

JURISDICTION

This Court has jurisdiction to issue a Writ of Mandamus and a Writ of Prohibition, or, in the alternative, a Writ of Certiorari or, *all writs necessary or appropriate*, to the district court and U.S. District Judge Fleissig, the Respondent under the All Writs Act, 28 U.S.C. §1651 & Rule 21 of the Federal Rules of Appellate Procedure, Judiciary Act & for the District Court is 28 U.S.C. §1331.

STATEMENT OF RELIEF SOUGHT

A Writ of Mandamus:

Petitioner, respectfully requests this Court grant this petition for a writ of mandamus, to compel the district court to remedy defects of justice and direct Respondent to perform an official and statutory duty which the law clearly and positively requires, however, refused to do so. This Court has succinctly held “*it is always in the public interest to protect constitutional rights*”.¹ Petitioner’s petitions lies in a First Amendment case where there are specific legal rights, but no specific legal remedy for enforcing those rights; when eviscerated by the Real Party in Interest, who invoked surreal power within *Federal Sovereign Immunity Doctrine*. Sequentially, the District Court erred as a matter of law, by usurping the constitutional authority of the Congress, or when issuing an Order that *cannot pass constitutional muster*. Significantly, this *semi-autonomous invisible line* with the word *waiver* = *consent*² are not of a corresponding meaning, nor as a *visibly equivalent in law* to affirm the Real Party in Interest’s argument to precluded jurisdiction or relief. The *ever-shifting sands of legalism* or *to work a manifest injustice* mandates relief sought herein.

The Court’s *Federal Sovereign Immunity Doctrine* prevents, a duty that is imperative, or commanding the performance of a specified official act, legally impossible; or worse to correct a

¹ *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) plaintiff seeking entry of a declaratory judgment finding, and the issuance of a preliminary and permanent injunction, in the matters of free speech of religious belief and of its practice.

² The term *waiver* is used in many legal contexts. *Consent* means either permission or agreement.

prior illegal action.³ Petitioner's writ of mandamus seeks an equitable remedy, because Petitioner is irreparable harm or affected by an official act in contravention of a statutory duty and where a prohibited or unconstitutional Order is made. The district court Judge's duty is imperative and not discretionary, with Petitioner's actions governed by well-settled principles of ***controlling law*** and *germane* U.S Supreme Court doctrines. Petitioner seeks a mandate directing the Respondent, to modify, vacate, set aside or reverse the District Court's "Order of Dismissal" issued on December 11, 2017 (ECF No. 94) and the Order issued in Memorandum and Order (ECF No. 93). Such Orders, whether based upon a clear abuse of discretion and *bias dictum* or of *Federal Sovereign Immunity*, but nevertheless, actions committed to defects of justice, in contravention of an official and statutory duty or as illicit Orders made in favor of ***unbridled power*** cannot pass ***constitutional scrutiny***. see Appendixes A through Z.

A Writ of Prohibition for raison d'etre:

raison d'etre: (the most important reason or purpose for someone or something's existence)

The *raison d'etre* of prohibition is to provide an extemporaneous remedy when the normal legal channels for relief are insufficient. It is submitted that such a spirit of '*relief when it is needed*' should govern the rules concerning the issuance of the writ. Therefore, the Petitioner, respectfully requests that this Court grant this petition for a writ of prohibition, to prevent Respondent from exercising her power in a manner unauthorized by law, whereby, she circumvents her jurisdiction ("principles of law and due process"), and failed to grant relief at the earliest possible moment in the course of litigation. The Petitioner has been irreparably injured. The "judicial act" of violating a constitutional doctrine of separation of powers or the Court's doctrine of the separation of church and state is profound, self-evident and everlasting. This writ of prohibition is for ***raison d'etre:***

³ prior illegal action: matters addressed as Fifth Amend. & First Amend. *clause violations* and the Establishment Clause Challenges, in conjunction with pertinent Court doctrines, tests or case law.

- 1). To prevent the lower court to act outside its jurisdictional powers, or to transgress the limits of powers vested in it, when Petitioner is in real danger of losing his fundamental and substantial rights, thereby, violating the *raison d'être* for the creation of the Constitution of the United States.
- 2). To forbid the contravention of a statutory duty in 26 U.S.C. §7806; or to prohibit a usurper throne *advancing legalism* for illicit Orders; made in favor of ***unbridled power*** by usurping the constitutional authority of the Congress and the lawful and legal rights of Petitioner.
- 3). To shield Petitioner's *protected speech* and expression, being free from [a]ny system of prior restraint of pure speech, conscience, assessment of thought, content based restrictions, or self-censorship, *inter alia*, when embracing a "*spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause*"
- 4). To prevent Petitioner irreparable harm with no adequate remedy by way of appeal for "judicial enforcement of established rights" or for *ultra vires* relief with constitutionally protected interests or essential rights that merits enforcement or protection by the law.
- 5). To prevent a *doctrine* in Dominion Theology, *inter alia* theologies to prevail in favor of a waiver or consent of the purview within *Federal sovereign immunity doctrine* involving a ***dogmatic doctrine*** in defense of ***absolutism*** or to *advance* the "United States" government's religious zeal of *absolutism* in an IRS' creed, or the pious beliefs and devout practices in [Taxology] and Taxism.
- 6). To prevent the advancement or endorsement of law respecting an establishment of religion that invaded Petitioner's *sacred precincts* of mind and soul or constitutionally protected interests.
- 7). To prevent 5th Amend. & First Amend. exercise/establishment clauses to become meaningless, irrelevant or to manifest a ***lack of faith*** in one's life, liberty or pursuit of happiness.

The *raison d'être* for the creation of our Constitution of the United States:

"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."

The Declaration of Independence, July 4, 1776.⁴

⁴ Set forth & defined as *Organic Law* in the Front Matter of the United States Code that formed the foundation of the Constitution of the United States of America; manifesting U.S. government.

One aspect of legal theory underlying the requested writs might be expressed as follows: when all other remedies fail to offer adequate relief, the writ of prohibition should be used as a ground for intervention. Some judicial acts are so excessive, as a matter of law that prohibition lies *as a matter of course*. The Petitioner's case presents constitutional issues and right to restrain by prohibition, however the Court's *medieval doctrine* of Federal sovereign immunity ("the King can do no wrong") is misplaced, and barred *without due process of law* a provision in 5th Amendment.⁵

For the purpose of determining the right to restrain by prohibition, a much broader meaning is given. In such proceedings, lack of jurisdiction may be applied to a case where, although the court has jurisdiction over the subject matter and parties in the fundamental sense, but, it had no "jurisdiction" or power to act except in a particular manner or to give certain kinds of relief or to act without the occurrence of certain procedural requirements. Simply stated, or as in this case, it is possible for a court to commit an act which may be prohibited by a superior court even though the lower court has jurisdiction over the subject matter and the parties. Respondent has refused or ignored her official duty or failed to gain jurisdiction over the Real Party in Interest or court's jurisdiction, as a matter of law, of which is constitutional preserved the by Supremacy Clause of the U.S. Constitution and its Article III powers granted, as well as, an Oath of Office before God.

**OR, IN THE ALTERNATIVE - PURSUANT TO FRAP, RULE 21(c) –
OTHER EXTRAORDINARY WRITS**

A Petition for a Writ of Certiorari:

In the alternative, Petitioner, seeks a vital legal remedy pursuant to FRAP, RULE 21(c) - OTHER EXTRAORDINARY WRITS with appellate relief, lawfully brought within 28 U.S.C. §2106 – Determination, or within the *inherent equitable powers* to issue *Writs*, to correct original

⁵ 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”

judgement upon discovery with clear and prejudicial error of law,⁶ fundamental error⁷ or reversible error.⁸ set forth herein, with Petitioner's ***constitutionally protected liberty and property interests***. This alternative Petition, for a Writ of Certiorari, addresses in essence, this Court power to compel the district Court to issue a ***Writ of Error Coram Nobis*** for correction of the court's errors of fact or "*where the errors were of the most fundamental character -- that is, such as rendered the proceeding itself irregular and invalid*".⁹ Petitioner believes, the Writ of Error Coram Nobis is perfectly suited to the challenges of this case, where the Court's decision-making was subverted by the lawyers for the Real Party in Interest, and that there is no reason why this Court cannot and should not employ these writs to accord Petitioner relief. Because federal courts generally invoke subject-matter jurisdiction over live controversies of federal questions; the fact the Real Party in Interest religiously raised a subject-matter jurisdiction defense of *Federal Sovereign Immunity Doctrine*, with the district court in lock step with the *bias dictum* for a ***fictional waiver*** or using *unbridled power* against Petitioner, the right under 28 U.S. Code §1291 - Final decisions of district courts, becomes legally pointless or moot. It is the equation of jurisdiction which explains the power of government.¹⁰ Here, in distinction, by merits¹¹ the correction of one evil would not justify the creation on another of equal degree.^{6,7,8} A ***writ of certiorari*** is an indicia of judiciary veracity.

⁶ see Appendix A.

⁷ see Appendix B.

⁸ see Appendix C.

⁹ see *U. S. v. Mayer*, 235 U.S. 55, 69 (1914); *United States v. Morgan*, 346 U.S. 502 (1954).

¹⁰ see Appendix D.

¹¹ see Appendixes, E & W.

ISSUES AND QUESTIONS PRESENTED

ORDER OF DISMISSAL (ECF No. 94) & MEMORANDUM AND ORDER (ECF No. 93)

For a Writ of Mandamus:

The issue presented is whether Petitioner is entitled to *injunctive relief and judicial review*¹ as a mandate to the district court, or *other such relief* as this Court deems appropriate; when Judge Fleissig clearly abused her discretion,² by granting a motion in favor of *unbridled power, defects of justice*,³ or for *Federal Sovereign Immunity Doctrine*,⁴ thereby advancing the “United States” government’s *religious zeal, IRS’ creed*,⁵ *beliefs and devout practices* in [Taxology]⁶ and Taxism.⁷

Did the District Court err as a matter of law, by usurping the constitutional authority of the Congress,⁸ or issuing an Order that cannot pass constitutional muster,⁹ or by Respondent failure to raise *judicial review* or *grant legal reliefs sought*,¹⁰ amounting to a judicial usurpation of power¹¹ or clear and prejudicial errors of law & fact; when Respondent failed to faithfully fulfill her official duties,¹² or sworn oath to uphold the U.S. Constitution and the laws made in pursuant thereof?¹³

Answer: **Yes**

¹ for judgment as a matter of law on the merits & *strict scrutiny standards* with U.S.C. §7421(a)
² of a non-discretionary manner of strict scrutiny standards, *see* Appendixes A, B, C, F, *inter alia*.
³ *see* “*Relief from Ultra Vires Governmental Action*”, Marquette Law Review (1959) Appendix G
⁴ A *dogmatic doctrine*, *ultra vires* to U.S. Const., precluded by germane Doctrines & Errors herein.
⁵ IRS religious creed: “*Our core values guide our path to archiving our vision*”. (IRS pub. 3744)
⁶ [Organized Religion of THEIRS] *per se* Taxology is set forth *passim* in this case of controversies.
⁷ Institutionalized Faith in Taxism declared *passim* the lawsuits, not just *per se*, at Compl. at ¶ 305
⁸ authorities: *see* 26 U.S.C. §7806 & 28 U.S.C. §§2201, 2202, 1346, *inter alia*, 5th & 1st Amends.
⁹ *Langford v. United States*, 101 U.S. 341 (1879). **Syllabus #1**, at 343-344, and *see* Addendum.
¹⁰ *strict scrutiny review*, Rule 52 or Rule 57 remedy, injunctive relief for claims or *liberty interests*.
¹¹ grounds for a writ being Defects of Justice as facts listed herein or *unbridled power*, *inter alia*.
¹² public/official nature: *substantive & procedural due process of law & judicial review*, *inter alia*.
¹³ *see* premises & arguments in (Doc. Nos. 43, 80, 81, 85, 92) & Addendum of Law

PETITIONER’S PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT

For a Writ of Prohibition:

The issue presented is whether Respondent abridged¹ Petitioner’s *free exercise of petition speech*² that conveys vital religious beliefs, equitable claims, grievances/enforcement of rights and a *spiritual message*, within a *strict scrutiny standard* forum³ to manifest protection of the law when he receives an injury; while embracing a “*spiritual stake in First Amendment values* sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause”.⁴

Does the First Amendment still protect Petitioner’s *free exercise of pure speech or religious beliefs*⁵ that is unfavorable to Respondent and the Real Party in Interest,⁶ or does the government or its Respondent avowing a doctrine in a *divine right of Kings*⁷ prevail; to advance or endorse law respecting an establishment of religion that invaded Petitioner’s *sacred precincts* of mind and soul?

Answer: “*the King can do no wrong*”⁸ *subjecting* U.S. citizens with Dominion Theology.⁹

¹ Petitioner’s *protected speech* or by regulating the contents of *pure or petition speech* via Court Orders & Memos, as an *invasion of constitutional protected interests* or curtail *essential rights*.

² Protected speech and expression being free from [a]ny system of prior restraint of expression or from unnecessary burdens, content based restrictions, vague rules or self-censorship, *inter alia*.

³ Courthouse with *strict scrutiny* for “the access sought by the speaker”, *see* Appendixes R, W, Y.

⁴ *Data Processing Svc. Orgs. v. Camp*, 397 U.S. 150, 154 (1970) *case/controversy test*-Article III

⁵ *pure speech* of religious beliefs constituted in [OVC/Petition] & “Other Amendments” as notice pleadings filed pursuant to FRCP 15(a)(2) or Declarations, Exhibits and briefs filed by Petitioner.

⁶ *favoring* viewpoint-based discrimination or restrictions on (Doc. Nos. 1, 3, 28, 33, 34, 44, 45.)

⁷ Divine right of Kings, a *dogmatic doctrine* in defense of monarchical absolutism, which asserted that Kings derived their authority from God and could not therefore be held accountable for their actions by any earthly authority such as a parliament, or of a constitutional case of controversies.

⁸ 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 or any claims against the King*.

⁹ IRS’ Dominion Theology endorsed in IRC §7402(a) Jurisdiction of district courts, to issue orders, processes, & judgments *with no legal effect* since Congress declared in IRC §7806(a) Construction of title a waiver of jurisdiction in IRC §7604(c)(1) Cross references *are made for convenience only*

JUDICIAL ENFORCEMENT OF FUNDAMENTAL AND SUBSTANTIAL RIGHTS

For a Writ of Certiorari:

Whether Petitioner is entitled ¹ to sue the Real Party in Interest ² as a necessary party to the suit,³ or *plead and manage one's causes personally* as a “*course of proceeding whatsoever*”⁴ in a suit against the “United States” government under Article III jurisdiction; versus a ***legal fiction*** of a waiver within the purview of sovereign immunity,⁵ effectively leaving no adequate appellate remedy to exists; when Petitioner is in real danger of losing his fundamental and substantial rights.

Did the District Court err as a matter of law, by failing to analyze or apply the ***controlling law*** correctly,⁶ when District Judge Fleissig reaches *a decision so arbitrary & unreasonable* as to amount to a clear and prejudicial error of law;⁷ thus, manifesting irreparable harm with no adequate remedy by way of appeal for “judicial enforcement of established rights”⁸ or *ultra vires relief* with constitutionally protected interests or essential rights that merits enforcement or protection by law?⁹

Answer: **Yes**

¹ ‘*entitled*’ means: entitlement to sue because of the Court’s Doctrine of Standing or the capacity to sue the “United States” government involving issues of constitutional magnitude; because the federal courts at every level viewed this type of complaint/lawsuit/action/equitable claims through the ***prism of due process***, which is the right to fair administration of justice, & *due process of law*.

² *per* 28 U.S.C §2403 Intervention by United States or a State; *constitutional question, inter alia*.

³ necessary party meaning; also as an indispensable party (also called a required party, necessary party, or necessary and indispensable party) is a party in a lawsuit whose participation is required for jurisdiction or the purpose of rendering a judgment. See FRCP, Rule 19 & 28 U.S.C. §2403.

⁴ ‘***petition speech***’ via Judiciary Act of 1789, SEC. 32, 35 & with *requirement of demurrer* upheld.

⁵ improper purposes unrelated to federal/constitutional questions or upholding a privilege of U.S. citizenship, ***due process*** or ***free exercise*** to petition and protest as First Amend. rights, *inter alia*.

⁶ ***controlling law***: *Langford v. United States, Marbury v. Madison*, or listed herein or Addendum

⁷ *see* (ECF Nos. 93, 94.) FRCP, Rule 8(e) CONSTRUING PLEADINGS, Appendixes A-C, F, I, K.

⁸ *see* Addendum of Law

⁹ *see* Appendixes *passim*.

FACTS NECESSARY TO UNDERSTAND PETITIONS

James Madison, writing as "Publius," stated in The Federalist paper, No. 47:

*"The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The **raison d'être** for accountability government.*

This statement of *governmental power* is a fact necessary to understand the petitions presented.

The doctrine and maxim in a *divine right of Kings*, manifesting "*the King can do no wrong*" from which the maxim was drawn; prevails today in favor of a waiver of Federal sovereign immunity, or worse yet, *consent to sue* pertaining to Petitioner's amended complaint and "PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT" for "DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF". In the eyes of the Petitioner, his *supreme possessions* bound by the chains of injustice; are controlled by a *dogmatic doctrine* in defense of *absolutism*. The "United States" government's religious zeal of a *Dominion Theology*, IRS' creed, beliefs and devout practices in [Taxology] and Taxism manifested this result quoted above. This heartfelt burden to exist as a '*subject*' and not as a *citizen*, or worse, be compelled to become a taxp[r]ayer is a fact necessary to understand the petitions presented, and this constitutional issue:

"Plaintiff's [conscience] dictates *free exercise principles* do not cause a man to sacrifice his integrity, his rights, the freedom of his convictions, the honesty of his feelings, or the independence of his thoughts. These are Mankind's supreme possessions. These are not the objects of sacrifice. Plaintiff [believes] the mind is a *sacred place* with the human heart (emotions) being a *sacred space* found within us all. Within these *most sacred precincts of private & domestic life*, religious experiences are created for many people or this Plaintiff." Petitioner's [OVC/Petition] at ¶3 & in Doc. No. 44 [Revelation #1] at ¶¶ 5 & 6. (pleaded facts of these *supreme possessions* are *passim*)

Another *raison d'etre* fact necessary to understand the petitions presented, *passim* in this suit:

"Plaintiff brings this action as a U.S. Citizen, not to define him as an IRS' taxp[r]ayer or as a customer "*dealing*" with the Internal Revenue Service. Plaintiff's [Q.U.E.S.T.] warrants one's *Quintessential Rights* with the prospective relief in a *right to exist as I Am* versus a *personal stake as defined, designed, driven, devalued, degraded, deprived*, or fearful to be *destroyed* by law respecting an establishment of religion in a matrix of religious *dealings*." [OVC/Petition] at ¶36 & in Doc. No. 44 [Revelation #1] page 14 at ¶101, ¶102. (supreme possessions as facts *passim* in this suit & case).

additionally,

Plaintiff's [conscience] dictates: "I am an architect of my [LLP]. I know what is to come by the principle on which it is built. Freedom is the light of all sentient beings with the right to exist as I Am, not as any person." [OVC/Petition] at ¶34 & Doc. No. 44 [Revelation #1] at ¶99.

Petitioner avers, the *existence of my life*, liberty or pursuit of happiness extends far beyond the limitations of me. The Petitioner's sincerely held religious beliefs ([Commanding Heights] are Quintessential Rights of the First Amendment) *and his secular beliefs* ([CLP] & U.S. Supreme Court doctrines, tests & case precedents) manifesting one's *personal constitution* built upon God's Policy of Truth is set against "United States" IRS' dominion theology, *inter alia*. see **Appendix J**

Another fact necessary to understand, these Court Orders (ECF No. 93 & 94) and the Real Party in Interest actions as pleaded; both embraces *ultra vires governmental actions*, under the *dogmatic shield* of a Court doctrine, whereby *sovereign immunity*, in this *case of controversies*, may justly be pronounced as the very definition of tyranny.

For facts necessary to understand the petitions or procedural posture, *see* appendixes, accordingly:

DEFECTS OF JUSTICE

Prevailing Preferences or Perspective versus Primacy of a Righteous Policy:

"By definition, a government has no conscience, sometimes it has a policy, but nothing more" is a fact necessary to understand the petitions presented, and the righteousness of securing free speech and religious liberty, the touchstone of Petitioner's case. The current administration, through the Article II powers of the Executive Branch; recognized certain '*defects of justice*' within Federal practices concerning infringing on religious beliefs or defeating its liberty. To suppress such governmental 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, on October 6, 2017, by U.S. Attorney General

Sessions' 25-page Memorandum and 2-page directive ("[Religious Liberty/Directive]"). This [Religious Liberty/Directive] is germane with Petitioner's speech of self-government and, the legal ambits of Petitioner's case and the issues and questions presented in these petitions. However, the *prevailing perspective* of the lawyers of the IRS' **tax division** for the DOJ have ignored or suppress [Religious Liberty/Directive] in favor of *unbridled power* exercised in (ECF Nos. 51, 52, 59, 67, 82, 83, 84, 86.). [Religious Liberty/Directive] contains no ambiguity of *prevailing* or *controlling* law and preserves a ***compelling governmental interest***, and of the President's declaration that "[i]t shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom." Exec. Order 13798, §1 (May 4, 2017), as well, within this written directive: ***"Litigating Divisions and United States Attorney's Offices*** should also consider, in consultation with the Associate Attorney General, *how best to implement the guidance with respect to arguments already made in pending cases where such arguments may be inconsistent with the guidance.*" (Emphasis added).

Petitioner filed (Doc. Nos. 87, 88, 89, 90) legal notice & seeking leave to file a memorandum of points and authorities in opposition of the "REPLY IN SUPPORT OF UNITED STATES' MOTION TO DISMISS" re: (ECF No. 86). Respondent issued an Order (ECF No. 91) granting the request for leave, whereby Petitioner filed a ***sur-reply brief*** (Doc. No. 92). The argument, premises of law and factual issues were ignored by Respondent or suppressed by the *prevailing perspective* in (ECF Nos. 93, 94) of *bias dictum* or for its *defects of justice*, in favor of *unbridled power*.

Unbridled power of discretion:

The ***arbitrary power*** of not evoking germane Court doctrines and precedents, or discarding strict scrutiny standards of judicial review or to alter the law with absolute impunity. A ***usurping power***, abridging the pure or protected speech of religious beliefs or conscience, favoring viewpoint-based discrimination or viewpoint-based restrictions.

The Act of Subterfuge:

The art of manipulation or achieve one's goals as an act of subterfuge is a *faithless discharge* of one's oath or official duties. In this case, the *color of law* artfully premised by crossing a threshold of restricting protected speech, based on its content, or for defects of justice; as *governmental actors* manifested *artful activities*, executing (ECF Nos. 82, 82-1, 83, 84, 86, 93, 94), *sequentially*.

Intellectualism of Indifference:

“We are in a sense as much responsible for what we do to others with words... as we would be with weapons.” Mankind has created a legal system and attempted to introduce a distinction between “*interpretation*” and “*construction*”, but what if, our understanding of these concepts is defined... only by the *intellectualism of indifference* and not from Mankind’s true creations of “empathy, sacrifice, love... these qualities are not confined to walls of flesh and blood... but are found within the deepest, best parts of man’s soul no matter where that soul resides.”

A Practice of Justification not of Justice:

Such a practice as witnessed in this case, *by granting a motion*, dismissing the **case** (ECF No. 94) **when** the Real Party in Interest, requested the Respondent *only to dismiss “with prejudice all counts and claims for relief in Plaintiff’s amended complaint”* (ECF No. 82). A fact reaffirmed, as *artfully* enlarged by a “[Proposed] ORDER (ECF No. 82-1) whereby “the United States moved to dismiss Plaintiff’s *complaint...*” vs an *amended complaint*. This practice of justification, not of Justice becomes self-evident; when the dismissal of this case operated on *formalities* not as an adjudication, judgement or decision on the merits. The *ever-shifting sands of legalism* is advanced by *clear and prejudicial error of law, fundamental error or reversible error*. These unmerited practices of injustice on the *free exercise* of Petitioner’s pure speech as frivolous or allowed Respondent, to Order “*that all pending motions are DENIED as moot*” (ECF No. 93). *see* (Doc. Nos. 80, 64, 53, 49, 46.). Petitioner was seeking to *exercise the legal right of procedural*

due process within these plead motions, but curtailed by a practice of justification, not of Justice.

Manifesting Second Class Citizenship:

“***National citizenship***” and its status are First Amendment privileges with the full protection of *due process of law*. U.S. citizenship and its legal status offers certain tangible or intangible benefits to its citizens. Under, strict scrutiny the government must prove that the challenged law is both narrowly tailored and the least-restrictive means available to further a compelling governmental interest. Respondent ignoring strict scrutiny standards of judicial review or failing to uphold U.S. Supreme Court precedents in *United States v. Playboy Entm’t Group*, 529 U.S. 803, 813 (2000) and *Sable Communications, Inc. v. FCC*, 492 U.S. 115, 126 (1989) degrades tangible or intangible benefits of citizenship. The Court has no compelling governmental interest of generating ***second-class citizenship*** only to be transformed as one's national citizenship by *a clear abuse of discretion*.

Bias dictum:

A judge's remark or observation on some point of law which is not essential to the case in question, hence not binding as a legal precedent, but advances vital departures from the law, by favoring viewpoint-based discrimination. Simply stated, a judge has full knowledge of the law with no desire to present the legalized will or legal reasoning, that is or was essential to the case in question.

Dichotomous Doctrines of Establishment Law:

The U.S. Supreme Court *Establishment Clause Doctrine* in the Separation of Church and State precludes a waiver, and prevails over the pious preeminence of [Federal Sovereign Immunity Doctrine *aka "the King can do no wrong"*] (“[FSID]”). Both are United States Supreme Court Doctrines and presents a totally dichotomy of *judicial reasoning* and political thought. Petitioner, asserts [FSID] is a ***religious zeal*** of the “United States” government. The Real Party in Interest or its Respondent are avowing a ***medieval doctrine*** in a *divine right of Kings*, premised as religion.

Artfully practiced when protecting matters of *church and state*, as witnessed in this lawsuit; a fact not denied by the Real Party in Interest. The facts, legal premises and law cited in Petitioner's *sur-rely* (Doc. No. 92) was not contested, nor denied by this party, nor addressed by the Respondent in (ECF No. 93). If this Court accepts this *dysfunctional doctrine* [FSID] as opposed to Petitioner's *arguments* of sound judicial reasoning or establishment clause challenges; there is a continuous chain of court precedents that bar the Courts, advancing conflicts with *constitutional restrictions* or failing to *preserve constitutionally protected liberty and property interests*.

This Legal Fiction of a Wavier:

“Believing or assuming something not true is true” or in this case, as a *legal fiction* of a **waiver** for the purview of *sovereign immunity*. This *legal fiction* within a constitutional system of law is [To LIVE as EVIL]. The Petitioner will not live under that yoke, because, it is a manifestation of injustice violating [RFRA] and Mankind's supreme possessions, becoming the *objects of sacrifice*.

Other First Amendment Burdens:

There are too many First Amendment Burdens, *inter alia* to list, manifesting a work of injustice. The further facts necessary for these petitions, are expounded with *legal precision*, with clear and prejudicial error of law and fact as ***a clear abuse of discretion*** in Appendix A, as well, fundamental errors in Appendix B, in addition to *reversible error* in Appendix C, as vital facts set forth herein.

REASONS WHY THE WRITS SHOULD ISSUE

A writ of mandamus/prohibition are extraordinary remedy appropriate only in exceptional circumstances, such as those amounting to a judicial “usurpation of power” or a clear abuse of discretion. *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380 (2004). There are ‘*five nonconclusive guidelines*’ in determining whether to grant mandamus/prohibition relief, *see In re Bieter*, 16 F.3d 929, 932 (8th Cir. 1994).

In deciding whether to issue such writs, this Court considers:

(1). *The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired:*

To seek or make a direct appeal, thereby to attain the relief desired or relief from *ultra vires* governmental actions; first, the Real Party in Interest would have to have a *judicial system* that cannot bypass, Supreme Court precedent, germane court doctrine or strict scrutiny test. Moreover, Federal Judges that would not misapply, misuse or exploit any **Editions** of Fed. R. Civ. P. or RULE 8 and uphold policy & the law.¹² The Real Party in Interest, would has to have officials that obey the U.S Constitution, or the desires to uphold Petitioner's First Amendment rights of religious liberty and protected speech; because *Federal Sovereign Immunity Doctrine precludes any remedy or other adequate means or equity*. In view of the delay that has already occurred, any further postponements or extensions of time will continue to unnecessarily or unjustly burden the *free exercise principles and practices* of the Petitioner's constitutional rights of the First Amendment. The preventative function and ambits of prohibition sought or mandamus requested are discussed or set forth herein, with each of the factors weighs heavily in favor of why the writs should issue.

(2). *The Petitioner will be damaged or prejudiced in a way not correctable on appeal:*

There is *no specific remedy at law* concerning the Petitioner's *free exercise* of First Amendment rights, or Establishment Clause challenges, when granting a motion in favor of *unbridled power* and of bias dictum for *ultra vires* governmental action; *absent of strict scrutiny review*, thereby manifesting irreparable harm with no adequate remedy by way of appeal for "judicial enforcement of established rights" or for any *ultra vires relief* with constitutionally protected interests or essential rights that merits enforcement or protection by the law. *see* Appendixes G, F, I, K, R, Y.

¹² *see* Addendum of Law.

(3). *The district court's order is clearly erroneous as a matter of law:*

1). Petitioner's case was not ripe or meets '*condition present*' for an Order of Dismissal at this stage of litigation or proceedings pursuant to Judiciary Act of 1789, SEC. 32. This Order of Dismissal is the ambits of fundamentals error with its Memorandum and Order, both premature and precluding the merits of the case or excluding evidence which Petitioner was entitled to have admitted, manifesting reversible error. *see* Appendixes A-C.

2). The District court does not apply the correct law; as the controlling law for *sovereign immunity* is in *Langford v. United States* 101 U.S. 341 (1879) the Court held: "***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.***" at 343-344

3). The District court rests its decision on a clearly erroneous finding of a material fact, as in this case, it presents ***mixed questions of law and fact*** involving liberty, law and religion, not administrative remedies or facts of a Bivens claim. Furthermore, a *legal fiction of a waiver* of sovereign immunity invokes a Theology Doctrine of the government. Intensely, Respondent's Orders willingly ignored ***capable-of-repetition doctrine*** or the '***Doctrine of Unconditional Conditions***' as the ***uncontested facts*** of Petitioner's case provides, there would in any event be a real basis for federal jurisdiction of such a suit; it is for violation of the Constitution and he will again be subjected to the alleged illegality. Any wavier in *Federal Sovereign Immunity doctrine*, with ***unknown terms or conditions*** in such a waiver, manifests "exceptional situations," where the Petitioner can make a reasonable showing that he will again be subjected to the alleged illegality or *unconstitutional conditions* of issuing an Order of Dismissal (ECF No. 94).

4). District court rules in an irrational manner, contrary to Article III powers, in part, provides that the "judicial Power" extends to the determination of various "Cases" and "Controversies." District

*court failed to fully address the legal premises and constitutional issues raised in Petitioner's RESPONSE IN OPPOSITION TO Rule 12(b)(1) & 12(b)(6) re82 (Doc. No. 85) or with his **sur-reply of points and authority brief** (Doc. No. 92).*

5). The District court made errors of law, and Respondent abused her discretion by erroneously interpreting a law or by resting its decision on an inaccurate view of the law. *see* Appendixes A, B, C, F, I, K, L, M, P, R, V, W, X, Y.

6). Record contains no evidence to support district court's decision, that this case concerns a Bivens claim or legal reasons for "Exhaustion of Administrative Remedies" or making a claim against IRS agents (no such claims exist). The many cases cited by the Respondent or Real Party in Interest, are not exhibits entered into the record, to confirm their germane use and accuracy of the words rely upon as the law.

(4). The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules: by consistently forsaking or reliably forgetting due process of law and FRCP, Rule 8(e) CONSTRUING PLEADINGS. It is the Respondent, not the Petitioner, who seeks to disregard well-established procedural law. It is the function and not the fiction that is fundamental in attaining the relief. These Orders issued (ECF Nos. 93, 94.) is merely a staged application and function, in support of *defects of justice*, legal fictions or consent for Federal sovereign immunity; effectively leaving no adequate appellate remedy to exists; when Petitioner is in real danger of losing his fundamental and substantial rights. To the extent that Petitioner seeks to attack these Orders, it is only because these Orders disregards the law, not the Court ability to apply an Order in a case. *see* Appendix I.

(5). The district court's order raises new and important problems or issues of law of first impression:

1). See page 7, PETITIONER'S PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT. The Orders abridged protected speech of religious beliefs, petition, *inter alia*.

2) 26 U.S.C. §7421 is within “subtitle F”:

Importantly, the law Respondent was relying on, 26 U.S.C. §7421 (“The Anti-Injunction Act”) which has “*no legal effect*” pursuant to 26 U.S.C. §7806- Construction of title; as “see subtitle F” is “*made only for convenience*” due to its “Cross reference” 26 U.S.C. §5067. “*For general administrative provisions applicable to the assessment, collection, refund, etc., of taxes, see subtitle F.*” See Appendix V, V-1.

3). Another important problem or issue of law of first impression, The Real Party in Interest, set forth in (Doc. No. 92, page 2) as:

“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.”

4). Another first impression and problem concern a landmark case: *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940) “*freedom to believe*” is absolute. Petitioner has a First Amendment *free exercise right of religious beliefs*; thereby [believes] in [Taxology] and Taxism; but conversely has a First Amendment Establishment right not to practice, partake or advance these established organized religions of the Real Party in Interest or the Institutionalized Faith of Taxism.

5). Petitioner's “Original Verified Complaint” included the legal aspects as a **Petition** seeking “IN THIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT” (Doc. No. 1, & *passim in other notice pleadings*) pursuant to the *Ninth Amendment of the U.S. Constitution*. This single new and important problem or issue of law of first impression, commands a legal precedent.

CONTROLLING LAW AND LEGAL STANDARDS

Petitioner avers the following *controlling law and legal standards* to understand said petitions:

1). Federal Sovereign Immunity: *Langford v. United States* 101 U.S. 341, 343-344 (1879) **Syllabus**

#1 re: "***the King can do no wrong***" 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 or any claims against the King. A Dominion Theology, whereby the Divine right of Kings, a ***dogmatic doctrine*** in defense of monarchical absolutism, which asserted that Kings derived their authority from God and could not, therefore, be held accountable for their actions by any earthly authority such as a parliament, or as herein, a constitutional case of controversies of religious liberty and establishment clause challenges. The U.S. Supreme Court has insightfully held for over 200 years:

"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. 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.*** It is not easy to see how the first proposition *can have any place in our system of government.* ***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.**" (Emphasis added)

2). For the *legal fiction in a protocol for a waiver and/or purview of consent* concerning Federal Sovereign Immunity, existing as *articulated law* for the "United States" to sue and be sued being, ***unequivocally expressed***, is pursuant to 28 U.S. Code §1345 - United States as plaintiff and 28 U.S. Code §1346 - United States as defendant, respectively. *See (Doc. No. 92, page 5, Sec. II, subsection A, addressing 28 U.S.C. §1346(a)(2))*: in pertinent part:

"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"

3). Regarding *capable-of-repetition doctrine* or controlling law for questions of mootness and its exceptions of Petitioner's claim or conduct "capable of repetition but evading review," *see* City of Los Angeles v. Lyons, 461 U.S. 95, 109-110 (1983).

4). For *subject matter jurisdiction* in 12(b)(1) & 12(b)6 motion to dismiss *see (Doc. Nos. 85 & 92)*.

- 5). For *controlling law* that declaratory and injunctive relief sought is precluded by statute or law, *see* 26. U.S.C. §7806 or the Court Doctrine in a Separation of Church and State, the Justiciability Doctrines, Judicial Review Doctrine, Prior Restraint Doctrine, or statutes 28 U.S.C. §§2201, 2202 implemented through Rule 57 of the Fed. R. Civ. P. and its Rule 52 or 28 U.S.C §1651 – Writs.
- 6). A federal court has the authority to determine whether it has jurisdiction to hear a particular case. *see United States v. Ruiz*, 536 U.S. 622, 628 (2002) (citing *United States v. Mine Workers of Am.*, 330 U.S. 258, 291 (1947)).
- 7). The ***principles of waiver***, consent, and estoppel do not apply to ***jurisdictional issues***—the actions of the litigants cannot vest a district court with jurisdiction above the limitations provided by the Constitution and Congress.

In *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), the Supreme Court noted that:

Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences directly follow from this. For example, ***no action of the parties*** can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, *California v. LaRue*, 409 U. S. 109 (1972), principles of estoppel do not apply, *Am. Fire & Casualty Co. v. Finn*, 341 U. S. 6, 17-18 (1951), and ***a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings***. (Emphasis added)

Id. at 702. *See also Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006) (jurisdiction upheld).

Writ of Error Coram Nobis:

The *Writ of Error Coram Nobis* is a common law writ that is preserved for the Supreme Court by the All Writs Act, 28 U.S.C. §1651(a) (“The Supreme Court ... may issue all writs necessary or appropriate in aid of ... [its] jurisdiction and agreeable to the usages and principles of law.”). As the Court observed in *United States v. Morgan*, 345 U.S. 502, 507-08 (1954), in directing a lower

federal court to consider issuance of Coram nobis pursuant to §1651(a):

The writ of coram nobis was available at common law to correct errors of fact. It was allowed without limitation of time for facts that affect the “validity and regularity” of the judgment, and was used in both civil and criminal cases.

The *Writ of Error Coram Nobis* has come before this Court infrequently. When it has, however, the Court has uniformly upheld its availability under the All Writs Act to remedy “errors of the most fundamental character.” *Morgan*, 345 U.S. at 512, quoting *United States v. Mayer*, 235 U.S. 55, 68 (1914); *See also Stroude v. The Stafford Justices*, 1 Brock. 162, 23 F. Cas. 236 (C.C.D. Va. 1810) (Marshall, C.J.) (granting Coram Nobis relief).

STATUTORY DUTIES OF JUDICIARY OFFICE

The Judiciary Act of 1789, in SEC. 7 in pertinent part:

"I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as, according to the best of my abilities and understanding, agreeably to the constitution, and laws of the United States. So help me God."

Federal Judiciary Oaths:

In the United States, federal judges are required to take two oaths. 28 U.S.C. §453, Oaths of justices and judges and 5 U.S.C. §3331, Oath of Office.

LEGAL FICTION

The district court used the **2006 Edition** of FRCP, Rule 8 as its legal authority to dismiss the [OVC/Petition] (Doc. No. 1) (ECF No. 8) when the **2016 Edition** of FRCP should prevailed.

What is **LEGAL FICTION**? (Black's Law Dictionary 2nd Ed.)

“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.” See <http://thelawdictionary.org/legal-fiction/>

Certain legal fictions addressed herein.

To withstand the strictures of the free exercise clause:

In interpreting and applying the Free Exercise Clause, the Court has consistently held religious beliefs to be absolutely immune from governmental interference.¹³ But it has used a number of standards to review government action restrictive of religiously motivated conduct, ranging from formal neutrality¹⁴ to clear and present danger of its conduct¹⁵ to strict scrutiny.¹⁶ For cases of intentional governmental discrimination against religion, the Court still employs strict scrutiny¹⁷ But for most other free exercise cases it has now reverted to a standard of formal neutrality. “[T]he right of free exercise,” it has stated, “does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)’”.¹⁸

¹³ *Reynolds v. United States*, 98 U.S. (8 Otto) 145 (1878); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

¹⁴ *Reynolds v. United States*, 98 U.S. (8 Otto) 145 (1879); *Braunfeld v. Brown*, 366 U.S. 599 (1961).

¹⁵ *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

¹⁶ *Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

¹⁷ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

¹⁸ *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990), quoting *United States v. Lee*, 455 U.S. 252, 263, n.3 (1982) (Justice Stevens concurring in the judgment)

Addendum of Law

See Addendum, for controlling law, standard of law or points & authorities used for these petitions.

Addendum of Appendixes

List Attached.

CONCLUSION

For all the foregoing reasons, and based upon the record, Petitioner respectfully request that this Court grant the Petition for Writ of Mandamus and a Writ of Prohibition in its entirety *or, in the alternative*, grant other extraordinary writs as petition herein or as this Court deems *necessary or appropriate* and order that an answer to the Petitions be filed by Respondent.

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Respectfully Submitted,

Date: February 9, 2018

In re: TERRY LEE HINDS, Petitioner,
438 Leicester Square Drive
Ballwin, Missouri 63021
636-675-0028

Attached hereto & incorporated herein by reference Appendixes A through Z, Addendum of Law are documents essential to understand the matters set forth herein.

The above signed hereby certifies that on this 9th day of February, 2018, the above was filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit.