In The United States District Court
for the District of Montana
Billings Division

In re William Krisstofer Wolf	Cause No. CV 15-28-BLG-SPW
Gary Hunt Next Friend Petitioner	Petition for Writ of Habeas Corpus *ad subjiciendum* with reference to Cause No. CR 15-49-BLG-SPW

Statement of the Basis for "Next Friend"

The right of Gary Hunt to file this Petition on behalf of William Krisstofer Wolf was affirmed by the United States Supreme Court in **Whitmore v. Arkansas, 495 US 149** (1990). This Court, upholding an ancient right, held that another person could petition on behalf of the incarcerated party, for habeas corpus, under certain conditions. In that decision, at 150:

> *(c) Whitmore's alternative argument that he has standing as Simmons' "next friend" is also rejected. The scope of any federal "next friend" standing doctrine, assuming that one exists absent congressional authorization, is no broader than the "next friend" standing permitted under the federal habeas corpus statute. Thus, **one necessary condition is a showing by the proposed "next friend" that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability**...*

The existence of the Power of Attorney, on record with this Court, establishes the requisite interest.

This was affirmed by the **United States Supreme Court, Docket 13-5009**, when that Court allowed Hunt to submit an Habeas Corpus to that Court, based upon the precedence established in Whitmore.

Statement of Jurisdiction

By this Petition, we challenge the jurisdiction of the federal government in the matter at hand. We pray that this Court will recognize the absence of that jurisdiction and order that Wolf be released from what will be proven to be an unlawful detention.

Introduction - Habeas Corpus

The Court also cites **Preiser v. Rodriguez, 411 U.S. 475** (1973), 484. This appears to be an effort the limit the scope and context of Habeas Corpus ad subjiciendum, though the Court therein ruled as narrowly as possible, to the appropriate construction of the matter before that Court. It is not on point to the matter before us.

To understand and properly apply Habeas Corpus, as intended by the Framers of the Constitution, we need to look at the intent at the time of the Constitution, and to understand that case law cannot diminish a constitutionally protected right. It would require an amendment, not a statute, or a decision, to diminish that intent.

Forty years (1829) after the ratification of the Constitution, William Rawle, a Constitutional scholar, in his "**A View of the Constitution of the United States",** provides insight into habeas corpus, as a part of the law of the land, when he says,

> *"It is the great remedy of the citizen or subject against arbitrary or illegal imprisonment; it is the mode by which the judicial power speedily and effectually protects the* ***personal liberty*** *of every individual, and repels the* ***injustice of unconstitutional*** *laws or despotic governors.*

And,

> *If this provision [Art. I, §9, cl. 3]had been omitted, the existing powers under the state governments, none of whom are without it, might be questioned, and a person imprisoned on a mandate of the president or other officer, under* ***colour of lawful authority*** *derived from the United States, might be denied relief.*

That "personal liberty" is fundamental in a country of free people. It is not the prerogative of government to remove that liberty, without just cause. Nor does "colour of lawful authority" provide any relief for the government, when the act is in violation of the Constitution.

The Honorable Justice Joseph Story, in his **"Commentaries on the Constitution" (1833),** provides additional insight, in*§ 1333.*

> ***In order to understand the meaning of the terms here used, it will be necessary to have recourse to the common law; for in no other way can we arrive at the true***

> ***definition of the writ of habeas corpus.*** *At the common law there are various writs, called writs of habeas corpus. But the particular one here spoken of is that great and celebrated writ, used in all cases of illegal confinement, known by the name of the writ of habeas corpus ad subjiciendum... It is, therefore, justly esteemed the* ***great bulwark of personal liberty****; since it is the appropriate remedy to ascertain, whether any person is rightfully in confinement or not, and the cause of his confinement; and if no sufficient ground of detention appears,* ***the party is entitled to his immediate discharge****.*

The reference to "recourse to the common law" exempts statutory interpretation, and renders any demand, such as this current matter, one that must be argued in substantive law rather than case law.

A Supreme Court decision that addresses Habeas Corpus is **Abelman v. Booth, 62 US 506** (1856), at 519:

> ***The sovereignty to be created [to the United States] was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers, it was not to be regarded as the supreme law of the land, nor were the State judges bound to carry it into execution.***

Then, at 521-521:

> *This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States,* ***but also to guard the States from any encroachment upon their reserved rights by the General Government****. And as the Constitution is the fundamental and supreme law,* ***if it appears that an act of Congress is not pursuant to and within the limits of the power assigned to the Federal Government, it is the duty of the courts of the United States to declare it unconstitutional and void****. The grant of judicial power is not confined to the administration of laws passed in pursuance to the provisions of the Constitution, nor confined to the interpretation of such laws; but, by the very terms of the grant, the Constitution is under their view when any act of Congress is brought before them, and it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress. . .*

Or, if the law is constitutional, with regard to those subject to its jurisdiction, it may be constitutional, though only as applied, properly, to those so subject, and not applied to those who are not subject to that jurisdiction.

In this decision, the constitutional nexus for the **Fugitive Slave Act of 1850** did have the requisite nexus to be constitutional, since it was enacted under authority of and consistent with **Article IV, §2, clauses 2 and 3**, Constitution.

In another Habeas Corpus decision, **In Re Tarble, 80 US 397** (1871), again, there is a constitutional nexus with **Article I, § 8, clause 12**, and **Article II, § 2, clause 1**.

In a non-Habeas Corpus decision, which does show the consequence of an absence of a direct nexus, we can look at **U. S. v. Reese, 92 US 214** (1875). Based upon the ratification of the **Fifteenth Amendment**, Congress enacted the **Act of May 31, 1870**. The Act, however, exceeded that authority conveyed by the Amendment, causing the Court to strike two sections from the Act. The nexus did not exist; therefore, the provisions of the Act were not within the constitutional authority of the Congress.

In the Supreme Court decision in **Dred Scott v.** Sandford 60 US 393, the Court held that Scott had no standing to plea before that Court, though his plea before a federal court was not challenged by Sandford, timely. That since the challenge was not brought timely, the Court could hear the case, as Sandford "waived his defense by pleading over, thereby admitted the jurisdiction of the court". The Court then assumed a jurisdiction that did not exist, because it was not challenged.

As far as the extension of geographic jurisdiction, we can look at **In Re Lane, 135 US 443** (1890), where in that decision, Justice Miller says:

> [W]e think the words 'except the territories' have reference exclusively to that system of organized government long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, a legislative, and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by act of congress; and their legislative acts are subject to the disapproval of the congress of the United States. They are not in any sense independant governments. They have no senators in congress, and no representatives in the lower house of that body except what are called 'delegates,' with limited functions. Yet they exercise nearly all the powers of government under what are generally called 'organic acts,' passed by congress, conferring such powers on them. It is this class of governments, long known by the name of 'territories,' that the act of congress excepts from the operation of this statute, while it extends it to all other places over which the United States have **exclusive** jurisdiction. Oklahoma was not of this class of territories. It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the territories of the United States have, and have always had.

That decision identifies three distinct entities, in terms of jurisdiction within the United States. An unorganized "territory" had no legislative, executive, or judicial branch of government. It fell exclusively under the "all needed Rules and Regulations" provision of **Article IV, § 3, clause 2**, Constitution. Once territories were organized, and granted by the Congress the authority to establish legislative, executive, and judicial branches of government, they were removed from the Article IV provision, and jurisdiction of the federal government was no longer generally existent. With statehood, and representation in Congress, a totally independent government was established, and any retained federal control by the territorial enactment no longer existed. It was clear by this decision that there could not be two laws, one conflicting with another, within a jurisdiction. The Congressional rule imposed upon the territory of Oklahoma, an unorganized territory, was inconsistent with the laws of Ohio, where the trial was held. Relief was sought under Ohio law, while the conviction was under a law enacted by the Congress, which crime was committed in the unorganized territory of Oklahoma. If a law is a rule of action, how can one decide which rule he is bound by? This decision resolves that dilemma, and provides for a singular jurisdiction, absent justifying circumstances.

The limitation that the Constitution imposed on Congress is more readily understood when we look at a law enacted to provide a means of punishing those who destroyed government property though extremely qualified, under the authority of **Article I, Section 8, clause 17**. It was the **Act of 1825,** enacted March 3, 1825, which reads, in part:

> ***An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes***
>
> Section 1: *"That if any person or persons, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to, and under the jurisdiction of, the United States, or on a site of any lighthouse, or other needful building belonging to the United States, the sight whereof is ceded to them [United States], and under their jurisdiction, as aforesaid, shall, willfully..."*

Clearly, to find acts to be criminal by federal law, even of damage to federal property, the act had to be committed on land described within the above said clause, AND, only when both land and jurisdiction were ceded to the federal government by the state.

Also, in regard to the distinct separation of jurisdiction, we can look at **Barron v. City of Baltimore, 32 US 243** (1833), Barron sought compensation for losses suffered as a consequence of work conducted by the City, which effectively "took" his property, without compensation, as he alleged, in violation of the Fifth Amendment. Justice Marshall, at 247:

> The question thus presented is, we think, of great importance, but not of much difficulty. **The [United States] constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states.** Each state established a constitution for itself, and in that constitution, **provided such limitations and restrictions on the powers of its particular government, as its judgment dictated**. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. **The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument.**

The Court determined that there was no protection afforded to Barron by the **Fifth Amendment**. There is little doubt that the **Fourteenth Amendment** extended federal authority, to an extent, over certain parties, though not to all.

That the **Fourteenth Article in Amendment** to the Constitution for the United States, ratified in 1868, states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States..."

That the qualifier in said Amendment, "and subject to the jurisdiction thereof", was limited in its application and does not apply to Wolf or his ancestors, thereby leaving him not as a citizen of the United States, rather, a citizen of Montana, and not subject to federal jurisdiction, as applied herein.

That the limitation on jurisdiction over citizens of a state, who were not citizens of the United States, was clearly reaffirmed in **Twining v. State of New Jersey** (211 US 78), when the Supreme Court

ruled that there was a distinction between a citizen of the United States and a citizen of New Jersey, and that federal law did not extend to the citizens of New Jersey (Twining and Cornell), hence, they were not subject to federal protection or jurisdiction.

Further, regarding Wolf being detained prior to the Grand Jury Indictment, the Fifth Article in Amendment to the Constitution reads:

> *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.*

Wolf had been "held to answer", for twenty-one days, without charge and without bail. On April 17, the Grand Jury, after 21 days, finally indicted Wolf. That process is specific in the Amendment. "Held" is detention, and in his case, it is the extreme of detention, incarceration. The requisite is capital or infamous (felony), though the troublesome aspect is the sequence. If he cannot be "held to answer, unless on a presentment or indictment of a Grand Jury", there can be no statutory exception. The government cannot put the cart before the horse. The "unless" excludes any other pretext for his being "held to answer".

Justice Brandeis, in **Ashwander v. Tennessee Valley Authority, 297 US 288** (1936), 346-349, explained by what means issues of a constitutional nature would not be heard, and what criteria would be used to rule on matters before that Court. These rules have been adhered to by lower courts, since that time.

> [At 347, Rule] "4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter."

In enumerating the "upon which the case may be disposed of", we find the following, also at 347:

> [Rule] "5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation."

Wolf, being denied his liberty, establishes sufficient injury, where such consideration must be made.

Then, at 348:

> [Rule] "6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits."

Wolf has availed himself to no benefit from the agency, or its statutes.

Congress enacted the **Administrative Procedures Act of 1946**, purportedly to afford protection from administrative agencies of the government. From the Congressional Record:

> "*We have set up a **fourth order in the tripartite plan of government** which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches; **but since that time we have set up fourth dimension, if I may so term it, which is now popularly known as administrative in nature.** So we have **the legislative, the executive, the judicial, and the administrative**."*
>
> *[T]he purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for **the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government**.*

At the time, they stated that it would affect "hundreds of thousands of Americans", that number being well below the then population of 150 millions of people. Obviously, by that statement, they excluded the vast majority, those many who had their allegiance to their state's government and constitution, and were citizens thereof. Included would be those who were granted citizenship by the Fourteenth Amendment, as well as those who voluntarily availed themselves to a benefit from a federal statute.

Relevant Facts

That Wolf avers that he is not a citizen of the United States; that he is a citizen of Montana.

That Wolf avers that he was not on land ceded to, or jurisdiction ceded to the federal government.

That Wolf avers that he is not subject to the jurisdiction assumed by the government in this matter.

That Wolf has not plead over, nor acknowledged any such relationship, nor availed himself to any benefit under the listed statutes that would subject him to such jurisdiction.

That Wolf purchased a Saiga-12, 12 gauge shotgun from a person ("UCE") identified as a Class III firearms licensee, which license can only be issued by the federal government.

That Wolf has learned, since then, that the barrel of the shotgun had been cut to a "length of less than 18 inches".

That Wolf was detained (denied his liberty) on March 26, 2015, and has remained detained in the Yellowstone County Detention Facility since that date.

That for the most part, Wolf does not dispute the pertinent parts of the Criminal Complaint (**MJ-15-20-BLG-CSO**), and states they are true to the best of his knowledge and belief.

Arguments

It is clear by the decisions in **Abelman v. Booth** and **In Re Tarble** that a nexus to an authority granted to the government by the Constitution is a requisite for any lawful enactment. Further, **U. S. v. Reese** establishes that enactments without that constitutional nexus are void of any lawful authority. It is to establish whether that lawful authority exists in this instant case.

As set out in the **Fourteenth Amendment**, only those identified in the ratified Amendment were included in the extension of Due Process. Forty years later, in **Twining**, we see the distinction between citizens created under the **Fourteenth Amendment** and citizens of the States of the Union, and that they continued to be separated, with regard to their relationship with the federal government.

Understanding that federal jurisdiction was limited by the Constitution, particularly **Article I, § 8, clause 17**, and, **Article IV, § 3, clause 2**, and that we can see by the **Act of 1825** and the Supreme Court's decisions in **Barron v. City of Baltimore** and **In Re Lane**, that the limitation of jurisdiction was put into practice by the former and upheld by the Court in the latter two.

That Wolf has not submitted to the jurisdiction of this Court (plead over); hence he has not left to the discretion of the Court the matter of submitting to a jurisdiction foreign to him, as explained in **Dred Scott v. Sandford**.

*In **Ashwander v. Tennessee Valley Authority**, Justice Brandeis explains the "rules" the Court has developed, and what the requisite is for a matter to be held to constitutionality, rather than subject to the statute, if the constitutionality of the statute is in question. This is followed, in ten years, by an Act of Congress, the **Administrative Procedures Act of 1946**, which creates a "fourth branch of government that is foreign to our Constitution, though not unconstitutional, if applied only to those who fall, by their own actions, as expressed in Ashwander, into legal obligations under those statutes. Wolf has not knowingly or willingly availed himself to any such benefit.

Conclusion and Prayer for Writ of Habeas Corpus

As per the Sixth Article in Amendment to the Constitution of the United States and Article I, Section 16, Montana Constitution, the "nature and cause of the accusation".

We are unable to find an injured party, who, if he exists, must provide a sworn affidavit of the injury.

If this is a matter civil rather than criminal, we cannot find the party injured by Wolf, nor is he properly identified, nor has he provided the original contract of which Wolf is alleged to be party to and in violation of.

If Wolf is charged with violating a statute, the burden of proof of lawful jurisdiction rests upon the government. Wolf has no causal relationship with the United States government that would obligate him to the statutes contained within the Indictment.

The Criminal Complaint, undisputed, describes the events that occurred on March 26, 2015. The "UCE" is introduced as a Class III Licensee. As such, he has availed himself to a benefit under a statute, and he meets the jurisdictional criteria, or he lied to Wolf by setting himself out as such. Had he provided the application for a background check and an application for a Class III license,

and, had Wolf executed and submitted, either one, or both, of those applications, then Wolf would have entered into federal jurisdiction. Absent that act on his part, Wolf did not create the requisite nexus to federal jurisdiction, though the federal licensee, "UCE", did, and his failure to provide the application, obtain completed applications from Wolf, submit them to the proper authorities, prior to the transfer, made his act criminal and subject to federal jurisdiction.

It also states that Wolf possessed a shotgun "having a barrel length of less than 18 inches." Wolf did not modify the shotgun to "less than 18 inches." He had no opportunity to measure the barrel length, nor was he concerned over the length of the barrel. He relied upon the "Class III licensee", as any purchaser of any firearm, from any such licensee would have done, which leaves the burden on the licensee, not the purchaser.

If, on the other hand, as stated in the Criminal Complaint, the firearm in question was transferred to Wolf by an agent off the United States government, then there is no nexus to federal jurisdiction. The statute cited is:

> **18 US Code §922:**
> (o) (1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.
> (2) This subsection does not apply with respect to -
> (A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or
> (B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

Under the described circumstances, the transfer would be exempt under §922 (o) (2) (A), "Except as provided in paragraph (2)... a transfer... by... any department or agency thereof." If the transfer was made without proper authority, the transferor would be criminal; however, the required nexus would not have been established, in either case, with regard to Wolf, the transferee.

Whichever of the above is correct, it is alleged that Wolf "possessed" the firearm at the location given in the Indictment, in Park County, Montana. Absent evidence establishing both ceded land and jurisdiction ceded, by the State of Montana to the United States, there is geographic absence of

jurisdiction. As understood by the Framers, and the obvious intent of the Constitution, the **Act of 1825** makes clear that criminal activity can only be prosecuted under those conditions. This is reaffirmed in the decision of **In Re Lane**.

As to the charge that Wolf is in violation of various sections of Title 26, Wolf was not in possession of the shotgun more than twenty minutes. During that time, he was in a parking lot. From that point on, he has been detained and has even been restricted in his communications. There was no intention to violate any law, there was also no opportunity to comply with any such law, and the presumption is nothing more than the conjecture of the prosecuting attorney. Wolf's "possession" was little more than having the shotgun handed to him, and then returned to the previous "possessor". There is nothing presented in the Complaint or Indictment that even warrants consideration in the Petition, as facts do not exist that demonstrate any criminal intent. If any taxes were owing on the shotgun, the proper applications would have been provided for by the Class III licensee, the licensee also being an agent of the government and knowledgeable in the applicable laws that he is obliged to administer to. This charge is inapplicable, for the same reasons as stated above with regard to possession, that there is no constitutional nexus.

As to the "Forfeiture Allegation", it, too, is dependent upon violation of the statute, 18 US Code §922 (o), at which it likewise fails, as it is void, absent a crime with a constitutional nexus, upon which it relies for justification.

The Constitution provides only one Constitutional remedy against the enforcement of unconstitutional laws. It is not with the legislative, as they would be the source of an unconstitutional law. It cannot be the Executive, as they are charged with enforcing, or, in many instances, creating rules and regulations, though these only apply when the jurisdiction exists. It can only reside within the judicial branch and the only prescribed means is Habeas Corpus *ad subjiciendum*, "the sacred writ".

The argument that the federal district courts have an obligation to answer and return a writ of Habeas Corpus *ad subjiciendum* is clearly established. The obligation upon this Court to answer and return this writ is unquestionable.

The limitation of federal jurisdiction, with regard to one who is a citizen of a State and not subject to any administrative rules, unless of a voluntary act, is clearly established.

Therefore, Hunt prays that Wolf be released, forthwith, and returned to the location, Livingston, Montana, where he was denied his Liberty on March 26, 2015. In addition, that all property taken from Wolf on that date and that he has acquired since, including paperwork, be returned to him, forthwith. Further, that he be allowed to retain the shotgun in question, along with any ammunition, or, that the purchase price be returned to him.

That if an oral hearing is required, that this matter be scheduled for hearing, and that sufficient time be allowed for my travel to Billings to be present at such hearing.

Gary Hunt
Next Friend for
William Krisstofer Wolf

25370 Second Avenue
Los Molinos, California 96055
(530) 384-0375
hunt@outpost-of-freedom.com

That this Petition was mailed, Priority Mail, to the above Court, on the 24 day of April, 2015,

Gary Hunt
Next Friend for
William Krisstofer Wolf

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Tehama)

On 4-24-2015 before me, Donna K. Wallan - Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared Gary Hunt
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Donna K Wallan
Signature of Notary Public

DONNA K. WALLAN
Commission # 2010334
Notary Public - California
Tehama County
My Comm. Expires Mar 8, 2017

Place Notary Seal Above

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Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Writ of Habeas Corpus Document Date: 4-24-15
Number of Pages: 14 Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Gary Hunt	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☒ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:

In The United States District Court
for the District of Montana
Billings Division

In re William Krisstofer Wolf	Cause No. CV 15-28-BLG-SPW
Gary Hunt Next Friend Petitioner	Memorandum in Support of Petition for Writ of Habeas Corpus *ad subjiciendum*

The following is to provide more detail into cited authorities within the **Petition for a Writ of Habeas Corpus ad subjiciendum,** as well as other authorities..

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With regard to the role of the judiciary in Habeas Corpus:

United States Constitution, **Article I, Section 9, clause 2**:

> *The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.*

In order to establish a foundation from which this Court might answer and return this Habeas Corpus, we must visit the precedence established by the United States Supreme Court.

Regarding Precedence, there are a number of United States Supreme Court decisions that establish the extent of federal jurisdiction in such cases. The first is **Abelman v. Booth,** 62 U.S. 506 (1858). Justice Taney, in the Decision of the Court, said, [at 519]:

> *The same purposes are clearly indicated by the different language employed when conferring supremacy upon the laws of the United States, and jurisdiction upon its courts. In the first case, it provides that 'this Constitution, and the laws of the United States **which shall be made in pursuance thereof**, shall be the supreme law of the land, and obligatory upon the judges in every State.' ...**The sovereignty to be created was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers, it was not to be regarded as the supreme law of the land, nor were the State judges bound to carry it into execution.*** ...

Clearly, if it is not regarded as the "supreme law of the land", there is an absence of federal jurisdiction, at 520,521, he says:

> *This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, **but also to guard the States from any encroachment upon their reserved rights by the General Government**. And as the Constitution is the fundamental and supreme law, **if it appears that an act of Congress is not pursuant to and within the limits of the power assigned to the Federal Government, it is the duty of the courts of the United States to declare it unconstitutional and void**. The grant of judicial power is not confined to the administration of laws passed in pursuance to the provisions of the Constitution, nor confined to the interpretation of such laws; but, by the very terms of the grant, the Constitution is under their view when any act of Congress is brought before them, and it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress. . .*

The Court, then, is to judge the Constitutionality of any law. However, to do so, they must also hear the matter. Habeas Corpus being the proper means of challenging such jurisdiction, only by Habeas Corpus can such a challenge be made. However, in Abelman there is no record that Booth attempted to serve a Habeas Corpus in the federal courts. Had he done so, the wording of the decision of the

Court would have been decided differently. However, the Wisconsin Supreme Court did see fit to challenge the constitutionality of the Fugitive Slave Act.

Clearly, the **Fugitive Slave Act of 1850** has that nexus, for the Constitution states, in Article IV, Section 2, clauses 2, 3:

> *A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.*
>
> *No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.*

Finally, as has been referred to by this Court, in **Abelman**, at 515,516:

> *There can be no such thing as judicial authority, unless it is conferred by a Government or sovereignty; and if the judges and courts of Wisconsin possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States; and it is equally clear it was not in the power of the State to confer it, even if it had attempted to do so; for no State can authorize one of its judges or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent Government. And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet **separate and distinct** sovereignties, acting separately and independently of each other, within their respective spheres.*

Here, we must ask where that line of distinction falls? Who is to determine that fine line, if not the judiciaries of both governments? And, absent involvement by the state government, is it to be left solely to the federal government to define just how far over that line they wish to reach?

Just thirteen years later, the same Court, the Wisconsin Supreme Court, saw fit, once again, to challenge the constitutionality of another detention by federal agents. However, the United States Supreme Court ruled that since Tarble had enlisted and was a member of the Army, the Constitutional nexus was existent.

In Re Tarble, 80 U.S. 397 (1871), deals with a Habeas Corpus filed in Wisconsin and upheld by the Supreme Court of the State of Wisconsin. So, once again, Wisconsin trod upon ground previously

tread upon in **Abelman**, where they had been overturned. Evidently, that Court saw fit to challenge federal jurisdiction whenever it was perceived to exist in contradiction to the Constitution, and, only by such test could they obtain a definitive ruling to that effect.

At 397,398:

> *This was a proceeding on habeas corpus for the discharge of one Edward Tarble, held in the custody of a recruiting officer of the United States as an enlisted soldier, on the alleged ground that he was a minor, under the age of eighteen years at the time of his enlistment, and that he enlisted without the consent of his father.*

Surely, this second decision by the Wisconsin Court was decided, as explained, because the youth, Tarble, was not yet 18 years of age, so the question arose as to whether the contract to enter the military service was valid. That would leave the question, if the Wisconsin Court were correct, as to the existence of the nexus directly to the United States Constitution. The decision, however, establishes the validity of that nexus.

That nexus to the Constitution is quite clear in Article I, Section 8, clause 12, and, Article II, Section 2, clause 1, to wit:

> *To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;*
>
> *The President shall be Commander in Chief of the Army and Navy of the United States...*

For Congress to raise and support Armies, there must be a degree of control over the resources and obligations of that Army. The President, as Commander in Chief, there can be no doubt as to the implications of jurisdiction over the members of the Army, once they have enlisted and are still under that enlistment.

Though the Court opinion also implied that there was no circumstance where a state could grant Habeas Corpus that was within the narrow confines of **Tarble**. Even so, the Chief Justice, in a dissenting opinion, stated [at 412]:

> ***I have no doubt of the right of a State court to inquire into the jurisdiction of a Federal court upon habeas corpus, and to discharge when satisfied that the petitioner for the writ is restrained of liberty by the sentence of a court without jurisdiction.*** *If it errs in deciding the question of jurisdiction, the error must be corrected in*

> *the mode prescribed by the 25th section of the Judiciary Act; **not by denial of the right to make inquiry**.*

Absent such ability of the states to challenge jurisdiction, at least when there is no direct Constitutional nexus, would result in the states and the people subjecting themselves to absolute federal despotism. This, clearly, was not the intent in either **Tarble**, or, the Constitution.

This, then, leads us to a consideration of the extent of federal legislative authority. This question of challenge of jurisdiction, based upon Constitutional authority, comes to us just four years afterword in **U. S. v. Reese,** 92 U.S. 214 (1875). Though this case does not deal with Habeas Corpus, it does address the matter of nexus to the Constitution and legislative authority. It will demonstrate that even with the nexus, absent explicit authority, the nexus is not sufficient to establish proper jurisdiction.

At 215, 216:

> *This case comes here by reason of a division of opinion between the judges of the Circuit Court in the District of Kentucky. It presents an indictment containing four counts, under sects. 3 and 4 of the act of May 31, 1870 (16 Stat. 140), against two of the inspectors of a municipal election in the State of Kentucky, for refusing to receive and count at such election the vote of William Garner, a citizen of the United States of African descent.*

Since the **Fifteenth Amendment** had been ratified prior to **Reese**, the nexus was created by that Amendment to the Constitution. The nexus exists, and, is confirmed by the decision of the Court, at 217,218:

> ***Rights and immunities created by or dependant upon the Constitution of the United States can be protected by Congress**. The form and the manner of the protection may be such as Congress, **in the legitimate exercise of its legislative discretion**, shall provide. These may be varied to meet the necessities of the particular right to be protected.*
>
> ***The Fifteenth Amendment does not confer the right of suffrage upon any one.** It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, &c., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is. **It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress**. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the*

express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'

However, in the decision, it is determined that the statutory enactment based upon the nexus, the **Fifteenth Amendment**, is too broadly written as to come within the authority granted by the Amendment. The decision brings into question whether Sections three and four of the **Act of Congress,** Act of May 31, 1870 (16 Stat; 140), are within the authority of the Congress based upon the Fifteenth Amendment. At 218:

> . *It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.*

And, at 219:

> *The statute contemplates a most important change in the election laws. Previous to its adoption, the States, as a general rule, regulated in their own way all the details of all elections. They prescribed the qualifications of voters, and the manner in which those offering to vote at an election should make known their qualifications to the officers in charge... This is a radical change in the practice, and the statute which creates it should be explicit in its terms. Nothing should be left to construction, if it can be avoided. The law ought not to be in such a condition that the elector may act upon one idea of its meaning, and the inspector upon another.*

And, at 220 - 222:

> *There is no attempt in the sections [of the Amendment] now under consideration to provide specifically for such an offence. If the case is provided for at all, it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. **We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not**... The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.*
>
> *It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will when ascertained, **if within the constitutional grant of power**. Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its*

> *constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings, must, annul its encroachments upon the reserved power of the States and the people.*

Therefore, in Reese, we see that though a partial constitutional nexus does exist, between the Constitution and the matter before the Court, the authority of the Congress, to act within the explicit grant of power, or authority, within the Constitution (Fifteenth Amendment), does not grant them legislative authority outside of that which was explicitly granted.

With regard to both habeas corpus and jurisdiction, we can look at **In Re Lane,** 135 U.S. 443 (1890), which will touch on the very heart of the instant matter.

Justice Miller provided the decision to deny habeas corpus.

> *1 This is a petition by Charles Mason Lane, addressed to the original jurisdiction of this court, for a writ of habeas corpus. Upon the filing of the petition a rule was issued upon Charles H. Case, warden of the penitentiary of the state of Kansas, who, it was alleged, held the petitioner in unlawful imprisonment. Case made a return to this rule, in which he said that the prisoner was held under a mittimus issued from the office of the clerk of the district court of the United States in and for the district of Kansas, and accompanying the return was a certified copy of the proceedings in that court under which Lane was held. From this it appears that the following indictment was found in that court at its September term, 1889:*

Original Jurisdiction was affirmed and the habeas corpus was answered and return by one Justice.

Lane was convicted by jury trial and sentenced to serve 5 years in prison.

> *5 There is really but one question, out of the several grounds of relief sought in this case, that is a proper subject for this court. By the act of congress approved February, 9, 1889, c. 120, (25 St. 658,) under which defendant is indicted and convicted, it is provided 'that every person who shall carnally and unlawfully know any female under the age of sixteen years, or who shall be accessory to such carnal and unlawful knowledge before the fact, in the District of Columbia or other place, except the territories, over which the United States has exclusive jurisdiction, or on any vessel within the admiralty or maritime jurisdiction of the United States, and out of the jurisdiction of any state or territory, shall be guilty of a felony, and when convicted thereof shall be punished by imprisonment at hard labor, for the first offense, for not more than fifteen years, and for each subsequent offense not more than thirty years.' The offense with which the petitioner is here charged is alleged in the indictment to have been committed within that part of the Indian Territory commonly known as 'Oklahoma,' and it is alleged in the indictment that this a district of country under the exclusive jurisdiction of the United States, and within the jurisdiction of the district court of Kansas. The counsel for prisoner contend that this is a territory, within the exception of the act of congress of 1889; that, therefore, this act does not apply to the case; and that, there being no other act of congress punishing a party for carnal and unlawful knowledge of a female under the age of 16 years, the court was without jurisdiction to try or to sentence the prisoner. But we think the words 'except the territories' have reference exclusively to that system of organized government long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, a legislative, and a*

> *judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by act of congress; and their legislative acts are subject to the disapproval of the congress of the United States. They are not in any sense independant governments. They have no senators in congress, and no representatives in the lower house of that body except what are called 'delegates,' with limited functions. Yet they exercise nearly all the powers of government under what are generally called 'organic acts,' passed by congress, conferring such powers on them. It is this class of governments, long known by the name of 'territories,' **that the act of congress excepts from the operation of this statute, while it extends it to all other places over which the United States have exclusive jurisdiction**. Oklahoma was not of this class of territories. It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the territories of the United States have, and have always had. We are therefore of opinion that the objection taken on this point by the counsel for prisoner is unsound.*

The statute provides a limitation on the jurisdiction of the enactment, which is also apparent in the statute of 1825 , to wit:

> ***An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes.*** (March 3, 1825
>
> *"That if any person or persons, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to, **and under the jurisdiction of the United States**, or on a site of any lighthouse, or other needful building belonging to the United States, the sight whereof is ceded to them {United States}, **and under their jurisdiction**, as aforesaid, shall, willfully..."*

and is presumed, by this Act, to be a limitation on the jurisdiction for enactment of statutes by the Congress, to avoid duplicity in jurisdiction. If a State or Territory has executive, legislative, and judicial branches, it is theirs to exercise the administration of justice. With that in mind, is it possible that absent such a qualifier, "*in the District of Columbia or other place, except the territories, over which the United States has exclusive jurisdiction, or on any vessel within the admiralty or maritime jurisdiction of the United States, and out of the jurisdiction of any state or territory*", then the qualification is still valid and applicable to any law enacted by the Congress which would otherwise presume to override the legislative authority reserved by the States, and is indicative of the limitation of the powers and authorities granted to the general government by the Constitution, absent the establishment of an individual's relationship to the general government by other means?

Absent such authority, either that presumed by statehood or conferred by Congress to a Territory, the jurisdiction is granted by the Constitution by either Article I, Section 8, clause 17, or, by Article

IV, Section 3, clause 2. This is the extent of jurisdiction of the District Courts, absent a clear authority granted by the Constitution.

With regard to Habeas Corpus (*ad subjiciendum*):

When we look at the history of Habeas Corpus, we can see the significance, and importance, of the writ as being a protection for the people from judicial misdeeds, even to the point of imposing severe penalties on those who did not answer to the writ.

With the enactment of the **Habeas Corpus Act** (Act 31 Car. 2, c. 2, 27 May 1679), urgency of the Habeas Corpus was established. There is a presumption that a Justice would grant the Writ and require appearance. Those holding the person detained risk severe penalties for failure to produce the "body".

> *V. And be it further enacted by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, **shall neglect or refuse to make the returns aforesaid**, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, **shall for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds**; (2) and **for the second offence the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office**; (3) the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators...*

In 1768, **William Blackstone, Commentaries** [3:129--37] provides even more insight into the necessity and requirements associated with this Writ of Right.

> *But the great and efficacious writ in all manner of illegal confinement, is that of habeas corpus ad subjiciendum; directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. This is a high prerogative writ, and therefore by the common law issuing out of the court of king's bench not only in term-time, but also during the vacation, by a fiat from the chief justice or any other of the judges, and running into all parts of the king's dominions: for the king is at all times intitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted. . .*

Clearly, whether jurisdiction is obvious, or in question, the Court is compelled to Answer.

> *In the court of king's bench it was, and is still, necessary to apply for it by motion to the court, as in the case of all other prerogative writs (certiorari, prohibition, mandamus, &c) which do not issue as of mere course, without shewing some probable cause why the extraordinary power of the crown is called in to the party's assistance. For, as was argued by lord chief justice Vaughan, "it is granted on motion, because it cannot be had of course; and there is therefore no necessity to grant it: for the court ought to be satisfied that the party hath a probable cause to be delivered".... On the other hand, if a probable ground be shewn, that the party is imprisoned without just cause, and therefore hath a right to be delivered, the writ of habeas corpus is then a writ of right, which "may not be denied, but ought to be granted to every man that is committed, or detained in prison, or otherwise restrained, though it be by the command of the king, the privy council, or any other."*
>
> *In a former part of these commentaries we expatiated at large on the personal liberty of the subject. It was shewn to be a natural inherent right, which could not be surrendered or forfeited unless by the commission of some great and atrocious crime, nor ought to be abridged in any case without the special permission of law. A doctrine co-eval with the first rudiments of the English constitution; and handed down to us from our Saxon ancestors, notwithstanding all their struggles with the Danes, and the violence of the Norman conquest: asserted afterwards and confirmed by the conqueror himself and his descendants: and though sometimes a little impaired by the ferocity of the times, and the occasional despotism of jealous or usurping princes, yet established on the firmest basis by the provisions of magna carta, and a long succession of statutes enacted under Edward III. To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society; and in the end would destroy all civil liberty, by rendering it's protection impossible: but the glory of the English law consists in clearly defining the times, the causes, and the extent, when, wherefore, and to what degree, the imprisonment of the subject may be lawful. This induces an absolute necessity of expressing upon every commitment the reason for which it is made; that the court upon an habeas corpus may examine into its validity; and according to the circumstances of the case may discharge, admit to bail, or remand the prisoner.*

Blackstone concludes his Commentary in the Sacred Writ in unequivocal terms:

> *This is the substance of that great and important statute: which extends (we may observe) only to the case of commitments for such criminal charge, as can produce no inconvenience to public justice by a temporary enlargement of the prisoner: all other cases of unjust imprisonment being left to the habeas corpus at common law. But even upon writs at the common law it is now expected by the court, agreeable to antient precedents and the spirit of the act of parliament, that the writ should be immediately obeyed, without waiting for any alias or pluries: otherwise an attachment will issue. By which admirable regulations, judicial as well as parliamentary, the remedy is now complete for removing the injury of unjust and illegal confinement. A remedy the more necessary, because the oppression does not always arise from the ill-nature, but sometimes from the mere inattention of government.*

As a soon to be Great Nation is founded, those who framed the Constitution saw fit to specifically carry forward, and secure rights against "inattentive government", as a part of the Constitution.

From the Constitutional Convention, we have **Madison: Records of the Federal Convention**, 2:334; Journal, 20 August.

> "*The privileges and benefits of the writ of habeas corpus shall be enjoyed in this government in the most expeditious and ample manner: and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding [blank] months.*"

"Expeditious and ample" are easily understood, and, clearly, the intention of the inclusion of the "Sacred Writ" within the protection of the Constitution. Being the only "right" defined as a "privilege", we need simply understand that it is the only enumerated right that is subject to legislative suspension, though only by the Congress.

William Rawle, in **"A View of the Constitution of the United States"** 117--19 (1829), provides us insight into the perception of the Writ just forty years after the Ratification of the Constitution, and, clearly, as it was envisioned at the time.

> *Reasons will be given hereafter for considering many of the restrictions, contained in the amendments to the Constitution, as extending to the states as well as to the United States, but the nature of the writ of habeas corpus seems peculiarly to call for this construction. It is the great remedy of the citizen or subject against arbitrary or illegal imprisonment; it is the mode by which the judicial power speedily and effectually protects the personal liberty of every individual, and repels the injustice of unconstitutional laws or despotic governors. After erecting the distinct government which we are considering, and after declaring what should constitute the supreme law in every state in the Union, fearful minds might entertain jealousies of this great and all-controlling power, if some protection against its energies when misdirected, was not provided by itself.*
>
> *The national code in which the writ of habeas corpus was originally found, is not expressly or directly incorporated into the Constitution.*
>
> *If this provision had been omitted, the existing powers under the state governments, none of whom are without it, might be questioned, and a person imprisoned on a mandate of the president or other officer, under colour of lawful authority derived from the United States, might be denied relief. But the judicial authority, whether vested in a state judge, or a judge of the United States, is an integral and identified capacity; and if congress never made any provision for issuing writs of habeas corpus, either the state judges must issue them, or the individual be without redress... that congress, which has authorized the courts and judges of the United States to issue writs of habeas corpus in cases within their jurisdiction, can alone suspend their power, and that no state can prevent those courts and judges from exercising their regular functions, which are, however, confined to cases of imprisonment professed to be under the authority of the United States. But the state*

> ***courts and judges possess the right of determining on the legality of imprisonment under either authority.***

So, **Rawle** has explained to us that the federal government can, "*under colour of lawful authority*", imprison a person. And, that only the state court can provide a remedy for such unlawful detention. However, this does not seem to square with **Abelman v. Booth** (1858)], however, the context of **Abelman** does not dispute **Rawle's** conclusion.

There is another legal authority that can provide us with insight into the intention of Habeas Corpus, as per the Founding era and our legal heritage. The Honorable Justice **Joseph Story**, "**Commentaries on the Constitution**", 3:§§ 1333--36 (1833), will provide that insight.

> *§ 1333. **In order to understand the meaning of the terms here used, it will be necessary to have recourse to the common law; for in no other way can we arrive at the true definition of the writ of habeas corpus. At the common law there are various writs, called writs of habeas corpus. But** the particular one here spoken of is that great and celebrated writ, used in all cases of illegal confinement, known by the name of the writ of habeas corpus ad subjiciendum, directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court, awarding such writ, shall consider in that behalf. **It is, therefore, justly esteemed the great bulwark of personal liberty; since it is the appropriate remedy to ascertain, whether any person is rightfully in confinement or not, and the cause of his confinement; and if no sufficient ground of detention appears, the party is entitled to his immediate discharge.** This writ is most beneficially construed; and is applied to every case of illegal restraint, whatever it may be; for every restraint upon a man's liberty is, in the eye of the law, an imprisonment, wherever may be the place, or whatever may be the manner, in which the restraint is effected.*

Can there be any doubt that absent the right of a citizen to legal recourse, by Habeas Corpus, to remedy, is a denial of the most fundamental and sacred of all legal remedies? And, can there be any contemplation, at all, that we have somehow failed to carry to the present day this ultimate remedy against overarching government?

As a final resource of competent legal authority, we will visit **Bouvier's Law Dictionary** (1856), from about the time of the Abelman decision [1858], in part:

> **HABEAS CORPUS**, *remedies A writ of habeas corpus is an order in writing, signed by the judge who grants the same, and sealed with the seal of the court of which he is a judge, issued in the name of the sovereign power where it is granted, by such a court or a judge thereof, having lawful authority to issue the same, directed to any one having a person in his custody*

or under his restraint, commanding him to produce, such person at a certain time and place, and to state the reasons why he is held in custody, or under restraint.

* * *

5. ...to pray a habeas corpus for his enlargement, may apply by any one in his behalf, ... to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And ..., any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.

* * *

7. The Constitution of the United State Article 1, s. 9, n. 2, provides, that " the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it and the same principle is contained in many of the state constitutions. In order still more to secure the citizen the benefit of this great writ, a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal.

9. - 1. The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, ...under any color or pretence whatsoever...

10. - 2. The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers...

11. - 3. The person to whom the writ is addressed or directed, is required to make a return to it, within the time prescribed; he either complies, or he does not. If, he complies, he must positively answer, 1. Whether he has or has not in his power or custody the person to be set at liberty, or whether that person is confined by him; if he return that he has not and has not had him in his power or custody, and the return is true, it is evident that a mistake was made in issuing the writ; if the return is false, he is liable to a penalty, and other punishment, for making such a, false return. If he return that he has such person in his custody, then he must show by his return, further, by what authority, and for what cause, he arrested or detained him. If he does not comply, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved.

12. - 4. When the prisoner is brought, before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and Papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody....

With regard to Jurisdiction:

Now, let us look in to the matter of jurisdiction. First, we might look at what the Framers of the Constitution, and others of that era, perceived as limitation on jurisdiction. In an Act of Congress,

"***An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes"***, (Act of 1825)the protection of government property, only on land ceded in accordance with the Constitution (*and under the jurisdiction of the United States*), could be protected by laws, by the authority of Congress, with an act imposing penalties for damage or destruction to that property.

Article I, Section 8, clause 17 seems to have established severe limits on Congress in such enactments and authority:

> *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;*

Moving ahead in time, we come to another momentous decision by Justice Taney, in **Dred Scott v. Sandford**, 60 U.S. 393 (1856). In this decision, notwithstanding the subject of the case, rather, with consideration of a rather obscure portion of the decision, we find that Scott had no standing. The Court decided to hear the case, anyway.

> *"That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated. If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court."*

Absent a challenge to the Court's jurisdiction, the Court may assume jurisdiction.

In **Barron v. City of Baltimore,** 32 U.S. 243 (1833), Barron sought relief from property taken by action of the City of Baltimore. He argued that the Fifth Amendment to the Constitution protected his property and required compensation for loss of use. In the Opinion of the Court, Justice Marshall makes clear that the Fifth Amendment does not extend to the states, nor does it afford any protection against the state enacting laws that might appear to be in conflict with certain provisions

of the Constitution. He explains that there is a separation between the two governments, and that the Constitution is only applicable to the general (federal) government.

At 247, 248:

> *The question thus presented is, we think, of great importance, but not of much difficulty.* ***The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states.*** *Each state established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests.* ***The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument.*** *They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.*
>
> *If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. In their several constitutions, they have imposed such restrictions on their respective governments, as their own wisdom suggested; such as they deemed most proper for themselves. It is a subject on which they judge exclusively, and with which others interfere no further than they are supposed to have a common interest.*

He explains the evidence in support of the proposition of that separation by reference to Article I, Sections 9 and 10, at 249:

> *If the original constitution, in the ninth and tenth sections of the first article,* ***draws this plain and marked line of discrimination between the limitations it imposes on the powers of the general government, and on those of the state.***

The concerns that lead to this separation are explained at 250, 251:

> *But it is universally understood, it is a part of the history of the day, that the great revolution which established the constitution of the United States, was not effected without immense opposition. Serious fears were extensively entertained, that those powers which the patriot statesmen, who then watched over the interests of our country, deemed essential to union, and to the attainment of those unvaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the constitution was adopted, amendments to guard against the abuse of power were recommended.* ***These amendments demanded security against the apprehended encroachments of the general government-not against those of the local governments.*** *In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in congress, and adopted by the states. These amendments contain no expression indicating an intention to apply them to the state governments.* ***This court cannot so apply them.***
>
> *We are of opinion, that the provision in the fifth amendment to the constitution, declaring that private property shall not be taken for public use, without just compensation, is intended*

> *solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the states.*

If this "court cannot so apply them", then, clearly, this Court has no jurisdiction in those matters that are reserved to the states.

Also, in considering jurisdiction, we must also visit **Twining v. State of New Jersey**, 211 U.S. 78 (1908). In this case, the decision of the United States Supreme Court had to do with the extent of federal jurisdiction. The jurisdiction was based upon the Fourteenth Amendment to the Constitution.

Albert C. Twining and David C. Cornell were indicted by a Grand Jury, and, convicted of providing "false papers" to a state banking examiner. They were sentenced to prison terms, and Twining appealed the action of the New Jersey Court. He held that the requirement to turn over papers to the examiner, absent a court order, denied him "due process" under the Fourteenth Amendment.

Since Twining and Cornel were both citizens of New Jersey, and there was no other qualifier for federal intervention, they retained their status as state citizens, dealing with the laws of that state, without "Federal right[s]" being conferred to them.

Justice Moody provided the decision of the court. In summing up the case, he posed the following, at 116:

> *". . . whether such a law [state law] violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty, or property without due process of law. In order to bring themselves within the protection of the Constitution it is incumbent on the defendants to prove two propositions: First, that the exemption from compulsory self- incrimination is guaranteed by the Federal Constitution against impairment by the states; and, second, if it be so guaranteed, that the exemption was in fact impaired in the case at bar.* The first proposition naturally presents itself for earlier consideration. ***If the right here asserted is not a Federal right, that is the end of the case.*** *We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws.*

That last point, "If the right here asserted is not a Federal right, that is the end of the case", will lead to the final decision of the Court. Does it also hold that if no right is conferred, that there is an absence of jurisdiction, as well?

Finally, at 115:

> *We do not pass upon the conflict, because, for the reasons given, we think that the exemption from compulsory self-incrimination in the courts of the states **is not secured by any part of the Federal Constitution**.*

That suggests that there is, without a doubt, a limitation on the jurisdiction of the federal government. If the Constitution does not provide for it, they cannot assume to have jurisdiction.

That which was established in **Barron** is confirmed in **Twining,** with the sole exception of those who were not, for whatever reason, citizens of the State. At the time of the **Barron** decision, the Court did not have to deal with the subsequent addition of another class of citizen by the 14th Amendment.

Now, on to the separation of the judiciary into its dual function. Though Administrative Agencies had been in existence prior to, it was not until **Ashwander v. Tennessee Valley Authority**, 297 U.S. 288 (1936), that we find a concise explanation of the "rules" adopted by the United States Supreme Court.

The case involves an effort by shareholders of the Alabama Power Company to annul a contract that was selling large portions of the operation, facilities, and franchises, of the Power Company to the Tennessee Valley Authority, a federal agency.

The outcome was based upon principles (rules?) developed in previous decisions, and the final decision was that the contracts were binding.

Justice Brandeis, in a concurring opinion, gave us the meat that is so necessary to understand what has apparently eroded, over time, the limitations imposed on the federal government by the Constitution. At 346:

> *The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:*
>
> *1. **The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals**. It never was the thought that, by means of a friendly suit, a*

party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.

*4. **The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of**. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.*

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained.

*6. **The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits**.*

*7. **When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided**...*

However, in line with Ashwander Decision, the Congress enacted the **Administrative Procedure Act of 1946.**

The Bill, "Administrative Procedure Act", was submitted by Representative Pat McCarran, Democrat, Nevada, who gave us some insight into its purpose, when he said (from the Congressional Record, March 12, 1946):

*"We have set up **a fourth order in the tripartite plan of government** which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches; **but since that time we have set up fourth dimension, if I may so term it, which is now popularly known as administrative in nature**. So we have the **legislative, the executive, the judicial, and the administrative**."*

"Perhaps there are reasons for that arrangement. We found that the legislative branch, although it might enact a law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. These rules and regulations are the very things that impinge upon, curb, or permit the citizen who is touched by the law, as every citizen of this democracy is.

*"Senate bill 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for **the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government**. It is designed to provide guarantees of due process in administrative procedure.*

> *"The subject of the administrative law and procedure is not expressly mentioned in the constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code.*
>
> *"Problems of administrative law and procedure have been increased and aggravated by the continued growth of the Government, particularly in the executive branch.*

Therefore, the question arises as to whether the administrative branch of government, "the fourth dimension', extends to all people, or just "*the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government*"? Given that the estimated population of the United States in 1946 was over 141 million people, that would mean that less than one percent were among those "hundreds of thousands of Americans".

Later, on May 24 (Congressional Record), Representative John Gwynne of Iowa provides insight into what "rule making" is, when he said:

> *"After a law has been passed by the Congress, before it applies to the individual citizens there are about three steps that must be taken. First, the bureau having charge of enforcement must write rules and regulations to amplify, interpret, or expand the statute that we passed; rulemaking, we call it. Second, there must be some procedure whereby the individual citizen who has some contact with the law can be brought before the bureau and his case adjudicated... Finally, there must be some procedure whereby the individual may appeal to the courts from the action taken by the bureau."*

"Amplify, interpret, or expand"? Was the intention of the Act to apply only to the hundreds of thousands, who were among that less than one percent? Or, was the intention to circumvent the Constitution and establish a despotic regime that was no longer bound by the Constitution?

If we assume the latter, that it only applies to those who come under the Administrative Procedure Act of 1946 that leaves cause to wonder whether the remaining 99 percent have fallen under the influence of the Act by other means, or simple inattention.

If we recall what Taney said in Dred Scott v. Sandford, if one fails to challenge jurisdiction, the Court will assume that it has the authority to hear the matter before it. If so, then Habeas Corpus is the only means by which that overarching government can be challenged as to the constitutionality of a law whereby they have sought to detain a person for a crime not within their jurisdictional authority.

With regard to the responsibility of the judiciary:

Alexander Hamilton, in **Federalist Nº 78**, discuses the role of the independence of the judiciary in the concept of government with a separation of powers:

> *This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean* ***so long as the judiciary remains truly distinct from both the legislature and the Executive****. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by it coordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in it constitution, and, in a great measure, as* ***the citadel of the public justice and the public security****.*

As was commonly understand at the end of the eighteenth century and the first few decades of the nineteenth century, the judiciary, not having obligations of patronage or continuing obligation to pursue reelection, was, by the nature of its office, the branch most able to protect the rights of the people against encroachments and usurpations.

> *The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.*
>
> *There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void.* ***No legislative act, therefore, contrary to the Constitution, can be valid****. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.*
>
> *If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be*

> *supposed, that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding form the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, **the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents**.*
>
> *Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. **It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former**. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.*

Justice Marshall in **Marbury v. Madison**, 5 US 137 (1803), established the principles of judicial review, which protected the citizens from an overarching government. He made clear the nature of a government, created and bound by a constitution, was when he said, at 177:

> *Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that **an act of the legislature repugnant to the constitution is void**.*

Antecedent to Marshall's adoption of judicial review, we find that the North Carolina Supreme Court, in **Bayard v Singleton**, 1 N.C. 42 (1787), provided elucidation, should the judiciary fail in correcting errors of the legislature:

> *But that it was clear that no act they could pass could by any means repeal or alter the constitution, because **if they could do this, they would at the same instant of time destroy their own existence as a legislature and dissolve the government thereby established**. Consequently, the constitution (which the judicial was bound to take notice of as much as of any other law whatever) standing in full force as the fundamental law of the land, notwithstanding the act on which the present motion was grounded, the same act must of course, in that instance, stand as abrogated and without any effect.*

Conclusion

Revisiting the history and significance of the Sacred Writ, Habeas Corpus *ad subjiciendum*, it is clear that the purpose of this Writ is to assure proper jurisdiction exists, in any matter, before any court, and as well, the constitutionality thereof. As for the constitutionality, that is not being

challenged, as it clearly exists under the authority of Article I, Section 8, clause 17, or, Article IV, Section 3, clause 2. So, we can grant that the constitutionality exists, though not the application outside of either of those indicated jurisdictions.

If the charges brought are without proper jurisdiction, the Court must reject the claim and release the person being held, absent proper jurisdiction.

To answer these questions, we can look to the **Administrative Procedure Act of 1946**, wherein, in their own words, the Congress established a " fourth dimension" (branch of government) that was to affect "*the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government.*"

These "hundreds of thousands" constitute less than one percent of the then population. Clearly, those "*whose affairs are controlled or regulated in one way or another by agencies of the Federal government*" can only enter that realm of being controlled or regulated by a voluntary act on their part. The Constitution does not provide for subjugation of the people by an act of government, though it does allow that they may voluntarily enter into such a relationship as would subordinate their protected rights to such "agencies". This would be voluntary servitude, only with informed consent. Absent informed consent, it would, if imposed by force and laws contrary to the Constitution, be in violation of said Constitution. It is in this light that we must view the matter before us.

If we look to the circumstances that existed shortly after the framing of the Constitution, we can see that there were clear and distinct separations of power and authority. In **Barron v. City of Baltimore**, [32 U.S. 243 (1833)], Justice Marshall explains that the federal court cannot apply impositions upon the states, based upon the Constitution, as the Constitution was written to apply only to the "general" (federal) government, except in those specific provisions wherein the state government is either allowed or prohibited. If the federal jurisdiction is limited and certain matters

are outside of the realm of powers and authorities, likewise, enactment of laws that tread upon this forbidden ground would be equally prohibited.

Further, in discussion of the extent of federal jurisdiction, we can look at **An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes - Act of 1825** (March 3, 1825), in which the Congress realized that even though the land in question had been ceded to the federal government, there could not be an assumption of their authority to enact laws, unless that ceding was on land "under the jurisdiction of the United States", this, simply to punish criminal acts against government property. Limitations were recognized and abided by those legislators who were present at, or had personal communication with, those who scribed the words that were to become the Constitution. Clearly, they had an understanding of the extent of legislative authority, as was intended by the Constitution, and that has not been changed by amendment thereto.

As in the **Act of 1825**, and the 1889 enactment cited in **Lane**, the Congress recognized, both before and after the Fourteenth Amendment, that there were limitations upon their legislative authority. In the former, that limitation is set out in Article I, Section 8, clause 17, and, in the latter, Article IV, Section 3, clause 2.

Can the simple avoidance of a qualifying statement in an enactment of Congress enlarge its authority beyond that which is granted by the Constitution? As Justice Miller pointed in **In Re Lane**, both Territories and States have Executive, Legislative, and Judicial branches. It is for those respective governments to enact laws, enforce them, and bring violators to justice. It is not within the purview of the federal government to enact laws which are within the purview of state's governments. It is only without such jurisdiction that the Framers granted legislative authority to the Congress (General Government), and it is only within those areas where no system of justice has been established, either by ceding or by the absence of a recognized government, that the Congress can enact laws that are not within the specifically granted powers of the Constitution. To even imagine that such laws could be enacted by two separate governments, where those laws may define

the crime, or the punishment, by different standards, is, at best, absurd -- as none would know by which laws they were bound.

Has the government, by guile or deceit, imposed that which was intended only for those who voluntarily entered into a relationship with the government upon the unwary citizen, depriving him, by chicanery, into revoking the protection afforded by the Constitution?

We can look to **Twining v. State of New Jersey** to see that after the Fourteenth Amendment was ratified, this Court continued torecognize that there were those who fell without the jurisdiction of the federal government, by the fact that the due process provision of that Amendment did not apply to those who were citizens of New Jersey (and, by extension, those citizens of any state). Has a subsequent action by the Congress, or the courts, absent an Amendment to the Constitution, revoked that separation of jurisdiction?

Though not a Habeas Corpus case, the United States Supreme Court, in **U. S. v. Reese** (1875), provided a decision that clearly demonstrates the requisite for a nexus to the Constitution, or an Amendment, for the Congress to have jurisdiction in an enactment presumed to be under the authority and within the powers vested them by that Constitution.

The Court, in **Ashwander v. Tennessee Valley Authority** (1936), provides insight into what might be considered complicity in denial of rights protected by the Constitution. Justice Brandeis, in his concurring opinion, provided insight into the "rules" adopted by that Court. Those rules provide that the Constitutionality of a matter before the Court be addressed only as a "last resort". That, along with the other "rules", provided an exception to the concept of judicial review.

Mr. Hamilton (**Federalist No 78**)made clear the judiciary, especially the Supreme Court (which is the only court proposed at the date of his writing) was "***the citadel of the public justice and the public security***", and, that "***No legislative act, therefore, contrary to the Constitution, can be valid***".

Further, Justice Marshall, in **Marbury v. Madison**, says that "***an act of the legislature repugnant to the constitution is void***".

Prior to the ratification of the federal Constitution, the North Carolina Supreme Court, in the first nullification of an enacted statutes contrary to the North Carolina Constitution (**Bayard v Singleton**), said that "***if they could*** [enact legislation contrary to the constitution]***, they would at the same instant of time destroy their own existence as a legislature and dissolve the government thereby established***".

There can be little doubt that **John Locke's** "Two Treatises of Government" (Chapter 19 - Theory of Dissolution of Government), was embodied in the acts and in the minds of the Framers of both state and federal constitution.

The Constitution has no severability clause; it is whole, in and unto itself. Except by Amendment, in accordance with Article V, it is unchangeable. The government that exists in Washington, District of Columbia, exist only by its creation by that Constitution; and, only by obedience to that Constitution does that government continue to exist.

whether any act of the Legislative or the Executive is consistent with, and within the powers and authorities granted by that Constitution. In that sense, the fuse to destruction of both Constitution, and the government created by, it lies in the hands of this Court, alone. Should this Court fail in its obedience to the Constitution, then it, alone, would be responsible for the dissolution of that government created under the authority of the people.

Gary Hunt
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William Krisstofer Wolf

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April 24, 2015

Tyler P. Gilman
Clerk of the Court
U.S. District Court Billings
2601 2nd Avenue North
Billings, Montana 59101

RE: In re William Krisstofer Wolf
CV-15-28-BLG-SPW-CSO

Dear Mr. Gilman,

Attached is a "Petition for Writ of Habeas Corpus ad subjiciendum" I understand that a Civil case was already opened on this matter, and am requesting that this Petition be filed in that case, by Gary Hunt as "next friend".

I am also requesting the filing, in the same case, the "Memorandum in Support of Petition for Writ of Habeas Corpus Ad Subjiciendum".

If there are any fees required, since I understand the $5 fee has been paid to open the CV case, I promise payment, as might be required by law, upon receipt a statement as to such fees. I trust that the matter will proceed, as scheduled, and that such ministerial requirements will not impede justice.

Respectfully,

Gary Hunt
Next Friend of
William Krisstofer Wolf

Attachments: Petition for Writ of Habeas Corpus ad subjiciendum

Memorandum in Support of Petition for Writ of Habeas Corpus ad subjiciendum