AFFIDAVIT

POSITION

The monies taken by the federal government from employers, wage earners, and self employed entepreneurs under the Federal Insurance Contributions Act (Social Security) has been ruled on by the United States Supreme Court 123 times since the Court's first decision handed down in the Steward Machine Co. vs. Davis Case 301 US 548, in 1936. With that many rulings on the subject, there should be nothing left to decide on this issue. For the purpose of this document, it is superfluous to examine all of the topics and subject matter the Court has already decided. However, it is expedient to review some of the history and key decisions made by the Court over the past 47 years to provide a basic understanding of the central question that must be answered in this case at this time concerning this natural person.

HISTORICAL BACKGROUND

Here are some of the more important case law decisions by the Court pursuant to this issue.

> "The provision of the Social Security Act by which Congress expressly reserved the right to alter, amend, or repeal any provision of the Act (42 USC 1304) Makes express what is explicit in the institutional needs of the Program." Flemming v. Nestor, 363 US 603, 80 S Ct 1367.

> "The Social Security System is a form of social insurance, enacted pursuant to Congress' power to spend money in aid of the general welfare, whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents." (emphasis added) Flemming v. Nestor, 363 US 603.

> "The tax imposed on employers by title IX of the Social Security Act of August 14, 1935 (49 Stat at L 620, chap 531, 42 USC chap 7 (Supp)), satisfies the constitutional requirement that excise taxes shall be uniform throughout the United States." Steward Mach. Co. v. Davis, 301 US 548.

"The tax imposed on employers by title IX of the Social Security Act of August 14, 1935 (49 Stat a L 620, chap 531, 42 USC chap 7 (Supp), is an excise tax and thus within the power conferred upon Congress by Art. I, & Sec. 8, of the Constitution to lay and collect duties, imposts, and excises." Steward Mach. Co. v. Davis, 301 US 548.

"Social Security benefits are to some degree in the nature of insurance, providing present security and peace if mind from fear of future lack of earnings." (emphasis added) Weinberger v. Wiesenfeld, 420 US 636.

"The "right" to Social Security benefits is in a sense "earned," for the entire scheme rests on the legislative judgment that those who in their productive years were functioning members of the economy may justly call upon that economy, in their later years, for protection from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near." (emphasis added) Flemming v. Nestor, 363 US 603.

"The tax imposed on employers by title VIII of the Social Security Act of August 14, 1935 (49 Stat at L 620, chap 531, 42 USC chap 7 (Supp)), is an excise tax and thus within the power conferred upon Congress by Art. 1, & Sec. 8, If the Constitution, to lay and collect duties, imposts, and excises." (emphasis added) Flemming v. Nestor, 363 US 603.

"The purpose of the old age benefits of the Social Security Act (49 Stat at L 622) is to provide funds through contributions by employer and employee for the decent support of elderly workmen who have ceased to labor, eligibility for these benefits and their amounts being dependent upon the total wages which the employee has received and the periods in which wages were paid." Social Security Bd. v. Nierotko, 327 US 358.

"The noncontractual interest of an employee covered by The Social Security Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments." (emphasis added) Flemming v. Nestor, 363 US 603.

"Although each categorical assistance program under the Social Security Act (42 USCS sections 301 et seq.) is intended to assist the needy, it does not follow that there is only one constitutionly permissible way for a state to approach this important goal; the very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them." Jefferson v. Hackney, 406 US 535.

"The specificity of the Social Security Act's exemptions from its operation, and the general nature of the employment definitions therein, indicates that the term "employment" and "employee" are to be construed to accomplish the purposes of the legislation." United States v. Silk, 331 US 704.

"Dance hall operators are not subject to the employment tax imposed by the Social Security Act in respect of members of "name" bands engaged by them under a contract with the Band leader, who employs and discharge musicians, exercises complete control over them, fixes and pays their salaries, tell them what and how to play, provides sheet music, public address system and uniforms, pays the expenses of the organization out of the receipts, and keeps for himself any profit and bears any losses even though the contract with the dance hall operator attempts to shift the incidence of the social secuity tax by a provision, which has no practical effect on the relations between the musicians and their leader and shall have complete control of the services to be rendered by them." (Douglas, Black, Murphy, JJ. dissented from this holding.) Bartels v. Birmingham, 332 US 126.

"Under 26 USC & 3121 (d) and 26 USC & 3306 (i), which provide that for purposes of the Federal Insurance Contributions Act and Federal Unemployment Tax Act, respectively, the term "employee" is to be determined under the "usual common law rules" applicable in determining the employer-employee relationship, the question whether captains and crewmen on a commercial fishing boat are employees of the owner is to be determined according to maritime law standards rather than according to common-law standards governing land-based occupations. (emphasis added) United States v. W.M. Webb, Inc. 397 US 179.

"That Congress, in enacting Sec. 202(n) of the Social Security Act (42 USC 402 (n) providing for termination of benefits payable to, or in certain cases in respect of, an alien deported on the ground, inter alia, of Communist Party membership, was concerned with the acts leading to deportation, and not with the fact of deportation, cannot be inferred from Congess' failure to apply the termination of benefits provision to Social Security beneficiaries voluntarily residing abroad; Congress may have failed to consider such persons or may have thought their number too slight, or the permanence of their voluntary residence abroad too uncertain, to warrant application of the statute to them." Flemming v. Nestor, 363 US 603.

"That Social Security benefits are financed in part by taxes on an employee's wages does not in itself limit the power of Congress to fix the levels of benefits under the

Social Security Act or the conditions upon which they may be paid." Richardson v. Belcher, 404US 78.

"That Congress, in enacting 202(n) of Social Security Act (42 USC & 402n) providing for termination of benefits payable to, or in certain cases in respect of, an alien deported on the ground, inter alia, of Communist Party membership, was concerned with acts leading to deportation, and not with the fact of deportation, cannot be inferred from the omission by Congress from the grounds requiring termination of payment of benefits of (1) mental disease, defect, or deficiency; (2) status as a public charge; (3) failure to maintain nonimmigrant status; or (4) inducing or aiding another alien to enter unlawfully." Flemming v. Nestor, 363 US 603.

"Once net wages are paid by an employer to an employee, federal taxes required to be withheld from wages by the employer for income and Social Security taxes are credited to the employee regardless of whether the employer pays them to the government, and the Internal Revenue Service has recourse only against the employer for the payment of such taxes required to be withheld." Slodov v. United States, 436 US 238.

"Section 6672 of the Internal Revenue Code of 1954 (26 USCS & 6672)--which provides that "any person required to collect, truthfully account for, and pay over" federal taxes, who "willfully" fails to do so, shall be liable to a "Penalty" equal to the total amount of the taxes in question---applies to an individual when that individual, who causes an employer's delinquency in paying taxes which the employer is required to withhold for income and Social Security taxes, is also a "responsible person" (a "person required to collect, truthfully account for, and pay over" federal taxes) at the time the government, upon failing in its efforts to collect from the employer, seeks recourse against responsible employees." Slodov v. United States, 436 US 238.

Our system of taxation is based upon voluntary assessment and payment, not upon distraint. Helvering v. Mitchell, 304 US 391.

" 'Income may be defined as the gain derived from capital, from labor, or from both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the Doyle case." Eisner v. Macomber, 252 US 189.

Compensation) There is a clear distinction between profit and wages or compensation for labour. Oliver v. Halstead, 96

SE 21 858, 859.

Compensation for labour can not be regarded as profit within the meaning of the law. The word profit, as ordinarily used, means the gain made upon any business or investments, a different thing altogether from compensation for labour. Commercial League asso. of America v. People ex net Needles Auditor 90 I11. 166

At this point it is necessary to include the opinions of the three minority opinions of the Supreme Court in the Nestor Case 363 US 603 (attached).

Remember these three judges were present during the enactment of the Social Security System, and their discenting opinions point out that the Social Security System was "sold" as insurance. It is in this light that these three judges contend that Social Security is a property right. The majority held that Social Security is welfare. Therefore, the state of the law concerning Social Security at this time is---Social Security is "WELFARE" not insurance.

The truth is, both sides in the Nestor Case are right. The intent and sales pitch for Social Security was "insurance". The contract written into law "Title 42" is welfare. In the minority opinion Black, Douglas, and Brennen, reveal the fraud and hoax perpetrated upon all labourers in violation of their rights. Those opinions are attached and must be read before continuing with my remarks as my remarks will not be understood until those remarks are read. Please read the Nestor case before continuing.

The above cited cases and opinions give us an overview of the essential elements of the Court's rulings and opinions

concerning Social Security. Here then are some of the conclusions of the law by the Supreme Court which are relevant in part to this person's issue.

1. The Social Security Act may be amended or repealed at any time. Flemming v. Nestor, 363 US 603.

2. The Social Security System is a form of social insurance. Flemming v. Nestor, 363 US 603.

3. Social Security is a tax. Flemming v. Nestor, 363 US 603.

4. Both Employee and Employer are taxed. Flemming v. Nestor, 363 US 603.

5. The foundation of Social Security is founded upon predictions of economic conditions "which must inevitably prove less than wholly accurate". Flemming v. Nestor, 363 US 603.

6. The tax imposed upon employers is constitutional. Stewart Machine Co. v. Davis 301 US 548.

7. The tax on employers is an excise tax. Stewart Machine Co. v. Davis 301 US 548.

8. The tax on employers is an excise tax which is uniform throughout the United States. Stewart Machine Co. v. Davis, 301 US 548.

9. The tax is an excise tax on business pursuant to the Congressional power to tax in Article 1, Sec. 8. Stewart Machine Co. v. Davis, 301 US 548 and Helvering v. Davis, 301 US 619.

10. Social Security is not an accrued property right. Helvering v. Davis, 301 US 619.

11. "Social Security changes constantly to everchanging

conditions." Flemming v. Nestor, 363 US 603.

12. "Social Security benefits are, to some degree, in the nature of insurance."

13. "The right to Social Security benefits is, in a sense earned." Flemming v. Nestor, 363 US 603.

14. "The entire scheme rests on the legislative judgement." Flemming v. Nestor, 363 US 603.

15. "The purpose of the old-age benefits of the Social Security Act is to provide funds through contributions by employer and employee."

16. Employees have no contractual interest in Social Security. Flemming v. Nestor, 363 US 603.

17. "Each categorical assistance program under the Social Security Act (42 USCS 301 et seq) is intended to assist the needy."

18. Employee contributions to Social Security is a tax. Richardson v. Belcher, 404 US 78.

19. Persons required to collect and pay over taxes who willfully fail or refuse are liable to a penalty equal to the total amount of the tax due. Slodov v. United States, 436 US 238.

20. Ministers, members, or practitioners who are conscientiously opposed to, or because of religious principles are opposed to the acceptance of benefits based on their earnings from such services may elect to be exempt from coverage by applying to the Internal Revenue Service for an irrevocable exemption. 42 USCA 411 (a) (7), (c) (4), 20 CFR 404 1061.

21. "Since only covered employees and not others are

required to pay the taxes toward the system..." Weinberger v. Wiesenfeld, 420 US 436.

22. "Congress included in the original act, and has since retained, a clause reserving to it the right to alter, amend or repeal any provision of the act 1104, 49 Stat. 648, 42 USC 1304, Flemming v. Nestor, 363 US 603.

23.

CONCLUSIONS OF LAW

Nowhere in the history of the Social Security Act has the High Court ruled upon the issue of whether or not the withholding from an employee was an unconstitutional tax on the right of labor. However, A RIGHT cannot be taxed. The power to tax is the power to destroy.

These axioms in law are relevant in this case because this person claims the right to labor and to retain the fruits thereof. Can the government take from a laboring person his wages, or a part thereof, by taxing him over his objection and against his will? The answer is no. Wherefore, then, can an employer take the withholding tax from this employee and give it to the general fund of the government? The answer is, only by the employee's contractual permission which are obtained through the W4 form and the voluntary application for and acceptance of the Social Security card.

This employee volunteered into the Social Security Act by accepting the Social Security card and number, but why did this natural person volunteer into the system? Because at the time I volunteered, I was too young and lacked the capacity to make a binding contract, or voluntary consent to participate, or understand the nature of the voluntary income tax (Social Security) upon my right to labor. My government told me through the public education system that I could not work without a Social Security Card, and they told me the Social Security System was an insurance program. My government lied to me and caused me to enter a voluntary contract or agreement (conversion of property) through lies, fraud and deceit, and it has only been recently that I have regained my capacities and therefore now repudiate this fraudulent conversion of my property (wages). When tricked into signing this fraudulent contract, I was a minor and incapable of making a contract at the time of signing. I admit to my past incapacities, but "now this idiot doth obtain his senses" and now reclaims his status and rights. Bouvier's law dictionary defines incapacity as:

> "The want of a quality legally to do, give, transmit, or receive something. In general, the incapacity ceases with the cause which produces it. If the idiot should obtain his senses..., incapacity would be at an end."

I do hereby declare by incapacity to be at an end and I contend that there has been no law pased that requires any citizen to enroll in or subscribe to the FICA program, indeed no law could be passed requiring such a conversion of property as it would violate a basic right.

I further contend that liability for FICA is not the result of being an employee, but that the liability is conditioned upon receiving a gain, profit, or privilege.

I contend that the privilege that produces liability is the employee's participation in interstate commerce through the use of inland bills of exchange. This participation in the use of bank credit cards, checking accounts, and credit in nationally chartered credit institutions is the corporate privilege which reduces a citizen to the status of member, subject or slave.

I contend that I am not engaged in interstate commerce and therefore I am not subject to the income tax or the special voluntary social security tax.

I concur that corporations may be taxed pursuant to Article 1, Sec. 8 of the U.S. Constitution and forced to pay FICA and income taxes pursuant to the 16th amendment upon a corporate privilege.

I contend however that this conversion of property was never fully explained to me. If it had been explained, I would never have agreed to give up my natural inalienable right to keep the fruits of my labor, nor would I have volunteered to contribute to the Social Security and/or income tax programs.

William E Wagoner

WILLIAM E. WAGONER JR.

10/11/84
DATE

JURAT: I, Notary Public in and for the State of Nevada, residing at ZEPHYR COVE witness that on this day, one known to me to be the above signature, did personally appear before me and upon the above expressed and implied oath or affirmation and verification, affixed the above executed signature hereto. My Commission expires on JUNE 11, 1985

Rita Bienz

Notary Public

10-11-84
Date

SEAL

RITA BIENZ
NOTARY PUBLIC - NEVADA
DOUGLAS COUNTY
My Appointment Expires June 11, 1985

VERIFICATION

I, the undersigned aggrieved individual suffering or about to suffer a legal wrong[1] under a relevant statute as applied to me or mine, for which there is NO clear, speedy certain, complete nor otherwise adequate remedy at law, even though I have EXHAUSTED ALL administrative remedies as may be required, and otherwise as Affiant in this matter--under pains and penalties of perjury--affirm that all statements herein in entirety are true and correct upon my personal knowledge, belief and information, and are NOT made for purposes of delay nor evasion, nor other bad purpose, but are made only to assert, protect, and vindicate my SUBSTANTIVE, Political, and Civil Rights, Liberties, Immunities, my Person, Family, Property, Interests and Endeavors--from, inter alia, alien and foreign jurisdictions and the effects thereof--to which I and Mine are IMMUNE, and otherwise have a right to be free from; and where anything herein appears to be a "conclusion", the same is NOT a mere conclusion, but represents JURISDICTIONAL AND CONSTITUTIONAL FACTS--which are "hard facts"--upon which I have and do and shall as foundation and justification for my acts and omissions (Lemon v. Kurtzman, 411 US 192; US v. Mason, 412 US 391)--for which dependence and reliance I can NOT be penalized US v. Mason, supra[2])--all such "hard facts" having "retro active effect" (Becker v. Nebr., 310 F. Supp. 1275, affd. 435 F2d 157, cert. den. 402 US 981; NY & Van Burkett v. Montanye, 335 NYS2 196, 70 Misc. 2d 907)--upon which AT LAW facts and authority I have based all my acts and want of action (supra)--in substance, mere form NOTWITHSTANDING--as relates to any supposed private or public or other claim or defense which government et al., may try to depend upon--or which is in process or which may arise in the future, and of course as otherwise may relate to this action, contest or case. This, in any event, is a or in the nature of, a "SPECIAL APPEARANCE" to challenge JURISDICTION of (a) any involved "agency" or agent thereof, and (b) supposed "court" acting on related enforcement of that agency's supposed jurisdiction and subject matter or claim, which is thus NOT acting "judicially" (Thompson v. Smith, 154 SE 579, 583), but as a mere extention of that agency for superior reviewing purposed (eg. see K.C. Davis, ADMIN. LAW, p. 95, 6 Ed. West's 1977, Ch. 1 1965 Ed.); FRC v. GE, 281 US 464, Keller v. PE, 261 US 428, etc.), allowing no one, supposed grand jury, prosecutor, "judge" (sic), "jurors" (sic), "court" (sic) any form of "judicial immunity" therefore and otherwise.

"This is, or is supplementary to, and only under and subsequent to a Special Appearance to deny and challenge jurisdiction of a governmental, quasi-governmental or private de facto or dejure agency--over my Person and thereto related Subject Matter--and if any court is supposing or otherwise claiming right to enforce any statute[3] against me, my property, Family, Life, Liberty, Immunity or other civil and political rights.

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(1) 5 USC 702 (eg., 5 USC 101-559, 701-706; Stark v. Wickard, 321 US 288 (1944)(2) Sherar v. Cullen, 481 F2d. 946 (1973); Simmons v. US, 390 uS 389 (1968); Miller v. US, 230 F2d. 486, 489; Malloy v. Hogan, 378 US 1, 8; US v. Bishop, 412 US 346 (72) (3) courts in administering or "enforcing" statutes do NOT act "judicially", but merely ministerially (Thompson v. Smith, 145 SE 579, 583, and do so at their personal risk and peril (Middleton v. Low, 30 C 596, ____P ____; see effect of San Christina v. SF, 167 C 762, 142 P 384).

William E. Wagoner Jr.
WILLIAM E. WAGONER JR.,

RITA BIENZ
NOTARY PUBLIC - NEVADA
DOUGLAS COUNTY
My Appointment Expires June 14, 1985

Date

Aggrieved Individual Suffering A Legal Wrong

JURAT: I, Notary Public in and for the State of NEVADA, and for the County of DOUGLAS, residing at ZEPHYR COVE witness that on this day, one known to me to be the above signator, did personally appear before me and upon the above expressed and implied oath or affirmation and verification, affixed the above executed signature hereto,

My Commission expires on 6-11-85 — NOTARY PUBLIC — 10-11-84 DATE

SEAL

REQUESTED BY
William Wagoner Jr
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

'94 OCT 11 A11 :39

SUZANNE BEAUDREAU
RECORDER

$ 16.00 PAID BK DEPUTY

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