

Anatomy of a Frivolous Argument

While I've spoken about this many times, it keeps coming up so I figured I would do a formal analysis. I'm well-aware this will have no impact on those who use this tactic to avoid discussion, such as lawyers and bureaucrats; this is for those who may be victims of this pernicious method of shouting down a valid argument. Ironically, as will be shown, it's those screeching "frivolous" that are usually raising a truly frivolous argument. Yelling frivolous is a distraction technique, don't be fooled by it.

Anyone who has ever challenged the legitimacy of government and the application of their sacred writ, called "laws," will be familiar with this tactic. When the accuser admittedly has no evidence, they just start shouting "frivolous argument" as if that magically creates facts to support their claim.

What is a frivolous argument? There are usually two constants, it's not just an argument lacking in merit or arbitrarily denied by a traffic court judge: "An appeal [argument] is not frivolous just because it has no merit" *Applied Business Software, Inc. v. Pacific Mortgage Exchange, Inc.*, 164 Cal. App. 4th 1108, it must also be brought in bad faith:

"frivolous. So clearly and palpably bad and insufficient as to require no argument or illustration to show the character as indicative of bad faith upon a bare inspection...Strong v Sproul, 53 NY 497, 499."
Ballentine's Law Dictionary, 3rd Ed., page 503.

Black's Law Dictionary adds to this (also quoting *Strong v Sproul*):

"...where it does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent..." 4th Ed, page 796.

A frivolous argument has three elements:

1. **lacks merit;**
2. **doesn't controvert the material points;** and
3. **is brought in bad faith.**

Now let's look at an argument I wrote that's been labeled "frivolous" by an administrative

law judge in California and see if it meets this criteria.

“...the legal claims made against me have no factual support, the FTB knows this, and is proceeding against me anyway.” The legal claim referenced is the claim the laws apply because the target of the assessment is physically in California or has a California source of money. The FTB argues their laws created an obligation, it’s a foundational claim.

We know this because several agents told us, this includes counsel for the FTB. When asked for the facts they relied on, they admittedly had nothing, counsel admitted this was an assumption (video below). Those are the facts my argument is based on, the argument follows directly from the facts.

1. Does the claim have merit? Yes; the FTB and IRS operate under the same presumption, they admit it; they claim their laws apply, gives them jurisdiction and creates obligations.

My argument is based on their admissions they don’t have evidence and don’t need evidence to support their claim. So with the FTB claim, where they admit they have no evidence and the foundation of their assessment is an assumption, there is solid factual support. Therefore, the argument is valid, it has merit because the facts support it.

The FTB and IRS are required to have evidence to support their assessments; lacking a foundational basis is referred to as a “naked assessment” to wit:

“The determination of tax due then may be one “without rational foundation and excessive,” and not properly subject to the usual rule with respect to the burden of proof in tax cases. Helvering v. Taylor, 293 US 507.” United States v. Janis, 428 U.S. 433.

The challenge is based on this principle, while my challenge is not spelled out in this or other cases I’m aware of, the legal principle is what’s relevant. The FTB’s assessment is “without rational foundation” by their own admissions.

The argument has merit because it is based on a sound legal principle, supported by the agents’ own admissions.

2. Does it “controvert the material points” made by the FTB or IRS? Yes; by their own admission they operate under the presumption the laws apply because you’re physically in California or have a California source of money; and by their own admission they have no evidence, it’s an assumption. It’s logical and consistent with the facts.

3. Is it brought in bad faith? No; it's based on facts, and a sound legal principle that "controverts the material points" raised by the FTB or IRS. It's a logically, legally, and factually consistent argument.

None of the three elements of a "frivolous argument" are present proving the argument is not frivolous; it may be wrong, but it's not *frivolous*. It's possible the facts as alleged are not true, but that is what a hearing is for, to determine if the alleged facts are true. In the above video you can hear the agent admit the assessment's foundation, the applicability of the laws, is an assumption. An assumption is not a "rational foundation."

If it's obvious it's not a frivolous argument, then why do tax agents and their lawyers (with and without black robes) insist it is and threaten thousands in sanctions? Because they have a vested interest in the system taking property by force (taxation). They are the ones raising an argument that has no rational foundation and is brought in bad faith. I've had tax agents claim they don't need evidence. That's frivolous, not pointing out their claim lacks factual support.

What they are really saying is just challenging their foundational claim is somehow a frivolous argument or calling out their frivolous argument is itself frivolous. That is proof of bad faith.

What they do is strawman the actual position claiming:

"Appellant's inquiry is entirely nonsensical, and while we are unsure of the exact import of this statement, it appears to be based on the meritless contention that California does not have jurisdiction to impose a personal income tax on appellant."

No, the contention is: the FTB admitted their foundational claim is the constitution applies because there was California source of money. When asked for evidence, they admittedly had none and agreed it was an assumption. We have never made the above claim, this is done to justify ignoring the actual issue. They know what the actual issue is because the "entirely nonsensical" argument is cited just before the above quote:

"Moreover, in her briefs, appellant states that she had previously contacted FTB staff and [FTB counsel] regarding the proposed assessments at issue, and that these individuals failed to provide evidence that the "constitution" applied to her."

First, the claim is not “entirely nonsensical” it’s based on the FTB’s own admissions and used as an insult, they also use “legalistic gibberish.” What this administrative law judge really thinks is frivolous, is *challenging* the FTB’s claim the laws apply to appellant. Questioning the FTB’s legal claim is the frivolous argument to him. This cow is so sacred to this bureaucrat he’s threatening a five-thousand dollar sanction for just questioning it and pointing out it’s admittedly an assumption. **Like the pope admitting he just assumes the gods are real and anyone quoting him is raising a frivolous argument.** By the way, this is the same bureaucrat allowing the FTB to lie with impunity in their pleadings. No bias there I guess.

Some claim the courts have already ruled the argument frivolous for decades as if that changes anything, it doesn’t. Because just as this ALJ is wrong, so are the courts for the reasons above.

It must also be noted they are not addressing this actual argument in those cases, just like the ALJ does here. If you look at the cases, the frivolous arguments are all arguments of legal interpretation, not issues of fact. This ALJ cites *Appeals of Dauberger* (82- SBE-082) 1982, as support; the type of arguments included are: wages not income without meaning of statute, not a taxpayer within meaning of statute, federal reserve notes are not legal tender, and the Fifth Amendment prohibits the requirement to file a tax return. Not a single issue of fact cited as a frivolous argument.

If it’s truly frivolous to challenge this legal claim, then that’s proof the system is rigged. Irrefutable presumptions are unfair and violate due process because they cannot be challenged, there is no defense, even against an assumption, *Vlandis v. Kline*, 412 US 441. Yes, this is about legislative presumptions, but the principle of fairness is what is relevant because due process requires notice and opportunity to defend at a meaningful hearing, *Goldberg v Kelly*, 397 US 254 (1970).

It’s not a so-called “frivolous argument” to point out someone’s foundational claim is admittedly an assumption, it’s a statement of fact.

So when they start chanting frivolous, call them on it, ask them what makes an argument frivolous and not just wrong. Ask them to point out what part of the argument is false; because the underlying facts are not and since the conclusion is drawn directly from the facts, the conclusion is accurate.

The argument the FTB or IRS has failed to support their claim the constitution applies, has merit because 1) it is based on their own admissions, 2) it controverts material points because they admit to not having evidence, and 3) because it’s based on a sound legal principle and the FTB’s own admissions, there is no bad faith.

Regardless of the chants from lawyers and bureaucrats, the argument is not frivolous.