No. 21-450

In The
Supreme Court of the United States

ANTHONY FUTIA, Jr. and ROBERT L. SCHULZ,

Petitioners,

v.

WESTCHESTER COUNTY BOARD OF LEGISLATORS,
BENJAMIN BOYKIN, II, Chairman,
HARRISON TOWN BOARD, RON BELMONT, Supervisor,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

ANTHONY FUTIA, JR., pro se
34 Custis Ave.
N. White Plains, NY 10603
(914) 906-7138
Futia2@optimum.net

ROBERT L. SCHULZ, pro se
2458 Ridge Road
Queensbury, NY
12804
(518) 361-8153
Bob@givemeliberty.org

QUESTIONS PRESENTED

As veterans of the U.S. Armed Forces and former employees of the government of N.Y. state, Petitioners are bound by their oaths to support and defend the Constitutions of the United States and N.Y. state.

Since 1997, Petitioners have served as board members of the We The People Foundation for Constitutional Education, Inc., whose official purpose is to support and defend America's national and state Constitutions through civic education and civic action. Since 2011, Petitioners have served as board members of We The People of New York, Inc., whose official purpose is the institutionalization of citizen vigilance and holding government accountable to the rule of law. Over the years, Petitioners have strived to restore the Petition Clause of the First Amendment.

Here, Petitioners exercised their Right by petitioning Respondents for increasing their compensation without an intervening election, in violation of the N.Y. Constitution and thus the Guarantee Clause of the U.S. Constitution.

The questions presented are:

Whether a State's legislative and executive employees are obligated to respond to Petitions from that State's citizen-voters for Redress of their violations of the State's Constitution and laws pursuant thereto.

QUESTIONS PRESENTED – Continued

Whether Petitioners' Guarantee Clause claim is resolvable by judicially discoverable and manageable standards and therefore justiciable.

Whether Petitioners have standing to maintain their claims.

PARTIES TO THE PROCEEDINGS

All parties to the proceeding are listed in the caption. Rule 29.6 does not apply to these Petitioners.

Defendants-Appellees in the court below, respondents here, are the Westchester County Board of Legislators, Ben Boykin, Chairman, and the Harrison Town Board, Ron Belmont, Supervisor. Plaintiffs-Appellants in the court below, petitioners here, are Robert L. Schulz, pro se, and Anthony Futia, Jr., pro se.

STATEMENT OF RELATED CASES

ANTHONY FUTIA, JR., ROBERT L. SCHULZ v. WESTCHESTER COUNTY BOARD OF LEGISLATORS, BENJAMIN BOYKIN, II, Chairman, HARRISON TOWN BOARD, RON BELMONT, Supervisor, No. 20-2946, United States Court of Appeals for the Second Circuit. Summary Order entered April 21, 2021.

ANTHONY FUTIA, JR., ROBERT L. SCHULZ v. WESTCHESTER COUNTY BOARD OF LEGISLATORS, BENJAMIN BOYKIN, II, Chairman, HARRISON TOWN BOARD, RON BELMONT, Supervisor, No. 20-1237, United States District Court for the Southern District of New York. Judgment entered August 7, 2020.

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PETITION FOR WRIT OF CERTIORARI

Anthony Futia, Jr., and Robert L. Schulz respectfully petition for a writ of certiorari to review the Summary Order of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The Second Circuit's Summary Order, dated April 21, 2021, affirmed the Judgment of the Southern District of New York, dated August 7, 2020.

CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE

The Second Circuit's April 21, 2021 Summary Order affirming the Judgment of the District Court is reported at 2021 U.S. App. LEXIS 11589, 2021 WL 1558299.

The District Court's August 7, 2020 Judgment is reported at 2020 U.S. Dist. LEXIS 141243, 2020 WL 4570494.

JURISDICTION

This Court has jurisdiction under Article III, Section 2 of the Constitution for the United States of America, the First Amendment and Article IV, Section

4 of the Constitution for the United States of America and 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED AND STAGE IN PROCEEDINGS WHERE THE PROVISIONS WERE RAISED

The following constitutional and statutory provisions are involved and each was raised in each of Petitioners' two Petitions for Redress of Grievances which were served on Respondents on January 6, 2020, and each was raised in Petitioners' Complaint which was filed and served on February 7, 2020:

- The First Amendment to the U.S. Constitution which provides, "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for redress of grievances" (the "Petition Clause").
- Article I, Section 9.1 of the New York State Constitution which provides, "No law shall be passed abridging the rights of the people . . . to petition the government."
- Article IV, Section 4 of the U.S. Constitution which provides, "The United States shall guarantee to every State in this Union a Republican Form of Government. . . ." (the "Guarantee Clause").

- Article IX, Section 2(c)(1) of the New York State Constitution which provides, "In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government . . . The powers, duties, qualifications, number, mode of selection and removal, terms of office, **compensation**, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. (emphasis added by Petitioners).

- Article III, Section 6(c) of the New York State Constitution which provides, "Each member of the legislature shall receive for his or her service a like annual salary, to be fixed by law . . . **Neither the salary**

of any member nor any other allowance so fixed may be increased or diminished during, and with respect to the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. . . ." (emphasis added by Petitioners).

- Article XIII, Section 7 of the New York State Constitution which provides, "Each of the state officers named in this constitution shall, during his or her continuance in office, receive a compensation, to be fixed by law, **which shall not be increased of diminished during the term for which he or she shall have been elected or appointed**; nor shall he or she receive to his or her use any fees or perquisites of office or other compensation." (emphasis added by Petitioners).

- Westchester County Local Law 12294-2019, which was enacted by the County Board of the County of Westchester on December 9, 2019 (after the November 5, 2019 general election), increased the annual salary of each member of the County Board of Legislators 53%, from $49,200 to $75,000. (Copy at App. 37).

- Westchester County Local Law 12292-2019, which was enacted by the County

Board of the County of Westchester on December 9, 2019 (after the November 5, 2019 general election), increased the annual salary of each of the County's appointed and elected officials. (Copy at App. 39).

- Westchester County Local Law 24-2000 provides that the Westchester County Board of Legislators shall appoint members to the County's Compensation Advisory Board ("CAB") in January of 2018 for the purpose of obtaining the CAB's public recommendations regarding increases in salaries and stipends for the Legislators' 2020-2021 term. (See Appendix C at App. 27).

- Town of Harrison's 2020 Budget Resolution, adopted December 5, 2019, provides a $30,000 increase in the Supervisor's annual salary, which increase was added to the proposed Budget on November 20, 2019 – after the November 5, 2019 general election. (See Appendix E at App. 55).

The following statutory provision is also involved. It was raised in Petitioners' Complaint which was served and filed on February 7, 2020:

- Section 801.2 of the New York State Education Law provides, "The regents shall prescribe courses of instructions in the **history, meaning, significance and effect** of the provisions of the constitution of the United States, the amendments

thereto, the declaration of independence, the constitution of the state of New York and the amendments thereto, **to be maintained and followed in all the schools of the state**. The boards of education and trustees of the several cities and school districts of the state shall require instruction to be given in such courses, by the teachers employed in the schools therein. All pupils attending such schools in the eighth and higher grades, shall attend upon such instruction . . . Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools in grades or classes corresponding to the instruction in the eighth and higher grades of the public schools shall attend upon such courses. If such courses are not so established and maintained in a private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to pupils in the public schools of the city or district in which pupils reside." (emphasis added by Petitioners).

STATEMENT OF THE CASE

I. Petitioners

Petitioners Futia and Schulz are citizens of the United States and residents of the State of New York

who early in their adult lives as members of the Armed Forces of the United States took an oath to support and defend the Constitution of the United States of America and later, as employees of the government within the State of New York, took an oath to support and defend the Constitutions for the State of New York and the United States.

In 1997, Petitioners were among the founders and have since served as members of the Boards of Directors of the We The People Foundation for Constitutional Education, Inc., and the We The People Congress, Inc., whose official purpose is to support and defend America's national and state Constitutions through civic education and civic action.

In 2011, Petitioners were among the founders and have since served as members of the Board of Directors of We The People of New York, Inc., whose official purpose has been the institutionalization of citizen vigilance in the State and holding government in the State accountable to the rule of law.

Petitioners have actively participated in dozens of challenges to unconstitutional and illegal behavior by government officials throughout the State of New York.

II. Westchester County Board of Legislators

In 2000, the Westchester County Board of Legislators (WCBOL) enacted Local Law ("L.L.") 24-2000, which created the Compensation Advisory Board ("CAB"). CAB's stated functions include advising

WCBOL whether any changes or adjustments to the compensation paid to members of WCBOL is warranted, and submitting recommendations to WCBOL regarding same. Pursuant to L.L. 24-2000, CAB is to be comprised of seven members appointed by WCBOL in even-numbered years.

Every two years, a new slate of WCBOL members is elected by Westchester County voters. On November 5, 2019, seventeen individuals were elected to WCBOL for the 2020-2021 term.

On November 18, 2019, WCBOL passed two resolutions scheduling a public hearing to discuss two pieces of proposed legislation: L.L. 12292-2019, to "provide for payments of increased compensation for officers appointed for a fixed term and elective officers during their term of office" and L.L. 12294-2019, to increase compensation of the "Members of [WCBOL]." However, WCBOL did not appoint any members to CAB in 2018, and thus CAB was not convened in 2018 or 2019. For this reason, CAB did not advise WCBOL in 2019 whether any changes or adjustments to compensation paid to members of WCBOL was warranted, and therefore did not recommend to WCBOL compensation adjustments for the 2020-2021 term.

On December 3, 2019, at the scheduled public hearing, Futia spoke against the proposed legislation.

On December 9, 2019, WCBOL passed the legislation. L.L. 12292-2019 made effective salary increases for certain appointed officers and certain elected officers. L.L. 12294-2019, which took effect January 1, 2020

– the start of the next term – increased WCBOL members' salaries from $49,200 to $75,000.

On January 6, 2020, Petitioners Futia and Schulz served WCBOL with a Petition for Redress of the violation of federal and state law in connection with the enactment of the above legislation. Under "Relief Requested" the Petition demanded "Pursuant to the historical scope and purpose of the Petition Clause of the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the Constitution for the State of New York, [WCBOL] is requested to immediately respond to this Petition for Redress by either repealing Local Law 12292-2019 and Local Law 12294-2019 or by providing the undersigned with a written document in which it proves petitioner's facts wrong by argument or evidence. . . ." WCBOL did neither.

III. Town of Harrison

On November 5, 2019, the Town held its general election for the 2020-2021 term. Supervisor Belmont was re-elected, and four other individuals were elected to the Town Board. Supervisor Belmont serves as the fifth and final member of the Town Board.

On November 7, 2019, Supervisor Belmont released the proposed Town Budget for 2020, which proposed the same salary for his position as he was paid in 2019. But on November 20, 2019, Supervisor Belmont updated the proposed budget to include a nearly $30,000 pay increase for his position. On December 5,

2019, the five-member Town Board unanimously approved the proposed Town Budget, which included the Supervisor's salary increase.

On January 6, 2020, Petitioners Futia and Schulz served the Town Board with a Petition for Redress of the violation of federal and state law in connection with the Town Board's approval of Supervisor Belmont's salary increase. Under "Relief Requested" the Petition demanded, "Pursuant to the historical scope and purpose of the Petition Clause of the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the Constitution for the State of New York, the Harrison Town Board is requested to immediately respond to this Petition for Redress by either repealing and amending the Budget to restore the compensation of the Supervisor to its 2019 amount or by providing the undersigned with a written document in which it proves petitioners' facts wrong by argument or evidence. . . ." The Town Board did not respond to the petition, or repeal and amend the budget.

IV. Petitioners' Claims

On February 7, 2020, Petitioners filed and served their Complaint, which included nine causes of action: that

(i) WCBOL violated L.L. 24-2000 by increasing WCBOL member compensation without first obtaining an advisory opinion from CAB;

(ii) L.L. 12294-2019 is inconsistent with and violates the New York State Constitution;

(iii) L.L. 12292-2019 is inconsistent with and violates the New York State Constitution;

(iv) WCBOL violated the New York State Constitution by passing the above legislation;

(v) the Town's 2020 budget is inconsistent with and violates the New York State Constitution;

(vi) the Town Board violated the New York State Constitution by approving the 2020 budget;

(vii) WCBOL and the Town Board violated the Guarantee Clause of the U.S. Constitution;

(viii) WCBOL and the Town Board violated the First Amendment to the U.S. Constitution and Article I, Section 9 of the New York State Constitution by failing to respond to Plaintiffs' Petitions for Redress; and

(ix) WCBOL and the Town Board violated Section 801.2 of the New York State Education Law.

V. Decisions By The Lower Courts

On August 7, 2020, the District Court:

a. Dismissed the claims against the Harrison Town defendants because Futia and

Schulz lack of standing as they "are not Town residents, and do not plausibly allege a 'direct and immediate' relationship with the municipality." (App. 19).

b. Held Schulz lacked standing to sue the Westchester County defendants because he is not a resident of the County. (App. 20).

c. Dismissed Futia's Guarantee Clause claim against the Westchester County defendants because "the complaint in this action is devoid of any indicia of a justiciable Guarantee Clause claim." (App. 23).

d. Dismissed Futia's First Amendment Petition Clause claim against the Westchester defendants because "'[n]othing in the First Amendment or in [the Supreme] 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.' *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S.at 285." (App. 24).

e. Declined to exercise its supplemental jurisdiction over Schulz and Futia's state law claims. App. 25.

On April 21, 2021, the Court of Appeals affirmed. (App. 6).

REASONS FOR GRANTING THE WRIT

I. This is a first impression case.

The overriding question in this case is whether the Right to Petition the Government for Redress of Grievances is an individual, unalienable civil liberty – a promise given full faith and credit when the nation was founded, one of our most significant checks and balances, thus not to be infringed, abridged or abolished by government officialdom, either by legislation, executive action or judicial interpretation.

To use the words of Thomas Paine in *Common Sense*, Futia and Schulz are an example of People who are unfortunately "recklessly petitioning" – that is, repeatedly petitioning the Government for redress of Government's violations of existing law, only to have their repeated petitions answered only with repeated injury.

This is a case of Government clearly stepping outside the boundaries drawn around its power by the State Constitution, gaining ground as individual Liberty loses ground. In the words of Thomas Jefferson, "No government can continue good except under control of the People."

No Court has declared the rights of the People and the obligations of the Government under the Petition Clause. Doing so now would be of tremendous importance, of great moment for the Republic and its People.

The history of the People's natural Right to Petition the Government for redress of grievances shows the Right was recognized and meant to remain as one of the most, if not the most powerful of the checks and balances embodied in America's Constitutional Republic, her political ideology – a principal means, in addition to the electoral and judicial processes, for citizens to hold their servant government accountable to their rule of law, from their federal and state constitutions on down.

II. The lower Courts overlooked *Garcetti v. Ceballos*, 547 U.S. 410 (2006), *District of Columbia v. Heller*, 554 U.S. 579 (2008) and *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011).

In holding WCBOL (and by implication the Town of Harrison) was not obligated to respond to Plaintiffs' Petitions for Redress the Court relied on *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 285 (1986).

Knight is inapplicable, not only because the petitions involved in *Knight* were aimed at government policymaking rather than government lawbreaking, but also because the petitioners in *Knight* were public sector employees whose speech and petition rights are limited. Some rights of public sector employees, especially union activity, and speech and petition regarding employment-related policy questions are limited so that the government agencies may perform their functions and because these employees often hold positions of trust in the Society. "[A] citizen who accepts public

employment 'must accept certain limitations on his or her freedom.' *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 386 (2011).

Petitioners here are not government employees and the complaint here is against government officials who have clearly strayed from their proper course. Petitioners' Petitions challenge not the legitimate power of those government officials to make law; Petitioners' Petitions seek to rectify lawbreaking by those government officials.

In addition, in relying on *Knight*, the lower Courts also overlooked *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011) and the historical record of the Petition Clause which Futia and Schulz referred to in their Petitions for Redress and included as *Exhibit J* in their Complaint.

Petitioners' reliance on the historical record of the Petition Clause comports with numerous principles set forth by this Court in *Heller* and *Guarnieri* as follows:

> "The First Amendment's Petition Clause states that 'Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.' The reference to 'the right of the people' indicates that the Petition Clause was intended to codify a pre-existing, individual right, which means that **we must look to historical practice to determine its scope**. See *District of Columbia* v. *Heller*, 554

U.S. 570, 579, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)." (emphasis added). *Guarnieri* at 403.

"[To determine] the proper scope and application of the Petition Clause . . . Some effort must be made to identify the historic and fundamental principles that led to the enumeration of the right to petition in the First Amendment, among other rights fundamental to liberty." *Guarnieri* at 394.

"The right to petition is in some sense the source of other fundamental rights, for **petitions have provided a vital means for citizens to . . . assert existing rights against the sovereign**." (emphasis added). *Guarnieri* at 397.

"Rights of speech and petition are not identical. **Interpretation of the Petition Clause must be guided by the objectives and aspirations that underlie the Right**. A petition conveys the special concerns of its author to the government and, in its usual form, **requests action by the government to address those concerns**." (emphasis added). *Guarnieri* at 388-389.

"**There is abundant historical evidence that Petitions were directed to the executive and legislative branches of government, not to the courts**." *Guarnieri* at 402.

"Petition, as . . . an **essential safeguard of freedom**, is of ancient significance in English

law and the Anglo-American legal tradition." (emphasis added). *Guarnieri* at 394.

In this case, consistent with the direction given by the Supreme Court in *Heller* and *Guarnieri*, Plaintiffs rested their Petition Clause claim on a detailed Historical Review of the origin, scope, purpose and line of growth of the Right to Petition, from the 1215 English Magna Carta to its addition to the U.S. Constitution's Bill of Rights in 1791, through the "Gag Rule" of 1836-1844 and beyond. (Complaint, Exhibit J).

Clearly evident is the Right of Futia and Schulz to a meaningful response to their proper Petition for Redress of governmental oppression such as WCBOL and the Town of Harrison's violations of the Constitution and laws pursuant thereto.

Chapter 61 of the Magna Carta of 1215 reads in 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 Petitioners).

Chapter 61 was thus 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, the People could retain their money** or violence could be legally employed against the King until he Redressed the alleged Grievances.[1]

The First Amendment of our Bill of Rights, prohibiting laws "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" was rooted in the 1689 English Declaration of Rights which proclaimed in part, "[I]t is the Right of the subjects to petition the King, and all commitments and prosecutions for such petitioning is illegal."

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**

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

> **procure relief, without trusting to despised petitions or disturbing the public tranquility."**[2]

In 1775, prior to drafting the Declaration of Independence, Thomas Jefferson gave further meaning to the 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, and how improvident would be the surrender of so powerful a mediator."[3]

In 1776, the Declaration of Independence plainly stated it was the government's refusal to respond to the People's Petitions for Redress that caused the separation. The document lists 27 grievances the People had against the Government. What follows is referred to by scholars as the "**capstone grievance**," the grievance that prevented Redress of the other Grievances, caused the People to withdraw their support and allegiance to the Government, and that eventually justified War against the King, morally and legally. Thus, the Declaration gives

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[2] "Continental Congress To The Inhabitants Of The Province of Quebec." Journals of the Continental Congress 1774. Journals 1:105-13.

[3] Thomas Jefferson: Reply to Lord North, 1775. Papers 1:225.

further meaning to the People's Right to Petition for Redress of Grievances, the Right to a response and the Right of enforcement. Quoting:

> **"In every stage of these Oppressions We have Petitioned for Redress in the most humble terms. Our repeated Petitions have been answered only by 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.

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.**[4]

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[4] See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142 (November, 1986); "SHALL MAKE NO LAW ABRIDGING . . . ": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986); "LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES – BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989); THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (March 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST

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

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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).

[5] 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.

[6] 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.

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

frequent prosecutions against the press for seditious libel.[8] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[9]

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,[10] the American Colonies,[11] and the first Continental Congress[12] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[13]

The historical record shows the framers and ratifiers of the First Amendment also **understood the Petition Right as distinct from the Rights of free expression**. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate

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[8] See Norman B. Smith, *supra* at 1165-67.

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

[10] See Norman B. Smith, *supra* at 1165.

[11] 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).

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

[13] 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* at 115-16.

sections.[14] 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 enumerated rights in the First Amendment were separate Rights that should be specifically protected.[15]

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

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[14] 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).

[15] See 5 Bernard Schwartz, *The Roots Of The Bill Of Rights* at 1089-91 (1980).

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

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

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

recognition of the **right of Petition in the People themselves.**[19]

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

In the American colonies, disenfranchised groups used Petitions to seek government accountability for

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[19] 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* at 188-89.

[20] For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Norman B. Smith, *supra* 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 Don L. Smith, *supra* at 41-43.

[21] See Norman B. Smith, *supra* at 1165 (describing a Petition regarding contested parliamentary elections).

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

their concerns **and to rectify government misconduct.**[23]

By the nineteenth century, Petitioning was described as "essential to . . . a free government"[24] – an inherent feature of a republican democracy,[25] and one of the chief means of **enhancing government accountability through the participation of citizens.**

This interest in Government accountability was understood to demand Government response to Petitions.[26]

American colonists, who exercised their Right to Petition the King or Parliament,[27] expected government

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

[24] 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).

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

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

[27] See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5 at 199;

to receive **and respond** to their Petitions.[28] **The King's persistent refusal to answer the colonists' grievances outraged the colonists, and as the grievance that capped all the others it was the most significant factor that led to the American Revolution.**[29]

Frustration with the British government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[30] Members of the First Congress easily defeated this right-of-instruction proposal.[31] 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.**[32]

DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), *reprinted in id.* at 198.

[28] See Frederick, *supra* at 115-116.

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

[30] See 5 BERNARD SCHWARTZ, *supra* at 1091-105.

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

[32] See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* 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's response to Petitions in the early years of the Republic also indicates that the original understanding of Petitioning **included a governmental duty to *respond***. Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.[33]

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

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

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bring non-binding instructions to Congress's attention) (statement of Rep. James Madison).

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

[34] 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.

[35] 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).

[36] See Higginson, *supra* at 157.

response and promoted government accountability.

III. The Petitions Were Proper, Suitable and Appropriate.

The Petitions for Redress by Futia and Schulz to WCBOL and the Town of Harrison exceed any rational standard requiring a response in that they:

1. provided legal Notice seeking substantive Redress to cure the infringement of a right leading to civil legal liability;
2. were serious and documented, not frivolous;
3. contained no falsehoods;
4. were not absent probable cause;
5. had the necessary quality of a dispute;
6. came from citizens outside the formal political culture and involved a legal principle not political talk;
7. were punctilious and dignified, containing both a "direction" and a "prayer for relief";
8. addressed a public, collective grievance with widespread participation and consequences; and
9. were instruments of deliberation not agitation.

IV. The lower Courts mischaracterized Petitioners' Guarantee Clause Claim and misapplied *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) and *New York v. United States*, 505 U.S. 144 (1992).

In dismissing Petitioners' Guarantee Clause claim, the lower court held "the claim presents nonjusticiable political questions, such as local government budget allocation." (App. 5).

However, Petitioners' Guarantee Clause claim is not enmeshed or tangled with any political question whatsoever.

This case is not barred by the political question doctrine. There is judicially discoverable evidence and judicially manageable standards. Resolving the case does not require the court to make any policy determination.

Absurd is the suggestion that this case is merely about budget allocations when, in fact, it is clearly about Respondents' violations of the Constitutions as explicitly detailed and expressed by Petitioners.

Rather than follow this Court's holdings in *Rucho* that, "Among the political question cases the Court has identified are those that lack 'judicially discoverable and manageable standards for resolving [them],'" *Baker v. Carr*, 369 U.S. 186, 217 (1962), and "judicial action must be governed by *standard*, by rule, and must be 'principled, rational, and based upon reasoned distinctions' found in the Constitution or laws," *Vieth v. Jubelirer*, 541 U.S. 267, 278, 279 (2004), Respondents

and the lower courts have taken out of context and applied the *Rucho* language that, "the Guarantee Clause does not provide the basis for a justiciable claim." *Rucho* at 2506.

In addition, rather than follow this Court's holding in *New York* that, "perhaps not all claims under the Guarantee Clause present nonjusticiable political questions," *New York* at 184, Respondents and the lower courts have taken out of context and utilized the *New York* language that no Guarantee Clause violations exist as long as, "The States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local electorate," *New York* at 185.

Petitioners are guaranteed a government in the State of New York that is republican in form and substance, meaning where the law is not only King, it is based on the will and consent of the People.

V. Petitioners have standing as New York State citizen-voters.

Petitioners have "the right, possessed by every citizen, to require that the Government be administered according to the law," *Fairchild v. Hughes*, 258 U.S. 126, 129 (1922).

Throughout America, "Governments are instituted among Men, deriving their just powers from the **consent of the governed**." (emphasis added). Declaration of Independence, paragraph 2.

The Government of the United States of America and the Government of the State of New York were

each created by, and all government employees in those jurisdictions are governed by, the **consent of the citizen-voters** of those jurisdictions, as expressed in the Constitution for the United States and the Constitution for the State of New York.

The high courts of both the United States and the State of New York have confirmed that this principle of popular sovereignty or self-government – government based upon the consent of the governed, is the foundation of our system of governance.

"History and sound checks-and-balances principles of governance recognize the People as the source of all governmental power." *Schulz v. State*, 81 N.Y. 2d 336, 345 (1993) (quoting *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364 (1975)).

"[T]he Constitution's conception of the People [is] as the font of governmental power. As Madison put it: 'the genius of **republican liberty** seems to demand . . . not only that all power should be derived from the people, but that **those entrusted with it should be kept in dependence on the people**.' . . . Our Declaration of Independence, paragraph 2, drew from Locke in stating: 'Governments are instituted among Men, deriving their just powers from the consent of the governed' . . . And our fundamental instrument of government derives its authority from 'We the People.' U.S. Const., Preamble." *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652, 2674-2675 (2015) (emphasis added).

The State Constitution is **existing Law**; it is the creation and reserved right of the sovereign People of

New York; it is the means by which the first of the grand rights of the People – that is, government based upon the consent of the People, is to be accomplished. **Without its limited powers, State Government could not long preserve its existence under the republican form of government guaranteed by the U.S. Constitution** [at Article IV, Section 4]. See *Collector v. Day*, 78 U.S. 113, 126 (1871).

Thus, the Constitution for the United States of America and the Constitution for the State of New York, as adopted and as amended over time, are **contracts** covering the rights and duties of two distinct groups of people within each of those two jurisdictions: 1) all citizen-voters; and 2) all government-employees.[37]

Both of these **constitution-based contracts**, approved by the citizen-voters of the United States and the State of New York, respectively, cover all government-employees in the State, including those in each County, Town and Village as **each municipality is a department, a division, of the complex whole and organized system of Government in the State of New York**.

Thus, the Constitution for the United States of America and the Constitution for the State of New York each organize and regulate the rights and duties

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[37] In this context, the Citizen-voter group includes Government-employees, but the Government-employee group does not include citizen-voters.

arising between the two groups, **with the intention to effect legal obligations**.

Under each Constitution, the citizen-voters extend an offer of government employment, with consideration and **with the stated intention to effect legal obligations**, and the government-employees accept the offer of employment **with the stated intention to effect legal obligations**.

All government-employees, upon employment, take an oath whereby they swear to support and defend the Constitution(s), legally binding them to certain constitution derived duties, obligations, prohibitions and mandates in return for a valuable benefit known as consideration.

The rights, duties and obligations of the two groups, who were parties to the two original constitution-based contracts, as amended, attach to all those in the two groups who succeed them. Their successors are **in privity**; there remains a successive, mutual relationship within each group and between the two groups that is legally enforceable over time.

With respect to the contract based on the Constitution for the State of New York, **all** citizen-voters within the State are **in privity** with each other and with all government-employees and all government-employees within the State are **in privity** with each other and with all citizen-voters in the State. There exist such legally enforceable, mutual relationships within the geographic borders of the State **that cross municipal boundaries**. Privity is essential to the constitution-based contract. If privity does not exist,

meaning there is no statewide relationship between the parties, enforcement of the Constitutions becomes extraordinarily problematic, especially in light of the government's long-standing violation of Section 801.2 of the State Education Law.[38]

Futia and Schulz have a legal interest in the laws arising out of their constitution-based, contractual relationship to the citizen-voters and government-employees of both Westchester County and the Town of Harrison.

Thus, Futia and Schulz qualify as parties with standing to bring the claims they have brought against the Town and WCBOL. They have shown, "first and foremost, injury in the form of invasion of a legally protected interest that is concrete and particularized, actual or imminent. The injury [is] fairly traceable to the challenged action, and redress able by a favorable ruling." (Quotations and citations omitted). *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652, 2663 (2015).

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[38] See Futia and Schulz's ninth cause of action, a challenge to WCBOL and the Town's complicity in government's violation of Section 801.2 of the State Education Law. WCBOL and the Town want it both ways: 1) see that the citizen-voters residing in their municipalities lack the knowledge that there is a State Constitution that prohibits government from acting in certain ways; and 2) prevent a State citizen who knows about the Constitution but who resides in a different municipality in the State from challenging their violations of the State Constitution. Because of their complicity in the utter failure of the government to honor Section 801.2 of the State Education Law, the citizens of their municipalities don't know there is a State Constitution much less what it prohibits.

Futia and Schulz's injuries are concrete (actual violations of said contracts), particularized (stated in detail), traceable (connected) to the actions of the Town and WCBOL and redressable (rectifiable) by a favorable ruling.

Futia and Schulz's injuries are not the result of a mere administrative or procedural violation of a statute. They are the result of a direct violation of clearly stated Rights, duties and prohibitions plainly written into their Constitutions – those contracts upon which their very Liberty and Freedom depend, contracts that both Futia and Schulz at a young age joined the military to defend and have actively served and supported during the past 4-5 decades.

To be clear, government employees have long been contractually prohibited by the citizen-voters of the United States and of the State of New York from adopting laws that would increase their compensation until an election of those government employees shall have intervened.

That prohibition is plainly written into the federal contract: "No Law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." 27th Amendment of the U.S. Constitution.

The prohibition is also plainly written into the State contract:

- the Article of the State Constitution that governs the *Legislature* reads in part, "Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law . . . Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation." Article III, Section 6 of the Constitution for the State of New York, and

- the Article of the State Constitution that governs *Public Officers* reads in part, "Each of the state officers named in this constitution shall, during his or her continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he or she shall have been elected or appointed; nor shall he or she receive to his or her use any fees or perquisites of office or other compensation." Article XIII, Section 7 of the Constitution for the State of New York, and finally

- the Article of the State Constitution that governs *Local Governments*, such as those in the Town of Harrison and Westchester County, reads in part, "In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws **not**

> **inconsistent with the provisions of this constitution** or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law **relating to the following subjects**, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:
>
> (l) The powers, duties, qualifications, number, mode of selection and removal, terms of office, **compensation**, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers." (emphasis added). Article IX, Section 2(c)(1).

Thus, the prohibition against increases in Westchester County and the Town of Harrison in the compensation of legislators and public officers, in the absence of an intervening election, is plainly stated in the two contracts and citizen-voters Futia and Schulz have a **legal interest in both contracts** that arise out of their successive and New York State-wide relationship to the parties – the citizen-voters and

government-employees of the State. **That relationship exists, regardless of the New York County and Town of residency of the parties.**

Futia and Schulz's injuries are concrete (actual violations of said freedom-and-liberty-based contracts), particularized (stated in detail), traceable (connected) to the actions of the Town and WCBOL and redress able (rectifiable) by a favorable ruling.

Both Futia and Schulz have standing to bring their claims against the Town and WCBOL; the claims are plausible on their face and their Complaint contains sufficient factual matter that has been accepted as true by the District Court. See *Ashcroft v. Iqbal,* 556 U.S. 662, 678, (2009) and (SA 7-10).

WCBOL and the Town have actually invaded Futia and Schulz's in-privity Rights to a government republican in form by violating the will and **consent of the People, the citizen-voters** of the State as directly expressed in Article I, Section 9, Article IX, Section 2(c)(1), Article III, Section 6 and Article XIII, Section 7 of the New York State Constitution and the First Amendment of the Constitution for the United States, and as expressed by their duly elected representatives in Westchester County Law 24-200 and State Education Law, Section 801.2.

The New York State Constitution's explicit prohibition against local laws that are inconsistent with any of its provisions is one of Futia and Schulz's legally protected interests invaded by the County and Town – an interest that is in full harmony with both the federal

and State Constitutions' conception of the People as the source of all governmental power.

Plaintiffs' Liberty is protected in part by the Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment provides that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amendment XIV, Section 1.

"The substantive component protects against government action that is arbitrary, conscience-shocking, or oppressive in a constitutional sense." *Nnebe v. Daus*, 184 F. Supp. 3d 61 (S.D.N.Y. 2016), quoting *Kaluczky v. City of White Plains*, 57 F.3d 202, 211 (2d Cir. 1995)

The WCBOL and Town actions were arbitrary in that they were based on the rule of whim, rather than the rule of law. The WCBOL and Town actions increasing compensation shocked the conscience in that they were adopted by the WCBOL and Town immediately after election day but not publicly discussed prior to election day, and in the case of the WCBOL, its Compensation Advisory Board was not convened, much less heard from in advance of election day as required by County Law 24-2000.

The challenged governmental actions are also oppressive; the people are being governed in an illegal, unfair and cruel way by the WCBOL and Town who have reduced the extent of the citizen-voter's Liberty and Power, significantly shifting the ultimate power in our society from the group of citizen-voters to the

government-employees, where it was NOT intended to reside.

As a consequence of Defendants' unconstitutional **seizure of power** – their violation of N.Y. Constitution Articles III, XIII and IX and their violation of the Guaranty and Petition Clauses of the U.S. Constitution – **their refusal to be "kept in dependence on the People,"** Futia and Schulz, in privity with citizen-voters-taxpayers statewide, including Westchester County and the Town of Harrison, have suffered a strong, sweeping injury, a concrete and particularized **loss of both liberty and power,** a blow to popular sovereignty and a diminution of **their right to a government in the State of New York, including every department and division of the whole, that is republican in form and substance.**

The Town and WCBOL failed in their duty to effect legal obligation pursuant to their constitution-based contracts. Plaintiffs' injury is not too "conjectural" or "hypothetical" to establish standing. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

VI. Petitioners' Taxpayer Standing

The fact that Futia and Schulz are State taxpayers adds to their standing to bring their claims.

In their Complaint, Futia and Schulz declared, "On information and belief, Westchester County will receive State taxpayer funds from N.Y. State in 2020 that will be co-mingled with county-generated

taxpayer funds in its general fund." (A 17). In its motion to dismiss, **the County did not deny the declaration**.

In addition, Futia and Schulz declared, "On information and belief, the Town of Harrison will receive State taxpayer funds from N.Y. State in 2020 that will be co-mingled with Town-generated taxpayer funds in its general fund." (A 18). In its motion to dismiss, **the Town did not deny the declaration by Futia and Schulz. Instead, the Town incorrectly argued neither Plaintiff alleges "an injury that impacted their 'pocketbooks' and was caused by the Town Board's adoption of its 2020 budget."**

In fact, Futia and Schulz did allege an imminent injury that would impact their "pocketbooks" that was caused by the Town's adoption of the 2020 budget. As Futia and Schulz argued in their opposition to the Town's motion to dismiss:

> Plaintiffs have been injuriously affected by a further abuse of governmental power, a consequence of the County and Town's use of **State-taxpayer-derived funds** and the County's use of county-taxpayer-derived funds to pay for the violations.
>
> Plaintiffs, who have set forth their status as State taxpayers and in Futia's case as a Westchester County taxpayer, have alleged more than the mere payment of taxes. **They have identified amounts of money to be appropriated for the challenged actions.** Plaintiffs' challenge is to the appropriating,

transferring, and spending of taxpayers' money from the General Fund of the County and Town Treasuries. Plaintiffs complain that by increasing the compensation of elected and appointed officials after election day, for terms those officials were just elected to, taxpayers have been burdened with the necessity to provide more taxes to support the increases. The pleadings set forth with specificity amounts of money appropriated and to be spent for unlawful purposes. See *Hoohuli v. Ariyoshi*, 741 F.2d 1169, 1180 (9th Cir. 1984). Like *Hoohuli,* this case fits the description of a "**good-faith pocketbook action**" set forth in *Doremus v. Board of Education*, 342 U.S. 429, 434-435 (1952). Plaintiffs have showed a measurable appropriation of County and Town general funds occasioned solely by the activities complained of.

CONCLUSION

The Court should grant the petition, declare Respondents are obligated to provide a meaningful response to Petitioners' Petitions for Redress of Grievances, declare Petitioners' Guarantee Clause Claim is justiciable, declare Futia and Schulz have standing to maintain their claims, vacate the Summary

Order below and remand to the District Court for further proceedings.

DATED: September 15, 2021

Respectfully submitted,

ANTHONY FUTIA, JR., pro se
34 Custis Ave.
N. White Plains, NY 10603
Futia2@optimum.net
(914) 906-7138

ROBERT L. SCHULZ, pro se
2458 Ridge Road
Queensbury, NY 12804
Bob@givemeliberty.org
(518) 361-8153