CASE BEING CONSISERED FOR TREATMENT PURSUANT TO
RULE 34(j) OF THE GENERAL RULES

05-5359

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

We The People, et al.,	)	
	)	
Appellants	)	
	)	No. 05-5359
v.	)	
	)	
United States, et al.,	)	
	)	
Appellees	)	

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS

Dated: May 7, 2006

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PRELIMINARY STATEMENT

The threshold questions presented for this Court's consideration, and upon which the substance of Plaintiff's complaint 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 the American people the Right to Petition the government for a redress of grievances, including the implied and inseparable Right to timely, accurate and complete answers to their petitions, based on the governments' 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 the People?

(4.) If the People are 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 the People for abuse of power resulting in violations of the Constitution of the United States of America?

(5.) Can the Congress, without amending the Constitution, pass laws such as the Anti-Injunction Act that abrogate the right of the People 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, the American People have been compelled by the Executive and Legislative Branches to bring this action to enforce the People's unalienable Rights guaranteed by the intent and unequivocal language of the First Amendment.

It is the position of the Executive and Legislative Branches that it would be impractical and burdensome to require them to respond to every petition for redress from the People, which, the government claims, would exceed the practical limitations of our system of government. This position is not only specious and repugnant to the meaning of the First Amendment, it is simply not responsive to the issues in this lawsuit.

If the Judiciary took the position that if the court system were required to consider every action and brief submitted to it, including those that are frivolous, it would impose a burden too difficult to meet and would require that the courthouse doors be closed except to selected litigants, it would be considered absurd. Instead of adopting so draconian an approach, the courts have found a method of separating frivolous matters from serious and reasonable applications. The Judiciary prevents frivolous actions at law from exceeding the practical limitations of our system by rejecting frivolous applications at an early stage and by adopting procedural controls to manage the litigation process.

The Executive and Legislative branches likewise could reasonably distinguish serious applications from frivolous ones, rather than complain about the burdens imposed by the First Amendment. Instead of hiding behind the pretended excuse of undue burden, the Executive and Congress must 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 United States government in this case, in apparent recognition of its flawed reasoning, has adopted an approach clearly intended to prejudice the court against the People. The government has selected a few questions asked by some of the thousands of different petitioners, has taken those questions out of context, and then implied without regard for the facts clearly set forth in all of the pleadings in this case that this case is an attack upon the income tax law. It apparently expects such sophistry to bias this court and evoke contempt for the courageous and patriotic Americans who have been so bold as to scrutinize and question the federal governments' lawful authority. However, the government knows that this case is exclusively about the People'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 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. The People's Right to timely, accurate and complete responses to their petitions, and their 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, The People *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* the People Petitioned the Judicial branch of the United States for Redress of two of the Grievances but had the cases dismissed for "lack of standing,"[1] *then* the People 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 the People begin to exercise their Right of Enforcement of their Right of Accountability and Right of Response under the First, Ninth and Tenth Amendments by retaining their money in an effort to secure Redress of the *constitutional torts*.[2]

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 to it by the terms and conditions of the Constitution. The Government argues that Americans, including 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 the People have appealed.

THE RESPONSE HAS ELEMENTS THAT ARE IRRELEVANT AND PREJUDICIAL

The People seek only a declaration of their Rights and injunctive relief.

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[1] 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).

[2] 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. (A-244)

Contrary to that which is implied by the Government in its response, the People have **not** asked the Court to address the unconstitutional conduct by the Government that gave rise to the People's four Petitions for Redress of Grievances. Rather, the People have asked the Court to declare the People's Rights under the Petition Clause itself, including the People's Right of Accountability, Right of Response and Right of Enforcement.[3]

Contrary to that which is implied by the Govemment in its response, the People have **not** asked the Court to address the origin or the enforcement of the internal revenue laws (the subject of one of its four Petitions for Redress). As the People stated in their complaint, "[T]he Plaintiffs do not, in this action, seek a ruling from the Court as to the constitutionality or enforceability of the Internal Revenue Code." (A-94).

Therefore, to the extent the response by the Government includes comments about the content of any of the People's four Petitions for Redress of Grievances, those comments are irrelevant.

The Government's response, particularly its Statement of Facts, contains incorrect and irrelevant material calculated to mislead and prejudice the Court against the People. The Statement of Facts is a red herring, designed to mislead the Court into believing, falsely, that the People are simple "tax protestors" and that this case is merely one more challenge to the constitutionality and enforceability of the internal revenue laws.

The Government's Statement of Facts includes numerous quotes and partial quotes from the People's Petitions for Redress of Grievances that are not only irrelevant to a determination of the issues on appeal, but have been taken out of context and are inflammatory, all for the purpose of biasing the Court against the People.

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[3] Any reference by the People to a request for a "proper response" is a request for specific and formal answers to the People's questions. Retaliation by the United States is not a proper response.

The People's Petitions for Redress of Grievances **speak for themselves.** Those 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 found in the Appendix **in their entirety**. A 474, A 445, A 334 and A 248-333.

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, the People do not have a Right of Accountability or a Right of Response or a Right of Enforcement.

THE PEOPLE HAVE 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 the People's Rights, and what is the Government's lawful obligation to the People, under the Petition Clause.

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

The People argue 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. The People argue their Right to Petition is a Right to *exact* a repair to any breakdown in constitutional governance in their country, not merely to utter speech about it. The People argue that this Right did not come from Congress and that no Act of Congress can abridge the Right, directly or indirectly.

The People argue 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 Government has chiefly relied on the following three cases in support of its request for a dismissal for failure of the People to state a claim for which relief could be granted: *Bi-Metallic Inv. Co. v. State Board of Equalization*, 239 U.S. 441 (1915); *Smith v Ark. State Highway Employees, Local 1315,* 441 U.S. 463 (1979); and *Minnesota State Board v. Knight*, 465 U.S. 271 (1984).

In reply, the People invite the Court's attention to pages 20-23 of the People's Brief to this Court and to pages A 179-184 of the Appendix where the People have argued that these three cases are inapposite. The People repeat those arguments as if reargued here.

In addition to the *Bi-Metallic, Smith* and *Knight*, the Government now cites a number of other court decisions to bolster its request for dismissal. However, those cases are also distinguishable and inapposite.

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.

Citizens have 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 the People's 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 the Government's "practical limitations" argument, The People argue 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.

THERE HAS BEEN *NO* RESPONSE

The Government asserts that it has replied to one of the People' *four* Petitions for Redress of Grievances, arguing that those who contend that the income tax is unconstitutional, etc., will find adequate guidance in official publications and court opinions as to the Government's position on such contentions.

These assertions are not only irrelevant they are inaccurate and misleading. Beyond the fact that this is the wrong forum to do so, the Government has not provided a scintilla of evidence in support of its argument that any one, much less all, of the questions the People have included in their Petition for Redress regarding the direct, un-apportioned tax on the People's labor, or any of the other three Petitions for Redress that the People have served on the Government have been answered. Contrary to the Government's allegation, there is no evidence in the Record to support the notion that the Government has ever attempted to provide a response to the People' Petitions for Redress of Grievances. That is precisely why the People have had to resort to the filing of this lawsuit -- to protect and defend the People's Freedom under the Petition Clause, including the Right of Accountability, Right of Response and Right of Enforcement.

In footnote 6 of its response brief, the Government improperly cites federal documents that were neither supplied nor cited in the Court below and, as such, should be placed out of view by this Court. Regardless, the information is irrelevant to a determination of the issues on appeal and certainly does not answer any of the questions included in any of the Petitions for Redress. The People invite the Court's attention to Docket #22 and #26, where the People have rebutted the Government's bad faith offer of proof to the District Court that the Government has responded to at least some of the People's questions.

AN ABSENCE OF CASE LAW DOES NOT EVISERATE CONSTITUTIONAL RIGHTS

The Government argues that the People have no Right of Enforcement because the People can cite no case in which such a right is recognized.

The People have made the case that *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 the People.

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

The absence of case law does not eviscerate the People's constitutional Right to rely on the protection of the Constitution in constraining the *ultra-vires*, extra-judicial actions of the government. The People, in reliance upon the express mandates of the Petition Clause, have 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.

SOVEREIGN IMMUNITY IS A MYTH

The Government asserts that it has, and relies completely upon having "Sovereign Immunity." The People assert and hereby prove 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 believe 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 out 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 the People'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 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 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 the People'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 the People'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 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 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 Robert Schulz, and others, against the Government for violating the money clauses of Article I of the Constitution of the United States of America.[4] On appeal, the Government withdrew its claim of

[4] 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.

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 (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 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.[5] There, the Government recognized the sovereignty of the People and made no attempt to claim sovereign immunity.

In opposition to the Government's motion to dismiss the instant case for lack of jurisdiction on the ground of sovereign immunity, the People not only argued the sovereignty of the People, they also argued the statutory basis for jurisdiction that was successfully argued in the earlier cases to defeat the Government's claim of sovereign immunity. See (A 167-173).

In its Reply Brief to the lower court in the instant case, the Government offered no rebuttal whatsoever (see A 235-236), and the District Court's Order gave no consideration to the Government's claim of "sovereign immunity."

Now, however, on appeal, the Government has decided not to concede the defense of sovereign immunity in the present controversy, another non-monetary action for declaratory and injunctive relief from a constitutional tort.

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

[5] 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.

Czerkies v. Department of Labor, 73 F.3d 1435 (7th 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.

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.

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 Government from renewing that defense in the future.

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 the People's request for injunctive relief, a request that is made solely for the purpose of recognizing the Right of the People to enforce their constitutional Rights without retaliation by the Government.

To deny these Plaintiffs-Appellants their constitutional Right of Enforcement by retaining their money until their grievances are redressed and without retaliation by the Government, is to deny these People their constitutional Right of Response to proper Petitions for Redress of constitutional torts. To deny the People their Right of Response is to deny the People their 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 the People as "taxpayers" as the Government would have 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 Government's response.

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

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 First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States of America.[6]

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[6] "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 bythe 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.

The Government argues the People have no Right of Accountability (except at the ballot box), and no Right of Response from the Government, and further more, that the People have no Right of Enforcement under the Petition Clause, whether by retaining their money or by any other mechanism of enforcement.[7]

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 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 the People 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. The People argue 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: the People have 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 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

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

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). [8]

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 the People have presented to the Government 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 Government 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 Government is attempting to prevent the People 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 assessment and collection proceedings. Such actions by the Government are violative of the Constitution and should be enjoined. The harm being done to the People is immediate, on-going and irreparable.

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[8] The United State's Statement of Facts is irrelevant. It includes numerous partial quotes from the People's complaint and quotes that have been taken out of context. When strung together are meant to be inflammatory and to bias the Court against the People by having the Court believe that this case is little more a challenge to the constitutionality and enforceability of the internal revenue laws. The Government's Statement of Facts is misleading and prejudicial. It is a red herring, designed to distract the Court away from the real issues in the case. As the record shows, this case is notabout taxes *per se*. This case seeks a declaration of the Rights of the People under the Petition Clause of the First Amendment. As the People clearly stated in their complaint, "[T]he Plaintiffs do not, in this action, seek a ruling from the Court as to the constitutionality or enforceability of the Internal Revenue Code." (A-94).

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 Government from eviscerating the Constitution's Petition Clause to escape accountability.

Some plaintiffs in this case are not retaining their money until their grievances are redressed, others are not. Those who have retained their money assert that in the absence of any response by the Government their only method of enforcing their right to petition is to retain their funds until the Government meets its obligations. Otherwise, the People's Rights become privileges with all the adverse consequences that would involve.

The Government's arguments are not relevant. Clearly, the People are entitled to injunctive relief. 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 Government cites 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. In approximately six and one-half pages of argument invoking the Act, the Government employs the legal term of art "taxpayer" fifteen separate times to imply by innuendo the nature of this case.

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 Government's 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 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 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 Government *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.

PLAINTIFFS ON APPEAL

The parties who appeared before the district court and who are appearing in this court are those who are identified in the People's Brief on pages i through xxv.

The statement by the government that the few plaintiffs it selected and referred to as all of the parties is incorrect both because it eliminated most of the plaintiffs, and added two former plaintiff who had withdrawn and the government had been so notified.

The caption of the amended complaint is 64 pages in length (A 14-77) and lists the name and address of nearly 1700 plaintiffs. Paragraph 6 of the amended complaint reads, "Aside from the two explicitly identified corporate Plaintiffs (We The People Foundation and We The People Congress), each remaining Plaintiff is a natural living human being, is over the age of eighteen, and is a citizen of the state identified with his/her name and address in the caption above." (A-80).

Contrary to the Government's statements on page 5 of its brief (first paragraph and footnote) the amended complaint did not include Jackson or Chappell. They withdrew as plaintiffs before the amended complaint was filed.

CONCLUSION

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 6762 words and 530 lines.

Respectfully submitted,

Dated: May 7, 2006

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