No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 2005

ROBERT L. SCHULZ

Petitioner,

DIANE LUKARIS, KEITH GILLIGAN, JUDITH PORCARO

Plaintiffs-Appellants,

- against -

WASHINGTON COUNTY BOARD OF SUPERVISORS, ANDREW J. WILLIAMSON, individually and in his official capacity as Chairman of the Washington County Board of Supervisors, WASHINGTON COUNTY TREASURER'S OFFICE, PHYLLIS COOPER, individually and in her official capacity as Washington County Treasurer, WASHINGTON COUNTY CLERK'S OFFICE, DEBORAH BEAHAN, individually and in her official capacity as Washington County Clerk,

(Caption continued on inside cover)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ROBERT L. SCHULZ
Pro Se
2458 Ridge Road
Queensbury, NY 12804
(518) 656-3578

No. _____

WARREN COUNTY BOARD OF SUPERVISORS, WILLIAM H. THOMAS, individually and in his official capacity as Chairman of the Warren County Board of Supervisors, WARREN COUNTY TREASURER'S OFFICE, FRANCIS X. O'KEEFE, individually and in his official capacity as Warren County Treasurer, WARREN COUNTY CLERK'S OFFICE, PAMELA VOGEL, individually and in her official capacity as Warren County Clerk,

Respondents.

QUESTIONS PRESENTED

Whether, under the Petition Clause of the First Amendment to the United States Constitution, government Respondents are obligated to respond with specific, formal answers to Petitioners' Petition for Redress of Grievance and whether Petitioners can retain their money until their grievances are redressed.

Whether the federal Tax Injunction Act can trump the Petition Clause of the First Amendment to the United States Constitution and deprive the federal courts of jurisdiction.

PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear in the caption of the case.

TABLE OF CONTENTS

TABLE OF CONTENTS (cont'd)

TABLE OF CONTENTS (Cont'd)

Page

TABLE OF AUTHORITIES

Page

FEDERAL CASES

STATE CASES

TABLE OF AUTHORITIES (Cont'd)

TABLE OF AUTHORITIES (Cont'd)

Page

TABLE OF AUTHORITIES (cont'd)

Page

TABLE OF AUTHORITIES (cont'd)

TABLE OF AUTHORITIES (cont'd)

Page

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT L. SCHULZ

Petitioner,

DIANE LUKARIS, KEITH GILLIGAN, JUDITH PORCARO

Plaintiffs-Appellants,

- against -

WASHINGTON COUNTY BOARD OF SUPERVISORS, et al.,

Respondents.

OPINIONS BELOW

The ORDER of the United States Court of Appeals for the Second Circuit, denying petition for panel rehearing and petition for rehearing en banc, filed January 19, 2006. Not reported.

The SUMMARY ORDER of the United States Court of Appeals for the Second Circuit affirming the judgment of the District Court, filed August 15, 2005. Not reported.

The MEMORANDUM DECISION AND ORDER of the United Stated District Court for the Northern District of New York denying motion for reconsideration, filed December 16, 2004. Not reported.

The MEMORANDUM DECISION AND ORDER of the United Stated District Court for the Northern District of New York, dismissing the action in its entirety, filed December 14, 2004. Reported at 349 F. Supp. 2d 375.

JURISDICTION

The Order sought to be reviewed was filed August 15, 2005.
The Order denying rehearing was filed on January 19, 2006.
This Court has jurisdiction under 28 U.S.C. Section 1257.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Petition Clause of the First Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law…abridging…the right of the people…to petition the Government for a redress of grievances."**

2. The Fifth Amendment to the United States Constitution reads in relevant part: **"No person shall be…deprived of…property, without due process of law…."**

3. The Fourteenth Amendment (Section 1) to the United States Constitution provides, in relevant part: **"…No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of …property, without due process of law…."**

4. The Tax Injunction Act, 28 U.S.C. Section 1341, provides that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law **where a plain, speedy and efficient remedy may be had in the courts of such State."**

STATEMENT OF THE CASE
A. OVERVIEW

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

However, the U.S. Court of Appeals has implicitly ruled that the Tax Injunction Act (28 U.S.C. 1341) can deprive and deny Petitioner of his Right to Petition his County government for a redress of grievances regarding a *Special law* the County has *admitted* in court was adopted in violation of the Home Rule Article of the New York thereby rendering its enforcement a remediable constitutional tort.

Petitioner came to federal court because the members of the Washington County Board of Supervisors refused to respond to his Petition for a Redress of the Grievances.

The issue presented to the District Court is whether the County Board of Supervisors, under the Petition Clause of the First Amendment, is obligated to respond to Plaintiffs' Petition for Redress, and whether Plaintiffs can hold the County Board of Supervisors accountable, not only to the Home Rule provision of the NY Constitution, but to the Petition Clause itself, by retaining their County property tax money in a trust account until their grievances regarding the admitted constitutional tort are Redressed, without retaliation by the County. Appendix G, pages A 41-71 hereto is a copy of the entire Complaint less exhibits.[1] See LCA 242-413 for the full complaint with its exhibits.

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

By its decision, the U.S. Court of Appeals implies the Petition Clause was intended to be without effect: government has no lawful obligation to respond to the People's Petitions, and Plaintiffs' have no Rights under the Petition Clause (other than speech).

There is no mention by the U.S. Court of Appeals of the **only** issue presented by Plaintiffs for the Court's consideration, Plaintiffs' Right to Petition for Redress and the impermissibility of the Respondents' retaliation against Plaintiffs for exercising that Right. This omission is an injustice. The decision by the lower court speaks only to the Tax Injunction Act and ignores the substance of Plaintiffs' complaint, including Plaintiffs' asserted Right to Petition. This is also an injustice.

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[1] References beginning with "A" are to pages numbers in the Appendix herein. References beginning with "LCA" are to page numbers in the lower court's Appendix.

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

Petitioner 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.

This is a case of first impression requiring a determination of the full contours of the meaning of the Petition Clause of the First Amendment to the U.S. Constitution.

The United States Court of Appeals has by implication, incorrectly decided this important question of constitutional law, a question that has not been, but should be, settled by this Court.

This case arises under the Petition Clause of the First Amendment to the U.S. Constitution (and under the Fourteenth Amendment), from the failure of the members of the governing body of Washington County, New York to respond to Plaintiffs' proper First Amendment Petitions for Redress of Grievances regarding a constitutional tort – a violation of a substantive mandate of the Home Rule article of the New York Constitution.

New York is a "Home Rule" State. The New York Constitution mandates that *Special laws* of the State (i.e., laws that affect the property, affairs or government of the people of one or more, but not all counties), must be preceded by a request by the affected County(ies), or by the Governor. NY Const. Art. 9, Sec. 2(b)(2).

Respondent Washington County has admitted in federal District Court that the *Special law* that is the subject of this case (Chapter 682 of the NY Laws of 1985) was *not* preceded by a request by Washington County or the Governor. **As District Court Judge Lawrence Kahn wrote in his Decision and Order dismissing**

this case, "At the preliminary injunction hearing …Washington County conceded that … a home rule resolution relating to this legislation [Chapter 682] was never passed." Quoting from Judge Kahn's Order) dated December 14, 2004. (A- 13).

By its decision, the U.S. Court of Appeals has implicitly accepted and endorsed Washington County's argument -- that is, while the First Amendment guarantees the Right of the People to Petition government for Redress of Grievances, its failure to explicitly require government to respond to such Petitions means the government has no such obligation to respond.

"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). Petitioner argues that to take away government's obligation to respond is to take away the Right to Petition government for Redress of Grievances, and to deprive the People of their essential Sovereignty over the servant government they have created and empowered with limited authority.

Having implicitly adopted this limited and demonstrably flawed interpretation of the Petition Clause, the Court of Appeals then dismissed the case on the ground that the federal Tax Injunction Act (28 U.S.C. section 1341) deprives the Court of jurisdiction. To the contrary, if the Petition Clause both expresses and guarantees a substantive Right, it must include the obligation by government to respond to Petitions for Redress.

Beyond this, even if the Tax Injunction Act could trump the Petition Clause (which is not possible), the Tax Injunction Act would only deprive the federal courts of jurisdiction in matters involving state taxes, "**where a plain, speedy and efficient remedy may be had in the courts of such State."** *Roswell v. La Salle National Bank*, 67 L. Ed. 2d 464, 473.

In affirming the lower court's decision the Court of Appeals wrote, "New York courts provide a "plain, speedy and efficient" remedy for plaintiffs' claims under 42 U.S.C. section 1983 and the New York State Constitution…and the procedural history of

the instant case is ample verification of this. See *Schulz v. New York State Legislature*, 773 N.Y.S.2d 174 (3rd Dep't 2004); *Schulz v State of New York*, 603 N.Y.S.2d 207 (3rd Dep't 1993)."(*Schulz I* and *II*).

Again, even if the Tax Injunction Act could trump the Petition Clause and if the "remedy" within the meaning of the Tax Injunction Act requires substance over the mere "procedural" freedom to file a complaint in state court, then, as the record clearly shows, there is no remedy available in state court to Plaintiffs' Chapter 682, Home Rule grievance. See Plaintiffs' affidavit with its documentary evidence. LCA 242-413.

It is the inability to secure redress from any judicial forum or from the Defendants that is at the root of Petitioner's direct exercise of the Right to Petition, including the retention of property taxes to secure such redress.

Petitioner invites this Court's attention to the fact that Washington County argued on the record in the District Court that, "[T]his case has nothing to do with 682…he [Schulz] is correct that he raised the issue of this constitutionality of 682 in 1992…The Appellate Division dismissed the petition…**he's correct, they did not expressly address the 682 claim…Twice in two separate actions he raised the constitutionality of 682…**." Transcript, page 17, line 4-7. A- 72.

The County attorney, who confessed in the hearing in federal District Court, also confessed under oath *in State Court*, that Chapter 682 was not preceded by the constitutionally mandated request by the County or by the Governor. A-30.

No more proof of the unavailability of a judicial remedy to this grievance should be required than the fact that after the decisions in *Schulz I* and *Schulz II*, Chapter 682 is still in full force and effect.

In an argument marked by contemptuous boldness, Washington County also argued on the record in the District Court that, "[E]ven if 682 is unconstitutional, that does not make any difference…The question is, does 1341 bar this Court from

exercising jurisdiction…The question is not whether he had an adequate remedy to challenge 682, its whether he had an adequate remedy to challenge the collection of taxes." Transcript, page 15, line 5-7. A-72.

Chapter 682 affects the real property of *only* Washington County. Chapter 682 exempts Washington County from those provisions of NY's General Municipal Law, a *General law,* that prohibits all Counties from using their property taxes to pay the bonds and other obligations of a local Industrial Development Authority ("IDA") and mandates competitive bidding of projects such as the Project authorized by Chapter 682.

Under the Petition Clause, Plaintiffs Petitioned the County Board, individually (A 20-35) and as a whole (A 36-40) for Redress of this grievance, requesting that the unlawful Project be removed from the County budget and that the County cease assessing taxes to finance it.

Plaintiffs established a Trust Account with the County Treasurer as a beneficiary and provided Notice to the Board of Supervisors that they would be depositing their 2004 and 2005 property tax money in the Trust Account where the money would remain until the County removed the Project from the budget and reduced the property tax accordingly or until a court ruled that Chapter 682 was not unconstitutional.

Respondents are impermissibly retaliating under color of law – New York's Real Property Tax law. Washington County has recently seized title to Petitioners' homes and real property.

On June 17, 2006, the County will publicly auction Plaintiffs' properties unless Plaintiffs "repurchase" the properties by paying the County the property taxes being held in Trust as part of their exercise of the First Amendment Right to Petition. Please see (A-73) for a copy of the Notice of Auction for one of Plaintiffs' properties.

B. STATEMENT OF FACTS

The NY Constitution prohibits the State Legislature from passing any law that would affect the property of only Washington County, unless the County or the Governor requests such a law.[2]

Any law passed by the state legislature is "abrogated" if it is "repugnant" to any provision of the State Constitution.[3]

NY State's General Municipal Law prohibits Counties from using the property tax to pay the obligations of Industrial Development Authorities ("IDA").[4]

In 1984, a local attorney (John Lemery) and a local refuse collector and former Queensbury Town councilman (Robert Barber) formed the Falls Energy Company for the purpose of developing a solid waste resource recovery facility in Washington County (the "Project"), utilizing bonds issued by the local IDA to finance construction of the Project and the County's property tax to pay the bonds and other obligations of the IDA.

Lemery and Barber conspired with two members of the Washington County Board of Supervisors to draft a *Special law*, to be passed by the State Legislature, that would exempt the Project from New York State's General Municipal Law section 870 (a *General law*, that prohibited all counties in the State from using the property tax to pay the bonds and other obligations of any IDA), and that would also exempt the Project from New

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[2] " … the legislature … Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership …." NY Constitution, Article IX, Section 2(b)(2). A "Special law" means, "A law which in terms and effect applies to one or more, but not all, counties …." Article IX, Section 3(d)(4).

[3] "But all such parts of the common law, and such of said acts …as are repugnant to this constitution, are hereby abrogated." NY Constitution, Article I, Section 14.

[4] "The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the State nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency." NYS General Municipal Law, Article 18-A, Section 870.

York State's General Municipal Law, section 120w (a *General law* mandating that all such Projects be competitively bid).

One of the two local officials approached was William Nikas, a practicing private attorney who was the Supervisor of the town where the Project was to be constructed, as well as Chairman of the Solid Waste Committee of the Washington County Board of Supervisors. The other local official was Joseph Rota, who was the Chairman of the County Board of Supervisors.

In April 1985, Nikas negotiated the language of Assembly Bill A. 937 and Senate Bill S. 755 (Chapter 682) with Assemblyman Kelleher and State Senator Stafford). LCA-51, A-27.

Without a request by the County Board of Supervisors or the Governor, as *mandated* by NY Const. Article 9, Kelleher and Stafford introduced the bill in the legislature as a S*pecial law.* The bills were passed and sent to the Governor for his action.

On June 28, 1985, Rota wrote to the Governor's Secretary, requesting that the Governor approve the bill because the Washington County Board of Supervisors "unanimously approved the concept and is in <u>full</u> support." (emphasis in the original) LCA-53, A-29. In fact, Rota filed a false statement. Other than Nikas and Rota, the other members of the County Board of Supervisors and the public were completely *unaware* that Stafford and Kelleher were asked to pass any such law. The subject never appeared in the minutes of any Board meeting.

Proof of this was provided by the Washington County attorney and the then Chairman of the Board of Supervisors, who **CONCEDED,** under oath in State Court**,** that although explicitly required by the NY Constitution, Chapter 682 was not preceded by a request by the County or by the Governor. LCA-56, A-30.[5]

The Governor signed the bill, exempting the Project from the State's competitive bidding laws and authorizing the County to

[5] Selected paragraphs from a Verified Answer in response to a lawsuit in State Supreme Court.

levy the cost of the Project against the taxable real property. LCA-365, A-26.[6]

In sum, Chapter 682 was adopted without a formal request by the County as mandated by Article IX of the NY Constitution, without general public knowledge or public review or notice, and after the filing by Washington County Board Chairman Joseph Rota, of a false instrument. These are material facts not at issue.

For seven years, Chapter 682 was kept from public knowledge. In 1992, the Project started commercial operation. Washington County and Warren County began using their property tax revenues to pay the bonds and other obligations of the IDA.[7]

Petitioner Schulz and others sued the Counties for violating NY General Municipal Law section 870, which prohibits counties from using property taxes to pay the obligations of quasi-governmental IDAs. *Schulz v State of New York*, 603 N.Y.S.2d 207 (3d Dept 1993). (*Schulz I*).

In response, the Chairman of the Board of Supervisors filed an affidavit with the State court, saying use of the property tax to pay the obligations of the IDA had been authorized by the state legislature with the passage of a Chapter 682. LCA-63, A-32[8]

This was the first public disclosure in the Counties and the first the Plaintiffs knew about Chapter 682. Schulz researched the minutes of the Board meetings and other official records of the Washington County Board of Supervisors and could find no evidence of any mention of the subject matter of Chapter 682, much less a vote by the Board requesting adoption of such a law.

In reply to the State Court, Schulz argued that Chapter 682 was unconstitutional and the use of the property tax to pay the obligations of the IDA was unlawful. LCA 383-386. However,

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[6] Copy of Chapter 682 of the NY Laws of 1985, a *Special law*.

[7] The counties have been doing so ever since. Without a court order, the counties will continue doing so until 2012.

[8] Selected paragraphs from Affidavit, dated 8/25/92, *Schulz I.*

the Court dismissed the case without a judicial memorandum or justification for its decision.

As the recorded facts of the case prove, Schulz pursued the Chapter 682 issue on appeal. However, the decision by the state appellate court also failed to encompass the Chapter 682 home rule issue, just as the lower courts had in *Schulz I* and *Schulz II*.

The record before the court proves that although the constitutionality of Chapter 682 was timely and properly challenged in State Court, no remedy was available in either *Schulz I,* which was filed in 1992 and finally "determined" in 1993, or in *Schulz II*, which was filed in 1998 and finally "determined" in 2004. See Point VI below.

In 2003, with no "plain, speedy and efficient remedy" available in the State judiciary, Plaintiffs directly petitioned each member of the Washington County Board of Supervisors for Redress of the Grievance. Each Petition included a statement of the grievance and a prayer for relief. A 20-35.[9]

There was no response. Schulz then Petitioned the full Board for Redress, citing the Petition Clause and annexing copies of ten Law Review Articles on the subject. The Petition informed the Supervisors that under the Petition Clause Petitioners would be exercising their Right of Redress before taxes, by establishing a Trust Account for their property taxes. A-36[10]

Plaintiffs provided the Treasurers of the Counties with a copy of the Trust Account, saying that pursuant to the Petition Clause their tax money would remain in the account until the Counties responded to the Petitions for Redress. For a copy of the entire Declaration of Trust, see LCA. 119-183

The Counties began to penalize Plaintiffs for not paying their property taxes. LCA-191.

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[9] Petition for Redress that was served on each member of the Board.

[10] Petition to the full Board of Supervisors, minus the law review articles on the Right to Petition that were annexed to and filed with the Petition.

On November 17, 2004, Plaintiffs Petitioned the federal District Court, seeking, *inter alia*: a) declaratory relief by constraining Defendants to meet their obligations under the Petition Clause of the First Amendment by addressing the issues raised in their Petitions for Redress; and b) injunctive relief by prohibiting Defendants from taking any further retaliatory action against Plaintiffs for retaining their money until their grievances are redressed. A 41-70 is a copy of the full complaint, less exhibits.

On April 7, 2006, Plaintiffs received notice that Washington County had taken title to their properties and will auction the properties to the highest bidder on June 17, 2006, unless Plaintiffs repurchase their properties from the County by June 9, 2006 for the amount of taxes due in 2004 and 2005, plus interest, penalties and other charges. A-73[11]

C. FEDERAL JURISDICTION IN DISTRICT COURT

The court of original instance, the U.S. District Court for the Northern District of New York, had jurisdiction under 28 U.S.C. Sections 1331 and 1343(3) and 42 U.S.C. Section 1983.

REASONS FOR GRANTING THE WRIT

Petitioner presents six reasons for granting the Writ: 1) This is a First Amendment Case of First Impression; 2) The Petitions for Redress Were Proper; 3) Government is Obligated to Respond to Proper Petitions for Redress; 4) The Right to Petition Includes the Right of Redress Before Taxes; 5) The Tax Injunction Act Cannot Trump the Constitution; It is Irrelevant Here; and 6) There was no adequate Remedy Available in State Court.

I. THIS IS A FIRST AMENDMENT CASE OF FIRST IMPRESSION

This is a case of first impression requiring a determination of the full contours of the meaning of the Petition Clause of the First Amendment to the U.S. Constitution.

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[11] One of the Notices that Petitioners' properties will be auctioned.

The United States Court of Appeals has by implication, incorrectly decided this important question of constitutional law, a question that has not been, but should be, settled by this Court.

II. THE 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."

For obvious reasons, Petitioner does not argue that all communications to the government, or just any document, communication or transaction with the government, can or should be regarded as a constitutionally protected Petition for Redress of Grievances. The Petitions for Redress giving rise to the cause of action in the instant controversy 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 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 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.

More importantly though, Plaintiffs' Petitions to the government contain and detail specific allegations of *constitutional torts*

committed by the government against the Plaintiffs that have directly resulted in the loss of fundamental Rights and Liberties.

However processed and in whatever forum, Plaintiffs' Petitions for Redress are formal, peaceful prayers to correct such wrongs, and must be considered, respected and protected within the historically evolved constitutional intent of the Individual, First Amendment Right to Petition.

III. 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

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 by Respondents who *are* obligated to respond and have failed to do so. Popular sovereignty depends upon and is

directly exercised through the People's Right of Response. Though the Right 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.[12]

The Government is obligated to respond to Petitions for Redress of Grievances, especially when, as in the present case, the oppressions are *ultra vires*, constituting 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

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[12] 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).

construed to deny or disparage the Right to have the Votes counted or the Right to a response to Petitions for Redress.

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. Petitioning, as a way of holding Government accountable to natural Rights, originated in England in the 11th century[13] and gained recognition as a Right in the mid 17th century.[14] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.[15] Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.[16] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[17]

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, [18] the American Colonies, [19] and the first Continental Congress[20] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[21]

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[13] 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.

[14] 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.

[15] See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.

[16] See Smith, *supra* n.4, at 1165-67.

[17] See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)

[18] See Smith, *supra* n4, at 1165.

[19] 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).

[20] See id. at 464 n.52.

[21] Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning,

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.[22] In addition, a "considerable majority" of Congress defeated a motion to strike the assembly provision from the First Amendment because of the understanding that all of the enumerated rights in the First Amendment were separate Rights that should be specifically protected.[23]

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 has played a key role in the development, exercise and enforcement of popular sovereignty throughout British and American history.[24] In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.[25] Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.[26] This broadening of

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whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n6, at 115-16.

[22] 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).

[23] See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).

[24] 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).

[25] The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5, at 187.

[26] See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 187-88.

political participation culminated in the official recognition of the right of Petition in the People themselves.[27]

The People used this newfound Right to question the legality of Government actions,[28] to present their views on controversial matters,[29] and to demand that the Government, *as the creature and servant of the People, be responsive to the popular will.*[30]

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify Government misconduct.[31]

By the nineteenth century, Petitioning was described as "essential to … a free government"[32] – an inherent feature of a republican democracy,[33] and one of the chief means of enhancing Government accountability through the participation of citizens.

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[27] 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." Res. of the House of Commons (1669), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 188-89.

[28] 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.

[29] See Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).

[30] 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.

[31] See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

[32] 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).

[33] 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]").

b. Accountability Was Understood To Demand Government Response To Petitions.[34]

American colonists, who exercised their Right to Petition the King or Parliament, [35] expected the Government to receive *and respond* to their Petitions.[36] The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the "**capstone**" **grievance**, underpinning the fundamental principal of popular sovereignty, was a significant factor that led to the American Revolution.[37]

Frustration with the British Government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[38] Members of the First Congress easily defeated this right-of-instruction proposal.[39] Some discretion to reject petitions 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*.[40]

Congress's response to Petitions in the early years of the Republic also indicates that the original understanding of

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[34] See Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).

[35] 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.

[36] See Frederick, *supra n7* at 115-116.

[37] 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).

[38] See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.

[39] The vote was 10-41 in the House and 2-14 in the Senate. See *id*. at 1105, 1148.

[40] 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).

Petitioning *included a governmental duty to respond*. Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.[41]

Congress referred Petitions to committees[42] and even created committees to deal with particular types of Petitions.[43] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report. [44]

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

The Supreme Court has characterized the interest underlying the Petition Right broadly as an interest in self-government. See *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 to hold Government accountable to its primary purpose of protecting the unalienable Rights of the Individual. If the Government of the People cannot be held constitutionally obligated to listen and honestly respond to The

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[41] 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)).

[42] 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.

[43] 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).

[44] See Higginson, n34 at 157.

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, and each natural Right, enumerated or not. 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. Plaintiffs have a Right to a response to their proper Petitions for Redress. To say otherwise is to deny the Right to Petition and the enjoyment of Popular Sovereignty.

Non-responsive "responses," including silence, are repugnant to the Petition Clause, and Petitioners 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 Prohibited

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. Respondents have made no such claim.

Respondents' retaliation against Petitioners is without reasonable cause; it is not objective; there is no clear and present danger to the Counties that would justify their punishment of Petitioners 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 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 the 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.

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 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 Individual Rights. 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.

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, Petitioners are being penalized for exercising a constitutional right of Petition. Respondents have implied that they are not targeting Petitioners 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." In 1670, the charge against William Penn, who preached a nonconformist doctrine 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.

Respondents are moving to silence Petitioners, who question Government's behavior and preach a nonconformist doctrine, that is, "the Government has an obligation to respond to the Petitions for Redress when they have acted unconstitutionally, and the People have a Right to hold government accountable by retaining their money until their Rights are Redressed."

Abuse of power is usually sought to be justified by some legitimate function of government (such as enforcement of a Tax law). Respondents do violence to the First Amendment when they attempt to turn a legitimate "Petition for Redress of Grievances" into a charge of "failure to pay property tax."

d. The Production of Information and 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."

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

The right to Petition Government officials for Redress of Grievances is the basis of Liberty. The founders 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 limited by the consent of the People.

The Founding Fathers declared that the Right of Redress of Grievances *includes* the Right to withhold payment of taxes while the grievance remains. In 1774, in an official Act passed unanimously by the Continental Congress, the Founders 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.*

By the First 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." 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 an elected representative; it is not confined to appearing

before the local city council, or writing letters to government officials. See *N. A. A. C. P.* v. *Button,* 371 U.S. 415, 429-431.

As the record reveals, conventional methods of Petitioning have been shut off to Petitioners. There is no remedy available in state Court. 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.

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 available to Petitioners to enforce their natural Rights, absent an effective declaration by the Court constraining the Respondents to respond to the Petitions.

V. THE TAX INJUNCTION ACT CANNOT TRUMP THE CONSTITUTION; IT IS IRRELEVANT HERE

As would be true with any legislative schema, The Tax-Injunction Act, 28 U.S.C. 1341, cannot bar plaintiffs from exercising or enforcing their Right to Petition the Government for Redress of Grievances, particularly grievances involving *constitutional torts*, the issue in the present case.

If not soundly rejected by the Court, any invocation of the Tax-Injunction Act to bar relief would effectively "trump" the Petition Clause and constitute an intolerable violation -- and abandonment -- of the essential principle of Popular Sovereignty as plainly recognized by the founding documents, the Declaration of Independence and the U.S. Constitution.

To fail to recognize and declare the original intent of the Right to Petition is to undermine our Republic and the first of the Great Rights—Government based upon the consent of the People. An **admitted** unconstitutional act of a legislature would be allowed to lie undisturbed, in spite of Plaintiffs' Right to Petition, forcing Petitioners to either succumb to the *ultra vires* demands and pay

the taxes alleged due, or suffer the unjust loss of their homes and real property under the constitutionally violative invocation of the U.S. Tax Injunction Act and the NY Real Property Tax Law.

"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425 (1886).

The U.S. Supreme Court affirmed the lower court's declaration that a legislative act was unconstitutional and of no effect. "…we are of the opinion that the courts below rightly held the statute to be repugnant to the Constitution and non-enforcible." *The Employers' Liability Cases*, 207 U.S. 463, 504.

In reference to another unconstitutional legislative act, the high court held, "That act was therefore as inoperative as if it had never been passed, for an unconstitutional act is not law, and can neither confer a right or immunity nor operate to supersede any existing valid law. *Norton v. Shelby County*, 118 U.S. 425, 442; *Ex parte Siebold*, 100 U.S. 371, 376." *Chicago, Indianapolis & Louisville Railway Company v. Hackett*. 228 U.S. 559 (1913).

Unconstitutional action "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation**,** as inoperative as though it had never been passed." *Linkletter v. Walker*, 381 U.S. 618 (1965).

In 1995, concurring, Justice Scalia, joined by Thomas, wrote,
"A court does not -- in the nature of things it *can* not -- give a 'remedy' for an unconstitutional statute, since an unconstitutional statute is not in itself a cognizable 'wrong.'
(If it were, every citizen would have standing to challenge every law.) In fact, what a court does with regard to an unconstitutional law is simply to *ignore* it. It decides the case *'disregarding the [unconstitutional] law,'" Marbury* v. *Madison*, 5 U.S. 137, 1 Cranch 137, 178, 2 L. Ed. 60(1803) (emphasis added), because a law repugnant to the Constitution 'is void, and is as no law,' *Ex parte Siebold*, 100 U.S. 371, 376, 25 L. Ed. 717 (1880). Thus, if a plaintiff seeks the return of money taken by the government in reliance on an unconstitutional tax law, the court ignores the tax

law, finds the taking of the property therefore wrongful, and provides a remedy. Or if a plaintiff seeks to enjoin acts, harmful to him, about to be taken by a government officer under an unconstitutional regulatory statute, 'the court enjoins, in effect, not the execution of the statute, but the acts of the official, *the statute notwithstanding.' Massachusetts* v. *Mellon*, 262 U.S. 447, 488-489, 67 L. Ed. 1078, 43 S. Ct. 597 (1923)."(emphasis by Petitioner).*Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749,760.

The Supremacy Clause of the U.S. Constitution gives federal courts the ability to act aggressively in reviewing state legislation. "This Constitution … shall be the supreme law of the land; and the judges in every State shall be bound thereby …." Article VI.

The unconstitutionality of Chapter 682 is beyond dispute, having been admitted to by Respondents, both in the Federal District Court and the state Court. Plaintiffs' injuries are personal, distinct and definite, and are traceable to the Respondents' unlawful conduct. Plaintiffs' injuries are likely to be redressed by the requested relief.

An unconstitutional law is void and not enforceable. As the record shows, the Act was born out of fraud and a conspiracy of concealment and silence. Respondents have no rational basis for collecting, committing, expending or assessing property taxes for a *knowingly* unlawful purpose.

There can be no immunity doctrine that can bar Petitioners from maintaining an action for declaratory and injunctive relief against a constitutional tort.

VI. TIA IS NO BAR TO JURISDICTION: REMEDY IS UNAVAILABLE IN STATE COURT

Even if the Tax Injunction Act could trump the Constitution (which is not possible), it was intended to bar actions adversely affecting a state's ability to raise revenue for *bona fide*, constitutional purposes. *HIBBS v Winn*, 124 S. Ct. 2276 (2004).

Respondents have **conceded** the unconstitutionality of Chapter 682 and Respondents have also conceded the fact that the state court has twice issued decisions that failed to encompass the 682 issue even though the issue was timely and properly raised.

Even if the TIA could trump the Constitution (which is not possible), Federal jurisdiction over challenges to state tax schemes is not precluded if state remedies are inadequate. *Kraebel v NYC Dept. of Housing Pres .and Develop't*, 959 F.2d 395, 400 (2d Cir. 1992). Such is the case here.

Even if the TIA could trump the Constitution (which is not possible), this action falls under the exception to TIA's general rule. "The Tax Injunction Act generally prohibits federal district courts from enjoining state tax administration except in instances where the state-court remedy is not 'plain, speedy and efficient.'" *Roswell v. LaSalle Nat'l Bank*, 67 L. Ed. 2d 464, 473.

Even if the TIA could trump the Constitution (which is not possible), "No court of equity will … allow its injunction to issue to restrain [state officers collecting state taxes], except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law." *Grace Brethren Church* at 412, quoting *Dows v. City of Chicago*, 11 Wall. 108, 110 (1871).

Even if the TIA could trump the Constitution (which is not possible), "The plain, speedy and efficient exception in the Tax Injunction Act … requires the state-court remedy to meet certain minimal procedural criteria. In particular, a state-court remedy is plain, speedy and efficient only if it provides the taxpayer with a full hearing and judicial determination …." *Grace Brethren Church* at 411.

As shown above and in the detailed Affidavit by Plaintiffs that was filed in the District Court and that resulted in the County attorney's admission in District Court on the record that Chapter 682 was violative of the Home Rule provisions of the NY Constitution, that this issue was twice presented to state court and that the state appellate court decisions did not encompass the Home Rule issue. Please see (LCA 242-

413), for a copy of the detailed Affidavit that was filed in District Court on December 6, 2004.

In sum, the State Court decisions admittedly did not encompass the Home Rule question, the forums deprived Petitioner of a full hearing and the resultant judicial determinations utterly failed to address the specific constitutional challenges raised regarding the authorization and sale of public bonds to finance a knowingly unconstitutional Project. In short, judicial Due Process is clearly not available in New York State to remedy the grievance.

Even if the Tax Injunction Act could trump the Petition Clause of the First Amendment (which is not possible), "The TIA requires the State to provide taxpayers with a swift and certain remedy …. An action dependent on a court's discretion, for example, would not qualify as a fitting remedy." *HIBBS v. Winn*, 159 L. Ed. 2d, at 182.

Even if the Tax Injunction Act could trump the Petition Clause of the First Amendment (which is not the case), a state-court remedy is "plain, speedy and efficient," only if it provides for a "full hearing and judicial determination." HIBBS at 2289, quoting *Roswell v. La Salle National Bank*, 450 U.S. 503, 514 (1981). As the documentary evidence filed with the District Court by Petitioner Schulz proves, no remedy the Chapter 682 Home Rule issue is available in State Court.

CONCLUSION

Petitioners urge this most Honorable Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Dated: April 14, 2006

ROBERT L. SCHULZ
Pro Se
2458 Ridge Road
Queensbury, NY 12804
518.656.3578