UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ	)	
	)	
Plaintiff	)	
	)	**DECLARATION #2**
-against-	)	**BY ROBERT SCHULZ**
	)	No. 06-MC-131
UNITED STATES; INTERNAL REVENUE SERVICE,	)	
	)	
Defendants	)	

DECLARATION #2 BY PLAINTIFF ROBERT L. SCHULZ

I, ROBERT L. SCHULZ, being duly sworn, declare under penalty of perjury:

1. I am the plaintiff in the matter captioned above and I make this affidavit in support of Plaintiff's motion for a temporary restraining order.

2. I am the founder and Chairman of the We The People Foundation for Constitutional Education, Inc., ("WTP Foundation"), a not-for-profit research and educational corporation under section 501c3 of the Internal Revenue Code, incorporated in New York State in 1997.

3. I am also the founder and Chairman of Appellant We The People Congress, Inc. ("WTP Congress"), a not-for-profit membership corporation under section 501c4 of the Internal Revenue Code, incorporated in New York State in 1997.

Citizenship

4. In 1973, I converted 2000 square feet of his house to an office. Since 1979, I have been analyzing governmental behavior, initially at the local and state level and eventually at all levels, comparing that behavior to the requirements of the State and federal constitutions, and confronting unconstitutional behavior in the courts. In 1979, I founded the Tri-County Taxpayers Association (TCTA) to serve the People in Washington, Warren and Saratoga Counties in his State of New York. In 1990, I founded the All-County Taxpayers Association (ACTA) to serve the People in all counties of New York State. In 1997, I founded the We The People Foundation for Constitutional Education, Inc., and the We The People Congress, Inc., (WTP) to serve all the People in America.

5. In each case, the address of the corporation, as given on the incorporation papers, was the same as my home address. This has been true for TCTA, ACTA and WTP.

6. My wife of 43 years and I live a very frugal life. It never occurred to me to have any donations to TCTA, ACTA or WTP go toward the cost of renting or building an office when I had one freely available.

7. It is also a fact that I have never received rent from TCTA, ACTA or WTP for the office space. Nor have I ever taken a deduction on my tax returns for donating space in his home to TCTA, ACTA or WTP.

8. It is also true that I have never sought or received any remuneration for any of this work. I could never accept payment for defending the Constitutions against governmental abuse.

9. In 1981, with the assistance of attorney Louis Oliver, I won my first case *Tri-County Taxpayers Association v. Town of Queensbury, et al.* Supreme Court of New York, Appellate Division, Third Department, 79 A.D.2d 337; 437 N.Y.S.2d 981; 1981 N.Y. App. Div. LEXIS 9710, March 12, 1981, Court of Appeals of New York, 55 N.Y.2d 41; 432 N.E.2d 592; 447 N.Y.S.2d 699; 1982 N.Y. LEXIS 3043; 12 ELR 20667, January 13, 1982, Argued, February 16, 1982, Decided.

10. Since then, I have worked pro-se and has won many cases.

11. Since 1982, I has completed the research, written the briefs and argued numerous cases against wayward government in state and federal courts. For a list of the State cases, see Exhibit A hereto. For a list of the federal cases, see Exhibit B hereto. I has prevailed in many of the cases, most of which were brought against Constitutional torts.

12. My latest case is *We The People et al. v. United States, et al.*, a first impression case in which the federal Court of Appeals for the District of Columbia Circuit is being asked to declare the contours of the meaning of the First Amendment's Petition Clause. The research and activities leading up to the filing of that case, represent merely the latest of a long line of issues that have caught my attention and that have involved questionable governmental behavior that I has decided to challenge.

13. In sum, for 27 years, in defense of the New York State Constitution and in defense of the Constitution for the United States of America, I have been petitioning government for Redress of constitutional torts and other violations of the law. Believing the preservation and protection of individual, unalienable, creator-endowed Rights to be the responsibility and duty of every American citizen, I have been scrutinizing the behavior of local, state and federal government officials and comparing that behavior with the requirements of my State and Federal Constitutions. Wherever I have seen a conflict or an impropriety, I have challenged the government's behavior, usually by bringing the offending government official(s) before the judiciary. I have gathered the facts, performed the legal research, written the pleadings and argued the cases in both State and federal courts, most often without benefit of attorneys. I have done so at my own expense. I have won many of

the cases, setting important constitutional precedent along the way. On information and belief, the legal and judicial communities in New York State are of the opinion that my work has been intelligent, rational and professional. One official publicly referred to me as "Citizen Schulz." Another as "The People's Centurion." For a listing of the reported decisions in the cases I have brought in State courts, see Exhibit A. For a listing of reported decisions in cases I have brought in federal courts, see Exhibit B.

Relevant Background
The Court's "No Standing" Doctrine

14. Between 1995 and 1999, I documented behavior by federal government officials that was *ultra vires* and prohibited by the money and war powers clauses of the federal Constitution, that is, action to bale out the Mexican Peso and the bombing of the Republic of Yugoslavia. With the assistance of a senior, experienced attorney and constitutional law professor, I, along with a group of other pro-se plaintiffs petitioned the Judicial branch of the United States for Redress of those Grievances. The question before the Court in each case required a declaration by the Court of the *Rights* of the People and the *Obligations* of the government under the money and war provisions of the Constitution. No matter how the Court ruled on the merits of the case, the Plaintiffs were going to be affected by the decision as long as the Plaintiffs continued to live in the United States of America and as long as the

Constitution remained in full force and effect. However, both cases were dismissed by the United States Court of Appeals for "lack of standing," and the United States Supreme Court denied cert.[1]

Joseph Banister, William Benson, Lowell Becraft

15. In 1999 I learned about Joseph Banister, William Benson and Lowell Becraft, their research, their efforts to obtain answers to their questions regarding the constitutionality of the origin and application of the federal income tax laws, and government's pattern of retaliation. Of particular interest to me was the fact that the enforcement of a direct, un-apportioned tax on labor appeared to be out of step with a whole host of decisions by the United States Supreme Court[2] and out of step with the Internal Revenue Code itself.[3]

16. What caught my attention was not so much the subject matter (taxes), but government's unwillingness to answer legitimate questions and be held

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[1] SCHULZ , et al. v. UNITED STATES, et al., NDNY No. 95-cv-133, Judge Cholakis, SUMMARY ORDER issued by the Second Circuit on February 10, 1997,Case No. 96-6184 (A 216-219); SCHULZ, et al. v. UNITED STATES, et al. NDNY No. 99-cv-0845, Judge Scullen, SUMMARY ORDER issued by the Second Circuit on March 6, 2000,Case No. 99-6241(A 223-224).

[2] Including The Antelope, 23 U.S. 66, 120 (1825); Citizens' Savings & Loan Ass'n v. City of Topeka, 87 U.S. 655 (1874); Butchers' Union Co. v. Crescent City Co, 111 U.S. 746 (1884); Adair v. United States, 208 U.S. 172; Flint v. Stone Tracy Co, 220 U.S. 107 (1911); Stratton's Independence LTD. v. Howbert 231 US 399, 414 (1913), Brushaber v. Union Pacific R. Co, 240 U.S. 1 (1916); Peck v Lowe, 247 U.S. 165; Doyle v. Mitchell Bros Co., 247 U.S. 179 (1918); Eisner v. Macomber, 252 U.S. 189 (1920), Truax v. Corrigan, 257 US 312, 331, 338 (1921); Bowers v. Kerbaugh-Empire Co, 271 US 174D (1926); Tyler v. U.S., 281 U.S. 497, at 502; Railroad Retirement Board v. Alton Railroad Co., 295 U.S. 330, 55 S. Ct. 758 (1935); Murdock v. Pennsylvania, 319 U.S. 105 at 113 (1943); James v. United States, 366 US 213, p. 213, 6L Ed 2d 246 (1961); Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978); South Carolina v. Baker, 485 U.S. 505 (1988).

[3] The language of Title 26 of the United States Code, in apparent agreement with the Supreme Court's interpretation of the taxing clauses of the Constitution, including the definition of "income" within the meaning of the 16th Amendment, appears not to require companies to withhold wages from the paychecks of its workers nor individuals to file tax returns or to pay a tax on their labor.

accountable to the Constitution, and the lengths the government was apparently willing to go to silence anyone who questioned its power to tax.

Banister and The IRS's "No Answers" Doctrine

17. After five years of service as a highly prized and competent, award-winning Special Agent for the Criminal Investigation Division of the Internal Revenue Service (IRS), Banister had quietly and professionally petitioned his superiors for answers to certain questions regarding the origin and enforcement of the Internal Revenue Code, the law Banister was hired to enforce. In effect, Banister was questioning whether his enforcement of the internal revenue laws and the IRS's day-to-day administration of those laws, were out of step with the taxing clauses of the Constitution and the Fifth Amendment to the Constitution. Rather than answer his questions, the IRS immediately forced Banister to resign. I reviewed Banister's research report, which formed the foundation for the questions he submitted to his superiors at the IRS. I reached the conclusion that Banister's behavior was entirely proper and respectful, that he was entitled to answers to his questions, and that quite possibly the IRS had "fired" Joe Banister because, in fact, the way the federal income tax system was working was in conflict with the law.

18. I decided to help Joseph Banister obtain answers to his questions.

Benson and the Court's "Political Question" Doctrine

19. As a former investigator with the Illinois Department of Revenue, William ("Bill") Benson undertook a research project in 1983-84 on the facts behind the ratification process of 1909-1913 regarding the 16th Amendment to the Constitution of the United States of America, the so-called income tax amendment. This was a most important undertaking given the fact that the IRS claims it is the 16th Amendment that gives it the power to enforce a direct, un-apportioned tax on the labor of every working man, woman and child in America.

20. In 1999, I learned about William Benson and his research. His report, titled, "The Law That Never Was," reported on the results of his research undertaken at the national archives and at the archives of all 48 states that were in existence in 1913. Notarized and certified copies of all official documents related to the ratification process were obtained, reviewed and reported on by Benson. Of great interest to me were the overwhelming number of violations of their State Constitutions committed by a great many State Legislatures during the ratification process in those States, as well as Benson's findings of a falsified vote count and differences in the language between what Congress had approved and sent to the States and what some of the State Legislatures actually "approved." He reported that in 1913, the Secretary of State,

Philander Knox, committed *fraud* when he declared that the 16th Amendment had been properly and legally ratified by the states.

21. Benson's findings soon found their way into court, to be used by defendants charged with failing to pay the federal individual income tax. Of profound impact on me was the fact that the judiciary dismissed any and all claims that Knox had fraudulently declared that the 16th Amendment had been properly ratified, without a hearing on the evidence in support of those claims. See *United States v Thomas,* 788 F.2d 1250 (7th Cir. 1986); *United States v Foster*, 789 F.2d 457 (7th Cir. 1986); *United States v Stahl*, 792 F.2d 1438 (9th Cir. 1986); *United States v Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v United States*, 868 F.2d 236 (7th Cir. 1988), and *United States v. Sitka,* 845 F.2d 43 (2nd Cir. 1988). To me, the judiciary showed little to no interest in getting to the truth, and to my dismay, the judiciary declared that the question of fraud committed during the adoption of the 16th Amendment was a *political question* for the Executive and Legislative branches to decide. I did not believe there was a statute of limitations on fraud. I believed fraud to be a legal, not a political question.

22. I decided to help Benson get to the truth of the issue.

Becraft and the Court's "Frivolity" Doctrine

23. In 1999 I also learned about Becraft. As an attorney, Lowell Becraft was closely associated with Benson as Benson was publishing his report, "The Law That Never Was." When Benson was doing his research regarding the non-ratification of the 16th Amendment, Becraft was engaged in the legal research of the question**.** In addition, Becraft represented the defendants in three of the cases referred to in the preceding paragraph: *United States v Ferguson*, 793 F.2d 828 (7th Cir. 1986), *United States v Stahl*, 792 F.2d 1438 (9th Cir. 1986) and *United States v. Sitka*, 845 F.2d 43 (2nd Cir. 1988). Becraft had also extensively researched the history, meaning, significance and effect of the federal income tax laws, and had published his research at the "Dixieland Law Journal" on his website. Much of Becraft's research suggested that the origin and operation and enforcement of the federal income tax law was repugnant to the tax clauses of the Constitution.

24. In 1999 I was profoundly impacted by the manner in which the judiciary reacted to Becraft's questions regarding the constitutionality of enforcing a direct, un-apportioned tax on the wages and salaries of working men and women, given the meaning of "income" within the meaning of the 16th Amendment as defined by the U.S. Supreme Court in a series of published opinions on the subject. In *In Re Lowell H. Becraft, Jr.; United States v*

Nelson 885 F.2d 547 (9th Cir. 1989) the Ninth Circuit opined that wages and salaries were income and the Court sanctioned Becraft, saying:

> "Notwithstanding Becraft's insistence that his argument regarding the inapplicability of the federal income tax laws to resident United States citizens raises numerous complex issues, his position can fairly be reduced to one elemental proposition: The Sixteenth Amendment does not authorize a direct non-apportioned income tax on resident United States citizens and thus such citizens are not subject to the federal income tax laws. We hardly need comment on the patent absurdity and frivolity of such a proposition. For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a non-apportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens. *See, e.g.*, *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, 12-19, 60 L. Ed. 493, 36 S. Ct. 236 (1916); *Ward*, 833 F.2d at 1539; *Lovell v. United States*, 755 F.2d 517, 519 (7th Cir. 1984); *Parker v. Commissioner*, 724 F.2d 469, 471 (5th Cir. 1984); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981). Indeed, in *Lovell*, one of the more recent cases explicitly rejecting a Sixteenth Amendment argument virtually identical to Becraft's position in this case, the court sanctioned the *pro se* appellants for raising this and other federal tax exemption claims on appeal. *See Lovell*, 755 F.2d at 520. If a claim is sufficiently frivolous to warrant sanctions against a *pro se* appellant, it unarguably supports the assessment of sanctions against a seasoned attorney with considerable experience in the federal courts."

25. I questioned the logic of the court's decision. The word "direct" is not in the 16th Amendment, and the decision appeared *not* to be in agreement with *Brushaber*, and did not appear to me to square with a whole host of decisions by the United States Supreme Court regarding the meaning of "income" and the 16th Amendment. In addition, the 11 Circuit Courts were demonstrably split 6-5 on the question of whether the federal individual income tax is a direct tax or an indirect tax, with 6 courts ruling that the tax is a direct tax and

5 courts defining the tax as an indirect tax. Regarding the meaning of "income" and the 16th Amendment and whether the government had the authority to impose a direct, un-apportioned tax on labor, the Ninth Circuit's decision, in *In Re Becraft,* was at odds with the Supreme Court's decisions in the following cases:

> The Antelope, 23 U.S. 66, 120 (1825); Citizens' Savings & Loan Ass'n v. City of Topeka, 87 U..S. 655 (1874); Butchers' Union Co. v. Crescent City Co, 111 U.S. 746 (1884); Adair v. United States, 208 U.S. 172; Flint v. Stone Tracy Co, 220 U.S. 107 (1911); Stratton's Independence LTD. v. Howbert 231 US 399, 414 (1913), Brushaber v. Union Pacific R. Co, 240 U.S. 1 (1916); Peck v Lowe, 247 U.S. 165;Doyle v. Mitchell Bros Co., 247 U.S. 179 (1918); Eisner v. Macomber,, 252 U.S. 189 (1920), Truax v. Corrigan., 257 US 312, 331, 338 (1921); Bowers v. Kerbaugh--Empire Co, 271 US 174D (1926); Tyler v. U.S., 281 U.S. 497, at 502; Railroad Retirement Board v. Alton Railroad Co., 295 U.S. 330, 55 S. Ct. 758 (1935); Murdock v. Pennsylvania, 319 U.S. 105 at 113 (1943); James v. United States, 366 US 213, p. 213, 6L Ed 2d 246 (1961); Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978); South Carolina v. Baker, 485 U.S. 505 (1988).

I Claimed and Began to Exercise The Constitutional Right To Petition for Redress

26. In 1999, I decided to help Banister and Benson obtain answers to their questions by *claiming and exercising the constitutional Right to Petition the Government for Redress of Grievances* regarding the fraudulent origin and illegal operation of the federal individual income tax.

27. For me, the issue was *not* about the subject matter of the Petition, "taxes." For me, the issue was popular sovereignty, the individual's natural Right to hold government accountable to the Constitution by Petitioning the Government

for a Redress of Grievances, Government's obligation to provide specific, official answers to the People's Petitions, the Right of the People to enforce their Rights, and the impermissibility of retaliation against those who Petition the Government for Redress.

28. Given what I knew about the federal court's "no standing" doctrine regarding alleged constitutional torts, and what I considered to be the courts' sharp, fiery and passionate application of its "political question" and "frivolous question" doctrines to questions regarding the validity of the individual income tax, I decided the best course of action would be *not* to Petition the judiciary, but to Petition the leaders of the two political branches for Redress.

28. As Chairman of the We The People Foundation for Constitutional Education, Inc., I respectfully invited the leaders of the Executive and Legislative branches of the federal government to identify their most knowledgeable people on the subjects and have them attend a Foundation sponsored academic symposium at the National Press Club in July of 1999, to discuss the issues with Banister, Benson and Becraft. The government did not attend and failed to even acknowledge receipt of the invitation. However, C-Span attended and broadcast the 3½ hour event live, including the remarks of Banister, Benson and Becraft. C-Span also rebroadcast the event 4 or 5 times during the days following the event.

C-Span Opens Pandora's Box
Not Just Banister, Benson and Becraft

29. In 1999, following the C-Span broadcast, I learned that for many years, many American citizens and organizations had been asking the IRS and their elected officials in the federal government to answer questions regarding the apparently fraudulent origin of the 16th Amendment and the apparently illegal operation and enforcement of the individual income tax system. I also learned that the government appeared never to respond to the requests, or if they did, the response was non-responsive.

30. I also learned that citizens were taking government's failure to answer their questions to mean admission, and were then acting on their beliefs by not filing any more tax returns.

31. I also learned that when taken to court for "willful failure to file," these citizens were not being allowed to defend themselves to the extent the language of Supreme Court decisions, the Constitution and the Internal Revenue Law was their defense. Judges were not allowing juries to see the defendant's evidence. In civil trials the citizens' questions regarding the origin and operation of the income tax system were being summarily dismissed as "frivolous."

32. To me, what was happening in America's courtrooms was at odds with what the U.S. Supreme Court has said regarding the definition of "income."

33. Following the C-Span broadcasts, I heard from many People, including tax professionals. I learned that the evidence of the government's lack of authority to impose a direct, un-apportioned tax on labor, and of the IRS' routine violation of individual due process Rights in the IRS' day-to-day administration of the Internal Revenue Laws was substantial and significant. I also learned that the evidence of constitutional torts and illegal behavior by the government regarding the income tax, coupled with the government's refusal to respond to citizens' Petitions for Redress of the grievances had resulted in a growing number of citizens who had decided to enforce their fundamental, constitutionally guaranteed Rights in the only non-violent way possible, by retaining their money until their grievances were redressed and their questions answered.

34. I learned that rather than properly respond to the citizens' Petitions for Redress, which Right appeared to me to include the Right to a response from the government and a Right of enforcement by retaining their money until their Grievances were Redressed, the IRS had been unconstitutionally retaliating against the Citizens, by using the Citizens' "No Answers, No Taxes" Rights-Enforcement actions as grounds for further abuse and the judiciary appeared to me to be cooperating with the executive branch in a cooperative "zero tolerance" decision to deny People their constitutional

Rights, by not allowing defendants to defend themselves. That is, Judges presiding over "willful failure to file" trials were not allowing defendants to present as evidence what they had read in the founding documents including the Constitution, or in decisions by the United States Supreme Court, or in the federal statutes.

The Petition Clause As A Sword

35. Since 1999, I have acted with a single-mindedness of purpose in using the Petition Clause of the First Amendment *as a sword* to *enforce* the People's Rights and the Government's obligations under the Constitution, that is, to hold the government accountable to the prohibitions and restrictions placed on the government by our written Constitution.[4] I have committed the whole of my being, the WTP Foundation and the WTP Congress to the pursuit of truth and justice and to a recognition by those wielding power in government that they are constitutionally obligated, in the interest of the essential principles underlying our system of self-government, including popular sovereignty and government based on the consent of the People, to provide formal, specific

[4] In 2002, I prepared three additional Petitions for Redress of Grievances that were signed by thousands of concerned citizens before they were served on every member of Congress and the President. They addressed grievances brought about by the government's violation of the Constitution's war powers, "privacy," money and debt-limiting clauses of the federal Constitution, brought about by the Iraq Resolution, the USA Patriot Act and the Federal Reserve System, respectively. As with the first Petition for Redress of Grievances regarding violations of the taxing clauses of the Constitution, the only Redress sought by the three later Petitions were formal, specific answers to questions.

responses to proper Petitions for Redress of Grievances received by them from the People.

36. I have personally planned and managed the many activities of the WTP Foundation and the WTP Congress that have been designed to provide the government with proper Petitions for Redress of Grievances and opportunities to respond to the Petitions. I have personally planned and managed the many WTP Foundation and WTP Congress programs and projects that were designed to provide the body politic with knowledge about the history, meaning, effect and significance of the Right to Petition the Government for Redress of Grievances, the four outstanding Petitions to the Government for Redress of Grievances regarding the tax, war powers, money and privacy clauses of the Constitution and the Government's unconstitutional response to those Petitions.[5]

37. The Record of includes an Affidavit signed by me that details every pro-active measure planned and managed by me and the WTP Foundation and WTP Congress since 1999 for the purpose of determining and *enforcing* the People's Rights and the Government's obligations under the tax, war, money and privacy clauses of the Constitution and under the Petition Clause of the First Amendment.

[5] In 2002, three additional Petitions for Redress were added to the income tax Petition for Redress

38. The WTP Foundation has received and spent more than 2 million dollars since 1999, in pursuit of the activities referred to above. The Congress has received and spent approximately $100,000. Exhibit C hereto includes copies of all Form 990 tax returns the WTP Foundation has ever been required to file.[6] Exhibit D hereto includes copies of the Form 990 tax returns the WTP Congress has ever bee required to file.[7]

39. All the money received by the WTP Foundation has come from donations from people who have indicated their desire to be associated with the WTP Foundation and its other supporters, and have wanted to see the Foundation's "government accountability" program succeed because they are interested in the *enforcement* of their Rights and the Government's obligations under the tax, war powers, money and privacy clauses of the Constitution, and because they obviously believe the government should be held accountable to the Constitution by responding to the Petitions for Redress of Grievances with formal and specific answers to their questions.

40. On the other hand, all the money received by the WTP Congress (approximately $100,000) has been from membership fees from People who have indicated their desire to be associated with the WTP Congress and its other members, and have wanted to see the Congress's "institutionalized

[6] WTP Foundation's Form 990 for 2005 has not yet been filed. Revenue for 2005 was $322,613. Revenue for the first nine months of 2006 is $75,000.
[7] WTP Congress was not required to file a Form 990 until 2003.

vigilance" program succeed because they believe the state and federal Constitutions are all that stand between them and government despotism and tyranny, that eternal vigilance is the price of Freedom, and that organization is the key to institutionalized vigilance.

41. To minimize expenses, I have always managed the business of the Foundation and the Congress from a suite of office space located in my home. I have never charged the Foundation rent. I do recover part of my phone bill and part of my electric bill from the Foundation.

42. I have never asked for nor have I ever received any compensation for my work with the Foundation and the Congress.

43. Neither the Foundation nor the Congress has any employees.

44. Exhibit E annexed hereto is a copy of the only brochure ever published by the We The People organization. It describes the commitment of the WTP Foundation to civic education, the commitment of the WTP Congress to civic action, and the emphasis the WTP organization has been placing on *enforcement* of the People's Rights and the Government's obligations under the Constitution, especially the Petition Clause of the First Amendment.

45. Between *1999 and 2004*, I and People associated with the cause of the We The People organization repeatedly petitioned the Executive and Legislative branches of the United States *respectfully and humbly* for Redress of

Grievances related to the money, war, tax and privacy clauses of the Constitution. However, there was *no* response from the government.

46. Only after the government's refusal to respond to any of the four Petitions for Redress did I begin to promote the *Right of Enforcement* as advocated by the same Continental Congress that adopted the Declaration of Independence and, as later underscored by Thomas Jefferson, by withdrawing my support of the government until I had secured Redress of the *constitutional torts*.[8]

The Petition Clause As A Shield

47. Since early 2003, I have been forced to use the Petition Clause of the First Amendment *as a shield* against Government attempts to undermine and silence the my efforts to obtain answers to our questions.

48. In April 2003, the Government finally responded to the Petitions for Redress. However, the Government's response to me has been through the enforcement division of the IRS. Since April 2003, the Government has been abusing its enforcement powers, including its subpoena and audit powers. Rather than be willing to be held accountable by the People to the Constitution, by answering questions regarding the *Rights* of the People and the *obligations* of the

[8] "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." Act passed unanimously by the Continental Congress in 1774. "Continental Congress To The Inhabitants of Quebec." Journals of the Continental Congress. Journals 1:105-113. See also Thomas Jefferson's reply to Lord North, "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 important would be the surrender of so powerful a mediator." Papers 1:225. (A-244)

Government under the tax, war, money and privacy clauses of the Constitution and under the First Amendment's Petition clause, the IRS continues to close its eyes to the Constitution and see only its interpretation of the Internal Revenue Code.

49. In April of 2003 the IRS launched an attack against me, the Foundation and the Petition process.

50. To justify its impermissible retaliation, and divert attention away from its unwillingness to be held accountable by setting a modern day precedent of responding to a citizen's Petition for Redress of constitutional torts, the Government labeled the People's campaign in support of the enforcement of the Petition Clause of the First Amendment a "promotion of an abusive tax shelter," a crime under Section 6700 of the Internal Revenue Code.

51. On April 4, 2003, having officially adorned its attack with the label "IRS enforcement program," the IRS sent me a letter that read:

> " We have reviewed certain materials with respect to your *tax shelter promotion*. We are considering possible action under Section 6700 and 7804 of the Internal Revenue Code relating to penalties and an injunction action for *promoting abusive tax shelters*. In addition, we plan to consider issuing 'pre-filing notification' letters to the *investors who have invested in this promotion.* You are requested to meet with the examiner at the above date, time and location. Enclosed is a list of documents, books and records that you should have available and questions you should be prepared to reply to at that time." (my emphasis added).

Exhibit F annexed hereto is a copy of the letter.

52. In fact, I was not and am not in the business of selling any service or product (trusts, tax avoidance products or otherwise). We reported on the website everything we were doing and tried to make it possible for anyone to obtain copies of our educational and research products, free of charge, by downloading it from the website. We requested a nominal donation for those items we had to send through the mail. We would send those items free of charge to anyone who could not afford to make a donation.

53. There had been and is no "tax shelter" scheme. There had been and are no "investors."

54. Rather, there have been Petitions for Redress of Grievances. There have been petitioners who have been claiming and exercising the constitutional Right and who have been associating with me, the Foundation, the Congress and with other like-minded people. There have been donors who believed in our cause and wanted to help us obtain answers to our questions. There have been providers of professional services to the Foundation and the Congress to help us develop an Internet presence, a communication capability and our projects. There has been a Board of Directors of the Foundation and a Board of Directors of the Congress.

55. Beginning with the IRS letter to me on April 4, 2003, the IRS has been attempting to put an end to the Petition for Redress process by silencing me

and chilling the enthusiasm of those associated with me and supporting the Petition process. It all began with the IRS announcement that I was "under investigation" under Section 6700 of the Internal Revenue Code, and by serving me with a Summons for my personal and private books, records and other documents, including financial records and the identities of all the people who were supporting the work of the Foundation. In its own words, as we will see below, the IRS has said it wants information so it can contact each of the people who were associating with and supporting the Petition process *for the purpose of examining them*.

56. On May 30, 2003, in response to the IRS's "6700" enforcement letter, I met with IRS Agent Roundtree. I handed him a letter with approximately 60 exhibits, advising him that his "enforcement action" was impermissible retaliation under the First Amendment and that the IRS was infringing on my Right to Petition, to Free Speech, to Freedom of the Press, to Peaceably Assemble, to be Secure in Person, House, Papers and Effects, to Due Process and to be left alone. See Exhibit F for a copy of my letter.

57. Agent Roundtree took one look at the letter and immediately said to me, "I am not going to play the constitution game. I have something for you." Roundtree then handed me a Summons, demanding the same information that he

demanded in his "6700" letter. See Exhibit G for a copy of the Summons dated May 30, 2003.[9]

58. On June 23, 2003, IRS Agent Cox served me with another Summons, "for the purpose of inquiring into any offenses connected with the administration or enforcement of the internal revenue laws." See Exhibit H.

59. Now I had to use the Petition Clause of the First Amendment as a shield against an attack by my government.

60. I responded to the IRS Summonses by petitioning the federal District Court for the Northern District of New York to quash the Summonses on the ground that I had the unalienable, natural Right, guaranteed by the First and Ninth Amendments to hold the government accountable to the Constitution by Petitioning the Government for a Redress of Grievances, especially grievances involving *constitutional torts*, that Government had an obligation to respond, that any Right that is not enforceable is not a Right, that if Government did not respond I had the Right to Enforce my Rights by withdrawing my support from the Government until my grievances were redressed, and that the Summons represented constitutionally impermissible retaliation and interference with my Right to Petition, to Free Speech, to Freedom of the Press, to Peaceably Assemble, to be Secure in Person, House, Papers and

[9] The Summons included an incorrect Social Security Number. On August 15, 2003, IRS Agent Roundtree served me with a corrected Summons.

Effects, to Due Process, and to be left alone. I argued that any issue and any Branch is petitionable.

61. The Government did not respond to my Motion To Quash. The District Court accepted as true the material facts as set forth in my papers but denied my motions to quash "as a matter of law."

62. On January 25, 2005, the U.S. Court of Appeals for the Second Circuit ruled that in the interest of my Right to Due Process I was not required to respond to IRS administrative directives and orders, such as the Summonses, without a court order, and if the IRS felt it was entitled to my records it would have to initiate a lawsuit in federal district where, in the interest of my due process there would be a *full adversarial proceeding and a hearing on the charges and on my defenses*. See Exhibit I for a copy of the decision (*Schulz I*).

63. The Government immediately motioned the Second Circuit Court of Appeals to amend its January 25, 2005 decision, on the ground that without an amendment the ruling would make it harder for the IRS to collect taxes.

64. On June 29, 2005, the Second Circuit issued a second opinion in the case, bolstering its earlier Due Process decision. In addition, on page 10 of its decision, the Second Circuit held that the due process principles the Court was applying applied not only to an IRS first-party summons, but to all to all administrative orders and directives (including, presumably, third-party

Summonses, liens and levys). Exhibit J hereto is a copy of the Court's decision (*Schulz II*).

65. Instead of doing what the Second Circuit directed the IRS to do if it believed it was legally and properly entitled to the information it was seeking from me, the IRS decided to go around the Second Circuit to obtain the identities of everyone who, in any way at all, was associated with me and supporting the Foundation for the purpose, as we shall see, of severing those associations and cutting off that support, in much the same way as the government apparently goes after domestic terrorists.

66. As we shall see, the Government's WTP 6700 program has been measurably successful. Donations have gone down from 350-400 thousand dollars annually to $75 thousand for the first nine months of this year, preventing the Foundation from carrying on with key components of its program such as its Operations Plan for 2006 (Exhibit K) and the Liberty Hour (Exhibit L).

67. On June 14, 2005, after the date of the decision in *Schulz I*, and just before the date of the decision in *Schulz II*, IRS agent Roundtree sent me a chilling letter telling me that because I did not provide the information and documentation on funds received "for the promo" that he had summoned from me on May 30 and August 15, 2003, the IRS would be contacting third parties for the

information. He made no mention of *Schulz I.* Exhibit M, hereto is a copy of Roundtree's June 14, 2005 letter.

68. The IRS was obviously angered by the Second Circuit's ruling in *Schulz I and Schulz II,* and more determined to put an end to the Petition for Redress process, which is obviously an embarrassment to the government, especially as more time passes without a response from the Government and more People associate with and support the Foundation and the Petition process.

69. In July of 2005, IRS Agents Roundtree and Cox, the same two agents who had served me with the summonses in 2003, served two third-party summonses on the PayPal corporation, one on PayPal in San Jose and one on PayPal in Omaha (Exhibit N hereto). *Between them, the two new summonses sought the same information sought by the two 2003 summonses and that the Second Circuit said the IRS was not entitled to receive absent a full adversarial proceeding and hearing.*

70. I filed two lawsuits to quash the Summonses, one in the northern district of California (Ninth Circuit) and another in the district of Nebraska (Eighth Circuit). My claims were similar to those I presented to the court in the Second Circuit in *Schulz v IRS.*

71. **The Government's pleading included an admission from the IRS that it wanted the identities of the people who had been sending money to the Foundation so the IRS could examine them**. Exhibit O, pg. 4, last sentence.

72. Without a full adversarial proceeding and hearing, both District Courts denied my Petitions to Quash. Neither Court addressed the constitutional issues I presented except to say, " There is no First Amendment Right to violate a constitutional statute." On information and belief, PayPal has given the IRS a CD-Rom(s) containing every bit of data in PayPal's possession regarding the We The People organization, including the identity of all People who had been associating financially, through their PayPal accounts, with the We The People organization. A copy of the decision from the District Court in San Jose is attached as Exhibit P. The Omaha Decision is Exhibit Q.

73. Both rulings are on appeal. The case number for the appeal to the Eighth Circuit is 06-2891, and the matter is being briefed. The case number for the appeal to the Ninth Circuit is 05-17338, and the matter is awaiting oral argument.

74. **No Appeals Court, other than the Second Circuit has issued a decision in any of the current Schulz cases that also involve the question of the Right to Petition.**

75. On September 2, 2006, following the filing of my Petitions to Quash the two PayPal summonses in California and Nebraska, the IRS served two more third-party summons that named me as their target. These were served on a former Board member of the We The People Foundation (attorney Christopher Garvey), and a son of a former Board member by the same name (Peter Candela). The IRS confused Candela the father (who was deceased) with the son. I filed a motion to quash the summonses in the District Court for the Eastern District of NY. My claims were similar to those I presented to the court in the Second Circuit in *Schulz v IRS*. The IRS provided Declarations by agent Roundtree as justification for the Summonses. Garvey (Exhibit R) and Candela (Exhibit S) provided sworn affidavits attacking the veracity of the Declarations by Roundtree and the Summonses. **Attorney Garvey's affidavit included the following statement: "IRS Revenue Officer Lawrence Engel, during the ensuing discussion, told me that the IRS had targeted me because of my affiliation with Bob Schulz. Engel told me at that time that his supervisor, David Smith, located in Buffalo, went on Schulz's website and decided to target all the Board Members of Schulz's organization."** See Exhibit R, paragraph 16. See also the Declaration by Christopher Garvey filed with the instant motion.

76. The District Court dismissed my Petition to Quash the Garvey and Candela summonses for being out of time, acknowledging in a footnote, however, that the IRS Summons may not be valid because they were served on me out of time. Exhibit T is a copy of the court's decision. The matter is now before the Second Circuit where it has been fully briefed and is awaiting oral argument.

77. Burr Deitz was the incorporator of the Foundation and Congress. He has been a member of the Board of Directors since incorporation. He too has been abused by the IRS. He is 77 years old. Prior to April 2, 2004, Deitz had never heard from the IRS. Since then the IRS has sent a Notice of Levy to his bank, who took the $350 that he had in his account. The IRS also sent a Notice of Levy to the company that he worked for, who took 100% of his earnings and sent it to the IRS. The IRS has also been taking 15% of his monthly social security check.

78. On February 28, 2006, the IRS notified me that it was initiating an audit of the We The People Foundation. The auditor, agent Michael Sciame, told me that he was handed a note by a superior and told to audit the We The People Foundation. The audit is on-going as of today, requiring hundreds of man hours of my time and that of our paid bookkeeper and accountant. See Exhibit U for a copy of the notification of the audit and agent Sciame's requests for information.

79. The audit is being conducted at the offices of the Foundation's accountant, Dievendorf and Company. At the onset of the audit, Sciame asked for the 1099's for all the people who assist the Foundation with things like website design and maintenance and Internet software development services. Sciame gave the impression that something was going on at the IRS where there appeared to be special attention being paid to Schulz and the Foundation.

80. On December 7, 2005, I received a letter from IRS agent David Gordon notifying me that the IRS's investigation of me as a promoter of "abusive tax shelters" has been transferred from agent Roundtree to him. See Exhibit V.

81. Gordon is sending letters to Plaintiffs in the *We The People v U.S.* case asking the Plaintiffs to cooperate with the IRS who is conducting a "6700" investigation of me and the We The People organization regarding "abusive activities as a promoter of tax products and services." Gordon is telling the Plaintiffs that his contact with the Plaintiff will be kept a secret if the Plaintiff wants it that way. This is having an adverse consequence on the continued funding of the Petition process.

82. Gordon is sending a *second letter* to the Plaintiffs who have not complied with Gordon's request, saying that the IRS will be initiating an investigation of that Plaintiff's tax returns by serving summonses on "other parties," suggesting this is punishment for not complying.

83. Plaintiffs, after receiving Gordon's first and second letter, are having their wages, bank accounts, retirement and social security payments taken by the IRS, liens placed on their homes and third party summonses issued to other parties. According to the Plaintiffs, this is being done by the IRS administratively without a court order and without following the appropriate procedures spelled out in the Internal Revenue Code. This is having an adverse consequence on the continued funding of the Petition process.

84. Gordon has also been sending his letters to people who are not Plaintiffs in this matter but who have donated money to the Foundation. See Exhibit W for copies of Gordon's letters to Robert Helveston and Sharon Harper.

85. Other Plaintiffs, without receiving any letter from Gordon, are also having their wages, bank accounts, retirement and social security payments taken by the IRS, liens placed on their homes and third party summonses issued to other parties. According to the Plaintiffs, this is being done by the IRS administratively without a court order and without following the appropriate procedures spelled out in the Internal Revenue Code. This is having an adverse consequence on the continued funding of the Petition process.

86. Word about IRS's investigation of me and the We The People Foundation regarding my "*potentially* abusive activities as a promoter of tax products and services" is being passed around among the Foundation's supporters and

donors and other People via the Internet. Exhibit X is a copy of one such e-mail.

87. Following the mailing of Gordon's letters to Plaintiffs and non-plaintiffs alike, the enforcement actions being initiated against Plaintiffs and the general publicity about the IRS's ongoing "6700" investigation, Plaintiffs have asked to be removed from the lawsuit and from our e-mail list. Exhibit Y is a copy of one such letter. In addition, correspondence with and Donations to the Foundation have dropped significantly in 2006 as follows:

	Donations	
2001	375,731	
2002	427,129	
2003	360,475	
2004	392,919	
2005	322,613	
2006	75,000	(1st 9 months)

88. On March 6, 2006, IRS agent Elsie Addington sent me a letter asking for a copy of my 2003 and 2004 tax returns. Exhibit Z is a copy of Addington's letter.

89. On April 17, 2006, Agent Addington telephoned me. Addington told me that one of her superiors told her to audit me for 2003 and 2004. She asked me why I had not filed tax returns for 2003 and 2004. I told her about the Petition for Redress, about my June 22, 2002 letter to the IRS Commissioner. I also told Addington that not everyone was required to file a return if they did not

receive any taxable income, and that I was one of those people. She asked where I got the money to eat and keep a roof over my head. I told her I never received any money for the work I have done for the We The People organization and that I was receiving personal gifts from family and friends or money from the sale of my homestead two acres at a time. I told her that when I sell my land I send both the IRS and the State of NY 5% as required by law. She requested a copy of the Second Circuit rulings in *Schulz I* and *Schulz II*, and a copy of the latest Petition for Redress of Grievances with the questions the Government has refused to answer. I mailed her the information she requested.

90. During subsequent phone conversations with agent Addington, she told me she wanted copies of all my bank statements, and all items deposited and withdrawn from my bank account. I reminded her that the items deposited in my account were personal gifts from family and friends and not for any services rendered. I also told her that unless the IRS had a good and sufficient reason for knowing, I did not want the IRS or anyone else to know how I was supporting my life and keeping a roof over my head, who my friends and associates were, whether or not I had any health issues and who my doctors were, whether and why I paid money to hospitals, who my telephone and IT service providers were, how much I paid to heat my home, whether or not I

insured my house and car, and where I shopped for food and how much I spent, etc. I told her those records were personal and private. Addington said she was after the identities of my family, friends and associates who were giving me any money *so the IRS could audit the tax returns of those people*.

91. On August 18, 2006, Addington sent a letter directing me to send her my personal and private bank records by September 21, 2006. See Exhibit Z for a copy of the request.

92. On or about August 20, 2006, Addington telephoned me to say that if I did not provide the information in her written request she would be serving my bank with a third party summons, requiring the Bank to provide the information requested.

93. On October 12, 2006, Addington served the Bank with the Summons that is the subject of the instant Petition to Quash Summons.

94. **The Bank's attorney, Mr. James Cullen has informed me that unless the Court stays the enforcement of the summons, the bank will comply with the summons by sending the summoned information to the IRS on November 7, 2006, enabling the information to reach Addington by November 9, 2006.**

I make this Declaration in support of the Appellants' motion for injunctive relief.

28 USC 1746 Unsworn Declarations

I declare under of penalty of perjury that the foregoing is true and correct.

Executed on Tuesday, November 2 In support of this motion, based on affidavits and declarations attached and all the prior pleadings, Mark Lane, counsel for all Plaintiffs-Appellants, with the exception of Robert L. Schulz, and Robert Schulz, who is *pro se*, state as follows:

RELIEF REQUESTED

Appellants, move this Honorable Court for an entry of an Order:

a) temporarily and preliminarily enjoining and prohibiting the Internal Revenue Service and any other agency of the United States that arguably may act under color of Subtitle A or C of the Internal Revenue Code from communicating directly with any of the plaintiffs, without the approval of his or her counsel, until the underlying questions before the Court are finally determined, and

b) directing IRS Agent David Gordon to immediately send a letter to each Plaintiff he sent a letter to, explaining that he had no authority to contact them directly, that his earlier letter impeded the administration of justice and violated the Plaintiff's natural Rights of association, speech, petition, privacy, due process and Right to Counsel, that any information acquired by him as a consequence of the earlier letter will be expunged from the record and considered

to be of no consequence, and apologizing to the Plaintiff for the misstep, and

c) directing the IRS to immediately provide attorney Mark Lane with a copy of all letters mailed by the IRS to any of the individual plaintiffs beginning September 12, 2004, and

d) directing the IRS to immediately release and suspend all liens, levys and audits put into effect against any and all Plaintiffs since September 12, 2004, and

e) temporarily and preliminarily enjoining and prohibiting the Internal Revenue Service and any other agency of the United States that arguably may act under color of Subtitle A or C of the Internal Revenue Code, from initiating, executing, or advancing any enforcement actions against any of the Plaintiffs, including first-party and third-party summonses, audits and liens and levys, before any administrative, civil and/or criminal tribunal, until the underlying questions before the Court are finally determined, and

f) temporarily and preliminarily enjoining and prohibiting the Internal Revenue Service and any other agency of the United States that arguably may act in this matter under color of Subtitle A or C of the Internal Revenue Code, from advancing any and all

administrative, civil and criminal proceedings against Plaintiffs under subtitle A and subtitle C of Title 26, including the sharing of information and/or cooperation with state taxing authorities, until the underlying questions before the Court are finally determined, and

f) temporarily and preliminarily enjoining and prohibiting Defendants from enforcing the collection of any tax from any Plaintiff that is based on the Plaintiff's labor, until the underlying questions before the Court are finally determined, and

g) granting any other relief that to the Court may seem just and proper.

INTRODUCTION

This is a motion to enjoin and prohibit, until the underlying issues are fully determined, a program (hereinafter "WTP-6700") inaugurated by Defendants (hereinafter the "Government"), which is impeding the administration of justice in this case, in violation of 18 USCS 1503, and is violating Plaintiffs' (hereinafter the "People") free speech, associational and petitioning Rights, as guaranteed by the First and Ninth Amendments to the United States Constitution, their privacy Rights as guaranteed by the Fourth Amendment of the United States Constitution, and their due process and property Rights as guaranteed by the Fifth Amendment.

The People are a group of persons and organizations who, according to the prior pleadings and their accompanying affidavits, have claimed and

are exercising the capstone Right of Petitioning the Government for Redress of Grievances. They have associated with one another and have given of their time, money and talents for the common purpose of petitioning elected and appointed officials for Redress of certain constitutional torts and for educating the general public about issues involved in the Petition process. They have conducted regular meetings and telephone and Internet communications, seeking answers to questions in order to reconcile certain acts of the federal government with the enumerated powers and prohibitions of the Constitution of the United States of America, all for various uncontested legitimate reasons including civic education, protecting individual liberty and freedom, and holding government accountable to the Constitution.[10]

None of the People have received a response from the Government to their Petitions for Redress. Nearly all Plaintiffs have, *therefore*, withdrawn their financial support of the federal government by retaining their money until their grievances are redressed, a natural Right of Enforcement inextricably intertwined with the Rights of Accountability, Petition and Response guaranteed by First and Ninth Amendments. The People, according to the accompanying Declarations and Affidavits are being

[10] Plaintiffs are seeking to reconcile the differences between Iraq Resolution and the war powers clauses, between the enforcement of the Internal Revenue Code and the tax clauses, between the Federal Reserve Act and the money clauses and between the USA Patriot Act and the privacy clauses.

oppressed by the government who, closing its eyes to the Constitution and seeing only its interpretation of the Internal Revenue Code, is interfering with and **preventing the People from peaceably enforcing the *Defendants'* contested obligations under the United States Constitution, while violently enforcing *Plaintiffs'* contested obligations under the Internal Revenue Code.**

The WTP-6700 program is not only impeding the administration of justice and injuring the People in specific ways, the WTP-6700 program has substantially chilled and impaired the People's constitutionally protected communications, associations, petitions and privacy. Persons who before the program associated with and donated in support of the Petition process will no longer do so.

As the accompanying affidavits and declarations demonstrate, WTP-6700 is clearly intended to shut down Plaintiff We The People Foundation for Constitutional Education, Inc. and, with it, the People's Petition process, by impairing the ability and willingness of the People to associate, by cutting off the flow of donations and technical assistance to the Petition process via the Foundation, and by so bogging down the manager of the Petition process (Plaintiff Robert Schulz) by forcing him to respond to one initiative after

another under the WTP-6700 program that he has little time to further the Petition process whether by litigation, civic education or civic action.

The affidavits and declarations accompanying this application show clearly the general pattern and specific steps being taken by the Government under WTP- 6700.

As the declaration by Schulz demonstrates, the first step in the Government's attack under its WTP-6700 program was to convert to a "crime" the People's claim and exercise of the Right to Petition Government for Redress of Grievances. The government did this by simply declaring that the People's promotion of the Petition process is a potential "promotion of an illegal tax shelter" and, therefore, could be a crime under 26 USC section 6700. The Government's next step was to declare that every person providing assistance to the People's Petition process is a potential "investor" in the "illegal tax shelter," whether that person had donated money or provided technical or other professional services to the Foundation.

Next, the Government has been seeking and obtaining the identities of each "investor," contacting and intimidating each "investor", including *Plaintiffs*,[11] donors who are not plaintiffs,[12] Board members,[13] providers of

[11] For instance, see Affidavits by Stephen Albright, Kathleen Little, Kimberly Owen, David Sharp, Clyde Shaulis, Richard
McFarland, John Q. Little. Douglas Allsup, Charles and Catherine Cartier, Frank Grieser, C. Gene Johnson, Scot Johnson, John
Korman, Dan Hanna and Julie Daube.

technical assistance[14] and the manager of the Petition process,[15] and otherwise doing whatever the Government feels is necessary to intercept and end all such donations, contributions, gifts, and professional assistance, even if that means taking by *administrative* directives, without warrants, hearings or court orders, and without following the due process procedures in the Internal Revenue Code, the wages, salaries, money in bank accounts, social security and other retirement payments, private and personal records and material from third parties, and placing liens on real property.

STATEMENT OF FACTS

The People's Petition Process

People Enforcing Constitutional Provisions

(People's Rights and Government's Obligations)

The Record before this Court includes extensive documentary evidence of the People's process of Petitioning for Redress of constitutional torts: the Government's abuse of its taxing, war-making, money-making and police powers, together with evidence of the Government's failure to respond to the Petitions. For the details of the Petition process, the Court's attention is invited to the Affidavit with its 65 Exhibits, sworn to by Plaintiff Schulz on July 17, 2004 (Docket #7). The Affidavit and copies of the

[12] For instance, see paragraph 67 of Declaration by Schulz re donors Robert Helveston and Sharon Harper.
[13] For instance, see Declaration by Christopher Garvey and Affidavit by Burr Deitz
[14] For instance, see Affidavit by Judith Dievendorf
[15] See Declaration by Robert Schulz

People's Petitions are also included in the Appendix at pages 104-134, 334-537.

The Government's WTP-6700 Program

The details of the WTP-6700 program are set forth in the accompanying Declarations and Affidavits. What they demonstrate is that the Government has launched a broad, *administrative*, coordinated program of threats, intimidation and takings aimed at shutting down the Petition process. The Government has been sending threatening and intimidating letters directly to Plaintiffs and other supporters of the Petition process. The Government has been serving *administrative* directives and orders on employers, banks, retirement plans including the Social Security Administration, and county clerks, resulting in the taking of wages, salaries, retirement payments, bank savings accounts from Plaintiffs and other supporters of the Petition process and the placement of liens on their homes and automobiles, *all without a judicial proceeding and hearing and court order.*

In addition, as the Declarations by Schulz and Dievendorf demonstrate, the IRS is now conducting an examination of the Foundation for the express purpose of gaining the identities of the providers of critical

Internet and website related services *so that they too could be examined by the IRS.*

In addition, as the Declaration by Schulz shows, the IRS has requested Schulz's personal bank records and has threatened to issue a third party summons on the bank if Schulz did not provide the information **by 9/21/06**. The IRS has admitted the purpose is to gain the identity of Schulz' friends and family members who have provided Schulz with personal gifts to allow him to keep a roof over his head (not for services rendered), *so that they too could be examined by the IRS*.

The WTP-6700 program is working real harm on People who have claimed and are exercising their constitutional Right to Petition for Redress. The Government is doing this without responding to the People's four Petitions to the Government for Redress of constitutional torts, and without honoring and respecting the People's Rights as Plaintiffs to the fair and equitable administration of justice, and without waiting for the Courts to declare the full contours of the People's Rights and the Government's Obligations under the Petition Clause.

People have asked to be removed as Plaintiffs and from the Foundation's mailing list, and donations in support the People's Petition Process have fallen dramatically, seriously impairing the People's ability to

effectively prosecute this case and to carry on their program of civic education and civic action related to self-government and the Right to Petition Government for Redress of Grievances.

As Schulz's Declaration shows, donations began to decline in 2005, due to the service of the administrative levies and liens on the Plaintiffs, and PayPal's compliance with the IRS's summonses, turning over its records of donations to the Petition process. Donations have dropped precipitously in 2006.

ARGUMENT

I. DEFENDANTS ARE OBSTRUCTING JUSTICE

The Government is obstructing justice. This should be reason enough for the injunction to issue. 18 USCS § 1503 reads:

> " (a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, **or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in …."(**emphasis added**).**

18 USCS § 1503 is divided into two parts: (1) its specific language, which forbids influencing, intimidation, or impeding of any witness, juror,

or court official, and (2) its concluding omnibus clause, which punishes influencing, obstruction, or impeding of due administration of justice. *United States v Howard (1978, CA5 La) 569 F2d 1331*.

The last clause of 18 USCS § 1503 is a broad catch-all phrase and is all embracive and designed to meet any corrupt conduct in endeavor to obstruct or interfere with due administration of justice, in same fashion as the Contempt of Court Statute [18 USCS § 401], **and is not merely intended to prohibit conduct directed against participants in judicial proceedings**. See *United States v Walasek (1975, CA3 Pa) 527 F2d 676*. (emphasis added).

The purpose of 18 USCS § 1503 is to render illegal all interference with judicial functions of the United States. The final clause was added in order to cover those means of interference which draftsmen were not prescient enough to enumerate, such as the letters and communications described in the accompanying affidavits. See *United States v Bonanno (1959, DC NY) 177 F Supp 106, revd on other grounds (1960, CA2 NY) 285 F2d 408*.

The letters and communications listed above are all part of an endeavor by the Government to obstruct or impede the administration of justice, by obstructing and impeding the ability of the People to prosecute this case, to peaceably assemble and associate with one another and with other people, to educate people who are not

party to the case about the issues involved in this case, including the important fact that for the first time in our history a case is before the federal courts that asks the judiciary to declare the full contours of the meaning of the last ten words of the First Amendment **and the ability of the People to hold the government accountable to the Constitution and the Bill of Rights.**

Government's Actions Are Shocking To The Senses

The acts under WTP-6700 are shockingly wrong, bad, evil, cruel and corrupt. Not only is it unethical for any defendant in a lawsuit to directly contact plaintiffs who are represented by counsel, without first contacting plaintiff's counsel, in this case the Defendant contacting the Plaintiffs is the IRS, the most terrifying organization in the country, someone few people want to risk becoming a target of unless they have a strong stomach and net worth. In this case, the Plaintiffs and donors have associated to share the cost and the risk. Individually, few can long stand alone against the abuse of power by the IRS.

As the Schulz Declaration and affidavits demonstrate, one of the most shocking of the Government's acts began on April 4, 2006. Without first contacting attorney Mark Lane, IRS agent David Gordon began contacting Lane's individual clients. There is an obvious threat from the Government in Gordon's letters, to wit, "You are supporting the Petition for Redress process; you have said you are retaining your money[16]; the IRS has labeled

[16] The IRS knows the Record of this case includes sworn affidavits from the overwhelming majority of Lane's individual clients filed on November 12, 2004 (Docket # 16 or 24), testifying to the fact that they have Petitioned the Government for Redress of Grievances, that the Government has not responded and that they are, therefore, retaining their money from the government until their grievances are redressed.

the Petition for Redress process an illegal tax shelter under Section 6700 of the Internal Revenue Code; this gives the IRS the power to conduct an investigation; we have identified you as an investor in this illegal tax shelter; testify against Schulz and the We The People Foundation; stop supporting the Right to Petition process; stop contributing to the fund that is paying your attorney, Mark Lane; we can go after you; help us and we will go easy on you; we won't tell your attorney or Schulz about this if you don't want us to."

II. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

The Government wants to operate without constitutional restraint (hence our Petitions for Redress) and now they are saying they can operate without judicial review (because Congress has not authorized this kind of lawsuit).

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.

The instant case is one of "first impression." Lacking any court ruling declaring the full contours of the meaning of the Petition Clause as it applies to ordinary natural citizens seeking Redress against their government for

constitutional torts, and taking into account the plain language of and the Framers' intent behind the words of the Petition Clause, the 791 years of history documenting the evolution of Liberty from Runnymede to Philadelphia, and the complete absence of any case law in opposition to the People's interpretation, the ends of Justice and Liberty require that deference, and the presumption that those fundamental Rights exist as argued by the People, must be provided to the People who have claimed and are exercising those Rights.

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." To avoid prior restraint or any infringement of the Right, the lack of oppositional precedent coupled with the plain language and the history, meaning effect and significance of our founding documents and their legal precedents must be construed in favor of the People's likelihood to succeed on the merits.

The People have provided the Court with extensive historical and documentary evidence in support of the true legal meaning and power of the Right to Petition Government for Redress of Grievances. See especially

APPELLANT'S BRIEF, pages 13-26. The Government has not been able to refute any of those arguments.

The Government is obligated to respond to Petitions for Redress of Grievances, and the People have a Right of enforcement, especially when, as here, the oppression is caused by unconstitutional government acts and the Government refuses to be held accountable by answering the questions in the People's Petitions. 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).

To leave the lower court's opinion undisturbed would be to reverse humanity's steady march towards "ordered liberty," suggesting that we transitioned from a Republic to a democracy without going through the amendment process required by Article V of the Constitution.

The individual's Right, through the Petition Clause of the First Amendment, to hold any branch of the government accountable to the Constitution, is the "capstone" Right, the period at the end of the sentence on Liberty's evolution, for "law without it, is law without justice." Appellant's ask rhetorically, "What is the Right to Petition if the People have to ask for permission?"

Freedom from unconstitutional government acts cannot be achieved without violence without the Right of Petition, which includes the Right of Response and Enforcement in the event the Government refuses to respond.

Despite the absence of a judicial declaration of the meaning of the Petition Clause, the plain language found in many historical documents that served as the very foundation of civilized society and ordered liberty-- our system of laws and our form of government-- support the claims made by the People regarding the full meaning of the Right to Petition.

Finally, the same Congress that adopted the Declaration of Independence unanimously adopted an Act in which they gave meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement as they spoke about the People's "Great Rights." Quoting:

> "**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, Journals 1: 105-13.

These references demonstrate the merit in law and in fact to the People's interpretation of their Right to Petition government to secure redress of constitutional torts, including government's obligation to respond to those Petitions and the Right of the People to *enforce* the Right of Redress, including the peaceful withholding of monies, and as a last resort, the use of lawfully justified force. The People's claims regarding the Right

to Petition are fully resonant with the Rights expressed within Magna Carta, the English Bill of Rights, the Journals of the Continental Congress, the Constitution and the Declaration of Independence.

Unable to undermine the Constitutional ground the People are standing on, the Government, therefore, asks the Court to close its eyes to the Constitution and see only certain Acts of Congress and certain judicial doctrines, including the Anti-Injunction Act, the Internal Revenue Code and the sovereign immunity doctrine.

However, the Supreme Court's opinion is clear, Congress cannot violate Fundamental Rights possessed by the People.

> "And the Constitution itself is in every real sense a law-the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible. 'We the People of the United States,' it says, 'do ordain and establish this Constitution.' Ordain and establish! These are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly-'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land.' (Const. art. 6, cl. 2.) The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior stat- [298 U.S. 238, 297] ute whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight,

Adkins v. Children's Hospital, 261 U.S. 525, 544 , 43 S.Ct. 394, 24 A.L.R. 1238; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 549 , 550 S., 55 S.Ct. 837, 97 A.L.R. 947." *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936) .

"The claim and exercise of a Constitutional right cannot be converted into a crime."

Miller v. U.S, 230 F 2d 486, 489

"Where rights secured by the Constitution are involved, there can be no rule making or

legislation which would abrogate them". *Miranda v. Arizona*, 384 U.S. 436 (1966)

"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to

> be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental." Hamilton, *Federalist No. 78*

IV. IMMEDIATE AND IRREPARABLE HARM

The accompanying Declarations and Affidavits show the harm and injuries being suffered by the individual Plaintiffs-Appellants as a result of the Government's malicious and continuing attack. The harm is immediate and ongoing, and will continue to ensue failing the issuance of an injunction.

An important part of the irreparable injury finds its roots in the on-going abridgment by the Government of First Amendment Rights of association, petition and speech, and Rights of Due Process, Privacy and Property.

> "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Ellrod v. Burns (1976) 427 U.S. 347, 373, 96 S.Ct. 2673, 2690*

As the declarations and affidavits show, the harmful effects of such out of control behavior by the government and government's unwillingness to justify its behavior have chilled the enthusiasm of countless friends and supporters of the People's Right to speak and publish freely and to freely Associate with others in the exercise of the Right to Petition. These acts of Government have also disrupted the People's ability to raise money via

donations to continue prosecuting this case, and to develop public support for the Petition process through a continuation of the People's legendary and *expensive* civic education and civic action projects. As the declaration by Schulz shows, the chill induced by the Government's illegal and unconstitutional acts is so broad and deep that the People have had to shelve their formal Operations Plan for 2006, including their plan for the creation of a WTP Network. This and much more has been adversely affected by the chill caused by the Government's WTP 6700 program. The harm is immediate and irreparable because of the denial of First Amendment Rights.

> "The ability and the opportunity to combine with others to advance one's views is a powerful practical means of ensuring the perpetuation of the freedoms the First Amendment has guaranteed to individuals as against the government. "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958)."*NYS Club Ass'n, Inc v City of NY*, U.S.N.Y.1988, 108 S.Ct 2225

WTP-6700 is stifling the People's Right to association, an irreparable harm. Acting under the guise of the Section 6700 of the Internal Revenue Code is a not-so-subtle interference with that Right.

CONCLUSION

The People ask this Honorable Court to temporarily and preliminarily confine the power of the Government to pass judgment on what constitutes

the meaning of the Petition Clause by granting the relief requested, thereby putting a stop to the IRS's obstruction of justice and abridgment of fundamental Rights, and halting all tax related enforcement actions against the Plaintiffs, at least until the full contours of the meaning of the Petition Clause is finally determined by the Judiciary.

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