

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

United States District Court
Southern District of Texas

FILED

FEB 09 2017

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA,)
)
 Petitioner,)
)
 v.)
)
 JOHN B. TROWBRIDGE,)
)
 Respondent.)

CIVIL ACTION NO. 16-mc-2688

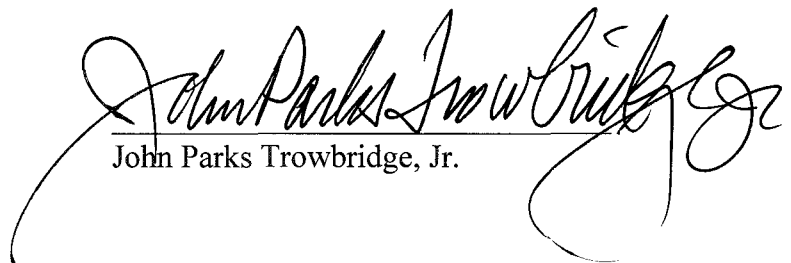
MOTION TO DISMISS (12b6)

COMES NOW John Parks Trowbridge, Jr. in the above-captioned matter, specially and not generally, respectfully, and without attorney, to move the Court to dismiss with prejudice the action of the petitioner pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. In support of this Motion, the undersigned would show the Court the attached Memorandum of Law, made fully part hereof and included herein by reference as though set forth in full.

WHEREFORE, the Undersigned prays the Court:

1. That the cause of action of the Plaintiff be dismissed for failure to state a claim upon which relief can be granted;
2. That the cost of this action be taxed against the Plaintiff; and
3. For such other and further relief that the Court may deem just and fair.

This, the 8th day of February 2017.



John Parks Trowbridge, Jr.

MEMORANDUM OF LAW

The instant Petition to Enforce Internal Revenue Summons (Document 1) (the “Petition”) asserts in pertinent part of pages 1 and 2 that Kendria R. Bruno is an “Officer of the Internal Revenue Service,” and infers in pertinent part of page 1 that Internal Revenue Service is constructive petitioner and part of the United States of America; to wit: “The United States of America (Internal Revenue Service), petitioner, through the United States Attorney . . .”

The Court in pertinent part of page 1 of the instant Order to Show Cause (Document 2) declares that petitioner is the United States; to wit: “On the petition of the United States, under 26 U.S.C. §§ 7402(b) and 7604(a) . . .”

The Court on page 2 of said Order to Show Cause requires that respondent John Parks Trowbridge, Jr. respond not to petitioner United States but constructive petitioner Internal Revenue Service; to wit: “Within 20 days of that service, the respondent must file with the court and serve on the Internal Revenue Service a written response . . .”

Wherefore, it is reasonable to presume from the representations of petitioner United States (the “Petitioner”), Internal Revenue Service, and Kendria R. Bruno and contents of the instant Order to Show Cause that, as an Officer of the Internal Revenue Service and Revenue Agent, Kendria R. Bruno is authorized to exercise the “The executive Power,” U.S. Const., Art. II, § 1, cl. 1, take territorial jurisdiction in Harris County, Texas, and issue against Respondent the instant “Summons,” “Service of Summons, Notice and Recordkeeper Certificates”, and “Attachment to Form 2039 Summons to Appear” (Document 1-2) (collectively the “Summons”).

Whereas, Kendria R. Bruno represents that Kendria R. Bruno is authorized to exercise “The executive Power,” U.S. Const., Art. II, § 1, cl. 1, it is reasonable to presume that Kendria R. Bruno is an executive officer of the United States.

EXECUTIVE AND JUDICIAL POWER OF THE UNITED STATES

The executive power and judicial power of the United States likewise are co-extensive with the legislative power of Congress; to wit:

It [the judicial power] is indeed commensurate with the ordinary legislative and executive powers of the General Government . . . *Chisholm v Georgia*, 2 U.S. 419, 435, (1793).

[I]t is an obvious maxim, ‘that the judicial power should be competent to give efficacy to the constitutional laws of the Legislature.’ The judicial authority, therefore, must be co-extensive with the legislative power. . . . *Osborn v. Bank of United States*, 9 Wheat., 738, 808 (1824).

The provisions of Article VI, Clause 3 of the U.S. Constitution are non-discretionary as to any oath or affirmation taken by, among others, any executive officer of the United States who wishes to accede to “The executive Power,” U.S. Const., Art. II, § 1, cl. 1; to wit:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The U.S. Constitution at Article I, Section 8, Clause 1 confers upon Congress subject-matter legislative power over taxes throughout the Union, in places like Harris County, Texas.

Executive officers of the United States who take an oath or affirmation that conforms to the provisions of Article VI, Clause 3 of the U.S. Constitution are authorized to exercise “The executive Power,” U.S. Const., Art. II, § 1, cl. 1, over taxes anywhere in the Union.

The first section of the first Act of Congress, 1 Stat. 23, provides the form of the oath or affirmation in respect of Article VI, Clause 3 of the U.S. Constitution, *supra*; to wit:

SEC. 1. *Be it enacted by the Senate and [House of] [sic] Representatives of the United States of America in Congress Assembled*, That the oath or affirmation required by the sixth article of the Constitution of the United States, shall be administered in the form following, to wit : “I, A.B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.” The said oath shall be administered within three days . . .

KENDRIA R. BRUNO'S OATH OR AFFIRMATION

Internal Revenue Manual 6.300.1.4 (11-06-2009) *Appointment Documents, Determinations, and Entitlements* provides, in pertinent part of subsection 1: “OPM’s GPPA, Chapter 3, Subchapter 4, and the Job Aid specifies the required appointment documents. . . .”

The United States Office of Personnel Management’s “The Guide to Processing Personnel Actions,” Chapter 3, Subchapter 4, section 4-3 provides, in pertinent part:

c. Oath of Office.

As part of the entry-on-duty process, the employee takes the oath of office. The Standard Form 61, Appointment Affidavit, contains the oath of office (part A) required by 5 U.S.C. 3331, the affidavit on striking against the Federal Government (part B) required by 5 U.S.C. 7311, and the affidavit on purchase and sale of office (part C) that 5 U.S.C. 3332 requires officers to complete.

Standard Form 61, Appointment Affidavit provides, in pertinent part:

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Whereas, there is no alternate oath or affirmation for Officers of the Internal Revenue Service and Kendria R. Bruno has no discretion to alter said oath, based on representations made by Kendria R. Bruno it is reasonable to presume that no later than June 30, 2016, Kendria R. Bruno takes the Oath of Office in part A of the Standard Form 61, Appointment Affidavit, *supra*.

The Standard Form 61, Appointment Affidavit part A Oath of Office, *supra*, requires a religious test as a qualification to the office of Revenue Agent; to wit: “So help me God.”

No oath or affirmation that requires a religious test “as a Qualification to any Office or public Trust under the United States,” U.S. Const., Art. VI, cl. 3, conforms to the provisions of Article VI, Clause 3 of the U.S. Constitution, *supra*, page 3.

Irrespective of any benign utility the Standard Form 61, Appointment Affidavit part A Oath of Office may have for other purposes, said oath or affirmation and the ordinary act of Congress providing it are repugnant to Article VI, Clause 3 of the U.S. Constitution, as such species of oath or affirmation is expressly prohibited by the provisions of said article and clause, *supra*, page 3, and therefore, for purposes of accession to “The executive Power,” U.S. Const., Art. II, § 1, cl. 1, void; to wit:

It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it . . .

. . . Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void. *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

[5 U.S. 137, 178] If then the courts are to regard the constitution; and he [*sic*] constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

Whereas, it is reasonable to presume that the only official oath or affirmation that Kendria R. Bruno has taken is the Standard Form 61, Appointment Affidavit part A Oath of Office: Kendria R. Bruno has failed to take an oath or affirmation that conforms to the provisions of Article VI, Clause 3 of the U.S. Constitution and therefore has no authority to exercise “The executive Power,” Constitution, Art. II, § 1, cl. 1, take territorial jurisdiction in Harris County, Texas, or issue the Summons against Respondent.

Whereas, Kendria R. Bruno’s Summons (Document 1-2) is legally frivolous, counsel for United States should be sanctioned under Rule 11(b)(1), (2), and (3) of the Federal Rules of Civil Procedure.

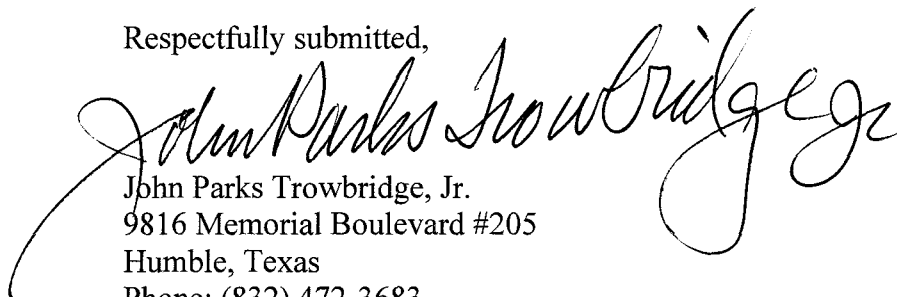
Whereas, the factual contentions asserted in the Petition have no evidentiary support and Petitioner can produce no admissible evidence in support of its claims: Petitioner has failed to state a claim upon which relief can be granted.

CONCLUSION

WHEREFORE, Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Petition should be dismissed with prejudice for failure to state a claim upon which relief can be granted.

Date: February 8, 2017

Respectfully submitted,

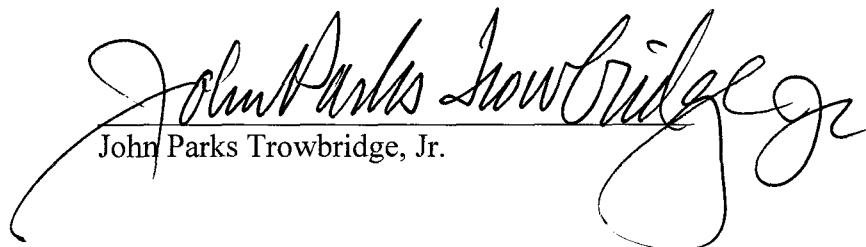


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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2017, I served a complete copy of MOTION TO DISMISS (12b6) by First Class mail on the following parties:

LEWIS A. BOOTH
Special Assistant
United States Attorney
8701 S. Gessner, Ste. 710
Houston, Texas 77074



John Parks Trowbridge, Jr.

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JOHN B. TROWBRIDGE,)	
)	
Respondent.)	

ORDER

The court, having considered the Respondent’s MOTION TO DISMISS (12b6) and any response or reply thereto, it is hereby ORDERED that:

1. The Motion of Plaintiff John Parks Trowbridge, Jr. is GRANTED.
2. The Petition to Enforce Internal Revenue Summons is DISMISSED with prejudice.

SIGNED, this _____ day of _____, 2017.

UNITED STATES DISTRICT JUDGE