No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 2007

WE THE PEOPLE, et al.,

Petitioners,

- against -

UNITED STATES, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTION PRESENTED

The full and fair question is, if "Congress shall make no law…abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble, and to Petition the government for Redress of Grievances" (First Amendment), and if "The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People" (Ninth Amendment) and if, "The Right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated,"(Fourth Amendment) and if, "No person shall be…deprived of life, liberty, or property without Due Process of law…." (Fifth Amendment), and if **the Constitution must be construed in its entirety**, and if the Government has committed acts that have violated that Constitution, do Plaintiffs acting in their individual **private** capacities have a Right to an official response from Government to their Petitions for Redress of **constitutional torts**, and **if Government refuses to respond** to those Petitions, are the People not then free to **retain their money** until their Grievances are Redressed and, if the People do withdraw their financial support from the Government for that reason, is the Government not then **prohibited from retaliating** against those People by enforcing the internal revenue laws against those People via summonses, liens, levies and seizures, and prosecutions, and otherwise seeking to prevent those People from freely Speaking out and Associating with other People for the purposes of furthering public debate, altering the way the Government operates, and exposing and correcting those un-Constitutional acts?

PARTIES

Due to the large number of individual named Plaintiffs (1450), the names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear in a separate Certificate as to Parties.

With regard to the two corporate Plaintiffs, the We The People Foundation for Constitutional Education, Inc., and the We The People Congress, Inc., both are not- for-profit corporations, neither has a parent company and neither has issued any stock.

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IN THE
SUPREME COURT OF THE UNITED STATES

WE THE PEOPLE, et al.

Petitioners

- against -

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OPINIONS BELOW

The ORDER of the United States Court of Appeals for the District of Columbia Circuit, filed August 3, 2007, denying petition for rehearing en banc. 2007 U.S. App. LEXIS 18716 (D.C. Cir., Aug 3, 2007).

The ORDER of the United States Court of Appeals for the District of Columbia Circuit filed May 11, 2007, dismissing as moot, motion for injunctive relief, motion to expedite ruling and motion for post-argument communication. 2007 U.S. App. LEXIS (D.C. Cir., May 11, 2007).

The OPINION of the United States Court of Appeals for the District of Columbia Circuit filed May 8, 2007, affirming the judgment of the District Court. 485 F.3d 140.

The OPINION AND ORDER of the United States District Court for the District of Columbia filed August 31, 2005, granting defendants' motion to dismiss the complaint and denying plaintiffs' motion to amend the complaint. 2005 U.S. Dist. LEXIS 20409 (D.D.C., 2005).

JURISDICTION

The Order sought to be reviewed was filed May 8, 2007. The Order denying rehearing was filed on August 3, 2007. This Court has jurisdiction under 28 U.S.C. Section 1257.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law…abridging…the right of the people…to petition the government for a redress of grievances."**

2. The First Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law…abridging the freedom of speech…."**

3. The First Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law…abridging…the right of the people peaceably to assemble…."**

4. The Fourth Amendment to the United States Constitution reads in relevant part: **"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation …."**

5. The Fifth Amendment to the United States Constitution reads in relevant part: **"No person shall be…deprived of…liberty, or property, without due process of law…."**

6. The Ninth Amendment to the United States Constitution reads in full: "**The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the People.**"

7. The Internal Revenue Code, 26 U.S.C. Sections 6700 and 6701. See Appendix N for the text of each.

STATEMENT OF THE CASE

A. OVERVIEW

This Complaint arises from the failure of the President of the United States and his Attorney General and his Secretary of the Treasury and his Commissioner of the Internal Revenue Service, and the failure of the United States Congress, to respond to Plaintiffs' four Petitions for Redress of Grievances against the Government.

Plaintiffs Petitioned government Defendants in an attempt to reconcile and remedy conflicts between the war powers clauses of the Constitution and the Iraq Resolution, the "privacy" clauses of the Constitution and the USA Patriot Act, the money clauses of the Constitution and the Federal Reserve System, and the taxing clauses of the Constitution and the direct, un-apportioned tax on labor.

This complaint also arises from the Executive Branch of the United States government in its retaliation against Plaintiffs for claiming and exercising Natural, unalienable Rights guaranteed by the First and Ninth Amendments.

Plaintiff "We The People Foundation for Constitutional Education Inc." is a non-partisan, tax-exempt, not--for--profit research and educational foundation in good standing and organized under the Laws of the state of New York. The Foundation has been spearheading, since

1999, a nationwide effort to obtain answers from the Government to specific questions served upon the Government as part of their Petitions for Redress regarding the Government's violation of the war powers, money, "privacy" and tax clauses of the Constitution.

Plaintiff "We The People Congress" is a non-partisan, membership organization in good standing and organized as a not--for--profit Corporation under the Laws of the state of New York. With thousands of members nationwide, with county and state coordinators in nearly all States of the Union, the mission of the We The People Congress, Inc. is to scrutinize governmental behavior at every level, compare that behavior with the requirements of the State and federal Constitutions, and intelligently, rationally, professionally, pro-actively and non-violently confront unconstitutional and unlawful behavior by elected and/or appointed public officials, regardless of their political party.

Plaintiff Schulz is the Chairman of We The People organization.

The remaining (1450) Plaintiffs are individuals residing in all 50 states of the Union.

By communicating information, associating with like minds, expressing facts and opinions, reciting Grievances, protesting abuses and praying for answers to specific questions, Plaintiffs have given expression essential to the end that under our system of limited government the government Defendants must be held accountable to the Constitution and to the Sovereignty of the People, and that Redress to which the People are entitled may be secured by lawful and peaceful means.

The Defendants have refused to respond to Plaintiffs' repeated Petitions for Redress of constitutional torts.

Knowing that with every Natural Right of the People there is an obligation of the Government, and that a Right that is not enforceable is not a Right, and wishing to peaceably enforce their unalienable Rights, some, but not all Plaintiffs decided to give further expression to their Right of Enforcement by retaining their money until their Grievances are Redressed.

Individual Plaintiffs believe that such further expression by them is not an abuse of the internal revenue laws, but an inextricable extension of their Natural Rights to government accountability and to the peaceful procurement of relief from unconstitutional acts through enforcement as guaranteed by the First and Ninth Amendments, and that any intervention by Defendants against such expression of these Rights constitutes a direct and substantive curtailment of those Rights and is strictly forbidden – that is, constitutionally impermissible.

However, after publicly uttering their unequivocal intention to respond to Plaintiffs through "tax code enforcement actions," Defendants have indeed pursued a broad range of attacks upon Plaintiffs and their supporters under the guise of enforcing the internal revenue laws, accusing Plaintiffs of promoting an "abusive tax shelter," a crime under Section 6700 of the Internal Revenue Code, and actively seeking the identification information of all People who have in any way at all supported the process of Petitioning the Government for Redress of said constitutional torts, call those People "customers" and "investors" who need to be "examined" and "audited" by the IRS, for the purpose of "protecting the public fisc."

Plaintiffs have suffered, and continue to suffer significant retaliation and injuries at the hands of Defendants for claiming and exercising constitutionally protected Rights.

This appeal is a constitutional challenge seeking declaratory and injunctive relief.

B. STATEMENT OF FACTS

Plaintiffs have engaged since 1999 in "a nationwide effort to get the government to answer specific questions" regarding what Plaintiffs view as the Government's "violation of the taxing clauses of the Constitution" and "violation of the war powers, money and 'privacy' clauses of the Constitution." Joint Appendix ("J.A.") 80 (Am. Compl. P 3). Plaintiffs submitted Petitions for Redress containing extensive lists of inquiries to various government agencies. On March 16, 2002, for example, Plaintiffs submitted a Petition with hundreds of inquiries regarding the tax code to Congress and to various parts of the Executive Branch, including the Department of Justice and the Department of the Treasury. On November 8, 2002, Plaintiffs presented four Petitions to every Member of Congress. Those Petitions concerned the Government's war powers, privacy issues, the Federal Reserve System, and the Internal Revenue Code. On May 10, 2004, Plaintiffs submitted a petition regarding similar issues to the Executive Branch, including the Department of Justice and the Department of the Treasury.

The Legislative and Executive Branches have responded to the repeated Petitions with "total silence and a lack of acknowledgment." J.A. 85 (Am. Compl. P 35).

On numerous occasions Plaintiffs have sought to publicly meet with the Defendants and to secure from the Defendants official answers to these reasonable questions regarding these acts of Defendants believed by Plaintiffs to

be repugnant to, and outside the authority lawfully granted by the People to their government by, the U.S. Constitution and certain Acts of Congress. A detailed account of the Petition process is provided in an Affidavit to the District Court. J.A. 104-134 (Aff. by Schulz).

What the record shows is that Plaintiffs have respectfully, intelligently and rationally contacted their Congresspersons and appropriate officials within the Executive branch, including the President, literally begging for someone in government to provide official answers to pertinent questions relating to alleged violations of the war powers, money, "privacy" and tax clauses of the Constitution.

Despite these repeated Petitions for Redress, Defendants have steadfastly refused to respond. Instead of a respectful response there has been institutionalized contempt and a condescending and antagonistic attitude by Defendants, eventually leading to overt retaliation.

Plaintiffs acted upon the Government's refusal to respond.

By claiming and exercising their unalienable Right under the First Amendment to hold the Government accountable to the Constitution, and their Right under the First and Ninth Amendments to Redress Before Taxes, some Plaintiffs formally Noticed the Executive and Legislative departments that as a consequence of the Government's refusal to respond, Plaintiffs were withdrawing their financial support from the Government until the Government responded to the Petitions for Redress, and that they would be encouraging others to do the same by publicly advocating "No Answers, No Taxes." Joint Appendix ("J.A.") 129,130 (Affidavit, P 67, 71, 73).

The Executive branch reacted by retaliating against Plaintiffs. First, on April 4, 2003, the IRS announced that under Section 6700 of the internal revenue laws it was initiating a formal investigation of Plaintiffs for promoting an "abusive tax shelter."[1]

Then, under the pretense of its "6700 investigation" the IRS initiated a broad based "enforcement" program (referred to by Plaintiffs in the pleadings as the IRS's "WTP-6700" enforcement program), which was clearly documented as an official IRS program and policy specifically designed and intended to chill the enthusiasm of people of ordinary firmness to continue their efforts to hold the Government accountable to the Constitution, thereby shutting down the Petition process and silencing Plaintiffs. At each step, the IRS has sought the confidential private records containing the identities of all people associated with Plaintiffs or who might have supported the Petition process or merely obtained copies of Plaintiffs' Speech. The IRS admitted its purpose was to subject those associates and supporters to "examination."

The IRS began its WTP-6700 enforcement program by serving Plaintiffs with a series of summonses demanding private books and records, including complete identification information of all associates and supporters.

Plaintiffs reacted in two ways.

First, Plaintiff Schulz petitioned the U.S. District Court to quash the Summonses on the ground that Plaintiffs' activities and speech were protected by the First and Ninth Amendments (**relying heavily on contemporary historical understanding and practices**), and that the

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[1] See Appendix L, page A-58 for a copy of the letter. Section 6700 penalizes persons for promoting illegal tax shelters.

summonses were improperly issued to chill the enthusiasm of Plaintiffs and their associates who were claiming and exercising constitutional Rights. Plaintiff argued such was not a legitimate purpose for the summonses and that the IRS was acting in bad faith. The U.S. Court of Appeals for the Second Circuit *twice* ruled against the IRS. The Court held that in the interest of Plaintiff's Right to Due Process, the IRS was not entitled to Plaintiff's private books and records without a court order, and that to get a court order the IRS would have to bring Plaintiff to federal District Court where Plaintiffs could be entitled to an adversarial proceeding and a hearing. See *Schulz I* and *Schulz II*.[2]

Second, 1450 Plaintiffs (all signatories to the four Petitions for Redress of Grievances) filed an action for declaratory and injunctive relief in the U.S. District Court, seeking a declaration of their Rights and the obligations of the Government under the First and Ninth Amendments. **It is that action that is the subject of this petition for Writ of Certiorari**.

In 2005, within weeks of the 2nd Circuit's ruling in *Schulz I*, IRS served two summonses on PayPal (an on-line financial transaction company), each seeking identification information of persons associating with Plaintiffs, supporting the Petition process, or obtaining copies of Plaintiffs' Speech.

One of the summonses was served on PayPal in San Jose, and the other was served on PayPal in Omaha, forcing Plaintiffs to petition both the US District Court for the Northern District of California and the District of Nebraska to quash the two new Summonses. Plaintiffs

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[2] *Schulz v IRS*, 395 F.3d 463 (2d Cir., Jan. 2005)(*Schulz* I); *Schulz v. IRS*, 413 F.3d 297 (2d Cir., June 2005) (*Schulz II*).

again argued that Plaintiffs' activities and Speech were protected by the First and Ninth Amendments (**relying heavily on contemporary historical understanding and practices**), and that the summonses were issued to chill the enthusiasm of Plaintiffs and their associates who were claiming and exercising constitutional Rights. Plaintiffs argued such was not a legitimate purpose for the summonses and that the IRS was acting in bad faith. However, both Circuits denied the petitions to quash, finding (without explanation in any cognizable judicial terms, strict scrutiny or a hearing) that Plaintiffs' constitutional arguments were "unpersuasive." They held that the IRS summonses had a "legitimate purpose."[3]

There have been many other "enforcement actions" initiated against the Plaintiffs under the pretense of an investigation of an alleged "commercial" "abusive tax shelter." Many are detailed in Plaintiffs' emergency motion for injunctive relief that was filed with the DC Circuit Court in this case on October 4, 2006.[4]

C. FEDERAL JURISDICTION IN DISTRICT COURT

The court of original instance, the U.S. District Court for the District of Columbia, had jurisdiction under 28 U.S.C. Section 1331.

REASONS FOR GRANTING THE WRIT

Petitioner presents four reasons for granting the Writ:

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[3] *Schulz v United States*, (Case No. 05-17388, 9th Cir., April 27, 2007); and *Schulz v United States* (Case No. 06-2891, 8th Circuit, September 13, 2007).

[4] Denied on May 11, 2007, following the DC Court's May 8th decision.

1) A United States Court of Appeals has decided a question of extreme public importance that has not been, but should be settled by this Court;
2) A United States Court of Appeals has entered a decision that has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power;
3) A United States Court of Appeals has entered a decision that conflicts with recent decisions of four other United States Courts of Appeal.
4) A United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

1. THIS IS A FIRST IMPRESSION QUESTION OF EXTREME PUBLIC IMPORTANCE

This proceeding involves a first-impression question of exceptional constitutional importance. The First Amendment is arguably the single most important sentence in the Constitution. Essential, unalienable, individual Rights were guaranteed by that sentence, including the Rights of the People to Petition the government for Redress to cure unconstitutional behavior. A decision denying these Rights, or even placing limitations upon them, is of exceptional constitutional importance.

The full and fair question is, if "Congress shall make no law…abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble, and to Petition the government for Redress of Grievances" (First Amendment), and if "The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People" (Ninth

Amendment) and if, "The Right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated,"(Fourth Amendment) and if, "No person shall be…deprived of life, liberty, or property without Due Process of law…." (Fifth Amendment), and if **the Constitution must be construed in its entirety**, and if the Government has committed acts that have violated that Constitution, do Plaintiffs acting in their individual **private** capacities have a Right to an official response from Government to their Petitions for Redress of **constitutional torts**, and **if Government refuses to respond** to those Petitions, are the People not then free to **retain their money** until their Grievances are Redressed and, if the People do withdraw their financial support from the Government for that reason, is the Government not then **prohibited from retaliating** against those People by enforcing the internal revenue laws against those People via summonses, liens, levies and seizures, and prosecutions, and otherwise seeking to prevent those People from freely Speaking out and Associating with other People for the purposes of furthering public debate, altering the way the Government operates, and exposing and correcting those un-Constitutional acts? ("the Question").

If the American People are truly free, with Natural, unalienable Rights endowed by the Creator rather than privileges granted by the state, and if those Rights are **individual** Rights, and if the federal government is truly a servant government established by the Sovereign People to secure those **individual** Rights, and if the power of the government to act is strictly limited by the original meaning of the words of the U.S. Constitution, and if the People have evidence that government officials in the political branches have stepped outside the boundaries drawn around their power and are acting in spite of

constitutional prohibitions, and if the People have intelligently, rationally, professionally, non-violently and repeatedly Petitioned those officials in the political branches with proper statements of Grievances and proper prayers for Relief, and if the government officials have decided to ignore the People's Petitions, fail to justify their alleged constitutionally tortuous behavior and refuse be held accountable to the Constitution and the Bill of Rights, then it is Plaintiffs' contention, based on common sense and the historical context and purpose of the Bill of Rights, that the People have the Natural, unalienable Right to defend the Constitution and enforce their individual Rights by retaining money wanted by those government officials, until their Grievances are Redressed, and to exercise such Rights without retaliation or infringement by the government.

No court has decided this question, although in recent months five Circuit Courts, including the DC court in the instant case, have issued conflicting opinions as to the meaning of the Petition Clause and its collateral Rights. (see part 3 below).

The Right to government limited by the Constitution and based upon the consent of the governed is among the most precious of the Great Rights and Liberties guaranteed by the Bill of Rights. The value in the Bill of Rights, particularly the Right to Petition, as an essential element in the direct, practical exercise of Popular Sovereignty and self-government is beyond question. It is, after all, the only way for the individual and the small group to secure their unalienable Rights against the majority, and to directly and peacefully hold the government accountable to the Constitution.

This "capstone" Right to Petition the government for Redress of Grievances is critical in maintaining the

balance of power between the People and the (servant) government and in preserving an environment conducive and protective of free political discourse, to the ends that government may be held accountable to the People, the Constitution and the Law, and that abuses of power may be curtailed and cured by peaceful means. Therein lies the very foundation of constitutional government and the Freedom of the People.

The Opinion by the DC Circuit Court in this case has, in error, removed the People's procedural instrument embedded within the Constitution for holding the Government accountable to the Constitution and Bill of Rights, thereby drastically dismantling the original balance of power between the People and the Government.

If left undisturbed, the Opinion would remove the capstone Right – the linchpin of the constitutional system of checks and balances – essential for the protection and preservation of the Constitutional Republic and its essential underlying principles of individual Rights, separation of powers, self-government and Popular Sovereignty.

If left undisturbed, the Opinion would eviscerate the legal and functional substance of the capstone Right of the Bill of Rights -- i.e., the Right of the People to peacefully hold the Government accountable to the war, tax, money, privacy, and other provisions of the Constitution -- by denying the People their Right to a Response from the Government to their Petitions for a Redress of **constitutional torts,** and by denying the People their Right to peacefully enforce their Rights by retaining their money until their Grievances are Redressed (not to be confused with the retention of money by individuals in

protest of one government policy over another on non-constitutional, i.e., "garden variety" political matters).

After all, the Petition for Redress is to the individual, the minority and the Constitutional Republic, what the ballot is to the majority and a pure democracy. Stripped of its original intent and power, the Petition Clause becomes nothing more than a redundant Expression clause, leaving the People with no apparent means of preserving their unalienable Rights -- i.e., the very antithesis of the intent of the Framers as evidenced by contemporary historical understanding and practices.

The Supreme Court has confirmed that, "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances" (*United States* v. *Cruikshank*, 92 U.S. 542, 552), and has recognized that the First Amendment expressly guarantees that right against abridgment by Congress as a Right that cannot be denied without violating those fundamental principles of liberty and justice that lie at the base of all civil and political institutions (*Hebert* v. *Louisiana*, 272 U.S. 312, 316 and *Powell* v. *Alabama*, 287 U.S. 45, 67), and has recognized this Right to Petition as one of "the most precious of the liberties safeguarded by the Bill of Rights" (*Mine Workers* v. *Illinois Bar Assn.,* 389 U.S. 217, 222), making explicit that, "the right to petition extends to all departments of the Government," and that "the right of access to the courts is . . . but one aspect of the right of petition" (*California Motor Transport Co.* v. *Trucking Unlimited,* 404 U.S. 508, 510).

The zone of interest to be protected by the Petition Clause goes beyond the Clause itself to all Natural Rights. The Petition Clause guarantees the Right to hold government

accountable to each provision of the Constitution through citizen participation in their Right to self-government.

The question now before this Court has profound moral, legal and practical implications.

The First of the Grand Rights is that governments are created by the People to serve and protect the People and their individual Rights. This Right is, as the Declaration of Independence proclaims, un-alienable. This Right is, as the Magna Carta demonstrates, the cradle of Liberty, forming the cornerstone of Western Civilization and our system of Law and Justice. This Right is articulated by the last ten words of the First Amendment. This Right is nothing less than the legal, procedural device by which We the People practically exercise self-governance and Popular Sovereignty, as individuals and as groups.

Plaintiffs have Petitioned the Judicial department to declare their Rights and the Government's obligations with respect to the First Amendment and the Ninth Amendment. They have Petitioned the Judiciary to declare their corollary Rights expressly articulated by the Founders in both the Declaration of Independence and the Journals of the Continental Congress, and as were exercised before, during and after the guarantees were added to the Constitution, amply demonstrated by contemporary historical understanding.

The People have not found it necessary to couple, claim and exercise these Rights. Consequently, until recently, no American court has ever been asked to undertake the difficult task of publicly declaring this self-evident truth.

Today's headlines chronicle the pace and breadth at which Individual Liberties are being eroded and the extent to

which those that run the government are prone to step outside the boundaries drawn around their power by the terms and limitations of the Constitution and Bill of Rights.

Fortunately, we have something our Founding Fathers did not have – the one thing of inestimable value that they left to succeeding generations – the Constitution of the United States of America.

However, the Constitution cannot defend itself. While the People are the final arbiters, the Judiciary is to protect the People and their Rights by holding sacred the essential Founding Principles and forever embracing the Rule of Law. It is axiomatic that without the protections of Fundamental Law, the government -- the creation and servant of the People, cannot be restrained.

This Court has before it a landmark, first impression, First Amendment question of almost immeasurable importance and consequence to Liberty.

The Court now has the opportunity, as the independent, co-equal branch intended by the People, to hear this case, address and determine the question, and declare the meaning of the full contours of the accountability clauses of the Constitution.

2. THIS COURT'S SUPERVISORY POWER IS REQUIRED

In the absence of any case law on point, Plaintiffs' interpretation of the Accountability/Petition Clause has relied on contemporary historical understanding and practices, which DC Circuit Court Judge Rogers in her separate opinion states is "consistent with the Supreme

Court's traditional interpretive approach to the First Amendment."

By failing to take into consideration plaintiffs' emphasis and reliance on contemporary historical understanding and practices, and by failing to subject Plaintiffs' First Amendment questions to strict scrutiny or a hearing, the lower court so far deviated from the Supreme Court's traditional interpretive approach to the First Amendment that this court's supervisory power is required.

The Plaintiffs have properly claimed and exercised their Rights under the First and Ninth Amendments by Petitioning the Government for Redress of four constitutional torts. However, the Government has arrogantly refused to respond to the Plaintiffs or their repeated Petitions for Redress. To enforce their Natural Right to hold the Government accountable to the Constitution, some, but not all of the Plaintiffs in this case decided to peaceably procure relief by retaining their money until their Grievances were Redressed, a Right guaranteed by the First and Ninth Amendments and clearly supported by the historical record.[5]

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[5] "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 Inhabitants of Quebec, an Act passed unanimously by the Congress. **Journals of the Continental Congress. Journals 1:105-113**. See Appendix O herein at page A-72, fifth paragraph.

"The privilege of giving or withholding our moneys is an important barrier against the undue exertion of prerogative which if left altogether without control may be exercised to our great oppression; and all history shows how efficacious its intercession for redress of grievances and reestablishment of rights, and how improvident would be the surrender of so powerful a mediator." **Thomas Jefferson: Reply to Lord North, 1775. Papers 1:225.**

Because this is a case of first impression involving a First Amendment prohibition whose meaning cannot be determined by the plain language approach to interpretation, it was necessary for Plaintiffs to apply and argue the contemporary historical understanding and practice, or "Framers' Intent," approach to the interpretation of the constitutional prohibitions.

Plaintiffs' full original intent argument is included in **Appendix M** hereto. The following is a summary of Plaintiffs' argument.

The Right is traced back to section 61 of the Magna Carta (1215) when the monarchy (King John) agreed: 1) that the People could Petition the King for redress of grievances; 2) that the King had 41 days to respond; and 3), that if the King failed to respond, the People could enforce their Rights by throwing off the King and his government, and seizing the King's castles, land and everything else belonging to the King except his life and that of the Queen and his children. See Appendix M at page A- 59 for the text of Section 61 of the Magna Carta.

From then on in England, people claimed and exercised the Right to Petition the Government for Redress of Grievances, giving rise to recognition of the "derivative Rights" including free Speech, free Press and free Assembly (i.e., it being necessary to speak, write and meet with others in support of the Petitions for Redress).

See also **Appendix M** hereto for details of the Historical Record of the Right to Petition. The full text of **Appendix M** was included in the pleadings and appears in the record of each of the three cases now before the Court.

In the American colonies, Petitions to Government for Redress of Grievances were received and submitted to committees for prompt consideration and response. It was unthinkable in those days that the Government would fail to consider and respond to the People's Petitions for Redress. Petitions changed the way Government operated. In fact, Akil Amar writes in his law review article that more state legislation came as a result of Petitions for Redress than for any other reason. See, THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991).

In 1774, the same Continental Congress that adopted the Declaration of Independence passed an eight-page Act, unanimously, that proclaimed the first of the Grand Rights of the People was "government based on the consent of the people." In the very next paragraph, the Congress proclaimed the collateral Right of the People to withhold their allegiance and support from the Government by retaining their money until their Grievances were redressed. See Appendix O at page A-71 for the full text of the Act.

In 1776, the Declaration of Independence clearly shows that the capstone Grievance was the failure of the British government to respond to the colonists' Petitions for Redress of Grievances. That failure was the proverbial "straw that broke the camel's back," the ultimate violation of the Rights of the People that led the colonists to throw off their government of 150 years.

In 1791, the People added the Right to Petition to the First Amendment in the American Bill of Rights, as the capstone Right, capping all others.

Until 1830, it was unthinkable for Government at any level in America not to respond to Petitions for Redress of Grievances, for fear of the Right of the People to enforce their Rights by withdrawing their allegiance and financial support. Even U.S. Congressmen submitted all Petitions for Redress of Grievances to a Committee for consideration and response. Every Wednesday Congress considered the Petitions for Redress.

In 1830, Southern Congressmen, frustrated by the flood of Petitions from People Grieving the issue of the Rights of slaves, managed to pass a procedural rule in Congress that permanently tabled any additional Petitions on the subject of slavery.[6]

It took John Quincy Adams five years to repeal the rule, but the precedent was established. That precedent became the basis of another and so forth, until the full contours of the meaning of the Right to Petition had become all but forgotten -- until 1985.

The Supreme Court had only to mention the Right to Petition in 1985 to wake up the scholars.[7] Following *MacDonald v Smith,* ten law review articles on the subject of the Right to Petition were published. None had ever been published before 1986. Included were extraordinary works on the history, meaning, effect and significance of the Right to Petition, especially those by Prof. Gregory Mark at Rutgers and Prof. Akil Amar at Yale. For a list of

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[6] It might not have taken 35 years and a civil war to end slavery in America had the Government, for the first time in American history, not failed to respond to the People's Petitions for Redress.

[7] In *MacDonald v. Smith*, 472 U.S. 479 (1985) the Supreme Court held that just as the Right of Free Speech is not absolute (one can't yell "fire" in a dark crowded theater, the Right to Petition for Redress is not absolute (one can't libel or defame another).

the ten Law Journal articles, see Appendix M, fn 5 at page A-62.

The DC District Court erred in deciding this constitutional question without taking Plaintiffs' original intent argument into consideration. This is particularly difficult for the Plaintiffs to accept in view of what Circuit Judge Rodgers 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 view, 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).

The Court's attention is invited to the full argument put forth by Circuit Judge Rogers in her separate opinion, seemingly quite supportive of a decision by the Supreme Court to consider this "interesting question".

3. THE DC CIRCUIT'S DECISION CONFLICTS WITH OTHER RECENT CIRCUIT COURT DECISIONS.

The decision by the DC Circuit Court conflicts with the recent decision in *Van Deelen* (10th Cir., 2007), and with three other Circuit Court decisions involving these Plaintiffs. In recent months there have been five conflicting decisions issued by five Circuit Courts, including the matter before the bar, regarding the meaning of the Petition Clause as follows:

1. *We The People v U.S.*,485 F.3d 140 (**DC Cir**.,2007) See Appendix D at page A-4 for a copy. **This case**.
2. *Schulz v U.S.*, (No. 06-2891, **8th Cir**., 2007) See Appendix G at page A-26 herein for a copy.
3. *Schulz v U.S*, (No. 05-17388, **9th Cir**., 2007). See Appendix H at page A-28 herein for a copy.

4. *U. S. v. Astrup*, (Case No. 05-5701, **2nd Cir**., 2006).
   See Appendix J at page A-39 herein for copy.
5. *Van Deelen v. Marion Johnson*, ___ F.3d ____ (Case No 06-3305, **10th Cir**. August 14, 2007).
   See Appendix K at page A-44 herein for a copy.

The instant Petition for Writ of Certiorari is a result of the first decision listed above.

Because these decisions, except the Van Deelen decision (No. 5 above), involve the same underlying legal controversy, the same basic facts, and generally the same parties, the full question at the heart of this case was presented in virtually identical fashion to the DC, Eighth, Ninth and Second Circuits. Conflicting determinations of the critically important constitutional question were issued in all the cases.

The DC, Eighth, Ninth and Second Circuit Courts reached the same result; that is, that the Executive and Legislative branches **do not have to respond** to the Petitions of private Citizens seeking Redress of constitutional torts and, therefore, the private Citizens have no Right to retain their money until their Grievances are Redressed and, therefore, the Government is free to enforce the internal revenue laws against anyone retaining his money until his Grievances are Redressed and the Courts are blocked from providing injunctive relief by the Anti-Injunction Act under the Internal Revenue Code.

However, the four Circuit Courts reached the result in different ways – a virtual smorgasbord of approaches has been used by the four Circuit Courts to defeat the question all, we suggest, are in error. The decisions appear not to be in cognizable judicial terms.

The DC Circuit, relying on *Smith* and *Knight*,[8] held that government does not have to listen or respond to People who Petition the Government for Redress of Grievances.[9] The DC Circuit Court erred: *Smith* and *Knight* are distinguishable on the facts and the law, and are not dispositive.

In her separate opinion, DC Circuit Judge Rogers distinguished the instant case from *Smith* and *Knight*, recognizing that the legally significant contemporaneous, historical context and purpose of the accountability clause, as argued by Plaintiffs in this case was not argued in *Smith* and *Knight*. In addition, *Smith* and *Knight* were cases involving job related grievances by **public** employees and grievance procedures set forth by their State legislatures. The cases were less about the Right to Petition than about its derivative Rights, the Right of free speech and association. Regardless, *Smith* and *Knight* were not cases, as here, involving **private** citizens petitioning the Government for violating restrictions and prohibitions found in the Articles of the Constitution. For more analysis, see Part 4 below.

On the other hand, the Eighth Circuit Court merely held, without any explanation whatsoever, that "[Plaintiffs'] constitutional arguments are without merit."[10] Ostensibly, the Court held that the accountability clause of the First Amendment was intended to be without effect and the Government has no obligation under it. This is clearly erroneous. As Chief Justice Marshall said, "There is no provision of the Constitution that was intended to be

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[8] Smith v. Ark. State Highway Employees, Local 1315, 441 U.S. 463 (1979), and Minnesota State Bd. Community Colleges v. Knight, 465 U.S. 217, 284 (1984).

[9] For a copy of the DC Circuit's Opinion please see App. D at A-4.

[10] For a copy of the 8th Circuit's Opinion please see App. G at A-26.

without effect." *Marbury v. Madison*, 5 U.S. 139 (Cranch) 1803.

The Ninth Circuit, affirming the District Court, said simply, in referring to Plaintiff's constitutional arguments, "Schulz's remaining contentions are unpersuasive."[11] The District Court simply **equated** Plaintiffs' Right to Petition for Redress of Grievances claim to a Right to Associate claim, and then held that there is "no *First Amendment* [association] right in violating a constitutional statute."[12]

In what we submit to be error, the Ninth Circuit equated Plaintiff's Right to Petition to a Right to Associate, then compounded that error by converting plaintiff's exercise of the constitutional Right into the potential crime of promoting an abusive tax shelter. The District Court was referring of course, to Section 6700 and 6701 of the internal revenue laws, which penalize those who promote "abusive tax shelters."

The Second Circuit, relying on *U.S. v. Ramsey*, 992 F.2d 831,833 (8th Cir. 1993), quoting *U.S. v. Lee*, 455 U.S. 252, 260, held that there is "no First Amendment right to avoid federal income taxes on religious grounds." *Ramsey* and *Lee* were Free Exercise cases that did not involve a Petition for Redress of a violation by the Government of any Article of the Constitution or the refusal of the Government to justify and/or cease its unlawful behavior. While *Lee* and *Ramsey* ultimately stood for the proposition that the imposition of taxes did not substantively infringe the exercise of religion, the *Astrup* Court deprived Astrup of the Right to Redress to cure constitutional torts and the Right to Redress Before Taxes. The Second Circuit erred

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[11] For a copy of the 9th Circuit's Opinion please see App. H at A-28.
[12] For a copy of the Dist. Court's Opinion please see App. I at A-31.

in deciding *Astrup*. *Ramsey* and *Lee* are distinguishable and not on point.

The Tenth Circuit decision actually helps Plaintiffs. It suggests the DC Circuit might have held differently had it considered Plaintiffs' argument that they are not public employees. The issue in *Van Deelen* was government retaliation against private Citizen Van Deelen for Petitioning the Government for Redress of Grievances. The County used the "public concern doctrine" in its defense. Unlike the DC Circuit in the instant case, however, the 10th Circuit recognized that the First Amendment Rights of private Citizens cannot be constrained in ways that are possible with public employees due to the public concern doctrine. The Tenth Circuit distinguished the First Amendment Rights of private persons from those of public employees acting in their official capacities (as in *Smith* and *Knight*). The Court held public employees who petition the Government (as in *Smith* and *Knight*) do not have the same First Amendment Right to a response and to protection against retaliation as private persons due to the need to provide public services in as efficient a manner as possible. The Tenth Circuit addressed only part of the instant question – that is, the permissibility of retaliation against a private person who Petitions the government for Redress of Grievances. Although the Court was not directly presented with the larger questions of "Right to Response," and "Right to Redress before taxes," it is clear that whatever powers the Right to Petition may embody, the Court firmly ruled it prohibits retaliation against Citizens that Petition. In deciding, the Court recognized the significant difference in the constitutional Rights of private individuals acting under the Petition Clause as opposed to individuals acting in their public (i.e., governmental) capacities. Its decision therefore conflicts with the decision by the DC Circuit. **Importantly, this decision does <u>not</u> conflict with this**

Court's holdings in *Smith* and *Knight*. The decision by the Tenth Circuit held in part, "A private citizen exercises a constitutionally protected First Amendment Right anytime he or she petitions the government for redress. The petitioning clause of the First Amendment does not pick and choose its causes. The minor and questionable, along with the mighty and consequential, are all embraced."

4. THE DC CIRCUIT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The DC Circuit Court's decision actually conflicts with this Court's decisions in *Smith* and *Knight, supra*.

Smith and *Knight* were cases involving job related grievances by **public** employees and grievance procedures set forth by their State legislatures. The cases were less about the Right to Petition than about its derivative Rights -- free speech and association. Regardless, *Smith* and *Knight* were not cases, as here, involving **private** citizens Petitioning the Government for violating constitutional prohibitions and limitations.

The DC Panel's application of the principles of law set down in *Smith* and *Knight* does not provide sufficient justification for the conclusion here that Government does not have an obligation to respond to private Plaintiffs' Petitions for Redress of **constitutional torts**.

Whatever effect the DC Court's decision may have in strengthening the application of *stare decisis*, it is likely to be far less important than what that Court has done in eroding the Constitution by sanctioning the Government's

retaliation, under color of law, against the People who have, in good faith, claimed and exercised unalienable Rights guaranteed by the Constitution.

The instant decision's conflict with *Smith* and *Knight* is due to the DC Circuit Court's failure to recognize the overriding distinguishing factual issue in this case -- Plaintiffs' Grievances go directly to **constitutional torts -- that is, violations of the constitution (policies long ago set in stone by the Framers and Ratifiers, subject only to change by Constitutional Amendment)** not, as in *Smith* and *Knight*, less significant government policy making by sitting state legislative and administrative boards.

The DC Court's decision in this case conflicts with *Smith* and *Knight* in that it is a watershed decision of far reaching importance, denying not only a Fundamental Right, but the "capstone Right" of all Persons (i.e., the procedural instrument for enforcing the rest of the Charter).

The constitutional principle declared in *Smith* and *Knight* merely governs the obligation of governments "to listen and respond" to public employees who do (*Smith*) or do not (*Knight*) want to submit employment related grievances to their state employers through a labor association as required by state legislation.

Notwithstanding *Smith* and *Knight*, the principle or rule of conduct governing Government's obligation to respond to Petitions to the federal Government by **private** Citizens, in their private capacities, for Redress of Grievances involving **constitutional torts, has yet to be declared by any Court**, much less "settled through iteration and reiteration over a long period."

The DC Circuit Court's decision also conflicts with *Clark v. Martinez*, 543 U.S. 371, quoting *Hilton* v. *South Carolina*

Public Railways Comm'n, 502 U.S. 197, 205 (1991), which stands for the proposition that in constitutional cases such as this, the Courts do not give as strong a *stare decisis* consideration to its holdings as with cases dealing with an issue of statutory interpretation (as in *Smith* and *Knight*).

In the instant case, the facts, circumstances and legal arguments are so radically different that there is no risk of making *Smith* or *Knight* a legal anomaly.

Indeed, the Panel concluded its opinion in what we believe to be error, saying, "We need not resolve this [original intent] debate, however, because we must follow the binding Supreme Court precedent [in *Smith* and *Knight*]."

However, "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. 139 (Cranch) (1803).

Finally, the DC Circuit Court decision conflicts with a long line of this Court's decisions that stand for the proposition that no Act of Congress (including the Internal Revenue Code) can trump the Constitution.

The DC Circuit Court decision held, in effect, that even if the Plaintiffs had a Right to hold the Government accountable to the Constitution (i.e., a Right to a Response from the Government to their four Petitions for Redress of constitutional torts), the Plaintiffs could not expect the judicial department to assist the Plaintiffs if the Plaintiffs were: a) attacked by the Executive department for withdrawing their financial support until their Grievances were Redressed; and b), if, in reaction to the retaliation, the Plaintiffs were to approach the Judicial branch for an order blocking any further retaliatory

actions by the Executive until Plaintiffs' Grievances were Redressed.

The Circuit Court cited the Anti-Injunction Act as the reason for being barred from protecting the Plaintiffs from such retaliation because of the Act's provision that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person."

This implies that Acts of Congress can trump the Constitution and the Fundamental, Individual Rights it expressly protects.

From *Carter v. Carter Coal Co.,* 298 U.S. 238 (1936):

> "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).

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."

The DC Court erred by failing to first consider the higher-order constitutional nature of the claim and exercise of the Right to Petition and its corollary Rights before invoking the Anti-Injunction Act.

CONCLUSION

The First and Ninth Amendment guarantee the positive Rights discussed above.

Petitioning the government for Redress of Grievances is the only non-violent means the Plaintiffs possess to hold their government accountable to its primary role of protecting the People and their individual, unalienable Rights.

Plaintiffs urge this most Honorable Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

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