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RESPONDENT'S
BRIEF

NO. 32514-4-II

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON INC. ET. AL.,

Appellant,

v.

Marcus A. Carter,

Citizen / respondent.

VAC

**MOTION TO DISMISS and MEMORANDUM - STATUTE
INVALID, INSUFFICIENT AND VOID FOR VAGUENESS AS
APPLIED**

Marcus A. Carter - Citizen
By limited special appearance and under continuing protest
Reserving All Rights
13271 Wicks End Place S. W.
Port Orchard, Washington
(360) 895-0724

COMES NOW Marcus Alton Carter, a natural born, Citizen of Washington, living in Kitsap County, by special limited appearance in propria persona, (and not "Pro Se"), proceeding at Law in sumo jure, jus regium, in forma pauperis, and as such, in specific objection and protest to, and without conferring nor consenting to, any ministerial strict liability, equity/admiralty/chancery, executive/military/corporate tribunal, or any other jurisdiction foreign and hostile to the rights of this Citizen to a constitutional court of Law under his guaranteed constitutional republican form of government.

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MOTION

This Citizen respectfully moves the Court for dismissal of the instant case for and because the charging statute, RCW 9.41.190, is invalid, insufficient, and void for vagueness as applied.

OPENING STATEMENT

- A citizen prosecuted under a criminal statute has standing to challenge the validity of the statute.¹
- This Citizen will prove beyond a reasonable doubt,² in facial challenge to the validity of the statute, that the statute under which he was charged is patently unconstitutional under the state and federal Constitutions³, same said as the Law of the Land⁴ in full force and effect as applied to this Citizen, the instant case and this Court by Oath of Office.
- This Citizen will prove that the charging statute as applied is insufficient to establish the commission of any crime by this natural Citizen.
- This Citizen will prove that the statute as applied in the instant case is void for vagueness as applied.⁵

¹ State v. Ruff, 122 Wn.2d 731, 861 P.2d 1063 (1993)

² State v. Smith, 48 Wn. App. 33, 737 P.2d 723 (1987)

³ CSW 1889 organic and CUSA 1789 organic

⁴ State v. Dexter, 32 Wn.2d 551, 202 P.2d 906 (1949)

⁵ State v. Wissing, 66 Wn. App. 745, 833 P.2d 424, (1992)

FACTS

See those FACTS listed in that document of record entitled BREIF OF CITIZEN/RESPONDANT submitted March 9, 2001 and incorporated herein in full.

ARGUMENT & LAW

The instant case should have been dismissed as STATE OF WASHINGTON lacked jurisdiction to bring this prosecution. A challenge to the jurisdiction of the court can be raised at any time.⁶ Jurisdiction has been timely challenged. Once jurisdiction has been challenged, plaintiff has burden to prove jurisdiction.⁷ That Plea in Abatement⁸ dated December 6, 1999, (which the court on that date unlawfully refused to hear timely, in denial of the right of the Accused to face his accuser(s) in probable cause hearing or any lawful arraignment; see transcript⁹), filed on January 10, 2000, and that Notice and Demand for Due Process of Law filed January 10, 2000¹⁰, are incorporated herein by reference as proof of the status of record of this Citizen, the special nature of this proceeding,

⁶ Capper v. Callahan, 39 Wn.2d 882, 887, 239 P.2d 541 (1952).

⁷ McNutt v. General Motors Acceptance Corporation, 298 U.S. 173

⁸ Appendix a

⁹ CP 222-230

¹⁰ Appendix b

and the duty of any and all courts hearing this matter to proceed at and to uphold the Law of the Land.

Mandatory Judicial Notice of these adjudicative facts of law is invoked under ER 201(d).

The United States Supreme Court¹¹ has set forth with specificity (See Mr. Justice Brandeis, concurring) the conditions under which the validity of statutes will be determined by that court. This Citizen calls to the attention of the Court that the instant case, (if this Citizen cannot gain enforcement of the Law and dismissal), would meet those conditions for review.

This Citizen, therefore, comes not with frivolous or contrived arguments, but with foundational issues of Law critical to the survival of government by and for the people in our Constitutional Republic; individual rights and liberties; and the rule of Law, requesting as a matter of right the full and undivided attention of the Court in fair hearing, diligent review of these pleadings, and especially patient study of the foundations of Law set forth.

¹¹ Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S. Ct. 466 (1936)

I. FACIAL VALIDITY OF STATUTE

CSW Art. 1 ss 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

MANDATORY: Containing a command; preceptive; imperitive; peremptory.¹²

Conclusion: The Washington State Constitution acts as a mandate and command to this Court. **The Court is without discretionary power where these mandates are in force.**

“The law imposes on the courts the duty of determining the constitutionality of any statute whenever the question is properly presented; and the duty of declaring void any statute which violates the constitution is not limited to direct violations, but **extends to evasions or indirections** which may be practiced by the legislature.”¹³

“A citizen prosecuted under a criminal statute has standing to challenge the validity of the statute...”¹⁴

The general misconception is that any statute passed by legislators bearing the color of law, especially that statute which becomes enforced over time and goes unchallenged, constitutes the law of the land. It is impossible for a law that violates the Constitutions to be valid. To wit:

“State Constitution is **limitation** on actions of legislature rather than grant of power.”¹⁵

¹² Black's Law Dictionary 1st Ed. 1891

¹³ State ex rel. Troy v. Yelle, 27 Wn. 2d 99, (1947)

¹⁴ State v. Ruff, 122 Wn. 2d 731, (1993) also see Am Jur 2nd Vol. 16 sec 139

¹⁵ In re Elliott, 446 P. 2d 347 (1968).

“Courts, above all else, have a duty to uphold the Constitution, and where a statute is in fact unconstitutional, the court’s duty is to declare it invalid, no matter how desirable or beneficial its purposes might be.”¹⁶

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”¹⁷

“An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation as though it had never been passed.”¹⁸

“All laws which are repugnant to the Constitution are null and void.”¹⁹

CSW Art. 1 ss 24 RIGHT TO BEAR ARMS. The right of the individual citizen to bear arms in defense of himself or the state **shall not be impaired**, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.²⁰ (Emphasis added)

Impair: To weaken, diminish, or relax, or otherwise affect in an injurious manner.²¹

It is no foreign doctrine to the Washington State Supreme Court that our state constitution may provide greater protections than afforded by the federal²². Such is the case here. “Impair” requires a more strict reading than “Infringe.” One may interpret what constitutes a “trespass”, but to diminish a thing (right) includes the smallest noticeable increment or change. The statute operates to impair this right.

¹⁶ AmJur 2d, vol.16 ss 109

¹⁷ Miranda v. Arizona, 384 US 436 p.491

¹⁸ Norton v. Shelby County, 118 US 425 p.442

¹⁹ Marbury v. Madison, 5 US (1 Cranch) 137,174,176 (1803)

²⁰ CSW Article 1 ss 24

²¹ Black’s Law Dictionary 1st 1891

²² State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)

Constitutional Law – Construction – Intent of Drafters – Accepted Constitutional Doctrine. The state constitution will be interpreted in accordance with the constitutional doctrine as understood and accepted at the time of the Constitutional Convention in 1889.²³

(See Black's 1st, 1891, above cited.)

It is a matter of elementary reason that the Drafters of the State Constitution in 1889, could never have envisioned a free Citizenry so preoccupied, misinformed, brainwashed, morally bankrupt or destitute, (or indeed elected officials under Oath of Office so dishonorable), that they would accept (or commit) the conspiracy, fraud, unlawful conversion, and treason that has transpired in 112 years of state history;

to wit:

- 12/23/1913: Federal Reserve Act (See: 12 U.S.C.A) Creating unconstitutional private central bank.
- 5/29/1920: "Independent Treasury" created by Congress (See: 41 Stat. Chapter 214, pg. 654) relinquishing delegated Powers, Authority and Duties. (See Osborne v. The Bank of the U.S., 6L.Ed (9 Wheat) 204, pg. 220)
- 3/9/1933: The resulting Federal Bankruptcy (See Executive Orders 6260, 6102, 6111, and 6073, and formal charges of CONSPIRACY, FRAUD, UNLAWFUL CONVERSION, and TREASON, brought by

²³ Southcenter Joint Venture v. NDPC, 133 Wn.2d 413 (1989)

Congressman Louis T. McFadden Congressional Record 5/23/1933).

The petition for Articles of Impeachment was thereafter referred to the Judiciary Committee, and has yet to be acted upon.

- 6/5/1933: Joint Resolution to Suspend the Gold Standard And Abrogate the Gold Clause (See HJR 192, 73rd Congress, 1st Session. (Impairment of obligations and considerations of contracts.)
- 3/6/1933: Conference of Governors pledges the full faith and credit of the several States of the Union to the aid of the National Government, and thereafter formed numerous socialist programs and committees. These Organizations operated under the “Declaration of Interdependence” of 1/22/1937, and not the organic Constitutions, in a wanton de facto system implemented under a declared State of Emergency in Executive usurpation, which has never been repealed.
- 2/5/1937: Roosevelt announced to Congress that he was intending to “reorganize” the judiciary, and appointing “more” (sic. “his”) Justices to the Supreme Court. This was clear notice to all that decisions must conform to the policies of the Executive and Legislative departments or additional subservient and compromised lawyers would be appointed to secure the desired results. The independent judiciary was thereby effectively tainted, and made an extension of the Executive

Office i.e. CUSA Article I, Section 8, Clause 9, “administrative tribunals”. See also Executive Order 12778, 10/23/91.

- 4/25/1938: The newly packed Supreme Court overturned the standing precedents of the prior 150 years concerning “common law”:

“THERE IS NO FEDERAL COMMON LAW, AND CONGRESS HAS NO POWER TO DECLARE SUBSTANTIVE RULES OF COMMON LAW APPLICABLE IN A STATE...” Erie Railroad Co. V. Tompkins, 304 U.S. 64.

“The common law is the fountain source of Substantive and Remedial Rights, if not our very Liberties.” See: Stephen, A Treatise On The Principles Of Pleading, p. 23; Hemmingway, History of Common Law Pleading as Evidence of the Growth of Individual Liberty and Power of the Courts, 5 Alabama Law Journal 1; Constitution, Article III Section 2, Amendments VII, IX, and X.

The members and association of the Bar thereafter formed Committees, granted themselves special privileges²⁴, immunities and franchises, and effectively formed a de facto legislative body, far distant from the depositories of our Public Records, to amend laws to conform to a trend of judicial decisions or to accomplish similar objectives, including what is known today as “One Form of Action.” Note: The enumerated, specified, and distinct Jurisdictions established by the Ordained Constitutions (1787 and 1889), Article III Section 2, and under the Bill of Rights (1791), Article VII, were further hodgepodged and fundamentally changed in

²⁴ CSW Art. 1 ss12

1982 to include Admiralty jurisdiction, which was once again brought inland.

“This is the FUNDAMENTAL CHANGE necessary to effect unification of Civil and Admiralty procedure. Just as the 1938 Rules ABOLISHED THE DISTINCTION between actions at Law and suits in Equity, this change would abolish the distinction between Civil actions and suits in Admiralty.” Fed. Rules of Civil Procedure, 1982 Ed. Pg. 17.

That these practices have been also established in the several States is a matter of record, and the Court may now better understand why this Citizen must claim timely his right to a court of proper jurisdiction, and ascertain that he is before an Article III Judge of Oath and Affirmation as applied to his case. The unsuspecting and the ignorant are treated as chattel. Rights not claimed timely are considered waived.

While time and paper would fail to recount further abuses: relinquishment of delegated powers to the Bank and the Fund and the U.N. under pretense of the “Bretton Woods Agreement” (December 27, 1945); the Reorganization (Title 5 U.S.C.A), with the “Secretary” (“Governor of the Fund and the Bank”) appointed as the “Receiver” in Bankruptcy; the “Coinage” Act of 1965 debasing and debauching forever the lawful Money of the United States, same said as Constitutional Coin, without Constitutional Amendment; the 1968 disavowal of notes and obligations i.e., redemption of “Federal Reserve Notes” through Public Law 90-269,

Section 2, 82 Stat. 50 (1968); confiscation of wealth by inflation ad infinitum, to the present day; and upon complete debauchment of the de jure, Constitutional monetary system, and the principles of reason and Law upon which it was founded;

The STATE OF WASHINGTON (corporation) promptly entered into Treaties, Alliances, Confederations, Pactions and Agreements, (1967 Multistate Tax Compact, RCW 82.56.010 et seq) and redefined the term, boundaries, and meaning of State (see: Art. II (1) Definitions.) In 1988, the STATE OF WASHINGTON, went into Re-Organization pursuant to the “1988” Administrative Procedure Act”, as found at RCW 34.05.001, promulgating an unaccountable, unelected, and unconstitutional fourth branch of government, with untold consequences to the doctrine of Separation of Powers.

“Well”, the honorable Court may ask, “What does all this have to do with the price of fish, and why does the Accused purport to teach the court history?”

While this Citizen is not so naive as to pretend to affect a remedy to all these problems here, the Court has guaranteed by Oath and Affirmation the application and protections of the Constitutions to the case and this Citizen is in full force and effect. A proper historical foundation and

understanding of law is necessary to measure the charging statute by the Constitution, and not some legal art or concoction invented since 1889, pursuant to the above cited mandate of the Washington State Supreme Court to hew to the “understanding of the drafters”, which mindset is readily obscure and lost to the modernist.

The point of this treatise on Law and history is as follows:

Without the enactment of the charging statute (See: Uniform Firearms Act, Laws, 1935, ch. 172, Section 19, Construction, “...to make uniform the law of those states which enact it.”) under that declared national State of Emergency and Executive Order and Rule above described and unlawfully promulgated upon an unsuspecting American National People, which Citizenry said ultra vires and de facto government had real cause to fear for usurpation of the Constitutional guarantees and liberties including that of a Republican form of government, in furtherance of the unconstitutional confiscation and transfer of the peoples gold (wealth) and firearms (protection against tyranny), together with the stealthy progression of enforcement of strict liability statutes in erosion and destruction of the common law elements of a crime, (See Actus Reus, Mens Rea, and Causation), whereby no crime can be charged without quantifiable harm to some person or property, WHICH CAN BE

PROVEN BY HISTORY TO BE THE “INTENT OF THE DRAFTERS”,
NO “CRIME” COULD BE CHARGED. It follows as a matter of
deductive reasoning and simple logic that the statute is facially invalid, if a
Citizen may still lay hold of his Liberties and his Constitution.

Let us proceed to examine, then, a few of the other Rights, Liberties, and
Constitutional Protections are violated in the instant case when the correct
standard is applied:

CSW Article I DECLARATION OF RIGHTS

Article 1 SS 1 POLITICAL POWER.

**All political power is inherent in the people, and governments
derive their just powers from the consent of the governed, and are
established to protect and maintain individual rights.**

Where is the consent of the governed *and* the protection and maintenance
of **individual rights**, and what are these rights? The Preamble states that
they are given by the Supreme Ruler of the Universe, as the founders and
drafters and this Citizen believe. The statute infringes upon this protection.
My Government does not have my consent to convert the exercise of a
constitutional right into a crime.

Article 1 SS 2 SUPREME LAW OF THE LAND.

The Constitution of the United States is the supreme law of the land.

This Citizen has claimed timely all of those rights here secured, and has waived none of them at any time, but since these parallel and support those enumerated in his State Constitution, let us proceed.

Article 1 SS 3 PERSONAL RIGHTS.

No person shall be deprived of life, liberty, or property, without due process of law.

Liberty and Property are at issue in the instant case, with **due process of law**. The statute improperly prohibits constitutionally protected conduct. This Citizen is a gunsmith and an inventor by trade, presumed to have a right to work and to enjoy the fruit of his labor as property rights. The statute redefines or “classifies” private property as “contraband” subject to forfeiture and criminal prosecution.

Again, this would be impossible without the stealthy erosion of the definition of a crime as understood by the drafters (1889), as detailed above, which brings us to Liberty.

Inherent in the concept of Liberty, is the right to do as one pleases unless real harm or injury to a real person or property results. If the Court will but allow that a Constitutional Citizen may still exist in this age of

government promulgated fraudulent and iniquitous third party undisclosed contracts of adhesion, (as in the instant case,) then the statute infringes upon protected liberties. Now individual freedom, it is generally received, is the essence of liberty. That the statute may be “enforced” to deprive a natural Citizen of his liberty, must certainly constitute deprivation of protected rights. This brings us to due process of law.

In examining how the statute operates to infringe upon or deprive a natural Citizen of due process of law, one need only read the transcript provided of what passed for an arraignment hearing in this case. Again, the higher standard is in force, timely invoked. The “Drafters” would be horrified. The Citizen arrives in his court, expecting to face his accusers in probable cause hearing to refute the outrageous lies of the Plaintiff in abatement of the charge, timely challenging jurisdiction. Instead of a hearing or constitutional due process, **only because the penal statute has evolved into that monstrosity above described, promulgated and enforced by a government foreign to that guaranteed to his Republic (State),** whereby an “information” by an agent of the plaintiff (and not an injured Citizen) replaces the common law right to a grand jury in charging any felony crime, said information substitutes for the right to face one’s accuser in determination of probable cause, train smoke pours out of the windows as another appointed agent of the plaintiff (public defender)

waives precious timely claimed rights over the protests of record of this Citizen so that the plaintiff/prosecution/court may “presume” jurisdiction (timely challenged, hearing denied) without which it cannot lawfully proceed!

It is this same insidious erosion of rights that resulted in the presumptuous attitude of the complaining “investigator”, who covertly interrogated this Citizen without the required advisement of rights, and confiscated the property resulting in the charge by threat of force and coercion. These violations of protected due process rights are all direct results of, and cannot have occurred without, the operation of this one unconstitutional statute upon this Citizen. This is a perfect case in point of that stealthy and relentless encroachment upon protected rights by the police power which the courts must check.

Article 1 SS 9 RIGHTS OF ACCUSED PERSONS.

No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

This Citizen has been compelled by the statute to give evidence against himself. Because the officer was trained to “invent” probable cause, (by disassembling this Citizen’s rifle without permission) and made the false assumption that the suspect property was governed by the statute, and because the statute operates to infringe upon this section by redefining

property or a firearm as "contraband", the right of this Citizen not to give evidence against himself is swept aside in the tidal wave of sedition by syntax and redefinition of terms. This Citizen begins to understand the counsel of 7 out of 8 criminal lawyers consulted in this matter that, "The Constitution doesn't matter."

Article 1 SS 10 ADMINISTRATION OF JUSTICE.
Justice in all cases shall be administered openly, and without unnecessary delay.

That justice shall be "administered openly"? The statute operates to encourage secret proceedings, same said as the ex parte "probable cause hearing" where an information²⁵ substitutes for the right to face one's accuser in open public hearing.

Article 1 SS 11 RELIGIOUS FREEDOM.
Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state...

This Citizen holds a firm and sincere moral and religious conviction that the Holy Bible is the Word of God, and has a Sacred Covenant, by the

²⁵ CP 1

blood of Jesus Christ, that he must "Obey God rather than man".²⁶ Where his government servants usurp their God-given, Citizen delegated lawful compacts of service, (sic. Constitutions and Oaths), this Citizen has a moral duty to defend against or to disobey iniquitous regulations, to preserve the blessings of Liberty to his posterity.

The statute operates to infringe upon this protected right, including that right under the CUSA, Bill of Rights Article 1. The intent of the drafters did not include innovative "state compelling interest" where no threat exists to the "peace and safety". No claim has ever been advanced by the plaintiff that this Citizen or his confiscated property posed a threat of any kind.

Article 1 SS 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED.

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

The charging statute claims to grant a privilege of possession of a "machine gun" and immunities from prosecution to a class of citizens, known as state agents/law enforcement and/or armed forces.

²⁶ Holy Bible - Acts 4:19

**Article 1 SS 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS.
Excessive bail shall not be required, excessive fines imposed, nor
cruel punishment inflicted.**

This penal statute operates to infringe upon the right of this Citizen not to be subjected to cruel or unusual punishment. Under the common law and in the intent of the framers and "drafters", deprivation of a Citizen's liberty in a penitentiary for an "offense" where no harm occurred was considered a cruel punishment. The British were driven out for precisely this sort of abuse.

**Article 1 SS 18 MILITARY POWER, LIMITATION OF.
The military shall be in strict subordination to the civil power.**

If all political power is inherent in the people, how is the military to remain in strict subordination to that power if the people allow the military to possess exclusively the power of the modern arms of the day. Police State anyone?

**Article 1 SS 23 BILL OF ATTAINDER, EX POST FACTO LAW,
ETC.
No bill of attainder, ex post facto law, or law impairing the
obligations of contracts shall ever be passed.**

This statute operates to infringe upon the constitutional protections, state and federal, against this Citizen being charged by a Bill of Pains and

Penalties. The Founders and the Drafters considered this principle worth fighting for, and worth enacting permanent protections against. The court would be hard pressed to find a more precise example.

Further, the statute operates to impair the obligation of contracts in the most injurious fashion, for how shall this Citizen's government servants honor, uphold, or obey their constitutional Oaths of Office when the statute expressly conflicts, especially if the courts lend themselves to usurpation? The original prohibition against impairment of obligations of contracts was set forth to protect pre-existent contracts. A conflict of law exists. Again, the tail is wagging the dog, and wants immediate amputation.

Article 1 SS 27 TREASON, DEFINED, ETC.

Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

The tearing down of constitutional protections and the general elimination of effective militia arms from the general citizenry can only be construed as giving our enemies aid and comfort.

Article 1 SS 29 CONSTITUTION MANDATORY.

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

When reading Article 1 SS 24 the court will take notice that there is no sub paragraph A, B or C describing acceptable impairments, therefore none are allowed. What part of “shall not be impaired” does Plaintiff not understand? Or does this provision mean anything at all?

Article 1 SS 32 FUNDAMENTAL PRINCIPLES.

A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

FUNDAMENTAL LAW. The law which determines the constitution of government in a state, and prescribes and regulates the manner of its exercise; the organic law of a state; **the constitution.**

Black’s Law Dictionary, First Edition, 1891 (**The one used by the “Drafters”.**)

For all of the reasons of law set forth above, the statute is violative of and infringes upon this constitutional protection secured to this Citizen. The “Drafters” presumably did not engage in meaningless rhetoric. What may appear to the careless observer as only a reminder is foundational truth set forth to guide wayward government back to the will of the people.

This Citizen respectfully reminds the Court that he is not responsible for the opening of the “Pandora’s Box” above described, and is only reporting

unpleasant facts necessary to his defense, not making accusations. On the principle that “However great the police power, it can never rise above rights secured by the Constitution”, the Court should declare void the statute.

Police Power – Police power is the exercise of the sovereign right of a government to promote order, safety, security, health, morals and general welfare **within constitutional limits** and is an essential attribute of government. *The police power is subject to limitations of the federal and State constitutions, and especially to the requirement of due process.*²⁷

Tyranny and oppression ever wear the mask of respectability, until the prey is in the trap. The following authenticated quote is worthy of the Court’s consideration in weighing this matter:

“This year will go down in history. For the first time, a civilized nation has full gun registration! Our streets will be safer, our police more efficient, and the world will follow our lead into the future.”
Adolf Hitler, 1935

1935: A very bad year for the adoption of penal firearms statutes by national leaders.

²⁷ Black’s Law Dictionary 6th Edition

**Conclusion, Section I, Constitutional Validity of Statute, State
Constitutional Doctrine:**

The instant case and the statute are ripe for the application of that doctrine set forth in Gunwall.²⁸

1. The textual language of our state constitution is more explicit than that of the federal.
2. This constitutes a significant difference in the text.
3. The historical test of 100+ years between the framing of federal and state constitutions reveals the intent of our drafters to forbid the erosion or abuses that had already appeared elsewhere through “interpretation”.
4. Preexisting state law did not “ban” classes of firearms and currently all neighboring states and the federal government recognize regular private ownership and possession arms known as Machine Guns.
5. The difference in structure test applies in powerful support of the above, in application that our state constitution is limitation of powers versus the federal constitution as a grant of powers.
6. There is no need for uniformity. Oregon, Idaho, Nevada and Arizona Alaska, most all other States, and the federal government provide for

²⁸ State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)

Legal ownership of these classes of firearms by their Citizens. This fact in and of itself is a railing indictment against this penal statute rising to the level of a felony crime.

II. STATUTE IS UNCONSTITUTIONALLY VAGUE, OVERBROAD, AND INSUFFICIENT AS APPLIED

Appellant/State has now made direct admission in its appeal brief dated 13 April, 2005 at page 8, last line that the statute is ambiguous.

RCW 9.41.190 Unlawful firearms—Exceptions

(2) This section shall not apply to:

(b) A person, including an employee of such person if the employee has undergone fingerprinting and a background check, who or which is exempt from or licensed under federal law, and engaged in the production, manufacture, repair, or testing of machine guns,...

(ii) To be used or purchased by federal, state, county, or municipal law enforcement agencies.²⁹

This Citizen is a Firearms Instructor & Gunsmith by trade and occupation, who has undergone a federal background check and fingerprinting, and is licensed under federal law. This Citizen is not engaged in the manufacture or sale of machine guns in any way, but has plied his trade for years, as a licensed Gunsmith and certified Firearms Instructor, instructing both law enforcement officers and the public in the safe and proficient use of

²⁹ RCW 9.41.190(2)

firearms. The *only difference* between the federal license issued to this Citizen and one required for the **sale** of machine guns is a fee of \$3,000.

This Citizen has repaired and tested machine guns used in law enforcement at the request of law enforcement officers, relying upon his reading of the statute as set forth in bold type above, and the reasonable presumption that law enforcement officers, who were relied upon by this Citizen as professionals and as experts in this matter, would not expect or condone illegal activity, especially when they would derive some benefit or service as a result.

The Court should also note, as further evidence of sedition by syntax and prejudicial attitudes, that the plaintiff and its agents/officers repeatedly fail in their material to note the critical distinction in law between a “firearm” and a “weapon”. A “weapon” must be used in or with intent to commit a violent act.

Although this Citizen earnestly believes that this statute is completely unconstitutional, as proven in Section I of this brief, this Citizen is law abiding, and will now show how the statute has been misapplied.

In re Olsen v. Delmore, 48 Wn.2d 545 (1956)

In Olsen, the court found the statute, (a product of the same misbegotten firearms act here contested), unconstitutional. The discretion or leeway in authorization given prosecuting officials to charge violations under the act

was found “...unconstitutional and invalid as being violative of the equal protection clause of the fourteenth amendment of the United States constitution and of Art. I. SS 12, of the state constitution, relating to privileges and immunities.”³⁰

This doctrine applies well to the instant case. The ambiguity in construction of the statute allows not only for selective prosecution by varied application, but a licensed gunsmith in the lawful practice of his trade and occupation, having the proper background and identity checks of record, may evidently be singled out for conducting independent professional research and testing designed to improve his proficiency, while other persons in like situations under the same circumstances go unmolested.

It is worthy of the Court’s full attention, and further proof of those abuses of and continual encroachment upon protected rights by unconstitutional expansion of the police power through penal statutes set forth in Section I herein, that upon the Court’s ruling in Olsen, supra, the legislature, at the behest of law enforcement and the executive branch, immediately amended the statute to provide for an even more severe penalty than originally legislated. Does not the historical common law

³⁰ In re Olsen v. Delmore, 48 Wn.2d 545, 551 295 P.2d 324

demand the less severe penalty (misdemeanor) for victimless “crimes”?

This is ever the pattern, and must be checked here.

State v. Wissing, 66 Wn. App. 745, (1992)

In Wissing, the court defined a vagueness test: “A criminal statute that requires persons of common intelligence **to guess at its meaning** or that allows them to **differ as to its application** or that does **not provide adequate standards to protect against arbitrary, erratic, and discriminatory enforcement** is unconstitutionally vague.”³¹

This Citizen realizes that “persons of common intelligence”, do not often pass the bar exam, and that it would be extremely rare for them to become judges, and so is at a loss as to how judges would measure and define such a test without a blind survey pool of citizens who have been tested and are known to have average intelligence quotients; but has conducted his own survey, and is batting 1000 with at least twenty lay persons who concur that they would understand his alleged conduct to be excepted under the statute.

In **State v. Smith, 48 Wn. App. 33, (1987)** the court defines facial invalidity and vagueness:

“... unless persons of common intelligence cannot understand what type of activity the statute prohibits or the statute lacks ascertainable standards for

³¹ State v. Wissing, 66 Wn. App. 745, 749

adjudication giving parties charged with its enforcement discretion to decide subjectively what conduct is prohibited.”³²

In the context of the instant case, the Court should give weighty consideration to the facts in application of the above:

After this Citizen had as common practice over time plied his trade as described with the implied consent of law enforcement, the complaining Investigator, Jackson, only after he took offense and started an argument in class because this Citizen (Instructor) notified and taught the class in brief about the principle that rights not claimed timely are considered waived, “focused in” on finding some cause of action against this Citizen, in covert interrogation and investigation without advisement of rights or disclosure that his questions were part of a criminal discovery process, and ultimately unlawfully seized the property (firearm) by threat and coercion, subjectively declaring that he possessed discretionary power to declare the firearm to be “contraband”. During the unfolding of these events, the Investigator readily admits that he knew this Citizen has a federal license, is a gunsmith, was clearly and repeatedly noticed that he was acting contrary to Law and his duty, and that he confiscated the rifle by threat of force.

³² State v. Smith, 48 Wn. App. 33, 35

This argument becomes even more weighty when the report found at CP 232 is considered.

Corporal Millard, supervisor for the Kitsap County Sheriff at the time of the unlawful seizure of the property, advised his responding Deputy, Rodrigue, as follows in pertinent part:

“I spoke with Deputy Rodrigue over the phone. I advised him that Carter was the President of the club and the owner of a gun store in Port Orchard. I advised him that if the weapon was full auto, **that Carter might have the proper license to have the rifle.**”³³

Now here is a supervisory rank law enforcement officer who was raising the question as to ascertainable standards in enforcement of the statute, and is quite evidently uncertain how to proceed, until his deputy is “urged on” by the complaining Investigator.

Note at CP 234, the Follow Up Report of Deputy Rodrigue dated 6/3/99, some two weeks later, **“parties charged with its enforcement”** (See Smith, supra) were still confused and attempting to gain clarification as to what conduct is prohibited. Note further that even two weeks later, the fact this Citizen had a specific Federal Firearms License had not been verified: “Whetsel (ATF) could not tell me if a Class 3 license has been issued to Carter”. Whetsel further advises Rodrigue, “..it is illegal to possess machine guns in Washington **except for persons** in law

³³ CP 232

enforcement or the military (or those persons **who purchase/ repair/ test machine guns for law enforcement**”³⁴

Now refer back to CP 232, Kitsap Sheriff Corporal Millard’s Report, at paragraph three, in part, describing the scene of the unlawful confiscation:

“Carter was not able to produce the proper documentation...”³⁵

(Your papers, Comrade!)

Which begs the question: If “parties charged with its enforcement”, having initially expressed doubt and differences of opinion as to the prohibited conduct in the instant case, had still not verified to their own satisfaction some two weeks later just exactly what they were doing and how to proceed, just exactly which “papers” were they demanding at the scene of the confiscation; were any such papers required by law to be carried around by this Citizen; and is there even a chance these “parties...” would have knowledge sufficient to authenticate said documents, should such even be determined to be required?

Further, just how the flying blue blazes is this Citizen supposed to have sorted it all out in advance if the Police are this confused by it? Were they only working overtime to justify the mistake of the overzealous Investigator? Why did they take 6 months to charge any crime? Who gave the order?

³⁴ CP 234

³⁵ CP 232

Further, as an aspect of the case which should interest the court, and lends real credibility to those abuses and infringements operating through the statute to prejudice substantial rights of this Citizen, documented in both Sections of this brief:

Why would county law enforcement seek legal advice “clarifying” enforcement of a state statute from a federal agency if not out of a desire to conform to the enforcement policies of a territorial jurisdiction foreign to the de jure State (Republic) of Washington and its Citizens, and because they had knowledge of the origin of the suspect Act?

At CP 236, is a true copy of the face page of a letter dated January 21, 1994, signed by then BATF Director John Magaw³⁶, 16 pages in length, with another 21 pages of enclosures, sent to our local and state law enforcement, “directing” them to disregard state and local law and practice, including constitutional protections, in enforcement of Brady Bill “Interim Provisions” (sic. Federal Executive Policy), which ATF communication, far from simply encouraging enforcement of the Brady Bill actual wording, advises Chief Law Enforcement Officers, among other constitutional violations, to shift the burden of tracking down absolute proof that a buyer is eligible *to a buyer*.

³⁶ CP 236

What was (and is now) being promulgated and enforced is a “law” that requires a county sheriff or city chief of police to abandon his or her own oath or statutory obligations, to comply with a *federal* mandate in making a “*reasonable effort*” to do background checks, to make them *responsible* for determining reasonableness in obeying the “law”, and then to throw *them* in jail when they don’t perform to BATF expectations! (Small wonder the officers in this case “consulted” the shadow government!)

Several sheriffs across the U.S. filed separate lawsuits challenging the constitutionality of the Brady Bill.

Within days, the Justice Department issued a “legal opinion” (which was not legally binding, and cannot afford protection to the government servants of this Citizen, should they choose to uphold their Oaths of Office in defiance of this usurpation), stating that the federal government would not prosecute law enforcement authorities for failure to comply with Brady Bill requirements. Although Sheriff Richard L. Mack of Arizona did at length prevail in the U.S. Supreme Court, which declared some provisions of the bill unconstitutional, the bill remains widely enforced. What has for the most part, in practice, proved as an effective substitute for “encouraging” local law enforcement to comply by threatening them with imprisonment, is simple extortion. That is, under the Reorganization and the “Bankruptcy” detailed in Section I herein, the “Treasury” same

said as the “Bank” and the “Fund”, upon receipt of a report of non-compliance by its employees or agents at BATF, withhold or deny Federal Matching Funds and etc., without which local agencies cannot task their mission after too many years at the trough.

A good highly publicized example of how this principle operates to subvert the law is that the federal government very effectively brought Governor Locke and our legislature into line when the state legislature recently initially refused to enact the Federal ID Policy requiring the citizen to furnish a social security number for any state license. \$500,000,000.00 in federal social services funds were withheld until “our” legislature obeyed the mandate. When another more responsible state challenged the constitutionality of the mandate, the “Fund” temporarily backed off, and this state discontinued enforcing the mandate.

In following the money trail in examination of the plaintiff/prosecutions motives and how this prejudices substantial rights of this Citizen, this Court should find interesting CP 238 & 239, attached hereto, showing true copies of classifications of crimes used on documents received from the plaintiff. While discovery on the authorization for the use of, funds and source(s) of funds obtained for the use of, and destination for (agencies and databases) documents so designated, has been demanded, the plaintiff has not (yet?) complied at this writing.

The Court must examine what is happening here. A law abiding Citizen, having an inalienable right to ply his trade and earn a living as secured by the liberty, property, and happiness clauses of the national and state constitutions³⁷, is suddenly and without trial or conviction for any crime, posted on God only knows whose state or national law enforcement (or international) “dart boards” as having been involved in “Hate Crimes”, “Violent Crime”, and “Gang Related Crimes.” This Citizen has always been very careful, because he knows that conservatives are vilified at every turn, to make clear that he condemns every form of racism.

The questions are germane:

Is this Citizen now marked for the Gulag or even worse because his trade is considered archaic, politically incorrect, or undesirable? Firearm collectors and sellers all over the country are being harassed, targeted and “stung”.

Is this Citizen targeted for exercising his first amendment right to express his minority religious and conservative political views? The complaining Investigator certainly took exception!

The charging statute operates to permit any and all of the above infringements and abuses, for and because it is unconstitutional, and

³⁷ see Cary v. Bellingham, 41 Wn. 2d 468, (1952), [3]

because abuse of the Law of the Land grows exponentially whenever it is given place.

In Section II:

This Citizen has met and exceeded the doctrinal tests set forth in Washington Stare Decisis:

- **Ambiguity in construction allowing for selective prosecution by varied application as applied.**
- **Persons of common intelligence are uncertain what activity the statute prohibits as applied.**
- **Does not protect against arbitrary, erratic, or discriminatory enforcement as applied.**
- **Operates to prejudice protected rights as applied.**
- **This Citizen is aggrieved by the particular features alleged to be defective.**
- **Operates by origin to unduly influence (corrupt) those charged with enforcement.**

This Citizen must believe that he still has a Law and Forum, and that honorable Citizens still hold office and duty in law enforcement and the courts who remain untainted by the awful corruption documented herein, and so he comes to his Court for justice, appealing to that love of liberty inherent in the human spirit, and to the “Supreme Ruler of the Universe”,

whom the "Drafters" (together with this Citizen) credit with our liberties,
that government by and for the people might not perish from the earth.

CONCLUSION

This citizen respectfully requests that the Court of Appeals dismiss this
action with prejudice based upon the memorandum and motion contained
herein.

Respectfully submitted, as such, to my Court this 9th day of September,
in the year of the Lord Jesus Christ, 2005



Citizen Marcus A. Carter, by
Limited Special Appearance
and under protest as noted of
record.

13271 WICKS END PL SW
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APPENDIX

- a. Plea in Abatement
- b. Notice and Demand for Due Process of Law

JAN 10 1999

SUPERIOR COURT OF WASHINGTON - COUNTY OF KITSAP

1
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6 STATE OF WASHINGTON INC., ET AL,
7 Plaintiff,
8
9 vs.
10
11 Citizen Marcus A. Carter,
12 Accused

Case No.: No. 99-1-01367-9
"PLEA IN ABATEMENT"
 BY SPECIAL APPEARANCE
 Notice and Demand to Dismiss for
 Lack of Jurisdiction
Motion and Notice of Motion
Demand for Bill of Particulars

13
14 **PLEASE TAKE NOTICE:** That the Accused hereby demands, pursuant to his timely invoked
 15 constitutional rights, including but not limited to his right to due process of law, full and fair hearing of this
 16 Motion for Dismissal prior to any arraignment or probable cause hearing brought under the above cause
 17 number. This constitutes actual and constructive Notice to the Court that any and all appearance by the
 18 Accused in this cause will be specifically made under protest, without prejudice, in specific challenge to
 19 the jurisdiction of this court, due only to the real threat and duress of the further loss of my rights of liberty,
 20 property, and the pursuit of happiness. Under color of law and by fraud and fraud in law, various agents
 21 or officers of the Plaintiff have violated the Constitutionally protected rights of the Accused.
 22

23 **LAW CrR 1.1 Scope- "...These rules shall not be construed to affect or derogate from the**
 24 **constitutional rights of any defendant."**

25
26 COMES NOW Marcus Alton Carter, a natural born Citizen of Washington, living in Kitsap County, by
 27 special limited appearance in propia persona, proceeding at law in summo jure jus regium, and as such,
 28 without conferring nor consenting to any ministerial strict liability jurisdiction. The Accused under **Article**
 29 **IV Sec. 1 and 5 Washington State Constitution, ["judicial power"]** , willfully enforces all constitutional
 30 provisions and limitations against this court, it's quasi ministerial jurisdictional capacity and summary
 31 proceeding and the herein stated Plaintiff's or prosecution and other interested officers, parties and
 32 employees operating in their respective political, corporate artificial capacities within the said county and
 33 state.
 34

35 **UNDER AND WITH THE INHERENT JUDICIAL POWER, THIS CITIZEN, THE ACCUSED, MAKES THE**
 36 **FOLLOWING DEMANDS:**

37 **Whereas,** the elements of due process protection together with all my constitutional rights were invoked
 38 timely and in force at the time: of the unconstitutional and warrantless seizure of my property (firearm) by
 39 threat, force and coercion; the unconstitutional clandestine investigation by entrapment of this citizen
 40 where the critical element of intent to commit any crime existed only in the mind of an officer determined
 41 to find or invent a cause against the accused; the unconstitutional interrogation of the accused without
 42 disclosure that the questions were part of a criminal discovery process and with absolutely no advisement
 43 of rights (Miranda warning); and whereas the plaintiff is attempting to defraud the accused of protected
 44 fundamental rights by the unlawful conversion of a right into a crime, and:

45 **[LAW " The claim and exercise of a constitutional right cannot be converted into a crime." Miller**
 46 **v. U.S. 230 F, 486,489]**

47 **Whereas, the statute relied upon by the plaintiff/prosecution is patently unconstitutional as**
 48 **applied to the accused** and the accused is not within the scope and purvue of any such statute;
 49 the elements required to charge this natural Citizen with a crime do not exist in that intent exists only in
 50 the fertile imaginations of the plaintiff/prosecution and; the plaintiff has failed in the evidence of any

1 corpus delicti; and all evidence including the certification and information are the fruit of the poisonous
2 tree;

3 **The Accused gives notice and makes challenge for good cause shown;** the Accused does not
4 understand nor is it evident upon the record as to the reason for any valid charge to exist.

5 **Therefore,** the Accused will not enter a plea, (and no plea may lawfully be entered for him), until the
6 plaintiff proves the validity of the charge and any information entered pursuant thereto by countering in
7 writing this motion in objection and challenge to jurisdiction.

8 Therefore, the Accused, without prejudice, moves the court by special appearance, **in challenge and**
9 **objection to its in rem and subject matter jurisdiction to dismiss with prejudice.**

10 **Wherefore,** pursuant to CrR sections 2 and 3, this Accused is entitled to be fully protected against an
11 "Invalid Complaint" constituting abuse of process; the prosecuting attorney in this case is being held to
12 the CrR, same said as being placed on actual notice as a check against abuse of process and malicious
13 prosecution; the greater requirements of constitutional due process by judicial power must be met; the
14 information must be provable by real, untainted evidence and not hearsay under constitutional law, and
15 the forgoing must exist for judicial and not ministerial probable cause (Arraignment) hearing to lawfully
16 proceed; [Art. 1 Sec. 10]

17 **Further, the Accused must be advised:** "The accused shall enjoy the right to be informed of the nature
18 and cause of the accusation..", the Accused has the immediate right to discovery [Art 1 sec. 22]; **it is**
19 **Therefore demanded, as a matter of right, that the plaintiff provide a bill of particulars in its**
20 **answer to this demand for dismissal, and that the court look for fact and evidence of an invalid**
21 **complaint, while taking special judicial notice under ER 201 and the Washington State Rules of**
22 **Evidence,** of each of the following written sections and cited law as set forth in this objection and
23 challenge to jurisdiction by the Accused:
24

- 25 1. That the Accused is an adult male over 39 years of age (sui juris) and a Private Citizen of Washington
26 and thus America (jus civitatis) natural born (jus sanguinas), therefore the Constitutions apply in full
27 force and effect to the benefit of the Accused. As a matter of firmly and sincerely held religious belief
28 pursuant to the First Article in Amendment, I have reserved my right to contract and hence my
29 religious liberty, refusing to enter or specifically modifying any contract which might interfere with my
30 obedience to the laws of nature and of nature's God. The burden of proof of the existence of any
31 contract purported to bind my natural person under any strict liability statute is laid with specificity,
32 under the rules of evidence and of discovery, upon the prosecution in this matter and further,
- 33 2. That the Accused claims all of his God-given constitutionally secured rights at all times and does not
34 choose to waive the exercise of any of those rights at any time; and further, this Citizen has a
35 contract, same said as a compact with the People of the State of Washington and with this court
36 known as the Constitution for the State of Washington and further,
- 37 3. That the Accused finds some of his God given rights are also secured by the Northwest Ordinance of
38 (1787); the Constitution for the United States of America with its Bill of Rights, and further, these
39 above listed compacts are still valid and binding; and further,
- 40 4. That in this instant case, the principals; The state of Washington, the counties of Pierce and of Kitsap;
41 as such are operating by agents in their respective corporate capacity known as "investigators" and
42 "prosecutors", are the sole party of interest in this sub rosa invoked qui tam action with its ministerial
43 summary proceeding and nor the de jure People of the State of Washington in representing the
44 evidence of a corpus delicti; and further,
- 45 5. That there is no current evidence and proof that this Accused injured any Citizen, person, public or
46 private property, nor is there a sworn oath affidavit of probable cause by the charging officer made
47 under penalty of perjury which would prove the foregoing. The court must therefore subdue the
48 outrageous lies made by complainants, and require the demanded proof that the Accused is within
49 the scope and purvue of any charging statute.
50

1 Therefore, it is demanded upon the plaintiff to prove jurisdiction to the above named court in
2 writing, *and it is not up to the court to intercede on behalf of the plaintiff* (jus dicere, non jus
3 dare), but rather the sworn duty of the court to protect the Citizen against these abuses.

4 Further,

5 **6. That nowhere in the Constitution for the People of Washington does it command or give**
6 **notice to the Accused of the following:**

- 7 a. That this accused must knowingly waive the protections of any of his precious God-given
8 rights.
9 b. That the legislature gained authority over the accused and the judicial power to create a
10 crime out of and from the Citizen's exercise of a Constitutional secured right.
11 c. That the Accused knowingly granted authority to any agency to try him for an alleged criminal
12 act/omission under any other jurisdiction than a judicial power jurisdiction and proceeding.
13 d. That the Accused has or must change his status from that of a private Citizen of Washington
14 to that of "person" or "resident" with no secured rights, in violation of his right to religious
15 freedom.

16 **LAW**

17 **Ohio Bell Tel. Co. V. Public Utilities Comm., 301 U.S. 292**

18 "Acquiescence in loss of fundamental rights will not be presumed."

19 **Regina v. Day, 9 Car. & P. 722**

20 "There is a difference between 'consent' and 'submission', but it by no means follows that mere
21 submission involves consent."

22 **Emspak v. United States, 349 US 190**

23 "The courts must indulge every reasonable presumption against waiver of fundamental rights."

24 **Butler v. Collins, 12 Cal. 457,463**

25 "Consent in law is more than a formal act of the mind. It is an act unclouded by fraud, duress, or
26 even mistake."

27 **Barnard v. Iron Co., 85 Tenn. 139 2 S.W. 21**

28 "Where a party intentionally or by design misrepresents a material fact or produces a false
29 impression, in order to mislead another, or to obtain an undue advantage of him, there is positive
30 fraud in the fullest sense of the term."

- 31 7. That no private Citizen of Washington can be forced or commanded by the State or its agencies to
32 exchange a God-given constitutionally secured rights in exchange for a state compelled legislative or
33 agency granted privilege, or gift of limited liability; and further,
34 8. That the state's police power, as ruled by the Washington and United States Supreme Courts on
35 numerous occasions, are limited and prohibited by, and do not extend beyond the protection of liberty
36 and rights afforded and secured by their Constitutions; and further;
37 9. **That any Judge or Officer of the Court**, acting in their official capacity, under oath of office, who
38 violates the Law of the Land and allows the prosecution of any Private Citizen of Washington without
39 probable cause or by invalid complaint, **commits felonious trespass against the case and that**
40 **Citizen**, and therefore the judge is devoid of any power or office to issue any such order or judgment,
41 and as such becomes subject to Citizen invoked impeachment for abuse of process and want of
42 jurisdiction, and then that Citizen has redress at civil law, or appropriate State and United States
43 Codes; and further
44 10. It is the duty and lawful requirement of the plaintiff/prosecution to **prove its asserted jurisdiction**
45 **before it moves the court**, for the maxim of law stands, "One who moves the court must prove
46 jurisdiction before any sanction can be imposed", and once jurisdiction is challenged it must be proven by
47 the moving party as ruled by the Supreme Courts of Washington and America.

48
49 The Accused will now evidence case law for his lawful due process objection and challenge to Plaintiff's
50 or Prosecution's fraudulent summons, or any asserted information and complaint which follows, probable
cause, and ministerial jurisdiction as follows:

1
2 "Once jurisdiction is challenged , it must be proven." Hagins v. Lavine, 415 U.S. 533, note 3.
3
4

5 "...affidavits or argument do not expand the the grounds of the jurisdictional challenge motion." Josephson
6 v. Superior Court, 219 C.A. 2nd 354,33 C.R. 196 (1963)
7

8 "It has also been held that jurisdiction must be affirmatively shown and will not be presumed." Special
9 Indem. Fund v. Prewitt, 205 F 2d. 306, 201 Okl.308.
10

11 "Courts enforcing mere statutes do not act judicially but merely ministerially, having thus no judicial
12 immunity, and unlike courts of law do not obtain jurisdiction by service or process or even arrest and
13 compelled appearance." Boswell v. Otis, 9 Howard 336,348.
14

15 "Constitutional principles may not be violated for administrative expediency." State of Ind. V.
16 Environmental Protection Agency C.J.A.4, 1975 530 F.2d. 215. Certiorari Granted 426 U.S. 904
17

18 "The organic requirements of due process of law are controlling when life, liberty, or property rights are
19 involved." Williams v. Kelly, So. 881,133 Fla. 244
20

21 "Jurisdiction is essential to give validity to determination of administrative authorities and, without
22 jurisdiction, their acts are void." Walling v. La Belle S.S. co., C.C.A. Ohio 148 F.2d 198.
23

24 "A judge or magistrate does not have sovereign immunity and can be sued for actions taken in which he
25 was wholly without jurisdiction." Stump v. Sparkman, 98 S. Ct. 1099, 1975.
26

27 **Whoever moves the court, the burden falls, to prove its jurisdiction by validity of complaint.**

28 The Plaintiff/Prosecution must evidence and prove in writing its jurisdiction and state the delegated
29 authority for the complaint by and under sworn oath before probable cause and evidence can be
30 established or its acts are null and void as found in the following case; Standard v. Olson, 74 S. Ct. 768,
31 **"No sanction can be imposed absent proof of jurisdiction."**
32

33 **"District attorney has the burden of proving court's jurisdiction in a criminal proceeding."** Hensley
34 v. Municipal Court, 365 F. Supp. 373, note 2. (ibid. At 373)
35

36 **Wherefore**, the Accused by limited special appearance moves for discovery in want of jurisdiction, for
37 and because jurisdiction has not yet been proved, if discovery is not made forthwith, this instant qui tam
38 action, should be dismissed, for it now constitutes abuse of process, breach of public trust and oath of
39 office which has been used to force and coerce this citizen into waiving his aforementioned secured rights
40 without involving himself in a ministerial proceeding under the guise and action of strict liability statutes,
41 being without the protection of the Constitutions.

42 **Whereas**, it is demanded upon the Plaintiff to answer this motion in objection and challenge to
43 jurisdiction, and to prove the validity of the purported complaint by answer to discovery in this instant
44 case, or then and therefore to dismiss the said qui tam ministerial complaint, with prejudice. If instead the
45 prosecution moves for a warrant by malicious prosecution and abuse of process for the arrest of the
46 Accused, he shall by such forgoing action, **agree to be made liable for civil and criminal damages and**
47 **penalties, and possible disbarment or impeachment.**

48 **Therefore**, if no answer or discovery is returned or made in writing and filed with the court and the
49 Accused by the Plaintiff or Prosecution and they fail to dismiss, then and therefore by default of the
50 Plaintiff for failure to answer with proof of jurisdiction, **the Court must sua sponte by order and**

1 judgment pursuant to the Constitution, dismiss this instant action on the court's own motion for
2 lack of Plaintiff's answer and want of proof of jurisdiction.
3
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8

9 Respectfully Submitted, as such, to my Court on the 6th day of December, in the year of Our Lord 1999.
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Citizen Marcus A. Carter, by
Limited Special Appearance
and under protest as noted of
record

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SUPERIOR COURT OF WASHINGTON - COUNTY OF KITSAP

STATE OF WASHINGTON INC., ET AL,
Plaintiff,
vs.
CITIZEN Marcus A. Carter
Accused,

Case No.: No. 99-1-01367-9

NOTICE AND DEMAND FOR DUE PROCESS OF
LAW (No lawful Arraignment, Jurisdictional
challenge not heard, Rights violations)

ER 201(d) CrR 4.1, RCW 5.28.060, 9A.80.010

COMES NOW THE ACCUSED, Citizen Marcus A. Carter, in sumo jure, by limited special appearance, under protest, in specific challenge to the jurisdiction of this court, claiming by timely and prior notice all of his rights ab initio, sua sponte, and waiving none of them at any time, and hereby:

NOTICES THE COURT, UNDER AND WITH THE AUTHORITY OF THE UNITED STATES SUPREME COURT, AND OF THE INHERENT CITIZEN JUDICIAL POWER, INVOKING **MANDATORY JUDICIAL NOTICE OF ADJUDICATIVE FACTS UNDER ER201(d)**, OF THE FOLLOWING VIOLATIONS OF THE ACCUSED'S RIGHTS TO DUE PROCESS OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS:

LAW "Once jurisdiction is challenged, it must be proven." Hagins v. Lavine, 415 U.S. 533, note 3.

LAW "Courts enforcing mere statutes do not act judicially but merely ministerially, having thus **no judicial immunity** and unlike courts of law **do not obtain jurisdiction** by service of process nor even arrest and compelled appearance." Boswell v. Otis, 9 Howard 336, 348.

At what was evidently supposed to have passed for a lawful arraignment on the 6th of December, 1999, the record will show that the accused was denied the opportunity to even understand the charge against him, that the information was not read into the record as required by CR4.1, that the accused was repeatedly interrupted and not given opportunity to present or argue his pleadings in proper and lawful challenge to the jurisdiction of this court, which challenge must be heard and ruled upon before any arraignment may proceed.

Further, the record will show that the judge, over the clear and repeated protests of the accused, appointed an agent of the plaintiff and officer of the court, a "public defender", which agent, purporting to represent my interests, waived and signed away my precious timely claimed rights without my knowledge or consent, (See attached page 2 of "Defendants" Acknowledgement, marked "REFUSED FOR FRAUD") presented as evidence that advice of rights has not been completed as required by CrR3.1 before arraignment may lawfully proceed.

The record will show that after the accused had repeatedly attempted in vain to be heard on jurisdictional issues and to have his questions answered by the court, the court, completely without authorization of law, in contravention of the governing statute, and in violation of protected rights, entered a plea for the accused.

LAW RCW 10.40.190 "If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court." (sic. *Only iff!*)

The accused having not been afforded opportunity to enter his plea, (Plea in Abatement), made because the alleged crime does not "amount to a felony" (or even a misdemeanor) under the state constitutional requirements for this court to lawfully acquire jurisdiction, the court must hear and rule upon the plea of the accused prior to arraignment.

1 Further, no opportunity for the accused to argue probable cause in refutation of the plaintiff's
2 misrepresentations was afforded. This violates the right of the accused to full and fair hearing.

3
4 THEREFORE: The Accused hereby makes this demand for fair hearing and due process of law including
5 but not limited to:

- 6 **1. Proceedings at law under judicial power jurisdiction and proceeding only, with proven lawful**
7 **jurisdiction over my natural person, and *not under ministerial strict liability statutory***
8 ***jurisdiction.***
9 **2. Proceedings may only be held by an Article III (United States Constitution) duly elected Judge**
10 **of oath and affirmation to uphold the federal and state constitutions (organic). Judges**
11 **presiding over any of these proceedings shall re-affirm their Constitutional oath of office on**
12 **the record as assurance to this Citizen that proceedings are being held under lawful**
13 **jurisdiction as noted at (1) above, and said elected officials shall affirm said oath as being in**
14 **full force and effect as applied to the accused and to this case.**

15 **CAVEAT: Persons refusing to affirm their oath may sacrifice judicial immunity pursuant to United**
16 **States Supreme Court law and become personally liable for damages for rights violations.**

17 **LAW** Title 18 USC 242 deprivation of a Citizen's rights under color of law by officers of the court.

18 **LAW** "A judge or magistrate does not have sovereign immunity and can be sued for actions taken in
19 which he was wholly without jurisdiction." Stump v. Sparkman, 98 S. Ct. 1099, 1978

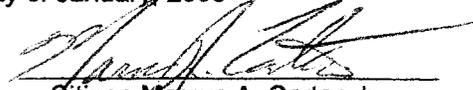
- 20 **3. Proceedings shall be held under the Official Flag of the United States of America, the flag of**
21 **peace, which preserves the Constitution, and not Executive Branch or Military National flags**
22 **or other mutilated or gold fringe flags.**

23 **LAW** Title 4: U.S.A. Codes: Chapter 1: Section: 1&2

24 **LAW** Presidential: Executive-Order: #10834, dated August the 25 of 1959.

- 25 **4. The accused demands timely his constitutional right to *Counsel* of his choice. Art.1 S. 22 WSC**
26
27
28

29 Dated this 8th day of January, 2000

30 

31 Citizen Marcus A. Carter, by
32 Limited Special Appearance
33 and under protest as noted of
34 record. All Rights Reserved.
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