I. INTRODUCTION AND STAGE OF PROCEEDINGS

A. *Protection of Religious Liberty & Speech as a primary right of self-government.*

It is a *sovereign secular belief* that religious liberty shall be protected under law for a manifestation of ***good government.*** Yet, an establishment of *"Our core values guide our path to achieving our vision"* as a *sacred creed* of an IRS Strategic Plan[1], for religious belief & practice prevails today.

"Plaintiff [believes] this religious creed is like so many church creeds that offer salvation in core values of their beliefs with a guiding path for redemption only to achieve a vision of THE**IRS**."[2]

To suppress such government activity and protect principles of Religious Liberty under Federal law by "Promoting Free Speech and Religious Liberty" President Trump issued Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Made perfectly clear by Attorney General Sessions' 25-page Memorandum and 2-page directive[3]; this policy is germane with Plaintiff's speech of self-government. Prior to this a Supreme Court precedent preserved a privilege of self-government as:

"The rights of conscience are sacred rights." "To deprive of any natural right, is also to punish. And so is it punishment to deprive of a privilege." [4] (Re: the right to dissent & unalienable rights)

The crucible of this litigation addressed the religious matter of <u>*converting* taxpayers into taxprayers</u> advanced by IRS' dogmas to which invades the sphere of intellect and spirit; which it is the purpose of the First Amendment to our Constitution to reserve from all official control. The Court has held:

"Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom of mind, so also the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority."[5]

"But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all."[5]

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[1] IRS Strategic Plan, (IRS publication 3744 rev. 6-2004) Catalog # 31685B, A Quote on page 4.
[2] Plaintiff's Exhibit E#1 - THE IRS [Creed] of Taxology / IRS Strategic Plans (Doc No. 3).
[3] Federal Law Protection for Religious Liberty, October 6, 2017 & Pla. Exh. V#2 & V#3 & V#4.
[4] *Cummings v. Missouri*, 71 U.S. 277, 4 Wall. 277 (1866) & Plaintiff's Exhibit C#2 (Doc No. 3).
[5] *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985) & Plaintiff's [CLP] Exhibit C#76 (Doc No. 3).

Still, **"S e r v i c e + E n f o r c e m e n t = C o m p l i a n c e"** [6] an IRS' dogma prevails over law. Plaintiff has filed an ***original verified complaint and petition***, along with a germane host of "Other Amendments" pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.") and under his *free exercise* of constitutional rights of the First Amendment. Plaintiff's case and controversies presents and has alleged a ***personal stake*** in the outcome of the particular controversies of this case as "to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[7] In the Record of his case:

"Plaintiff avers his [Questions Utilizing Evidence Seeking Truth] *per se* as ("[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."[8]

The matrix of "Service + Enforcement = Compliance" is the ***dogma of sovereign immunity.*** The Court's doctrine requiring a waiver of Federal sovereign immunity *versus* Plaintiff's ***primary right of self-government*** regarding religious liberty & conscience resigns the *first duty* of government:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. ***One of the first duties of government is to afford that protection***." [9] (Emphasis added)

Defendants' duties are to afford protection of religious & civil liberty created as an ***express trust.***

B. *The protected speech in the pure speech of religious beliefs cannot be dismissed.*

The Defendants in this case, denoted as the Legislative, Executive & Judiciary Branches of the United States government are to protect religious liberty; not prevent the ***free exercise*** of religious beliefs or *abridge* the protected speech that it has manifested within this case or controversies. The entity, known as United States of America, consisting currently of 50 States of the Union, whereby "We The People" ordained and established the United States Constitution for the United States of

[6] Plaintiff's Exhibit F- #1 THE IRS PATH OF LIFE – "IRS Strategic Plan 2005-2009/35 pages.
[7] *Baker v. Carr*, 369 U.S. 186, 204-205 (1962).
[8] ¶102 of [Revelation #1] on page 14 (Doc No. 44).
[9] *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 163 (1803)

America. The United States Government and United States of America was founded upon the "Charters of Freedom" manifesting the touchstone for the Rule of Law and as a fountainhead of faith for a Nation. However, Defendants' IRS and their army of tax attorneys of the Department of Justice ("DOJ") have manifested a long history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny. To defend and advance Plaintiff's lawful constitutional and legal rights; has plead this following statement of expressive conduct as pure speech of religious beliefs and conscience. This message is conveyed for content-based purpose or justification. This content or viewpoint of the speech being considered is listed in 23 documents:

"FIRST AMENDMENT RIGHT TO PETITION AND PROTEST"

"Plaintiff *exerting legal* rights filed with the Court on February 16, 2017 an [ORIGINAL VERIFIED COMPLAINT FOR DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF INTHIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT, presented with a 16-page Brief in Support, with an Exhibit List consisting of 26 pages instituting 510 Exhibits attached thereto; a case and its controversies listed on 549 pages] ("[OVC/Petition]"). Plaintiff is engaged in peaceful expressive activity pursuant to established fundamental free exercise rights of the First Amendment and the rule of law of this Nation. A message as pure speech of religious belief."[10]

Plaintiff's statements and actions of expressive conduct as pure speech of religious beliefs and the rights of conscience cannot be dismissed. However, the Defendants are regulating this protected speech because of disagreement with the message it conveys. The Defendants, and in this case, mainly the Court (Federal Judges) decisions are based on the content or viewpoint of the speech being considered. Plaintiff's content of expression or viewpoint, is set forth in numerous written documents, declarations and exhibits, but the Defendants have declared what message may be conveyed— or worst the content or viewpoint of the speech that will be considered. Plaintiff's original pleading or "other pleadings" or a "*course of proceeding whatsoever*"; is protected under the First Amendment, the right to petition and protest. Additionally, the Judiciary Act of 1789 for

[10] Plaintiff's filings or other pleadings filed in (Doc Nos. 44, 45 49, 50, 54, 65, 69, 71, 73, 75, 76)

civil causes in this District of the United States, shall not 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".[11] Plaintiff's protected speech (pleadings) and his expression (exhibits) conveys a vital and spiritual message, conducted in a limited public forum (Courthouse). However, Defendants' actions in this case are acting as a *police state* by invoking Federal sovereign immunity; contrary to the established U.S. Supreme Court precedents or the First Amendment rights that permeate this case. The Court has declared:

"[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." [12]

Above all else, Plaintiff's communication of ideas in liberty, law and religion is the subject matter, and content of his protected speech of religious beliefs and cannot be dismissed, or worst stricken from the record. In this case, Rule 8(a)(2) produces a prior restraint on free speech & expression.

C. *A case of actual controversies appropriate for judicial power & determination.*

The Supreme Court of the United States, in Marbury v. Madison, (1803) interpreted the Case or Controversy Clause of Article III of the United States Constitution (found in Art. III, Section 2, Clause 1) as embodying the legal principle of ***judicial review***–the ability of the Supreme Court to limit Congressional power by declaring legislation unconstitutional. Federal sovereign immunity is moot by Article III; as ***judicial power shall extend to all cases in law and equity.*** *Judicial power* is authority, both constitutional and legal, given to the courts and its judges (1) to preside over and render judgment on court-worthy cases; (2) to enforce or void statutes and laws when scope or constitutionality are questioned (3) to interpret statutes and laws when disputes arise. "In a case of actual controversy within its jurisdiction"[13] a "Creation of remedy" was granted by Congress, with

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[11] In relevant part, the Judiciary Act of 1789, SEC. 32. 1 Stat. 73
[12] *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972)
[13] 28 U.S. Code § 2201 - Creation of remedy

"necessary or proper relief" based on a declaratory judgment or decree may also be granted:

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."[14]

Plaintiff's case of actual controversies, in part, presents forbidden intrusion on the field of free expression, where government seeks to control thought or to justify its laws for that impermissible end. Such activities set forth in this case cannot survive ***constitutional scrutiny*** as the Court holds:

"First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought."[15]

Federal Sovereign Immunity is ***tangibly waived*** as the Constitution of the United States declares:

"The ***judicial power of the United States shall extend to all cases in law and equity*** arising under that Constitution, the laws of the United States…" [16] (Emphasis added)

II. PLAINTIFF'S GERMANE RESPONSE IN OPPOSITION TO DEFENDANTS' "REPLY IN SUPPORT OF UNITED STATES' MOTION TO DISMISS"

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"Plaintiff provides no authority to the contrary,
and his suit must therefore be dismissed for failure to establish a waiver of sovereign immunity."[17]

A. *The "United States" to sue and be sued being unequivocally expressed*

Congress has conferred legal standing on the "United States" to sue and be sued pursuant to 28 U.S. Code § 1345 - United States as plaintiff and 28 U.S. Code § 1346 - United States as defendant, respectively. This action and claim is in accord with 28 U.S.C. § 1346(2), seeking, in part, $1.00:[18]

28 U.S.C. §1346(a)(2) in pertinent parts: "The district courts shall have original jurisdiction…Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department"

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[14] 28 U.S. Code § 2202 - Further relief (June 25, 1948, ch. 646, 62 Stat. 964.)
[15] *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002) / [CLP] Exhibit C#90 (Doc No. 3).
[16] Article III, § 2, Clause 1 of the United States Constitution
[17] Defendants' Reply in Support of United States Motion to Dismiss (ECF No. 86) Sec. I on p.2
[18] Nominal damages for vindicating legal or constitutional rights [OVC/Petition] (Doc. No. 1).

Therefore, the Congress granted original jurisdiction for this district court, the authority to try this case, a civil action & claims against the "United State". Defendants in this case, signified as the Legislative, Executive & Judiciary Branches of the "United States" government are a party to an:

"ORIGINAL VERIFIED COMPLAINT FOR DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF IN THIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT" along with a Briefs in Support, Exhibits & other pleadings or documents[19]

This [OVC/Petition] is founded upon the Constitution, & Act of Congress, &/or regulations of an executive department. Additionally, Plaintiff's "Other Amendments" (Doc Nos. 28, 33, 34, 44, 45.) pursuant to Court Orders are Federal Questions of subject matter jurisdiction are established.[20]

B. ***The Legal Fiction in a Waiver of Federal Sovereign Immunity v. Free Exercise Clause***

Plaintiff's ***free exercise rights*** of the First Amendment as set forth in this case and its controversies is not a *legal fiction,* nor requires a waiver of Federal Sovereign Immunity, because ***fundamental rights*** are constitutional protections or guarantees. First Amendment rights cannot be burden and the Court has succinctly held ***"it is always in the public interest to protect constitutional rights"***.[21] A waiver of U.S. sovereign immunity is an unjust burden. It is a ***legal fiction;*** when the Defendants raised a medieval court's cannon to avoid issues of a new situation of law or to deprive the Plaintiff of protection in ***free exercise clause rights*** of the First Amendment. What is **LEGAL FICTION**?

"Believing or assuming something not true is true. *Used in judicial reasoning for avoiding issues where a new situation comes up against the law, changing how the law is applied, but not changing the text of the law."*[22]

Plaintiff provides this *proper authority* which is contrary to Defendants' legal fiction in a waiver of Federal Sovereign Immunity and is pursuant to ***free exercise clause claims and rights,*** to-wit:

Amendment 5, United States Constitution Bill of Rights, in pertinent part provides:

"No person shall be… deprived of life, liberty, or property, without due process of law."

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[19] Plaintiff's pure speech existing as protected speech/expression of religious belief & conscience
[20] Appendix A, Federal question jurisdiction pursuant to U.S. Const. Art. III, Sec. 2.
[21] Phelps-Roper v. Nixon, 545 F.3d 685, 690 (8th Cir. 2008)
[22] http://thelawdictionary.org/legal-fiction/ (Black's Law Dictionary Online Legal Dict. 2nd Ed.)

C. *Federal sovereign immunity doctrine is the earmark of "the King can do no wrong".*

Most accounts trace the doctrine of *sovereign immunity* to the English notion that *"the King can do no wrong"*. The long standing common law maxim, that the King was believed to be divine in nature and it would be a contradiction of the King's perfection to allow suits against the King.[23] At its core, the doctrine of sovereign immunity stands for the proposition that the government cannot be sued without its consent – that is, "the King can do no wrong". The Framers of our Constitution knew better, and the Constitution itself is silent respecting the immunity of the federal government from suit. Sovereign immunity is simple in concept but nuanced in application. Federal sovereign immunity is a power not granted or implied in the U.S. Constitution; however, it is a Court's doctrine involving common law, contract rights & other ***tort liability***. Two traditional stanchions of government's immunity cannot pass ***constitutional muster*** as this lawsuit or of its petition; the Court is to ***"mitigate unjust consequences of sovereign immunity from suit"***. The Court precedent in *Gray v. Bell,* 712 F.2d 490; 229 U.S.App.D.C. 176 (1983) explained and held:

> The government's immunity from tort liability traditionally rested on broader justifications. In the early part of this century, however, the doctrine was given increasingly narrow application as the reasons for its existence were gradually discarded. Sovereign immunity's two traditional stanchions--***"the king can do no wrong,"***[60] and "there can be no legal right as against the authority that makes the law on which the right depends"[61]--were thoroughly discredited in a series of leading articles by Professor Edwin Borchard.[62] Enacted in the reformist climate initiated by these articles, see Keifer & Keifer v. RFC, 306 U.S. 381, 391, 59 S.Ct. 516, 519, 83 L.Ed. 784 (1939) ("the present climate of opinion ... has brought governmental immunity from suit into disfavor"), the FTCA was one of the earliest efforts in a widely accepted move by courts and legislatures, both state and federal, to ***"mitigate unjust consequences of sovereign immunity from suit."*** Feres v. United States, 340 U.S. 135, 139, 71 S.Ct. 153, 156, 95 L.Ed. 152 (1950).[63] **(Emphasis added)**

Plaintiff's lawsuit has nothing to do with common law, contract rights or other kinds of tort liability rather seeks "DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF" for Plaintiff's "PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT".

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[23] 3 W. Holdsworth, A History of English Law 458-69 (5th Edition 1942)

D. *This Suit concerns Constitutional law & its rights; not common law or contract rights*

Furthermore, Defendants' argument cannot pass *constitutional mustard*, as *the Congress shall make no law*… abridging the freedom of speech… or to protest or to petition the government for a redress of grievances. Defendants' defense, seeking a dismissal under Rule 12(b)(1) for lack of *subject matter jurisdiction*, is troubling in a case of controversies concerning the First Amendment. Defendants' lawyers refusing to understand, or accept the very letters and Spirit of the Preamble of the U.S. Constitution; for a vile spirit of faction, using an evil eye upon all external attempts to restrain or contest government activity of its religious endeavors, & zealous advancements of their IRS' endorsements of law respecting an establishment of religion as set forth in suit. *Publius* held:

"A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons of whom they are composed into improprieties and excesses, for which they would blush in a private capacity. In addition to all this, there is, in the nature of ***sovereign power***, an impatience of control, that disposes those who are invested with the exercise of it, to look with an evil eye upon all external attempts to restrain or direct its operations."[24]

Generations have genuflected before the ***divine altar of sovereign immunity***, and as a result, countless litigants have been stunned by the rigorous application of the dead but lethal residuum of an outdated legal doctrine. Since the days of the Declaration of Independence, the keystone of American political thought has always been responsible government, and the entire history of the American Revolution would seem to negate the applicability in this country of the English maxim that *"the King can do no wrong"*. Such has been, in fact, the holding of the United States Supreme Court,[25] but the threads of English precedent are nevertheless visible in American decisions. The germane or leading precedent of the Supreme Court in 1879 ***is controlling law in this case***, to wit:

"As applicable to the government or any of its officers, the maxim that the King can do no wrong has no place in our system of constitutional law." "We have no King to whom it can be applied."[25]

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[24] The Federalist Papers, Federalist No. 15, Author: Alex. Hamilton, under the pseudonym Publius
[25] *Langford v. United States*, 101 U.S. 341 (1879). Syllabus 1 and *at* 343-343

This U.S. Supreme Court case is not amenable to Defendants' legal position of a waiver or legal proposition that Federal *sovereign immunity* prevails over constitutional law or its claims, to-wit:

"1. That the maxim of English constitutional law, that the King can do no wrong, is one which the courts must apply to the government of the United States, and that therefore there can be no tort committed by the government." See Langford, 101 U.S. at 343-343

"It is not easy to see how the first proposition can have any place in our system of government. **We have no King to whom it can be applied.** The President, in the exercise of the executive functions, bears a nearer resemblance to the limited monarch of the English government than any other branch of our government, and is the only individual to whom it could possibly have any relation. **It cannot apply to him, because the Constitution admits that he may do wrong, and has provided, by the proceeding of impeachment, for his trial for wrongdoing, and his removal from office if found guilty**. None of the eminent counsel who defended President Johnson on his impeachment trial asserted that by law he was incapable of doing wrong, or that, if done, it could not, as in the case of the King, be imputed to him, but must be laid to the charge of the ministers who advised him." *Id.* at 343-343. (Emphasis Added)

"It is to be observed that the English maxim does not declare that the government, or those who administer it, can do no wrong; for it is a part of the principle itself that wrong may be done by the governing power, for which the ministry, for the time being, is held responsible; and the ministers personally, like our President, may be impeached; or, if the wrong amounts to a crime, they may be indicted and tried at law for the offense." *Id.* at 343-343. (Emphasis Added)

"We do not understand that either in reference to the government of the United States**,** or of the several states, or of any of their officers, *the English maxim has an existence in this country.*" *Id.*

E. ***Defendants' actions or consensus disregarded or abandon Federal Sovereign Immunity***

Defendants proffered *"Plaintiff provides no authority to the contrary"* about sovereign immunity. First, the Defendants, of which, includes this District Court representing the Judiciary Branch of United States government made pertinent rulings, and issued memorandums and orders in this case.[26] These orders or its memorandum never raised any issues of *subject matter jurisdiction* or the requirements of Federal Sovereign Immunity. Secondly, The Defendants, of which, includes the DOJ representing the Executive Branch of United States government waived any claims for sovereign immunity by filing a *responsive pleading* [27] in this action without raising a defense of

[26] District Court Orders (ECF Nos. 8, 18, 29, 36, 42, 55, 66 & 91.)
[27] United States' Motion to Strike Filings or, in the Alt., for an Ext. of Time, re: ECF No 51 & 52

sovereign immunity. Lastly, the Defendants, of which, includes the Congress, representing the Legislative Branch of United States government, unequivocally expressed the consent of the Federal Government, by authorizing the Bill of Rights [28] for a person or this Plaintiff to exercise certain fundamental rights. Among these constitutional rights is the *free exercise* to dissent, protest or legally challenge, as well as, to petition the government about law, activities or it institutional bodies or instruments not operating within the rule of law of this Nation. If, Plaintiff could be barred by the surreal notion of Federal sovereign immunity prevails above all matters of law and liberty, the Bill of Rights becomes absolutely meaningless, with U.S. Supreme Court decisions, doctrines or precedent becoming frivolous or moot. In effect the rule of men, not the rule of law prevails as a terrible consensus for a history of war. However, and most profoundly spoken during the American Civil War by the 16th President of the United States, Abraham Lincoln declared:

"Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation or any nation so conceived and so dedicated can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this. But in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead who struggled here have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us the living rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us--that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion--that we here highly resolve that these dead shall not have died in vain, ***that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.***"[29] (Emphasis Added)

This profound declaration concerned the Union of the United States and its Nation's government; not for the terrible *consensus* that southern states invoked sovereign immunity or the **C**onfederate **S**tates **A**merica abandon the U.S. Constitution, or worst, Defendants repeat this moment in history.

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[28] Bill of Rights is the first ten amendments to U.S. Constitution, Ratified by Congress 12/15/1791
[29] Gettysburg Address, November 19, 1863 - http://avalon.law.yale.edu/19th_century/gettyb.asp

F. ***A "waiver" of Federal Sovereign Immunity by the United States is a presumption.***

Federal Sovereign Immunity is a court doctrine, but its waiver or consent creates a presumption. *"The power to create presumptions is not a means of escape from constitutional restrictions."*[30] It is apparent that a constitutional prohibition cannot be simply transgressed indirectly by the creation of a legal presumption any more than it can be violated by permitting Federal Sovereign Immunity which is offensive to the other proclaimed court doctrines listed herein. Plaintiff avers the presumption a Federal Sovereign Immunity and its waiver or consent involves strict scrutiny standards of the First Amendment. The presumption of a waiver of Federal Sovereign Immunity v. consent by statute from Federal Sovereign Immunity is a matter of "strict scrutiny". The notion of "levels of judicial scrutiny", including strict scrutiny, was introduced in Footnote 4 of the U.S. Supreme Court decision in United States v. Carolene Products Co. (1938), one of a series of decisions testing the constitutionality of New Deal legislation. U.S. courts apply the strict scrutiny standard in two contexts: when a fundamental constitutional right is infringed, particularly those found in the Bill of Rights and those the court has deemed a fundamental right protected by the Due Process Clause or "liberty clause" of the 14th Amendment, or when a government action applies to a "suspect classification," such as race, national origin or religion.[31]

G. ***Federal Sovereign Immunity Doctrine conflicts with constitutional restrictions.***

There are many *constitutional restrictions* on which courts hear which kinds of cases and on the various policies and requirements for appeal which a can make the system less than efficient, but are in place to protect the both parties in legal dealings. The United States' system of separation of powers and checks and balances is a good example of this.[32] The Court doctrine in the ***separation***

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[30] *Bailey v. State of Alabama,* 219 U. S. 219, 239 (1911)
[31] Exhibit A- #4, Strict Scrutiny Test manifested in "Compelling Interest Test" (Doc. No. 3)
[32] Exhibit D- #2, Separation of Powers Doctrine (a system of checks and balances) (Doc. No.3)

of powers utilizing a system of ***checks and balances*** or the Court doctrine maintain a ***separation of church and state*** under the strict scrutiny test of Lemon [33] are constitutional restrictions that are active elements or restrictions involved in Plaintiff's case of controversies. The Court's doctrine of Federal Immunity Doctrine presents hostility to the ***separation of powers*** when the Defendants' DOJ can invoke it over a remedy under the U.S. Constitution or the common sense constitutional values set forth its Preamble. Federal Sovereign Immunity Doctrine can be important in matter of money, government property or in tort liability cases, but not within the protected realm of the First Amendment or the letters or spirit of the Preamble to the U.S. Constitution. The First Amendment or the letters or spirit of the Preamble are the foundation stone and spirit of America. No just government can promote the poisonous venom of arbitrary will in sovereign immunity. In fact, the First Amendment and the Preamble are constitutional restrictions of the highest order. The Court has held "While the spirit of the Constitution is to be respected not less than its letter, the spirit is to be collected chiefly from its words." [34] Plaintiff's suit incites causes and doctrines under First Amendment protection with constitutional restrictions set forth therein. The Court held:

"First Amendment provides the only kind of security system that can preserve a free government -- one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines however obnoxious and antagonistic such views may be to the rest of us." [35]

H. ***Federal Sovereign Immunity Doctrine amends the Constitution of the United States.***

The powers of the federal government that are specifically described in the U.S. Constitution are sometimes called 'delegated' or 'expressed powers,' but most often they are known as 'enumerated powers,' [36] and they describe how three distinct branches of the Defendants can operate effectively.

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[33] *Lemon v. Kurtzman,* 403 U.S. 602 (1971) *A Landmark Case* Plaintiff's Exh.D- #6, (Doc. No. 3)
[34] *Jacobson v. Massachusetts,* 197 U.S. 11, 12 (1905) & Plaintiff's Exhibit C- #10 (Doc. No. 3)
[35] Yates v. United States, 354 U. S. 298, 354 (1957)
[36] Enumerated powers of The U.S. Congress, Article I, Section 8 of the United States Constitution.

Federal Sovereign Immunity is not a 'delegated' or 'expressed powers. Congress may exercise the powers that the Constitution grants it, subject to the individual rights listed in the Bill of Rights. Moreover, the U.S. Constitution expresses various other limitations on Congress, such as the one expressed by the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The doctrine of Federal Sovereign Immunity, in effect, amends the U.S. Constitution making enumerated powers meaningless.

I. A *republican form* of government is guaranteed & bars Federal Sovereign Immunity.

In Article IV, Section 4 is referred to, as the Guarantee Clause of the U.S. Constitution. The principal guarantee in Article IV, Section 4, is that the federal government will assure the states "a Republican Form of Government." However, there was a consensus as to three criteria of republicanism, the lack of any of which would render a government un-republican. The first of these criteria was popular rule. The Founders believed that for government to be republican, political decisions had to be made by a majority (or in some cases, a plurality) of voting citizens. To a generation immersed in Latin learning and looking to pre-imperial Rome for inspiration, a republic was very much res publica—the people's affair. The second required element of republican government was that there be no monarch. In fact, when Alexander Hamilton proposed a President with lifetime tenure, the delegates so disagreed that they did not even take the time to respond. The third criterion for a republic was the rule of law. Ex post facto laws, bills of attainder, extreme debtor-relief measures—most kinds of retroactive legislation, for example, were deemed inconsistent with the rule of law, and therefore un-republican. Plaintiff avers the Defendants' IRS certainly defeated those concepts of a *republican form* of government. Furthermore, the Federal Sovereign Immunity doctrine, as used in Plaintiff's case, has the full appearance of the Defendants'

DOJ lawyers acting as a little Caesar, with their IRS' deity as the great [WHATEVER][37] converting taxpayers into taxpayers[38] or advancing [Worthship][39] and [Purpose Driven Life][40] while endorsing [Intellectual Tithing][41] [Temple Taxes][42] for Taxology [43] at the ***divine altar of sovereign immunity.***

J. *Traditional tools of statutory construction being unequivocally expressed.*

The Congress passed the Judiciary Act of 1789[44] that first established the Courts and a system of rules and requirements for the Judiciary Branch of the Defendants. The first traditional tools and tools shed of statutory construction has been a long process of court doctrines and decisions as the Court, is the third branch of Government. The Court or Plaintiff's right of petition, both seeking a balance between law and liberty, are both under the Fed. R. Civ. P. providing the structure and *statutory construction* for Federal questions of law. Plaintiff avers there are numerous Fed. R. Civ. P., however, the following three would invalidate sovereign immunity because there are tools of statutory construction being unequivocally expressed:

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(2) *Action in the Name of the United States for Another's Use or Benefit.* When a federal statute so

[37] Plaintiff's Exhibit H- #6 & Exhibit H- #7 & Exhibit H- #9 (Doc. No. 3) Great [WHATEVER]
[38] Plaintiff's Exhibit K- #10 & K- #11 & K- #12 & K- #13 (Doc. No. 3) taxpayers into taxprayers
[39] Plaintiff's Exhibit F- #7 & F- #8 & F- #9 & F- #10 & F- #11 (Doc. No. 3) [Worthship]
[40] Plaintiff's Exhibit H- #5 & E- #2 & F- #55 & G- #4 & G- #5 (Doc. No. 3) [Purpose Driven Life]
[41] Plaintiff's Exhibit G- #1 & G- #2 & F- #12 (Doc. No. 3) Intellectual Tithing & Offerings
[42] Plaintiff's Exhibit K- #5 & Exhibit K- #6 (Doc. No. 3) [Temple Taxes]
[43] Plaintiff's Exhibit I- #25 & E- #1 & E- #5 & F- #15 & F- #16 & F- #49 & F- #50 (Doc. No. 3)
[44] Judiciary Act of 1789 CHAP. XX.-An Act to establish the Judicial Courts 1 Stat. 73 on 9/24/1789

provides, an action for another's use or benefit must be brought in the name of the United States.

Rule 55. Default; Default Judgment

(d) JUDGMENT AGAINST THE UNITED STATES. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

By Defendants invoking Federal sovereign immunity or a "waiver" if the Court should determine one does exists or the terms and conditions of such a waiver; suppresses protected speech, abridges Plaintiff's right to petition or publish his works (legal writings, exhibits and declarations) or even the right to access the Court for relief. The U.S. Supreme Court has upheld these rights:

"Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition. See Johnson v. Avery, 393 U.S. 483, 485; Ex parte Hull, 312 U.S. 546, 549." [45]

And

"The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." [46]

III. "SOVEREIGN IMMUNITY BARS PLAINTIFF'S CLAIMS AGAINST THE UNITED STATES BECAUSE HE HAS NOT ESTABLISHED A WAIVER."

A. *The Legal Fiction of Federal Sovereign Immunity Creating an Indispensable Party*

A **wavier** is the voluntary relinquishment or surrender of some known right or privilege. It is not the same as ***consenting to litigation*** or seeking a removal of *real or potential liability* for the other party in a contract agreement. Federal Sovereign Immunity is not established as a waiver of a right; rather as a ***legal fiction*** exercised as a court doctrine. This ***privilege of pride*** manifests a contempt for the *rule of law* and First Amendment rights. This *legal fiction* of the Defendants demonstrates

[45] California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972)
[46] *Marbury v. Madison,* 5 U.S. 1 Cranch 137, 137 (1803) Plaintiff's Exhibit D- #21 (Doc. No. 3)

the tyranny of *medieval doctrines* or worst the Defendants are allowed to becomes a lawbreaker or an ***indispensable party.*** The "UNITED STATES" GOVERNMENT is to fights *constitutional evils* and not become a master of evil; teaching all its citizens the examples of [LIVE as EVIL].[47] U.S. Supreme Court Justice Louis D. Brandeis, *dissenting* in Olmstead v. United States, 277 U. S. 438, (1928) and in the opinion of this Plaintiff is controlling law in this First Amendment lawsuit:

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously.

Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

Plaintiff [believes] ***free exercise principles*** do not cause a man to sacrifice the freedom of his convictions.[48] Furthermore, *sovereign immunity* is addressed in the Declaration of Independence concerned "Independent States", not the Defendants as an ***indispensable party*** in this suit, to-wit:

"That these United Colonies are, and of Right ought to be Free and Independent States; that they are ***Absolved from all Allegiance to the British Crown,*** and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved…" [48] (emphasis added)

The Representatives of the united States of America, did not recognized the common law of ***"the king can do no wrong"***, and why should this district Court accept this cannon of common law. Besides, the United States of America understands that "We the People" are the authority, to-wit:

"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, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."[48]

The Court's cannon of construction concerning *sovereign immunity* is important to a limited degree

[47] Plaintiff's Exh. H- #26 & K- #47 & L- #19 & L- #20 & L- #21 & L- #22 & L- #23 (Doc. No. 3)
[47] Plaintiff's Exh. L- #24 & L- #25 & L- #26 & L- #27 & L- #28 & L- #29 & L- #30 (Doc. No. 3)
[48] Declaration of Independence, July 4 1776 establishment of the united States of America

of legal reason, but not for a ***legal fiction*** of Federal sovereign immunity creating an ***indispensable party.*** The Defendants are not a King. However, the Defendants' "IRS" is the King of Deception, that manifested itself in the year "1646" [49] nor has the IRS absolved itself "from all Allegiance to the British Crown". This is true, as this IRS entity, that Mr. Mokodean or his minions represent, has ***"refused his Assent to Laws, the most wholesome and necessary for the public good."*** History revisited or based on the record of this case, Plaintiff would have to ***abandon*** his First Amendment right *to protest* or ***relinquish*** *the right to petition for the privileges of self-government* granted by the First & Ninth Amendments, to establish a waiver of Federal sovereign immunity. Defendants' claim or *legal fiction* of federal sovereign immunity manifests a deprivation of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. This is true, because this Nation's government, particularly the Congress established the right to dissent, the privilege of U.S. citizenship, or the ***religious immunity*** from establishment clause claims[50], or any act(s) done under the *color of law* (18 U.S. Code § 242 - Deprivation of rights under color of law). Plaintiff has established seven causes of action[51] seeking seven claims for relief [52] whereby a waiver of sovereign immunity is not required or a consent manifested by statutes. If a so called "wavier" should exists concerning this lawsuit seeking DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF IN THIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT, then Fed. R. Civ. P., **Rule 5.1. Constitutional Challenge to a Statute** prevails as such. Besides, if the United States government cannot be a party to this suit, then 28 U.S. Code § 2403 - Intervention by United States or a State; constitutional question *becomes moot or frivolous in a court of law*. Furthermore, if the Court would grant Defendants' Federal Sovereign

[49] Plaintiff's Exh. G- #6, Promise Land & [THE BOOK] "IRS Historical Fact Book" (Doc. No. 3)
[50] First Amendment free exercise of religion, speech, conscience, association, protest & petition
[51] Plaintiff's Notice Pleading of Other Amendments per Court Order (Doc. No. 33) 7 documents
[52] Plaintiff's Notice Pleading of Other Amendments per Court Order (Doc. No. 34) 7 documents

Immunity claim it would create an ***indispensable party***; or the Defendants as a "necessary" party, who absence threatens Plaintiff's liberty or property interests. Suitably, Plaintiff served notice of Rule 5.1. Constitutional Challenge to a Statute to the Defendants. Last of all 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 or other laws made pursuant to the U.S. Constitution. Plaintiff avers sovereign immunity claims concerning First Amendment Challenges or free exercise claims are moot or frivolous.

B. The Defendants' claim of Federal Sovereign Immunity is barred under the First Amendment or repugnant to the Constitution of the United States and the laws in pursuance thereof or predisposed in Langford v. United States, 101 U.S. 341 (1879)

In American Constitutional law, a court doctrine known as *sovereign immunity* bars suits against the federal and state governments in certain circumstances involving contracts or the recovery of property.[53] Plaintiff's case of actual controversies concerns the ***free exercise rights*** of the First Amendment and Establishment Clause Challenges. This litigation **has nothing to do with** contract relief or its law, any civil rights statutes or such matters, the constitutionality of state statutes, or a right or entitlement to loan guaranty by the SBA or involves the Small Business Administration, nor concerns the Federal Tort Claims Act (FTCA), the Tucker Act, nor does Plaintiff seek damages under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). As a final matter, this lawsuit has nothing to do with ***sovereign immunity*** or any case law cited when by ***exposing someone to radiation*** or prevent liability for "common forms" of negligence. As a threshold matter, Plaintiff's case & its controversies involve an ***Original Verified Complaint*** and "Other Amendments" filed

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[53] See *United States v. Lee*, 106 U.S. 196 (1882); *Alden v. Maine*, 527 U.S. 706 (1999); *Hans v. Louisiana*, 134 U.S. 1 (1890).

under Fed. R. Civ. P, Rule 15(a) as a petition seeking Declaratory Judgement, Injunctive and other Appropriate Relief for his for Quintessential Rights of the First Amendment.

C. Defendants cited Inapplicable Case Law or proffers legal positions that have no merits

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"But the First Amendment does not waive sovereign immunity." [54]

This case presents First Amendment clause violations and Establishment Clause Challenges concerning Defendants' unconstitutional acts and activities of law and by institutions, *inter alia, advancing* or respecting an establishment of religion. Plaintiff's suit pleads detailed First Amendment claims, germane Court doctrines or precedents, in part, including other amendments regarding seven causes of action and seven claims for relief sought. ***"A suit presupposes that the defendants are subject to the law invoked."*** [55] The Plaintiff avers, if the First Amendment does not waive sovereign immunity, then the Court doctrine that "the King can do no wrong" rule, who is the head of the Church of England, could prevail against the establishment clause of the First Amendment with a total or tangible impunity. The First Amendment does not operate in the surreal vacuum of legalism or within the cannons of construction concerning Federal Sovereign Immunity.

"*See Ascot Dinner Theatre, Ltd. v. SBA*, 887 F.2d 1024, 1031-32 (10th Cir. 1989) (citing *Laswell v. Brown*, 683 F.2d 261, 268 (8th Cir. 1982))." [54]

This inapplicable case proffers a legal position that has no merit or is erroneously applied:

***Ascot Dinner Theatre, Ltd. v. SBA*, 887 F.2d 1024, 1031-32 (10th Cir. 1989)**

Law at issue: "opinion molder rule", Sovereign Immunity, Tucker Act, 15 U.S.C. Sec. 634(b)(1) Powers of Administrator, Tort Exclusion, Contract Relief, The First Amendment with tort liability defined by the Federal Tort Claims Act (FTCA) under 42 U.S.C. Sec. 1983.

[54] Def.' Reply in Support of United States Motion to Dismiss (ECF No. 86) Sec. I on p.1
[55] *Kawananakoa v. Polyblank*, 205 U.S. 349, 353, 27 S.Ct. 526, 527, 51 L.Ed. 834. (1907)

"The district court held unconstitutional as applied here the SBA's "opinion molder rule," a regulation which disqualified certain businesses engaged in the formation, expression and distribution of ideas from receiving SBA loan guarantees."

"No claim of error is asserted by the defendants with respect to the district judge's adjudication that the rule as applied is invalid under First Amendment principles. Hence that ruling is not considered or disturbed."

"In this case of first impression, Ascot says that the unconstitutional application of the opinion molder rule entitles it to recover damages on its claim whose 'substance is that of a breach of contract rather than tort.'"

"Ascot resists analysis of its claim as a constitutional tort."

"It says its claim is "akin to an action for breach of a loan guaranty commitment, and, therefore, its substance is that of a breach of contract, rather than tort.""

"Ascot concedes that the constitutional amendments themselves 'do not constitute a waiver of sovereign immunity'."

"It sought declaratory relief, and also damages against the SBA and its Administrator in his official capacity for wrongful denial of the loan guarantee."

This case involves Small Business Administration (SBA) and its Administrator appeal a judgment awarding damages to the Ascot Dinner Theatre (Ascot), an applicant denied a loan guaranty by the SBA. The so-called "opinion molder rule" was intended to prevent Government entanglement with controversial views and thus the appearance of conflict with First Amendment protections. The district court held unconstitutional as applied the SBA's "opinion molder rule," a regulation which disqualified certain businesses engaged in the formation, expression and distribution of ideas from receiving SBA loan guarantees. The court awarded $59,086.25 as damages arising from the unconstitutional denial of the Ascot application. Accordingly, the award of damages in the judgment of the district court is REVERSED.

For the record, Plaintiff avers this inapplicable case is not controlling law. This case presents or proffers no merits that would assist the Court in making a proper or valid legal decision. It is a pretense for a *sovereign immunity claim* against the established rights, claims and law the

Plaintiff presents in his First Amendment violations of the *free exercise clause* or establishment challenges claims as set forth in this Article III case and its controversies.

This inapplicable case proffers a legal position that has no merit or is erroneously applied:

***Laswell v. Brown*, 683 F.2d 261, 268 (8th Cir. 1982)**

Law at issue: doctrine of *respondeat superior*, claims arising under the FTCA, Constitutional Tort Claims, causes of action are based upon Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics with a question of what immunity, qualified or absolute, the employees were entitled to damages, *Feres doctrine* (money damages recovery for death caused by negligence), Children's claims arising out of disability and death of plaintiff, relationship between the Govt's and members of its armed forces.

"This case presents a recurring problem of intramilitary immunity."

"The plaintiffs claim that Laswell was exposed to low-level ionizing radiation as part of this country's atmospheric nuclear weapons testing program while he was on active duty in the South Pacific after World War II."

"The two remaining causes of action allege that the defendants intentionally violated Laswell's Fifth Amendment rights by exposing him to radiation and that they have intentionally violated Laswell and his progeny's Fifth Amendment rights by failing to warn or treat the plaintiffs."

"The plaintiffs' arguments in the case at bar can be grouped into three categories. First, they argue that the *Feres* doctrine should be overturned; second, that *Feres* which concerned "common forms of negligence" is distinguishable from this case which concerns a more egregious act; and third, the plaintiffs assert this case is an example of "post-discharge" negligence pointing to the defendants' failure to warn and treat the plaintiff after Laswell left the service."

"In Bivens, the Court implied a cause of action for damages from the Fourth Amendment in suits against federal employees." "the district court's dismissal concluding that the plaintiffs' claims do not support subject matter jurisdiction."

This case presents a recurring problem of intramilitary immunity. Plaintiffs-appellants seek damages, among other claims, for the disability and eventual death of their husband and father, Charles Laswell. The plaintiffs claim that Laswell was exposed to low-level ionizing radiation as part of this country's atmospheric nuclear weapons testing program while he was on active duty in

the South Pacific after World War II.

For the record, Plaintiff avers this inapplicable case is not controlling law. This case presents or proffers no merits that would assist the Court in making a proper or valid legal decision. It is a pretense for a *sovereign immunity claim* against the established rights, claims and law the Plaintiff presents in his First Amendment violations of the *free exercise clause* or establishment challenges claims as set forth in this Article III case and its controversies.

"And a waiver cannot be implied. *See* **United States v. Mitchell, 445 U.S. 535 (1980)."** [54]

This inapplicable case proffers a legal position that has no merit or is erroneously applied:

Law at issue: jurisdiction in the Court of Claims, Indian General Allotment Act of 1877, Tucker Act, § 24 of the Indian Claims Commission Act, recover money damages, breaches of fiduciary duty upon the Government to manage timber resources or using the land for agricultural or grazing purposes, immune from **state taxation**

"Denying the Government's motion to dismiss the actions on the alleged ground that it had not waived its ***sovereign immunity*** with respect to the asserted claims, the Court of Claims held that the General Allotment Act created a fiduciary duty on the United States' part to manage the timber resources properly, and constituted a waiver of sovereign immunity against a suit for money damages as compensation for breaches of that duty."

"The Court of Claims held that the General Allotment Act creates a fiduciary duty on the part of the United States to manage timber resources properly, and constitutes a waiver of sovereign immunity against a suit for money damages as compensation for breaches of that duty. The court drew both of these conclusions from the Act's language providing that the United States is to "hold the land . . . in trust for the sole use and benefit of the" allottee. The court held that this language created an express trust, and concluded that money damages are available to compensate for breaches of this trust, apparently because that remedy is available in the

Page 445 U. S. 542

ordinary situation in which a trustee has violated a fiduciary duty and because, without money damages, allottees would have no effective redress for breaches of trust,,"

Held: The General Allotment Act cannot be read as establishing that the United States has a fiduciary responsibility for management of allotted forest lands, and thus does not provide respondents with a cause of action for the damages sought. Pp. 445 U. S. 538-546.

(a) Neither the Tucker Act, under which the individual claimants premised jurisdiction in the Court of Claims, nor § 24 of the Indian Claims Commission Act, on which jurisdiction over the Tribe's claim was based, confers a substantive right against the United States to recover money damages. Pp. 445 U. S. 538-540.

(b) The General Allotment Act created only a limited trust relationship between the United States and the allottee that does not impose any duty upon the Government to manage timber resources. The language of § 5 of the Act must be read *in pari materia* with the language of §§ 1 and 2, both of which indicate that the Indian allottee, and not a representative of the United States, is responsible for using the land for agricultural or grazing purposes. The Act's legislative history also

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indicates that the trust Congress placed on allotted lands is of limited scope, it appearing that, when Congress enacted the Act, it intended that the United States hold the lands in trust not because it wished the Government to control use of the lands and be subject to money damages for breaches of fiduciary duty, but simply because it wished to prevent alienation of the lands and to ensure that allottees would be immune from state taxation. Furthermore, certain events surrounding and following the Act's passage indicate that it should not be read as authorizing, much less requiring, the Government to manage timber resources for the benefit of Indian allottees. Pp. 445 U. S. 540-546.

219 Ct.Cl. 95, 591 F.2d 1300, reversed and remanded.

For the record, Plaintiff avers this inapplicable case is not controlling law. This case presents or proffers no merits that would assist the Court in making a proper or valid legal decision. It is a pretense for a *sovereign immunity claim* against the established rights, claims and law the Plaintiff presents in his First Amendment violations of the *free exercise clause* or establishment challenges claims as set forth in this Article III case and its controversies.

United States v. Clarke, 33 U.S. 436, 443 (1834)
("As the United States are not suable of common right, the party who institutes a suit against them must bring his case within the authority of some act of congress, or the court cannot exercise jurisdiction.") [54]

"To the extent Plaintiff argues that the First Amendment right to petition abolished the doctrine of sovereign immunity, Plaintiff's argument would be contrary to centuries of Supreme Court precedent applying the doctrine." [54]

FOR THE RECORD: Plaintiff is U.S. citizen seeking court sanctioned relief in a U.S. District Court not in a territorial court of *special limited jurisdiction.* This case of a sovereign immunity claim involves a treaty between the United States and Spain. Plaintiff is not a country, and his suit manifests nothing with ***common right*** or the facts of this cited case or that ***"Plaintiff's argument would be contrary to centuries of Supreme Court precedent applying the doctrine."*** [56]

This inapplicable case proffers a legal position that has no merit or is erroneously applied:

Law at issue: common right, Spanish grants of land in the Territory of Florida, Construction of the articles of the treaty between the United States and Spain.

"In April, 1829, George J. F. Clarke, the defendant in error, filed his petition in the Court of the United States for the Eastern District of Florida, praying that court to decree a confirmation of his title to sixteen thousand acres of land, granted to him on 6 April. 1816, by Don Jose Coppinger, then Acting Governor of the Province of East Florida."

"Construction of the articles of the treaty between the United States and Spain ceding Florida, relating to the confirmation of grants of lands made by the Spanish authorities prior to the treaty." "An examination of the authority of the Governors of Florida and of other Spanish officers under the Crown of Spain to grant lands within the territory, and of the manner in which that authority was exercised."

"An examination of the legislation of the United States on the subject of the examination and confirmation of Spanish grants of land in the Territory of Florida, made before the cession of the same to the United States."

"The proposition that in courts of a special limited jurisdiction, which that of East Florida unquestionably is in this case, the pleadings must contain averments which bring the cause within the jurisdiction of the court, or the whole proceeding will be erroneous, is admitted. The inquiry is, does the petition of George J. F. Clarke contain these averments."

For the record, Plaintiff avers this inapplicable case is not controlling law. This case presents or proffers no merits that would assist the Court in making a proper or valid legal decision. It is a pretense for a *sovereign immunity claim* against the established rights, claims and law the Plaintiff presents in his First Amendment violations of the *free exercise clause* or establishment challenges claims as set forth in this Article III case and its controversies.

[56] Defendants' lawyers either misread or misapplied, *Langford v. United States,* 101 U.S. 341 (1879).

***Cohens v. Virginia*, 19 U.S. 264, 411-12 (1821)**
("The universally received opinion is, that no suit can be commenced or prosecuted against the United States; that the judiciary act does not authorize such suits.").

This inapplicable case proffers a legal position of **State sovereignty** & is erroneously applied:

Law at issue: writ of error was a suit against the United States, Eleventh Amendment, "a sovereign independent State is not suable except by its own consent" or "the sovereignty of the States" or "State sovereignty"

"The point of view in which this writ of error, with its citation, has been considered uniformly in the Courts of the Union has been well illustrated by a reference to the course of this Court in suits instituted by the United States. The universally received opinion is that no suit can be commenced

Page 19 U. S. 412

or prosecuted against the United States; that the Judiciary Act does not authorize such suits. Yet writs of error, accompanied with citations, have uniformly issued for the removal of judgments in favour of the United States into a superior Court, where they have, like those in favour of an individual, been reexamined, and affirmed or reversed. It has never been suggested that such writ of error was a suit against the United States, and, therefore, not within the jurisdiction of the appellate Court."

FOR THE RECORD: If this premise is universally received by this district court as case law germane to Plaintiff's case, Plaintiff states the following premise further set forth in **Appendix B**:

The Judiciary Act of 1789, in germane parts, *"That in all courts of the United States, the **parties may plead and manage their own causes personally**"* and *"by the rules of the said courts respectively **shall be permitted to manage and conduct causes therein**"* SEC.35 or *"where is **drawn in question** the **construction of any clause of the constitution**"* SEC.25 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**"* SEC.32

*"And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of scire facias, habeas corpus, **and all other writs not specially provided for***

***by statute**, which **may be necessary** for the exercise of their respective jurisdictions, **and agreeable to the principles and usages of law.**"* SEC.14

IV. "EVEN IF PLAINTIFF COULD IDENTIFY A WAIVER OF SOVEREIGN IMMUNITY, RELIEF IS PRECLUDED."

Defendants' Doctrine of Deception [57]

"First, Plaintiff appears to concede that neither § 1983
nor *Bivens* provides for a damages action against the United States."

For the record, Plaintiff never conceded that the Defendants, the Court or the *pro se* attorneys for the Clerk of Court had the legal right to misapply or misconstrue the nature of the suit in opposition of the First Civil Cover sheet [58] Plaintiff "hereby gives Notice that in the above-entitled civil action **is not about** or nature of **"Civil Rights"** but the nature of Constitutional rights, privileges and immunities of Plaintiff's ***unalienable rights** to life, liberty and pursuit of happiness*."

In the Record, the Defendants manifested, contrived or fabricated in their Memorandum in Support of Unites States Motion to Dismiss re (ECF No. 83) the surreal idea that "If Plaintiff's Amended Complaint Is Construed to Assert a Bivens Claim, the Claim Should Be Dismissed." [59] Plaintiff's avers Defendants' Doctrine of Deception manufactured a dreamlike defense by shifting the argument to a subject matter never raised or presented to the court by the Plaintiff. In fact, ***"Bivens provides for a damages action against the United States"*** [60] is in reality a ***smoke screen*** used to confuse the Court about claims, precluded relief sought or advanced the legal fiction of sovereign immunity involving the First Amendment. Furthermore, this deviant diversion direct Plaintiff's legal resource and legal issues or controversies in the wrong direction. Plaintiff aver the

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[57] Defendants' Doctrine of Deception outlined, documented and revealed in Doc. Nos. 54 & 57)
[58] NOTICE TO THE NATURE OF SUIT IN OPPOSITION TO CIVIL COVER SHEET re (Doc. No. 11)
[59] Def. MEMO. IN SUP. OF U.S> MOTION TO DISMISS re ECF No. 83 see page 9 Section B
[60] Defendants' MEMO. IN SUPPORT OF UNITED STATES' MOTION TO DISMISS re ECF No. 83

DOJ lawyer who contrived such a defense to undermine or suppress Plaintiff's religious liberty and protected speech violated U.S. government policy [61]

"Second, to the extent that the amended complaint is construed to seek declaratory and injunctive relief with respect to taxes, the tax exception to the Declaratory Judgment Act and the Ant-Injunction Act ("AIA") preclude such requests in this case."

"Plaintiff's opposition does not address or dispute that the tax exception to the Declaratory Judgment Act precludes actions for declaratory relief "with respect to taxes." 26 U.S.C. § 2201(a). Plaintiff only disputes whether the AIA is constitutional."

Defendants' above mentioned legal propositions are egregious and erroneous. The Declaratory Judgment Act does preclude actions for declaratory relief with respect to Federal taxes. 26 U.S.C. § 2201(a). However, the Declaratory Judgment Act has established no such exception concerning First Amendment *free exercise clause violations* or Establishment Clause Challenges. Plaintiff legal position is clear from the beginning as declared by the Plaintiff:

"This action arises under the Establishment/Free Exercise Clause of the First Amendment of the United States Constitution. This lawsuit is not about taxation. It is about religion and what is central to one's sincerely held religious beliefs, its expressive activities, the nature of the relevant forums or the rule of law used, primarily aimed at protecting non-economic interests of a spiritual and religious nature as opposed to a physical or pecuniary nature." [62]

Furthermore, Defendants must have known that "with respect to Federal taxes" is not the same as *internal revenue taxes* set forth in 28 U.S. Code § 1396 - ***Internal revenue taxes,*** especially when 26 U.S.C §7410. Cross references "(1) For provisions for collecting taxes in general, see chapter 64" has no legal effect.[63] AIA is unconstitutional as it chills speech or operates as a prior restraint on protected speech using content-based restrictions *based on viewpoint or subject matter*. [64]

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[61] U.S. government policy issued A.G of DOJ October 6, 2017 see Plaintiff's Exh. V#2 & V#3
[62][OVC/Petition] ¶1 on page 1 (Doc No.1) and [Revelation #1] ¶¶ 1 & 2 on page 2 (Doc No. 44)
[63] Plaintiff's Exhibit E- #10 & E- #11 & E- #12 Ignorance Is a Choice Subchapter A, B & D
[64] Plaintiff's Exhibit J- #7 & Exhibit A- #5 & Exhibit A- #6 & Exhibit A- #7 (Doc. No. 3)

"The AIA applies to Plaintiff's claims, and Plaintiff does not argue otherwise."
See Pagonis v. United States, 575 F.3d 809, 815 (8th Cir. 2009)

Defendants' above mentioned legal propositions are egregious and erroneous. Simply because Anti-Injunction Act, 26 U.S.C. § 7421(a) ("AIA") does not apply to the Plaintiff's suit that concerns law respecting an establishment of religion or the endorsement of religious activities or Defendants' advancement of making a proper return to the IRS and their religious beliefs and practices, in violation of the free exercise clause. The AIA involves restraining the assessment or collection of any tax, not the ***collective experience*** of religious belief of law that has no legal effect, pursuant to 26 U.S.C. § 7806. Plaintiff avers Defendants' IRS has made no claims that the Plaintiff owe a Federal income tax or is subject to internal revenue taxes set forth in 28 U.S. Code § 1396 - Internal revenue taxes. Furthermore, regarding Federal Debt Collection Procedure, pursuant to U.S. Code › Title 28 › Part VI › Chapter 176 › Subchapter A › § 3002: Definitions as used in this chapter: (2) "Court" means any court created by the Congress of the United States, ***excluding the United States Tax Court***. Plaintiff [believes] ***United States Tax Court*** is the Temple of Taxism as the Orthodox Church of Taxology.[65] Nevertheless, Defendants' IRS have threatened Plaintiff with ***"additional civil and criminal penalties"*** [66] as well as, ***"be subject to federal criminal prosecution and imprisonment"*** [67] or has mailed a large host of IRS Notices without OMB# [68] but did issued Privacy Act Notice 609 declaring, in part,

"If you do not a return, do not provide required information, or provide false or fraudulent information, the law says that we may have to charge you penalties and, in certain cases, subject you to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make your tax higher or delay any refund. Interest may also be charged."

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[65] Exhibit H- #11, The Orthodox Church of Taxology – Temple of Taxism /16 pages (Doc No. 3)
[66] See Appendix C
[67] See Exhibit L- #35, list of IRS Letters to Plaintiff many without valid OMB control number
[68]* None of these IRS documents have a required or a valid OMB control number

"And the AIA is constitutional."
See Bob Jones Univ. v. Simon, 416 U.S. 725, 746-47 (1974);
Professional Engineers, Inc. v. United States, 527 F.2d 597, 600 (4th Cir. 1975).

The Defendants cited case law that involves certain tax matters of revoking 501 status by the IRS. Defendants' above mentioned legal propositions or cases are egregious and erroneous to this pending case.

See Muncaster v. Baptist, 367 F. Supp. 1120, 1123 (N.D. Ala. 1973), *aff'd*, 507 F.2d 1279 (5th Cir. 1975).

"Specifically, the AIA does not violate the constitutional right to access to the courts because Congress has provided alternative remedies for tax disputes, and where those remedies are unavailable, the Williams Packing exception controls."

Once again, this case law has nothing to do with First Amendment free exercise clause or the Establishment Challenges are requiring no response and is not controlling law.

See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).
And the Court should similarly not accept the truth of "wholly unrealistic assertions."
Brown v. Medtronic, Inc., 628 F.3d 451, 461 (8th Cir. 2010).

In *Ashcroft v. Iqbal*, concerned top governmental officials were not liable for actions of subordinates' assent evidence of alleged discriminatory activity. In *Brown v. Medtronic, Inc* Holding that derivative monitoring claims cannot survive without a sufficiently pled theory of an underling breach. Defendants' above mentioned legal proposition is egregious and erroneous. But:

"Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others." [69]

[69] *United States v. Ballard, 322 U.S. 78 (1944); United States v. Seeger, 380 U.S. 163 (1965)*

"However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; ***religious beliefs need not be acceptable, logical, consistent, or comprehensible to others*** in order to merit First Amendment protection."[70] (Emphasis Added)

[70] *Thomas v. Review Bd., Ind. Empl. Sec. Div., 450 U.S. 707, 714 (1981)*

V. "IN ANY CASE, PLAINTIFF HAS NOT PLED A VIOLATION OF THE FIRST AMENDMENT."

1. Defendants raised no objection or defense to Notice Pleadings (Doc. Nos. 33 & 34)

2. Plaintiff's Notice Pleadings with the "Religiosity of Facts" 1 to 7. (Doc. No. 45.)

3. See Appendix D addressing why relief is not precluded listed as A through G

VI. CONCLUSION

The Court should not grant Defendants' Motion to Dismiss Re: ECF No. 82 for reasons herein and in Doc. No. 85 and allow Plaintiff to proceed with his First Amendment Case and its controversies.

Respectfully submitted,

Executed this 22rd day of November, 2017

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CERTIFICATE OF SERVICE AND DELIVERY

I hereby certify that the foregoing was filed this 22rd day of November, 2017 and served upon Defendants and its U.S. Attorney, by First class postage prepaid, U.S. Certified mail # 7009-0960-0000-0249-7016 at the following address:

Gregory L. Mokodean Initials _____
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238 Washington, D.C. 20044
Attachments: Appendix A
Appendix B
Appendix C
Appendix D
LIST OF EXHIBITS
Attached hereto and incorporated by reference as if fully set forth herein.