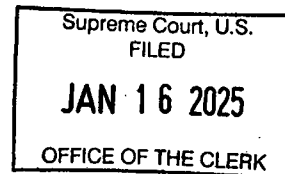


No. 24-776

In the
Supreme Court of the United States



PAUL ASTRUP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

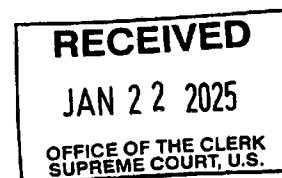
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BOSTON, MASSACHUSETTS



QUESTIONS PRESENTED

1. Pursuant to SCOTUS Rule 13.3, did the lower court appropriately entertain an untimely petition for rehearing thus fixing the time for Astrup to file this petition for a writ of certiorari at 90 days or less from October 23, 2024, which was the date of the lower court's denial of Astrup's motion to file a late petition for rehearing and his motion to recall the mandate?

2. Pursuant to Federal Rule of Civil Procedure 56, did Astrup properly present by affidavit genuine issues as to material facts showing that Plaintiff United States of America was not entitled to the summary judgment as a matter of law?

3. Does the Petition Clause of the First Amendment to the U.S. Constitution secure to Astrup:

- a) the right to a meaningful response from the United States of America to a proper petition for redress of a violation of a provision of the Constitution; and
- b) the right of enforcement — such as redress before taxes, should the government ignore its obligation to provide a meaningful response?

4. Is Astrup's petition for redress of the Government's violation of Articles I and V and the 5th, 7th, 9th, and 14th Amendments of the Constitution of the United States of America a proper petition for redress of grievances?

5. Does the Summary Order of the United States Court of Appeals for the Second Circuit in *United States of America v. Astrup*, No. 23-847, U.S. entered June 24, 2024:

- a) conflict with this Court's decision in *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011); and/or
 - b) decide a federal constitution question that has not been, but should be settled by this Court?
6. Has the lower court's denial of Astrup's motion for a trial by jury violated rights secured to him by the Seventh Amendment to the Constitution of the United States of America?

LIST OF PROCEEDINGS

U.S. District Court, Eastern District of New York

No. 2:18-cv-1531

United States of America, Plaintiff-Appellee

v. Paul Astrup, Defendant-Appellant

Memorandum Opinion: March 18, 2023

Final Judgment: April 25, 2023

U.S. Court of Appeals, Second Circuit

No. 23-847

United States of America, Plaintiff

v. Paul Astrup, Defendant

Opinion: June 24, 2024

Mandate: August 19, 2024.

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OPINIONS BELOW

The U.S. District Court for the Eastern District entered its memorandum opinion on March 18, 2023. (App.19a); and its final judgment on April 25, 2023. (App.16a).

The U.S. Court of Appeals for the Second Circuit issued its final opinion on June 24, 2024 (App.1a); and its Mandate on August 19, 2024. (App.8a).

The Petitioner also seeks review of the Second Circuit's claim that Petitioner was untimely with the rehearing petition. (App.28a, 36a).



JURISDICTION

The Summary Order and Mandate sought to be reviewed were entered June 24, 2024 (App.1a) and August 19, 2024 respectively. (App.8a).

The lower court's Notice of Defective Document including its directive to Astrup to file a motion to file a late petition for panel rehearing and motion to recall the mandate was entered September 16, 2024.

The Order denying Astrup's motions to file a late petition for rehearing and to remove mandate was entered October 23, 2024. (App.28a). The Petitioner challenges this order, and argues that as a pro se petitioner, he did not receive proper notice of the opinion which had mailed to the wrong address. Thus Petitioner contends the 90 day window to file a petition

for writ of certiorari starts with the October 23, 2024 order.

The constitutional and statutory provisions conferring on this Court jurisdiction to review on a writ of certiorari the Orders and Notices in question include U.S. Constitution, Article III, Section 2, Clause 2.2 and United States Code, Article 28, Sections 1254(1) and 1331.



CONSTITUTIONAL PROVISIONS

U.S. Const. Art. I, sec. 2, cl. 3

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

U.S. Const. Art. I, sec. 9 cl. 4

"No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken

U.S. Const. Art. V

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for

proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States,”

U.S. Const. amend I

“Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances.”

U.S. Const. amend V

“No person shall be . . . deprived of life, liberty, or property, without due process of law”

U.S. Const. amend VII

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved”

U.S. Const. amend IX

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

U.S. Const. amend XIV

“[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend XVI

“The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.”



STATEMENT OF THE CASE

In 2018, the United States of America (the "Government") brought this action to reduce to judgment what it claimed were certain unpaid tax liabilities of Astrup for years beginning in 2001 and to enforce federal tax liens on Astrup's home and residence.¹

In his defense Astrup argued, based on genuine material facts in each case;

- 1) that as an active member of, and the son-in-law of a founding board member of both the not-for-profit We The People Foundation for Constitutional Education, Inc., and the not-for-profit We the People Congress, Inc. (together "WTP"), both established in 1997, he had properly petitioned individual branches and officials within the Government beginning in 1999 for redress of their violation of rights secured to him as an individual American citizen by each of several provisions of the Constitution of the United States of America, including but not limited to its tax and due process related provisions, and
- 2) that the Government was obligated by the petition clause of the First Amendment to the Constitution to provide a meaningful response to said petitions for redress of grievances but refused to do so, and

¹ Complaint, *United States of America v. Paul S. Astrup, et al*, Case No. 2:18-cv-1531

- 3) that the petition clause of the First Amendment also secured to him the right of enforcement, such as the right to withhold his taxes until said grievances are redressed.

The Government did not respond much less dispute Astrup's declaration of genuine material facts, failing to refute, deny, reject, contradict, admit or otherwise address any of them!

Instead, the Government presented and relied on immaterial tax enforcement related facts – facts simply attesting to actions the Government took to force Astrup to pay what Astrup had genuinely and materially shown to be an unconstitutional federal individual income tax.

Astrup argued the Government's tax enforcement related facts were immaterial unless and until Astrup's facts disputing the legitimacy of the tax were meaningfully addressed by the Government, including the Judiciary and found to be immaterial, and that thus far, no court has ever addressed much less ruled on any of the genuine, material facts relied on by Astrup.

Astrup also timely requested a jury trial and that he be allowed the right to take discovery and depose members of the Government or their representatives. Those motions were not meaningfully opposed by the Government but denied by the lower court.

Without addressing any of Astrup's arguments and any of his genuine, material facts, the lower court ruled in the Government's favor asserting Astrup failed to present any genuine dispute of material facts as to the validity of the IRS's tax assessment.



ARGUMENT

I. Preliminary Statement

Summary judgment is improper if the materials on file . . . show there are genuine issues as to any material fact and that the movant is not entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). All evidence and factual inferences are to be viewed in a light most favorable to the nonmoving party . . . there must be no genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.242, 247-48, 255 (1986).

Summary judgment was unlawfully granted by the lower court as Astrup was denied his right to discovery and a trial by jury and the materials on file showed there were genuine issues before the court as to: 1) the historical facts creating Astrup's lack of tax liability; and 2) the historical facts creating the Government's obligations and Astrup's rights pursuant to the petition clause of the First Amendment.

II. Genuine Material Facts Creating Astrup's Lack of Tax Liability

The Appendix/Record of this case includes hundreds of material facts presented by Astrup in his opposition to summary judgment that genuinely challenge Astrup's liability for the tax – material facts that were ignored by the Government and the lower court.

Astrup's material facts were divided among ten constitutionally relevant subject areas as follows:

1. 16th Amendment
Appendix pages 3419-3449
2. 13th Amendment
Appendix pages 3471-3487
3. 5th Amendment (self-incrimination)
Appendix pages 3498-3501
4. 5th Amendment (due process)
Appendix pages 3513-3517
5. Administrative Due Process
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6. Article I
Appendix pages 3558-3564
7. Statutory jurisdiction
Appendix pages 3580-3590
8. Liability
Appendix pages 3604-3611
9. Taxable Sources
Appendix pages 3623-3627
10. Vagueness of the Tax Code
Appendix pages 3639-3645

As the Record shows, said statement of material facts was derived, under oath, from the testimony of numerous professional researchers and investigators, expert on the subjects, in response to questions prepared for Astrup/WTP by other professional experts in the field. The questions as prepared were originally meant to be asked of and answered by those in the government most knowledgeable on the subject who had been invited on multiple occasions by Astrup/WTP

to conferences and symposiums.² However, after asking for, receiving and viewing the questions, the government refused to answer them.³

In fact, when asked by the a NY Times reporter if and when the government intended to respond to the Petition and answer the questions, the IRS declared its intention to continue answering the petition's questions with "enforcement actions"⁴

As testified to by Rep. Roscoe Bartlett on behalf of Astrup/WTP, the government refused numerous, respectfully drawn invitations to have its people most knowledgeable on the subject meet with Astrup's experts from the tax honesty movement to discuss, admit or deny their material facts.⁵

In this case, the lower court clearly erred in stating, "there is no challenge before the court as to the historical facts creating the tax liability" ⁶

The truth is there is no response much less challenge before the court as to any of the many on-point, material facts presented by Astrup and absolving Astrup of the tax liability!

As required by Rule 56 of the Federal Rules of Civil Procedure, the evidence cited by Astrup went well beyond the pleadings. He cited to affidavits⁷ and

² Appendix Volume 11, pages 3004-3098

³ Appendix Volume 11, page 3099-3102

⁴ Appendix Volume 11, page 3155

⁵ Appendix Volume 12, page 3233, paragraphs 17 and 18.

⁶ Appendix Volume 13, page 3730

⁷ Appendix Volume 5, page 1319 through Volume 13 page 3685

electronically stored information⁸ in the record that supports his position and that certainly would affect the outcome of the case.

The lower court was required but failed to review the facts in a light most favorable to Astrup and give Astrup the benefit of all reasonable inferences.

The lower Court should not have adopted the Government's version of the facts when the record blatantly contradicts it such that a jury could not believe it. *Scott v Harris*, 550 U.S. Supreme Court 372 (2007).

III. Genuine Material Facts Creating Astrup's Rights and Government's Obligations Under The Petition Clause

The Appendix/Record of this case also includes genuine material facts presented by Astrup in his opposition to summary judgment that speak to Astrup's rights and the Government's obligations under the petition clause of the First Amendment to the Constitution of the United States of America – material facts that were also unjustly passed over and ignored by the Government and the lower court.

Astrup's exercise of the right was based on the historical record of the petition clause⁹ and conformed with the fact-based direction given in 2011 by this court – “[to determine] the proper scope and application of the Petition Clause . . . Some effort must be made to identify the historic and fundamental principles that

⁸ Appendix Volume 9, page 2636; Volume 10, pages 2726, 2730, 2741, 2751; Volume 11, page 2925, 3141, 3152; Volume 12, pages 3226, 3228.

⁹ Appendix, Volume 5, pages 1382-1387

led to the enumeration of the right to petition in the First Amendment, among other rights fundamental to liberty.” *Borough of Duryea v. Guarnieri*, 584 U.S. 379 (2011).

The court, in *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011) went on to list some of those historic and fundamental principles, including:

- a) “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.” (emphasis added)
- b) “Petition, as a word, a concept, and an essential safeguard of freedom, is of ancient significance in English law and the Anglo-American legal tradition.” (emphasis added).
- c) “[P]etitions have provided a vital means for citizens . . . to assert existing rights against the sovereign.” (emphasis added).
- d) “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).

Another of the material facts relating to the petition clause included by Astrup in his opposition that the Government did not respond to was the following:

“One of the advantages of popular government, of which Jefferson was distinctly aware, was that it afforded a means of redressing grievances against the government without the resort to force; it provided, as he would later put it in his First Inaugural Address, ‘a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceful remedies are unprovided.’” (Emphasis added). David N. Mayer, *“The Constitutional Thought of Thomas Jefferson,”* University Press of Virginia, 1994, at 107. See also Thomas Jefferson, *First Inaugural Address*, 4 March 1801, L.C.” (emphasis added).

To repeat, the Government did not respond much less refute said genuine, material facts regarding the petition clause.

No court, including this court has ever prescribed the full range of the government’s principal obligations and the citizens’ principal rights pursuant to the Petition Clause of the First Amendment to the U.S. Constitution.

However, the declaration of genuine material facts which Astrup presented to the Government and to the lower court in this case,¹⁰ but ignored as neither the government nor the Court acknowledged it, provides sufficient proof that:

¹⁰ Appendix Volume 5, pages 1381-1387

- a) the government was obligated to provide a meaningful response to Astrup's proper Petitions for Redress of the government's violation of Astrup's Rights as secured by the tax, due process and other provisions of the Constitution and laws pursuant thereto; and
- b) if the government did not provide a meaningful response, Astrup had the Right of enforcement as by filing zero sum tax returns or not filing a tax return at all until the grievance was redressed.¹¹

IV. Astrup's Right To Take Discovery Violated

Pro se Astrup was unjustly denied the opportunity to depose Government witnesses.

The lower court ordered Astrup and his co-defendants to "file a letter by November 30, 2022, notifying counsel for the government whether they intend to depose any witnesses and if so, listing the categories of information the witnesses should be prepared to address."¹²

Astrup responded by filing a letter that, as requested, listed the categories of information the witness should be prepared to address.¹³

Asserting Astrup identified "no factual issues whatsoever on which they require further discovery,"

¹¹ Appendix Volume 5, pages 1381-1387, see especially 1383.

¹² Appendix Volume I, page 74

¹³ Appendix Volume I, pages 75-77

the District Court directed Astrup to file an opposition to a protective order.¹⁴

Pro se Astrup filed his opposition to a protective order which included a most thorough, extraordinarily complete identification of the factual issues on which he required discovery. Astrup's opposition went so far as to include scores of on-point material facts, including 65 Exhibits with a description of each as well as questions Astrup intended would be asked of the witness relative to each Exhibit.¹⁵

The very next day, the Court issued a protective order. Remarkably, with seemingly nothing more than a biased broad brush, the Court falsely declared, "defendants fail to identify a single factual issue related to their case on which they require discovery" and accused Astrup of "raising frivolous legal theories."¹⁶

Astrup motioned for reconsideration arguing the uniqueness and applicability of the material facts of the topics on which he was seeking discovery. He argued, "Not one of these facts have been denied or refuted during any proceeding in any court case."¹⁷ The motion was denied. The Court prohibited Astrup from "deposing any government witness on the topics."¹⁸

¹⁴ Appendix Volume I, page 78

¹⁵ Appendix Volume I, pages 79-301

¹⁶ Appendix Volume I, pages 302-304

¹⁷ Appendix Volume I, pages 305-307

¹⁸ Appendix Volume I, page 308

Astrup argued the government was not entitled to a protective order, protecting the government from a discovery deposition regarding genuine material facts that have never been publicly admitted or denied by the government.

Astrup was unjustly denied the opportunity to conduct discovery as the Record proves there is a genuine dispute as to material facts and the facts in dispute had the potential to affect the case's outcome.

V. Astrup's Right to a Jury Trial Violated

Astrup repeatedly motioned the lower court for a trial by jury.¹⁹

The Government did not oppose Astrup's motion for a jury trial and the court did not properly process it as the court addressed the motion only after the court granted summary judgement.²⁰

Astrup's right to a trial by jury was secured by the 7th Amendment, as such it is inviolate, sacrosanct and not to be injured.

¹⁹ Appendix Volume 13, pages 3721-3722.

²⁰ Appendix Volume 13, pages 3731, 3750-3751, 3759.



CONCLUSION

Pursuant to the First Amendment's petition clause, Astrup properly – professionally, intelligently and rationally petitioned the Government for redress of its violation of rights secured to him by the rule of law including provisions of the United States Constitution.

The Government did not respond.

Astrup then exercised his First Amendment petition clause right of enforcement by retaining his taxes until the grievances were redressed.

Rather than provide a meaningful response to Astrup's First Amendment petitions the Government obtained from the lower court an order requiring Astrup to vacate his home and authorizing the Government to sell Astrup's home and garnish Astrup's wages in order to recover the taxes retained by Astrup.

Adding to the dilemma faced by Astrup is the fact that no court has ever declared the full meaning of the Petition Clause of the First Amendment.

Respectfully, Astrup requests of this Court:

- a) a declaration of the principal rights of the people and the principal obligations of the Government under the Petition Clause of the First Amendment to the United States Constitution, and
- b) a directive to the lower court that it grant Astrup immediate injunctive relief, including a hold on the sale of Astrup's home and further

garnishment of his wages, pending this Court's declaration of said Petition Clause rights and its determination of whether Astrup and the Government acted within those rights and obligations.

Respectfully submitted,

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January 17, 2024