No. 23-435

ORIGINAL

In The

Supreme Court of the United States

MINOR LEE MCNEIL,

Petitioner,

v.

ASA HUTCHINSON, GOVERNOR, AND
CHIEF EXECUTIVE OF ARKANSAS, et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Arkansas, and most if not all other States, lay and collect *direct taxes* based largely on disparate property evaluations; with each State taxing their citizens ownership of *Private property* and earnings from labor, solely because of their possession thereof. Property or labor evaluations are not the constitutional basis for direct taxation. Fifth Amendment protections are eliminated by this practice.

Arkansas also uses a bill of attainder to ensure tax collections by legislating for its Direct tax and enforcement thereof, while imposing a penalty without judicial involvement for non-compliance.

With the exception of George Ticknor Curtis, in his article of 1866, it is believed that no writer can be quoted in support of the views advanced by Justices Fuller and Field in 1895, and used today to define direct taxes.

Whether a State can lay a *direct tax* that is vested in Congress, or operates differently from the *apportioned direct tax* defined in the Constitution?

Whether the citizen should know that the words *"all legislative powers"* in Article I, really means *some* (but not all) *legislative powers*?

Whether the rights and immunities regarding *private property* are protected by the vesting clause?

PARTIES TO THE PROCEEDING

MINOR LEE McNEIL is an individual representing himself and was the claimant in the trial Court; is Petitioner and Plaintiff here – Appellant below.

Respondents are Asa Hutchinson, the Governor and Chief Executive of Arkansas, Mr. Charles Collins, Commissioner of Revenue; and Mr. Bryan West, Collections Manager, Carl F Cooper III, "Trey", Assistant Attorney General, State of Arkansas, Brent Dillon Houston, Judge. Each is herein alleged to be enforcing illegal direct taxation using a bill of attainder under color of State law.

LIST OF PROCEEDINGS

McNeil entered a Complaint for injunction and for other relief against Governor Asa Hutchinson and the involved State officials, in both their personal and official capacities, under authority of Title 42 U.S.C. § 1983, in the Eastern District of Arkansas, see COMPLAINT AND REQUEST FOR INJUNCTION AND FOR OTHER RELIEF Docket No. 22-cv-693-LPR. The Complaint is available for viewing on Pacer. The District Court dismissed the Complaint without prejudice on 1/30/2023. See also APPEAL FROM A WRONGFUL ORDER OF DISMISSAL ISSUED IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS CENTRAL DIVISION, Docket No. 23-1319.

LIST OF PROCEEDINGS – Continued

The Appeal from a wrongful dismissal in the case of *Minor Lee McNeil v. Asa Hutchinson, et al.*, was affirmed by interim judgment by the Eighth Circuit, Docket No. 23-1319 on 6/23/2023.

The Eighth Circuit denied en banc reconsideration for its dismissal, demurring to the anti-injunction act on 08/03/2023.

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INTRODUCTION AND BACKGROUND

This case arises from the vesting clause, Article I, Section 1, clause 1, and from the universal requirement for apportionment of direct taxes which appears in Article I, Section 9, clause 4. The Constitution for the United States of America nowhere specifies just what taxes are to be deemed "direct." But it does restrain the collecting of any un-apportioned direct taxes, or the use of Bills of Attainder by *any government*.

"All legislative powers herein granted shall be *vested* in a Congress of the United States – ." The power to lay and collect direct taxes is *exclusive* of other governments. "*This power extends over all the Union including the District of Columbia, and the federal Territories*;" *Loughborough v. Blake*, 18 U.S. 317 (1820), page 18 U.S. 325; "*and is thus* ***positively denied*** *to the several States*;" *Holmes v. Jennison*, 39 U.S. 540 (1840), page 39 U.S. 574. See also: *Cross v. Harrison*, 57 U.S. 164 (1853) page 57 U.S. 176; *Chisholm v. Georgia*, 2 U.S. 419 (1793), page 2 U.S. 468; *Brown v. Maryland*, 25 U.S. 419 (1827), page 25 U.S. 446; *Sturges v. Crowninshield*, 17 U.S. 122 (1819), page 17 U.S. 122; *Weston v. City Council of Charleston*, 27 U.S. 449 (1829), page 27 U.S. 466; *Shaffer v. Carter, State Auditor, et al.*, 252 U.S. 37 (1920), page 252 U.S. 50; *McCulloch v. State of Maryland*, 17 U.S. 316 (1819), page 17 U.S. 429-430.

The universal state practice of collecting direct property taxes based upon each's own assessment of property values or earnings, may be the only example of a frank constitutional denial of power for which this

Court has tacitly relieved the States from compliance. States do not apportion direct taxes. And unlike every other negative command of the Constitution, such taxes were exempted from apportionment seemingly only by the opinion of Mr. Justice Fuller. See Opinion of the Court, *Pollock v. Farmer's Loan and Trust Company* (Rehearing), 158 U.S. 601 (1895), pages 158 U.S. 620-621.

At adoption, capitations or poll taxes apportioned by numbers were in common use by States. There was nothing new or unexpected in the constitutional requirement accepted as a compromise. It is shown herein that no writer among the founders can be quoted in support of the views advanced by Justices Fuller and Field in 1895, and used today to define State collection of direct taxes. The single notable exception being the writings of George Curtis occurring decades after to the adoption. App. Pgs. No. 64 and 65.

All other constitutional negatives contained in Article I, Sections nine, or Section ten, are mandates universally applicable to both the several States as well as to Congress. The current practice is violative of the Constitution.

State taxing of earnings from labor, or private property by its mere possession or relation to assessed evaluations is here questioned. The Sixteenth Amendment relates to the changed powers of Congress only. Direct taxation as contemplated by the Constitution, and described by Justices in this Court, can only be assessed by a Capitation or 'head' tax, and this includes

taxes on real estate and the income from rents or income from real estate. See the "income tax cases," 157 U.S. 429, and 158 U.S. 601. Direct taxation is unjust, and unworkable, and its practice has long been abandoned. Direct taxes, other than an income tax authorized exclusively to Congress by the Sixteenth Amendment, have not been practiced since the Civil War period. A head, or *Capitation tax* directly collected by apportionment remains, according to this Court, the one and only direct taxing power constitutionally vested in the *States* since adoption.

The Constitution means what it says. The powers vested in Congress by the vesting clause are exclusive, but those clauses which deny a power apply to all American governments. The Constitution loosely specifies the only form of direct taxation available to States: a *Capitation, or head tax*, derived by the numbers in the census, and imposed uniformly throughout the United States.

The States surrendered to the general government the powers specifically conferred upon the nation; *Hawke v. Smith* (No. 1) 253 U.S. 221 (1920), 253 U.S. 226, citing to *McCulloch v. Maryland*.

At adoption, the founders envisioned direct taxes solely as "head taxes" or Capitations. These were to be collected through requisitions directed to counties, and not as a tax on property according to its estimated value. See App. Pgs. 68-69.

It is error to claim, or to imply, that all States used property evaluations to lay and collect direct taxes prior to the adoption of the Constitution of the United States of America. Few, if any, of the States had evaluated their lands at that time. *Direct Taxes Under the Constitution*, Bullock, Political Science Quarterly, Vol. XV, Nos. 2 & 3, 1900, p. 219.

Presently, private property is annually taxed directly by States because of its ownership, according to each's own assessment of its value, and not by the rule of apportionment.

The expressed meaning of the Constitution does not change. See Syllabus, *South Carolina v. United States*, 199 U.S. 437 (1905). ***All*** legislative powers granted to the general government by the Constitution for the United States of America were surrendered entirely by the States, or the Constitution does not mean what it plainly says. Direct taxation by States based upon property evaluations because of ownership is inconsistent with the singular definition of direct taxes defined by the founders at adoption, and violates the reserved immunities provided for by the Constitution's Fifth Amendment protections of private property.

The Arkansas Legislature has created a statutory scheme which eliminates all judicial participation in enforcement of taxing statutes; even going to the extent of granting the Arkansas Tax Commission the powers of a judge to Levy, and of a County Sheriff for the purposes of seizure and sale of properties judged to be delinquent by the Commission alone. Persons who

resist the illegal collection of taxes are legislatively deemed statutory felons.

Laxity in applying the constitutional requirement for the collection of taxes by apportionment, encourages State contempt for the prohibition against enactment of bills of attainder

OPINIONS AND ORDERS BELOW

The Opinion of the Eighth Circuit Court in error appears in the Appendix at App. 8. A Motion for en banc review was rejected by the Eighth Circuit Court on August 3, 2023.

All documents docketed in the Eastern District of Arkansas and referred to herein are available for view on Pacer.

JURISDICTION

This court has constitutional jurisdiction found in Article III of the Constitution, and enacted by the Congress at Title 28 U.S.C. § 1254(1).

The Eighth Circuit issued its Opinion and Judgement on June 23, 2023, and denied en banc rehearing by its order issued on August 3, 2023.

The All Writs Act of 1940, and the present U.S. Code, at Title 28 U.S.C. §1651 give this Court jurisdiction to issue all writs in aid of its Appellate function.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Legislative Powers vested in Congress by the Constitution are exclusive. Article I, Section 1, Clause 1, App. 2. "All legislative powers hearing granted are *vested* in a Congress of the United States." Emphasis added.

B. "No Capitation, or other direct, Tax shall be laid unless in proportion to the Census herein before directed to be taken." Article I, Section 9, Clause 4. "Other direct" taxes can only be laid by the same authority which collects Capitations; by Congress. Other direct taxes (than head taxes) such as those determined by property evaluations is not an implied or reserved State power.

STATEMENTS

Facts giving rise to this Petition

A. Judges and administrators below fall silent or deny justice without comment, demurring to the Anti-Injunction Act after actually reading the Constitution and then understanding that no Union State has, or ever has had, the legislative capacity to lay and collect

un-apportioned direct taxes. A previous decision by this Court holds that failure to exercise a jurisdiction given by the Constitution, or to usurp one not given is treason; *Cohens v. Virginia*, 19 U.S. 264 (1821), 19 U.S. 404. "[A]s the Constitution originally stood, the appellate jurisdiction of this Court, in all cases arising under the Constitution, laws, or treaties of the United States, was not arrested by the circumstance that a State was a party." Id. Similarly, the Anti-Injunction Act must not be read so as to abridge the Constitution.

B. Article I, Section 1, Clause 1, vests all legislative power therein granted to the Congress. Emphasis added. As used in the Constitution all means the totality of everything granted. The vesting of it, confides the grant of powers to the grantee and, with certain defined and narrow exceptions, to the total exclusion of all others.

C. "No Capitation, or other direct, Tax shall be laid unless in proportion to the Census herein before directed to be taken." Emphasis added. Article I, Section 9, clause 4.

D. Article I, Section 9, clause 4, bars all American governments from any use of un-apportioned direct Taxes. The constitutional demand that Congress alone be vested with such a power has never been altered or amended by any Amendment ratified after its adoption.

REASONS FOR GRANTING THIS PETITION

Petitioner McNeil alleges to this Court that the constitutional issue of whether the term *direct taxes* can mean anything other than a *Capitation* or *head Tax*, was wrongly decided in the income tax cases. A State tax on personal property according to its perceived value violates the rule of numbers, and is not provided for by the Constitution of the United States of America. Legislative powers vested in the Congress are exclusive of all others. Article I, Section 1, clause 1.

This issue, together with its obvious impacts upon Fifth Amendment protections of private property are of such immediate, ongoing, and imperative public importance as to warrant the granting of this Petition.

A plain reading of the express language of the Constitution, together with the recorded historical accounts and settled decisions of this Court, unmistakably establish that no State has now, or since adoption of the Constitution, has ever had, the legislative power to lay and collect direct Taxes grounded on property evaluations or earnings.

Standing

Petitioner McNeil has standing as an injured party having the right to petition governments for redress of grievances under terms of the First Amendment.

Petitioner McNeil has also suffered "classic pocket-book injury" from the State enforcement of unconstitutional statutes.

McNeil's injuries have occurred over a protracted period of time during which Officers or employees of the State of Arkansas have laid and collected direct taxes while acting under color of State Law.

Incorporated Material

The Appendix contains the orders and mandate issued in error by the Eighth Circuit, and Bullock's Law Review.

Causes of Action

McNeil's causes of action are found in the vesting Clause in the first sentence of Article I of the Constitution for the United States of America, and from the fifth article of the Bill of Rights adopted in 1791. See also the long settled holdings of this Court accumulated in App. No. 2.

Quoting Article I, Section 9, Clause 4: "No Capitation, or other direct, Tax shall be laid unless in Proportion to the Census or enumeration hereinbefore directed to be taken."

Direct taxation of private property by States according to its value, is always and everywhere now done in open contempt for the express reservations

made by the whole people of the United States at adoption. The private American right to be taxed directly *by the rule of apportionment* and by the Congress of the United States only, was one of the strongest inducements for the adoption; *Cross v. Harrison et al.*, 57 U.S. 164 (1853), 57 U.S. 176, citing to no fewer than fifty-two other founding documents affirming the fact of exclusivity.

Upon receipt of Statehood and acceptance into the Union of compact States, the legislative power to lay and collect direct Taxes, was surrendered by every American State to the government of the Union; *Hawke v. Smith*, supra.

In consequence of this surrender of State sovereignty at acceptance of Statehood, no Union State has now, or has ever had, the legislative capacity to lay and collect direct taxes ***other than by apportionment according to its census***. And no power on earth can restore to States that which they willingly surrendered, except the whole people of the United States acting through the adoption of a specific Amendment operating to that end.

No State government presently has, or during its entire sovereign existence has ever had, a legislative power to lay and collect *unapportioned* direct taxes. Such taxes have been unfailingly distinguished by this Court from indirect or excise taxes, and each identified

by certain identifying characteristics of the tax, and as cited to herein in App. 3.

CONCLUSION

No one argues that a document drafted before 1790, works seamlessly for the needs of a hugely expanded society in 2023. However, the Constitution in express terms **vests** all legislative powers therein granted to Congress. The grant is exclusive of State Governments who act in open contempt of it when they usurp a power to tax property or earnings according to their value. That power having been intentionally surrendered by each State upon becoming a member of the federal Union.

Congress alone was given a power to directly tax private property by capitations. Those are individual properties acquired and held for private, non-commercial use. Those are the properties intended to be taken only after a jury trial under the umbrella of the Magna-Carta and its common law progeny: "[N]o freeman shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed or destroyed; nor will we pass upon him, nor condemn him, except by the judgment of his peers, or by the law of the land. See *Kerry v. Din*, Supreme Court No. 13-1402 (2015), at p. 4, emphasis added; Magna Carta, Clause 39.

Will this Court also deny the plain meaning of the express language of the vesting clause of the

Constitution as did the courts below? Will it also deny the constitution's express exclusion of private property and earnings from direct taxation by States through property evaluations or otherwise as a basis?

Respectfully submitted,

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