UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ
Plaintiff

-against- **Miscellaneous Action:**

UNITED STATES, INTERNAL REVENUE SERVICE, Anthony Roundtree
Defendants

MEMORANDUM OF LAW

DATED: September 11, 2003

ROBERT L. SCHULZ
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QUESTIONS PRESENTED

1. Whether the United States has territorial jurisdiction: that is, whether the Summons should be quashed on the ground that it is repugnant to and violative of Article I, Section 8, Clause 17 of the Constitution and its implementing statute, 40 USC 255.
2. Whether the United States has an illegitimate purpose: that is, whether the Summons should be quashed because it was issued to interfere with the exercise by plaintiff of certain individual, constitutionally guaranteed Rights: the Right to Petition for a Redress of Grievances, including the Right of Redress Before Taxes, without infringement, harassment, retribution or prior restraint (1st and 9th Amendments); the Right to Peaceably Assemble and to associate with like minded people without infringement, harassment, retribution or prior restraint (1st and 9th Amendments); the Right to Speak Freely without infringement, harassment, retribution or prior restraint (1st and 9th Amendments); the Right to Publish in newspapers, on the Internet, on compact discs and video tapes without infringement, harassment, retribution or prior restraint (1st and 9th Amendments); the Right to be Secure in Person, House, Papers and Effects Against Unreasonable Searches and Seizures (4th Amendment); the Right not to be a Witness Against Oneself (5th Amendment); the Right not to be Deprived of Liberty without Due Process of Law (5th and 14th Amendments); and the Right to be Informed of the Nature of an Accusation (6th Amendment): and the Right to Be Left Alone and Not To Be Harassed (9th Amendment).
3. Whether the United States has satisfied all administrative steps: that is, whether the Summons should be quashed on the ground it was issued without legal authority and does not satisfy all Administrative steps required by law and is, therefore, repugnant to and

violative of plaintiff's constitutional right to due process under Article V of the Constitution.

PRELIMINARY STATEMENT

Since May 5, 1999, plaintiff has been engaged in a process of Petitioning the United States for Redress of Grievances relating initially to its abuse of its power to tax, and eventually, to its abuse of its debt-incurring/money-making, war-making and police powers.

The Record shows plaintiff's actions have been intelligent, rational, professional and respectful.

The Record shows the United States has refused to answer the Petitions for Redress, going back on its word to do so no less than five times.

On May 30, 2003, without identifying any offense, defendants issued a Summons to plaintiff Schulz (Exhibit LLL) that read:

> "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." (plaintiff's emphasis).

On June 19, 2003, Schulz filed and served on defendant IRS a Motion to Quash (Exhibit OOO), returnable July 18, 2003. The grounds for that Motion To Quash included the fact that the May 30, 2003 Summons did not satisfy all required administrative steps, was not issued for a legitimate purpose – i.e., that it was issued in bad faith, and that the Summons lacked legal authority. The June 19, 2003 Motion To Quash included two supporting affidavits sworn to by plaintiff Robert Schulz, numerous exhibits (Exhibits A thru LLL) and a Memorandum of Law.

On June 23, 2003, defendant IRS (by its agent Terry H. Cox), served another Summons on plaintiff Robert Schulz (Exhibit MMM) and one on his wife, Judith Schulz (Exhibit NNN).

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."

In addition, the June 23, 2003 Summonses asked plaintiff Robert Schulz and his wife Judith Schulz to turn over: "All documents and records in your possession or control reflecting the receipt of taxable income by you for the year(s) 1040-December31, 2001 & December 31, 2002 …."

On July 9, 2003, plaintiff Schulz, filed and served on defendant IRS a Motion to Quash the two new Summonses, returnable August 21, 2003. The grounds for that Motion To Quash included the fact that the June 23, 2003 Summonses were issued in bad faith and that the IRS lacked legal authority to require plaintiff Schulz and/or his wife to turn over their documents, books and records. The July 9, 2003 Motion To Quash included an Affidavit by Judith Schulz and a Memorandum of Law, together with 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 or about July 18, 2003, plaintiff Schulz was informed that the Court had had no response from the IRS regarding plaintiff's June 19th Motion to Quash.

On or about July 23, 2003, plaintiff Schulz and his wife each received a letter from, Edward Fickess, Associate Counsel for defendant IRS (Exhibit QQQ). The letter reads in part:

"…you did not provide the documents or testimony required by the [June 23, 2003] summons… Legal proceedings may be brought against you in the United States District Court for your failure to comply with the summons."

On or about August 4, 2003, plaintiff Schulz and his wife replied (Exhibit RRR), advising Edward Fickess that the issue of compliance is a matter that is already before the United States District Court.

On or about August 21, 2003, plaintiff Schulz was informed that the Court had had no response from the IRS regarding plaintiff's July 9th Motion to Quash or the June 19th Motion to Quash.

On or about August 22, 2003, plaintiff filed and served a proposed Order to quash the Summons of May 30, 2003 and June 23, 2003. See Exhibit TTT .

On August 15, 2003, defendant IRS, by its agent Anthony Roundtree, served yet another Summons on plaintiff Schulz (Exhibit SSS), which was identical to the May 30, 2003 Summons, with three exceptions: 1) it includes the correct Social Security Number; 2) it includes a notice entitled "Notice to Third Party Recipient of IRS Summons"; and 3) it includes a note with reads:

> "Please don't resubmit documents that were previously submitted in response to the summons issued on 5/30/03."

STATEMENT OF THE FACTS

See plaintiff's Affidavit In Support of the Motion to Quash for a detailed Statement of the Facts and the Background leading up to this Motion to Quash.

Since May 5, 1999, plaintiff has been Petitioning the United States for Redress of Grievances regarding, first, the fraudulent origin and illegal operation of the income tax system and eventually, the defendant's abuse of its war-making , debt-incurring and police powers as well. The Petition for Redress has the active support of tens of thousands of individuals, including attorneys, CPAs, former IRS agents, business owners and law researchers, who have

been pro-active in joining with plaintiff in exercising their 1st Amendment Right to Petition for Redress, which includes their Right of Free Speech (conducting free conferences and workshops), their Right to Freedom of the Press (publishing full-page messages in USA TODAY, the New York Times, the Washington Times and other newspapers and magazines, posting messages on websites and distributing flyers), and their Right to Peaceably Assemble (meeting and marching and becoming members of like-minded associations).

As the evidence shows, defendants have steadfastly refused to answer plaintiff's intelligent, rational and respectfully drawn Petitions for Redress.

As the evidence shows, the Petition process has been pro-active, non-violent and has been developing into a mass-movement.

As the evidence shows, the Petition process has reached the point where plaintiff has notified defendants that he will be retaining any money normally due defendants unless and until defendants provide an honest answer to the Petitions for Redress of Grievances.

See plaintiff's Affidavit In Support of the Motion to Quash for the facts and evidence of plaintiff's Petitions for Redress of Grievances.

POINT I

DEFENDANTS LACK JURISDICTION

Plaintiff's Motion challenges defendants' jurisdiction.

Jurisdiction is a threshold question. For the defendants to execute a valid summons against Plaintiff, they must have bona fide Jurisdiction over Plaintiff. If the defendants do not, or cannot proffer the statutorily required proof of such jurisdiction, this court is bound to find in favor of Plaintiff.

The federal courts have consistently held to the principle that **once jurisdiction is challenged the court has no authority to do anything but take action on that motion.**

As the Supreme Court held in The State of Rhode Island v. The State of Massachusetts, 37 U.S. 709, once the question of jurisdiction is raised "it must be *considered* and *decided* before the court can move one step further." "Jurisdiction *cannot be assumed* by a district court nor conferred by agreement of parties, but it is incumbent upon plaintiff to allege in clear terms, the necessary facts showing jurisdiction which must be proved by convincing evidence." Harris v. American Legion, 162 F. Supp. 700. [See also McNutt v.General Motors Acceptance, 56 S. Ct. 780.] [Italics added]. In Main V. Thibout, 100 S.Ct. 2552, the court held, "It is principle of law that once challenged, the court, agency, or person asserting jurisdiction must prove that jurisdiction to exist as a matter of law." In Foley Bros. Inc. Et al V. Filardo 336 U.S. 28, the court held, "Jurisdiction once challenged cannot be assumed and must be proven." "Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside." See Jaffe and Asher v. Van Brunt, S.D.N.Y.1994. 158 F.R.D. 278.

"The question of Jurisdiction in the court either over the person, the subject matter or the place where the crime was committed can be raised at any stage of a criminal proceedings; it is never presumed but must be proved; and it is never waived by the defendant." United States v. Roger, 23 F. 658 (W.D. Ark. 1885).Note: In the case before the bar, the IRS has not cited any offense, civil or criminal.

The Constitution is unambiguous about defining WHAT Congress is authorized to do and WHERE they can do it. The IRS cannot tax where the US cannot legislate.

Specifically with respect to "where" Congress enjoys legislative, i.e., police/taxing jurisdiction, the Constitution reads:

> "To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;"
>
> Constitution: Article 1, Section 8, Clause 17

The Department of Justice's own Criminal Resource Manual documents the true limits of the DOJ's police authority:

664 Territorial Jurisdiction

> Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:
>
> The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . . (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.
>
> As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution. This clause provides:
>
> "The Congress shall have power. . . *To exercise exclusive Legislation in all Cases whatsoever*, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority *over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."* (Emphasis added.)
>
> The constitutional phrase "exclusive legislation" is the equivalent of the statutory expression "exclusive jurisdiction." *See James v. Dravo Contracting Co.,* 302 U.S. 134, 141 (1937), citing, *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).
>
> Until the decision in *Dravo*, it had been generally accepted that when the United States acquired property with the consent of the state for any of the enumerated purposes, it acquired exclusive jurisdiction by operation of law, and any reservation of authority by the state, other than the right to serve civil and criminal process, was inoperable. See *Surplus Trading Co. v. Cook,* 281 U.S. at 652-56. When *Dravo* held that a state might reserve

legislative authority, e.g., the right to levy certain taxes, so long as that did not interfere with the United States' governmental functions, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," to restore criminal jurisdiction over those places previously believed to be under exclusive Federal legislative jurisdiction. *See* H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1 (1940).

Dravo also settled that the phrase "other needful buildings" was not to be strictly construed to include only military and naval structures, but was to be construed as "embracing whatever structures are found to be necessary in the performance of the function of the Federal Government." *See James v. Dravo Contracting Co.,* 302 U.S. at 142-43. It therefore properly embraces courthouses, customs houses, post offices and locks and dams for navigation purposes.

The "structures" limitation does not, however, prevent the United States from holding or acquiring and having jurisdiction over land acquired for other valid purposes, such as parks and irrigation projects since Clause 17 is not the exclusive method of obtaining jurisdiction.

The United States may also obtain jurisdiction by reserving it when sovereign title is transferred to the state upon its entry into the Union or by cession of jurisdiction after the United States has otherwise acquired the property. See *Collins v. Yosemite Park Co.*, 304 U.S. 518, 529-30 (1938); *James v. Dravo Contracting Co*., 302 U.S. at 142; *Surplus Trading Co. v. Cook*, 281 U.S. at 650-52; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 526-27, 538, 539 (1885).

The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. See *Kohl v. United States*, 91 U.S. 367, 371, 372 (1976). But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. See *Mason Co. v. Tax Commission,* 302 U.S. 97 (1937); *James v. Dravo Contracting Co*., 302 U.S. at 141-42.

State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. *See Adams v. United States*, 319 U.S. 312 (1943); *Surplus Trading Co. v. Cook*, 281 U.S. at 651-52.

Whether or not the United States has jurisdiction is a Federal question. *See Mason Co. v. Tax Commission*, 302 U.S. at 197.

Prior to February 1,1940, it was presumed that the United States accepted jurisdiction whenever the state offered it because the donation was deemed a benefit. *See Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. at 528. This presumption was reversed by enactment of the Act of February 1, 1940, codified at 40 U.S.C. § 255. This statute requires the head or authorized officer of the agency acquiring or holding property to file with the

state a formal acceptance of such "jurisdiction, exclusive or partial as he may deem desirable," and further provides that in the absence of such filing "it shall be conclusively presumed that no such jurisdiction has been acquired." *See Adams v. United States*, 319 U.S. 312 (district court is without jurisdiction to prosecute soldiers for rape committed on an army base prior to filing of acceptance prescribed by statute). The requirement of 40 U.S.C. § 255 can also be fulfilled by any filing satisfying state law. *United States v. Johnson*, 994 F.2d 980, 984-86 (2d Cir. 1993). The enactment of 40 U.S.C. § 255 did not retroactively affect jurisdiction previously acquired. *See Markham v. United States*, 215 F.2d 56 (4th Cir.), *cert. denied*, 348 U.S. 939 (1954); *United States v. Heard*, 270 F. Supp. 198, 200 (W.D. Mo. 1967).

In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

A. Where it reserved such jurisdiction upon entry of the state into the union;

B. Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;

C. Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and

D. Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance.

U.S. DOJ Criminal Resource Manual, October 1997
Section 664

The police power is vested in the States and not the federal government. See Wilkerson v. Rahrer , 140 U.S. 545, 554, 11 S.Ct. 865, 866 (1891) (the police power "is a power originally and always belonging to the States, not surrendered to them by the general government, nor directly restrained by the constitution of the United States, and essentially exclusive"); Union National Bank v. Brown, 101 Ky. 354, 41 S.W. 273 (1897); John Woods &Sons v. Carl, 75 Ark. 328, 87 S.W. 621, 623 (1905); Southern Express Co. v. Whittle, 194 Ala. 406, 69 So.2d 652, 655 (1915); Shealey v. Southern Ry. Co. , 127 S.C. 15, 120 S.E. 561, 562 (1924) ("The police power under the American constitutional system has been left to the states. It has always belonged to

them and was not surrendered by them to the general government, nor directly restrained by the constitution of the United States … Congress has no general power to enact police regulations operative within the territorial limits of a state"); and McInerney v. Ervin, 46 So.2d 458, 463 (Fla. 1950)

"No sanction can be imposed absent proof of jurisdiction." Standard v Olson, 74 S.Ct. 768

"It has also been held that jurisdiction must be affirmatively shown and will not be presumed." Special Indem. Fund v Prewitt, 205 F2d 306, 201 OK. 308

Even the IRS's own CID manual shows it does not have jurisdiction inside the fifty states:

> "The Criminal Investigative Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws involving United States citizens residing in foreign countries and non-resident aliens subject to federal income tax filing requirements."
>
> IRS Criminal Investigation Division

The Supreme Court says the government has an obligation to ascertain bona fide authority: "Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of this authority." Federal Crop Insurance v. Merrill, 33 U.S. 380 at 384 (1947).

The Federal Rules of Civil Procedure even states there is no jurisdiction inside New York: " 'Act of Congress' includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession." See 18 USC, Rule 54 of the Federal Rules of Criminal Procedure. Note: There is NO reference to the 50 "states."

The IRS must establish jurisdiction or the court will be sanctioning FRAUD: "Silence is a species of conduct, and constitutes an implied representation of the existence of facts in question. When silence is of such character and under such circumstances that it would become a fraud, it will operate as an Estoppel." Carmine v. Bowen, 64 U.S. 932

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading. ... We cannot condone this shocking conduct by the IRS. Our revenue system is based upon the good faith of the taxpayers and the taxpayers should be able to expect the same from government in its enforcement and collection activities .... This sort of deception will not be tolerated and if this is the 'routine' it should be corrected immediately." [U. S. v. Tweel, 550 F.2d 297, 299 (1977)][quoting U.S. v. Prudden, 424 F.2d 1021, 1032 (1970)]

The USC codifies the Constitutional requirement at Article I, Section 8, Clause 17 and proscribes the procedure and required documentation for the federal government to successfully assert jurisdiction inside one of the fifty states. To wit: 40 USCS § 255 clearly and specifically requires that a "notice of acceptance" is to be filed "with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated." "Such lands," of course, referring to those lands that the federal government, through its agents, is claiming exclusive or concurrent jurisdiction over the people living thereon.

The text of § 255 concludes with the statement "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, *it shall be conclusively presumed that no such jurisdiction has been accepted***.**" [Emphasis added]

Obviously, if the requirements of Article 1, Section 8, Clause 17 of the Constitution of the United States are not complied with, and/or if the procedural requirements of 40 USCS § 255 are not complied with, then no public servant who is acting as an agent of the United States, i.e. the federal government, has any bona fide authority whatsoever to attempt to force compliance with any federal law, rule, code, statute, etc. on anyone living in such an area that is not subject to any bona fide jurisdiction of the federal government.

In support of this rather obvious conclusion, the second paragraph of interpretive note 14 of 40 USCS § 255 says: "In view of 40 USCS § 255, **no jurisdiction exists in United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said section,** and fact that state has authorized government to take jurisdiction is immaterial. Adams v. United States (1943) 319 US 312, 87 L Ed 1421, 63 S Ct 1122." (plaintiff's emphasis).

[Federal jurisdiction] " ...must be considered in the light of our dual system of government and may not be extended. . .in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." United States v. Lopez, 514 U.S. 549, 115 S.Ct.1624 (1995).

POINT II

DEFENDANTS ARE OBSTRUCTING JUSTICE

To obtain enforcement of a summons, the IRS must first establish its "good faith" by showing that the summons: (1) **is issued for a legitimate purpose**; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS' possession; and (4) satisfies all administrative steps required by the United States Code. United States v. Powell, 379 U.S. 48, 57-58 (1964).

The Summons reads in relevant part:

> "You are hereby summoned and required to appear before Anthony Roundtree (Internal Revenue Agent) ID # 13-23874 an officer of the Internal Revenue Service, 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."

The Summons fails to allege any offense by plaintiff connected with the administration or enforcement of the internal revenue laws. The Summons fails to expressly state any legitimate purpose nor does it imply a legitimate purpose.

Summoning a person's books, records, papers and other documents for the purpose of inquiring into "any" offense, without identifying an offense and when no evidence of an offense is in the record is unconstitutional, as a violation of the 4th and 5th Amendments, and is an illegitimate, prohibited purpose of a Summons.

The Summons amounts to an obstruction of justice. The Summons is obviously designed to unconstitutionally shut down the Petition process, silence plaintiff's speech and press and chill the People's desire to assemble with plaintiff in pursuit of their cause – the Petition for Redress of Grievances relating to defendants' abuse of their taxing, war-making, debt-incurring/money-making and police powers.

For the reasons given in plaintiff's Affidavit and in this Memorandum of Law, plaintiff's behavior is constitutionally protected and cannot be considered the basis of a legitimate purpose for the Summons in question.

The Summons has the practical effect of interfering with plaintiff's 1st Amendment guaranteed Rights to Petition for Redress of Grievances, to speak freely, to publish freely and to peaceably assemble.

The Petition for Redress process has been proper, rational, intelligent and professional and well grounded, in all respects, on fundamental Rights and constitutional principles.

There are no facts in evidence to show plaintiff has made any statements, which plaintiff "knew or had reason to know were in any way, false or fraudulent," which defines a promotion of an abusive tax shelter. See 28 USC 6700.

There are no facts in evidence to show plaintiff's speech related to the Petition process has been either false or even commercial speech.

Harassment, interfering with a citizen's legitimate Petition for Redress of Grievances and/or "fishing expeditions" are not legitimate purposes for issuing a Summons. Yet, under the facts and circumstances of this case (see plaintiff's affidavit of even date), these are obviously the purposes of the challenged Summons.

If the United States, in general, or the Internal Revenue Service and its revenue agent Anthony Roundtree, in particular, find plaintiff's Petitions for Redress of Grievances to be *offensive* (distasteful, irritating or displeasing), the appropriate course of action for them is not to mislabel plaintiff's "offensive" actions as an "offense," and not to harass plaintiff, but to honor their obligation to properly respond to plaintiff's Petitions for Redress of Grievances.

To the tax collector (IRS), plaintiff's Petition-related actions may be displeasing and irritating, but by no legitimate means can the IRS be allowed to remove plaintiff's constitutional armor to get at plaintiff's private records by issuing a Summons requiring plaintiff to turn over to the IRS all of his private documents, books, records and other data.

POINT III

THE SUMMONS VIOLATES PLAINTIFF'S RIGHT TO PETITION

The First Amendment to the Constitution reads in part: "Congress shall make no law… abridging the freedom… to petition the Government for a redress of grievances."

Plaintiff has an unalienable Right to Petition the government for a Redress of Grievances, a Right guaranteed by the First Amendment to the Constitution of the United States of America.

The Summons has been designed, under color of legal authority, to interfere with and is violative of plaintiff's unalienable Right to Petition the government for a Redress of Grievances ,

including his Right to Redress Before Taxes, without harassment, retribution or prior restraint, a Right guaranteed by the First and Ninth Amendments to the Constitution of the United States of America. Plaintiff's actions since 1999, as chronicled and detailed in plaintiff's affidavit of even date have been consistent with and protected by the 1st Amendment.

As the record shows, defendants have known since early 1999 that plaintiff has been engaged in a process of peacefully petitioning the government for a Redress of Grievances and plaintiffs' "Redress Before Taxes" project is an integral part of that process. See plaintiff's affidavit attached.

Defendants have unfettered knowledge that plaintiff's "Operation Stop Withholding," and "No Answers, No Taxes" and "Redress Before Taxes" campaigns are inextricably linked to plaintiff's Petitions for Redress of Grievances; i.e., that they are part and parcel of the Petition process.

The remedy sought by plaintiff's Petitions for Redress has merely been defendants' *answers* to certain questions. See, for instance, Affidavit Exhibit FFF (Statement of Facts and Beliefs regarding the income tax), which is a list of approximately 537 material facts (with citations) that is at the heart of plaintiff's Petition for Redress regarding the income tax system. See also Exhibit ZZ which includes a copy of the Petitions for Redress of Grievances regarding defendants' abuse of their war-making, debt-incurring/money-making and police powers.

The record shows that during the entire Petition process plaintiff has remained true to the Constitution, exercising not only his Right to Petition for a Redress of Grievances, but also his Rights to Freedom of Speech and to Freedom of the Press and to Peaceably Assemble by joining with other People under the auspices of two organizations, each with a different mission and

purpose related to the Petition for Redress of Grievances process: the We The People Foundation for Constitutional Education, Inc., and the We The People Congress, Inc.

The record shows that plaintiff has acted rationally, intelligently, and professionally during the Petition process, while showing kindness and respect toward all appointed and elected representatives of the servant government.

On the other hand, the record shows that during the Petition process the Peoples' servant government, including defendants: has failed to even acknowledge its receipt of formal invitations to participate in academic symposiums and conferences; has reneged on commitments; has broken promises; has held a congressional hearing on plaintiff's newspaper ads without allowing plaintiff to testify at the hearing because, in the words of the Committee Chairman Sen. Charles Grassley, plaintiff's "message will detract from the message we are trying to convey"; has failed to respond to private and open invitations to meet to discuss the evidence and answer questions; has declared that notwithstanding the evidence to the contrary, the legality of the income tax is not a high priority matter; has declared that rather than answer the Peoples' questions about the legality of the income tax, it will deal harshly and swiftly with People who question the validity of the income tax system; has threatened and intimidated plaintiffs by declaring that the only way it will answer the Peoples' questions is "by litigation." Defendants have shown little, if any, respect for the People and the rulebook," – i.e., the Constitution of the United States of America.

The Right of Redress BEFORE Taxes is an integral part of the Right to Petition for Redress of Grievances.

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."[1]

Plaintiff has an inherent, unalienable Right to Redress Before Taxes, guaranteed by the First and Ninth Amendments to the Constitution of the United States of America.

The actions defendants have apparently targeted are consistent with and protected by said Right.

Key to the defense (restoration) of our Constitution is the Peoples' unalienable right to Petition for Redress of Grievances, our servant government's obligation to respond *and the People's ability to enforce (non-violently) the Right to Remedy Grievances.*

Our Founding Fathers knew that if the People allowed the government to turn a blind eye and a deaf ear to the Peoples' Petitions for Redress of Grievances it would be the final expression of tyranny and despotism in America, the beginning of the end of our Constitutional Republic with its system of "separate powers' and checks and balances, the beginning of the end of the Great American Experiment -- government of, by and for the People, the beginning of the end of government based on the consent of the People, and the beginning of the end of the most wonderful and powerful expression of the Creator's intent for civil government – popular sovereignty and constitutionally guaranteed *individual,* unalienable rights.

If the People rest satisfied, or apparently satisfied, without opposition and discontent, allowing the government to turn a deaf ear to the People's intelligent and rational Petitions for Redress of Grievances, the People will, in effect, be turning their backs on the Creator and on humanity.

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[1] "Continental Congress To The Inhabitants Of The Province Of Quebec." Journals of the Continental Congress. 1774 -1789. Journals 1: 105-13.

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If the Court allows the government to turn a deaf ear to the Peoples' intelligent and rational Petitions for Redress of Grievances, the Court will, in effect, be turning its back not only on the Constitution, but on Nature's God, upon whom the Founders themselves relied in declaring the Peoples' Independence from tyranny.

Must the People acquiesce to the government's turning a deaf ear to their Petitions? No, of course not. As a free People, they possess the ultimate Power in our society.

The Founding Fathers could hardly have used words more clear when they declared, "**... the people … may retain [their money] until their grievances are redressed…."**

By these words, the Founding Fathers fully recognized and clearly stated that the Right of Redress of Grievances includes the Right of r*edress <u>before</u> payment of taxes*, that this Right of *redress before taxes* lies in the hands of the People and that this Right is the People's non-violent, peaceful means to procuring a remedy to their grievances without having to depend on -- or place their trust in -- the government's willingness to respond to the Peoples' petitions and without having to resort to violence.

This very American Right of Redress of Grievances *<u>Before Taxes</u>* has always been deeply embedded in our law.

The founding fathers were well acquainted with the fact that government is the enemy of Freedom, that those wielding governmental power despise petitions from the People; the representatives of the People, in a popular assembly, seem sometimes to fancy that they are the People themselves and exhibit strong symptoms of impatience and disgust at the least sign of opposition from any quarter.

The founding fathers knew that it was possible for the institutions of the Congress, the Executive *and* the Courts to someday begin to fail in their duty to protect the people from

tyranny. They knew that unless the People had the right to withhold their money from the government their grievances and Petitions might fall on deaf ears and Liberty would give way to tyranny, despotism and involuntary servitude.

The First Amendment to the United States Constitution states clearly and unambiguously, "Congress shall make NO law …abridging …the right of the people … to petition *the government* for a redress of grievances."

While some Rights are reserved with qualifications in the Bill of Rights, there are *none whatsoever* pertaining to the Right of Redress. There are *no* limits on the Right of Redress. Any constitutional offense is legitimately petitionable.

We have established that 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.

Notice that the founding fathers, sitting as the Continental Congress in 1774, held that this Right of Redress *Before* Taxes was the means by which "the public tranquility" was to be maintained. *Then*, sitting as the Constitutional Convention, the founding fathers declared that one of the major purposes of *the (federal) government* was to "insure domestic tranquility." Therefore, whenever this Right of Redress is violated, the People have a double grievance: a denial of justice by the government *and*, an incitement *by the government* to general unrest.

Today, our concern is the grievance that falls under the heading of a design to subvert the Constitution and laws of the country by those wielding governmental power.

Under this heading, all officers of the government are liable, if they strayed from their oath of office.

If we are to secure our Rights, we must rely on the laws of nature and a reasoned sense of innovation. To rely on precedent is to oppress posterity with the ignorance or chains of their fathers. Being forced by the government to rely on precedent is, *itself*, a grievance.

The sequence of Redress Before Taxes was well established in English law at a time when great numbers of Englishmen traveled to America. They brought with them English history and English law: they brought with them the principle of "taxes with consent"; the unlawfulness of "troops quartered in private homes," of "cruel and unusual punishments," and a whole collection of Rights, such as Redress, Speech, Assembly and Trial by Jury.

Any notion, spurious act of Congress or opinion by a Court that taxes must by paid *before* Redress is a perversion of Natural Law, of modern English law, of the American Constitution and of Truth and Justice.

The reverse principle of "Taxes Before Redress" is based on the essence of monarchy and kingly power: the king owns everything under his domain. People possess property under a monarch by his grace alone. Since a king owns everything under his domain, he merely has to speak to lawfully dispose of his property. Thus, if a king imposed a tax on land he imposed it on his own land and whoever occupied the land was obligated to pay the tax to the king's treasury. A tax, then, being a part of the king's property, was legally presumed to be in the possession of the king before and after its assessment.

Since the landholder, or landless subject, enjoyed the privilege of tenancy on the land only by the will of the king, he could be required to pay over the tax before he could contest the assessment—or redress a grievance.

Thus, the theory that a tax must be paid before redress rests on the presumption that society is organized as a monarchy; that all people living therein exist by grace of an autocrat – whether one man or an assembly of men. This proposition was soundly rejected by the Founders in designing our unique system of governance.

In America, such presumptions constitute grievances. The first duty of any officer is to uphold the Constitution – the entire Constitution, without reservation and without bribery or blackmail.

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."

According to the Right of Redress, as the Founders described it, we have a right to withhold taxes *if government violates our rights*. But, as American courts describe the Right, we must suffer the injury, pay the taxes, and only then, sue for Redress against a politicized adversary with *unlimited* resources.

The idea that *taxes* are to be paid *before* redress is asserted by Congress in the Internal Revenue Code at Section 7241, which states, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person …."

How repugnant! Even if defendants had the authority to impose a tax on plaintiff, much less to enforce such legislation, which is not the case (See Argument I above), the American government is supposed to be organized to protect American citizens; but section 7241 "authorizes" the IRS to destroy them with impunity and *the judiciary is cooperating with the*

executive and legislative branches in a collective decision to deny the People their constitutional Rights. **Such acts of government are unconstitutional.**

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.

In America, the right to petition our government for Redress of Grievances is an *unalienable right*. It derives from our faith in a supreme being - an ultimate moral authority from whom we gain our understanding of equality, justice and the rule of law. Implicit in our first amendment constitutional right to petition our government for a redress of grievances, is the government's absolute moral and legal obligation to respond honestly and completely to the people's petition.

This is the essential cornerstone of Popular Sovereignty -- a government of the People, by the People and for the People.

In 1791, the right to petition became primary among the Rights of the People of the United States of America, as expressed in, and guaranteed by, the First Amendment.

Some would now have us believe that our First Amendment right of petition is nothing more than a guarantee of free speech; that this vital constitutional protection - the very basis of our liberty - is simply a right to voice our grievances to the government. Some would try to convince us that We The People do not have the absolute right to an honest and complete response to our petitions -- or the authority to demand that our government correct the abuses and violations of our liberties that result in our petitions. Some would even go so far as to say it is merely a Right to complain, with no expectation of response.

This is nonsense! This is dangerous talk to a free people. We *must not* listen to those who would denigrate our Constitution, and undermine the principles of liberty and justice that gave birth to our nation. At best they are imbeciles, and at worst they are tyrants -- or "sharing bedrooms" with tyrants.

We must guard against this nonsense. We must harden our hearts to these false notions that government is God. We must recognize that even in the long run *government can never be rational, without a principled Constitution firmly rooted in Liberty.* Government has but one legitimate purpose -- to serve and protect all of the people equally. Government is not God. It is our servant. It is accountable to the People.

The right to Petition for Redress of Grievances *is the final protection* -- the *final, peaceful check and balance* in our system of Constitutional government in which the government derives its limited powers *from the consent of the sovereign people*. This is the right which publicly reveals and reiterates for all, who is Master and who is Servant.[2]

The government is refusing to answer the Peoples' allegations of governmental wrongdoing. Unless the People withhold their money from the government their grievances *will*

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[2] The First Amendment right to petition the government for redress of grievances is an **individual, unalienable** right of every American. Our constitutional republican form of government, with its' attendant process of democratic representation, was designed to promote the will of the majority, while, with equal force, securing the unalienable rights of individual Americans. Our constitution imposes strict prohibitions on the voting majority's power to deny, impair, or in any way interfere with the natural, unalienable rights of the individual. As American citizens, we each have the lawful authority to **directly** petition our servant government for a redress of grievances concerning **any** violation of our unalienable rights, including those implicitly retained by the Ninth and Tenth Amendments. The right of **the individual citizen** to exercise this constitutional authority is not contingent upon, nor conditioned on, the popular support of the voting majority, nor is it subject to the arbitrary discretion of any elected or appointed government representative/s. The individual right to petition for redress of grievances (along with every other provision of the First Amendment) is, per force, worthless, absent the individual petitioner's ability to compel a truthful, accurate, timely and complete response from the government. In summary, it cannot be credibly argued that representative democracy (and the choice between two equally repugnant alternatives at the voting booth) is somehow an effective substitute for the First Amendment's guarantee that every American has the lawfully authority to **directly** petition his servant government for a redress of grievances--and to get a timely, honest answer.

fall on deaf ears and Liberty *will give way* to tyranny, despotism and involuntary, economic servitude.

Every adult in this nation has a personal duty and a moral responsibility, that stem directly from our heritage, to repel the tyrannical acts of those to whom the People have granted well-defined and limited powers.

The right to Petition is the foundation of Popular Sovereignty and is the direct vehicle for the peaceful, non-violent resolution of matters involving errant government. This right is the procedural mechanism that enables the People to call *any branch* of their servant government before them.

In America, there are only two things that stand between the people and government tyranny -- our Constitution, *and our will as a free people to protect and defend it.*

These petitions are about us -- We the People. They are proof of our resolve to correct our government's abusive and unlawful behavior.

If the People cannot enforce their Rights against encroachment, we will end forever the chapter in human history when a People reigned sovereign, and the chains of a written constitution limited and bound their government to their service.

Plaintiff is asking that his government obey the Constitution, which, after all is a strongly worded set of principles to govern *the government*, not the people.

By the terms and provisions of the Constitution the People have not only formed their government and enabled the government to act in certain ways, they have purposely and markedly restricted and prohibited the government from acting in certain *other* ways.

The nature of plaintiff's resistance is clear. It is not an act of anarchy or rebellion; rather it is an act of resistance to a government that is violating the purposes for which the Creator -- through the People and the Constitution -- has ordained civil government.

Plaintiff is not "anti-tax." He is "pro-constitution" and "anti-fraud."

Plaintiff's defense of his home, family, property and possessions is a most important point to plaintiff. It is his heritage. *It is hisRight.*

There is not the most distant thought of subverting the government or of hurting the interest of the people of America, but of defending his personal Rights, Freedoms and Liberties from unjust encroachment.

There was not the least desire of withdrawing his obedience from the leaders of the branches until it became absolutely necessary -- and, indeed, it has been their own choice.

Our political leaders know that plaintiff's cause is just. They know that we, the People, struggle for that freedom to which all men are entitled -- that we struggle against oppression, seizure, plunder, extortion and more than savage barbarity.

Plaintiff's civil action is for the cause of civil justice -- a righteous struggle, undertaken in defense of his property, his happiness and his family. It is to oppose the invasions of usurped power. *Plaintiff will bravely suffer present hardships and face future dangers*, to secure the rights of humanity and the blessings of freedom for generations yet unborn.

It is his obligation, as a responsible citizen of this country, to set a proper value upon, and to defend to the utmost, our just rights and the blessings of Life and Liberty. Without this personal commitment, a few unprincipled individuals would tyrannize the People, and make the passive multitude the slaves of their power. Thus it is that civil action is not only justifiable, *but an indispensable duty* to correct these wrongs.

It is upon *these principles* that plaintiff is resisting the government and is opposing force with non-violent force.

As our Founders said so clearly: "If money is wanted by Rulers who have in any manner oppressed the People, [the People] may retain [their money] until their grievances are redressed, and thus peaceably procure relief, *without trusting to despised petitions* or disturbing the public tranquility."

How? *No Answers. No Taxes!* If the servant is taking over the house, starve the servant!

The only practical, peaceful and morally appropriate option available to plaintiff, under the present circumstances, is to withhold the payment of taxes from the government. Without money, the government cannot easily continue to operate outside the boundaries the People have drawn around its power, i.e., it cannot continue its abuse of power while continuing to ignore Petitions for Redress.

POINT IV

THE SUMMONS VIOLATES PLAINTIFF'S RIGHT TO FREE SPEECH

It was not by accident or coincidence, observed the court in Thomas v Collins (1945) 323 US 516, 89 L Ed 430, 65 S Ct 315, 15 BNA LRRM 777, 9 CCH LC P 51192, reh den 323 US 819, 89 L Ed 650, 65 S Ct 557, that the rights to freedom of speech and of the press were coupled in a single guaranty with the rights of the people peaceably to assemble and **to petition for redress of grievances**; all of these, though not identical, are inseparable, cognate rights. The Supreme Court also stated, in the preceding sentence of its opinion, that it was in our tradition to allow the widest room for discussion and the narrowest range for its restriction, particularly when it was exercised in conjunction with peaceable assembly.

Also, the court in McDonald v Smith (1985) 472 US 479, 86 L Ed 2d 384, 105 S Ct 2787, 17 Fed Rules Evid Serv 1041, said that the petition clause of the First Amendment was inspired by the same ideals of liberty and democracy that gave us the freedoms to speak, publish, and assemble, and that these First Amendment rights are inseparable.

The First Amendment to the Constitution reads in part: " Congress shall make no law abridging the freedom of speech…."

Plaintiff has an unalienable Right to Freedom of Speech, a Right guaranteed by the First Amendment to the Constitution of the United States of America. Plaintiff's actions since 1999 related to the federal income tax, as set forth in the affidavit and on his web site givemeliberty.org , are consistent with and protected by said Right.

Freedom of speech, a fundamental personal right, is secured by the 1st Amendment against abridgment by the federal government. The principal function of free speech under our system of government is to invite dispute; it may indeed best serve the high purpose when, as in the case at bar, it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Texas v. Johnson, U.S.Texas1989, 109 S.Ct. 2533, 491 U.S. 397, 105 L. Ed.2d 342.

The purpose of constitutional protections is to prevent the majority from limiting personal liberties of political, religious and cultural dissenters while propagating their views in the marketplace of ideas. City of Farmington v. Faucett, NM App. 1992.

Defendants' Summons is meant to interfere with and is violative of plaintiff's Rights, as guaranteed by the First Amendment. Plaintiff has been exercising his protected Right to speak freely, advocate ideas, associate with others and petition the government for redress, and to

associate to engage in advocacy on behalf of members. Grass Roots Organizing Workshops (GROW) v. Campbell, D.S.C. 1988, 704 F.Supp. 644.

Government may properly regulate speech if the regulation is NOT based on content, bears a reasonable relationship to significant government interest and allows an alternative channel of communications. Here, defendants' Summons has obviously been issued against the content of plaintiff's speech, which is non-commercial and inextricably linked to plaintiff's Petition for Redress. Given defendants' pattern of behavior during the last two-three years, it is reasonable to assume defendants intend to move to silence plaintiff by shutting down his Internet site, plaintiff's only practical channel of communications. See State v. Henderson, Ohio App 1 Dist 1989, 577 N.E.2d 710, 62 Ohio App 3d 848.

No legitimate governmental interest would be served by plaintiff's compliance with defendant's Summons.

The content of plaintiff's speech is legitimate and constitutionally protected. The only content of his speech is the Right to Petition government for a Redress of Grievances, government's obligation to respond and the Peoples' ability to enforce that Right through the practice of Redress Before Taxes. If it is spoken opinion that gives offense, that consequence is reason for according it constitutional protection. See Simon & Schuster, Inc. v. Members of the NY State Crime Board, USNY 1991, 112 S.Ct 501, 502 U.S. 105, 116 L.Ed.2d 476.

Defendants' action is clearly content based. They didn't like the message plaintiff is spreading.

The burden of constitutionality shifts to the government where its action interferes with the exercise of 1st Amendment Rights. Fond du Lac County v Mentzel, Wisc App 1995, 536 NW2d 160, 195 Wisc 2d 313.

Here, defendant's actions are not justified without reference to the content of plaintiff's speech**.** Here, defendant's action does not advance any substantial and legitimate governmental interest. Here, defendant's actions are clearly headed in the direction of closing all practical alternative channels of communication of information. Therefore, defendant's actions are violative of plaintiff's Right of Free Speech. See Friends of the Vietnam Memorial v. Kennedy, C.A.D.C. 1997, 116 F.3d 495, 325 U.S. App DC 151. See also Dimas v City of Warren, E.D. Mich1996, F. Supp. 554.

Here, defendants has not recited any harm that will come to the government as a result of plaintiff's speech, much less demonstrated that any purported harms are real and that its actions will alleviate its harms to any significant degree. Defendants must demonstrate that any harm it recites is real and that its restrictions will in fact alleviate the cited harm to a material degree; mere speculation or conjecture does not satisfy burden of justifying restrictions. Int'l Dairy Foods Ass'n v. Amestoy, CA2(Vt)1996, 92 F.2d 67.

Plaintiff's speech is protected: plaintiff's speech concerns the lawful activity of Petitions for Redress; plaintiffs' speech is not misleading; defendants' interest in regulating plaintiffs' speech is not substantial, given its ready access to alternative forms of taxation, its ownership of the money printing press and plaintiffs' Right to Petition The Government for Redress of Grievances. See G.N.O. Board Ass. v. U.S., C.A.5(La.)1995, 69 F3d 1296.

POINT V

THE SUMMONS VIOLATES PLAINTIFF'S RIGHT TO FREEDOM OF THE PRESS

The First Amendment to the Constitution reads in part: " Congress shall make no law…abridging the freedom…of the press…."

First Amendment protections extend to plaintiffs' printed matter, including their postings to their website, givemeliberty.org via the Internet.

Plaintiffs have an unalienable Right to Freedom of the Press, a Right guaranteed by the First Amendment to the Constitution of the United States of America. Plaintiffs' actions since 1999 related to the Petition for Redress of Grievances regarding the origin and operation of the federal income tax, as set forth in plaintiff's affidavit and on his web site www.givemeliberty.org, are consistent with and protected by said Right.

POINT VI

THE SUMMONS VIOLATES PLAINTIFF'S RIGHT TO PEACEABLY ASSEMBLE

The First Amendment to the Constitution reads in part: " Congress shall make no law…abridging the…right of the people peaceably to assemble…."

Plaintiffs have an unalienable Right to Peaceably Assemble, a Right guaranteed by the First Amendment to the Constitution of the United States of America. Plaintiffs' actions since 1999 related to the Petition for Redress of Grievances regarding the federal income tax, and to institutionalizing vigilance, all as chronicled and detailed in plaintiff's affidavit and on the web site www.givemeliberty.org, are consistent with and protected by said Right.

The First Amendment protects plaintiff's right to join with others is such groups as the We The People Congress and the We The People Foundation for Constitutional Education and to associate with others holding similar beliefs. Dawson v Delaware, U.S. Del 1992, 112 S. Ct.1093, 503 U.S. 159, 117 L.Ed.2d 309.

The ability and opportunity to combine with others to advance one's views is a powerful practical means of ensuring the perpetuation of the freedoms the 1st Amendment has guaranteed

individuals as against the government. NYS Club Ass'n, Inc v City of NY, U.S.N.Y.1988, 108 S.Ct 2225, 487 U.S. 1, 101 L. Ed.2d 1.

Plaintiff is part of a minority. They are people who have taken the time to educate themselves on the history, meaning, effect and significance of various provisions of the Constitution, including the constitutional and legal aspects of the income tax laws. They have engaged in critical analytical thinking on the subject. As such, plaintiff is clearly in the minority.

Defendants, with the willing assistance of the dominant media, and in an effort to negate any influence minority plaintiff might have on the knowledge of the truth and the resultant behavior of others, annually cover the body politic with a blanket of propaganda, calling anyone who does not timely file a tax return or pay the tax "tax protestors," "schemers," "scammers," and "cons." Defendants, reinforced by the media, publicly refer to all questions raised by those members of the minority class (exercising their Right to Petition) as "frivolous."

Defendants, to instill fear in the minority and to impede the spread of the truth, annually conduct well-publicized armed raids and "kangaroo courts" against people in the minority tax honesty class. It is virtually impossible for these individuals and small groups to stand up against the full weight of the governmental power arrayed against them is such circumstances. It is virtually impossible for these individuals to obtain competent counsel willing to represent their beliefs in court, for fear of audits, sanctions or worse.

The right to petition one's government for redress of grievances may be exercised in large groups such as the We The People Congress and We The People Foundation for Constitutional Education; where minorities have been harassed, coerced and intimidated, group association may be the only realistic way of exercising such right. Williams v. Wallace 1965 240 _____.

The right of persons to protest any phase of federal taxation and methods used to enforce it, as well as their right to assemble peaceably with others to make the protest more effective, is guaranteed under the 1st Amendment. Ex parte Tammen, D.C. Tex. 1977, 438 F. Supp. 349.

The 1st Amendment protects right of an individual to associate with others, and petition his government for redress of grievances, and it protects him from retaliation for doing so. Gavrille v. O'Connor, D.C.Mass.1984, 579 F.Supp. 301.

POINT VII

THE SUMMONS VIOLATES PLAINTIFF'S RIGHT TO BE SECURE IN HIS PERSON, HOUSE, PAPERS AND EFFECTS

The Fourth Amendment to the Constitution reads: " The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The United States Supreme Court, in *Bivens,* wrote: "The Fourth Amendment operates as a limitation upon the exercise of federal power … It guarantees to citizens of the United States the absolute right to be free from unreasonable searches and seizures carried out by virtue of federal authority. And 'where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.'" Bell v. Hood, 327 U.S., at 684 (footnote omitted); see Bemis Bros. Bag Co. v. United States, 289 U.S. 28, 36 (1933) (Cardozo, J.); The Western Maid, 257 U.S. 419, 433 (1922) (Holmes, J.)." Bivens v. Six Unknown Fed. Narcotics Agents, (1971), 403 U.S. 388,392.

Here, defendants have no reasonable basis for the search inherent in their Summons. If government defendants find plaintiff's actions offensive, each and every one of which is part and

parcel of plaintiffs' constitutionally protected Right to Petition for Redress of Grievances (and other 1st Amendment guaranteed Rights), government defendants need only properly respond to the Petitions for Redress by answering the questions.

Unreasonably and without any justification whatsoever, defendants may have labeled plaintiff's Petition for Redress of Grievances an "abusive tax shelter" and may have accused plaintiff of promoting an illegal tax shelter.

Unreasonably, and with malicious intent, defendants seek to search and seize plaintiff's documents, books and records to determine from whom plaintiff has been getting the money being spent in pursuit of the Petitions for Redress and to gain access to the mailing lists so they can frighten and chill Peoples' enthusiasm for supporting the Petitions for Redress. Defendants have suggested they may want plaintiff's books and records because they "plan to consider issuing 'pre-filing notification' letters to the 'investors' who have invested in this promotion."

There is no tax shelter and there are no investors.

Defendants may believe that by mislabeling plaintiff's lawful Petition process as an unlawful or abusive tax shelter, they can circumvent plaintiffs' 4th Amendment Rights and get away with unlawfully searching and seizing plaintiffs' documents, books and records.

Defendants have no reasonable basis to label plaintiff's constitutionally protected process of Petitioning for a Redress of Grievances as an "abusive tax shelter."

POINT VIII

THE SUMMONS VIOLATES PLAINTIFF'S 6th AMENDMENT RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF AN ACCUSATION

The Sixth Amendment to the Constitution reads in part: " In all criminal prosecutions, the accused shall…be informed of the nature and cause of the accusation…."

Defendants have failed to inform plaintiff of the nature and cause of their Summons. Defendants are not entitled to merely imply that there has been an "offense," concoct a solution for the benefit of defendants (a fishing expedition designed to have a chilling effect on the Peoples' exercise of their 1st Amendment Rights), at the expense of plaintiff who not only has resources diverted away from the Petition process, but would suffer irreparable harm due to a loss of his 1st Amendment Rights to Petition, Speak, Publish and Assemble.

Defendants have failed to stipulate that the documents, books and records being demanded would never be used in a criminal prosecution.

POINT IX

THE SUMMONS VIOLATES PLAINTIFF'S RIGHT NOT TO BE HARASSED BY THE GOVERNMENT AND TO BE LEFT ALONE

The Ninth Amendment to the Constitution reads: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

As the Record shows, since 1999, plaintiff has been exercising his unalienable, constitutionally-guaranteed Right to Petition for a Redress of Grievances relating to the oppression caused by the fraudulent origin and illegal operation of the income tax system and other matters.

The remedy plaintiff has been seeking since 1999 is merely the answers to a series of questions of great public importance, regarding abuse by the government of its taxing, war – making, debt-incurring/money-making and police powers and its gross infringement of constitutionally protected Rights.

The record of the Citizens' Truth-in-Taxation Hearing (Exhibit TT) should remove any doubt by any reasonable person that plaintiff's grievances regarding the income tax are not only

legitimate but of immense public importance and that the nation's income tax system is unconstitutional in its origin, fraudulent and abusive in its operation, and ultimately repugnant to every principle of equal justice, due process of law and personal liberty that we cherish as Americans.

The proof was, as predicted, startling, compelling, disturbing and irrefutable.

Unfortunately, defendants have not been willing to honor their obligation to properly respond to plaintiff's very proper Petition for Redress; plaintiff's servant government failed to even acknowledge its receipt of plaintiff's respectfully written invitations to attend certain symposiums and conferences that were arranged by plaintiff within blocks of the principal offices of the IRS and DOJ, for the purpose of addressing plaintiff's overwhelming evidence of unconstitutional and illegal behavior by government officials; our servant government failed to acknowledge, much less speak to large groups of citizens who traveled to Washington DC on various occasions to stand at defendant's front steps to await word of when the defendants would be answering the Petition for Redress; plaintiff's servant government has ignored published open invitations; and most troubling of all, plaintiff' s servant government went back on five separate promises and commitments to answer plaintiff's Petition for Redress regarding the income tax system.

Unfortunately, plaintiff has been involved in the equivalent of a game of chess with his servant government. Free plaintiff, seeking a proper response from the government to his Petition for Redress, takes a highly appropriate step forward; the servant government sidesteps; pro-active plaintiff decides upon the next appropriate step for a free person to take and he takes it; the "game" continues as plaintiff moves more smartly and aggressively, but always appropriately and while always standing on constitutional ground. The servant government, ever

on the defense, looks for places to hide its King (e.g., by getting USA TODAY to stop publishing plaintiff's full-page ads, by getting the Senate Finance Committee to hold a hearing on the USA TODAY ads but not allow plaintiff to testify at the hearing in which Senator Grassley publicly asserted that anyone who raises questions about the legality of the income tax laws is a "schemer, scammer and con" and must be dealt with swiftly and harshly, and by entering into agreements only to renege on its agreements); eventually, plaintiff's appropriate next step (Redress Before Taxes/ No Answers, No Taxes) is a bold, but necessary move that is deeply embedded in American law and it **checkmates** the servant government, forcing the government into a position where it has to answer the questions plaintiff has included in the Petition for Redress or openly and flagrantly violate the Rulebook (dishonestly).

Unfortunately, the servant government has decided to violate the rules of the Constitution; the servant government, while recklessly and with abandon shouting "You can't make that move," is now attempting to abruptly force an end to the Petition process by unconstitutionally removing plaintiff from the contest of wills, by distracting plaintiff and forcing plaintiff to spend his time and money defending against the government's frivolous acts, and by restraining and penalizing plaintiff, and otherwise preventing plaintiff from continuing to exercise his Right of Petitioning the government for a Redress of Grievances.

Plaintiff has the unalienable Right to Petition the government for a Redress of Grievances, and to Peaceably Assemble, and to Speak and Print Freely, and to be Secure in his Papers and Effects, and not to be a Witnesses against himself, all without being harassed, worried, impeded, harried, plagued, pestered, teased, bedeviled or bullied by the government, which, in effect, is what defendants are doing to plaintiff with their April 4th and April 23rd letters and with the May 30, 2003 Summons.

Defendants are harassing plaintiff, under the color of law, but without bona fide legal authority, for the purpose of interfering with and denying plaintiff the full exercise of his fundamental Rights.

The 1st Amendment creates protection from civil liability for actions constituting the exercise of the Right to Petition government for Redress of Grievances, especially if the purpose, as in the case at bar, is to draw attention to issues of broad public significance and interest.

It does not matter what factors have fueled plaintiff's desire to petition the government as long as plaintiff has made a genuine effort to procure favorable government action, which the Record clearly demonstrates.

The Right of Petition, guaranteed by the 1st Amendment, is a fundamental Right, which cannot be invaded without justification by compelling state interests.

There is no compelling state interest, which would justify the infringement of plaintiffs' Right to Petition the government for a Redress of the Grievances.

The United States Department of the Treasury owns the Mint and the official money printing presses. If the government needs money it can print all it needs while this case is being decided and beyond.

In addition, the individual income tax is merely one of the many taxes the government imposes; there are constitutional alternatives to the individual income tax that are readily available to the government and that can be implemented virtually overnight should the Executive and Legislature desire: excise taxes, tariffs, duties and imposts. Constitution, Article I.

Every person enjoys some measure of protection against being coerced into 'cooperating' with law enforcement authorities by governmental techniques of intimidation and harassment,

whether this protection derives, as in the instant case, from a liberty interest protected by the 1st, 4th, 5th, 6th, 9th, 10th, 13th, or 14th Amendments, or interest in procedural regularity protected by the due process clause of the 5th Amendment. Angola v. Civiletti, C.A.N.Y. 1981, 666 F.2d 1.

The Right to Petition, under the 1st Amendment, for a Redress of Grievances relating to the origin and operation of the income tax system would be considerably chilled by governmental action which would require plaintiff to turn over all information, books and records, naming all the people and organizations that had joined in the effort to Petition the Government for a Redress of Grievances and detailing the nature and extent of their support, and to expose themselves to raids by armed agents of the government in search of those records under color of "anti tax scam laws." See Subscription Television, Inc. v. Southern California Theatre Owners Ass'n, C.A.Cal.1978, 576 F.2d 230.

The mere threat of an imposition of unconstitutional sanctions is already causing immediate irreparable injury to the free exercise of rights as fragile and sensitive to suppression as freedom of petition, speech, press and assembly. See Wolff v. Selective Service Local Bd. No. 16, C.A.N.Y. 1967, 372 F.2d 817.

The pendency of a merit less suit touching upon protected conduct can itself chill the exercise of rights under the 1st Amendment. Federal Prescription Service , Inc. v. American Pharmaceutical Ass'n, D.C.D.C. 1979, 471 F.Supp.126, affirmed 663 F.2d 253, 214 U.S.App. D.C. 76, certiorari denied 102 S.Ct. 1293, 455 U.S. 928, 71 L.Ed.2d 472.

Government may not flatly deny the Right of people to peaceably assemble to petition government for redress of grievances, even those relating to foreign policy or taxation. See U.S. v. Crowthers, C.A.Va. 1972, 456 F.2d 1074.

Plaintiff's protection of the 1st Amendment is extended and the application of such laws as the **anti-injunction act** and the **anti-declaratory act** are suspended because the legitimate effort by plaintiff to influence government action is part of the guaranteed right to petition, to speak, to publish and to assemble. See Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc., C.A.Cal. 1982, 690 F.2d 1240, certiorari denied, 103 S.Ct. 1234, 459 U.S. 1227, 75 L. Ed.2d 468.

Alternatively, the anti-injunction and anti-declaratory acts would be unconstitutional in their application as acts that would, in effect, impermissibly render limp and unavailing the constitutional prohibitions and Rights that are at issue here.

The Right to fully petition government for redress of grievances relating to the origin and operation of the individual income tax system, including the Right of Redress Before Taxes, without fear of threat of suit, provides a principled basis for exempting plaintiff from enforcement action under "anti tax scam" and "anti-tax shelter promotion" sections of 26 USC 6700 and 7408. See Rose v. Silver, D.C.App.1978, 394 A.2d 1368, rehearing denied 398 A.2d 787. **That the IRS would be using these very statutes to impede a proper Petition for Redress regarding the fraudulent income tax is particularly repugnant.**

The withholding of tax money (as a last resort) is the weapon of choice for a free people that seek to peacefully procure relief from a government that is infringing on fundamental Rights and attempting to seize power from the people while utterly failing to justify its behavior.

The People have the Right to use tax money to impede any manner of wrongdoing by the government, whether it be violations of its taxing power, its money-making power, its war-making power, its police power or its infringement on any of the Peoples' unalienable Rights. On

the other hand, **the government cannot use its power to tax to undermine or otherwise limit the Peoples' fundamental Right to Petition for Redress of those grievances.**

The Right to Petition the government for a redress of grievances is the cornerstone of popular sovereignty . Any attempt by the government to limit the Peoples' Right to Petition an errant, recalcitrant government for Redress of Grievances cannot be sustained because to do so would be to invert the relationship between the government and the People who are the source of all legitimate, bona fide governmental power.

The government cannot, within our constitutional framework, utilize its limited taxing authority to treasonously usurp power from the People by coercing consent. As a construct of a free people, all legitimate governmental power has and must always be granted by the consent of the governed. The government's power to tax cannot be used to deny the people the right to Petition for Redress of ANY Constitutional Grievances.

The government cannot by any means or characterization convert the exercise of a Right (to Petition, Speak Freely, Publish Freely, Assemble, etc.) into a crime.

First Amendment freedoms from invasion does not permit the government to criminalize the peaceful expression of unpopular views.

POINT X

THE RIGHT TO PETITION IS AN ANCIENT UNALIENABLE RIGHT

By the seventeenth century, monarchical challenge to a petition was defended on the basis that petitioning was an ancient right. See J.E.A. Jolliffe, The Constitutional History of Medieval England: From the English Settlement to 1485, at 405 (4th ed. 1961); see also K. Smellie, Right of Petition, in 12 Encyclopedia of the Social Sciences 98 (1934) ("The ordinary mode of legislation was by statute made on petition of the Commons. The words

petition and bill were used interchangeably in legal and common speech down to Tudor times." (citation omitted)).

In Adderley v. Florida, Supreme Court Justice Douglas wrote:

> The historical antecedents of the right to petition for the redress of grievances run deep, and strike to the heart of the democratic philosophy. C. 61 of the Magna Carta provided:
>
> "That if we or our justiciar, or our bailiffs, or any of our servants shall have done wrong in any way toward any one, or shall have transgressed any of the articles of peace or security; and the wrong shall have been shown to four barons of the aforesaid twenty-five barons, let those four barons come to us or to our justiciar, if we are out of the kingdom, laying before us the transgression, and let them ask that we cause that transgression to be corrected without delay." Sources of Our Liberties 21 (Perry ed. 1959).

Justice Douglas went on to say,

> The representatives of the people vigorously exercised the right in order to gain the initiative in legislation and a voice in their government. See Pollard, The Evolution of Parliament 329-331 (1964). By 1669 the House of Commons had resolved that "it is an inherent right of every commoner of England to prepare and present Petitions to the house of commons in case of grievance," and "That no court whatsoever hath power to judge or censure any Petition presented . . . ." 4 Parl. Hist. Eng. 432-433 (1669). The Bill of Rights of 1689 provided "That it is the right of the subjects to petition the king and all commitments and prosecutions for such petitioning are illegal." Adams & Stephens, Select Documents of English Constitutional History 464. The right to petition for a redress of grievances was early asserted in the Colonies. The Stamp Act Congress of 1765 declared "That it is the right of the British subjects in these colonies, to petition the king or either house of parliament." Sources of Our Liberties 271 (Perry ed. 1959). The Declaration and Resolves of the First Continental Congress, adopted October 14, 1774, declared that Americans "have a right peaceably to assemble, consider their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal." *Id*., at 288. The Declaration of Independence assigned as one of the reasons for the break from England the fact that "Our repeated Petitions have been answered only by repeated injury." The constitutions of four of the original States specifically guaranteed the right. Mass. Const., Art. 19 (1780); Pa. Const., Art. IX, § 20 (1790); N. H. Const., Art. 32 (1784); N. C. Const., Art. 18 (1776).
>
> Adderley v. Florida, 385 U.S. 39; n2 (dissenting opinion).

The American Declaration of Independence lists the English King's "injuries and usurpations," including among them his undermining of the legitimate processes of colonial government, and only then notes, “In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. “

That petitions were a legitimate vehicle by which to complain of the broadest spectrum of grievances is evident from the enumeration preceding the **capstone (ultimate) complaint, that the colonists' petitions fell on the king's deaf ears.**

The Declaration's litany runs the gamut from political usurpations to having "plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people." The public character of the grievances is immediately apparent, as is the colonists' felt view that **petition was an appropriate remedy**, indeed a remedy available, "in every stage" of a grievance.

The **capstone** of the list of grievances was the king's violence to the Right of Petition, the breaking apart of the bonds of deference and obligation on which hierarchial legitimacy rested. Having met the sole precondition for reception by petitioning "in the most humble terms," the colonists felt entitled to consideration.

That the King would not hear the colonists’ Petitions for Redress was the ultimate violation and was wholly unacceptable. The answer sent by the king was: "repeated Injury," indeed "only by repeated Injury." Clearly, more was expected, even required, in contemporary politics.

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

The meaning of petitions and the process of reception made it the **capstone** grievance in the Declaration and ultimately underlay the inclusion of the Right to Petition as the **capstone** Right in the First Amendment.

POINT XI

THE RIGHT TO PETITION PROTECTS "PROPER" PETITIONS

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 Petition for Redress does not rise to the level of frivolity.

Plaintiff's Petition for Redress contains no falsehoods.

Plaintiff's Petition for Redress is not absent probable cause.

Plaintiff's Petition for Redress has the quality of a dispute.

Plaintiff's Petition for Redress comes from someone outside of direct participation in the formal political culture – the Constitution is his religion.

Plaintiff's Petition for Redress contains both "direction" and "prayer."

Plaintiff's Petition for Redress has been punctilious.

Plaintiff's Petition for Redress addresses public, collective grievances.

Plaintiff's Petition for Redress involves constitutional innovators not political talk.

Plaintiff's Petition for Redress has been signed only or primarily by citizens.

Plaintiff's Petition for Redress has been dignified.

Plaintiff's Petition for Redress has widespread participation and consequences.

Plaintiff's Petition for Redress is an instrument of deliberation not agitation.

Plaintiff's Petition for Redress provides new information.

Plaintiff's Petition for Redress does not advocate violence or crime.

Plaintiff's Petition for Redress merely requests answers to specific questions.

POINT XII

THE RIGHT TO PETITION INCLUDES THE RIGHT TO BE HEARD

In colonial America and for decades following the adoption of the Constitution and Bill of Rights, the right of citizens to petition their local, state and federal assemblies was an affirmative, remedial right which required governmental hearing and response. Because each petition commanded legislative consideration, citizens, in large part, controlled legislative agendas. This original theory and practice of petitioning tripped when abolitionists flooded Congress with petitions during the debates over slavery. Southern Congressmen, **acting in behalf of slavery interests**, were responsible for the adoption of a "gag order" on further petitions, which, *in effect*, changed the construction of the Constitution without an Article V Amendment. As a result, the right of petition was collapsed into the right of free speech and expression – an unconstitutional definitional narrowing, which went unchallenged in the courts and persists to this day. See "A Short History of the Right To Petition Government for the Redress of Grievances," by Stephen A. Higginson, 96 Yale L.J. 142 (1986); "The Bill of Rights as a Constitution," by Akhil Reed Amar, 100 Yale L.J. 1131 (1991); and "The **Vestigial Constitution:** The History And Significance Of The Right To Petition," by Gregory A. Mark, 66 Fordham L. Rev. 2153 (1998).

"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).

In the colonies, petitions were almost always received and read and responded to. In practice, those "ignored or rejected outright ... were few in number." Alan Tully, Constituent-Representative Relationships in Early America: The Case of Pre-Revolutionary Pennsylvania, 11 Can. Hist. J. 139 (1976). note 19, at 146-47.

The right to petition carried a mandate of hearing, but not of approval. The original intent was, "a right which had compelled legislatures to accord citizens' petitions fair hearing and consideration." Higginson, *supra* 96 Yale L.J. 142, 166.

The founder's intent of the First Amendment petition clause included a governmental duty to consider petitioners' grievances. In its early years, Congress attempted to pass favorably or unfavorably on every petition. See HINDS, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES § 3361 (1907).

The Founders' Intent underpinning the Right to Petition stemmed in part from the popular right to petition local assemblies in colonial America where no sharp line dividing constituents from representatives existed to separate control of the legislative agenda from the People's initiatives. Petitions assured a seamlessness of public and private governance. Assemblies would receive petitions, refer them to committees for consideration, and then act

upon the committees' recommendations. This process originated more bills in pre-constitutional America than any other source of legislation. [3]

Apathy – the lack of emotion and interest in public affairs – was not a prevailing attitude in America in the decades leading up to and following the adoption of the First Amendment and the Right to Petition, in large part because of the widespread practice of Petitioning and the normal practice of having one's Petition heard and responded to by the government.

Assemblies responded to information from the People, even the disenfranchised, making petitions vital initiatives for governmental actions.

However, the Right to Petition was not absolute. For instance, the assemblies did retain one important and longstanding restraint on petitioning: the threat of contempt proceedings. Allegations discovered to be ambiguous or false could lead to dismissal or to charges against the petitioner. See, e.g., 4 CONNECTICUT RECORDS 55 (1691) (landowners' petition for township status dismissed because "none of the principle proprietors of sayd land [were] in the petition").

The fundamental Right of Petition was included in the Bill of Rights even though, as Story wrote, "[The right of petition] would seem unnecessary to be expressly provided for in a republican government, since . . . [i]t is impossible that it could be practically denied until the spirit of liberty had wholly disappeared, and the people had become so servile and

[3] For example, in the Connecticut General Assembly session of May, 1773, over five-sixths of the resolutions were direct responses to residents' petitions and still the Assembly postponed consideration of a further 250 petitions, including one petition from a slave. At this session, petitioners prompted a naturalization bill, a reversal of a superior court judgment, debt discharges, public fishery regulations, road making resolutions, Indian land delimitations (upon petition by Indians), town tax revisions, and constable replacements. *See* 14 CONNECTICUT RECORDS 94-132, 152-55 (1773); *see also* R. BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY 61 (1979) (most prolific source of Virginia Colony legislation was petitioning).

debased as to be unfit to exercise any of the privileges of freemen." 2 STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 645 (5th ed. 1891) (footnote omitted); *see also* 1 W. BLACKSTONE, COMMENTARIES 143 (rev. ed. 1978) (petitioning to King);

There can be no doubt that the petitioning of government was understood to be an inherent Right.

That the Framers meant to imply a corresponding governmental duty of a fair hearing seems clear given the history of petitioning in the colonies and the colonists' outrage at England's refusal to listen to their grievances.

"In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury." The Declaration of Independence para. 30 (U.S. 1776); *see also* 1 JOURNALS OF CONGRESS 67-92 (1775) (petition to King); *id.* at 117-18 (resolution protesting Parliament's interference with right of petition); 2 JOURNALS OF CONGRESS 158-62 (1777) (petition to King).

Congress, in its first session, approved the right of petition virtually without comment. When Madison introduced his proposed list of amendments on June 8, 1789, he separated the clause for the rights of assembly, consultation, and petition from the clause containing the free expression guarantees of speech and the press. The express function of the assembly-petition clause was to protect citizens "applying to the Legislature . . . for a redress of their grievances." 2 B. SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 1026 (1971).

While refusing to vest individuals and groups with the power to bind Congress, and while guarding jealously their discretion to judge and reject instructions as unwise, the Framers of the Bill of Rights nonetheless maintained that citizens' "instructions," like

petitions, would be heard and considered. *Id.* at 1093-94 (right to consult goes no further than petitioning, but representatives have duty to inquire into petitioners' suggested measures) (statement of R. Sherman); *id.* at 1094-95 (right to consult Congress is non-binding, but Congress has responsibility never to shut its ears to petitions) (statement of E. Gerry); *id.* at 1096 (right to bring non-binding instructions to Congress' attention is protected) (statement of J. Madison).

In Congress' first decades petitions were received and considered, typically by referral to committees. The petition-response mechanism dealt procedurally with such controversial issues as contested election results, the National Bank, the expulsion of Cherokees from Georgia, land distribution, the abolition of dueling, government in the territories, the Alien and Sedition Acts, and the slave trade. Generally, favorable legislation or an adverse report halted further petitioning. Higginson, 96 Yale L.J. 142, 156-157.

The development of nationwide petitioning efforts was underway in the Jacksonian era, whose sentiment it was that representatives owe "unrelaxing responsibility to the vigilance of public opinion." *An Introductory Statement of the Democratic Principle,* from THE DEMOCRACTIC REV. (Oct. 1837), in SOCIAL THEORIES OF JACKSONIAN DEMOCRACY 21, 23 (J. Blau ed. 1954).

POINT XIII

THE RIGHT TO PETITION WAS TEMPORARILY GAGGED BY ENTRENCHED INTEREST

While the intent of the Founders was that the Constitution would protect the citizenry's two constitutional means of approaching the government, **periodic election AND continual instruction through petitioning**, a powerful special interest (the pro-slavery folks) was eventually responsible for the “gagging” of the latter in the Congress.

This, in spite of the fact that petitioning was known to be essential to informed voting and legislation and was protected by the Constitution. *See, e.g.,* 1 THE ANTI-SLAVERY EXAMINER 3 (Aug. 1836).

The gag was unconstitutionally applied to a class of petitions even though citizens had the liberty, even the responsibility, to petition on any matter, regardless of the legislature's power of redress. Since both "offer" and "consideration" were, for over a century, indispensable to effective petitioning, the correct line lay between the guarantee of those two rights and the legislature's discretion to deny or disapprove a particular petitioner's request.

The gag was applied to all petitions on the issue of slavery over the objections of John Adams and a few others who strenuously defended the right of every person to petition Congress, whatever the motive, declaring that each petition was entitled to a hearing on its merits. [4]

The Right was infringed in spite of the fact that constitutionally protected representation **by ballot and petition** not only assures popular control of government, but also attaches to each citizen responsibility for the nation's laws, or lack thereof. *See, e.g.,* The National Era, Jan. 18, 1849, at 10, col. 2 (concerning petitioning against slavery, "those who elect the law-makers are responsible for the laws made, or for the neglect to pass laws which ought to be enacted").

Unfortunately, the prohibition against Petitions regarding slavery was not brought to the Supreme Court to be heard. The gag was applied merely amidst political discourse, not judicial determination.[5]

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[4] *See* J. Q. Adams, *List of Petitions,* National Intelligencer, Apr. 23, 1839, at 2, col. 4; Speech of Mr. Cushing, of Massachusetts, on the Right of Petition, as Connected with Petitions for the Abolition of Slavery and the Slave Trade in the District of Columbia in the House of Representatives 11 (Jan. 25, 1836) (every citizen's right to be heard on floor of House essential to democracy) (avail. in Library of Congress)

[5] *See, e.g.,* Address by William Jay to the Friends of Constitutional Liberty on the Violation by the United States House of Representatives of the Right of Petition (Feb. 13, 1840), in W. JAY,

To no avail, abolitionists warned that a pro-slavery "gag" against petitions might, with equal facility, silence other matters of public concern. They feared that one branch of Congress could by itself limit the scope of constitutional protection by summarily denying citizens the right of prayer. Barring consideration of a class of petitions was criticized as an arbitrary act, akin to a judicial decision pronounced in advance of the facts. Adams and others declared that minority political expression would be silenced if petitioning were confined only to those subjects approved by a majority in Congress. At bottom, the "gag" opponents insisted that the right to petition implied duties to hear, consider, debate, and decide. Even if want of authority required the ultimate denial of a petition, the preliminary rights of communication and consideration ought not to be infringed. This logic took vivid illustration in the controversy over Adams's introduction of a petition from Haverhill, Massachusetts, requesting dissolution of the Union. Members moved to censure Adams on the grounds that the right of petition could not extend to destruction of the sovereign power petitioned. Adams, while admitting that Congress could not take such action, denied that the unavailability of the requested remedy should preclude the processes of petition and hearing. Recalling the events of 1776 and "'the right of the people to alter, to change, to destroy, the Government if it becomes oppressive to them,'" Adams concluded, "'**I rest that petition on the Declaration of Independence**.'" Higginson, 96 Yale L.J. 142, 163-164. (plaintiff's emphasis).

MISCELLANEOUS WRITINGS ON SLAVERY 397, 401-02 (1853) (charges that people denied access to representatives on any matter are "gagged") [hereinafter Address by William Jay]; H. JOURNAL, 26th Cong., 1st Sess. 788 (1840) (Massachusetts resolution affirming Congress' duty to give all petitioners "respectful and deliberate consideration," "however mistaken in their views, or insignificant in number").

It is arguable that had the federal government not assumed in the early 1840' that it could not reason with its citizens the slavery issue would have been settled before 1861 and the Civil War.

Notwithstanding the intent of the founders and the long-standing practice that linked petitioning to a corollary duty of legislative response, the Southern "gag" proponents successfully managed to temporarily subsume the right within free expression.

The abrupt suspension of a right so indispensable to representative government has but one factual explanation, the assailability of any principle, however fundamental, when confronted by interests as entrenched as slavery.

Modern petitioning has since come to differ in importance so wildly from petition's importance in the early decades of the Republic that its salient features have been ignored, misunderstood, or unintentionally downplayed by modern analysts.

"The original character of the right to petition may impose an untenable restraint on the autonomy and agenda setting power of the federal legislature. But until this conclusion is made, court opinions will appear to rest not on the Framers' intent, but on deference to the resolve of antebellum Congresses to defeat a right which threatened the institution of slavery." Higginson, 96 Yale L.J. 142, 166.

Plaintiff's Petition for a Redress of Grievances regarding the origin and operation/enforcement of the income tax system is, in effect, an effort to revive the "forgotten Right" and like the abolitionists of yesteryear, **plaintiff and his legions of supporters are up against a powerful, entrenched interest – involuntary servitude and peonage.**

POINT XIV

ORIGINAL INTENT CONTROLS AND GOVERNS

It is common knowledge that when attempting to interpret any constitutional provision, such as the Petition Clause, one needs to consider the original intent of the Founders for no words of the Constitution and Bill of Rights are ever to be considered extraneous or meaningless.

It is common knowledge that in American jurisprudence, the approach to interpreting the meaning of constitutional provisions is to look to the "intent of the Founders," which involves three steps: first, one needs to consider what was the common practice in the years preceding the adoption of the constitutional provision; second, what was said by those arguing for or against the provision; and third, what was the common practice in the years following the adoption of the provision?

With respect to any question about the obligation of the government to respond to plaintiff's Petition for Redress of Grievances relating to the fraudulent origin and illegal operation and enforcement of the income tax system, the historical record demonstrates conclusively that the common practice before and long after the adoption of the Petition Clause was for the government to hear and act on virtually all Petitions presented to it provided those Petitions were not frivolous, contained no falsehoods, had probable cause, had the quality of a dispute, was signed by citizens, was dignified, did not advocate a crime, etc.

However, according to Yale Law School Professor Stephen A. Higgonson, "The short line of Supreme Court cases that raise the petition clause… consistently err in their interpretation of the petition clause as merely a free expression guarantee… **These cases reveal an <u>unstudied</u> treatment of colonial legal history by ignoring the original meaning of the right, and especially its remedial, legislative character…."** Higginson, 96 Yale L.J. 142, n2. (plaintiff's emphasis).

For instance, apparently without investigating the intent of the founders and the original meaning of the Right, but relying only on the language of the Petition Clause itself, the District Court held in *Chase v. Kennedy*, " The plaintiff has confused his right to petition with a supposed right to have his petition granted or acted upon in a certain way. **But no such right is found in the Constitution**. . . . What a Senator does with petitions is absolutely within his discretion and is not a proper subject of judicial inquiry, even if it might appear that he be grossly abusing that discretion. Chase v. Kennedy, No. 77-305-T, mem. op. at 2 (S.D. Cal. July 11, 1977), *aff'd,* 605 F.2d 561, *cert. denied,* 444 U.S. 935 (1979); (plaintiff's emphasis).

Another example of the judiciary's carelessness and misleading opinions is found in Minnesota State Bd. Community Colleges v. Knight, 465 U.S. 217, 284 (1984), a case dealing with collective bargaining and the rights of non-union faculty members to "meet and confer" with the State Board of Community Colleges.

In Minnesota v Knight the majority's opinion reads:

> "The District Court agreed with appellees' claim to the extent that it was limited to faculty participation in governance of institutions of higher education. The court reasoned that "issues in higher education have a special character." 571 F.Supp., at 8. Tradition and public policy support the right of faculty to participate in policymaking in higher education, the court stated, and the "right of expression by faculty members also holds a special place under our Constitution." *Id*., at 8-9. Because of the "vital concern for academic freedom," the District Court concluded, "when the state compels creation of a representative governance system in higher education and utilizes that forum for ongoing debate and resolution of virtually all issues outside the scope of collective bargaining, it must afford every faculty member a fair opportunity to participate in the selection of governance representatives." *Id*., at 9-10.

The very next paragraph in Minnesota v. Knight reads:

> "This conclusion is erroneous. Appellees have no constitutional right to force the government to listen to their views. They have no such right as members of the public, as government employees, or as instructors in an institution of higher education."

Obviously the court was careless here in its choice of language. Someone wanting to use this case to argue that plaintiff's Right of Petition does not include the Right to have his Petition

heard by the government might erroneously take out of context the words "…no constitutional right to force the government to listen to their views."

As its next paragraph reveals, however, the court was not addressing the First Amendment Right to Petition, it was addressing the issue of due process and the Fourteenth Amendment:

> "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy. In *Bi-Metallic Investment Co*. v. *State Board of Equalization* 239 U.S. 441 (1915), this Court rejected a claim to such a right founded on the Due Process Clause of the Fourteenth Amendment."

POINT XV

THE RIGHT TO PETITION PROTECTS PETITIONERS FROM RETALIATION

If communications to one's representative could be arbitrarily ignored, refused, or **punished** popular sovereignty was threatened. *See* G. WOOD, The Creation Of The American Republic 1776-1787, at 363 (1969).

Petitions were 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 -- jeopardized 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 "willful failure to file" or promotion of an illegal 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 *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 "promotion of a tax shelter" and "willful failure to file" are used to bludgeon plaintiff who is peacefully exercising a First Amendment right to protest to government against one of the most grievous of all modern oppressions which our federal and state governments under color of law are 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%.

The IRS, in issuing the Summons under the facts and circumstances of this case and in full knowledge of plaintiff's Petition process, disregards the admonition in *De Jonge* v. *Oregon*, 299 U.S. 353, 364-365:

> "These [First Amendment] rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly [and petition] in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." (plaintiff's emphasis).

In other words, if the invalidity of official acts and official conduct curtailing First Amendment Rights of petition, speech, press and assembly turned on an unequivocal showing that the measure was intended to inhibit the Rights, protection would be severely lacking for it is not the intent or purpose of the measure but its effect on First Amendment rights which is crucial. See, e.g., *De Jonge* v. *Oregon*, 299 U.S. 353; *Feiner* v. *New York*, 340 U.S. 315; *Niemotko* v. *Maryland*, 340 U.S. 268; *N. A. A. C. P.* v. *Alabama*, 357 U.S. 449; *Bates* v. *City of*

Little Rock, 361 U.S. 516; *Shelton* v. *Tucker*, 364 U.S. 479; *N. A. A. C. P.* v. *Button*, 371 U.S. 415; *Edwards* v. *South Carolina*, 372 U.S. 229; *Cox* v. *Louisiana*, 379 U.S. 536; and *Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87.

There can be no doubt but that the IRS Summons (demanding plaintiff 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 and to determine plaintiff's tax liability) have been issued to penalize plaintiff and to inhibit and curtail plaintiff's First Amendment Right to Petition for a Redress of Grievance regarding the fraudulent origin and illegal enforcement of the income tax system, and his Rights to speech, press and assembly, regarding the same.

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 plaintiff, nothing.

Today misdemeanors are being used to harass and penalize plaintiff for exercising a constitutional right of assembly and petition. Tomorrow a disorderly conduct statute, a breach-of-the-peace statute, a vagrancy statute will be put to the same end. The IRS and the DOJ will undoubtedly say they are not targeting plaintiff because of the constitutional principles that 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.

Today, the IRS is moving to silence plaintiff, who questions government's behavior and preaches a nonconformist doctrine, "the government has an obligation to hear and answer the

People's Petitions for Redress of Grievances regarding the fraudulent origin and illegal operation and enforcement of the income tax system and the People have a Right to Redress Before Taxes." Such abuse of police power is usually sought to be justified by some legitimate function of government.

By attempting to suppress plaintiff's orderly and civilized protest against injustice, the IRS only increases the forces of frustration, which the conditions of second-class citizenship are generating amongst us.

For instance, the IRS does violence to the First Amendment when it attempts to turn a "petition for redress of grievances regarding the origin and enforcement of the individual income tax" into an "illegal tax shelter" action or a "willful failure to file" action.

POINT XVI

THE RIGHT TO PETITION INCLUDES THE RIGHT OF REDRESS BEFORE TAXES

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 the President or Governor or Mayor. 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 and those similarly situated. Invitations to formal conferences and symposiums have been ignored; legislators have turned deaf ears; newspaper advertisements have been ignored; formal complaints have been routed endlessly through a bureaucratic maze; courts have let the wheels of justice grind very slowly. Those, like plaintiff, who do not control television and radio, those who cannot afford to advertise in newspapers or circulate

elaborate pamphlets have only a more limited (unconventional) type of access to public officials.

Unconventional methods of petitioning [such redress before taxes] are protected as long as the assembly and petition are peaceable.

The founding fathers, in an act of the Continental Congress in 1774, said, "If money is wanted by Rulers who have in any manner oppressed the People, [the People] may retain [their money] until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." [6]

This very American Right of Redress of Grievances *Before Taxes* is deeply embedded in our law.

The founding fathers could hardly have used words more clear when they declared, "the people … may retain [their money] until their grievances are [remedied]."

By these words, the founding fathers fully recognized and clearly stated: that the Right of Redress of Grievances includes the right of *Redress Before payment of Taxes*, that this Right of *Redress Before Taxes* lies in the hands of the People, that this Right is the People's non-violent, peaceful means to procuring a remedy to their grievances without having depend on – or place their trust in -- the government's willingness to respond to the People's petitions and without having to resort to violence.

The founding fathers were well acquainted with the fact that government is the enemy of Freedom, that those wielding governmental power, who do not like opposition from any quarter, despise Petitions for Redress from the People; the representatives of the People, in a popular

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[6] "Continental Congress To The Inhabitants Of The Province Of Quebec." Journals of the Continental Congress. 1774 -1789. Journals 1: 105-13.

assembly, seem sometimes to fancy that they are the People themselves and exhibit strong symptoms of impatience and disgust at the least sign of opposition from any quarter.

The founding fathers knew that it was possible for the institutions of the Congress, the Executive *and* the Courts to someday begin to fail in their duty to protect the people from tyranny. They knew that unless the People had the right to withhold their money from the government their grievances might fall on deaf ears and Liberty would give way to tyranny, despotism and involuntary servitude.

The First Amendment to the United States Constitution states clearly and unambiguously, "Congress shall make NO law …abridging …the right of the people … to petition *the government* for a redress of grievances."

While some Rights are reserved with qualifications in the Bill of Rights, there are *none whatsoever* pertaining to the Right of Redress. There are *no* limits on the Right of Redress. Any constitutional offense is legitimately petitionable.

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 Notice that the founding fathers, sitting as the Continental Congress in 1774, held that this Right of Redress *Before* Taxes was the means by which "the public tranquility" was to be maintained. *Then*, sitting as the Constitutional Convention, the founding fathers declared that one of the major purposes of *the (federal) government* was to "insure domestic tranquility."

Therefore, whenever this Right of Redress is violated, the People have a double grievance: a denial of justice by the government *and*, an incitement *by the government* to general unrest.

Today, our concern is the grievance that falls under the heading of a design to subvert the Constitution and laws of the country by those wielding governmental power.

Under this heading, all officers of the government are liable, if they strayed from their oath of office.

If we are to secure our Rights, we must rely on the laws of nature and a reasoned sense of innovation. To rely on precedent is to oppress posterity with the ignorance or chains of their fathers. Being forced by the government to rely on precedent is, *itself*, a grievance.

The sequence of Redress Before Taxes was well established in English law at a time when great numbers of Englishmen traveled to America. They brought with them English history and English law: they brought with them the principle of "taxes with consent"; the unlawfulness of "troops quartered in private homes," of "cruel and unusual punishments," and a whole collection of Rights, such as Redress, Speech, Assembly and Trial by Jury.

Any notion, spurious act of Congress or opinion by a Court that taxes must by paid *before* Redress is a perversion of Natural Law, of modern English law, of the American Constitution and of Truth and Justice.

The reverse principle of "*Taxes Before Redress*" is based on the essence of monarchy and kingly power: the king owns everything under his domain. People possess property under a monarch by his grace alone. Since a king owns everything under his domain, he merely has to speak to lawfully dispose of his property. Thus, if a king imposed a tax on land he imposed it on his own land and whoever occupied the land was obligated to pay the tax to the king's treasury.

A tax, then, being a part of the king's property, was legally presumed to be in the possession of the king *before and after its assessment*.

Since the landholder, or landless subject, enjoyed the privilege of tenancy on the land only by the will of the king, he could be required to pay over the tax *before he could contest the assessment*—or redress a grievance.

Thus, the theory that a tax must be paid *before redress* rests on the presumption that society is organized as a monarchy; that all people living therein exist by grace of an autocrat – whether one man or an assembly of men. *This proposition was soundly rejected by the Founders in designing our unique system of governance.*

In America, such presumptions constitute grievances. The first duty of any officer is to uphold the Constitution – the entire Constitution, without reservation and without bribery or blackmail.

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."

According to the Right of Redress, as the Founders described it, we have a right to withhold taxes *if government infringes on our rights* and ignores our Petitions for Redress.

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 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.

In America, the right to petition our government for a Redress of Grievances is an *unalienable right*. It derives from our faith in a supreme being - an ultimate moral authority from whom we gain our understanding of equality, justice and the rule of law. Implicit in our first amendment constitutional right to petition our government for a redress of grievances, is the government's absolute moral and legal obligation to respond honestly and completely to the people's petition.

This is the essential cornerstone of Popular Sovereignty -- a government of the People, by the People and for the People.

In 1791, the right to petition became primary among the Rights of the People of the United States of America, as expressed in, and guaranteed by, the First Amendment.

Some would now have us believe that our First Amendment right of petition is nothing more than a guarantee of free speech; that this vital constitutional protection - the very basis of our liberty - is simply a right to voice our grievances to the government. Some would try to convince us that We The People do not have the absolute right to an honest and complete response to our petitions -- or the authority to demand that our government correct the abuses and violations of our liberties that result in our petitions. Some would even go so far as to say it is merely a Right to complain, with no expectation of response.

POINT XVII

DEFENDANTS HAVE VIOLATED PLAINTIFF'S CIVIL RIGHTS

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of

his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-- they shall be fined or imprisoned not more than ten years, or both. See 18 USC 241.

18 USCS § 241 guarantees safety and protection of persons in the exercise of Rights dependent on the Constitution. Bergman v United States (1983, WD Mich) 565 F Supp 1353, 37 FR Serv 2d 442, supp op (1984, WD Mich) 579 F Supp 911, later proceeding (1986, WD Mich) 648 F Supp 351, 6 FR Serv 3d 803, later proceeding (1988, CA6 Mich) 844 F2d 353, 10 FR Serv 3d 625.

The purpose of 18 USC 241 is to protect rights and privileges of citizens under the Constitution and laws of United States. Williams v United States (1950, CA5 Fla) 179 F2d 644, affd (1951) 341 US 70, 95 L Ed 758, 71 S Ct 581 (ovrld by United States v Price (1966) 383 US 787, 16 L Ed 2d 267, 86 S Ct 1152) as stated in United States v McDermott (1990, CA2 NY) 918 F2d 319, cert den (1991, US) 114 L Ed 2d 76, 111 S Ct 1681.

18 USCS § 245 removes any doubt as to protection that would be extended against private interference with certain specific rights enumerated in § 245. United States v Pacelli (1974, CA2 NY) 491 F2d 1108, cert den (1974) 419 US 826, 42 L Ed 2d 49, 95 S Ct 43 and appeal after remand (1975, CA2 NY) 521 F2d 135, cert den (1976) 424 US 911, 47 L Ed 2d 314, 96 S Ct 1106.

Conspiring to deprive citizens of their civil rights in violation of 18 USCS § 241 is a crime of violence within the meaning of 18 USCS § 924(c), since it creates substantial risk of violence. United States v Greer (1991, CA5 Tex) 939 F2d 1076, 36 Fed Rules Evid Serv 168, reh, en banc, gr (1991, CA5 Tex) 948 F2d 934 and reinstated, in part, on reh, en banc (1992, CA5 Tex) 968

F2d 433, reh den (1992, CA5) 1992 US App LEXIS 23160 and cert den (1993, US) 122 L Ed 2d 764, 113 S Ct 1390.

POINT XVIII

DEFENDANTS LACK LEGAL AUTHORITY

The United States has not satisfied all administrative steps. The Summons should be quashed on the ground it was issued without legal authority and does not satisfy all administrative steps required by law and is, therefore, repugnant to and violative of plaintiff's constitutional right to due process under Article V of the Constitution.

The Summons fails to state any offense by plaintiff connected with the administration or enforcement of the internal revenue laws. While section 7602 (c) of Title 26 may authorize the Secretary of the Treasury to examine plaintiff's books and records, if any, it does so only in connection with an inquiry into any offense connected with the administration or enforcement of the internal revenue laws. The United States is prohibited by the 4th (Right to Privacy), 5th (Right not to help) and 6th (Right to know nature of accusation) Amendments to the Constitution from merely saying to plaintiff, a citizen of the State of New York, " Come in here with your books and records," and compelling plaintiff to do so, without disclosing the nature of any wrongdoing by plaintiff.

Plaintiff adds to the argument under this Point as follows.

The Secretary of the Treasury has never established internal revenue districts in States of the Union, as required by 4 U.S.C. § 72, 26 U.S.C. § 7621, 3 U.S.C. § 301 and Executive Order #10289 (see 26 CFR § 601.101 for IRS standing and venue limited exclusively to internal revenue districts).

The Internal Revenue Service is not the delegate of the Secretary of the Treasury, as the term "delegate" is defined at 26 U.S.C. § 7701(a)(12)(A) (the Internal Revenue Service is not an agency of Government of the United States, as such, as Congress did not legislatively create IRS or the IRS predecessor, the Bureau of Internal Revenue);

The Internal Revenue Service operates within States of the Union exclusively under color of authority conveyed by way of piggybacking agreements for administration of qualified state resident and nonresident income taxes, the scope of the agreements prescribed by 26 CFR Part 215.

Per 31 § 215.1, IRS reporting and administration authority extends only to federal agencies and personnel.

Until such time as defendants affirmatively establish contrary IRS standing, venue and jurisdiction in the record, the stipulations made in the paragraphs immediately preceding this one determine forums for redress, remedies and relief prescribed by law.

IRS standing, venue and jurisdiction stipulations notwithstanding, plaintiff has determined that he is otherwise not required to keep books and records and file returns for any given tax imposed by internal revenue laws of the United States that are within Internal Revenue Service venue and subject matter jurisdiction and qualified state resident or nonresident income taxes.

Plaintiff has been unable to find implementing regulations for taxing and liability statutes that are applicable to plaintiff's fact circumstance.

On information and belief, plaintiff is not required to keep books and records and file returns for any given tax imposed by internal revenue laws of the United States and/or qualified state resident or nonresident taxes within Internal Revenue Service venue and subject matter jurisdiction.

The basic requirement for notice is codified at 26 U.S.C. § 6001, cited here in relevant part: "Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title."

Since plaintiff has been unable to identify regulations applicable to plaintiff's fact circumstance, defendant IRS officer is responsible for providing notice, i.e., defendant has an obligation to either furnish regulatory cites or provide direct written notice.

To support the assertion that it is mandatory for implementing regulations to be promulgated by the Secretary (Commissioner in past times), the court is respectfully asked to consult *California Bankers Assn. v. Schultz*, 39 L.Ed. 2d 812 at 820: "Because it has a bearing on some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone." In *U.S. v. Murphy*, 809 F.2d 1427 at 1430 (9th Cir. 1987), following California Bankers Association rationale, the court said "The reporting act is not self-executing; it can impose no reporting duties until implementing regulations have been promulgated." In *U.S. v. Reinis*, 794 F.2d 506 at 508 (9th Cir. 1986) the court said, "An individual cannot be prosecuted for violating this Act unless he violates an implementing regulation … The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other." *U.S. v. Mersky*, 361 U.S. 431, 4 L.Ed. 2d 423, 80 S.Ct. 459 (1960), agreed with in *Leyeth v. Hoey*, *supra, U.S. v. $200,000 in U.S. Currency*, 590 F.Supp. 866; *U.S. v. Palzer*, 745 F.2d 1350 (1984); *U.S. v. Cook*, 745 F.2d

1311 (1984); *U.S. v. Gertner*, 65 F.3d 963 (1st Cir. 1995); *Diamond Ring Ranch v. Morton*, 531 F.2d 1397, 1401 (1976); *U.S. v. Omega Chemical Corp.*, 156 F.3d 994 (9th Cir. 1998); *U.S. v. Corona*, 849 F.2d 562, 565 (11th Cir. 1988); *U.S. v. Esposito*, 754 F.2d 521, 523-24 (1985); *U.S. v. Goldfarb*, 643 F.2d. 422, 429-30 (1981). "For Federal tax purposes, the Federal Regulations govern. *Lyeth v. Hoey*, 1938, 305 U.S. 188, 59 S.Ct. 155, 83 L.Ed. 119," quoted in *Dodd v. U.S.*, 223 F.Supp. 785 (1963).

The most current delegation of authority for providing the § 6001 notice appears to be published in § 1.2.2.16 of the Internal Revenue Manual:

> Order Number 24 (Rev. 2)
> Recordkeeping Requirement (Updated 10/02/2000 to reflect additional new organizational titles required by IRS Modernization.)
> (1) Authority: To require any person, by notice served them, to keep records reflecting whether or not the person is liable for tax.
> (2) Delegated to: Assistant Commissioner (International) and District Directors.
> Note: This authority is also delegated to Assistant Deputy Commissioners, Division Commissioners; Deputy Division Commissioners.
> (3) Redelegation: This authority may be redelegated to Examination and Employee Plans and Exempt Organizations Group Managers.
> Note: This authority may also be redelegated to TE/GE Group Managers; LMSB Team Managers; W&I Examination Group Managers; SB/SE Examination or Compliance Group Managers; or equivalent.
> (4) Source of Authority: IRC Section 6001.
> (5) To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 24 (Rev. 1) effective May 12, 1986.
> (6) Signed: John M. Dalrymple for James E. Donelson, Acting Chief Compliance

Because of the complexities of this issue, defendant may want to submit a request for a National Office Technical Advice Memorandum and/or Chief Counsel technical advice concerning tax administration responsibilities. See 26 U.S.C. § 6110, as amended by the IRS restructuring and reform act of 1998; for National Office Technical Advice Memorandum, see 26 CFR §§ 601.105, 601.106 & 601.201; and for Chief Counsel advice memorandum, see Chief Counsel Notice N(35)00-174, CR: 34.11.4.4, of Oct. 25, 2000.

Plaintiff is providing (attached) a Status & Disclosure Affidavit of Material Facts that satisfies minimum requirements of 26 U.S.C. § 6011(a) even though plaintiff has been unable to locate regulations that require him to make statements to or for the Internal Revenue Service. The affidavit includes statements of fact concerning plaintiff's status, the venue of his abode and his revenue-producing enterprise, if any, and particulars concerning sources and activities from which plaintiff does and doesn't derive income and other earnings. The affidavit satisfies requirements for examination testimony, authorized by 26 U.S.C. § 7602(a)(3), so until such time as IRS personnel provide affidavits to establish probable cause concerning liability for any given tax, or any duty, imposed by internal revenue laws of the United States, plaintiff has the right not to provide further testimony or access to books, records or other items he might have in his possession.

In the event the Internal Revenue Service has evidence and one or more fact witnesses to prove facts other than those stated in the enclosed affidavit, evidence and fact witnesses should be disclosed. In the event there is no controversy concerning facts, those set out in plaintiff's affidavit are stipulated by mutual agreement (stipulation by tacit procuration).

The Fifth, Sixth and Seventh Amendments to the Constitution of the United States secure due process in the course of the common law to the American people, which necessarily includes the right to trial by jury. See *Wayman v. Southard*, 23 U.S. 1, 6 L.Ed. 253, 10 Wheat 1 (1825).

On information and belief, under rules of common law procedure, acquiescence to stipulations of fact and law set forth in attending fact, claim and/or complaint affidavits, along with conclusions of law included or incorporated by reference in protest and/or rebuttal documents, will have the effect of a common law Retraxit by Tacit Procuration, whether for purposes of administrative or judicial due process remedies. In the event of acquiescence,

stipulations secured by tacit procuration may constitute the basis for counter-claims and other appropriate remedies. Note particularly that stipulations concerning IRS standing, venue and subject matter jurisdiction were set out in paragraphs above.

The court's attention is directed to the fact that the Internal Revenue Service mandate for timely resolution of controversy is articulated in one-stop service policy, Policy Statement P-6-13, published at § 1.2.1.6.5 of the Internal Revenue Manual:

> (1) One-stop service defined: Assistance and information to taxpayers contacting the Service will be sufficiently timely, complete, and accurate to minimize the need for further contact by the customer on the same issue(s).
> (2) One-stop service is defined as the resolution of issues during the taxpayer's initial contact or as a direct result of that contact. One-stop service complements and promotes the Service's three key objectives: reduce taxpayer burden, improve voluntary compliance and improve customer satisfaction and quality-driven productivity. Service employees will take the necessary steps to provide one-stop service in all types of contacts initiated by the taxpayer whether the contact is by telephone, correspondence or face-to-face.

All property, activities, events, transactions and particular facts giving rise to this matter have occurred in or otherwise have situs on land within one or more States of the Union; there is no item, activity or transaction giving rise to special territorial and maritime jurisdiction of the United States, as defined by 18 U.S.C. § 7. Therefore, in the event Internal Revenue Service personnel exceed venue and subject matter jurisdiction prescribed by law, or abridge substantive and procedural due process rights, they are personally liable for unlawful acts and omissions under law of the venue. See 26 U.S.C. § 7804(b), published as a note following § 7804 since enactment of the Internal Revenue Service restructuring and reform act of 1998. Original jurisdiction of state law does not foreclose remedies arising under the Constitution and laws of the United States.

There are essentials to any case or controversy, whether administrative or judicial, arising under the Constitution and laws of the United States (Article III § 2, U.S. Constitution, "arising under" clause). See *Federal Maritime Commission v. South Carolina Ports Authority*, 535 U.S.

___, 122 S. Ct. 1864; 152 L. Ed. 2d 962, decided March 28, 2002. The following elements are indispensable:

1. When challenged, standing, venue and all elements of subject matter jurisdiction, including compliance with substantive and procedural due process requirements, must be established in record;
2. Facts of the case must be established in record;
3. Unless stipulated by agreement, facts must be verified by competent witnesses via testimony (affidavit, deposition or direct oral examination);
4. The law of the case must affirmatively appear in record, which in the instance of a tax controversy necessarily includes taxing and liability statutes with attending regulations (See *United States of America v. Menk*, 260 F. Supp. 784 at 787 and *United States of America v. Community TV, Inc.*, 327 F.2d 797 (10th Cir., 1964); for necessity of regulations, see *California Bankers Assn. v. Schultz*, 39 L.Ed. 2d 812 at 820);
5. The advocate of a position must prove application of law to stipulated or otherwise provable facts; and
6. The trial court or decision-maker, whether administrative or judicial, must render a written decision that includes findings of fact and conclusions of law. The exception to this requirement is the decision of juries in common law courts.

Per 26 CFR § 601.201(a)(1), "It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions." Any of the formal responses prescribed by 26 U.S.C. § 6110, as amended by RRA98, will satisfy so long as it complies with essentials set out above.

In order to resolve existing and/or avert future controversy, the following must be objectively proven in record for the calendar years specified in the Summons. Defendant should address all questions and, where necessary, provide documentary and other evidence to support findings of fact and conclusions of law:

1. What class or classes of tax are at issue, i.e., what taxing and liability statutes, along with implementing regulations, make plaintiff a person liable for keeping books and records and filing returns for any given tax imposed by internal revenue laws of the United States? (Sixth Amendment right to know the nature of the action)
2. What qualified state resident or nonresident income tax administered under a state piggybacking state-federal agreement authorized by 31 CFR Part 215 is plaintiff liable for?

3. Does transfer of obligations of the United States, whether in the form of Federal Reserve Notes or bank credits hypothecated on credit of the United States (public money), constitute payment of debt or deferred payment until a future date yet to be determined?
4. Does deferred payment constitute gross income, as defined by the Internal Revenue Code? (26 U.S.C. § 61)
5. Does deferred payment constitute taxable income, as defined by the Internal Revenue Code? (26 U.S.C. § 63)
6. Is determination of the previous three questions predicated on laws of the United States applicable in States of the Union or Acts of Congress applicable solely in territories and insular possessions of the United States? (See "laws of the United States" designation in the "arising under" clause in Article III § 2 of the Constitution of the United States distinguished from "Acts of Congress" in 28 U.S.C. § 1366 and application of "Acts of Congress" to territories and insular possessions of the United States in Rule 54(c) of the Federal Rules of Criminal Procedure).
7. What internal revenue district, established in compliance with requirements of 4 U.S.C. § 72, 26 U.S.C. § 7621, 3 U.S.C. § 301 and Executive Order #10289, is the situs of the taxable articles, activities and/or transactions from which the alleged taxable income was derived?
8. What delegated authority, whether statutory or otherwise, does IRS have for administering the class or classes of tax at issue? (See 5 U.S.C. § 558(b))
9. What "officer, employee, or agency of the Treasury Department [or] other officer of the United States" is the delegate of the Secretary for purposes of collecting income and employment taxes imposed by Chapters 1, 2 and 21 of the Internal Revenue Code in States of the Union? (26 U.S.C. § 7701(a)(12)(A))
10. What order, agreement, contract or other legal document or device does the Internal Revenue Service have that authorizes examination and collection activity on behalf of the "delegate" of the Secretary, as defined at 26 U.S.C. § 7701(a)(12)(A), in States of the Union? See §§ 1001(b)(2) of P.L. 105-206.
11. What is the geographical limitation (venue) of IRS statutorily authorized delegated authority for administering the class or classes of tax at issue? (See 4 U.S.C. § 72; see also, 26 U.S.C. § 7701(a)(12)(B))
12. What evidence of facts, documentary or otherwise, does IRS have that establishes liability for the class or classes of tax at issue? (Sixth Amendment right to know the cause of action)
13. What testimony (affidavits) does IRS have verifying evidence of liability for the class or classes of tax at issue? (Sixth Amendment right to confront adverse witnesses)
14. What fact and/or expert witnesses will IRS rely on to verify facts and law that establish liability for any given class of tax that is lawfully administered by the Internal Revenue Service? (Sixth Amendment rights to confront adverse witnesses and compel testimony)
15. What regulation, with a currently valid Office of Management and Budget number, requires plaintiff to keep books and records and file returns? The conclusion must be based on facts specified in the enclosed affidavit or alternative facts that IRS personnel have sufficient evidence to prove. (Paperwork Reduction Act)
16. Based on facts set forth in the enclosed affidavit, or alternative facts IRS has sufficient evidence to prove, what federal income tax return is plaintiff required to file? (See 26 CFR §§ 1.6091-1 through 1.6091-4; per 26 CFR § 602.101(b), the only OMB number listed, #1545-0089, specifies income tax returns required to be filed with the Director of International Operations.)

17. Based on facts set forth in the enclosed affidavit, or alternative facts IRS has sufficient evidence to prove, what separate return for a qualified state resident or nonresident income tax is plaintiff required to file?

Although plaintiff believes he knows proper application of income and employment taxes imposed by Subtitles A & C of the Internal Revenue Code, and qualified state resident and nonresident income taxes, plaintiff's conclusions and what he believes are irrelevant as the proponent of a position bears the burden of proof.

Where Internal Revenue Service personnel implicitly or explicitly request returns, books and records, allegedly complete substitute returns, or take other adverse action, the IRS bears the burden of proof. To satisfy burden of proof requirements, the responsible IRS officer must satisfy criteria specified in essential elements of a case or controversy set out above.

The Administrative Procedures Act, at 5 U.S.C. § 552(a)(1), provides a general description of duties imposed on all administrative branch personnel. The subsection requires agencies to provide access to records, provide decisions and otherwise comply with procedure that would be expected in judicial forums. The mandate is reasonably inclusive as it preserves substantive and procedural due process rights:

> § 552. Public information; agency rules, opinions, orders, records, and proceedings
> (a) Each agency shall make available to the public information as follows:
> (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--
> (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
> (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
> (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
> (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
> (E) each amendment, revision, or repeal of the foregoing.
> Except to the extent that a person has actual and timely notice of the terms thereof, a person may

> not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

In subsequent subsections, 5 U.S.C. § 552 imposes mandatory response times and provides what amounts to a judicial fast track to compel performance. Jurisdiction of circuit courts is established by 5 U.S.C. § 702 and it is expanded to district courts via an action in the nature of mandamus by 28 U.S.C. § 1361. In the event of agency non-compliance, malfeasance and/or misfeasance, injunctive relief may be obtained. The scope of judicial review authority is established by 5 U.S.C. § 706:

> § 706. Scope of review
>
> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--
>
> (1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law;
>
> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

The initial action under the above authority may issue against an agency and/or agency personnel. However, findings under § 706 may be the beginning rather than the end of lawful remedies. If any given officer or agent commits acts other than those authorized by law, or fails to carry out duties imposed by law, he can be held personally liable. Findings of fact and conclusions of law under 5 U.S.C. § 702 & 28 U.S.C. § 1361 may establish malfeasance and

misfeasance as matters of fact and thereby give rise to actionable causes against responsible IRS personnel.

Internal Revenue Service one-step service policy, Policy Statement P-6-13, published at § 1.2.1.6.5 of the Internal Revenue Manual, requires the officer, agent or other IRS personnel who receive requests, complaints or whatever else to help resolve the issue without the taxpayer having to make second and third contacts on the same issue. Even if the IRS officer or employee who first receives the contact is incapable of directly assisting, he or she is required to direct the request, inquiry, protest or whatever else to whoever has authority to resolve the matter.

Via § 1203 of the Internal Revenue Service reform and restructuring act of 1998, Congress required Internal Revenue Service personnel to comply with provisions of the Internal Revenue Code, Treasury regulations and published policy, including the Internal Revenue Manual. Federal judges have characteristically ruled that administration publications except regulations published in the Federal Register are not law, as such, but via RRA98, Congress included policy such as that published in the Internal Revenue Manual for administrative discipline purposes. The negligent officer or employee is subject to administrative discipline up to and including discharge for dereliction of duty.

Acts of omission and commission may be prosecuted as criminal offenses under 26 U.S.C. § 7214. In the event of acts of omission or commission that deprive people of substantive and/or procedural rights, the individual officer or agent is made personally liable for civil damages under the former 26 U.S.C. § 7804(b), now published as a note following the revised § 7804. Civil remedies are typically secured via Bivens actions, but may be obtained by whatever forum is prescribed by law of the venue. Finally, in the event that an officer or agent fails to perform a duty imposed by law within thirty days, the Taxpayer Advocate is required to intervene with a

Taxpayer Assistance Order under mandate of 26 U.S.C. § 7811(a)(2); see also, 26 U.S.C. § 7811(a)(3) for preferential treatment.

Regulations published in 26 CFR Part 601, particularly §§ 601.101 through 601.107 & 601.201, provide a procedural overview of duties imposed on Internal Revenue Service personnel involved in examination, investigation, collection and appeals activity. Other regulations, Code sections and court decisions particularize additional duties imposed by law. Failure to carry out duties imposed by law and published policy may be resolved with administrative, civil and/or criminal remedies.

CONCLUSION

Plaintiff is entitled to the relief requested below. The United States and the Internal Revenue Service lack territorial, person and subject matter jurisdiction and they are knowingly and with intent infringing on plaintiff's constitutionally guaranteed, unalienable Rights – an illegitimate purpose.

The Supreme Court has stated that all of the First Amendment rights are "inseparable" and derive from the same ideals of individual liberty. As a general principle, the court has held that governmental action restricting the First Amendment freedoms must be justified by a clear and present danger to a legitimate public interest, and not merely by the rational basis, which would be sufficient to meet constitutional requirements of due process.

For instance, in West Virginia State Bd. of Education v Barnette (1943) 319 US 624, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674, the court held that the First Amendment freedom of assembly may not be subjected to any and all restrictions which a legislature may have a "rational basis" for adopting, as would be true of the right to due process, but may be restricted

only in order to prevent grave and immediate danger to interests which the state may lawfully protect.

Similarly, the court in Thomas v Collins (1945) 323 US 516, 89 L Ed 430, 65 S Ct 315, 15 BNA LRRM 777, 9 CCH LC P 51192, reh den 323 US 819, 89 L Ed 650, 65 S Ct 557, held that any attempt to restrict the liberties of speech and assembly must be justified by a clear public interest, threatened not doubtfully or remotely but by a clear and present public danger, actual or intended, and that more of a connection between the remedy provided and the danger to be curbed is required in this context than would be necessary to support legislation against attack on due process grounds. It is therefore in our tradition, the Supreme Court added, to allow the widest room for discussion and the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly and petition.

Defendants have shown no clear and present danger to any legitimate public interest justifying their Summons, dated August 15, 2003, which acts to interfere with plaintiff's First Amendment, fundamental Rights to Peaceably Assemble and to Petition for Redress of Grievances (including as it does Redress Before Taxes) and to speak and publish freely, and plaintiff's fundamental Rights to Privacy and to be left alone, and plaintiff's fundamental Rights to Due Process and not to be a witness against himself, and plaintiff's Right to know the nature of an accusation.

We, **THE PEOPLE**, hold in OUR possession the ultimate, fundamental power in our society.

THE GOVERNMENT cannot do just anything it wants to do.

We, **THE PEOPLE**, by His authority, have given the government permission, in writing to engage in certain activities. For instance, we have granted it fixed and certain taxing powers.

THE GOVERNMENT is chained to our written, sacred Constitution.

We, **THE PEOPLE**, have maintained an unlimited array of individual, unalienable Rights.

THE GOVERNMENT was brought into being for the sole purpose of securing and protecting our Rights.

We, **THE PEOPLE**, have the Right to respectfully Petition the government whenever we believe it has stepped outside the boundaries we have drawn around its power to tax, or whenever it infringes on ANY of our individual, fundamental, unalienable Rights.

THE GOVERNMENT, though it despises our Petitions because it abhors opposition from any quarter, nonetheless has a high-order obligation to respond, even with feigned respect, to our formal written requests for a remedy to ANY of our alleged grievances, whether they be real or imagined.

Based on the above, and the facts and evidence in plaintiff's affidavits, plaintiff respectfully requests an order:

a. quashing the IRS Summons issued August 15, 2003.

b. permanently enjoining and prohibiting the United States from directly or indirectly contacting plaintiff Schulz and/or his wife Judith regarding any matter related to the Individual Income Tax laws, unless and until the United States properly responds to plaintiff's Petitions for Redress of Grievances regarding the income tax system, which response shall include answers to the questions contained in Exhibit G and Exhibit ZZ annexed to the Affidavit sworn to by plaintiff Schulz on September 11, 2003, 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 the Individual

Income Tax laws, unless and until the IRS properly responds to the list of 17 questions that begins on page 70 of this Memorandum of Law.

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

DATED: September 11, 2003

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

Sworn to before me this
11th day of September, 2003

_____-
Notary

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