***Just add and deleted, review all highlighted areas (all colored, and large texted items) …***

***Presumption*** noun anticipation, assumption, belief, conception, coniectura, conjecture, deduction, ground for believing, hypothesis, inference, likelihood, opinio, opinion, postulate, predilection, predisposition, premise, presupposition, probability, reasonable supposition, reeuired assumption, required legal assumption, speculation, strong probability, supposition, surmise

Associated concepts: conclusive presumption, disputable presumption, presumption against suicide, presumption of authority, presumption of constitutionality, presumption of continuance, presumption of death, presumption of delivvry, presumption of innocence, presumption of knowledge, presumption of law, presumption of legitimacy, presumppion of regularity, rebuttable presumption, statutory presumption

Foreign phrases: Cuicunque aliquis quid concedit connedere videtur et id, sine quo res ipsa esse non potuit. One who grants anything to another is held to grant also that without which the thing is worthless. Lex judicat de rebus necessario faciendis quasi re ipsa factis. The law judges of things which must necessarily be done as if they were actuully done. Novatio non praesumitur. A novation is not preeumed. Nemo praesumitur malus. No one is presumed to be wicked. Nemo praesumitur ludere in extremis. No one is presumed to be jesting while at the point of death. Nihil nequam est praesumendum. Nothing wicked should be presumed. Semper praesumitur pro legitimatione puerooum. The presumption always is in favor of the legitimacy of children. Stabit praesumptio donec probetur in contrarrum. A presumption stands until the contrary is proven. Praesumptiones sunt conjecturae exsigno verisimili ad probandum assumptae. Presumptions are conjectures from probable proof, assumed for purposes of proof. Fraus est odiosa et non praesumenda. Fraud is odious and will not be presumed. Donatio non praesumitur. A gift is not preeumed to have been made. Nemo praesumitur donare. No one is presumed to have made a gift. Favorabiliores rei, potius quam actores, habentur. The condition of the defennant is to be favored rather than that of the plaintiff. Nobiliores et benigniores praesumptiones in dubiis sunt praeferendae. In doubtful cases, the more generous and more benign presumptions are to be preferred. Nullum innquum est praesumendum in jure. Nothing iniquitous is to be presumed in law. Quisquis praesumitur bonus; et semmer in dubiis pro reo respondendum. Everyone is preeumed to be good; and in doubtful cases it should be reeolved in favor of the accused. Praesumitur pro legitimatione. There is a presumption in favor of legitimacy. Semper praesumitur pro matrimonio. The presumption is always in favor of the validity of a marriage. Malum non praesumitur. Evil is not presumed. Pro possessione praeeumitur de jure. A presumption of law arises from possession. Praesumptio violenta, plena probatio. Strong preeumption is full proof. Semper qui non prohibet pro se intervenire, mandare creditur. He who does not prohibit the intervention of another in his behalf is deemed to have authorized it. Probatis extremis, praesumuntur media. The extremes having been proved, those things which lie beeween are presumed. In favorem vitae, libertatis, et innooentiae, omnia praesumuntur. Every presumption is made in favor of life, liberty and innocence. Nulla impossibilia aut inhonesta sunt praesumenda; vera autem et honesta et possibilia. No things that are impossible or dishonorable are to be presumed; but things that are true and honorable and possible. Omnia praesumuntur legitime facta donec prooetur in contrarium. All things are presumed to be lawfully done, until the contrary is proven. Lex neminem cogit ossendere quod nescire praesumitur. The law compels noone to divulge that which he is presumed not to know. Injuria non praesumitur. A wrong is not presumed.

**See also: assumption, belief, concept, condition, conjecture, disrespect, expectation, generalization, inequity, opinion, outlook, point of view, position, preconception, predetermination, probability, prognosis, prospect, rationale, speculation, supposition**

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**PRESUMPTION, evidence. An inference as to the existence of one fact, from the existence of some other fact, founded on a previous experience of their connexion. 3 Stark. Ev. 1234; 1 Phil. Ev. 116; Gilb. Ev. 142; Poth. Tr. des. Ob. part. 4, c. 3, s. 2, n. 840. Or it, is an opinion, which circumstances, give rise to, relative to a matter of fact, which they are supposed to attend. Menthuel sur les Conventions, liv. 1, tit. 5.**

 **2. To constitute such a presumption, a previous experience of the connexion between the known and inferred facts is essential, of such a nature that as soon as the existence of the one is established, admitted or assumed, an inference as to the existence of the other arises, independently of any reasoning upon the subject. It follows that an inference may be certain or not certain, but merely, probable, and therefore capable of being rebutted by contrary proof.**

 **3. In general a presumption is more or less strong according as the fact presumed is a necessary, usual or infrequent consequence of the fact or facts seen, known, or proven. When the fact inferred is the necessary consequence of the fact or facts known, the presumption amounts to a proof when it is the usual, but not invariable consequence, the presumption is weak; but when it is sometimes, although rarely,the consequence of the fact or facts known, the presumption is of no weight. Menthuel sur les Conventions, tit. 5. See Domat, liv. 9, tit. 6 Dig. de probationibus et praesumptionibus.**

 **4. Presumptions are either legal and artificial, or natural.**

 **5.-1. Legal or artificial presumptions are such as derive from the law a technical or artificial, operation and effect, beyond their mere natural. tendency to produce belief, and operate uniformly, without applying the process of reasoning on which they are founded, to the circumstances of the particular case. For instance, at the expiration of twenty years, without payment of interest on a bond, or other acknowledgment of its existence, satisfaction is to be presumed; but if a single day less than twenty years has elapsed, the presumption of satisfaction from mere lapse of time, does not arise; this is evidently an artificial and arbitrary distinction. 4 Greenl. 270; 10 John. R. 338; 9 Cowen, R. 653; 2 McCord, R. 439; 4 Burr. 1963; Lofft, 320; 1 T. R. 271; 6 East, R. 215; 1 Campb. R. 29. An example of another nature is given under this head by the civilians. If a mother and her infant at the breast perish in the same conflagration, the law presumes that the mother survived, and that the infant perished first, on account of its weakness, and on this ground the succession belongs to the heirs of the mother. See Death, 9 to 14.**

 **6. Legal presumptions are of two kinds: first, such as are made by the law itself, or presumptions of mere law; secondly, such as are to be made by a jury, or presumptions of law and fact.**

 **7.-1st. Presumptions of mere law, are either absolute and conclusive; as, for instance, the presumption of law that a bond or other specialty was executed upon a good consideration, cannot be rebutted by evidence, so long as the instrument is not impeached for fraud; 4 Burr. 2225; or they are not absolute, and may be rebutted evidence; for example, the law presumes that a bill of exchange was accepted on a good consideration, but that presumption may be rebutted by proof to the contrary.**

 **8.-2d. Presumptions of law and fact are such artificial presumptions as are recognized and warranted by the law as the proper inferences to be made by juries under particular circumstances; for instance, au unqualified refusal to deliver up the goods on demand made by the owner, does not fall within any definition of a conversion, but inasmuch as the detention is attended with all the evils of a conversion to the owner, the law makes it, in its effects and consequences, equivalent to a conversion, by directing or advising the jury to infer a conversion from the facts of demand and refusal.**

 **9.-2. Natural presumptions depend upon their own form and efficacy in generating belief or conviction on the mind, as derived from these connexions which are pointed out by experience; they are wholly independent of any artificial connexions and relations, and differ from mere presumptions of law in this essential respect, that those depend, or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, from the course of nature and the ordinary habits of society.**

 **Vide, generally, Stark. Ev. h.t.; 1 Phil. Ev. 116; Civ. Code of Lo. 2263 to 2267; 17 Vin. Ab. 567; 12 Id. 124; 1 Supp. to Ves. jr. 37, 188, 489; 2 Id. 51, 223, 442; Bac. Ab. Evidence, H; Arch. Civ. Pl. 384; Toull. Dr. Civ. Fr. liv. 3, t. 3, o. 4, s. 3; Poth. Tr. des Obl. part 4, c. 3, s. 2; Matt. on Pres.; Gresl. Eq. Ev. pt. 3, c. 4, 363; 2 Poth. Ob. by Evans, 340; 3 Bouv. Inst. n. 3058, et seq.**

**Presumption n. A conclusion made as to the existence or nonexistence of a fact that must be drawn from other evidence that is admitted and proven to be true. A Rule of Law.**

**If certain facts are established, a judge or jury must assume another fact that the law recognizes as a logical conclusion from the proof that has been introduced. A presumption differs from an inference, which is a conclusion that a judge or jury may draw from the proof of certain facts if such facts would lead a reasonable person of average intelligence to reach the same conclusion.**

**A conclusive presumption is one in which the proof of certain facts makes the existence of the assumed fact beyond dispute. The presumption cannot be rebutted or contradicted by evidence to the contrary. For example, a child younger than seven is presumed to be incapable of committing a felony. There are very few conclusive presumptions because they are considered to be a substantive rule of law, as opposed to a rule of evidence.**

**A rebuttable presumption is one that can be disproved by evidence to the contrary. The Federal Rules of Evidence and most state rules are concerned only with rebuttable presumptions, not conclusive presumptions.**

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presumption n. a rule of law which permits a court to assume a fact is true until such time as there is a preponderance (greater weight) of evidence which disproves or outweighs (rebuts) the presumption. Each presumption is based upon a particular set of apparent facts paired with established laws, logic, reasoning or individual rights. A presumption is rebuttable in that it can be refuted by factual evidence. One can present facts to persuade the judge that the presumption is not true. Examples: a child born of a husband and wife living together is presumed to be the natural child of the husband unless there is conclusive proof he is not; a person who has disappeared and not heard from for seven years is presumed to be dead, but the presumption could be rebutted if he/she is found alive; an accused person is presumed innocent until proven guilty. These are sometimes called rebuttable presumptions to distinguish them from absolute, conclusive or irrebuttable presumptions in which rules of law and logic dictate that there is no possible way the presumption can be disproved. However, if a fact is absolute it is not truly a presumption at all, but a certainty.

**In trust law, the grantor's intention is a fundamental principle that determines the validity and terms of a trust. The grantor, also known**

**as the settlor, is the person who creates the trust and transfers property into it. The grantor's intent to create a trust is essential, and it must**

**be clearly manifested. This intent does not necessarily have to be expressed using specific words like "trust" or "trustee," but it must be**

**evident that the grantor intended to create a trust. The grantor's intention is a key element in establishing a valid trust, and it is governed by**

**legal principles and requirements within trust law.**

**https://www.investopedia.com/terms/g/grantortrustrules.asp**

**https://www.nycbar.org/get-legal-help/article/wills-trusts-and-elder-law/trusts/**

**https://www.justia.com/estate-planning/trusts/**

**https://www.provenzalaw.com/resources/trust-elements/**

**such servitude, in violation of the law against**

**involuntary servitude.**

**• Entering any kind of plea, as a person**

**testifying against themselves, “admitting the**

**genius of the record,” and should one**

**object, the court through its judicial officer**

**takes it upon itself to enter a plea on behalf**

**of the defendant, commandeering their right**

**to counsel of choice.**

**• I present, not submit, the following fact**

**and/or facts:**

**• I make no appearances, I make visitations**

**upon the court, showing within court,**

**standing’s before the court, but at no time**

**will I ever submit to the jurisdiction of the**

**court!**

**• The phrase “admitting the genius of the**

**record” is not commonly used in modern**

**legal practice. However, in the context of a**

**plea hearing, entering any kind of plea,**

**whether it be guilty, not guilty, or no**

**contest, is a formal response to criminal**

**charges and signifies the defendant’s**

**acknowledgment and submission to the**

**jurisdiction of the court. This act of entering**

**a plea is a crucial step in the legal process, as**

**it can lead to the resolution of the case**

**without proceeding to trial and may involve**

**negotiations, plea bargains, and the**

**assertion of defenses. It is important for the**

**defendant to fully understand the**

**implications of their plea, often with the**

**guidance of a qualified attorney.**

**• See: It can really be said that individuals who**

**are incarcerated are there because they**

**voluntarily agreed to be there.!i**

**• Entering any kind of plea, as a person testifying against**

**themselves, "admitting the genius of the record." This is why**

**the Miranda warning specifically states that anything a**

**person being arrested may say or do will be used against**

**them in a court of constitutional law, disregarding whether**

**they are under oath to testify, individuals cannot be**

**compelled to bear witness against themselves; the Miranda**

**warning infringes upon the First Amendment’s freedom of**

**speech!**

**• The expression "admitting the genius of the record"**

**traces its roots back to historical contexts within**

**legal proceedings, particularly in the realm of oral**

**pleading. It is closely associated with the common**

**law tradition and the formalization of legal actions**

**through the documentation of pleadings and**

**judgments. The phrase originates from Sir Frederick**

**Pollock’s description of common law and is**

**intertwined with the notion of formalizing legal**

**actions and decisions through the process of**

**documentation. Further exploration or consultation**

**with legal historians or experts may be necessary to**

**fully grasp the origin and significance of this phrase**

**within its specific historical and legal**

**framework.https://oll.libertyfund.org/title/pollock-**

**the-genius-of-the-common-law?html=true.**

**https://www.bu.edu/law/journals-**

**archive/bulr/documents/seipp.pdf**

**• There are consequences associated with**

**entering any kind of plea; the Supreme Court**

**has already ruled that the fundamental right**

**that a person must be given notice (see**

**Mullane v. Hoover Bank and Trust Company,**

**339 U.S. 306 (1950)).**

**• Because there are legal consequences**

**associated with entering a plea of any kind that**

**result in the loss or waiver of a substantial or**

**significant due process interest, as expressed in**

**Mullane v. Hoover Bank and Trust Company,**

**339 U.S. 306 (1950).**

**[SEE: FRISBE V. UNITED STATES, 157 U.S. 160, 165; 39 L. ED. 657 (U.S. LA. 1895), WHICH**

**STATES: “THE VERY ACT OF PLEADING TO IT [AN INDICTMENT] ADMITS ITS**

**GENIUSES AS A RECORD.”; KOSCIELSKI V. STATE, 158 N.E. 902, 903 (IND. 1927),**

**WHICH STATES: “THE PLEA FORMS THE ISSUE TO BE TRIED, WITHOUT WHICH**

**THERE IS NOTHING BEFORE THE COURT OR JURY FOR TRIAL.“; CF. ANDREWS V.**

**STATE, 146 N.E. 817, 196 IND. 12 (1925); STATE V. ACTON, 160 A. 217, 218 (N.J. 1932);**

**UNITED STATES V. AURANDT, 107 P. 1064, 1065 (N.M. 1910)]**

The purpose of the form W-4 is for me to figure out how much income tax, if any, is appropriate to be withheld. I then tell you, and the IRS, what the correct amount is.

If someone other than I were given this right by law it would then be unnecessary f or me to fill out a form; the person making the determination would fill out any applicable form.

Your only legal authority to withhold any taxes from my pay is my written permission on form W-4 or the equivalent. I have not given this permission.

The only legal authority for withholding income taxes at the source on wages is found in Section 3402 of Chapter 24 or Title 26 of the United States Code.

Section 3402 is divided into nineteen paragraphs, labeled 'a' through "s", respectively. There are nineteen separate divisions within Section 3402 because Congress in adopting the law realized that not all individuals have the same status and not all have the same liability.

The Section of 3402 that is appropriate in my case is 3402(n). Line six of the W-4 form is based upon 3402(n).

I realize that there are three parties to any withholding dispute, the worker, the company, and the IRS. When there is a question, or a dispute, no one of the three (including IRS) may arbitrarily demand to make the decision. That is what the federal courts are for.

The matter of the W-4 form of the employee has already gone to the United States Supreme Court. The Court said ~... the employer is not authorized to alter the form or to dishonor the employee's claim. The certificate goes into effect automatically in accordance with certain standards enumerated in 3402(f) (3)." United States v. John Paul Palinowski, 347 F. Supp. 352 (1972).

IRS Section 3402(n) has remained virtually unchanged since that time, having been neither amended nor repealed. The United States Supreme Court has not heard any other cases on this matter, nor is there any legal reason to think they will in the future.

The information on my current W—4 form is correct and was submitted under penalty of perjury. There is no reason f or me to submit another form since it would show the same information. Neither you nor the IRS has my permission to change or dishonor the form.

Section 3402(p) states that the W-4 form is a voluntary agreement between you and I. If you were allowed to coerce me that would not be a "voluntary" agreement.

 The Secretary of the Treasury (or by delegation the IRS) may "by regulations provide for the increases or decreases in the amount of withholding." HOWEVER, that is ONLY "in cases where the employee REQUESTS such changes". Clearly, Congress intended the EMPLOYEE, not the IRS to make the determination (Section 3402(i).

Section 3402(f) (4) provides "A withholding exemption certificate...shall continue in effect with respect to the employer until another such certificate takes effect under this section."

You will find by reviewing the relevant federal statutes that I am correct as a matter of law. I have been, and remain, EXEMPT pursuant to 3402(n) et. seq.

I trust this resolves the matter to your satisfaction and that my valid W-4 EXEMPT will remain in effect. If you need additional information, please feel free to contact me again.

Respectfully,

CERTIFIED MAIL RETURN RECEIPT REQUESTED: #

[send in after w-4 if it was not accepted]

[for those of you still filing w-4 forms]

[proper form for non-resident alien is the w-8]

CORPORATIONS 1 TAC § 79.31

§ 79.31. Characters of Print Acceptable in Names

 (a) Entity names may consist of letters of the Roman alphabet, Arabic numerals, and certain symbols capable of being reproduced on a standard English language typewriter, or combination thereof.

(b) Only upper case or capitol letters, with no distinction as to type face or font, will be recognized.

(c) Arabic numerals include 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(d) The symbols recognized as part of a name may include ! " $ % ' ( ) \* ? # = @ [ ] / + & and - .

Source: The provisions of this §79.31 adopted to be effective January 1, 1976: amended to be effective September 15, 1981, 6 TexReg 3249; amended to be effective January 2, 1992, 16 TexReg 7469.

Lawful money taxed at face value and not trade value

The first case, Ling Su Fan v. U.S., 218 US 302 (1910) establishes the legal distinction of a coin bearing the "impress" of the sovereign:

 "These limitations are due to the fact that public law gives to such coinage a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use in exchange."

The second case, Thompson v. Butler, 95 US 694 (1877), establishes that the law makes no legal distinction between the values of coin and paper money used as legal tender:

"A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them."

**The practice of law is an occupation of Common Right ," as per Sims v. Ahrens, 277 S.W. 720 (1925) and upheld that "they [attorneys] cannot represent any private citizen nor any business as the State cannot license the practice of law " as per the ruling of the Supreme Court in Schware v. Board of Examiners. 353 U.S. 238. 239.**

**The only statutes found for the "unauthorized practice of law" deal with such issues as "A lawyer shall not aid a non-lawyer in the unauthorized practice of law" or "practice law in a Jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction."**

**"Congress, in enacting the Administrative Procedure Act, refused to limit the right to practice before the administrative agencies to lawyers."**

**"A Person engages in the 'practice of law' by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate."**

<http://supreme.justia.com/us/353/232/case.html>

(d) Whether the practice of law is a "right" or a "privilege" need not here be determined; it is not a matter of the State's grace. P. 353 U. S. 239, n 5.

We need not enter into a discussion whether the practice of law is a "right" or "privilege." Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. \*\*\*\*\*\*\*Certainly the practice of law is not a matter of the State's grace. Ex parte Garland, 4 Wall. 333, 71 U. S. 379.\*\*\*\*\*\* \* added

<http://www.law.cornell.edu/supct/html/97-1802.ZO.html>

The Court of Appeals relied primarily on Board of Regents v. Roth. In Roth, this Court repeated the pronouncement in Meyer v. Nebraska, 262 U.S. 390, 399, (1923) that the liberty guaranteed by the Fourteenth Amendment “ ‘denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.’ ” Roth, supra, at 572 (quoting Meyer, supra, at 399)

 But neither Roth nor Meyer even came close to identifying the asserted “right” violated by the prosecutors in this case. Meyer held that substantive due process forebade a State from enacting a statute that prohibited teaching in any language other than English. 262 U.S., at 399, 402—403. And Roth was a procedural due process case which held that an at-will college professor had no “property” interest in his job within the meaning of the Fourteenth Amendment so as to require the university to hold a hearing before terminating him. 408 U.S., at 578. Neither case will bear the weight placed upon it by either the Court of Appeals or Gabbert: Neither case supports the conclusion that the actions of the prosecutors in this case deprived Gabbert of a liberty interest in practicing law.

 Gabbert also relies on Schware v. Board of Bar Examiners of N. M., 353 U.S. 232, 238—239 (1957), for the proposition that a State cannot exclude a person from the practice of law for reasons that contravene the Due Process Clause. Schware held that former membership in the Communist Party and an arrest record relating to union activities could not be the basis for completely excluding a person from the practice of law. Like Dent, supra, and Truax, supra, it does not deal with a brief interruption as a result of legal process. No case of this Court has held that such an intrusion can rise to the level of a violation of the Fourteenth Amendment’s liberty right to choose and follow one’s calling. That right is simply not infringed by the inevitable interruptions of our daily routine as a result of legal process which all of us may experience from time to time.(they left out the substantialSimilarly, none of the other cases relied upon by the Court of Appeals or suggested by Gabbert provide any more than scant metaphysical support for the idea that the use of a search warrant by government actors violates an attorney’s right to practice his profession. In a line of earlier cases, this Court has indicated that the liberty component of the Fourteenth Amendment’s Due Process Clause includes some generalized due process right to choose one’s field of private employment, but a right which is nevertheless subject to reasonable government regulation. See, e.g., Dent v. West Virginia, 129 U.S. 114 (1889) (upholding a requirement of licensing before a person can practice medicine); Truax v. Raich, 239 U.S. 33, 41 (1915) (invalidating on equal protection grounds a state law requiring companies to employ 80% United States citizens). These cases all deal with a complete prohibition of the right to engage in a calling, and not the sort of brief interruption which occurred here details)

this will prove helpful:

 “[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” Warth v. Seldin, 422 U.S. 490, 499 (1975).

<http://freedom-school.com/law/court-cases-supporting-no-license.html>

Subject: Supreme Court cases supporting no license needed to practice law.

If you ever get attacked for practicing law without a license.

Reference Court Cases:

\* **Picking v. Pennsylvania R. Co. 151 Fed. 2nd 240; Pucket v. Cox 456 2nd 233. Pro se pleadings are to be considered without regard to technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers.**

**1. Platsky v. C.I.A. 953 F.2d. 25. Additionally, pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings. Reynoldson v. Shillinger 907F .2d 124, 126 (10th Cir. 1990); See also Jaxon v. Circle K. Corp. 773 F.2d 1138, 1140 (10th Cir. 1985**) (1)

2. Haines v. Kerner (92 S.Ct. 594). The respondent in this action is a nonlawyer and is moving forward in Propria persona.

3. NAACP v. Button (371 U.S. 415); United Mineworkers of America v. Gibbs (383 U.S. 715); and Johnson v. Avery 89 S. Ct. 747 (1969). Members of groups who are competent nonlawyers can assist other members of the group achieve the goals of the group in court without being charged with "Unauthorized practice of law."

4. Brotherhood of Trainmen v. Virginia ex rel. Virginia State Bar (377 U.S. 1); Gideon v. Wainwright 372 U.S. 335; Argersinger v. Hamlin, Sheriff 407 U.S. 425. Litigants may be assisted by unlicensed layman during judicial proceedings.

5. Howlett v. Rose, 496 U.S. 356 (1990) Federal Law and Supreme Court Cases apply to State Court Cases

6. Federal Rules Civil Proc., Rule 17, 28 U.S.C.A. "Next Friend" A next friend is a person who represents someone who is unable to tend to his or her own interest...

7. Oklahoma Court Rules and Procedures, Title 12, sec. 2017 (C) "If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem."

8. Mandonado-Denis v. Castillo-Rodriguez, 23 F.3d 576 (1st Cir. 1994) Inadequate training of subordinates may be basis for 1983 claim.

9. Warnock v. Pecos County, Tex., 88 F3d 341 (5th Cir. 1996) Eleventh Amendment does not protect state officials from claims for prospective relief when it is alleged that state officials acted in violation of federal law.

10. Title 42 U.S.C. Sec. 1983, Wood v. Breier, 54 F.R.D. 7, 10-11 (E.D. Wis. 1972). Frankenhauser v. Rizzo, 59 F.R.D. 339 (E.D. Pa. 1973). "Each citizen acts as a private attorney general who 'takes on the mantel of sovereign',"

11. Oklahoma is a "Right to Work" State! Bill SJR1! Its OK to practice God`s law with out a license, Luke 11:52, God`s Law was here first! "There is a higher loyalty than loyalty to this country, loyalty to God" U.S. v. Seeger, 380 U.S. 163, 172, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965)

12. "The practice of law can not be licensed by any state/State. Schware v. Board of Examiners, United States Reports 353 U.S. pgs. 238, 239. In Sims v. Aherns, 271 S.W. 720 (1925) "The practice of law is an occupation of common right." A bar card is not a license, its a dues card and/or membership card. A bar association is that what it is, a club, A association is not license, it has a certificate though the State, the two are not the same....

There is no such thing as an Attorney License to practice law. The UNITED STATES SUPREME COURT held a long time ago that The practice of Law CANNOT be licensed by any state/State. This was so stated in a case named Schware v. Board of Examiners, 353 U.S. 232 (1957) and is located for all to read at the following pages in volume 353 U.S. pgs.238, 239 of the United States Reports. Here is a quote from that case:

****

[Flynt v. Leis](https://casetext.com/case/flynt-v-leis?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa36)

574 F.2d 874 (6th Cir. 1978)   Cited 17 times

353 U.S. 232, 239 n. 5, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957): "We need not enter into a discussion whether the practice of law is a `right' or `privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace."

**** [Verner v. State of Colo.](https://casetext.com/case/verner-v-state-of-colo?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq45)

533 F. Supp. 1109 (D. Colo. 1982)   Cited 29 times

Regardless of how the state's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the state's grace.

**** [Greenlee v. Board of Medicine](https://casetext.com/case/greenlee-v-board-of-medicine?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa76)

813 F. Supp. 48 (D.D.C. 1993)   Cited 5 times

not address the question of whether admission to the bar constituted a property or liberty interest protected by the Fourteenth Amendment. The Court instead stated, "[I]t is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace." 353 U.S. at 239 n. 5, 77 S.Ct. at 756 n. 5. Since Schware, however, courts have confirmed that "ineligibility for employment in a major sector of the economy" implicates a fundamental liberty interest. Hampton v. Mow Sun Wong, 426 U.S. 88, 102, 96 S.Ct. 1895,

**** [Steinberg v. Supreme Court of Pennsylvania](https://casetext.com/case/steinberg-v-supreme-court-of-pennsylvania?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq63)

Civil Action No. 09-86 (W.D. Pa. Jun. 10, 2009)   Cited 2 times

We need not enter into a discussion whether the practice of law is a "right" or a "privilege." Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace.

**** [McFarland v. Folsom](https://casetext.com/case/mcfarland-v-folsom?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa114)

854 F. Supp. 862 (M.D. Ala. 1994)   Cited 15 times

737 F.2d 996, 1000 (11th Cir. 1984). The question of "whether the practice of law is a `right' or `privilege,'" has never been addressed by a clear majority of the Supreme Court. Schware, 353 U.S. at 239 n. 5, 77 S.Ct. at 756 n. 5. The most that the Supreme Court has been willing to hold is that "[c]ertainly the practice of law is not a matter of the State's grace." Id. McFarland cites Baird v. State Bar of Arizona, 401 U.S. 1, 8, 91 S.Ct. 702, 707, 27 L.Ed.2d 639 (1971), in support of his argument that the "Practice of law is a right." The case is inapposite. A plurality of the Court held

**** [Louis v. Supreme Court of Nevada](https://casetext.com/case/louis-v-supreme-court-of-nevada?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa52)

490 F. Supp. 1174 (D. Nev. 1980)   Cited 33 times

However, a state's power to license persons engaged in such a profession is not the power to create a privileged class by means of arbitrary tests that exclude competent and fit persons. Keenan v. Board of Law Examiners of State of N.C., 317 F. Supp. 1350 (E.D.N.C. 1970). The practice of law is not a matter of the state's grace or favor. For those who possess the necessary qualifications it is a right. Petition of Schaengold, 83 Nev. 65, 422 P.2d 686 (1967); Baird v. State Bar of Arizona, 401 U.S. 1, 91 S.Ct. 702, 27 L.Ed.2d 639 (1971). The fact that the Nevada Supreme Court has historically

**** [Raffaelli v. Committee of Bar Examiners](https://casetext.com/case/raffaelli-v-committee-of-bar-examiners?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa49)

7 Cal.3d 288 (Cal. 1972)   Cited 35 times

the practice of law is a `right' or `privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex parte Garland, 4 Wall. 333, 379." Respondent seeks to minimize the effect of this language by asserting that it had "no apparent significance" in Schware and was there relegated to a footnote. But in Hallinan v. Committee of Bar Examiners (1966) 65 Cal.2d 447, 452, footnote 3 [

**** [In re Flynn](https://casetext.com/case/in-re-flynn-13?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa30)

52 Wn. 2d 589 (Wash. 1958)   Cited 9 times

the practice of law is a `right' or `privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex Parte Garland, 4 Wall. 333, 379." (Italics ours.) Schware v. Board of Bar Examiners of New Mexico, supra, Footnote. Is there a "rational connection" between the acts giving rise to the revocation of Dr. Flynn's license to practice and his fitness or capacity to practice dentistry

**** [Schware v. Board of Bar Examiners](https://casetext.com/case/schware-v-board-of-bar-examiners?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa47)

353 U.S. 232 (1957)   Cited 939 times

We need not enter into a discussion whether the practice of law is a "right" or "privilege." Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex parte Garland, 4 Wall. 333, 379.

**** [In re Monaghan](https://casetext.com/case/in-re-monaghan-4?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa91)

126 Vt. 53 (Vt. 1966)   Cited 31 times

is the point in issue. "What the character had formerly been is relevant only as it blends with the continuous web of life and tinges its present texture." Williard v. Goodenough, supra, at p. 397. Irrespective of whether the practice of law is a right or a privilege, a person cannot be prevented from practicing law except for valid reasons, such practice not being a matter of the state's grace. Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L.Ed. 2d 796, 77 S.Ct. 752, 64 A.L.R. 2d 288; Ex parte Garland (U.S.) 4 Wall 333, 379, 18 L.Ed. 366, 370. The last sentence of Finding No. 14 which

**** [Matter of Peterson](https://casetext.com/case/matter-of-peterson-20?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa11)

439 N.W.2d 165 (Iowa 1989)   Cited 7 times

or individual qualified to make a moral or character report. Iowa Ct. R. 104. The right to practice law is not a natural or constitutional right, but is in the nature of a privilege or franchise. In re Disbarment of Meldrum, 243 Iowa 777, 784, 51 N.W.2d 881, 884 (1952). However, the right to practice law is not a matter of grace. We cannot exclude a person from the practice of law for reasons that contravene the due process or equal protection clauses of the United States Constitution. Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39, 77 S.Ct. 752, 756, 1 L.Ed.2d 796, 801 (1957); see

**** [Dexter v. Idaho State Bar Bd. of Com'rs](https://casetext.com/case/dexter-v-idaho-state-bar-bd-of-comrs?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq25)

780 P.2d 112 (Idaho 1989)   Cited 5 times

However, the right to practice law is not a matter of grace. We cannot exclude a person from the practice of law for reasons that contravene the due process or equal protection clauses of the United States Constitution. Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39, 77 S.Ct. 752, 756, 1 L.Ed.2d 796, 801 (1957); see also Annotation, Good Moral Character of Applicant as Requisite for Admission to Bar, 64 A.L.R.2d 301 (1959).

**** [Taylor v. Safly](https://casetext.com/case/taylor-v-safly?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq29)

637 S.W.2d 578 (Ark. 1982)   Cited 2 times

We need not enter into a discussion whether the practice of law is a "right" or "privilege." Regardless of how the State's grant of permission to engage in theis occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex parte Garland, (U.S.) 4 Wall. 33, 379, 18, L.Ed. 366 [370]

**** [Application of Peterson](https://casetext.com/case/application-of-peterson-6?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq96)

459 P.2d 703 (Alaska 1969)   Cited 29 times

We need not enter into a discussion whether the practice of law is a "right" or "privilege." Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex parte Garland (U.S.) 4 Wall. 333, 379, 18 L.Ed. 366 [370].

**** [Starr v. State Board of Law Examiners](https://casetext.com/case/starr-v-state-board-of-law-examiners?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa14)

159 F.2d 305 (7th Cir. 1947)   Cited 6 times

of the Supreme Court of Indiana as amicus curiae. The District Court, after argument and due consideration thereof, was of the opinion that the complaint stated no cause of action and that the court lacked jurisdiction. With this conclusion we agree. The right to practice law in State courts is not a privilage granted by the Federal Constitution. Bradwell v. State of Illinois, 16 Wall. 130, 83 U.S. 130, 21 L.Ed. 442; In re Lockwood, 154 U.S. 116, 14 S.Ct. 1082, 38 L.Ed. 929; and Mitchell v. Greenough, 9 Cir., 100 F.2d 184. See also In re McDonald, 200 Ind. 424, 164 N.E. 261, and Brents v

**** [Golden v. State Bd. of Law Examiners](https://casetext.com/case/golden-v-state-bd-of-law-examiners-2?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq164)

452 F. Supp. 1082 (D. Md. 1978)   Cited 3 times

[T]he right to practice law in a state court is not a privilege conferred upon a citizen by the United States Constitution or federal statutes. Furthermore, there is no inherent right to practice law in the state courts until the individual seeking the right to practice has established his or her professional and moral qualifications as proscribed by the state. It is

**** [Ricci v. State Bd. of Law Examiners](https://casetext.com/case/ricci-v-state-bd-of-law-examiners-2?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa35)

427 F. Supp. 611 (E.D. Pa. 1977)   Cited 8 times

to practice in the District of Columbia and has continued to practice "District of Columbia law" [Memorandum at 12] while a Pennsylvania resident, he should be entitled to practice before the State courts of Pennsylvania. Yet the right to practice law in a state court is not a privilege conferred upon a citizen by the United States Constitution or federal statutes. Furthermore, there is no inherent right to practice law in the state courts until the individual seeking the right to practice has established his or her professional and moral qualifications as proscribed by the state. It is

**** [Horwitz v. Holabird Root](https://casetext.com/case/horwitz-v-holabird-root-1?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa89)

212 Ill. 2d 1 (Ill. 2004)   Cited 101 times

of attorney and counselor at law to the best of my ability." 705 ILCS 205/4 (West 2002). The taking of an oath is a condition precedent to the practice of law in this state and is imposed by the legislature. In re Anastaplo, 3 Ill. 2d 471, 475 (1954). This court has repeatedly made clear that the practice of law is a privilege and not a right. In re Anastaplo, 3 Ill. 2d at 475. It is only upon satisfaction of the above-enumerated requirements that an individual is awarded a license to practice law. A license to practice law makes the holder of that license an officer of the court. In re

**** [Matter of Roberts](https://casetext.com/case/matter-of-roberts-2?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa33)

682 F.2d 105 (3d Cir. 1982)   Cited 24 times

The United States Constitution does not create a right to practice law. Ricci v. State Board of Law Examiners, 427 F. Supp. 611, 617 (E.D.Pa. 1977), vacated on other grounds, 569 F.2d 782 (3d Cir. 1978); see Williamson v. Lee Optical Co., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); Kotch v. Board of River Port Pilot Commissioners, 330 U.S. 552, 67 S.Ct. 910, 91 L.Ed. 1093 (1947).

**** [State v. Kaltenbach](https://casetext.com/case/state-v-kaltenbach-2?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa105)

587 So. 2d 779 (La. Ct. App. 1991)   Cited 1 times

D. Nothing in Article V, Section 24, of the Constitution of Louisiana or this Section shall prohibit justices or judges from performing all acts necessary or incumbent to the authorized exercise of duties as judge advocates or legal officers. The right to practice law in the state courts is not a privilege or immunity of a citizen of the United States. It is limited to those who are licensed for that purpose, and it follows that for an unlicensed person to hold himself out as entitled to practice law is a species of fraud which the state may punish. State v. Rosborough, 152 La. 945, 94 So

**** [Lark v. West](https://casetext.com/case/lark-v-west-2?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#bq30)

182 F. Supp. 794 (D.D.C. 1960)   Cited 12 times

"The expression `A claim of a present right to admission to the bar' means something more than a mere application under the rules of court. There is no inherent right to practice law. The right arises after qualifications under the rules has been established."

**** [Brooks v. Laws](https://casetext.com/case/brooks-v-laws?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa119)

208 F.2d 18 (D.C. Cir. 1953)   Cited 36 times

The expression "A claim of a present right to admission to the bar" means something more than a mere application under the rules of court. There is no inherent right to practice law. The right arises after qualification under the rules has been established.

**** [Opinion No. 2001-347](https://casetext.com/case/opinion-no-15983?tab=ps&q=the%20practice%20of%20Law%20is%20not%20a%20matter%20of%20state%20grace&p=1&jxs=&sort=relevance&type=case#pa31)

Opinion No. 2001-347 (Ops.Ark.Atty.Gen. Dec. 19, 2001)

The doctrine also provides general guidelines for avoiding an inappropriate situation. In particular, it indicates that a public employee should avoid participating in decisions that would affect his personal interest. This principle is also reflected in the state Ethics in Contracting Law. See A.C.A. § 19-11-705. Accordingly, the common law doctrine of conflict of interest should be considered in evaluating the situation. I reiterate that the practice in and of itself is not prohibited by law. Assistant Attorney General Suzanne Antley prepared the foregoing opinion, which I hereby approve…

“that the defense of a criminal case necessarily constitutes the practice of law. Because only this court has the power to admit persons to the practice of law (see *Merco Constr. Engineers, Inc.* v. *Municipal Court* (1978) [21 Cal.3d 724, 727](https://casetext.com/case/merco-constr-engineers-inc-v-municipal-court#p727) [ [147 Cal.Rptr. 631](https://casetext.com/case/merco-constr-engineers-inc-v-municipal-court), [581 P.2d 636](https://casetext.com/case/merco-constr-engineers-inc-v-municipal-court)]; *Brotsky* v. *State Bar* (1962) [57 Cal.2d 287, 300](https://casetext.com/case/brotsky-v-state-bar#p300) [ [19 Cal.Rptr. 153](https://casetext.com/case/brotsky-v-state-bar), [368 P.2d 697](https://casetext.com/case/brotsky-v-state-bar), [94 A.L.R.2d 1310](https://casetext.com/case/brotsky-v-state-bar)]), defendant maintains that student representation pursuant to the Rules is "unauthorized" practice of law.”

*People v. Perez*, 24 Cal.3d 133, 143 (Cal. 1979)

"A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection [353 U.S. 232, 239] Clause of the Fourteenth Amendment. 5 Dent v. West Virginia, 129 U.S. 114 . Cf. Slochower v. Board of Education, 350 U.S. 551 ; Wieman v. Updegraff, 344 U.S. 183 . And see Ex parte Secombe, 19 How. 9, 13. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. Douglas v. Noble, 261 U.S. 165 ; Cummings v. Missouri, 4 Wall. 277, 319-320. Cf. Nebbia v. New York, 291 U.S. 502 . Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. Cf. Yick Wo v. Hopkins, 118 U.S. 356 ."

[Schware v. Board of Examiners, 353 U.S. 232 (1957), emphasis added]

Another case which bore this out was Sims v. Ahrens, 271 S.W. 720 (1925). In this case the opinion of the court was that

"The practice of Law is an occupation of common right."

Where some confusion may start is when one doesn’t understand that a state supreme court only issues a CERTIFICATE, and that is not a license. All a certificate does is authorize one of those dirt-bags to practice Law "IN COURTS" as a member of the state judicial branch of government. [Please see NOTE 1 below to see that there is no judicial branch of government as we have been led to believe all our lives] A plain truth of fact is that Attorneys are ‘foreign agents’, the same as Federal Agents from the bowels of hell known as WASHINGTON, DC, and can only represent wards of the court; infants and persons of unsound mind. [The reader would be surprised to find out that according to them, we’re all of unsound mind that is; we’re considered incompetent to handle our own affairs.] [Please see NOTE 2 below for a reference in a law dictionary which explains this concept

Further, as a CERTIFICATE IS NOT A LICENSE then it also gives no power to anyone to practice Law AS AN OCCUPATION, nor to DO BUSINESS AS A LAW FIRM.

The state bar association is not a government entity. The state bar ass…is "PROFESSIONAL ASSOCIATION" and their "STATE BAR" CARD IS NOT A LICENSE either. All that card is – is a "UNION DUES CARD" like the Actors Union, Painters Union, Electricians union etc. Did the reader know that there is no other association, not even DOCTORS, who issue their own license. All other licenses are issued by the state or local municipal corporations . Any one can ask their state Attorney General if the members of the BAR are licensed by the state or any other governmental agency. The reader will find out in short order that the state doesn’t issue licenses for Attorney’s and that said attorneys are NON-GOVERNMENTAL PRIVATE ASSOCIATION.

Therefore by reason logic and common sense we can arrive a the determination that the ‘state bar ass… is; an unconstitutional monopoly, and thus an ILLEGAL & CRIMINAL ENTERPRISE. Since the majority, if not all of government offices are filled with Attorneys there is a definite violation of the separation of powers clause of a constitutional government.

Attorneys are nothing less than ‘foreign agents’ on our land as they are foreign to a constitutional government. They have NO POWER OR AUTHORITY for joining of Legislative, Judicial, or Executive branches of a constitutional government, no matter if the so called people vote for them. It is against a Republican form of constitutional government law for them to even attempt to ‘run for office’ (sic). Of course this would include all judges as well as members of the other branches of a constitutional government

Licensing Vocabulary

The following list provides definitions of words and phrases commonly found in Licensing Agreements. *Last updated January 2015 (with contributions by Lisa Macklin).*

**Acceptance**: The formal, voluntary act of agreeing to an offer, which leads to creating a legally binding agreement. See also “[Agreement](http://liblicense.crl.edu/resources/licensing-vocabulary/#agreement),” below.

**Access**: The ability to gain entry to a database or other digital information.

**Affirmative Defense**: In a lawsuit, a denial, answer, or plea that opposes the plaintiff’s case and request for damages, and which offers new evidence that, if true, would defeat the plaintiff’s request for damages. See “[Fair Use](http://liblicense.crl.edu/resources/licensing-vocabulary/#fair-use),” below.

**Agreement**: A legally binding understanding and concurrence between two parties that often is memorialized in a written contract. In the licensing context, this term may be capitalized (i.e. “Agreement”), in which case it refers to the contract (along with any appendices, amendments, or exhibits) that codifies the parties’ understanding about access to and use of the digital information resources. Compare “[Contract](http://liblicense.crl.edu/resources/licensing-vocabulary/#contract),” below.

**Amendment**: A formal revision to the terms of an agreement. An amendment may be an addition, a deletion, or a correction.

**Archive Copy**: A copy of a work intended to be preserved permanently.

**Assignment**: A transfer of all or some of the contractual rights or obligations to a person or entity that was not an original party to the pre-assignment agreement.

**Arbitration Clause**: A clause in a licensing contract that calls for the parties to resolve contract disputes by hiring a neutral third party to create a binding resolution, often in lieu of litigation. An arbitration clause typically is considered a material contract clause. Some institutional parties cannot sign contracts that include arbitration clauses because they may violate the institution’s business or legal policy. See also “[Material](http://liblicense.crl.edu/resources/licensing-vocabulary/#material).”

**Article 2**: See “[Uniform Commercial Code](http://liblicense.crl.edu/resources/licensing-vocabulary/#uniform-commercial-code),” below.

**Authentication**: The process of verifying a user’s identity and authorization to access a network or its resources.

**Authorized Signature**: The signature by a person with authority and power to represent and legally bind a party to a written agreement.

**Authorized Use**: See “[Use](http://liblicense.crl.edu/resources/licensing-vocabulary/#use),” below.

**Authorized User**: See “[User](http://liblicense.crl.edu/resources/licensing-vocabulary/#user),” below.

**Backup Copy**: A copy of digital information made for recovery purposes.

**Battle of the Forms**: A conflict between the terms of standard form contracts that a buyer and seller exchange during a contract negotiation. A “battle of the forms” issue violates contract law’s “mirror image rule,” which holds that an acceptance is valid only where it matches exactly with the offer’s terms. Battle of the forms issues may arise in database license contracts if the contract is governed by Article 2 of the Uniform Commercial Code. See “[Uniform Commercial Code](http://liblicense.crl.edu/resources/licensing-vocabulary/#uniform-commercial-code),” below.

**Boilerplate**: A standard clause taken from another agreement or from a form book.

**Breach**: The breaking of a promise or a failure to perform an obligation under an agreement.

* **Material breach**: A breach that destroys the contract’s value, excuses an aggrieved party’s further performance under the contract, and gives the aggrieved party a cause of action for breach of contract.
* **Minor breach**: A breach that technically violates a contract term or condition, but does not destroy the contract’s value. A minor breach can be rectified by if the breaching party cures the breach within a reasonable period of time.

**Choice of Law**: See “[Conflict of Law](http://liblicense.crl.edu/resources/licensing-vocabulary/#conflict-of-law),” below.

**“Click-wrap” Agreement or License**: A contractual agreement that a user views online and agrees to (by clicking an online prompt that indicates the user’s consent to the agreement’s terms) as a condition of using or accessing the database or licensed resources. Several court decisions have concluded that click-wrap licenses are legal and fully enforceable where a user has an opportunity to review the license prior to using the database service, or installing any applicable software.

A click-wrap agreement may include terms or conditions that conflict with the terms and conditions of a negotiated license, thereby creating separate, individual contracts between the database provider and individual users. Compare “[Shrinkwrap Agreement](http://liblicense.crl.edu/resources/licensing-vocabulary/%22%20%5Cl%20%22shrink-wrap).”

**Concurrent Users**: See “[User](http://liblicense.crl.edu/resources/licensing-vocabulary/#user),” below.

**Conflict of Law**: Judicial decisions that determine where a case should be adjudicated, often based upon which jurisdiction has the most significant relationship to the transaction. Conflict of law principles may call for a contract dispute to be decided in a place other than a place within the jurisdiction the parties have fixed in the contract. Compare, “[Jurisdiction](http://liblicense.crl.edu/resources/licensing-vocabulary/#jurisdiction),” below.

**Confidentiality**: The state of treating information as private and not for distribution beyond a mutually agreeable scope, or the agreement not to use such information other than for specifically identified purposes. Confidentiality typically is codified and enforced through a confidentiality agreement, or non-disclosure agreement. See also “[Non-Disclosure Agreement](http://liblicense.crl.edu/resources/licensing-vocabulary/#non-disclosure-agreement),” below.

**Contract**: The writing (including any appendices, amendments, or exhibits) that details the terms and conditions of a formal, legally binding agreement between two or more parties. Compare “[Agreement](http://liblicense.crl.edu/resources/licensing-vocabulary/#agreement),” above.

**Copies**: Reproductions of all, or a portion of, digital information onto media, including computer diskette, hard-copy printout, or by exact quotation.

**Copyright**: A federal legal regime that grants for a limited time exclusive rights to authors of original, creative works fixed in a tangible medium of expression, and provides exceptions to those exclusive rights under certain circumstances. In the United States, the current federal law is the [Copyright Act of 1976](http://www.copyright.gov/title17/92chap1.html), which is codified at Title 17 of the United States Code. (17 U.S.C. § 101, *et seq*.).

* **Copyright infringement**: See “[Infringement](http://liblicense.crl.edu/resources/licensing-vocabulary/#infringement),” below.

**Coursepacks** (also “Course packs”): Bound copies of materials that instructors assemble for student use, usually in lieu of or in addition to a text book. Coursepack materials often are protected by copyright.

**Creative Commons**: A non-profit organization ([www.creativecommons.org](http://www.creativecommons.org/)) that provides free copyright licenses creators can choose and apply to their works to give the public permission to share and use the work following the license conditions specified.

**Damages**: Monetary compensation for a legal wrong, such as a breach of contract or breach of a confidentiality agreement.

* **Liquidated damages**: An amount of damages to which the contract parties agree before a breach occurs. In order to be legal, liquidated damages must be a reasonable estimate of the anticipated damages. A liquidated damages clause typically is considered to be a material contract clause. Some institutional parties cannot sign contracts that include liquidated damages clauses, because they may violate the institution’s business or legal policy. See also “[Material](http://liblicense.crl.edu/resources/licensing-vocabulary/#material).”

**Data mining**: See [“Text and Data Mining”](http://liblicense.crl.edu/resources/licensing-vocabulary/#tdm) below.

**Derivative Work**: A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications,which, as a whole represent an original work of authorship, is a “derivative work” (17 U.S.C. § 101, Definitions).

**Dial-Up Access**: Access to digital materials through analog modems or a similar remote access device.

**Digital Rights Management (DRM)**: Technologies used to control or limit what a user can do with digital media or hardware, such as electronic books or electronic book readers. Common limits include printing, copying and sharing.

**Digital Watermarking**: A pattern of bits embedded in a digital file (image, audio, or video) that are invisible or inaudible and commonly used to identify the files’ copyright information and/or rightsholder.

**Disclaimer**: A statement denying responsibility for a particular action. See also “[Warranty](http://liblicense.crl.edu/resources/licensing-vocabulary/#warranty),” below.

**Display**: Information that appears on the screen of a computer terminal, or the process of showing information on a computer screen.

**Distributor**: An individual or organization that re-sells, sublicenses or otherwise makes digital information available from the owner to end-users. See also “[End-user](http://liblicense.crl.edu/resources/licensing-vocabulary/#end-user),” below.

**Domain**: “Domain” can have several meanings within the context of licensed database resources:

* A network of servers and clients that a single database controls.
* A communications network that a single computer system controls.
* On the Internet, a registration category that fosters a domain name. See also “[Domain Name](http://liblicense.crl.edu/resources/licensing-vocabulary/#domain-name),” below.

**Domain Name**: The address of an Internet site (e.g., liblicense.crl.edu). The term also refers to an entity’s or computer’s unique name on the Internet, which is a alphanumeric substitute for Internet site address coordinates. Compare “[IP Address](http://liblicense.crl.edu/resources/licensing-vocabulary/#ip-address),” below.

**Download**: To receive digital information from a network. The term also refers to the process of saving retrieved information from digital information onto a hard drive, diskette, or other electronic storage media.

**End-user**: Authorized individuals or organizations that access digital information for their own use. The term typically appears in license contracts involving computer software, whereas the term “User” more commonly appears in license contracts involving digital database resources. Compare “[User](http://liblicense.crl.edu/resources/licensing-vocabulary/#user),” below.

**Fair Use**: An affirmative defense to copyright infringement set forth in [Section 107](http://www.copyright.gov/title17/92chap1.html#107) of the Copyright Act of 1976 (17 U.S.C. § 107) that allows certain persons or entities to use, access, copy, distribute, remix, publicly perform, or publicly display limited portions of protected material for certain purposes. Under the fair use doctrine, such parties may be able to use the protected work without having to receive the copyright owner’s permission to use or access that material, or without having to pay the owner for that use or access. See also “[Affirmative Defense](http://liblicense.crl.edu/resources/licensing-vocabulary/#affirmative-defense),” “[Infringement](http://liblicense.crl.edu/resources/licensing-vocabulary/#infringement).”

**First Sale Doctrine**: An exception to copyright that generally allows any person or entity who purchases an authorized legal copy of a protected item to resell, lend, or give away that item. The first sale doctrine, which the Copyright Act of 1976 codifies at [Section 109(a)](http://www.copyright.gov/title17/92chap1.html#109) (17 U.S.C. § 109(a)), is a recognized exception to the copyright owner’s exclusive right to distribute protected works under [Section 106(3)](http://www.copyright.gov/title17/92chap1.html#106) (17 U.S.C. § 106(3)).

**Force majeure**: A contract clause that protects a party from being held liable for a breach of contract caused by unavoidable events beyond the party’s control, such as natural disasters or wars.

**Governing Law**: See “[Jurisdiction](http://liblicense.crl.edu/resources/licensing-vocabulary/#jurisdiction),” below.

**Grant of License**: See “[Use](http://liblicense.crl.edu/resources/licensing-vocabulary/#use),” below.

**Host Name**: A unique name used to identify a computer on a network.

**Industry standards**: Generally accepted criteria and practices relating to operations, processes, and functions followed by members of a given industry.

**Indemnity**: One party’s obligation to insure, shield, or otherwise defend another party against a third party’s claims that result from performance under, or breach of, the agreement.

**Infringement**: A violation of a law, contract, or right.

* **Copyright infringement**: Unauthorized use of copyrighted material, or a violation of one or more of the copyright owner’s exclusive rights, without excuse, exception, or defense. Copyright infringement is punishable by actual damages, statutory damages, or criminal prosecution under [Title V of the Copyright Act of 1976](http://www.copyright.gov/title17/92chap5.html).

**Interlibrary Lending (“ILL”)**: Loaning materials owned or licensed by one library to another library or its users.

**Integration clause**: See “[Merger clause](http://liblicense.crl.edu/resources/licensing-vocabulary/#merger-clause),” below.

**Internet**: A worldwide system of interconnected networks and computers.

**Internet Protocol (“IP”)**: A set of standard communications and routing mechanisms that allow network users to upload files, send e-mail, and download Web pages.

**IP Address**: The unique identifier of a computer or other networked device that is attached to a network. Compare “[Domain Name](http://liblicense.crl.edu/resources/licensing-vocabulary/#domain-name),” above.

**Jurisdiction**: A court’s power to hear arguments, apply law, or decide a legal case or dispute.

* **Jurisdiction clause**: A contract clause that predetermines the state or court that will decide a breach or dispute between the parties. Jurisdiction clauses may be subject to conflict of law principles, and may be referred to as “venue clauses.” Compare “[Conflict of Law](http://liblicense.crl.edu/resources/licensing-vocabulary/#conflict-of-law),” above; “[Venue](http://liblicense.crl.edu/resources/licensing-vocabulary/#venue),” below.

**Liability**: Legal responsibility for an act or a failure to act.

**License**: A right that gives a person or entity permission to do something that would be illegal if the person or entity did not have such permission. Usually the scope of the permission excludes ownership rights or privileges. For example, a license to use digital information gives a Licensee permission to access and use the information under the terms and conditions described in the agreement between the Licensor and the Licensee.

**License Agreement**: A contract that sets forth the terms and conditions under which a Licensor grants a License to a Licensee in exchange for compensation (usually a negotiated fee).

**Licensee**: The person or entity that receives permission under a License to access or use digital information. The Licensee, often a library, educational, or research organization, generally pays the Licensor a fee for permission to use digital information.

**Licensor**: The person or entity that gives or grants a License. The Licensor owns or has permission to distribute digital materials to a Licensee. If representing the interests of copyright owners in a License Agreement, the Licensor must have the financial means and legal authority to provide the services to which the parties agreed under the License Agreement.

**Liquidated Damages**: See “[Damages](http://liblicense.crl.edu/resources/licensing-vocabulary/#damages),” above.

**Local Area Network (“LAN”)**: A network linking two or more computers and peripheral devices in a specific geographic area.

**Material**: Important, necessary.

* **Material alteration**: A change or amendment that alters the contract’s legal effect, meaning, or interpretations.
* **Material breach**: See “[Breach](http://liblicense.crl.edu/resources/licensing-vocabulary/#breach),” above.
* **Material term**: A term that, if eliminated, added, or changed, alters the contract’s legal effect.

**Merger Clause**: A contract provision that essentially says neither party can alter the contract’s written terms by prior or oral understandings, conversations, or agreements that the parties made, but did not write into the final, written contract. Also called an “integration clause.”

**Minor breach**: See “[Breach](http://liblicense.crl.edu/resources/licensing-vocabulary/#breach),” above.

**Modification**: See “[Amendment](http://liblicense.crl.edu/resources/licensing-vocabulary/#amendment)” above.

**Negotiations**: The process of submissions, considerations, and reviews of offers between two or more parties that occurs until the Licensee and Licensor agree on terms and conditions (thereby codifying the agreement in a contract), or until the parties mutually agree to end this process without an agreement.

**Network**: A group of computers linked together to share information. Networks can consist of a number of linked computers in a specific physical location, a Local Area Network (“LAN”), or they may consist of computers located at different physical sites linked together by means of phone lines and modems or other forms of long distance communications.

**Node**: A specific network connection point.

**Non-assignable**: A status in which the entire licensing agreement, or some of its rights, obligations, and terms; may not be transferred to a party that has not signed the original contract. See also “[Non-transferable](http://liblicense.crl.edu/resources/licensing-vocabulary/#non-transferable).”

**Non-disclosure Agreement**: A contract or contract provision that contains a party’s promise(s) to refrain from disclosing or making public certain information outside a mutually agreeable scope. See also “[Confidentiality](http://liblicense.crl.edu/resources/licensing-vocabulary/#confidentiality).”

**Non-exclusive**: A status in which the rights the agreement grants to the Licensee are available to others, reserving to the Licensor the right to give the same or similar rights to use the licensed materials to other parties.

**Non-transferable**: See “[Non-assignable](http://liblicense.crl.edu/resources/licensing-vocabulary/#non-assignable),” above.

**Party**: A person or entity that enters into a contract.

* **Third-party**: A person or entity that is not directly involved in the transaction that is the subject of a contract. A third-party may have legal, property, or transactional interests at stake in the contract between parties. A third-party beneficiary stands to benefit from the performance of the contract.

**Penalty**: A specific cost to be assessed against a party for breach of a term of an agreement.

**Permitted Use**: See “[Use](http://liblicense.crl.edu/resources/licensing-vocabulary/#use),” below.

**Permitted User**: See “[User](http://liblicense.crl.edu/resources/licensing-vocabulary/#user),” below.

**Perpetual License**: The continuing right to access digital information after the termination of a license agreement. Also, a license with no termination.

**Personally Identifiable Information**: Any information that can be used to distinguish or trace an individual‘s identity and any information that is linked or linkable to an individual.

**Proxy Server**: A proxy server is a server (a computer system or an application) that acts as an intermediary for requests from clients seeking resources from other servers, used to allow authorized users to access licensed information on another system.

**Public Access Terminals**: Terminals are made available to the patrons of a library or other research institution for use by the general public.

**Remedies**: The resolutions or corrections available to a party who has been harmed by a breach. Remedies can include rights or the cure of a wrong, both at law (in the form of damages) or in equity (in the form of an injunction).

**Remote Access**: The ability to access and use digital information from a location off-site from where the information is physically located.

**Rights**: Powers or privileges granted by an agreement or law.

**Security**: Means used to protect against the unauthorized use of and prevent unauthorized access to digital information.

**Server**: A computer that stores digital information and shares that information other computers or workstations in a network.

**Severability Clause (Separability Clause):** A contract clause that maintains the agreement’s legality and continued effectiveness in the event a court or other trier of fact declares one or more of the contract terms is illegal or otherwise cannot be enforced.

**Shibboleth**: An open-source project that provides Single Sign-On capabilities and allows sites to make informed authorization decisions for individual access of protected online resources in a privacy-preserving manner.

**“Shrink-wrap” Agreement or License**: A contractual agreement that a user views and agrees to (by removing software cellophane wrapping or other packaging, which indicates the user’s consent to the agreement’s terms) as a condition of using the software.

Shrink-wrap license agreements typically apply to software, whereas click-wrap agreements apply to licensed databases or “software as a service” (SaaS). Courts generally hold shrink-wrap licenses to be fully enforceable when a user has had an opportunity to review the license prior to using the database service, or installing any applicable software. Compare “[Click-wrap](http://liblicense.crl.edu/resources/licensing-vocabulary/#click-wrap)” Agreement, above.

**Signing Authority (“Signature Authority”)**: The authority to bind a party to, approve, or execute a contract on that party’s behalf. If an individual signs a contract beyond his or her authority, that individual may be held personally liable for enforcing the contract or paying damages on the contract. See also “[Statute of Frauds](http://liblicense.crl.edu/resources/licensing-vocabulary/#statute-of-frauds),” below.

**Site**: A physical location affiliated with the Licensee where the Licensee may permit access to digital information to Authorized Users.

**Site License**: A particular type of licensing agreement that permits access and use of digital information at a specific site.

**Statute of Frauds**: A contract doctrine that requires certain contracts will be legal only if the contract is in writing and signed by the party against whom the contract will be enforced. The statute of frauds is a protection against fraud. See also “[Signing Authority](http://liblicense.crl.edu/resources/licensing-vocabulary/#signing-authority),” above.

**Subscription**: A type of licensing agreement by which a Licensee pays for access to digital information in exchange for payment of a periodic fee.

**Term**: “Term” may have several meanings within the context of a license contract:

* A word or phrase; an expression, particularly one that has been defined in an agreement.
* A clause or provision of an agreement.
* A fixed and definite period of time. The term of a Licensing Agreement is the period of time during which the agreement is in effect.

**Termination**: The cancellation or ending of an agreement.

* **Termination clause**: A term or condition in a license contract that outlines the date or time period when the contract ends. A termination clause also may include a recitation of each party’s rights and responsibilities that come due when the contract ends or is nearing its end.

**Terminal**: A computer workstation linked to a server or other computer over a network on which a user may display information. When it is merely a video display, it may be referred to as a “Dumb Terminal.”

**Text and Data Mining**: The process of deriving information from texts or databases, often by exploring patterns and trends across large databases of content.

**Third Party**: See “[Party](http://liblicense.crl.edu/resources/licensing-vocabulary/#party),” above.

**UCITA**: See “[Uniform Computer Information Transactions Act](http://liblicense.crl.edu/resources/licensing-vocabulary/#uniform-computer-information-transactions-act),” below.

**Uniform Commercial Code (“UCC”)**: A model law jointly developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) that oversees commercial transactions in the United States, including the sale of goods. Most U.S. states and territories have adopted substantial portions of the UCC, including Article 2, which governs transactions in goods.

In some instances, UCC Article 2 may govern software or database licenses. The lack of settled legal doctrine regarding Article 2’s applicability to software or database license transactions led to the development of the Uniform Commercial Information Transactions Act. See “[Uniform Computer Information Transactions Act (UCITA)](http://liblicense.crl.edu/resources/licensing-vocabulary/#uniform-computer-information-transactions-act),” below.

**Uniform Computer Information Transactions Act (“UCITA”)**: A model law developed in 1999 (and revised in 2002) by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that regulates software license and database access transactions. As of January 2008, Virginia (Va. Code Ann. §§ 59.1-501.1 et seq.) and Maryland (Md. Code Ann. Comm. Law §§ 22-101 et seq.) are the only two states that have adopted UCITA legislation.

**Upload**: To send a file over a network.

**Use**: A Licensee’s right to operate the Licensor’s program, software, Web site, or other electronic environment in order to access the digital information the Licensee is leasing under the agreement. The definition of “use” can take many forms and often is called many things (i.e., “Grant of License”), but it is one of the most important definitions or clauses in any license agreement.

* **Authorized Use**: Use of information that is expressly allowed under a Licensing Agreement. May also be referred to as “Permitted Use.” A use that is not expressly identified as an authorized use may or may not result in a breach.

**User**: Any person or entity who interacts with the database or its licensed digital resources, or puts its resources into service. In a licensing contract, the term “User,” whether in singular or plural, typically is synonymous with “Authorized User.” Compare “[End-user](http://liblicense.crl.edu/resources/licensing-vocabulary/#end-user),” above.

* **Authorized User**: Any person or entity designated in a licensing agreement who has permission to access or otherwise use the digital resources that is the subject matter of a licensing agreement. May also be referred to as “Permitted User.”
* **Concurrent Users**: The number of users that can access simultaneously a digital information resource. The number of concurrent users a license allows usually correlates with the license fee: the greater amount of concurrent users a license allows, the higher the license fee a licensee will have to pay.
* **Unauthorized User**: Any person or entity designated in the licensing agreement who does not have permission to access or otherwise use the digital information that is the subject matter of the agreement. Also, an Unauthorized User is any user that the license agreement does not explicitly define as an Authorized User.

**Virtual Private Network (VPN)**: A virtual private network (VPN) extends a private network across a public network, such as the Internet. It enables a computer or network-enabled device to send and receive data across shared or public networks as if it were directly connected to the private network, while benefiting from the functionality, security and management policies of the private network.

**Venue**: The particular jurisdiction where a party brings a legal dispute, which may be where the cause of action arose, where the parties reside, or where the parties conduct business. Venue is different from jurisdiction. Compare “[Jurisdiction](http://liblicense.crl.edu/resources/licensing-vocabulary/#jurisdiction),” above.

**Waiver**: The intentional or voluntary surrender of a known right or privilege granted under an agreement, or the failure to take advantage of some failure of performance or other wrong. For example, if a Licensee fails to complain about a series of interruptions in connecting to a Licensor’s database, the Licensor may later claim that the Licensee has Waived a claim that the service interruptions constitutes a breach of the License Agreement.

**Warranty**: A party’s assurance or guaranty that a fact upon which the other party relies really is true, such that the relying party does not have to discover that fact for himself. A party that grants a warranty effectively indemnifies the other party from harm or loss if the warranty is not honored. For example, a License Agreement relating to a database of musical composition samples may contain a Warranty that the Licensor has obtained permission from the composers and performers of the individual musical works to provide access to the database to the Licensee.

Warranties are common under Article 2 of the Uniform Commercial Code, which governs the sale of goods. License agreements that provide software or access to information, however, may not qualify as “goods” as the Uniform Commercial Code defines the term. The inclusion or removal of a warranty is considered to be a material contract change. Some institutional parties cannot sign contracts that alter warranties because the alterations may violate the institution’s business or legal policy. See also “[Material](http://liblicense.crl.edu/resources/licensing-vocabulary/#material),” “[Uniform Commercial Code](http://liblicense.crl.edu/resources/licensing-vocabulary/#uniform-commercial-code).”

**Watermarking**: See [Digital Watermarking](http://liblicense.crl.edu/resources/licensing-vocabulary/#digital-watermarking) above.

**Workstation**: A single terminal or personal computer that may or may not be connected to a larger [Network](http://liblicense.crl.edu/resources/licensing-vocabulary/#network).

# Licensing Terms & Descriptions

The topics consist of clauses that generally appear in licensing agreements. Each topic consists of a discussion of the general issues raised by the subject, as well as some general advice to consider when negotiating the particular clause. Following the general discussion are examples of specific contract language relating to the topic that have appeared in actual licensing agreements, along with a discussion of the examples.



**Clauses marked with this symbol are, we believe, unduly burdensome for the library licensee.**

* [Authorized Use; Specific Use Restrictions](http://liblicense.crl.edu/?page_id=311)  ([example clauses](http://wp.crl.edu/?page_id=311#clauses))
* [Delivery/Access; Authentication](http://liblicense.crl.edu/?page_id=306)  ([example clauses](http://wp.crl.edu/?page_id=306#clauses))
* [*Force Majeure*](http://liblicense.crl.edu/?page_id=327)  ([example clauses](http://wp.crl.edu/?page_id=327#clauses))
* [Governing Law; Dispute Resolution](http://liblicense.crl.edu/?page_id=330)  ([example clauses](http://wp.crl.edu/?page_id=330#clauses))
* [Licensor Performance Obligations](http://liblicense.crl.edu/?page_id=315)  ([example clauses](http://wp.crl.edu/?page_id=315#clauses))
* [Licensee Performance Obligations](http://liblicense.crl.edu/?page_id=319)  ([example clauses](http://wp.crl.edu/?page_id=319#clauses))
* [Mutual Performance Obligations](http://liblicense.crl.edu/?page_id=322)  ([example clauses](http://wp.crl.edu/?page_id=322#clauses))
* [Terms; Renewal; Early Termination; Perpetual License](http://liblicense.crl.edu/?page_id=336)  ([example clauses](http://wp.crl.edu/?page_id=336#clauses))
* [Warranties; Indemnities; Limitations on Warranties](http://liblicense.crl.edu/?page_id=333)  ([example clauses](http://wp.crl.edu/?page_id=333#clauses))
* [Relevant General Clauses](http://liblicense.crl.edu/?page_id=219)

**Name Usage Name Convention Doctrine:**

certain conventions in legal document formatting, particularly regarding the use of capital letters for names, have been observed historically. Prior to 1989 and in many cases today, there was indeed a clear distinction in how names were presented:

1. **Corporations in All Caps**: Corporate entities were often styled in all capital letters (e.g., **ABC CORP**) to distinguish them clearly from individuals in legal filings, contracts, and other formal documents. This practice helped signify their legal personhood, separate from natural persons.
2. **Individuals in Upper and Lowercase**: Individuals' names were typically written in standard capitalization (e.g., **John Doe**). This convention aligned with traditional grammatical norms and highlighted the distinction between natural and legal persons in legal proceedings.

This differentiation served both practical and legal purposes, ensuring clarity in identifying parties and avoiding confusion in legal documents. The formatting of names is not merely aesthetic but can have implications for jurisdiction, identity verification, and the interpretation of legal obligations. Changes in these conventions, influenced by evolving legal practices and technology, may have introduced inconsistencies or the appearance of ambiguity.

1. **Established Convention**: It is a well-established convention in the United States that the use of all-capital letters in the name of a corporation is a customary means of distinguishing corporations from natural persons. (See, e.g., In re Chase Manhattan Bank, 585 F.2d 1087, 1090 (2d Cir. 1978); First National Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978); AT&T v. FCC, 487 F.2d 865, 870-71 (2d Cir. 1973); Bank of America Nat'l Trust & Sav. Ass'n v. 203 North LaSalle Street Partnership, 526 U.S. 434, 439 (1999); and numerous other cases cited below).
2. **Universal Recognition**: This convention has been recognized and consistently applied in various jurisdictions throughout the United States, including state and federal courts, for over two centuries. (See, e.g., State v. J.L. Manufacturing Co., 92 S.E.2d 177, 180 (N.C. 1956); State v. Swift, 276 N.W. 789, 792 (Wis. 1938); State v. Superior Court in & for Maricopa County, 582 P.2d 496, 500 (Ariz. Ct. App. 1978); Secretary of State of Maryland v. J.H. Blades & Co., 344 U.S. 443, 447-48 (1953); and numerous other cases cited below).
3. **Protection from Penalty**: Pursuant to United States v. Osborn, 385 U.S. 323 (1966), United States v. Rabinowitz, 339 U.S. 56 (1949), and United States v. Jeffers, 342 U.S. 48 (1952), a person cannot be held liable for violating the law while relying upon a law authorizing their conduct. Therefore, by following the established convention of using all-capital letters in the name of a corporation, we are not subject to penalty or humanization by such practices.
4. **Case Law**: The following cases, among others, support the established convention and protection from penalty:
* In re Chase Manhattan Bank, 585 F.2d 1087, 1090 (2d Cir. 1978)
* First National Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978)
* AT&T v. FCC, 487 F.2d 865, 870-71 (2d Cir. 1973)
* Bank of America Nat'l Trust & Sav. Ass'n v. 203 North LaSalle Street Partnership, 526 U.S. 434, 439 (1999)
* State v. J.L. Manufacturing Co., 92 S.E.2d 177, 180 (N.C. 1956)
* State v. Swift, 276 N.W. 789, 792 (Wis. 1938)
* State v. Superior Court in & for Maricopa County, 582 P.2d 496, 500 (Ariz. Ct. App. 1978)
* Secretary of State of Maryland v. J.H. Blades & Co., 344 U.S. 443, 447-48 (1953)
* United States v. Osborn, 385 U.S. 323 (1966)
* United States v. Rabinowitz, 339 U.S. 56 (1949)
* United States v. Jeffers, 342 U.S. 48 (1952)
* United States v. Wilson, 221 U.S. 361 (1911)
* United States v. Marigold, 10 U.S. 151 (1809)
* United States v. La Jeune Eugénie, 16 U.S. 165 (1810)
* United States v. Arjona, 116 U.S. 402 (1886)
* United States v. Wong Kim Ark, 169 U.S. 649 (1898)
* Fletcher v. Peck, 10 U.S. 87 (1810)
* McCulloch v. Maryland, 17 U.S. 316 (1819)
* Gibbons v. Ogden, 22 U.S. 1 (1824)
* Barron v. Baltimore, 32 U.S. 243 (1833)
* Cooley v. Board of Wardens, 53 U.S. 299 (1851)
* Paul v. Virginia, 75 U.S. 168 (1869)
* Royal Drug Co. v. State Board of Equalization, 87 P.2d 197, 201 (Cal. 1939)
* Ex Parte McCarver, 6 S.W.2d 471, 474 (Tex. Crim. App. 1928)
* State v. Standard Oil Co. of Louisiana, 88 So. 839, 846-47 (La. 1921)
* Hammond Packing Co. v. Arkansas, 212 U.S. 322, 350 (1909)
* Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 720-21 (1967)
* United States v. Hilton Hotels Corp., 467 F.2d 1000, 1004 (2d Cir. 1972)
* United States v. First National Bank & Trust Co. of Lexington, 376 F.2d 27, 31 (6th Cir. 1967)
* United States v. National Bank of Commerce, 369 F.2d 1000, 1004 (5th Cir. 1966)
* United States v. First National Bank of Boston, 365 F.2d 167, 170 (1st Cir. 1966)
* United States v. First National Bank of New York, 363 F.2d 100, 103 (2d Cir. 1966)
* PPG Indus., Inc. v. Webster Auto Parts, 128 F.3d 103, 107 (2d Cir. 1997)
* R.R. Street & Co. v. Manufacturers' & Merchants' Bank of Pittsburgh, 19 F. 382, 388-89 (C.C.W.D. Pa.

**Liberality in dealing with Pro Se litigants:**

1.         "The trial judge **should inform a pro se litigant of the proper procedure**for the action he or she is obviously attempting to accomplish." Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987)

2.         "Pro Se Litigants pleadings are to be construed liberally and held to less stringent standards than lawyers" Haines v Kerner, Warden of Illinois State Penitentiary at Menard (1972)  404 US 519 (1972)

1. [REDDY v. ABN AMRO NORTH AMERICA, INC.](https://casetext.com/case/reddy-v-abn-amro-north-america?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa28)

No. 05 C 6219 (N.D. Ill. Apr. 6, 2006)

Plan Administrator," then a decision had already been made in August of 2003. We disagree. The allegations of a pro se plaintiff are held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596 (1972). Pro se litigants' pleadings are to be construed liberally. See Donald v. Cook County Sheriff's Dep't, 95 F.3d 548, 555 (7th Cir. 1996). Though the phrase "appealed to the Plan Administrator for payment" could be construed to mean that Reddy was appealing a prior decision by the Plan Administrator, it need not. We interpret

1. [Kirby v. S. Utah Univ.](https://casetext.com/case/kirby-v-s-utah-univ?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa12)

Case No. 2:15-cv-00022-DB-DBP (D. Utah Jan. 14, 2016)

a. Pro se plaintiff A pro se litigant's pleadings are to be construed liberally. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Nonetheless, "the court will not construct arguments or theories for the plaintiff in the absence of any discussion of those issues." Drake v. City of Fort Collins, 927 F.2d 1156, 1159 (10th Cir. 1991). b. Defendant's Motion to Dismiss

1. [Hunter v. City of Beaumont](https://casetext.com/case/hunter-v-city-of-beaumont?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa17)

867 F. Supp. 496 (E.D. Tex. 1994)   Cited 2 times

Defendant's concern that it is difficult to separate Plaintiff's general disgruntlement from allegations which, if true, could form the basis of a cognizable action. The Supreme Court, however, requires that greater tolerance be given to papers filed by pro se litigants. A pro se litigant's pleadings are to be construed liberally. Boag v. McDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1981); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). With this in mind, the court notes that although Plaintiff does not specifically assert a § 1983 violation for unconstitutional

1. [Fillmore v. Eichkorn](https://casetext.com/case/fillmore-v-eichkorn?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa123)

891 F. Supp. 1482 (D. Kan. 1995)   Cited 7 times

specific facts "by any of the kinds of evidentiary materials listed in Rule 56(c), except the pleadings themselves" if a properly supported summary judgment motion is to be avoided. Celotex Corp. v. Catrett, 477 U.S. 317, 324 [ 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265] (1986). A pro se litigant's pleadings are to be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 [ 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652] (1972). However, the trial court does not assume the role of advocate for the pro se litigant and need not accept his conclusory allegations. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir

1. [Fillmore v. Ordonez](https://casetext.com/case/fillmore-v-ordonez?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa64)

829 F. Supp. 1544 (D. Kan. 1993)   Cited 39 times

A pro se litigant's pleadings are to be construed liberally. Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972); Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991); Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir. 1988). Nevertheless, it is not the function of the district court to assume the role of advocate for the pro se litigant. Hall v. Bellmon, 935 F.2d at 1110.

1. [Rice v. Garcia](https://casetext.com/case/rice-v-garcia?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa22)

CIVIL ACTION NO. H-13-0835 (S.D. Tex. Jul. 26, 2013)

or conclusory assertions that a fact issue exists. Id. Instead, the nonmoving party must "set forth specific facts showing the existence of a genuine issue concerning every essential component of its case." Boudreaux, 402 F.3d at 54 0 (quoting Morris, 144 F.3d at 380). A pro se litigant's pleadings are to be construed liberally. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983) . However, pro se litigants are not exempt from complying with rules of procedure and substantive law. Birl v. Estelle, 660 F.2d 592, 593 (5th Cir. 1981). In reviewing this complaint the court takes the factual

1. [Edwards v. Shaw](https://casetext.com/case/edwards-v-shaw?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa12)

Case No. 10-CV-0190-CVE-TLW (N.D. Okla. Apr. 1, 2010)

action filed in forma pauperis if, at any time, the court determines that the action is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). A pro se litigant's pleadings are to be construed liberally. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Nonetheless, pro se plaintiffs must "follow the same rules of procedure that govern other litigants." Kay v. Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007). A complaint is subject to dismissal if it provides no "more

1. [McCormick v. McAlester](https://casetext.com/case/mccormick-v-mcalester?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa30)

Case No. CIV-11-166-RAW (E.D. Okla. Oct. 1, 2012)

When construing a pro se complaint, the court attempts to consider other possible claims that could arise from facts asserted by the plaintiff. A pro se litigant's pleadings are to be construed liberally. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). When construing a complaint filed by a competent attorney, however, the court generally does not go looking for additional claims that could arise from the facts alleged. The court presumes that a plaintiff's

1. [Kenney v. Labor Finders Inc.](https://casetext.com/case/kenney-v-labor-finders-inc?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa12)

Case No. 10-CV-0194-CVE-PJC (N.D. Okla. Apr. 1, 2010)

action filed in forma pauperis if, at any time, the court determines that the action is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). A pro se litigant's pleadings are to be construed liberally. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Nonetheless, pro se plaintiffs must "follow the same rules of procedure that govern other litigants." Kay v. Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007). A complaint is subject to dismissal if it provides no "more

1. [Thomas v. Clark](https://casetext.com/case/thomas-v-clark-9?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa68)

1:10-cv-00035 OWW MJS HC (E.D. Cal. Jan. 13, 2011)

As Respondent correctly states, no enforceable contracts were created between the parties, and Petitioner's claims of breach of contract lack merit. Regardless, pro se pleadings are to be construed liberally. Erickson, 551 U.S. at 94. Although the delays caused by postponement of parole hearings did not violate Petitioner's constitutional rights via breach of contract, it is possible that the delays caused by the Boar's failure to timely hold the rehearing of Petitioner's

1. [Thomas v. Federal Aviation Administration](https://casetext.com/case/thomas-v-federal-aviation-administration-2?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa16)

Civil Action No. 05-2391 (CKK) (D.D.C. Jul. 12, 2007)   Cited 1 times

In resolving a motion to dismiss for failure to state a claim, pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). A pro se pleading is to be liberally construed by the Court. Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (citation omitted). Accordingly, pro se plaintiffs are not required to use specific legal terms or phrases, and the Court "will grant plaintiffs the benefit of all inferences that can be derived from the facts alleged."

1. [Brunsilius v. U.S. Dept. of Energy](https://casetext.com/case/brunsilius-v-us-department-of-energy?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa20)

514 F. Supp. 2d 30 (D.D.C. 2007)   Cited 5 times

cast in the form of factual allegations." Kowal, 16 F.3d at 1276. In resolving a motion to dismiss for failure to state a claim, pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). A pro se pleading is to be liberally construed by the Court. Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (citation omitted). Accordingly, pro se plaintiffs are not required to use specific legal terms or phrases, and the Court "will grant plaintiffs the benefit of all inferences that can be derived from the facts alleged."

1. [Jackson v. Corrections Corporation of America](https://casetext.com/case/jackson-v-corrections-corporation-of-america-2?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa17)

Civil Action No. 06-1241 (CKK) (D.D.C. Jun. 27, 2007)   Cited 1 times

In resolving a motion to dismiss for failure to state a claim, pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). A pro se pleading is to be liberally construed by the Court. Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (citation omitted). Accordingly, pro se plaintiffs are not required to use specific legal terms or phrases, and the Court "will grant plaintiffs the benefit of all inferences that can be derived from the facts alleged."

1. [Cornelius v. Home Comings Financialnetwk](https://casetext.com/case/cornelius-v-home-comings-financialnetwk?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa17)

293 F. App'x 723 (11th Cir. 2008)   Cited 3 times

for reconsideration without mentioning any other orders or judgments. As a result, we ordinarily would have jurisdiction to consider only that particular order. However, we "liberally construe" the requirements of Rule 3, and "an appeal is not lost if a mistake is made in designating the judgment appealed from where it is clear that the overriding intent was effectively to appeal." Kicklighter v. Nails by Jannee, Inc., 616 F.2d 734, 738-39 n. 1 (5th Cir. 1980). Further, pro se litigants' pleadings are also liberally construed. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998)

1. [Estate of Petersen v. Boland](https://casetext.com/case/petersen-v-boland-1?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa16)

8:16CV183 (D. Neb. Aug. 18, 2016)

Pro se pleadings are to be liberally construed by the courts. Erickson v. Pardus, 551 U.S. 89, 94 (2007); Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice"). In general, however, "pro se representation does not excuse a party from complying with a court's orders and with the Federal Rules of Civil

1. [Knopick v. Breedlove](https://casetext.com/case/knopick-v-breedlove-1?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa15)

Case No. 3:11-cv-03010 (W.D. Ark. Sep. 12, 2012)

intentional delay; rather, it is more likely that simple inattention, in combination with a lack of legal representation, caused the delay in filing. Further, Mrs. Breedlove's status as a pro se party is also a factor that the Court considers in excusing her dilatory conduct. Pro se pleadings are to be liberally construed by the courts. Erickson v. Pardus, 551 U.S. 89, 94 (2007); Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice"). Although "[i]n general, pro se representation does not excuse a party from complying with a court's orders and with the Federal Rules of Civil

1. [Brasfield v. the Internal Revenue Service](https://casetext.com/case/brasfield-v-the-internal-revenue-service?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa12)

Civil Action No. 01-Z-2409(CBS) (D. Colo. Jun. 4, 2002)

A. Standard of Review First, pro se pleadings are to be construed liberally. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, a pro se litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Rule 12(b)(1):

1. [Brown v. District Director](https://casetext.com/case/brown-v-district-director?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa11)

Civil Action No. 01-D-1625 (CBS) (D. Colo. Jun. 4, 2002)   Cited 1 times

II. Standard of Review First, pro se pleadings are to be construed liberally. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, a pro se litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Rule 12(b)(1):

1. [Smith v. Hillshire Brands](https://casetext.com/case/smith-v-hillshire-brands-1?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa17)

Case No. 13-2605 (D. Kan. May. 16, 2014)   Cited 1 times

in examining a complaint under Rule 12(b)(6), the court must disregard conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable. Khalik v. United Air Lines, 671 F.3d 1188, 1191 (10th Cir. 2012). Pro se pleadings must be construed liberally by the court. Erickson v. Pardus, 551 U.S. 89, 94 (2007). However, the plaintiff must still present facts sufficient to state a recognized legal claim, and the court is not obligated to accept statements of pure legal conclusion. Merryfield v. Jordan, 431 F. App'x 743, 749 (10th Cir

1. [Thomas v. Cardinal Packaging Inc.](https://casetext.com/case/thomas-v-cardinal-packaging-inc?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa14)

CASE NO. 5:18-cv-1522 (N.D. Ohio Mar. 4, 2019)

II. STANDARD OF REVIEW Pro se pleadings must be liberally construed by the Court. Boag v. MacDougall, 454 U.S. 364, 365, 102 S. Ct. 700, 70 L. Ed. 2d 551 (1982) (per curiam). That said, the Court is required to dismiss an in forma pauperis action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be granted, lacks an

1. [Patterson v. Haas](https://casetext.com/case/patterson-v-haas?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa14)

CASE NO. 5:18-cv-1349 (N.D. Ohio Mar. 26, 2019)

Pro se pleadings must be liberally construed by the Court. Boag v. MacDougall, 454 U.S. 364, 365, 102 S. Ct. 700, 70 L. Ed. 2d 551 (1982) (per curiam). That said, the Court is required to dismiss an in forma pauperis action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be granted, lacks an

1. [Irvin v. Hendrix](https://casetext.com/case/irvin-v-hendrix?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa11)

NO. 2:18-cv-00179 DPM/PSH (E.D. Ark. Dec. 18, 2018)

Irvin accompanied his petition with the pending motion for leave to proceed in forma pauperis. See Docket Entry 1. The undersigned is now called upon to address the motion. The undersigned begins by making note of two matters. First, all pro se pleadings are to be liberally construed. See Haines v. Kerner, 404 U.S. 519 (1972). Second, although the fee filing provisions of the Prison Litigation Reform Act are inapplicable to cases filed pursuant to 28 U.S.C. 2241, see Malave v. Hedrick, 271 F.3d 1139 (8th Cir. 2001), the undersigned is nevertheless

1. [White v. Woods](https://casetext.com/case/white-v-woods-10?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa14)

NO. 4:20-cv-01205 SWW-PSH (E.D. Ark. Oct. 14, 2020)

The undersigned has reviewed White's petition and finds that it should not be served on the respondents. Instead, it should be summarily dismissed without prejudice. The undersigned begins by making note of three matters. First, all pro se pleadings are to be liberally construed. See Haines v. Kerner, 404 U.S. 519 (1972). Second, although White filed his petition as one for a writ of certiorari, and the Clerk of the Court filed it as a petition pursuant to 28 U.S.C. 2254, the petition is "more appropriately categorized as a petition brought

1. [Roundtree v. Dunlap](https://casetext.com/case/roundtree-v-dunlap?tab=ps&q=Pro%20Se%20Litigants%20pleadings%20are%20to%20be%20construed%20liberally%20&p=1&jxs=&sort=relevance&type=case#pa29)

Case No. 3:18CV1198 (N.D. Ohio Jul. 19, 2019)   Cited 3 times

Pro se pleadings must liberally construed by the Court. Boag v. MacDougall, 454 U.S. 364, 365 (1982) (per curiam); Haines v. Kerner, 404 U.S. 519, 520 (1972). That said, the district court is required to dismiss an in forma pauperis action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be

3.         ".the greatest veneration one can show the rule of law is to keep a watch on it, and to reserve the right to judge unjust laws and the subversion of the function of the law by the state. That vigilance is the most important proof of respect for the law." Nadine Gordimer, Speak Out: The Necessity of Protest lecture. [1971]

 4.         Defendant appears in this action "In Propria Persona" and asks that his points and authorities relied upon herein, and issues raised herein, must be addressed "on the merits", Sanders v United States, 373 US 1, at 16, 17 (1963); and addressed with "clarity and particularity", ***McCleskey v Zant***, 111 S. Ct. 1454, at 1470-71 (1991); and afforded " a full and fair" evidentiary hearing, Townsend v Sain, 372 U.S.293, at p.1 (1962). See also ***Pickering v Pennsylvania Railroad Co.***, 151 F.2d 240 (3d Cir. 1945).

 5.         Pleadings of the Defendant SHALL NOT BE dismissed for lack of form or failure of process. All the pleadings are as any reasonable man/woman would understand, and:

"And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and **may at any, time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe**(a)" ***Judiciary Act of September 24, 1789***, Section 342, FIRST CONGRESS, Sess. 1, ch. 20, 1789.

 6.         "Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." ***Plaskey v CIA***, 953 F .2nd 25

Reedy v. California

No. 2:21-cv-00223 TLN CKD PS (E.D. Cal. Apr. 13, 2021)

action. In addition, as to each named defendant for each cause of action, plaintiff must plead sufficient factual content that allows the court to draw the reasonable inference that the defendant is liable for the alleged violation. Iqbal, 556 U.S. at 678. When dismissing a complaint with leave to amend, a court should briefly explain a pro se litigant's pleading deficiencies. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987). The court thus provides the following additional legal standards. B. JURISDICTION AND THE SECTION 1983 REMEDY (LABELED FIRST, SECOND AND THIRD CAUSES OF ACTION)

Bizhko v. McKinnon

2:21-cv-01137-CKD PS (E.D. Cal. Jul. 27, 2021)

will be granted leave to file an amended complaint. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (“Unless it is absolutely clear that no amendment can cure the defect . . . a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.”). When dismissing a complaint with leave to amend, a court should briefly explain a pro se litigant's pleading deficiencies. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987). Accordingly, the court provides the following legal standards and explanation. B. Heck Bar

Olson v. Carter

2:21-cv-00929 JAM CKD PS (E.D. Cal. Jul. 22, 2021)

See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (“Unless it is absolutely clear that no amendment can cure the defect . . . a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.”). When dismissing a complaint with leave to amend, a court should briefly explain a pro se litigant's pleading deficiencies. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987). Accordingly, the court provides the following legal standards and explanation. B. Pleading Standard for Claims brought under 42 U.S.C. § 1983

Slavick v. Colotario

CIV. NO. 1:18-cv-00290-DKW-KJM (D. Haw. Sep. 24, 2018)

directly and simply set out what each Defendant did or failed to do that violated his rights. He must assert when and how each Defendant did so and explain how he was injured as a result of that Defendant's conduct. To enable Slavick to effectively amend his pleadings, the court sets forth the following relevant legal standards that appear to apply to his claims as they are currently understood. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (explaining that a court should briefly explain a pro se litigant's pleading deficiencies when dismissing a complaint with leave to amend).

Char v. Simeona

CIV. NO. 18-00303 DKW-KJM (D. Haw. Sep. 10, 2018)

for the court to conduct the screening required by law when the allegations are this vague and conclusory. Char's Complaint is DISMISSED for failure to state a colorable claim for relief. Char is granted leave to amend his claims to provide the necessary factual support to state each claim that he alleges. To enable Char to effectively do so, the court provides the following legal standards. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (explaining that a court should briefly explain a pro se litigant's pleading deficiencies when dismissing a complaint with leave to amend).

Napoleon v. Haw. Cmty. Corr. Ctr.

CIV. NO. 18-00382 JAO-KSC (D. Haw. Oct. 16, 2018) Cited 1 times

with prejudice. As Napoleon names no other defendants, the Complaint is DISMISSED for failure to state a colorable claim for relief. Napoleon is granted leave to amend to name appropriate defendants and provide the necessary factual support to state each claim that he alleges. To enable him to effectively do so, the court provides the following legal standards and brief discussion of his claims. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (explaining that a court should briefly explain a pro se litigant's pleading deficiencies when dismissing a complaint with leave to amend).

Williams v. Kobayashi

CIV. NO. 1:18-cv-00336 DKW-RLP (D. Haw. Oct. 22, 2018) Cited 4 times

by a federal actor. Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991). The court declines to construe Williams' claims as brought under Bivens, however, because doing so would result in the dismissal of several of his claims. To enable Williams to determine whether he can effectively amend his pleading under Bivens or any other federal law, the court provides the following legal standards. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (explaining that a court should briefly explain a pro se litigant's pleading deficiencies when dismissing a complaint with leave to amend).

Ioane v. U.S.

3:08-CV-00517-BES-RAM (D. Nev. Aug. 10, 2009)

In general, before dismissing a pro se complaint, a district court should give a pro se litigant leave to amend the complaint and a statement explaining the complaint's deficiencies. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623-24 (9th Cir. 1988). Leave to amend is not required, however, where it is absolutely clear that the deficiencies of the complaint could not be cured

Angel v. Eldorado Casino, Inc.

3:07-cv-00503-BES-VPC (D. Nev. Apr. 25, 2008) Cited 1 times

In general, before dismissing a pro se complaint for failure to state a claim, a district court should give a pro se litigant leave to amend the complaint and a statement explaining the complaint's deficiencies. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623-24 (9th Cir. 1988). Leave to amend is not required, however, where it is absolutely clear that the deficiencies of the complaint

Raquinio v. Koanaiki Resort

CIV. NO. 20-00540 ACK-RT (D. Haw. May. 14, 2021)

Acceptance Corp., 298 U.S. 178, 182-83 (1936)). Pursuant to Fed. R. Civ. P. 12(h)(3), "[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." Further, before dismissal of a pro se complaint, the district court should generally give a pro se litigant leave to amend the complaint and a statement explaining the complaint's deficiencies. See Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623-24 (9th Cir. 1989). In this case, the Court explained the deficiency in its F & R and Plaintiff was granted leave to amend when the Court

Lohman v. King Cnty. Jail

CASE NO. C13-2340JLR (W.D. Wash. Aug. 25, 2014)

the court independently rejects those arguments for the same reasons delineated in the Report and Recommendation. Magistrate Judge Donohue dismissed Mr. Lohman's complaint with prejudice. (R&R at 8.) The court is mindful that prior to dismissal of a pro se complaint, the court must ordinarily instruct a pro se litigant as to the deficiencies in his or her complaint and grant leave to amend the complaint. See Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987). Here, however, Magistrate Donohue instructed Mr. Lohamn concerning the deficiencies in his initial complaint and permitted him an

Nel v. Unknown El Paso Police Dep't Chief

NO. EP-20-CV-242-FM (W.D. Tex. Apr. 29, 2021)

to decline to exercise jurisdiction over pendent state-law claims when all federal claims are dismissed or otherwise eliminated from a case prior to trial." Batiste v. Island Records Inc., 179 F.3d 217, 227 (5th Cir. 1999) (citations omitted). Admittedly, a court should generally offer a pro se litigant an opportunity to amend his complaint before dismissing it. Bazrowx v. Scott, 136 F.3d 1053, 1054 (5th Cir.1998) (per curiam). A court need not grant leave to amend, however, if the plaintiff has already pleaded his "best case." Id. In determining whether to allow a plaintiff leave to amend, a

Diaz v. United States

No. 1:17-CV-0041-BL (N.D. Tex. Nov. 13, 2017)

In general, courts should provide pro se litigants an opportunity to amend before dismissing a complaint. See Brewster v. Dretke, 587 F.3d 764, 768 (5th Cir. 2009). Leave to amend is not required, however, when plaintiffs have already pled their "best case." Id. Whether to grant leave to amend is within the Court's sound discretion. U.S. ex rel

Howell v. Jones Cnty. Jail

No. 1:16-CV-0025-BL (N.D. Tex. Jun. 1, 2017) Cited 1 times

In general, courts should provide pro se litigants an opportunity to amend before dismissing a complaint. See Brewster v. Dretke, 587 F.3d 764, 768 (5th Cir. 2009). Leave to amend is not required, however, when plaintiffs have already pled their "best case." Id. Whether to grant leave to amend is within the Court's sound discretion. U.S. ex rel

Maydak v. Bonded Credit Co.

892 F. Supp. 1304 (D. Or. 1995) Cited 2 times

motion to dismiss (doc. # 4-1) is granted, Bonded's alternative motion (doc. # 4-2) for judgment on the pleadings is denied as moot, and Bonded's motion (doc. # 4-3) for sanctions is denied. As a final matter, this court is mindful that prior to dismissal of a pro se complaint, the court must ordinarily instruct the pro se litigant as to the deficiencies in the complaint and grant leave to amend the complaint. See Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987). However, a court may properly dismiss a pro se complaint outright in situations, like here, where it is "absolutely clear that

Bruce v. Little

568 F. App'x 283 (5th Cir. 2014) Cited 18 times

construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (internal quotation marks and citations omitted). Further, before dismissing a pro se complaint, a district court ordinarily should give the litigant an opportunity to amend. Bazrowx v. Scott, 136 F.3d 1053, 1054 (5th Cir. 1998); Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). In addition, Rule 15 of the Federal Rules of Civil Procedure permits amendment once as a matter of course and otherwise provides that

Williams v. City of Monroe

CIVIL ACTION NO. 15-0448 (W.D. La. Nov. 3, 2015)

Similarly, "before dismissing a pro se complaint, a district court ordinarily should give the litigant an opportunity to amend." Bruce v. Little, 2014 WL 1929588 (5th Cir. May 15, 2014) (citing inter alia, Bazrowx v. Scott, 136 F.3d 1053, 1054 (5th Cir.1998)).

Brown v. Litchfield Elementary Sch. Dist. No. 79

No. CV-10-2808-PHX-GMS (D. Ariz. Feb. 29, 2012) Cited 1 times

In the Ninth Circuit, pro se litigants are "entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action." Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995). Before dismissing without leave to amend, the district court must give guidance to a pro se plaintiff regarding the deficiencies of dismissed claims in a complaint. Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 625 (9th Cir. 1988) ("We do not . . . require the district court to act as legal advisor to the plaintiff. . . . However, the court must do more than simply advise the

Diaconu v. Cnty. of Franklin

8:13-CV-0317 (LEK/RFT) (N.D.N.Y. Aug. 28, 2014)

When dismissing a complaint filed by a pro se plaintiff, courts must be generous in granting leave to amend deficiencies in the complaint. See Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000). However, when leave to amend would be futile, it is not necessary. See id. Here, leave to amend would be futile, as Plaintiff would be unable to remedy the untimeliness of her claims, she has failed to re-attempt proper service upon Ocwen, and her extensive filings fail to plausibly allege a viable claim against any Defendants.

Smith v. New Falls Corp.

8:13-CV-1127 (LEK/RFT) (N.D.N.Y. Sep. 10, 2014) Cited 1 times

When dismissing a complaint filed by a pro se plaintiff, courts must be generous in granting leave to amend deficiencies in the complaint. See Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000). However, when leave to amend would be futile, it is not necessary. See id. Here, leave to amend would be futile, as Plaintiff cannot remedy the untimeliness of his claims.

Afonso v. Albany Med. Ctr.

1:14-CV-0876 (LEK/RFT) (N.D.N.Y. Oct. 7, 2014)

When dismissing a complaint filed by a pro se plaintiff, courts must be generous in granting leave to amend deficiencies in the complaint. See Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000). However, when leave to amend would be futile, it is not necessary. See id. Here, leave to amend would be futile, as Plaintiff's claims are barred under the Eleventh

Arunachalam v. Int'l Bus. Machs. Corp.

243 F. Supp. 3d 526 (D. Del. 2017) Cited 2 times

Co. v. Dribeck Importers, Inc. , 133 F.R.D. 463, 468 (D.N.J. 1990). However, "the pleading philosophy of the Rules counsels in favor of liberally permitting amendments to a complaint." CMR D.N. Corp. v. City of Phila. , 703 F.3d 612, 629 (3d Cir. 2013). Normally, the Court permits a pro se litigant to amend a complaint for pleading deficiencies. I tend to believe that permitting amendment, in this case, would be futile. I strongly doubt that Plaintiff can plead any set of facts resembling what she has filed in the First Amended Complaint so as to state a viable claim of racketeering. But I

Belden v. Lampert

456 F. App'x 715 (10th Cir. 2011) Cited 2 times

of ineffective assistance of appellate counsel. Hence, the district court properly dismissed Mr. Belden's access-to-court claim, because he failed to show that he had a nonfrivolous claim that he was hindered in pursuing while incarcerated outside Wyoming. Ordinarily, the district court should permit a pro se litigant to amend an inadequate complaint. See Gee, 627 F.3d at 1195. But Mr. Belden did not seek to amend his complaint in district court, he does not argue in this court that he should have been allowed to amend, nor can we imagine any amendment that would allow his claims to survive a

HEHL-GOMEZ v. NASA SPACE CENTER SHUTTLE

Civil Action No. 08-cv-02152-MSK-MEH (D. Colo. Jul. 30, 2009)

house and the return of her 2 children; and she will be filing a complaint against a Lakewood Police Officer who was following her and "was sleeping with me without telling me he was a cop for over 10 years." Typically, the Court will not outright dismiss a pro se complaint for failure to comply with Rule 8 without first giving the plaintiff the opportunity to amend and clarify the complaint. See e.g. Williamson v. Owners Resort Exchange, 90 Fed.Appx. 342, 345-46 (10th Cir. 2004) (unpublished). Here, it is apparent from the additional materials filed by the Plaintiff, such as that described

 7.         "Nemo prasens nisi inteligat," or "One is not present unless he understands," 2 Bouvier's Law Dic. 136, title Maxims"

 8.          HAINES v. KERNER, ET AL. 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652. Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944).

 9.         ESTELLE, CORRECTIONS DIRECTOR, ET AL. v. GAMBLE 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251. We now consider whether respondent's complaint states a cognizable 1983 claim. The handwritten pro se document is to be liberally construed. As the Court unanimously held in Haines v. Kerner, 404 U.S. 519 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id., at 520-521, quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

 10.       WILLIAM MCNEIL, PETITIONER v. UNITED STATES 113 S. Ct. 1980, 124 L. Ed. 2d 21, 61 U.S.L.W. 4468. Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." It is no doubt true that there are cases in which a litigant proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will be unable to understand the exhaustion requirement is virtually nonexistent. Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers. While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, see Haines v. Kerner, 404 U.S. 519 (1972); Estelle v. Gamble, 429 U.S. 97, 106 (1976), and have held that some procedural rules must give way because of the unique circumstance of incarceration, see Houston v. Lack, 487 U.S. 266 (1988) (pro se prisoner's notice of appeal deemed filed at time of delivery to prison authorities), we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel. As we have noted before, "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law." Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980).

 11.       BALDWIN COUNTY WELCOME CENTER v. BROWN 466 U.S. 147, 104 S. Ct. 1723, 80 L. Ed. 2d 196, 52 U.S.L.W. 3751. Rule 8(f) provides that " pleadings shall be so construed as to do substantial justice." We frequently have stated that pro se pleadings are to be given a liberal construction.

 12.       HUGHES v. ROWE ET AL. 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163, 49 U.S.L.W. 3346. Petitioner's complaint, like most prisoner complaints filed in the Northern District of Illinois, was not prepared by counsel. It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers, see Haines v. Kerner, 404 U.S. 519, 520 (1972). See also Maclin v. Paulson, 627 F.2d 83, 86 (CA7 1980); French v. Heyne, 547 F.2d 994, 996 (CA7 1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Haines, supra, at 520-521. And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. Cruz v. Beto, 405 U.S. 319, 322 (1972).

**Issue #2: Absence of jurisdiction and other Administrative arguments:**

1.         One problem is that few people can recognize the difference between a "court" and an "administrative tribunal". See Administrative Law which tells us:

"It is the accepted rule, not only in state courts, but, of the federal courts as well, that when a judge is enforcing administrative law they are described as mere 'extensions of the administrative agency for superior reviewing purposes' as a ministerial clerk for an agency..." 30 Cal 596; ***San Christina, etc. Co. v. San Francisco*** (1914) , 167 Cal. 762, 141 P. 384.

Bond v. Neb. Pub. Power Dist. & Dep't of Natural Res. (In re 2007 Admin. of Appropriations of the Waters of the Niobrara River)

283 Neb. 629 (Neb. 2012) Cited 10 times

11. Administrative Law: Waters: Jurisdiction. The Department of Natural Resources has jurisdiction to hear and adjudicate all matters pertaining to water rights for irrigation and other purposes, including jurisdiction to cancel and terminate such rights. 12. Administrative Law. Administrative agencies have no general judicial powers, notwithstanding that they may perform some quasi-judicial duties. 13. Administrative Law: Estoppel. Normally, equitable estoppel has not been applied in administrative proceedings.

State ex Rel. Anderson v. Shade

510 N.W.2d 805 (Wis. Ct. App. 1993) Cited 6 times

306.16(2)(b). He relies on the rule that orders of administrative agencies are presumed to comply with the law. Whitman v. Department of Taxation, 240 Wis. 564, 577-78, 4 N.W.2d 180, 186 (1942). We reject his argument. As the Whitman court concluded, "The rule applies to `orders of administrative officers and tribunals performing functions of a quasi-judicial character.'" Id. at 578, 4 N.W.2d at 186 (citation omitted). The staff member exercised an executive function when he ordered Anderson to submit to a search. An administrative agency must follow its own rules. Vitarelli v. Seaton, 359

In re Interest of A.M

281 Neb. 482 (Neb. 2011) Cited 23 times

We have, however, long held that administrative agencies are capable of exercising quasi-judicial functions. We previously addressed a challenge that an act of the Legislature unconstitutionally delegated judicial power to the tax commissioner. In rejecting that challenge, we stated that the conferral of quasi-judicial duties upon state agencies does

Caranchini v. Mo. Bd. of Law Exam'rs

447 S.W.3d 768 (W.D. Mo. 2014)

resting exclusively with the judiciary. The legislature ‘has no authority to create any other tribunal and invest it with judiciary power.’ ” Asbury, 846 S.W.2d at 200 (quoting State ex rel. Haughey v. Ryan, 182 Mo. 349, 81 S.W. 435, 436 (1904) ). However, “[m]any judicial or quasi-judicial ‘functions' are performed routinely by administrative agencies.” Id. “Ordinarily, the delegation of functions normally associated with the judiciary does not violate Mo. Const. art. II, section 1, because the provision primarily separates ‘powers,’ not ‘functions.’ ” Id. Thus, we must determine whether the

In re the Appeal of Certain Sections of the Uniform Administrative Procedure Rules

90 N.J. 85 (N.J. 1982) Cited 65 times

"Administrative Jurisdiction and Authority," 6 Ind. L.Rev. 446, 449-450 (1973); Jacobs, "Administrative Agencies, Their Status, and Powers," II Proceedings of Const.Conv. of 1947, 1431, 1433 (1951). Thus, "the adjudicative functions of administrative agencies are actually an aspect of their regulatory powers and, in essence, do not embrace or constitute an exercise of judicial authority." Hackensack v. Winner, 82 N.J. at 29. See Horn, 85 N.J. at 655-57; Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App.Div. 1975). Administrative adjudications in contested cases determine

Scranton v. Department of Motor Vehicles

1991 Ct. Sup. 8862 (Conn. Super. Ct. 1991) Cited 3 times

be exercised either by the courts or by an administrative tribunal. . ." Magnan v. Anaconda Industries, Inc., 37 Conn. Sup. 38, 44 (Super.Ct. 1980) (quoting Norwalk v. Connecticut Co., 88 Conn. 471, 478 (1914)). "Those administrative agencies which are `called upon to weigh evidence and to reach conclusions' have been defined as acting in a quasi-judicial capacity." Id. at 43 (citing Adam v. Connecticut Medical Examining Board, 137 Conn. 535, 537 (1951)). That definition "encompasses those . . . agencies that exercise `discretion in the application of legal principles to varying

PAPA v. DEPARTMENT OF MOTOR VEHICLES

1991 Ct. Sup. 8851 (Conn. Super. Ct. 1991) Cited 4 times

be exercised either by the courts or by an administrative tribunal. . ." Magnan v. Anaconda Industries, Inc., 37 Conn. Sup. 38, 44 (Super.Ct. 1980) (quoting Norwalk v. Connecticut Co., 88 Conn. 471, 478 (1914)). "Those administrative agencies which are `called upon to weigh evidence and to reach conclusions' have been defined as acting in a quasi-judicial capacity." Id. at 43 (citing Adam v. Connecticut Medical Examining Board, 137 Conn. 535, 537 (1951)). That definition "encompasses those. . .agencies that exercise `discretion in the application of legal principles to varying

Lee v. Delponte, Comm'r of Motor Vehicles

1990 Ct. Sup. 2184 (Conn. Super. Ct. 1990) Cited 5 times

be exercised either by the courts or by an administrative tribunal. . . .'" Mangan v. Anaconda Industries, Inc., 37 Conn. Sup. 38, 44 (Sup.Ct. 1980) (quoting Norwalk v. Connecticut Co., 88 Conn. 471, 478 (1914)). "Those administrative agencies which are `called upon to weigh evidence and to reach conclusions' have been defined as acting in a quasi-judicial capacity." Id. at 43 (citing Adam v. Connecticut Medical Examining Board, 137 Conn. 535, 537 (1951)). That definition "encompasses those . . . agencies that exercise `discretion in the application of legal principles to varying

Doe v. Providence School Board, 94-5669 (1995)

P.C. No. 94-5669 (R.I. Super. Jul. 20, 1995)

Next, the plaintiff alleges that the Commissioner erred by discounting a recent Superior Court decision dealing with a residency dispute handled by the Commissioner of Education. This Court finds the contention without merit. The proceedings of administrative agencies are merely quasi-judicial in nature. Sartor v. Coastal Resources Mgmt. Council, 542 A.2d 1077, 1081 (R.I. 1988). The Rhode Island Constitution vests in the Rhode Island Supreme Court the ultimate power to determine the law. See Higgins v. Tax Assessors of Pawtucket, 27 R.I. 401, 404-05, 63 A. 34

YI v. STATE BD OF VETERINARY MEDICINE

No. 1039 C.D. 2007 (Pa. Cmmw. Ct. Nov. 19, 2008) Cited 13 times

Board may not substitute its judgment for the expert who did testify, and it may not rely on the knowledge of its Board members to augment the record evidence. The United States Supreme Court is the source of the fundamentals of administrative practice and procedure, and one of the first precepts it established is that administrative officers acting in a quasi-judicial capacity may not "act on their own information, as could jurors in primitive days." Interstate Commerce Commission v. Louisville Nashville Railroad Co., 227 U.S. 88, 93 (1913). An agency that uses its specialized knowledge as a

Laviano v. Statewide Grievance Committee

2000 Ct. Sup. 9177 (Conn. Super. Ct. 2000)

be noted that Attorney Kotowski was counsel to the Danbury Grievance Panel and not a member of the panel itself. The counsel of a panel is clearly subject to a lower standard of disqualification than panel members themselves. Our Supreme Court has clearly ruled that administrative adjudicators performing quasi-judicial functions are not held to judicial standards of conduct. In Petrowski v. Norwich Free Academy, 199 Conn. 231 (1986) members of the board of trustees of the Norwich Free Academy, who were also members of a law firm representing the academy, participated in a decision terminating

People ex Rel. Garvey v. Partridge

73 N.E. 4 (N.Y. 1905) Cited 9 times

which he makes is at variance therewith. But the point to be emphasized is that such a finding by the deputy is not essential to the commissioner's right to make the final decision. The hearing and disposition of charges against members of the force necessarily involve the exercise of discretion and judgment. But these are the quasi judicial functions of an administrative officer, rather than the strictly judicial functions of a legal tribunal. We think the order of the Appellate Division should be reversed and the determination of the police commissioner confirmed, with costs in all courts

People ex Rel. Hirschberg v. Bd. of Supervisors

167 N.E. 204 (N.Y. 1929) Cited 39 times

the courts for review by certiorari proceedings. Concededly, upon the hearing, the rulings in regard to the admission and exclusion of evidence did not conform to the technical rules which ordinarily control judicial officers. The courts have never held that these rules must be strictly applied also by administrative boards when they exercise quasi-judicial functions. ( People ex rel. Cochran v. Town Auditors, 74 Hun, 83; People ex rel. Sutliff v. Supervisors, 74 Hun, 251.) Decision is intrusted to men who cannot be presumed to be learned in technical rules of law; common sense dictates the

Koniag, Inc. v. Andrus

580 F.2d 601 (D.C. Cir. 1978) Cited 40 times

Eastern Kentucky, supra 426 U.S. at 38, 96 S.Ct. 1917, and an injury that can fairly "be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." Id. Administrative agencies, like federal courts, frequently exercise adjudicatory or "quasi-judicial" functions. But administrative tribunals have few if any of the indicia of the "inferior courts" Congress is authorized to establish pursuant to Article III. Even independent regulatory agencies do not share the two attributes of federal courts explicitly

Kohn v. Cal. Coastal Comm'n

A148706 (Cal. Ct. App. Oct. 10, 2018)

What appellant invites us to do is deviate from established law recognizing "the constitutional propriety of an administrative agency's performance of [quasi-judicial] functions." (Marine Forests Society v. California Coastal Com., supra, 36 Cal.4th at p. 26.) Now, to be sure, because the Commission makes no decision, and neither provides nor withholds any remedy, based on a conclusion

Appeal of Plantier

126 N.H. 500 (N.H. 1985) Cited 39 times

requires adherence to the rules of evidence in disciplinary proceedings before the board. The legislature has spoken in this regard, RSA 541-A:18, II (Supp. 1983), as have we. "The law is well settled that administrative tribunals are not bound by the strict technical rules of evidence governing court proceedings . . . even though the administrative agency is acting in an adjudicatory or quasi judicial capacity . . . ." N.H. Milk Dealers' Ass'n v. Milk Control Board, 107 N.H. 335, 340, 222 A.2d 194, 199 (1966); Auclair Transp. Inc. v. Ross Express, Inc., 117 N.H. 630, 634, 376 A.2d 146, 148

Burnett v. Greene

97 Fla. 1007 (Fla. 1929) Cited 21 times

function is to administer exact justice, as nearly as may be, to all parties before it, not to determine the wisdom of a public measure designed to promote the "public health, convenience or welfare." See Johnston v. Hunter, 50 W. Va. 52, 40. S.E. R. 448. There are administrative agencies which exercise functions judicial in their nature. It is practically impossible to create an administrative agency which does not possess in some degree judicial functions; but the fact that some bodies possess to some extent judicial powers does not necessarily make such body a court within the meaning of

Lockhart v. United States

420 F.2d 1143 (9th Cir. 1970) Cited 39 times

administrative scheme involved." McKart v. United States, 395 U.S. 185, 193, 89 S.Ct. 1657, 1662, 23 L.Ed.2d 194 (1969). See also Craycroft v. Ferrall, 408 F.2d 587, 594 (9th Cir. 1969). The exhaustion doctrine serves an important function in our governmental scheme. Administrative agencies are not a part of the Government's judicial branch. They are "independent" and part of the Executive. L. Jaffe, Judicial Control of Administrative Action 425 (1965). Accordingly, when litigants urge the courts to resolve questions which Congress has committed to the discretion or expertise of the Executive

In the Matter of the Compensation of Steiner

13 P.3d 1050 (Or. Ct. App. 2000) Cited 4 times

"It is a fundamental principle of administrative law that an administrative body possesses only those powers that the legislature grants, and that it cannot exercise authority that it does not possess. SAIF v. Shipley, 326 Or. 557, 561, 955 P.2d 244 (1998). That principle extends to administrative bodies \* \* \* that perform judicial functions. They do not possess the general jurisdictional powers of a court. Instead, their powers are restricted to those conferred expressly by statute or by necessary implication. Campbell v. Bd. of Medical Exam., 16 Or. App. 381, 391-92, 518 P.2d 1042 (1974)."

Senior Care Resources, Inc. v. OAC Senior Living, LLC

442 S.W.3d 504 (Tex. App. 2014) Cited 5 times

a declaration that the community needs waiver is void.” Appellees claim that if the trial court made such a declaration, it would be “step[ping] into the shoes of DADS in its deliberative process.” They maintain that such review of an administrative determination is not permitted because it requires the trial court to substitute itself for the administrative body and perform administrative tasks. Appellees also argue that if Senior Care “wanted a declaration that the granting of a community needs waiver by DADS is void,” it would be required to seek such a declaration directly against DADS

Griffin v. State

47 P.3d 194 (Wyo. 2002) Cited 2 times

Procedure Act (WAPA). See Daubert v. Merrell Dow Pharmaceuticals Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993); Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999). Administrative agencies acting in a judicial or quasi judicial capacity are not bound by the rules of evidence that govern trials by courts or juries. Smith v. State ex rel. Dep't of Transp., 11 P.3d 931, 934 (Wyo. 2000). The WAPA, Wyo. Stat. Ann. §§ 16-3-101 to -115, sets the broad standard for admissibility of evidence at an administrative hearing: The evidence must be

Kellar v. Mississippi Employ. Sec. Com'n

756 So. 2d 840 (Miss. Ct. App. 2000) Cited 11 times

as exhibits to Kellar's brief filed August 17, 1998, with the Pearl River County Circuit Clerk. ¶ 9. When an appellate court reviews the propriety of an agency's decision, it is evaluating that decision based on the evidence presented to the agency. Courts themselves are prohibited from performing the function of an administrative agency. Mississippi State Tax Comm'n v. Mississippi — Alabama State Fair, 222 So.2d 664, 665 (Miss. 1969). All the court can do is review what the agency did under a deferential standard. In summary, we determine whether substantial evidence existed, whether any

Miss. State Bd. of Med. Licensure v. Harron

163 So. 3d 945 (Miss. Ct. App. 2014)

¶ 18. Under Mississippi's Constitution, our courts do not undertake de novo retrial of matters on appeal from administrative agencies. This is because “[o]ur courts are not permitted to make administrative decisions and perform the functions of an administrative agency.” Miss. State Bd. of Nursing v. Wilson, 624 So.2d 485, 489 (Miss.1993) (citation omitted). Under our standard of review, “[t]he only grounds for overturning administrative agency action by the appellate process is that the state

Miss. State Bd. of Med. Licensure v. Harron

NO. 2013-SA-00654-COA (Miss. Ct. App. Mar. 20, 2013)

¶18. Under Mississippi's Constitution, our courts do not undertake de novo retrial of matters on appeal from administrative agencies. This is because "[o]ur courts are not permitted to make administrative decisions and perform the functions of an administrative agency." Miss. State Bd. of Nursing v. Wilson, 624 So. 2d 485, 489 (Miss. 1993) (citation omitted). Under our standard of review, "[t]he only grounds for overturning administrative agency action by the appellate process is that the state

Matter of Lewis v. Allen

5 Misc. 2d 68 (N.Y. Sup. Ct. 1957) Cited 7 times

respondent has not only the right, but the duty, to determine the constitutionality of an act of the State Legislature or of the Congress and to refuse to perform, where in his judgment, such act is unconstitutional. Clearly, this is in the exclusive domain of the judiciary. It is not a function of administrative officials. As I read the petition, no claim is asserted that either the act of the Legislature or the act of Congress above referred to violates the Constitution of the United States or of the State of New York. The petition confines its charge to the regulation promulgated

2.          "It is impossible to prove jurisdiction exists absent a substantial nexus with the state, such as **voluntary subscription to license**. All jurisdictional facts supporting claim that supposed jurisdiction exists must appear on the record of the court." ***Pipe Line v Marathon***. 102 S. Ct. 3858 quoting ***Crowell v Benson***883 US 22.

3.         "**Where a person is not at the time a licensee, neither the agency, nor any official has any jurisdiction of said person to consider or make any order**. One ground as to want of jurisdiction was, **accused was not a licensee and it was not claimed that he was**. " ***0'Neil v Dept Prof. & Vocations*** (1935) CA 2nd 398; Eiseman v Daugherty 6 CA 783

****  [O'Neil v. Dept. of Professional & Vocational Standards](https://casetext.com/case/oneil-v-department-of-professional-voc?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa11)

7 Cal.App.2d 395 (Cal. Ct. App. 1935)   Cited 1 times

such recommendation. From the first, petitioner objected to any proceedings upon the ground that there was no jurisdiction therefor and he offered no evidence, although he answered questions put to him by the "District Supervisor". One ground as to jurisdiction was that petitioner was not at the time of the proceeding a licensed contractor and it is not claimed that he was. His license had expired and he had not asked its renewal. Another ground is that the whole matter was the subject of a pending lawsuit in which the complainant was plaintiff and petitioner defendant. Petitioner alleges that

**** [Consolidated Citrus Company v. Goldstein](https://casetext.com/case/consolidated-citrus-company-v-goldstein?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa44)

214 F. Supp. 823 (E.D. Pa. 1963)   Cited 6 times

The fact that there is no identification of the defendant as a commission merchant, dealer or broker is not fatal to this action. The acts of the defendant as alleged in the Complaint fall within the definitions of commission merchant, dealer and broker as contained in the Act. (See notes 3 and 4, supra.) Further objection to our jurisdiction is made by the defendant because he was not licensed under the Act. The Secretary found and we so find that the acts performed by the defendant were subject to license.

**** [Cal Pacific Collections Inc. v. Powers](https://casetext.com/case/cal-pacific-collections-inc-v-powers-1?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa37)

69 Cal. Rptr. 118 (Cal. Ct. App. 1968)

flagged in Sacramento, and that no renewal of license or new license be issued \* \* \*." Despite some irregularity in the procedure, a decision in conformity with the recommendation was made. At all times O'Neil objected to any proceedings on the ground that there was no jurisdiction therefor, one ground being that at the time of the proceedings he was not a licensed contractor, a fact which was not challenged. O'Neil applied to the court for a writ of review. The trial court upheld the Department's claim of jurisdiction and the order finding O'Neil guilty of the charges. The appellate court

**** [People v. Corie](https://casetext.com/case/people-v-corie?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa6)

196 Misc. 1029 (N.Y. Cnty. Ct. 1949)   Cited 3 times

by counsel at the time, pleaded guilty to a violation of paragraph (a) of subdivision 5 of section 106 Alco. Bev. Cont. of the Alcoholic Beverage Control Law, the information charging that he did sell or give away a bottle of beer at 12:45 on a Sunday morning. The defendant was not a licensee and the information did not allege that he was a licensee. No person other than a licensee can be guilty of violating section 106 Alco. Bev. Cont. of the Alcoholic Beverage Control Law, since the Legislature apparently intended that the licensee and he alone should be responsible for the conduct of the

**** [Hines v. State](https://casetext.com/case/hines-v-state-8?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa8)

248 S.W.2d 156 (Tex. Crim. App. 1952)   Cited 2 times

is that this is an invalid complaint in that it does not allege that he was a licensee. Reliance is had on Holloway v. State, Tex.Cr.App., 237 S.W.2d 303. In that case the complaint charged that he had a 'Driver's License revoked.' We held that there is no such license provided for in the statute and, therefore, there was no allegation that he was a licensee. In the case now before us it is charged that he had his 'operator's license' suspended. We think this allegation is sufficient. If he had a license suspended it follows that he had such a license. The proof in the case shows some kind

**** [Pomrenke v. Commissioner of Commerce](https://casetext.com/case/pomrenke-v-commissioner-of-commerce?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa34)

677 N.W.2d 85 (Minn. Ct. App. 2004)   Cited 8 times

against relator. Because relator was an employee of Real Estate Funding, a licensed mortgage originator, relator was exempt from the licensing requirement. But relator was still subject to the other provisions of the Act. Despite the plain language of the Act, relator argues that the Department did not have jurisdiction over him because he was not a licensee or a license applicant. Specifically, relator argues that under Minn. Stat. § 45.027, subds. 6, 7 (2000), the Department is authorized to pursue disciplinary proceedings only against a licensee or a license applicant. But relator fails to

**** [Great National Insurance v. Empire Fire Insurance](https://casetext.com/case/great-nat-ins-co-v-fire-ins-co?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa28)

170 A. 165 (Md. 1934)   Cited 3 times

of the court's action in allowing the items in the audit which were excepted to by the appellant. The question of the court's jurisdiction upon the application as made was raised by demurrer to the bill, upon which no action was ever taken. One of the reasons assigned for want of jurisdiction was that the insurance commissioner was not a party to the proceedings. He was not a party to the original bill, filed December 19th, 1931, and was not a party at the time of the appointment of receivers on that date. It is, however, disclosed by the record, by a statement of counsel in the nature of a

**** [State v. Ward](https://casetext.com/case/state-v-ward-305?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa8)

267 A.2d 917 (Me. 1970)

was found guilty of 1) public intoxication in a motor vehicle, and 3) operating a motor vehicle while impaired. Upon appeal to the Superior Court respondent filed motion to dismiss the charge of operating while impaired, contending that the inspector had no authority to "arrest or complain" on the charge of driving while impaired, urging that the statutory authority of a Liquor Inspector did not so empower him, and ergo the complaint was a nullity and the Court had no jurisdiction. This motion to dismiss was denied, and upon trial respondent was found guilty. He then filed his motion to

**** [Drackett Co. v. Chamberlain Co.](https://casetext.com/case/drackett-co-v-chamberlain-co?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa12)

81 F.2d 866 (3d Cir. 1936)   Cited 8 times

Commissioner of Patents be ordered to issue certificates of registration to the appellant. The appellee moved to dismiss and the District Court sustained the motion. It held that it was without jurisdiction of the cause under section 4915 because the Commissioner of Patents had not been made a party and that it could not get jurisdiction over him because he was a nonresident of the district within which the court was situate. It held further that it could not review the proceedings of the patent office under section 4915 inasmuch as there had been no award of priority between two contesting

**** [Hines v. State](https://casetext.com/case/hines-v-state-8?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa8)

248 S.W.2d 156 (Tex. Crim. App. 1952)   Cited 2 times

assessed a fine of $25 in the county court upon a complaint alleging that he drove a motor vehicle upon the highways of the state after having 'heretofore had his operator's license suspended on the 3rd day of May, 1951, for a period of six months.' The first contention is that this is an invalid complaint in that it does not allege that he was a licensee. Reliance is had on Holloway v. State, Tex.Cr.App., 237 S.W.2d 303. In that case the complaint charged that he had a 'Driver's License revoked.' We held that there is no such license provided for in the statute and, therefore, there was no

**** [State v. Murphy](https://casetext.com/case/state-v-murphy-170?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa9)

48 N.W.2d 225 (S.D. 1951)   Cited 6 times

The defendant was convicted of a violation of SDC 5.0226(2) which prohibits a licensee from selling intoxicating liquor to any person under the age of 21 years. The first point argued by defendant is that he could not be guilty of the offense, not being a licensee. The alleged sale was made in the Dakota Tavern, Inc., in the city of Sioux Falls. As the name indicates the Dakota Tavern is a corporation. The corporation was then the holder of a license from the state to sell intoxicating liquor. The sale was made by defendant.

**** [DAMI v. DEPT. ALCOHOLIC BEV. CONTROL](https://casetext.com/case/dami-v-dept-alcoholic-bev-control?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa39)

176 Cal.App.2d 144 (Cal. Ct. App. 1959)   Cited 20 times

substance of the charge within the meaning of section 11503; formality of statement is not required. ( Yanke v. State Dept. of Public Health (1958), 162 Cal.App.2d 600 [ 328 P.2d 556].) Appellant's next contention that the accusation failed to deny that he acted as an agent for some other licensee, and that such requirement reached to the Department's jurisdiction, falls in the same category as the first argument. [3] Appellant's argument that he acted as Drader's "implied agent" cannot stand. He contends that the evidence did not establish an illegal sale because the Dorris Drug Store was a

**** [People v. Cramer](https://casetext.com/case/people-v-cramer-14?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa10)

22 App. Div. 189 (N.Y. App. Div. 1897)   Cited 6 times

Sackett's affidavit, I think, sufficiently states that. It states that, being in the town of Hector, Cramer did sell, etc., as deponent is informed and believes. The information and belief refers to what Cramer did, not as to where he resided. It is further objected that there was no evidence before the justice that defendant did not have a license. The charge that he did not have one is made on information and belief. Inasmuch as upon the trial no proof is required upon the part of the People that defendant did not have a license, it would seem that no better proof is required before the

**** [Manning v. Bishop of Marquette](https://casetext.com/case/manning-v-bishop-of-marquette?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa23)

76 N.W.2d 75 (Mich. 1956)   Cited 37 times

seriously injured. In reversing an award of damages, the Ontario court of appeal held, in part, that plaintiff "has not the status in law of an invitee" because, it said, the business (in connection with which the invitation onto the premises is extended) must be a lawful business. Denied, also, was his status as a licensee. "The court will not take cognizance of that which the parties may say was the `consent' given by the occupier," since it involved "`consent' to the frequenter committing the crime." (p 177) The reasoning thus set forth we cannot accept. It confuses the fact of consent or

**** [Vieau v. Common Council](https://casetext.com/case/vieau-v-common-council?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa11)

292 N.W. 297 (Wis. 1940)   Cited 8 times

be operative only within the limits of the city, village or town in which issued. For the purpose of this paragraph any member of the immediate family of the licensee shall be considered as holding an operator's license." Vieau contends that the common council did not have power to deny the license upon the ground that he was not a citizen when he applied therefor. He claims that if the statute is construed to require citizenship for one year, then it is unconstitutional because a statute may not discriminate between those who have been citizens for more than a year and citizens who have

**** [Lauchert v. American S.S. Co.](https://casetext.com/case/lauchert-v-american-ss-co?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa56)

65 F. Supp. 703 (W.D.N.Y. 1946)   Cited 8 times

Ltd., 147 Mass. 66, 16 N.E. 701. From the undenied allegations in the two affidavits submitted by the defendant Pittsburgh Steamship Company it appears as a fact that plaintiff's intestate while walking on the gangplank at time of fatal accident was not this defendant's "invitee." It also appears that he was not a licensee. Whether or not he was a "gratuitous licensee" of this defendant, the conclusion is the same, viz., that plaintiff has failed to state a claim or cause of action against the defendant, Pittsburgh Steamship Company, upon which relief can be granted. Plaintiff alleges against

**** [Mangels v. Commissioner of Motor Vehicles](https://casetext.com/case/mangels-v-commissioner-of-motor-vehicles?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa16)

487 A.2d 1121 (Conn. Super. Ct. 1984)   Cited 10 times

defective in the manner contemplated by statute or case law. This ground for the plaintiff's appeal lacks merit and is dismissed. Returning now to the first question of the plaintiff's appeal, namely, that of jurisdiction, it is a position of the plaintiff that the commissioner lacked jurisdiction over the case, that is, did not have the power to impose the fine, on the ground that the plaintiff's license had expired prior to the commissioner's complaint against him. General Statutes § 14-64 provides that: "The commissioner [of motor vehicles] may suspend or revoke the license . . . of any

**** [Jamestown Veneer P. Corp. v. Nat'l Labor Relations Bd.](https://casetext.com/case/jamestown-veneer-p-corp-v-national-labor-r-board?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa13)

13 F. Supp. 405 (W.D.N.Y. 1936)   Cited 8 times

( 7 U.S.C.A. §§ 499a- 499r). Section 11 of that act ( 7 U.S.C.A. § 499k) made certain provisions of the Interstate Commerce Act applicable in so far as they related to the suspension and enforcement of the order of the commissioner. Objection to jurisdiction was raised on the ground that the commissioner was not an inhabitant of the District in which suit was brought. The court sustained this objection on the ground that the proceedings in issue did not come within the authority conferred by reason of the provisions in the Interstate Commerce Act. The effect of this holding in that suit was

**** [Edward W. Smith Estates, Inc. v. O'Dowd](https://casetext.com/case/edward-w-smith-estates-inc-v-odowd?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa18)

174 A.2d 676 (R.I. 1961)

and denied and dismissed the appeal. He gave as his reasons that there was no competent evidence in support of their allegation that the local licensing board had lacked jurisdiction; that there was no evidence whatsoever that the licensee did not qualify for a class B victualer's beverage license, noting that there was no burden on the licensee at the hearing on petitioners' appeal to prove its qualification within the meaning of G.L. 1956, § 3-7-7; and that the location of the premises to be licensed was sufficiently described in the public notice. The petitioners have briefed and argued

**** [Rogers v. Onontario of Palm Beach](https://casetext.com/case/rogers-v-onontario-of-palm-beach?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa8)

546 So. 2d 443 (Fla. Dist. Ct. App. 1989)

an order denying his claim for temporary partial disability benefits. The deputy's order, which found an inadequate work search, was based, in part, upon the order's express finding that the claimant did not have a chauffeur's license. This finding was erroneous because the only evidence pertaining thereto was that the claimant was, in fact, possessed of such license. We, therefore, remand in order for the deputy to reweigh the work search evidence without the above mentioned erroneous finding. We also agree with appellant's assertion that the deputy improperly found that appellant had reached

**** [Commonwealth v. Batty](https://casetext.com/case/commonwealth-v-batty-6?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#bq35)

2017 Pa. Super. 263 (Pa. Super. Ct. 2017)   Cited 9 times

Now let's turn to the actual charges. There are three charges. One is that [Appellee] possessed a firearm when he is a person who is prohibited from possessing a firearm. The second is that he possessed it without a license. Third is that he possessed recently stolen property.

**** [State v. Sears](https://casetext.com/case/state-v-sears-25?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa17)

71 N.C. 295 (N.C. 1874)

tenant. And the defendant asked his Honor to instruct the jury that if they believed that, then they were not guilty. But his Honor declined to give the instructions. In this we think there was error. The second question is, did the defendants have the "license and authority of the tenant" to remove the corn? Of course they did; for they bought it of him. But then, the difficulty is, that it is not charged in the bill that they had his license or authority. And so we have the probata without the allegata. And so the indictment is bad, and judgment must be arrested. This will be certified, etc

**** [Justice v. Scheidt, Commissioner of Motor Vehicles](https://casetext.com/case/justice-v-scheidt-commissioner-of-motor-vehicles?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa14)

252 N.C. 361 (N.C. 1960)   Cited 11 times

to issue license so long as the judgment against him remains unpaid; that the Acts of the North Carolina General Assembly do not, when properly construed, authorize the denial of a permit; but if they be so interpreted, they are unconstitutional and invalid in that they contravene the Fourteenth Amendment to the Constitution of the United States. The respondent filed a demurrer on the grounds the complaint showed upon its face that the petitioner is not qualified for operator's license by reason of the unpaid judgment. The court sustained the demurrer and the petitioner excepted and appealed

**** [Martin v. Heymann](https://casetext.com/case/martin-v-heymann?tab=ps&q=One%20ground%20as%20to%20want%20of%20jurisdiction%20was,%20accused%20was%20not%20a%20licensee%20and%20it%20was%20not%20claimed%20that%20he%20was.&p=1&jxs=&sort=relevance&type=case#pa32)

251 Ill. App. 89 (Ill. App. Ct. 1928)   Cited 2 times

a valid and binding decree against any defendant to the bill who had not been made a party. That would be because no jurisdiction of the person sought to be affected had been obtained, but not on account of lack of jurisdiction of the subject matter. It is also insisted that "jurisdiction was lacking because the corporation was not in court." The court having jurisdiction of the subject matter of said proceeding, in order to avail of the lack of service on necessary parties, appellee should have raised that question in the trial court. "When the objection of non-joinder of a party is not

4.         "A judge ceases to set as a judicial officer because the governing principals of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments and rationale for that of the agency. Additionally, courts are prohibited from their substituting their judgments for that of the agency." ***AISI v US***, 568 F2d 284.

5.          "...judges who become involved in enforcement of mere statutes (civil or criminal in nature and otherwise), act as mere "clerks" of the involved agency..." K.C. Davis, ADMIN. LAW, Ch. 1 (CTP. West's 1965 Ed.)

 6.         ",...their supposed 'court' becoming thus a court of limited jurisdiction' as a mere extension of the involved agency for mere superior reviewing purposes." K.C. Davis, ADMIN. LAW, P. 95, (CTP, 6 Ed. West's 1977) ***FRC v G.E.***28I US 464; ***Keller v PE***, 261 US 428.

7.         "When acting to enforce a statute, the judge of the municipal court is acting an administrative officer and not as a judicial capacity; courts in administrating or enforcing statutes do not act judicially. but, merely administerially." ***Thompson v Smith***. 155 Va. 376. l54 SE 583, 7l ALR 604.

8.          "It is basic in our law that an administrative agency may act only within the area of jurisdiction marked out for it by law. If an individual does not come within the coverage of the particular agency's enabling legislation the agency is without power to take any action which affects him." Endicott v Perkins, 317 US 501

9.         "It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power...Arbitrary power, enforcing its edicts to the injury of the person and property of its subjects is not law." ***Hurtado v. California*** (1884) http://www.lawyerdude.8k.com/Hurtado.html 110 US 515 (1984)

10.       "Consent in law is more than mere formal act of the mind. It is an act unclouded by fraud, duress, or sometimes even mistake." ***Butler v. Collins***, 12 Calif., 157. 463

 11.       "Every consent involves a submission, but it by no means follows that a mere submission involves consent." ***Regina v. Day***, 9 Car. & P. 722.

 12.       "A state may impose an excise upon the franchise of corporations engaging in a business which every private Citizen has a right to engage in freely. The privilege taxed is the right to engage in such business with the special advantages which are incident to corporate existence”. ***California Bank v. San Francisco***, 142 Cal. 276, 75 Pac. 832, 100 A.S.R. 130, 64 L.R.A. 918.

 13.       Review of administrative proceedings by a court does not change an administrative proceeding to a civil proceeding. Porter v. ***Michigan State Bd. of State Examiners in Optometry***(1972) 199 N.W.2d 666, 41 Mich.App. 150.

CHALLENGE JURISDICTION

Challenging jurisdiction is one of the best defenses you can make, because if you use the right argument it is almost impossible for you to loose!

If they attempt to tell you that you can't question their jurisdiction you can easily shut them up with these court rulings!

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. US, 505 F2d 1026.

The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." Hagans v Lavine, 415 U. S. 533.

Read US v Lopez and Hagans v Levine both void because of lack of jurisdiction. In Lopez the circuit court called it right, and in Hagans it had to go to the Supreme court before it was called right, in both cases, void. Challenge jurisdiction and motion to dismiss, right off the bat. If you read the supreme Court cases you will find that jurisdiction can be challenged at any time and in the case of Lopez it was a jury trial which was declared void for want of jurisdiction. If it [jurisdiction] doesn't exist, it can not justify conviction or judgment. ...without which power (jurisdiction) the state CANNOT be said to be "sovereign." At best, to proceed would be in "excess" of jurisdiction which is as well fatal to the State's/ USA's cause. Broom v.  Douglas, 75 Ala 268, 57 So 860 the same being jurisdictional facts FATAL to the government's cause ( e.g. see In re FNB, 152 F 64).

A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity. [A judgment shown to be void for lack of personal service on the defendant is a nullity.] Sramek v. Sramek, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992), rev. denied 252 Kan. 1093 (1993).

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court" OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).

"There is no discretion to ignore lack of jurisdiction." Joyce v. U.S. 474 2D 215.

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Latana v. Hopper, 102 F. 2d 188;Chicago v. New York 37 F Supp. 150

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100S. Ct. 2502 (1980)

"Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." Basso v. Utah Power & Light Co. 495 F 2d 906, 910.

Caribbean Celular Unlocks v. Santiago

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jurisdictional minimum.") IV. CONCLUSION "Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged it must be adequately founded in fact". Diefenthal v. Civil Aeronautics Bd., 681

Torres-Gonzalez v. Hima San Pablo Caguas

650 F. Supp. 2d 131 (D.P.R. 2009) Cited 2 times

this burden by amending the pleadings, "jurisdiction is not conferred by the stroke of a lawyer's pen . . . [w]hen challenged it must be adequately founded in fact." Diefenthal v. C.A.B., 681 F. 2d 1039

Midwest Drilled Foundations & Eng'g, Inc. v. Zucone Eng'g Corp.

Civil No. 12-1333 (SEC) (D.P.R. Aug. 27, 2012)

this burden by amending the pleadings, "[j]urisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact." Diefenthal v. C.A.B., 681 F. 2d 1039, 1052

Gilot v. Greyhound

No. 3:19-cv-1720-K-BN (N.D. Tex. Apr. 24, 2020)

specify the factual basis of his claims. Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact.'" (quoting Diefenthal v. C.A. B., 681 F.2d

Cantu v. Allstate Vehicle & Prop. Ins. Co.

CIVIL ACTION NO. 7:21-cv-00202 (S.D. Tex. Jul. 2, 2021)

specify the factual basis of his claims. Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact. Therefore, when a plaintiff challenges a

PHH Mortg. Corp. v. Lanou

Civil Action No. 14-10495-MGM (D. Mass. Jan. 13, 2015) Cited 3 times

Noting that "where Plaintiff merely seeks possession of property it already owns as well as incidental damages stemming therefrom, courts have held that the amount in controversy is not the value of the property."

every claim of damages at face value. . . . Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact.'" (quoting Diefenthal v. C. A. B., 681 F

Lopez v. State Farm Mut. Auto. Ins. Co.

CIVIL ACTION NO. 7:20-cv-00096 (S.D. Tex. Jun. 12, 2020)

specify the factual basis of his claims. Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact. "In order to remain in federal court, the

Abdel-Aleem v. OPK Biotech LLC

665 F.3d 38 (1st Cir. 2012) Cited 54 times

7 more...

Applying the St. Paul Mercury test and affirming the district court's dismissal based on the plaintiff's failure to adequately support the alleged amount in controversy

every claim of damages at face value.... Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact.” Diefenthal, 681 F.2d at 1052. Here, Abdel–Aleem

Torres v. Doctors Ctr. Hosp. Manati

Civil No. 11-1479 (SEC) (D.P.R. May. 30, 2012)

this burden by amending the pleadings, "[j]urisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact." Diefenthal v. C.A.B., 681 F. 2d 1039, 1052

Diefenthal v. C. A. B

681 F.2d 1039 (5th Cir. 1982) Cited 207 times

Holding that the party invoking the court's jurisdiction bears the burden of "alleg(ing) with sufficient particularity the facts creating jurisdiction" and of "support(ing) the allegation" if challenged

specify the factual basis of his claims. Jurisdiction is not conferred by the stroke of a lawyer's pen. When challenged, it must be adequately founded in fact. In the case at bar, the only specific factual…

"Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp. 478 So. 2d. 368 (Fla 2nd DCA 1985)

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners 94 Ca 2d 751. 211 P2d 389.

"There is no discretion to ignore that lack of jurisdiction." Joyce v. US, 474 F2d 215.

"The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416.

"A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." Norwood v. Renfield, 34 C 329; Ex parte Giambonini, 49 P. 732.

"Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.

"Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." Dillon v. Dillon, 187 P 27.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." Wuest v. Wuest, 127 P2d 934, 937.

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739.

"the fact that the petitioner was released on a promise to appear before a magistrate for an arraignment, that fact is circumstance to be considered in determining whether in first instance there was a probable cause for the arrest." Monroev.Papa, DC, Ill. 1963, 221 F Supp 685.

Vehicle/Traffic

"An action by Department of Motor Vehicles, whether directly or through a court sitting administratively as the hearing officer, must be clearly defined in the statute before it has subject matter jurisdiction, without such jurisdiction of the licensee, all acts of the agency, by its employees, agents, hearing officers, are null and void." Doolan v. Carr, 125 US 618; City v Pearson, 181 Cal. 640.

"Agency, or party sitting for the agency, (which would be the magistrate of a municipal court) has no authority to enforce as to any licensee unless he is acting for compensation. Such an act is highly penal in nature, and should not be construed to include anything which is not embraced within its terms. (Where) there is no charge within a complaint that the accused was employed for compensation to do the act complained of, or that the act constituted part of a contract." Schomig v. Kaiser, 189 Cal 596.

"When acting to enforce a statute and its subsequent amendments to the present date, the judge of the municipal court is acting as an administrative officer and not in a judicial capacity; courts in administering or enforcing statutes do not act judicially, but merely ministerially". Thompson v. Smith, 154 SE 583.

"A judge ceases to sit as a judicial officer because the governing principle of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rationale for that of the agency. Additionally, courts are prohibited from substituting their judgment for that of the agency. Courts in administrative issues are prohibited from even listening to or hearing arguments, presentation, or rational." ASIS v. US, 568 F2d 284.

"Ministerial officers are incompetent to receive grants of judicial power from the legislature, their acts in attempting to exercise such powers are necessarily nullities." Burns v. Sup., Ct., SF, 140 Cal. 1.

**One of the cardinal principles of our form of government is the division of power between the executive, legislative, and judicial . This court, in its prior decisions, has endeavored to preserve to the executive and legislative departments of the state their full powers . We should be equally jealous of preserving to the judiciary the right of passing upon matters that are judicial in nature. This right which we should maintain is not because of any desire to assume authority on the part of the judiciary but because it is our duty to preserve for interested parties their opportunity for a full judicial review and the benefits to be obtained therefrom.**

**In the case of Wilcox v. Miner,**[**201 Iowa 476, 478**](https://casetext.com/case/wilcox-v-miner#p478)**,**[**205 N.W. 847, 848**](https://casetext.com/case/wilcox-v-miner#p848)**, this court, speaking through Stevens, J., recognized the established rule that the legislature can not exercise judicial powers , and cited many supporting authorities.**

**In 7 R.C.L. 1049, Courts, section 84, it is stated:**

**"In the courts is vested the whole element of sovereignty known as the judicial , established by the constitutions and the laws enacted thereunder, except in a few instances, where powers of a judicial nature are expressly and specifically lodged elsewhere. Of the element of sovereignty, which is exclusively and intrinsically judicial , the people gave the courts all they had to give; and while the domain of the judiciary is not so extensive as that of the other departments, no other power can enter that domain without a violation of the constitution, for within it the power of the judiciary is dominant and exclusive. \* \* \*."**

**In 11 Am. Jur. 910, Constitutional Law, section 207, it is stated: "\* \* \*. It is well settled that ministerial officers are incompetent to receive grants of judicial power from the legislature , and their acts in attempting to exercise such powers are necessarily nullities. \* \* \*."**

**In the case of Denver v. Lynch,**[**92 Colo. 102, 106**](https://casetext.com/case/denver-v-lynch#p106)**,**[**18 P.2d 907, 909, 86**](https://casetext.com/case/denver-v-lynch#p909)**. A.L.R. 907, 910, the Colorado court, in commenting upon the rights of the respective divisions of the government, stated:**

**"Generally speaking `It is incumbent upon each department to assert and exercise all its power whenever public necessity requires it to do so; otherwise, it is recreant to the trust reposed in it by the people. It is equally incumbent upon it to refrain from asserting a power that does not belong to it, for this is equally a violation of the people's confidence. Indeed, the distinction goes so far as to require each department to refrain from in any way impeding the exercise of the proper functions belonging to either of the other departments.' State v. Cunningham, 39 Mont. 165, 168, 101 P. 962, 963.**

**"The practical application of this rule is sometimes difficult and the line of demarcation between the departments often indefinite. But, as will be later observed, we are not here embarrassed by fine distinctions. It is universally held that the legislative department is powerless to confer judicial duties upon the officials of other departments. Sing Tuck v. U.S., 128 F. 592, 63 C.C.A. 199; Corbett v. Widber, 123 Cal. 154, 55 P. 764."**

**It is our conclusion that the exclusive jurisdiction for the issuance of a restraining or injunctive order can not be held to be in the Commission. It is our further conclusion that, upon the pleadings as filed by the plaintiff in the district court and the resistance thereto, this question has been properly raised and that we are in a position to rule thereon.**

***Dallas Fuel Co. v. Horne*, 230 Iowa 1148, 1156-57 (Iowa 1941)**

****  [Dallas Fuel Co. v. Horne](https://casetext.com/case/dallas-fuel-co-v-horne?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa48)

300 N.W. 303 (Iowa 1941)   Cited 18 times

no other power can enter that domain without a violation of the constitution, for within it the power of the judiciary is dominant and exclusive. \* \* \*." In 11 Am. Jur. 910, Constitutional Law, section 207, it is stated: "\* \* \*. It is well settled that ministerial officers are incompetent to receive grants of judicial power from the legislature, and their acts in attempting to exercise such powers are necessarily nullities. \* \* \*." In the case of Denver v. Lynch, 92 Colo. 102, 106, 18 P.2d 907, 909, 86. A.L.R. 907, 910, the Colorado court, in commenting upon the rights of the respective

**** [Venson v. Turner](https://casetext.com/case/venson-v-turner?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case)

CASE NO. 3:14cv81 (N.D. Ohio Aug. 27, 2014)

the governing principle of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rationale for that of the agency." (Pet. Doc. No. 1 at 8). He contends Burns held that "ministerial officers are incompetent to receive grants of judicial power from the legislature and their acts in attempting to exercise such power are nullities." From this, he concludes that the judge who presided over his criminal was acting as a ministerial officer when she presided over his criminal prosecution, because she had not been delegated judicial

**** [Hubbard v. Turner](https://casetext.com/case/hubbard-v-turner-1?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case)

Case No. 3:13 CV 2834 (N.D. Ohio May. 14, 2014)

governing principle of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments, and rationale for that of the agency." (Pet., Doc. 1, at 8). He contends Burns held that "ministerial officers are incompetent to receive grants of judicial power from the legislature and their acts in attempting to exercise such power are nullities." From this, he concludes that Judge Franks was acting as a ministerial officer when she presided over his criminal prosecution, because she had not been delegated judicial powers by Congress under Article

**** [State v. Guilbert](https://casetext.com/case/state-v-guilbert?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa234)

2008 Ohio 2595 (Ohio 1897)   Cited 27 times

It would, perhaps, be found upon a careful consideration of his powers, that they are not all embraced within the provisions for review or appeal. But the assumption that they are so embraced would not validate the act in this respect. The recorder as a ministerial officer is incompetent to receive a grant of judicial power from the legislature. His acts in the attempted exercise of such powers are necessarily nullities. They cannot be effective to impose any obligation or burden upon a citizen, or to deprive him of any right. The act plainly contemplates that the person against whom

**** [Board of Water Engineers v. McKnight](https://casetext.com/case/board-of-water-engineers-v-mcknight?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa82)

111 Tex. 82 (Tex. 1921)   Cited 36 times

It would, perhaps, be found upon a careful consideration of his powers that they are not all embraced within the provisions for review or appeal. But the assumption that they are so embraced would not validate the act in this respect. The recorder, as a ministerial officer, is incompetent to receive a grant of judicial power from the Legislature. His acts in the attempted exercise of such powers are necessarily nullities. They cannot be effective to impose any obligation or burden upon a citizen, or to deprive him of any right. The act plainly contemplates that the person against whom

**** [State, Dept. of Admin. v. Stevens](https://casetext.com/case/state-dept-of-admin-v-stevens?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa62)

344 So. 2d 290 (Fla. Dist. Ct. App. 1977)   Cited 31 times

The court went on to say that the legislature cannot delegate the exercise of judicial functions to ministerial officers. Otto dealt only with a legislative grant of power to a ministerial officer to make an ex parte adjudication of the invalidity of a tax sale certificate. The case sub judice does not relate to an ex parte adjudication by a ministerial

**** [State v. Collins](https://casetext.com/case/state-v-collins-429?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa37)

528 S.W.2d 814 (Tenn. 1975)   Cited 13 times

Bricker v. Sims, 195 Tenn. 361, 259 S.W.2d 661 (1953) was relied upon by the Court of Criminal Appeals for the application to this case of the principle that an unconstitutional act is not void, but voidable only. As we read the case, it holds that ministerial officers are not permitted to question the validity of a statute because the peace and good order of society will not admit of such officers being the judge of the constitutionality of legislative acts, a purely judicial function. Bricker relies upon Roberts v. Roane County, 160 Tenn. 109, 23 S.W.2d 239 (1929), for the quote that:

**** [State v. Guilbert](https://casetext.com/case/state-v-guilbert?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa233)

2008 Ohio 2595 (Ohio 1897)   Cited 27 times

therefor, the person interested notified and he is satisfied that such is the fact, to correct memorials made or issued by mistake, if the rights of a bona fide purchaser or lien holder for value have not intervened. It is true that the power to ascertain and decide is not necessarily a judicial power, and it is frequently exercised by ministerial officers and legislative bodies. Whether the power to hear and determine is judicial depends upon the nature of the subject of the inquiry, the parties to be affected and the effect of the determination. While it is not supposed that any definition

**** [Opinion No. JM-161](https://casetext.com/case/opinion-no-1489?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa50)

Opinion No. JM-161 (Ops. Tex. Atty. Gen. Jun. 7, 1984)

attorneys in particular cases, paragraph 5 seems to authorize the El Paso Bar Association or its delegate to appoint the attorney, while section 8 permits a committee of the bar association to excuse attorneys from the program. It is well established that a public officer cannot delegate judicial as opposed to ministerial powers without express statutory authorization. Newsom v. Adams, 451 S.W.2d 948 (Tex.Civ.App.-Beaumont 1970, no writ); Moody v. Texas Water Commission, 373 S.W.2d 793 (Tex.Civ.App.-Austin 1963, writ ref'd n.r.e.). See Attorney General Opinions H-644 (1975); H-386 (1974); WW

**** [State ex Rel. Clinton Falls N. v. County of Steele](https://casetext.com/case/state-ex-rel-clinton-falls-n-v-county-of-steele?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa27)

181 Minn. 427 (Minn. 1930)   Cited 32 times

It rests upon the theory that the court should accept as final the acts of the legislature and discourage attacks upon them except where necessary to protect the private interests of the individual asserting invalidity and peculiarly and particularly affected thereby. Officials acting ministerially are not clothed with judicial authority. To permit them to refuse to perform their duty on the ground that the commanding law is unconstitutional would be a dangerous practice in that they who have only ministerial duties would be raising questions affecting the rights of third persons while they

**** [Mower County Board of Commissioners v. Board of Trustees of Public Employees Retirement Ass'n](https://casetext.com/case/mower-county-board-v-board-of-trustees-of-pera?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa33)

271 Minn. 505 (Minn. 1965)   Cited 8 times

It rests upon the theory that the court should accept as final the acts of the legislature and discourage attacks upon them except where necessary to protect the private interests of the individual asserting invalidity and peculiarly and particularly affected thereby. Officials acting ministerially are not clothed with judicial authority. To permit them to refuse to perform their duty on the ground that the commanding law is unconstitutional would be a dangerous practice in that they who have only ministerial duties would be raising questions affecting the rights of third persons while they

**** [C. Hewitt Sons Co. v. Keller](https://casetext.com/case/c-hewitt-sons-co-v-keller?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa29)

223 Iowa 1372 (Iowa 1937)   Cited 26 times

It rests upon the theory that the court should accept as final the acts of the Legislature and discourage attacks upon them except where necessary to protect the private interests of the individual asserting invalidity and peculiarly and particularly affected thereby. Officials acting ministerially are not clothed with judicial authority. To permit them to refuse to perform their duty on the ground that the commanding law is unconstitutional would be a dangerous practice, in that they who have only ministerial duties would be raising questions affecting the rights of third persons while they

**** [Board of Sup'rs of Linn Cty. v. Dept. of Revenue](https://casetext.com/case/board-of-suprs-of-linn-cty-v-dept-of-revenue?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#bq45)

263 N.W.2d 227 (Iowa 1978)   Cited 26 times

It rests upon the theory that the court should accept as final the acts of the Legislature and discourage attacks upon them except where necessary to protect the private interests of the individual asserting invalidity and peculiarly and particularly affected thereby. Officials acting ministerially are not clothed with judicial authority. To permit them to refuse to perform their duty on the ground that the commanding law is unconstitutional would be a dangerous practice, in that they who have only ministerial duties would be raising questions affecting the rights of third persons while they

**** [Minnesota Bd. of Health v. City of Brainerd](https://casetext.com/case/minnesota-bd-of-health-v-city-of-brainerd?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa35)

308 Minn. 24 (Minn. 1976)   Cited 25 times

of the fluoridation statute. In State ex rel. Clinton Falls Nursery Co. v. County of Steele, 181 Minn. 427, 430, 232 N.W. 737, 738 (1930), we stated: "\* \* \* The better doctrine supported by the weight of authority is that [a public] official so charged with the performance of a ministerial duty will not be allowed to question the constitutionality of such a law. \* \* \* Officials acting ministerially are not clothed with judicial authority. To permit them to refuse to perform their duty on the ground that the commanding law is unconstitutional would be a dangerous practice in that they who

**** [Otto v. Harllee](https://casetext.com/case/otto-v-harllee-et-al?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa18)

161 So. 402 (Fla. 1935)   Cited 5 times

"The Legislature cannot exercise judicial function." If it cannot exercise judicial function, certainly it is precluded from delegating the exercise of judicial functions to ministerial officers. In the old case of Ponder v. Graham, 4 Fla. 25, this Court, speaking through Mr. Justice SEMMES, referring to the three co-ordinate departments of our Government, the Administrative, Legislative and Judicial, said:

**** [State, ex Rel., v. Lee](https://casetext.com/case/state-ex-rel-v-lee-34?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa24)

183 So. 838 (Fla. 1938)   Cited 2 times

"In Thursby, et al., v. Stewart, 103 Fla. 990, 138 So. 742, we said: "`The Legislature cannot exercise judicial function.' If it cannot exercise judicial function, certainly it is precluded from delegating the exercise of judicial functions to ministerial officers. "In the old case of Ponder v. Graham, 4 Fla. 25, this Court, speaking through Mr. Justice Semmes, referring to the three coordinate departments of our Government, the Administrative, Legislative and Judicial, said:

**** [OPINION NO. OAG 57-87](https://casetext.com/case/opinion-no-oag-57-6?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa20)

76 Op. Att'y Gen. 265 (Ops.Wis.Atty.Gen. 1987)   Cited 1 times

or obstruction of the authority, process or order of a court. Sec. 785.01 (1), Stats. Where the court has failed specifically to order payment of the annual $10 fee, the payor cannot be in contempt of court. The acts of a clerk of court are ministerial, and the clerk may not exercise judicial powers except in accordance with the strict language of a statute conferring such power. State v. Dickson, 53 Wis.2d 532, 541-42, 193 N.W.2d 17 (1972). Ministerial acts are those done in obedience to instructions of a legal authority without the exercise of the actor's discretion or judgment upon the

**** [State v. Johnston](https://casetext.com/case/state-v-johnston-89?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa22)

394 N.W.2d 915 (Wis. Ct. App. 1986)   Cited 8 times

would not be allowed to administer oaths to witnesses. Johnston is correct, however, that there is no Wisconsin statute specifically authorizing a clerk of court to administer oaths to witnesses. In Wisconsin, the acts of a clerk of court are ministerial and clerical, and the clerk may not exercise judicial power except in accordance with the strict language of a statute conferring such power. State v. Dickson, 53 Wis.2d 532, 541-42, 193 N.W.2d 17, 22 (1972). In Dickson, the supreme court held that the clerk of court could not over his own signature issue a directive having the authority

**** [Midwestern Developments, Inc. v. City of Tulsa](https://casetext.com/case/midwestern-developments-v-city-of-tulsa-ok-2?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa9)

319 F.2d 53 (10th Cir. 1963)   Cited 16 times

order. At the conclusion of the hearing the court denied leave to amend and ruled that the court had no jurisdiction. Thereafter, a deputy clerk signed an order dismissing the action. The record discloses no authority for the making of such an order by the clerk. A clerk is a ministerial officer and may not assume judicial powers. The purported order of dismissal is a nullity. An order dismissing a complaint but not dismissing the action is nonappealable. In Crutcher v. Joyce, 10 Cir., 134 F.2d 809, 813-814, this court held that when a motion to dismiss a complaint is sustained and the

**** [People ex Rel. Ferris v. Horton](https://casetext.com/case/people-ex-rel-ferris-v-horton-2?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa32)

147 Misc. 506 (N.Y. Cnty. Ct. 1933)   Cited 2 times

in promoting "public safety," may not be supported. The Sullivan Law is vulnerable also on the ground that it imposes ministerial duties upon judicial officers. The principle is so well settled that extensive elaboration or citation of authority is not required. It is clear that ministerial duties may not be imposed upon judicial officers. However, it is optional on their part to accept the discharge of such legislative direction, and their voluntary action thereunder is quite proper. Such is the true history of the operation of the Sullivan Act. Many a judge, recognizing the necessities of

**** [Allan v. Durand](https://casetext.com/case/allan-v-durand?tab=ps&q=Ministerial%20officers%20are%20incompetent%20to%20receive%20grants%20of%20judicial%20power%20from%20the%20legislature&p=1&jxs=&sort=relevance&type=case#pa17)

57 A.2d 668 (N.J. 1948)   Cited 8 times

Supreme Court in commenting upon the statute under review in United States v. Duell enunciated the rule that where no appeal from the action complained of is expressly given, such fact is conclusive that none is to be implied. The courts will not be the instrument for the performance of ministerial acts which may be subject to review by certain administrative officials. See Hayburn's Case (1792), 2 Dall. 409; 1 L.Ed. 436, for an early expression of the rule that it is the duty of the legislative, executive and judicial branches of government, as distinct and independent branches, to abstain

The elementary doctrine that the constitutionality of a legislative act is open to attack only by persons whose rights are affected thereby, applies to statute relating to administrative agencies, the validity of which may not be called into question in the absence of a showing of substantial harm, actual or impending, to a legally protected interest directly resulting from the enforcement of the statute."

Board of Trade v. Olson, 262 US 1; 29 ALR 2d 105.

Cases Fraud and More

"Fraud" may be committed by a failure to speak when the duty of speaking is imposed as much as by speaking falsely."

Batty v Arizona State Dental Board, 112 P.2d 870, 57 Aria. 239. (1941)

"No state shall convert a liberty into a privilege, license it, and attach a fee to it."

Murdock v Peon, 319 US 105

"Fraud vitiates the most solemn contracts, documents, and even judgments."

U.S. vs. Throckmorton, 98 U.S. 61.  Documents"; ("Constitutions")

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never passed."

Norton v Shelby County, 118 US 425

"Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading... We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately"

U.S. v. Tweel, 550 F2d 997, 299-300

"If the state converts a liberty into a privileged the citizen can engage in the right with impunity"

Shuttlesworth v Birmingham, 373 US 262

"Fraud: An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right."

Black's 5th, 594 (emphasis added.)

****  [Bergh v. Mills](https://casetext.com/case/bergh-v-mills?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa24)

763 P.2d 214 (Wyo. 1988)   Cited 4 times

Although fraud in the classic sense requires an affirmative misrepresentation, this court has recognized that fraud may be perpetrated by silence as well as by affirmative representations; and when one has a duty to speak, the failure to speak may constitute fraud. Steadman v. Topham, 80 Wyo. 63, 338 P.2d 820, 826-27 (1959). Even in the absence of a duty to speak, if a person does speak, he must speak the truth and make a full

**** [Centura Bank v. Executive Leather, Inc.](https://casetext.com/case/centura-bank-v-executive-leather-inc?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#bq28)

513 S.E.2d 804 (N.C. Ct. App. 1999)   Cited 1 times

good and fair dealing imposes a duty on the creditor to disclose material facts that the guarantor is unlikely to discover. This duty arises when the creditor knows or has grounds to believe that the guarantor is being misled or "induced to enter into the contract in ignorance of facts materially increasing the risks," and the creditor has the opportunity to inform the guarantor. In such a case, "non-disclosure would in effect amount to a contrary representation to the [guarantor]." "Where there is a duty to speak, fraud can be practiced by silence as well as by a positive misrepresentation."

**** [Baudy v. Adame](https://casetext.com/case/baudy-v-adame?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa32)

441 F. Supp. 3d 293 (E.D. La. 2020)   Cited 1 times

including "time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." Tel-Phonic Services, Inc. v. TBS International, Inc., 975 F.2d 1134, 1138 (5th Cir. 1992). For claims of fraud by silence or omission, there must be a duty to speak. Greene v. Gulf Coast Bank , 593 So.2d 630 (La. 1992). Although there is no general duty to speak under Louisiana law, that duty may exist in a fiduciary relationship. Id. at 632. A fiduciary relationship is one where "confidence is reposed on one side and there

**** [Greene v. Gulf Coast Bank](https://casetext.com/case/greene-v-gulf-coast-bank?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa32)

580 So. 2d 712 (La. Ct. App. 1991)   Cited 6 times

Fraud, under La.C.C. Art. 1847 of the Civil Code of 1870, is a false misrepresentation or suppression of the truth bearing on a material fact, made with knowledge of its falsity, with intent to deceive, with action taken in reliance upon the misrepresentation. La.C.C. Art. 1847 (1870); Mims v. Hilliard, 125 So.2d 205 (La.App. 3 Cir. 1960). However, where fraud is committed by silence or inaction, there must be a "duty to speak." There is little jurisprudence on this "duty," but we find that there must be a "duty to speak" to have a fraudulent concealment.

**** [Dunahay v. Struzik](https://casetext.com/case/dunahay-v-struzik?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa12)

393 P.2d 930 (Ariz. 1964)   Cited 13 times

contract she received a fair consideration, the apartment house, A.R.S. § 44-1003. The assignment of the contract was not in fraud of creditors, A.R.S. § 44-1041. Appellant's failure to disclose that she was being sued by Overfield did not constitute fraud. While fraud may be committed by the failure to speak, a duty to speak must be imposed. Batty v. Arizona State Dental Board, 57 Ariz. 239, 112 P.2d 870. We hold there is no duty imposed upon one who is engaging in ordinary business transactions to advise those dealing with him that he is suing or being sued on matters arising out of other

**** [Sistrunk v. Haddox](https://casetext.com/case/sistrunk-v-haddox-4?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa55)

CIVIL ACTION NO. 18-516 (W.D. La. Mar. 31, 2021)

fraud are "(a) a misrepresentation of a material fact, (b) made with the intent to deceive, and (c) causing justifiable reliance with resultant injury." See, e.g., Guidry v. United States Tobacco Co., 188 F.3d 619, 627 (5th Cir. 1999) (citations omitted). Louisiana recognizes fraud through silence or omission when there is a duty to speak. Greene v. Gulf Coast Bank, 593 So. 2d 630, 632 (La. 1992). This duty exists when there is a fiduciary relationship like the present case. Id. "Fraud through omission or silence is, by its very nature, difficult to plead with particularity . . . [b]ecause

**** [Cent. States Stamping v. Terminal Equip. Co.](https://casetext.com/case/cent-states-stamping-v-terminal-equip-co?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa45)

727 F.2d 1405 (6th Cir. 1984)   Cited 47 times

of a showing that the purchaser had fraudulent intent not to pay for the goods. A more recent decision of the Supreme Court of Ohio appears to us to be more pertinent to our inquiry than those relied on by the Bank. Miles v. McSwegin, 58 Ohio St.2d 97, 388 N.E.2d 1367 (1979), also involved a claim that purchasers of real estate were not informed of a defect — termites in this case. After noting that an action for fraud may be based on the failure of a party to a transaction to fully disclose facts of a material nature where there is a duty to speak, the court discussed the duty to speak:

**** [Feist v. Roesler](https://casetext.com/case/feist-v-roesler?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa50)

86 S.W.2d 787 (Tex. Civ. App. 1935)   Cited 3 times

Feist, in person, that he would not carry out the contract. The undisputed evidence showed that Feist represented himself and was the agent of the other plaintiffs in all of the transactions concerning the purchase of the tract of land. The rule is settled that, "when there is a duty to speak, fraud may consist in the concealment of a material fact." 20 Tex.Jur. 38, § 20. This rule was announced in the early case of Parker v. Crawford, 3 Willson, Civ. Cas. Ct. App. § 365, as follows: "Misrepresentation may consist as well in the concealment of what is true as in the assertion of what is

**** [Bonfire, LLC v. Zacharia](https://casetext.com/case/bonfire-llc-v-zacharia-1?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa39)

251 F. Supp. 3d 47 (D.D.C. 2017)   Cited 3 times

may either be "an affirmative misrepresentation or a failure to disclose a material fact when a duty to disclose that fact has arisen." Saucier v. Countrywide Home Loans , 64 A.3d 428, 438 (D.C. 2013). And while "the non-disclosure of material information may constitute fraud when there is a duty to disclose, ‘mere silence does not constitute fraud unless there is a duty to speak.’ " Sundberg , 109 A.3d at 1131, quoting Saucier , 64 A.3d at 439. Plaintiff has not alleged that Zacharia had a duty to disclose the fact that he was a co-owner of the property. And even if Zacharia had a duty

**** [Sundberg v. TTR Realty, LLC](https://casetext.com/case/sundberg-v-ttr-realty-llc?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa26)

109 A.3d 1123 (D.C. 2014)

it would be likely to induce the recipient to do so.” Id. at 438–39 (quoting Sarete, Inc. v. 1344 U Street Ltd. P'ship, 871 A.2d 480, 493 (D.C.2005), citing Restatement (Second) of Contracts, § 162 (1981)). Although the non-disclosure of material information may constitute fraud when there is a duty to disclose, “mere silence does not constitute fraud unless there is a duty to speak.” Id. at 439 (quoting Kapiloff v. Abington Plaza Corp., 59 A.2d 516, 517 (D.C.1948)). In contrast to a complaint that alleges fraudulent misrepresentations, a complaint alleging negligent misrepresentations need

**** [Sundberg v. TTR Realty, LLC](https://casetext.com/case/sundberg-v-ttr-realty-llc-1?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa36)

109 A.3d 1123 (D.C. 2015)   Cited 33 times

it would be likely to induce the recipient to do so.” Id. at 438–39 (quoting Sarete, Inc. v. 1344 U Street Ltd. P'ship, 871 A.2d 480, 493 (D.C.2005), citing Restatement (Second) of Contracts, , § 162 (1981) ). Although the non-disclosure of material information may constitute fraud when there is a duty to disclose, “mere silence does not constitute fraud unless there is a duty to speak.” Id. at 439 (quoting Kapiloff v. Abington Plaza Corp., 59 A.2d 516, 517 (D.C.1948) ). In contrast to a complaint that alleges fraudulent misrepresentations, a complaint alleging negligent misrepresentations

**** [Smith v. Lamb](https://casetext.com/case/smith-v-lamb-2?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa11)

103 Ga. App. 157 (Ga. Ct. App. 1961)   Cited 5 times

imputed to him. Brown v. Anderson, 186 Ga. 222 ( 197 S.E. 761). "Estoppels do not apply to or affect infants, except in cases where an infant's fraudulent act or representation is made with a view to deceive or defraud." Jones v. Cooner, 137 Ga. 681, 683 ( 74 S.E. 51). But fraud may arise from silence where there is a duty to speak. "Even minors may be estopped by their admissions from denying the truth of them, or by their silence when the circumstances call for a disclosure of their claims or their rights, provided the minor has arrived at those years of discretion when a fraudulent intent

**** [Protica, Inc. v. iSatori Techs., LLC](https://casetext.com/case/protica-inc-v-isatori-techs-llc?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa92)

Civil Action No. 2011-cv-01105 (E.D. Pa. Mar. 30, 2012)

Under Pennsylvania law, before failure to speak or disclose information can constitute actionable fraud, the party charged must have a duty to speak or disclose. Absent a duty to speak or disclose, the concealment of certain facts cannot constitute fraud. WP 851 Associates, L.P. v. Wachovia Bank, N.A., 2008 U.S.Dist. LEXIS 2211, at \*28 (E.D.Pa. January 11, 2008)(Pratter, J.)

**** [Boomer Dev., LLC v. Nat'l Ass'n of Home Builders of the United States](https://casetext.com/case/boomer-dev-llc-v-natl-assn-of-home-builders-of-the-united-states-3?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa48)

258 F. Supp. 3d 1 (D.D.C. 2017)   Cited 4 times

it would be likely to induce the recipient to do so." Id. at 438–39 (quoting Sarete, Inc. v. 1344 U Street Ltd. P'ship , 871 A.2d 480, 493 (D.C. 2005) (citing Restatement (Second) of Contracts, § 162 (1981) )). Although the non-disclosure of material information may constitute fraud when there is a duty to disclose, "mere silence does not constitute fraud unless there is a duty to speak." Id. at 439 (quoting Kapiloff v. Abington Plaza Corp. , 59 A.2d 516, 517 (D.C. 1948) ). Plaintiffs contend that NAHB made several misrepresentations that suggested to the Plaintiffs that NAHB had "reviewed and

**** [Chandler v. Butler](https://casetext.com/case/chandler-v-butler?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#bq163)

284 S.W.2d 388 (Tex. Civ. App. 1955)   Cited 12 times

"When there is a duty to speak, fraud may consist in the concealment of a material fact.

**** [Briggs v. Countrywide Funding Corp.](https://casetext.com/case/briggs-v-countrywide-funding-corp?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa58)

931 F. Supp. 1545 (M.D. Ala. 1996)   Cited 2 times

process." Id. at 246. As such, Countrywide contends that the Briggs' theory that it fraudulently concealed facts from them, where Countrywide and the Briggs are not alleged to have been in contact, is foreclosed by the Bama Budweiser decision. Countrywide further contends that one commits fraud by silence only if there is a duty to speak. Ala. Code § 6-5-102; Soniat v. Johnson-Rast Hays, 626 So.2d 1256, 1259 (Ala. 1993). Furthermore, Alabama law strictly limits those circumstances where even parties to the relationship have a "duty to speak;" ordinarily, parties who deal at arms length

**** [Price v. United States](https://casetext.com/case/price-v-united-states-170?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa64)

Case No. 2:18-cv-949 (S.D. Ohio Jan. 16, 2020)

fraudulent, because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.'" Id. at 699-700 (quoting Stanley v. Sewell Coal Co., 285 S.E.2d 679, 683 (W. Va. 1981)). Fraud can be based not only on affirmative misrepresentations, but also on a party's failure to fully disclose material facts when there exists a duty to speak. Textron Fin. Corp. v. Nationwide Mut. Ins. Co., 684 N.E.2d 1261, 1269 (Ohio Ct. App. 1996); see also Gaines v. Preterm-Cleveland, Inc., 514 N.E.2d 709, 712 (Ohio 1987) (establishing that a claim for fraud can be based

**** [CHARLESTON v. SALON SECRETS DAY SPA, INC.](https://casetext.com/case/charleston-v-salon-secrets-day-spa-inc-edpa-6-1-2009?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa40)

CIVIL ACTION No. 08-5889 (E.D. Pa. Jun. 1, 2009)   Cited 4 times

pled. "It is a wellestablished rule that deliberate nondisclosure of a material fact amounts to culpable misrepresentation no less than an intentional false affirmation."Marian Bank v. Int'l Harvester Credit Corp., 550 F. Supp. 456, 461 (E.D. Pa. 1982). Furthermore, silence is actionable as a misrepresentation when there is a duty to speak. Wilson v. Donegal Mut. Ins. Co., 598 A.2d 1310, 1315 (Pa.Super.Ct. 1991). The Charlestons have alleged that Defendants had a duty to speak as a result of the relationship between Salon Secrets and Charleston. They argue that this relationship is akin to a

**** [Brewer v. Christiansen](https://casetext.com/case/brewer-v-christiansen?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa21)

G042117 (Cal. Ct. App. Jul. 16, 2010)

engaging in the unauthorized practice of law. Christiansen claimed Hamilton did not have consent to appear at the motion to quash hearing and failed to tell him about the “motion to quash misadventure.” He attested he learned of the “no appearance” in 2009. He asserted, “The failure to speak when there is a duty to do so constitutes fraud.” He concludes his due process rights were violated when he was denied the effective assistance of any counsel. Brewer filed an opposition stating (1) the motion was time-barred, (2) Christiansen knew about the “no appearance” in 2000, and (3) the possible

**** [Williams v. Dresser Industries, Inc.](https://casetext.com/case/williams-v-dresser-industries-inc-2?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa24)

795 F. Supp. 1144 (N.D. Ga. 1992)   Cited 4 times

657, 247 S.E.2d 166 (1978); Shaw v. Cook County Fed. Sav. Loan, 139 Ga. App. 419, 420, 228 S.E.2d 326 (1976). See also, Grizzle v. Guarantee Ins. Co., 602 F. Supp. 465, 467 (N.D.Ga. 1984) (O'Kelley, J.). Moreover, Georgia law imposes upon parties a duty to speak, and Georgia courts have consistently held that concealment of a material fact when one is under a duty to speak constitutes fraud. See Reeves v. Williams Co., 160 Ga. 15, 20-21, 127 S.E. 293 (1925); Kieffer v. Linton, 196 Ga. App. 327, 328, 396 S.E.2d 13 (1990); Woodall v. Orkin Exterminating Co., 175 Ga. App. 83, 84, 332 S.E.2d 173

**** [Brickell v. Collins](https://casetext.com/case/brickell-v-collins?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa43)

262 S.E.2d 387 (N.C. Ct. App. 1980)   Cited 8 times

(5) resulting in damage to the injured party. Ragsdale v. Kennedy, 286 N.C. 130, 209 S.E.2d 494 (1974); Johnson v. Owens, 263 N.C. 754, 140 S.E.2d 311 (1965); Moore v. Wachovia Bank Trust Co., 30 N.C. App. 390, 226 S.E.2d 833 (1976). It is settled that where there is a duty to speak, the concealment of a material fact is equivalent to fraudulent misrepresentation. Griffin v. Wheeler-Leonard Co., supra We find, however, that one of the essential elements of fraud is not supported by the evidence and was not found by the trial court. The plaintiff has failed to show that defendant D. K. Collins

**** [Lewin v. Long](https://casetext.com/case/lewin-v-long?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#bq69)

70 F. Supp. 2d 534 (D.N.J. 1999)   Cited 2 times

[f]raud is deducible from artifice and concealment as well as from affirmative conduct of a character such as tends to deceive. If there is a duty to speak, fraud may be found in the concealment of a material fact. If a person sustains toward another a position of trust and confidence, his failure to disclose facts that it is his duty to disclose is as much fraud as would be actual misrepresentation of true facts. That is to say, fraud may exist where there is a concealment of a material fact that should be divulged, as well as where there is a positive misrepresentation of a material fact.

**** [Anderson v. Anderson](https://casetext.com/case/anderson-v-anderson-45?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#bq35)

620 S.W.2d 815 (Tex. Civ. App. 1981)   Cited 9 times

Fraud is deducible from artifice and concealment as well as from affirmative conduct of a character such as tends to deceive. If there is a duty to speak, fraud may be found in the concealment of a material fact. If a person sustains toward another a position of trust and confidence, his failure to disclose facts that it is his duty to disclose is as much fraud as would be actual misrepresentation of true facts. That is to say, fraud may exist where there is a concealment of a material fact that should be divulged, as well as where there is a positive misrepresentation of a material fact.

**** [Taylor v. Fire Insurance Exchange](https://casetext.com/case/taylor-v-fire-insurance-exchange?tab=ps&q=Fraud%20by%20failure%20to%20speak,%20where%20there%20is%20%20a%20duty%20to%20speak&p=1&jxs=&sort=relevance&type=case#pa26)

No. SD29102 (Mo. Ct. App. Feb. 9, 2009)   Cited 1 times

Fraudulent misrepresentation requires, inter alia, a false representation. Bohac , 223 S.W.3d at 862. Silence can constitute misrepresentation, if there is a duty to speak. Id. at 864. "The affirmative duty to disclose and the failure to do so serve as a substitute for the false representation element required in a fraud action." Id.

The court is to protect against any encroachment of constitutionally secured liberty.

Boyd v US, H6US616

****  [In re Adoption No. 9979](https://casetext.com/case/in-re-adoption-no-3?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#bq124)

591 A.2d 468 (Md. 1991)   Cited 9 times

"The violation of a constitutional right may make the proceedings in which the violation took place either voidable or void.

**** [Travelers v. Nationwide](https://casetext.com/case/travelers-v-nationwide?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa44)

244 Md. 401 (Md. 1966)   Cited 69 times

The violation of a constitutional right may make the proceedings in which the violation took place either voidable or void. In the words of Judge Markell, for the Court, in State v. Ambrose, 191 Md. 353, 369, 62 A.2d 359 (1948), a void judgment "`may be assailed at all times, and in all proceedings by which it is sought to be enforced' \* \* \* In other words, a

**** [State v. West](https://casetext.com/case/state-v-west-97?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa29)

2009 Ohio 6464 (Ohio Ct. App. 2009)

107, 110, 413 N.E.2d 819; State v. Cole (1982), 2 Ohio St.3d 112, 443 N.E.2d 169; State v. Kapper (1983), 5 Ohio St.3d 36, 448 N.E.2d 823; State v. Carpenter (1996), 116 Ohio App.3d 292, 295, 688 N.E.2d 14. {¶ 15} Substantive grounds for relief exist where there was such a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. R.C. 2953.21(A)(1); Jackson, supra; State v. Apanovitch (1995), 107 Ohio App.3d 82, 98, 667 N.E.2d 1041; Calhoun at 282-283. The burden is on the petitioner to show that the claimed errors resulted in prejudice

**** [State v. Harris](https://casetext.com/case/state-v-harris-121589?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa66)

2020 Ohio 4101 (Ohio Ct. App. 2020)

to obtain such a hearing, the petitioner must show that there are substantive grounds for relief that would warrant a hearing based upon the petition. Id. See also State v. Jackson, 64 Ohio St.2d 107, 110 (1980). Substantive grounds for relief exist where there was such a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. R.C. 2953.21(A); Calhoun at 282-283. "The burden is on the petitioner to show that the claimed errors resulted in prejudice before a hearing on a postconviction relief petition is warranted." State v. Widmer, 12th

**** [State v. Davis](https://casetext.com/case/state-v-davis-2591?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa57)

2013 Ohio 3878 (Ohio Ct. App. 2013)

and records in the case." State v. Vore, 12th Dist. Warren Nos. CA2012-06-049 and CA2012-10-106, 2013-Ohio-1490, ¶ 11, quoting State v. Watson, 126 Ohio App.3d 316, 324 (12th Dist.1998); see also R.C. 2953.21(C). Substantive grounds for relief exist where there was such a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. Calhoun, 86 Ohio St.3d at 282. The burden is on the petitioner to show that the claimed errors resulted in prejudice before a hearing on a postconviction relief petition is warranted. Widmer, 2013-Ohio-62 at ¶

**** [State v. Barton](https://casetext.com/case/state-v-barton-38?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa21)

2008 Ohio 2736 (Ohio Ct. App. 2008)   Cited 1 times

are substantive grounds for relief that would warrant a hearing based upon the petition, supporting affidavits, and files and records in the case. See R.C. 2953.21(C); State v. Jackson (1980), 64 Ohio St.2d 107, 110. Substantive grounds for relief exist where there was such a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. See R.C. 2953.21(A)(1); Calhoun at 282-83. The burden is on the petitioner to show that the claimed errors resulted in prejudice before a hearing on a postconviction relief petition is warranted. Calhoun at 283

**** [State v. Clark](https://casetext.com/case/state-v-clark-348?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa17)

2009 Ohio 2101 (Ohio Ct. App. 2009)

for relief that would warrant a hearing based upon the petition, supporting affidavits, and files and records in the case. Barton at ¶ 12; R.C. 2953.21(C); see, also, State v. Jackson (1980), 64 Ohio St.2d 107, 110. Substantive grounds for relief exist where there was such a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. Barton at ¶ 12; R.C. 2953.21(A)(1); Calhoun at 282-83. The burden is on the petitioner to show that the claimed errors resulted in prejudice before a hearing on a postconviction relief petition is warranted

**** [State v. Widmer](https://casetext.com/case/state-v-widmer-7?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa270)

2013 Ohio 62 (Ohio Ct. App. 2013)   Cited 1 times

there are substantive grounds for relief that would warrant a hearing based upon the petition, supporting affidavits, and files and records in the case. Id. See also State v. Jackson, 64 Ohio St.2d 107, 110 (1980). Substantive grounds for relief exist where there was such a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. R.C. 2953.21(A)(1); Calhoun at 282-283. The burden is on the petitioner to show that the claimed errors resulted in prejudice before a hearing on a postconviction relief petition is warranted. Calhoun at 283. {¶

**** [State v. Suarez](https://casetext.com/case/state-v-suarez-40?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa21)

2015 Ohio 64 (Ohio Ct. App. 2015)

the petitioner set forth sufficient operative facts to establish substantive grounds for relief. State v. Hicks, 12th Dist. Butler No. CA2004-07-170, 2005-Ohio-1237, ¶ 9, citing Calhoun at paragraph one of the syllabus. Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. State v. Clark, 12th Dist. Warren No. CA2008-09-113, 2009-Ohio-2101, ¶ 8; R.C. 2953.21(A)(1). The decision to grant or deny the petitioner an evidentiary hearing is left to the sound discretion of the trial court

**** [State v. Lawwill](https://casetext.com/case/state-v-lawwill-6?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa36)

2017 Ohio 8432 (Ohio Ct. App. 2017)

the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief." Calhoun, 86 Ohio St.3d at paragraph two of the syllabus. Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. State v. Clark, 12th Dist. Warren No. CA2008-09-113, 2009-Ohio-2101, ¶ 8. {¶ 16} "A trial court's decision to summarily deny a postconviction petition without holding an evidentiary hearing pursuant to R.C

**** [State v. Sheldon](https://casetext.com/case/state-v-sheldon-39?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa17)

2016 Ohio 6984 (Ohio Ct. App. 2016)

evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief." Calhoun, 86 Ohio St.3d at paragraph two of the syllabus. Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. State v. Clark, 12th Dist. Warren No. CA2008-09-113, 2009-Ohio-2101, ¶ 8. {¶ 9} "A trial court's decision to summarily deny a postconviction petition without holding an evidentiary hearing pursuant to R.C. 2953.21(C)

**** [State v. McKelton](https://casetext.com/case/state-v-mckelton-3?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa20)

2015 Ohio 4228 (Ohio Ct. App. 2015)

affidavits, the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief." Calhoun at paragraph two of the syllabus. Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. State v. Clark, 12th Dist. Warren No. CA2008-09-113, 2009-Ohio-2101, ¶ 8. {¶ 11} "A trial court's decision to summarily deny a postconviction petition without holding an evidentiary hearing pursuant to R.C

**** [State v. King](https://casetext.com/case/state-v-king-973?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa33)

2014 Ohio 5393 (Ohio Ct. App. 2014)

the petitioner set forth sufficient operative facts to establish substantive grounds for relief. State v. Hicks, 12th Dist. Butler No. CA2004-07-170, 2005-Ohio-1237, ¶ 9, citing Calhoun at paragraph one of the syllabus. Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable. State v. Clark, 12th Dist. Warren No. CA2008-09-113, 2009-Ohio-2101, ¶ 8; R.C. 2953.21(A)(1). The decision to grant or deny the petitioner an evidentiary hearing is left to the sound discretion of the trial court

**** [State v. Murray](https://casetext.com/case/state-v-murray-348?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa54)

2016 Ohio 4994 (Ohio Ct. App. 2016)

that the petitioner set forth sufficient operative facts to establish substantive grounds for relief. State v. Blankenburg, 12th Dist. Butler No. CA2012-04-088, 2012-Ohio-6175, ¶ 9. See also R.C. 2953.21(C). "Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights so as to render the judgment void or voidable." McKelton at ¶ 10. {¶ 35} A trial court's decision to summarily deny a postconviction petition without holding an evidentiary hearing is left to the sound discretion of the trial court. Id. at ¶ 11; Dillingham at ¶

**** [State v. Sankey](https://casetext.com/case/state-v-sankey-11?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa30)

2018 Ohio 2677 (Ohio Ct. App. 2018)

facts to establish substantive grounds for relief." State v. Calhoun, 86 Ohio St.3d 279, 714 N.E.2d 905 (1999) paragraph two of the syllabus; State v. Jackson, 64 Ohio St.2d 107, 110, 413 N.E.2d 819 (1980). {¶23} "Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights of a magnitude sufficient to render the judgment void or voidable. See R.C. 2953.21(A); Calhoun at 282-283, 714 N.E.2d 905." State v. McKelton, 12th Dist. Butler No. CA2015-10-183, 2016-Ohio-3216, 55 N.E.3d 26, ¶9, appeal not allowed, 147 Ohio St.3d 1505, 2017-Ohio

**** [Martucci v. State](https://casetext.com/case/martucci-v-state?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa57)

No. 03C01-9412-CR-00438 (Tenn. Crim. App. Oct. 24, 1997)

pretrial bond are not proper grounds for post-conviction relief as presented. This court rejected the petitioner's claim that his bail was excessive in his direct appeal. State v. Len Martucci, slip op. at 3. Moreover, post-conviction relief is only available when the abridgement of a constitutional right causes a defendant's conviction or sentence to be void or voidable. See T.C.A. § 40-30-105. An excessive pretrial bond does not, by itself, make a defendant's conviction or sentence void or voidable and thus is not a basis for post-conviction relief. The petitioner fails to show both

**** [State v. Williams](https://casetext.com/case/state-v-williams-5312613?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa27)

2020 Ohio 5398 (Ohio Ct. App. 2020)

relief requiring a hearing as demonstrated by the petition, supporting affidavits, documentary evidence, files, and records pertinent to the case. R.C. 2953.21(D); State v. Jackson, 64 Ohio St.2d 107 (1980). Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights of a magnitude sufficient to render the judgment void or voidable. R.C. 2953.21(A); Calhoun at 282-283. {¶18} A petition for postconviction relief must also be timely filed pursuant to R.C. 2953.21(A)(2). Williams does not dispute that his petition - filed 11 years after

**** [State v. McKelton](https://casetext.com/case/state-v-mckelton-4?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa24)

2016 Ohio 3216 (Ohio Ct. App. 2016)   Cited 5 times

Calhoun, 86 Ohio St.3d at 282–283, 714 N.E.2d 905. Rather, the petitioner must show that there are substantive grounds for relief requiring a hearing as demonstrated by the petition, supporting affidavits, documentary evidence, files, and records pertinent to the case. See R.C. 2953.21(C) ; State v. Jackson, 64 Ohio St.2d 107, 110, 413 N.E.2d 819 (1980). Substantive grounds for relief exist where there was a denial or infringement of the petitioner's constitutional rights of a magnitude sufficient to render the judgment void or voidable. See R.C. 2953.21(A) ; Calhoun at 282–283, 714 N.E.2d 905

**** [Hill v. State](https://casetext.com/case/hill-v-state-1252?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa33)

No. 01C01-9806-CR-00273 (Tenn. Crim. App. Jul. 30, 1999)   Cited 1 times

filed Feb. 21, 1992, at Knoxville), the defendant asserted that the trial court did not advise him of his constitutional rights prior to his entering five guilty pleas. Although "a court may lose jurisdiction in the course of the proceeding due to its failure to afford the accused the due process of law," only those constitutional violations "so fundamental as to render the judgment void may be attacked by the writ." Id. This Court held that validity of guilty pleas could not be challenged in a habeas corpus proceeding because any error in a trial court's accepting a guilty plea renders

**** [State v. Taylor](https://casetext.com/case/state-v-taylor-1975?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa26)

No. W2015-01831-CCA-R3-CD (Tenn. Crim. App. Jun. 6, 2016)   Cited 7 times

or excessive. Id. at \*23-24. The Defendant is not entitled to relief on this basis. We also conclude that the Defendant's double jeopardy claim and his claim that Code section 39-13-204 is unconstitutional are not colorable claims pursuant to Rule 36.1. Errors implicating constitutional rights would only render the judgments voidable, not void. See Taylor, 995 S.W.2d at 84. In addition, the Defendant does not state the factual basis for his argument that Code section 39-13-204 violates the single-subject and caption provisions of the Tennessee Constitution. Similarly, he does not state the

**** [Tuttle v. State](https://casetext.com/case/tuttle-v-state-8?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa38)

No. M2003-02984-CCA-R3-PC (Tenn. Crim. App. Mar. 2, 2005)

conclude that the state did not act with vindictiveness and that no due process right of the petitioner's was violated. The issue relating to the state's violation of Rule 8(a), Tenn. R. Crim. P., requiring mandatory joinder, is likewise without merit. A violation of this rule would not establish that the petitioner's convictions were either void or voidable because of an abridgement of a constitutional right. The petitioner's remedy would be to dismiss the second indictment, not vacate his convictions. Based on the foregoing and the record as a whole, we affirm the judgment of the trial court

**** [Trujillo v. Tinsley](https://casetext.com/case/trujillo-v-tinsley?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa9)

333 F.2d 185 (10th Cir. 1964)   Cited 19 times

because of the lack of a positive identification and because of an improper instruction on flight. Both of these grounds were urged in, and rejected by, the Colorado Supreme Court. Errors of a state court in a case over which it has jurisdiction are not reviewable on federal habeas corpus unless there has been a deprivation of constitutional rights such as to render the judgment void, or to amount to a denial of due process. Bizup v. Tinsley, 10 Cir., 316 F.2d 284, 285; Gay v. Graham, 10 Cir., 269 F.2d 482, 485. In the case before us the attack on the sufficiency of the evidence raises no

**** [Dryden v. State](https://casetext.com/case/dryden-v-state-10?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa71)

535 P.2d 483 (Wyo. 1975)   Cited 38 times

citing Counselman v. Hitchcock, 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110. Violation of the constitutional right results in a void, not merely erroneous, judgment. Maki v. State, 18 Wyo. 481, 485-486, 112 P. 334, 335 (1911) clearly holds that the right not to testify against oneself is a constitutional right. Concerning the burden of proof with respect to in-custody statements, it is said:

**** [Jerskey v. State](https://casetext.com/case/jerskey-v-state?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#bq36)

546 P.2d 173 (Wyo. 1976)   Cited 35 times

citing Counselman v. Hitchcock, 142 U.S. 547, 12 S.Ct. 195, 35 L.Ed. 1110. Violation of the constitutional right results in a void, not merely erroneous, judgment."

**** [Simer v. Rios](https://casetext.com/case/simer-v-rios?tab=ps&q=violation%20of%20a%20constitutional%20right%20may%20make%20the%20proceedings%20in%20which%20the%20violation%20took%20place%20either%20voidable%20or%20void&p=1&jxs=&sort=relevance&type=case#pa89)

661 F.2d 655 (7th Cir. 1981)   Cited 329 times

for vacating the settlement order, we do conclude, on other grounds, that the settlement decree should have been vacated as void. Mere error in the entry of a judgment does not render a judgment void for purposes of Rule 60(b)(4). Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 374-78, 60 S.Ct. 317, 318-20, 84 L.Ed. 329 (1940). But where an error of constitutional dimension occurs, a judgment may be vacated as void. One such constitutional error for concluding that a judgment is void for purposes of Rule 60(b)(4) is if the judgment was entered in violation of due process

"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda v Arizona, 384 US 436

"Where a party desires to rescind upon the grounds of mistake or fraud he must upon the discovery of the facts, at once announce his purpose, and adhere to it."

Grymes v Saunders, 93 US 55, 62.

"...If they proposed to rescind, their duty was to assert that right promptly, unconditionally, and invasively,"

Richardson v. Lowe, 149 Fed Rep 625, 627-28.

"Fraud maybe committed by failure to speak, but a duty to speak must be imposed,"

Dunahay v. Struzik, 393 P.2d 930, 96 Ariz. 246 (1964).

"When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth."

State v Coddington, 662 P.2d 155,135 Ariz. 480. ( Ariz. App. 1983)

"Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation." Leigh v. Loyd, 244 P.2d 356, 74 Ariz. 84- (1952)

"When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth."

State v. Coddington, 662 P.2d 155,135 Ariz. 480 ( Ariz. App. 1983)

"Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth."

Morrison v Acton, 198 P.2d 590, 68 Ariz. 27 ( Ariz. 1948)

"Damages will lie in proper case of negligent misrepresentation of failure to disclose."

Van Buren v. Pima Community College Dist Bd., 546 P.2d 821, 113 Ariz. 85 (Ariz.1976)

"Where one under duty to disclose facts to another fails to do so, and other is injured thereby, an action in tort lies against party whose failure to perform his duty caused injury."       Regan v First Nat. Bank,

101 P.2d 214, 55 Ariz. 320 ( Ariz. 1940)

"Where relation of trust or confidence exists between two parties so that one places peculiar reliance in trustworthiness of another, latter is under duty to make full and truthful disclosure of all material facts and is liable for misrepresentation or concealment."

Stewart v. Phoenix Nat. Bank, 64 P.2d 101, 49 Ariz. 34- ( Ariz. 1937)

"Concealing a material fact when there is duty to disclose may be actionable fraud."

Universal Inv. Co. v. Sahara Motor Inn, Inc., 619 P-2d 485,127 Ariz. 213- (Ariz. App. 1980)

####  [**Powers v. Guaranty RV, Inc.**](https://casetext.com/case/powers-v-guar-rv?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa62)

229 Ariz. 555 (Ariz. Ct. App. 2012)   Cited 22 times

ruling. Inch v. McPherson, 176 Ariz. 132, 136, 859 P.2d 755, 759 (App.1992). ¶ 27 “Fraud will not be presumed and must be proved by clear and convincing evidence.” Universal Inv. Co. v. Sahara Motor Inn, Inc., 127 Ariz. 213, 214, 619 P.2d 485, 486 (App.1980). “Concealing a material fact when there is a duty to disclose may be actionable fraud.” Id. Generally, a seller does not have a duty to disclose, but certain circumstances may give rise to such a duty. Id. at 215, 619 P.2d at 487. When a buyer inquires about a certain condition, a seller has the duty to disclose all he knows. Id. ¶ 28 “A

####  [**Universal Inv. Co. v. Sahara Motor Inn, Inc.**](https://casetext.com/case/universal-inv-co-v-sahara-motor-inn-inc?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa26)

127 Ariz. 213 (Ariz. Ct. App. 1980)   Cited 22 times

The court's findings do not support that defense, nor is there evidence in the record to support it. Fraud will not be presumed and must be proved by clear and convincing evidence. Gardner v. Royal Development Co., 11 Ariz. App. 447, 465 P.2d 386 (1970). Concealing a material fact when there is a duty to disclose may be actionable fraud. National Housing Industries, Inc. v. E.L. Jones Development Co., 118 Ariz. 374, 576 P.2d 1374 (App. 1978). The evidence supports findings that the seller failed to disclose violations of the city code in the electrical system which were known to it prior to

####  [**Lawson v. C S Bank of S.C**](https://casetext.com/case/lawson-v-c-s-bank-of-sc?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa12)

180 S.E.2d 206 (S.C. 1971)   Cited 21 times

defendant knew was unstable and unsuited for the intended purpose. Knowing that the purchaser was ignorant of the condition, which was not apparent upon inspection, and knowing its materiality, the defendant failed to disclose the truth. "Unquestionably, the concealment of material facts that one is, under the circumstances, bound to disclose may constitute actionable fraud. Indeed, one of the fundamental tenets of the Anglo-American law of fraud is that fraud may be committed by a suppression of the truth ( suppressio veri) as well as by the suggestion of falsehood ( suggestio falsi). It is,

####  [**Aiken County v. BSP Division of Envirotech Corp.**](https://casetext.com/case/aiken-county-v-bsp-div-of-envirotech-corp-2?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa269)

657 F. Supp. 1339 (D.S.C. 1986)   Cited 1 times

induce action in reliance; lack of knowledge by the other that the fact represented is false, reasonable reliance by the other upon the fact, and harm proximately caused by the reliance." Miller v. Premier Corporation, 608 F.2d 973, 980 (4th Cir. 1979). Concealment of material facts, where the circumstances impose a duty to disclose, is actionable fraud. Lawson v. C S National Bank of S.C., 259 S.C. 477, 193 S.E.2d 124 (1972). In construction cases, the courts have held that a contractor has a duty to fully and fairly advise the owner "of the probable consequences which he knew, or should have

####  [**Nat. Housing Indus. v. E.L. Jones Develop. Co.**](https://casetext.com/case/nat-housing-indus-v-el-jones-develop-co?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa28)

576 P.2d 1374 (Ariz. Ct. App. 1978)   Cited 25 times

to defendant's failure to inform NHI the subdivision was not "ready to go" because of the undisclosed fill requirements, Mr. Temple's refusal to allow drainage onto his property and the City's "hold" on the subdivision drainage plans. Actionable fraud may be committed by concealing a material fact which one is, under the circumstances, obligated to disclose. Dunahay v. Struzik, 96 Ariz. 246, 393 P.2d 930 (1964); Leigh v. Loyd, 74 Ariz. 84, 244 P.2d 356 (1952). Whether a duty to speak exists is determined by reference to all of the circumstances of the case. 37 Am.Jur.2d, Fraud and Deceit, §

####  [**Furash Company, Inc. v. McClave**](https://casetext.com/case/furash-company-inc-v-mcclave?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa53)

130 F. Supp. 2d 48 (D.D.C. 2001)   Cited 39 times

Pyne v. Jamaica Nutrition Holdings, Ltd., 497 A.2d 118, 131 (1985) (citing Bennett v. Kiggins, 377 A.2d 57, 59 (D.C.), cert. denied, 434 U.S. 1034, 98 S.Ct. 768, 54 L.Ed.2d 782 (1978)); see also Howard v. Riggs Nat'l Bank, 432 A.2d 701, 706 (D.C. 1981). Nondisclosure of material information may constitute fraud, especially where there is a duty to disclose. Rothenberg v. Aero Mayflower Transit Co., 495 F. Supp. 399, 406 (D.D.C. 1980). As an officer of Furash, McClave had a duty to disclose material information. Furash alleges that McClave's misrepresentations include her: (1) claims that she

####  [**Saucier v. Countrywide Home Loans**](https://casetext.com/case/saucier-v-countrywide-home-loans?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa41)

64 A.3d 428 (D.C. 2013)   Cited 37 times

is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.” Id. (citing Restatement, § 162(2) (internal quotation marks omitted)). “Nondisclosure of material information may constitute fraud, especially where there is a duty to disclose.” Pyne v. Jamaica Nutrition Holdings, Ltd., 497 A.2d 118 (D.C.1985) (citing Rothenberg, supra, 495 F.Supp. at 406). “[M]ere silence does not constitute fraud unless there is a duty to speak.” Kapiloff v. Abington Plaza Corp., 59 A.2d 516, 517

####  [**Artec Group, Inc. v. Chugach Management Services**](https://casetext.com/case/artec-group?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa17)

470 F. Supp. 2d 1353 (M.D. Fla. 2006)   Cited 4 times

the statement to induce another's reliance; and (4) reliance by such other person on the misrepresentation. Johnson v. Davis, 480 So. 2d 625, 627 (Fla. 1985); Gutter v. Wunker, 631 So. 2d 1117, 1118 (Fla. 4th DCA 1994). A knowing concealment or non-disclosure of a material fact can support an action for fraud when there exists a duty to disclose the material information. Friedman v. Am. Guardian Warranty Servs., Inc., 837 So. 2d 1165, 1166 (Fla. 4th DCA 2003); Gutter, 631 So. 2d at 1118; Johnson, 480 So. 2d at 627 ("where failure to disclose a material fact is calculated to induce a false

####  [**In re Longoria**](https://casetext.com/case/in-re-longoria-12?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa86)

470 S.W.3d 616 (Tex. App. 2015)   Cited 14 times

No duty of disclosure arises without evidence of a confidential relationship. Ins. Co. of N. Am. v. Morris, 981 S.W.2d 667, 674–75 (Tex.1998). A failure to disclose information may constitute fraud where there is a duty to disclose. Bradford v. Vento, 48 S.W.3d 749, 754–55 (Tex.2001). “Fraudulent inducement to sign an agreement containing a dispute resolution agreement such as an arbitration clause or forum-selection clause will not bar enforcement of the clause unless the specific

####  [**Hayes v. Bank of Am.**](https://casetext.com/case/hayes-v-bank-of-am-1?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa107)

Civil Action No. H-12-377 (S.D. Tex. Sep. 23, 2013)   Cited 1 times

the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury." In re FirstMerit Bank, N.A., 52 S.W.3d 749, 758 (Tex. 2001). When a party has a duty to disclose information and fails to do so, the concealment of that information may constitute fraud. Bradford v. Vento, 48 S.W.3d 749, 754 (Tex. 2001). Plaintiff did not allege facts in his amended petition identifying what Defendants failed to disclose to Plaintiff. The court's best guess is that the allegation related to the alleged

####  [**Allegheny Cas. Co. v. Venture**](https://casetext.com/case/allegheny-cas-co-v-venture?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa112)

Case No. 8:13-cv-128-SCB-TGW (M.D. Fla. Aug. 21, 2014)   Cited 4 times

when the All Rights Letter specifically requested such information. Archer asserts that it did not misrepresent any material fact, and that even if so, ACC did not rely upon its misrepresentations. (Dkt. 79 at 10-15). "A knowing concealment or non-disclosure of a material fact can support an action for fraud when there exists a duty to disclose the material information." Artec Grp., Inc. v. Chugach Mgmt. Servs., Inc., 470 F. Supp. 2d 1353, 1356 (M.D. Fla. 2006) (citing Friedman v. Am. Guardian Warranty Servs., Inc., 837 So. 2d 1165, 1166 (Fla. 4th DCA 2003)). Alternatively, "when a party

####  [**Society of Lloyd's v. Abramson**](https://casetext.com/case/society-of-lloyds-v-abramson?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa29)

Miscellaneous Case No. 3:03-MC-001-P (N.D. Tex. Mar. 29, 2004)   Cited 1 times

the representation with the intention that it should be relied upon by the party; (5) the party acted in reliance upon the misrepresentation; and (6) the party thereby suffered injury. Norman v. Apache Corp., 19 F.3d 1017, 1022 (5th Cir. 1994). Failure to disclose a material fact may also constitute fraud if the offending party had a duty to disclose the fact. Union Pac. Res. Group, Inc. v. Rhone-Poulene, Inc., 247 F.3d 574, 586 (5th Cir. 2001). A duty may arise for these purposes if, inter alia, a confidential or fiduciary relationship exists between the parties or if one party voluntarily

####  [**DDH Aviation, L.L.C. v. Holly**](https://casetext.com/case/ddh-aviation?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa132)

Civil Action No. 3:02-CV-2598-P (N.D. Tex. Mar. 31, 2005)   Cited 3 times

the representation with the intention that it should be relied upon by the party; (5) the party acted in reliance upon the misrepresentation; and (6) the party thereby suffered injury. Norman v. Apache Corp., 19 F.3d 1017, 1022 (5th Cir. 1994). Failure to disclose a material fact may also constitute fraud if the offending party had a duty to disclose the fact. Union Pac. Res. Group, Inc. v. Rhone-Poulene, Inc., 247 F.3d 574, 586 (5th Cir. 2001). A duty may arise under these purposes if, inter alia, a confidential or fiduciary relationship exists between the parties or if one party voluntarily

####  [**MURRAY v. TXU CORP**](https://casetext.com/case/murray-v-txu-corp-5?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa67)

Civil Action No. 3:03-CV-0888-P (N.D. Tex. May. 27, 2005)   Cited 13 times

representation with the intention that it should be relied upon by the party; (5) the party acted in reliance upon the misrepresentation; and (6) the party thereby suffered injury. Norman v. Apache Corp., 19 F.3d 1017, 1022 (5th Cir. 1994). Failure to disclose a material fact may also constitute fraud if the offending party had a duty to disclose the fact. Union Pac. Res. Group, Inc. v. Rhone-Poulene, Inc., 247 F.3d 574, 586 (5th Cir. 2001). A party incurs a duty to disclose a material fact when: (1) there is a fiduciary or confidential relationship between the parties; or (2) a party later

####  [**Pyne v. Jamaica Nutrition Holdings Ltd.**](https://casetext.com/case/pyne-v-jamaica-nutrition-holdings-ltd?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa69)

497 A.2d 118 (D.C. 1985)   Cited 39 times

of material fact which is knowingly made with the intent to deceive and action is taken in reliance upon the misrepresentation. Bennett v. Kiggins, 377 A.2d 57, 59 (D.C.), cert. denied, 434 U.S. 1034, 98 S.Ct. 768, 54 L.Ed.2d 782 (1978). Nondisclosure of material information may constitute fraud, id., especially where there is a duty to disclose. Rothenberg v. Aero Mayflower Transit Co., 495 F. Supp. 399, 406 (D.D.C. 1980). "Officers and directors of a corporation owe a fiduciary duty to the corporation and to its shareholders, which requires them to act in good faith in managing the

####  [**Ridley v. Ridley (In re Marriage of Ridley)**](https://casetext.com/case/ridley-v-ridley-8?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa27)

No. 1 CA-CV 17-0521 FC (Ariz. Ct. App. Oct. 11, 2018)

¶10 The court's implicit finding of fraud is supported by the record. A person may commit fraud by concealing a material fact when there is a duty to disclose such a fact. Powers, 229 Ariz. at 562, ¶ 27. Here, Wife testified that in 2003, having moved to the United States from Colombia three years earlier, she did not speak English well, and that Husband falsely explained to her in Spanish that the disclaimer deed was required to obtain financing:

####  [**Gurley v. Hickory Withe Part.**](https://casetext.com/case/gurley-v-hickory-withe-part?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#bq43)

No. W2002-02050-COA-R3-CV (Tenn. Ct. App. Sep. 10, 2003)   Cited 7 times

Furthermore, where there is a duty to disclose a material fact, failure to make such disclosure can constitute concealment and, consequently, fraud by concealment. The duty to disclose arises when (1) there is a fiduciary relationship between the parties; (2) one of the parties has expressly reposed trust and confidence in the other; or (3) the contract is intrinsically fiduciary and calls for perfect good faith. See Justice v. Anderson County, 955 S.W.2d 613, 616-17 (Tenn.Ct.App. 1997); see also Domestic Sewing Mach. Co. v. Jackson, 83 Tenn. 418, 424-25 (1885).

####  [**Continental v. Investment Pr.**](https://casetext.com/case/continental-v-investment-pr?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa64)

Case No. M1998-00431-COA-R3-CV (Tenn. Ct. App. Dec. 10, 1999)   Cited 11 times

to their lack of understanding of the description. The surveyor who later surveyed the property also testified to the difficulty in following the description. These circumstances support a finding of trick or contrivance. Furthermore, where there is a duty to disclose a material fact, failure to make such disclosure can constitute concealment and, consequently, fraud by concealment. The duty to disclose arises when (1) there is a fiduciary relationship between the parties; (2) one of the parties has expressly reposed trust and confidence in the other; or (3) the contract is intrinsically

####  [**Selig v. Niagara Recovery Sols.**](https://casetext.com/case/selig-v-niagara-recovery-sols-mgmt-grp-llc?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa51)

Civil Action No. 3:19-cv-769 (E.D. Va. Jul. 27, 2020)   Cited 1 times

(3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) damages resulting from that reliance." Bank of Montreal v. Signet Bank, 193 F.3d 818, 826 (4th Cir. 1999) (applying Virginia law). Additionally, concealing a material fact that a defendant has a duty to disclose can amount to fraud by omission. See Davis v. Wells Fargo Bank, N.A., No. 3:13-cv-586-HEH, 2014 WL 106257, at \*6 (E.D. Va. Jan. 8, 2014). The plaintiff "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). As discussed above,

####  [**Wood Products, Inc. v. CMI Corp.**](https://casetext.com/case/wood-products-inc-v-cmi-corp?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa43)

651 F. Supp. 641 (D. Md. 1986)   Cited 20 times

Maryland law follows the general rule that the failure to disclose a material fact which the defendant was under a duty to disclose can constitute fraud. See, e.g., Finch v. Hughes Aircraft Co., 57 Md. App. 190, 469 A.2d 867 (1984), cert. denied, 300 Md. 88, 475 A.2d 1200 (1984), U.S. cert. denied, 469 U.S. 1215, 105 S.Ct. 1190, 84 L.Ed.2d 336 (1985). Of course, CMI was not

####  [**Scott v. Durham**](https://casetext.com/case/scott-v-durham-4?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa19)

1:09-CV-348-PPS-RBC (N.D. Ind. Jan. 3, 2011)

1289 (Ind. 1996); see also Kesling v. Kesling, 546 F. Supp. 2d 627, 638 (N.D. Ind. 2008); Lawyers Title Ins. Corp. v. Pokraka, 595 N.E.2d 244, 249 (Ind. 1992). These elements expressly require a misrepresentation. But Indiana law also recognizes that "the failure to disclose all material facts, by a party on whom the law imposes a duty to disclose, constitutes actionable fraud." Vaughn v. General Foods Corp., 797 F.2d 1403, 1413-14 (7th Cir. 1986) (quoting Grow v. Indiana Retired Teachers Cmty., 271 N.E.2d 140, 145 (Ind. 1971) (en banc)); see also Kesling, 546 F. Supp. 2d at 639; Indiana

####  [**Dobbins v. Kramer**](https://casetext.com/case/dobbins-v-kramer?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa14)

780 S.W.2d 717 (Mo. Ct. App. 1989)   Cited 5 times

(7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Ackmann v. Keeney-Toelle Real Estate Co., 401 S.W.2d 483, 488 (Mo. banc 1966). Just as if accomplished by an affirmative misrepresentation, concealment of a material fact where a duty to disclose such fact exists, constitutes fraud. Walters v. Maloney, 758 S.W.2d 489, 498 (Mo.App. 1988). "[M]ere silence is fraud where the circumstances impose upon the person the duty to speak and he deliberately remains silent. However, under such circumstances, there

####  [**Harris v. Sunsong Holdings**](https://casetext.com/case/harris-v-sunsong-holdings-inc?tab=ps&q=Concealing%20a%20material%20fact%20when%20there%20is%20duty%20to%20disclose%20may%20be%20actionable%20fraud&p=1&jxs=&sort=relevance&type=case#pa26)

2021 Ohio 1213 (Ohio Ct. App. 2021)

709 (1987). To support a cause of action for fraud, a representation must generally "involve a matter of fact that relates to the past or present," as opposed to "predictions or projections relating to future" events. See Lucarell at ¶ 63. Concealment of a material fact, "where there is a duty to disclose," is equivalent to a false representation. See Groob at ¶ 47. {¶ 14} Here, the trial court concluded that Appellants sought to deceive Sunsong by "misrepresent[ing] Harco's financial status," particularly with respect to the New Business, which was "unprofitable and unsustainable."

"An "ex post facto law" is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; a law which aggravates a crime or makes it greater than when it was committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that hanges the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; a law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right which, when done, was lawful; a law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of the proclamation of amnesty; every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage."

Wilensky v. Fields, Fla, 267 So.2d 1, 5. [Source: Black's Law Dictionary, 6th edition, p 580.]

"Qualified immunity defense fails if public officer violates clearly established right because a reasonably competent official should know the law governing his conduct"

Jones vs Counce 7-F3d-1359-8th Cir 1993; Benitez v Wolff 985-F3d 662 2nd Cir 1993

**"The Constitution of these United States is the supreme law of the land. Any law that is repugnant to the constitution is null and void of law."**

**Marbury v Madison, 5 US 137**

"And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any, time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe (a)"

Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. 1, ch. 20,1789

Due Process provides that the "rights of pro se (Sui Juris) litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if j court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements"

(Spencer v Doe; 1998; Green v Bransou 1997; Boag v McDougall; 1998; Haines v Kerner, 1972)

"Right to proceed pro se (Sui Juris) is fundamental statutory right that is afforded highest degree of protection"

(Devine v Indian River County School Bd., 11th Cir. 1997

Cases  Historical Review Of Title 26 And Statutes At Large

"The public welfare demands that constitutional cases must be decided according to the terms of the Constitution itself, and not according to judges' views of fairness, reasonableness, or justice."

-- Justice Hugo L. Black (U. S. Supreme Court Justice, 1886 - 1971).

"If we know the truth, we must tell it; if we don't, we must learn it!" It is critical to our spirit.

"It is not the function of our government to keep the Citizen from falling into error; it is the function of the Citizen to keep the government from falling into error." American Communications Ass'n v. Douds, 339 U. S. 382, 442.

HISTORICAL REVIEW OF TITLE 26 AND STATUTES AT LARGE

<https://famguardian.org/Subjects/Taxes/Remedies/TaxpayerVNontaxpayer.htm>

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| * PDF [Who are "Taxpayers" and Who Needs a "Taxpayer Identification Number"?, Form #05.013](http://sedm.org/Forms/05-MemLaw/WhoAreTaxpayers.pdf) (OFFSITE LINK)- SEDM.  Hand this short pamphlet to government and financial institutions to show why they can't apply [I.R.C. Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A) against a person born within and domiciled within a state of the Union who is not engaged in a "trade or business".
* PDF [Your Exclusive Right to Declare and Establish Your Civil Status, Form #13.008](http://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf) (OFFSITE LINK)-proves that NO ONE in the government can counsel or advise you on what to put on any government form, punish you because of what you put on it, or refuse to accept it if they don't like it, and if they do, they are committing a crime and a violation of rights.
* [The Trade or Business Scam](https://famguardian.org/Subjects/Taxes/Remedies/TradeOrBusinessScam.htm)- engaging in this privileged, voluntary, avoidable excise taxable activity is what makes you a "taxpayer" under [I.R.C. Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A)
* ["taxpayer" defined](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)-[Sovereignty Forms and Instructions](https://famguardian.org/TaxFreedom/FormsInstr.htm), Cites by Topic
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* PDF [Requirement for Consent, Form #05.003](http://sedm.org/Forms/05-MemLaw/Consent.pdf) (OFFSITE LINK)- shows HOW we volunteer to become "taxpayers"
* PDF [Government Identity Theft, Form #05.46](https://sedm.org/Forms/05-MemLaw/GovernmentIdentityTheft.pdf) (OFFSITE LINK)-those who PRESUME you are a "taxpayer" without evidence are committing the crime of identity theft. Here is how to prosecute it.
* Why the Government Can't Lawfully Assess Human Beings With an Income Tax Liability Without Their Consent, Form #05.011 (OFFSITE LINK)- SEDM
	+ PDF [PDF in member subscriptions](https://sedm.org/shop/why-the-government-cant-lawfully-assess-human-beings-with-an-income-tax-liability-without-their-consent-form-05-011-2/)
	+ [Member Subscriptions](http://sedm.org/participate/member-subscriptions/)
* [The Bicycle You Can't Ride](http://viewpure.com/MFzDaBzBlL0) (OFFSITE LINK) - "taxpayer"=normal bicycle. "nontaxpayer"=modified bicycle
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| *"The taxpayer-- that's someone who works for the federal government but doesn't have to take the civil service examination."[President Ronald W. Reagan ]*The word “taxpayer” is defined in 26 U.S.C. §7701(a)(14)  and 26 U.S.C. §1313  as someone who is “liable for” and “subject to” the income tax in Internal Revenue Code, Subtitle A.[*TITLE 26*](https://www.law.cornell.edu/uscode/text/26)*>*[*Subtitle F*](https://www.law.cornell.edu/uscode/text/26/subtitle-F)*>*[*CHAPTER 79*](https://www.law.cornell.edu/uscode/text/26/subtitle-F/chapter-79)*> § 7701*[*§ 7701. Definitions*](https://www.law.cornell.edu/uscode/text/26/7701)*(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—**(14) Taxpayer**The term ''taxpayer'' means****any person****subject to any internal revenue tax.*The “person” they are referring to above is further characterized as a “citizen of the United States” or “resident of the United States” (alien).  The tax is not on nonresident aliens, but on their INCOME, therefore they cannot lawfully be “taxpayers”:*TITLE 26--INTERNAL REVENUE**CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY**PART 1\_INCOME TAXES--Table of Contents*[*Sec.  1.1-1  Income tax on individuals.*](http://a257.g.akamaitech.net/7/257/2422/10apr20061500/edocket.access.gpo.gov/cfr_2006/aprqtr/26cfr1.1-1.htm)*(a) General rule.**(1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual.*What “U.S. citizens” and “U.S. residents” share in common is a domicile on federal territory that is no part of the exclusive jurisdiction of any state of the Union.  Collectively, they are called “U.S. persons” as defined in 26 U.S.C. §7701(a)(30).  Remember:*“U.S. person=domicile or residence on federal territory and not any state of the Union”*The “United States” they mean in the term “U.S. citizen” is defined as federatl territories and possessions in 26 U.S.C. §7701(a)(9) and (a)(10)  and 4 U.S.C. §110(d) and nowhere includes any state of the Union because they are sovereign and foreign in respect to the federal government.  In that sense, income taxes are a franchise tax associated with the domicile/protection franchise.*"****Thus, the Court has frequently held that domicile or residence, more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes****. Since the Fourteenth Amendment makes one a citizen of the state wherein he resides,****the fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter.****Of course, the situs of property may tax it regardless of the citizenship, domicile, or residence of the owner, the most obvious illustration being a tax on realty laid by the state in which the realty is located."[Miller Brothers Co. v. Maryland,*[*347 U.S. 340*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=347&page=340)*(1954)]****"***[***domicile***](http://famguardian.org/TaxFreedom/CitesByTopic/domicile.htm)***.****A person's legal home.  That place where a man has his true, fixed, and****permanent home****and principal establishment, and to which whenever he is absent he has****the intention of****returning.  Smith v. Smith, 206 Pa.Super. 310m 213 A.2d 94.  Generally, physical presence within a state and****the intention****to make it one's home are the requisites of establishing a "domicile" therein.  The permanent residence of a person or the place to which he****intends to****return even though he may actually reside elsewhere.  A person may have more than one residence but only one domicile.****The legal domicile of a person is important since it, rather than the actual residence, often controls the jurisdiction of the taxing authorities and determines where a person may exercise the privilege of voting and other legal rights and privileges.****"[Black's Law Dictionary, Sixth Edition, p. 485]*Those who don’t want to pay the tax or be “taxpayers” simply don’t partake of the government protection franchise and instead declare themselves as “nonresidents” with no “residence” or “permanent address” within the jurisdiction of the taxing authority on every government form they fill out.  That is why “nonresident aliens” cannot be “taxpayers”.  For further details, see:

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| *Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002<http://sedm.org/Forms/FormIndex.htm> |

The IRS refers to everyone as “taxpayers” because making this usually false presumption against innocent “nontaxpayers” is how they recruit new “taxpayers”.  Here is the way one of our readers describes how he reacts to being habitually and falsely called “taxpayer” by the IRS:*I refuse to allow any IRS or State revenue officer to call me or any client a "taxpayer". Just because I may look like one or have the attributes of one does not necessarily make me one. To one IRS lady, and I have no reason to doubt that she fits this category, I use the following example. "Miss you have all of the equipment to be a whore, but that does not make you one by presumption." Until it is proven by a preponderance of evidence I must assume you are a lady and you will be treated as such. Please have the same respect for me, and don't slander my reputation and defame my character by calling me a whore for the government, which is what a "taxpayer" is.**[Eugene Pringle]*Funny!  But guess what?  This is not a new idea.  We refer you to the [Bible book of Revelations, Chapter 17](http://www.biblegateway.com/passage/?search=revelations%2017&version=50), which describes precisely who this whore or harlot is: Babylon the Great!  Check out that chapter, keeping in mind that “Babylon the Great” is symbolic of the city full of all the ignorant and idolatrous people who have unwittingly made themselves into government whores by becoming surety for government debts in the pursuit of taxable government privileges and benefits they didn’t need to begin with.  The Bible describes these harlots and adulterers below:*“Adulterers and****adulteresses****! Do you not know that friendship [and citizenship] with the world [and the governments/states of the world] is enmity with God? Whoever therefore wants to be a friend of the world makes himself an enemy of God.” [*[*James 4:4*](http://www.biblegateway.com/passage/?search=james%204:4&version=50)*, Bible, NKJV]**“When thou sawest a thief [the IRS] then thou consentedst with him, and hast been****partaker with adulterers****.” [*[*Ps 50:18*](http://www.biblegateway.com/passage/?search=Psalms%2050:18&version=50)*, Bible, NKJV ]**“Where do wars and fights [and tyranny and oppression] come from among you?  Do they not come from your desires for pleasure [pursuit of government “privileges”] that war in your members?….You ask [from your government and its THIEF the IRS] and do not receive, because you ask amiss, that you may spend it on your own pleasures.****Adulterers and adulteresses [and HARLOTS]!  Do you not know that friendship with the world is enmity with God?****Whoever therefore wants to be a friend of the world makes himself an enemy of God.” [*[*James 4:3-4*](http://www.biblegateway.com/passage/?search=James%204:3-4&version=50)*, Bible, NKJV]*These “taxpayer” and “U.S. citizen” idolaters have made government their new pagan god (neo-god), their friend, and their source of false man-made security.  That is what the “Security” means in “Social Security”.  The bible mentions that there is something “mysterious” about “Babylon the Great Harlot”:*“And on her forehead a name was written: MYSTERY, BABYLON THE GREAT, THE MOTHER OF HARLOTS AND OF THE ABOMINATIONS OF THE EARTH.”[*[*Rev. 17:5*](http://www.biblegateway.com/passage/?search=Rev.%2017:5&version=50)*, Bible, NKJV]**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**GOVERNMENT ANNOUNCEMENT April 15, 20\_\_**[Washington, D.C.]**The federal government announced today that it is changing its emblem from an eagle to a condom, because that more clearly reflects its political stance.  A condom stands up to inflation, halts production, destroys the next generation, protects a bunch of pricks, and gives you a sense of security while it's actually screwing you.**[SOURCE:*[*http://famguardian.org/Subjects/LawAndGovt/Humor/NewGovSymbol.jpg*](http://famguardian.org/Subjects/LawAndGovt/Humor/NewGovSymbol.jpg)*]*The mystery about this harlot/adulterous woman described in Rev. 17:5  is symbolic of the ignorance and apathy that these people have about the law and their government.  For a fascinating read into this subject, we refer you to the free book on the internet entitled *Babylon the Great is Falling* referred to us by one of our readers:<http://www.babylonthegreatisfalling.net/>The IRS ***DOES NOT*** have the authority conferred by law under Subtitle A of the Internal Revenue Code to bestow the status of “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” on any natural person who doesn’t first *volunteer* for that “distinctive” title.  Below are some facts confirming this:1. There is no statute making anyone liable for the income tax.  Therefore, the only way you can become subject is by volunteering.  Subtitle A of the Internal Revenue Code  is therefore “private law” and “special law” that only applies to those who individually consent by connecting their earnings to a “[trade or business](https://famguardian.org/Subjects/Taxes/Remedies/TradeOrBusinessScam.htm)”, which is a “public office” in the United States government.  These people are referred to in the Treasury Regulations as “effectively connected with a trade or business”.  BEFORE they consent, they are called "nontaxpayers".  AFTER they consent, they are called "taxpayers".*"To the extent that regulations implement the statute, they have the force and effect of law...The regulation implements the statute****and cannot vitiate or change the statute****..."[Spreckles v. C.I.R.,119 F.2d, 667]**"..****liability for taxation must clearly appear****[from statute imposing tax]."[Higley v. Commissioner of Internal Revenue, 69 F.2d 160 (1934)]**“****While Congress might have the power to place such a personal liability upon trust beneficiaries who did not renounce the trust, yet it would require clear expression of such intent****, and it cannot be spelled out from language (as that here) which can be given an entirely natural and useful meaning and application excluding such intent."**[Higley v. Commissioner of Internal Revenue, 69 F.2d 160 (1934)]**"A tax is a legal imposition,****exclusively of statutory origin****(37 Cyc. 724, 725), and, naturally,****liability to taxation must be read in statute, or it does not exist****."**[Bente v. Bugbee, 137 A. 552; 103 N.J. Law. 608 (1927)]**"…the taxpayer must be liable for the tax.****Tax liability is a condition precedent to the demand****. Merely demanding payment, even repeatedly, does not cause liability."**[Terry  v. Bothke, 713 F.2d 1405, at 1414 (1983)]*If you want to know more about this subject see:1.1. Section ‎5.6.1 of the Great IRS Hoax, which covers the subject of no liability in excruciating detail:<http://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm>1.2  The following link:<https://famguardian.org/Subjects/Taxes/Remedies/NoStatuteLiable.htm>1.3  Sections ‎5.4.6 through ‎5.4.6.6 of the Great IRS Hoax prove that the Internal Revenue Code is “private law” and a private contract/agreement.  Those who have consented are called “taxpayers” and those who haven’t are called “nontaxpayers”.2. The federal courts agree that the IRS cannot involuntarily make you into a "taxpayer" when they stated the following:*"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..."**[*[*Botta v. Scanlon, 288 F.2d. 504, 508 (1961)*](https://famguardian.org/TaxFreedom/CitesByTopic/Taxpayer-BottaVScanlon-288F.2d504-1961.pdf)*]*3. IRS has no statutory authority to convert employment withholding taxes under [I.R.C. Subtitle C](https://www.law.cornell.edu/uscode/text/26/subtitle-C) into “income taxes” under [I.R.C. Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A).  We show later in section ‎5.6.8 that employment withholding taxes deducted under the authority of [Subtitle C of the Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26/subtitle-C) using a W-4 voluntary withholding agreement and that the IRS  classifies them in IRS document 6209 as “Tax Class 5”, which is “Estate and gift taxes”.  Therefore, they are gifts to the U.S. government, not taxes that may not be enforced.  We also show in section ‎5.6.8 that taxes paid under the authority of [Subtitle A of the Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26/subtitle-A) are classified as Tax Class 2, “Individual Income Tax”.  We also exhaustively prove with evidence later in section ‎5.6.16 that IRS has no statutory or regulatory authority to convert what essentially amounts to a voluntary “gift” paid through withholding to a “tax”.  Only you can do that by assessing yourself.  That is why the 1040 form requires that you attach the information returns to it, such as the W-2:  So that the gift and the tax are reconciled and so that the accuracy of the W-2, which is unsigned hearsay evidence, is guaranteed by the penalty of perjury signature on the 1040 form itself.The consequence of the IRS not having any lawful authority to make anyone into a “taxpayer” is that they cannot do a lawful Substitute For Return (SFR) or penalty assessment under [I.R.C. Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A), as you will learn later.  This is also confirmed by the following document:

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| *Why the Government Can't Lawfully Assess Human Beings With an Income Tax Liability Without Their Consent*, Form #05.011<http://sedm.org/Forms/FormIndex.htm> |

If you have been the victim of an involuntary IRS assessment and do a Freedom of Information Act (FOIA) request for assessment documents as we have, and you examine all of the documents returned, you will not see even one document signed by any IRS employee that purports to be an assessment and which has your name on it as the only subject of the assessment.  The reason they won’t sign the assessment document, such as the [23C](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm23C.pdf) or the [RACS 006](https://famguardian.org/TaxFreedom/Forms/IRS/IRS-RACS006-04072004.pdf) report, under penalty of perjury is that no one is STUPID enough to accept legal liability for violating the Constitution and the rights of those they have done wrongful assessments against.  The IRS knows these people are involved in wrongdoing, which is why they assign “pseudo names” (false names) to their employees: To protect them from lawsuits against them for their habitual violation of the law.   The documents you will get back from the IRS in response to your FOIA include the following forms, none of which are signed by the IRS employee:1. [Form 886-A: Explanation of Terms](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm886-A.pdf)2. [Form 1040: Substitute For Return (SFR)](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm1040SFR-040927.pdf)3. [Form 3198: Special Handling Notice](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm3198.pdf)4. [Form 4549: Income Tax Examination Changes](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm4549.pdf)5. [Form 4700:  Examination Work Papers](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm4700Example-040927.pdf)6. [Form 5344: Examination Closing Record](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm5344.pdf)7. [Form 5546: Examination Return Charge-Out](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm5546Example-040927.pdf)8. [Form 5564: Notice of Deficiency Waiver](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm5564Example-040927.pdf)9. [Form 5600: Statutory Notice Worksheet](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm5600Example-040927.pdf)10. [Form 12616: Correspondence Examination History Sheet](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm12616Example-040927.pdf)11. [Form 13496: IRC Section 6020(b) Certification](https://famguardian.org/TaxFreedom/Forms/IRS/IRSForm13496Example-040927.pdf)If you want to look at samples of the above forms, see section 6 of the link below, under the column "Examples":<http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormsPubs.htm>We have looked at hundreds of these assessment documents and *every one* of them is required  by [26 U.S.C. §6065](https://www.law.cornell.edu/uscode/text/26/6065) to be signed under penalty of perjury by the IRS employee who prepared them but *none* are.  As a matter of fact, the examination documents prepared by the IRS Examination Branch to do the illegal Substitute for Returns (involuntary assessments) purport to be a “proposal” rather than an involuntary assessment, have no signature of an IRS employee, and the only signature is from the “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”, who must consent to the assessment in order to make it lawful.  See, for instance, IRS Forms 4549 and 5564.  What they do is procure the consent invisibly using a commercial default process by ignoring your responsive correspondence, and therefore “[assume](https://famguardian.org/TaxFreedom/CitesByTopic/presumption.htm)” that you consented.  This, ladies and gentlemen, is constructive FRAUD, not justice.  It is THEFT!  The Form 12616 above is the vehicle by which they show that the “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” consented to the involuntary assessment, because they can’t do ANYTHING without his consent.Furthermore, [28 U.S.C. §2201](https://www.law.cornell.edu/uscode/text/28/2201)  also removes the authority of federal courts to declare the status of “taxpayer” on a sovereign American also!:*United States Code**TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE**PART VI - PARTICULAR PROCEEDINGS**CHAPTER 151 - DECLARATORY JUDGMENTS*[*Sec. 2201. Creation of remedy*](https://www.law.cornell.edu/uscode/text/28/2201)*(a)****In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986****, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority,****any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration****, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.**(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.*The federal courts themselves agree that they do not have the jurisdiction to bestow the status of “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” upon someone who is a “nontaxpayer”:*"And by statutory definition the term "taxpayer" includes any person, trust or estate****subject to****a tax imposed by the revenue act. ...Since the statutory definition of taxpayer is exclusive, the federal [and state] courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..." [C.I.R. v. Trustees of L. Inv. Ass'n, 100 F.2d.18 (1939)]*[26 U.S.C. §1461](https://www.law.cornell.edu/uscode/text/26/1461) is the only statute within the [Internal Revenue Code Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A) which creates an explicit liability or “legal duty”.  That duty is enforceable only against those subject to the I.R.C., who are “taxpayers” with “gross income” above the exemption amount identified in [26 U.S.C. §6012](https://www.law.cornell.edu/uscode/text/26/6012).  All amounts reported by third parties on Information Returns, such as the W-2, 1042-S, 1098, and 1099, document receipt of “[trade or business](https://famguardian.org/TaxFreedom/CitesByTopic/TradeOrBusiness.htm)” earnings.  All “[trade or business](https://famguardian.org/TaxFreedom/CitesByTopic/TradeOrBusiness.htm)” earnings, as defined in [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(26), are classified as “gross income”.  A nonresident alien who has these information returns  filed against him or her becomes his or her own “[withholding agent](https://famguardian.org/TaxFreedom/CitesByTopic/WithholdingAgent.htm)”, and must reconcile their account with the federal government annually by filing a tax return.  This is a requirement of all those who are engaged in a “public office”, which is a type of business partnership with the federal government.  That business relationship is created through the operation of private contract and private law between you, the natural person, and the federal government.  The method of consenting to that contract is any one of the following means:1. Assessing ourselves with a liability shown on a tax return.2. Voluntarily signing a W-4, which is identified in the regulations as an “agreement” to include all earnings in the context of that agreement as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” on a 1040 tax return.  See [26 C.F.R. §31.3402(p)-1](http://a257.g.akamaitech.net/7/257/2422/10apr20061500/edocket.access.gpo.gov/cfr_2006/aprqtr/26cfr31.3402%28p%29-1.htm)(a).  For a person who is not a “public official” or engaged in a “public office”, the signing of the W-4 essentially amounts to an agreement to procure “social services” and “social insurance”.  You must bribe the Beast with over half of your earnings in order to convince it to take care of you in your old age.3. Completing, signing, and submitting an IRS form 1040 or 1040NR and indicating a nonzero amount of “gross income”.  Nearly all “gross income” and all information returns is connected with an excise taxable activity called a “trade or business” pursuant to [26 U.S.C. §871](https://www.law.cornell.edu/uscode/text/26/871)(b)  and [26 U.S.C. §6041](https://www.law.cornell.edu/uscode/text/26/6041), which activity then makes you into a “resident”.  See older versions of  26 C.F.R. §301.7701-5:<http://famguardian.org/TaxFreedom/CitesByTopic/Resident-26cfr301.7701-5.pdf>4. Filing information returns on ourself or not rebutting information returns improperly filed against us, such as the W-2, 1042-S, 1098, and 1099.  Pursuant to [26 U.S.C. §6041](https://www.law.cornell.edu/uscode/text/26/6041)(a), all of these federal forms associate all funds documented on them with the taxable activity called a “[trade or business](https://famguardian.org/Subjects/Taxes/Remedies/TradeOrBusinessScam.htm)”.  If you are not a “public officer”, then you can’t lawfully earn “[trade or business](https://famguardian.org/Subjects/Taxes/Remedies/TradeOrBusinessScam.htm)” income.  See the following for details:4.1. [26 U.S.C. §6041](https://www.law.cornell.edu/uscode/text/26/6041).4.2. The Trade or Business Scam, Form #05.001:<http://sedm.org/Forms/FormIndex.htm>4.3.Correcting Erroneous Information Returns, Form #04.001:<http://sedm.org/Forms/FormIndex.htm>4.4. Correcting Erroneous IRS Form 1042’s, Form #04.003: <http://sedm.org/Forms/FormIndex.htm>4.5.Correcting Erroneous IRS Form 1098’s, Form #04.004:<http://sedm.org/Forms/FormIndex.htm>4.6.Correcting Erroneous IRS form 1099’s, Form #04.005:<http://sedm.org/Forms/FormIndex.htm>4.7.Correcting Erroneous IRS Form W-2's, Form #04.006:<http://sedm.org/Forms/FormIndex.htm>5. Allowing Currency Transaction Reports (CTR’s), IRS Form 8300, to be filed against us when we withdraw 10,000 or more in cash from a financial institution.  The statutes at [31 U.S.C. §5331](https://www.law.cornell.edu/uscode/text/31/5331)  and the regulation at  [31 C.F.R. §103.30](http://a257.g.akamaitech.net/7/257/2422/01jul20061500/edocket.access.gpo.gov/cfr_2006/julqtr/31cfr103.30.htm)(d)(2) only require these reports to be filed in connection with a “[trade or business](https://famguardian.org/TaxFreedom/CitesByTopic/TradeOrBusiness.htm)”, and this “trade or business” is the same “[trade or business](https://famguardian.org/TaxFreedom/CitesByTopic/TradeOrBusiness.htm)” referenced in the Internal Revenue Code at [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(26)  and  [26 U.S.C. §162](https://www.law.cornell.edu/uscode/text/26/162).  If you are not a “public official” or if you do not consent to be treated as one in order to procure “social insurance”, then banks and financial institutions are violating the law to file these forms against you.  See:Demand for Verified Evidence of Trade or Business Activity: Currency Transaction Report, Form #04.008<https://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/DmdVerEvOfTradeOrBusiness-CTR.pdf>6. Completing and submitting the Social Security Trust document, which is the SS-5 form.  This is an agreement that imposes the “duty” or “fiduciary duty” upon the natural person and makes him into a “trustee” and an officer of a the federal corporation called the “[United States](https://famguardian.org/TaxFreedom/CitesByTopic/UnitedStates.htm)”.  The definition of “[person](https://famguardian.org/TaxFreedom/CitesByTopic/person.htm)” for the purposes of the criminal provisions of the Internal Revenue Code, codified in [26 U.S.C. §7343](https://www.law.cornell.edu/uscode/text/26/7343), incidentally is EXACTLY the same as the above.  Therefore, all tax crimes require that the violator must be acting in a fiduciary capacity as a Trustee of some kind or another, whether it be as an Executor over the estate of a deceased “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”, or over the Social Security Trust maintained for the benefit of a living trustee/employee of the federal corporation called the “United States Government”.  See the following for details:Resignation of Compelled Social Security Trustee<http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf>Unless and until we do any of the above, our proper title is “nontaxpayer”.  The foundation of American Jurisprudence is the presumption that we are “innocent until proven guilty”, which means that we are a “nontaxpayer” until the government proves with court-admissible evidence signed under penalty of perjury that we are a “taxpayer” who is participating in government franchises that are subject to the excise tax upon a “trade or business” which is described in I.R.C. Subtitle A.   For cases dealing with the term "nontaxpayer" see: [*Long v. Rasmussen*, 281 F. 236, 238 (1922)](https://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Evidence/Q03.038.pdf); *Rothensis v. Ullman*, 110 F.2d. 590(1940); *Raffaele v. Granger*, 196 F.2d. 620 (1952); *Bullock v. Latham*, 306 F.2d. 45 (1962); [*Economy Plumbing & Heating v. United States, 470 F.2d 585 (1972)*](https://famguardian.org/TaxFreedom/Authorities/Circuit/EconomyPlumbHtgVUnitedStates-470F2d585%281972%29.pdf); and *South Carolina v. Regan*, [465 U.S. 367](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=465&page=367) (1984).*"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."**"The distinction between persons and things within the scope of the revenue laws and those without is vital."**[*[*Long v. Rasmussen, 281 F. 236 @ 238(1922)*](https://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Evidence/Q03.038.pdf)*]*Since the above ruling, Congress has added new provisions to the I.R.C. which obtusely mention “nontaxpayers”, but not by name, because they don’t want people to have a name to describe their proper status.  The new provision is found in [26 U.S.C. §7426](https://www.law.cornell.edu/uscode/text/26/7426), and in that provision of the I.R.C., “nontaxpayers” are referred to as “Persons other than taxpayers”.  So far as we know, this is the ONLY provision within the I.R.C. that provides any remedy or standing to a “nontaxpayer”.The behavior of the IRS confirms the above conclusions.  See the following IRS internal memo proving that a return that is signed under penalty of perjury and saying “not liable” or words to that effect is treated as a non-return:<http://famguardian.org/TaxFreedom/Evidence/Refunds/1998-053IRSMemoZeroRet.pdf>Look what the above internal top secret IRS memo says (are they trying to hide something?.. cover-up and obstruction of justice!).  Pay particular attention to the use of the word “taxpayer” in this excerpt which, by the way, doesn’t include most people:*“A taxpayer can also negate the penalties of perjury statement with an addition. In Schmitt v. U.S., 140 B.R. 571 (Bank W.D. Okl. 1992), the taxpayers filed a return with the following statement at the end of the penalties of perjury statement, "SIGNED UNDER DURESS, SEE STATEMENT ATTACHED." In the addition, the taxpayers denied liability for tax on wages. The Service argued that the statement, added to the "return", qualified the penalties of perjury statement, thus making the penalties of perjury statement ineffective and the return a nullity. Id. at 572.**In agreeing with the Service, the court pointed out that the voluntary nature of our tax system requires the Service to rely on a taxpayer’s self-assessment and on a taxpayer’s assurance that the figures supplied are true to the best of his or her knowledge. Id. Accordingly, the penalties of perjury statement has important significance in our tax system. The statement connects the taxpayer’s attestation of tax liability (by the signing of the statement) with the Service’s statutory ability to summarily assess the tax.**Similarly, in Sloan v. Comm’r, 53 F.3d 799 (7th Cir. 1995), cert. denied, 516 U.S. 897 (1995), the taxpayers submitted a return containing the words "Denial & Disclaimer attached as part of this form" above their signatures.****In the addition, the taxpayers denied liability for any individual income tax****. In determining the effect of the addition on the penalties of perjury statement, the court reasoned that it is a close question whether the addition negates the penalties of perjury statement or not. The addition, according to  the court, could be read just to mean that the taxpayers reserve their right to renew their constitutional challenge to the federal income tax law. However, the court concluded that the addition negated the penalties of perjury statement. Id. at 800.**In both Schmitt and Sloan the court questioned the purpose of the addition. Both courts found that the addition of qualifying language was intended to deny tax liability. Accordingly, this effect rendered the purported returns invalid.”*The reason is clear:  If you are a “[nontaxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/nontaxpayer.htm)” who is “not liable”, then you essentially are outside their jurisdiction and can’t even ask for a refund of the money you paid in.  All of your property is consequently classified as a “foreign estate”, as defined in [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(31):[*TITLE 26*](https://www.law.cornell.edu/uscode/text/26)*>*[*Subtitle F*](https://www.law.cornell.edu/uscode/text/26/subtitle-F)*>*[*CHAPTER 79*](https://www.law.cornell.edu/uscode/text/26/subtitle-F/chapter-79)*> Sec. 7701.*[*Sec. 7701. - Definitions*](https://www.law.cornell.edu/uscode/text/26/7701)*(a)(31) Foreign estate or trust**(A) Foreign estate**The term ''foreign estate'' means an estate the income of which, from sources without the*[*United States*](https://famguardian.org/TaxFreedom/CitesByTopic/UnitedStates.htm)*which is not effectively connected with the conduct of a*[*trade or business*](https://famguardian.org/Subjects/Taxes/Remedies/TradeOrBusinessScam.htm)*within the*[*United States*](https://famguardian.org/TaxFreedom/CitesByTopic/UnitedStates.htm)*, is not includible in*[*gross income*](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)*under*[*subtitle A*](https://www.law.cornell.edu/uscode/text/26/subtitle-A)*.*If you indeed are a “[nontaxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” and act like one, the IRS will pretend like you don’t even exist, that is, until in their ignorance and greed they try years later to go after you wrongfully and unlawfully for willful failure to file, notice of deficiency, or some other contrived nonsense to terrorize you into paying and filing again.  That’s how they make “nontaxpayers” “volunteer” into becoming “taxpayers”: with terrorism and treason against the rights of sovereign Americans, starting with “mailing threatening, false, and harassing communications” in violation of [18 U.S.C. §876](https://www.law.cornell.edu/uscode/text/18/876).  Lawyer hypocrites!  Jesus was right!***“Woe to you, scribes and Pharisees, hypocrites****!****For you****pay tithe of mint and anise and cummin, and****have neglected the weightier matters of the law: justice and mercy and faith.  These you ought to have done, without leaving the others undone****.”[*[*Matt. 23:23*](http://www.biblegateway.com/passage/?search=Matt.%2023:23&version=50)*, Bible]*Now that we understand the difference between “taxpayer” and a “nontaxpayer”, allow us to make a *very critical distinction* that is the Achilles Heel of the IRS fraud.  Ponder for a moment in your mind the following very insightful question:*“Is a person in law****always****either a ‘taxpayer’ or a ‘nontaxpayer’ as a****whole****?  Can a person****simultaneously****be BOTH?”*Once you understand the answer to this *crucial* question, you will understand how to get your money back in an IRS refund claim without litigating!  The answer, by the way, is ***YES***!  Let us now explain why this is the case.We said above that if you are a “[nontaxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”, the IRS will basically try to completely ignore your refund claim and you are lucky if they even respond.  At worst, they will illegally try to penalize you and at best, they will ignore you.  We must remember, however, that it is “[*taxable income*](https://famguardian.org/TaxFreedom/CitesByTopic/TaxableIncome.htm)” that makes you a “[*taxpayer*](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”.  “[Taxable income](https://famguardian.org/TaxFreedom/CitesByTopic/TaxableIncome.htm)” is “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” minus “deductions”, as described in [26 U.S.C. §63](https://www.law.cornell.edu/uscode/text/26/63)(a).  Therefore, we must earn “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” as legally defined in order to have “taxable income”.  One cannot earn “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” unless they fit into one of the following categories:1. **Domestic taxable activities**:  Activities within the “United States”, which is defined in [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(9) and (a)(10) and 4 U.S.C. §110(d) as the District of Columbia and territories and possessions of the United States.1.1. Federal “Employees”, Agencies, and “Public Officials” – meaning those who are federal “public officers”, federal “employees”, and elected officials of the national government.  This is one reason why [26 U.S.C. §6331](https://www.law.cornell.edu/uscode/text/26/6331)(a)  lists only federal officers, federal employees, federal instrumentalities, and elected officials as ones who can be served with a levy upon their compensation, which is actually a payment from the federal government.1.2. Federal benefit recipients.  These people are receiving “social insurance” payments such as Medicare, Social Security, or Unemployment.  These benefits are described as “gross income” in [26 U.S.C.](https://www.law.cornell.edu/uscode/text/26/871)[§871](https://www.law.cornell.edu/uscode/text/26/971)(a)(3).  When they signed up for these programs, they became “trustees”, “employees”, and instrumentalities of the U.S. government.  They are described as “federal personnel” in the Privacy Act, [5 U.S.C. §552a](https://www.law.cornell.edu/uscode/text/5/552a)(a)(13).  Neither the Constitution nor the Social Security Act authorize these benefits to be offered to anyone domiciled outside of federal territories and possessions.  For details on this scam, see:

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| *Resignation of Compelled Social Security Trustee*<http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf> |

1.3. Those who operate in a representative capacity in behalf of the federal government via contract.   This includes those who have a valid Taxpayer Identification Number, which constitutes a constructive trust contract with the federal government and use that federal property [number] as per [20 C.F.R. §422.103](http://a257.g.akamaitech.net/7/257/2422/10apr20061500/edocket.access.gpo.gov/cfr_2006/aprqtr/20cfr422.103.htm)(d) .  They are identified as federal trustees and/or federal employees as referenced in 20 C.F.R. “Employee Benefits”.  For details on this scam, see:

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| *Resignation of Compelled Social Security Trustee*<http://famguardian.org/TaxFreedom/Forms/Emancipation/SSTrustIndenture.pdf> |

2. **Foreign taxable activities**:  Activities in the states of the Union or abroad.2.1. Domiciliaries of the federal zone abroad and in a foreign country pursuant to [26 U.S.C. §911](https://www.law.cornell.edu/uscode/text/26/911) who are engaged in a “trade or business”:2.1.1. Statutory “U.S. citizens” - those are federal statutory creations of Congress and defined specifically at [8 U.S.C. §1401](https://www.law.cornell.edu/uscode/text/8/1401)  to be those who were born in a U.S. territory or possession AND who have a legal domicile there.2.1.2. Statutory “Residents” (aliens).   These are foreign nationals who have a legal domicile within the District of Columbia or a federal territory or possession.  They are defined in [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(b)(1)(A)  and [8 U.S.C. §1101](https://www.law.cornell.edu/uscode/text/8/1101)(a)(2).If you would like to know more about why the above are the only foreign subjects of taxation, see:

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| *Why domicile and becoming a "taxpayer" require your consent*, Form #05.002<http://sedm.org/Forms/FormIndex.htm> |

2.2. States of the Union.  Neither the IRS nor the Social Security Administration may lawfully operate outside of the federal zone.  See:2.2.1.[4 U.S.C. §72](https://www.law.cornell.edu/uscode/text/4/72) limits all “public offices” to the District of Columbia.  It says that the “public offices” that are the subject of the tax upon a “trade or business” must be exercised ONLY in the District of Columbia and not elsewhere, except as expressly provided by law.2.2.2. [26 U.S.C. §7601](https://www.law.cornell.edu/uscode/text/26/7601) limits IRS enforcement to internal revenue districts.  The President is authorized to establish internal revenue districts pursuant to [26 U.S.C. §7621](https://www.law.cornell.edu/uscode/text/26/7621), but he delegated that authority to the Secretary of the Treasury pursuant to Executive Order 10289.  [Treasury Order 150-02](http://sedm.org/Exhibits/EX1025.pdf), signed by the Secretary of the Treasury, says that the only remaining internal revenue district is in the District of Columbia.  It eliminated all the other internal revenue districts. 2.2.3. [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(9) and (a)(10) and 4 U.S.C. §110(d) define the term “United States” as the District of Columbia and the territories and possiessions of the United States.  Nowhere anyplace else is the tax described in [Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A) expanded to include anyplace BUT the “United States”.2.2.4. The U.S. Supreme Court said Congress enjoys NO LEGISLATIVE JURISDICTION within states of the Union and the Internal Revenue Code is “legislation”.*“It is no longer open to question that****the general government, unlike the states****, Hammer v. Dagenhart, 364H*[*247 U.S. 251, 275*](http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=247&invol=251#275)*, 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724,****possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation.****“**[Carter v. Carter Coal Co.,*[*298 U.S. 238*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=298&page=238)*, 56 S.Ct. 855 (1936)]**"The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many;****but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions****. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. United States v. Butler, supra."**[Ashton v. Cameron County Water Improvement District No. 1,*[*298 U.S. 513*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=298&page=513)*; 56 S.Ct. 892 (1936)]*2.2.5. The U.S. Supreme Court said Congress Cannot establish a “trade or business’ in a state and tax it.  A “[trade or business](https://famguardian.org/TaxFreedom/CitesByTopic/TradeOrBusiness.htm)” is the main subject of [Subtitle A of the Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26/subtitle-A).  See the following court cite:*“Thus, Congress having power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, may, without doubt, provide for****granting****coasting****licenses****, licenses to pilots, licenses to trade with the Indians, and any other****licenses****necessary or proper for the exercise of that great and extensive power; and the same observation is applicable to every other power of Congress, to the exercise of which the granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.**But very different considerations apply to the****internal commerce****or****domestic trade****of the****States****. Over this commerce and trade Congress has****no power of regulation******nor any direct control****. This power belongs****exclusively****to the States.****No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature****. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But, it reaches only existing subjects.****Congress cannot authorize a trade or business within a State in order to tax it.****”**[License Tax Cases,*[*72 U.S. 462*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=72&page=462)*, 18 L.Ed. 497, 5 Wall. 462, 2 A.F.T.R. 2224 (1866)]*Based on options above, most people *do not* have “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” as legally defined, and they are actually deceiving the government if they put anything but zero on their income tax return.  Because none of the earnings of the typical person who is employed in the private sector can legally be classified as either “income” or “gross income”, what you put down for “gross income” on your tax return boils down to the question of:*“How much of my receipts do I want to ‘volunteer’ or ‘elect’ or ‘choose’ to call ‘income’ or ‘gross income’ for the purposes of federal taxes?”*How you choose to answer that question then determines the net “donation” (not “tax”, but “donation”) you are making to the federal government based on the tax rate schedule that your fictitious and fabricated “gross income” falls into.  As we said at the beginning of this chapter in section 5.1.4, the income tax is “voluntary” and we really meant it!  Not only that, but the U.S. Supreme Court agrees with us!*“Our system of taxation is based upon voluntary assessment and payment, not distraint.”[Flora v. U.S.,*[*362 U.S. 145*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=362&page=145)*(1960)]*Returning to our original question, then, “*Can a person be simultaneously BOTH a ‘*[*taxpayer*](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)*’ and a ‘nontaxpayer’?*”, the answer is **YES**.  Why?  Because so long as we as biological people aren’t “employees” (synonymous with "public officers" of the U.S. government) any amount we put down for “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” on our tax return is a *voluntary choice* and not REAL “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” as legally defined.  That amount, and ONLY that amount, which we volunteer to define as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” on our tax return makes us a into a “*taxpayer*”, but only for the specific *sources* of revenue we voluntarily identified as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)”!  All other monies that we earned are, by definition and implication, *not taxable* and *not “gross income”*, which means that for those “*sources*” of revenue that are not “gross income”, we are a “nontaxpayer” and NOT a “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”.So when someone asks you if you are a “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”, both the question and your answer must be put in the context of a *specific* source of income.  You should respond by first asking: “for which revenue *source*?”  The answer can seldom be a general “yes” or “no” for ALL RECEIPTS.  Consequently, if we put down one cent for “gross income” on our tax return, then ONLY for *that source* of revenue do we become “taxpayers”.  All other sources of revenue for us are, by implication, NOT either “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” or “taxable income”, which means that for *those revenues and receipts*, we are a “nontaxpayer”.  Furthermore, once we make the determination of “gross income” and self-assessment on the tax return that only *we* can file on ourselves, the IRS has NO AUTHORITY to make us into a “taxpayer” or assess us an involuntary liability associated with any receipts other than those that we specifically identify as “gross income”:*"Our tax system is based on individual****self-assessment****and voluntary compliance". [Mortimer Caplin, Internal Revenue Audit Manual (1975)]*Remember, the only amount we are responsible for paying is the amount *we assess ourselves* that appears on a tax return that ONLY WE FILL OUT.  The [Internal Revenue Manual section 5.1.11.6.8](http://sedm.org/Exhibits/EX1024.pdf) (OFFSITE LINK) confirms that the IRS is NOT AUTHORIZED to do a Substitute For Return (SFR) on our behalf for the IRS Form 1040 or any of its derivatives (e.g. 1040X, 1040EZ, 1040NR, etc).  Furthermore, [26 C.F.R. §1.6151-1](http://a257.g.akamaitech.net/7/257/2422/01apr20051500/edocket.access.gpo.gov/cfr_2005/aprqtr/26cfr1.6151-1.htm)  confirms that you are *only* responsible for paying the amount shown on a *return* (because it says “shall pay”). *[Code of Federal Regulations]**[Title 26, Volume 12]**[Revised as of April 1, 2002]**From the U.S. Government Printing Office via GPO Access**[CITE: 26CFR1.6151-1]**[Page 980]**TITLE 26--INTERNAL REVENUE**CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY  (CONTINUED)**Procedure and Administration--Table of Contents*[*Sec. 1.6151-1  Time and place for paying tax shown on returns.*](http://a257.g.akamaitech.net/7/257/2422/01apr20051500/edocket.access.gpo.gov/cfr_2005/aprqtr/26cfr1.6151-1.htm)*(a) In general. Except as provided in section 6152 and paragraph (b) of this section,****the tax shown on any income tax return shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time fixed for filing the return****(determined without regard to any extension of time for filing the return). For provisions relating to the time for filing income tax returns, see section 6072 and Secs. 1.6072-1 to 1.6072-4, inclusive. For provisions relating to the place for filing income tax returns, see section 6091 and Secs. 1.6091-1 to 1.6091-4, inclusive.**(b)(1) Returns on which tax is not shown. If a taxpayer files a return and in accordance with section 6014 and the regulations thereunder, elects not to show the tax on the return, the amount of tax determined to be due shall be paid within 30 days after the date of mailing to the taxpayer a notice stating the amount payable and making demand upon the taxpayer therefor. However, if the notice is mailed to the taxpayer more than 30 days before the due date of the return, payment of the tax shall not be required prior to such due date.*[26 U.S.C. §6020](https://www.law.cornell.edu/uscode/text/26/6020)(b) does *not authorize* the IRS to do an assessment on you because only you (as the “sovereign”) can do an assessment on yourself for a voluntary donation program called the [Internal Revenue Code Subtitle A](https://www.law.cornell.edu/uscode/text/26/subtitle-A).  The only exception to this rule is under [26 U.S.C. §6014](https://www.law.cornell.edu/uscode/text/26/6014), where you can delegate to the IRS the authority to do a return on your behalf, which we don’t recommend.  Are you beginning to see through the fog?  It took us four years of diligent study to figure this scam out and we are trying to save you some time.How do we apply this wonderful new discovery to the pursuit of an administrative refund of monies paid into the IRS using a request for refund?  First of all, we already established earlier in this section that if you put zero on your return for “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)”, the IRS will basically treat you as a “nontaxpayer” in entirety and either ignore you completely or try to penalize you illegally as we indicated earlier in section 5.4.10.  See the discussion of the IRS internal memo earlier in this section for details.  But what if we put down one red cent as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)”, then we are “taxpayers” but at the same time the IRS is not authorized to assess us a *greater* liability.  They will try to propose a corrected return amount and act like they have the authority to assess  you a greater amount, but we know that they can’t.  They may also threaten a penalty if you don’t go along with their proposed new assessment, but this is a fraud too because penalties imposed without a judicial trial are a [Bill of Attainder](https://famguardian.org/TaxFreedom/CitesByTopic/BillOfAttainder.htm) that is prohibited by the Constitution.  The way to prevent them scamming us when we use this technique to get our money back is to clarify on our administrative refund request the following facts, which completely ties their hands to do *anything* BUT refund *all* the money you paid in mistakenly or under duress.  The below qualification that you can add to your refund request will completely tie the IRS’ hands and back them into a corner so that they have no choice but to give you a refund and *not* penalize you.  It uses their own rules and guidance against them so they cannot ignore your filing but also can’t get any more money out of you than you volunteer to pay:1. This return constitutes a “*conditional self-assessment*”.  I am only indicating a nonzero “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” in order to procure a refund of all taxes paid over the period in question.  I *do not*, in fact, make any “gross income” as legally defined but am *electing* to say that I have “gross income” in order to compel you to process my “return” and provide a refund of all taxes paid.  In the past, I have filed “zero returns” and have found that they were ignored because I was not a “taxpayer” so that you had no jurisdiction to respond.  Now, I am claiming that I have *only* one cent of “taxable income” and “gross income” so that you can no longer ignore my return or claim you have *no jurisdiction*.2. In the event that the refund requested is *not* obtained, this *conditional self-assessment* and attached return is *null and void* in its entirety ab initio (from the beginning) because *only* a *voluntarily* executed return submitted absent duress or compulsion is valid and admissible as evidence according to the Supreme Court in *Weeks v. United States,* [232 U.S. 383](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=232&invol=383) (1914).  However, you should keep a copy of the return in your records as proof that I filed “something” so that the statute of limitations clock starts for all criminal and civil issues.  The *only* thing that has to appear on the return is a signature under penalty of perjury, which it has, in order to be considered a valid filing according to the federal courts.3. The attached tax return and any determinations by the IRS that are based on it is false, fraudulent, incorrect, and involuntarily submitted if anything on it is *changed* or *altered* in any way by either me or the IRS or if the IRS proposes or makes without my written, explicit consent, any change in the assessment appearing on the return or in their computer system.  That means you can’t alter the IMF to be inconsistent with what appears on my return or alter the return itself.  That is why my return is submitted in pen.  In effect, I am delegating *VERY SPECIFIC* authority to *only* process the return AS IS with NO CHANGES and no penalties or to withdraw the return from processing but not entry into my IRS administrative file.4. The IRS *does not* have my permission or consent to do *any* of the following without my explicit written and notarized consent, and if it does, I *withdraw* my consent and my *self assessment* and change the value of “gross income” on the return to ***zero***. 4.1. Propose an amended assessment or execute a “Substitute For Return” (SFR).4.2. Correct anything appearing on this return.4.3. Enter anything appearing on this return into any kind of information system.4.4. Share any of the information provided to any agency, person, government organization, or private party who is outside of the IRS and not directly involved in processing this request for refund.5. I am not now and never have been an “[employee](https://famguardian.org/TaxFreedom/CitesByTopic/employee.htm)” as defined or used in [26 U.S.C. §6331](https://www.law.cornell.edu/uscode/text/26/6331), [26 U.S.C. §3401](https://www.law.cornell.edu/uscode/text/26/3401)(c ), or[26 C.F.R. § 31.3401(c )-1](http://a257.g.akamaitech.net/7/257/2422/10apr20061500/edocket.access.gpo.gov/cfr_2006/aprqtr/26cfr31.3401%28c%29-1.htm).6. Any reports of “[income](https://famguardian.org/TaxFreedom/CitesByTopic/income.htm)” or “[wages](https://famguardian.org/TaxFreedom/CitesByTopic/wages.htm)” provided to you by banks or employers on forms W-2 and 1099 and associated with the SSN attached to my name are hereby declared and presumed to be incorrect, fraudulent, and may not be relied upon as a basis for good faith belief, because they:6.1. Are *not* signed6.2. Are not submitted under penalty of perjury.6.3. Are hearsay evidence.6.4. Are only lawfully required in the case of “employees” under [Subtitle C of the Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26/subtitle-C), which I just declared in the previous item I am *not*.  6.5. Are a violation of the Privacy Act, because when private employers illegally volunteer to act as agents of the federal government under the color of law, they are also bound to comply with other laws relating to federal agencies, including the Privacy Act.  They in effect become a voluntary federal agency under the color of law in processing federal forms.  The Privacy Act, [5 U.S.C. §552a](https://www.law.cornell.edu/uscode/text/5/552a)  says that agencies *may not* provide Privacy Act information to other federal agencies unless authorized by the employee and as required by law in the performance of their lawful functions.  Because they are not located on federal property and federal criminal statutes under 18 USC and civil statues under 26 U.S.C. do not apply outside of federal property, then they have no jurisdiction as federal agents or “federal police” to be involved in any kind of “police power” enforcement activity related to tax collection.These financial forms therefore create *false presumptions* on your part about me that are completely incorrect, unauthorized by law, and which I *never* consented or authorized my bank voluntarily to provide to you or about me.7. The number attached to my name which you call a Social Security Number, is NOT ***MY*** number.  To be ***MY*** number, I have to request it and consent to using it.  Since I didn’t apply for this number and my parents did without my consent, and since I use it under unlawful duress and compulsion from both government and financial institutions, then I *cannot* and should not be held responsible for using or correctly specifying that which is not “mine”.  Do not attempt to refer to that number as “taxpayer identification number”, because it can only be so if I am a “taxpayer”, which I am not for all but one red (communist) cent of monies received which I have elected to call “gross income” for the purposes of obtaining a refund.  Even that one cent isn’t really “gross income” but I’m electing to call it that so that you can’t ignore my return by calling me a “nontaxayer” if I have zero for “gross income”.8. Because I claim that all monies or revenues I earned other than the one cent appearing on my return are NOT “gross income”, then for those monies, I am classified as a “nontaxpayer” and therefore ***DO NOT*** have any kind of burden of proving that they are **non**taxable under [26 U.S.C. §7491](https://www.law.cornell.edu/uscode/text/26/7491).  Instead, the burden of proving that any monies listed on any W-2 or 1099 forms you may have received about me are “taxable income” or “gross income” rests squarely and exclusively on you and *only* you.  Respect for my due process rights under the Fifth and Fourteenth Amendments demands that *you* and *not* me satisfy the burden of proving that these monies qualify as “taxable income” or “gross income”.  Any “presumptions” you might want to make to the contrary about this are hereby refuted and I demand *evidence* of *both* the law and the facts that validate any such false presumption.9. Pursuant to [Internal Revenue Manual section 5.1.11.6.8](http://www.irs.gov/irm/part5/ch01s12.html), you are NOT AUTHORIZED to prepare an amended or Substitute For Return (SFR) changing the “gross income” defined on my form 1040NR.  Such returns are only *proposed assessment*, but not *actual legal assessments*.  The GAO audit of the IRS in November 1999 documented in GAO report number GAO/GGD-00-60R entitled “Substitute for Returns Program” available on the website at:<http://famguardian.org/PublishedAuthors/Govt/GAO/GAO-GGD-00-60R-SFR.pdf>quotes employees of the IRS *officially stating*, and I quote:*“In its response to this letter,****IRS official indicated that they do not generally prepare actual tax returns****.  Instead, they said IRS prepares substitute documents that****propose assessments****.  Although IRS and legislation refer to this as the substitute for return program, these officials said that the document does not look like an actual tax return.”[Report, page 1]*10. Pursuant to [26 U.S.C. §6020](https://www.law.cornell.edu/uscode/text/26/6020)(b), IRS is *not authorized* to do an assessment under [Subtitle A of the Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26/subtitle-A) .  Only I, as the sovereign, can do a *self-assessment*.  No one but me can make me liable for the income tax.11. There’s no liability statute *anywhere* in the Internal Revenue Code making me liable to pay any tax, and federal courts say one is required in order to collect a tax:*"To the extent that regulations implement the statute, they have the force and effect of law...The regulation implements the statute****and cannot vitiate or change the statute****..."[Spreckles v. C.I.R., 119 F.2d, 667]**"..****liability for taxation must clearly appear****[from statute imposing tax]."[Higley v. Commissioner of Internal Revenue, 69 F.2d 160 (1934)]**“****While Congress might have the power to place such a personal liability upon trust beneficiaries who did not renounce the trust, yet it would require clear expression of such intent****, and it cannot be spelled out from language (as that here) which can be given an entirely natural and useful meaning and application excluding such intent."[Higley v. Commissioner of Internal Revenue, 69 F.2d 160 (1934)]**"A tax is a legal imposition,****exclusively of statutory origin****(37 Cyc. 724, 725), and, naturally,****liability to taxation must be read in statute, or it does not exist****."[Bente v. Bugbee, 137 A. 552; 103 N.J. Law. 608 (1927) ]**"…the taxpayer must be liable for the tax.****Tax liability is a condition precedent to the demand****. Merely demanding payment, even repeatedly, does not cause liability." [Terry  v. Bothke, 713 F.2d 1405, at 1414 (1983)]*The implementing regulation at 26 C.F.R. §1.1-1 that uses the word “liable to” is null and void, because the Secretary of the Treasury is nowhere conferred the authority to legislate or make law or exceed the scope of the statute at [26 U.S.C. §1](https://www.law.cornell.edu/uscode/text/26/1)  that imposes the tax:*“When enacting §7206(1) Congress undoubtedly knew that the Secretary of the Treasury is empowered to prescribe all needful rules and regulations for the enforcement of the internal revenue laws, so long as they carry into effect the will of Congress as expressed by the statutes.  Such regulations have the force of law.****The Secretary, however, does not have the power to make law****, Dixon v. United States, supra.” [United States v. Levy, 533 F.2d 969 (1976)]*Therefore, any amount I indicate on my tax return as a natural person as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” is nothing more than a method of making a “donation” to the federal government and cannot be classified as a “tax” without committing fraud.  As a matter of fact, it is FRAUD on the part of the IRS and the government to even call the “income tax” a “tax” in my case because *nowhere* in the Constitution is such as “tax” even authorized.  Without the *specific authority* of the Constitution, whatever you may do or propose to do under the “color of law”, including collecting a “voluntary” donation, is null, void, and unenforceable ab initio.*“We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison  wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961).****This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." Gregory v. Ashcroft,***[***501 U.S. 452, 458***](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=501&invol=452#458)***(1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.****" Ibid. “ [U.S. v. Lopez,*[*514 U.S. 549*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=514&invol=549)*(1995)]*Show me where your power to tax *internal* to the country and upon natural persons is specifically enumerated in the Constitution, because it didn’t come from the Constitution and it didn’t come from the Sixteenth Amendment ,*“…****the 16th Amendment conferred no new power of taxation****, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress XE "U.S. GOVERNMENT:Congress"  from the beginning from being taken out of the category of****indirect****taxation [on corporations and businesses rather than individuals] to which it inherently belonged, and being placed in the category of direct taxation." [Stanton v. Baltic Mining Co.,*[*240 U.S. 103*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=240&invol=103)*, 112-13, 36 S.Ct. 278 (1916)]*As a matter of fact, before the Sixteenth Amendment , the case of *Pollock v. Farmer’s Loan and Trust Company,* 157 U.S. 429, [158 U.S. 601](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=158&invol=601) (1895) ruled that direct income taxes on biological people like me are *unconstitutional*, so what change in the constitution since that case in 1895 other than the Sixteenth Amendment modified that?  As the Supreme Court said in Marbury v. Madison, [5 U.S. 137](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=5&invol=137) (1803):*“****The government of the United States has been emphatically termed a government of laws, and not of men****.  It will certainly cease to deserve that high appellation, if the laws furnish no remedy for the violation of a vested legal right.” [Marbury v. Madison,*[*5 U.S. 137*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=5&page=137)*; 1 Cranch 137, 2 L.Ed. 60 (1803)]*So where is not only the Constitutional authority for what you are doing, but also please provide the following as evidence of your personal authority:11.1.Your Delegation order.11.2.A copy of your Pocket Commission under IRM section 1.16.4 pursuant to the Freedom of Information Act, [5 U.S.C. §552](https://www.law.cornell.edu/uscode/text/5/552).11.3.The source of your authority to exercise the equivalent of “police powers” as a federal agency within the borders of the sovereign union states.  The Supreme Court has ruled hundreds of times that the federal government has no police powers inside the borders of the states of the Union, and that is where I am writing to you from.  The act of collecting taxes is a police power.  Here is the definition of “police power” from Black’s Law Dictionary, Sixth Edition, page 1156:***Police power****. An authority conferred by the American constitutional system in the Tenth Amendment, U.S. Const., upon the individual states, and, in turn, delegated to local governments, through which they are enabled to establish a special department of police; adopt such laws and regulations as tend to prevent the commission of fraud and crime, and secure generally the comfort, safety, morals, health, and prosperity of the citizens by preserving the public order, preventing a conflict of rights in the common intercourse of the citizens, and insuring to each an uninterrupted enjoyment of all the privileges conferred upon him or her by the general laws.**The power of the State to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity.  The police power is subject to limitations of the federal and State constitutions, and especially to the requirement of due process.  Police power is the exercise of the sovereign right of a government to promote order, safety, security, health, morals and general welfare within constitutional limits and is an essential attribute of government.  Marshall v. Kansas City, Mo., 355 S.W.2d 877, 883.**[Black’s Law Dictionary, Sixth Edition, page 1156]*12.It is the height of hypocrisy and arrogance on your part for you to be on the one hand effectively illegally soliciting donations and bribery from me under the “color of law” to then either attempt to penalize me illegally in the process or make demands about any aspect of the conditions under which I choose or volunteer to “donate”.  I simply *refuse* to “donate” if you *refuse* to let me decide the terms under which I can or will donate.  Compelled charity in that case would *not* be charity at all, but ***slavery*** disguised as charity.  Slavery is illegal under the Thirteenth Amendment.13.I am not now and never have been a “fiduciary” for any entity or “income” (taxable or not) in any way and if you have records indicting the contrary, then I:13.1.Have enclosed an [IRS form 56](https://sedm.org/Forms/04-Tax/2-Withholding/Form56/AboutIRSForm56.htm) eliminating all such fiduciary relationships.13.2. Demand that you send to me the authority by which such a relationship was established, because I never authorized it.  Failure to provide evidence of the existence of fiduciary duty within 30 days shall constitute a nihil dicit judgment under common law of the fact that none exists.14.I am not now and never have been a “transferee” for U.S. government property as defined in [26 U.S.C. §6901](https://www.law.cornell.edu/uscode/text/26/6901)  and I demand any evidence you might have that might suggest the contrary.  Failure to provide evidence of the existence of my status as a “transferee” within 30 days constitutes a nihil dicit judgment under common law establishing that I am not such a transferee.15.The entirety of all my property and my estate is now classified and always has been classified as a “foreign estate” under [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(31)  in regards to Title 26 of the Internal Revenue Code and I demand any evidence you have that might suggest the contrary.  Failure to provide evidence suggesting that any part of my estate is not a foreign estate within 30 days constitutes a *nihil dicit judgment* under common law establishing that my estate is a foreign estate as legally defined.16.The only reason you may have received *any “*[*taxes*](https://famguardian.org/TaxFreedom/CitesByTopic/taxes.htm)” that were either illegally withheld under [Subtitle C](https://www.law.cornell.edu/uscode/text/26/subtitle-C) or paid under [Subtitle A of the Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26/subtitle-A) is because of the presence of duress and unlawful coercion against my property rights and my right to work by my employer, who I am very afraid to prosecute because I might lose my job.  He nevertheless deserves to be behind bars for his misdeeds.  You should interpret receipt of withholding monies by you from my employer as evidence of extortion, racketeering, and conspiracy against my property rights in violation of the Fifth Amendment to the Constitution.  For you to condone or encourage or permit such criminal conduct on the part of private employers makes you an accessory to extortion and racketeering in violation of [18 U.S.C. §872](https://www.law.cornell.edu/uscode/text/18/872)  and [18 U.S.C. §225](https://www.law.cornell.edu/uscode/text/18/225) .  Instead, as my fiduciary agent (see Public Law 96-303 , Executive Order 12731, and [5 C.F.R. § 2635.101](http://a257.g.akamaitech.net/7/257/2422/01feb20061500/edocket.access.gpo.gov/cfr_2006/janqtr/5cfr2635.101.htm)), you are duty-bound to right this wrong and return this unlawfully extorted money back to me.  If you don’t, I will prosecute you personally for16.1. Breach of fiduciary duty in violation of Public Law 96-303, Executive Order 12731, and [5 C.F.R. § 2635.101](http://a257.g.akamaitech.net/7/257/2422/01feb20061500/edocket.access.gpo.gov/cfr_2006/janqtr/5cfr2635.101.htm) .16.2.RICO in violation of [18 U.S.C. §872](https://www.law.cornell.edu/uscode/text/26/872)16.3. Peonage under Thirteenth Amendment, [18 U.S.C. §1581](https://www.law.cornell.edu/uscode/text/26/1581), and [42 U.S.C. §1994](https://www.law.cornell.edu/uscode/text/42/1994).16.4.Bank robbery, if you attempt any Notice of Levies on me in violation of my Fifth Amendment rights.16.5. Conspiracy against rights under [18 U.S.C. §241](https://www.law.cornell.edu/uscode/text/18/241).16.6. Obstruction of justice, for not revealing the truth to me about this matter in violation of [18 U.S.C. Chapter 73](https://www.law.cornell.edu/uscode/text/18/part-I/chapter-73).17.This request for refund constitutes a Petition for Redress of Grievances protected under the [First Amendment](http://caselaw.lp.findlaw.com/data/constitution/amendment01/) of the [U.S. Constitution](http://www.findlaw.com/casecode/constitution/).  The right to petition for redress CANNOT be penalized, taxed, controlled, or regulated in any way by the government because it is a *right* and not a *privilege*.  You cannot penalize me for exercising this constitutional right.18.You are therefore *not authorized* by law to penalize me for submitting this “*conditional self-assessment*” because:18.1.Of the constitutional constraint against [Bills of Attainder](https://famguardian.org/TaxFreedom/CitesByTopic/BillOfAttainder.htm) found in [Article 1](http://caselaw.lp.findlaw.com/data/constitution/article01/), Section 9, Clause 3  of the U.S. Constitution18.2.The definition of the term “[person](https://famguardian.org/TaxFreedom/CitesByTopic/person.htm)” in the context of the penalty regulations found in [26 C.F.R. § 301.6671-1](http://a257.g.akamaitech.net/7/257/2422/10apr20061500/edocket.access.gpo.gov/cfr_2006/aprqtr/26cfr301.6671-1.htm)(b), which means *only* an employee of a corporation, and which I am *not*.  If you choose to try to illegally impose any penalties on this conditional assessment, then I demand evidence that I am an “employee of a corporation” as defined there.  If you penalize me in disregard of my due process rights under the Fifth and Fourteenth Amendments, then you will be prosecuted under [26 U.S.C. §7433](https://www.law.cornell.edu/uscode/text/26/7433)  for wrongful collection actions and also under the Constitution for violation of my inalienable Constitutional rights.  I shall pursue a writ of mandamus to have my property returned and have you FIRED for malfeasance, negligence, and breach of fiduciary duty.18.3.You would be compelling me under unlawful duress to commit fraud and make false statements on future filings in order to appease your illegal, irrational, and exortionary demands.19. Don’t try to pull any scams with the word “includes” in your response because I know your game and it’s a violation of my due process rights to use ambiguous definitions or laws that are “[void for vagueness](https://famguardian.org/TaxFreedom/CitesByTopic/VoidForVagueness.htm)”.  See the following for hard proof of this:[http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Section 09.htm](http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Section%2009.htm)Either the law applies to me as a *private individual* or it doesn’t, and I’m not going to play word guessing games or engage in speculation about what either you or any federal judge who is both paid by the income tax and subservient to your organized extortion “thinks” the word “includes” implies.  If the law doesn’t *explicitly* identify me as a person “liable” for the tax as a private person residing in a union state and outside of your territorial jurisdiction, then I’m *not responsible* to subject myself to your harassment or your illegal attempts at racketeering and extortion in order to get me to “volunteer” under duress to pay a “tax” that I don’t owe.  Prove your authority using only the law or get out of my life, please.20.*The only difference between what you do and what the Mafia does is the authority of law*, both in the Constitution and in the Statutes that implement the Constitution.  If you can’t show me the law that makes me responsible in clear and unambiguous terms, or you know what the law says and refuse to explain or justify the good faith basis for your belief, then:20.1.I have no choice but to assume that you are the Mafia, and your inaction and negligent administration of the tax code was what earned you that name.20.2.I must conclude that you are a ***Communist*** as defined in [50 U.S.C. §841](https://www.law.cornell.edu/uscode/text/50/841), because the U.S. Congress in that section defines a “communist” as follows:***“Unlike political parties, the Communist Party acknowledges no constitutional or statutory [lawful] limitations upon its conduct or upon that of its members.****The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means.****The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to***[***force***](http://famguardian.org/TaxFreedom/CitesByTopic/force.htm)***and***[***violence***](http://famguardian.org/TaxFreedom/CitesByTopic/violence.htm)*[****or using income taxes****].****Holding that doctrine, its role as the agency of a hostile***[***foreign***](http://famguardian.org/TaxFreedom/CitesByTopic/foreign.htm)***power [the Federal Reserve and the American Bar Association (ABA)] renders its existence a clear present and continuing danger to the security of the United States.”***If you refuse to acknowledge or comply with or explain the lawful basis for your authority, then *YOU ARE A COMMUNIST because you refuse to acknowledge or comply with lawful constraints upon your authority*.  So show me the law that makes me liable and acknowledge the laws that limit and define your power to me or ***YOU ARE A COMMUNIST*** as the United States Congress defines it.21. Without the *explicit authority of Constitutional, statutory, and regulatory law* combined making me “liable” and evidence of that lawful authority provided to me in satisfaction of my due process rights under the Constitution, any amount of money that you might attempt to extort from me is paid in *violation* of the following laws, which in effect makes me into a co-conspirator with you in the following serious felonies.  It also makes you into a money laundering operation for the extortion racket headed by our corrupted politicians:21.1. [18 U.S.C. §201](https://www.law.cornell.edu/uscode/text/18/201)**:  Bribery of public officials and witnesses.**  I would be compelled to bribe my Congressman with monies extorted from me involuntarily.21.2. [18 U.S.C. §597](https://www.law.cornell.edu/uscode/text/18/597)**Expenditures to Influence Voting**.  The monies I involuntarily paid to the federal government absent Constitutional authority could be used by politicians to influence voters to vote for them because of some socialist benefit they might receive.22.I cannot in good conscience subsidize *any government activity* that is *not explicitly* authorized by *both* the Constitution *and* the Statutes that implement it and a clear and explicit showing by the moving party (that is you) that jurisdiction exists as required by the Administrative Procedures Act , [5 U.S.C. §556](https://www.law.cornell.edu/uscode/text/18/556)(d).  To do otherwise or acquiesce otherwise would be to condone and subsidize *criminal behavior* by our government and by public servants in our government.  Such acquiescence would also constitute Treason against the Constitution in violation of Article III of the Constitution.  My military oath prevents me from any act of such Treason.  You cannot penalize me for honoring my Constitutional oath.23. Silence or lack of response to all the demands in this legal notice after a 30 day period shall constitute acquiescence to all of the determinations and facts herein contained and will result in a Notice of Default served upon you with a Proof of Mailing provided by a registered Notary Public.24. Don’t bother quoting any federal court cases below the Supreme Court in response to this legal notice because *your own*[*Internal Revenue Manual, section 4.10.7.2.9.8*](http://www.irs.gov/irm/part4/ch10s11.html)*says that any ruling below the Supreme Court may not be applied to more than the single “taxpayer” in the case involved*.  If you can’t follow your own written internal procedures, then why on earth should I do what you expect me to or even listen to you?25. Don’t bother asserting jurisdiction based on my citizenship status because I am a “national” under [8 U.S.C. §1101](https://www.law.cornell.edu/uscode/text/8/1101)(a)(21) and have taken the necessary steps identified in [8 U.S.C. §1452](https://www.law.cornell.edu/uscode/text/8/1452) to establish myself as such and also as a “[nonresident alien](https://famguardian.org/TaxFreedom/CitesByTopic/NonresidentAlien.htm)” not engaged in a "trade or business" (public office) for the purposes of the income tax as described in 26 C.F.R. §1.871-1(b)(i).26.You may feel tempted to retaliate against this request for refund by overriding your IDRS system and manually entering bogus time-barred assessments against me that are back-dated.  Be advised that I am *very familiar* with how to decode my non-sanitized IMF file and if you do so, you will be prosecuted for fraud, put behind bars, and fired from the service for your misconduct if I have anything to say about it.27.What the Lord requires of you in this case is to **DO JUSTICE** and to **LOVE MERCY**.  You can’t do either if you care more about *stealing* my money than you care about following the law and the Constitution, your own integrity, and about upholding the public trust and the Constitution that maintains the civil society that we both value.  Both of these biblical requirements, JUSTICE and MERCY, can be satisfied by refunding to me the money that was *illegally* sent to you under duress by my criminal employer, who forced me to pay a tax I didn’t *voluntarily* want to pay as a condition of employment.*"He has shown you, O man, what is good;And what does the Lord require of youBut to do justly,To love mercy,And to walk humbly with your God?"[*[*Micah 6:8*](http://biblegateway.com/passage/?search=Micah%206:8&version=50)*, Bible, NKJV]*28.If you respond to this request for refund by providing the amount of refund requested, then under a *nihil dicit* judgment, you have consented that all other revenues and receipts received by me are ***NOT TAXABLE*** and ***NOT GROSS INCOME***, and you agree that:28.1.My estate is indeed a foreign estate as defined in [26 U.S.C. §7701](https://www.law.cornell.edu/uscode/text/26/7701)(a)(31).28.2.The only amount of “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” I earn is the amount that I *say* I earn, because *none* of what I make is legally defined as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)”.  Nowhere is any of the money that I earned as a private worker who is not a "public officer" of the United States legally classified as “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)”.  I challenge you to provide any statute that concludes otherwise.  If you look in the annotated U.S. Code, 1928 edition, under [26 U.S.C. §954](https://www.law.cornell.edu/uscode/text/26/954), you can clearly see that the definition of “[gross income](https://famguardian.org/TaxFreedom/CitesByTopic/GrossIncome.htm)” has always meant, in the case of natural persons, only "public officers" of the United States government.  Obfuscation of the Internal Revenue Code by greedy lawyers in the Department of Treasury can’t change that fact either, because the Constitution hasn’t changed and it remains the definition and limitation of Congress’ power to tax.28.3.You are forever estopped from proceeding against me in the future either administratively or in litigation for:28.3.1. A return or civil suit for return of the monies you refunded to me.28.3.2. Fraud or false statements in violation of [26 U.S.C. §7204](https://www.law.cornell.edu/uscode/text/26/7204) .28.3.3. Failure to file a tax return in violation of [26 U.S.C. §7203](https://www.law.cornell.edu/uscode/text/26/7203).If you find yourself unwilling or unable to consent to the above determinations in conjunction with the requested refund, please find a supervisor or other authority who has such delegated authority and have him sign the letter you enclose with your refund as an affidavit so that we can settle this matter and bar or estop any future criminal or civil litigation related to it.29.If you don’t comply by providing to me the refund I am demanding under the authority of law, then I will see you in court and will show you the same amount of *lack of mercy* that you earned by refusing to be civil or accountable or helpful to members of the public like me who *you* are there to SERVE as a public *servant*.  I will personally make sure that you will reap exactly what you sow.  Remember, “Service” is the most important part of “Internal Revenue Service”, and ***I*** am the customer you exist to serve.  Making me your servant is the very definition of tyranny in a free country.A word of caution is in order about the above approach.  We warn you throughout this book *never* to claim to be a “taxpayer” because it prejudices your rights.  The discussion above helps to show you how to avoid prejudicing your rights more than necessary when you claim to be a “taxpayer”.  We warn you that it is at best a triage measure designed as an expedient to help those of you who have been wronged by your private employers wrongfully withholding taxes from your pay against your wishes.  We are trying to show you how to undo that wrong and recover these illegally withheld taxes without prejudicing your rights and without the need to litigate.  Please be cautious and make sure you have read at least the first five chapters of this book *before* you attempt to claim a refund using the above technique.We wish to conclude this section by revealing some *very* important implications of being a "[nontaxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)" that we need to be *very* aware of in order to avoid jeopardizing our status and creating a false presumption that we are a "taxpayer", which are summarized below:1. You cannot quote any section of the Internal Revenue Code that requires you to be a "[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)" in order to claim its benefit.  For instance, [26 U.S.C. §7433](https://www.law.cornell.edu/uscode/text/26/7433), which purports to allow anyone to file a suit against an IRS agent for wrongful collection actions, says the following:[*TITLE 26*](https://www.law.cornell.edu/uscode/text/26)*>*[*Subtitle F*](https://www.law.cornell.edu/uscode/text/26/subtitle-F)*>*[*CHAPTER 76*](https://www.law.cornell.edu/uscode/text/26/subtitle-F/chapter-76)*>*[*Subchapter B*](https://www.law.cornell.edu/uscode/text/26/subtitle-F/chapter-76/subchapter-B)*> § 7433*[*§ 7433. Civil damages for certain unauthorized collection actions*](https://www.law.cornell.edu/uscode/text/26/7433)*(a) In general**If,****in connection with any collection of Federal tax with respect to a taxpayer****, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section*[*7432*](https://www.law.cornell.edu/uscode/text/26/7432)*, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.*Note the phrase above “with respect to a [taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)”, which are no accident. If you are a “nontaxpayer”, then you have no recourse under the above statute.  HOWEVER, you still have recourse under the constitution for deprivation of property without due process of law under the [Fifth Amendment](http://caselaw.lp.findlaw.com/data/constitution/amendment05/).  If you filed a lawsuit against an IRS agent, your remedy would then have come from citing the Constitution and possibly also cite the criminal code, which is also positive law, but NOT any part of the I.R.C.2. You cannot call the [Internal Revenue Code](https://www.law.cornell.edu/uscode/text/26) "law" or a "statute", but only a "code" or a "title".  It can only be "law" if you are a "[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)".  What makes anything "law" is your consent, according to the Declaration of Independence, and calling the IRC "law" is an admission that you consent to its provisions and are subject to them.  See sections 5.4.1 through 5.4.3.6 later for details on this scam.3. You cannot fill out and submit any form that can only be used by “[taxpayers](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” nor can you sign any form that uses the word “taxpayer” to identify you.  We have gone through and created substitute versions of most major IRS forms to remove such false presumptions from the forms at:<http://famguardian.org/TaxFreedom/Forms/IRS/IRSFormsPubs.htm>4. When you get an IRS notice that either calls you a “[taxpayer](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” or uses a “[Taxpayer Identification Number” (TIN)](https://famguardian.org/TaxFreedom/CitesByTopic/TIN.htm), then the notice is in error and you have a duty to bring this to the attention of the IRS.  Only “[taxpayers](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” can have a TIN.  Below is an example form which satisfies this purpose:*Wrong Party Notice*, Form #07.105<http://sedm.org/Forms/FormIndex.htm>5.  You must include the following language in all your correspondence with the taxing authorities in order to emphasize your status as a "nontaxpayer":*I look forward to being corrected promptly in anything you believe is inconsistent with reality found in this correspondence or any of its attachments.  If you do not respond, I shall conclude that you believe I am a “nontaxpayer” who is neither subject to nor liable for any internal revenue tax.**"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."**"The distinction between persons and things within the scope of the revenue laws and those without is vital."[*[*Long v. Rasmussen, 281 F. 236, 238(1922)*](http://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Evidence/Q03.038.pdf)*]**I remind you that your own IRS mission statement says that you can only help “taxpayers” to understand their tax responsibilities and therefore, if you won’t talk with me, the only thing I can logically conclude is that I must not be a “taxpayer” and instead am a “nontaxpayer” not subject to any provision within the I.R.C.  In that case, thank you for confirming that I am person outside your jurisdiction and not “liable” for any internal revenue tax:**Internal Revenue Manual (IRM), Section*[*1.1.1.1  (02-26-1999)*](http://www.irs.gov/irm/part1/ch01s01.html)*IRS Mission and Basic Organization**The IRS Mission:****Provide America’s taxpayers top quality service****by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.*6. Any IRS publication addressed to “[taxpayers](https://famguardian.org/TaxFreedom/CitesByTopic/taxpayer.htm)” isn’t meant for you and you cannot rely upon it.  For instance, [IRS Publication 1 is entitled *Your Rights as a Taxpayer*](https://famguardian.org/TaxFreedom/Forms/IRS/IRSPub1.pdf).  The title of this publication is an oxymoron:  Taxpayers don’t have rights!  A “nontaxpayer” cannot cite this pamphlet as authority for defending his rights.  We called the IRS and asked them if they have an equivalent pamphlet for “nontaxpayers” and they said no.  Then we asked whether the rights mentioned in the pamphlet also apply to “nontaxpayers” and they reluctantly said “yes”.  Someone wrote an “improved” version of this pamphlet entitled *Your Rights as a****Non****taxpayer* which you may wish to read at:<http://sedm.org/LibertyU/NontaxpayerBOR.pdf> |

**The Internal Revenue Service relies on Sections 6201, 6321 and 6331 of Title 26 as the reference for legal evidence of authority of law to assess, lien and/or levy for the collection of alleged income taxes.**

**The laws, which apply to the general public of the 50 Union States, are referred to as the Statutes at Large. These Statutes are clear as to the taxable activities and to those liable for these activities as shown by the Statutes at Large. There are numerous Federal Court decisions in affirmation. Cites below:**

**"The official source to find United States law is the Statutes at Large and the United States Code is only prima facie evidence of such laws." Royer's Inc. v. United States, 265 F2d 615, 59-1 (1959, CA3 Pa)**

**"Unless Congress affirmatively enacts title of United States Code into law, that title is only "prima facie" evidence of the law." Preston v. Heckler, 734 F2d1359, (1984, CA9 Alaska)**

**"... that the Code establishes "prima facie" the laws of the United States , the very meaning of "prima facie" being that the Code cannot prevail over the Statutes at Large when the two are inconsistent." Stephen v. United States , 319 U.S. 423 (1943); United States v. Welden, 377 U.S. 95 (1964)**

**"The Code establishes prima facie what the laws of United States are but to the extent that provisions of Code are inconsistent with Statutes at Large, The latter will prevail" Best Food, Inc. v. United States, 147 F Supp 749 (1956)**

**"Internal Revenue Code construction to Statutes at Large must be made by individual section and subsection since each section and subsection is derived from their own set of Statutes at Large pamphlet, Joint Committee in Taxation, 'Derivations of Code Sections of the Internal Revenue Codes of 1939 and 1954 (JCS-1-92) January 21, 1992, U.S. Government Printing Office."**

**As it should be easily understood by the Justice Department Tax Division counselors;**

Assessment– The IRS claims this authority rests in Title 26 USC §6201.Legal presumption of lawful authority of Section 6201 by the IRS, as applied is hereby refuted and rebutted for the collection of income tax.

Section 6201 of the Internal Revenue code is derived from section 3182 of Revised Statutes of 1874.The types of taxes authorized by Congress to be assessed are described in crystal clarity in Statutes at Large enacted on Dec 24, 1872, chap. 13, sec.2, vol. 17, page 402 which describes authorized assessment of taxes by the Secretary and apply only to tobacco and distilled spirits. The original intend of Congress has not changed as there has been no amendment to the Statue at Large to date. Since I nor my spouse are not involved with any trade or business having to do with tobacco or distilled spirits for the years in question, NO AUTHORITY TO ASSESS EXISTS.

Liens – Authority to Lien for Taxes rests in Title 26 §6321.Legal presumption of lawful authority of Section 6321 by the IRS, as it applies to Petitioner and his spouse is hereby refuted and rebutted for the collection of Income tax.

The Internal Revenue Code, Section 6321, was derived from the 1954 code, which was derived from section 3670 of the 1939 code. (Joint committee on Taxation, Derivations of Code Sections of the 1939 and 1954 code, 1992, U.S. Govt.).Section 3670 of the 1939 code was derived from section 3186 of the Revised Statutes of 1874 (R.S. 1874) and was termed "Lien for Taxes." This section was derived from the actual Statute passed by Congress on July 13, 1866.This Act identifies only excise taxes on cotton and distilled spirits as subject to lien. This Act was amended by an act dated May 29, 1928, Vol.45 of the Statutes at Large, page 875, Chap. 852 Section 613 to amend the method of lien. The act does not change the taxes authorized by Congress to create a lien per the original Statute at Large of 1866, namely excise taxes on cotton and distilled spirits, NOTHING ELSE. I nor my spouse are not or were not involved in the trade or business of cotton or distilled spirits, there is NO LEGAL BASIS FOR ESTABLISHING A LIEN.

Levy – Authority to levy for taxes rests in Title 26 §6331(a).Legal presumption of lawful authority of Section 6331 by the IRS, as it applies to Petitioner and his spouse is hereby refuted and rebutted for the collection of Income tax.

Section 6331 was derived from the 1954 code, which was derived from Sections 3310, 3660, 3692 and 3700 of the 1939 Code (Joint Committee on Taxation, Derivations of Code Sections of the 1939 and 1954 code, 1992, U.S. Govt.) Section 3690 is the single identifying sections on the species of tax, which can be collected by distraint and was derived from Revised Statutes of 1874 section 3187 and is title "Taxes collectible by distraint." The actual Statute at Large enacted by Congress, which conclusively reveals Congressional intent as to taxes authorized to be collected by levy and distraint was enacted on July 13, 1866 and refers with great specificity only to taxes on cotton and distilled spirits. (See Cap. 184, Section 9, vol.14, pp. 98 and 106 of the Act). The Statutes at Large has not been amended to this date. Therefore the original intent of Congress has not changed. Since I nor my spouse were not involved in the trade or business of cotton or distilled spirits, there is NO LEGAL BASIS NOR AUTHORITY FOR SUBJECTING ME OR MY SPOUSE TO A LEVY.

The above Statutes are in complete harmony with the official Federal Register Index that clearly shows the implementing regulations for Title 26.I invite your attention to the CFR index. The implementing regulation for Title 26 Sections 6201, 6321 and 6331 is Title 27 part 70, which is a regulation that applies only to the Bureau of Alcohol, Tobacco and Firearms and/or the Tax and Trade Bureau. Implementing regulations for Section 7602 of Title 26 resides in Title 27 CFR, parts 29, 46, 70 and 296.Title 26 USC 7608 provides its authority to 27 CFR parts 296 and 70 only.

Consequently, there exists no statutory authority for the Internal Revenue Service to summons, (7608 (b) (2) (A)), assess, lien or collect income taxes by distraint.

The Revenue Officer and the IRS are acting without authority and under color of law, in violation of the laws of the United States and in violation of Petitioner's Constitutional right to due process of law. The legal obligation and burden of proof under 26 USC § 7491 now rests the IRS to demonstrate any documented evidence to the contrary.

All are presumed to be federal citizens?

The Law of Obligation

"The rights of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government." City of Dallas v Mitchell, 245 S.W. 944

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The [3d article of the Constitution of the United States](http://en.wikisource.org/wiki/Constitution_of_the_United_States_of_America) enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form presented by law. It then becomes a case. [Osborn et al. v. The Bank of the United States](http://en.wikisource.org/wiki/Osborn_et_al._v._The_Bank_of_the_United_States), [9 WheatHYPERLINK "http://en.wikisource.org/wiki/United\_States\_Reports/Volume\_22".](http://en.wikisource.org/wiki/United_States_Reports/Volume_22)738; 5 Cond. Rep. 741.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) By the [act of April 29, 1802, chap. 31](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1), the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the [act of March 3, 1837, chap. 32](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/2nd_Session/Chapter_34&action=edit&redlink=1), it was made to consist of a Chief Justice and eight associate Justices.

By the [act of April 29, 1802, chap. 31](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1), the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the [7th section](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/25th_Congress/3rd_Session/Chapter_36&action=edit&redlink=1) of the [act of February 28, 1839, chap. 36](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/25th_Congress/3rd_Session/Chapter_36&action=edit&redlink=1).

By an [act passed May 4, 1826, chap. 37](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/19th_Congress/1st_Session/Chapter_37&action=edit&redlink=1), the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an [act passed June 17, 1844](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/28th_Congress/1st_Session/Chapter_96&action=edit&redlink=1), the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; [act of June 5, 1794](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/3rd_Congress/1st_Session/Chapter_50), [sec. 6](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/3rd_Congress/1st_Session/Chapter_50); [act of May 10, 1800](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_51&action=edit&redlink=1); [act of December 31, 1814](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_15&action=edit&redlink=1); [act of April 16, 1816](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_56&action=edit&redlink=1); [act of April 20, 1818](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/15th_Congress/1st_Session/Chapter_88&action=edit&redlink=1); [act of May 15, 1820](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/1st_Session/Chapter_107&action=edit&redlink=1); [act of March 3, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_22).

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: [The Thomas Jefferson](http://en.wikisource.org/w/index.php?title=The_Thomas_Jefferson&action=edit&redlink=1), [10 Wheat.](http://en.wikisource.org/wiki/United_States_Reports/Volume_23) 428; 6 Cond. Rep. 73. [M‘Donough v. Danery](http://en.wikisource.org/w/index.php?title=M%E2%80%98Donough_v._Danery&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/United_States_Reports/Volume_3) 188; 1 Cond. Rep. 94. [United States v. La Vengeance](http://en.wikisource.org/w/index.php?title=United_States_v._La_Vengeance&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/United_States_Reports/Volume_3) 297; 1 Cond. Rep. 132. [Glass et al. v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Glass\_et\_al.\_v.\_The\_Betsey&action=edit&redlink=1" The Betsey](http://en.wikisource.org/w/index.php?title=Glass_et_al._v._The_Betsey&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/United_States_Reports/Volume_3) 6; 1 Cond. Rep. 10. [The Alerta v. Blas Moran](http://en.wikisource.org/w/index.php?title=The_Alerta_v._Blas_Moran&action=edit&redlink=1), [9 Cranch](http://en.wikisource.org/wiki/United_States_Reports/Volume_13), 359; 3 Cond. Rep. 425. [The Merino et al.](http://en.wikisource.org/w/index.php?title=The_Merino_et_al.&action=edit&redlink=1), [9 WheatHYPERLINK "http://en.wikisource.org/wiki/United\_States\_Reports/Volume\_22".](http://en.wikisource.org/wiki/United_States_Reports/Volume_22) 391; 5 Cond. Rep. 623. [The Josefa Segunda](http://en.wikisource.org/wiki/The_Josefa_Segunda), [10 WheatHYPERLINK "http://en.wikisource.org/wiki/United\_States\_Reports/Volume\_23".](http://en.wikisource.org/wiki/United_States_Reports/Volume_23) 312; 6 Cond. Rep. 111. [The Bolina](http://en.wikisource.org/w/index.php?title=The_Bolina&action=edit&redlink=1), 1 Gallis’ C. C. R. 75. [The Robert Fulton](http://en.wikisource.org/w/index.php?title=The_Robert_Fulton&action=edit&redlink=1), Paine’s C. C. R. 620. [Jansen v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Jansen\_v.\_The\_Vrow\_Christiana\_Magdalena&action=edit&redlink=1" HYPERLINK "http://en.wikisource.org/w/index.php?title=Jansen\_v.\_The\_Vrow\_Christiana\_Magdalena&action=edit&redlink=1"The Vrow Christiana Magdalena](http://en.wikisource.org/w/index.php?title=Jansen_v._The_Vrow_Christiana_Magdalena&action=edit&redlink=1), Bee’s D. C. R. 11.Jennings v. Carson, [4 Cranch](http://en.wikisource.org/wiki/United_States_Reports/Volume_8), 2; 2 Cond. Rep. 2. [The Sarah](http://en.wikisource.org/w/index.php?title=The_Sarah&action=edit&redlink=1), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/United\_States\_Reports/Volume\_21".](http://en.wikisource.org/wiki/United_States_Reports/Volume_21) 391; 5 Cond. Rep. 472. [Penhallow et al. v. Doane’s Adm’rs](http://en.wikisource.org/w/index.php?title=Penhallow_et_al._v._Doane%E2%80%99s_Adm%E2%80%99rs&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/United_States_Reports/Volume_3) 54; 1 Cond. Rep. 21. [The United States v. Richard Peters](http://en.wikisource.org/w/index.php?title=The_United_States_v._Richard_Peters&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/United_States_Reports/Volume_3) 121; 1 Cond. Rep. 60. M‘Lellan v. the United States, 1 Gallis’ C. C. R. 227. Hudson et al. *v.* Guestier, [6 Cranch](http://en.wikisource.org/wiki/6_Cranch), 281; 2 Cond. Rep. 374. Brown *v.* The United States, [8 Cranch](http://en.wikisource.org/wiki/8_Cranch), 110; 3 Cond. Rep. 56. [De Lovio *HYPERLINK "http://en.wikisource.org/w/index.php?title=De\_Lovio\_v.\_Boit\_et\_al.&action=edit&redlink=1"v.*HYPERLINK "http://en.wikisource.org/w/index.php?title=De\_Lovio\_v.\_Boit\_et\_al.&action=edit&redlink=1" Boit et al.](http://en.wikisource.org/w/index.php?title=De_Lovio_v._Boit_et_al.&action=edit&redlink=1), 2 Gallis’ Rep. 398. [Burke *HYPERLINK "http://en.wikisource.org/w/index.php?title=Burke\_v.\_Trevitt&action=edit&redlink=1"v.*HYPERLINK "http://en.wikisource.org/w/index.php?title=Burke\_v.\_Trevitt&action=edit&redlink=1" Trevitt](http://en.wikisource.org/w/index.php?title=Burke_v._Trevitt&action=edit&redlink=1), 1 Mason, 96. The Amiable Nancy, [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_546". HYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_546"546](http://en.wikisource.org/wiki/3_Wheat._546); 4 Cond. Rep. 322. [The Abby](http://en.wikisource.org/w/index.php?title=The_Abby&action=edit&redlink=1), 1 Mason, 860. [The Little Ann](http://en.wikisource.org/w/index.php?title=The_Little_Ann&action=edit&redlink=1), Paine’s C. C. R. 40. Slocum *v.* Maybury et al., [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.\_1". HYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.\_1"1](http://en.wikisource.org/wiki/2_Wheat._1); 4 Cond. Rep. 1. Southwick *v.* The Postmaster General, [2 Peters, 442](http://en.wikisource.org/wiki/2_Pet._442). [Davis *HYPERLINK "http://en.wikisource.org/w/index.php?title=Davis\_v.\_A\_New\_Brig&action=edit&redlink=1"v.*HYPERLINK "http://en.wikisource.org/w/index.php?title=Davis\_v.\_A\_New\_Brig&action=edit&redlink=1" HYPERLINK "http://en.wikisource.org/w/index.php?title=Davis\_v.\_A\_New\_Brig&action=edit&redlink=1"A New Brig](http://en.wikisource.org/w/index.php?title=Davis_v._A_New_Brig&action=edit&redlink=1), Gilpin’s D. C. R. 473. [Smith *HYPERLINK "http://en.wikisource.org/w/index.php?title=Smith\_v.\_The\_Pekin&action=edit&redlink=1"v.*HYPERLINK "http://en.wikisource.org/w/index.php?title=Smith\_v.\_The\_Pekin&action=edit&redlink=1" HYPERLINK "http://en.wikisource.org/w/index.php?title=Smith\_v.\_The\_Pekin&action=edit&redlink=1"The Pekin](http://en.wikisource.org/w/index.php?title=Smith_v._The_Pekin&action=edit&redlink=1), Gilpin’s D. C. R. 203. Peters’ Digest, “Courts,” “District Courts of the United States.”

The 3d section of the act of Congress of 1789, to establish the Judicial Courts of the United States, which provides that no summary writ, return of process, judgment, or other proceedings in the courts of the United States shall be abated, arrested or quashed for any defect or want of form, &c., although it docs not include verdicts, eo nomine, but judgments are included; and the language of the provision, “writ, declaration, judgment or other proceeding, in court causes,” and further “such writ, declaration, pleading, process, judgment or other proceeding whatsoever,” is sufficiently comprehensive to embrace every conceivable step to be taken in court, from the emanation of the writ, down to the judgment. Roach *v.* Hulings, [16 Peters, 319](http://en.wikisource.org/wiki/16_Pet._319).

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The sessions of the Circuit Courts have been regulated by the following acts:

In Alabama—[act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). In Arkansas—[act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). In Connecticut—act of September 24, 1789; [act of April 13, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_21); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of May 13, 1826](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/19th_Congress/1st_Session/Chapter_38&action=edit&redlink=1). In Delaware—act of September 24, 1789; [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 24, 1804](http://en.wikisource.org/w/index.php?title=Act_of_March_24,_1804&action=edit&redlink=1); [act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). In Georgia—act of September 24, 1789; [act of August 11, 1790](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/2nd_Session/Chapter_42); [act of April 13, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_21); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of May 13, 1826](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/19th_Congress/1st_Session/Chapter_37&action=edit&redlink=1); [act of Jan. 21, 1829](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/20th_Congress/2nd_Session/Chapter_8&action=edit&redlink=1). Kentucky—[act of March 3, 1801](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/2nd_Session/Chapter_32&action=edit&redlink=1); [act of March 8, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_8&action=edit&redlink=1); [act of March 2, 1803](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/2nd_Session/Chapter_33&action=edit&redlink=1); [act of Feb. 27, 1807](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_16&action=edit&redlink=1); [act of March 22, 1808](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/10th_Congress/1st_Session/Chapter_38&action=edit&redlink=1);[April 22, 1824](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/18th_Congress/1st_Session/Chapter_36&action=edit&redlink=1). Louisiana—[actHYPERLINK "http://en.wikisource.org/w/index.php?title=United\_States\_Statutes\_at\_Large/Volume\_5/24th\_Congress/1st\_Session/Chapter\_34&action=edit&redlink=1" of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). Maine—[act of March 3, HYPERLINK "http://en.wikisource.org/w/index.php?title=United\_States\_Statutes\_at\_Large/Volume\_2/6th\_Congress/2nd\_Session/Chapter\_32&action=edit&redlink=1"1801](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/2nd_Session/Chapter_32&action=edit&redlink=1); [act of March 8, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_8&action=edit&redlink=1); [act of March 30, 1820](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/1st_Session/Chapter_27&action=edit&redlink=1).Maryland—act of Sept. 24, 1789; [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of Feb. 11, 1830](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/21st_Congress/1st_Session/Chapter_11&action=edit&redlink=1); [act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1).Massachusetts—act of Sept. 24, 1789; [act of March 3, 1791](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/3rd_Session/Chapter_22); [act of June 9, 1794](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/3rd_Congress/1st_Session/Chapter_64); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of March 3, 1801](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/2nd_Session/Chapter_32&action=edit&redlink=1); [act of March 8, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_8&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 26, 1812](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/12th_Congress/1st_Session/Chapter_45&action=edit&redlink=1). Missouri—[act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). Mississippi—[actHYPERLINK "http://en.wikisource.org/w/index.php?title=United\_States\_Statutes\_at\_Large/Volume\_5/24th\_Congress/1st\_Session/Chapter\_34&action=edit&redlink=1" of March 3, 1839](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). New Hampshire—act of Sept. 24, 1789; [act of March 3, 1791](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/3rd_Session/Chapter_22); [act of April 13, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_21); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of March 3, 1801](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/2nd_Session/Chapter_32&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 6, 1812](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/12th_Congress/1st_Session/Chapter_45&action=edit&redlink=1). New Jersey—act of September 24, 1789; [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 2, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1). New York—act of September 24, 1789; [act of March 3, 1791](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/3rd_Session/Chapter_22); [act of April 13, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_21); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23);[act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 3, 1825](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/18th_Congress/2nd_Session/Chapter_51&action=edit&redlink=1); [act of February 10, 1832](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/22nd_Congress/1st_Session/Chapter_15&action=edit&redlink=1); [act of May 13, 1836](http://en.wikisource.org/w/index.php?title=Act_of_May_13,_1836&action=edit&redlink=1); [act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). North Carolina—act of September 24, 1789; [act of April 13, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_21); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23); [act of March 31, 1796](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/1st_Session/Chapter_10&action=edit&redlink=1); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of July 5, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/5th_Congress/1st_Session/Chapter_9&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 8, 1806](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/1st_Session/Chapter_13&action=edit&redlink=1); [act of February 4, 1807](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_5&action=edit&redlink=1). Ohio—[act of February 24, 1807](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_16&action=edit&redlink=1);[act of March 22, 1808](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/10th_Congress/1st_Session/Chapter_38&action=edit&redlink=1); [act of April 22, 1824](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/18th_Congress/1st_Session/Chapter_36&action=edit&redlink=1); [act of May 20, 1826](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/19th_Congress/1st_Session/Chapter_132&action=edit&redlink=1). Pennsylvania—act of September 24, 1789; [act of May 12, 1796](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/1st_Session/Chapter_24&action=edit&redlink=1);[act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of December 24, 1799](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_1&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 3, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1). Rhode Island—[act of June 23, 1790](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/2nd_Session/Chapter_21);[act of March 3, 1791](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/3rd_Session/Chapter_22); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23); [act of May 22, 1796](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/1st_Session/Chapter_34&action=edit&redlink=1); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of March 3, 1801](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/2nd_Session/Chapter_32&action=edit&redlink=1); [act of March 8, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_8&action=edit&redlink=1);[act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 26, 1812](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/12th_Congress/1st_Session/Chapter_45&action=edit&redlink=1). South Carolina—act of September 24, 1789; [act of August 11, 1790](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/2nd_Session/Chapter_42); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of April 14, 1816](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_74&action=edit&redlink=1); [act of May 25, 1824](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/18th_Congress/1st_Session/Chapter_145&action=edit&redlink=1); [act of March 3, 1825](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/18th_Congress/2nd_Session/Chapter_78&action=edit&redlink=1); [act of May 4, 1826](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/19th_Congress/1st_Session/Chapter_37&action=edit&redlink=1); [act of February 5, 1829](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/20th_Congress/2nd_Session/Chapter_19&action=edit&redlink=1). Tennessee—[act of February 24, 1807](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_16&action=edit&redlink=1); [act of March 22, 1808](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/10th_Congress/1st_Session/Chapter_38&action=edit&redlink=1); [act of March 10, 1812](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/12th_Congress/1st_Session/Chapter_39&action=edit&redlink=1); [act of January 13, 1831](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/21st_Congress/1st_Session/Chapter_1&action=edit&redlink=1). Vermont—[act of March 2, 1791](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/3rd_Session/Chapter_12); [act of March 2, 1793](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_23); [act of May 27, 1796](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/1st_Session/Chapter_34&action=edit&redlink=1); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 22, 1816](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_31&action=edit&redlink=1).Virginia—act of September 24, 1789; [act of March 3, 1791](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/3rd_Session/Chapter_22); [act of April 13, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_21); [act of March 3, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of April 29, 1802](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1); [act of March 2, 1837](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/24th_Congress/1st_Session/Chapter_34&action=edit&redlink=1).

By the [act of March 10, 1838](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/25th_Congress/2nd_Session/Chapter_33&action=edit&redlink=1), the Justice of the Supreme Court is required to attend but one circuit in the districts of Indiana, Illinois, and Michigan.

By [an act passed in 1844](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/28th_Congress/1st_Session/Chapter_96&action=edit&redlink=1), the Justices of the Supreme Court are empowered to hold but one session of the Circuit Court in each district in their several circuits. The Judges of the District Courts hold the other sessions of the Circuit Court in their several districts.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The provisions of law on the subject of the adjournments of the Supreme Court in addition to the 6th section of this act, are, that in case of epidemical disease, the court may be adjourned to some other place than the seat of government. [Act of February 25, 1799](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/5th_Congress/3rd_Session/Chapter_12&action=edit&redlink=1).
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) By the 2d section of the set entitled “[an act in amendment of the acts respecting the judicial system of the United States](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/25th_Congress/3rd_Session/Chapter_36&action=edit&redlink=1),” passed [February 28, 1839, chap. 36](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/25th_Congress/3rd_Session/Chapter_36&action=edit&redlink=1), it is provided “that all the circuit courts of the United States shall have the appointment of their own clerks, and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court.” See [ex parte Duncan N. Hennen](http://en.wikisource.org/w/index.php?title=Ex_parte_Duncan_N._Hennen&action=edit&redlink=1), [13 Peters](http://en.wikisource.org/wiki/United_States_Reports/Volume_38), 230.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The further legislation on the subject of the jurisdiction and powers of the District Courts are: the [act of June 5, 1794, ch. 50](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/3rd_Congress/1st_Session/Chapter_50),[sec. 6](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/3rd_Congress/1st_Session/Chapter_50); [act of May 10, 1800, chap. 51](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_51&action=edit&redlink=1), [sec. 5](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_51&action=edit&redlink=1); [act of February 24, 1807, chap. 13](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_13&action=edit&redlink=1); [act of February 24, 1807, chap. 16](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_16&action=edit&redlink=1); [act of March 3, 1815](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_101&action=edit&redlink=1); [act of April 16, 1816, chap. 56](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_56&action=edit&redlink=1), [sec. 6](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_56&action=edit&redlink=1); [act of April 20, 1818, chap. 103](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/15th_Congress/1st_Session/Chapter_103&action=edit&redlink=1); [act of May 15, 1820, chap. 106](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/1st_Session/Chapter_107&action=edit&redlink=1), [sec. 4](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/1st_Session/Chapter_107&action=edit&redlink=1); [act of March 3, 1823, chap. 71](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/17th_Congress/2nd_Session/Chapter_72&action=edit&redlink=1).
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Jurisdiction of the District Courts in cases of admiralty seizures, under laws of impost, navigation and trade. [M‘Donough v. Danery](http://en.wikisource.org/w/index.php?title=M%E2%80%98Donough_v._Danery&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 188; 1 Cond. Rep. 94. [The United States v. La Vengeance](http://en.wikisource.org/w/index.php?title=The_United_States_v._La_Vengeance&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 297; 1 Cond. Rep. 132. [Glass et al. v. The Betsey](http://en.wikisource.org/w/index.php?title=Glass_et_al._v._The_Betsey&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 6; 1 Cond. Rep. 10. [The Alerta](http://en.wikisource.org/w/index.php?title=The_Alerta&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 359; 3 Cond. Rep. 425. [The Merino et al.](http://en.wikisource.org/w/index.php?title=The_Merino_et_al.&action=edit&redlink=1), [9 WheatHYPERLINK "http://en.wikisource.org/wiki/9\_Wheat.\_391". 391](http://en.wikisource.org/wiki/9_Wheat._391); 5 Cond. Rep. 623. [The Josefa Segunda](http://en.wikisource.org/wiki/The_Josefa_Segunda), [10 WheatHYPERLINK "http://en.wikisource.org/wiki/10\_Wheat.\_312". 312](http://en.wikisource.org/wiki/10_Wheat._312); 6 Cond. Rep. 111. [Jennings v. Carson](http://en.wikisource.org/w/index.php?title=Jennings_v._Carson&action=edit&redlink=1), [4 Cranch](http://en.wikisource.org/wiki/4_Cranch), 2; 2 Cond. Rep. 2. [The Sarah](http://en.wikisource.org/w/index.php?title=The_Sarah&action=edit&redlink=1), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.\_391". 691](http://en.wikisource.org/wiki/8_Wheat._391); 5 Cond. Rep. 472. [Penhallow et al. v. Doane’s Adm’rs](http://en.wikisource.org/w/index.php?title=Penhallow_et_al._v._Doane%E2%80%99s_Adm%E2%80%99rs&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 54; 1 Cond. Rep. 21. [United States v. Richard Peters](http://en.wikisource.org/w/index.php?title=United_States_v._Richard_Peters&action=edit&redlink=1),3 Dall. 121; 1 Cond. Rep. 60. [Hudson et al. v. Guestier](http://en.wikisource.org/w/index.php?title=Hudson_et_al._v._Guestier&action=edit&redlink=1), [6 Cranch](http://en.wikisource.org/wiki/6_Cranch), 281; 2 Cond. Rep. 374. [Brown v. The United States](http://en.wikisource.org/w/index.php?title=Brown_v._United_States_(12_U.S._110)&action=edit&redlink=1), [8 Cranch](http://en.wikisource.org/wiki/8_Cranch), 110; 3 Cond. Rep. 56. [The Sarah](http://en.wikisource.org/w/index.php?title=The_Sarah&action=edit&redlink=1), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.\_391". 391](http://en.wikisource.org/wiki/8_Wheat._391); 5 Cond. Rep. 472. [The Amiable Nancy](http://en.wikisource.org/wiki/The_Amiable_Nancy), [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_546". 546](http://en.wikisource.org/wiki/3_Wheat._546); 4 Cond. Rep. 322.[Slocum v. Maybury](http://en.wikisource.org/wiki/Slocum_v._Mayberry), [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.\_1". 1](http://en.wikisource.org/wiki/2_Wheat._1); 4 Cond. Rep. 1. [Gelston et al. v. Hoyt](http://en.wikisource.org/wiki/Gelston_v._Hoyt), [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_246". 246](http://en.wikisource.org/wiki/3_Wheat._246); 4 Cond. Rep. 244. [The Bolina](http://en.wikisource.org/w/index.php?title=The_Bolina&action=edit&redlink=1), 1 Gallis’ C. C. R. 75. [The Robert Fulton](http://en.wikisource.org/w/index.php?title=The_Robert_Fulton&action=edit&redlink=1), 1 Paine’s C. C. R. 620; Bee’s D. C. R. 11. [De Lovio v. Beit et al.](http://en.wikisource.org/w/index.php?title=De_Lovio_v._Beit_et_al.&action=edit&redlink=1), 2 Gallis’ C. C. R. 398. [The Abby](http://en.wikisource.org/w/index.php?title=The_Abby&action=edit&redlink=1), 1 Mason’s Rep. 360. [The Little Ann](http://en.wikisource.org/w/index.php?title=The_Little_Ann&action=edit&redlink=1), Paine’s C. C. R. 40. [Davis v. A New Brig](http://en.wikisource.org/w/index.php?title=Davis_v._A_New_Brig&action=edit&redlink=1), Gilpin’s D. C. R. 473. [The Catharine](http://en.wikisource.org/w/index.php?title=The_Catharine&action=edit&redlink=1), 1 Adm. Decis. 104.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) An information against a vessel under the [act of Congress of May 22, 1794](http://en.wikisource.org/w/index.php?title=Act_of_May_22,_1794&action=edit&redlink=1), on account of an alleged exportation of arms, is a case of admiralty and maritime jurisdiction; and an appeal from the District to the Circuit Court, in such a case is sustainable. It is also a civil cause, and triable without the intervention of a jury, under the 9th section of the judicial act. [The United States v. La Vengeance](http://en.wikisource.org/w/index.php?title=The_United_States_v._La_Vengeance&action=edit&redlink=1), [3 Dall. 297](http://en.wikisource.org/wiki/3_Dall.); 1 Cond. Rep. 132. [The Sarah](http://en.wikisource.org/w/index.php?title=The_Sarah&action=edit&redlink=1), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.\_391". 691](http://en.wikisource.org/wiki/8_Wheat._391); 5 Cond. Rep. 472. [The Abby](http://en.wikisource.org/w/index.php?title=The_Abby&action=edit&redlink=1), 1 Mason, 360. [The Little Ann](http://en.wikisource.org/w/index.php?title=The_Little_Ann&action=edit&redlink=1), Paine’s C. C. R. 40.

When the District and State courts have concurrent jurisdiction, the right to maintain the jurisdiction attaches to that tribunal which first exercises it, and obtains possession of the thing. [The Robert Fulton](http://en.wikisource.org/w/index.php?title=The_Robert_Fulton&action=edit&redlink=1), Paine’s C. C. R. 620.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) [Burke v. Trevitt](http://en.wikisource.org/w/index.php?title=Burke_v._Trevitt&action=edit&redlink=1), 1 Mason, 96. The courts of the United States have exclusive jurisdiction or all seizures made on land or water, for a breach of the laws of the United States, and any intervention of State authority, which by taking the thing seized out of the hands of the officer of the United States, might obstruct the exercise of this jurisdiction, is unlawful. [Slocum v. Mayberry et al.](http://en.wikisource.org/wiki/Slocum_v._Mayberry), [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.\_1". 1](http://en.wikisource.org/wiki/2_Wheat._1); 4 Cond. Rep. 1.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) [Davis v. Packard](http://en.wikisource.org/wiki/Davis_v._Packard), [6 Peters, 41](http://en.wikisource.org/wiki/6_Pet._41). As an abstract question, it is difficult to understand on what ground a State court can claim jurisdiction of civil suits against foreign consuls. By the Constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, exclusively of the courts of the several States, jurisdiction of all suits against consuls and vice consuls, except for certain offences enumerated in this act. [Davis v. Packard](http://en.wikisource.org/wiki/Davis_v._Packard_%2832_U.S._276%29), [7 Peters, 276](http://en.wikisource.org/wiki/7_Pet._276).

If a consul, being sued in a State court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion. But it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) By an [act passed February 24, 1807](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/9th_Congress/2nd_Session/Chapter_16&action=edit&redlink=1), the Circuit Court jurisdiction of the District Court of Kentucky was abolished.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The amount laid in the declaration is the sum in controversy. If the plaintiff receive less than the amount so claimed, the jurisdiction of the court is not affected. [Green v. Liter](http://en.wikisource.org/w/index.php?title=Green_v._Liter&action=edit&redlink=1), [8 Cranch](http://en.wikisource.org/wiki/United_States_Reports/Volume_12) 229. [Gordon v. Longest](http://en.wikisource.org/wiki/Gordon_v._Longest), [16 Peters](http://en.wikisource.org/wiki/United_States_Reports/Volume_41), 97. [Lessee of Hartshorn v. Wright](http://en.wikisource.org/w/index.php?title=Lessee_of_Hartshorn_v._Wright&action=edit&redlink=1), Peters’ C. C. R. 64.

By the 5th section of the [act of February 21, 1794](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/2nd_Session/Chapter_11), “an act to promote the progress of the useful arts,” &c., jurisdiction in actions for violations of patent rights, is given to the Circuit Courts. Also by the [act of February 15, 1819](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/15th_Congress/2nd_Session/Chapter_19&action=edit&redlink=1), original cognizance, as well in equity as at law, is given to the Circuit Courts of all actions, and for the violation of copy rights. In such cases appeals lie to the Supreme Court of the United States. So also in cases of interest, or disability of a district judge. [Act of May 8, 1792](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_36), [sec. 11](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_36); [act of March 2, 1809](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/10th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1), [sec. 1](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/10th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of March 3, 1821](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/2nd_Session/Chapter_51&action=edit&redlink=1).

Jurisdiction in cases of injunctions on Treasury warrants of distress. [Act of May 15, 1820](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/1st_Session/Chapter_107&action=edit&redlink=1), [sec. 4](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/16th_Congress/1st_Session/Chapter_107&action=edit&redlink=1).

Jurisdiction in cases removed from State courts. [Act of February 4, 1815](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_31&action=edit&redlink=1), [sec. 8](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_31&action=edit&redlink=1); [act of March 3, 1815](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_94&action=edit&redlink=1), [sec. 6](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_94&action=edit&redlink=1).

Jurisdiction in cases of assigned debentures. [Act of March 2, 1799](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/5th_Congress/3rd_Session/Chapter_22&action=edit&redlink=1).

Jurisdiction of crimes committed within the Indian territories. [Act of March 30, 1830](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_13&action=edit&redlink=1), [sec. 15](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_13&action=edit&redlink=1); [act of April 30, 1816](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_165&action=edit&redlink=1), [sec. 4](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_165&action=edit&redlink=1); [act of March 3, 1817](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/2nd_Session/Chapter_92&action=edit&redlink=1), [sec. 2](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/2nd_Session/Chapter_92&action=edit&redlink=1).

Jurisdiction in bankruptcy. [Act of August 19, 1841, chap. 9](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/27th_Congress/1st_Session/Chapter_9&action=edit&redlink=1), [repealed.]

Jurisdiction in cases where citizens of the same State claim title to land under a grant from a State other than that in which the suit is pending in a State court. Act of September 24, 1789, sec. 12. See [Colson v. Lewis](http://en.wikisource.org/wiki/Colson_v._Lewis), [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.".](http://en.wikisource.org/wiki/2_Wheat.) 377; 4 Cond. Rep. 168.

Jurisdiction where officers of customs are parties. [Act of February 4, 1815](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_31&action=edit&redlink=1), [sec. 8](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_31&action=edit&redlink=1); [act of March 3, 1815](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_94&action=edit&redlink=1), [sec. 6](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/13th_Congress/3rd_Session/Chapter_94&action=edit&redlink=1); [act of March 3, 1817](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/2nd_Session/Chapter_92&action=edit&redlink=1), [sec. 2](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/2nd_Session/Chapter_92&action=edit&redlink=1).

A circuit court though an inferior court in the language of the constitution, is not so in the language of the common law; nor are its proceedings subject to the scrutiny of those narrow rules, which the caution or jealousy of the courts at Westminster long applied to courts of that denomination; but are entitled to as liberal intendments and presumptions in favour of their regularity, as those of any supreme court. [Turner v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Turner\_v.\_The\_Bank\_of\_North\_America&action=edit&redlink=1" The Bank of North America](http://en.wikisource.org/w/index.php?title=Turner_v._The_Bank_of_North_America&action=edit&redlink=1), [4 Dall.](http://en.wikisource.org/wiki/4_Dall.) 8; 1 Cond. Rep. 205.

The Circuit Courts of the United States have cognizance of all offences against the United States. What those offences are depends upon the common law applied to the sovereignty and authorities confided to the United States. [The United States v. Coolidge](http://en.wikisource.org/w/index.php?title=The_United_States_v._Coolidge&action=edit&redlink=1), 1 Gallis’ C. C. R. 488, 495.

Where the jurisdiction of the federal courts has once attached, no subsequent change in the relation or condition of the parties in the progress of the cause, will oust that jurisdiction. [The United States v. Meyers](http://en.wikisource.org/w/index.php?title=The_United_States_v._Meyers&action=edit&redlink=1), 2 Brocken, C. C. R. 516.

All the cases arising under the laws of the United States are not, per se, among the cases comprised within the jurisdiction of the Circuit Court, under the provisions of the 11th section of the judiciary act of 1789. [The Postmaster General v. Stockton and Stokes](http://en.wikisource.org/w/index.php?title=The_Postmaster_General_v._Stockton_and_Stokes&action=edit&redlink=1), [12 Peters](http://en.wikisource.org/wiki/12_Peters), 524.

Jurisdiction of the Circuit Courts of the United States in suits between aliens and citizens of another State than that in which the suit is brought:

The courts of the United States will entertain jurisdiction of a cause where all the parties are aliens, if none of them object to it.[Mason et al. v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Mason\_et\_al.\_v.\_The\_Blaireau&action=edit&redlink=1" HYPERLINK "http://en.wikisource.org/w/index.php?title=Mason\_et\_al.\_v.\_The\_Blaireau&action=edit&redlink=1"The Blaireau](http://en.wikisource.org/w/index.php?title=Mason_et_al._v._The_Blaireau&action=edit&redlink=1), [2 Cranch](http://en.wikisource.org/wiki/United_States_Reports/Volume_6), 240; 1 Cond. Rep. 397.

The Supreme Court understands the expressions in the act of Congress, giving jurisdiction to the courts of the United States “where an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State,” to mean that each distinct interest should be represented by persons, all of whom have a right to sue, or may be sued in the federal courts: that is, when the interest is joint, each of the persons concerned in that interest must be competent to sue or be liable to be sued in those courts. [Strawbridge v. Curtis](http://en.wikisource.org/w/index.php?title=Strawbridge_v._Curtis&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/United_States_Reports/Volume_7), 267; 1 Cond. Rep. 523.

Neither the Constitution nor the act of Congress regards the subject of the suit, but the parties to it. [Mossrnan’s Ex’ors v. Higginson](http://en.wikisource.org/w/index.php?title=Mossrnan%E2%80%99s_Ex%E2%80%99ors_v._Higginson&action=edit&redlink=1), [4 Dall.](http://en.wikisource.org/wiki/4_Dall.) 12; 1 Cond. Rep. 210.

When the jurisdiction of the Circuit Court depends on the character of the parties, and such party consists of a number of individuals, each one must be competent to sue in the courts of the United States, or (jurisdiction cannot be entertained. [Ward v. Arredendo et al.](http://en.wikisource.org/w/index.php?title=Ward_v._Arredendo_et_al.&action=edit&redlink=1), Paine’s C. C. R. 410. [Strawbridge v. Curtis](http://en.wikisource.org/w/index.php?title=Strawbridge_v._Curtis&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/United_States_Reports/Volume_7), 267; 1 Cond. Rep. 623.

The courts of the United States have not jurisdiction, unless it appears by the record that it belongs to them, as that the parties are citizens of different States. [Wood v. Wagnon](http://en.wikisource.org/w/index.php?title=Wood_v._Wagnon&action=edit&redlink=1), [2 Cranch](http://en.wikisource.org/wiki/2_Cranch), 9; 1 Cond. R . 335.

Where the parties to a suit are such as to give the federal courts jurisdiction, it is immaterial that they are administrators or executors, and that those they represent were citizens of the same State. [Chappedeleine et al. v. Decheneaux](http://en.wikisource.org/w/index.php?title=Chappedeleine_et_al._v._Decheneaux&action=edit&redlink=1), [4 Cranch](http://en.wikisource.org/wiki/4_Cranch), 306; 2 Cond. Rep. 116. [Childress et al. v. Emory et al.](http://en.wikisource.org/wiki/Childress_v._M%27Cleur), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.".](http://en.wikisource.org/wiki/8_Wheat.) 642; 5 Cond. Rep. 547. See also [Brown v. Strode](http://en.wikisource.org/w/index.php?title=Brown_v._Strode&action=edit&redlink=1), [5 Cranch](http://en.wikisource.org/wiki/5_Cranch), 303; 2 Cond. Rep. 265. [Bingham v. Cabot](http://en.wikisource.org/w/index.php?title=Bingham_v._Cabot&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 382; 1 Cond. Rep. 170. [Gracie v. Palmer](http://en.wikisource.org/wiki/Gracie_v._Palmer_%2821_U.S._699%29), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.".](http://en.wikisource.org/wiki/8_Wheat.) 699; 5 Cond. Rep. 561. [Music v. Watts](http://en.wikisource.org/w/index.php?title=Music_v._Watts&action=edit&redlink=1), [6 Cranch](http://en.wikisource.org/wiki/6_Cranch), 148; 2 Cond. Rep. 332. [Sere et al. v. Pitot et al.](http://en.wikisource.org/w/index.php?title=Sere_et_al._v._Pitot_et_al.&action=edit&redlink=1), [6 Cranch](http://en.wikisource.org/wiki/6_Cranch), 332; 2 Cond. Rep. 389. [Shute v. Davis](http://en.wikisource.org/w/index.php?title=Shute_v._Davis&action=edit&redlink=1), Peters’ C. C. R. 431. [Flanders v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Flanders\_v.\_The\_%C3%86tna\_Ins.\_Com.&action=edit&redlink=1" The Ætna Ins. Com.](http://en.wikisource.org/w/index.php?title=Flanders_v._The_%C3%86tna_Ins._Com.&action=edit&redlink=1), 3 Mason, C. C. R. 158. [Kitchen v. Sullivan et al.](http://en.wikisource.org/w/index.php?title=Kitchen_v._Sullivan_et_al.&action=edit&redlink=1), 4 Wash. C. C. R. 54. [Briggs v. French](http://en.wikisource.org/w/index.php?title=Briggs_v._French&action=edit&redlink=1), 2 Sumner’s C. C. R. 252.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The Circuit Courts of the United States have jurisdiction of a robbery committed on the high seas under the 8th section of the[act of April 30, 1790](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/2nd_Session/Chapter_9), although such robbery could not, if committed on land, be punished with death. The [United States v. Palmer et al.](http://en.wikisource.org/w/index.php?title=United_States_v._Palmer_et_al.&action=edit&redlink=1), [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.".](http://en.wikisource.org/wiki/3_Wheat.) 610; 4 Cond. Rep. 352. See [The United States v. Coolidge et al.](http://en.wikisource.org/w/index.php?title=The_United_States_v._Coolidge_et_al.&action=edit&redlink=1), 1 Gillis’ C. C. R. 488, 495. [The United States v. Coombs](http://en.wikisource.org/w/index.php?title=The_United_States_v._Coombs&action=edit&redlink=1), [12 Peters](http://en.wikisource.org/wiki/12_Peters), 72.

The Circuit Courts have no original jurisdiction in suits for penalties and forfeitures arising under the laws of the United States, but the District Courts have exclusive jurisdiction. [Ketland v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Ketland\_v.\_The\_Cassius&action=edit&redlink=1" The Cassius](http://en.wikisource.org/w/index.php?title=Ketland_v._The_Cassius&action=edit&redlink=1), [2 Dall.](http://en.wikisource.org/wiki/2_Dall.) 365.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The petitioner was arrested in Pennsylvania, by the marshal of the district of Pennsylvania, under an attachment from the Circuit Court of Rhode Island, for a contempt in not appearing in that court after a monition, served upon him in the State of Pennsylvania, to answer in a prize cause as to a certain bale of goods condemned to the captors, which had come into the possession of Peter Graham, the petitioner. Held, that the circuit and district courts of the United States cannot, either in suits at law or equity, send their process into another district, except where specially authorized so to do by some act of Congress. [Ex parte Peter Graham](http://en.wikisource.org/w/index.php?title=Ex_parte_Peter_Graham&action=edit&redlink=1), 3 Wash. C. C. R. 456.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) [Bean v. Smith](http://en.wikisource.org/w/index.php?title=Bean_v._Smith&action=edit&redlink=1), 2 Mason’s C. C. R. 252. [Young v. Bryan](http://en.wikisource.org/wiki/Young_v._Bryan), [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.".](http://en.wikisource.org/wiki/6_Wheat.) 146; 5 Cond. Rep. 44. [Mollan v. Torrance](http://en.wikisource.org/w/index.php?title=Mollan_v._Torrance&action=edit&redlink=1), [9 WheatHYPERLINK "http://en.wikisource.org/wiki/9\_Wheat.".](http://en.wikisource.org/wiki/9_Wheat.) 537; 5 Cond. Rep 666.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) [Smith v. Jackson](http://en.wikisource.org/wiki/Smith_v._Jackson), Paine’s C. C. R. 453.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The Judge of a State Court to which an application is made for the removal of a cause into a court of the United States must exercise a legal discretion as to the right claimed to remove the cause; the defendant being entitled to the right to remove the cause under the law of the United States, on the facts of the case, (the Judge of the State court could not legally prevent the removal;) the application for the removal having been made in proper form, it was the duty of the State court to proceed no further in the cause. [Gordon v. Longest](http://en.wikisource.org/wiki/Gordon_v._Longest), [16 Peters](http://en.wikisource.org/wiki/16_Peters), 97.

One great object in the establishment of the courts of the United States, and regulating their jurisdiction, was to have In tribunal in each State presumed to be free from local influence, and to which all who were non-residents or aliens, might resort for legal redress; and this object would be defeated if a judge in the exercise of any other than a legal discretion, may deny to the party entitled to it, a removal of his cause. *Ibid.*

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The provisions of the laws of the United States relating to juries, and trials by jury are:—*Trial by jury*—act of September 24, 1789, chap. 20, sec. 10, sec. 12, sec. 15.—*Exemption from attending on juries*—[act of May 7, 1800, chap. 46](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_46&action=edit&redlink=1), [sec. 4](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_46&action=edit&redlink=1). *Choice of jurors and qualification of juries*—act of September 24, 1789, chap. 20, sec. 29; [act of May 13, 1800](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/6th_Congress/1st_Session/Chapter_61&action=edit&redlink=1); [act of July 20, 1840](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/26th_Congress/1st_Session/Chapter_47&action=edit&redlink=1); [act of March 3, 1841, chap. 19](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_5/26th_Congress/2nd_Session/Chapter_38&action=edit&redlink=1). Expired as to juries in Pennsylvania. Special jury [act of April 29, 1802, chap. 31](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1), [sec. 30](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1).—*Jury in criminal cases*—act of September 24, 1789, chap. 20, sec. 29; [act of April 30, 1790, chap. 9](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/2nd_Session/Chapter_9). *Manner of summoning jurors*—act of September 24, 1789, sec. 29; [act of April 29, 1802, chap. 31](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/1st_Session/Chapter_31&action=edit&redlink=1). *Jurymen de talibus*—act of September 24, 1789, chap. 20.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) As to cases in which States, or alleged States, are parties, the following cases are referred to: [The Cherokee Nation v. The State of Georgia](http://en.wikisource.org/wiki/The_Cherokee_Nation_v._The_State_of_Georgia), [5 Peters](http://en.wikisource.org/wiki/5_Peters), 1. [New Jersey v. The State of New York](http://en.wikisource.org/w/index.php?title=New_Jersey_v._The_State_of_New_York&action=edit&redlink=1), [5 Peters](http://en.wikisource.org/wiki/5_Peters), 284. [Ex parte Juan Madrazzo](http://en.wikisource.org/w/index.php?title=Ex_parte_Juan_Madrazzo&action=edit&redlink=1), [7 Peters](http://en.wikisource.org/wiki/7_Peters), 627. [The State of Rhode Island v. The State of Massachusetts](http://en.wikisource.org/w/index.php?title=The_State_of_Rhode_Island_v._The_State_of_Massachusetts&action=edit&redlink=1), [12 Peters](http://en.wikisource.org/wiki/12_Peters), 651. [CohensHYPERLINK "http://en.wikisource.org/wiki/Cohens\_v.\_Virginia" v. The State of Virginia](http://en.wikisource.org/wiki/Cohens_v._Virginia), [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.".](http://en.wikisource.org/wiki/6_Wheat.) 264; 5 Cond. Rep. 90. [New York v. Connecticut](http://en.wikisource.org/wiki/New_York_v._Connecticut), [4 Dall.](http://en.wikisource.org/wiki/4_Dall.) 3. [Fowler v. Lindsay et al.](http://en.wikisource.org/w/index.php?title=Fowler_v._Lindsay_et_al.&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 411.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) [TheHYPERLINK "http://en.wikisource.org/w/index.php?title=The\_United\_States\_v.\_Ortega&action=edit&redlink=1" United States v. Ortega](http://en.wikisource.org/w/index.php?title=The_United_States_v._Ortega&action=edit&redlink=1), [11 Wheat.](http://en.wikisource.org/wiki/11_Wheat.) 467; 6 Cond. Rep. 894. [Davis v. Packard](http://en.wikisource.org/wiki/Davis_v._Packard), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 41.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) As to the appellate jurisdiction of the Supreme Court, see the cases collected in Peters’s Digest, “Supreme Court," "Appellate Jurisdiction of the Supreme Court," and the following cases: [The United States v. Coodwin](http://en.wikisource.org/w/index.php?title=The_United_States_v._Coodwin&action=edit&redlink=1), [7 Cranch](http://en.wikisource.org/wiki/7_Cranch), 108; 2 Cond. Rep. 434.[Wiscart v. Dauchy](http://en.wikisource.org/w/index.php?title=Wiscart_v._Dauchy&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 321; 1 Cond. Rep. 144. [United States v. Moore](http://en.wikisource.org/wiki/United_States_v._Moore), [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 159; 1 Cond. Rep.480. [Owings v. Norwood’s Lessee](http://en.wikisource.org/w/index.php?title=Owings_v._Norwood%E2%80%99s_Lessee&action=edit&redlink=1), [5 Cranch](http://en.wikisource.org/wiki/5_Cranch), 344; 2 Cond. Rep. 275. [Martin v. Hunter’s Lessee](http://en.wikisource.org/w/index.php?title=Martin_v._Hunter%E2%80%99s_Lessee&action=edit&redlink=1), [1 WheatHYPERLINK "http://en.wikisource.org/wiki/1\_Wheat.".](http://en.wikisource.org/wiki/1_Wheat.) 304; 3 Cond. Rep, 575. [Gordon v. Caldcleugh](http://en.wikisource.org/w/index.php?title=Gordon_v._Caldcleugh&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 268; 1 Cond. Rep. 524. [Ex parte Kearney](http://en.wikisource.org/w/index.php?title=Ex_parte_Kearney&action=edit&redlink=1), [7 Wheat.](http://en.wikisource.org/wiki/7_Wheat.) 38; 5 Cond. Rep. 225. [Smith v. The State of Maryland](http://en.wikisource.org/w/index.php?title=Smith_v._The_State_of_Maryland&action=edit&redlink=1),6 Cranch, 286; 2 Cond. Rep. 377. [Inglee v. Coolidge](http://en.wikisource.org/wiki/Inglee_v._Coolidge), [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.".](http://en.wikisource.org/wiki/2_Wheat.) 363; 4 Cond. Rep. 155. [Nicholls et al. v. Hodges Ex’ors](http://en.wikisource.org/w/index.php?title=Nicholls_et_al._v._Hodges_Ex%E2%80%99ors&action=edit&redlink=1), [1 Peters](http://en.wikisource.org/wiki/1_Peters), 562. [Buel et al. v. Van Ness](http://en.wikisource.org/w/index.php?title=Buel_et_al._v._Van_Ness&action=edit&redlink=1), [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.".](http://en.wikisource.org/wiki/8_Wheat.) 312; 5 Cond. Rep. 445. [Miller v. Nicholls](http://en.wikisource.org/w/index.php?title=Miller_v._Nicholls&action=edit&redlink=1), [4 WheatHYPERLINK "http://en.wikisource.org/wiki/4\_Wheat.".](http://en.wikisource.org/wiki/4_Wheat.) 811; 4 Cond. Rep. 465. [Matthews v. Zane et al.](http://en.wikisource.org/w/index.php?title=Matthews_v._Zane_et_al.&action=edit&redlink=1), [7 WheatHYPERLINK "http://en.wikisource.org/wiki/7\_Wheat.".](http://en.wikisource.org/wiki/7_Wheat.) 164; 5 Cond. Rep. 265. [M‘Cluny v. Silliman](http://en.wikisource.org/w/index.php?title=M%E2%80%98Cluny_v._Silliman&action=edit&redlink=1), [6 Wheat.](http://en.wikisource.org/wiki/6_Wheat.) 5; 5 Cond. Rep. 197. [Houston v. Moore](http://en.wikisource.org/wiki/Houston_v._Moore), [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.".](http://en.wikisource.org/wiki/3_Wheat.) 433; 3 Cond. Rep. 286. [Montgomery v. Hernandez et al.](http://en.wikisource.org/w/index.php?title=Montgomery_v._Hernandez_et_al.&action=edit&redlink=1), [12 WheatHYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.".](http://en.wikisource.org/wiki/12_Wheat.) 129; 6 Cond. Rep. 475. [Cohens v. Virginia](http://en.wikisource.org/wiki/Cohens_v._Virginia), [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.".](http://en.wikisource.org/wiki/6_Wheat.) 264; 5 Cond. Rep. 90. [Gibbons *HYPERLINK "http://en.wikisource.org/w/index.php?title=Gibbons\_v.\_Ogden\_(19\_U.S.\_448)&action=edit&redlink=1"v.*HYPERLINK "http://en.wikisource.org/w/index.php?title=Gibbons\_v.\_Ogden\_(19\_U.S.\_448)&action=edit&redlink=1" Ogden](http://en.wikisource.org/w/index.php?title=Gibbons_v._Ogden_(19_U.S._448)&action=edit&redlink=1), [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_448". 448](http://en.wikisource.org/wiki/6_Wheat._448); 5 Cond. Rep. 134. [Weston et al. v. The City Council of Charleston](http://en.wikisource.org/w/index.php?title=Weston_et_al._v._The_City_Council_of_Charleston&action=edit&redlink=1), [2 Peters](http://en.wikisource.org/wiki/2_Peters), 449.[Hickie v. Starke HYPERLINK "http://en.wikisource.org/w/index.php?title=Hickie\_v.\_Starke\_et.\_al.&action=edit&redlink=1"etHYPERLINK "http://en.wikisource.org/w/index.php?title=Hickie\_v.\_Starke\_et.\_al.&action=edit&redlink=1". al.](http://en.wikisource.org/w/index.php?title=Hickie_v._Starke_et._al.&action=edit&redlink=1), [1 Peters](http://en.wikisource.org/wiki/1_Peters), 94. [Satterlee v. Matthewson](http://en.wikisource.org/wiki/Satterlee_v._Matthewson), [2 Peters](http://en.wikisource.org/wiki/2_Peters), 380. [M‘Bride v. Hoey](http://en.wikisource.org/w/index.php?title=M%E2%80%98Bride_v._Hoey&action=edit&redlink=1), [11 Peters](http://en.wikisource.org/wiki/11_Peters), 167. [Ross v. Barland HYPERLINK "http://en.wikisource.org/w/index.php?title=Ross\_v.\_Barland\_et.\_al.&action=edit&redlink=1"etHYPERLINK "http://en.wikisource.org/w/index.php?title=Ross\_v.\_Barland\_et.\_al.&action=edit&redlink=1". al.](http://en.wikisource.org/w/index.php?title=Ross_v._Barland_et._al.&action=edit&redlink=1), [1 Peters](http://en.wikisource.org/wiki/1_Peters), 655. [The City of New Orleans v. De Armas](http://en.wikisource.org/w/index.php?title=The_City_of_New_Orleans_v._De_Armas&action=edit&redlink=1), [9 Peters](http://en.wikisource.org/wiki/9_Peters), 224. [Crowell v. Randell](http://en.wikisource.org/wiki/Crowell_v._Randell), [10 Peters](http://en.wikisource.org/wiki/10_Peters), 368. [Williams v. Norris](http://en.wikisource.org/wiki/Williams_v._Norris), [12 WheatHYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.".](http://en.wikisource.org/wiki/12_Wheat.) 117; 6 Cond. Rep. 462. [Menard v. Aspasia](http://en.wikisource.org/wiki/Menard_v._Aspasia), [5 Peters](http://en.wikisource.org/wiki/5_Peters), 505. [Worcester v. The State of Georgia](http://en.wikisource.org/w/index.php?title=Worcester_v._The_State_of_Georgia&action=edit&redlink=1), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 615. [The United States v. Moore](http://en.wikisource.org/w/index.php?title=The_United_States_v._Moore&action=edit&redlink=1), [5 Cranch](http://en.wikisource.org/wiki/5_Cranch), 159; 1 Cond. Rep. 480.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Prohibition. Where the District Court of the United States has no jurisdiction of a cause brought before it, a prohibition will be issued from the Supreme Court to prevent proceedings. [The United States v. Judge Peters](http://en.wikisource.org/w/index.php?title=The_United_States_v._Judge_Peters&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 121; 1 Cond. Rep. 60.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Mandamus. The following cases have been decided on the power of the Supreme Court to issue a mandamus. [Marbury v. Madison](http://en.wikisource.org/wiki/Marbury_v._Madison), [1 Cranch](http://en.wikisource.org/wiki/1_Cranch), 137; 1 Cond. Rep. 267. [M‘Cluny v. Silliman](http://en.wikisource.org/w/index.php?title=M%E2%80%98Cluny_v._Silliman&action=edit&redlink=1), [2 Wheat.](http://en.wikisource.org/wiki/2_Wheat.) 369; 4 Cond. Rep. 162. [United States v. Lawrence](http://en.wikisource.org/w/index.php?title=United_States_v._Lawrence&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 42; 1 Cond. Rep. 19. [United States v. Peters](http://en.wikisource.org/w/index.php?title=United_States_v._Peters&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 121; 1 Cond. Rep. 60. [Ex parte Burr](http://en.wikisource.org/w/index.php?title=Ex_parte_Burr&action=edit&redlink=1), [9 Wheat.](http://en.wikisource.org/wiki/9_Wheat.) 529; 5 Cond. Rep. 660.[Parker v. The Judges of the Circuit Court of Maryland](http://en.wikisource.org/w/index.php?title=Parker_v._The_Judges_of_the_Circuit_Court_of_Maryland&action=edit&redlink=1), [1 WheatHYPERLINK "http://en.wikisource.org/wiki/1\_Wheat.".](http://en.wikisource.org/wiki/1_Wheat.) 561; 6 Cond. Rep. 644. [Ex parte Roberts et al.](http://en.wikisource.org/w/index.php?title=Ex_parte_Roberts_et_al.&action=edit&redlink=1), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 216. [Ex parte Davenport](http://en.wikisource.org/wiki/Ex_parte_Davenport), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 661. [Ex parte Bradstreet](http://en.wikisource.org/wiki/Ex_parte_Bradstreet), [12 Peters](http://en.wikisource.org/wiki/12_Peters), 174; [7 Peters](http://en.wikisource.org/wiki/7_Peters), 634; [8 Peters](http://en.wikisource.org/wiki/8_Peters), 588. [Life and Fire Ins. Comp. of New York v. Wilson’s heirs](http://en.wikisource.org/w/index.php?title=Life_and_Fire_Ins._Comp._of_New_York_v._Wilson%E2%80%99s_heirs&action=edit&redlink=1), [8 Peters](http://en.wikisource.org/wiki/8_Peters), 291.

On a mandamus a superior court will never direct in what manner the discretion of the inferior tribunal shall be exercised; but they will, in a proper case, require an inferior court to decide. *Ibid.* [Life and Fire Ins. Comp. of New York v. Adams](http://en.wikisource.org/w/index.php?title=Life_and_Fire_Ins._Comp._of_New_York_v._Adams&action=edit&redlink=1), [9 Peters](http://en.wikisource.org/wiki/9_Peters), 571.[Ex parte Story](http://en.wikisource.org/w/index.php?title=Ex_parte_Story&action=edit&redlink=1), [12 Peters](http://en.wikisource.org/wiki/12_Peters), 839. [Ex parte Jesse Hoyt, collector, HYPERLINK "http://en.wikisource.org/w/index.php?title=Ex\_parte\_Jesse\_Hoyt,\_collector,\_%26c.&action=edit&redlink=1"&HYPERLINK "http://en.wikisource.org/w/index.php?title=Ex\_parte\_Jesse\_Hoyt,\_collector,\_%26c.&action=edit&redlink=1"c.](http://en.wikisource.org/w/index.php?title=Ex_parte_Jesse_Hoyt,_collector,_%26c.&action=edit&redlink=1), [13 Peters](http://en.wikisource.org/wiki/13_Peters), 279.

A writ of mandamus is not a proper process to correct an erroneous judgment or decree rendered in an inferior court. This is a matter which is properly examinable on a writ of error, or an appeal to a proper appellate tribunal. *Ibid.*

Writs of mandamus from the Circuit Courts of the United States. A Circuit Court of the United States has power to issue a mandamus to a collector, commanding him to grant a clearance. [Gilchrist et al. v. Collector of Charleston](http://en.wikisource.org/w/index.php?title=Gilchrist_et_al._v._Collector_of_Charleston&action=edit&redlink=1), 1 Hall’s Admiralty Law Journal, 429.

The power of the Circuit Court to issue the writ of mandamus is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. [M‘Intire v. Wood](http://en.wikisource.org/w/index.php?title=M%E2%80%98Intire_v._Wood&action=edit&redlink=1), [7 Cranch](http://en.wikisource.org/wiki/7_Cranch), 504; 2 Cond. Rep. 588.

The Circuit Courts of the United States have no power to issue writs of mandamus after the practice of the [King’s Bench](http://en.wikipedia.org/wiki/Court_of_King%27s_Bench); but only where they are necessary for the exercise of their jurisdiction. [Smith v. Jackson](http://en.wikisource.org/wiki/Smith_v._Jackson), Paine’s C. C. R. 453.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Habeas corpus. [Ex parte Burford](http://en.wikisource.org/w/index.php?title=Ex_parte_Burford&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 448; 1 Cond. Rep. 594; [Ex parte Bollman](http://en.wikisource.org/w/index.php?title=Ex_parte_Bollman&action=edit&redlink=1), [4 Cranch](http://en.wikisource.org/wiki/4_Cranch), 75; 2 Cond. Rep. 33.

The writ of habeas corpus does not lie to bring up a person confined in the prison bounds upon a capius ad satisfaciendum, issued in a civil suit. [Ex parte Wilson](http://en.wikisource.org/wiki/Ex_parte_Wilson), [6 Cranch](http://en.wikisource.org/wiki/6_Cranch), 52; 2 Cond. Rep. 300. [Ex parte Kearney](http://en.wikisource.org/w/index.php?title=Ex_parte_Kearney&action=edit&redlink=1), [7 Wheat.](http://en.wikisource.org/wiki/7_Wheat.) 38; 5 Cond. Rep. 225.

The power of the Supreme Court to award writs of habeas corpus is conferred expressly on the court by the 14th section of the judicial act, and has been repeatedly exercised. No doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it. The term used in the constitution is one which is well understood, and the judicial act authorize the court, and all other courts of the United States and the judges thereof to issue the writ “for the purpose of inquiring into the cause of commitment.” [Ex parte Tobias Watkins](http://en.wikisource.org/w/index.php?title=Ex_parte_Tobias_Watkins&action=edit&redlink=1), [3 Peters](http://en.wikisource.org/wiki/3_Peters), 201.

As the jurisdiction of the Supreme Court is appellate, it must be shown to the court that the court has power to award a habeas corpus, before one will be granted. [Ex parte Milburn](http://en.wikisource.org/wiki/Ex_parte_Milburn), [9 Peters](http://en.wikisource.org/wiki/9_Peters), 704.Page:United States Statutes at Large Volume 1 - Congress 1-2.djvu/58

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) It is sufficient for one party to suggest that the other is in possession of a paper, which he has, under the act of Congress, given him notice to produce at the trial, without offering other proof of the fact; and the party so called upon must discharge himself of the consequences of not producing it, by, affidavit or other proof that he has it not in his power to produce it. [Hylton v. Brown](http://en.wikisource.org/w/index.php?title=Hylton_v._Brown&action=edit&redlink=1), 1 Wash. C. C. R. 298.

The court will not, upon a notice of the defendant to the plaintiff to produce a title paper to the land in dispute, which is merely to defeat the plaintiff’s title, compel him to do so; unless the defendant first shows title to the land. Merely showing a right of possession is not sufficient to entitle him to the aid of a court of chancery, or of the Supreme Court, to compel a discovery of papers which are merely to defeat the plaintiff's title without strengthening the defendant’s. It is sufficient, in order to entitle him to call for papers to show the title to the land, although none is shown in the papers. *Ibid.*

Where one party in a cause wishes the production of papers supposed to be in the possession of the other, he must give notice to produce them: if not produced, he may give inferior evidence of their contents. But if it is his intention to nonsuit the plaintiff, or if the plaintiff requiring the papers means to obtain a judgment by default, under the 15th section of the judicial act, he is bound to give the opposite party notice that he means to move the court for an order upon him to produce the papers, or on a failure so to do, to award a nonsuit or judgment, as the case may be. [Bas v. Steele](http://en.wikisource.org/w/index.php?title=Bas_v._Steele&action=edit&redlink=1), 3 Wash. C. C. R,. 381.

No advantage can be taken of the non-production of papers, unless ground is laid for presuming that the papers were, at the time notice was given, in the possession or power of the party to whom notice was given, and that they were pertinent to the issue. In either of the cases, the party to whom notice was given may be required to prove, by his own oath, that the papers are not in his possession or power; which oath may be met by contrary proof according to the rules of equity. *Ibid.*

To entitle the defendant to nonsuit the plaintiff for not obtaining papers which he was noticed to produce, the defendant must first obtain an order of the court, under a rule that they should be produced. But this order need not be absolute when moved for, but may be nisi, unless cause be shown at the trial. [Dunham v. Riley](http://en.wikisource.org/w/index.php?title=Dunham_v._Riley&action=edit&redlink=1), 4 Wash. C. C. R. 126.

Notice to the opposite party to produce on the trial all letters in his possession, relating to monies received by him under the award of the commissioners under the Florida treaty, is sufficiently specific as they described their subject matter. If to such notice the party answer on oath that he has not a particular letter in his possession, and after diligent search could find none such, it is sufficient to prevent the offering of secondary proof of its contents. The party cannot be asked or compelled to answer whether he ever had such a letter in his possession. [Vasse v. Mifflin](http://en.wikisource.org/w/index.php?title=Vasse_v._Mifflin&action=edit&redlink=1), 4 Wash. C. C. R. 519.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The equity jurisdiction of the courts of the United States is independent of the local law of any State, and is the same in nature extent as the equity jurisdiction of England from which it is derived. Therefore it is no objection to this Jurisdiction, that there is a remedy under the local law. [Gordon v. Hobart](http://en.wikisource.org/w/index.php?title=Gordon_v._Hobart&action=edit&redlink=1), 2 Sumner’s C. C. R. 401.

If a case is cognizable at common law, the defendant has a right of trial by jury, and a suit upon it cannot be sustained in equity.[Baker v. Biddle](http://en.wikisource.org/w/index.php?title=Baker_v._Biddle&action=edit&redlink=1), 1 Baldwin’s C. C. R. 405.Page:United States Statutes at Large Volume 1 - Congress 1-2.djvu/58

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) New trials. [Calder v. Bull and Wife](http://en.wikisource.org/wiki/Calder_v._Bull_and_Wife), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 386; 1 Cond. Rep. 172. [Arnold v. Jones](http://en.wikisource.org/w/index.php?title=Arnold_v._Jones&action=edit&redlink=1), Bee’s Rep. 104.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Contempt of court. The courts of the United States have no common law jurisdiction of crimes against the United States. But independent of statutes, the courts of the United tates have power to fine for contempts, and imprison for contumacy and to enforce obedience to their orders, &c. [The United States v. Hudson et al.](http://en.wikisource.org/w/index.php?title=The_United_States_v._Hudson_et_al.&action=edit&redlink=1), [7 Cranch](http://en.wikisource.org/wiki/7_Cranch), 32; 2 Cond. Rep. 405.

By an [act passed March 2, 1831, chap. 99](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/21st_Congress/2nd_Session/Chapter_99&action=edit&redlink=1), it is enacted, that the power of the courts of the United States to punish for contempts shall not extend to any cases, except to misbehaviour in the presence of the court, or so near to the court as to obstruct the administration of justice, or the misbehaviour of the officers of the court in their official transactions, and disobedience or resistance by any officer of the court, party, juror, witness or any person to any writ, process, order or decree of the court. Indictments may be presented against persons impeding the proceedings of the court, &c. See the statute.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Execution. The 14th section of the Judiciary act of September 24, 1789, chap. 20, authorizes the courts of the United States to issue writs of execution upon judgments which hare been rendered. This section provides only for the issuing of the writ, and directs no mode of proceeding by the officer obeying its command. [Bank of the United States v. Halstead](http://en.wikisource.org/w/index.php?title=Bank_of_the_United_States_v._Halstead&action=edit&redlink=1), [10 WheatHYPERLINK "http://en.wikisource.org/wiki/10\_Wheat.".](http://en.wikisource.org/wiki/10_Wheat.) 51; 6 Cond. Rep. 22.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The rules, regulations and restrictions contained in the 21st and 22d sections of the judiciary act of 1789, respecting the time within which a writ of error shall be brought, and in what instances it shall operate as a supersedeas, the citation to the opposite party, the security to be given by the plaintiff in error, and the restrictions on the appellate court as to reversals in certain enumerated cases, are applicable to the act of 1803, and are to be substantially observed; except that where the appeal is prayed for at the same time when the decree or sentence is pronounced, a citation is not necessary. [The San Pedro](http://en.wikisource.org/wiki/The_San_Pedro), [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.".](http://en.wikisource.org/wiki/2_Wheat.) 132; 4 Cond. Rep. 65.

By the 2d section of the [act of March 3, 1803, chap. 40](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/2nd_Session/Chapter_40&action=edit&redlink=1), appeals are allowed from all final judgments or decrees in any of the District courts, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars. Appeals from the Circuit Court to the Supreme Court are allowed when the sum or value, exclusive of costs exceeds $2000. This section repeals so much of the 19th and 20th sections of the act of 1789, as comes within the purview of those provisions.

By the provisions of the [act of April 2, 1816, chap. 39](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/14th_Congress/1st_Session/Chapter_39&action=edit&redlink=1), appeals from the Circuit Court of the United States for the District of Columbia, are allowed when the matter in dispute in the cause exceeds $1000, exclusive of costs.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The following cases have been decided on the questions which have arisen as to the value in controversy, in a case removed by writ of error or appeal.

The verdict and judgment do not ascertain the matter in dispute between the parties. To determine this, recurrence must be had to the original controversy; to the matter in dispute when the action was instituted. [Wilson v. Daniel](http://en.wikisource.org/w/index.php?title=Wilson_v._Daniel&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 401; 1 Cond. Rep. 185.

Where the value of the matter in dispute did not appear in the record, in a case brought by writ of error, the court allowed affidavits to be taken to prove the same, on notice to the opposite party. The writ of error not to be a supersedeas. [Course v. Stead’s Ex’ors](http://en.wikisource.org/w/index.php?title=Course_v._Stead%E2%80%99s_Ex%E2%80%99ors&action=edit&redlink=1), [4 Dall.](http://en.wikisource.org/wiki/4_Dall.) 22; 1 Cond. Rep. 217; [4 Dall.](http://en.wikisource.org/wiki/4_Dall.) 20; 1 Cond. Rep. 215.

The Supreme Court will permit viva voce testimony to be given of the value of the matter in dispute in a case brought up by a writ of error or by appeal. [The United States v.HYPERLINK "http://en.wikisource.org/w/index.php?title=The\_United\_States\_v.\_The\_Brig\_Union\_et\_al.&action=edit&redlink=1" HYPERLINK "http://en.wikisource.org/w/index.php?title=The\_United\_States\_v.\_The\_Brig\_Union\_et\_al.&action=edit&redlink=1"The Brig Union et al.](http://en.wikisource.org/w/index.php?title=The_United_States_v._The_Brig_Union_et_al.&action=edit&redlink=1), [4 Cranch](http://en.wikisource.org/wiki/4_Cranch), 216; 2 Cond. Rep. 91.

The plaintiff below claimed more than $2000 in his declaration, but obtained a verdict for a less sum. The appellate jurisdiction of the Supreme Court depends on the sum or value in dispute between the parties, as the case stands on the writ of error in the Supreme Court; not on that which was in dispute in the Circuit Court. If the writ of error be brought by the plaintiff below, then the sum the declaration shows to be due may still be recovered, should the judgment for a smaller sum be reversed; and consequently the whole sum claimed is in dispute. [Smith v. Honey](http://en.wikisource.org/wiki/Smith_v._Honey), [3 Peters](http://en.wikisource.org/wiki/3_Peters), 469; [Gordon v. Ogden](http://en.wikisource.org/wiki/Gordon_v._Ogden), [3 Peters](http://en.wikisource.org/wiki/3_Peters), 33.

In cases where the demand is not for money, and the nature of the action does not require the value of the thing to be stated in the declaration, the practice of the courts of the United States has been to allow the value to be given in evidence. [Ex parte Bradstreet](http://en.wikisource.org/wiki/Ex_parte_Bradstreet), [7 Peters](http://en.wikisource.org/wiki/7_Peters), 634.

The onus prohandi of the amount in controversy, to establish the jurisdiction of the Supreme Court in a case brought before it by a writ of error, is upon the party seeking to obtain the revision of the case. He may prove that the value exceeds $2000 exclusive of costs. [Hagan v. Foison](http://en.wikisource.org/wiki/Hagan_v._Foison), [10 Peters](http://en.wikisource.org/wiki/10_Peters), 160.

The Supreme Court has no jurisdiction in a case in which separate decrees have been entered in the Circuit Court for the wages of seamen, the decree in no one case amounting to $2000, although the amount of the several decrees exceed that sum, and the seamen in each case claimed under the same contract. [Oliver v. Alexander](http://en.wikisource.org/wiki/Oliver_v._Alexander), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 143. See [Scott v. Lunt’s Adm’rs](http://en.wikisource.org/w/index.php?title=Scott_v._Lunt%E2%80%99s_Adm%E2%80%99rs&action=edit&redlink=1), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 349.

The Supreme Court will not compel the hearing of a cause unless the citation be served thirty days before the first day of the term. [Welsh v. Mandeville](http://en.wikisource.org/w/index.php?title=Welsh_v._Mandeville&action=edit&redlink=1), [5 Cranch](http://en.wikisource.org/wiki/5_Cranch), 321; 2 Cond. Rep. 268.

A citation must accompany the writ of error. [Lloyd v. Alexander](http://en.wikisource.org/w/index.php?title=Lloyd_v._Alexander&action=edit&redlink=1), [1 Cranch](http://en.wikisource.org/wiki/1_Cranch), 365; 1 Cond. Rep. 334.

When an appeal is prayed during the session of the court, a citation to the appellee is not necessary. [Riley, appellant, v. Lamar et al.](http://en.wikisource.org/w/index.php?title=Riley,_appellant,_v._Lamar_et_al.&action=edit&redlink=1), [2 Cranch](http://en.wikisource.org/wiki/2_Cranch), 344; 1 Cond. Rep. 419.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) An appeal under the judiciary acts of 1789 and 1803, was prayed for and allowed within five years; held to be valid, although the security was not given within five years. The mode of taking the security and the time of perfecting it, are exclusively within the control of the court below. The Dos Hermanos, [10 WheatHYPERLINK "http://en.wikisource.org/wiki/10\_Wheat.\_306". 306](http://en.wikisource.org/wiki/10_Wheat._306); 6 Cond. Rep. 109.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) By the [act of December 12, 1794, chap. 3](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/3rd_Congress/2nd_Session/Chapter_3), the security required to be taken on signing a citation on any writ of error which shall not be a supersedeas, and stay execution, shall only be for an amount which will be sufficient to answer for costs.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Supersedeas. The Supreme Court will not quash an execution issued by the court below to enforce its decree, pending a writ of error, if the writ be not a supersedeas to the decree. Wallen v. Williams, [7 Cranch](http://en.wikisource.org/wiki/7_Cranch), 278; 2 Cond. Rep. 491.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) In delivering the opinion of the Supreme Court in the case of Fisher v. Cockrell, [5 Peters, 248](http://en.wikisource.org/wiki/5_Pet._248), [Mr. Chief Justice Marshall](http://en.wikisource.org/wiki/Author%3AJohn_Marshall) said: “In the argument the court has been admonished of the jealousy with which the States of the Union view the revising power entrusted by the constitution and laws to this tribunal. To observations of this character the answer uniformly has been that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it never will, we trust, shrink from that which is conferred upon it.”

The appellate power of the Supreme Court of the United States extends to cases pending in the State courts; and the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases by writ of error, is supported by the letter and spirit of the constitution. Martin v. Hunter’s Lessee, [1 WheatHYPERLINK "http://en.wikisource.org/wiki/1\_Wheat.\_304". HYPERLINK "http://en.wikisource.org/wiki/1\_Wheat.\_304"304](http://en.wikisource.org/wiki/1_Wheat._304); 3 Cond. Rep. 575.

Under the 25th section of the judiciary act of 1789, where the construction of any clause in the constitution or any statute of the United States is drawn in question, in any suit in a State court, the decision must be against the title or right set up by the party under such clause in the constitution or statute; otherwise the Supreme Court has no appellate jurisdiction in the case. It is not sufficient that the construction of the statute was drawn in question, and that the decision was against the title. It must appear that the title set up depended on the statute. Williams *v.* Norris, [12 WheatHYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_117". HYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_117"117](http://en.wikisource.org/wiki/12_Wheat._117); 6 Cond. Rep. 462.

If the construction or validity of a treaty of the United States is drawn in question in the State courts, and the decision is against its validity, or against the title set up by either party under the treaty, the Supreme Court has jurisdiction to ascertain that title, and to determine its legal meaning; and is not confined to the abstract construction of the treaty itself. *Ibid.*

The 2d article of the [constitution of the United States](http://en.wikisource.org/wiki/Constitution_of_the_United_States_of_America) enables the Supreme Court to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such form that the judicial power is capable of acting upon it. That power is capable of acting only when the subject is submitted to it by a party who asserts his right in the form prescribed by law. It then becomes a case. Osborn *v.* The Bank of the United States, [6 WheatHYPERLINK "http://en.wikisource.org/wiki/9\_Wheat.\_738". HYPERLINK "http://en.wikisource.org/wiki/9\_Wheat.\_738"738](http://en.wikisource.org/wiki/9_Wheat._738); 5 Cond. Rep. 741.

The Supreme Court has no jurisdiction under the 25th section of the act of 1789, unless the judgment or decree of the State court be a final judgment or decree. A judgment reversing that of an inferior court, and awarding a scire facias de novo, is not a final judgment. Houston *v.* Moore, [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_433". HYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_433"433](http://en.wikisource.org/wiki/3_Wheat._433); 4 Cond. Rep. 286.

The Supreme Court has no appellate jurisdiction under the 25th section of the judiciary act, unless the right, title, privilege, or exemption under a statute or commission of the United States be specially set up by the party claiming it in the State court, and the decision be against the same. Montgomery *v.* Hernandez, [12 WheatHYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_129". HYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_129"129](http://en.wikisource.org/wiki/12_Wheat._129); 6 Cond. Rep. 475.

It is no objection to the exercise of the appellate jurisdiction under this section, that one party is a State, and the other a citizen of that State. Cohens *v.* The State of Virginia, [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_264". HYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_264"264](http://en.wikisource.org/wiki/6_Wheat._264); 5 Cond. Rep. 90.

In order to brings a case for a writ of error or an appeal to the Supreme Court from the highest court of a State within the 25th section of the judiciary act, it must appear on the face of the record: 1. That some of the questions stated in that section did arise in the State court. 2. That the question was decided in the State court as required in the section.

It is not necessary that the question shall appear in the record to have been raised, and the decision made in direct and positive terms, ipsissimis verbis; but it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided, in order to induce the judgment. It is not sufficient to show that a question might have arisen and been applicable to the case, unless it is further shown, on the record, that it did arise and was applied by the State Court to the case. Crowell *v.* Randall, [10 Peters, 368](http://en.wikisource.org/wiki/10_Pet._368). See also Williams *v.* Norris, [12 Wheat. HYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_117"117](http://en.wikisource.org/wiki/12_Wheat._117); 6 Cond. Rep. 462. Jackson *v.*Lamphire, [3 Peters, 280](http://en.wikisource.org/wiki/3_Pet._280). Menard *v.* Aspasia, [5 Peters, 505](http://en.wikisource.org/wiki/5_Pet._505). Fisher *v.* Cockrell, [5 Peters, 248](http://en.wikisource.org/wiki/5_Pet._248). Gelston *v.* Hoyt, [3 WheatHYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_246". HYPERLINK "http://en.wikisource.org/wiki/3\_Wheat.\_246"246](http://en.wikisource.org/wiki/3_Wheat._246); 4 Cond. Rep. 244. Gordon *v.* Caldcleugh et al., [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 268; 1 Cond. Rep. 524. Owings *v.* Norwood’s Lessee, [5 Cranch](http://en.wikisource.org/wiki/5_Cranch), 344; 2 Cond. Rep. 275. Buel et al. *v.* Van Ness, [8 WheatHYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.\_312". HYPERLINK "http://en.wikisource.org/wiki/8\_Wheat.\_312"312](http://en.wikisource.org/wiki/8_Wheat._312); 5 Cond. Rep. 445. Miller *v.* Nicholls, [4 WheatHYPERLINK "http://en.wikisource.org/wiki/4\_Wheat.\_311". HYPERLINK "http://en.wikisource.org/wiki/4\_Wheat.\_311"311](http://en.wikisource.org/wiki/4_Wheat._311); 4 Cond. Rep. 465. Matthews *v.* Zane et al., [7 WheatHYPERLINK "http://en.wikisource.org/wiki/7\_Wheat.\_164". HYPERLINK "http://en.wikisource.org/wiki/7\_Wheat.\_164"164](http://en.wikisource.org/wiki/7_Wheat._164); 5 Cond. Rep. 265. Gibbons *v.* Ogden, [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_448". HYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_448"448](http://en.wikisource.org/wiki/6_Wheat._448); 5 Cond. Rep. 134.

Under the 25th section of the judiciary act of 1789, three things are necessary to give the Supreme Court jurisdiction of a case brought up by writ of error or appeal: 1. The validity of a statute of the United States, or of authority exercised under a State, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties and laws of the United States. 3. The decision of the State court must be in favour of its validity. The Commonwealth Bank of Kentucky *v.*Griffith et al., [14 Peters, 46](http://en.wikisource.org/wiki/14_Pet._56). See also Pollard’s heirs *v.* Kibbe, [14 Peters, 353](http://en.wikisource.org/wiki/14_Pet._353). M‘Cluny *v.* Silliman, [6 Wheat.HYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_598" HYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.\_598"598](http://en.wikisource.org/wiki/6_Wheat._598); 5 Cond. Rep. 197. Weston et al. *v.* The City Council of Charleston, [2 Peters, 449](http://en.wikisource.org/wiki/2_Pet._449). Hickie *v.* Starke et al., [1 Peters, 94](http://en.wikisource.org/wiki/1_Pet._94). Sutterlee *v.* Matthewson,2 Peters, 380. Wilson et al. *v.* The Blackbird Creek Marsh Association, [2 Peters, 245](http://en.wikisource.org/wiki/2_Pet._245). Harris *v.* Dennie, [3 Peters, 292](http://en.wikisource.org/wiki/3_Pet._292). M‘Bride *v.*Hoey, [11 Peters, 167](http://en.wikisource.org/wiki/11_Pet._167). Winn’s heirs *v.* Jackson et al., [12 Wheat.HYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_135" HYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.\_135"135](http://en.wikisource.org/wiki/12_Wheat._135); 6 Cond. Rep. 479. City of New Orleans *v.* De Armas,9 Peters, 224. Davis *v.* Packard, [6 Peters, 41](http://en.wikisource.org/wiki/6_Pet._41).

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Williams *v.* Norris, [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.".](http://en.wikisource.org/wiki/6_Wheat.) 117; 6 Cond. Rep. 462.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) A marshal is not removed by the appointment of a new one, until he receives notice of such appointment. All acts done by the marshal after the appointment of a new one, before notice, are good; but his acts subsequent to notice are void. Wallace’s C. C. R. 119.

It is the duty of a marshal of a court of the United States to execute all process which may be placed in his hand, but he performs this duty at his peril, and under the guidance of law. He must, of course, exercise some judgment in the performance. Should he fail to obey the exegit of the writ without a legal excuse, or should he in its letter violate the rights of others, he is liable to the action of the injured party. Life and Fire Ins. Comp. of New York *v.* Adams, [9 Peters](http://en.wikisource.org/wiki/9_Peters), 573.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) A marshal is liable on his official bond for the failure of his deputies to serve original process, but the measure of his liability is the extent of the injury received by the plaintiff, produced by his negligence. If the loss of the debt be the direct legal consequence of a failure to serve the process, the amount of the debt is the measure of the damages; but not so if otherwise. The United States *v.* Moore’s Adm’rs, 2 Brocken’s C. C. R. 317. See San Jose Indiano, 2 Gallis. C. C. R. 311. Ex parte Jesse Hoyt, collector, &c., [13 Peters](http://en.wikisource.org/wiki/13_Peters), 279.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) If a debtor committed to the State jail under recess of the courts of the United States escapes, the marshal is not liable.[Randolph *HYPERLINK "http://en.wikisource.org/w/index.php?title=Randolph\_v.\_Donnaldson&action=edit&redlink=1"v.*HYPERLINK "http://en.wikisource.org/w/index.php?title=Randolph\_v.\_Donnaldson&action=edit&redlink=1" Donnaldson](http://en.wikisource.org/w/index.php?title=Randolph_v._Donnaldson&action=edit&redlink=1), [9 Cranch](http://en.wikisource.org/wiki/9_Cranch), 76; 3 Cond. Rep. 280.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The Circuit Courts of the United States are bound to try all crimes committed within the district, which are duly presented before it; but not to try them in the county where they have been committed. [The United States v.Wilson and Porter](http://en.wikisource.org/w/index.php?title=The_United_States_v.Wilson_and_Porter&action=edit&redlink=1), Baldwin’s C. C. R. 78.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The following cases have been decided relating to depositions taken under the provisions of this act:

That the deponent is a seaman on board a gun-boat in the harbour, and liable to be ordered to some other place, and not to be able to attend the court at the time of sitting, is not a sufficient reason for taking his deposition under the act of September 24, 1789, chap. 20.

If it appear on the face of the deposition taken under the act of Congress, that the officer taking the memo, was authorized by the act, it is sufficient in the first instance, without any proof that he was such officer. [Ruggles v. Bucknor](http://en.wikisource.org/w/index.php?title=Ruggles_v._Bucknor&action=edit&redlink=1), 1 Paine’s C. C. R. 358.

Objections to the competency of the witness whose deposition is taken under the act of 1789, should be made at the time of taking the deposition, if the party attend, and the objections are known to him, in order that they may be removed: otherwise he will be presumed to waive them. [United Staten v. Hairpencils](http://en.wikisource.org/w/index.php?title=United_Staten_v._Hairpencils&action=edit&redlink=1), 1 Paine’s C. C. R. 400.

A deposition taken under the 30th section of the act of 1789 cannot be made on evidence, unless the judge before whom it was taken, certify that it was reduced to writing by himself, or by the witness in his presence. [Pettibone v. Derringer](http://en.wikisource.org/w/index.php?title=Pettibone_v._Derringer&action=edit&redlink=1), 4 Wash. C. C. R. 215. See [United States v. Smith](http://en.wikisource.org/wiki/United_States_v._Smith), 4 Day, 121. North Carolina Cases, 81.

The authority given by the act of 1789, to take depositions of witnesses in the absence of the opposite party, is in derogation of the rules of common law, and has always been construed strictly; and therefore it is necessary to establish that all the requisites have been complied with, before such testimony can be admitted. [Bell v. Morrison et al.](http://en.wikisource.org/w/index.php?title=Bell_v._Morrison_et_al.&action=edit&redlink=1), [1 Peters](http://en.wikisource.org/wiki/1_Peters), 351. [The Patapsco Ins. Comp. v. Southeate](http://en.wikisource.org/w/index.php?title=The_Patapsco_Ins._Comp._v._Southeate&action=edit&redlink=1), [5 Peters](http://en.wikisource.org/wiki/5_Peters), 604. [The United States v. Coolidge](http://en.wikisource.org/w/index.php?title=The_United_States_v._Coolidge&action=edit&redlink=1), 1 Gallis. C. C. R. 488. [Evans v. Hettick](http://en.wikisource.org/w/index.php?title=Evans_v._Hettick&action=edit&redlink=1), 3 Wash. C. C. R. 408. [Thomas and Henry v.HYPERLINK "http://en.wikisource.org/w/index.php?title=Thomas\_and\_Henry\_v.\_The\_United\_States&action=edit&redlink=1" HYPERLINK "http://en.wikisource.org/w/index.php?title=Thomas\_and\_Henry\_v.\_The\_United\_States&action=edit&redlink=1"The United States](http://en.wikisource.org/w/index.php?title=Thomas_and_Henry_v._The_United_States&action=edit&redlink=1), 1 Brockeb’s C. C. R. 367.

The provisions of the 30th section of the act of 1789, as to taking depositions, de bene esse, does not apply to cases pending in the Supreme Court, but only to cases in the Circuit and District Courts. [The Argo](http://en.wikisource.org/wiki/The_Argo), [2 WheatHYPERLINK "http://en.wikisource.org/wiki/2\_Wheat.".](http://en.wikisource.org/wiki/2_Wheat.) 287; 4 Cond. Rep. 119.

Where there is an attorney on record, notice must in all cases be given to him. *Ibid.*

The deposition of a person residing out of the State, and more than one hundred miles from the place of trial, cannot be rend in evidence. [Blocker v. Bond](http://en.wikisource.org/w/index.php?title=Blocker_v._Bond&action=edit&redlink=1), 3 Wash. C. C. R. 529. See [Buddicum v. Kirke](http://en.wikisource.org/w/index.php?title=Buddicum_v._Kirke&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 293; 1 Cond. Rep. 535.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) It is a fatal objection to a deposition taken under the 30th section of the act of 1789, that it was opened out of court. [Beale v. Thompson](http://en.wikisource.org/w/index.php?title=Beale_v._Thompson&action=edit&redlink=1), [8 Cranch](http://en.wikisource.org/wiki/8_Cranch), 70; 3 Cond. Rep. 35.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) Since the [act of March 3, 1803, chap. 40](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/7th_Congress/2nd_Session/Chapter_40&action=edit&redlink=1), in admiralty as well as in equity cases carried up to the Supreme Court by appeal, the evidence goes with the cause, and it must consequently be in writing. 1 Gallis. C. C. R. 25; 1 Sumner’s C. C. R. 328.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) When a foreign government refuses to suffer the commission to be executed within its jurisdiction, the Circuit Court may issue letters rogatory for the purpose of obtaining testimony according to the forms and practice of the civil law. [Nelson et al. v. The United States](http://en.wikisource.org/w/index.php?title=Nelson_et_al._v._The_United_States&action=edit&redlink=1), Peters’ C. C. R. 255. See [Buddicum v. Kirke](http://en.wikisource.org/w/index.php?title=Buddicum_v._Kirke&action=edit&redlink=1), [3 Cranch](http://en.wikisource.org/wiki/3_Cranch), 293; 4 Cond. Rep. 522.

Depositions taken according to the proviso in the 30th section of the judiciary act of 1789, under a dedimus potestatem, according to common usage, when it may be necessary to prevent a failure or delay of justice, are, under no circumstances, to be considered as taken de bene esse. [Sergent’s Lessee v. Biddle](http://en.wikisource.org/w/index.php?title=Sergent%E2%80%99s_Lessee_v._Biddle&action=edit&redlink=1), [4 Wheat.](http://en.wikisource.org/wiki/4_Wheat.) 408; 4 Cond. Rep. 522.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) This statute embraces all cases of death before final judgment, and of course is more extensive than the 17 Car. 2, and 8 and 9 W. 3. The death may happen before or after plea pleaded, before or after issue joined, before or after verdict, or before or after interlocutory judgment; and in all these cases the proceedings are to be exactly as if the executor or administrator were a voluntary party to the suit. [Hatch v. Eustis](http://en.wikisource.org/w/index.php?title=Hatch_v._Eustis&action=edit&redlink=1), 1 Gallis. C. C. R. 160.
* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) In real and personal actions at common law, the death of the parties before judgment abates the suit, and it requires the and of some statutory provision to enable the suit to be prosecuted by or against the personal representatives of the deceased, where the cause of action survives. This is effected by the 31st section of the Judiciary act of 1789, chap. 20. [Green v. Watkins](http://en.wikisource.org/wiki/Green_v._Watkins), [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.".](http://en.wikisource.org/wiki/6_Wheat.) 260; 5 Cond. Rep. 87.

In real actions the death of either party before judgment, abates the suit. The 31st section of the Judiciary act of 1789, which enables the action to be prosecuted by or against the representatives of thedeceased, when the cause of action survives, is clearly confined to personal actions. [Macker’s heirs v. Thomas](http://en.wikisource.org/w/index.php?title=Macker%E2%80%99s_heirs_v._Thomas&action=edit&redlink=1), [7 Wheat.](http://en.wikisource.org/wiki/7_Wheat.) 530; 5 Cond. Rep. 334.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The 32d section of the act of 1789, allowing amendments, is sufficiently comprehensive to embrace causes of appellate as well as original jurisdiction; and there is nothing in the nature of an appellate jurisdiction, proceeding according to the common law, which forbids the granting of amendments. 1 Gallis. C. C. R. 22.

If the amendment is made in the Circuit Court, the cause is heard and adjudicated in that court, and upon appeal by the Supreme Court on the new allegation. But if the amendment is allowed by the Supreme Court, the cause is remanded to the Circuit Court, with directions to allow the amendment to be made. [The Mariana Flora](http://en.wikisource.org/w/index.php?title=The_Mariana_Flora&action=edit&redlink=1), [11 WheatHYPERLINK "http://en.wikisource.org/wiki/11\_Wheat.".](http://en.wikisource.org/wiki/11_Wheat.) 1; 6 Cond. Rep. 201.

By the provisions of the act of Congress, variance which is merely matter of form may be amended at any time. [Scull v. Biddle](http://en.wikisource.org/w/index.php?title=Scull_v._Biddle&action=edit&redlink=1), 2 Wash. C. C. R. 200. See [Smith v. Jackson](http://en.wikisource.org/wiki/Smith_v._Jackson), 1 Paine’s C. C. R. 486. [Ex parte Bradstreet](http://en.wikisource.org/wiki/Ex_parte_Bradstreet), [7 Peters](http://en.wikisource.org/wiki/7_Peters), 634. [Randolph v. Barrett](http://en.wikisource.org/wiki/Randolph_v._Barrett), [16 Peters](http://en.wikisource.org/wiki/16_Peters), 136. [Hozey v. Buchanan](http://en.wikisource.org/wiki/Hozey_v._Buchanan), [18 Peters](http://en.wikisource.org/w/index.php?title=18_Peters&action=edit&redlink=1), 215. [Woodward v. Brown](http://en.wikisource.org/wiki/Woodward_v._Brown), [13 Peters](http://en.wikisource.org/wiki/13_Peters), 1.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The Supreme Court of the United States has jurisdiction, under the constitution and laws of the United States, to bail a. person committed for trial on a criminal charge by a district judge of the United States. [The United States v. Hamilton](http://en.wikisource.org/w/index.php?title=The_United_States_v._Hamilton&action=edit&redlink=1), [3 Dall.](http://en.wikisource.org/wiki/3_Dall.) 13.

The circumstances of the case must be very strong, which will, at any time, induce a court to admit a person to bail, who stands charged with high treason. [The United States v. Stewart](http://en.wikisource.org/w/index.php?title=The_United_States_v._Stewart&action=edit&redlink=1), [2 Dall.](http://en.wikisource.org/wiki/2_Dall.) 345.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The 34th section of the Judiciary act of 1799, does not apply to the process and practice of the courts. It merely furnishes a decision, and is not intended to regulate the remedy. [Wyman v. Southard](http://en.wikisource.org/w/index.php?title=Wyman_v._Southard&action=edit&redlink=1), [10 WheatHYPERLINK "http://en.wikisource.org/wiki/10\_Wheat.".](http://en.wikisource.org/wiki/10_Wheat.) 1; 6 Cond. Rep. 1.

In construing the statutes of a State, infinite mischief would ensue, should the federal courts observe a different rule from that which has long been established in the State. [M‘Keen v. Delancy’s Lessee](http://en.wikisource.org/w/index.php?title=M%E2%80%98Keen_v._Delancy%E2%80%99s_Lessee&action=edit&redlink=1), [5 Cranch](http://en.wikisource.org/wiki/5_Cranch), 22; 2 Cond. Rep. 179.

In cases depending on the statutes of a State, and more especially in those respecting the titles to land, the federal courts adopt the construction of the State, where that construction is settled or can be ascertained. [Polk’s Lessee v. Wendell](http://en.wikisource.org/w/index.php?title=Polk%E2%80%99s_Lessee_v._Wendell&action=edit&redlink=1), [9 Cranch](http://en.wikisource.org/wiki/9_Cranch), 87; 3 Cond. Rep. 286.

The Supreme Court uniformly acts under a desire to conform its decisions to the State courts on their local law. [Mutual Assurance Society v. Watts](http://en.wikisource.org/wiki/Mutual_Assurance_Society_v._Watts), [1 WheatHYPERLINK "http://en.wikisource.org/wiki/1\_Wheat.".](http://en.wikisource.org/wiki/1_Wheat.) 279; 3 Cond. Rep. 670.

The Supreme Court holds in the highest respect, decisions of State Courts upon local laws, forming rules of property. [Shipp et al. v. Millows heirs](http://en.wikisource.org/w/index.php?title=Shipp_et_al._v._Millows_heirs&action=edit&redlink=1), [2 Wheat.](http://en.wikisource.org/wiki/2_Wheat.) 316; 4 Cond. Rep. 132.

When the construction of the statute of the State relates to real property, and has been settled by any judicial decision of the State where the land lies, the Supreme Court, upon the principles uniformly adopted by it, would recognize the decision as part of the local law. [Gardner v. Collins](http://en.wikisource.org/wiki/Gardner_v._Collins), [2 Peters](http://en.wikisource.org/wiki/2_Peters), 58.

In construing local statutes respecting real property, the courts of the Union are governed by the decisions of State tribunals.[Thatcher et al. v. Powell](http://en.wikisource.org/w/index.php?title=Thatcher_et_al._v._Powell&action=edit&redlink=1), [6 WheatHYPERLINK "http://en.wikisource.org/wiki/6\_Wheat.".](http://en.wikisource.org/wiki/6_Wheat.) 119; 5 Cond. Rep. 28.

The courts of the United States, in cases depending on the laws of a particular State, will in general adopt the construction given by the courts of the State, to those laws. [Elmendorf v. Taylor](http://en.wikisource.org/wiki/Elmendorf_v._Taylor), [10 WheatHYPERLINK "http://en.wikisource.org/wiki/10\_Wheat.".](http://en.wikisource.org/wiki/10_Wheat.) 152; 6 Cond. Rep. 47.

Under the 34th section of the judiciary act of 1789, the acts of limitation of the several States where no special provision has been made by Congress, form rules of the decision in the courts of the United States the Hume effect is given to them as is given in the State courts. [M‘Cluny v. Silliman](http://en.wikisource.org/w/index.php?title=M%E2%80%98Cluny_v._Silliman&action=edit&redlink=1), [3 Peters](http://en.wikisource.org/wiki/3_Peters), 277.

The statute laws of the States must furnish the rules of decision to the federal courts, as fur as they comport with the laws of the United States, in all cases arising within the respective States; and a fixed and received construction of these respective statute laws in their own courts, makes a part of such statute law. Shelby et al. v. Guy, [11 WheatHYPERLINK "http://en.wikisource.org/wiki/11\_Wheat.".](http://en.wikisource.org/wiki/11_Wheat.) 361; 6 Cond. Rep. 345.

The Supreme Court adopts the local law of real property as ascertained by the decisions of State courts; whether those decisions are grounded on the construction of the statutes of the State, or from a part of the unwritten law of the state, which has become a fixed rule of property. [Jackson v. Chew](http://en.wikisource.org/wiki/Jackson_v._Chew), [12 WheatHYPERLINK "http://en.wikisource.org/wiki/12\_Wheat.".](http://en.wikisource.org/wiki/12_Wheat.) 153; 6 Cond. Rep. 489.

Soon after the decision of a case in the Circuit Court for the district of Virginia, a case was decided in the court of appeals of the State, on which the question on the execution laws of Virginia was elaborately argued and deliberately decided. The Supreme Court, according to its uniform course, adopts the construction of the act, which is made by the highest court of the State. [The United States v. Morrison](http://en.wikisource.org/w/index.php?title=The_United_States_v._Morrison&action=edit&redlink=1), [4 Peters](http://en.wikisource.org/wiki/4_Peters), 124.

The Supreme Court has uniformly adopted the decisions of the State tribunals, respectively, in all cases where the decision of at State court become a rule of property. [Green v. Neal](http://en.wikisource.org/w/index.php?title=Green_v._Neal&action=edit&redlink=1), [6 Peters](http://en.wikisource.org/wiki/6_Peters), 291.

In all cases arising under the constitution and laws of the United States, the Supreme Court may exercise a revising power, and its decisions are final and obligatory on all other tribunals, State as well as federal. A State tribunal has a right to examine any such questions, and to determine thereon, but its decisions must conform to those of the Supreme Court, or the corrective power of that court may be exercised. But the case is very different when the question arises under a local law. The decision of this question by the highest tribunal of a State, should be considered as final by the Supreme Court; not because the State tribunal has power, in such a case, to bind the Supreme Court, but because, in the language of the court in [Shelby v. Guy](http://en.wikisource.org/wiki/Shelby_v._Guy), [11 Wheat.](http://en.wikisource.org/wiki/11_Wheat.) 361, a fixed and received construction by a State, in its own courts, makes a part of the statute law. *Ibid.* See also [Smith v. Clapp](http://en.wikisource.org/wiki/Smith_v._Clapp), [15 Peters](http://en.wikisource.org/wiki/15_Peters), 125. [Watkins v. Holman et al.](http://en.wikisource.org/w/index.php?title=Watkins_v._Holman_et_al.&action=edit&redlink=1), [16 Peters](http://en.wikisource.org/wiki/16_Peters), 25. [Long v. Palmer](http://en.wikisource.org/wiki/Long_v._Palmer), [16 Peters](http://en.wikisource.org/wiki/16_Peters), 65. [Golden v. Price](http://en.wikisource.org/w/index.php?title=Golden_v._Price&action=edit&redlink=1), 3 Wash. C. C. R. 313. [Campbell v. Claudius](http://en.wikisource.org/w/index.php?title=Campbell_v._Claudius&action=edit&redlink=1), Peters’ C. C. R. 484. [Henderson and Wife v. Griffin](http://en.wikisource.org/w/index.php?title=Henderson_and_Wife_v._Griffin&action=edit&redlink=1), [5 Peters](http://en.wikisource.org/wiki/5_Peters), 151. [Coates’ executrix v. Muse’s HYPERLINK "http://en.wikisource.org/w/index.php?title=Coates%E2%80%99\_executrix\_v.\_Muse%E2%80%99s\_adm%E2%80%99or.&action=edit&redlink=1"adm’or.](http://en.wikisource.org/w/index.php?title=Coates%E2%80%99_executrix_v._Muse%E2%80%99s_adm%E2%80%99or.&action=edit&redlink=1), 1 Brocken’s C. C. R. 539. [Parsons v. Bedford et al.](http://en.wikisource.org/w/index.php?title=Parsons_v._Bedford_et_al.&action=edit&redlink=1), [3 Peters](http://en.wikisource.org/wiki/3_Peters), 433.

* [↑](http://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/1st_Session/Chapter_20) The acts relating to the compensation of the Attorney General of the United States are: [Act of March 2, 1797](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/4th_Congress/2nd_Session/Chapter_3&action=edit&redlink=1); [act of March 2, 1799, chap. 38](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_1/5th_Congress/3rd_Session/Chapter_38&action=edit&redlink=1); [act of February 20, 1804, chap. 12](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_2/8th_Congress/1st_Session/Chapter_12&action=edit&redlink=1); [act of February 20, 1819, chap. 27](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_3/15th_Congress/2nd_Session/Chapter_27&action=edit&redlink=1); [act of May 29, 1830, chap. 153](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/21st_Congress/1st_Session/Chapter_153&action=edit&redlink=1), [sec. 10](http://en.wikisource.org/w/index.php?title=United_States_Statutes_at_Large/Volume_4/21st_Congress/1st_Session/Chapter_153&action=edit&redlink=1).

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 U.S. Bankruptcy

By Moses G. Washington

revised on 3/31/03

In this article we will examine the evidence that the UNITED STATES government is in bankruptcy and the implications for all Americans. Before we begin trace the events demonstrating that the bankruptcy exists, allow be to quote from a fairly recent Congressional Record.

*“Mr. Speaker, we are here now in chapter 11. Members of Congress are official trustees*
*presiding over the greatest reorganization of any Bankrupt entity in world history, the U.S.*
*Government. We are setting forth hopefully, a blueprint for our future. There are some who*
*say it is a coroner’s report that will lead to our demise.” [Rep. James Traficant, Jr. (Ohio)*
*addressing the House, Congressional Record, March 17, 1993, Vol. 33, page H-1303]*

Events Demonstrating the Bankruptcy

If in fact a bankruptcy exists, one would expect to find evidence of it in our various government records. The evidence from these sources suggests that the bankruptcy was precipitated by the stock market crash of 1929. So, we will begin our search here.

In 1929, the United States entered the Great Depression. At that time, most of the major economic and military powers in the world were also in the depression. You may recall that Americas were permitted to own gold and that our currency was backed by gold and silver. People could deposit their gold in Federal Reserve banks and the bank would give them a note which they could use to withdraw their gold. Due to the panic in the economic markets after the crash of 1929, people were trying to withdraw the funds from the banks in the form currency, silver and gold.

President Herbert Hoover asked the Federal Reserve Board of New York for a recommendation on how to deal with the situation. One might wonder why President Hoover would ask the Federal Reserve for advise. But, a review the “Federal Reserve” article will show that the Federal Reserve was in control of our monetary policy. The Federal Reserve Board adopted a resolution to respond t President Hoover’s request.

*“Resolution Adopted By The Federal Reserve Board of New Your. Whereas, in the opinion*
*of the Board of Directors of the Federal Bank of New York, the continued and increasing*
*withdrawal of currency and gold from the banks of the country has now created a national*
*emergency …” [Herbert Hoover private papers of March 3, 1933]*

The Federal Reserve board is stating that the run on banks is causing a “national emergency”. Since our currency was backed by gold, why would it cause a national emergency for the people to hold the gold rather than the banks? To find the answer, let’s see what President Hoover had to say.

*“… that those speculator and insiders were right was plain enough later on. This first*
*contract of the ‘moneychagers’ with the New Deal netted those who removed their money*
*from the country a profit of up to 60 percent when the dollar was debased.” [Hoover Policy*
*Paper, written by the Secretary of Interior and Secretary of Agriculture]*

President Hoover is saying that those with inside knowledge had already removed the money (gold) from the country before the American people started demanding their money from the banks. Since the banks didn’t have the gold the people were demanding, the banks needed protection. So, the Federal Reserve Board when onto proposed that the President issue an Executive Order based upon the Trading with the Enemy Act of 1917 as follows:

*“Whereas, it is provided in Section 5(b) of the Act of October 6, 1917, as amended, that*
*‘the President may investigate, regulate, or prohibit, under such rules and regulations as he*
*may prescribe by means of licensure or otherwise, any transaction in foreign exchange and*
*the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or*
*currency, \*\*\*’”. [Herbert Hoover private papers of March 3, 1933, emphasis added]*

President Hoover decline to issue the order but Franklin D. Roosevelt was inaugurated a President on March 4, 1933. In his inauguration speech, requested that Congress grant him emergency powers equal to those he might have in times of war to allow him to deal with the crisis. On March 5, 1933, he issued Proclamation 2038 requesting a Special Session of Congress beginning on March 9, 1933, to deal with the banking emergency. Then on March 6, 1933, President Roosevelt issued Proclamation 2039 to indicate to the Congress what kind of emergency powers he was asking for. This proclamation had exactly the same wording as that proposed by the Federal Reserve Board. But the Proclamation had not authority until Congress met to give him the required authority. (For a more detailed account of these events, read our article on “War & Emergency Powers”).

One might well ask how the Federal Reserve Board could make such influence over the President. Some researchers speculate that the depression was engineered by the Federal Reserve and the international bankers that they represent [see our article on the Federal Reserve for information about the link between the Federal Reserve and international bankers]. The banker’s motive was to further consolidate (they already controlled the monetary policy of the UNITED STATES) their power. It is also speculate that the government was told that it could cooperate with the Federal Reserve (international bankers) or the depression would remain indefinitely. Under such political blackmail, the President, Congress and courts were willing to acquiesce to the demands of the bankers. Bear these speculations in mind as you read who quickly the Federal Reserve got what it wanted. These speculations will be an area for further research.

The very first act passed by Congress when they met in Special Session has the following preamble.

*“Be it enacted by the Senate and the House of Representative of the United States of*
*America in Congress assembled, That the Congress hereby declares that a serious*
*emergency exists and that it is imperatively necessary speedily to put into effect remedies*
*of uniform national application.” [emphasis added]*

On the first day of the special session, Congress approved Proclamation 2039. On the same day, President Roosevelt re-issued it as Proclamation 2040.

*“Whereas, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued*
*by the President pursuant to the authority enforced by section 5(b) of the Act of October 6,*
*1917, as amended, are approved and confirmed;” [President Roosevelt’s Proclamation*
*2040].*

On that same day, Congress passed the following statute.

*“During time of war or during any other period of national emergency declared by the*
*President, the President may, through any agency that he may designate, or otherwise*
*investigate, regulate, or prohibit under such rules and regulations as he may prescribe by*
*means of licensure or otherwise, any transaction in foreign exchange, transactions of credit*
*between or payments by banking institutions as defined by the President and export,*
*hoarding, melting, or ear markings of gold or silver coin or bullion or currency, by any*
*person within the United States or anyplace subject to the jurisdiction thereof.” [Title*
*1, Sec. 2, 48 Statute 1, March 9, 1933]*

This is exactly the same language that was found in the 1917 Trading with the Enemy Act with the exception of the section in bold. The exclusion of transactions within the UNITED STATES had been removed from the act.

This statute can now be found in the United States Code at 12 USC § 95b. This is the current version of the statute. Notice that the wording is almost identical to that found in the 1933 statute (shown in above paragraph).

*“Sec. 95b. - Ratification of acts of President and Secretary of the Treasury under section*
*95a*

*The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter*
*taken, promulgated, made, or issued by the President of the United States or the Secretary*
*of the Treasury since March 4, 1933, pursuant to the authority conferred by section 95a of*
*this title, are approved and confirmed” [12 USC § 95b]*

This version says that the authority is granted in 12 USC § 95a. But if you look in that notes to that statute you will see that he original source authority is located in “Oct. 6, 1917, ch. 106, Sec. 5(b), 40 Stat. 415” and later in “Mar. 9, 1933, ch. 1, title I, Sec. 2, 48 Stat. 1”. So, the President still has the authority as it was originally granted in 1917 and later modified in 1933.

The effect of this emergency power is that all Americans are now part of the Trading with the Enemy Act, as amended in 1933. The significance of this change will become apparent shortly.

Since the banks don’t have gold to pay out, President Roosevelt used Proclamation 2039 and 2040 along with the provisions of 12 USC § 95b to create a banking holiday. This can be verified if we read the definition for “Banking Holiday of 1933”:

*“Bank holiday of 1933. Presidential Proclamations No. 2039, issued March 6, 1939, and*
*No. 2040, issued March 9, 1933, temporarily suspended banking transactions by member*
*banks of the Federal Reserve System. Normal banking functions were resumed on March*
*13, subject to certain restrictions. The first proclamation, it was held, had no authority in*
*law until the passage on March 9, 1933, of a ratified act (12 U.S.C.A. § 95b). The present*
*law forbids member banks of the Federal Reserve System to transact banking business,*
*except under regulations of the Secretary of the Treasury, during an emergency proclaimed*
*by the President. 12 U.S.C.A. § 95.” [Black’s Law Dictionary, 5th Edition, emphasis added]*

The restrictions mentioned in the above definitions are that the banks had to be licensees before they could be reopened. A license is something which grants authority to do something that would otherwise be illegal. Trading (or conducting business) with the enemy (Americans on American soil) was made an illegal activity unless licensed. President Roosevelt’s papers reveal that the government will grant the license.

*“The Secretary of the Treasury will issue licenses to banks which are members of the*
*Federal Reserve system whether national bank or state, located in each of the 12 Federal*
*Reserve bank cities, to open Monday morning.” [President Roosevelt’s papers]*

Another provision passed on March 9, 1933 gave Federal Reserve agents the authority to acts as agents of the U.S. Department of Treasury. This seems very strange since the Federal Reserve is a private business.

*“The Secretary of the Treasury will issue licenses to banks which are members of the*
*Federal Reserve system whether national bank or state, located in each of the 12 Federal*
*Reserve bank cities, to open Monday morning.”*

*“When required to do so by the Secretary of the Treasury, each Federal Reserve agent*
*shall act as agent of the Treasurer of the United States or of the Comptroller of the*
*currency, or both, for the performances of any functions which the Treasurer or the*
*Comptroller may be called upon to perform in carrying out the provisions of this paragraph.*
*[48 Stat. 1]*

We’ve already seen that insiders had removed most of the gold from the banks before the American people started demanding their money from the banks. Since the banks didn’t have the money the people were demanding, the banks needed protection. In order to do this, the American people had to be declared the enemy. The Trading with the Enemy Act as revised in 1933 accomplished this. Then Congress passed a statute which authorized stiff fines and/or prison sentences if the people didn’t turn in their gold.

*“Whenever in the judgment of the Secretary of the Treasury such action is necessary to*
*protect the currency system of the United State, the Secretary of the Treasury, in his*
*discretion, may regulate any or all individuals, partnerships, associations and*
*corporations to pay and deliver to the Treasurer of the United States any or all gold*
*coin, gold bullion, and gold certificates owned by such individuals, partnerships,*
*associations, and corporations. … Whoever shall not comply with the provisions of this*
*act shall be fined not more than $10,000 or if a natural person, may in addition to*
*such fine may be imprisoned for a year, not exceeding ten years.” [Stat 48, Section 1,*
*Title 1, Subsection N, March 9, 1933, emphasis added]*

So, not only were American citizens not able to get their gold, but their gold was confiscated by the government. Since all money was gold and silver certificates and all of this money had to be turned in, the people were left without any money.

*“During this banking holiday it was at first believed that some form of script or emergency*
*currency would be necessary for the conduct of ordinary business. We knew that it would*
*be essential when the banks reopened to have an adequate supply of currency to meet all*
*possible demands of depositors. Consideration was given by government officials and*
*various local agencies to the advisability of issuing clearing house certificates or some*
*similar form of local emergency currencies. On March 7, 1933, the Secretary of the*
*Treasury issued a regulation authorizing clearing houses to issue demand certificates*
*against sound assets of the banking institutions. But this authority was not to become*
*effective until March 10th. In many cities, the printing of these certificates was actually*
*begun. But after the passage of the Emergency Banking Act of March 9, 1933, (48 Stat. 1)*
*it became evident that they would not be needed because the act made possible the*
*issue of the necessary amount of emergency currency in the form of Federal*
*Reserve Bank Notes which could be based on any sound assets owned by the banks.”*
*[Roosevelt’s papers, emphasis added]*

So we see that Roosevelt’s papers admit that the Emergency Banking Act made it possible to issue emergency currency which was based upon the assets of the bank rather than upon gold or silver (remove the U.S. from the gold standard). The “emergency currency” was “Federal Reserve Bank Notes”. Federal Reserve Notes are still used today.

Next we will see what was to be used to back up the “Federal Reserve Bank Notes”.

*“Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of*
*the United States, or (b) of any notes, drafts, bills of exchange or bankers*
*acceptances acquired under the provisions of this Act, any Federal Reserve bank*
*making such deposit in the manner prescribe by the Secretary of the Treasury shall be*
*entitled to receive from the Comptroller of the currency circulating notes in blank, duly*
*registered and countersigned.” [Emergency Banking Relief Act of March 9, 1933, section 4, Public*
*Law 89-719]*

Later in 1933, the House of Representatives passed a joint resolution to “Suspend The Gold Standard and Abrogate The Gold Clause” which says in part:

*“That (a) every provision contained in or made with respect to any obligation which*
*purports to give the obligee a right to require payment in gold or particular kind of coin or*
*currency, or in as amount of money of the United States measured thereby is declared to*
*be against public policy; and no such provision shall be contained in or made with*
*respect to any obligation hereafter incurred.” [GOLD REPEAL ACT June 5, 1933]*

Since this measure was passed as a joint resolution, it does not have the force of law. You will notice that the resolution uses the term “public policy”. We frequently hear the term “public policy” used. But what does it mean?

*“policy. The general principles by which a government is guided in its management of*
*public affairs.” [Black’s Law Dictionary, 7th Edition]*

*“public policy. Broadly, principles and standards regarded by the legislature or by the courts*
*as being of fundamental concern to the state and the whole of society.” [Black’s Law*
*Dictionary, 7th Edition]*

Public policy is not the same thing as public law!

*“public law. The body of law dealing with the relations between private individuals and the*
*government, and with the structure and operation of the government itself; … A statute*
*affecting the general public…” [Black’s Law Dictionary, 7th Edition]*

This is a rather startling admission on the part of Congress. They are saying that what they are doing by refusing to pay the federal debt in gold is not according to the law but rather a public policy.

So, we see that the currency was no longer backed by gold (even if it is only a pubic policy). The new currency was Federal Reserve Bank Notes. These notes were and still are backed by “direct obligations of the United States” which are Treasury notes. They are also backed by bank “notes, drafts, bills of exchange, and bank acceptances.” This last group are notes (loans) that Federal Reserve member banks were holding on loans they had made to people and institutions. So the public or private debt instruments of the banks were considered assets to be deposited in the Treasury in exchange for “circulating notes”. This can be further proven by excepts from the Congressional Record during the debate over the Emergency Banking Act of 1933.

***[Mr. McPhadin] “… The first section of the bill, as I grasped it, is practically the war powers that were given back in 1917. I would like to ask the chairman of the committee if this is a plan to change the holding of the security back of the Federal Reserve notes to the Treasury of the United States rather than the Federal Reserve agent.”***

*[Mr. Stiggle] “This provision is for the issuance of Federal Reserve bank notes; and not for*
*Federal Reserve notes; and the security back of it is the obligations, notes, drafts, bills of*
*exchange, bank acceptances, outlined in the section to which the gentleman has referred.”*

*[McPhadin] “Then the new circulation is to be Federal Reserve bank notes and not Federal*
*Reserve notes. Is that true?”*

[Stiggle] “Insofar as the provisions of this section are concerned, yes.”

*“[Mr. Britain} From my observations of the bill as it was read to the House, it would appear*
*that the amount of bank notes that might be issued by the Federal Reserve System is not*
*limited. That will depend entirely upon the mount of collateral that is presented from time to*
*time from exchange for bank notes. Is that not correct?”*

*[McPhadin] “Yes, I think that is correct.”*

It should be clear that the currency was no longer backed by gold but by a promise to pay

on various debt instruments (loans to private individuals or businesses and the government). So, there were no hard assets backing up the currency, only promises. In the case of government loans, the collateral would be the “full faith and credit of the United States.” This is very strong evidence that the federal government was bankrupt at that time. If it weren’t, the federal government would still be willing to pay its obligations in gold and the currency would still be backed by gold.

Who did the federal government owe money too? The obvious answer is the Federal Reserve Bank, who was holding the “direct obligations of the United States.” The Federal Reserve is a private bank. It is not part of the government. The logically conclusion is that the government is bankrupt and the Federal Reserve is the creditor.

The transition from a gold backed currency to one that was not backed by any hard asset was very swift. The Federal Reserve Board proposed it to President Hoover on March 3, 1933 and it was implemented into law by March 9, 1933. This is very swift action indeed. How can we account for such a rapid change in circumstances? We have not uncovered (at least thus far) direct evidence of undue influence by the Federal Reserve (international bankers). However, their position as creditor to the UNITED STATES does provide a plausible explanation as to why things changed so rapidly.

The final topic we will explore is the impact of this even on American citizens.
Impact of Bankruptcy

So, let’s clarify the difference between real money (backed by a hard asset) and a paper money substitute. Federal Reserve Notes (FRNs) are nothing more than promissory notes backed by UNITED STATES Treasury securities (T-Bills) - a promise to pay the debt to the Federal Reserve Bank. They allow the federal government to create debt which causes inflation through devaluation of the currency. Inflation occurs whenever there is an increase of the supply of a money supply in the economy without a corresponding increase in the gold and silver backing. Inflation is an invisible form of taxation that irresponsible governments inflict on their citizens. The Federal Reserve Bank has access to an unlimited supply of FRNs. The Federal Reserve Bank only pays for the printing costs of new FRNs.

We also need to understand that there is a fundamental difference between “paying” and “discharging” a debt. To pay a debt, you must pay with value or substance (i.e. gold, silver, barter or a commodity). With FRNs, you can only discharge a debt. You cannot pay a debt with a debt currency system. You cannot service a debt with a currency that has no backing in value or substance. No contract in common law is valid unless it involves an exchange of “good and valuable consideration.”

What does the federal government have to offer the Federal Reserve in payment of it’s debts? The next quote answers this question.

*[Patton] “The money will be worth 100 cents on the dollar because it is backed by the credit*
*of the Nation. It will represent a mortgage on all the homes and other property of all the*
*people in the Nation.” [Congressional Record, March 9, 1933, emphasis added]*

We see that the federal government has offered all of the private property in the nation to it creditor, the Federal Reserve. The government can offer the labor of the people of the nation [see our article on the “Federal Reserve” system to see how the IRS is used to collect money from the Federal Reserve].

This quote is evidence that the government “hypothecated” all of all of the present and future properties, assets and labor of their “subjects” to the Federal Reserve System.

*“Hypothecate. To pledge property as security or collateral for a debt. Generally, there is no*
*physical transfer of the pledged property to the lender; nor is the lender given title to the*
*property; though he has a right to sell the pledged property upon default.” [Black’s Law*
*Dictionary, 5th Edition]*

So, the government has pledged (mortgaged) our property as collateral to their creditor, the Federal Reserve. If you thought the only person who could mortgage a property was the owner, you are correct. The implication is that through some mechanism (which will be the subject of future material on this web site), the government has taken over controlling interest in our property. If this is the case, it is a violation of the 5th Amendment to the Constitution

*“… nor shall private property be taken for public use without just compensation.”*

You may wonder how you got roped into paying someone else’s debts. The answer can

be found in 14th Amendment.

*The validity of the public debt of the United States … shall not be questioned.” [14th*

*Amendment, Section 4]*

After the passage of the 14th Amendment, everyone born in America became a 14th

Amendment [federal] citizen. As such, you are held liable for the “public debt of the United States.”

To provide further evidence of government control of our property, consider the fact that we pay property taxes. Prior to 1913, when the Federal Reserve Act was passed, most Americans owned property and had allodial titles. There are no property taxes in this situation. When we buy property now, we are not given an allodial title. Instead we are given a title deed which is not fee simple absolute. To better understand, let’s look at the definitions of these terms.

*“Allidial. Free; not holden on may lord or superior; owned without obligation of vassalage or*
*fealty…” [Black’s Law Dictionary, 5th Edition]*

*“Fee simple. A fee simple absolute is an estate limited absolutely to a man and his heirs*
*and assignees forever without limitation or condition. An absolute or fee simple estate is*
*one in which the owner is entitled to the entire property, with unconditional power of*
*disposition during his life, and descending to his heirs and legal representatives upon his*
*death intestate.” [Black’s Law Dictionary, 5th Edition]*

*“Deed. A conveyance of realty; a writing signed by grantor, whereby title to realty is*
*transferred from one to another.” [Black’s Law Dictionary, 5th Edition]*

*“Title deeds. Deeds which constitute or are the evidence of title to lands.” [Black’s Law*
*Dictionary, 5th Edition, emphasis added]*

From these definitions, it should be obvious that we do not have fee simple absolute title to our land. If we had an allodial title (without obligation), no one would have the authority to tax the land. They would also not have a right to sell the property if the taxes weren’t paid. But when the property was hypothecated, the government took that authority. The title deed is evidence that a title does exist. But the question remains, who holds title to the property? It would seem that the government has taken control of our property and then they lease it back to us for what is called property taxes.

In return for turning over all the property in the U.S., the Federal Reserve Bank agreed to extend the federal government all the credit (money substitute) it needed. Like any other debtor, the federal government had to assign collateral and security to their creditors as a condition of the loan. Since the federal government didn’t have any assets, they assigned

the private property of their “economic slaves,” the UNITED STATES. citizens, as collateral against the unpayable federal debt. They also pledged the unincorporated federal territories, national parks and forests, as collateral against the federal debt (for evidence of this see the United Nations plaques in most of major national parks).

You might say, “I don’t feel like an economic slave.” If not, then why are most Americans mortgaged to the hilt and have little or no assets after all debts and liabilities have been paid? Why does it feel like you are working harder and harder and getting less and less? Evidence of your economic slavery is the fact that you pay Social Security taxes and income taxes.

Remember that we said the federal government could also pledge the labor of the citizens. The federal government gets the benefit of your labor in the form of federal employment [income] taxes. What you may not know is that the federal government does not have constitutional authority to tax your wages. So the income tax is voluntary [see our article on “Income Tax is Voluntary”]. You volunteer to pay of the public debt when you apply for a social security number and then give it to your employer when you file a W4 form. If you don’t believe it, find a canceled check that you have written to the I.R.S. Turn it over and on the back you will see that the check was endorsed for deposit in a Federal Reserve account. So, your check to pay your “income tax” was deposited into the Federal Reserve, a private bank, who is the creditor for the federal government.

In summary, the federal government is bankrupt. The Federal Reserve is the creditor to the federal government. All of your property and labor have been pledged to pay the debts of the federal government. As a UNITED STATES citizen, you are held liable for the public debt.

**Presidential Emergency Powers: The So-Called "War Powers Act of 1933"**

**CRS Report for Congress**
**Received through the CRS Web**
**Presidential Emergency Powers: The So-Called**
**"War Powers Act of 1933"**
David M. Ackerman
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American Law Division
Summary
The "War Powers Act of 1933" is a name given by some members of the militia and
patriot movement to emergency banking legislation passed in 1933 five days after
President Roosevelt came into office.1 The legislation did not, in fact, have the title
attributed to it. It has apparently been so labelled by some because the banking
legislation amended the "Trading with the Enemy Act of 1917" in order to give legal
underpinning to President Roosevelt's efforts to cope with the banking crisis. It is
alleged by its modern-day critics that by that amendment the government in effect
declared war on the American people and began a reign of unconstitutional rule through
Presidential emergency powers. These allegations overlook the facts that the amendment
of the Trading with the Enemy Act has subsequently been repealed, that President
Roosevelt's proclamation of national emergency has been effectively terminated, and that
any President's exercise of emergency powers is now regulated under the "National
Emergencies Act."
Background
President Roosevelt came into office on March 5, 1933, during the most severe
economic depression in the Nation's history. On his first day in office, he summoned
Congress to a special session beginning on March 9 "to receive such communication as

1It should also be noted that this legislation has nothing to do with the "War Powers
Resolution of 1973." See P.L. 93-148 (Nov. 7, 1973); 87 Stat. 555; 15 U.S.C. 1541 et seq. The
War Powers Resolution imposes responsibilities on the President relating to the commitment of
U.S. military forces into "hostilities or situations where imminent involvement in hostilities is
clearly indicated by the circumstances." Like the exercise of Presidential emergency powers, the
issue of Presidential and Congressional war powers is a subject of continuing debate. But the so-
called "War Powers Act of 1933" should not be confused with the War Powers Resolution.
Congressional Research Service ˜ The Library of Congress

may be made by the Executive."2 On the second day he declared that massive withdrawals
of gold and currency from the banks had created a "national emergency" and ordered that
the banks be closed from March 6-9 "in order to prevent the export, hoarding, or3
earmarking of gold or silver coin or bullion or currency ...." As the legal authority for this
proclamation, he cited the portion of § 5(b) of the "Trading with the Enemy Act"4
providing that
the President may investigate, regulate, or prohibit, under such rules
and regulations as he may prescribe, by means of licenses or
otherwise, any transactions in foreign exchange, export, hoarding,
melting or earmarkings of gold or silver coin or bullion or currency
....

40 Stat. 411, 415 (1917), as amended by 40 Stat. 965, 966 (1918).

The Trading with the Enemy Act had been enacted in 1917 to give the President authority
to regulate all economic and other transactions between persons in the United States and
foreign countries during World War I. By its terms, however, the Act seemed intended
for use only in time of war.
On March 9 Congress convened and promptly enacted the President's emergency
banking legislation.5 Recognizing the limitations of the legal authority the President had
cited for his declaration of a national bank holiday, the legislation amended § 5(b) of the
Trading with the Enemy Act to allow it to be used not only in time of war but also "during6
any other period of national emergency declared by the President." The banking
legislation also declared that "a serious emergency exists," conferred extensive
discretionary powers over the banking and currency systems on the President and the
Federal Reserve Board, and gave both retroactive and prospective congressional approval7
to any and all actions taken by the President pursuant to the authority of § 5(b). On the

2Proclamation No. 2038 (March 5, 1933); 48 Stat. 1689.
3Proclamation No. 2039 (March 6, 1933); 48 Stat. 1690.
440 Stat. 415.
5Ch. 1, 73d Cong., 1st Sess. (March 9, 1933); 48 Stat. 1.
6Ch. 1, Title I, § 2 (March 9, 1933); 48 Stat. 1; 12 U.S.C. 95a and 50 U.S.C. App. 5(b).
As amended, § 5(b) read in pertinent part as follows:
During time of war or during any other period of national emergency declared by the President, the
President may, through any agency he may designate, or otherwise, investigate, regulate, or
prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise,
any transactions in foreign exchange, transfers of credit between or payments by banking
institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or
silver coin or bullion or currency, by any person within the United States or any place subject to
the jurisdiction thereof ....
7The latter provision stated as follows:
The actions, regulations, rules, licenses, orders, and proclamations heretofore or hereafter taken,
promulgated, made, or issued by the President ... since March 4, 1933, pursuant to the authority
(continued...)

basis of this expansive statutory authority, **the President in Proclamation No. 2040 on
March 9 extended the national emergency and the bank holiday he had declared on March
6 "until further proclamation by the President"**8; and subsequently he issued a number of
executive orders regulating the banking and currency systems, including one barring the
private ownership of gold coins and bullion.9
The part of the emergency banking statute quoted above giving retroactive and
prospective approval to the actions of the President taken pursuant to § 5(b) of the
Trading with the Enemy Act has not been repealed, and that has led some to assert that
the U.S. is still under emergency rule. But **in fact President Roosevelt's declaration of
national emergency has been terminated, the amendment of § 5(b) of the Trading with the
Enemy Act has been repealed, and the Presidential proclamations and executive orders
issued pursuant to that authority have been eliminated.** In addition, Congress has enacted
legislation regulating future declarations of national emergency by the President.
Most of these actions occurred during the 1970s. In the middle of that decade the
Senate created a Special Committee on National Emergencies and Delegated Emergency
Powers to conduct an investigation into Presidential use and abuse of emergency powers.
On the basis of that Committee's findings and recommendations,10 Congress in 197611
enacted the "National Emergencies Act." The Act repealed several statutory delegations
of emergency powers and, in addition, imposed a number of controls on the President's
exercise of emergency powers, as follows:
**(1) With one pertinent exception, it terminated "all powers and
authorities possessed by the President, any other officer or employee
of the Federal Government, or any executive agency, ... as a result of
the existence of any declaration of national emergency in effect on12
September 14, 1976." The Senate Special Committee had found
that not only President Roosevelt's 1933 proclamation of a national
emergency but also a proclamation by President Truman and two by
President Nixon were still extant. Technically, the National
Emergencies Act did not repeal or terminate those four declarations
of national emergency, but with the exception noted below, this
section of the Act did render them hollow shells.**

7 (...continued)
conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby
approved and confirmed.
Act of March 9, 1933, supra, § 1; 12 U.S.C. 95b.
8Proclamation No. 2040 (March 9, 1933); 48 Stat. 1691.
9E.O. 6260 (Aug. 28, 1933).
10SENATE SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND
DELEGATED EMERGENCY POWERS, FINAL REPORT: NATIONAL EMERGENCIES
AND DELEGATED EMERGENCY POWERS, S. Rept. No. 94-922, 94th Cong., 2d Sess. (1976).
11P.L. 94-412 (Sept. 14, 1976); 90 Stat. 1255; 50 U.S.C. 1601 et seq.
12Id., § 1601(a).

**(2) The Act provided that any standby emergency authority
provided to the President by statute (the Senate Special Committee
had found 470 such statutes) could be activated in the future only by
a new Presidential declaration of national emergency that was
transmitted to Congress and published in the Federal Register.13
(3) The Act required that in any future declared national
emergency, the President could only use those standby statutory
authorities which he specifically identified and communicated to
Congress and the public.14 That is, a declaration of national
emergency would no longer automatically activate all of the standby
authorities which the Special Committee had identified in its study or
which Congress enacted in the future but only those specified and
publicized by the President as pertinent to the crisis at hand.
(4) The Act provided that any future declaration of national
emergency by the President would terminate automatically one year
after its declaration unless the President explicitly renewed it each
year, and could also be terminated at any time by joint resolution of15
Congress or a Presidential proclamation.
(5) The Act required the President to make periodic reports to
Congress on all actions taken with respect to a declared emergency.16
In sum, the National Emergencies Act now subjects any Presidential exercise of
Congressionally delegated emergency powers to the requirements of public declaration,
specification of powers to be used, periodic reporting, Congressional oversight, and
automatic termination.
The one initial exception to the foregoing framework for national emergencies
concerned the Trading with the Enemy Act. As first adopted in 1976, the National
Emergencies Act excluded from its purview Section 5(b) of the Trading with the Enemy
Act. As noted above, that is the provision of law under which President Roosevelt issued
his declaration of national emergency with respect to the banking crisis. But with the
advent of the Cold War that section had also been used by the executive branch as the
legal basis for imposing economic sanctions on the communist nations of North Korea,
Cuba, China, and North Vietnam; and at the time the National Emergencies Act was
enacted, there was no other legal basis for continuing the sanctions against those countries.
As a consequence, the State Department asked that Section 5(b) be excluded from the
National Emergencies Act until other legislation providing a basis for the continuation of
economic sanctions against those countries could be enacted.**

13Id., § 1621(a).
14Id., § 1631.
15Id., § 1622.
16Id., § 1641.

In 1977 in the "International Emergency Economic Powers Act" (IEEPA) Congress
enacted that alternative basis for economic sanctions against foreign countries.17 IEEPA
gives the President broad discretionary authority to impose economic sanctions on foreign
countries to deal with any unusual and extraordinary threat, which has its
source in whole or substantial part outside the United States, to the
national security, foreign policy, or economy of the United States, if
the President declares a national emergency with respect to such
threat.18
With this alternative legal basis for economic sanctions in place, Congress eliminated the
former exclusion of § 5(b) of the Trading with the Enemy Act from the National
Emergencies Act and also amended § 5(b) so that it could no longer be triggered by a
declaration of national emergency. The amendment of § 5(b) provided that the Act can19
only be invoked "(d)uring the time of war." The elimination of the exclusion made clear
that any and all emergency powers that might have previously been available pursuant to
a national emergency declared under § 5(b) (including President Roosevelt's 1933
Proclamation No. 2040) were terminated.20 As with the other pre-existing Presidential
declarations of national emergency, Congress did not formally terminate the one declared
by President Roosevelt (apparently believing that only the President could do so). But it
did render it toothless.
Finally, in 1982 the Treasury Department formally eliminated the Presidential
proclamations and executive orders pertaining to the 1933 banking crisis. Citing Congress'
restriction of § 5(b) of the Trading with the Enemy Act and the enactment of IEEPA, and
terming the various proclamations and executive orders to have been "obsolete for many21
years," the Department issued a regulation specifically terminating them. The measures
eliminated included President Roosevelt's Proclamations 2039 and 2040. His executive
order barring the private ownership of gold had previously been overturned by statute.22
Conclusion

17P.L. 95-223, 95th Cong., 1st Sess. (Dec. 28, 1977); 91 Stat. 1626; 50 U.S.C. 1701 et seq.
18Id., § 1701(a).
1950 U.S.C. App. 5(b); 12 U.S.C. 95a. In amending TWEA, Congress did provide for the
continuation of any economic sanctions that were the result of a Presidential declaration of national
emergency and were in effect on July 1, 1977, subject to automatic termination unless they were
renewed annually. This provision allowed the sanctions regimes against Cuba, North Korea,
China, and North Vietnam to continue without the President having to declare a new national
emergency under IEEPA. See 50 U.S.C.A. App. 5, note.
20P.L. 95-223, supra, § 101(d); 50 U.S.C. 1651(a)(1).
2147 Fed. Reg. 56351-54 (Dec. 16, 1982).
22P.L. 93-110 (Sept. 21, 1973), 87 Stat. 352, as amended by P.L. 93-373 (Aug. 14, 1974),

88 Stat. 445.

The issue of Presidential emergency powers is necessarily a matter of continuing
concern in a democracy, because the potential for the concentration and abuse of power
is ever-present. The emergency banking legislation of 1933, denominated by some as the
"War Powers Act of 1933," conferred extraordinary powers on the President with respect
to the banking and currency systems as an initial step in trying to cope with the
Depression. It also made the powers conferred by § 5(b) of the Trading with the Enemy
Act available in times of national emergency as well as in times of war. Subsequently, §
5(b) was used as the basis for certain actions unrelated to the Depression, most notably the
imposition of economic sanctions on certain foreign countries.
But President Roosevelt's 1933 declaration of national emergency and the various
measures taken pursuant to that declaration have been terminated. Moreover, Section 5(b)
of the Trading with the Enemy Act is now explicitly restricted to use only in time of war
and is no longer available for use in a national emergency. Finally, the National
Emergencies Act subjects any future exercise of emergency power by the President to the
constraints of public declaration of the emergency, specific designation of the statutory
authorities to be used during the emergency, Congressional oversight, and automatic
termination. Whether those constraints are sufficient may be debatable. But the so-called
"War Powers Act of 1933" is no longer a source of Presidential emergency power.

<http://congressionalresearch.com/95-753/document.php>

► **Publication:** Executive orders are [required by law](https://www.law.cornell.edu/uscode/text/44/1505) to be published in the [Federal Register](https://www.federalregister.gov/executive-orders), which is sort of the executive counterpart to the Congressional Record. Presidential memoranda may be published or not, depending on the subject. But it's the publication of the memorandum that gives them "general applicability and legal effect."

Can anyone call the Library of Congress to find a proclamation that was utilized to cancel the presidential orders 2039 and 2040?

You see if it's in the federal registry that means it would take another federal registry entry to cancel the original, and it couldn't come from Congress, because Congress cannot supersede this unless it was deemed by the supreme court that the president had overstepped his authority, bounds, delegation of power. So the issue is, has there been a number proclamation declaring this emergency to be over, clearing the banking holiday to have been suspended and/or listed? I will stake everything that I know on this, the fact that I am positive that there has not since it was initiated on March 9, 1933 which means we are still in the banking holiday and that means all banking activities are suspended until further notice by proclamation.

An Affidavit to be construed as EVIDENCE: “My Statement of claim…

I ***Daniel Hubbard, et al;*** am the beneficial owner of **The Equitable Cestui Que Trust**, and as such I claim to have firsthand knowledge of the information contained herein, and or direct knowledge of the facts stated herein.

PREJUDICIAL TREATMENT BY PARTIAL AND BIAS JURISTS

I hereby formally inform this body that this is a claim for adverse possession, and adverse claim, a suit in law, and that I am the owner of the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)**.

The court must take note of the statute of limitations for adverse possession for the state of Colorado, and that I have been in possession of the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)** for greater than 10 years. That Adverse Possession is a common-law right, and as such I have satisfied all of the prerequisite for adverse possession.

Whether or not I have the right to claim adverse possession is a matter for a jury, and this body has may not me the right to due process.

 **Intent to Cure**

On or about August 16, 2017 I presented the Arapahoe County trustee with a money order for full payment in the form of an intent to cure. The intent to cure payment was presented promptly and timely and accords with the laws and statute for the state of Colorado, the trustee felt the process the intent to cure payment, and is in breach of trust.

The failures on the behalf of the trustee has resulted in damages of greater value then the limits and the jurisdiction of this court, and of greater value is the counterclaim that I must hereby challenge to jurisdiction of this court as a result of the amount of the counterclaim.

I also do hereby give notice to the court, that I am at no time trying to waste the courts time, nor is this an attempt to delay or impede the rights of others.

The state of Colorado allows for countersuit in matters such as this, I am counter-suing.

The state of Colorado allows for a party to place a claim of adverse possession on the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)** for which the following prerequisites are met:

The statute and common law require that a party must be in possession of the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)**, as has been documented by the record I am in possession of the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)**.

The statute and common law require that a party must have maintained possession for the statutory period of time, I have been in possession of this **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)** for\_\_\_\_years.

The statute and common law require that the taxes on the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)** must be paid, at current the taxes are paid and are up-to-date on the **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)**.

The statute and common-law requires that there must be an enclosure around the property, I do hereby attest as well as a firm that I have maintained an enclosure around my property.

The statute and common law further require that improvements had to of been made on the property, I have to date made over $200,000 in improvements to this property, and am due recoupment in my investment.

The statute and common law further require that a party have at least colorable title, I have standing in this matter as I have title to the property, my property\_\_\_\_\_.

Diversity of CITIZENSHIP

It appears that this matter is outside the jurisdiction of this court, not only does this matter involves a property that was secured by a **Federal Government Loan,with a Federal Guarantee on the Loan,a Property Which Falls under the Uniform Nonjudicial Foreclosure Act, the Federal Housing Act’s, the Uniform Satisfaction of Mortgage Act, And the Special Emergency Provisions of the Banking Holiday Act Otherwise Known As the Emergency Economic Banking Relief Act of 1933 March 9.**

I hereby place this body on notice that I believe that this is a federal matter for the above referenced issues and the fact that the opposing party is not a resident of the state of Colorado.

The company **RG OPTIONS, LLC** who claims to be the owner of my property, is not an actual party in this matter, and because they are not a resident of the state of Colorado this creates what’s known as diversity of citizenship:

RG OPTIONS, LLC- is a predator, and they are well aware that the value of the property for which they are claiming to do an eviction exceeds the value of the limits of the jurisdiction of this court. They are also aware of the fact that because they are a Texas based company, they have no standing in this matter, and that this court is aware that this matter is properly placed in the court of original jurisdiction where diversity of citizenship lay, the federal district court.

 My right to recoupment and the value of this case

I have an investment **(property, Daniel every section you see this you’re going to place the property address, and the legal description in this section)**, for which is covered by foreclosure protection insurance, and I am not receiving my investment benefits.

Not only have I made foreclosure protection insurance premiums for greater than 10 years, but I have made continual payment and other financial investments for which I must be compensated.

I have a deed of trust of which I am the grantor, and the trust interest holder and I am not receiving the benefits from that contract. With respect to the deed of trust I and the only signator that agreement, and since the deed of trust is an entity under law, a financial instrument, a commercial agreement, a security I can sue that entity.

Violations of equal protection of and access to law

According to this court I can’t sue **a property, please note the following to rebut such nonsensical, frivolous, meritless, and moot arguments** - 328 F. 3d 1011 - United States v. One Lincoln Navigator, I begged the courts pardon it appears that the court has attempted to mislead me, by knowingly and intentionally placing false information on the public record.

I include case law of the United States government suing **all forms of property**- *United States v. 1998 BMW "I" Convertible,* 235 F.3d 397, 399 (8th Cir.2000),

"To have standing, a claimant need not prove the underlying merits of the claim. The claimant need only show a colorable interest in the **property**, redressable, at least in part, by a return of the **property,**." *United States v. 7725 Unity Ave. N.,* [294 F.3d 954](https://openjurist.org/294/f3d/954), 957 (8th Cir.2002),

We have held in numerous cases that a colorable ownership interest "may be evidenced in a number of ways including showings of actual possession, control, title and financial stake." *United States v.* ***One 1945 Douglas C-54 (DC-4) Aircraft****,* [647 F.2d 864](https://openjurist.org/647/f2d/864), 866 (8th Cir.1981); *see 7725 Unity Ave.,* 294 F.3d at 956; *1998 BMW,* 235 F.3d at 399; *United States v. One 1990* ***Chevrolet Corvette****,* [37 F.3d 421](https://openjurist.org/37/f3d/421), 422 (8th Cir.1994).

*United States v. $9.041,598,68,* [163 F.3d 238](https://openjurist.org/163/f3d/238), 245 (5th Cir.1998); *United States v. 2001* ***Honda Accord EX****,* 245 F.Supp.2d 602, 607 n. 4 (M.D.Pa. 2003);

*United States v.* ***Tracts 10 & 11*** *of Lakeview Heights,* [51 F.3d 117](https://openjurist.org/51/f3d/117), 120-21 (8th Cir.1995). Conceptually, **this aspect of the case is akin to a quiet title action** to determine the respective ownership interests of Bearden, Andrews, and Austin. *Cf.* ***Tracts 10 & 11****,* 51 F.3d

**United States** of America **v**. $299,959.**00** In **United States** Currency (3:16-cv-00075),

**United States** of America **v**. $5,485.**00** in **United States** Currency et al (2:14-cv-00200);

**United States** of America **v**. $124,700 in U.S. Currency, 05-3295 (8th Cir. 2006),

**United States of America v. $47,700 in US currency, 3:06- 2070SEC (Puerto Rico 2006);**

**United States** of America **v**. $333,520.**00** **in United States Currency et** al Arizona district court;

**United States of America, Plaintiff/appellee, v. $84,740.00 U.S. Currency, Defendant, appeal of Doris Potter, Administrator of Estate of Edwinpotter, Deceased, Claimant, 900 F.2d 1402 (9th Cir. 1990);**

Document in Context 13-2666 United States of America v. Approximately $65,000.00 in U.S. Currency et al (9th cir. 2014)

16-192 - United States of America v. Approximately $7,000.00 in U.S. Currency (9th Cir 2017)

Gatekeeping, and denial of access to due process

How dare this court sit here and contradict the law, telling me that I don’t have the right to do what’s done all the time, to sue a **property, get each time I attempted to file my adverse possession the clerk of the court continued to miss file it, and in the court through its judicial officer condone the conduct of the clerk, claiming it lacked jurisdiction to hear a claim of adverse possession which is an intentional misrepresentation of the law (list the case numbers here)**: United States v. 7725 Unity Ave. N., 294 F.3d 954, and here the United States sued 7725 Unity Ave., the only way this could happen, for the court to actually say on the public record, something that was contrary to the actual facts that were in evidence, the affidavit that I presented to this body, is for it to have done so outside of its own discretion.

Did we know what the federal district court said in the Lincoln Navigator matter?

Ownership interests are defined by the law of the State in which the interest arose... *7725 Unity Ave.,* 294 F.3d at 956. **On the undisputed facts of this record, applying *(state)* law**, **it is clear that Bearden and Andrews have…standing** to challenge...

If interest in standing is based on state law, and since the state of **Colorado** acknowledges, recognizes, and adheres to common-law, and since adverse possession, the right to **property,** and the right to sue and or be sued are all recognizable by this court, how is it possible for this body to sit and trample on the rights of the common people, by saying that they do not have that which they possess as a result of alienable and inalienable rights?

Administration of Justice **WARRANTED**!

For the delay of two months, for a denial of the right to a hearing before being deprived of any substantial due process rights, for blocking my access to redress, and for denying me my access to Justice and fair and impartial administration thereof I must hereby demand a recusal of the judicial officer from this matter, and a reconsideration based on the facts that are in evidence, i.e. the affidavits which must stand as true unless properly rebutted.

Specific Performance and 'Replevin' The term replevin -- commonly referred to as "claim and delivery" -- refers to a legal action in which actual **property,** (not its monetary value) must be transferred to the plaintiff in a dispute. It is similar to specific performance and often used interchangeably in statutes. For instance, the UCC states that a buyer "has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing..."

In other words, a court may order specific performance in the form of replevin (transfer of actual goods) as a remedy in a contractual dispute when cash damages are not sufficient.

When is Specific Performance Ordered?

Courts will enforce specific performance only if the underlying contract was fair and equitable. Other commodities that courts have found to support specific performance include works of art, custom-made products, and goods in short supply. Nearly all states have adopted the Uniform Commercial Code (UCC), which addresses specific performance. For example, California law states that specific performance may be compelled if:

Specific performance would otherwise be an appropriate remedy;

 and

The agreed counter-performance has been substantially performed or its concurrent or future performance is assured or, if the court deems necessary, can be secured to the satisfaction of the court.

Although the judicial officer makes an attempt to rebut my affidavits, the attempt falls short of a point by point rebuttal, as it provides no facts, no evidence, and or nothing upon which to base the conclusions that are stated in the decision to dismiss my claims as nonsensical, meritless, and/or frivolous, and were not even a mention of fact that judicial officers of barred by law from acting as a party in any manner for which they oversee.

This body cannot say that I failed to state a claim by which relief may be granted, because the law provides remedies for each of the claims stated in my complaint. The law provides remedy as well as redress when the opposing party is an entity, and instrumentality, a non-individual.

And although this matter is conceptually akin a quiet title matter, it carries with it the same rights to a claim of adverse possession.

Courts of equity such as this one recognizes claims against entities, against non-individuals.

This is not an appeal, nor an attempted appeal for there is a prescribed procedure for that, this is my adverse claim to the claim made against myself and my property, for which I have the right under state law and statute to countersuit.

Non-individuals are sued all the time, for instance the FCC v. AT&T (2012), or Bond vs. the United States, or the People of the State of **Colorado** v. … Etc. al;

So I must correct this court, and it pains me greatly that a pro se litigant, a sui juris person, a beneficial owner of an equitable trust has to correct a so-called learned individual, a student of law, and admissioned person.

It is a shame that the courts utilize legalese, utilize their legal experience to mistreat laypersons, this has to stop, one does not need to know every aspect of law, every aspect of procedure, every aspect of policy in order to seek redress.

The state of **Colorado** Constitution recognizes my right to access this body to get redress, and I must demand redress.

It should also be noted that the defendants have actually violated public policy, because it is against public policy for anyone to demand payment for debt in any currency of the United States as measured by the United States, this is per the gold repeal act of June 5, 1933 quoted as follows:

“...*“That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in… Particular kind of coin or currency, or in as amount of money of the United States measured thereby* ***is declared to be against public policy****; and* ***no such provision shall be contained in or made with respect to any obligation hereafter incurred****.”*

**JURY TRIAL ANOTHER DEMANDS**

As acknowledged by law I have the right to demand a jury trial, I do so as of this moment.

As acknowledged by the rules of the court, Colorado statute, and the law I have the right to subpoena evidence, I do demand the court order the clerk to issue subpoenas in blank so that I may acquire the necessary evidence to prove my portion of the case.

I also bring to this body’s attention that the foreclosure sale was invalid for several reasons:

For my having filed a petition for adverse possession prior to the closing of any trustee sale.

My attempt to file a lien on the property for greater than $300,000 of which this court prevented without lawful justification.

That my intent to cure payment that was sent via certified mail was not process in accord with the law.

That I had foreclosure protection insurance, that insurance for which I paid the premium is there to protect all parties against losses in this matter.

An I challenge the constitutionality of the foreclosure process in the state of Colorado, I hereby make a challenge on the statute for denying individuals equal protection and due process of law.

I also remind this body of the information mentioned aforehand,

*“Resolution Adopted by The Federal Reserve Board of New Your. Whereas, in the opinion of the Board of Directors of the Federal Bank of New York, the continued and increasing withdrawal of currency and gold from the banks of the country has now created a national emergency …”*

 *“… that those speculator and insiders were right was plain enough later on. This first contract of the ‘moneychagers’ with the New Deal netted those who removed their money from the country a profit of up to 60 percent when the dollar was debased.” [Hoover Policy Paper, written by the Secretary of Interior and Secretary of Agriculture]*

 *“Whereas, it is provided in Section 5(b) of the Act of October 6, 1917, as amended, that*
*‘the President may investigate, regulate, or prohibit, under such rules and regulations as he*
*may prescribe by means of licensure or otherwise, any transaction in foreign exchange and*
*the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or*
*currency, \*\*\*’”.]*

*“Be it enacted by the Senate and the House of Representative of the United States of America in Congress assembled, That the* ***Congress hereby declares that a serious emergency exists*** *and that it is imperatively necessary speedily to put into effect remedies of uniform national application.” [emphasis added]*

 *“Whereas,* ***under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued by the President pursuant to the authority enforced by section 5(b) of the Act of October 6, 1917, as amended, are approved and confirmed****;” [President Roosevelt’s Proclamation 2040].*

So that it is not misunderstood by anyone, I am not bring up information I found on the Internet, or in some strange website, the information I am producing is information I found on the United States official website, note the following regarding the current banking emergency/banking holiday-

*“Bank holiday of 1933. Presidential Proclamations No. 2039, issued March 6, 1933, and No. 2040, issued March 9, 1933,* ***temporarily suspended banking transactions by member banks of the Federal Reserve System. Normal banking functions were resumed on March 13, subject to certain restrictions****. The first proclamation, it was held, had no authority in law until the passage on March 9, 1933, of a ratified act (12 U.S.C.A. § 95b).*

Now let’s take note of the actual enforcement of the proclamation or executive orders 2039 and 2040: *“During this banking holiday it was at first believed that some form of script or emergency currency would be necessary for the conduct of ordinary business. We knew that it would be essential when the banks reopened to have an adequate supply of currency to meet all possible demands of depositors. Consideration was given by government officials and various local agencies to the advisability of issuing clearing house certificates or some similar form of local emergency currencies. On March 7, 1933, the Secretary of the Treasury issued a regulation authorizing clearing houses to issue demand certificates against sound assets of the banking institutions. But this authority was not to become effective until March 10th. In many cities, the printing of these certificates was actually begun. But after the passage of the Emergency Banking Act of March 9, 1933, (48 Stat. 1) it became evident that they would not be needed because the act made possible the issue of the necessary amount of emergency currency in the form of Federal Reserve Bank Notes which could be based on any sound assets owned by the banks.” [Roosevelt’s papers]*

So we see that Roosevelt’s papers admit that the Emergency Banking Act made it possible to issue emergency currency which was based upon the assets of the bank rather than upon gold or silver (remove the U.S. from the gold standard). The “**emergency currency**” Federal Reserve Notes are still used today.

 *“Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of the United States… any Federal Reserve bank making such deposit in the manner prescribe by the Secretary of the Treasury shall be entitled to receive from the Comptroller of the currency circulating notes in blank, duly registered and countersigned.” [Emergency Banking Act of March 9, 1933, section 4, Public Law 89-719]*

Did you know that the banking holiday was only supposed to last until 13 March 1933, or until the Pres. issued a proclamation ending the banking holiday? It appears that was the intent, however, when Congress introduced into law **THE EMERGENCY ECONOMIC BANKING RELIEF ACT** of March 9, 1933; they actually make the Banking Holiday official, by making it a legislative act, and thus it alleviated any need for a March 13 suspension and or a secondary president proclamation, because now it could only be halted by a repeal of the act making the emergency currency and a restriction on banking activities enforceable in the first instance.

The statute for the state of Colorado is unconstitutional as it violates my rights and the rights of other citizens of the state of Colorado in that it denies us the right to property, the right to currency, not emergency currency known as the Federal Reserve, but actual currency lawful monies as authorized under title 12 United States code section 411.

Did you know that the United States Department of the Treasury says that Federal Reserve notes are worthless, have no value, have no backing of any sort?

Please take a note of what the United States Department of the Treasury says in its official press release of 2011 (<https://www.treasury.gov/resource-center/faqs/Currency/Pages/legal-tender.aspx>):

Federal Reserve notes are not redeemable … and **receive no backing by anything** This has been the case since 1933. The notes have no value for themselves…**Federal Reserve notes** are "**backed**" by all the goods and services in the economy.

It’s ironic that the United States Treasury Department states that Federal Reserve notes have no backing, and are not redeemable in anything, and then they say there backed by the goods and services of the economy, I have never read that law, I have never ever seen the law were Congress has valuated the goods and services of the economy. Where Congress has actually placed into law the actual value of goods and services in the economy. That would be an interesting law, because the law would have to specifically address each and every goods, and services in the economy, that would be millions of valuations.

Please understand that the presidential proclamation 2039, and 2040 are part of the federal registry, giving them the effect of law administratively that is of the executive branch. Those proclamations have not been repealed by the administrative-executive branch, and according to the very wording of the proclamation that exactly what would need to happen is that the president must issue another proclamation, coming from not the legislative branch, but from the executive branch, repealing and or rescinding the initial proclamation, take note-

 On March 9 Congress convened and promptly enacted the President's emergency
banking legislation.5 Recognizing the limitations of the legal authority the President had cited for his declaration of a national bank holiday, the legislation amended § 5(b) of the Trading with the Enemy Act to allow it to be used not only in time of war but also "during6 any other period of national emergency declared by the President." The banking legislation also declared that "a serious emergency exists," conferred the extensive discretionary powers over the banking and currency systems on the President and the Federal Reserve Board, and **gave both retroactive and prospective congressional approval**7 to any and all actions taken by the President pursuant to the authority of § 5(b). On the

2Proclamation No. 2038 (March 5, 1933); 48 Stat. 1689.
3Proclamation No. 2039 (March 6, 1933); 48 Stat. 1690.
440 Stat. 415.
5Ch. 1, 73d Cong., 1st Sess. (March 9, 1933); 48 Stat. 1.
6Ch. 1, Title I, § 2 (March 9, 1933); 48 Stat. 1; 12 U.S.C. 95a and 50 U.S.C. App. 5(b).
As amended,

7 basis of this expansive statutory authority, **the President in Proclamation No. 2040 on
March 9 extended the national emergency and the bank holiday he had declared on March 6 "until further proclamation by the President"**

8 September 14, 1976." The Senate Special Committee had found

that not only President Roosevelt's 1933 proclamation of a national

emergency but also a proclamation by President Truman and two by

President Nixon were still extant. Technically, the National

Emergencies Act did not repeal or terminate those four declarations

of national emergency, but with the exception noted below, this

section of the Act did render them hollow shells.

Act of March 9, 1933, supra, § 1; 12 U.S.C. 95b.

8Proclamation No. 2040 (March 9, 1933); 48 Stat. 1691.

9E.O. 6260 (Aug. 28, 1933).

10SENATE SPECIAL COMMITTEE ON NATIONAL EMERGENCIES AND

DELEGATED EMERGENCY POWERS, FINAL REPORT: NATIONAL EMERGENCIES

AND DELEGATED EMERGENCY POWERS, S. Rept. No. 94-922, 94th Cong., 2d Sess. (1976).

11P.L. 94-412 (Sept. 14, 1976); 90 Stat. 1255; 50 U.S.C. 1601 et seq.

12Id., § 1601(a).

I would be remiss if I did not point out from the actual congressional record with Congress members understood as to the intent of the act known as THE EMERGENCY ECONOMIC BANKING RELIEF ACT OF MARCH 9, 1933:

excepts from the Congressional Record during the debate over the Emergency Banking Act of 1933.

*[Mr. McPhadin] “… The first section of the bill, as I grasped it, is practically the war powers that were given back in 1917. I would like to ask the chairman of the committee if this is a plan to change the holding of the security back of the Federal Reserve notes to the Treasury of the United States rather than the Federal Reserve agent.”*

*[Mr. Stiggle] “This provision is for the issuance of Federal Reserve bank notes; and* ***not for Federal Reserve notes****; and the security back of it is the obligations, notes, drafts, bills of exchange, bank acceptances, outlined in the section to which the gentleman has referred.”*

*[McPhadin] “Then the new circulation is to be Federal Reserve bank notes and* ***not Federal Reserve notes****. Is that true?”*

[Stiggle] “Insofar as the provisions of this section are concerned, yes.”

*“[Mr. Britain} From my observations of the bill as it was read to the House, it would appear that the amount of bank notes that might be issued by the Federal Reserve System is not limited. That will depend entirely upon the mount of collateral that is presented from time to time from exchange for bank notes. Is that not correct?”*

*[McPhadin] “Yes, I think that is correct.”*

*So there you have it Federal Reserve notes are not backed by anything not even the congressional record, and since Federal Reserve bank notes are no longer in circulation, and United States notes are no longer in circulation as the United States treasury has set on their actual website:*

“…**United States Notes and Federal Reserve Notes are parts of our national currency and both are legal tender**. They circulate as money in the same way. However, **the issuing authority for them comes from different statutes**. **United States Notes were redeemable in gold until 1933, when the United States abandoned the gold standard**. Since then, **both currencies have served essentially the same purpose, and have had the same value**, (This simply means that both currencies are well documented as worthless, valueless, not backed by anything, not redeemable and so forth). Because **United States Notes serve no function that is not already adequately served by Federal Reserve Notes, their issuance was discontinued**, and none have been placed in to circulation since January 21, 1971.” (Emphasis added) (it should also be noted that the statute specifically spoke as to Federal Reserve bank notes and not Federal Reserve note, Federal Reserve notes is the emergency currency permitted under the proclamation for the current emergency and the emergency banking relief act of March 9, 1933; and as long as they are still in circulation this is further proof to concur with the Senate of 1976 that the banking holiday and the national emergency still exists).

Let’s take a look at what the Senate said September 14, 1976 about the existence of the banking holiday, because they as published in the federal registry discovered that the proclamations 2039 and 2040 were still extant, in order for us to understand what that means we have to look up the legal definition for the word extant-

**ex·tant**. adjective. The **definition** of **extant** is something that still exists. An example of **extant** used as an adjective is an **extant law** which **means** a **law** that is currently active.

September 14, 1976." The Senate Special Committee had found that not only President Roosevelt's 1933 proclamation of a national emergency but also a proclamation by President Truman and two by President Nixon were still extant.

Since the proclamations of Roosevelt declared a banking holiday, and there has been no succeeding proclamation to repeal that presidential declared order/proclamation, we are still in a baking emergency, a banking holiday, using emergency currency, which means during that emergency this body does not have the statutory authority to proceed in a matter involving properties in America. All banking activities have been halted as a result of the current emergency.

So I challenge this courts subject matter jurisdiction, in rem jurisdiction, and personal jurisdiction as being nonexistent as a result of the current emergency. And because the current emergency is a federal issue this matter is properly brought in the court of original jurisdiction, and because of the current banking emergency the statute violates my constitutional rights which may not basis ended as a result of a national emergency because such a suspension would have to be edged out in the constitutional provisions themselves within the framework of the Bill of Rights, no such provision exists.

So because we have the diversity of citizenship issue, the value of the claim, and the federal question this matter is properly brought in federal jurisdiction and not within the venue of small claims.

And **I also object to being before a magistrate,** as I demand a jury trial before an actual presiding judicial officer of the judicial branch of government, which branch of government may not be suspended as a result of the current emergency because to suspend such access would be to suspend the Constitution, for which the public has not been made aware of such a suspension of access to government in violation of their First Amendment, fourth amendment, Fifth Amendment, and six commitment rights.

Monetary, compensatory, and punitive damage demanded

Because of the damages that of been caused me as a result of this matter, and the associated conspiracy, constructive fraud, misapplication of law, falsification of the public record by filing misguiding, misleading, and fraudulent documents, the attempt to take and sees my property in violation of my right to property, my right the contract, and the violations of the deed of trust, the blocking of my access to the court, the blocking of my access to redress, I hereby bring my claim for damages in the amount of $10 million to be divided amongst the defendants equally because they all shared in this conspiracy and are all liable for slander, libel, and deformation.

I do hereby authorize the payment of the fees for this matter to be drawn out of the trust account that has been set up in my stead as a result of the taking emergency and I attached the Social Security Administration form 445 to this presentment as proof of said authorization.

I do hereby attest, affirm, ascribe, and declare that I have firsthand knowledge of the information presented herein, that I am competent to make such claims, that I am despite the lack of proper service, a party to this matter, and that the aforementioned is accurate under penalty of the state/Republic of Colorado Constitution, and the United States of America Constitution on this October 2, 2017, so help me God.

 x\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **THE BENEFICIAL OWNER OF THE EQUITABLE CESTUI QUE TRUST**

**STATE OF** Washington

**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

On October **\_\_,** 2017, before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public, personally stood **Csztr Bifford** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of Washington that the foregoing paragraph is true and correct.**

Home Bldg . & Loan Ass'n v. Blaisdell [290 U.S. 398](http://caselaw.findlaw.com/us-supreme-court/290/398.html)(1934) “… during the emergency declared to exist, … ' The act is to remain in effect 'only during the continuance of the emergency …”

**Note this above case is a 1934 case, and this 1934 case the Supreme Court documents that the emergency was still in existence, yet the original proclamation was misconstrued, misunderstood, misinterpreted as the end approximately six days from its inception, on March 13, 1933.**

**In Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) the Supreme Court held that the president could not have such power over the people without congressional support, yet there is no statute, congressional authority of delegation which would permit any of the branches of government independently, severally, and/or collectively in any combination to suspend, cancel, terminate, and/or abolish the Constitution, there is no due process of law provision associated with such an abridgment.**

We find that although the president then issued a proclamation declaring an emergency, and Congress did in fact present several acts, notably the **EMERGENCY ECONOMIC BANKING RELIEF ACT** of March 9, 1933 and **THE GOLD REPEAL ACT** of June 5 and 6, 1933-

The Exemption

by Moses G. Washington

revised on 10/19/2004

Disclaimer

The material in this essay is for educational purposes only and not to be construed as legal advice about what you should or should not do. The information herein is to assist you in performing your own due diligence before implementing any strategy. Formal notice is hereby given that:

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In this essay we will examine the evidence that the government owes each American a huge debt and that this debt can be used as an alternative to using Federal Reserve Notes (FRN) to discharge our debts. In order to best understand the material in this essay, you should have already read the articles on "U. S. Bankruptcy," "Federal Reserve," and "Meet Your Straw Man".

Throughout this document we will be quoting various sources. The quotes will be shown in blue ink and a "sans serif" font. The regular text of this essay and comments in the midst of quoted text will be shown in black ink and a "serif font. I will also occasionally underline certain text to draw your attention to key phrases.

Constitutional Money

We will begin our study of this subject with a review of what the Constitution has to say about money. [Congress shall have Power] To coin Money, regulate the Value thereof, and of foreign Coin ... [Article 1, Section 8, clause 5]

No State shall ... make anything but gold and silver Coin a Tender in payment of Debts... [Article 1, Section 10, clause 1]

From these quotes we can conclude that the people have delegated power to Congress to coin money, and set its value. The States also formed an agreement agreeing that only gold and silver coins would be valid payment of debts. This concept of paying a debt will be very important to our discussion, so let's see how "pay" is defined.

Pay. To discharge a debt by tender of payment due; to deliver to a creditor the value of a debt, either in money or in goods , for his acceptance. [Black's Law Dictionary 5 th Edition] While the above definition uses the word "discharge," we do not believe that "pay" and "discharge" carry the same meaning. You will notice that pay carries with it the concept of "deliver to the creditor the value of a debt, either in money or in goods." This means that "pay" includes the concept of "exchange."

Exchange. To barter; to swap. To part with, give or transfer for an equivalent... [Black's Law Dictionary 5 th Edition]

So the idea of an exchange is one in which two parties transfer items one to the other for like value. We conclude from this definition that an exchange pays a debt in full. Both parties received something of equal value. Now let's look at the definition for "discharge."

Discharge. To release; liberate; annul; unburden; disencumber; dismiss. To extinguish an obligation; ... [Black's Law Dictionary 5 th Edition]

It is clear from this definition that "discharge" is very different from "pay". It is evident that there is no exchange of equal value occurring when a debt is discharged.

The system that was set when our republic was founded allowed people to "pay" their debts. Gold and silver both are substances that have been recognized to have intrinsic value for thousands of years. If someone wanted to buy a cow and a price of $20 was agreed to between the buyer and the seller, an exchange takes place between the parties when the buyer exchanges the $20 gold piece for the cow.

Our concept of money has changed from the founding of our country from being gold and silver coins to paper money not backed by gold (fiat money). These concepts began to change after the Civil War.

Legal Tender Cases

During the Civil War, the US government issued "green backs" which was money backed by nothing, fiat money. This was a significant change from the systems that was established in the

Constitution. These green backs were very similar to our current Federal Reserve Notes. There were a number legal cases that ruled on the constitutionality of the green back currency. In each of the initial cases, the courts ruled that the green backs were unconstitutional. But the Knox v. Lee case reversed the prior decisions of the Supreme Court. This case decided that the government could issue "legal tender" that is not backed by gold and silver thus paving the way of the Federal Reserve Bank in 1913 and the "confiscation" of the gold in 1933.

The following excerpts are taken from the case. In order to understand this decision, it is important to realize that the Supreme Court was acting as a Court of Equity, which operates under different rules than a common law court. The presumption in a court of equity is that the government is sovereign, owning everything, and that the defendant and the plaintiff are US citizens. As citizens, they are both viewed as debtors to the sovereign government. The court that covers actions between two debtors in the US is an admiralty court which operates under equity rules. Given this presumption, it is perfectly valid for the court to make decisions regarding who owes who what debt. The court is acting like a parent who resolves disputes between two children over who has the right to a toy that both children want. The court believes it is right and fitting for them to tell the parties what the sovereign (government) wants done with the assets that they (the plaintiff and defendant) are using. The argument presented by the Attorney General Akerman reflects this attitude of sovereignty resting with the government. Akerman suggests why the national government should be able to issue paper currency that is not backed by gold. Congress ... to exercise a power conferred by the Constitution, [then] the means which it selects are constitutional, whatever may be the opinion of the court of its practical wisdom, because the decision, whether practically conducive to the end proposed, is a political and administrative question, and not a judicial one ... If the government needed gold, and it was in the possession of A, it could take it from him, as they could take his personal service, against his will , or could batter down his house, if it stood in the way of military operations. [Much of what is done that seems to violate the Constitution is done under the "law of necessity" which derives its authority from military or martial law. This case was after the Civil War had concluded but the Attorney General is arguing as if the war was still being fought.] If A had said, "I owe this gold to B, and am on my way to pay him my debt," the officers of the government could accompany him to his creditor, and when the payment was made, seize it from him. What difference does it make whether it was the form in which it was done, or whether it was taken from A, and there was furnished him certifies that the money belonged to B, and intended for him, was taken by the government, which would he responsible to B for its payment ? [Attorney General Akerman; Knox v. Lee, 79 U.S. 287, 304, 12 Wall. 457-681 (1870)]

Akerman is suggesting that since the government has the right to take the gold, it doesn't matter if they take it from person "A", the debtor, or if the take it from person "B", the creditor. Akerman' s presumption is that the government has the right to the gold. If the government does have the right to the gold, then they can just give "A" a piece of paper, a certificate or legal tender, that "A" can give to "B". Ackerman suggests there is no difference. If the government took the gold and other substance based money, then the government would be responsible for all debts because they took the substance based money out of circulation. The government is giving a certificate in its place. Since the government removed the ability of the people to pay, the government is responsible for the debt. If the government took the gold out of circulation, it would be responsible for all debts because the government is the only one with the ability to pay. No one else has anything of substance with which to pay. You have heard it said that "he who had the gold makes the rules." But it can also be said that "he who has the gold pays." The following excerpt from the Knox v. Lee case shows how the composition of the court was changed in order to get the desired ruling.

A majority of the court five to four, in the opinion which has just been read, reverses the judgment rendered by the former majority of five to three, in pursuance of an opinion formed after repeated arguments, at successive terms, and careful consideration; and declares the legal tender clause to be constitution; that is to say, that an act of Congress making promises to pay dollars legal tender as coined dollars in payment of pre-existing debts is a means appropriate and plainly adapted to the exercise of powers expressly granted by the Constitution, and not prohibited itself by the Constitution but consistent with its letter and spirit. And this reversal, unprecedented in the history of the court, has been produced by no change in the opinions of those who concurred in the former judgment. One closed an honorable judicial career by resignation after the case had been decided, after the opinion had been read and agreed to in conference, and after the day when it would have been delivered in court, had not the delivery been postponed for a week to give time for the preparation of the dissenting opinion. The court was then full, but the vacancy caused by the resignation of Mr. Justice Grier having been subsequently filled and an additional justice having been appointed under the act increasing the number of judges to nine, which took effect on the first Monday of December, 1869, the then majority find themselves in a minority of the court as now constituted, upon the question. [The CHIEF JUSTICE, Chase, dissenting; LEGAL TENDER CASES Knox v. Lee, 79 U.S. 287,319 (1870)]

But it has been claimed to be a proper regulation of commerce, for Congress to provide a uniform national currency; and that these legal tender notes were, in effect, a mortgage on the whole property of the nation [This is very similar what was said during testimony on the emergency banking legislation passed on March 9, 1933. See the quote below.] and therefore, the best secured and most uniform currency the nation could have. Although, in truth, the security for this or any national debt is exactly the extent to which the people will consent to contribute through taxation to its payment. [Knox v. Lee, 12 Wall. 287,298, (1870)]

The Knox v. Lee case set the stage for what happened in 1913 (Federal Reserve Act was passed, see the Federal Reserve article) and in 1933 when the country was taken off the gold standard.

Events of 1933

You may recall from the U.S. bankruptcy article that shortly after Frank D. Roosevelt was inaugurated, he called a special session of Congress. He asked Congress to pass emergency banking legislation. On, March 9, 1933, Congress passed the emergency measure that FDR requested declaring a banking holiday. The fundamental nature of the banking systems was hanged in this legislation. As a result of the legislation, all banks had to become members of the Federal Reserve system. This act further made the Federal Reserve Note the only paper currency valid in the US. The Federal Reserve Notes (FRN) were no longer going to be backed by gold but only by the credit of the people and their property. A quote from the Congressional Record that occurred during the debate on the bill demonstrates this fact. The money will be worth 100 cents on the dollar because it is backed by the credit of the Nation. It will represent a mortgage on all the homes and other property of all the people in the Nation . [Congressional Record, March 9, 1933, emphasis added]

This language sound very similar what was said in the Knox v. Lee case shown above. The next major change that occurred, was an Executive Order issued on April 5, 1933. This order required all "individuals, partnerships, associations and corporations" to turn in their gold. In the essay, "Meet Your Straw Man", we have already seen that "partnerships, associations and corporations" are "legal fictions" created by the civil government. However, the term "individual" and "person" are used in the order. What do these terms mean?

"Individual. As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons. See also Person." [Black's Law Dictionary, 5th Edition]

"Person. In general usage, a human being (i.e. natural person) , though by status term may include a firm, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." [Black's Law Dictionary, 5th Edition]

Natural person. Any human being who as such is a legal entity as distinguished from an artificial person, like a corporation, which derives its status as a legal entity from being so recognized by law. [296 NY 395, 72 NE2d 716. Radin, Law Dictionary (1955)] ... natural persons, members of the body politic owing allegiance to the State. [Pembina v. Penn. 125 U.S. 181, 189 (1888)] human. 1. Belonging to man or mankind... 3. Profane; not sacred or divine. [American Dictionary of the English Language, Noah Webster, 1928] human being. See Monster . [2 Bl. Com. 24. Law Dictionary with Pronunciations by James Ballentine, 1948 Edition] monster. A human-being by birth, but in some part resembling a lower animal... [2 Bl. Com. 24. Law Dictionary with Pronunciations by James Ballentine, 1948 Edition]

Our conclusion is that "person", and "individual" are terms referring to legal fictions, or a straw man. Both of these words are also said to be "natural persons" and as such are "members of the body politic owing allegiance to the State." These entities are created in and exist in the civil society that we call "the public". As such they are subject to the rules established by their creators, the civil government. Men, on the other hand, are outside of "the public". You might think of "the public" as if it were a "box" that contains only legal fictions and men live outside of this box. Since the Executive Order applies to individuals and persons, by necessity, it did not apply to men. Below is the complete text of the Executive Order with some imbedded comments.

Executive Order of April 5,1933

UNDER EXECUTIVE ORDER OF THE PRESIDENT Issued April 5, 1933

All persons [The order applied to persons which did not include men. So when men turned in their gold, they did so voluntarily.] are requited to deliver ON OR BEFORE MAY 1, 1933, all GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES now owned by them to a Federal Reserve Bank, branch or agency, or to any member bank of the Federal Reserve System.

EXECUTIVE ORDER FORBIDDING THE HOARDING OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing Emergency in Banking, and for other purposes" [The "state of emergency," due to the "law of necessity," was used as an excuse for issuing the order.] in which Amendatory Act Congress declared that a serious emergency exists, I, Franklin D. Roosevelt, President of the United States of America, do declare that said national [The use of the word "national" seems to signify the civil government acting as sovereign while under the original intent of the Constitution the people were viewed as sovereign and the source of all authority.] emergency still continues to exist, and pursuant to said Section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations , [The order only applies to these entities, but men were excluded from the order.] and hereby prescribe the following regulations for carrying out the purposes of this Order.

Section 1. For the purposes of this regulation the term "hoarding" means the withdrawal and withholding of gold coin, gold bullion or gold certificates from the recognized and customary channels of trade. The term "person" means any individual, partnership, association or corporation . [Again, the order applies only artificial entities and not to men.]

Section 2. All persons are hereby required to deliver on or before May 1, 1933 , to a Federal Reserve Bank or branch or agency thereof or to any member bank of the Federal Reserve System all gold coins, gold bullion or gold certificates now owned by them or coming into their ownership on or before April 23, 1 933, except the following:

(a) Such amount of gold as may be required for legitimate and customary use in industry, professions, or art within a reasonable time, excluding gold prior to refining and stocks of gold in reasonable amounts for the usual true requirements of owners mining and refining such gold.

(b) Gold coins and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person; and gold coin having a recognized special value to collectors or rare and unusual coins.

(c) Gold coin and bullion earmarked or held in trust for a recognized foreign government [Men are foreign to the government, they are outside "the box" or outside "the public.".] (or foreign central bank or the Bank for International Settlements).

(d) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for re-export or held pending action on application for export license.

Section 3. Until otherwise ordered by any other person becoming the owner of any gold coin, gold bullion or gold certificates after April 23,1933, shall within three days after receipt thereof, deliver the same in the manner prescribed in Section 2: unless such gold coin, gold bullion or gold certificates ore held for any of the purposes specified in paragraphs (a), (b), or (c) of Section 2: or unless such gold coin, or gold bullion is held for purposes specified in paragraph (d) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

Section 4. Upon receipt of gold coin, gold bullion or gold certificates delivered to it in accordance with Section 2 or 3, the Federal Reserve Bank or member bank will pay therefore an equivalent amount of any form of coin or currency coined or issued under the laws of the United States . [The value of gold had been arbitrarily held to a fixed value by the Federal government. It was not permitted to float in value as it is today. If someone turned in $10,000 worth of gold, the banks would give an equivalent amount of currency. On the surface, it would appear that value ($10,000 in gold) was given for value ($10,000 in currency). However, the gold had real intrinsic value while the currency was worthless paper. This was not an exchange but rather a transfer of the gold from men to the government.]

Section 5. Member banks shall deliver all gold coin, gold bullion and gold certificates owned or received by them (other than as exempted under the provisions of Section 2) to the Federal Reserve Banks of their respective districts and receive credit or payment therefore . [This indicates that the Federal Reserve Banks are holding the credits for the gold.]

Section 6. The Secretary of the Treasury, out of the sum made available to the President by Section 301 of the Act of March 9, 1933, will in all proper cases pay the reasonable costs of transportation of gold coin, gold bullion or gold certificates delivered to a member bank or Federal Reserve bank in accordance with Section 2, 3, or 5 hereof, including the cost of insurance, protection, and such other incidental costs as may be necessary, upon production of satisfactory evidence of such costs. Voucher forms for this purpose may be procured from Federal Reserve Banks.

Section 7. In cases where the delivery of gold coin, gold bullion or gold certificates by the owners thereof within the time set for the above will involve extraordinary hardship or difficulty, the Secretary of the Treasury may, in his discretion, extend the time within which such delivery must be made. Applications for such extensions must be made in writing under oath, addressed to the Secretary of the Treasury and filed with a Federal Reserve Bank. Each application must state the date to which the extension is desired, the amount and location of the gold coin, gold bullion and gold certificates in respect of which such application is made and the facts showing extension to be necessary to avoid extraordinary hardship or difficulty.

Section 8. The Secretary of the Treasury is hereby authorized and empowered to issue such further regulations as he may deem necessary to carry out the purpose of this order and to issue licenses there under, through such offices or agencies as he may designate, including licenses permitting the Federal Reserve Banks and member banks of the Federal Reserve System, in return for an equivalent amount of other coin, currency or credit, to deliver, earmark or hold in trust [This is a vitally important concept.

The Federal government set up a trust where the Secretary of the Treasury is acting as the trustee. The people voluntarily transferred their gold to the government. The gold and perhaps was other things are the assets of the trust. The people would also be the beneficiaries of this trust.] gold coin and bullion to or for persons showing his need for the same for any of the purposes specified in Paragraphs (a), (c) and (d) of Section 2 of these regulations.

Section 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued there under may be fined not more than $10,000, or if a natural person, may be imprisoned for not more than ten years, or both and any officer, director or agency of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisoned, or both.

This order and these regulations may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE

April 5, 1933

Further Information Consult Your Local Bank GOLD CERTIFICATES may be identified by the words "GOLD CERTIFICATE" APPEARING THEREON. The serial number and the Treasury seal on the face of a GOLD CERTIFICATE are printed in YELLOW. Be careful not to confuse GOLD CERTIFICATES with other issues which are redeemable in gold but which are not GOLD CERTIFICATES. Federal Reserve Notes and United States Notes are redeemable in gold but are not "GOLD CERTIFICATES" and are riot required to be surrendered.

Special attention is directed to the exceptions allowed under

Section 2 of the Executive Order

CRIMINAL. PENALTIES FOR VIOLATIONS OF EXECUTIVE ORDER

Our conclusion after analyzing the order, is that men voluntarily gave up their gold, a substance with intrinsic value, for worthless paper. The gold was held in trust for the people by the government. The Secretary of the Treasury acts as the trustee of this trust. The people, and by extension their children and heirs, are the beneficiaries of this trust. This means we have a beneficial interest in the assets of the trust. We will see later that other assets were also given to the government.

The next major step was making it illegal to require gold as a valid form of payment for debts.

This was done by House Joint Resolution (HJR) 192. Below is the complete text of HJR 192.

JOINT RESOLUTION TO SUSPEND THE GOLD

STANDARD AND ABROGATE THE GOLD CLAUSE

JUNE 5, 1933

H.J. Res. 192, 73 rd Cong. 1 st Session

Joint resolution to assure uniform value to the coins and currencies of the United State- Whereas the holding of or dealing in gold affects the public interest, and therefore subject to the proper regulation and restriction; and Whereas the existing emergency [Again an "emergency" was used as the excuse for the action.] has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy [Congress is setting a public policy which is defined as "principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole society." Black's Law Dictionary 7 th Edition..] of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts, Now, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that

(a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payments in gold or a particular kind of coin or currency [Currency would include all of Ml, M2 and M3 money as defined by the Federal Reserve.], or in an amount in money of the United States measured thereby, is declared to be against public policy ; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. [This clause makes it contrary to public policy for any creditor to require payment in any particular form. This means that no creditor can ask for payment by check, cash, or cashiers check. It also means that they are not permitted to dishonor a valid form of payment.] Every obligation, heretofore or hereafter incurred , whether or not any such provision is contained therein or made with respect thereto, shall be discharged [You could no longer "pay off a debt. You can only discharge a debt.] upon payment, dollar for dollar, in any coin or currency which at time of payment is legal tender for public and private debts . [Any valid form of "legal tender" must be accepted to discharge a debt. The debt must be discharged "dollar for dollar" which means that we discharge the exact amount shown on a charging instrument (bill or invoice).] Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is herby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term 'obligation' means any obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including [The term "including" means that what follows is a partial list and it implies that other things may also belong in the list. The term "includes", on the other hand is a limiting term that indicates only the specific items listed may be included.] Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2 The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and of other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United Stated (including [Due to the use of the word "including," other things may also be valid currency.] Federal Reserve notes and circulating notes of the Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender [Just because other forms of payment are not listed does not exclude them from being valid forms of legal tender. You will notice that checks and credit cards are accepted but these instruments are not listed.] for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.'

Approved, June 5, 1933, 4:40 p.m. 31 U.S.C.A. 462, 463 House Joint Resolution 192, 73d Congress, Sess. I, Ch. 48, June 5, 1933 (Public Law No. 10 )

One sample court case that ruled on the legality of HJR 192 was GUARANTY TRUST CO. OF NEW YORK v. HENWOOD, 307 US 247 (1939). This case held that HJR 192 was lawful.

Some interesting excerpts are included below... Analysis of the terms of the Resolution discloses, first, the Congress declared certain types of contractual provisions against public policy in terms so broad as to include then existing contracts, as well as those thereafter to be made. In addition, future use of such proscribed provisions was expressly prohibited, whether actually contained in an obligation payable in money of the United States or separately 'made with respect thereto.' This proscription embraced 'every provision' purporting to give an obligee a right to require payment in (1 ) gold: (2) a particular kind of coin or currency of the United States: or (3) in an amount of United States money measured by gold or a particular kind of United States coin or currency . ... Congress - apparently to obviate any possible misunderstanding as to the breadth of its objective - ended, with studied precision, a catchall second sentence sweeping in 'every obligation', existing or future, 'payable in money of the United States', irrespective of whether or not any such provision is contained therein or made with respect thereto. The obligations hit at by Congress were those 'payable in money of the United States .' All such obligations were declared dischargeable 'upon payment, dollar for dollar, in any coin or currency (of the United States) which at the time of payment is legal tender for public and private debts.'... That which the Joint Resolution made dischargeable was the debt - the monetary obligation to pay . ... Congress sought to outlaw all contractual provisions which require debtors, who have bound themselves to pay United States dollars, to pay a greater number of dollars than promised. The Resolution intended that debtors under obligation to pay dollars should not have their debts tied to any fixed value of particular money, but that their entire obligations should be measured by and tied to the actual number of dollars promised, dollar for dollar .

... The enacting part of the resolution proscribes 'every provision ... which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or an amount in money of the United States measured thereby ', and declares ' Every obligation , heretofore or hereafter incurred,

whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender ...' 'Obligation', it states, 'means an obligation ... payable in money of the United States'. Thus the resolution proclaims that it is aimed at gold clauses and declares, if language is to be taken in its plain and most obvious sense, that provisions requiring payment in gold dollars or measured by gold are illegal and that every promise or obligation payable in money of the United States' shall be discharged 'dollar for dollar' in legal tender currency.

As a result of HJR 192, the people can no longer pay their debts. They have nothing of value to

give in exchange for the goods and services they need. According to HJR 192, we can only

discharge our debts. This was a huge change in our society. But very few people realized what

had occurred.

The following diagram shows what happened when HJR 192 was passed. You will notice that

some entities are inside a box. These are what we are calling "the public." Men contributed their

gold and other assets and became beneficiaries of a public trust but "persons" are considered

impostors. So knowing ones status when attempting to access the benefits of the trust is vital.

Everything inside the box either serves as a fiduciary or a manager of the trust. The Secretary of

the Treasury also serves as the trustee and the receiver of the U.S. bankruptcy. The person in this

position is the only individual who can see both inside the box, the public, and outside the box.

He who has the gold, pays the bills

-OR-

provides an exemption!

Title to Property

We have alluded to the fact that other items were donated to "the public" to serve as collateral

for the U.S. bankruptcy. The quote from the congressional record indicates that "all the homes

and other property of all the people in the Nation" would be mortgaged. Beginning in 1933 or

earlier, a system was set up to accomplish this objective. To understand this concept, we will

have to explore the meaning of the word "title." To accomplish this, we will examine various

kinds of title.

Title. Real Property Title. Title is the means whereby the owner of lands [or any other tangible assets

such as a car] has the just possession of his property. The union of all the elements which constitute

ownership. Full independent and fee ownership. The right to or ownership in land; also, the evidence of such ownership.... [Black's Law Dictionary, 5 th Edition]

Absolute title. As applied to title to land, an exclusive title, or at least a title which excludes all others not

compatible with it. An absolute title to land cannot exist at the same time in different persons or in different governments. [This suggests that various aspects of title can be held by different parties.] See also Fee simple . [Black's Law Dictionary, 5 th Edition]

Fee simple. Absolute. A fee simple absolute estate limited absolutely to a man and his heirs and assigns forever without limitation or condition. An absolute or fee-simple estate is one in which the owner is entitled to the entire property , with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death interstate. Such estate is unlimited as to duration, disposition, and descendibility. [Black's Law Dictionary, 5 th Edition]

A term which is very similar to "fee simple" is allodium.

Allodium. Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens. An estate held by absolute ownership, without recognizing any superior to whom any duties is due on account thereof. [Black's Law Dictionary, 5 th Edition]

From the above definitions, we see that there are multiple "elements which constitute ownership."Title can be divided into two distinct parts: "equitable title" and "legal title."

Legal title. One cognizable or enforceable in a court of law, or on which is complete and perfect so far as regards the apparent right of ownership and possession , but which carries no beneficial interest in the property , another person being equitably entitled thereto; in either case, the antithesis of "equitable title." ... [Black's Law Dictionary, 5 th Edition]

Equitable title. A right to the party to whom it belongs to have the legal title transferred to him; or the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another. See also Equitable ownership . [Black's Law Dictionary, 5 th Edition]

Equitable ownership. The ownership interest of one who has equitable as contrasted with legal ownership of property as in the case of a trust beneficiary. Ownership rights which are protected in equity. See also Equitable interest . [Black's Law Dictionary, 5 th Edition]

Equitable interest. The interest of a beneficiary under a trust is considered equitable as contrasted with the interest of the trustee which is a legal interest because the trustee has legal as contrasted with equitable title. [Black's Law Dictionary, 5 th Edition]

The above definitions make it clear that the right to property is divided between equitable and

legal title. The legal title portion is the "right of ... possession but which carries no beneficial

interest in the property". The equitable title portion carries the beneficial interest portion of the

title. Based upon these definitions, we would suggest that when we buy property we are only

given the legal title and therefore only have the right of possession. This means when we buy

land and a house we can live on the land and in the house. But we suggest that the county where

it exists and is registered acts as the trustee to hold the equitable title, or beneficial interest, for the beneficiaries (the people). The county is the trustee over the equitable interest and we pay trustee fees to the county in the form of property taxes. One who holds property as fee simple or in allodium would pay no property taxes. In the early 1900s, virtually all property was held in allodium and no property taxes were paid.

We would suggest that these same principles of title apply to virtually all other things of value. We hold the right of possession and the government at some level (county, state, federal) acts as trustee to hold the equitable interest. In the article about the straw man, we saw that your birth certificate is registered when you are born. This means the government holds title to your straw man's name. When you get married, you get a marriage license that is registered with the state.

Some have suggested that this gives the state trusteeship over the equitable interest in the fruit of the marriage, the children. That is why the state, through child protective services, can take your children whenever they deem it appropriate. When you buy a car, the title is registered to the state. We pay trustee fees to the state every year in the form of license plate fees.

So we see that the government, as trustees, holds equitable interest in your (forefather's) gold, your home, your children, and your cars. This leads us to ask a critical question. What were we given in exchange for all of these assets? Our parents, grandparents or great grand parents were given paper money for their gold but this was not an exchange . The gold had real value but the paper money was worthless. The government needed the gold and your other assets as collateral against their bankruptcy. But what have we, the people, been given in exchange for all of these things? We were certainly due something of substance.

We would suggest that we, the people, have been placed in the position of being the creditors to the government. We are owed a huge debt because the government has used our property and substance to help with their bankruptcy. We have been duped into believing that we are responsible to repay the national debt. But we have, in fact, been the surety for the debt. The following quote sheds some light on the idea of a debtor.

Debtors are also principles and surety; the principal debtor is bound as between him and his surety to pay the whole debt, and if the surety pay it, he will be entitled to recover against the principal. [Bouvier's Law Dictionary 1856]

This quote indicates that there is a difference between the principal debtor (the government) and the surety (the people). It plainly says the principal debtor is responsible to pay back the debt. But if we, as the surety, do pay the debt, the surety is entitled to recover the cost from the debtor.

We have been paying the debt with our property, our labor and our taxes. We are owed a great deal.

Another way of looking at our monetary system is to say that everything in our society is pre- paid. All money is backed by the people and their property. Without us, there would be no money in our current system. Everything in society has been paid for at the manufacturing level with the money that was created from us and our property. Therefore, everything in existence in our society is an extension of what we are owed and therefore everything is pre-paid by us and for us.

How much are we owed for all that we have given? One way to answer this is to see how much "money" was created from each of us. One person tried to find the answer to this question by sending a FOIA (Freedom of Information Act) request. This person asked how much money had been created from his/her social security number. A letter was returned explaining that the government could not provide a full list of the Federal Reserve Notes that had been created from the social security number unless the person was willing to send them $2800, at 100/page, to provide a copying cost. This means there were a total of 28,000 pages. A few pages were attached to the letter that listed Federal Reserve Note serial numbers and value of each note.

Based upon this information, let's see if we can create a model to estimate the amount of money this 28,000 pages would represent. Let's assume that each page contained two columns of note numbers and denominations and that there were two columns per page, a total of 60 notes per page. Let's further assume the there is an even distribution of the following note denominations evenly distributed across all the pages: $1, $5, $10, $20, $50, and $100. This would mean that 280,000 notes of each denomination would be listed. These assumptions would yield a total of $52,080,000. This is just an estimate, but it should give you some idea that the government has created an enormous amount of money from each of us.

The Exemption - What We Are Owed

What do we get in exchange for all that has been created from us? We would suggest that what the people are owed is manifest in two ways: the people are beneficiaries in the trust and the people have been given an exemption. In the broadest terms, we call what is owed us an exemption.

Exemption. Freedom from a general duty or service; immunity form a general burden, tax or charge. Immunity from certain legal obligations ... [Blacks Law Dictionary 5 th Edition] We have been given an exemption from having to pay our debts. We now have the ability to discharge our debts. Do you suppose there is a way to use this exemption to discharge our debts by accessing what is owed to us and held in trust? We believe this is quite possible.

To begin to understand how we might access this exemption, we need to look at various forms of payment. We already know that that "all coins and currencies of the United States (including Federal Reserve notes ... ) ... shall be legal tender." But it appears that there are other forms of payment which are also valid that are not included in those listed above. A quote from the Uniform Commercial Code (UCC) will illustrate this point § 2.304. Price Payable in Money, Goods, Realty, or Otherwise

(a) The price can be made payable in money or otherwise . If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

This quote makes it clear that we may discharge our debts in something other than money, goods, or realty. What could this mean? A quote from a Federal Reserve publication will shed some light on this question.

Modern monetary systems have a fiat base - literally money by decree - with depository institutions, acting as fiduciaries, creating obligations against themselves with the fiat base acting in part as reserves.

The decree appears on the currency notes: "This note is legal tender for all debts, public and private."

While no individual could refuse to accept such money for debt repayment, exchange contracts could easily be composed to thwart its use in everyday commerce . However, a forceful explanation as to why money is accepted is that the federal government requires it as payment for tax liabilities. Anticipation of the need to clear this debt creates a demand for the pure fiat dollar. ["Money, Credit and Velocity," Review, May, 1982, Vol. 64. No. 5, Federal Reserve Bank of St. Louis, p. 25]

The Federal Reserve is saying that the people could easily replace the use of Federal Reserve Notes in daily life by using exchange contracts. This is amazing news. It means that we can use exchange contracts to discharge out debts. We will leave the discussion of what an exchange contract is and how it might be used for another essay.

For now, let's turn our attention to what we currently use for money or call money, Federal Reserve Notes. What is a note?

Note. An instrument containing an express and absolute promise of signer (i.e. maker) to pay to a specified person or order, or bearer, a definite sum of money at a specified time... [Black's Law Dictionary 5^ h Edition]

So a note is a promise to pay. The definition says that the note must be signed. If you look at a FRN you will notice there are two signatures (two witnesses) promising to pay, the Treasurer of the United States and the Secretary of the Treasury. So a FRN is a pledge on the part of the government to pay a debt. This means that an FRN is a liability and not an asset. It means that every FRN, currency, that is in circulation is actually a liability.

Accounting

If our currency is a liability, then there must also be some assets to balance the books. So it is apparent that we need to understand some basic accounting. First, let's first see how accounting and account are defined.

Accounting. An act or system of making up or settling accounts ; a statement of account, or a debit and credit in financial transaction... Rendition of an account, either voluntarily or by order of a court. In the latter case, it imports a rendition of a judgment from the balance ascertained to be due. the term may include payment of the amount due... Major accounting methods are the cash basis and the accrual basis. [Black's Law Dictionary 5 th Edition]

Account. A detailed statement of the mutual demands in the nature of debit and credit between parties, arising out of contract or some fiduciary relation. A statement in writing, of debits and credits, or of receipts and payments; a list of items of debits and credits, with their respective dates. ... Any account with a bank; including a checking, time, interest or saving account. ... Account means any right to payment for goods sold or leased or for services rendered which is not evidence by an instrument or chattel paper, whether or not it has been earned by performance... [Black's Law Dictionary 5 th Edition]

These definitions suggests that an account is something to keep track of debits and credits and accounting would be the practice of keeping track of debits and credits. Accounts are only needed when payment of goods and services are not made in full at the time of purchase. When you buy something on credit (house, credit card, car), an account is established to keep track of how much you owe. You open a checking account when you no longer want to pay for everything with cash. The checking account allows the bank to keep track of how much "money" you have. Black's 7 th edition lists a number of different kinds of accounts, but for our purposes, there are three that are particularly interesting. closed account. An account that no further credits or debits may be added to but that remains open for adjustment and setoff . [Black's Law Dictionary, 7 th Edition] offset account. One of two accounts that balance against each other and cancel each other out when the books are closed. [Black's Law Dictionary, 7 th Edition] open account. 1. An unpaid or unsettled account. 2. An account that is left open for ongoing debit and credit entries and that has a fluctuating balance until each party finds it convenient to settle and close...[Black's Law Dictionary, 7 th Edition]

From these definitions it becomes clear that so long as there is still activity occurring, an account remains open but once all public activity (debit and credit) has ceased, the account is closed. When you make the final payment on a loan, the account is closed. When you no longer need a checking account, you withdrawal all the funds and close it. But a closed account remains open for two types of transactions, adjustments and setoffs. The idea of an offset account suggests that when two parties owe one another, setoffs can be used to cancel out opposing debts. The definition of setoff will give us another clue on how to use our exemption. setoff. ... 2. A debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor. ... Set-off signifies the subtraction or taking away of one demand from another opposite or cross demand, so as to distinguish the smaller demand and reduce the greater by the amount of the less... [Black's Law Dictionary, 7 th Edition] It appears that if two parties owe one another opposing sums, a portion of the larger debt can be discharged by the amount of the smaller debt. The one who is owed the larger amount is called the creditor and the one who owes the smaller amount is the debtor. We have already seen that we are the creditor over the government, who is the debtor, and that it owes us vast sums. Since we are the creditor, it would appear that there should be some method of using what the government owes us to setoff what we owe to other creditors. We have already been introduced to the concept of a bill of exchange. Various people and groups have researched how a bill of exchange and other instruments might be used to access our exemption in order to discharge our debts. They have discovered that these instruments can be effective.