06-0984-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Sal Celauro Jr; PAUL S. ASTRUP; and ROSANNE B. ASTRUP,	)	
Appellants,	)	
v.	)	
UNITED STATES; INTERNAL REVENUE SERVICE; LAWRENCE ENGEL individually and in his official capacity; SMITH'S AEROSPACE, INC.; TEACHER'S FEDERAL CREDIT UNION; and DCS TRANSPORT & LOGISTICS SOLUTIONS,	)	**EDNY District Court Case No. 05-cv-02245**
Appellees.	)	

BRIEF FOR PRO-SE PLAINTIFF-APPELLANTS

Dated: May 7, 2006

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS ……………	i
TABLE OF AUTORITIES ……………	iii
PRELIMINARY STATEMENT ……………	1
JURISDICTIONAL STATEMENT ……………	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW ……………	2
CLEAR ERROR BY THE DISTRICT COURT ……………	3
FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ……………	5
STATEMENT OF THE CASE	
A. OVERVIEW ……………	6
B. STATEMENT OF FACTS ……………	7
SUMMARY OF THE ARGUMENT ……………	11
ARGUMENT	
I. THE PEOPLE'S PETITIONS FOR REDRESS ARE "PROPER" ……………	12
II. GOVERNMENT IS OBLIGATED TO RESPOND TO PROPER PETITIONS FOR REDRESS OF GRIEVANCES	
A. Overview Of The History, Meaning, Effect And Significance Of The Right To Petition ……………	13
B. This Interest In Government Accountability Was Understood To Demand Government Response To Petitions ……………	17
C. Retaliation Is Not A Permissible Response ……………	20
E. The Production Of Information And Answers To Questions Is The Only Legitimate Response ……………	22

TABLE OF CONTENTS (continued)

Page

III. THE RIGHT TO PETITION INCLUDES THE RIGHT OF REDRESS BEFORE TAXES …………… 22

IV. THE COURT HAS JURISDICTION ...………… 22

V. THE ANTI-INJUNCTION ACT IS INAPPLICABLE ………….. 28

CONCLUSION ..………… 35

CERTIFICATE OF COMPLIANCE ..………… 35

TABLE OF AUTHORITIES

Page

CASES

Case	Page
Adderley v. Florida, 385 U.S. 39, 40-42 (1966)	13
Alexander v "Americans United," Inc., 416 US 752 (1974)	32
Bob Jones Univ. V. Simon, 416 US 725	32,33
Brushaber v. Union Pacific, 240 US 1, (1916)	33
Cantwell v. Connecticut, 310 U.S. 296, 307	21
Commissioner v Shapiro, 47 L Ed 2d 278 (1976)	32
Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc)	27,28
De Jonge v. Oregon, 299 U.S. 353, 364 (1937)	21
Edwards v. South Carolina, 372 U.S. 229, 238	13,21
Enochs v Williams Packing & Navigation Co. 370 US 1 (1962)	32,33
Hebert v. Louisiana, 272 U.S. 312, 316	20
Herndon *v.* Lowry, 301 U.S. 242	21
Investment Annuity v Blumenthal (1979, App DC) 197 US App DC 235, 609 F2d 1, cert den (1980) 446 US 981	31
Lane v. Pena, 518 U.S. 187 (1996)	27,28
Marbury v. Madison. 5 U.S. (1 Cranch) 139 (1803)	14
McDonald v. Smith, 472 U.S. 479, 483 (1985).	18,20
Miller v Standard Nut Margarine Co., 284 US 498 (1932)	32,33,34
Mine Workers v. Illinois Bar Assn., 389 U.S., at 221-222	13
N. A. A. C. P. *v.* Button, 371 U.S. 415, 433 (1963)	13,21,23
NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)	13
New York Times Co. v. Sullivan, 376 U.S. 254 at 266, 269	7,20
New York Times Co. v. U.S., 403 U.S. 670, 716 n.2 (1971)	15
Phillips v. Commissioner, 283 US 589	32,33
Powell v. Alabama, 287 U.S. 45, 67	20
Schulz v. United States, NDNY No. 95-cv-133, SUMMARY ORDER issued by the Second Circuit on February 10, 1997, Case No. 96-6184	27
Schulz v. United States, NDNY No. 99-cv-0845, SUMMARY ORDER issued by the Second Circuit on March 6, 2000,Case No. 99-6241	28
U.S. v. Nordic Village, 503 U.S. 30, decided in 1992	28
United States v American Friends Service Committee , 419 US 7 (1974)	32
United States v Babcock, 250 US 328 (1919)	26
United States v. Cruikshank, 92 U.S. 542, 552 (1876)	20
United States v. Sherwood, 312 U.S. 584 (1941)	28
We The People v. United States (Case Number 04-01211), on appeal at the United States Court of Appeals for the District of Columbia Circuit (Case Number 05-5359).	8
Yannicelli v Nash , 354 F Supp 143 (1972, DC NJ)	31
Yates v IRS (1998, DC SC) 98-1 USTC P 50452, 83 AFTR 2d 1147)	32

TABLE OF AUTHORITIES (continued)

Page

STATUTES

5 U.S.C. 702 26,27
26 U.S.C. § 6020 7
26 U.S.C. § 6021 7
26 U.S.C. § 6065 7
26 U.S.C. § 6212 7
26 U.S.C. § 6303 7
26 U.S.C. § 6330 7
26 U.S.C. § 6331(a) 7
26 U.S.C. § 6331(d) 7
26 U.S.C. § 6331(h) 7
26 U.S.C. 7421(a) 6,30,31,32
28 U.S.C. 1291 2
28 U.S.C. 1331 2,27
28 U.S.C. 1343 27
28 U.S.C. 2679(b)(1),(2) 1

CONSTITUTION

Article I, Section 8 2
First Amendment, Petition Clause passim
Fifth Amendment passim
Ninth Amendment passim
Tenth Amendment 5,29,32,35
Fourteenth Amendment 2,20,32

OTHER REFERENCES

Higginson, Stephen A., "A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES," 96 Yale L.J. 142 (November, 1986) 14, 18,21

Smith, Norman B., "SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION," 54 U. Cin. L. Rev. 1153 (1986) ` 14,15

Schnapper, Eric, "LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW," 74 Iowa L. Rev. 303 (January 1989) 14

Amar, Akhil Reed, "THE BILL OF RIGHTS AS A CONSTITUTION," 100 Yale L.J. 1131 (March, 1991) 14

TABLE OF AUTHORITIES (continued)

Page

NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, "
106 Harv. L. Rev. 1111 (MARCH, 1993) 14

Pfander, James E., "SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, "
91 Nw. U.L. Rev. 899 (Spring 1997) 14

Mark, Gregory A., "THE **VESTIGIAL CONSTITUTION:** THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION,"
66 Fordham L. Rev. 2153 (May, 1998) 14,15

Lawson, Gary and Seidman, Guy, "DOWNSIZING THE RIGHT TO PETITION," *93 Nw. U.L. Rev. 739* (Spring 1999) 14

Rice-Andrews, Carol, "A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT," 60 Ohio St. L.J. 557 (1999) 14

Rice-Andrews, Carol, "MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE," Carol Rice Andrews,
61 Ohio St. L.J. 665 (2000) 14
Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in
5 THE FOUNDERS' CONSITUTION 197
(Philip B. Kurland & Ralph Lerner eds. 1987) 15

1 WILLIAM BLACKSTONE, COMMENTARIES 138-39 15

Frederick, David C., "JOHN QUINCY ADAMS, SLAVERY, AND THE DISAPPEARANCE OF THE RIGHT TO PETITION,"
9 LAW & HIST. REV. 113, at 115 15

Rice, Charles E., "FREEDOM OF PETITION", in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986) 15

Anderson, David A., "THE ORIGINS OF THE PRESS CLAUSE,"
30 UCLA L. REV. 455, 463 n.47 (1983) 15

1 ANNALS OF CONG. (Joseph Gales ed., 1834) 15,18

5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS (1980) 16,17,18

TABLE OF AUTHORITIES (continued)

Page

Smith, Don L. "THE RIGHT TO PETITION FOR REDRESS OF GRIEVANCES: CONSTITUTIONAL DEVELOPMENT AND INTERPRETATIONS" (1971) (unpublished Ph.D. dissertation) (Univ. Microforms Int'l) 16

Smellie, K., " RIGHT TO PETITION," in 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES, (R.A. Seiligman ed., 1934) 16

MAGNA CARTA (1215), 5 THE FOUNDERS' CONSTITUTION 16

"PETITION OF RIGHT" (1628), 5 THE FOUNDERS' CONSTITUTION 16

Bailey, Raymond, "POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA" (1979) 17

Cooley, Thomas M., " TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION" (6th ed. 1890) 17

CONG. GLOBE, 39th Cong., 1st Session. 1293 (1866) 17

Story, Joseph, "COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES" (Carolina Academic Press ed. 1987) (1833) 17

"DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3" (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION 17

DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), reprinted in 5 THE FOUNDERS' CONSTITUTION 17

THE DECLARATION OF INDEPENDENCE (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199 17

Strimbeck, Lee A., " THE RIGHT TO PETITION," 55 W. VA. L. REV. 275, 277 (1954) 17

STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99TH CONG., 2D SESS., PETITIONS, MEMORIALS AND OTHER DOCUMENTS SUBMITTED FOR THE CONSIDERATION OF CONGRESS, MARCH 4, 1789 TO DECEMBER 15, 1975, at 6-9 (Comm. Print 1986) 18

H.J., 25th Cong., 2d Sess. 647 (1838) 18

TABLE OF AUTHORITIES (continued)

Page

"CONTINENTAL CONGRESS TO THE INHABITANTS OF QUEBEC."
Journals of the Continental Congress. Journals 1:105-113 23,29

Thomas Jefferson Papers 1:225 29

G. WOOD, The Creation Of The American Republic 1776-1787, at 363 (1969) 21

PRELIMINARY STATEMENT

This appeal is from an Order of the United States District Court for the Eastern District of New York signed by Judge Arthur D. Spatt. On information and belief, the decision and order was not reported. A copy of the Decision and Order is in the Appendix at Page A-12.

JURISDICTIONAL STATEMENT

Due to the nature of the complaint, the District Court sat as constitutional court, not a legislative court. For purposes of this complaint, the United States District Court and this Court of Appeals are Article III judicial courts, vested with all the judicial powers granted by the 3rd Article of the Constitution for the United States of America (hereinafter "Constitution"), with full respect, recognition and guarantee of each Plaintiff's constitutionally protected Rights.

In addition, all elected officials and federal employees are immune from suit individually for common law torts occurring within the scope of their employment. *See* 28 U.S.C. §2679(b)(1). Section 2679(b)(1) does not extend to "a civil action against an employee of the Government which is brought for a violation of the Constitution of the United States, or which is brought for a violation of a statute of the United States…" *See* §2679(b)(2). Therefore, the UNITED STATES, THE INTERNAL REVENUE SERVICE and LAWRENCE ENGEL in his individual and official capacity have been named as the Defendants in this Complaint.

The President of the United States, his Executive Branch Agencies, and the Legislative Branch of the United States have failed to address the People's Petitions for Redress of Grievances and have subsequently retaliated against the People in violation of the

First and Ninth Amendments to the Constitution, and jurisdiction is therefore proper under the Constitution and 28 U.S.C. §1331.

The People have been denied due process in violation of the Fifth and Fourteenth Amendments to the Constitution, and jurisdiction is proper in accordance with the Constitution and 28 U.S.C. §1331.

The Court of Appeals has jurisdiction pursuant to 28 U.S.C. Section 1291. The appeal is from a final decision of the District Court entered January 28, 2006 that disposes of all parties' claims. The appeal was taken on February 27, 2006.

STATEMENT OF THE ISSUES FOR REVIEW

1. Whether Plaintiffs-Appellants (hereinafter "People") have a Right of Accountability and a Right of Response under the Petition Clause of the First Amendment to the Constitution, and whether government Defendants-Appellees (hereinafter "United States") are thereby obligated to respond with specific, official answers to the questions put forth by the People in their Petitions to the United States for Redress of Grievances relating to *constitutional torts*.

2. Whether the People have a Right of Enforcement under the Petition Clause of the First Amendment to the Constitution, and whether the People may thereby retain their money without retaliation by the United States until their grievances are redressed.

3. Whether the United States lacks territorial jurisdiction over these Plaintiffs given Article I, Section 8, Clause 17 of the Constitution.

4. Whether the People's Right to Due Process under the Fifth and Fourteenth Amendments to the Constitution has been violated.

5. Whether the doctrine of sovereign immunity is a bar to the Court's jurisdiction.

6. Whether the Anti-Injunction Act can bar injunctive relief.

CLEAR ERROR BY THE DISTRICT COURT

The District Court committed clear error.

Contrary to the first sentence in the District Court's Decision, this case is not "an action challenging the constitutionality and operation of the federal income tax system." There is nothing in the People's Verified Complaint that supports such an opinion.

Clearly, the high order issue presented for consideration is the meaning of the Petition Clause of the First Amendment: to wit, what are the People's Rights, and what is the United States' lawful obligation to the People, under the Petition Clause.

A fair reading of the Verified Complaint would show that this action is not about taxes but is all about the People's Right of Due Process and the People's Right of Accountability, Right of Response and Right of Enforcement under the First (Petition Clause) and Ninth Amendments to the Constitution.

For instance, the Statement of Facts in the Verified Complaint (**A 46-50**), speaks only to the People's repeated Petitions to the United States for Redress of Grievances regarding the United States' violations of the Constitution's war powers, tax, privacy, and money and debt-limiting clauses and the United States' failure to respond to the People's Petitions.

In addition, a fair reading of the five Causes of Action in the Verified Complaint shows not a constitutional challenge to the federal income tax system, but claims by the People that the United States has violated the People's fundamental Rights:

- by **not responding** to the People's four Petitions for Redress of *constitutional torts*, in violation of the People's Right of Accountability and Right of

Response under the Petition Clause of the First Amendment (Third Cause of Action) (**A-52**); and

- by using force against the People, **by administrative order**, to take the money property from the People for exercising their Right of Accountability, Response and Enforcement under the Petition Clause, a violation of the People's Right of Due Process (First Cause of Action)(**A-50**) and
- by otherwise **impermissibly retaliating** against the People for exercising the Right to Petition, in violation of the People's privacy Rights under the Fourth and Ninth Amendments to the Constitution, and in violation of the People's Right of Accountability, Response and Enforcement under the First and Ninth Amendments to the Constitution (Fourth Cause of Action)(**A-53**); and
- by acting against the People outside of the United States' **territorial jurisdiction** in violation of the prohibitions of Article I, Section 8, Clause 17 of the Constitution (Second Cause of Action)(**A-51**), and
- by acting under color of law (Fifth Cause of Action)(**A-53**).

By not considering any of the People's causes of action, which individually and collectively claim violations of the People's Rights under the Petition Clause, the District Court implies the Petition Clause was intended to be without effect: the United States has no lawful obligation to respond to the People's Petitions, and the People have no Rights under the Petition Clause.

There is no mention by the District Court of the **only** issue presented by Plaintiffs for the Court's consideration, Plaintiffs' Right to Petition for Redress and the impermissibility of the Defendants' retaliation against Plaintiffs for exercising that Right.

The omission is an injustice. The decision by the lower court speaks only to the "sovereignty" of the United States and to the federal income tax laws, including the Anti-Injunction Act and ignores the substance of the People's complaint, including Plaintiffs' asserted Right to Petition. **This is also an injustice**.

The Court's attention is invited to the statement by Judge Spatt on page 11 of his decision and order; "Although the Plaintiffs have submitted numerous exhibits outside of the pleadings in support of their arguments against dismissal, the Court declines to consider those materials." (A-22). The Plaintiffs-Appellants did not include *any* exhibits in support of their arguments against dismissal. See Plaintiffs' Opposition to the Defendants' Motions to Dismiss. (A 714-746). However, Plaintiffs did include numerous exhibits with their complaint, i.e., *within the pleadings*.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"Congress shall make no law … abridging …the Right of the People … to petition the government for a redress of grievances." Constitution of the United States of America, First Amendment.

"No person shall be compelled in any criminal case to be a witness against against himself, nor be deprived of …liberty, or property, without due process of law …." Constitution of the United States of America, Fifth Amendment.

"The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People." Constitution of the United States of America, Ninth Amendment.

"The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People." Constitution of the United States, Tenth Amendment.

" …. no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom the tax was assesses." Internal Revenue Code (26 U.S.C.) Sec. 7421(a).

STATEMENT OF THE CASE

A. OVERVIEW

Prior to February of 2004, and for as long as seven years, the People had been intelligently, rationally, professionally and respectfully exercising their Right of Accountability by petitioning the United States for Redress of Grievances regarding violations by the United States of the tax, war, privacy and money and debt limiting provisions of the Constitution. The People sought answers to specific, thoughtful questions. See the Joint Affidavit by all three Plaintiffs (A 62-294), and the Affidavit by Plaintiff Paul Astrup (A 295-351) and the Affidavit by Plaintiff Sal Celauro (A 352-360), with relevant exhibits (A 361-680).

To this day, there has been no response from the United States to any of those Petitions for Redress. There have been no answers to any of the People's questions.

Prior to February 2004, the People began to exercise their Right of Response and Right of Enforcement under the Petition Clause of the First Amendment and under the Ninth Amendment. They began to retain their money until their grievances were redressed.

In 2004, by a simple "Notice of Levy" served on the companies the People worked for and the banks where the People had savings accounts, the United States began seizing

85% of the People's weekly earnings and all but 1$ from savings accounts, all without responding to the People's legitimate First Amendment Petitions for Redress of Grievances, without a court order, and **without even attempting to follow its own law**.

The Notice of Levy was served by Defendant Engel **without a court order or hearing,** without first preparing and serving a "substitute for return" (required by 26 U.S.C. § 6020), without first preparing and serving an "assessment" (required under § 6201), without first preparing and serving a "declaration under the penalties of perjury that the assessment was valid**"** (required by § 6065), without first preparing and serving a "Notice of deficiency" (required by § 6212), without first preparing and serving a "notice and demand for tax" (required under § 6303), without first preparing and serving a "Notice and opportunity for hearing before levy" (required by § 6330), without including the statement regarding the "Authority of the Secretary" (required by § 6331(a)), without obtaining the approval of the Secretary for a "continuous levy*"* (required by § 6331(h)), without complying with the provision of § 6331(h)) that prohibits the IRS from attaching more than 15% of the payments due the People each week, and without issuing the People a "Notice Before Levy" (required by § 6331(d)), much less a "Notice before levy 30 days before the levy" (required by § 6331(d)).

None of the above has been rebutted much less denied by the United States in District Court.

B. STATEMENT OF FACTS

For seven years, Plaintiffs have been associating with thousands of other citizens from every state in the Union to support and participate in a formal process of Petitioning the United States for Redress of Grievances regarding the United States' violations of the

Constitution's tax, war powers, money and debt-limiting and privacy clauses. See the Joint Affidavit by all three Plaintiffs (A 62-294), and the Affidavit by Plaintiff Paul Astrup (A 295-351) and the Affidavit by Plaintiff Sal Celauro (A 352-360), with relevant exhibits (A 361-680).

As the Joint Affidavit demonstrates, the United States has thus far refused to respond to the Petitions for Redress and the People have been forced to ask the District Court in and for the District of Columbia for a declaration of their Rights under the Petition Clause. See *We The People v. United States* (Case Number 04-01211), on appeal at the United States Court of Appeals for the District of Columbia Circuit (Case Number 05-5359).

Facts Re Celauro

On or about Nov 13, 2003, Defendant IRS agent Engel served Plaintiff Celauro with an administrative summons that "required" Celauro to meet with Engel and turn over his personal books and records for the year **2001** and **2002**. (A 361). Celauro responded to the Summons. He met with agent Engel on December 1, 2003. However, in good faith, Celauro properly and respectfully refused to comply with the Summons' "requirement" that he turn over his personal and private books and records. During the meeting, Engel told Celauro: 1) that it was mandatory (not voluntary) that Celauro comply with the requirements of the Summons; and 2) that he would not guarantee that the information would not be used against Celauro in a criminal proceeding. Celauro, therefore, invoked the 5th Amendment in response to many of Engel's questions. For a copy of the transcript of the meeting see (A 386-396).

During the December 1st meeting, and on six separate occasions following the date of the meeting, Celauro submitted First Amendment Petitions for Redress of Grievances, requesting answers from the IRS to legitimate questions going to Celauro's liability under the

law: December 1, 2003 (A 397-503); December 8, 2003 (A 504-535); December 17, 2003 (A 536); December 20, 2003 (A 537-543); January 5, 2004 (A 544-545); January 7, 2004 (A 578-579); January 30, 2004 (A 580-594). The United States did not respond.

On February 2, 2004, **without a judicial hearing and without a court order, and without responding to Celauro's Petitons for Redress of Grievances**, Engel simply served a Notice of Levy, administratively directing Defendant DCS (the company Celauro worked for) to turn over $23,143.31 from Celauro's earnings.[1] (A-593).

Within days of his receipt of the Notice of Levy, Celauro again submitted First Amendment Petition for Redress of Grievances, requesting answers to more questions related to his liability. He did so on February 4, 2004 (A 598-603), and March 19, 2004 (A 616-624). The United States did not respond.

However, without a judicial hearing and without a court order, and without responding to Celauro's Petitions for Redress, and without determining whether the Engel was operating within the law, DCS simply complied with Engel's administrative request. $3,193.68 was seized and turned over to the IRS, leaving Celauro with a mere $150 per week to support himself and his family.

Unable to continue working at that rate, Celauro was forced to seek and find other work, but his new work paid him little more than half (57%) of what he was earning earned at DCS.

Defendant Engel then repeated injury upon Celauro. On May 7, 2004, Celauro was handed a Summons (A 625-626), "requiring" Celauro to meet with Engle and to surrender his personal and private books and records for **2000**.

[1] Compounding the abuse of Celauro's due process Rights, the Notice of Levy was for **2000**, meaning, it was force applied to Celauro that was unrelated to the Summons (which was issued for **2001** and **2002**), and was, in fact, unrelated to any IRS administrative procedure because there was no prior contact between Celauro and the IRS before the Summons.

On June 8, 2004, Celauro responded to the Summons by meeting with agent Engel (and others at the IRS). Again, in good faith, Celauro properly and respectfully refused to comply with the "requirements" of the Summons. For a copy of the Transcript see
(A 627-636).

During the June 8th meeting, and on three separate occasions following the meeting, Celauro submitted First Amendment Petitions for Redress of Grievances, requesting answers from the IRS to legitimate questions going to Celauro's liability under the law: June 8, 2004 (A 639-659); June 15, 2004 (A 660-661); November 13, 2004 (A 665-666); and January 31, 2005 (A 667-672). The United States did not respond

On March 22, 2005, without a court hearing and without a court order, the Engel applied more force against Celauro (for failing to comply with the "requirements" of the summons), by serving another Notice of Levy, directing Celauro's new company to turn over $21,754 (A 673).

Facts Re Paul And Rosanne Astrup

On October 14, 2004, following receipt of a Notice of Levy that had been served on his company for the tax period **1997, for which there had been no prior correspondence between Astrup and the IRS,** Astrup submitted a First Amendment Petition for Redress of Grievances to Engel, requesting answers to legitimate questions going to Astrup's liability under the law. (A 303-315). The United States did not respond.

On November 29, 2004, <u>without a court order or hearing, and without responding to Astrup's Petition for Redress of Grievances</u>, Engle served a Notice of Levy on Astrup's company for $51,730.34 for tax periods **1998, 1999, 2000 and 2001, for which there had been no prior correspondence**. (A 318-319). The Company immediately began to turn over 85% of Astrup's weekly earnings to the to the IRS. (A 324-342)

On November 30, 2004, without a court order or hearing, and without responding to Astrup's Petition for Redress of Grievances, Engle served a Notice of Levy on Astrup's Credit Union for $51,730.34 for tax periods **1998, 1999, 2000 and 2001**. (A 321-322). The Credit Union immediately complied by turning over to the IRS all of Astrups' savings.
(A 344).

On December 9, 2004, ten days *after* the service of the Notice of Levy, Astrup received a Summons "requiring" him to meet with Engle 28 days later, on January 6, 2005 to turn over his personal and private books and records for the tax periods **1998, 1999, 2000 and 2001.** (A 346-347).

During the January 6, 2005 meeting and on March 15, 2005, Astrup submitted Petitions for Redress of Grievances, requesting answers from the IRS to questions going to Astrup's liability under the law (A 349). The United States did not respond.

SUMMARY OF THE ARGUMENT

The People's Petitions for Redress that gave rise to this case set a high standard. They meet or exceed any rational standard for Petitions protected by the First Amendment.

Because this is a case of first impression where the full contours of the meaning of the Petition Clause of the First Amendment has not been declared by any court in America, Plaintiffs' provide a detailed review of the history, meaning, effect and significance of the Right to Petition.

The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the Government consider *and respond* to their Petitions.

The Right to Petition Government for Redress of Grievances includes the Right of Redress *Before* Taxes, and the Right to Petition for Redress of Grievances includes protection from

retaliation. The Founding Fathers clearly declared that the Right of Redress of Grievances *includes* the Right to withhold payment of taxes while the grievance remains.

Petitioning the Government for Redress of Grievance naturally includes the ability to compel admissions – the production of information and answers to questions

THE PEOPLE'S PETITIONS FOR REDRESS ARE "PROPER"

The term "Petition" is not defined in the Constitution. To be sure, a communication, to be protected as a Petition to the Government for Redress of Grievances would have to embody certain components to ensure that the document was a Petition and not a "pretended petition." The People do not argue that all communications, nor just any document, can be regarded as a constitutionally protected Petition for Redress of Grievances. The People's Petitions for Redress that gave rise to this case set a high standard. They meet or exceed any rational standard for Petitions protected by the First Amendment. For instance, Plaintiff's Petitions for Redress:

- are serious and documented, not frivolous.
- contain no falsehoods.
- are not absent probable cause.
- have the quality of a dispute.
- come from a person outside of the formal political culture.
- contain both a "direction" and a "prayer" for relief.
- have been punctilious.
- address public, collective grievances.
- involve constitutional principles not political talk.
- have been signed only or primarily by citizens.
- have been dignified.
- have widespread participation and consequences.
- are instruments of deliberation not agitation.
- provide new information.
- do not advocate violence or crime.
- merely request answers to specific questions.

GOVERNMENT IS OBLIGATED TO RESPOND TO PROPER PETITIONS FOR REDRESS OF GRIEVANCES

A. Overview Of The History, Meaning, Effect And Significance Of The Right To Petition

Because this is a case of first impression it is instructive to review the history of the Right to Petition.

Although the term "petition" is not defined by the Constitution, it is clear the United States Supreme Court has interpreted the "Petition Clause" to apply in a variety of circumstances, noting the right to petition the representatives of the people in Congress, to petition the Executive Branch, and the right of access to the courts. The Supreme Court has also determined that it is appropriate to give an alleged intrusion on First Amendment rights particular scrutiny where the Government may be attempting to chill the exercise of First Amendment rights because the exercise of those rights would adversely affect the Government's own interests.

Although the courts have not previously addressed the precise issue presented here, the courts have recurrently treated the Right to Petition similarly to, and frequently as overlapping with, the First Amendment's other guarantees of free expression. See, *e. g.,* *NAACP* v. *Claiborne Hardware Co*., 458 U.S. 886, 909-912, 915 (1982);*Mine Workers* v. *Illinois Bar Assn.*, 389 U.S., at 221-222;*Adderley* v. *Florida*, 385 U.S. 39, 40-42 (1966); *Edwards* v. *South Carolina*, 372 U.S. 229, 234-235 (1963); *NAACP* v. *Button*, 371 U.S. 415, 429-431 (1963).

The Right To Petition is a distinct, substantive Right that has been violated; Government *is* obligated to respond and has failed to do so. Popular sovereignty depends upon and is directly exercised through The Peoples' Right of Response. Though the Rights to Popular Sovereignty and

its “protector” Right, the Right of Petition for Redress have become somewhat forgotten, they took shape early on by Government’s *response* to Petitions for Redress of Grievances.[2]

The Government is obligated to respond to Petitions for Redress of Grievances, especially when, as here, the oppressions are *ultra vires*, caused by unconstitutional government acts--constitutional torts. The underlying, fundamental Right is not changed by the fact that the Petition Clause lacks an affirmative statement that Government shall respond to Petitions for Redress of Grievances. “It cannot be presumed, that any clause in the Constitution is intended to be without effect.” Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803).

For instance, while the 26th Amendment guarantees all citizens above the age of 18 the Right to Vote, it does not contain an affirmative statement that the Government shall count the votes. The enumeration in the Constitution of the Right to Vote and to Petition the Government for Redress of Grievances cannot be construed to deny or disparage the Right to have the Votes counted or the Right to a response to Petitions for Redress of Grievances.

The Right to Petition is a distinctive, substantive Right, from which other substantive First Amendment Rights were *derived.* The Rights to free speech, press and assembly originated as *derivative* Rights insofar as they were necessary to protect the *preexisting* Right to Petition.

[2] See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142(November, 1986); "SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986);"LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989);THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997);THE **VESTIGIAL CONSTITUTION:** THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998); DOWNSIZING THE RIGHT TO PETITION, Gary Lawson and Guy Seidman, *93 Nw. U.L. Rev. 739* (Spring 1999); A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. L.J. 557 (1999) ; MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000).

Petitioning, as a way of holding Government accountable to natural Rights, originated in England in the 11th century[3] and gained recognition as a Right in the mid 17th century.[4] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.[5] Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.[6] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[7]

In addition, the Right to Petition was widely accorded greater importance than the Rights of free expression. For instance, in the 18th century, the House of Commons, [8] the American Colonies, [9] and the first Continental Congress[10] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[11]

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate sections.[12] In addition, a "considerable majority" of Congress defeated a motion to strike the assembly provision from the First Amendment because of the

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[3] Norman B. Smith, "Shall Make No Law Abridging…": Analysis of the Neglected, But Nearly Absolute, Right of Petition, 54 U. CIN. L. REV. 1153, at 1154.
[4] See Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in 5 THE FOUNDERS' CONSITUTION 197 (Philip B. Kurland & Ralph Lerner eds., 1987); 1 WILLIAM BLACKSTONE, COMMENTARIES 138-39.
[5] See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.
[6] See Smith, *supra* n.4, at 1165-67.
[7] See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)
[8] See Smith, *supra* n4, at 1165.
[9] For example, Massachusetts secured the Right to Petition in its Body of Liberties in 1641, but freedom of speech and press did not appear in the official documents until the mid-1700s. See David A. Anderson, *The Origins of the Press Clause*, 30 UCLA L. REV. 455, 463 n.47 (1983).
[10] See id. at 464 n.52.
[11] Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning, whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n6, at 115-16.
[12] See New York Times Co. v. U.S., 403 U.S. 670, 716 n.2 (1971)(Black, J., concurring). For the full text of Madison's proposal, see 1 ANNALS OF CONG. 434 (Joseph Gales ed., 1834).

understanding that all of the enumerated rights in the First Amendment were separate Rights that should be specifically protected.[13]

The zone of interest to be protected by the Petition Clause goes beyond the Clause itself to all natural Rights. The Petition Clause guarantees the Right to hold Government accountable to each provision of the Constitution through citizen participation in their Right to self-government.

Petitioning Government for Redress of Grievances has played a key role in the development, exercise and enforcement of popular sovereignty throughout British and American history. [14] In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.[15] Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.[16] This broadening of political participation culminated in the official recognition of the right of Petition in the People themselves.[17]

The People used this newfound Right to question the legality of the Government's actions,[18] to present their views on controversial matters,[19] and to demand that the Government, *as the creature and servant of the People, be responsive to the popular will.*[20]

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[13] See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).
[14] See Don L. Smith, *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations* 10-108 (1971) (unpublished Ph.D. dissertation) (Univ. Microforms Int'l); K. Smellie, Right to Petition, in 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 98, 98-101 (R.A. Seiligman ed., 1934).
[15] The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5, at 187.
[16] See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 187-88.
[17]In 1669, the House of Commons stated that, "it is an inherent right of every commoner in England to prepare and present Petitions to the House of Commons in case of grievances, and the House of Commons to receive the same." Resolution of the House of Commons (1669), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 188-89.
[18] For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Smith, *supra* n4, at 1160-62. James II's attempt to punish the bishops for this Petition led to the Glorious Revolution and to the enactment of the Bill of Rights. See Smith, *supra* n15 at 41-43.
[19] See Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).
[20] In 1701, Daniel Defoe sent a Petition to the House of Commons that accused the House of acting illegally when it incarcerated some previous petitioners. In response to Defoe's demand for action, the House released those Petitioners. See Smith, *supra* n4, at 1163-64.

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify Government misconduct.[21]

By the nineteenth century, Petitioning was described as "essential to … a free government"[22] – an inherent feature of a republican democracy,[23] and one of the chief means of enhancing Government accountability through the participation of citizens.

B. This Interest In Government Accountability Was Understood To Demand Government Response To Petitions.[24]

American colonists, who exercised their Right to Petition the King or Parliament, [25] expected the Government to receive *and respond* to their Petitions.[26] The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the "**capstone**" **grievance**, was a significant factor that led to the American Revolution.[27]

Frustration with the British Government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[28] Members of the First Congress easily defeated this right-of-instruction proposal.[29] Some discretion to reject petitions

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[21] See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).
[22] THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 531 (6th ed. 1890).
[23] See CONG. GLOBE, 39th Cong., 1st Session. 1293 (1866) (statement of Rep. Shellabarger) (declaring petitioning an indispensable Right "without which there is no citizenship" in any government); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 707 (Carolina Academic Press ed. 1987) (1833) (explaining that the Petition Right "results from [the] very nature of the structure [of a republican government]").
[24] See Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).
[25] See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), *reprinted in id*. at 198.
[26] See Frederick, *supra n7* at 115-116.
[27] See THE DECLARATION OF INDEPENDENCE para. 30 (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; Lee A. Strimbeck, The Right to Petition, 55 W. VA. L. REV. 275, 277 (1954).
[28] See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.
[29] The vote was 10-41 in the House and 2-14 in the Senate. See *id*. at 1105, 1148.

that "instructed government," they reasoned, would not undermine Government accountability to the People, as long as Congress had a duty to consider petitions *and fully respond to them*.[30]

Congress's response to Petitions in the early years of the Republic also indicates that the original understanding of Petitioning *included a governmental duty to respond*. Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.[31]

Congress referred Petitions to committees[32] and even created committees to deal with particular types of Petitions.[33] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report. [34]

Thus, throughout early Anglo-American history, general petitioning (as opposed to judicial petitioning) allowed the people a means of direct political participation that in turn demanded government *response* and promoted accountability.

The Supreme Court has characterized the interest underlying the Petition Right broadly as an interest in self-government. McDonald v. Smith, 472 U.S. 479, 483 (1985).

The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the Government consider and respond to their Petitions.

Petitioning the Government for Redress of Grievances is the only non-violent way the plaintiffs have to hold their Government accountable to its primary role of protecting the

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[30] See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n15, at 1093-94 (stating that representatives have a duty to inquire into the suggested measures contained in citizens' Petitions) (statement of Rep. Roger Sherman); *id*. at 1095-96 (stating that Congress can never shut its ears to Petitions) (statement of Rep. Elbridge Gerry); *id*. at 1096 (arguing that the Right to Petition protects the Right to bring non-binding instructions to Congress's attention) (statement of Rep. James Madison).

[31] See STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99TH CONG., 2D SESS., PETITIONS, MEMORIALS AND OTHER DOCUMENTS SUBMITTED FOR THE CONSIDERATION OF CONGRESS, MARCH 4, 1789 TO DECEMBER 15, 1975, at 6-9 (Comm. Print 1986) (including a comment by the press that "the principal part of Congress's time has been taken up in the reading and referring Petitions" (quotation omitted)).

[32] See Stephen A. Higginson, Note, *A Short History of the Right to Petition the Government for the Redress of Grievances,* 96 YALE L. J. 142, at 156.

[33] See H.J., 25th Cong., 2d Sess. 647 (1838) (describing how petitions prompted the appointment of a select committee to consider legislation to abolish dueling).

[34] See Higginson, n34 at 157.

individual’s, unalienable rights. If the Government of the People cannot be held constitutionally obligated to listen and honestly respond to The People’s proper and responsible Petitions for Redress, individual Rights will be predictably and irretrievably lost.

The historical record shows that the Framers and ratifiers of the First Amendment clearly understood the Petition Right as distinct from the ancillary Rights of free expression and the other First Amendment Rights, and that it included the Right to a response.

The zone of interest that is uniquely served by Petitions for Redress is the Constitution itself, *all* of it, each natural Right, enumerated and un-enumerated. Without the Government’s obligation to respond to Petitions for Redress of Grievances, the People have no non-violent way to enforce the rules laid out in the founding documents to govern the ongoing contest of Freedom in America. Freedom is a fragile thing, never more than a generation away from extinction. Freedom is not to be considered as inherited. It needs to be defended against Government misconduct by each generation. The Petition is to the individual and the minority as the Ballot is to the majority. Take away the Government’s obligation to respond and we take away the Right to Petition. Take away the Right to Petition and we take away the ability to limit the Government to our written constitutions, State and Federal. The People have a Right to a response to their proper Petitions for Redress. To say otherwise is to deny the Right to Petition.

Non-responsive “responses,” including silence, are repugnant to the Petition Clause, and The People have an unalienable Right to peaceably enforce each of their unalienable Rights, without disturbing the public tranquility when the Government refuses to respond to proper Petitions for Redress. *Any Right that is not enforceable is not a Right*. The only non-violent means by which The People can ultimately keep an arrogant, recalcitrant Government from acting without authority is by retaining their money until their grievances are redressed.

C. Retaliation Is Not A Permissible Response

By communicating information, and praying for answers to specific questions, The People have given expression essential to the end that government Defendants may be responsive. See McDonald v Smith (1985) 472 US 479; New York Times Co. v. Sullivan, 376 U.S. 254 at 266, 269.

The First Amendment Right to Petition Government for Redress of Grievances includes protection from retaliation. A retaliatory action is one brought with a motive to *interfere* with the exercise of protected Rights. A clear and present danger to the public interest is required before the Government can restrict Rights. Defendants make no such claim.

The Government's retaliation against The People is without reasonable cause; it is not objective; there is no clear and present danger to the Government that would justify their punishment of The People for performing a self-government function. The Petition clause was included in the First Amendment to ensure the growth and preservation of democratic self-governance.

The right to Petition the Government requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to Petition for a Redress of Grievances." *United States* v. *Cruikshank*, 92 U.S. 542, 552 (1876).

The First Amendment of the Federal Constitution expressly guarantees that Right against abridgment by Congress. The Right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions, -- principles which the Fourteenth Amendment embodies in the general terms of its due process clause. *Hebert* v. *Louisiana*, 272 U.S. 312, 316; *Powell* v. *Alabama*, 287 U.S. 45, 67.

Except in the most extreme circumstances citizens cannot be punished for exercising this Right "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions," *De Jonge* v. *Oregon*, 299 U.S. 353, 364 (1937).

If the ability to enforce the right to petition by communicating to one's representative could be arbitrarily ignored, refused, suppressed or punished, popular sovereignty is threatened. *See* G. WOOD, The Creation Of The American Republic 1776-1787, at 363 (1969).

Petitions are tied to distrust of and the imperfect nature of government officials and to a refusal by elected representatives to equate or subordinate their will to the Rights of individuals. Undue assertions of parliamentary privilege and punishing petitioners who were said to menace the dignity of the assembly jeopardize the institution of petitioning**.** Higginson, 96 Yale L.J. 142, n45.

Before a First Amendment right may be curtailed under the guise of a law, including the Fnternal revenue laws, any evil that may be collateral to the exercise of the right, must be isolated and defined in a "narrowly drawn" statute (*Cantwell v. Connecticut*, 310 U.S. 296, 307), lest the power to control excesses of conduct be used to suppress the constitutional right itself. *Herndon* v. *Lowry*, 301 U.S. 242, 258-259; *Edwards v. South Carolina*, 372 U.S. 229, 238; *N. A. A. C. P. v. Button*, 371 U.S. 415, 433.

There is no evidence in the Record of anything but Plaintiffs' open, honest and humble actions in relation to the Petition process. There is nothing in the record of any inappropriate or untoward behavior by Plaintiffs.

Today, threats are being used to harass and penalize The People for exercising a constitutional right of Assembly and Petition. The Government will undoubtedly say they are not targeting Plaintiffs because of the constitutional principles they espouse. However, that pretext is usually given, as we know from the many cases, over the centuries, involving arrests of minority

groups for "breaches of the peace, unlawful assemblies, and parading without a permit." The charge against William Penn, who preached a nonconformist doctrine in a street in London, was that he caused "a great concourse and tumult of people" in contempt of the King and "to the great disturbance of his peace." 6 How. St. Tr. 951, 955. That was in 1670.

Defendants are moving to silence the People, who question Government's behavior and preach a nonconformist doctrine, that is, "the United States has an obligation to hear and answer the People's Petitions for Redress of Grievances and the People have a Right to enforce their Rights which includes retaining their money until their Rights are Redressed." Such abuse of police power is usually sought to be justified by some legitimate function of government.

The United States does violence to the First Amendment when it attempts to turn a reasonable and legitimate "Petition for Redress of Grievances" into a statutorily based charge of "willfully failing to file," under color of the internal revenue laws.

D. Answers To Questions Is The Only Legitimate Response

Petitioning the Government for a Redress of Grievance naturally includes the ability to compel admissions – the production of information and answers to questions. Jefferson wrote:

> "The right of freely examining public characters and measures, and of free communication among the people thereon…has ever been justly deemed the *only effectual guardian* of every *other* right."

III. THE RIGHT TO PETITION INCLUDES THE RIGHT OF REDRESS BEFORE TAXES

In America, the right to Petition Government officials for Redress of Grievances is the basis of Liberty. The founders explicitly recognized this right in the very first amendment to the Constitution for they understood that without it, The People could not have a government whose power is defined and limited by the consent of the People.

The Founding Fathers clearly declared that the Right of Redress of Grievances *includes* the Right to withhold payment of taxes while the grievance remains. By the 1st Amendment, the founding fathers secured for posterity the Right of Redress of Grievances *before* payment of Taxes and they made the Right of Redress *before* Taxes operate against "*the government*," that is, against *all branches* of "the government," – the legislative, the executive and the judicial branches. Redress reaches all.

The right to Petition for the Redress of Grievances has an ancient history and is not limited to writing a letter or sending a telegram to a congressman; it is not confined to appearing before the local city council, or writing letters to elected officials. See *N. A. A. C. P.* v. *Button*, 371 U.S. 415, 429-431.

As the record in the instant case reveals, conventional methods of Petitioning have been shut off to the People. Unconventional methods of Petitioning [such as redress before taxes] are protected as long as the Assembly and Petition are peaceful. The Right of Redress *before* Taxes is a peaceful, integral part of the Right to Petition for Redress of Grievances.

For instance, in 1774, in an official Act of the Continental Congress, the founding fathers wrote: " If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." *Continental Congress To The Inhabitants Of The Province Of Quebec. Journals of the Continental Congress. 1774 -1789. Journals 1: 105-13.*

Plaintiffs have an inherent, unalienable Right to *Redress Before Taxes,* guaranteed by the First and Ninth Amendments. Under the facts and circumstances of this case, the People's retention of their money until their grievances are Redressed is consistent with and protected by

the Right to Petition. It remains as the only peaceful method of enforcing the Right to Petition available to The People, absent an effective declaration by the Court constraining the Defendants to respond to the Petitioners.

IV. THE COURT HAS JURISDICTION.

In the District Court, the United States declared its sovereignty over the People, that is, that the People have either voluntarily given up *all* of their natural, unalienable, individual Rights to the United States, or that the United States has seized all of the People's Rights that the People had not voluntarily given up to the United States.

In the District Court the United States has declared that as sovereign it can do no wrong and that the People have no Right to sue the United States.

In the District Court the United States has declared that from time to time the United States issues written decrees, with specific conditions, that grant the People a privilege to sue the United States in a United States court.

In the District Court the United States argued that the People cannot point to a specific decree issued by the United States that grants to the People the privilege of filing the present lawsuit against the United States in a United States court.[35]

The People declare that they have not voluntarily given up *all* of their natural, unalienable, individual Rights to the United States, a creation and servant of the People.

The People declare that sovereignty in America remains in the People, not the United States.

The People argue that the United States cannot point to a specific provision of the Constitution, as amended, that grants sovereignty to the United States.

[35] Otherwise referred to as a waiver of sovereign immunity.

The People argue that “sovereignty of the United States” is an anti-constitutional myth without any legal authority under the Constitution of the United States of America.

The People declare that the power of the United States is limited by the Constitution of the United States of America.

The People reassert that Congress shall make no law abridging the Right of the People to Petition the Government for Redress of Grievances.

The People reassert that all legislative power shall be vested in the Congress of the United States; no law making power is vested in any Court of the United States of America.

The People declare that the People have the ultimate power in America.

The **People declare that the People are the source of all political power.**

The United States argued that this Court cannot hear this case because the United States has not decreed that the People may sue the United States for a declaration of the United States' obligations and the People's Rights within the meaning of the Petition Clause of the First Amendment to the Constitution of the United States of America, i.e., Congress had not waived its “sovereign immunity.”

However, there is a higher order constitutional question at issue in this case that under our system of governance is and must remain immune from any and all claims of immunity by the United States. This case involves the People's natural, unalienable Rights endowed by the Creator, not a right (small “r”) or privilege created by the United States.

Judicial immunity may be properly applied when the United States creates rights or privileges in individuals against itself. In that case, the United States is not only under no obligation to provide a remedy through the courts, but where the statute creates a right and provides a special remedy, that remedy is exclusive. In the case of rights or privileges created by

Congress, Congress can express its intention to confer upon the Executive Department exclusive jurisdiction and to make its decisions final. *United States v Babcock*, 250 US 328, 331 (1919).

The judicial power of this Court to decide Constitutional issues brought by the citizens of America is derived from the Judiciary Article of the Constitution, not the Legislative Article.

The United States, the lead defendant in this matter, cannot legitimately ignore the People's proper Petitions for Redress of Grievances (arising from unconstitutional conduct by the United State's Executive and Legislative branches), by simply having the United States' Judicial branch declare the United States immune from this Judicial Petition for Redress, citing the self-serving doctrine of sovereign immunity (or the Anti-Injunction Act).

The Petition Clause of the First Amendment guarantees the People's Right to pursue judicial remedies for unconstitutional conduct by the United States. The Petition Clause's affirmation of the United State's suability operates as a constitutional antidote to any claim of sovereign immunity the United States might enjoy as in the case of rights or privileges created by the United States that could prohibit the United States Courts from entertaining claims against the United States in the absence of a legislative waiver of immunity that meets a fairly demanding clear-statement requirement.

Besides the People's fundamental Right to sue the United States by Petitioning the Judiciary (the United States' non-political branch) for a Redress of Grievances brought on by the failure of the United States' two political branches to respond to proper Petitions for Redress of Grievances (which in turn were brought on by the unconstitutional conduct of those two branches), the Court's attention is invited to the possibility that while it is not needed or relied upon by the People in the present case, a **statutory basis** for judicial review is 5 U.S.C. Section 702. Under 702, judicial review is to be supplied by the court once an adequate, independent, statutory basis

for jurisdiction is articulated in the pleadings. 28 U.S.C. Section 1331 is an adequate statutory basis to confer subject matter jurisdiction over federal questions involving the constitutionality of federal acts, as is 28 U.S.C. 1343.

In addition, the People are seeking a declaratory judgment and injunctive relief. Therefore, jurisdiction is no bar to the maintenance of this action. See Lane v. Pena, 518 U.S. 187 (1996) and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc).

No immunity doctrine can bar the People from maintaining an action for a declaratory judgment seeking a declaration of Rights and Obligations under the Petition Clause. No immunity doctrine can bar the People from maintaining an action for an injunction preventing further retaliation against the People, who in the course of exercising and enforcing those Rights are retaining their money until their grievances are Redressed. Again, there is no non-violent alternative available to the People for the enforcement of the fundamental Rights at issue in this case.

The Court's attention is invited to two recent judicial cases and controversies regarding claims against the United States for unconstitutional conduct and the issue of "sovereign immunity," where the United States admitted sovereignty resided in the People, not the United States. The first of the two earlier cases was brought by Robert Schulz, and others, against the United States for violating the money clauses of Article I of the Constitution of the United States of America.[36] On appeal, the United States withdrew its claim of sovereign immunity saying, "The government argued below—and the district court held—that the court lacked jurisdiction due to the absence of a waiver of sovereign immunity. Because this case involves a constitutional challenge, we believe that Section 702 of the Administrative Procedure Act, 5 U.S.C. Section 702,

[36] SCHULZ , et al. v. UNITED STATES, et al., NDNY No. 95-cv-133, Judge Cholakis, SUMMARY ORDER issued by the Second Circuit on February 10, 1997,Case No. 96-6184.

constitutes such a waiver. See, e.g., Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc). Accordingly, we do not renew the sovereign immunity argument before this Court."

The second of the earlier cases was brought by Robert Schulz, and others, against the United States for violations of the war powers clauses of Article I and II of the Constitution of the United States of America.[37] There, the United States recognized the sovereignty of the People and made no attempt to claim sovereign immunity.

The following cases, cited by the District Court are inapposite. They predate Lane v. Pena, 518 U.S. 187 (decided 1996), and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996), and involved rights or privileges created by Congress, but did not involve a federal constitutional tort claim, and the plaintiff was seeking money damages from the United States.

United States v. Sherwood, 312 U.S. 584, decided in 1941, involved rights created by Congress under the Tucker Act, did not involve a constitutional question, but did involve a prohibited demand against a party other than the United States for money damages.

U.S. v. Nordic Village, 503 U.S. 30, decided in 1992, did not involve a constitutional question and was a claim for money damages in Bankruptcy Court.

The People respectfully request an explicit finding by this Court that the defense of sovereign immunity is no bar to suits for equitable relief asserting constitutional claims. Only such an explicit finding might adequately deter the United States from renewing that defense in the future.

V. THE ANTI-INJUNCTION ACT IS INAPPLICABLE

The attention of the Court is again invited to the fact that the object of the controversy is not the "tax questions" or the status of the People as "taxpayers" as the United States would have

[37] SCHULZ, et al. v. UNITED STATES, et al. NDNY No. 99-cv-0845, Judge Scullen, SUMMARY ORDER issued by the Second Circuit on March 6, 2000,Case No. 99-6241.

the Court believe, but rather the People's higher order Rights under the Petition Clause of the First Amendment. This distinction is crucial in discerning the fundamental flaws in the Defendants' motions to dismiss.

The People's issue on appeal is the question of the Rights and obligations of the People and the United States under the Petition Clause of the Constitution of the United States of America, including whether the People have a Right to a response from the United States in the form of specific, formal answers to the questions presented in the People's Petitions regarding unconstitutional conduct by the United States, and whether the People have the Right to enforce the Right to accountability, if and when the United States refuses to respond, by retaining money from the United States until the People's grievances are redressed, without retaliation by the United States.

The People's position is that they have a Right of Accountability, a Right of Response and a Right of Enforcement by retaining their money until their grievances are redressed. The People's position is supported by the common knowledge, essential principle of *Popular Sovereignty*, and by the plain language of the founding documents, in particular, by the explicit guarantees of the Ninth and Tenth Amendments to the Constitution of the United States of America.[38]

The United States assumes the People have no Right of Accountability (except at the ballot box), and no Right of Response from the United States, and further more, that the People have no

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[38] "If money is wanted by Rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." Act passed unanimously by the Continental Congress in 1774. "Continental Congress To The Inhabitants of Quebec." Journals of the Continental Congress. Journals 1:105-113. See also Thomas Jefferson's reply to Lord North, "The privilege of giving or withholding our moneys is an important barrier against the undue exertion of prerogative which if left altogether without control may be exercised to our great oppression; and all history shows how efficacious its intercession for redress of grievances and reestablishment of rights, and how important would be the surrender of so powerful a mediator." Papers 1:225.

Right of Enforcement under the Petition Clause, whether by retaining their money or by any other mechanism of enforcement.[39]

The United States, having adopted this anti-accountability, anti-constitutional attitude regarding the Petition Clause, then instructs its Judicial branch that the United States is sovereign, and until the United States Congress decrees that the Judicial branch can investigate and determine the truthfulness of the United States' attitude regarding the meaning of the Petition Clause, the attitude is not to be reviewed by the Judicial branch and all the (unreviewable) tax laws, including the Anti-Injunction Act, are to be enforced against the People by the United States Executive and the Judicial branch. Of course, this is not in accordance with the fundamental, initial arrangement and would compound the tort.

In reply, the People argue that in addition to all the other problems with the United States' attitude, the Anti-Injunction Act, 26 U.S.C. 7421(a) is inapplicable.

The First Amendment Petition Clause survives the statutory schema of the Anti-Injunction Act; otherwise the Act would be unconstitutional as applied. The Act cannot be invoked to disparage the fundamental Right to Petition the government for a Redress of Grievances involving constitutional torts.

The background and circumstance of this case is clear: the People have repeatedly petitioned the Executive and Legislative officials of the United States for Redress of Grievances, respectfully demanding that the United States answer questions regarding what appear to the People to be clear violations by the United States' political branches of certain prohibitions of the federal Constitution, notably the war powers clauses (by the Iraq Resolution); the privacy and due process clauses (by the U.S.A. Patriot Act), the tax clauses (by the direct un-apportioned tax on labor), and the money and debt limiting clauses (by the Federal Reserve System).

[39] The People know of no alternative that would, likewise, not disturb the public tranquility.

The United States has refused to be held accountable to the Constitution. The Executive and Legislative branches have refused to answer the questions, ignoring every opportunity the People have presented to the United States to answer the questions. The People's Petitions for Redress have been intelligent, rational, respectful, non-violent and professional and have been signed by tens of thousands of other American citizens.

Revenue collection proceedings are not immune from judicial interference under 26 USCS § 7421 if such proceedings impede constitutional rights. See Yannicelli v Nash (1972, DC NJ) 354 F Supp 143, 72-2 USTC P 9763, 31 AFTR 2d 315.

The United States is exercising its limited assessment and collection (enforcement) authority against the People in violation of the People's constitutional Right to Petition and their Right of Accountability, their Right of Response and their Right of Enforcement. After refusing to respond to the People's First Amendment Petitions, the United States is attempting to prevent the People from enforcing that Constitutional Right (and the Constitutional Rights that are the subject of the Petitions themselves). The United States is willfully retaliating under the color of federal assessment and collection proceedings. Such actions by the United States is violative of the Constitution and should be enjoined. The harm being done to the People is immediate, on-going and irreparable.

The limited immunities offered by the Anti-Injunction Act must yield when denial of injunction rises to a level of constitutional infirmity. See for instance Investment Annuity v Blumenthal (1979, App DC) 197 US App DC 235, 609 F2d 1, 1 EBC 2079, 79-2 USTC P 9615, 44 AFTR 2d 5746, cert den (1980) 446 US 981, 64 L Ed 2d 837, 100 S Ct 2961.

The People's request for injunctive relief is made to prevent the United States from eviscerating the Constitution's Petition Clause to escape accountability.

Plaintiffs in this case are retaining their money until their grievances are redressed. Those who have retained their money assert that in the absence of any response by the United States their only method of enforcing their right to petition is to retain their funds until the United States meets its obligations. Otherwise, the People's Rights become privileges with all the adverse consequences that would involve.

The United States' arguments are neither relevant nor dispositive. Clearly, the injunction can issue. See Enochs v Williams Packing & Navigation Co. (1962) 370 US 1, 8 L Ed 2d 292, 82 S Ct 1125,reh den 370 US 965, 8 L Ed 2d 833, 82 S Ct 1579; Alexander v "Americans United," Inc. (1974) 416 US 752, 40 L Ed 2d 518, 94 S Ct 2053; United States v American Friends Service Committee (1974) 419 US 7, 42 L Ed 2d 7, 95 S Ct 13; Commissioner v Shapiro (1976, US) 47 L Ed 2d 278, 96 S Ct 1062.

26 USCS § 7421 is inapplicable, where, as here, the legal remedy is shown to be inadequate. See Enochs v Williams Packing & Navigation Co. (1962) 370 US 1, 8 L Ed 2d 292, 82 S Ct 1125, 62-2 USTC P 9545, 9 AFTR 2d 1594, reh den (1962) 370 US 965, 8 L Ed 2d 833, 82 S Ct 1579 and (criticized in Yates v IRS (1998, DC SC) 98-1 USTC P 50452, 83 AFTR 2d 1147).

An injunction restraining the collection of a retribution tax may be obtained where, as here, absent an injunction, the People will suffer irreparable injury due to the loss of their Fist, Fifth, Ninth, Tenth and Fourteenth Amendment Rights of Petition, Speech and Due Process. See Miller v Standard Nut Margarine Co. (1932) 284 US 498, 76 L Ed 422, 52 S Ct 260).

The attention of the Court is invited to the fact that in arguing for the application of the Anti-Injunction Act to deny jurisdiction, the United States cite cases such as *Phillips v. Commissioner* 283 US 589, *Bob Jones Univ. V. Simon* 416 US 725 and *Enochs v. Williams Packing & Navig. Co*. 370 US 1,7. The People do not deny that where the United States Congress

has bestowed a privilege upon a person or corporation, it has an inherent power, in consideration of such privilege and/or benefit, to demand a lesser standard regarding the application and availability of due process.

Unfortunately, the seminal Anti-Injunction cases cited by the government do not involve citizens while all involve corporations and/or the assessment of constitutional corporate excise taxes, including the (indirect) corporate income tax as an excise tax upon corporate profits. (See *Brushaber v. Union Pacific*, 240 US 1, (1916) et al).

Specifically, *Phillips* involved the dissolution of a corporation and the United States' efforts to exact unpaid corporate income taxes from those who had received the property of the corporation during its dissolution. Within this context, these transferees were properly barred from a bringing suit against the government's attempts to collect the corporation's tax bill. In *Bob Jones Univ.*, the issue involved the revocation of its 501(c)3 tax-exempt corporate privilege and the subsequent potential damages it might suffer. Within this context, the Supreme Court properly held the Anti-Injunction Act barred a pre-emptive suit to block the 501(c)3 revocation. In *Enochs v.Williams Packing Co*., the Supreme Court further detailed judicial exceptions to the Anti-Injunction Act. Key to its holding the validity of the Act, was its distinguishing of *Miller v. Standard Nut Margarine Co*. 284 US 498 (1959). In upholding an injunction to prevent the collection of taxes in *Standard Nut*, and rejecting the inherently limited form of due process afforded by the Act, the high court delineated a judicial exception to the general applicability of the Anti-Injunction Act, premised on the "special and extraordinary facts and circumstances" of that case, which turned squarely upon the factual question of whether the corporation's margarine-like product could even be taxed under the language of the tax statutes and the fact that the imposition of the tax would destroy the corporate business.

"This is not a case in which the injunction is sought upon the mere ground of illegality because of error in the amount of the tax. The article is not covered by the act. A valid oleomargarine tax could by no legal possibility have been assessed against respondent, and therefore the reasons underlying 3224 apply, if at all, with little force." *MILLER v. STANDARD NUT MARGARINE CO. OF FLORIDA*, 284 U.S. 498 (1932)

Again, the instant case is NOT *per se* about "federal taxes." The lawsuit is to secure a declaration to define the Rights of the People under the First Amendment Right to Petition. The United States' has mislead the Court regarding the object of the case in controversy. The fact that under a declaration by this Court regarding the Right to Petition the United States might eventually be compelled to reveal or confirm further details regarding the People's Rights under the tax laws is only a *secondary* and indirect effect of this suit, thereby rendering the invocation of the Declaratory Judgment Act inappropriate and inapplicable.

The higher order question of the Rights of the People under the Petition Clause must be determined by the Judiciary *before* the Judiciary can legitimately determine the constitutionality of the conduct of the United States *that is the object of those Petitions for Redress.* For example, the Judiciary must *first* determine whether the People, in fact, have a Right of Accountability, Response and Enforcement with respect to the First Amendment Right to Petition for Redress of Grievances relating to the allegedly unconstitutional direct, un-apportioned tax on labor, *before* the Judiciary can direct the enforcement of the direct, un-apportioned tax on labor and all the laws surrounding that tax, including the Anti-Injunction Act. The Judicial branch can't close its eyes to the Constitution and see only the acts of the Congress and the Executive. To do so would be to strike through the heart of our Constitution and the sacrosanct principles it was designed to protect.

CONCLUSION

Under the Constitution, Petitioning for Redress is not a Right that is given only to be so circumscribed that it exists in principle but not in fact. The Right to Petition the

Government for Redress of Grievances is nothing short of the **capstone** Right through which all other Rights are peacefully enforced and the sovereignty of The People is directly exercised by Individuals.

In order for the Government to justify its failure to respond, it must be able to show that its non-responsiveness was caused by something more than a mere desire to avoid discomfort, unpleasantness or practical difficulty. There must be a clear and present reason for the Government to trespass upon the First Amendment. No such reason is in evidence in the Record.

For the foregoing reasons, the Appellants respectfully request an order:

a) reversing the Order of the District Court, and

b) declaring the full contours of the meaning of the People's Right of Accountability, Right of Response and Right of Enforcement under the First (Petition Clause), Ninth and Tenth Amendments of the Constitution of the United States of America, and

c) enjoining and prohibiting Defendants from enforcing the internal revenue laws against the Appellants until Defendants have provided specific, formal answers to the questions contained in the Petitions for Redress of Grievances in the Record, regarding the war powers, tax, money and privacy clauses of the Constitution, and

d) for such other and further relief as to the Court may seem just and proper.

CERTIFICATE OF COMPLIANCE

In keeping with Rule 32(a)(7)(B), this brief contains 9818 words and 814 lines.

Respectfully Submitted,

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