

Transcript
Oral Argument Before the U.S. Court of Appeals for the Second Circuit
United States v. Robert L. Schulz, et al.
Docket 07-3729-cv

February 4, 2008

SCHULZ: If it please the Court, my name is Robert Schulz. I am one of the Appellants. First, there's an error in my reply brief. Just to mention, on Page 4 the sixth line down from the top should have read...let me get my glasses out ...and thus, 6700 and 6701 are being used by the government to further illegitimate ends ...It says legitimate ends by mistake. Also, another matter, this morning I filed a motion, suggesting that it be sent to the court right away because of the oral argument today. Last Friday...the three appellants in this case are the lead plaintiffs in a somewhat related case known as *We The People v. United States* ...

JUDGE NEWMAN: Yeah, we have your motion.

SCHULZ: Okay, and the Petition for Rehearing was part of that motion. It was filed Friday and delivered to the Court this morning. The historical context and purpose of the right to petition, the last ten words of the First Amendment, are important to this case. No court has ever declared what these rights of a private individual to petition the government for constitutional torts. No courts ever declared what these rights of the private individual are or what the obligations of the Government are.

JUDGE SOTOMAYOR: You have any number of the people who have given you advice convicted of failure to pay their taxes, correct?

SCHULZ: I am aware of those cases, yes.

JUDGE SOTOMAYOR: And you are aware of many courts who have rejected your argument with respect to the tax issue, aren't you?

SCHULZ: That's not true, your honor.

JUDGE SOTOMAYOR: What court has supported your position that taxes are not due to the government or that you have a constitutional right not to pay taxes?

SCHULZ: Your honor that's not the issue in these proceedings. It's not the issue

JUDGE SOTOMAYOR: So even though you know, even though you know, that every court has taken a contrary position to your own you were entitled to make up forms and to advocate others, to give them forms to assist them in not paying their taxes.

SCHULZ: No your honor, there's a severe misunderstanding here. The material that is at issue in this case, known as the blue folder, those documents are, of course, in the record. This (holding up a copy of the blue folder) is a petition that I submitted to the Executive and Legislative branches on March 15th of 2003. No question here, no issue here, no statement here has ever been answered. I am not in the habit of asking questions that have been answered by the government. We petitioned the government. We submitted this and we asked them, "Is there anything in here that is false or misleading. Please let us know because I intend to go across the country and hand out for free copies of this speech. There was no response. I then got into my automobile and scheduled 37

meetings across the country in 37 days and handed out, this is all in the record, handed out 3500 copies of this document never receiving a fee – for free.

What does this document say to workers – “Give this to your employer, ask your employer to give it to the company’s tax professionals ... CPAs, attorneys, accountants...

JUDGE NEWMAN: Do you make money doing what you are doing?

SCHULZ: No.

JUDGE NEWMAN: You make no money at all?

SCHULZ: For 29 years,,,,

JUDGE NEWMAN: Do you make any...

SCHULZ: The answer is “No.” I make no money. I take nothing from the work I’ve done for 29 years your honor. I...

JUDGE NEWMAN: Do you have any money coming in to you from any source?

SCHULZ: When I need money...

JUDGE NEWMAN: Do you have any money coming to you from any source? Very simple question.

SCHULZ: Yes occasionally I sell some of my land to keep my house....

JUDGE NEWMAN: Do you pay taxes on that?

SCHULZ: Yes, when I sell a piece of land I send 5 percent, on the advice of my accountant, I send 5 percent of the selling price to the federal government and 5 percent to the state government because that is

JUDGE NEWMAN: Have you filed for refunds when you weren't entitled to them?

SCHULZ: No.

JUDGE NEWMAN: Never have?

SCHULZ: No, never have. This is not about what...

JUDGE NEWMAN: Why do you urge everyone else not to pay taxes when ...

SCHULZ: I have never done that.

JUDGE NEWMAN: Oh, you don't do that?

SCHULZ: I've never done that.

JUDGE NEWMAN: No?

SCHULZ: Never have. This is about this folder. I.. if there's incitement ... this is not ... this is pure political speech. It's not commercial. I've never received anything. It's not false. There is nothing in here that has ever been denied by any academician, any government agency. There are questions in here that have never been...

JUDGE NEWMAN: Your not telling employers they don't have to withhold?

SCHULZ: No I'm not doing that.

JUDGE NEWMAN: Well, why are you running around the country then if everyone is supposed to pay their taxes?

SCHULZ: They are issues related to withholding, not tax filings or tax payments, but withholding.

JUDGE NEWMAN: Do you urge people not to withhold?

SCHULZ: I do not. I urge people to take this...I'm sorry your honor, I urge people to give this to their companies, have their companies give it to their tax professionals to check its accuracy. It may lead to a voluntary termination of a W-4 between the worker and a company and this

JUDGE NEWMAN: Do you tell people the 16th Amendment isn't valid?

SCHULZ: I do not.

JUDGE NEWMAN: You don't do that either?

SCHULZ: I do not. And that's not in here. That's a mistake on the part of ... Its an error on the part of the government to say that these forms, your honor mentions...They don't mention the 16th Amendment. Now, there are issues, there are 109 questions in this blue folder There are 56 pages out of a Statement of facts and beliefs that came out of a citizens truth in taxation hearing in February of 2002. There was a hunger fast and the government had agreed to meet with us to address these questions and answer them, address the issues and answer the questions. After 9/11 they decided not to do that. We went ahead anyway and put under oath constitutional attorneys, tax accountants, former IRS agents and so forth and we had a hearing. It cost a lot of money, we rented the Washington Marriott and for two days we had these people under oath to answer the questions that the government refused to answer and 109 of those questions, in detail, address the sixteenth amendment, the ratification process of the sixteenth amendment.

My interest in the ratification process of the sixteenth amendment has to do with clear, for the record, violations of state constitutions. For instance, in New York, the people ...

JUDGE NEWMAN: It's very simple, are you telling the people the Sixteen Amendment isn't valid?

SCHULZ: I am not.

JUDGE NEWMAN: You are not?

SCHULZ: I am not.

JUDGE NEWMAN: Are you telling people they need to pay their taxes?

SCHULZ: I don't tell...I don't give that advice.

JUDGE NEWMAN: You don't? These forms that are supposed to go to the workers, are they telling them you don't have to withhold, you don't have to have your employer withhold?

SCHULZ: They cite... these forms that we ask the workers to give to their company to give to their professionals so that we can get a whole lot of the nation's tax professionals...

JUDGE NEWMAN: To what end? So that there won't be any withholding? Is that your objective?

SCHULZ: No, the truth is the objective, your Honor.

JUDGE NEWMAN: Very simple, do you think the employer should withhold or should not?

SCHULZ: I think they should follow the law.

JUDGE NEWMAN: And does the law require withholding?

SCHULZ: I don't know. That's the purpose of

JUDGE NEWMAN: Oh, you don't know. I see.

SCHULZ: That's the purpose of these questions your honor.

JUDGE NEWMAN: I see.

SCHULZ: Your honor, we simply are trying to get the government to answer questions. They refuse to respond to the petitions of redress of grievances.

JUDGE SOTOMAYOR: Doesn't the Blue Folder under statement of facts and beliefs that state, unequivocally, that the income tax is a tax on labor prohibited by the Thirteenth amendment. Does it say that or does it not?

SCHULZ: The Statement of Facts and Beliefs, are not my statement, but the statement of the people who were under oath to answer the questions in the truth in taxation hearing. This is their beliefs. That's what this is. This, we say...

JUDGE SOTOMAYOR: Have any of these people been convicted for not paying their taxes, correct?

SCHULZ: No, that's not true. Larry Becraft is a constitutional attorney who answered most of those questions. A former agent has not....Joe Banister, a special agent, in the criminal investigation....

JUDGE SOTOMAYOR: Some of those people been convicted?

SCHULZ: The answers to those questions during this hearing, yes.

JUDGE SOTOMAYOR: And where in this blue folder is that information contained?

SCHULZ: Any conviction came after this folder was distributed. Your honor, there's a difference here. This Statement of Facts and Beliefs is not a part of what we have asked

the people to give to their employers. These are the forms that you referenced there. They cite Supreme Court decisions. They cite statutes and regulations and so forth, and repeatedly at oral argument on the motion for preliminary ruling, the Department of Justice attorneys admitted that throughout this document there are these disclaimers. There was no imminent incitement to break a law. If there was incitement we were inciting workers to give this to their companies to in turn give it their tax professionals because we wanted a lot of tax professionals to be looking at this because the government refused to answer the questions ...

JUDGE SOTOMAYOR: Mr. Schulz, you have now gone over.

SCHULZ: Fine, thank you.

CATTERALL: May it please the court, my name is Arthur Catterall of the Justice Department, and I represent the United States in this matter. I think the record fairly well speaks for itself. Simply put, there is not error in the District Court's opinion. The judge very carefully went through the required elements needed to establish violation of section 6700 of the internal revenue code, and very carefully analyzed the factors to be considered in determining whether an injunction is necessary to prevent a recurrence.

JUDGE SOTOMAYOR: Why is, well, first, where in your brief below did you explain the need for the disclosure of the names of individuals to whom this blue folder has been given?

CATTERALL: In the brief below?

JUDGE SOTOMAYOR: Yes.

CATTERALL: I did not prepare the brief below. So I cannot directly answer where that would appear. I can attempt to answer, from the appellee's point of view.

JUDGE SOTOMAYOR: Well, you can't make up facts that are not there. Except that I don't see the argument below. Assuming that I am correct, how can we sustain that part of the injunction that the District Court issued directing the disclosure of those names?

CATTERALL: Oh, because...I think...and again...I don't know exactly what's in the record. My understanding was the need to get the names of the people who received these material is, in part, to be able to contact them to find people who have been taken in by this plan and, uh, alert them, look you need to file your returns, pay your taxes, withhold from your employees or there is going to be...

JUDGE SOTOMAYOR: The blue folder tells them to get tax advice before they do anything.

CATTERALL: We, in District Court found that there was no disclaimer at all. It goes against itself, it says ...these are pure educational materials, get somebody to review them, but you can use these to exercise your constitutional rights to withhold taxes until

the government answers our petitions for redress. So I think that the District Court's feeling that this was not a disclaimer at all.

JUDGE SOTOMAYOR: I am not sure I understand why. If *Reed* says that you can, consistent with the First Amendment, encourage people to break the law, why is this different? How is this different?

CATTERALL: Well, if someone crosses the line from advocacy to action.

JUDGE SOTOMAYOR: That's exactly the line I am trying out how it was crossed...

CATTERALL: It was crossed because the defendants prepared the forms to be used to thwart the withholding system, encouraged people to use these forms to submit them to their employers or if they were employers, to use these forms. This just goes beyond...

JUDGE SOTOMAYOR: But I am not sure. If the forms are a statement of belief, which is what they appear to be, how do they thwart anyone?

CATTERALL: Well they mislead people into believing that withholding is voluntary, and it's simply isn't, and whether this is, you know, an honestly held belief, it's not a reasonably held belief...

JUDGE WINTER BY PHONE HOOKUP: (Unintelligible, but sounds like, “Even if they persuade workers, the employee has the belief. That doesn’t stop the withholding.”)

CATTERALL: Right, they encourage the employee to give these forms to their employers. It’s a little less benign than the defendants would have you believe because they have forms for...the forms contain very threatening arguments to the employer, you know, if you do not stop withholding from our wages I’m going to file all sorts of actions against you, I’m going to sue you. It’s not a benign exercise.

JUDGE WINTER BY PHONE HOOKUP: (Unintelligible)

CATTERALL: Well I know there have been cases where employers have been convicted for not withholding from the employee’s wages, just as defendants have encouraged them not to, and ...

JUDGE WINTER BY PHONE HOOKUP: (Unintelligible)

CATTERALL: Well we do know that approximately 1000 of Mr. Schulz’ followers who signed onto the petition in the *We The People* case in the DC Circuit signed affidavits saying they are no longer filing returns and are not paying their taxes until their petition for redress is answered. So that is certainly in the record. And, Mr. Schulz, himself, his web postings, refers to various instances where people are heeding

his advice and going, you know, en mass to their employers saying, you know, stop withholding or we are going to, you know, bring all sorts of ... trouble for you.

JUDGE NEWMAN: Do you know whether he files returns?

CATTERALL: Just from what I get from the record I understand that he does, and the position is that he does not have any income.

JUDGE NEWMAN: Has the IRS looked into that?

CATTERALL: I believe the IRS is currently looking into that. In separate litigation, uh, involving the PayPal system on the Internet and, you know, trying to track down whether... I can tell you this that since 1999 over 2 million has been taken in by the foundation, the We The People Foundation, and I think the IRS is trying to make sure that none of that two million dollars is finding its way into Mr. Schulz' hands.

JUDGE NEWMAN: So the possibility of a prosecution is still alive?

CATTERALL: I imagine so. I am not aware of ...

JUDGE NEWMAN: Well you've got a tax protest movement all over the country. Right?

CATTERALL: Right.

JUDGE NEWMAN: And occasionally you bring a criminal case?

CATTERALL: Right.

JUDGE NEWMAN: And other times its just civil?

CATTERALL: Right.

JUDGE NEWMAN: I don't understand why if the government is very concerned about a wide spread protest movement that is consuming an awful lot of time and an awful lot of courts they don't go as aggressively as the law permits.

CATTERALL: And, uh, again, I've been going through the file and, you know, I don't know if this is in the record, but just to answer your question, I know that when the US department of justice started pursuing this civil action the U.S. attorneys office said that we strongly feel that you all need to prosecute this person criminally. I don't know why that advice is not heeded.

JUDGE NEWMAN: You don't?

CATTERALL: No I do not.

JUDGE NEWMAN: Seems an odd position for the leadership of a department that is anxious to have taxes paid.

CATTERALL: Odd position not to pursue criminal?

JUDGE NEWMAN: Yes.

CATTERALL: I do not disagree with you.

JUDGE NEWMAN: You are from the department?

CATTERALL: Of Justice.

JUDGE NEWMAN: And you don't know why there is a reluctance to prosecute?

CATTERALL: No, I do not.

JUDGE NEWMAN: Have you asked anyone?

CATTERALL: No I haven't.

JUDGE NEWMAN: Aren't you curious?

CATTERALL: I am curious, yes.

JUDGE NEWMAN: So am I.

CATTERALL: I don't hold a policy position and so...the lines ... (unintelligible)
...cases...(unintelligible)... point well taken. I would just like to say , as far as the First
Amendment concerns, the District Court...

JUDGE SOTOMAYOR: You are well over your time, so lets wrap this...

CATTERALL: The district court assumed that this was not commercial speech. It gave
the analysis as though it was political speech and correctly concluded that because the
defendants are aiding and abetting violations of the tax laws, there is no First Amendment
protection.

JUDGE SOTOMAYOR: Thank you counsel. Mr. Schulz.

SCHULZ: With respect to the comment about two million dollars, the IRS has audited
the Foundation. We provided everything. There is a clean bill of health. There is no
money coming to me from the Foundation. We had run full page USA ads, NY Times
ad, conferences, two CSPAN covered conferences at the National Press Club, this
citizens truth in taxation hearing. We are trying to educate people. We are trying to get

information out on these issues. Yes, the IRS have been investigating me. In 2003 they issued a summon on my personal books and records. I brought an action which this court eventually heard and in Schulz I and II, as they are referred to, this court said that I am entitled to a full adversarial proceeding and a hearing, and if the IRS wanted to pursue the matter they had to bring me to court and I would be entitled to a hearing. What they did instead, instead of responding to what this court recommend they do, they issued a third party summons on my bank in Glens Falls and in this IRS agent's declaration under the U.S. v Powell criteria, the agent said one of the reasons we need Mr. Schulz's records from the Glens Falls National Bank is because we have evidence that there is an online payment fulfillment system on PayPal and money is transferred from PayPal to my bank and to my account and to accounts in my control. I responded to that and said I want this agent sanctioned. This is a fabrication. The agency knows not only from the audit of the Foundation but it also knows from third party summonses that it issued to PayPal and got all the records, that no nickel ever went from PayPal to my bank. I have never had an account, except a personal account, at that bank. The case before the Northern District about the Bank summons is 06- MC- 131. With respect to ...

JUDGE SOTOMAYOR: Mr. Schulz, now we are off the

SCHULZ: With respect to the thousand followers in this other case that Mr. Cameron referred to, we petitioned with the assistance of constitutional scholars to try to get a reconciliation between the Iraq Resolution and the War Powers Clauses. There are four petitions. Between the US Patriot Act and the Privacy Clauses. Between the money

clauses of the constitution and the Federal Reserve and a reconciliation between the direct un-apportioned tax on labor and the taxing clauses. No response came from the government to any of those four petitions for redress. We then went to the DC District Court to test its attitude and to get a declaration of our rights on the case, and in support of that case, there were 1450 named plaintiffs in that case, they all, almost all of them, signed an affidavit saying we have petitioned, the government has refused to respond, therefore, we are taking the advice of the founders, who in 1774, sitting as the Continental Congress, not an irrelevant Congress, that's the one that adopted the Declaration of Independence ...

JUDGE SOTOMAYOR: Mr. Schulz now I'm going to end this. We will reserve decision.