

Appendix B1

Grounds for Fundamental Error, Points and Authorities

(Facts Necessary to Understand Petitions)

or as parts of the record that may be essential to understand the matters set forth in the petition

LAW: *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), is a landmark case by the United States Supreme Court which forms the basis for the exercise of *judicial review* in the United States under Article III of the Constitution. The landmark decision helped define the boundary between the constitutionally and proper balance for the suitable separation of the executive and judicial branches of the American form of government.

FACT: Judicial review is one of the checks and balances in the separation of powers: the power of the judiciary to supervise the legislative and executive branches of government when the latter exceed their authority.

FACT: In contrast to legislative supremacy, the idea of separation of powers was first introduced by Montesquieu;¹ it was later institutionalized in the United States by the Supreme Court ruling in *Marbury v. Madison* under the court of John Marshall. Separation of powers is based on the idea that no branch of government should be able to exert power over any other branch without due process of law; each branch of government should have a check on the powers of the other branches of government, thus creating a regulative balance among all branches of government. The key to this idea is checks and balances. In the United States, judicial review is considered a key check on the powers of the other two branches of government by the judiciary.

FACT: *Strict scrutiny* is the utmost stringent standard of judicial review and to be used by United States courts. It is part of the hierarchy of standards that courts use to determine which is weightier, a constitutional right or principle or the government's interest against observance of the principle. The lesser standards are rational basis review or intermediate scrutiny. These standards are used to test statutes and government action at all levels of government within the United States.

FACT: U.S. courts shall apply the strict scrutiny standard in two contexts: when a fundamental constitutional right is infringed,² 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 or law applies to a "suspect classification," such as race, *religion* or national origin.

FACT: Respondent failed or refused to invoke a strict scrutiny standard or the lesser standards of rational basis review or intermediate scrutiny in this case or with its controversies, thus failing to *faithfully fulfill her official duties*, or sworn oath to uphold the U.S. Constitution and the laws made in pursuant thereof.

¹ Montesquieu, Baron Charles de, *The Spirit of the Laws*

² *Roe v. Wade*, 410 U.S. 113, 155 (1973) Note, *strict scrutiny* is not within the record of this case.

FACT: Respondent failed to conduct a proper judicial review of Petitioner’s case and of its vast array of controversies. The action and inaction are set forth below.

MEMORANDUM AND ORDER (ECF No. 93) Issued December 11, 2017 by Respondent

FACT: Respondent made fundamental errors when she made these statements or decisions:

b. Declaratory Judgment Act

The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides the courts with the authority to enter declaratory judgments in favor of “any interested party,” regardless of whether further relief could be sought, “except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986.”³ This action “pertains to taxes” and was not brought under 26 U.S.C. § 7428. Therefore, the Declaratory Judgment Act does not grant this Court jurisdiction to enter declaratory judgment on the constitutionality of assessing and collecting taxes from Plaintiff. *Ginter*, 815 F. Supp. at 1293; *Davis v. U.S.*, No. 07-3039 CV-SRED, 2007 WL 1847190, at *1 (W.D. Mo. June 25, 2007); *Vaughn v. I.R.S.*, 2013 WL 3898890, at *5; *see also E.J. Friedman Co. v. U.S.*, 6 F.3d 1355, 1358 (9th Cir. 1993). The alleged constitutional nature of Plaintiff’s claims does not affect this conclusion. *Wyo. Trucking Ass’n v. Bentsen*, 82 F.3d 930, 933-34 (10th Cir. 1996).

AND

c. Anti-Injunction Act

The Anti-Injunction Act provides, in relevant part, that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.” 26 U.S.C. § 7421(a). The Anti-Injunction Act was intended to protect “the Government’s need to assess and collect taxes as expeditiously as possible with a minimum of reinforcement judicial interference.” *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). Although the taxpayer cannot bring a pre-enforcement challenge, a taxpayer may raise a dispute after the assessment of taxes in a suit for refund or by petitioning the Tax Court to review a notice of deficiency. *Id.* at 730-31.

The Anti-Injunction Act provides a narrow exception that allows for the courts to enter injunctive relief in a tax suit if two elements are met. *Id.* at 725, 737. First, injunctive relief is only authorized if “it is clear that under no circumstances could the Government ultimately prevail,” based on the information available to the Government at the time of the lawsuit. *Id.* at 737. Second, injunctive relief is only authorized “if equity jurisdiction otherwise exists,” or, in other words, the plaintiff has shown an irreparable injury for which there is no adequate remedy at law. *Id.* at 725, 737; *see also id.* at 744 n. 19, 745 (illustrating the meaning of the requirement that equity jurisdiction exist);

³ Section 7428 of the Internal Revenue Code provides for declaratory judgments relating to 501(c)(3) status.

McGraw, 782 F. Supp. at 1334. If the plaintiff fails to make a showing pursuant to this standard, the court should dismiss the case. *Bob Jones*, 416 U.S. at 737; *see also Porter v. Fox*, 99 F.3d at 274 (granting motion to dismiss where the plaintiff made no allegations his claim “fell within the limited judicial exception” to the Anti-Injunction Act).

The exception to the Anti-Injunction Act does not apply in this case. The Court cannot say that the United States is certain to lose on the merits. Courts have long held that religious beliefs in conflict with the payment of taxes are no basis for challenging the collection of a tax. *See, e.g., U.S. v. Lee*, 455 U.S. 252, 260 (1982). Courts have likewise found the federal tax system constitutional under the Establishment Clause. *See, e.g., Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 394 (1990). Additionally, “[c]ourts are properly hesitant to declare legislative enactments unconstitutional,” meaning a constitutional challenge to the federal tax system is not certain to prevail. *McGraw*, 782 F. Supp. at 1334. Lastly, Plaintiff cannot show irreparable harm because he has an adequate remedy at law. For instance, he may “pay the tax, file a claim for refund with the IRS, and sue for refund” once he has exhausted his administrative remedies, as discussed below. *See McGraw*, 782 F. Supp. at 1334. As a result, the Anti-Injunction Act bars Plaintiff’s claim.

The Lack of Judicial Review Which Mandates the Hierarchy of Standards

LAW: Pub. L. 105–206, title III, §3468, July 22, 1998, 112 Stat. 770

PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS

Pub. L. 105–206, title III, §3468, July 22, 1998, 112 Stat. 770, provided that:

"(a) Prohibition.- No officer or employee of the United States may request a taxpayer to waive the taxpayer's right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

"(b) Exceptions.- Subsection (a) shall not apply in any case where-

- "(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily; or
- "(2) the request by the officer or employee is made in person and the taxpayer's attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer's attorney or other representative."

LAW: IRC under 26 U.S.C. § 7421 The Anti-Injunction Act

U.S. Code > Title 26 > Subtitle F > Chapter 76 > Subchapter B > § 7421

26 U.S. Code § 7421 - Prohibition of suits to restrain assessment or collection

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax

Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be ma

(b) Liability of transferee or fiduciary No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code [1] in respect of any such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 89–719, title I, § 110(c), Nov. 2, 1966, 80 Stat. 1144; Pub. L. 94–455, title XII, § 1204(c)(11), Oct. 4, 1976, 90 Stat. 1699; Pub. L. 95–628, § 9(b)(1), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 97–258, § 3(f)(13), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 105–34, title XII, §§ 1222(b)(1), 1239(e)(3), title XIV, § 1454(b)(2), Aug. 5, 1997, 111 Stat. 1019, 1028, 1057; Pub. L. 105–206, title III, § 3201(e)(3), July 22, 1998, 112 Stat. 740; Pub. L. 105–277, div. J, title IV, § 4002(c)(1), (f), Oct. 21, 1998, 112 Stat. 2681–906, 2681–907; Pub. L. 106–554, § 1(a)(7) [title III, §§ 313(b)(2)(B), 319(24)], Dec. 21, 2000, 114 Stat. 2763, 2763A–642, 2763A–647; Pub. L. 114–74, title XI, § 1101(f)(10), Nov. 2, 2015, 129 Stat. 638.)

[1] So in original. Probably should be followed by a comma.

<https://www.law.cornell.edu/uscode/text/26/7421>

FACT: In this case, 26 U.S.C. § 7421 operates as a *prior restraint* on protected or free speech.

FACT: The above-mentioned law *in this case* serves as, or advances an organized religion of Taxology, or is the endorsement of law respecting an establishment of religion.

FACT: The above-mentioned law *in this case*, as applied to Petitioner, curtails First Amendment rights of the Petitioner, or others that are similarly situated.

FACT: Petitioner’s has pleaded or made a sworn Declaration with the following, mandating the hierarchy of standards of judicial review and Respondent’s vital duty of her Office, to wit:

Plaintiff [believes] and [conscience] dictates Defendants’ activities are using mysticism or religious studies within “[Tax Anti-Injunction Act 26 U.S.C. §7421(a) – the essence of censorship/sacrilege]” *per se* as (“[Prior Restraint]”). [OVC/Petition] ¶ 1528. Also in Doc. No. 69 FOURTH DECLARATION OF TERRY LEE HINDS, page 153 at ¶ 1528.

The Establishment Clause requires that Defendants’ law, conduct and activities alleged *herein*, shall have a secular purpose with prior restraint of speech and expressions of wants.

[OVC/Petition] ¶ 1799 Also in Doc. No. 69 FOURTH DECLARATION OF TERRY LEE HINDS, page 184 at ¶ 1799.

By Defendants' law, conduct and activity alleged *herein*; it is evident Defendants manifests no secular purpose because Defendants' [Tax Anti-Injunction Act 26 U.S.C. §7421(a) – the essence of censorship/sacrilege] *per se* as (“[Prior Restraint]”) transfigures taxpayers as taxprayers and transforms U.S. citizens into customers of THEIRS. [OVC/Petition] ¶ 1800. Also in Doc. No. 69 FOURTH DECLARATION OF TERRY LEE HINDS, page 184 at ¶ 1800.

[THE CODE] has no clear secular purpose but a legislative outcome of [Prior Restraint]. [OVC/Petition] ¶1894. Also in Doc. No. 69 FOURTH DECLARATION OF TERRY LEE HINDS, page 192 at ¶ 180.

By Defendants' law, conduct and activity alleged *herein*; it is evident Defendants' IRS fosters, promotes or advances an excessive government entanglement by indoctrinating, proselytizing or converting taxpayers into taxprayers through [Prior Restraint]. [OVC/Petition] ¶ 2049. Also in Doc. No. 69 FOURTH DECLARATION OF TERRY LEE HINDS, page 215 at ¶ 2049.

Plaintiff [believes] and/or [conscience] dictates that Exhibit J- #7, [Prior Restraint] §7421 – Prohibition of suits to restraint is evidence germane in this [OVC] or of its controversies; more particularly described thus attached hereto and incorporated by reference as if fully set forth herein. [OVC/Petition] ¶ 2341.

Plaintiff [believes] and/or [conscience] dictates that Exhibit J- #7, [Prior Restraint] §7421 – Prohibition of suits to restraint is religiosity of facts and evidence germane in this [OVC/Petition] or of its controversies; more particularly described in Exhibit J- #7 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.Doc. No. 45, [Religiosity of Facts #6] ¶ 12 at page 4.

As a matter of equity Plaintiff refuses to accept Defendants' legal opinions or its policy decisions involving Defendants' [Prior Restraint] for reasons as set forth herein. [OVC/Petition] ¶ 2664. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 25-26 ¶ 2664.

Plaintiff avers his *free exercise right* to petition, evoke or declare [Mankind's Supreme Possessions] is infringed on or inhibited by [Prior Restraint] for reasons as set forth herein. [OVC/Petition] ¶ 2674. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 26 at ¶ 2674.

Plaintiff avers [THE WORDS] is impermissible prior restraint on free speech. [OVC/Petition] ¶ 2814. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 37 at ¶ 2814.

Plaintiff avers [THE WORDS] constitute prior restraints by preventing free speech before it occurs and by obtaining IRS permission before that speech can be repeated. [OVC/Petition] ¶ 2815. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 37 at ¶ 2815.

Defendants' IRS are compelling the Plaintiff to profess, practice or accept [Prior Restraint] as set forth herein existing as an invasion of a legally protected interest. [OVC/Petition] ¶ 2895. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 44 at ¶ 2895.

Plaintiff *personal constitution* dictates [Refunds] [Exemptions] [Tax Credits] [Tax Deductions] and its [MAGI] with [Enumerations] [Prior Restraint] or [Abatements] exist as a **collective experience** manifested as IRS' Indoctrination. [OVC/Petition] ¶2923. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 46 at ¶ 2923.

Defendants' law, conduct and activities listed herein are *indoctrinating, proselytizing or converting taxpayers into taxprayers* through [Prior Restraint]. [OVC/Petition] ¶ 2968. Also in Doc. No. 71 FIFTH DECLARATION OF TERRY LEE HINDS, page 50 at ¶ 2968.

There is no compelling governmental interest sufficient to justify [Prior Restraint] or Defendants' differential treatment of Plaintiff from other similarly situated. [OVC/Petition] ¶ 3893. Also in Doc. No. 73 SIXTH DECLARATION OF TERRY LEE HINDS, page 57 at ¶ 3893.

[Prior Restraint] on its face and as applied, is not narrowly tailored. [OVC/Petition] ¶ 3894. Also in Doc. No. 73, SIXTH DECLARATION OF TERRY LEE HINDS, page 57 at ¶ 3894.

[Prior Restraint] on its face and as applied, is not the least restrictive means to accomplish any permissible government purpose.

See [OVC/Petition] ¶3895. Also in Doc. No. 73, SIXTH DECLARATION OF TERRY LEE HINDS, page 57 at ¶ 3895.

VI. On Plaintiff's SIXTH CLAIM FOR RELIEF (e.) "[Tax Anti-Injunction Act 26 U.S.C. §7421(a) – the essence of censorship /sacrilege]" ("[Prior Restraint]") [OVC/Petition] page 542.

Petitioner avers the following concerning the Declaratory Judgment Act with religious law:

[RFRA] vs. making a [proper return] existing as an invasion of a legally protected interest

In Christianity, many of their vast dominations, sects or associations look forward to or seek the present-day return of their religious deity, providing redemption, aid and hope, especially when viewing present-day world events. However, Defendants' religion and its activities provide redemption or such salvations with taxp[r]ayers making a [proper return] existing as *an invasion of a legally protected interest* of Plaintiff's religious beliefs and practices. Whether making a [proper return] or seeking the benefits and beliefs in the return of who we worship; both entity, are clothed with immense power. Plaintiff [believes] it is a matter of what book, codes, benefits or

“voice” you have faith in or will profit therefrom, knowing “*the worst thing you can do is nothing at all*”. That quote is from an IRS publication and website of the Taxpayer Advocate Service.

It is true, religion compels us all to act on our beliefs. The New Testament of the Holy Bible, revealed The Christ, as the Messiah prophesied in the Old Testament protested religious matters of the Jewish people and of its religious government; while establishing his kingdom on Earth. Anybody who threatening Rome’s ideas of *collecting taxes* or disturbing the peace established by religious leaders or by the secular authority was dealt with, in the harshest ways. Under a Roman Empire, the *separation of religious matters* and *secular law* of Rome was well known; however, served a pagan community, observing a polytheistic religion. **Polytheism** is the worship of or belief in multiple deities usually assembled into a pantheon of gods and goddesses, along with their own religions and rituals, thus ensures that interests in religious freedom are protected. It has been said and witnessed that history repeats itself or less rhymes with the most important current events of that time period. The Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4 (“[RFRA]”) “ensures that interests in religious freedom are protected.” Subsequently, Plaintiff’s *protest activities* under [RFRA] as exercised in [OVC] vs. making a [proper return] existing as *an invasion of a legally protected interest of his religious beliefs and practices*; is now before the voice of this court, with both parties and this Honorable Court clothed with immense power.

FACT: Petitioner’s brief in support, **Doc. No. 2**, as well as in other briefs set forth the *requirements* or *considerations* for *strict scrutiny* or *standards of judicial review*. See pages 7, 8, 9.

LAW: *A fundamental error of legal or judicial error occurred when Respondent ignored, elected, or refused to consider strict scrutiny of judicial review, or the lesser standards of rational basis review or intermediate scrutiny. A basic fact, the Law cannot or should not disregard.*

*See Petitioner’s filings entered into the Court’s Pacer system for germane documents.
See Clerk of Court Office, Eastern District of Missouri stored in paper form for such Exhibits.*