IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WE THE PEOPLE FOUNDATION, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	
	)	No. 1:04-cv-01211 EGS
UNITED STATES, et al.,	)	
	)	
Defendants	)	

MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AMENDED COMPLAINT

This Memorandum is submitted in support of Plaintiffs' opposition to Defendants' Motion to Dismiss, dated September 30, 2004.

PRELIMINARY STATEMENT

This is an action to obtain the Judicial branch's initial interpretation of the contours of the Right guaranteed by the last ten words of the First Amendment – the Right to Petition the Government for Redress of Grievances.

Given the facts and circumstances of this case (wherein the People's repeated Petitions to the Executive and Legislative branches for Redress of certain Constitutional Grievances have been met by repeated injuries), together with the facts and circumstances of three prior cases (wherein the People's Petitions to the Judicial branch for Redress of similar Grievances were dismissed without reaching the merits[1]), the fundamental Constitutional question in the instant case is:

[1] ROBERT L. SCHULZ , et al. v. WILLIAM CLINTON and ROBERT RUBIN, et al., NDNY No. 95-cv-133, Judge Cholakis, SUMMARY ORDER issued by the Second Circuit on February 10, 1997,Case No. 96-6184; ROBERT L. SCHULZ, et al. v. WILLIAM CLINTON, WILLIAM COHEN, TRENT LOTT AND DENNIS HASTERT, et al. NDNY No. 99-cv-0845, Judge Scullen, SUMMARY ORDER issued by the

If the American People are truly free, with natural, individual Rights endowed by the Creator rather than privileges granted by the State, and if those Rights are unalienable **individual** Rights, and if the federal government is truly a servant government established by the sovereign People to secure those **individual** Rights, and if the power of the government to act is strictly limited by the original meaning of the words of the U.S. Constitution, and if the People have evidence that government officials in the political branches have stepped outside the boundaries drawn around their power and are acting is spite of Constitutional prohibitions, and if the People have intelligently, rationally, professionally, non-violently and repeatedly Petitioned those officials in the political branches with proper statements of grievances and proper prayers for Relief, and if the government officials have decided not to answer the People's Petitions, not to justify their behavior and not be held accountable to the Constitution and the Bill of Rights, do the People not then have the Right to defend the Constitution and enforce their **individual** Rights by retaining money wanted by those government officials until their Grievances are Redressed, and to do so without retaliation by the government?

The Petition is to the individual, the minority and the Constitutional Republic, what the ballot is to the majority and a Democracy. Take away the original meaning and power of the Petition Clause and we are left with the ballot and the majority voting away individual Rights.

SUMMARY OF PLAINTIFFS' OPPOSITION

As grounds for this opposition, plaintiffs submit that the Court has subject-matter jurisdiction. In particular, the Petition Clause of the First Amendment guarantees Plaintiffs'

Second Circuit on March 6, 2000,Case No. 99-6241; PHILIP LEWIS HART v. COMMISSIONER OF INTERNAL REVENUE, Ninth Cir. No. 01-70173, decided July 31, 2001)

natural Right to pursue judicial remedies for unconstitutional government conduct. That is, the Petition Clause's affirmation of government suability operates as a constitutional antidote to the doctrine of sovereign immunity. In addition, 28 U.S.C. Section 1331 is an adequate statutory basis to confer subject matter jurisdiction over federal questions involving the constitutionality of federal acts, as is 28 U.S.C. 1346 and 42 U.S.C. 1983. Finally, plaintiffs are seeking only a declaratory judgment and injunctive relief. Therefore, the "sovereign immunity" doctrine cannot bar plaintiffs from maintaining this action. See Lane v. Pena, 518 U.S. 187 and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc).

As further grounds for this opposition, Plaintiffs submit that Plaintiffs have stated a claim upon which relief may be granted. The government IS obligated to respond to Petitions for Redress of Grievances, especially when, as here, the oppressions are caused by unconstitutional government acts-- constitutional torts. This is not changed by the fact that the Petition Clause lacks an affirmative statement that government shall respond to Petitions for Redress of Grievances. This is a first-impression case; the courts have not clearly delineated the contours of the substantive Right to Petition. "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). The zone of interest to be protected here is government accountability through citizen participation. The People are entitled to a responsive response from the Court – that is, a declaration of the People's full Rights under the Petition Clause.

As further grounds for this opposition, Plaintiffs submit that the Anti-Injunction Act, 28 U.S.C. 7421(a), cannot bar plaintiffs from enforcing their First Amendment Right to Petition the Government for Redress of Grievances, particularly grievances involving constitutional

torts. “Congress shall make no law … abridging …the Right of the People … to petition the government for a redress of grievances.” Any Right that is not enforceable is not a Right. If and when the political branches refuse to respond to proper Petitions for Redress of Constitutional Grievances, the people have a Right to retain their money until their grievances are redressed. The use of 28 U.S.C. 7421(a) to trump the First Amendment would be an intolerable violation of the essential principle of **popular sovereignty** as laid down in the U.S. Constitution, utterly undermining our Constitutional Republic and the first of the Great Rights, “Government based upon the consent of the People.”

Defendants’ assert (Memorandum, page 14), that Plaintiffs’ have made only “vague and conclusory allegations” that Defendants’ enforcement actions are retaliatory. Submitted herewith are affidavits sworn to by each of the Plaintiffs, attesting to the fact that each Plaintiff has Petitioned the government for Redress of Grievances, and instead of a responsive response, the government is retaliating against the Plaintiffs as Petitioners.

ARGUMENT

I. THE COURT HAS SUBJECT-MATTER JURISDICTION.

Contrary to Defendants’ allegation, the Court has subject matter jurisdiction. The Petition Clause of the First Amendment guarantees Plaintiffs’ Right to pursue judicial remedies for **unconstitutional** government conduct. The Petition Clause’s affirmation of government suability operates as a constitutional antidote to the doctrine of sovereign immunity, which purports to prohibit the federal courts from entertaining claims against the United States government in the absence of a legislative waiver of immunity that meets a fairly demanding clear-statement requirement.

In addition, the **statutory** basis for judicial review is 5 U.S.C. Section 702, which is supplied by the court once an adequate, independent, statutory basis for jurisdiction is articulated in the pleadings. 28 U.S.C. Section 1331 is an adequate statutory basis to confer subject matter jurisdiction over federal questions involving the constitutionality of federal acts, as is 42 U.S.C. 1983 and 28 U.S.C. 1346.

In addition, plaintiffs are seeking only a declaratory judgment and injunctive relief. Therefore, the "sovereign immunity" doctrine cannot bar plaintiffs from maintaining this action. See Lane v. Pena, 518 U.S. 187 and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc).

The U.S. Department of Justice has taken strong academic criticism of its tunnel-visioned approach to sovereign immunity in suits for injunctive or declaratory relief only. Once again, DOJ has demonstrated a near incapacity to cite cases upholding its arguments on sovereign immunity in injunctive/declaratory relief cases (distinguished from the monetary relief cases that it cites).

The sovereign immunity doctrine cannot bar plaintiffs from maintaining an action for a declaratory judgment holding that defendants' failure to listen and respond to plaintiffs Petitions for Redress of Grievances (and defendants' retaliation against Petitioners), is repugnant to and violative of Plaintiffs' natural, fundamental Rights, as guaranteed by the spirit and the letter of the Constitution, including inter alia, the Petition Clause itself and the Ninth and Tenth Amendments, and for an injunction preventing further retaliation against Plaintiffs, who in the course of exercising and enforcing those Rights are retaining their money until their grievances are Redressed.

In 1995, Plaintiff Robert Schulz brought an action for declaratory and injunctive relief against the United States, William Clinton and Treasury Secretary Robert Rubin (hereafter "Schulz 1").[2] The claim was that in bailing out the Mexican Peso, by borrowing money in the credit of the United States and using that money to provide loans and loan guarantees to Mexico, the President and the Treasury Secretary had usurped various powers reserved to Congress under the Constitution of the United States of America (money and debt-limiting clauses).

In Schulz 1, The District Court granted the DOJ's motion to dismiss for reasons of **sovereign immunity**, finding that the actions of the Executive Branch to assist Mexico could not be questioned in court because there was no explicit statutory waiver of the sovereign immunity of the United States in the jurisdictional sections that the plaintiffs complaint cited (28 U.S.C. Sections 1331 and 1343, and 42 U.S.C. Section 1983).

In Schulz 1, the appeal to the Second Circuit was based on the fact that Schulz raised federal **constitutional** questions, that the **statutory** basis for judicial review is 5 U.S.C. Section 702, which is supplied by the court once an adequate, independent, statutory basis for jurisdiction is articulated in the pleadings, that 28 U.S.C. Section 1331was an adequate statutory basis to confer subject matter jurisdiction over federal questions involving the constitutionality of federal acts, that plaintiff was seeking only a declaratory judgment and injunctive relief, and that the "sovereign immunity" doctrine is not a bar given: a) Lane v. Pena, 518 U.S. 187 and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc); b) the strong academic criticism of the tunnel-visioned approach to sovereign immunity that the U.S. Department of Justice has taken in suits for injunctive or declaratory

[2] ROBERT L. SCHULZ , et al. v. WILLIAM CLINTON and ROBERT RUBIN, et al., NDNY No. 95-cv-133, Judge Cholakis, SUMMARY ORDER issued by the Second Circuit on February 10, 1997,Case No. 96-6184.

relief only; c) the near incapacity of the Department of Justice to cite cases upholding its arguments on sovereign immunity in injunctive/declaratory relief cases (as distinguished from the monetary relief cases that it cited); and d) a reasonable "strict constructionist" bias against the entirely judge-made doctrine of federal sovereign immunity in the first place.[3]

In Schulz 1, the Department of Justice answered AND CONCEDED THE ARGUMENT ON SOVEREIGN IMMUNITY. On page 16 in its Brief For The Federal Appellees, DOJ wrote, "The government argued below—and the district court held—that the court lacked jurisdiction due to the absence of a waiver of sovereign immunity. Because this case involves a constitutional challenge, we believe that Section 702 of the Administrative Procedure Act, 5 U.S.C. Section 702, constitutes such a waiver. See, e.g., Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc). Accordingly, we do not renew the sovereign immunity argument before this Court." Exhibit A attached to the affidavit by Plaintiff Schulz, sworn to on November 10, 2004, is a copy of page 16 from DOJ's Brief to the 2d Circuit in Schulz 1.

In his Reply Brief to the 2d Circuit in Schulz 1, Schulz argued, "It is respectfully suggested that the Second Circuit, like the Seventh Circuit in Czerkies, should take advantage of the opportunity presented by this case to declare explicitly that, in suits seeking declaratory or injunctive relief only, not monetary damages, and seeking to vindicate constitutional claims for relief, plaintiffs will not be barred by the jurisdictional defense of sovereign immunity. It is unreasonable to assume that future teams of Justice Department lawyers will concede the defense of sovereign immunity in similar circumstances. Only an explicit finding by the Second Circuit that the defense of sovereign immunity is no bar to

[3] See, e.g., dissent of Justice Stevens in Lane, supra, 135 L. Ed. 2d at 498, referring to the Supreme Court's reliance "on an amalgam of judge-made rules to defeat the clear intent of Congress to authorize an award of damages against a federal executive agency.

suits for equitable relief asserting constitutional claims will adequately deter the Justice Department from renewing that defense in the future, notwithstanding the clear language in Lane v. Pena, [citations omitted], to the same effect."

In Schulz 1, without heeding the suggestion that the Court follow the lead of the Seventh Circuit, the Second Circuit, in a Summary Order, affirmed the District Court's dismissal on other grounds (standing). See Exhibit A annexed to the affidavit by Schulz is a copy of the SUMMARY ORDER issued by the Second Circuit on February 10. 1997.

In 1999, Plaintiff Schulz brought an action against the President of the United States, and the Secretary of Defense (Schulz 2).[4] The claim was that in applying the armed forces in hostilities overseas (Republic of Yugoslavia/Kosovo), without a congressional declaration of war, the President and his Secretary of Defense had usurped various powers reserved to Congress in seven clauses under Article I and Article II of the Constitution of the United States of America – the so-called war powers clauses.

Consistent with its admission in 1996 in Schulz 1, (the Mexican Peso case), e.g., that sovereign immunity is no defense against constitutional challenges, the Department of Justice did not seek to have Schulz 2 dismissed on the basis of sovereign immunity. The case was dismissed on other grounds (standing) in the district court and affirmed by SUMMARY ORDER by the Second Circuit. Exhibit B annexed to the Schulz affidavit is a copy of the SUMMARY ORDER issued on March 8, 2000.

Now, however, another team of Justice Department lawyers has decided not to concede the defense of sovereign immunity in this, a circumstance similar to those in Schulz 1 and Schulz 2.

[4] ROBERT L. SCHULZ, et al. v. WILLIAM CLINTON, WILLIAM COHEN, TRENT LOTT AND DENNIS HASTERT, et al. NDNY No. 99-cv-0845, Judge Scullen, SUMMARY ORDER issued by the Second Circuit on March 6, 2000,Case No. 99-6241.

Here, in opposition to the Justice Department's motion to dismiss on the basis of sovereign immunity, plaintiffs argue, as has been successfully done in the past, that they have raised federal constitutional questions, that the **statutory** basis for judicial review is 5 U.S.C. Section 702, which is supplied by the court once an adequate independent, statutory basis for jurisdiction is articulated in the pleadings, that 28 U.S.C. Section 1331 is an adequate statutory basis to confer subject matter jurisdiction over federal questions involving the constitutionality of federal acts, that plaintiffs are seeking only a declaratory judgment and injunctive relief, that the "sovereign immunity" doctrine is not a bar given Lane v. Pena, 518 U.S.187 and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc), the strong academic criticism of the tunnel-visioned approach to sovereign immunity that the U.S. Department of Justice has taken in suits for injunctive or declaratory relief only, the near incapacity of the Department of Justice to cite cases upholding its arguments on sovereign immunity in injunctive/declaratory relief cases (as distinguished from the monetary relief cases that it has cited), and a reasonable "strict constructionist" bias against the entirely judge-made doctrine of federal sovereign immunity in the first place.[5]

The cases cited by the Justice Department in support of the motion to dismiss for sovereign immunity not only predate Lane v. Pena, 518 U.S. 187 (decided 1996), and Czerkies v. Department of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc), the facts and circumstances of the cases cited by DOJ are distinguishable from those involved in the instant case.

[5] See, e.g., dissent of Justice Stevens in Lane, supra, 135 L. Ed. 2d at 498, referring to the Supreme Court's reliance "on an amalgam of judge-made rules to defeat the clear intent of Congress to authorize an award of damages against a federal executive agency.

Blackmar v. Guerre, decided in 1952, did not involve a federal constitutional tort claim. There, the plaintiff was seeking to be restored to an employment position with the Veterans Administration, and was seeking **money damages** (back pay).[6]

Daly v. Department of Energy, 741 F. Supp. 202, decided in 1990, did not involve a federal constitutional tort claim, and plaintiff (a whistleblower) was seeking **money damages**.

Dugan v. Rank, 372 U.S. 609, decided in 1963, did not involve a federal constitutional tort claim. There, the suit for injunctive relief only, sought to prevent the storing and diverting of water at a dam.

McNuttv. GMAC, 298 U.S. 178, was decided in 1936. There, GMAC waived constitutional question jurisdiction, by pleading to the merits.

Navy, Marshall & Gordon, P.C. v U.S. International Development Cooperation Agency, 557 F. Supp. 484, decided in 1983, involved a claim for **money damages** related to the provision of architectural and engineering services in connection with a project financed by the Agency.

Nicholsv. United States, 74 U.S. 122, decided in 1869, involved a claim for **money damages** (tax refund).

U.S. v. Nordic Village, 503 U.S. 30, decided in 1992, did not involve a constitutional question and was a claim for **money damages** in Bankruptcy Court.

United States v. Sherwood, 312 U.S. 584, decided in 1941, did not involve a constitutional question and did involve a demand for **money damages** in the Court of Claims for breach of contract.

[6] 342 U.S. 512

Plaintiffs respectfully request an explicit finding by this Court that the defense of sovereign immunity is no bar to suits for equitable relief asserting constitutional claims. Only such an explicit finding will adequately deter the Justice Department from renewing that defense in the future, notwithstanding the clear language in Lane v. Pena, and Czerkies [citations omitted], to the same effect.

II. PLAINTIFFS HAVE STATED A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Contrary to Defendants' allegation, plaintiffs have stated a valid claim upon which relief can be granted: the Right To Petition is a distinct substantive Right; government IS obligated to respond; popular sovereignty depends upon the Peoples' Right of Response and was shaped by government's Response to Petitions for Redress of Grievances.[7]

Plaintiffs have stated a claim upon which relief may be granted. 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.

[7] 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); the arguments in this Memorandum draw heavily from these Law Review articles, particularly Harvard Law Review article and the documents cited therein.

This is not changed by the fact that the Petition Clause lacks an affirmative statement that government shall respond to Petitions for Redress of Grievances.

While the Court may or may not be able to order the Executive and the Legislative to respond to Plaintiffs' Petitions, the court is able to declare that Plaintiffs have a Right to a response, that non-responsive responses, including silence, are repugnant to the Petition Clause and the equivalent to admission of fraud, and that the People have an unalienable Right to peaceably enforce their Rights, without disturbing the public tranquility, by retaining their money until their grievances are redressed, if it should come to that.

While the 26th 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 or to Petition the government for Redress of Grievances shall not 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.

This is a first-impression case; the courts have not clearly delineated the contours of the substantive Right to Petition. "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).

The People are entitled to a responsive response from the Court – that is, a declaration of the People's Rights under the Petition Clause.

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 11th century[8]

[8] 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.

and gained recognition as a Right in the mid 17th century.[9] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.[10] Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.[11] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[12]

In addition, the Right to Petition was widely accorded greater importance than the Rights of free expression. For instance, in the 18th century, the House of Commons, [13] the American Colonies, [14] and the first Continental Congress[15] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[16]

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.[17] In addition, a "considerable majority" of Congress defeated a motion to strike the assembly provision from the First Amendment

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[9] See Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in 5 THE FOUNDERS' CONSITUTION 197 (Philip B. Kurland & Ralph Lerner eds., 1987); 1 WILLIAM BLACKSTONE, COMMENTARIES 138-39.

[10] See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.

[11] See Smith, *supra* n.4, at 1165-67.

[12] See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)

[13] See Smith, *supra* n4, at 1165.

[14] 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).

[15] See id. at 464 n.52.

[16] 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* n6, at 115-16.

[17] 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).

because of the understanding that all of the enumerated rights in the First Amendment were separate Rights inherent in the People that should be specifically protected.[18]

The zone of interest to be protected here is government accountability through citizen participation. Petitioning government for Redress of Grievances has played a key role in the development and exercise of popular sovereignty throughout British and American history. [19] In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.[20] Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.[21] This broadening of political participation culminated in the official recognition of the right of Petition in the People themselves.[22]

The People used this newfound Right to question the legality of the government's actions,[23] to present their views on controversial matters,[24] and to demand that the government, as the servant of the People, be responsive to the popular will.[25]

In the American colonies, disenfranchised groups could use Petitions to seek government accountability for their concerns and to rectify government misconduct.[26]

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[18] See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).
[19] 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).
[20] The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5, at 187.
[21] See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 187-88.
[22]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.
[23] 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.
[24] See Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).
[25] 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.

By the nineteenth century, Petitioning was described as "essential to … a free government"[27] – an inherent feature of a republican democracy,[28] and one of the chief means of enhancing government accountability through the participation of citizens.

In addition, this interest in government accountability was understood to demand government response to petitions.[29]

American colonists, who exercised their Right to Petition the King or Parliament, [30] expected the government to receive and respond to their Petitions.[31] The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the "capstone" grievance, was the most significant factor that led to the American Revolution.[32]

Frustration with the British government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[33] Members of the First Congress easily defeated this right-of-instruction proposal.[34] Some discretion to reject

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[26] See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).
[27] THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 531 (6th ed. 1890).
[28] See CONG. GLOBE, 39th Cong., 1st 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]").
[29] See Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).
[30] 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.
[31] See Frederick, *supra n7* at 115-116.
[32] 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).
[33] See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.
[34] The vote was 10-41 in the House and 2-14 in the Senate. See *id*. at 1105, 1148.

some petitions, 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.[35]

Congress's response to Petitions in the early years of the Republic also indicates that the original understanding of Petitioning included a governmental duty to respond. Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.[36]

Congress referred Petitions to committees[37] and even created committees to deal with particular types of Petitions.[38] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report. [39]

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

The 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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[35] 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).

[36] See STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99TH 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)).

[37] 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.

[38] See H.J., 25th Cong., 2d Sess. 647 (1838) (describing how petitions prompted the appointment of a select committee to consider legislation to abolish dueling).

[39] See Higginson, n34 at 157.

Petitioning the government for a Redress of Grievances is the only non-violent way the People have to hold their servant government accountable to its primary role of protecting the People's individual, unalienable Rights to Life, Liberty, Property and the Pursuit of Happiness. The Petition is for the individual to hold government accountable to the Constitution, the Bill of Rights and to the protection, preservation and enhancement of **individual** Rights, Liberties and Freedoms. If the servant government of the People is not obligated to listen and honestly respond to the citizen's Petition for Redress, individual Rights are at risk of a take-over by the servant of the majority.

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. The ratifying states also shared this understanding of the Petition Right as separate from the other First Amendment Rights.

The zone of interests that are uniquely served by Petitioning are all individual Rights, enumerated and un-enumerated. Without the servant government's obligation to respond to Petitions for Redress of Grievances, the People have no non-violent way to enforce their Rights against government tyranny.

Defendants cite the following three cases in support of their motion: Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915); Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979); Minnesota State Board For Community Colleges v. Knight et al., 465 U.S. 271 (1984) (hereinafter "Knight")..

In fact, none of the cases cited by Defendants is on point, much less dispositive. The facts and circumstances are entirely different. The cases are easily put out of view.

The instant case deals with the People's ability to use the Petition Clause to hold the Executive and Legislative branches of the federal government directly accountable to the already adopted, bedrock and inviolate fundamental Rules of governmental conduct laid out in the ultimate rule book – the federal Constitution: the war powers clauses, the tax clauses, the money and debt-limiting clauses and the "privacy" clauses.

On the other hand, the cases relied on by Defendants deal with public policymaking by units of local and state government -- the adoption of public acts, statutes, general laws, regulations, resolutions, ordinances and the like – rules designed and adopted by government to govern the conduct of the People – and whether the proper state machinery and constitutional safeguards (such as due process, and free speech) were being breached, either in the adoption of the rule or in its application.

In Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915), the controversy was between a unit of local government (Tax Commission of the City of Denver) that adopted a rule that increased the valuation of the property tax, and a corporate property owner who claimed its due process Rights were violated because the Commission did not issue a public notice of the pending public policy and give everyone an opportunity to be heard. The court ruled that statutes that are within the state power (i.e., that are not repugnant to the State or federal constitutions), were constitutional without providing individuals a full opportunity to be heard. The court ruled, in effect, that when it comes to the adoption of public policy rules and regulations, where the proper state machinery has been used, "there must be a limit to individual argument in such matters if government is to go on," and that if the people are not happy with the rules as adopted the People can vote the rule maker out of office. The facts and circumstances of Bi-Metallic are clearly differentiated from the facts

and circumstances in the instant case, which goes to Constitutional torts and the People's ability to hold government accountable to the restrictions and prohibitions of the Constitution – that is, the People's ability to self-govern.

In Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979), the controversy was between a unit of State government (Arkansas State Highway Commission) that adopted a rule by which it would only address individual grievances that were initiated by individual public employees rather than by the employee's union, and the public employee union that claimed that the public employer's grievance procedure violated the First Amendment. The Court held that, "the First Amendment protects the right of an individual to speak freely, to advocate ideas, to associate with others, and to petition his government for redress of grievances. And it protects the right of associations to engage in advocacy on behalf of its members…the First Amendment is not a substitute for the national labor relations laws … all that the Commission has done in its challenged conduct is simply to ignore the union. That it is free to do… that the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context to recognize the association and bargain with it." The facts and circumstances of Smith are clearly differentiated from the facts and circumstances in the instant case, which goes to Constitutional torts by the government and the People's ability to hold government accountable to the Constitution – that is, the People's ability to self-govern.

Likewise, in Minnesota State Board For Community Colleges v. Knight et al., 465 U.S. 271 (1984), the claim was NOT about the People's ability to defend, protect, preserve and enhance their fundamental Rights by using the Petition Clause to hold the government accountable to public "policies" as already adopted and expressed in the Constitution. Knight

was a controversy dealing with (public) institutional policymaking, and specifically to collective bargaining between public employees and public employers -- negotiations between community college instructors and college administrators, and about employment-related issues.

In Knight, the controversy was between a unit of State government (Minnesota State Board for Community Colleges), who, in implementing a properly adopted state statute designed to govern collective bargaining between public employers and public employees on issues related to employment (Public Employment Labor Relations Act or "PELRA"), required that faculty members, whether union members or not, must not communicate directly with college administrators but must submit their ideas and recommendations to the "exclusive representative" of the faculty of the state's community colleges (Minnesota Community College Faculty Association or MCCFA), and a group of college instructors who challenged the constitutionality of MCCFA's exclusive representation in both the "meet and negotiate" and "meet and confer" processes, arguing that their First Amendment Rights of speech, petition and association were being violated. The court held that "the instructors had no right as members of the public to a government audience for their policy views," that PELRA was adopted to "establish orderly and constructive relationships between all public employers and their employees," and was "rationally related to the state's legitimate interest in ensuring that its public employers hear one, and only one, voice presenting the majority view of is professional employees on employment-related policy questions," and that, "there remains substantial opportunity, outside the formal "meet and confer" sessions, for administrators and faculty members in Minnesota community colleges to exchange ideas on a wide variety of topics."

While clearly NOT saying that no government official is "ever" constitutionally obligated before or after making a decision on a matter of "public" policy, and without explaining what direct public participation in government policymaking was "limited" to, Justice O'Connor, writing for the majority in Knight held that, " It is inherent in a republican form of government that direct public participation in government policymaking is limited."

While definitely NOT saying that government officials are "always" constitutionally obligated, before or after making a decision on a matter of "public" policy, Justice Stevens, in his dissenting opinion in Knight argued that, "The First Amendment was intended to secure something more than an exercise in futility – it guarantees a meaningful opportunity to express one's views."

The concurring opinion of Justice Marshall in Knight is instructive if not dispositive. He wrote, "I do not agree with the majority's sweeping assertion that no government official is ever constitutionally obligated, before making a decision on a matter of public policy, to afford interested citizens an opportunity to present their views. *Ante*, at 283-285. Nor do I agree with JUSTICE STEVENS that the First Amendment always – or even often – requires that government decisions be made in "an open marketplace of ideas." See *post* at 300, 314. Rather I think that the constitutional authority of a government decisionmaker to choose the persons to whom he will and will not listen prior to making a decision varies with the nature of the decision at issue and the institutional environment in which it must be made. Cf. Healy v. James, 408 U.S. 169, 180 (1972). ("First Amendment rights must always be applied 'in light of the special characteristics of the … environment' in the particular case.") (quoting Tinker v. Des Moines Independent School District, 393 U.S. 503, 506 (1969)… The difficult task of giving shape to these First Amendment rights and of assessing the state interests that

might justify their abridgment can, however, be left to another day because the proofs in these cases do not establish the kind of impairment of the ability of faculty members to communicate with administrators that would, in my view, give rise to constitutional difficulty." (emphasis added by Plaintiffs).

In other words, Justice Marshall was making it clear in Knight, that the contours of the Right to Petition were not defined in Knight, but were being "left to another day." Plaintiffs argue that with the instant case, the day Justice Marshall was referring to has arrived.

The power of the Executive and Legislative branches has become too "remote." The First Amendment guarantees, and the circumstances of this case warrant the restoration of the "forgotten Right" – the restoration of the Right on the part of individuals to present their grievances and prayers for relief to the government decision makers, and to obtain responsive answers, as an alternative check on the choices made.

The factual background of this particular case raises these constitutional issues in a manner not heretofore passed on by the courts. If new constitutional ground must be broken in reaffirming this Nation's dedication to safeguarding the Rights of individuals, as opposed to the desires of the majority, then let it be.

Under the Constitution, Petitioning for Redress is not a Right that is given only to be so circumscribed that it exits in principle but not in fact. Freedom of Petitioning for Redress would not truly exist if the Right could be exercised only in an area that a benevolent government has provided as a safe haven for "protestors and crackpots." The Right to Petition the Government for Redress of Grievances is nothing short of the **capstone** Right. For instance, the exercise of the Right to Petition is not to be confined to, or subsumed by, freedom of expression.

In order for the government to justify its failure to respond, 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 danger to the government for the government to trespass on the First Amendment.

The Court is respectfully asked not to dismiss this complaint for failure to state a valid claim, but to decide the case on its merits.

III. THE ANTI-INJUNCTION ACT IS NO BAR TO THE INJUNCTIVE RELIEF REQUESTED.

Contrary to Defendants' allegation, the Anti-Injunction Act, 28 U.S.C. 7421(a), is **inapplicable**. It cannot bar plaintiffs from enforcing their constitutional Right to Petition the government for a Redress of Grievances.

The Petition Clause trumps the Anti-Injunction Act. Otherwise the Act would be unconstitutional as applied. A retaliatory or **retribution tax** imposed against Plaintiffs for Petitioning the Government for Redress of Constitutionally directed Grievances is, itself, illegal and unconstitutional and should not be enforced.

The background and circumstance of this case is that plaintiffs have repeatedly Petitioned the Executive and Legislative branches of our servant government for Redress of Grievances, demanding that the government answer questions regarding what appears to Plaintiffs to be clear violations by the political branches of certain prohibitions of the federal Constitution, notably the war powers clauses (by the Iraq Resolution); the privacy and due process clauses (by the U.S.A. Patriot Act), the tax clauses (by the direct un-apportioned tax on labor), and the money and debt limiting clauses (by the Federal Reserve System). See

Schulz affidavit, sworn to on September 16, 2004 for details of the Petition process. See also the affidavits by Banister, Turner, George and Morgan attached to Plaintiffs Opposition.

The government has refused to be held accountable to the Constitution. The Executive and Legislative have refused to answer the questions, ignoring every opportunity plaintiffs have presented to the government to answer the questions. Plaintiffs' Petitions for Redress have been intelligent, rational, respectful and professional.

Plaintiffs argue that any Right that is not enforceable is not a Right. Plaintiffs have the Right to retain their money until their grievances are redressed.[40]

Revenue collection proceedings are not immune from judicial interference under 26 USCS § 7421 if such proceedings are exercised in excess of statutory authority granted to the IRS and in violation of constitutional rights. Yannicelli v Nash (1972, DC NJ) 354 F Supp 143, 72-2 USTC P 9763, 31 AFTR 2d 315. The government is exercising its assessment and collection (enforcement) proceedings against Plaintiffs in violation of Plaintiffs' constitutional Right to Petition. After utterly refusing to respond to Plaintiffs' First Amendment Petitions, the government is now attempting to prevent Plaintiffs from enforcing that Constitutional Right (and the Constitutional Rights that are the subject of the Petitions themselves). Federal officials are retaliating under the color of federal and state assessment and collection proceedings. Such actions by the government are reprehensible and

[40] "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.

unconstitutional and should be enjoined. The harm being done Plaintiffs is both immediate and irreparable.

The Anti-Injunction Act must yield when denial of injunction rises to level of constitutional infirmity. See for instance Investment Annuity v Blumenthal (1979, App DC) 197 US App DC 235, 609 F2d 1, 1 EBC 2079, 79-2 USTC P 9615, 44 AFTR 2d 5746, cert den (1980) 446 US 981, 64 L Ed 2d 837, 100 S Ct 2961.

Plaintiffs' request for a restraining order is made to prevent the political branches from eviscerating the Petition Clause, rendering it worthless, by taking away the only non-violent tool the Plaintiffs have to enforce the Right to Petition and to make the Clause operative and effectual. Without the Right to retain our money, FREE FROM RETALIATION, until our grievances are redressed, the Petition Clause is rendered nugatory by the government's enforcement actions; this contravenes the execution of the Right to Petition and, therefore, the entire social compact known as the Constitution of the United States of America.

Without the full force of the Petition Clause the People have no way to hold government accountable to the Constitution with its guarantee of certain UNALIENABLE and INDIVIDUAL Rights; the ballot is merely for the majority.

When government neglects to honor any of the People's natural, fundamental Rights and then refuses to answer to the People (refusing to listen, refusing to respond, refusing in every way to justify its behavior, refusing to be otherwise held accountable), the People must have the ability to enforce their Rights against those oppressions by retaining their money until their Grievances are Redressed. Otherwise, their Rights become privileges with all the adverse consequences that would involve.

The government can't legally change the full force and effect of any prohibition, restriction or guarantee clause of the Constitution FIRST by violating that restriction, THEN by tossing the People's judicial Petitions for Redress of that Grievance without reaching the merits (e.g., for "lack of standing" or "*stare decisis*"), THEN by ignoring the People's non-judicial Petitions for Redress of that Grievance, THEN by retaliating with brutal and vicious enforcement actions against People who decide to defend their fundamental Rights by retaining their money until their Grievances are Redressed, THEN, finally, applying the Anti-Injunction Act to close the courthouse door to People who are seeking the protection of the Judiciary, at least temporarily, while the court, for the first time, delineates the contours of the Petition Clause , providing to the People a full and lasting declaration of their Rights under the Petition Clause to hold government accountable to said restrictions.

The government's arguments in support of its motion to dismiss are so limp and unavailing that it is safe to say that under no circumstances can the government ultimately prevail in this First Amendment, first impression, declaratory-judgment action. In addition, equity jurisdiction otherwise exists in the Court. Therefore, on those grounds alone, the injunction can issue. See Enochs v Williams Packing & Navigation Co. (1962) 370 US 1, 8 L Ed 2d 292, 82 S Ct 1125,reh den 370 US 965, 8 L Ed 2d 833, 82 S Ct 1579; Bob Jones University v Simon (1974) 416 US 725, 40 L Ed 2d 496, 94 S Ct 2038;Alexander v "Americans United," Inc. (1974) 416 US 752, 40 L Ed 2d 518, 94 S Ct 2053; United States v American Friends Service Committee (1974) 419 US 7, 42 L Ed 2d 7, 95 S Ct 13; Commissioner v Shapiro (1976, US) 47 L Ed 2d 278, 96 S Ct 1062.

To apply the Anti-Injunction Act to prevent the People from obtaining relief from the government's very heavy hand of retaliation during the time it will take to see this case

through the courts would not only be an unconstitutional application of the Act, it would set the stage for a mighty Pyrrhic victory by the Plaintiffs, a victory that will be very, very costly to Plaintiffs who are determined to defend the Constitution at all costs, pro-actively and non-violently. Among the Plaintiffs seeking the Truth are People who side with Thomas Paine who said, "If there is to be trouble, let it be now so my children will be free."

26 USCS § 7421 is **inapplicable**, where, as here, the legal remedy is shown to be inadequate. See Enochs v Williams Packing & Navigation Co. (1962) 370 US 1, 8 L Ed 2d 292, 82 S Ct 1125, 62-2 USTC P 9545, 9 AFTR 2d 1594, reh den (1962) 370 US 965, 8 L Ed 2d 833, 82 S Ct 1579 and (criticized in Yates v IRS (1998, DC SC) 98-1 USTC P 50452, 83 AFTR 2d 1147).

An injunction restraining the collection of a **retribution tax** may be obtained where, as here, absent an injunction, Plaintiffs will suffer irreparable injury due to the loss of their Fist Amendment Rights of Petition, Speech and Due Process. See Miller v Standard Nut Margarine Co. (1932) 284 US 498, 76 L Ed 422, 52 S Ct 260).

IV. RETALIATION IS A MATERIAL ISSUE OF FACT

THE COURT IS ASKED TO LOOK AT THE MATERIAL FACTS OF THE CASE THROUGH THE PRISM OF THE ORIGINAL MEANING, INTENT, HISTORY AND SIGNIFICANCE OF THE PETITION CLAUSE OF THE CONSTITUTION

After alleging that the government does not have to listen to the People as Petitioners, Defendants then assert that Plaintiffs' claims of unconstitutional retaliation are "legal conclusions cast in the form of factual allegations," that the court need not accept as true. Def. Mem. Pg 19

Contrary to Defendants assertions, the government's conduct complained of IS prohibited conduct.

As Plaintiffs affidavits to the court show, on numerous occasions Plaintiffs have respectfully sought to petition the Defendants, to meet with the Defendants and to secure from the Defendants answers to reasonable questions regarding certain acts of Defendants believed by Plaintiffs to be repugnant to and outside the authority lawfully granted by the U.S. Constitution and certain statutes.

Plaintiffs' Petitions for Redress of Grievances have included respectfully drawn requests for answers to questions regarding Defendants' actions related to the tax, war powers, money and "privacy" and due process clauses of the Constitution and certain statutes-- questions designed to assist Plaintiffs in their quest to hold Defendants accountable to the Constitution and the Bill of Rights and to determine their obligations under those policies and programs as enforced by the Defendants. The Defendants have steadfastly refused to properly respond to Plaintiffs' proper Petitions for Redress of grievances and oppressions.

To repeat, the remedy sought by Plaintiffs' Petitions for Redress has merely been the government's *answers* to certain questions.

What the record shows is Plaintiffs have respectfully, intelligently and rationally contacted their Congresspersons and appropriate officials within the Executive branch, including the President, literally begging for someone in government to answer pertinent questions relating to alleged violations of the taxing, war powers, money and "privacy" and due process clauses of the Constitution, including the legitimacy of the direct, un-apportioned tax on labor, as enforced by Defendant Internal Revenue Service.

Despite these pleadings by the Plaintiffs there has been a lack of responsiveness from the Legislative and Executive branches of our government.

Instead, as the Record shows, there has been a condescending and antagonistic attitude by our elected and appointed officials. Twice, Defendants have publicly uttered their intention to respond to said Petitions through "**enforcement actions**."

For example, on September 16, 2003, at a formal press conference, Defendant IRS's senior spokesman, Terry Lemons, said on the record to New York Times reporter David Cay Johnston that, "the recent spate of enforcement actions taken by the I.R.S. … show other ways that government is answering the petition." At the same press conference, IRS senior official, Dale Hart, said the IRS was "after mailing lists." All of this is obviously meant to have a chilling effect on the Plaintiffs' exercise of their fundamental Right to Petition. Exhibit UUU, attached to Plaintiff Schulz's Affidavit is a copy of the NY Times article. Dale Hart's statement about mailing lists can be seen and heard on the web cast of the 9/16/03 press conference, which is archived on the Treasury Department's Internet site.

Plaintiffs' Opposition papers include affidavits sworn to by all plaintiffs, attesting to the fact that they are Petitioning for Redress of certain grievances, and that the government is retaliating against them. Every Plaintiff is prepared to further support his or her charge with evidentiary material.

A few examples of Defendants' impermissible retaliation against Plaintiffs is what the Defendants have been doing to Plaintiffs Joseph Banister, Richard George, John Turner and William and Tara Morgan, as detailed in their Affidavits dated August 25, 2004, August 14, 2004, September 14, 2004, and August 28, 2004 respectively. Copies are attached to Plaintiffs' opposition papers.

Plaintiffs Joseph Banister, John Turner, Richard George and William Morgan are all accomplished professionals who have not only individually Petitioned the government (without proper effect) for a Redress of Grievances relating to the direct, un-apportioned tax on their labor, but have also joined and added their names, expertise and resources to the Petition for Redress process organized by the We The People Foundation for Constitutional Education, Inc., which has tens of thousands of individual participants seeking answers and remedies to the same and similar oppressions.

Banister, Turner, George and Morgan have each become a target of an IRS "enforcement" action and, in violation of their Right to Petition and to associate and peaceably assemble each has been informed by the IRS that the government has targeted him/her because of his/her association with the We The People organization and Petition process.

According to the Affidavits by Banister and Turner, Defendants have admitted that they have targeted Banister and Turner because of their association with the We The People Foundation and the Petition process, first in appearing, as they did, in a full-page message published in USA Today by the We The People Foundation, and then continually and publicly speaking out about the IRS' failure to answer their questions about the government's apparent violation of the Constitution's taxing clauses and lack of IRS's authority to force companies and individuals to withhold and pay the direct, un-apportioned tax on labor. Exhibit X attached to Schulz's affidavit of Sept. 16th is a copy of the USA TODAY message.

According to the affidavit by Plaintiff Richard George, Defendants have also admitted that they have targeted Richard George because of his association with We The People and

the Petition process. Mr. George has been serving as the lead Internet software engineer and developer for the We The People Foundation.

According to the affidavits by William and Tara Morgan, Defendants have also admitted that they have targeted William and Tara Morgan because of their association with the We The People and the Petition process. Mr. Morgan provided the resources that allowed We The People Foundation to webcast its first "Liberty Hour," a one hour program that 118,000 People logged on to watch. The educational program discussed the history, meaning and significance of the Right to Petition, the Petition process, the government's failure to properly respond and the rational behind the "No Answers, No Taxes" mantra.

Without the valuable and highly technical services of Plaintiffs William Morgan and Richard George, the ability of the Petition process to carry on, and to continue to hold the government accountable to the Constitution and to the Bill of Rights, is being adversely affected and impaired.

Defendant IRS has been sending very ominous and threatening "enforcement" letters to Plaintiffs, including the so-called "6700" letter that falsely characterizes Plaintiffs' First Amendment Petition process as a "promotion of an abusive tax shelter," characterizing the thousands of people who have signed the Petitions for Redress as "investors" in the "abusive tax shelter," and requesting full information about the people who had signed the Petitions for Redress, full information about the source of funds used by Plaintiffs to Petition the government for Redress of grievances, and so forth. Specifically, the letters say, "We have reviewed certain materials with respect to your tax shelter promotion. We are considering possible action under Section 6700 ….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 document, books and records that you should have available and questions you should be prepared to reply to at that time." Exhibit 2 attached to Plaintiff Turner's Affidavit is a copy of the so-called "6700" letter.

In fact, as the Record clearly shows, Plaintiffs are not engaged in the sale or purchase of any service or product ("trusts" or otherwise), and have received no compensation for their work in pursuit of the answers to the questions contained in the subject Petitions for Redress. There is no "tax shelter" scheme. There are no "investors." Rather, there are Petitions for Redress of Grievances and there are Petitioners, who have joined together in Petitioning the government for answers to specific questions regarding the Defendants' constitutional authority.

The IRS' "enforcement actions" are, in effect, prohibited retaliatory actions against Plaintiffs and, as such, are infringing on Plaintiffs' First Amendment Right to Petition the government for a Redress of Grievances.

The IRS is also issuing the very ominous and frightful Administrative Summonses to Plaintiffs, demanding the same information that they demand in their "6700" letters.

The "7602" Summonses do not identify any offense. They merely demand that Plaintiffs appear before Defendant's agents, " to give testimony and to bring with you and to produce for examination the following books, records, papers and other data relating to the tax liability or the collection of the tax liability or **for the purpose of inquiring into any offense** connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown."

With increasing frequency, Defendants' agents are conducting armed raids on Plaintiffs' homes and businesses and they are routinely violating due process rights in their day-to-day enforcement procedures.

Plaintiffs argue that under the circumstances of this case, the enforcement actions being taken against Plaintiffs by the Defendants amount to impermissible retaliation, prohibited by the original meaning and spirit of the Petition and Assembly, Speech, Press and due process Clauses of the Constitution.

Plaintiffs respectfully request the Court look at the material facts of the case through the prism of the original meaning, intent, history and significance of the Petition Clause of the Constitution. The First Amendment Right to Petition government for Redress of Grievances includes protection from retaliation.

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

Plaintiffs have petitioned Defendants for a Redress of Grievances relating to: (a) The taxing clauses of the Constitution and the direct, un-apportioned tax on labor; (b) The war powers clauses of the Constitution and the Iraq Resolution; (c) The money clauses of the Constitution and the Federal Reserve; and (d) The "privacy" clauses of the Constitution and the USA Patriot Act.

By communicating information, expressing facts and opinions, reciting grievances, protesting abuses and praying for answers to specific questions, Plaintiffs have given expression essential to the end that government Defendants may be responsive and accountable to the Constitution and to the sovereignty of the People and that changes that

Plaintiffs are entitled to may be obtained by lawful and peaceful means. See *McDonald v Smith* (1985) 472 US 479; *New York Times Co*. v. *Sullivan*, 376 U.S. 254 at 266, 269.

The record shows Defendants have repeatedly refused to respond to Plaintiffs' repeated Petitions for Redress.

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

Plaintiffs believe such further expression is not an abuse of any of their First Amendment Rights, but an extension of their First Amendment Rights and any intervention by Defendants against such exercise of these First Amendment Rights represents a curtailment of Plaintiffs' Rights and is forbidden. [41]

By their "6700" letters, "7602" Summonses, order-less Levies and Liens, Dummy Returns, armed raids, and other "enforcement" actions, defendants are retaliating against Plaintiffs by attempting to disqualify them from taking a public position on matters in which they are financially interested, depriving Plaintiffs of their Right to Petition, to associate and to speak freely in the very instance in which those Rights are of the most importance to Plaintiffs. See *Bridges v. California*, 314 U.S. 252 (1941).

[41] "The privilege of giving or withholding our money 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." Thomas Jefferson: Reply to Lord North, 1775, Papers 1:225.

Defendants' retaliation against Plaintiffs is without reasonable cause; it is not objective; there is no clear and present danger to the government Defendants that would justify their punishment of Plaintiffs for performing a self-government function; the Petition clause was included in the First Amendment to ensure the growth and preservation of democratic self-governance; "it is as much Plaintiff's duty to question as it is the defendants' duty to administer." See *New York Times Co.* v. *Sullivan*, 376 U.S., at 282

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. Defendants make no such claim.

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

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 communications to one's representative could be arbitrarily ignored, refused, 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 representative institutions and refusal to identify individuals' rights with, or subordinate them to, the wills of elected representatives. Undue assertions of parliamentary privilege -- **punishing petitioners who were said to menace the dignity of the assembly -- jeopardize the entire institution of petitioning.** Higginson, 96 Yale L.J. 142, n45.

Before a First Amendment right may be curtailed under the guise of a law, 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. See also *Stromberg* v. *California*, 283 U.S. 359, 369; *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.

That tragic consequence is threatened today when broadly drawn laws such as 26 USC 6700 “promotion of a tax shelter,” and 26 USC 7202 “willful failure to withhold,” and 26 USC 7203 “willful failure to file” are used to bludgeon People who are peacefully exercising a First Amendment right to question government’s authority behind one of the most grievous of all modern oppressions, which our federal government under color of law is inflicting on the working men and women in America – state ownership of their labor property, which if constitutional at 1% would also be constitutional at 100%.

There can be no doubt but that IRS letters and Summonses (demanding Plaintiffs turn over all documents, books, records and other data for the purpose of “inquiring into any

offense connected with the enforcement of the income tax laws") are being issued for an illegitimate purpose -- to punish and penalize Plaintiffs and to inhibit and curtail Plaintiffs' First Amendment Rights. See *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

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

Today, misdemeanors are being used to harass and penalize Plaintiffs for exercising a constitutional right of Assembly and Petition. The government will undoubtedly say they are not targeting Plaintiffs beause of the constitutional principles they espouse. However, that excuse is usually given, as we know from the many cases 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 Plaintiffs, who question government's behavior and preach a nonconformist doctrine, that is, "the government has an obligation to hear and answer 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.

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 "promotion of an abusive tax shelter" or a "willful failure to file" action.

Petitioning may be the forgotten Right, but it is not a lost Right. "Petitioning was at the core of the constitutional law and politics of the early United States. That was why it was included in the First Amendment, not as an afterthought, but rather as its **capstone**… petitioning embodied important norms of political participation in imperfectly representative political institutions…. **Petitioning was the most important form of political speech** …For individuals and groups, it was a mechanism for redress of wrongs that **transcended the stringencies of the courts** and could force the government's attention on the claims of the governed when no other mechanism could." Gregory A. Mark, The Vestigial Constitution**:** The History And Significance Of The Right To Petition, 66 Fordham L. Rev. 2153, 2157 (1998). (Plaintiffs'emphasis). 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."

In America, the right to Petition our government for Redress of Grievances is the basis of our liberty. Our founders explicitly recognized this right in the very first amendment to our constitution – for they understood that without it, we could not have a servant 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 1st 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 Plaintiffs. Unconventional methods of Petitioning [such as redress before taxes] are protected as long as the Assembly and Petition are peaceable. The Right of Redress Before Taxes is an integral part of the Right to Petition for Redress of Grievances.

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.*

Plaintiffs have an inherent, unalienable Right to Redress Before Taxes, guaranteed by the First and Ninth Amendments. The actions Defendants are complaining about are consistent with and protected by said Right.

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 colonists held that tyranny marked a society in which the rulers ignored "a free People."

To be sure, a communication, to be protected as a Petition for Redress, would have to embody certain components to ensure that the document was a petition and not a "pretended petition." Not all communications, nor just any document, can be regarded as a constitutionally protected Petition for Redress of Grievances.

Plaintiffs' Petitions for Redress meet or exceed any rational standard. Plaintiff's Petitions for Redress:

- do not rise to the level of frivolity.
- 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.

Although the term "petition" is not defined by the Constitution, our United States Supreme Court long ago interpreted the "Petition Clause" to apply in a variety of circumstances, noting the right to petition the representatives of the people in Congress, to petition the Executive Branch, and the right of access to the courts. The Supreme Court has

also determined that it is appropriate to give an alleged intrusion on First Amendment rights particular scrutiny where the government may be attempting to chill the exercise of First Amendment rights because the exercise of those rights would adversely affect the government's own interests.

Congress has carefully restricted the IRS's power to certain rather precisely delineated purposes. For instance, IRS's enforcement powers are to be used for genuine investigation of particular taxpayers, not to quash a serious and intelligent Petition for Redress of Grievances, or to chill the enthusiasm of People to participate in the Petition for Redress process.

Any attempt by the IRS to use its enforcement power to methodically force disclosure of whole categories of transactions, information and communications related to the Petition for Redress participants, and to closely monitor the myriad operations of the Petition for Redress process, on the theory that the information thereby accumulated might expose some kind of "tax shelter" or facilitate the assessment and collection of some kind of a federal tax from somebody, is constitutionally impermissible.

"Although the [enforcement] power provisions of the Internal Revenue Code are to be liberally construed, a court must be careful to insure that its construction will not result in a use of the power beyond that permitted by law." *United States* v. *Humble Oil & Refining Co*., 488 F.2d 953 at 958 (5th Cir. 1974).

Under the facts and the law, the Court should satisfy itself, via sworn testimony of the Defendant, that the IRS is not acting arbitrarily and capriciously, and that there was a plausible reason for believing fraud is being practiced on the revenue. The Court is free to act in a judicial capacity, free to disagree with the administrative enforcement actions if a substantial question is raised or the minimum standard is not met. The District Court reserves the right to

prevent the "arbitrary" exercise of administrative power, by nipping it in the bud. See *United States* v. *Morton Salt Co*., 338 U.S. 632, 654.

The IRS at all times must use the enforcement authority in good-faith pursuit of the authorized purposes of Code. *U.S. v. La Salle N.B.*, 437 U.S. 298 (1978).

Plaintiffs have clearly been undertaking to exercise their constitutionally protected freedoms under the Petition, Speech, Publish and Assembly clauses and they had no other purpose. Therefore, IRS enforcement actions are impermissible retaliation.

A court may not permit its process to be abused by allowing the IRS to continue on with an illegitimate enforcement actions, without a hearing. Where plaintiff has made a substantial preliminary showing of such abuse, he is entitled to an opportunity to substantiate his allegations by way of an evidentiary hearing. See *U.S. v. Millman*, 765 F.2d 27, (2nd Cir., 1985)

For instance, the I.R.C. § 7602 authorizes the issuance of summonses for the purpose of ascertaining the correctness of any return. The Internal Revenue Service is required to declare a good-faith pursuit of the congressionally authorized purposes of Section 7602. *U.S. v. White*, 853 F.2d 107 (2nd Cir, 1988).

As the long Record before the court clearly shows, Defendants have intentionally evaded being held accountable to the Constitution, and the court, by refusing to respond to Plaintiffs' legitimate Petition for Redress of Grievances. Instead, Defendants are attempting to quash Plaintiff's Petition for Redress of Grievances, by purposefully and unlawfully interfering with the constitutionally protected Right of those who choose to associate with it, by characterizing--in bad-faith--the Petition for Redress of Grievances as an "abusive tax

shelter", and publicly prosecuting its participants for promoting an "abusive tax shelter," or for "failure to withhold," or for "failure to file."

Plaintiffs have petitioned the Court for protection from the IRS, which is retaliating against Plaintiffs for lawfully and respectfully exercising their fundamental First Amendment Right to Petition the government for Redress of Grievances (together with their Right to Associate freely and to Speak and Publish freely).

Rather than properly respond to the legitimate questions presented in Plaintiff's Petition for Redress, Defendants are attempting to abuse the enforcement process, and to publicly denigrate Plaintiffs by improperly characterizing the Petition for Redress as an "abusive tax shelter". Adding further injury to Plaintiffs, Defendants are demanding, without lawful authority, that Plaintiffs turn over to the IRS personal and private records, including the records of all those who have signed the Petitions for Redress, and who have supported the First Amendment Petition process. This is patently and Constitutionally objectionable.

Plaintiffs have innocently put Defendants into a position of being required to publicly answer a few questions and openly account for their official behavior and they apparently deeply resent it.[42]

Included with Plaintiffs' Complaint was an extraordinary affidavit by Schulz that detailed the long process of Petitioning the government for Redress of Grievances, supported by an abundance of evidentiary material.

Plaintiffs humbly request that this Court compare and examine Plaintiffs' Petition for Redress, which began in 1999,with the language of the IRS's so-called "6700" letter, which is the basis of IRS's demand for Plaintiffs' personal and private records.[43]

[42] Plaintiffs' Petitions for Redress make no claim that the IRS lacks authority to tax. Plaintiffs' Petitions for Redress merely ask the government for answers to specific questions regarding the tax, war, money and debt and "privacy" clauses of the Constitution..

There is not a scintilla of evidence, in or out of court, to support the notion that Plaintiffs are, or ever have been, involved with any type of "tax shelter", much less an abusive one, or that Plaintiffs have ever been involved with any so-called "investors." On the other hand, there is an abundance of evidence to support Plaintiffs' claim that the IRS's motive behind its enforcement activities is simply to shut down the Petition for Redress process and to chill the enthusiasm of the People to associate with it.

The IRS has an opportunity in Court to argue otherwise.

Although its investigative powers are broad, IRS has no lawful authority to examine any personal and private records unless they are relevant to the tax liability of the person(s) under investigation. The IRS certainly has no legal or moral authority to deploy the vast resources of the United States against individual citizens who are clearly exercising and seeking the protections guaranteed them by the First Amendment to the United States Constitution.

Given the facts and circumstances of this case, the IRS should be required to respond to plaintiff's Petitions for Redress of Grievances before plaintiffs are forced to suffer a further loss of individual Rights, liberties and freedoms..

IV. FEDERAL AGENCIES AND OFFICIALS ARE ACTING UNDER COLOR OF STATE LAW

Contrary to Defendants' allegations, federal officials and agencies are operating under color of State law. For example, on September 16, 2003, at a formal press conference

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[43] The "6700" letter from the IRS reads, "We have reviewed certain materials with respect to your tax shelter promotion. We are considering possible action under 6700 and 7408 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…. "

held at the Treasury Building in Washington DC, Defendants announced a joint federal-state enforcement program aimed, in part, against Plaintiffs' and their Petitions for Redress. State enforcement officials from numerous States were present during the press conference. During the press Defendant IRS's senior spokesman, Terry Lemons, said on the record to New York Times reporter David Cay Johnston that, "the recent spate of enforcement actions taken by the I.R.S. … show other ways that government is answering the petition." Exhibit UUU, attached to Plaintiff Schulz's affidavit of September 16 is a copy of the NY Times article.

In addition, all State "income" tax laws and enforcement programs "piggyback" on the federal "income" tax laws and enforcement program.

CONCLUSION

Based on the above and the on the accompanying papers, Plaintiffs respectfully request an order denying Defendants' Motion to Dismiss the Amended Complaint.

Dated: November 11, 2004

Respectfully Submitted,

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