

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

United States District Court
Southern District of Texas
FILED

MAY 01 2017

HOUSTON DIVISION

David J. Bradley, Clerk of Court

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

**RESPONDENT’S REPLY TO PETITIONER’S RESPONSE IN OPPOSITION TO
RESPONDENT’S MOTION TO DISMISS BY REASON OF *CORAM NON JUDICE***

Respondent’s Motion to Dismiss by Reason of *Coram Non Judice* (Document 18) presents certain claims, defenses, and other legal contentions that are warranted by existing law and certain factual contentions with evidentiary support, i.e., among other things, that (a) in this civil proceeding the meaning of the controlling definition of the statutory term “United States” is “a Federal corporation,” (b) Keith P. Ellison is a judge of a Federal corporation, (c) the jurisdiction of federal (Article III constitutional) courts is limited to personal and subject-matter jurisdiction, (d) territorial jurisdiction over persons and property throughout the Union is the exclusive domain of each respective member of the Union, (d) Keith P. Ellison is bereft of the capacity, as given by the U.S. Constitution, to take territorial jurisdiction or enter an order against person or property in Harris County, Texas, (e) Keith P. Ellison is usurping exercise of territorial jurisdiction over respondent and respondent’s property in the judicial district known as the Southern District of Texas.

Petitioner’s response in opposition (Document 23) to respondent’s motion to dismiss fails to rebut with material evidence any of the above claims, defenses, or other legal or factual

contentions and operates as a general denial of the factual contentions presented by respondent and is not warranted on the evidence. For this reason petitioner's response in opposition is frivolous and meritless and counsel for petitioner should be sanctioned under Rule 11(b)(1), (2), (3), and (4) of the Federal Rules of Civil Procedure.

UNABLE TO PROVE CONSTITUTIONAL AUTHORITY, COUNSEL FOR PETITIONER ATTEMPTS TO LEAD THE COURT INTO ERROR

The Supremacy Clause of the U.S. Constitution, Article VI, Clause 2, provides, in pertinent part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . ."

What this means is that unless a particular statute is made in pursuance of the U.S. Constitution, an adverse suit authorized thereby is not in and of itself sufficient to vest jurisdiction in the Federal courts; to wit:

So, we conclude, as we did in the prior case, that, although these suits may sometimes so present questions arising under the Constitution or laws of the United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the Federal courts. *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 513 (1900).

Unless a statute authorizing executive or judicial action is made in pursuance of the U.S. Constitution, no jurisdiction is created and any such congressional statute is irrelevant; to wit:

As regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. Their concurrence is necessary to vest it. . . . It can be brought into activity in no other way. *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1867).

The essence of respondent's motion to dismiss (Document 18) is lack of constitutional authority for any judge of the United States to take territorial jurisdiction over person or property

in Harris County, Texas, and Keith P. Ellison's lack of constitutional authority to take territorial (or any other form of) jurisdiction in Harris County, Texas.

Notwithstanding the above blackletter law as to the primacy of constitutional authority in respect of creation of jurisdiction and the nature of respondent's motion, petitioner's response in opposition on pages 5 and 6 cites a statute of Congress, I.R.C. § 7604, as ultimate authority for Keith P. Ellison to take territorial jurisdiction and enforce an Internal Revenue Service Summons against petitioner and petitioner's property in Harris County, Texas; to wit:

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) [*sic*]

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

Neither I.R.C. § 7604(a) nor (b) is made in pursuance of the U.S. Constitution because there is no provision thereof that gives any judge of the district court the capacity to take territorial jurisdiction over person or property or "compel such attendance, testimony, or production of books, papers, records, or other data" or "enforce obedience to the requirements of the summons and to punish such person for his default or disobedience" in Harris County, Texas.

The reason petitioner's response in opposition fails to present a constitutional authority for Keith P. Ellison to take territorial jurisdiction and enforce I.R.C. § 7604(a) and (b) over respondent or respondent's property in Harris County, Texas, is that none exists.

Petitioner's I.R.C. § 7604(a) and (b) arguments are frivolous and meritless and a willful attempt to lead the Court into error for which counsel for petitioner should be sanctioned under Rule 11(b)(1), (2), and (3) of the Federal Rules of Civil Procedure.

Further, petitioner's response in opposition (Document 23) makes several remarks for which there is no evidence; to wit:

- "In this case, respondent alleges, incorrectly, that the Judge Ellison took an oath which violates Article VI, Clause 3 of the United States Constitution" (p. 6);
- "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'" (*id.*);
- ". . . his [respondent's] assertion that the oath he alleges was given to Judge Ellison was an impermissible religious test" (*id.*);
- "Respondent's argument that any oath given to Judge Ellison is an unconstitutional religious test is simply wrong" (p. 7); and
- "Respondent's argument . . . that the oath taken by Judge Ellison is an impermissible religious test is simply wrong" (p. 9).

Whereas there is no evidence of the above factual contentions, counsel for petitioner should be sanctioned under Rule 11(b)(3) of the Federal Rules of Civil Procedure.

The grounds of respondent's motion to dismiss (Document 18) are abundantly clear therein (e.g., *see a–e*, p. 1) and revolve around whether there is a constitutional authority that gives Keith P. Ellison the capacity to take territorial jurisdiction and enter an order against person or property in Harris County, Texas. Petitioner's response in opposition not only fails to present such constitutional authority but asserts no less than five times that "[R]espondent's motion . . . fails to state grounds for

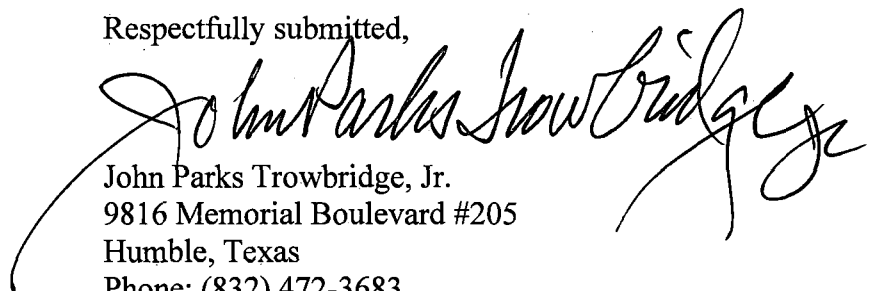
which relief can be granted” (pp. 1, 2, 3, 4, and 10), a patently frivolous claim for which counsel for petitioner should be sanctioned under Rule 11(b)(1) of the Federal Rules of Civil Procedure.

Further, petitioner’s response in opposition states on page 9 thereof that “Respondent’s argument that Judge Ellison is a judge of a ‘Federal Corporation’ . . . is simply wrong.” Said denial of respondent’s factual contention is not warranted on the evidence, but more so is a knowing and willful repudiation of existing law, 28 U.S.C. § 3002(15), wherein Congress have mandated that in every Federal debt collection proceeding, such as the instant lawsuit, the statutory term “United States” means “a Federal corporation,” every single use of the statutory term “United States” means a Federal corporation, and every judge of the United States is a judge of a Federal corporation. In respect of this, counsel for petitioner is willfully repudiating and refusing to follow the law, even when presented and explained to him, egregious conduct for which counsel petitioner should be sanctioned under Rule 11(b)(1), (2), and (4) of the Federal Rules of Civil Procedure and made the subject of disbarment proceedings.

For the above reasons, respondent’s motion should be granted and this lawsuit dismissed.

Date: May 1, 2017

Respectfully submitted,

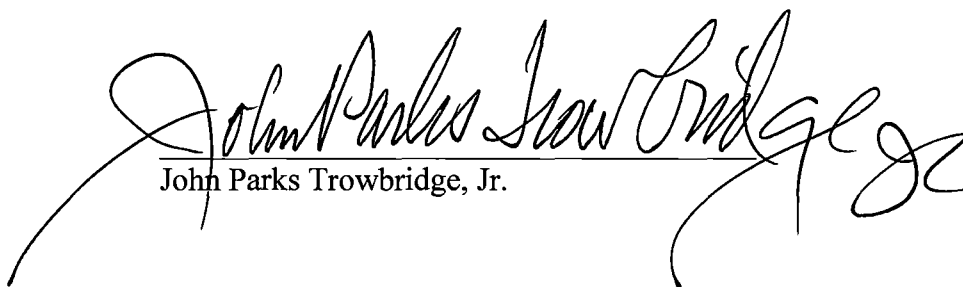


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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2017, I served a complete copy of RESPONDENT'S REPLY TO PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS BY REASON OF *CORAM NON JUDICE* by First Class mail on the following parties:

LEWIS A. BOOTH
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