

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

U.S. DISTRICT COURT - N.D. OF N.Y.  
**FILED**  
JAN 24 2019  
AT \_\_\_\_\_ O'CLOCK  
John M. Domurad, Clerk - Albany

ROBERT L. SCHULZ, et al )  
 )  
 Plaintiffs )  
 )  
 v. )  
 )  
 STATE OF NEW YORK, et al )  
 )  
 Defendants )

CASE No. 1:19-cv-56  
GTS/TWD

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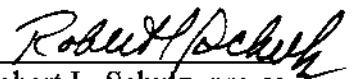
**NOTICE OF MOTION FOR SUMMARY JUDGMENT**

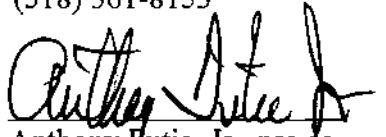
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Plaintiffs Robert L. Schulz and Anthony Futia, Jr. respectfully move the Court for Summary Judgment under Federal Rule of Civil Procedure 56. Plaintiffs will move the Court for an order granting this motion on February 14, 2019 at 10:00 a.m., before the Honorable Glenn T. Suddaby at the United States District Court for the Northern District of New York, in the James Hanley Federal Building, 100 South Clinton Street, Syracuse, NY 13261.

January 24, 2019

Respectfully submitted,

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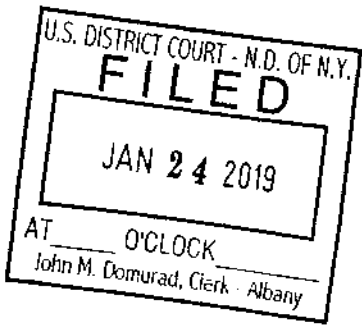
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr. )  
 )  
 Plaintiffs )  
 )  
 v. )

**MATERIAL FACTS**  
**NOT IN GENUINE DISPUTE**  
CASE No. 1:19-CV-56

STATE OF NEW YORK, ANDREW CUOMO, )  
 individually and in his official capacity as )  
 Governor of the State of New York; JOHN J. )  
 FLANAGAN, individually and in his former )  
 capacity as Majority Leader of the New York )  
 State Senate; ANDREA-STEWART COUSINS, )  
 individually, and in her former capacity as )  
 Minority Leader of the New York State Senate; )  
 CARL E. HEASTIE, individually and in his )  
 official capacity as Speaker of the New York )  
 State Assembly; BRIAN KOLB, individually and )  
 in his official capacity as Minority Leader of the )  
 New York State Assembly; THOMAS DINAPOLI, )  
 in his official capacity as Comptroller of New York )  
 State, )  
 Defendants )

GTS/TWD



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**STATEMENT OF MATERIAL FACTS PLAINTIFFS CONTEND  
ARE NOT IN GENUINE DISPUTE**

In support of their motion for Summary Judgment and pursuant to Federal Rules of Civil Procedure 56 and Local Rule of Practice 7.1(a)(3), Plaintiffs Robert L. Schulz ("Schulz") and Anthony Futia, Jr. ("Futia") submit the material facts set forth below as to which they contend there is no genuine dispute.

**Committee on Legislative and Executive Compensation**

1. On or about April 1, 2018 Bill #S.7509-C/A.9509-C, including its Part HHH, was passed by the Legislature and delivered to defendant Cuomo, who signed it on or about April 12, 2018, when it became Chapter 59 of the Laws of 2018.<sup>1</sup>
2. Article III, Section 1 of the New York Constitution mandates, “The legislative power of this state shall be **vested in the senate and assembly.**”<sup>2</sup> (emphasis added).
3. Article III, Section 6 of the New York Constitution reads in relevant part, “Each member of the legislature shall receive for his or her services a like annual salary, **to be fixed by law.** He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. **Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected,** nor shall he or she be paid or receive any other extra

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<sup>1</sup> Dkt 1-1, Schulz Affidavit Exhibit A.

<sup>2</sup> Dkt 1, Complaint, paragraph 69.

compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be **exclusively** controlling, according to their terms.”<sup>3</sup> (emphasis added).

4. Likewise, Article XIII, Section 7 reads, “Each of the state officers named in this constitution shall, during his or her continuance in office, receive a compensation, to be **fixed by law**, which shall not be increased or diminished during the term for which he or she shall have been elected or appointed; nor shall he or she receive to his or her use any fees or perquisites of office or other compensation.” (emphasis added).
5. The People of New York State have not given the New York State Legislature the power to have legislative and executive salaries fixed by any means **other than a bill passed by the assent of a majority of the members elected to each branch of the legislature** much less the power to have their salaries fixed by law increased during, and with respect to, the term for which he or she shall have been elected.<sup>4</sup>
6. Part HHH of Chapter 59 of the Laws of 2018 - the Governor’s 2018 Revenue Bill S.7509-C/A.7509-C, established a foreign object in the body of 2018 laws that does not belong there – a Committee on Legislative and Executive Compensation.<sup>5</sup>
7. The Committee on Legislative and Executive Compensation was established to “examine, evaluate and make recommendations, with respect to adequate levels of compensation, non-salary benefits and allowances pursuant to section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law,”<sup>6</sup> where “Each recommendation... shall have the force of law and shall supersede, where appropriate, inconsistent provisions of section 169 of the

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<sup>3</sup> *Id.*, paragraph 70.

<sup>4</sup> *Id.* paragraphs 71-73.

<sup>5</sup> Dkt 1-1, Schulz Affidavit, Exhibit A.

<sup>6</sup> Dkt 1-1, Schulz Affidavit, Exhibit A, Part HHH, Section 1.

executive law, and sections 5 and 5a of the legislative law, unless modified or abrogated by statute prior to January first of the year as to which such determination applies to legislative and executive compensation.”<sup>7</sup>

8. The Committee was required by Part HHH to make recommendations by December 10, 2018, after the general election in November, 2018, which recommendations would be effective January 1, 2019, in time for the 2019-2020 Legislature.<sup>8</sup>
9. The Committee’s 12/10/18 Report recommended substantial and significant increases in compensation for **legislators** that became **effective January 1, 2019 without a bill passed by the assent of a majority of the members elected to each branch of the legislature – that is, increases that were not exclusively fixed by law.**<sup>9</sup>
10. The Committee’s 12/10/18 Report recommended substantial and significant increases in compensation for **Statewide Elected Officials** that became **effective January 1, 2019 without a bill passed by the assent of a majority of the members elected to each branch of the legislature – that is, increases that were not exclusively fixed by law.**<sup>10</sup>
11. The Committee’s 12/10/18 Report recommended substantial and significant increases in compensation for **Commissioners** that became **effective three weeks later on January 1, 2019, while the Legislature was not in session to receive the Report much less act on it during the holidays, all without a bill passed by the assent of a majority of the members elected to each branch of the legislature – that is, increases that were not exclusively fixed by law.**<sup>11</sup>

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<sup>7</sup> Dkt. 1-1, Schulz Affidavit, Exhibit A at Section 4.2.

<sup>8</sup> Dkt. 1-1, Schulz Affidavit, Exhibit A at Sections 4.1.

<sup>9</sup> DKT. 1-1, Schulz Affidavit, Exhibit B at page 14.

<sup>10</sup> Dkt. 1-1, Schulz Affidavit, Exhibit B at pages 16-17

<sup>11</sup> Dkt. 1-1, Schulz Affidavit, Exhibit B at page 17

12. Defendants intended Part HHH to be an evasion of the law expressed in Articles III and XIII of the New York State Constitution.<sup>12</sup>
13. The adoption of Part HHH of Chapter 59 was intended by the Legislature and the Governor to be their final word on the subject before collecting their salary increases.<sup>13</sup>
14. The legislators and the Governor were wholeheartedly receptive to and biased in favor of increases in their compensation, along with similar increases in executive compensation.<sup>14</sup>

### **The Amazon Deal**

15. On or about November 12, 2018, the New York State Urban Development Corporation d/b/a Empire State Development and amazon.com Services, Inc. (“Amazon”) signed a Memorandum of Understanding (“MOU”).<sup>15</sup>
16. The Memorandum of Understanding (“MOU”) includes a commitment by the State to provide Amazon with refundable tax credits and annual monetary grants valued at \$1.750 billion.<sup>16</sup>
17. Under the MOU, the monetary grants totaling \$505 million, would begin in 2019 with a grant in the amount of \$33.4 million and continue for fifteen years with a final grant in 2033 of \$60 million.<sup>17</sup>
18. Under the MOU, the annual tax credits would total \$1.2 billion and would begin in 2019.<sup>18</sup>
19. In September of 2018, Amazon’s corporate value reached \$1trillion.<sup>19</sup>

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<sup>12</sup> Dkt. 1, Complaint at paragraph 81.

<sup>13</sup> *Id.* at 82

<sup>14</sup> *Id.* at 83

<sup>15</sup> Dkt 1-1, Schulz Affidavit, Exhibit C.

<sup>16</sup> Dkt. 1-1, Schulz Affidavit, Exhibit C, Attachment C, Incentive Proposal, page 8.

<sup>17</sup> Dkt. 1-1, Schulz Affidavit, Exhibit C, Attachment C, Incentive Proposal, pages 3-4.

<sup>18</sup> Dkt. 1-1, Schulz Affidavit, Exhibit C, Attachment C, Incentive Proposal, page 7.

<sup>19</sup> Dkt. 1-1, Schulz Affidavit, Exhibit E, Petition for Redress, page 2

20. Between October 2017 and October 2018, the net worth of Amazon CEO Jeff Bezos increased by approximately \$78 billion, raising his personal net worth to \$150 billion.<sup>20</sup>
21. The MOU violates the Letter and Spirit of certain provisions of the New York State Constitution, including: 1) the prohibition against giving or lending the money of the State “to or in aid of any ... private undertaking,” (Art. VII, Section 8.1); 2) the prohibition against giving or lending the credit of the state “to or in aid of any ... public or private corporation or association, or private undertaking,” (Art. VII, Section 8.1); 3) the prohibition against contracting debt “unless such debt shall be authorized by law,” which law shall not take effect “until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election,” (Art. VII, Section 11).<sup>21</sup>
22. Article VII, Section 8.1 of the New York Constitution reads in relevant part, “The money of the state shall not be given or loaned to or in aid of any private corporation or association, **or private undertaking**; nor shall the credit of the state be given or loaned to or in aid of any individual, **or public or private corporation or association, or private undertaking**, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational, mental health or mental retardation purposes.”<sup>22</sup> (emphasis added).
23. Article VII, Section 11 of the New York Constitution reads in relevant part, “Except the debts or refunding debts specified in sections 9, 10 and 13 of this article, no debt shall be hereafter contracted by or in behalf of the state, unless such debt shall be **authorized by**

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<sup>20</sup> Id.

<sup>21</sup> Id. at 2-3

<sup>22</sup> Dkt. 1, Complaint at paragraph 85

**law, for some single work or purpose, to be distinctly specified therein.** No such law shall take effect until it shall, at a general election, have been **submitted to the people, and have received a majority of all the votes cast for and against it at such election** nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law or any bill shall be submitted to be voted for or against.”<sup>23</sup> (emphasis added).

### **Civic Education**

24. New York State Education Law, Section 801.2 reads in full, “The regents shall prescribe courses of instruction in the **history, meaning, significance and effect** of the provisions of the constitution of the United States, the amendments thereto, the declaration of independence, the constitution of the state of New York and the amendments thereto, **to be maintained and followed in all of the schools of the state.** The boards of education and trustees of the several cities and school districts of the state shall require instruction to be given in such courses, by the teachers employed in the schools therein. All pupils attending such schools, in the eighth and higher grades, shall attend upon such instruction...Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools in grades or classes corresponding to the instruction in the eighth and higher grades of the public schools shall attend upon such courses. If such courses are not so established and maintained in a private school, attendance upon instruction in such school shall not be deemed substantially equivalent to

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<sup>23</sup> *Id.* at 86, 87



instruction given to pupils in the public schools of the city or district in which such pupils reside.”<sup>24</sup> (emphasis added).

25. Thomas Jefferson, in his 1801 inaugural address referred to the State Governments as “the surest bulwarks against anti-republican tendencies.”<sup>25</sup>
26. The U.S. Supreme Court has repeatedly emphasized the role of the nation's schools in inculcating basic values, describing the schools as places for the conveyance of the “shared values of a civilized social order” referring to education as “the very foundation of good citizenship.”<sup>26</sup>
27. The regents and boards of education and trustees of the several cities and school districts of the State of New York do not now, nor have they ever complied with said law, notwithstanding the federal constitution’s guarantee of a republican form of government in the State.<sup>27</sup>
28. The New York State Grades 9-12 Social Studies Framework does not include and makes no reference whatsoever to the New York State Constitution, much less the history, meaning, significance and effect of its provisions.<sup>28</sup>
29. The New York State Grades 9-12 Social Studies Framework does not include the history, meaning, significance and effect of the provisions of the U.S. Constitution and Declaration of Independence.<sup>29</sup>

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<sup>24</sup> Dkt. 1, Complaint at paragraph 88, Section 801.2 of the State Education Law, as amended in 1947.

<sup>25</sup> Dkt. 1-1, Schulz Affidavit, Exhibit E, Petition for Redress, page 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Dkt 1-1, Schulz Affidavit, Exhibit D.

<sup>29</sup> *Id.*

30. The overwhelming majority of the citizens of New York State do not know there is a New York State Constitution, much less whether their local and State governments are in compliance with its terms and conditions.<sup>30</sup>
31. Defendants are in violation of Section 801.2 of the State Education Law by not equipping and anchoring each rising generation with republican virtues “thereby enabling slavery to ensue.”<sup>31</sup>

### **The New York State Judiciary**

32. Article VI, Section 6 (c) of the New York State Constitution reads, “The justices of the supreme court shall be chosen **by the electors** of the judicial district in which they are to serve. The terms of justices of the supreme court shall be fourteen years from and including the first day of January next after their election”<sup>32</sup> (emphasis added).
33. Many of the State Supreme Court Justices serving in Judicial Districts were appointed by Defendant Governor and his predecessor(s) to the Court of Claims and then immediately assigned to the State Supreme Court sections statewide where they rule on civil and criminal cases, including cases brought against the Government for violating the Constitution.<sup>33</sup>
34. Of the ten Supreme Court Justices holding office in the Third Judicial District, seven are Acting State Supreme Court Justices.<sup>34</sup>

### **The First Amendment Petition For Redress**

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<sup>30</sup> Dkt. 1-1, Schulz Affidavit, Exhibit E, Petition for Redress, page 3. Also Dkt. 1, Complaint at paragraph 91.

<sup>31</sup> Thomas Payne, “*Common Sense*.”

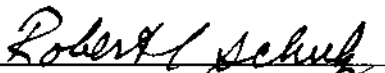
<sup>32</sup> Dkt. 1, Complaint at paragraph 93.


<sup>33</sup> Dkt. 1-1, Schulz Affidavit, Exhibit F.

<sup>34</sup> Dkt 1-1, Schulz Affidavit Exhibit G.

35. On November 28, 2018, Plaintiff Schulz served each Defendant with a First Amendment Petition for Redress of Grievances regarding: i) said Part HHH of Chapter 59 of the NY State Laws of 2018 and the Committee on Legislative and Executive Compensation; ii) the Amazon Deal; and iii) the lack of Civic Education.<sup>35</sup>
36. Defendants have not responded to said First Amendment Petition for Redress of Grievances.

Dated: January 24, 2019

  
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518-361-8153

  
ANTHONY FUTIA, Jr., pro se  
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<sup>35</sup> Dkt 1-1, Schulz Affidavit Exhibit E

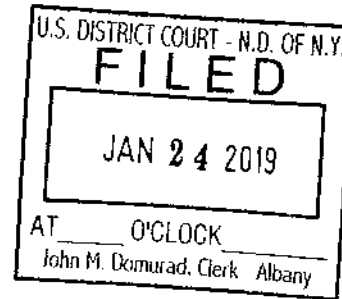
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individually and in his official capacity as )  
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FLANAGAN, individually and in his former )  
capacity as Majority Leader of the New York )  
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individually, and in her former capacity as )  
Minority Leader of the New York State Senate; )  
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in his official capacity as Minority Leader of the )  
New York State Assembly; THOMAS DINAPOLI, )  
in his official capacity as Comptroller of New York )  
State, )  
Defendants )



**PLAINTIFFS' MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Dated: January 24, 2019

ROBERT L. SCHULZ, pro se  
2458 Ridge Road  
Queensbury, NY 12804  
TEL: [518] 361-8157

ANTHONY FUTIA, Jr., pro se  
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## TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT .....	1
STANDARD OF REVIEW .....	3
FACTS.....	4
Committee on Legislative and Executive Compensation.....	4
The Amazon Deal .....	5
Civic Education .....	6
New York State Judiciary.....	7
First Amendment Petition for Redress .....	8
ARGUMENT .....	8
I.    U.S. Constitution Article IV, Section 4 .....	8
II.   The Committee on Legislative and Executive Compensation.....	10
III.  The Amazon Deal .....	13
IV.  The Lack of Proper Civic Education .....	15
V.   The New York State Judiciary .....	17
VI.  First Amendment Petition for Redress of Grievances.....	17
CONCLUSION .....	20

## PRELIMINARY STATEMENT

This Complaint arises from the peaceful demise of republicanism in New York State, a violation of Article IV, Section 4 of the Constitution for the United States of America, and the failure of the Government of the State to respond to a proper First Amendment Petition for Redress of the Grievance.

Defendants are in violation of Section 801 of the State Education Law by failing to require that each rising generation be taught that there is a State Constitution, that the State Constitution governs the behavior of all elected and appointed officials in the State, far more so than the federal Constitution which hardly ever comes into play in the day-to-day administration of the State, and that it is the duty of each citizen to be attentive to possible danger or difficulties.

Defendants are also in violation of Article III of the New York State Constitution having transferred a significant power of the State Legislature to a body located outside of the Legislative (and Executive) Branch – a Committee on Legislative and Executive Compensation.

Defendants are also in violation of Article VII of the New York State Constitution by contracting debt without a bill and without voter approval while also giving and lending the money and credit of the State in aid of a public corporation and a private undertaking – amazon.com Services, Inc.

Defendants are also in violation of Article VI, Section 6 (c) of the New York State Constitution by failing to require the election of State Supreme Court judges rather than their appointment by the Governor.

Defendants are also in violation of the First Amendment to the U.S. Constitution and Article I, Section 9 of the New York Constitution by refusing to respond to Plaintiff's November 28, 2018 Petition for Redress of the Grievances listed above.

New York State is unworthy of the name “republic” because of the corrupt influence of ambition and the suppression of counterbalancing influences meant to protect the People and ensure that political power is not concentrated in the hands of individuals or groups.

The New York State Constitution is being disposed of its liberty and freedom-oriented protections.

Republicanism is America’s underlying political ideology centered on citizenship in a state organized as a Republic under which the people hold popular sovereignty where the People give their elected representatives the power to make decisions for them, decisions **constrained by the Rule of Law** which, by design, was meant to begin with the prohibitions, mandates and underlying principles of the Federal and State Constitutions and the Declaration of Independence. Republicanism is a way of life, a core ideology, an uncompromising commitment to ordered liberty, the Rule of Law, popular sovereignty, separation of powers and government based upon the will of the People as expressed in written constitutions.

However, in New York State the Rule of Law is being replaced by the Rule of Man and his Whim.

“The natural progress of things is for liberty to yield, and government to gain ground.”<sup>1</sup> Our written constitutions stand between Plaintiffs and the retention of republicanism. They must be adhered to in a very careful and thorough way, only possible with citizen vigilance. As the prescient Thomas Jefferson warned, “We have the greatest opportunity the world has ever seen, as long as we remain honest – Cherish, therefore, the spirit of our people, and keep alive their attention. If once they become inattentive to the public affairs, you and I, and Congress and

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<sup>1</sup> Letter from Thomas Jefferson to Edward Carrington, Paris, May 17, 1788.

Assemblies, judges and governors, shall all become wolves. It seems to be the law of our general nature."<sup>2</sup>

This motion for summary judgment seeks immediate relief from a series of decisions and actions by Defendants that violate the will of the People as expressed in our Constitutions - innovations that have become obtruded – noticeable in a most unwelcome, intrusive way.

### STANDARD OF REVIEW

Summary judgment in favor of Plaintiffs is appropriate where, as here:

- The case can be decided upon the facts of the case. *First Nat'l Bank v. Cities Service Co.*, 391 US 253.
- The record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that Defendants cannot prevail under any circumstances. *Prince v. Pittston Co.*, 63 FRD 28 (D. W. Va. 1974).
- It is quite clear what the truth is. *Quadra v. Superior Court of San Francisco*, 378 F Supp 605 (N.D. Cal. 1974).
- There are no material issues of fact and formal trial would be fruitless. *Traverse v. World Service Life Ins. Co.*, 436 F Supp 810 (W.D. Okla. 1977).
- Reasonable minds could not differ as to impact of evidence. *DiAmore v. Am. Honda Motor Co.*, 248 F Supp 2d 82 (D. Conn. 2002).
- There is no factual dispute on essential element of Plaintiffs' claim. Any unresolved issues are primarily legal rather than factual. *EEOC v. Oilgear Co.*, 250 F Supp 2d 1193, 91 Fair Empl Prac Cas (BNA) 963 (D. Neb. 2003).

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<sup>2</sup> Thomas Jefferson, Letter to Edward Carrington January 16, 1787.



- The Record demonstrates a compelling factual situation in a setting of controlling legal principle. *Lefrak v. Arabian American Oil Co.*, 487 F Supp 808, 1980-1 Trade Cas (CCH) P63152 (E.D.N.Y. 1980).

## FACTS

### Committee on Legislative and Executive Compensation

On or about April 1, 2018 Bill #S.7509-C/A.9509-C, including its Part HHH, was passed by the Legislature and delivered to the Governor, who signed it on or about April 12, 2018, when it became Chapter 59 of the Laws of 2018.<sup>3</sup>

Part HHH of Chapter 59 of the Laws of 2018 - the Governor's 2018 Revenue Bill S.7509-C/A.7509-C, established a Committee on Legislative and Executive Compensation.<sup>4</sup>

The Committee on Legislative and Executive Compensation was established to "examine, evaluate and make recommendations, with respect to adequate levels of compensation, non-salary benefits and allowances pursuant to section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law,"<sup>5</sup> where "Each recommendation... shall have the force of law and shall supersede, where appropriate, inconsistent provisions of section 169 of the executive law, and sections 5 and 5a of the legislative law, unless modified or abrogated by statute prior to January first of the year as to which such determination applies to legislative and executive compensation."<sup>6</sup> (emphasis added).

The Committee was required by Part HHH to make recommendations by December 10, 2018, after the general election in November, 2018, which recommendations would be effective

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<sup>3</sup> Dkt 1-1, Schulz Affidavit Exhibit A.

<sup>4</sup> Dkt 1-1, Schulz Affidavit, Exhibit A.

<sup>5</sup> Dkt 1-1, Schulz Affidavit, Exhibit A, Part HHH, Section 1.

<sup>6</sup> Dkt. 1-1, Schulz Affidavit, Exhibit A at Section 4.2.

January 1, 2019, in time for the 2019-2020 Legislature and new terms of office for elected statewide officials, including the Governor.<sup>7</sup>

The Committee's 12/10/18 Report recommended substantial and significant increases in compensation for **legislators** that became **effective January 1, 2019 without a bill passed by the assent of a majority of the members elected to each branch of the legislature – that is, increases that were not exclusively fixed by law.**<sup>8</sup>

The Committee's 12/10/18 Report recommended substantial and significant increases in compensation for **Statewide Elected Officials** that became **effective January 1, 2019 without a bill passed by the assent of a majority of the members elected to each branch of the legislature – that is, increases that were not exclusively fixed by law.**<sup>9</sup>

The Committee's 12/10/18 Report recommended substantial and significant increases in compensation for **Commissioners** that became **effective three weeks later on January 1, 2019, while the Legislature was not in session to receive the Report much less act on it during the holidays, all without a bill passed by the assent of a majority of the members elected to each branch of the legislature – that is, increases that were not exclusively fixed by law.**<sup>10</sup>

### **The Amazon Deal**

On or about November 12, 2018, the New York State Urban Development Corporation d/b/a Empire State Development and amazon.com Services, Inc. ("Amazon") signed a Memorandum of Understanding ("MOU")<sup>11</sup> that includes a contractual commitment by the State to provide Amazon with monetary grants and refundable tax credits valued at \$1.750 billion.<sup>12</sup>

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<sup>7</sup> Dkt. 1-1, Schulz Affidavit, Exhibit A at Sections 4.1.

<sup>8</sup> DKT. 1-1, Schulz Affidavit, Exhibit B at page 14.

<sup>9</sup> Dkt. 1-1, Schulz Affidavit, Exhibit B at pages 16-17

<sup>10</sup> Dkt. 1-1, Schulz Affidavit, Exhibit B at page 17

<sup>11</sup> Dkt 1-1, Schulz Affidavit, Exhibit C.

<sup>12</sup> Dkt. 1-1, Schulz Affidavit, Exhibit C, Attachment C, Incentive Proposal, page 8.

Under the MOU, the monetary grants totaling \$505 million, would begin in 2019 with a grant in the amount of \$33.4 million and continue for fifteen years with a final grant in 2033 of \$60 million.<sup>13</sup>

Under the MOU, the annual tax credits would total \$1.2 billion and would begin in 2019.<sup>14</sup>

### Civic Education

New York State Education Law, Section 801.2 reads in full, “The regents shall prescribe courses of instruction in the **history, meaning, significance and effect** of the provisions of the constitution of the United States, the amendments thereto, the declaration of independence, the constitution of the state of New York and the amendments thereto, **to be maintained and followed in all of the schools of the state.** The boards of education and trustees of the several cities and school districts of the state shall require instruction to be given in such courses, by the teachers employed in the schools therein. All pupils attending such schools, in the eighth and higher grades, shall attend upon such instruction... Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools in grades or classes corresponding to the instruction in the eighth and higher grades of the public schools shall attend upon such courses. If such courses are not so established and maintained in a private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to pupils in the public schools of the city or district in which such pupils reside.”<sup>15</sup> (emphasis added).

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<sup>13</sup> Dkt. 1-1, Schulz Affidavit, Exhibit C, Attachment C, Incentive Proposal, pages 3-4.

<sup>14</sup> Dkt. 1-1, Schulz Affidavit, Exhibit C, Attachment C, Incentive Proposal, page 7.

<sup>15</sup> Dkt. 1, Complaint at paragraph 88, Section 801.2 of the State Education Law, as amended in 1947.

However, the *New York State Grades 9-12 Social Studies Framework* does not include and makes no reference whatsoever to the New York State Constitution, much less the history, meaning, significance and effect of its provisions.<sup>16</sup>

In addition, the *New York State Grades 9-12 Social Studies Framework* does not include the history, meaning, significance and effect of the provisions of the U.S. Constitution and Declaration of Independence.<sup>17</sup>

The overwhelming majority of the citizens of New York State do not know there is a New York State Constitution, much less whether their local and State Government is in compliance with its terms and conditions.<sup>18</sup>

### **The New York State Judiciary**

There are 13 Judicial Districts within New York States' Unified Court System.

Many of the State Supreme Court Justices serving in Judicial Districts were appointed by Defendant Governor to the Court of Claims and then immediately assigned to the State Supreme Court sections statewide where they rule on civil and criminal cases, including cases brought against the State Government for violating the State Constitution.<sup>19</sup>

Many of the Governor's appointees are former counsels and other government employees, politicians who were rejected by voters in judgeship races and former legislators who provided the Governor with critical votes to his signature legislation.<sup>20</sup>

Of the ten Supreme Court Justices holding office in the Third Judicial District, which includes Albany County, seven are Acting State Supreme Court Justices appointed by the Governor.<sup>21</sup>

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<sup>16</sup> Dkt 1-1, Schulz Affidavit, Exhibit D.

<sup>17</sup> *Id.*

<sup>18</sup> Common knowledge.

<sup>19</sup> Schulz Affidavit of even date, Exhibit F.

<sup>20</sup> *Id.*

### **The First Amendment Petition For Redress**

On November 28, 2018, Plaintiff Schulz served Defendants Cuomo, Cousins, Flanagan, Heastie and Kolb with a proper First Amendment Petition for Redress of Grievances regarding said 2018 Committee on Legislative and Executive Compensation, the Amazon Deal and the lack of Civic Education.<sup>22</sup>

Defendants have not responded to said Petition for Redress.

### **ARGUMENT**

#### **FIRST CAUSE OF ACTION:**

#### **U.S. Constitution Article IV, Section 4**

Article IV, Section 4 of the Constitution for the United States of America reads, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

The authority contained within the confines of the clause has been largely unexplored.<sup>23</sup> In such cases, Thomas Jefferson advised, "On every question of construction [of the Constitution] let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or intended against it, conform to the probable one in which it was passed."<sup>24</sup>

The history of Article IV's republicanism Clause is worth attending to. On July 18, 1787, at the constitutional convention, delegate Randolph asserted: "The Resoln. has 2 Objects. 1. to

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<sup>21</sup> Schulz Affidavit of even date, Exhibit G.

<sup>22</sup> Schulz Affidavit of even date, Exhibit E.

<sup>23</sup> See generally W. Wiecek, *The Guarantee Clause of the U.S. Constitution* (Ithaca: 1972).

<sup>24</sup> Thomas Jefferson (1743-1826), letter to Judge William Johnson, (from Monticello, June 12, 1823)

**secure Republican government.** 2. To suppress domestic commotions. He urged the necessity of both of these provisions.”<sup>25</sup> (emphasis added).

The following speakers alluded to the dangers of monarchical government being created peacefully as necessitating the provision.<sup>26</sup>

Article IV, Section 4 of the U.S. Constitution, “presupposes the continued existence of the states and ... those means and instrumentalities which are the creation of their sovereign and reserved rights.” *Printz v. United States*, 521 U.S. 898, 919 (1997) quoting *Helvering v. Gerhardt*, 304 U.S. 405, 414-415 (1938).

One such instrumentality created by the sovereign people of New York and guaranteed by Article IV, Section 4 to continue is the New York State Constitution.

The New York State Constitution, as the supreme law of the State, was the creation and reserved right of the People of New York, the means by which government based upon the consent of the People was to be accomplished. Without its limited powers, New York State Government under the form of government guaranteed by the U.S. Constitution could not long preserve its existence. A despotic government might. See *11 Wall.* 125, 126, 78 U.S. 113, 20-21.

This case is a challenge to the peaceful demise of republicanism in the State of New York, and the creation of a ruling class led by a small power elite that exhibits little regard for the Rule of Law as it has turned a blind eye to the will of the People as expressed in the State Constitution and laws pursuant thereto in: a) bestowing increases in compensation upon themselves notwithstanding the provisions of Article III; b) bestowing judgeships, notwithstanding the provisions of Article VI; c) contracting debt without a bill and voter approval and in gifting and lending the money and credit of the State to a public corporations and

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<sup>25</sup> M. Farrand, *The Records of the Federal Convention of 1787* (rev. ed. 1937) at 47.

<sup>26</sup> *Id.* at 48. See W. Wiecek, *The Guarantee Clause of the U.S. Constitution* (Ithaca, 1972) ch. 2.

in aid of a private undertaking, notwithstanding the provisions of Article VII; d) failing to comply with the requirements of State Education Law, Section 801.2, and; e) failing to respond to a Petition for Redress of Grievances, notwithstanding the requirements of Article I, Section 9 (and the First Amendment to the Constitution for the United States of America).

Article IV, Section 4 of the U.S. Constitution does not preclude the federal court from granting summary judgment on theory that nonjusticiable political question is presented. The suit is not barred by the political question doctrine because there are judicially discoverable and manageable standards for litigation, and resolving this case would not require the court to improperly make a policy determination. See *Kerr v Hickenlooper* (2014, CA10 Colo) 744 F3d 1156.

#### **SECOND CAUSE OF ACTION:**

##### **The Committee on Legislative and Executive Compensation**

Article III, Section 1 of the New York Constitution mandates, “The legislative power of this state shall be **vested in the senate and assembly.**” (emphasis added).

Article III, Section 6 of the New York Constitution reads in relevant part, “Each member of the legislature shall receive for his or her services a like annual salary, **to be fixed by law.** He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected

therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. **Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected,** nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be **exclusively** controlling, according to their terms.” (emphasis added).

Article III, Section 13 of the New York Constitution reads in relevant part, “The enacting clause of all bills shall be “The People of the State of New York, represented in Senate and Assembly, do enact as follows, **and no law shall be enacted except by bill.**” (emphasis added).

Article III, Section 14 of the New York Constitution reads in relevant part, “No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, **at least three calendar legislative days** prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage; nor shall any bill be passed or become a law, except by the assent of a majority of the members **elected to each branch of the legislature;** and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the ayes and nays entered on the journal.” (emphasis added).

The People have not given the Legislature the right to transfer its law making powers to anyone.



However, Part HHH of the Governor's 2018 Revenue Bill S.7509-C/A<sup>27</sup> effectively transfers to a Committee located outside of the State Legislature the power to make law.

Without a separate vote by the Legislature, a Committee on Legislative and Executive Compensation was established with the adoption of the Governor's Budget to "examine, evaluate and make recommendations, with respect to adequate levels of compensation, non-salary benefits and allowances pursuant to section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law."<sup>28</sup>

The Committee was required by Part HHH to complete its work and submit its recommendation to the Governor and Legislature by December 10, 2018.<sup>29</sup>

"Each recommendation... shall have the force of law and shall supersede, where appropriate, inconsistent provisions of section 169 of the executive law, and sections 5 and 5a of the legislative law, unless modified or abrogated by statute prior to January first of the year as to which such determination applies to legislative and executive compensation."<sup>30</sup>

The Committee's Report recommended substantial and significant increases in compensation for legislators **effective January 1, 2019**.<sup>31</sup> Those increases have not been "fixed by law", much less a law "enacted by bill."

The Committee's Report recommended substantial and significant increases in compensation for Statewide Elected Officials **effective January 1, 2019**.<sup>32</sup> Those increases have not been "fixed by law", much less a law "enacted by bill."

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<sup>27</sup> Schulz Affidavit of even date, Exhibit A.

<sup>28</sup> Schulz Affidavit of even date, Exhibit A, Part HHH, Section 1.

<sup>29</sup> Schulz Affidavit of even date, Exhibit A at Sections 4.1.

<sup>30</sup> Schulz Affidavit of even date, Exhibit A at Section 4.2.

<sup>31</sup> Schulz Affidavit of even date, Exhibit B at page 14.

<sup>32</sup> Schulz Affidavit of even date, Exhibit B at pages 16-17

The Committee's Report recommended substantial and significant increases in compensation for Commissioners **effective January 1, 2019.**<sup>33</sup> Those increases have not been "fixed by law", much less a law "enacted by bill."

Any argument that Part HHH was intended to provide the legislature time to receive the Committee's report on December 10, 2018, study and digest it, and call a special session of the Legislature to modify or abrogate its recommendations by statute prior to January first of 2019 is **untenable and not able to be maintained or defended** against this attack on the constitutionality of Part HHH.

That the vote of the Legislature in passing Part HHH was intended to be anything other than its final word on the subject of an increase in their compensation in 2019 is a **material fact not in genuine dispute.**

That the Legislators were anything but wholeheartedly receptive to and biased in favor of increases in their compensation, along with similar increases in executive compensation, while not opposing the Governor's amazon deal, is a **material fact not in genuine dispute.**

Here, the power transferred from the Legislature to the non-legislative Committee on Legislative and Executive Compensation to fix the compensation of legislators, Statewide Elected Officials and Commissioners is substantial. Its retention in the Legislature is essential to the "separation of power" and "government based upon the consent of the People" doctrines. Defendants are in violation of the provision of Art IV, Section 4, requiring a republican form of government. See *State v. Lehtola*, (1972) 55 Wis 2d 494.

### **THIRD CAUSE OF ACTION:**

#### **The Amazon Deal**

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<sup>33</sup> Schulz Affidavit of even date, Exhibit B at page 17

Article VII, Section 8.1 of the New York Constitution reads in relevant part, “The money of the state shall not be given or loaned to or in aid of any private corporation or association, **or private undertaking**; nor shall the credit of the state be given or loaned to or in aid of any individual, **or public or private corporation or association, or private undertaking**, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational, mental health or mental retardation purposes.” (emphasis added).

Article VII, Section 11 of the New York Constitution reads in relevant part, “Except the debts or refunding debts specified in sections 9, 10 and 13 of this article, no debt shall be hereafter contracted by or in behalf of the state, unless such debt shall be **authorized by law, for some single work or purpose, to be distinctly specified therein**. No such law shall take effect until it shall, at a general election, have been **submitted to the people, and have received a majority of all the votes cast for and against it at such election** nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law or any bill shall be submitted to be voted for or against.” (emphasis added).

The amazon deal, manifested in said MOU violates the Letter and Spirit of Article VII, Sections 8 and 11 of the New York State Constitution. The State has unconstitutionally contracted debt without a bill much less a bill that has been submitted to the voters for approval. In addition, Defendants have unconstitutionally given the money and credit of the State to a public corporation in aid of a private undertaking.

Republican form of government precludes raising of taxes for anything but public purposes; taxation for private purpose is prohibited by provision of Art IV, Section 4, which

requires the United States to guarantee to every state republican form of government. *Heimerl v Ozaukee County* (1949) 256 Wis 151, 40 NW2d 564.

Here, the power to contract debt and to give taxpayer money and the credit of the State to a public corporation in aid of a private undertaking is substantial. Its retention in the People is essential to the “government based upon the consent of the People” and “Rule of Law” doctrines. Defendants are in violation of the provision of Art IV, Section 4, requiring a republican form of government. See *State v. Lehtola*, (1972) 55 Wis 2d 494.

#### **FOURTH CAUSE OF ACTION:**

##### **The Lack of Proper Civic Education**

New York State Education Law, Section 801.2 reads in full, “The regents shall prescribe courses of instruction in the **history, meaning, significance and effect** of the provisions of the constitution of the United States, the amendments thereto, the declaration of independence, the constitution of the state of New York and the amendments thereto, **to be maintained and followed in all of the schools of the state.** The boards of education and trustees of the several cities and school districts of the state shall require instruction to be given in such courses, by the teachers employed in the schools therein. All pupils attending such schools, in the eighth and higher grades, shall attend upon such instruction... Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools in grades or classes corresponding to the instruction in the eighth and higher grades of the public schools shall attend upon such courses. If such courses are not so established and maintained in a private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to pupils in the public schools of the city or district in which such pupils reside.” (emphasis added).

The regents and boards of education and trustees of the several cities and school districts of the State are in violation of said law, notwithstanding the federal constitution's guarantee of a republican form of government in the State.

This is evidenced, for instance, by the New York State Grades 9-12 Social Studies Framework,<sup>34</sup> which makes no reference whatsoever to the New York State Constitution and insufficient, inadequate reference to the history, meaning, significance and effect of the essential, republican provisions of the U.S. Constitution and Declaration of Independence.

On information and belief, the overwhelming majority of the citizens of New York State do not know there is a New York State Constitution, much less whether their local and State Government is in compliance with its terms and conditions.

Defendant Governor is in violation of Section 801 of the State Education Law by not equipping and anchoring each rising generation with republican virtues "thereby enabling slavery to ensue."<sup>35</sup>

Thomas Jefferson, in his 1801 inaugural address referred to the State Governments as "the surest bulwarks against anti-republican tendencies."<sup>36</sup>

The U.S. Supreme Court has repeatedly emphasized the role of the nation's schools in inculcating basic values, referring to education as "the very foundation of good citizenship."<sup>37</sup>

Here, the power to retain republicanism through the inculcation of its basic values in the schools of the State by the teachers of the state is substantial. Its retention is essential to the preservation of the "Rule of Law" and "government based upon the consent of the People"

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<sup>34</sup> Schulz Affidavit of even date, Exhibit D.

<sup>35</sup> Thomas Payne, "Common Sense."

<sup>36</sup> Dkt. 1-1, Schulz Affidavit, Exhibit E, Petition for Redress, page 3.

<sup>37</sup> *Id.*

doctrines. Defendants are in violation of the provision of Art IV, Section 4, requiring a republican form of government. See *State v. Lehtola*, (1972) 55 Wis 2d 494.

**FIFTH CAUSE OF ACTION:**

**The New York State Judiciary**

Article VI, Section 6 (c) of the New York State Constitution reads, “The justices of the supreme court **shall be chosen by the electors** of the judicial district in which they are to serve. The terms of justices of the supreme court shall be fourteen years from and including the first day of January next after their election” (emphasis added).

Many of the State Supreme Court Justices serving in Judicial Districts were appointed by Defendant Governor to the Court of Claims and then immediately assigned to the State Supreme Court sections statewide where they rule on civil and criminal cases, including cases brought against the Government of the State for violating the State Constitution, **where republicanism and the balance of power between the Government and the People hang in the balance.**<sup>38</sup>

Defendants are in violation of Article 6, Section 6(c) of the New York Constitution.

Here, the power to position State Supreme Court justices is substantial. Its retention in the People is essential to the “separation of powers,” “Rule of Law” and “government based upon the consent of the People” doctrines. Defendants are in violation of the provision of Art IV, Section 4, requiring a republican form of government. See *State v. Lehtola*, (1972) 55 Wis 2d 494.

**SIXTH CAUSE OF ACTION:**

**The First Amendment Petition For Redress of Grievances**

The First Amendment to the Constitution for the United States of America reads in full, “Congress shall make no law respecting an establishment of religion, or prohibiting the free

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<sup>38</sup> Schulz Affidavit of even date, Exhibit F.

exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to **petition the government for a redress of grievances.**" (emphasis added).

On November 28, 2018, Plaintiff Schulz served Defendant Governor with a proper and legal First Amendment Petition for Redress of Grievances regarding the 2018 Committee on Legislative and Executive Compensation, the Amazon Deal and the lack of Civic Education, as well as the Right to a government republican in form and substance.<sup>39</sup>

Defendants have not responded to said Petition for Redress.

Defendants are in violation of the First Amendment to the U.S. Constitution and the First Article of the New York State Constitution.

Schulz's November 28, 2018 Petition was not a garden variety "speech petition" merely seeking to influence government "policy making." Schulz is not trying to shape new policy. Schulz's Petition was a proper Petition for Redress calling out and seeking to remedy Defendant's oppressive violations of **existing law**. It is a First Amendment Petition by a citizen of the State of New York who has been guaranteed a republican form of government by Article 4 of the U.S. Constitution. It is a Petition to hold government Defendants accountable to the Rule of Law – i.e., to keep them within the boundaries drawn around their power by **current law**.

The only Supreme Court cases on the subject of the Rights of the People and the obligations of the Government under the Petition Clause are irrelevant as they address speech used by public employees to influence government **policy making**. See *Smith v Arkansas*, 441 US 463 and *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271.

State highway workers in *Smith v Arkansas*, 441 US 463 and State college professors in *Minnesota v Knight*, 465 US 271, as **public employees**, had petitioned their public employers for

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<sup>39</sup> Schulz Affidavit of even date, Exhibit E

new employment-related **policies**, not as here, to remedy violations of **black letter, well-established legal rules that are not subject to reasonable dispute.**

Defendants were obligated to respond to Plaintiff's Petition for Redress of Grievances.

Plaintiff's Petition for Redress exceeded any rational standard requiring a formal, specific response from Defendants: it is serious and documented, not frivolous; it contains no falsehoods; it is not absent probable cause; it has the necessary quality of a dispute; it comes from a citizen outside of the formal political culture and involves a legal principle not political talk; it is punctilious and dignified, containing both a "direction" and a "prayer" for relief; it addresses a public, collective grievance with widespread participation and consequences; it is an instrument of deliberation not agitation; and, it provides legal Notice seeking substantive Redress to cure the infringement of a right leading to civil legal liability.

By failing to respond to the First Amendment Petition for Redress while continuing to advance Part HHH of S.7509-C and the Amazon Deal, and failing to comply with State Education Law Section 801.2, Defendants are outside the boundaries drawn around their power by our Constitutions and are subject to being held accountable by Plaintiffs and this Court.

America's Declaration of Independence was incorporated **in its entirety** as the Preamble to New York State's first Constitution (April,1777). This action goes to the very heart of the meaning of "self-government" and the phrase found in the Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness -- That to secure these rights, **governments are instituted among men, deriving their just powers from the consent of the governed....**" (emphasis added).



## CONCLUSION

WHEREFORE, plaintiffs respectfully request a final Order:

- a. Declaring Defendants are in violation of Article IV, Section 4 of the Constitution for the United States of America which guarantees to People of New York State a government republican in form and substance, and
- b. Declaring Defendants are in violation of a fundamental, unalienable Right guaranteed Plaintiffs by the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the Constitution for the State of New York, by failing to respond to Plaintiff's November 28, 2018 Petition for Redress of Grievances; and
- c. Declaring Part HHH of S. 7509-C/ A. 9509-C of the Laws of 2018, and the 2018 Committee on Legislative and Executive Compensation and its recommendations to be unconstitutional, null and void; and
- d. Directing the Defendant Comptroller to reduce the compensation of State Legislators and Executives commensurate with any increase in their compensation resulting from Part HHH of S. 7509-C/ A. 9509-C; and
- e. Declaring the November 12, 2018 Memorandum of Understanding between the State of New York, Amazon.com Services, Inc. and the City of New York and any agreements pursuant thereto to be unconstitutional, null and void , and
- f. Directing Defendants to notify the Court within ninety (90) days of the date of its Order how Defendants will, by the start of the 2019-2020 school year, have all teachers of all children in grades 8-12, in public and private schools in the State of New York, teaching the "history, meaning, effect and significance" of the provisions of the United States' Declaration of Independence and the provisions of the current Constitutions for the State

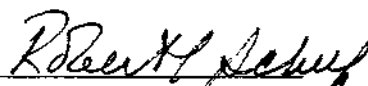
of New York and the United States of America, in compliance with Section 801 of the New York State Education Law, and

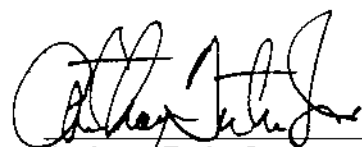
- g. Declaring Defendant Governor's practice of appointing people to the Court of Claims and immediately assigning those people to the State Supreme Court as Acting State Supreme Court Justices to be violative of Article VI, Section 6 (c) of the New York State Constitution; and
- h. Directing Defendants to notify the Court within sixty (60) days of the date of its Order of the specific steps to be taken by Defendants to ensure that as of December 31, 2019 all State Supreme Court Justices will have been elected to their positions, and
- i. Declaring Defendants have deprived Plaintiffs of certain fundamental Rights under color of law in violation of 42 U.S.C. Section 1483, and
- j. Directing Defendants to personally pay for a series of three, two-hour courses of public instruction, to be held in a law library located in each county of the State of New York, on the history, meaning, significance and effect of the provision of the New York State Constitution, the federal Constitution and the Declaration of Independence, using funds contributed by persons to accounts established by Defendants for the purpose of supporting Defendants' reign as Governor and Leaders of the Legislature of the State of New York, said courses of instruction to be conducted between July 4, 2019 and September 17, 2019 by constitutional attorneys and college professors as recommended by the Federalist Society, and approved by Plaintiffs, in compliance with Section 801 of the State Education Law as amended in 1947; and

- k. Granting any other relief to the Plaintiffs that the Court may deem just and proper, including but not necessarily limited to a reimbursement of Plaintiffs' costs and fees related to this case.

Respectfully Submitted,

Dated: January 24, 2019

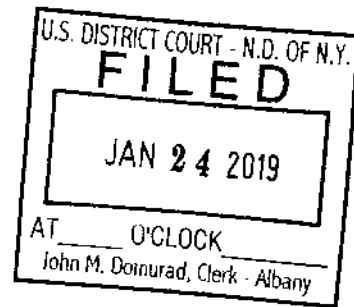
  
ROBERT L. SCHULZ, pro se  
2458 Ridge Road  
Queensbury, NY 12804  
TEL: [518] 361-8157

  
Anthony Futia, Jr., pro se  
34 Custis Ave.  
N. White Plains, NY 10603  
914-906-7138

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

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr. )  
 )  
 Plaintiffs )  
 )  
 v. )  
 )  
 STATE OF NEW YORK, ANDREW CUOMO, )  
 individually and in his official capacity as )  
 Governor of the State of New York; JOHN J. )  
 FLANAGAN, individually and in his former )  
 capacity as Majority Leader of the New York )  
 State Senate; ANDREA-STEWART COUSINS, )  
 individually, and in her former capacity as )  
 Minority Leader of the New York State Senate; )  
 CARL E. HEASTIE, individually and in his )  
 official capacity as Speaker of the New York )  
 State Assembly; BRIAN KOLB, individually and )  
 in his official capacity as Minority Leader of the )  
 New York State Assembly; THOMAS DINAPOLI, )  
 in his official capacity as Comptroller of New York )  
 State, )  
 Defendants )

CASE No. 1:19-CV-56  
GTS/TWD

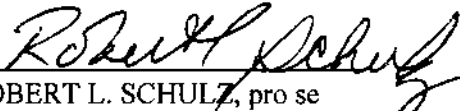


**PLAINTIFFS' AFFIDAVIT IN SUPPORT OF MOTION  
FOR SUMMARY JUDGEMENT**

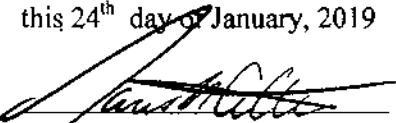
Plaintiffs ROBERT L. SCHULZ ("Schulz") and Anthony Futia, Jr. ("Futia"), declare, under penalty of perjury:

1. We are the plaintiffs in the matter captioned above and we write this Affidavit in support of our motion for summary judgment.
2. On January 16, 2019, Plaintiff Schulz filed an Affidavit in support of the Complaint filed by Schulz and Futia.

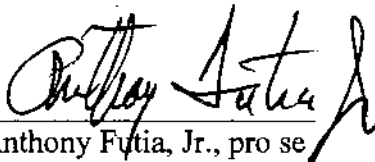
3. Plaintiffs Schulz and Futia incorporate paragraphs 1-7 of the January 16<sup>th</sup> Affidavit by reference herein as if fully set forth herein.

  
ROBERT L. SCHULZ, pro se  
2458 Ridge Road,  
Queensbury, NY 12804  
(518) 361-8153

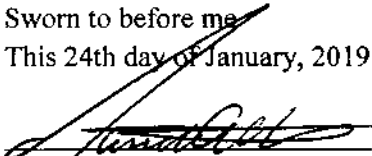
Sworn to before me  
this 24<sup>th</sup> day of January, 2019

  
Notary

JARRETT ALTILIO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01AL6382616  
Qualified in Albany County  
My Commission Expires 10-29-2022

  
Anthony Futia, Jr., pro se  
34 Custis Ave.  
N. White Plains, NY 10603  
914-906-7138

Sworn to before me  
This 24th day of January, 2019

  
Notary

JARRETT ALTILIO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01AL6382616  
Qualified in Albany County  
My Commission Expires 10-29-2022

U.S. DISTRICT COURT - N.D. OF N.Y.  
**FILED**  
JAN 24 2019  
AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_  
John M. Durpurad, Clerk Albany

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

ROBERT L. SCHULZ, ANTHONY FUTIA, JR. )  
 )  
 Plaintiffs )  
 v. )  
 )  
 STATE OF NEW YORK, et al. )  
 )  
 Defendants )

**CERTIFICATE OF SERVICE**

CASE No. 1:19-cv-56

GTS/TWD

**CERTIFICATE OF SERVICE**

ROBERT L. SCHULZ, declares under penalty of perjury:

1. I am a party to the matter captioned above.
2. On January 24, 2019, I served Defendants with the annexed Notice of Motion for Summary Judgment, Statement of Material Facts, Memorandum of Law and Affidavit as follows:
  - a. THOMAS DiNAPOLI: at 12:12 PM a copy was handed to STEVE MARIINDAC at the office of the NYS Comptroller, located at 110 State Street, Albany NY
  - b. STATE OF NEW YORK: at 10:30 AM a copy was handed to ANDREA GILLIGAN at the office of the NYS Attorney General located in the Justice Building.
  - c. ANDREW CUOMO: at 11:05 AM a copy was handed to JAMES FINKE at the office of the Governor located in the State Capitol.
  - d. ANDREA STEWART-COUSINS: at 11:30 a copy was handed to ALEJANDRA PAULINO at the office of the Majority Leader of the NYS Senate located in the State Capitol.
  - e. CARL HEASTIE: at 11:45 AM a copy was handed to DAVID WU SHETI at the office of the Speaker of the NYS Assembly located in the State Capitol.
  - f. BRIAN KOLB: at 12:05 PM a copy was handed to KELLY KLINE at the office of the Minority Leader of the NYS Assembly located in the Legislative Office Building.
  - g. JOHN J. FLANAGAN: at 11:10 AM a copy was handed to NANCY LAUSTRAIT at the office of the Minority Leader of the NYS Senate located in the State Capitol.

Robert Schulz  
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