

## **SUMMARY OF THE CASE**

Since 1999, Plaintiff Robert L. Schulz (“Schulz”), and People associating with him, has claimed and exercised his Right to Petition the Government for Redress of Grievances, under the 1<sup>st</sup> and 9<sup>th</sup> Amendments, regarding Defendants’ (“Government”) violation of the tax, war, money and “privacy” clauses of the Constitution. The only Redress sought by the Petitions has been specific, formal answers to specific questions.

Government failed to respond, forcing Schulz (and others associating with him) to exercise their Right of Accountability and Enforcement under the Petition Clause by retaining their money until their grievances were redressed.

In 2003, Government attempted to convert Schulz’s claim and exercise of the constitutional Right into a crime. The IRS Summoned Schulz’s records, saying Schulz was “promoting an illegal tax shelter,” a crime under 26 USC 6700.

Schulz Petitioned federal District Court for the Northern District of New York to quash the Summonses claiming he was exercising his constitutional Right to Petition and that the Summonses were an abridgment of that Right. In 2005, the 2<sup>nd</sup> Circuit ruled that because the principles of Due Process apply to all administrative orders and directives the IRS must bring Schulz to court, where

Schulz would be able to assert his defenses and would be entitled to a full adversarial proceeding and a hearing, before any harm could come to Schulz.<sup>1</sup>

Ignoring the Court of Appeals, the IRS has now directed the Glens Falls Bank and Trust Company to turn over Schulz's records by November 9, 2006.

The Bank's attorney has told Schulz that on November 7, 2006, the Bank will send the IRS the information requested in the Summons *unless there is a Court Order staying the enforcement of the Summons.*

### **JURISDICTIONAL STATEMENT**

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

Defendants failed to respond to Schulz's Petitions for Redress of Grievances but retaliated against him, all in violation of the 1st and 9th Amendments to the Constitution. Jurisdiction is therefore proper under 28 U.S.C. §1331.

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<sup>1</sup> See *Schulz v IRS*, 395 F.3d 463 (2d Cir. 2005)(*Schulz I*), and 413 F.3d 297 (2d Cir. 2005)(*Schulz II*),

Schulz is being denied due process in violation of the Fifth and Fourteenth Amendments to the Constitution, and jurisdiction is proper under 28 U.S.C. §1331.

The IRS has no jurisdiction over Schulz under Article I, Section 8, Clause 17 of the Constitution, and jurisdiction is proper under 28 U.S.C. §1331.

Finally, the Court has jurisdiction under 26 U.S.C. Section 7609.

### **ISSUES PRESENTED FOR REVIEW**

Whether a claim and exercise of the constitutional Right to Petition the Government for Redress of Grievances can be converted into a crime.

Whether the Government is obligated under the Petition Clause of the First Amendment to the Constitution to respond with specific, official answers to the questions put forth by Schulz in his Petitions for Redress of Grievances.

Whether the Petition Clause of the First Amendment includes the Right of Enforcement if the Government contumaciously refuses to respond to proper Petitions for Redress of constitutional torts.

Whether the IRS lacks jurisdiction under the Constitution, Article I, Section 8, Clause 17.

### **STATEMENT OF THE CASE**

The current case and controversy arose, first, from the failure of the Government (that is, the President of the United States and the Attorney General, the Secretary of the Treasury, the Commissioner of the Internal Revenue Service,

and the United States Congress) to respond to proper Petitions for Redress of Grievances developed by Schulz relating to the Government's violations of the U.S. Constitution's War powers, Taxing, Money, and "Privacy" Clauses.

On numerous occasions over the past seven years, Schulz (and those People associated with him) has respectfully Petitioned the Government, and in good faith sought to meet publicly with the Government to secure answers to reasonable questions regarding certain acts by the Government believed to be outside the lawful authority granted by the U.S. Constitution and Acts of Congress.

The Petitions for Redress of Grievances by Schulz (and those People associated with him) have included respectful, concisely drawn requests for answers to questions. The questions were designed to assist Schulz (and those People associated with him) in his earnest quest to determine his *bona fide* Rights and Government's *bona fide* legal obligations under the Constitution, and his *bona fide* obligations and Government's *bona fide* rights under certain acts of Congress, as enforced by the Executive.

A detailed account of multiple attempts by Schulz (and those People associated with him) to Petition the Government for Redress of Grievances, and the Government's persistent failure to acknowledge or respond to those Petitions, is provided in Declaration #2 by Schulz (attached).

This case also arose from Government's contumacious disregard of the decision by the United States Court of Appeals for the Second Circuit in *Schulz v. IRS*, 395 F.3d 463 (2d Cir 2005) (*Schulz I*), and *Schulz v. IRS*, 413 F.3d 297 (2d Cir 2005) (*Schulz II*).

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

The legitimate Petitions by Schulz have been met either by total silence or direct retaliation by the Executive Branch. Far from receiving a proper response, Schulz has encountered an institutional contempt and condescending, antagonistic attitude by the elected and appointed officials of the Government. This chilling and arrogant disregard for The Constitution of the United States and Schulz's guaranteed First Amendment Right to Petition for Redress of Grievances is beyond the pale for a servant government in our American Republic.

Schulz's Petition for Redress of Grievances related to the direct, un-apportioned tax on labor is but one of four Petitions for Redress of Grievances to

which the Government has refused to respond. This action arose from four

Petitions for Redress of Grievances, to wit:

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

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

Knowing that a Right that is not enforceable is not a Right and wishing to peaceably enforce his individual, unalienable Rights, and to defend the Constitution’s war powers, money, privacy, due process and tax clauses, Schulz has found it necessary to give further expression to his Rights under the First Amendment to Speech, Assembly and Petition, by deciding to take the advice of the founders and not withhold and turn over to the Government any money earned

in direct exchange for labor (i.e., not profit or gain “derived from” labor, but money earned in exchange for labor).<sup>2</sup>

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

However, the Government has been retaliating against Schulz by attempting to disqualify and discourage Schulz from taking a public position on matters in which Schulz is financially, governmentally and politically interested, depriving Schulz of his Right to Petition, to Peaceably Assemble and to Speak freely in the very instance in which those Rights are of the most importance to Schulz.

The Government has retaliated against Schulz under color of law in the following ways: 1) by maliciously mislabeling Schulz’s legal promotion of his First Amendment Right to Petition for Redress of Grievances as a promotion of an

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<sup>2</sup> “If money is wanted by Rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility.” Continental Congress To Inhabitants of Quebec, an Act passed unanimously by the Congress. **Journals of the Continental Congress. Journals 1:105-113.** “The privilege of giving or withholding our moneys is an important barrier against the undue exertion of prerogative which if left altogether without control may be exercised to our great oppression; and all history shows how efficacious its intercession for redress of grievances and reestablishment of rights, and how improvident would be the surrender of so powerful a mediator.” **Thomas Jefferson: Reply to Lord North, 1775. Papers 1:225.**

abusive tax shelter – a crime under Section 6700 of the Internal Revenue Code; 2) by serving on Schulz a series of “first party” Summonses in 2003 demanding his personal and private books and records as part of a “6700 investigation”; 3) by forcing Schulz to take the Government to federal Court to quash those Summonses in defense of his First Amendment Right to Petition for Redress of Grievances without retaliation by the Government; 4) by ignoring the order of the United States Court of Appeals for the Second Circuit that held that in the interest of his constitutional rights, Schulz did not have to comply with the Summonses, or any other IRS administrative order, and that if the IRS wanted Schulz’s books and records the IRS would have to bring Schulz to federal Court where Schulz would be entitled to *a full adversarial proceeding and hearing* in defense of his actions and Rights and any attempt by the IRS to enforce the Summons<sup>3</sup>; 5) by then serving a “three party” Summonses on Schulz’s Bank to obtain Schulz’s personal and private property *without a full adversarial proceeding or hearing*, instead of taking Schulz to Court and giving him an opportunity to defend against the illegal seizure of his property and invasion of his privacy, that is, instead of doing what the Second Circuit held the Government must do in the interest of Schulz’s Due Process Rights; and 6), by forcing Schulz to Petition federal District Courts in to quash the three party Summons.

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<sup>3</sup> *Schulz v. IRS*, 395 F.3d 463 (2d Cir 2005); *Schulz v. IRS*, 413 F.3d 297 (2d Cir 2005).



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

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

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

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

In sum, this motion to quash the Summons is based on claims: 1) that the Government is acting under color of law while closing its eyes to the Constitution; 2) that the Summons amounts to an impermissible encroachment on Schulz's fundamental Rights to Petition for Redress, Peaceably Assemble, Speech, Property, Privacy and Due Process; 3) that the IRS failed to meet the requirements set forth in *United States v Powell*, because it was acting in bad faith, lacking a legitimate purpose and a *prima facie* case against Schulz; and 4) that the IRS lacks jurisdiction under Article I, Section 8, Clause 17 of the Constitution of the United States of America.

Schulz supports his Petition to Quash with Declarations that provide extensive documentary evidence in support of his claims.

## **STATEMENT OF FACTS**

### **A. Schulz Claims And Exercises The Constitutional Right to Petition Government For A Redress of Grievances**

On March 16, 2002, Schulz Petitioned the Government [Congress and the U.S. Attorney General] for violating the tax clauses of the Constitution. Schulz

formally submitted a list of 538 specific questions to be answered. The questions were broken down into fifteen lines of inquiry. (Schulz Declaration #2, Exhibit G). The Government has not responded to the Petition for Redress of the Grievance and has not answered the questions.

On November 8, 2002, Schulz petitioned every member of Congress and President Bush for Redress regarding violations of the war powers, money, and “privacy” clauses of the Constitution. The Petitions, requested answers to specific questions. For copies of the Petitions see (Schulz Declaration #2, Exhibit ZZ). The Government has not answered the questions and has not otherwise responded to the Petitions for Redress.

On May 10, 2004, Schulz again petitioned the Government [President Bush, Treasury Secretary Snow, and Attorney General Ashcroft] for violating the tax clauses of the Constitution. (Schulz Declaration #2, Exhibits HHH and III). Schulz requested answers to 43 specific questions.

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

In May of 1999, Schulz had evidence that the Government was engaging in unconstitutional behavior by violating the tax clauses of the federal Constitution.

Schulz petitioned the leaders of the Executive and Legislative branches of the Federal Government for Redress of that Grievance. Schulz respectfully asked the Government to participate in a symposium at the National Press Club to address the issues. Schulz requested answers, supported by documentary evidence, to three questions. (Schulz Declaration #2, Exhibits M and N). The Government did not respond.

On April 13, 2000, Schulz again petitioned the leaders of the Executive and Legislative branches of the Federal Government for violating the tax clauses of the federal Constitution. A delegation of the People, representing all 50 states, traveled to the District of Columbia. Schulz and two other delegates met in the White House and in the Capitol with key aides to President Clinton, Speaker Hastert and Senator Lott, each of whom accepted a copy of a *Remonstrance* that included a statement of the grievance and a specific prayer for relief. (Schulz Declaration #2, Exhibits R, S and T). The Government did not respond to the *Remonstrance*.

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

On April 15, 2002, Schulz petitioned his Congressman regarding violations of the tax clauses of the Constitution. Schulz served a record of the Citizens Truth in Taxation Hearing during which each of the 538 questions was asked of and answered by tax professionals. Schulz requested a full congressional hearing to address the evidence and answer the questions. (Schulz Declaration #2 Exhibits TT and XX). The Government did not respond.

**B. Government Attempts To Convert Schulz's  
Claim and Exercise of a Constitutional Right  
To A Crime**

Since early 2003, the Government has been seeking Schulz's personal and private books and records to determine where the money has come from that is being used to promote First Amendment Petitions for Redress of Grievances. To justify their unconstitutional behavior, the Government disingenuously refers to Schulz's exercise of his First Amendment Right to Petition for Redress as a "promotion of an abusive tax shelter," a crime under 26 USC Section 6700.

This is the second attempt by the IRS to use IRS's summons authority to forcibly obtain the information. In 2003, IRS agents Terry Cox and Anthony Roundtree summoned Schulz's personal and private books and records. Schulz filed a motion to quash the Summonses in the Northern District of New York, where the case was dismissed for lack of jurisdiction. However, the matter was

appealed to the Court of Appeals for the Second Circuit, where Schulz obtained a significant measure of relief from IRS's infringement on his constitutional Rights.

On January 25, 2005, the Second Circuit issued the first of its two decisions in the case. The Court affirmed the District Court's order, deciding that the judicial power of the federal courts, under Article III of the Constitution, did not extend to the case because Schulz had not and would not incur any injury unless and until the IRS initiates an action against Schulz in District Court, under 26 U.S.C. section 7604(b), to compel compliance with the IRS summons. However, as the Court noted, Schulz would be entitled, under due process, to assert his defenses in a full adversarial proceeding and hearing in any such action by the Government to enforce the Summons. See *Schulz v. IRS*, 395 F.3d 463 (2d Cir. 2005).

In effect, the Second Circuit held that the IRS had only taken the first step of a two-step enforcement program against Schulz, and until the IRS takes the second step, seeking a federal court order, requiring the IRS to prove the legitimacy of its request for Schulz's personal and private information, and giving Schulz an opportunity to face his accuser and defend his actions, the IRS cannot use force to obtain the requested information.

However, the Second Circuit went on to hold that the IRS Summonses amount to administrative *requests* that do not threaten any injury, have no force or effect unless the IRS seeks a federal court order to enforce them, and no consequences

can befall a taxpayer, who refuses, ignores, or otherwise does not comply with the summons until that summons is backed by a federal court order. In addition, the Second Circuit held that any taxpayer subject to a court order under 26 U.S.C. Section 7604 cannot be held in contempt, arrested, detained, or otherwise punished for refusing to comply with the original IRS summons, no matter the summoned party's reasons or lack of reasons for so refusing.

On March 1, 2005, the Department of Justice moved to amend the Second Circuit's January 25, 2005 decision in *Schulz* on the grounds, among others, that, left undisturbed, the decision meant the general effectiveness and ability of the IRS to collect taxes would be seriously impaired.

On June 29, 2005, in a thirteen page decision (*Schulz II*), the Second Circuit not only denied DOJ's motion to amend the January 25, 2005 decision (*Schulz I*), the Court held that the Due Process principles being set down by the Court applied *to all IRS administrative orders*. See *Schulz II*, page 10. See *Schulz v. IRS*, 413 F.3d 297 (2d Cir. 2005)(*Schulz II*).

However, rather than comply with the Second Circuit's ruling in *Schulz* to obtain the information (by seeking a federal court order to enforce its 2003 summonses against Schulz), the IRS apparently decided to evade the Second Circuit's ruling. The IRS is now attempting to obtain the information by issuing a third party summonses to the Bank. The IRS obviously hops the Bank would

decide to turn over the summoned information to the IRS rather than risk a confrontation with the IRS by demanding of the IRS that it obtain a court order directing the Bank to turn over the information, or otherwise risk becoming embroiled in Schulz's dispute with the Government.

### **SUMMARY OF THE ARGUMENT**

The Government cannot convert a claim and exercise of a constitutional Right to a crime.

Schulz argues, as he did in the Second Circuit case, that the IRS lacks a prima facie and has acted in bad faith, and that the summons is an interference with and an infringement of his fundamental Rights under the First Amendment and Ninth Amendments and his Due Process Rights under the Fifth and Fourteenth Amendments.

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

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



The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the Government consider *and respond* to their Petitions without retaliation.

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

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

The subject Summons does not meet the requirements set forth in *United States v Powell*. The Summons was not issued for a legitimate purpose. The IRS lacks a prima facie case against Schulz.

The IRS lacks jurisdiction over Schulz under Article I, Section 8, Clause 17

## **ARGUMENT**

### **I. THE GOVERNMENT CANNOT CONVERT A CONSTITUTIONAL RIGHT TO A CRIME**

The claim and exercise of a constitutional right cannot be converted into a crime. *Miller v. US*, 230 F 486, at 489 (5<sup>TH</sup> Cir. 1956).

It is an unconstitutional deprivation of due process for the Government to penalize a person merely because he has exercised a protected statutory or constitutional right. *United States v. Goodwin*, 457 U.S. 368, 372.

## **II. SCHULZ'S PETITIONS FOR REDRESS ARE "PROPER"**

The term "Petition" is not defined in the Constitution. To be sure, a communication, to be protected as a Petition to the Government for Redress of Grievances would have to embody certain components to ensure that the document was a Petition and not a "pretended petition." Schulz does not argue that all communications, nor just any document, can be regarded as a constitutionally protected Petition for Redress of Grievances. Schulz's Petitions for Redress that gave rise to this case set a high standard. They meet or exceed any rational standard for Petitions protected by the First Amendment. For instance, each of Schulz's four Petitions for Redress:

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

- merely request answers to specific questions.

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

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

Because this is a case of first impression, requiring a declaration of Schulz's Rights under the Petition Clause of the First Amendment, it is instructive to review the history of the Right to Petition.

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

Although the courts have not previously addressed the precise issue presented here, the courts have recurrently treated the Right to Petition similarly to, and frequently as overlapping with, the First Amendment's other guarantees of free expression. See, *e. g.*, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 909-912,

915 (1982); Mine Workers v. Illinois Bar Assn., 389 U.S., at 221-222; Adderley v. Florida, 385 U.S. 39, 40-42 (1966); Edwards v. South Carolina, 372 U.S. 229, 234-235 (1963); NAACP v. Button, 371 U.S. 415, 429-431 (1963).

The Right To Petition is a distinct, substantive Right that has been violated; Government *is* obligated to respond and has failed to do so. Popular sovereignty depends upon and is directly exercised through Schulz's Right of Response. Though the Rights to Popular Sovereignty and its "protector" Right, the Right of Petition for Redress have become somewhat forgotten, they took shape early on by Government's *response* to Petitions for Redress of Grievances.<sup>4</sup>

The Government is obligated to respond to Petitions for Redress of Grievances, especially when, as here, the oppressions are *ultra vires*, caused by unconstitutional government acts-- constitutional torts. The underlying, fundamental Right is not changed by the fact that the Petition Clause lacks an affirmative statement that Government shall respond to Petitions for Redress of

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<sup>4</sup> See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142(November, 1986); "SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986); "LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989); THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997); THE **VESTIGIAL CONSTITUTION**: THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998); DOWNSIZING THE RIGHT TO PETITION, Gary Lawson and Guy Seidman, 93 Nw. U.L. Rev. 739 (Spring 1999); A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. L.J. 557 (1999) ; MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000).

Grievances. “It cannot be presumed, that any clause in the Constitution is intended to be without effect.” Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803).

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

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

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<sup>5</sup> Norman B. Smith, “Shall Make No Law Abridging...”: Analysis of the Neglected, But Nearly Absolute, Right of Petition, 54 U. CIN. L. REV. 1153, at 1154.

<sup>6</sup> See Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in 5 THE FOUNDERS’ CONSTITUTION 197 (Philip B. Kurland & Ralph Lerner eds., 1987); 1 WILLIAM BLACKSTONE, COMMENTARIES 138-39.

<sup>7</sup> See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.

protection from the frequent prosecutions against the press for seditious libel.<sup>8</sup>

Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.<sup>9</sup>

In addition, the Right to Petition was widely accorded greater importance than the Rights of free expression. For instance, in the 18<sup>th</sup> century, the House of Commons,<sup>10</sup> the American Colonies,<sup>11</sup> and the first Continental Congress<sup>12</sup> gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.<sup>13</sup>

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate sections.<sup>14</sup> In addition, a “considerable majority” of Congress defeated a motion to strike the assembly provision from the First Amendment because of the understanding that

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<sup>8</sup> See Smith, *supra* n.4, at 1165-67.

<sup>9</sup> See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)

<sup>10</sup> See Smith, *supra* n.4, at 1165.

<sup>11</sup> For example, Massachusetts secured the Right to Petition in its Body of Liberties in 1641, but freedom of speech and press did not appear in the official documents until the mid-1700s. See David A. Anderson, *The Origins of the Press Clause*, 30 UCLA L. REV. 455, 463 n.47 (1983).

<sup>12</sup> See *id.* at 464 n.52.

<sup>13</sup> Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning, whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n.6, at 115-16.

<sup>14</sup> See *New York Times Co. v. U.S.*, 403 U.S. 670, 716 n.2 (1971)(Black, J., concurring). For the full text of Madison’s proposal, see 1 ANNALS OF CONG. 434 (Joseph Gales ed., 1834).

all of the enumerated rights in the First Amendment were separate Rights that should be specifically protected.<sup>15</sup>

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

Petitioning Government for Redress of Grievances has played a key role in the development, exercise and enforcement of popular sovereignty throughout British and American history.<sup>16</sup> In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.<sup>17</sup> Later, in the 17<sup>th</sup> century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.<sup>18</sup> This broadening of political participation culminated in the official recognition of the right of Petition in the People themselves.<sup>19</sup>

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<sup>15</sup> See 5 BERNARD SCHWARTZ, *THE ROOTS OF THE BILL OF RIGHTS* at 1089-91 (1980).

<sup>16</sup> See Don L. Smith, *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations* 10-108 (1971) (unpublished Ph.D. dissertation) (Univ. Microforms Int'l); K. Smellie, Right to Petition, in 12 *ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 98, 98-101 (R.A. Seiligman ed., 1934).

<sup>17</sup> The Magna Carta of 1215 guaranteed this Right. See *MAGNA CARTA*, ch. 61, reprinted in 5 *THE FOUNDERS' CONSTITUTION*, *supra* n.5, at 187.

<sup>18</sup> See *PETITION OF RIGHT* chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 *THE FOUNDERS' CONSTITUTION*, *supra* n5 at 187-88.

<sup>19</sup>In 1669, the House of Commons stated that, "it is an inherent right of every commoner in England to prepare and present Petitions to the House of Commons in case of grievances, and the House of Commons to receive the same." Resolution of the House of Commons (1669), reprinted in 5 *THE FOUNDERS' CONSTITUTION*, *supra* n5 at 188-89.

The People used this newfound Right to question the legality of the Government's actions,<sup>20</sup> to present their views on controversial matters,<sup>21</sup> and to demand that the Government, *as the creature and servant of the People, be responsive to the popular will.*<sup>22</sup>

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify Government misconduct.<sup>23</sup>

By the nineteenth century, Petitioning was described as “essential to ... a free government”<sup>24</sup> – an inherent feature of a republican democracy,<sup>25</sup> and one of the chief means of enhancing Government accountability through the participation of citizens.

## **B. This Interest In Government Accountability Was Understood To Demand Government Response To Petitions.<sup>26</sup>**

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<sup>20</sup> For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Smith, *supra* n4, at 1160-62. James II's attempt to punish the bishops for this Petition led to the Glorious Revolution and to the enactment of the Bill of Rights. See Smith, *supra* n15 at 41-43.

<sup>21</sup> See Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).

<sup>22</sup> In 1701, Daniel Defoe sent a Petition to the House of Commons that accused the House of acting illegally when it incarcerated some previous petitioners. In response to Defoe's demand for action, the House released those Petitioners. See Smith, *supra* n4, at 1163-64.

<sup>23</sup> See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

<sup>24</sup> THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 531 (6<sup>th</sup> ed. 1890).

<sup>25</sup> See CONG. GLOBE, 39<sup>th</sup> Cong., 1<sup>st</sup> Session. 1293 (1866) (statement of Rep. Shellabarger) (declaring petitioning an indispensable Right “without which there is no citizenship” in any government); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 707 (Carolina Academic Press ed. 1987) (1833) (explaining that the Petition Right “results from [the] very nature of the structure [of a republican government]”).

<sup>26</sup> See Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).



American colonists, who exercised their Right to Petition the King or Parliament,<sup>27</sup> expected the Government to receive *and respond* to their Petitions.<sup>28</sup> The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the “**capstone**” grievance, was a significant factor that led to the American Revolution.<sup>29</sup>

Frustration with the British Government led the Framers to consider incorporating a people's right to “instruct their Representatives” in the First Amendment.<sup>30</sup> Members of the First Congress easily defeated this right-of-instruction proposal.<sup>31</sup> Some discretion to reject petitions that “instructed government,” they reasoned, would not undermine Government accountability to the People, *as long as Congress had a duty to consider petitions and fully respond to them.*<sup>32</sup>

Congress's response to Petitions in the early years of the Republic also indicates that the original understanding of Petitioning *included a governmental*

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<sup>27</sup> See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), reprinted in *id.* at 198.

<sup>28</sup> See Frederick, *supra* n7 at 115-116.

<sup>29</sup> See THE DECLARATION OF INDEPENDENCE para. 30 (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; Lee A. Strimbeck, The Right to Petition, 55 W. VA. L. REV. 275, 277 (1954).

<sup>30</sup> See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.

<sup>31</sup> The vote was 10-41 in the House and 2-14 in the Senate. See *id.* at 1105, 1148.

<sup>32</sup> See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n15, at 1093-94 (stating that representatives have a duty to inquire into the suggested measures contained in citizens' Petitions) (statement of Rep. Roger Sherman); *id.* at 1095-96 (stating that Congress can never shut its ears to Petitions) (statement of Rep. Elbridge Gerry); *id.* at 1096 (arguing that the Right to Petition protects the Right to bring non-binding instructions to Congress's attention) (statement of Rep. James Madison).

*duty to respond*. Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.<sup>33</sup>

Congress referred Petitions to committees<sup>34</sup> and even created committees to deal with particular types of Petitions.<sup>35</sup> Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report.<sup>36</sup>

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

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

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

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<sup>33</sup> See STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99<sup>TH</sup> CONG., 2D SESS., PETITIONS, MEMORIALS AND OTHER DOCUMENTS SUBMITTED FOR THE CONSIDERATION OF CONGRESS, MARCH 4, 1789 TO DECEMBER 15, 1975, at 6-9 (Comm. Print 1986) (including a comment by the press that “the principal part of Congress’s time has been taken up in the reading and referring Petitions” (quotation omitted)).

<sup>34</sup> See Stephen A. Higginson, Note, *A Short History of the Right to Petition the Government for the Redress of Grievances*, 96 YALE L. J. 142, at 156.

<sup>35</sup> See H.J., 25<sup>th</sup> Cong., 2d Sess. 647 (1838) (describing how petitions prompted the appointment of a select committee to consider legislation to abolish dueling).

<sup>36</sup> See Higginson, n34 at 157.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Before a First Amendment right may be curtailed under the guise of a law, including the internal revenue laws, any evil that may be collateral to the exercise of the right, must be isolated and defined in a "narrowly drawn" statute (Cantwell v. Connecticut, 310 U.S. 296, 307), lest the power to control excesses of conduct be used to suppress the constitutional right itself. Herndon v. Lowry, 301 U.S. 242, 258-259; Edwards v. South Carolina, 372 U.S. 229, 238; N. A. A. C. P. v. Button, 371 U.S. 415, 433.

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

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

Defendants are moving to silence Schulz, who questions Government’s behavior and preaches a nonconformist doctrine, that is, “the Government has an obligation to listen and respond to the People’s Petitions for Redress of Grievances and the People have a Right to enforce their Rights, which includes retaining their money until their Rights are Redressed.” Such abuse of police power is usually sought to be justified by some legitimate function of government, such as its protection of the People from abusive tax shelters.

The Government does violence to the First Amendment when it attempts to turn a reasonable and legitimate "Petition for Redress of Grievances" into a

statutorily based charge of “promotion of an abusive tax shelter,” under color of the internal revenue laws.

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

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

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

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

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

The Founding Fathers clearly declared that the Right of Redress of Grievances *includes* the Right to withhold payment of taxes while the grievance remains. By the 1<sup>st</sup> Amendment, the founding fathers secured for posterity the Right of Redress of Grievances *before* payment of Taxes and they made the Right of Redress *before* Taxes operate against “*the government*,” that is, against *all*



*branches* of “the government,” – the legislative, the executive and the judicial branches. Redress reaches all.

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

As the record in the instant case reveals, conventional methods of Petitioning have been shut off to Schulz. Unconventional methods of Petitioning [such as redress before taxes] are protected as long as the Assembly and Petition are peaceful. The Right of Redress *before* Taxes is a peaceful, integral part of the Right to Petition for Redress of Grievances.

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

Schulz has an inherent, unalienable Right to *Redress Before Taxes*, guaranteed by the First and Ninth Amendments. Under the facts and circumstances of this case, any retention by Schulz of his money until his grievances are

Redressed is consistent with and protected by the Right to Petition. It remains as the only peaceful method of enforcing the Right to Petition available to Schulz, absent an effective declaration by the Court constraining the Defendants to respond to the Petitioners.

#### **V. IRS IS ATTEMPTING TO EVADE SECOND CIRCUIT'S RULING IN *SCHULZ V IRS***

The issues involved in the present case were recently argued before the U.S. Court of Appeals for the Second Circuit. In *Schulz v IRS*, 395 F.3d 463 (2d Cir. 2005)(*Schulz I*), and 413 F.3d 297 (2d Cir. 2005)(*Schulz II*), the Court ruled that in the interest of Schulz's Due Process Rights, if the IRS wanted to enforce its summonses issued by Roundtree and Cox to Schulz in 2003 the IRS needed to initiate an action against Schulz, in a federal district court, under 7604 of the Internal Revenue Code, where Schulz would have an opportunity to defend himself in a full adversarial proceeding, and that the IRS needed to do so before the IRS could use force to obtain the information it was seeking on Schulz.

Instead of seeking a court order to enforce the original summonses by Roundtree and Cox, the IRS has summoned the Bank seeking from the Bank the same information the IRS sought but failed to obtain from Schulz (absent a court order) in the 2nd Circuit.

## VI. IRS IS ACTING UNDER COLOR OF LAW

As argued in the Second Circuit Schulz has been leading, without any remuneration, a nationwide effort involving four Petitions for Redress of *constitutional torts* by the federal government: violations of various provisions of the Constitution including the war making, taxing, privacy and money and debt-limiting clauses. The Petition process is highly public and confrontational and apparently an embarrassment to the government who has chosen not to respond to the Petitions. The overall Petition process is detailed in Declaration #2, supported by evidentiary documents, including 73 Exhibits (Exhibits A through TTT).

The IRS is acting under color of law. It cannot be allowed to trivialize and falsely characterize Plaintiff's acts as a potential "abusive tax shelter" or a potential "tax evasion case," simply because the content of the Petitions is highly critical and damaging to the Government and because Schulz has asked the DC Court for a declaration of his Rights under the Petition Clause and if the Right to Petition the government includes the Right to retain money from the government if the government refuses to respond to a proper Petition for Redress. This practice of Redress Before Taxes is a practice expressly

*prescribed by our Founding Fathers* as a peaceful means to secure Redress from a government that fails to respond to despised Petitions.<sup>37</sup>

## **VII. BAD FAITH: IMPERMISSIBLE ENCROACHMENT AND RETALIATION**

As argued in the Second Circuit and as shown in the documentary evidence included in Affidavits #1 through #2, the IRS's Summonses amount to impermissible encroachment on Schulz's fundamental Rights to Petition for Redress, Peaceably Assemble, Speech, Property, Privacy and Due Process.

The IRS seeks to chill the enthusiasm of Schulz and dissuade others from associating with Schulz and from continuing the constitutionally protected Petition process. IRS's summons amounts to impermissible retaliation against Schulz. The Summons was issued by the IRS in bad faith, in violation of *United States v. Powell*.

## **VIII. THE SUMMONS INVADES PLAINTIFF'S DUE PROCESS RIGHTS IN VIOLATION OF THE 5<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS**

Without a court order *and without a hearing*, in violation of unalienable Rights guaranteed by the Constitution of the United States of America, Defendants have conspired to take Plaintiff's personal and private property by

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<sup>37</sup> "If money is wanted by Rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." Continental Congress To The Inhabitants of Quebec, Journals of the Continental Congress. Journals 1:105-113.

force. A Summons is an administrative request. Without a hearing, Plaintiff would be denied his Right to face his accuser and assert his defenses in a federal District Court. Plaintiff is being denied Due Process. The U.S. Court of Appeals for the 2<sup>nd</sup> Circuit has held that a court order is required before the IRS can force anyone to turn over a taxpayer's personal and private property. See *Schulz I and Schulz II*. (Exhibits C and D attached to Schulz's Declaration #1).

**IX. PLAINTIFF HAS A RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF CONSTITUTIONAL TORTS AND GOVERNMENT HAS AN OBLIGATION TO RESPOND**

Plaintiff has an unalienable Right to Petition the government for Redress of Grievances, a Right guaranteed by the U.S. Constitution, and Defendants have an obligation to properly respond to Plaintiff's proper Petitions

The First Amendment of the U.S. Constitution 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."

Defendants have failed to properly respond to Plaintiff's proper Petitions and are constitutionally prohibited from using any force against Plaintiff until they respond. This includes third party summonses, such as the subject Bank Summons.

## **X. DEFENDANTS' ACTION IS RETALIATORY AND FORBIDDEN**

Defendants are retaliating against Plaintiff. Defendants' retaliation against Plaintiff for exercising his Right to Petition the Government for Redress of Grievances is unconstitutional.

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).

Under our form of governance, 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 14<sup>th</sup> Amendment.

## **XI. DEFENDANTS LACK JURISDICTION**

Plaintiff challenges Defendants' jurisdiction.

The Constitution is unambiguous about defining what Congress is authorized to do and where Congress can do it. The United States cannot tax where the U.S. cannot legislate.

Specifically with respect to “where” Congress enjoys legislative, i.e., police/taxing jurisdiction, the Constitution reads:

“To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;”

Constitution: Article 1, Section 8, Clause 17

The USC codifies the Constitutional requirement at Article I, Section 8, Clause 17 and proscribes the procedure and required documentation for the federal government to successfully assert jurisdiction inside one of the fifty states. To wit: 40 USCS § 255 (now Sections 1331 and 1332) clearly and specifically requires that a "notice of acceptance" is to be filed "with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated." "Such lands," of course, referring to those lands that the federal government, through its agents, is claiming exclusive or concurrent jurisdiction over the people living thereon.

The text of § 255 concludes with the statement "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as

aforesaid, *it shall be conclusively presumed that no such jurisdiction has been accepted.*" [Emphasis added]

Obviously, if the requirements of Article 1, Section 8, Clause 17 of the Constitution of the United States are not complied with, and/or if the procedural requirements of 40 USCS § 255 are not complied with, then no public servant who is acting as an agent of the United States, i.e. the federal government, has any *bona fide* authority whatsoever to attempt to force compliance with any federal law, rule, code, statute, etc., on anyone living in such an area that is not subject to any *bona fide* jurisdiction of the federal government. In support of this rather obvious conclusion, the second paragraph of interpretive note 14 of 40 USCS § 255 says: "**In view of 40 USCS § 255, no jurisdiction exists in United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said section, and fact that state has authorized government to take jurisdiction is immaterial.** *Adams v. United States* (1943) 319 US 312, 87 L Ed 1421, 63 S Ct 1122." (plaintiff's emphasis).

[Federal jurisdiction] " ...must be considered in the light of our dual system of government and may not be extended. . .in view of our complex society, would effectually obliterate the distinction between what is national



and what is local and create a completely centralized government." *United States v. Lopez*, 514 U.S. 549, 115 S.Ct.1624 (1995).

## CONCLUSION

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

In order for the Government to justify its failure to respond to Schulz's Petitions for Redress, except by enforcement actions under Title 26, it must be able to show that its non-responsiveness was caused by something more than a mere desire to avoid discomfort, unpleasantness or practical difficulty. There must be a clear and present reason for the Government to trespass upon the First Amendment. No such reason is in evidence in the Record. Schulz's pleadings set forth a valid claim.

In addition, the Petition to Quash should be granted because the Government is violating the Second Circuit's Order in *Schulz*, and has not met the requirements of *United States v Powell*, and has no jurisdiction over Schulz under Article I, Section 8, Clause 17 of the Constitution

WHEREFORE, Schulz respectfully requests an Order:

- a) quashing the IRS Summons served on October 12, 2006, or
- b) alternatively, scheduling an evidentiary hearing to determine the legitimacy of the Summons, and
- c) temporarily and preliminarily enjoining and prohibiting the IRS from enforcing the Summons, by directing the IRS to notify the Bank not to comply with the summons and not to send the summoned information, until the underlying questions before the Court are fully determined, and
- d) granting such other and further relief that to the Court may seem just and proper.

Dated: November 1, 2006

Respectfully Submitted,

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