

ORAL ARGUMENT HEARD ON OCTOBER 6, 2006

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

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

APPELLANTS' REPLY IN SUPPORT OF EMERGENCY MOTION

Mark Lane, counsel for all Plaintiffs-Appellants, with the exception of Robert L. Schulz, and Robert Schulz, who is *pro se*, submit this reply to Appellees' opposition to the instant motion and state as follows:

**The People Have Shown Impracticality Of
Motioning District Court For The Injunction**

Contrary to Appellees' (hereinafter the "Government") assertion, Appellants' (hereinafter the "People") have shown the impracticality of first applying to the District Court for an order granting an injunction while the appeal is pending.

This is a motion for an injunction pursuant to Rule 8(a)(1)(C), not a motion for a stay of a judgment or order pursuant to Rule 8(a)(1)(A).

Pursuant to Rule 8(a)(2)(A), the People have shown that moving first in the district court would be impracticable. The motion for an injunction is supported by “affidavits, declarations and all prior pleadings.” (Mot. 1).

This motion was filed long after this Court obtained jurisdiction, after the matter was fully briefed to this Court and within two days of oral argument before this Court.

The District Court’s dismissal was on the merits (the government does not have to listen or respond to the People’s Petitions for Redress of Grievances). The lower court THEN denied the People’s request for injunctive relief. A motion to stay the enforcement of such an order would be meaningless and impracticable whether filed soon after it was issued in August of 2005 or in October of 2006.

Any such injunction would have had to rest, in part, on a likelihood of success on the merits, arguments more practically made on appeal.

In addition, the People’s position has changed dramatically since the lower Court’s decision. The irreparable harm the People are now in need of relief from (obstruction of Justice and denial of fundamental, natural Rights) was not a factor until after the decision by the lower court and has now become intolerable: Agent Gordon’s letters to Plaintiffs and donors; IRS liens and its seizure of wages, pension and investment accounts, Social Security payments, and real property; Agent Sciame’s audit of the Foundation with its focus on the people providing

services to the Foundation; Agent Engel's and Agent Cox's actions against Foundation Board members; Agent Roundtree's and Agent Cox's summonses to PayPal for donor identities; and Agent Addington's summons for Schulz's personal bank records seeking identities of family and friends who are helping Schulz.¹

The People Have Shown A Strong Likelihood Of Succeeding on the Merits

The Government argues that the People have failed to show an applicable waiver of the Government's sovereign immunity to its suit.

As the People have argued, they can't prove a negative. In this case there is no sovereign immunity for the government to waive. The People have presented the court with two constitutional questions: 1) Does the First and Ninth Amendments to the U.S. Constitution obligate the Government to respond with specific, formal answers to the questions included in the People's four Petitions for Redress of Grievances?; 2) Does the First and Ninth Amendments to the U.S. Constitution guarantee the Right of the People to withdraw their financial support from the federal government if the government refuses to respond to the People's Petitions for Redress of Grievances?

¹ The People's instant motion and Schulz's 10/4/06 Declaration showed that IRS Agent Addington had threatened to formally summon Schulz's personal records from his bank if Schulz did not provide those records to Addington by 9/21/06. As the Declaration by Schulz dated 10/18/06 demonstrates, Addington served the Summons on October 12, 2006, requiring the Bank to turn over the records by November 7, 2006.

The Government's sovereign immunity umbrella does not extend to the Constitution; it does not protect the Government from the fallout from its constitutional torts. There must be, and there are, limits to Government's immunity from suit.

The Government cannot take itself outside the reach of the People. The People never gave Congress the power to act without constitutional restraint and judicial review. The government does not have the unilateral prerogative to interpret its own authority to act unchecked outside the limited powers delegated to it by the terms and conditions of the Constitution. If the Government believes a change to a more totalitarian form of government would be desirable in America it needs to follow the procedure set down in Article V of the Constitution to obtain the change.

As it is, individuals and minorities do not depend upon the ballot box for their freedoms; they depend on the spirit and intent of the Constitution.

Contrary to the Government's self-serving and baseless notion, the People do not need Congress's permission to seek from the Court a declaration of Government's obligations and the People's Rights under the Constitution. The People have the ultimate power in our society and are truly sovereign.

Therefore, contrary to the Government's assertion, the Court has jurisdiction and does not need Congress's permission to decide this case on the merits. Article

III of the U.S. Constitution, the Petition Clause of the First Amendment and the Ninth Amendment guarantee the People's Right to pursue judicial remedies for *unconstitutional* government conduct. The Petition Clause's affirmation of government suability operates as a constitutional antidote to the doctrine of sovereign immunity.

Even if there was no constitutional basis for judicial review (which is certainly not the case), 5 USC Section 702 is a statutory basis for judicial review in this case, which is an action for declaratory and injunctive relief with no demand for money damages.

Besides the sovereign immunity issue, the Government is once again, asserting, *without a scintilla of evidence* and without rebutting the People's legal argument, that the Government is not obligated to respond to the People's Petitions for Redress by answering the questions, and that the People do not have the Right to enforce their Rights, until their Grievances are Redressed, without retaliation and harassment by the Government.

The Government does harm to its position by not refuting any element of the extensive body of documentary evidence and legal precedent relied upon by the People in support of their position that the government is *obligated* to respond and the People have the *Right* of enforcement if it does not respond.

The People Have Shown Irreparable Harm

The People have shown in their motion (Mot. 18-19) and supporting Declarations and Affidavits the irreparable harm they are suffering.

The Government does not deny the People's claims of irreparable injury. Instead, the Government argues that the irreparable injury being experienced by the People is authorized "by statute."

In reply, the People argue once again that the People are enforcing their constitutionally guaranteed Rights and no act of Congress can trump the Constitution to deny individuals their unalienable Rights. If the Constitution prohibits Congress from passing any law that would abridge the Right of the People to Petition the Government for Redress of constitutional torts, then Congress is obligated to respond to the Petitions and if Government does not respond, the People have the Right to enforce their Right, in this case by peaceably and without "disturbing the public tranquility," by retaining their money without retaliation, harassment or further abuse.

The absence of a determination by this Court of the People's higher order constitutional questions represents a constitutional bar to a determination by this Court of the lower order statutory questions presented by the Government in its defense.

The Government is quick to point to statutes. However, the Government has not offered any argument to refute the People's argument that no act of Congress can trump the Constitution and that the People are being irreparably harmed.

Finally, the People argue that even if there was no constitutionally mandated order of decisions (that is, that a statute could trump the constitution) there is no statute that authorizes the Government to obstruct justice and, in fact, 18 USC 1503 prohibits it.

**The People Have Shown That The Public Interest
Would Be Served If The Injunction Is Granted**

The People have shown how the Constitution and therefore the public interest would be served if the Injunction is granted: obstruction of justice and the denial of First Amendment, Due Process, Privacy and Property Rights would end.

Compared to the enormity of the harm to the People if the Injunction is denied, if the injunction is granted any harm to the Government and the public interest would be *de minimus* ; a balancing of the equities argues heavily for the injunction.

The Government has not attempted to quantify what would be an obviously negligible harm to other parties if the injunction issues.

The Government's argument that the injunction will interfere with the Government's on-going investigation of a *potentially* abusive tax shelter under Section 6700 can be safely put out of view. There is no specificity of any harm in

this general statement. In addition, the People have shown that the on the merits, the People's Petition Process is anything but an abusive tax shelter.

Once again, the Constitutional question must be determined before the Government is allowed to continue wrecking lives and obstructing justice under an investigation of the People's Petition process as a *potentially* abusive tax shelter – a bogus claim to be sure.

The Judiciary, not the Executive, must be the branch that *first* decides if the People's Petition process is unconstitutional. If, after the People are ruled correct on their interpretation of their Rights and the Government's obligations, the Government has in the meantime irreparably harmed the People, the People's victory will be a Pyrrhic victory for no amount of money will make the Plaintiffs whole again.

Contrary to the Government's allegation, the People are not seeking judicial interference with the assessment and collection of taxes against "all individual taxpayers." (Response, 13). The injunction requested would apply only to the Plaintiffs in the present case and to those whose identities the IRS obtained by such means as third-party summonses where the target was a plaintiff.

If the motion is granted, the Government will be temporarily restrained from enforcing various aspects of the Internal Revenue Code against a very limited number of Plaintiffs (and those whose identities the Government obtained).

However, from the perspective of the public interest, in a worst-case scenario (the injunction issues and the Judiciary eventually declares the Government is not obligated to respond to the People's Petitions for Redress and, consequently, the People did not have a Right that needs to be enforced), the Government may temporarily suffer a negligible loss of tax revenue allegedly owed by the Plaintiffs. This loss, obviously *de minimus* in nature, is as a matter of fact, of no practical detriment or impediment to a government with a 2.7 trillion dollar budget that prints whatever money it needs to cover its self-induced deficits.

However, the relatively small loss of revenue would arguably have been quickly and totally offset by the redirection of government officials, investigative expenses and administrative energies currently being employed in the Government's WTP 6700 program. These "freed up" resources would arguably be enthusiastically redeployed against actual and more pressing threats to the nation, resulting in virtually zero net loss to the government.

Summary Re Balancing of the Equities

If the injunction is issued, the Government will, in relative terms, suffer virtually no loss or disruption, save a temporary loss of revenue that is *de minimus* to such an extent as to be unnoticeable. Its essential functions will continue virtually undisturbed, its taxing and money making machinery intact and fully operational.

Plaintiffs, on the other hand, face individually and collectively the certain and virtual annihilation of their Rights without this injunction. If the injunction is not issued the People will continue to suffer the injuries detailed in the motion papers, both in terms of their individual stress, household budgets, assets, marriages and health, and in terms of their individual Rights to Speech, Assemble, Petition, Due Process Privacy and Property.

**The Anti-Injunction Act
Is No Bar To The Injunction**

The Government devoted six and one-half pages of its Response Brief to its argument that the Anti-Injunction Act prohibits the Court from granting the People's request for injunctive relief. In their Reply Brief, the People devoted an equal number of pages to rebuttal arguments.

In its opposition to the instant motion, the Government has repeated the arguments from its Response Brief. In Reply, the People re-allege the arguments on pages 16-23 of its Reply Brief, as if presented here.

The Anti-Injunction Act is no bar to a grant of the motion. The Petition Clause survives the statutory schema of the Anti-Injunction Act; otherwise the Act would be unconstitutional as applied. The Act cannot be invoked to diminish the fundamental Right to Petition the government for a Redress of Grievances involving constitutional torts.

The People's request for injunctive relief is made to prevent the Government from irreparably harming the People and eviscerating the Constitution's Petition Clause to escape accountability.

CONCLUSION

For the foregoing reasons, the People's motion should be granted.

Respectfully submitted,

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MARK LANE
2523 Brunswick Road
Charlottesville, VA 22903
Phone: (434) 293-2349

ROBERT L. SCHULZ, pro se
2458 Ridge Road
Queensbury, NY 12804
Phone: (518) 656-3578