

# 05-5359

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

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

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**BRIEF FOR PLAINTIFFS-APPELLANTS**

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Dated: February 22, 2006

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Attorney for each of the Appellants  
except Robert Schulz, who is pro se

(redacted)

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## **JURISDICTIONAL STATEMENT**

All elected officials and federal employees are immune from suit individually for common law torts occurring within the scope of their employment. *See* 28 U.S.C. §2679(b)(1). Section 2679(b)(1) does not extend to “a civil action against an employee of the Government which is brought for a violation of the Constitution of the United States, or which is brought for a violation of a statute of the United States...” *See* §2679(b)(2). Therefore, the UNITED STATES, THE TREASURY DEPARTMENT, THE INTERNAL REVENUE SERVICE and THE DEPARTMENT OF JUSTICE have been named as the Defendants in this Complaint.

The President of the United States, his Executive Branch Agencies, and the Legislative Branch of the United States Government have failed to address the Plaintiffs’ (“The People’s”) Petitions for Redress of Grievances and have subsequently retaliated against The People in violation of the First Amendment to the Constitution of the United States, and jurisdiction is therefore proper under 28 U.S.C. §1331.

The People have been denied due process in violation of the Fifth and Fourteenth Amendments to the Constitution, and jurisdiction is proper in accordance with 28 U.S.C. §1331.

The People’s civil rights have been violated, and jurisdiction is also invoked pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343.

The Court of Appeals has jurisdiction pursuant to 28 U.S.C. Section 1291. The appeal is from a final decision of the District Court entered August 31, 2005 that disposes of all parties’ claims. The appeal was taken on September 12, 2005.

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Whether Defendants (“the Government”) are obligated under the Constitution to respond with specific, official answers to the questions put forth by The People in their Petitions for Redress

of Grievances. Whether The People may retain their money without retaliation by the Government, until their grievances are redressed.

## **STATEMENT OF THE CASE**

This Complaint arises from the failure of the Government (that is, the President of the United States and the Attorney General, the Secretary of the Treasury, the Commissioner of the Internal Revenue Service, and the United States Congress) to respond to The People's Petitions for Redress of Grievances against their government, grievances relating to violations of the U.S. Constitution's War powers, Taxing, Money, and "Privacy" Clauses.

This Complaint also arises from the retaliation by the Executive Branch of the United States Government against The People for Petitioning the Government for a Redress of Grievances. The People's grievances, as set forth in this Complaint, relate to specific violations by the Government of the U.S. Constitution's War Powers, Taxing, Money and "Privacy" Clauses.

On numerous occasions over approximately the past six years, The People have respectfully Petitioned the Government, and in good faith sought to meet publicly with the Government to secure answers to reasonable questions regarding certain acts by the Government believed to be outside the lawful authority granted by the U.S. Constitution and Acts of Congress.

Plaintiffs' Petitions for Redress of Grievances have included respectful, concisely drawn requests for answers to questions regarding Defendants' statutes, policies, programs and overt practices related to the Tax, War Powers, Money, "Privacy" and Due Process Clauses of the Constitution. Plaintiffs' questions were designed to assist The People in their earnest quest to determine their *bona fide* Rights and *bona fide* legal obligations under those acts, policies and programs, as enforced by the Defendants.

Defendants have steadfastly refused to publicly acknowledge or respond to The People's proper Petitions for Redress of Grievances.

A detailed account of multiple attempts by The People to Petition the Government for Redress of Grievances, and the Government's persistent failure to acknowledge or respond to those Petitions, is provided in the Affidavit by Plaintiff Robert Schulz, sworn to on September 15, 2004. (A-104).

Plaintiffs' were prepared at trial to present a thoroughly documented record of their attempts to Petition the Government for Redress of these Grievances, and the Governments' refusal to respond, but The People's Complaint was dismissed by the lower court for "failure to state a valid claim."

The history and record of this case irrefutably demonstrate that The People have respectfully, intelligently, rationally, peacefully and repeatedly appealed to the President of the United States and other appropriate officials of the Executive branch, and every member of the United States Senate and Congress, earnestly pleading for someone in the Government to provide official answers to their rational, legitimate questions relating to alleged violations of the War Powers, Taxing, Money and "Privacy" Clauses of the U.S. Constitution.

For the past six years, the respectful, patient and legitimate Petitions by a large number of Americans have been met either by total silence or direct retaliation by the Legislative and Executive Branches of our Government. Far from receiving a respectful and proper Redress of our Grievances, The People have encountered an institutional contempt and condescending, antagonistic attitude by the elected and appointed officials of the Government. This chilling and arrogant disregard for The Constitution of the United States, and The Peoples' guaranteed First Amendment Right to Petition for Redress of Grievances, is beyond the pale for a servant government in our American Republic.

On September 16, 2003, at a press conference held at the U.S. Treasury Building in Washington, DC, and organized by Defendant U.S. TREASURY DEPARTMENT and Defendant INTERNAL REVENUE SERVICE, Mr. Terry Lemons, a senior spokesman for the IRS was asked by the The New York Times why the Defendants had not responded to Plaintiffs' Petitions and questions regarding the legality of the income tax as it is presently being applied. Mr Lemons responded by stating: "We *are* answering those petitions through enforcement actions." (emphasis added)

We focus here, momentarily, on one of The People's four Petitions for Redress of Grievances, the Petition relating to the direct, un-apportioned tax on labor. The American People delegated to the Federal Government the lawful authority to impose and collect taxes subject to specifically enumerated limits as clearly set forth in the taxing clauses of the Constitution of the United States. The taxing clauses of the Constitution, and the limited taxing powers delegated to the Government by The People, have never been amended. The Federal Governments' specific taxing authority, as expressed in the U.S. Internal Revenue Laws, Code and Regulations, must conform to the precise contours and limits imposed by the Constitution and to those Supreme Court decisions which define the content and scope of the Governments' delegated authority to tax. It is also settled law that the Internal Revenue Law, Code and Regulations must be written in words and terms that the ordinary American, exercising ordinary common sense, can sufficiently understand and comply with, without sacrifice to the public interest. *See Arnett v. Kennedy*, 416 U.S. 134, 159, 40 L. Ed. 2d 15, 94 S. Ct. 1633 (1974) (quoting *United States Civil Serv. Commission v. National Association of Letter Carriers*, 413 U.S. 548, 579, 37 L. Ed. 2d 796, 93 S. Ct. 2880 (1973)).

To pass constitutional scrutiny, the Internal Revenue Law, Code and Regulations must give persons of ordinary intelligence fair notice that their contemplated conduct is forbidden by statute.

*See Grayned v. City of Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972); and *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972); and *Bouie v. City of Columbia*, 378 U.S. 347, 348, 351, 84 S. Ct. 1697, 1699, 1701, 12 L. Ed. 2d 894 (1964); and *United States v. National Dairy Products Corp.*, 372 U.S. 29, 83 S. Ct. 594, 9 L. Ed. 2d 561 (1963).

For years now, The People, who are of ordinary intelligence, have petitioned the Executive Branch and the Legislative Branch of the Federal Government to tell them specifically where in the Internal Revenue Law the average American citizen-worker is made liable to pay a direct, un-apportioned tax on the wages directly derived from his/her labor, or where the Internal Revenue Law requires the average private sector company to withhold the direct, un-apportioned tax from the wages of its' workers. In fact, Defendants have not, and cannot, show, demonstrate or otherwise factually explain where the Internal Revenue Law and Code imposes such a liability or requires such acts.

To repeat, the People's Petition for Redress of Grievances related to the direct, un-apportioned tax on labor, is but one of four Petitions for Redress of Grievances to which Defendants have refused to respond. This Complaint arose from four Petitions for Redress of Grievances, to wit:

- a) The War Powers Clauses of the Constitution and the Iraq Resolution.
- b) The Money Clauses of the Constitution and the Federal Reserve System.
- c) The "Privacy" and Due Process Clauses of the Constitution and the USA Patriot Act.
- d) The Taxing Clauses of the Constitution and the Direct, Un-Apportioned Tax on Labor.

By communicating information, associating with like minds, expressing facts and opinions, reciting grievances, protesting abuses and praying for answers to specific questions, The People have given expression essential to the end that Defendants are, and must be held responsive and accountable to the Constitution and to the sovereignty of the People and that Redress to which the People are entitled may be obtained by lawful and peaceful means.

Knowing that a Right that is not enforceable is not a Right and wishing to peaceably enforce their individual, unalienable Rights, and to defend the Constitutions war powers, money, privacy, due process and tax clauses, some Plaintiffs have found it necessary to give further expression to their Rights under the First Amendment to Speech, Assembly and Petition, by not withholding and turning over to the Government money earned in direct exchange for labor (i.e., not profit or gain “derived from” their labor, but money earned in exchange for their labor).<sup>1</sup>

Under the facts and circumstances, the retention of their money until their grievances are Redressed is not an abuse of any of their First Amendment Rights, but a Right that is inextricably intertwined with their Rights under the Petition and other clauses of the First Amendment, and any intervention by government against such exercise of these Rights represents a direct and substantive curtailment of The People’s Rights and is prohibited.

However, the Government is retaliating against The People by attempting to disqualify and discourage The People from taking a public position on matters in which The People are financially and politically interested, depriving The People of their Right to Petition, to Peaceably Assemble and to Speak freely in the very instance in which those Rights are of the most importance to The People. The Government is retaliating against The People under color of law in the following ways: by sending Plaintiffs threatening letters; placing liens on Plaintiffs’ property; levying and seizing Plaintiffs’ property and/or wages; raiding Plaintiffs’ homes and/or offices; forcing Plaintiffs to

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<sup>1</sup> “If money is wanted by Rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility.” Continental Congress To Inhabitants of Quebec, an Act passed unanimously by the Congress. **Journals of the Continental Congress. Journals 1:105-113.** “The privilege of giving or withholding our moneys is an important barrier against the undue exertion of prerogative which if left altogether without control may be exercised to our great oppression; and all history shows how efficacious its intercession for redress of grievances and reestablishment of rights, and how improvident would be the surrender of so powerful a mediator.” **Thomas Jefferson: Reply to Lord North, 1775. Papers 1:225.**

appear before administrative, civil and/or criminal tribunals; denying Plaintiffs due process; or by other enforcement actions.

The Government's retaliation against The People is without reasonable cause; it is not objective; there is no clear and present danger to the Government that would justify their punishment of The People for the direct exercise of popular sovereignty or for performing an act of self-governance; the Petition clause was included in the First Amendment to ensure the growth and preservation of orderly, peaceful, and democratic self-governance; The very nature of our government, republican in form, limited by the Constitution as it is, provides a guarantee of the Rights of The People, as citizens, to Assemble peaceably with other citizens for consultation with respect to public affairs, to Speak openly about the defects and abuses of governance and to effectively Petition the Government for a Redress of Grievances.

The Right to Petition is among the most precious of the liberties guaranteed by the Bill of Rights; the value in the Right of Petition as an essential element in the direct exercise of popular sovereignty and self-government is beyond question. It is as much The People's duty to question the acts and authority of Government, as it is the Government's duty to administer and obey their limited and delegated authority. See *New York Times Co. v. Sullivan*, 376 U.S. at 282.

The Government's refusal to respond to proper Petitions for Redress and, instead, its attempt to suppress the lawful exercise of The People's Right to Petition for Redress is the mark of tyranny.

Ultimately, this case is about the meaning and composite purpose of the First Amendment's role in securing unalienable Rights by holding Government accountable through the practical exercise of the inter-related Speech, Assembly and Press clauses of the First Amendment, in conjunction with the First Amendment's "capstone" clause – the Petition Clause.



## **PROCEDURAL HISTORY and DISPOSTION BY THE LOWER COURT**

The Government moved to dismiss the complaint (A-135) on the grounds that: 1) Congress has not authorized this manner of petition against the “sovereign” Government; 2) the Government “does not have to listen or respond” to The People’s petitions; 3) The People’s claims of retaliation are “legal conclusions cast in the form of factual allegations”; and 4), Congress did not authorize The People to enforce their Rights through the retention of money “as an avenue for the relief sought”

The People opposed the motion (A-165), arguing that: 1) the Petition Clause operates as a constitutional antidote to the doctrine of sovereign immunity; 2) the enumeration of the Right to Petition in the First Amendment cannot be construed to deny The People’s Right to a response – that is, the Government is *implicitly* obligated under the Constitution to respond by providing specific answers, just as the Government is *implicitly* obligated under the 26<sup>th</sup> Amendment to count the votes of the people who have voted; 3) the issue of “Impermissible Retaliation” is a material fact not at issue; and 4) the Right of Petition does not depend upon Congress for its enforceability and survives the schema of any act of Congress that infringes or abridges its guarantees (such as the Internal Revenue Code, the Anti-Injunction Act or the Tax Injunction Act).

In Reply, the Government raised additional arguments (A-225): 1) Government’s response to The People’s Petitions does not have to be “adequate”; 2) the Government *has* responded to The People’s Petitions; 3) The People have no Right to enforce their Rights by retaining their money until their grievances are Redressed because The People “can cite no case in which such a right is recognized...[and] history is replete with those who have sought to engage in civil disobedience by violating our nation’s tax laws”; and 4), a requirement that it respond to Petitions for Redress from the people could overwhelm Government.

In their Sur-Reply (A-237), The People argued that; 1) citizens have a constitutional right of access to the Government, and that the access must be "adequate, effective, and meaningful" to comport with the Constitution; 2) while these principles may be easier to state than to apply, the First Amendment right to petition, as currently interpreted, is a birthplace for the People's right of access to the Government, and the touchstone is meaningful access; 3) if The People's Right of access for the purposes of exercising self-government is to be "adequate, effective and meaningful," the Government must have an obligation to respond to The People's responsible Petitions for Redress; 4) no response or a non-responsive response by the Government is inadequate; 5) a government that governs according to the consent of The People and respecting the Rights thereof, would not be so overwhelmed by non-frivolous Petitions for Redress of Grievances regarding constitutional torts that the Government would reach its practical limitations to respond adequately, effectively and meaningfully; 6) *repeated* responsible Petitions to Government for Redress of Grievances that involve *constitutional torts*, that have gone *unanswered*, or that have been met with repeated injuries, can constitutionally be enforced by the People, by retaining their money until their grievances are Redressed, unless there is some other non-violent way for The People to enforce their Rights. The People asked the Court, rhetorically, "If the servant Government assumes no obligation to protect and defend the unalienable Rights of The People, and after a long course of repeated usurpations and violations of the People's Rights, upon what practical, effective and peaceful means might the People rely for Redress of their Grievances other than those expressly enumerated in the First Amendment of the United States Constitution?"; and 7), the absence of case law does not eviscerate The People's right to rely on the protection of the Constitution in constraining the extra-judicial actions of the Government.

The District Court disposed of the case by granting the Government's motion to dismiss for failure to state a valid claim for relief and by denying The People's motion for leave to file an amended complaint as futile. The People appealed. The Government did not file a cross-appeal.

## **STATEMENT OF FACTS**

On March 16, 2002, The People Petitioned the Government [Congress and the U.S. Attorney General] for violating the tax clauses of the Constitution. The People formally submitted a list of 538 specific questions to be answered. The questions were broken down into fifteen lines of inquiry. (Docket 7, Schulz Affidavit, Exhibit G). See (A-334) for a copy of Exhibit G. The Government has not answered the questions.

On November 8, 2002, The People petitioned every member of Congress and President Bush for Redress regarding violations of the war powers, money, "privacy" and tax clauses of the Constitution. The four Petitions, signed by thousands of Americans, requested answers to specific questions. (Docket 7, Schulz Affidavit, Exhibit ZZ). See (A-445) for a copy of Exhibit ZZ, including a copy of each of the four Petitions for Redress. The Government did not respond.

On May 10, 2004, The People again petitioned the Government [President Bush, Treasury Secretary Snow, and Attorney General Ashcroft] for violating the tax clauses of the Constitution. At the end of Attachment #1, The People requested answers to 38 specific questions. At the end of Attachment #2, The People requested answers to 5 specific questions. (Docket 7, Schulz Affidavit, Exhibits HHH and III). See (A-469) for Exhibit HHH and (A-474) for Exhibit III.

The failure of the Government to respond to The People's Petitions for Redress on the three dates that are mentioned in the paragraphs above were merely the latest of a string of similar injuries suffered by The People and that gave rise to this lawsuit. Other examples follow.

In May of 1999, The People had evidence that the Government was engaging in unconstitutional behavior by violating the tax clauses of the federal Constitution. The People petitioned the leaders of the Executive and Legislative branches of the Federal Government for Redress of that Grievance. The People respectfully asked the Government to participate in a symposium at the National Press Club to address the issues. The People requested answers, supported by documentary evidence, to three questions. (Docket 7, Schulz Affidavit, Exhibits M and N). See (A-248) for Exhibit M and (A-251) for Exhibit N. The Government did not respond.

On April 13, 2000, The People again petitioned the leaders of the Executive and Legislative branches of the Federal Government for violating the tax clauses of the federal Constitution. A delegation of The People, representing all 50 states, traveled to the District of Columbia. Three delegates met in the White House and in the Capitol with key aides to President Clinton, Speaker Hastert and Senator Lott, each of whom accepted a copy of a *Remonstrance* that included a statement of the grievance and a specific prayer for relief. (Docket 7, Schulz Affidavit, Exhibits R, S and T). See (A-260) for the Remonstrance, signed by Americans from each of the 50 states. The Government did not respond to the Remonstrance.

On April 2, 2001, The People again petitioned the Government for violating the tax clauses of the federal Constitution. The People petitioned the Senate Finance Committee, submitting a detailed statement of the grievance and requesting answers to two-dozen questions. (Docket 7, Schulz Affidavit, Exhibits H, I and J). The Government did not respond.

On April 15, 2002, The People petitioned Congress regarding violations of the tax clauses of the Constitution. Each member of Congress was served by at least one of their constituents with a record of the Citizens Truth in Taxation Hearing during which each of the 538 questions was asked of and answered by tax professionals. The People requested a full congressional hearing to address

the evidence and answer the questions. (Docket 7, Schulz Affidavit, Exhibits TT and XX). See (A-444) for Exhibit XX. The Government did not respond.

## **SUMMARY OF THE ARGUMENT**

The People's Petitions for Redress that gave rise to this case set a high standard. They meet or exceed any rational standard for Petitions protected by the First Amendment.

Because this is a case of first impression where the full contours of the meaning of the Petition Clause of the First Amendment has not been declared by any court in America, Plaintiffs' provide a detailed review of the history, meaning, effect and significance of the Right to Petition.

The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the Government consider *and respond* to their Petitions.

The lower court cited Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979) to support its opinion that The People failed to state a claim upon which relief could be granted. However, *Smith* is not on point, much less dispositive. The Court erred. The facts and circumstances of *Smith* are entirely different from those of the present case.

The Right to Petition Government for Redress of Grievances includes the Right of Redress *Before* Taxes, and the Right to Petition for Redress of Grievances includes protection from retaliation. The Founding Fathers clearly declared that the Right of Redress of Grievances *includes* the Right to withhold payment of taxes while the grievance remains.

Petitioning the Government for a Redress of Grievance naturally includes the ability to compel admissions – the production of information and answers to questions

### **I. THE PEOPLE'S PETITIONS FOR REDRESS ARE "PROPER"**

The term "Petition" is not defined in the Constitution. To be sure, a communication, to be protected as a Petition to the Government for Redress of Grievances would have to embody certain

components to ensure that the document was a Petition and not a "pretended petition." The People do not argue that all communications, nor just any document, can be regarded as a constitutionally protected Petition for Redress of Grievances. The People's Petitions for Redress that gave rise to this case set a high standard. They meet or exceed any rational standard for Petitions protected by the First Amendment. For instance, Plaintiff's Petitions for Redress:

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

## **II. GOVERNMENT IS OBLIGATED TO RESPOND TO PROPER PETITIONS FOR REDRESS OF GRIEVANCES**

### **A. Overview Of The History, Meaning, Effect And Significance Of The Right To Petition**

Because this is a case of first impression it is instructive to review the history of the Right to Petition.

Although the term "petition" is not defined by the Constitution, it is clear the United States Supreme Court has interpreted the "Petition Clause" to apply in a variety of circumstances, noting the right to petition the representatives of the people in Congress, to petition the Executive Branch, and the right of access to the courts. The Supreme Court has also determined that it is appropriate to

give an alleged intrusion on First Amendment rights particular scrutiny where the Government may be attempting to chill the exercise of First Amendment rights because the exercise of those rights would adversely affect the Government's own interests.

Although the courts have not previously addressed the precise issue presented here, the courts have recurrently treated the Right to Petition similarly to, and frequently as overlapping with, the First Amendment's other guarantees of free expression. See, e. g., NAACP v. Claiborne Hardware Co., 458 U.S. 886, 909-912, 915 (1982); Mine Workers v. Illinois Bar Assn., 389 U.S., at 221-222; Adderley v. Florida, 385 U.S. 39, 40-42 (1966); Edwards v. South Carolina, 372 U.S. 229, 234-235 (1963); NAACP v. Button, 371 U.S. 415, 429-431 (1963).

The Right To Petition is a distinct, substantive Right that has been violated; Government is obligated to respond and has failed to do so. Popular sovereignty depends upon and is directly exercised through The Peoples' Right of Response. Though the Rights to Popular Sovereignty and its "protector" Right, the Right of Petition for Redress have become somewhat forgotten, they took shape early on by Government's *response* to Petitions for Redress of Grievances.<sup>2</sup>

The Government is obligated to respond to Petitions for Redress of Grievances, especially when, as here, the oppressions are *ultra vires*, caused by unconstitutional government acts--

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<sup>2</sup> See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142(November, 1986); "SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986); "LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989); THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997); THE **VESTIGIAL CONSTITUTION: THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION**, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998); **DOWNSIZING THE RIGHT TO PETITION**, Gary Lawson and Guy Seidman, 93 Nw. U.L. Rev. 739 (Spring 1999); A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. L.J. 557 (1999) ; **MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE**, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000).

constitutional torts. The underlying, fundamental Right is not changed by the fact that the Petition Clause lacks an affirmative statement that Government shall respond to Petitions for Redress of Grievances. “It cannot be presumed, that any clause in the Constitution is intended to be without effect.” Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803).

For instance, while the 26<sup>th</sup> Amendment guarantees all citizens above the age of 18 the Right to Vote, it does not contain an affirmative statement that the Government shall count the votes. The enumeration in the Constitution of the Right to Vote and to Petition the Government for Redress of Grievances cannot be construed to deny or disparage the Right to have the Votes counted or the Right to a response to Petitions for Redress of Grievances.

The Right to Petition is a distinctive, substantive Right, from which other substantive First Amendment Rights were *derived*. The Rights to free speech, press and assembly originated as *derivative* Rights insofar as they were necessary to protect the *preexisting* Right to Petition. Petitioning, as a way of holding Government accountable to natural Rights, originated in England in the 11<sup>th</sup> century<sup>3</sup> and gained recognition as a Right in the mid 17<sup>th</sup> century.<sup>4</sup> Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.<sup>5</sup> Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.<sup>6</sup> Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.<sup>7</sup>

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<sup>3</sup> Norman B. Smith, “Shall Make No Law Abridging...”: Analysis of the Neglected, But Nearly Absolute, Right of Petition, 54 U. CIN. L. REV. 1153, at 1154.

<sup>4</sup> See Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in 5 THE FOUNDERS’ CONSTITUTION 197 (Philip B. Kurland & Ralph Lerner eds., 1987); 1 WILLIAM BLACKSTONE, COMMENTARIES 138-39.

<sup>5</sup> See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.

<sup>6</sup> See Smith, *supra* n.4, at 1165-67.

<sup>7</sup> See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)



In addition, the Right to Petition was widely accorded greater importance than the Rights of free expression. For instance, in the 18<sup>th</sup> century, the House of Commons,<sup>8</sup> the American Colonies,<sup>9</sup> and the first Continental Congress<sup>10</sup> gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.<sup>11</sup>

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate sections.<sup>12</sup> In addition, a “considerable majority” of Congress defeated a motion to strike the assembly provision from the First Amendment because of the understanding that all of the enumerated rights in the First Amendment were separate Rights that should be specifically protected.<sup>13</sup>

The zone of interest to be protected by the Petition Clause goes beyond the Clause itself to all natural Rights. The Petition Clause guarantees the Right to hold Government accountable to each provision of the Constitution through citizen participation in their Right to self-government.

Petitioning Government for Redress of Grievances has played a key role in the development, exercise and enforcement of popular sovereignty throughout British and American history.<sup>14</sup> In medieval England, petitioning began as a way for barons to inform the King of their concerns and to

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<sup>8</sup> See Smith, *supra* n4, at 1165.

<sup>9</sup> For example, Massachusetts secured the Right to Petition in its Body of Liberties in 1641, but freedom of speech and press did not appear in the official documents until the mid-1700s. See David A. Anderson, *The Origins of the Press Clause*, 30 UCLA L. REV. 455, 463 n.47 (1983).

<sup>10</sup> See *id.* at 464 n.52.

<sup>11</sup> Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning, whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n6, at 115-16.

<sup>12</sup> See *New York Times Co. v. U.S.*, 403 U.S. 670, 716 n.2 (1971)(Black, J., concurring). For the full text of Madison’s proposal, see 1 ANNALS OF CONG. 434 (Joseph Gales ed., 1834).

<sup>13</sup> See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).

<sup>14</sup> See Don L. Smith, *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations* 10-108 (1971) (unpublished Ph.D. dissertation) (Univ. Microforms Int’l); K. Smellie, Right to Petition, in 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 98, 98-101 (R.A. Seiligman ed., 1934).

influence his actions.<sup>15</sup> Later, in the 17<sup>th</sup> century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.<sup>16</sup> This broadening of political participation culminated in the official recognition of the right of Petition in the People themselves.<sup>17</sup>

The People used this newfound Right to question the legality of the Government's actions,<sup>18</sup> to present their views on controversial matters,<sup>19</sup> and to demand that the Government, *as the creature and servant of the People, be responsive to the popular will.*<sup>20</sup>

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify Government misconduct.<sup>21</sup>

By the nineteenth century, Petitioning was described as “essential to ... a free government”<sup>22</sup> – an inherent feature of a republican democracy,<sup>23</sup> and one of the chief means of enhancing Government accountability through the participation of citizens.

### **B. This Interest In Government Accountability Was Understood To Demand Government Response To Petitions.<sup>24</sup>**

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<sup>15</sup> The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5, at 187.

<sup>16</sup> See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5 at 187-88.

<sup>17</sup> In 1669, the House of Commons stated that, “it is an inherent right of every commoner in England to prepare and present Petitions to the House of Commons in case of grievances, and the House of Commons to receive the same.” Resolution of the House of Commons (1669), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5 at 188-89.

<sup>18</sup> For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Smith, *supra* n.4, at 1160-62. James II's attempt to punish the bishops for this Petition led to the Glorious Revolution and to the enactment of the Bill of Rights. See Smith, *supra* n.5 at 41-43.

<sup>19</sup> See Smith, *supra* n.4, at 1165 (describing a Petition regarding contested parliamentary elections).

<sup>20</sup> In 1701, Daniel Defoe sent a Petition to the House of Commons that accused the House of acting illegally when it incarcerated some previous petitioners. In response to Defoe's demand for action, the House released those Petitioners. See Smith, *supra* n.4, at 1163-64.

<sup>21</sup> See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

<sup>22</sup> THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 531 (6<sup>th</sup> ed. 1890).

<sup>23</sup> See CONG. GLOBE, 39<sup>th</sup> Cong., 1<sup>st</sup> Session. 1293 (1866) (statement of Rep. Shellabarger) (declaring petitioning an indispensable Right “without which there is no citizenship” in any government); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 707 (Carolina Academic Press ed. 1987) (1833) (explaining that the Petition Right “results from [the] very nature of the structure [of a republican government]”).

<sup>24</sup> See Frederick, *supra* n.7 at 114-15 (describing the historical development of the duty of government response to Petitions).

American colonists, who exercised their Right to Petition the King or Parliament,<sup>25</sup> expected the Government to receive *and respond* to their Petitions.<sup>26</sup> The King’s persistent refusal to answer the colonists’ grievances outraged the colonists and as the “**capstone**” grievance, was a significant factor that led to the American Revolution.<sup>27</sup>

Frustration with the British Government led the Framers to consider incorporating a people’s right to “instruct their Representatives” in the First Amendment.<sup>28</sup> Members of the First Congress easily defeated this right-of-instruction proposal.<sup>29</sup> Some discretion to reject petitions that “instructed government,” they reasoned, would not undermine Government accountability to the People, as long as Congress had a duty to consider petitions *and fully respond to them*.<sup>30</sup>

Congress’s response to Petitions in the early years of the Republic also indicates that the original understanding of Petitioning *included a governmental duty to respond*. Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.<sup>31</sup>

Congress referred Petitions to committees<sup>32</sup> and even created committees to deal with particular types of Petitions.<sup>33</sup> Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report.<sup>34</sup>

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<sup>25</sup> See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS’ CONSTITUTION, *supra* n5 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), reprinted in *id.* at 198.

<sup>26</sup> See Frederick, *supra* n7 at 115-116.

<sup>27</sup> See THE DECLARATION OF INDEPENDENCE para. 30 (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS’ CONSTITUTION, *supra* n5 at 199; Lee A. Strimbeck, The Right to Petition, 55 W. VA. L. REV. 275, 277 (1954).

<sup>28</sup> See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.

<sup>29</sup> The vote was 10-41 in the House and 2-14 in the Senate. See *id.* at 1105, 1148.

<sup>30</sup> See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n15, at 1093-94 (stating that representatives have a duty to inquire into the suggested measures contained in citizens’ Petitions) (statement of Rep. Roger Sherman); *id.* at 1095-96 (stating that Congress can never shut its ears to Petitions) (statement of Rep. Elbridge Gerry); *id.* at 1096 (arguing that the Right to Petition protects the Right to bring non-binding instructions to Congress’s attention) (statement of Rep. James Madison).

<sup>31</sup> See STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99<sup>TH</sup> CONG., 2D SESS., PETITIONS, MEMORIALS AND OTHER DOCUMENTS SUBMITTED FOR THE CONSIDERATION OF CONGRESS, MARCH 4, 1789 TO DECEMBER 15, 1975, at 6-9 (Comm. Print 1986) (including a comment by the press that “the principal part of Congress’s time has been taken up in the reading and referring Petitions” (quotation omitted)).

<sup>32</sup> See Stephen A. Higginson, Note, *A Short History of the Right to Petition the Government for the Redress of Grievances*, 96 YALE L. J. 142, at 156.

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

The Supreme Court has characterized the interest underlying the Petition Right broadly as an interest in self-government. *McDonald v. Smith*, 472 U.S. 479, 483 (1985).

The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the Government consider and respond to their Petitions.

Petitioning the Government for Redress of Grievances is the only non-violent way the plaintiffs have to hold their Government accountable to its primary role of protecting the individual's, unalienable rights. If the Government of the People cannot be held constitutionally obligated to listen and honestly respond to The People's proper and responsible Petitions for Redress, individual Rights will be predictably and irretrievably lost.

The historical record shows that the Framers and ratifiers of the First Amendment clearly understood the Petition Right as distinct from the ancillary Rights of free expression and the other First Amendment Rights, and that it included the Right to a response.

The zone of interest that is uniquely served by Petitions for Redress is the Constitution itself, *all* of it, each natural Right, enumerated and un-enumerated. Without the Government's obligation to respond to Petitions for Redress of Grievances, the People have no non-violent way to enforce the rules laid out in the founding documents to govern the ongoing contest of Freedom in America. Freedom is a fragile thing, never more than a generation away from extinction. Freedom is not to be considered as inherited. It needs to be defended against Government misconduct by each generation. The Petition is to the individual and the minority as the Ballot is to the majority. Take away the

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<sup>33</sup> See H.J., 25<sup>th</sup> Cong., 2d Sess. 647 (1838) (describing how petitions prompted the appointment of a select committee to consider legislation to abolish dueling).

<sup>34</sup> See Higginson, n34 at 157.

Government's obligation to respond and we take away the Right to Petition. Take away the Right to Petition and we take away the ability to limit the Government to our written constitutions, State and Federal. The People have a Right to a response to their proper Petitions for Redress. To say otherwise is to deny the Right to Petition.

Non-responsive "responses," including silence, are repugnant to the Petition Clause, and The People have an unalienable Right to peaceably enforce each of their unalienable Rights, without disturbing the public tranquility when the Government refuses to respond to proper Petitions for Redress. *Any Right that is not enforceable is not a Right.* The only non-violent means by which The People can ultimately keep an arrogant, recalcitrant Government from acting without authority is by retaining their money until their grievances are redressed.

### **C. The Lower Court Erred In Relying On *Smith v. Arkansas***

The lower court cited Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979) to support its opinion that The People failed to state a claim upon which relief could be granted. However, *Smith* is not on point, much less dispositive. The Court erred. The facts and circumstances of *Smith* are entirely different from those of the present case.

In Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979), the controversy was between a unit of State government (Arkansas State Highway Commission) that adopted a rule by which it would only address individual grievances that were initiated by individual public employees rather than by the employee's union, and the public employee union that claimed that the public employer's grievance procedure violated the First Amendment. The Court held that, "the First Amendment protects the right of an individual to speak freely, to advocate ideas, to associate with others, and to petition his Government for redress of grievances. And it protects the right of associations to engage in advocacy on behalf of its members...the First Amendment is not a

substitute for the national labor relations laws ... all that the Commission has done in its challenged conduct is simply to ignore the union. That it is free to do... that the First Amendment does not impose any affirmative obligation on the Government to listen, to respond or, in this context to recognize the association and bargain with it.”

The facts and circumstances of Smith are clearly differentiated from the facts and circumstances in the instant case, which deals not with legislative or executive discretionary policymaking, but with the non-discretionary, bedrock and inviolate fundamental Rules of governmental conduct laid out in the ultimate rule book – the federal Constitution, and The People’s ability to use the Petition Clause to hold the Executive and Legislative branches of the Federal Government directly accountable the Constitution when those Rules are violated.

*Smith* dealt with public *policymaking* by state government -- the adoption of public acts, statutes, general laws, regulations, resolutions, ordinances and the like – rules designed and adopted by Government to govern the conduct of the People and associations of People – and whether the proper state machinery and constitutional safeguards (such as due process, and free speech) were being breached, either in the adoption of the rule or in its application.

Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915), was a controversy between a unit of local government (Tax Commission of the City of Denver) that adopted a rule that increased the valuation of the property tax, and a corporate property owner who claimed its due process Rights were violated because the Commission did not issue a public notice of the pending public policy and give everyone an opportunity to be heard. In *Bi-Metallic*, the court ruled that statutes that were within the state’s discretionary power (i.e., that are not repugnant to the State or federal constitutions) were constitutional without providing individuals a full opportunity to be heard. The court ruled, in effect, that when it comes to the adoption of public policy rules and

regulations, where the proper state machinery has been used, “there must be a limit to individual argument in such matters if government is to go on,” and that if the people are not happy with the discretionary, political rules as adopted the People can vote the rule maker out of office. The facts and circumstances of *Bi-Metallic* are clearly differentiated from the facts and circumstances in the instant case, which deals with Constitutional torts and the People’s natural Right to hold Government accountable to the Constitution.

Minnesota State Board For Community Colleges v. Knight et al., 465 U.S. 271 (1984), was another controversy dealing with political, discretionary, institutional policymaking, and specifically with collective bargaining between public employees and public employers, including negotiations between community college instructors and college administrators. The case and controversy in Knight involved challenges to discretionary, political, employment-related, State statutes and policies, not challenges to non-discretionary, non-political, Government acts that are violative of and repugnant to various provisions of the Constitution.

Justice O’Connor, writing for the majority in Knight held that, “ It is inherent in a republican form of government that direct public participation in government *policymaking* is limited.” (emphasis added by Plaintiffs).

The concurring opinion of Justice Marshall in Knight is instructive if not dispositive. He wrote, “I think that the constitutional authority of a government decision maker to choose the persons to whom he will and will not listen prior to making a decision varies with the nature of the decision at issue and the institutional environment in which it must be made. Cf. Healy v. James, 408 U.S. 169, 180 (1972). (“First Amendment rights must always be applied ‘in light of the special characteristics of the ... environment’ in the particular case.”) (quoting Tinker v. Des Moines Independent School District, 393 U.S. 503, 506 (1969)... The difficult task of giving shape to these

First Amendment rights and of assessing the state interests that might justify their abridgment can, however, be *left to another day* because the proofs in these cases do not establish the kind of impairment of the ability of faculty members to communicate with administrators that would, in my view, give rise to constitutional difficulty.” (emphasis added).

In other words, Justice Marshall made clear in *Knight*, a case that was decided in 1984, seven years *after Smith v. Arkansas*, that the Supreme Court had not yet given shape to the Right to Petition, that the contours of the Right had not yet been fully defined, and that that task was being “left to another day.” The full contours of the meaning of the Right to Petition had not yet been defined in 1979, the year that the Supreme Court decided *Smith v. Ark. State Highway Employees, Local 1315*, 441 U.S. 463 (1979).

#### **D. Retaliation Is Not A Permissible Response**

By communicating information, and praying for answers to specific questions, The People have given expression essential to the end that government Defendants may be responsive. See *McDonald v Smith* (1985) 472 US 479; *New York Times Co. v. Sullivan*, 376 U.S. 254 at 266, 269.

The First Amendment Right to Petition Government for Redress of Grievances includes protection from retaliation. A retaliatory action is one brought with a motive to *interfere* with the exercise of protected Rights. A clear and present danger to the public interest is required before the Government can restrict Rights. Defendants make no such claim.

The Government’s retaliation against The People is without reasonable cause; it is not objective; there is no clear and present danger to the Government that would justify their punishment of The People for performing a self-government function. The Petition clause was included in the First Amendment to ensure the growth and preservation of democratic self-governance.



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

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

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

If the ability to enforce the right to petition by communicating to one's representative could be arbitrarily ignored, refused, suppressed or punished, popular sovereignty is threatened. See G. WOOD, The Creation Of The American Republic 1776-1787, at 363 (1969).

Petitions are tied to distrust of and the imperfect nature of government officials and to a refusal by elected representatives to equate or subordinate their will to the Rights of individuals. Undue assertions of parliamentary privilege and punishing petitioners who were said to menace the dignity of the assembly jeopardize the institution of petitioning. Higginson, 96 Yale L.J. 142, n45.

Before a First Amendment right may be curtailed under the guise of a law, including the internal revenue laws, 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. 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.

There is no evidence in the Record of anything but Plaintiffs' open, honest and humble actions in relation to the Petition process. There is nothing in the record of any inappropriate or untoward behavior by Plaintiffs.

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

Defendants are moving to silence The People, who question Government's behavior and preach a nonconformist doctrine, that is, "the Government has an obligation to hear and answer the People's Petitions for Redress of Grievances and the People have a Right to enforce their Rights which includes retaining their money until their Rights are Redressed." Such abuse of police power is usually sought to be justified by some legitimate function of government.

The Government does violence to the First Amendment when it attempts to turn a reasonable and legitimate "Petition for Redress of Grievances" into a statutorily based charge of "promotion of an abusive tax shelter," under color of the internal revenue laws.

#### **E. Answers To Questions Is The Only Legitimate Response**

Petitioning the Government for a Redress of Grievance naturally includes the ability to compel admissions – the production of information and answers to questions. Jefferson wrote:

“The right of freely examining public characters and measures, and of free communication among the people thereon...has ever been justly deemed the *only effectual guardian* of every *other* right.”

### **III. THE RIGHT TO PETITION INCLUDES THE RIGHT OF REDRESS BEFORE TAXES**

In America, the right to Petition Government officials for Redress of Grievances is the basis of Liberty. The founders explicitly recognized this right in the very first amendment to the Constitution for they understood that without it, The People could not have a government whose power is defined and limited by the consent of the People.

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 1<sup>st</sup> Amendment, the founding fathers secured for posterity the Right of Redress of Grievances *before* payment of Taxes and they made the Right of Redress *before* Taxes operate against “*the government,*” that is, against *all branches* of “the government,” – the legislative, the executive and the judicial branches. Redress reaches all.

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

As the record in the instant case reveals, conventional methods of Petitioning have been shut off to The People. Unconventional methods of Petitioning [such as redress before taxes] are

protected as long as the Assembly and Petition are peaceful. The Right of Redress *before* Taxes is a peaceful, integral part of the Right to Petition for Redress of Grievances.

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

Plaintiffs have an inherent, unalienable Right to *Redress Before Taxes*, guaranteed by the First and Ninth Amendments. Under the facts and circumstances of this case, the People’s retention of their money until their grievances are Redressed is consistent with and protected by the Right to Petition. It remains as the only peaceful method of enforcing the Right to Petition available to The People, absent an effective declaration by the Court constraining the Defendants to respond to the Petitioners.

### **THE LOWER COURT’S DICTUM**

After opining that the Government does not have to listen or respond to The People’s Petitions for Redress of Grievances, the Opinion of the Lower Court went on to address other matters such as Congress’ provisions of methods for challenging the legality of IRS enforcement actions, civil disobedience, liability for false and fraudulent returns, and the Anti-Injunction Act, the Declaratory Judgment Act. These opinions are not vital to the principal issue of the case.

If the Government does not have to listen or respond to The People’s proper Petitions for Redress of Grievances, then there is no Right to Petition the Government for Redress of Grievances relating to the war, tax, money, privacy, due process or any other provision of the Constitution. If there is no Right to Petition the Government for Redress of Grievances, there is no Right of Redress

*Before Taxes.* If there is no Right of Redress *Before Taxes*, there is no Impermissible Retaliation. If there is no Impermissible Retaliation, The People are on their own without the rule of law and with only the ballot to protect them from the whims of man.

## CORRECTIONS

On page 3 of its Opinion and Order, the lower Court wrote, “Plaintiffs contend that...defendants have committed constitutional torts against plaintiffs in failing to respond to their petitions.” This is not quite accurate. In point of fact, Plaintiffs’ contention is that the defendants have committed constitutional torts *by violating the war powers, money, privacy, tax and due process clauses of the Constitution* and that Defendants have compounded their constitutional problems by failing to respond to The People’s Petitions for Redress of those Grievances.

On page 6 of its Opinion and Order, the lower Court wrote, “In light of the preceding discussion and the Court’s ruling granting the defendants’ motion to dismiss the complaint, plaintiffs’ motion for leave to amend their complaint to add additional defendants, including ...the Commissioner of the Internal Revenue Service...as well as adding 1,600 plaintiffs, shall be **DENIED** as futile.” In fact, Plaintiffs did not move the District Court to add the Commissioner of the IRS as a party- defendant. He was already a named defendant in the case. In addition, Plaintiffs did not move the Court to add 1,600 plaintiffs. In fact, there are approximately 1,700 named plaintiffs in the case. The motion included a request to add approximately 200 additional plaintiffs.

## CONCLUSION

Under the Constitution, Petitioning for Redress is not a Right that is given only to be so circumscribed that it exists in principle but not in fact. The Right to Petition the Government for Redress of Grievances is nothing short of the **capstone** Right through which all other Rights are peacefully enforced and the sovereignty of The People is directly exercised by Individuals.

In order for the Government to justify its failure to respond, it must be able to show that its non-responsiveness was caused by something more than a mere desire to avoid discomfort, unpleasantness or practical difficulty. There must be a clear and present reason for the Government to trespass upon the First Amendment. No such reason is in evidence in the Record.

The complaint in this case clearly sets forth a valid claim for which the requested relief can be granted.

WHEREFORE, the Plaintiffs, respectfully request the Court enter an Order:

a. Granting declaratory relief to the Plaintiffs by constraining the defendants to meet their obligations under the law and Constitution and relevant rules by entering into good faith exchanges with the Plaintiffs and to provide to the Plaintiffs documented and specific answers to the reasonable questions asked of them by the Plaintiffs and to address each of the issues in their official respective capacities as raised by the Plaintiffs in their various Petitions to representatives of the United States Government; and

b. Granting a temporary injunction against the United States Internal Revenue Service and the Department of Justice and any other agency of the United States that arguably may act in this matter under color of law, from taking any further retaliatory actions against the named Plaintiffs in this proceeding and against all others similarly situated, whether such retaliation is for attempting to Petition the United States Government, for Peaceably Assembling and associating with other individuals under the umbrella and auspices of the We The People Foundation For Constitutional Education or the We The People Congress, for serving as Plaintiffs in this action or for the exercise of any other rights protected by the Constitution of the United States; and

c. Retaining jurisdiction of this action to ensure compliance with the Court's decisions; and

d. Granting any other, non-financial relief to the Plaintiffs that the Court may deem just and proper.

**CERTIFICATE OF COMPLIANCE**

In keeping with Rule 28.1(e)(2) and 32(a)(7)(B), this brief contains 8,584 words.

Dated: February 22, 2006

Respectfully Submitted,

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