## APPENDIX A

***State of New York***
***Court of Appeals***

***Decided and Entered on the twenty-fourth day of March, 2020***

**Present,** Hon. Janet DiFiore, *Chief Judge,* ***presiding.***

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SSD 8
Robert L. Schulz,
Appellant,

v.

Town Board of the Town of Queensbury et al.,
Respondents.

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Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

/s/ John P. Asiello
John P. Asiello
Clerk of the Court

## APPENDIX B

***State of New York***
***Supreme Court, Appellate Division***
***Third Judicial Department***

Decided and Entered: October 24, 2019 527707

ROBERT L. SCHULZ,

Appellant,

v

TOWN BOARD OF THE TOWN OF QUEENSBURY et al.,

Respondents.

OPINION AND ORDER

Calendar Date: September 3, 2019

Before: Egan Jr., J.P., Lynch, Clark, Mulvey and Pritzker, JJ.

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Robert L. Schulz, Queensbury, appellant pro se.

Miller, Mannix, Schachner & Hafner, Glens Falls (Jacquelyn P. White of counsel), for respondents.

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Mulvey, J.

Appeals (1) from a judgment of the Supreme Court (Muller, J.), entered September 20, 2018 in Warren County, which, among other things, granted defendants' cross motion to dismiss the amended complaint, and (2) from an order of said court, entered February

26, 2019 in Warren County, which, among other things, upon reargument, adhered to its prior decision granting defendants' cross motion to dismiss.

In 2013, the Town of Queensbury, Warren County began considering the establishment of a sanitary sewer district to serve a certain portion of the Town. In September 2016, defendant Town Board of the Town of Queensbury completed its review under the State Environmental Quality Review Act (see ECL art 8 [hereinafter SEQRA]), issued a negative declaration stating that the proposed sewer district would have no significant environmental impacts, and approved a resolution to establish the sewer district. Plaintiff, who did not participate in the public hearing, attended a Town Board meeting in October 2016 where he read aloud and submitted to the Town Board a document he labeled "Petition for the Redress of Grievances Regarding the Proposed [sewer district]." The Town Board did not respond to this document. In November 2017, after receiving approval from the State Comptroller (see Town Law § 209-f), the Town Board adopted a final order establishing the sewer district. On June 4, 2018, plaintiff read and submitted to the Town Board a petition labeled the same as his October 2016 document. On July 2, 2018, the Town Board accepted a bid to commence construction on the sewer project.

That same day, plaintiff commenced this action against the Town Board and defendant John Strough, the Town Supervisor, seeking declaratory and injunctive relief, including a temporary restraining order. Defendants cross-moved to dismiss the complaint.

Supreme Court, among other things, granted the cross motion and dismissed the complaint on the bases that plaintiff's SEQRA claims were time-barred and his constitutional claims failed to state a cause of action (61 Misc 3d 1202[A] [Sup Ct, Warren County 2018]). Plaintiff then moved to reargue and renew. Although the court stated that it was denying his motion (62 Misc 3d 1225[A] [Sup Ct, Warren County 2019]), we view the decision as essentially granting reargument but adhering to the court's prior determination (see Galway Co-Op.Com, LLC v Niagara Mohawk Power Corp., 171 AD3d 1283, 1284 [2019]; Flisch v Walters, 42 AD3d 682, 683 [2007]). Plaintiff appeals from the judgment dismissing his complaint and from the order upon reconsideration.

Plaintiff does not have standing to raise the SEQRA claims. "In land use matters especially, [the Court of Appeals] ha[s] long imposed the limitation that the plaintiff, for standing purposes, must show that [he or she] would suffer direct harm, injury that is in some way different from that of the public at large [and] [t]his requirement applies whether the challenge to governmental action is based on a SEQRA violation, or other grounds" (Society of Plastics Indus. v County of Suffolk, 77 NY2d 761, 774 [1991] [internal citations omitted]; see Matter of Save the Pine Bush, Inc. v Common Council of City of Albany, 13 NY3d 297, 304 [2009]; Matter of Clean Water Advocates of N.Y., Inc. v New York State Dept. of Envtl. Conservation, 103 AD3d 1006, 1007 [2013], lv denied 21 NY3d 862 [2013]). Plaintiff does not reside in the Town. Although

his homestead apparently straddles the Town line such that 1.2 acres of his land is situated in the Town, his property is located outside of – and approximately 15 miles away from – the sewer district. Moreover, plaintiff's status as a taxpayer, by itself, does not grant him standing to challenge the establishment of the sewer district (see Tilcon N.Y., Inc. v Town of New Windsor, 172 AD3d 942, 944 [2019]; Matter of Kopald v Supervisor & Town Bd. of Town of Highlands, 34 AD3d 810, 810 [2006]). As plaintiff has not alleged that the Town Board's SEQRA determination and approval of the sewer district created a direct harm to him that is different from that of the public at large, he does not have standing to challenge these actions (see Matter of Clean Water Advocates of N.Y., Inc. v New York State Dept. of Envtl. Conservation, 103 AD3d at 1007-1009).

Plaintiff's SEQRA challenge is also time-barred. Regardless of how a plaintiff may label or style his or her claim, courts must look to the core of the underlying claim and the relief sought and, if the claim could have been properly addressed in the context of a CPLR article 78 proceeding, a four-month statute of limitations will apply (see Northern Elec. Power Co., L.P. v Hudson Riv.-Black Riv. Regulating Dist., 122 AD3d 1185, 1187-1188 [2014]; Bango v Gouverneur Volunteer Rescue Squad, Inc., 101 AD3d 1556, 1557 [2012]). Thus, even though plaintiff couched his requested relief in the form of a declaratory judgment action, his allegations of SEQRA violations are subject to a four-month statute of limitations (see Matter of Young v Board of Trustees of Vil. of Blasdell, 89 NY2d 846, 848

[1996]; Matter of Save the Pine Bush v City of Albany, 70 NY2d 193, 203 [1987]; Matter of Village of Woodbury v Seggos, 154 AD3d 1256, 1260 [2017]). Although plaintiff asserts that the SEQRA violations arose, at least in part, due to the Town Board providing knowingly false answers on the environmental assessment form, the complaint does not contain a separate fraud cause of action that would be governed by a longer statute of limitations; neither does plaintiff assert that he was prevented from filing suit earlier due to the allegedly false answers. Considering that the Town Board completed its SEQRA review and issued a negative declaration in September 2016 and gave final approval to the sewer project in November 2017, plaintiff's challenges thereto in his July 2018 complaint were untimely.

Supreme Court did not err in concluding that plaintiff's constitutional allegations failed to state a cause of action. Plaintiff alleged that the Town Board was constitutionally obligated to respond to his petitions for redress of grievances. Both the State and Federal Constitutions prohibit the government from making any law that abridges the right of the people "to petition the [g]overnment for a redress of grievances" (US Const, First Amend; see NY Const, art I, § 9 [stating "(n)o law shall be passed abridging the rights of the people . . . to petition the government, or any department thereof"]). However, the Supreme Court of the United States has stated that "[n]othing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and

petition require government policymakers to listen or respond to individuals' communications on public issues" (Minnesota State Bd. for Community Colleges v Knight, 465 US 271, 285 [1984]; see Smith v Arkansas State Highway Empls., Local 1315, 441 US 463, 465 [1979]; accord Knight First Amendment Inst. at Columbia Univ. v Trump, 302 F Supp 3d 541, 576 [SD NY 2018], affd 928 F3d 226 [2d Cir 2019]). Stated otherwise, the First Amendment does not "guarantee[ ] a citizen's right to receive a government response to or official consideration of a petition for redress of grievances" (We the People Found., Inc. v United States, 485 F3d 140, 141 [DC Cir 2007], certs denied 552 US 1102 [2008]).

Plaintiff attempts to distinguish between petitions that address public policy – with plaintiff conceding that the Supreme Court of the United States has held that they are not entitled to a direct response – versus petitions asserting that the government has violated laws or the constitution – with plaintiff arguing that the petitioned government agency or official must respond to them. However, the federal Court of Appeals for the District of Columbia Circuit has already rejected that argument, noting that "[n]othing in the [relevant and binding] Supreme Court opinions hints at a limitation on their holdings to certain kinds of petitions" (We the People Found., Inc. v United States, 485 F3d at 144 [emphasis omitted]). Although some commentators suggest that the Supreme Court failed to consider important historical information and, based on this information, the Petition Clause should be

interpreted to include a right to a response to or official consideration of petitions (see e.g. James E. Pfander, Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government, 91 Nw U L Rev 899, 904-905 & 905 n 22 [1997]; Julie M. Spanbauer, The First Amendment Right to Petition Government for a Redress of Grievances: Cut From a Different Cloth, 21 Hastings Const LQ 15, 17-19 [1993]; Stephen A. Higginson, A Short History of the Right to Petition Government for the Redress of Grievances, 96 Yale LJ 142, 155 [1986]; compare Gary Lawson & Guy Seidman, Downsizing the Right to Petition, 93 Nw U L Rev 739, 766 [1999]; Norman B. Smith, "Shall Make No Law Abridging . . . ": An Analysis of the Neglected, but Nearly Absolute, Right of Petition, 54 U Cin L Rev 1153, 1190-1191 [1986]), "we must follow the binding Supreme Court precedent" interpreting the First Amendment (We the People Found., Inc. v United States, 485 F3d at 144).

Despite the ability of New York courts to interpret our State Constitution in a way that provides more expansive rights than similar provisions in the Federal Constitution (see e.g. People v Scott, 79 NY2d 474, 478 [1992]; People v P.J. Video, Inc., 68 NY2d 296, 302-304 [1986], cert denied 479 US 1091 [1987]; Sharrock v Dell Buick-Cadillac, 45 NY2d 152, 159 [1978]), we see no reason to do so here. Requiring a response to every petition, especially in this digital age in which petitions can be copied and circulated with great speed and ease, could create a crushing burden on government

agencies and officials and waylay them from the performance of their duties (see Norman B. Smith, "Shall Make No Law Abridging . . . ": An Analysis of the Neglected, but Nearly Absolute, Right of Petition, 54 U Cin L Rev at 1190-1191 ["with our present capacity for multiplying documents, the business of government could be halted if each paper produced in a massive petition campaign is addressed"]). Rather, in our republican form of government in which direct public participation is limited, "disapproval of officials' responsiveness . . . is to be registered principally at the polls" (Minnesota State Bd. for Community Colleges v Knight, 465 US at 285). Because plaintiff requested a declaration and Supreme Court did not grant one (see CPLR 3001), we declare that defendants were not obligated to respond to plaintiff's petitions for redress of grievances.

Egan Jr., J.P., Lynch, Clark and Pritzker, JJ., concur.

ORDERED that the judgment and order are modified, on the law, without costs, by declaring that defendants were not obligated to respond to plaintiff's petitions for redress of grievances dated October 17, 2016 and June 4, 2018, and, as so modified, affirmed.

ENTER:

/s/ Robert D. Mayberger
Robert D. Mayberger
Clerk of the Court

## APPENDIX C

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

ROBERT L. SCHULZ,

Plaintiff-Petitioner,

v.

TOWN BOARD OF THE TOWN OF QUEENSBURY, JOHN STROUGH, SUPERVISOR,

Defendants-Respondents.

**DECISION AND ORDER**

Index No. 65513
RJI No.
56-1-2018-0322

*Robert L. Schulz*, Queensbury, plaintiff-petitioner pro se.

*Miller, Mannix, Schachner & Hafner, LLC*, Glens Falls (*Jacqueline P. White* of counsel), for defendants-respondents.

ROBERT J. MULLER, J.S.C.

Plaintiff-petitioner (hereinafter petitioner) commenced this action to challenge the establishment of a Sanitary Sewer District in the vicinity of Carey Road in the Town of Queensbury, Warren County (hereinafter the Carey Road District). Petitioner sought a declaratory judgment that defendants-respondents (hereinafter respondents) violated the State Environmental Quality Review Act (*see* ECL art 8 [hereinafter SEQRA]) and, further, violated his rights under the First Amendment of the United States Constitution by failing to respond to two separate petitions for redress

of grievances presented to respondent Town Board of the Town of Queensbury (hereinafter the Town Board).

The action was dismissed by Decision and Judgment dated September 19, 2018, with the Court finding that petitioner's SEQRA claims should have been brought in the context of a CPLR article 78 proceeding and, as such, were time-barred (61 Misc 3d 1201[A], 2018 NY Slip Op 51328[U], *2 [Sup Ct, Warren County 2018]). The Court further found that petitioner was not entitled to a response to his petitions for redress of grievances under the First Amendment and his constitutional claims therefore failed to state a cause of action (*id.* at *3). Presently before the Court is (1) petitioner's motion for leave to reargue or, alternatively, for leave to renew relative to this Decision and Judgment; and (2) petitioner's motion by Order to Show Cause for a preliminary injunction. The motions will be addressed *ad seriatim.*

Motion for Leave to Reargue/Renew

Turning first to that aspect of the motion which seeks leave to reargue, to succeed on such a motion petitioner must demonstrate that the Court "overlooked significant facts or misapplied the law in its original decision" (*Matter of Town of Poestenkill v New York State Dept. of Envtl. Conservation*, 229 A.D.2d 650, 650 [1996]; *see* CPLR 2221[d]; *Greene Major Holdings, LLC v Trailside at Hunter, LLC*, 148 AD3d 1317, 1318-1319 [2017]; *Matter of Ellsworth v Town of Malta*, 16 AD3d 948, 949 [2005]).

Here, petitioner contends that the Court overlooked his claims that the short environmental assessment form (hereinafter EAF) contained fraudulent responses and, in so doing, erroneously found that his SEQRA claims should have been brought in the context of a CPLR article 78 proceeding. More specifically, petitioner contends as follows:

> "Under the facts and circumstances of this case, which has more to do with the filing of a false instrument than with identifying and thoroughly analyzing relevant areas of environmental concern, a declaratory judgment action under CPLR 3001 to nullify the EAF and [the Town Board's] resolutions establishing the District was the proper context for [petitioner's] action, rather than a proceeding under CPLR [a]rticle 78."

This contention is without merit. In his amended complaint-petition, petitioner alleges that respondents fraudulently responded to question 13 (b) of part 1 of the EAF by indicating that the District would not physically alter or encroach into any existing wetland or water body. He further alleges that respondents fraudulently responded to question 7 (b) of part 2 of the EAF by indicating that the District would not impact any existing wastewater treatment utilities. The wastewater generated in the Town of Queensbury (hereinafter the Town) is treated by the City of Glens Falls (hereinafter the City) at its Wastewater Treatment Plant. According to petitioner, the City's Wastewater Treatment Plant "already frequently bypass[es] large volumes of existing domestic sewage and

industrial wastewater to the Hudson River," and the problem "will only increase as sewer districts such as [the] Carey Road District . . . are developed for discharge of hundreds of thousands of additional gallons of domestic sewage and industrial wastewater to the [City's] Wastewater Treatment Plant."

Notably, petitioner does not allege that respondents lied or knowingly failed to disclose relevant information in the EAF. The record in fact suggests quite the opposite. Respondents were aware of the problem and took steps to remedy it, as the result of which they ultimately determined that the City's Wastewater Treatment Plant would be able to "accommodate the increased flow . . . result[ing] from the [Carey Road] District." Their responses to question 13 (b) of part 1 of the EAF and question 7 (b) of part 2 of the EAF reflect this determination. In sum, notwithstanding petitioner's use of the word "fraudulent," his allegations amount to nothing more than a disagreement with respondents as to the potential impact of the Carey Road District on the environment.

Briefly, even if the Court had erred in finding that petitioner's SEQRA claims were barred by the statute of limitations, they would nonetheless be subject to dismissal because petitioner is without standing to assert them. "[T]he conferral of standing to challenge governmental actions involving land use, on SEQRA grounds or otherwise, requires a showing that the challenger will suffer direct harm, that is, injury which is in some way different from that of the public at large" (*Matter of Schulz v New York State Dept. of Envtl.*

*Conservation*, 186 AD2d 941, 942 [1992], *lv denied* 81 NY2d 707 [1993]; *see Matter of Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 NY3d 297, 304-306 [2009]; *Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 774-779 [1991]; *Matter of O'Brien v New York State Commr. of Educ.*, 112 AD3d 188, 194 [2013]). Here, petitioner does not and cannot claim an injury that is in some way different from that of the public at large. He does not own property within the Carey Road District nor does he reside within the Town.[1]

Petitioner next contends that the Court misapplied the law in dismissing his constitutional claims. Specifically, petitioner contends that the cases relied upon by the Court in dismissing the claims are inapposite because his petitions for redress of grievances "were not garden variety 'speech petitions' merely seeking to influence government 'policy making' but were "proper [p]etitions . . . calling out and seeking to remedy [respondents'] oppressive violations of existing law."

This contention is without merit as well. Nowhere does petitioner cite – nor was the Court able to locate – any case law drawing a distinction between petitions for redress of grievances which seek to shape policy and those which allege violations of existing law. In fact, in *We the People Found., Inc. v United States* (485 F 3d 140 [DC Cir 2007]) – which dealt with a petition

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[1] Petitioner resides in the Town of Fort Ann, Washington County. While he owns approximately one acre of vacant land in the Town, this land is located 15 miles from the Carey Road District.

for redress of grievances relative to the government's alleged "'violation of the taxing clauses of the Constitution' and 'violation of the war powers, money and privacy clauses of the Constitution'" (*id.* at 141 [internal quotation marks omitted]) – the District of Columbia Court of Appeals expressly found that the First Amendment does not encompass "a citizen's right to receive a government response to or official consideration of a petition for redress of grievances" (*id.* at 141).

While the Court agrees with petitioner's spirited arguments emphasizing the citizenry's fundamental right to petition the government, with soundings as deep as Federalist Papers No. 18, adherence to such truths is not inconsistent with a majority view of numerous tribunals as have weighed the issue and repeatedly concluded – as does this Court – that "[n]othing in the First Amendment or in [the] case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues" (*Minnesota State Bd. for Community Colls. v Knight*, 465 US 271, 285 [1984]; *see Knight First Amendment Inst. at Columbia Univ. v Trump*, 302 F Supp 3d 541, 576 [SD NY 2018]).

Finally, petitioner contends that the Court misapplied the law in stating as follows:

> "Insofar as petitioner claims that the bid for construction approved by the Town Board on July 2, 2018 was based upon specifications and drawings which did not comport with the [Map, Plan and Report (MPR) prepared by

> Chazen Companies], . . . such claims [are] raised for the first time in his reply papers and, as such, [are] not properly before the Court" (2018 NY Slip Op 51328[U], at *4 n 2).

Specifically, petitioner contends that "the subject of the [MPR] was first raised . . . by [respondents] in support of [their] motion [to dismiss]" and he was therefore "within his rights to reply as he did."

This contention is unavailing. The MPR was one of many documents mentioned by respondents in their discussion of the procedure followed by the Town in establishing the Carey Road District. Respondents made no arguments relative to the MPR. More significantly, however, the MPR was filed with the Town Clerk for public inspection in August 2016 and was available to petitioner for review well before he commenced this action. As such, any allegations that the bid for construction approved by the Town Board did not comport with the MPR could and should have been included in his initial pleadings. Alternatively, petitioner could have made a motion to amend the pleadings so as to include these allegations (*see* CPLR 3025).

Based upon the foregoing, the aspect of petitioner's motion seeking leave to reargue is denied.

With respect to the aspect of the motion which seeks leave to renew, to succeed on such a motion petitioner must "provide new facts that would change the prior determination as well as a justifiable excuse for not providing such facts earlier" (*Hurrell–Harring v.*

*State of New York*, 112 AD3d 1217, 1218 [2013]; *see* CPLR 2221[e]).

Here, petitioner has submitted (1) a document entitled "Sewage Discharge Notifications," apparently printed from the website maintained by the Department of Environmental Conservation; and (2) an undated email to him including what appears to be an October 2, 2018 article entitled "Heavy rains cause combined sewer overflows in Glens Falls, Ticonderoga."

Turning first to the Sewer Discharge Notifications document, petitioner contends that it includes a list of dates in 2015 and 2016 when untreated sewage bypassed the City's Wastewater Treatment Plant as a result of heavy rain and was discharged into the Hudson River and, as such, provides new facts. Petitioner further contends that he has a justifiable excuse for not providing the document earlier, namely that "[g]iven the common knowledge [relative to the bypasses, he] did not believe it was necessary to add . . . the information." He later realized it was necessary, however, when "[t]he Court . . . overlooked . . . the fact of its seriousness."

These contentions are without merit. The Sewer Discharge Notifications document does not change the Court's determination. Indeed, notwithstanding the information contained therein, petitioner's SEQRA claims are still time-barred and his constitutional claims still fail to state a cause of action. Further, petitioner's belief that it was not necessary to include the document in opposition to respondents' motion to

dismiss does not constitute a justifiable excuse for his failure to do so. "[A] motion to renew is 'not a second chance to remedy inadequacies that occurred in failing to exercise due diligence in the first instance'" (*Howard v Stanger*, 122 AD3d 1121, 1123 [2014], *lv dismissed* 24 NY3d 1210 [2015], quoting *Onewest Bank, FSB v Slowek*, 115 AD3d 1083, 1083 [2014] [internal quotation marks and citation omitted]).

Turning now to the October 2, 2018 article, petitioner contends that it provides new facts because it demonstrates that the bypasses continue to occur notwithstanding the improvements made to the City's Wastewater Treatment Plant. He further contends that he has a justifiable excuse for not providing the article earlier, namely that it was not published until after issuance of the Decision and Judgment.

While petitioner perhaps has a justifiable excuse for not providing the article earlier, the article – much like the Sewer Discharge Notifications document – does not change the Court's determination. It must also be noted that the article has questionable value, as it is entirely unclear where it was published.

Based upon the foregoing, the aspect of petitioner's motion seeking leave to renew is also denied.

Motion for Preliminary Injunction

To the extent that petitioner's motion for leave to reargue or, alternatively, for leave to renew is denied,

his motion for a preliminary injunction must also be denied.

Therefore, having considered the Affidavit of Robert L. Schulz, sworn to October 9, 2018, submitted in support of motion for leave to reargue; Affidavit of Robert L. Schulz with exhibits attached thereto, dated October 9, 2018, submitted in support of motion for leave to renew;[2] Memorandum of Law of Robert L. Schulz, dated October 9, 2018, submitted in support of motion for leave to reargue/renew; Affidavit of Robert L. Schulz, sworn to October 9, 2018, submitted in support of motion for preliminary injunction; Brief of Robert L. Schulz, dated October 9, 2018, submitted in support of motion for preliminary injunction; Memorandum of Law of Jacquelyn P. White, Esq., dated October 18, 2018, submitted in opposition to motion for leave to reargue/renew and motion for preliminary injunction; Affidavit of Christopher Harrington, sworn to October 18, 2018, submitted in opposition to motion for leave to reargue/renew and motion for preliminary injunction; and Affidavit of Robert L. Schulz, sworn to October 23, 2018, submitted in further support of motion for leave to reargue/renew and motion for preliminary injunction; Memorandum of Law of Robert L. Schulz, dated October 9, 2018, submitted in further support of motion for leave to reargue/renew and motion for preliminary injunction;[3] and correspondence of

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[2] The Court notes that this affidavit was not sworn to before a Notary Public nor was it signed.

[3] It appears that this Memorandum of Law was erroneously dated.

Robert L. Schulz dated February 16, 2019, submitted in further support of motion for leave to reargue/renew and motion for preliminary injunction, and oral argument having been heard on February 15, 2019 with petitioner Robert L. Schulz appearing pro se and Jacquelyn P. White, Esq. appearing on behalf of respondents, it is hereby

**ORDERED** that petitioner's motion for leave to reargue or, alternatively, for leave to renew is denied; and it is further

**ORDERED** that petitioner's motion for a preliminary injunction is denied; and it is further

**ORDERED** that any relief not specifically addressed has nonetheless been considered and is expressly denied.

The original of this Decision and Order has been filed by the Court together with the Notice of Motion for Leave to Reargue and Renew dated October 9, 2018 and the submissions enumerated above. Counsel for respondents is hereby directed to obtain a filed copy of the Decision and Order for service with notice of entry in accordance with CPLR 5513.

Dated: February 25, 2019
Lake George, New York

/s/ Robert J. Muller
ROBERT J. MULLER, J.S.C.

ENTER:

## APPENDIX D

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

ROBERT L. SCHULZ,

Plaintiff-Petitioner,

v.

TOWN BOARD OF THE TOWN OF QUEENSBURY, JOHN STROUGH, SUPERVISOR,

Defendants-Respondents.

**DECISION AND JUDGMENT**

Index No. 65512
RE No.
56-1-2018-0322

*Robert L. Schulz*, Queensbury, plaintiff-petitioner pro se.

*Miller, Mannix, Schachner & Hafner, LLC*, Glens Falls (*Jacqueline P. White* of counsel), for defendants-respondents.

The City of Glens Falls (hereinafter the City) and Town of Queensbury (hereinafter the Town) entered into a Wastewater Treatment Agreement on April 1, 2002, which Agreement provides for the treatment of the Town's wastewater at the City's Wastewater Treatment Plant.[1] In March 2013, the Town began discussing the establishment of a Sanitary Sewer District in the vicinity of Carey Road. The Town then entered into the "Carey Road Sewer District Sewer Improvement Agreement" with the City in March 2016 to implement certain improvements to existing sewer mains so as to

[1] The Court notes that the Agreement was subsequently amended on August 1, 2012 and November 1, 2012.

accommodate the flow increases expected from the Town's development of this new District. The Town thereafter proceeded with formation of the District.

In accordance with Town Law article 12-a, the Town commissioned engineering firm Chazen Companies (hereinafter Chazen) to prepare a Map, Plan and Report (MPR) relative to the project (*see* Town Law § 209-b, 209-c). The MPR was finalized in July 2016 and filed with the Town Clerk for public inspection on August 12, 2016 (*see* Town Law § 209-c). Defendant-respondent Town Board of the Town of Queensbury (hereinafter the Town Board) met on August 15, 2016 and scheduled a public hearing on the establishment of the District for September 12, 2016, thereafter publishing notice of the same (*see* Town Law § 209-d). The public hearing was then held as scheduled and the Town Board adopted a Resolution establishing the District, subject to a permissible referendum (*see* Town Law § 209-e). Notice of adoption of the Resolution was published and no petition for referendum was filed.

In accordance with the State Environmental Quality Review Act (*see* ECL art 8 [hereinafter SEQRA]), the Town Board deemed the project to be an Unlisted action and, on January 11, 2016, adopted a Resolution indicating that it planned to serve as Lead Agency for SEQRA review purposes (*see* 6 NYCRR 617.6[a][1]; [b][2][1]). Chazen then prepared part one of the short environmental assessment form (FAIT) and it was provided – together with the Lead Agency Notice – to all potentially involved agencies, namely the Department of Environmental Conservation (hereinafter DEC), the

Warren County Department of Public Works and the State Historic Preservation Office (*see* 6 NYCRR 617.6[b][3][1]). The EAF included detailed information regarding the project, including the fact that the District would discharge all wastewater to the City's Wastewater Treatment Plant.

The DEC responded by letter dated April 12, 2016, consenting to the Town Board acting as Lead Agency and providing comments relative to, *inter alia*, the potential need for DEC permitting of construction activities on the project. Notably, the DEC did not express any concerns about the District discharging all wastewater to the City's Wastewater Treatment Plant. Neither the Warren County Department of Public Works nor the State Historic Preservation Office responded and, as such, were deemed to consent to the Town Board acting as Lead Agency.

At the conclusion of the public hearing on September 12, 2016, the Town Board – all of whom had heard a presentation by Chazen and been provided with a copy of part one of the EAF – completed its SEQRA review. Specifically, the Town Board addressed each question in part two of the EAF and then adopted a negative declaration determining that the project will not result in any significant adverse environmental impacts (*see* 6 NYCRR 617.7[a][2]). The Town Board further completed part three of the EAF. including a written explanation for the negative declaration. This SEQRA review was completed prior to the adoption of the Resolution establishing the District.

On December 22, 2016, the Town submitted its application for approval of the District to the State Comptroller (*see* Town Law § 209-f), which then granted approval on November 10, 2017. On November 20, 2017, the Town Board adopted the Final Order establishing the District. The Town Board then adopted a Resolution on January 22, 2018 authorizing the issuance of up to $1,919,949.00 in serial bonds and bond anticipation notes to pay the cost of acquisition, construction and installation of the District improvements. On March 1, 2018, the Town closed on $325,000.00 of the authorized financing and, on July 2, 2018, the Town Board approved a bid for construction of the project submitted by Turner Underground Installations (hereinafter Turner).

On July 2, 2018, plaintiff-petitioner (hereinafter petitioner) commenced this action for a declaratory judgment against the Town Board and defendant-respondent John Strough, the Town Supervisor. Petitioner claims that defendants-respondents (hereinafter respondents) violated SEQRA and, further, violated his rights under the First Amendment of the United States Constitution by failing to respond to two separate Petition for Redress of Grievances, one presented to the Town Board at its meetings on October 17, 2016 and another at its meeting on June 4, 2018. Presently before the Court is (1) petitioner's motion by Order to Show Cause for a preliminary injunction prohibiting respondents from executing a contract with Turner relative to construction of the project and issuing any bonds or bond anticipation notes to fund the

construction; and (2) respondents' pre-answer cross motion to dismiss the action.

Turning first to the cross motion, respondents contend that petitioner's claims relative to SEQRA must be dismissed as time-barred (*see* CPLR 3211[5]).

It is by now well established that – regardless of the form in which a petitioner chooses to couch his or her claims – any claims that a municipality has failed to follow SEQRA are maintainable only in the context of a CPLR article 78 proceeding, which must be commenced within the applicable four-month statute of limitations (*see* CPLR 217[1]; *Matter of Save the Pine Bush v City of Albany*, 70 NY2d 193, 203 [1987]; *Matter of Village of Woodbury v Seggos*, 154 AD3d 1256, 1260 [2017]). To that end, "an agency's action is final for statute of limitations purposes when the decisionmaker arrives at a definitive position on the issue that inflicts an actual, concrete injury" (*Matter of Eadie v Town Bd. of Town of N. Greenbush*, 22 AD3d 1025, 1027 [2005], *affd* 7 NY3d 306 [2006] [internal quotation marks and citations omitted]).

Here, while petitioner commenced a declaratory judgment action, his claims relative to SEQRA should have been brought in the context of a CPLR article 78 proceeding (*Matter of Save the Pine Bush v City of Albany*, 70 NY2d at 203; *Matter of Village of Woodbury v Seggos*, 154 AD3d at 1260). Insofar as the deadline for such proceeding is concerned, the Town Board completed its SEQRA review and adopted a Resolution establishing the District on September 12, 2016. The

Court finds that the adoption of this Resolution constituted a definitive position on the issue inflicting an actual, concrete injury. The proceeding therefore had to be commenced on or before January 12, 2017. To the extent that the instant action was not commenced until July 2, 2018, the Court finds that petitioner's claims relative to SEQRA are time-barred (*see* CPLR 217[1]; *Matter of Save the Pine Bush v City of Albany*, 70 NY2d at 203; *Matter of Village of Woodbury v Seggos*, 154 AD3d at 1260).

Briefly, it must also be noted that even if the Court chose to use November 20, 2017 – when the Final Order establishing the District was adopted as the date upon which the Town Board's action became final for statute of limitations purposes, petitioner's claims relative to SEQRA still would be time-barred.

Respondents next contend that petitioner's remaining constitutional claims fail to state a cause of action (*see* CPLR 3211[7]).

"On a motion to dismiss for failure to state a cause of action, [the Court] must 'afford the pleadings a liberal construction, accept the facts alleged therein as true, accord [petitioner] the benefit of every possible inference and determine whether the facts alleged fit within any cognizable legal theory'" (*Nelson v Capital Cardiology Assoc., P.C.*, 97 AD3d 1072, 1073 [2012], quoting *Matter of Upstate Land & Props., LLC v Town of Bethel*, 74 AD3d 1450, 1452 [2010]).

The First Amendment of the United States Constitution states that "Congress shall make no law

respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." With that said, "[n]othing in the First Amendment or in [the] case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues" (*Minnesota State Bd. for Community Colls. v Knight*, 465 US 271, 285 [1984]; *see Knight First Amendment Inst. at Columbia Univ. v Trump*, 302 F Supp 3d 541, 576 [SD NY 2018]). Indeed, "'[a] person's right to speak is not infringed when government simply ignores that person while listening to others,' or when the government 'amplifies' the voice of one speaker over those of others" (*Knight First Amendment Inst. at Columbia Univ. v Trump*, 302 F Supp 3d at 576, quoting *Minnesota State Bd. for Community Colls. v Knight*, 465 US at 285). It is "when the government goes beyond merely amplifying certain speakers' voices and not engaging with others, and actively restricts 'the right of an individual to speak freely [and] to advocate ideas,' [that] it treads into territory proscribed by the First Amendment" (*Knight First Amendment Inst. at Columbia Univ. v Trump*, 302 F Supp 3d at 576, quoting *Smith v Arkansas State Highway Employees, Local 1315*, 441 US 463, 464 [1979]; *see Minnesota State Bd. for Community Colls. v Knight*, 465 US at 286).

Here, petitioner provided written comments to the Town Board at its meetings on October 17, 2016 and

June 4, 2018, respectively, which comments he labeled "Petition[s] for Redress of Grievances Regarding the Proposed Carey Road Sanitary Sewer District." While petitioner contends that his First Amendment rights were violated because the Town Board failed to respond to the comments in writing, the Court is not persuaded. The comments were accepted by the Town Board and even read into the record at the meetings. Under these circumstances, it certainly cannot he said that the Town Board actively restricted petitioner's right to speak freely and to advocate his ideas. Even affording the pleadings a liberal construction and accepting the facts alleged as true, the Court nonetheless finds that petitioner has failed to state a claim for violation of his rights under the First Amendment of the United States Constitution.

Based upon the foregoing, respondents' cross motion is granted in its entirety and the action dismissed.

Petitioner's motion for a preliminary injunction is denied as moot.[2]

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[2] Insofar as petitioner claims that the hid for construction approved by the Town Board on July 2, 2018 was based upon specifications and drawings which did not comport with the MPR, the Court notes that such claims were raised for the first time in his reply papers and, as such, not properly before the Court (*see Kurbatsky v Intl. Conference of Funeral Serv. Examining Bds.*, 162 AD3d 1379, 1380 n 1 [2018]; *Matter of Jay's Distribs., Inc. v Boone*, 148 AD3d 1237, 1241 [2017], *lv denied* 29 NY3d 918 [2017]; *Matter of Rosenfelder [Community First Holdings, Inc. – Commissioner of Labor]*, 137 AD3d 1438, 1440 [2016]).

The parties' remaining contentions, to the extent not expressly addressed herein, have been considered and are either academic in light of this decision or without merit.

Therefore, having considered the Brief of Robert L. Schulz, dated July 3, 2018, submitted in support of the motion; Affidavit of Robert L. Schulz with exhibits attached thereto, sworn to July 3, 2018, submitted in support of the motion; Affirmation of Jacquelyn P. White, Esq. with exhibit attached thereto, sworn to July 16, 2018, submitted in support of the cross motion and in opposition to the motion; Affidavit of Christopher Harrington, Jr. with exhibits attached thereto, sworn to July 13, 2018, submitted in support of the cross motion and in opposition to the motion; Memorandum of Law of Jacquelyn P. White, Esq., dated July 16, 2018, submitted in support of the cross motion and in opposition to the motion; Affidavit of Robert L. Schulz with exhibits attached thereto, sworn to July 19, 2018, submitted in opposition to the cross motion and in further support of the motion; and Brief of Robert L. Schulz, dated July 19, 2018, submitted in opposition to the cross motion and in further support of the motion,[3] it is hereby

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[3] The Court notes that petitioner submitted correspondence dated August 20, 2018 in further support of his motion. This correspondence was not considered, however, as it was submitted approximately one month after the return date.

**ORDERED AND ADJUDGED** that respondents' cross motion is granted in its entirety and the action dismissed; and it is further

**ORDERED AND ADJUDGED** that petitioner's motion for a preliminary injunction is denied as moot.

The original of this Decision and Judgment has been filed by the Court together with the Notice of Cross Motion dated July 16, 2018 and the submissions enumerated above. Counsel for respondents is hereby directed to obtain a filed copy of the Decision and Judgment for service with notice of entry in accordance with CPLR 5513.

Dated: September 19, 2018
Lake George, New York

/s/ Robert J. Muller
ROBERT J. MULLER, J.S.C.

ENTER:

## APPENDIX E

***State of New York***
***Court of Appeals***

***Decided and Entered on the tenth day of September, 2020***

**Present,** Hon. Janet DiFiore, *Chief Judge,* ***presiding.***

---

Mo. No. 2020-319
Robert L. Schulz,
Appellant,

v.

Town Board of the Town of Queensbury et al.,
Respondents.

---

Appellant having moved for reconsideration of this Court's March 24, 2020 dismissal order and for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for reconsideration is denied; and it is further

ORDERED, that the motion for leave to appeal is denied.

/s/ John P. Asiello
John P. Asiello
Clerk of the Court

# APPENDIX F

## *Short Environmental Assessment Form*
## *Part 1 – Project Information*

**Instructions for Completing**

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding. are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

| Part 1 – Project and Sponsor Information |
|---|
| Name of Action or Project:<br>Town of Queensbury Carey Road Sewer District Formation and Construction |
| Project Location (describe, and attach a location map):<br>Proposed Sewer District is located in the south-central portion of the Town of Queensbury, Warren County, NY. |

| | | |
|---|---|---|
| Brief Description of Proposed Action:<br>Proposed new Carey Road Sewer District which includes approximately 47 tax parcels which total 245.27+/- non-contiguous acres along Corinth Road (CR 28), Carey Road, Silver Circle, Big Bay Road, and Big Boom Road in the south-central portion of the Town of Queensbury. Following formation of the District, the project includes construction of low pressure sewer forcemains, manholes and services. Please refer to Figure 1 for the proposed Carey Road Sewer District area. | | |
| Name of Applicant or Sponsor:<br>Town of Queensbury (John Strough, Town Supervisor) | Telephone:<br>515-761-8200<br>E-Mail:<br>johnsqueensbury.net | |
| Address:<br>742 Bay Road | | |
| City/PO:<br>Queensbury | State:<br>NY | Zip Code:<br>12804 |

| | NO | YES |
|---|---|---|
| 1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?<br>If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2. | ☑ | ☐ |

| 2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:<br>NYSDEC approval of public sewer plans, NYSDEC GP-0-15-002, Warren County Dept of Public Works Highway Work Permit | NO | YES |
|---|---|---|
| | ☐ | ☑ |

| |
|---|
| 3.a. Total acreage of the site of the proposed action? 245.27 acres<br>b. Total acreage to be physically disturbed? 3+/- acres<br>c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 0 acres |

| 4. Check all land uses that occur on, adjoining and near the proposed action. |
|---|
| ☑ Urban ☐ Rural (non-agriculture) ☑ Industrial<br>☑ Commercial ☑ Residential (suburban)<br>☑ Forest ☐ Agriculture ☑ Aquatic ☐ Parkland<br>☑ Other (specify): medical office, vacant |

| 5. Is the proposed action, | NO | YES | N/A |
|---|---|---|---|
| a. A permitted use under the zoning regulations? | ☐ | ☐ | ☑ |
| b. Consistent with the adopted comprehensive plan? | ☐ | ☐ | ☑ |

| 6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? | NO | YES |
|---|---|---|
| | ☐ | ☑ |

| | NO | YES |
|---|---|---|
| 7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ | ☑ | ☐ |
| 8. a. Will the proposed action result in a substantial increase in traffic above present levels? | ☑ | ☐ |
| b. Are public transportation service(s) available at or near the site of the proposed action? | ☐ | ☑ |
| c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action? | ☐ | ☑ |
| 9. Does the proposed action meet or exceed the state energy code requirements? NA | ☐ | ☐ |
| If the proposed action will exceed requirements, describe design features and technologies: _____ | | |
| 10. Will the proposed action connect to an existing public/private water supply? NA | | |
| If No, describe method for providing potable water: _____ | ☐ | ☐ |

| | NO | YES |
|---|---|---|
| 11. Will the proposed action connect to existing wastewater utilities? (City of Glens Falls WWTP)<br>If No, describe method for providing wastewater treatment: _____ | ☐ | ☑ |
| 12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? | ☑ | ☐ |
| b. Is the proposed action located in an archeological sensitive area? Refer to Figure 2 and Endnote 1.<br>Project information will be submitted to NYS Office of Parks, Recreation & Historic Preservation for review. | ☐ | ☑ |
| 13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? Refer to Figures 3 and 4. | ☐ | ☑ |
| b. Would the proposed action physically alter, or encroach into. any existing wetland or waterbody?<br>If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ | ☑ | ☐ |

| | | |
|---|---|---|
| 14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:<br>☐ Shoreline ☑ Forest ☐ Agricultural/grasslands<br>☑ Early mid-successional ☑ Wetland<br>☑ Urban ☑ Suburban | | |
| 15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Refer to Figure 3 and Endnote 1. | NO<br>☐ | YES<br>☑ |
| 16. Is the project site located in the 100 year flood plain? (per FEMA FIRM Panels 360879 0025B & 0028B) | NO<br>☑ | YES<br>☐ |
| 17. Will tile proposed action create storm water discharge, either from point or non-point sources? If Yes,<br>a. Will storm water discharges flow to adjacent properties? ☐ NO ☐ YES<br>b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?<br>If Yes, briefly describe: ☐ NO ☐ YES<br>_____<br>_____ | NO<br>☑ | YES<br>☐ |

| | NO | YES |
|---|---|---|
| 18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?<br>If Yes, explain purpose and size: _____ | ☑ | ☐ |
| 19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?<br>If Yes, describe: _____ | ☑ | ☐ |
| 20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?<br>If Yes, describe: _____ | ☑ | ☐ |

**I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/sponsor name: Town of Queensbury Date: February 8, 2016

Signature: _____

ENDNOTE:

1. The sewer route will closely follow the road ROW and will largely be confined to previously disturbed areas associated with the roadway. Site evaluations will be performed to confirm the presence/absence of the noted resources. In the event any sensitive resource is identified, the project will incorporate design and construction measures to avoid any impacts. These measures may include routing to avoid the resource, directional drilling/other low impact construction methods. The project will comply with state/federal permit requirements as necessary.

# APPENDIX G

## *Short Environmental Assessment Form*
## *Part 2 – Impact Assessment*

**Part 2 is to be completed by the Lead Agency.**

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

| | **No, or small impact may occur** | **Moderate to large impact may occur** |
|---|---|---|
| 1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? | ☒ | ☐ |
| 2. Will the proposed action result in a change in the use or intensity of use of land? | ☐ | ☒ |
| 3. Will the proposed action impair the character or quality of the existing community? | ☒ | ☐ |
| 4. Will the proposed action have an impact on the environmental characteristics that caused the | ☒ | ☐ |

| | | | |
|---|---|---|---|
| | establishment of a Critical Environmental Area (CEA)? | | |
| 5. | Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? | ☐ | ☒ |
| 6. | Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? | ☒ | ☐ |
| 7. | Will the proposed action impact existing:<br>a. public/private water supplies?<br>b. public/private wastewater treatment utilities? | ☒<br>☒ | ☐<br>☐ |
| 8. | Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? | ☒ | ☐ |
| 9. | Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)? | ☒ | ☐ |

| | | |
|---|---|---|
| 10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? | ☒ | ☐ |
| 11. Will the proposed action create a hazard to environmental resources or human health? | ☒ | ☐ |

# APPENDIX H

## *Short Environmental Assessment Form Part 3 Determination of Significance*

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

The availability of public sewer will likely lead to the development of vacant lands and as well as more intense use of currently developed lands. Additional development could result in additional traffic which is indefinite at this time. SEQRA for future projects will have to address the specific impacts. While this -impact is considered "moderate", the development which may occur would be consistent with the Town's Zoning Code and the Town's planning initiatives. The proposed action is not considered to result in any significant adverse impacts.

| | |
|---|---|
| ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required. | |
| ☒ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts. | |
| Queensbury Town Board | September 12, 2016<br>Date |
| John F. Strough<br>Print or Type Name of Responsible Officer in Lead Agency | Town Supervisor<br>Title of Responsible Officer |
| /s/ John F. Strough<br>Signature of Responsible Officer in Lead Agency | Signature of Preparer (if different from Responsible Officer) |

## APPENDIX I

Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

October 17, 2016

John Strough, Supervisor
and Members of the
Queensbury Town Board
742 Bay Road
Queensbury, NY 12804

Attn: Caroline Barber, Town Clerk

Re: Petition for Redress of Grievances Regarding
The Proposed Carey Road Sanitary Sewer District

Dear Mr. Strough;

With reference to Resolution 3.8 on the Agenda for tonight's Town Board meeting I petition for redress of the following grievances:

1. Alternatives to the system proposed for managing wastewater from the Carey Road Sanitary Sewer District have not been reviewed, an apparent violation of the State Environmental Quality Review Act ("SEQRA"). There are at least two alternatives that have not been reviewed. SEQRA does require the environmental impacts of each alternative be quantified and compared and that the alternative with the least adverse impact on the environment must be chosen, with economics taken into consideration.

2. The Carey Road Sewer District, as proposed would transfer its waste water to a Glens

> Falls combined storm water and wastewater line and from there to the Glens Falls Wastewater Treatment Plant, which does not now have and would not have the capacity to treat the additional wastewater. It is common knowledge that up to 20 times per year. during periods of rainfall, valves are opened at the Glens Falls Plant to bypass to the Hudson River the flow of large volumes of raw sewerage, oil, toxic industrial chemicals and other matter normally found in sewers.

I ask that the Board responsively respond to this Petition for Redress and that it do so before committing any addition taxpayer funds to the wastewater management system currently proposed for Carey Road.

Respectfully submitted,

/s/ Robert L. Schulz
Robert L. Schulz

Cc: The Glens Falls Post Star

**APPENDIX J**

Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

June 4, 2018

John Strough, Supervisor
and Members of the
Queensbury Town Board
742 Bay Road
Queensbury, NY 12804

Attn: Caroline Barber, Town Clerk

Re: Petition for Redress of Grievances Regarding
The Proposed Carey Road Sanitary Sewer District

Dear Mr. Strough and members of the Town Board;

In October of 2016. I served each member of the Town Board with a proper, First Amendment Petition for Redress (copy attached) to remedy a grievance regarding the Board's violation of our Rule of Law.

Certain, reasonable alternatives to the system proposed for managing wastewater from the Carey Road Sanitary Sewer District have not been reviewed, a violation of the State Environmental Quality Review Act ("SEQRA").

The Carey Road Sewer District, would transfer its wastewater to a Glens Falls combined storm water and wastewater line and from there to the Glens Falls Wastewater Treatment Plant. which does not now have and would not have the capacity to treat the additional wastewater, thus requiring periodic bypass to the

Hudson River of large volumes of raw sewerage, oil, toxic industrial chemicals and other matter normally found in sewers.

There were and remain at least two alternatives that have not been reviewed: a packaged treatment plant discharging wholly within the District and the "no action" alternative.

The State Environmental Quality Review Act requires the environmental impacts of each alternative be quantified and compared and that the alternative with the least adverse impact on the environment must be chosen, with the economy taken into consideration.[1]

The 2016 Petition for Redress required a response before the Town Board committed any addition taxpayer funds to the wastewater management system proposed for Carey Road.

To be sure, a communication designated as a Petition for Redress requiring a formal, specific response from the government, would have to embody certain components to ensure that the document was a First Amendment petition and not a "pretended petition." Not all communications, nor just any document, can be

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[1] On information and belief, the Town's violation of SEQRA has been compounded since 2016. The boundaries of the district have changed with the elimination of Halcyon Properties, Inc., the addition of eight residential lots on Stevens Road and the proposed consolidation of the Carey Road Sanitary Sewer District with the West Queensbury Sanitary Sewer District, further nullifying the Town's 2016 Environmental Impact Statement ("EIS").

regarded as a constitutionally protected Petition for Redress of Grievances.

The subject Petition for Redress exceeds any rational standard requiring a formal, specific response from the Town Board: it is serious and documented, not frivolous; it contains no falsehoods; it is not absent probable cause; it has the necessary quality of a dispute; it comes from a citizen outside of the formal political culture and involves a legal principle not political talk; it is punctilious and dignified, containing both a "direction" and a "prayer" for relief; it addresses a public, collective grievance with widespread participation and consequences; it is an instrument of deliberation not agitation; and, it provides legal Notice seeking substantive Redress to cure the infringement of a right leading to civil legal liability.

By failing to respond to the First Amendment Petition for Redress, and continuing to advance the Carey Road Sanitary Sewer District without a legal and proper Environmental Impact Statement. the Town is outside the boundaries drawn around its power and subject to being held accountable by its taxpayers.

Please provide the rightful response on or before June 11, 2018. Sincerely yours,

Sincerely yours,

/s/ Robert L. Schulz
Robert L. Schulz

Cc: The Glens Falls Post Star

## APPENDIX K

### Historical Record Of The Right To Petition Government For Redress Of Grievances

Plaintiff's interpretation of the meaning of the Petition Clause of the First Amendment is strongly supported by all of history, from the English Magna Carta to the American Declaration of Independence and beyond. There is absolutely nothing in American History or Jurisprudence that contradicts Plaintiff's interpretation.

The following are the highlights.

Chapter 61 of the Magna Carta (the cradle of Liberty and Freedom from wrongful government, signed at a time when King John was sovereign) reads in relevant part:

> "61. Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, **to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter,** so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, **or shall have broken any one of**

> **the articles of this peace or of this security**, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, **petition to have that transgression redressed without delay**. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) **within forty days**, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons, and those five and twenty barons shall, **together with the community of the whole realm**, distrain and distress us in all possible ways, namely, by **seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit,** saving harmless our own person, and the persons of our queen and children; and **when redress has been obtained, they shall resume their old relations towards us. . . .** " (emphasis added by Plaintiffs).

Chapter 61 was a procedural vehicle for enforcing the rest of the Charter. It spells out the Rights of the People and the obligations of the Government, and the procedural steps to be taken by the People and the King, in the event of a violation by the King of any provision of that Charter: the People were to transmit a Petition for a Redress of their Grievances; the King had 40 days

to respond; if the King failed to respond in 40 days, the People could non-violently retain their money or violence could be **legally** employed against the King until he Redressed the alleged Grievances.[1]

The 1689 Declaration of Rights proclaimed, "[I]t is the Right of the subjects to petition the King, and all commitments and prosecutions for such petitioning is illegal." This was obviously a basis of the "shall make no law abridging the right to petition government for a redress of grievances" provision of our Bill of Rights.

In 1774, the same Congress that adopted the Declaration of Independence unanimously adopted an Act in which they gave meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement as they spoke about the People's "Great Rights." Quoting:

> "If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." "Continental Congress To The Inhabitants Of The Province Of Quebec." Journals of the Continental Congress 1774, Journals 1: 105-13.

In 1775, just prior to drafting the Declaration of Independence, Jefferson gave further meaning to the

---

[1] See Magna Carta Chapter 61. See also William Sharp McKechnie, Magna Carta 468-77 (2nd ed. 1914)

People's Right to Petition for Redress of Grievances and the Right of enforcement. Quoting:

> "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, an how improvident would be the surrender of so powerful a mediator." Thomas Jefferson: Reply to Lord North, 1775. Papers 1:225.

In 1776, the Declaration of Independence was adopted by the Continental Congress. The bulk of the document is a listing of the Grievances the People had against a Government that had been in place for 150 years. The final Grievance on the list is referred to by scholars as the "capstone" Grievance. The capstone Grievance was the ultimate Grievance, the Grievance that prevented Redress of these other Grievances, the Grievance that caused the People to non-violently withdraw their support and allegiance to the Government, and the Grievance that eventually justified War against the King, morally and legally. The Congress gave further meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement. Quoting the Capstone Grievance:

> "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms. **Our repeated Petitions have been answered only with repeated injury.** A Prince, whose character is thus marked by

> every act which may define a Tyrant, is thus unfit to be the ruler of a free people. . . . We, therefore . . . declare, That these United Colonies . . . are Absolved from all Allegiance to the British Crown. . . ." ***Declaration of Independence*, 1776**

"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)

"On every question of the construction of the Constitution, let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed." Thomas Jefferson, Letter to William Johnson, Supreme Court Justice (1823)

From *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936):

> "And the Constitution itself is in every real sense a law-the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not

rationally possible. 'We the People of the United States,' it says, 'do ordain and establish this Constitution.' Ordain and establish! These are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly-'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land.' (Const. art. 6, cl. 2.) The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute [298 U.S. 238. 297] whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, *Adkins v. Children's Hospital*, 261 U.S. 525. 544, 43 S.Ct. 394, 24 A.L.R. 1238; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 549, 550 S., 55 S.Ct. 837, 97 A.L.R. 947."

And from Hamilton, *Federalist No. 78:*

> "There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.
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> "If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental

> law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.
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> "Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

Though the Rights to Popular Sovereignty and its "protector" Right, the Right of Petition for Redress have become somewhat forgotten, they took shape early on by Government's *response* to Petitions for Redress of Grievances.[2] The Right is not changed by the fact that

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[2] See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR 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"

the Petition Clause lacks an affirmative statement that Government shall respond to Petitions for, "It cannot be presumed, that any clause in the Constitution is intended to be without effect." Chief Justice Marshall in *Marbury v. Madison.* 5 U.S. (1 Cranch) 139 (1803). For instance, 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 Right to Petition is a distinctive, substantive Right, from which other First Amendment Rights were **derived**. The Rights to free speech, press and assembly originated as **derivative** Rights insofar as they were necessary to protect the **preexisting** Right to Petition. Petitioning, as a way to hold Government

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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).

accountable to natural Rights, originated in England in the 11th century[3] and gained recognition as a Right in the mid 17th century.[4] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.[5] Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.[6] Public meetings to prepare Petitions led to the Right of Public Assembly.[7]

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,[8] the American Colonies,[9] and the first Continental

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[3] 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.

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

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

[6] See Smith, *supra* n.3, at 1165-67.

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

[8] See Smith, *supra* n.3, at 1165.

[9] 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).

Congress[10] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[11]

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 speech and press in two separate sections.[12] In addition, a "considerable majority" of Congress defeated a motion to strike the assembly provision from the First Amendment because of the understanding that all of the rights in the First Amendment were separate Rights that should be specifically protected.[13]

Petitioning Government for Redress has played a key role in the development and enforcement of popular sovereignty throughout British and American history.[14] In medieval England, petitioning began as a way

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

[11] Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning, whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n.5, at 115-16.

[12] 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).

[13] See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).

[14] 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

for barons to inform the King of their concerns and to influence his actions.[15] Later, in the 17th century, Parliament gained the Right to Petition the King.[16] This broadening of participation culminated in the official recognition of the right of Petition in the People themselves.[17]

The People used this newfound Right to question the legality of the Government's actions,[18] to present their views on controversial matters,[19] **and to demand that the Government, *as the creature and servant of the People, be responsive to the popular will.***[20]

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Int'l); K. Smellie, Right to Petition, in 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 98, 98-101 (R.A. Seiligman ed., 1934).

[15] The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.4, at 187.

[16] See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.4 at 187-88.

[17] 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* n.4 at 188-89.

[18] For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Smith, *supra* n.3, 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* n.14 at 41-43.

[19] See Smith, *supra* n.3, at 1165 (describing a Petition regarding contested parliamentary elections).

[20] In 1701, Daniel Defoe sent a Petition to the House of Commons that accused the House of acting illegally when it

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify Government misconduct.[21] **By the nineteenth century, Petitioning was described as "essential to . . . a free govemment,"[22] an inherent feature of a republic[23] and a means of enhancing Government accountability through the participation of citizens.**

**Government accountability was understood to include response to petitions.[24] American colonists, who exercised their Right to Petition the King or Parliament,[25] expected the Government**

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incarcerated some previous petitioners. In response to Defoe's demand for action, the House released those Petitioners. See Smith, *supra* n.3, at 1163-64.

[21] See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

[22] 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).

[23] See CONG. GLOBE, 39th Cong., 15 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]").

[24] See Frederick, *supra* n.5 at 114-15 (describing the historical development of the duty of government response to Petitions).

[25] See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5

**to receive *and respond* to their Petitions.[26] The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the "capstone" grievance, was a significant factor that led to the American Revolution.[27]**

Frustration with the British Government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[28] Members of the First Congress easily defeated this right-of-instruction proposal.[29] Some discretion to reject petitions that "instructed government," they reasoned, would not undermine Government accountability to the People, as long as Congress had a duty to consider petitions *and fully respond to them.*[30]

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THE FOUNDERS' CONSTITUTION, *supra* n.4 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), *reprinted in id.* at 198.

[26] See Frederick, *supra* n,5 at 115-116.

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

[28] See 5 BERNARD SCHWARTZ, *supra* n.13, 1091-105.

[29] The vote was 10-41 in the House and 2-14 in the Senate. See *id.* at 1105, 1148.

[30] See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n.13, 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

Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.[31] Congress referred Petitions to committees[32] and even created committees to deal with particular types of Petitions.[33] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report.[34] Thus, throughout early Anglo-American history, general petitioning (as opposed to judicial petitioning) allowed the people a means of direct political participation that in turn demanded government *response* and promoted accountability.

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bring nonbinding instructions to Congress's attention) (statement of Rep. James Madison).

[31] 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" (quot. omitted)).

[32] 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.

[33] 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).

[34] See Higginson, n.32 at 157.