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March 12, 2010

Hon. Richard C. Wesley, Judge
United States Court of Appeals
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: Post Argument Communication
Schulz v Federal Reserve, et al., Case No. 08-4810 and 09-1229

Dear Judge Wesley:

During yesterday's argument I asked the Court to put out of view the line of Supreme Court cases on standing that the District Court relied on in dismissing the instant case for "lack of standing," and to consider relying instead on the last ten words of the First Amendment – the Petition Clause, to decide the question of my standing to maintain the instant constitutional challenge.

I argued yesterday, that the First Amendment Right to Petition for a Redress of Grievances was not argued or considered in said line of Supreme Court cases on standing.

I argued that under the First Amendment's guarantee of my Right to Petition the Government for a Redress of Grievances, the Judiciary, is OBLIGATED to respond on the merits of my Complaint.

I argued, as I argued in the Court below and in the Brief to this Court, that "this lawsuit is a Petition for Redress (remedy) of a Constitutional tort, and that no act of Congress can, in equity or in law, bar the Court from determining the merits of Plaintiff's complaint."¹

I argued that since no court in our history had declared the meaning of the last ten words of the First Amendment, the Court should determine the question of my standing based on the "Framers' Intent" approach to interpreting constitutional provisions, that is, based on the historical context and purpose of the prohibition (the "original intent").

¹ See APPENDIX ON BEHALF OF APPELLANT, pages A-20, A-52a, A-81 and A-117. See also BRIEF ON BEHALF OF APPELLANT, page 14.

I argued that I had undertaken that research, but I misspoke when I said the full results of that research was in the record of this case. It isn't.

What is in the record of this case is my argument:

“Lacking any court ruling declaring the full contours of the meaning of the Petition Clause as it applies to ordinary natural citizens seeking Redress against their Government for a constitutional torts, and taking into account the plain language of and the **Framers' intent behind the words of the Petition Clause**, the 791 years of history documenting the evolution of Liberty from Runnymede to Philadelphia, and the complete absence of any case law in opposition to Plaintiff's interpretation of the Constitution, the ends of Justice and Liberty require that deference, and the presumption that those fundamental Rights exist as argued by Plaintiff must be provided to Plaintiff who has claimed and is exercising those Rights. The individual's Right, through the Petition Clause of the First Amendment, to hold any branch of the government accountable to the Constitution, is the 'capstone' Right, the period at the end of the sentence on Liberty's evolution, for 'law without it, is law without justice.'”²

The historical context and purpose of the Petition Clause is in the record of an action for declaratory relief decided in 2007 by the United States Court of Appeals for the District of Columbia, *We The People v. United States*, Case No. 05-5359 (May 8, 2007). The case number at the DC District Court was 04-1211; Docket Number 24 is Plaintiff's Memorandum of Law in Opposition to the Government's Motion to Dismiss. Exhibit A, attached to this letter, is the historical evidence and argument taken from said Memorandum of Law, pages 9-20. While Plaintiffs in *We The People* were arguing the obligation of officials in the Executive and Legislative Branches to respond to Petitions for Redress, the historical evidence and argument applies also to the Judiciary's obligation to reach the merits on constitutional grievances such as those that gave rise to the instant case.

In *We The People* the DC Circuit Court decided that in light of two decisions by the Supreme Court, the Government does not have to listen or respond to Petitions for Redress of Grievances. The two SCOTUS decisions were *Smith v Ark. State*, 441 U.S. 463 (1979) and *Minnesota State v Knight*, 465 U.S. 217 (1984).

However, the Court's attention is invited to the fact that not only were the facts in *We The People* vastly different from the facts in the *Smith* and *Minnesota* cases, but as Judge Rogers wrote in her separate nine page opinion in *We The People*: 1) the DC Circuit Court **did not consider Plaintiffs' historical evidence and legal argument**; and 2) nothing similar to Plaintiffs' historical evidence and legal argument was before SCOTUS in *Smith* or *Minnesota*.

It is arguable that the DC Court erred in deciding the constitutional meaning of the Petition Clause without taking Plaintiffs' original intent argument into consideration. The DC Court's ruling is

² See APPENDIX ON BEHALF OF APPELLANT, pages A-23, A-55, A-84 and A-120. See also BRIEF ON BEHALF OF APPELLANT, page 16-17.

particularly difficult for Plaintiff to accept in view of what Circuit Judge Rodgers had to say in her separate opinion, to wit:

“That precedent [*Smith and Knight*], 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...The Supreme Court’s interpretation of the Constitution has been informed by the understanding that ...it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth...the Supreme Court has rejected a pure textual approach in favor of an analysis that accords weight to the historical context and the underlying purpose of the clause at issue...In the context of the First Amendment, the Supreme Court has repeatedly emphasized the significance of historical evidence...Appellants point to a long history of petitioning and the importance of the practice in England, the American Colonies, and the United States until the 1830’s as suggesting that the Right to petition was commonly understood at the time the First Amendment was proposed and ratified to include duties of consideration and response...Even those who take a different view, based on a redefinition of the question and differences between English and American governments, acknowledge that there is ‘an emerging consensus of scholars’ embracing appellants’ interpretation of the right to petition...the historical context and underlying purpose have been the hallmarks of the Supreme Court’s approach to the First Amendment...Of course, this court cannot know whether the traditional historical analysis would have resonance with the Supreme Court in a Petition Clause claim such as appellants have brought...No doubt it would present an interesting question. For now it suffices to observe that appellants’ emphasis on contemporary historical understanding and practices is consistent with the Supreme Court’s traditional interpretive approach to the First Amendment.” (footnotes and citations omitted).

CONGRESS AGREES

Congress obviously agrees with Plaintiffs’ interpretation of the meaning of the First Amendment’s Petition Clause, i.e., that the Judiciary is obligated to reach the merits of a constitutional challenge.

Plaintiff argued in the Court below (see Appendix, page A-114) and on page 2 of his BRIEF ON BEHALF OF APPELLANT, Congress specifically authorized permanent and preliminary injunctions and other forms of equitable relief against Defendants to remedy violations of the Constitution.

Consistent with the requirements of the First Amendment, Section 119(a)(2)(A) of the final Emergency Economic Stabilization Act of 2008 authorizes injunctions for violations of the Constitution:

“INJUNCTION.- No injunction or other form of equitable relief shall be issued against the Secretary for actions pursuant to section 101, 102, 106, and 109, **other than to remedy a violation of the Constitution.**”

The Act directs Courts to expedite requests for Preliminary Injunctions. EESA, Section 119(a)(2)(C). The Act directs Courts to expedite requests for Permanent Injunctions and wherever possible to consolidate trial on the merits with any hearing on a request for a preliminary injunction. EESA Section 119(a)(2)(C).The Act provides for an automatic stay of any injunction for 3 days. EESA Section 119(a)(2)(D).

Plaintiff respectfully requests the Court consider the contemporaneous historical meaning of the last ten words of the First Amendment, and Congress' statutory provision expressly authorizing challenges to the constitutionality of the EESA within the Emergency Economic Stabilization Act, itself, in deciding the question of Plaintiffs' standing to maintain the instant case, taking into consideration Plaintiffs' historical evidence and argument.

Respectfully submitted,

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EXHIBIT A

ORIGINAL INTENT OF THE LAST TEN WORDS OF THE FIRST AMENDMENT

NOTE: The following was copied word for word from Plaintiffs' Memorandum of Law, Docket 24, pages 9-20, *We The People v. United States*, DC District Court Case Number 04-1211.

II. PLAINTIFFS HAVE STATED A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Contrary to Defendants' allegation, plaintiffs have stated a valid claim upon which relief can be granted: the Right To Petition is a distinct substantive Right; government IS obligated to respond; popular sovereignty depends upon the Peoples' Right of Response and was shaped by government's Response to Petitions for Redress of Grievances.³

Plaintiffs have stated a claim upon which relief may be granted. The government IS obligated to respond to Petitions for Redress of Grievances, especially when, as here, the oppressions are *ultra vires*, caused by unconstitutional government acts-- constitutional torts. This is not changed by the fact that the Petition Clause lacks an affirmative statement that government shall respond to Petitions for Redress of Grievances.

³ 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 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); the arguments in this Memorandum draw heavily from these Law Review articles, particularly Harvard Law Review article and the documents cited therein.

While the Court may or may not be able to order the Executive and the Legislative to respond to Plaintiffs' Petitions, the court is able to declare that Plaintiffs have a Right to a response, that non-responsive responses, including silence, are repugnant to the Petition Clause and the equivalent to admission of fraud, and that the People have an unalienable Right to peaceably enforce their Rights, without disturbing the public tranquility, by retaining their money until their grievances are redressed, if it should come to that.

While the 26th Amendment guarantees all citizens above the age of 18 the Right to Vote, it does not contain an affirmative statement that the government shall count the votes. The enumeration in the Constitution of the Right to Vote or to Petition the government for Redress of Grievances shall not be construed to deny or disparage the Right to have the Votes counted or the Right to a response to Petitions for Redress of Grievances.

This is a first-impression case; the courts have not clearly delineated the contours of the substantive Right to Petition. "It cannot be presumed, that any clause in the Constitution is intended to be without effect." Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803).

The People are entitled to a responsive response from the Court – that is, a declaration of the People's Rights under the Petition Clause.

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, originated in England in the 11th century⁴ and gained recognition as a Right in the mid 17th century.⁵ Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.⁶ Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.⁷ Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.⁸

In addition, 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,⁹ the American Colonies,¹⁰ and the first Continental Congress¹¹ gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.¹²

⁴ 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.

⁵ 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.

⁶ See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.

⁷ See Smith, *supra* n.4, at 1165-67.

⁸ See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)

⁹ See Smith, *supra* n4, at 1165.

¹⁰ 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).

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate sections.¹³ 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 inherent in the People that should be specifically protected.¹⁴

The zone of interest to be protected here is government accountability through citizen participation. Petitioning government for Redress of Grievances has played a key role in the development and exercise of popular sovereignty throughout British and American history.¹⁵ In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.¹⁶ Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.¹⁷ This broadening of political participation culminated in the official recognition of the right of Petition in the People themselves.¹⁸

The People used this newfound Right to question the legality of the government’s actions,¹⁹ to present their views on controversial matters,²⁰ and to demand that the government, as the servant of the People, be responsive to the popular will.²¹

In the American colonies, disenfranchised groups could use Petitions to seek government accountability for their concerns and to rectify government misconduct.²²

¹¹ See *id.* at 464 n.52.

¹² 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* n6, at 115-16.

¹³ 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).

¹⁴ See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).

¹⁵ 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).

¹⁶ The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS’ CONSTITUTION, *supra* n.5, at 187.

¹⁷ See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS’ CONSTITUTION, *supra* n5 at 187-88.

¹⁸ 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* n5 at 188-89.

¹⁹ For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Smith, *supra* n4, at 1160-62. James II’s attempt to punish the bishops for this Petition led to the Glorious Revolution and to the enactment of the Bill of Rights. See Smith, *supra* n15 at 41-43.

²⁰ See Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).

²¹ 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 Smith, *supra* n4, at 1163-64.

By the nineteenth century, Petitioning was described as “essential to ... a free government”²³ – an inherent feature of a republican democracy,²⁴ and one of the chief means of enhancing government accountability through the participation of citizens.

In addition, this interest in government accountability was understood to demand government response to petitions.²⁵

American colonists, who exercised their Right to Petition the King or Parliament,²⁶ expected the government to receive and respond to their Petitions.²⁷ The King’s persistent refusal to answer the colonists’ grievances outraged the colonists and as the “capstone” grievance, was the most significant factor that led to the American Revolution.²⁸

Frustration with the British government led the Framers to consider incorporating a people’s right to “instruct their Representatives” in the First Amendment.²⁹ Members of the First Congress easily defeated this right-of-instruction proposal.³⁰ Some discretion to reject some petitions, 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.³¹

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.³²

²² See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

²³ 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).

²⁴ 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]”).

²⁵ See Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).

²⁶ See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS’ CONSTITUTION, *supra* n5 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), reprinted in *id.* at 198.

²⁷ See Frederick, *supra* n7 at 115-116.

²⁸ See THE DECLARATION OF INDEPENDENCE para. 30 (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS’ CONSTITUTION, *supra* n5 at 199; Lee A. Strimbeck, The Right to Petition, 55 W. VA. L. REV. 275, 277 (1954).

²⁹ See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.

³⁰ The vote was 10-41 in the House and 2-14 in the Senate. See *id.* at 1105, 1148.

³¹ See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n15, 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 non-binding instructions to Congress’s attention) (statement of Rep. James Madison).

³² 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)).

Congress referred Petitions to committees³³ and even created committees to deal with particular types of Petitions.³⁴ Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report.³⁵

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

The Court has characterized the interest underlying the Petition Right broadly as an interest in self-government. McDonald v. Smith, 472 U.S. 479, 483 (1985).

The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the government consider and respond to their Petitions.

Petitioning the government for a Redress of Grievances is the only non-violent way the People have to hold their servant government accountable to its primary role of protecting the People's individual, unalienable Rights to Life, Liberty, Property and the Pursuit of Happiness. The Petition is for the individual to hold government accountable to the Constitution, the Bill of Rights and to the protection, preservation and enhancement of **individual** Rights, Liberties and Freedoms. If the servant government of the People is not obligated to listen and honestly respond to the citizen's Petition for Redress, individual Rights are at risk of a take-over by the servant of the majority.

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. The ratifying states also shared this understanding of the Petition Right as separate from the other First Amendment Rights.

The zone of interests that are uniquely served by Petitioning are all individual Rights, enumerated and un-enumerated. Without the servant government's obligation to respond to Petitions for Redress of Grievances, the People have no non-violent way to enforce their Rights against government tyranny.

Defendants cite the following three cases in support of their motion: Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915); Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979); Minnesota State Board For Community Colleges v. Knight et al., 465 U.S. 271 (1984) (hereinafter "Knight").

In fact, none of the cases cited by Defendants is on point, much less dispositive. The facts and circumstances are entirely different. The cases are easily put out of view.

The instant case deals with the People's ability to use the Petition Clause to hold the Executive and Legislative branches of the federal government directly accountable to the already

³³ 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.

³⁴ 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).

³⁵ See Higginson, n34 at 157.

adopted, bedrock and inviolate fundamental Rules of governmental conduct laid out in the ultimate rule book – the federal Constitution: the war powers clauses, the tax clauses, the money and debt-limiting clauses and the “privacy” clauses.

On the other hand, the cases relied on by Defendants deal with public policymaking by units of local and state government -- the adoption of public acts, statutes, general laws, regulations, resolutions, ordinances and the like – rules designed and adopted by government to govern the conduct of the People – and whether the proper state machinery and constitutional safeguards (such as due process, and free speech) were being breached, either in the adoption of the rule or in its application.

(Note: The original brief continues)