

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

<b>ROBERT L. SCHULZ</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>-against-</b>	)	
	)	<b>Case No. 06-MC-131</b>
	)	<b>DNH/DRH</b>
<b>UNITED STATES and THE</b>	)	
<b>INTERNAL REVENUE SERVICE</b>	)	
	)	
<b>Defendants</b>	)	

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**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO CONSOLIDATE**

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In support of this motion, based on Declaration #6 by Robert Schulz, and the prior pleadings, Robert Schulz, who is *pro se*, states as follows:

**RELIEF REQUESTED**

Schulz moves this Honorable Court for an entry of an Order:

- a) Consolidating this case with *United States v. Schulz*, Case 07-cv-352 and
- b) Granting any further relief that to the Court may seem just and proper.

**THE URGENCY**

This memorandum is filed in support of the Show Cause Order to consolidate this case (hereinafter “Case #1”) with an action that has been filed in

the Northern District: *United States v. Schulz, et al.*, Case No. 07-cv-352 TJM/RFT (hereinafter “Case #2”).

Case #2 was served on Schulz on May 3, 2007.

On May 23, 2007, Case #2 defendants served and filed a Motion to Dismiss, returnable July 9, 2007.

In the interest of judicial economy and to avoid unnecessary cost and delay, this motion is brought on by Order to Show Cause.

### **STATEMENT OF FACTS**

The instant case, *Schulz v United States*, Case No. 06-131 (“Case #1”) was filed to quash a summons that was served by the IRS against Schulz (seeking records related to Schulz and the two organizations controlled by Schulz – We The People Foundation for Constitutional Education, Inc. and We The People Congress, Inc.) pursuant to an alleged investigation of an alleged abusive tax shelter as defined in Section 6700 of the Internal Revenue Code.

Another case, *United States v Schulz*, Case No. 07-352 (“Case #2”) has been filed at the behest of the IRS against Schulz and the two organizations controlled by Schulz (We The People Foundation for Constitutional Education, Inc., and We The People Congress, Inc.) to enjoin certain speech

allegedly promoting an alleged abusive tax shelter as defined in Section 6700 of the Internal Revenue Code.

On May 3, 2007, Case #2 defendants were served with the Complaint.

On May 23, 2007, Case #2 defendants served and filed a Motion to Dismiss, returnable July 9, 2007.

In Case #1, plaintiff Schulz is representing himself, pro se.

In Case #2, defendant Schulz is representing himself, pro se. The two defendant organizations are represented by attorney Mark Lane.

See Declaration #6 attached hereto for a copy of the Case #2 Complaint and defendants' motion to dismiss.

## **ARGUMENT**

### **THE TWO CASES SHOULD BE CONSOLIDATED PURSUANT TO RULE 42**

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the two cases should be consolidated.

Rule 42(a) of the Federal Rules of Civil Procedure reads:

Rule 42. Consolidation; Separate Trials [Caution: For amendment effective December 1, 2007, see prospective amendment note below.]

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Prospective amendment:

Amendment of Rule 42, effective December 1, 2007. By order dated April 30, 2007, the Supreme Court of the United States approved the following amendments to Rule 42, effective December 1, 2007, and authorized their transmission to Congress in accordance with [28 USCS § 2072](#):

Rule 42. Consolidation; Separate Trials

- (a) Consolidation. If actions before the court involve a common question of law or fact, the court may:
- (1) join for hearing or trial any or all matters at issue in the actions;
  - (2) consolidate the actions; or
  - (3) issue any other orders to avoid unnecessary cost or delay.

The parties in the two cases are similar. In Case #1, the summons demands records relating to Schulz and two organizations controlled by Schulz -- the We The People Foundation and the We The People Congress. See Exhibits F and G in Declaration # 2 in the instant case. In Case #2, Schulz and those same two organizations are the named Defendants.

The facts of the two cases are similar. In Case #1, the summons was served because the IRS alleged “We have reviewed certain materials with respect to your tax shelter promotion. We are considering possible action under Section 6700 and 7408 of the Internal Revenue Code ....” On the other hand, Case #2 seeks to enjoin certain materials under authority of Section 6700 and 7408 of the Internal Revenue Code.

A common question of law is involved in Case #1 and Case #2. In both Cases, Schulz has alleged bad faith on the part of the Government, and violations of Schulz’s exercise of constitutionally protected Rights of Petition, Association, Speech, Press, Privacy, Property and Due Process.

As argued, the challenged summons, alone and as part of IRS's overall WTP-6700 enforcement program is violating Schulz's free speech, associational and petitioning Rights, as guaranteed by the First and Ninth Amendments to the United States Constitution, his privacy Rights as guaranteed by the Fourth Amendment of the United States Constitution, and his due process and property Rights as guaranteed by the Fifth Amendment.

### **CONCLUSION**

In the interest of judicial economy and to avoid unnecessary cost and delay, Case #1 and Case #2 should be consolidated.

Respectfully submitted,

Dated: May 24, 2007

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