

No. 24-659

IN THE
Supreme Court of the United States

Brian D. Swanson

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR REHEARING

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RULE 29.6 STATEMENT

The corporate disclosure statement in the
petition for a writ of certiorari remains accurate.

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PETITION FOR REHEARING

Pursuant to the Court's Rule 44.2, Petitioner, Brian D. Swanson, respectfully petitions for rehearing of this Court's February 24th order denying certiorari in this case.

GROUND FOR REHEARING

District Court for the Southern District of Georgia has permanently enjoined petitioner from challenging both Puerto Rico's status as an unincorporated Territory and whether the Commissioner computes income tax incorrectly. This injunction applies to any federal court nationwide and is a chilling warning, to not only the petitioner, but to any taxpayer nationwide who would dare challenge Puerto Rico's status or the Commissioner's legal errors. Combine the nationwide injunction with the misapplication of the Uniformity Clause, by which the income tax is collected in the 50 States and in foreign countries but not in Puerto Rico, and the result is a case presenting not only legal and constitutional errors, but a case in which the collective authorities seem desperate to sabotage. If this court rejects the opportunity to resolve these errors now, petitioner will not be able to argue them in the future. The nationwide permanent injunction will also dissuade others from attempting to correct these errors and will provide a justification for enjoining those who try.

REASONS FOR GRANTING A REHEARING

I. **The Commissioner's Instruction to Use Box 1 of a Form W-2 to Compute Income Tax Violates the Tax Code.**

The 2019 Form 1040 Instructions tells taxpayers to use box 1 from their Form W-2 to compute their income tax:

Enter the total of your wages, salaries, tips, etc. If a joint return, also include your spouse's income. For most people, the amount to enter on this line should be shown in box 1 of their Form(s) W-2.¹

This instruction violates the Tax Code and is illegal. Box 1 of a Form W-2 is “wages” as defined in 26 U.S.C. §3401(a) as required by 26 U.S.C. § 6051(a)(3). This statute is found in Subtitle C and defines statutory “wages” for purposes of determining the employer’s chapter 24 employment tax liability. This is not an income tax statute, it is an employment tax statute. 26 U.S.C. §61(a) excludes statutory income from Subtitle C by law², including “wages,” as defined in § 3401(a). This statute reads, **“Except as otherwise provided in this subtitle, gross income means all income from whatever source derived including (but not limited to) the following items:”** All statutes from outside of Subtitle A, including: Subtitle B, Subtitle C,

¹ 2019 Form 1040 Instructions p.26,
<https://www.irs.gov/pub/irs-prior/i1040gi--2019.pdf>

² 26 C.F.R. 1.61-1.

Subtitle D, etc., are excluded from determining the meaning of gross income.

The interpretation of taxing statutes requires strict construction and the fact that box 1 is determined in Subtitle C forbids this dollar figure to compute income tax simply because the law says so, regardless of the deceptive labels used to describe the income. *Gould v. Gould* 245 U.S. 151, 153 (1917) (“In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used In case of doubt, they are construed most strongly against the government and in favor of the citizen.”) The clear import of §61(a) excludes income from Subtitle C and thus, the Commissioner’s use of box 1 from a Form W-2 in the amount of \$79,186.38 to compute Mr. Swanson’s income tax deficiency is a violation of the Tax Code because it is determined in Subtitle C. This IRS procedure violates the law and is an illegal administrative procedure, which invalidates the Notice of Deficiency.

II. Did the Appeals Court Show a Lack of Good Behavior Under Article III Sec. 1 of the Constitution When It Upheld a Sanction for Invoking This Court’s Authority?

The Tax Court imposed, and the Eleventh Circuit upheld, a \$15,000 sanction for frivolous arguments under 26 U.S.C. §6673 for invoking this Court holding in *Moore et ux v. United States* (20204). It was held that income taxes are indirect taxes and that indirect taxes must be uniform throughout the United States. (“indirect taxes are permitted without apportionment but must “be uniform throughout the United States,” §8, cl. 1. Taxes on income are indirect taxes”) In his

Opposition to Summary Affirmance, petitioner cut-and-paste paragraph (a) of this Court's holding to quote it verbatim and to use it in support of his argument that income taxes must be uniform throughout the United States and that this should include Puerto Rico after Congress approved its constitution. The Eleventh Circuit's opinion ignored the holding and rebuked petitioner by saying, "First, it is not clear that the Uniformity Clause applies to income taxes," and then upheld the \$15,000 sanction.

Is it any less a waste of time and judicial resources when lower courts ignore the written opinions and holdings of the Supreme Court than when a litigant files frivolous appeals or arguments? Does the blatant disregard for a holding of the Supreme Court and the imposition of a sanction on the litigant who invokes this Court's authority constitute an egregious lack of good behavior? Litigants are sanctioned for wasting the time and resources of the courts under FRAP Rule 38. Is it time for those judges who demonstrate a lack of good behavior by wasting this Court's time and resources to be likewise held accountable under Article III Sec. 1 of the Constitution?

III. The Misapplication of the Uniformity Clause Permits the Income Tax to Be Collected in the 50 States and in Foreign Countries but Not in Puerto Rico.

By what abuse of logic is an income tax that is allegedly subject to the Uniformity Clause, according to *Moore et ux v. United States* (20204), collected in foreign countries but not in Puerto Rico?

The embarrassing state of current affairs is illustrated by the fact that the income tax is collected on income earned in India, but it is not collected on

income earned in Puerto Rico. The income tax is subject to the Constitution's Uniformity Clause according to *Moore et ux v. United States* (2024) ("indirect taxes are permitted without apportionment but must "be uniform throughout the United States," §8, cl. 1. Taxes on income are indirect taxes") and the Uniformity Clause requires geographical uniformity throughout the United States. *Knowlton v. Moore*, 178 U.S. 41 (1900) ("The provision in Section 8 of Article I of the Constitution that "all duties, imports and excises shall be uniform throughout the United States" refers purely to a geographical uniformity, and is synonymous with the expression 'to operate generally throughout the United States.'") We are told that an unincorporated Territory is not an integral part of the United States and therefore the Uniformity Clause does not apply. *Downes v. Bidwell*, 189 U.S. 244 (1901) ("We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution") Is India more a part of the United States within the revenue clauses of the Constitution than unincorporated Puerto Rico? We are asked to believe that an income tax limited by the rule of uniformity can be collected from American Citizens who earn income in India but cannot be collected from American Citizens who earn income in Puerto Rico. The Uniformity Clause is both a requirement and a limitation: taxes are **required** to operate with geographical uniformity throughout the United States and taxes are **limited** to the geographical United States. The Moore's should have argued that undistributed income accumulated in India is constitutionally excluded from the income tax by the rule of uniformity which limits the collection of the

income tax to the geographical United States. After Congress approved Puerto Rico's constitution, the geographical United States includes Puerto Rico, but it does not include India or any other foreign country. Whether an income tax is *apportioned among the several states*³ or is *uniform throughout the United States*,⁴ neither of these two rules permit an income tax to operate in a foreign country.⁵ Therefore, the income tax must be collected on income earned in Puerto Rico but the income tax cannot be collected on income earned in India. The Commissioner is collecting the income tax in foreign countries using the power of an unconstitutional administrative regulation. The misapplication of the Uniformity Clause is causing much confusion, error and injury. Collecting the income tax in the 50 States, and in foreign countries, but not in Puerto Rico violates the Uniformity Clause in multiple ways. This embarrassing state of affairs should be corrected and *pro se* litigants should not be sanctioned for attempting to correct errors that others have overlooked.

The Tax Code is so confusing and so incomprehensible that the Commissioner is collecting the income tax perfectly backwards. First, he collects the tax in India but not in Puerto Rico and second, he

³ U.S. Constitution Art I. §9 cl. 4; Art I. §2 cl. 3

⁴ U.S. Constitution Art I. §8 cl. 1

⁵ The attempt to collect income tax "without the United States" is implemented by regulation that exceeds the authority of the statute. I.R.C. §1 makes no attempt to collect the tax "without the United States," but this language is added to 26 C.F.R. 1.1-1(b) which attempts to expand Congress' taxing power into foreign countries in violation of the Constitution. Not even the defunct Chevron Defense would permit such an egregious overreach.

confuses the Subtitle C taxes with the Subtitle A taxes and computes the income tax using illegal income, and these errors invalidate the Notice of Deficiency.

IV. Petitioner Has Been Permanently Enjoined Nationwide from Raising the Questions Presented in This Petition.

In a separate case, petitioner has been enjoined by the District Court for the Southern District of Georgia from raising the issue of Puerto Rico's incorporation or whether the Commissioner is computing the income tax using the wrong wages. This injunction applies to "this Court or any other federal court." (Rehearing App at 1) This case originated as a refund suit that was dismissed (Docket 1:23-cv-193) The injunction prohibits Mr. Swanson from raising the following arguments, "(1) any argument that he is not required to report his wages as income on his tax return; and (2) any argument that the collection of income taxes is unconstitutional under the Uniformity Clause of the Constitution due to Puerto Rico's status as an incorporated territory of the United States." (Rehearing App at 2) A nationwide injunction of this type imposed on an individual seems unprecedented.

No court has ruled whether Congressional approval of Puerto Rico's constitution is sufficient to incorporate the Territory and whether its incorporation affects the uniform collection of the federal income tax. And, challenging the Commissioner's computation of the income tax has always been a valid claim for relief. Neither one of these arguments is an appropriate subject for a nationwide injunction. Additionally, it is doubtful that this district court has the authority to enjoin petitioner from invoking the Constitution

beyond its territorial jurisdiction described in 28 U.S.C. §90(c).

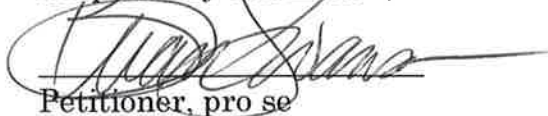
This injunction has been appealed and is currently sitting with the Eleventh Circuit Court of Appeals as case 24-12394. If This Court has no interest in the underlying issues, then the Eleventh Circuit, which has already sanctioned petitioner for these arguments, will likely affirm the nationwide injunction and send a chilling warning to any who would challenge Puerto Rico's status or challenge the erroneous computation of the tax. Also, appealing the injunction would become moot and a waste of time and resources if this Court has already refused to hear the enjoined arguments. This Court should decide both the petition, and the injunction using Rule 11, because it is obvious that neither the government nor the courts want these questions to be answered.

Mr. Swanson is a *pro se* litigant and a public schoolteacher who has been sanctioned a total of \$65,000 by the courts for trying to correct these errors and now he has been enjoined nationwide from invoking the Constitution.

CONCLUSION

The Court should grant the petition for rehearing.

Respectfully Submitted,



Petitioner, pro se

1805 Prince George Ave
Evans, Ga 30809
(831)601-0116

March 5, 2025

CERTIFICATE OF COUNSEL

I certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.



Petitioner, pro se

Rehearing Appendix

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

BRIAN D. SWANSON,	*
	*
Plaintiff,	*
	*
V.	* CV 123-193
	*
UNITED STATES	*
OF AMERICA,	*
	*
Defendant.	*
	*

ORDER

On May 28, 2024, the Court ordered Plaintiff to show cause why the proposed permanent injunction contained therein should not be imposed. (Doc. 14, at 11-13.) For the reasons discussed in the Order filed contemporaneously herewith, the Court finds Plaintiff has failed to show cause why the Court should not move forward with the proposed permanent injunction.

Accordingly, IT IS THEREFORE ORDERED that Plaintiff, Brian Swanson, is henceforth PERMANENTLY ENJOINED from filing or attempting to file any lawsuit in this Court or any other federal court seeking to obtain a tax refund for a tax year in which Mr. Swanson failed to report his

wages as income. In the event Mr. Swanson files a lawsuit seeking a tax refund in this Court or any other federal court in the future, Mr. Swanson SHALL FILE his complaint accompanied by: (1) the tax return(s) he filed for the tax year(s) relevant to his lawsuit showing he properly claimed his wages as income; (2) a copy of this injunction; and (3) a list of each and every lawsuit and appeal he has filed in any federal court along with the final disposition of each lawsuit or appeal. Additionally, neither Mr. Swanson's complaint nor any motions, responses, replies, or other papers Mr. Swanson files in this Court shall include any arguments this Court, the United States Court of Appeals for the Eleventh Circuit, the United States Tax Court, or any other court has previously determined to be frivolous, including but not limited to: (1) any argument that he is not required to report his wages as income on his tax return; and (2) any argument that the collection of income taxes is unconstitutional under the Uniformity Clause of the Constitution due to Puerto Rico's status as an incorporated territory of the United States. Any complaint Mr. Swanson files that does not comply with the terms of the permanent injunction as stated herein shall be summarily dismissed without further explanation.

ORDER ENTERED at Augusta, Georgia, this 9th day of July, 2024.

/S/ RANDAL HALL .
HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

No. 659

IN THE
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Brian D. Swanson, *Petitioner*,

v.

United States of America, *Respondent*.

PETITION FOR REHEARING

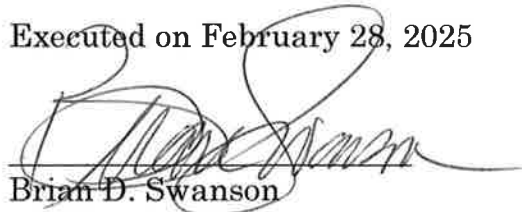
CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2023 three (3) copies of the PETITION FOR REHEARING in the above-captioned case were served, as required by Supreme Court Rule 29.5, on the following:

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530-0001
(202) 514-2217

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

Executed on February 28, 2025



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No. 24-659

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v.

United States of America, *Respondent*.

PETITION FOR REHEARING

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 2,055 words, established by Rule 33.1(g)(xv).

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

Executed on February 28, 2025



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