

Civil Action No. 8:10CV3031-JMC-JDA  
4th Circuit No. 11-1670

In the Supreme Court of the United States

In Re: Adrian Charles Banks

Petition for Writ of Prohibition

Adrian Charles Banks

v.

The State of South Carolina

Adrian Charles Banks

[Name, address, & phone #]

Pro Se

## **Questions Presented For Review**

- 1) Does the 11<sup>th</sup> Amendment to the United States Constitution bar suits by individuals against States whose rights have been violated pursuant to the Civil Rights Acts of 1866 and 1871?
- 2) Does the compensation a person receives for providing their labor fall within the legal definition of income?
- 3) Are there any limits to the powers that government at all levels can exercise over the labor of the people?

## **List of Parties**

1. Adrian Charles Banks, Plaintiff and Petitioner  
507 Wellington Street  
Anderson, South Carolina 29624
  
2. The State of South Carolina, Defendant  
The Hon. Alan Wilson  
Attorney General for the State of South Carolina  
J. Emory Smith Jr.  
Assistant Deputy Attorney General  
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## **Jurisdiction**

This Court had jurisdiction pursuant to Section 10 of the Civil Rights Act of 1866, which states: “That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.”

## **Constitutional Provisions and Statutes at Issue**

The 13<sup>th</sup> Amendment to the United States Constitution

The 14<sup>th</sup> Amendment to the United States Constitution,  
Sections 1 & 5

The Civil Rights Act of 1866 (14 Stat. 27-30, April 9,  
1866)

The Civil Rights Act of 1871 (17 Stat. 13, April 20, 1871)

South Carolina Code of Laws:

### **SECTION 40-59-20. Definitions**

(7) "Residential specialty contractor" means an independent contractor who is not a licensed residential builder, who contracts with a licensed residential builder, general contractor, or individual property owner to do construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed two hundred dollars and are not regulated by the provisions of Chapter 11. Residential specialty contracting includes the following areas of contracting and other areas as the commission may recognize by regulation:

- (a) plumbers;
- (b) electricians;
- (c) heating and air conditioning installers and repairers;
- (d) vinyl and aluminum siding installers;
- (e) insulation installers;
- (f) roofers;
- (g) floor covering installers;
- (h) masons;
- (i) dry wall installers;
- (j) carpenters;
- (k) stucco installers;
- (l) painters/wall paperers.

**SECTION 40-59-30.** License requirement; enforcement of contracts; restraining orders.

(A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

(C) Pursuant to Article 5, Chapter 23, Title 1, the

commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent.

City of Anderson Code of Ordinances:

Sec. 26-37. Definitions

*Gross income* means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business done wholly outside of the city on which a license tax is paid to some other city or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Insurance Commission, or other government agency.

Sec. 26-61. Classification and rates.

(a) The sectors of businesses included in each Rate Class are listed with the United States North American Industry Classification System (NAICS) Codes. The alphabetical index in this ordinance, filed in the office of the city clerk, is a tool for classification, not a limitation on businesses

subject to a license tax. The license official shall determine the proper class for a business according to the applicable NAICS manual, whether or not the business is listed in the alphabetical index.

(b) The license fee for each class of businesses subject to this ordinance shall be computed in accordance with the following classification rate schedule. A copy of the license ordinance text, business classifications and rates shall be made available to the public in booklet form.

## CLASS 8 RATES

Each NAICS Number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined rates. Non-resident rates do not apply except where indicated.

### NAICS 23 - Contractors, Construction, All Types

8.1 - Having permanent place of business within the municipality

Minimum on first \$2,000.00 . . . \$35.00

PLUS

Per \$1,000.00, or fraction over \$2,000.00 from work in city . . . \$1.75

work performed outside city limits . . . 0.50

8.1A - Non-resident (no permanent place of business in the municipality)

Minimum on first \$2,000.00 . . . \$70.00

PLUS

Per \$1,000.00, or fraction, over \$2,000.00) . . . \$3.50  
(non-resident double rates do not apply)

A trailer at the construction site, or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

The total fee for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base fee shall be paid in a calendar year.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Each prime contractor shall file with the license official a list of sub-contractors furnishing labor or materials for each project. Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor. A business license is required for a party doing construction work regardless of the nature of the contractual relationship with the owner, except a bonafide payroll deducted employee of a licensed contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. No building code permits shall be issued until a required business license has been obtained. Zoning permits must be obtained when

required by the zoning ordinance. No certificate of occupancy shall be issued until all license fees have been paid.

Sec. 26-59. Violations.

Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein. (Ord. No. 06-23, § 24, 10-9-06)

## Statement of the Case

All matters concerning this case are questions of constitutional law, and therefore no jury trial was requested by petitioner. On November 24, 2010, petitioner filed a civil action in the Federal District Court in Greenville, South Carolina. The Complaint challenges recently enacted state laws on the grounds that the laws violate the 13<sup>th</sup> and 14<sup>th</sup> amendments to the United States Constitution and the Civil Rights Acts of 1866 and 1871. The state laws challenged, according to petitioner's research, were passed in 1990. Petitioner has labored in the construction trades all his life, and currently sells the use of his labor as a handyman. The laws challenged are Title 40, Chapter 59, Article 1 of the South Carolina Code of Laws that pertain to "residential specialty contractor." These laws took common and ordinary construction trades and deemed them to be "special." The operation of these state laws denied petitioner the ability to contract his labor on a vinyl siding job on a rental home in the City of Anderson in October of 2010. City of Anderson Building Codes would not issue a permit to either myself or the owner of the property to do the work. Codes advised the owner of the property that a licensed builder would have to pull the permit and that state law mandated this. Petitioner researched the state laws and filed this civil action. Back in the 1980's petitioner did this very same type of work in the City of Anderson without these laws infringing upon his ability to contract his labor.

The Complaint describes what happened that denied petitioner the ability to contract his labor and he tried to invoke federal jurisdiction by virtue of the Civil Rights Act of 1866, 14 Stat. 27-30, April 9, 1866, § 3; 42 U.S.C. § 1981; and 28 U.S.C. § 1343(a)(3). The Complaint contends that the operation of these state laws violate his rights secured by the 5<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> amendments to the United

States Constitution. The Complaint was accompanied with a Supporting Brief that is 37 pages long. The Supporting Brief was based upon several years of legal and historical research by the petitioner. The Supporting Brief shows that the people, after the Civil War, had the right to a free labor market until taxation pursuant to the Social Security Act of 1935 took effect in 1937, where labor began being directly taxed at one percent. Petitioner submits that this started a process of increasing servitude and, through a slow and gradual process, has resulted in an institution of slavery enforced by arbitrary laws where taxes, garnishments and fees are imposed upon labor without restraint and upheld by the courts. The Supporting Brief shows how the state laws in question are a badge of servitude that violate the 13<sup>th</sup> amendment and violate the equal protection of the 14<sup>th</sup> amendment. The Supporting Brief uses the following authorities.

Court cases: *Dred Scott v. Sanford* 19 How. 393; *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495; *O'Donoghue v. U.S.* 289 U.S. 516; *O'Malley v. Woodrow* 307 U.S. 277; *U.S. v. Moreland* 258 U.S. 433; *Eisner v. Macomber* 252 U.S. 189; *Butchers' Union Slaughterhouse & Livestock Landing Co. v. Crescent City Livestock Landing & Slaughterhouse Co.*, 111 US 746; *Cheek v. U.S.* 498 U.S. 192; *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273; *The Antelope*, 10 Wheat 66, 120; *U.S. v. Connor*, 898 F.2d 942.

Federal and State laws cited: Public Laws, Ch. 619, Oct 21, 1942, pg. 892; S. C. Code of Laws Section 40-59-20, 40-59-30, 40-59-90; The Civil Rights Act of 1866, 14 Stat. 27-30, April 9, 1866, Section 1; 14<sup>th</sup> amendment to the United States Constitution, Section 1.

Press Articles and editorials: *Stumbling Into Socialism*, by David Lawrence, *The Saturday evening Post*, July 20, 1935; *The Socialist Vote*, by George Lorimer, *The*

Saturday Evening Post, Jan. 21, 1933; The Hundred Days, by Garet Garrett, The Saturday Evening Post, Aug. 12, 1933; <http://www.lewrockwell.com/orig6/napolitano2.html>; Consequences to Liberty of Regimentation, by Herbert Hoover, The Saturday Evening Post, Sept. 15, 1934; The Congress, by Samuel G. Blythe, The Saturday Evening Post, November 3, 1917; <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/09/AR2010090903376.html>; The Court, by George Lorimer, The Saturday Evening Post, April 25, 1936; Washingtonia, by Raymond Carroll, The Saturday Evening Post, May 16, 1936; The 168 Days, by Joseph Alsop and Turner Catledge, part 1, The Saturday Evening Post, Sept. 18, 1937; The 168 Days, The Ghost of Justice Robinson, by Joseph Alsop and Turner Catledge, part 2, The Saturday Evening Post, September 25, 1937; In and Out, by George N. Peek with Samuel Crowther, The Saturday Evening Post, May 16, 1936; The Income Tax, by Benton McMillin, The Saturday Evening Post, May 17, 1913; The Paramount Issue, by David Lawrence, The Saturday Evening Post, Oct. 10, 1936; Social Security - Or De Levee Done Bust, by Frank Parker Stockbridge, The Saturday Evening Post, March 7, 1936; The First Law of Nature, by George Lorimer, The Saturday Evening Post, March 31, 1934; Newsweek, Oct. 19, 1942; [http://www.glennsacks.com/distraught\\_fathers\\_courthouse.htm](http://www.glennsacks.com/distraught_fathers_courthouse.htm).

Other authorities: The Federalist #78; The Complete Works of Abraham Lincoln, The Tandy-Thomas Co., N.Y., 1905, Volumes III, IV, & V; The Institutes of Justinian, by Thomas Collett Sandars, M.A., Longmans, Green, and Co., 39 Patternoster Row, London, New York and Bombay, 1903; The Works of William E. Channing, Boston, American Unitarian Association, 1873, Vol II; Cannibals All! Or Slaves Without Masters, by George Fitzhugh, originally published in 1857, republished by The Belknap

Press of Harvard Univ. Press, Cambridge, Mass & London, England, 1960; *The Life and Times of Frederick Douglass*, Written by Himself, Park Publishing Co., Hartford, Conn., 1882; *Impending Crisis of the South*, by Hinton Helper, A.B. Burdick, N.Y., 1860; *Taken Into Custody*, by Stephen Baskerville, Cumberland House Publishing, Inc., 2007; *The Nazis - A Warning From History*, Laurence Rees, The New Press, N.Y., 1997; *Cotton is King and Pro-Slavery Arguments*, Pritchard, Abbott & Loomis, Augusta, Ga., 1860; *I Will Bear Witness*, by Victor Klemperer, Random House, N.Y., 1999; *The American Slave Code in Theory and in Practice - It's Distinctive Features shown by It's Statutes, Judicial Decisions and Illustrative Facts*, by William Goodell, The American and Foreign Anti-Slavery Society, 1853, reprinted by The Apple Manor Press, Markham, Va., 2009; *Jefferson Davis: The Essential Writings*, edited by William Cooper Jr., The Modern Library, N.Y., 2004; 48 Am Jur 2d--Sections 1-3; *Bouvier's Law Dict.*, Banks-Baldwin Law Publishing Co., Cleveland, 1940.

On the 23<sup>rd</sup> of December, 2010, service of process was made upon the South Carolina State Attorney General. On January 11, 2011, the State Attorney General filed a Motion to Dismiss pursuant to FRCP 12(b)(1) & (6). It is the State Attorney General's position that the State of South Carolina is immune from suit under the Eleventh Amendment of the United States Constitution. The next day, on January 12, 2011, a Roseboro Order was filed by the District Court. Petitioner mailed his Response to Motion to Dismiss on January 18, 2010. In his Response, petitioner quoted from some of the legislative history of the 37<sup>th</sup>, 38<sup>th</sup>, 39<sup>th</sup>, 41<sup>st</sup>, & 42<sup>nd</sup> Congress found in the Congressional Globe. The Supreme Court Cases he used were: *Ex Parte State of Virginia*, 100 U.S. 399 (1879); *Fitpatrick v. Blitzer* 427 U.S., 445; *Allgeyer v. State of Louisiana* 165 U.S. 578;

Adkins v. Children's Hospital 261 U.S. 525; & Cheek v. U.S. 498 U.S. 192. Press articles quoted were: Surrender of the Purse, The Saturday Evening Post, June 22, 1935; Taxation - House Default, Time Magazine, May 11, 1936; Power Over Liberty, The Saturday Evening Post, February 15, 1936: Books quoted from were: The Road to Serfdom, by Friedrich A. Hayek (1944); & The Complete Works of Abraham Lincoln.

The State Attorney General filed a Reply to Response to Motion to Dismiss on January 27, 2011. The Reply claimed that the statutes under which I had sued do not waive the State's 11<sup>th</sup> amendment immunity. The Reply used the cases of Quern v. Jordan 440 U.S. 332; Malone v. Schenk 638 F. Supp. 423; & Gilyard v. S. Carolina Dept. Of Youth Services 667 F. Supp. 266.

Petitioner mailed a Response to Reply to Response to Motion to Dismiss on January 31, 2011. Petitioner showed that none of the cases cited in the Reply to Response to Motion to Dismiss applied to him. Petitioner contends he has a right to contract his labor in a free labor market. The cases cited in the State's Reply to Response to Motion to Dismiss dealt with discrimination (Gilyard case), refusal of the sale of lottery tickets because of race (Malone case), and welfare benefits (Quern case). Petitioner's case strikes at the very core of the rights that the 13<sup>th</sup> amendment are supposed to protect, and he quoted more legislative history of the 39<sup>th</sup> Congress. On page 7 of petitioner's Response to Reply, he quoted from Rep. Wilson concerning the Civil Rights Act of 1866. Rep. Wilson said:

“Upon this broad principle I rest my justification of this bill. I assert that we possess the power to do these things which Governments are organized to do; that we may protect a citizen of the United States against a violation of his rights by the laws of a

single State; that by our laws and our courts we may intervene to maintain the proud character of American citizenship; that this power permeates our whole system, is a part of it, without which the States can run riot over every fundamental right belonging to the citizens of the United States; that the right to exercise this power depends upon no express delegation, but runs with the rights it is designed to protect; that we possess the same latitude in respect to the selection of means through which to exercise this power that belongs to us when a power rests upon express delegation; and the decisions which support the latter maintain the former. And here, sir, I leave the bill to the consideration of the House.” (Congressional Globe, 39<sup>th</sup> Congress, 1<sup>st</sup> Sess., pg. 1119)

Petitioner’s research shows that the 13<sup>th</sup> and 14<sup>th</sup> amendments made the States’ 11<sup>th</sup> amendment sovereign immunity a qualified immunity and not an absolute immunity. If a State enacts a law that imposes a badge of servitude that violates the 13<sup>th</sup> and/or 14<sup>th</sup> amendments, then it would be a miscarriage of justice to allow a State to shield its criminal behavior from federal intervention using the 11<sup>th</sup> amendment. This is contrary to both the spirit and letter of the 13<sup>th</sup> and 14<sup>th</sup> amendments and the legislation supporting them.

On April 6, 2011, while Petitioner was painting a couple of doors in the front yard on a rental home at 601 Fredericks St. in Anderson, S.C., he was charged by Doug Ramsey, the City of Anderson Business License Officer, with the crime of “working without a business license.” Petitioner objected and signed the Uniform Ordinance Summons “under protest.” Officer Ramsey asked why I signed the Summons “under protest.” I simply answered

“slavery.” Mr. Ramsey put April 13, 2011 as the court date on the Summons and told me that if I got my city business license by noon the day before court that he would not turn the Summons in to the Municipal Court. That evening I drew up a Motion for Emergency Hearing and Temporary Injunction and filed it the next morning with the District Court. I also filed a Motion for Continuance with the Anderson Municipal Court on April 11, 2011 which was granted by the City Attorney and court was rescheduled for May 13, 2011. Petitioner filed a Motion to Dismiss and Supporting Brief in this criminal case challenging the municipal codes on basically the same grounds as this civil action. The Municipal Court judge did not rule on my constitutional challenges and wanted to review my arguments before ruling. As of this date, petitioner has not heard back from the Municipal Court.

On April 11, 2011, United States Magistrate Judge Jacquelyn Austin filed her Report and Recommendation of Magistrate Judge. The Report and Recommendation said that the Motion for Temporary Restraining Order was moot and that the Magistrate Judge recommended that the case be dismissed with prejudice. The Magistrate Judge agreed with the State Attorney General that the State can only be sued in the manner it consents to be sued, and therefore the 11<sup>th</sup> amendment barred the suit. On page 10 of petitioner’s Response to Motion to Dismiss, he quoted from General Orders No. 1 made by General Sickles in 1866 when South Carolina was under martial law showing that requiring a person to pay for a license as a condition of contracting their labor was a badge of servitude. Section III of these General Orders State:

“All the employments of husbandry or the useful arts, and all lawful, trades or callings may be followed by all persons irrespective of color or caste;

nor shall any freedman be obliged to pay any tax or any fee for a license, nor be amenable to any municipal or parish ordinance, not imposed upon other persons.” (Congressional Globe, 39<sup>th</sup> Congress, 1<sup>st</sup> Sess., pg. 908)

Petitioner mailed his Objections to Report and Recommendations on April 18, 2011. In his Objections Petitioner pointed out that the Magistrate Judge did not address any of his legal arguments in his Supporting Brief, Response to Motion to Dismiss, or Response to Reply to Response to Motion to Dismiss which shows that when a State enacts laws that violate the 13<sup>th</sup> and 14<sup>th</sup> amendments, the 11<sup>th</sup> amendment does not shield the State from suit in federal court. Petitioner, on pages 1 & 2 of his Objections to R & R, said:

“Plaintiff would think that he would, at a bare minimum, be entitled to the rights of a newly emancipated slave after the civil war. He should be free to contract his labor without unconstitutional interference, and, pursuant to the Civil Rights Act of 1866, it is the duty of the District Courts to defend this basic property right.”

Petitioner used more of the legislative history of the 39<sup>th</sup> Congress. The court cases used were: *Hale v. Henkel* 201 U.S. 43; *Fitzpatrick v. Blitzer* 427 U.S. 445; *Civil Rights Cases* 109 U.S. 3; *Monroe v. Pape* 365 U.S. 167; *Miller v. U.S.* 230 F.2d 486; & *Marbury v. Madison* 1 Cranch 138. Other authorities were: *The Complete Works of Abraham Lincoln*; *Making Our Democracy Work*, by Stephen Breyer, Alfred A. Knopf, N.Y., 2010; <http://www.youtube.com/watch?v=W1-eBz8hyoE>; & *The Life and Times of Frederick Douglass*.

On May 3, 2011, The State Attorney General filed his Reply to Objections to Report and Recommendations and said that petitioner “has not brought this suit under any statutes that waive the State’s Eleventh Amendment immunity.”

The District Court Judge filed her Opinion and Order on May 31, 2011. The Opinion and Order adopted the Magistrate Judge’s Report and Recommendations and ruled that the State cannot be sued unless it consents to be sued. However, the District Judge did say that “Plaintiff is correct that Congress may abrogate State’s 11<sup>th</sup> Amendment immunity pursuant to §5 of the 14<sup>th</sup> Amendment. However, he has failed to show that Congress has done so in this case.” The District Court ordered that the case be dismissed with prejudice.

On June 27, 2011, petitioner filed a Notice of Appeal with the 4<sup>th</sup> Circuit. On June 30, 2011, the 4<sup>th</sup> Circuit sent petitioner an Informal Briefing Order. On July 18, 2011, petitioner mailed his Informal Brief to the 4<sup>th</sup> Circuit and to the South Carolina Attorney General. On November 8, 2011, the 4<sup>th</sup> Circuit issued it’s Judgement affirming the District Court’s decision in an unpublished opinion. Hence, petitioner now appeals to this Court.

Petitioner contends that he has met his burden of proof that Congress, pursuant to its 13<sup>th</sup> and 14<sup>th</sup> amendment enforcement powers, has reduced the State’s 11<sup>th</sup> amendment immunity to a qualified immunity. States, by their laws, cannot infringe upon the fundamental rights of United States citizenship. Both the Civil Rights Acts of 1866, §3 and 1871, §1 grant to the federal courts jurisdiction concerning violations of these Acts. Nowhere in the legislative history concerning these Acts can petitioner find where members of Congress believed that the 11<sup>th</sup> amendment would bar suits against States for violations of

these Acts. The 13<sup>th</sup> and 14<sup>th</sup> amendments are supposed to guarantee to all working people in the United States the right to contract their labor in a free labor market, and that this right be federally protected if a State enacts laws that infringe upon this right. Petitioner contends that the federal questions of law he has brought to the Court's attention are the most serious federal questions since the Dred Scott case in the 1850's, and that the Court has jurisdiction to hear this case. The New Deal of the 1930's did not change the Constitution, but changed the courts by attacking their independence. Petitioner contends that if the State of South Carolina had passed the laws that petitioner are challenging before the New Deal, the Court would have recognized its jurisdiction and decided the case. On pages 4-5 of petitioner's Supporting Brief, he quoted from the press article *The Hundred Days*, by Garet Garrett, *The Saturday Evening Post*, Aug. 12, 1933, which said:

“To anyone who said such an act as this one or that one was unconstitutional and would be so held by the Supreme Court, the answer that became current was: ‘Those who imagine the new order can be defeated by an appeal to the Supreme Court on the Constitution will be disappointed. Do they think the Government, having gone so far, would hesitate to give the Supreme Court a new mind?’”

In a November 30, 1935 editorial in the *Saturday Evening Post*, we read:

“A prominent New Deal senator is quoted as saying that constitutional objections will be forgotten before next year's presidential campaign. ‘Nobody knows what the issues will be, but we can lick them on constitutionality. They'll be ready to drop that.’ He is

right in surmising that nobody knows at this moment exactly what issues will be most emphasized six to eight months from now. Public opinion changes rapidly. But the gentleman is more than a little brash when he says that constitutional issues will be forgotten so soon. On the contrary, we doubt whether they ever will be forgotten as long as the Republic endures.”

Creating the fiction that compensation for labor, which is usually in the form of wages, is income within the meaning of the tax laws has opened up Pandora’s box and has made the people’s labor a great feast at all levels of government. In reading the speeches of congressional members in the Globe from 1861 and 1862, we can clearly see that compensation for labor was not considered “income” back then. On July 29, 1861, Senator Simmons said:

“A man will say his house lost five or ten per cent by the wear of it; that the tenants have destroyed the wood-work, and all those kind of evasions; but nobody can mistake the word ‘income.’ It is the net profits of a man for the year.” (Congressional Globe, 37<sup>th</sup> Congress, 1<sup>st</sup> Sess., pg. 315)

Representative Stevens, on April 3, 1862, said:

“The words ‘gain’ and ‘income’ mean the same thing. They are equivalent terms. They mean the net profits. You cannot have any gains until you pay the expenses. What it costs to produce is to be deducted, and then there will be left only the net profits.” (Congressional Globe, 37<sup>th</sup> Congress, 2<sup>nd</sup> Sess., pg. 1531)

To say that “wages” and “net profits” are synonymous terms is absurd. Perverting the income tax to include the object of human labor starting in 1937 has brought the 16<sup>th</sup> amendment into direct conflict with the 13<sup>th</sup> amendment. This is a serious federal question, and is the very cornerstone of the institution of cannibalistic slavery that the people find themselves trapped in today. It has created the philosophy among many political rulers and judges that there are no limits to the powers that can be exercised in directing and receiving the fruits of labor; and laws at both the federal and state levels which impose taxes, garnishments and fees upon labor are no doubt numerous today. However, petitioner contends that it is the direction of change and not the numerical count that is important. On page 17 of his Supporting Brief, petitioner quoted from Justice Curtis’ dissenting opinion in the Dred Scott v. Sanford case. Justice Curtis said:

“The status of slavery is not necessarily always attended with the same powers on the part of the master. The master is subject to the supreme power of the State, whose will controls his action towards his slave, and this control must be defined and regulated by the municipal law. In one State, as at one period of the Roman law, it may put the life of the slave into the hand of the master; others, as those of the United States, which tolerate slavery, may treat the slave as a person, when the master takes his life; while in others, the law may recognize a right of the slave to be protected from cruel treatment. In other words, the status of slavery embraces every condition, from that in which the slave is known to the law simply as a chattel, with no civil rights, to that in which he is recognized as a person for all purposes, save the compulsory power of directing

and receiving the fruits of his labor. Which of these conditions shall attend the status of slavery, must depend on the municipal law which creates and upholds it.” (Dred Scott v. Sanford, 19 How. 393; 624-25)

By a process of morphing its thinking since the New Deal began, the courts have created the fiction that the 11<sup>th</sup> amendment, to a high degree, bars suits against States in federal courts for 13<sup>th</sup> and 14<sup>th</sup> amendment violations. It makes no sense to petitioner that the Congress back after the Civil War knew that all their efforts in passing legislation enforcing the 13<sup>th</sup> and 14<sup>th</sup> amendments in order to protect the fundamental rights of American citizenship were in vain since the 11<sup>th</sup> amendment could be invoked by the States to bar suits in the federal courts when State laws infringed upon rights secured by the 13<sup>th</sup> and 14<sup>th</sup> amendments. Injunctive relief in such cases would be necessary to protect the Constitution’s Supremacy Clause, otherwise immune States could enact laws imposing badges of servitude with impunity, thus invalidating the supremacy of our Constitution. Justice Bradley, in the Civil Rights Cases 109 U.S. 3 (1883), said:

“It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not

be a mere *brutum fulmen*, the last section of the amendment invests congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited state law and state acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon congress, and this is the whole of it.” (supra., 11. See also: pg. 3 of Objections to R & R)

Petitioner contends that the operation of State law has impaired his right to contract his labor. Justice Bradley also said:

“Some obnoxious state law passed, or that might be passed, is necessary to be assumed in order to lay the foundation of any federal remedy in the case, and for the very sufficient reason that the constitutional prohibition is against state laws impairing the obligation of contracts.” (supra., 13)

In the case of *Boyd v. U.S.* 116 U.S. 616 (1886), we read:

“It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.” (supra., 635)

After the philosophies of socialism were implanted during the New Deal of the 1930's, the Supreme Court changed from the position it took in the *Boyd* case. In the first point in the syllabus of *Youngstown Sheet & Tube v. Sawyer* 343 U.S. 579 (1952), we read: “Courts will decline

to reach and decide constitutional questions until compelled to do so.”

The 16<sup>th</sup> amendment became part of the Constitution in 1913. The income tax was sold to the people in the beginning as a tax upon the accumulated wealth in the hands of the few, and for the next 23 years less than 3% of the people had a legal obligation to file and pay federal income tax. Judges were truly independent because no taxation was imposed upon their salaries. The argument that wages were income within the meaning of the tax laws did not exist back then. The first case to come before the Supreme Court where a wage earner had been convicted of tax crimes for not filing and paying income tax on his labor was in the 1991 term. In this case, the Court said:

“It is common ground that this Court, where possible, interprets congressional enactments so as to avoid raising serious constitutional questions.”  
(*Cheek v. U.S.* 498 U.S. 192, 203. See also: pg. 23 of Supporting Brief)

Petitioner contends that the courts morphing their thinking to comport with a process of increasing servitude has caused harm since it has aided the political power in taking away the people’s liberties without changing their Constitution. It has gotten to the point where Taxpayer Identification Numbers are assigned to children at birth, thus restoring the old slave maxim *partus sequitur ventrem*. The process by which power over the people’s labor has been gained more resembles the *Gleichschaltung* of the National Socialists of the WWII era, where propaganda was used to alter the way people think so that they conformed to the Nazi system. Dorothy Thompson, in a 1933 article wrote:

“I have just come back from - the Germany of Adolf Hitler and National Socialism - I have watched with unbelieving eyes the developments of the first ten or twelve weeks of the German revolution. And as I read the German newspapers, following the decrees of the new dictatorship, I have a strange apprehension that I am reading Aldous Huxley's book come true. Is this, perhaps, the Brave New World?...

“But the German revolution is better expressed in its own words. All students of contemporary world affairs must learn it. The word is *Gleichschaltung*. *Gleichschaltung* means ‘bringing into line.’ It means ‘conformity.’ It means, quite simply, ‘making everything alike.’

“Whoever has followed the German press since the revolution on the fifth of March has seen this word over and over again. ‘*Gleichschaltung* of the provincial governments.’ ‘*Gleichschaltung* of the civil servants.’ .... ‘*Gleichschaltung* of the professions.’ .... ‘*Gleichschaltung* of the schools, of the universities.’ .... *Gleichschaltung*,’ finally, of every individual human being.” (Room to Breathe, by Dorothy Thompson, The Saturday Evening Post, June 24, 1933, pp. 3-4)

## **Why the Writ of Prohibition Should be Granted**

According to the legal and historical research petitioner has done, this Court is the only Court in the United States that has not yet embraced the fiction that compensation paid for providing labor is legally income, even though numerous state and federal court rulings now embrace this fiction. Prior to the New Deal of the 1930's, no court opinions can be found at any level which state that

compensation for labor is legally income. According to petitioner's research, cases ruling that wages are income started around the 1970's and 1980's and have greatly multiplied since. In footnote #7 of the Cheek v. U.S. case (1991), we read:

“The opinion stated, 882 F.2d 1263, 1268-1269, n. 2 (CA7 1989), as follows:

‘For the record, we note that the following beliefs, which are stock arguments of the tax protester movement, have not been, nor ever will be, considered ‘objectively reasonable’ in this circuit: ‘(1) the belief that the sixteenth amendment to the constitution was improperly ratified, and therefore never came into being; ‘(2) the belief that the sixteenth amendment is unconstitutional generally; ‘(3) the belief that the income tax violates the takings clause of the fifth amendment; ‘(4) the belief that the tax laws are unconstitutional; ‘(5) the belief that wages are not income, and therefore are not subject to federal income tax laws; ‘(6) the belief that filing a tax return violates the privilege against self-incrimination; and ‘(7) the belief that Federal Reserve Notes do not constitute cash or income.

Miller v. United States, 868 F.2d 236, 239-41 (7th Cir. 1989); Buckner, 830 F.2d at 102; United States v. Dube, 820 F.2d 886, 891 (7th Cir. 1987); Coleman v. Comm., 791 F.2d 68, 70-71 (7th Cir. 1986); Moore, 627 F.2d at 833. We have no doubt that this list will increase with time.’”

Hence, we can see that the 7<sup>th</sup> and 9<sup>th</sup> Circuits have embraced the fiction that compensation for labor is legally

income and that it will never rule otherwise. In 1990, in the case of U.S. v. Connor, the 3<sup>rd</sup> Circuit stated:

“We take this opportunity to reiterate that wages are income within the meaning of the Sixteenth Amendment. Unless subsequent Supreme Court decisions throw any doubt on this conclusion, we will view arguments to the contrary as frivolous, which may subject the party asserting them to appropriate sanctions.”

Here we see that the 3<sup>rd</sup> Circuit clearly states that it has also embraced the fiction that compensation for labor is legally income and will only rule otherwise if this Court rules otherwise. In the 2005 case of Buckley v. Wilkins, the Ohio Supreme Court ruled that wages and salaries are legally income. There are many more cases that could be cited, but this would be surplusage. Petitioner has also researched the arguments of law professors who teach law in colleges and universities, and they also teach the fiction that compensation for labor is legally income and look with contempt upon those who dissent from their way of thinking. One such Law Professor is Jonathan Siegel of George Washington University Law School. Siegel is currently serving as Director of Research and Policy of the Administrative Conference of the United States. Siegel’s argument that he alleges proves that wages are legally income that can be taxed can be found on the web at <http://docs.law.gwu.edu/facweb/jsiegel/Personal/taxes/wages.htm>. Basically, Professor Siegel states that since you paid nothing for your labor, everything that you earn from providing your labor is a gain and therefore taxable. This is a fiction that has been created to mask imposing servitude upon the people. Representative Donnelly, on February 1, 1866, stated:

“Slavery consists in a deprivation of natural rights. A man may be a slave for a term of years as fully as though he were held for life; he may be a slave when deprived of a portion of the wages of his labor as fully as if deprived of all...” (Congressional Globe, 39<sup>th</sup> Congress, 1<sup>st</sup> Sess., pg. 588)

It was R.G. Ingersoll who said:

“You have no idea how many men are spoiled by what is called education. For the most part, colleges are places where pebbles are polished and diamonds are dimmed. If Shakespeare had graduated at Oxford, he might have been a quibbling attorney, or a hypocritical parson.”

If this Court embraces the fiction of law that has been invented since the New Deal started that compensation for labor is legally income, then the people’s labor has become the slave property of government at all levels, and the door will be open for a miserable slavery that may become far worse than actual bondage. In the Republican presidential debates hosted by Bloomberg on the night of October 11, 2011, Rep. Michelle Bachman, who is a tax attorney, commented that if we continue down the road we are on our children and grandchildren may have to pay a tax rate of up to 75% to support the system. This goes beyond the slavery the Nazis imposed upon the Jews in the Lodz Ghetto of Poland during WWII, when the Nazis taxed the wages of the Jews at a 65% rate. Petitioner submits that this may be the most serious case ever to come before this Court, for it’s decision will effect all who labor for their bread throughout the United States and all future generations. As Lincoln said concerning the Dred Scott case:

“What are the uses of decisions of courts? They have two uses. As rules of property they have two uses. First - they decide upon the question before the court. They decide in this case that Dred Scott is a slave. Nobody resists that. Not only that, but they say to everybody else that persons standing just as Dred Scott stands are as he is.” (The Complete Works of Abraham Lincoln, Vol. III, pg. 39)

Hence, it is evident that the circumstances in this case are exceptional and that adequate relief cannot be obtained in any other court. The Writ of Prohibition will aid the Court’s appellate jurisdiction by destroying the fiction the lower courts have created that compensation for labor is legally income, thus allowing governments at all levels to feast upon the people’s labor without limits, thereby circumventing the 13<sup>th</sup> amendment and enslaving them with arbitrary laws. The proper way to take away or diminish the people’s liberties is by asking their consent through constitutional amendment, not by trying to brainwash them with propaganda; and once the people’s thinking has been perverted to accept their servitude, the courts begin creating the legal fictions necessary to pronounce constitutional abuses of power constitutional. This is an insidious method of enslaving the people, and when the people begin to awaken, the fruit becomes ripe for revolution and violence, or the dictatorship necessary to suppress it. A decision in favor of the truth by this Court may help curb the tide in either direction and remind those exercising political and judicial power that the Constitution does not exist in shadows and that the people’s right to a free labor market was bought by the blood of the Civil War. Lincoln told us in 1864 “that the existing rebellion means more , and tends to more, than the perpetuation of African slavery - that it is, in fact, a war upon the rights of all working people.”

## Conclusion

In the Syllabus of the Dred Scott decision, we read: “Declaration of Independence does not include slaves as part of the people.” This is correct, for slaves have no inalienable rights. As Harriet Beecher Stowe said in *Uncle Tom’s Cabin*: “The law regards him, in every respect, as devoid of rights as a bail of merchandise.”

In a 1934 editorial, George Lorimer, who was editor of *The Saturday Evening Post* from 1899 through 1936, said:

“By income taxes we strive to redress the balance and at the same time make the builders of great fortunes pay proper toll to the society which has made their success possible.”

Are all who labor for their bread today deemed to be “the builders of great fortunes”?

Franklin D. Roosevelt knew the dangers of handing power over the people’s labor to an executive bureaucracy in violation of the Constitution. The Social Security Act of 1935, which started taxing wages at 1% starting in 1937, was the first law that gave the government the power to determine the allowance workers would receive from their wages since masters exercised power over the wages of their slaves in pre Civil War times. Petitioner’s historical research has shown that the Congress simply became a rubber stamp for executive legislation starting with the New Deal. Since the New Deal started, the people’s elected representatives in Congress rarely ever write laws nor do they read the laws they vote on in most cases. This abandonment of Congress of their essential legislative functions has done great harm to the people’s liberties. Herbert Hoover, in 1934 said:

“If we examine the fate of wrecked republics over the world we shall find first a weakening of the legislative arm. Herein lay the decay of Continental European liberalism. The lack of adequate cohesion among the members of these legislative bodies, the disintegration into blocs, the futility of discussions and negative action which was the inseparable result, so aroused resentment of the people that they turned them out for despotism and ‘action.’ It is in the legislative halls that liberty commits suicide, although legislative bodies usually succeed in maintaining their forms. For 200 years the Roman senate continued as a scene of social distinction and noisy prattle after it had surrendered its responsibilities and the Roman State had become a tyranny.”

George Lorimer reported on FDR’s annual message to Congress in a 1936 editorial. 1936 was the last year American workers received their wages in full, and thus the last year the people, pursuant to the principles of the Declaration of Independence, had the right to a free labor market. The argument that wages were income did not exist in judicial opinions at this time, even though the income tax had been in existence for 23 years. Less than 3% of the population was legally obligated to pay federal income tax in 1936. Mr. Lorimer said:

“But the political value of the President's challenge is flawless. By raising debate on the magnificence of the New Deal's acts, supposing the beneficiaries to be very numerous, attention is distracted from the meaning of the fact that the extension of executive and bureaucratic power over the lives of people in these 34 months is such as

never occurred before in the world in time of peace, without violence.

“The President says: ‘In the hands of a people's government this power is wholesome and proper. But in the hands of political puppets of an economic autocracy, such power would provide shackles for the liberties of the people.’

“This is a very significant utterance, apparently unguarded. The President is saying that the new instruments of government power in the bad hands could be used to shackle liberty. All that now saves liberty, therefore, is that the instruments are in good hands.

“These things we know about such power: First, that the instruments thereof, once created, never are surrendered; secondly, that in the course of human events they are bound to change hands; thirdly, that no authority, no administration, can guarantee the character of its succession.

“Whether the present Administration is a people's government or not is a matter of opinion. Certainly it is not the government they thought they were voting for in 1932 - not the kind of government that was represented to them then.

“If the President really believes that those who stand against him are but predatory public enemies, wishing only they had the power to enslave the people, he must shudder to think what would happen if the instruments he has created should fall into their hands. He must know, as everyone else knows, that this was one of the dangers foreseen when a people who cherished liberty above security or beneficence instituted in this country a system of representative, constitutional government of limited

powers. The Federal Government was invested with three powers, executive, legislative, and judicial, so balanced that each one was a limit to the two others, all three being limited by the Constitution. The total power of the Federal Government, again, was limited by the sovereign powers reserved to the states.

“The President's thesis is that the people now much choose between a government of unlimited powers and an economic autocracy of unlimited power. ‘Give them their way,’ he says, of he calls the economic autocracy, ‘and they will take the course of every autocracy of the past - power for themselves, enslavement for the people.’”

Abraham Lincoln was right when he said:

“That is the real issue. That is the issue that will continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles - right and wrong - throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity, and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, ‘You toil and work and earn bread, and I'll eat it.’ No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle.” (The Complete Works of Abraham Lincoln, Volume V, pg. 65)

The rights of a newly free slave after the Civil War were aptly described by General Howard in 1866, who was in charge of the Freedman's Bureau. He said:

“The freedmen referred to in the resolution are at liberty to enter into just such agreements or contracts as they please, and with whomsoever they please, and they will not be restrained from receiving as high wages as they can get.” (Congressional Globe, 39<sup>th</sup> Congress, 1<sup>st</sup> Sess., pg. 517)

This meant that a newly freed slave had the right to contract his labor with whomsoever he pleased without unconstitutional interference and receive his wages in full, and the only way this right could be taken away was for punishment for crime after conviction. The 16<sup>th</sup> Amendment did not empower the Federal Government to destroy this right, but it has by perverting the income tax laws to directly tax labor; and today, because of the Federal Government's example, the people's labor has become a great feast at all levels of government. Frederick Douglass said:

“War, slavery, injustice, and oppression, and the idea that might makes right, have been uppermost in all such governments; and the weak, for whose protection governments are ostensibly created, have had practically no rights which the strong have felt bound to respect.”

Former President Herbert Hoover tried to warn the people not to allow the politicians to expand power over them in violation of their Constitution. The majority of the people at the time did not heed his warnings, and this trapped posterity into a process of gradual socialism and increasing servitude. The result is that today the people's

right to contract their labor in a free labor market has been destroyed without amending their Constitution. In his 1934 book *The Challenge to Liberty*, Mr Hoover said:

“In the Epilogue the dreams of those who saw Utopia are shattered and the people find they are marching backward toward the Middle Ages - as regimented men.”

The record in the lower courts in this case goes into far more detail if the Court chooses to read the full case.

The petitioner hopes the Court will issue the Writ of Prohibition against the State of South Carolina and all of its political subdivisions; and all officers, agents, servants, employees, successors and assigns, and all persons acting in concert or participation with them, so that petitioner can contract his labor in a free labor market; and the only way he can be stripped of this right is for punishment for crime after conviction.

Respectfully submitted this \_\_\_\_\_ day of January, 2012.

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Adrian Charles Banks, Pro Se