

**ORAL ARGUMENTS WERE HEARD OCTOBER 6, 2006**

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

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

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**APPELLANT’S MOTION FOR  
POST ARGUMENT COMMUNICATION**

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In support of this motion for post-argument communication Appellant Robert Schulz states as follows:

From the time of the filing of this case in July of 2004, Attorney Mark Lane has been representing all Plaintiffs except Robert Schulz, who has been *pro se*. This has been clearly stated in each of Plaintiffs’ pleadings.

The Court ordered that at oral argument it would only hear from one counsel per side. This meant that either Lane or Schulz, but not both of them could argue – that is, they could not share the 10 minutes of allotted time.

The order meant that either Schulz or the 1435 Appellants represented by attorney Lane would be heard. Lane and Schulz agreed that Lane would argue, meaning Schulz would not have the same appeal rights as the other Appellants.

Had Schulz been allowed to argue, he would have argued as follows:

### **I. THE PUBLIC FISC COULD BE AFFECTED**

This is an action for declaratory and injunctive relief.

Putting aside the issue of injunctive relief, the Court has been asked to declare Plaintiff's Rights under the Petition Clause of the First Amendment. Specifically, the Court has been asked to determine two questions: 1) Whether the government is obligated under the Constitution to respond with specific, official answers to the questions put forth by the Plaintiffs in their Petitions for Redress of Grievances; and 2) Whether the Plaintiffs may retain their money without retaliation by the Government until their Grievances are Redressed if the Government fails in its constitutional duty to respond (App. Brief, 1-2).

With regard to the Appellants, the public fisc could be impacted temporarily, albeit negligibly, if the Court ruled that under the Constitution's Petition Clause the Government is obligated to respond to these Petitions for Redress, and that these Appellants have the Right to enforce that Right by withdrawing their financial support from the Government *until their Grievances are Redressed, because the Government refused to respond to the Petitions for Redress.*

Once the Government violates the Petition Clause by refusing to respond to proper Petitions for Redress, any money sent to the Government would be on a voluntary basis, i.e., the People would no longer be obligated to provide financial

support to the Government. That is, Appellants would owe the federal Government nothing.

Regardless, the adverse impact on the public fisc from such a judgment in the context of this case would not be noticeable in an annual budget of \$2.7 trillion.

However, should the Government fail to respond to future and proper Petitions for Redress of constitutional torts the adverse impact on the public fisc could become more significant. The ongoing choices the Government makes with regard to continuing to indulge the majority and those in positions of influence by abusing its limited powers under the Constitution will ultimately determine the magnitude of such impact. As distasteful as such a result may be, our form of government, and the future of Liberty itself, require the protection of the fundamental, unalienable Rights of the Appellants. The unpleasant fact that the public fisc may be impacted by achieving the ends of justice in this case or by those in the future that may choose to exercise their Right to Petition to resolve future *Constitutional torts*, cannot be used to deny Appellants the enjoyment of their individual, unalienable Rights.

## **II. SOVEREIGN IMMUNITY IS NO BAR**

Notwithstanding the fact that the public fisc could be adversely affected, the Government's limited umbrella of sovereign immunity cannot bar the action or the relief because it does not extend to the Constitution; it does not protect the

Government from the ramifications of its constitutional torts. There are, and must be, constitutional “bright-lines” that limit Government’s immunity from accountability to the Constitution, the Law and judicial review.

The Government cannot take itself outside the reach of the People. The People have never given Congress the power to act without constitutional restraint and subsequent judicial review. The People possess the ultimate power in our society and have always been the true sovereigns. (See for example, *YICK WO v. HOPKINS*, 118 U.S. 356 (1886))

Article III of the U.S. Constitution, the Petition Clause of the First Amendment, and the Fourth, Fifth, Ninth and Fourteenth Amendments guarantee Appellants’ Rights to pursue judicial remedies for *unconstitutional* government conduct. The Constitution’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. *Withdrawing voluntary financial support from the government is not the same as receiving money from the Government’s treasury. Not giving the Government money it is fundamentally not entitled to does not constitute a monetary claim against the Government.*

An effect on the fisc that ensues from the exercise or judicial protection of a fundamental Right cannot be used to justify the infringement of the underlying Right, in this case the Right to Petition and the Right to withhold money to secure Redress. Such a result would inevitably justify the annihilation of virtually all fundamental Rights.

Despite the fact that Appellants admit that their withholding of money from the Government to secure Redress may admittedly impact the fisc, and that the exercise of such Right effectively results in the temporary suspension of the enforcement of the tax laws against those honorably seeking Redress and who are exercising such Right of retention, these factors alone *do not give license to the Government to unilaterally alter the fundamental limitations on government authority set forth in the Constitution*, nor transform the Natural and Lawful fiduciary relationship that exists between the People and the government they created, nor can it abolish the fundamental Right of the People to directly hold their servants accountable for the limited, Constitutional purposes those servants have been tasked with.

The government can produce nothing that would limit or deny the exercise or enforcement of the Right of Petition by individual natural citizens. It could not, for **“Congress shall make no law...abridging...the right of the People...to petition the government for redress of grievances.”**

### **III. SILENCE IS ADMISSION**

Silence, where there exists a duty to speak is, by Law, admission. If the Government decides not to respond to proper Petitions for Redress the “response” is a non-responsive response. In that case, the People have the Right to enforce their Right by retaining their money until their Grievances are Redressed.

### **IV. IN THIS CASE, ANSWERS WOULD BE A REMEDIAL ACTION**

The Right to Petition the Government for Redress of Grievances includes the Right to Admissions.

The questions embodied in each of the four Petitions for Redress of Grievances were carefully crafted. Each included a statement of fact preceded by the words “Admit” or “Admit or deny.” No question included a statement of opinion. Plaintiffs knew the answer to each question. Plaintiffs needed the Government to admit to the facts. Only by getting the Government to admit to the facts would the Plaintiffs be able to achieve Redress of Grievances.

Having the Government respond to the Petitions, by admitting or denying the facts, would be an *action* by the Government that would be part and parcel of any remedy to the grievance. By responding to the Petitions for Redress the Government is put into a state of acting or moving, in this case toward a solution to constitutional torts.

The instant Petition process can be thought of as a deposition where the party deposed must answer the questions and the answers lead to knowledge, truth and Justice.

For instance, Plaintiffs' Petition for Redress regarding the Iraq Resolution (served on Government nearly four months before the United States applied its armed forces in hostilities in Iraq in 2003) could have demanded a stronger act, say a Declaration of War, before the invasion instead of admissions to facts. Both approaches are Petitions within the meaning of the Petition Clause. The former approach may have required the sought after admissions by the Government before Declaring War. The latter approach (the one chosen) was meant to obtain public admissions by the Government prior to a consideration of a Declaration of War.

### **CONCLUSION**

Appellant Schulz respectfully requests an order granting this motion for post argument communication, making the contents herein a part of Schulz's appeal.

Respectfully submitted:

Dated: October 30, 2006

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