

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff

v.

**ROBERT L. SCHULZ;
WE THE PEOPLE FOUNDATION FOR
CONSTITUTIONAL EDUCATION, INC.;
WE THE PEOPLE CONGRESS, INC.**

Defendants

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) **Case No. 1:07-CV-0352 TJM/RFT**
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) **Date: July 27, 2007**
) **Time: 10:00 A.M.**
) **Ctrm:**
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**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT AND IN RESPONSE
TO OPPOSITION TO MOTION TO DISMISS**

Dated: July 16, 2007

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INTRODUCTION

In this case the Plaintiff (“United States”) is unconstitutionally applying an otherwise constitutional statute (26 USC Section 6700) against Defendants (“Schulz”), to prevent Schulz from continuing with a **free** program of informing people that there is a **method** of paying taxes that they do not have to engage in – i.e., the withholding and diversion of their pay by the company they work for, and how those people can legally terminate said withholding.

Defendants program is **free** for the People to use, relies on the law, and has nothing to do with the individual’s responsibility of paying taxes.

The United States does not challenge Defendants over the withholding laws Defendants are relying on in the program that is the subject of the complaint; the United States only makes unsupported, inaccurate assertions about Defendants.

In a related case pending before this Court,¹ the United States is unconstitutionally applying yet another otherwise constitutional statute (26 USC Section 7602) against Defendants to prevent Schulz from continuing with the same **free** program and other programs that are aimed at holding the Government accountable to the Constitution and statutory law.

In the related case (06-mc-131), the United States was also caught making false assertions under oath to the Court and a request has been made of the Court to sanction and hold in contempt of court the offending official.

To justify its motion for a Summary Judgment, the Department of Justice would have the Court unjustly believe that Schulz is nothing more than a promoter of an illegal tax shelter.

The facts prove otherwise.

¹ *Schulz v United States*, Case No 06-MC-131. When filing the Civil Cover Sheet with the Clerk’s office, the DOJ should have, but failed to identify 06-MC-131 as a related case. A decision is pending on Schulz’s motions to consolidate that case with the instant case.

STATEMENT OF THE FACTS

The facts are included in Schulz's Response to the Statement of Material Facts the United States Contends Are Not Genuinely In Dispute (attached), in Schulz's Declarations #1 through #10 in this case and in the Schulz Declarations in said related case (which Schulz incorporates by reference).

SUMMARY OF THE ARGUMENT

The United States' cross-motion for summary judgment should be denied on the ground that the United States did not lack notice of the documents Schulz included in the Motion to Dismiss – documents material to, referred to and relied on by the United States in its Complaint.

Schulz's motion to dismiss should be granted on the ground that the United States can prove no set of facts in support of its claim that Defendants' March 15, 2003 letter with its Blue Folder and Forms is not protected by the Petition Clause of the First Amendment and by the Ninth Amendment.

In addition, Schulz's motion to dismiss should be granted on the ground that the United States can prove no set of facts in support of its claim that the March 15, 2003 with its Blue Folder and Forms is not protected by the **derivative** Rights of free political Speech and Assembly.

In addition, even if the distribution of the letter and the Folder were not protected by Schulz's Right to Petition, Speak and Assemble, the United States can prove no set of facts in support of its claim that Schulz is engaged in a promotion of an abusive tax shelter in violation of Section 6700.

I. THE UNITED STATES IS NOT ENTITLED TO HAVE DEFENDANTS' MOTION TO DISMISS CONVERTED TO A MOTION FOR SUMMARY JUDGMENT

A. Standard of Review

If a Plaintiff does not incorporate by reference or attach documents to its complaint, but the documents are referred to in the complaint and is central to the Plaintiff's claim, a Defendant may submit indisputably authentic copies to the court to be considered on a motion to dismiss. *Cortec Indus. v. Sum Holding*, 949 F.2d 42, 47-48 (2d Cir. 1991). See also *GFF Corp., v. Assoc. Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384. "When a Plaintiff chooses not to attach to the complaint or incorporate by reference a prospectus upon which it solely relies and which is integral to the complaint, the defendant may produce the prospectus when attacking the complaint for its failure to state a claim, because plaintiff should not so easily be allowed to escape the consequences of its own failure...Where Plaintiff has actual notice of all information in the movant's papers and has relied upon these documents in framing the complaint the necessity of translating a Rule 12(b)(6) motion into one under Rule 56 is largely dissipated."

B. The Court Is Entitled To Consider Schulz's Documents In Deciding The Motion To Dismiss; No Lack Of Notice

The complaint clearly targets, refers to and relies on the content of Schulz's March 15, 2003 letter to officials of the United States and the enclosure to that letter (the "Blue Folder").

The United States did not lack notice of the documents that were included with Schulz's Motion to Dismiss. While those documents were not attached to or incorporated in the complaint by reference, the United States obviously had actual notice of these documents and relied upon them in framing the complaint – and, they are integral to the complaint. The United States has long been in possession of these documents, which were originally prepared for submission to

the United States,² and repeatedly served on the United States in the pleadings in a series of lawsuits initiated by Schulz and others against the United States, including one initiated last November in the Northern District of New York.³ In each of these lawsuits, the March 15, 2003 letter and its enclosure (the Blue Folder) were served on the United States as Exhibits EEE and FFF to an Affidavit by a Plaintiff(s).⁴

The Court's attention is invited to the fact that all the material documents included by Schulz in his Motion to Dismiss and relied on by the United States in framing its complaint were provided to the United States by Schulz in *Schulz v United States*, Case No. 06-MC-131, a case filed on November 1, 2006 and assigned to Judge Hurd who is considering a motion to consolidate that case with this case.

Plaintiff United States' motion to convert Schulz's motion to dismiss to a motion for summary judgment should be DENIED on the facts and the law.

II. THE COMPLAINT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT AND BY THE NINTH AMEMDMENT

The United States has failed to prove any set of facts in support of its claim that Schulz's promotion of his March 15, 2003 letter with its WTP Withholding Forms are not protected by the Petition Clause of the First Amendment and by the Ninth Amendment.

² For instance, the March 15, 2003 letter was addressed to and served on the IRS Commissioner, the Attorney General, the President, the Treasury Secretary and the leaders of the Senate and House of Representatives. Schulz Declaration #1, Exhibit A.

³ **Northern District of NY:** *Schulz v. U.S.*, (06-MC-131); *Schulz v. U.S.*, (03-MC-50); *Schulz v. U.S.*, (03-MC-71); *Schulz v. U.S.*, (03-CV-1354); *Deitz v. U.S.*, (05-CV-0676). **Eastern District of NY:** *Schulz v. U.S.*, (06-CV-75); *Celauro v. U.S.* (05-CV-2245). **Northern District of California:** *Schulz v. U.S.*, (05-MC-80184). **District of Nebraska:** *Schulz v. U.S.*, (05-CV-397). **District of Columbia:** *We The People Foundation v. United States* (04-CV-1221).

⁴ See for instance paragraph #75 in Schulz Declaration #5 in said Case No. 06-MC-131, paragraph #75 in the Astrup Affidavit in said Case No. 05-CV-2245, and paragraph #75 in the Deitz Affidavit included in said Case No. 05-CV-0676. The Astrup and Deitz Affidavits were included with Plaintiffs opposition papers in the instant case.

By its very words, Schulz's March 15, 2003 letter, with its enclosure (see Schulz Decl. #6, Exh. A), together with the 37 letters from Schulz to the local IRS and DOJ officials (Schulz Decl. #2, Exh. GGG) represent a Petition to the Government for Redress of Grievances related to the involuntary withholding of pay from workers and is inextricably linked to Schulz's First Amendment Rights, subject to strict scrutiny. The United States failed to respond to said Petition for Redress. Defendants then promoted and continue to promote the legal termination of withholding of pay from workers' paychecks. Defendants argue the United States is attempting to impermissibly and unconstitutionally retaliate against Defendants for claiming and exercising their Constitutional Rights, that is, the United States is attempting to deny a constitutional Right.

This proceeding therefore involves a **first-impression** question of exceptional constitutional importance. The First Amendment is arguably the single most important sentence in the history of our Nation. Essential, unalienable, individual Rights were guaranteed by that sentence, including the right of the people to petition the government for redress of grievances. A decision denying that right, or even placing limitations upon it, is of exceptional constitutional importance.

Because the issue is one of first impression it is instructive to review the history of the Right to Petition going to original intent. In Schulz's motion to dismiss, filed May 23, 2007, Schulz incorporated by reference the First Amendment Right to Petition arguments included in Schulz's Briefs to the United States Court of Appeals in *We The People Foundation v. United States*, Case No. 05-5359. (Defs Memo, page 19).

On June 22, 2007 Schulz filed a Petition for Rehearing En Banc with the DC court. Schulz incorporates by reference the arguments included in said Petition for Rehearing, a copy of which is included as Exhibit A in Schulz Declaration #9.

**Schulz's Emphasis On Contemporary Historical Understanding
And Practices is Consistent with the Supreme Court's
Traditional Interpretive Approach to the First Amendment**

The Court is respectfully requested to factor into its decision Schulz's primary, extensively documented legal argument, that is, the meaning of the Petition Clause based on the "Framers' intent" approach to determining the construction of the Constitution's provisions and prohibitions, especially in light of what the one Judge on the DC Panel in *We The People* had to say in her concurring opinion, to wit:

"That precedent [*Smith* and *Knight*], however, does not refer to the historical evidence and we know from the briefs in *Knight* that the historical argument was not presented to the Supreme Court...The Supreme Court's interpretation of the Constitution has been informed by the understanding that ...it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth...the Supreme Court has rejected a pure textual approach in favor of an analysis that accords weight to the historical context and the underlying purpose of the clause at issue...In the context of the First Amendment, the Supreme Court has repeatedly emphasized the significance of historical evidence...Appellants point to a long history of petitioning and the importance of the practice in England, the American Colonies, and the United States until the 1830's as suggesting that the Right to petition was commonly understood at the time the First Amendment was proposed and ratified to include duties of consideration and response...Even those who take a different, based on a redefinition of the question and differences between English and American governments, acknowledge that there is 'an emerging consensus of scholars' embracing appellants' interpretation of the right to petition...the historical context and underlying purpose have been the hallmarks of the Supreme Court's approach to the First Amendment...Of course, this court cannot know whether the traditional historical analysis would have resonance with the Supreme Court in a Petition Clause claim such as appellants have brought...No doubt it would present an interesting question. For now it suffices to observe that appellants' emphasis on contemporary historical understanding and practices is consistent with the Supreme Court's traditional interpretive approach to the First Amendment." (footnotes and citations omitted) (J. Rogers, concurring opinion).⁵

Finally, on March 12, 2007, Schulz filed a Sur-Reply with the U.S. District Court for the Northern District of NY in *Schulz v U.S.*, Case No. 06-MC-131. Schulz incorporates by reference the arguments on the Right to Petition included in said Sur-Reply, pages 5-12. a copy of said Sur-Reply is included for the convenience of the Court as Exhibit B in Schulz Declaration #9.

⁵ *We The People Foundation v United States* (US Court of Appeals for the DC Circuit, Case No. 05-5359, May 8, 2007) (Judge Rodgers, concurring opinion).

In sum, the United States can prove no set of facts and cite no law in support of its claim that Schulz's March 15, 2003 letter with its WTP Forms are not inextricably linked to the constitutional process of petitioning the Government for Redress of constitutional torts and are not protected by the Petition Clause of the First Amendment and by the Ninth Amendment.

III. THE COMPLAINT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED UNDER THE SPEECH CLAUSE OF THE FIRST AMENDMENT

The United States has failed to prove any set of facts in support of its claim that Schulz's promotion of the March 15, 2003 letter with its WTP Withholding Forms is not protected by the Speech Clause of the First Amendment and by the Ninth Amendment.

The United States incorrectly contends that the WTP Forms that are the subject of its complaint represent false commercial speech and are therefore not protected by the First Amendment's Speech and Press Clauses.

In reply to the United States' opposition, Defendants submit Schulz Declaration #5, Exhibits A-M to prove the Blue Folders with the Forms were/are not sold, for profit or otherwise, but are given away. In addition, Defendants have denied and rebutted each of numerous incorrect claims in the United States' Brief and its Statement of Material Facts That The United States Contends Are Not In Genuine Dispute.

IV. THE COMPLAINT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED UNDER THE 26 USC Section 6700

The United States has failed to prove any set of facts in support of its claim that Schulz's is engaged in the promotion of an illegal tax shelter in violation of Section 6700.

The statute penalizing "abusive tax shelters" (26 USC § 6700) is plainly designed to punish only someone who participates in the organization or sale of a "plan or arrangement," while falsely telling potential participants (directly or indirectly) that "by reason of holding an interest in the entity or participating in the plan or arrangement," they can become entitled to a deduction, credit, exclusion, or some other "tax benefit."

Clearly only claiming that PARTICIPATION in a given plan ENTITLES one to some "tax benefit" could fall within the meaning of an "abusive tax shelter." However, **freely** telling someone (without charging them for the education) that based on existing law their pay does not have to be withheld and diverted to the Government, and suggesting workers and companies check into the accuracy of the that claim and to terminate withholding if true, simply does not fit within the statutory definition of "abusive tax shelter."

Because nothing in the materials given away free or for a nominal donation by Defendants (to cover printing and mailing costs of the voluminous materials for those who do not know how to download the material from the website for free) claim in any way to be able to GRANT to anyone some new TAX BENEFIT, those materials cannot possibly constitute a "tax shelter" (abusive or otherwise). This would be true even if the accuracy of one or two of the dozens of legal citations and opinions expressed therein turned out to be questionable.

Contrary to the United States' assertions, Defendants do not fit into the category of "advisors who seek to profit by ... aid[ing] others in the fraudulent underpayment of their tax." (U.S. Resp. page 3). 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 tax bill. It addresses only the withholding of pay. Schulz Dec.#5, Exh A-M; Decl #6, Exh A.

Material Facts Not In Dispute

Defendants have argued right along that the challenged program is about the *legal* termination of withholding, that is, the WTP Forms rely on black letter law. The United States has not taken issue with the accuracy of the underlying statutes regulations and other legal references relied on and cited by Defendants in the WTP Forms themselves. What follows is a list of those legal citations that are not in dispute and where on the WTP Forms they can be found (See Schulz Decl. #6, Exhibit A).

1. "The law [26 CFR § 31.3402 (p)-1 Voluntary Withholding Agreements]....(a) An employee who desires to enter into an agreement for withholding.....shall furnish his employer with Form W -4 (or equivalent)for withholding and (b)(2) Either the employer or the employee may terminate the agreement by furnishing a signed written notice to the other...." Voluntary Withholding Agreements are voluntary.

WTP Form #1, 7.A

2. Pursuant to 26 USC § 3402(p)(3)(A), 5 USC §5517 and 31 CFR §215.2(n)(1), all ordinary American workers have the right to refuse to consent to enter into a voluntary withholding agreement and can voluntarily refuse to have amounts taken from his/her pay for federal and/or state taxes, social security, other governmental insurance programs or welfare programs.

WTP Form #1, 7.B

3. Pursuant to 26 CFR § 31.3402(p)-1(b)(2), either a company or a worker may terminate the withholding agreement (or its equivalent) at any time, by furnishing a signed, written notice to the other.

WTP From #1, 7.C

4. "Protected Individuals" as defined at 8 USC §1324b(a)(3)(A) cannot be compelled to submit any specific government documents or to disclose a social security number as a condition of being hired by or maintaining their status as a worker. Most American workers qualify as "Protected Individuals" under the law.

WTP Form #1, 7.G

5. The landmark decision of *EEOC v. Information Systems Consulting CA3-92-0169T U.S.D.C. Northern District of Texas Dallas Division*, held that companies cannot discriminate against applicants or workers for failure to obtain or disclose a social security number.

WTP Form #1, 7.I

6. No law requires a worker to file a Form W-4 (or its equivalent). In *U.S. v. Mobil Oil Co., 82-1 USTC* para. 9242, *U.S.D.C. ND Tex. Dallas 1981 CA. 3-80-04 38-G*, the court ruled that an Entity does not even have to send a W-4 Form or other employment forms to the Internal Revenue Service unless served with a judicial court-ordered summons to do so.

WTP Form #1, 7.J

7. Pursuant to **IRC §6041(c)**, a worker is only required to furnish a name and address upon demand of a company for whom he seeks to work. No social security number is required by statute.

WTP Form #1, 7.K

8. Absent a valid, order executed from a court of competent jurisdiction, a company has no lawful authority to take amounts from a worker's paycheck for non-judicial garnishments, levies, interest and/or penalties without his or her written consent.

WTP Form #1, 7.M

9. Under **IRC §6301**, any company, acting as a “tax collector,” must be able to produce evidence of having a written delegation of authority from the Secretary to collect from a worker taxes imposed by the internal revenue laws. No implementing regulation exists for such under 26 CFR.

WTP Form #1, 7.O

10. Under **IRC §6201**, any company, acting as an “assessment officer,” must be able to provide evidence of having a written delegation of authority from the Secretary to make inquiries, determinations and assessments against a worker for the taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed under 26 USC. No implementing regulation exists for such under 26 CFR.

WTP Form #1, 7.P

11. The authority of a **Withholding Agent** (defined in §§7701(a)16, 26CFR §301.7701-16) to withhold from a worker's pay or remuneration (**IRC §§1441, 1442, 1443**, and specifically in **26 CFR §1.1441-7**) applies only to nonresident aliens and foreign entities. Said authority does not extend to ordinary American workers.

WTP Form #1, 7.Q

12. A **Withholding Agent** is required to have the specific *Form 2678* on file with the IRS to be legally authorized to withhold from a worker's earnings, or a *Form 8655 Reporting Agent Authorizing Certificate* from the Treasury Financial Management Service.

WTP Form #1, 7.R

13. A company must execute a Form 2678 or 8655 specific to each worker. These forms are the only authority by which a **Withholding Agent** as defined in law can legally withhold money. These forms do not apply to ordinary American workers and therefore the companies do not have filing or reporting requirements regarding such.

WTP Form #1, 7.S

14. The published policies of the IRS in *Publication 515 pages 2, 3 and 4* are clear in explaining that ordinary American workers are not subject to withholding of the income tax imposed in Subtitle A, and not subject to the jurisdiction for federal or state withholding.

WTP Form #1, 7.T

15. State-federal agreements for administration of qualified state income taxes are authorized by **Part 215 of 31 CFR**. The authority applies exclusively to federal government agencies and personnel; it does not extend to general population in States of the Union. Pursuant to **31 CFR § 215 .9** and **26 USC Subtitle A**, an ordinary American worker needs to provide his written consent to have any such sums withheld.

WTP Form #1, 7.V

16. To legally withhold Social Security or other similar federal/state insurance taxes, a worker must knowingly and voluntarily agree to such via a **Section 218 Voluntary Agreement** for coverage of social security/insurance benefits pursuant to **42 USC 418**.

WTP Form #1, 7.X

17. Ordinary American workers do not derive Subtitle A wage Gross Income (**IRC §§ 61, 911, and 26 CFR §§1.861-4, 1.61-2**) from their labor and their remuneration does not constitute wages for withholding purposes under **IRC §3401 (a)(8)(A)(i)**.

WTP Form #1, 7.Y

18. Ordinary American workers do not derive taxable income as defined in **26 CFR §1.863-I(c)** from a taxable source defined in the **operative** section of **26 CFR §1.861-(f)(i)**. They are not engaged in a revenue taxable activity, event, or commodity. They are outside the venue and the jurisdiction of **26 USC** and **26 CFR**.⁶

WTP Form #1, 7.Z

19. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." **Miranda v. Arizona, 384 U.S. 436, 491**. Federal and/or

⁶ This is the only section of law and interpretation the United States has taken issue with and may be in dispute.

state withholding, for any purpose, from the paychecks of ordinary Americans cannot be legally accomplished without the voluntary consent of the worker.

WTP Form #1, 7.AA

20. Companies using hired workers must comply with the *Anti-Discrimination Act (8 U.S.C. §1324a* and *§1324b*, the *Civil Rights Act of 1974*, and the *Privacy Act of 5 U.S.C.A. 552(a)*, all which prohibit discrimination against “**Protected Individuals**” based on citizenship or national origin, or to deny any individual any right, benefit or privilege provided by the law because of failure to disclose a social security number.

WTP Form #2, 7.B

21. Ordinary American workers are “*Protected Individuals*” as defined at *8 USC §1324b(a)(3)(A)*, and cannot be compelled to submit any specific government documents or to disclose a social security number as a condition being hired by or maintaining a position with a company.

WTP Form #2, 7.C

22. Companies are required by law to be in accordance with the ruling of *EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. INFORMATION SYSTEMS CONSULTING, United States District Court for the Norther District of Texas Dallas Division CA3-92-0169-T*, which held that, “*The defendant shall be permanently enjoined from terminating an employee or refusing to hire an individual for failure to provide a social security number.*”

WTP Form #2, 7.D

23. A worker’s signed **Statement of Citizenship and Residence** satisfies the requirement of the Department of Justice that a worker attest to his employment eligibility under *8 USC 324a(b)(2)*.

WTP Form #2, 7.E

24. Pursuant to *IRC §6041(c)*, a worker is only required to furnish a name and address upon demand of a company hiring him. No social security number is required by statute.

WTP Form #2, 7.F

25. Pursuant to *42 USC 405(c)(2)(B)(i)*, unless an individual is seeking to become a direct recipient of government benefits, he not required by law to obtain or disclose a social security number as a condition of being hired or maintain an existing position.

WTP Form #2, 7.G

26. Under *Internal Revenue Code §6109(a)(3)* and *26 CFR §301.6109-1(c)*, a company's only obligation under the law is make a reasonable effort to request, at least twice, for a worker to disclose a social security number (SSN), taxpayer identification number (TIN) or employer identification number (EIN).

WTP Form #2, 7.H

27. Ordinary American workers, as “**Protected Individuals**,” have no lawful duty to provide a SSN, TIN or EIN to a company. Having been refused, a company need only follow the instruction given at *26 CFR §301.6109-1....* “*When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating.*”

WTP Form #2, 7.I

28. Ordinary American workers are not required under *26 USC Subtitle A or 31 CFR § 215.9*, to submit any federal Form W-4 withholding certificate (or its equivalent) unless **volunteering** to have amounts withheld from pay for taxes, fees or other charges.

WTP Form #2, 7.J

29. Pursuant to *31 CFR § 215.11* and *26 USC Subtitle A*, absent a worker's voluntary, written consent, ordinary American workers are not subject to withholding.

WTP Form #2, 7.K

30. Pursuant to *26 USC § 3402(p)(3)(A)* and *31 CFR §215.2(n)(1)*, workers are under no legal obligation to permit amounts to be withheld nor enter into voluntary withholding agreements with their companies, consequently such workers are not required by statute to submit IRS **Form W-4** (or its equivalent) for that reason.

WTP Form #2, 7.L

31. Pursuant to *26 CFR §31.3402(p)-1(b)(2)*, either the Entity or the worker may terminate the W-4 Agreement (or its equivalent) at any time by furnishing a signed, written notice to the other.

WTP Form #2, 7.M

32. Pursuant to *29 USC Chapter 14 The Age Discrimination in Employment Act of 1967 §623(a)(1)*, no law requires the applicant/worker to disclose age or birth date since it is unlawful for the Entity to fail or refuse to hire or to discharge a worker or otherwise discriminate against a worker because of one's age.

WTP Form #2, 7.N

33. Ordinary American workers are not '**employees**' as defined in **26 USC § 3401(c), § 3121(d) and § 3306(i)** "*an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing; also includes an officer of a corporation.*"

WTP Form #2, 7.O

34. Most American companies are not a duly authorized "**Withholding Agent**" as defined in **IRC §7701(a)16** and **26 CFR §301.7701-16**. As such, these companies lack any lawful authority to withhold amounts for federal and/or state taxes, fees or other charges, without the worker's voluntary written consent.

WTP Form #2, 7.P

35. Most American workers are not subject to withholding under **26 USC §§1441 through 1446** because they are not "nonresident aliens".

WTP Form #2, 7.Q

36. As required by **IRC §6301**, most American companies have not received a written delegation of authority from the Secretary to collect from the worker, the taxes imposed by the internal revenue laws and the Secretary has not established any such authority by regulation.

WTP Form #2, 7.R

37. As required by **IRC §6201**, most American companies have not received a written delegation of authority from the Secretary to make inquiries, determinations and assessments against their workers pertaining to the taxes (including interest, additional amounts, additions to the tax, and assessable penalties) that may be imposed by Title **26 USC**.

WTP Form #2, 7.S

38. Ordinary American companies do not provide to their workers, taxable income as defined in **26 CFR §1.863-1(c)** from a taxable source defined in the operative section of **26 CFR 1.861-(f)(i)**. Therefore these workers are outside the venue of and not subject to the jurisdiction of **26 USC** and **26 CFR**.

WTP Form #2, 7.T

39. Pursuant to **26 USC § 6041**, most American companies are not required to make returns or statements of payments regarding income derived by their workers.

WTP Form #2, 7.U

40. Most American companies are NOT required to file an *IRS Form 8655 Reporting Agent Authorization* by any federal or state tax agency (specific to each of their ordinary American workers), therefore it has no filing or reporting requirement regarding those workers.

WTP Form #2, 7.V

41. In order to withhold, a company must enter into Standard Agreement with the Secretary of the Treasury and Fiscal Assistant Secretary (or his delegates) pursuant to **31 CFR Subpart B-Standard Agreement §215.6** regarding withholding from each specific worker. Without this Agreement, the company is NOT authorized by law to withhold any federal and/or income taxes or employment taxes from the worker.

WTP Form #2, 7.W

42. Pursuant to **26 CFR § 301.7512-1(d)**, in order to withhold taxes from a worker without his consent, the IRS Director has must order in writing, or order personally hand-deliver to a company, via internal revenue officer or employee, a judicial court order ordering such withholding.

WTP Form #2, 7.Y

43. Most American workers are classified as a 'non-covered' workers, and therefore are not subject to the *Federal Insurance Contributions Act (FICA)* commonly known as Social Security since the worker cannot be compelled to register for, or participate in, such government entitlement programs. Such authority to require such from a worker is a power which “*obviously lie(s) outside the orbit of congressional power.*” ***Railroad Retirement Board v. Alton Railroad Co.*, 295 U.S. 330, 55 S. Ct. 758 (1935).**

WTP Form #2, 7.Z

44. State-federal agreements for the administration of qualified state income taxes are authorized by Part 215 of 31 CFR. This authority applies exclusively to federal government agencies and personnel; it does not extend to general population in states of the Union. Pursuant to **31 CFR §215.9** and **26 USC Subtitle A**, most American companies lack the lawful authority to take amounts from their workers' pay since their worker have not given their **voluntary**, written consent to do so.

WTP Form #2, 7.AA

45. Without a Standard Agreement with the Secretary of the Treasury and the Fiscal Assistant Secretary (or his delegates) pursuant to **31 CFR Subpart B-Standard Agreement §215.6**; a company lacks lawful authority to take amounts from a worker's pay.

WTP Form #2, 7.BB

46. Without a **Section 218 Voluntary Agreement** for coverage of social security, specific to each worker, pursuant to **42 USC 418**, a company lacks the lawful authority to take amounts from a worker's pay.

WTP Form #2, 7.CC

47. No American living in a state is "subject to the jurisdiction of Congress," generally speaking, unless one is a nonresident alien involved in immigration proceedings or nonresident employee; or one is a federal officer, federal employee; active member of the Armed Forces; elected federal official; mariner, Indian ward, engaged in interstate commerce, or participating in federal insurance.

WTP Form #2, 7.FF

48. The legal authority to take any amount from a worker's pay for any federal and state taxes, trusts, benefits, programs, social security deductions, non-judicial penalties, garnishments, liens or levies upon the worker's earnings requires the worker's voluntary, written consent or verified signature on *IRS Form 2159-Payroll Deduction Agreement*.

WTP Form #2, 7.GG

49. The **Privacy Act of 5 U.S.C. Annotated 552(a)** states, "It shall be unlawful...to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his/her social security number."

WTP Form #3, page 1.

50. The House Congressional Record, March 27, 1943, page 2580 states, "*income tax is an excise tax with respect to certain federal activities and privileges. The income is not the subject of the tax....*"

WTP Form #3, page 1.

51. Labor is a fundamental unalienable right and is protected under the U.S. Constitution¹¹ and fundamental rights under the U.S. Constitution CANNOT be taxed, therefore money CANNOT be withheld for taxes. ***Butcher's Union Co. v Crescent City Co. 111 US 746, at 758-757 (1884) [Labor] 2 Murdock v Pennsylvania. 319 US 105, at 113 (1943) [no tax on Labor]***

WTP Form #3, page 2.

52. "*The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of the law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws.*"

Economy Plumbing and Heating v. United States. 470 F.2d 585, at 589 (Ct.Cl.1972).

WTP Form #3, page 2.

53. The income tax is not a tax on “income”, it is an excise tax on privileged activities. Engaging in excise taxable activities makes one a taxpayer. The code only applies to taxpayers. Therefore, any type of list defining the source from which income is derived in the code is mooted by a presumption of a lawful ‘nontaxpayer’ status. “*Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege.*” **Jack Cole Co. v. MacFarland**, 337 S.W. 2d 453, 455-456 (Tenn.1960). [explanation added.]

WTP Form #3, page 2.

54. U.S. Citizens cannot be compelled to register in and subsequently participate in government entitlement programs, as the authority to require such from Citizens is a power which “*obviously lie(s) outside the orbit of congressional power.*” **Railroad Retirement Board v. Alton Railroad Co.**, 295 U.S. 330, 55 S. Ct. 758 (1935).

WTP Form #3, page 2.

55. “*The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals’ rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.*” **Redfield** (cite omitted)

WTP Form #3, page 2.

56. “*The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry.*” **48 Am Jur 2d, Section 2, page 80.**

WTP Form #3, page 2.

57. “*A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.*” **Murdock v. Pennsylvania**, 319 U.S. 105, 113 (1943.)

WTP Form #3, page 2.

58. “*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*” **United States Constitution, 9th Amendment.**

WTP Form #3, page 2.

59. “*Our system of taxation is based upon voluntary assessment and payment, not upon distraint.*” **Flora v. United States**, 362 U.S. 145, 176 (1960).

WTP Form #3, page 2.

60. No law requires a worker to file a Form W-4 (or its equivalent). In *U.S. v. Mobil Oil Co.*, 82-1 USTC para. 9242, U.S.D.C. ND Tex. Dallas 1981 CA. 3-800438-G, the court ruled that an Entity does not even have to send a Form W-4 or other employment forms to the Internal Revenue Service unless served with a judicial court-ordered summons to do so.

WTP Form #4, 7.I

61. Most American workers and independent contractors are not engaged as a '**trade or business**' as defined in *IRC §7701(a)(26)*: “includes the performance of the functions of a public office,” therefore the such individuals are not required under *IRC §6041(a)* to file any return, statement or list to the government.

WTP Form #4, 7.N

62. Pursuant to *Paperwork Reduction Act Notice (Public Law 104-13)*, the instructions clearly state that one is not required to respond to a collection of information that does not display a (valid) OMB control number. **IRS Form W-9, Request for Taxpayer Identification Number and Certification**, does not have an OMB number.

WTP Form #5, 6.A

63. Pursuant to *IRC §6722(b)(2)*, no penalty can be imposed upon a company or Payee for failure to include information (such as a SSN, TIN , or EIN) because the collection of such information on IRS Form W-9 is by law, voluntary not mandatory.

WTP Form #5, 6.C

64. A TIN is *not* required for Protected Individuals who do not receive taxable income and are not required to report taxable income to the IRS. No law requires a Protected Individual to complete an IRS Form W-9 or to furnish a social security number to obtain labor or to maintain a labor contract. *Title 8 USC § 1324b* states that “Protected Individuals” cannot be required by any entity to provide any specific documents in order to work in America. Per *26 CFR 301.61091(c)*, a company can request either item and needs only to sign an affidavit stating that the request has been made. No federal or state statute authorizes anyone to determine who is subject to any revenue tax.

WTP Form #6, (bottom)

65. A Protected Individual who is not required to furnish a TIN includes, but is not necessarily limited to, an individual who is domiciled in one of the states of the union of the fifty united states of America, and does **not** live, work, or derive income from any source within the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, or any other Territory or enclave under the sovereignty within the federal United States, which entity has its origin and jurisdiction from Article 1, Section 8, Clause 17 of the U.S. Constitution and *26 CFR 1.911-2(g)*.

WTP Form #6, (bottom)

The United States has questioned (not disproved) one or two of the dozens of legal citations being relied upon by Defendants' Operation Stop Withholding. The promotion and free distribution of these forms can hardly be considered an illegal tax shelter if the United States finds no fault with them. The United States may not like Defendants free program, but that is hardly dispositive.

The United States has failed to prove any set of facts in support of its claim that Schulz is engaged in the promotion of an illegal tax shelter in violation of Section 6700. The complaint should be dismissed for failure to state a claim for which relief can be granted under Section 6700 and 6701.

CORPORATE DEFENDANT'S STATEMENT

The corporate defendants through counsel assert that they did not state in the documents in question that persons should not pay taxes. They assert that the documents dealt with the method of paying taxes, that is through withholding, and that they merely accurately stated the law.

The corporate defendants state that they did not "sell" the documents in question.

In addition, the corporate defendants state that there are many material facts that are in dispute.

The corporate defendants submit in support of their argument the declarations and documents provided by Mr. Schulz in the pleadings that he has prepared and submitted. Those documents upon which they rely provide evidence of the positions set forth above.

Mark Lane, counsel for the corporate defendants has been a member continuously in good standing of the New York State bar for more than fifty years and he apologizes for not having before this time submitted his application for membership in this court. A delay in

obtaining a certificate in good standing has caused this delay. Mr. Lane is a member of the bar of the United States District Court for the Southern District, most US Courts of Appeals and the United States Supreme Court bar, and is confident that within 48 hours he will submit to this court an application for membership along with the required documents and fees.

CONCLUSION

For the reasons set forth above the Defendants respectfully request that United States' motion for summary judgment be denied and Defendants motion to dismiss be granted.

Dated: July 15, 2007

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