12/22/25

No. 25-1032

In The

Supreme Court of the United States

ANTHONY DWAYNE WILLIAMS,

Petitioner

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent

On Petition For Writ Of Certiorari
To the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

ANTHONY DWAYNE WILLIAMS
13022 Goodwood Blvd.
Baton Rouge, LA 70815
Telephone: (225) 275-2005

Pro Se

QUESTION PRESENTED

Whether the Sixteenth Amendment authorizes Congress to tax compensation for labor not arising from the exercise of a federal privilege (i.e., an "excise")[1] without apportionment among the Union States.

---

[1] The terms 'excise tax' and 'privilege tax' are synonymous. The two are often used interchangeably. American Airways v. Wallace, 57 F.2d 877, 880 (Dist. Ct., MD. Tenn., 1932).

PARTIES TO THE PROCEEDING

I, Anthony Dwayne Williams, was the petitioner in the United States Tax Court and appellant in the United States Court of Appeals for the Fifth Circuit proceedings. I am the petitioner or appellant in this Court's proceedings.

The Commissioner of Internal Revenue (C.I.R.) was the respondent in the U.S. Tax Court and appellee in the U.S. Court of Appeals proceedings. He's the respondent or appellee in this Court's proceedings.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held company meeting the description of Rule 29.6 of the Rules of the Supreme Court of the United States.

STATEMENT OF RELATED PROCEEDINGS

This case directly relates to the following proceedings:

Anthony Dwayne Williams v. C.I.R., Case No. 10275-23L, United States Tax Court. Judgment entered on July 22, 2024. See App.3 – App.19[2].

Anthony Dwayne Williams v. C.I.R., Case No. 24-60525, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on August 7, 2025. See App.1 – App.2.

Anthony Dwayne Williams v. C.I.R., Case No. 24-60525, U.S. Court of Appeals for the Fifth Circuit. On Petition for Rehearing and Rehearing En Banc. Judgment entered on October 3, 2025. See App.20.

---

[2] "**App.**" references the Appendix followed by the page number where the document can be found.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases **Page**

26 U.S.C. Internal Revenue Code (I.R.C.) of 1986

Statutes **Page**

Treasury Regulations (26 C.F.R.):

United States Constitution:

Constitutional Provisions:

Miscellaneous:

Other Authorities:

PETITION FOR WRIT OF CERTIORARI

I pro se petitioner Anthony Williams respectfully petitions for a writ of certiorari to review the judgment of the Fifth Circuit's final decision affirming the Tax Court granting summary judgment to the Commissioner of the Internal Revenue, sustaining the seizure of my state tax refund in the amount of $1,867.00 for partial satisfaction of a § 6702(a) frivolous tax submission penalty of $5,000 pertaining to my 2015 federal tax return, and imposing a $2,500 sanction under § 6673(a)(1).

OPINIONS OF THE COURT

The Fifth Circuit Court of Appeals entered an unpublished judgment affirming the Tax Court's decision (Rule 36-type disposition). The Tax Court granted summary judgment in favor of the Commissioner and imposed a penalty upon me under § 6673(a)(1). The opinions of both courts are reproduced verbatim and appear in the appendix[3].

JURISDICTION

United States Tax Court judgment was entered on July 22, 2024.The court of appeals entered judgment on August 7, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). A timely petition for rehearing was denied on October 3, 2025. This petition is filed within the time allowed by Supreme Court Rule 13.

---

[3] "ROA" —references are to the documents comprising the electronic record on appeal as numbered by the Tax Court. "**Br**." —references are to my opening brief; Fifth Circuit Court. "**Rb**." —references my reply brief. Unless stated otherwise, all code reference is to the Internal Revenue Code of 1986 (26 U.S.C.)

This corrected petition is submitted in accordance with Rule 29.2 and is within the 60 day time limit allowed under Rule 14.5.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixteenth (16th) Amendment to the U.S. Constitution provides:

> Congress shall have 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.

The Constitution's Apportionment Clause and Direct Tax Clause, U.S. Const., Art. I, § 2, cl. 3; Art. I, § 9, cl. 4 and relevant portions of the Tax Code are reproduced in the Appendix at App.21 – App.25.

STATEMENT OF THE CASE

The U.S. Courts of Appeals have repeatedly attributed to *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916), a proposition that *Brushaber* itself identified as an "erroneous assumption," and that misstatement has been used to reject constitutional arguments as frivolous. In *Parker v. Commissioner*, the Fifth Circuit stated that the Sixteenth Amendment was enacted to provide for a "direct income tax," on all wages and that *Brushaber* supplied the basis for a "direct non-apportioned income tax." The Eighth Circuit in *United States v. Francisco* similarly stated that *Brushaber* established that the income tax is a direct tax and quoted *Brushaber* as taking the income tax "out of the class of excises, duties and imposts and place it in the class of direct taxes." The Tenth Circuit in *United States v. Collins* likewise stated that the

Supreme Court recognized a "direct nonapportioned tax" under the Sixteenth Amendment. *Parker v. Comm'r*, 724 F.2d 469 (5th Cir. 1984); *United States v. Francisco, 614 F.2d 617 (8th Cir. 1980); United States v. Collins, 920 F.2d 619 (10th Cir. 1990).*

Those formulations conflict with *Brushaber*'s text and holding. *Brushaber* states that the Sixteenth Amendment was intended to "simplify the situation" and "not to create radical and destructive changes in our constitutional system," and that it "does not purport to confer power to levy income taxes in a generic sense." It further explains that the confusion arose from the very "erroneous assumption" that the Amendment created a new power to impose an income tax as a direct tax free from apportionment, and warned that accepting that assumption would produce constitutional conflict and "radical and destructive changes." *Brushaber*, 240 U.S. at 11–13, 19–20.

Review is especially warranted because this is not an isolated phrasing dispute. The appellate misstatement has become a recurring doctrinal shortcut used to dispose of constitutional challenges and to impose "frivolous" labels and sanctions, as reflected in *Francisco*, *Parker*, and *Collins*. That recurring use creates ongoing harm by insulating a disputed constitutional premise from meaningful review while purporting to rest on *Brushaber*. This Court should grant the writ to restore fidelity to its own precedent and clarify the actual holding of *Brushaber* for the lower courts.

History of the Proceedings

On July 19, 2018, I submitted my joint tax return Form 1040 for tax year 2015 signed under the penalty of perjury. ROA.453 – 470. In my return I reported $0

gross "**income**" on the form, claimed $6,057.35 in federal tax withholdings, and attached five "Form 4852" substitute for W-2 forms, five "CORRECTED" "Form 1099-MISC" forms, and two "CORRECTED" "Form 1099-INT" forms.

All the attachments had **comments** on them. The comments were **only** meant to **notify** the respondent that the Forms are being used to "**rebut**" and correct the erroneous "**income**" information that may have been sent by a third party in error claiming that I received "**income**"[4]. App.6 – App.7. Respondent sent a 3176C Letter on December 19, 2019, warning me to withdraw my tax return filings alleging that:

> "You filed a purported tax return for the tax periods above that claimed one or more frivolous positions or reflected a desire to delay or impede administration of the tax law. If you don't immediately correct your return, we'll assess a $5,000 penalty against you...
>
> Based on the Internal Revenue code Section 6702, Frivolous tax Submissions, we determined the information you filed as a purported tax return, on Apr. 20, 2019 is frivolous and there is no basis in the law for your position". (ROA.479 – 482.)

On January 9, 2020, I sent a letter in response to the 3176C letter, including a copy of the letter itself. I begged respondent to please point out exactly what part(s) on the return that appeared to be frivolous, so

---

[4] There were no altered jurats found on the form 1040. The comments written on all the attachments are protected under the first amendment to the Constitution and therefore not frivolous. See *McCormick v. Peterson, 1993 U.S. Dist. LEXIS 17561 (E.D.N.Y. 1993).* **App.43**

that correction could be made. (ROA.483 – 484.)

Respondent did not respond to my request (supra).

On August 12, 2020, Supervisory Tax Examiner Adam R. Fisher approved assessing the section 6702(a) Frivolous Filing penalty against me for tax year 2015[5]. (ROA.485 – 489.)

On or about 02/19/2021 I received in the mail a CP59 Notice (Failure to file a Form 1040 tax return), dated 02/15/2021 from respondent[6]. (ROA.18 – 22.)

On or about 02/19/2021 I received in the mail a CP504[7] Notice (Notice of Intent to Seize (Levy) Property), dated 02/15/2021 from respondent. (ROA.23 – 26.) The notice was a demand for payment for an alleged civil penalty in the total amount of $5,023.07 including interest. The notice also informed me to request an appeal under the Collection Appeals Program (CAP) if disagree with the levy.

On 03/10/2021, I mailed my completed Form 9423[8] –CAP Request to respondent via USPS Priority Mail Express under tracking number EJ646961071US. (ROA.1051–1057.) The tracking history for USPS Priority Mail EJ646961071US shows the package was delivered on 03/11/2021 at 8:38 am and signed for by S CHISM. (ROA.1058 – 1059.) I did not receive a reply or response from respondent concerning his CAP request.

---

[5] I was unaware at the time that the penalty was actually assessed.

[6] I did not respond to the CP59 Notice.

[7] Notice CP59 and CP504 was received 1st around the same time.

[8] A copy of the completed Form 9423 was sent to respondent via email on February 16, 2024.

On October 4, 2021, I received a Notice of Seizure of State Tax Return for the amount of $1,867.00 which also notified me of my right to request a Collection Due Process Hearing ("CDP"). (ROA.490 – 495.)

First Instance

I mailed in my completed Form 12153 "Request for a Collection Due Process or Equivalent Hearing" on October 30, 2021, with an attached four page letter explaining my position along with my eighty nine (89) -page Memorandum In Opposition To the Levy[9] pointing out the facts. (ROA.305 – 402)

On my Form 12153 in section 8 under "Reason" I stated:

> "I am not employed in "trade or business" as defined by statue. I did not engage in a privileged federal (economic) activity that is subject to a federal income tax under the excise tax law of the United States. I certainly did not agree knowingly, willingly or voluntarily offer to give as a gift or otherwise my property (money) to the United States.
>
> I disagree with your assessment, therefore I request a Collection Due Process Hearing (CDP) hearing to prove my claim.
>
> Please see my attached "89 page MEMORANDUM IN OPPOSITION TO RESPONDENT'S (IRS) INTENT TO LEVY" to be used as evidence in the U.S. Tax Court or any other federal district, state or local court where a lawsuit may

---

[9] Here is the **first instance** of my notice challenging the U.S. Constitution concerning "income", "wages" and the 16th Amendment all presented in my 89-page "**Memorandum In Opposition To the Levy**". It remains included in the ROA.

be filed."

In my 4 page correspondence letter in support of my CDP request, I stated:

> "Furthermore, to keep in good faith, I have included with this request my 89 page MEMORANDUM IN OPPOSITION TO RESPONDENT'S (IRS) INTENT TO LEVY to present addition information and facts as to why I believe my property (earnings) should not be subject to the federal income (excise) tax and why this levy should be permanently dismissed. This additional information and facts are to be used as part of my records in any future dealings with the IRS and to be used as evidence in a federal U.S. Tax Court or any other federal district, state or local court where a lawsuit may be filed".

Collection Due Process Hearing (CDP)

On or about November 13, 2022 I received a letter from the CDP Appeals Officer (AO) Ms. Deborah Connors (Ms. Connors) that contained additional information concerning the hearing[10]. (ROA.595 – 598.) I requested to be provided with a copy of the Admin Record. AO acknowledged the request and provide a copy. The **IRS Form 8278 -Assessment and Abatement** of Miscellaneous Civil Penalties (ROA.489), dated August 12, 2020 was not included with the Admin Record that I received. The CDP Hearing took place on March 14, 2023[11]. (ROA.616–

[10] The letter informed me of my rights and the right to request the IRS Administrative Files concerning my case. I requested to receive a copy of the file.

[11] See 9-R (ROA.757-872) for a copy of the Admin Record

756.) I did not propose an alternative payment arrangement during the CDP Hearing[12]. I also wanted to address other relevant tax related issues at the hearing including, challenges to the validity of the assessment and the tax liability behind it[13]. AO Ms. Connors did not want to discuss anything other than an alternative payment arrangement and did not address any of my raised liability issues. (ROA.873–885.) AO did not provide me with a copy of Form 8278 even after being requested. (ROA.734 – 735.) As a result of the hearing, a Notice of Determination was issued June 5, 2023 sustaining the Levy for tax period 2015. (ROA.886.) I filed the instant petition with the Tax Court on June 27, 2023. (ROA.6 – 37.)

The Tax Court Proceedings

On October 30, 2023, I filed in the court a formal First Request for Admissions which requested

---

that was sent to me on March 2, 2023 and 10-R (ROA.873-885) for my letter to AO on March 12, 2023, concerning issues that needed to be addressed during the hearing. Other issues included my missing 2015 tax return. (ROA.1040-1045.) A Collection Appeals Program Hearing (CAP) request was timely requested, but lost by respondent. (ROA.1051-1057.)

[12] I believed it would not have been in my best interest providing a Form 433-A, for it would have been deemed frivolous by respondent anyway, and possibly getting him assessed with an additional penalty pursuant to § 6702(b)(1).

[13] A record of this hearing was recorded as it took place through the Secure Messaging System and a copy of the transcript can be reviewed at Admin Record exhibits 8-R. (ROA.617–755.)

respondent to respond to 71 requests for admission and contained 11 exhibits. (ROA.250 – 415.) On November 7, 2023, in response to my Request for Admissions, respondent filed an Objection and filed a Motion for Protective Order[14] asking the Court to Order that respondent did not have to answer to the first Request for Admissions to "protect the respondent from annoyance, embarrassment, and undue burden and expense of responding to the First Request for Admissions". (ROA.236 – 249.)

Second Instance

On November 14, 2023, I filed a response to respondent's Objection to [my] First Request for Admissions. (ROA.417 – 431.) App.39 – App.52.

In that response while addressing respondent's comments I stated in part:

> "IN SUPPORT THEREOF, petitioner respect-fully states the following:
>
> > ... Not once do I refer to my earnings as "income". My earnings are from my labor, made from my inalienable right to follow any common occupation of life[5]. (See Butchers' Union Co. v. Crescent City Co. 111 U.S. 746 (1883)). The United States Constitutional meaning of "income" was defined in Doyle v. Mitchell Brothers Company 247 U.S. 179 (1918), 492[6]. I did not make nor received "income" within the meaning of that term.
> >
> > My proper arguments to date are that my undisputed earnings are not subject to federal

[14] Submitted along with respondent's Motion for Protective Order (attached to as Exhibit A) was a copy of my First Request for Admissions. (ROA.250 – 415.)

> taxation under the "excise" laws of the United States because:"...

I continued by listing from "**a**" to "**g**" the reasons why.

In footnotes 5 and 6, I made reference to see my "MEMORANDUM IN OPPOSITION TO RESPONDENT'S (IRS) INTENT TO LEVY" for more detail on the subject. App.26 – App.37.

On November 17, 2023, the Court Ordered that on or before January 2, 2024, the parties shall comply with Tax Court Rule 93 and either file a stipulated Admin Record or respondent shall file the entire Admin Record appropriately certified as to its genuineness. It was further Ordered that, if I assert that the Admin Record was not complete, I may move on or before February 5, 2024, to complete or supplement the record. (ROA.433 – 435.) The Court stated further, until the complete Admin Record is filed in this case, any request for admissions is premature. Therefore, the Court directed that respondent was not required to respond to my First Request for Admissions at this time and will dismiss as moot and without prejudice respondent's Motion for Protective Order. (ROA.433 – 435.) The Court also ORDERED that my First Request for Admissions filed October 30, 2023, is hereby stricken from the Court's record and shall not be viewable as part of this case. It was further ORDERED that respondent's Motion for Protective Order filed November 7, 2023, is denied without prejudice as moot.

The Court also warned me of possible sanctions under I.R.C. § 6673(a)(1) if I continued to advance frivolous arguments[15]. App.38 – App.42.

---

[15] This was a very prejudicial comment. The judge had

Administrative Record and Court's Disposition

On December 18, 2023, both parties endeavored to comply with the Court's directive and attempted to file a stipulated administrative record. However, consensus could not be reached on several of my stipulations[16].

On December 20, 2023, respondent filed a Notice of Filing of the Admin Record, a Certificate as to the Genuineness of the Admin Record, and the entire Admin Record. (ROA.444 – 922.)

On January 28, 2024, I filed a Notice of Objection to Certificate as to the Genuineness of the Admin Record. I stated that my objection concerned the certification and genuineness as to some parts of the Admin Record filed by respondent. (ROA.923 – 932.)

On February 5, 2024, the Court directed respondent to file a reply to my Notice of Objection to Certificate as to the Genuineness of the Admin Record. (ROA.933.)

On February 16, 2024, pursuant to Tax Court Rule 90, I sent respondent another First Request for Admissions[17] informally via email to answer within 30

---

already made her decision without receiving any facts of the case. App.41

[16] I wanted the IRS Form 8278 -Assessment and Abatement of Miscellaneous Civil Penalties (ROA.489), dated August 12, 2020 excluded, because it was not included with the Admin Record that Appellant received, also appellant considered it to be hearsay.

[17] My first formal Request for Admissions was stricken from the record. My informal First Request for Admissions was an exact copy of the one that was stricken from the

days of receipt. Respondent acknowledged receiving it by email. I also filed with the court a Certificate of Service for the First Request for Admissions. (ROA.934 – 936.)

On February 27, 2024, respondent filed a Reply to Notice of Objection to Certificate as to the Genuineness of the Admin Record. (ROA.937 – 945.)

On May 22, 2024, the Court ORDERED that, on or before June 20, 2024, the parties shall file a status report detailing the then-current status of this case. However, the Court did not rule on my Notice of Objection to Certificate as to the Genuineness of the Admin Record. (ROA.946.)

Respondent did not answer my informal First Request for Admissions within 30 days of receipt pursuant to Tax Court Rule 90. It was received by respondent on February 16, 2024. (ROA.250 – 415.)

On May 29, 2024, respondent filed a Motion for Summary Judgment (motion) under Rule 121. Respondent filed in support of the motion a Declaration of Adam R. Fisher, Internal Revenue Service (IRS) Return Integrity Verification Operations Supervisory Tax Examiner, as well as a memorandum. In the motion respondent moved the Court to grant respondent's motion and requested that the Court sanction me pursuant to section 6673(a)(1). (ROA.947 – 974.)

On May 31, 2024, Court ordered me to file a response to respondent's motions, supra. (ROA.975.)

On July 11, 2024, I filed an Opposition to Motion for Summary Judgment, (ROA.977 – 1060.) a Notice of

---

record and the very same one respondent attached to their Motion for Protective Order. (ROA.250 – 415.)

Objection to the declaration of Adam R. Fisher, (ROA.1061 – 1066.) and a declaration of I, Anthony D. Williams in support of my Opposition to Motion for Summary Judgment. (ROA.1067 – 1066.)

My Arguments Dismissed as Frivolous

I made a number of additional arguments in my "Notice of Objection to Certificate as to the Genuineness of the Administrative Record" and "Opposition to Motion for Summary Judgment", which the Court did not address dismissing them as frivolous arguments citing Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit"). App.3 – App.19.

The Court concluded that there were not any disputes as to any genuine issues of material fact and that respondent is entitled to judgment as a matter of law. Further, as discussed below, the Court imposed sanctions on me pursuant to section 6673(a)(1) in the amount of $2,500 causing additional financial harm to me. (ROA.1070 – 1078.)

Third Instance

A timely request for an appeal was received by the Fifth Circuit Court. The same augments raised in Tax Court were also presented in my opening and reply brief to the Court. They too were not addressed. App.1 – App.2.

A timely Petition for Rehearing and Rehearing En Banc was denied on October 3, 2025. App.20.

REASONS FOR GRANTING THE PETITION

I respectfully believe that Supreme Court Rule 10(c) warrants review in this case. Rule 10(c) provides that certiorari is appropriate where "a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." To the best of my knowledge, this Court has not squarely granted certiorari to decide the constitutionality of taxing compensation for labor not arising from the exercise of a federal privilege (i.e., an "excise"). The question presented here is:

> "Whether the Sixteenth Amendment authorizes Congress to tax compensation for labor not arising from the exercise of a federal privilege (i.e., an "excise") without apportionment among the Union States".

This question is important and unsettled and—given the reasoning employed below—conflicts with this Court's direct/indirect taxation taxonomy. The lower courts dismissed my properly raised arguments as "frivolous" without engaging the controlling constitutional distinctions between direct taxes on persons or property (requiring apportionment) and indirect taxes (duties, imposts, and excises) that require only uniformity. By treating personal earnings/property as taxable "statutory wages" irrespective of realized gain or profit, the decision effectively sustains a non-apportioned "capitation[18]",

---

[18] Art. I, §9, cl. 4 —No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

contrary to the constitutional framework that this Court has articulated.

Granting certiorari to resolve the question stated above would **(1)** correct the erroneous assumption recurring in the lower courts regarding the Sixteenth Amendment's effect on compensation for labor unconnected to federal privilege (sometimes referred to in my filings as "non-statutory wages"), and **(2)** at minimum supply clear guidance to the courts of appeals and lower courts on how to analyze—and not summarily dismiss—the related arguments that were presented and preserved in this case.

Reasons:

The U.S. Tax Court erred in classifying my non-privilege earnings as qualified statutory "wages" and or "income". In Oliver v. Halstead, 196 Va. 992 (1955), the Supreme Court of Virginia observed:

> "The word "profit" is defined in Black's Law Dictionary (3rd ed.) as "The advance in the price of goods sold beyond the cost of purchase. The gain made by the sale of produce or manufactures, after deducting the value of the labor, materials, rents, and all expenses, together with the interest of the capital employed." There is a clear distinction between "profit" and "wages" or compensation for labor. "Compensation for labor can not be regarded as profit within the meaning of the law. The word 'profit', as ordinarily used, means the gain made upon any business or investment -- a different thing altogether from mere compensation for labor." The Commercial League Association of America The People ex rel. Thomas B. Needles, Auditor, 90 Ill. 166. "Reasonable compensation

> for labor or services rendered is not profit." Laureldale Cemetery Association Matthews, 354 Pa. 239, 47 A.(2d) 277." *Oliver v. Halstead, 196 Va. 992 (1955).*

In its ruling against me the Tax Court stated:

> "Ultimately this case rests on the Code's definition of gross income, which is all income from whatever source derived. I.R.C. § 61. This includes wages or money paid for services. See Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986). (ROA.1070 – 1078.) App.17.

The Tax Court is 100 percent correct "Ultimately this case rests on the Code's definition of gross income, which is **all "income" from whatever source derived**. I.R.C. § 61. However, neither the Tax Court nor does §61 defines the meaning of "income". Therefore it must be determined what is the meaning of "income" as that word is used in the United States Constitution 16th Amendment. This should be easy to determine. For court reference I'll be citing a more recent case decided by this court in "*Moore v. United States, 602 U.S. 572 (2024)*". In this case honorable Justice Thomas and Justice Barrett wrote separate opinions expressing their views on the meaning of "income". Justice Thomas and Justice Barrett went as far as explaining the intent of the U.S. Constitution 16th Amendment and its effect it had concerning the direct tax holding in "Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895)". I argued these same exact views but was sanctioned for advancing frivolous arguments.

The Tax Court's Summary Judgment ruling against me rests on the Internal Revenue Code's definition of "gross income" under I.R.C. § 61, which

states that gross income includes "all income from whatever source derived." Id. While this statutory definition is broad, it does not define the constitutional meaning of "income" as that term is understood in the Sixteenth Amendment. To address this deficiency, the constitutional interpretation of "income" must take precedence. This Court's recent decision in *Moore v. United States*, 602 U.S. 572 (2024), provides critical guidance on this issue, particularly in the opinions of Justice Barrett and Justice Thomas. Then it must be determined if compensation for labor that was not gain through the connection of an excise is considered a gain or profit within the meaning of the 16th Amendment.

Taxing Me In General Just For Working Mirrors A Capitation

A "capitation" is 1 of only 2 things considered a direct tax in the Constitution that is forbidden without apportionment.

> "The better opinion seems to be that the direct taxes contemplated by the Constitution were only two, viz., a capitation or poll tax and a tax on land". Pollock v. Farmers' Loan & Trust Company (Rehearing), 158 U.S. 601 (1895). Id. at 657-658; Moore v. United States, 602 U.S. 572 (2024), Thomas, J., dissenting.

If allowed the taxing of my earnings even the associated alleged penalties would be a direct tax on "personal property" a "capitation" which is forbidden under U.S. Constitution Article I, § 2, cl. 3, and Article I, § 9, cl. 4 without apportionment for me or anyone who did not engaged in an activity that was subject to a federal tax under the excise laws of the United States. See Pollock v. Farmers' Loan and Trust Co.,

157 U.S. 429 (1895) 898.

Also, no gain, profit or "income" was derived from my labor which is also considered my personal property an inalienable right. See, *Butchers' Union Co. v. Crescent City Co. 111 U.S. 746 (1883) at 757,* concurring opinion of Justice Field. No exercise of a single power over my property incidental to ownership was exercised under the excise laws of the United States that was subjected to federal taxes. See *Bromley v. McCaughn, 280 U.S. 124 (1929)* at 137.

Any tax on or measured by common economic activity or the proceeds there from is a "**capitation**" as that term is meant in the United States Constitution. This Court declared the meaning of the Constitutional term "**capitation**" in its ruling in *Pollock v. Farmers' Loan and Trust Company 157 U.S. 429 (1895) 898.* It was one of the most detailed analyses of federal taxing powers ever made by the Court. The Court does so by citing to, and endorsing, the observations as to the Framers' understanding and the use of the term[19] **quoted** by **Albert Gallatin** a Pennsylvania State and Federal Congressman, Senator and U.S. Minister to England and France, and the longest-serving Secretary of the Treasury in U.S. history.

---

[19] But in arriving at any conclusion upon this point, we are at [15 S.Ct. 681] liberty to refer to the historical circumstances attending the framing and adoption of the Constitution, as well as the entire frame and scheme of the instrument, and the consequences naturally attendant upon the one construction or the other. We inquire, therefore, what, at the time the Constitution was framed and adopted, were recognized as direct taxes? What did those who framed and adopted it understand the terms to designate and include? *Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895)* 898. Id. at 559.

In *Pollock, 157 U.S. 429 (1895)*, MR. CHIEF JUSTICE FULLER, delivered the opinion of the court observed:

> [Direct & Indirect Taxes][20]
>
> "Ordinarily, **all taxes paid primarily by persons_who can shift the burden upon someone else**, or who are under no legal compulsion to pay them, **are considered indirect taxes**; **but** a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estates, and the payment of which **cannot be avoided**, are **direct taxes**." Id. at 558. (Emphasis added).
>
> In the debates in the House of Representatives preceding the passage of the act of Congress to lay "duties upon carriages for the conveyance of persons," approved June 5, 1794 (1 Stat. 373, c.45), Mr. Sedgwick said that
>
> > a **capitation tax**, and taxes on land and on property and income[21] generally were direct charges, as well in the immediate as ultimate sources of contribution. He had considered those and those only, as direct taxes in their operation and effects. On the other hand, a tax imposed on a specific article of personal property, and

---

[20] Note: Words found inside a pair of "[ ]" brackets are not part of the original text as it was written or published. They are used for the following purposes: Clarification, Translation and Emphasis.

[21] Mr. Sedgwick is referring to income in the ordinary sense and not its Constitutional meaning of "gain" or "profit".

> particularly if objects of luxury, as in the case under consideration, he had never supposed had been considered a direct tax within the meaning of the Constitution.

Mr. Dexter observed that his colleague

> had stated the meaning of direct taxes to be a [15 S.Ct. 685] capitation tax, or a general tax on all the taxable property of the citizens, and that a gentleman from Virginia (Mr. Nicholas) thought the meaning was that **all taxes are direct which are paid by the citizen without being recompensed by the consumer**; but that, where the tax was only advanced and repaid by the consumer, the tax was indirect. He thought that both opinions were just, and not inconsistent, though the gentlemen had differed about them. He thought that a general tax on all taxable property was a direct tax, because it was paid without being recompensed by the consumer. Id. at 569-570. (Emphasis added).

"But **Albert Gallatin**, in his "Sketch of the Finances of the United States," published in November, 1796, said:

> The most generally received opinion, however, is that, by **direct taxes** in the Constitution, those are meant which are raised on the **capital** or **revenue** [22] of

---

[22] *Black's Law Dictionary 4th Edition:*
REVENUE- Return, yield, as of land, profit, that which returns or comes back from an investment, the annual or periodical rents, profits, interest or issues of any species of

> the people; by **indirect**, such as are raised on their expense. As that opinion is, in itself, rational and conformable to the decision which has taken place on the subject of the carriage tax, and as it appears important, for the sake of preventing future controversies, which may be not more fatal to the revenue than to the tranquility of the Union, that a fixed interpretation should be generally adopted, it will not be improper to **corroborate** it by **quoting the author** from whom the idea seems to have been borrowed." Id. at 570. (Emphasis added).

He [Albert Gallatin] **then quotes from Smith's Wealth of Nations, and continues:**

> The remarkable coincidence of the clause of the Constitution with this passage in using the word "**capitation**" as a generic expression, including the different species of direct taxes, an acceptation of the word peculiar, it is believed, to Dr. Smith, leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from, and falling immediately on, the revenue, and, by indirect, those which are paid indirectly out of the revenue by falling immediately upon the expense. Id. at 570. (Emphasis added).

---

property, real or personal, income. *Willoughby v. Willoughby, 66 R.I. 430, 19 A.2d 857, 860.*

Capitations had long been in use throughout the Western World when the term was deployed in the Constitution. Dr. Adam Smith describes several forms of **capitation** in his '*Causes of the Wealth of Nations*' book:

> "The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"... "**Capitation** taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at."..."**Capitation** taxes, so far as they are levied upon the lower ranks of people, are **direct taxes upon the wages of labor**, and are attended with all the inconveniences of such taxes."..." In the **capitation** which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people, according to what is supposed to be their fortune, by an **assessment** which varies from year to year." ... "In the first poll-tax [some] were **assessed** at three shillings in the pound of their supposed income,..."
> *An Inquiry into the Nature and Causes of the Wealth of Nations*', Book V, Ch. II, Art. IV (1776) by Adam Smith (Emphasis added.)

In J.J.S. Wharton, Esq., in his 1848 'Law Lexicon or Dictionary of Jurisprudence', the meaning of capitation is as follows:

> "CAPITATION - a tax or imposition raised on each person in consideration of his labor, industry, office, rank, etc. It is a very ancient kind of tribute, and answers to what the Latins called tributum, by which taxes on persons are distinguished from taxes on merchandize, called vectigalia." *Wharton's Law Lexicon, (1848)*

In the official law dictionary of Congress at the time of the enactment of the first United States Federal "income tax" act under President Lincoln's Admini-stration, the definition of "capitation" was as follows:

> "CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."
>
> Bouvier's Law Dictionary, 6th Ed. (1856) by John Bouvier. A Law Dictionary Adapted To The Constitution And Laws of The United States of America and of The Several States of The American Union.

From its inception the "income tax" has been an **"excise"** that applies to gains from the exercise of privileges and therefore need not be apportioned, as the Pollock court itself noted in Justice Field's separate concurring opinion:

> "...in Springer v. U. S., 102 U.S. 586 , it was held that a tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional." *Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895)* Id., at 588–589

I. Statutory "Wages" Are Indeed Taxable Under the Tax Excise Laws

> "The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..." *United States v. County of Allegheny, 322 US 174 (1944).* (Emphases added.)

With all being said, the central issue remains, the definition of "income," or "gross income" as stated by the Tax Court. As I have consistently demonstrated, the U.S. Supreme Court has defined "income" in *Moore v. United States, 602 U.S. 572 (2024)*, and *Eisner v. Macomber, 252 U.S. 189 (1920)*, as a gain or profit that is "derived" from any source, in accordance with the Sixteenth Amendment. This includes gains or profits derived from income generated by land or personal property. However, there must be a clear mechanism or method to distinguish and separate the property itself from the "income" (i.e., the gain or profit) once realized. Absent such a separation, it becomes nearly impossible to determine whether the tax is imposed on the property itself—an act prohibited without apportionment under Article I, § 9, cl. 4 of the U.S. Constitution.

This issue was at the heart of *Pollock v. Farmers' Loan & Trust Co.* The prevailing understanding at the time was that activities subject to Duties, Imposts, and Excises were taxable under Article I, § 8, cl. 1.

However, nothing in the Constitution explicitly removed the constitutional protections against direct taxation on property, as established in Article I, § 2, cl. 3 and Article I, § 9, cl. 4 when that property was used in an activity subject to federal excise taxation under Article I, § 8, cl. 1. See Pollock, 157 U.S. 429 (1895) at 580–581.[23]

Pollock recognized this constitutional limitation and leveraged it to challenge the federal income tax. In response, the Sixteenth Amendment was ratified to prevent similar challenges in the future. The amendment effectively severed the constitutional protections of Article I, § 2, cl. 3, and Article I, § 9, cl. 4, for individuals engaging in excisable activities, thereby ensuring that income derived from such activities could be taxed without apportionment.

However, the Sixteenth Amendment must be read in conjunction with Article I, § 2, cl. 3, and Article I, § 9, cl. 4, to maintain constitutional consistency. Its purpose was not to create a new category of taxation

---

[23] Pollock, 157 U.S. 429 (1895), observed: "As no capitation, or other direct, tax was to be laid otherwise than in proportion to the population, some other direct tax than a capitation tax (and it might well enough be argued some other tax of the same kind as a capitation tax) must be referred to, and it has always been considered that a tax upon real estate or upon its owners in respect thereof is a direct tax within the meaning of the Constitution. But is there any distinction between the real estate itself or its owners in respect of it and the rents or income of the real estate coming to the owners as the natural and ordinary incident of their ownership?" Id. at 580-581. (Emphasis added).

but rather to confirm what had been the general understanding of the Constitution prior to Pollock[24]. Furthermore, it is important to recognize that the holding in *Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895)*, which classified a direct tax on property as unconstitutional without apportionment, has never been overruled. In the present case, there is no evidence in the record demonstrating that the appellant has derived a gain or profit from the exercise of his inalienable right to earn a living. Other than mere allegations, the appellee has failed to provide any substantive evidence to the contrary. Additionally, the appellee has not produced a tax assessment signed under penalty of perjury or any other documentation establishing that the money earned by the appellant from exercising his right to work constitutes gains or profits. Moreover, there is nothing in the record indicating that the appellant engaged in any particular use of his property or exercised any power over it incidental to ownership that would render me liable for income tax, under that jurisprudence demonstrated in *Bromley v. McCaughn, 280 U.S. 124 (1929).*

I challenged the IRS's determinations for tax year 2015 and the assessment of a § 6702 "frivolous return" penalty. In the Tax Court, I argued **(1)** the

---

[24] "Therefore, the Sixteenth Amendment expressly confirmed what had been the understanding of the Constitution before Pollock: Taxes on income—including taxes on income from property—are indirect taxes that need not be apportioned Brushaber, 240 U. S., at 15, 18. Meanwhile, property taxes remain direct taxes that must be apportioned. See Helvering v. Independent Life Ins. Co., 292 U. S. 371, 378–379 (1934)." Moore, 602 U.S. 572 (2024) Id. at 583-584.

Commissioner did not meet § 6201(d)'s burden once I reasonably disputed the third-party information returns; **(2)** under Supreme Court precedent, "income" denotes realized gain or profit and the Commissioner offered no competent evidence distinguishing my personal property from taxable gains; and **(3)** sanctions were unwarranted because I advanced good-faith arguments grounded in Supreme Court and Fifth Circuit decisions. The Tax Court granted summary judgment and imposed a § 6673(a)(1) penalty. The Fifth Circuit affirmed, without citing any authority that confronts the controlling decisions and undisputed points I raised in my opening and reply brief.

The Panel Overlooked Binding Precedent on "Income" and Realization

1. This Court has long defined "income" as gain or profit derived from capital, labor, or both; *Eisner v. Macomber, 252 U.S. 189 (1920)* at 207; most recently, *Moore, 602 U.S. 572 (2024)* reaffirmed the core taxonomy that "taxes on income—including taxes on income from property—are indirect taxes that need not be apportioned," while "property taxes remain direct taxes that must be apportioned." *Moore, 602 U.S. 572 (2024)* at 583–84 (citing *Brushaber* and *Helvering*). At minimum, a robust thread in the Court's jurisprudence links "income" to *realization*—i.e., separating the property from the gain. See *Moore, 602 U.S. 572 (2024)* at 606 (Barrett, J., concurring); see also id. (Thomas, J., dissenting). The Fifth Circuit Court did not confront any of this.

2. **Application to this record.** I did not argue that "wages" (statutory) can never be taxed. I argued the Commissioner failed to show **realized** taxable income on this record, and failed to distinguish

my personal property from any alleged gain or profit as required by the authorities above. This constitutes a "**capitation**[25]". The Fifth Circuit panel did not address this precise argument, which was extensively briefed and documented.

3. **Related excise/direct-tax framework.** The Supreme Court has repeatedly distinguished direct taxes on persons or property (requiring apportionment) from excises upon particular activities or privileges. *Pollock, 157 U.S. 429 (1895)* at 558, 580–81; *Bromley, 280 U.S. 124 (1929)* at 136–39. I invoked this line to show the need for a *realization* event that separates property from "income" (gain/profit). The panel overlooked this framework entirely. The Fifth Circuit Court and the IRS has relied on the 16th Amendment to justify taxing all earnings as "income" without regards to a "capitation" or being direct. See *Parker v. CIR. 724 F.2d 469 (5th Cir. 1984).* This conflicts with controlling Supreme Court precedent. See *Pollock v. Farmer's Loan & Trust, 158 U.S. 601 (1895)*; Brushaber v. Union Pacific R. Co. 240 U.S.1 (1916), and now *Moore v. U.S., 602 U.S. 572 (2024).*

The Truth

In 1916, this "Court was first asked to interpret the Sixteenth Amendment in Brushaber v. Union Pacific R. Co., 240 U. S". *Moore, 602 U.S. 572 (2024) (Thomas, J., dissenting);* Id., at 640. In its unanimous

---

[25] Direct taxes also include a capitation tax, which imposes a tax on every person "without regard to property, profession, or any other circumstance." *National Federation of Independent Business v. Sebelius, 567 U. S. 519, 571 (2012)* (NFIB) (internal quotation marks omitted; emphasis deleted). *Moore, 602 U.S. 572 (2024)* (Thomas, J., dissenting); Id., at 640.

ruling which remains the settled law-of-the-land today, unambiguously confines the "income" tax to the objects and administrative rules of an indirect excise tax only.

The Brushaber court holds that the sole purpose and effect of the 16th Amendment is to undo and overrule its conclusion in Pollock v. Farmer's Loan & Trust, 158 U.S. 601 (1895) that a tax on otherwise excise-taxable dividends and rent becomes a property tax in those particular applications.

The Pollock court had reasoned that the linkage of the dividends and rent to their personal property sources- the stock or the real estate from which they are derived – transforms the income excise on those gains into a property tax on the sources, which therefore required apportionment in its imposition.

The 16th Amendment says the Brushaber court, severs (prohibits) the "source" linkage imagined by the Pollock court. This overruling of the Pollock allows the by-then 51 year-old "income" tax to be revived and to resume application as the excise tax it always has been.

In its unanimous ruling the Brushaber courts said:

> "**We are of opinion**, however, that the confusion is not inherent, but rather arises from the conclusion that the **Sixteenth Amendment** provides for a hitherto unknown power of taxation -- that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this **erroneous assumption** will be made clear by generalizing the many contentions advanced in argument to support it... But it clearly

> results that the proposition and the contentions under it, **if acceded to, would cause one provision of the Constitution to destroy another**; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into **irreconcilable conflict** with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. **This result, instead of simplifying the situation and making clear the limitations on the taxing power**, which obviously the Amendment must have been intended to accomplish, **would create radical and destructive changes in our constitutional system and multiply confusion"**. (Emphasis added). *Brushaber v. Union Pacific Railroad Company, 240 U.S. 1 (1916).* Id., at 10 – 12.

There is no ambiguity here! The court is clear that the 16th Amendment does not authorize a non-apportioned direct tax. It only authorizes an indirect non-apportioned tax on "**income**"[26] a gain or profit as

---

[26] As the text of the Sixteenth Amendment indicates, income is financial gain that "derive[s]" from property or

that term is meant under the Constitution derived from duties, imposts or excises; Art. I, § 8, cl. 1, the 16th Amendment overrides the apportionment requirement when being opposed on "income" only once the "income" has been derived. See *South Carolina v. Baker, 485 U.S. 505 (1988), fn 13,* ("[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever **incomes were otherwise taxable**"). (Emphasis added). "Regardless of whether one uses the term "derived" or "realized," the important point is this: The Sixteenth Amendment and the Direct Tax Clause distinguish between taxes on property, which are subject to apportionment, and taxes on income derived or realized from that property, which are not". *Moore, 602 U.S. 572 (2024)*; Id., at 607 (Barrett, J., concurring).

The Brushaber court reiterates its repeated pre-16th Amendment holdings that:

> "Moreover, in addition, the conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but, on the contrary, **recognized the fact that taxation on income was in its nature an excise en-titled to be enforced as such...**" *Brushaber, 240 U.S. 1 (1916).* Id., at 16–17. (Emphasis added).

Almost every possible authority agrees about what the Brushaber court says. Cornell Law Quarterly reporting on the Brushaber case at the time observed:

---

another source. See, *e. g.*, *United States* v. *Phellis*, 257 U. S. 156, 168–169 (1921). *Moore v. United States, 602 U. S. 572 (2024).* Id., at 605.

> "The Sixteenth Amendment does not permit a new class of a direct tax... The [16th]Amendment, the [Supreme] court said, judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong." *Cornell Law Quarterly, 1 Cornell L. Q. page 298-301 (1915–1916)* (Emphasis added).

In the Harvard Law Review reporting on the Brushaber case at the time observed:

> "In Brushaber v. Union Pacific Railroad Co., Mr. C. J. White, upholding the income tax imposed by the Tariff Act of 1913, construed the Amendment as a declaration that an income tax is "indirect," rather than... an exception to the rule that direct taxes must be apportioned." *Harvard Law Review, 29 Harv. L. Rev. page 536 (1915–1916)* (Emphasis added).

The Supreme Court reiterates this ruling again.
In *Stanton v. Baltic Mining Co., 240 U.S. 103 (1916)* the Supreme Court observed:

> "[B]y the previous ruling [Brushaber, 240 U.S. 1 (1916)], it was settled that **the provisions of the Sixteenth Amendment** conferred no new power of taxation, but **simply prohibited** the previous complete and plenary power of income **taxation** possessed by Congress **from the beginning from being taken out of the category of indirect taxation to which it inherently belonged**, and being placed in the

> category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived -- that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed." Id., at 112–113. (Emphasis added).

In *Steward Machine Co. v. Collector of Internal Revenue, 301 U.S. 548 (1937)* the court observed:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. Burnet v. Brooks, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; Brushaber v. Union Pacific R. Co., 240 U. S. 1, 240 U. S. 12." *Steward Machine Co. v. Davis, 301 U.S. 548 (1937). Id., at 581–582.*

In the Congressional Record, March 27, 1943, Mr. F. Morse Hubbard stated:

> "The sixteenth amendment authorizes the taxation of income "from whatever source derived" –thus taking in investment income– "without apportionment among the several States." The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely remove the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source of another

> [footnotes omitted]. So the amendment made it possible to bring investment income within the scope of a general income–tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income. The income tax is, therefore, not a tax on income [earnings] as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of the tax." **(Emphasis added)** *U.S. House Congressional Record, March 27, 1943, page 2580.* (Testimony of Treasury Department legislative draftsman F. Morse Hubbard).

In 1979, Mr. Howard M. Zaritsky, Legislative Attorney of the American Law Division of the Library of Congress observed this:

> "The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment..."*Report No. 80-19A 'Some Constitutional Questions Regarding the Federal Income Tax Laws' by Howard M. Zaritsky, Legislative Attorney of the American Law Division of the Library of Congress (1979)* (Emphasis added).

To summarize; **(1)** The Supreme Court's words in the Brushaber ruling itself; **(2)** The 1916 Cornell Law Quarterly and Harvard Law Quarterly reporting on the Brushaber ruling; **(3)** The Supreme Court, referencing and reiterating the Brushaber ruling, in 1916, 1937 and 1988; **(4)** The Treasury Department's tax legislation draftsman in 1943 and the Library of Congress' legislative attorney in 1979 discussing the Brushaber ruling... all agree that Brushaber rules the "income" tax to always have been, and to still remain, and indirect excise tax; that the 16th Amendment does not authorize any kind of non-apportioned direct tax; and that non-apportioned direct taxes remain Constitutionally prohibited. The Brushaber's 16th Amendment ruling is the thoroughly-settle law of the land. Every institution of government knows that, and knows what Brushaber says.

II. The Appellate Courts Ruling (Erroneous Assumption) Conflicts with Controlling Supreme Court Precedent

The Lies!

DESPITE THE ABSOLUTE CLARITY of what the Brushaber court says in what remain the settled law to this day regarding the meaning and effect of the 16th Amendment and the nature of the income tax; in 1980 the U.S. Court of Appeals for the Eighth Circuit makes this bizarre and manifestly **false** pronouncement:

> "[T]he income tax is a direct tax... See Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, 19, 36 S. Ct. 236, 242, 60 L. Ed. 493 (1916) **(the purpose of the Sixteenth Amendment was to take the income tax "out of the class of excises, duties and**

> **imposts and place it in the class of direct taxes"**)". (Emphasis added). *U.S. v. Harold L. Francisco, 614 F.2d 617 (8th Cir. 1980)*

In 1984 the Fifth Circuit **lied** about what the Brushaber court held stating:

> "Parker maintains that "the IRS and the government in general, including the judiciary, mistakenly interpret the sixteenth amendment as allowing a direct tax on property (wages, salaries, commissions, etc.) without apportionment." As we observed in *Lonsdale v. CIR, 661 F.2d 71 (5th Cir. 1981)*, **the sixteenth amendment was enacted for the express purpose of providing for a direct income tax.** The thirty words of this amendment are explicit: "The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." The Supreme Court promptly determined in ***Brushaber v. Union Pacific Ry. Co., 240 U.S. 1, 36 S. Ct. 236, 60 L. Ed. 493 (1916)***, that **the sixteenth amendment provided the needed constitutional basis for the imposition of a direct non-apportioned income tax... [T]he sixteenth amendment merely eliminates the requirement that the direct income tax be apportioned among the states.** The immediate recognition of the validity of the sixteenth amendment continues in an unbroken line. See e.g. *United States v. McCarty, 665 F.2d 596 (5 Cir. 1982); Lonsdale v. CIR. Parker v. CIR., 724 F.2d 469 (5th Cir. 1984)* (Emphasis added).

In 1990 the U.S. Court of Appeals for the Tenth Circuit also **lied** about what the Brushaber court held stating:

> "For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves, see *Brushaber v. Union Pac. R.R., 240 U.S. 1, 12-19, 36 S. Ct. 236, 239-42, 60 L. Ed. 493 (1916)." United States v. Roy W. Collins, 920 F.2d 619 (10th Cir. 1990)*

These judicial **lies** by panels of actual U.S. Appellate Court judges, in actual rulings by which actual people suffered actual and substantial harm including me are grossly, egregiously and staggeringly criminal. These lies are also fundamentally despotic in nature and purpose and put them at odds with well settled law. This fact is ironically underscored by the *Parker 724 F.2d 469 (5th Cir. 1984)* ruling cited herein. All told, the behavior exposed above is nothing less than subversion. These judges and their present-day mimics, co-conspirators and enablers were and are oath-breaking enemies of the Constitution, engaged in a deliberate and sustained assault on the rule of law in America. These actions should not be overlooked or condoned by this honorable court. And finally to drive the "final nail in the coffin" I add this:

> "...Macomber, 252 U. S., at 218. The Court acknowledged that the **Sixteenth Amendment** had overruled Pollock's holding that a tax on income derived from property must be apportioned. 252 U. S., at 219. **But it stressed that the Sixteenth Amendment did not otherwise disturb the law concerning the Direct Tax Clause**—including Pollock's

> holding that the Clause applies to "property, real and personal." Id., at 206; see id., at 219 **("[T]he Amendment applies to income only")**. *Moore, 602 U.S. 572 (2024)* (Barrett, J., concurring); Id., at 614. (Emphasis added).

And this:

> Against the background of Pollock, the "power to lay and collect taxes on incomes, from whatever source derived, without apportionment" under the Sixteenth Amendment has an obvious and narrow meaning. The **only** thing the Amendment changed about the Constitution was to abolish Pollock's rule that an income tax is a direct tax if a tax on the source of the income would be a direct tax. The Sixteenth Amendment left everything else in place, including the federalism principles bound up in the division between direct and indirect taxes. The Court was first asked to interpret the Sixteenth Amendment in Brushaber v. Union Pacific R. Co., 240 U. S. *Moore, 602 U.S. 572 (2024) (Thomas, J., dissenting);* Id., at 640. (Emphasis added).

III. The Panel Overlooked § 6201(d) and Fifth Circuit Law Requiring More Than a Bare Form 1099

Congress codified a clear evidentiary rule: when a taxpayer "asserts a reasonable dispute" with respect to an item reported on an information return by a third party, "the Secretary shall have the burden of producing reasonable and probative information ... in addition to such information return." 26 U.S.C. § 6201(d) (emphasis added). This Court has enforced that rule. *Portillo*, 988 F.2d at 29 (a lone Form 1099 is

insufficient to support an assessment); see also *Daines*, 105 F. Supp. 2d at 1159–60 (collecting authorities). I squarely and repeatedly raised § 6201(d), explaining that the IRS never produced **additional** "reasonable and probative" evidence beyond third-party forms to establish the existence and amount of *realized* taxable income. The panel did not address § 6201(d), *Portillo*, or *Daines*, nor did it identify any non-1099 evidence substantiating the Commissioner's position. That omission is outcome-determinative in a case resolved on summary judgment. See Br. and Ar. Also see 26 C.F.R. § 301.6020-1(b), Returns prepared or executed by the Commissioner or other Internal Revenue Officers; (If any person required by the Internal Revenue Code or by the regulations to make a return ... fails to make such return at the time prescribed therefore, or makes, willfully or otherwise, a false, fraudulent or **frivolous return**, the Commissioner or other authorized Internal Revenue Officer employee **shall** make such return from his own knowledge and from such information as he can obtain through testimony or otherwise).

IV. Summary Judgment Was Improper Because the Commissioner Failed to Carry the Burden as a Matter of Law

Summary judgment is improper where the movant fails to produce competent evidence entitling it to judgment as a matter of law. On this record, once § 6201(d) was triggered, the Commissioner was required to offer **more** than information returns—to produce "reasonable and probative information" establishing *realized* income. The IRS did not do so. The panel's affirmance—without analysis of the summary-judgment standard or the evidentiary gap—was error.

V. The § 6673(a)(1) Penalty Cannot Stand

§ 6673(a)(1) penalty requires a finding that the taxpayer's position is frivolous, groundless, or maintained primarily for delay. That determination must rest on what the taxpayer actually argued, not on straw-man characterizations. Here, I expressly acknowledged Congress's power to tax *income* without apportionment and cited Supreme Court and Fifth Circuit authorities; my argument was that, on **this** record, the government failed to prove *realized* taxable "income" as those authorities require. See, e.g., *Moore*; *Eisner*; *Helvering*; *Bromley*; *Portillo*. The panel's affirmance of sanctions, without addressing those authorities or explaining why the arguments were frivolous **in light of them**, is an abuse of discretion and chills good-faith litigation on questions the Supreme Court has recently illuminated. See Br., Ar. and *Moore, 602 U.S. 572 (2024).*

VI. The Panel's Disposition, Issued without Citation, Conflicts with the Need for Reasoned Decision-Making in Recurring, Important Tax Controversies

While Rule 36 permits unpublished dispositions, affirming both summary judgment and sanctions **without citing any precedent**—and without engaging controlling authorities marshaled by a pro se litigant—creates the appearance of outcome-driven decision-making, undermines uniformity, and invites further confusion in CDP and deficiency cases. These types of circumstances are precisely the reasons why petition for Certiorari should be granted, to secure uniformity and maintain fidelity to precedent. See *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (lower courts must follow Supreme Court precedent until

expressly overruled).

CONCLUSION

Relief Requested

I respectfully requests that the Court grant certiorari and reverse the lower court's judgment.

With Love!

Respectfully submitted this 25th day of February 2026

ANTHONY DWAYNE WILLIAMS