

NO. 21-261

In The
SUPREME COURT OF THE UNITED STATES

Carrie Rae Eldridge,
Petitioner

vs.

United States of America,
Respondent

**On Petition for Re-Hearing
Under Rule 44**

**PETITION FOR
RE-HEARING UNDER RULE 44**

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in *propria persona*
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ISSUE PRESENTED

The Petitioner was denied due process at law in this litigation because there was no proper declaration, nor full disclosure made on the record of the action, of a fully granted subject-matter jurisdiction of the district court that was lawfully taken to allow the court to uphold and enforce the United States' claim for a direct tax without constitutional limitation under alleged authority of the 16th Amendment.

Further, due process was denied because the U.S. 9th Circuit Court of Appeals lacked subject-matter jurisdiction over the claims of this dispute, for lack of an enabling enforcement clause in the 16th Amendment to constitutionally authorize the U.S. Congress to write new law to enforce that new and unlimited, direct tax and taxing power.

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CAUSE FOR PETITION OF RE-HEARING

Petitioner hereby timely submits this *Petition for Re-Hearing* in a final plea for both justice and for the due process at law that the Petitioner is entitled to in the federal courts under the U.S. Constitution.

Petitioner has thus far in this litigation, been denied the required *due process* at law of a full disclosure and proper establishment on the record of the action, of the fully granted *subject-matter jurisdiction* of the federal courts to act to enforce the claim for the payment of a direct tax that has been made by the United States' Commissioner in this case under alleged authority of the 16th Amendment alone.

It is a virtual legal impossibility under our system of Constitutional Law for the 16th Amendment to have

created a new *subject-matter jurisdiction* of the federal courts to take, to enforce a new taxing *power* that is alleged in this case by the United States' Commissioner to have been newly *created* by the adoption of the 16th Amendment in 1913, because the U.S. Congress is not constitutionally authorized to write new law under the Amendment for *lack* of an *enabling enforcement clause* in that Amendment. That lack of a grant of enforcement power to Congress, made by an *enabling enforcement clause* in that Amendment, is a *fatal defect* in any claim to a *subject-matter jurisdiction* that is allegedly taken under alleged authority of the 16th Amendment alone.

The federal courts *lack* the legal authority and constitutional ability to lawfully take subject-matter jurisdiction under authority of the 16th Amendment

because the U.S. Congress is not constitutionally authorized to write law under that Amendment by an enabling enforcement clause in it.

That statutory enforcement authority of Congress, *i.e.*: to write law that is constitutionally authorized, is an *essential* and *indispensable* element of the federal courts' ability to properly establish that a fully-granted *subject-matter jurisdiction* of the court does exist, and may be lawfully taken by the court to enforce the specific and particular claim for tax at issue, *i.e.*: - here, the Commissioner wrongfully demands the payment of an allegedly *direct* tax that is not subject to any constitutional limitations. This is a *fatally erroneous* argument that is bereft of all constitutional and precedential foundations and is outside the granted *subject-matter jurisdictions* of the

court that do exist to enforce constitutional taxation, *i.e.: indirect* taxes subject to the rule of *uniformity*, and *direct* taxation subject to the rule of *apportionment*.

There is no exception to these rules. Each and every taxing power that is constitutionally granted, is subject to one of these two limitations.

The federal courts, for want of an *enabling enforcement clause* in the 16th Amendment, *lack* the ability to lawfully take a granted *subject-matter jurisdiction* of the court under an alleged authority of the 16th Amendment alone, to enforce any claim for a *direct* tax against an American citizen in a federal court proceeding.

Subject-matter jurisdiction of the federal courts to enforce taxation **cannot** lawfully be *constitutionally* established, and does **not** exist, under the 16th Amendment (alone).

It is ***fatal error*** for the United States and its Commissioner to claim that subject-matter jurisdiction exists under the 16th Amendment, when the U.S. Congress isn't even authorized to write law by an enabling enforcement clause in the Amendment. If the U.S. Congress is not constitutionally authorized to write law by an enabling enforcement clause of either the original Constitution or an Amendment, then the federal courts **cannot possibly** establish or lawfully take subject-matter jurisdiction under alleged authority of that deficient Amendment.

All of the other Amendments to the Constitution include their own enabling enforcement clause to authorize the U.S. Congress to write new law. But **not** the 16th Amendment.

It is **irrefutable** that there is no *enabling enforcement clause* in the 16th Amendment. Thus, it is *constitutionally impossible* for any *subject-matter jurisdiction* of the federal courts to have been created thereunder. The 16th Amendment, absent an enabling enforcement clause, is **irrelevant** to the legal issue of the *subject-matter jurisdiction* of the federal courts.

Subject-matter jurisdiction therefore, plainly and clearly, can be **neither** established **nor** lawfully *taken* under the 16th Amendment, as *erroneously*

done in this case, because the U.S. Congress is **not** constitutionally authorized to write any new law under that Amendment, and the federal courts can only lawfully take jurisdiction to enforce law that Congress is constitutionally authorized to write.

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life Ins. Co. of America*, 511 US 375 (1994)

"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. Aurech*, 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)

"Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, ... A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution -

that is, by the law of its creation - to pass **upon the subject-matter of the suit**; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 US 733, 24 L.Ed. 565.

"An orderly proceeding ... **before a court having power to hear and determine the case.**" *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 190.

"It is well established that federal courts are courts of limited jurisdiction, possessing **only** that power **authorized by the Constitution and statute.**" *Hudson v. Coleman*, 347 F.3d 138, 141 (6th Cir. 2003)

"Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with *due process.*" *Klugh v. U.S., D.C.S.C.*, 610 F. Supp. 892, 901.

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their

judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *Williamson v. Berry*, 8 HOW. 945, 540 12 L.Ed. 1170, 1189 (1850)

The only *direct* taxation that the U.S. Congress is constitutionally authorized by an applicable *enabling enforcement clause* of the Constitution to write, is the *direct* taxation that is authorized (and limited) by Article I, Section 2, clause 3, and Article I, Section 9, clause 4.

All *direct* taxation under those Article I clauses, **without** exception, **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.

"The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the

method of apportionment may at times be different. "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

"... by the previous ruling [*Brushaber v Union Pacific R. Co.*] it was settled that 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 (1916), at 112

"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. Soule*, 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

No *direct*, or completely *unlimited*, tax or taxation can be constitutionally *enforced* by the U.S. courts as a result of the adoption of the 16th Amendment (or any other alleged authority of the Constitution). 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, *direct* tax without any constitutional limitation.

Without an *enabling enforcement clause* that is made applicable to the specific *taxing power* alleged invoked and exercised by the United States in practice, *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 claim for tax as a *direct and unlimited tax*.

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 under constitutionally authorized law, and that can be lawfully established, invoked, and *taken* by a federal court, to allow it to enforce a specific *claim* for

particular type of tax, *i.e.*: either as a *uniform indirect* tax, or an *apportioned direct* tax.

"Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." *United States v. Cotton*, 535 U.S. 625, 630 (2002); *Accord Jordon v. Gilligan*, 500 F.2d 701 (6th CA, 1974) ("[A] court must vacate any judgment entered in excess of its jurisdiction."); *State v. Swiger*, 125 Ohio.App.3d 456 (1995)

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. Those powers are made enforceable at law by a constitutionally authorized Congress under the

original "*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).

Of course, previous to the adoption of the 16th Amendment, all *direct* taxation under Article I had to be *apportioned* to the States¹ and imposed in *proportion* to the last census². Therefore, any claim

¹ Article I, Section 2, cl. 3

² Article I, Section 9, cl. 4

to an unlimited *power* to tax *directly* and without *limitation* as a result of the adoption of the 16th Amendment, **would certainly be a claim** by the United States 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 was created and existed, and that could lawfully be taken by the court over the claim made for the

enforced payment of a direct tax alleged owed under authority of the 16th Amendment.

In this case however, the Commissioner, the U.S. Tax Court, and the Ninth Circuit, have all specifically rejected *indirect* taxation as the constitutional basis and legal foundation for the *subject-matter jurisdiction* of the court in this case, and have instead *erroneously* endorsed the Commissioner's 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 under authority of the Amendment, to enforce this alleged new and unlimited *direct* tax.

In point of fact, Article I, Section 2, clause 3 of the U.S. Constitution still **mandates** that: "*Representatives and direct Taxes shall be apportioned among the several States*", and Article I, Section 9, clause 4 still **commands** that: "*No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken*". These *limitation* clauses still exist in the U.S. Constitution. They have **not** been repealed, **nor** amended, by any text of any Amendment adopted while stating such intended legal effect.

"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 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)

Therefore, as a tax without *apportionment*, as stated in the 16th Amendment, the federal courts lack the subject-matter jurisdiction necessary to enforce the personal income tax as a direct tax (without that limitation), as they have erroneously done in this litigation.


RELIEF REQUESTED

Petitioner now calls upon this Supreme Court to honor their constitutional duty to ensure that the federal courts do not *erroneously* enforce claims for tax without the subject-matter jurisdiction necessary to lawfully do so.

PRAYER FOR JUSTICE

Petitioner now prays this court will **GRANT** this
Petition for Re-hearing.

Respectfully,



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