UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	**Case No. 1:07-CV-0352 TJM/RFT**
Plaintiff	)	
	)	
v.	)	
	)	
ROBERT L. SCHULZ;	)	
WE THE PEOPLE FOUNDATION FOR	)	**Date: July 27, 2007**
CONSTITUTIONAL EDUCATION, INC.;	)	**Time: 10:00 A.M.**
WE THE PEOPLE CONGRESS, INC.	)	**Ctrm:**
	)	
Defendants	)	

DEFENDANTS' RESPONSE TO STATEMENT OF MATERIAL FACTS AND ADDITIONAL MATERIAL FACTS THAT ARE IN DISPUTE

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1. Deny.

Only one of the two entities, We The People Foundation for Constitutional Education, Inc., ("WTP Foundation") was organized by Defendant Robert Schulz ("Schulz") as a 501(c) 3 research and educational foundation. The other entity, We The People Congress ("WTP Congress") was organized by Schulz as a 501(c) 4 civic/political action organization. See Schulz Decl. #3 par 44, Exh. E.

2. Deny.

Neither Schulz nor the WTP Foundation or the WTP Congress have ever been in business for the purpose of marketing any products or services, much less a tax fraud scheme. The corporations are not-for-profit entities and recognized as such by the IRS. Defendants have no "customers," defined in Black's Law Dictionary, Fifth Edition as "One who regularly or

repeatedly makes purchases of, or has business dealings with, a tradesman or business (citations omitted). Ordinarily, one who has had repeated business dealings with another."

By citing and relying on *United States v Boos* (Pltf fn.1), the Government has apparently, out of ignorance, confused the WTP Foundation and the WTP Congress with another organization known simply as "We the People." The We the People organization referred to throughout *Boos* is unknown to Defendants and, according to *Boos*, was in existence in 1993, years before Schulz incorporated the WTP Foundation and the WTP Congress (1997).

The other references in Government footnote 1 refer to Schulz's March 15, 2003 letter to the Government, the content of the so-called "Blue Folder," and Schulz's 2003 Operation Stop Withholding speaking schedule that included meetings in 37 municipalities during which Schulz distributed 3500 copies of the Blue Folder, free of charge. See, for instance, Schulz Decl. 1, Exhibit C, which is a copy of the initial website article about WTP's campaign to stop withholding and the Blue Folder. It clearly makes the entire content of the Blue Folder available free of charge. See also Schulz Declaration #5, Exhibits A-M.

As plainly stated in the March 15, 2003 letter itself, and as argued in Defendants' pleadings, these materials were an outgrowth to the process of Petitioning the United States for a Redress of Grievances relating to violations by the United States of the war, tax, money and privacy clauses of the Constitution, not part of any tax fraud scheme. See Schulz Decl. #1 (par 3-17, Exhs.A-I), and Schulz Decl. #2 (par 3-92, Exhs. A-ZZZ, particularly par 75-75, Exhs. EEE-GGG.

3. <u>Deny</u>.

"Legal termination of Tax Withholding For Companies, Workers and Independent Contractors" is neither a tax-fraud scheme, nor is it marketed.

"Legal termination of Tax Withholding For Companies, Workers and Independent Contractors" is the label Schulz placed on what the United States is calling an abusive tax shelter and what Defendants have referred to in their pleadings as the "Blue Folder."

Defendants did not "market" the Blue Folder, nor does the content of the Blue Folder constitute a "tax-fraud scheme". Rather, the Folder contains speech, (albeit highly offensive to the government,) integral to the claim and exercise of protected First Amendment Rights.

The meeting halls where meetings were held in 2003 to distribute the Blue Folders were not markets set up for the selling and buying of the Blue Folders – **the Blue Folders were given away at no cost.** No money changed hands for the Folders. Also, Defendants deny their website has been a market for the selling and buying of the Blue Folder – the Folders are given away on the web site. See Schulz Declaration #1 (par 3-17 and Exhs. A-I), and Schulz Declaration #5, Exhibits A-M).

As argued in Defendants' pleadings, these materials were distributed free of charge, except for a nominal donation of $20 from anyone who for any reason could not download and print the material from the website where it was posted for everyone to download and print free of charge. The $20 donation was to cover the cost of copying and mailing the Blue Folder with its voluminous contents. As argued in Schulz's pleadings, anyone not able to afford the recommended $20 donation were noticed to let the organization know and the organization would waive the donation for copying and mailing the Blue Folder. See Schulz Declaration #1 (par 3-17 and Exhs. A-I), and Schulz Declaration #5, Exhibits A-M).

4. <u>Deny</u>.

Defendants have never provided "tax evasion materials," nor does the Blue Folder "solicit sales of other products."

Rather, as the March 15, 2003 letter to the United States says (Schulz Decl. #4, par 12 Exh. I), by participating in Operation Stop Withholding, Defendants, in distributing the Blue Folders, and those individuals who may have used the Forms in the Blue Folder to assist them in terminating withholding were all participating in the process of Petitioning the United States for Redress of various constitutional torts.

For instance, the Blue Folder has always included a copy of the STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX, which corresponded to the 538 questions that have not been answered even though they were included in the Petition for Redress served on the United States on March 16, 2002 (Schulz Decl. # 4, par. 6 and Exh. C) and were based entirely on the answers provided by tax professionals under oath at the Truth in Taxation Hearing (Schulz Decl. #4, par. 7 and Exh. D).

Schulz has never admitted to "having provided over 3,500 copies of a "tax termination package" in exchange for a $20 fee."

First of all, the words "tax termination package" are nowhere to be found in the Blue Folder or on the website's articles about the Blue Folder. The United States has admitted this. (Brief at 19).

In addition, Schulz has repeatedly said in his pleadings that he handed out the 3,500 copies **for free** at 37 meetings in 2003 and that he put the entire contents of the material on the website for anyone to read, download and copy, without charge. In addition, Schulz has repeatedly said in his pleadings that if someone could not, for any reason, access the material from the website and wanted Schulz to mail a copy of all the material, Schulz would copy and mail the material, asking for a nominal donation of $20 to cover the cost of copying and mailing the voluminous material. Finally, Schulz has repeatedly said in his pleadings that if anyone

wanted Schulz to copy and mail the material but could not afford to send a donation, Schulz would send the material anyway. See Schulz Declaration #1 (par 3-17 and Exhs. A-I), and Schulz Declaration #5, Exhibits A-M).

Everything Defendants have been engaged in since 1999 has been directly related to Defendants' efforts to obtain a response from the Government to Defendants' Petitions for Redress of Grievances and to "institutionalize citizen vigilance" of Government's actions (i.e., comparing Government's actions with the requirements of the Constitution and Petitioning the Government for a Redress of constitutional torts). Schulz Decl. #2 par 3-92, Exhs. A-ZZZ.

For educational purposes only, Defendants make copies of their work available to People. In doing so, Defendant's policy has always been to make the educational product available to anyone and everyone free of charge whenever possible by posting it on the website for anyone to see and download. Where that is not possible, as with very large electronic files such as the record of the two-day Citizen's Truth in Taxation Hearing held in Washington DC in February of 2002, or Video-tape records of our conferences at the National Press Club in DC, or the 400 MB "Analysis of the Federal Income Tax", Defendants request a donation to cover their costs of preparing and shipping the material, **never to make a profit or for economic gain**. In addition, Defendants' policy has always been to provide its material to anyone, free of charge, if the person simply tells Defendants he/she can't download the material and does not have the money for a donation.

The Government's averred statements of fact claiming that Schulz sold thousands of copies of the Blue Folder, and further admitted to such, are patently inaccurate and appear to have been made to solely to deceive the Court in an attempt to paint Defendants with a commercial motive. Schulz Declaration #5, Exhibits A-M.

5. <u>Deny</u>.

Defendants' Blue Folder is not a tax evasion scam. Nor does it offer help to people to "opt out" of paying taxes. The Blue Folder clearly instructs workers and the companies that they can legally "opt out" of **withholding,** not **taxes**. These are two entirely separate things. The United States admits the Blue Folder is labeled "Legal Termination of Tax **Withholding** For Companies, Workers and Independent Contractors," and that the Blue Folder is part of Defendants' "Operation Stop **Withholding**." (Defts emphasis). Gordon decl., par. 10.

The Blue Folder offers information on how to **legally** stop wage **withholding** based on black letter law. For instance, the following sections of the law are relied on and cited throughout the materials in the Blue Folder. Operation Stop Withholding rests squarely and primarily on the following sections of the law; all other arguments in the Blue Folder are less relevant, although believed to be accurate and included in the Blue Folder as additional statements of fact and belief that the United States has refused to respond to, and included in the material to be subjected to a "rigorous review" by the workers and the Entities and their tax professionals, including CPA's, attorneys and accountants.

In fact, the truth is, the "crux" of Defendant's offensive speech is not that "participants" can "opt-out" of "paying taxes", but rather that workers can exercise their Rights as explicitly provided by U.S. law and legally terminate their **voluntary** wage withholding agreements (*See* 26 USC 3402(p)-1 below) and legally work without such an agreement. Furthermore, in no event has any such "participant" ever received Defendants' personal assistance in exercising such Rights. Schulz Decl. #6, Exhibit A, par. 2p, WTP Form 11; Gordon Decl. Exhibit 27, Item 2, Gordon Decl. Exh. 8.

"**26 CFR Section 31.3402(p)-1 Voluntary Withholding Agreements.**

(a) *In General.* An employee and his employer **may** enter into an agreement under section 3402(b) to provide for the withholding of income tax …

(b) *Form and duration of agreement*…an employee who **desires** to enter into an agreement under section 3402 (p) shall furnish his employer with Form W-4 (withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for withholding….

*(d)(iii)(2)…***either the employer or the employee may terminate the agreement prior to the end of such period by furnishing a signed written notice to the other**…" (Emphasis added by Defendants).

What Defendants say in the Blue Folder about the 16th Amendment and the liability of most Americans to pay an un-apportioned tax on their labor is not false. Those statements regarding the "16th Amendment," "liability" and "Section 861" were based on the STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX, which STATEMENT was included in the Folder. Those 538 statements of fact and belief directly corresponded to the 538 questions that have not been answered by the United States even though they were included in the Petition to the United States for Redress of Grievances that was served on the United States on March 16, 2002 (Schulz Decl. # 4, par. 6 and Exh. C); they are based entirely on the answers provided by tax professionals under oath at the Truth in Taxation Hearing. Schulz Decl. #4, par. 7 and Exh. D, Transcript. See also paragraph 8 below.

The questions/facts regarding the ratification of the 16th Amendment are included in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the "Sixth Belief", paragraphs 1-119. Nowhere in American history or jurisprudence have said questions been answered except by Bill Benson in his two volume research report, "The Law That Never Was" and at the two-day Citizens' Truth in Taxation Hearing in Washington DC on February 27-28, 2002 by a panel of experts including constitutional attorney Lowell Becraft, former IRS Special Agent Joseph Banister and Bill Benson. Nowhere in American jurisprudence have said facts been refuted.

The questions/facts regarding “Section 861” are found in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the “Ninth Belief”, paragraphs 1-16. Nowhere in American history or jurisprudence have said questions been answered except by Larken Rose in his research report, “Taxable Income.” (Schulz Decl #10, Exhibit A). Nowhere in American jurisprudence have said facts been formally and specifically been refuted.

The questions/facts regarding “Liability” are found in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the “Second Belief”, paragraphs 1-82, and under the “Third Belief,” paragraphs 1-45, and under the “Fourth Belief,” paragraphs 1-23, and under the “Seventh Belief,” paragraphs 1-42, and under the “Eighth Belief,” paragraphs 1-23, and under the “Tenth Belief,” paragraphs 1-24. Nowhere in American history or jurisprudence have said questions been answered, except by various tax professionals at the Citizens’ Truth in Taxation Hearing in Washington DC on February 27-28, 2002. The United States has refused to answer said questions.

The Blue Folder is pure political speech and is inextricably linked to Defendants’ First Amendment Petitions for Redress of Grievances. See Schulz Decl. #1 par 3-17, Exhs.A-I., Schulz Decl. #2 par 3-92, Exhs. A-ZZZ and Schulz Decl. #3 par 3-93, Exhs A-Z.

6. <u>Deny</u>.

Schulz has not admitted to adopting any frivolous theories -- to the contrary, Schulz and thousands of others have repeatedly asked the Government to officially answer the questions regarding such "theories" in their First Amendment Petitions for Redress. The questions/facts presented by Defendants in the Blue Folder come from established tax professionals, including currently licensed attorneys, and certainly do not rise to the level of frivolity. If anything, it is the

Government's well-worn, one-size-fits-all retort that virtually any (and every) potent legal argument put forth questioning the Government's authority to impose an income tax upon average Americans be characterized as "frivolous," is itself frivolous and should not be entertained by this Court. See paragraph 8 below.

Contrary to the assertion by the United States, Bill Benson was not subject to criminal sanctions for raising his questions regarding the ratification of the 16th Amendment. In fact, Mr. Benson was prevented from entering into the record and showing his jury his evidence regarding the fraudulent ratification of the 16th Amendment. *U.S. v. Benson*, 67 F.3d 641 (7th Cir. 1995).

Defendants do not have “customers” and are not in business to “sell” anything. Defendants ask workers and companies to subject the contents of a Blue Folder to a “rigorous review” by their tax professionals (CPAs, attorneys, accountants, etc.) for the purpose of determining accuracy. Schulz Decl #6, Exh. A, par. 2p,form 11; Gordon Decl. Exh 27, Item 2.

With respect to *In re Becraft* proffered by Plaintiffs as factual evidence of frivolity, the 9th Circuit Court of Appeals conclusion regarding the 16th Amendment flies in the face of the fact that numerous (and <u>never overturned</u>) Supreme Court decisions hold the direct opposite of that cited by the Plaintiffs in Footnote 6. Specifically, the Supreme Court has ruled repeatedly that "the provisions of the 16th Amendment conferred no new power of taxation" (*Stanton v. Baltic Mining*, 240 US 103 (1916)) and that the income tax is constitutional solely because it is an *indirect excise* tax, and therefore properly not subject to apportionment (*Brushaber v. Union Pacific R.R.*, 240 US 1 (1916)). Defendants deny there is no controversy regarding these critical facts. See Schulz Declaration #2, Exhibits III-KKK and Schulz Decl. #8, <u>Exhibits A-F.</u>

The Blue Folder is pure political speech that has always been inextricably linked to Defendants' First Amendment Petitions for Redress of Grievances. See Schulz Decl. #1 par 3-17, Exhs.A-I., Schulz Decl. #2 par 3-92, Exhs. A-ZZZ and Schulz Decl. #3 par 3-93, Exhs A-Z.

7. <u>Defendants Deny in part, admit in part</u>.

Defendants' Blue Folder and its statements do not "market" or "advertise" an abusive scheme as implied by the United States. The Blue Folder presents workers and companies with information they most likely did not have regarding the voluntary nature of Withholding Agreements and their Rights as expressly provided by U.S. law. Defendants recommend throughout the material that should the workers and Entities decide claim and exercise their constitutional and statutory Rights to end withholding by using the material, the workers and companies should submit the information to a rigorous review by their tax professionals (CPAs, attorneys, accountants, etc.). Schulz Decl. #6, Exh. A, para. 2 c-q, Exhibits C-Q.

Defendants do list certain obvious benefits to the companies (Exh. D) if they were able to stop withholding pursuant to the exercise of their Rights as provided by U.S. law.

8. <u>Deny</u>.

Defendants have never had or offered any "tax-evasion forms." Defendants' Blue Folder recommends workers and companies take the **withholding** information in the Folder to their tax professionals to legally stop withholding, not to evade taxes. Schulz decl #6, Exh A, par 2c-q, Exhibits A-Q; and Gordon decl. Exhs 4-18, 27 Item 2.

In fact, Defendants' Blue Folders correctly reports that, "The information is the result of research by tax professional: attorneys, paralegals, CPA's, a forensic accountant, a Special Agent of the Criminal Investigation Division of the IRS, a former Revenue Agent of the IRS, a former IRS Auditor and Fraud Examiner, a constitutional attorney and numerous expert tax law researchers." Gordon Decl. Exh. 8.

In fact, the Defendants' Petition for Redress of Grievances regarding the fraudulent origin and illegal operation and enforcement of the federal income tax system included 538 Statements of Facts and Beliefs regarding the income tax laws. Schulz decl. #4, par 6, Exh C.

The United States first agreed but then reneged on its agreement to answer the questions. Those very questions were then put to and answered under oath by the following group of tax professionals:

Constitution and Tax Attorney Lowell Becraft

Constitution and Tax Attorney Jeffrey Dickstein

Tax Attorney and former IRS Counsel Paul Chappell

Tax Attorney Robert Bernhoft

Tax Attorney Noel Spaid

CPA and former IRS Special Agent and CPA Joseph Banister

CPA and former IRS Fraud Examiner and Auditor Sherry Peel Jankson

Former IRS Revenue Agent John Turner

Forensic Accountant Vicki Osborn

Certified Paralegal Lynda Wall

Former Illinois Revenue Agent and 16th Amendment Ratification Expert William Benson

Constitution and Tax Law Researcher Irwin Schiff

(See Schulz Decl. 2, par. 60, Exhibit TT and Schulz Decl 4, par. 7, Exh D)

Defendants' Folder does not include a "challenge." It includes a firm "request" that the company "subject" the information to a "rigorous review." Gordon Dec., Exh. 8. It also includes a request that the workers and the Entities subject the material to a rigorous review, obviously by "tax professionals (CPA, attorney, accountant, etc.)." The forms clearly have the worker saying

to the company, “Please share my findings with your tax professionals (CPA, attorney, accountant, etc.)” Schulz Dec. 6, Exh A, par. 2p,form 11; and Gordon Decl. Exh 27, Item 2.

Defendants obviously could not order the company to do anything else. By “rigorous,” Defendants obviously meant the review should be by tax advisors due to the nature of the subject and that the review should be “severe, exact, strict, harsh, scrupulously accurate, precise review that allowed no abatement or mitigation.” That’s the meaning of the word (Webster’s Dictionary).

9. <u>Deny</u>.

Defendants can’t “require” a tax professional to review the material. Defendants can only recommend the workers and the entities subject the material to a rigorous review, obviously by “tax professionals (CPA, attorney, accountant, etc.)” due to the nature of the subject. Schulz Decl. #6, Exhibit A, par. 2p,form 11; Gordon Decl. Exhibit 27, Item 2, Gordon Decl. Exh. 8.

Not only is there a warning and disclaimer on the website, a warning and disclaimer is sent along with every copy of the Blue Folder that anyone asks be mailed to them. (See Schulz Declaration #5, par. 11-12 and Exhibit H and I).

While the Blue Folder does not “market” anything, it does caution the reader against less than rigorous reviews by “incompetent tax professionals or incompetent IRS employees” that may incorrectly claim the law “requires” the Entities to withhold. Withholding *is* voluntary and either party *may* terminate an existing withholding agreement. See paragraph 5 above. See also Schulz Declaration #6, Exh. A, par 2 c-q and Gordon Declaration Exhibit 27, Item 2.

Defendants have not offered to sue anyone, much less “sue an employer who withholds taxes if the employer does not accede to the customers’ demands.” Nowhere in Defendants’ Blue Folder do Defendants offer to sue anyone nor do they make any offer of assistance to do so.

The Worker that decides to submit WTP Form 1 in its entirety to his company says, at the end of the Form, "Should the Entity decide to continue to deprive me of my personal property (pay) for any reason other than a judicial order issued by a court of competent jurisdiction, I will pursue all available remedies to protect my rights and my property." Schulz Decl. #6, Exhibit A, par. 2f, Exh. F; and Gordon Decl. Exh. 9.

The Worker that elects to submit form #9 in its entirety to his Entity says in the conclusion, "The Entity has deliberately and intentionally ignored my previous demands. The Entity continues to unlawfully take amounts from my pay based on misinterpretation of federal and/or state law by Entity's incompetent employees, officers, agents and/or the Entity's tax professionals (attorneys and CPA's). When, after twenty (20) days from the date of this FINAL NOTICE AND DEMAND, the Entity fails to provide me a full pay check (less my voluntary deductions for which I have given written consent) for labor or services rendered, I reserve the right to seek a lawful process for review and remedy." Schulz Decl. 6, Exh. A, par 2n, Exh. N and Gordon decl., Exh 26, Form 9, Conclusion. A "lawful process" would include taking the matter to the State Labor Board.

10. <u>Deny</u>.

Defendants have never charged any company or worker a fee to represent them in anything, much less a matter involving withholding, and the United States knows any such an assertion is patently inaccurate.

For a brief period of time in early 2003 (less than 30 days) Defendants entertained the idea of creating a Legal Defense Association modeled after the Home Schooling Legal Defense Association. In fact, the organization was never activated and no such fees were ever retained by Defendants. See Schulz Declaration #5, <u>Exhibit L</u>.

It is common knowledge that the United States uses the threat of audits and other forms of harassment and intimidation by the IRS to control and punish companies and workers who challenge its behavior or who do not otherwise "toe the line." It is common knowledge that most companies and workers (like home-schoolers before 1980) have such a fear of the Government that they would rather give up their Rights than have the Government retaliate against them for doing anything the Government disapproves of, even if all the company and worker were doing was claiming and exercising an unalienable or statutory Right.

It is common knowledge that most companies and individuals (and home schoolers before 1980) do not have the resources or the courage to stand up to the Government to defend their Rights.

With this knowledge and belief, and based on the original intent, history, success and model of the Home Schoolers Legal Defense Association, Defendants briefly advanced the idea of a Right to Petition Legal Defense Association. The LDA would consist of attorneys and paralegals and support personal who would be on staff or under retainer across the country, available to assist anyone being retaliated against by the Government for claiming and exercising the Right to Petition Government for a Redress of **any constitutional tort, tax related or otherwise.** Defendants prepared a standard LDA agreement with a notice that **only if 10,000 applications** were received Defendants would Defendants activate the LDA. Defendants never activated the LDA. Defendants are not in receipt of any LDA Application fees. **Application to the LDA was free**. See Schulz Decl #5, Exhibits A and L.

Defendants do not have "customers." Never did Defendants contend that participation in the LDA **enables** the participant to legally stop filing returns or paying taxes until the defendants' questions were answered.

Instead, as the language of the model LDA Agreement clearly stated: membership in the LDA would be open to anyone who has Petitioned the Government for Redress of a constitutional tort and has decided to retain his money until the Grievance is Redressed **because the Government has refused to respond to the Petition for Redress**; and, the LDA would, on a **best-efforts basis** represent the member in administrative and/or legal proceedings, with no guarantees of success. Schulz Decl. #5, Exhibit L.

11. Deny.

Defendants have no customers.

Per the excruciatingly plain language of 26 CFR 31.3402(p)-1, "Voluntary withholding agreements", either a worker or a company may legally terminate a voluntary withholding agreement at any time upon notice to the other party. The mere fact that the WTP forms provide sufficient information about the law that enables both parties to freely execute the termination of such an agreement without fear of breaking the law can hardly be labeled a "collusion," much less an illegal "scheme". The forms for workers provide a tangible, practical means for them to convey proper legal notice to companies to terminate their voluntary withholding agreements as provided by law. The forms for companies likewise provide them with optional documentation regarding the legal basis for their decision to honor a worker's withholding termination request as well as their legal status with regard to any potential obligations as a "withholding agent". All of this information and documentation can be used in the future, by either workers or companies against any potential harassment by IRS or DOJ officials who themselves, remain ignorant about the content of the law.

To the extent a company and its tax professionals actually review the applicable U.S. laws regarding voluntary withholding, it should view a worker's request to terminate, or work

without, a voluntary W-4 withholding agreement with no more terror or "threat" than an invoice received from one of its suppliers or vendors.

As to using the Forms "*in lieu* of a W-4", it can hardly be improper for a worker to advise a company about his or her legal Rights using a WTP Form when the law explicitly makes withholding agreements using the W-4 **voluntary** for average American workers (*see again,* 26 CFR 31.3402(p)-1). There is no legal requirement to file a W-4.

12. Deny.

Defendants have no customers. Nor does the Blue Folder have any false statements. Above all, the Blue Folder is replete with requests of the Entity to have the statements thoroughly reviewed by competent professional for accuracy, including:

- a request to the Entity for a "rigorous review." (Schulz dec. 6, Exh. A: par. 2, Exh C), and
- a request from the worker, submitted to the Entity, to "please share my findings with your tax professionals (CPA, attorney, accountant, etc.)." (Schulz decl. 6, Exh. A: par. 2, Exh P, Form 11, page 1), and
- a request from the worker to the Entity to secure written verification from the government of the section of the Code that authorizes the United States to direct the Entity to take and divert to the United States from the worker's pay without the worker's consent. (Schulz decl. 6, Exh. A, par. 2: Exh N, form 9, page 8-9; Exh O, form 10, page 7-8), and
- a final request from the worker to the Entity, "I strongly urge you to share this information and my entire file pertaining to the non-consensual taking from pay with your legal counsel." (Schulz decl. 6, Exh. A, par. 2: Exh Q, form 12, page 2).

Form #1 and Form #3 clearly begin by quoting black letter law **that the United States has not denied or refuted**, including, but by no means limited to 26 CFR Sections 301.3402 (p)-1 (withholding agreements are voluntary), 26 CFR Sections 301.3402 (p)-1 (b)(2) (either the worker or the Entity can terminate a withholding agreement by simply notifying the other party, 26 USC Section 3402(p)(3)(A) (withholding of other than wages is also voluntary), 31 CFR Section 215.6 (Standard Agreement between Treasury Secretary and Entity required for

withholding), 26 CFR Sections 1441-1446 (Non-resident Aliens and Foreign Corporations withholding), 26 USC 7701 (a) 16 and 26 CFR 301.7701-16 (term "withholding agent" means any person required to deduct and withhold any tax under the provisions of Section 1441, 1442, 1443 or 1446), 26 USC 3504 (Form 2678 Employer Appointment of Agent required), 8 USC 1324(a)(3)(A) (protected individuals cannot be compelled to provide *any* specific document in order to work in America), 26 CFR 301.6109-1(c) (Entity required to make an affidavit *for its file* stating the Entity made two requests for Tax Identification Number).

Defendants have not "willfully misread" or misquoted *U.S. v. Malinowski* 347 F. Supp. 347, 352. Nor have Defendants quoted *Malinowski* for the proposition asserted by the United States. Defendants have quoted *Malinowski* for the proposition (as highlighted in the quote), that is, a Company is not authorized to dishonor a workers claim.

The quote by the United States from the Circuit Court in *Malinowski* is irrelevant to the facts and circumstances of this case and may have been intended to mislead the Court. Defendants are certainly not urging anyone violate a federal law. Defendants, are urging workers and companies, as part of a process of petitioning the Government for a Redress of constitutional torts, to **legally** terminate their voluntary withholding agreements – that is, that they subject the information to a rigorous review by their tax professionals for compliance with the law.

Additionally, although Defendants do not necessarily oppose the conclusion that withholding bona fide taxes as a *political* expression against government *policy* finds no protection from the First Amendment, Defendants strongly oppose any proposition that citizens lack a fundamental Right to withhold taxes to secure Redress to cure *constitutional torts*. Indeed this is the very controversy at the heart of the *We The People* case before the DC Circuit and an underlying issue in this case; the issue has never been explicitly addressed by any federal court.

13. Deny.

Defendants did not misquote *Holstrom,* or willfully mislead. The relevancy of *Holstrom* pales in the light of the statutes identified in paragraphs 5 and 10 above which explicitly provide the legal authority for workers to terminate their voluntary withholding agreements and would, in any event, be determined during the recommended rigorous review by the tax professionals.

14. Deny.

Defendants have no customers.

The relevancy of the Form's mention of 26 CFR 1.863-1(c) **and** 26 CFR 1.861-(f)(i) pales in the light of the statutes identified in paragraphs 5 and 10 above and would, in any case, be determined during the recommended rigorous review by the tax professionals.

In addition, what is stated on the Form about "861" is derived directly from the 16 statements under the "Ninth Belief" on pages 36 and 37 of the STATEMENT OF FACTS AND BELIEFS REGARDING THE FEDERAL INCOME TAX, which 16 statements were repeatedly served on the United States as questions in Defendant's Petition for Redress of Grievances regarding the federal income tax system. For whatever reason, the United States has decided it does not want to answer those questions – that is, the United States has chosen not to respond.

In addition, what is stated on the Form about "861" is also derived from the six questions thousands of people have sent during the last five years to their elected representatives and to officials at the IRS – questions that have not been answered by the United States.

In October, 2003 alone, Department of Treasury Assistant Secretary for Tax Policy, Ms. Pam Olson, was respectfully Petitioned by over five hundred people to answer the six questions:

> 1) Should I use the rules found in 26 USC § 861(b), and the related regulations beginning at 26 CFR § 1.861-8, to determine my taxable domestic income?

2) If some individuals—including myself—should *not* use those sections for determining their taxable domestic income, please show me where the regulations say who should or should not use those sections for that.

Reason for first two questions: The regulations under 26 USC § 861(b) (26 CFR § 1.861-8 and following) begin by stating that Sections 861(b) and 863(a) state in general terms "*how to determine taxable income of a taxpayer from sources within the United States*" after gross income from the U.S. has been determined. (The regulations then say that Sections 862(b) and 863(a) describe how to determine taxable income from *outside* of the U.S.) Section 1.861-1(a)(1) of the regulations confirms that "*taxable income from sources within the United States*" is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8. (See also 26 CFR §§ 1.862-1(b), 1.863-1(c).)

3) If a U.S. citizen lives and works exclusively within the 50 states, and receives all of his income from within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show such income to be taxable?

Reason for question: Section 217 of the Revenue Act of 1921, statutory predecessor of 26 USC § 861 and following, stated that income from within the U.S. was taxable for foreigners and for U.S. citizens and corporations deriving most of their income from federal possessions (but did *not* say the same about the domestic income of most Americans). The regulations under the equivalent section of the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "*specific sources and activities,*" which, concerning *domestic* income, still relate only to foreigners and certain Americans receiving income from federal possessions (26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

4) Should one refer to 26 CFR § 1.861-8T(d)(2) to determine whether the "items" of income he receives (such as compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

Reason for question: The regulations (26 CFR § 1.861-8(a)(3)) state that a "*class of gross income*" consists of the "items" of income listed in 26 USC § 61 (e.g. compensation, interest, etc.). The regulations (26 CFR §§ 1.861-8(b)(1)) then direct the reader to "paragraph (d)(2)" of the section, which provides that such "*classes of gross income*" may include some income which is *excluded* for federal income tax purposes.

5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is the income of the average American *not* on that list?

Reason for question: After defining "*exempt income*" to mean income which is exempt, eliminated, or excluded for federal income tax purposes (26 CFR §

1.861-8T(d)(2)(ii)), the regulations give a list of types of income which are *not* exempt (i.e. which *are* subject to tax), which includes the domestic income of foreigners, certain foreign income of Americans, income of certain possessions corporations, and income of international and foreign sales corporations, but which does *not* include the domestic income of the average American (26 CFR § 1.861-8T(d)(2)(iii)).

6) What types of income (if any) are *not* exempted from taxation by any *statute,* but are nonetheless "*excluded by law*" (not subject to the federal income tax) because they are, under the Constitution, not taxable by the federal government?

Reason for question: Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute "*or fundamental law*" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to those types of income exempted by *statute*, other types of income were exempt because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)).

Neither Ms. Olsen, or any one individual from the Executive Branch, the Legislative Branch or the Internal Revenue Service has responded to these simple questions.

Until workers and Entities receive formal, specific answers to the 16 questions or the 6 questions, it is highly appropriate to include those statements as facts to be subjected to a rigorous review by tax professionals, along with every other statement on the Form(s).

The United States, seemingly as an excuse for not answering reasonable questions, seems content to merely declare that "the courts have ruled against these issues." Regarding the "861 evidence" in particular, however, the U.S. Supreme Court has never addressed it, and the various lower court rulings, when they have done anything more than declare the position "frivolous" or "without merit," have relied exclusively upon the broadly-worded general definition of "gross income" found in Section 61 (USC, Title 26), to the exclusion of all else.

This provides a good example of why unsupported assertions and unexplained conclusions do not constitute a valid substitute for Defendants' reasonable answers to reasonable questions. If, as the United States asserts in its paragraph 14, Defendants need only look to the

general statutory definition of "gross income" (as found in Section 61 of the tax code) in order to determine whether their income is indeed taxable, the following obvious questions arise:

> 1) Why are Defendants to rely only on a section which says nothing at all about who is receiving income or where it is coming from, while ignoring the part of the law which specifically deals with such issues (Subchapter N, which begins with Section 861)?
>
> 2) If Defendants need look no further than Section 61, why is there a cross-reference under 61 **itself** directing the reader to 861 regarding domestic income (and 862 regarding foreign-source income)? (Defs emphasis).
>
> 3) If the United States is correct in its repeated assertion that the general wording of Section 61 makes it unnecessary to look elsewhere in the Code to determine whether one's income is taxable, why do the regulations under Section 61 **itself** state that if "another section of the Code or of the regulations thereunder" gives specific rules about any specific type of income, "such other provision shall apply **notwithstanding section 61 and the regulations thereunder**" (26 CFR § 1.61-1(b))? (Defs emphasis).
>
> 4) If Defendants need look no further than Section 61, why do the regulations say that the types of income listed in Section 61 make up "classes of gross income," which may include some income which is tax-exempt (26 CFR §§ 1.861-8(a)(3), 1.861-8(b)(1))?
>
> 5) If Defendants need look no further than the general definition of "gross income," why do the regulations, past and present, specifically say that, notwithstanding that broadly-worded definition, some income is exempt from tax because of the Constitution itself (e.g., 26 CFR § 1.312-6(b), 26 CFR § 39.22(b)-1 (1956))?
>
> 6) If the broad language in Section 61 means that all income is taxable, no matter where it comes from, why did a Supreme Court justice state that, "'From whatever source derived,' as it is written in the Sixteenth Amendment [which is where the wording in Section 61 came from], does not mean from whatever source derived" (*Wright v. United States*, 302 U.S. 583 (1938), dissenting opinion)?
>
> 7) If Defendants should only refer to the general definitions of "gross income" and "taxable income," why do half a dozen regulations say, without any qualifications or conditions, that 861 and its regulations are to be used to determine one's taxable domestic income (e.g., 26 CFR §§ 1.861-1(a), 1.861-1(b), 1.861-8(a), 1.863- 1(c))?

> 8) If Section 61 makes all income taxable, no matter where it comes from, why do the regulations under 861, and more than eighty years of predecessor statutes and regulations, plainly identify U.S.-source income as being taxable for foreigners, and for certain Americans with possessions income, while never mentioning Americans who live and work only in the U.S.?

To Defendants' knowledge, NONE of the court rulings concerning 861 have ever addressed ANY of the issues above, or even MENTIONED any of the sections cited therein. Not once. Choosing to ignore such questions entirely, and the research report that generated the questions (Schulz Decl. 10, Exh. A), while calling a conclusion "frivolous" or "without merit," is not an adequate substitute for providing reasonable answers to reasonable questions.

To malign or penalize a person for his conclusions, while refusing to point out exactly where his error lies, and refusing (repeatedly) to answer his questions about how to properly comply with the law, is an affront to the principle of Due Process.

The ability of the United States to insult people, fine people, or even imprison people, is no substitute for the ability to actually help people "understand" their tax responsibilities, as the IRS' own Mission Statement dictates. In a country based upon the rule of law, "enforcement actions" are an unacceptable response to the asking of questions by honest citizens who peaceably Petition the Government for Redress of alleged Grievances, particularly those dealing with constitutional torts.

Furthermore, as the United States well knows, in a federal trial a jury is not permitted to decide the validity of anyone's legal position, but must accept the judge's statements on what the law is. Therefore, citing jury verdicts as if they constitute a substantive refutation of a well-articulated legal argument is disingenuous, to say the least.

15. <u>Deny</u>.

Defendants have no customers.

WTP Form #8 is not "altered." The Form recommends to the worker what information to **legally** enter on the standard government I-9 form, and includes notes and instructions that have obviously by added by Defendants. Schulz Decl. #8, Exh. A, par 2m and Exhibit M.

The Form is not "declaring that the customers Social Security number cannot be disclosed." The Form is obviously recommending the worker enter, "optional, not required by law" where the form requests the worker's social security number, in keeping with the worker's Rights under U.S. law and the statements made regarding social security on WTP Form #1.

Defendants are certainly not instructing employers to falsify WTP Form #2. Obviously, the employer is not going to sign the form unless he complies with the law, namely 26 CFR 301.6109-1(c), which requires the company to make an affidavit *for its file* stating the Entity made two requests for the worker's Tax Identification Number/ Social Security Number.

16. <u>Deny</u>.

Defendants have no customers.

Defendants forms are respectful and logically progress from mild requests to stronger requests to secure the Rights of the requestor, all the while requesting the information be subjected to rigorous reviews by tax professionals (CPA, attorneys, accountants, etc.), and all the while "preserving" rights to pursue other remedies as are provided by law. Schulz Dec 6, Exh A. The worker should never have to use Form #12, but if he did, the worker finds it necessary to tell the Entity (**at risk of losing his job**) that the unless the Entity stops withholding, the Entity is "at risk of lawsuit for breach, conversion of property, violation of human rights, violation of due process, violation of labor rights, irreparable injury and perhaps other torts and injuries."

17. <u>Deny</u>.

The program is not "false" or illegal.

The fact that a jury convicted Dick Simkanin does not establish any precedent regarding the issues in the instant case. Simkanin was an employer who was convicted for violating 26 USC 7202 -- a penalty statute[1]. Schulz Decl #7, Exhibit A, Transcript.

Simkanin, an employer who stopped withholding did not argue at his trial that the 16th Amendment was not properly ratified. Simkanin was prevented (by a motion In limine) from entering into evidence and showing the jury anything he had read and relied upon as his sole basis for his beliefs and decision to stop withholding. What he relied upon were the federal statutes, regulations and Supreme Court decisions referred to above in paragraphs 5 and 10, and which constitute significant portions of the WTP Forms themselves. It was never Simkanin's intent to instruct the Court or the Jury what the law was, but to instead to justify his actions by testifying about his beliefs about the laws, court decisions, etc. that he had relied upon. However, he was prevented from doing so. To the extent that was his defense, which it was, Simkanin was prevented from putting on a defense by the court.

As laid out in paragraph 5 above, what Defendants have said about the ratification of the 16th Amendment (in the Blue Folder, but not on the Forms to be used by the workers and Entities), is based entirely on the questions/facts regarding the ratification of the 16th Amend. are included in said STATEMENT OF [538] FACTS AND BELIEFS REGARDING THE INDIVIDUAL INCOME TAX under the "Sixth Belief", paragraphs 1-119. Nowhere in American history or jurisprudence have said questions been answered except by Bill Benson in his two volume research report, "The Law That Never Was" and at the two-day Citizens' Truth in Taxation Hearing in Washington DC on February 27-28, 2002 by a panel of experts including

[1] 26 USC 7202 reads, "Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution."

constitutional attorney Lowell Becraft, former IRS Special Agent Joseph Banister and Bill Benson. Nowhere in American jurisprudence have said facts been refuted. They certainly were not presented or raised in Simkanin's courtroom according to the transcript of the trial. Schulz Decl. 7, Exhibit A.

18. <u>Deny</u>.

If the "scheme" the United States is referring to is Defendants' Operation Stop Withholding and the speech in the Blue Folder, the "scheme" is not illegal.

If the "scheme" the United States is referring to is Defendants' epic struggle with the United States over the question of the People's Right to withdraw their financial support from the United States if the United States refuses to respond to the People's Petitions for Redress of constitutional torts, then the United States is mixing "apples with oranges."

Operation Stop Withholding and the Blue Folder relate only to question of the withholding of pay by companies. The statements in the Blue Folder stand on their own legal legs, regardless of the outcome of the underlying question in Defendants' epic struggle with the United States regarding the Rights of the People and the obligations of the Government under the First Amendment's Petition Clause.

The United States is obviously out of bounds by characterizing the decision in *We The People Foundation v. United States* in 2005, by the United States District Court for the District of Columbia, a "warning." In effect, the Department of Justice is attempting to intimidate Defendants by threatening Defendants to discontinue Defendants' efforts to obtain, for the first time in American history and Jurisprudence a judicial declaration of the People's Rights to hold the United States accountable to the constitution by claiming and exercising their Rights guaranteed by the Petition Clause of the First Amendment. Until Defendants exhaust their judicial remedies Defendants have every Right to rely on the historical record and purpose of

that clause, as clearly expressed by the Magna Carta, the English Bill of Rights, the First Congress of the United States, the Declaration of Independence and the responses by the United States Congress and the State Legislatures to Petitions for Redress for decades following the adoption of the United States Constitution and the Bill of Rights.

The United States, as a party to *We The People*, is well aware of the extraordinarily interesting decision in that case by the United States Court of Appeals for the DC Circuit and the powerful arguments by Defendants' in their Petition for Rehearing En Banc (Schulz Decl #9, Exh. A)

Defendants most strenuously deny any assertion by the United States that the decision by the DC District Court was meant by the United States Judicial branch to be a "warning." The assertion is frivolous in the extreme.

If in fact, by its assertion, the Executive branch of the United States is waving the decision by the DC District Court in the face of Defendants as a warning to Defendants to discontinue their peaceful attempts to hold the United States accountable to the Constitution by constitutional means, then the Executive branch is unquestionably abusing its power. Additionally, to the extent that the instant lawsuit is directly interfering with the Defendant's ability to prosecute the ongoing litigation in the DC Court of Appeals, and the plain fact that the controversy in that suit involves the exact same offensive activities the government complains of here and involves the exact same legal questions, this lawsuit should reasonably be viewed as an obstruction of justice -- i.e., a criminal act of prosecutorial abuse.

19. <u>Deny</u>.

Defendants have no customers.

Defendants' purposes are the "rigorous review" by "tax professionals (CPA, attorneys, accountants, etc.)" and Entities' "legal counsel" of the information in the Forms and the legal

termination of voluntary wage withholding by companies as provided for by U.S. law, (*again, see* 26 CFR 31.3402(p)-1), and the claim and exercise of the First Amendment Right to Petition -- i.e., not the underpayment of individual taxes, or the cessation of individual tax returns or the obstruction of lawful IRS collection and examinations. (Schulz decl. 6, Exh. A: par. 2, Exh C; Exh P, Form 11, page 1; Exh N, form 9, page 8-9; Exh O, form 10, page 7-8; and Exh Q, form 12, page 2).

20. Deny.

Defendants have no customers.

This comment is irrelevant to this case which is about the legal termination of workers' voluntary withholding agreements as provided for by U.S. law, not about the filing or non-filing of individual income tax returns. Substitutes for returns are prepared by the United States for individuals the United States believes have failed to file a required tax return. Substitutes for return have nothing to do with the wage or salary withholding which is the whole of the Government's claims regarding Defendant's alleged violations of IRC Section 6700.

Beyond this, IRS Revenue Agent training materials covering Delegation of Authority Order No. 182 (Rev 3, 12-14-83) and 26 USC 6020(b) (Substitute for Returns) make clear that IRS has no legal authority to create "substitute returns" for *income tax* non-filers that the government complains of (i.e., for Individual Form 1040). IRS's delegated authority regarding Substitute for Returns is strictly limited to creating substitutes for *business* returns.

21. Deny.

Defendants have no customers.

The time and expense the IRS devoted to assessing and collecting taxes due the United States from individuals or corporations is an irrelevant fact having nothing to do with the subject

of this case, that is, whether Defendants' Operation Stop Withholding and the Forms within the Blue Folder constitute an illegal tax shelter within the meaning of Section 6700 and 6701 of the Internal Revenue Code.

ADDITIONAL MATERIAL FACTS THAT DEFENDANT'S CONTEND ARE IN DISPUTE.

22. Contrary to the United States assertions (U.S. Brief at 3), Defendants do not fit into the category of "advisors who seek to profit by … aid[ing] others in the fraudulent underpayment of their tax." Schulz does not and cannot profit from the distribution of the Blue Folder; nor is the purpose of the Blue Folder to offer advice on how a person can reduce the amount of his taxes owed by law. Schulz Dec.#5, Exhibit A-M.

23. The United States asserts without support that, "There is no question that defendants organized or sold a plan or arrangement [in violation of 6700 and 6701]. Defendants charge for participation in parts of the programs and other parts are offered for free. Defendants market their programs in seminars and on their websites. Thus, defendants' tax termination package is organized and sold within the meaning of IRC Section 6700." (U.S. Brief at 4).

In fact, as previously argued (Defs 5/23/07 Memo. page 3), the Forms provided by Defendants for use by workers and companies to legally stop withholding do not provide any information to workers or company officials about "tax avoidance" or "tax termination." See Schulz Declaration #6, Exh. A, par 2 c-q, Exhibits C-Q.

24. The United States incorrectly asserts (Brief, page 4) that the collection of Forms provided by Defendants for use by workers and companies to legally stop withholding is a "tax termination package." Ironically, the United States admits in the last paragraph of its Brief (at 19) that the words "tax termination package" "do not appear consecutively" in Defendants

materials. The United States, disingenuously then says, in effect, “but two of the three words show up (juxtaposed) in different parts of the label on the Blue Folder.” In fact, the label reads. “Legal Termination of Tax Withholding For Companies, Workers and Independent Contractors.” The instructions on how to legally terminate **Withholding** do not offer any advice on how to terminate taxes. Just because a company terminates withholding from a worker's pay does not mean the worker would or could terminate the payment of taxes. Very importantly, monies withheld under voluntary withholding agreements are technically "pre-payments" against potential tax liabilities that may arise when taxes are assessed and due under the law, i.e., on April 15. Until payment is required and due by law, the wages and salaries of American workers remain their exclusive property, and they retain the Right in law to possess it in full, without withholding. This is the very essence of voluntary withholding agreements (See 26 CFR 31.3402(p)-1).

Use of the words, “tax termination package” by the United States *is* false, prejudicial, inflammatory, irrelevant and scandalous.

The Forms provided by Defendants for use by workers and companies to legally stop withholding contain an overwhelming number of references to statutes, regulations and case law proving the voluntary nature of withholding and the ease by which the law provides for legally terminating withholding for those wishing to do so. **Critically, in its pleadings in this case, the United States has not denied or rebutted a single one of the withholding related citations**. The Forms provided by Defendants for use by workers and companies to legally stop withholding offer no advice regarding “tax benefits” nor do they seek to encourage non-filing of returns, nor do they offer or give any personal assistance as to those matters.

25. The United States incorrectly asserts (Brief, page 4) that "defendants organized or sold a plan or arrangement [within the meaning of IRC 6700 or 6701]." In fact, Defendants have not organized such a plan or arrangement and certainly have not sold such a plan or arrangement. See Schulz Declaration #1, and Schulz Declaration #5, Exhibits A-M.

26. The United States incorrectly asserts (Brief, page 4) that "Defendants charge for participation in parts of the programs and other parts are offered for free." In fact, Defendants have never charged a fee for the Blue Folder, which is the only part of Defendants' Operation Stop Withholding. See Schulz Declaration #1 and Schulz Declaration #5, Exhibits A-M.

27. The United States incorrectly asserts (Brief, page 4) that, "Defendants market their programs in seminars and on their websites." In fact, Defendants do not market the Blue Folder. They give it away (virtually for free) in public meetings and on their websites. See Schulz Declaration #1, and Schulz Declaration #5, Exhibits A-M.

28. Almost everything the United States has written under "(2) Defendants made false or fraudulent statements regarding the tax benefits associated with their program" (Brief, at 4-8), is frivolous. There is absolutely no basis in fact or in law to virtually all the United States has written, but the United States has filed it anyway, with malice, to harass Defendants and deceive the Court through obfuscation. Virtually all assertions made by the United States on these pages are fraudulent, deceptive, misleading, deceitful and shocking to the senses coming from the United States Department of Justice.

The fraud, with actual intent to confuse and deceive the Court, was obviously meant to directly prevent the exposure of the truth regarding the Right of workers to legally terminate withholding, and to indirectly deprive Schulz of his lawful Rights to Speak, Publish, Assemble

and Petition the Government for Redress of Grievances relating to the fraudulent enforcement of the nation's withholding laws as well as other constitutional torts.

These extensive assertions by the United States are so false, so untrue, so erroneous, so fallacious that the United States has now revealed that not only has it been abusing its powers under Section 6700 and 6701 to obstruct justice, but the IRS and the DOJ will do anything to prevail in this case, including lying to the Court about every aspect of the law, the facts and the motivation of the Government.

What should now be clear to the Court is that the United States' legitimate powers under Section 6700 and 6701 of the Internal Revenue Code are not being summoned against Defendants to further any legitimate end of government, but for the malevolent ends of perpetuating, preserving and protecting the deceptive and illegal practices of IRS to force companies to withhold monies from the pay of working Americans who wish only to exercise their Rights **as expressly provided by the internal revenue laws of this nation.**

The United States (the IRS agents and DOJ attorneys prosecuting this case) should be held in contempt of Court and sanctioned for actual fraud and obstruction of justice.

29. The United States incorrectly asserts that, "The main theme of defendants' program is that ordinary citizens are not 'taxpayers' and thus not subject to the nation's tax laws." (Brief at 4). Unsupported and not true. In fact, the actual "theme" of the Forms provided by Defendants for use by workers and companies to legally stop withholding is **clearly** 26 CFR Sections 301.3402 (p)-1 (withholding agreements are voluntary), 26 CFR Sections 301.3402 (p)-1 (b)(2) (either the worker or the company can terminate a withholding agreement by simply notifying the other party), 26 USC Section 3402(p)(3)(A) (withholding of other than wages is also voluntary), 31 CFR Section 215.6 (Standard Agreement between Treasury Secretary and Entity

is required for withholding), 26 CFR Sections 1441-1446 (Non-resident Aliens and Foreign Corporations withholding), 26 USC 7701 (a) 16 and 26 CFR 301.7701-16 (term “withholding agent” means any person required to deduct and withhold any tax under the provisions of Section 1441, 1442, 1443 or 1446), 26 USC 3504 (Form 2678 Employer Appointment of Agent required),

8 USC 1324(a)(3)(A) (protected individuals cannot be compelled to provide *any* specific document in order to work in America), 26 CFR 301.6109-1(c) (Entity required to make an affidavit *for its file* stating the Entity made two requests for Tax Identification Number), and similar statutes, regulations and case law. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

Defendants’ theme is so clear and unambiguous it leaves no room for misinterpretation. Despite the fact that the U.S. laws controlling wage withholding are the essence of the Government's judicial complaint against Defendants, the United States has not, and cannot rebut Defendants’ citations or refute his reliance upon these references in withholding law. Instead, the United States engages in hyperbole, obfuscation and outright perjury in an attempt to deceive the Court into believing the Forms provided by Defendants for use by workers and companies to legally stop withholding stands for the proposition that citizens are not subject to the nation’s tax law. This is so contemptuous and deceitful, coming from the Department of Justice, as to be shocking to the senses.

30. The United States incorrectly asserts that Defendants have defined “taxpayers” as only those who have volunteered to pay taxes through written agreements with their employers. (Brief at 4). Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a “rigorous review” by “tax

professionals (CPAs, attorneys, accountants, etc.)" do Defendants define "taxpayer," much less as "volunteers."

31. The United States incorrectly asserts that Defendants have claimed the Internal Revenue Code is unconstitutional. (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" have Defendants ever said the IRC was unconstitutional. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q. The laws are patently constitutional, it is their *application* that is not.

32. The United States incorrectly asserts that Defendants contend that those participating in Operation Stop Withholding can withhold taxes and stop filing returns until Defendants' questions regarding the legality of the income tax have been answered (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make or imply such behavior. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

33. The United States incorrectly asserts that Defendants' Forms say "federal taxes only apply to persons earning foreign source income". (Brief at 5). Unsupported and not true. Nowhere in the Forms to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a statement. In a statement true but irrelevant to the theme of the program the Forms say, "I do not derive taxable income as defined in 26 CFR Section 1.863-1c from a taxable source defined in the operative section of 26 CFR Section 1.861-(f)(i)." Schulz Decl #6, Exh A, Exhibits C-Q.

34. The United States incorrectly asserts that Defendants have claimed the IRC "does not apply to an individual that has unilaterally revoked their [sic] consent to pay taxes." (Brief at 5).

Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding do Defendants make such a claim. The Forms cite the law that authorizes the unilateral revocation of a worker's consent to voluntary **withholding**, not the payment of taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

35. The United States incorrectly asserts that Defendants contend that those participating in the program can "withhold taxes and stop filing tax returns until defendants' questions regarding the legality of the income tax have been answered." (Brief at 5) Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a statement(s). Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

36. The United States incorrectly asserts that Defendants' program advises people they can opt-out of paying taxes if they simply stop volunteering to pay taxes." (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make such a claim. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

37. The United States incorrectly asserts that there is no difference between wage withholding and tax withholding. (Brief at 5). Unsupported and not true. They are different. A company could legally terminate wage withholding by giving the worker 100% of his pay, but the worker would still be legally obligated to pay 100% of the taxes assessed and due under law.

38. The United States incorrectly asserts that Defendants' have claimed that "an individual can revoke his or her requirement to pay taxes or file returns." (Brief at 5). Unsupported and not true. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants,

etc.)" do Defendants make such a claim. The Forms address the legal authority of an individual to terminate his/her private, voluntary contract consenting to wage withholding, not the filing or paying of his taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

39. The United States incorrectly asserts once more that Defendants maintain that "the income tax is unconstitutional, or only applies to foreign source income." (Brief at 6). Unsupported and not true. Nowhere in the Forms to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" or in the Blue Folder do Defendants say the income tax is unconstitutional. Schulz Dec #6, Exh A, par 2c-q, Exhts C-Q.

40. The United States incorrectly asserts that Defendants have stated that filing a tax return or payment of federal income taxes is voluntary. (Brief at 7). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make any statements about individuals filing tax returns or making tax payments. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

41. The United States incorrectly asserts that Defendants' program is a "re-hash of oft-repeated anti-tax arguments about what constitutes income." (Brief at 8). Unsupported and not true. The Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" focus on the voluntary nature under the law of the practice of withholding of a worker's pay by an entity. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

42. The United States incorrectly asserts that Defendants' "knew that their statements regarding the tax consequences of purchasing their scheme were false or fraudulent." (Brief at 8). Not true and not relevant. The Blue Folders are not purchased. Regardless, there are no tax

consequences of having a Blue Folder, or of using the Forms in the Blue Folder. Terminating withholding is expressly provided by U.S. law. The United States has not denied or refuted Defendants' legal citations asserting such. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

43. The United States asserts that "the law is well settled that the tax statements made by defendants of promises to 'leave the tax system' through the use of fraudulent 'We the People' forms are false [sic]." (Brief at 9). Defendants have no idea what this sentence means. Regardless, Defendants Forms make no tax statements or promises.

44. The United States incorrectly asserts that "Schulz admits that he created We The People to document this research into the tax code." (Brief at 9). Schulz finds this to be one of the most egregious lies in the United States' brief. Schulz has never made such an admission, nor could he. It's unsupported and not true. There must be no shame remaining at the DOJ for it to make such a ridiculous assertion. The details of the formation of the We The People Foundation for Constitutional Education, Inc. and We The People Congress, Inc., and their predecessor organizations are well known to the Government, who played a hand in their start-up as 501(c)3 and 501(c)4 organizations, respectively, who has received Schulz Declaration #1 in this case with its discussion of the background of Schulz and the WTP organization, and who is familiar with Defendants' website with its "About Us" feature detailing the origins of the organizations.

45. The United States incorrectly asserts that Defendants' Forms have made "promises of tax exemption" that had a "substantial impact on people's decisions whether to purchase the tax termination program." (Brief at 10). Unsupported and not true. Nowhere in the Forms provided by Defendants to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants make any promises or talk about tax exemptions. In

addition, people don't purchase the Forms; they are distributed free of charge. The United States knows this. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q and Schulz Decl. #5, Exhibits A-M.

46. The United States incorrectly asserts that "defendants' customers have used the "tax termination" program for its intended purpose: (1) to forestall assessment and collection of taxes and (2) to 'voluntarily' withdraw from the federal tax system." (Brief at 10). Unsupported and not true. Defendants have no customers, the subject Forms relate solely to the withholding of pay -- not tax terminations, assessments, deductions, or determinations. Nowhere in the Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" do Defendants say the Forms can or should be used to forestall the assessment and collection of taxes or to withdraw from the federal tax system. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

47. The United States incorrectly asserts that Defendants "are advising and assisting persons to put into practice discredited theories of federal tax laws." (Brief at 10). Unsupported and not true. The Forms provided by Defendants for use by workers and companies to legally stop withholding after a "rigorous review" by "tax professionals (CPAs, attorneys, accountants, etc.)" rely on laws that are black letter. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

In fact, it is the United States that has been discredited by continuing to prosecute this case without rebutting the actual "theme" of the Forms provided by Defendants for use by workers and companies to legally stop withholding, including, but not limited to 26 CFR Sections 301.3402 (p)-1 (withholding agreements are voluntary), 26 CFR Sections 301.3402 (p)-1 (b)(2) (either the worker or the company can terminate a withholding agreement by simply notifying the other party), 26 USC Section 3402(p)(3)(A) (withholding of other than wages is also voluntary), 31 CFR Section 215.6 (Standard Agreement between Treasury Secretary and

Entity is required for withholding), 26 CFR Sections 1441-1446 (Non-resident Aliens and Foreign Corporations withholding), 26 USC 7701 (a) 16 and 26 CFR 301.7701-16 (term "withholding agent" means any person required to deduct and withhold any tax under the provisions of Section 1441, 1442, 1443 or 1446), 26 USC 3504 (Form 2678 Employer Appointment of Agent required), 8 USC1324(a)(3)(A) (protected individuals cannot be compelled to provide *any* specific document in order to work in America), 26 CFR 301.6109-1(c) (Entity required to make an affidavit *for its file* stating the Entity made two requests for Tax Identification Number), and similar statutes, regulations and case law.

48. The United States incorrectly asserts that Defendants' "customers have been harmed by the abusive promotions because the customers have paid defendants significant sums to purchase worthless We the People forms." (Brief at 10). Unsupported and not true. Defendants have no customers, Defendants distribute the Forms for **free** (Schulz Declaration #5, Exhibits A-M) and the Forms are about the laws controlling the withholding of pay, not about the termination or diminution of potential *bona fide* tax liabilities. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

49. The United States incorrectly asserts that Defendants Forms "have been discredited." (Brief at 10). Unsupported and not true. In fact, the United States has not denied any of the withholding statutes, regulations or case law cited and relied upon by Defendants on the various forms Defendants recommend be used by workers and company officials to legally terminate withholding.

50. The United States incorrectly asserts that Defendants have "misled customers by advertising that employers and other individuals have legally stopped paying taxes…and continue to falsely advertise the legality of the scheme, while they know others have faced criminal sanctions for following the same plan." (Brief at 10-11). Unsupported and not

true. Defendants have no customers; the Forms and Folder address withholding of pay not taxes; and no employer has faced criminal sanctions for legally terminating withholding or violating the withholding laws cited by Defendants in their Forms and Folder.

51. The United States incorrectly asserts Defendants' "customers are not paying the correct amount of taxes to the United States Treasury." (Brief at 11). Unsupported, not true and misleading. Defendants have no customers and the Defendants' Operation Stop Withholding is about withholding of pay, not about the payment of taxes due and owing to the United States. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

52. The United States incorrectly asserts Defendants are "attempting to wrench tax statutes out of context to encourage a willful misreading of the law…Schulz promotes himself as knowledgeable about the income tax laws and the tax termination program…" (Brief at 11). Unsupported and not true. The complaint targets Defendants Operation Stop Withholding and its Forms. It is not a tax termination program. In addition, those Forms have numerous legal citations. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q. The United States has not denied the accuracy of any of those legal references.

53. The United States incorrectly asserts in footnote 37 on page 11 of its Brief, referring to Schulz Declaration #1, Exhibits H-I, that Defendants' customers have followed the scheme, and that Defendants argue that no one would use the illegal plan after receiving competent advice, while touting that others have benefited from the plan. Not true. Beyond the fact that Defendants have no customers and the plan is not illegal, said Exhibits say, in effect, that scuttlebutt has it that workers are presenting the Forms to Entities to legally stop withholding, but Entities are refusing to stop withholding and this appears to be sparking "workers' rights" litigation.

54. The United States incorrectly asserts that Defendants "advise customers to prepare, file, or assist them in preparing and filing, false or fraudulent tax withholding forms, and other documents purporting to enable customers to legally stop filing returns and paying taxes." (Brief at 12). Unsupported and not true. Beyond the fact that Defendants have no customers, Defendants' Blue Folders do not advise anyone to file *false* withholding forms or to stop filing returns and paying taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

55. The United States incorrectly asserts that Defendants' false tax advice to customers and their abusive program interferes with the enforcement of the internal revenue laws by delaying examination and collection and by helping their customers violate the internal revenue laws." (Brief at 13). Unsupported and not true. Beyond the fact that Defendants have no customers and no abusive program that helps people violate the law, Defendants' Forms and Blue Folder cannot delay IRS examinations and collections because the Forms and Blue Folder are totally unrelated to any process of examinations and collections. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

56. The United States incorrectly asserts that "customers that follow defendants' advice file improper, inaccurate tax returns or do not file tax returns at all, and in either case do not report or pay their proper federal income taxes." (Brief at 13). Unsupported and not true. Beyond the fact that Defendants have no customers, the program the United States is complaining about has everything to do with the legal withholding of workers' pay and absolutely nothing to do with tax returns and the reporting and paying of federal income taxes. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

57. The United States incorrectly asserts that an injunction will not harm Defendants but will prevent Defendants from continuing to disrupt the federal tax system. (Brief at 13). Not true. An injunction will be an infringement and an abridgment of Defendants' First Amendment Rights of

Speech, Press, Assembly and Petition, and will seriously discredit Defendants in their attempt to educate workers and companies regarding their Rights to legally stop withholding of pay.

58. The United States incorrectly asserts that "Defendants' promotion constitutes commercial speech." (Brief at 15). Unsupported and not true. The United States has not rebutted the facts and arguments contained in Defendants' Motion to Dismiss. For additional evidence in support of the fact that Defendants Blue Folder and its Forms are not commercial speech, the Court's attention is invited to Schulz Declaration #5, Exhibits A-M providing additional evidence that the Blue Folders are not sold and furthermore they contain no offer or solicitation for any commercial product or service.

59. The United States, in referring to a series of prior tax shelter cases, incorrectly asserts that "Like defendants in the above cases, defendants market a line of tax evasion products and services." (Brief at 15). Unsupported and not true. Defendants do not have much less market any tax evasion products or services. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

60. The United States incorrectly asserts that the court, in *We The People v. United States* has unequivocally established "that defendants' illegal conduct is afforded no First Amendment protection." (Brief at 16). Unsupported and not true. First of all that case is far from over. (Schulz Decl #9, Exh A). Regardless, the issues presented of the United States' complaint in the instant case (defendants' Operation Stop Withholding, and the Forms in the Blue Folder) were not presented or raised in *We The People*.

61. The United States, in referring to *Buttorff,* has incorrectly asserted that Defendants are "creating and marketing a commercial product designed to effectuate the same scheme of falsifying forms W-4." (Brief at 16). Unsupported and not true. Defendants' program is not similar to any program addressed by any prior court – the legal termination of withholding of

workers' pay by Entities, based on black letter law that the United States has not and cannot tell this Court means something other than what Defendants, in their Operation Stop Withholding Forms have stated it means. Defendants do not provide any instruction with regard to W-4 forms except that the W-4s are not required by U.S. law for ordinary American workers. In any event, Defendants presume the users of the WTP forms will not file any W-4 form, much less do they instruct the users on how to "falsify" a Form W-4. Plaintiffs have failed to refute Defendant's claim that W-4's are voluntary under U.S. law. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

62. The United States has incorrectly asserted that Defendants are "offering how-to-do-it assistance and advice that is meant for their audience to use to circumvent the law." (Brief at 17). Unsupported and not true. Defendants' Operation Stop Withholding Forms merely for workers to submit to Entities, Entities to submit to tax professionals (CPAs, attorneys, accountants, etc.) for the legal termination of withholding by those Entities of the pay of workers. Defendants Forms are certainly not meant for anyone to circumvent the law. The law the Forms rely on is black letter law that the United States has not and cannot tell this court does not allow for the legal termination of withholding. Critically, Defendants do not offer, or provide, legal advice or assistance. Schulz Decl #6, Exh A, par 2 c-q, Exhibits C-Q.

63. The United States incorrectly asserts that Defendants' Operation Stop Withholding Forms are fraudulent because they rely on the Section 861 Argument , the claim that the 16th Amendment was not ratified, and other "frivolous" arguments have unanimously rejected. (Brief at 18). Unsupported and not true. First, the Forms rely directly on black letter law relating directly to withholding that the United States has not attacked. See for instance, Defendants' accompanying Brief Point IV, and paragraph 12 above. Second, the subject Forms do not mention, much less rely on the 16th Amendment argument. Finally, beyond the fact that Section

861 is irrelevant to the main theme and central thrust of the Forms, what is said is not frivolous. See paragraph 14 above, Schulz Decl. #10, Exh. A, and Schulz Decl. #2, Exh. III, Attach #2, and Exh. KKK.

64. The United States has incorrectly asserted that Defendants Rule 12(b)(6) motion did not "attack the Plaintiff's factual allegations " and simply argued "they have a First Amendment Right to commit fraud." (Brief at 18). Not supported and not true. See Schulz's Declarations 1-3 and Defendants Brief. Defendants have never argued they have a First Amendment Right to commit fraud. Defendants do however assert they do enjoy fundamental, unalienable First Amendment Rights including the Right to Petition the Government for Redress of Grievances -- even if that involves educating Americans about the law and their constitutionally protected Rights, and even if such education eventually prompts activity which is inconvenient for, or even highly offensive to the U.S. Government due to its misperceptions regarding its constitutionally limited self-interests.

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