

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Jeffrey T. Maehr,

Plaintiff/Petitioner - Appellant,

v.

Case No. 16-1204

-John Koskinen, Commissioner of Internal Revenue;
-John Vencato, Revenue Agent;
-Ginger Wray, Revenue Agent;
-Jeremy Woods, Disclosure Specialist;
-William Sothen, Revenue Agent;
-Gary Murphy, Revenue Agent;
-Theresa Gates, Program Manager;
-Sharisse Tompkins, Disclosure Manager;
-Carolyn Colvin, Acting Social Security Administrator;
-Wells Fargo Bank, NA;
-John and Jane Does, 1-100,

Defendants/Respondents - Appellees.

PETITION FOR REHEARING EN BANC

Plaintiff comes before this court in a timely manner with a Petition for Rehearing En Banc of only the ORDER upholding a "legally frivolous" defense, due to the following evidence:

1. Plaintiff raised these same issues in at least a dozen other cases, which evidence was ignored or suppressed in these past courts, and no point by point rebuttal or finding of facts or conclusions of law⁽¹⁾ were provided as required by law.

¹ "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission v. South Carolina State Ports Authority, et al.* certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). Argued February 25, 2002--Decided May 28, 2002. See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

2. The term "income" is not defined in the IR Code, but is defined by the U.S. Supreme Court as evidence provided clearly proves. An "income" tax has been ruled as an "excise" tax on the exercise of privilege⁽²⁾, and entitled to be enforced as such.⁽³⁾ Working is a right that cannot be taxed.⁽⁴⁾

3. The court did not address the relevant U.S. Supreme Court rulings stating that wages salary and compensation for services are NOT lawful income, or the distinction made by the same court regarding wages vs gains or profits. Plaintiff provided clear and unambiguous standing case law proving the distinction between wages not being "gain or profit", and government Defendants have failed to provide evidence proving that such case law is not valid in this instant case.

4. Plaintiff challenged government Defendant's claim that all assets in some accounts is lawfully defined as "income" and can be assessed, and the court did not consider this evidence in its order. No such evidence from Defendants is of record, and Defendants have ignored standing case law proving "all that comes in"⁽⁵⁾ is not "income" and therefore cannot be assessed as such without lawful evidence.

Further, the record shows that Defendants failed to consider lawful business expenses in its assessment, and included "all" that came in to Plaintiff's business account as lawful "income", which it clearly was not as the bank records clearly prove but which were not provided in the record.

5. Government Defendants are taking the totality of Plaintiff's social security which has caused "irreparable injury" already in multiple ways, and without proper due process of law, or evidence of a valid debt being owed under standing laws. Such taking will have deprived Plaintiff of over \$6200 as of November 1, 2016, which has severely hampered his ability to "live and function" adequately and will not be bearable without further permanent damage to "maintenance and survival" in the future.

If the alleged tax debt is valid, why haven't government Plaintiffs provided lawful proof of this debt apart from hearsay and presumption which is not evidence? Is

² "The requirement to pay [excise] taxes involves the exercise of privilege." *Flint v. Stone Tracey Company*, 220 U.S. 107, 108 (1911).

³ *Brushaber V. Union Pacific R. co.*, 240 U.S. 1 (1916)

⁴ "The legislature has no power to declare as a privilege and tax for revenue purposes, occupations that are of common right." *Sims vs. Ahrens*, 167 Ark. 557; 271 S.W. 720, 730, 733 (1925).; *See also Butchers' Union Co. V. Crescent City, CO.*, 111 U.S. 746, 757 (1883);

⁵ *Southern Pacific v. Lowe*, 247 U.S. 330. (1918)

anything coming into anyone's account lawful "income" that can be assessed? By what authority can government Defendants label as "income" whatever they choose without validation or evidence?

6. The court did not consider the evidence against the traditional "frivolous" finding of Plaintiff's defense. The evidence presented to this court proved that previous court claims of such defenses being "frivolous" were never before these past courts, (other than *Maehr v IRS* which evidence was never addressed). Also, such past court rulings are not binding against Plaintiff, as IR Code evidence presented showed.

How can the court, or Defendants, ignore the Supreme Court evidence and not provide counter evidence to the actual substantial claims made that are far from "frivolous" unless the court and Defendants believe such Supreme Court cases ARE frivolous and not binding?

The court appears to be defending Defendants and not requiring the government to provide actual evidence, or findings of fact and conclusions of law, or answer to requirements to comply with U.S. Supreme Court case precedent. No evidence of the relevant Supreme Court cases being "frivolous" was provided.

7. Plaintiff provided evidence countering the government's claim that the 16th Amendment authorizes the income tax, let alone a tax on Plaintiff's wages, or all assets in some account. No such wage tax existed prior to the 16th Amendment and U.S. Supreme Court case law calls into serious question the Defendant's claims that this new tax⁽⁶⁾ was established. The evidence simple does not exist and no proof of debt or lawful tax liability against Plaintiff has been established in the record.

Can the court, and Defendants, ignore standing Supreme Court cases which have been violated in doing damage to Plaintiff? Plaintiff merely desires clear and unambiguous evidence be presented as is required by law. Plaintiff has the right to be heard on all points, and to receive adequate rebuttal using standing evidence, or he is clearly being denied due process of law.⁽⁷⁾

8. Defendants have not proven Plaintiff is under their jurisdiction, nor their claim that he is a "U.S. Citizen" and subject to the tax assessment made, rather than an

⁶ "... It manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation." *Evans vs. Gore*, 253 US 245, 263 (1920).

⁷ "His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. He owes nothing to the public so long as her does not trespass upon their rights." *Hale v. Henkel*, 201 U.S. 74 (1905):

American National.

9. The court's "Reverse and Remand" ORDER provides evidence in support of Defendant Wells Fargo Bank (WFB) also being complicit in unlawful taking. If government Defendants are guilty of illegal taking, certainly Wells Fargo Bank would also be. Standing law is law and ignorance of these basic laws is no excuse. Can Wells Fargo Bank be free to regularly violate law and cause Plaintiff or others damage in their ability to "live and function" adequately and help cause permanent damage to "maintenance and survival"? The very fact that WFB refunded its "non-refundable" bank fee for the unlawful levy is prima facie evidence of guilt.

Wells Fargo Bank was NOTICED at least twice of its illegal actions in violation of standing statutes protecting VA disability compensation, yet willfully ignored these and complied with government Defendants levy which cost Plaintiff money and emotional and psychological stress and aggravation of his PTSD disability.

10. Plaintiff demanded a trial by jury which is his right under the 7th Amendment.⁽⁸⁾ Any jury of Plaintiff's peers would clearly see the evidence but this is being denied. If Plaintiff's constitutional rights of due process and trial by jury are not valid in this court, Plaintiff challenges jurisdiction and requests proper court venue for such rights to be enforced. Plaintiff's right to bring Petition to the U.S. Supreme Court is reserved.

Conclusion

Plaintiff has provided multiple levels of evidence which have not been rebutted but is persistently labeled as "frivolous" without evidence proving such. Either the U.S. Supreme Court is the standard which can't be ignored, or it has become frivolous in its past rulings. Either this court and government Defendants are required to comply with U.S. Supreme Court standing case law, or both can apparently ignore such evidence.

Defendants have not proven their position on Plaintiff's wages being lawful "income" which item was never previously taxed prior to the 16th Amendment.

Defendants have not proven the 16th Amendment provided a new tax scheme on Plaintiff's wages, as the U.S. Supreme Court upheld.

Defendants have not proven that assets in Plaintiff's accounts was lawful

⁸ "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

“income” that could be assessed in its entirety.

Defendants have failed to rebut the plethora of evidence in support of Plaintiff's position as presented regarding their lawful authority to tax as they have against Plaintiff.

Plaintiff moves this court to reconsider ALL evidence and case law in regard to these constitutional questions, and ORDER government Defendants to provide rebuttal to actual evidence instead of its favorite mantra of “frivolous” without any evidence of record.

This court has the opportunity to right an egregious wrong that affects the court's families, friends and neighbors as well as Plaintiff. Is this court wiling to perpetuate a fraud that will, sooner than later, be fully exposed to Americans without a least requiring that government Defendants provide some semblance of evidence as rebuttal to the evidence of record, and place the burden of proof to rebut on them? It is not for this court to defend government.

If government Defendants have a “meritorious” defense based on actual law and original intent, and proof that all U.S. Supreme Court and other evidence has been overturned in the past, then why won't they do so, point by point, for all to see, and stop this entire ongoing line of challenge here and now? Why won't this court require this rebuttal if it actually exists apart from hearsay and presumption?

Plaintiff's disability compensation is hardly enough to survive on let along thrive on, and loss of finances is debilitating to Plaintiff, especially where said assessment was not based on wages or salary or compensation for services when assessed. The government Defendants have no lawful jurisdiction to assess Plaintiff's assets as “all income” when 95% are business expenses out of the deposited assets.

Will justice and lawful adjudication take place in this court, or will this simply be more cover-up of a fraud on most Americans? We either are a nation of the rule of law and a constitution, or we have become no better than any third world banana republic as the court seems to be declaring.

Respectfully submitted,

10-28-16
Date

Jeffrey T. Mach
Signature

CERTIFICATE OF SERVICE

I hereby certify that on 10-28-16, I served a copy of the Motion for Reconsideration En Banc by United States Postal Mail, to the below named counsel for Federal Appellees, and non-responding Wells Fargo Bank, at the addresses stated.

1. Julie Ciamporcero Avetta, Appellate Section, P.O. Box 502, N.W., Washington, D.C. 20044.
2. Wells Fargo Bank, NA, P.O. Box 29728, Phoenix, AZ 85038-9728.

10-28-16
Date

Jeffrey A. Mack
Signature