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JUDGMENT OF THE EIGHTH CIRCUIT (FEBRUARY 26, 2018)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

In re: TERRY LEE HINDS,

Petitioner,

No. 18-1299

Appeal from U.S. District Court for the Eastern District of Missouri–St. Louis (4:17-cv-00750-AGF)

Before: WOLLMAN, MURPHY and COLLOTON, Circuit Judges.

Petition for extraordinary writ has been considered by the court and is denied. Mandate shall issue forthwith.

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit.

MANDATE OF THE EIGHTH CIRCUIT (FEBRUARY 26, 2018)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

In re: TERRY LEE HINDS,

Petitioner,

No. 18-1299

Appeal from U.S. District Court for the Eastern District of Missouri–St. Louis (4:17-cv-00750-AGF)

In accordance with the judgment of 02/26/2018, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

Clerk, U.S. Court of Appeals,
Eighth Circuit.

MEMORANDUM AND ORDER OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI (DECEMBER 11, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4:17-CV-00750 AGF

Before: Audrey G. FLEISSIG,
United States District Judge.

This matter is before the Court on the motion to dismiss filed by Defendant, United States. ECF No. 82. Plaintiff filed a response in opposition to the motion, and the United States filed a reply. On November 22, 2017, Plaintiff filed a sur-reply. For the reasons set forth below, the motion to dismiss of the United States will be granted.

BACKGROUND

This case has a lengthy procedural history.[1] On February 16, 2017, Plaintiff filed a 548-page pro se complaint, in which Plaintiff contends that by virtue of the Tax Code, the Government has established an institutionalized faith and religion of taxism. Compl. at ¶ 305. Plaintiff contends that this institutionalized religion has the effect of endorsing, favoring, and promoting organized religions, which Plaintiff believes violates the Establishment and Free Exercise clauses of the Constitution. He seeks declaratory and injunctive relief, including a permanent injunction enjoining the tax code from having any legal effect, as well as nominal damages.

On February 23, 2017, the Court ordered Plaintiff to file an amended complaint in conformity with the requirements of Fed. R. Civ. P. 8 (ECF No. 7), which provides that a pleading must contain a short and plain statement of the grounds for the Court's jurisdiction, a short plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought.[2] The Court again ordered Plaintiff to file an amended complaint on March 10, 2017 (ECF No. 18), April 11, 2017 (ECF No. 29), and May 12, 2017 (ECF No. 36). Plaintiff filed a Petition for Writ of Mandamus and Prohibition challenging the Court's May 12, 2017 Order that Plaintiff file an

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[1] Since filing his lawsuit, Plaintiff has filed 34 "Notices" and "Declarations" with the Court constituting numerous pages and exhibits.

[2] This matter was initially assigned to a magistrate judge, and then to a district judge, before it was reassigned to the undersigned on May 5, 2017. ECF No. 32.

amended complaint. The Eighth Circuit Court of Appeals denied Plaintiff's Petition. ECF No. 47.

On June 14, 2017, Plaintiff filed a "Hybrid Pleading Making a Conscientious Effort to Comply with the Court's Orders Manifesting an Amended Complaint" ("Hybrid Pleading"). ECF No. 44. There, Plaintiff contends that requiring citizens to file an individual tax return establishes a religion centered on the Internal Revenue Service ("IRS"), which has burdened Plaintiff's First Amendment rights to free speech and free exercise of religion. Plaintiff further alleges that the challenged government conduct and activities have no legitimate, compelling interest or clear secular purpose, but have the purpose of endorsing religion with the primary effect of advancing it.

Although Plaintiff's Hybrid Pleading still did not comply with the Court's prior orders, because Plaintiff was proceeding pro se, the Court elected to construe Plaintiff's pleading very liberally and to not require further pleading. Thus, on July 11, 2017, the Court construed Plaintiff's Hybrid Pleading as an amended complaint. ECF No. 55. On July 24, 2017, Plaintiff filed a motion to reconsider the Court's ruling construing the Hybrid Pleading as an amended complaint (ECF No. 56), which the Court denied (ECF No. 66).

On September 11, 2017, the United States filed a motion to dismiss. ECF No. 82. In its motion, the United States argues that sovereign immunity bars Plaintiff's claims, that the declaratory and injunctive relief sought is precluded by statute, and that Plaintiff failed to exhaust administrative remedies. The United States further argues that if the Court finds that it has subject matter jurisdiction over Plaintiff's case,

Plaintiff failed to state a claim for the violation of his right to free exercise of religion.

In his response in opposition and sur-reply, Plaintiff first attempts to re-litigate his complaints with regard to the Court's interpretation of his Hybrid Pleading as an amended complaint. He then contends that this Court has subject matter jurisdiction because the lawsuit seeks declarations of Plaintiff's and the Government's rights with regard to First Amendment challenges and free exercise clause violations. Specifically, Plaintiff challenges the Government's "new priesthood for [the] religious doctrine of legalism." ECF No. 85 at 15. Plaintiff contends that the Government waived sovereign immunity when Congress passed the First Amendment and that the federal courts always have the power to adjudicate issues of federal law. ECF No. 85 at 9, 15. He also contends that the sovereign immunity doctrine is a legal fiction and conflicts with the Constitution. ECF No. 92.

DISCUSSION

a. Sovereign Immunity

"[T]he United States, as sovereign, is immune from suit save as it consents to be sued." *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). Federal courts generally lack jurisdiction to hear claims against the United States because of sovereign immunity. *Barnes v. U.S.*, 448 F.3d 1065, 1066 (8th Cir. 2006). This immunity can be waived, but the waiver must be clear and unmistakable. *U.S. v. Mitchell*, 445 U.S. 535, 538 (1980). Courts narrowly construe such waivers. *U.S. v. Sherwood*, 312 U.S. 584, 587-88 (1941); *see also Ginter v. U.S.*, 815 F. Supp. 1289, 1293 (W.D. Mo.

1993) (such a waiver "must be strictly construed, unequivocally expressed, and cannot be implied").

Here, the Court has not found, nor has Plaintiff pointed the Court to, any case law indicating that the First Amendment is strictly construed to waive sovereign immunity. While the United States has, for instance, waived sovereign immunity for claims in suits for a tax refund, that waiver is conditioned upon the taxpayer first exhausting administrative remedies. *Olson v. Soc. Sec. Admin.*, 243 F.Supp.3d 1037, 1054 (D.N.D. 2017). As discussed more fully below, Plaintiff has not done so here.

Plaintiff argues that 28 U.S.C. § 1331 confers jurisdiction. However, federal courts have consistently held that this statute does not waive sovereign immunity. *See Whittle v. U.S.*, 7 F.3d 1259, 1262 (6th Cir. 1993) ("The federal question jurisdictional statute is not a general waiver of sovereign immunity; it merely establishes a subject matter that is within the competence of federal courts to entertain."); *Toledo v. Jackson*, 485 F.3d 836, 838 (6th Cir. 2007) (holding that § 1331 did not independently waive the government's sovereign immunity and plaintiffs had to go further than merely invoking the general jurisdiction statute).

Plaintiff also claims that the Court has jurisdiction pursuant to 28 U.S.C. § 1367. However, before invoking supplemental jurisdiction under 28 U.S.C. § 1367, Plaintiff must first establish this Court's original jurisdiction over a claim upon which others, not within the Court's original jurisdiction, may be supplemented. Plaintiff has not done so.

Lastly, to the extent Plaintiff challenges the constitutionality of the doctrine of sovereign immunity itself, the doctrine pre-dates the Constitution and has been consistently upheld by the United States Supreme Court. *See, e.g.*, *U.S. v. Thompson*, 98 U.S. 486, 489 (1878); *U.S. v. Lee*, 106 U.S. 196, 204 (1882); *State of Kan. v. U.S.*, 204 U.S. 331, 341 (1907).

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).

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

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); *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.

d. Exhaustion of Administrative Remedies

Congress has created a number of "specific and meaningful remedies for taxpayers" who wish to challenge the assessment and collection of taxes, including challenges grounded in the constitutionality of assessment and collection. *Vennes v. An Unknown No. of Unidentified Agents of U.S.*, 26 F.3d 1448, 1454 (8th Cir. 1994). Taxpayers wishing to challenge the assessment or collection of taxes may bring a suit for refund under 26 U.S.C. § 7422(a). The statute provides that filing a claim for refund with the IRS is a jurisdictional prerequisite that cannot be waived. *Bruno v. U.S.*, 547 F.2d 71, 74 (8th Cir. 1976). Further,

exhaustion is a jurisdictional prerequisite that must be pled. *Bellecourt v. U.S.*, 994 F.2d 427, 430 (8th Cir. 1993). To the extent Plaintiff seeks to bring his cause of action under § 7422, his cause of action is barred for failure to exhaust administrative remedies.

e. *Bivens* claim

The United States Government is the only Defendant named in Plaintiff's Complaint. However, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotations omitted). Therefore, the Court will analyze Plaintiff's claims to the extent they can be construed as making a claim against IRS agents.

A plaintiff may bring a cause of action for damages caused by individual federal official's violations of the plaintiff's constitutional rights. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 396-97 (1971); *Servs. Corp. v. Malesko*, 534 U.S. 61, 72 (2001) (cited by Defendant).[4] If Plaintiff is asserting a *Bivens* cause of action, sovereign immunity is no bar because a *Bivens* claim is not made against the federal government, but rather against an individual official for conduct outside of their official capacities.

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[4] A *Bivens* cause of action is the federal counterpart of a § 1983 claim; 42 U.S.C. § 1983 provides a cause of action against state officials who act outside of their official capacity to violate a person's constitutional rights, and *Bivens* created a like claim as against federal officials. *Vennes*, 26 F.3d at 1452; *Piciulo v. Brown*, 2005 WL 1926688, at *2-3.

See Shah v. Samuels, 121 F.Supp.3d 843, 845 (E.D. Ark. 2015).

However, the courts have long dismissed *Bivens* actions against IRS agents for assessment and collection of taxes. *Vennes*, 26 F.3d at 1454 (collecting cases). Where Congress has provided "adequate remedial mechanisms for constitutional violations," the courts refrain from creating Bivens remedies. *Id.* (quoting *Schweiker v. Chilicky*, 487 U.S. 412, 423 (1988)). Congress has refused to "permit unrestricted damage actions by taxpayers," instead providing specific remedies to challenge the collection and assessment of taxes administratively. *Id.*

To the extent Plaintiff seeks monetary damages relating to the assessment of taxes, his claim is again barred by sovereign immunity because the United States has not waived its sovereign immunity for *Bivens*-type constitutional tort claims alleging damages caused by the government's violation of the plaintiff's constitutional rights. *Phelps v. U.S.*, 15 F.3d 735, 739 (8th Cir. 1994); *Olson v. Soc. Sec. Admin.*, 243 F.Supp.3d 1037, 1053-54 (D.N.D. 2017).

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss of Defendant United States [ECF No. 82] is GRANTED, and the case is dismissed without prejudice.

IT IS FURTHER ORDERED that all pending motions are DENIED as moot. A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 11th day of December, 2017.

/s/ Audrey G. Fleissig
United States District Judge

ORDER OF DISMISSAL OF THE DISTRICT COURT OF MISSOURI (DECEMBER 11, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4:17-CV-00750 AGF

Before: Audrey G. FLEISSIG,
United States District Judge.

Pursuant to the Memorandum and Order issued herein on this day,

IT IS HEREBY ORDERED that this case is DISMISSED without prejudice.

/s/ Audrey G. Fleissig
United States District Judge

Dated this 11th day of December, 2017.

VERIFIED PETITION FOR A WRIT OF MANDAMUS & A WRIT OF PROHIBITION *OR, IN THE ALTERNATIVE*, A VERIFIED PETITION FOR A WRIT OF CERTIORARI PURSUANT TO FRAP, RULE 21(C)-OTHER EXTRAORDINARY WRITS (FEBRUARY 9, 2018)

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

In re: TERRY LEE HINDS,

Petitioner,

v.

THE HONORABLE JUDGE AUDREY G. FLEISSIG
UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,

Respondent.

"UNITED STATES" GOVERNMENT,

Real Party in Interest.

Case. RE: 18-1299

Petitioner, TERRY LEE HINDS, a *pro se* Plaintiff in Civil Action No. 4:17-CV-750 AGF captioned as TERRY LEE HINDS vs. "UNITED STATES" GOVERNMENT, in the United States District Court for the Eastern District of Missouri, hereby applies,

pursuant to the provisions of 28 U.S. Code, § 1651 and Fed. R. App. P., Rule 21 and the Judiciary Act of 1789, SEC. 32, for writs of mandamus and prohibition or, in the alternative, other extraordinary writs to be issued by this Court directing the Honorable Audrey G. Fleissig, Judge of the United States District Court for the Eastern District of Missouri, 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, based upon a clear abuse of discretion and bias dictum or a legal fiction of a waiver in sovereign immunity, but nevertheless; actions committed to defects of justice, in contravention of a statutory duty or as illicit Orders made in favor of unbridled power.

{TOC and TOA Omitted}

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 prior illegal action.[3]

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[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.

[3] prior illegal action: matters addressed as Fifth Amend. & First Amend. clause violations and the Establishment Clause Chal-

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,

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lenges, in conjunction with pertinent Court doctrines, tests or case law.

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*:

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'etre* 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'etre* 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]

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

[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.

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 EXTRA-

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[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"

ORDINARY 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 judgement upon discovery with clear and prejudicial error of law,[6] fundamental error[7] 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,

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6 *see* Appendix A.

7 *see* Appendix B.

8 *see* Appendix C.

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

becomes legally pointless or moot. It is the equation of jurisdiction which explains the power of government.[10] Here, in distinction, by merits[11] the correction of one evil would not justify the creation on another of equal degree. A writ of certiorari is an indicia of judiciary veracity.

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10 *see* Appendix D. 11

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]

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[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

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 power[11] 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

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[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 abridged[1] 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 forum[3] 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]

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[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

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]

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[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.

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[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.0 § 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*.

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

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'etre* for accountability government.

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

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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.

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:

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-reply* (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.[10] 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

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10 *see* Addendum of Law.

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.

(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 US. 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 insightful 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.[11] But it has used a number of standards to review government action restrictive of religiously motivated conduct, ranging from formal neutrality[12] to clear and present danger of its conduct[13] to strict scrutiny.[14] For cases of intentional governmental discrimination against religion, the Court still employs strict scrutiny[15] 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)".[16]

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11 *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).

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

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

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

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

16 *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.

Respectfully Submitted,

/s/ Terry Lee Hinds

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

Date: February 9, 2018

{Certificates and Verifications Omitted}

ORDER OF THE EIGHTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (APRIL 2, 2018)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

In re: TERRY LEE HINDS,

Petitioner,

No. 18-1299

Appeal from U.S. District Court for the Eastern District of Missouri-St. Louis–(4:17-cv-00750-AGF)

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals,
Eighth Circuit.

APPELLANT'S PETITION FOR EN BANC REHEARING OR FOR PANEL REHEARING AND REQUEST TO RECALL MANDATE & ISSUE WRITS *OR, IN THE ALTERNATIVE*, WITH SUGGESTION FOR EN BANC REVIEW AND DISPOSITION (MARCH 8, 2018)

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

TERRY LEE HINDS,

Petitioner-Appellant,

v.

HONORABLE JUDGE AUDREY G. FLEISSIG,

Respondent-Appellee.

"UNITED STATES" GOVERNMENT,

Real Party Interest.

No. 18-1299

On Appeal from an Order of the United States District Court for the Eastern District of Missouri,–Saint Louis Civil Case No. 4:17–cv–750 Hon. Audrey G. Fleissig, United States District Judge
and
On Petition for a Writ of Mandamus and a Writ of Probation App. No.18-1299, Submitted: February 9, 2018-Decided: February 26, 2018

Before: WOLLMAN and COLLOTON Circuit Judges, and MURPHY Senior Judge.

Terry Lee Hinds
Petitioner Pro Se
438 Leicester Square Drive
Ballwin, MO 63021
Tel: (636) 675-0028

{ TOC and TOA omitted }

STANDARD FOR DECISION

Rehearing *en banc* is not favored and ordinarily will not be provided unless one of two conditions are met. First, if the panel's decision conflicts with a decision of the United States Supreme Court, an *en banc* hearing may be necessary to secure or maintain uniformity of the court's decisions. Fed. R. App. P. 35(a)(1). Second, *en banc* rehearing is appropriate when the underlying proceeding involves one or more questions of exceptional importance as *en banc* hearing will afford the full Court an opportunity to deliberate and reach a binding result. Fed. R. App. P. 35(a)(2). Here, both standards are satisfied. A panel rehearing is proper in support of the petition, where the Petitioner believes the panel has overlooked relevant points of law or fact. Fed. R. App. P. 40(a)(2). Here, Petitioner believes the panel has forsaken their sworn oath of office to uphold the U.S. Constitution and the laws made in pursuant thereof.

Fed. R. App. P., Rule 35 *En Banc* Determination

Petitioner/Appellant, Hinds seeks *en banc* reconsideration or an *en banc* hearing for a disposition and

reversal of the panel's [JUDGMENT, MANDATE and the breath of the underlying proceeding], ("[decision]") (attached to Addendum) regarding his:

VERIFIED PETITION FOR A WRIT OF MANDAMUS & A WRIT OF PROHIBITION *or, in the alternative*, A VERIFIED PETITION FOR A WRIT OF CERTIORARI PURSUANT TO FRAP, RULE 21(C)— OTHER EXTRAORDINARY WRITS

This vital *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions with the proceeding involving questions of exceptional importance.

Required Rule 35 Statement

In a decision dated February 26, 2018, the panel (Senior Judge Murphy and Circuit Judges Wollman and Colloton) denied Petitioner/Appellant Hinds' appeal to issue a Writ of Mandamus and 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.

A. The Panel's Underlying Proceeding and Misplaced Decision, Dated February 26, 2018, Raised Question[s] and/or Issues of Exceptional Circumstances or of a General Public Importance and/or Exceptional Importance, in Addition to, the Interests of Justice that Conflicts and/or is Contrary to Court Precedent, to-wit:

First, whether the panel's [decision] curtailed First Amendment rights as it pertains to petition speech and in the pure speech with religious beliefs of Appellant, that is unfavorable to the panel, Respondent & the Real Party in Interest of a public benefit; while exercising their official duties or a sworn oath to uphold the U.S. Constitution and the laws made in pursuant thereof. Did the panel not fathom *Trinity*'s breadth? Second, whether the panel's determination effectively abrogates protected speech or manifests a profound and pervasive chilling effect on pure speech of religious beliefs or creates uncertainty on the legitimate exercise of natural and legal rights or inhibits the sacred rights of conscience; thereby the panel's [decision] renders them meaningless as protected speech or as expressive conduct of the First Amendment. Third, whether the Court *En Banc* should review and grant a rehearing to determine if substantive & procedural due process of law should be considered or was violated, notwithstanding cure the uncertainty in the precedent of strict scrutiny review within the circularly type of forums used in this case, thus resolving conflicts with the Fifth Amendment which guarantees "No person shall be . . . deprived of life, liberty, or property, without due process of law". Did the panel forsake the Supremacy Clause? Fourth, whether the panel's [decision] properly considers Petitioner's appeal of the Respondent's Court Order, when a verified petition for a writ of mandamus and writ of probation or, in the alternative, a verified petition for a writ of certiorari, pursuant to FRAP, Rule 21(c)-other extraordinary writs were sought. Nonetheless, the panel's judgment, devoid the cognitive embodiment of a vital opinion; revealed that evidently only a single petition

for extraordinary writ was considered by the panel. Fifth, whether the panel's [decision] is a lack of enforcement or implementation of the separation of church and state doctrine or other U.S. Supreme Court doctrines that mark a radical shift away from the Court's judgment, for specified woes that prompt a panel to uphold the U.S. Constitution & the laws made in pursuant thereof. Sixth, whether the panel's judgment, choice or mandate not to issue an extraordinary writ(s) to Respondent, or the panel's disposition of the matter serves as a sweeping *sua sponte* decision regarding religious status or the application of the United States Constitution for two hundred million citizens, that mark a radical shift away from the Court's judgment, Judiciary Act and Article III, for specified woes enmeshed or to cultivate fear factor[s] of this panel's [decision] for such purposes as stare decisis. Seventh, whether the panel sidestepped Court precedent, a remedy or the controlling law of *Langford v. United States*, which marks a radical shift away from the Court's judgment or ignored to incorporate the modified standard this Court articulated in *Phelps-Roper*. Did the panel reject or fail to consider a Ninth Amendment protection articulated in Quintessential Rights of the First Amendment with the knowledge "it is always in the public interest to protect constitutional rights"[1] by failing to evoke such principles in the inherent equitable powers of the Court to issue such Writs?

This *en banc* review is needed to secure or maintain uniformity of the Court's decisions, thus to reconcile this Court's authority with Supreme Court

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[1] *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008).

precedent and to address substantive issues of constitutional law that are exceptionally important or to determine if the panel's [decision] to the vital issues presented is suitable for constitutionally protected liberty and property interests of the Petitioner/Appellant.

These seven significant matters and substantive issues deserve the attention of the full court and the case should be reheard *en banc*. *see Western Pac. Ry. Corp. v. Western Pac. Ry. Co.*, 345 U.S. 247, 262-63 (1953).

Fed. R. App. P., Rule 40(a)(2) Contents in a Petition for Panel Rehearing

This petition states with particularity each point of law or fact that the Petitioner believes the panel has overlooked or misapprehended and will be succinctly listed. The panel professed one "Petition for extraordinary writ has been considered . . . ", yet overlook multiple points of law. An impugned Judgment notwithstanding multiple writs requested, within two petitions presented, is one's perspective of the law, not the practice of the law. The panel provided no written opinion, drawing a perspective of the law as a *sua sponte decision*, not a practice in due process of law. The panel's [decision] also conflicts with or is inconsistent with an important role to faithfully discharge "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law".[2]

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[2] agreeable to the usages and principles of law is set forth in sections A. & B. of this petition.

B. Petitioner/Appellant Argues in Support of this Petition, as the Panel did Forsake their Sworn Oath of Office and its Solemn Duty or Important Role to Faithfully Discharge and to Uphold the U.S. Constitution and the Laws made in Pursuant Thereof, being Profound, Self-Evident and Everlasting, to wit:

(1). 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.

(2). The Judiciary Act of 1789, in SEC. 7 and in SEC. 14 and SEC. 32, *inter alia*.

(3). Judiciary and Judicial Procedure 28 U.S. Code § 2106. Determination.

(4). Judiciary and Judicial Procedure 28 U.S. Code § 1651. All Writs Act.

(5). U.S. Supreme Court Doctrines as set forth herein (*See* App.213a-332a).

(6). 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".

(7). The Establishment/Free Exercise Clause of the First Amendment to the United States Constitution.

Petitioner/Appellant further expresses an earnest belief, based upon sound judicial reasoning and a deliberated constitutional sensibility, that the panel's [decision] is contrary to at least the following decisions of the Supreme Court of the United States, and in

conflict with the First Amendment principles or practices most notably in:

1. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803)

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.

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.

2. *United States v. Morgan*, 346 U.S. 502, 503 (1954)

Continuation of litigation, after final judgment and after exhaustion or waiver of any statutory right of review, should be allowed through the extraordinary remedy of *coram nobis* only under circumstances compelling such action to achieve justice. P. 346 U.S. 511.

3. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)

Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.

4. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002)

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.

5. *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002)

"[A]s a general matter, 'the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 65 (1983) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)).

6. *Calif. Motor Transport v. Trucking Unlimited*, 404 U.S. 508, 510-511 (1972)

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.

7. *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973)

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and

property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon. (Emphasis added).

8. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)

It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' *Speiser v. Randall*, 357 U.S. 513, 357 U.S. 526. Such interference with constitutional rights is impermissible.

9. *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 & at Syllabus #3 (1940)

3. Under the constitutional guaranty, freedom of conscience and of religious belief is absolute; although freedom to act in the exercise of religion is subject to regulation for the protection of society. Such regulation, however, in attaining a permissible end, must not unduly infringe the protected freedom. Pp. 310 U.S. 303-304.

The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such

religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute, but, in the nature of things, the Page 310 U.S. 304 second cannot be. Conduct remains subject to regulation for the protection of society. [Footnote 4]

[Footnote 4] *Reynolds v. United States*, 98 U.S. 145; *Davis v. Beason*, 133 U.S. 333.

10. *In Re Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 116 (1872)

This, it is true, was the violation of a political right; but personal rights were deemed equally sacred, and were claimed by the very first Congress of the Colonies, assembled in 1774, as the undoubted inheritance of the people of this country; and the Declaration of Independence, which [83 U.S. 36, 116] was the first political act of the American people in their independent sovereign capacity, lays the foundation of our National existence upon this broad proposition: "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." Here again we have the great threefold division of the rights of freemen, asserted as the rights of man. Rights to life, liberty, and the pursuit of happiness are equivalent to the rights of life, liberty, and property. These are the fundamental rights which can only be taken away by due process of law, and which can only be interfered with, or the enjoyment of which can only be modified, by lawful regulations necessary or proper for the

mutual good of all; and these rights, I contend, belong to the citizens of every free government.

11. *Chisholm v. Georgia*, 2 U.S. 2 Dall. 419 419 (1793)

The part of the Constitution concerning the Judicial Power is as follows, *viz*:

> "Art.3. sect. 2. The Judicial Power shall extend"
>
> "(1) To all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;"
>
> "(2) To all cases affecting Ambassadors, or other public Ministers, and Consuls;"
>
> "(3) To all cases of Admiralty and Maritime Jurisdiction;"
>
> "(4) To controversies to which the Page 2 U.S. 431 United States shall be a party;"
>
> "(5) To controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof and foreign states, citizens or subjects."

12. *Rhode Island v. Massachusetts*, 37 U.S. 12 Pet. 657 657 (1838)

Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit—to adjudicate or exercise any judicial power over them. An objection to jurisdiction on the ground of exemption from the process of the court in which

the suit is brought or the manner in which a defendant is brought into it is waived by appearance and pleading to issue, but when the objection goes to the power of the court over the parties or the subject matter, the defendant need not, for he cannot give the plaintiff a better writ, or bill.

13. *Data Processing Svc. Orgs. v. Camp*, 397 U.S. 150, 154 (1970)

A person or a family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause.

ARGUMENT

I. Reasons Why the Petition Should Be Granted

A. The Panel's [decision] Opposing Binding Precedents of the Supreme Court.

The power of the Courts of Appeals is clear, yet the panel's [decision] passed over vital duties and important arguments and/or the reliefs or remedy sought. The panel, in its very essence, relates to discretionary power, or as a controlling trust or other monopolies of civil power or benefits that such power can produce. Accordingly, *La Buy v. Howes Leather Co., Inc.*, 352 U.S. 249 (1957) is a binding precedent. The All Writs Act, 28 U.S.C. § 1651(a), confers the power of mandamus on federal appellate courts. *Id.* The Court has long reaffirmed that proper judicial administration requires supervisory control of the district courts by the courts of appeals and that in proper circumstances such supervisory authority might

be exercised through extraordinary means.[3] Further, the Court made it clear that the circuit courts have the "naked power"[4] to issue extraordinary writs whenever they could at some future stage of the litigation exercise jurisdiction to review on appeal from a final judgment. In such a situation, as herein, issuance of a writ of mandamus would be "in aid of appellate jurisdiction," and the requirements of the All Writs Act would in that regard be satisfied.[5] Due to word count limitation, other binding precedents are in sec. A & B.

B. The Panel's [decision] is Inconsistent with Mandamus Jurisdiction.

The profound vacuum of the panel's [decision] is a discernable void when no opinion is provided or it is read against the shallow breadth that a "Petition for extraordinary writ has been considered by the court and is denied." The panel's [decision] is not only importantly incorrect, but sows inconsistency in the law. A point of law, 28 U.S. Code § 1651(a), All Writs Act, whereby civil liberty transcends and demands;

> "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

The panel's [decision] substantially undercuts *Cantwell v. Connecticut*, 310 U.S. 296, 303-304, an

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[3] 352 U.S. at 256, 259-60.

[4] *Id.* at 255.

[5] *Id* at 263-64.

en banc decision of the Court and further failed to enforce the Unconditional Condition Doctrine and Separation of Church and State Doctrine. *En banc* review is necessary to prevent *Schneckloth v. Bustamonte*, at 229 from being reduced to an obnoxious thing and to restore the proper scope in a duty of courts, of obviously knowing, "the first duties of government is to afford that protection", as long held by the Court for over 200 years, by *Marbury v. Madison*, 5 U.S. 137, 163.

C. The Panel's Actions Raise Issues of Exceptional Importance, *inter alia*

The panel's misplaced [decision] raised question[s] of exceptional circumstances or of general public and exceptional importance or in the interests of justice, as set forth in section A of this petition. However, it is the Panel's actions of not obtaining the records of Petitioner's case No. 4:17—CV—750, nor providing some assemblance for the doctrines of substantive and procedural due process as an impermissible end that raises vital issues of exceptional importance, *inter alia*. The Panel's actions or inactions have advanced "Rex non potent peccare"—the king can do no wrong—a maxim of law that has come down to us from Roman times. It is a theology doctrine in its most traditional forum. Petitioner believes this feudal doctrine should protect the public purse rather than perpetuating a theology or the current legal notions of sovereign power and incapacity to err. Despite this well-settled principle of law or as a theology doctrine, the Court's medieval doctrine of Federal sovereign immunity ("the King can do no wrong") is misplaced and barred without the due process of law, a provision in the Fifth Amendment, and thereby furnishes no

remedy at law concerning the merits of Petitioner's case. Due to limitations, no additional or further legal argument can be properly presented, with the binding precedent articulated in *Langford v. United States*; "while sovereign powers are delegated to the agencies of government" under a fixed autonomy of, *Yick Wo v. Hopkins*, 118 U.S. 356, 370.

D. The Panel, Respondent & Real Party in Interest Evolving Dominion Theology

Finally, although any extended discussion would exceed what this format allows, the Petitioner notes that the panel disavowed or simply passed over a key argument. The First Amendment establishment clause challenges and the free exercise clause claims in this suit exists without a legal remedy. It is an extraordinary case about religious belief, its liberty and protected speech, *inter alia*, seeking authorized relief for constitutionally protected interests or essential rights that merits enforcement and protection by the law. The Panel, Respondent and Real Party in Interest are evolving a Dominion Theology, that is established, endorsed or advancing as: [IRS] [Creed] [Taxology] [Taxing Trinity] [To LIVE as EVIL] [Purpose-Driven Life] [Worthship] [Theology Forum] [THE WORDS] [THE CODE] [Ministries] [Temple Taxes] [Auditing] [Legalism] [Ceremony] [Collective Experience] [FAITH] [Mammon] [Taxism], *inter alia*. Such matters are within, Lemon civil case 4:17-cv-00750.

SUGGESTION FOR EN BANC REVIEW AND DISPOSITION

It is settled law that the right to petition is fundamental. Our concepts on the legal right to protest, or what shall constitute due process of law, may vary in the realm of time and space or within a specified forum—however minor or insignificant—are subject to a strict scrutiny standard. This suggestion, whether grounded in the Well of Souls or by the Will of God, under *Lemon* and its progeny, such practices need not arise from a place where spirits of the dead can be heard awaiting Judgment Day. Petitioner's prior petition No.17-2199 Submitted: 05/31/2017-Decided: 06/17/2017 for a writ of mandamus and probation was considered by the court and was denied, yet nevertheless, three days outside the 8th Circuit Local Rule 21A:

RULE 21A: PETITIONS FOR WRITS OF MANDAMUS AND PROHIBITION

> Within 14 days after the filing of the petition, or as the court orders, the court must either dismiss the petition or direct that an answer be filed.

Cross-Reference: FRAP 21.

A constitutional challenge may enhance the perceived importance of such disputes. Since Petitioner's case and his petitions involve the exercise of judicial review and raise the potential for conflict between the court and the democratic institutions of government, notwithstanding, the seven significant matters and substantive issues presented deserve the attention of the full court for *en banc* review and disposition.

CONCLUSION

WHEREFORE, for all the foregoing reasons, this petition for a panel rehearing and rehearing *En Banc* should be GRANTED. Petitioner/Appellant respectfully requests that the mandate be recalled and stay pending final resolution of this appeal pursuant to Federal Rule of Appellate Procedure 41. Petitioner believes his case and petition warrants *en banc* review and disposition, and in so doing aptly secures, or maintains uniformity of the Court's decisions thus; ensuring a correct determination of the validity of the exceptionally importance of the First, Fifth and Ninth Amendments to the United States Constitution.

Respectfully submitted,

/s/ Terry Lee Hinds
In re: Terry Lee Hinds, *pro se*
Petitioner/Appellant
438 Leicester Square Drive
Ballwin, Missouri 63021
636-675-0028

Dated: March 8, 2018

CIVIL DOCKET SHEET FOR
CASE NO.: 4:17-CV-00750-AGF
(FEBRUARY 16, 2017)

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

In the Matter of:
TERRY LEE HINDS, *Pro Se*,

Plaintiff,

v.

"UNITED STATES" GOVERNMENT,

Defendant.

Civil Action File Number: 4:17-CV-00750 AGF

Original Verified Complaint for Declaratory Judgment, Injunctive and Other Appropriate Relief in This Petition for Quintessential Rights of the First Amendment

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Assigned to: District Judge Audrey G. Fleissig
Cause: 28:2201 Constitutionality of State Statute(s)
Date Filed: 02/16/2017
Date Terminated: 12/11/2017
Jury Demand: None
Nature of Suit: 950 Constitutional State Statute
Jurisdiction: Federal Question

2/16/2017

1 COMPLAINT against defendant United States Government 3 Summons(es) issued, Jury Demand,, filed by Terry Lee Hinds. (Attachments: #1 Civil Cover Sheet, #2 Original Filing Form, #3 Summons Attorney General, #4 Summons U.S. Attorney, #5 Summons United States Government) (MFG) (Entered: 02/16/2017)

02/16/2017

2 Brief in Support of Plaintiffs Original Verified Complaint for Declaratory Judgement, Injunctive and Other Appropriate Relief in this Petition for Quintessential Rights of the First Amendment re Complaint, by Plaintiff Terry Lee Hinds. (MFG) (Entered: 02/16/2017)

02/16/2017

3 Exhibit List by Plaintiff Terry Lee Hinds. Exhibits to be maintained in Clerk's Office in paper format (Boxes 1-4). (MFG) (Entered: 02/16/2017)

02/16/2017

Case Opening Notification: 3 Summons(es) issued. The summons was hand delivered to Terry Lee Hinds. All parties must file the Notice Regarding Magistrate Judge Jurisdiction Form consenting to or opting out of the Magistrate Judge jurisdiction. Judge Assigned: Honorable John M. Bodenhausen. (MFG) (Entered: 02/16/2017)

02/16/2017

4 Pursuant to Local Rule 2.08, the assigned/ referred magistrate judge is designated and authorized by the court to exercise full authority in this assigned/referred action or matter under 28 U.S.C. Sec. 636 and 18 U.S.C. Sec. 3401. (CSAW) (Entered: 02/16/2017)

02/16/2017

Receipt 4644062753 in the amount of $400.00 for CIVIL FILINGS FEE on behalf of Terry L Hinds (CCAM) (Entered: 02/23/2017)

02/21/2017

5 ENTRY of Appearance for Plaintiff Terry Lee Hinds, appearing pro se. (CAR) (Entered: 02/22/2017)

02/21/2017

6 MOTION to Leave to Amend Summons as to Listing Plaintiff's Name and Address on Summons by Plaintiff Terry Lee Hinds. (CAR) (Entered: 02/22/2017)

02/21/2017

7 MEMORANDUM in Support of Motion re MOTION for Leave to Amend Summons as to Listing Plaintiff Name and Address on Summons filed by Plaintiff Terry Lee Hinds. (CAR) (Entered: 02/22/2017)

02/23/2017

8 MEMORANDUM AND ORDER-IT IS HEREBY ORDERED that Plaintiff shall file an Amended Complaint in conformity with the requirements of Rule 8 no later than March 20, 2017. IT IS FURTHER ORDERED that Plaintiffs Request for Leave to Amend

Summons as to Listing Plaintiffs Name and Address on Summons (ECF No. 6) is DENIED AS MOOT. Signed by Magistrate Judge John M. Bodenhausen on 2/23/17. (KJS) (Entered: 02/23/2017)

02/23/2017

ORDER RECEIPT: (*see* receipt) Docket No: 8. Thu Feb 23 15:23:32 CST 2017 (Shirley, Kelley) (Entered: 02/23/2017)

02/24/2017

9 SUMMONS Returned Executed filed by Terry Lee Hinds. Defendant United States Government served on 2/16/2017, answer due 4/17/2017. (ARL) (Entered: 02/24/2017)

02/24/2017

10 SUMMONS Returned Executed filed by Terry Lee Hinds. (ARL) (Entered: 02/24/2017)

02/24/2017

11 NOTICE to the nature of suit in opposition to civil cover sheet.: by Plaintiff Terry Lee Hinds (LGK) (Entered: 02/28/2017)

03/06/2017

12 MOTION for Extension of Time to File a Response to the Court's Memorandum and Order dated 23rd day of February 2017 (ECF No. 8), by Plaintiff Terry Lee Hinds. (Attachments: #1 Text of Proposed Order) (CAR) (Entered: 03/07/2017)

03/06/2017

13 MEMORANDUM in Support of Motion re 12 MOTION for Extension of Time to File a Response to the Court's Memorandum and

Order dated 23rd day of February 2017 (ECF No. 8), filed by Plaintiff Terry Lee Hinds. (Attachments: #1 First Declaration of Terry Lee Hinds, #2 Exhibit T-9 (Page 1), #3 Exhibit T-9 (Page 2), #4 Exhibit T-9 (Page 3), #5 Exhibit T-9 (Page 4)) (CAR) (Entered: 03/07/2017)

03/07/2017

14 PLAINTIFF'S NOTICE OF OBJECTIONS AND OPPOSITION to the Court's Memorandum and Order dated 23rd day of February 2017 (ECF No. 8), by Plaintiff Terry Lee Hinds. (Attachments: #1 Exhibit U-8, #2 Exhibit T-10) (CAR) (Entered: 03/08/2017)

03/07/2017

15 NOTICE OF JUDICIAL ASSIGNMENT PURSUANT TO LOCAL RULE 2.08 Non-Consent to Exercise of Jurisdiction by a United State Magistrate Judge by Plaintiff Terry Lee Hinds (CAR) (Entered: 03/08/2017)

03/07/2017

16 CJRA ORDER (GJL). Magistrate Judge John M. Bodenhausen termed. Case reassigned to District Judge John A. Ross for all further proceedings. (CAR) (Entered: 03/08/2017)

03/08/2017

ORDER RECEIPT: (*see* receipt) Docket No: 16. Copy mailed to pro se Plaintiff Wed Mar 8 10:35:15 CST 2017 (Ritter, Cheryl) (Entered: 03/08/2017)

03/09/2017

17 ENTRY of Appearance by Gregory Louis Mokodean for Defendant United States Gov-

ernment. (Mokodean, Gregory) (Entered: 03/09/2017)

03/10/2017

18 MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that Plaintiff shall file an amended complaint in conformity with the requirements of Rule 8 no later than Friday, May 19, 2017. Failure to do so may result in dismissal of this action. Signed by District Judge John A. Ross on 3/10/17. (JAB) (Entered: 03/10/2017)

03/10/2017

ORDER RECEIPT: (*see* receipt) Docket No: 18. Mailed to party not set up for electronic notification Fri Mar 10 11:59:28 CST 2017 (Bernsen, John) (Entered: 03/10/2017)

03/13/2017

19 PLAINTIFF'S FIRST REQUEST FOR CONSTITUTIONAL RELIEF AND A MOTION TO CORRECT THE LEGAL STATUS OF THIS CASE DEFACED AS "CIVIL RIGHTS" AND/OR, IN THE ALTERNATIVE, FOR COURT ORDERED SANCTIONS AGAINST PRO SE LAWYERS OF THE OFFICE OF THE CLERIC/COURT WHO VIOLATED PLAINTIFF'S FUNDAMENTAL RIGHTS by Plaintiff Terry Lee Hinds. (Attachments: #1 Memorandum in Support, #2 Exhibit U-9) (KKS) Modified on 3/17/2017 (CLO). (Entered: 03/13/2017)

03/17/2017

20 PLAINTIFF'S SECOND REQUEST FOR CONSTITUTIONAL RELIEF AND A MOTION TO STRIKE ENTRY OF APPEARANCE OF COUNSEL & NOTICE OF APPEARANCE OR, IN THE ALTERNATIVE, MOTION TO SHOW CAUSE WHY SUCH PLEADINGS SHOULD NOT BE STRICKEN by Plaintiff Terry Lee Hinds. (Attachments: #1 Memorandum in Support, #2 Exhibit U-10, #3 Exhibit U-11, #4 Exhibit U-12, #5 Exhibit U-13, #6 Exhibit U-14, #7 Exhibit U-15, #8 Exhibit U-16) Modified filing date on 3/24/2017 (KKS). Modified on 3/28/2017-corrected text of doc #20-1 (JAB). (Entered: 03/20/2017)

03/22/2017

21 SUMMONS Returned Executed filed by Terry Lee Hinds as to Jefferson B. Sessions, Attorney General, on March 14, 2017 (KKS) (Entered: 03/23/2017)

03/24/2017

22 NOTICE OF (Doc. No. #20) was filed on Friday 17th Day of March 2017 and NOT on Monday 20th without the statement of "MCHR Right to Sue Charging Letter" as displayed on Court Docket Sheet being erroneous and NOT germane to Plaintiffs Case by Plaintiff Terry Lee Hinds (KKS) (Entered: 03/24/2017)

03/24/2017

23 SUPPLEMENTAL: NOTICE OF FILING EXHIBIT (U-17) re MOTION to Strike Entry of Appearance by Plaintiff Terry Lee

Hinds. (Attachments: #1 Exhibit U-17) (KKS) (Entered: 03/24/2017)

03/27/2017

24 Plaintiffs NOTICE AND REQUEST For A Hearing Date by Plaintiff Terry Lee Hinds. (Attachments: #1 Third Declaration of Terry Lee Hinds, #2 Notice of Filing Exhibit in Support of Declaration, #3 Exhibit U-18) (JAB) (Entered: 03/27/2017)

03/28/2017

25 SUPPLEMENTAL: Notice of Filing Exhibit in Support of Doc #20 re PLAINTIFF'S SECOND REQUEST FOR CONSTITUTIONAL RELIEF AND A MOTION TO STRIKE ENTRY OF APPEARANCE OF COUNSEL & NOTICE OF APPEARANCE OR, IN THE ALTERNATIVE, MOTION TO SHOW CAUSE WHY SUCH PLEADINGS SHOULD NOT BE STRICKEN by Plaintiff Terry Lee Hinds. (Attachments: #1 Exhibit U-20) (JAB) (Entered: 03/28/2017)

03/28/2017

26 SUPPLEMENTAL: Notice of Filing Exhibit In Support of Doc #22 re NOTICE OF (Doc. No. #20) was filed on Friday 17th Day of March 2017 and NOT on Monday 20th without the statement of "MCHR Right to Sue Charging Letter as displayed on Court Docket Sheet being erroneous and NOT germane to Plaintiffs Case by Plaintiff Terry Lee Hinds. (Attachments: #1 Exhibit U-19) (JAB) (Entered: 03/28/2017)

03/31/2017

27 Second NOTICE of Appearance by Plaintiff Terry Lee Hinds (Attachments: #1 Notice of Filing Exhibit In Support of Second Notice of Appearance, #2 Exhibit U-21, U-22, U-23, U-24, U-25, U-26) (JAB) (Entered: 03/31/2017)

04/10/2017

FIRST NOTICE OF A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THE PLAINTIFF IS ENTITLED TO RELIEF UNDER THE FIRST AMENDMENT re Complaint, by Plaintiff Terry Lee Hinds. (KKS) (Entered: 04/10/2017)

04/11/2017

29 ORDER: IT IS HEREBY ORDERED that Plaintiff shall file an amended complaint in conformity with the requirements of Rule 8 no later than Friday, May 19, 2017. Plaintiff is again cautioned that failure to do so may result in dismissal of this action. Response to Court due by 5/19/2017. Signed by District Judge John A. Ross on 4/11/17. (KKS) (Entered: 04/11/2017)

04/11/2017

ORDER RECEIPT: (*see* receipt) Docket No: 29. Mailed to party not set up for electronic notification. Tue Apr 11 13:56:35 CDT 2017 (Stamm, Katie) (Entered: 04/11/2017)

04/28/2017

(Court only * * * Deadlines terminated. Answer ddl (KKS) (Entered: 04/28/2017)

04/28/2017

30 PLAINTIFF'S NOTICE AND REQUEST FOR A DUE PROCESS HEARING DATE OR, IN THE ALTERNATIVE, AN INSTANT RULING OR DECISION ON CONSTITUTIONAL RELIEF REQUESTED PURSUANT TO MOTIONS AND BRIEFS FILED WITH THE COURT/Doc. Nos. 19 & 20 by Plaintiff Terry Lee Hinds. (KKS) (Entered: 04/28/2017)

05/05/2017

31 ORDER: IT IS HEREBY ORDERED that the Clerk of Court shall reassign the case to another judge. Signed by District Judge John A. Ross on 5/5/17. (JAB) (Entered: 05/05/2017)

05/05/2017

ORDER RECEIPT: (*see* receipt) Docket No: 31. Mailed to party not set up for electronic notification Fri May 5 15:07:25 CDT 2017 (Bernsen, John) (Entered: 05/05/2017)

05/05/2017

32 REASSIGNMENT ORDER (GJL). District Judge John A. Ross no longer assigned to case. Case reassigned to District Judge Audrey G. Fleissig for all further proceedings. (JAB) (Entered: 05/05/2017)

05/05/2017

ORDER RECEIPT: (*see* receipt) Docket No: 32. Mailed to party not set up for electronic notification Fri May 5 16:23:21 CDT 2017 (Bernsen, John) (Entered: 05/05/2017)

05/08/2017

33 FIRST NOTICE OF UNJUST BURDENS ON FREE EXERCISE PRINCIPLES ANDON PLAINTIFF'S CONSTITUTIONAL RIGHTS OF THE FIRST AMENDMENTAND, IN THE ASSESSMENT OF TRUTH FOR Ru1e 8(d)(1) pleading requirement that "each allegation must be simple, concise and direct" by Plaintiff Terry Lee Hinds (Attachments: #1 Second Notice, #2 Third Notice, #3 Fourth Notice, #4 Fifth Notice, #5 Sixth Notice. #6 Seventh Notice) (KCB) (Entered: 05/10/2017)

05/08/2017

34 FIRST NOTICE OF A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THE PLAINTIFF IS ENTITLED TO RELIEF UNDER THE FIRST AMENDMENT AND, IN THE ASSESSMENT OF TRUTH FOR A fact-based pleading and Rule 8 entitlement; giving rise to plausibility of "entitlement to relief' by Plaintiff Terry Lee Hinds (Attachments: #1 Second Notice, #2 Third Notice, #3 Fourth Notice, #4 Fifth Notice, #5 Sixth Notice, #6 Seventh Notice) (KCB) (Entered: 05/10/2017)

05/08/2017

35 PRO SE MOTION: PLAINTIFF'S NOTICE AND REQUEST FOR EXTENSION OF TIME TO BE GIVEN AN OPPORTUNITY TO PROPERLY PRESENT THE MERITS OF HIS ACTION AND/OR, IN THE ALTERNATIVE, to make a conscientious effort to comply with the court's initial review order

by Plaintiff Terry Lee Hinds. (KCB) (Entered: 05/10/2017)

05/12/2017

36 MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that Plaintiffs motion for extension of time [ECF No. 35] is GRANTED in part. IT IS FURTHER ORDERED that Plaintiff must file his amended complaint that complies with Rule 8 of the Federal Rules of Civil Procedure by June 15, 2017. IT IS FURTHER ORDERED that all of Plaintiffs pending motions are DENIED as frivolous, and Plaintiff is advised that the Court will not entertain any similar motions filed by Plaintiff at this time. (Amended/Supplemental Pleadings due by 6/15/2017.) Signed by District Judge Audrey G. Fleissig on May 12, 2017. (BRP) (Entered: 05/12/2017)

05/12/2017

ORDER RECEIPT: (*see* receipt) Docket No: 36. Sent to non-electronic party this date. Fri May 12 16:37:11 CDT 2017 (Porter, Brittany) (Entered: 05/12/2017)

05/19/2017

38 PRO SE MOTION to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff's Free Exercise of Pure Speech of Religious Beliefs and/Or, in the alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b) (6) "any other reason that justifies relief" by Plaintiff Terry Lee Hinds. (BRP) (Entered: 05/23/2017)

05/19/2017

39 MEMORANDUM in Support of Motion re 38 PRO SE MOTION tiled by Plaintiff Terry Lee Hinds. (Attachments: #1 Exhibit Z-1 Memorandum and Order dated February 23, 2017, #2 Exhibit Z-2 Memorandum and Order dated March 10, 2017, #3 Exhibit Z-2 Order dated April 11, 2017, #4 Exhibit Z #4 Index List of Plaintiffs Exhibits, #5 Exhibit Z #5 FRCP, #6 Exhibit Z #6 General Rules of Pleading) (BRP) (Entered: 05/23/2017)

05/23/2017

37 RETURN LETTER from clerk to Terry Lee Hinds (BRP) (Entered: 05/23/2017)

05/23/2017

40 PLAINTIFF'S FIRST NOTICE TO PRESENT THE MERITS OF HIS ACTION AND/OR, IN THE ALTERNATIVE, to make a conscientious effort to comply with the court's initial review order by Plaintiff Terry Lee Hinds. (KCB) (Entered: 05/25/2017)

05/23/2017

41 NOTICE OF FILING EXHIBIT IN SUPPORT OF PLAINTIFF'S FIRST NOTICE TO PRESENT THE MERITS OF HIS ACTION by Plaintiff Terry Lee Hinds. (Exhibits found in the Clerk's Office in paper format.) (KCB) (Entered: 05/25/2017)

05/26/2017

(Court only) * * * Deadlines terminated. (Response to Court Deadline 05/19/2017) (KCB) (Entered: 05/26/2017)

05/26/2017

42 MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that plaintiff must file an amended complaint in compliance with Federal Rules of Procedure 8 and 10 no later than June 15, 2017. IT IS FURTHER ORDERED that Plaintiffs First Notice to Present the Merits of His Action And/Or, in the Alternative to Make A Conscientious Effort to Comply with the Courts Initial Review Order, interpreted as a motion for reconsideration of the Courts Order requiring plaintiff to file an amended complaint, is DENIED. IT IS FURTHER ORDERED that the Clerk shall maintain, in paper format only, the exhibits attached to Plaintiffs First Notice to Present the Merits of His Action And/Or, in the Alternative to Make A Conscientious Effort to Comply with the Courts Initial Review Order. IT IS FURTHER ORDERED that the Clerk of Court will be instructed, by Order of this Court, to continue to return to plaintiff any additional exhibits or notices filed by plaintiff that are not presented in support of an amended complaint or non-frivolous motion in this matter. (Amended/Supplemental Pleadings due by 6/15/2017.) Signed by District Judge Audrey G. Fleissig on 05/26/2017. (KCB) (Entered: 05/26/2017)

05/26/2017

ORDER RECEIPT: (*see* receipt) Docket No: 42. Fri May 26 14:37:27 CDT 2017 (Battle, Kinica) (Entered: 05/26/2017)

06/01/2017

43 Petition for Writ of Mandamus USCA Appeal #: 17-2199(NEB) (Entered: 06/01/2017)

06/14/2017

44 PLAINTIFF'S HYBRID PLEADING #1 MAKING A CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS MANIFESTING AN AMENDED COMPLAINT [Revelation #1] by Plaintiff Terry Lee Hinds. (Attachments: #1 Revelation #2, #2 Revelation #3, #3 Revelation #4, #4 Revelation #5, #5 Revelation #6, #6 Revelation #7) (KCB) (Entered: 06/14/2017)

06/14/2017

45 PLAINTIFF'S CONSCIENTIOUS EFFORT TO COMPLY WITH COURT'S ORDERS TO MANIFEST AN AMENDED COMPLAINT WITHIN A RELIGIOSITY OF FACTS [Religiosity of Facts #1] by Plaintiff Terry Lee Hinds. (Attachments: #1 Religiosity of Facts #2, #2 Religiosity of Facts #3, #3 Religiosity of Facts #4, #4 Religiosity of Facts #5, #5 Religiosity of Facts #6, #6 Religiosity of Facts #7) (KCB) (Entered: 06/14/2017)

06/15/2017

46 PRO SE MOTION: PLAINTIFF'S REQUEST FOR AN EVIDENTIARY HEARING TO PRESENT EXHIBITS/DOCUMENTATION ADVANCING DUE PROCESS AND RESOLVING THIS CASE AND CONTROVERSIES "ON THE MERITS" NOT ON FORMALITIES by Plaintiff Terry Lee Hinds. (KCB) (Entered: 06/15/2017)

06/16/2017

(Court only) * * * Deadlines terminated. (Amended/Supplemental Pleading 06/15/2017) (KCB) (Entered: 06/16/2017)

06/19/2017

47 USCA JUDGMENT as to Petition for Writ of Mandamus . . . The relief sought in Petitioners Verified Petition for Writ of Mandamus and Prohibition or Other Appropriate Relief has been considered by the court and is denied. Mandate shall issue forthwith. (NEB) (Entered: 06/19/2017)

06/19/2017

48 MANDATE of USCA. USCA Appeal #: 17-2199 . . . In accordance with the judgment of 06/17/2017, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter. (NEB) (Entered: 06/19/2017)

06/22/2017

49 MOTION to Continue Civil Action by Plaintiff Terry Lee Hinds. (NEB) (Entered: 06/22/2017)

06/22/2017

50 MEMORANDUM in Support of Motion re MOTION to Continue Civil Action filed by Plaintiff Terry Lee Hinds. (NEB) (Entered: 06/22/2017)

06/29/2017

51 MOTION to Strike Filings or, in the Alternative, for an Extension of Time by Defendant United States Government. (Mokodean, Gregory) (Entered: 06/29/2017)

06/29/2017

52 MEMORANDUM in Support of Motion re MOTION to Strike Filings or, in the Alternative, for an Extension of Time filed by Defendant United States Government. (Mokodean, Gregory) (Entered: 06/29/2017)

07/05/2017

53 NOTICE PLAINTIFF'S NOTICE & OPPOSITION TO DEFENDANTS' REQUEST FOR A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P.-RULE 6(b)(1) OR, IN THE ALTERNATIVE, GRANT LEAVE FOR PLAINTIFF TO FILE A COMPREHENSIVE BRIEF OF LAW & REASONS WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P.-RULE 6(b)(1). (KCB) (Entered: 07/06/2017)

07/05/2017

54 PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE by Plaintiff Terry Lee Hinds (Attachments: #1 MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE, #2 NOTICE OF FILING EXHIBIT IN SUPPORT OF PLAINTIFF'S REQUEST & OPPOSITION TO DEFEND-

ANTS' MOTION TO STRIKE, #3 Exhibit) (KCB) (Entered: 07/06/2017)

07/11/2017

55 MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that Plaintiffs Hybrid Pleading Making a Conscientious Effort to Comply with Courts Orders Manifesting an Amended Complaint (ECF No. 44) is construed as an amended complaint. IT IS FURTHER ORDERED that Defendant United States Governments Motion to Strike Filings or, in the Alternative, for an Extension of time (ECF No. 51) is GRANTED IN PART and DENIED IN PART. Defendant is ordered to file a responsive pleading within sixty (60) days of this Order. IT IS FURTHER ORDERED that Plaintiffs First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiffs Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6) (ECF No. 38) is DENIED as moot. IT IS FURTHER ORDERED that the Clerk of the Court will change the Cause listed on the docket sheet to reflect that the matter is brought pursuant to § 1983. IT IS FINALLY ORDERED that the Clerk of Court will mail a blank civil cover sheet and civil nature of suit code descriptions sheet to Plaintiff. Signed by District Judge Audrey G. Fleissig on 07/11/2017. (Attachments: #1 Attachment) (KCB) (Entered: 07/11/2017)

07/11/2017

ORDER RECEIPT: (*see* receipt) Docket No: 55. Tue Jul 11 13:13:26 CDT 2017 (Battle, Kinica) (Entered: 07/11/2017)

07/24/2017

56 MOTION to Reconsider the Court's Ruling of July 11, 2017 to Correct Clear Errors of Law and Prevent Manifest Injustice Under Rule 59(e), in Conjunction with Obtaining Relief from a Proceeding & Order pursuant to Fed. R. Civ. P. Rule 60(b)(1)(4)(6) Or, in the Alternative, Federal Rule of Civil Procedure Rule 54(a)(b) and Rule 46-Objecting to a Ruling of Order re Memorandum & Order by Plaintiff Terry Lee Hinds. (BRP) (Entered: 07/25/2017)

07/24/2017

57 MEMORANDUM in Support of Motion re MOTION for Reconsideration re Memorandum & Order filed by Plaintiff Terry Lee Hinds. (BRP) (Entered: 07/25/2017)

07/24/2017

58 Notice of Filing Exhibit in Support of Plaintiffs Motion to Reconsider the Court's Ruling of July 11, 2017 & Memorandum of Law and Brief in Support Thereof by Plaintiff Terry Lee Hinds. (Attachments: #1 Exhibits) (BRP) (Entered: 07/26/2017)

07/27/2017

60 PLAINTIFF'S FIRST NOTICE PURSUANT TO JULY 11th, 2017 RULING as to Civil Cover Sheet and Civil Nature of Suit Code

Descriptions Sheet. (KCB) (Entered: 08/01/2017)

07/28/2017

61 PLAINTIFF'S NOTIFICATION TO CLERK OF COURT AS TO ACCEPTING A LIST & ITS ATTACHED EXHIBITS (Doc. No. 58) FOR FILING, YET FAILED TO PROPERLY ENTER INTO THE RECORD OR NEGLECTED TO SUBMIT CERTAIN DOCUMENTS by Plaintiff Terry Lee Hinds (Attachments: #1 Exhibit U-38, #2 Exhibit U-28, #3 Exhibit U-29, #4 Exhibit U-33) (KCB) (Entered: 08/01/2017)

07/31/2017

59 MEMORANDUM in Opposition re MOTION for Reconsideration re Memorandum & Order . . . filed by Defendant United States Government. (Mokodean, Gregory) (Entered: 07/31/2017)

08/04/2017

62 PLAINTIFF'S REPLY AND OPPOSITION TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION (EFC. No. 56) filed by Plaintiff Terry Lee Hinds. (NEB) (Entered: 08/07/2017)

08/04/2017

63 NOTICE OF FILING EXHIBIT IN SUPPORT OF PLAINTIFF'S REPLY AND OPPOSITION (EFC. No. 62) TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION (EFC. No. 56)- EXHIBIT Z-1 (300 pages) Received in paper format; originals will be maintained in

paper format in the Clerk's Office. (NEB) (Entered: 08/07/2017)

08/14/2017

64 MOTION for Leave to Construe and Correct the Record with Stricken Exhibits Originally Listed & Presented as Evidence (Doc. No.3) or, in the Alternative, Motion for Relief from Non dispositive Pretrial Order of Magistrate Judge Bodenhausen's (Doc. No. 8) by Plaintiff Terry Lee Hinds. (BRP) (Entered: 08/15/2017)

08/14/2017

65 MEMORANDUM in Support of Motion re MOTION for Leave to Construe and Correct the Record with Stricken Exhibits Originally Listed & Presented as Evidence (Doc. No.3) or, in the Alternative, Motion for Relief from Non dispositive Pretrial Order of Magistrate Judge Bodenhausen's (Doc. filed by Plaintiff Terry Lee Hinds. (BRP) (Entered: 08/15/2017)

08/18/2017

66 MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that Plaintiffs motion to reconsider (ECF No. 56) is DENIED. IT IS FURTHER ORDERED that, in light of Plaintiffs notice as to the civil cover sheet and civil nature of suit (ECF No. 60), the Clerk of the Court shall assign to this lawsuit a nature of suit code of 950: Constitutional-State Statute, and a cause of action code of 28:2201 Constitutionality of State Statute(s).1 Plaintiff is advised that the Court cannot assign more than one code to any given action. Signed by District Judge

Audrey G. Fleissig on August 18, 2017. (BRP) (Entered: 08/18/2017)

08/18/2017

ORDER RECEIPT: (*see* receipt) Docket No: 66. Sent to non-electronic party this date. Fri Aug 18 12:57:36 CDT 2017 (Porter, Brittany) (Entered: 08/18/2017)

08/21/2017

68 PLAINTIFF'S INITIAL CONSTRUCTIVE NOTICE PERTAINING TO THE COURT'S May 12th, 2017 Ruling & March 10th, 2017 Ruling & February 23rd, 2017 Ruling by Plaintiff Terry Lee Hinds (NEB) (Entered: 08/22/2017)

08/21/2017

69 FOURTH DECLARATION OF TERRY LEE HINDS filed by Plaintiff Terry Lee Hinds. (Attachments: #1 Attachment, #2 Attachment, #3 Attachment, #4 Attachment) (NEB) (Entered: 08/22/2017)

08/22/2017

67 MEMORANDUM in Opposition re MOTION for Leave to Construe and Correct the Record with Stricken Exhibits Originally Listed & Presented as Evidence (Doc. No.3) or, in the Alternative, Motion for Relief from Non dispositive Pretrial Order of Magistrate Judge Bodenhausen's (Doc. filed by Defendant United States Government. (Mokodean, Gregory) (Entered: 08/22/2017)

08/22/2017

70 PLAINTIFF'S SECOND CONSTRUCTIVE NOTICE PERTAINING TO THE COURTS

May 26th, 2017 Ruling & April 1 lth, 2017 Ruling & February 23rd, 2017 Ruling by Plaintiff Terry Lee Hinds (NEB) (Entered: 08/22/2017)

08/22/2017

71 FIFTH DECLARATION OF TERRY LEE HINDS filed by Plaintiff Terry Lee Hinds. (Attachments: #1 Attachment) (NEB) (Entered: 08/22/2017)

08/23/2017

72 PLAINTIFF'S THIRD CONSTRUCTIVE NOTICE PERTAINING TO THE COURT'S July 11th, 2017 Ruling & May 5th, 2017 Ruling & February 23rd, 2017 Ruling by Plaintiff Terry Lee Hinds (KCB) (Entered: 08/23/2017)

08/23/2017

73 SIXTH DECLARATION OF TERRY LEE HINDS filed by Plaintiff Terry Lee Hinds. (KCB) (Entered: 08/23/2017)

08/24/2017

74 PLAINTIFF'S FOURTH CONSTRUCTIVE NOTICE IN OPPOSITION TO U.S. SUPREME COURT PRECEDENTS AS TO FIRST AMENDMENT CHALLENGES VIOLATIONS OR, IN THE ALTERNATIVE, OF PLAINTIFF'S ACTUAL NOTICE HAVING A BASIS IN LAW & FACT by Plaintiff Terry Lee Hinds. (KCB) (Entered: 08/24/2017)

08/24/2017

75 SEVENTH DECLARATION OF TERRY LEE HINDS filed by Plaintiff Terry Lee Hinds. (KCB) (Entered: 08/24/2017)

08/25/2017

76 PLAINTIFF'S LEGITIMATE NOTICE AS TO THIS LAWSUIT CAUSE OF ACTION should be listed or assigned as "28 U.S. Code 28 section 2201-Creation of Remedy and 28 U.S. Code 28 section 2202 . . . by Plaintiff Terry Lee Hinds (NEB) (Entered: 08/25/2017)

08/29/2017

77 REPLY to Response to Motion re MOTION for Leave to Construe and Correct the Record with Stricken Exhibits Originally Listed & Presented as Evidence (Doc. No.3) or, in the Alternative, Motion for Relief from Non dispositive Pretrial Order of Magistrate Judge Bodenhausen's (Doc. filed by Plaintiff Terry Lee Hinds. (NEB) (Entered: 08/29/2017)

08/30/2017

78 PLAINTIFF'S LAWSUIT WITH A LEGITIMATE NOTICE AS TO THE TRUE CIVIL "NATURE OF SUIT" & ITS LEGAL PROCEEDINGS ARE COMMENCED UNDER AN Action Drawing into Question the "Constitutionality of Federal Statutes" . . . by Plaintiff Terry Lee Hinds. (NEB) (Entered: 09/05/2017)

08/31/2017

79 PLAINTIFF'S FIRST NOTICE TO CLERK OF COURT THAT (ECF No. 77) WAS ALTERED, AMENDED OR DEFACED UPON ITS ENTRY INTO PACER'S SYSTEM, AS WELL AS, BEING PRESENTED ON THE COURT'S DOCKET SHEET AS BEING FALSE OR MISLEADING INFORMATION & VIOLATING PLAINTIFF'S LEGAL RIGHTS by Plaintiff Terry Lee Hinds (NEB) (Entered: 09/05/2017)

09/05/2017

80 PLAINTIFF'S NOTICE THAT THE DISTRICT COURT ERRED, AS A MATTER OF LAW & FACT WITH THE DISTRICT JUDGE ABUSING HER DISCRETION IN THE [AUGUST 18TH, 2017 RULING] (ECF No. 66) THEREBY EXHIBITING A WORK OF MANISFESTED INJUSTICE AND PURSUANT TO A RULE 60(b)(1)(4)(6) MOTION, IN CONJUNCTION WITH, PLAINTIFF'S RULE 54(a) HYBRID MOTION TO RECONSIDER VACATING AN ORDER by Plaintiff Terry Lee Hinds. (BRP) (Entered: 09/06/2017)

09/05/2017

81 MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF PLAINTIFF'S NOTICE THAT THE DISTRICT COURT ERRED, AS A MATTER OF LAW & FACT WITH THE DISTRICT JUDGE ABUSING HER DISCRETION IN THE [AUGUST 18TH, 2017 RULING] (ECF No. 66) THEREBY

EXHIBITING A WORK OF MANISFESTED INJUSTICE AND PURSUANT TO A RULE 60(b)(1)(4)(6) MOTION, IN CONJUNCTION WITH, PLAINTIFF'S RULE 54(a) HYBRID MOTION TO RECONSIDER VACATING AN ORDER filed by Plaintiff Terry Lee Hinds. (BRP) (Entered: 09/06/2017)

09/11/2017

82 MOTION to Dismiss for Lack of Jurisdiction, MOTION to Dismiss Case by Defendant United States Government. (Attachments: #1 Text of Proposed Order Proposed Order) (Mokodean, Gregory) (Entered: 09/11/2017)

09/11/2017

83 MEMORANDUM in Support of Motion re MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss Case filed by Defendant United States Government. (Mokodean, Gregory) (Entered: 09/11/2017)

09/13/2017

84 RESPONSE in Opposition re PRO SE MOTION for Reconsideration filed by Defendant United States Government. (Mokodean, Gregory) (Entered: 09/13/2017)

09/21/2017

85 PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THAT PRESENTED MATTERS UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 21(b)1 or with RULE 21(B)(6) & RULE 12(d) advanced as a RULE 56 Motion OR, IN THE ALTERNATIVE, The Court Grant Leave for Plaintiff to File "Other Amendments"

pursuant to Rule 15(a)(2) &/or relief under the Judiciary Act of 1789, SEC. 32 that precludes law not notwithstanding filed by Plaintiff Terry Lee Hinds. (BRP) (Entered: 09/21/2017)

09/28/2017

86 REPLY to Response to Motion re MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss Case filed by Defendant United States Government. (Mokodean, Gregory) (Entered: 09/28/2017)

09/29/2017

87 PLAINTIFF'S REQUEST FOR LEAVE PURSUANT TO LOCAL RULE 7-4.01(C) 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 by Plaintiff Terry Lee Hinds. (NEB) (Entered: 10/03/2017)

09/29/2017

88 NOTICE OF FILING EXHIBITS IN SUPPORT OF A REQUEST FOR LEAVE by Plaintiff Terry Lee Hinds (Attachments: #1 Exhibit D-3, #2 Exhibit U-39, #3 Exhibit U-40) (NEB) Modified on 10/23/2017 (BRP). (Entered: 10/03/2017)

10/23/2017

89 LEGAL NOTICE OF "UNITED STATES" GOVERNMENTAL POLICY ON RELIGIOUS LIBERTY PROTECTIONS UNDER FEDERAL LAW by Plaintiff Terry Lee Hinds (BRP) (Entered: 10/23/2017)

10/23/2017

90 NOTICE OF FILING EXHIBITS IN SUPPORT OF LEGAL NOTICE by Plaintiff Terry Lee Hinds (Attachments: #1 Exhibit V #1 (1 page), #2 Exhibit V #2 (25 pages), #3 Exhibit V #3 (2 pages), #4 Exhibit V #4 (3 Pages)) (BRP) (Entered: 10/23/2017)

10/26/2017

91 ORDER: IT IS HEREBY ORDERED that Plaintiffs motion for leave to file a memorandum of points and authorities in opposition to the Governments reply [ECF No. 87] is GRANTED. Plaintiff shall file his memorandum on or before November 24, 2017. Signed by District Judge Audrey G. Fleissig on 10/26/2017. (KCB) (Entered: 10/26/2017)

10/26/2017

ORDER RECEIPT: (*see* receipt) Docket No: 91. Thu Oct 26 14:19:22 CDT 2017 (Battle, Kinica) (Entered: 10/26/2017)

11/22/2017

92 PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION OF THE "REPLY IN SUPPORT OF UNITED STATES' MOTION TO DISMISS", ECF No. 86 filed by Plaintiff Terry Lee Hinds. (Attachments: #1 Appendix A, #2 Appendix B, #3 Appendix C, #4 Appendix D, #5 Exhibit list) (KXS) Modified docket text on 11/30/2017 (NEP). (Entered: 11/28/2017)

12/11/2017

93 MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that the motion to

dismiss of Defendant United States [ECF No. 82] is GRANTED, and the case is dismissed without prejudice. IT IS FURTHER ORDERED that all pending motions are DENIED as moot. Signed by District Judge Audrey G. Fleissig on 12/11/2017. (KCB) (Entered: 12/11/2017)

12/11/2017

94 ORDER OF DISMISSAL: Pursuant to the Memorandum and Order issued herein on this day, IT IS HEREBY ORDERED that this case is DISMISSED without prejudice. Signed by District Judge Audrey G. Fleissig on 12/11/2017. (KCB) (Entered: 12/11/2017)

12/11/2017

ORDER RECEIPT: (*see* receipt) Docket No: 93, 94. Mon Dec 11 15:02:55 CST 2017 (Battle, Kinica) (Entered: 12/11/2017)

PETITIONER'S ADDENDUM OF LAW (FEBRUARY 9, 2018)

CONTROLLING LAW &/OR LEGAL STANDARDS:

- **Article I, Section 8, Clause 1 of the United States Constitution**

  The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

- **Article VI, Clause 2, Supremacy Clause**

  This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

- **First Amendment of the United States Constitution**

  Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- **Fifth Amendment of United States Constitution**

  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- **Ninth Amendment of the United States Constitution**

  The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- **Thirteenth Amendment of the United States Constitution**

  - **Section 1**

  Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

  - **Section 2**

  Congress shall have power to enforce this article by appropriate legislation.

- **Sixteenth Amendment of the United States Constitution**

  The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

See Petitioner's Exhibits for Controlling Legal Principles in this case.

***Am. Fire & Casualty Co. v. Finn*,**
341 U.S. 6, 17-18 (1951)

The Congress, in the revision, carried out its purpose to abridge the right of removal. Under the former provision, 28 U.S.C. (1946 ed.) § 71, separable controversies authorized removal of the suit. 'Controversy' had long been associated in legal thinking with 'case.' It covered all disputes that might come before federal courts for adjudication. In § 71 the removable 'controversy' was interpreted as any possible separate suit that a litigant might properly bring in a federal court so long as it was wholly between citizens of different states. So, before the revision, when a suit in a state court had such a separate federally cognizable controversy, the entire suit might be removed to the federal court.

A separable controversy is no longer an adequate ground for removal unless it also constitutes a separate and independent claim or cause of action. *Compare Barney v. Latham*, 103 U.S. 205, 212, 26 L.Ed. 514, with the revised § 1441. Congress has authorized removal now under § 1441(c) only when there is a separate and independent claim or cause of action. of

course, 'separate cause of action' restricts removal more than 'separable controversy.' In a suit covering multiple parties or issues based on a single claim, there may be only one cause of action and yet be separable controversies. The addition of the word 'independent' gives emphasis to congressional intention to require more complete disassociation between the federally cognizable proceedings and those cognizable only in state courts before allowing removal.

The effectiveness of the restrictive policy of Congress against removal depends upon the meaning ascribed to 'separate and independent * * * cause of action'. § 1441. Although 'controversy' and 'cause of action' are treated as synonymous by the courts in situations where the present considerations are absent, here it is obvious different concepts are involved. We are not unmindful that the phrase 'cause of action' has many meanings. To accomplish its purpose of limiting and simplifying removal, Congress used the phrase 'cause of action' in an accepted meaning to obtain that result. By interpretation we should not defeat that purpose.

In a suit turning on the meaning of 'cause of action,' this Court announced an accepted description. *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 47 S.Ct. 600, 71 L.Ed. 1069. This Court said, at page 602:

'Upon principle, it is perfectly plain that the respondent suffered but one actionable wrong and was entitled to but one recovery, whether his injury was due to one or the other of several distinct acts of alleged negligence or to a combination of some or all of them. In either view, there would be but a single wrongful invasion of a single primary right of the plaintiff, namely, the right of bodily safety, whether

the acts constituting such invasion were one or many, simple or complex.

'A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show.'

See Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 443, 64 S.Ct. 208, 215. 88 L.Ed. 149. Considering the previous history of 'separable controversy,' the broad meaning of 'cause of action,' and the congressional purpose in the revision resulting in 28 U.S.C. 1441(c), 28 U.S.C.A. § 1441(c), we conclude that where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under § 1441(c).

In making this determination we look to the plaintiff's pleading, which controls. *Pullman Co. v. Jenkins*, 305 U.S. 534, 538, 59 S.Ct. 347, 349, 83 L.Ed. 334.

***Arkansas Ed. Television Comm'n v. Forbes*, 523 U.S. 666, 690 (1998)**

It seems equally clear, however, that the First Amendment will not tolerate arbitrary definitions of the scope of the forum. We have recognized that "[o]nce it has opened a limited forum, . . . the State must respect the lawful boundaries it has itself set." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). It follows, of course, that a State's failure to set any meaningful boundaries at all cannot insulate the State's action from First Amendment challenge. The dispositive issue in this case, then, is not whether AETC created a designated public forum or a nonpublic forum, as the Court

concludes, but whether AETC defined the contours of the debate forum with sufficient specificity to justify the exclusion of a ballot qualified candidate.

AETC asks that we reject Forbes' constitutional claim on the basis of entirely subjective, ad hoc judgments about the dimensions of its forum. The First Amendment demands more, however, when a state government effectively wields the power to eliminate a political candidate from all consideration by the voters. All stations must act as editors, *see ante*, at 673, and when state-owned stations participate in the broadcasting arena, their editorial decisions may impact the constitutional interests of individual speakers. A state-owned broadcaster need not plan, sponsor, and conduct political debates, however. When it chooses to do so, the First Amendment imposes important limitations on its control over access to the debate forum.

AETC's control was comparable to that of a local government official authorized to issue permits to use public facilities for expressive activities. In cases concerning ac-

[. . .]

. . . to operate under the Communications Act"); *see also* Brief for State of California et al. as *Amici Curiae* 4 ("In its role as speaker, rather than mere forum provider, the state actor is not restricted by speaker-inclusive and viewpoint-neutral rules").

Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977)

The principles that, under the First Amendment, an individual should be free to believe as he will, and that, in a free society, one's beliefs

should be shaped by his mind and his conscience, rather than coerced by the State, prohibit appellees from requiring any of the appellants to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public-school teacher. Pp. 232-237.

Our decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. *E.g.*, *Elrod v. Burns*, 427 U.S. 347, 355-357 (plurality opinion); *Cousins v. Wigoda*, 419 U.S. 477, 487; *Kusper v. Pontikes*, 414 U.S. 51, 56-57; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-461.

Equally clear is the proposition that a government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment. *E.g., Elrod v. Burns*, *supra* at 357-360, and cases cited; *Perry v. Sindermann*, 408 U.S. 593; *Keyishian v. Board of Regents*, 385 U.S. 589. The appellants argue that they fall within the protection of these cases because they have been prohibited not from actively associating, but rather from refusing to associate. They specifically argue that they may constitutionally prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative. We have concluded that this argument is a meritorious one.

One of the principles underlying the Court's decision in *Buckley v. Valeo*, 424 U.S. 1, was that contributing to an organization for the purpose of spreading a political message is protected by the

First Amendment. Because "[m]aking a contribution . . . enables like-minded persons to pool their resources in furtherance of common political goals," *Id.*, at 22, the Court reasoned that limitations upon the freedom to contribute "implicate fundamental First Amendment interests," *Id.*, at 23.

The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights. For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that, in a free society, one's beliefs should be shaped by his mind and his conscience, rather than coerced by the State. *See Elrod v. Burns, supra* at 356-357; *Stanley v. Georgia*, 394 U.S. 557, 565; *Cantwell v. Connecticut*, 310 U.S. 296, 303-304. And the freedom of belief is no incidental or secondary aspect of the First Amendment's protections:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 642.

These principles prohibit a State from compelling any individual to affirm his belief in God, *Torcaso v. Watkins*, 367 U.S. 48, or to associate with a political party, *Elrod v. Burns*, *supra*; *see* 427 U.S. at 363-364, n. 17, as a condition of retaining public employment. They are no less applicable to the case at bar, and

they thus prohibit the appellees from requiring any of the appellants to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public school teacher.

***Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006)**

The objection that a federal court lacks subject-matter jurisdiction, *see* Fed. R. Civ. P. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment, Rule 12(h)(3). *See Kontrick v. Ryan*, 540 U.S. 443, 455. By contrast, the objection that a complaint "fail[s] to state a claim upon which relief can be granted," Rule 12(b)(6), endures only up to, not beyond, trial on the merits, Rule 12(h)(2)

***Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974)**

Section 501(a) of the Code exempts from federal income taxes organizations described in 501(c)(3). The latter provision encompasses:

> "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

The clash between the language of the Anti-Injunction Act and the desire of 501(c)(3) organizations to block the Service from withdrawing a ruling letter has been resolved against the organizations in most cases. *E.g.*, [416 U.S. 725, 734] *Crenshaw County Private School Foundation v. Connally*, 474 F.2d 1185 (CA5 1973), *pet. for cert.* pending in No. 73-170; *National Council on the Facts of Over-population v. Caplin*, 224 F. Supp. 313 (DC 1963); *Israelite House of David v. Holden*, 14 F.2d 701 (WD Mich. 1926). But *see McGlotten v. Connally*, 338 F. Supp. 448 (DC 1972) (three-judge court). *Cf. Green v. Connally*, 330 F. Supp. 1150 (DC), *aff'd per curiam sub nom. Coit v. Green*, 404 U.S. 997 (1971).

The Anti-Injunction Act apparently has no recorded legislative history, but its language could scarcely be more explicit—"no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court . . . ." The Court has interpreted the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference, "and to require that the legal right to the disputed sums be determined in a suit for refund." *Enochs v. Williams Packing & Navigation* [416 U.S. 725, 737] *Co.*, *supra*, at 7. *See also*, *e.g.*, *State Railroad Tax Cases*, 92 U.S. 575. 613-614 (1876). *Cf. Cheatham v. United States*, 92 U.S. 85, 88-89 (1876). The Court has also identified "a collateral objective of the Act–protection of the collector from litigation pending a suit for refund." *Williams Packing*, *supra*, at 7-8.

California v. Larue, 409 U.S. 109 (1972)

Our prior cases have held that both motion pictures and theatrical productions are within the protection of the First and Fourteenth Amendments. In *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952), it was held that motion pictures are "included within the free speech and free press guaranty of the First and Fourteenth Amendments," though not "necessarily subject to the precise rules governing any other particular method of expression." *Id.* at 343 U.S. 502-503. In *Schacht v. United States*, 398 U.S. 58, 398 U.S. 63 (1970), the Court said with respect to theatrical productions:

> "An actor, like everyone else in our country, enjoys a constitutional right to freedom of speech, including the right openly to criticize the Government during a dramatic performance."

But as the mode of expression moves from the printed page to the commission of public acts that may themselves violate valid penal statutes, the scope of permissible state regulations significantly increases. States may sometimes proscribe expression that is directed to the accomplishment of an end that the State has declared to be illegal when such expression consists, in part, of "conduct" or "action," *Hughes v. Superior Court*, 339 U.S. 460 (1950); *Giboney v. Empire Storage Co.*, 336 U.S. 490 (1949). In *O'Brien*, *supra*, the Court suggested that the extent to which "conduct" was protected by the First Amendment depended on the presence of a "communicative element," and stated:

> "We cannot accept the view that an apparently limitless variety of conduct can be labeled

> 'speech' whenever the person engaging in the conduct intends thereby to express an idea."

391 U.S. at 391 U.S. 376.

[. . .]

. . . support this proposition, appellants rely primarily on *United States v. O'Brien*, 391 U.S. 367 (1968), which upheld the constitutionality of legislation punishing the destruction or mutilation of Selective Service certificates. *O'Brien* rejected the notion that

> "an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea,"

and held that Government regulation of speech-related conduct is permissible

> "if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

Id. at 391 U.S. 376, 391 U.S. 377.

While I do not quarrel with these principles as stated in the abstract, their application in this case stretches them beyond the breaking point. In *O'Brien*, the Court began its discussion by noting that the statute in question "plainly does not abridge free speech on its face." Indeed, even *O'Brien* himself conceded that, facially, the statute dealt "with conduct

having no connection with speech." *Id.* at 391 U.S. 375. Here, the situation is quite different. A long line of our cases makes clear that motion pictures, unlike draft card burning, are a form of expression entitled to *prima facie* First Amendment protection.

***City of Los Angeles v. Lyons*, 461 U.S. 95, 109-110 (1983)**

2. The federal courts are without jurisdiction to entertain respondent's claim for injunctive relief. *O'Shea v. Littleton*, 414 U.S. 488; *Rizzo v. Goode*, 423 U.S. 362. Pp. 101-113.

(a) To satisfy the "case or controversy" requirement of Art. III, a plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct, and the injury or threat of injury must be "real and immediate," not "conjectural" or "hypothetical."

"Past exposure to illegal conduct . . .

[. . .]

> . . . does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects."

O'Shea, supra, at 414 U.S. 495-496. Pp. 461 U.S. 101-105.

It goes without saying that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Art. III of the Constitution by alleging an actual case or controversy. *Flast v. Cohen*, 392 U.S. 83, 392 U.S. 94-101 (1968); *Jenkins v. McKeithen*, 395 U.S. 411, 395 U.S. 421-425 (1969) (opinion of MARSHALL, J.).

Plaintiffs must demonstrate a "personal stake in the outcome" in order to "assure that concrete adverseness which sharpens the presentation of issues" necessary for the proper resolution of constitutional questions. *Baker v. Carr*, 369 U.S. 186, 369 U.S. 204 (1962). Abstract injury is not enough. The plaintiff must show that he "has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged official conduct, and the injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical." *See, e.g.*, *Golden v. Zwickler*, 394 U.S. 103, 394 U.S. 109-110 (1969); *Public Workers v. Mitchell*, 330 U.S. 75, 330 U.S. 89-91 (1947); *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 312 U.S. 273 (1941); *Massachusetts v. Mellon*, 262 U.S. 447,262 U.S. 488 (1923)

***Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380 (2004)**

(c) Absent overriding concerns such as the need to avoid piecemeal litigation, *see Schlagenhauf v. Holder*, 379 U.S. 104, 111, the Court declines to direct the Court of Appeals to issue mandamus against the District Court. This is not a case where, having considered the issues, the appeals court abused its discretion by failing to issue the writ. Instead, it relied on its mistaken reading of *Nixon* and prematurely terminated its inquiry without even reaching the weighty separation-of-powers objections raised in the case or exercising its discretion to determine whether mandamus is appropriate under the circumstances. Because issuance of the writ is vested in the discretion of the court to which to petition is made, this Court leaves it to the Court of Appeals to address the parties' arguments and other matters bearing on whether

mandamus should issue, bearing in mind the burdens imposed on the Executive Branch in any future proceedings. Special considerations applicable to the President and the Vice President suggest that the lower courts should be sensitive to Government requests for interlocutory appeals to reexamine, *e.g.*, whether the statute embodies the *de facto* membership doctrine. Pp. 20-21.

***Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 154 (1970)**

The "legal interest" test goes to the merits. The question of standing is different. It concerns, apart from the "case" or "controversy" test, the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Thus, the Administrative Procedure Act grants standing to a person "aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702 (1964 ed., Supp. IV). That interest, at times, may reflect "aesthetic, conservational, and recreational," as well as economic, values. *Scenic Hudson Preservation Conf. v. FPC*, 354 F.2d 608, 616; *Office of Communication of United Church of Christ v. FCC*, 123 U.S. App. D.C. 328, 334-340, 359 F.2d 994, 1000-1006. A person or a family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause. *Abington School District v. Schempp*, 374 U.S. 203. We mention these noneconomic values to emphasize that standing may stem from them as well as from the economic injury on which petitioners rely here. Certainly he who is "likely to be financially"

injured, *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 309 U.S. 477, may be a reliable private attorney general to litigate the issues of the public interest in the present case.

***Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992)**

(b) An examination of the county's implementation and authoritative constructions of the ordinance demonstrates the absence of the constitutionally required "narrowly drawn, reasonable and definite standards," *Niemotko v. Maryland*, 340 U.S. 268, 271, to guide the county administrator's hand when he sets a permit fee. The decision how much to charge for police protection or administrative time-or even whether to charge at all-is left to the unbridled discretion of the administrator, who is not required to rely on objective standards or provide any explanation for his decision.

(c) The ordinance is unconstitutionally content based because it requires that the administrator, in order to assess accurately the cost of security for parade participants, must examine the content of the message conveyed, estimate the public response to that content, and judge the number of police necessary to meet that response. *Cox v. New Hampshire*, 312 U.S. 569, distinguished.

Respondent mounts a facial challenge to the Forsyth County ordinance. It is well established that in the area of freedom of expression an overbroad regulation may be subject to facial review and invalidation, even though its application in the case under consideration may be constitutionally unobjectionable. *See, e.g.*, *City Council of Los Angeles*

v. Taxpayers for Vincent, 466 U.S. 789, 798-799, and n.15 (1984); *Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987). This exception from general standing rules is based on an appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court. *See, e.g.*, *New York v. Ferber*, 458 U.S. 747, 772 (1982); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985). Thus, the Court has permitted a party to challenge an ordinance under the overbreadth doctrine in cases where every application creates an impermissible risk of suppression of ideas, such as an ordinance that delegates overly broad discretion to the decisionmaker, *see Thornhill v. Ala-* . . .

Insurance Corp. of Ireland v. Compagnie Des Bauxites de Guinee, 456 U.S. 694 (1982)

In *McDonald v. Mabee*, 243 U.S. 90 (1917), another case involving an alleged lack of personal jurisdiction, Justice Holmes wrote for the Court, "great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact." *Id.* at 243 U.S. 91. Petitioners' basic submission is that to apply Rule 37(b)(2) to jurisdictional facts is to allow fiction to get the better of fact, and that it is impermissible to use a fiction to establish judicial power where, as a matter of fact, it does not exist. In our view, this represents a fundamental misunderstanding of the nature of personal jurisdiction.

The validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties. *Stoll v. Gottlieb*, 305 U.S. 165, 305 U.S. 171-172 (1938); *Thompson v. Whitman*, 18 *Wall.* 457, 85 U.S. 465 (1874). The con-

cepts of subject matter and personal jurisdiction, however, serve different purposes, and these different purposes affect the legal character of the two requirements. Petitioners fail to recognize the distinction between the two concepts—speaking instead in general terms of "jurisdiction"—although their argument's strength comes from conceiving of jurisdiction only as subject matter jurisdiction.

Federal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend are delineated in Art. III, § 2, cl. 1. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. Again, this reflects the constitutional source of federal judicial power: apart from this Court, that power only exists "in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1

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, *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 341 U.S. 17-18 (1951), and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject matter jurisdiction on its own motion.

> "[T]he rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record."

Mansfield, C. & L. M R. Co. v. Swan, 111 U.S. 379, 111 U.S. 382 (1884).

None of this is true with respect to personal jurisdiction. The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause: the personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that "the maintenance of the suit . . . not offend traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 326 U.S. 316 (1945), *quoting Milliken v. Meyer*, 311 U.S. 457, 311 U.S. 463 (1940).

Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived. In *McDonald v. Mabee*, *supra*, the Court indicated that, regardless of the power of the State to serve process, an individual may submit to the jurisdiction of the court by appearance. A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court. In *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 375

U.S. 316 (1964), we stated that "parties to a contract may agree in advance to submit to the jurisdiction of a given court," and, in *Petrowski v. Hawkeye-Security Co.*, 350 U.S. 495 (1956), the Court upheld the personal jurisdiction of a District Court on the basis of a stipulation entered into by the defendant. In addition, lower federal courts have found such consent implicit in agreements to arbitrate. *See Victory Transport Inc. v. Comisaria General de Abastecimientos y Transportes*, 336 F.2d 354 (CA2 1964); 2 J. Moore & J. Lucas, Moore's Federal Practice 4.02[3], n. 22 (1982), and cases listed there. Furthermore, the Court has upheld state procedures which find constructive consent to the personal jurisdiction of the state court in the voluntary use of certain state procedures. *See Adam v. Saenger*, 303 U.S. 59, 303 U.S. 67-68 (1938) ("There is nothing in the Fourteenth Amendment to prevent a state from adopting a procedure by which a judgment *in personam* may be rendered in a cross-action against a plaintiff in its courts. . . . It is the price which the state may exact as the condition of opening its courts to the plaintiff"); *Chicago Life Ins. Co. v. Cherry*, 244 U.S. 25, 244 U.S. 29-30 (1917) ("[W]hat acts of the defendant shall be deemed a submission to [a court's] power is a matter upon which States may differ"). Finally, unlike subject matter jurisdiction, which even an appellate court may review *sua sponte*, under Rule 12(h), Federal Rules of Civil Procedure, "[a] defense of lack of jurisdiction over the person . . . is waived" if not timely raised in the answer or a responsive pleading.

International Soc. for krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 678 (1992)

Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 629 (1980)); *Riley v. National Federation of Blind of N. c., Inc.*, 487 U.S. 781, 788-789 (1988). But it is also well settled that the government need not permit all forms of speech on property that it owns and controls. *Postal Service v. Council of Greenburgh Civic Assns.*, 453 U.S. 114, 129 (1981); *Greer v. Spock*, 424 U.S. 828 (1976). Where the government is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject. *Kokinda, supra*, at 725 (plurality opinion) (*citing Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886, 896 (1961)). Thus, we have upheld a ban on political advertisements in city-operated transit vehicles, *Lehman v. Shaker Heights*, 418 U.S. 298 (1974), even though the city permitted other types of advertising on those vehicles. Similarly, we have permitted a school district to limit access to an internal mail system used to communicate with teachers employed by the district. *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37 (1983).

These cases reflect, either implicitly or explicitly, a "forum based" approach for assessing restrictions that the government seeks to place on the use of its property. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 800 (1985). Under this approach, regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such

regulations survive only if they are narrowly drawn to achieve a compelling state interest. *Perry*, 460 U.S., at 45. The second category of public property is the designated public forum, whether of a limited or unlimited character property that the State has opened for expressive activity by part or all of the public. *Ibid*. Regulation of such property is subject to the same limitations as that governing a traditional public forum. *Id.*, at 46. Finally, there is all remaining public property. Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view. *Ibid*.

Johnson v. New York, N.H., & H.R. Co., 344 U.S. 48, 51 (1952)

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE JACKSON, MR. JUSTICE BURTON and MR. JUSTICE MINTON join, dissenting.

If the Court's opinion in this case merely disposed of a particular litigation by finding error in a decision of the Court of Appeals that a judgment be entered for the defendant in a negligence suit, an expression of dissent, let alone a dissenting opinion, would not be justified. If that were all there were to it, neither would the Court have been justified in granting the petition for certiorari. The same considerations which made the case one of general importance for review here make it appropriate to spell out the grounds of dissent.

Not the least important business of this Court is to guide the lower courts and the Bar in the effective and economical conduct of litigation. That is what is involved in this case. The immediate issue is the construction of one of the important Rules of Civil Procedure. That construction in turn depends upon our basic attitude toward those Rules-whether we take their force to lie in their very words, treating them as talismanic formulas, or whether we believe they are to be applied as rational instruments for doing justice between man and man in cases coming before the federal courts.

Jimmy Swaggart Ministries v. Bd. of Equalization of Cal., 493 U.S. 378, 394 (1990)

1. California's imposition of sales and use tax liability on appellant's sales of religious materials does not contravene the Religion Clauses of the First Amendment. Pp. 493 U.S. 384-397.

(a) The collection and payment of the tax imposes no constitutionally significant burden on appellant's religious practices or beliefs under the Free Exercise Clause, which accordingly does not require the State to grant appellant a tax exemption. Appellant misreads *Murdock v. Pennsylvania*, 319 U.S. 105, and *Follett v. McCormick*, 321 U.S. 573, which, although holding flat license taxes on commercial sales unconstitutional with regard to the evangelical distribution of religious materials, nevertheless specifically stated that religious activity may constitutionally be subjected to a generally applicable income or property tax akin to the California tax at issue. Those cases apply

only where a flat license tax operates as a prior restraint on the free exercise of religious belief. As such, they do not invalidate California's generally applicable sales and use tax, which is not a flat tax, represents only a small fraction of any sale, and applies neutrally to all relevant sales regardless of the nature of the seller or purchaser, so that there is no danger that appellant's religious activity is being singled out for special and burdensome treatment. Moreover, the concern in *Murdock* and *Follett* that flat license taxes operate as a precondition to the exercise of evangelistic activity is not present here, because the statutory registration requirement and the tax itself do not act as prior restraints—no fee is charged for registering, the tax is due regardless of preregistration, and the tax is not imposed as a precondition of disseminating the message. Furthermore, since appellant argues that the exercise of its beliefs is unconstitutionally burdened by the reduction in its income resulting from the presumably lower demand for its wares (caused by the marginally higher price generated by the tax) and from the costs associated with administering the tax, its free exercise claim is in significant tension with *Hernandez v. Commissioner*, 490 U.S. 680, 490 U.S. 699, which made clear that, to the extent that imposition of a generally applicable tax merely decreases the amount of money appellant has to spend on its religious activities, any such burden is not constitu-

tionally significant because it is no different from that imposed by other generally applicable laws and regulations to which religious organizations must adhere. While a more onerous tax rate than California's, even if generally applicable, might effectively choke off an adherent's religious practices, that situation is not before, or considered by, this Court. Pp. 493 U.S. 384-392.

(b) Application of the California tax to appellant's sale of religious materials does not violate the Establishment Clause by fostering an excessive governmental entanglement with religion. The evidence of administrative entanglement is thin, since the Court of Appeal expressly found that, in light of appellant's sophisticated accounting staff and computerized accounting methods, the record did not support its assertion that the collection and payment of the tax impose severe accounting burdens on it. Moreover, although collection and payment will require some contact between appellant and the State, generally applicable administrative and recordkeeping burdens may be imposed on religious organizations without running afoul of the Clause. *See e.g.*, *Hernandez*, *supra*, at 490 U.S. 696-697. The fact that appellant must bear the cost of collecting and remitting the tax—even if the financial burden may vary from religion to religion—does not enmesh the government in religious affairs, since the statutory scheme requires neither the involvement of state

> employees in, nor on-site continuing inspection of, appellant's day-to-day operations. Most significantly, the imposition of the tax without an exemption for appellant does not require the State to inquire into the religious content of the items sold or the religious motivation for selling or purchasing them, since they are subject to the tax regardless of content or motive. Pp. 493 U.S. 392-397.

2. The merits of appellant's Commerce and Due Process Clause claim are not properly before, and will not be reached by, this Court, since both the trial court and the Court of Appeal ruled that the claim was procedurally barred because it was not presented to the Board as required by state law. *See, e.g.*, *Michigan v. Long*, 463 U.S. 1032, 463 U.S. 1041-1042. Appellant has failed to substantiate any claim that the California courts in general apply the procedural bar rule and a pertinent exception in an irregular, arbitrary, or inconsistent manner. Pp. 493 U.S. 397-399.

***Langford v. United States*,**
101 U.S. 341, 343-344 (1879)

Syllabus

1. 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.

The argument rests on two distinct propositions:

1. That the maxim of English constitutional law, that the King can do no wrong, is one which the courts must apply to the govern-

ment of the United States, and that therefore there can be no tort committed by the government.

2. That by virtue of the constitutional provision that private property shall not be taken for public use, without just compensation, there arises in all cases where such property is so taken an implied obligation to pay for it.

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.

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.

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.

***Roe v. Wade*, 410 U.S. 113, 155 (1973)**

Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and of predilection. We seek earnestly to do this, and, because we do, we have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortion procedure over the centuries. We bear in mind, too, Mr. Justice Holmes' admonition in his now-vindicated dissent in *Lochner v. New York*, 198 U.S. 45, 76 (1905):

> "[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."

***Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995)**

(c) Vital First Amendment speech principles are at stake here.

The Guideline at issue has a vast potential reach: The term "promotes" as used there would comprehend any writing advocating a philosophic position that

rests upon a belief (or nonbelief) in a deity or ultimate reality, while the term "manifests" would bring within the prohibition any writing resting upon a premise presupposing the existence (or nonexistence) of a deity or ultimate reality. It is difficult to name renowned thinkers whose writings would be accepted, save perhaps for articles disclaiming all connection to their ultimate philosophy. pp. 835-837.

On cross-motions for summary judgment, the District Court ruled for the University, holding that denial of SAF support was not an impermissible content or viewpoint discrimination against petitioners' speech, and that the University's Establishment Clause concern over its "religious activities" was a sufficient justification for denying payment to third-party contractors. The court did not issue a definitive ruling on whether reimbursement, had it been made here, would or would not have violated the Establishment Clause. 795 F. Supp. 175, 181-182 (WD Va. 1992).

The United States Court of Appeals for the Fourth Circuit, in disagreement with the District Court, held that the Guidelines did discriminate on the basis of content. It ruled that, while the State need not underwrite speech, there was a presumptive violation of the Speech Clause when viewpoint discrimination was invoked to deny third-party payment otherwise available to CIa's. 18 F.3d 269, 279-281 (1994). The Court of Appeals affirmed the judgment of the District Court nonetheless, concluding that the discrimination by the University was justified by the "compelling interest in maintaining strict separation of church and state." *Id.*, at 281. We granted certiorari. 513 U.S. 959 (1994).

II

It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Other principles follow from this precept. In the realm of private speech or expression, government regulation may not favor one speaker over another. *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789,804 (1984). Discrimination against speech because of its message is presumed to be unconstitutional. *See Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641-643 (1994). These rules informed our determination that the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression. *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, . . .

Sable Communications, Inc. v. FCC,
492 U.S. 115, 126 (1989)

Furthermore, Sable is free to tailor its messages, on a selective basis, if it so chooses, to the communities it chooses to serve. While Sable may be forced to incur some costs in developing and implementing a system for screening the locale of incoming calls, there is no constitutional impediment to enacting a law which may impose such costs on a medium electing to provide these messages. Whether Sable chooses to hire operators to determine the source of the calls or engages with the telephone company to arrange for the screening and blocking of out-of-area calls or finds another means for providing messages compatible with community standards is a decision for the message provider to make. There is no con-

stitutional barrier under *Miller* to prohibiting communications that are obscene in some communities under local standards, even though they are not obscene in others. If Sable's audience is comprised of different communities with different local standards, Sable ultimately bears the burden of complying with the prohibition on obscene messages.

***Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975)**

Respondents' action here is indistinguishable in its censoring effect from the official actions consistently identified as prior restraints in a long line of this Court's decisions. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 394 U.S. 150-151 (1969); *Staub v. City of Baxley*, 355 U.S. 313, 355 U.S. 322 (1958); *Kunz v. New York*, 340 U.S. 290, 340 U.S. 293-294 (1951); *Schneider v. State*, 308 U.S. 147, 308 U.S. 161-162 (1939); *Lovell v. Griffin*, 303 U.S. 444, 303 U.S. 451-452 (1938). In these cases, the plaintiffs asked the courts to provide relief where public officials had forbidden the plaintiffs the use of public places to say what they wanted to say. The restraints took a variety of forms, with officials exercising control over different kinds of public places under the authority of particular statutes. All, however, had this in common: they gave public officials the power to deny use of a forum in advance of actual expression.

Invariably, the Court has felt obliged to condemn systems in which the exercise of such authority was not bounded by precise and clear standards. The reasoning has been, simply, that the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum's use. Our distaste

for censorship—reflecting the natural distaste of a free people—is deep-written in our law.

In each of the cited cases, the prior restraint was embedded in the licensing system itself, operating without acceptable standards. In *Shuttlesworth*, the Court held unconstitutional a Birmingham ordinance which conferred upon the city commission virtually absolute power to prohibit any "parade," "procession," or "demonstration" on streets or public ways. It ruled that

> "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional."

394 U.S. at 394 U.S. 150-151. In *Hague v. CIO*, 307 U.S. 496 (1939), a Jersey City ordinance that forbade public assembly in the streets or parks without a permit from the local director of safety, who was empowered to refuse the permit upon his opinion that he would thereby prevent "riots, disturbances or disorderly assemblage,'" was held void on its face. *Id.* at 307 U.S. 516 (opinion of Roberts, J.).

In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), a unanimous Court held invalid an act which proscribed the solicitation of money or any valuable thing for "any alleged religious, charitable or philanthropic cause" unless that cause was approved by the secretary of the public welfare council. The elements of the prior restraint were clearly set forth:

> "It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that

> he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion."

Id. at 310 U.S. 305.

The elements of prior restraint identified in *Cantwell* and other cases were clearly present in the system by which the Chattanooga board regulated the use of its theaters. One seeking to use a theater was required to apply to the board. The board was empowered to determine whether the applicant should be granted permission—in effect, a license or permit—on the basis of its review of the content of the proposed production. Approval of the application depended upon the board's affirmative action. Approval was not a matter of routine; instead, it involved the "appraisal of facts, the exercise of judgment, and the formation of an opinion" by the board.

***Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940)**

Held:

1. Freedom of speech and of the press, secured by the First Amendment against abridgment by the United States, is secured to all persons by the Fourteenth Amendment against abridgment by the States. P. 310 U.S. 95.

2. When abridgment of the effective exercise of the rights of freedom of speech and of the press is

claimed, it is incumbent on the courts to "weigh the circumstances" and "appraise the substantiality of the reasons advanced" in support of the challenged regulations. P. 310 U.S. 96.

3. The statute must be judged upon its face. P. 310 U.S. 96.

(a) The charges were framed in the words of the statute, and the finding was general; it is not necessary to consider whether the evidence would have supported a conviction based upon different and more precise charges. P. 310 U.S. 96.

(b) The very existence of a penal statute such as that here, which does not aim specifically at evils within the allowable area of state control, but sweeps within its ambit other activities that, in ordinary circumstances, constitute an exercise of freedom of speech or of the press, results in a continuous and pervasive restraint of all freedom of discussion that might reasonably be regarded as within its purview. One convicted under such a statute does not have to sustain the burden of showing that the State could not constitutionally have written a different and specific statute covering the particular activities in which he is shown to have been engaged. P. 310 U.S. 97.

(c) Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. P. 310 U.S. 98.

4. The statute is invalid on its face. P. 310 U.S. 101.

(a) Freedom of speech and of the press embraces, at the least, the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. P. 310 U.S. 101.

(b) The dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion which is guaranteed by the Constitution. P. 310 U.S. 102.

Second. The section in question must be judged upon its face.

The finding against petitioner was a general one. It did not specify the testimony upon which it rested. The charges were framed in the words of the statute, and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute by prior state decisions. In these circumstance, there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges. "Conviction upon

a charge not made would be sheer denial of due process." *De Jonge v. Oregon*, 299 U.S. 353, 299 U.S. 362; *Stromberg v. California*, 283 U.S. 359, 283 U.S. 367-368. The State urges that petitioner may not complain of the deprivation of any rights but his own. It would not follow that, on this record, petitioner could not complain of the sweeping regulations here challenged.

[. . .]

There is a further reason for testing the section on its face. Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. *Schneider v. State*, 308 U.S. 147, 308 U.S. 162-165; *Hague v. CIO*, 307 U.S. 496, 307 U.S. 516; *Lovell v. Griffin*, 303 U.S. 444,303 U.S. 451. The cases, when interpreted in the light of their facts, indicate that the rule is not based upon any assumption that application for the license would be refused, or would result in the imposition of other unlawful regulations. Rather, it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing" is pernicious not merely by reason of the censure of particular comments, but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor, but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. *See Near v. Minnesota*, 283 U.S. 697, 283 U.S. 713. One who might have had a license for the asking may therefore call into question the whole scheme of

licensing when he is prosecuted for failure to procure it. *Lovell v. Griffin*, 303 U.S. 444; *Hague v. CIO*, 307 U.S. 496. A like threat is inherent in a penal statute, like that in question here, which does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that, in ordinary circumstances, constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective, or, if the restraint is not permissible, less pernicious, than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. *Schneider v. State*, 308 U.S. 147, 308 U.S. 155, 308 U.S. 162-163. Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. *Stromberg v. California*, 283 U.S. 359, 283 U.S. 368; *Schneider v. State*, 308 U.S. 147, 308 U.S. 155, 308 U.S. 162-163. *Compare Lanzetta v. New Jersey*, 306 U.S. 451.

U.S. v. Mayer, 235 U.S. 55, 69 (1914)

In view of the statutory and limited jurisdiction of the federal district courts, and of the specific provisions for the review of their judgments on writ of error, there would appear to be no basis for the conclusion that, after the term, these courts in common law actions, whether civil or criminal, can set aside or modify their final judgments for errors of law, and even if it be assumed that in the case of errors in certain matters of fact, the district courts may exercise in criminal cases—as an incident to their powers expressly granted—a correctional jurisdiction at subsequent terms analogous to that exercised at common law on writs of error *coram nobis* (*see* Bishop, New Crim. Pro., 2d ed. § 1369), as to which we express no opinion, that authority would not reach the present case. This jurisdiction was of limited scope; the power of the court thus to vacate its judgments for errors of fact existed, as already stated, in those cases where the errors were of the most fundamental character—that is, such as rendered the proceeding itself irregular and invalid. In cases of prejudicial misconduct in the course of the trial, the misbehavior or partiality of jurors, and newly discovered evidence, as well as where it is sought to have the court in which the case was tried reconsider its rulings, the remedy is by a motion for a new trial (Judicial Code, § 269)—an application which is addressed to the sound discretion of the trial court, and, in accordance with the established principles which have been repeatedly set forth in the decisions of this Court above cited, cannot be entertained, in the absence of a different statutory rule, after the expiration of the term at which the judgment was entered.

***United States v. Carolene Products, Co.*, 304 U.S. 144 (1938)**

First. The power to regulate commerce is the power "to prescribe the rule by which commerce is to be governed," *Gibbons v. Ogden*, 9 *Wheat.* 1, 22 U.S. 196, and extends to the prohibition of shipments in such commerce. *Reid v. Colorado*, 187 U.S. 137; *Lottery Case*, 188 U.S. 321; *United States v. Delaware & Hudson Co.*, 213 U.S. 366; *Hope v. United States*, 227 U.S. 308; *Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311; *United States v. Hill*, 248 U.S. 420; *McCormick & Co. v. Brown*, 286 U.S. 131. The power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed by the Constitution." *Gibbons v. Ogden*, *supra*, 22 U.S. 196. Hence, Congress is free to exclude from interstate commerce articles whose use in the states for which they are destined it may reasonably conceive to be injurious to the public health, morals or welfare, *Reid v. Colorado*, *supra*; *Lottery Case*, *supra*; *Hipolite Egg Co. v. United States*, 220 U.S. 45; *Hope v. United States*, *supra*, or which contravene the policy of the state of their destination. *Kentucky Whip & Collar Co. v. Illinois Central R. Co.*, 299 U.S. 334. Such regulation is not a forbidden invasion of state power either because its motive or its consequence is to restrict the use of articles of commerce within the states of destination, and is not prohibited unless by the due process clause of the Fifth Amendment. And it is no objection to the exertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. *Seven Cases v. United States*, 239 U.S. 510, 239 U.S. 514;

Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 251 U.S. 156. The prohibition of the shipment of filled milk in interstate commerce is a permissible regulation of commerce, subject only to the restrictions of the Fifth Amendment.

United States v. Morgan, 346 U.S. 502 (1954)

Syllabus

By a proceeding in the nature of *coram nobis*, respondent sought to have a Federal District Court set aside his conviction and sentence in that court for a federal crime, though he had served the full term for which he had been sentenced. He claimed that his conviction was invalid because of denial of his constitutional right to counsel at his trial. He had since been convicted in a state court of another crime, had been sentenced to a longer term as a second offender because of his prior federal conviction, and was still serving the state sentence.

Held:

Under the All-Writs Section, 28 U.S.C. § 1651(a), the Federal District Court had power to issue a writ of error *coram nobis*; it had power to vacate its judgment of conviction and sentence, and respondent is entitled to an opportunity to show that his federal conviction was invalid. Pp. 346 U.S. 503-513.

Since this motion in the nature of the ancient writ of *coram nobis* is not specifically authorized by any statute enacted by Congress, the power to grant such relief, if it exists, must come from the all-writs section of the Judicial Code. This section originated in the Judiciary Act of 1789, and its substance persisted through the Revised Statutes, § 716, and the Judicial

Code, § 262, to its present form upholding the judicial power to attain justice for suitors through procedural forms "agreeable to the usages and principles of law." If there is power granted to issue writs of *coram nobis* by the all-writs section, we hold it would comprehend the power for the District Court to take cognizance of this motion in the nature of a *coram nobis*. *See* note 4 *supra*. To move by motion instead of by writ is purely procedural. The question, then, is whether the all-writs section gives federal courts power to employ *coram nobis*.

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. While the occasions for its use were infrequent, no one doubts its availability at common law. *Coram nobis* has had a continuous, although limited, use also in our states. Although the scope of the remedy at common law is often described by references to the instances specified by Tidd's Practice, *see* note 9 *supra*, its use has been by no means so limited. The House of Lords, in 1844, took cognizance of an objection through the writ based on a failure properly to swear witnesses. *See* the *O'Connell* case, note 11 *supra*. It has been used in the United States with and without statutory authority, but always with reference to its common law scope—for example, to inquire as to the imprisonment of a slave not subject to imprisonment, insanity of a defendant, a conviction on a guilty plea through the coercion of fear of mob violence, failure to advise of right to counsel. An interesting instance of the use of *coram nobis* by the Court of Errors of New York is found in *Davis v.*

Packard, 8 Pet. 312. It was used by the Court of Errors, and approved by this Court, to correct an error "of fact not apparent on the face of the record" in the trial court, to-wit, the fact that Mr. Davis was consul general of the King of Saxony, and therefore exempt from suit in the state court.

***United States v. Lee*, 455 U.S. 252, 260, n.3 (1982)**

Unlike the situation presented in *Wisconsin v. Yoder*, *supra*, it would be difficult to accommodate the comprehensive social security system with myriad exceptions flowing from a wide variety of religious beliefs. The obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes; the difference—in theory at least—is that the social security tax revenues are segregated for use only in furtherance of the statutory program. There is no principled way, however, for purposes of this case, to distinguish between general taxes and those imposed under the Social Security Act. If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief. *See*, *e.g.*, *Lull v. Commissioner*, 602 F.2d 1166 (CA4 1979), *cert. denied*, 444 U.S. 1014 (1980); *Autenrieth v. Cullen*, 418 F.2d 586 (CA9 1969), *cert denied*, 397 U.S. 1036 (1970). Because the broad public interest in maintaining a sound tax system is of such a high order, religious

belief in conflict with the payment of taxes affords no basis for resisting the tax.

United States v. Kokinda,
497 U.S. 720, 726-727 (1990)

The Government, even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business, but its action is valid in these circumstances unless it is unreasonable, or, as was said in Lehman, "arbitrary, capricious, or invidious." *Ibid*. In *Lehman*, the plurality concluded that the ban on political advertisements (combined with the allowance of other advertisements) was permissible under this standard:

> "Users [of the transit system] would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service oriented advertising does not rise to the dignity of a First Amendment violation. Were we to hold to the contrary, display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities immediately would become Hyde Parks open to every would-be pamphleteer and politician. This the Constitution does not require."

Id. at 418 U.S. 304.

Since *Lehman*,

> "the Court has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. Accordingly, the extent to which the Government can control access depends on the nature of the relevant forum."

Cornelius v. NAACP Legal Defense and Educational Fund, 473 U.S. 788, 473 U.S. 800 (1985). In *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37 (1983), the Court announced a tripartite framework for determining how First Amendment interests are to be analyzed with respect to Government property. Regulation of speech activity on governmental property that has been traditionally open to the public for expressive activity, such as public streets and parks, is examined under strict scrutiny. *Id.* at 460 U.S. 45. Regulation of speech on property that the Government has expressly dedicated to speech activity is also examined under strict scrutiny. *Ibid.* But regulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness. *Id.* at 460 U.S. 46.

Respondents contend that, although the sidewalk is on postal service property, because it is not distinguishable from the municipal sidewalk across the parking lot from the post office's entrance, it must be a traditional public forum and therefore subject to strict scrutiny. This argument is unpersuasive. The mere physical characteristics of the property cannot dictate forum analysis. If they did, then *Greer v.*

Spock, 424 U.S. 828 (1976), would have been decided differently. In that case, we held that, even though a military base permitted free civilian access to certain unrestricted areas, the base was a nonpublic forum. The presence of sidewalks and streets within the base did not require a finding that it was a public forum. *Id.* at 424 U.S. 835-837.

The postal sidewalk at issue does not have the characteristics of public sidewalks traditionally open to expressive activity. The municipal sidewalk that runs parallel to the road in this case is a public passageway. The Postal Service's sidewalk is not such a thoroughfare. Rather, it leads only from the parking area to the front door of the post office. Unlike the public street described in *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981), which was

> "continually open, often uncongested, and constitute[d] not only a necessary conduit in the daily affairs of a locality's citizens but also a place where people [could] enjoy the open air or the company of friends and neighbors in a relaxed environment,"

id. at 452 U.S. 651, the postal sidewalk was constructed solely to provide for the passage of individuals engaged in postal business. The sidewalk leading to the entry of the post office is not the traditional public forum sidewalk referred to in *Perry*.

***United States v. Lanier*, 520 U.S. 259, 266 (1997)**

There are three related manifestations of the fair warning requirement. First, the vagueness doctrine bars enforcement of "a statute which either forbids or requires the doing of an act in terms so vague that

men of common intelligence must necessarily guess at its meaning and differ as to Its application." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926); accord, *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). Second, as a sort of "junior version of the vagueness doctrine," H. Packer, The Limits of the Criminal Sanction 95 (1968), the canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered. *See*, *e.g.*, *Liparota v. United States*, 471 U.S. 419, 427 (1985); *United States v. Bass*, 404 U.S. 336, 347-348 (1971); *McBoyle*, *supra*, at 27. Third, although clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute, *see*, *e.g.*, *Bouie*, *supra*, at 357-359; *Kolender*, *supra*, at 355-356; *Lanzetta*, *supra*, at 455-457; Jeffries, Legality, Vagueness, and the Construction of Penal Statutes, 71 Va. L. Rev. 189, 207 (1985), due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope, *see*, *e.g.*, *Marks v. United States*, 430 U.S. 188, 191-192 (1977); *Rabe v. Washington*, 405 U.S. 313 (1972) (*per curiam*); *Bouie*, *supra*, at 353-354; *cf.* U.S. Const., Art. I, § 9, cl. 3; *id.*, § 10, cl. 1; *Bouie*, *supra*, at 353-354 (*Ex Post Facto States v. Aguilar*, 515 U.S. 593, 600 (1995). See generally H. Packer, The Limits of the Criminal Sanction 79-96 (1968) (discussing "principle of legality," "that conduct may not be treated as criminal unless it has been so defined by [a competent] authority . . . before it has taken place," as implementing separation of powers, providing notice, and preventing abuses of official discretion) (quotation

at 80); Jeffries, Legality, Vagueness, and the Construction of Penal Statutes, 71 Va. L. Rev. 189 (1985).

***United States v. Playboy Entm't Group*, 529 U.S. 803, 813-815 (2000)**

Since § 505 is a content-based speech restriction, it can stand only if it satisfies strict scrutiny. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). If a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling Government interest. *Ibid*. If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative. *Reno*, 521 U.S., at 874 ("[The CDA's Internet indecency provisions'] burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve"); *Sable Communications*, *supra*, at 126 ("The Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest"). To do otherwise would be to restrict speech without an adequate justification, a course the First Amendment does not permit.

Our precedents teach these principles. Where the designed benefit of a content-based speech restriction is to shield the sensibilities of listeners, the general rule is that the right of expression prevails, even where no less restrictive alternative exists. We are expected to protect our own sensibilities "simply by averting [our] eyes." *Cohen v. California*, 403 U.S. 15,21 (1971); *accord*, *Erznoznik v. Jacksonville*, 422 U.S. 205, 210-211 (1975). Here, of course, we consider

images transmitted to some homes where they are not wanted and where parents often are not present to give immediate guidance. Cable television, like broadcast media, presents unique problems, which inform our assessment of the interests at stake, and which may justify restrictions that would be unacceptable in other contexts. *See Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 744 (1996) (plurality opinion); *id.*, at 804-805 (KENNEDY, J., concurring in part, concurring in judgment in part, and dissenting in part); *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). No one suggests the Government must be indifferent to unwanted, indecent speech that comes into the home without parental consent. The speech here, all agree, is protected speech; and the question is what standard the Government must meet in order to restrict it. As we consider a content-based regulation, the answer should be clear:

> The standard is strict scrutiny. This case involves speech alone; and even where speech is indecent and enters the home, the objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative.

In *Sable Communications*, for instance, the feasibility of a technological approach to controlling minors' access to "dial-a-porn" messages required invalidation of a complete statutory ban on the medium. 492 U.S., at 130-131. And, while mentioned only in passing, the mere possibility that user-based Internet screening software would "'soon be widely available'" was relevant to our rejection of an overbroad restriction

of indecent cyberspeech. *Reno*, *supra*, at 876-877. *Compare Rowan v. Post Office Dept.*, 397 U.S. 728, 729-730 (1970) (upholding statute "whereby any householder may insulate himself from advertisements that offer for sale 'matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative" (quoting then 39 U.S.C. § 4009(a) (1964 ed., Supp. IV))), with *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 75 (1983) (rejecting blanket ban on the mailing of unsolicited contraceptive advertisements). Compare also *Ginsberg v. New York*, 390 U.S. 629, 631 (1968) (upholding state statute barring the sale to minors of material defined as "obscene on the basis of its appeal to them"), with *Butler v. Michigan*, 352 U.S. 380, 381 (1957) (rejecting blanket ban of material "'tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth'" (quoting then Mich. Penal Code § 343)). Each of these cases arose in a different *context-Sable Communications* and *Reno*, for instance, also note the affirmative steps necessary to obtain access to indecent material via the media at issue-but they provide necessary instruction for complying with accepted First Amendment principles.

JUDICIARY ACT OF 1789, 1 STAT. 73
SEPTEMBER 24, 1789

1 Stat. 73 September 24, 1789

Chap. XX.–An Act to Establish the Judicial Courts of the United States.

- **Sec. 8**

And be it further enacted, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "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."

- **Sec. 14**

And be it further enacted, That all the beforementioned 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. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.—Provided, That writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless where they are in custody, under or by

colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

- Sec. 25

And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may

at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.

- Sec. 32

And be it further enacted, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe.

- Sec. 35

And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.

FEDERAL REGISTER/VOL. 82, NO. 88/
TUESDAY, MAY 9, 2017/
PRESIDENTIAL DOCUMENTS 21675

Executive Order 13798 of May 4, 2017
Promoting Free Speech and Religious Liberty

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America, and to further compliance with the Constitution and with applicable statutes and Presidential Directives, it is hereby ordered as follows:

- **Section 1. Policy**

It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

- **Sec. 2. Respecting Religious and Political Speech**

All executive departments and agencies (agencies) shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury. As used in this section, the term "adverse action" means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit.

- **Sec. 3. Conscience Protections with Respect to Preventive-Care Mandate**

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg-13(a)(4) of title 42, United States Code.

- **Sec. 4. Religious Liberty Guidance**

In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.

- **Sec. 5. Severability**

If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

- **Sec. 6. General Provisions**

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

U.S. ATTORNEY GENERAL SESSIONS' 25-PAGE MEMO. & 2-PAGE DIRECTIVE. (OCT. 6, 2017)

Memorandum for All Executive Departments and Agencies

From: The Attorney General
Subject: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society." Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably

accommodated in all government activity, including employment, contracting, and programming.

The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

Memorandum for All Component Heads and United States Attorneys

From: The Attorney General
Subject: Implementation of Memoranda on Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law. Exec. Order 13798, § 4 (May 4, 2017). Pursuant to that instruction and consistent with my authority to provide advice and opinions on questions of law to the Executive Branch, I have undertaken a review of the primary sources for federal protection of religious liberty in the United States, along with the case law interpreting such sources. I also convened a series of listening sessions, seeking suggestions regarding the areas of federal protection for religious liberty most in need of clarification or guidance from the Attorney General.

Today, I sent out a memorandum to the heads of all executive departments and agencies summarizing twenty principles of religious liberty and providing an appendix with interpretive guidance of federal-law protections for religious liberty to support those principles. That memorandum and appendix are no less applicable to this Department than to any other

agency within the Executive Branch. I therefore direct all attorneys within the Department to adhere to the interpretative guidance set forth in the memorandum and its accompanying appendix.

In particular, I direct the Department of Justice to undertake the following actions:

- All Department components and United States Attorney's Offices shall, effective immediately, incorporate the interpretative guidance in litigation strategy and arguments, operations, grant administration, and all other aspects of the Department's work, keeping in mind 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).
- 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.
- Department attorneys shall also use the interpretive guidance in formulating opinions and advice for other Executive Branch agencies and shall alert the appropriate officials at such agencies whenever agency policies may conflict with the guidance.
- To aid in the consistent application of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, and other

federal-law protections for religious liberty, the Office of Legal Policy shall coordinate with the Civil Rights Division to review every Department rulemaking and every agency action submitted by the Office of Management and Budget for review by this Department for consistency with the interpretive guidance. In particular, the Office of Legal Policy, in consultation with the Civil Rights Division, shall consider whether such rules might impose a substantial burden on the exercise of religion and whether the imposition of that burden would be consistent with the requirements of RFRA. The Department shall not concur in the issuance of any rule that appears to conflict with federal laws governing religious liberty, as set forth in the interpretive guidance.

- In addition, to the extent that existing procedures do not already provide for consultation with the Associate Attorney General, Department components and United States Attorney's Offices shall notify the Associate Attorney General of all issues arising in litigation, operations, grants, or other aspects of the Department's work that appear to raise novel, material questions under RFRA or other religious liberty protections addressed in the interpretive guidance. The Associate Attorney General shall promptly alert the submitting component of any concerns.

Any questions about the interpretive guidance or this memorandum should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950

Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

PLAINTIFF'S EXHIBITS TO ORIGINAL VERIFIED COMPLAINT FOR DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF IN THIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT (FEBRUARY 16, 2017)

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

In the Matter of:
TERRY LEE HINDS, *Pro se*,

Plaintiff,

v.

"UNITED STATES" GOVERNMENT,

Defendants.

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- Exhibit C-#50 . . .
Miranda v. Arizona, 384 U.S. 436 (1966) / 1 page
- Exhibit C-#51 . . .
United States v. Robel, 389 U.S. 258 (1967) / 2 pages
- Exhibit C-#52 . . .
Machinists v. Street, 367 U.S. 740, 789 (1961) / 2 pages
- Exhibit C-#53 . . .
Stanley v. Georgia, 394 U.S. 557 (1969) / 2 page
- Exhibit C-#54 . . .
Elrod v. Burns, 427 U.S. 347 (1976) / 7 pages
- Exhibit C-#55 . . .
Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) / 9 pages
- Exhibit C-#56 . . .
Welsh v. United States, 398 U.S. 333 (1970) / 4 pages

- Exhibit C-#57 . . .
Wisconsin v. Yoder, 406 U.S. 205 (1972) / 2 pages
- Exhibit C-#58 . . .
California Motor Trans. Co. v. Trucking Unlim, 404 U.S. 508 (1972) / 6 pages
- Exhibit C-#59 . . .
Perry v. Sindermann, 408 U.S. 593 (1972) / 1 page
- Exhibit C-#60 . . .
Schneckloth v. Bustamonte, 412 U.S. 218 (1973) / 2 pages
- Exhibit C-#61 . . .
United States v. Bishop, 412 U.S. 346 (1973) / 6 pages
- Exhibit C-#62 . . .
Buckley v. Valeo, 424 U.S. 1 (1976) / 10 pages
- Exhibit C-#63 . . .
Wooley v. Maynard, 430 U.S. 705 (1977) / 1 page
- Exhibit C-#64 . . .
Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977) / 2 pages
- Exhibit C-#65 . . .
Stone v. Graham, 449 U.S. 39 (1980) / 2 pages
- Exhibit C-#66 . . .
Widmar v. Vincent, 454 U.S. 263 (1981) / 3 pages
- Exhibit C-#67 . . .
Thomas v. Review Bd., Ind. Empl. Sec. Div., 450 U.S. 707 (1981) / 1 page
- Exhibit C-#68 . . .
USPS v. Council of Greenburgh Civic Assns., 453 U.S. 114 (1981) / 8 pages

- Exhibit C-#69 . . .
Valley Forge Coll. v. Americans United, 454 U.S. 464 (1982) / 5 pages
- Exhibit C-#70 . . .
Larson v. Valente, 456 U.S. 228 (1982) / 5 pages
- Exhibit C-#71 . . .
Roberts v. United States Jaycees, 468 U.S. 609 (1984) / 6 pages
- Exhibit C-#72 . . .
Estate of Thornton v. Caldor, Inc. 472 U.S. 703 (1984) / 1 page
- Exhibit C-#73 . . .
Lynch v. Donnelly, 465 U.S. 668 (1984) / 4 pages
- Exhibit C-#74 . . .
City Council v. Taxpayers for Vincent, 466 U.S. 789 (1984) / 6 pages
- Exhibit C-#75 . . .
Cornelius v. NAACP Leg. Def. Fund, 473 U.S. 788 (1985) / 4 pages
- Exhibit C-#76 . . .
Wallace v. Jaffree, 472 U.S. 38 (1985) / 2 pages
- Exhibit C-#77 . . .
Bowen v. Roy, 476 U.S. 693 (1986) / 2 pages
- Exhibit C-#78 . . .
Board of Airport Comm. City v. Jews for Jesus, 482 U.S. 569 (1987) / 1 page
- Exhibit C-#79 . . .
Riley v. Nat. Fed. of the Blind of N Carolina, 487 U.S. 781 (1988) / 2 pages

- Exhibit C-#80 . . .
Hernandez v. Commissioner, 490 U.S. 680 (1989) / 4 pages
- Exhibit C-#81 . . .
Texas v. Johnson, 491 U.S. 397 (1989) / 1 page
- Exhibit C-#82 . . . *Employment Division. v. Smith*, 494 U.S. 872 (1990) / 3 pages
- Exhibit C-#83 . . .
Cheek v. United States, 498 U.S. 192 (1991) / 4 pages
- Exhibit C-#84 . . .
Church of the Lukumi Babalu Aye, v. Hialeah, 508 U.S. 520 (1993) / 2 pages
- Exhibit C-#85 . . .
Hurley v. Irish-American Gay, Lesbian, and Bisexual, 515 U.S. 557 (1995) / 2 p
- Exhibit C-#86 . . .
Lebron v. National R.R. Passenger Corp., 115 S.Ct. 961, 393 (1995) / 2 pages
- Exhibit C-#87 . . .
Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753 (1995) / 3 pg
- Exhibit C-#88 . . .
Boy Scout of America v. Dale, 530 U.S. 640 (2000) / 2 pages
- Exhibit C-#89 . . .
Bartnicki v. Vopper, 532 U.S. 514 (2001) / 1 pages
- Exhibit C-#90 . . .
Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002) / 1 page

- Exhibit C-#91 . . .
  Ashcroft v. American Civil Liberties Union, 535 U.S. 564 (2002) / 1 page
- Exhibit C-#92 . . .
  GONZALES v. O CENTRO ESPIRITA, 546 U.S. (2006) / 2 pages
- Exhibit C-#93 . . .
  Rumsfeld v. Forum for Academic & Inst. Rights, 547 U.S. 47 (2006) / 2 page
- Exhibit C-#94 . . .
  KNOX v. SER.EMPLOYEES INTERN. UNION, 132 S.Ct. 2277 (2012) / 2 pages
- Exhibit C-#95 . . .
  Burwell v. Hobby Lobby Stores, Inc., 573 U.S. (2014) / 2 pages
- Exhibit C-#96 . . .
  Our Decision with God given unalienable rights of [LLP] / 1 page

AN INTERSECTION OF CHURCH AND STATE–
PERSONAL CONSTITUTION & U.S. CONSTITUTION

- Exhibit D-#1 . . .
  Justice–Equality–Service–Unity–Sacrifice / 3 pages
- Exhibit D-#2 . . .
  Separation of Powers Doctrine (a system of checks and balances) / 2 pages
- Exhibit D-#3 . . .
  The Preamble of the United States Constitution-Letters and Spirit of / 1 page

- Exhibit D-#4 . . .
  For God & Country-Preambles of 50 State Constitutions of U.S.A. / 8 pages
- Exhibit D-#5 . . .
  Everson v. Board of Education, 330 U.S. 1 (1947) *A Landmark Case* / 1 page
- Exhibit D-#6 . . .
  Lemon v. Kurtzman, 403 U.S. 602 (1971) *A Landmark Case* / 2 page
- Exhibit D-#7 . . .
  Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982) *Est. Clause Dec.* / 2 pages
- Exhibit D-#8 . . .
  Walz v. Tax Comm'n of City of New York 397, U.S. 664 *Est. Clause* / 3 pages
- Exhibit D-#9 . . .
  Butchers' Union Co. v. Crescent City, 111 U.S. 746 (1884) / 3 pages
- Exhibit D-#10 . . .
  United States v. Cruikshank, 92 U.S. 542 (1875) / 3 pages
- Exhibit D-#11 . . .
  Loan Assoc. v. Topeka, 87 U.S. 20 *Wall* 655 (1874) / 1 page
- Exhibit D-#12 . . .
  U.S. v. Butler, 297 U.S. 1 (1936) / 3 pages
- Exhibit D-#13 . . .
  Griswold v. Connecticut, 381 U.S. 479 (1965) / 4 pages

- Exhibit D-#14 . . .
  J. Story, Commentaries on the Constitution of the United States § 1893 / 1 p
- Exhibit D-#15 . . .
  The Public Policy Doctrine of United States Criminal Law / 15 pages
- Exhibit D-#16 . . .
  Contemporary Civil Religion in the United States / 16 pages
- Exhibit D-#17 . . .
  IN GOD WE TRUST–A Principle system for Mankind's possibilities / 21 pages
- Exhibit D-#18 . . .
  [Quintessential Rights] of the First Amendment Free Exercise Clause / 17 pages
- Exhibit D-#19 . . .
  The All Seeing Eye of Providence & The Chief Cornerstone / 2 pages
- Exhibit D-#20 . . .
  United States v. Bishop & 28 U.S. Code § 2007 & Mo. Const. Art I, Sec.11 / 3p
- Exhibit D-#21 . . .
  Marbury v. Madison, 5 U.S. 1 *Cranch* 137 137 (1803) / 4 pages
- Exhibit D-#22 . . .
  McCulloch v. Maryland, 17 U.S. 4 *Wheat* 316 316 (1819) / 7 pages
- Exhibit D-#23 . . .
  Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922) / 2 pages

- Exhibit D-#24 . . .
County of Allegheny v. ACLU, 492 U.S. 573 (1989) / 4 pages
- Exhibit D-#25 . . .
Edwards v. Aguillard, 483 U.S. 578 (1987) / 5 pages
- Exhibit D-#26 . . .
Grosjean v. American Press Co., Inc., 297 U.S. 233 (1936) / 3 pages
- Exhibit D-#27 . . .
Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485 (1986) / 1page
- Exhibit D-#28 . . .
Gibbons v. Ogden, 22 U.S. 1 (1824) / 29 pages
- Exhibit D-#29 . . .
Doctrine of Stare Decisis / 3 pages
- Exhibit D-#30 . . .
Intelligent Design of Civil Religion / 2 pages
- Exhibit D-#31 . . .
The Intersection of Church and State/Our Church of Greater Reality / 35 pages
- Exhibit D-#32 . . .
[Commanding Heights] *E Pluribus Unum* (Latin for "Out of many, one") / 11 p

COUNT I—EXHIBITS IN SUPPORT OF COUNT #1

- Exhibit E-#1 . . .
THE IRS [Creed] of Taxology / IRS Strategic Plans 2000-2005 / 109 pages

- Exhibit E-#2 . . .
  [Purpose-Driven Life]-The semblances of religion, *inter alia* / 12 pages
- Exhibit E-#3. . . .
  [THE CODE] is Law Respecting an Establishment of Religion / 7 pages
- Exhibit E-#4 . . .
  [Burdens] Unworldly Zeal or Religious Fervor of THEIRS / 4 pages
- Exhibit E-#5. . . .
  [Burdens] Collective Experience Mission of Taxology / 13 pages
- Exhibit E-#6 . . .
  [Burdens] *Collective Experience v. Our Independence* / 6 pages
- Exhibit E-#7. . . .
  [Burdens] . . . not hard to believe & Tax Code spans 70,000 pages / 7 pages
- Exhibit E-#8 . . .
  The OUTER LIMITS-Parallel Tables–A list of No CFR for Title 26 / 17 pages
- Exhibit E-#9 . . .
  Field of Dreams–Parallel Tables numerous CFR for other Titles / 32 pages
- Exhibit E-#10 . . .
  [THE CODE] Ignorance Is a Choice-Subchapter A / 5 pages
- Exhibit E-#11 . . .
  [THE CODE] Ignorance Is a Choice-Subchapter C / 26 pages

- Exhibit E-#12 . . .
  [THE CODE] Ignorance Is a Choice-Subchapter D / 8 pages
- Exhibit E-#13 . . .
  [THE CODE] Face Sheet of each Subtitle involved in case / 1 page
- Exhibit E-#14 . . .
  [THE CODE] CCH Federal Tax Law Keeps Piling Up / 1 page
- Exhibit E-#15 . . .
  [THE CODE]-Subtitle A-Chapter 1 / 50 pages
- Exhibit E-#16 . . .
  [THE CODE]-Subtitle A-Chapter 2 / 2 pages
- Exhibit E-#17 . . .
  [THE CODE]-Subtitle C-Chapter 21 / 2 pages
- Exhibit E-#18 . . .
  [THE CODE]-Subtitle C-Chapter 23 / 2 pages
- Exhibit E-#19 . . .
  [THE CODE]-Subtitle C-Chapter 24 / 2 pages
- Exhibit E-#20 . . .
  [THE CODE]-Subtitle C-Chapter 25 / 2 pages
- Exhibit E-#21 . . .
  [THE CODE]-Subtitle D-Chapter 35 / 2 pages
- Exhibit E-#22 . . .
  [THE CODE]-Subtitle F-Chapter 61 through Chapter 80 / 26 pages
- Exhibit E-#23 . . .
  [Refunds] Seed Money & Rise of the Seed Faith, Save for a Rainy Day / 2 pages

- Exhibit E-#24 . . .
  [Refunds] Give Us This Day Our Daily Bread vs. Earning you're . . . / 2 pages
- Exhibit E-#25 . . .
  [Moralistic] Theology of Money / 1 Page
- Exhibit E-#26 . . .
  [Moralistic] Spirituality through Materialism / 4 Page
- Exhibit E-#27 . . .
  Sindustry of THEIRS-Moral Arguments & Moral Hazards / 11 pages
- Exhibit E-#28 . . .
  The Built Environments of THE-IRS / 3 pages
- Exhibit E-#29 . . .
  "The Four Protocols" of the Apocalypse / 1 pages
- Exhibit E-#30 . . .
  Religious Threads of Taxology and Taxism / 1 page
- Exhibit E-#31 . . .
  Religious Syncretism of THEIRS / 1 page
- Exhibit E-#32 . . .
  TAXTAN–The Essence of Taxology's TAXTAN / 9 pages
- Exhibit E-#33 . . .
  IRS Vision Quest-§ 7851. Applicability of revenue laws / 11 pages
- Exhibit E-#34 . . .
  IRS Dogma "*See*" those Speaking in Tongues Sowing the [See]ds of Faith / 38 p

COUNT II-EXHIBITS IN SUPPORT OF COUNT #2

- Exhibit F-#1 . . .
  THE IRS PATH OF LIFE–Vision "IRS Strategic Plan 2005-2009 / 35 pages
- Exhibit F-#2 . . .
  THE IRS PATH OF LIFE–Definitions 26 § 7701 / 1 page
- Exhibit F-#3 . . .
  THE IRS PATH OF LIFE Overruling the Supreme Court / 47 pages
- Exhibit F-#4 . . .
  THE IRS PATH OF LIFE [Ceremony] & [Body of Rites] / 11 pages
- Exhibit F-#5 . . .
  THE IRS PATH OF LIFE-§ 7803 "set of fundamental rights" / 11 pages
- Exhibit F-#6 . . .
  [IRS Path of Life] is tantamount to a relationship pregnant w / involvement / 450 p
- Exhibit F-#7 . . .
  Search Results for a [proper return] & a Modes of [Worthship] / 186 pages
- Exhibit F-#8 . . .
  [Worthship]–Moving toward a Deeper Theology Worship / 6 pages
- Exhibit F-#9 . . .
  A Revelation of [Worthship] / 3 pages
- Exhibit F-#10 . . .
  Modes of [Worthship] manifested by THE GREAT WHATEVER / 1 page

- Exhibit F-#11 . . .
  Doctrine of Exchange manifested by Taxology Modes of [Worthship] / 6 pages
- Exhibit F-#12 . . .
  Doctrine of Exchange "pay-as-you-go" balance "inflow" & "outflow" / 7 pages
- Exhibit F-#13 . . .
  [proper return] to the IRS and their path of life, beliefs and practices / 3 pages
- Exhibit F-#14 . . .
  The Protected Speech of Tax Return vs making a [proper return] / 3 page
- Exhibit F-#15 . . .
  Taxology–An Organized Religion of THEIRS / 28 pages
- Exhibit F-#16 . . .
  Taxology like Religious Bigotry is a lifestyle Choice / 1 page
- Exhibit F-#17 . . .
  [Exemptions] 26 U.S.C. § 151 Allowance of deductions / 8 pages
- Exhibit F-#18 . . .
  [Exemptions] 26 U.S.C. § 152 Dependent Defined / 15 pages
- Exhibit F-#19 . . .
  [Exemptions] 26 U.S. Code § 501 Exemptions from tax / 64 pages
- Exhibit F-#20 . . .
  [Exemptions] 501(c)(1) Corp. Organized under Act of Congress / 12 pages

- Exhibit F-#21 . . .
  [Exemptions] 501(c)(2) Title Holding Corp. for Exempt Org. / 10 pages
- Exhibit F-#22 . . .
  [Exemptions] 501(c)(3) Religious, Charitable, Ed., Etc., Org. / 26 pages
- Exhibit F-#23 . . .
  [Exemptions] 501(c)(4) Civic Leagues, Social Welfare Orgs. and / 11 pages
- Exhibit F-#24 . . .
  [Exemptions] 501(c)(5) Labor, Agricultural, and Horticultural Orgs. / 11 pages
- Exhibit F-#25 . . .
  [Exemptions] 501(c)(6) Buss. Leagues, Chambers of Commerce etc / 25 pages
- Exhibit F-#26 . . .
  [Exemptions] 501(c)(7) Social and Recreational Clubs / 16 pages
- Exhibit F-#27 . . .
  [Exemptions] 501(c)(8) Fraternal Beneficiary Societies / 7 pages
- Exhibit F-#28 . . .
  [Exemptions] 501(c)(9) Voluntary Employees' Beneficiary Assoc. / 17 pages
- Exhibit F-#29 . . .
  [Exemptions] 501(c)(10) Domestic Fraternal Societies and Assoc. / 27 pages
- Exhibit F-#30 . . .
  [Exemptions] 501(c)(11) Teachers' Retirement Fund Associations / 3 pages

- Exhibit F-#31 . . .
  [Exemptions] 501(c)(12) Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, etc. / 10 pages
- Exhibit F-#32 . . .
  [Exemptions] 501(c)(13) Cemetery Companies / 9 pages
- Exhibit F-#33 . . .
  [Exemptions] 501(c)(14) State-Chartered Credit & Mutual Res. Funds / 5 pages
- Exhibit F-#34 . . .
  [Exemptions] 501(c)(15) Mutual Insurance Companies or Assoc. / 11 pages
- Exhibit F-#35 . . .
  [Exemptions] 501(c)(16) Corp. Organized to Finance Crop Operations / 3 pages
- Exhibit F-#36 . . .
  [Exemptions] 501(c)(17) Supplemental Unemployment Benefit Trusts / 8 pages
- Exhibit F-#37 . . .
  [Exemptions] 501(c)(18) Employee Funded Pension Trust / 2 pages
- Exhibit F-#38 . . .
  [Exemptions] 501(c)(19) Veterans' Organizations / 8 pages
- Exhibit F-#39 . . .
  [Exemptions] 501(c)(20) Qualified Group Legal Services Plans / 2 pages

- Exhibit F-#40 . . .
  [Exemptions] 501(c)(21) Black Lung Benefit Trusts / 5 pages
- Exhibit F-#41 . . .
  [Exemptions] 501(c)(22) Withdrawal liability payment fund / 4 pages
- Exhibit F-#42 . . .
  [Exemptions] 501(c)(23) Veterans' Organizations / 8 pages
- Exhibit F-#43 . . .
  [Exemptions] 501(c)(24) Section 4049 ERISA Trusts / 1 page
- Exhibit F-#44 . . .
  [Exemptions] 501(c)(25) Multiple Parent Title Holding Companies / 5 pages
- Exhibit F-#45 . . .
  [Exemptions] 501(c)(26) Qualified State-Sponsored High Risk Insurance Organizations Providing Health Coverage for High-Risk Individuals / 2 pages
- Exhibit F-#46 . . .
  [Exemptions] 501(c)(27) Qualified State-Sponsored Workers' Comp. Org. / 3p
- Exhibit F-#47 . . .
  [Exemptions] 501(c)(28) National Railroad Retirement Invest. Trust / 3 pages
- Exhibit F-#48 . . .
  [Exemptions] 501(c)(29) Qualified Nonprofit Health Insurance Issuers / 1 page
- Exhibit F-#49 . . .
  Taxology Religiosity / 4 pages

- Exhibit F-#50 . . .
  Taxology's Theology of THEIRS-Religiosity / 2 pages
- Exhibit F-#51 . . .
  Willpower of THEIRS-Possession In the Garden of Temptation / 1 page
- Exhibit F-#52 . . .
  IRS Revivalism of THEIRS "name-it and claim it" Doctrine / 3 pages
- Exhibit F-#53 . . .
  Oracles of the Faithful IRS Manual-Examination of Returns / 16 pages
- Exhibit F-#54 . . .
  IRS CORE Values–IRS Manual–Importance of Standards / 27 pages
- Exhibit F-#55 . . .
  Speaking in Tongues and producing the confession of language / 116 pages

COUNT III-EXHIBITS IN SUPPORT OF COUNT #3

- Exhibit G-#1 . . .
  Intellectual Tithing for a Religion of Reality-Tree of Knowledge / 44 pages
- Exhibit G-#2 . . .
  Intellectual Tithing & Offerings for a Religion of Submission / 28 pages
- Exhibit G-#3 . . .
  [Internal Religious Service aka IRS] ("[IRS]") / 20 pages

- Exhibit G-#4 . . .
  An IRS Pilgrimage TAS document in search for the truth / 1 pages
- Exhibit G-#5 . . .
  An IRS Pilgrimage–Knowing the Unknowable Answers Exist / 2 pages
- Exhibit G-#6 . . .
  The Promise Land & [THE BOOK] "IRS Historical Fact Book" / 4 pages
- Exhibit G-#7 . . .
  IRS Moral Inception a [thought crime] / 1 page
- Exhibit G-#8 . . .
  Nonconformists: Right of Conscience vs. [thought crimes] / 17 pages
- Exhibit G-#9 . . .
  [House of Worthship] Church of Taxology/Internal Revenue Service / 5 pages
- Exhibit G-#10 . . .
  [IRS House of Worship] 14 Points of Policy/Criteria of an IRS Church / 3 pages
- Exhibit G-#11 . . .
  Temple Currency of THEIRS-Tax Credits / 3 pages
- Exhibit G-#12 . . .
  [Tax Credits] [Refundable/Nonrefundable Tax Credits] / 24 pages
- Exhibit G-#13 . . .
  [THEIRS] [Systematic Theology of THEIRS] / 1 pages

- Exhibit G-#14 . . .
  [Systematic Theology of THEIRS] Redesignation of the IRC / 103 pages
- Exhibit G-#15 . . .
  [Systematic Theology of THEIRS] IRS Doctrine of / 62 pages
- Exhibit G-#16 . . .
  Temple Police of THE-IRS / 2 pages
- Exhibit G-#17 . . .
  The Religious Authority of THEIRS / 8 pages
- Exhibit 0-#18 . . .
  The Wages of Sins is Death / 2 pages

COUNT IV-EXHIBITS IN SUPPORT OF COUNT #4

- Exhibit H-#1 . . .
  [FAITH]–Taking Faith to the next level and its various practices / 30 pages
- Exhibit H-#2 . . .
  [FAITH]–The Ten Tax Commandments / 9 pages
- Exhibit H-#3 . . .
  [FAITH]-Institutionalized Faith of THEIRS-Next Exit Blind Faith / 27 page
- Exhibit H-#4 . . .
  IRS Genesis of Justification-The Midas Touch-Get Right with your / 5 pages
- Exhibit H-#5 . . .
  [Mammon] Worship of Money a practice which touches upon religion / 2 pages
- Exhibit H-#6 . . .
  THE GREAT WHATEVER-The Deific & Divinity of THEIRS / 2 pages

- Exhibit H-#7 . . .
  [WHATEVER]–An IRS Deific & Divinity of THEIRS / 9 pages
- Exhibit H-#8 . . .
  [WHATEVER] The Messianic State Savior of THEIRS / 22 pages
- Exhibit H-#9 . . .
  Encoded Syntax Messiah of THEIRS–Incarnate Spirit of [THE CODE] /1 page
- Exhibit H-#10 . . .
  [Taxism]-An Institutionalized Faith & Religion / 402 pages
- Exhibit H-#11 . . .
  The Orthodox Church of Taxology–Temple of Taxism / 16 pages
- Exhibit H-#12 . . .
  [Auditing] IRS Manuel Nonfiled Returns / 20 pages
- Exhibit H-#13 . . .
  [Auditing] IRS Manuel Examining Process / 22 pages
- Exhibit H-#14 . . .
  [Auditing] Scientology is like Taxology both believe in [Auditing] / 9 pages
- Exhibit H-#15 . . .
  [MAGI] Modified Adjusted Gross Incomes / 4 pages
- Exhibit H-#16 . . .
  [Tax Deductions] Tax Topics–Itemized Deductions / 1 page

- Exhibit H-#17 . . .
  [Tax Deductions] Above/Below the Line Tax Deductions / 11 pages
- Exhibit #18 . . .
  [IRS Realm] of THEIRS–Dominion Theology of Taxism / 21 pages
- Exhibit H-#19 . . .
  Taxing-Vision Ministries of THEIRS–"Rethink Church" / 14 pages
- Exhibit H-#20 . . .
  Dominion Theology-Collective Experience of THEIRS / 5 pages
- Exhibit H-#21 . . .
  Religious Formation NOW & THEN, The Collective Experience / 1 page
- Exhibit H-#22 . . .
  Keeping the F.A.I.T.H of THEIRS-Above/Below the Line / 3 pages
- Exhibit H-#23 . . .
  Laws of Attraction–A Law Unto Itself / 2 pages
- Exhibit H-#24 . . .
  The Taxing Culture of THEIRS–Faith & Fear / 4 pages
- Exhibit H-#25 . . .
  The Collective Experience's Mission of Taxism Death & Taxes / 2 pages
- Exhibit H-#26 . . .
  [To LIVE as EVIL] Dogma "Service+Enforcement= Compliance" / 7 pages

- Exhibit H-#27 . . .
  An IRS Idol: The Golden Calf–The Bull on Wall Street / 17 pages
- Exhibit H-#28 . . .
  The Structure of a Modern Day Tower of Babel of THEIRS / 1 page
- Exhibit H-#29 . . .
  Golden Rule of Taxism "He Who Has the Gold Makes the Rules" / 19 pages
- Exhibit H-#30 . . .
  Sanctification of THEIRS (Marriage) / 8 pages

COUNT V-EXHIBITS IN SUPPORT OF COUNT #5

- Exhibit I-#1 . . .
  Taxpayer Advocate Service (TAS) "Your Voice at The IRS" / 5 pages
- Exhibit I-#2 . . .
  [Theology Forum] in defining the forum, the focus should be on . . . / 3 pages
- Exhibit I-#3 . . .
  The Church of What's Happening Now-Taxpayer Advocate Service / 1 page
- Exhibit I-#4 . . .
  [Government Speech]–[Body of Rites] Know Your Rites / 6 pages
- Exhibit I-#5 . . .
  [Government Speech] The Ads, Pictures and Posting on the Internet / 24 pages
- Exhibit I-#6 . . .
  [Government Speech] Do as We Say Not As We Do / 11 pages

- Exhibit I-#7 . . .
  [Government Speech] A Spiritual Tradition of THE-IRS / 2 pages
- Exhibit I-#8 . . .
  [Government Speech] THEIRS is the Kingdom of Taxprayers / 1 page
- Exhibit I-#9 . . .
  [Government Speech] Taxing Spirit of F.E.A.R. Ghost Returns 1040 A / 12 pages
- Exhibit I-#10 . . .
  [Government Speech] Presidential election campaign fund checkoff / 5 pages
- Exhibit I-#11 . . .
  [Government Speech] Form 1040A / 95 pages
- Exhibit I-#12 . . .
  [Government Speech] Superstitions, Omens & Misconceptions / 43 pages
- Exhibit I-#13 . . . IRS Indoctrination–Define with IRS practices of Indoctrination/OMB# / 3 pages
- Exhibit I-#14 . . .
  IRS Indoctrination & Symbol of an "Inverted Cross" / 3 pages
- Exhibit I-#15 . . .
  IRS Scales of Injustice instill conduct "in a fair and honest way" / 29 pages
- Exhibit I-#16 . . .
  IRS Indoctrination & Symbol of an alleged "Olive Branch" / 3 pages

- Exhibit I-#17 . . .
  IRS Indoctrination & Symbol of a "Bird" of THEIRS / 3 pages
- Exhibit I-#18 . . .
  IRS Indoctrination–Publication-IRS Manuel / 82 pages
- Exhibit I-#19 . . .
  The [Govspel] of THEIRS–List of Publications for [Worthship] / 30 pages
- Exhibit I-#20 . . .
  The [Govspel] of THEIRS–List of Instructions/Forms for [Worthship] / 70 pages
- Exhibit I-#21 . . .
  The [Govspel] of THEIRS–Pub 17-Your Federal Income Tax / 32 pages
- Exhibit I-#22 . . .
  The [Govspel] of THEIRS What we find as opposed to what may find/ 1 page
- Exhibit I-#23 . . .
  Law & Gospel-Letters & Spirit in [THE CODE] & [THE WORDS] / 104 pages
- Exhibit I-#24 . . .
  Understanding Taxes–Lessons-Teacher & Student of THEIRS / 123 pages
- Exhibit I-#25 . . .
  IRS Indoctrination Taxology a Religion of Submission / 30 pages
- Exhibit I-#26 . . .
  Indoctrination-Application of Internal Revenue Laws *see* Chapter 64 / 3 pages

- Exhibit I-#27 . . .
  The Life Cycle Series of THEIRS–"Get Right With Your Taxes" / 23 pages
- Exhibit I-#28 . . .
  Religious Observances–Life Cycle from Birth through Childhood / 1 page
- Exhibit I-#29 . . .
  Religious Observances–Life Cycle Divorce and non-custodial / 1 page
- Exhibit I-#30 . . .
  Religious Observances–Life Cycle Retirement Savings / 1 page
- Exhibit I-#31 . . .
  Religious Observances–26 § 6014 "shall be given no legal effect" / 7 pages
- Exhibit I-#32 . . .
  [religious gerrymanders] Redesignation & Taxation w/o / 4 pages
- Exhibit I-#33 . . .
  [religious gerrymanders] IRS Mailed doc w/no OMB# & Cross Ref. / 14 pages
- Exhibit I-#34 . . .
  [religious gerrymanders] Bailouts as Moral Hazards / 2 pages
- Exhibit I-#35 . . .
  [Peter-to-Paul Mandates] as [THE WORDS] of THEIRS / 4 pages
- Exhibit I-#36 . . .
  [THE WORDS] of THEIRS–The reality of a Dark Side of the Force / 1 page

- Exhibit I-#37 . . .
  [THE WORDS]–Water Boarding with Words of THEIRS (IRB) / 28 pages
- Exhibit I-#38 . . .
  [THE WORDS]–Belief-O-Matic–IRS Written Determinations / 25 pages
- Exhibit I-#39 . . .
  [THE WORDS]–Belief-O-Matic–Private Letter Rulings / 22 pages
- Exhibit I-#40 . . .
  [THE WORDS]–Belief-O-Matic–Cross Ref. as beliefs rooted in / 41 pages
- Exhibit I-#41 . . .
  [Enumerations] IRS Tax Tables, Brackets & Rates or exclusions / 15 pages
- Exhibit I-#42 . . .
  [Enumerations] Tax Tips Lists given a detail account collecting taxes / 33 pages
- Exhibit I-#43 . . .
  [Materialism] In Greed We Trust / 6 pages
- Exhibit I-#44 . . .
  Progressive Theology of Materialism / 7 pages
- Exhibit I-#45 . . .
  Progressive Theology of Materialism / 11 pages
- Exhibit I-#46 . . .
  Progressive Theology of Materialism-Credit Default Swaps 1 page
- Exhibit I-#47 . . .
  Moral Hazards of Greed IRS Parable of Prodigal Sons / 7 pages

- Exhibit I-#48 . . .
  Foundationalism of THEIRS "The New World Order" / 3 pages
- Exhibit I-#49 . . .
  IRS Corporatism / 2 Pages
- Exhibit I-#50 . . .
  An IRS Hierarchy Rule of Men embracing the Rule by Law / 2 pages
- Exhibit I-#51 . . .
  Taxmageddon–New look of doom and gloom to change your beliefs / 8 pages
- Exhibit I-#52 . . .
  Progressive Theology citizens into customers-Deep Stellar Mission / 50 pages
- Exhibit I-#53 . . .
  Integrated Auxiliary of Church of Taxology-Taxpayer Advocacy Panel / 1 page

COUNT VI-EXHIBITS IN SUPPORT OF COUNT #6

- Exhibit J-#1 . . .
  [Ministries] The Church Without Walls / 1 page
- Exhibit J-#2 . . .
  [Mega Church]-IRS Worthship Ministries / 3 page
- Exhibit J-#3 . . .
  [Taxing Trinity] of THEIRS "The Bureau" "The Agency" "The Service" / 1 page
- Exhibit J-#4 . . .
  [Taxing Trinity] "One Look. One Voice. One IRS." / 43 pages
- Exhibit J-#5 . . .
  [Confession] = [Voluntary Compliance] / 5 page

- Exhibit J-#6 . . .
  [Confession] of Faith in [Form 1040] & Amended Return Form 1040X / 7 pages
- Exhibit J-#7 . . .
  [Prior Restraint] § 7421-Prohibition of suits to restraint / 2 page
- Exhibit J-#8 . . .
  Federal Tax Return Filing Status/Badge of Protected Speech / 2 pages
- Exhibit J-#9 . . .
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- Exhibit J-#10 . . .
  [Form 1040] IRS Covenant to convert taxpayers into taxprayers / 2 pages
- Exhibit J-#11 . . .
  [Form 1040] An Act of Faith in a petition [Form 1040] from taxprayers / 3 pages
- Exhibit J-#12 . . .
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- Exhibit J-#13 . . .
  [Form 1040] is a forum of expressive activity / 3 pages
- Exhibit J-#14 . . .
  [Dispensation] THE IRS Zenith: Money Madness / 2 pages
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  [Dispensation] Left Behind or a religious viewpoint of the Rapture / 1 page

- Exhibit J-#16 . . .
  [Dispensation] Government Bailout Plan as Core Political Speech / 4 pages
- Exhibit J-#17 . . .
  [Dispensation] "IN GREED WE TRUST" / 1 page
- Exhibit J-#18 . . .
  F.A.T.E. Who Must File? / 2 pages
- Exhibit J-#19 . . .
  Forbidden Accounting Transforms Everything / 5 pages
- Exhibit J-#20 . . .
  Spiritualism's Union of THEIRS–IRS Unification / 6 pages
- Exhibit J-#21 . . .
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  The Collective Hopes of THEIRS–A Leap of Faith / 1 page

COUNT VII-EXHIBITS IN SUPPORT OF COUNT #7

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  [Convention] The Fountainhead of Faith Doing What Faith Does / 3 pages
- Exhibit K-#2 . . .
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- Exhibit K-#3 . . .
  [Emerging Church] of THEIRS–A B C Ministries of THEIRS / 5 pages

- Exhibit K-#4 . . .
  The ABC's Ministries of THEIRS–An Alternative Worthship / 21 pages
- Exhibit K-#5 . . .
  [A B C's of Faith] & The Religious Triggers of [Temple Taxes] / 79 pages
- Exhibit K-#6 . . .
  [Temple Taxes] [Penalties & Interests of THEIRS] / 8 pages
- Exhibit K-#7 . . .
  Religious Faith Envisioned & Practiced-Wailing Wall / 2 pages
- Exhibit K-#8 . . .
  [Orthodoxy of THEIRS] *see* attached listed of terms and words/ 9 pages
- Exhibit K-#9 . . .
  [Orthodoxy of THEIRS] An Analysis of Federal Income Tax Laws / 33 pages
- Exhibit K-#10 . . .
  The Converts of THE-IRS–Taxprayers & Definitions § 7701 / 9 pages
- Exhibit K-#11 . . .
  The Taxprayers of THE-IRS-§§ 861 & 862 Income from sources / 20 pages
- Exhibit K-#12 . . .
  Hybrid Congregation of THEIRS, [body of believers] / 12 pages
- Exhibit K-#13 . . .
  The Anointed: The Chosen Ones of Taxology / 2 pages

- Exhibit K-#14 . . .
  Believers of THEIRS / 6 pages
- Exhibit K-#15 . . .
  T.R.U.E. Believers in Taxism [Their Religion Unify Everyone] / 14 pages
- Exhibit K-#16 . . .
  The Devoted Minions of THEIRS / 1 page
- Exhibit K-#17 . . .
  Chosen People &/or Chosen Taxprayers of Taxology / 17 pages
- Exhibit K-#18 . . .
  Taxpayer-President Ronald Reagan Quote / 3 pages
- Exhibit K-#19 . . .
  Followers of IRS' Faith–IRS Employees / 4 pages
- Exhibit K-#20 . . .
  Supporters of IRS' Faith: IRS Volunteers, Blind Leading the Blind / 3 pages
- Exhibit K-#21 . . .
  IRS' Revenue Agents: Zealots of THEIRS / 1 page
- Exhibit K-#22 . . .
  New Age Prophets: CPA Advisors & others practicing before IRS / 28 pages
- Exhibit K-#23 . . .
  IRS Discipleship of THEIRS: The Takers of Souls / 2 pages
- Exhibit K-#24 . . .
  [Worthship] & dependent conditions for a Body of Believers / 17 pages

- Exhibit K-#25 . . .
  [Worthship] & dependent conditions for a Body of Believers / 86 pages
- Exhibit K-#26 . . .
  Adherents of THEIRS / 2 pages
- Exhibit K-#27 . . .
  The Lost, but Found Govspel of THEIRS (Tax Expenditures) . . . / 29 pages
- Exhibit K-#28 . . .
  IRS Non-Believers of THEIRS aka "nontaxpayers" / 2 pages
- Exhibit K-#29 . . .
  IRS Non-Believers of THEIRS: aka Any Person that is a Non-Filer / 28 pages
- Exhibit K-#30 . . .
  IRS' Holy Rollers: Tax Division U.S. Department of Justice / 22 pages
- Exhibit K-#31 . . .
  IRS' Human Capital / 12 pages
- Exhibit K-#32 . . .
  [Abatements] *i.e.* Salvation & Forgiveness IRS Fresh Start / 7 pages
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  [Abatements] i.e. Salvation-Simple as A B C / 6 pages
- Exhibit K-#34 . . .
  [Abatements] *i.e.* Salvation First Time Penalty abatements / 4 pages

- Exhibit K-#35 . . .
  [Abatements] *i.e.* Salvation IRS Tax Tip 2012-48 / 16 pages
- Exhibit K-#36 . . .
  Black Theology of Legalism: The ABC's of Salvation / 231 pages
- Exhibit K-#37 . . .
  Black Theology of Legalism: Definitions § 7701 / 39 pages
- Exhibit K-#38 . . .
  Spiritual Transcendence-Spiritual Purgatory of THEIRS / 2 pages
- Exhibit K-#39 . . .
  The Rapture, Spiritual Marriage &Revelations of THEIRS / 18 pages
- Exhibit K-#40 . . .
  IRS' Deacons of Deception / 21 pages
- Exhibit K-#41 . . .
  Debtors Prisons of THEIRS / 31 pages
- Exhibit K-#42 . . .
  IRS Forbidden Fruit / 23 pages
- Exhibit K-#43 . . .
  IRS Rethink Church: IRS endorsement of The Church of Reality / 224 pages
- Exhibit K-#44 . . .
  Source: What part of the 16th Amend. does the IRS not understand? / 26 pages
- Exhibit K-#45 . . .
  Census: What part of the 16th Amend. does the IRS not understand? / 10 pages

- Exhibit K-#46 . . .
  Enumeration: What part of the 16th Amend. Does the IRS not underst / 9 pages
- Exhibit K-#47 . . .
  [To LIVE as EVIL] Inherit The Wind/Cross References summary / 15 pages
- Exhibit K-#48 . . .
  Core Values of THEIRS with NO CFR under § 7122 Compromises / 5 pages
- Exhibit K-#49 . . .
  Separating the Wheat from the Chaff-Offer in Compromises / 9 pages

[TO LIVE AS EVIL]–EXHIBITS IN SUPPORT OF [OVC]

- Exhibit L #1 . . .
  "You owe past due taxes for 1997" dated 9/27/2004 / 8 pages
- Exhibit L #2 . . .
  "You owe past due taxes for 1997" dated 9/26/2005 / 8 pages
- Exhibit L #3 . . .
  "REQUEST FOR YOUR TAX RETURN" "12-31-2004" 7/24/2006/ 4 pages
- Exhibit L #4 . . .
  "You owe past due taxes for 1997" dated 9/25/2006 / 5 pages
- Exhibit L #5 . . .
  "You owe past due taxes for 1997" dated 9/24/2007 / 9 pages

- Exhibit L #6 . . .
  "You owe past due taxes for 1997" dated 9/22/2008 / 3 pages
- Exhibit L #7 . . .
  "Request for Your Tax Return" "Dec. 31, 2008" dated 7/26/2010 / 6 pages
- Exhibit L #8 . . .
  "YOUR TAX RETURN IS OVERDUE" "12-31-2008" dated 9/20/2010 / 4 pages
- Exhibit L #9 . . .
  "YOUR TAX RETURN IS OVERDUE" "12-31-2009" dated 9/19/2011 / 4 pages
- Exhibit L #10 . . .
  "You didn't file a form 1040 tax return" "2010 Form 1040" 5/21/2012/ 5 pages
- Exhibit L #11 . . .
  "YOUR TAX RETURN IS OVERDUE" "12-31-20010" dated 7/9/2012 / 3 page
- Exhibit L #12 . . .
  "You didn't file a form 1040 tax return" "2011 Form 1040" 5/27/2013 / 5 pages
- Exhibit L #13 . . .
  "You must file your 2011 tax return" "2011 Form 1040" 7/15/2013 / 3 pages
- Exhibit L #14 . . .
  "Dear Taxpayer" "In reply refer to: 0765433863" dated 11/10/2014 / 2 pages
- Exhibit L #15 . . .
  "Dear Taxpayer" Taxpayer number: 496-62-7855 dated 11/17/14 / 15 pages

- Exhibit L #16 . . .
  "Dear Taxpayer" "In reply refer to: 0469000192" dated 11/26/2014 / 3 pages
- Exhibit L #17 . . .
  "You didn't file a form 1040 tax return" "2012 Form 1040" 12/1/2014 / 5 pages
- Exhibit L #18 . . .
  "You must file your 2012 tax return" "2012 Form 1040" 2/9/2015 / 4 pages
- Exhibit L-#19 . . .
  [To LIVE as EVIL] IRS Dogma F.E.A.R. / 8 pages
- Exhibit L-#20 . . .
  [To LIVE as EVIL] IRS Dogma–Star Trek for a Religion of Reality / 7 pages
- Exhibit L-#21 . . .
  [To LIVE as EVIL] Moral Hazards-Bank-Bailout Redemption Plans / 1 page
- Exhibit L-#22 . . .
  [To LIVE as EVIL] Moral Hazards–Collateralized Debt Obligations / 1 page
- Exhibit L-#23 . . .
  [To LIVE as EVIL] Moral Hazards–Credit Default Swaps/Bread Line/ 1 page
- Exhibit L-#24 . . .
  [To LIVE as EVIL] Moral Hazards–Liars of U.S. Tax Code Reform / 1 page
- Exhibit L-#25 . . .
  [To LIVE as EVIL] Moral Hazards–Credit Markets & subprime crisis/ 1 page

- Exhibit L-#26 . . .
  [To LIVE as EVIL] Moral Hazards–2008 Global Economic Crisis / 1 page
- Exhibit L-#27 . . .
  [To LIVE as EVIL] Moral Hazards–Too Big To Fail /Bus. of Greed /1 page
- Exhibit L-#28 . . .
  [To LIVE as EVIL] Moral Hazards–Enablers for the Bus. of Greed / 4 pages
- Exhibit L-#29 . . .
  [To LIVE as EVIL] IRS Dogma using the same OMB# for different Reg. / 74 p
- Exhibit L-#30 . . .
  [To LIVE as EVIL] Doctrine of Discrimination & Discernment / 4 pages
- Exhibit L-#31 . . .
  [The Policy] on its face and as applied/IRS Strategic Plan 2014-2017 / 44 pages
- Exhibit L-#32 . . .
  [The Program] activities in proselytizing a taxing environment, culture or . . . 1 p
- Exhibit L-#33 . . .
  [CRITERION] a strategy plan or positions enforced as their core values / 8 pgs.
- Exhibit L-#34 . . .
  [IRS] Angry man flies plane into IRS Office/ manifesto/ Collective Ex / 6 pgs.
- Exhibit L-#35 . . .
  list of IRS Letters to Plaintiff many without valid OMB control number / 1 page

- Exhibit L-#36 . . .
  False Evidence Appearing Real Civil Rights Office of IRS / 8 pages
- Exhibit L-#37 . . .
  IRS Dogma: Wicked Law–IRC Title 1986 is as follows: . . . / 5 pages

THE BOOK OF REVELATION & PLAINTIFF'S POLICY OF TRUTH—EXHIBITS IN SUPPORT OF [OVC]

- Exhibit M-#1 . . .
  A Question of True Relations: Seven Deadly Tax Sins of Taxology / 9 pages
- Exhibit M-#2 . . .
  A Question of Values: Revelation 6.2 Who Makes an Act of Faith / 3 p
- Exhibit M-#3 . . .
  A Question of Purpose: Where is the Hand of God? / 25 pages
- Exhibit M-#4 . . .
  A Question of Balance: The Words I Live by Are Not an Argument / 4 pages
- Exhibit M-#5 . . .
  Question of Proof: Our Decision [To LIVE as EVIL] v. In the Name of God 5p
- Exhibit M-#6 . . .
  Question of Truth: God's Policy of Truth–Intersection of Church & State / 2p
- Exhibit M-#7 . . .
  Question of Trust: One Nation Under God and The Holy Bible / 1 page

- Exhibit M-#8 . . .
  Question of Take, Taken & Take Away To Serve, Civil Religion, Our Fight /4p
- Exhibit M-#9 . . .
  Question of Judgement: True Mark, Measure & Key Signature of Character / 3p
- Exhibit M-#10 . . .
  Question of THESE WORDS I BELIEVE ARE NOT AN ARGUMENT / 38 p

MARK VAN DER LEEST—EXHIBITS IN SUPPORT OF THE PLAINTIFF AND AS A WITNESS

- Exhibit N-#1 . . .
  Declaration of Mark Van Der Leest / 5 pages
- Exhibit N-#2 . . .
  Year 2013 / 127 pages
- Exhibit N-#3 . . .
  Year 2014 / 179 pages
- Exhibit N-#4 . . .
  Year 2015 / 124 pages
- Exhibit N-#5 . . .
  Year 2016 / 149 pages
- Exhibit N-#6 . . .
  [Controlling Legal Principles] of Mark Van Der Leest / 104 pages

TERRY LEE HINDS-EXHIBITS IN SUPPORT OF [OVC]

- Exhibit O . . .
  Q.U.E.S.T. vs. IGNORANCE, THE ROOT AND STEM OF ALL EVIL / 1 page

- Exhibit O-#1 . . .
  Year 2014-09/29/2014 Defendants' proselytizing IRS activities through CP 59 beliefs. Plaintiff's thoughts, words and activities in free exercises of First Amendment protections within forums of certain guarantees of [Sacred Honor] [Mankind's Supreme Possessions] religion and religious beliefs, [conscience] [Constitutionally Protected Interests] [Protected Conduct] and [Protected Speech] concerning Plaintiff's life, liberty and the pursuit of happiness. / 11 pages
- Exhibit O-#2 . . .
  Year 2014-09/29/2014 Defendants' proselytizing IRS activities through CP 516 beliefs. Plaintiff's thoughts, words and activities in free exercises of First Amendment protections within forums of certain guarantees of [Sacred Honor] [Mankind's Supreme Possessions] religion and religious beliefs, [conscience] [Constitutionally Protected Interests] [Protected Conduct] and [Protected Speech] concerning Plaintiff's life, liberty and the pursuit of happiness. / 3 pages
- Exhibit O-#3 . . .
  Year 2014-09/30/2014 Defendants' proselytizing IRS activities through CP 71 beliefs. Plaintiff's thoughts, words and activities in free exercises of First Amendment protections within forums of certain guarantees of [Sacred Honor] [Mankind's Supreme Possessions] religion and religious beliefs, [conscience] [Constitutionally Protected Interests] [Protected Conduct] and [Protected Speech] concerning Plaintiff's life, liberty and the pursuit of happiness. / 9 pages

- Exhibit O-#4 . . .
  Year 2015-08/27/2015 Defendants' proselytizing IRS activities through CP 2566 beliefs. Plaintiff's thoughts, words and activities in free exercises of First Amendment protections within forums of certain guarantees of [Sacred Honor] [Mankind's Supreme Possessions] religion and religious beliefs, [conscience] [Constitutionally Protected Interests] [Protected Conduct] and [Protected Speech] concerning Plaintiff's life, liberty and the pursuit of happiness. / 46 pages
- Exhibit O-#5 . . .
  Year 2016-05/12/2016 Defendants' proselytizing IRS activities through CP 504 beliefs. Plaintiff's thoughts, words and activities in free exercises of First Amendment protections within forums of certain guarantees of [Sacred Honor] [Mankind's Supreme Possessions] religion and religious beliefs, [conscience] [Constitutionally Protected Interests] [Protected Conduct] and [Protected Speech] concerning Plaintiff's life, liberty and the pursuit of happiness. / 31 pages
- Exhibit O-#6 . . .
  Year 2016-08/5/2016 Defendants' proselytizing IRS activities through CP 71C beliefs. Plaintiff's thoughts, words and activities in free exercises of First Amendment protections within forums of certain guarantees of [Sacred Honor] [Mankind's Supreme Possessions] religion and religious beliefs, [conscience] [Constitutionally Protected Interests] [Protected Conduct] and [Protected Speech] concerning Plaintiff's life, liberty and the pursuit of happiness. / 89 pages

IRS' [CREED], ATMOSPHERE, ENVIRONMENT & REALM— EXHIBITS IN SUPPORT OF [OVC]

- Exhibit P-#1 . . .
  The Raised Altar of THEIRS built upon the sacred trust of citizens / 2 pages
- Exhibit P-#2 . . .
  IRS CORE Values particular expressions of one's values / 51 pages
- Exhibit P-#3 . . .
  U.S. Supreme Court versus The ABC's of Salvation & IRS Values / 28 pages
- Exhibit P-#4 . . .
  IRS Holy War of THEIRS creating a rich man's war and a poor man's fight / 2 p.
- Exhibit P-#5 . . . Conditional Values of THEIRS– 26 U.S. Code § 7122 Compromise / 5 pages
- Exhibit P-#6 . . .
  A Personal Stake to reflect the probable intent of Congress Amendments / 99 pages
- Exhibit P-#7 . . .
  CODIFICATION to reflect the probable intent of Congress / 10 pages
- Exhibit P-#8 . . .
  Defendants' redesignation, redesignated & redesignating law or § thereof / 171 p
- Exhibit P-#9 . . .
  Internal Revenue Title referred to in subsection (a)(1) is as follows: * * * / 9 pages

- Exhibit P-#10 . . .
  Collective Hopes of THEIRS / Missing Children Program / 74 pages
- Exhibit P-#11 . . .
  Trial by Ordeal-passing a heartfelt judgement and its tests upon others /10 pages
- Exhibit P-#12 . . .
  Collective Exp. of religious dominance, decisions & taxing dimensions / 5 pages
- Exhibit P-#13 . . .
  THE IRS Questioning Our Values / 1 page
- Exhibit P-#14 . . .
  Unlock Your Promise-The "What Ifs" for Struggling Taxpayers / 4 pages
- Exhibit P-#15 . . .
  THE "EXAMINERS" of THEIRS-Importance of Court Decisions / 1 page
- Exhibit P-#16 . . .
  Sin of Greed with Wall Street Investments Banks in a Confidence Game / 2 pages
- Exhibit P-#17 . . .
  Who is the "secretary of the Treasury" IRS web page Statutory Authority / 4 pages
- Exhibit P-#18 . . .
  Who is the "secretary of the treasury" found in 26 U.S. Code § 432(e)(G) /1 page

THE SEVEN SEALS OF ALMIGHTY GOD— EXHIBITS IN SUPPORT OF [OVC]

- Exhibit Q-41 . . .
  Overview of the Great Seal of the United States / 7 pages
- Exhibit Q-#2 . . .
  The All Seeing Eye of Providence on Great Seal of the United States / 3 pages
- Exhibit Q-#3 . . .
  Annuity Coeptis-(Providence has favored our undertakings) / 2 pages
- Exhibit Q-#4 . . .
  E Pluribus Unum (Out of Many, One) / 4 pages
- Exhibit Q-#5 . . .
  Unity is a Founding Principle Expressed by the Great Seal of the U.S. / 2 pages
- Exhibit Q-#6 . . .
  Date on the Great Seal MDCCLXXVI is 1776 & Unfinished Pyramid / 3 pages
- Exhibit Q-#7 . . .
  Novus Ordo Seclorum on Unfinished Pyramid "A New Order of the Ages" 4 p.

THE GREAT SEAL OF THIS NATION— EXHIBITS IN SUPPORT OF [OVC]

- Exhibit R-#1 . . .
  The Great Seal's Pyramid with All Seeing Eye of Providence above it / 3 pages
- Exhibit R-#2 . . .
  Amer. Bald Eagle on the Great Seal / a Bundle of 13 Arrows in its left talon / 4p

- Exhibit R-#3 . . .
  Constellation of 13 Stars above Eagle on the Great Seal of Unites States / 2 page
- Exhibit R-#4 . . .
  Olive Branch held by Eagle on the Great Seal in its right talon / 2 pages
- Exhibit R-#5 . . .
  Shield on the Great Seal, Escutcheon [shield] denotes defense & its Virtue / 3p
- Exhibit R-#6 . . .
  Rays of Light surrounding the Eye and Stars on the Great Seal / 3 pages
- Exhibit R-#7 . . .
  Clouds above Eagle in a Pillar of fire as divine Presence & Command / 2 pages

RELIGIOUS DOCTRINES, DOGMAS AND THEOLOGIES EXHIBITS IN SUPPORT OF [OVC]

- Exhibit S-#1 . . .
  Joel Osteen Ministries / 3 pages
- Exhibit S-#2 . . .
  Benny Hinn Ministries / 1 pages
- Exhibit S-#3 . . .
  Creflo Dollar Ministries / 4 pages
- Exhibit S-#4 . . .
  Jehovah Witness Kingdom / 6 pages
- Exhibit S-#5 . . .
  Kenneth Copeland Ministries / 8 pages
- Exhibit S-#6 . . .
  The Fallen / 2 pages

- Exhibit S-#7 . . .
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[Q.U.E.S.T.] EXHIBITS IN SUPPORT OF [OVC]

- Exhibit T-#1 . . .
  [Sacred Honor] / 3 pages
- Exhibit T-#2 . . .
  [Mankind's Supreme Possessions] / 20 pages
- Exhibit T-#3 . . .
  As Architects of Religion and Religious Beliefs / 1 page
- Exhibit T-#4 . . .
  [conscience] / 7 pages
- Exhibit T-#5 . . .
  [Constitutionally Protected Interests] /3 pages
- Exhibit T-#6 . . .
  [Protected Conduct] / 12 pages
- Exhibit T-#7 . . .
  [Protected Speech] / 5 pages
- Exhibit T-#8 . . .
  [Q.U.E.S.T.] Immortal Thought of Larry Beeraft No auth. [THE CODE] / 7 pages

EXHIBITS IN SUPPORT OF [OVC]

- Exhibit U-#1 . . .
  Letter of Rule 5.1 notice and federal questions to Attorney General / 3 pages

CONSTITUTIONAL, DOCTRINES, DECISIONS, PRECEDENTS, ORDERS, CODES, AND STATUTORY OR OTHER PROVISIONS OF LAW INVOLVED

I. The Issues Presented Pursuant to the United States Constitution

i. Article I, Congressional and Legislative Authority & Intent

- Section 1.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

- Section 8, Clause 18.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

ii. Article II, § 1, Clause 1: Exec. Power of the President

In pertinent part:

The executive Power shall be vested in a President of the United States of America.

iii. Article III, §§ 1 and 2

- Section 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

In pertinent part:

- Section 2. Clause 1

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . . to controversies to which the United States shall be a party.

- Section 2. Clause 2

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

iv. Article VI, Clause 2, *Supremacy Clause*

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be

bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

II. The Issues Presented Pursuant to Constitutional Amendments

i. First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ii. Fifth Amendment

In pertinent part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

iii. Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

III. The Issues Presented Pursuant to U.S. Supreme Court's Doctrines, Precedents or Decisions or Controlling Law.

i. Doctrines of Constitutional Construction

- **Consistent with the letter and spirit of the Constitution**

"The Government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the Constitution, form the supreme law of the land." *McCulloch v. Maryland*, 17 U.S. 4 Wheat. 316 316 (1819) at Syllabus.

"If the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect." *McCulloch v. Maryland*, 17 U.S. 4 Wheat. 316 316 (1819) at Syllabus.

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional." *Id* at 421-422.

"The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument as a means to effect the legitimate objects of the Government." *Id* at 423-424.

"In making this construction, no principle, not declared, can be admissible which would defeat the

legitimate operations of a supreme Government. It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments as to exempt its own operations from their own influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain. We must, therefore, keep it in view while construing the Constitution." *Id* at 427-428.

"It is admitted that the power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the Government may choose to carry it. The only security against the abuse of this power is found in the structure of the Government itself." *Id* at 428-429.

"These collisions may take place in times of no extraordinary commotion. But a Constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen indeed if they have not provided it, as far as its nature will permit, with the means of self-preservation from the perils it may be destined to encounter. No government ought to be so defective in its organization as not to contain within itself the means of securing the execution of its own laws against other dangers than those which occur every day. Courts of justice are the means most usually employed, and it is reasonable to expect that a government should repose on its own Courts, rather

than on others." *Cohens v. Virginia*, 19 U.S. (6 Wheaton) 264, 388 (1821)

- **Construing Constitution in Accord with Original Intent**

"We look first to evidence of the original understanding of the Constitution." *Alden v. Maine*, 527 U.S. 706, 741 (1999).

- **Construing Constitution in Accord with Early Practice**

"[E]arly congressional practice . . . provides 'contemporaneous and weighty evidence of the Constitution's meaning.'" *Alden v. Maine*, 527 U.S. 706, 743-744 (1999) (quoting *Printz v. United States*, 521 U.S. 898, 905 (1997) (internal quotation marks omitted)).

- **Precedents Binding**

"We would have thought it self-evident that the lower courts must adhere to our precedents." *Hubbard v. United States*, 115 S.Ct. 1754, 1764 n.13 (1995) (opinion of Stevens, J.).

ii. Doctrines of Statutory Construction

- **Statutory Language**

"When interpreting a statute, we look first to the language." *Richardson v. United States*, 526 U.S. 813, 818 (1999).

- **Plain Meaning**

"As in any case of statutory construction, our analysis begins with the language of the statute. . . . And where the statutory language provides a clear answer, it ends there as well." *Hughes Aircraft*

Co. v. Jacobson, 525 U.S. 432, 438 (1999) (citation and internal quotation marks omitted).

"'We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.'" *Department of Defense v. FLRA*, 114 S.Ct. 1006, 1014 (1994), quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. ___, 112 S.Ct. 1146, 1149 (1992).

"'Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words . . . in search of an intention which the words themselves did not suggest.'" *United States v. Gonzales*, 117 S.Ct. 1032, 1036 (1997) (quoting *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820) (Marshall, C.J.)).

- **Ordinary Meaning**

"In the absence of an indication to the contrary, words in a statute are assumed to bear their 'ordinary, contemporary, common meaning.'" *Walters v. Metropolitan Educational Enterprises, Inc.*, 117 S.Ct. 660, 664 (1997) (quoting *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 388 (1993)).

Supreme Court rejected a construction that "violates the ordinary meaning of the key word." *Dunn v. Commodity Futures Trading Comm'n*, 117 S.Ct. 913, 916 (1997) (internal quotation marks omitted).

- **Ambiguity**

"Ambiguity is a creature not of definitional possibilities but of statutory context . . . ." *Brown v. Gardner*, 115 S.Ct. 552, 555 (1994).

- **Congressional Intent**

"'The ultimate question is one of congressional intent, not one of whether this Court thinks that it can improve upon the statutory scheme that Congress enacted into law.'" *United States v. Mezzanatto*, 115 S.Ct. 797, 808 (1995) (Souter, J., dissenting) (quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 578 (1979)).

- **Construed in Context**

"As our decisions underscore, a characterization fitting in certain contexts may be unsuitable in others." *Nationsbank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 115 S.Ct. 810, 816 (1995) (citations omitted).

- **Context**

"[T]he meaning of statutory language, plain or not, depends on context." *Holloway v. United States*, 526 U.S. 1, 7 (1999) (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994), and *King v. St. Vincent's Hospital*, 502 U.S. 215, 221 (1991)).

- **Construe Not Rewrite**

"Our task is to apply the text, not to improve upon it." *Fogerty v. Fantasy, Inc.*, 114 S.Ct. 1023, 1033 (1994) (Thomas, J. dissenting), quoting *Pavelic & Le Flore v. Marvel Entertainment Group*, 493 U.S. 120, 126 (1989).

- **Construed as a Whole**

"The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences." *Beecham v. United States*, 114 S.Ct. 1669, 1671 (1994)

- **Construed in Accord with Contemporary Legal Context**

The Supreme Court held that the construction it adopted is "faithful to the contemporary legal context in which the [statute] was drafted." *Dunn v. Commodity Futures Trading Comm'n*, 117 S.Ct. 913, 920 (1997) (internal quotation marks omitted).

- **Construed in Accord with Supreme Court Precedents**

"[W]e presume that Congress expects its statutes to be read in conformity with this Court's precedents * * * ." *United States v. Wells*, 117 S.Ct. 921, 929 (1997).

"[I]t is not only appropriate but also realistic to presume that Congress was thoroughly familiar with [our] precedents . . . and that it expect[s] its enactments[s] to be interpreted in conformity with them." *North Star Steel Co. v. Thomas*, 115 S.Ct. 1927, 1930 (1995) (quoting *Cannon v. University of Chicago*, 441 U.S. 677, 699 (1979).

- **Construed to Avoid Constitutional Questions**

"'[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.'" *Jones v. United States*, 526 U.S. 227, 239 (1999) (quoting United States *ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)).

"[W]e must 'first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided.'" *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707

(1999) (quoting *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 345 (1998), and *Tull v. United States*, 481 U.S. 412, 417, n.3 (1987)).

"Federal courts, when confronting a challenge to the constitutionality of a federal statute, follow a 'cardinal principle': They 'will first ascertain whether a construction . . . is fairly possible' that will contain the statute within constitutional bounds." *Arizonans for Official English v. Arizona*, 117 S.Ct. 1055, 1074 (1997) (quoting *Ashwander v. TVA*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring).

"'Statutes should be construed to avoid constitutional questions, but this interpretative canon is not a license for the judiciary to rewrite language enacted by the legislature.'" *Salinas v. United States*, 522 U.S. 52, 59-60 (1997) (quoting *United States v. Albertini*, 472 U.S. 675, 680 (1985)).

- **Equitable Exceptions to Statutes**

"'[A]s a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text[.'] Although trust law may offer a 'starting point' for analysis in some situations, it must give way if it is inconsistent with 'the language of the statute, its structure, or its purposes.'" *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (quoting *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 376 (1990), and *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996)).

- **Literal Construction**

"[W]e ordinarily resist reading words or elements into a statute that do not appear on its face." *Bates v.*

United States, 522 U.S. 23, 29 (1997). A literal reading of the statute "is not a sensible interpretation of this language, since a literal reading of the words * * * would dramatically separate the statute from its intended purpose." *Lewis v. United States*, 523 U.S. 155, 160 (1998).

- **Presumption of Judicial Review**

" * * * [W]hen a government official's determination of a fact or circumstance—for example, 'scope of employment'—is dispositive of a court controversy, federal courts generally do not hold the determination unreviewable. Instead, federal judges traditionally proceed from the 'strong presumption that Congress intends judicial review.'" *Gutierrez de Martinez v. Lamagno*, 115 S.Ct. 2227, 2231 (1995) (quoting *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 670 (1986) (other citations omitted)).

"Accordingly, we have stated time and again that judicial review of executive action 'will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress.'" *Gutierrez de Martinez v. Lamagno*, 115 S.Ct. 2227, 2231 (1995) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967)).

"Because the statute is reasonably susceptible to divergent interpretation, we adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review and that mechanical judgments are not the kind federal courts are set up to render." *Gutierrez de Martinez v. Lamagno*, 115 S.Ct. 2227, 2236 (1995).

- **Judicial Review Provisions**

"Judicial review provisions, however, are jurisdictional in nature and must be construed with strict fidelity to their terms." *Stone v. INS*, 115 S.Ct. 1537, 1549 (1995).

- **Definitions: Jurisdiction**

"'Jurisdiction,' it has been observed, 'is a word of many, too many, meanings * * * .'" *Steel Co. v. Citizens for a Better Environment*, 523 U.S.83, 90 (1998) (quoting *United States v. Vanness*, 85 F.3d 661, 663, n.2 (D.C. Cir. 1996)).

- **Title of Statute**

"'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute." *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (quoting *Trainmen v. Baltiore & Ohio R. Co.*, 331 U.S. 519, 528-529 (1947)).

iii. Supreme Court Practice

- **Court Considers Issues Not Raised**

"'On a number of occasions, this Court has considered issues waived by the parties below and in the petition for certiorari because the issues were so integral to decision of the case that they could be considered "fairly subsumed" by the actual questions presented.' *Gilmer v. Interstate / Johnson Lane Corp.*, 500 U.S. 20, 37 (1991) (Stevens, J., dissenting) (citing cases). The Court has not always confined itself to the set of issues addressed by the parties." *Kolstad v. American Dental Assn.*, 527 U.S. 526, 540 (1999).

- **Argument Preserved**

"It is our practice to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari." *Bragdon v. Abbott*, 524 U.S. 624, 638 (1998).

- **Remand**

"'When attention has been focused on other issues, or when the court from which a case comes has expressed no views on a controlling question, it may be appropriate to remand the case rather than deal with the merits of that question in this Court.'" *Bragdon v. Abbott*, 524 U.S. 624, 654 (1998) (quoting *Dandridge v. Williams*, 397 U.S. 471, 476 n.6 (1970)).

- **Unconstitutional Conditions**

The Supreme Court has "long since rejected Justice Holmes' famous dictum, that a policeman 'may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." *Board of Comm'rs, Wabaunsee Cty. v. Umbehr*, 116 S.Ct. 2342, 2347 (1996) (quoting *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 220, 29 N.E. 517 (1892)).

"'[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. That would allow the government to "produce a result which [it] could not command directly." Such interference with constitutional rights is impermissible.'" *O'Hare Truck Service, Inc. v. City of Northlake*, 116 S.Ct. 2353, 2356-2357 (1996) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972), *and Speiser v. Randall*, 357 U.S. 513, 526 (1958)).

iv. Procedural Doctrines

- **Abuse of Discretion: Error of Law**.

"It is true that the trial court has discretion, but the exercise of discretion cannot be permitted to stand if we find it rests upon a legal principle that can no longer be sustained." *Agostini v. Felton*, 117 S.Ct. 1997, 2018 (1997).

"It is a paradigmatic abuse of discretion for a court to base its judgment on an erroneous view of the law." *Schlup v. Delo*, 115 S.Ct. 851, 870 (1995) (O'Connor, J., concurring).

"[A]buse of discretion is the proper standard of review of a district court's evidentiary rulings." *General Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997).

"[D]eference [to the trial court] . . . is the hallmark of abuse of discretion review." *General Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997).

"A district court by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996).

"A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 110 S.Ct. 2447, 2461 (1990).

- **"Capable of Repetition Yet Evading Review" Doctrine**

The basic test for application of the doctrine "capable of repetition yet evading review" was outlined by the Supreme Court in *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975), where the Court explained that

the doctrine applies where "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." *See also Murphy v. Hunt*, 455 U.S. 478 (1982).

- **Case or Controversy**

"Of course no statute could authorize a federal court to decide the merits of a legal question not posed in an Article III case or controversy. For that purpose, a case must exist at all the stages of appellate review." *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 115 S.Ct. 386, 389 (1994).

- **Cert. Denied: Effect**

"Of course, '[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times.'" *Missouri v. Jenkins*, 115 S.Ct. 2038, 2047 (1995) (quoting *United States v. Carver*, 260 U.S. 482, 490 (1923)).

- **Constitutional Analysis**

"'[W]hatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution.'" *United States v. Lopez*, 115 S.Ct. 1624, 1636 (1995) (Kennedy, J., concurring) (quoting *Wickard v. Filburn*, 317 U.S. 111, 123 n.24 (1942)).

- **Constitutional Rights May Not Be Indirectly Denied**

"As we have often noted, constitutional rights would be of little value if they could be * * * indirectly denied. The Constitution nullifies sophisticated as well as simpleminded modes of infringing on Constitutional protections." *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842, 1867 (1995) (citations and internal quotation marks omitted).

- **Due Process: Procedural**

"A primary purpose of the notice required by the Due Process Clause is to ensure that the opportunity for a hearing is meaningful." *West Covina v. Perkins*, 525 U.S. 234, 240 (1999).

- **Due Process: Property Right**

"The hallmark of a protected property interest is the right to exclude others. That is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 673 (1999) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).

- **Declaratory Judgment Act**

"We have repeatedly characterized the Declaratory Judgment Act as 'an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant.'" *Wilton v. Seven Falls Co.*, 115 S.Ct. 2137, 2143 (1995) (quoting *Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 241 (1952)).

"By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's

quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants." *Wilton v. Seven Falls Co.*, 115 S.Ct. 2137, 2143 (1995).

- **All Writs Act**

"While the All Writs Act authorizes employment of extraordinary writs, it confines the authority to the issuance of process 'in aid of' the issuing court's jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999).

"The All Writs Act invests a court with a power essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law." *Clinton v. Goldsmith*, 526 U.S. 529, 537(1999).

"Although the United States suggests that there is statutory support for the present injunction in the All Writs Act, 28 U.S.C. § 1651, * * * we have said that the power conferred by the predecessor of that provision is defined by 'what is the usage, and what are the principles of equity applicable in such a case.'" *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 326 n.8 (1999) (quoting *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 219 (1945)).

- **Appellate Jurisdiction**

"Appeal rights cannot depend on the facts of a particular case." *Behrens v. Pelletier*, 116 S.Ct. 834, 841 (1996) (quoting *Carroll v. United States*, 354 U.S. 394, 405 (1957)).

"[A]ppealability determinations are made for classes of decisions, not individual orders in specific

cases." *Behrens v. Pelletier*, 116 S.Ct. 834, 834, 841-842 (1996).

- **Appealable Final Orders**

"[A] decision is not final, ordinarily, unless it "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Cunningham v. Hamilton County*, Ohio, 527 U.S. 198, 204 (1999) (quoting *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521-522 (1988), and *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

- **Avoiding Constitutional Issues**

"'If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.'" *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 343 (1999) (quoting *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944)).

"'[I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.'" *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 344 (1999) (quoting *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring)).

- **Constitutional Adjudication**

"'If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.' *Spector Motor Service v. McLaughlin,*

323 U.S. 101, 105 (1944). It has long been the Court's 'considered practice not to decide abstract, hypothetical or contingent questions . . . or to decide any constitutional question in advance of the necessity for its decision . . . or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied . . . or to decide any constitutional question except with reference to the particular facts to which it is to be applied. . . .' *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 461 (1945)." *Clinton v. Jones*, 117 S.Ct. 1636, 1642 n.11 (1997).

- **Dicta Not Binding**

"[I]t is to the holdings of our cases, rather than their dicta, that we must attend." *Bennis v. Michigan*, 116 S.Ct. 994, 999 (1996) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. ___, ___ (1994)).

- **Distinguishing Issues of Fact and Law**

"[T]he proper characterization of a question as one of fact or law is sometimes slippery." *Thompson v. Keohane*, 116 S.Ct. 457, 464 (1995).

- **Equitable Remedies**.

"A remedial decree, this Court has said, must closely fit the constitutional violation; it must be shaped to place persons unconstitutionally denied an opportunity or advantage in 'the position they would have occupied in the absence of [discrimination].' *See Milliken v. Bradley*, 433 U.S. 267, 280 (1977) (internal quotation marks omitted)." *United States v. Virginia*, 116 S.Ct. 2264, 2282 (1996).

- **Equity Powers of Federal Courts**

"'Substantially, then, the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789 (1 Stat. 73).'" *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) (quoting A. Dobie, Handbook of Federal Jurisdiction and Procedure 660(1928)).

"We do not question the proposition that equity is flexible; but in the federal system, at least, that flexibility is confined within the broad boundaries of traditional equitable relief." *Grupo Mexicano de Desarrollo S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 322 (1999).

"[C]ourts of equity will "'go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'"" *Grupo Mexicano de Desarrollo S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 326 (1999) (quoting *United States v. First Nat. City Bank*, 379 U.S. 378, 383 (1965), and *Virginian R. Co. v. Railway Employees*, 300 U.S. 515, 552 (1937)).

"[T]he equitable powers conferred by the Judiciary Act of 1789 did not include the power to create remedies previously unknown to equity jurisprudence. Even when sitting as a court in equity, we have no authority to craft a 'nuclear weapon' of the law like the one advocated here." *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999).

- **Federal Courts-Inherent Power**

"Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities. [Citations omitted.] The extent of these powers must be delimited with care, for there is a danger of overreaching when one branch of the Government, without benefit of cooperation or correction from the others, undertakes to define its own authority." *Degen v. United States*, 116 S.Ct. 1777, 1780 (1996).

"A court's inherent power is limited by the necessity giving rise to its exercise." *Degen v. United States*, 116 S.Ct. 1777, 1783 (1996).

- **Grounds for Affirmance**

A court "may affirm on any ground that the law and the record permit." *Thigpen v. Roberts*, 468 U.S. 27, 30 (1984).

- **Jurisdiction-General**

"[A] federal court may exercise ancillary jurisdiction '(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.'" *Peacock v. Thomas*, 116 S.Ct. 862, 867 (1996) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. ___, ___ (1994)).

- **Jurisdiction: Federal Question**

"'[T]he presence or absence of federal-question jurisdiction is governed by the "well pleaded complaint

rule," which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)).

- **Jurisdiction: Hypothetical**

The "doctrine of hypothetical jurisdiction" is "embraced by several Courts of Appeals, which find it proper to proceed immediately to the merits question, despite jurisdictional objections, at least where (1) the merits question is more readily resolved, and (2) the prevailing party on the merits would be the same as the prevailing party were jurisdiction denied. * * * We decline to endorse such an approach because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers." *Steel Co. v. Citizens fora Better Environment*, 523 U.S. 83, 93-94 (1998).

"Hypothetical jurisdiction produces nothing more than a hypothetical judgment—which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998).

- **Jurisdiction: Supplemental**

"[T]his Court has long adhered to principles of pendent and ancillary jurisdiction by which the federal courts' original jurisdiction over federal questions carries with it jurisdiction over state law claims that 'derive from a common nucleus of operative fact,' such that 'the relationship between [the federal] claim and the state claim permits the conclusion that

the entire action before the court comprises but one constitutional "case.'" Mine *Workers v. Gibbs*, 383 U.S. 715, 725 (1966) * * * . Congress has codified those principles in the supplemental jurisdiction statute, which combines the doctrines of pendent and ancillary jurisdiction under a common heading. 28 U.S.C. § 1367." *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 164-165 (1997).

- **Judicial Notice**

"The contents of the Federal Register shall be judicially noticed * * * ." 44 U.S.C. 1507.

- **Mootness**

"'This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate. . . . The parties must continue to have a 'personal stake in the outcome' of the lawsuit." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-478 (1990)).

"[M]ootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so. We are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong." *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).

- **Mootness: Capable of Repetition Yet Evading Review**

"The capable-of-repetition doctrine applies only in exceptional situations, * * * where the following two circumstances are simultaneously present: (1) the challenged action is in its duration too short to be

fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (internal quotation marks, citations, ellipses, and brackets omitted).

- **Plain Error Doctrine**

"Under [review for plain error], relief is not warranted unless there has been (1) error, (2) that is plain, and (3) affects substantial rights. * * * Appellate review under the plain-error doctrine, of course, is circumscribed and we exercise our power under Rule 52(b) sparingly. * * * An appellate court should exercise its discretion to correct plain error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Jones v. United States*, 527 U.S. 373, 389 (1999) (citations, internal quotation marks, and brackets omitted).

- **Preliminary Injunctions**

"Preliminary injunctions are, after all, appealable as of right." *El Paso Natural Gas Co. v. Neztsosie*, 526 U.S. 473, 482 (1999) (citing 28 U.S.C. 1292(a)(1) and noting that Federal Rules of Appellate Procedure 4 and 26 (b) cover such appeals).

- **Recall of Appellate Court Mandate**

"[T]the courts of appeals are recognized to have an inherent power to recall their mandates, subject to review for an abuse of discretion." *Calderon v. Thompson*, 523 U.S. 538, 549 (1998).

"In light of 'the profound interests in repose' attaching to the mandate of a court of appeals, however, the power can be exercised only in extraordinary cir-

cumstances." *Calderon v. Thompson*, 523 U.S. 538, 550(1998) (citing 16 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3938, p. 712 (2d ed. 1996)).

"The sparing use of the power [to recall the mandate] demonstrates it is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Calderon v. Thompson*, 523 U.S. 538, 550 (1998).

- **Standard of Appellate Review De Novo**

"Independent review is therefore necessary if appellate courts are to maintain control of, and to clarify the legal principles." *Ornelas v. United States*, 116 S.Ct. 1657, 1662 (1996).

- **Stare Decisis**

"The Court of Appeals was correct in applying [*stare decisis*] despite disagreement with [a Supreme Court precedent], for it is this Court's prerogative alone to overrule one of its precedents." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997).

"Stare decisis reflects 'a policy judgment that "in most matters it is more important that the applicable rule of law be settled than that it be settled right."'" *Agostini v. Felton*, 521 U.S. 203, 235 (1997) (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). It 'is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.' *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997).

"*Stare decisis* is 'the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Hohn v. United States*, 524 U.S. 236, 251 (1998) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)).

"[S]tare decisis is a 'principle of policy' rather than 'an inexorable command.' * * * For example, we have felt less constrained to follow precedent where, as here, the opinion was rendered without full briefing or argument. * * * The role of *stare decisis*, furthermore, is 'somewhat reduced . . . in the case of a procedural rule . . . which does not serve as a guide to lawful behavior.'" *Hohn v. United States*, 524 U.S. 236, 251 (1998) (citations omitted).

"*Stare decisis* is a powerful concern, especially in the field of statutory construction. *See Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989). * * * But 'we have never applied stare decisis mechanically to prohibit overruling our earlier decisions determining the meaning of statutes.' *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 695 (1978)." *Holder v. Hall*, 114 S.Ct. 2581, 2618 (1994) (Thomas, J. concurring).

"In deciding whether to depart from a prior decision, one relevant consideration is whether the decision is 'unsound in principle.' * * * Another is whether is 'unworkable in practice.' * * * And, of course, reliance interests are of particular relevance because '[a]dherence to precedent promotes stability, predictability, and respect for judicial authority.'" *Allied-Signal, Inc. v. Director, Div. of Taxation*, 112 S.Ct. 2251, 2261 (1992) (citations omitted).

- **Significance of Title**

"In other contexts, we have stated that the title of a statute or section can aid in resolving an ambiguity in the legislation's text." *INS v. National Center for Immigrants' Rights*, 112 S.Ct. 551, 556 (1991) (citations omitted).

- **Strict Scrutiny**

"Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law." *City of Boerne v. Flores*, 117 S.Ct. 2157, 2171 (1997).

The Supreme Court has "dispel[led] the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097, 2117 (1995) (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 519 (1980) (Marshall, J., concurring in judgment)).

- **Trial Court**

"we review trial court determinations of negligence with considerable deference." *Doggett v. United States*, 112 S.Ct. 2686 (1992).

- **Whether Statute Creates a Cause of Action Not Jurisdictional**

"The question whether a federal statute creates a claim for relief is not jurisdictional." *Northwest Airlines, Inc.*, 114 S.Ct. 855, 862 (1994) (citations omitted).

v. Substantive Law Doctrines. Blackstone

The works of Blackstone "constituted the preeminent authority on English law for the founding generation." *Alden v. Maine*, 527 U.S. 706, 715 (1999).

- **Delegation Doctrine**

"Another strand of our separation-of-powers jurisprudence, the delegation doctrine, has developed to prevent Congress from forsaking its duties. * * * The fundamental precept of the delegation doctrine is that the lawmaking function belongs to Congress, U.S. Const., Art. I, § 1, and may not be conveyed to another branch or entity." *Loving v. United States*, 116 S.Ct. 1737, 1743-1744 (1996).

The "general rule is that '[a] constitutional power implies a power of delegation of authority under it sufficient to effect its purposes.'" *Loving v. United States*, 116 S.Ct. 1737, 1748 (1996) (quoting *Lichter v. United States*, 334 U.S. 742, 778 (1948).

- **Due Process: Substantive**

"Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition * * * and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed * * *. Second, we have required in substantive-due-process cases a careful description of the asserted fundamental liberty interest. * * * Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking * * * that

direct and restrain our exposition of the Due Process Clause." *Washington v. Glucksberg*, 117 S.Ct. 2258, 2268 (1997) (citations and internal quotation marks omitted).

"[W]here another provision of the Constitution 'provides an explicit textual source of constitutional protection,' a court must assess a plaintiff's claims under that explicit provision and 'not the more generalized notion of "substantive due process."'" *Conn v. Gabbert*, 526 U.S. 286, 293 (1999) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)).

"'[W]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.'" *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (quoting *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (plurality opinion of Rehnquist, C.J.) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989) (internal quotation marks omitted)).

"'[T]he touchstone of due process is protection of the individual against arbitrary action of government * * * .'" *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

- Due Process

"The core of due process is the right to notice and a meaningful opportunity to be heard." *Lachance v. Erickson*, 522 U.S. 262, 266 (1998).

- **Equity**

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case." *United States v. Noland, Trustee*, 116 S.Ct. 1524, 1527 (1996) (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)).

"[C]ourts of equity must be governed by rules and precedents no less than the courts of law." *Lonchar v. Thomas, Warden*, 116 S.Ct. 1293, 1297(1996) (quoting *Missouri v. Jenkins*, 115 S.Ct. 2038, 2068 (1995) (Thomas, J., concurring)).

- **First Amendment—General**

"[U]rgent, important, and effective speech can be no less protected than impotent speech, lest the right to speak be relegated to those instances when it is least needed." *McIntyre v. Ohio Elections Comm'n*, 115 S.Ct. 1511, 1519 (1995) (citation omitted).

"[T]he fundamental rule of protection under the First Amendment * * * [is] that a speaker has the autonomy to choose the content of his own message." *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 115 S.Ct. 2338, 2347 (1995).

"Thus, when dissemination of a view contrary to one's own is forced upon a speaker intimately connected with the communication advanced, the speaker's right to autonomy over the message is compromised." *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 115 S.Ct. 2338, 2348 (1995).

- **First Amendment—Independent Appellate Review**

The Supreme Court's "review of petitioners' claim that their activity is * * * in the nature of protected speech carries with it a constitutional duty to conduct an independent examination of the record as a whole, without deference to the trial court. * * * Even where a speech case has originally been tried in a federal court, subject to the provision of Federal Rule of Civil Procedure 52(a) that '[f]indings of fact . . . shall not be set aside unless clearly erroneous,' we are obliged to make a fresh examination of crucial facts." *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 115 S.Ct. 2338, 2344 (1995).

- **First Amendment**

"[T]he First Amendment, the terms of which apply to governmental action, ordinarily does not itself throw into constitutional doubt the decisions of private citizens to permit, or to restrict, speech—and this is so ordinarily even where those decisions take place within the framework of a regulatory regime such as broadcasting." *Denver Area Educ. Telecom. Consortium v. FCC*, 116 S.Ct. 2374, 2383 (1996) (plurality opinion).

"The history of this Court's First Amendment jurisprudence, however, is one of continual development, as the Constitution's general command * * * has been applied to new circumstances requiring different adaptations of prior principles and precedents. The essence of that protection is that Congress may not regulate speech except in cases of extraordinary need and with the exercise of a degree of care that we have not elsewhere required." *Denver*

Area Educ. Telecom. Consortium v. FCC, 116 S.Ct. 2374, 2384 (1996) (plurality opinion).

"[T]he First Amendment embodies an overarching commitment to protect speech from Government regulation through close judicial scrutiny, thereby enforcing the Constitution's constraints, but without imposing judicial formulae so rigid that they become a straightjacket that disables Government from responding to serious problems. This Court, in different contexts, has consistently held that the Government may directly regulate speech to address extraordinary problems, where its regulations are appropriately tailored to resolve those problems without imposing an unnecessarily great restriction on speech." *Denver Area Educ. Telecom. Consortium v. FCC*, 116 S.Ct. 2374, 2385 (1996) (plurality opinion).

"In other cases, where, as here, the record before Congress or before an agency provides no convincing explanation, this Court has not been willing to stretch the limits of the plausible, to create hypothetical nonobvious explanations in order to justify laws that impose significant restrictions upon speech." *Denver Area Educ. Telecom. Consortium v. FCC*, 116 S.Ct. 2374, 2394 (1996).

- **First Amendment: Traditional Public Fora**

"Traditional public fora are defined by the objective characteristics of the property, such as whether, 'by long tradition or by government fiat,' the property has been 'devoted to assembly and debate.' *Perry Ed. Ass'n* [*v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983)] at 45. The government can exclude a speaker from a traditional public forum 'only when the exclusion is necessary to serve a compelling state interest and

the exclusion is narrowly drawn to achieve that interest.' *Cornelius* [*v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788 (1985)] at 800." *Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998).

- **First Amendment: Designated Public Fora**

"Designated public fora, in contrast, are created by purposeful governmental action. 'The government does not create a [designated] public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional public forum for public discourse.' * * * Hence 'the Court has looked to the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum.' * * * If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny." *Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998) (quoting *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 802 (1985)).

"To create a forum of this type, the government must intend to make the property 'generally available,' * * * to a class of speakers." *Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, 678 (1998) (quoting *Widmar v. Vincent*, 454 U.S. 263, 264 (1981)).

"A designated public forum is not created when the government allows selective access for individual speakers rather than general access for a class of speakers." *Arkansas Educational Television Comm'n v. Forbes,* 523 U.S. 666, 679 (1998).

- **First Amendment: Nonpublic Fora and Non-Fora**

"Other government properties are either nonpublic fora or not for a at all. * * * The government can restrict access to a nonpublic forum 'as long as the restrictions are reasonable and [are] not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, 677-678 (1998) (quoting *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

"To be consistent with the First Amendment, the exclusion of a speaker from a nonpublic forum must not be based on the speaker's viewpoint and must otherwise be reasonable in light of the purpose of the property." *Arkansas Educational Television Comm'n v. Forbes*, 523 U.S. 666, 682 (1998).

- **Fifth Amendment: Takings**

"'The Fifth Amendment's guarantee . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702 (1999) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

- **First Amendment: Freedom of Speech**

"For the power to prohibit or to regulate particular conduct does not necessarily include the power to prohibit or regulate speech about that conduct. * * * It is well settled that the First Amendment mandates closer scrutiny of government restrictions on speech than of its regulation of

commerce alone." *Greater New Orleans Broadcasting Assn., Inc. v. United States*, 527 U.S. 173, 193 (1999).

"Even under the degree of scrutiny that we have applied in commercial speech cases, decisions that select among speakers conveying virtually identical messages are in serious tension with the principles undergirding the First Amendment." *Greater New Orleans Broadcasting Assn., Inc. v. United States*, 527 U.S. 173, 193-194 (1999).

There is a "presumption that the speaker and the audience, not the Government, should be left to assess the value of accurate and nonmisleading information about lawful conduct." *Greater New Orleans Broadcasting Assn., Inc. v. United States*, 527 U.S. 173, 195 (1999).

"A content-neutral regulation will be sustained under the First Amendment if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174, 1186 (1997).

- **Prophylactic Measures**

"A prophylactic measure, because its mission is to prevent, typically encompasses more than the core activity prohibited." *United States v. O'Hagan*, 117 S.Ct. 2199, 2217 (1997).

- **Separation of Powers**

"We have recognized that '[e]ven when a branch does not arrogate power to itself . . . the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties.'"

Clinton v. Jones, 117 S.Ct. 1636, 1648 (1997) (quoting *Loving v. United States*, 517 U.S. ___, ___, 116 S.Ct. 1737, 1743 (1996)).

"[I]t remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another." *Loving v. United States*, 116 S.Ct. 1737, 1743 (1996).

The separation of powers doctrine serves (1) to deter "arbitrary or tyrannical rule," and (2) to "allocat[e] specific powers and responsibilities to a branch fitted to the task, [thereby fostering] a National Government that is both effective and accountable." *Loving v. United States*, 116 S.Ct. 1737, 1743 (1996).

- **Sovereign Immunity**

"'Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.'" *Department of Army v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999) (quoting *FDIC v. Meyer*, 510 U.S. 471, 475 (1994)).

"Although we have adopted the related doctrine of sovereign immunity, the common-law fiction that '[t]he king . . . is not only incapable of doing wrong, but even of thinking wrong," * * * was rejected at the birth of the *Republic." Clinton v. Jones*, 117 S.Ct. 1636, 1646 n.24 (1997) (quoting 1 W. Blackstone, Commentaries *246)).

"A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text * * * and will not be implied * * * . Moreover, a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of

the sovereign." *Lane v. Pena*, 116 S.Ct. 2092, 2096 (1996) (citations omitted).

"To sustain a claim that the Government is liable for awards of monetary damages, the waiver of sovereign immunity must extend unambiguously to such monetary claims." *Lane v. Pena*, 116 S.Ct. 2092, 2096-2097 (1996).

- **Sovereign Immunity, Strict Construction**

"We start with a common rule, with which we presume congressional familiarity, *see McNary v. Haitian Refugee Center*, 498 U.S. ___, ___, 111 S.Ct. 888, ___ (1991), that any waiver of the National Government's sovereign immunity must be unequivocal, *see United States v. Mitchell*, 445 U.S. 535, 538-539 (1980). 'Waivers of immunity must be "construed strictly in favor of the sovereign," *McMahon v. United States*, 342 U.S. 25, 27 (1951), and not "enlarge[d] . . . beyond what the language requires." *Eastern Transportation Co. v. United States*, 272 U.S. 675, 686 (1927).' *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685-686 (1983)." *United States Dep't of Energy v. Ohio*, 112 S.Ct. 1627, 1633 (1992).

- **Availability of Remedies Where Sovereign Immunity Is Not An Issue**

Court reaffirmed "the long line of cases in which the Court has held that if a right of action exists to enforce a federal right and Congress is silent on the question of remedies, a federal court may order any appropriate relief." *Franklin v. Gwinnett County Public Schools*, 112 S.Ct. 1028, 1034 (1992).

"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." *Langford v. United States*, 101 U.S. 341, 343-344, Syllabus #1 (1879)

- **Supremacy Clause**.

"As is evident from its text, however, the Supremacy Clause enshrines as 'the supreme Law of the Land' only those Federal Acts that accord with the constitutional design. * * * Appeal to the Supremacy Clause alone merely raises the question whether a law is a valid exercise of the national power." *Alden v. Maine*, 527 U.S. 706, 731 (1999).

vi. Free Exercise Clause Doctrine

Petitioner's Controlling Legal Principles set forth as Exhibits in this case:

***Martin v. Hunter's Lessee*,**
14 U.S. 1 Wheat. 304 304 (1816)

The Constitution of the United States was ordained and established not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary, to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. These deductions do not rest upon general reasoning, plain and obvious as they seem to be. They have been positively recognized by one of the articles in amendment of the Constitution, which declares that

> "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 government, then, of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication. On the other hand, this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms, and where a power is expressly given in general terms, it is not to be restrained to particular cases unless that construction grow out of the context expressly or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.

Cummings v. Missouri,
71 U.S. 277, 4 Wall. 277 (1866)

The rights of conscience are sacred rights. They are too often confounded, however, with the unrestrained license to corrupt, from the pulpit, the public taste or the public morals. However, this may be, the American people are exceedingly sensitive on the subject of religious freedom; and whenever, the people are told, as they have been in this case, that the indefeasible right to worship God according to the dictates of conscience is about to be invaded, the public mind at once arouses itself to repel the invasion. The first article of the amendments to the Constitution is in these words: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'

> "This results from the rule of the Constitution, that the instrument itself, and the laws made in pursuance of it, are the supreme law of the land; and whatever obstructs or impairs, or tends to obstruct or impair, their free and full operation is unconstitutional and void."

"What is punishment? The infliction of pain or privation. To inflict the penalty of death, is to inflict pain and deprive of life. To inflict the penalty of imprisonment, is to deprive of liberty. To impose a fine, is to deprive of property. To deprive of any natural right, is also to punish. And so is it punishment to deprive of a privilege."

Watson v. Jones, 80 U.S. 13 Wall. 679 679 (1871)

In this country, the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

Reynolds v. United States,
98 U.S. 145, 163 (1878)

"The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is what is the religious freedom which has been guaranteed.

Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions."

Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)

When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but, in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power.

But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws, and not of men." For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.

Davis v. Beason, 133 U.S. 333, 342-343 (1890)

It was never intended that the first Article of Amendment to the Constitution, that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof," should be a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society.

The First Amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion or forbidding the free exercise thereof, was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit

legislation for the support of any religious tenets, or the modes of worship of any sect. *Id.*

The oppressive measures adopted, and the cruelties and punishments inflicted, by the governments of Europe for many ages to compel parties to conform, in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons and enforce an outward conformity to a prescribed standard led to the adoption of the amendment in question. *Id*

***Jacobson v. Massachusetts*,**
97 U.S. 11, 27 (1905)

Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power or in some power to be properly implied therefrom. 1 Story's Const. § 462.

The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of

the same right by others. It is then liberty regulated by law.

Truax v. Corrigan, 257 U.S. 312 (1921)

The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law—a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. *Hurtado v. California*, 110 U.S. 516, 110 U.S. 535.

It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. "All men are equal before the law," "This is a government of laws and not of men," "No man is above the law," are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute, and apply laws. But the framers and adopters of this amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty.

The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all

persons, even though all enjoyed the protection of due process. (Emphasis added)

United States v. Constantine, 296 U.S. 287, 293 (1935)

The concession of such a power would open the door to unlimited regulation of matters of state concern by federal authority. The regulation of the conduct of its own citizens belongs to the state, not to the United States.

Minersville School District v. Board of Education, 310 U.S. 586, 607 (1940)

The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey if it is to adhere to that justice and moderation without which no free government can exist.

For this reason, it would seem that legislation which operates to repress the religious freedom of small minorities, which is admittedly within the scope of the protection of the Bill of Rights, must at least be subject to the same judicial scrutiny as legislation which we have recently held to infringe the constitutional liberty of religious and racial minorities.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943)

We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the

price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

United States v. Ballard, 322 U.S. 78, 86-88 (1944)

Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones*, 13 Wall. 679, 80 U.S. 728. The First Amendment has a dual aspect. It not only "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship," but also "safeguards the free exercise of the chosen form of religion." *Cantwell v. Connecticut*, 310 U.S. 296, 310 U.S. 303.

"Thus, the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." *Id.*, pp. 310 U.S. 303-304. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education by Barnette*, 319 U.S. 624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the

orthodox faiths. Heresy trials are foreign to our Constitution. 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.

Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased, and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First

Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock v. Pennsylvania*, 319 U.S. 105. As stated in *Davis v. Beason*, 133 U.S. 333, 133 U.S. 342:

> "With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

See Prince v. Massachusetts, 321 U.S. 158. So we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents.

Thomas v. Collins, 323 U.S. 516, 530-531 (1945)

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now, as always, delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable, democratic freedoms secured by the First Amendment. *Cf. Schneider v. State*, 308 U.S. 147; *Cantwell v. Connecticut*, 310 U.S. 296; *Prince v. Massachusetts*, 321 U.S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what

standard governs the choice. Compare *United States v. Carolene Products Co.*, 304 U.S. 144, 304 U.S. 152-153. For these reasons, any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which, in other contexts, might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation.

Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, *cf. De Jonge v. Oregon*, 299 U.S. 353, 299 U.S. 364, and therefore are united in the First Article's assurance. *Cf.* 1 Annals of Congress 759-760.

This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. *Cf. Pierce v. Society of Sisters*, 268 U.S. 510; *Meyer v. Nebraska*, 262 U.S. 390; *Prince v. Massachusetts*, 321 U.S. 158. Great

secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and, with it, the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest.

Zorach v. Clauson, 343 U.S. 306, 314 (1952)

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.

When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The

government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here.

Fowler v. Rhode Island, 345 U.S. 67, 70 (1953)

Appellant's sect has conventions that are different from the practices of other religious groups. Its religious service is less ritualistic, more unorthodox, less formal than some. But, apart from narrow exceptions not relevant here, *Reynolds v. United States*, 98 U.S. 145; *Davis v. Beason*, 133 U.S. 333, it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment. Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings.

Yates v. United States, 354 U.S. 298, 344 (1957)

Doubtlessly, dictators have to stamp out causes and beliefs which they deem subversive to their evil regimes.

But governmental suppression of causes and beliefs seems to me to be the very antithesis of what our Constitution stands for. The choice expressed in the First Amendment in favor of free expression was made against a turbulent background by men such as Jefferson, Madison, and Mason—men who believed that

loyalty to the provisions of this Amendment was the best way to assure a long life for this new nation and its Government. Unless there is complete freedom for expression of all ideas, whether we like them or not, concerning the way government should be run and who shall run it, I doubt if any views, in the long run, can be secured against the censor. The 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.

Speiser v. Randall, 357 U.S. 513, 527 (1958)

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions." *Bailey v. State of Alabama*, 219 U.S. 219, 239.

The appellees, in controverting this position, rely on cases in which this Court has sustained the validity of loyalty oaths required of public employees, *Garner v. Board of Public Works*, 341 U.S. 716, candidates for public office, *Gerende v. Board of Supervisors*, 341 U.S. 56, and officers of labor unions, *American Communications Ass'n v. Douds*, *supra.* In these cases, however, there was no attempt directly to control speech, but rather to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern.

Braunfeld v. Brown, 366 U.S. 599, 603-604 (1961)

Certain aspects of religious exercise cannot in any way be restricted or burdened by either federal or state legislation. Compulsion by law of the acceptance of any creed or the practice of any form of worship is strictly forbidden. The freedom to hold religious beliefs and opinions is absolute. *Cantwell v. Connecticut*, 310 U.S. 296, 310 U.S. 303; *Reynolds v. United States*, 98 U.S. 145, 98 U.S. 166. Thus, in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, this Court held that state action compelling school children to salute the flag, on pain of expulsion from public school, was contrary to the First and Fourteenth Amendments when applied to those students whose religious beliefs forbade saluting a flag. But this is not the case at bar; the statute before us does not make criminal the holding of any religious belief or opinion, nor does it force anyone to embrace any religious belief or to say or believe anything in conflict with his religious tenets.

Engel v. Vitale, 370 U.S. 421, 443 (1962)

"We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 343 U.S. 313. Under our Bill of Rights, free play is given for making religion an active force in our lives. But "if a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government." *McGowan v. Maryland*, 366 U.S. 420, 366 U.S. 563 (dissenting opinion). By reason of the First Amendment, government is commanded "to have no interest in theology or ritual" (*id.* at 366 U.S. 564), for on those matters "government must be neutral." *Ibid.* The First Amendment leaves the Government in a position not

of hostility to religion, but of neutrality. The philosophy is that the atheist or agnostic—the nonbeliever—is entitled to go his own way. The philosophy is that, if government interferes in matters spiritual, it will be a divisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests.

> *School Dist. of Abington Tp. v. Schempp*, 374 U.S. 203, 245-246 (1963)

The requested charge was refused, and we upheld that refusal, reasoning that the First Amendment foreclosed any judicial inquiry into the truth or falsity of the defendant's religious beliefs. We said:

> "Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations."

322 U.S. at 322 U.S. 86-87.

The dilemma presented by the case was severe. While the alleged truthfulness of nonreligious publications could ordinarily have been submitted to the jury, Ballard was deprived of that defense only because the First Amendment forbids governmental inquiry into the verity of religious beliefs. In dissent, Mr. Justice Jackson expressed the concern that, under

this construction of the First Amendment, "[p]rosecutions of this character easily could degenerate into religious persecution." 322 U.S. at 322 U.S. 95. The case shows how elusive is the line which enforces the Amendment's injunction of strict neutrality, while manifesting no official hostility toward religion—a line which must be considered in the cases now before us. Some might view the result of the Ballard case as a manifestation of hostility—in that the conviction stood because the defense could not be raised. To others, it might represent merely strict adherence to the principle of neutrality already expounded in the cases involving doctrinal disputes. Inevitably, insistence upon neutrality, vital as it surely is for untrammeled religious liberty, may appear to border upon religious hostility. But, in the long view, the independence of both church and state in their respective spheres will be better served by close adherence to the neutrality principle. If the choice is often difficult, the difficulty is endemic to issues implicating the religious guarantees of the First Amendment. Freedom of religion will be seriously jeopardized if we admit exceptions for no better reason than the difficulty of delineating hostility from neutrality in the closest cases.

Sherbert v. Verner, 374 U.S. 398, 403 (1963)

The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, *Cantwell v. Connecticut*, 310 U.S. 296, 310 U.S. 303. Government may neither compel affirmation of a repugnant belief, *Torcaso v. Watkins*, 367 U.S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, *Fowler v. Rhode Island*, 345 U.S. 67; nor employ the taxing power to

inhibit the dissemination of particular religious views, *Murdock v. Pennsylvania*, 319 U.S. 105; *Follett v. McCormick*, 321 U.S. 573; *cf. Grosjean v. American Press Co.*, 297 U.S. 233. On the other hand, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for "even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions." *Braunfeld v. Brown*, 366 U.S. 599, 366 U.S. 603. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. *See, e.g.*, *Reynolds v. United States*, 98 U.S. 145; *Jacobson v. Massachusetts*, 197 U.S. 11; *Prince v. Massachusetts*, 321 U.S. 158; *Cleveland v. United States*, 329 U.S. 14.

***NAACP v. Button*, 371 U.S. 415, 433 (1963)**

It makes no difference that the instant case was not a criminal prosecution, and not based on a refusal to comply with a licensing requirement. The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. *Cf. Marcus v. Search Warrant*, 367 U.S. 717, 367 U.S. 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. *Cf. Smith v. California*, *supra*, at 361 U.S. 151-154; *Speiser v. Randall*, 357 U.S. 513, 357 U.S. 526. Because First Amendment freedoms need breathing space to survive,

government may regulate in the area only with narrow specificity. *Cantwell v. Connecticut*, 310 U.S. 296,3 310 U.S. 11.

***New York Times Co. v. Sullivan*, 376 U.S. 254, 271-272 (1964)**

Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed."

In *Cantwell v. Connecticut*, 310 U.S. 296, 310 U.S. 310, the Court declared:

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields, the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained, in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive," *NAACP v. Button*, 371 U.S. 415, 371 U.S. 433, was also recognized by the

Court of Appeals for the *District of Columbia Circuit in Sweeney v. Patterson*, 76 U.S. App. D.C. 23, 24, 128 F.2d 457, 458 (1942), *cert. denied*, 317 U.S. 678.

***Griswold v. Connecticut*,**
381 U.S. 479, 484-485 (1965)

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. *See Poe v. Ullman*, 367 U.S. 497, 367 U.S. 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy.

The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth

Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

United States v. Seeger, 380 U.S. 163, 185 (1965)

Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to Government. As MR. JUSTICE DOUGLAS stated in *United States v. Ballard*, 322 U.S. 78, 322 U.S. 86 (1944):

> "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."

Local boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held, and whether they are, in his own scheme of things, religious.

But we hasten to emphasize that, while the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case.

Miranda v. Arizona, 384 U.S. 436, 460, 491 (1966)

Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that "illegitimate and unconstitutional practices get their first

footing . . . by silent approaches and slight deviations from legal modes of procedure."

Boyd v. United States, 116 U.S. 616, 635 (1886). The privilege was elevated to constitutional status, and has always been "as broad as the mischief against which it seeks to guard." *Counselman v. Hitchcock*, 142 U.S. 547, 562 (1892). We cannot depart from this noble heritage.

[. . .]

Judicial solutions to problems of constitutional dimension have evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when Escobedo was before us, and it is our responsibility today. Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them.

***Machinists v. Street*, 367 U.S. 740, 788-789 (1961)**

The First Amendment provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Probably no one would suggest that Congress could, without violating this Amendment, pass a law taxing workers, or any persons for that matter (even lawyers), to create a fund to be used in helping certain political parties or groups favored by the Government

to elect their candidates or promote their controversial causes. Compelling a man by law to pay his money to elect candidates or advocate laws or doctrines he is against differs only in degree, if at all, from compelling him by law to speak for a candidate, a party, or a cause he is against. The very reason for the First Amendment is to make the people of this country free to think, speak, write and worship as they wish, not as the Government commands.

***Stanley v. Georgia*, 394 U.S. 557, 564-565 (1969)**

It is now well established that the Constitution protects the right to receive information and ideas. "This freedom [of speech and press] . . . necessarily protects the right to receive. . . . " *Martin v. City of Struthers*, 319 U.S. 141, 319 U.S. 143 (1943); *see Griswold v. Connecticut*, 381 U.S. 479, 381 U.S. 482 (1965); *Lamont v. Postmaster General*, 381 U.S. 301, 381 U.S. 307-308 (1965) (BRENNAN, J., concurring); *cf. Pierce v. Society of Sisters*, 268 U.S. 510 (1925). This right to receive information and ideas, regardless of their social worth, *see Winters v. New York*, 333 U.S. 507, 333 U.S. 510 (1948), is fundamental to our free society. Moreover, in the context of this case—a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home—that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions

of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." *Olmstead v. United States*, 277 U.S. 438, 277 U.S. 478 (1928) (Brandeis, J., dissenting). *See Griswold v. Connecticut*, *supra; cf. NAACP v. Alabama*, 357 U.S. 449, 357 U.S. 462 (1958).

These are the rights that appellant is asserting in the case before us. He is asserting the right to read or observe what he pleases—the right to satisfy his intellectual and emotional needs in the privacy of his own home. He is asserting the right to be free from state inquiry into the contents of his library. Georgia contends that appellant does not have these rights, that there are certain types of materials that the individual may not read or even possess. Georgia justifies this assertion by arguing that the films in the present case are obscene. But we think that mere categorization of these films as "obscene" is insufficient justification for such a drastic invasion of personal liberties guaranteed by the First and Fourteenth Amendments. Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds.

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969)

Held: Civil courts cannot, consistently with First Amendment principles, determine ecclesiastical questions in resolving property disputes; and since the "departure from doctrine" element of Georgia's implied trust theory requires civil courts to weigh the significance and meaning of religious doctrines, it can play no role in judicial proceedings. Pp. 393 U.S. 445-452.

Wisconsin v. Yoder, 406 U.S. 205, 224 (1972)

We must not forget that, in the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is "right," and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.

Calif. Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510-511 (1972)

The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms. *Id.*, at 138.

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.

Abood v. Detroit Bd. of Educ.,
431 U.S. 209, 259 (1977)

"Although First Amendment protections are not confined to 'the exposition of ideas,' *Winters v. New York*, 333 U.S. 507, 510 (1948), 'there is practically universal agreement that a major purpose of th[e] Amendment was to protect the free discussion of governmental affairs. . . .' *Mills v. Alabama*, 384 U.S. 214, 218 (1966)." *Buckley*, 424 U.S. at 14.

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

Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. *Sherbert v. Verner*, *supra*; 406 U.S. S. *714 v. Yoder*, 406 U.S. 205, 406 U.S. 215-216 (1972). The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. 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.

USPS v. Council of Greenburgh Civic Assns.,
453 U.S. 114, 132-133 (1981)

To be sure, if a governmental regulation is based on the content of the speech or the message, that action must be scrutinized more carefully to ensure that communication has not been prohibited "merely because public officials disapprove the speaker's view.'"

Roberts v. United States Jaycees,
468 U.S. 609, 621 (1984)

An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. *See*, *e.g.*, *Citizens Against Rent Control / Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 454 U.S. 294 (1981). According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity, and in shielding dissident expression from suppression by the majority. *See*, *e.g.*, *Gilmore v. City of Montgomery*, 417 U.S. at 417 U.S. 575; *Griswold v. Connecticut*, 381 U.S. at 381 U.S. 482-485; *NAACP v. Button*, 371 U.S. 415, 371 U.S. 431 (1963); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 357 U.S. 462. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. *See, e.g.*, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 458 U.S. 907-909, 458 U.S. 932-933 (1982); *Larson v. Valente*, 456 U.S. 228, 456 U.S. 244-246 (1982); *In re Primus*, 436 U.S. 412, 436 U.S. 426 (1978); *Abood v. Detroit Board of Education*, 431 U.S. 209, 431 U.S. 231 (1977). In view of the various protected activities in which the Jaycees engages, *see infra* at 468 U.S. 626-627, that right is plainly implicated in this case.

Lynch v. Donnelly, 465 U.S. 668, 678 (1984)

There are countless other illustrations of the Government's acknowledgment of our religious heritage

and governmental sponsorship of graphic manifestations of that heritage. Congress has directed the President to proclaim a National Day of Prayer each year "on which [day] the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals." 36 U.S.C. § 169h. Our Presidents have repeatedly issued such Proclamations. Presidential Proclamations and messages have also issued to commemorate Jewish Heritage Week, Presidential Proclamation No. 4844, 3 CFR 30 (1982), and the Jewish High Holy Days, 17 Weekly Comp. of Pres.Doc. 1058 (1981). One cannot look at even this brief resume without finding that our history is pervaded by expressions of religious beliefs such as are found in Zorach. Equally pervasive is the evidence of accommodation of all faiths and all forms of religious expression, and hostility toward none. Through this accommodation, as Justice Douglas observed, governmental action has "follow[ed] the best of our traditions" and "respect[ed] the religious nature of our people." 343 U.S. at 3 343 U.S. 14.

Rather than mechanically invalidating all governmental conduct or statutes that confer benefits or give special recognition to religion in general or to one faith—as an absolutist approach would dictate—the Court has scrutinized challenged legislation or official conduct to determine whether, in reality, it establishes a religion or religious faith, or tends to do so. *See Walz*, *supra*, at 397 U.S. 669. Joseph Story wrote a century and a half ago:

> "The real object of the [First] Amendment was . . . to prevent any national ecclesiastical establishment, which should give to an

> hierarchy the exclusive patronage of the national government."

3 J. Story, Commentaries on the Constitution of the United States 728 (1833).

> *Cornelius v. NAACP Leg. Def. Fund*, 473 U.S. 788, 789 (1985)

> The Court, of course, has recognized that the
>
> "First Amendment prohibits Congress from 'abridging freedom of speech, or of the press,' and its ramifications are not confined to the 'public forum.'"

Although, as an initial matter, a speaker must seek access to public property or to private property devoted to public use to evoke First Amendment concerns, forum analysis is not completed merely by identifying the Government property at issue. Rather, in defining the forum, the focus should be on the access sought by the speaker.

> *Riley v. National Fed. of the Blind of North Carolina*, 487 U.S. 781, 797 (1988)

There is certainly some difference between compelled speech and compelled silence, but, in the context of protected speech, the difference is without constitutional significance, for the First Amendment guarantees "freedom of speech," a term necessarily comprising the decision of both what to say and what not to say.

> *Texas v. Johnson*, 491 U.S. 397, 414-415 (1989)

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because

society finds the idea itself offensive or disagreeable. *See*, *e.g.*, *Hustler Magazine v. Falwell*, 485 U.S. at 485 U.S. 55-56; *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 466 U.S. 804 (1984); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 463 U.S. 65, 463 U.S. 72 (1983); *Carey v. Brown*, 447 U.S. 455, 447 U.S. 462-463 (1980); *FCC v. Pacifica Foundation*, 438 U.S. at 438 U.S. 745-746; *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 427 U.S. 63-65, 427 U.S. 67-68 (1976) (plurality opinion); *Buckley v. Valeo*, 424 U.S. 1, 424 U.S. 16-17 (1976); *Grayned v. Rockford*, 408 U.S. 104, 408 U.S. 115 (1972); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 408 U.S. 95 (1972); *Bachellar v. Maryland*, 397 U.S. 564, 397 U.S. 567 (1970); *O'Brien*, 391 U.S. at 391 U.S. 382; *Brown v. Louisiana*, 383 U.S. at 383 U.S. 142-143; *Stromberg v. California*, 283 U.S. at 283 U.S. 368-369.

In holding in Barnette that the Constitution did not leave this course open to the government, Justice Jackson described one of our society's defining principles in words deserving of their frequent repetition:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Id. at 319 U.S. 642.

***Employment Div. v. Smith*, 494 U.S. 872, 887-888 (1990)**

As we reaffirmed only last Term,

> "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretation of those creeds."

Hernandez v. Commissioner, 490 U.S. at 490 U.S. 699. Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim. *See, e.g., Thomas v. Review Board, Indiana Employment Security Div.*, 450 U.S. at 450 U.S. 716; *Presbyterian Church v. Hull Church*, 393 U.S. at 393 U.S. 450; *Jones v. Wolf*, 443 U.S. 595, 443 U.S. 602-606 (1979); *United States v. Ballard*, 322 U.S. 78, 322 U.S. 85-87 (1944).

***Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534-535 (1993)**

The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause "forbids subtle departures from neutrality," *Gillette v. United States*, 401 U.S. 437, 452 (1971), and "covert suppression of particular religious beliefs," *Bowen v. Roy*, *supra*, at 703 (opinion of Burger, C. J.). Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality.

The Free Exercise Clause protects against governmental hostility which is masked as well as overt.

"The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring).

Boy Scout of America v. Dale,
530 U.S. 640, 648 (2000)

In *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984), we observed that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." This right is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas. *See ibid.* (stating that protection of the right to expressive association is "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority"). Government actions that may unconstitutionally burden this freedom may take many forms, one of which is "intrusion into the internal structure or affairs of an association" like a "regulation that forces the group to accept members it does not desire." *Id.*, at 623. Forcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express. Thus, "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Ibid.*

Burwell v. Hobby Lobby Stores, Inc.,
573 U.S. ___ (2014)

The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least

restrictive means of furthering that compelling governmental interest." 42 U.S. C. §§ 2000bb-1(a), (b). As amended by the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), RFRA covers "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." § 2000cc-5(7)(A).

vii. Establishment Clause Doctrine (Separation of Church & State)

***Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947)**

The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth. The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom. There is every reason to give the same application and broad interpretation to the "establishment of religion" clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina, quoted with approval by this Court in *Watson v. Jones*, 13 Wall. 679, 80 U.S. 730:

> "The structure of our government has, for the preservation of civil liberty, rescued

> the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority."

The "establishment of religion" clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State." *Reynolds v. United States*, *supra*, at 98 U.S. 164.

***Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971)**

There, MR. JUSTICE BLACK, writing for the majority, suggested that the decision carried to "the verge" of forbidden territory under the Religion Clauses. *Id.* at 330 U.S. 16. Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.

The language of the Religion Clauses of the First Amendment is, at best, opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead, they commanded that there should be "no law respecting an establishment of religion." A law may be one "respecting" the forbidden objective while falling short of its total realization. A law "respecting" the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not establish a state religion, but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment, and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Commission*, 397 U.S. 664, 397 U.S. 668 (1970).

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v. Allen*, 392 U.S. 236, 392 U.S. 243 (1968); finally, the statute must not foster "an excessive government entanglement with religion." *Walz*, *supra*, at 397 U.S. 674.

Engel v. Vitale, 370 U.S. 421, 431-432 (1962)

Although these two clauses may, in certain instances, overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a

civil magistrate. Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand.

Larson v. Valente, 456 U.S. 228 (1982)

The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another. Before the Revolution, religious establishments of differing denominations were common throughout the Colonies. But the Revolutionary generation emphatically disclaimed that European legacy, and "applied the logic of secular liberty to the condition of religion and the churches." If Parliament had lacked the authority to tax unrepresented colonists, then by the same token the newly independent States should be powerless to tax their citizens for the support of a denomination to which they did not belong. The force of this reasoning led to the abolition of most denominational establishments at the state level by the 1780's, and led ultimately to the inclusion of the Establishment Clause in the First Amendment in 1791.

This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause. Madison once noted:

> "Security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests and in the other in the multiplicity of sects."

Madison's vision—freedom for all religion being guaranteed by free competition between religions—naturally assumed that every denomination would be

equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference. Free exercise thus can be guaranteed only when legislators—and voters—are required to accord to their own religions the very same treatment given to small, new, or unpopular denominations.

As Justice Jackson noted in another context,

> "there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally."

Railway Express Agency, Inc. v. New York, 336 U.S. 106, 336 U.S. 112 (1949) (concurring opinion).

Since *Everson v. Board of Education*, 330 U.S. 1 (1947), this Court has adhered to the principle, clearly manifested in the history and logic of the Establishment Clause, that no State can "pass laws which aid one religion" or that "prefer one religion over another." *Id.* at 330 U.S. 15. This principle of denominational neutrality has been restated on many occasions. In *Zorach v. Clauson*, 343 U.S. 306 (1952), we said that "[t]he government must be neutral when it comes to competition between sects." *Id.* at 343 U.S. 314. In *Epperson v. Arkansas*, 393 U.S. 97 (196), we stated unambiguously:

> "The First Amendment mandates governmental neutrality between religion and religion. . . . The State may not adopt programs or practices . . . which 'aid or oppose' any religion. . . . This prohibition is absolute."

Id. at 393 U.S. 104, 393 U.S. 106, *citing Abington School District v. Schempp*, 374 U.S. 203, 374 U.S. 225 (1963). And Justice Goldberg cogently articulated the relationship between the Establishment Clause and the Free Exercise Clause when he said that

> "[t]he fullest realization of true religious liberty requires that government . . . effect no favoritism among sects . . . and that it work deterrence of no religious belief."

Abington School District, *supra*, at 374 U.S. 305. In short, when we are presented with a state law granting a denominational preference, our precedents demand that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality.

In *Lemon v. Kurtzman*, 403 U.S. 602 (1971), we announced three "tests" that a statute must pass in order to avoid the prohibition of the Establishment Clause.

[. . .]

> "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v. Allen*, 392 U.S. 236, 392 U.S. 243 (1968); finally, the statute must not foster 'an excessive governmental entanglement with religion.' *Walz* [*v. Tax Comm'n*, 397 U.S. 664, 397 U.S. 674 (1970)]."

Id. at 403 U.S. 612-613.

As our citations of Board of Education v. Allen, 392 U.S. 236 (1968), and *Walz v. Tax Comm'n*, 397 U.S. 664 (1970), indicated, the *Lemon v. Kurtzman* "tests"

are intended to apply to laws affording a uniform benefit to all religions, and not to provisions, like § 309.515, subd. 1(b)'s fifty percent rule, that discriminate among religions. Although application of the Lemon tests is not necessary to the disposition of the case before us, those tests do reflect the same concerns that warranted the application of strict scrutiny to § 309.515, subd. 1(b)'s fifty percent rule. The Court of Appeals found that rule to be invalid under the first two Lemon tests. We view the third of those tests as most directly implicated in the present case. Justice Harlan well described the problems of entanglement in his separate opinion in *Walz*, where he observed that governmental involvement in programs concerning religion "may be so direct or in such degree as to engender a risk of politicizing religion. . . . [R]eligious groups inevitably represent certain points of view, and not infrequently assert them in the political arena, as evidenced by the continuing debate respecting birth control and abortion laws. Yet history cautions that political fragmentation on sectarian lines must be guarded against. . . . [G]overnment participation in certain programs, whose very nature is apt to entangle the state in details of administration and planning, may escalate to the point of inviting undue fragmentation." 397 U.S. at 397 U.S. 695.

IV. The Issues Presented Concerns Fed. R. App. P. and Executive Order #13798 & Gov't Policy Published.

i. Fed. R. App. P., 21 Writs of Mandamus and Prohibition, and Other Extraordinary Writ

(a) MANDAMUS OR PROHIBITION TO A COURT: PETITION, FILING, SERVICE, AND DOCKETING.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)

(A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) DENIAL; ORDER DIRECTING ANSWER; BRIEFS; PRECEDENCE.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) OTHER EXTRAORDINARY WRITS.

An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the appli-

cation must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) FORM OF PAPERS; NUMBER OF COPIES; LENGTH LIMITS.

All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 21(a)(2)(C):

(1) a paper produced using a computer must not exceed 7,800 words; and

(2) a handwritten or typewritten paper must not exceed 30 pages.

NOTES

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2016, eff. Dec 1, 2016.)

ii. Fed. R. App. P., 35 En Banc Determination

(a) WHEN HEARING OR REHEARING EN BANC MAY BE ORDERED.

A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or the proceeding involves a question of exceptional importance.

(b) PETITION FOR HEARING OR REHEARING EN BANC.

A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the limits in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a

single document even if they are filed separately, unless separate filing is required by local rule.

(c) TIME FOR PETITION FOR HEARING OR REHEARING EN BANC.

A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) NUMBER OF COPIES.

The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) RESPONSE.

No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) CALL FOR A VOTE.

A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

iii. Fed. R. App. P., 40(a)(2)

Rule 40. Petition for Panel Rehearing

(a) TIME TO FILE; CONTENTS; ANSWER; ACTION BY THE COURT IF GRANTED.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

iv. **Presidential Executive Order #13798, Promoting Free Speech and Religious Liberty, entered in to Federal Register/Vol. 82, No. 88/Tuesday, May 9, 2017**

See App.391a to App.393a.

v. **Federal Law Protections for Religious Liberty, issued Oct. 6, 2018 by the U.S. Attorney General, 25-page policy of the United States Gov't.**

See App.333a to App.386a.

vi. **Office of Attorney General, From Attorney General, Oct. 6, 2018 Implementation of Memorandum for All Component Heads and United States Attorneys as a directive.**

See App.387a to 390a.

V. **Federal Statutes or U.S. Code**

i. **Judiciary Act of 1789, 1 Stat. 73 September 24, 1789**

In pertinent parts:

- **SEC. 7**

And be it [further] enacted, That the Supreme Court, and the district courts shall have power to appoint clerks for their respective courts, and that the clerk for each district court shall be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being appointed clerk of, do solemnly swear, or affirm, that I will truly and faithfully enter and

record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." Which words, so help me God, shall be omitted in all cases where an affirmation is admitted instead of an oath. And the said clerks shall also severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court of which he is clerk.

- **SEC. 8**

And be it further enacted, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "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."

- **SEC. 13**

And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or

aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice consul, shall be a party. And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

- SEC. 14

And be it further enacted, That all the beforementioned 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. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment. A—A—Provided, That writs of habeas corpus shall in no case extend to prisoners in

gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

- **SEC. 24**

And be it further enacted, That when a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree as the district court should have rendered or passed; and the Supreme Court shall do the same on reversals therein, except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or matter to be decreed, are uncertain, in which case they shall remand the cause for a final decision. And the Supreme Court shall not issue execution in causes that are removed before them by writs of error, but shall send a special mandate to the circuit court to award execution thereupon.

- **SEC. 25**

And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of,

or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be reexamined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.

- **SEC. 32**

And be it further enacted, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law

shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe.

- SEC. 35

And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as compensation for his services such fees as shall be taxed therefor in the respective courts before

which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.

ii. The Religious Freedom Restoration Act of 1993 Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993) 42 U.S.C. § 2000bb *et seq.* ("[RFRA]")

- **42 U.S. Code § 2000bb-Congressional Findings and Declaration of Purposes**

(a) Findings The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually

eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

(Pub. L. 103–141, § 2, Nov. 16, 1993, 107 Stat. 1488.)

- **42 U.S. Code § 2000bb–1-Free Exercise of Religion Protected**.

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103–141, § 3, Nov. 16, 1993, 107 Stat. 1488.)

- **42 U.S. Code § 2000bb–2-Definitions**

As used in this chapter—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term "covered entity" means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion;

(4) and the term "exercise of religion" means religious exercise, as defined in section 2000cc–5 of this title.

(Pub. L. 103–141, § 5, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, § 7(a), Sept. 22, 2000, 114 Stat. 806.)

- **42 U.S. Code § 2000bb–3-Applicability**.

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(Pub. L. 103–141, § 6, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, § 7(b), Sept. 22, 2000, 114 Stat. 806.)

- **42 U.S. Code § 2000bb–4-Establishment Clause Unaffected**

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not

include the denial of government funding, benefits, or exemptions.

(Pub. L. 103–141, § 7, Nov. 16, 1993, 107 Stat. 1489.)

iii. 5 U.S.C. § 3331, Oath of Office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

iv. 26 U.S. Code § 7421-Prohibition of Suits to Restrain Assessment or Collection

(a) Tax

Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 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 maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(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 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.)

v. 28 U.S.C. § 453, Oaths of Justices and Judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, 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 upon me as ___ under the Constitution and laws of the United States. So help me God."

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 101–650, title IV, § 404, Dec. 1, 1990, 104 Stat. 5124.)

vi. 28 U.S.C. § 1651-All Writs Act

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 90, 63 Stat. 102.)

vii. 28 U.S. Code § 2106–Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(June 25, 1948, ch. 646, 62 Stat. 963.

viii. 28 U.S. Code § 2201-Creation of Remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under

section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 111, 63 Stat. 105; Aug. 28, 1954, ch. 1033, 68 Stat. 890; Pub. L. 85–508, § 12(p), July 7, 1958, 72 Stat. 349; Pub. L. 94–455, title XIII, § 1306(b)(8), Oct. 4, 1976, 90 Stat. 1719; Pub. L. 95–598, title II, § 249, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 98–417, title I, § 106, Sept. 24, 1984, 98 Stat. 1597; Pub. L. 100–449, title IV, § 402(c), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 100–670, title I, § 107(b), Nov. 16, 1988, 102 Stat. 3984; Pub. L. 103–182, title IV, § 414(b), Dec. 8, 1993, 107 Stat. 2147; Pub. L. 111–148, title VII, § 7002(c)(2), Mar. 23, 2010, 124 Stat. 816.)

ix. 28 U.S. Code § 2202-Further Relief

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.

(June 25, 1948, ch. 646, 62 Stat. 964.)

x. Front Matter, Organic Law of U.S. Code The Declaration of Independence

See App.485a to 492a

VI. U.S. District's Memorandum and Order ECF No. 93 and its dictum

DISCUSSION

a. Sovereign Immunity

"[T]he United States, as sovereign, is immune from suit save as it consents to be sued." *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). Federal courts generally lack jurisdiction to hear claims against the United States because of sovereign immunity. *Barnes v. U.S.*, 448 F.3d 1065, 1066 (8th Cir. 2006). This immunity can be waived, but the waiver must be clear and unmistakable. *U.S. v. Mitchell*, 445 U.S. 535, 538 (1980). Courts narrowly construe such waivers. *U.S. v. Sherwood*, 312 U.S. 584, 587–88 (1941); *see also Ginter v. U.S.*, 815 F. Supp. 1289, 1293 (W.D. Mo. 1993) (such a waiver "must be strictly construed, unequivocally expressed, and cannot be implied").

Here, the Court has not found, nor has Plaintiff pointed the Court to, any case law indicating that the First Amendment is strictly construed to waive sovereign immunity. While the United States has, for instance, waived sovereign immunity for claims in suits for a tax refund, that waiver is conditioned upon the taxpayer first exhausting administrative

remedies. *Olson v. Soc. Sec. Admin.*, 243 F. Supp. 3d 1037, 1054 (D.N.D. 2017). As discussed more fully below, Plaintiff has not done so here.

Plaintiff argues that 28 U.S.C. § 1331 confers jurisdiction. However, federal courts have consistently held that this statute does not waive sovereign immunity. *See Whittle v. U.S.*, 7 F.3d 1259, 1262 (6th Cir. 1993) ("The federal question jurisdictional statute is not a general waiver of sovereign immunity; it merely establishes a subject matter that is within the competence of federal courts to entertain."); *Toledo v. Jackson*, 485 F.3d 836, 838 (6th Cir. 2007) (holding that § 1331 did not independently waive the government's sovereign immunity and plaintiffs had to go further than merely invoking the general jurisdiction statute).

Plaintiff also claims that the Court has jurisdiction pursuant to 28 U.S.C. § 1367. However, before invoking supplemental jurisdiction under 28 U.S.C. § 1367, Plaintiff must first establish this Court's original jurisdiction over a claim upon which others, not within the Court's original jurisdiction, may be supplemented. Plaintiff has not done so.

Lastly, to the extent Plaintiff challenges the constitutionality of the doctrine of sovereign immunity itself, the doctrine pre-dates the Constitution and has been consistently upheld by the United States Supreme Court. *See, e.g.*, *U.S. v. Thompson*, 98 U.S. 486, 489 (1878); *U.S. v. Lee*, 106 U.S. 196, 204 (1882); *State of Kan. v. U.S.*, 204 U.S. 331, 341 (1907).

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." 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).

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); *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.

d. Exhaustion of Administrative Remedies

Congress has created a number of "specific and meaningful remedies for taxpayers" who wish to challenge the assessment and collection of taxes, including challenges grounded in the constitutionality of assessment and collection. *Vennes v. An Unknown No. of Unidentified Agents of U.S.*, 26 F.3d 1448, 1454 (8th Cir. 1994). Taxpayers wishing to challenge the assessment or collection of taxes may bring a suit for refund under 26 U.S.C. § 7422(a). The statute provides that filing a claim for refund with the IRS is a jurisdictional prerequisite that cannot be waived. *Bruno v. U.S.*, 547 F.2d 71, 74 (8th Cir. 1976). Further, exhaustion is a jurisdictional prerequisite that must be pled. *Bellecourt v. U.S.*, 994 F.2d 427, 430 (8th Cir. 1993). To the extent Plaintiff seeks to bring his cause of action under § 7422, his cause of action is barred for failure to exhaust administrative remedies.

e. Bivens claim

The United States Government is the only Defendant named in Plaintiff's Complaint. However, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotations omitted). Therefore, the Court will analyze Plaintiff's

claims to the extent they can be construed as making a claim against IRS agents.

A plaintiff may bring a cause of action for damages caused by individual federal official's violations of the plaintiff's constitutional rights. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 396-97 (1971); *Servs. Corp. v. Malesko*, 534 U.S. 61, 72 (2001) (cited by Defendant).4 If Plaintiff is asserting a *Bivens* cause of action, sovereign immunity is no bar because a *Bivens* claim is not made against the federal government, but rather against an individual official for conduct outside of their official capacities. *See Shah v. Samuels*, 121 F. Supp. 3d 843, 845 (E.D. Ark. 2015).

However, the courts have long dismissed *Bivens* actions against IRS agents for assessment and collection of taxes. *Vennes*, 26 F.3d at 1454 (collecting cases). Where Congress has provided "adequate remedial mechanisms for constitutional violations," the courts refrain from creating *Bivens* remedies. *Id.* (quoting *Schweiker v. Chilicky*, 487 U.S. 412, 423 (1988)). Congress has refused to "permit unrestricted damage actions by taxpayers," instead providing specific remedies to challenge the collection and assessment of taxes administratively. *Id.*

To the extent Plaintiff seeks monetary damages relating to the assessment of taxes, his claim is again barred by sovereign immunity because the United States has not waived its sovereign immunity for *Bivens*-type constitutional tort claims alleging damages caused by the government's violation of the plaintiff's constitutional rights. *Phelps v. U.S.*, 15 F.3d 735, 739 (8th Cir. 1994); *Olson v. Soc. Sec. Admin.*, 243 F. Supp. 3d 1037, 1053-54 (D.N.D. 2017).

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss of Defendant United States [ECF No. 82] is GRANTED, and the case is dismissed without prejudice.

IT IS FURTHER ORDERED that all pending motions are DENIED as moot. A separate Order of Dismissal shall accompany this Memorandum and Order.

ORDER OF DISMISSAL

Pursuant to the Memorandum and Order issued herein on this day,

IT IS HEREBY ORDERED that this case is DISMISSED without prejudice.

VII. Eighth Circuit Court of Appeals' Judgment, Mandate & Order

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In re: TERRY LEE HINDS,

Petitioner,

Appeal from U.S. District Court for the Eastern District of Missouri–St. Louis (4:17-cv-00750-AGF)

Judgment

Before WOLLMAN, MURPHY and COLLOTON, Circuit Judges.

Petition for extraordinary writ has been considered by the court and is denied. Mandate shall issue forthwith.

See App.1a

Mandate

In accordance with the judgment of 02/26/2018, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

See App.2a

Order

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

See App.14a

[. . .]

B. The Issues Presented Concerns Establishment, Endorsement or Advancement of a Religion and Common Law (Ecclesiastical)

I. 26 U.S. Code § 7806. Construction of title

(a) Cross references

The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

(Aug. 16, 1954, ch. 736, 68A Stat. 917 .)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is act Aug. 16, 1954.

II. Law Respecting an Establishment of Religion

See App.404a to 457a

III. Common Law-The Ten Commandants-Exodus 20:1-17

- THOU SHALL HAVE NO OTHER GODS BEFORE ME
- THOU SHALL NOT MAKE ANY FALSE IMAGES OR STATUES TO WORSHIP
- THOU SHALL NOT TAKE THE NAME OF THE LORD THY GOD IN VAIN
- REMEMBER THE SABBATH TO KEEP IT HOLY
- HONOR THY FATHER AND THY MOTHER

- THOU SHALL NOT KILL
- THOU SHALL NOT COMMIT ADULTERY
- THOU SHALL NOT STEAL
- THOU SHALL NOT BEAR FALSE WITNESS
- THOU SHALL NOT COVET

C. The Constitutional Issues or Matters Presented to the Eighth Circuit

[. . .]

III. The Eighth Circuit not preserving the breath, practicing or conflicting with U.S. Supreme Court's doctrines, precedents or controlling law

1. *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002)

"[A]s a general matter, 'the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 65 (1983) (quoting *Police Dept. of Chicago* v. *Mosley*, 408 U.S. 92, 95 (1972)).

2. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002)

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.

3. *Calif. Motor Transport v. Trucking Un*, 404 U.S. 508, 510-511 (1972)

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.

4. *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 at Syllabus #3 (1940)

3. Under the constitutional guaranty, freedom of conscience and of religious belief is absolute; although freedom to act in the exercise of religion is subject to regulation for the protection of society. Such regulation, however, in attaining a permissible end, must not unduly infringe the protected freedom.

The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute, but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

5. *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380 (2004)

The common-law writ of mandamus against a lower court is codified at 28 U.S. C. § 1651(a): "The Supreme Court and all courts established by Act of

Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-260 (1947). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction,'" *Will v. United States*, 389 U.S. 90, 95 (1967), "only exceptional circumstances amounting to a judicial 'usurpation of power,'" *ibid.*, or a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953), "will justify the invocation of this extraordinary remedy," *Will*, 389 U.S., at 95.

As the writ is one of "the most potent weapons in the judicial arsenal," *id.*, at 107, three conditions must be satisfied before it may issue. *Kerr v. United States Dist. Court for Northern Dist. of Cal.*, 426 U.S. 394, 403 (1976). First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," *ibid.*—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process, *Fahey*, *supra*, at 260. Second, the petitioner must satisfy "'the burden of showing that [his] right to issuance of the writ is "clear and indisputable."'" *Kerr*, *supra*, at 403 (quoting *Banker's Life & Casualty Co.*, *supra*, at 384). Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its dis-

cretion, must be satisfied that the writ is appropriate under the circumstances. *Kerr*, *supra,* at 403 (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 112, n. 8 (1964)). These hurdles, however demanding, are not insuperable.

6. *Chisholm v. Georgia*, 2 U.S. 2 Dall. 419 419 (1793)

The part of the Constitution concerning the Judicial Power is as follows, viz:

"Art.3. sect. 2. The Judicial Power shall extend"

"(1) To all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;"

"(2) To all cases affecting Ambassadors, or other public Ministers, and Consuls;"

"(3) To all cases of Admiralty and Maritime Jurisdiction;"

"(4) To controversies to which the United States shall be a party;"

"(5) To controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof and foreign states, citizens or subjects."

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

see App.49a, App.170a, App.281a, App.351a, App. 352a, App.353a, App.354a, App.355a, App.356a, App.367a

8. *Data Processing Svc. Orgs. v. Camp*, 397 U.S. 150, 154 (1970)

A person or a family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause.

9. *Employment Div. v. Smith*, 494 U.S. 872, 887-888 (1990)

See App.49a, App.280a to 281a

10. In Re *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 116 (1872)

This, it is true, was the violation of a political right; but personal rights were deemed equally sacred, and were claimed by the very first Congress of the Colonies, assembled in 1774, as the undoubted inheritance of the people of this country; and the Declaration of Independence, which [83 U.S. 36, 116] was the first political act of the American people in their independent sovereign capacity, lays the foundation of our National existence upon this broad proposition: "That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." Here again we have the great threefold division of the rights of freemen, asserted as the rights of man. Rights to life, liberty, and the pursuit of happiness are equivalent to the rights of life, liberty, and property. These are the fundamental rights which can only be taken away by due process of law, and which can only be interfered with, or the enjoyment of which can only be modified, by lawful regulations necessary or proper for the

mutual good of all; and these rights, I contend, belong to the citizens of every free government.

11. *La Buy v. Howes Leather Co., Inc.*, 352 U.S. 249 (1957)

The Power of the Courts of Appeals.—Petitioner contends that the power of the Courts of Appeals does not extend to the issuance of writs of mandamus to review interlocutory orders except in those cases where the review of the case on appeal after final judgment would be frustrated. Asserting that the orders of reference were in exercise of his jurisdiction under Rule 53(b), petitioner urges that such action can be reviewed only on appeal, and not by writ of mandamus, since, by congressional enactment, appellate review of a District Court's orders may be had only after a final judgment. The question of naked power has long been settled by this Court. As late as *Roche v. Evaporated Milk Association*, 319 U.S. 21, 319 U.S. 25 (1943), Mr. Chief Justice Stone reviewed the decisions and, in considering the power of Courts of Appeals to issue writs of mandamus, the Court held that "the common law writs, like equitable remedies, may be granted or withheld in the sound discretion of the court." The recodification of the All Writs Act in 1948, which consolidated old §§ 342 and 377 into the present § 1651(a), did not affect the power of the Courts of Appeals to issue writs of mandamus in aid of jurisdiction. *See Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 346 U.S. 382-383 (1953). Since the Court of Appeals could at some stage of the antitrust proceedings entertain appeals in these cases, it has power in proper circumstances, as here, to issue writs of mandamus reaching them. *Roche*, *supra*, at 319 U.S. 25, and cases there cited. This is not to say that the

conclusion we reach on the facts of this case is intended, or can be used, to authorize the indiscriminate use of prerogative writs as a means of reviewing interlocutory orders. We pass on, then, to the only real question involved, *i.e.*, whether the exercise of the power by the Court of Appeals was proper in the cases now before us.

The Discretionary Use of the Writs

The use of masters is "to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause," *Ex parte Peterson*, 253 U.S. 300, 253 U.S. 312 (1920), and not to displace the court. The exceptional circumstances here warrant the use of the extraordinary remedy of mandamus. *See Maryland v. Soper*, 270 U.S. 9, 270 U.S. 30 (1926). As this Court pointed out in *Los Angeles Brush Mfg. Corp. v. James*, 272 U.S. 701, 272 U.S. 706 (1927): " . . . [W]here the subject concerns the enforcement of the . . . [r]ules which, by law, it is the duty of this court to formulate and put in force," mandamus should issue to prevent such action thereunder so palpably improper as to place it beyond the scope of the rule invoked. As was said there at page 272 U.S. 707, were the Court " . . . to find that the rules have been practically nullified by a District Judge . . . it would not hesitate to restrain [him] . . . ." The *Los Angeles Brush Mfg. Corp.* case was cited as authority in 1940 for a per curiam opinion in *McCullough v. Cosgrave*, 309 U.S. 634, in which the Court summarily ordered vacated the reference of two patent cases to a master.

12. *Langford v. United States*, 101 U.S. 341, 343-344, *Syllabus* #1 (1879)

Syllabus

1. 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.

2. 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.

3. That by virtue of the constitutional provision that private property shall not be taken for public use, without just compensation, there arises in all cases where such property is so taken an implied obligation to pay for it.

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.

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.

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.

13. *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971)

The language of the Religion Clauses of the First Amendment is, at best, opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead, they commanded that there should be "no law respecting an establishment of religion." A law may be one "respecting" the forbidden objective while falling short of its total realization. A law "respecting" the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not establish a state religion, but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment, and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: "sponsorship,

financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Commission*, 397 U.S. 664, 397 U.S. 668 (1970).

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v. Allen*, 392 U.S. 236, 392 U.S. 243 (1968); finally, the statute must not foster "an excessive government entanglement with religion." *Walz*, *supra*, at 397 U.S. 674.

14. ***Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803)**

2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

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. In Great Britain, the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

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.

If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case.

15. *McCulloch v. Maryland*, 17 U.S. 4, 421-422 (1819)

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional.

16. *Rhode Island v. Massachusetts*, 37 U.S. 12 Pet. 657 657 (1838)

Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit—to adjudicate or exercise any judicial power over them. An objection to jurisdiction on the ground of exemption from the process of the court in which the suit is brought or the manner in which a defendant is brought into it is waived by appearance and pleading to issue, but when the objection goes to the power of the court over the parties or the subject matter, the defendant need not, for he cannot give the plaintiff a better writ, or bill.

17. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)

It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' *Speiser v. Randall*, 357 U.S. 513, 357

U.S. 526. Such interference with constitutional rights is impermissible.

18. *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973)

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon.

19. *United States v. Morgan*, 346 U.S. 502, 503 (1954)

Continuation of litigation, after final judgment and after exhaustion or waiver of any statutory right of review, should be allowed through the extraordinary remedy of *coram nobis* only under circumstances compelling such action to achieve justice. P. 346 U.S. 511.

20. *Western Pac. Ry. Corp. v. Western Pac. Ry. Co.*, 345 U.S. 247, 262-63 (1953)

Syllabus

1. Referring to a United States Court of Appeals, 28 U.S.C. § 46(c) provides that

> "Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in active service."

Held:

(a) This statute is simply a grant of power to order hearings and rehearings *en banc* and to establish the procedure governing the exercise of that power. Pp. 345 U.S. 250-259, 345 U.S. 267.

(b) Litigants are given no statutory right to compel each member of the court to give formal consideration to an application for a rehearing en banc. Pp. 345 U.S. 256-259, 345 U.S. 267.

(c) The statute does not compel the court to adopt any particular procedure governing the exercise of the power; but, whatever procedure is adopted, it should be clearly explained, so that the members of the court and litigants in the court may become thoroughly familiar with it. Pp. 345 U.S. 259-261, 345 U.S. 267.

(d) Whatever procedure is adopted, it should not prevent a litigant from suggesting to those judges who, under the procedure established by the court, have the responsibility of initiating a rehearing en banc, that his case is an appropriate one for the exercise of the power. Pp. 345 U.S. 261-262, 345 U.S. 268.

2. Having lost their case in a three-judge division of a Court of Appeals, petitioners applied for a rehearing before the Court of Appeals en banc. The division of

three judges denied rehearing and struck as unauthorized by law or practice the request that the rehearing be en banc. Petitioners then applied for leave to file a motion to reinstate their petition for rehearing en banc, claiming that such a request was authorized by statute and required the attention of the full court. The Court of Appeals, en banc, declined to entertain this second application and announced that thereafter each petition for rehearing *en banc* in a case determined by a division of three judges would be considered and disposed of by such division of three judges as an ordinary petition for rehearing.

21. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)

Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.

Law Respecting an Establishment of Religion

U.S. Code § 5067. Cross reference

For general administrative provisions applicable to the assessment, collection, refund, etc., of taxes, *see* subtitle F.

(Added Pub. L. 85–859, title II, § 201, Sept. 2, 1958, 72 Stat. 1338, § 5066; renumbered § 5067, Pub. L. 91–659, § 3(a), Jan. 8, 1971, 84 Stat. 1965.)

See App.404a to 457a attached to this petition for each U.S. Code section in subtitle F which are made only for convenience, and shall be given no legal effect pursuant to U.S. Code § 7806(a). Construction of title.

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES (OCTOBER 6, 2017)

OFFICE OF THE ATTORNEY GENERAL
Washington, D.C. 20530

From: The Attorney General

Subject: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."[1] Religious

[1] James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), in 5 THE FOUNDERS' CONSTITUTION 82 (Philip B. Kurland & Ralph Lerner eds., 1987).

liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

1. The Freedom of Religion Is a Fundamental Right of Paramount Importance, Expressly Protected by Federal Law

Religious liberty is enshrined in the text of our Constitution and in numerous federal statutes. It encompasses the right of all Americans to exercise their religion freely, without being coerced to join an established church or to satisfy a religious test as a qualification for public office. It also encompasses the right of all Americans to express their religious beliefs, subject to the same narrow limits that apply to all forms of speech. In the United States, the free exercise of religion is not a mere policy preference to be traded against other policy preferences. It is a fundamental right.

2. The Free Exercise of Religion Includes the Right to Act or Abstain from Action in Accordance with One's Religious Beliefs

The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs. Federal statutes, including the Religious Freedom Restoration Act of 1993 ("RFRA"), support that protection, broadly defining the exercise of religion to encompass all aspects of observance and practice, whether or not central to, or required by, a particular religious faith.

3. The Freedom of Religion Extends to Persons and Organizations

The Free Exercise Clause protects not just persons, but persons collectively exercising their religion through churches or other religious denominations, religious organizations, schools, private associations, and even businesses.

4. Americans Do Not Give Up Their Freedom of Religion by Participating in the Marketplace, Partaking of the Public Square, or Interacting with Government

Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society. Although the application of the relevant protections may differ in different contexts, individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by

receiving government grants or contracts; or by otherwise interacting with federal, state, or local governments.

5. Government May Not Restrict Acts or Abstentions Because of the Beliefs They Display

To avoid the very sort of religious persecution and intolerance that led to the founding of the United States, the Free Exercise Clause of the Constitution protects against government actions that target religious conduct. Except in rare circumstances, government may not treat the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons. For example, government may not attempt to target religious persons or conduct by allowing the distribution of political leaflets in a park but forbidding the distribution of religious leaflets in the same park.

6. Government May Not Target Religious Individuals or Entities for Special Disabilities Based on Their Religion

Much as government may not restrict actions only because of religious belief, government may not target persons or individuals because of their religion. Government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities such as worship or proselytization. For example, the Supreme Court has held that if government provides reimbursement for scrap tires to replace child playground surfaces, it may not deny participation in that program to religious schools. Nor may government deny religious schools—including schools whose cur-

ricula and activities include religious elements—the right to participate in a voucher program, so long as the aid reaches the schools through independent decisions of parents.

7. Government May Not Target Religious Individuals or Entities Through Discriminatory Enforcement of Neutral, Generally Applicable Laws

Although government generally may subject religious persons and organizations to neutral, generally applicable laws—*e.g.*, across-the-board criminal prohibitions or certain time, place, and manner restrictions on speech—government may not apply such laws in a discriminatory way. For instance, the Internal Revenue Service may not enforce the Johnson Amendment—which prohibits 501(c)(3) non-profit organizations from intervening in a political campaign on behalf of a candidate—against a religious non-profit organization under circumstances in which it would not enforce the amendment against a secular non-profit organization. Likewise, the National Park Service may not require religious groups to obtain permits to hand out fliers in a park if it does not require similarly situated secular groups to do so, and no federal agency tasked with issuing permits for land use may deny a permit to an Islamic Center seeking to build a mosque when the agency has granted, or would grant, a permit to similarly situated secular organizations or religious groups.

8. Government May Not Officially Favor or Disfavor Particular Religious Groups

Together, the Free Exercise Clause and the Establishment Clause prohibit government from officially

preferring one religious group to another. This principle of denominational neutrality means, for example, that government cannot selectively impose regulatory burdens on some denominations but not others. It likewise cannot favor some religious groups for participation in the Combined Federal Campaign over others based on the groups' religious beliefs.

9. Government May Not Interfere with the Autonomy of a Religious Organization

Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra-denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.

10. The Religious Freedom Restoration Act of 1993 Prohibits the Federal Government from Substantially Burdening Any Aspect of Religious Observance or Practice, Unless Imposition of That Burden on a Particular Religious Adherent Satisfies Strict Scrutiny

RFRA prohibits the federal government from substantially burdening a person's exercise of religion, unless the federal government demonstrates that application of such burden to the religious adherent is the least restrictive means of achieving a compelling governmental interest. RFRA applies to all actions by federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration.

11. RFRA's Protection Extends Not Just to Individuals, but Also to Organizations, Associations, and at Least Some For-Profit Corporations

RFRA protects the exercise of religion by individuals and by corporations, companies, associations, firms, partnerships, societies, and joint stock companies. For example, the Supreme Court has held that Hobby Lobby, a closely held, for-profit corporation with more than 500 stores and 13,000 employees, is protected by RFRA.

12. RFRA Does Not Permit the Federal Government to Second-Guess the Reasonableness of a Religious Belief

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so. Thus, for example, a government agency may not second-guess the determination of a factory worker that, consistent with his religious precepts, he can work on a line producing steel that might someday make its way into armaments but cannot work on a line producing the armaments themselves. Nor may the Department of Health and Human Services second-guess the determination of a religious employer that providing contraceptive coverage to its employees would make the employer complicit in wrongdoing in violation of the organization's religious precepts.

13. A Governmental Action Substantially Burdens an Exercise of Religion Under RFRA If It Bans an Aspect of an Adherent's Religious Observance or Practice, Compels an Act Inconsistent with That Observance or Practice, or Substantially Pressures the Adherent to Modify Such Observance or Practice

Because the government cannot second-guess the reasonableness of a religious belief or the adherent's assessment of the religious connection between the government mandate and the underlying religious belief, the substantial burden test focuses on the extent of governmental compulsion involved. In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion. For example, a Bureau of Prisons regulation that bans a devout Muslim from growing even a half-inch beard in accordance with his religious beliefs substantially burdens his religious practice. Likewise, a Department of Health and Human Services regulation requiring employers to provide insurance coverage for contraceptive drugs in violation of their religious beliefs or face significant fines substantially burdens their religious practice, and a law that conditions receipt of significant government benefits on willingness to work on Saturday substantially burdens the religious practice of those who, as a matter of religious observance or practice, do not work on that day. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself

regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden.

14. The Strict Scrutiny Standard Applicable to RFRA Is Exceptionally Demanding

Once a religious adherent has identified a substantial burden on his or her religious belief, the federal government can impose that burden on the adherent only if it is the least restrictive means of achieving a compelling governmental interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion, and such interests must be evaluated not in broad generalities but as applied to the particular adherent. Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program.

15. RFRA Applies Even Where a Religious Adherent Seeks an Exemption from a Legal Obligation Requiring the Adherent to Confer Benefits on Third Parties

Although burdens imposed on third parties are relevant to RFRA analysis, the fact that an exemption would deprive a third party of a benefit does not categorically render an exemption unavailable. Once an adherent identifies a substantial burden on his or her religious exercise, RFRA requires the federal government to establish that denial of an accommodation or exemption to that adherent is the least restrictive means of achieving a compelling governmental interest.

16. Title VII of the Civil Rights Act of 1964, as Amended, Prohibits Covered Employers from Discriminating Against Individuals on the Basis of Their Religion

Employers covered by Title VII may not fail or refuse to hire, discharge, or discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of that individual's religion. Such employers also may not classify their employees or applicants in a way that would deprive or tend to deprive any individual of employment opportunities because of the individual's religion. This protection applies regardless of whether the individual is a member of a religious majority or minority. But the protection does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

17. Title VII's Protection Extends to Discrimination on the Basis of Religious Observance or Practice as Well as Belief, Unless the Employer Cannot Reasonably Accommodate Such Observance or Practice Without Undue Hardship on the Business.

Title VII defines "religion" broadly to include all aspects of religious observance or practice, except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, unless doing so would create an undue hardship, such as materially compromising operations or violating a collective bargaining agreement. Title VII might also require an employer to modify a no-head-coverings policy to allow a Jewish employee to wear a yarmulke or a Muslim employee to wear a headscarf. An employer who contends that it cannot reasonably accommodate a religious observance or practice must establish undue hardship on its business with specificity; it cannot rely on assumptions about hardships that might result from an accommodation.

18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace Provide Useful Examples for Private Employers of Reasonable Accommodations for Religious Observance and Practice in the Workplace

President Clinton issued Guidelines on Religious Exercise and Religious Expression in the Federal Workplace ("Clinton Guidelines") explaining that federal employees may keep religious materials on

their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing. The Clinton Guidelines have the force of an Executive Order, and they also provide useful guidance to private employers about ways in which religious observance and practice can reasonably be accommodated in the workplace.

19. Religious Employers Are Entitled to Employ Only Persons Whose Beliefs and Conduct Are Consistent with the Employers' Religious Precepts

Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies—that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes—have an express statutory exemption from Title VII's prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations' religious precepts. For example, a Lutheran secondary school may choose to employ only practicing Lutherans, only practicing Christians, or only those willing to adhere to a code of conduct consistent with the precepts of the Lutheran community sponsoring the school. Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.

20. As a General Matter, the Federal Government May Not Condition Receipt of a Federal Grant or Contract on the Effective Relinquishment of a Religious Organization's Hiring Exemptions or Attributes of Its Religious Character

Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions.

Guidance for Implementing Religious Liberty Principles

Agencies must pay keen attention, in everything they do, to the foregoing principles of religious liberty.

Agencies as Employers

Administrative agencies should review their current policies and practices to ensure that they comply with all applicable federal laws and policies regarding accommodation for religious observance and practice in the federal workplace, and all agencies must observe such laws going forward. In particular, all agencies should review the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, which President Clinton issued on August 14, 1997, to ensure that they are following those Guidelines. All agencies should also consider practical steps to improve safeguards for religious liberty in the federal workplace, including through subject-matter

experts who can answer questions about religious nondiscrimination rules, information websites that employees may access to learn more about their religious accommodation rights, and training for all employees about federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so. In developing that process, agencies should consider drawing upon the expertise of the White House Office of Faith-Based and Neighborhood Partnerships to identify concerns about the effect of potential agency action on religious exercise. Regardless of the process chosen, agencies should ensure that they review all proposed rules, regulations, and policies that have the potential to have an effect on religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies. The Office of Legal Policy will also review any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought, *see, e.g.*, Exec. Order 12250 § 1-2, 45 Fed. Reg. 72995 (Nov. 2, 1980), to ensure that such action complies with the principles of religious liberty outlined in this memorandum and appendix. The Department will not concur in any proposed action that does not comply with federal law protections for religious liberty as interpreted in

this memorandum and appendix, and it will transmit any concerns it has about the proposed action to the agency or the Office of Management and Budget as appropriate. If, despite these internal reviews, a member of the public identifies a significant concern about a prospective rule's compliance with federal protections governing religious liberty during a period for public comment on the rule, the agency should carefully consider and respond to that request in its decision. *See Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. 1199, 1203 (2015). In appropriate circumstances, an agency might explain that it will consider requests for accommodations on a case-by-case basis rather than in the rule itself, but the agency should provide a reasoned basis for that approach.

Agencies Engaged in Enforcement Actions

Much like administrative agencies engaged in rulemaking, agencies considering potential enforcement actions should consider whether such actions are consistent with federal protections for religious liberty. In particular, agencies should remember that RFRA applies to agency enforcement just as it applies to every other governmental action. An agency should consider RFRA when setting agency-wide enforcement rules and priorities, as well as when making decisions to pursue or continue any particular enforcement action, and when formulating any generally applicable rules announced in an agency adjudication.

Agencies should remember that discriminatory enforcement of an otherwise nondiscriminatory law can also violate the Constitution. Thus, agencies may not target or single out religious organizations or religious conduct for disadvantageous treatment in

enforcement priorities or actions. The President identified one area where this could be a problem in Executive Order 13798, when he directed the Secretary of the Treasury, to the extent permitted by law, not to take any "adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character" from a non-religious perspective has not been treated as participation or intervention in a political campaign. Exec. Order No. 13798, § 2, 82 Fed. Reg. at 21675. But the requirement of nondiscrimination toward religious organizations and conduct applies across the enforcement activities of the Executive Branch, including within the enforcement components of the Department of Justice.

Agencies Engaged in Contracting and Distribution of Grants

Agencies also must not discriminate against religious organizations in their contracting or grant-making activities. Religious organizations should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations. Absent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization's Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations. In particular, agencies should not attempt through conditions on grants or contracts to meddle in the internal governance

affairs of religious organizations or to limit those organizations' otherwise protected activities.

* * *

Any questions about this memorandum or the appendix should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

APPENDIX

Although not an exhaustive treatment of all federal protections for religious liberty, this appendix summarizes the key constitutional and federal statutory protections for religious liberty and sets forth the legal basis for the religious liberty principles described in the foregoing memorandum.

Constitutional Protections

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. In the original version of the Constitution, the people agreed that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." U.S. Const., art. VI, cl. 3. The people then amended the Constitution during the First Congress to clarify that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I, cl. 1. Those protections have been incorporated against the States. *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15 (1947) (Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise Clause).

A. Free Exercise Clause

The Free Exercise Clause recognizes and guarantees Americans the "right to believe and profess whatever religious doctrine [they] desire[]." *Empl't Div. v. Smith*, 494 U.S. 872, 877 (1990). Government may not attempt to regulate religious beliefs, compel religious beliefs, or punish religious beliefs. *See id.*; *see also Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492-93, 495 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). It may not lend its power to one side in intra-denominational disputes about dogma, authority, discipline, or qualifications for ministry or membership. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); *Smith*, 494 U.S. at 877; *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116, 120-21 (1952). It may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status. *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And with the exception of certain historical limits on the freedom of speech, government may not punish or otherwise harass churches, church officials, or religious adherents for speaking on religious topics or sharing their religious beliefs. *See Widmar v. Vincent*, 454 U.S. 263, 269 (1981); *see also* U.S. Const., amend. I, cl. 3. The Constitution's protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. *Smith*, 494 U.S. at 877; *Sherbert*,

374 U.S. at 402; *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

The Free Exercise Clause protects beliefs rooted in religion, even if such beliefs are not mandated by a particular religious organization or shared among adherents of a particular religious tradition. *Frazee v. Illinois Dept. of Emp't Sec.*, 489 U.S. 829, 833-34 (1989). As the Supreme Court has repeatedly counseled, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993) (internal quotation marks omitted). They must merely be "sincerely held." *Frazee*, 489 U.S. at 834.

Importantly, the protection of the Free Exercise Clause also extends to acts undertaken in accordance with such sincerely-held beliefs. That conclusion flows from the plain text of the First Amendment, which guarantees the freedom to "exercise" religion, not just the freedom to "believe" in religion. *See Smith*, 494 U.S. at 877; *see also Thomas*, 450 U.S. at 716; *Paty*, 435 U.S. at 627; *Sherbert*, 374 U.S. at 403-04; *Wisconsin v. Yoder*, 406 U.S. 205, 219-20 (1972). Moreover, no other interpretation would actually guarantee the freedom of belief that Americans have so long regarded as central to individual liberty. Many, if not most, religious beliefs require external observance and practice through physical acts or abstention from acts. The tie between physical acts

and religious beliefs may be readily apparent (*e.g.*, attendance at a worship service) or not (*e.g.*, service to one's community at a soup kitchen or a decision to close one's business on a particular day of the week). The "exercise of religion" encompasses all aspects of religious observance and practice. And because individuals may act collectively through associations and organizations, it encompasses the exercise of religion by such entities as well. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 199; *Church of the Lukumi Babalu Aye*, 508 U.S. at 525-26, 547; *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2770, 2772-73 (2014) (even a closely held for-profit corporation may exercise religion if operated in accordance with asserted religious principles).

As with most constitutional protections, however, the protection afforded to Americans by the Free Exercise Clause for physical acts is not absolute, *Smith*, 491 U.S. at 878-79, and the Supreme Court has identified certain principles to guide the analysis of the scope of that protection. First, government may not restrict "acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display," *id.* at 877, nor "target the religious for special disabilities based on their religious status," *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ___, ___ (2017) (slip op. at 6) (internal quotation marks omitted), for it was precisely such "historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause." *Church of the Lukumi Babalu Aye*, 508 U.S. at 532 (internal quotation marks omitted). The Free Exercise Clause protects against "indirect coercion or penalties on the free ex-

ercise of religion" just as surely as it protects against "outright prohibitions" on religious exercise. *Trinity Lutheran*, 582 U.S. at ___ (slip op. at 11) (internal quotation marks omitted). "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Id.* (quoting *Sherbert*, 374 U.S. at 404).

Because a law cannot have as its official "object or purpose . . . the suppression of religion or religious conduct," courts must "survey meticulously" the text and operation of a law to ensure that it is actually neutral and of general applicability. *Church of the Lukumi Babalu Aye*, 508 U.S. at 533-34 (internal quotation marks omitted). A law is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits "gratuitous restrictions on religious conduct"; or "accomplishes . . . a 'religious gerrymander,' an impermissible attempt to target [certain individuals] and their religious practices." *Id.* at 533-35, 538 (internal quotation marks omitted). A law is not generally applicable if "in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief," *id.* at 543, including by "fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does" the prohibited conduct, *id.*, or enables, expressly or de facto, "a system of individualized exemptions," as discussed in *Smith*, 494 U.S. at 884; *see also Church of the Lukumi Babalu Aye*, 508 U.S. at 537.

"Neutrality and general applicability are interrelated, . . . [and] failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Id.* at 531. For example, a law that disqualifies a religious person or organization from a right to compete for a public benefit—including a grant or contract—because of the person's religious character is neither neutral nor generally applicable. *See Trinity Lutheran*, 582 U.S. at ___-___ (slip op. at 9-11). Likewise, a law that selectively prohibits the killing of animals for religious reasons and fails to prohibit the killing of animals for many nonreligious reasons, or that selectively prohibits a business from refusing to stock a product for religious reasons but fails to prohibit such refusal for myriad commercial reasons, is neither neutral, nor generally applicable. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 533-36, 542-45. Nonetheless, the requirements of neutral and general applicability are separate, and any law burdening religious practice that fails one or both must be subjected to strict scrutiny, *id.* at 546.

Second, even a neutral, generally applicable law is subject to strict scrutiny under this Clause if it restricts the free exercise of religion and another constitutionally protected liberty, such as the freedom of speech or association, or the right to control the upbringing of one's children. *See Smith*, 494 U.S. at 881-82; *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1295-97 (10th Cir. 2004). Many Free Exercise cases fall in this category. For example, a law that seeks to compel a private person's speech or expression contrary to his or her religious beliefs implicates both the freedoms of speech and free exercise. *See, e.g.*, *Wooley v. Maynard*, 430 U.S. 705, 707-08 (1977) (challenge by

Jehovah's Witnesses to requirement that state license plates display the motto "Live Free or Die"); *Axson-Flynn*, 356 F.3d at 1280 (challenge by Mormon student to University requirement that student actors use profanity and take God's name in vain during classroom acting exercises). A law taxing or prohibiting door-to-door solicitation, at least as applied to individuals distributing religious literature and seeking contributions, likewise implicates the freedoms of speech and free exercise. *Murdock v. Pennsylvania*, 319 U.S. 105, 108-09 (1943) (challenge by Jehovah's Witnesses to tax on canvassing or soliciting); *Cantwell*, 310 U.S. at 307 (same). A law requiring children to receive certain education, contrary to the religious beliefs of their parents, implicates both the parents' right to the care, custody, and control of their children and to free exercise. *Yoder*, 406 U.S. at 227-29 (challenge by Amish parents to law requiring high school attendance).

Strict scrutiny is the "most rigorous" form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546; *see also City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) ("Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law."). It is the same standard applied to governmental classifications based on race, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007), and restrictions on the freedom of speech, *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218, 2228 (2015). *See Church of the Lukumi Babalu Aye*, 508 U.S. at 546-47. Under this level of scrutiny, government must establish that a challenged

law "advance[s] interests of the highest order" and is "narrowly tailored in pursuit of those interests." *Id. at* 546 (internal quotation marks omitted). "[O]nly in rare cases" will a law survive this level of scrutiny. *Id.*

Of course, even when a law is neutral and generally applicable, government may run afoul of the Free Exercise Clause if it interprets or applies the law in a manner that discriminates against religious observance and practice. *See, e.g., Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (government discriminatorily interpreted an ordinance prohibiting the unnecessary killing of animals as prohibiting only killing of animals for religious reasons); *Fowler v. Rhode Island*, 345 U.S. 67, 69-70 (1953) (government discriminatorily enforced ordinance prohibiting meetings in public parks against only certain religious groups). The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. *See Trinity Lutheran*, 582 U.S. at ___ (slip op. at 6); *cf. Good News Club v. Milford Central Sch.*, 533 U.S. 98, 114 (2001) (recognizing that Establishment Clause does not justify discrimination against religious clubs seeking use of public meeting spaces); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837, 841 (1995) (recognizing that Establishment Clause does not justify discrimination against religious student newspaper's participation in neutral reimbursement program). That is true regardless of whether the discriminatory application is initiated by the government itself or by private requests or complaints. *See, e.g.*, *Fowler*, 345 U.S. at 69; *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

B. Establishment Clause

The Establishment Clause, too, protects religious liberty. It prohibits government from establishing a religion and coercing Americans to follow it. *See Town of Greece, N.Y. v. Galloway*, 134 S.Ct. 1811, 1819-20 (2014); *Good News Club*, 533 U.S. at 115. It restricts government from interfering in the internal governance or ecclesiastical decisions of a religious organization. *Hosanna-Tabor*, 565 U.S. at 188-89. And it prohibits government from officially favoring or disfavoring particular religious groups as such or officially advocating particular religious points of view. *See Galloway*, 134 S.Ct. at 1824; *Larson v. Valente*, 456 U.S. 228, 244-46 (1982). Indeed, "a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion." *Rosenberger*, 515 U.S. at 839 (emphasis added). That "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Id.* Thus, religious adherents and organizations may, like nonreligious adherents and organizations, receive indirect financial aid through independent choice, or, in certain circumstances, direct financial aid through a secular-aid program. *See, e.g.*, *Trinity Lutheran*, 582 U.S. at ___ (slip. op. at 6) (scrap tire program); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (voucher program).

C. Religious Test Clause

Finally, the Religious Test Clause, though rarely invoked, provides a critical guarantee to religious adherents that they may serve in American public life. The Clause reflects the judgment of the Framers that a diversity of religious viewpoints in government would enhance the liberty of all Americans. And after the Religion Clauses were incorporated against the States, the Supreme Court shared this view, rejecting a Tennessee law that "establishe[d] as a condition of office the willingness to eschew certain protected religious practices." *Paty*, 435 U.S. at 632 (Brennan, J., and Marshall, J., concurring in judgment); *see also id.* at 629 (plurality op.) ("[T]he American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.").

Statutory Protections

Recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*; and the American Indian Religious Freedom Act, 42 U.S.C. § 1996. Such protections ensure not only that government tolerates religious observance and practice, but that it embraces religious adherents as full members of society, able to contribute through employment,

use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger through accommodation of religion than segregation or isolation of it.

A. Religious Freedom Restoration Act of 1993 (RFRA)

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, prohibits the federal government from "substantially burden[ing] a person's exercise of religion" unless "it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* § 2000bb-1(a), (b). The Act applies even where the burden arises out of a "rule of general applicability" passed without animus or discriminatory intent. *See id.* § 2000bb-1(a). It applies to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," *see* §§ 2000bb-2(4), 2000cc-5(7), and covers "individuals" as well as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies," 1 U.S.C. § 1, including for-profit, closely-held corporations like those involved in *Hobby Lobby*, 134 S.Ct. at 2768.

Subject to the exceptions identified below, a law "substantially burden[s] a person's exercise of religion," 42 U.S.C. § 2000bb-1, if it bans an aspect of the adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, *see Sherbert*, 374 U.S. at 405-

06. The "threat of criminal sanction" will satisfy these principles, even when, as in *Yoder*, the prospective punishment is a mere $5 fine. 406 U.S. at 208, 218. And the denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion under these principles. *Sherbert*, 374 U.S. at 405-06; *see also Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas*, 450 U.S. at 717-18. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden. *See, e.g.*, *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 448-49 (1988); *Bowen v. Roy*, 476 U.S. 693, 699-700 (1986).

As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent's assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents. *Hobby Lobby*, 134 S.Ct. at 2778. If the proffered belief is sincere, it is not the place of the government or a court to second-guess it. *Id.* A good illustration of the point is *Thomas v. Review Board of Indiana Employment Security Division*—one of the *Sherbert* line of cases, whose analytical test Congress sought, through RFRA, to restore, 42 U.S.C. § 2000bb. There, the Supreme Court concluded that the denial of unemployment benefits was a substantial burden on the

sincerely held religious beliefs of a Jehovah's Witness who had quit his job after he was transferred from a department producing sheet steel that could be used for military armaments to a department producing turrets for military tanks. *Thomas*, 450 U.S. at 716-18. In doing so, the Court rejected the lower court's inquiry into "what [the claimant's] belief was and what the religious basis of his belief was," noting that no one had challenged the sincerity of the claimant's religious beliefs and that "[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is struggling with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ." *Id.* at 714-15 (internal quotation marks omitted). The Court likewise rejected the lower court's comparison of the claimant's views to those of other Jehovah's Witnesses, noting that "[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences." *Id.* at 715. The Supreme Court reinforced this reasoning in *Hobby Lobby*, rejecting the argument that "the connection between what the objecting parties [were required to] do (provide health-insurance coverage for four methods of contraception that may operate after the fertilization of an egg) and the end that they [found] to be morally wrong (destruction of an embryo) [wa]s simply too attenuated." 134 S.Ct. at 2777. The Court explained that the plaintiff corporations had a sincerely-held religious belief that provision of the coverage was morally wrong, and it was "not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* at 2779.

Government bears a heavy burden to justify a substantial burden on the exercise of religion. "[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Thomas*, 450 U.S. at 718 (quoting *Yoder*, 406 U.S. at 215). Such interests include, for example, the "fundamental, overriding interest in eradicating racial discrimination in education—discrimination that prevailed, with official approval, for the first 165 years of this Nation's history," *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983), and the interest in ensuring the "mandatory and continuous participation" that is "indispensable to the fiscal vitality of the social security system," *United States v. Lee*, 455 U.S. 252, 258-59 (1982). But "broadly formulated interests justifying the general applicability of government mandates" are insufficient. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435-38. For example, the military may have a compelling interest in its uniform and grooming policy to ensure military readiness and protect our national security, but it does not necessarily follow that those interests would justify denying a particular soldier's request for an accommodation from the uniform and grooming policy. *See, e.g.*, Secretary of the Army, Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation (2017) (recognizing the "successful examples of Soldiers currently serving with" an accommodation for "the wear of a hijab; the wear of a beard; and the wear of a turban or under-turban/patka, with uncut beard and uncut hair" and providing for a

reasonable accommodation of these practices in the Army). The military would have to show that it has a compelling interest in denying that particular accommodation. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests. *See O Centro*, 546 U.S. at 433, 436-37; *see also Hobby Lobby,* 134 S.Ct. at 2780.

The compelling-interest requirement applies even where the accommodation sought is "an exemption from a legal obligation requiring [the claimant] to confer benefits on third parties." *Hobby Lobby*, 134 S.Ct. at 2781 n.37. Although "in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,'" the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. § 2000bb-1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby*, 134 S.Ct. at 2781 n.37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is "exceptionally demanding." *Hobby Lobby*,

134 S.Ct. at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government's stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781-82.

B. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

Although Congress's leadership in adopting RFRA led many States to pass analogous statutes, Congress recognized the unique threat to religious liberty posed by certain categories of state action and passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address them. RLUIPA extends a standard analogous to RFRA to state and local government actions regulating land use and institutionalized persons where "the substantial burden is imposed in a program or activity that receives Federal financial assistance" or "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." 42 U.S.C. §§ 2000cc(a)(2), 2000cc-1(b).

RLUIPA's protections must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA] and the Constitution." *Id.* § 2000cc-3(g). RLUIPA applies to "any ex-

ercise of religion, whether or not compelled by, or central to, a system of religious belief," *id.* § 2000cc-5(7)(A), and treats "[t]he use, building, or conversion of real property for the purpose of religious exercise" as the "religious exercise of the person or entity that uses or intends to use the property for that purpose," *id.* § 2000cc-5(7XB). Like RFRA, RLUIPA prohibits government from substantially burdening an exercise of religion unless imposition of the burden on the religious adherent is the least restrictive means of furthering a compelling governmental interest. *See id.* § 2000cc-1(a). That standard "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." *Id.* § 2000cc-3(c); *cf. Holt v. Hobbs*, 135 S.Ct. 853, 860, 864-65 (2015).

With respect to land use in particular, RLUIPA also requires that government not "treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," 42 U.S.C. § 2000cc(b)(1), "impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination," *id.* § 2000cc(b)(2), or "impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction," *id.* § 2000cc(b)(3). A claimant need not show a substantial burden on the exercise of religion to enforce these antidiscrimination and equal terms provisions listed in § 2000cc(b). *See id.* § 2000cc(b); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 262-64 (3d Cir. 2007), *cert. denied*, 553 U.S.

1065 (2008). Although most RLUIPA cases involve places of worship like churches, mosques, synagogues, and temples, the law applies more broadly to religious schools, religious camps, religious retreat centers, and religious social service facilities. Letter from U.S. Dep't of Justice Civil Rights Division to State, County, and Municipal Officials re: The Religious Land Use and Institutionalized Persons Act (Dec. 15, 2016).

C. Other Civil Rights Laws

To incorporate religious adherents fully into society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. It must also root out public and private discrimination based on religion. Religious discrimination stood alongside discrimination based on race, color, and national origin, as an evil to be addressed in the Civil Rights Act of 1964, and Congress has continued to legislate against such discrimination over time. Today, the United States Code includes specific prohibitions on religious discrimination in places of public accommodation, 42 U.S.C. § 2000a; in public facilities, *id.* § 2000b; in public education, *id.* § 2000c-6; in employment, *id.* §§ 2000e, 2000e-2, 2000e-16; in the sale or rental of housing, *id.* § 3604; in the provision of certain real-estate transaction or brokerage services, *id.* §§ 3605, 3606; in federal jury service, 28 U.S.C. § 1862; in access to limited open forums for speech, 20 U.S.C. § 4071; and in participation in or receipt of benefits from various federally-funded programs, 15 U.S.C. § 3151; 20 U.S.C. §§ 1066c(d), 1071(a)(2), 1087-4, 7231d(b)(2), 7914; 31 U.S.C. § 6711(b)(3); 42 U.S.C. §§ 290cc-33(a)(2), 300w-7(a)(2), 300x-57(a)(2), 300x-65(f), 604a(g), 708(a)(2), 5057(c), 5151(a), 5309(a), 6727(a), 98581(a)(2), 10406(2)(B),

10504(a), 10604(e), 12635(c)(1), 12832, 13791(g)(3), 13925(b)(13)(A).

Invidious religious discrimination may be directed at religion in general, at a particular religious belief, or at particular aspects of religious observance and practice. *See, e.g.*, *Church of the Lukumi Babalu Aye*, 508 U.S. at 532-33. A law drawn to prohibit a specific religious practice may discriminate just as severely against a religious group as a law drawn to prohibit the religion itself. *See id.* No one would doubt that a law prohibiting the sale and consumption of Kosher meat would discriminate against Jewish people. True equality may also require, depending on the applicable statutes, an awareness of, and willingness reasonably to accommodate, religious observance and practice. Indeed, the denial of reasonable accommodations may be little more than cover for discrimination against a particular religious belief or religion in general and is counter to the general determination of Congress that the United States is best served by the participation of religious adherents in society, not their withdrawal from it.

1. Employment

i. Protections for Religious Employees

Protections for religious individuals in employment are the most obvious example of Congress's instruction that religious observance and practice be reasonably accommodated, not marginalized. In Title VII of the Civil Rights Act, Congress declared it an unlawful employment practice for a covered employer to (1) "fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual

with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion," as well as (2) to "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a); *see also* 42 U.S.C. § 2000e-16(a) (applying Title VII to certain federal-sector employers); 3 U.S.C. § 411(a) (applying Title VII employment in the Executive Office of the President). The protection applies "regardless of whether the discrimination is directed against [members of religious] majorities or minorities." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71-72 (1977).

After several courts had held that employers did not violate Title VII when they discharged employees for refusing to work on their Sabbath, Congress amended Title VII to define "Neligion" broadly to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j); *Hardison*, 432 U.S. at 74 n.9. Congress thus made clear that discrimination on the basis of religion includes discrimination on the basis of any aspect of an employee's religious observance or practice, at least where such observance or practice can be reasonably accommodated without undue hardship.

Title VII's reasonable accommodation requirement is meaningful. As an initial matter, it requires an

employer to consider what adjustment or modification to its policies would effectively address the employee's concern, for [a]n ineffective modification or adjustment will not accommodate" a person's religious observance or practice, within the ordinary meaning of that word. *See U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (considering the ordinary meaning in the context of an ADA claim). Although there is no obligation to provide an employee with his or her preferred reasonable accommodation, *see Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986), an employer may justify a refusal to accommodate only by showing that "an undue hardship [on its business] would in fact result from each available alternative method of accommodation." 29 C.F.R. § 1605.2(c)(1) (emphasis added). "A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." *Id.* Likewise, the fact that an accommodation may grant the religious employee a preference is not evidence of undue hardship as, "[b]y definition, any special 'accommodation' requires the employer to treat an employee . . . differently, *i.e.*, preferentially." *U.S. Airways*, 535 U.S. at 397; *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S.Ct. 2028, 2034 (2015) ("Title VII does not demand mere neutrality with regard to religious practices—that they may be treated no worse than other practices. Rather, it gives them favored treatment.").

Title VII does not, however, require accommodation at all costs. As noted above, an employer is not required to accommodate a religious observance or practice if it would pose an undue hardship on its business. An accommodation might pose an "undue hardship," for

example, if it would require the employer to breach an otherwise valid collective bargaining agreement, *see, e.g.*, *Hardison*, 432 U.S. at 79, or carve out a special exception to a seniority system, *id.* at 83; *see also U.S. Airways*, 535 U.S. at 403. Likewise, an accommodation might pose an "undue hardship" if it would impose "more than a de minimis cost" on the business, such as in the case of a company where weekend work is "essential to [the] business" and many employees have religious observances that would prohibit them from working on the weekends, so that accommodations for all such employees would result in significant overtime costs for the employer. *Hardison*, 432 U.S. at 80, 84 & n.15. In general, though, Title VII expects positive results for society from a cooperative process between an employer and its employee "in the search for an acceptable reconciliation of the needs of the employee's religion and the exigencies of the employer's business." *Philbrook*, 479 U.S. at 69 (internal quotations omitted).

The area of religious speech and expression is a useful example of reasonable accommodation. Where speech or expression is part of a person's religious observance and practice, it falls within the scope of Title VII. *See* 42 U.S.C. §§ 2000e, 2000e-2. Speech or expression outside of the scope of an individual's employment can almost always be accommodated without undue hardship to a business. Speech or expression within the scope of an individual's employment, during work hours, or in the workplace may, depending upon the facts and circumstances, be reasonably accommodated. *Cf. Abercrombie*, 135 S.Ct. at 2032.

The federal government's approach to free exercise in the federal workplace provides useful guidance on such reasonable accommodations. For example, under the Guidelines issued by President Clinton, the federal government permits a federal employee to "keep a Bible or Koran on her private desk and read it during breaks"; to discuss his religious views with other employees, subject "to the same rules of order as apply to other employee expression"; to display religious messages on clothing or wear religious medallions visible to others; and to hand out religious tracts to other employees or invite them to attend worship services at the employee's church, except to the extent that such speech becomes excessive or harassing. Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, § 1(A), Aug. 14, 1997 (hereinafter "Clinton Guidelines"). The Clinton Guidelines have the force of an Executive Order. *See Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order*, 24 Op. O.L.C. 29, 29 (2000) ("[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order."); *see also* Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) ("All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully."). The successful experience of the federal government in applying the Clinton Guidelines over the last twenty years is evidence that religious speech and expression can be reasonably accommodated in the workplace without exposing an employer to liability under workplace harassment laws.

Time off for religious holidays is also often an area of concern. The observance of religious holidays is an "aspect[] of religious observance and practice" and is therefore protected by Title VII. 42 U.S.C. §§ 2000e, 2000e-2. Examples of reasonable accommodations for that practice could include a change of job assignments or lateral transfer to a position whose schedule does not conflict with the employee's religious holidays, 29 C.F.R. § 1605.2(d)(1)(iii); a voluntary work schedule swap with another employee, *id.* § 1065.2(d)(1)(i); or a flexible scheduling scheme that allows employees to arrive or leave early, use floating or optional holidays for religious holidays, or make up time lost on another day, *id.* § 1065.2(d)(1)(ii). Again, the federal government has demonstrated reasonable accommodation through its own practice: Congress has created a flexible scheduling scheme for federal employees, which allows employees to take compensatory time off for religious observances, 5 U.S.C. § 5550a, and the Clinton Guidelines make clear that "[a]n agency must adjust work schedules to accommodate an employee's religious observance—for example, Sabbath or religious holiday observance—if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency," Clinton Guidelines § 1(C). If an employer regularly permits accommodation in work scheduling for secular conflicts and denies such accommodation for religious conflicts, "such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." *Philbrook*, 479 U.S. at 71.

Except for certain exceptions discussed in the next section, Title VII's protection against disparate

treatment, 42 U.S.C. § 2000e-2(a)(1), is implicated any time religious observance or practice is a motivating factor in an employer's covered decision. *Abercrombie*, 135 S.Ct. at 2033. That is true even when an employer acts without actual knowledge of the need for an accommodation from a neutral policy but with "an unsubstantiated suspicion" of the same. *Id.* at 2034.

ii. Protections for Religious Employers

Congress has acknowledged, however, that religion sometimes is an appropriate factor in employment decisions, and it has limited Title VII's scope accordingly. Thus, for example, where religion "is a bona fide occupational qualification reasonably necessary to the normal operation of [a] particular business or enterprise," employers may hire and employ individuals based on their religion. 42 U.S.C. § 2000e-2(e)(1). Likewise, where educational institutions are "owned, supported, controlled or managed, [in whole or in substantial part] by a particular religion or by a particular religious corporation, association, or society" or direct their curriculum "toward the propagation of a particular religion," such institutions may hire and employ individuals of a particular religion. *Id.* And "a religious corporation, association, educational institution, or society" may employ "individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." *Id.* § 2000e-1(a); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335-36 (1987).

Because Title VII defines "religion" broadly to include "all aspects of religious observance and practice,

as well as belief," 42 U.S.C. § 2000e(j), these exemptions include decisions "to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198-200 (11th Cir. 1997). For example, in *Little*, the Third Circuit held that the exemption applied to a Catholic school's decision to fire a divorced Protestant teacher who, though having agreed to abide by a code of conduct shaped by the doctrines of the Catholic Church, married a baptized Catholic without first pursuing the official annulment process of the Church. 929 F.2d at 946, 951.

Section 702 broadly exempts from its reach religious corporations, associations, educational institutions, and societies. The statute's terms do not limit this exemption to non-profit organizations, to organizations that carry on only religious activities, or to organizations established by a church or formally affiliated therewith. *See* Civil Rights Act of 1964, § 702(a), codified at 42 U.S.C. § 2000e-1(a); *see also Hobby Lobby*, 134 S.Ct. at 2773-74; *Corp. of Presiding Bishop*, 483 U.S. at 335-36. The exemption applies whenever the organization is "religious," which means that it is organized for religious purposes and engages in activity consistent with, and in furtherance of, such purposes. Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008). Thus, the exemption applies not just to religious denominations and houses of worship, but to religious colleges, charitable organizations like the Salvation Army and World Vision International, and many more. In that way, it is consistent with other broad protections for religious entities in

federal law, including, for example, the exemption of religious entities from many of the requirements under the Americans with Disabilities Act. *See* 28 C.F.R. app. C; 56 Fed. Reg. 35544, 35554 (July 26, 1991) (explaining that "[t]he ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations").

In addition to these explicit exemptions, religious organizations may be entitled to additional exemptions from discrimination laws. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 180, 188-90. For example, a religious organization might conclude that it cannot employ an individual who fails faithfully to adhere to the organization's religious tenets, either because doing so might itself inhibit the organization's exercise of religion or because it might dilute an expressive message. *Cf. Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649-55 (2000). Both constitutional and statutory issues arise when governments seek to regulate such decisions.

As a constitutional matter, religious organizations' decisions are protected from governmental interference to the extent they relate to ecclesiastical or internal governance matters. *Hosanna-Tabor*, 565 U.S. at 180, 188-90. It is beyond dispute that "it would violate the First Amendment for courts to apply [employment discrimination] laws to compel the ordination of women by the Catholic Church or by an Orthodox Jewish seminary." *Id.* at 188. The same is true for other employees who "minister to the faithful," including those who are not themselves the head of the religious congregation and who are not engaged solely in religious functions. *Id.* at 188, 190, 194-95; *see also* Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v.*

World Vision, Inc., No. 08-35532 (9th Cir. 2008) (noting that the First Amendment protects "the right to employ staff who share the religious organization's religious beliefs").

Even if a particular associational decision could be construed to fall outside this protection, the government would likely still have to show that any interference with the religious organization's associational rights is justified under strict scrutiny. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (infringements on expressive association are subject to strict scrutiny); *Smith*, 494 U.S. at 882 ("[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns."). The government may be able to meet that standard with respect to race discrimination, *see Bob Jones Univ.*, 461 U.S. at 604, but may not be able to with respect to other forms of discrimination. For example, at least one court has held that forced inclusion of women into a mosque's religious men's meeting would violate the freedom of expressive association. *Donaldson v. Farrakhan*, 762 N.E.2d 835, 840-41 (Mass. 2002). The Supreme Court has also held that the government's interest in addressing sexual-orientation discrimination is not sufficiently compelling to justify an infringement on the expressive association rights of a private organization. *Boy Scouts*, 530 U.S. at 659.

As a statutory matter, RFRA too might require an exemption or accommodation for religious organizations from antidiscrimination laws. For example, "prohibiting religious organizations from hiring only coreligionists can 'impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities.'" *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162, 172 (2007) (quoting *Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001*, 25 Op. O.L.C. 129, 132 (2001)); *see also Corp. of Presiding Bishop*, 483 U.S. at 336 (noting that it would be "a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court w[ould] consider religious" in applying a nondiscrimination provision that applied only to secular, but not religious, activities). If an organization establishes the existence of such a burden, the government must establish that imposing such burden on the organization is the least restrictive means of achieving a compelling governmental interest. That is a demanding standard and thus, even where Congress has not expressly exempted religious organizations from its antidiscrimination laws—as it has in other contexts, *see, e.g.*, 42 U.S.C. §§ 3607 (Fair Housing Act), 12187 (Americans with Disabilities Act)—RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in government contracts, grants, and other programs. Recognizing that religious organizations can make important contributions to government programs, *see, e.g.*, 22 U.S.C. § 7601(19), Congress has expressly permitted religious organizations to participate in numerous such programs on an equal basis with secular organizations, *see, e.g.*, 42 U.S.C. §§ 290kk-1, 300x-65 604a, 629i. Where Congress has not expressly so provided, the President has made clear that "[t]he Nation's social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs." Exec. Order No. 13559, § 1, 75 Fed. Reg. 71319, 71319 (Nov. 17, 2010) (amending Exec. Order No. 13279, 67 Fed. Reg. 77141 (2002)). To that end, no organization may be "discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs." *Id.* "Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)" are eligible to participate in such programs, so long as they conduct such activities outside of the programs directly funded by the federal government and at a separate time and location. *Id.*

The President has assured religious organizations that they are "eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social services programs

supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character." *See id.*; *see also* 42 U.S.C. § 290kk-1(e) (similar statutory assurance). Religious organizations that apply for or participate in such programs may continue to carry out their mission, "including the definition, development, practice, and expression of . . . religious beliefs," so long as they do not use any "direct Federal financial assistance" received "to support or engage in any explicitly religious activities" such as worship, religious instruction, or proselytization. Exec. Order No. 13559, § 1. They may also "use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities," and they may continue to "retain religious terms" in their names, select "board members on a religious basis, and include religious references in . . . mission statements and other chartering or governing documents." *Id.*

With respect to government contracts in particular, Executive Order 13279, 67 Fed. Reg. 77141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations include independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, which normally apply to government contracts, do "not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such

corporation, association, educational institution, or society of its activities." Exec. Order No. 13279, § 4, amending Exec. Order No. 11246, § 204(c), 30 Fed. Reg. 12319, 12935 (Sept. 24, 1965).

Because the religious hiring protection in Executive Order 13279 parallels the Section 702 exemption in Title VII, it should be interpreted to protect the decision "to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little*, 929 F.2d at 951. That parallel interpretation is consistent with the Supreme Court's repeated counsel that the decision to borrow statutory text in a new statute is "strong indication that the two statutes should be interpreted pari passu." *Northcross v. Bd. of Educ. of Memphis City Sch.*, 412 U.S. 427 (1973) (per curiam); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559 U.S. 573, 590 (2010). It is also consistent with the Executive Order's own usage of discrimination on the basis of "religion" as something distinct and more expansive than discrimination on the basis of "religious belief." *See, e.g.*, Exec. Order No. 13279, § 2(c) ("No organization should be discriminated against on the basis of religion or religious belief . . . " (emphasis added)); *id.* § 2(d) ("All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program

beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice."). Indeed, because the Executive Order uses "on the basis of religion or religious belief" in both the provision prohibiting discrimination against religious organizations and the provision prohibiting discrimination "against beneficiaries or potential beneficiaries," a narrow interpretation of the protection for religious organizations' hiring decisions would lead to a narrow protection for beneficiaries of programs served by such organizations. *See id.* §§ 2(c), (d). It would also lead to inconsistencies in the treatment of religious hiring across government programs, as some program-specific statutes and regulations expressly confirm that "[a] religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation, or receipt of funds from, a designated program." 42 U.S.C. § 290kk-1(e); *see also* 6 C.F.R. § 19.9 (same).

Even absent the Executive Order, however, RFRA would limit the extent to which the government could condition participation in a federal grant or contract program on a religious organization's effective relinquishment of its Section 702 exemption. RFRA applies to all government conduct, not just to legislation or regulation, *see* 42 U.S.C. § 2000bb-1, and the Office of Legal Counsel has determined that application of a religious nondiscrimination law to the hiring decisions of a religious organization can impose a substantial burden on the exercise of religion. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. O.L.C. at 172; *Direct Aid to Faith-Based*

Organizations, 25 Op. O.L.C. at 132. Given Congress's "recognition that religious discrimination in employment is permissible in some circumstances," the government will not ordinarily be able to assert a compelling interest in prohibiting that conduct as a general condition of a religious organization's receipt of any particular government grant or contract. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. of O.L.C. at 186. The government will also bear a heavy burden to establish that requiring a particular contractor or grantee effectively to relinquish its Section 702 exemption is the least restrictive means of achieving a compelling governmental interest. *See* 42 U.S.C. § 2000bb-1.

The First Amendment also "supplies a limit on Congress' ability to place conditions on the receipt of funds." *Agency for Int'l Dev. v. All. for Open Soc'y Intl, Inc.*, 133 S.Ct. 2321, 2328 (2013) (internal quotation marks omitted)). Although Congress may specify the activities that it wants to subsidize, it may not "seek to leverage funding" to regulate constitutionally protected conduct "outside the contours of the program itself." *See id.* Thus, if a condition on participation in a government program—including eligibility for receipt of federally backed student loans—would interfere with a religious organization's constitutionally protected rights, *see, e.g.*, *Hosanna-Tabor*, 565 U.S. at 188-89, that condition could raise concerns under the "unconstitutional conditions" doctrine, *see All. for Open Soc'y Int'l, Inc.*, 133 S.Ct. at 2328.

Finally, Congress has provided an additional statutory protection for educational institutions controlled by religious organizations who provide educa-

tion programs or activities receiving federal financial assistance. Such institutions are exempt from Title IX's prohibition on sex discrimination in those programs and activities where that prohibition "would not be consistent with the religious tenets of such organization[s]." 20 U.S.C. § 1681(a)(3). Although eligible institutions may "claim the exemption" in advance by "submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization," 34 C.F.R. § 106.12(b), they are not required to do so to have the benefit of it, *see* 20 U.S.C. § 1681.

3. Government Mandates

Congress has undertaken many similar efforts to accommodate religious adherents in diverse areas of federal law. For example, it has exempted individuals who, "by reason of religious training and belief," are conscientiously opposed to war from training and service in the armed forces of the United States. 50 U.S.C. § 3806(j). It has exempted "ritual slaughter and the handling or other preparation of livestock for ritual slaughter" from federal regulations governing methods of animal slaughter. 7 U.S.C. § 1906. It has exempted "private secondary school[s] that maintain[] a religious objection to service in the Armed Forces" from being required to provide military recruiters with access to student recruiting information. 20 U.S.C. § 7908. It has exempted federal employees and contractors with religious objections to the death penalty from being required to "be in attendance at or to participate in any prosecution or execution." 18 U.S.C. § 3597(b). It has allowed individuals with religious objections to certain forms of medical treat-

ment to opt out of such treatment. *See, e.g.*, 33 U.S.C. § 907(k); 42 U.S.C. § 290bb-36(f). It has created tax accommodations for members of religious faiths conscientiously opposed to acceptance of the benefits of any private or public insurance, *see, e.g.*, 26 U.S.C. §§ 1402(g), 3127, and for members of religious orders required to take a vow of poverty, *see, e.g.*, 26 U.S.C. § 3121(r).

Congress has taken special care with respect to programs touching on abortion, sterilization, and other procedures that may raise religious conscience objections. For example, it has prohibited entities receiving certain federal funds for health service programs or research activities from requiring individuals to participate in such program or activity contrary to their religious beliefs. 42 U.S.C. § 300a-7(d), (e). It has prohibited discrimination against health care professionals and entities that refuse to undergo, require, or provide training in the performance of induced abortions; to provide such abortions; or to refer for such abortions, and it will deem accredited any health care professional or entity denied accreditation based on such actions. *Id.* § 238n(a), (b). It has also made clear that receipt of certain federal funds does not require an individual "to perform or assist in the performance of any sterilization procedure or abortion if [doing so] would be contrary to his religious beliefs or moral convictions" nor an entity to "make its facilities available for the performance of" those procedures if such performance "is prohibited by the entity on the basis of religious beliefs or moral convictions," nor an entity to "provide any personnel for the performance or assistance in the performance of" such procedures if such performance or assistance

"would be contrary to the religious beliefs or moral convictions of such personnel." *Id.* § 300a-7(b). Finally, no "qualified health plan[s] offered through an Exchange" may discriminate against any health care professional or entity that refuses to "provide, pay for, provide coverage of, or refer for abortions," § 18023(b)(4); *see also* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. H, § 507(d), 129 Stat. 2242, 2649 (Dec. 18, 2015).

Congress has also been particularly solicitous of the religious freedom of American Indians. In 1978, Congress declared it the "policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." 42 U.S.C. § 1996. Consistent with that policy, it has passed numerous statutes to protect American Indians' right of access for religious purposes to national park lands, Scenic Area lands, and lands held in trust by the United States. *See, e.g.*, 16 U.S.C. §§ 228i(b), 410aaa-75(a), 460uu-47, 543f, 698v-11(b)(11). It has specifically sought to preserve lands of religious significance and has required notification to American Indians of any possible harm to or destruction of such lands. *Id.* § 470cc. Finally, it has provided statutory exemptions for American Indians' use of otherwise regulated articles such as bald eagle feathers and peyote as part of traditional religious practice. *Id.* §§ 668a, 4305(d); 42 U.S.C. § 1996a.

* * *

The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.").

MEMORANDUM FOR ALL COMPONENT HEADS AND UNITED STATES ATTORNEYS (OCTOBER 6, 2017)

OFFICE OF THE ATTORNEY GENERAL
Washington, D.C. 20530

From: The Attorney General

Subject: Implementation of Memorandum on Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law. Exec. Order 13798, § 4 (May 4, 2017). Pursuant to that instruction and consistent with my authority to provide advice and opinions on questions of law to the Executive Branch, I have undertaken a review of the primary sources for federal protection of religious liberty in the United States, along with the case law interpreting such sources. I also convened a series of listening sessions, seeking suggestions regarding the areas of federal protection for religious liberty most in need of clarification or guidance from the Attorney General.

Today, I sent out a memorandum to the heads of all executive departments and agencies summarizing twenty principles of religious liberty and providing an appendix with interpretive guidance of federal-law protections for religious liberty to support those principles. That memorandum and appendix are no less applicable to this Department than to any other agency within the Executive Branch. I therefore direct all attorneys within the Department to adhere to the

interpretative guidance set forth in the memorandum and its accompanying appendix.

In particular, I direct the Department of Justice to undertake the following actions:

- All Department components and United States Attorney's Offices shall, effective immediately, incorporate the interpretative guidance in litigation strategy and arguments, operations, grant administration, and all other aspects of the Department's work, keeping in mind 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).
- 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.
- Department attorneys shall also use the interpretive guidance in formulating opinions and advice for other Executive Branch agencies and shall alert the appropriate officials at such agencies whenever agency policies may conflict with the guidance.
- To aid in the consistent application of the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, and other federal-law protections for religious liberty, the Office of Legal Policy shall coordinate with

the Civil Rights Division to review every Department rulemaking and every agency action submitted by the Office of Management and Budget for review by this Department for consistency with the interpretive guidance. In particular, the Office of Legal Policy, in consultation with the Civil Rights Division, shall consider whether such rules might impose a substantial burden on the exercise of religion and whether the imposition of that burden would be consistent with the requirements of RFRA. The Department shall not concur in the issuance of any rule that appears to conflict with federal laws governing religious liberty, as set forth in the interpretive guidance.

- In addition, to the extent that existing procedures do not already provide for consultation with the Associate Attorney General, Department components and United States Attorney's Offices shall notify the Associate Attorney General of all issues arising in litigation, operations, grants, or other aspects of the Department's work that appear to raise novel, material questions under RFRA or other religious liberty protections addressed in the interpretive guidance. The Associate Attorney General shall promptly alert the submitting component of any concerns.

Any questions about the interpretive guidance or this memorandum should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

Thank you for your time and attention to this important matter.

EXECUTIVE ORDER-13798
(MAY 4, 2017)

Promoting Free Speech and Religious Liberty

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America, and to further compliance with the Constitution and with applicable statutes and Presidential Directives, it is hereby ordered as follows:

- **Section 1. Policy**

It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

- **Sec. 2.—Respecting Religious and Political Speech**

All executive departments and agencies (agencies) shall, to the greatest extent practicable and

to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury. As used in this section, the term "adverse action" means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit.

- **Sec. 3.—Conscience Protections with Respect to Preventive-Care Mandate**

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg-13(a)(4) of title 42, United States Code.

- **Sec. 4. Religious Liberty Guidance**

In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.

- **Sec. 5. Severability**

If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

- **Sec. 6. General Provisions**

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

/s/ {Illegible}

MOTIONS AND BRIEFS OR REQUESTS FILED BY THE PETITIONER

(FACTS NECESSARY TO UNDERSTAND PETITIONS)
or as parts of the record that may be essential to understand the matters set forth in the petition

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- Doc. No. 6,02/21/2017—Motion for Leave to Amend Summons as to Listing Plaintiff's Name and Address on Summons.
- Doc. No. 7—Memorandum in Support of re: Doc. No. 6.

FACT: Granted by the Court, with no response or opposition by the Real Party in Interest.

[. . .]

- Doc. No. 12, 03/06/2018—Motion for Extension of to File a Response to the Court's Memorandum and Order dated 23rd day of February 2017 (ECF. No. 8) with attachment #1
- Doc. No. 13—Memorandum in Support of re: Doc. No. 12 with 5 attachments.

FACT: Granted by the Court, with no response or opposition by the Real Party in Interest.

[. . .]

- Doc. No. 19, 03/13/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S FIRST REQUEST FOR CONSTITUTIONAL RELIEF AND A MOTION TO CORRECT THE LEGAL STATUS OF THIS CASE DEFACED AS "CIVIL RIGHTS" AND/OR, IN THE ALTERNATIVE, FOR COURT

ORDERED SANCTIONS AGAINST *PRO SE LAWYERS* OF THE OFFICE OF THE CLERK/COURT WHO VIOLATED PLAINTIFF'S FUNDAMENTAL RIGHTS

With Attachment #1, Memorandum in Support of re: Doc. No. 19 and 1 Exhibit: U#9.

FACT: Not granted, and *denied as frivolous* by the Court, *per* ECF No. 36 with no response or opposition by the Real Party in Interest.

[. . .]

- Doc. No. 20, 03/17/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S SECOND REQUEST FOR CONSTITUTIONAL RELIEF AND A MOTION TO STRIKE ENTRY OF APPEARANCE OF COUNSEL & NOTICE OF APPEARANCE OR, IN THE ALTERNATIVE, MOTION TO SHOW CAUSE WHY SUCH PLEADINGS SHOULD NOT BE STRICKEN

With Attachment #1, Memorandum in Support of re: Doc. No. 20 and 7 Exhibits: U#10 -U#16.

FACT: Not granted, and *denied as frivolous* by the Court, *per* ECF No. 36 and issued illicit orders, with no response or opposition made by the Real Patty in Interest.

[. . .]

- Doc. No. 24, 3/27/2017, Petitioner filed this request for relief captioned as:

  PLAINTIFF'S NOTICE AND REQUEST FOR A HEARING DATE

With 3 attachments listed as attachments: #1 Third Declaration of Terry Lee Hinds, #2 Notice of filing

Exhibit in Support of Declaration, and #3 Exhibit U#18

FACT: Not granted, and *denied as frivolous* by the Court, *per* ECF No. 36 and issued illicit orders, with no response or opposition made by the Real Party in Interest.

[. . .]

- Doc. No. 30, 04/28/2017, Petitioner filed this request for relief captioned as:

  PLAINTIFF'S NOTICE AND REQUEST FOR A DUE PROCESS HEARING DATE OR, IN THE ALTERNATIVE, AN INSTANT RULING OR DECISION ON CONSTITUTIONAL RELIEF REQUESTED PURSUANT TO MOTIONS AND BRIEFS FILED WITH THE COURT/Doc. Nos. 19 & 20

FACT: Not granted, and *denied as frivolous* by the Court, *per* ECF No. 36 and issued illicit orders, with no response or opposition made by the Real Party in Interest.

[. . .]

- Doc. No. 35, 05/08/2017, Petitioner filed this request for relief captioned as:

  PLAINTIFF'S NOTICE AND REQUEST FOR EXTENSION OF TIME TO BE GIVEN AN OPPORTUNITY TO PROPERLY PRESENT THE MERITS OF HIS ACTION AND/OR, IN THE ALTERNATIVE, to make a conscientious effort to comply with the court's initial review order

FACT: Granted, in part, (extension of time) by Respondent, but *denied as frivolous* by the Court, *per* ECF No. 36, and issued illicit orders, with

no response or opposition made by the Real Party in Interest.

[. . .]

- Doc. No. 38, 05/19/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S FIRST MOTION TO REVIEW, ALTER, AMEND, OR VACATE ORDERS PURSUANT TO PLAINTIFF'S FREE EXERCISE OF PURE SPEECH OF RELIGIOUS BELIEFS AND/OR, IN THE ALTERNATIVE, FOR RELIEF FROM ORDERS PURSUANT TO FED. R. CIV. P. RULE 60(b)(6) "any other reason that justifies relief"

- Doc. No. 39—*Memorandum of Law and Brief in Support* of re: Doc. No. 38 and 6 Exhibits: listed as Exhibits Z#1 through Exhibits Z#6.

FACT: Not Granted, and "DENIED as moot" by the Court, *per* ECF No. 55 and issued illicit orders, with no response or opposition made by the Real Party in Interest.

[. . .]

- Doc. No. 46, 06/15/2017, Petitioner filed this request for relief captioned as:

  PLAINTIFF'S REQUEST FOR AN EVIDENTIARY HEARING TO PRESENT EXHIBITS/DOCUMENTATION ADVANCING DUE PROCESS AND RESOLVING THIS CASE AND CONTROVERSIES "ON THE MERITS" NOT ON FORMALITIES

FACT: Not granted, and *dismissed this as moot* by the Court, *per* ECF No. 93 and issued illicit orders, with no response or opposition by the Real Party in Interest.

[. . .]

- Doc. No. 49, 6/22/2017, Petitioner filed this request for relief and motion captioned as:

  NOTICE OF MOTION AND MOTION FOR CONTINUANCE OF THIS CIVIL ACTION

- Doc. No. 50—Memorandum of Law and Brief in Support of re: Doc. No. 49 * * * THIS NOTICE "or other proceedings in civil causes in any of the courts of the United States" is governed by the Judiciary Act of 1789 and procedural due process of law, *inter alia*.

FACT: Not granted, and *dismissed this as moot* by the Court, *per* ECF No. 93, and issued illicit orders, with the Real Party in Interest, never raising opposition, answer or defense to this notice and motion, nor denied any pleaded facts noticed.

[. . .]

- Doc. No. 56, 07/24/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S RULING OF JULY 11, 2017 to correct clear errors of law and prevent manifest injustice under Rule 59(e), in conjunction with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6) OR, IN THE ALTERNATIVE, Federal Rule of Civil Procedure Rule 54(a)(b) and Rule 46-Objecting to a Ruling or Order

- Doc. No. 57—Memorandum of Law and Brief in Support of re: Doc. No. 56.

FACT: Not granted, and Denied by the Court, *per* ECF No. 66 and issued illicit orders; however, the Real Party in interest made a response or raised an opposition to this motion.

[. . .]

- Doc. No. 64, 08/14/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S MOTION FOR LEAVE TO CONSTRUE AND CORRECT THE RECORD WITH STRICKEN EXHIBITS ORIGINALLY LISTED & PRESENTED AS EVIDENCE (DOC. NO. 3) OR, IN THE ALTERNATIVE, Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge Bodenhausen's (Doc. No. 8)

- Doc. No. 65—Memorandum of Law and Brief in Support of re: Doc. No. 64.

FACT: Not granted and *dismissed this as moot* by the Court, *per* ECF No. 93, and issued illicit orders, with the Real Party in Interest making a response ECF No. 67.

[. . .]

- Doc. No. 77, 08/29/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTIONS AS THE DEFENDANTS ESPOUSED IN (ECF NO. 67) IN REGARDS TO (DOC. NO. 64) OR, IN THE ALTERNATIVE, PLAINTIFF'S SUGGESTIONS IN SUPPORT OF HIS DISTINGUISHED MOTIONS

FACT: The facts and legal premises made in Doc. No. 77, where never address or ignored by the Court, per ECF No. 93.

[. . .]

- Doc. No. 80, 09/05/2017, Petitioner filed this request for relief and motion captioned as:

  PLAINTIFF'S NOTICE THAT THE DISTRICT COURT ERRED, AS A MATTER OF LAW & FACT WITH THE DISTRICT JUDGE ABUSING HER DISCRETION IN THE [AUGUST 18TH, 2017 RULING] (ECF NO. 66) THEREBY EXHIBITING A WORK OF MANIFESTED INJUSTICE AND PURSUANT TO A RULE 60(b)(1)(4)(6) MOTION, IN CONJUNCTION WITH, PLAINTIFF'S RULE 54(a) HYBRID MOTION TO RECONSIDER VACATING AN ORDER

- Doc. No. 81—Memorandum of Law and Brief in Support of re: Doc. No. 80.

FACT: Not granted, with facts and legal premises made in Doc. Nos. 80, 81, where not address or ignored by the Court, *per* ECF No. 93 and issued an illicit order in ECF No. 93; with, the Real Party in Interest making a response to Petitioner's motion in ECF No. 84.

[. . .]

- Doc. Nos. 87, 88, 09/29/2017, Petitioner filed this request for relief & exhibit list captioned as:

  PLAINTIFF'S REQUEST FOR LEAVE PURSUANT TO LOCAL RULE 7-4.01(C) 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

FACT: No response or opposition by the Real Party in Interest re: Petitioner's Doc. No. 87, 88.

FACT: Respondent, ignored or refused this legal request, concerning First Amendments rights and duties of the "Judicial branch" to uphold the law or preserve the rule of law, including due process of law, *inter alia*, for a time period of approximately 2 months.

FACT: On 10/26/2017, Respondent granted this request (Doc. No. 87) pursuant to ECF No. 91; after Petitioner filed Doc. Nos. 89, 90 on 10/23/2017.

- Doc. No. 89, captioned as:

  LEGAL NOTICE OF "UNITED STATES" GOVERNMENTAL POLICY ON RELIGIOUS LIBERTY PROTECTIONS UNDER FEDERAL LAW

- Doc. No. 90, captioned as:

  NOTICE OF FILING EXHIBITS IN SUPPORT OF LEGAL NOTICE

FACT: No response or opposition by the Real Party in Interest re: Petitioner's Doc. Nos. 89, 90.

FACT: Respondent never did properly address in her Memorandum and Order ECF No. 93 the argument, exhibits presented, legal premises or the issues raised for protection provided under the law, as set forth in Doc. Nos. 87, 88, 89, 90.

[. . .]

FACT: On 10/26/2017, Respondent issued ORDER ECF No. 91, granting Petitioner leave to file a sur-reply brief, Doc. No. 92.

FACT: On 11/22/2017, Petitioner's filed sur-rely points and authorities brief, captioned as:

> PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION OF THE "REPLY IN SUPPORT OF UNITED STATES' MOTION TO DISMISS", ECF No. 86

FACT: No response or opposition by the Real Party in Interest re: Petitioner's Doc. No. 92.

FACT: Respondent did not address or ignored Petitioner's legal and constitutional rights, as set forth in Doc. Nos. 89, 90, 92, when dismissing pending motions as "moot" and issuing an order of dismissal of the case. Respondent failed to properly fulfil her official duties, deserting substantive & procedural due process of law & judicial review, *inter alia*.

[. . .]

FACT: Due process of law was forsaken in such matters or motions, with a total disregard for the Judiciary Act of 1789, SEC 32, by the Respondent. The First and Fifth Amendments' rights are made pointless or moot by Respondent's actions; abandoning the rule of law.

FACT: Petitioner's pure speech or as petition speech, with this Respondent, is made meaningless with viewpoint discrimination advanced as "moot" or sanctioned as frivolous in the eyes of the Court.

FACT: Respondent's actions herein are a perspective of the law, not the practice of the law.

FACT: The Petitioner has declared on his website, www.tlc76.com this controlling declaration of

fact and law; concerning this case and the evil that exists in this World today:

"If EVIL is defined as a matter of perspective then . . . GOOD must be defined as a matter of principle."

FACT: The concept of good and evil exist in law. The realm of law is vast, from Court doctrines to legal fictions. A system built upon the vision to see what is wrong and to know what principles that merits protection under the law of what is justly right.

FACT: Petitioner, who seeks an equitable remedy, respectfully request this Court to preserve the Rule of Law and the practice of it. Thus, enforcing the sworn oath of the Respondent, to uphold the U.S. Constitution and the laws made in pursuant thereof versus the legal fictions of judicial economy or for the perspectives of conformity within Rule 8, but nevertheless, for the prevailing perspective the law or the commands of sovereign immunity upon us all.

LAW RESPECTING AN ESTABLISHMENT OF RELIGION

Subtitle A–Income Taxes–(Chapter 2)

CHAPTER 2–Tax on Self-Employment Income (sections 1401 to 1403)

CHAPTER 2–FRONT MATTER

- Sec. 1401. Rate of tax
- Sec. 1402. Definitions
- Sec. 1403. Miscellaneous provisions

CHAPTER 2A–Unearned Income Medicare Contribution (section 1411)

CHAPTER 2A–FRONT MATTER

- Sec. 1411. Imposition of tax

Subtitle C–Employment Taxes–(Chapter 21)

- Subtitle C–Employment Taxes (sections 3101 to 3512)

SUBTITLE C–FRONT MATTER

- CHAPTER 21–Federal Insurance Contributions Act (sections 3101 to 3128)

CHAPTER 21–FRONT MATTER

- Subchapter A–Tax on Employees (sections 3101 to 3102)
- Subchapter B–Tax on Employers (sections 3111 to 3113)
- Subchapter C–General Provisions (sections 3121 to 3128)

Subchapter A–Tax on Employees (sections 3101 to 3102)

SUBCHAPTER A–FRONT MATTER

- Sec. 3101. Rate of tax
- Sec. 3102. Deduction of tax from wages

Subchapter B–Front Matter

- Sec. 3111. Rate of tax
- Sec. 3112. Instrumentalities of the United States
- Sec. 3113. Repealed. Pub. L. 94-455, title XIX, § 1903(a)(2), Oct. 4, 1976, 90 Stat. 1806

Subchapter C–General Provisions (sections 3121 to 3128)

SUBCHAPTER C–FRONT MATTER

- Sec. 3121. Definitions
- Sec. 3122. Federal service
- Sec. 3123. Deductions as constructive payments
- Sec. 3124. Estimate of revenue reduction
- Sec. 3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia
- Sec. 3126. Return and payment by governmental employer
- Sec. 3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs
- Sec. 3128. Short title

Subtitle C–Employment Taxes–(Chapter 23)

- Subtitle C–Employment Taxes (sections 3101 to 3512)

SUBTITLE C–FRONT MATTER

- CHAPTER 23–Federal Unemployment Tax Act (sections 3301 to 3311)

CHAPTER 23–Front Matter

- Sec. 3301. Rate of tax
- Sec. 3302. Credits against tax
- Sec. 3303. Conditions of additional credit allowance
- Sec. 3304. Approval of State laws
- Sec. 3305. Applicability of State law
- Sec. 3306. Definitions
- Sec. 3307. Deductions as constructive payments
- Sec. 3308. Instrumentalities of the United States
- Sec. 3309. State law coverage of services performed for nonprofit organizations or governmental entities
- Sec. 3310. Judicial review
- Sec. 3311. Short title

Subtitle C–Employment Taxes–(Chapter 24)

- Subtitle C–Employment Taxes (sections 3101 to 3512)

SUBTITLE C–FRONT MATTER

- CHAPTER 24–Collection of Income Tax at Source on Wages (sections 3401 to 3456)

CHAPTER 24–Front Matter

- Sec. 3401. Definitions
- Sec. 3402. Income tax collected at source
- Sec. 3403. Liability for tax
- Sec. 3404. Return and payment by governmental employer
- Sec. 3405. Special rules for pensions, annuities, and certain other deferred income
- Sec. 3406. Backup withholding [View] Secs. 3451 to 3456. Repealed. Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369

Subtitle C–Employment Taxes–(Chapter 25)

- Subtitle C–Employment Taxes (sections 3501 to 3512)

CHAPTER 25–General Provisions Relating to Employment Taxes (sections 3501 to 3512)

CHAPTER 25–FRONT MATTER

- Sec. 3501. Collection and payment of taxes
- Sec. 3502. Nondeductibility of taxes in computing taxable income
- Sec. 3503. Erroneous payments
- Sec. 3504. Acts to be performed by agents
- Sec. 3505. Liability of third parties paying or providing for wages

- Sec. 3506. Individuals providing companion sitting placement services
- Sec. 3507. Repealed. Pub. L. 111-226, title II, § 219(a)(1), Aug. 10, 2010, 124 Stat. 2403
- Sec. 3508. Treatment of real estate agents and direct sellers
- Sec. 3509. Determination of employer's liability for certain employment taxes
- Sec. 3510. Coordination of collection of domestic service employment taxes with collection of income taxes
- Sec. 3511. Certified professional employer organizations
- Sec. 3512. Treatment of certain persons as employers with respect to motion picture projects

Subtitle D–Miscellaneous Excise Taxes–

CHAPTER 35–TAXES ON WAGERING

CHAPTER 35–FRONT MATTER

- Subchapter A–Tax on Wagers (sections 4401 to 4405)

  Subchapter A–Front Matter

  - Sec. 4401. Imposition of tax
  - Sec. 4402. Exemptions
  - Sec. 4403. Record requirements
  - Sec. 4404. Territorial extent
  - Sec. 4405. Cross references

- Subchapter B–Occupational Tax (sections 4411 to 4414)

SUBCHAPTER B–FRONT MATTER

- Sec. 4411. Imposition of tax
- Sec. 4412. Registration
- Sec. 4413. Certain provisions made applicable
- Sec. 4414. Cross references

- Subchapter C–Miscellaneous Provisions (sections 4421 to 4424)

SUBCHAPTER C–FRONT MATTER

- Sec. 4421. Definitions
- Sec. 4422. Applicability of Federal and State laws
- Sec. 4423. Inspection of books
- Sec. 4424. Disclosure of wagering tax information

Subtitle F–Procedure and Administration

Chapter 61 through Chapter 80

- Subtitle F–Procedure and Administration (sections 6012 to 7874)

SUBTITLE F–FRONT MATTER

- CHAPTER 61–INFORMATION AND RETURNS (sections 6012 to 6117)
- Subchapter A–Returns and Records (sections 6012 to 6076)

SUBCHAPTER A–FRONT MATTER

PART I–RECORDS, STATEMENTS, AND SPECIAL RETURNS (section 6001)

PART I–FRONT MATTER

- Sec. 6001. Notice or regulations requiring records, statements, and special returns

PART II–TAX RETURNS OR STATEMENTS (sections 6012 to 6021)

PART II–FRONT MATTER

- Subpart A–General Requirement (section 6011)

SUBPART A–FRONT MATTER

- Sec. 6011. General requirement of return, statement, or list

- Subpart B–Income Tax Returns (sections 6012 to 6017A)

SUBPART B–FRONT MATTER

- Sec. 6012. Persons required to make returns of income
- Sec. 6013. Joint returns of income tax by husband and wife
- Sec. 6014. Income tax return-tax not computed by taxpayer
- Sec. 6015. Relief from joint and several liability on joint return
- Sec. 6016. Repealed. Pub. L. 90-364, title I, § 103(a), June 28, 1968, 82 Stat. 260
- Sec. 6017. Self-employment tax returns

- Sec. 6017A. Repealed. Pub. L. 101-239, title VII, § 7711(b)(1), Dec. 19, 1989, 103 Stat. 2393

- Subpart C–Estate and Gift Tax Returns (sections 6018 to 6019)

SUBPART C–FRONT MATTER

- Sec. 6018. Estate tax returns
- Sec. 6019. Gift tax returns

SUBPART B–FRONT MATTER

- Sec. 6041. Information at source
- Sec. 6041A. Returns regarding payments of remuneration for services and direct sales
- Sec. 6042. Returns regarding payments of dividends and corporate earnings and profits
- Sec. 6043. Liquidating, etc., transactions
- Sec. 6043A. Returns relating to taxable mergers and acquisitions
- Sec. 6044. Returns regarding payments of patronage dividends
- Sec. 6045. Returns of brokers
- Sec. 6045A. Information required in connection with transfers of covered securities to brokers
- Sec. 6045B. Returns relating to actions affecting basis of specified securities
- Sec. 6046. Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock
- Sec. 6046A. Returns as to interests in foreign partnerships

- Sec. 6047. Information relating to certain trusts and annuity plans
- Sec. 6048. Information with respect to certain foreign trusts
- Sec. 6049. Returns regarding payments of interest
- Sec. 6050. Repealed. Pub. L. 96-167, § 5(a), Dec. 29, 1979, 93 Stat. 1276
- Sec. 6050A. Reporting requirements of certain fishing boat operators
- Sec. 6050B. Returns relating to unemployment compensation
- Sec. 6050C. Repealed. Pub. L. 100-418, title I, § 1941(b)(1), Aug. 23, 1988, 102 Stat. 1323
- Sec. 6050D. Returns relating to energy grants and financing
- Sec. 6050E. State and local income tax refunds
- Sec. 6050F. Returns relating to social security benefits
- Sec. 6050G. Returns relating to certain railroad retirement benefits
- Sec. 6050H. Returns relating to mortgage interest received in trade or business from individuals
- Sec. 6050I. Returns relating to cash received in trade or business, etc.
- Sec. 6050J. Returns relating to foreclosures and abandonments of security

- Sec. 6050K. Returns relating to exchanges of certain partnership interests
- Sec. 6050L. Returns relating to certain donated property
- Sec. 6050M. Returns relating to persons receiving contracts from Federal executive agencies
- Sec. 6050N. Returns regarding payments of royalties
- Sec. 6050P. Returns relating to the cancellation of indebtedness by certain entities
- Sec. 6050Q. Certain long-term care benefits
- Sec. 6050R. Returns relating to certain purchases of fish
- Sec. 6050S. Returns relating to higher education tuition and related expenses
- Sec. 6050T. Returns relating to credit for health insurance costs of eligible individuals
- Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements
- Sec. 6050V. Returns relating to applicable insurance contracts in which certain exempt organizations hold interests
- Sec. 6050W. Returns relating to payments made in settlement of payment card and third-party network transactions

- Subpart C–Information Regarding Wages Paid Employees (sections 6051 to 6053)

SUBPART C–FRONT MATTER

- Sec. 6051. Receipts for employees
- Sec. 6052. Returns regarding payment of wages in the form of group-term life insurance
- Sec. 6053. Reporting of tips

- Subpart D–Information Regarding Health Insurance Coverage (sections 6055 to 6056)

SUBPART D–FRONT MATTER

- Sec. 6055. Reporting of health insurance coverage
- Sec. 6056. Certain employers required to report on health insurance coverage

- Subpart E–Registration of and Information Concerning Pension, Etc., Plans (sections 6057 to 6059)

SUBPART E–FRONT MATTER

- Sec. 6057. Annual registration, etc.
- Sec. 6058. Information required in connection with certain plans of deferred compensation
- Sec. 6059. Periodic report of actuary

- Subpart F–Information Concerning Tax Return Preparers (section 6060)

SUBPART F–FRONT MATTER

- Sec. 6060. Information returns of tax return preparers

PART IV–SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS (sections 6061 to 6065)

PART IV–FRONT MATTER

- Sec. 6061. Signing of returns and other documents
- Sec. 6062. Signing of corporation returns
- Sec. 6063. Signing of partnership returns
- Sec. 6064. Signature presumed authentic
- Sec. 6065. Verification of returns

PART V–TIME FOR FILING RETURNS AND OTHER DOCUMENTS (sections 6071 to 6076)

PART V–FRONT MATTER

- Sec. 6071. Time for filing returns and other documents
- Sec. 6072. Time for filing income tax returns
- Sec. 6073. Repealed. Pub. L. 98-369, div. A, title IV, § 412(a)(2), July 18, 1984, 98 Stat. 792
- Sec. 6074. Repealed. Pub. L. 90-364, title I, § 103(a), June 28, 1968, 82 Stat. 260
- Sec. 6075. Time for filing estate and gift tax returns
- Sec. 6076. Repealed. Pub. L. 100-418, title I, § 1941(b)(1), Aug. 23, 1988, 102 Stat. 1323

PART VI–EXTENSION OF TIME FOR FILING RETURNS (section 6081)

PART VI–FRONT MATTER

- Sec. 6081. Extension of time for filing returns

PART VII–PLACE FOR FILING RETURNS OR OTHER DOCUMENTS (section 6091)

PART VII–FRONT MATTER

- Sec. 6091. Place for filing returns or other documents

PART VIII–DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND (section 6096)

PART VIII–Front Matter

- Sec. 6096. Designation by individuals

- Subchapter B–Miscellaneous Provisions (sections 6101 to 6117)

SUBCHAPTER B–FRONT MATTER

- Sec. 6101. Period covered by returns or other documents
- Sec. 6102. Computations on returns or other documents
- Sec. 6103. Confidentiality and disclosure of returns and return information
- Sec. 6104. Publicity of information required from certain exempt organizations and certain trusts
- Sec. 6105. Confidentiality of information arising under treaty obligations
- Sec. 6106. Repealed. Pub. L. 94-455, title XII, § 1202(h)(1), Oct. 4, 1976, 90 Stat. 1688
- Sec. 6107. Tax return preparer must furnish copy of return to taxpayer and must retain a copy or list
- Sec. 6108. Statistical publications and studies
- Sec. 6109. Identifying numbers

- Sec. 6110. Public inspection of written determinations
- Sec. 6111. Disclosure of reportable transactions
- Sec. 6112. Material advisors of reportable transactions must keep lists of advisees, etc.
- Sec. 6113. Disclosure of nondeductibility of contributions
- Sec. 6114. Treaty-based return positions
- Sec. 6115. Disclosure related to quid pro quo contributions
- Sec. 6116. Requirement for prisons located in United States to provide information for tax administration
- Sec. 6117. Cross reference

CHAPTER 62–TIME AND PLACE FOR PAYING TAX (sections 6151 to 6167)

CHAPTER 62–FRONT MATTER

- Subchapter A–Place and Due Date for Payment of Tax (sections 6151 to 6159)

SUBCHAPTER A–FRONT MATTER

- Sec. 6151. Time and place for paying tax shown on returns
- Sec. 6152. Repealed. Pub. L. 99-514, title XIV, § 1404(c)(1), Oct. 22, 1986, 100 Stat. 2714
- Sec. 6153. Repealed. Pub. L. 98-369, div. A, title IV, § 412(a)(3), July 18, 1984, 98 Stat. 792
- Sec. 6154. Repealed. Pub. L. 100-203, title X, § 10301(b)(1), Dec. 22, 1987, 101 Stat. 1330-429

- Sec. 6155. Payment on notice and demand
- Sec. 6156. Repealed. Pub. L. 108-357, title VIII, § 867(b)(1), Oct. 22, 2004, 118 Stat. 1622
- Sec. 6157. Payment of Federal unemployment tax on quarterly or other time period basis
- Sec. 6158. Repealed. Pub. L. 101-508, title XI, § 11801(a)(44), Nov. 5, 1990, 104 Stat. 1388-521
- Sec. 6159. Agreements for payment of tax liability in installments

- Subchapter B–Extensions of Time for Payment (sections 6161 to 6167)

SUBCHAPTER B–FRONT MATTER

- Sec. 6161. Extension of time for paying tax
- Sec. 6162. Repealed. Pub. L. 94-455, title XIX, § 1906(a)(12), Oct. 4, 1976, 90 Stat. 1825
- Sec. 6163. Extension of time for payment of estate tax on value of reversionary or remainder interest in property
- Sec. 6164. Extension of time for payment of taxes by corporations expecting carrybacks
- Sec. 6165. Bonds where time to pay tax or deficiency has been extended
- Sec. 6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business
- Sec. 6166A. Repealed. Pub. L. 97-34, title IV, § 422(d), Aug. 13, 1981, 95 Stat. 315

- Sec. 6215. Assessment of deficiency found by Tax Court
- Sec. 6216. Cross references

- Subchapter C–Tax Treatment of Partnership Items (sections 6221 to 6235)

SUBCHAPTER C–FRONT MATTER

- Sec. 6221. Tax treatment determined at partnership level
- Sec. 6222. Partner's return must be consistent with partnership return or Secretary notified of inconsistency
- Sec. 6223. Notice to partners of proceedings
- Sec. 6224. Participation in administrative proceedings; waivers; agreements
- Sec. 6225. Assessments made only after partnership level proceedings are completed
- Sec. 6226. Judicial review of final partnership administrative adjustments
- Sec. 6227. Administrative adjustment requests
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THE FOUNDERS' CONSTITUTION CHAPTER 16, DOCUMENT 23—JAMES MADISON, PROPERTY (MARCH 29, 1792)

So insofar as the Founders made any distinction between property rights and other individual rights, they insisted that property rights were at least as important as personal rights. In Federalist 54, James Madison stated tersely:

> "Government is instituted no less for protection of the property, than of the persons, of individuals. The one as well as the other, therefore, may be considered as represented by those who are charged with the government."

PUBLIUS.-Tuesday, February 12, 1788

Property

CHAPTER 16 | Document 23

Papers 14:266–68

This term in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

In the former sense, a man's land, or merchandize, or money is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has a property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.

Where there is an excess of liberty, the effect is the same, tho' from an opposite cause.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.

According to this standard of merit, the praise of affording a just securing to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government, where a man's religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and unalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest. A magistrate issuing his warrants to a press gang, would be in his proper functions in Turkey or Indostan, under appellations proverbial of the most compleat despotism.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called. What must be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favour his neighbour who manufactures woolen cloth; where the manufacturer and wearer of woolen cloth are again forbidden the oeco-

nomical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

A just security to property is not afforded by that government, under which unequal taxes oppress one species of property and reward another species: where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied, by an unfeeling policy, as another spur; in violation of that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him, in the small repose that could be spared from the supply of his necessities.

If there be a government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken directly even for public use without indemnification to the owner, and yet directly violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which indirectly violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares, the influence [inference?] will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling

its example in violating the latter, will make themselves a pattern to that and all other governments.

The Founders' Constitution
Volume 1, Chapter 16, Document 23
http://press-pubs.uchicago.edu/founders/documents/v1ch16s23.html
The University of Chicago Press

The Papers of James Madison. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962–77 (vols. 1–10); Charlottesville: University Press of Virginia, 1977—(vols. 11—).

Emphasis upon this:

"Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own." (Emphasis added).

"More sparingly should this praise be allowed to a government, where a man's religious rights are

violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and unalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact." (Emphasis added).

MEMORANDUM AND ORDER OF THE DISTRICT COURT OF MISSOURI (FEBRUARY 23, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4: 17CV 750 JMB

Before: John M. BODENHAUSEN,
United States Magistrate Judge

This matter is before the Court on Plaintiffs' Motion for Leave to Amend Summons (ECF No. 6) and a review of the Original Verified Complaint for Declaratory Judgment, Injunctive and Other Appropriate Relief in This Petition for Quintessential Rights of the First Amendment ("Complaint") (ECF No. 1).

In the Complaint, *pro se* Plaintiff seeks monetary damages, declaratory relief, equitable relief, and injunctive relief, naming as Defendant the United States Government. Plaintiff purports to allege nu-

merous constitutional violations in the 547-page Complaint with 4,451 paragraphs. A review of the Complaint shows that it fails to comply with the strictures of Rule 8(a).

The Court finds that Plaintiff has failed to file the Complaint in accordance with Rule 8(a) and (e) of the Federal Rules of Civil Procedure, which require a "short and plain statement of the claim(s)" and "[e]ach averment of a pleading shall be simple, concise, and direct." Fed. R. Civ. P. 8(a) and (e). "Taken together, Rules 8(a) and 8(e)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules." *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 669 (D.C. Cir. 2004). "Extreme length alone, of course, will not always constitute a violation of Rule 8." *Reinholdson v. Minnesota*, 2002 WL 32658480 *2 (D. Minn. 2002) ("Judges are not like pigs, hunting for truffles buried in briefs [or Complaints]."") (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)).

The Complaint alleges numerous constitutional violations and claims for relief. Violations of the short and plain statement rule have included complaints that were too long. *See United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 379 (7th Cir. 2003) (finding 400 paragraphs covering 155 pages asserting numerous variations of fraud instead of a concise statement illustrated by 400 concrete examples of fraud in violation of Rule 8); *In re Westinghouse Secs. Litigation*, 90 F.3d 696, 703 (3d Cir. 1996) (finding a complaint more than 600 paragraphs and 240 pages was too long); *Kuehl v. FDIC*, 8 F.3d 905, 908-09 (1st Cir. 1993) (358 paragraphs in only 43 pages); *Michaelis v. Nebraska State Bar Assoc.*, 717

F.2d 437, 439 (8th Cir. 1983) (144 paragraphs in 98 pages); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981) (dismissing 98-page complaint containing 144 paragraphs). Indeed, the Supreme Court has noted the practical importance of "sharpening and limiting the issues" in the pleading stages, to facilitate resolution at the final stage. *O'Donnell v. Elgin, Joliet & Eastern Ry. Co.*, 338 U.S. 384, 392 (1949).

The 547-page Complaint is by virtue of its length alone problematic. Courts are empowered to dismiss excessively wordy complaints because such complaints "make[] it difficult for the defendant to file a responsive pleading and make[] it difficult for the trial court to conduct orderly litigation." *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775-76 (7th Cir. 1994) (199-page, 385 paragraph complaint "violated the letter and spirit of Rule 8(a)). Further, courts faced with hopelessly verbose complaints must consider "the right of . . . defendants to be free from . . . costly and harassing litigation." *Id.* at 776. An unnecessarily long complaint makes it difficult for the Court to conduct an orderly litigation and the Defendants to file a responsive pleading. *Id.* at 775-76.

The Court finds prejudice on the part of Defendant inasmuch as the Complaint's unnecessary prolixity of the pleading places an undue burden on the responding party. *Roberto's Fruit Mkt., Inc. v. Schaffer*, 13 F.Supp.2d 390, 395 (E.D. N.Y. 1998) (quoting *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988)) ("[U]nnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage."). The

Court finds that filing a responsive pleading to the instant Complaint would not only be difficult but costly in terms of time and money especially in light of the numerous legal theories advanced in the case. Accordingly, finding the Complaint violates Rule 8(a) and (e) to the extent that a great deal of judicial energy and resources would have to be devoted to restructuring the pleading and streamlining the unnecessary matter, the Court will strike the Complaint. As a matter of prudent case management, the Court directs Plaintiff to file a streamlined and reorganized Amended Complaint removing unnecessary and redundant allegations as required by Rule 8 thereby clarifying and expediting all further proceedings in the case to the advantage of the litigants, counsel, and the Court. Accordingly,

IT IS HEREBY ORDERED that Plaintiff shall file an Amended Complaint in conformity with the requirements of Rule 8 no later than March 20, 2017.

IT IS FURTHER ORDERED that Plaintiff's Request for Leave to Amend Summons as to Listing Plaintiff's Name and Address on Summons (ECF No. 6) is DENIED AS MOOT.

Dated this 23rd day of February, 2017.

/s/ John M. Bodenhausen
United States Magistrate Judge

MEMORANDUM AND ORDER OF THE DISTRICT COURT OF MISSOURI (MARCH 10, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4: 17-CV-750 JAR

Before: John A. ROSS, United States District Judge

This matter is before the Court on Plaintiff's pro se Motion for Extension of Time to File a Response to the Court's Memorandum and Order dated 23rd day of February, 2017 (Doc. No. 12). On February 23, 2017, after a review of the Original Verified Complaint for Declaratory Judgment, Injunctive and Other Appropriate Relief in This Petition for Quintessential Rights of the First Amendment ("Complaint") (Doc. No. 1), the Court found the Complaint violates Rule 8(a) and (e) of the Federal Rules of Civil Procedure and ordered Plaintiff to file an amended complaint in conformity with the requirements of Rule 8 no later

than March 20, 2017 (Doc. No. 8). It appears that Plaintiff is now seeking reconsideration of the Court's Order; however, upon further review of his 547-page Complaint, with 4,451 paragraphs, the Court finds it clearly does not comply with Rule 8, which requires a "short and plain statement of the claim(s)" and that "[e]ach averment of a pleading shall be simple, concise, and direct." Thus, no motion for reconsideration will be considered. The Court will grant Plaintiff's request for extension of time, up to and including May 19, 2017, to file an amended complaint. Plaintiff is cautioned that failure to do so may result in dismissal of this action.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff shall file an amended complaint in conformity with the requirements of Rule 8 no later than Friday, May 19, 2017. Failure to do so may result in dismissal of this action.

/s/ John A. Ross
United States District Judge

Dated this 10th day of March, 2017.

MEMORANDUM AND ORDER OF THE DISTRICT COURT OF MISSOURI (MAY 12, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4: 17-CV-750 AGF

Before: Audrey G. FLEISSIG,
United States District Judge

This matter is before the Court on Plaintiff's motion for extension of time (ECF No. 35). On February 23, 2017, the Court[1] ordered Plaintiff to file an amended complaint that complies with Rule 8 of the Federal Rules of Civil Procedure. Since then, Plaintiff has filed seventeen motions or other documents, none of which appear to have any basis in law or fact.

[1] The case, at the time, was assigned to another judge of this Court, and has since been transferred to the undersigned.

On March 10, 2017, the Court granted his motion for extension of time to file the amended complaint, providing Plaintiff more than two months to file his amended complaint. As such the Court believes that Plaintiff has had ample time to comply with this requirement, especially in light of the numerous other filings by Plaintiff. Plaintiff needs to focus on presenting his factual allegations to the Court in a manner that complies with the Rules, rather than filing frivolous notices and motions. Nevertheless, the Court will grant a limited additional period of time to Plaintiff to file an amended complaint.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for extension of time [ECF No. 35] is GRANTED in part.

IT IS FURTHER ORDERED that Plaintiff must file his amended complaint that complies with Rule 8 of the Federal Rules of Civil Procedure by June 15, 2017.

IT IS FURTHER ORDERED that all of Plaintiff's pending motions are DENIED as frivolous, and Plaintiff is advised that the Court will not entertain any similar motions filed by Plaintiff at this time.

Dated this 12th day of May, 2017.

/s/ Audrey G. Fleissig
United States District Judge

MEMORANDUM AND ORDER OF THE DISTRICT COURT OF MISSOURI (MAY 26, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4: 17-CV-750 AGF

Before: Audrey G. FLEISSIG,
United States District Judge

Before the Court are certain documents received by the Court for filing by plaintiff Terry Lee Hinds as of May 23, 2017.

On May 23, 2017, the Court received a one-inch-thick stack of documents entitled, "First Notice and Demand for Mandatory Judicial Notice in Support of Plaintiff's Free Exercise Right to Make a Complaint/ Petition Judicial Notice #1." In addition, on this same date, plaintiff has submitted another one-inch-thick stack of documents entitled, "Plaintiff's First Notice to Present the Merits of His Action And/Or, In the Alter-

native, to Make A Conscientious Effort to Comply with the Court's Initial Review Order."

Although the first set of documents submitted by plaintiff contained the word "complaint" in the heading, the documents presented to the Court were, in actuality, nothing more than, "exhibits" gathered from filings in other courts around the nation and presented to this Court as a "package" of purported "evidence" in support of plaintiff's assertions. In other words, none of the documents submitted by plaintiff contained plaintiff's own writings.

As plaintiff was told in the Court's May 12, 2017 Memorandum and Order, this Court will no longer accept any additional frivolous "notices" and "exhibits" from plaintiff that are devoid of factual allegations. Therefore, plaintiff's "exhibits" contained in his "First Notice and Demand for Mandatory Judicial Notice in Support of Plaintiff's Free Exercise Right to Make a Complaint/Petition Judicial Notice #1" were returned to him on May 23, 2017.

In lights of plaintiff's failure to comply with the Court's prior Memorandum and Order, the Clerk of Court will once again be instructed, by Order of this Court, to continue to return to plaintiff any additional "exhibits" or "notices" filed by plaintiff not presented in support of an amended complaint or non-frivolous motion in this matter.

The Court has also reviewed "Plaintiff's First Notice to Present the Merits of His Action And/Or, in the Alternative to Make A Conscientious Effort to Comply with the Court's Initial Review Order," as well as the documents attached as an exhibit to plaintiff's Notice. The Court interprets this Notice as

a motion for reconsideration of the Court's May 12, 2017 Memorandum and Order requiring plaintiff to file an amended complaint in this action. In his Notice, plaintiff argues that he believes his original, verified complaint is not "groundless or meritless."

This Court has already found that plaintiff's original complaint failed to comply with Rule 8 of the Federal Rules of Civil Procedure. The Court then Ordered, on February 23, 2017, for plaintiff to file an amended complaint in this action. Plaintiff has on several occasions been granted an extension of time to file an amended complaint in compliance with this Court's Orders, but he has failed to do so, instead having filed more than seventeen other motions or documents in this matter that appear to have any basis in law or fact.

If plaintiff wishes to proceed in this action, he must file an amended complaint in this action that comports with this Court's prior Orders and complies with Federal Rules of Procedure 8 and 10. His motion for reconsideration of the Court's prior Orders requiring him to file an amended complaint will be denied. Further, the exhibits attached to "Plaintiff's First Notice to Present the Merits of His Action And/Or, in the Alternative to Make A Conscientious Effort to Comply with the Court's Initial Review Order" will not be scanned into the Court's electronic filing system due to the frivolous nature of the exhibits and the excessive page length. The Clerk will be instructed to maintain the exhibits in paper format.

Accordingly,

IT IS HEREBY ORDERED that plaintiff must file an amended complaint in compliance with Federal

Rules of Procedure 8 and 10 no later than June 15, 2017.

IT IS FURTHER ORDERED that "Plaintiff's First Notice to Present the Merits of His Action And/Or, in the Alternative to Make A Conscientious Effort to Comply with the Court's Initial Review Order," interpreted as a motion for reconsideration of the Court's Order requiring plaintiff to file an amended complaint, is DENIED.

IT IS FURTHER ORDERED that the Clerk shall maintain, in paper format only, the exhibits attached to "Plaintiff's First Notice to Present the Merits of His Action And/Or, in the Alternative to Make A Conscientious Effort to Comply with the Court's Initial Review Order."

IT IS FURTHER ORDERED that the Clerk of Court will be instructed, by Order of this Court, to continue to return to plaintiff any additional "exhibits" or "notices" filed by plaintiff that are not presented in support of an amended complaint or non-frivolous motion in this matter.

Dated this 26th day of May, 2017.

/s/ Audrey G. Fleissig
United States District Judge

MEMORANDUM AND ORDER OF THE DISTRICT COURT OF MISSOURI (JULY 11, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4: 17-CV-750 AGF

Before: Audrey G. FLEISSIG,
United States District Judge

This matter comes before the Court on Defendant United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of Time. ECF No. 51. In its motion, Defendant argues that Plaintiff Terry Lee Hinds' June 14 Filings (ECF Nos. 44 and 45), if construed as an amended complaint, should be stricken for failure to comply with Rule 8. In the alternative, if the Court were to construe the June 14 Filings as an amended complaint, Defendant requests 60 days to file responsive pleadings. Plaintiff opposes

the motion. ECF No. 54-1. The Court will deny in part and grant in part Defendant's motion.

The purpose of Rule 8 is simply to give the opposing party fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved. Courts generally prefer to decide claims on their merits instead of on their pleadings. *Wisdom v. First Midwest Bank, of Poplar Bluff*, 167 F.3d 402, 409 (8th Cir. 1999). Therefore, a document filed pro se is to be liberally construed by the Court and held to less stringent standards than formal pleadings drafted by lawyers. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). District courts may construe filings beyond their description in the captions in order to avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se filing and its underlying legal basis. *See Castro v. United States*, 540 U.S. 375, 381-82 (2003) (internal citations omitted).

Plaintiff argues that Rule 8 does not authorize the Court to construe the June 14 Filings as an amended complaint. However, "captions do not control" a filing if the body of that filing presents a claim. *See Estate of Snyder v. Julian*, 789 F.3d 883, 886 (8th Cir. 2015). Upon review and liberal construction of the June 14 Filings, the Court construes Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting an Amended Complaint (ECF No. 44), and the attachments thereto, as an amended complaint. Although Plaintiff's Hybrid Pleading does not comply with the Court's orders to file a short, plain statement, the Court finds that Plaintiff has sufficiently pled violations of his First Amendment

rights to put Defendant on notice of his claims and allow Defendant to file a responsive pleading.[1]

However, the Court notes that Plaintiff's originally-filed complaint, brief in support, and exhibit list (ECF Nos. 1-3) have been stricken by the Court. ECF No. 8. As a result, Plaintiff cannot incorporate those filings into his amended complaint. Therefore, to the extent the amended complaint references Plaintiff's previously-filed complaint, brief and support, and exhibits, those provisions will be stricken.

The Court next turns to Defendant's request for an extension. Given the length, complexity, and difficult nature of the claims asserted by Plaintiff, the Court will grant Defendant's request for a 60-day extension to file a responsive pleading. Such an extension will not unfairly prejudice Plaintiff, nor is there evidence that the extension was requested in bad faith. Furthermore, this is Defendant's first request for an extension in this matter, and Plaintiff has been given several extensions by the Court to file his amended complaint.

As a final matter, Plaintiff, in his Motion to Review, Alter, Amend or Vacate Orders (ECF No. 38), sought relief from the Court's previous orders requiring him to file an amended complaint (ECF Nos. 8, 18, and 29). The Court has interpreted ECF No. 44 as an amended complaint. Therefore, the relief sought in Plaintiff's Motion to Review, Alter, Amend or Vacate Orders will be denied as moot.

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[1] ECF No. 44 and its attachments (Revelations Nos. 1 through 6) set forth jurisdiction, venue, parties, and laws at issue.

The Court has also reviewed Plaintiff's requests to change the "Cause" on the Court's docket sheet because "42:1981 Civil Rights" is an inaccurate representation of his case. The Court will order the clerk of the court to update the "Cause" to reflect that this matter asserts violations of Plaintiff's constitutional (*i.e.* civil) rights, which may be brought under 42 U.S.C. § 1983.

As to Plaintiff's objections to the "Nature of Suit," the Court finds that "440 Civil Rights: Other" most accurately represents the claims brought by Plaintiff. However, the Court will instruct the Clerk of the Court to mail to Plaintiff documents listing the "Nature of Suit" codes and their descriptions. If Plaintiff wishes to assign a different code to his case, he may file such a request, including the proper code, with the Court.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting an Amended Complaint (ECF No. 44) is construed as an amended complaint.

IT IS FURTHER ORDERED that Defendant United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of time (ECF No. 51) is GRANTED IN PART and DENIED IN PART. Defendant is ordered to file a responsive pleading within sixty (60) days of this Order.

IT IS FURTHER ORDERED that "Plaintiff's First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff's Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For

Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6)" (ECF No. 38) is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk of the Court will change the "Cause" listed on the docket sheet to reflect that the matter is brought pursuant to § 1983.

IT IS FINALLY ORDERED that the Clerk of Court will mail a blank civil cover sheet and civil nature of suit code descriptions sheet to Plaintiff.

Dated this 11th day of July, 2017.

/s/ Audrey G. Fleissig
United States District Judge

MEMORANDUM AND ORDER OF THE DISTRICT COURT OF MISSOURI (AUGUST 18, 2017)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY LEE HINDS,

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

No. 4: 17-CV-750 AGF

Before: Audrey G. FLEISSIG,
United States District Judge

This matter is before the Court on Plaintiff's motion to reconsider the Court's July 11, 2017 Order ("July 11 Order"). ECF No. 56. In his motion, Plaintiff argues, inter alia, that it was a clear error of law when the Court construed his hybrid pleading (ECF No. 44) as an amended complaint, granted Defendant an extension of time to file a responsive pleading, and denied as moot Plaintiff's motions to vacate the Court's orders requiring Plaintiff to file an amended complaint. Defendant opposes the motion.

A "motion to reconsider" is not explicitly contemplated by the Federal Rules of Civil Procedure. *Broadway v. Norris*, 193 F.3d 987, 989 (8th Cir. 1999). The Court must first determine whether a "motion for reconsideration" is in fact a Rule 59(e) "Motion to Alter or Amend a Judgment," or a Rule 60(b) "Motion for Relief from Judgment or Order." *Id.* Here, Plaintiff's motion for reconsideration is not directed to a final judgment. Instead, it is directed to a nonfinal order. Therefore, the Court will construe the motion for reconsideration as a Rule 60(b) motion.

Rule 60(b) allows relief from an order due to: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b); *see also Elder–Keep v. Aksamit*, 460 F.3d 979, 984 (8th Cir. 2006). Relief under "Rule 60(b) is an "extraordinary remedy" that is "justified only under 'exceptional circumstances.'" *Prudential Ins. Co. of Am. v. Natl. Park Med. Ctr., Inc.*, 413 F.3d 897, 903 (8th Cir. 2005) (quoting *Watkins v. Lundell*, 169 F.3d 540, 544 (8th Cir. 1999)). Further, "[r]elief is available under Rule 60(b)(6) only where exceptional circumstances have denied the moving party a full and fair opportunity to litigate his claim and have prevented the moving party from receiving adequate

redress." *Harley v. Zoesch*, 413 F.3d 866, 871 (8th Cir. 2005). The Rule 60(b)(6) catch-all provision is not a vehicle for setting forth arguments that were made or could have been made earlier in the proceedings. *See Broadway*, 193 F.3d at 989-90.

In his motion to reconsider, Plaintiff raises the same arguments that he has advanced in various pleadings throughout this litigation. The Court has carefully reviewed the motion and concludes that Plaintiff has not satisfied his burden under Rule 60(b). His motion and related filings include arguments that were or could have been made earlier in the proceedings. Furthermore, Plaintiff has provided the Court with no exceptional circumstances that might constitute grounds for the Court to reconsider its July 11 Order.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to reconsider (ECF No. 56) is DENIED.

IT IS FURTHER ORDERED that, in light of Plaintiff's notice as to the civil cover sheet and civil nature of suit (ECF No. 60), the Clerk of the Court shall assign to this lawsuit a nature of suit code of 950: Constitutional-State Statute, and a cause of action code of 28:2201 Constitutionality of State Statute(s).[1] Plaintiff is advised that the Court cannot assign more than one code to any given action.

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[1] Plaintiff correctly points out that while the codes seem to implicate the constitutionality of state, rather than federal, statutes, the civil nature of suit code description for 950 includes an "[a]ction drawing into question the constitutionality of a federal or state statute."

Dated this 18th day of August, 2017.

/s/ Audrey G. Fleissig
United States District Judge

ORGANIC LAW—
THE DECLARATION OF INDEPENDENCE
(JULY 4, 1776)

THE UNANIMOUS DECLARATION OF THE
THIRTEEN UNITED STATES OF AMERICA

WHEN in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses

and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distance from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled

in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the Representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled,

appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, 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 dis-solved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

John Hancock.

NEW HAMPSHIRE:

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY:

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE ISLAND:

Stephen Hopkins,
William Ellery.

CONNECTICUT:

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK:

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY:

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA:

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE:

Caesar Rodney,
George Read,
Thomas McKean.

MARYLAND:

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll of Carrollton.

VIRGINIA:

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA:

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA:

Edward Rutledge,
Thomas Heyward, Jr.,
Thomas Lynch, Jr.,
Arthur Middleton.

GEORGIA:

Button Gwinnett,
Lyman Hall,
George Walton.

TAXAONMY OF DUE PROCESS MANIFESTING STRICT SCRUTINY IN THE MIDDLE FORUM HARVARD LAW REVIEW VOL. 122, NO. 8 (JUNE., 2009)

(FACTS NECESSARY TO UNDERSTAND PETITIONS)
or as parts of the record that may be essential to understand the matters set forth in the petition

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FACT: The Court have come to recognize that two aspects of due process exist: procedural due process and substantive due process. However, this has not been a visible fact in this case.

FACT: Taxonomy is the classification of things according to their natural relationships. The term is commonly used to refer to the classification of plants and animals, but animate objects, inanimate objects, places, and events, may be classified according to some taxonomic scheme. Source: https://definitions.uslegal.com/t/taxonomy/

FACT: In general, substantive due process prohibits the government from curtailing or infringing on fundamental constitutional liberties. By contrast, procedural due process refers to the procedural limitations placed on the manner in which a law, governmental policy or of its legal practices is administered, applied, or enforced.

FACT: Substantive due process, in United States constitutional law, is a principle allowing courts to protect certain fundamental rights

from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the U.S. Constitution. The Court has identified the basis for such protection from the due process clauses of the Fifth and Fourteenth Amendments to the Constitution, which prohibit the federal and state governments, respectively, from depriving any person of "life, liberty, or property, without due process of law." Substantive due process demarcates the line between the acts that courts hold is subject to government regulation or legislation and the acts that courts place beyond the reach of governmental interference. Whether the Fifth and/or Fourteenth Amendments were intended to serve that function continues to be a matter of scholarly as well as judicial discussion and dissent.[1]

FACT: Substantive due process is to be distinguished from procedural due process. A distinction arises from the words "of law" in the phrase "due process of law."[2] Procedural due process protects individuals from the coercive power of government by ensuring that adjudication processes, under valid laws, are fair and impartial. Such protections, for example, include sufficient and timely notice on why a party is required to appear before a court or

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1 Ryan C. Williams (2010). "*The One and Only Substantive Due Process Clause*". Yale Law J.

2 Timothy Sandefur (2010). The Right to Earn a Living: Economic Freedom and the Law.

other administrative body, the right to an impartial trier of fact and trier of law, and the right to give testimony and present relevant evidence at hearings.

In contrast, substantive due process protects individuals against majoritarian policy enactments that exceed the limits of true governmental authority: courts may find that a majority's enactment is not law and cannot be enforced as such, regardless of whether the processes of enactment and enforcement were actually fair.

FACT: The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states.

LAW: The Fifth Amendment of the U.S. Constitution provides,

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall pri-

vate property be taken for public use, without just compensation."

FACT: Due Process Clause:

The guarantee of due process for all persons requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive any person of life, liberty, or property. Due process essentially guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. While the Fifth Amendment only applies to the federal government, the identical text in the Fourteenth Amendment explicitly applies this due process requirement to the states as well.

FACT: The procedural due process aims to ensure fundamental fairness by guaranteeing a party the right to be heard, ensuring that the parties receive proper notification throughout the litigation, and ensures that the adjudicating court has the appropriate jurisdiction to render a judgment. Meanwhile, substantive due process has developed during the 20th century as protecting those substantive rights so fundamental as "immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty." Substantive due process as a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Palko v. Connecticut*, 302 U.S. 319, 324 (1937).

FACT: Petitioner is entitled to substantive due process prohibiting government from curtailing or infringing on fundamental constitutional liberties, or by contrast, procedural due process of law.

See: *Strict Scrutiny in the Middle Forum*, Harvard Law Review, Vol. 122, No. 8 (Jun., 2009), pp. 2140-2161. Published by: The Harvard Law Review Association, page ct. 22 plus 2 cover sheets.

See: "*The One and Only Substantive Due Process Clause*". Yale Law Journal, page ct. 105

CLEAR AND PREJUDICIAL ERROR OF LAW AND FACT AS A CLEAR ABUSE OF DISCRETION (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(Facts Necessary to Understand Petitions)
or as parts of the record that may be essential to understand the matters set forth in the petition

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Defects of Justice to Work a Manifest Injustice

FACT: ECF No. 82, on 09/11/2017, the Real Party in Interest, filed a motion to dismiss:

"Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), the United States requests that the Court dismiss with prejudice all counts and claims for relief in Plaintiffs amended complaint." Doc. No 44. "The United States submits the attached memorandum in support of this motion." Emphasis added.

FACT: ECF No. 93, on 12/11/2017, Respondent issued MEMORANDUM AND ORDER thereby accordingly: "IT IS HEREBY ORDERED that the motion to dismiss of Defendant United States [ECF No. 82] is GRANTED, and the case is dismissed without prejudice."

FACT: The Real Party in Interest's motion was for lack of subject matter jurisdiction & failure to state a claim re: all counts and claims for relief in Plaintiff's amended complaint. It was not for summary judgement, or a Rule 12(c) motion for judgment on the pleadings, or; in the alternative, 56(a) motion seeking an order

granting summary judgment to them on all counts and claims.

Egregious Fact (Departures):

Respondent manifested a plain error by granting a motion in favor of unbridled power, defects of justice, or for Federal Sovereign Immunity Doctrine; invoked by vital departures from the law, favoring viewpoint-based discrimination with Doc. Nos. 28, 33, 34, 44, 45 or viewpoint-based restrictions with Doc. Nos. 69, 71, 73, 75, 92, as these documents were made in support of Doc. Nos. 44, 45.

Egregious Fact (Disruptions):

Respondent unjustly dismissing the entire breadth and merits of Petitioner's case, advancing prejudicial errors of law and fact; manifesting for the Real Party in Interest; a Rule 56, Motion for Summary Judgement upon unsettled grounds of false facts or the color of law artfully premised as a 12(b)(1) & 12(b)(6) motion.

Egregious Fact (Duplicity):

Respondent committed, clear and prejudicial error of law and fact, by failing to raise strict scrutiny review or grant legal reliefs sought; and altered the law with total impunity, amounting to a judicial usurpation of power, when Respondent refused to faithfully fulfill her official duties, or sworn oath to uphold the U.S. Constitution and the laws made in pursuant thereof for acts of subterfuge.

Egregious Fact (Discredit):

Respondent prevented "from having any legal effect" the claims or reliefs sought with law respecting an establishment of religion that invaded Petitioner's sacred precincts of mind & soul; a *pro se* Plaintiff entitled to injunctive relief & judicial review versus remarks that were taken out of context in an effort to discredit him.

The Art of Departures, Disruptions, Duplicity and Discredit

Fact: Petitioner was informed in 1988 by a powerful, well-respected and insightful attorney in St Louis that the practice of law is an art, with one's position or picture of it not always pleasing.

FACT: In the background section of Respondent's Memorandum and Order ECF No. 93, and within the opening paragraph this espoused perspective of the law and facts are presented:

"This case has a lengthy procedural history. On February 16, 2017, Plaintiff filed a 548-page pro se complaint, in which Plaintiff contends that by virtue of the Tax Code, the Government has established an institutionalized faith and religion of taxism. Compl. at ¶ 305. Plaintiff contends that this institutionalized religion has the effect of endorsing, favoring, and promoting organized religions, which Plaintiff believes violates the Establishment and Free Exercise clauses of the Constitution. He seeks declaratory and injunctive relief, including a permanent injunction enjoining the tax code from having any legal effect, as well as nominal damages." *Id* at Page1, ¶ 1.

The Art of Departures

"This case has a lengthy procedural history."

FACT: Respondent's asserted, Plaintiff has "filed 34 'Notices' and 'Declarations'". However, this is a departure from facts being self-evident as Petitioner filed 29 "Notice Pleadings" with 7 sworn Declarations, (4 in support of Doc. No. 44, 45) along with one "Judicial Notice" returned by the Clerk of the Court's Office, or a notice to present the merits of his action, required notices for exhibits with motions, declarations, and 7 constructive notices about court practices or proceedings and/or other numerous notices protecting one's legal rights!

FACT: Respondent's departure from germane facts of a lengthy procedural history, encompasses Petitioner's 13 motions, with attached brief in support, written requests for: (1) evidentiary hearing, (2) a hearing date, (3) due process hearing, or (4) for leave to file sur-reply brief.

FACT: Respondent's assertion: "This case has a lengthy procedural history." benefits a diversion & a departure from procedural due process for the self-serving interests of the Respondent.

LAW: Respondent's departure from the rule of law (U.S. Supreme Ct. precedents); in such a case that has a lengthy procedural history knows "Jurisdiction is the right to put the wheels of justice in motion and to proceed to the final determination of the cause upon the pleadings and evidence." *See Illinois Central R. Co. v. Adams*, 180 U.S. 28, 29 (1901).

FACT: Respondent's departure from Fed. R. Civ. P., Rule 8(e) CONSTRUING PLEADINGS, or the requirements of Rule 8(a) are self-evident & self-serving, respectively. Whereas, "Pleadings must be construed so as to do justice." must be self-evident, but not in this case.

FACT: In ECF No. 55, Respondent alters the law to manifest an espoused perspective of the law and facts by ordering (Doc. No. 44) construed as an "amended complaint", and "that the Clerk of the Court will change the 'Cause' listed on the docket sheet to reflect that the matter is brought pursuant to § 1983." The Court's deviations are departures from the law.

FACT: Petitioner filed Doc. Nos. 87, 88, for the vital purposes of this DOJ's mission & message:

> The DOJ, should not be seen in the light as the "Department of Justification" versus its established role, which the DOJ has declared on its website "The most sacred of the duties of government [is] to do equal and impartial justice to all its citizens." Moreover, the DOJ declares: "This sacred duty remains the guiding principle for the women and men of the U.S. Department of Justice." https://www.justice.gov/about. *See* Petitioner's Doc. No. 87, at page 1 & 2.

FACT: Petitioner filed Doc. Nos. 89, 90, regarding Petitioner's claims and reliefs sought, to wit:

> Also, Defendants' Motion (ECF No. 82) was filed in opposition to the requirement in section 32 of the Judiciary Act of 1789, as well as, [Exec. Order/Directive/A.G.Policy]. For the record, U.S.

Supreme Court precedent as held in *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940):

> "Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion.
>
> Thus, the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection." (Emphasis added).

For the premises or reasons set forth herein, Plaintiff requests the above-mentioned attorneys for the Defendants file a MOTION to withdraw Defendants' pending RULE 12(b)1 MOTION to Dismiss for Lack of Jurisdiction, RULE 12(b)6 & RULE 12(d) MOTION to Dismiss Case filed by Defendants "United States" Government (ECF No. 82). These pending motions or activity is contrary to the rule of law, Plaintiff's religious liberty, constitutional rights or his sacred right of conscience, as well as, the governmental policy set as [Exec.Order/Directive/A.G.Policy]. *See* Doc. No. 89, at page 9, last two paragraphs.

FACT: Petitioner's faith versus the fate of this case is within the proclaimed mission statement of the DOJ. Now, there is hope in a quantifiable policy issued on October 6, 2017 from an executive order issued from the Office of the

President of the United States. Petitioner [believes] this policy will maintain a proper [d]ivision of religious liberty and its free or pure speech of it *vs.* governmental authority curtailing such liberty. *See* Doc. Nos. 89, 90.

FACT: Respondent evidently read Petitioner's Doc. Nos. 87, 88, 89, 90, and granted pursuant to ECF No. 91, Petitioner leave to file a *sur-rely* point and authorities brief. re Doc. No. 92.

FACT: Petitioner filed Doc. No. 92, addressing the barred claims and reliefs sought, to wit:

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 ("DOT) 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 Plaintiffs 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. (*Id.* at Page 3, 1st & 2nd paragraphs)

FACT: Respondent seemingly never read or ignored issues presented, but refused discussion in ECF No. 93, with the legal & factual matters presented in Doc. Nos. 85, 87, 88, 89, 90, 92.

FACT: Respondent's viewpoints expressed within ECF No. 93 serve as the dark matter within a precise language used advancing a legal fiction for the 'ceremony of release to elsewhere'.

FACT: Such illicit notions for the injection of injustice and its 'ceremony of release to elsewhere' (a lengthy, costly & time-consuming appeals process) is as real as life itself. To some it is a legal purgatory. To the Petitioner it is a spiritual death and the destruction to a Nation's soul if this Court (8th Circuit) refuses to manifest an equitable remedy or mandate relief where no such relief exists, for arguments that precluded jurisdiction or the reliefs sought.

FACT: Petitioner, as a witness, knows he will NEVER be granted protections or enforcement of the law, if under the same condition, he is allowed

to step back into this district courthouse under the usurping authority of *bias dictum* or unbridled power of the Respondent.

FACT: "This case has a lengthy procedural history" digresses a procedural due process of law. Unconstitutional conditions doctrine prohibits forcing a person to choose between two constitutionally protected rights, as witnessed herein, a minefield to be traversed gingerly.

FACT: Respondent's departures in making this case have a "lengthy procedural history" can be seen in the surreal light of this decision, which authorizes the Real Party in Interest to make a motion to strike (Doc. No. 44) in the future feasible for violating Rule 8(a), to wit, in ECF No. 55, whereby the Respondent alters the law by declaring, in pertinent parts:

> "Although Plaintiff's Hybrid Pleading does not comply with the Court's orders to file a short, plain statement, the Court finds that Plaintiff has sufficiently pled violations of his First Amendment rights to put Defendant on notice of his claims and allow Defendant to file a responsive pleading."

FACT: Petitioner's original verified complaint & petition (Doc. No. 1) was unjustly stricken from the record by the Court or a Judge's *sua sponte* decisionmaking, but, nevertheless, by what method or somehow now, Doc. No. 44 meets the 'precision of language' of the Court or Respondent's viewpoint &/or content based restrictions written within Rule 8(a).

FACT: Petitioner's Doc. No. 62 addresses such matters in detail because Petitioner understood that the ending or termination of this case will be injected with departures, disruptions, duplicity and discredit by the Respondent and by the Real Party in Interest.

LAW: Another departure in making this case have a "lengthy procedural history, is when the Respondent failed, by her own actions, to preserve Fed. R. Civ. P., Rule 1, in pertinent part:

> 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.

FACT: Some truths are stranger than fictions; but the visible departures from U.S. Supreme Court precedents, Fed. R. Civ. P., congressional authority, etc. (addendum of law) was cited in this case by the Respondent as a legal fiction for a waiver of Federal Sovereign Immunity; causing unconstitutional conditions, in part, curtailing protected speech for a public trial.

FACT: This departure from a U.S. Supreme Court doctrine (unconstitutional condition, *inter alia*, other gamine doctrines) usurps the United States Constitution, the First & 5th Amendment, the rule of law, including but not limited to, Petitioner's God given unalienable rights.

The Art of Disruptions

"On February 16, 2017, Plaintiff filed a 548-page pro se complaint, in which Plaintiff contends that by virtue of the Tax Code, the Government has established an institutionalized faith and religion of taxism. Compl. at ¶ 305."

FACT: Petitioner filed 549-page *pro se* complaint/ Petition in which Petitioner [OVC/Petition] Doc. No. 1 was unjustly stricken from the record for a legal fiction of judicial economy and, for the content-based restrictions, inserted into Fed. R. Civ. P., Rule 8(a) or as a prior restraint on the protected speech of petition speech or pure speech of religious beliefs and conscience, and Petitioner' s free speech to protest the color of law by governmental actors.

FACT: The above facts are manifested by viewpoint discrimination of Respondent & a Magistrate Judge, both superseding the practice of law by one's own perspective of the law and facts. This disturbance of the law usurps the U. S. Constitution, the First Amendment, Court doctrines, including Petitioner's God given unalienable rights to life, liberty and his own pursuits of happiness, granted and guaranteed by the 5th Amendment due process clause.

FACT: Respondent's above-captioned statement is so convoluted, it is hard to understand where Petitioner's truths of law and fact begins and where the Respondent's legal fictions end.

FACT: Respondent elected to pick only two averments being "Compel. at ¶ 305." and ECF No. 85 at 15. This proffered surreal distraction

promotes the idea that no other averments of facts exist within Petitioner's case or that the law premised and presented by the Petitioner is not germane to Respondent's decision-making, regarding the dismissal of the case; of which concerns constitutional claims, duties and rights, *inter alia*, of the parties involved.

FACT: The above captioned statement made by Respondent's decision-making inferred that:

"Plaintiff contends that by virtue of the Tax Code, the Government has established an institutionalized faith and religion of taxism. Compel. at ¶ 305."

FACT: This statement distorts or disrupts what background information is to be relied upon, and is not the meaning of what was actually written by Petitioner in "Compl. at ¶ 305.", to wit:

"Plaintiff [believes] Taxology, like Scientology, advances its religion through the authority, power and use of tax-exempt status. *See* [OVC/Petition] page 75 at ¶ 305."

FACT: Respondent's discretion to cite Petitioner's stricken complaint/petition, Doc. No. 1, when the Real Party in Interest's motion to dismiss concerned only an "amended complaint" Doc. No. 44 serves as a disruption or distraction from matters that were to be considered.

FACT: Respondent relied upon, as the background of this case, ECF No. 85 at 15 proffering:

"Specifically, Plaintiff challenges the Government's "new priesthood for [the] religious doctrine of legalism." *See* ECF No. 93, Background, at page 3, last paragraph.

FACT: HOWEVER, Petitioner made this statement of religious belief at ECF No. 85 at 15:

"The Plaintiff [believes] that Mr. Mokodean and tax lawyers of the Department of Justice ("DOJ") represent the new priesthood for their religious doctrine of legalism."

FACT: Respondent's proffered viewpoints are a distraction from the facts of this case, &/or worse a departure from Respondent in faithfully fulfilling her official duties or her sworn oath to uphold the U.S. Constitution & the laws made in pursuant thereof, for works of injustice.

FACT: Petitioner's various statements, notices, and even briefs addressing Mr. Mokodean and tax lawyers of the Department of Justice ("DOJ") are about their pursued perspective of the law and facts, of which, concerns Petitioner's pure speech of religious beliefs and practices of the Real Party in Interest. *See* Petitioner's Memo & Briefs (Doc. Nos. 2, 54, 57, 92).

FACT: Respondent's pervasive distractions and numerous departures of law and fact, including, acting *de facto*, as the lead counsel for the Real Party in Interest is disturbing to Petitioner. Note: Respondent worked in and served as the U.S. Attorney for this Eastern District of Missouri; however, currently, her duties as a Federal Judge, should be separate

from former allegiances to the DOJ, or favoring IRS tax attorneys or other lawyers for the government.

FACT: Petitioner states, that Respondent 'takes issue' with a statement & facts in ECF No. 85 at 15, and is either disturbed or annoyed by the following statements on that page, to wit:

Real lawyers, who practice constitutional law, uphold established legal principles in the rule of law, or have read, like the Plaintiff has done, thousands of the Court's, Memorandums and Orders, Appellate Cases, and Supreme Court decisions thereby knows:

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

The Plaintiff assert the record reveals (ECF. No. 8) that judicial economy demands were reviewed by this Court, thus Defendants' 12(b)(1) motion is moot. The Plaintiff assert the record reveals the Defendants' 12(b)(6) motion is frivolous based upon Plaintiffs notice pleadings (Doc. Nos. 28, 33, 34, 44 & 45).

FACT: The Court's ruling in ECF No. 8 determined that no jurisdiction questions exist.

FACT: Respondent's art of disruptions cannot distract or conceal the facts in Doc. No. 92, and particularly within the ten (10) legal premises in Section II, on pages 5 thru 15, to wit:

II. Plaintiff's Germane Response in Opposition to Defendants' "Reply in Support of United States' Motion to Dismiss"

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

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

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

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

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

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

G. Federal Sovereign Immunity Doctrine conflicts with constitutional restrictions.

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

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

J. Traditional tools of statutory construction being unequivocally expressed.

FACT: Respondent reliance upon only two averments of mixed fact and law ("Compl. at ¶ 305." & ECF. No. 85 at 15) serves as a distraction. More importantly, the Respondent is creating within this theater of law, for the art of disruptions, disturbances or distractions, a war

of words. The Respondent, by misdirecting facts or manifesting a smoke screen for legalism wasteland has sanctioned the injection of injustices which gave birth to such real conflicts.

FACT: Respondent deliberate disruptions of facts and evolving departures from the law regarding matters of life, law or liberty of religious beliefs will not prevail. *See* Psalm at 18.

The Art of Duplicity

"Plaintiff contends that this institutionalized religion has the effect of endorsing, favoring, and promoting organized religions, which Plaintiff believes violates the Establishment and Free Exercise clauses of the Constitution."

FACT: The art of duplicity has a full range of deceitfulness in speech or conduct, as by speaking or acting in two different ways to different people concerning the same matter; re: double-dealing or two faced. *e.g.* a sworn oath of Office vs. discarding First Amendment claims.

FACT: The roots of duplicity meaning can be found in the initial "dupl-," from the Latin duplex, meaning twofold, or double. One can easily see how acting in double, or in two ways at different times, can be a way of deceiving or lying. The duplicitousness of human nature is evident in the widespread usage of other terms with similar roots.

FACT: Hypocrisy is the pretense of possessing qualities of sincerity, goodness, devotion, etc. and is considered by the Petitioner as the

genesis, consensus and principle element of duplicity.

FACT: In the discussion section of ECF No. 93, and within "c. Anti-Injunction Act" on page 7 the Respondent presents this perspective of the law, but not germane to this case, to wit:

> "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)."

FACT: The Respondent stated: "The Court cannot say that the United States is certain to lose on the merits." (Emphasis added)

FACT: Respondent's statement addressed an interesting point of law; but her duplicity dismisses Petitioner's case on the merits, while basing her decisions on (1) a. Sovereign Immunity, and (2) b. Declaratory Judgment Act, and (3) c. Anti-Injunction Act, and (4) d. Exhaustion of Administrative Remedies, and (5) e. *Bivens claim*. re ECF No 93.

FACT: Respondent's states, cites or advances her decision-making based on, in part, to wit:

"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., US. v. Lee*, 455 U.S. 252, 260 (1982)."

LAW: *Id* at 455 U.S. 252, 260 (1982), in pertinent part:

Unlike the situation presented in *Wisconsin v. Yoder*, *supra*, it would be difficult to accommodate the comprehensive social security system with myriad exceptions flowing from a wide variety of religious beliefs. The obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes; the difference—in theory at least—is that the social security tax revenues are segregated for use only in furtherance of the statutory program. There is no principled way, however, for purposes of this case, to distinguish between general taxes and those imposed under the Social Security Act.

FACT: Petitioner's case has nothing to do with social security system or one's obligation to pay the social security tax because of the religious beliefs of the Amish or being a self-employed Amish member. Simply this case relied upon does not involve or address matters of the U.S. government endorsing or advancing law respecting an establishment of religion.

FACT: This case law cited by Respondent has no relevant facts or similarly issues addressed by the Petitioner, simply because he has averred this issue of fact and law, respectively:

"Plaintiff has a First Amendment free exercise right of religious beliefs; thereby [believes] in

Taxology and [Taxism]; but conversely has a First Amendment Establishment right not to practice, partake or advance these established religions." [OVC/Petition] page 9, at ¶ 34 and [Revelation #1] at ¶ 98.

FACT: Respondent states, cites or advances her decision-making based on, in part, to wit:

"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 US. 378, 394 (1990)."

LAW: *Id* at 493 U.S. 378, 394 (1990), in pertinent part:

The issue presented, therefore, is whether the imposition of sales and use tax liability in this case on appellant results in "excessive" involvement between appellant and the State and "continuing surveillance leading to an impermissible degree of entanglement."

FACT: Petitioner's case has nothing to do with "the imposition of sales and use tax liability" or with "excessive" involvement between him and any State of the Union or for reasons of a:

"law requires retailers to pay a 6% sales tax on in-state sales of tangible personal property and to collect from state residents a 6% use tax on such property purchased outside the State."

FACT: *see* Appendix V, for the law and reasons why the Anti-Injunction Act is not controlling.

LAW: (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.

FACT: Respondent's perspective of the law, and not the practice of the law, as well as, the Real Party in Interest, genesis that a waiver exists is the hypocrisy of hopelessness. As such, the impossibility that Mr. Mokondean, an officer or employee of the United States, cannot not 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. (Emphasis added)

FACT: *see* Appendix W, The Merits of the Case and its Constitutional Claims to properly address the outright duplicity of this above statement. Respondent seeks to control the Petitioner's case and the arguments or legal premises. The Court should not accept this practice of law.

FACT: The sole matter presented before the Court concerned only the dismissal of the all counts and claims within an "amended complaint" Doc. No 44 and did not concern any the other notices, pleadings, declarations of the Petitioner or with striking the exhibits in the record.

FACT: Respondent's dim perspective of the law as a dark matter; increases the real gravity of duplicity, which cannot be weigh or measured by the unseen vacuum of legalism. The light of truth shall prevail, when these facts were averred by Petitioner in Doc. No. 44, to wit:

[Revelation #1]

I. Preliminary Statement-Nature of the Case & its Controversies

¶ 1) This action arises under the Establishment/ Free Exercise Clause of the First Amendment of the United States Constitution.

¶ 2) 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.

¶ 3) Where a given religion is strongly associated—or perceived to be associated, manifested by the said parties proselytizing or when engaged in numerous forms of religiously oriented expressions of their activities, it cultivates intrinsic and expressive associations.

¶ 4) The legal endorsements of the said parties proselytizing or when engaged in numerous forms of religiously oriented expressions of their activities through the Internal Revenue Code and its Federal Taxing Statutes ("IRC/FTS") has encouraged loyalty and given a hierarchy exclusive patronage of the national government involving the spheres of religious activity.

¶ 5) 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.

¶ 6) Plaintiff's [sincerely held religious beliefs] ("[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.

¶ 7) In light of forces and influences in the forums of dialogue shared or exercised in the eyes of its beholders, whether reserved or germane to said Parties' participation is an issue herein.

¶ 8) Whether openly or secretly in the affairs of any religious practice, Federal questions arise in the interplay between Establishment challenges and the free exercise clause and what is truly the right test(s) for evaluating such issues presented in this case and its controversies.

¶ 9) Plaintiff [believes] when a person believes in, practices or makes a proper return to the Internal Revenue Service ("IRS") and their path of life, beliefs and practices it manifests Worship of Argumentative Wealth, Words & Wants of Materialism.

¶ 10) Plaintiff [believes] Worship of Argumentative Wealth, Words & Wants of Materialism is manifested as a system of Worthship.

¶ 11) Defendants have manifested a proselytizing effect for a religion of reality, advanced by an IRS Path of Life to keep your Faith THEIRS.

¶ 12) Religious activities of Defendants' endorsements are advanced by an Organized Religion of THEIRS, *per se* as Taxology.

Inter alia, in [Revelation #1] the Petitioner has averred:

¶ 98) Plaintiff avers he has a First Amendment free exercise right of religious beliefs; thereby [believes] in Taxology and [Taxism]; but conversely has a First Amendment Establishment right not to practice, partake or advance these established religions.

¶ 99) Plaintiffs [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.

¶ 101) Plaintiff avers he 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.

¶ 102) 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.

[Revelation #2]

II. Jurisdiction and Venue

¶ 1) This action arises under the Establishment/ Free Exercise Clause of the First Amendment to the United States Constitution and presents federal questions within this Court's jurisdiction under Article III of the Constitution, with federal claims and the jurisdiction of this Court invoked pursuant to 28 U.S.C. § 1331.

¶ 2) This civil action is also founded upon the Constitution of the United States of America, or numerous Acts of Congress, or regulation of an executive department. As such, this Court has jurisdiction over Defendant United States of America under 28 U.S.C. § 1346(a)(2).

¶ 3) The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs state

claims arising under the Constitution of the State of Missouri because those claims are related to the federal claims and are part of a single case or controversy.

¶ 4) The Court may grant preliminary and permanent injunctive relief under Federal Rule of Civil Procedure 65 and by the inherent equitable powers of this Court. The Court may grant declaratory relief under Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 implemented through Rule 57 of the Federal Rules of Civil Procedure.

¶ 5) Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because: Defendants are a governmental entity located in this district; and a substantial part of the events or omissions giving rise to the claims occurred in this district or will continue to occur in this district; with Defendants performing their official duties in, and with Plaintiff residing in and has a dwelling in this judicial district.

¶ 6) Divisional venue is proper in the Eastern Division because the events leading to the claim for relief arose in the County of Saint Louis, Missouri, E.D. Mo. L.R. 2.07 (A)(1) and (B)(1).

[Revelation #3]

III. The Parties

s¶ 1) Plaintiff, TERRY LEE HINDS, born on September 11, 1955, is a "national born" Citizen of the United States of America and a legal Citizen of the State Missouri pursuant to the U.S. Constitution and Constitution of the State of Missouri and a person who pays or is subject to federal internal revenue taxes; and state or local taxes.

¶ 2) Plaintiff lawful maintains these types of legal status or citizenships are a constitutional right. The statutes conferring citizenship in Title 8 of the U.S. Code are a privilege granted. Plaintiff existing with citizenship status, not as a customer or other status of the Defendants.

¶ 3) Plaintiff was exercising his U.S. & Missouri Constitutional rights, privileges & immunities during the acts, policies, practices, customs, procedures & events set forth herein. Plaintiff is a legal resident of the State of Missouri and is a registered voter in St. Louis County for over the past 30 years. Plaintiff's domicile is at or home address is 438 Leicester Square Drive Ballwin, Missouri 63021.

4) Plaintiff, is proceeding as a *pro se* litigant pursuant to 28 U.S.C. § 1654 which provides: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Plaintiff is freely exercising a right to Petition herein.

¶ 5) Plaintiff avers he is a religious Plaintiff who deeply holds very genuine or "[sincerely held religious beliefs]" (hereinafter "[believes]") and who practices religion over non-religion as set forth in this [OVC] and deprived of [LLP] subject to the current case or controversies.

¶ 6) The Plaintiff avers he is also a spiritual & moral Plaintiff who exercises his sacred right of "[conscience]" (hereinafter "[conscience]") entailing spiritual, ethical, and moral beliefs that dictates

conformity to what one considers to be correct, right, or morally good for his [LLP], this Nation or the World he currently lives in or for the World within his next life.

Inter alia, in [Revelation #3] the Petitioner has averred:

¶ 14) Defendants, "UNITED STATES" GOVERNMENT at all times relevant to this complaint is ultimately responsible for the actions, conduct, events and inactions alleged herein; existing as the system of government for UNITED STATES OF AMERICA (the "United States"), which is a sovereign and body politic.

¶ 15) Defendants, "UNITED STATES" GOVERNMENT are within the legal jurisdiction of the "United States" with its principle place of business in Washington D.C.

¶ 16) Defendants, the "United States" is defined by 28 USC 3002 (15) "United States" means—(A) a Federal corporation; (B) an agency, department, commission, board, or other entity of the United States; or (C) an instrumentality of the United States.

¶ 17) "UNITED STATES" GOVERNMENT pursuant to 5 U.S.C. § 101 (Government Organization and Employees) has 15 Executive Departments, with The Department of the Treasury, The Department of Justice and The Department of Commerce, and Department of Labor actions or inactions being challenged.

¶ 18) Defendants, "UNITED STATES" GOVERNMENT refers to the "United States" system of government or any agency, entity, commission, service,

bureau, office or instrumentality thereof, including without limitation the Internal Revenue Service and the IRS regardless of their past or current status or titles.

[Revelation #4]

IV. Law at Issue and Legal Framework
Section A–United States Supreme Court Doctrines & Related Tests or Law

¶ 1) Plaintiff avers he has a lawful right to rely on the guarantees and protections set forth in Exhibit A-#1 through Exhibit A-#11 with the confidence that the existing government or its authorities cannot take away established rights, privileges or immunities with impunity or without the due process of law.

Inter alia, in [Revelation #4] the Petitioner has averred:

¶ 13) Plaintiff's proposed the Doctrine of Operative Facts in the Rule of Law germane in this case, more particularly described in Exhibit A-#12 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

[Revelation #5]

IV. Law at Issue and Legal Framework
Section B–U.S. Constitutional Provisions & germane Amendments at issue in this Case

¶ 1) Plaintiff avers The First Amendment mandates: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition the Government for a redress of grievances." more particularly described in Exhibit B-#1 attached to Plaintiff's Exhibit List (Doc. No.3) and incorporated by reference as if fully set forth herein.

¶ 2) Plaintiff avers The Due Process of Fifth Amendment which holds in part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ", more particularly described in Exhibit B-#2 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

¶ 3) Plaintiff avers The Ninth Amendment of Unenumerated rights of which holds: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." more particularly described in Exhibit B-#3 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

Inter alia, in [Revelation #5] the Petitioner has averred:

¶ 7) Plaintiff avers Article VI, Clause 2 mandates: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." The Supremacy Clause of the United States Constitution is more particularly described in Exhibit B-#7 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

[Revelation #6]

IV. Law at Issue and Legal Framework Section C–Plaintiff's Quintessential Rights of [Controlling Legal Principles] ("[CLP]")

¶ 1) Plaintiff's [conscience] dictates as the architect of his [LLP]; he knows what is to come by the principle on which it is built. Plaintiff's [conscience] dictates free exercise principles as set forth in [OVC] and declares he has a First Amendment Quintessential Right to [CLP].

¶ 2) [CLP] consist of United States Supreme Court doctrines, decisions, court applied tests, requirements & case law that the Plaintiff utilizes to help form his personal constitution which was built upon the foundational cornerstone of who created reason, not religion; "Jesus Christ Himself as the Chief cornerstone" of One Nation Under God established as "IN GOD WE TRUST".

¶ 3) Plaintiff's personal constitution has determined and dictates he has a free exercise First Amendment Quintessential Right to [CLP] as set forth in *Martin v. Hunter's Lessee*, 14 U.S. 1 Wheat. 304 304 (1816); more particularly described in Exhibit C-#1 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

Inter alia, in [Revelation #6] the Petitioner has averred:

¶ 98) Plaintiff's personal constitution has determined and dictates he has a free exercise First Amendment Quintessential Right to [CLP] as set forth in Our Decision with God-given unalienable

rights; more particularly described in Exhibit C-#96 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

[Revelation #7]

IV. Law at Issue and Legal Framework
Section D–An Intersection of Church and State-Personal Constitution & U.S. Constitution

¶ 1) Plaintiff's personal constitution in pursuant of his [LLP] has established legal evidence of reason, not of a religion through Exhibit D-#1, Justice—Equality—Service—Unity—Sacrifice; more particularly described in Exhibit D-#1 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

¶ 2) Plaintiff's personal constitution in pursuant of his [LLP] has established legal evidence of reason, not of a religion through Exhibit D-#2, Separation of Powers Doctrine (a system of checks and balances); more particularly described in Exhibit D-#2 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

Inter alia, in [Revelation #7] the Petitioner has averred:

¶ 30) Plaintiff's personal constitution in pursuant of his [LLP] has established legal evidence of reason, and American Civil Religion through Exhibit D-#30, Intelligent Design of Civil Religion; more particularly described in Exhibit D-#30 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

¶ 31) Plaintiff's personal constitution in pursuant of his [LLP] has established legal evidence of reason, and American Civil Religion through Exhibit D-#31, The Intersection of Church and State/Our Church of Greater Reality; more particularly described in Exhibit D-#31 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

¶ 32) Plaintiff's personal constitution in pursuant of his [LLP] has established legal evidence of reason, and American Civil Religion through Exhibit D-#32, [Commanding Heights] E Pluribus Unum (Latin for "Out of many, one"); more particularly described in Exhibit D-#32 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

¶ 33) Plaintiff's personal constitution in pursuant of his [LLP] has established legal evidence of reason, and not of any religion through Exhibit D-#33, The Intersection of Church and State—A Threshold for Understanding; more particularly described in Exhibit D-#33 attached to Plaintiff's Exhibit List (Doc. No. 3) and incorporated by reference as if fully set forth herein.

The Art of Discredit

"He seeks declaratory and injunctive relief, including a permanent injunction enjoining the tax code from having any legal effect, as well as nominal damages."

FACT: Respondent's art of discredit is a powerful tool or vital instrument for engines of injustice.

Proof: The above captioned statement of the Respondent, reveals the difference between tool and maker, especially when Petitioner's remarks were taken out of context in an effort to discredit him.

FACT: The Respondent, by Court Order ECF No. 55 decreed:

> IT IS FURTHER ORDERED that the Clerk of the Court will change the "Cause" listed on the docket sheet to reflect that the matter is brought pursuant to § 1983.

FACT: Petitioner never asserted, averred or even alleged that Petitioner's case or its controversies concerns a matter of 42 U.S.C. § 1981 or 42 U.S.C. § 1983. *See* Petitioner's filings, passim.

FACT: The power to make assumptions widely held, or on a one-to-one person basis, serve as a reliable tool to affect fruitfully another's credibility, if not, to devalue or undermining the claims of this lawsuit. This is self-evident within Respondent's ECF No. 93.

FACT: Respondent, while clothed with immense power censured & espoused in ECF No. 93:

> "Plaintiff challenges the Government's "new priesthood for [the] religious doctrine of legalism." ECF No. 85 at 15." (*Id.* at page 3, last paragraph).
>
> "He also contends that the sovereign immunity doctrine is a legal fiction and conflicts with the Constitution. ECF No. 92." (*Id.* at page 3 last paragraph into page 4).

> "To the extent Plaintiff seeks monetary damages relating to the assessment of taxes, his claim is again barred by sovereign immunity because the United States has not waived its sovereign immunity for Bivens-type constitutional tort claims alleging damages caused by the government's violation of the plaintiffs constitutional rights. *Phelps v. U.S.*, 15 F.3d 735, 739 (8th Cir. 1994); *Olson v. Soc. Sec. Admin.*, 243 F. Supp. 3d 1037, 1053-54 (D.N.D. 2017)." (*Id.* page 9, last para.)

FACT: These above statements of Respondent <u>are not true</u>. Petitioner's remarks or claims were taken out of context in an effort to discredit him and devalue or undermining the claims of this lawsuit. These statements are manufactured arguments or a premise of the Respondent.

FACT: Logically, an argument is held in discredit if the underlying premise is found, "So severely in error that there is cause to remove the argument from the proceedings because of its prejudicial context and application . . . ". This is the real intent of the Respondent.

FACT: Petitioner has witnessed as a police officer, and now within this case, the massive tools of government and its very elaborate mechanisms of law, which have unfortunately developed an irrefutable <u>environment of fear, frustration and fate</u> leaving the entire needs of our legal system of commerce, customers, citizens or any person to fall victim to the same immutable laws. The wheels of Justice

& its arsenal of free people demand faith in the law.

FAITH: Our own faith, legal abilities and moral reasoning of a Nation depends on how we make or use the tools that are set before us, to extend our abilities, to further our reach, and fulfill our aspirations. However, we must never let them define us as a nation or as free people. For if there is no difference between tool and maker, then who will be left to build our world? Petitioner does not take credit for that thought, nor is he discredited by its works.

FACT: The use of deception and its effects . . . is upholding a principle as cruel as war itself.

FACTS: Respondent & the Real Party in Interest are engaged in a fateful war of words with the the Petitioner, whereas the arguments of law or fact are reduced to casualty of causation or formalities, not the claims or rights of constitutional injuries addressed. This litigation has advanced itself as a battlefield for the [Commanding Heights] with the Real Party in Interest demanding, and Respondent advancing Federal Sovereign Immunity Doctrine as a Dominion Theology for a Nation and its subject, because the King can do no wrong.

FACT: This litigation is about free exercise claims and rights and establishment clause challenges. It is not about Federal Sovereign Immunity Doctrine as a Dominion Theology for a Nation and its subject, because this "One Nation under God", and a U.S. Constitution and 50

State Constitutions have established citizens, not subjects to be enslaved for the realm of the IRS.

FACT: Petitioner set forth & seeks "DECLARATORY JUDGEMENT, INJUNCTIVE AND OTHER APPROPRIATE RELIEF IN THIS PETITION FOR QUINTESSENTIAL RIGHTS OF THE FIRST AMENDMENT". Petitioner filed an Original Verified Complaint existing as pure speech of religious beliefs and of the rights of conscience. This petition speech is afforded full First Amendment protections, under the law, with highest strict scrutiny standards applied as its guardian.

FACT: Respondent in this case, is acting as a tool of government, and as the maker of the Real Party in Interest's legal arguments while advancing their premises as lead counsel for the defense, suddenly becomes apparent when looking at this single statement, to wit:

> "He also contends that the sovereign immunity doctrine is a legal fiction and conflicts with the Constitution. ECF No. 92."

FACT: Real Party in Interest raised no objection or made a request or rely to Petitioner's Doc. No. 92. However, it was not necessary when a single statement made by the Respondent, discredits Doc. No. 92 under the sole premise "that the sovereign immunity doctrine is a legal fiction". Petitioner never made this claim or offer it as a legal premise or argument.

FACT: Petitioner did make this statement in Doc. No. 92, page 1, in pertinent part, to wit:

The Court's doctrine requiring a waiver of Federal sovereign immunity versus Plaintiffs 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." (Emphasis added)

FACT: Petitioner did make this legal premise in Doc. No. 92, page 5, in pertinent part, to wit:

II. Plaintiff's Germane Response in Opposition to Defendants' "Reply in Support of United States' Motion to Dismiss"

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

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:

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"

FACT: Petitioner did make this legal premise in Doc. No. 92, page 6, in pertinent part, to wit:

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". 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."

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.

FACT: Petitioner did make this legal argument in Doc. No. 92, page 9, in pertinent part, to wit:

D. This Suit Concerns Constitutional Law & its Rights; Not Common Law or Contract Rights

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.*

FACT: Petitioner did make this legal argument in Doc. No. 92, page 11, in pertinent part, to wit:

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." 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.

FACT: Petitioner did make this legal premise in Doc. No. 92, page 15, in pertinent part, to wit:

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 the tyranny of medieval doctrines or worst the Defendants are allowed to becomes a lawbreaker or an indispensable party.

FACT: The Real Party in Interest 12b(1) & 12b(6) motion seeks dismissing "all counts and claims for relief in Plaintiff's amended complaint" ECF No. 82. But nevertheless, within a debase belief of a different thought presented in their legal brief, ECF No. 86, command, in part:

> "Plaintiff provides no authority to the contrary, and his suit must therefore be dismissed for failure to establish a waiver of sovereign immunity." (Emphasis added)

FACT: As Petitioner stated on page 1 of this petition, to wit:

> 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 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.

FACT: Respondent did not conduct a proper judicial review or strict scrutiny. Append. B, B-1.

LAW: Respondent's clear and prejudicial error of law and fact as a clear abuse of discretion are

> so self-evident or indisputable that further facts are unnecessary, but are available, or as parts of the record that may be essential to understand the matters set forth in the petition.

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.

FACTS OF &/OR MALFEASANCE OF FUNDAMENTAL ERROR (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(Facts Necessary to Understand Petitions)
or as parts of the record that may be essential to understand the matters set forth in the petition

FACT: A fundamental error is a type of legal or judicial error.

Plain Error of Law:

Clear error that is so obvious and substantial that an appellate court should address the problem in order to ensure the justice system is not eroded. The appellate court should review and rectify a plain error even if neither party may have properly preserved the issue by objecting to the error at the time the error was made or raising the issue in the appeal.

FACT: On 12/11/2017 Respondent issued MEMORANDUM AND ORDER ECF No. 93, thereby encompassing her entire decision-making or discretion therein. This advance a clear error that is so obvious and substantial of a plain error so prejudicial by an illegitimate or a bias:

Conclusion

Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss of Defendant United States [ECF No. 82] is

GRANTED, and the case is dismissed without prejudice.

IT IS FURTHER ORDERED that all pending motions are DENIED as moot. A separate Order of Dismissal shall accompany this Memorandum and Order.

FACT: Contemporaneously, Respondent's MEMORANDUM AND ORDER ECF No. 93, and its CONCLUSION was premised without a reference, criterion or a section known as:

Standards of Review &/or Legal Standard

FACT: Furthermore, this MEMORANDUM AND ORDER ECF No. 93, and its CONCLUSION were premised without a vital or pertinent section known as:

Summary of Argument

FACT: Respondent circumvented Judiciary Act of 1789, SEC. 32., & the Court failed to "proceed and give judgment according as the right of the cause and matter in law shall appear unto them." Therefore, the Respondent usurping the constitutional authority of the Congress.

FACT: Respondent did not fittingly address Petitioner's arguments regarding the legal issues or premises presented in favor of ambiguity, a lack of judicial review or her *bias dictum*.

FACT: Additionally, Respondent's ECF No. 93 never provides any notice or her intent of what Federal law or Rule of Fed. R. Civ. P., the "motion to dismiss" was premised upon.

FACT: This ambiguity & mootness alike fear & fate are powerful combinations of subterfuge.

FACT: Ambiguity is a powerful weapon in the arsenal of deception. Especially, when practiced by duplicity, when Respondent refused to faithfully fulfill her official duties, or sworn oath to uphold the U.S. Constitution & the laws made in pursuant thereof for acts of subterfuge.

FACT: In the "DISCUSSION" section of MEMORANDUM AND ORDER ECF No. 93, what is noticeability absent, facial wanting or even absent-minded is this legal fact or issue:

> A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may be either a "facial" challenge based on the face of the pleadings, or a "factual" challenge, in which the court considers matters outside the pleadings. *See Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993); *Osborn v. United States*, 918 F.2d 724, 729, n. 6 (8th Cir. 1990); *C.S. ex rel. Scott v. Mo. State Bd. of Educ.*, 656 F. Supp. 2d 1007, 1011 (E.D. Mo. 2009).

FACT: Here in their motion, the Real Party in Interest's challenge is based on the face of the pleadings and is therefore a facial attack, ECF No. 83, to wit:

> In a facial challenge such as this, "all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Id.* at page 4, Argument

FACT: It is unknown, if Respondent's decision is "facial" or a "factual" approach as the Court considers matters outside the pleadings:

> Plaintiff contends that by virtue of the Tax Code, the Government has established an institutionalized faith and religion of taxism. Compl. at ¶ 305.
>
> Specifically, Plaintiff challenges the Government's "new priesthood for [the] religious doctrine of legalism." ECF No. 85 at 15.

FACT: Pursuant to the Court Orders, Petitioner, seeking what constitutes an amended complaint did file 29 "Other Amendments" as notice pleadings (Doc. Nos. 28, 33, 34, 44, 45.)

FACT: Respondent failed to address: *Langford v. United States*, 101 U.S. 341, 343-344 (1879)

LAW: A fundamental error of legal or judicial error occurred when Respondent ignored, elected, or refused to consider and rectify, legal issues presented, only to dismiss later as moot, Petitioner's motions concerning matters of procedural due process of law, *inter alia*.

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.

GROUNDS FOR FUNDAMENTAL ERROR, POINTS AND AUTHORITIES (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(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

[1] Montesquieu, Baron Charles de, The Spirit of the Laws

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

---

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

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.

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

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

constitutionality of assessing and collecting taxes from Plaintiff. *Ginter*, 815 F. Supp. at 1293; *Davis v. US.*, 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. US.*, 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);

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 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.)

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 Plaintiffs 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 threating 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.

FACTS OF &/OR MALFEASANCE OF REVERSIBLE ERROR (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(Facts Necessary to Understand Petitions)
or as parts of the record that may be essential to understand the matters set forth in the petition

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Memorandum and Order (ECF No. 55) Issued July 11, 2017 By Respondent

ISSUE PRESENTED: in support of a Writ of Certiorari &/or a Writ of Prohibition

FACT: The Respondent stricken from the record, Petitioner's Doc. Nos. 2 & 3, however, the Real Party in Interest's 12(f) motion (ECF No. 51) made no mention of these filings, nor attempted to strike the facts or evidence entered into the record on 02/16/2017.

LAW: The Court erred, when the Respondent made a wrongful assumption of the existing record pertaining to ECF No. 8, whereby Doc. No. 1 was stricken from the record on 02/23/17.

Real Party in Interest:

FACT: On June 29, 2017 the Real Party in Interest filed (ECF No. 51) a 12(f) motion to strike Petitioner's notice pleadings (Doc. Nos. 44, 45) or, in the Alternative, for an Extension of Time.

FACT: "Defendant argues that Plaintiff Terry Lee Hinds' June 14 Filings (ECF Nos. 44 and 45), if construed as an amended complaint, should be stricken for failure to comply with Rule 8."

FACT: This party also, simultaneously filed a Memorandum in Support (ECF No. 52) but failed to [p]roperly incorporate this orphan brief into their motion. (ECF No. 51).

Petitioner:

FACT: On July 5th 2017 Petitioner gave notice for leave and filed (Doc. No. 53) in opposition to the pending 12(f) Motions to Strike, or in the Alternative, for an Extension of Time, captioned as:

> PLAINTIFF'S NOTICE & OPPOSITION TO DEFENDANTS' REQUEST FOR A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P.–RULE 6(b)(1) OR, IN THE ALTERNATIVE, GRANT LEAVE FOR PLAINTIFF TO FILE A COMPREHENSIVE BRIEF OF LAW & REASONS WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P.–RULE 6(b)(1)

FACT: Petitioner simultaneously filed on July 5th 2017 (Doc. No. 54) raising a legal request, & response to DEFENDANTS' MOTION TO STRIKE "June 14 Filings" captioned as:

> PLAINTIFF'S REQUEST & OPPOSITION TO DEFENDANTS' MOTION TO STRIKE "June 14 Filings" Pursuant to Federal Rules of Civil Procedure, Rule 12(f)

FACT: Petitioner, simultaneously filed with the Court, MEMORANDUM OF LAW AND BRIEF IN SUPPORT OF said filings set forth on the Court's docket sheet as (Doc. No. 54 attachments #1).

FACT: Petitioner, simultaneously filed with the Court, a NOTICE OF FILING EXHIBIT IN Support of (Doc. No. 54) set forth on Court's docket sheet as (Doc. No. 54 attachments #2).

FACT: Attached to the NOTICE OF FILING EXHIBIT IN Support of (Doc. No. 54) and entered into the record was Exhibit #U27 comprising 12 U.S. Supreme Court decisions regarding "notice pleadings" to assist the Court with the proper precedent and the law, Respondent shall rely upon.

Respondent:

FACT: The Respondent issued a decision (ECF No. 55) regarding United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of Time. Re: ECF No. 51.

FACT: The Respondent issued the following Orders: Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting an Amended Complaint (ECF No. 44) is construed as an amended complaint.

IT IS FURTHER ORDERED that Defendant United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of time (ECF

No. 51) is GRANTED IN PART and DENIED IN PART. Defendant is ordered to file a responsive pleading within sixty (60) days of this Order.

IT IS FURTHER ORDERED that "Plaintiff's First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff's Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6)" (ECF No. 38) is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk of the Court will change the "Cause" listed on the docket sheet to reflect that the matter is brought pursuant to § 1983.

IT IS FINALLY ORDERED that the Clerk of Court will mail a blank civil cover sheet and civil nature of suit code descriptions sheet to Plaintiff.

FACT: The Respondent, erred as a matter of law when she stated and held, to wit:

> Plaintiff argues that Rule 8 does not authorize the Court to construe the June 14 Filings as an amended complaint. However, "captions do not control" a filing if the body of that filing presents a claim. *See Estate of Snyder v. Julian*, 789 F.3d 883, 886 (8th Cir. 2015).
>
> (ECF No. 55, page 2, at 2nd paragraph)

FACT: The Respondent, erred as a matter of law, manifesting an Amended Complaint being limited to and decided as (ECF No. 44) being construed as an "amended complaint".

FACT: The Respondent, erred as a matter of law, by Ordering that the Clerk of the Court will

change the "Cause" listed on the docket sheet to reflect that the matter is brought pursuant to § 1983.

FACT: The Respondent, erred as a matter of law, when she decided that (ECF No. 38) should be DENIED as moot, failing to uphold due process of law and endorsing improper or wrongful acts conduct within the procedures of this case.

Petitioner:

FACT: On July 24th 2017, Petitioner appropriately or precisely addressed certain issues and to (1) rectify clear errors of law, (2) reversible or manifested errors of law or fact and (3) prevent manifest injustice, as well as, (4) others malfeasance issues, thereby filed (Doc. No. 56) captioned as:

> PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S RULING OF JULY 11, 2017 to correct clear errors of law and prevent manifest injustice under Rule 59(e), in conjunction with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6) OR, IN THE ALTERNATIVE, Federal Rule of Civil Procedure Rule 54(a)(b) and Rule 46-Objecting to a Ruling or Order

Petitioner contemporaneously filed (Doc. No. 57) as a Memorandum of Law and Brief in support thereof and attached thereto.

FACT: Petitioner presented to the Court, vital premises, argument and points of law within (Doc. No. 57) on page 13, 14, so Respondent's

> legal determination of the law would conform with the facts and law within this case, to wit:

An "amended complaint" practice is a misapplication, mistake of law or a manifest error of law or fact. Rule 15(a)(2) "Other Amendments" governs "notice pleadings" in furtherance of a compelling governmental interest using the least restrictive means of furthering that compelling governmental interest. But according to the Court, [OCV/ Petition] does not exist. A complaint must exist before "Other Amendments" can take effect in application to the legal process. Pursuant to Fed. R. Civ. P., Rule 15(a):

> "Amendments Before Trial" with Rule 15(2) endorses "Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

Defendants have made a claim in their orphan brief that "notice pleadings" aka other amendments before trial is the same as "June 14 Filings". The Court's [July 11, 2017 Ruling] manifested this:

> "Plaintiff argues that Rule 8 does not authorize the Court to construe the June 14 Filings as an amended complaint. However, 'captions do not control' a filing if the body of that filing presents a claim. *See Estate of Snyder v. Julian*, 789 F.3d 883, 886 (8th Cir. 2015)."
>
> "IT IS HEREBY ORDERED that Plaintiff's Hybrid Pleading Making a Conscientious Effort to Comply with Court's Orders Manifesting

> an Amended Complaint (ECF No. 44) is construed as an amended complaint."
>
> The misapplication or mistake of law is clear about 'captions do not control' when understanding that "notice pleadings" aka other amendments before trial, is not the same as or in support of a "post-trial motion" when "'captions do not control' if the body of the motion or memorandum presents a claim."

FACT: Petitioner presented to the Court, vital premises, argument and points of law within (Doc. No. 57) on page 14, so Respondent could rectify or reconsider the Order thus conform with the facts and the law within this case, to wit:

The Court held *Estate of Snyder v. Julian*, 789 F.3d 883, 886 (8th Cir. 2015):

> "A post-trial motion "cannot be measured by [ ] unexpressed intention or wants," and a motion to set aside a verdict and for a new trial is not sufficient to satisfy the rule requiring a motion for judgment as a matter of law. *Johnson v. New York, N.H., & H.R. Co.*, 344 U.S. 48, 51 (1952). At the same time, however, "[t]echnical precision is not necessary in stating grounds for the motion so long as the trial court is aware of the movant's position," *Rockport Pharmacy, Inc. v. Digital Simplistics, Inc.*, 53 F.3d 195, 197 (8th Cir.1995) (internal quotation omitted), and "captions do not control" if the body of the motion or memorandum presents a claim. *Cosgrove v. Bartolotta*, 150 F.3d 729, 732 (7th Cir.1998); *see Elm Ridge Exploration Co. v. Engle*, 721 F.3d 1199, 1220 (10th Cir.2013)." (Emphasis added)

FACT: Petitioner presented to the Court, in (Doc. No. 57) on page 14, so that Respondent's legal determination of the law would conform with the facts and law within this case, to wit:

Plaintiff's argues notice pleadings (Doc. No. 44 and 45) are not a motion or memorandum, nor are they "June 14 Filings" rather present establishment/exercise clause claims

FACT: Respondent misread the law and misplaced facts, because this case was a pre-trial status; with notice pleadings (Doc. Nos. 44, 45) not the same as the body of a motion or memorandum.

FACT: Petitioner presented to the Court, in (Doc. No. 57) "Seven Primary Arguments as Issues Presented for Reconsideration, to Rectify and Relief"; so that Respondent could rectify or reconsider the Order thus conform with the facts and the law within this case, to wit:

(A/1): The Bad faith in Crafty Bespeaks Defenses for Extension of time, *inter alia*

(A/2): "As a final matter" a Standard of Moot vs. a Clear Abuse of Discretion

(A/3): This Court as the adversary, not as the arbiter for justice

(A/4): 'Amended Complaint' is [To LIVE as EVIL]

(A/5): Misapplication, mistake of law or a manifest error of law or fact

(A/6): The Merits, a Lack of Due Process and stricken from the record

(A/7): Notice Pleadings with the "Religiosity of Facts" 1 to 7. (ECF No. 45.)

FACT: On August 18, 2017, Respondent made a decision of *bias dictum* and of unbridled power that Petitioner's legal premises &/or arguments presented were moot and issued Order in (ECF No. 66) "that Plaintiff's motion to reconsider (ECF No. 56) is DENIED."

FACT: Respondent did not response to or address Petitioner's "Seven Primary Arguments as Issues Presented for Reconsideration, to Rectify and Relief".

LAW: The District Court err as a matter of law, by failing to analyze or apply the controlling law correctly; when Respondent reaches a decision so arbitrary & unreasonable as to amount to a clear and prejudicial error of law; thus, manifesting irreparable harm with no adequate remedy by way of appeal for "judicial enforcement of established rights" or *ultra vires relief* with constitutionally protected interests or essential rights that merits enforcement or protection by law.

An Act of Reversible Error

FACT: Respondent professed, in part, issued in (ECF No. 55):

> "This matter comes before the Court on Defendant United States Government's Motion to Strike Filings or, in the Alternative, for an Extension of Time. ECF No. 51. In its motion, Defendant argues that Plaintiff Terry Lee Hinds' June 14 Filings (ECF Nos. 44 and 45), if construed as an

amended complaint, should be stricken for failure to comply with Rule 8. In the alternative, if the Court were to construe the June 14 Filings as an amended complaint, Defendant requests 60 days to file responsive pleadings. Plaintiff opposes the motion. ECF No. 54-1. The Court will deny in part and grant in part Defendant's motion." (Emphasis added).

Egregious Act for Reversible Error:

"Defendant argues that Plaintiff Terry Lee Hinds' June 14 Filings (ECF Nos. 44 and 45), if construed as an amended complaint, should be stricken for failure to comply with Rule 8." but nevertheless, the Respondent striking the merits of Petitioner's case by excluding evidence which Petitioner was entitled to have admitted, (Doc. Nos. 2, 3.) thereby manifesting reversible error.

Bias Dictum and Unbridled Power–ECF No. 55

FACT: Respondent professed, in part:

"However, the Court notes that Plaintiff's originally-filed complaint, brief in support, and exhibit list (ECF Nos. 1-3) have been stricken by the Court. ECF No. 8. As a result, Plaintiff cannot incorporate those filings into his amended complaint. Therefore, to the extent the amended complaint references Plaintiff's previously-filed complaint, brief and support, and exhibits, those provisions will be stricken." *Id.* at page 2, last paragraph.

Fatal Fact: The Respondent, committed a plain error, when professing:

"the Court notes that Plaintiff's originally-filed complaint, brief in support, and exhibit list (ECF Nos. 1-3) have been stricken by the Court. ECF No. 8."

FACT: The record plainly reveals that Magistrate Judge JOHN BODENHAUSEN had stricken only the complaint (Doc. No. 1) not the brief in support (Doc. No. 2) or the exhibits and its list entered into the record (Doc. No. 3) when originally filed on 02/16/2017.

As a Clear Abuse of Discretion

FACT: The Respondent did not address Petitioner's objections, arguments or the many legal issues presented in (Doc. Nos. 53, 54.).

FACT: The Respondent, as an act of unbridled power, did issue an Order of fundamental error:

IT IS FURTHER ORDERED that "Plaintiff's First Motion to Review, Alter, Amend, or Vacate Orders Pursuant to Plaintiff's Free Exercise of Pure Speech of Religious Beliefs and/or, in the Alternative, For Relief from Orders Pursuant to Fed. R. Civ. P. Rule 60(b)(6)" (ECF No. 38) is DENIED as moot. *Id.* at page 4, 3rd order.

FACT: The issues and matters presented required substantive & procedural due process of law & with judicial review of strict scrutiny standard.

Prejudicial Error of Law and Fact

FACT: The Respondent, clearly abused her discretion, by violating Fed. R. Civ. P., Rule 8(e) (CONSTRUING PLEADINGS. Pleadings must be

construed so as to do justice.) with (Doc. No. 44) or in her decision not to incorporate (Doc. No. 45) when presented by Petitioner and was objected to by Real Party in Interest *via* their motion, ECF. No 51.

FACT: Petitioner's had a legal right (Judiciary Act 1789, SEC. 32. & Fed. R. Civ. P., Rule 15(a)(2) to incorporate "Other Amendments" (Doc. Nos. 28, 33, 34, 45) to manifest as an amended complaint. The Court Ordered Petitioner to file an amended complaint, without guidance.

FACT: The Respondent, alters the law, Rule 8(a) thereby to assist the Real Party in Interest, at some point or later date, if necessary, by declaring:

> Although Plaintiff's Hybrid Pleading does not comply with the Court's orders to file a short, plain statement, the Court finds that Plaintiff has sufficiently pled violations of his First Amendment rights to put Defendant on notice of his claims and allow Defendant to file a responsive pleading.[1] (Emphasis added)

FACT: The Real Party in Interest's 12(f) motion concerned only "June 14 Filings" (ECF Nos. 44, 45) not (Doc. No. 1) nor the brief in support (Doc. No. 2) nor the exhibits entered into the record (Doc. No. 3) originally filed by Petitioner 02/16/2017.

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[1] ECF No. 44 and its attachments (Revelations Nos. 1 through 6) set forth jurisdiction, venue, parties, and laws at issue.

Egregious fact:

Fed. R. Civ. P. do not define or what shall constitute an "amended complaint".

Egregious fact:

Real Party in Interest used there 12(f) motion in lieu of, but in legal reality was a motion for summary judgement.

Egregious fact:

Respondent totally ignored the legal issues and facts of (Doc. No. 45) a notice pleading and discounted or disregarded, (by not addressing in full Petitioner's arguments, objections), or worse overlooking controlling law raised in (Doc. No. 46, 49, 53, 54.)

Controlling Law:

- Required Standard of Review: Fed. R. Civ. P. Rule 8(e) CONSTRUING PLEADINGS.
- Application of Law: Judiciary Act of 1789, *passim* in SEC 32.
- Applicable Rules: Fed. R. Civ. P. Rule 15(a)(2) "Other Amendments"
- Rule 12(d) Result of Presenting Matters Outside the Pleading
- U.S. Supreme Court Precedents on "notice pleadings": Entered into the record, set forth in (Doc. No. 54) Exhibit U#27
- Court Doctrine: Unconstitutional Conditions Doctrine, The Doctrine of Substantive Due Process and the Doctrine of Procedural Due Process of Law

Malfeasance Issue #1:

a defect of justice committed with Petitioner's motion (Doc. No. 54) to wit:

"Wherefore, premises considered and for the germane facts herein, the Plaintiff respectfully request legal and constitutional relief from Defendants' "Motion to Strike Filings or, in the Alternative, for an Extension of Time" (Doc. No. 51) pursuant to Federal Rules of Civil Procedure and within Plaintiff's legal and constitutional rights, with the Court issuing an Order that the Defendants' motion be stricken from the record, or in the alternative, denied or such other relief as the Court deems proper."

FACT: This motion was not granted, or worse, the legal premises &/or Petitioner's arguments are not properly nor fully addressed by the Court.

Malfeasance Issue #2:

a defect of justice committed with Petitioner's motion (Doc. No. 53) to wit:

"Plaintiff makes this request in accordance with U.S. Supreme Court due process doctrine and to maintain the appearance for fundamental fairness. Plaintiff also, requested the Court grant leave allowing the Plaintiff to prepare a legal brief that shall not exceed 60 pages in breath, to proper address DEFENDANTS SIXTY-DAY EXTENSION OF TIME." (*See* entire breath of motion)

FACT: This motion was not granted, or worse, the legal requests &/or Petitioner's premises are not properly nor fully addressed by the Court.

Malfeasance Issue #3:

FACT: Real Party in Interest's 12(f) motion being utilized as summary judgement or in lieu of Fed. R. Civ. P., Rule 56 Summary Judgment (a) Motion for Summary Judgment or Partial Summary Judgment

Malfeasance Issue #4:

The Court advancing a defect of justice, when the Local Court Rule 7-4.01 Motions and Memoranda decreed, in part: "No party shall file any motion, memorandum or brief which exceeds fifteen (15) numbered pages, exclusive of the signature page and attachments, without leave of Court."

This local rule, in First Amendment case only, or where the due process clause of Fifth Amendment comes into existence, is an unconditional condition, violating protected speech of pure speech and defeats the constitutional guaranine to protest, in a limited public forum and quarantines the constitutional right to petition, a branch of "United States" government, vital to due process of law

FACT: Petitioner's request and motion for leave (Doc. No. 54) was ignored by the Respondent's unbridled power, thereby, to work a manifest injustice. (Doc. No. 54) seeks, in part:

> GRANT LEAVE FOR PLAINTIFF TO FILE A COMPREHENSIVE BRIEF OF LAW & REASONS WHY THE COURT SHOULD NOT GRANT DEFENDANTS A SIXTY-DAY EXTENSION OF TIME PURSUANT TO FED. R. CIV. P.–RULE 6(b)(1)

FACT: [S]hould this Court believe that Petitioner's so-called "amended complaint" is somehow

deficient, the appropriate remedy is not to dismiss the case, but to allow Petitioner leave to file an "amended complaint" or brief through the just power of a Writ of Certiorari.

LAW: In United States law, a reversible error is an error of sufficient gravity to warrant reversal of a judgment on appeal. It is an error by the trier of law (judge), or the trier of fact (the jury, or the judge if it is a bench trial), or malfeasance by one of the trying attorneys, which results in an unfair trial. Prejudicial error: This kind of error is a mistake about the law or court procedures that causes substantial harm to the appellant. Prejudicial error can include things like mistakes made by the judge about the law, incorrect instructions given to the jury, and errors or misconduct by the lawyers or by the jury.

FACT: Respondent crossed these thresholds with impunity.

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.

ESSENTIAL RIGHTS AS FUNDAMENTAL RIGHTS OR OF UNALIENABLE RIGHTS (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(Facts Necessary to Understand Petitions)
or as parts of the record that may be essential to understand the matters set forth in the petition

Essential Rights as Fundamental Rights

Of the First Amendment these free exercise principles:

- Freedom to practice the establishment, an endorsement or proselytizing a religion.
- Freedom of religion, or for worship, or for the innate desire to create, or for Mankind's true creations of empathy, sacrifice, love or for the personal stake of our sacrifice for others.
- Freedom of religious beliefs and of choice or free from the religious beliefs of others.
- Freedom of speech, or to write, or to read, or freedom not to speak at all.
- Freedom of expressive conduct, to publish, or freedom of association or not to associate.
- Freedom of conscience or individual freedom of mind.
- Freedom to protest the color of law of governmental activities or unconstitutional conditions.

- Freedom to petition for "the sacred rights of mankind" or against a system for an intellectualism of indifference that advances [A Complacent Policy of Indifference to Evil] ("[To LIVE as EVIL]") or "to secure the perfect enjoyment of that great right of the common law, that a man']s house shall be his own castle, privileged against all civil and military intrusion."

Essential Rights of Unalienable Rights

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

"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." (Emphasis added) in pertinent part, Declaration of Independence, July 4, 1776.[1]

The essential rights of unalienable rights are the establishment and endorsed Quintessential Rights of the First Amendment ("[Commanding Heights]"), as unenumerated rights guaranteed under the Ninth Amendment of the U. S. Const. for American Civil Religion. *see* Appendixes J, T, U, Y.

"Plaintiff avers he has properly and legally established Quintessential Rights granted under the full protection or established protocols of the First Amendment as guaranteed by the Ninth Amendment to

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[1] 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.

United States Constitution and as sanctioned by [CLP]." *see* [OVC/Petition] ¶ 4024.

See Clerk of Court Office, Eastern District of Missouri stored in paper form for such Exhibits.

A FORUM FOR ACTIONS SUBJECT TO STRICT SCRUTINY STANDARD OF JUDICIAL REVIEW (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(Facts Necessary to Understand Petitions)
or as parts of the record that may be essential
to understand the matters set forth in the petition

FACT: Respondent's decision to exclude Petitioner's legal premises and arguments from her legal discussion in ECF. No. 93 is unreasonable, advancing viewpoint based discrimination in a forum for actions subject to strict scrutiny standard of judicial review.

FACT: Respondent' invidious vantage point, being an espoused perspective of the law and facts, and not within the practice of the law, is neither of a compelling government interest, forsaking First Amendment claims for reliefs or remedy sought, nor of a narrowly tailored legal reason for excluding Petitioner's viewpoints or of his sincerely held religious beliefs.

FACT: The record demonstrates beyond dispute, this bias dictum of Respondent's discretions to excluded Petitioner's presented facts, legal premises and arguments, manifests the dangers of censorship and the abridgment of our precious First Amendment freedoms or of liberty within the law, itself. Such departures were based on the content of the message provided.

FACT: These such departures, as listed herein above or vital departures from the law, favoring viewpoint-based discrimination with Doc. Nos. 1, 3, 28, 33, 34, 44, 45 or viewpoint-based restrictions with Doc. Nos. 69, 71, 73, 75, 92, as these documents were made in support of Doc. Nos. 44, 45. These activities of Respondent are facially unconstitutional, as applied.

LAW: "It is not merely the sporadic abuse of power by the censor, but the pervasive threat inherent in its very existence, that constitutes the danger to freedom of discussion." *See Thornhill v. Alabama*, 310 U.S. 88, 97 (1940).

FACT: Based on the Respondent's implementation and construction of the Memorandum and Order, ECF No. 93 and its Order of Dismissal, ECF No. 94; it simply can be said or seen that there are no articulated "Standards of Review" maintained in ECF No. 93 or in the Respondent's established practices of a "Legal Standard" in Petitioner's case.

FACT: Respondent's Memorandum and Order, ECF No. 93 failed to legally articulate and aborts or provide a measure for "Standards of Review". Respondent failed to set forth or uphold a known "Legal Standard" in ECF No. 94, thus, the Order of Dismissal is facially invalid.

FACT: The Court's forums, for public issue, as government speech is facially unconstitutional, when a forum for actions subject to strict scrutiny standard of judicial review is ignored or forsaken, or worse, accepted as the art of departures, disruptions, duplicity and discredit.

FACT: The ECF Nos. 93, 94 are unconstitutionally content based, because it requires that the Petitioner, in order to assess accurately the law administered; to envision the standard of review &/or espoused a perspective of the law as a measure of the law within ECF No. 93.

FACT: Petitioner is left to the unbridled discretion of the Respondent, who is not required or is currently compelled to rely on objective legal standards or provide any explanation for her decision under the law.

LAW: "The First Amendment prohibits the vesting of such unbridled discretion in a government official." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992) (footnotes omitted).

FACT: Respondent's discussion in ECF No. 93, addressed:

a. Sovereign Immunity

b. Declaratory Judgment Act

c. Anti-Injunction Act

d. Exhaustion of Administrative Remedies

e. Bivens claim

FACT: Respondent's discussion in ECF No. 93 and the law relating to a matter or cited for an issue of: d. Exhaustion of Administrative Remedies, and, e. Bivens claim are frivolous acts.

FACT: Respondent's discussion in ECF No. 93 and the law relating to a matter or cited for an issue of: b. Declaratory Judgment Act, and, c. Anti-Injunction Act are moot upon a proper

judicial review of Petitioner's arguments and legal premises presented to the Court.

FACT: Respondent's discussion in ECF No. 93 and the law relating to a matter or cited for an issue of: a. Sovereign Immunity or more accurately, Federal Sovereign Immunity Doctrine, capitulates substantive & procedural due process of law & Strict Scrutiny Standard of Judicial Review, *inter alia*. (Emphasis added).

LAW: The reasoning is simple, a case of religion, law & liberty. If the permitted scheme, 'involves appraisal of facts, the exercise of judgment, and the formation of an opinion,' *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940), by the Judicial authority, 'the danger of censorship and of abridgment of our precious First Amendment freedoms is too great' to be permitted, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975)." 505 U.S., at 131.

FACT: 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 prior illegal or unconstitutional action committed by Real Party in Interest.

FACT: This Dominion Theology, from a common law maxim, has effortlessly relinquished the rule of law of this Nation, sending to the legal graveyard seven meritorious causes of action involving various controversies that are substantial and concrete, that touch the legal relations of parties with adverse interests;

with the Petitioner seeking specific declaratory, injunctive and other appropriate relief.

FACT: The Court's Federal Sovereign Immunity Doctrine, in Petitioner's case & its controversies advances the color of law, for law respecting an establishment of religion and its forums.

LAW: "It seems equally clear, however, that the First Amendment will not tolerate arbitrary definitions of the scope of the forum." *See Arkansas Ed. Television Comm'n v. Forbes*, 523 U.S. 666, 690 (1998)

NOTE: The following forums' descriptions, places or instrumentality are regarding to:

United States District Court,
Eastern District of Missouri
Thomas Eagleton U.S. Courthouse
111 South 10th St, St. Louis, Missouri 63102

FACT: The courtroom, is a Designated Public Forum for Protected Speech. The Petitioner has not entered into, nor allowed access to, nor conducted any legal matters within that realm of a forum. A vital forum, clothed with immense powers emits for all, equality before the law.

FACT: The Courthouse, is a governmental building and designated area, and is a Limited Public Forum for Protest & Petition Speech, *inter alia*, of which, the Court is more qualified to discuss or pronounce, than, the Petitioner is capable of Petitioner has entered through the Courthouse doors, only to be vanquished by

the faithless or the fateful vacuum of legalism.

FAITH: The gates of hell and all its forces shall not prevail against the underlying legal basis or the grounds of the law and fact presented, if not, the rock upon Petitioner's stands. Psalm 18:33 It is a fact and precept, I do not hold with equality in all things, only with equality before the law.

FACT: The Clerk of the Court, Office,—"in defining the forum . . . " is within the Courthouse and in the wide sense, an area open to the public for certain purposes, practices and speech, based on the exercise of a reasonable or permissible time, place, and manner restrictions. In a narrower sense, a forum proceeding according to the course of Federal statutory law, including the First Amendment and the Fifth Amendment of the United States Constitution thereby is governed by its rules and principles. In most cases U.S. Supreme Court doctrines.

FACT: The Public Access to Court Electronic Records ("PACER") is an instrumentality used for communication, still yet, is a nontraditional public forum or a public forum by designation.

FACT: Petitioner, Real Party in Interest, & the Court used U.S. mail system for communications.

The Clerk of the Court, Office,—
"in defining the forum . . . "

FACT: The Clerk of the Court, Office, the principle place or provided forum, is where Petitioner's

case of controversies, have been presented, published and expressed as his plan, in the freedom of thought, of choice or discussion as one's practice of the law or as other First Amendment activity.

FACT: The Clerk of the Court, Office,—"in defining the forum the focus should be on the access sought by the speaker" and is a traditional public forum for actions subject to strict scrutiny standard of judicial review, of the highest order, involving matters of the First Amendment.

FACT: The Clerk of the Court, Office,—by long tradition or by government fiat, has been devoted to assembly, protected speech guaranteed and protest or debate is offered. It is where the freedom of thought, of choice or discussion as one's practice of the law or as other First Amendment activity shall not be ignore, within the special nature and vital function of this federal workplace.

FACT: Petitioner, is a teacher & student of the law; because of the content of his protected speech.

FACT: Petitioner premeditated, protected and pursued his life's work, liberty and his pursuit of happiness through the free exercise of First Amendment activities; as an unalienable right from his Creator, God (Jesus Christ) and of governmental authority, The Constitution of the United States of America, and its authorization of law made in pursuant thereof.

LAW: The Court profoundly held in *Cornelius v. NAACP Leg. Def. Fund*, 473 U.S. 788 (1985):

Although, as an initial matter, a speaker must seek access to public property or to private property devoted to public use to evoke First Amendment concerns, forum analysis is not completed merely by identifying the Government property at issue. Rather, in defining the forum, the focus should be on the access sought by the speaker.

FACT: The PACER system, an instrumentality used for communication, is an electronic public access service that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts, and the PACER Case Locator. PACER is provided by the Federal Judiciary in keeping with its commitment to providing public access to court information via a centralized service.

FACT: The Clerk of the Court Office, has published or allowed to be published Petitioner's case 4:17-CV-750 with the Court's Pacer system. This Office and certain employees of the government, *pro se* lawyers for the Court, and data entry clerks have recorded, reported, misreported and misrepresented to the public, who used the PACER system, the petition speech and pure speech of the Petitioner.

FACT: Petitioner protested this wrongful conduct or its activities to no avail or protection thereof.

FACT: Petitioner, Real Party in Interest, & the Court, via the Clerk of the Court, Office manifests or invoked and used the U.S. mail system for communications, specifically used for the communication of information, ideas,

messages or as written speech and of its expressions.

FACT: Protected speech and its vast hybrid forums are not confined to thresholds of traditions.

FACT: By contrast, the mails and the letterbox are specifically used for the communication of information and ideas, and thus surely constitute a public forum appropriate for the exercise of First Amendment rights subject to reasonable time, place, and manner restrictions, such as those embodied in this case and its controversies. *see* Fed R. Civ. P. for such restrictions.

LAW: "Not every instrumentality used for communication, however, is a traditional public forum or a public forum by designation." *United States Postal Service v. Council of Greenburgh Civic Assns.*, 453 U.S. 114, 453 U.S. 130, n. 6 (1981). *quoting Cornelius v. NAACP Leg. Def. Fund*, 473 U.S. 788, 803-804 (1985).

FACT: The Clerk of the Court Office, has recorded, produced and will publish &/or present upon proper requests (via the internet or at location) certain legal documents, including but not limited to; complaints, pleadings, summons, writ, declaration, return, process, judgment, or other proceedings in civil causes or cases within any of the courts of the United States.

FACT: The Clerk of the Court Office, will do the same for any criminal actions, or actions relating to a specific jurisdiction of the Court, with the exception of any matter concerning the Court, that is sealed by Court Ordered, or

on a case-by-case basis for JUVENILE cases only, etc.

FACT: Records are commonly sealed in a number of situations:

- Sealed birth records (usually for so-called closed adoption, in which the birthparents' identity is usually anonymous).
- Juvenile criminal records may be sealed Other types of cases involving juveniles may be sealed, anonymized, or pseudonymized ("impounded"); *e.g.*, child sex offense or custody cases.
- Cases using witness protection information may be partly sealed.
- Cases involving trade secrets.
- Cases involving National Security Interests

FACT: Petitioner's devout religious belief, and practice, that "Thou Shalt Not Bear False Witness" but not self-evident, when the Court refused to act and the Clerk of the Court can act, with impunity, the usurping power of control of the pure speech of this Petitioner. Regardless of this fact, it will become the duty of the U.S. Supreme Court to establish a doctrine that will protect U.S. citizen and the forums chosen by them or by the Court, which forum is relevant; because the Court broadcasted on the world wide web (internet) this case and its controversies.

The Courthouse–A Limited Public Forum for Protest & Petition Speech

FACT: The Courthouse has content based restrictions &/or time, place, and manner restrictions, as a limited open public forum for protest and petition speech, *inter alia*.

FACT: Petitioner's constitutional rights, privileges or immunities, with laws made in pursuant thereof; shall not end at the threshold of the Courthouse's doors; hence, vanquished by the faithless or a fateful vacuum of legalism; or in essence, for viewpoint based discrimination in the matrix of religious dealings.

FACT: Petitioner's constitutional rights, privileges or immunities, with laws made in pursuant thereof cannot be converted into a crime, offense, code or Fed. R. Civ. P., Rule 8 violation, thereby to chill speech or curtailing it.

FACT: Petitioner's constitutional rights, privileges or immunities, of protected speech (protest &/or petition) are prevailing *versus* establishing a permitting scheme of viewpoint and content-based restrictions on speech and/or allowing future viewpoint and content-based restrictions on speech, as an unconstitutional prior restraint on free speech.

FACT: From the Courthouse or to the schoolhouse, although they do not have to open or maintain a limited open forum, however, once they do, they may not discriminate against a person, a class or Petitioner, a teacher & student of the law; because of the content of their speech.

LAW: The Court in, *Arkansas Ed. Television Comm'n v. Forbes*, 523 U.S. 666, 677-678 (1998):

> "[T]he Court [has] identified three types of fora: the traditional public forum, the public forum created by government designation, and the nonpublic forum." *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 802 (1985).
>
> "The government does not create a [designated] public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional public forum for public discourse." 473 U.S., at 802; *accord, International Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992)

If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny. *Ibid.*; *United States v. Kokinda*, 497 U.S. 720, 726-727 (1990) (plurality opinion of O'CONNOR, J.).

The Courtroom– A Designated Public Forum for Protected Speech

FACT: It is truly best to understand the authority that stands above all things or best recognize the authority, that authorized by law or by its own definition; the forums or prayers for relief sought in this case of protected speech of religious beliefs & the sacred rights of conscience.

FAITH: "God grant me the serenity to accept the things I cannot change, the courage to change

> the things I can, and the wisdom to know the difference. "This is true in a Court of Justice or just in the Kingdom of God; because the serenity to accept one's own judgement or the judgement day by others as our day of judgment, is in the wisdom to know the difference.

What is COURT OF LAW?

In a wide sense, any duly constituted tribunal administering the laws of the state or nation; in a narrower sense, a court proceeding according to the course of the common law and governed by its rules and principles, as contrasted with a "court of equity."

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed https://thelawdictionary.org/court-of-law/

What is COURT OF EQUITY?

A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. *Thomas v. Phillips*, 4 Smedes & AL t-Miss.) 423.

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed https://thelawdictionary.org/court-of-equity/

What is a COURT OF JUSTICE?

According to Black's Law Dictionary, a forum and/or a nonpublic forum set forth as:

Law:

Forum

Lat. A court of justice, or Judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. 3 Story, 347. Black's Law Dictionary 2nd Edition, St. Paul, Minn.: West Publishing, published (1910)

Nonpublic Forum. 2.

A court or other judicial body; a place of jurisdiction. Pl. forums, fora. Black's Law Dictionary (8th ed. 2004)

LAW: Venue is "[t]he territory, such as a country or other political subdivision, over which a trial court has jurisdiction."

FACT: It is unknown at this time by the Petitioner, if Respondent manifested her Memorandum and Order, ECF No. 93 and its Order of Dismissal, ECF No. 94, within the Courtroom, or as a COURT OF LAW or as a COURT OF EQUITY or as a COURT OF JUSTICE.

PETITIONER SEEKING A HYBRID FORUM FOR ACTIONS . . .

in defining the forum, the focus should be on the access sought by the speaker. *Cornelius v. NAACP Leg. Def. Fund*, 473 U.S. 788, 789 (1985)

FACT: Petitioner understanding the legal important of establishing his physical presents inside the Courtroom, understanding in defining the forum, the focus should be on the access sought by the speaker.

FACT: The law is so clear with a hybrid forum(s) for actions subject to strict scrutiny standard of judicial review regarding religious liberty, one would expect this litigation to prevail.

LAW:

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 (also known as [RFRA]), is a 1993 United States federal law that "ensures that interests in religious freedom are protected."

FACT: Petitioner pleaded this statement in Doc. No. 2, brief in support of [OVC/Petition]:

> Plaintiff's free exercise claims. See Plaintiff's Exh. A- #3 & 4 in support of:
>
> A. It must be justified by a compelling governmental interest. While the Courts have never brightly defined how to determine if an interest is compelling, the concept generally refers to something necessary or crucial, as opposed to something merely preferred.
>
> B. It must be narrowly tailored to achieve that goal or interest. If the government action encompasses too much (overbroad) or fails to address essential aspects of the compelling interest, then the rule is not considered narrowly tailored.
>
> C. It must be the least restrictive means for achieving that interest, that is, there cannot be a less restrictive way to effectively achieve the compelling government interest. If the government enacts a law that restricts a fundamental personal liberty, it must employ the least restrictive measures possible to achieve its true goal. This test

applies even when the government has a legitimate purpose in adopting the particular law.

LAW: U.S. Supreme Court has held: *West Virginia Sch. Bd. v. Barnette*, 319 U.S. 624, 642 (1943):

> But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 19,

> PLAINTIFF'S FIRST REQUEST FOR CONSTITUTIONAL RELIEF AND A MOTION TO CORRECT THE LEGAL STATUS OF THIS CASE DEFACED AS "CIVIL RIGHTS" AND/OR, IN THE ALTERNATIVE, FOR COURT ORDERED SANCTIONS AGAINST *PRO SE LAWYERS* OF THE OFFICE OF THE CLERK/COURT WHO VIOLATED PLAINTIFF'S FUNDAMENTAL RIGHTS

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 24,

PLAINTIFF'S NOTICE AND REQUEST FOR A HEARING DATE

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 30,

PLAINTIFF'S NOTICE AND REQUEST FOR A DUE PROCESS HEARING DATE OR, IN THE ALTERNATIVE, AN INSTANT RULING OR DECISION ON CONSTITUTIONAL RELIEF REQUESTED PURSUANT TO MOTIONS AND BRIEFS FILED WITH THE COURT /Doc. Nos. 19 & 20

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 38,

PLAINTIFF'S FIRST MOTION TO REVIEW, ALTER, AMEND, OR VACATE ORDERS PURSUANT TO PLAINTIFF'S FREE EXERCISE OF PURE SPEECH OF RELIGIOUS BELIEFS AND/OR, IN THE ALTERNATIVE, FOR RELIEF FROM ORDERS PURSUANT TO FED. R. CIV. P. RULE 60(b)(6) "any other reason that justifies relief

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 46,

PLAINTIFF'S REQUEST FOR AN EVIDENTIARY HEARING TO PRESENT EXHIBITS/DOCUMENTATION ADVANCING DUE PROCESS AND RESOLVING THIS CASE AND CONTROVERSIES "ON THE MERITS" NOT ON FORMALITIES

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 49,

NOTICE OF MOTION AND MOTION FOR CONTINUANCE OF THIS CIVIL ACTION

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 56,

PLAINTIFF'S MOTION TO RECONSIDER THE COURTS RULING OF JULY 11, 2017 to *correct clear errors of law and prevent manifest injustice* under Rule 59(e), in conjunction with obtaining relief from a proceeding & Order pursuant to Fed. R. Civ. P., Rule 60(b)(1)(4)(6) OR, IN THE ALTERNATIVE, Federal Rule of Civil Procedure Rule 54(a)(b) and Rule 46-Objecting to a Ruling or Order

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 64,

PLAINTIFF'S MOTION FOR LEAVE TO CONSTRUE AND CORRECT THE RECORD WITH STRICKEN EXHIBITS ORIGINALLY LISTED & PRESENTED AS EVIDENCE (DOC. NO. 3) OR, IN THE ALTERNATIVE, Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge Bodenhausen's (Doc. No. 8)

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review filed:

Doc. No. 80,

PLAINTIFF'S NOTICE THAT THE DISTRICT COURT ERRED, AS A MATTER OF LAW & FACT WITH THE DISTRICT JUDGE ABUSING HER DISCRETION IN THE [AUGUST 18TH, 2017 RULING] (ECF NO. 66)

THEREBY EXHIBITING A WORK OF MANIFESTED INJUSTICE AND PURSUANT TO A RULE 60(b)(1)(4)(6) MOTION, IN CONJUNCTION WITH, PLAINTIFF'S RULE 54(a) HYBRID MOTION TO RECONSIDER VACATING AN ORDER

Petitioner's faith in strict scrutiny is the most stringent standard of judicial review 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.

FACT: Petitioner seeking a forum subject to strict scrutiny standard of judicial review, because of these and other such activities of the Respondent, or by the Court, cannot take place within any U.S. District Court, or within any forum for actions subject to strict scrutiny standard of judicial review.

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.

EXHIBITS ENTERED INTO THE RECORD WHEN CASE FILED–510 EXHIBITS (FACTS PRESENTED TO THE EIGHTH CIRCUIT IN PETITIONS) (FEBRUARY 9, 2018)

(Facts Necessary to Understand Petitions)
or as parts of the record that may be essential to understand the matters set forth in the petition

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Doc. No. 3, 02/16/2017—Petitioner's Exhibits listed from A through U

FACT: These 510 exhibits are germane documents or objects of expression, produced as protected speech, of pure speech about religious beliefs, practices, or of conscience or other matters of insight and knowledge of the Petitioner and are a revelation, given to him by the power of the Holy Spirit.

FACT: These 510 exhibits and their nature have a basis or grounds of the claims presented. These exhibits in this matter and its cause of actions have a vital basis in law or fact.

FACT: Petitioner maintains these exhibits are property and are sacred, as the rights of conscience are sacred rights, also with the liberty to introduce as evidence during a trial.

FACT: These 510 exhibits which are referred to and incorporated into the main pleading and its attached Brief in support thereof. Petitioner also incorporated these exhibits with his "Other Amendments" filed in the record of this case.

FACT: These are subject to objections by opposing attorneys just like any evidence. However, the Real Party in Interest, 12(f) motion ECF No. 51 or its orphan brief, ECF No. 52 makes no reference or objections to or attempts to strike such exhibits from the record.

FACT: The Petitioner, if required to do so, can bear witness to these truths and its credibility of such matters that concerns this case and controversies.

FACT: The Petitioner, legal holds these exhibits are self-evident as his religious beliefs are not an argument, in a court of law or of its forums and/or within the public forums of life.

See Clerk of Court Office, Eastern District of Missouri stored in paper form for these Exhibits