from being taken out of the class of excise taxes where it rightly belonged.

101. Admit that in the *Brushaber* decision, the United States Supreme Court discarded the notion that a direct tax could be relieved from apportionment, because to so hold would destroy the two great classifications of taxes.

102. Admit that the Union Pacific Railroad was a United States Corporation located in the Utah Territory.

103. Admit that the privilege of operating as a corporation can be taxed as an excise.

104. Admit that in *Eisner v. Macomber*, 252 U.S. 189, 205-206 (1920), the United States Supreme Court held a tax on income was a direct tax, but could be imposed without apportionment because the 16th Amendment gave Congress the 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.

105. Admit that the United States Supreme Court stated in *Eisner*:

a. 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 v. Farmers' Loan and Trust Co.*, 158 U.S. 601, under the Act of August 27, 1894, c. 349, section 27, 28 Stat. 509, 553, it was held that taxes upon rents and profits of real property were in effect direct taxes upon the property from which such income arose,

imposed by reason of ownership; and that Congress could not impose such taxes without apportioning them among the States according to population, as required by Art. I, section 2, c1.3, and section 9, cl.4, of the original Constitution.

b. Afterwards, and evidently in recognition of the limitation upon the taxing power of Congress thus determined, the Sixteenth Amendment was adopted, in words lucidly expressing the object to be accomplished: "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." As repeatedly held, this did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income. (Citing *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. at 17-19) (other citations omitted).

c. A proper regard for its genesis, as well as its very clear language, requires also that this Amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not to be over ridden by Congress or disregarded by the courts.

d. In order, therefore, that the clauses cited from Article I of the Constitution may have proper force and effect, save only as modified by the Amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income" as the term is there used; and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.

105a. Admit that the U.S. Supreme Court, in the Sims case, declared that wages and salaries are property.

105b. Admit that the last time the U.S. Supreme Court addressed the question of whether the income tax was a direct tax or an indirect tax was in the *Eisner* case.

105c. Admit that the U.S. Supreme Court, in *Eisner*, declared the income tax to be a direct tax.

105d. Admit that the 5th Circuit Court of Appeals, in the Parker case, ruled that, "The sixteenth Amendment merely eliminates the requirement that the direct income tax be apportioned among the states . . . The sixteenth amendment was enacted for the

express purpose of providing for a direct income tax."

105e. Admit that the 7th Circuit Court of Appeals, in the Coleman case, held that an argument that the income tax was an excise tax was frivolous on its face and that the court declared, "The power thus long predates the Sixteenth Amendment, which did no more than remove the apportionment requirement."

105f. Admit that the 8th Circuit Court of Appeals, in the Francisco case, held that, "The cases cited by Francisco clearly establish that the income tax is a direct tax . . . ."

105g. Admit that the 10th Circuit Court of Appeals, in the Lawson case, ruled that, "The Sixteenth Amendment removed any need to apportion income taxes among the states that otherwise would have been required by Article I, Section 9, clause 4."

106. Admit that Judges in the Courts of Appeal for the Second Circuit take the position that the income tax is an indirect tax.

107. Admit that Judges in the Courts of Appeal for the Fifth Circuit take the position that the income tax is a direct tax.

[. . .]

110. Admit that when a law is ambiguous, it is unconstitutional and cannot be enforced under the "void for vagueness doctrine" because it violates due process protections guaranteed by the Fifth and Sixth

Amendments as described by the Supreme Court in the following decisions:

- Origin of the doctrine (*See Lanzetta v. New Jersey*, 306 U.S. 451) (Ex. 59)
- Development of the doctrine (*See Screws v. United States*, 325 U.S. 91, *Williams v. United States*, 341 U.S. 97, and *Jordan v. De George*, 341 U.S. 223). (Ex. 59a) (Ex. 59b) (Ex. 59c)

110a. Admit that the "void for vagueness doctrine" of the Supreme Court was described in *U.S. v. DeCadena* as follows:

> "The essential purpose of the "void for vagueness doctrine" with respect to interpretation of a criminal statute, is to warn individuals of the criminal consequences of their conduct. . . . Criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law."

111. Admit that in 1894, the United States Constitution recognized two classes of taxes, direct taxes and indirect taxes.

112. Admit that in 1894, the United States Constitution, at Art. 1, Sec. 2, Clause 3 and Art. 1, Sec. 9, Clause 4, required apportionment of all direct taxes.

113. Admit that in 1894, the United States Constitution, at Art. 1, Sec. 8, Clause 1, required all indirect taxes to be uniform.

114. Admit that in 1894, no one doubted that an excise tax was an indirect tax as opposed to a direct tax.

115. Admit that in 1894 Congress passed the following income tax act:

> Sec. 27. That from and after the first day of January, eighteen hundred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States. And the tax herein provided for shall be assessed, by the Commissioner of Internal Revenue and collected, and paid upon the gains, profits and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said Tax.

116. Admit that Mr. Pollock, a citizen of the State of Massachusetts, challenged the 1894 income tax on the grounds that the tax imposed was a direct tax that was not apportioned.

117. Admit that the majority of the justices of the United States Supreme Court found that the 1894 tax at Sec. 27 was a direct tax.

118. Admit that the minority of the justices of the United States Supreme Court in the *Pollock* case believed the 1894 tax at Sec. 27 was an indirect tax.

119. Admit that the United States Supreme Court held the 1894 income tax was unconstitutional as being in violation of the apportionment requirements for direct taxes.

120. Admit that in 1909, President Taft called a special session of Congress for the purpose of amending the apportionment requirement of income taxes.

121. Admit that during the congressional debate on the income tax amendment, it was stated that the income tax would not touch one hair of a working man's head.

113 Questions:66-69,62a-62d,63,63a-63e,64-65,70-74,74a-74b,75-78,78a,79-94,94a-94oo,95-105,105a-105g,106-107,11 0-110a,111-121

FOURTH AMENDMENT

With the assistance of the following questions we will prove that the IRS routinely violates 4th Amendment due process protections of Americans by seizing assets without lawful authority or a court order

400. Admit that 26 U.S.C. § 6331 is the alleged authority by which distraint in the collection of Subtitle A income taxes against individuals is instituted.

401. Admit that 26 U.S.C. § 6331(a) identifies the only entities against whom distraint may be instituted.

402. Admit that 26 U.S.C. § 6331(a) identifies that levy may be made against only the following individuals:

> (a) . . . Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.

403. Admit that 26 CFR § 31.3401(c) identifies the definition of "employee" as: " . . . the term [employee] *includes* officers and employees, whether elected or appointed, *of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.*

The term 'employee' also includes an officer of a corporation."

404. Admit that the IRS Form 668-A(c)(DO) is the Notice of Levy form routinely delivered to private, nongovernmental employers by the IRS to institute distraint against their employees.

405. Admit that the reverse side of IRS Form 668-A(c)(DO) shows 26 U.S.C. § 6331 but has paragraph (a) removed.

406. Admit that the removal of 26 U.S.C. § 6331(a) from the reverse side of IRS Form 668-A(c)(DO) could lead private employers who do not employ federal "employees" to incorrectly honor a Notice of Levy.

407. Admit that inclusion of 26 U.S.C. § 6331(a) on the reverse side of the IRS Form 668-A(c)(DO) would make it less likely to cause private employers to misinterpret or misapply the law in processing an IRS Notice of Levy.

408. Admit that the Fourth Amendment requires that all seizures of property by the U.S. government must be preceded by service of a warrant upon the party whose property is to be seized.

409. Admit that the Fourth Amendment requires that the person who signs or issues the warrant authorizing seizure must be a neutral magistrate as indicated in the annotated Fourth Amendment:

> Issuance by Neutral Magistrate.–In numerous cases, the Court has referred to the necessity that warrants be issued by a "judicial officer" or a "magistrate."1 "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it

denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers."2 These cases do not mean that only a judge or an official who is a lawyer may issue warrants, but they do stand for two tests of the validity of the power of the issuing party to so act. "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search."3 The first test cannot be met when the issuing party is himself engaged in law enforcement activities,4 but the Court has not required that an issuing party have that independence of tenure and guarantee of salary which characterizes federal judges. 5 And in passing on the second test, the Court has been essentially pragmatic in assessing whether the issuing party possesses the capacity to determine probable cause. 6

410. Admit that the IRS routinely seizes property from citizens without first litigating to obtain a warrant from a neutral magistrate.

411. Admit that the Supreme Court said that persons are entitled to a due process hearing prior to the seizing of property as follows:

> "The right to a prior hearing has long been recognized by this Court [Supreme Court] under the Fourteenth and Fifth Amendments . . . [T]he court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes place."
>
> *Bell v. Burson*, 402 U.S. 535, 542, *Wisconsin v. Constantineau*, 400 U.S. 433, *Goldberg v. Kelly*, 397 U.S. 254, *Armstrong v. Manzo*, 380 U.S. 551, *United States v. Illinois Central R. Co.*

412. Admit that the due process hearing prior to seizure must occur at the point where the seizure of property can be prevented as follows:

> "If the right to notice and a hearing is to serve its full purpose, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded him for wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of due process has already occurred. This Court [the

> Supreme Court] has not embraced the general proposition that a wrong may be done if it can be undone." *Stanley v. Illinois*, 405 U.S. 645, 647, 31 L.Ed.2d 551, 556,.Ct. 1208 (1972).

413. Admit that 26 U.S.C. § 7805(a) authorizes and empowers the Secretary of the Treasury as follows:

> Sec. 7805.-Rules and regulations
>
> (a) Authorization
>
> Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

414. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which authorize assessment of the tax imposed under 26 U.S.C. § 1 or 26 U.S.C. § 871 by other than the taxpayer filling out the form.

415. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which require record keeping for the tax imposed under 26 U.S.C. § 1 or 26 U.S.C. § 871 by other than the taxpayer filling out the form.

416. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which authorize IRS collection of

the tax imposed under 26 U.S.C. § 1 or 26 U.S.C. § 871.

417. Admit that there are no implementing regulations applicable to Part 1 of Title 26 of the Code of Federal Regulations which authorize imposition by the government of penalties or interest for nonpayment of the tax imposed under 26 U.S.C. § 1 or 26 U.S.C. § 871.

19 Questions: 400-417

IRS FRAUD: TIME-BARRED ASSESSMENTS

With the following series of questions and evidence, we will prove willful and intentional manual manipulation of taxpayers' Individual Master Files for the purpose of creating time-barred assessments, creating and providing fraudulent certificates of official records to the court to support illegal assessments, manipulating master files to short pay taxpayers legal interest owed by the government, collecting social security from taxpayers via levy in direct violation of the law, willful and intentional creation of fraudulent penalty and interest against taxpayers, and willful and intentional violation of taxpayers rights to due process.

231a. Admit the IRS is placing levies on taxpayers federal social security benefits in direct violation of the law.

231b. Admit the IRS is exceeding the 15% lawful restriction on collection of continuing levies.

231c. Admit that the IRS is making illegal time barred assessments and concealing those assessments by placing fraudulent information on taxpayer master files.

231d. Admit that the IRS is submitting fraudulent CERTIFICATES OF OFFICIAL RECORDS to the courts to substantiate lawful assessments.

231e. Admit that the IRS illegally transfers taxpayer payments from their master file to an account called "excess collections" for the purpose of

creating fraudulent penalty and interest charges against the taxpayer.

231f. Admit that IRS collection division agents put accounting hold codes on taxpayers' accounting modules which forces all entry of data to be inputted manually by the agents and prevents the computer from performing the taxpayers' accounting according to its programming.

231g. Admit the IRS is short-paying taxpayers' lawful interest owed to them by placing wrongful dates and codes on taxpayers' master files

7 Questions: 231a – 231g

IRS VIOLATES CITIZENS' DUE PROCESS RIGHTS

With The Next Line Of Inquiry We Will Prove That The IRS Routinely Violates The Due Process Rights Of The People In Its Day-To-Day Administrative Procedures.

256a. Admit that after IRS has audited a taxpayer, and there is disagreement, the Code of Federal Regulations requires IRS to take certain procedural steps to ensure the TAXPAYER administrative level action for hearings on those disagreements, including an examination of the audit with the agent, followed by a meeting with the IRS' agent's supervisor, followed by a 30 day letter which sets out the IRS's disputed items with the TAXPAYER and an administrative appeal of the IRS' decision on the audit.

256b. Admit that that the purpose of these administrative steps is to afford the TAXPAYER an opportunity to have his disputed audit resolved at the administrative level? In other words, that these are pre-court or pre-litigation steps, which are designed to help the People avoid the expensive procedure known as Tax Court?

256c. Admit that if the dispute is not resolved at the administrative level, the taxpayer is forced into Tax Court.

256d. Admit that IRS Publication 1, IRS Publication 5 and IRS Publication 556, are all given to the taxpayer during the audit through appeals procedure and that these publications state that these administrative, procedural (due process) steps are available to the TAXPAYER.

256f. Admit that Tax Court is an extremely expensive remedy for the individual TAXPAYER.

256g. Admit that the IRS is the only party that benefits as taxpayers are forced into Tax Court.

256h. Admit that the Tax Court, in *Minahan v Commissioner 88 T.C. 492*, found that the taxpayer's right to attorney's fees on favorable outcome is jeopardized if the administrative procedures are not exhausted.

256i. Admit that the *Reform and Restructuring Act of 1998* requires the TAXPAYER to go through these administrative, procedural (due process) steps in order to prove his "cooperativeness" with IRS, and to shift the burden of proof to the IRS during the administrative hearing and at trial. (*See* Reform and Restructuring Act of 1998, Section 3001).

256j. Admit that the IRS routinely ignores the Peoples' demands for their procedural, due process, statutory rights, ignoring IRS publications 1, 5, and 556, the regulations they are supposed to use in making their determination and the underlying statutes.

256k. Admit that there is no penalty for the IRS agents if they violate the income tax statutes by denying the People their due process rights, but the statutes contain a multitude of penalties for the People if they violate the income tax statutes, and those penalties are almost always imposed.

256l. Admit that the IRS will often deny a person his administrative, statutory, due process rights because the statute of limitation (26 *I.R.C. 6501 et. seq.*) is running out for them to get the statutory Notice of

Deficiency (*26 I.R.C. 6212*) out and they are in fear of losing the whole year of taxation from that person.

256m. Admit that the IRS races to issue a STATUTORY NOTICE OF DEFICIENCY, *26 I. R. C. 6212*, rather than give the People their due process rights to administrative level resolution under *C.F.R. 601.605, 601.606*, because the IRS has greater resources and power in TAX COURT.

256n. Admit that a Notice of Deficiency is, in most cases, completely erroneous, and always greatly in favor of the IRS.

256o. Admit that many people default on their Notice of Deficiency because they don't have the money to get to Tax Court.

256p. Admit that IRS often uses erroneous figures for Income when they send out a Notice of Deficiency.

256q. Admit that there are other ways that the IRS uses figures that it knows are false on its Notice of Deficiencies under *26 I.R.C. 6212.*

256r. Admit that the result of this the fact that the TAXPAYER is often sent an entirely false Notice of Deficiency.

256s. Admit that *26 I.R.C. 6211* is used to determine how a deficiency is made and it does not allow for "o" deductions when the TAXPAYER has claimed deductions.

256t. Admit that the Tax Court has, however, ruled that the use of "o" line deduction in IRS issued Notices of Deficiency is permissible, even if the taxpayer has claimed deductions.

256u. Admit that the law (*26 I.R.C. 6211* Definition of Deficiency) does not permit the "bank deposit analysis" method of determining gross income of a person.

256v. Admit that the IRS routinely issues Notices of Deficiency that are based on assessments that the IRS makes without following its own procedures and manuals.

256w. Admit that the issuance of a Notice of Deficiency or "90 day Notice" letter is the triggering event and a person so receiving such a letter must file his case in Tax Court within 90 days or forever be held to the often totally false liability assessed in the grossly false Notice of Deficiency.

256x. Admit that this is why the administrative, statutory due process steps are so important.

256y. Admit that the federal district court has refused to reach the merits of a claim that Tax Court lacks subject matter jurisdiction in those cases where the IRS has issued Notices of Deficiency after denying the taxpayers their administrative, statutory due process rights.

256z. Admit that the IRS Handbook for Examination of Returns reads in part, "Examiners are responsible for determining the correct tax liability as prescribed by the Internal Revenue Code. It is imperative that examiners can identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case.

256aa. Admit that the IRS Handbook for Examination of Returns also reads in part, " Conclu-

sions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation."

256bb. Admit that when a taxpayer requests what regulations and statutes the examiner used in making his determination of tax liability, the IRS refuses to cite the law.

256cc. Admit that without an assessment there can be no liability.

256dd. Admit that the IRS disclosure officers are making the assessments.

256ee. Admit that that there is no law in which a disclosure officer is authorized to make an assessment.

256ff. Admit that an assessment made by a disclosure officer is invalid as a matter of law.

256gg. Admit that that there are over 100 regulations that apply to Form 1040 cross referenced by OMB #1545-0074, and that the IRS refuses to identify which ones they use in making determinations that a citizen is liable to file a Form 1040 and is liable to pay the tax.

256hh. Admit that a lien arises at the time an assessment is made.

256ii. Admit that the evidence underlying the entries on the Certificate of Assessments and Payments is relevant to the issue of whether an assessment was made.

256jj. Admit that without an assessment there is no liability.

> Note: On appeal the government did not provide underlying evidence in support of its tax assessments and the case was remanded back to the district court for the government to prove its tax assessments.

256kk. Admit that the TAXPAYER is helpless as he tries to exercise his statutory (due process) rights to these lower level administrative remedies to resolve his audit difference without going to tax court.

257. Admit that the tax imposed upon individuals required to make a return under Section 6012(a) of the Internal Revenue Code is imposed upon the individual's "taxable income."

258. Admit that the Section 6020(b) requirement for the Secretary to make the required Section 6012(a) return is to require the Secretary to compute the taxpayers taxable income so the correct amount of tax owed can be calculated.

259. Admit that when an individual required to make a return under Section 6012(a) of the Internal Revenue Code fails to make the required return, and the Internal Revenue Service issues a notice of deficiency, the amount of tax claimed as due by the Secretary is not based upon the taxable income, but is computed without regard to the requirements of Sections 62 and 63 of the Internal Revenue Code from which adjusted gross income and taxable income are computed from gross income.

260. Admit that the IRS attempts to obtain assessments of more tax than would otherwise be

required by law as an unauthorized additional penalty on those who are required to, but do not, make federal income tax returns.

261. Admit that the word "shall" as contained in Section 6001 of the Internal Revenue Code imposes a mandatory duty on those to whom the statute applies to keep records, render statements, make returns and to comply with rules and regulations promulgated by the Secretary of the Treasury.

262. Admit that the word "shall" as contained in Section 6011 of the Internal Revenue Code imposes a mandatory duty on those to whom the statute applies to make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury.

263. Admit that the word "shall" as contained in Section 6012 of the Internal Revenue Code imposes a mandatory duty on those to whom the statute applies to make returns.

264. Admit that the word "shall" as contained in Section 6020(b) of the Internal Revenue Code imposes a mandatory duty on those to whom the statute applies to make returns.

265. Admit that Section 6020(b) of the Internal Revenue Code states:

> If any person fails to make any return required by an internal revenue law or regulation made there under at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information

as he can obtain through testimony or otherwise.

266. Admit that nowhere in the Internal Revenue Code has Congress indicated that the word "shall" as used in Section 6020(b) of the Internal Revenue Code has a different meaning than as used in Sections 6001, 60011 and/or 6012 of the Internal Revenue Code.

267. Admit that in the absence of a Congressionally declared distinction for a word used in the same Code (here the Internal Revenue Code), in the same subtitle (here Subtitle F), in the same Chapter (here Chapter 61) and in the same Subchapter (here subchapter A) to be given a different meaning, the same word is to be given the same meaning.

268. Admit that if an individual required to make a return under Section 6012(a) of the Internal Revenue Code fails to make the required return, the Secretary of the Treasury does not make the return mandated by Section 6020(b) of the Internal Revenue Code.

269. Admit that the IRS computer system, the IDRS (Integrated Data Retrieval Systems) was programmed to require a tax return to be filed in order to create a tax module for each taxable year.

270. Admit that if an individual required to make and file a return under Section 6012(a) fails to file such a return, that the Secretary creates a "dummy return" showing zero tax due and owing.

271. Admit that this "dummy return" sets forth no financial data from which the gross income, adjusted gross income or taxable income can be computed.

272. Admit that this "dummy return" is not signed.

273. Admit that a "dummy return" is physically created on the IRS Form 1040.

274. Admit that Congress has not authorized the Internal Revenue Code or Treasury Regulations that authorizes the creation of "dummy returns".

275. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain the financial information necessary to allow the IRS to compute gross income, adjusted gross income and/or taxable income, the IRS calls such a return a "zero return."

276. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain the financial information necessary to allow the IRS to compute gross income, adjusted gross income and/or taxable income, the IRS takes the position that no return has been filed.

277. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain the financial information necessary to allow the IRS to compute gross income, adjusted gross income and/or taxable income, the IRS takes the position that the return is "frivolous" and imposes a $500 penalty.

278. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain a signature made under penalty of perjury, the IRS takes the position that no return has been filed. (*See* 26 U.S.C. 6065).

279. Admit that if an individual required to make a return under Section 6012(a) files a return that does not contain a signature under penalties of perjury, the IRS takes the position that the return is "frivolous" and imposes a $500 penalty.

280. Admit that an IMF record bearing the code "SFR 150" indicates that a fully paid IRS Form 1040a was filed. (*See* LEM III 3(27)(68)0-34) (Ex. 178.)

60 Questions: 256a-256d, 256f-256kk, 257-280

26 USC 6020(B): SUBSTITUTE RETURNS

With the assistance of the following series of questions we intend to prove that there is no legal way for the IRS to prepare a tax return for a person if that person does not file a tax return, but that does not stop the IRS – they prepare "dummy" returns illegally.

The next 16 questions relate, Lesson 23 Section IRC 6020(b), used by the IRS to train future Revenue Officers during their Phase One training: to will arise from an inspection of this lesson.

301. Admit that on page 23-1, under REFERENCES, "Circular E" is listed and that besides the Circular E, there are no other reference materials listed?

302. Admit that "Circular E", more fully known as Circular E, Employer's Tax Guide, is also designated by IRS as Publication 15, and that "Circular E" deals essentially with employer withholding requirements and Form 941, Employer's Quarterly Federal Tax Return?

303. Admit that in Lesson 23 page 23-1, under CONTENTS, three types of tax returns are listed: Employment Tax Returns, The Partnership Return, and Excise Tax Returns and that Income Tax Returns are not included?

304. Admit that in Lesson 23 page 23-1, under INTRODUCTION, the purpose of this Lesson 23 is to instruct the revenue officer trainee about how to deal with situations involving the occasional taxpayer who refuses to voluntarily file returns, using an important administrative tool referred to as 6020(b) procedure?

305. Admit that in Lesson 23, Figure 23-1 on page 23-2 is a reprint of Internal Revenue Code Section 6020(b) and the Regulation at Section 301.6020-1?

306. Admit that in Lesson 23, Figure 23-2, on page 23-3, contains a reprint of Delegation Order 182, and that the Order lists revenue agents and revenue officers as having delegated authority to execute returns under the authority of 6020(b)?

307. Admit that the Internal Revenue Manual restricts the broad delegation of Delegation Order No.182 to employment, excise, and partnership taxes?

308. Admit that the Secretary has recognized that the delegation authority of D.O. No. 182 is restricted to employment, excise, and partnership taxes because of constitutional issues?

309. Admit that the Internal Revenue Manual lists the following tax returns Form 940, Employer's Annual Federal Unemployment Tax Return; Form 941, Employer's Quarterly Federal Tax Return; Form 942, Employer's Quarterly Tax Return for Household Employees; Form 943, Employer's Annual Tax Return for Agricultural Employees; Form 720, Quarterly Federal Excise Tax Return; Form 2290, Federal Use Tax Return on Highway Motor Vehicles; Form CT-1, Employer's Annual Railroad Retirement Tax Return; Form 1065, U.S. Partnership Return of Income-as being appropriate for action under 6020(b)?

310. Admit that Form 1040, U.S. Individual Income Tax Return is NOT included in IRM 5.18.2.3 as a return appropriate for action under 6020(b)?

311. Admit that when recommending assessments under 6020(b) the revenue officer will prepare all the necessary returns?

312. Admit that the balance of Lesson 23 IRC SECTION 6020(B) for Revenue Officer Phase One training explains the 6020(b) procedures for computing the tax for Employment, Excise, and Partnership returns?

313. Admit that Lesson 23 IRC SECTION 6020(B) does not contain any references to preparing income tax returns under 6020(b)?

314. Admit that Lesson 23 IRC SECTION 6020(B) makes the statement to the revenue officer trainee, "You have already studied audit referrals as a means to enforce compliance on income tax returns?"

315. Admit that the trainee is told that by the end of the lesson he will be able to identify situations when action under IRC section 6020(b) is appropriate?

316. Admit that if the revenue officer is expected to identify situations when action under IRC 6020(b) is appropriate the revenue officer would also be expected to identify situations when action under IRC 6020(b) would not be appropriate, and that Lesson 23 IRC SECTION 6020(B) made it clear that it is not appropriate to use 6020(b) for income tax, Form 1040 non-filers?

317. Admit that there are no training instructions within Lesson 23 that pertain to using 6020(b) to prepare and assess Form 1040, U.S. Individual Income Tax Return?

318. Admit that Lesson 23 points to Lesson 25 REFERRALS for instructions on dealing with income tax non-filers?

319. The language of IRC 6020(b)(1) is very broad, " . . . if any person fails to make any return . . . " Does the IRS purport that there are ways (plural) to resolve cases for nonfilers with different situations, different types of taxes and different types of tax returns?

320. Does IRS make a distinction in the procedures for dealing with nonfilers of income tax returns as opposed to employment, partnership and excise tax returns?

321. Is it true that IRS uses "6020(b) procedures" to enforce compliance of nonfilers of employment, excise, and partnership returns, and uses "Referral to Exam" procedures to enforce compliance of income tax nonfilers?

322. Do you agree that the stated focus of Lesson 25 REFERRALS is *the referral process*?

323. Do you agree that an objective of Lesson 25 is for the trainee to be able to select which cases should be referred to the Examination Division?

324. Do you recall that Lesson 23 IRC SECTION 6020(B) made it clear that the revenue officer is not to use 6020(b) for enforcing compliance of income tax nonfilers, but instead is to use the referral process in?

325. In Lesson 25, the reference materials to be used for the lesson are listed under REFERENCES, and the lone item listed is IRM 52(10) 0. Do you agree that there is no reference to any statute or any internal revenue code section?

326. In Lesson 25, page 25-3, under OBJECTIVES, would you agree that the trainee is told that after completing this lesson he will be able to select those cases which should be referred to the Examination Division?

327. Lesson 25 pages 25-4 through 25-9 contain instructions, with examples, showing the trainee how to complete referral forms. This section of the lesson on the subject of making referrals to Exam for income tax non-filers concluded with the statement, "Remember: Refusal to file cases involving Forms 940, 941, 942, 943, 720, 1065, 2290, or CT-1 will not be referred to Exam. These returns should be prepared under authority of IRC Section 6020(b)." Clearly, IRC section 6020(b) is to be utilized to enforce compliance of specified business master file returns. In this lesson, is there mention anywhere of the statute that authorizes IRS preparation of Form 1040 U.S. Individual Income Tax Returns?

[. . .]

329. IRC 6020(b)(1) is written in very broad language and if taken literally it seems to give authorization to IRS to make any return for any person who fails to make one. However, we have seen how the statute is, in fact restricted in its application. Revenue officers, and specified other IRS employees do have delegated authority to make returns under 6020(b). But, we have seen that the delegated authority limits the types of returns that can be prepared under 6020(b). We have seen that the exclusion includes income tax returns, corporate or individual. Since 6020(b) does not permit preparation of income tax returns, and, since the SFR program is merely a program, with no basis in law, what is the authority

for IRS to make an income tax return when a citizen fails to make his own?

330. It is well settled in law that government employees need proper delegated authority to operate in their capacities. Do IRS employees have delegated authority to make "Substitute for Returns"?

31 Questions: 301-327, 329-330

THE COURTS ARE CLOSED

With the following series of questions we will prove that the courts are biased, arbitrary and capricious and discriminate against those that question the validity of the federal tax laws

232. Admit that 26 U.S.C. 7203 purportedly imposes a penalty for the crime of wilful failure to file a tax return.

233. Admit that Congress enacted 26 U.S.C. 7203 in August, 1954.

234. Admit that the United States Supreme Court in *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998) stated: "[w]e assume that Congress is aware of existing law when it passes legislation."

235. Admit that Congress enacted 44 U.S.C. 3512 in 1980.

236. Admit that 44 U.S.C. 3512 states that:

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if–

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

237. Admit that United States Supreme Court Chief Judge Taney in 1863 protested the constitutionality of the income tax as applied to him.

238. Admit that United States District Court Judge Walter Evans, in 1919 protested the constitutionality of the income tax as applied to him.

239. Admit that United States Circuit Court Judge Joseph W. Woodrough in 1936 protested the constitutionality of the income tax as applied to him.

240. Admit that United States District Court Judge Terry J. Hatter and other federal court judges in the 1980s protested the constitutionality of taxes as applied to them.

241. Admit that even in criminal cases where a loss of freedom can be the result, American citizens who are not judges are precluded by the federal judiciary, and with the express approval and consent of the Department of Justice and U.S. Attorney, from arguing the constitutionality of the income tax as applied to them.

242. Admit that the Executive and Judicial branches of the federal government label Americans who challenge the legality of the federal income tax as "tax protesters."

243. Admit that United States Supreme Court Chief Judge Taney submitted his protest in a letter to the Secretary of the Treasury.

244. Admit that letters of protest written to the Secretary of the Treasury by American Citizens are used by the Executive branch of government, and accepted by the Judicial branch of government, as proof of income tax evasion and conspiracy against those who write the letters.

255. Admit that if an individual required to make a return under Section 6012(a) of the Internal Revenue Code fails to make the required return, the statutory procedure authorized by Congress for the determination of the amount of tax due is the "deficiency" procedure set forth at subchapter B of Chapter 63 of the Internal Revenue Code, commencing at Section 6211.

14 Questions: 232-244, 255

PAPERWORK REDUCTION ACT AND ADMINISTRATIVE PROCEDURES ACT REGULATIONS

With the assistance of the following series of questions we intend to prove that . . .

192. Admit that the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., mandates that forms and regulations of federal agencies that require the provision of information must bear and display OMB control numbers.

193. Admit that 1 C.F.R. 21.35 requires that OMB control numbers shall be placed parenthetically at the end of a regulation or displayed in a table or codified section.

194. Admit that the following tax regulations contain OMB control numbers at the end of these regulations:

26 C.F.R. 1.860-2	(Exhibit 115)
26 C.F.R. 1.860-4	(Exhibit 116)
26 C.F.R. 1.897-1	(Exhibit 117)
26 C.F.R. 1.901-2	(Exhibit 118)
26 C.F.R. 1.1445-7	(Exhibit 119)
26 C.F.R. 1.6046-1	(Exhibit 122)
26 C.F.R. 1.6151-1	(Exhibit 124)
26 C.F.R. 1.6152-1	(Exhibit 125)
26 C.F.R. 1.9200-2	(Exhibit 126)
26 C.F.R. 31.3401 (a)(8)(A)-1	(Exhibit 127)

26 C.F.R. 31.3501(a)-1T	(Exhibit 128)
26 C.F.R. 301.6324A-1	(Exhibit 129)
26 C.F.R. 301.7477-1	(Exhibit 130)

195. Admit that 26 U.S.C. 6012 does not specify where tax returns are to be filed.

196. Admit that 26 U.S.C. 6091 governs the matter of where tax returns are to be filed.

197. Admit that by the plain language of Section 6091, regulations must be promulgated to implement this statute.

198. Admit that in 5 U.S.C.§ 551, a "rule" is defined as:

> "(4) 'rule' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency "

199. Admit that 5 U.S.C. 552 describes in particular detail various items which must be published by federal agencies in the Federal Register, as follows:

> "(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public–
>
> (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make

submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision or repeal of the foregoing."

200. Admit that the Department of the Treasury as well as the IRS acknowledge the publication requirements of the Administrative Procedure Act in 31 C.F.R. 1.3 and 26 C.F.R. 601.702.

201. Admit that the Commissioner of Internal Revenue promulgated the Treasury Regulation set out at 26 C.F.R. 602.101 to collect and display the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

202. Admit that the Internal Revenue Service intended that 26 C.F.R. 602.101 comply with the re-

quirements of OMB regulations implementing the Paperwork Reduction Act of 1980, for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations.

203. Admit that 26 C.F.R. 602.101(c) displays a table (the "Table") which on the left side lists the CFR part or section where the information to be collected by the Internal Revenue Service is identified and described, and on the right side, lists the OMB control number assigned to the OMB-approved form to be used to collect the information so identified and described.

204. Admit that the Table displayed at 26 C.F.R. 602.101 in the 1994 version of the Code of Federal Regulations lists 1.1-1 as a CFR part or section that identifies and describes information to be collected by the Internal Revenue Service.

205. Admit that 26 C.F.R. 1.1-1 relates to the income tax imposed on individuals by 26 U.S.C.§ 1.

206. Admit that the OMB control number assigned to the form to be used to collect the information identified and described at 26 C.F.R. 1.1-1 is 1545-0067.

207. Admit that the OMB control number 1545-0067 is assigned to the IRS Form 2555.

208. Admit that the IRS Form 2555 is titled "Foreign Earned Income".

209. Admit that the IRS Form 2555 is used to collect information regarding foreign earned income.

210. Admit that the OMB control number assigned to the IRS Form 1040 Individual Income Tax Return is 1545-0074.

211. Admit that the Table set out at 26 C.F.R. 602.101 has never displayed the OMB control number 1545-0074 as being assigned to the collection of individual income tax information identified and described by 26 C.F.R. 1.1-1.

212. Admit that the OMB has not approved the IRS Form 1040 U.S. Individual Income Tax Return as the proper form on which to make the return of individual income tax information identified and described at 26 C.F.R.§ 1.1-1.

213. Admit that the Table displayed at 26 C.F.R. 602.101 in the 1995 version of the Code of Federal Regulations does not list 1.1-1 as a CFR part or section that identifies and describes information to be collected by the Internal Revenue Service.

214. Further admit that the Internal Revenue Service caused the entry for 1.1-1 to be deleted from 26 C.F.R. 602.101, by publishing the deletion at 59 FR 27235, on May 26, 1994. *See* 26 C.F.R. 602.101; 59 FR 27235.) (Ex. 006, 140.)

215. Further admit that the published deletion was accomplished under the supervision of Internal Revenue Service employee Cynthia E. Grigsby, Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

23 Questions: 192-215

INDIVIDUAL MASTER FILES (IMFS)

216. Admit that the Internal Revenue Service tracks every working American through a computer-based records system.

217. Admit that Treasury System of Records 24.030 is titled as follows: "Individual Master File (IMF); Returns and Information Processing. D:D:R-Treasury/IRS".

218. Admit that the Individual Master File relates to: "Taxpayers who file federal individual income tax returns (*i.e.*, forms 1040, 1040A) and power of attorney notifications for individuals."

219. Admit that the Privacy Act codified at 5 U.S.C. 552a(e)(5) states that: "Each agency that maintains a system of records shall . . . maintain all records which are used by the agency in making any determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination "

220. Admit that the Privacy Act codified at 5 U.S.C. 552a(e)(6) states that: "Each agency that maintains a system of records shall . . . prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes . . . "

221. Admit that the Internal Revenue Service is subject to the Privacy Act requirements codified at 5

U.S.C. 552a(e)(5) and (6), which requirements are set out in relevant part at paragraphs 219-20, above.

222. Admit that the Individual Master File computer records use various codes to represent agency actions, determinations, and transactions regarding taxpayers.

223. Admit that Document 6209 is the IRS reference guide which describes the meaning of most of the codes used on the Individual Master File record.

224. Admit that the Law Enforcement Manual 3(27)(68)0 is the underpinning authority for the Document 6209.

225. Admit that the taxpayer's IMF account number is the taxpayer's social security number.

226. Admit that all returns and transactions processed on the Individual Master File must contain the taxpayer's correct social security number.

227. Admit that an account freeze is placed on an Individual Master File record to indicate that the social security number on the record is invalid.

228. Admit that no transactions can be posted to an Individual Master File entity module which is identified by an invalid social security number.

229. Admit that a "VAL-1" code posted on an Individual Master File record means an invalid social security number freeze has been released.

230. Admit that the "VAL-1" invalid social security number freeze release indicator is effective only during the calendar year to which it has been posted.

231. Admit that the "VAL-1" invalid social security number freeze release indicator allows the Internal

Revenue Service to post transactions to an Individual Master File record which has been frozen because the social security number on that IMF record is invalid.

16 Questions: 216-231

WORD "INCLUDES"

With the assistance of the following series of questions we intend to show that . . .

418. Admit that the word "includes" is defined in 26 U.S.C. § 7701(c) as follows:

> TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.
>
> Sec. 7701.-Definitions
>
> (c) Includes and including
>
> The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

419. Admit that the word "includes" is defined by the Treasury in the Federal Register as follows:

> Treasury Definition 3980, Vol. 29, January-December, 1927, pgs. 64 and 65 defines the words includes and including as:
>
> "(1) To comprise, comprehend, or embrace . . . (2) To enclose within; contain; confine . . . But granting that the word 'including' is a term of enlargement, it is clear that it only performs that office by introducing the specific elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited, preceding general language . . . The word 'including' is obviously used in the sense of its synonyms, comprising; comprehending; embracing."

420. Admit that the definition of the word "includes" found in Black's Law Dictionary, Sixth Edition, page 763 is as follows:

> "Include. (Lat. Inclaudere, to shut in keep within.) To confine within, hold as an inclosure. Take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. Term may, according to context, express an enlargement and have the meaning of and or in addition to, or merely specify a particular thing already included within general words theretofore used. "Including" within statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. *Premier Products Co. v. Cameron*, 240 Or. 123, 400 P.2d 227, 228."

421. Admit that if the meaning of the word "includes" as used in the Internal Revenue Code is "and" or "in addition to" as described above, then the code cannot define or confine the precise meaning of the following words that use "include" in their definition:

- "State" found in 26 U.S.C. § 7701(a)(10) and 4 U.S.C. § 110
- "United States" found in 26 U.S.C. § 7701(a)(9)
- "employee" found in 26 U.S.C. § 3401(c) and 26 CFR § 31.3401(c)-1 Employee
- "person" found in 26 CFR 301.6671-1 (which governs who is liable for penalties under Internal Revenue Code)

422. Admit that if the meaning of "includes" as used in the definitions above is "and" or "in addition to", then the code cannot define any of the words described, based on the definition of the word "definition" found in Black's Law Dictionary, Sixth Edition, page 423:

> definition: (Black's Law Dictionary, Sixth Edition, page 423) A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, including all essential elements and excluding all nonessential, as to distinguish it from all other things and classes."

423. Admit that absent concrete definitions of the above critical words identified in question 417, the meaning of the words becomes ambiguous, unclear, and subjective.

424. Admit that when the interpretation of a statute or regulation is unclear or ambiguous, then the by the rules of statutory construction, the doubt should be resolved in favor of the taxpayer as indicated in the cite from the Supreme Court below:

> "In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of clear expression to the contrary, to operate prospectively; that, if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer . . . " *Hassett v. Welch.*, 303 US 303, pp. 314-315, 82 L.Ed 858. (1938) (emphasis added)

425. Admit that in the majority of cases, doubts about the interpretation of the tax code are not resolved in favor of the taxpayer by any federal court as required by the Supreme Court above.

426. Admit that an ambiguous meaning for a word violates the requirement for due process of law by preventing a person of average intelligence from being able to clearly understand what the law requires and does not require of him, thus making it impossible at worst or very difficult at best to know if he is following the law.

427. Admit that Black's Law Dictionary, Sixth Edition, page 500, under the definition of "due process of law" states the following:

> The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought.

428. Admit that if the definition of the word "includes" means that it is used synonymously with the word "and" or "in addition to", then it violates the requirement for due process of law found in the Fifth Amendment.

429. Admit that the violation of due process of law created by the abuse of the word "includes" found in the preceding question creates uncertainty, mistrust, and fear of citizens towards their government because of their inability to comprehend what the law requires them to do.

430. Admit that the violation of due process caused by the abuse of the word "includes" (in this case, making it mean "and" or "in addition to") identified above could have the affect of extending the perceived jurisdiction and authority of the federal government to tax beyond its clear limits prescribed in the U.S. Constitution.

431. Admit that an abuse of the word "includes" to mean "and" or "in addition to" indicated above could have the affect of increasing and possibly even maximizing income tax revenues to the U.S. government through the violation of due process, confusion, and fear that it creates in the citizenry.

432. Admit that fear and confusion on the part of the citizenry towards their government and violation of due process by the government are characterized by most rational individuals as evidence of tyranny and treason against citizens.

433. Admit that the U.S. Constitution provides the following definition for "treason":

> *U.S. Constitution, Article III, Section 3, Clause 1:*
>
> *"Treason against the United States shall consist only of levying war against them, or adhering to their enemies . . . "*

434. Admit that Black's Law Dictionary, Sixth Edition, page 1583, provides the following definition for "war":

> *"Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between citizens in the same nation or state."*

435. Admit that agents of the IRS involved in seizures of property use guns and arms and against citizens, making the confrontation an armed confrontation.

436. Admit that IRS seizures can and do occur without court orders, warrants, or due process required by the Fourth Amendment and at the point of a gun.

437. Admit that property seizures as described above amount to an act of war of the government against the citizens.

438. Admit that acts of war against citizens, when not based on law, are treasonable offenses punishable by execution.

439. Admit that violation of due process produces *injustice* in society, which is why the founding fathers required us to have a Fifth Amendment.

440. Admit that the purpose of the government is to write laws to *prevent*, rather than *promote*, injustice in society, and thereby protect the right to life, liberty, property, and pursuit of happiness of *all citizens equally*.

23 Questions: 418-440

TAXABLE SOURCES

With the following series of questions we Intend to prove that . . .

441. Admit that the term "from whatever source derived" as used in the Sixteenth Amendment does *not* mean that the source of income or the situs for taxation is *irrelevant or inconsequential in determining taxable income*.

442. Admit that interpreting the phrase "from whatever source derived" to mean that the source or situs is irrelevant, makes the federal income tax applicable to any country or location in the world and renders 26 U.S.C. § 861 and 26 U.S.C. § 862 irrelevant and unnecessary, which clearly is an irrational and nonsensical conclusion to reach.

443. Admit that the federal income tax applies only to taxable income, which, generally speaking, is "gross income" minus allowable deductions.

444. Admit that the federal income tax regulations generally define "gross income" to mean "all income from whatever source derived, unless excluded by law." as follows:

26 CFR § 1.61-1(a):

> (a) General definition. Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash. Section 61 lists the more common items of gross income for

> purposes of illustration. For purposes of further illustration, Sec. 1.61-14 mentions several miscellaneous items of gross income not listed specifically in section 61. Gross income, however, is not limited to the items so enumerated.

445. Admit that there are certain types of income which Congress has exempted by statute as identified in 26 CFR § 1.61-1(a).

446. Admit that there are other types of income not enumerated above which are not exempted by statute, but are nonetheless excluded by law, for income tax purposes, because they are excluded from taxation by the Constitution itself.

> 26 CFR § 39.21-1 (1956):
>
> (a) The tax imposed by chapter 1 is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.
>
> 26 CFR § 39.22(b)-1 (1956):
>
> Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items may be excluded from gross income except (a) those items of income which are, under the Constitution, not taxable by the Federal Government; (b) those items of income which are exempt from tax on income under the

> provisions of any act of Congress still in effect; and (c) the income excluded under the provisions of the Internal Revenue Code (see particularly section 116).

447. Admit that the phrase "fundamental law" indicated above in the older regulations means the U.S. Constitution.

448. Admit that the above older regulation, 26 CFR § 39.21-1 (1956) and 26 CFR § 39.22(b)-1 (1956) has never been explicitly repealed or superceded by newer regulations and is still in force.

449. Admit that the regulations under 26 U.S.C. § 863 state:

> 26 CFR § 1.863-1(c)
>
> "Determination of taxable income. The taxpayer's taxable income from sources within or without the United States will be determined under the rules of Secs. 1.861-8 through 1.861-14T for determining taxable income from sources within the United States."

450. 26 USC § 61 lists some of the more common "items" of income which are taxable, such as compensation for services, interest, and dividends, among others. Admit that section 1.861-8(d)(2) of the federal income tax regulations are to be consulted in determining in which situations these "items" of income are excluded for federal income tax purposes?

> 26 CFR § 1.861-8(d)(2)
>
> (2) Allocation and apportionment to exempt, excluded, or eliminated income. [Reserved]

For guidance, see Sec. 1.861-8T(d)(2).

451. Admit that 26 CFR § 1.861-8T(d)(2) of the regulations lists several types of income which are, quote, not considered to be exempt, eliminated, or excluded income, end quote as follows:

26 CFR § 1.861-8T(d)(2)(iii)

(iii) Income that is not considered tax exempt. The following items are not considered to be exempt, eliminated, or excluded income and, thus, may have expenses, losses, or other deductions allocated and apportioned to them:

(A) In the case of a foreign taxpayer (including a foreign sales corporation (FSC)) computing its effectively connected income, gross income (whether domestic or foreign source) which is not effectively connected to the conduct of a United States trade or business;

(B) In computing the combined taxable income of a DISC or FSC and its related supplier, the gross income of a DISC or a FSC;

(C) For all purposes under subchapter N of the Code, including the computation of combined taxable income of a possessions corporation and its affiliates under section 936(h), the gross income of a possessions corporation for which a credit is allowed under section 936(a); and

(D) Foreign earned income as defined in section 911 and the regulations

> thereunder (however, the rules of Sec. 1.911-6 do not require the allocation and apportionment of certain deductions, including home mortgage interest, to foreign earned income for purposes of determining the deductions disallowed under section 911(d)(6)).

452. Admit that only income derived from certain activities related to international or foreign commerce are included on that list of non-exempt types of income appearing in 26 CFR § 1.861-8T(d)(2)(iii) above.

453. Admit that the domestic income of most U.S. citizens is absent, and therefore excluded, from the list appearing in 26 CFR § 1.861-8T(d)(2)(iii).

454. Admit that 26 USC § 861(b), and the related regulations beginning at 26 CFR § 1.861-8, the sections to use to determine one's taxable income from sources within the United States, regardless of citizenship and residency.

455. Admit that for U.S. citizens living and working exclusively in the 50 states and receiving all income from within the 50 states, that 26 U.S.C. § 861(b) and related regulations beginning at 26 CFR § 1.861-8 do not show such income to be taxable.

456. Admit that "items" of income are identified in 26 U.S.C. § 61 while "sources" of income are identified in 26 U.S.C. § 861 and 26 U.S.C. § 862.

16 Questions: 442-456

FUTIA'S/WTP'S OVERALL PETITIONING PROCESS

A WELL-ADAPTED AND APPROPRIATE PETITION PROCESS

The full measure of Futia's/WTP's petition process from 1999 through 2010. is presented in extraordinary detail in Futia's thirteen volume Record on Appeal in this case.

Futia's/WTP's multi-year petition process included but was not limited to the following actions:

1 Futia's/WTP's 5/5/99 and 6/4/99 letters to Pres. Clinton, Senate leader Lott, House leader Hastert and IRS Comm. Rossotti inviting them to participate in a WTP-sponsored symposium at the National Press Club (NPC) on July 1-2, 1999.[1]

2 Futia's/WTP's 10/13/99 letter to Clinton, Lott, Hastert and Rossotti inviting their input to a WTP-sponsored Citizens Summit to take place at the NPC on 11/13/99 for the purpose of developing a Remonstrance-*i.e.*, first amendment petition for redress of grievances.[2]

3 Futia's/WTP's 4/13/2000 personal service of the Remonstrance on Clinton, Lott, Hastert

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[1] Appellant's Record on Appeal, Volume 10, pages 2502-2507

[2] Appellant's Record on Appeal, Volume 10, pages 2512-2514

and Chief Judge Rehnquist with its request for a response.[3]

4 Futia's/WTP's 6/19/2000 plea via USA TODAY to Defendant for a response to the Remonstrance and to attend 6/29/00 conference on the matter.[4]

5 Futia's/WTP's 7/7/2000 plea via USA TODAY to Defendant for a response to the Remonstrance.[5]

6 Futia's/WTP's 2/14/2001 letter to Rossotti inviting IRS to attend 2/17/2001 conference on the matter at the Crystal City Hilton.[6]

7 Futia's/WTP's plea via USA TODAY to Defendant to attend 2/17/2001 conference on the matter at the Crystal City Hilton.[7]

8 Futia's/WTP's 3/2/01 plea via USA TODAY to Defendant to respond to the Remonstrance.[8]

9 Futia's/WTP's 3/19/01 letter to Rossotti inviting IRS to meet on 4/9/01 with people who signed the Remonstrance who will gather at the front door of the IRS Headquarters

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[3] Appellant's Record on Appeal, Volume 10, pages 2523-2604

[4] Appellant's Record on Appeal, Volume 10, page 2608

[5] Appellant's Record on Appeal, Volume 10, page 2613

[6] Appellant's Record on Appeal, Volume 10, pages 2615-2617

[7] Appellant's Record on Appeal, Volume 10, page 2619

[8] Appellant's Record on Appeal, Volume 10, page 2624

Building in Washington D.C. to be shown the law that requires them to file a tax return and pay the tax.[9]

10 Futia's/WTP's 3/23/01 plea via USA TODAY to Defendant to respond to the Remonstrance.[10]

11 Futia's/WTP's 4/5/01 Statement on the matter as submitted to Senate Finance Committee.[11]

12 Futia's/WTP's 6/11/01 letter inviting Defendant to 9/18/01 conference to meet with tax law researchers from the tax honesty movement to argue against their conclusions and providing notice of Schulz's intention to begin a fast on 7/1/01 and to fast until Defendant agrees to meet on the matter in a recorded public forum.[12]

13 WTP's 6/28/01 emergency meeting of its Board of Directors.[13]

14 Futia's/WTP's 7/1/01 follow-up invitation to Defendant to attend 9/18/01 conference on the matter.[14]

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[9] Appellant's Record on Appeal, Volume 10, pages 2626-2627

[10] Appellant's Record on Appeal, Volume 10, page 2629

[11] Appellant's Record on Appeal, Volume 10, pages 2633-2634 and 2639-2651

[12] Appellant's Record on Appeal, Volume 10, pages 2653-2657

[13] Appellant's Record on Appeal, Volume 10, pages 2659-2663

[14] Appellant's Record on Appeal, Volume 10, pages 2665-2666

15 Futia's/WTP's 7/9/01 follow-up invitation to Defendant to attend 9/18/01 conference on the matter.[15]

16 Rep. Ron Paul's 7/17/01 public Statement on the matter.[16]

17 White House's 7/18/01 letter to Schulz at WTP.[17]

18 Rep. Bartlett's 7/20/01 Agreement with Defendant's DOJ for a 9/25-26/01 congressional style meeting on Capitol Hill on the matter.[18]

19 Tax Notes 7/23/01 article on the matter.[19]

20 Futia's/WTP's 7/30/01 Press Release on the 7/20/01 Agreement.[20]

21 Rep. Bartlett's 7/30/01 email attesting to accuracy of Futia's/WTP's 7/30/01 Press Release.[21]

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[15] Appellant's Record on Appeal, Volume 10, pages 2668-2674

[16] Appellant's Record on Appeal, Volume 10, pages 2676-2677

[17] Appellant's Record on Appeal, Volume 10, page 2679

[18] Appellant's Record on Appeal, Volume 10, page 2681

[19] Appellant's Record on Appeal, Volume 10, pages 2683-2688

[20] Appellant's Record on Appeal, Volume 10, pages 2690-2692

[21] Appellant's Record on Appeal, Volume 10, page 2694

22 Defendant IRS's 7/30/01 email saying it will not participate in the 9/25-26/01 congressional style meeting on the matter.[22]

23 Tax Notes 8/13/01 article on the matter.[23]

24 Rep. Bartlett's 8/29/01 email saying he is pursuing Defendant.[24]

25 Futia's/WTP's 9/12/01 letter requesting delay in 9/25-26/01 conference due to terrorist attack on the World Trade Center.[25]

26 Rep. Bartlett's 10/12/01 notice rescheduling conference to 2/27-28/2002.[26]

27 Tax Notes 1/7/02 article reporting Defendant will not attend the conference.[27]

28 Futia's/WTP's 2/10/02 plea via the NEW YORK TIMES, "IRS and Department of Justice: Why Won't You Answer Our Questions?[28]

29 Futia's/WTP's questions prepared by three hired attorneys following 7/20/01 Agreement, to be asked of Defendant's witnesses at

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[22] Appellant's Record on Appeal, Volume 10, page 2696

[23] Appellant's Record on Appeal, Volume 10, pages 2698-2699

[24] Appellant's Record on Appeal, Volume 10, page 2701

[25] Appellant's Record on Appeal, Volume 10, page 2703

[26] Appellant's Record on Appeal, Volume 10, pages 2705-2706

[27] Appellant's Record on Appeal, Volume 10, page 2708

[28] Appellant's Record on Appeal, Volume 10, page 2710

hearing scheduled for Capitol Hill in September 2001, which hearing was rescheduled for Capitol Hill on February 27-28, 2002 following the attack on the World Trade Center but moved to the Washington Marriott following Defendant's refusal to attend.[29]

30 Futia's/WTP's Statement of Facts derived from testimony of expert witnesses at WTP's Citizen's-Truth-in-Taxation Hearing held the Washington Marriott on February 27-28, 2002.[30]

31 Futia's/WTP's 3/16/02 letter to Rep. Bartlett with questions to be sent to Defendant at Defendant's request.[31]

32 Defendant's 4/10/02 letter to Rep. Bartlett saying Defendant will not answer the questions.[32]

33 Futia's/WTP's 4/8/02 and 4/10/02 letters to Defendant transmitting copies of the transcript and a video of the Feb. 27-28, 2002 Citizens-Truth-In-Taxation Hearing saying in part, "The first Amendment REQUIRES that our Government answer these

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[29] Appellant's Record on Appeal, Volume 11, pages 2712-2803

[30] Appellant's Record on Appeal, Volume 11, pages 2811-2882

[31] Appellant's Record on Appeal, Volume 11, pages 2884-2977

[32] Appellant's Record on Appeal, Volume 11, pages 2979-2981

questions . . . These are questions that MUST BE ANSWERED."[33]

34 Constituent letter, similar to those received by every member of Defendant's Senate and House of Representatives along with a transcript and video copy of the Citizens-Truth-In-Taxation Hearing.[34]

35 White House Press Briefing segment regarding Futia's/WTP's REMONSTRANCE.[35]

36 Futia's/WTP's 11/8/02 memo to Defendant transmitting Petitions for Redress challenging the constitutionality of the Tax on Labor, the USA Patriot Act, the IRAQ Resolution and the Federal Reserve System and requesting a response be given to the people gathered on the National Mall on 11/14/02.[36]

37 WTP's 11/14/02 gathering on the National Mall to await Defendant's response to its four Petitions for Redress.[37]

38 American Free Press article "Congress, President Served Petitions With Protest,

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[33] Appellant's Record on Appeal, Volume 12, pages 2983-2989

[34] Appellant's Record on Appeal, Volume 12, pages 2991-2992

[35] Appellant's Record on Appeal, Volume 12, page 2994

[36] Appellant's Record on Appeal, Volume 12, pages 2996-3019

[37] Appellant's Record on Appeal, Volume 12, page 3021

Government Shows Ultimate Disrespect to We The People: They Ignore Us"[38]

39 WTP's 3/15/03 letter to Defendant with Folder labeled *"Legal Termination of Tax Withholding For Companies, Workers and Independent Contractors"*[39]

40 New York Times 9/17/03 article quoting Defendant saying Defendant is responding to Futia's/WTP's petitions for redress with "enforcement actions."[40]

41 Futia's/WTP's 5/10/04 letters inviting Defendant to 7/19/04 symposium at the NPC with questions to be answered.[41]

42 White House 6/18/04 letter to WTP, "your request will be given every consideration."[42]

43 White House 7/12/04 letter to WTP, "we are unable to accommodate your request."[43]

44 WTP's 7/19/04 symposium at the NPC.[44]

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[38] Appellant's Record on Appeal, Volume 12, pages 3023-3030

[39] Appellant's Record on Appeal, Volume 2, pages 491-603

[40] Appellant's Record on Appeal, Volume 12, pages 3032-3035

[41] Appellant's Record on Appeal, Volume 12, pages 3037-3104

[42] Appellant's Record on Appeal, Volume 3, page 681,

[43] Appellant's Record on Appeal, Volume 3, page 682

[44] Appellant's Record on Appeal, Volume 12, page 3106

45 WTP's argument at D.C. Circuit in *We The People v United States:*[45]

46 Aaron Russo's 2007 documentary, *America: Freedom to Fascism.*[46]

47 Rep. Bartlett's 3/2/17 sworn affidavit.[47]

[. . .]

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[45] Appellant's Record on Appeal, Volume 3, pages 684-702

[46] Appellant's Record on Appeal, Volume 12, page 3108

[47] Appellant's Record on Appeal, Volume 12, pages 3110-3113. Particularly noteworthy is Congressman Bartlett's testimony on pages 3 and 4 of his Affidavit regarding Defendant's abuse of power related to the Tax Relief and Health Care Reform Act of 2006, which unconstitutionally has Congress transferring its lawmaking power to the Treasury Department, and Treasury Notice 2007-30, which unconstitutionally has Treasury removing the right of enforcement under the Petition Clause of the First Amendment.

HISTORICAL RECORD OF THE RIGHT TO PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES

HISTORICAL RECORD OF THE RIGHT TO PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES

by

Robert L. Schulz

> "On every question of the construction of the Constitution, let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."
>
> Thomas Jefferson,
> Letter to William Johnson, Supreme Court Justice (1823)

It is instructive to review the history of the Right to Petition in order to determine its meaning.

The following are the highlights of the historical record of the Right to Petition:

Chapter 61 of the Magna Carta (the cradle of Liberty and Freedom from wrongful government, signed at a time when King John was sovereign) reads in relevant part:

> "61. Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted

all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons, and those five and twenty barons shall, together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harm-

> less our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations towards us. . . . " (emphasis added by the People).

Chapter 61 was a procedural vehicle for enforcing the rest of the Charter. It spells out the Rights of the People and the obligations of the Government, and the procedural steps to be taken by the People and the King, in the event of a violation by the King of any provision of that Charter: the People were to transmit a Petition for a Redress of their Grievances; the King had 40 days to respond; if the King failed to respond in 40 days, the People could non-violently retain their money or violence could be legally employed against the King until he Redressed the alleged Grievances.[1]

The 1689 Declaration of Rights proclaimed, "[I]t is the Right of the subjects to petition the King, and all commitments and prosecutions for such petitioning is illegal." This was obviously a basis of the "shall make no law abridging the right to petition government for a redress of grievances"· provision of our Bill of Rights.

In 1774. the same Congress that adopted the Declaration of Independence unanimously adopted an Act in which they gave meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement as they spoke about the People's "Great Rights." Quoting:

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[1] *See* Magna Carta Chapter 61. *See also* William Sharp McKechnie, Magna Carta 468-77 (2nd ed. 1914)

> "If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." "Continental Congress To The Inhabitants Of The Province Of Quebec." Journals of the Continental Congress 1774, Journals 1: 105-13.

In 1775, just prior to drafting the Declaration of Independence, Jefferson gave further meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement. Quoting:

> "The privilege of giving or withholding our moneys is an important barrier against the undue exertion of prerogative which if left altogether without control may be exercised to our great oppression; and all history shows how efficacious its intercession for redress of grievances and reestablishment of rights, an hou improvident would be the surrender of so powerful a mediator." Thomas Jefferson: Reply to Lord North, 1775. Papers 1:225.

In 1776, the Declaration of Independence was adopted by the Continental Congress. The bulk of the document is a listing of the Grievances the People had against a Government that had been in place for 150 years. The final Grievance on the list is referred to by scholars as the "capstone" Grievance. The capstone Grievance was the ultimate Grievance, the Grievance that prevented Redress of these other Grievances, the Grievance that caused the People to non-violently withdraw their support and allegiance to the Govern-

ment, and the Grievance that eventually justified War against the King, morally and legally. Thus, the Congress gave further meaning to the People's Right to Petition for Redress of Grievances and the Right of enforcement. Quoting the Capstone Grievance:

> "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms. Our repeated Petitions have been answered only by with repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is thus unfit to be the ruler of a free people. . . . We, therefore . . . declare, That these United Colonies . . . are Absolved from all Allegiance to the British Crown. . . . " *Declaration of Independence,* 1776

Though the Rights to Popular Sovereignty and its "protector" Right, the Right of Petition for Redress have become somewhat forgotten, they took shape early on by government's *response* to Petitions for Redress of Grievances.[2]

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[2] *See* A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142 (November, 1986); "SHALL MAKE NO LAW ABRIDGING . . . ": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986);" LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES-BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989);THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION:

The Right to Petition is a distinctive, substantive Right, from which other substantive First Amendment Rights were *derived.* The Rights to free speech, press and assembly originated *as derivative* Rights insofar as they were necessary to protect the *preexisting* Right to Petition. Petitioning, as a way of holding government accountable to natural Rights, originated in England in the 11th century[3] and gained recognition as a Right in the mid 17th century.[4] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.[5] Publications reporting Petitions were the first to receive protection

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TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997);THE VESTIGIAL CONSTITUTION: THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998); DOWNSIZING THE RIGHT TO PETITION, Gary Lawson and Guy Seidman, *93 Nw. U.L. Rev.* 739 (Spring 1999); A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. Li. 557 (1999); MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000).

[3] Norman B. Smith, "Shall Make No Law Abridging . . . ": Analysis of the Neglected, But Nearly Absolute, Right of Petition, 54 U. CIN. L. REV. 1153, at 1154.

[4] *See* Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in 5 THE FOUNDERS' CONSITUTION 197 (Philip B. Kurland & Ralph Lerner eds., 1987); 1 WILLIAM BLACKSTONE, COMMENTARIES 138-39.

[5] *See* David C. Frederick, John Quincy Adams, Slavery, and the Disappearance of the Right to Petition, 9 LAW & HIST. REV. 113, at 115.

from the frequent prosecutions against the press for seditious libel.[6] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[7]

In addition, the Right to Petition was widely accorded greater importance than the Rights of free expression. For instance, in the 18th century, the House of Commons,[8] the American Colonies,[9] and the first Continental Congress[10] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[11]

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate

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6 *See* Smith, *supra* n.4, at 1165-67.

7 *See* Charles E. Rice, *Freedom of Petition,* in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)

8 *See* Smith, *supra* n4, at 1165.

9 For example, Massachusetts secured the Right to Petition in its Body of Liberties in 1641, but freedom of speech and press did not appear in the official documents until the mid-1700s. See David A. Anderson, *The Origins of the Press Clause,* 30 UCLA L. REV. 455, 463 n.47 (1983).

10 *See id.* at 464 n.52.

11 Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning, whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n6, at 115-16.

sections:[12] In addition, a "considerable majority" of Congress defeated a motion to strike the assembly provision from the First Amendment because of the understanding that all of the enumerated rights in the First Amendment were separate Rights that should be specifically protected.[13]

Petitioning government for Redress of Grievances has played a key role in the development, exercise and enforcement of popular sovereignty throughout British and American history.[14] In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.[15] Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.[16] This broadening of political part-

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[12] *See New York Times Co. v. U.S.*, 403 U.S. 670, 716n.2 (1971) (Black, J., concurring). For the full text of Madison's proposal, *see* 1 ANNALS OF CONG. 434 (Joseph Gales ed., 1834).

[13] *See* 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).

[14] *See* Don L. Smith, *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations 10-108* (1971) (unpublished Ph.D. dissertation) (Univ. Microforms Int'l); K. Smellie, Right to Petition, in 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 98, 98-101 (R.A. Seiligman ed., 1934).

[15] The Magna Carta of 1215 guaranteed this Right. *See* MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5, at 187.

[16] *See* PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 187-88.

icipation culminated in the official recognition of the right of Petition in the People themselves.[17]

The People used this newfound Right to question the legality of the government's actions,[18] to present their views on controversial matters,[19] and to demand that the government, *as the creature and servant of the People, be responsive to the popular will.*[20]

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify government misconduct.[21]

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[17] In 1669, the House of Commons stated that, "it is an inherent right of every commoner in England to prepare and present Petitions to the House of Commons in case of grievances, and the House of Commons to receive the same." Resolution of the House of Commons (1669), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 188-89.

[18] For example, in 1688, a group of bishops sent a petition to James 11 that accused him of acting illegally. See Smith, *supra* n4, at 1160-62. James II's attempt to punish the bishops for this Petition led to the Glorious Revolution and to the enactment of the Bill of Rights. *See* Smith, *supra* n15 at 41-43.

[19] *See* Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).

[20] In 1701, Daniel Defoe sent a Petition to the House of Commons that accused the House of acting illegally when it incarcerated some previous petitioners. In response to Defoe's demand for action, the House released those Petitioners. See Smith, *supra* n4, at 1163-64.

[21] *See* RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

By the nineteenth century, Petitioning was described as "essential to . . . a free government"[22] — an inherent feature of a republican democracy,[23] and one of the chief means of enhancing government accountability through the participation of citizens.

This Interest in Government Accountability Was Understood To Demand Government Response To Petitions.[24]

American colonists, who exercised their Right to Petition the King or Parliament,[25] expected the government to receive *and respond* to their Petitions.[26] The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the "capstone":

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[22] THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 531 (6th ed. 1890).

[23] *See* CONG. GLOBE, 39th Cong., 1st Session. 1293 (1866) (statement of Rep. Shellabarger) (declaring petitioning an indispensable Right "without which there is no citizenship" in any government); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 707 (Carolina Academic Press ed. 1987) (1833) (explaining that the Petition Right "results from [the] very nature of the structure [of a republican government]").

[24] *See* Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).

[25] *See* DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), *reprinted in id.* at 198.

[26] *See* Frederick, *supra n4* at 115-116.

grievance, was a significant factor that led to the American Revolution.[27]

Frustration with the British government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[28] Members of the First Congress easily defeated this right-of-instruction proposal.[29] Some discretion to reject petitions that "instructed government," they reasoned, would not undermine government accountability to the People, as long as Congress had a duty to consider petitions *and fully respond to them.*[30]

Congress's response to Petitions in the early years of the Republic also indicates that the original understanding of Petitioning *included a governmental duty to respond.* Congress viewed the receipt and

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[27] *See* THE DECLARATION OF INDEPENDENCE para. 30 (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra n5* at 199; Lee A. Strimbeck, The Right to Petition, 55 W. VA. L. REV. 275, 277 (1954).

[28] *See* 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.

[29] The vote was 10-41 in the House and 2-14 in the Senate. *See id.* at 1105, 1148.

[30] *See* 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n15, at 1093-94 (stating that representatives have a duty to inquire into the suggested measures contained in citizens' Petitions) (statement of Rep. Roger Sherman); *id.* at 1095-96 (stating that Congress can never shut its ears to Petitions) (statement of Rep. Elbridge Gerry); *id.* at 1096 (arguing that the Right to Petition protects the Right to bring non-binding instructions to Congress's attention) (statement of Rep. James Madison).

serious consideration of every Petition as an important part of its duties.[31]

Congress referred Petitions to committees[32] and even created committees to deal with particular types of Petitions.[33] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report.[34]

Thus, throughout early Anglo-American history, general petitioning (as opposed to judicial petitioning) allowed the people a means of direct political participation that in turn demanded government *response* and promoted accountability.

To determine "[t]he proper scope and application of the Petition Clause . . . Some effort must be made to identify the historic and fundamental principles that led to the enumeration of the right to petition in the First Amendment, among other rights fundamental

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[31] *See* STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99TH CONG., 2D SESS., PETITIONS. MEMORIALS AND OTHER DOCUMENTS SUBMITTED FOR THE CONSIDERATION OF CONGRESS, MARCH 4, 1789 TO DECEMBER 15, 1975, at 6-9 (Comm. Print 1986) (including a comment by the press that "the principal part of Congress's time has been taken up in the reading and referring Petitions" (quotation omitted)).

[32] *See* Stephen A. Higginson, Note, A Short History of the Right to Petition the Government for the Redress of Grievances, 96 YALE L. J. 142, at 156.

[33] *See* H.J., 25th Cong., 2d Sess. 647 (1838) (describing how petitions prompted the appointment of a select committee to consider legislation to abolish dueling).

[34] *See* Higginson, n34 at 157.

to liberty." *Guarnieri* at 394-395. (Emphasis added). *Borough of Duryea v. Guarnieri,* 564 U.S. 379 (2011).

"The First Amendment's Petition Clause states that 'Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.' The reference to `the right of the people' indicates that the Petition Clause was intended to codify a pre-existing individual right, which means that we must look to historical practice to determine its scope. (*See District of Columbia v. Heller,* 554 U.S. 570, 579, 592 (2008)." *Guarnieri* at 403. (Emphasis added).

"There is abundant historical evidence that 'Petitions' were directed to the executive and legislative branches of government." *Guarnieri* at 403. (Emphasis added).

"Petition, as a word, a concept, and an essential safeguard of freedom, is of ancient significance in English law and the Anglo-American legal tradition." *Guarnieri* at 394-395. (Emphasis added).

"[P]etitions have provided a vital means for citizens . . . to assert existing rights against the sovereign." *Guarnieri* at 397. (Emphasis added).

"Rights of speech and petition are not identical. Interpretation of the Petition Clause must be guided by the objectives and aspirations that underlie the right. A petition conveys the special concerns of its author to the government and, in its usual form, requests action by the government to address those concerns." *Guarnieri at* 388-389. (Emphasis added).

"One of the advantages of popular government, of which Jefferson was distinctly aware, was that it

afforded a means of redressing grievances against the government without the resort to force; it provided, as he would later put it in his First Inaugural Address, 'a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceful remedies are unprovided.'" (Emphasis added). David N. Mayer, *"The Constitutional Thought of Thomas Jefferson,"* University Press of Virginia, 1994, at 107. *See also* Thomas Jefferson, *First Inaugural Address,* 4 March 1801, L.C.

SUPREME COURT
PRESS

CERTIFICATE OF WORD COUNT

No. 24-364

Anthony Futia, Jr.,

Petitioner,

v.

United States of America,

Respondent.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. That, as required by Supreme Court Rule 33.1(h), I certify that the ANTHONY FUTIA, JR. PETITION FOR REHEARING contains 599 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Lucas DeDeus

January 22, 2025

SCP Tracking: Anthony Futia, Jr.-34 Custis Ave.-Cover Tan

CERTIFICATE OF SERVICE

No. 24-364

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Petitioner,

v.

United States of America,

Respondent.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say under penalty of perjury:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. On the undersigned date, I served the parties in the above captioned matter with the ANTHONY FUTIA, JR. PETITION FOR REHEARING, by both email and by mailing three (3) true and correct copies of the same by USPS Priority mail, prepaid for delivery to the following address which the filing party avers covers all parties required to be served.

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January 22, 2025