Supreme Court, U.S.
FILED
APR 11 2019
OFFICE OF THE CLERK

No. 18-9679

IN THE

SUPREME COURT OF THE UNITED STATES

Gary Harvey and Bernice Harvey,

Petitioners,

vs.

United States of America, ex rel. IRS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Gary Raymond Harvey
Bernice Claire Harvey
P.O. Box 177
Peck, Idaho 83545
Email: circlejb@msn.com
Phone: 208-486-6186

Defendants-Appellants, Pro se.

ORIGINAL

QUESTION(S) PRESENTED

I. Congress enacted the Release of lien or discharge of property Act, 26 U.S.C.A. § 6325 (f) (2); Public Law 115-281, approved 12/1/18, to inform both the IRS and the People what was and was not allowed when the IRS issued a lien upon a person's property relating to a tax debt claim. IRS liens are allowed to be imposed, once an assessment is done, but when a lien is erroneously released after the assessment, it can be reinstated only if the statute of limitations has not elapsed. The statute clearly states "a certificate of release or nonattachment of a lien imposed by section 6321 [26 USCS § 6321] was issued erroneously or improvidently, * * *, and if the period of limitation on collection after assessment has not expired, the Secretary may revoke such certificate and reinstate the lien, however, if after a lien is released erroneously and the period of limitation has expired, the liens are not allowed to be reinstated, even by the Secretary. This Act imposes an obligation upon the IRS to act within set boundaries and a fiduciary duty to the people to follow those boundaries and a court interpreting the statute must comply with that statutory plain language as set under the Chevron test pursuant to *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The question presented is: Whether the courts' below, in conflict with this Court's ruling in Chevron, erroneously held the lien valid even though when it was erroneously released, and took a year to reinstate, the period of limitation after assessment had already elapsed making the liens' reinstatement invalid and contrary to the plain language under Section 6325 (f) (2)?

II. Absent contrary congressional intent, where the Advisory Committee Notes regarding the Federal Rules of Evidence, Rule 1101 explains clearing this Supreme Court had determined a distinct difference between the phraseology of the various federal courts, claiming that a "district court of the United States" and a "United States District Court" as set by this Court, hold different meanings as set by the Advisory Committee where this Supreme Court's power to make rules of practice and procedure extends. The act concerning civil actions, as amended in 1966, which refers to "*the district courts * * * of the United States* in civil actions, including admiralty and maritime cases. * * *" 28 U.S.C.

§2072, Pub. L. 89–773, §1, 80 Stat. 1323, contrary to the bankruptcy authorization for rules of practice and procedure "under the Bankruptcy Act." 28 U.S.C. §2075, Pub. L. 88–623, §1, 78 Stat. 1001. The Bankruptcy Act in turn created bankruptcy courts called "*the United States district courts* and the district courts of the Territories and possessions to which this title is or may hereafter be applicable." 11 U.S.C. §§1(10), 11(a), which provision applied also to criminal rules up to and including verdicts applies to "criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, * * *, and in proceedings before United States magistrates." 18 U.S.C. §3771. As set by congressional usage the phrase "*district courts of the United States*," without further qualification, traditionally included the district courts established by Congress in the states under Article III of the Constitution, which are "constitutional" courts, and has not included the territorial courts created under Article IV, Section 3, Clause 2, referred to as the "*United States District Court*," which are "legislative" courts as held in this Court's ruling in *Hornbuckle v. Toombs*, 85 U.S. 648, 21 L. Ed. 966 (1873). If a United States District Court is legislative, then an appointed Article III judge becomes nothing more than a mere "commissioner," and deprives a taxpayer of their rights to an Article III court as secured by the United States Constitution and this Court. Moreover, when lower courts hold a ruling of this Court, like *Hornbuckle*, or Congressional Acts, are "frivolous" and deprives a taxpayer of how the laws, or the federal courts apply to the law and understand the laws, it goes directly against this Court's ruling in *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498-499 (1937) ("The taxpayers were entitled to know the basis of law and fact on which the commissioner sought to sustain the deficiencies."). When Petitioners challenged the distinction of the various courts, relying on this Court's rulings, the lower courts erroneously held the challenge was "frivolous," and deprived any meaningful understanding of the laws and why or why not a "United States District Court" was legislative and not a constitution Article III court contrary to this Court's holdings. The question presented is: Whether the lower courts erroneously hold the Petitioners', as taxpayers, challenge that a "United States District Court" was a Article IV Legislative Court, and not a true "District Court of the United States" which is an Article III Constitutional Court, which made the appointed Article III judges merely commissioners, creating as biasness in favor of the IRS as "frivolous," contrary to this Court's ruling in *Hornbuckle* and the Rules of Evidence as set by the Advisory

Committee's Notes denied taxpayers a true understanding of the law and the variances of the different courts on why or why not the challenge has merit and why the lower courts erroneously denied American tax payers the ability to understand the law and variances of the court as held by this Court in *Helvering*?

III. Congress enacted An *Act to Enact the Uniform Commercial Code (UCC) For the District of Columbia, And for Other Purposes*, 77 STAT. 630, 88th Congress, 1st Session, Vol. 77, pgs. 630-775 (Jan. 9, 1963), to bring fairness, regarding commercial transactions, into the federal courts and enclaves, especially in relation to private international law. The UCC was created to encompass all commercial transactions to insure all parties obtained a fair dealing and included the Hague Court [H.J. Res. 778] for unification of private laws. The lower courts have held this Act as "frivolous" and would not explain why or how the Act applies or does not apply to tax case against a party who resides with a "state" which this Court has held to be "foreign" from the United States under private international law as set by *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888) and Rhode Island decision in *Robinson v. Norato* (1945) 71 R.I.256, 43 A.2d 467, 468, 162 A.L.R. 362. Congress further set forth that all "revenue laws" are commercial in nature, 27 C.F.R. § 72.11 as thus, together, requires the UCC for the purpose to insure fairness between a powerful private agency called the IRS and the people that private agency comes against by using the UCC in federal courts, especially where commercial law has been preempted by federal laws and uniformity of laws in all jurisdictions is needed. The question presented is: Did Congress intend the UCC to apply to the federal "United States District Courts" under *An Act to Enact The Uniform Commercial Code (UCC) For the District of Columbia, And For Other Purposes*, 77 STAT. 630, 88th Congress, 1st Session, Vol. 77, pgs. 630-775 (Jan. 9, 1963), where Federal Laws have preempted many state usages of the UCC, to insure fairness between the parties and where revenue laws are commercial?

IV. Did the lower courts erroneously hold res judicata never applied, even though all facts, parties and circumstances were identical except for the years in question?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Gary Raymond Harvey, Defendant-Petitioner;
Bernice C. Harvey, Defendant-Petitioner,
Organic Assembly of Circle JB,
509 Private Non-Profit Organization, Defendant, not a party,
LHS Trust, Defendant, not a party,
Internal Revenue Service, Private Agency,
Represented by United States Corp., Plaintiff-Respondent,
United States Government-Private Corporation, Plaintiff-Respondent.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES: **PAGE(S)**

TABLE OF AUTHORITIES CITED

CASES: **PAGE(S)**

TABLE OF AUTHORITIES CITED

CASES: **PAGE(S)**

STATUTES, REGULATIONS, AND RULES:

TABLE OF AUTHORITIES CITED

STATUTES: **PAGE(S)**

TABLE OF AUTHORITIES CITED

UNIFORM COMMERCIAL CODE CITES: **PAGE(S)**

CONSTITUTIONAL CITES:

OTHER:

TABLE OF AUTHORITIES CITED

OTHER: **PAGE(S)**

TABLE OF AUTHORITIES CITED

OTHER: **PAGE(S)**

TABLE OF AUTHORITIES CITED

OTHER: **PAGE(S)**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[**X**] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix to the petition and is

[ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [**X**] is unpublished and attached as **APPENDIX A** hereto. Rehearing was filed and accepted without deficiencies, and rehearing was denied as **APPENDIX B** hereto indicates.

The opinion of the United States district court appears at **APPENDIX A-1** to the petition and is

[ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [**X**] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

[ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

The opinion of the court appears at Appendix to the petition and is

[ ] reported at ; or, [ ] has been designated for publication but is not yet reported; or, [ ] is unpublished.

1.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 18, 2018 (memorandum) and January 28, 2019 (final order) attached as **APPENDIX A** hereto.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 18, 2019, and a copy of the order denying rehearing appears at **APPENDIX B** hereto.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ____. A copy of that decision appears at Appendix ___.

[ ] A timely petition for rehearing was thereafter denied on the following date: ___, and a copy of the order denying rehearing appears at Appendix ___.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTUTIONAL PROVISIONS:

U.S. Constitution, Article III, § 2, in pertinent provision, states:

> Article III; Section 2:
>
> * * *
>
> 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;10 —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.

U.S. Constitution, Article IV, in pertinent provision, states:

Article IV (Article 4 - States' Relations)

> **Section 1**
> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.
>
> **Section 2**
> 1: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.
>
> * * *
>
> **Section 3**

* * *

2: The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

U.S. Constitution, Amendment XIV, in pertinent provision, states:

Article XIV (Amendment 14 - Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection)
1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

5: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTORY AND RULE PROVISIONS:

27 CF R § 72.11, states in pertinent provision:

§ 72.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words

importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

* * *

Commercial crimes. Any of the following types of crimes (Federal or State): Offenses against the revenue laws; burglary; counterfeiting; forgery; kidnapping; larceny; robbery; illegal sale or possession of deadly weapons; prostitution (including soliciting, procuring, pandering, white slaving, keeping house of ill fame, and like offenses); extortion; swindling and confidence games; and attempting to commit, conspiring to commit, or compounding any of the foregoing crimes. Addiction to narcotic drugs and use of marihuana will be treated as if such were commercial crime.

* * *

Director. The Director, Bureau of Alcohol, Tobacco, and Firearms, the Department of the Treasury, Washington, DC.

Equity. As used in administrative action on petitions for remission or mitigation of forfeitures, shall mean that interest which a petitioner has in the personal property or carrier petitioned for at the time of final administrative action on the petition, but such interest shall not be considered to include any unearned finance charges from the date of seizure or the date of default, if later; any amount rebatable on account of paid insurance premiums; attorney's fees for collection; any amount identified as dealer's reserve; or any amount in the nature of liquidated damages that may have been agreed upon by the buyer and the petitioner.

Person. An individual, trust, estate, partnership, association, company or a corporation.

* * *

Federal Rule of Evidence 1101, states in pertinent provision:

Rule 1101. Applicability of the Rules

(a) To Courts and Judges. These rules apply to proceedings before:

· United States district courts;
· United States bankruptcy and magistrate judges;
· United States courts of appeals;
· the United States Court of Federal Claims; and
· the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands.

(b) To Cases and Proceedings. These rules apply in:

· civil cases and proceedings, including bankruptcy, admiralty, and maritime cases;
· criminal cases and proceedings; and
· contempt proceedings, except those in which the court may act summarily.

(c) Rules on Privilege. The rules on privilege apply to all stages of a case or proceeding.

* * *

(e) Other Statutes and Rules. A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.

15 U.S.C. § 17, Antitrust laws not applicable to labor organizations, states in pertinent portion:

> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members

thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

15 U.S.C. § 7003 (a), states in pertinent provision:

Section 7003. Specific exceptions

(a) Excepted requirements: The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

* * *or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

26 U.S.C. § 6325 (f) (2), states in pertinent provision:

(f) Effect of certificate

* * *

(2) Revocation of certificate of release or non-attachmentIf the Secretary determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary may revoke such certificate and reinstate the lien—

(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) by filing notice of such revocation in the same office in which

the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

28 U.S.C. §§ 92, 132, states in pertinent provisions:

28 U.S. Code § 92 - Idaho

Idaho, exclusive of Yellowstone National Park, constitutes one judicial district.
Court shall be held at Boise, Coeur d'Alene, Moscow, and Pocatello.

28 U.S. Code § 132 - Creation and composition of district courts

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.
(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

28 U.S. Code § 3002 (10), (15) (a)(b)(c), states in pertinent provision:

* * *

(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

* * *

(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.

APPOINTMENT OF JUSTICES AS TRUSTEE TO SETTLE THE DEBT

As Petitioners understand this process and based on facts and law they have deciphered[1], the Honorable Justices, the Federal Attorney or IRS Officers had leveled criminal charges with the Clerk and against the Trust, which is perceived by the use of the ALL CAPS NAME that appears on this BIRTH CERTIFICATE in the past, under true bill[2] numbers: *United States v. Harvey, et al.*, Case: 3:11-cr-00194-BLW (USDC, District of Idaho, 2013) and *United States v. Gary Harvey, et al*, Case: 3:16-cv-00046-EJL (USDC of Idaho, 2016), the birth certificate being the

[1] If Petitioners are in error, then this Court should explain why or why not this principal has application or not. The lower courts merely just claim the matters "frivolous" and make no legal breakdown to explain to any Citizen why or why not the law or application lacks or has merit.

[2] It is noted that an indictment is labelled as a "True Bill," and believed indicating a debt or negotiable instrument, brought by a Grand Jury, indicated by the monetary amounts of a statute.

true party in the action attached as **APPENDIX C** hereto! The use of capital letters is dictated by the Superintendent of Documents, U.S. Government Printing Office, U.S. Printing Style Manuel, starting Page 27, ISBN 978–0–16–081813–4 (2008) which explains how to identify a CORPORATION or entity.[3] The Clerk of this Court is the ADMINISTRATOR of the CESTA QUE TRUST, then, we appointed

---

[3]Capital names are not a Christian name, but a fictitious identity for an alleged debt (true bill), where this United States Supreme Court declared: "Defendant was impleaded by the name of "A.W. Becker." Initials are no legal part of a name, the authorities holding the full Christian name to be essential. (cases omitted) This loose method of pleading is not one to be commended, but as no advantage was taken of it in the court below, it will not be considered here. ..." (Emph. Added./mine) *Monroe Cattle Co. v Becker* (1893) 147 U.S. 47, 59, 37 L. Ed. 72, 13 S. Ct. 217. "Fiction Names" spelled in all 'capitol lettering/'initial's', was a "creation" from England, and part of the Declaration of Independence, 1776, that the American People protested, as declared therein by improper English. That the U.S. federal and State court "judges" are now, it is believed and therefore asserted, using today, like birth certificates, court names, cusip numbers, on the same scale; one case that explains this is *Staufen v British Columbia*, (Attorney General); B.C.J. No. 1109 2001 BC SC 779, Vancouver Registry No. L010409, British Columbia Supreme Court Vancouver, British Columbia, Scarth J. (In Chambers); Heard May 16, 2001, Judgment: May 29, 2001 (**APPENDIX C-1**); where the court explains there exists many legal fictions, and states how the Kings use to use Capitalization names to make people allege a debt that was untrue, like in this case.

As defined by the Katherine Barber, Oxford Canadian Dictionary, 2nd Ed., Term "legal fiction," p. 302, ISBN-13: 978-0195418163 (British, 2001) is "an assertion accepted as true (though probably fictitious) to achieve a useful purpose, esp. in legal matters". In a Sweet & Maxwell, Historical Introduction to English Law and Its Institutions (3rd ed.) by Harold Potter, p. 302, (1958) groups the fictions used into three classes: (1) fictions used to increase the jurisdiction of Courts; (2) fictions designed to avoid cumbersome and archaic forms of action; (c) fictions having a false assumption of fact in order to extend the remedy the Court could grant. Anderson Publisher, Jowitt's Dictionary of English Law, By John Burke (2nd ed.), p. 787 (1977), provides two examples in order to illustrate how the former practice and jurisdiction of the courts rested largely on fictions. Thus, the king's Bench acquired jurisdiction in actions for debt by "surmising" or "feigning" that the defendant had been arrested for a trespass which he had never committed and then allowing the plaintiff to proceed against him for debt. In the second example the Court of Exchequer acquired jurisdiction by permitting the plaintiff in certain actions to plead that he was a debtor to the king and that by reason of the cause of action pleaded he had become less able to pay his wholly fictitious debt to the king. Current use of capitalization on the State issued certificate of birth is the true party and acts as a negotiable instrument under the worthless instruments act federal statute, which if certified makes a worthless instrument negotiable.

you Justices as the TRUSTEE for the TRUST and since none of you can be the BENEFICIARY, that leaves the Petitioners, Gary Harvey and Bernice Harvey, as the sole beneficiaries and therefore you are OUR TRUSTEE![4]

The attached civil complaint was filed under fraud where Petitioner asked if he was doing anything wrong, and still received a check indicating the IRS alleged no wrong was being done, than the IRS brought an action to steal property of the state, so I had informed that I DID NOT ACCEPT THE OFFER TO CONTRACT And that I DID NOT CONSENT TO THE LOWER PROCEEDINGS, to be ignored by the commissioner judge, I have attached the complaint as **APPENDIX D** hereto, signed in purple ink to represent our Sovereignty as People of the Republic as set by the Paris Peace Treaty of 1783 (Sept. 3, 1783) which distinguishes between the "people of the United States," (Article IV Citizens) and the "inhabitants of the United States," (XIV Amendment citizens), Petitioners' being of the people and we sign our signatures underneath in purple ink and in front of a Notary[5].

---

[4] Petitioners believe this holds validity, because Citizens have obtained stock agents or financial persons to use the SSI and the cusip on the back of the SSI card or/and a Birth Certificate number to come up with a cusip number then use the Fidelity Investment bank cite to place the number to bring up the created fiction and the amount they are valued at. Therefore, because of this many Americans hold a strong belief the trust is real and again, this Court should explain why or why not these beliefs hold merit or not.

[5] Petitioners do not discriminate; and even though *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) holds all peoples are "separate but equal" and many cases indicate a difference between citizens. The Petitioners argued this in the lower courts, and as shown below, many web sites, many factors, support, that this argument has merit. The lower courts

Our use of "Without prejudice", UCC 1-308 above or below our signatures, indicates our intent to reserve our rights under Article IV of the Organic Constitution of these United States, not to be compelled to enter into any contract or "commercial obligations" not entered into knowingly, voluntarily and intelligently. That this shows my intent to reserve mt common law rights not to be compelled into any commercial contracts where the Uniform Commercial Code where "an interest of the debtor in property" is not defined by the Bankruptcy Code or federal law but left to state law. *Butner v. United. States*, 440 U.S. 48, 54, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). Thus, state law affords the Uniform Commercial Code, reserving our common law rights and therefore, as OUR TRUSTEE, we instruct you to discharge this entire matter, with prejudice and award the penalties for these crimes and civil actions to be paid to each of us in compensation and damages from the CESTUI QUE TRUST for Petitioner's Gary Harvey's false arrests and incarceration and false claims on behalf of both Petitioners where 27 CF R § 72.11 holds revenue laws are "commercial crimes" therefore this civil action has the criminal aspect of seizure and forfeiture of property, even if In Rem,

---

will not define these matters and merely make claims they are "frivolous" or "without merit" and thereby denies Petitioners and every American an explanation of how the law applies and why. Petitioners pray this Court will clarify something and explain why or why not these matters are true or not. Even the trust issue is support by statements and factors of records, as shown in **APPENDIX E** (Definition of Citizen) hereto. **Exhibit E** is from a web source Petitioner copied off.

based on a contract forced up Petitioners, which under the common law is not acceptable against the people and thus Petitioners!

Idaho Statutes Title 28, Chapter, 1 Section 28-1-308
"Without Recourse" "Reserve all my Rights"

By: Gary Raymond Harvey DATED: 4-4, 2019.
Gary Raymond Harvey, sui juris

Idaho Statutes Title 28, Chapter, 1 Section 28-1-308
"Without Recourse" "Reserve all my Rights"

By: Bernice Claire Harvey
Bernice Claire Harvey

Acknowledgment of the People

state OF IDAHO)
) ss:
COUNTY OF Clearwater)

On this 4th day of April, in the year 2019, before me, Emily Simmons, a Notary Public, personally appeared Gary Raymond Harvey and Bernice Harvey, known or identified to me (or proved to me on the oath of _____), to be the parties whose names are subscribed to the above statement, and acknowledged to me that they executed the same under oath before me.

Emily Simmons
Notary Public
Printed Name: Emily Simmons
Commission Expires: July 11, 2024

EMILY SIMMONS (Seal) NOTARY PUBLIC Comm No. 47948 STATE OF IDAHO

STATEMENT OF THE CASE

Petitioner Gary Harvey acted for the Organic Circle JB, private non-profit organization, and filed taxes claiming various claims for refunds. Petitioner Gary Harvey contacted the IRS and asked if he was doing wrong in his filings and the IRS issued a check for the claimed refunds. Petitioner Harvey took this action as the IRS condoning his tax refund claims as valid. The next year again he contacted the IRS and asked if he was making any errors and again the IRS issued a check for the full refund as set forth, a second time acting to condone the Petitioner was not doing any wrong. On January 1, 2016 the IRS brought an action in the federal "United States District Court" claiming tax fraud and seeking liens against the property Petitioners were domiciled upon for unpaid federal income tax liabilities for taxable years 1989 through 1991. This was based on Petitioner Harvey claiming his labor exempt, which the IRS disputed as "frivolous," and the federal court contended lacked merit.

Just three (3) years before, the IRS brought a criminal action against Petitioner Harvey and the Organic Assembly of Circle JB for preparing a form 990-T for the Circle JB for claimed refunds of various amounts for the years 2002 through 2009. The IRS brought a criminal action set by a "True Bill" against a

Defendant referenced as "GARY RAYMOND HARVEY[6]" and not the human being under the Christian name "Gary Raymond Harvey." Petitioner was never informed the action was based upon a 'contract' claim to defend against, which is his belief based on law and facts he has been shown, kept hidden by the lower "United States District Court" and the IRS. He strived to argue these defenses, but courts today will not hear issues and merely contend jurisdiction without proof of any authority.[7] They do not explain how the law works, and why it has no merit, or does have merit. He was incarcerated for the error and completed the entire time.

The IRS knew of the 1989 through 1991 claims three years before filing the criminal action and could have brought the action in 2013 when they filed the criminal complaint. They deliberately chose to wait for a later date.

The lower United States District Court ordered the Petitioner to file his tax forms in the 1999-2000 civil action, which was amended to a criminal action,

---

[6] Petitioners acknowledge cases like *Bendeck v. U.S. Bank Nat'l Ass'n*, 2017 U.S. Dist. LEXIS 97404, * 14 (June 23, 2017) hold this as "frivolous," yet cases from this Court do not support that, like the *Monroe Cattle Co. v Becker* (supra) (capitalization or abbreviations not a Christian name), support that Capital letters of a name is not the Human being. If these claims are invalid, a court needs to show why or why not it does not apply, not just make a mere claim it is "frivolous." The lower courts will NOT make this type adjudication, which leaves ONLY this Court.

[7] The IRS Tax Court, in *Harvey & Harvey v. Commissioner of Internal Revenue*, docket 22760-17 (United States Tax Court, DC) (Order of Dismissal for Lack of Jurisdiction) (Issued Feb. O1 2018) issued a ruling twice that it never had any jurisdiction based on "no notice of determination concerning collection action pursuant to section 6320 and/or 6330," which the United States District Court rejected by a mere claim "this court has jurisdiction" without proof by the Government.

which was based on threat of contempt or criminal charges for the years 1973 through 1997, which formed an invalid contractual agreement.

The Petitioners' were filed against by the IRS for tax violations seeking to lien their property and sell it in 2016. The statutory limitations period ended "February 14, 2016." PACER, United States' Response to Defendants' Objection to Report and Recommendation, Document 62, filed 07/17/17 at page 6. The United States and IRS dismissed the liens "conclusively" after that date against the Petitioners and the property. They claimed they were erroneously released and sought to reinstate the liens in July 2017, over a year after the limitations period expired.

Circle JB organization never appeared, yet, the bylaws of that organization held that the creator, Gary Harvey has all rights to defend any and all matters on the organization's behalf. Petitioner Gary Harvey argued for himself and the organization. The court never asked or explained any lawyer was necessary, and solely allowed Petitioner to dispute the claims.

Petitioners challenged the Court's authority and jurisdiction based on Rules of Evidence 1101, advisory notes, which held a distinction between a "United States District Court" and a "District Court of the United States," one being legislative, the other a constitutional court. They moved for change of Division of the Court from a "United States District Court" which was legislative, to the

"District Court of the United States" which is constitutional by motion on July 03, 2017. The court ordered response and the IRS and government held this as "frivolous" and the court never addressed the matter more.

Petitioners' also challenged that the UCC applied based on *An Act to Enact The Uniform Commercial Code (UCC) For The District Of Columbia, And For Other Purposes*, 77 STAT. 630, 88th Congress, 1st Session, Vol. 77, pgs. 630-775 (Jan. 9, 1963), contending Congressional intent was to apply the UCC to all federal matters for comity and uniformity sake, as well as State law in the civil action. The Petitioners' further contended the liens were invalid. Not that the tax case was not filed timely, but because statute held that if the liens were released, and the limitations period had expired when released, the liens could not be reinstated.

Other matters, res judicata, et al, were raised. The Court granted summary judgment to the Government because Circle JB and the other party never appeared even though Petitioner Harvey defended in accordance with the by-laws. The Court never considered the by-laws allowed Appellant Harvey to act on behalf of the organization, Circle JB nor did it inform Petitioner Harvey he could not defend.

An appeal was brought, and the matters raised. The Appellate panel held the liens were properly reinstated because the action was timely brought in federal

court. The plain language of the statute, 26 U.S.C. § 6325 (f) (2), went unheeded by the Ninth Circuit panel and it never applied this Court's holding in Chevron, infra. The panel also held res judicata never applied (Appellant reserves right to raise this issue in the Supreme Court), because the court properly held it could not have been brought in any criminal matter, even though all parties and facts, except for the years, were identical. In relation to federal court diversity, whether the court was legislative and not a constitutional court, and whether the UCC applied based on *An Act to Enact The Uniform Commercial Code (UCC) For The District of Columbia, and for Other Purposes*, the panel merely contended these matters were without merit and made no adjudication, contrary to the Supreme Court that a tax payer holds right to be informed how the law applies as set by *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498-499 (1937).

Petitioners filed seeking rehearing or rehearing en banc to have the Court adjudicate the laws and why it does or does not apply. The lower court issued the mandate and never addressed the petition for rehearing. This petition for certiorari is brought to have this Court decide if lower courts must adhere to its holdings and must afford tax payers an understanding of how the laws do or do not apply, which affects every tax payer in America.

REASONS FOR GRANTING THE PETITION

I. Review Is Warranted Because the Opinion by the Ninth Circuit Conflicts with Affirmations Contained in Opinions of This Court in *Chevron*, and contrary to the plain language under Section 6325 (f) (2)?

This Court has long held that when a court reviews a legal challenge to an (IRS) agency's interpretation, they must use the two-part test adopted by this Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In this case, the Ninth Circuit panel did not apply the *Chevron* test, at all, to the IRS's statutory construction. Instead, the panel merely held that it was bound to accept the statutory interpretation that it was valid solely because the IRS case was filed within the statutory limitations period. This is not what 26 U.S.C. § 6325 (f) (2) contends.

Section 6325 (f) (2) states in pertinent part:

> (f) Effect of certificate.
> * * *
> (2) Revocation of certificate of release or nonattachment. If the Secretary determines that a certificate of release or nonattachment of a lien imposed by section 6321 [26 USCS § 6321] was issued erroneously or improvidently, * * * , and *if the period of limitation on collection after assessment has not expired*, the Secretary may revoke such certificate and reinstate the lien--
>
> (A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

> (B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as if such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 [26 USCS § 6321] (relating to lien for taxes).

26 U.S.C. § 6325 (f) (2) (Current through PL 115-281, approved 12/1/18) (PACER).

Many Americans, including the Petitioners, are subjected to IRS liens to seize and sell their property for claimed tax debts, regularly. This Court has long held a taxpayer holds right to understand the law and how it applies as set by *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498-499 (1937) ("The taxpayers were entitled to know the basis of law and fact on which the commissioner sought to sustain the deficiencies"). Yet, contrary to plain statutory language, liens are erroneously released by the IRS after the limitations period elapses, then reinstated, because the IRS knows the lower federal courts will uphold it as valid and not adhere to the *Chevron* test this Court applied.

Tax liens affect the nation's economy because the IRS has deemed tax laws had been violated and even though taxpayers have the right to understand the laws under *Helvering*, the proper format to calculate taxes owed, is never adhered to by

the IRS or any "United States District Court" which requires the IRS to follow, as follows: 1) 26 U.S.C. § 83(a); 2) 26 C.F.R. §§ 1.83-3(g) and 1.834 (b)(2); 3) 26 U.S.C. § 1012 and 26 C.F.R. § 1.1012-1(a); 4) 26 U.S.C. § 1011 and 26 C.F.R. § 1.1011-1(a); 5) 26 U.S.C. § 1001 and 26 C.F.R. § 1.1001-1 (a) to come up with the final calculation under 6) 26 U.S.C. § 61 (a). The actual debt owed by Petitioners, therefore, could not have ever be adjudicated if this formula was not followed by the IRS agents or courts.

A tax lien applied without following the proper formula is invalid from the start. Still, even discarding the formula, the plain statutory language of § 6325 (f) (2) holds that if the lien is released, and that release occurs after the limitations period has ended, the liens cannot be reinstated. The liens here were released after the limitations period expired, then the IRS sought to reinstate them over a year later, contrary to the statute § 6325 (f) (2). The Ninth Circuit panel never read the plain language of the statute, and their ruling is error. The panel disregarded the plain statutory language and merely contended because the case was filed within the statutory time frame, the liens were valid and could be reinstated.

The Ninth Circuit's decision is patently flawed and contrary to statutory interpretation and this Court should grant certiorari so that it can apply the correct standard of review – the *Chevron* test – to decide the issue at the heart of this case.

As a result, Petitioners respectfully submit that the opinion by the Ninth Circuit is in error and that summary reversal of the decision is appropriate. Assuming arguendo this Court does not summarily reverse the majority's decision, Petitioners respectfully submit that review by this Court is warranted.

II. Review Is Warranted Because the Ninth Circuit's Decision Conflicts with This Court's Holding in *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 482-86, 104 L. Ed. 2d 526, 109 S. Ct. 1917 (1989) When it held the distinction Between courts as set by *Hornbuckle v. Toombs*, 85 U.S. 648, 21 L. Ed. 966 (1873) was 'without merit' and the lower "United States District Court" claimed it was "Frivolous."

It has been held by this Court that lower courts are not at liberty to disregard a ruling of this Court but must obey the ruling and they "are not at liberty to disregard binding case law that is closely on point and has been only weakened, rather than directly overruled, by the Supreme Court." *Fla. League of Professional Lobbyists v. Meggs*, 87 F.3d 457, 462 (11th Cir. 1996). This quotation is based on the Supreme Court's ruling in *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 482-86, 104 L. Ed. 2d 526, 109 S. Ct. 1917 (1989). See *Fla. League of Professional Lobbyists*, 87 F.3d at 462 (citing Rodriguez). This Court explained there that when lower courts are faced with seemingly conflicting Supreme Court decisions, they should leave it to the high court to determine which of its decisions are overruled, or to sort out any conflicts between its rulings. The Eleventh Circuit acknowledges this understanding, but in the instant

case the Petitioners cited the advisory notes from the Federal Rules of Evidence, Rule 1101, which states:

Notes of Advisory Committee on Proposed Rules

> Subdivision (a). The various enabling acts contain differences in phraseology in their descriptions of the courts over which the Supreme Court's power to make rules of practice and procedure extends. The act concerning civil actions, as amended in 1966, refers to "the district courts * * * of the United States in civil actions, including admiralty and maritime cases. * * *" 28 U.S.C. §2072, Pub. L. 89–773, §1, 80 Stat. 1323. The bankruptcy authorization is for rules of practice and procedure "under the Bankruptcy Act." 28 U.S.C. §2075, Pub. L. 88–623, §1, 78 Stat. 1001. The Bankruptcy Act in turn creates bankruptcy courts of "the United States district courts and the district courts of the Territories and possessions to which this title is or may hereafter be applicable." 11 U.S.C. §§1(10), 11(a). The provision as to criminal rules up to and including verdicts applies to "criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, in the district courts for the districts of the Canal Zone and Virgin Islands, in the Supreme Court of Puerto Rico, and in proceedings before United States magistrates." 18 U.S.C. §3771.
>
> These various provisions do not in terms describe the same courts. In congressional usage the phrase "district courts of the United States," without further qualification, traditionally has included the district courts established by Congress in the states under Article III of the Constitution, which are "constitutional" courts, and has not included the territorial courts created under Article IV, Section 3, Clause 2, which are "legislative" courts. *Hornbuckle v. Toombs*, 85 U.S. 648, 21 L.Ed. 966 (1873). However, any doubt as to the inclusion of the District Court for the District of Columbia in the phrase is laid at rest by the provisions of the Judicial Code constituting the judicial districts, 28 U.S.C. §81 et seq. creating district courts therein, Id. §132, and specifically providing that the term "district court of the United States" means the courts so constituted. Id. §451. The

District of Columbia is included. Id. §88. Moreover, when these provisions were enacted, reference to the District of Columbia was deleted from the original civil rules enabling act. 28 U.S.C. §2072. Likewise Puerto Rico is made a district, with a district court, and included in the term. Id. §119. The question is simply one of the extent of the authority conferred by Congress. With respect to civil rules it seems clearly to include the district courts in the states, the District Court for the District of Columbia, and the District Court for the District of Puerto Rico.

The bankruptcy coverage is broader. The bankruptcy courts include "the United States district courts," which includes those enumerated above. Bankruptcy courts also include "the district courts of the Territories and possessions to which this title is or may hereafter be applicable." 11 U.S.C. §§1(10), 11(a). These courts include the district courts of Guam and the Virgin Islands. 48 U.S.C. §§1424(b), 1615. Professor Moore points out that whether the District Court for the District of the Canal Zone is a court of bankruptcy "is not free from doubt in view of the fact that no other statute expressly or inferentially provides for the applicability of the Bankruptcy Act in the Zone." He further observes that while there seems to be little doubt that the Zone is a territory or possession within the meaning of the Bankruptcy Act, 11 U.S.C. §1 (10), it must be noted that the appendix to the Canal Zone Code of 1934 did not list the Act among the laws of the United States applicable to the Zone. 1 Moore's Collier on Bankruptcy 1.10, pp. 67, 72, n. 25 (14th ed. 1967). The Code of 1962 confers on the district court jurisdiction of:

"(4) actions and proceedings involving laws of the United States applicable to the Canal Zone; and

"(5) other matters and proceedings wherein jurisdiction is conferred by this Code or any other law." Canal Zone Code, 1962, Title 3, §141.

Admiralty jurisdiction is expressly conferred. Id. §142. General powers are conferred on the district court, "if the course of proceeding is not specifically prescribed by this Code, by the statute, or by applicable rule of the Supreme Court of the United

> States * * *" Id. §279. Neither these provisions nor §1(10) of the Bankruptcy Act ("district courts of the Territories and possessions to which this title is or may hereafter be applicable") furnishes a satisfactory answer as to the status of the District Court for the District of the Canal Zone as a court of bankruptcy. However, the fact is that this court exercises no bankruptcy jurisdiction in practice.
>
> * * *

Federal Rules of Evidence 1101 (a) (2011) (Cornell Law School web site) (Advisory Notes). Notably, the states are not "districts" but sovereigns among other sovereigns, nor are they "territories" any more. Idaho became a free and independent state July 3, 1890 and it ceased being a territory for a "United States District Court" to have authority over.

This Court helps in the different meanings as set by the Advisory Committee whereby this Supreme Court's power to make rules of practice and procedure extends, and as such the lower Courts are duty bound to obey. Yet, the federal court in the state is referenced and labelled as a "United States District Court," and relying on this information the Petitioners moved to change division (venue) over to the "District Court of the United States" to insure their rights were insured regarding the property in question and an Article III judge adjudged it. When raised, the lower court ordered response and the United States Attorney and IRS held this matter "frivolous." The "United States District Court" agreed and disregarded this rule and this Court's holdings with the Magistrate contending it "has no merit." See Objection to Magistrate, **APPENDIX F** hereto.

When appealed to the Ninth Circuit court, that court held the matter "without merit" and would not address the issue, even though THIS COURT has held American taxpayers, including the Petitioners, are entitled to know how the law applies to them as set by *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498-499 (1937) ("The taxpayers were entitled to know the basis of law and fact on which the commissioner sought to sustain the deficiencies"). THIS COURT is the Court that set forth that a "United States District Court" is a legislative Court and as such, as set by *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982), that the right to a trial before an Article III judge had three exceptions: (1) territorial courts; (2) courts-martial; and, (3) legislative courts and administrative agencies adjudicating public rights cases. The first two exceptions appear relatively straightforward. The "public rights" exception was held less easily defined. *Northern Pipeline* noted that "the distinction between public rights and private rights has not been definitively explained in our precedents." *Northern Pipeline* at 2870. This decision suggests that a matter of public rights concerns a dispute between the government and other parties. *Northern Pipeline* recognizes that matters of public rights may be delegated by Congress to non-Article III legislative courts or administrative agencies for determination. "Private-rights disputes, on the other hand, lie at the core of the historically recognized judicial power." *Northern Pipeline* at 2871. It

might be understood that private right disputes generally encompass the alleged liability of one individual or entity to another under applicable law.

This Court made the ruling that taxpayers hold the right to understand the law. Petitioner's acknowledge many courts hold matters "frivolous" or "without merit," however, these definitions DO NOT explain the law. All Americans are entitled, as THIS COUT has held in *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498-499 to understand the law and how it applies. If a party argues the acclaimed "strawman issue" then it should be explained, why capital letters is unimportant relating to a Christian name ort a birth certificate. If they claim the Uniform Commercial Code, then a court should explain why or why not it applies. And, if they argue an admiralty court, or Article III, and a judge states those don't apply, it must be explained why and the type court one is brought into. This Court is the last resort, and if it hides how the law applies or does not apply, then this Court has also held its own decisions are, as the lower court has stated "frivolous" because they cease to mean anything. Petitioners' seek a clarification how the laws apply, including the type court and the UCC. This is not unreasonable from any Citizen.

Petitioners are entitled, where their rights are involved, an Article III judge, not an Article III judge who acts as a mere commissioner and looses his Article III capacity. They are also entitled to a seventh Amendment trial by jury on the matter

where property rights are involved as set by *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 109 S.Ct. 2782, 2797, 106 L. Ed. 2d 26 (1989).

Here, Petitioners challenged the type court they were in[8]. The lowers courts felt this was a "frivolous" action, even though a taxpayer holds right to understand the law or, as here, the type court they are in. *Helvering,* 300 U.S. @ 498-499. The truth is the lower courts held this Court's holdings, the advisory committee's notes, and the rules of evidence had "no merit." If this is the truth, then what laws should a taxpayer turn too, the sword, a gun, a foreign nation. If this Court's rulings mean nothing, and are frivolous when used, and a taxpayer is not entitled to understand what type court he or she is in, then justice has fled this land. The Petitioners

---

[8] American Citizens have been doing this for years. Web sites show many Americans are trying to determine what type courts the United States Courts are, see, e.g. *United States v. Skurdal*, No: CR-91-00016-JDS (1991), appealed, 341 F.3d 921 (9th Cir. 2003) (Challenged court jurisdiction on type court and informed by judge not required to inform on matter, asking if common law, equity or admiralty, told none applied under Article III; in closed session Court stated "constitution does not apply"); *Anderson v. O'Sullivan*, 2015 Md. App. LEXIS 1147 *11 (2015) (listing "redemption" theory cases on people challenging type court system); *McLaughlin v. CitiMortgage, Inc.*, 726 F. Supp. 2d 201, 208 (USDC, CT, 2010) Claiming contract against citimortgage was admiralty, court holding petition could not make own rules but needed follow federal rules of procedure); Sovereign Citizens Movement, web site: https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement (indicating citizens belief government has set up admiralty law court system); https://anticorruptionsociety.com/2015/09/24/the-federal-reserve-uses-fraud-to-enslave-the-american-people/ The Federal Reserve uses fraud to enslave the American people! (Telling of Col. Edward Mandell House); YouTube, Sovereign Citizen Freeman in Court Utterly Fails with Judge -- Default Issued, https://www.youtube.com/watch?reload=9&v=jBK-DMDlzM4 (Defendant claiming common law and asking if admiralty, what type court process); *United States v. Sellers*, 2013 U.S. Dist. LEXIS 76730, * 2-3 (Fl. ND Ct., 2013) (Holding belief in strawman redemption, filing false tax claims for others); Anti-corrupt society, Judge Dale, retired federal Judge, part 5, legal process, at: https://anticorruptionsociety.com/judge-dale-part-5/, and many other cases. Some Americans contend federal courts are military courts under Trading with the Enemy Act. A clarification is necessary.

cannot believe that is the case. Thus, when considered in conjunction with historical references to the various type courts, and the fact the lower court is called a "United States District Court" and the affirmations of this Court, a request to know the type of court[9] one is in and change venue or division by a Citizen or taxpayer is not out of reason. Therefore, review of the majority opinion is warranted by this Court.

III. Review Is Warranted Because Of The National Importance In Determining Whether the Uniform Commercial Code, A State law in every State and used by Banks, Businesses, and People alike, and where State Law controls a Federal Civil Action, and Congress passed *An Act to Enact the Uniform Commercial Code (UCC) For the District of Columbia, and for Other Purposes*, A Federal District, and Title 15 U.S.C. § 7003 (a) (3), the Importance of Whether the UCC Applies to a Federal Case Based on "Revenue Laws" Being Commercial in Nature Under 27 C.F.R. § 72.11, Which Affects Every Citizen and Taxpayer Across this Land and Abroad, Impacts the Citizens of the Nine Western States as well as Citizens throughout these United States' and over Seas.

The lower "United States District Court" U.S. Attorney and IRS claimed this matter was "frivolous." The court Magistrate held the claim "has no merit," and the

[9] As shown above, many people are seeking to determine the type federal courts they are in. In *Skurdal*, supra, the judge instructed common law, equity and admiralty, the only authority under Article III, did not apply. That left legislative court or some other, but the judge decided Skurdal did not need to know. The movement is upsetting the entire country, disrupting courts, costing money, solely because no judge or court of authority will clarify the court system. This Court held a "United States District Court" is a legislative court, thus depriving Citizens of the right to an Article III court system by the Constitution. The court records make plain this is the court Petitioners are in, not a "District Court of the United States" a constitutional court. Legislative courts, Article IV, set on mere statute, involves to most Americans' belief, contractual obligations for the court to force jurisdiction, and authority on the party. To clarify this matter for all the Nation would settle many disputes and ravings now rising more and more.

Ninth Circuit held it was "without merit." Yet, Congress enacted an *Act to Enact the Uniform Commercial Code (UCC) For the District of Columbia, And for Other Purposes*, 77 STAT. 630, 88th Congress, 1st Session, Vol. 77, pgs. 630-775 (Jan. 9, 1963), to bring fairness, regarding commercial transactions, into the federal courts and enclaves, especially in relation to private international law.[10]

---

[10] Similarly, it is agreed that horizontal uniformity in (or the unification of) transnational commercial law is equally important. This was a primary goal of the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG), *U.N. Conference on Contracts for the International Sale of Goods, Final Act April 11, 1990*, U.N. Doc. A/Conf. 97/18, reprinted in S. TREATY Doc. No. 98-9, 98th Cong., 1st Sess., which is now in force in the three NAFTA trading partners: The United States since January 1; 1988, Canada since May 1, 1992, See Laura A. Donner, *Impact of the Vienna Sales Convention on Canada*, 6 EMORY INT'L L REV. 743 (1992) and Mexico since January 1, 1989. See Jorge Barrera Graf, *The Vienna Convention on International Sales Contracts and Mexican Law: A Comparative Study*, 1 ARiz. J. INT'L & CoMp. L 122 (1982 CISG will be in force in a total of 47 countries by the end of 1995). See *Journal of Law and Commerce CISG Contracting States and Declarations Table*, 14 J.L. & CoM. 235 (1995) (as of April 1995)). There is a United Nations "hotline" for the current state of ratifications. Dial (212) 963-5047. CISG is supplemented by a *Convention on the Limitation Period in the International Sale of Goods*, June 14, 1974, U.N. Doc. A/Conf.63/15, and an amending Protocol, April 10, 1980, U.N. Doc. AIConf.97/18, to which the United States Senate has given advice and consent. See *S. Treaty Doc. No. 10*, 103d Cong., 1st Sess. (1993) (official text) and 139 Cong. Rec. S16,213 (daily ed. Nov. 18, 1993). The Convention took effect on December 1, 1994.

In the United States, CISG is a self-executing treaty with the preemptive force of federal law. Unless otherwise agreed, CISG applies to "contracts for sale of goods between parties whose places of business are in different States...when the States are Contracting States." See Richard E. Speidel, *The Revision of UCC Article 2, Sales in Light of the United Nations Convention on Contracts for the International Sale of Goods*, 16 Nw. J. Int'l L. & Bus. 165 (1995-1996); See also Dore, *Choice of Law Under the International Sales Convention: A United States Perspective*, 77 AM J. IN"L L. 521 (1983).

The United States federal authorities have adopted the Uniform Commercial Code at various levels for years to use in federal actions. For example, besides the CISG, on November 16, 2016, the U.S. State Department's Advisory Committee on Private International Law held its annual meeting to discuss ongoing work involving the negotiation and drafting of instruments governing private cross-border transactions. The Committee announced transmittal letters were sent for each of several treaty documents to the Senate in hopes to ratification three conventions proposed by the United Nations Commission on International Trade Law (UNCITRAL). (S. Treaty Doc. No. 114-5, 2016, CONGRESS.GOV; S. Treaty Doc. No. 114-7, 2016, CONGRESS.GOV; S. Treaty Doc. No. 114-9, 2016, CONGRESS.GOV.) The United States has signed two of the three conventions, like the *United Nations Convention on the Use of Electronic Communications in International Contracts* (New York, 2005), (adopted on November 23, 2005, and entered into force on March 1, 2013) (UNCITRAL website); the *United Nations Convention on the Assignment of Receivables in International Trade* (New York, 2001), (Signed December 30, 2003) (UNCITRAL website); and the *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit* (New York, 1995), (signed December 11, 1997) (UNCITRAL website) (all last visited Feb. 10, 2017).) This Convention's provisions, with two minor exceptions, are substantively similar to article 5 of the Uniform Commercial Code, which all

fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted. (S. Treaty Doc. No. 114-9, supra.). This Convention sets forth modern uniform rules for global receivables financing, to produce the same results as those under article 9 of the Uniform Commercial Code on secured transactions. (S. Treaty Doc. No. 114-7, supra.).

Likewise, Section 101 of the *Electronic Signatures in Global and National Commerce Act*, ("ESIGN") Pub. L. No. 106-229, codified at 15 U.S.C. §§ 7001 et seq. ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 of the Act, recognizing some exceptions, requires the Secretary of Commerce to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). Section 7003 (a) statute states, in pertinent part:

> (a) Excepted requirements. The provisions of section 101 [15 USCS § 7001] shall not apply to a contract or other record to the extent it is governed by--
> (1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;
> (2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or
> (3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

Section 7003 (a) (1-3) makes plain that section 101 does not apply to the UCC, in effect in a state, other then section 1-107, 1-206 and Articles 1 and 2A. Article I has three sections, which relate to the Electronic Signatures Act, being: Part 1. General Provisions, Part 2. General Definitions and Principles of Interpretation, and Part 3. Territorial Applicability and General Rules. The last part allows choice of applicable law, Course of Performance, Course of Dealing, and Usage of Trade, Obligation of Good Faith, et. al.; Article 2 applies to transactions of goods and sales; and Article 2A applies to any transactions, regardless of form, that creates a lease.

"Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938). Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law. State law includes the Uniform Commercial Code in relation to commercial transactions.[11]

The *Act to Enact the Uniform Commercial Code (UCC) For the District of Columbia, And for Other Purposes*, 77 STAT. 630-775 contends it is "and for other purposes," which includes transactions with the Hague Court, international treaties, private international laws and other matters. This can also apply to 'all

[11] Petitioner Harvey claimed his labor and funds derived therefrom were exempt. He based this on law and statute, 15 U.S.C. § 17 which holds a person's labor is not taxable and is not a commodity for commerce upon which, Petitioner's believe, taxes are based.

federal court cases of a commercial matter' and brings the UCC into federal courts, where this Court has made it plain that the union states are foreign from States of the United States.[12] Notably, many federal courts have applied the UCC as if it were applicable federal law in various cases. See, e.g. *Safety Nat'l Cas. Corp. v. Certain Underwriters*, 587 F.3d 714, 745 (5th Cir., 2009) ("This is comparable to our occasional practice of applying the Uniform Commercial Code as if it were enforceable law, when we really mean to refer to state statutes enacting the

---

[12] "The United States government is a foreign corporation with respect to a state." *In re Merriam*, 36 N.E. 505, 141 N.Y. 479, 485 (1894), affirmed 163 U.S. 625, 631; 16 S. Ct. 1073 (1896) (Emph. Add.); Volume 20: Corpus Juris Sec. § 1785. See also 28 U.S. Code § 3002 (10), (15) (a)(b)(c). "The United States never held any municipal sovereignty, jurisdiction, or right of soil in [Idaho] or any of the new states which were formed ... The United States has no Constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain, within the limits of a state or elsewhere, except in the cases in which it is expressly granted ..." *Pollard Lessee v. Hagan*, 44 U.S.C. 212, 221, 223 (1845). "... the states are separate sovereigns with respect to the federal government" *Heath v. Alabama*, 474 U.S. 82; 106 S. Ct. 433, 437 (1985).

As a corporation, the "S"tate in the State of Idaho is merely a subsidiary of the corporate United States and thus foreign from the sovereign "s'tates of the union, E.g. 28 U.S. Code § 3002 (10) ("Person" is a "State" and by term includes, references a "State" as a corporation) and *Tex. v. White*, 74 U.S. 700, 729 (1869) (People of republic are the "state"), and therefore as creations under the Charter called the Constitution, these governments are but "trustees" acting under derived authority and have no power to delegate what is not delegated to them. *Luther v. Borden*, 48 U.S. 1, 12 L.Ed. 581 (1849).

B. STATE OF IDAHO VERSUS IDAHO sTATE:

"It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a Capitol S for the word when applied to a State of the United States" *Eisenberg v. Comm. Union Assurance Co.*, 189 F. Supp. 500 (S.D.N.Y. 1960) (company with London headquarters was British citizen for purposes of diversity jurisdiction, regardless of the size of its U.S. operations). The same is true for U.S. [Democracy] companies headquartered within a "s"tate of the Union [Republic], where this "U.S. supreme court opinions", declared: "... The defendants have stated correctly the well-established principal of law that the government of the United States is foreign to the states of the union within the rule of private international law that the penal statutes of one sovereign will not be enforced by another." *Robinson v. Norato*, (1945), 71 R.I. 256, 43 A.2d 467, 468, 162 A.L.R. 362 (in which it had reasoned that: A state need not enforce the penal laws of a government which is 'foreign in the international sense'); *State of Wisconsin v Pelican Ins. Co.*, 127 US 265, 8 S. Ct. 1370 (1888).

uniform provisions. See, e.g., *First United Fin. Corp. v. Specialty Oil Co.*, 5 F.3d 944, 946 n. 2 (5th Cir. 1993) ("[B]ecause Louisiana has adopted the UCC provisions relevant herein, all sections will hereafter be cited to the UCC rather than to the specific Louisiana statute."). In the instant case, however, the distinction is not merely tangential but dispositive: the McCarran-Ferguson Act [15 U.S.C. §§ 1011-1015] applies only to Acts of Congress, not to treaties.)).

Finally, based on *Erie R.R.*, supra, that the law of the state controls a federal action, and the fact Congress and the United States have moved toward adopting the UCC at various levels in treaties and private international laws, it is recognize that revenue laws are "commercial," 27 C.F.R. § 72.11, thus affording a taxpayer or Citizen of these united states of America to use the UCC for purpose of insuring fair dealing and good faith standards in regards to a private agency, the IRS, court actions and legal issues which is known by majority of Americans to be a corrupt organization and who will violate laws for its own agenda.

Given all the above, and the fact this Court has made it plain a taxpayer (and a Citizen) have the right to know how the law applies, *Helvering v. Tex-Penn Oil Co.*, 300 U.S. @ 498-499, the lower Courts' holdings that raising the UCC was "frivolous" and "without merit" flies in the face of this Court's rulings and deprives how the law actually relates to a commercial transaction, including revenue laws of a commercial nature as defined by 27 C.F.R. § 72.11. For each of

these reasons, Petitioners' respectfully submit that the issues rejected by the Ninth Circuit in this case are of national importance because of the substantial impact this decision will have on the taxpayers of the nine western states as well as citizens and taxpayers throughout these united States'. Therefore, Petitioners' respectfully request that this Court either summarily reverse the Ninth Circuit decision and instruct them to explain how the law applies to taxpayers in a civil action or grant review of this important issue so all taxpayers may understand how commercial revenue laws do or do not apply the UCC.

CONCLUSION

Based on the foregoing, Petitioners respectfully submit that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the Ninth Circuit Court of Appeals, with instructions to explain why and how the laws apply to taxpayers and Citizens alike.

Dated: 4-4, 2019.

Idaho Statutes Title 28, Chapter, 1 Section 28-1-308
"Without Recourse" "Reserve all my Rights"

By: Gary Raymond Harvey
Gary Raymond Harvey, sui juris

Idaho Statutes Title 28, Chapter, 1 Section 28-1-308
"Without Recourse" "Reserve all my Rights"

By: Bernice Claire Harvey
Bernice Claire Harvey