

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA

Plaintiff-Appellee

**EMERGENCY MOTION FOR
CERTIFICATE OF AGREEMENT**

v.

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

Case No. 07-3729-cv

Defendants-Appellants

**APPELLANTS' BRIEF IN SUPPORT
OF APPLICATION FOR CERTIFICATE OF AGREEMENT**

Appellants Robert L. Schulz, who is pro-se, and We The People Foundation for Constitutional Education, Inc., and We The People Congress, Inc., who are represented by attorney Mark Lane (collectively hereinafter “Schulz” or “Appellants” or “Defendants”), state as follows:

RELIEF REQUESTED

Appellants move this Honorable Court for an entry of an Order:

- a) granting Appellants’ application for a Certificate of Agreement, and
- b) in the event the Court grants Appellants’ application for a Certificate of Agreement, staying the proceedings of the instant case, pending the decision by the United States Supreme Court on the petition for a rehearing of its January 7 Order denying certiorari in *We The People v. United States*, and
- c) granting further relief that to the Court may seem just and proper.

ARGUMENT

The Defendants in the instant case are the lead Plaintiffs in *We The People, et al., v. United States*, 485 F.3d 140 (DC Cir., May 8, 2007), *certiorari denied* (January 7, 2008).

We The People is an action for declaratory relief, seeking a declaration of the full contours of the meaning of the First Amendment's Petition Clause. Specifically, the first of two questions presented in *We The People* is whether the Government is obligated to respond to proper Petitions by ordinary, private individuals for Redress of Grievances -- specifically Grievances alleging constitutional torts. The second question presented in *We The People* is whether the private individual, having so Petitioned, has an individual Right to act to hold the Government accountable if the Government refuses to respond.

The questions presented in *We The People* are similar to the questions before the Court in the instant case.

Here, the facts are that the Government did not respond to Defendants' March 15, 2003 Petition for Redress of Grievances (consisting of a Blue Folder containing various statements questioning the legal basis of the institutionalized practice of withholding and conversion of pay from workers' paychecks, and a transmittal letter requesting a response). Here, the facts are that following the Government's failure to respond to Defendants' (multiple) Petitions for Redress of Grievances regarding withholding, Defendants acted to hold the Government accountable by publicly distributing copies of the Petition for Redress, for free, to anyone who wanted one, with the suggestion that its contents be submitted to a rigorous review by tax professionals for accuracy, possibly leading to the legal termination of withholding. Here, the facts are that the Government retaliated by initiating this civil injunction lawsuit, claiming that Defendants' actions in distributing copies of the withholding Petition for Redress amounted to a promotion of

an abusive tax shelter, subject to penalty under Section 6700 and 6701 of the internal revenue laws.

As argued repeatedly by Defendants in the present case, the issue of whether the Right of ordinary, private persons to Petition the Government for Redress of *constitutional torts* embodies both a Right to a Response and a Right of Enforcement is a first impression question of law that has never been directly addressed by any federal court. Unless the Supreme Court grants certiorari in *We The People*, this Court will have no relevant case law to guide it in determining whether the Speech and actions of the (private party) Defendants in the instant case fall within the zone of interest protected by the Petition Clause of the First Amendment, as argued by Defendants.¹

On Monday of this week, January 7, 2008, the Supreme Court of the United States denied certiorari in *We The People*.

Supreme Court Rule 44 reads in relevant part:

“2. Any petition for the rehearing of an order denying a petition for a writ of certiorari ... shall be filed within 25 days after the date of the order of denial...but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented....”

The We The People Foundation for Constitutional Education, Inc., the We The People Congress, Inc., and Robert L. Schulz, the lead Plaintiffs in *We The People* (as well as the sole Defendants in the instant case) wish very much to file a petition with the Supreme Court of the United States for a rehearing of the January 7, 2008 order denying the petition for a writ of

¹ Unfortunately, the two cases relied upon by the Court’s sister Circuit (DC) in *We The People* involved employment related grievances of state public employees and State legislation governing same, not Grievances of private parties, and not involving alleged violations of the Constitution. In addition, as Judge Rodgers wrote in her separate opinion, legal arguments presented to the Courts in the earlier state employee cases did not include the historical record and original intent of the Right to Petition – an argument at the heart of the *We The People* case and the instant case.

certiorari, limiting its grounds to the circumstances of the instant case and the need for a relevant ruling from the Supreme Court to guide this Court in its determination of the instant case.

Defendants in the instant case, as the lead Plaintiffs in *We The People*, wish to include in their petition to the Supreme Court for a rehearing of the January 7 order denying certiorari a Certificate of Agreement from the three-judge panel hearing the instant case, stating the panel agrees the Supreme Court should grant certiorari in *We The People*.

CONCLUSION

For the reasons given above, Defendants respectfully request an Order:

- a) granting Appellants' application for a Certificate of Agreement, and
- b) in the event the Court grants Appellants' application for a Certificate of Agreement, staying the proceedings of the instant case, pending the decision by the United States Supreme Court on the petition for a rehearing of its January 7 Order denying certiorari in *We The People v. United States*, and
- c) granting further relief that to the Court may seem just and proper.

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