09-1229-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT L. SCHULZ,

Plaintiff-Appellant

-against-

1:08-CV-991 (Lead)

UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, Chairman of the United States Federal Reserve System, UNITED STATES DEPARTMENT OF THE TREASURY, HENRY M. PAULSON, JR., Secretary of the United States Department of the Treasury, and the UNITED STATES

Defendants-Appellees

ROBERT L. SCHULZ,

Plaintiff-Appellant **1:08-CV-1011 (Member)**

-against-

UNITED STATES EXECUTIVE DEPARTMENT, GEORGE W. BUSH, President of the United States, HENRY M. PAULSON, JR., Secretary of the Treasury; UNITED STATES CONGRESS, NANCY PELOSI, Speaker of the House of Representatives, HARRY REID, Senate Majority Leader; UNITED STATES FEDERAL RESERVE SYSTEM, BEN S. BERNANKE, Chairman of the Board of the United States Federal Reserve System,

Defendants-Appellees

BRIEF ON BEHALF OF APPELLANT

May 9, 2009

ROBERT L. SCHULZ
2458 Ridge Road
Queensbury, NY 12804

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Appellant Robert L. Schulz, states as follows:

RELIEF REQUESTED

With respect to the Lead Case (the "AIG" case), Appellant requests an Order:

a) Permanently and Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to its employees, agents and contractors from giving or lending any public money and public credit to A.I.G., and anyone acting on its behalf, including but not limited to its employees, agents, subsidiaries, partners and affiliates pending a determination of the underlying constitutional question and any appeal there from, and

b) Granting any further relief that to the Court may seem just and proper.

With respect to the Member Case (the "$700 Billion Bailout" case), Appellant requests an Order:

a) Permanently and Preliminarily enjoining, prohibiting and restraining Defendants, and anyone acting on their behalf, including but not limited to their employees, agents and contractors from using public funds to purchase or insure any financial assets from any private entity under Defendants' so-called $700 Billion bailout plan, pending a determination of the underlying constitutional question and any appeal there from, and

b) Granting any further relief that to the Court may seem just and proper.

JURISDICTION

This Court's jurisdiction is provided by 28 USC Section 1291. This appeal is from a final decision of the District Court entered February 24, 2009 that disposes of all parties' claims. The appeal was taken on March 23, 2009.

The Lead and Member cases arose under the Constitution of the United States of America. The District Court's jurisdiction to declare the constitutionality of the challenged behavior is provided by Article III, Section 2 of the Constitution, which reads in relevant part: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States…."

In addition, the District Court's jurisdiction is also provided by 28 U.S.C. Sections 1331.

Relevant to both cases, because it is common knowledge that Defendants have been giving money to AIG and numerous other privately owned entities (e.g., banks, car companies, etc.) from the $700 billion bailout fund, Section 119(a)(2)(A) of the final Emergency Economic Stabilization Act of 2008 authorizes Injunctions for violations of the Constitution:

> "INJUNCTION. No injunction or other form of equitable relief shall be issued against the Secretary for actions pursuant to section 101, 102, 106, and 109, other than to remedy a violation of the Constitution."

The Act directs Courts to expedite requests for Preliminary Injunctions. EESA, Section 119(a)(2)(C). The Act directs Courts to expedite requests for Permanent Injunctions and wherever possible to consolidate trial on the merits with any hearing on a request for a preliminary injunction. EESA Section 119(a)(2)(C). The Act provides for an automatic stay of any injunction for 3 days. EESA Section 119(a)(2)(D).

FACTS AND PROCEDURAL HISTORY

The Lead case, filed September 18, 2008,[1] is a challenge to the giving or lending of public money or credit to a private company (American International Group – "A.I.G.") for a definitively private purpose[2], **without a constitutional grant of authority from the People to do so.** Facts about the AIG case, besides those discussed in this part of Appellant's brief are included in the Record (A 29-44).

[1] Two days after the public announcement of an agreement whereby the Treasury Department (without approval from Congress) would loan $85 Billion to A.I.G. in exchange for 79.9% ownership of A.I.G.

[2] To help A.I.G. avoid Bankruptcy Court by giving it a chance to sell its assets in an orderly fashion, thereby helping its private trading partners, such as Goldman Sachs. Source: *New York Times* article dated September 28, 2008 titled, "Behind Insurer's Crisis, Blind Eye to a Web of Risk.".

The Member case, filed September 24, 2008,[3] is a challenge to the use of public money under the so-called $700 Billion Bailout Plan (the Emergency Economic Stabilization Act – "EESA"),[4] **without a constitutional grant of authority from the People to do so,** to purchase or insure assets belonging to private entities for definitively private purposes, that is, to remove bad debts (worthless or near worthless investments) from private balance sheets.[5]

EESA, Section 101(a)(1) authorizes Defendants to "establish a troubled asset relief program (or 'TARP') to purchase, troubled assets from any financial institution …" EESA, Section 3(9) defines troubled assets to mean:

> (A) residential or commercial mortgages and any securities, obligations, or other instruments ….
>
> (B) any other financial instrument that Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines [to] purchase ….

As expected, the core feature of the final Act had not changed from that of the Emergency Economic Stabilization Act of 2008 ("EESA") voted down by the House on Monday, September 29, which did not change from that of the original three page bill delivered to Congress on September 20, 2008 – that is, the final Act (still in effect as of this day) has authorized the Executive Branch's Treasury Department to begin using $700 Billion of public, taxpayer funds to purchase or insure any financial asset from any private entity, domestic or foreign (e.g., worthless and near worthless bad debts and investments).

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[3] Three days after the public release of a proposed law that would "authorize" the Treasury Department to use $700 Billion to purchase private assets for decidedly private purposes.

[4] On October 3, 2008, the Emergency Economic Stabilization Act was signed into law by President Bush. The Act passed the Senate on October 1 and by the House on October 3.

[5] *New York Times* article dated September 29, 2008, titled, "Breakthrough Reached in Negotiations on Bailout."

"**Upon request of a financial institution, the Secretary may guarantee the timely payment of principal of, and interest on, troubled assets in amounts not to exceed 100 percent of such payments**." EESA, Section 102(a)(3).

Effective upon the enactment of the Act (October 3, 2008), the Secretary is authorized to spend $250 billion in public taxpayer funds to purchase the troubled assets of private financial institutions. If at any time the President submits to the Congress a written certification that the Secretary wants an additional $100 billion, the Secretary's authority to spend public, taxpayer funds to purchase the troubled assets of private financial institutions is increased to $350 billion. The authorization is increased to **$700 billion** if, after the President certified the Secretary wanted another $100 billion the President then submits a report to the Congress requesting authority to spend another $350 billion and Congress does not deny the request. EESA Section 115 (a)-(c).

Concurrent with the filing of each of the two Complaints, Schulz filed and timely served a Show Cause Order to expedite the proceedings, and for a TRO and a Preliminary Injunction to stay the transfer of taxpayer funds from the public treasury unless and until the Defendants provided evidence of their authority, under the Constitution of the United States of America, (and/or appropriate statutes) to engage in such conduct.

With respect to the A.I.G. case, the District Court did not act on Schulz's emergency motion for five days, which allowed the Treasury and/or Federal Reserve to transfer $61 Billion (of the initial $85 Billion) of taxpayer-backed funds to A.I.G. On September 23, the Court issued a Text Only Order denying the motion for a TRO on the (erroneous) ground that Schulz had not cited the Court's jurisdiction.[6] (A 6).

[6] The first paragraph of the Complaint is titled Jurisdiction and Venue and properly cites the jurisdiction of the Court under Article III, section 2 of the Constitution as well as under 28 U.S.C. 1331.

The District Court issued its Order without any response from the Defendants to the Complaint, much less a hearing. Other than a Notice of Appearance in the Lead Case, the Defendants in both the Lead and Member cases were not heard from. [7]

With respect to the $700 Billion Bailout case, the District Court did not act on Schulz's emergency motion for two days. On September 26, the Court issued an Order denying the motion for a TRO and a Preliminary Injunction on the (erroneous) ground that Schulz had not cited the Court's jurisdiction.[8] (A 7-10).

In addition, the District Court's September 26 Order consolidated the two cases, on the ground that they "appeared to be related," and denied Schulz's motion for a Preliminary Injunction in the A.I.G. case. (A 7-10).[9]

On Tuesday, September 30, Schulz filed a Notice of Appeal from the District Court's Orders of September 23 and September 26, and an Emergency Motion at the Court of Appeals to expedite the proceedings and to stay the transfer of taxpayer funds from the public treasury under both programs unless and until the Defendants provided proof of their authority under the Constitution of the United States of America to engage in such conduct.

The Second Circuit did not act on Schulz's Emergency Motion for six days and did not notify Schulz of its decision for another four days. On October 6, without explanation and without any hearing or response from any of the Defendants, the Court of Appeals denied the emergency motion, which allowed Defendants to transfer more of the $85 Billion to A.I.G. (and to entertain another request by

[7] Long after this appeal was filed, Defendants filed a motion to dismiss in District Court. Appellant filed a letter motion for clarification regarding jurisdiction. (A-103). The Court did not respond but issued a scheduling order (A-104).

[8] Again, the first paragraph of the Complaint is titled Jurisdiction and Venue and properly cites the jurisdiction of the Court under Article III, section 2 of the Constitution as well as under 28 U.S.C. 1331.

[9]. In the AIG case, the U.S. Treasury Department did NOT seek or obtain Congressional approval. In the $700 Billion Bailout Case, the Executive Department did seek and did obtain Congressional approval.

A.I.G for an additional $37.8 Billion beyond the initial $85 Billion), and allowed Defendants to pursue the use of the $700 billion bailout fund.[10]

The New York Times reported in an article dated November 11, 2008 titled, "A.I.G. Secures $150 Billion Assistance Package" that A.I.G would be receiving an additional $150 Billion "to get most tainted assets out of the company."

Schulz filed an application for emergency relief with the Supreme Court of the United States, requesting the same relief the Second Circuit had denied. On November 17, SCOTUS denied the application.

On December 8, 2008, citing this court's jurisdiction under 28 USC Section 1292, Schulz perfected his appeal (Brief and Appendix) from the District Court's 9/26/08 Decision denying his request for a Preliminary Injunction. On January 6, 2009, Defendant's filed their Response. This Court's Docket Number for that appeal is 08-4810-cv. Said appeal was pending when, on November 24, 2008, Defendants filed their Motion in the District Court to Dismiss the lead and member cases. Appellant filed a letter motion for clarification regarding jurisdiction. (A-103). The Court did not respond to the letter. Instead, the Court issued a scheduling order (A-104).

There has been a near blackout about events taking place pursuant to the AIG Agreement and the $700 billion bailout.

Including the $700 Billion, more than $8 Trillion in public funds have been given or pledged to AIG and other private parties, and despite the express requirements of the TARP statute and the large body of existing statutes governing federal financial accounting and record keeping, all this has been done without public disclosure or congressional oversight. On November 26, 2008, the *New York Times* reported that Defendants had spent or committed $3 Trillion on "Investments" (private stock, corporate

[10] Schulz, who is pro-se, learned of the Court's decision on Thursday, October 9 when he received an email from a friend who had noticed the decision was posted on the Docket Sheet. Schulz telephoned the case manager at the Court, who confirmed the decision, and agreed to fax a copy to Schulz. Schulz received the fax late afternoon October 10, 2008.

debt and mortgages), $3.1 Trillion on "Guarantees" (private corporate bonds, money market funds and deposit accounts), and $1.7 Trillion on "Loans" (to private companies).

However, according to Bloomberg LP, Defendants are refusing to reveal how U.S. taxpayer funds are being spent. Source: *Bloomberg LP v. Board of Governors of the Federal Reserve System*, 08-cv-9595 (SDNY).

Additional facts about the $700 Billion case are included in the Record (A 74-76).

ARGUMENT

A. THE JUDICIARY'S APPLICATION OF ITS STANDING DOCTRINE, COUPLED WITH THE JUDICIARY'S APPLICATION OF ITS S*TARE DECISIS* DOCTRINE, IN A STRING OF CONSTITUTIONAL CHALLENGES TO ACTIONS BY THE GOVERNMENT, ADDS UP TO AN UNCONSTITUTIONAL, INTOLERABLE DEPRIVATION OF PLAINTIFF'S RIGHT TO A GOVERNMENT REPUBLICAN IN FORM AND SUBSTANCE.

In 1997, this Court dismissed another constitutional challenge by Plaintiff Schulz for lack of standing. [11] Schulz claimed Defendants in that case, President Clinton and Treasury Secretary Robert Rueben had acted *ultra vires* and without authority in agreeing to bail out the Mexican Peso with $20 billion of public funds. Schulz charged Defendants were usurping the powers granted to Congress under the Money clauses of the Constitution, in violation of his individual, unalienable Right to an Executive Branch limited by a written Constitution, i.e., an Executive that does not act arbitrarily by exercising power not granted to it. Plaintiff sought to prevent the transfer of public funds to Mexico by the Executive Branch pending a resolution of the underlying constitutional question.

[11] See *Robert Schulz, et al, v United States (President William Clinton and Treasury Secretary Robert Rubin), et al.*, Court of Appeals for the Second Circuit Case Number 96-6184, U.S. District Court for the Northern District of New York Case Number 95-cv-133.

In 2000, this Court dismissed another constitutional challenge by Schulz for lack of standing. [12] Schulz claimed Defendants in that case, President Clinton and Defense Secretary William Cohn had acted *ultra vires* to bomb the Federal Republic of Yugoslavia. Schulz charged Defendants were usurping the powers granted to Congress under the War Powers clauses of the Constitution, in violation of his individual, unalienable Right to an Executive Branch limited by a written Constitution, i.e., an Executive that does not act arbitrarily by exercising power not granted to it. Plaintiff sought to prevent any further application of the armed forces of the United States in hostilities in Yugoslavia or elsewhere overseas pending a resolution of the underlying constitutional question.

Having determined the policy of the Judicial Branch of the Government was not to honor the First Amendment guarantee of the Creator-endowed Right of American citizens to hold the Government accountable to the Constitution by Petitioning the Government for Redress of its violations, Schulz then began to Petition his elected representatives in the Legislative and Executive Branches for Redress of numerous other violations of the Constitution. Between 1999 and 2004, Schulz served fact-based First Amendment Petitions for Redress of Grievances relating to those violations of the Constitution on his members of Congress and the President. Each Petition for Redress sought relief from a specific act of the Government alleged to be in violation of a specific restriction, prohibition or mandate of the Constitution (the Iraq Resolution and the War Powers clause, Federal Reserve System and the Money clauses, the U.S.A. Patriot Act and its violation of the Privacy clauses, and federal income tax system and its violation of the Tax clauses). However, the officials of each of the two non-judicial branches refused to respond to *any* of the Petitions for Redress – i.e., they refused, and continue to refuse to be held accountable. They refused, and continue to refuse to justify their behavior.

[12] See *Robert Schulz, et al., v. United States Executive (President William Clinton and Secretary of Defense William Cohen), et al.*, U.S. Court of Appeals for the Second Circuit Case Number 99-624, U.S. District Court for the Northern District of New York Case Number 99-cv-845.

In 2004, Schulz returned to the Judicial Branch with an action for declaratory relief, seeking a declaration of his Rights and the obligations of the Government under the accountability clause of the First Amendment – the last ten words.[13] Schulz asked the Court to answer two questions: 1) Is the Government obligated to respond to Petitions for Redress of ***constitutional*** violations?; and 2) If the Government does not respond do the People have a Right to withdraw their support and resources until their Grievances are Redressed? Citing two cases decided by the Supreme Court of the United States in 1979 and 1984, the Court grotesquely misapplied the judicial doctrine of *stare decisis* to arrive at its ruling that the Government is not obligated to respond to Petitions for Redress of violations of the Constitution and that, therefore, the People possess no Right to withdraw their support from the Government until their Grievances were Redressed.[14]

In effect, by its combined actions, the Judicial, Legislative and Executive branches have adopted a self-serving, patently unjustifiable policy that if a citizen(s) directly suffers, or has evidence, that a government official(s) has violated any of the restrictions, prohibitions or mandates of the Constitution (such as the faithfully execute clause of Article 2, or the war, tax and money clauses of Article 1) or any of the provisions of the Bill of Rights (such as the privacy clauses of the Fourth Amendment, or the accountability clause of the First Amendment, or the well regulated militia clause of the Second Amendment), the citizen must rely exclusively on the electoral process for relief. That is, the Government, in its collective, has effectively held that citizens who have endured infringements of their Individual Rights, must rely on one more than half the number of people voting in the polling

[13] See *We The People and Schulz v. United States, el al.*, U.S. Court of Appeals for the District of Columbia Case Number 05-5359.

[14] Of extreme importance was the separate opinion written by Judge Judith Rogers, one of the three judges deciding 05-5359. She declared she read all the briefs filed in the 1979 case (*Smith v Arkansas*, 41 U.S. 463) and in the 1984 case (*Minnesota v Knight*, 465 U.S. 271) and that the legal question/argument before her Court in 05-5359 was not presented or raised in either of those two cases, and was certainly not addressed by any of the Courts in either of those two cases. SCOTUS denied cert.

places or one more than half the number of people voting in the halls of Congress to secure and enjoy those Rights.

This presents an interesting dilemma for a government allegedly constructed upon the Principle of the recognition of the sanctity of unalienable Individual Rights and the Rule of Law. It suggests that those running the three branches of the Republic have unilaterally chosen amongst themselves, to transition America from a Constitutional Republic to a pure Democracy, freely ignoring the mandated procedure articulated in Article 5 of the Constitution.

Should this Court affirm the District Court's decision to dismiss this case for lack of standing, without reaching the merits of Plaintiff's claims the Court will be affirming the arguably dangerous notion that if citizens object to the fact that their elected officials violate the Constitution or their Individual Rights, that they have NO means to secure Justice or Liberty other than to register to vote at the next election..

B. THE COURT HAS JURISDICTION[15]

The Lead and Member cases arise under the Constitution of the United States of America.

Schulz cited the District Court's jurisdiction to declare the constitutionality of the challenged behavior as Article III, Section 2 of the Constitution, which reads in relevant part: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States…."

Schulz also cited the District Court's jurisdiction under 28 U.S.C. Sections 1331.

[15] With reference to the issue of preliminary relief, Schulz incorporates by reference the arguments contained in his BRIEF ON BEHALF OF APPELLANT, dated December 5, 2008, Court of Appeals Docket Number 08-4810-cv.

Schulz also cited the District Court's jurisdiction to entertain his Show Cause Orders for injunctive relief – i.e., the District Court's rules L.R. 7.1(e) and (f).

Relevant to both the lead and member cases, because it is common knowledge that Defendants have been giving money to AIG and numerous other privately owned entities from the $700 billion bailout fund, Section 119(a)(2)(A) of the final Emergency Economic Stabilization Act of 2008 authorizes injunctions for violations of the Constitution:

> **"INJUNCTION.- No injunction or other form of equitable relief shall be issued against the Secretary for actions pursuant to section 101, 102, 106, and 109, other than to remedy a violation of the Constitution."**

The Act directs Courts to expedite requests for Preliminary Injunctions. EESA, Section 119(a)(2)(C).

The Act directs Courts to expedite requests for Permanent Injunctions and wherever possible to consolidate trial on the merits with any hearing on a request for a preliminary injunction. EESA Section 119(a)(2)(C).

The Act provides for an automatic stay of any injunction for 3 days. EESA Section 119(a)(2)(D).

Notwithstanding the above, the Court erroneously dismissed the case for lack of jurisdiction.

The Court erroneously overlooked the fact that Schulz is a "natural born citizen" of the United States of America. Both of Schulz's parents and his maternal and paternal grandparents were citizens of the United States for their entire lifetimes, and Schulz was born on U.S. soil in Queens, New York.

Schulz will live the duration of his life while the Constitution of the United States of America is expected to be in full force and effect.

The Constitution is a set of principles to govern the Government. It is all that stands between Schulz, a free person, and total tyranny and despotism.

While Schulz can do anything he wants to do as long as (constitutional) law does not prohibit it, Defendants, on the other hand, can only do what the Constitution authorizes them to do, and if it is not in writing, they can't do it, period.

> "Subject matter of complaint which plainly sets forth a case arising under Federal Constitution is within federal judicial power defined in Article III, § 2, of Federal Constitution, and so within power of Congress to assign to jurisdiction of District Courts." *Baker v Carr* (1962) 369 US 186, 7 L Ed 2d 663, 82 S Ct 691.

The primary role of the judiciary is to exercise its jurisdiction to keep the other two branches in their constitutional places, regardless of the level of practical difficulty:

> "Existence of jurisdiction implied duty to exercise it, and that its exercise might be onerous did not militate against that implication." *Second Employers' Liability Cases* (1912) 223 US 1, 56 L Ed 327, 32 S Ct 169.

28 USCS § 1331 provides District Courts with jurisdiction over motions for injunctive relief and power to review decisions and actions of federal agencies. *Parkview Corp. v Department of Army, Corps of Engineers, etc*. (1980, ED Wis) 490 F Supp 1278, 14 Envt Rep Cas 2115.

With respect to the AIG case, the Executive Department is not authorized, with or without the approval of Congress (Congress is not authorized to give approval), to *participate* in commerce by gifting or lending public funds and credit to a private party for a definitively private purpose. This is true, regardless of any noble intent of the program or any contrived benefit the Government may accrue as an outcome of such transactions (e.g., partial ownership of a bank or auto manufacturer). The Court's attention is invited to the fact that, even if Congress had such power under Article I, Section 8 of the Constitution (which it does not have) the Executive Branch did not seek and has still not obtained the

approval of Congress for the required appropriation of public funds for such an expenditure or to enter into the initial $85 billion Agreement with AIG.

With respect to the $700 Billion case, any act of Congress, such as EESA, that is repugnant to the Constitution is null and void. *Marbury v Madison,* 5 U.S. (1 Cranch) 139 (1803).

In addition, the Executive Department is not authorized by the Constitution, with or without the approval of Congress, to *participate* in commerce as a purchaser or insurer of real and personal property (mortgage related assets or otherwise) from private, for-profit entities for decidedly **private** purposes. This is true, regardless of any noble intent or perceived public benefit of such program. Large sums of public funds are being used to purchase, insure, or otherwise indemnify the real and personal property, financial investments or contracts of private entities for decidedly **private** purposes.

Appellant has raised serious questions going to the merits to establish fair grounds for litigation.

The Constitution must be construed in its entirety.

There is no provision of the Constitution that permits or grants the Government of the United States of America the power to *participate* in commerce, i.e., to set prices and be a market participant, by giving or lending public funds and credit to a private party - even if such transaction results in an exchange for warrants, financial interest, and/or control of the private party, especially if such transaction is for a decidedly, definitively, **private** purpose.

Under Article I, Section 8 of the Constitution of the United States of America, the People have given Congress the power, **"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."**

Article I, Section 8 of the Constitution of the United States of America gives Congress the power to regulate commerce, not to *participate* in commerce as a giver or lender of public money and credit to private, for-profit entities.

The *First Amendment* to the Constitution of the United States of America reads in part,

"Congress shall make no law…abridging … the Right of the People peaceably to Assemble and to Petition the Government for Redress of Grievances."

This lawsuit is a Petition for Redress (remedy) of a Constitutional tort. No act of Congress can, in equity or in law, bar the judiciary from its Constitutional duty in determining the merits of Plaintiff's complaint and granting the requested relief.

Plaintiff's Liberty depends upon his vigilance and ability to defend against any act or threat by Defendants to diminish the value of his Liberty.

The *Ninth Amendment* reads, **"The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People."**

Plaintiff claims and is exercising his natural Right to challenge Defendants' cooperative decision to deny Plaintiff his constitutional Right to constitutional governance carried out in decency and good order and to a Government that does not act without the consent of the governed.

The *Tenth Amendment* to the Constitution of the United States of America reads, **"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People."**

The power to give or lend A.I.G. or any other private entity public money and public credit is clearly reserved to the People, who have not expressly transferred that power to Defendants via the Constitution. The Agreement reached between Defendants and A.I.G. is a usurpation of the inherent power and vital interests of the free People of the United States of America. Plaintiff's claims are

aggravated further still by the strong certainty that public monies are being used to purchase or insure significant amounts of *foreign owned* impaired assets or counterparty obligations by the U.S. Treasury.

Plaintiff, as a free person and citizen of the United States, has a Fundamental Right to know that no official of the United States is acting without *bona fide* constitutional authority.

The Supreme Court of the United States and the Founder's opinions are clear: no department of the Government can violate Fundamental Rights possessed by Schulz, not even Congress.

In *Carter v. Carter Coal Co.,* the Supreme Court said:

> "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 stat- [298 U.S. 238, 297] ute 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).

In *Miranda v Arizona*, the Supreme Court said:

> "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)

In Federalist 78, Hamilton wrote:

> "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." Hamilton, *Federalist No. 78*

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, as well as 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 Plaintiff's interpretation of the Constitution, **the ends of Justice and Liberty require that deference, and the presumption that**

those fundamental Rights exist as argued by Plaintiff must be secured for Plaintiff who, by this Petition, has claimed and is exercising those Rights.

The individual's 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."

Let the Government and other Defendants come forth to present evidence of their Constitutional and statutory authority to engage in these transactions. They have refused to do so.

The loss of U.S. Constitutional freedoms, even for minimal periods of time, constitutes irreparable injury. Plaintiff has a fundamental Right to constitutional governance carried out in decency and good order. Plaintiff has a fundamental Right to a government that does not violate the Constitution. Plaintiff has a fundamental Right to hold the Government accountable to the Constitution. Impairment of *constitutional* Rights can undoubtedly constitute irreparable injury. S*ee Elrod v. Burns, 427 U.S. 347, 373, 49 L. Ed. 2d 547, 96 S. Ct. 2673 (1976)* (plurality opinion)." *Time Warner v. Bloomberg, 118 F.3d 917, 924 (2d Cir. 1997).*

Schulz has standing to bring suit – his constitutional, fundamental Right to Government officials who abide by the spirit and the letter of the Constitution has been violated. Clearly and demonstrably, Schulz has been injured. **The Court has jurisdiction even before the conspiracy has resulted in economic or "tangible" injury,** as has been and will be the situation with a continuation of Defendants' exercise of (alleged) "authority" under EESA**.** See *LeBlanc-Sternberg v. Fletcher, 67 F.3d 412 (2d Cir., 1995).*

Violations of U.S. Constitutional Rights are commonly considered irreparable injuries for the purposes of injunctions. See *Bery v. City of New York, 97 F.3d 689, (2d Cir., 1996).*

The Court has jurisdiction. Schulz's primary injury is due to Defendants' encroachment on the zone of interests protected by the Constitution.

The zone of constitutional interests being defended by Plaintiff Schulz includes the preservation, protection and enhancement of self-government, due process, popular sovereignty, accountability in government, the Right to Petition Government for a Redress of constitutional torts, and the Right to Constitutional governance carried out in decency and good order.

This nation's founding documents are comprised of the Declaration of Independence and the Constitution of the United States of America. They are inextricably intertwined.

The Declaration of Independence is the nation's "Charter," with its essential principles, including:

"[A]ll men…are endowed by their Creator with certain unalienable Rights...That to secure these Rights, Governments are instituted among men, deriving their just powers from the consent of the governed…."

Schulz's Rights to self-government, due process, popular sovereignty, accountability in government, the Right to Petition Government for a Redress of constitutional torts, and the Right to Constitutional governance carried out in decency and good order come from his Creator, not the state. He has them and is to enjoy them simply because he is alive.

The Preamble of the Constitution of the United States of America reads:

> "WE THE PEOPLE of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and Posterity, do ordain and establish this Constitution for the United States of America."

The District Court's implied doctrine of non-resistance by Schulz (and the rest of "We the People") to arbitrary power and oppression by the political branches of the federal Government,

apparently based on some manufactured notion of a lack of judicial jurisdiction to hear cases and controversies dealing with the Government's violation of the Constitution is absurd, slavish and destructive of good and happiness of mankind.

Defendants argued in their Reply below that a constitutional challenge by taxpayers, "very similar to the one at bar" had recently been dismissed for lack of standing: *Henry Builders, Inc. et al. v. United States et al*., 1:09-cv-0299 (E.D.N.Y. Jan. 26, 2009).

Defendants' reliance on *Henry Builders* is misplaced. The cases are not similar. The principle of law Plaintiff relies on in the instant case was not relied on by the parties or by the Court in *Henry Builders*. In addition, Schulz is not acting in his capacity as a "taxpayer." He is acting in his capacity as sovereign citizen who expects to live the rest of his life alongside elected officials who are chained and bound down by the Rule of Law – the Constitution – not under the Rule of Man, Whim or the will of any Majority.

In *Henry Builders*, as Judge Vitaliano stated on page 2 of his decision, Plaintiffs argued that the Emergency Economic Stabilization Act of 2008, "violates the Constitution's guarantee of equal protection because plaintiffs … who, in common with the whole of the population and millions of the nation's businesses, are not financial institutions – are ineligible for relief under the Act's provisions. In sum, plaintiffs charge that TARP is the equivalent of a financial 'bridge to nowhere' and that they are aggrieved because Congress did not build one for them too."

Here, Schulz claims no interest as a potential recipient of the "pirated bounty" of the public fisc obtained via TARP, etc. but has instead, clearly charged Government defendants acted *ultra vires* in adopting the EESA statute *itself*, that is, the use of public money for such purposes is entirely without **any** constitutional authority whatsoever. In effect, Schulz has charged defendants with arrogating and usurping power from the People – that is, oppressing the People by acting arbitrarily and capriciously.

Quoting *DaimlerChrysler Corp. v Cuno*, 547 U.S. at 345 (2006), Judge Vitaliano dismissed *Henry Builders* in part because Plaintiffs were seeking to invade "policy judgment[s] committed to the broad and **legitimate discretion of lawmakers**, which the courts cannot presume either to control or to predict." *Henry Builders* at page 3. (plaintiff's emphasis).

Here, unlike *Henry Builders*, Schulz has charged Congress acted *ultra vires* – that is, **illegitimately.** Again, TARP, AIG, etc. are not questions of public "policy" – they are **outside** the constitutional jurisdiction of the Law.

In addition, quoting *Lance v Coffman*, 549 U.S. at 439 (2007), Judge Vitaliano dismissed *Henry Builders* in part because Plaintiffs raised, "only a generally available grievance about government – claiming only harm to [their] and every citizen's interest in proper application of the Constitution and laws…." *Henry Builders* at page 3-4.

Here, unlike *Henry Builders*, Schulz's challenge is not directed at whether some provision of the Constitution or laws has been improperly applied. His claim is that the Defendants acted without any lawful authority whatsoever – that is, that the Constitution was ignored altogether.

Thus far, Defendants have utterly failed to cite their authority to give or lend public money to private corporations for decidedly and definitively private purposes. Defendants' motion to dismiss for lack of standing must be denied.

Schulz has suffered an actual injury in fact. The AIG Agreement and EESA are invasions of legally protected-constitutional- interests. Schulz's injuries, although shared with many others, are as particularized and concrete as any injury can ever be – that is, loss of his natural, individual, unalienable Right of sovereignty and self-government, and loss of his Grand Right to government based on the consent of the governed. Schulz's injuries are clearly traceable to the AIG Agreement and to EESA. Only a favorable decision by the Court will remedy his injuries.

To dismiss this case on a theory of lack of standing would be to effectively hold that, despite the fact that all those who comprise the class of humans referred to by the first three words of the Constitution may suffer equal injuries and deprivations of Liberty (*See*, "We the People"), the Judiciary itself is simply no longer available as a means of securing Redress to cure or restrain the unlawful acts of the (servant) government they created.

Let us pray this has not become the fate of our nation.

CONCLUSION

Plaintiff respectfully requests an order reversing the District Court's decision, requiring Defendants to cite their authority to engage in the challenged acts, and granting Plaintiff's application for Preliminary injunctive relief. Thus far, Defendants have utterly failed to cite their authority to give or lend public money to *privately-owned* corporations for decidedly, and definitively, *private* purposes.

CERTIFICATE OF COMPLIANCE

In keeping with Rule 28 and 32, this Brief contains 6925 words, including footnotes.

Respectfully submitted,

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