19-6487

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Sean M. Donahue — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Common Pleas of Luzerne County
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean M. Donahue
(Your Name)

625 Cleveland Street
(Address)

Hazleton, PA 18201
(City, State, Zip Code)

570-454-5367
(Phone Number)

QUESTION I

DOES TREATING "CIVIL RIGHTS" AS CUMULATIVE RENDER THE ENFORCEMENT OF 18 U.S.C. §922(g)(1) AND 18 U.S.C. §921(a)(20)(B) TO BE CONSTITUTIONALLY INFIRM WITHIN PENNSYLVANIA?

SUGGESTED ANSWER: YES

QUESTION II

IN A CASE IN WHICH AN APPELLANT WHO HAS BEEN CONVICTED OF A FIRST DEGREE MISDEMEANOR IN PENNSYLVANIA DOES NOT STIPULATE TO THE MEANING OF "HAS HAD CIVIL RIGHTS RESTORED" REFERRING EXPLICITLY TO, AND ONLY, TO "THE RIGHT TO VOTE, THE RIGHT TO SEEK AND HOLD PUBLIC OFFICE AND THE RIGHT TO SERVE ON A JURY", DO PENNSYLVANIA TRIAL COURTS HAVE THE AUTHORITY AND JURISDICTION NECESSARY TO RESTORE ENOUGH "CIVIL RIGHTS" TO EFFECTUATE THE REMOVAL OF A FIREARMS DISABILITY UNDER 18 U.S.C. §922(g)(1) AND 18 U.S.C. §921(a)(20)(B)? **SUGGESTED ANSWER: YES**

QUESTION III

ARE MISDEMEANANTS IN PENNSYLVANIA EXEMPT FROM FIREARMS DISABILITIES UNDER 18 U.S.C. §922(g)(1) AND 18 U.S.C. §921(a)(20)(B) WITH REGARD TO FIREARMS THAT WERE POSSESSED OR OWNED PRIOR TO AN INDIVIDUAL INCURRING A FIRST DEGREE MISDEMEANOR CONVICTION IN PENNSYLVANIA AND ALSO WITH REGARD TO FIREARMS MANUFACTURED WITHIN THE STATE OF PENNSYLVANIA OR FIREARMS ASSEMBLED IN PENNSYLVANIA, IN WHICH THE 'CONTROLLED PARTS' ARE MANUFACTURED WITHIN PENNSYLVANIA. **SUGGESTED ANSWER: YES**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

(1) Sean M. Donahue v. Pennsylvania, (Supreme Court of The United States Docket 19-5808)

(2) Evangelisto Ramos v. Louisiana, (Supreme Court of The United States Docket 18-5924)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF CONSTITUTIONS, LAWS & STATUTES

US CONSTITUTION

PENNSYLVANIA CONSTITUTION

US LAW AND STATUTES

PENNSYLVANIA LAW AND STATUTES

TABLE OF SOURCES AND CITATIONS

US CASE LAW

PENNSYLVANIA CASE LAW

NEW JERSEY CASE LAW

JOURNAL OF US CONGRESS

US DECLARATION OF INDEPENDENCE

AVVO.COM

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A.1 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Court of Common Pleas of Luzerne County court appears at Appendix A.1 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was June 13, 2018. A copy of that decision appears at Appendix A.1.

[✓] A timely petition for rehearing was thereafter denied on the following date: September 27, 2019, and a copy of the order denying rehearing appears at Appendix A.2.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. §921(a)(20)(B):

> "...What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or **has had civil rights restored** shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

---

18 U.S.C. §922(g)(1):

> "(g)It shall be unlawful for any person—
>
> (1)who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> ...
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." *(District Of Columbia v. Heller ,554 U. S. 570, 576 (2008))*
>
> "...it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." *(id p592)*
>
> "...the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence." *(id 593-4)*

INTRODUCTION AND RELEVANT ADMINISTRATIVE HISTORY

The state court appointed appellate counsel refused to share copies of orders issued by the Superior Court of Pennsylvania with the Petitioner in the instant case. (APPENDIX A.4) Therefore, the Petitioner only has copies of the trial court order and the orders of the Supreme Court of Pennsylvania. (APPENDIX A.2 & APPENDIX A.3) The Petitioner submits copies of the public docket sheet (APPENDIX A.4) and asks the Supreme Court of the United States to take judicial notice of that document in lieu of the actual Superior Court orders. The Petitioner has again asked the former appellate counsel for a copy of the orders but does not expect the former appellate counsel to provide them. (*id*)

The trial court was the last court to review the case and issue an order that can be taken as an opinion. (APPENDIX A.1) The Superior Court of Pennsylvania quashed the appeal from the trial court order because the appellate counsel ignored an order to show cause. (APPENDIX A.4) Knowing that his appellate counsel intended to ignore the order to show cause, the Petitioner filed a show of cause *pro se* but the Superior Court of Pennsylvania would not recognize it. (APPENDIX A.4, Entry of October 16, 2018 & Entry of December 28, 2018 & Correspondence with Appellate Counsel)

The Petitioner then appealed to the Supreme Court of Pennsylvania. Once again, a new court appointed appellate counsel also failed to pursue the appeal so the Petitioner again attempted to pursue the appeal *pro se.* The Supreme Court of

Pennsylvania denied the appeal and on August 1, 2019 (APPENDIX A.3) that same court denied an application for reargument on September 27, 2019 (APPENDIX A.2). The Petitioner avers that there is good cause to hear the matters being raised herein and also believes that the matters being raised herein are now ripe for review by the Supreme Court of the United States. The Petitioner is without means to afford counsel and therefore submits his case to the high court *pro se.*

STATEMENT OF THE CASE

Pennsylvania trial courts have the authority and jurisdiction to restore enough civil rights to effectuate the removal of firearms disabilities under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B).

The Pennsylvania trial court in the instant case erred in *"declin[ing] to consider Defendant's request that his civil rights 'to include the right to bear, purchase, own and bear arms upon completion of his sentence' ...be restored...because [the trial court] believe[s that it does not] have jurisdiction over any of the law enforcement agencies which might impose any restrictions upon Defendant...".* (APPENDIX A.1, PART 3 of the Order in Question, PART 1 & 2 of the order are not being appealed)

The Superior Court of Pennsylvania erred in *Commonwealth v Stiver, 50 A.3d 702. [J-A12029-12] (Pa. Super. Ct. 2012)* by finding that *"the trial court did not*

*have the authority to restore Stiver's [other] civil rights [ex the rights] to sit on a jury or hold public office".(id *703, J-A12029-12 p1)*

That court also erred in *Stiver* by finding that;

> "For federal law to recognize the state restoration of rights pursuant to section 921(a)(20), the state restoration must include an unconditional restoration of firearm rights as well as the right to vote, the right to seek and hold public office and the right to serve on a jury. See Commonwealth v. Sherwood, 859 A.2d 807, 809 (Pa.Super.2004); Logan v. U.S., 552 U.S. 23, 128 S.Ct. 475, 169 L.Ed.2d 432 (2007)." *(id *705, J-A12029-12 p6)*

The Superior Court of Pennsylvania also erred in *Commonwealth v. Sherwood, 859 A.2d 807, 809 (Pa. Super. 2004),* first, by recognizing the existence of a special category of civil rights, *"referred to [by then Pennsylvania Superior Court Judge Del Sole] as 'core civil rights' "* and, second, by elevating *"[t]he restoration of a person's right to vote, to hold public office and to serve on a jury" (id ¶4; *809)* to the level of a prerequisite for the removal of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B).

Courts in our nation may not take any one fundamental right as having more or less weight, significance or priority than any other fundamental right. The 1774 Letter to Quebec recognized five "great rights" *(Journal of the Continental Congress, 1904 ed., vol. I, pp.104 -114;* APPENDIX B*);* The 1776 US Declaration of Independence recognized "unalienable rights"; The US Constitution recognized the "Bill of Rights", which we take to be fundamental rights; AND the Pennsylvania

Constitution recognized "1. Inherent rights of mankind." (PA Constitution, Article I, Section 1)

None of those documents recognized "core civil rights". Our system recognizes civil rights vs substantive rights. There is no such thing as "core civil rights" vs civil rights. The existence of such a category of rights would render the "BIll of Rights" to be of lesser significance than "core civil rights". This distinction cannot exist under our federal constitution.

The US Constitution does not allow for a rank ordering of rights and 18 U.S.C. §921(a)(20)(B) makes no mention of "core civil rights".

US Constitution Amendment IX states;

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Having more of one right, does not require one to have less of another right and many rights are reserved by the people as being inalienable.

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." *(District Of Columbia v. Heller ,554 U. S. 570, 576 (2008))*

> "...it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." *(id p592)*

> "...the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence." *(id 593-4)*

Accepting a rank ordering of rights would greatly alter our system and require an individual to choose to forfeit some rights as a currency that can be spent to pay the cost of attaining or preserving other rights. Allowing rights to be rank ordered will yield a cumulative interpretation of rights in which one right plus some other right adds to a third right. 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B), when enforced together, create the result that rights are cumulative. Therefore, courts must reject the enforcement of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B). The two statutes taken together are constitutionally infirm under the Pennsylvania Constitution. In Pennsylvania, rights are "inherent", not cumulative. (PA Constitution, Article I, Section 1)

Similarly, the Pennsylvania courts cannot extend the definition of "Restoration of firearms rights" that appears in 18 Pa. C.S. §6105.1(e) *(Sherwood supra ¶2; *808)* to defining the term "has had civil rights restored" in 18 U.S.C. §921(a)(20)(B). This too is not allowed under our federal constitution. The reason this has been done in the past is because the federal congress failed to define the term "has had civil rights restored". This failure has left appellate courts throughout our nation to search for an adequate definition each time a new case arises.

In both *Stiver supra* and *Sherwood supra,* the Superior Court of Pennsylvania adopted a definition of the term "has had civil rights restored" that originated from a US Sixth Circuit decision in *United States v. Cassidy, 899 F.2d*

543 (6th Cir.1990). However, the definition adopted in Cassidy traces back to stipulations made by Cassidy, which in turn trace back further to to the language used by an Ohio Parole officer on a "Restoration Certificate".

> "I.
> On September 29, 1983, Defendant Calvin Cassidy was convicted in the State of Ohio of trafficking in marijuana, a crime punishable by a prison term in excess of one year. Cassidy was released from prison on June 29, 1984 and received a "Restoration to Civil Rights" certificate (the "Restoration Certificate") from the Ohio Adult Parole Authority which restored "the rights and privileges forfeited by [his] conviction; namely the right to serve on juries and to hold office of honor, trust, or profit." " *(id pp543-4(PART I.))*

The decisions by the Pennsylvania court's to define the term "had civil rights restored" by adopting the definition of the term used in other jurisdictions lacked the rigor due the court. Adopting the definitions that arose in other jurisdictions also lacked the rigor necessary to warrant their acceptance by Pennsylvanians as legal precedents. In Sherwood, the Superior Court of Pennsylvania merely defaulted to Sixth Circuit and First Circuit decisions involving 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) without exploring the logic and facts of the individual Sixth and First Circuit cases. In Sherwood and Stiver, the Pennsylvania courts failed to thoroughly root out the idiosyncrasies of the factual context that are likely to differ in most cases originating in Pennsylvania trial courts.

Cassidy states;

> "it is not clear which civil rights must be restored to constitute a "restoration of civil rights." Second, it is unclear whether Congress intended that a court look only to the document, if any, tendered to a felon upon release to determine whether his civil rights have been

> restored and whether there is an express limitation upon his firearms privileges. It is axiomatic that if we must look to the whole of state law in order to determine whether a felon's civil rights have been restored, as opposed to looking only to an order or certificate, we must also look to the whole of state law in order to determine if his firearms privileges have been expressly restricted." *(Cassidy supra *546)*

It is only because a "Restoration Certificate" in Ohio included the term "serve on juries and to hold office of honor, trust, or profit" that jury duty has become an appellate court linchpin of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B). Yet, there is no specifying language in 18 U.S.C. §921(a)(20)(B) that specifically identifies jury duty or any other civil right as a necessary prerequisite for the removal of a firearms disability.

In *Logan v. United States 552 U.S. 23 (2007) (552 U.S. 23 (2007) • 128 S. Ct. 475 • 169 L. Ed. 2d 432 • 76 U.S.L.W. 4005)*, the Supreme Court of the United States accepted the stipulation of the parties as to the definition of the term "had civil rights restored" by making direct reference to *Caron v. United States, 524 U.S. 308, 316, 118 S.Ct. 2007, 141 L.Ed.2d 303 (1998).* The high court did not conduct an analysis of the history of the stipulations in Caron.

> "Restoration of the right to vote, the right to hold office, and the right to sit on a jury turns on so many complexities and nuances that state law is the most convenient source for definition." (Caron 524 U.S. 308 supra, 316 ¶2)

In *Logan*, the US Supreme Court wrote;

> "While §921(a)(20) does not define the term "civil rights," courts have held, and petitioner agrees, that the civil rights relevant under the above-quoted provision are the rights to vote, hold office, and serve on

a jury. See Brief for Petitioner 13, n. 10; cf. Caron v. United States, 524 U. S. 308, 316 (1998)." (id p28)

Logan stipulated that the meaning of "has had civil rights restored" refers to restoration of "the rights to vote, hold office, and serve on a jury" because it was in his best interests to do so.

> "None of Logan's battery convictions have been expunged, set aside, or pardoned. See 453 F. 3d, at 809. Under Wisconsin law, felons lose but can regain their civil rights and can gain the removal of firearms disabilities. See Wis. Stat. § 6.03(1)(b) (Supp. 2006); Wis. Const., Art. XIII, § 3(2); Wis. Stat. § 756.02 (2001); § 973.176(1) (2007). Persons convicted of misdemeanors, however, even if they are repeat offenders, generally retain their civil rights and are not subject to firearms disabilities.
>
> With this background in view, we turn to the proper interpretation of the § 921(a)(20) exemption from ACCA-enhanced sentencing for offenders who have had their "civil rights restored." Logan's misdemeanor convictions, we reiterate, did not result in any loss of the rights to vote, hold public office, or serve on juries." *(id p31)*

In the dissenting opinion in Caron (*Caron 524 U.S. 308 supra pp317-320, Thomas, J., dissenting, joined by Souter and Scalia*), reference is made to the claim that

> "[u]nder § 921(a)(20), state-law limitations on firearms possession are only relevant once it has been established that an ex-felon's other civil rights, such as the right to vote, the right to seek and to hold public office, and the right to serve on a jury, have been restored. See 77 F.3d 1, 2 (CA1 1996)." *(Caron 524 U.S. 308 dissenting 318)*

In *U.S. v. Caron 77 F.3d 1 (1st Cir. 1996)*, the term "had civil rights restored" was defined by making the below reference;

"B. Massachusetts Statutory Scheme

'Civil rights,' within the meaning of Section(s) 921(a)(20), have been generally agreed to comprise the right to vote, the right to seek and hold public office, and the right to serve on a jury. United States v. Cassidy, 899 F.2d 543, 549 (6th Cir. 1990). As an initial matter, therefore, we recount the relevant Massachusetts laws corresponding to these rights." *(Caron 77 F.3d 1 (1st Cir. 1996), p2)*

Both the Supreme Court of the United States and the First Circuit failed to bring attention to the fact that Caron felt it was in his best interest for jury duty to be included in the list of civil rights that had been restored simply because his eligibility for jury duty had been restored.

"A convicted felon in Massachusetts does not lose the right to vote. *See* Mass. Gen. L. ch. 54, Section(s) 86, 103B. He does, however, lose the right to hold public office while serving his sentence. Mass. Gen. L. ch. 279, Section(s) 30. And, a felon is disqualified from juror service until seven years from his conviction." *(Caron 77 F.3d 1 (1st Cir. 1996) p2)*

"The use of the word "restore" calls for some affirmative act by the state. It is not cavalierly ignored. In the instant case, however, we are not confronted with a total absence of affirmative action, as in *Ramos* and *McGrath*. Here, affirmative action has taken place with respect to the right to sit on a jury (subject to some contingency) and the right to hold public office. Only the right to vote was not taken away. The words of Section(s) 921(a)(20) literally apply: Caron is "a person [who] . . . has had civil rights restored." In this case, therefore, the dictates of both literalism and sense are met." *(Caron 77 F.3d 1 (1st Cir. 1996) p6)*

The US Supreme Court later ruled in *Caron 524 US 308 supra* that;

"We note these preliminary points. First, Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender." *(Caron 524 U.S. 308 supra, *313)*

In Pennsylvania,

> "[t]he right to vote is automatically restored after completion of the term of imprisonment. 25 P.S. § 2602(w); Mixon v. Commonwealth, 759 A.2d 442 (Pa.Cmwlth. 2000), aff'd per curiam, 566 Pa. 616, 783 A.2d 763 (2001)." *(Sherwood supra ¶5)*

Therefore, *"we are not confronted with a total absence of affirmative action, as in Ramos[1,2] and McGrath." (ante citing Caron 77 F.3d 1 (1st Cir. 1996) at p6)* If Pennsylvania courts treat misdemeanants who have been convicted of M1 misdemeanors as felons in the light of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B), then under that very same light, Pennsylvania courts must also treat "rights retained" by misdemeanants as "rights restored" to misdemeanants under *Logan supra* because *"[t]he right to vote is automatically restored" (ante citing Sherwood supra at ¶5)* in Pennsylvania.

Pennsylvanians have always sought an assertive role when faced with overreaching federal authority that tramples upon the individual rights that their history has taken to be inalienable, i.e., The Whisky Rebellion. *(The United States v. The Insurgents Of Pennsylvania, 2 U.S. 335 (1795))* The reason there is very little precedent Pennsylvania case law interpreting 18 U.S.C. §922(g)(1) and 18 U.S.C.

---

[1] "In United States v. Caron, 77 F.3d 1 (1st Cir.) (Caron II) cert. denied, ___ U.S. ___, 116 S. Ct. 2569, 135 L. Ed. 2d 1085 (1996), the First Circuit sitting en banc reversed its earlier decision in United States v. Ramos, 961 F.2d 1003 (1st Cir.1992)" (United States v. Caron, 941 F. Supp. 238, (I. PROCEDURAL BACKGROUND(¶2)), (D. Mass. 1996))

[2] "We acknowledge, however, that, contrary to Ramos' holding, the "restoration" requirement does not automatically exclude the possibility that rights never taken away can sometimes be viewed as rights restored." (U.S. v. Caron 77 F.3d 1 (1st Cir. 1996), Reversing Ramos)

§921(a)(20)(B) is because Pennsylvanias have generally felt that the law doesn't apply within the Pennsylvania context due to operation of Pennsylvania state law and the Pennsylvania constitution. The unchallenged precedent in Pennsylvania is that a full return of civil rights is NOT NECESSARY to own, possess, buy, sell and use a firearm in Pennsylvania after a first degree misdemeanor conviction.

On www.AVVO.com[3], a Pennsylvania DUI misdemeanant asked the following question;

> "Can I posses a gun In Pa after being convicted of an M1 offense (DUI) ?
>
> " I was arrested for a DUI in 2005 and another In 2006. I was 19 for the first one and twenty when I was arrested for the second one. I recently tried to purchase a gun and was denied because the second offense was considered an M1. I have guns that I've had before I was arrested, can I posses[s] these guns and would I ever be able to buy a gun again. I am an avid hunter and fisherman and mistakes I made 8-9 years ago are adversely affecting my only recreational hobbies [https://www.avvo.com/legal-answers/can-i-posses-a-gun-in-pa-after-being-convicted-of--1546117.html, January 4, 2014; See hardcopy in APPENDIX C]."

In response, Pennsylvania attorney Forest Dean Morgan stated the following;

> " You are caught at the intersection of State and Federal Law. An intersection that is creating a hassle for otherwise eligible individuals in Pennsylvania.
>
> **You are not prohibited from possessing the firearms you already own.** However, because an M1 in Pennsylvania has a maximum sentence of 5 years, it is treated differently by federal authorities. When you attempted to purchase your weapon, the State

[3] www.avvo.com is a public forum in which attorneys rate each other and provide answers to legal questions.

> Police will rely on federal law to determine whether the purchase is permissible.
>
> You can appeal the denial. However, to be candid, the State Police do not make it easy to appeal.
>
> it is a nightmare, and the only way this will issue (for you and other gun owners) will ever be resolved is through litigation [https://www.avvo.com/legal-answers/can-i-posses-a-gun-in-pa-after-being-convicted-of--1546117.html, January 4, 2014; See hardcopy in APPENDIX C]."

In response to the Petitioner's inquiry into the source of Forest Dean Morgan's assertions, Mr. Morgan wrote the following;

> "...The information I provided was general based upon the two statutes 18 Pa.C.S.A. 6105(c)(9) [which refers only to the federal prohibition in - 18 USC 922(g) as an exclusion on possession in PA] and 18 USC 922(d) [which prohibits sale to a person who has been convicted of a crime punishable by a term of imprisonment of more than one year].
>
> I know of no specific case that supports my conclusion, nor am I inclined to look into it further as my advice to my own clients has never been challenged and you are asking for a service to be provided for free. Even if you were to offer to pay for the service, I would recommend you find another lawyer, as I am not accepting any non-DUI cases at this time.
>
> In the event the order you refer to is not complied with, then whoever holds your weapon can be sanctioned. I expect the court ordered a deadline for compliance. Once that date passes, file a motion for contempt. In the event the party intends to appeal, the Court (not you) will draft an Opinion citing the appropriate case law as part of the appellate process.... [APPENDIX D]".

Pennsylvania appellate courts have never adequately explored the unambiguous meaning of the term "has had civil rights restored" by analyzing the

plain language of 18 U.S.C. §921(a)(20)(B) within the context of a case that originated in a Pennsylvania trial court and is explicitly absent the passive acceptance of petitioner stipulations derived from Sixth and First Circuit cases. The Sixth and First Circuit cases from which petitioner stipulations in Pennsylvania cases are derived originated in states where the restoration of "the rights to vote, hold public office, or serve on juries" occurred through operation of law. Because the rights to "hold public office, or serve on juries" are not automatically restored by operation of law in Pennsylvania, it is not in the best interest of Pennsylvania petitioners to stipulate to those three rights being the only rights that are taken into consideration for removal of firearms disabilities under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B).

Pennsylvania appellate courts must construct Pennsylvania's own case law on this matter, ex Sixth and First Circuit precedents. The Sixth and First Circuit precedents in this matter are defined by facts and state laws that are inapposite to the factual context of the instant Pennsylvania case. The facts and state statutes that are present in the Sixth and First Circuit cases are also inapposite to similarly situated persons who have been convicted of first degree misdemeanors in Pennsylvania.

Prior to the passing of the Gun Control Act of 1968 (GCA), the position of the Pennsylvania legislature on "had civil rights restored" had always been that unless Pennsylvania law or the Pennsylvania Constitution states otherwise, all civil rights

that are lost while serving a criminal sentence are automatically restored upon completion of that sentence. The GCA did nothing whatsoever to change this position. If in the eyes of Pennsylvania on the day before the GCA of 1968 went into effect, an individual who completed a sentence had enough "civil rights" restored to allow that individual to buy, sell, possess and use guns, then that same individual had enough "civil rights" restored the day after the GCA went into effect to buy, sell, possess and use guns. The GCA did not change the 1968 views and position of the Pennsylvania legislature on the matter of "has had civil rights restored".

REASONS FOR GRANTING THE PETITION

Treating "civil rights" as cumulative renders the enforcement of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) to be constitutionally infirm within the state of Pennsylvania. The Appellant in the instant case DOES NOT stipulate that the meaning of the term "has had civil rights restored" refers explicitly to, and only, to "the right to vote, the right to seek and hold public office and the right to serve on a jury". Therefore, Pennsylvania trial courts do have the authority and jurisdiction necessary to restore enough "civil rights" to effectuate the removal of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) for those who have been convicted of first degree misdemeanors in Pennsylvania. 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) do not impose firearms disabilities on misdemeanants with regard to firearms that were possessed or owned prior to an

individual incurring a first degree misdemeanor conviction in Pennsylvania, nor do they apply to to firearms manufactured within the state of Pennsylvania or firearms assembled in Pennsylvania, in which the 'controlled parts' are manufactured within Pennsylvania. (*Navarro v. Pennsylvania State Police, No. 72 MAP 2018, J-38-2019, WL 3209478 (Pa July 17, 2019)*)

The Appellant avers the following;

(1) The enforcement of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) is constitutionally infirm within Pennsylvania because the inevitable outcome of enforcing the strictures of 18 U.S.C. §921(a)(20)(B) requires Pennsylvania courts to either rank order "civil rights" and/or allow "civil rights" to have cumulative effect, meaning that the sum of two "civil rights" equals those two rights plus a third "civil right". Neither the US Constitution nor the Pennsylvania Constitution allow for this approach.

Accepting a rank ordering of rights alters our system and forces the Petitioner to choose to forfeit some rights as a currency that he can spend to pay the cost of attaining or preserving other "civil rights". This is not allowed. One cannot legally sell one's self into indentured servitude or peonage in exchange for other rights that he or she places a greater value on. Alternatively, "civil rights" are not cumulative. Two "civil rights" do not add up to equal a third "civil right" that

cannot be had without the other two. Yet, the outcome of 18 U.S.C. §921(a)(20)(B) is that "civil rights" are treated as cumulative.

There is no provision in the US Constitution that allows "civil rights" to be treated as either cumulative or zero sum (US Constitution, Amendment IX). Even if the US Constitution granted the right to treat "civil rights" that are not explicitly mentioned in the US Bill of Rights as zero sum or cumulative, doing so would still be constitutionally infirm within the state of Pennsylvania, where rights are taken to be "inherent" (Pennsylvania Constitution, Article I, Section 1). Therefore, because treating "civil rights" as cumulative is the inevitable outcome of enforcing 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B), the enforcement of both 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) must be treated as constitutionally infirm within the state of Pennsylvania.

(2) The restoration of any one "civil right" plus the retention and/or restoration of any other "civil right" constitutes the restoration of enough "civil right" to effectuate the removal of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B).

18 U.S.C. §921(a)(20)(B):

> "(20)The term "crime punishable by imprisonment for a term exceeding one year" does not include—
>
> (A)any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B)any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or **has had civil rights restored** shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

The term "has had civil rights restored" is a much different statement than the term "has had [all] civil rights restored". 18 U.S.C. §921(a)(20)(B) does not require that 'all' "civil rights" be restored. It only requires that more than one civil right be restored, i.e., two or more "civil rights". As little as any two civil rights having been restored, or one of which having been retained and the other having been restored, is adequate for removal of firearms disabilities under 18 U.S.C. §922(g)(1).

In *United States v. Caron, 941 F. Supp. 238 (D. Mass. 1996)*, the court wrote;

"B. Is Full Restoration or Only Substantial Restoration Required?

The seminal case on this issue is the Sixth Circuit's opinion in Cassidy, where the court wrote

'Our review of the legislative history has not produced a precise statement from Congress identifying the rights that must be restored by a state in order for it to have effected a "restoration of civil rights" for purposes of §921(a) (20). We are confident, however, based on the general intent of Congress to redirect enforcement efforts against firearms owners that have a demonstrated potential for serious unlawful activity, that Congress envisioned a restoration of more than a de minimis quantity of civil rights.[Footnote 13] We do not read into the statutory language, however, a requirement that there be a "full"

restoration of rights. If Congress had intended a requirement of a complete restoration of all rights and privileges forfeited upon conviction, it could easily have so stated.'

Cassidy, 899 F.2d at 549 (footnote [13] omitted)." *(Cassidy 941 F. Supp. 238 supra at Part(II)(B), citing U.S. v. Cassidy 899 F.2d 543, 549 (6th Cir. 1990))*

a. 18 U.S.C. §921(a)(20)(B) does not identify any specific vehicle through which civil rights must be restored. Any vehicle of law will suffice.

U.S. v. Cassidy 899 F.2d 543, 549 (6th Cir. 1990), Footnote 13 stated;

> "13 There is no rational basis, particularly in light of the legislative history, for distinguishing between civil rights possessed by a felon after his release that were not expressly taken away, and those civil rights which were negated, by statute or otherwise, upon conviction or incarceration and then reinstated after his release." *(id)*

In *Caron v. United States 524 U.S. 308, (1998),* the US Supreme Court stated;

"We note these preliminary points. First, Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term "pardon" connotes a case-by-case determination, "restoration of civil rights" does not. Massachusetts has chosen a broad rule to govern this situation, and federal law gives effect to its rule. All Courts of Appeals to *314 address the point agree. See Caron, 77 F.3d, at 2; McGrath v. United States, 60 F.3d 1005, 1008 (CA2 1995), cert. denied, 516 U.S. 1121 (1996); United States v. Hall, 20 F.3d 1066, 1068-1069 (CA10 1994); United States v. Glaser, 14 F.3d 1213, 1218 (CA7 1994); United States v. Thomas, 991 F.2d 206, 212-213 (CA5), cert. denied, 510 U.S. 1014 (1993); United States v. Dahms, 938 F.2d 131, 133-134 (CA9 1991); United States v. Essick, 935 F.2d 28, 30-31 (CA4 1991); United States v. Cassidy, 899 F.2d 543, 550, and n. 14 (CA6 1990)." *(id *313-314)*

b. There is no language in either 18 U.S.C. §922(g)(1) or 18 U.S.C. §921(a)(20)(B) that refers to "core civil rights". Nor is there any language that refers to the "rights to vote, hold office, and serve on a jury". "§921(a)(20) does not define the term 'civil rights' ". *(Logan supra at p28; 128 S. Ct. 475, *480)*

18 U.S.C. §921(a)(20)(B) does not assign a higher or lower rank of importance, an increased or decreased weight of significance or any other differentiating characteristic to help determine which "civil rights" are included or excluded by the term "has had civil rights restored". Because the federal congress did not differentiate as to which "civil rights" qualify for inclusion and which "civil rights" do not qualify for inclusion, the courts may not differentiate between which "civil rights" matter and which do not. The courts may not rank order, include and exclude from consideration "civil rights" that they find to be of greater or lesser importance or of more or less significant when determining whether or not an individual "has [or has not] had civil rights restored".

In describing the language of 18 U.S.C. §921(a)(20)(B), the Supreme Court of the United States in *Beecham v. United States 511 U.S. 368 (1994)* concluded the following statement;

> "[O]ur task is not the hopeless one of ascertaining what the legislators who passed the law would have decided had they reconvened to consider petitioners' particular cases. Rather, it is to determine whether the language the legislators actually enacted has a plain, unambiguous meaning. In this instance, we believe it does." *(id 374)*

The Appellant's argument in the instant case is that because he has had more than one "civil right" restored, he "has had civil rights restored".

In the instant case, the Petitioner argues that enough "civil rights" have already been retained and/or restored to both negate and/or remove the imposition of any firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B). If Pennsylvania courts rule that a firearms disability is imposed upon the Petitioner under 18 U.S.C. §922(g)(1) in the instant case, then the Pennsylvania courts must also rule that because *"[t]he right to vote is automatically restored" (ante citing Sherwood supra at ¶5)* in Pennsylvania, the Petitioner "has had civil rights restored" and "we are not confronted with a total absence of affirmative action" *(Caron 77 F.3d 1 (1st Cir. 1996) p6).* Because 18 U.S.C. §921(a)(20)(B) does not include a "requirement that there be a "full" restoration of rights" (*United States v. Caron, 941 F. Supp. 238 (D. Mass. 1996) Part(II)(B) citing U.S. v. Cassidy 899 F.2d 543, 549 (6th Cir. 1990)*), the Petitioner need only show that he has either retained at least one additional "civil right" or has had at least one additional "civil right" restored, i.e., "civil rights". The US Congress did not require that three or more "civil rights" be restored.

In the instant case, a thorough inventory of rights would reveal that well over three "civil rights" were taken from the Petitioner and then later restored. While serving his sentence, the Petitioner temporarily lost his US Fourth Amendment Rights. He was subjected to both pretrial incarceration and post trial supervision.

Throughout the entirety of that time, the Petitioner was subject to random searches and warrantless covert monitoring. Upon Completion of his sentence, the Petitioner's US Fourth Amendment Rights were restored.

During pretrial incarceration, which was later applied to the Petitioner's sentence, the Petitioner lost his rights to freedom and basic liberties and could only work for a prisoner's nominal wage. *(42 U.S.C. §1994-Peonage abolished)* While under supervision, the Petitioner was still subject to travel restrictions and could not leave the state of Pennsylvania without permission from the Commonwealth, which is an inalienable "civil right" per Section 2 of Article IV of the US Constitution. *(Corfield v. Coryell, 6 Fed. Cas. 546 (1823); Paul v. Virginia, 75 U.S. 168 (1869))* Upon Completion of his sentence, the Petitioner's Rights to freedom and basic liberties were restored.

While incarcerated, all prisoners lose their right to trial by jury because it is up to the jailer to decide whether a criminal charge will be filed or whether prison discipline will govern events that occur within jailhouse walls. When prison discipline governs, even when a crime occurs, punishment is dished out without a trial by jury. Therefore, trial by jury becomes a privilege that is only available upon a jailer's decision to refer matters to the courts, rather than to handle them inhouse. Upon Completion of his sentence, the Petitioner's absolute right to trial by jury was restored. *(Second "great right", Journal of the Continental Congress, 1904 ed., vol. I,*

pp.104 -114, 107; APPENDIX B; US Constitution Amendment VI; PA Constitution Article I, Section 6; PA Constitution, Article I, Section 1; 42 U.S.C. §1981(a),(b),(c))

When one is incarcerated, one must surrender bodily fluids, including blood and urine, upon demand of the jailer. This is a violation of one's fundamental rights not to be assaulted. *(In re Conroy, 486 A.2d 1209 (N.J. 1985);* Section 2 of Article IV of the US Constitution*)* Upon Completion of his sentence, the Petitioner's right not to be assaulted was restored.

While incarcerated and while under supervision, the Petitioner was not allowed to possess firearms. (US Constitution Amendment II) That restriction was removed upon the completion of the Petitioner's sentence. What is more, on June 14, 2018, the trial court in the instant case ordered the commonwealth to return a 30/30 rifle that was taken from the Petitioner's home. (APPENDIX A.1) Thus, the trial court restored the Petitioner's gun rights, at least with respect to that specific rifle, and did so after weighing the issues raised in *Binderup v. Attorney Gen. U.S. 836 F.3d 336 (3d Cir. 2016)* and *Pennsylvania State Police v. Paulshock 575 Pa. 378, 836 A.2d 110 (Pa. 2003).*

Since the completion of his sentence, numerous other rights that the Petitioner is unaware were ever taken away from him have also likely been restored. Because more than one "civil right" has been restored, the Petitioner "has had civil rights restored". Therefore, criteria necessary to remove firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) have been met.

(3) Eligibility to serve on a jury is a privilege not a right. The US congress' 1774 . Letter to Quebec recognized the right to be tried by a jury as the second "great right" (*Journal of the Continental Congress, 1904 ed., vol. I, pp.104 -114, 107;* APPENDIX B); The Sixth Amendment in the US Bill of Rights recognized the right to trial by jury as a fundamental inalienable right; AND Article I, Section 6 of the Pennsylvania Constitution recognized jury duty as an "inherent right" (PA Constitution, Article I, Section 1). None of these documents recognize the right to sit on a jury.

a. Few, if any, jurors consider jury duty to be anything more than an unwanted burden. Most people who show up for jury duty do so out of fear of getting in trouble if they ignore their calling. To say that the "civilians" *(Coffin v. United States, 156 U.S. 432, 460 (1895))* consider jury duty to be a right is an embellishment.

In Pennsylvania, eligibility for jury duty is seen and treated much more like eligibility for military conscription than it is treated like a right that one is enthusiastic to exercise.

42 Pa C.S. §4584. Failure of juror to appear.

> "A prospective juror who has been summoned to serve as a juror and who fails to appear as summoned shall, unless exempt or excused pursuant to section 4503 (relating to exemptions from jury duty), be punishable for contempt of court and may be fined in an amount not exceeding $500 or imprisoned for a term no more than ten days or both."

b. Even if eligibility to serve on a jury is a right, eligibility to serve on a jury is not a right under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B), which originate from the Gun Control Act of 1968. The case law that has mistakenly recognized jury duty to be a right greatly postdates the passage of the 1968 Gun Control Act by 26 years. It was not until *J. E. B. v. ALABAMA ex rel. T. B., 511 U. S. 127 (1994)* that a pooled juror could assert a right not to be preemptively excluded from a petit jury solely based on sex (gender). In the eyes of congress in 1968 and under the light of 18 U.S.C. §921(a)(20)(B), eligibility to serve on a jury was not yet considered to be a right, as is asserted in *Cassidy supra, Coran suora, Sherwood supra, Stiver supra and Logan supra.*

In discussing this very issue, the US Supreme Court in *J.E.B.* wrote the following;

> "II
> Discrimination on the basis of gender in the exercise of peremptory challenges is a relatively recent phenomenon. Gender-based peremptory strikes were hardly practicable during most of our country's existence, since, until the 20th century, women were completely excluded from jury service. **[note 2]** So well entrenched was this exclusion of women that in 1880 this Court, while finding that the exclusion of African-American men from juries violated the Fourteenth Amendment, expressed no doubt that a State "may confine the selection [of jurors] to males." Strauder v. West Virginia, 100 U. S., at 310; see also Fay v. New York, 332 U. S. 261, 289–290 (1947). Many States continued to exclude women from jury service well into the present century, despite the fact that women attained suffrage upon ratification of the Nineteenth Amendment in 1920. **[note 3]** States that did permit women to serve on juries often erected other barriers, such as registration requirements and automatic exemptions, designed to deter women from exercising their right to jury service. See, e. g., Fay v. New York, 332 U. S., at 289 ("[I]n 15 of the 28 states which permitted women to serve [on juries in 1942], they might claim

exemption because of their sex"); Hoyt v. Florida, 368 U. S. 57 (1961) (upholding affirmative registration statute that exempted women from mandatory jury service)."

> **[note 2]** There was one brief exception. Between 1870 and 1871, women were permitted to serve on juries in Wyoming Territory. They were no longer allowed on juries after a new chief justice who disfavored the practice was appointed in 1871. See Abrahamson, Justice and Juror, 20 Ga. L. Rev. 257, 263–264 (1986).
>
> **[note 3]** In 1947, women still had not been granted the right to serve on juries in 16 States. See Rudolph, Women on Juries—Voluntary or Compulsory?, 44 J. Am. Jud. Soc. 206 (1961). As late as 1961, three States, Alabama, Mississippi, and South Carolina, continued to exclude women from jury service. See Hoyt v. Florida, 368 U. S. 57, 62 (1961). Indeed, Alabama did not recognize women as a "cognizable group" for jury-service purposes until after the 1966 decision in White v. Crook, 251 F. Supp. 401 (MD Ala.) (three-judge court)." *(J. E. B. v. ALABAMA ex rel. T. B., 511 U. S. 127 (1994))*

c. Eligibility to serve on a jury, even if mistakenly taken by the courts to be a right, is not, and has never been, a prerequisite to exercising US Second Amendment Rights. *J.E.B. supra* was not ruled on until 1994. As late a *"1947, women still had not been granted the right to serve on juries in 16 States." (id note 3, p131)* Yet, women had a right to own, possess, sell and use guns. Annie Oakley was not eligible to be summoned for jury duty. Yet, she had a gun circa 1860-1926, (aged twenty in 1880) more than a century before *J.E.B. supra (1994).*

d. Being eligible for jury service in Pennsylvania is not a prerequisite for exercising US Second Amendment Rights in Pennsylvania, nor is it a prerequisite for exercising Pennsylvania gun rights. In Pennsylvania, anyone who "is unable to

read, write, speak and understand the English language" (42 Pa. C.S. §4502) is ineligible to serve on a jury. Yet, such individuals are still eligible to own, possess, buy, sell and use firearms.

> "42 Pa. C.S. §4502. Qualifications of jurors.
>
> (a) General rule.--Every citizen of this Commonwealth who is of the required minimum age for voting for State or local officials and who resides in the county shall be qualified to serve as a juror therein unless such citizen:
>
> (1) is unable to read, write, speak and understand the English language;
>
> (2) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or
>
> (3) has been convicted of a crime punishable by imprisonment for more than one year and has not been granted a pardon or amnesty therefor."

e. In *Pennsylvania State Police v. Paulshock 575 Pa. 378, 836 A.2d 110 (Pa. 2003)*, it was only the dissenting opinion by Pennsylvania Justice Newman that attempted to define the term "had civil rights restored".

> "Federal court decisions have concluded that, for federal law to recognize state restoration of rights, the state restoration must include: (1) the right to vote; (2) the right to seek and hold public office; and (3) the right to serve on a jury. See, e.g., Hampton v. United States, 191 F.3d 695 (6th Cir. 1999). " *(Paulshock supra at 392)*

The dissenting opinion of Pennsylvania Justice Newman cites *Hampton v. United States 191 F.3d 695 (6th Cir. 1999),* which reads;

> "...we are forced to conclude that Michigan restores a felon's right to sit on a jury upon completion of his sentence. Froede, 523 N.W.2d at 852. We find that the Michigan Court of Appeals decision in Froede controls and, until or unless the Michigan Supreme Court decides otherwise, or

> in some other way casts sufficient doubt on that decision, we must abandon our interpretation of Michigan law previously recognized in Driscoll.
>
> Thus, all of Petitioner's key rights were restored at the time he was charged with a violation of § 922(g). Because his rights were so restored from the 1986 conviction, it appears that Petitioner plead guilty to a charge to which he was actually innocent because the Government could not satisfy all of the elements of the § 922(g) charge." (Hampton supra *702-703)

Once again, it was in the best interests of Hampton to include jury duty in the list of civil rights that had been restored simply because he was not forbidden from sitting on a jury.

When turning to Sixth Circuit precedents, such as Cassidy, no appellate court, including the Sixth Circuit, has ever addressed why they left out "and to hold office of... profit", which was also included in Cassidy's "Restoration Certificate". It is not at all clear what an "office of profit" is. If "office of profit" refers to being the Chief Executive Officer at a bank or being the owner of a municipal garbage removal service and always being awarded the annual garbage removal contract, then such things were not truly intended by the framers of the Pennsylvania and US Constitutions to be "civil rights".

The Petitioner argues that neither the destiny of his "civil rights", nor that of any Pennsylvanian, should rest upon the fragments of a sentence that was likely framed by an Ohio parole officer to appear on a certificate. The Ohio "Restoration

Certificate" cited in Cassidy clearly grouped rights and privileges into a single sentence;

> "'...the rights and privileges forfeited by [his] conviction; namely the right to serve on juries and to hold office of honor, trust, or profit.'" *(Cassidy supra pp543-4(PART I.))*

It is not at all clear that the parole officer who drafted the Ohio certificate, nor the framers of the Pennsylvania and US Constitutions, considered jury duty to be a right, rather than a privilege. It was well established for most of our history that serving on a jury was not a right. *(ante citing J.E.B. supra)* Because the Ohio "Restoration Certificate grouped "rights and privileges" together, it is not clear that Ohio thought of jury duty as a "right", rather than a "privilege".

If one has a "right to sit on a jury", then no trial court could ever refuse a juror who was not summoned for duty but showed up at the courthouse *sua sponte* to judge the facts of a specific case that he or she selected *sua sponte* from the docket list simply because he or she has taken an interest in the case. If sitting on a jury is a right, rather than a duty and privilege, there will be long lines at the courthouse to serve on celebrity trials of notorious individuals and courts will not be permitted to turn jurors away. The inevitable result will be that celebrities will never be tried for crimes because the case law will evolve such that it will mandate that trial courts dismiss cases or declare mistrials when too many interested jurors show up seeking to exercise their right to be a fact finder on a particular case.

Summoning too large of a jury pool is already grounds for dismissal. (*The Insurgents Of Pennsylvania supra*)

It is possible that the currently ongoing case before the Supreme Court of the United States debating the existence (or inexistence) of a right to jury unanimity may serve to shed additional light regarding jury duty being (or not being) a right. The US Supreme Court may choose to opine on a court's authority to dismiss a lone dissenting juror versus a lone dissenting juror's right to remain on the jury and have his or her vote counted. (*Evangelisto Ramos v. Louisiana, On Writ Of Certiorari To The Court Of Appeal Of Louisiana, Fourth Circuit, No. 18-5924, Docketed September 11, 2018, US Supreme Court, See public Docket at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-5924.html*

https://www.supremecourt.gov/docket/docketfiles/html/public/18-5924.html)

In Pennsylvania, it is not in the best interest of any Petitioner seeking the removal of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) to include jury duty in the definition of the term "has had civil rights restored". If the case law had originated in Pennsylvania, rather than in Ohio and Massachusetts, petitioners likely would have centered their arguments around other "civil rights" that are of equal importance and significance. The standard adopted by the Superior Court of Pennsylvania in Stiver and Sherwood are not a result of critical legal analysis by Pennsylvanaia Petitioners and Pennsylvania

courts but are instead the result of two petitioners from Ohio and Masssachuttes who, through serendipity, "got there first" and who did not face the same facts as does a petitioner from Pennsylvania. Had a Petitioner from Pennsylvania "got there first", jury duty would not have been included in any stipulations as the definition of the term "has had civil rights restored".

The only reason the Cassidy case, originating in the the US Sixth Circuit in Ohio, centered around "the right to vote, the right to seek and hold public office and the right to serve on a jury" *(Cassidy supra *549; p8)* is because those rights had already been restored to Cassidy by operation of law. Therefore, it was in the best interests of Petitioner Cassidy to include those rights.

The only reason the Caron case, originating in the US First Circuit in Massachusetts, centered around "Restoration of the right to vote, the right to hold office, and the right to sit on a jury" *(Caron 524 U.S. 308 supra, 316)* is because those rights had already been restored to Caron by operation of law. Therefore, it was in the best interests of Petitioner Caron to include those rights.

Other than the instant case, there is no case originating in Pennsylvania, neither state nor federal, that does not trace back to petitioner stipulations that are derived from *Cassidy supra* and/or *Caron supra.* In the instant case, it is not in the best interest of the Petitioner to center his argument around a list of "civil rights" that includes jury duty. Therefore, the Petitioner rejects the premise that eligibility to serve on a jury is a right and further rejects the premise that eligibility for jury

duty is a necessary condition for the removal of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B).

(4) Firearms disabilities under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) do not apply to firearms that were possessed prior to first degree misdemeanor convictions. *(ante quoting Forest Dean Morgan APPENDIX C & APPENDIX D)* What is more, in the instant case, the Commonwealth did not proffer any evidence to show that the rifle, for which the trial court implicitly restored "civil rights" by ordering its return, ever traveled across state or international political boundaries. Because the Commonwealth did not proffer any such evidence prior to the court issuing its June 14, 2018 order (APPENDIX A.1), it waived that issue and cannot raise such issues now. *(Navarro supra)* Because the federal case law that the Commonwealth would have to cite to make such an argument greatly predate both the Navarro decision and the June 14, 2018 order (APPENDIX A.1), the Commonwealth cannot argue that this matter constitutes new and uncharted territory with which they were unfamiliar. In the instant case, as in Navarro, the Commonwealth failed to raise the matter of where a previously possessed firearm was manufactured. Therefore, the Commonwealth waived such arguments.

(5) Pennsylvania law enforcement cannot enforce 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) with regard to misdemeanants and firearms that are manufactured within the state of Pennsylvania because such firearms do not "affect

interstate commerce". (*Navarro supra; Scarborough v. United States, 431 U.S. 563 (1977)*)

18 U.S.C. §922(g)(1)

"It shall be unlawful for any person—

(1)who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;...

...to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

a. Not every piece and part of a rifle or pistol is considered by the federal government in and of itself to be a "firearm". However, some pieces and parts, standing alone and not assembled into a firearm, i.e., the controlled parts, are still defined by the federal government to be a firearm. According to *Navarro supra,* such firearms parts, if manufactured in Pennsylvania, are beyond the reach of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B). Therefore, a rifle or pistol, i.e., an assembled firearm, if assembled in Pennsylvania and if the 'controlled parts' of that firearm were manufactured within the state of Pennsylvania, is exempt from the enforcement of a firearms disability imposed by 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) because the firearms disability only applies to firearms that travel through interstate and foreign commerce.

WHEREFORE, treating "civil rights" as cumulative renders the enforcement of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) to be constitutionally infirm

within the state of Pennsylvania, the Petitioner RESPECTFULLY REQUESTS that the Supreme Court of the United States declare the enforcement of 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) by Pennsylvania law enforcement to be constitutionally infirm and that the Court issue an injunction at large against the enforcement of those statutes in Pennsylvania and/or that the Court grant such an injunction to specifically apply to the Appellant in the instant case.

WHEREFORE, the Petitioner in the instant case DOES NOT stipulate that the meaning of the term "has had civil rights restored" refers explicitly to, and only, to "the right to vote, the right to seek and hold public office and the right to serve on a jury", the Petitioner RESPECTFULLY REQUESTS, that the Supreme Court of the United States find that Pennsylvania trial courts do have the authority and jurisdiction necessary to restore enough "civil rights" to effectuate the removal of a firearms disability under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) with regard to those who have been convicted of first degree misdemeanors in Pennsylvania.

The Petitioner further RESPECTFULLY REQUESTS that the Supreme Court of the United States find that in the instant case, both the trial court and operation of Pennsylvania law restored enough "civil rights" for the removal of all firearms disabilities under 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) and/or that the trial court and operation Pennsylvania of law did effectuate the removal and/or inapplicability of firearms disabilities under 18 U.S.C. §922(g)(1) and 18

U.S.C. §921(a)(20)(B) with regard to the specific firearm that the trial court ordered the Commonwealth to return to the Appellant on June 14, 2018. (APPENDIX A.1)

WHEREFORE, 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) do not impose firearms disabilities on firearms that were possessed or owned prior to an individual incurring a first degree misdemeanor conviction in Pennsylvania; AND WHEREFORE the Commonwealth failed to argue in the instant case that the specific firearm that the trial court ordered it to return "affected interstate commerce", the Petitioner RESPECTFULLY REQUESTS that the Supreme Court of the United States find that the Appellant in the instant case is not affected by 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B), at least with regard to the firearm that the trial court ordered the Commonwealth to return. (APPENDIX A.1)

AND WHEREFORE 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) do not apply to firearms manufactured within the state of Pennsylvania or to firearms assembled in Pennsylvania, in which the 'controlled parts' are manufactured within Pennsylvania, the Petitioner RESPECTFULLY REQUESTS that the Supreme Court of the United States find that individuals convicted of first degree misdemeanors in Pennsylvania are not affected by 18 U.S.C. §922(g)(1) and 18 U.S.C. §921(a)(20)(B) with regard to any new firearms that are assembled in Pennsylvania and in which the 'controlled parts' and/or all parts are manufactured within Pennsylvania.

CONCLUSION

The petition for a writ of certiorari should be granted.

The foregoing document is true in both fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Oct 3, 2019
Date

Sean M. Donahue
Sean M. Donahue