

# 06-0075-cv

## IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**ROBERT L. SCHULZ** )  
)  
                                  **Appellant** )  
)  
                          **-against-** )  
)  
**UNITED STATES; INTERNAL** )  
**REVENUE SERVICE; and** )  
**ANTHONY ROUNDTREE** )  
)  
                                  **Appellees** )

No. 06-0075-cv

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**ON APPEAL FROM THE JUDGEMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK**

**REPLY BRIEF FOR PLAINTIFF-APPELLANT**

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Dated: May 10, 2006

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## SUMMARY OF THE ARGUMENT

Clear error was committed by the District Court. The District Court did not consider the high order constitutional questions that were presented: Schulz's Rights of Accountability, Response and Enforcement under the First Amendment's Petition Clause and the Ninth Amendment of the Constitution of the United States of America.

Schulz was entitled, in the interest of Due Process, to a full adversarial proceeding and hearing to test the merits of the IRS's Summonses that targeted Schulz's personal and private property.

The doctrine of sovereign immunity is no bar to the District Court's jurisdiction in the present case.

### I. CLEAR ERROR WAS COMMITTED BY THE DISTRICT COURT

This Court held in *Schulz I* and *Schulz II*, that if the IRS wanted to enforce the Summonses served on Schulz in connection with an investigation of Schulz by that agency under Section 6700 of the Internal Revenue Code, the IRS needed to take Schulz to federal District Court *where Schulz would have an opportunity to test the merits of the Summonses through a full adversarial proceeding and hearing.*<sup>1</sup> In *Schulz*, the IRS Summonses sought Schulz's personal and private property. In *Schulz*, the motion to quash questioned the merits of the Summonses on constitutional grounds.

Instead of doing what this Court said the government must do by giving Schulz the opportunity in federal District Court to test the merits of the purpose of the Summonses targeting Schulz's personal and private property, as stated by the IRS (an "investigation" of Schulz under section 6700 of the IRC, which prohibits promotions of abusive tax shelters), the IRS issued "third party" Summonses that once again target Schulz's personal and private property, and that

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<sup>1</sup> See *Schulz v. IRS*, 395 F.3d 463 (Schulz I) and *Schulz v IRS*, 413 F.3d 297 (Schulz II).

once again gave as the purpose of the Summonses, an “investigation” of Schulz under section 6700 of the IRC.

In the present case, Schulz challenged the Summonses on the same *constitutional* ground that he was standing on in *Schulz*. However, without the full adversarial proceeding or hearing required to determine the merits of Schulz’s claims, the District Court denied Schulz’s motion to quash the Summonses giving as its reason, the government’s “sovereign immunity.”

Rather than address the priority constitutional questions presented in Schulz’s motion to quash, the District Court held that the Summonses must be complied with because Schulz didn’t comply with the conditions of the act of Congress that “allows” Schulz to sue the government.

The District Court was referring to 26 U.S.C. section 7609, which specifies the time within which Schulz had to file his motion to quash *and the time* within which a copy of the Summons had to be served on Schulz.

As the parties have admitted, the IRS did not serve Schulz with a copy of the Summons within the time limits specified in 7609, and Schulz did not file his motion to quash within the time limits specified in 7609.

The government argues that the constitutional validity of the Summonses cannot be tested by Schulz in the District Court because Schulz did not file his motion to quash within the time limit set by 7609, *but the Summonses are valid and must be enforced even though the IRS did not act within the time limits set by 7609*. This double standard should not be tolerated by the Court.

Schulz has argued the 7609 issue *in the alternative*. Schulz’s argument all along has been that he has presented a higher order constitutional question to the Court that is being ignored and must be determined in a full adversarial proceeding and hearing.

Schulz's Petitions to Quash the IRS Summonses have been clearly based entirely on the ground that the Summonses were issued in spite of *constitutional prohibitions* and in bad faith.

As Schulz argued in his Petition to Quash, "The IRS Summonses equate to Constitutionally impermissible retaliation against Schulz because they lessen and diminish specific, individual Rights that the Constitution guarantees Schulz is free to exercise without abridgment, infringement, harassment, retribution or prior restraint. Those Rights are the Right to Petition government for Redress of Grievances; the Right to Peaceably Assemble and to associate with like minded people; the Right to Speak Freely; the Right to Publish in newspapers, on the Internet, on compact discs and video tapes; the Right to be Secure in Person, House, Papers and Effects Against Unreasonable Searches and Seizures; etc." (A-13).

Schulz argued in his Petition to Quash that by issuing the Summonses the government Defendants were retaliating against Plaintiff Schulz *under color of law* and that, "Defendants' retaliation against Plaintiff for exercising his Right to Petition the Government for Redress of Grievances is unconstitutional." (A-14).

The highest order question presented to the District Court was, what are the full contours of the meaning of the Petition Clause of the First Amendment and is there any truth to Schulz's claim that the Summonses were in any way connected to Schulz's exercise of his constitutionally guaranteed Rights under the Petition Clause, including his Right of Accountability, Right of Response and Right of Enforcement?

Instead of responding to the high order constitutional question Schulz presented to the District Court, the government asked the District Court for an order to enforce the Summons on the ground of the doctrine of sovereign immunity, and the District Court complied.

Clear error was committed by the District Court by not addressing Schulz's priority constitutional claims under the Petition and Due Process Clauses, and dismissing the case on the ground of sovereign immunity.

On appeal, the government finally responds to Schulz's claim that the summonses were issued in spite of *constitutional prohibitions* and in bad faith.

In the last paragraph of its Brief to his Court (Resp. Br., page 26), the government addresses what has been Schulz's only cause of action in the Court below, that is, that the Summonses were issued in spite of *constitutional prohibitions* and in bad faith.

The government argues, "Schulz asserts...that among the issues presented here is whether the United States is obligated to respond to his 'Petitions for Redress of Grievances' that he submitted to governmental agencies. His argument is misconceived, however, as the district court had no jurisdiction to entertain his suit. Further, Schulz did not seek such responses in his petition to quash... The issue therefore was not before the district court, and the court properly did not address it in its opinion and order...For the same reason, the issue is not properly before this Court." (Resp. Br., page 26).

The government's misapprehension of the case is two-fold:

First, it would not have been proper for Schulz to seek responses from the District Court to the Petitions for Redress that Schulz had submitted to the government and that had thus far gone unanswered. *That is clearly not the role of the District Court.* The Petitions for Redress were served on officials in the Executive and Legislative branches of the United States government. Responses to those Petitions have to come from the Executive and Legislative branches. The role of the District Court, however, was to declare the meaning of the full contours of the Petition Clause, including Schulz's Right of Accountability, whether the Executive and

Legislative branches are obligated to respond with specific, formal answers to the questions in Schulz's Petitions for Redress of Grievances, whether Schulz has the Right of Enforcement, and whether the government's Summonses amounted to impermissible, unconstitutional retaliation.

Second, the District Court had jurisdiction because the doctrine of sovereign immunity is cannot bar the court, under Article III of the Constitution, from determining the merits of this case and controversy.

The threshold questions presented for this Court's consideration, and upon which the substance of Schulz's case must be adjudicated, are set forth as follows:

- (1.) Are the words and ideals contained in the First Amendment to the Constitution of the United States of America to be interpreted and understood by the American citizen of average intelligence to mean precisely what they say?
- (2.) Can the Executive, Legislative or Judicial Branches of the United States government lawfully deny Schulz the Right to Petition the government for a redress of grievances, including the implied and inseparable Right to timely, accurate and complete answers to his Petitions, based on the government's alleged power of Sovereign Immunity?
- (3.) As defined by the specifically enumerated and limited powers delegated to it in the Constitution of the United States of America, from what constitutional authority does the government derive its' alleged sovereign immunity from accountability to Schulz?
- (4.) If Schulz is denied the Right to Petition, and the lawful power to enforce that Right, by what peaceful means can government agencies and officials be held



accountable to Schulz for abuse of power resulting in violations of his individual Rights under the Constitution of the United States of America?

- (5.) Can the Congress, without amending the Constitution, pass laws such as the Anti-Injunction Act or any other provision of the Internal Revenue Code that diminish or abrogate the right of Schulz to seek and secure redress of grievances involving constitutional torts?

It is far beyond the pale that after years of careful scholarship and respectful petitions to the federal government, Schulz has been compelled to bring this action and appeal (to quash a Summons) to enforce his unalienable Rights guaranteed by the intent and unequivocal language of the First Amendment.

The Executive and Congress must be made to realize their duty under our Constitution and must develop and adopt reasonable means to distinguish and respond to serious Petitions for Redress -- particularly those Petitions involving Constitutional torts. **The Constitution demands it.**

The government knows that this case is exclusively about Schulz's Right to Petition, and ultimately the meaning and effect of the First Amendment.

The instant case has no precedent in contemporary American jurisprudence. None of the cases regarding other people, as cited by government involve *constitutional torts* and the People's constitutional Right to Petition the government for a redress of grievances, and the inseparable Right of the People to timely, accurate and complete responses to their petitions. The limited powers expressly delegated to the government in the Constitution, and the powers reserved to the states and to individual Americans, would be meaningless without the People's Right to Petition, Right of Accountability, Right of Response, and Right of Enforcement.

Collectively, these Rights represent the essence of popular sovereignty and the People's ability to enforce the rule of law, and to hold government accountable for its actions. Schulz's Right to timely, accurate and complete responses to his Petitions, and his Right to enforce the constitutional limits on government authority under the First (Petition Clause), Ninth and Tenth Amendments, serve to cure *constitutional torts* committed by a noncompliant, obstinate, and stubbornly defiant servant government that refuses to obey lawful authority.

We are not dealing here with unilateral behavior based on personal beliefs regarding the free exercise or free speech clauses. This case is distinguishable. Here, Schulz *first*, identified and documented behavior by the government that is *ultra vires* and prohibited by the Articles of the Constitution (as opposed to the Bill of Rights), *then* Schulz Petitioned the Judicial branch of the United States for Redress of two of the Grievances but had the cases dismissed for "lack of standing,"<sup>2</sup> *then* Schulz Petitioned the Executive and Legislative branches of the United States *respectfully, repeatedly and humbly* for Redress of four Grievances, but had the Petitions dismissed by those branches *without any response*. Only *then* did Schulz begin to exercise his Right of Enforcement of his Right of Accountability and Right of Response under the First, Ninth and Tenth Amendments in an effort to secure Redress of the *constitutional torts*.<sup>3</sup>

There is much at stake for both sides in this controversy. The Government asserts its authority to act without constitutional restraint or judicial review. It assumes the unilateral prerogative to interpret its own authority to act unchecked outside the limited powers delegated

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<sup>2</sup> 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 (A 216-219); 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 (A 223-224).

<sup>3</sup> Guided by the essential principles, particularly "popular sovereignty" and the first of the "Great Rights," as articulated in the Act unanimously passed by the Congress in 1774. See "CONTINENTAL CONGRESS TO THE INHABITANTS OF QUEBEC." Journals of the Continental Congress. Journals 1:105-113

to it by the terms and conditions of the Constitution. The Government implies that Americans, including Schulz and other individuals and minorities, have no means beyond the ballot box by which to enforce any and all of their Rights. It is for these reasons Schulz has appealed.

Schulz's Petitions for Redress of Grievances **speak for themselves and are worthy of a response from the Executive and Legislative branches.** The Petitions for Redress that were served on the government between May of 1999 and May of 2004, regarding the constitutionality of the conduct of the government vis-a-vis the war powers, tax, privacy and money clauses of the Constitution are referred to in Schulz's Affidavit (A 35-66).

This is not the forum for the Government to respond to those Petitions for Redress. This forum is for the Government to prove that under our system of governance and law, Schulz does *not* have a Right of Accountability and Response under the Petition Clause and the Ninth Amendment, and that the government *does* have the power to retaliate against those that attempt to exercise those functions of self-governance.

## **II. SCHULZ HAS RIGHTS OF ACCOUNTABILITY, RESPONSE AND ENFORCEMENT**

“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.

“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.

The issue presented for consideration is the meaning of the Petition Clause of the First Amendment: to wit, what are Schulz's Rights, and what is the Government's lawful obligation to Schulz, under the Petition Clause.

By its decision, the District Court has implicitly ruled that the Petition Clause was intended to be without effect: the Government has no lawful obligation to respond to Schulz's Petitions, and Schulz has no substantive Rights under the Petition Clause (other than the redundantly stated Right of free speech).

Schulz argues that the Right to Petition for Redress of the Grievance is a substantive, distinct Right which did not derive from and cannot be diminished, diluted or otherwise set aside by Congress. Schulz argues his Right to Petition is a Right to *exact* a repair to any breakdown in constitutional governance in his country, not merely to utter speech about it. Schulz argues that this Right did not come from Congress and that no Act of Congress can abridge the Right, directly or indirectly.

Schulz argues that this Individual Right is nothing less than the "capstone" Right of the Bill of Rights and that its exercise is a direct enjoyment of popular sovereignty and self-government as guaranteed by our founding documents.

The issue presented to the Court in this case is whether the government can be held accountable to the promise of the Constitution by the Constitution.

Schulz has a constitutional right of access to the government. See *Bounds v Smith*, 430 U.S. 817, 821. The access must be "adequate, effective, and meaningful" to comport with the Constitution. *Bounds*, 430 U.S. at 822. While these principles may be easier to state than to apply because their textual footing in the Constitution is not clear, (see, *Morrow v. Harwell*, 768 F.2d 619, 623, (1985), the First Amendment right to petition, as currently interpreted, is a

birthplace for Schulz' right of access to the government (*Bieregu v. Reno*, 59 F.3d 1445, 1453 (3d Cir. 1995), and "The touchstone . . . is meaningful access . . ." *Bounds*, at 823).

If the Right to Petition the government for Redress of Grievances -- that is, the Right of access for the purposes of exercising self-government -- is to be "adequate, effective and meaningful," the government must have an obligation to respond. No response or a non-responsive response would be inadequate.

In reply to any "practical limitations" argument, Schulz argues that a government that governs according to the dictates of the People and respecting the Rights thereof, would not be so overwhelmed by Petitions for Redress of Grievances regarding *constitutional torts* that the government would reach its practical limitations to respond adequately, effectively and meaningfully.

*Repeated* Petitions to government for Redress of Grievances that involve *constitutional torts*, that have gone *unanswered*, or that have been met with repeated injuries, can constitutionally be enforced by Schulz.

If the servant government assumes no obligation to protect and defend the unalienable Rights of Schulz, and after a long course of repeated usurpations and violations of Schulz's Rights, upon what practical, effective and peaceful means might Schulz rely for Redress of his Grievances other than those expressly enumerated in the First Amendment of the United States Constitution?

The absence of case law does not eviscerate Schulz's constitutional Right to rely on the protection of the Constitution in constraining the *ultra-vires*, extra-judicial actions of the government. Schulz, in reliance upon the express mandates of the Petition Clause, has taken the appropriate steps. The Constitution cannot defend itself. Any fundamental Right that is not

enforceable is not a Right. By necessity, the compelling interests of the People must stand above the limited interests of the government.

### **III. SOVEREIGN IMMUNITY IS A MYTH**

The Government asserts that it has, and relies completely upon having "Sovereign Immunity." Schulz asserts and hereby proves that in America, and under the Constitution of the United States of America, that government immunity (so called sovereign immunity) is a myth. In a *legal* sense, it does not and cannot exist under our Constitution and the Government's assertion of it, from 1793, when the issue was first mentioned by the United States Supreme Court in dicta, was and is an anti-constitutional usurpation of unlawful power that has no legal foundation at all.

This Court knows, without citation, that there is no sovereign, in *not all of the government combined*. The Government is not THE UNITED STATES. The United States consists of three separate things: its geographical area; its people; and, its government. When the Government calls itself "The United States," no one but a person with little or no judgment, common sense, wisdom and reason -- a silly person, and the government's conceited and egotistical officials -- really believes that it is THE UNITED STATES. So, we should understand from the outset, that what the Government is claiming in its response is not the "sovereign immunity" of the United States, but the "absolute immunity of the government of the United States from its own people." There is a major difference: The United States is a sovereign among sovereign nations. It has immunity as to any other nation, except in so far as it has surrendered that immunity by treaties. It maintains it's military to ensure that sovereignty.

But under our Constitution, "government immunity from its own people" is a contradiction in terms. Government is either limited by the Constitution, or it is not so limited.

Which official(s) of the Government, besides the Government's lawyers over whose signatures the response was submitted, say the Government of the United States is not limited by the terms of the Constitution? That official(s) needs to be identified who dares to make the claim that the government has legal powers beyond those granted by the Constitution. All of the People need to know who that someone is because when the distinction between THE UNITED STATES and its government is made, *that claim is the most audacious claim that can be made by anyone sworn to support and defend our Constitution.*

NOW, wherefrom comes this anti-constitutional thing the Government calls "Sovereign Immunity" but by which it really means the "immunity of the government from its people for the injuries that it causes them in the course of governing".

The Court's attention is invited to the fact that in its brief, the Government never points to a constitutional source of this power the Government purports to have, which by its very nature would be superior to all other powers of the government, and superior to all retained powers of the people, including their Right to "amend" *the* Constitution.

So, when we look at the First Amendment which says that "Congress shall make no law ... abridging ... the right of the People to ... petition the government for a redress of grievances", while we right away see that Congress has not the power to alter that right, we need look only to Article I to know that the Judiciary shall make no law at all.

None of the cases cited by the Government to support the Government's notion of "government immunity from its own people" address the Petition Clause issue in the context in which the issue is raised in the present case. Thus those cases are inapposite and can't be accepted as cases that refute Schulz's petition clause claims in the present case. The issue here is "The Petition Clause vs Government Immunity." They can't both exist under our one and only

Constitution. The second is created by the Courts, but the first is created by the First Amendment, and as between the two, it is clear that only the first can be law.

The cases cited by the Government did not address the issue of the Petition Clause within the context of the facts and circumstances of this case and controversy. This is the common distinction between those cases and the instant case. Those cases are presumptuous offerings, claiming more than is due them. They simply begged the questions before this Court.

Sovereign immunity may be properly applied when the Government creates rights or privileges in individuals against itself. In that case, the Government 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 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 United States government, the lead defendant in this matter, cannot legitimately ignore Schulz'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 government 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 Schulz's Right to pursue judicial remedies for unconstitutional conduct by the Government. The Petition Clause's affirmation of the United State's suability operates as a constitutional antidote to any claim of sovereign immunity the government might enjoy as in the case of rights or privileges created by the government that could prohibit the United States Courts from entertaining claims against the



government in the absence of a legislative waiver of immunity that meets a fairly demanding clear-statement requirement.

Besides Schulz's fundamental Right to sue the Government by Petitioning the Judiciary (the United States' non-political branch of the Government) for a Redress of Grievances brought on by the failure of the United States' two political branches of the Government 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 Schulz 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, Schulz is seeking, in effect, 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 (7<sup>th</sup> Cir. 1996) (en banc).

No immunity doctrine can bar Schulz from maintaining an action for a declaratory judgment seeking a declaration of Rights and Obligations under the Petition Clause. No immunity doctrine can bar Schulz from maintaining an action for an injunction preventing further retaliation against Schulz, who in the course of exercising and enforcing those Rights is retaining his money until their grievances are Redressed. Again, there is no peaceful alternative available to Schulz 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 between the parties regarding claims against the Government for unconstitutional conduct and the issue of

“sovereign immunity,” where the Government admitted sovereignty resided in the People, not the Government. The first of the two earlier cases was brought by this Appellant Schulz, and others, against the Government for violating the money clauses of Article I of the Constitution of the United States of America.<sup>4</sup> On appeal, the Government 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, constitutes such a waiver. See, e.g., Czerkies v. Department of Labor, 73 F.3d 1435 (7<sup>th</sup> 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 this Appellant Robert Schulz, and others, against the Government for violations of the war powers clauses of Article I and II of the Constitution of the United States of America.<sup>5</sup> There, the Government recognized the sovereignty of the People and made no attempt to claim sovereign immunity.

The cases cited by the Government here and in the district court in support of a dismissal on the ground of sovereign immunity predate Lane v. Pena, 518 U.S. 187 (decided 1996), and Czerkies v. Department of Labor, 73 F.3d 1435 (7<sup>th</sup> Cir. 1996) (en banc), and/or the facts, circumstances and arguments surrounding the cases cited by the Government are clearly distinguishable from those involved in the instant case, which is a non-monetary action for declaratory and injunctive relief.

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<sup>4</sup> 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.

<sup>5</sup> 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.

More importantly, however, is the fact that none of the cases cited by the Government to support the Government's notion of "government immunity from its own people" address the Petition Clause issue in the context in which the issue is raised in the present case.

Schulz respectfully requests 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 Government from renewing that defense in the future.

#### **IV. THE ANTI-INJUNCTION ACT IS INAPPLICABLE**

For all the reasons given in the section above headed "Sovereign Immunity is a Myth," the Anti-Injunction Act cannot bar the Court from granting Schulz's request for injunctive relief, a request that is made solely for the purpose of recognizing the Schulz's Right to enforce his constitutional Rights without retaliation by the Government.

To deny Schulz his constitutional Right of Enforcement by retaining his money until his grievances are redressed and without retaliation by the Government, is to deny Schulz his constitutional Right of Response to proper Petitions for Redress of constitutional torts. To deny Schulz his Right of Response is to deny Schulz his constitutional Right to Petition for Redress of Grievances. A government that denies the People their constitutional Right to Petition the Government for Redress of Grievances is a government that has unconstitutionally assumed the mantle of sovereign.

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 Schulz as "taxpayer" as the Government would have the Court believe, but rather Schulz's higher-order Rights under the Petition Clause of the First Amendment. This distinction is crucial in discerning the fundamental flaws in the Government's response.

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

Schulz's position is that he has a Right of Accountability, a Right of Response and a Right of Enforcement by retaining his money until his grievances are redressed. Schulz's position is supported by the common knowledge, essential principles of *Popular Sovereignty*, and by the plain language of the founding documents, in particular, by the explicit guarantees of the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States of America.<sup>6</sup>

The Government implies Schulz have no Right of Accountability (except at the ballot box), and no Right of Response from the Government, and furthermore, that Schulz has no Right of Enforcement under the Petition Clause, whether by retaining his money or by any other mechanism of enforcement.<sup>7</sup>

The Government, having adopted this anti-accountability, anti-constitutional attitude regarding the Petition Clause, then instructs its Judicial branch that the Government is sovereign, and until the United States Congress decrees that the Judicial branch can investigate and

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<sup>6</sup> "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.

<sup>7</sup> Schulz knows of no alternative that would, likewise, not disturb the public tranquility.

determine the truthfulness of the Government's 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 Schulz by the United States Executive and the Judicial branch.

Of course, this is not in accordance with the previous arrangement and would compound the tort. Schulz argues that in addition to all the other problems with the Government's 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: Schulz has repeatedly petitioned the Executive and Legislative officials of the Government for Redress of Grievances, respectfully demanding that the Government answer questions regarding what appear to Schulz 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).

The Government has refused to be held accountable to the Constitution. The Executive and Legislative branches have refused to answer the questions, ignoring every opportunity Schulz and others have presented to the Government to answer the questions. Schulz'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 Government is exercising its limited assessment and collection (enforcement) authority against Schulz in violation of Schulz's constitutional Right to Petition and his Right of Accountability, his Right of Response and his Right of Enforcement. After refusing to respond to Schulz's First Amendment Petitions, the Government is attempting to prevent Schulz from enforcing that Constitutional Right (and the Constitutional Rights that are the subject of the Petitions themselves). The Government is willfully retaliating under the color of federal tax laws. Such actions by the Government are violative of the Constitution and should be enjoined. The harm being done to Schulz 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.

**Schulz's request for injunctive relief is made to prevent the Government from eviscerating the Constitution's Petition Clause to escape accountability.**

Schulz is are entitled to injunctive relief. An injunction restraining the collection of a **retribution tax** may be obtained where, as here, absent an injunction, Schulz will suffer irreparable injury due to the loss of his First, 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 Government cites cases that are inapposite, such as *Bob Jones Univ. V. Simon* 416 US 725.

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.

Again, the instant case is NOT *per se* about “federal taxes.” The lawsuit is to secure a declaration to define the Rights of Schulz under the First Amendment Right to Petition. The Government’s brief clearly intends to mislead the Court regarding the object of the appeal in controversy. The fact that under a declaration by this Court regarding the Right to Petition the Government might eventually be compelled to reveal or confirm further details regarding Schulz’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 Schulz under the Petition Clause must be determined by the Judiciary *before* the Judiciary can legitimately determine the constitutionality of the conduct of the Government *that is the object of those Petitions for Redress*. For example, the Judiciary must *first* determine whether Schulz, in fact, has 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**

For the foregoing reasons, the Appellant respectfully requests an order:

- a) reversing the Order of the District Court, and
- b) declaring the full contours of the meaning of the 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 Schulz 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 5476 words and 437 lines.

Respectfully submitted,

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