

04-0196-cv

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Robert L. Schulz

Plaintiff-Appellant

-vs-

IRS, United States, Anthony Roundtree

Defendants-Appellees

NDNY Case No.

1:03-CV-1354 (lead)

1:03-MC-0050 (Consol.)

1:03-MC-0071 (Consol.)

BRIEF FOR PRO-SE PLAINTIFF-APPELLANT

DATED: August 1, 2004

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PRELIMINARY STATEMENT

This is an appeal from the Order of the Honorable David N. Hurd, filed on December 4, 2003, in the United States District Court for the Northern District of New York.

JURISDICTION

All elected officials and federal employees are immune from suit individually for common law torts occurring within the scope of their employment. See 28 U.S.C. §2679(b)(1). Section 2679(b)(1) does not extend to “a civil action against an employee of the Government which is brought for a violation of the Constitution of the United States, or which is brought for a violation of a statute of the United States...” See §2679(b)(2). Therefore, the IRS, United States, and Agent Anthony Roundtree have been named as the defendants in this Complaint.

The President of the United States and his Executive Branch Agencies, and the Legislative Branch of the United States government have failed to address Plaintiff's Petitions for Redress of grievances. The Executive Branch subsequently retaliated against the Plaintiff in violation of the First Amendment to the United States Constitution, and jurisdiction is proper in accordance with 28 U.S.C. §1331. Plaintiff has been denied due process in violation of the 5th

and 14th Amendments to the United States Constitution, and jurisdiction is proper in accordance with 28 U.S.C. §1331.

Plaintiff's civil rights have been violated, and jurisdiction is also invoked pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1346.

QUESTIONS PRESENTED

- 1. Whether defendant's "Section 6700" letter and Administrative Summons are impermissible retaliation, violating plaintiff's Rights as guaranteed by the First Amendment's Petition, Speech, Assembly and Press clauses.**
- 2. Whether the District Court abused its discretion in ruling plaintiff may not seek a court order quashing an IRS summons issued under 26 U.S.C. 7602, even after the District Court accepted the material facts in support of plaintiff's "illegitimate purpose and bad faith" arguments, and after the District Court accepted the facts in support of plaintiff's jurisdictional argument challenging defendant's enforcement and prosecutorial authority as against plaintiff.**
- 3. Whether the District Court abused its discretion in ruling plaintiff may not seek a court order quashing an IRS summons issued under 26 U.S.C. 7602 because plaintiff "is under no compulsion to comply."**
- 4. Whether the District Court abused its discretion in ruling plaintiff may not seek a court order quashing an IRS summons issued under 26 U.S.C. 7602 because plaintiff "cannot petition a district court to quash a summons but must raise his challenge in a district court enforcement action filed by the IRS [under 26 U.S.C. 7604]."**

STATEMENT OF THE CASE

This Complaint arises from the failure of the President of the United States and his Executive Agencies, particularly the Internal Revenue Service, and the failure of the United States Congress, to properly respond to Plaintiff's Petitions

for Redress of grievances, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money, and "privacy" clauses.

This complaint also arises from the Executive Branch of the United States government, particularly the IRS, in its retaliation against Plaintiff for Petitioning the government for a Redress of Grievances, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money and "privacy" clauses.

STATEMENT OF THE FACTS

On numerous occasions plaintiff has respectfully sought to petition the defendants, to meet with the defendants and to secure from the defendants answers to reasonable questions regarding certain acts of defendants believed by plaintiff to be repugnant to and outside the authority lawfully granted by the U.S. Constitution and certain statutes.

Plaintiff's Petitions for Redress of Grievances have included respectfully drawn requests for answers to questions regarding defendants' actions related to the tax, war powers, money and "privacy" clauses of the Constitution and certain statutes-- questions designed to assist plaintiff in his quest to hold defendants accountable to the Constitution and the Bill of Rights and to determine his obligations under those policies and programs as enforced by the

defendants. The defendants have steadfastly refused to properly respond to plaintiff's proper Petitions for Redress of grievances and oppressions.

A detailed account of multiple attempts by plaintiff to Petition his government for Redress of Grievances and the government's failure to respond is provided in the Affidavit (with the numerous exhibits annexed thereto as documentary evidence), by Robert L. Schulz in support of the Motion to Quash IRS Summons. See Civil Docket For Case # 1:03-mc-00050, entry # 2 and 5-15. The Affidavit, without exhibits, is included in the Appendix at A-26.

What these examples show is Plaintiff has respectfully, intelligently and rationally contacted his Congresspersons and appropriate officials within the Executive branch, including the President, literally begging for someone in government to answer pertinent questions relating to alleged violations of the taxing, war powers, money and "privacy" clauses of the Constitution, including the legitimacy of the direct, un-apportioned tax on labor, as enforced by defendant Internal Revenue Service.

Despite these pleadings by the Plaintiff for defendants to address pertinent issues and questions posed by him, there has been a lack of responsiveness from the Legislative and Executive branches of our government.

Instead, there has been a condescending and antagonistic attitude by our elected and appointed officials toward plaintiff who has merely Petitioned his

government for Redress of Grievances under the First Amendment to the Constitution. The defendants have failed to properly respond to plaintiff's Petitions for Redress; twice, defendants have publicly uttered their intention to respond to said Petitions through "enforcement actions."

In fact, on September 16, 2003, at a formal press conference, defendant IRS's senior spokesman, Terry Lemons, said on the record to New York Times reporter David Cay Johnston that, "the recent spate of enforcement actions taken by the I.R.S. against promoters of abusive tax schemes, and the new agreement with the states, show other ways that government is answering the petition." At the same press conference, IRS senior official, Dale Hart, said the IRS was "after mailing lists." All of this is obviously meant to have a chilling effect on the Plaintiff's exercise of his fundamental Right to Petition. Exhibit UUU, attached to plaintiff's Memorandum of Law, dated October 28, 2003 (CIVIL DOCKET FOR CASE # 1:03-mc-00050, Docket Entry 25), is a copy of the NY Times article. A copy of Exhibit UUU is included in the Appendix at A-150. Dale Hart's statement about mailing lists can be seen and heard on the web cast of the 9/16/03 press conference, which is archived on the Treasury Department's Internet site.

In fact, on April 4, 2003, defendant IRS sent a very ominous and threatening "enforcement" letter to Plaintiff falsely characterizing Plaintiff's

reasonable and legitimate First Amendment Petition process as a “promotion of an abusive tax shelter,” characterizing the thousands of people who had signed the Petitions for Redress as “investors” in the abusive tax shelter, and requesting full information about the people who had signed the Petitions for Redress, full information about the source of funds used by plaintiff to Petition the government for Redress of grievances, and so forth. Specifically, the letter said, “We have reviewed certain materials with respect to your tax shelter promotion. We are considering possible action under Section 6700for promoting abusive tax shelters. In addition, we plan to consider issuing “pre-filing notification” letters to the investors who have invested in this promotion...You are requested to meet with the examiner at the above date, time and location. Enclosed is a list of document, books and records that you should have available and questions you should be prepared to reply to at that time.” Exhibit HHH at A-152 is a copy of the letter. It was attached to plaintiff’s Affidavit In Support of Motion To Quash, dated September 11, 2003 (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry 2).

In fact, as the Record on Appeal clearly shows, plaintiff is not engaged in the sale of any service or product (“trusts” or otherwise), and has received no compensation for the work he has done since May of 1999 in pursuit of the answers to the questions contained in the subject Petitions for Redress. There is

no “tax shelter” scheme. There are no “investors.” Rather, there are Petitions for Redress of Grievances and there are petitioners, who have joined plaintiff in petitioning the government for answers to specific questions regarding the defendants’ constitutional authority.

On May 30, 2003, in response to defendant Roundtree’s “6700” enforcement letter, plaintiff Schulz met with defendant Roundtree and handed defendant Roundtree a letter with approximately 60 exhibits, advising the IRS that its “enforcement actions” were, in effect, prohibited retaliatory actions against plaintiff and, as such, were infringing on Plaintiff’s First Amendment Right to Petition the government for a Redress of Grievances. Exhibit KKK, attached to plaintiff’s Motion To Quash IRS Summons, dated June 19, 2003 (CIVIL DOCKET FOR CASE # 1:03-mc-00050, Docket Entry 1), is a copy of the letter. Exhibit KKK is included in the Appendix at A-156.

Roundtree took one look at the letter and immediately said to Schulz, “I am not going to play the constitution game. I have something for you.” Roundtree then handed Schulz a Summons, demanding the same information of Schulz that was demanded in the earlier “6700” letter. Exhibit LLL, attached to plaintiff’s Motion To Quash IRS Summons, dated June 19, 2003 (CIVIL DOCKET FOR CASE # 1:03-mc-00050, Docket Entry 1), is a copy of the Summons. A copy of Exhibit LLL is included in the Appendix at A-161.

The May 30, 2003 Summons (Exhibit LLL) does not identify any offense. It merely demands that Plaintiff Schulz appear before defendant Roundtree, “ to give testimony and to bring with you and to produce for examination the following books, records, papers and other data relating to the tax liability or the collection of the tax liability or **for the purpose of inquiring into any offense** connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.”

On June 19, 2003, plaintiff motioned District court to quash the IRS Summons.

On June 23, 2003, defendant IRS (by its agent Terry H. Cox), served another Summons on plaintiff Robert Schulz and one on his wife, Judith Schulz. See Exhibits MMM and NNN annexed to plaintiff’s Affidavit at A-26. The June 23, 2003 Summonses, without identifying any offense, contained language identical to the IRS’s May 30, 2003 Summons, to wit:

“to give testimony and to bring with you and to produce for examination the following books, records, papers and other data relating to the tax liability or the collection of the tax liability or **for the purpose of inquiring into any offense** connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.”

On July 9, 2003, plaintiff Schulz, filed a Motion to Quash the June 23 Summonses on the ground that they too were issued in bad faith. The July 9,

2003 Motion To Quash included plaintiff Schulz's statement that he was re-alleging and repeating the arguments, background statements and the statements of fact and evidence set forth in his June 19, 2003 Motion to Quash and its supporting affidavits and memorandum of law.

On August 15, 2003, defendant IRS, by its agent Anthony Roundtree, served yet another Summons on plaintiff Schulz, to correct Schulz's Social Security Number.

On September 12, 2003, Plaintiff filed a Motion To Quash the August 15 Summons, repeating the arguments, background statements and the statements of fact and evidence set forth in Plaintiffs June 19, 2003 and July 9, 2003 Motions to Quash IRS Summonses. (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry 1). See A-16 through A-149.

Defendants did not respond to any of Plaintiff's three Motions To Quash. Defendants made no appearance whatsoever during the proceedings in District Court.

However, on October 16, 2003, Magistrate Homer accepted as true the material facts as set forth in plaintiff's papers but denied plaintiff's motions to quash "as a matter of law."

On October 30, 2003, Plaintiff unsuccessfully appealed from the Magistrate's decision and order by filing an Amended Motion and an Amended

Memorandum. (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry #12 and #14), included in the Appendix at A-158 and A-175 respectively.

SUMMARY OF THE ARGUMENT

Plaintiff argues that under the circumstances of this case, the “6700” letter and Summonses issued against Plaintiff by the IRS amounts to impermissible retaliation against Plaintiff, prohibited by the meaning and spirit of the Petition and due process Clauses of the Constitution and that the District Court failed to look at the (accepted as true) material facts of the case through the prism of the original meaning, intent, history and significance of the Petition Clause of the Constitution. The First Amendment Right to Petition government for Redress of Grievances includes protection of petitioners from retaliation.

Plaintiff also argues that the District Court abused its discretion in denying plaintiff’s motions to quash. Contrary to the District Court’s ruling, deciding a motion to quash an IRS Summons is a matter of equity, not law. See *Reisman v. Caplin* 375 US 440, 443 (1964). Contrary to the District Court’s ruling, a close reading of 26 USC 7604 shows plaintiff is, in effect, under a strong compulsion to comply with the demands of the subject IRS administrative Summonses. The facts of the case before the bar are clearly distinguishable from the facts of the cases cited by the District Court. A balancing of the equities in this case argues is favor of Plaintiff: the Record shows plaintiff has been properly exercising his

Right to Petition; plaintiff's actions in exercising his Rights under the Petition Clause are protected from retaliation; the Summonses fail to list/identify ANY offense connected with the administration or enforcement of the internal revenue laws; the "6700" letter that preceded the Summonses falsely characterized plaintiff's Petition process as an "abusive tax shelter"; and, defendants failed to make any appearance at all in the District Court.

Plaintiff also argues that the District Court failed to address Plaintiff's claim that the IRS appears to lack territorial jurisdiction under Article I, Section 8, Clause 17 of the Constitution and 40 USCS Sections 3111 and 3112 (formally 40 USCS 255).

ARGUMENT

POINT I

THE FIRST AMENDMENT RIGHT TO PETITION PROTECTS PETITIONERS FROM RETALIATION

THE DISTRICT COURT FAILED TO LOOK AT THE (ACCEPTED AS TRUE) MATERIAL FACTS OF THE CASE THROUGH THE PRISM OF THE ORIGINAL MEANING, INTENT, HISTORY AND SIGNIFICANCE OF THE PETITION CLAUSE OF THE CONSTITUTION

Respectfully, due to the limited space allowed in this Brief, the court's attention is directed to Plaintiff's 87 page Memorandum of Law, dated September 11, 2003, for Plaintiff's entire argument regarding the meaning,

history and significance of Plaintiff's Right to Petition the government for Redress of Grievances. Plaintiff merely highlights those arguments here. See A-58 for the MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry #4).

Plaintiff has an unalienable Right to Petition the government for a Redress of Grievances, a Right guaranteed by the First Amendment to the Constitution. The First Amendment states clearly and unambiguously, "Congress shall make no law ...abridging ...the right of the people ... to petition the government for a redress of grievances." (plaintiffs' emphasis).

The Right to Petition is among the most precious of the liberties guaranteed by the Bill of Rights; the value in the Right of Petition as an essential element of self-government is beyond question.

Plaintiff has petitioned defendants for a Redress of Grievances relating to: (a) The taxing clauses of the Constitution and the direct, un-apportioned tax on labor; (b) The war powers clauses of the Constitution and the Iraq Resolution; (c) The money clauses of the Constitution and the Federal Reserve; and (d) The "privacy" clauses of the Constitution and the USA Patriot Act.

By communicating information, expressing facts and opinions, reciting grievances, protesting abuses and praying for answers to specific questions, plaintiff has given expression essential to the end that government defendants

may be responsive and accountable to the Constitution and to the sovereignty of the People and that changes may be obtained by lawful and peaceful means. See *McDonald v Smith* (1985) 472 US 479; *New York Times Co. v. Sullivan*, 376 U.S. 254 at 266, 269.

The record shows defendants have repeatedly refused to respond to plaintiff's repeated Petitions for Redress.

Knowing that a Right that is not enforceable is not a Right and wishing to peaceably enforce his individual, unalienable Rights, Plaintiff has decided to give further expression to his Rights under the First Amendment to Speech, Assembly and Petition, by not withholding and turning over to government direct, un-apportioned taxes on plaintiff's labor -- money earned in direct exchange for his labor (not to be confused with money "derived from" labor).

Plaintiff believes such further expression is not an abuse of any of his First Amendment Rights, but an extension of his First Amendment Rights and any intervention by defendants against such exercise of these First Amendment Rights represents a curtailment of Plaintiff's Rights and is forbidden.¹

By their "6700" letter and Summonses, defendants are retaliating against Plaintiff by attempting to disqualify him from taking a public position on

¹ "The privilege of giving or withholding our money 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." Thomas Jefferson: Reply to Lord North, 1775, Papers 1:225.

matters in which he is financially interested, depriving Plaintiff of his Right to Petition, to speak freely in the very instance in which those Rights are of the most importance to plaintiff. See *Bridges v. California*, 314 U.S. 252 (1941).

Defendants' retaliation against Plaintiff is without reasonable cause; it is not objective; there is no clear and present danger to the government defendants that would justify their punishment of Plaintiff 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; "it is as much Plaintiff's duty to question as it is the defendants' duty to administer." See *New York Times Co. v. Sullivan*, 376 U.S., at 282

A retaliatory action is one brought with a motive to *interfere* with the exercise of protected Rights. A clear and present danger to public interest is required before the government can restrict Rights. Defendants make no such claim.

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

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

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

If communications to one's representative could be arbitrarily ignored, refused, 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 representative institutions and refusal to identify individuals' rights with, or subordinate them to, the wills of elected representatives. Undue assertions of parliamentary privilege -- **punishing petitioners who were said to menace the dignity of the assembly -- jeopardize the entire institution of petitioning.** Higginson, 96 Yale L.J. 142, n45.

Before a First Amendment right may be curtailed under the guise of a law, such as 26 USC 6700 (“promotion of an abusive tax shelter”), any evil that may be collateral to the exercise of the right, must be isolated and defined in a “narrowly drawn” statute (*Cantwell v. Connecticut*, 310 U.S. 296, 307) lest the power to control excesses of conduct be used to suppress the constitutional right itself. See also *Stromberg v. California*, 283 U.S. 359, 369; *Herndon v. Lowry*, 301 U.S. 242, 258-259; *Edwards v. South Carolina*, 372 U.S. 229, 238; *N. A. A. C. P. v. Button*, 371 U.S. 415, 433.

That tragic consequence is threatened today when broadly drawn laws such as 26 USC 6700 “promotion of a tax shelter” and 26 USC 7203 “willful failure to file” are used to bludgeon People who are peacefully exercising a First Amendment right to question government’s authority behind one of the most grievous of all modern oppressions which our federal government under color of law is inflicting on the working men and women in America – state ownership of their labor property, which if constitutional at 1% would also be constitutional at 100%.

There can be no doubt but that IRS Summonses (demanding plaintiffs turn over all documents, books, records and other data for the purpose of “inquiring into any offense connected with the enforcement of the income tax laws”) were issued for an illegitimate purpose -- to punish and penalize plaintiff

and to inhibit and curtail plaintiff's First Amendment Rights. See *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

There is no evidence in Record of anything but plaintiff's 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, nothing.

Today, misdemeanors are being used to harass and penalize plaintiff for exercising a constitutional right of assembly and petition. The government will undoubtedly say they are not targeting plaintiff because of the constitutional principles he espouses. However, that excuse is usually given, as we know from the many cases involving arrests of minority groups for breaches of the peace, unlawful assemblies, and parading without a permit. The charge against William Penn, who preached a nonconformist doctrine in a street in London, was that he caused "a great concourse and tumult of people" in contempt of the King and "to the great disturbance of his peace." 6 How. St. Tr. 951, 955. That was in 1670.

Defendants are moving to silence plaintiff, who questions government's behavior and preaches a nonconformist doctrine, that is, "the government has an obligation to hear and answer the People's Petitions for Redress of Grievances and the People have a Right to enforce their Rights which includes retaining

their money until their Rights are Redressed.” Such abuse of police power is usually sought to be justified by some legitimate function of government.

The government does violence to the First Amendment when it attempts to turn a reasonable and legitimate "petition for redress of grievances" into a statutorily based “promotion of an abusive tax shelter” or a “willful failure to file” action.

Petitioning may be the forgotten Right, but it is not a lost Right. “Petitioning was at the core of the constitutional law and politics of the early United States. That was why it was included in the First Amendment, not as an afterthought, but rather as its **capstone**... petitioning embodied important norms of political participation in imperfectly representative political institutions.... **Petitioning was the most important form of political speech** ...For individuals and groups, it was a mechanism for redress of wrongs that **transcended the stringencies of the courts** and could force the government's attention on the claims of the governed when no other mechanism could.” Gregory A. Mark, The Vestigial Constitution: The History And Significance Of The Right To Petition, 66 Fordham L. Rev. 2153, 2157 (1998). (plaintiff’s emphasis).

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.”

In America, the right to petition our government for redress of grievances is the basis of our liberty. Our founders explicitly recognized this right in the very first amendment to our constitution – for they understood that without it, we could not have a servant government whose power is defined and limited by the consent of the people.

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

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

As the record in the instant case reveals, conventional methods of petitioning have been shut off to plaintiff. Unconventional methods of petitioning [such as redress before taxes] are protected as long as the assembly and petition are peaceable. The Right of Redress Before Taxes is an integral part of the Right to Petition for Redress of Grievances.

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

Plaintiff has an inherent, unalienable Right to Redress Before Taxes, guaranteed by the First and Ninth Amendments. The actions defendants are complaining about are consistent with and protected by said Right.

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 colonists held that **tyranny marked a society in which the rulers ignored "a free People."**

A communication, to be protected as a Petition for Redress, would have to embody certain components to ensure that the document was a petition and not a "pretended petition." Not all communications, nor just any document, can be regarded as a constitutionally protected Petition for Redress of Grievances.

Plaintiff's Petitions for Redress meet or exceed any rational standard.

Plaintiff's Petitions for Redress:

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

The remedy sought by plaintiff's Petitions for Redress has merely been the government's *answers* to certain questions related to the origin and operation of the federal individual income tax system, the Iraq Resolution, the Federal Reserve System and the USA Patriot Act. See Exhibit ZZ and Exhibit FFF (Statement of Facts and Beliefs regarding the income tax), which are the heart of plaintiff's Petition process, and which plaintiff has been asking the government to respond to.

Although the term "petition" is not defined by the Constitution, our United States Supreme Court long ago 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.

POINT II

THE DISTRICT COURT ABUSED ITS DISCRETION:

Respectfully, due to the limited space allowed in this Brief, the court's attention is directed to Plaintiff's Memorandum to Appeal the Magistrate's

Decision and Order, dated October 30, 2003, for Plaintiff's entire argument regarding the meaning, history and significance of Plaintiff's Right to Petition the government for Redress of Grievances. Plaintiff merely highlights those arguments here. See A-58 for the MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry #4).

Contrary to the District Court's decision, deciding a motion to quash an IRS Summons is a matter of equity, not law. See *Reisman v. Caplin* 375 us 440, 443 (1964).

Without addressing Plaintiff's First Amendment Rights and arguments, and while holding that, "the facts as set forth in Schulz's papers are accepted as true," the District Court, as a matter of law, denied Plaintiff's motion to quash saying, "the moving party is entitled to prevail only if the material facts demonstrate entitlement to prevail as a matter of law."

Plaintiff argues the primary law of this case is the First Amendment's guarantee of the Right to Petition for Redress of grievances, including its inherent Right of protection from retaliation by the government.

The undisputed material facts (accepted by the court as true) demonstrate Plaintiff has been engaged, under the First Amendment, in a highly proper,

reasonable and legitimate process of Petitioning defendant government for a Redress of Grievances.

The District Court not only failed to look at the facts of the case through the prism of the original meaning, intent, history and significance of the Petition Clause of the Constitution, the District Court also misapprehended the applicable case law (regarding motions to quash administrative Summonses issued by the IRS.

In its October 16, 2003 Memorandum Decision and Order, the Magistrate Judge held, “It appears well settled that a taxpayer may not seek a court order quashing an IRS Summons for at least two reasons. First, until the IRS commences a proceeding to enforce compliance with a summons pursuant to 26 U.S.C. Section 7604, the taxpayer is under no compulsion to disclose information or records. Second, proceedings commenced by the IRS under Section 7604 afford a taxpayer an adequate method of asserting any defenses the taxpayer may have to compelled compliance with a summons. *Gutierrez v. U.S.*, No. CS-95-599-RHW, 1996 WL 751342, at *2 (E.D. Wash. July 31, 1996); *Rodio v. Commissioner*, 138 F.R.D. 341, 344 (D.R.I. 1991) (holding that a summons recipient cannot petition a district court to quash a summons but must raise his challenge in a district court enforcement action filed by the IRS); *Ramos v United States*, 375 F. Supp. 154, 155 (E.D. Pa. 1974)(holding that a

remedy at law exists through intervention of the taxpayer in judicial proceedings brought by the IRS to enforce compliance with a summons)... Here, the IRS has not yet commenced enforcement actions as to any of the summonses issued to Schulz as is required for a court to consider the contentions raised by Schulz on these motions. Accordingly, this court lacks jurisdiction to entertain these motions and both motions must be dismissed.” (Appendix at A-14)

The United States Supreme Court has held that a suit in a U.S. district court for relief against an IRS summons issued under 26 U.S.C. 7602, for production of books, records and documents, is a matter of equity, to be decided by the judge after resorting to principles of fairness and justice, that is, the court has the discretionary power to grant the relief. See *Reisman v Caplin* (1964), 375 US 440, 443. The Reisman court did not hold, explicitly or implicitly, that suits in District Courts for relief against IRS summonses issued under 26 U.S.C. 7602 must, as a matter of law, be dismissed.

In *Reisman*, the petitioners were three attorneys who had hired the accounting firm of Peat, Marwick, Mitchell & Co., to assist the attorneys who were representing a Mr. Bromley and his business interests. The IRS had issued summonses under 7602 against Peat, Marwick for books, records and other documents. **At the time of service, there were four civil tax cases pending in**

Tax Court contesting alleged deficiencies in income tax returns of the Bromleys and a criminal investigation of Mr. Bromley on the tax matters.

See *Reisman v Caplin*, 375 US 440, 443. Here, defendant's Summonses have not listed any wrongdoing, suspected or otherwise, against Plaintiff Schulz.

In *Reisman*, the Supreme Court, exercising its discretionary, equitable powers, decided that under the facts and circumstances of that case the appropriate remedy would be a full adversarial proceeding in District Court, that is, a balancing of the equities required the denial of Reisman's motion to quash so as not to overly restrict the government's ability to obtain books and records related to the ongoing civil and criminal proceedings. Plaintiff Schulz is not the target of any civil or criminal proceeding. Justice would not be impaired if defendants were precluded from enforcing the current Summonses in District Court. If that were not the case, defendant's should have appeared in District Court and argued for a denial of plaintiff Schulz's motion to quash.

Under the facts and circumstances of this case, plaintiff Schulz is, in effect, compelled to comply with IRS summons or face immediate loss of liberty and property. Plaintiff respectfully draws the court's attention to the language of 26 U.S.C. Section 7604 (b):

"Whenever any person summoned under section ... 7202 neglects or refuses to obey such summons ... the Secretary may apply to the judge of the district court or to a United States commissioner ... for

an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of the person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have the power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.”

According to the language of 7604, if plaintiff Schulz does not comply with the summons, the IRS could, and probably would, apply to a U.S commissioner for an attachment, falsely claiming Schulz’s refusal to comply with the summons was a “default or contumacious” refusal. Schulz could very well then be arrested for contempt, incarcerated and held without bail for an indefinite period of time, until he gives the IRS what it wants or until the end date of a hearing, whichever comes first, all based on an mere “application” to a United States commissioner by the IRS stating, simply, “Schulz was served this Summons and he refused to obey.”

To dismiss plaintiff Schulz’s pre-enforcement motion to quash the IRS summons, thereby subjecting plaintiff Schulz to the threat of arrest, incarceration and trial on charges of “contempt’ for not complying with the summons, is, under the facts and circumstances of this case, to deny plaintiff Schulz his fundamental Rights to due process and to Petition for Redress.

This is especially true given the facts and the law presented by plaintiff in his motion papers and considering the fact that the IRS chose not to oppose plaintiff's motion or to refute the facts or the arguments. The IRS chose not to justify its issuance of its summons by at least indicating the nature of the offense it is allegedly investigating.

Plaintiff has the Right to avoid/prevent the instant loss of Rights and privileges, which would be the result of an attachment issued under 7604. The United States cannot use a statute to circumvent plaintiff's fundamental Right of due process or to interfere with plaintiff's fundamental Rights of Petition, Assembly, Speech and Press.

Given the facts and circumstances of this case, the IRS should be required to respond to plaintiff's Petitions for Redress of Grievances before plaintiff is forced to suffer a loss of liberty and the indignity and expense of an arrest for contempt, in violation of his fundamental Right to due process and his first Amendment Rights under the Petition, Assembly, Speech and Press clauses.

26 U.S.C. 7604 is being unconstitutionally applied here. 7604 is meant to apply to people who simply ignore or refuse to respond to an IRS Summons, especially where the IRS is legitimately investigating tax crimes. Here, there is nothing in the record suggesting plaintiff Schulz has done anything wrong. On the other hand the record contains sufficient evidence demonstrating the servant

government is abusing its power. Schulz didn't "default or contumaciously" refuse to respond to the Summons. He came to this court with an intelligent, rational and professionally drawn motion to quash the Summons, well grounded on essential constitutional principles and all in defense of his individual, unalienable, fundamental Rights.

POINT III DEFENDANTS LACK JURISDICTION

Plaintiff's Motion papers included a challenge to defendant's territorial and enforcement jurisdiction as well as subject matter jurisdiction. Due to poor plaintiff's understanding of the importance of the issue and the lack of space in this Brief, plaintiff respectfully repeats the arguments made before the lower court as if reargued here. Plaintiff respectfully directs the court's attention to A-71-78 and A-191-203.

Jurisdiction is a threshold question. Respectfully, for the defendants to execute a valid summons against Plaintiff (under 26 U.S.C. 7602 or 7604), they must have bona fide Jurisdiction over plaintiff. If the defendants do not, or cannot proffer the statutorily required proof of such jurisdiction, the court is bound to find in favor of plaintiff. Defendants have not rebutted plaintiff's jurisdictional challenge under Art. I, Section 8, Cl 17 and 42 USC 255.

CONCLUSION

Plaintiff respectfully requests an order:

(a) reversing the order of the district court, quashing the IRS Summonses,

(b) permanently enjoining and prohibiting defendants from directly or indirectly contacting plaintiff Schulz and/or his wife Judith regarding any matter related to any direct, un-apportioned tax on their labor, unless and until the defendants properly respond to plaintiff's Petitions for Redress of Grievances, which response shall include answers to the questions contained in Exhibit G and Exhibit ZZ annexed to plaintiff's AFFIDAVIT IN SUPPORT OF MOTION TO QUASH (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry #2), and

(c) permanently enjoining and prohibiting the IRS from directly or indirectly contacting plaintiff Schulz and/or his wife Judith regarding any matter related to any direct, un-apportioned tax on their labor, unless and until the defendants properly respond to the list of 17 questions in paragraph 57 of PLAINTIFF'S STATUS & DISCLOSURE AFFIDAVIT OF MATERIAL FACTS (CIVIL DOCKET FOR CASE # 1:03-mc-00071, Docket Entry #3), and

(d) for such other relief as to the court may seem just and proper.

DATED: August 1, 2004

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