IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In the Matter of:	}	
TERRY LEE HINDS,	}	
Pro se,	}	CIVIL ACTION
Plaintiff,	}	FILE NUMBER: 4:17 - CV – 750 AGF
-Vs-	}	
"UNITED STATES" GOVERNMENT,	}	
Defendants.	}	

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THAT PRESENTED MATTERS UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 12(b)1 or with RULE 12(b)6 & RULE 12(d) advanced as a RULE 56 Motion
OR, IN THE ALTERNATIVE,
The Court Grant Leave for Plaintiff to File "Other Amendments" pursuant to Rule 15(a)(2) &/or relief under the Judiciary Act of 1789, SEC. 32 that precludes law not notwithstanding

TO THE HONORABLE JUDGE OF SAID COURT AND DEFENDANTS:

Plaintiff, TERRY LEE HINDS, ("Plaintiff") proceeding *pro se* hereby submits Plaintiff's response in opposition to Defendants' Motion to Dismiss "with prejudice all counts and claims for relief in Plaintiff's amended complaint", or "Plaintiff's amended complaint" (ECF No. 44) pursuant to Rule 12, Defenses and Objections, Rule 12(b)(1) for a lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim on which relief can be granted. However, ***de facto*** Defendants' arguments, defenses or objections are ostensibly raised under Rule 12(d) (RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS). Defendants effort to avoid a trial on the merits, the claims for relief, and seven causes of action established in Plaintiff's notice pleadings; the law is clear on a motion under Rule 12(b)(6); when "*matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for* ***summary judgment under Rule 56***".

see Fed. R. Civ. P.12(d). Furthermore, the Defendants' prior **12(f)** ***motion*** (ECF No. 51) ***to strike the entire breath and merits*** of Plaintiff's notice pleadings in (Doc. Nos. 44 & 45); was *de facto* masked as a 12(b)(6) motion alleging "Plaintiff's June 14 Filings Do Not Request any Relief" thereby manifests this pending motion as a second bite of the apple. Thus, Plaintiff incorporates his responses in (Doc Nos. 54 & 62) to Defendants' prior motion (ECF No. 51). The Court should deny this motion for the same reasons, including the facts and reasons set forth herein.

I. *SUA SPONTE & SUO MOTU* DECISIONMAKING

A. *Sue sponte & Suo Motu*

In law, *sua sponte* ("on its own") or *suo motu* ("on its own motion") describes an act of authority taken without formal prompting from another party. The term is usually applied to actions by a judge taken without a prior motion or request from the parties. Manifestly, this ***case and its controversies*** is where or how a Federal Judge's *sua sponte decisionmaking;* transforms himself into the lead counsel for the Defendants *versus* arbitrator of justice. Other Federal Judges have stricken from record Plaintiff's pleadings, filings and exhibits or ***advancing legal fictions*** or for the surreal thought that ***"violations of Plaintiff's constitutional (i.e. civil) rights, which may be brought under 42 U.S.C. § 1983".*** Three Federal Judges directly violating this Nation's Separation of Powers Doctrine, oath of Office, and have willingly disregarded the *rule of law* or the Judiciary Act of 1789, sec 32 regarding ***due process*** or "other proceedings" in a civil cause of actions. This District Court abated, arrested, quashed or reversed, ***"for any defect or want of form"*** Plaintiff's seven causes of action and claims for relief set forth and pleaded in his original verified complaint /petition or his notice pleadings. This Court refused to "*proceed and give judgment according as the right of the cause and matter in law shall appear unto them"* only to convert or reducing Plaintiff's constitutional claims into "civil rights". The initial law that created the Federal Judicial

System with the Judiciary Act of 1789 on September 24, 1789 was written in the letters and spirit of law, in ones right to petition and protest through a civil action or a ***matter in law*** "without regarding any imperfections, defects, or want of form in such writ, declaration, or **other pleading**, return, **process**, judgment, **or course of proceeding whatsoever**." Still or on the other hand, the Defendants' DOJ (an authority) *suo motu,* as addressed herein, has becomes Plaintiff's voice or a judgement for ***just-a-system for justifications*** evolving an insipid or surreal thought of ***"Plaintiff's Amended Complaint Is Construed to Assert a Bivens Claim"***. The DOJ's thoughtless position that Anti-Injunction Act somehow precludes the free exercise/establishment clause of the First Amendment is absorbed by the established facts and law in this ***case and its controversies.*** Plaintiff's "operative complaint" or his right to petition or protest for ones established rights of protected speech of religious belief or for his sacred right of conscience is absolute pursuant to the Judiciary Act of 1789, sec 32. But, the Defendants are advancing and demanding a more ***secular message*** through the ambiguity in Rule 8 conformity; against the written words of the ***pure speech*** in Plaintiff's ***communication*** *of ideas in liberty, law and religion* or through his conduct limited in form, that is expressed in exhibits that is necessary to convey the idea. Plaintiff's maintains the constitutional right that an "operative complaint" as declared by Defendants, "Other Amendments" under Rule 15(a)(2) and "June 14 Filings" (ECF Nos. 44 and 45), including but not limited to, his numerous briefs, notices and the Exhibits and its Exhibit List (Doc. No. 3) is pure speech.

The DOJ and this Court undoubtedly knows finality in litigation has particular importance in our system of justice. *See* S. Pac. R.R. Co. v. United States, 168 U.S. 1, 48-49 (1897). It "secure[s] the peace and repose of society" by settling disputes between parties. *Id.* Furthermore, or more importantly the Defendants, of which the Court is a branch of "United States" government, as well as, the Department of Justice ("DOJ") knows in this ***case and its controversies***; concerns

fundamental rights of the Plaintiff or ***constitutional guarantees***. A fundamental right is a right expressly or implicitly enumerated by the U.S. Constitution. In *Palko v. Connecticut*, 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 (1937), Justice BENJAMIN N. CARDOZO wrote that these freedoms represent "the very essence of a scheme of ordered liberty … principles so rooted in the traditions and conscience of our people as to be ranked as fundamental." However, the Defendants' Judges *sua sponte decisionmaking*, or with this Court on its own motion – in modifying the "operative complaint"; the cause of action as a "civil action", or the nature of the suit as a challenge to "state law" versus federal law, or stricken from the record (Doc. Nos. 1-3.) per the Court's decision in (ECF. No. 55), or striking the entire breath and merits of Plaintiff's ***original verified complaint*** is a work of manifest injustice and a clear abuse of discretion.

II. JUDICIARY ACT OF 1789

The Defendants' pending motion to dismiss under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") and this Court's Judges *sua sponte decisionmaking* are in conflict with existing Federal law. The Defendants have failed to comply with requirements of Judiciary Act of 1789 ("Act of 1789") prior to filing their motion to dismiss for imperfections, defects, or want of form within Plaintiff's other pleadings, now referred by the Defendants as the "operative complaint". One duty of the Defendants is to comply with a legal requirement, such as *"in cases of demurrer, which the* ***party demurring shall specially sit down*** *and express together with his demurrer as the cause thereof."* The Act of 1789 establishes requirement on the Court and the party demurring, to wit:

> SEC. 32. And be it further enacted, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this

act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe. see 1 Stat. 73

A **demurrer** is a pleading in a lawsuit that objects to or challenges a pleading filed by an opposing party. The word *demur* means "to object"; a *demurrer* is the document that makes the objection. Plaintiff's asserts this Court violated Section 32 of the Act of 1789, when *Magistrate Judge* Bodenhausen *sua sponte decisionmaking* to strike his complaint/petition (Doc. No. 1) for a defect or want of form or when the Court failed to proceed and give judgment according as the right of the cause and matter in law that appear unto them.

III. PLAINTIFF'S *PRO SE* LITIGATION OF NOTICE PLEADINGS

A. The "*operative complaint" inter alia* "June 14 Filings", or "Other Amendment" etc.

The unjust and burdensome actions *have compelled the Plaintiff to make a choice*, thus maintain his declared religious beliefs and maintain his sacred right of conscience or renounce, revise or restate his message of protected speech for a more secular message for Rule 8 conformity. The Court's policy or custom of a party manifesting an "amended complaint" violates section 32 in the Act of 1789. Furthermore, the Court seeks conformity within Rule 8, for a ***legal fiction***, (*"to the extent that a great deal of judicial energy and resources would have to be devoted to restructuring the pleading and streamlining the unnecessary matter"* (Doc. No. 8)). This *legal fiction* defeats the legal purposes of section 32 in the Act of 1789. Subsequently, the Court thereby imposed unconstitutional ***subject matter or viewpoint-based discrimination and content-based restrictions or distinctions,*** *as applied* on Plaintiff's free, pure, or [Protected Speech]. The Court ignored the fact that over 2000 averments were of Rule 8 conformity, "a short and plain statement of the claim showing that the pleader is entitled to relief". The [OVC/Petition] is a ***sacred property*** of the Plaintiff. Plaintiff seeking Court sanctioned guidance filed one initial notice pleading regarding

his First Amendment challenge to Federal statutes and free exercise clause violations. (Doc. No. 28). The Plaintiff's, acting *pro se* in the course of proceeding with his seven causes of action and seven claims for relief has filed "Other Amendments" as ***notice pleadings*** pursuant to Rule 15(a)(2) set forth and caption as follows:

1.) Plaintiff's initial notice pleadings on filed April 10, 2017

FIRST NOTICE OF A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THE PLAINTIFF IS ENTITLED TO RELIEF UNDER THE FIRST AMENDMENT (Doc. No. 28)
(Plaintiff discovered one notice was insufficient but many would meet the Court expectation)

Note: The Court did not strike this notice pleading nor did the Defendants make a response to it.

2.) Plaintiff's group of notice pleadings filed on May 8, 2017

PLAINTIFF'S NOTICE OF UNJUST BURDENS ON FREE EXERCISE PRINCIPLES AND ON PLAINTIFF'S CONSTITUTIONAL RIGHTS OF THE FIRST AMENDMENT AND, IN THE ASSESSMENT OF TRUTH FOR *Rule 8(d)(1) pleading requirement that "each allegation must be simple, concise and direct"*
Filed as seven separate notice pleadings (Doc. No. 33).

PLAINTIFF'S NOTICE OF A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THE PLAINTIFF IS ENTITLED TO RELIEF UNDER THE FIRST AMENDMENT AND, IN THE ASSESSMENT OF TRUTH FOR A *fact-based pleading and Rule 8 entitlement; giving rise to plausibility of "entitlement to relief"*
Filed as seven separate notice pleadings (Doc. No. 34).

Note: The Court did not strike this notice pleading nor did the Defendants make a response to it.

3.) Declared by this Court as "June 14 Filings" however filed as notice pleadings on that date.

PLAINTIFF'S HYBRID PLEADING MAKING A CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS MANIFESTING AN AMENDED COMPLAINT (Revelation #1 through #7).
Filed as seven separate notice pleadings (Doc. No. 44).

PLAINTIFF'S CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS TO MANIFEST AN AMENDED COMPLAINT WITHIN A RELIGIOSITY OF FACTS (Religiosity of Facts #1 through #7)
Filed as seven separate notice pleadings (Doc. No. 45).

Note: The Court ruled (Doc. No. 44) as an "amended complaint" ignoring (Doc. No. 45) status.

IV. MIXED QUESTION OF FACT AND LAW

This case and its controversies are questions of religion in government itself; the piecemeal installation (or establishment) of religion within the operation of the government. The tendency of government to cultivate an official religiosity, virtually claiming to establish the IRS as itself through taxation without representation manifesting law "made only for convenience, and shall be given no legal effect". See section 7806 Construction of title. The "materiality" of [THE CODE] in this case, that which is not merely of form but of substance, violates legal concepts and the exercise of judgment about the values that animate legal principles. In this case, as originally plead in [OVC/Petition] or now in "Other Amendments" pursuant to Rule 15(a)(2) reveal a large host in mixed questions of fact and law, especially [w]hen... historical facts are established, the rule of law is undisputed, and the issue is whether the facts satisfy the legal rule. The Defendants' actions, advance by this Court's ***official policy or custom*** of compelling the Plaintiff to file an "amended complaint" violates free exercise rights of protected speech of religious belief and the sacred right of conscience. This Court's ***policy or custom*** violates a basic legal premise: "*Ubi non est condendi auctoritas, ibi non est parendi necessitas*"— (Where there is no authority to enforce, there is no need to obey). The ***gravamen*** of this case and its germane controversies rest with the Court, and ultimately; with Plaintiff knowing of this event in time, the inevitability of the U. S. Supreme Court shall make a touchstone precedent of the ***subject matter*** in this case and its controversies. The ***gravamen*** or so called "theory" this Court seeks as a basis or essence of a grievance; is the issue upon which a particular controversy turns pertains to the mixed questions within "Liberty & Law" presented to the Defendants and the Court as:

1. Plaintiff has a First Amendment ***free exercise right*** of religious beliefs; thereby [believes] in Taxology and [Taxism]; but conversely has a First Amendment Establishment right not to practice, partake or advance these established religions. Plaintiff's [conscience] dictates: **I am** an architect of my [LLP]. I know what is to come by the principle on which it is built. Freedom is the light of all sentient beings with the right to exist as **I Am**, not as *any person.*

2. The laws at issue and Defendants' actions complained of by act or word, as set forth in this [OVC] manifests violations of: (1) Establishment Clause Tests, (2) Endorsement Tests, (3) Free Exercise Clause Tests, (4) Balancing Tests of Court: "Strict Scrutiny" manifested in "Compelling Interest Test" (5) Content-Based Restrictions Test, and squarely conflicts with (6) Doctrines of Substantial Overbreadth & Void for Vagueness (7) Public Forum Doctrine, (8) Unconstitutional Conditions Doctrine or with Plaintiff's [CLP] for his [LLP].

3. Plaintiff brings this action as a U.S. Citizen, not to *define* him as an IRS' taxp[r]ayer or as a ***customer "dealing"*** with the Internal Revenue Service. Plaintiff's [Q.U.E.S.T.] warrants one's ***Quintessential Rights*** with the prospective relief in a *right to exist as* **I Am** versus a ***personal stake*** as *defined, designed, driven, devalued, degraded, deprived,* or fearful to be *destroyed* by law respecting an establishment of religion in a matrix of religious ***dealings.***

V. LEGAL STANDARD

A. Standard of Review for Rule 12(b)(1) & Rule 12(b)6

A federal court cannot assume jurisdiction exists. Rather, the Plaintiff is required to specifically plead adequate facts in its complaint to sufficiently establish the court has jurisdiction. Norton v. Larney, 266 U.S. 511, 515-16 (1925). Defendants bring their motion under both Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6). Rule 12(b)(1) requires dismissal if the court lacks subject matter jurisdiction over the claim. The standards applied to a Rule 12(b)(1) motion to dismiss are the same as those that apply to a Rule 12(b)(6) motion to dismiss for failure to state a claim. Vankempen v. McDonnell Douglas Corp., 923 F. Supp. 146, 147 (E.D.Mo.1996) (citing Satz v. ITT Fin. Corp., 619 F.2d 738, 742 (8th Cir.1980)). Fed. R. Civ. P. 12(b)(6) provides that a party may assert a defense by motion for "failure to state a claim upon which relief can be granted." The 8th Circuit has held "The existence of subject-matter jurisdiction is a question of law that this court reviews de novo." *ABF Freight Sys., Inc. v. Int'l Bhd. of Teamsters*, 645 F.3d 954, 958 (8th Cir. 2011). "A court deciding a motion under Rule 12(b)(1) must distinguish between a 'facial attack' and a 'factual attack'" on jurisdiction. *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). In a facial attack, "the court restricts itself to the face of the pleadings, and the non-moving party receives the same protections as it would defending

against a motion brought under Rule 12(b)(6)." *Id.* (internal citations omitted). "In a factual attack, the court considers matters outside the pleadings, and the non-moving party does not have the benefit of 12(b)(6) safeguards." *Id.* (internal citation omitted). The method in which the district court resolves a Rule 12(b)(1) motion—that is, whether the district court treats the motion as a facial attack or a factual attack—obliges us to follow the same approach. *BP Chemicals Ltd. v. Jiangsu Sopo Corp.*, 285 F.3d 677, 680 (8th Cir. 2002).

B. Standard of Review for any civil action "arising under the Constitution, laws…

A district court has subject matter jurisdiction over any civil action "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "A claim arises under federal law when the plaintiff's statement of his own cause of action shows that it is based upon federal laws or the federal Constitution." *Cobb v. Contract Transp., Inc.*, 452 F.3d 543, 548 (6th Cir. 2006) (brackets and quotation marks omitted). Plaintiff asserts that his claims arise under the Declaratory Judgment Act, 28 U.S.C. § 2201, and under supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's state claims arising under the Constitution of the State of Missouri because those claims are related to the federal claims and are part of a single case or controversy.

The Declaratory Judgment Act, 28 U.S.C. § 2201, provides that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." But § 2201 does not create an independent cause of action. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950) (holding that "Congress enlarged the range of remedies available in the federal courts [under the Act] but did not extend their jurisdiction"). A federal court accordingly "must have jurisdiction already under some other federal statute" before a plaintiff can "invok[e] the Act." *Toledo v. Jackson*, 485 F.3d 836, 839 (6th Cir. 2007) (quotation

marks omitted).

C. Standard for a Motion to Dismiss

(1.) Standard for Dismissal under Rule 12(b)(1)- *subject-matter jurisdiction*

"In order to properly dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the complaint must be successfully challenged on its face or on the factual truthfulness of its averments." Titus v. Sullivan, 4 F.3d 590, 593 (8th Cir.1993) (citing Osborn v. United States, 918 F.2d 724, 729 n. 6 (8th Cir.1990)). A complaint can be dismissed under Federal Rule of Civil Procedure 12(b)(1) because its claim is ***"so attenuated and unsubstantial as to be absolutely devoid of merit."*** See Hagans v. Lavine, 415 U.S. 528, 536-37 (1974). This germane case held:

The principle applied by the Court of Appeals -- that a "substantial" question was necessary to support jurisdiction -- was unexceptionable under prior cases. Over the years, this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are "so attenuated and unsubstantial as to be absolutely devoid of merit," Newburyport Water Co. v. Newburyport, 193

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U.S. 561, 193 U. S. 579 (1904); "wholly insubstantial," Bailey v. Patterson, 369 U. S. 31, 369 U. S. 33 (1962); "obviously frivolous," Hannis Distilling Co. v. Baltimore, 216 U. S. 285, 216 U. S. 288 (1910); "plainly unsubstantial," Levering & Garrigues Co. v. Morrin, 289 U. S. 103, 289 U. S. 105 (1933); or "no longer open to discussion," McGilvra v. Ross, 215 U. S. 70, 215 U. S. 80 (1909).

(2.) Standard for Dismissal under Rule 12(b)(6)- *test the legal sufficiency of the complaint*

Rule 12(b)(6) provides that parties may assert by motion a defense based on "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). If a cause of action triggers First Amendment concerns, courts must be especially vigilant when scrutinizing the sufficiency of the allegations within the complaint. Darakjian v. Hanna, 366 N.J. Super. 238, 248 (App. Div. 2004). The purpose of a Rule 12(b)(6) motion is to eliminate those actions "which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial

and trial activity." Young v. City of St. Charles, 244 F.3d 623, 627 (8th Cir. 2001) (citing Neitzke v. Williams, 490 U.S. 319, 326-27 (1989)).

The Rule 12(b)(6) test has been revised in recent years. In Conley v. Gibson, 355 U.S. 41 (1957), the Supreme Court stated the interplay between Rule 8 (pleading) and Rule 12(b)(6) as follows: "[T]he accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. at 45-46. In Bell Atlantic Corporation v. Twombly, 55 U.S. 544 (2007), the Court noted questions raised regarding the "no set of facts" test and clarified that "once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint," id. at 563. It continued: "the Court further elaborated on the test, including this statement:

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face.'" Id. at 1949 (citation omitted). Where a complaint is inadequate, leave to amend the complaint is common. See, e.g., Butt v. United Brotherhood of Carpenters & Joiners of America, No. 09–4285, 2010 WL 2080034 (E.D. Pa. May 19, 2010).

The complaint should not be dismissed unless "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The Supreme Court has explained that a complaint need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002); accord Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557, 568 n.15 (1987) (under Federal Rule 8, claimant has "no duty to set out all of the relevant facts in his complaint"). "Specific facts are not necessary in a Complaint; instead, the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting Bell

Atlantic v. Twombly, 550 U.S. 544, 555 (2007)).

The Court has held "To survive a motion to dismiss, a claim must be facially plausible, meaning that the 'factual content. . .allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" Cole v. Homier Dist. Co., Inc., 599 F.3d 856, 861 (8th Cir. 2010) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). The Court must "accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the nonmoving party." *Id*. (quoting Coons v. Mineta, 410 F.3d 1036, 1039 (8th Cir. 2005)). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," will not pass muster. Iqbal, 556 U.S. at 678.

The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the complaint. Fed. R. Civ. P. 12(b)(6). The factual allegations of a complaint are assumed true and construed in favor of the plaintiff, "even if it strikes a savvy judge that actual proof of those facts is improbable." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citing Swierkiewicz v. Sorema N.A., 534 U.S. 506, 508 n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002)); Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance...dismissals based on a judge's disbelief of a complaint's factual allegations."); Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) (stating that a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely"). The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of his claim. *Id.* A viable complaint must include "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570, 127 S.Ct. 1955 ; see id. at 563, 127 S.Ct. 1955 (stating that the "no set of facts" language in Conley v. Gibson, 355 U.S. 41, 45–46, 78 S.Ct. 99, 2 L.Ed.2d

80 (1957), "has earned its retirement"); see also Ashcroft v. Iqbal, 556 U.S. 662, 678–84, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (holding that the pleading standard set forth in Twombly applies to all civil actions). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555, 127 S.Ct. 1955.

VI. STATEMENT OF FACTS

A. The Court has been fully briefed, *inter alia*

The Court has failed to recognize, acknowledge or perhaps review that Plaintiff has fully briefed the Court in the matters now presented by the Defendants or in defense of Plaintiff's constitutional rights. Plaintiff has observed that no Memorandum and Order issued in his case has referred to his attached briefs. Plaintiff request that the Court read and review Plaintiff's seven declaration in support of his lawsuit against the Defendants. (Doc. Nos. 13, 20, 24, 69, 71, 73 & 75). For purposes of Defendants' motion, all of the above facts therein must be taken as true.

VII. ARGUMENT

The magistrate judge having review the original verified complaint/petition and interpret its subject matter jurisdiction, as the District Court render a decision on the breath and merits of the claims and causes of action, determining a lack of conformity with Rule 8, not a lack of subject matter jurisdiction or failed to state a claim for relief.

Federal subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because this action challenges the constitutionality of the Internal Revenue Code of 1986 under the United States Constitution as law respecting an establishment of religion. In 1824, in Osborn v. United States, 22 U.S. (9 Wheat.) 738 (1824) the Supreme Court held in an opinion by Chief Justice John Marshall that a case arises under federal law for purposes of Article III if federal law ***"forms an ingredient of the original cause."*** *Id.* at 823. Some judges and scholars have read

Osborn to mean that "Congress may confer on the federal courts jurisdiction over ***any case or controversy*** that might call for the application of federal law." see Verlinden B.V. v. Cent. Bank of Nig., 461 U.S. 480, at 492

Federal subject matter jurisdiction is proper when Plaintiff presents federal questions within this Court's jurisdiction under Article III of the Constitution, with federal claims and the jurisdiction of this Court invoked pursuant to 28 U.S.C. § 1331. Specifically, the Supreme Court of the United States has held that "a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution." Louisville & Nashville Railroad Co. v. Mottley, 211 U.S. 149, 152 (1908).

Federal subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2201 because this action seeks declarations of Plaintiffs' and Defendants' rights and legal relations concerning the various plead controversies in Plaintiff's notice pleadings.

Where, as here, a court is satisfied that it may exercise federal question jurisdiction over the interpretation and construction of federal law, and a case in which the United States is a party, or particularly when Plaintiff's seven causes of action and seven claims for relief involves First Amendment Challenges and free exercise clause violations as set forth in notice pleading. In Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 199 (1921), the Court held that a federal district court could exercise federal-question jurisdiction if it "appears from the [complaint] that the right to relief depends upon the construction or application of [federal law]."

However, in this case, Defendants declare their 12(b)(1) motion is a ***facial challenge*** that claims the Plaintiff lacks subject matter jurisdiction, concerning a matter of "SOVEREIGN IMMUNITY BARS PLAINTIFF'S CLAIMS" or if that idea does not work then, the "United States

Has Not Waived Sovereign Immunity for Plaintiff's Claims for Declaratory and Injunctive Relief" or for an insipid or surreal thought of *"Plaintiff's Amended Complaint Is Construed to Assert a Bivens Claim"*. Furthermore, the Defendants claimed "Here, the amended complaint is required to allege the jurisdictional prerequisites necessary to maintain this suit, but it fails to plead facts showing that the Court has jurisdiction over the amended complaint." However, PLAINTIFF'S HYBRID PLEADING #2 MAKING A CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS MANIFESTING AN AMENDED COMPLAINT [Revelation #2] (Doc. No. 44) overcomes that assertion. **Importantly,** Defendants made no claim(s) as in Hagans v. Lavine, 415 U.S. 528.

The Plaintiff [believes] that Mr. Mokodean and tax lawyers of the Department of Justice ("DOJ") represent the new priesthood for their religious doctrine of legalism. Real lawyers, who practice constitutional law, uphold established legal principles in the rule of law, or have read, like the Plaintiff has done, thousands of the Court's, Memorandums and Orders, Appellate Cases, and Supreme Court decisions thereby knows:

> "[J]urisdiction is a threshold question, [and] judicial economy demands that the issue be decided at the outset rather than deferring it until trial." Osborn v. United States, 918 F.2d 724, 729 (8th Cir. 1990).

The Plaintiff assert the record reveals (ECF. No. 8) that judicial economy demands were reviewed by this Court, thus Defendants' 12(b)(1) motion is moot. The Plaintiff assert the record reveals the Defendants' 12(b)(6) motion is frivolous based upon Plaintiff's notice pleadings (Doc. Nos. 28, 33, 34, 44 & 45). Lastly the "UNITED STATES" GOVERNMENT waived sovereign immunity when the Congress passed the First Amendment granting the fundamental right to petition and protest government action or to seek relief from the Court as set forth and established by the Judiciary Act of 1789. Sovereign immunity claims concerning First Amendment Challenges or free exercise claims are moot or frivolous. Furthermore, The Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421, abridges the right of the people to petition the government for a redress of

grievances and infringes or chills free speech. The AIA is an act of law that is unconstitutional, as well as law advancing or respecting an establishment of religion as set forth in Plaintiff's pleadings. This is a true because "The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution." see *U.S. v. Cruikshank*, 92 U.S. 542 (1875).

VIII. CONCLUSION

The liberal construction of a claim's plausibility in the pleading stage is required by Court procedures and the Judiciary Act of 1789. "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree." See Schenck v. United States, 249 U.S. 47, 52-53 (1919). Plaintiff request the Court Grant Leave for Plaintiff to File "Other Amendments" pursuant to Rule 15(a)(2) &/or obtain relief under the Judiciary Act of 1789, SEC. 32 that precludes law not notwithstanding or if the Court should elect to grant Defendants' motions.

Respectfully submitted,

_____

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Executed this 21st day of September, 2017

CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 21st day of September, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-6972 at the following address:

Gregory L. Mokodean
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044

Initials _____

Signatures of

_____

TERRY LEE HINDS, *Pro se,* Plaintiff