

# MEMORANDUM OF LAW

## ARTICLE III COURTS -V- ARTICLE I COURTS

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The purpose of this memorandum is to clarify the Jurisdictions of the Federal District Courts that are to proceed under Law or Equity under the Rules of Common Law. There is no constitutional authority for the creation of the de-facto "Article I tax court" which is prohibited by Article I Section 9 Clause 4: "No capitation, or other direct, tax (*tax on salary or property*) shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."

De-facto USC Title 26 supports the de-facto Article I court being written to control and appear to give law and authority to the said de-facto court. Whereas de-facto Title 26 states no jurisdiction, claims to be a court of record, operates under statutes, which is an oxymoron. Whereas a "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeds according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial."<sup>1</sup> "Common Law is distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority."<sup>2</sup>

We the People via the Constitution empowered elected and appointed servants to guard the same. The Constitution cannot be altered or abolished by the legislative servants who took an oath to protect it. "Any judge who does not comply with his oath to the Constitution for the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason."<sup>3</sup>

### CREATION OF ARTICLE III COURTS THERE IS NO SUCH THING AS AN ARTICLE I COURT

It is Article III Section 1 where authority is given to create courts. We the People vested power in only "One Supreme Court" and empowered Congress to ordain and establish inferior courts whereas judges hold office only so long as they are in good behavior.

Article III Section 1: *The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time*

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<sup>1</sup> Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

<sup>2</sup> Klever v. Seawall, C.C.A.Ohio, 65 F. 395, 12 C.C.A. 661.

<sup>3</sup> Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).

*to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior...*

Good behavior is defined in Article VI which is obedience to the 'Law of the Land' which includes Natural Law. Any judge not in good behavior would be in bad behavior and forfeit's their office. Therefore, it is Congresses' duty to impeach judges in bad behavior if they do not stand down. And if Congress cannot find the backbone to do their duty, then we the People will remove them via extraordinary indictments.

Article VI Clause 2: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Congress has been given power to create only Article III Courts of Record and equity ruled by American Jurisprudence. Equity courts proceed under USC Titles whereas Law courts a/k/a 'courts of record' are to proceed under Natural Law. Both courts are governed by the Rules of Common Law.

Article I Section 8; Clause 9: *The Congress shall have power to constitute tribunals inferior to the Supreme Court*; as referred to in Article III Section 14

In other words, Article I Section 8, Clause 9 only authorizes power to Congress to create Article III courts, there is no such thing as an Article I Court. Whereas 28 USC §132 defines the nature of the created district courts as courts of record.<sup>5</sup>

28 USC §132: *Creation and composition of district courts (a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district. (b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court. (c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.*

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<sup>4</sup> **Article III Section 1**: The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

<sup>5</sup> **COURTS OF RECORD and COURTS NOT OF RECORD** - The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

Every federal district is to have a ‘court of record’ a/k/a natural law court which is presided over by the People (12 jurists), ‘no political judges permitted.’ When a judge sits as judge, it is an equity court under statutes or contract; Amendment VI makes clear that judges cannot hear, decide, or sentence criminal cases.

*“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,”*

And, Amendment VII protects the Peoples’ right to common law courts according to the rules of Common Law.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

**COURTS THAT RESIST THE CONSTITUTION:** Judges have a duty by oath to support the Constitution and guarantee a Republican form of government.<sup>6</sup> Any judge acting upon seditious legislative-acts joins the conspiracy of subversion: *“if then the courts are to regard the constitution and the 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. Those then who resist the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.”... “It is in these words: ‘I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.’ Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him and cannot be inspected by him. If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.”<sup>7</sup>*

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<sup>6</sup> **Article IV Section 4:** The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

<sup>7</sup> *MARBURY v. MADISON*, 5 U.S. 137 (1803) 5 U.S. 137 (Cranch) 1803

**CONCLUSION:** Congress has been given power to constitute tribunals under Article I Section 8, clause 9, said tribunals are defined under Article III Section 1 and 2. Both Law and equity courts are called “United States District Court” and all judges are bound to the law of the land and hold office only when they are obedient to the Law of the Land. There exists no authority for Congress to create or the Judiciary to create a jurisdiction called an “Article I tax court.”

USC Title 26 is NOT LAW and does not state or define a jurisdiction as it claims to be a court of record while operating under statutes, which is an oxymoron. A “court of record” proceeds according to the course of common law, not codes and statutes and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, whereas A “court of record” is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it and proceeds according to the rules of Common Law.