No. 22-6201 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

"In re ARTHUR JAMES LOMAX" — PETITIONER
(Your Name)

vs.

JEFF LONG
WARDEN ~~MATT WINDEN~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF ~~CERTIORARI~~ Habeas Corpus TO

The U.S. District Court for the District of Colorado
~~United State Court of Appeals for the Tenth Circuit~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF ~~CERTIORARI~~ Habeas Corpus

ARTHUR JAMES LOMAX
(Your Name)

Sterling Correctional Facility/ SCP, P.O. Box 6000
(Address)

Sterling, Colorado 80751
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

See Attachment

Is it true that the Colorado Constitution specifies that the style of all laws of this state shall be: Be it enacted by the General Assembly of the State of Colorado? Colo. Const. art. V. § 18.

Is the Colorado Court of Appeals correct in explainining that the enacting clause as published in the Session Laws of Colorado satisfies this mandate, or in error? People v. Washington, 969 P.2d 788, 790 (Colo. App. 1998).

The omission of the enacting clause from the Colorado Revised Statutes does it or not render the statutes unconstitutional? People v. Washington, 969 P.2d 788, 790 (Colo. App. 1998).

Courts in other states, construing similar state constitutional provisions, have ruled that the precise form of the commonly called "enacting clause" is mandatory in the official publication of the laws, would this be an important federal question in regard to Due Process of Law (the charging instrument) conflicting with the decision of another state court? See Supreme Court Rule 10 (b) and (c), and Fifth and Fourteenth Amendments. See Palmer v. Arkansas, 137 Ark. 160, 208 S.W. 436 (1919); Sjoberg v. Security Savings & Loan Ass'n, 73 Minn. 203, 75 N.W. 1116 (1898).

QUESTION(S) PRESENTED

When a states "Bill of Rights", calls for the prosecution of felonies *only by indictment whether prosecution by any other method conforms with the states constitutional "uniformity of laws clause", and the protections of the 14th Amendment of the U.S. Constitution?

Whether a Government Officers "discretion" can abolish the substantial constitutional safeguard of a grand jury indictment, to one portion of citizens charge with felonies, but leave it in effect to another portion of citizens who are charged with felonies?

An indictment confers competent subject-matter jurisdiction on the district court. An indictment is also the culmination of the probable cause screening process of the Grand Jury and that procedure functions as a "constitutionally adequate" substitute for a preliminary hearing whether a petitioner can be deprived of an indictment and a preliminary hearing and be awarded a fair trial. (Note: Defendant made no waiver of these protections)

Whether the substantial - due process safeguards to the accused provided by the requirement that such an offense be prosecuted by indictment can be eradicated on the theory that noncompliance is a mere technical departure from the rules? (Note: Se, Hagner vs. United States, 2.85 U.S. 427, also see, Williams vs. United States, 341 U.S. 97) [**997]

When a Grand Jury Indictment is incorporated in a States Bill of Rights, and when a state Habeas applicant makes a Prima Facie showing that he was prosecuted for a felony, without an indictment. Whether a state judge can dismiss the Habeas as having no merit? (Note: This arbitrary action violates the due process protections of the National and State Constitution)

When the sentencing courts mittimus is absolutely void for want of jurisdiction, whether a 2254 Habeas applicant can be required to exhaust remedies before his writ is issued? Whether state statues can be applied in a manner that creates ex post facto laws, by altering the necessary criminal rules of procedure (e.g. indictment for a felony) and by requiring that different or less testimony is needed the law requires at time of the offense to convict the offender?

When a State Bill of Rights guarantees an indictment for a felony, and when it was the common law practice to add any facts or elements that increase punishment in an indictment.

Whether a prosecutor can charge a defendant of an aggravated crime when the defendant was not proceeded against by an indictment. (Note: *Se*, Appendix V New Jersey, 530 U.S. 466 (2000) *See*, Criminal Procedure Section 82 at 51-52)

When a indictment and a preliminary hearing shields the accused from unwarranted charges. Whether defendant's public defender can be said to have protected defendants 6th amendment right to effective assistance of counsel, when defendant's public defender did not protect defendant's constitutional rights to a preliminary hearing and indictment before proceedings and trial.

When a conviction is not merely erroneous, but is illegal and absolutely void, because the pretrial and trial court(s) did not have subject matter jurisdiction over the felony charges, and when defendants public defender was clearly ineffective, seeing the defendant was convicted in a court that did not have subject matter jurisdiction over the felony charges, whether such conviction can be the legal cause of imprisonment?

Whether the statutory enactment 16-5-101 can override the fundamental constitutional requirement of article 2, section 8, of the Colorado Constitution, that requires indictments for felonies? Whether statutory enactments that are in contrast to the National and State Constitutions can be upheld as valid?

If the provisions of the State Constitution, that until otherwise provided by law, no person shall, for a felony, be proceeded against criminally otherwise than by indictment, and if the power conferred upon to provide otherwise. The question arises how must this power be exercised?

Statute (16-5-204) article 2, section 24; allow citizens to petition the Government for redress for Grievances. Petitioner's arrest was without miranda rights. Considering these facts, petitioner's public defender should have brought petitioner's case before the Grand Jury to investigate the acts of County Officials. (Note: No preliminary hearing was held to contest such actions). When a Court properly has cognizance of cause, a mere error of law must be reviewed by appeal or writ of error.

By Mandate should the style of all laws have an Enacting Clause in and publication of each state law, mainly Colorado? Colo. Const. Art. V, Sect. 18 and Legislative Construction of Statutes 2-4-213.

Petitioner's point of law did not have to be met at every stage of criminal proceedings, because it goes beyond a mere error in point of law. The proceedings were not merely erroneous, but entirely null and void because the trial/sentencing Court(s) were without jurisdiction over the offense. Petitioner is subject to illegal imprisonment, and is held in violation of several amendments of the National and State Constitutions; petitioner can't enforce his civil rights in the local courts. Petitioner prays that the Colorado U.S. District Court order his discarge.

Conclusion: The petitioner for a writ of Habeas should be granted and the petitioner ask that his record of conviction be expunged.

Arthur J. Lamark
#134416

LIST OF PARTIES

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

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

See PETITION FOR WRIT OF CERTIORARI/ "
HABEAS CORPUS

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 A to the petition and is

[✓] reported at U.S. Court of Appeals (10th Cir.); 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 B to the petition and is

[✓] reported at U.S. District Court of Colorado; 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 C to the petition and is

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

The opinion of the District Court, Denver County, Colorado court appears at Appendix D to the petition and is

[✓] reported at District Court, Denver County, Colorado; 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 July 15, 2022.

[ ] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 Jan 27, 2022. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See PETITION FOR WRIT OF CERTIORARI/HABEAS CORPUS

REASONS FOR GRANTING THE PETITION

How the writ will aid in the courts appellate jurisdiction (statements 1-3)

1. This is a question of National and Local importance under the Colorado Bill of Rights, the state trial court did not have authority to proceed against the petitioner (for a felony) with out an indictment, so therefore the habeas corpus was a right that could not be denied. The state court had no authority to dismiss petitioners habeas, or to require the petitioner to exhaust state remedies before the writ is issued. Others in the same situation (from all circuits) will benefit from the granting of the writ because adjudication of the merits will make it clear to the less informed public, that a state can't use technical rules of construction (e.g. state remedies & state statutes) to defeat the objectives of the National & State Constitution.

2. On the local and National Level, the granting of the writ will clarify that no state can abolish a portion of the states Bill of Rights (e.g. the Grand Jury Institution) to a portion of the people charge with felonies, while leaving the same safeguard in full effect to another portion of the citizens charged with felonies. There has not been any Colorado Constitutional amendment enacted that has abolished the indictment requirement from the states Bill of Rights, neither has there been an amendment ratified by the people that authorize crimes that warrant a infamous punishment to be prosecuted by any other means than by indictment. Patitioner's case can aid the courts appellate jurisdiction to show that states must abolish the Grand Jury institution by constitutional amendment, and not by state statutes - judicial interpretation, or through the underutilization of the Grand Jury institution by the prosecutor, that abolishes the institution only to a portion of the states citizens, while leaving the same safeguards (with wide statutory protections) in effect to another portion charged with felonies.

3. In re Lowrie, 8 Colo, 499, 9 & 489, is Colorado's Supreme Court binding authority that makes it clear that all felonies are to be prosecuted by indictment. The principles of in re Lowrie & Stare decisis are being ignored by the local government. If the writ is granted recent case law can be made that will clear any confusion (seeing that Lowrie is a old case from 1885), and aid the courts appellate jurisdiction, because fair adjudication will show that the grand jury institution can't be regarded as a mere rubber stamp on prosecutions, or bypassed as if it is a mere rule of practice that has no effect on essential rights. If the writ is granted recent case law can be made to show government officials and the people (on a local and national level)

How the writ will aid the courts appellate jurisdiction
(Continued from: Page 1)

that no state official can ignore the principle of stare decisis, and the restraints of amendment 14, sections 1 & 3, and article 6, sections 2 & 3, of the U.S. Constitution.

What exceptional circumstances warrant the exercise of the courts discretionary powers (statements 4-6)?

4. In the case at bar, there are exceptional circumstances because the state court did not have jurisdiction over the felony charges, because the petitioner was not indicted for such felonies as the state Bill of Rights requires. The proceedings against the petitioner were erroneous, void, and illegal, so the petitioner is held in violation of the national and state constitutions, because the state court did not have plenary jurisdiction over both the cause and the person.

5. Accusations of presumption of guilt generally do not imply an actual legal presumption of guilt, but rather denounce some failures ensuing that suspects are treated well and offered good defense conditions. Exceptional circumstances exist because petitioners trial was unfair and unconstitutional because he was not offered proper defense argumentation, seeing that he was denied both a Grand Jury investigation and a preliminary hearing within 48 hours or at any time. Petitioner made no waiver of the preliminary hearing that was intelligently made on record. Petitioner did not face his trial with an equal weight of arms, i.e. a level playing field in terms of legal representation, the petitioner was prosecuted under the rule of de jure (a presumption of guilt).

6. Petitioners arrest was without miranda rights, but there was no preliminary hearing held within 48 hours to challenge the miranda rights. **Nat. Counsel of Resistance to Iran v. Dep't of State**, 251 F.3d 192 (D.C. Cir. 2001) (due process requires an opportunity to be heard at a meaningful time and in a meaningful manner; due process must be afforded before deprivation of life, liberty, or property). Because petitioner was denied this preliminary hearing, and an indictment, exceptional circumstances exist. (Note: petitioner made no waiver of the preliminary hearing) (Petitioner is held in involuntary servitude without duly being convicted). Why adequate relief cannot be obtained in any other form or from any other state court.

(statements 7-9)

7. Ex parte Bain, Ex parte Wilson, Ex parte Moreland, and Ex parte Mackin,

are the U.S. Supreme Court binding authority (from other circuits) that require indictments for infamous crimes, Colorado's Supreme Court precedent, in Re Lowrie, follows the listed precedents. For a Colorado State Judge, (in response to petitioners State Habeas) to deny without any written opinion and/or rule that the petitioners indictment claims have no merit, conflicts with U.S. Supreme Court precedent, the concept of due process, and the binding authority of the State if a Federal Judge dismiss a petitioners 2254 (which was based on the same claims as the state petition) makes it clear that adequate relief can't be obtained from these courts.

8. Under the Habeas act of February 5, 1867 petitioner applies to the U.S. Supreme Court, because the trial court did not have jurisdiction over the felony charges, habeas corpus is the proper remedy, and other forms of relief shall not be used to suspend the writ of habeas.

9. In clear violation of Article 2, Sec 6, of the Colorado constitution, petitioner is being denied the equality of justice, and the right to have justice administered without denial, because he can't enforce his civil rights in the local courts. In violation of article 2, section 3, of the Colorado constitution, petitioner is being denied his inalienable rights. Relief can't be obtained because technical rules of construction are being used to deny the clear objectives of the constitution. (see article 2, sec 8, of the Colorado Constitution).

The reason for not making application to the district court (statement 10)

10. Petitioner made application for a writ of habeas to the Denver County (State Court) trial court, but it was denied without any written opinion, and now the petitioner is filing his 2254 habeas application to the Colorado Supreme Court and praying that his habeas will be lawfully granted. Then his only option left is the 10th Cir. District Court and the U.S. Supreme Court. Because the trial court sentence is erroneous, void, and illegal, and the petitioner is held in violation of several amendments of the National and State constitutions.

How the decisions of the court that decided my case are in conflict with the decisions of another appellate court (statement 11)(Rule 10(c))

11. Hurtado vs. California 110 U.S. led 232 (1884), Davis vs. Burke, 179 U.S. 399, Maxwell vs. Dow 176 U.S.581, and Bollin vs. Nebraska,176 U.S. 83, are

(Continued from: Page 3)

cases from different appellate jurisdictions that have made it clear that prosecutions for felonies are not in violation of the 14th amendment of the U.S. constitution, when the constitution of the state authorizes prosecutions for felonies on information. Colorado's Constitution authorizes felony prosecutions only by indictment, but petitioner was charged for a felony, on information, so that action is in conflict with the listed precedents, and the states Bill of Rights. How the decisions of the lower court may be erroneous / the national importance of the case to others similarly situated;
(*See* statement 12)

12. This is an issue of National Importance, because sometimes when the citizen's rights are reinforced through a victory in court, they are disparagingly referred to as legal technicalities. The fact that forcing our Government to follow the prescribed procedures to accuse/and or incarcerate someone, and prohibiting our Government from cheating to lock citizens away, was a hard fought victory long ago when our Country was founded which should not be diminished from public ridicule or neglect. Petitioner's conviction was erroneous, void, and illegal, because he was denied a Substantive Right and Procedural Due Process. Fair litigation on this issue will help others in similar situations because it will enforce fundamental law.

The denial of petitioner's first amendment right to petition the Government is a Constitutional error.

13. The Colorado Constitution (Article 2 Section 24) buttresses the attitude of openness toward the Grand Jury and this is also embodied in Statute - (16-5-204) Article 2, Section 24, allows citizen's to petition the Government for redress for Grievances. Petitioner's arrest was without miranda rights. Considering these facts, petitioners Public Defender should have brought petitioners case before the Grand Jury to investigate the acts of County Officials.

(Note: No Preliminary Hearing was held to contest such actions)

When a Court properly has cognizance of a case, a mere error of law must be reviewed by appeal or writ of error. Petitioner's point of law did not have to be met at every stage of criminal proceedings, because it goes beyond a mere error in Point of Law. The proceedings were not merely erroneous, but entirely Null and Void because the Trial/Sentencing Court(s) were without jurisdiction over the offense.

STATEMENT OF THE CASE

COMES NOW, Mr. Lomax, the Petitioner, pro se, state prisoner, seek review on a petition for a writ of ~~certiorari,~~ habeas corpus, and request this honorable Court to grant review for these compelling reasons. Rule 20 and Rule 36

Rule 10. (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceeding, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (b)

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Rule 11. A petition for a writ of ~~certiorari~~ habeas corpus to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U.S.C. 2101(e).

Mr. Lomax, on or about June, 2021 filed a Motion to Vacate, Set Aside, And/ Or Set Aside for the Lack of Subject Matter Jurisdiction and a Habeas Corpus 28 U.S.C. 2241 and/or 28 U.S.C. 2254/ Petition for Relief/ Petition for Writ w/attach filed with the criminal court and/or district court, Denver County, Colorado they was both denied on 6/18/2021. And filed his Petition for Writ of Habeas Corpus in the

Colorado Supreme Court, it was denied on 1/27/2022. Also he filed a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. 1915 and a Habeas Corpus Action in the U.S. District Court of Colorado, on 3/18/2022,and on 5/17/2022, it was recommended that claim one of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. 2241, which the Court has construed as arising under 28 U.S.C. 2254, be DISMISSED WITHOUT PREJUDICE for lack of statutory jurisdiction. Mr. Lomax, further filed a notice of appeal within fourteen days after (See, Rule 4(b)) the U.S. District Court of Colorado dismissed his claim one of the Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. 2241, which the Court has construed as arising under 28 U.S.C. 28 U.S.C. 2254, be DISMISSED WITHOUT PREJUDICE for lack of statutory jurisdiction. He is now refiling a 28 U.S.C. 2254 Writ of Habeas Corpus.

Furthermore, Mr. Lomax, a Colorado prisoner proceeding pro se, did seek authorization to file a second or successive habeas application under 28 U. S. C. 2254. The Colorado Court of Appeals for the 10th Circuit, stated, because he has not met the requisite conditions under 28 U.S.C. 2244(b), they denied authorization on July 14, 2022, see Order. Also, Appellant sought to appeal a May 17, 2022 Recommendation of the United States Magistrate Judge that was not appealable because it is not a final decision by the district court judge, and Appellant was directed to show cause why the appeal should not be dismissed for lack of appellate jurisdiction by June 22, 2022. The reason he didn't respond to the show cause order, because he did not have physical access to the prison facility law library from 6/9/2022 to 7/25/2022 .

Mr. Lomax, the Petitioner, pro se, requesting the Court(s) "by the habeas corpus act" to vacate, set aside, and/or set aside for the lack of subject matter

and personal jurisdiction, and to completely expunge his criminal record, and to immediately release him from the custody (Warden ~~Matt Winder~~ Jeff Long) and/or the Colorado Department of Corrections. Mr. Lomax, has been incarcerated for almost seventeen years for a crime he did not commit and still maintain his innocence.

He is denying and challenging the criminal court lack of jurisdiction over the subject matter and over his person. See, 28 U.S.C.S. 2241 (a), (b) (c) (1), (2),(3),and (5) (d), and 46-22-101(1)..., every person imprisoned or otherwise restrained of liberty within this state may prosecute a writ of habeas corpus into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.

Habeas Corpus requirement, see C.R.S. 13-45-101 (1) and (2). ("[I]t is law... to apply to the...district court for a writ of habeas corpus.") The procedures set out in the statute, including the warrant requirement, implement the constitutional right to seek a writ of habeas corpus. See Colo. Const. art. II, subsect. 21; see also U.S. Const. art. I, subsect. 9, cl. 2. And the Colorado Constitution provides that "[t]he privilege of the writ of habeas corpus shall never be suspended, unless when in case of rebellion or invasion, the public safety may require it." Colo. Const. art. I subsect. 21.

In 1807, Chief Justice Marshall referred to the writ of habeas corpus as a "great constitutional privilege." Ex Parte Bollman and Ex Parte Swartwout, 8 U.S. 75, 4 Cranch 75, 95, 2 L. Ed. 554, 561 (1807). Literally meaning "you have the body," habeas corpus ensures the integrity of the legal process resulting in imprisonment. Originating in the

English common law, habeas corpus is a form of collateral attack that functions as an independent proceeding "to determine whether a defendant is being unlawfully deprived of his or her liberty." Black's Law Dictionary 709 (6th ed., West 1990). "Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to immediate release." Fay v. Noia, 372 U.S. 391, 402, 83 S. Ct. 822, 829, 9 L. Ed. 2d 837 (1963) (overturned in part on other grounds).

A few decades later, in 1927, this Court explained,

The purpose of a writ of habeas corpus is to determine the legality or illegality of the restraint alleged to be exercised. It is available only to those persons, or on behalf of those persons, unlawfully imprisoned or restrained of their liberty, and is independent of the legal proceeding under which the detention is sought to be justified.

August v. Burns, 79 Mont. 198, 213, 255 P. 737, 741 (1927) (citations omitted).

Lott v. State, 2006 MT 279, P9, 334 Mont. 270, 275, 150 P.3d 337, 340, 2006 Mont. LEXIS 585, *9-10 (Mont. October 27, 2006).

The petitioner is not validly confined and is thus entitled to immediate release or that the petitioner has suffered a serious infringement of a fundamental constitutional right resulting in a significant loss of liberty.

Mr. Lomax, in July, 2005 was extradited from Memphis, Tennessee to Denver, Colorado county jail, while in law official custody he were never given his Miranda warning when they are required. See, Miranda v. Arizona, 384 U.S. 436, 467-74, 86 S. Ct. 1601 (1966). The failure to give you Miranda warnings is important only in connection with a subsequent criminal prosecution. Therefore, he is claiming his rights under the

Fourteenth Amendment was violated when he were falsely arrested and falsely imprisoned.

The Plaintiff and/or the Petitioner is alleging in his false arrest : (1) an unlawful detention and deprivation of liberty against his will; (2) an unreasonable detention which is not warranted by the circumstances; and (3) an intentional detention. And alleging for his false imprisonment; 1) the unlawful detention of his person; 2) against his will; 3) without legal authority or color of authority; and 4) which is unreasonable and unwarranted under the circumstances. See, Bonett v. Cook, 2021 U.S. Dist. LEXIS 212336.

42 U.S.C. § 1983 empowers federal courts to vindicate the federal rights of those individuals who suffer harm by those acting with actual or apparent state law authority. Aracena v. Gruler, 347 F. Supp. 3d 1107, 1113 (M.D. Fla. 2018). However, "[q]ualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Ashcroft v. al-Kidd, 563 U.S. 731, 735, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011).

"Qualified immunity is an affirmative defense," McDowell v. Gonzalez, 820 F. App'x 989, 991 (11th Cir. 2020),which "is intended to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, protecting from suit all but the plainly incompetent or one who is knowingly violating the federal law," Brown v. City of Huntsville, 608 F.3d 724, 733 (11th Cir. 2010) (internal quotation marks omitted). The Supreme Court has "'repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation.'" Pearson v. Callahan, 555 U.S. 223, 232, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (quoting Hunter v. Bryant, 502 U.S. 224, 227, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991) (per curiam)). As such, although the defense of qualified immunity is typically addressed at the summary

judgment stage of litigation, it may be raised on a motion to dismiss. Corbitt v. Vickers, 929 F.3d 1304, 1311 (11th Cir. 2019), cert. denied, 141 S. Ct. 110, 207 L. Ed. 2d 1051 (2020); see O'Kelley v. Craig, 781 F. App'x 888, 893 (11th Cir. 2019) ("Because qualified immunity is a defense not only from liability, but from suit, the defense may be raised in a motion to dismiss."), cert. denied, 140 S. Ct. 2641, 206 L. Ed. 2d 713 (2020).

To receive qualified immunity, "an official must first establish that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred." McCullough v. Antolini, 559 F.3d 1201, 1205 (11th Cir. 2009) (internal quotation marks omitted). "A governmental official acts within his discretionary authority if his actions were (1) undertaken pursuant to the performance of his duties; and (2) within the scope of his authority." Mikko v. City of Atlanta, 857 F.3d 1136, 1144 (11th Cir. 2017). "In applying each prong of this test, [courts] look to the general nature of the defendant's action, temporarily putting aside the fact that it may have been committed for an unconstitutional purpose, in an unconstitutional manner, to an unconstitutional extent, or under constitutionally inappropriate circumstances." Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1266 (11th Cir. 2004). "In other words, 'a court must ask whether the act complained of, if done for a proper purpose, would be within, or reasonably related to, the outer perimeter of an official's discretionary duties.'" Mikko, 857 F.3d at 1144 (original emphasis removed) (quoting Harbert Int'l, Inc. v. James, 157 F.3d 1271, 1282 (11th Cir. 1998)).

If a defendant establishes that he was acting within discretionary authority, "the burden shifts to the plaintiff to show that qualified immunity is not appropriate." Brooks v. Warden, 800 F.3d 1295, 1306 (11th Cir. 2015) (internal quotation marks omitted). To that end, the plaintiff must establish that qualified immunity is inappropriate by showing that

"(1) the facts alleged make out a violation of a constitutional right and (2) the constitutional right was clearly established at the time of the alleged misconduct." Gates v. Khokhar, 884 F.3d 1290, 1297 (11th Cir. 2018); see Carollo v. Boria, 833 F.3d 1322, 1328 (11th Cir. 2016) (explaining, in analyzing a district court's denial of qualified immunity at the pleading stage, that the first prong is the "merits" prong and the second prong is the "immunity" prong). A court may address either prong first. See Pearson, 555 U.S. at 236.

Thus, in analyzing the applicability of the qualified immunity defense raised in a motion to dismiss, the analysis entails two questions once the defendant shows that he was acting within the scope of his discretionary authority: (1) "whether the allegations, taken as true, establish the violation of a constitutional right"; and (2) "if so, whether the constitutional right was clearly established when the violation occurred." Guerra v. Rockdale Cnty., 420 F. Supp. 3d 1327, 1328 (N.D. Ga. 2019) (citing Hadley v. Gutierrez, 526 F.3d 1324, 1329 (11th Cir. 2008)). "Generally speaking, it is proper to grant a motion to dismiss on qualified immunity grounds when the 'complaint fails to allege the violation of a clearly established constitutional right.'" Corbitt, 929 F.3d at 1311 (quoting St. George v. Pinellas Cnty., 285 F.3d 1334, 1337 (11th Cir. 2002)).

STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW

See, USCS Fed. Rules Civ. Proc. (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2)...

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5)...

(6) any other reason that justifies relief.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to;

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

In analyzing a § 1983 claim, a court must first isolate the exact constitutional violation with which the defendant is charged. Jordan v. Mosley, 298 F. App'x 803, 805 (11th Cir. 2008). "If an Amendment provides an explicit textual source of constitutional protection against the sort of conduct complained of, that Amendment—not the more generalized notion of substantive due process under the Fourteenth Amendment—is the guide for analyzing the claim." Id. (citing Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)).

The petitioner, by the state prosecutor Mr. Dough Jackson and the alleged victim DR did accused and charged him with an illegal charging document known as the **Colorado Revised Statutes** book which has not been properly enacted into law by the legislative power and/or the General Assembly of the State of Colorado, and the book is missing the enacting clauses and the titles which is required by mandate and the constitution. Therefore, the criminal court did not have subject matter jurisdiction and/or over his person to charge him with any crime, to try the alleged crime, or to pass judgment and sentence or punish him for any crime, and for this cause the default judgment and sentence rendered is void ab initio or from the beginning.

This was exceptionally painful and incredibly humiliating. And has been separated from his home and family for almost seventeen years, because of his false imprisonment.

Unlike its counterparts, Fed. R. Civ. P. 60 (b) (4) which provides relief from void judgment, is not subject to any time limitation. V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979); Orner v. Shalala, 30 F.3d 1307(10th Circuit Court of Appeals,1994). The original judgment of the trial court was **void** because it was entered in a manner inconsistent with due process. For a judgment to be void under Rule 60(b) (4), it must be determined that the rendering court was powerless to enter it. If found at all, **voidness** usually arises for lack of subject matter jurisdiction or jurisdiction over the parties. It may also arise if the court's action involves a plain usurpation of power or if the court has acted in a manner inconsistent with due process of law.
Allstate Ins. Co. v. Khani, 75 Wash. App. 317, 326-27, 877 P.2d 724, 729 (1984) ("A party will **not** be deemed to have waived the right to challenge a default **judgment void** for lack of personal jurisdiction merely because **time** has passed since the **judgment** was entered."). *See also Austin v. Smith*, 312 F.2d 337, 343, 114 U.S. App. D.C. 97 (D.C. Cir. 1962) ("[Federal Rule of Civil Procedure 60(b)(4)] places no **time limit** on an attack upon a **void judgment**, nor can such a **judgment** acquire validity because of laches on the part of him who applies for relief from it."). "The district court abused its discretion and exceeded its power and jurisdiction, on an erroneous view of the law and/or on a clearly erroneous assessment of the evidence." Lyons v. Jefferson Bank & Trust,994 F.2d 716, 727 (10th Cir. 1993).(quoting Cooter & Gell v. Hartmarx Corp.,496 U.S. 384,405,110 L. Ed. 2d 359,110 S.Ct. 2447 (1990)).

A cause of action is a civil injury that gives one the right to assert a claim based on the breach of a right guaranteed under a constitution (federal and/or state), statute, regulation,

or as a matter of due process. A cause of action is simply "a factual situation that entitles one person to obtain a remedy." Cause of Action, BLACK'S Law DICTIONARY (10th ed. 2014). Habeas corpus proceeding are civil in nature and have for their sole purpose the determination of whether the person in custody is being lawfully detained. Buhler v. People, 151 Colo. 345, 377 P.2d 748; McGrath v. Tinsley, 138 Colo. 18, 328 P.2d 579; Riley v. Denver, 137 Colo. 312, 324 P.2d 790;

Mr. Lomax, is also claiming cruel and unusual punishment. The substantive right to be free from cruel and unusual punishment stems from the Eighth Amendment of the U.S. Constitution. The Eighth Amendment's prohibition on cruel and unusual punishment encompasses not only "physically barbarous punishments" but also "punishments which are incompatible with the evolving standards of decency" or "involve the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (internal citations omitted).

The Supreme Court has interpreted this prohibition flexibly, measuring punishments challenged as in violation of it against 'evolving standards of decency...The court has generally indicated that it would apply the amendment to prohibit punishments it found barbaric or disproportionate to the crime punished." W. Allan Wilbur, "Cruel and Unusual Punishment," in Congressional Quarterly's Guide to the U.S. Supreme Court 575, 575 (Elder Witt ed.,1979).As the defendant/petitioner point out, the Eighth Amendment also bars wrongful confinement. See Mitchell v. N.M. Dep't of Corrs., 1993 U.S. App. LEXIS 13138, 1993 WL 191810, at *3 (10th Cir. June 1, 1993) ("Imprisonment beyond one's term can constitute cruel and unusual punishment.") However, he is seeking declaratory and injunctive relief as to past practices, and seek relief to remedy past harm.

The defendant and/or petitioner also allege he has been deprived of procedural and

substantive due process in violation of the Fourteenth Amendment in regards to his liberty interest, being incarcerated for almost 17 years in CDOC because of his due process violation and for lack of subject matter jurisdiction of the Denver County Court.

Mr. Lomax's initial lawyer Mr. Scott Reisch did not protect his National and State Constitutions, because he was denied both a Grand Jury investigation and a preliminary hearing within 48 hours or at any time.Petitioner made no waiver of a Grand jury investigation and/or his preliminary hearing that was intelligently made on record. His trial attorney was ineffective, and his trial was unfair and unconstitutional because he was not offered proper defense argumentation, he failed to investigate the state's witnesses, and no performance of professional strategy. He violated professional ethic. Furthermore, Mr. Lomax' right under the United States Constitution were violated because he did not have notice of the "nature and cause of accusation against him," and because the state court lacked subject matter jurisdiction over his case.

Mr. Lomax, was denied a preliminary hearing within 48 hours or at any time. The petitioner did not waive his preliminary hearing right C.R.S. 16-5-301(1) (a). See, Rule 5.1(a) of the *Federal Rules of Criminal Procedure* entitles a defendant charged with a non-petty offense to a public preliminary hearing before a federal magistrate judge. See, also 18 U.S.C. 3060(a). Preliminary examination. At the preliminary hearing, the court determines whether probable cause exists at the time of the hearing rather than at the time of arrest. See, e.g., Mendenhall v. Riser, 213 F.3d 226, 231 (5th Cir. 2000). Therefore, there was no probable cause found to bind the defendant for trial, the petitioner was not properly bounded over for a trial, and the defendant's right to a fair trial was substantially prejudiced by the People of the State of Colorado and his own attorney. The right is guaranteed... and allows a magistrate to determine whether probable cause exists to

believe that the defendant committed the offense. Overall, the court did not have subject matter jurisdiction and /or personal jurisdiction.

Mr. Lomax, believes his 5th, 6th, 8th, 9th, and 14th Amendments to the Constitution of the United States and the Colorado's State Constitution and Article IV (1876), Article V. Sec. 18, through the omitting of the enacting clauses and titles in the laws listed in the criminal complaint, as cited from the **Colorado Revised Statutes.** If the sentencing court lacked jurisdiction, then the conviction is void and must be set aside. Williams v. United States, 582 F.2d 1039, 1041 (6th Cir.). The trial court did not have jurisdiction over the subject matter and/or over the person.

The Ninth Circuit has held that when a government employee "invoke[s] the power of [his or her] office to accomplish the offensive act" clearly relates to the performance of official duties, and the employee acted under color of state law for the purposes of a 1983 action. McDade v. West, 223 F.3d 1135, 1140 (9th Cir. 2000). Therefore, there has been a breach-of-a-legal-duty-to-use-due-care standard of negligence and/or the wrongful-application-of-force standard.

A district court's decision will constitute an abuse of judicial power and/or discretion if it makes an error of law or clear error of fact, but "[r]eversal will not be granted unless prejudice is shown." City of Long Beach v. Standard Oil Co., 46 F.3d 929, 936 (9th Cir. 1995).

To warrant relief under 28 U.S.C. 2254 and/or 28 U.S.C. 2255 because of constitutional error, the error must be one of constitutional magnitude which had a substantial and injurious effect or influence on the proceeding. Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S. Ct. 1710, 123 L.Ed. 2d 353 (1993) (citation omitted0 (2254 case); Clemmons v. Sower, 34 F.3d 352, 354 (6th Cir. 1994); see also United States v. Cappas, 29

F.3d 1187, 1193 (7th Cir. 1994) (apply Brecht to a 2255 motion). If the **sentencing** court lacked **jurisdiction**, then the conviction is **void** and must be set aside. Williams v. United States, 582 F.2d 1039, 1041 (6th Cir.), cert. denied, 439 U.S. 988, 99 S. Ct. 584, 58 L.Ed. 2d 661 (1978).

THE TEST OF HISTORICAL EVIDENCE

I am asking the court to please consider and allow me to introduce my Exhibit A and B and/or questionnaire, and the reasons for granting the petition as evidence and a part of my pleading, see attachment(s).

Dr. Harvey W. Everest in his classic textbook, lists some criteria used to test historical evidence. When the criteria are met, we can judge the testimony to be the truth.

Frist, the evidence is credible when the witnesses are honest, competent, and have the opportunity to know.

Second, evidence is credible when the witnesses agree in general statement, although they may differ on minor points.

Third, evidence is credible when there is no known motive for imposture or faking.

Fourth, the testimony is reliable when the facts recorded are strongly against the well-being or interest of the narrator.

Fifth, the testimony is reliable when such witnesses are numerous.

Sixth, the testimony is reliable when the recorded facts and the existing facts are related as cause and effect.

Seventh, the testimony is reliable when recorded facts are sustained by existing documents, coins, games, or other public institutions.

The result, it is confidently believed, will be an undoubting conviction of their integrity, ability, and truth.

The court should consider: To decide whether a Section 2254 petition has proved a claim and a person is entitled to relief on the merits, the Court may be required to answer Three (3) sets of questions: (1) questions of fact; (2) question of law; and (3) mixed questions of law and fact. A question of fact is a question that focuses on whether or how a physical event took place in a world of space and time. A question of fact that requires an inquiry into basic, primary, historical facts; it involves a recital of external events and an examination into the credibility of the narrators. A question of law is a question that focuses on determining what the governing legal standards are that apply to the facts of the case. A mixed question of law and fact is a question that focuses on whether, applying the correct legal standard to a material fact, a ruling or decision should be for or against the petitioner. Stated differently, a mixed question of law and fact involves applying the governing legal principles to the historical facts of the case.

The following is a summary of issues that may be collaterally attacked in 2254 pleading.

1. The underlying conviction
   (a) Is void for lack of personal jurisdiction
   (b) Is void for lack of subject matter jurisdiction because of the operation of the federal statutory law, or perhaps;
   (c) Is void for lack of subject matter jurisdiction as a matter of state law.
2. The underlying conviction or sentence was obtained in violation of the United States Constitution; or
3. The custody is a result of federal constitutional error not affecting the validity of the conviction or sentence. See **Gagnon v. Scarpelli**, 411 U.S. 778 (1973); **Prizer v. Rodriguez**, 411 U.S. 475 (1973); and **Morrissey v. Brewer**, 408 U.S. 471 (1972).

Furthermore, 28 U.S.C. subsect. 2254 (d) : An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceeding unless the adjudication of the claim-

(1) Resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The following are grounds for relief for constitution grounds concerning unconstitutional conviction and sentence that may be available.

Custody, pursuant to unconstitutional state court conviction or sentence, is custody in violation of the Constitution and subject to 2254 attack. A conviction or a sentence of a state court is unconstitutional under the Federal constitution in the following circumstances:

(1) A conviction is unconstitutional if the state statute defining the offense, or some other state statute affecting the validity of the finding of guilt, violates the provision in the United States Constitution, whether the statute conflicts with

(a) The First Amendment;

(b) The Interstate Commerce Clause;

(c) The Impairment of Contracts Clause; and

(d) Any other provision of the constitution which limits the exercise of State power.

(2) A state conviction is unconstitutional even though the statute defining the offense, or any other governing statutes'constitution of the conviction was obtained in

violation of the Federal constitutional right, that is, if the conviction resulted from the denial of procedural rights secured by the constitution. See **Jackson v. Virginia**, 443 U.S. 307 (1979).

Mr. Lomax and/or the Petitioner is presently in the custody of the Colorado Department of Corrections and/or Warden ~~Matt Winden~~ Jeff Long of the ~~Centennial~~ Sterling Correctional Facility. The petitioner is not validly confined and is thus entitled to **immediate release** or that the petitioner has **suffered a serious infringement of a fundamental constitutional right** resulting in a **significant loss of liberty**. Procedural Due Process, Scope of Protection: No State shall deprive **any person** of liberty without **due process of law. U.S. Constitution**, Fourteenth Amendment, subsection 1.

Preemption Principles

The Supremacy Clause of the United States Constitution provides that the laws of the United States are "the supreme Law of the Land; ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. In any preemption analysis, congressional intent is the "'ultimate touchstone.'" Tocher v. City of Santa Ana, 219 F.3d 1040, 1045 (9th Cir. 2000) (quoting Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516, 120 L. Ed. 2d 407, 112 S. Ct. 2608 (1992)), petition for cert. filed, (U.S. Nov. 29, 2000) (No. 00-916). Federal law preempts state law in three circumstances: (1) Congress explicitly defines the extent to which the enacted statute preempts state law; (2) state law actually conflicts with federal law; or (3) state law attempts to regulate "conduct in a field that Congress intended the Federal Government to occupy exclusively." Choate v. Champion Home Builders Co., 222 F.3d 788, 792 (10th Cir. 2000) (citing English v. General Elec. Co., 496 U.S. 72, 78-79, 110 L. Ed. 2d 65, 110 S. Ct. 2270 (1990)). " Congress' enactment of a provision defining the pre-emptive reach of a statute implies that

matters beyond that reach are not pre-empted." Cipollone, 505 U.S. at 517.

(B) Article VI subsection 3- 'Original Jurisdiction'. Article VI, subsection 2 U.S. Constitution- This Constitution, and of the United States which shall be made in Pursuant therof...shall be the Supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding. U.S. Constitution Article VI subsection 3- The Senators and Representatives before mentioned, and Members of the several State Legislatures, and all executives and judicial Officers, both in the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;... State of Colorado Constitution (C) Article XIII subsection 8.

Mr. Lomax, allege and/or claim and that the government (The People of the State of Colorado/Judge Morris B. Hoffman/Prosecutor Doug Jackson), acting under color of state law violated and deprived the defendant and/or the petitioner of both his procedural and substantive due process rights under the Fifth, Eighth, Ninth, Fourteeth Amendments and/or Colorado's State Constitution. Judge Hoffman and Prosecutor Doug Jackson both violated the oath taken by them and/or of their duties.

The Due Process Clause applies when government action deprives a person of life, liberty; accordingly, when there is a claimed denial of due process, a court must consider the nature of the individual's claimed interest. Greenholtz v. Inmates of Nebraska Penal and Correctional Complex 442 U.S. 1, 7, 60 L. Ed. 2d 668, 99 S. Ct. 2100 (1979). "This has meant that to obtain a protectable right a person must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it" See Greenholtz, 442 U.S. at 7 (citation omitted). (B) Article X subsection 13-"Where a rule providing relief from a void judgment

is applicable, relief is not a discretionary matter, but is mandatory, see Orner v. Shalala, 30 F.3d 1307 (Colo. 1994). Also see, the State of Colorado Article II subsection iii (25)- 'Due Process of Law'...and Article II subsection (i) (6) "Equality of Justice"... "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right justice should be administered without sale, denial or delay".

These decisions underscore the truism that "[d]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. Arnett v. Kennedy, at 167-168 (POWELL, J., concurring in part); Goldberg v. Kelly, at 263-266; Cafeteria Workers v. McElroy, at 895. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See, e.g., Goldberg v. Kelly, supra, at 263-271.

Mr. Lomax, unindicted felony charge of sexual assault caused him egregious harm. See Farrakhan v. State, 263 S. W. 3d 124, 145 (Tex. App.- Houston [1st Dist.] 2006). *"The*

juvenile court thus improperly assumed jurisdiction to try such an offense. Moreover, the general jurisdiction of the district court was not divested by the Act." Abbott v. People, 91 Colo. 510, 510, 16 P.2d 435, 435, 1932 Colo. LEXIS 402, *1 (Colo. November 28, 1932). Furthermore, the court reversed the trial court's judgment and remanded with directions to the trial court to vacate its judgment and dismiss the action.

Because the defendant and/or petitioner was never **indicted** for **sexual assault**, (nor did the trial court have proper **jurisdiction)** the jury charge egregiously harmed defendant, and his conviction for **sexual assault** violated his due process rights, he did not waive **indictment**. The misconduct of Mr. Lomax's Lawyer and the State Prosecutor failing to present his felony offense before a grand jury is actually and substantially prejudicial, because he was not **indicted** by the grand jury. See Mattis, 854 N.E. 2d at 1153; State v. Edmonson, 113 Idaho 230, 237, 743 P.2d 459, 466 (1987); Black's Law Dictionary 1179 (6th ed. 1990) (a prejudicial error is one that affects the final result of the proceeding). See 24-72- 304. Inspection of criminal justice records. Mr. Lomax' Lawyer and the State Prosecutor both violated the oath taken by them and/or of their duties and/or misconduct.

But he was charged by **information**. Mr. Lomax, did not voluntarily, knowingly, or intelligently waive his **indictment** and/or his **preliminary hearing**, he did not have a **proper preliminary hearing** or **sign a preliminary hearing waiver agreement**. Article VII, section 5(3)-5, defines how a person may be charged with a crime punishable as a felony. The charge may be initiated by a grand jury **indictment**. Or Const. Art. VII, subsec. 5(3). Alternatively, a felony charge may be initiated by a district attorney's **information** if the person charged appears before a circuit court judge and knowingly waives **indictment**, Subsec. 5(4). Therefore, a felony charge may be initiated by a district attorney's **information** if the **information** is accompanied either by a **preliminary**

hearing before a magistrate to establish probable cause or by the person's **knowing waiver of a preliminary hearing.**

"As a matter of due process, an Offender may not be sentenced on the basis of mistaken facts or unfounded assumptions." See, Townsend v. Burke, 384 U.S. 736, 740-741 (1948). Also see, Colo. Const. Art. XVIII, section 4. Felony Defined: The term felony, wherever it may occur in this constitution, or the laws of this state, shall be construed to mean any criminal offense punishable by death or imprisonment penitentiary, and none other.

Indictment (Criminal law) means- The formal written accusation of a crime, made by a grand Jury and presented to a court for prosecution against the accused person. See, Fed. R. Crim. P 7. The **Indictment** and the **Information**. **(a) When Used. (1)** Felony. An offense (other than criminal contempt) **must** be prosecuted by an **indictment** if it is Punishable: **(A)** by death; or **(B)** by imprisonment for more than one year. **(b) Waiving Indictment**. An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment. **Colo. Const. Art. II, Section 8. Prosecutions- Indictment or Information**. Until otherwise provided by law, **no person shall, for a felony**, be proceeded against criminally otherwise than by **indictment**, 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. In all other cases, offenses shall be prosecuted criminally by indictment or information.

"Ignorance of the law does not excuse misconduct in anyone, least of all sworn officers of the law." In Re McCowan, 177,93, 170 P. 1100 (1917)."**The style of the laws of this state shall be: 'Be it enacted by the General Assembly of the State of Colorado**.'" Courts in other **states**, construing similar state constitutional provisions, have ruled that the

precise form of the so-called "**enacting** clause" **is** mandatory in the official publication of the **laws** and that a significant defect or its absence renders the legislative act unconstitutional. See Palmer v. Arkansas, 137 Ark. 160, 208 S.W. 436 (1919); Sjoberg v. Security Savings & Loan Ass'n, 73 Minn. 203, 75 N.W. 1116 (1898). However (it has been stated), no **Colorado** appellate court has ruled on the question of whether a flaw in the **enacting clause** or its absence renders an **act unconstitutional**.

MEMORANDUM OF LAW

THE NATURE OF SUBJECT MATTER JURISDICTION

Statement of Issues.

a. First Issue:

Argument and Authorities:

The jurisdiction of the court over the subject matter has been said to be **essential**, **necessary, indispensable**, and an **elementary perquisite** to the exercise of the judicial power.The term "jurisdiction" is notoriously malleable and is used in a variety of contexts (e.g., personal jurisdiction) that have nothing whatever to do with the court's subject matter jurisdiction. See Hugi, 164 F.3d at 380-81. In very general terms, "jurisdiction" means something akin to "authority over." Black's Law Dictionary 855 (7th ed. 1999). United States v. Gonzalez, 311 F.3d 440, 443, 2002 U.S. App. LEXIS 23937, *7-8 (1st Cir. P.R. November 22, 2002). "[A] court's inherent authority does not allow it to act where it would otherwise lack jurisdiction." In re McKinney, 158 N.C. App. at 443, 581 S.E.2d at 795. "'A court cannot undertake to adjudicate a controversy on its own motion . . . before a court may act there must be some appropriate application invoking the judicial power of the court with respect to the matter in question.'" Id. at 444, 581 S.E.2d at 795 (emphasis omitted) (citation omitted). For this reason, a defense based upon lack of subject matter

jurisdiction "cannot be waived and may be asserted at any time. Accordingly, the appellants may raise the issue of jurisdiction over the matter for the first time on appeal although they initially failed to raise the issue before the trial court." In re Green, 67 N.C. App. 501, 504, 313 S.E.2d 193, 195 (1984) (citations omitted), see also In re Z.T.B., 170 N.C. App. 564, 613 S.E.2d 298, 300 (2005) (holding that when defects in a petition raise a question of the trial court's subject matter jurisdiction over the action, the issue may properly be raised for the first time on appeal).

A court cannot proceed with a trial or make a judgement without such jurisdiction existing. It is elementary that the jurisdiction of the court over the subject matter of the action is most critical aspect of the court's authority to act without it, the court lacks any power to proceed forward. Therefore, defense based upon this lack cannot be waived and may be asserted at any time. Matter of Green, 313 S.E. 2d 193 (N.C. App. 1984). "The law provides that once state and federal jurisdiction has been challenged, it must be proven," 100 S. Ct 2502 (1980). "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." Melo v. U.S., 505 F.2d 1026. "Jurisdiction, once challenged, cannot be assumed and must be decided," Main v. Thiboutot, 100 S. Ct. 250. "The burden shifts to the court to prove jurisdiction," Rosemond v. Lambert, 469 F.2d 416.

Subject matter jurisdiction "cannot" be conferred by waiver or consent, and may be raised at any time, Rodrigues v. State, 411 So. 2d 1129 (Fla. App. 1983). The subject matter jurisdiction of a criminal case is related to the cause of action in general, and more specifically to the alleged crime or offense which creates the action. The subject matter of a criminal offense is the crime itself. Subject matter in it's broadest sense means the cause, the object, or the thing in dispute, Stillwell v. Markham, 10 P.2d 15 135 Kan. 206 (1932).

The Fifth Amendment provides that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a **presentment** or **indictment** of a Grand Jury...The grand jury determines if there is probable cause to believe that a crime has been committed and protects citizens against unfounded prosecutions. See, U.S. v. Sells Eng'g Inc., 463 U.S. 418, 423 (1983); see also U.S. v. Cotton, 535 U.S. 625, 634 (2002) ("Fifth Amendment grand jury right serves a vital function... as a check on prosecutorial power"); see, e.g., In re U.S., 441 F.3d 44, 58 (1st Cir. 2006) (grand juries investigate criminal allegations and protect citizens against prosecutorial misconduct). Mr. Lomax, did not waived his **indictment** right, therefore, his rights and due process were violated, and the criminal court did not have subject matter jurisdiction and/or personal jurisdiction.

An **indictment** in a criminal case is the only means by which a court obtains subject matter jurisdiction, and is "the jurisdictional instrument upon which the accused stands trial," State v. Chatmon, 671 P.2d 531, 538 (Kan. 1983). The **indictment** is the foundation of the jurisdiction of the court. Thus, if these charging instruments are invalid, there is a lack of subject matter jurisdiction. Without a formal and sufficient **indictment** a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime. Honomichi v. State, 333 N.W. 2d 797, 798 (S.D. 1983).

A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties, and where the **indictment** or **information** is valid the court is without jurisdiction. Exparte Carlson, 186 N.W. 722, 725, 176 Wis. 538 (1922). Without a valid **indictment** any **judgment** or **sentence** rendered is, void ab initio. Ralph v. Police Court of El Cerrito, 190 P.2d 632, 84 Cal. App. 2d 257 (1984); Sauls v. Sauls, 40 Colo. App. 275 (1977). The validity of a judgment depends upon the court's jurisdiction over the person and the subject matter involved. A judgment

rendered without jurisdiction is void. McLeod v. Provident Mutual Life Insurance Co., 186 Colo. 234, 526 P.2d 1318; In re the Marriage of Zubia, 38 Colo. App. 471, 558 P.2d 1003. In Klancher v. Anderson, 113 Colo. 478, 158 P.2d 923, the Supreme Court distinguished jurisdiction from the exercise of jurisdiction:

"The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction; and when there is jurisdiction of the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. . . .

"[J]urisdiction is the power to hear and determine . . . [and] the power to decide necessarily carries with it the power to decide wrongly as well as rightly. . . ."

Jurisdiction to try and punish for a crime cannot be acquired by mere assertion of it, or invoke otherwise than in the mode prescribed by law, and if it is not so acquired or invoked any judgment is a **nullity**, 22 C.J.S. "Criminal Law" Sec. 167, p. 202.

The charging instrument **must not only** be in the particular **mode** or **form** prescribed by the **constitution** and **statutes** to be **valid** but it also **must** contain reference to **valid laws**. **Without valid laws,** the **charging instrument is insufficient** and **no subject matter jurisdiction** exist for matter to be tried. Where an **information** charges no crime, the court lacks jurisdiction to try the accused. People v. Hardiman,347 N.W. 2d 460, 462, 132 Mich. App. 382 (1984). Whether or not the complaint charges an offense is a jurisdiction matter. Ex parte Carlson, 186 N.W. 722, 725, 176 Wis. 538 (1922). An **invalid law** charged against one in a criminal matter also negates subject matter jurisdiction by the sheer fact that it fails to **create a cause of action**. "Subject matter is the thing in **controversy**." Holmes v. Mason, 115 N.W. 770, 80 Neb. 454. Further, citing Blacks Law Dictionary:

"Without a valid law, there is no issue or controversy for a court to decide upon. Thus, where a law does not exist or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter jurisdiction to try one for

an offense alleged under the law."

If a criminal statute is unconstitutional, the court lacks subject matter jurisdiction and cannot proceed to try the case. 22 C.J.S. "Criminal Law", Sec. 157 P. 189, People v. Katrink, 185 Cal. Rptr. 869, 136 Cal. App. 3d 145 (1982). Where the offense charged does not exist, the trial court lacks jurisdiction, State v. Christensen, 329 N.W. 2d 382, 383, 110 Wis. 2d 538 (1983).

Not all statutes create a criminal offense. Thus, where a man charged with a statute which does not create a criminal offense, such person was never legally charged with any crime or lawfully convicted because the trial court did not have jurisdiction of the subject matter. State ex rel. Hansen v. Rigg, 258 Minn. 338, 104 N.W. 2d 553 (1960). There must be a valid law in order for subject matter to exist.

In a case where a man convicted of violating certain sections of some laws, and he later claimed that the law were **unconstitutional** which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

"If these section are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be legal cause for imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law." Kelly v. Meyers, 263 Pac., 903, 905 (Ore. 1928).

Without a valid law there can be no crime charged under that law, and where there is no crime there is no controversy or cause of action, and without a cause of action there can be no subject matter jurisdiction. To try a person of violating said law. The court then has no power or right to hear and decide a particular case involving such **invalid** or **nonexistent** laws. These authorities and others make it clear that if there are **no valid laws** charged against a person, there is **nothing** that can be deemed a **crime**, and without a crime there is no **subject matter jurisdiction**. Further, invalid or unlawful laws make the complaint fatally defective and insufficient, and without a valid **indictment** there is a lack of subject matter jurisdiction.

The accused/petitioner asserts that the **allege laws** charged against him are not **valid**, or do not **constitutionally** exist as they do not conform to certain **constitutional prerequisites**, and thus are **no laws** at all which prevents subject matter jurisdiction to Denver County Court or trial court. The accused and/or petitioner has come to realize after

intense and serious research, that these **allege laws** and/or **statutes** used in the complaint against the accused/petitioner, are located in and derived from a collection of "**Copyrighted Books**" entitled **"Colorado Revised Statues."** Upon researching these copyrighted statues in this publication, they do not **adhere** to several **Constitutional provisions of the Colorado Constitution**. According to Article IV of the Colorado Constitution (1876), that all lawmaking authority for the state is vested in the **General Assembly Colorado**. This article also prescribes certain **forms, modes**, and **procedures** that must be followed in order for a **valid law** to exist under the **Constitution**. It is fundamental that **nothing** can be a **law** that is not **enacted** by the **General Assembly** prescribed in the **Colorado Constitution**, and which fails to conform to **constitutional, forms, prerequisites**, and **prohibitions**. These are grounds for challenging the subject matter jurisdiction of the criminal court, since the validity of the **law** on the complaint goes to the jurisdiction of the court. The following explains in authoritative detail, and why the **laws** cited in the complaint against the accused and/or petitioner are not **constitutional valid laws**.

BY MANDATE, "ALL LAWS" MUST HAVE AN ENACTING CLAUSE

b. Second Issue:

Argument and Authorities:

One of the forms that all laws are required to follow by the Colorado Constitution (1876) which contains an enacting style or clause. This provision is stated as follows: **Colo. Const. Art. V, Section 18. The style of all laws of this state shall be; "BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF COLORADO." (Effective date August 1, 1876).**

Each of the statutes the accused and/or petitioner was convicted of C.R.S. # 18-3-402-(1) (a); C.R.S. # 18-3-402 (1) (e); and C.R.S. # 18-3-404 (1) (e).None of the laws cited in the complaint against the accused/petitioner, as found in the **"Colorado Revised Statutes"** 2005, 2006, and 2007 contain any form of **"Enacting Clauses."** As constitutionally required by the Colorado Constitution Article V. Sec. 18. And Legislative Construction of Statutes 2-4-213, form of enacting clause. The Constitution provision which prescribes an enacting clause for all laws is not directive, but is mandatory. This provision is to be strictly adhered to as asserted by the Supreme Court of Minnesota:

Upon both principle and authority, we hold that Article 4, Sec. 13, of the

Constitution, by the Legislature of the State of Minnesota, is mandatory and that a statute without any enacting clause is void. See, Sjoberg v. Security Savings & Loan Assn., 73 Minn. 203, 212 (1898). Also see, Collier & Cleveland Lithographing Co. v. Henderson, 18 Colo. 259, 32 P. 417 (1893).

The United States Court of Appeals for the Tenth Circuit stated as follows:

... While it is true that the Colorado Constitution requires inclusion of an enacting clause in and publication of each state law... See, Stevens v. Colorado, 18 Fed. Appx. 779, 780, (10th Cir. Colo. September 17, 2001).

THE PURPOSE FOR PROVISION FOR AN ENACTING CLAUSE

c. Third Issue:

Argument and Authorities:

To determine the validity of using laws without an **enacting clause** against **citizens**, we need to determine the **purpose** and **function** of an **enacting clause**, and see what **problems** or **evils** were intended to be avoided by including such a provision in our State Constitution.

The purpose of thus prescribing an enacting clause is the style of the act, and to establish it, and to give it permanence, uniformity, and certainty; to identify the act of legislation as of the **General Assembly**; to afford evidence of it's **legislative statutory nature**; and to secure uniformity of identification, and thus prevent inadvertence, possibly mistake and fraud. State v. Patterson, 4 S.E. 350, 352, 98 N.C. 660 (1887); 82 C.J.S. Statutes Sec. 65, p. 104; Joiner v. State, 155 S.E. 2d 8, 10, 223 Ga. 367 (1967). The object of the **style of a bill** or **enacting clause** is to show the authority by which the **bill is enacted into law**. Also, to show the **act** comes from a place pointed out by the **constitution** as the **source of legislation** by the **General Assembly**. Ferrill v. Keel, 151 S.W. 269, 272, Ark. 380 (1912).

To fulfill the purpose of identifying the lawmaking authority of the law, it has been repeatedly declared by the courts of this land that an **enacting clause** is to appear **on the face of every law** which the people are to **follow** and **obey**. The almost unbroken custom of centuries has been to **preface laws** with a statement in some form declaring the **enacting authority**. The purpose of an **enacting clause of statute** is to identify it as an **act** of legislation by expressing **on it's face** the **authority** behind the **act**, 73 Am. Jur. 2d

"Statutes" Sec. 93 p. 319, 320; Preckel v. Byrne, 243 N.W. 823, 826, 62 N.D. 365 (1932). For an enacting clause to appear on the face of a law, it must be **recorded** or **published** with the **law** so that the public can readily **identify the authority** for that **particular law** which they are expected to **follow**. The statutes (C.R.S.# 18-3-402 (1) (a); C.R.S. # 18-3-402 (1) (e): C.R.S. # 18-3-404 (1) (a)) used in the complaint against the accused and/or petitioner had no **enacting clause**, as required the **Colorado Constitution, Art. V Sec. 18,** and the legislative construction of statutes as prescribed in **Colorado Revised Statutes 2-4-213**. Both, clearly state the laws of this State shall be as follows; **"BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF COLORADO."** They cannot be identified as laws of the legislation of the state of Colorado or enacted by the **General Assembly of Colorado** pursuant to it's Constitutional Mandate under Article V Sec. 18, of the Constitution of Colorado (1876) and C.R.S. 2-4-213, since a law mainly identified as a true Constitional law by way of it's **enacting clause**.

The Supreme Court of Georgia asserted:

"That a statute must have an enacting clause, even though their state constitution had no provision for the measure. The court stated that an enacting clause establishes a law or statute as being a true and authentic law of the state. The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity." Joiner v. State, 155 S.E. 2d 8, 10 (Ga. 1967).

The failure of a law to display on it's face an enacting clause deprives it of essential legality, and tenders a statute which omits such clause as "a nullity and of no force of law". Joiner v. State, supra. The statutes cited in the complaint have "no jurisdiction identity" and are "not authentic laws under the Constitution of Colorado".

The Court of Appeals of Kentucky held that:

The Constitutional provision requiring an enacting clause is a basic concept which has a direct affect upon the validity of the law.

The court, in dealing with a law that had contained no "enacting clause", stated:

The alleged act or law in question is unnamed it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it where, upon each enactment for the sake of identity, and to assume and show responsibility.

While the "Constitution" makes this a necessity, it did not originate it. The custom is in

use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, they were not the first to be prefaced with a **Statement of Authority**. The law was delivered to Moses in the name of the **Great I Am**, and the Prologue to the **Great Commandments** is no less majestic and impelling. But, whether these edicts and commands be **promulgated** by the **Supreme Ruler** or **petty kings**, or by the **sovereign people** themselves, they have always begun with some such form as an evidence of **power** and **authority**. Commonwealth v. Illinois Cent. R. Co., 170 S.W. 171, 172, 175, 160 Ky. 745 (1914).

The **laws** against the defendant and/or petitioner are **unnamed**. They show no sign of **authority on their face** as recorded in the **Colorado Revised Statutes**. They carry with them no evidence that the General Assembly of Colorado, pursuant to Article V Section 18 of the Constitution of the State of Colorado (1876), and legislative construction of statutes 2-4-213, form of enacting clause, is "responsible" for these laws. Without an enacting clause, the laws referenced to in the complaint have no "official evidence" that they are from an authority which I am subject to or required to obey.

When the question of the objects intended to be secured by the **enacting clause** provision was before the Supreme Court of Minnesota, the Court held that:

Such a clause was necessary to show the people who are too obey the law, the authority for their obedience. It was revealed that historically, this was a main use for an enacting clause, and thus it's use is a fundamental concept of law, and the Court stated:

All written laws, in all times and in all countries, whether in the form of decrees issued by absolute monarch, or statutes enacted by King and Council, or by a representative body, have as a rule, expressed upon their faces the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. If such an enacting clause is a mere matter of form, a relic of antiquity, serving no useful purpose, why should the Constitutions of many of our states require that all laws must have an enacting clause, and prescribe its forms? If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted so that the people who are to obey them need not search legislative and other records to ascertain the authority, that it is not beneath the dignity of the framers of the Constitution, or unworthy of such an instrument, to prescribe a uniform style for such

an enacting clause.

The words of the Constitution that the style of all laws of this State shall be, "***Be it enacted by the Legislature of the State of Minnesota,***" imply that all laws must be so expressed or declared to the end that they may express upon their face the authority by which they were enacted, and if they did not so declare, they are not laws of the state. ***Sjoberg v. Security Saving & Loan Assn, Minn, 203, 212-214*** (1898). This case was initiated when it was discovered that the **law** relating to building saving and loan associations, had no **enacting clause** as it was printed in the **statue book**, "Laws 1897, P. 250. The court made it clear that a law existing in that manner is **VOID.** ***Sjoberg, supra, at P.214. Sjoberg, supra, P. 214.***

The purported laws in the complaint which defendant and/or petitioner is said to have violated are referenced to various laws found printed in the Colorado revised Statute book. I have looked up the laws charged against me and found no enacting clause for any of these alleged laws. A citizen is not expected or required to search through other records or books for the enacting authority. If such enacting authority is not "on the face" of the laws which are referenced in a complaint, then they are not laws of this state and thus are laws to which I am subject. Such they are not laws of this state, the above named Court has no subject matter jurisdiction, as there can be no crime which can exist from failing to follow laws which do not constitutionally exist. In speaking on the necessity and purpose that each law be prefaced with an enacting clause, the Supreme Court of Tennessee quoted the first portion of the Sjoberg case cited above, and stated:

The purpose of provisions of this character is that all statues may bear their faces a declaration of sovereign authority, by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe command respect and aid in the enforcement of laws. State v. Barrow, 104 S.W. 526-29, 119 Tenn., (1907).

Petitioner contends that the use of an enacting clause does not merely serve as a "flag" under which bills run the course through the legislative machinery. See Vaugn Ragsdale Co v. State Bd. of Eq., 96 P.2d 420-24 (Ont. 1939). The enacting clause of a law goes to its substance, and is not merely procedural. Morgan v. Murry, 328 P.2d 644-54 (Mont. 1958). (Any purported statues which has no enacting clause on its face is not legally binding and obligatory upon the people), as it is not constitutionally a law at all. The Supreme Court of Michigan, inciting numerous authorities, said that an enacting clause was a requisite to a valid law since the enacting provision was mandatory:

The laws in the **Colorado Revised Statutes** do not show on their face the authority by which they are adopted and promulgated. There is nothing on their face which declares they should be law, or that they are of the proper legislative authority in the state. These and other authorities all hold that the enacting clause of a law is to be **"on it face"** of the law does not and cannot mean that the enacting clause can be buried away in some other volume or some other book or records.

> **FACE – The surface of any thing, especially the front, upper, or outer part of surface that which particularly offers itself to the view of a spectator that which is shown by the language employed, without any explanation, modification or addition from intrinsic facts or evidence. Black's Law Dictionary, 5th Ed., p. 530.**

The enacting clause must be intrinsic to the law, and not "extrinsic" to it. That is, it cannot be hidden away in other record or books. Thus, the enacting clause is regarded as part of the law and has to appear directly with the law, on it face, so that one charge with said law knows the authority by which exist.

LAWS MUST BE PUBLISHED AND RECORDED WITH ENACTING CLAUSES

Since it has been repeated held that an enacting clause must appear "on its face" of a law, such a requirement affects the printing and publishing of laws. The fact that the Constitution requires "all law" to have an enacting clause makes it a requirement and not just bills without the Legislature, but on

published laws, as well. If the Constitution said "all bills" "shall" have an enacting clause, it probably could be said that their use in publishing would not be required. But the historical usage and application of an enacting clause has been for them to be printed and published along with the body of the law, thus appearing on the face of the law. It is obvious, then, that the enacting clause must be readily visible "on its face" of a statue in common mode in which it is published so that citizens did not have to search through the legislative or other records and books to see the kind of clauses used, or if an exist at all. Thus, a law in a statue book without an enacting clause is not a valid publication of law.

In regards to the validity of law that was found in their "statute books" with a defective enacting clause, the Supreme Court of Nevada held:

Our Constitution expressly provided that the enacting clause of "every law's shall by; The People of the State of Nevada, represented in senate and assembly, do enact as follows: This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, required that "all laws" to be biding upon, shall their face, express the authority by which they were enacted and since this act comes to us without such authority appearing "on its face" it is not a law. State of Nevada v. Rogers, 10 Nev. 120, 261 (1875); approved in Caine v. Robbons, 131 P.2d 516-18, 61 Nev. 416 (1942): Kefauver v. Spurling, 290 S.W. 14-15 (Tenn. 1926).

Petitioner asserts the manner in which the law came to the Court was by the way it was found in the statue book, cited by the Court as Statue 1875, session 66, and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, which had an insufficient enacting clause on its face, it was deemed to be "not a law". It is only by inspecting the publicly printed in the statute book which had an insufficient enacting clause on its face, it was deemed to be "not a law". It is only by inspecting the publicly printed statute book that the people can determine the source of authority and constitutional authenticity of the law they are expected to follow. It should be noted that laws in the above cases were held to be void for having no enacting clause despite that fact that they were published in an official statue book of the state, and were next to other laws which had the power enacting clauses.

The preceding examples and declarations on the use and purpose of enacting of enacting clauses show beyond that nothing can be called or regarded as a law of this state which is published without an enacting clause on its face "**Nothing**" ***can exist as a State of Colorado Constitutional law except in the manner prescribed by the State of Colorado Constitution***. Therefore, on of the provisions under Colorado law is that ***"all laws must bear on their face a specific enacting style, that it be enacted by the General Assembly of the State of Colorado. Colo. Const. Article, V. section 18 and Colorado Revised Statute Subsection, 2-4-213, forms of enacting clause."*** All laws must be published with this clause in order to be valid laws, and since the statues in the Colorado Revised Statues are not so published, they are not laws of the State.

THE LAWS REFERENCED TO IN THE COMPLAINT CONTAIN NO TITLES

The laws listed in the complaint in question, as cited from the Colorado Revised Statute, contain no titles. All laws are to have titles indicating the subject matter of the law, as required by the Constitution of the State of Colorado:

Article, V. Section: No Bill except general appropriate bills shall be passed containing more than one subject which shall be clearly expressly in it title, but if any subject "shall" be embraced in any act which "shall" not be expressed in the title, such act shall be "void" only as to so much thereof as shall not be so expressed.

Article IV, Section 20, of the Oregon Constitution, Provides in part

"Every Act shall embrace, but one subject and matters properly connected therewith which subject shall be expressed in the title, but if any subject "shall" be embraced in an act which shall not be expressed in the title. Such act shall be void only as to so much thereof, as shall not be expressed in the tile. See Melntire v. Forbes, 322 Ore. 426.

Nevertheless, as asserted above, by the provision, a title is required to be on all~~ows~~ laws. The title is another one of the forms of law required by the constitution. This type of constitutional provision 'makes

the title an essential part of ever law", thus, the title is as much a part of the act as the body itself. See Leininger v. Alger, 26 N.W. 2d 348-51, 316 Mich. 644 (1947). Therefore, the title to a legislative act is apart thereto and must clearly express the subject of legislation. See State v. Burlington & M. RR. Co., 60 Neb. 741, 84 N.W. (1900). Nearly all legal authorities have held that the title is part of the act, especially when a constitutional provision for a title exists. See 37 A.L.R. annotated pp. 984-89. What then can be said of a law in which an essential part of it is missing, except that it is not a law under the State Constitution? This provision of the State Constitution, providing that every law is to have a tile, expressing one subject is mandatory and is to be followed in all laws, as stated by the Supreme Court of Minnesota. **(Emphasis Added).**

We point out that our constitutional debates indicated that the constitutional requirements relating to enactment of statutes were intended to be remedial and mandatory; remedial, as guarding against recognized evils arising from looses and dangerous methods of conducting legislation; and mandatory, as requiring compliance by the legislature without discretion on its part to protect the public interest against such recognized evils, and that the validity of statue should depend on compliance with such requirement. Bull v. King, 286 N.W. 311, 313(Minn. 1939).

The constitutional provisions for a title have been held in many other states to be mandatory in the highest sense. State v. Beckman, 185 S.W. 2d 810, 816 (Mo. 1945): Leininger v. Alger, 26 N.W. 2d 348, 316 Mich. 644: 82 C.J.S. "Statues" subsection, 64 of p.102. The provision for a title in the constitution renders a title indispensable. 73 Am, Jur, Statutes, subsection, 99 P. 325. Citing, People v. Monroe, 349 III. 270, 182 N.E. 439. Since such provisions regarding a tile are mandatory and indispensable, the existence of a title is necessary to the validity of the act. If a title does not exist, then it is not a law pursuant to Article v. Section 21, of the Constitution of the State of Colorado (1876). In speaking of the constitutional provision requiring one subject to be embraced in the title of each law, the Supreme Court of Tennessee stated:

That requirement of the organic law is mandatory and unless obeyed in every instance. The legislation attempted is invalid and of no effect whatsoever. State v. Yardley, 32 S.W. 481, 482, 95 Tenn. 546 (1895).

Petitioner asserts to further determine the validity of citing laws in a complaint which have no titles, we must look at the purpose for this constitutional provision and the evils and problems which it was intended to prevent or defeat. One of the aims and purposes for a title or caption to an act is to convey to the people who are to obey it the legislative intent behind the law.

The constitution has made the tile the conclusive index to the legislative intent as to what shall have operation. Megins v. City of Duluth, 106 N.W 89-97, Minn, 23 (1906); Hyman v. State, 9 S.W. 372-73, 87 Tenn. 109 (1888):

In ruling as to the precise meaning of the language employed in a statute, nothing, as ~~of~~ we have said before, is more pertinent towards ascertain the true intention of the legislative mind in the passage of the enactment than the legislature's own interpretation of the scope and purpose contained in the caption. Wimberly v. Georgia, S. & F.F. Com 63 S.E. 29, 5 Ga. App. 263 (1908).

Under a constitutional provision requiring the subject of the legislation to be expressed in the title, that portion of an act is often the very window through which the legislative intent may be seen. See State v. Clinton County, 76 N.W. 986, 166 Ind. 162 (1906) without the tile the intent of the legislature is concealed or cloaked from public view. Yet a specific purpose or function of a tile to a law is to "protect the people against convert legislation." Brown v. Clower, 166 S.E. 2d 363-65, 225 Ga. 165 (1969). A title will reveal or give notice to the public of the general character of the legislation. However, the nature and intent of the law in the Colorado Statutes have been concealed and made uncertain by its non use of titles. The true nature of the subject matter of the law therein is not made clear without titles. Thus, another purpose of the title is to apprise the People of the nature of legislation, thereby, preventing fraud or deception in regard to the laws they are to follow. The United State Supreme Court in determining the purpose of such a provision in state constitutions said:

The purpose of the constitutional provision is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth, and fraud in legislation. Courts strictly enforce such provisions in cases that fall within the reasons on which they rest, and hold that, in order warrant the setting aside of enactments for failure to comply with the rule, the violation must be substantial and plain.

The complete omission of a title is about as substantial and plain a violation of this constitution provision as can exist. The laws cited in the complaint against the accused and/or petitioner is of that nature. They have no titles at all and thus, are not laws under the Colorado State Constitution.

The Supreme Court of Idaho, in construing the purpose for its constitutional provision requiring a one-subject title on all laws as stated, the object of the title is to give a general statement of the subject matter, and such a general statement will sufficient to include all provisions of the act having a reasonable connection with the subject matter mentioned. The object or purpose of the clause in the constitution is to prevent the perpetration of fraud upon the members of the legislature or citizens of the state in the enactment of laws. Ex parte Crane, 151 Pac. 1006, 1010, 1011, 27 Idalho 671 (1915).

The Supreme Court of North Dakota, in speaking on its constitutional provision requiring titles on laws, stated that:

This provision is intended to prevent all surprises or misapprehensions on the part of the public. State v. McEnroe, 283 N.W. 57 (N.D. 1983):

The Supreme Court of Minnesota, in speaking on Article 4, subsection 27, which is the same as Article, 5 of subsection 21, of the Colorado State Constitution said:

This section of the constitution is designed to prevent deception as to the nature or subject of legislative enactments. State v. Rigg, 109 N.W. 2d 314, 260 Minn, (1961); Leroy v. Special Ind, Sch. Dist., 172 N.W 2d 764, Minn. (1969).

Petitioner argues that the purposes of the constitutional provision requiring a one subject title and the mischief which it was designed to prevent are defeated by the lack of such a title on the face of the law, in which a citizen is charged with violating. Upon looking at the laws charged in the complaint fro the Colorado Revised Statutes? I am left asking "What is the subject and nature of the laws used in the complaint against me." What interests or rights are these laws intended to affect? Since the particular objects of the provision requiring a one-subject title are defeated by the publication of laws which are completely absent of a title, the use of such a publication to charge citizens with violating such laws is fraudulent and obnoxious to the constitution.

This provision prevent surreptitious, inconsiderate, and misapprehend legislation, carelessly, inadvertently, or unintentionally enacted through stealth and fraud, and similar abuses, that the subject or object of a law is required to be stated in the title. 73 Am. Jur. Statues, subject. 100, p. 325, case cited.

Judge Cooley says BW that the object of requiring a title is to "fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered." Cooley, Const. Lim., p. 144. The state constitution requires one subject titles. The particular ends to be accomplished by requiring the title of a law are not fulfilled in the statutes referred to in the **Colorado Revised Statutes**. Thus the laws charged in the complaint against me are not valid laws.

COLORADO REVISED STATUTES ARE OF UNKNOWN AUTHORITY

In their July 14, 2022 Order the Tenth Circuit (Court of Appeals) cited:

It is true that the Colorado Constitution specifies that "[t]he style of the Laws of this state shall be:" Be it enacted by the General Assembly of the State of Colorado.'" Colo. Const. Art. V. §18. But the Colorado Court of Appeals explained that "the enacting clause as published in the Session. Laws of Colorado satisfies [this] mandate... and its underlying policy. Consequently, the omission of the

enacting clause from the Colorado Revised Statutes does not render the statues unconstitutional." People v. Washington, 969 P.2d 788, 790 (Colo. App. 1998).

The so called statutes in **Colorado Revised Statutes** are not only absent enacting clause, but are surrounded by their other issues and facts which make their authority unknown or questionable. The title page of the **Colorado Revised Statutes** states that the statutes therein were, "compiled, edited, and published by the reviser of the Statutes of Colorado." It does not say that they are the official laws of the General Assembly of Colorado. The official laws of this state have always been listed in the Session Laws of the State of Colorado. The office laws of this state have always been listed in the Session Laws of the State of Colorado passed during the Forty Fourth Session of the State Legislature. The Colorado Statutes states that: "**Colorado Revised Statutes** must not be cited, enumerated, or otherwise treated as a Session Law." M.S. 3C. 07, Subd. 1.

The Session Law was also published by the ***Secretary of the State***, who historically and constitutionally is in possession of the enrolled bills of the legislature which become state law. The Constitution of Colorado, Article IV, Section 11 (1876) requires that every bill which passed both the Senate and House, and is signed by the Governor, is to be deposited "in the office of the Secretary of State for preservation." Thus in this state, as in nearly all other states, all official laws, records and documents are universally recognized by their being issued or published by the Secretary of State.

According to the Constitution, enacting and changing laws for a state, falls upon the Legislative branch of government, and that branch "cannot" delegate the power to any other. The Code of Commissioners or Revising Committee may be composed of lawyers, judges, and Private persons. It thus has been noted that "revisers have no legislative authority, and are powerless to lessen or expand the letter or meaning of the law." State v. Maurer, 164 S.W. 551, 552, 255 Mo. 152 (1944).

Therefore, the work of these committees "cannot" be regarded as law pursuant to the Constitution. The law they produce is another manner of law coming from a source other than the Constitution authorized source. These comprehensive revisions or codifications are like a private law approved by the legislature. The mass of laws written by reviser and codifiers "is not the law" of the legislature, even when approved by it. They were not enacted in the mode intended by the term of the Constitution. Also, since we have no legal relationship to the commission or committee that drafted the code or revised statutes, it would seem the laws they have no authority over us. This is made clear by the fact that these comprehensive codes and revisions have no sign or authority which all law is required to have.

When we look at the specific-subject codes, or the ancient codes of the past, such as the Code of Justinian, the Roman Twelve Tablets, or the Napoleonic Civil Code, we find in their contents or in their faces the authority by which promulgated. The specific-subject codes had what is called an "enacting clause" which is an office declaration of authority and authenticity. The modern-day codes have no such declaration of authority on their face or contents.

The **Colorado Revised Statutes** are published by the Reviser of Statutes, and are also copyrighted by him or this office. The Session Laws were "never" copyrighted as they are true public documents. In fact, "no true public document of this state or the United States" has been or can be under a copyright. Public documents are in the public domain. A copy right infers a private right over the contents of a book, suggesting that the laws in the Colorado **revised Statutes** is derived from a private source, and thus are "not" true public laws. The Reviser of the Statutes, in the preface of this statute book, called **Colorado Revised Statutes**, point out the difference in the various types of arrangements of laws, and states the following:

Conclusion

Based upon the above pleading and petition, the defendant and/or the petitioner moves that this action and cause to be dismissed and expunged from his record for lack of subject matter jurisdiction. For the following reasons:

1) A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. United States v. Siviglia, 686 Fed. 2d 832, 835 (1981), case cited.

2) Nothing can be regarded as a law in this State which fails to conform to the constitutional prerequisites which call for an enacting clause and title.

3) There is nothing in the complaint which can constitutionally be regarded as laws, and thus there is nothing in them which the defendant and/or petitioner is answerable for or which can be charged against him.

4) Since there are no valid or constitutional laws charged against the defendant and/or Petitioner, there are no crimes that exist, consequently there is no subject matter jurisdiction, which he can be tried in the above-named court, and/or pursuant to Colorado Revised Statutes subsection 18-1-410, Post-Conviction Remedy.

Done this 5 day of October, 2022.

Arthur J. Lomax

Arthur James Lomax, #134416

Sterling Correctional Facility

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