

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA**

WE THE PEOPLE FOUNDATION INC.,  
et al.,

Plaintiffs,

No. 104-cv-01221 EGS

v.

UNITED STATES, et al.,

Defendants.

**PLAINTIFF’S SUR REPLY TO DEFENDANTS’ MOTION TO DISMISS**

---

This is an action for declaratory relief by constraining the defendants to meet their obligations under the Constitution by responding with specific, official answers to the reasonable questions put forth by Plaintiffs in their Petitions for Redress of Grievances, regarding *constitutional torts* involving violations of the U.S. Constitution’s war powers, taxing, money, and “privacy” and due process clauses (Amend. Comp. 65). This is also an action for injunctive relief against the Defendants, from taking any further retaliatory actions against Plaintiffs. (Amend. Comp. 65).

Defendants moved to dismiss the complaint on the grounds that Congress has not authorized this manner of petition against the “sovereign” government (Mot. 13), the government does not have to “listen or respond to Plaintiffs’ petitions” (Mot. 15), Plaintiffs’ claims of retaliation are “legal conclusions cast in the form of factual allegations” (Mot. 19), and Congress did not authorize People to enforce their Rights through the retention of money “as an avenue for the relief sought” (Mot. 23).

In Opposition, Plaintiffs argued that the Petition Clause operates as a constitutional antidote to the doctrine of sovereign immunity (Plts’ Opp. 3), the enumeration of the Right to Petition in the First Amendment cannot be construed to deny Plaintiffs’ Right to a response – that is, the government is implicitly obligated under the Constitution to respond by providing specific answers,

just as the government is implicitly obligated under the 26<sup>th</sup> Amendment to respond by counting the votes of people who have voted (Plts' Opp.10), that the issue of "Impermissible Retaliation" is a material issue of fact, (Plts' Opp. 26) and, the Right of Petition does not depend upon Congress for its enforceability and survives the schema of any act of Congress that infringes or abridges its guarantees (Plts' Opp. 21).

In Reply, Defendants raised new arguments: government's response to Plaintiffs' Petitions does not have to be "adequate" (Reply 2); the government *has* responded to Plaintiffs' Petitions (Reply 5 fn 4); and, Plaintiffs have no Right to enforce their Rights by retaining their money because "Plaintiffs can cite no case in which such a right is recognized...[and] history is replete with those who have sought to engage in civil disobedience by violating our nation's tax laws" (Reply 6).

#### **I. PETITION PROCESS MUST BE "ADEQUATE, EFFECTIVE AND MEANINGFUL"**

Defendants now argue that nothing in the Constitution requires the Government's response be "adequate", and that such a requirement could overwhelm government (Reply, 2).

Citizens have a constitutional right of access to the government. See, for instance *Bounds*, 430 *U.S. at 821*. The access must be "adequate, effective, and meaningful" to comport with the Constitution. *Bounds*, 430 *U.S. at 822*. While these principles may be easier to state than to apply because their textual footing in the Constitution is not clear, (see, *Morrow v. Harwell*, 768 *F.2d 619, 623, 1985*), the First Amendment right to petition, as currently interpreted, is a birthplace for the People's right of access to the government (*Bieregu v. Reno*, 59 *F.3d 1445, 1453 (3d Cir. 1995)*), and "The touchstone . . . is meaningful access ...." *Bounds, at 823*).

If the Right to Petition the government for Redress of Grievances -- that is, the Right of access for the purposes of exercising self-government -- is to be "adequate, effective and meaningful," the government must have an obligation to respond. No response or a non-responsive response would be

inadequate. In reply to Defendants' new "practical limitations" argument, Plaintiffs argue that a government that governs according to the dictates of the People and respecting the Rights thereof, would not be so overwhelmed by Petitions for Redress of Grievances regarding *constitutional torts* that the government would reach its practical limitations to respond adequately, effectively and meaningfully.

## **II. GOVERNMENT HAS NOT RESPONDED**

Defendants' argue that the government has at least *partially* replied to one of Plaintiffs' *four* Petitions for Redress of Grievances, stating, "all three branches have already responded to anti-tax arguments identical to those raised by plaintiffs ...." (Reply, fn 4), and that, "[T]hose who contend that the income tax is unconstitutional, etc., will find adequate guidance in official publications and court opinions as to the government's position on such contentions" (Opp. 4).

These assertions are false. Defendants' counsel, at best, is laboring under a misconception, and would have the Court do the same. Defendants have not provided a scintilla of evidence in support of the notion that any, much less all, of the questions Plaintiffs have included in their *four* Petitions for Redress, have been answered by the government. In fact, no evidence exists that Defendants have ever attempted to provide an adequate, effective or meaningful response to Plaintiffs' Petitions for Redress of Grievances, thus precipitating the instant legal action to protect and defend the People's First Amendment Rights.

Plaintiff respectfully invites the Court's attention to Docket #22 and #26, where Plaintiff rebuts Defendants' claim and Defendants' bad faith offer of proof that they have responded.

## **DISTINGUISHABLE AND WORTHY**

Defendants now argue that Plaintiffs have no Right to enforce their Rights by retaining their money because "Plaintiffs can cite no case in which such a right is recognized...[and]

history is replete with those who have sought to engage in civil disobedience by violating our nation's tax laws. (line of case citations omitted).” (Defs’ Reply 6-7).

Plaintiffs have made the case that *repeated* Petitions to government for Redress of Grievances that involve *constitutional torts*, that have gone *unanswered*, or that have been met with repeated injuries, can constitutionally be enforced by the People, by retaining their money until their grievances are Redressed. In fact, if the servant government assumes no obligation to protect and defend the unalienable Rights of the People, and after a long course of repeated usurpations and violations of the People’s Rights, upon what practical, effective and peaceful means might the People rely for Redress of their Grievances other than those expressly enumerated in the First Amendment of the United States Constitution? The absence of case law does not eviscerate the People’s Natural Right to rely on the protection of the Constitution in constraining the extra-judicial actions of the government. Plaintiffs, in reliance upon the express mandates of the First Amendment, have taken the appropriate next step. The Constitution cannot defend itself. Any fundamental Right that is not enforceable is not a Right. By necessity, the compelling interests of the People must stand above the limited interests of the government.

“Civil Disobedience.” This is what Defendants now call Plaintiff’s “No Taxes” reply to government’s “No Answers” response to Plaintiff’s Petitions for Redress. Still reluctant to set a modern day precedent of constitutional accountability by responding to the People’s Petitions for Redress, Defendants are now attempting to shoehorn this case into a newly cited line of cases dealing with taxpayers who withheld taxes in support of a *political or criminal* cause.

The instant case has no precedent in contemporary American jurisprudence. None of the cases cited by Defendants involve the Petition Clause or the retention of taxes as a way of curing a *constitutional tort*. We are not dealing here with unilateral behavior based on personal beliefs

regarding the free exercise or free speech clauses. This case is distinguishable. Here, Plaintiffs *first*, identified and documented behavior by the government that is *ultra vires* and prohibited by the Articles of the Constitution (as opposed to the Bill of Rights), *then* Petitioned the Judicial branch for Redress of two of the Grievances but had the cases dismissed for “lack of standing,” and *then* Petitioned the Executive and Congress *respectfully, repeatedly and humbly* for Redress but had the Petitions dismissed *without comment*. Only *then* did Plaintiffs begin to retain their money in an effort to secure Redress of their constitutional grievances.<sup>1</sup>

### CONCLUSION

There is much at stake for both sides in this controversy. The government asserts its authority to act without constitutional restraint or judicial review. It assumes the unilateral prerogative to interpret its own authority to act unchecked outside the limited powers delegated to it by the terms and conditions of the Constitution. Defendants argue that the American People, including individuals and minorities, have no means beyond the ballot box by which to enforce their Rights. If the People are truly sovereign, the Court, as a neutral arbiter and protector of the People and the People’s Natural Right as the final interpreter of the Constitution, should grant Plaintiffs’ Petition to secure this forum to resolve this historic case and controversy, and define for the first time, the full contours of the Right to Petition the government for a Redress of Grievances.

Dated: February 26, 2005

Respectfully submitted,

---

Robert L. Schulz, pro se  
2458 Ridge Road  
Queensbury, NY 12804  
518.656.3578

---

<sup>1</sup> Guided by the essential principles underlying our system of governance, particularly “popular sovereignty” and the first of the “Great Rights,” as articulated in the Act unanimously passed by the Congress in 1774 (copy attached as Exhibit A)