UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	**)**
	) Case No. 1:07-CV-0352 TJM/RFT
Plaintiff	**)**
	) DEFENDANTS' MEMORANDUM OF
	) LAW IN SUPPORT OF MOTION
v.	**) TO DISMISS, OR ALTERNATIVELY,**
	) TO STRIKE AND FOR A MORE
	) DEFINITE STATEMENT
ROBERT L. SCHULZ;	**)**
WE THE PEOPLE FOUNDATION FOR	**) Date: July 9, 2007**
CONSTITUTIONAL EDUCATION, INC.; and	**) Time: 9:30 A.M.**
WE THE PEOPLE CONGRESS, INC.	**) Ctrm:**
	)
Defendants	**)**

Pursuant to Local Rule 7.1, defendants Robert L. Schulz ("Schulz"), We The People Foundation for Constitutional Education, Inc., and We The People Congress, Inc. submit this Memorandum of Law in support of defendants' motion to dismiss, or alternatively, to strike and for a more definite statement. Accompanying this Memorandum are three Declarations by Schulz.

INTRODUCTION

Pursuant to the Court's "inherent equity powers" and sections 7402 and 7408 of the Internal Revenue Code, the United States seeks, in general, to permanently enjoin and prohibit Schulz and the two corporate defendants ("We The People Organization"), from engaging in Operation Stop Withholding (which consists of the distribution of a certain Blue Folder containing certain printed matter), as conduct allegedly subject to penalty under sections 6700 and 6701, and "any other penalty provision in the Internal Revenue Code." (Complaint, pages 2-3)

Specifically, the "Conduct Sought to be Enjoined" is printed matter in the Blue Folder that is (falsely) identified by the United States as a " 'Tax Termination Package' for Employers" and a " 'Tax Termination Package' for Employees'". (Complaint, pages 3-8).

Defendants move this Honorable Court to dismiss the complaint under Rule 12(b)(6), for failure to state a claim for which relief can be granted under the First Amendment's free speech and Right to Petition clause, and under Sections 6700 and 6701 of the Internal Revenue Code.

In addition, Defendants move this Honorable Court to dismiss the complaint under Rule 12(b)(7) for failure to name a necessary party(ies).

In the alternative, Defendants move this Honorable Court for a more definite statement under Rule 9(b) and Rule 12(e), and to strike certain prejudicial, and scandalous matter under Rule 12(f).

SUMMARY OF THE ARGUMENT

Defendants We the People are not-for-profit organizations. The material forming the basis of the Complaint is protected political and/or educational material. It does not, under even the most liberal construction, constitute a "scheme" to "incite" illegal tax evasion. Neither Schulz nor the We The People Organization garner any profit whatsoever from the material, which they make available for free on their website. They merely request a donation representing photocopying and mailing charges from any requesting party. Where the requesting party is unable to reimburse defendants for the cost of reproduction, the materials are provided **free of charge**. Neither Schulz nor the We The People Organization has "customers" nor are they engaged in commerce.

The content of the Blue Folder is not only political speech, it is an integral element of the formal process of Petitioning the Government for Redress of constitutional torts. The material is therefore afforded not only the full protection of the First Amendment's Free Speech clause, it is wholly protected by the Petition clause. The distribution of the Blue Folder is nothing less than the direct exercise of the First Amendment to cure wrongful acts by the Government. Despite the fact that its contents may greatly offend the Government it is neither criminal nor civilly actionable, it is the highest form of speech protected by the First Amendment, i.e., political expression.

There is no merit to the complaint on the facts or the law. The complaint was filed with hyperbole intended solely to harass Defendants, to convert the claim and exercise of a constitutional Right into a crime, to deter and obstruct Defendants from exercising their Rights, and to have a constitutionally prohibited chilling effect on citizens who challenge the basis and scope of the Government's authority.

The Blue Folder does not provide any information to workers or company officials about "tax avoidance" or "tax termination." Nowhere in the Blue Folder are the words "Tax Termination Package" used. Although the materials contain some general legal research questioning the government's purported legal authority to impose direct, un-apportioned taxes on the labor of Americans, the Blue Folder materials do NOT focus on taxes or "tax benefits" nor do they seek to encourage non-filing of returns, nor do they give any advice or personal assistance as to those matters. The Complaint must be dismissed.

BACKGROUND AND SUMMARY OF THE FACTS

In 1979, at age 40, Schulz realized the Government was not always benevolent, did not always have the public interest uppermost in mind when it acted and, in the interest of the protection, preservation and enhancement of individual, unalienable Rights, Freedoms and Liberties, it was his duty as an American citizen to be vigilant and to hold government accountable to the Rule of Law.

Since 1979 Schulz has been petitioning the New York State Judiciary to hold local and State government accountable to the New York Constitution, setting some important precedents.[1]

In 1995 and 1999, Schulz petitioned the U.S. Judiciary to hold the Government accountable to the money and war making clauses of the Constitution.[2] However, both cases were dismissed for "lack of standing," something that had not happened to Schulz in defending the State Constitution.

[1] See Schulz Declaration #3.

Therefore, between 2000 and 2002, Schulz and many others[3] petitioned the federal Executive and Legislative branches for Redress of Grievances regarding the Government's violation of the war, money, tax and "privacy" clauses of the federal Constitution. The only remedies sought were formal, specific answers to certain questions regarding the Iraq Resolution, the USA Patriot Act, the Federal Reserve System and the direct, un-apportioned federal taxes on labor.

The Government has refused to respond to the First Amendment Petitions for Redress.

Believing that the First Amendment Right to Petition the Government for Redress of Grievances, **especially constitutional torts**, could not have been enumerated as part of the First Amendment without effect, that the Right of Popular Sovereignty obligates the Government to respond to such Petitions for Redress, and that the People had the Right to peacefully secure Redress by withdrawing their allegiance and support from the Government if the Government failed to respond to such Petitions for Redress, Schulz began to exercise his *other* First Amendment Rights and publicly advocate that that People had a Natural Right guaranteed by the First Amendment to retain their money until their Grievances were Redressed.

Believing that the institutionalized practice of wage withholding was precluding the People from exercising their First Amendment Right to retain their money until their Grievances were Redressed, and knowing that the law clearly states that withholding agreements (W-4s) are voluntary and that either party could terminate withholding by simply notifying the other party (*See* 26 CFR 3402(p)-1), Defendants launched "Operation Stop Withholding," to get company attorneys to review the law and companies to ***legally*** terminate voluntary wage withholding.

---

[2] SCHULZ v. U.S., (NDNY No. 95-133)(SUMMARY ORDER by the Second Circuit Feb 10, 1997,Case No. 96-6184); SCHULZ v. U.S. (NDNY No. 99-0845) (SUMMARY ORDER by the Second Circuit March 6, 2000,Case No. 99-6241)

[3] In 1997, Schulz founded the We The People Foundation for Constitutional Education, Inc. (a civic educational organization) and the We The People Congress, Inc. (a civic action organization). Through the activities of these two organizations, tens of thousands of individuals learned about these Petitions for Redress of Grievances and decided to support the cause in one way or another.

Operation Stop Withholding consisted of the **free** public distribution of a "Blue Folder." Each Folder included **instructions that the worker and/or the entity should have their tax professionals check the accuracy of the statements made in the Blue Folder. The workers were also advised that if the company refused the worker's request to stop withholding, the worker could approach his state labor commission to lodge a complaint against the entity or sue the company, with the attendant risk that the worker might be fired from his job.**[4]

On March 15, 2003, Schulz sent a copy of the Folder to the IRS, the DOJ and other federal officials, requesting to be notified if there was anything in the folder that was false or misleading, and informing them of his intentions to begin the widespread, **free** distribution of the Blue Folder.

In April-May, 2003, Schulz lectured in 37 cities, handing out over 3500 copies of the Blue Folder, **free of charge**. He posted the entire content of the Blue Folder on the website, allowing People to download and print the information, **free of charge**. Before each public event, Schulz again provided Notice to the local IRS office and U.S. Attorney responsible for that state or region.

Tellingly, the government did not respond to the March letter or to any of the separate local Notices provided regarding his speaking locations and dates. Instead, in April, the IRS sent Schulz a letter saying it had reviewed "certain material," under the authority of Section 6700 it was investigating a potential "abusive tax shelter" and it demanded Schulz's books and records.[5]

---

[4] For more information about Operation Stop Withholding and the Folder, see Declaration #1. The Blue Folder contains: 1) a 3-page letter from Robert Schulz to IRS Commissioner Mark Everson, dated March 15, 2003; 2) 41 pages of material for the consideration of workers and contractors, together with 6 pages of information for companies; 3) a 51-page Statement of Facts and Beliefs Regarding the Individual Income Tax; and 4) two pages of Jury Instructions in the 1951 trial of businesswoman Vivian Kellem, together with a 1-page Preface.

[5] This was the beginning of IRS's WTP-6700 pretextual "enforcement" program; the actual purpose is to identify for harassment all persons who are contributing to the cause of holding the Government accountable through the Petition Clause of the First Amendment. See Schulz Declaration #3 for more information about WTP-6700.

Schulz refused in writing, on the ground that the request was an abridgment of his First Amendment Right to Petition the Government for Redress of Grievances. The IRS served Schulz with a Summons, "requiring" Schulz to turn over his personal and private books and records.

Schulz petitioned the USDC to quash the Summons. The Second Circuit ruled that under the principles of Due Process, Schulz did not have to respond to administrative requests -- including Summonses, and if the IRS wanted the information it would have to bring an enforcement proceeding in District Court where Schulz would be entitled to a hearing.[6]

After this strong ruling in favor of taxpayers, the IRS moved the Second Circuit to modify its decision to require Schulz to respond to its administrative demand for his private records. The Second Circuit patently refused to do so, reiterating the compelling Due Process issues at stake.[7]

In July of 2004, Schulz and 1450 named plaintiffs filed a declaratory judgment action in the USDC for the District of Columbia, seeking -- *for the first time in history* -- a declaration of the Rights of the People and the obligations of the Government under the First Amendment's Petition Clause. The Court was asked to determine whether the Government is required to respond to said four Petitions for Redress of **constitutional torts**, and whether the Plaintiffs have the Right to retain their money until their Grievances were Redressed.[8]

Central to this landmark lawsuit is a body of historical and archived evidence clearly establishing the Right of the People to withhold their money from the Government to secure Redress. Included in this body of legal evidence is a quote from the Journals of the Continental Congress expressing this specific assertion:

---

[6] *Schulz v IRS*, 395 F.3d 463 (2d Cir. 2005)

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

[8] The case is before the United States Court of Appeals for the District of Columbia. *We The People Foundation v. United States*, Case number 05-5359. On May 8, the Court issued its Opinion. A Petition for Rehearing En Banc will soon be filed. See Schulz Declaration #2, Exhibit ZZZ for a copy of the Opinion. See Exhibits OOO-YYY for the pleadings and court orders in the case, at both the District and Appellate level.

"If money is wanted by Rulers who have in any manner oppressed the People, *they may retain it* until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility."
Journals of the Continental Congress,1:105-113

Obviously angered by the filing of said *We The People vs. United States* declaratory judgment action in 2004, and by said decisions by the Second Circuit in 2005, and highly motivated to derail and shut down the First Amendment Petition process rather than respond to the People's Petitions for Redress, the IRS stepped up its WTP-6700 "enforcement" program against Defendants, targeting anyone associated with them, including donors, Board members, contractors, those who signed the Petitions for Redress, and many of the plaintiffs in *We The People v United States*, all under the pretext that it was investigating an "abusive tax shelter" under 26 USC Section 6700.[9]

The Court's attention is especially invited to another matter that is currently before the USDC for the Northern District of New York. In October of 2006, the IRS served a third-party summons on Schulz's Bank. Schulz petitioned to quash the Summons on the ground that the IRS was acting in bad faith.[10] Schulz argued, as here, that the Summons was issued solely to obstruct the exercise of First Amendment Rights. To manipulate the Court, the IRS then filed a fraudulent Declaration by the agent that issued the Summons. She **falsely testified** under penalty of perjury that the Bank summons was issued because the IRS had evidence that money had been transferred from an on-line payment fulfillment system (PayPal) to accounts in the Bank controlled by Schulz. This assertion was false and the agent knew it was a false. Schulz moved the Court to sanction the agent. Tellingly, the IRS did not (and could not) refute the charge of perjury in its pleadings.[11]

After four years of "investigation", audits and the Defendants being forced to litigate numerous federal lawsuits to three separate Courts of Appeals to quash this barrage of bad-

[9] See Declaration #3 for information regarding the IRS's WTP-6700 "enforcement" program.
[10] *Schulz v United States*, Northern District of New York, Case No 06-mc-131, Judge David N. Hurd.
[11] On information and belief, that agent has been removed from the Schulz case.

faith IRS administrative actions, and while the parties were waiting for the Northern District to decide whether to quash the Bank summons and sanction the IRS agent for fraud and perjury, the IRS filed the instant 6700 action.

The Court's attention is invited to Schulz's Declaration #1 for the full set of facts relating to said Operation Stop Withholding and the Blue Folder, the alleged cause of the Government's request for an Injunction in the instant case. The Court's attention is invited to Schulz's Declaration #2 for the full set of facts relating to said First Amendment Petition process.

The Court's attention is invited to Schulz Declaration #3 for the full set of facts relating to IRS's myriad retaliatory "enforcement" actions taken against Defendants in response to, and in an effort to shut down their First Amendment Petition for Redress process regarding the Iraq Resolution, the USA Patriot Act, the Federal Reserve System and the direct, un-apportioned federal taxes on labor. All of these so-called "enforcement" actions, including the instant lawsuit, have been initiated by the IRS under cover of its authority under 26 USC Section 6700.

POINT I

THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED BECAUSE IT SEEKS TO ENJOIN CONSTITUTIONALLY PROTECTED SPEECH

The complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim for which relief can be granted inasmuch as the conduct complained of constitutes constitutionally protected speech under the First Amendment.

It is important to note that the activity complained about is part and parcel of the Defendant's exercise of the First Amendment Petition process-[12] and strictest scrutiny must be applied when seeking to chill the expression of ideas. *McIntyre v Ohio Elec. Comm'n*, 514 U.S. at 347 (1995).

[12] The First Amendment Petition process is aimed at remedying certain constitutional torts – i.e., Government's violation of the war powers, privacy, money and tax clauses of the federal Constitution.

The First Amendment to the Constitution declares "Congress shall make no law … abridging the freedom of speech." The U.S. Supreme Court has at times interpreted the Amendment broadly, and as Justice Brandeis explained: "even advocacy of [law] violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on." *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring). While the material and statements may be provocative, this is all the more reason to refrain from suppressing this speech. The right to criticize and question the government is "the heart of what the First Amendment is meant to protect." *McConnell v. Fed. Elect. Comm'n*, 540 U.S. 93, 248 (2003) (Scalia, J., concurring in part and dissenting in part). "Speech concerning public affairs is more than self-expression; it is the essence of self government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). "The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes." *Terminello v. Chicago*, 337 U.S.1, 4 (1949). A function of "provocative and challenging" free speech is to invite dispute. *337 U.S.* at 4. Free speech is best serving "its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *337 U.S.* at 4. Speech, while serving its laudable purpose may also "strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." 337 U.S. at 4. Political speech must be protected regardless of whether it has the intended effect on the audience. 337 U.S. at 4-5.

The Government is seeking to permanently enjoin Defendants from conducting Operation Stop Withholding and disseminating educational and political material pertaining to the "Legal Termination of Tax Withholding For Companies, Workers and Independent Contractors." This material is inextricably intertwined with the Petition Process. For that reason and others, the

material constitutes constitutionally protected political speech under the First Amendment. See *McIntyre v Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

Specifically, the purportedly objectionable material includes sections and excerpts of the Internal Revenue Code and Regulations, court cases and other references including:

a. Most workers are not required by law to supply their company with a social security number.[13]
b. Most workers are not compelled by law to submit a federal W-4 withholding certificate in order to work for a company.[14]
c. Most companies, and most workers can legally terminate a W-4 withholding agreement certificate.[15]
d. Most workers do not fit the definition of "employee" under the internal revenue laws.[16]
e. Most companies do not fit the definition of a "withholding agent," under the internal revenue code.[17]
f. Most personal earnings are not taxable under the internal revenue laws.[18]
g. Most companies are not required by law to make returns or statements of payments to their workers.[19]
h. Most workers are not required by law to participate in the Social Security entitlement program.[20]
i. The internal revenue laws do not define what is meant by "income".[21]
j. The word "income" means what the Supreme Court has consistently defined the word "income" to mean, which is "profit gained through the sale or conversion of capital assets".[22]
k. The IRS may not have legislative and territorial jurisdiction over most companies and most workers.[23]
l. Filing an individual tax return is voluntary (not compelled).[24]

Defendant's speech addresses **the way government is operated**, i.e., it is intended to cure *constitutional torts* against the People through the political mechanism provided by the unrestricted exercise of First Amendment Rights. Speech that advocates the exercise of fundamental Rights and provisions of U.S. law that may be highly offensive to the nation's

---

[13] See the March 18, 1999 letter from Charles Mullen, Director Office of Public Inquiries of Social Security Administration, included in Exhibit B to Declaration # 1.
[14] See 31 CFR 215.2(n) (1), 215.6, 215.9 and 215.11. See also 26 USC 3402 (p)(3)(A).
[15] See 26 CFR 3402(p)-1(b)(2).
[16] See 26 USC 3401(c), 3121(d), and 3306 (i).
[17] See 26 USC 7701(a)16, 26 CFR 301.7701-16 and 26 USC 1441 through 1446, 6201, and 6301.
[18] See 26 CFR 1.863-1(c) and 26 CFR 1.861-1.
[19] See 26 USC 6401.
[20] See Railroad Retirement Board v. Alton Railroad Co., 295 U.S.330.
[21] See Eisner v. Macomber, 252 U.S. 189,206
[22] See Stratton v. Howbert, 231 U.S. 399,414; Doyle v. Mitchell, 247 U.S. 179,185; So. Pacific v. Lowe 247 U.S. 330; Eisner v. Macomber, 252 U.S. 189 and Merchants Loan v. Smeitanka, 255 U.S. 509. See also House Report No. 1337; Senate Report No. 1622; U.S. Code Congressional and Administrative News, 83rd Congress, 2nd Session, pages 4155 and 4802, respectively (1954).
[23] U.S. Constitution, Article 1, Section 8, clause 17; U.S. v. Lopez, 514 U.S. 549 (1995), Adams v. U.S. 319 U.S. 312 (1943), and 40 U.S.C 255 (now 3111 and 3112).
[24] See *U.S. v, Conklin* WestLaw 504211, (10th Circuit, 1994), wherein the court held, "The [5th Amendment] protects against compelled testimonial communications…," meaning filing an income tax return is voluntary.

revenue agents, cannot be used to deny the People the very Rights and tools, provided by the Constitution, necessary to insure their control over their servant government.

"Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This includes discussions of candidates, structures and forms of government, **the manner in which government is operated** or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press, which includes…newspapers, books, magazines … to play an important role in the discussion of public affairs." *Mills v. Alabama*, 384 U.S. 214, 218-219 (1966) (Defendants' emphasis). "The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."*Roth v U.S*., 354 U.S. 476, 484 (1957).

Defendants' speech, press, assembly and petition Rights are of exceedingly high value, for without them Defendants cannot hope to non-violently defend the Constitution and protect their individual, Natural Rights, Freedoms and Liberties from a tyrannical government. The high value of free speech will often lead those in power to seek to suppress it, as in the case at hand. See *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978) (citing *Associated Press v. United States*, 326 U.S. 1, 20 (1945). "It is here that the state has a special incentive to repress opposition and often wields a more effective power of suppression." 435 U.S. at 777 n. 11.

Instead of suppressing speech, the Supreme Court has underscored the importance of opening channels of communication to allow Americans to form their own judgments in making informed choices. See for instance, *VA State Bd. of Pharmacy v. Citizens*, 425 U.S. 748, 770 (1976).

Operation Stop Withholding and the Blue Folder are part and parcel of the First Amendment Petition Process that, in turn, is part and parcel of an **ideology** that is rooted in the essential

doctrines underpinning the American system of governance, including popular sovereignty. Ideological communication is different from pure commercial price and product advertising, which the government can properly regulate, the former deserving full First Amendment protections. See *Va. State Bd. of Pharmacy*, 425 U.S. at 776 (1976) (Stewart, J., concurring):

"**Ideological expression**, be it oral, literary, pictorial, or theatrical, is integrally related to the exposition of thought – thought that may shape our concepts of the whole universe of man. Although such expression may convey factual information relevant to social and individual decisionmaking, it is **protected by the Constitution, whether or not it contains factual representations and even if it includes inaccurate assertions of fact.** Indeed, disregard of the 'truth' may be employed to give force to the underlying idea expressed by the speaker." *Id* at 779-80. (Defendants' emphasis).

A. The Blue Folder Is Not Commercial Speech

Commercial speech has long been considered by the Supreme Court as less worthy of full First Amendment Protection than political speech because the Government need not tolerate inaccuracies in objective, factual commercial speech as it tolerates false assertions in political commentary. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 772 (1976). Commercial speech is expression that "propose[s] a commercial transaction." *Va. State Bd. of Pharmacy*, 425 U.S. at 762 (1976). Operation Stop Withholding, including the statements in the Blue Folder, do not propose a commercial transaction, and is therefore not commercial speech. The commercial speech doctrine relies on "the 'common-sense' distinction between speech proposing a commercial transaction … and other varieties of speech." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 455-56 (1978). Neither Defendants' website language announcing the availability of the Blue Folder, nor the Blue Folder itself is an advertisement for any product sold for profit. The Blue Folder is not sold, much less sold for profit. It is the protected *political speech* of the Defendants.

The facts clearly demonstrate that the speech that is the object of this case does not relate in any way to the economic interest of any of the Defendants and is, therefore, not commercial speech. Commercial speech is "**expression related solely to the economic interests of the**

speaker and its audience." *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York,* 447 U.S. 557, 561 (1980). (Defendants' emphasis). Justice Stevens concurred in the judgment, adding it was unclear in the decision as to "whether the subject matter of the speech or the motivation of the speaker [is] the limiting factor." Justice Stevens went on to say either interpretation "encompasses speech that is entitled to the maximum protection afforded by the First Amendment." *Central Hudson*, 447 U.S. at 579.

If and only if the speech is related solely to the **economic interests of the speaker** *and* its audience can it be suppressed as speech more likely to deceive than inform or speech that is related to illegal activity. *Central Hudson*, 447 U.S. at 563-564 (1980). (Def'ts emphasis).[25]

Beyond the fact that the Government will not be able to (successfully) refute a single assertion made in Defendants' Blue Folder, the content does not constitute commercial speech as it has been defined by the Supreme Court. As such, it cannot be suppressed or afforded only the limited protections provided by the First Amendment.

Defendants offer no "tax avoidance products or services" – much less a "scheme" to evade taxes. Rather, Defendants' speech is primarily and purely an **exercise of their rights under the First Amendment.**

The Government's oft-repeated claims in the Complaint that the not-for-profit Defendants "marketed," "promoted" and "sold" "false" "tax fraud" "scheme" materials are false and prejudicial. Despite the fact that many national professional tax preparation and accounting firms publish voluminous tomes each year interpreting the thousands of pages of the IRC and purporting to offer every taxpayer every advantage to avoid taxes, these firms remain largely unbothered by IRS. Only citizens who aggressively exercise those same Free Speech Rights AND who advocate

[25] Even if the challenged speech was commercial (which is not the case), the First Amendment affords protection "to the communication, to its source and to its recipients both." *Va. State Bd. of Pharm*, 425 U.S. 756.

good faith legal arguments contrary to the widely held (but provably mistaken) beliefs regarding our Constitution, become targets to be harassed by the Justice Department and labeled "abusive tax scheme promoters."

In sum, speech is commercial speech if the speech proposes a **commercial transaction** (See *Va. State Bd. of Pharmacy*, 425 U.S. at 762 (1976)), is linked to **commercial profits** (See *Virginia State Bd. of Pharmacy*, 425 U.S. at 772 (1976)), and is related solely to the **economic interests of the speaker** and the audience (See *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 561 (1980)) (emphasis added by Def'ts).

Even if the complained of speech "had commercial aspects … [it does] not negate all First Amendment guarantees." *Bigelow v. Virginia*, 421 U.S. 809, 818 (1975).

Bolger v. Young Drug Products Corp., 463 U.S. 60 (1983) remains the only Supreme Court case to directly confront what, other than pure advertising, constitutes commercial speech. See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES Section 11.3.2 (2d ed. 2002). *Bolger* acknowledged three characteristics of commercial speech. First, it is a type of advertisement; second, it refers to a specific product; and third, the speaker has an economic motivation for the expression. *Bolger*, 463 U.S. at 66-67 (1983).

The Blue Folder cannot be characterized as an advertisement, it does not refer to any specific product, and the Defendants have no economic motivation for any of the statements in the Folder.

Fear by the United States that the audience may find Defendants' message persuasive is no justification for suppressing it or by characterizing the speech as commercial and denying it the full protection of the First Amendment. As argued above, the Government's claims that Defendants' speech is false or is "inciting" lawless acts, MUST be subject to examination under the doctrine of **strict scrutiny because it is fully protected political speech.**

POINT II

THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED UNDER THE FIRST AMENDMENT'S PETITION CLAUSE

"Congress shall make no law…abridging…the right of the People…to petition the government for redress of grievances." See Constitution of the United States of America, First Amendment. The Right, through the Petition Clause of the First Amendment, to hold any branch of the government accountable to the Constitution, is the "capstone" Right, the period at the end of the sentence on Liberty's evolution, for "law without it, is law without justice."

Defendants' speech, and the acts it advocates, *are* the lawful exercise of the First Amendment Right to Petition. Despite the facts that this speech is abhorred by the Government, it advocates acts that are not in the government's limited interests, and may even have some limited effect upon the public fisc, it cannot be lawfully enjoined because it strikes directly at the First Amendment Right of the People to hold their servant government accountable through the exercise and *enforcement* of the Right of Petition. This is the essence of Popular Sovereignty.

The material contained Defendants' Blue Folder is constitutionally protected under the First Amendment's Petition Clause, because it is an integral part of exercising Defendants' Petition process for Redress of constitutional torts. The First Amendment bars a prosecution (as under 26 U.S.C. 6700) where the proceeding is motivated by the improper purpose of interfering with the defendant's constitutionally protected [rights]. *Bantam Books v. Sullivan*, 372 U.S. 58 (1963); *Dombrowski v. Phister*, 380 U.S. 479 (1975).

The Supreme Court and the Founder's opinions are clear; the United States cannot violate Fundamental Rights possessed by the People.

"And the Constitution itself is in every real sense a law-the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible. 'We the People of the United States,' it says, 'do ordain and establish this Constitution.' Ordain and establish! These are definite words of enactment, and without more would stamp what follows with the dignity and character of law. The framers of the Constitution, however, were not content to let the matter rest here, but provided explicitly-'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land.' (Const. art. 6, cl. 2.) The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution. And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute [298 U.S. 238, 297] whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, *Adkins v. Children's Hospital,* 261 U.S. 525, 544 , 43 S.Ct. 394, 24 A.L.R. 1238; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 549 , 550 S., 55 S.Ct. 837, 97 A.L.R. 947." *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936).

"The claim and exercise of a Constitutional right cannot be converted into a crime."
Miller v. U.S, 230 F 2d 486, 489

"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 (1966)

And from Hamilton, *Federalist No. 78*:

"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

Under a thin veil of spurious presumptions and false assertions, the Government's 6700 "enforcement" program (hereinafter "WTP-6700") is violating Defendants' Free Speech, Press, Associational and Petitioning Rights, as guaranteed by the First and Ninth Amendments to the United States Constitution, their privacy Rights as guaranteed by the Fourth Amendment of the United States Constitution, and their Due Process and Property Rights as guaranteed by the Fifth Amendment. WTP-6700, of which the instant Complaint is one part, is clearly intended to shut down the We The People Foundation for Constitutional Education, Inc. and the We The People Congress, Inc., and with them, the First Amendment Petition process, by impairing the ability and willingness of other People to associate, by cutting off the flow of donations and technical assistance to the Petition process via the Foundation, and by so bogging down the manager of the Petition process (Schulz) by forcing him and the We The People organization to respond to one initiative after another under the WTP-6700 program that he has little time to further the Petition process whether by litigation, civic education or civic action. The record shows clearly the general pattern and specific steps being taken by the United States under WTP- 6700.

Defendants are associating with a group of persons and organizations who have claimed and are exercising the capstone Right of Petitioning the Government for Redress of Grievances. They have associated with one another and have given of their time, money and talents for the common purpose of petitioning elected and appointed officials for Redress of certain constitutional torts and for educating the general public about issues involved in the Petition process. They have conducted regular meetings and telephone and Internet communications, seeking answers to questions in

order to reconcile certain acts of the federal government with the enumerated powers and prohibitions of the Constitution of the United States of America, all for various uncontested legitimate reasons including civic education, protecting individual liberty and freedom, and holding government accountable to the Constitution.[26]

As the Declarations by Schulz show, the IRS has admitted its purpose has been to gain the identity of those contributing in one way or another to Defendants' cause *so that they too could be examined by the IRS* – in other words, to chill their enthusiasm to continue their support.

The Government wants to operate without constitutional restraint (hence the Petitions for Redress) and, the Government wants to operate without judicial review (hence the WTP-6700 "enforcement" program). However, the Government does not have the unilateral prerogative to interpret its own authority to act unchecked outside the limited powers delegated to it by the terms and conditions of the Constitution.

The instant case is one of "first impression." Lacking any court ruling declaring the full contours of the meaning of the Petition Clause as it applies to ordinary natural citizens seeking Redress against their government for **constitutional torts**, and taking into account the plain language of and the Framers' intent behind the words of the Petition Clause, the 791 years of history documenting the evolution of Liberty from Runnymede to Philadelphia, and the complete absence of any case law in opposition to Defendants' interpretation, the ends of Justice and Liberty require that deference, and the presumption that those fundamental Rights exist must be provided to Defendants who have claimed and are exercising those Rights.

The United States can produce nothing that would limit or deny the exercise or enforcement of the Right of Petition by individual natural citizens. To avoid prior restraint or any infringement of

[26] Defendants are seeking to reconcile the differences between Iraq Resolution and the war powers clauses, between the enforcement of the Internal Revenue Code and the tax clauses, between the Federal Reserve Act and the money clauses and between the USA Patriot Act and the privacy clauses.

the Right, the lack of oppositional precedent coupled with the plain language and the history, meaning effect and significance of our founding documents and their legal precedents must be construed in favor of Defendants' likelihood to succeed on the merits.

Defendants include here by reference Defendants' legal arguments in *We The People Foundation v United States* -- legal arguments that support of the true legal meaning and power of the Right to Petition Government for Redress of Grievances based on extensive historical and documentary evidence. See Schulz Declaration #2, Exhibits UUU, VVV, XXX and YYY.[27]

The Government is obligated to respond to Petitions for Redress, and Defendants have a Right of enforcement, especially when, as here, the oppression is caused by unconstitutional government acts and the Government refuses to be held accountable by responding to the Petitions for Redress. The underlying, fundamental Right is not changed by the fact that the Petition Clause lacks an affirmative statement that Government shall respond to Petitions for Redress of Grievances. "It cannot be presumed, that any clause in the Constitution is intended to be without effect." Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803).

Finally, the same Congress that adopted the Declaration of Independence unanimously adopted an Act in which they gave meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement as they spoke about the People's "Great Rights." Quoting:

> "**If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility.**"
> "*Continental Congress To The Inhabitants Of The Province Of Quebec." Journals of the Continental Congress 1774*, Journals 1: 105-13.

These references demonstrate the merit in Defendants' interpretation of the Right to Petition government to secure redress of constitutional torts, including government's obligation to respond

[27] The case is before the United States Court of Appeals for the District of Columbia. *We The People Foundation v. United States*, Case number 05-5359. On May 8, the Court issued its Opinion. A Petition for Rehearing En Banc will soon be filed. See Schulz Declaration #2, Exhibit ZZZ for a copy of the Opinion. See Exhibits OOO-ZZZ for the pleadings and court orders in the case, at both the District and Appellate level.

to those Petitions and the Right of the People to *enforce* the Right of Redress, including the peaceful retention of their money. Defendants' claims regarding the Right to Petition are fully resonant with the Rights expressed within Magna Carta, the English Bill of Rights, the Journals of the Continental Congress, the Constitution and the Declaration of Independence.

Defendants include here by reference Defendants' legal arguments in *We The People Foundation v United States* -- legal arguments that support of the true legal meaning and power of the Right to Petition Government for Redress of Grievances based on extensive historical and documentary evidence. See Schulz Declaration #2, Exhibits UUU, VVV, XXX and YYY.

We The People Foundation v. United States, Case number 05-5359 is currently before the United States Court of Appeals for the District of Columbia. On May 8, the Court issued its Opinion, on the ground of *stare decisis.* See Schulz Declaration #2, Exhibit ZZZ for a copy of the Opinion.[28] A Petition for Rehearing En Banc will soon be filed with the DC Circuit.

POINT III

THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED UNDER 26 USC SECTION 6700

The United States seeks an injunction pursuant to 26 USC Section 7408, which authorizes an action to enjoin promoters of abusive tax shelters from further engaging in conduct subject to penalty under Section 6700[29] (promoting abusive tax shelters) and Section 6701 (aiding and abetting understatement of tax liability).

---

[28] See Exhibits OOO-ZZZ for the pleadings and court orders in the case, at both the District and Appellate level.

[29] 26 U.S.C. 6700 (a) authorizes in part the imposition of a penalty on any person who:

(A) organizes (or assists in the organization of) –
  (i) a partnership or other entity,
  (ii) any investment plan or arrangement, or
  (iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and
  (1) makes or furnishes or causes another person to make or furnish (in connection with such organization

To establish a violation of Section 6700, the U.S must carry the burden of showing that:

(1) Defendants organized or sold, or participated in the organization or sale of an entity, plan, or arrangement;
(2) Defendants made or caused to be made false or fraudulent statements concerning the **tax**
(3) **benefits** to be derived from the entity, plan, or arrangement;
(3) Defendants knew or had reason to know that the statements were false or fraudulent;
(4) the false or fraudulent statements pertained to a material matter; and
(5) an injunction is necessary to prevent recurrence of this conduct.

Regarding the first prong of proving a Section 6700 violation, neither the We The People Foundation nor the We The People Congress has a commercial enterprise. They are not in the business of selling goods or services.[30] None of the Defendants dispose of the Blue Folder by sale; they do not "sell" the Blue Folder; the Blue Folder is given away for free.[31]

Regarding the second and third prong of proving a Section 6700 violation, Operation Stop Withholding (the Blue Folder) addresses the issue of wage withholding. The statements in the Folder's documents that allegedly induce the offensive acts the Government complains of are clearly and overwhelmingly focused on wage withholding. Although the materials contain some general legal research questioning the government's purported legal authority to impose direct, un-apportioned taxes on the labor of Americans, the Blue Folder materials do NOT focus on taxes or "tax benefits" nor do they seek to encourage non-filing of returns, nor do they give any advice or personal assistance as to those matters. Beyond advocating the protected exercise of the Right to

---

or sale) --
(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or
(B) a gross valuation overstatement as to any material matter.

[30] Business means "Employment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. Black's Law Dictionary, Fifth Edition.

[31] Approximately 3,500 copies were initially handed out at 37 meetings, free of charge, and all the material has been available on the website, 24 hours a day, seven days a week since April of 2003, free of charge. The posted policy has always been: 1) that the We The People organization prefers to communicate electronically; 2) if for some reason someone could not download the material, the material would be mailed to him; 3) to cover the cost of supplies, printing and mailing a nominal donation of $20 is suggested; 4) if anyone said he could not afford the $20, the material would be mailed to him anyway.

Petition (particularly the withholding of monies), the Blue Folders -- the material core of what the Government claims is the "abusive tax scheme," merely addresses the private legal relationship between workers and their companies, and the legal Right of workers to terminate (or contract in absence of) a **voluntary** wage withholding agreement (*Again, see* 26 CFR 3402(p)-1). Any claimed actual harms flowing from understatement or underpayment of taxes due, or non-filing of returns is not the direct result of the speech or acts of the Defendants, but of the acts of unnamed third parties responsible for allegedly filing or preparing those assessments or returns.

Regarding the fourth prong of proving a Section 6700 violation, the statements made in the Blue Folder are not material within the meaning of Section 6700, having no substantial impact on the decision-making process of any entity or worker, other than the decision by the worker to submit the statements to the entity, and the entity's decision to submit the statements to its tax and legal professional(s). Defendants know of no company that stopped withholding after receiving any of the documents in the Blue Folder and after checking with its tax professionals. Defendants know of no company that stopped withholding based on any of the statements in the Blue Folder.

Consequently, regarding the fifth prong, there is no apparent threat of future violation of Section 6700.

The United States has failed to state a cause of action for which relief can be granted under 26 U.S.C. Sections 6700, 6701, or 7408 or 7402. The Complaint should be dismissed.

POINT IV

THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO JOIN A NECESSARY PARTY(IES)

There is no evidence of a crime having been committed. The "*corpus delicti*" of a crime is the body or the substance of the crime, which ordinarily includes two elements: the act and the

criminal agency of the act. Even if the statements in the Blue Folder were not afforded the full protection of the First Amendment (which is not true) and were false or misleading (which is not true), and even if those statements were submitted to a company for the purpose of terminating withholding (which may not be true), and even if those statements were submitted by a company to that company's tax professionals (a principal purpose of the plan), the question becomes, who were the tax professionals that advised a company to stop withholding, and who were the company officials that ordered the termination of withholding based on the statements in the Blue Folder? If any crime has been committed, or any action taken which could be penalized under Section 6700, evidence of the crime must be evident and those individuals are necessary parties and must be joined as defendants in this case.

Otherwise, the complaint must be dismissed under Rule 12(b)(7) for failure to join a party.

POINT V

PREJUDICIAL, INFLAMMATORY, IRRELEVANT, AND SCANDALOUS MATERIAL SHOULD BE STRICKEN FROM THE COMPLAINT

The Blue Folder provides materials to be used *jointly* by workers and company officials, material that suggests a legal approach to ending "wage withholding." The Blue Folder does not provide any information to workers or company officials about "tax avoidance" or "tax termination." Nowhere in the Blue Folder are the words "Tax Termination Package" used.

In addition, the Blue Folder, containing educational material, is distributed free of charge by Defendant not-for-profit organizations that are not in the business of selling any products or services. None of the Defendants have "customers."

Therefore, the appearance and use of the phrase "tax termination package(s)" and the word "customer(s)" in the Complaint is prejudicial, scandalous, irrelevant and immaterial and must be struck from the Complaint pursuant to Rule 12(f).

POINT VI

A MORE DEFINITE STATEMENT IS REQUIRED

Since allegations of "fraud" are required by the Section 6700, the heightened "fraud" pleading requirements of Rule 9(b) would apply, as well as the more definite statement requirement under Rule 12(e). See, for example, *In re Daou Systems Inc., Securities*, 397 F.3d 704 (9th Cir 2005) (Rule 9(b) applies to federal statutory fraud claims). Averments of fraud must be accompanied by "the who, what, when, where, and how" of the misconduct charged, must set forth more than the neutral facts necessary to identify the transaction, and must set forth what is false or misleading about a statement, and why it is false. *Vess v Ciba-Geigy Corp, USA*, 317 F. 3d 1097, 1106 (9th Cir. 2003).

The Complaint is defective since, at a minimum, it fails to state any dates of any purported fraudulent acts [when], and the locations of any fraudulent acts [where], and the names of any company officials that fraudulently stopped withholding [who], and the amount of money that was fraudulently not withheld [what], and the fraudulent process that was followed [how]. Neither has the Complaint identified what statements are false and why they are false.

POINT VII

THE UNITED STATES HAS FAILED TO DEMONSTRATE AN ENTITLEMENT TO INJUNCTIVE RELIEF

The United States is not entitled to an order permanently enjoining and prohibiting Defendants from distributing the Blue Folder, certainly not under the First Amendment's free speech clause, and not under the First Amendment's petition clause (at least until the underlying issue of the obligation of the United States to respond to Defendants' Petitions for Redress of Grievances and

the Rights of the People to retain their money until their Grievances are Redressed is fully settled by the federal judiciary in the case of *We The People v United States).*[32]

The United States will suffer no harm, much less irreparable harm if the injunction does not issue. Its law enforcement structure and process will remain unimpaired and is well equipped to handle any law breaking. On the other hand, Defendants' harm will be immediate and irreparable. Defendants' fundamental Rights are being infringed. When fundamental rights are violated, even for minimal periods of time, the harm is irreparable. *Elrod v. Burns*, 427 U.S. 347.

A balancing of the equities argues in favor of Defendants, who will be irreparably harmed if the injunction were to issue. The United States will suffer no harm, or immeasurable harm if the injunction does not issue, and certainly no irreparable harm.

CONCLUSION

Based on the above and on the accompanying Declarations, Defendants respectfully request an order dismissing the Complaint for failure to state a claim for which relief can be granted and for failure to add necessary parties, with prejudice, or, in the alternative, dismissing the Complaint for indefinite and scandalous statements, without prejudice.

Dated: May 23, 2007

MARK LANE
Bar Number: 445988
Attorney for We The People Foundation
For Constitutional Education, Inc., and
We The People Congress, Inc.
2523 Brunswick Road
Charlottesville, VA 22903

ROBERT L. SCHULZ, pro se
2458 Ridge Road
Queensbury, NY 12804

[32] A Petition for Rehearing En Banc will be filed with the DC Circuit Court within weeks. No matter how that Petition is decided, the matter will be taken to the United States Supreme Court because so much is at stake for both the People and the United States, in the case that will, for the first time in history, declare the Rights of the People and the Obligations of the Government under the First Amendment's Petition Clause, in the case of Petitions for Redress of **constitutional torts**.