

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

WE THE PEOPLE FOUNDATION INC., )  
2458 Ridge Road, Queensbury, NY 12804; )  
WE THE PEOPLE CONGRESS, Inc., 2458 )  
Ridge Road, Queensbury, NY 12804; )  
ROBERT L. SCHULZ, 2458 Ridge Road, )  
Queensbury, NY 12804; JOSEPH BANISTER, )  
2282 Sunny Vista Dr., San Jose, CA 95128; )  
JOHN TURNER, PO Box 612, Paradise, CA )  
95967 and other persons similarly situated )

Plaintiffs )

v. )

UNITED STATES; U.S. TREASURY )  
DEPARTMENT, Main Treasury Building, 1500 )  
Pennsylvania Ave. NW, Washington, D.C. 20220, John )  
W. Snow, Secretary; INTERNAL REVENUE )  
SERVICE, 1111 Constitution Ave. NW, Washington, )  
DC 20224, Mark Everson, Commissioner; and )  
U.S. DEPARTMENT OF JUSTICE, Main Justice )  
Building, 950 Pennsylvania Ave. NW, Washington, )  
DC 20530, John Ashcroft, Attorney General )

Defendants )

CASE No. \_\_\_\_\_

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**CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF, EQUITABLE  
RELIEF, AND INJUNCTIVE RELIEF**

**(Jury Trial Requested)**

Plaintiffs by and through undersigned counsel, with the exception of Robert L. Schulz who is pro se, and pursuant to Rules 20, 23, and 65 of the Federal Rules of Civil Procedure, hereby moves the Court for an entry of an Order:

- a. Granting declaratory relief to the Plaintiffs by constraining the defendants to meet their obligations under the law 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 raised by the Plaintiffs in their petitions to representatives of the United States Government, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money, and "privacy" clauses ; 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 if for attempting to petition the United States Government, 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. Expediting these proceedings where this matter might be set for trial; and
- e. Granting any other, non-financial relief to the Plaintiffs that the Court may deem proper.

In furtherance of this Motion, the Plaintiffs allege and say:

## I. STATEMENT OF THE CLAIM

1. This Complaint arises from the failure of the President of the United States and his Attorney General and his Secretary of the Treasury and his Commissioner of the Internal Revenue Service, and the failure of the United States Congress, to properly respond to Plaintiffs' Petitions for Redress of grievances against their government, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money, and "privacy" clauses.

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

3. This Complaint also arises from the Judicial Branch of the United States government in its failure to uphold judicial doctrines, authoritative case law; the principles of United States law and the United States Constitution when ruling in matters where individuals have sought to enforce their Rights, by giving further expression to their First Amendment Rights to Speech, Assembly and Petition, by not withholding and turning over to government money earned in direct exchange for labor, after the individuals properly Petitioned the government for a Redress of Grievances, and after the government failed to properly respond to the individuals' Petitions for Redress of grievances against their government, namely: grievances relating to violations of the U.S. Constitution's war powers, taxing, money and "privacy" clauses.

**THE PARTIES  
AND OTHER RESPONSIBLE PERSONS  
AND INSTITUTIONS**

4. Plaintiff “We The People Foundation for Constitutional Education Inc.” is a not for profit research and educational foundation in good standing and organized under the Laws of the State of New York, with principle offices located at 2458 Ridge Rd., Queensbury, NY 12804. The Foundation has been spearheading, since 1999, a nationwide effort to get the government to answer specific questions, first regarding the government’s violation of the taxing clauses of the Constitution, and then, beginning in 2002, regarding the government’s violation of the war powers, money and “privacy” clauses of the Constitution.

5. Plaintiff “We The People Congress” is a membership organization in good standing and organized as a not for profit corporation under the Laws of the State of New York, with principle offices located at 2458 Ridge Rd., Queensbury, NY 12804. The We The People Congress currently has thousands of members nationwide, with county and state coordinators in nearly all States of the Union. The mission of the WTP Congress is to scrutinize governmental behavior at every level, compare that behavior with the requirements of the State and federal Constitutions, and then to intelligently, rationally, professionally, pro-actively and non-violently confront unconstitutional and illegal behavior by elected and/or appointed public officials.

6. Plaintiff Robert L. Schulz is a citizen of the United States and resident of Queensbury, New York. Mr. Schulz is the Chairman of We The People Foundation for Constitutional Education, Inc., and We The People Congress, Inc. Mr. Schulz is representing himself, without attorney, in the instant case.

7. Plaintiff Joseph Banister is a citizen of the United States and a resident of San Jose, California. Mr. Banister is a former Special Agent of the Criminal Investigation Division of the Internal Revenue Service.

8. Plaintiff John Turner is a citizen of the United States and a resident of Paradise, California. Mr. Turner is a former Revenue Officer of the Internal Revenue Service.

9. Plaintiff Sherry P. Jackson is a citizen of the United States and a resident of Storm Mountain, Georgia. Mrs. Jackson is a former Revenue Agent of the Internal Revenue Service.

10. George W. Bush is the President of the United States, duly elected in accordance with Article II § 1 of the United States Constitution as amended by the Twelfth Amendment to the Constitution.

11. The Department of the Treasury is an executive department of the United States Government at the seat of the United States Government as defined and described in 5 U.S.C. §101, and 31 U.S.C. §301. John Snow is the Secretary of the Treasury.

12. The Secretary of the Treasury is mandated to maintain separate accounts of taxes received in each State, territory, and possession of the United States and collection district, with each account listing each kind of tax; the amount of each tax; and the money paid as pay and allowances to officers and employees of the Department collecting taxes in that State, territory, possession, or district, in accordance with 31 U.S.C. §321.

13. The Internal Revenue Service is a Division of the Department of the Treasury, with principle offices located at 1111 Constitution Ave NW, Washington DC. Mr. Mark Everson is the IRS Commissioner.

14. The precursor to the Internal Revenue Service was established on July 1, 1862 by act of Congress. *See* 72 Ch. 119, 12 Stat. 432, (37th Cong., 2nd Session; 1862). Currently, the Internal Revenue Service is an official agency under the dominion and jurisdiction of the United States Treasury Department, with its principal place of operation in Washington, D.C.

15. The Department of Justice is an executive department of the United States Government at the seat of the United States Government and described in 5 U.S.C. §101, and 31 U.S.C. §301. John Ashcroft is the Attorney General.

16. The Congress of the United States has been duly elected by the citizens of the United States. The Honorable J. Dennis Hastert is currently Speaker of the House of Representatives and Honorable Bill Frist, M.D., is currently Senate Majority Leader.

17. The United States District Courts and the United States Circuit Courts have been established by Act of Congress pursuant to the United States Constitution. Pursuant to 28 U.S.C. § 41, there are thirteen Circuit Courts and pursuant to 28 U.S.C. §81 *et. seq.*; there are ninety-four District Courts within the United States.

## **STATEMENT OF FACTS**

### **A. THE FAILURE OF THE UNITED STATES GOVERNMENT TO ADDRESS THE PLAINTIFFS' PETITION FOR REDRESS OF GRIEVANCES**

18. On numerous occasions the plaintiffs have respectfully sought to petition the defendants, to meet with the defendants and to secure from the defendants answers to reasonable questions regarding certain acts of defendants believed by plaintiffs to be

repugnant to and outside the authority lawfully granted by the U.S. Constitution and certain statutes.

19. Plaintiffs' Petitions for Redress of Grievances have included respectfully drawn requests for answers to questions regarding defendants' policies and programs related to the tax, war powers, money and "privacy" clauses of the Constitution and certain statutes-- questions designed to assist plaintiffs in their quest to determine their obligations under those policies and programs as enforced by the defendants.

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

21. A detailed account of multiple attempts by plaintiffs to Petition their government for Redress of Grievances and the government's failure to respond is provided in the Affidavit to this court by plaintiff Robert Schulz, sworn to on July 16, 2004.

22. Additional examples of plaintiffs' attempt to Petition their government for Redress of Grievances and the government's failure to respond are provided in paragraphs 27 through 29 below.

23. Many additional examples of attempts by plaintiffs to Petition their government for Redress of Grievances and government's failure to properly respond will be provided at trial and during discovery.

24. What these examples show is Plaintiffs have respectfully, intelligently and rationally contacted their Congresspersons and appropriate officials within the Executive branch, including the President, literally begging for someone in government to answer pertinent questions relating to alleged violations of the war powers, taxing, money and "privacy" clauses of the Constitution, including the legitimacy of the direct, un-

apportioned tax on labor, as enforced by the Internal Revenue Code, and as applied to the working men and women of America.

25. Despite these pleadings by the Plaintiffs for defendants to address pertinent issues and questions posed by a large number of Americans, there has been total silence and a lack of acknowledgement from the Legislative and Executive branches of our government.

26. Instead, there has been a condescending and antagonistic attitude by our elected and appointed officials toward those plaintiffs that have Petitioned for Redress of Grievances.

27. In October, Department of Treasury Assistant Secretary for Tax Policy, Ms. Pam Olson, was respectfully asked by over five hundred plaintiffs these following six questions:

- 1) Should I use the rules found in 26 USC § 861(b), and the related regulations beginning at 26 CFR § 1.861-8, to determine my taxable domestic income?
- 2) If some individuals—including myself—should *not* use those sections for determining their taxable domestic income, please show me where the regulations say who should or should not use those sections for that.

Reason for first two questions: The regulations under 26 USC § 861(b) (26 CFR § 1.861-8 and following) begin by stating that Sections 861(b) and 863(a) state in general terms “*how to determine taxable income of a taxpayer from sources within the United States*” after gross income from the U.S. has been determined. (The regulations then say that Sections 862(b) and 863(a) describe how to determine taxable income from *outside* of the U.S.) Section 1.861-1(a)(1) of the regulations confirms that “*taxable income from sources within the United States*” is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8. (See also 26 CFR §§ 1.862-1(b), 1.863-1(c).)

- 3) If a U.S. citizen lives and works exclusively within the 50 states, and receives all of his income from within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show such income to be taxable?

Reason for question: Section 217 of the Revenue Act of 1921, statutory predecessor of 26 USC § 861 and following, stated that income from within the U.S. was taxable for foreigners and for U.S. citizens and corporations deriving most of their income from federal possessions (but did *not* say the same about the domestic income of most Americans). The regulations under the equivalent section of the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain “*specific sources and activities*,” which, concerning *domestic* income, still relate only to foreigners and certain Americans receiving income from federal possessions (26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

- 4) Should one refer to 26 CFR § 1.861-8T(d)(2) to determine whether the “items” of income he receives (such as compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

Reason for question: The regulations (26 CFR § 1.861-8(a)(3)) state that a “*class of gross income*” consists of the “items” of income listed in 26 USC § 61 (e.g. compensation, interest, etc.). The regulations (26 CFR §§ 1.861-8(b)(1)) then direct the reader to “paragraph (d)(2)” of the section, which provides that such “*classes of gross income*” may include some income which is *excluded* for federal income tax purposes.

- 5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is the income of the average American *not* on that list?

Reason for question: After defining “*exempt income*” to mean income which is exempt, eliminated, or excluded for federal income tax purposes (26 CFR § 1.861-8T(d)(2)(ii)), the regulations give a list of types of income which are *not* exempt (i.e. which *are* subject to tax), which includes the domestic income of foreigners, certain foreign income of Americans, income of certain possessions corporations, and income of international and foreign sales corporations, but which does *not* include the domestic income of the average American (26 CFR § 1.861-8T(d)(2)(iii)).

- 6) What types of income (if any) are *not* exempted from taxation by any *statute*, but are nonetheless “*excluded by law*” (not subject to the federal income tax) because they are, under the Constitution, not taxable by the federal government?

Reason for question: Older income tax regulations defining “gross income” and “net income” said that neither income exempted by statute “*or fundamental law*” were subject to the tax (§ 39.21-1 (1956)), and said that in addition to those types of income exempted by *statute*, other types of income were exempt because they were, “*under the Constitution, not taxable by the Federal Government*” (§ 39.22(b)-1 (1956)).

28. As of this date, the Plaintiffs are still awaiting Ms. Olsen, or any one individual from the Executive Branch, the Legislative Branch or the Internal Revenue Service to answer these simple questions.

29. On September 16, 2003, at a press conference held at the U.S. Treasury Building, organized by defendant U.S. TREASURY DEPARTMENT, and defendant INTERNAL REVENUE SERVICE, Mr. Terry Lemons, a senior spokesman for the IRS, stated in response to a question put to him by The New York Times as to why the defendants had not responded to plaintiffs' Petitions and questions regarding the legality of the income tax system as applied, "We are answering those petitions through enforcement actions."

**B. THE RETALIATION BY THE EXECUTIVE BRANCH AGAINST  
PLAINTIFFS FOR PETITIONING THE GOVERNMENT  
FOR REDRESS OF GRIEVANCES**

30. Plaintiffs have petitioned defendants for a Redress of Grievances relating to:

- a) The taxing clauses of the Constitution and the direct, un-apportioned tax on labor.
- b) The war powers clauses of the Constitution and the Iraq Resolution.
- c) The money clauses of the Constitution and the Federal Reserve System.
- d) The "privacy" clauses of the Constitution and the USA Patriot Act.

31. By communicating information, expressing facts and opinions, reciting grievances, protesting abuses and praying for answers to specific questions, plaintiffs have given expression essential to the end that government defendants may be responsive and accountable to the Constitution and to the sovereignty of the People and that changes may be obtained by lawful and peaceful means.

32. The defendants have failed to properly respond to plaintiffs' Petitions for Redress; twice, defendants have publicly uttered their intention to respond to said Petitions through "enforcement actions."

33. Knowing that a Right that is not enforceable is not a Right and wishing to peaceably enforce their individual, unalienable Rights, Plaintiffs have decided to give further expression to their Rights under the First Amendment to Speech, Assembly and Petition, by not withholding and turning over to government money earned in direct exchange for labor (not money "derived from" labor).

34. Plaintiffs believe such further expression is not an abuse of any of their First Amendment Rights, but an extension of their First Amendment Rights and any intervention by defendants against such exercise of these First Amendment Rights represents a curtailment of Plaintiffs' Rights and is forbidden.

35. However, defendants are retaliating against plaintiffs 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 appear before administrative, civil and/or criminal tribunals; denying plaintiffs due process; or by some other enforcement action.

36. Defendants are retaliating against Plaintiffs by attempting to disqualify them from taking a public position on matters in which they are financially interested, depriving Plaintiffs of their Right to Petition, to speak freely in the very instance in which those Rights are of the most importance to plaintiffs.

37. Defendants' retaliation against Plaintiffs is without reasonable cause; it is not objective; there is no clear and present danger to the government defendants that would

justify their punishment of Plaintiffs for performing a self-government function; the Petition clause was included in the First Amendment to ensure the growth and preservation of democratic self-governance; it is as much Plaintiffs' duty to question as it is the defendants' duty to administer.

38. The very idea of a government, republican in form, implies a right on Plaintiffs' part, as citizens, to meet peaceably with other citizens for consultation with respect to public affairs and to effectively petition the government defendants for a redress of grievances.

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

### **C. THE FAILURE OF THE UNITED STATES JUDICIARY TO FOLLOW THE LAW IN REGARD TO THE UNITED STATES TAX CODE**

40. For years, our United States Judiciary has rendered cursory, inexplicable opinions which are in total conflict with the general principals of Anglo/American jurisprudence, and the concept of *stare decisis et non quieta movere*, when addressing any individual who has been criminally or civilly charged with failure to file an income tax return or failure to withhold and/or has otherwise questioned the legitimacy of the Internal Revenue Code.

41. First, it has been determined by most all District Courts and Circuit Courts that wages are income. *Carter v. Commissioner*, 784 F.2d 1006, 1009 (9th Cir. 1986). Many Circuit Courts and District Courts have upheld that the imposition of income taxes does not violate the Thirteenth Amendment. *See Kasey v. Commissioner*, 457 F.2d 369, 370

(9th Cir. 1972); and *Christenson v. Ward*, 916 F.2d 1462 (10<sup>th</sup> Cir. 1990); and *Newman v. IRS*, 2003 U.S. Dist. LEXIS 11294, April 2, 2003; and *Bach v. Mason*, 190 F.R.D. 567 (D.C. Id 1999).

42. Nevertheless, the United States Judiciary has never required the Internal Revenue Service nor the United States Congress to specify where exactly within the code that an individual is mandated by law to pay taxes on wages that he has earned or to withhold.

43. The argument that labor is a property right given in exchange for wages, therefore no gain is recognized; has been rejected. *See Hansen v. I.R.S.*, 744 F.2d 658 (8<sup>th</sup> Cir. 1985); and *Rowlee v. Commissioner*, 80 T.C. 1111, 1119-22 (1983).

44. Without ever addressing the issue of how the Internal Revenue Code mandates that an individual must pay taxes on his/her income or that companies must withhold many Circuit Courts and District Courts have held that the Internal Revenue Code imposes a tax on all income. *See Coleman v. Commissioner*, 791 F.2d 68, 70 (7<sup>th</sup> Cir. 1986); *Lovell v. United States*, 755 F.2d 517, 519 (7<sup>th</sup> Cir. 1984), and that wages are income, *United States v. Koliboski*, 732 F.2d 1328, 1329 & n.1 (7<sup>th</sup> Cir. 1984). Congress lawfully enacted the Internal Revenue Code and the Internal Revenue Code lawfully imposes a tax on income. *See United States v. Sloan*, 939 F.2d 499 (7<sup>th</sup> Cir. 1991); *Coleman, supra*, 791 F.2d at 70; *United States v. Studley*, 783 F.2d 934, 940 (9<sup>th</sup> Cir. 1986); *Wheeler v. United States*, 744 F.2d 292, 293 (2<sup>nd</sup> Cir. 1984); *Koliboski*, 732 F.2d at 1329. As stated, at no time has the Federal Judiciary ever addressed the issue with specificity as to what part, section or paragraph of the Internal Revenue Code unequivocally requires an individual to pay income taxes or that companies must withhold.

45. The Federal Judiciary has ruled that generally asserting the size and complexity of Title 26 does not relieve a complainant of his duty to pay taxes. *See Swallow v. United States*, 325 F.2d 97, 97-98 (10th Cir. 1963) (e.g.; finding no reason to find the code unconstitutional merely because it is complex and often difficult to understand), and *Lonsdale v. United States*, 919 F.2d 1440, 1447 (10th Cir. 1990) (e.g.; noting that tax laws “are probably the best publicized and indexed area of federal law”).

46. These opinions are in direct conflict with Chief Justice Warren’s Opinion in *United States v. Harris*, 347 U.S. 612, 617, 74 S. Ct. 808, 812, 98 L. Ed. 989 (1954):

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that *his* contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct, which he could not reasonably understand to be proscribed.

47. A statute must be set out in terms that the ordinary person 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)).

48. To pass constitutional scrutiny, a statute or code 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).

49. For years now, the Plaintiffs, who are of ordinary intelligence, have petitioned the Executive Branch of the Federal Government, the Legislative Branch of the Federal Government, and the Judicial Branch of the Federal government to tell them specifically where in the Internal Revenue Code does it specify that an individual must pay taxes on wages derived or companies to withhold. As of this date, the Executive Branch, the Legislative Branch and the Judicial Branch of the Federal government has failed to show, demonstrate, or explain where in fact in the Internal Revenue Code does it in fact require such an act.

#### **JURISDICTION AND VENUE**

50. 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.

51. The President of the United States and his Executive Branch Agencies, and the Legislative Branch of the United States government have failed to address the Plaintiffs’ Petitions for Redress of grievances and subsequently retaliated against the Plaintiffs in

violation of the First Amendment to the United States Constitution, and jurisdiction is proper in accordance with 28 U.S.C. §1331.

52. Plaintiffs have been denied due process in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, and jurisdiction is proper in accordance with 28 U.S.C. §1331.

53. Plaintiffs' civil rights have been violated, and jurisdiction is also invoked pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343.

54. The acts alleged by the Plaintiffs were perpetrated by the Executive Branch and Legislative Branch of the United States government, and regulatory agencies of the United States government and venue is founded on 28 U.S.C. §1391(e).

### **FIRST CAUSE OF ACTION**

#### **DEFENDANTS HAVE FAILED TO PROPERLY RESPOND TO PLAINTIFFS' PROPER PETITIONS FOR REDRESS OF GRIEVANCES**

55. The Plaintiffs incorporate by reference the issues and facts stated in paragraphs 1 through 54, as if stated fully herein.

56. The value in the Right of Petition as an important aspect of self-government is beyond question. It is, after all, the only way for the individual and the small group to hold the government accountable to the Constitution and Bill of Rights.

57. The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." The Supreme Court has recognized this right to petition as one of "the most

precious of the liberties safeguarded by the Bill of Rights," *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967).

58. As the Supreme Court said in [\*United States v. Cruikshank\*, 92 U.S. 542, 552](#): "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." 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](#).

59. Defendants' have an obligation to properly respond to Plaintiffs' proper Petitions. 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, free assembly and free 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.

60. The Framers envisioned the rights of speech, press, assembly, and petitioning as interrelated components of the public's exercise of its sovereign authority. As Representative James Madison observed during the House of Representatives' consideration of the First Amendment:

"The right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of this Government; the people may therefore publicly address their representatives, may privately advise them, or declare their sentiments by petition to the whole body; *in all these ways they may communicate their will.*" 1 Annals of Cong. 738 (1789) (emphasis added).

61. "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, . . . and therefore are united in the First Article's assurance." [\*Thomas v. Collins\*, 323 U.S. 516, 530 \(1945\)](#).

62. 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 \(1963\)](#).

63. The Supreme Court has also considered the right to petition when interpreting federal law. In the antitrust context, for example, the Supreme Court held that "the Sherman Act does not prohibit . . . persons from associating . . . in an attempt to persuade the legislature or the executive to take particular action with respect to a law . . ." *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136, 5 L. Ed. 2d 464, 81 S. Ct. 523 (1961).

64. The Supreme Court made explicit that "the right to petition extends to all departments of the Government," and that "the right of access to the courts is . . . but one aspect of the right of petition." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510.

65. While genuine petitioning is immune from antitrust liability, sham petitioning is not. Plaintiffs' Petitions are neither objectively baseless, nor subjectively motivated by an unlawful purpose.

**The Internal Revenue Code Is Impermissably Vague  
And For Those Reasons It Is Reasonable And Appropriate For The Plaintiffs To  
Seek Its Clarification Through Petition**

66. While the Plaintiffs in this action do not request that the Court issue a declaratory judgment asserting that the Internal Revenue Code is vague and cannot be interpreted reasonably and while the Plaintiffs do not, in this action, seek a ruling from the Court as to the constitutionality or enforceability of the Internal Revenue Code, Plaintiffs assert that their numerous petitions to the United States are both reasonable and appropriate due, in large measure, to the fact that the language of the Internal Revenue Code is sufficiently unclear, contradictory and vague so that a reasonable person would be constrained to seek clarity through petitions to the relevant authorities. It has long been established that regulations with criminal sanctions must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

67. The seminal case concerning pre-enforcement facial challenges on the grounds of vagueness is *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982). The *Flipside* Court determined that when a

court examines such a challenge, “assuming the enactment implicates no constitutionally protected conduct, [the court] should uphold the challenge only if the enactment is impermissibly vague in *all of its applications*.” *Id.* at 495 (emphasis added). Although the Supreme Court does not state precisely what it means by “constitutionally protected conduct,” it is clear that it is referring primarily to the First Amendment expressive freedoms, which have long received special protection in vagueness cases. *See, e.g. Smith, Sheriff v. Goguen*, 415 U.S. 566, 573, 39 L. Ed. 2d 605, 94 S. Ct. 1242 (1974).

68. It has been established principal that a party must establish “vagueness” as the statute or code is specifically applied to his/her own matter; *e.g.*; he “cannot complain of the vagueness of the law as applied to the conduct of others. In the instant matter, it is well known throughout the land that no one individual can understand the Internal Revenue Code. Even the individuals charged with the enforcement of the Code cannot explain where exactly within the Internal Revenue Code an individual is mandated by law to pay taxes upon wages that he has earned and companies are mandated to withhold. The Federal Judiciary has ruled that generally asserting the size and complexity of Title 26 does not relieve a complainant of his duty to pay taxes. *See Swallow v. United States*, 325 F.2d 97, 97-98 (10th Cir. 1963) (*e.g.*; finding no reason to find the code unconstitutional merely because it is complex and often difficult to understand), and *Lonsdale v. United States*, 919 F.2d 1440, 1447 (10th Cir. 1990) (*e.g.*; noting that tax laws “are probably the best publicized and indexed area of federal law”).

69. These opinions are in direct conflict with Chief Justice Warren’s Opinion in *United States v. Harris*, 347 U.S. 612, 617, 74 S. Ct. 808, 812, 98 L. Ed. 989 (1954):

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that *his* contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct, which he could not reasonably understand to be proscribed.

70. A statute must be set out in terms that the ordinary person 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)).

71. To pass constitutional muster, a statute or code 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);

72. For many years, the Plaintiffs, who are of ordinary intelligence, have petitioned the Executive Branch of the Federal Government, the Legislative Branch of the Federal Government, and the Judicial Branch of the Federal government to tell them specifically where in the Internal Revenue Code does it specify that an individual must pay taxes on wages or that companies must to withhold. As of this date, the Executive Branch, the Legislative Branch and the Judicial Branch of the Federal government has failed to show,

demonstrate, or explain where in fact in the Internal Revenue Code does it in fact require such acts. As a matter of law, the Internal Revenue Code as it stands today must be determined to be unconstitutional in that it is not understandable by persons of reasonable intelligence.

## SECOND CAUSE OF ACTION

### **THE INTERNAL REVENUE SERVICE AND THE DEPARTMENT OF JUSTICE HAVE TAKEN RETALIATORY ACTIONS AGAINST THE PLAINTIFFS FOR PETITIONING FOR REDRESS OF GRIEVANCES AND EXPRESSING THOSE GRIEVANCES PUBLICLY, AND SUCH RETALIATORY ACTION IS UNCONSTITUTIONAL**

73. The Plaintiffs incorporate by reference the issues and facts stated in paragraphs 1 through 64, as if stated fully herein.

74. A retaliatory action is one brought with a motive to *interfere* with the exercise of protected Rights.

75. A danger to public interest is required before the government can restrict Rights.

76. 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 \(1876\)](#).

77. 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 \(1937\)](#).

78. 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, free assembly and free 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.

79. Although the term “petition” is not defined by the Constitution, our United States Supreme Court long ago interpreted the “Petition Clause” to apply in a variety of circumstances, noting the right to petition the representatives of the people in Congress; to petition the Executive Branch, and the right of access to the courts. The Supreme Court has also determined that it is appropriate to give an alleged intrusion on First Amendment rights particular scrutiny where the government may be attempting to chill the exercise of First Amendment rights because the exercise of those rights would adversely affect the government's own interests.

80. More importantly, the government cannot retaliate for the exercise of the constitutional right to petition for redress of grievances, or to access the courts. Such retaliation is cognizable under Title 42, U.S.C. § 1983. The right of access that underlies a charge of retaliation is lodged not only in the Petition Clause of the First Amendment, but also in the Due Process Clause of the Fifth and Fourteenth Amendments, and the Privileges and Immunities Clauses of Article IV and the Fourteenth Amendment.

81. More than twenty years ago, the Senate Finance Committee explained:

The committee is concerned with the rapid growth in deliberate defiance of the tax laws by tax protestors. The Internal Revenue Service had 13,600

illegal protest returns under examination as of June 30, 1981. . . . The committee believes that an immediately assessable penalty on the filing of protest returns will help deter the filing of such returns, and will demonstrate the determination of the Congress to maintain the integrity of the income tax system.

*S. Rep. No. 494, 97th Cong., 2d Sess. 277, reprinted in 1982 U.S. Code Cong. & Admin. News 781, 1023-24.*

82. For many years, it has been the policy of the Internal Revenue Service as well as the Justice Department to vociferously pursue, harass, charge, indict and prosecute those individuals who merely questioned the Internal Revenue Code. The aforementioned Senate Finance Committee's Memoranda demonstrates the Congress' tacit approval of such illicit activity.

83. In the instant matter, the Internal Revenue Service and the Department of Justice has specifically targeted many individuals who are members of the Plaintiff We the People Congress and We The People Foundation because of their expressed beliefs, and their unalienable right to petition the Executive Branch, the Legislative Branch and the Federal Judiciary of our government for a redress of grievances.

84. Individuals who are engaging in protected free speech, which speech the government alleges advocates law-breaking, and which speech the government chooses not to answer or address, and which speech incites no present harm, is protected, and the retaliation by government agencies is unconstitutional as well as being morally reprehensible. The conduct by the I.R.S. and the Justice Department is reminiscent of the actions taken by undemocratic countries which action has been criticized by the United States. As a matter of law, the retaliatory actions against the Plaintiffs in whole or

individually by the Internal Revenue Service and the Department of Justice must be ceased.

### **CLASS CERTIFICATION**

85. The Plaintiffs bring this action against the defendants on behalf of themselves and all Americans.

86. The Plaintiffs seek certification pursuant to Rule 23(b)(1) and 23(b)(2) in light of the nature of this case, and essentially the relief sought.

87. In the event that the Court does not determine to certify this action pursuant to Rules 23(b)(1) and 23(b)(2), the Plaintiffs respectfully request certification pursuant to Rule 23(b)(3), in that the relief sought is an equitable remedy, and the expensive and time consuming procedure of class notice before making a final class certification is unnecessary. Further, a Rule 23(b)(1) &(b)(2) certification does not require findings on predominance, manageability and superiority factors as would a Rule 23(b)(3) certification.

88. Common questions of law and fact exist as to all members of the Class and predominate over any question solely affecting the individual members of the Class.

89. It is difficult to estimate the potential size of the class. However, 15,604 people have participated in the petitions referred to above, and 2605 people have thus far asked to participate as a named plaintiff in this case.

**WHEREFORE**, the Plaintiffs, and other persons similarly situated, respectfully request the Court to enter an Order:

- a. Granting declaratory relief to the Plaintiffs by constraining the defendants to meet their obligations under the law 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 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 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. Expediting these proceedings where this matter might be set for trial; and
- e. Granting any other, non-financial relief to the Plaintiffs that the Court may deem proper.

Respectfully Submitted,

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Sworn to before me  
this \_\_\_ day of July, 2004

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Notary