

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 16-mc-2688
)	
JOHN B. TROWBRIDGE,)	
)	
Respondent.)	

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS BY
REASON OF CORAM NON JUDICE

TO THE HONORABLE JUDGE OF THE COURT:

PETITIONER MOVES, that this Court deny respondent's Motion to Dismiss by Reason of Coram Non Judice (Document #18) as it is frivolous, meritless, and fails to state grounds for which relief can be granted.

IN SUPPORT THEREOF, petitioner respectfully states:

1. Petitioner filed a Petition to Enforce Internal Revenue Service Summons on November 15, 2016.
2. Respondent filed a Motion to Dismiss on February 9, 2017
3. On March 27, 2017, this Court held a Show Cause hearing and also a hearing regarding respondent's Motion to Dismiss.

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4. After this hearing, respondent filed the following documents:

(a) A Response to Petitioner's Petition to Enforce I.R.S. Summons;

(b) Motion to Dismiss by Reason of Coram Non Judice; and

(c) Motion to Withdraw Tag-End Order in OSC.

5. As is more fully set forth in the Memorandum of Law attached to this Response, respondent's Motion to Dismiss by Reason of Coram Non Judice is frivolous, meritless, and fails to state grounds for which relief can be granted.

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WHEREFORE, the petitioner respectfully prays that this Court deny respondent's Motion to Dismiss by Reason of Coram Non Judice, as it is frivolous, meritless, and fails to state a grounds for which relief can be granted.

Respectfully submitted,

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 Petitioner,)
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 v.) CIVIL ACTION NO. 16-mc-2688
)
JOHN B. TROWBRIDGE,)
)
 Respondent.)

PETITIONER'S MEMORANDUM OF LAW

Respondent's Motion to Dismiss by Reason of Coram Non
Judice alleges that United States District Court Judge for
the Southern District of Texas Keith P. Ellison is a judge
of a "Federal Corporation" and that the oath taken by Judge
Ellison is an impermissible religious test. Specifically,
respondent argues that there is no procedural or
constitutional authority allowing Judge Ellison to exercise
territorial, personal, and subject matter jurisdiction in
Harris County, TX. For the reasons set forth below,
respondent's Motion to Dismiss by Reason of Coram Non
Judice should be denied, as it is frivolous, meritless, and
fails to state grounds for which relief can be granted.

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It is well-settled that this Court is vested with the Power to enforce a validly issued Internal Revenue Service Summons.

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found **shall have jurisdiction** by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data. I.R.C. § 7604(a). (emphasis added)

Whenever any person summoned ... neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court ... for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. **It shall be the duty of the judge** ... to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge ... shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the

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requirements of the summons and to punish such person for his default or disobedience. I.R.C. § 7604(b). (emphasis added).

In this case, respondent alleges, incorrectly, that the Judge Ellison took an oath which violates Article VI, Clause 3 of the United States Constitution. Respondent asserts that, because Judge Ellison took this oath, he is prohibited from taking jurisdiction outside of the "United States of America, a Federal Corporation." This is simply wrong.

Any oath given to Judge Ellison is plainly not a religious test, but rather an oath to defend the constitution, as mandated by Article VI, Clause 3 of the United States Constitution. See also M'Culloch v. Maryland, 17 U.S. 316 (1819) ("The oath which might be exacted—that of fidelity to the constitution—is prescribed, and no other can be required. Yet, he would be charged with insanity, who should contend, that the legislature might not superadd, to the oath directed by the constitution, such other oath of office as its wisdom might suggest.")

Respondent offers no authority for his assertion that the oath he alleges was given to Judge Ellison was an impermissible religious test. However, assuming *arguendo* that the alleged oath is an impermissible religious test,

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the proper party to raise this issue would be Judge Ellison. See Torasco v. Watkins, 367 U.S. 488 (1961) (Suit brought by Notary Public appointee alleging violation of Article VI, Clause 3); Stewart v. Washington, 301 F.Supp. 610 (D.D.C. 1969) (Action brought by school substitute teacher alleging violation of Article VI, Clause 3.)

Respondent's argument that any oath given to Judge Ellison is an unconstitutional religious test is simply wrong. Additionally, even if the oath was an impermissible religious test, respondent is not the proper party to make this claim. Respondent's arguments are frivolous and meritless. Respondent's Motion should be denied.

Respondent's Motion is a frivolous filing; the likes of which this Court should not give credence or legitimacy.

Respondent's argument that Judge Ellison's authority only applies within the District of Columbia is clearly frivolous. See Lonsdale v. U.S., 919 F.2d 1440, 1448 (10th Cir. 1990) ("the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous... (2)the authority of the United States is confined to the District of Columbia...").

Respondent is a frequent litigant in Federal Courts and has made several spurious claims concerning the

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Internal Revenue Service and its authority in several cases. These cases include affirmation of a District Court Order enforcing an IRS administrative summons. See United States v. Trowbridge, 251 F.3d 157(5th Cir. 2001).¹

Respondent's arguments in this case are similar to the arguments presented in Crain v. Commissioner, 737 F.2d.

1417 (5th Cir. 1984). The Court in Crain noted:

We are sensitive to the need for the courts to remain open to all who seek in good faith to invoke the protection of law. An appeal that lacks merit is not always—or often—frivolous. However, we are not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority. Crain's present appeal is of this sort. It is a hodgepodge of unsupported assertions, irrelevant platitudes, and legalistic

¹ See also Trowbridge v. Dept. of Treasury, 90 AFTR2d ¶ 2002-7636 (5th Cir.), 2002 WL 31730286, (affirming district court order dismissing petition for writ of mandamus), 89 AFTR2d ¶ 2002-466, 2001 WL 1750765, Civil No. H-01-0369 (USDC SD Texas, Houston); Trowbridge v. Dept. of Treasury, et al., 539 U.S. 924 (2003), (denying motion for leave to file an objection in the nature of a writ of error); Trowbridge v. Internal Revenue Service, 90 AFTR2d ¶ 2002-6419 (5th Cir.), 2002 WL 31017638, (affirming district court order dismissing petition for writ of mandamus, 88 AFTR2d ¶ 2001-5861, 2001 WL 1172417, Civil No. H-00-4426, USDC SD Texas, Houston); Trowbridge v. Commissioner, T.C. Memo. 2003-165, 2003 WL 21278414, appealed to the 5th Circuit, No. 04-60014; Trowbridge v. Commissioner, T.C. Memo. 2003-164, 2003 WL 21278475, appealed to the 5th Circuit, No. 04-60029; John Parks v. Carol Barthel and Mark Everson, Civil Action No. h-04-1708 (USDC SD TX, Houston Division)

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gibberish. The government should not have been put to the trouble of responding to such spurious arguments, nor this court to the trouble of "adjudicating" this meritless appeal.

Respondent's argument that Judge Ellison is a judge of a "Federal Corporation" and that the oath taken by Judge Ellison is an impermissible religious test is simply wrong. Respondent's arguments are frivolous and meritless. Respondent's Motion should be denied.

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WHEREFORE, the petitioner respectfully prays that this Court deny respondent's Motion to Dismiss by Reason of Coram Non Judice, as it is frivolous, meritless, and fails to state a grounds for which relief can be granted.

Respectfully submitted,

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