05/17/21
MD

No. 20-1626

In The

Supreme Court of the United States

ROBERT L. SCHULZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of New York

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Through more than 18 years of litigation, relying on a thorough review of its historical record, Robert Schulz has strived to fully restore the First Amendment Right to Petition. As CEO, he guided the We The People organization's petitions for redress of violations of the Constitution's prohibition against undeclared wars, invasions of privacy, un-enumerated powers and direct un-apportioned taxes. Absent a response, the organization petitioned for redress of a violation of the Right itself – tax withholding, which the organization reasoned prevents the peaceful enforcement of Rights against a Government stubbornly resistant to the People's rightful authority. Government enforcement actions and litigation followed; relying on two inapplicable cases (*Smith* and *Knight*), the D.C. Circuit held Government did not have to respond to the Petitions; the 2d Circuit then held the Withholding Petition was forbidden speech subject to penalty. Soon after, this Court declared "we must look to historical practice to determine its scope" (*Heller*) and "Interpretation of the Petition Clause must be guided by the objectives and aspirations that underlie the right" (*Guarnieri*). Regardless, the IRS then penalized Schulz, the N.D.N.Y. held the forerunners were fully, fairly and completely litigated and the 2d Circuit did not respond to Schulz's argument re *Heller* and *Guarnieri*.

The questions presented are:

Whether a forerunner to this case, *We The People, et al. v. United States*, 2005 U.S. Dist. LEXIS 20409 (D.D.C. 2005) *aff'd* 485 F.3d 140 (2007, D.C. Cir.) was

QUESTIONS PRESENTED – Continued

fully, fairly and completely litigated given that Court's decision not to consider the historical scope and purpose of the Petition Clause but, instead, to rely on two inapplicable cases (*Minnesota v. Knight*, 465 U.S. 271 and *Smith v. Arkansas*, 441 U.S. 463) in concluding government was not obligated to respond to the organization's Petitions for Redress.

And, whether the other forerunner, *United States v. We The People, et al.*, 529 F. Supp. 2d 341 (N.D.N.Y. 2007) *aff'd* 517 F.3d 606 (2d Cir., 2008) (*Schulz 1*) was fully, fairly and completely litigated given that Court's decision to avoid Defendants' Petition Clause argument altogether and instead declare the Withholding Petition was subject to penalty.

And, if not fully, fairly and completely litigated, whether the Court should vacate the Summary Order below and the final decisions and judgments in said forerunners and remand to the D.C. Circuit in light of *District of Columbia v. Heller*, 554 U.S. 579 and *Borough of Duryea v. Guarnieri*, 564 U.S. 379.

PARTIES TO THE PROCEEDINGS

All parties to the proceeding are listed in the caption. Rule. 29.6 does not apply to this Petitioner.

Defendant-Counter-Claimant-Appellee in the court below, respondent here, is United States of America. Plaintiff-Counter-Defendant-Appellant in the court below, petitioner here, is Robert L. Schulz, pro se.

STATEMENT OF RELATED PROCEEDINGS

Schulz v. IRS,
413 F.3d 297 (2d Cir., 2005)

We The People, et al. v. United States,
2005 U.S. Dist. LEXIS 20409 (D.D.C. 2005) *aff'd*
485 F.3d 140 (D.C. Cir., 2007)

Schulz v. IRS,
230 Fed. Appx. 709 (9th Cir., 2005)

Schulz v. IRS,
240 Fed. Appx. 167 (8th Cir., 2005)

Schulz v. IRS,
205 U.S. Dist. LEXIS 40161 (N.D.N.Y., 2006)

United States v. We The People Foundation, et al.,
529 F. Supp. 2d 341 (N.D.N.Y. 2007) *aff'd*
517 F.3d 606 (2d Cir., 2008)

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PETITION FOR WRIT OF CERTIORARI

Robert L. Schulz respectfully petitions for a writ of certiorari to review the Summary Judgment of the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The Second Circuit's Summary Judgment, dated December 18, 2020 and reported at 831 Fed. Appx. 48, affirmed the Summary Judgment of the Northern District of New York, dated March 27, 2019, reported at 2019 U.S. Dist. LEXIS 51073.

CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE

The Second Circuit's December 18, 2020 summary judgment affirming a financial penalty of $4,430 against Schulz as ordered by the District Court on March 27, 2019 is reported at 831 Fed. Appx. 48.

The District Court's March 27, 2019 summary judgment that fixed the amount of a penalty and determined Schulz was personally liable for the penalty, is reported at 2019 U.S. Dist. LEXIS 51073.

The District Court's October 9, 2018 decision denying Schulz's motion for reconsideration of the Court's July 12, 2018 decision is reported at 2018 U.S. Dist. LEXIS 173391.

The District Court's July 12, 2018 decision rejecting Schulz's 26 U.S.C. 6751 jurisdictional claim and finding the We The People organization was Schulz's alter ego is reported at 2018 U.S. Dist. LEXIS 115760.

The District Court's August 24, 2017 decision affirming the Magistrate's June 21, 2017 text order denying Schulz's request to subpoena IRS's Lois Lerner while approving Schulz's request to subpoena other IRS employees is reported at 2017 U.S. Dist. LEXIS 205524.

The District Court Magistrate's June 21, 2017 text order denying Schulz's request to subpoena IRS's Lois Lerner is reported at 2017 U.S. Dist. LEXIS 131516.

The District Court's May 4, 2017 decision granting Schulz's motion for an explanation of the Court's decision to prematurely deny his March 21, 2017 motion for reconsideration and denying his motions: 1) for reassignment due to "outside influence" of the question whether *Schulz 1* was fully, fairly and completely litigated; 2) that the Court's March 7, 2017 and April 14, 2017 judgments be set out in a separate document; and 3) to amend the Court's April 14, 2017

Decision by removing the "wholly unfair and misleading" footnote and modifying a "wholly unfair and misleading" paragraph is reported at 2017 U.S. Dist. LEXIS 131516.

The District Court's April 14, 2017 decision denying Schulz's motion for reconsideration of the Court's March 7, 2017 decision is reported at 244 F. Supp. 3d 307.

The District Court's March 7, 2017 decision denying Schulz's motion to relitigate *Schulz 1*, finding the District Court's Decision in *Schulz 1* that found the Tax Withholding Petition for Redress to be an abusive tax shelter subject to penalty under 26 U.S.C. Section 6700 is entitled to preclusive effect in this case, is reported at 244 F. Supp. 3d 307.

The District Court's May 6, 2016 Decision denying Schulz's statute of limitations/latches claim and motion for summary judgment, and granting the Government's motion to dismiss the IRS as a Defendant is reported at 216 U.S. Dist. LEXIS 19229.

The District Court's February 11, 2016 Decision denying Schulz's motion for the removal of the notice of tax lien is reported at 216 U.S. Dist. LEXIS 19229.

JURISDICTION

This Court has jurisdiction under Article III, Section 2 of the Constitution for the United States of America, the First Amendment to the Constitution of the United States of America and 28 U.S.C. Section 1254(1) and 26 U.S.C. 6751.

The Summary Judgment of the United States Court of Appeals was entered on December 18, 2020. In accordance with Rule 13.1 of this Court, this petition is filed within 150 days of the date of the entry of the Summary Order.

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

References to STMT OF FACTS in the footnotes refers to Document 197-2 filed in this case and included herein at Appendix U.[1]

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") was raised in this case[2], and in each of

[1] Included at pages A-1 thru A-69 in Appellant's Appendix at the 2d Circuit.

[2] AMD COMP 3, 18; 2d AMD COMP 21; STMT OF FACTS 3, 4; APP BR passim; APP REPLY BR passim.

its two forerunners, *We The People, et al. v. United States*[3], and *United States v. We The People, et al. (Schulz 1)*.[4]

The Fourth Amendment, which provides "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." was raised in connection with the passage of Public Law 107-56 (the "Patriot Act") in this case[5] and its forerunners *We The People*[6] and *Schulz 1*.[7]

The Ninth Amendment, which provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" was raised in connection with

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[3] AMD COMP pages 1-4, 7-25; OPP TO DISM 9-24, 29-41, SURREPLY 1-5.

[4] Def. Motion to Dismiss filed 5/23/07 at 2-8, 15-20 and throughout Declarations 1-3; Def. MOL in Opp. to Summary Judgment filed July 16, 2007 at 4-7 and Declarations 4-10; Def. MOL for reconsideration filed August 19, 2007 at 1-3, 13-25 and Declaration 11.

[5] AMD COMP 4; 2d AMD COMP 4, 23; STMT OF FACTS 3; APP BR 2, 59, 61; APP REPLY BR 2, 29.

[6] AMD COMP pages 2-4, 7-11; OPP TO DISM 21, 25.

[7] Def. Motion to Dismiss filed 5/23/07 at 4, 17 and Declarations 1-3; Def. MOL for reconsideration filed August 19, 2007 at 2 and Declaration 11.

enforcement of the Petition Clause in this case[8] and *Schulz 1*.[9]

Article I, Section 1 of the U.S. Constitution which provides, "All legislative Powers herein granted shall be vested in a Congress of the United States. . . ." was raised in connection with 1) the adoption of Public Law 109-432, which authorized the Treasury Secretary to define "frivolous" and "prescribe a list of specified frivolous positions" and to fine anyone who submits one of those positions, and 2) Treasury Notice 2007-30 which declared as "frivolous" and subject to penalty the enforcement by the People of their Right to Petition the Government for Redress of violations of the Constitution by withholding their money until their grievances are redressed. This constitutional provision was raised in this case.[10]

Article I, Section 2, Clause 3 and Article I, Section 9, Clause 4 of the Constitution provide, "direct Taxes shall be apportioned among the several States. . . ." and "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." These provisions were raised, in connection with the current, un-codified,

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[8] AMD COMP 3, 18; 2d AMD COMP 21, 23; APP BR 6.

[9] Def. Motion to Dismiss filed 5/23/07 at 17 and Declarations 1-3; Def. MOL in Opp. to Summary Judgment filed July 16, 2007 at 4, 7, 17 and Declarations 4-10.

[10] AMD COMP 5; 2d AMD COMP 7; STMT OF FACTS 13-16; APP BR 4; APP REPLY BR 12.

direct, un-apportioned tax on labor, in this case,[11] *We The People*[12] and *Schulz 1*.[13]

Article I, Section 8, Clause 5 and Article I, Section 10, Clause 11 provide, "Congress shall have the power . . . To coin Money, regulate the Value thereof, and of foreign Coin. . . ." and "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts." These provisions, along with the Constitution's prohibition against un-enumerated powers, were raised in connection with Public Law 63-43 (Federal Reserve Act) in this case,[14] *We The People*[15] and *Schulz 1*.[16]

Article I, Section 8, Clause 11 which provides, "The Congress shall have Power . . . To declare War. . . ." was raised, in connection with the passage of Public Law

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[11] AMD COMP 4; 2d AMD COMP 4, 23; STMT OF FACTS 3; APP BR 2,59.61; APP REPLY BR 2, 29.

[12] AMD COMP pages 2-4, 7-11; OPP TO DISM 21, 25.

[13] Def. Motion to Dismiss filed 5/23/07 at 4, 17 and Declarations 1-3; Def. MOL for reconsideration filed August 19, 2007 at 2 and Declaration 11.

[14] AMD COMP 4; 2d AMD COMP 4, 23; STMT OF FACTS 3; APP BR 2, 59, 61; APP REPLY BR 2, 29.

[15] AMD COMP pages 2-4, 7-11; OPP TO DISM 21, 25.

[16] Def. Motion to Dismiss filed 5/23/07 at 4, 17 and Declarations 1-3; Def. MOL for reconsideration filed August 19, 2007 at 2 and Declaration 11.

107-243 (the Iraq Resolution), in this case,[17] *We The People*[18] and *Schulz 1.*[19]

Article I, Section 10, Clause 1, which prohibits the Government from retroactively making "political and legislative" any activity that was not political and legislative when performed, was raised in this case in connection with the IRS auditor who, in 2006 had declared the organization's records detailed, thorough and professional with no inurement and void of any political or legislative activity, was directed by IRS's Lois Lerner in 2008 to revoke the tax exempt status of the organization on "political and legislative grounds" retroactive to 2003, and apply the maximum penalty and interest.[20]

26 U.S.C. 6501 which provides, "the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed," together with Internal Revenue Manual 25.6.22.5.11 require Form 872, Consent to Extend Time To Assess Tax must be signed by the IRS and returned to the taxpayer with a Letter 929 indicating IRS Consent, before the expiration of

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[17] AMD COMP 4; 2d AMD COMP 4, 23; STMT OF FACTS 3; APP BR 2, 59, 61; APP REPLY BR 2, 29.

[18] AMD COMP pages 2-4, 7-11; OPP TO DISM 21, 25.

[19] Def. Motion to Dismiss filed 5/23/07 at 4, 17 and Declarations 1-3; Def. MOL for reconsideration filed August 19, 2007 at 2 and Declaration 11.

[20] 2d AMD COMP 21; STMT OF FACTS 18, 23; APP BR 30, 54; APP REPLY BR 20, 14.

the 3-year statute of limitation, was raised in this case.[21]

26 U.S.C. 6700, which provides for the imposition of a penalty against any person who organizes or participates in the sale of an abusive tax shelter was raised in connection with classification of the Withholding Petition for Redress as an abusive tax shelter in this case,[22] in *We The People*[23] and *Schulz 1.*[24]

26 U.S.C. 6751, which provides, "No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate" was raised in this case in connection with the failure of the IRS Agent making the determination of the penalty against Schulz to obtain the required approval.[25]

There is no federal constitutional or statutory provision that controls in determining the nature of the legal interest which Schulz had in the property of the We The People organization at the time of the

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[21] STMT OF FACTS 16-19; APP BR 5, 8; APP REPLY BR 13-14.

[22] AMD COMP 1, 2-18; 2d AMD COMP 2, 6-25; STMT OF FACTS 9,12,15; APP BR passim; APP REPLY BR 1, 9.

[23] OPP TO DISM 28-31, 40.

[24] Def. Motion to Dismiss filed 5/23/07 at 1, 5-7, 17, 20-22 and throughout Declarations 1-3; Def. MOL in Opp. to Summary Judgment filed July 16, 2007 at 1, 17-19.

[25] 2d AMD COMP 1-2, 10, 23-24; STMT OF FACTS 24-32; APP BR 1, 46-50, 53, 65; APP REPLY BR 17-19.

transaction attacked. New York State's common law controls. Upon discovering Schulz had no financial interest in the organization, the Government raised an alter ego claim. The issue was raised in this case.[26]

INTRODUCTION

This case has two forerunners: *We The People, Schulz, et al. v. United States,* 2005 U.S. Dist. LEXIS 20409 (D.D.C. 2005) *aff'd* 485 F.3d 140 (D.C. Cir., 2007) which, after deciding not to consider the scope and purpose of the Petition Clause, held Government was not obligated to respond to any of the organization's five Petitions for Redress of Grievances, including its Withholding Petition; and *United States v. We The People, Schulz, et al.*, 529 F. Supp. 2d 341 (N.D.N.Y., 2007), *aff'd* 517 F.3d 606 (2d Cir., 2008) (*Schulz 1*), which held the Withholding Petition was false commercial speech, subject to penalty under 26 U.S.C. 6700, while avoiding altogether Defendants' Petition Clause claim and its historical scope and purpose (see below).

Initially, the instant case was about a penalty, the direct result of *Schulz 1* (2008), but it is now a dispute principally about the legitimacy of the preclusive effect given *We The People, et al. v. United States*, 485 F.3d 140 (2007) and *United States v. We The People, et al.*, 517 F.3d 606 (2008) (*Schulz 1*) especially in view of this Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Borough of Duryea v. Guarnieri*,

[26] 2d AMD COMP 1; STMT OF FACTS 23-25, 28; APP BR 1, 8-46; APP REPLY BR 19-32.

564 U.S. 379 (2011) which affirmed the controlling legal principle relied on by Schulz throughout the litigation – the historic and fundamental principles that led to the enumeration of the right to petition in the First Amendment.

Following discovery in this case (there was no hearing or discovery in *Schulz 1*) this case now also involves a dispute about jurisdiction under 26 U.S.C. 6751, culpability under 26 U.S.C. 6700 and statute of limitations/jurisdiction under 26 U.S.C. 6501.

STATEMENT OF THE CASE

At this point, the primary concern is whether this Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011) should intervene on behalf of Schulz to ensure the fullness, fairness and completeness of the litigation.

This case also concerns violations of: 1) 26 U.S.C. 6501, due to the failure of the IRS to timely return to Schulz a signed Form 872 Consent to Extend Time To Assess Penalty; 2) 26 U.S.C. 6751, due to the failure of the IRS Agent who determined the penalty to obtain the written approval of his supervisor; and 3) 26 U.S.C. 6700, due to the IRS's admission of no financial benefit to Schulz from the transaction attacked and the lack of conclusive evidence that the organization was Schulz's alter ego.

I. Historical Practice Should Determine Scope and Purpose of the Petition Clause – *Heller* and *Guarnieri*

In *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011), four years after the D.C. and 2d Circuits elected to avoid the historical record of the Petition Clause in deciding the two forerunners to this case, this court held:

> "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 (2008)." *Guarnieri* at 403.
>
> "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." *Guarnieri* at 388.
>
> "[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 request recognition of new rights and to assert existing rights against the sovereign." *Guarnieri* at 397.
>
> "There is abundant historical evidence that 'Petitions' were directed to the executive and legislative branches of government." *Guarnieri* at 403.
>
> "Petitions to the government assume an added dimension when they seek to advance political, social, or other ideas of interest to the community as a whole. 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." *Guarnieri* at 394.

At all times throughout the petitioning process and the litigation (this case and its two forerunners) the organization and Schulz provided the Executive and the Courts with a written copy of the information that had been guiding them – a thorough, historical review of the origin, line of growth, scope, purposeful objectives and aspirations underlying the Right to Petition the Government for Redress of Grievances, including the following:

Chapter 61 of the Magna Carta of 1215 which 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 Schulz).

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.[27]

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

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

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."**[28]

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."**[29]

In 1776, the Declaration of Independence was adopted by the Continental Congress. The bulk of the document is a listing of 27 grievances the People had against the Government that had been ruling the colonies for 150 years. The final grievance on the list is

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

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

referred to by scholars as the "**capstone grievance,**" the grievance that prevented Redress of the other Grievances, finally 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 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 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.[30]

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[30] 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

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[31] and gained official recognition as a Right in the mid-17th century.[32] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they

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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).

[31] 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.

[32] 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.

received.[33] Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.[34] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[35]

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,[36] the American Colonies,[37] and the first Continental Congress[38] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[39]

The historical record shows the framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the

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

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

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

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

[37] 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).

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

[39] 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.

Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate sections.[40] 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**.[41]

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.[42] In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.[43] Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to

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[40] 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).

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

[42] 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).

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

his attention.[44] This broadening of political participation culminated in the official recognition of the right of Petition in the People themselves.[45]

The People used this newfound Right to question the legality of the government's actions,[46] to present their views on controversial matters,[47] **and to demand that the government, as the creature and servant of the People, be responsive to the popular will.**[48]

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

[45] 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.

[46] 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 Donald L. Smith, *supra* at 41-43.

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

[48] 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.

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and **to rectify government misconduct.**[49]

By the nineteenth century, Petitioning was described as "essential to . . . a free government"[50] – an inherent feature of a republican democracy,[51] 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.[52]

American colonists, who exercised their Right to Petition the King or Parliament,[53] expected the

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

[50] 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).

[51] 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]").

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

[53] See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199;

government to receive **and respond** to their Petitions.[54] **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.**[55]

Frustration with the British government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[56] Members of the First Congress easily defeated this right-of-instruction proposal.[57] 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.**[58]

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

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

[55] 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).

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

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

[58] 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 bring

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.[59]

Congress referred Petitions to committees[60] and even created committees to deal with particular types of Petitions.[61] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report.[62]

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

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

[59] 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)).

[60] 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.

[61] 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).

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

demanded government response and promoted government accountability.

II. The Organization's Petitions Were Proper First Amendment Petitions for Redress

Each of the five Petitions for Redress at issue in this case, including the Withholding Petition, were **proper** Petitions for Redress of violations of the Constitution, each protected by the First Amendment, in that they:

- were serious and documented, not frivolous;
- contained no falsehoods;
- were not absent probable cause;
- had the necessary quality of a dispute;
- came from citizens outside the formal political culture;
- involved legal principles, not political talk;
- were punctilious and dignified, containing both a "direction" and a "prayer" for relief;
- addressed a public, collective grievance with widespread participation and consequences;
- were instruments of deliberation not agitation; and
- provided legal notice seeking substantive Redress to cure the infringement of a right under the Constitution and laws pursuant thereto.

III. The D.C. and 2d Circuits Have Abolished the First Amendment Right to Petition and by Extension the Structure of the Constitution

Between May of 1999 and November of 2002, the organization, together with tens of thousands of other ordinary Americans, sought to exercise their right to hold the Government accountable by petitioning the Government for redress of what they perceived to be violations of the Constitution's prohibition against undeclared wars,[63] unreasonable invasions of privacy,[64] un-enumerated powers,[65] and direct, un-apportioned taxes.[66]

The petitions quoted the Constitution and laws, provided factual evidence of the violations and respectfully, imaginatively and persistently asked the Government of the United States to respond. The Government did not respond, except for an insincere response meant only to end a hunger fast.[67]

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[63] Public Law 107-243 (Iraq Resolution): violation of Art. I, Section 8, Clause 11.

[64] Public Law 107-56 (Patriot Act): violation of Fourth Amendment.

[65] Public Law 63-43 (Federal Reserve Act): an un-enumerated power.

[66] The direct, un-apportioned tax on labor: a violation of Art. I, Section 9, Clause 4.

[67] On July 1, 2001, Schulz, in his individual capacity, embarked on a personal hunger fast until the Government agreed to meet in a public, congressional-style hearing on Capitol Hill to discuss the constitutionality of the direct, unapportioned tax on labor. On July 20, 2001, with the assistance of Rep. Roscoe

On March 15, 2003, the organization petitioned the federal Government for redress of grievances related to the federal policy of forcing companies to withhold taxes from the paychecks of workers. The Tax Withholding Petition alleged the policy violated the Right to Petition itself by preventing the People from peacefully enforcing their Constitutional Rights against a Government stubbornly resistant to their

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Bartlett, the IRS and DOJ agreed to such a congressional-style hearing. The agreed-upon date of the hearing, to be chaired by Rep. Henry Hyde, was September 22-23, 2001. Schulz ended his 20-day hunger fast. The organization hired three licensed and practicing constitutional attorneys to prepare the questions to be asked of the Government at the agreed-upon hearing. However, the events of September 11, 2001 led to Government's cancellation of the congressional-style hearing on Capitol Hill. The organization organized a two-day hearing at the Washington Marriott on February 22-23, 2002, which was public and live-streamed on the Internet, where numerous tax-professionals, including a former IRS Counsel, former IRS Agents and practicing attorneys, CPAs and tax law researchers answered the questions, supporting their answers with factual evidence which was displayed on a large screen for the full audience to see. The New York Times covered the event, describing it in an article published the next day as a "multi-media, technological breakthrough." Following the hearing, Rep. Bartlett mailed a copy of the questions to the DOJ, requesting answers. In April of 2002, DOJ sent a letter advising Rep. Bartlett that the Government would not be responding to the questions, and that for four years the DOJ and the IRS had been attempting, without success, to get Congress to put into law that the issues addressed by the questions were frivolous. Following the hearing at the Marriott, the organization delivered a complete video and transcribed record of the hearing to the executive and various legislative committees in Congress, requesting a response. Each and every member of Congress received a complete video and transcribed record from one or more of their constituents, requesting a response. There was no response.

authority. The Petition also alleged the policy conflicted with nine identified federal Statutes, rules and regulations. The transmittal letter respectfully requested of the Government that it advise the organization if any of the content of the Petition was "faulty or misleading."

Absent a response from the Government, the organization placed the Petition on its website for free download, and members and supporters of the organization from across the country organized 37 free meetings from April 5 through March 27, 2003, where they handed out, for free, a total of 3500 copies of the Petition that they had printed locally; regional IRS and DOJ officials were formally invited to attend the meetings and to let the organization know if anything being said or handed out was faulty or misleading.

While the meetings were underway, the Internal Revenue Service summoned Schulz to provide his books and records and those of the organization as part of what it called an abusive tax shelter investigation under 26 U.S.C. 6700. When asked by the NY Times why it was not responding to the organization's Petition, the IRS publicly admitted it was "responding to the Petitions with enforcement actions."[68]

In 2003, Schulz sued to quash the IRS summonses. Schulz claimed the Tax Withholding Petition was a proper Petition for Redress and that the IRS was retaliating against Schulz and the organization due to their

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[68] New York Times, September 17, 2003.

repeated Petitions for Redress of violations of the Constitution. In 2005, the 2d Circuit Court of Appeals decided, on due process grounds, that Schulz did not have to respond to summonses issued by the IRS in 2003.[69]

In July of 2004, Schulz, representing himself, along with attorney Mark Lane, who was representing the organization and 1450 citizens residing in all 50 States, filed a declaratory judgment action in the D.C. District Court asking the Court to declare if the United States was obligated to provide a meaningful response to the subject Petitions for Redress, and if People had the right to retain their money until their grievances were redressed. The plaintiffs argued they were relying on the historical record of the Right for an affirmative answer to both questions.

The matter reached the Court of Appeals for the D.C. Circuit, where oral arguments were heard on October 6, 2006, but a final decision was not issued until May 7, 2007. During those seven months, Public Law 109-432 was passed and signed into law, Treasury Notice 2007-30 was issued and *United States v. We the People, et al.* (*Schulz 1*) was initiated.

Public Law 109-432, Division A, Part IV, Section 407 authorized the Treasury Secretary to define "frivolous" and prescribe a list of "specified frivolous positions" and to penalize anyone who submits a specified frivolous position in any proceeding before the Treasury Department.

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[69] *Schulz v IRS*, 413 F.3d 297 (2d Cir., 2005).

Treasury Notice 2007-30 was issued in March of 2007. Pursuant to Public Law 109-432, it included a list of "specified frivolous positions." Listed at paragraph 9(b) as a frivolous position is "A taxpayer may withhold payment of taxes or the filing of a tax return until the Service or other government entity responds to a First Amendment petition for redress of grievances."

In April of 2007, the United States sued the We the People organization and Schulz, claiming the Withholding Petition was an abusive tax shelter subject to penalty and its further distribution should be prohibited. *United States v. We The People, et al.,* 529 F. Supp. 2d 341 (N.D.N.Y. 2007), *aff'd* 517 F.3d 606 (2d Cir., 2008) (*Schulz 1*).

On May 8, 2007, the D.C. Court of Appeal decided *We The People, et al. v. United States*, 485 F.3d 140. Citing *Minnesota v. Knight* 465 U.S. 271 (1984) and *Smith v. Arkansas*, 441 U.S. 463 (1979) the Court opined the Government was not obligated to respond to any Petition for Redress of Grievances. **The D.C. Court admitted, however, that the historical record of the Right to Petition was not before this Court during *Smith* and *Knight* and that there is "an emerging consensus of scholars embracing appellant's interpretation of the right to petition" and that it nevertheless felt bound by the ruling in *Minnesota.***

Judge Rogers, in a concurring opinion wrote in relevant part:

> "[T]he Supreme Court precedents in *Smith* and *Knight* govern this case . . . That precedent, however, **does not refer to the historical evidence and we know from the briefs in *Knight* that the historical argument was not presented to the Supreme Court . . . In the context of the First Amendment, the Supreme Court has repeatedly emphasized the significance of historical evidence . . . there is 'an emerging consensus of scholars' embracing appellants' interpretation of the right to petition** . . . the historical context and the underlying purpose have been the hallmarks of the Supreme Court's approach to the First Amendment . . . appellants' emphasis on contemporary historical understanding and practices is consistent with the Supreme Court's traditional interpretative approach to the First Amendment." (citations and quotations omitted) (emphasis added). *We The People* at 144-149.

On August 9, 2007, without ever mentioning the right to Petition and its historical record, but mentioning speech twenty-four times, the Northern District of New York decided *Schulz 1*, deciding the organization's Withholding Petition was forbidden speech subject to penalty under 26 U.S.C. 6700. The District Court prohibited the further distribution of the Petition but did not impose a financial penalty. On February 22, 2008 the 2d Circuit affirmed, 517 F.3d

606 (2d Cir., 2008) "for substantially the reasons set forth in the District Court's decision."

On December 28, 2008, the IRS revoked the organization's tax-exempt status, retroactive to 2003, citing "political and legislative" grounds, and applied a penalty against the organization which with interest is estimated to amount to more than $500,000 today. The IRS auditor who revoked the tax-exempt status and applied the penalty in 2008 is the same auditor who, in 2007 completed a year-long, wide-ranging audit of the organization's books and records and declared the records "detailed, thorough and professional and no inurement"; but rather than close his audit he paused the audit, pending the outcome of *Schulz 1*, admitting he did so at the direction of IRS's Lois Lerner. The IRS admitted it violated 26 U.S.C. 6501 and the Internal Revenue Manual by not providing Schulz in 2007 with a signed Form 872 Consent to Extend Time to Assess a Penalty until long after the 36 month statute of limitations had tolled.[70]

Three years later, in 2011, this court issued its decision in *Borough of Duryea v. Guarnieri*, 564 U.S. 379.

However, in 2015, citing *Schulz 1,* the IRS issued a Notice of Penalty pursuant to 26 U.S.C. 6700 against Schulz personally in the amount of $225,000. This case followed.

Schulz moved early to relitigate the forerunners on the ground that absent consideration of the historical

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[70] STMT OF FACTS 18-19.

record of the Petition Clause they were not fully, fairly or completely litigated. The motion was denied.

During discovery, Schulz proved he not only never received any compensation from the organization there was more than $110,000 in organization-related expenses between 2000 and 2008 that Schulz had paid, had not been reimbursed and had forgiven. Following the submission of that evidence the Government shifted its penalty argument, arguing the organization was Schulz's alter ego arguing Schulz was therefore personally responsible for the penalty and, presumably, the penalty imposed on the organization in 2008 (above).

The Government's alter ego claim was built on cherry-picked inferences – i.e., logical deductions based on premises assumed to be true and relevant, while Schulz's defense was built on material facts that were not in genuine dispute, including the following:

- The We The People organization ("WTP") and Schulz observed the corporate formalities, e.g. frequent committee and director meetings with detailed operational and financial reports, maintenance of corporate records, and a constant stream of written, extraordinarily detailed, updates reporting on all of WTP's day-to-day activities.
- Schulz's control, as the person legally and formally charged with running the day-to-day activities of WTP, did not exceed that which was authorized by WTP's official By-Laws.

- Neither WTP nor Schulz ever expected to earn any gross income from the Withholding Petition and never did.
- WTP's and Schulz's personal finances were never blended thoroughly into a harmonious whole or pooled together to reduce risk or cost – i.e., "commingled."
- There were no loans, either unsecured, interest free or otherwise from WTP to Schulz or from Schulz to WTP.
- WTP never paid Schulz a salary or compensated him in any way for his time.
- In keeping with WTP's entries in its official IRS Form 1023, WTP conducted its business from a fully equipped, 2,000 square foot office space in Schulz's home, until such time as WTP was able to operate from its own "citizen vigilance center."
- WTP never compensated Schulz for its use of his home and Schulz never took a deduction on his taxes for turning the space over to WTP for its use.
- When able to do so, WTP reimbursed Schulz a partial amount of his out-of-pocket expenses incurred as a result of WTP's use of his electrically-heated basement office space and his telephone lines, as authorized by WTP's Board of Directors.
- There was more than $110,000 in other WTP-related expenses paid by Schulz which were unreimbursed, forgiven and never the subject

of any agreement, written or otherwise, between WTP and Schulz.

- WTP was never undercapitalized relative to its reasonable, anticipated risks of business.
- WTP was not being used as a "shell" by Schulz to enrich himself or to advance his own purely personal interests at the expense of WTP, the government or any other party. He had no business of his own.
- The facts prove an absence of both an **indirect** and **direct** personal, financial or economic benefit derived or to be derived by Schulz from the activity.

During discovery, the IRS Agent who made the determination to penalize Schulz was unable to prove he had satisfied the jurisdictional requirements of 26 U.S.C. 6751.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari because of the important sovereign interests at stake – 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.

I. This is a First Impression Case of Exceptional Constitutional Importance.

This litigation equates to a first-impression case. No Court has declared the Rights of the People and the obligations of the Government under the Petition Clause.

The First Amendment is arguably the single-most important sentence in the history or our Nation. Essential, unalienable, individual Rights were guaranteed by that sentence, including the right of the People to hold the government accountable to the rest of the Constitution by petitioning for redress of its violations. A decision denying that right, or even placing limitations upon it, is of exceptional constitutional importance.

It is a settled and invariable principle, that every right when withheld must have a remedy, and every injury its proper redress. See Blackstone, *Commentaries on the Laws of England* 23 and *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162-163 (1803).

Without the ability to hold the government accountable to existing laws by virtue of the Petition Clause the structure of the Constitution is destroyed.

If the American People are truly free, with natural, individual Rights endowed by the Creator rather than privileges granted by the State, and if those Rights are unalienable, and if the government is truly a servant government established by the sovereign People to

secure those Rights, and if the power of the government to act is strictly limited by the original meaning of the words of the U.S. Constitution, and if the People have evidence that government officials in the political branches have stepped outside the boundaries drawn around their power and are acting in spite of constitutional prohibitions, and if the People have intelligently, rationally, professionally, non-violently and repeatedly Petitioned those officials with proper statements of grievances and proper prayers for relief, and if the government officials have decided to ignore the People's Petitions, fail to justify their constitutionally tortious behavior and refuse to be held accountable to the Constitution and Bill of Rights, the Sovereign People have a natural, lawful Right to peacefully defend the Constitution and enforce their individual Rights by, for example, retaining money wanted by those government officials until their grievances are redressed, and to exercise such Right without retaliation by the government.

No Court has declared the Rights of the People and the obligations of the Government under the Petition Clause. To do so now would be a public service of great importance. It is much needed.

II. The D.C. and 2d Circuits Prohibited the Sovereign People From Defending Their Law By Abolishing Their Right to Petition for Redress

As demonstrated above and without intervention by this Court, it is now the law of the land that

the Right of the People to hold their Government accountable to existing law via the Petition Clause has been abolished by the Government.

By virtue of Public Law 109-432, the Legislative branch has given the Executive the power to make law.

By virtue of Public Law 109-432 and Treasury Notice 2007-30, the Executive branch has declared "frivolous" and subject to penalty the position that, "A taxpayer may withhold payment of taxes or the filing of a tax return until the Service or other government entity responds to a First Amendment petition for redress of grievances."

By virtue of *We The People* and *Schulz 1*, the D.C. and 2d Circuits have declared Government is not obligated to respond, not only to petitions by public servants in their official capacities seeking to influence **lawmaking**, as in *Smith* and *Knight,* but also to petitions by ordinary, non-aligned citizens seeking to hold government accountable when **lawbreaking**, and those who seek "redress before taxes" are subject to penalty.

III. History Repeats Itself.

History repeats itself. This aphorism is rich in meaning and relevant here.

"Our repeated petitions are being answered only with repeated injury" declared the founding fathers, referring to the thirteen years prior to the Declaration

of Independence, as they chose separation over reconciliation.

If left undisturbed, this case, together with its two forerunners would remove the linchpin of the constitutional system of checks and balances – the cornerstone of our system of governance.

If left undisturbed, this litigation would eviscerate the legal and functional substance of the Bill of Rights – i.e., the Right of the People to peacefully hold the Government accountable to the war, tax, privacy, enumerated powers and other provisions of the Constitution by denying the People their Right to a response from the Government to their proper Petitions for a Redress of constitutional torts and by denying the People their Right to peacefully enforce the Right by retaining their money until their Grievances are redressed.

After all, the Petition is to the individual, the minority and the Constitutional Republic, what the ballot is to the majority and a pure Democracy. Stripped of its original intent and power, the Petition Clause becomes nothing more than a redundant expression clause, leaving the People powerless and the Constitution ineffective.

As Thomas Jefferson warned, "No government can continue good but under the control of the People."[71]

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[71] Thomas Jefferson to John Adams, 1819.

CONCLUSION

The Court should grant the petition, vacate the judgment below and the judgments in the two forerunners, and remand to the D.C. Circuit in light of *Heller* and *Guarnieri*.

Respectfully submitted,

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