No. 21-261

In The

SUPREME COURT OF THE UNITED STATES

Carrie Rae Eldridge,
Petitioner
v.
United States of America,
Respondent

On Petition for Writ of Certiorari to the United State Court of Appeals for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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OPINIONS APPEALED

Carrie Rae Eldridge v. Commissioner of Internal Revenue (U.S. Ninth Circuit Court of Appeals, No. 20-70221) an appeal from the United States Tax Court, U.S. Tax Court No.: 14744-18.

JURISDICTIONAL STATEMENT

This *Petition for Writ of Certiorari,* filed by a *pro se Petitioner* is filed pursuant to 28 U.S.C. § 1254(1). The *Petition* seeks review of the Ninth Circuit Court of Appeal's *Order* in case No. 20-70221.

CAUSE FOR THE PETITION

The enforcement operations of the Internal Revenue Service, with respect to its improper enforcement of the *class* legislation of the non-uniform federal personal income tax as a *direct* tax without limitation under the 16th Amendment, **violates** the Constitution. The *class* legislation of the *graduated* federal personal income tax is responsible for the division of the American people, who are now divided precisely along the *class* lines created by the tax-brackets of the graduated income tax law. The result of the mal-administration of this *class legislation* will ultimately be the complete destruction of our entire Constitutional Republic if the mal-administration of the law By the IRS is not addressed and corrected by this court. This has now become a matter of the highest level of national importance possible.

The class legislation of the federal personal income tax is destroying our constitutional system of a representative government, of a people united under a common Supreme Law (the Constitution), that creates, preserves, and protects equal opportunity, equal protection, and the equal rights of all Americans, without creating *classes* of citizens within the law that are treated differently under it. The *class* legislation of the communistically *graduated* income tax, that is mal administered today in place of constitutionally uniform *indirect* taxation authorized,

has resulted in the creation of the repugnant and destructive *class warfare* that is now tearing America apart.

Since the late 1800s, the use by Congress of tax-brackets in the law, with different rates of tax imposed on the *persons* of each bracket, is based on the *power* of Congress **to discriminate** against the **privileged** *persons* (and the inanimate *commodities* and *articles of commerce*) that are subject to taxation by the *indirect* powers (*Impost, Duty, Excise*); where the amount of taxation imposed is *graduated,* depending upon the amount of *income* realized from the *privilege* that is possessed, where the privilege is subjected to *excise* taxation.

But the U.S. Congress possesses **no** *power* what-so-ever to discriminate in law against the American citizens themselves, on any basis, including *income,* particularly when earned through the exercise of a non-taxable *right,* rather than on the basis of a taxable *privilege* that is enjoyed, and from which *taxable income* is derived.

The Internal Revenue Service (IRS), the Department of Justice (DOJ), and the lower federal courts are not adhering to, and are in fact violating, both the U.S. Constitution and the written laws of the Internal Revenue Code in their income tax enforcement operations and rulings. Many are operating now in **open rebellion** against our constitutional system of taxation that grants only *limited* powers to tax, *i.e.*: limited by either the Rule of *uniformity* if the tax is *indirect,* or by the Rule of *apportionment* if *direct.*

The original Act of Congress that created the current personal income tax law was the *Underwood-Simmons Tariff Act of October 3, 1913.* That Act of Congress did **not** create or impose a *direct* tax, because that Act imposed a tariff. A tariff is one type of an ***Impost,*** which is one of the three *forms* of ***indirect*** taxation that are constitutionally authorized by Article 1, Section 8, clause 1. Those granted powers to

tax are then made enforceable at law, by a constitutionally authorized Congress, under the original *"Necessary and Proper" enabling enforcement clause* of Article 1, Section 8, clause 18. This gives the federal courts the ability to lawfully take a *subject-matter jurisdiction* to enforce claims for those uniform *indirect* taxes, and the apportioned *direct* taxes, of Article I. But **no** such jurisdiction is ever granted to Congress to enforce claims for an unlimited *direct* tax, as unconstitutionally practiced by the IRS in alleging *deficiencies,* and as held, in this case.

In this *Petition* it is alleged that the U.S. Tax Court, and the Ninth Circuit Court of Appeals, each committed *egregious* ***reversible*** *error* and **violated** the U.S. Constitution when they refused to address the irrefutable ***lack*** of a constitutionally granted *subject-matter jurisdiction* of the federal courts that can be lawfully taken under the 16th Amendment alone, to enforce the federal personal income tax as a *direct* tax **without** any constitutional limitations; -for ***lack*** of an *enabling enforcement clause* in the Amendment granting the authority to Congress to write such tax law.

The 16th Amendment **cannot** be the source of a new taxing *power* for Congress to exercise and enforce, as *erroneously* argued by the Commissioner and wrongfully accepted by the lower courts in this dispute, for the irrefutable ***lack*** of an *enabling enforcement clause* in that Amendment to properly authorize the U.S. Congress to write new law to enforce a new power to tax (income) thereunder, allegedly *directly* and without any applicable constitutional *limitations,* as wrongfully operationally practiced by the IRS, *erroneously* argued by the Commissioner, and held in both the lower courts, in this case. Those courts wrongfully and erroneously endorsed the argument of the Commissioner and DOJ that the income tax is a *direct* tax newly created under the 16th Amendment **without** any constitutional *limitation* being applicable to the tax or taxing power. That holding was ***fatal reversible error.***

It was *fatal reversible* ***error*** because the decisions of the lower courts in this case directly **contradict** and **violate** the decisions of the U.S. Supreme Court taken in the *controlling* decisions of *Brushaber v. Union Pacific R.R. Co.*, 240 US 1, (1916) and *Stanton v. Baltic Mining Co.*, 240 US 103 (1916), where the court declared that the true constitutional nature of the tax on *income* imposed in 1913 by the Underwood-Simmons Tariff Act, was ***indirect,*** under Article I, Section 8, clause 1.

Flint v Stone Tracy Co., 220 US 107 (1911) clearly establishes the constitutional limits of the range and scope of the legal *power* to tax *indirectly* by *Impost, Duty* and *Excise.*

> "Excises are "taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges ... *the requirement to pay such taxes involves the exercise of the privilege* and if business is not done in the manner described *no tax is payable...**it is the privilege which is the subject of the tax*** and not the mere buying, selling or handling of goods. Cooley, Const. Lim., 7th ed., 680." *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151; 31 S.Ct. 342, 349 (1911); or a tax on privileges, syn. "privilege tax". Black's Law Dictionary 6th Edition

Additionally, the appellate decision in the instant case not only directly **contradicts** both of the Supreme Court decisions taken in *Brushaber v. Union Pacific R.R. Co.*, 240 US 1 (1916) and *Stanton v. Baltic Mining Co.*, 240 US 103 (1916), it also contradicts the decisions of the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, in case #16-1689, which decision sustained the Richmond district court's holding in *United States v. Lewis F. Carter, et al,* case #3:15-cv-161, that the federal income tax is constitutionally based, **not** on the 16th Amendment as argued by the Commissioner, but **only** on the *indirect* taxing *powers* of Article I, Section 8, clauses 1 and 18, *i.e.*: to tax *indirectly* by uniform taxation, where "*income*" is **used as the *yardstick*** that ***measures*** the amount of the underlying *indirect* tax that is owed as an *Impost, Duty,* or *Excise.* But the "*income*" is **not itself** the proper subject, **nor** the object, of the *indirect* taxation. That "*indirect*" district court ruling

cited *United States v. Melton*, No. 94-5535, 1996 WL 271468, at *2 (4th Cir. May 22, 1996) (citing *Brushaber v. Union Pacific R.R. Co.,* 240 US 1, 11, 16-19 (1916)) as the basis for the "*indirect* tax" holding of the court, which was later sustained in the Fourth Circuit in a subsequent action with the same defendant in Case No. #18-1471.

The federal income tax cannot be lawfully or constitutionally enforced by the federal courts in a different manner in the different states and in the different U.S. Circuit Courts of Appeals. It cannot lawfully be enforced as two different *powers* of taxation in two or more different states, or in two or more different Circuit Courts, *i.e.*: as an *indirect* tax in the Fourth Circuit, but as a *direct* tax without *limitation* as held in the Ninth Circuit in this case. The income tax may **only** be lawfully enforced by the lower courts as the **same *form* of tax**, under the **same invoked *power*** to tax, in **every** state, and in every Circuit Court, in the country. This court **now** has a legal duty to resolve the conflicted and contradictory rulings of the different Circuit Courts of Appeals on this issue of the true constitutional nature of the federal personal income tax that was enacted in 1913.

It is further alleged that the Tax Court, and the Ninth Circuit Court of Appeals, committed further ***reversible*** *error* when they ruled that a "*deficiency*" for tax under I.R.C. Sections 6211 and 6212 can **violate** those statutes and be based on Subtitle "C" tax law, instead of **just** the Subtitle "A" laws that IRC Sections 6211 and 6212 mandate all *deficiencies* actually be based upon.

Additionally, the Ninth Circuit Court further erred when it ignored the ***lack*** and **absence** of a properly declared and fully disclosed *subject-matter jurisdiction* of the court to act in the civil action, to enforce the [alleged] *deficiency* as a *direct* tax under the 16th Amendment **without** *limitation*, rather than as a uniform *indirect* tax under Article I.

Thus, the *standards of law* used to control the decision in the lower courts was wrongfully deemed to be "*some substantive evidence*" that was alleged presented by the Commissioner, and a subsequent alleged failure of the *Petitioner* "*to show by a preponderance of evidence that the deficiency was arbitrary or erroneous*".

However, as all the Commissioner's alleged evidence produced in the Tax Court was improperly only based on payments earned **outside** of the Subtitle A tax laws that are required to be used as the *statutory* foundation of a lawful *deficiency* claim under IRC Sections 6211 and 6212, then clearly the **wrong** *standards at law* were adopted by the court to decide this case.

Since there were **no** Subtitle "A" laws or "*wages*" that were used to calculate the alleged *deficiency*, then it is the legal *standards* of:

1) the ***lack*** of a properly granted and fully disclosed *subject-matter jurisdiction* of the court to act at law to enforce a *direct tax* without limitation on an individual *person* (instead of upon the "*several states*");
2) the constitutional *limitations* of Article I that must still be applied to all federal taxation whether *direct* or *indirect*, and
3) *statutory construction*;

that should have been used as the *standards at law* that controlled and commanded the lower court decisions.

The **absence** of an *enabling enforcement clause* in the 16th Amendment is ***fatal*** to the federal courts' ability to lawfully take a fully granted *subject-matter jurisdiction* of the court under that Amendment, to allow the court to enforce an allegedly new and *direct* **un**limited *power* to tax that was erroneously claimed by the Commissioner to have been created in 1913 by the adoption of the 16th Amendment, rather than as the ***indirect*** tax (it is) under the pre-existing Article I, Section 8,

clause 1 powers to tax by *Impost, Duty,* and *Excise.* Where '*income*" is used as the ***yardstick*** that ***measures*** the amount of the ***indirect*** tax owed. "*Income*" is **not** the taxable activity, or "thing", that is actually taxed (directly), it is the mechanism by which the *amount* of the *indirect* tax due, is ***measured***.

No taxing *power* that is alleged to have been *created* in 1913 by the adoption of the 16th Amendment can be shown to have been made constitutionally *enforceable* with law that the U.S. Congress is constitutionally authorized to write, for ***lack*** of an *enabling enforcement clause* in that Amendment. That lack of a grant of enforcement powers, by an *enabling enforcement clause* in that Amendment, is a ***fatal defect*** in every claim that is made alleging *subject-matter jurisdiction* exists *and may be taken* under authority of the 16th Amendment, rather than under Article I, Section 8.

That enforcement authority of Congress, to write constitutionally authorized law, is an ***essential*** and ***indispensable*** element of the federal courts' ability to properly establish that a fully-granted *subject-matter jurisdiction* of the court exists, that may be lawfully taken by the court to enforce a specific claim for tax, *i.e.*: - here, the Commissioner wrongfully demands the payment of a *deficiency* for an alleged *direct* tax, that has been calculated **outside** of the Subtitle "A" tax laws, and is ***erroneously*** alleged owed as a newly authorized *direct* tax without *limitation* under authority of the 16th Amendment.

The federal courts, for want of an *enabling enforcement clause* in the 16th Amendment, ***lack*** the ability to take a fully granted *subject-matter jurisdiction* of the court to enforce claims for a *direct* tax, that are made under an alleged authority of the 16th Amendment alone, severed from, and without foundational reliance upon the *indirect* taxing powers granted and made enforceable at law under Article I, Section 8, clauses 1 and 18.

In summary, the ***direct*** and *unlimited* taxation of the *labors* and the *fruits of labor* of the American People, derived from the simple exercise of the citizens' *right to work,* as *operationally* wrongfully *practiced* by the IRS in assessing *deficiencies* outside of the subtitle "A" laws, - without a *statutory* specification of any *liability* for the payment of any tax to lawfully enforce; without the use of the **prerequisite** *indirect* basis of *Excise, Duty,* or *Impost* taxation; and without an applicable *enabling enforcement clause* in the 16th Amendment to constitutionally authorize Congress to write law to enforce any such alleged new *power* to tax *income* ***directly*** and without *limitation,* is all patently **unconstitutional**.

Standards of Statutory Construction

The standards of *statutory construction* are well known. Many examples were cited in the *Petitioner's* pleadings in the lower courts. Here, we cite just two:

> "It is a basic principle of statutory construction that courts have no right first to determine the legislative intent of a statute and then, under the guise of its interpretation, proceed to either add words to or eliminate other words from the statute's language. *DeSoto Securities Co. v. Commissioner*, 235 F.2d 409, 411 (7th Cir. 1956); see also 2A *Sutherland Statutory Construction* § 47.38 (4th ed. 1984). Similarly, the Secretary has no power to change the language of the revenue statutes because he thinks Congress may have overlooked something." *Water Quality Ass'n v. United States*, 795 F.2d 1303 (7th Cir. 1986), p. 1309 - citing and quoting *Calamaro*

> "As in all cases involving statutory construction, "our starting point must be the language employed by Congress," *Reiter v Sonotone Corp.*, 442 US 330, 337, 60 L Ed 2d 931, 99 S Ct. 2326 (1979), and we assume "that the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v United States,* 369 US 1, 9, 7 L Ed 2d 492, 82 S Ct. 585 (1962)

This appeal and *Petition* are predicated on the plain and clear language used in the controlling statutes and clauses of the U.S. Constitution. The allegations of judicial error are based on the clear and specific language used in the provisions of the

Constitution granting the two *forms* of federal taxation that are authorized and made enforceable at law, *i.e.*: *direct* and *indirect*; -where all *direct* taxation must obey the Rule of *apportionment* regardless of the adoption of the 16th Amendment, and all *indirect* taxation must obey the Rule of *uniformity.*

The lower courts have also violated the statutes of Title 26 that establish the limits of authority that control the lawful issuance of a *Notice of Deficiency.* The courts have *erroneously* ignored or overlooked the controlling provisions of the Subtitle A laws of IRC Sections 6211, 6212, 1441(b), and 1461.

ISSUE ARGUMENTS

ISSUE A

A. Does *subject-matter jurisdiction* exist to enforce the income tax as a *direct* tax without limitation under the 16th Amendment?

Subject-matter jurisdiction of the federal courts cannot be lawfully established and does **not** exist under the 16th Amendment, to allow the federal courts to take jurisdiction thereunder, as erroneously alleged in this case, to enforce upon the *Petitioner* the *direct* and *unlimited* tax on *income* that is now claimed owed as a *deficiency.* This is clearly true because of the irrefutable ***lack*** of an *enabling enforcement clause* in that Amendment, that would authorize the U.S. Congress to write new law to enforce, **without** any applicable *limitation,* the *direct* tax alleged owed under the 16th Amendment (as the *deficiency* at issue in this case).

The only ***direct*** taxation that the U.S. Congress is *constitutionally* authorized by an applicable *enabling enforcement clause* of the Constitution to enforce, is the *direct* taxation authorized (and limited) by Article I, Section 2, clause 3, and Article I, Section 9, clause 4. That *direct* taxation, under those Article I clauses, **must** be "*apportioned* to the "*several States*" for payment, and must also be laid in "*proportion*

to the last census", **regardless** of the adoption of the 16th Amendment. These original clauses of the Constitution have **never** been repealed or amended, and the 16th Amendment cannot accomplish that repeal (or amending) without text in the Amendment clearly stating such legal effect as the intended effect, which cannot otherwise be effected by mere inference, presumption, conjecture, supposition, assumption, or even by *opinions* of the lower courts.

No *direct* or completely *unlimited* tax or taxation **can** be constitutionally *enforced* by the U.S. courts under the 16th Amendment (or any other alleged authority of the Constitution) against an American citizen as a taxable "*person*". Nor may tax be lawfully laid or imposed as a *direct* tax upon their *labor* or the *fruits of labor* derived from the simple exercise of the citizens' *right to work* and to earn money from *labors* undertaken exclusively within the fifty states without the involvement of some underlying *Impost, Duty,* or *Excise* taxable *activity* or *privilege.* This is true because there ***inarguably*** is **no** *enabling enforcement clause* in the 16th Amendment to properly constitutionally authorize the U.S. Congress to write any new laws to enforce upon the American citizens a new, unapportioned, disproportionately imposed and otherwise completely *unlimited, direct* tax on all earnings and payments, allegedly redefined by a statute as "*taxable income*" as "*gross income*".

Without an *enabling enforcement clause* that is made applicable to the specific *taxing power* alleged invoked and exercised, *subject-matter jurisdiction* of the federal courts is ***lacking*** and **cannot** be properly identified, legally established, or lawfully *taken,* by any federal court, to allow the court to enforce a *deficiency* as a *direct* and *unlimited* tax on all earnings. An applicable *enabling enforcement clause* is an **essential** and **indispensable** element of properly establishing that there is a fully granted *subject-matter jurisdiction* of the court that actually exists, and that can be lawfully established, invoked, and *taken* by a federal court, to allow it to enforce a specific *claim* for a particular type of tax (*Impost, Duty,* or *Excise*), of a specific constitutional *nature, i.e.*: *direct* or *indirect.*

Previous to the adoption of the 16th Amendment the taxation of *income* had been repeatedly upheld by this Supreme Court as a legitimate and constitutional exercise of the ***indirect*** taxing powers given to Congress to tax *uniformly* by *Impost, Duty,* and *Excise* under the power and authority granted by Article I, Section 8, clause 1 of the U.S. Constitution, and made enforceable at law by a constitutionally authorized Congress under the *"Necessary and Proper" enabling enforcement clause* of Article I, Section 8, clause 18. see *Springer v. U. S.*, 102 U.S. 586, 26 L. ed. 253 (1880); *Pollock v. Farmer's Loan & Trust,* 158 U.S. 601, (1895); *Pacific Ins. Co. v. Soule,* 7 Wall. 433, 19 L. ed. 95 (1868); *Spreckels Sugar Ref. Co. v. McClain,* 192 U.S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376. (1904); *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911); *Stratton's Independence, Ltd. v. Howbert,* 231 U.S. 399, at 416-417 (1913), and later, *Bowers v. Kerbaugh-Empire Co.,* 271 U.S. 170 (1926).

The *Petitioner* does not dispute this lawful, authorized, constitutional application of the ***indirect*** taxing powers, but inarguably asserts that under Title 15 Section 17 there is **no** *Impost, Duty* or *Excise* tax or *taxing power* that reaches her *person* with legal effect, or her *right to work,* or the *fruits of her labors* derived from her labors conducted strictly within the State of California under and through a simple exercise of her *rights* to work and to own and accumulate *private property.*

Furthermore, previous to the adoption of the 16th Amendment, all *direct* taxation under Article I had to be *apportioned* to the States for payment and imposed in *proportion* to the last census. Therefore, any claim to an unlimited *power* to tax *directly* and without *limitation* under the 16th Amendment, as a result of the adoption of the Amendment, **would certainly be a claim** by the Commissioner to a **new** *power* to tax, allegedly created by the Amendment. Any such **new** *power,* in order to be enforceable in the federal courts, would require that an *enabling enforcement clause* be present in the Amendment to authorize the U.S. Congress to write law thereunder to enforce the new, previously non-existent, *power to tax* **without** *limitation.* And only then could a federal court be able to identify both of

the **essential** constitutional elements necessary to fully establish that there was a fully-granted *subject-matter jurisdiction* of the court that exists and could lawfully be taken by it over the claim for a tax or *deficiency* alleged owed under authority of the 16th Amendment as a *direct* tax on all earnings.

In this case however, the Commissioner, the U.S. Tax Court, and the Ninth Circuit, have all specifically rejected ***indirect*** taxation as the constitutional foundation for the *subject-matter jurisdiction* of the court, and have instead ***erroneously*** endorsed the Commissioner's (IRS') unlawful *operational practice* of enforcing the federal income tax as a *new* power to tax *directly* and *without* any *limitation* under alleged authority of the 16th Amendment, despite the irrefutable **fact** that there is **no** *enforcement authority* granted to Congress under the Amendment because of the ***fatal defect*** of the Amendment's ***lack*** of an *enabling enforcement clause* to constitutionally authorize the U.S. Congress to write new law to enforce this alleged new and unlimited *direct* tax on "*income*".

The 16th Amendment to the U.S. Constitution plainly reads:

> **16th Amendment**
>
> "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."

The language that is used in this Amendment does **not** actually contain the word "***direct***" in describing the tax on *income* that is addressed therein, and there certainly is **no** *enabling enforcement clause* in the Amendment to properly grant a new *enforcement power* to Congress to write new law, which is essential in order to properly establish that a fully granted *subject-matter jurisdiction* of the court exists to allow the enforcement by the court, of a new taxing power alleged created.

There is a particularly egregious error of the Tax Court in this dispute because the legal *effect* of improperly adding by *presumption* the word "***direct***" to the 16th Amendment in an *interpretational* opinion, rather than by factual inclusion, is to wrongfully attempt to use the Amendment to **destroy** two other pre-existing unrepealed and unamended clauses of the U.S. Constitution limiting the power to tax *directly*. Article I, Section 2, clause 3 of the U.S. Constitution still reads today: "*Representatives and direct Taxes shall be apportioned among the several States*", and Article I, Section 9, clause 4 still commands: "*No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken*".

These clauses still exist in the U.S. Constitution. They have **not** been repealed **nor** amended by any text of any Amendment stating such legal effect, **not** even with respect to the taxation of *income* under the 16th Amendment. Neither repeal, nor amendment, of any provision of the Constitution may be lawfully or legitimately *assumed* or *inferred* into alleged existence without being plainly stated in writing as an intended legal effect[1].

It is completely improper to use one clause of the Constitution (the 16th Amendment) **to destroy** two other, pre-existing, Article I provisions that **still** *constitutionally* **limit** the power to tax *directly*. This was carefully and specifically noted by the *Brushaber* court in its original *controlling* decision.

> "But it clearly results that the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution **to destroy another**; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into **irreconcilable conflict** with the general requirement **that all direct taxes be apportioned.** Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to

[1] See the very specific text of the 21st Amendment repealing prohibition.

> authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. **This result**, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, **would create radical and destructive changes in our constitutional system and multiply confusion** ... In the matter of taxation, the Constitution recognizes the **two great classes** of *direct* and *indirect* taxes, and lays down **two rules by which their imposition must be governed,** namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises." *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, 11-13 (1916)
>
> (emphasis added)

Therefore, as a tax without *apportionment* under the 16th Amendment, the federal personal income tax **cannot** be enforced as a *direct* tax, as it can only be lawfully sustained and enforced in the courts as an ***indirect*** tax under the Constitution because *indirect taxation* is **not** subject to the *Rule of apportionment*, **only** the *Rule of uniformity*. Clearly, the *income* tax can **only** be sustained, (as a tax without apportionment and without proportionate imposition as stated in the 16th Amendment, and without creating any inherent conflicts with any other part of the Constitution), **as an *indirect* tax** under Article I, Section 8. Any other application or interpretation of the Amendment's legal effect would destructively *engineer* a court-manufactured, **irreconcilable,** inherent conflict between the Amendment and the two pre-existing *limiting* clauses of Article I, as noted by the Supreme Court, and would be an **improper** attempt to use one clause of the Constitution (the 16th Amendment) to **destroy** those two other *unrepealed* and *unamended* clauses limiting the power of all *direct* taxation. This court has consistently been clear about these matters:

> "The provisions of the Sixteenth Amendment **conferred no new power of taxation** but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of **indirect taxation to which it inherently belonged** . . ." *Stanton v. Baltic Mining Co.*, 240 U.S. 103, pg. 112."

"The Congress shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. **If the tax is a *direct* one, it shall be *apportioned*** according to the census or enumeration. **If it is a *duty, impost,* or *excise,* it shall be *uniform*** throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. *Cf. Burnet v. Brooks,* 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.,* 240 U. S. 1, 240 U. S. 12." *Steward Mach. Co. v. Collector,* 301 U.S. 548 (1937), at 581

"Whether the tax is to be classified as an "***excise***" is in truth not of critical importance. If not that, it is an "***impost***" (*Pollock v. Farmers' Loan & Trust Co.,* 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soble,* 7 Wall. 433, 74 U. S. 445), or a "***duty***" (*Veazie Bank v. Fenno,* 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.,* 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore,* 178 U. S. 41, 178 U. S. 46). **A *capitation* or other "*direct*" tax it certainly is not.**" *Steward Mach. Co. v. Collector,* 301 U.S. 548 (1937), at 581-2

"The [income] tax being an ***excise***, its imposition must conform to the canon of *uniformity*. There has been **no departure** from this requirement. According to the settled doctrine the uniformity exacted is *geographical,* not intrinsic. *Knowlton v. Moore, supra,* p. 178 U. S. 83; *Flint v. Stone Tracy Co., supra,* p. 220 U. S. 158; *Billings v. United States,* 232 U. S. 261, 232 U. S. 282; *Stellwagen v. Clum,* 245 U. S. 605, 245 U. S. 613; *LaBelle Iron Works v. United States,* 256 U. S. 377, 256 U. S. 392; *Poe v. Seaborn,* 282 U. S. 101, 282 U. S. 117; *Wright v. Vinton Branch Mountain Trust Bank,* 300 U. S. 440." *Steward Mach. Co. v. Collector,* 301 U.S. 548 (1937), at 583

"Evidently Congress adopted the income tax as the ***measure*** of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, **with regard to the amount of benefit presumably derived by such corporations** from the current operations of the government. In *Flint v. Stone Tracy Co.* 220 U.S. 107, 165, 55 S.L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was **not** debarred by the Constitution from ***measuring*** the taxation by the total income, although derived in part from property which, considered by itself, was not taxable. It was reasonable that

Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance of the business transacted." *Stratton's Independence, Ltd. V. Howbert,* 231 U.S. 399, at 416 – 417 (1913)

"The Sixteenth Amendment **must** be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted. In *Pollock* ... it was held ... that Congress could not impose such [direct] taxes without apportioning them among the states according to population, as required by Article I, § 2, cl. 3, and Article I, § 9, cl. 4, of the original Constitution.

Afterwards, and evidently in recognition of the limitation upon the taxing power of Congress thus determined, the Sixteenth Amendment was adopted, ... **As repeatedly held, this did not extend the taxing power to new subjects** ... *Peck & Co. v. Lowe,* 247 U.S. 165, 172 (1918)

"This court had decided in the *Pollock* Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing **not** an income tax, but an **excise** tax upon the conduct of business in a *corporate capacity*, ***measuring***, however, **the amount of tax by the income of the corporation,** ..." *Flint v. Stone Tracy Co.* 220 U.S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312; *McCoach v. Minehill* & S. H. R. Co. 228 U.S. 295, 57 L. ed. 842, 33 Sup. Ct. Rep. 419; *United States v. Whitridge* (decided at this term, 231 U.S. 144, 58 L. ed. --, 34 Sup. Ct. Rep. 24." *Stratton's, supra* at 414

"Moreover in addition the conclusion reached in the *Pollock* case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an **excise** entitled to be enforced as such **unless and until** it was concluded that **to** enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the **duty would arise** to disregard form and consider substance alone and **hence subject the tax to the**

> **regulation as to apportionment** which otherwise **as an excise** would not apply to it." *Brushaber*, supra, at 16-17.

Therefore, since the *subject-matter jurisdiction* of the federal courts to enforce a *deficiency* for a *direct* tax on *income* under alleged authority of the 16th Amendment is in question in this action - because of the ***lack*** of an *enabling enforcement clause* in the 16th Amendment, the *Petitioner* still seeks on the record an explanation of how the alleged *subject-matter jurisdiction* of the federal courts has been established and taken in this case under the 16th Amendment to allow the court-ordered enforcement of the ***direct*** tax on *income*.

> "However late this objection has been made or may be made in any cause in an inferior or appellate court of the United States, it must be considered and decided before any court can move one further step in the cause, as any movement is necessarily the exercise of jurisdiction. 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;" State *of Rhode Island v. The State of Massachusetts*, 37 U.S. 709, 718 (1838)

> "In a long and venerable line of cases, the Supreme Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit. See, *e.g.*, *Capron v. Van Noorden*, 2 Cranch 126; *Arizonans for Official English v. Arizona*, 520 U.S. 43, (1997). *Bell v. Hood, supra*; National *Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 465, n. 13; Norton *v. Mathews*, 427 U.S. 524, 531; Secretary *of Navy v. Avrech*, 418 U.S. 676, 678 (per curiam); United *States v. Augenblick*, 393 U.S. 348 ; *Philbrook v. Glodgett*, 421 U.S. 707, 721; and *Chandler v. Judicial Council of Tenth Circuit*, 398 U.S. 74, 86-88, distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, **an *ultra vires* act.**" Pp. 93-102. *Steel Co., aka Chicago Steel & Pickling Co. v. Citizens for A Better Environment*, No. 96-643, 90 F.3d 1237 (1998).

ISSUE B

B. Is the graduated taxation of citizens unconstitutional *class* legislation that unlawfully *discriminates* against them by *classifying* them differently, rather than treating them *uniformly?*

Graduated taxation, that uses tax-brackets with **non**-uniform rates of tax that are imposed on *classes* of American citizens as *persons* who are made *class* members of **different** *classes* by the tax-brackets of IR Section 1, is **not** authorized under the U.S. Constitution, and is unconstitutional when enforced upon the citizens as an *indirect* tax without the *uniformity* limitation. *Graduated* taxation may only be constitutionally enforced against the inanimate taxable *commodities* and *articles of commerce* subject to tax, and the *privileged* corporate, licensed, and foreign *"persons"* that Congress **is** empowered to ***discriminate*** against in law based on the different amounts of *"income"* realized in return from the enjoyment of a taxable *privilege*[2] that is possessed.

But the U.S. Congress **cannot** lawfully *discriminate* in law against the American people themselves on any basis, including wealth or amounts of earnings, or even *income,* to create or legislate into existence different *classes* of American citizens who are subjected to different rates of non-uniform taxation, by the same tax imposed, depending upon the particular *class* that they are each ***discriminatorily*** assigned to by the taxing legislation.

The U.S. Constitution does not authorize *graduated* taxation. Under the U.S. Constitution, every tax, if *direct,* must be apportioned and imposed proportionately under the last census, regardless of the adoption of the 16th Amendment in 1913, and, if *indirect,* must be ***uniform*** in operation on all *persons*, and **cannot** be *graduated* in its enforced application against the American citizens. *Graduated* taxation of the American people is quite simply unconstitutional *class legislation.*

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[2] Like the privileges of i*ncorporation* and those possessed by *license.*

The *graduated* taxation of American citizens by *class* legislation, is absolutely **repugnant** to the U.S. Constitution because it **violates** the central tenet of all taxation in America, *i.e.*: that every American is treated the same under the law, and is taxed the **same** as all other Americans are taxed.

> "The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of **equal and uniform** apportionment among the persons taxed, and any other exaction does **not** come within the legal definition of a 'tax.'" *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 599 (1895)

> "There is **no** such thing in the theory of our national government as **unlimited** power of taxation in congress. There are limitations, as he justly observes, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without which society could not exist, and which are respected by every government. The **power of taxation is subject to these limitations.** *Citizens' Savings Loan Ass'n v. Topeka*, 20 Wall. 655, and *Parkersburg v. Brown*, 106 U.S. 487, 1 Sup. Ct. 442." *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 599 (1895)

The creation, by I.R.C. Section 1, of different tax brackets, that allegedly create **different** *classes* of American *persons*, depending upon the tax-bracket they are assigned to by that law, is **un**constitutional. It is unconstitutional because the differing *classes* of citizens created under the law, are then all treated differently under that law because the different *class* members are taxed differently, at different rates, and on different amounts of earnings, and without *uniformity* across the "*several states*", even within each tax-bracket. Under the unlimited SALT deduction of the 1986 IR Section 1 tax imposed, which deduction varies in every state, and is formulaically controlled in each state by three different state tax variables (state property, sales, & income, taxes), instead of being controlled by one *uniform* **federal** formula to calculate the taxable *gross income* of a *person*; and thus, the citizens of the different states are taxed at different rates of tax and on differing amounts of earnings, depending upon the *class* [tax-bracket] assigned and the differing amounts of state tax paid in the state where they reside; -which **destroys**

the required geographical *uniformity* of the tax across the several states. This is **un**constitutional because that system of using the three different state rates of tax to calculate federal *gross income,* and based on that, the total tax owed, destroys the geographical *uniformity* amongst the states that is required of all *indirect* taxation under Article I, Section 8, clause 1. The Constitution does not authorize the U.S. Congress to use tax-brackets and **non**-uniform rates of taxation to prejudicially create, and then ***discriminate*** in law against, different *classes* of American citizens as "*persons*" within the tax code, **on any basis**, including race, color, religion, gender, age, national origin, wealth (property), different levels of earnings, or even "*income*". However, the corporate *person*, the foreign *person,* and the licensed *person,* (as well as the inanimate *commodities* and *articles of commerce* subject to tax), **are** *constitutionally* **subject** to this sort of discriminatory *classification* by Congress based on the level of return ("*income*") that is realized by them from the possession of the taxable *privilege* enjoyed by the taxable *person* engaged in the federally taxable activity subject to some *impost, duty,* or *excise.*

Congress, however, has **no** lawfully granted *power* what-so-ever to ***discriminate*** in law against the individual American citizens themselves as "*persons*", because the citizens' labor, *fruits of labor,* and *right to work*, are not lawfully or constitutionally subject to the *Excise* taxation of a *privilege*" or the *Impost* taxation by tariff[3] of a "foreign" *person's* activity in America.

To comply with the constitutionally required *uniformity* of taxation, Congress may **only** *discriminate* in law with different *rates* of tax being imposed upon the manufacture, sale, and consumption of *commodities* and *Articles of Commerce* subject to tax, and upon the ***privileged*** (and therefore taxable) "*persons*" subject to the *indirect* taxation of activities that are subject to some federal *Impost, Duty,* or *Excise* tax, as was routinely recognized and well-settled by this court before the

[3] As imposed by the *Underwood-Simmons Tariff Act of Oct. 3, 1913,* - the original Act of Congress creating the federal personal income tax.

adoption of the **irrelevant** 16th Amendment, which "***conferred no new power of taxation***", *Baltic Mining, supra.*

The only "*persons*" that the U.S. Congress may constitutionally ***discriminate*** in law **against,** with **non**-*uniform* rates of taxation, are 1) the *privileged* corporate "*persons*" who have **no** God-given *rights* to *work,* to *Life,* to *Liberty,* to *private property,* and to *the pursuit of happiness,* but who rather exist and operate **only** by virtue of the government granted [and therefore federally *taxable*] "*privilege*" of ***incorporation***; and 2) *persons* **not** operating in America by *right,* but who hold a license to deal in taxable *commodities* or *Articles of Commerce* subject to taxation; or 3) who are ***foreign*** to the United States of America, or are *persons* who are in a foreign place (a territory, possession, or foreign country under a tax-treaty), and therefore may be *subjected* to federal taxation by virtue of the *privilege* of the federal protections provided under those circumstances and in those places.

Title 15 U.S.C. Section 17 specifically commands that: "*The labor of a human being is* ***not*** *a commodity or Article of Commerce*", and therefore, as such, the *labors* of the American citizens, conducted by *right,* are completely **removed** from any *subjectivity* to the *indirect powers* to tax, by *Excise* or otherwise.

The *graduated direct* taxation of the *income* of the *American* citizens as currently operationally enforced by the IRS, without any *indirect* taxation basis, is patently ***unconstitutional*** because the tax is **neither** *apportioned* **nor** *uniform,* as all taxation is **still** required to be under the U.S. Constitution, regardless of the adoption of the 16th Amendment.

Graduated *direct* taxation of the American people is **not** authorized by the U.S. Constitution; - but it is demanded under the Communist Manifesto's 2nd Plank. How is it possible that the U.S. courts are enforcing a plank of the Communist Manifesto, instead of the tax *limitation* clauses of the U.S. Constitution?

> Hamilton says in one of his papers (the Continentalist): 'The genius of liberty **reprobates everything arbitrary or discretionary in taxation.** It exacts that every man, **by a definite and general rule, should know what proportion of his property the state demands**; ..." 1 Hamilton's Works (Ed. 1885) 270. *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 596 (1895)
>
> "The income tax law under consideration is **marked by discriminating features** which affect the whole law. It **discriminates** between those who receive an income of $4,000 and those who do not. It thus **vitiates,** in my judgment, **by this arbitrary discrimination, the whole legislation.** *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 596 (1895)
>
> "The legislation, **in the discrimination it makes, is *class* legislation.** Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens **by reason** of their birth, or wealth, or religion, it is ***class* legislation**, and leads inevitably **to oppression and abuses,** and to **general unrest and disturbance in society.** *"Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 596 (1895)
>
> "It was hoped and believed that the great amendments to the constitution which followed the late Civil War had rendered such legislation **impossible for all future time.** But the objectionable legislation reappears in the act under consideration." *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 596 (1895)

The great Amendments to which Justice Fields refers to, are of course the 14th Amendment containing the *Equal Protection* clause guaranteeing to all *persons* the **equal protection** of the law.

The concern identified by Justice Fields is clear. **ALL** *class legislation*, taxing or otherwise, **violates** the *equal protection* clause of the 14th Amendment requiring that all *persons* be provided with the *equal protection* of the law, *equal opportunity,* equal *rights,* and equal treatment under the law. His concerns and warnings were truly prophetic, as we are now confronted today with all of the same evil aspects of the *discriminatory* and prejudicial, communistic *class* legislation of today's income tax laws, that he confronted, and that this court firmly **rejected** 125 years ago.

In conclusion, Justice Fields exposes the conflicted philosophical battle that was just beginning in his day, but which is now consuming America with violence as we arrive at the time of the fulfillment of Justice Fields' prophecy:

> "Here I close my opinion. I could not say less in view of questions of such gravity that go down **to the very foundation of the government**. If the provisions of the constitution can be set aside by an act of congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, **till our political contests will become a war of the poor against the rich,** -a war constantly growing in intensity and bitterness. **'If the court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the constitution,' as said by one who has been all his life a student of our institutions, 'it will mark the hour when the sure decadence of our present government will commence.'** If the purely arbitrary limitation of four thousand dollars in the present law can be sustained, none having less than that amount of income being assessed or taxed for the support of the government, the limitation of future congresses may be fixed at a much larger sum, at five or ten or twenty thousand dollars, parties possessing an income of that amount alone being bound to bear the burdens of government; or the limitation may be designated at such an amount as a board of 'walking delegates' may deem necessary. There is no safety in allowing the limitation to be adjusted except in **strict compliance** with the mandates of the constitution, which require its taxation, if imposed by direct taxes, to be apportioned among the states according to their representation, and, if imposed by indirect taxes, to be uniform in operation and, so far as practicable, in proportion to their property, **equal upon all citizens.** Unless the rule of the constitution governs, a majority may fix the limitation at such rate as will not include any of their own number." *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 607 (1895)

Today, all *direct* taxes must still be *apportioned* to the states for payment and imposed *proportionately* to the last census, **regardless** of the adoption of the 16th Amendment; and all *indirect* taxation **must** be *uniform* in their effect upon the American citizens.

The tax-brackets of the federal personal income tax laws, with **non**-uniform *discriminatory* and *prejudicial* rates of *income tax* imposed on the different *classes* of citizens created by the tax-brackets defined within the *class legislation* of the income tax law, are **not** constitutional when enforced upon the American citizens and their *right to work,* as a *direct tax* without *limitation,* and (or) without any legitimate *indirect* basis for the taxation that is properly based upon one of the three *indirect* powers to tax, *i.e.*: by *Impost, Duty,* or *Excise.*

> The Constitution provides that representatives and direct [p556] taxes shall be apportioned among the several States according to numbers, and that no direct tax shall be laid except according to the enumeration provided for, and also that all duties, imposts, and excises shall be uniform throughout the United States.
> ...
> The tax **must** be ***uniform*** on the particular **article**, and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States.
>
> That is manifestly the meaning of this word as used in this clause. The framers of the Constitution could **not** have meant to say that the government, in raising its revenues, should not be allowed to **discriminate between the articles** which it should tax.
>
> The difficulties in the way of this construction have, however, been very largely obviated by the meaning of the word [p595] "uniform" which has been adopted, holding that the uniformity must refer to **articles of the same class**. That is, **different articles** may be taxed at different amounts, provided the rate is ***uniform*** **on the same class** everywhere, with all people, and at all times. *Pollock v. Farmers' Loan & Trust Co.,* 157 U. S. 429, 157 U. S. 57

It is **only** the *inanimate* commodities and *articles of commerce* and the *privileged persons* conducting taxable activities, that are subject to some *Impost, Duty,* or *Excise* taxation, that may lawfully be *discriminated against* in law, by a *graduated* tax law.

The Constitution does **not** allow the *discriminatory* and *prejudicial* **non**-*uniform* taxation of the American People through the *classification* of the American citizens in the fifty States into **different** *classes* that are defined by the tax-brackets of the income tax law, on any alleged basis for the *discrimination* effected, -including on the basis of the amount of *income* earned.

Under the Constitution the U.S. Congress **cannot** write *discriminatory* and *prejudicial, class* based, **non**-uniform *direct* tax law (that is also laid without *apportionment* or *proportionate imposition* of the tax under the census), on the American people simply because they exist, live, work, and earn money in America; - **nor** may it be done because of the adoption of the 16th Amendment.

> "The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of **equal** and **uniform** *apportionment* among the persons taxed, and any other exaction does **not** come within the legal definition of a 'tax.' " *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 599 (1895)

The tax-brackets of our income tax system are being **un**constitutionally used to separate and divide the American people into different *classes* of *persons.* The *discriminatory, prejudicial, graduated* taxation of income that is wrongfully pursued in *operational practice* by the IRS, for enforcement of the tax on *income* as a *direct tax* without *limitation*, is outside of, and a violation of, the Constitutions' granted *limited* taxing powers. It **cannot** be sustained on review by any honest court.

In order to preserve *equal opportunity, equal rights,* and *equal protection* in the United States of America for all citizens under the 14th Amendment, there must be **no** *class* legislation, like the IR Section 1 income tax, that is used to create an unconstitutional system of *communistically* ***graduated*** taxation of different *classes* of American citizens, at **different** *rates of tax imposed* than is borne by the other *classes*, - resulting in the **un**constitutional, **non**-*uniform, arbitrary, discriminatory*

and *prejudicial* taxation of the labors of the American people simply exercising a *right* to work.

The American citizens are **not inherently** federally taxable "*persons*", unlike the corporate, licensed, and foreign *persons,* **regardless** of the fact that they allegedly have *income. Indirect* taxation, including the lawful taxation of *income,* may only be lawfully based on the taxpayer's participation in some certain activity that is subject to the application of some *indirect Impost, Duty or Excise* tax, where "*income*" is the **yardstick** that ***measures*** the amount of tax owed, and is **not** the actual "thing" or *activity* (earning money) that is the subject of the tax.

ISSUE C

C. Does the *graduated* taxation of the American citizens destroy *equal protection* under the 14th Amendment when imposed directly upon them without *uniformity*?

Graduated ***direct*** taxation of *classes* of American citizens allegedly created under law, violates the 14th Amendment because the **non**-*uniform* rates of tax imposed on each of the different *classes* of *persons* created by the tax-brackets that are defined in the tax law of IRC Section 1, **destroys** the ***equal protection*** of the law, and thus also destroys *equal opportunity* and the *equal rights* of the American people, to **all** be treated *uniformly* by any tax law, whether it be a *direct* or *indirect* tax that is imposed. The federal courts are **not** authorized to enforce upon the American people the *class legislation* of the *graduated* taxation of the
2nd Plank of the Communist Manifesto in place of the constitutionally authorized federal taxation that is always controlled, **still today**, by either the *Rule of uniformity* whenever the tax is *indirect,* or by the *Rule of apportionment* whenever the tax is *direct,* regardless of the adoption of the 16th Amendment.

In *Coppage v. Kansas,* 236 U.S. 1, 14, 59 L.Ed. 441, L.R.A. 1915C, 960, 35 S.Ct.Rep. 240 (1915), Mr. Justice Pitney wrote:

> "Included in the right of personal liberty and the right of private property - partaking of a nature of each- is the **right to make contracts for the acquisition of property.** Chief among such contracts is **that of personal employment,** by which **labor and other services are exchanged** for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial **impairment** of liberty in the long-established constitutional sense."

In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the Supreme Court, again, recognized this fundamental *right* in declaring unconstitutional a statute that would force a Chinese laundry businessman out of business, holding at 370:

> "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."

> "It requires no argument to show that the **right to work for a living** in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [14th] Amendment to secure. *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 762; *Barbier v. Connolly*, 113 U.S. 27, 31; *Yick Wo v. Hopkins*, supra; *Allgeyer v. Louisiana*, 165 U.S. 578, 589, 590; *Coppage v. Kansas*, 236 U.S. 1, 14." *Truax v. Raich*, 239 U.S. 33, 41 (1915)

Many other precedential opinions exist supporting this understanding that an American citizen's *right* to work and earn money in the fifty states is **not** a federally taxable activity.

> "... Without doubt, it [liberty] denotes not merely freedom from bodily restraint but also the **right** of the **individual to contract, to engage in any of the common occupations of life**, to acquire useful knowledge, to marry, establish a home and bring up children, to

worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. *Slaughter-House Cases*, 16 Wall. 36; *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746; *Yick Wo v. Hopkins*, 118 U.S. 356; *Minnesota v. Barber*, 136 U.S. 313; *Allgeyer v. Louisiana*, 165 U.S. 578; *Lochner v. New York*, 198 U.S. 45; *Twining v. New Jersey*, 211 U.S. 78; *Chicago, Burlington & Quincy R.R. Co. v. McGuire*, 219 U.S. 549; *Truax v. Raich*, 239 U.S. 33; *Adams v. Tanner*, 244 U.S. 590; *New York Life Ins. Co. v. Dodge*, 246 U.S. 357; *Truax v. Corrigan*, 257 U.S. 312; *Adkins v. Children's Hospital*, 261 U.S. 525; *Wyeth v. Cambridge Board of Health*, 200 Mass. 474." *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625 (1923)

"Whether "fundamental" or not, "`the right of the individual . . . to engage in any of the common occupations of life'" has been repeatedly recognized by this Court as falling within the concept of liberty guaranteed by the Fourteenth Amendment. *Board of Regents v. Roth*, 408 U.S. 564, 572 (1972), quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). As long ago as *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746 (1884), Mr. Justice Bradley wrote that this right 'is an inalienable right; it was formulated as such under the phrase `pursuit of happiness' in the Declaration of Independence . . .. This right is a large ingredient in the civil liberty of the citizen.' Id., at 762 (concurring opinion). And in *Smith v. Texas*, 233 U.S. 630 (1914), in invalidating a law that criminally penalized anyone who served as a freight train conductor without having previously served as a brakeman, and that thereby excluded numerous equally qualified employees from that position, the Court recognized that 'all men are entitled to the equal protection of the law in their **right to work for the support of themselves and families**.' Id., at 641.

'In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.' Id., at 636." *Massachusetts Bd. Of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562 (1976)

The citizens' *labors,* and simple exercise of the *right to work,* **cannot** lawfully be taxed by Congress, neither *directly,* **nor** *indirectly.* See also In *re Slaughter-House*

Cases, 16 Wall. 36, 21 L.Ed. 394; *Minnesota v. Barber*, 136 U.S. 313, 10 S.Ct. 862, 34 L. Ed. 455; *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937, 3 Ann.Cas. 1133; *Twining v. New Jersey*, 211 U.S. 78, 29 S.Ct. 14, 53 L.Ed. 97; *Wyeth v. Cambridge Board of Health*, 200 Mass. 474, 86 N.E. 925, 23 L.R.A., N.S., 147, 128 Am.St.Rep. 439; *Farrington v. Tokushige*, 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646; *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468; and *Wysinger v. Crookshank*, 82 Cal. 588, 23 P. 54.

There is no doubt that the *right to work,* and to pursue one's chosen common-law occupation within the fifty states, is a basic and fundamental *right* of *We the People* that the federal government, and, through the 14th Amendment, the States, may not abridge. This is a *right* that is not created, granted, or permitted by either the federal or State governments; thus, it neither exists by any government's authority, nor is it introduced by its permission, and thus is not a federally *taxable* "thing" or activity, but rather is constitutionally exempt because the American citizens' exercise of *rights*, like the *right to vote* and the *right to work,* cannot be lawfully taxed by Congress.

It is a fundamental duty and priority of the federal courts to protect the *rights* of the American people.

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them" *Miranda v. Arizona*, 384 U.S. 436, 491 (1966)
>
> "All laws, rules and practices which are repugnant to the Constitution are null and void." *Marbury v. Madison*, 5th US (2 Cranch) 137, (1803)
>
> "It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon" *Boyd v. United States*, 116 U.S. 616 (1886)

ISSUE D

D. Is a *deficiency* under IRC Sections 6211 and 6212 based only upon the Subtitle "A" tax laws as stated therein?

Deficiencies are defined in law by IRC Section 6211 and are only authorized therein under Subtitle "A" tax law, **not** Subtitle "C". The *liability* for tax that is imposed by the statutes of Subtitle "A" is established under Section 1461, which is the **only** statute in Subtitle "A" that identifies the *statutory liability* for the payment of the personal *income* tax upon which a *deficiency* can be lawfully alleged under that Subtitle.

> **§ 1461. Liability for withheld tax.**
>
> Every person required to deduct and withhold any tax under this chapter **is hereby made liable** for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

The *Petitioner* in this case has **no** *liability* for the payment of any tax under this statute, and therefore, no lawful *deficiency* (of a required payment of tax) can exist.

And Title 26 U.S.C. Section 6211 provides the statutory definition of an actual tax "*deficiency*" under the law. It states:

> **§ 6211. Definition of deficiency**
>
> **(a) In general.** For purposes of this title in the case of income, estate, and gift taxes imposed by **subtitles A and B** and excise taxes imposed by chapters **41, 42, 43, and 44,** the term "deficiency" means the amount by which the **tax imposed by Subtitle "A" or B,** or chapter **41, 42, 43, or 44,** exceeds the excess of - ...
>
> (1) the sum of
>
> (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over -

(2) the amount of rebates, ...

This statute very clearly states that federal income tax *deficiencies* are **only** based on taxes "*imposed by* ***subtitles A*** *and B and excise taxes imposed by chapters 41, 42, 43, and 44...*". A *deficiency* for Federal income tax is **not** based on taxes imposed by, or *collected* under, the Subtitle **"C"** laws, as has ***erroneously*** been done in this case.

Title 26 U.S.C. Section 6212 – "*Notice of deficiency*" clearly repeats the *limitation* imposed on the authority of the I.R.S. to assess a *deficiency* **only** under "*subtitles A or B or Chapters 41, 42, 43, or 44*".

In this case however, it was the Subtitle **"C"** earnings of the *Petitioner* that have been **improperly** used as the alleged basis for the *deficiency*. But the statutory *deficiency* is **only** lawfully **created** under Subtitle **"A"** tax law, **not** Subtitle "C".

As supporting statutory evidence for the argument that the Subtitle "C" "*wages*" of the American Citizens, are not subject to the limited Subtitle **"A"** *deficiency* authorities authorized under IRC Sections 6211 and 6212, we must examine the "*wages*" that are **explicitly identified** in the statutes of Subtitle "A" as being made subject to the collection of the tax and are thus subject to the *deficiency* authorities of Sections 6211 and 6212.

I.R.C. Section 1441(b) identifies the "*Income items*" that were made the subject of the income tax laws in 1913 by the original income tax legislation, and thus, may be used today as the basis for the calculation of a *deficiency* for tax under the Subtitle **"A"** statutes. It reads:

§ 1441. Withholding of tax on nonresident aliens

...

(b) Income items

The items of income **referred to in subsection (a)** are interest (other than original issue discount as defined in section 1273), dividends, rent, **salaries**, **wages**, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, ... The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are **received by a nonresident alien individual** who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are— ....

Of course, the "*subsection (a)*", referred to in the first line of this statute, is IRC Section 1441(a), which is titled, and only provides for the "***Withholding of tax on nonresident aliens***", as plainly stated in subsection (b).

Petitioner is **not** the "*nonresident alien individual*" (identified in the statute) whose "*wages*" are subject to the collection of the tax under the Subtitle A laws, and thus she earns **no** "*wages*" subject by law to the Subtitle "A" *deficiency* procedures under IRC Section 6211. This is true because her "*wages*" are **not** the "*wages*" specified as being made subject in Subtitle "A" law (by Section 1441(b)), to the collection of the tax. It is Subtitle "A" law that is required by Section 6211 and 6212 to be the basis of a *deficiency,* **not** Subtitle "C" law. The words "*wages*" and "*salaries*" appear nowhere else in Subtitle "A" except in Section 1441(b). They simply do not exist in any other statute of Subtitle "A" (Chapters 1 through 6) of Title 26 U.S.C. Therefore, **no** other "*wages*" or "*salaries*" under Subtitle "C" law can lawfully be used as the legal basis for the calculation of an alleged *deficiency* under authority of Subtitle A.

Petitioner is **not** the "*non-resident alien*" individual *person* described in IRC Section 1441(a), whose "*salary*" and "*wages*" are specifically made subject by law under IRC Sections 1441(b) and 6211, to the *deficiency* procedures of Subtitle **"A"** law. The alleged *deficiency* in this case is wrongfully based on "*wages*" that were earned and

reported **only** under the Subtitle "C" *employment* tax laws, **not** the Subtitle "A" income tax laws. That Subtitle "C" basis was **not** a lawful basis for a claim of a *deficiency* under Subtitle "A" law.

The federal personal income tax statutes of 1913 that were enacted by Congress under the *Underwood-Simmons Tariff Act of Oct. 3, 1913*, **only** establish a *statutory liability* for the payment of the Subtitle "A" *income tax* in the name of the federal *tax-collectors,* - who are defined in law under IR Section 7701(a)(16), as "*Withholding Agents*".

> **§ 7701 Definitions.**
>
> **(a)** When used in this Title ...
>
> ....
>
> **(16). Withholding Agent.** - The term "Withholding Agent" means any person required to deduct and withhold any tax under the provisions of sections **1441**, 1442, 1443, or 1461."

Of course, Section 1441, referenced here, is where the "*wages*" of the *non-resident alien* were previously shown to be made subject to the collection of the tax imposed under Subtitle "A" law, and thus, to the *deficiency* procedures of Section 6211 and 6212. Section 1461, *supra,* is the only statute in Subtitle "A" that makes any *person* ***liable*** for the payment of the federal personal *income* tax.

> "If any question of fact or **liability** be conclusively **presumed** against him, this is **not due process** of law." [Black's Law Dictionary 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)]

The Tax Court ***erred*** by ignoring the limited nature of the *statutory liability* that exists in the written law of Subtitle A, under Section 1461, and instead, has enforced an improperly ***assumed*** *liability* for tax that does **not** exist in statute to legally base a *deficiency* upon under Subtitle "A" tax law, as required.

> "Tax liability is a condition **precedent** to the demand. ..." *Flora v. United States*, 362 U.S. 145, 176, 80 S.Ct. 630, 646-47, 4 L.Ed.2d 623 (1960),

Therefore, the Tax Court and Circuit Court both committed reversible ***error*** when they failed to acknowledge the clearly written laws that exist under the Subtitle "A" statutes of IRC Sections 1461, 1441(b), 6211, and 6212, that plainly and clearly define and limit a *deficiency* for tax to the taxes imposed by Subtitles "A" (and "B"...) and does **not** include the tax laws or other *sources* of earnings that are earned or taxed instead under Subtitle **"C" tax** law.

There are **no** other individual *persons*, other than the *non-resident alien* individuals of Section 1441, who are made subject to the collection of, and *liable* for the payment of, the federal personal income tax under the Subtitle "A" tax laws of Title 26. The inclusion of *Petitioner*'s Subtitle "C" "*wages*" by the Commissioner in the calculation of the *deficiency* alleged owed was ***erroneous*** because it improperly and unlawfully extended the taxing authorities **beyond** that **defined in law** by Sections 6211 and 6212, under Subtitle **"A"** laws, to matters outside of that Subtitle. The standards of *statutory construction* preclude the federal courts from expanding the *force of law* beyond the stated statutory scope of the law as written by Congress.

SUMMARY AND CONCLUSION

In summary, it is therefore clear that both the U.S. Tax Court and the Ninth Circuit Court of Appeals *erred* egregiously in their *Opinions* and *Decisions* taken in this case because they accepted the ***erroneous*** argument that the 16th Amendment created a new taxing power for Congress to exercise, *i.e.*: a power to tax *directly* and without any limitation.

> "The provisions of the Sixteenth Amendment **conferred no new power of taxation** but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of **indirect taxation to which it inherently belonged** . . ." *Stanton v. Baltic Mining Co.*, 240 U.S. 103, pg. 112."

RELIEF REQUESTED

Petitioner now calls upon this Supreme Court to invoke and honor their constitutional duty to reign in this violative open *rebellion* against the U.S. Constitution that is occurring, and to uphold the Article I protections that are still afforded and guaranteed the American People with respect to all *direct* taxation, and: "***hence subject the tax to the regulation as to apportionment*** *which otherwise as an excise would not apply to it*", as called for in the *controlling Brushaber Opinion, supra*, at 16-17.

PRAYER for JUSTICE

Petitioner now prays this honorable court will grant this *Petition for Writ of Certiorari,* so that this court can collectively address these incredibly important constitutional issues, and the matter of vital national importance of ending the wrongful enforcement of the *class legislation* of the federal personal income tax as a *direct* tax without constitutional limitation.

Respectfully,

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