22-6993

NO. _____

IN THE UNITED STATES SUPREME COURT

Kenneth Ray Carlyle, Jr.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

P E T I O N F O R W R I T C E R T I O R A R I

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Kenneth Ray Carlyle, Jr.,
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QUESTIONS PRESENTED

1. Whether A Historical Analysis of the Second Amendment Reveals Felons Armed With Sawed-Off Shotguns Guarding Other Felons The Right of Property In Keeping and Bearing Arms Is Distinctly and Affirmed In the 2d Amendment To All Persons Born In The United States of America Including Ex-Convict Citizens Especially Those Who did Not Use Any Firearms To Commit The Prior Offense(s)?

2. Whether The Power To Regulate Commerce Include The Power To Convert the Free Exercise of an Unalieable Right Into A Crime?

3. Petitioner's Substantial Rights Were Affected Sufficient Enough to Merit Reversal Under Rule 52(b) Plain Error Standard Where the Jury Was Not Instructed to Find that the Firearm Petitioner Allegedly Possessed Had been Shipped or transported In Interstate Commerce Due to Fact That **Reheaif v. United States**, 139 S.Ct. 2191(2019) Was Decided After Petitioner Was Convicted And **Greer v. United States**, 141 S.Ct. 2090(2021) Did Not Address Whether Government Had To Prove Defendant Knew Firearm He Allegedly Possessed Had Been Shipped Or Transported In Interstate or Foreign Commerce As An Essential Element of the § 922(g) Offense?

4. Whether 922(g)'s Implied Constructive Possession Provision Is An Unconstitutional Strict Liability Provision Which Requires Only That A Defendant Voluntarily Be In A Motor Vehicle Or Other Place When He Knows That A Firearm Is The Same As The D.C. Code § 22-2511 Statute Declared Unconstitutional In **Conley v. United States**, 79 A.3d 270(D.C. 2013 D.C.)

5. Whether The Constitution Guarantees All Citizens The Right To Keep And Bear And Arms Except Those Who Use Those Arms In A Manner As To Terrify Other Citizens Unnecessarily Or Those Who Take Arms Against The United States or State In A Manner Prohibited By 14th Amendment § 3?

6. Whether 18 U.S.C. § 922(g) Violates 5th & 8th Amendment's Prohibition Against Cruel & Unusual Punishment Because It Seeks To Punish The Accused for the Exercise of A Clearly Written Constitutional Right?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

1. The Fifth Artice of the United States Constitution provides:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

2. The Sixth Article of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

3. The Second Amendment to the United States Constitution provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

4. The Fifth Amendment to the United States Constitution provides in part that:

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

5. The Fourteenth Amendment to the United States Constitution provides in part that:

> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

6. 18 U.S.C. § 922(g)(1) provides in relevant parts:

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

CITATIONS OF OPINIONS AND ORDERS IN CASE

Petitioner's Judgment of Conviction and sentence from the United States District Court for the Middle District of North Carolina was not reported, but is set forth in Appendix 1.

The United States Court of Appeals for the Fourth Circuit's opinion affirming Petitioner's conviction and sentence is not published but can be found on LexisNexis and Westlaw as unpublished opinion under **United States v. Carlyle**, 2022 U.S. App. Lexis 22282, 2022 WL 3278939(8-11-2022 CA4) a copy of that opinion is set forth in Appendix 2.

The United States Court of Appeals for the Fourth Circuit denying Petitioner's petition for rehearing and/or rehearing en banc is also set forth in Appendix 3.

JURISDICTIONAL STATEMENT

The judgement of the United States Court of Appeals for the Fourth Circuit was entered on August 11, 2022, and this petition followed after that court's denial of a timely filed petition for rehearing and/or rehearing en banc. Ergo, and as such the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On May 16, 2019, petitioner was convicted by a jury of keeping and bearing arms in violation of 18 U.S.C. § 922(g)(1) a statute passed in violation of the Amendment process mandated by Article V of the Constitution, contrary to the Infringement Clause of the Second Amendment and on account of his ancestral racial origin, in the U.S. District Court for the Middle District of North Carolina @ Greensboro, Case No. 1:18-cr-00376-TDS-1. A copy of the Judgment and Commitment is attached as Appendix 3.

On August 11, 2022, the Fourth Circuit affirmed petitioner's conviction and sentence rejecting his Rehaif v. United States, 139 S.Ct. 2191(2019) argument that Government was required to prove that petitioner knew he was a prohibited person under 18 U.S.C. § 922(g) via his prior condition of penal servitude as a free black felon, while failing to address whether Rehaif v. United States, 139 S.Ct. 2191(2019) required the Government to prove that the Defendant knew that the arms he allegedly kept and bore traveled in or affected interstate or foreign commerce.

Petitioner filed a motion or petition for rehearing and/or rehearing en banc which was subsequently denied.

Petitioner also moved this court for leave to file this petition beyond the 60 days time limit, said petition was within the time limits specified by this Court's rules.

During the interim the Third Circuit recently decided to hear a 922(g) case en banc in Range v. Ag, No. 21-2835.

I.
WHERE A HISTORICAL ANALYSIS OF THE SECOND AMENDMENT REVEALS FELONS ARMED WITH SAWED-OFF SHOTGUNS GUARDING OTHER FELONS THE RIGHT OF PROPERTY IN KEEPING ARMS IS DISTINCTLY AND AFFIRMED IN THE 2D AMENDMENT TO ALL PERSONS BORN IN THE UNITED STATES OF AMERICA INCLUDING EX-CONVICT CITIZENS

There are **Three Great Lights** where upon the Democracy of this Nation has been established. They are **"THE HOLY BIBLE," "The Declaration of Independence;"** and **"The United States Constitution."** Followed by the lessor lights of the Federal Code; the State Constitutions; and the laws of the several states. In Marbury v. Madison, 5 U.S. 1 Cranch 137, 177, 2 L. Ed. 60, 73(1803), our Supreme Court held some more than **200** years ago that our U.S. **Constitution** is by its own term as set forth under **Article VI, § 2,** "the **Supreme Law of the Land,**" That all legislative acts (including Acts of Congress), and all other acts of Government are inferior to "**the Supreme Law of the Land,**" and cannot be allowed to conflict with the Supreme Law. That courts must refuse to enforce any legislative acts and all other actions of Government (including judiciary or executive acts) which violate our Constitution. Which is to be regarded as the most fundamental law of this land." See the **Federalist No. 78,** Nov. 23, 1787(Alexander Hamilton); See also, McAllister v. United States, 35 L.Ed. 693, 141 U.S. 174 (quoting from the Federalist No. 78, Id., @ 141 U.S. 197). The Court also unequivocally asserted in recognizing the Constitution as a procedural mandate, that all Judges have a ministerial duty according to their **Article VI § 3** oath to support and enforce as the Supreme and most fundamental law of the Land. See also, e.g., Cook v, Curtis, 46 U.S. 295, 5 How. 295 @ 308, 12 L.Ed. 159 @ 166(1847)("The Constitution of the United States is the supreme law of the land, and binds every forum, whether it derives its authority from a State or from the United States. When this court has declared State legislation to be in conflict with the Constitution of the United States, and therefore void."); **Dred Scott v. John F.A. Sandford**, 15 L.Ed. 691, 19 How. 393-633([1856-57])("Constitution should have the meaning intended when it was adopted"); Ex parte Milligan, 71 U.S. (4 Wall) 2, 120, 18 L.Ed 281(1866)("The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances." No doctrine involving more pernicious consequences was ever invented by the writ of man than that any of its provisions can be

suspended during any of the great exigencies of the government); Kansas v. Burleson, 63 L.Ed 926, 250 U.S. 188("Where Federal authority is unopposed and the courts are open for administration of justice, constitutional guaranties of liberty cannot be disturbed by the President, Congress, or the Judiciary, in any exigency. The Constitution was intended for state of war as well as peace, and is a law for rulers as well as people."); See also, Duncan v. Kahanamoku, 90 L.Ed. 688, 327 U.S. 304 @ 335(1946)(same). "For no ... judicial officer can war against the [U.S.] Constitution without violating [one's] understanding [or oath] to support [and to obey] it," according to Cooper v. Aaron, 358 U.S. 1 @ 18, 78 S.Ct. 1397, 3 L.Ed.2d 1(1958). The Constitution is not some sort of flexible meaningless rules that can be bent or twisted to meet the factious ambitions of tyrant. "The Constitution is a written instrument as such, its meaning does not alter. That which it meant when it was adopted, it means now," according to South Carolina v. United States, 50 L.Ed. 261 @ 264, 199 U.S. 437 @ 448(1905). Therefore without an amendment thereto; The Constitution of the United States of America, still remains the Supreme Law of this country under our form of Constitutional Democracy, according to **Article VI, §§ 2-3** of our Constitution as set forth in Butler v. Ala. Judiciary Inquiry Comm'n, 245 F.3d 1257, 1260(11th Cir. 2001)("The Constitution of the United States of America is the supreme law of this country. Both state courts and federal courts have the authority and the duty to enforce the federal Constitution"), as mandated by their **Article V, § 3** oaths as outlined in **28 U.S.C. § 453**(Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, --, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as -- under the Constitution and laws of the United States. So help me God.") No judge nor any group of judges acting in concert, not even the Supreme Court is authorized to Amend any part of the Constitution. To do so, violates **Article V's** Amendment Clause and violates the separation of powers doctrine.

In the **Dred Scott Case**, which came before the United States Supreme Court during its 1856-57 term, and involved a determination of the constitutionality of the Missouri Compromise and of the legal

right of Negroes to become a United States Citizen or "to petition the Government for a redress of grievance" in federal courts. **Dred Scott** (1795-1858) a Negro of African descent was held in slavery by a Caucasian U.S. Army surgeon, John Emerson of Missouri. In 1836 Scott had been taken by Emerson to Fort Snelling, in what is now Minnesota, then a territory in which slavery was forbidden according to the terms of the Missouri Compromise.

While still on free territory, Scott had been allowed to marry a woman who had also been held in Slavery by Emerson. In 1846, after an attempt at self purchase, Scott brought suit in the state court on the grounds that residence in a free territory released him from slavery. The Supreme Court of Missouri, however, ruled in 1852 that upon his being brought back to territory where the enslavement of the Negro race was legal, the status of slavery reattached to him and he had no standing before the court.

With these established principles in mind, Congress, therefore had no delegated constitutional authority to pass the **Gun Control Act** of 1968, Pub.L.No. 90-618, 102, 82 Stat. 1213 (1968), or any provision of **18 U.S.C. § 922-924**, but more specifically, **§ 922(g)**, making the mere possession of a firearm or ammunition by a U.S. Citizen solely based upon one's previous condition of penal servitude without anything more, a federal crime. Because its violates the **Amendment Clause** prescribed in **Article V** of the original Constitution, and seeks to legislatively or constructively repeal the Second Amendment to the Constitution, imposing a punitive sanction upon citizens for exercising an inalienable right expressly given to all Americans. Where the Second Amendment states in plain and unambiguous terms that:

'... the right of the people to keep and bear Arms, shall not be infringed."

In its plain language the **Second Amendment** excludes no one born in the United States of America from bearing and keeping Arms. It does not state that "but in a manner to be prescribed by law," as it does in the Third Amendment; or that "Congress shall have power to enforce this article by appropriate legislation;" or the "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article," as it states in the post **Civil War Amendments 13-27**.

Neither does it stay that:

'A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms,**[except for: negroes; women; homosexuals; or those having been previously**

convicted of, a crime punishable by imprisonment for a term exceeding one year;'], shall not be infringed!'

Nor does it say that:

'A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed; **[except for those convicted of a felony against a State or the United States before a court of competent jurisdiction, who shall as part of any sentence imposed forfeit the right to keep and bear Arms, unless persons' right is restored by executive order or judicial degree]'.**

See, e.g., ***Counselman v. Hitchcock***, 142 U.S. 547 @ 565(1891)("Legislation cannot detract from the privileged afforded by the Constitution. It would be quite another thing if the Constitution had provided that no person shall be compelled in any criminal case to be a witness against himself, unless it should be provided by statute that criminating evidence extracted from a witness against his will should not be used against him. But a mere Act of Congress cannot amend the Constitution, even if should engraft thereon such a proviso.").

If so, then that would have rendered the proclamation of September 22, 1862, 12 Stat. at. L. 1267 abolishing slavery and the **Emancipation Proclamation**, Exe. Proclamation No. 17 (Jan. 1, 1863), reprinted in **12 Stat. 1268** (1863), giving Negroes and convicted felon Negroes firearms loaded with live ammunition in the Union Army an unconstitutional act, or enlisting convicted felons and giving them loaded firearms during World War II and allowing them their use in the U.S. Armed Forces when the government's continued and effective operation depended upon avenging Pearl Harbor, an unconstitutional act. See, Presidential Proclamation No. 2676, 60 Stat. 1335; or the use of convicted felons while under an actual judgment of conviction and sentence carrying riffles and loaded shotguns to oversee other convicted felons illegal. According to Congress' 1968 **repeal** of the **2nd Amendment** to the U.S. Constitution under the **Gun Control Act** of 1968. In attempting to justify its reasoning for limiting the type of weapons, the court in ***District of Columbia v. Heller***, 171 L Ed 2d, 677(2009) states that "The final section of the brief recognized that 'some courts have said that the right to bear arms includes the right of the individual to have them for protection of his person and property,' and launched an alternative argument that 'weapons which are commonly used by criminals,' such as **sawed-off shotguns**, are not protected. Herein lies the problem with that, seeing that those very same courts found no ought with inmates under a judgment of felony

conviction and sentence possessing and using "**sawed-off shotguns**" to supervise other inmates, although **18 U.S.C. § 922(g)** prohibited such as far back as June 19, 1968, P.L. 90-351, 82 Stat. 228). But such was not the finding in the following 8th Amendment cases such as, ***Roberts v. Williams***, 456 F.2d 819 @ 821(1971 CA5) where the Sheriff "had selected as **[an armed] trusty guard** Columbus Williams, a 23 year old man with a 4th grade education, who had been **convicted of assault with intent to kill**, and later of theft. Despite Williams' [violent felony] record, the trier of fact was not convinced that he was 'a person of murderous and malicious instincts." See also, ***James v. Murphy***, 392 F.Supp. 641(M.D. Ala. 1975); ***Hutto v. Finney***, 410 F.Supp.251(E.D. Ark. 1976); ***Ruiz v. Mckaskle***, 724 F.2d 1149(1984 CA5); ***Archie v. Christian***, 812 F.2d 250(1987 CA5); ***Douglass v. York County***, 2002 U.S. Dist. Lexis 12729(D.Me. 2002)("The York County jail was understaffed and had no female guard. Id. 147. It had a policy of using inmate 'turnkey' or 'trustee' who had possession of keys to all jail cells."); ***Neal v. Cooper***, 2007 U.S.Dist. Lexis 78918(W.D.La.)("Gun Guard#1-John Doe(1)), Gun Guard #2-John Doe (2), Inmate Earnest White,"); and 28 C.F.R. 541.23(a)(5) ("Inmates who have previously served as **inmate gun guard**, dog caretakers, or in similar positions in state or local correctional facilities."); ***Wilerson v. Sarver***, 72 F.R.D. 605, 72 F.R.D. 607-08; 1976 U.S. Dist. Lexis 12190(E.D. Ark. 1976)("In the final first amendment to his complaint for damages, he contends that he is entitled to damages from the defendants, Robert Sarver, Charlie Sides and Dr. Jack Eardley, for injury sustained by being **shot with a pistol by inmate Charlie Sides, acting as a trustee guard**, on **October 5, 1969**. ... The defendant Sides, a **[convicted felon] trustee guard, armed with a pistol** with two other guards..."); ***Jackson v. Hollowell***, 714 F.2d 1372, 714 F.2d 1373, n.2(1983 CA5)(On **February 6, 1973**, Arthur Jackson, an eighteen-year old inmate in the Mississippi State Prison (Parchman), lost his left eye as a result of a ricochet bullet fired from a **sawed-off shotgun** by Lepoleon Reed, an armed trusty shooter .... Under the classification system utilized at Parchman at the time of the incident, certain inmates were classified as 'trusty shooter.' These **inmates were armed with loaded shotguns** and were entrusted with the responsibility of guiding the other inmates." Why would the Second Amendment give a Citizen who is actually serving a sentence pursuant to a felony conviction, more rights "to keep and bear Arms" than it would to the ex-convict who has paid his debt or debts to society? See, also H.R. 3222(2007) permitting felons to join the military.

The Supreme Courts controlling case on possession of a firearm by an ex-convict without deciding anything more than merely possessing it was ***Scarborugh v. United States***, 431 U.S. 563, 52 L.Ed.2d 582, 97 S.Ct. 1963(1977), which only addressed the statutory construction of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 USC App 1202(a), which has been repealed, and did not address the constitutionality of the Act itself; and the Supreme Court's decision in ***Lewis v. United States***, 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198(1980), "an appeal from a conviction for being a felon in possession of a firearm. The challenge was based on the contention that the prior felony conviction had been unconstitutional. No Second Amendment claim was raised or briefed by any party." See, ***District of Columbia v. Heller***, 128 S.Ct. 2738, 171 L.Ed.2d 637,(2008) FN25. **18 U.S.C. § 922(g) & 924(e)** were put into effect in violation of the 2nd Amendment to the U.S. Constitution and constitutes an unlawful amendment or a legislative attempt to constructively repeal the **2nd Amendment** in contrary to the manifest tenor of Article V of the Constitution for the United States of America as well as being in violation of the **13th** through the **15th Amendments**. As further explained herein as follows:

II.
THE POWER TO REGULATE COMMERCE DOES NOT INCLUDE THE POWER TO CONVERT THE FREE EXERCISE OF AN UNALIEABLE RIGHT INTO A CRIME

"The Constitution [of the United States] is limited grant of power. Nothing is to be presumed but what is expressed therein." ***Hepburn & Dundas v. Ellzey***, 2 U.S. 445 @ 449, 2 L.Ed. 332 @ 334(1805). Furthermore, "[T]he government of the United States. For although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. Certain specified powers, enumerated in the Constitution, have been conferred upon it; and neither the Legislative, Executive nor Judicial Departments of the Government can lawfully exercise any authority beyond the limits marked out by the Constitution, ***Dred Scott v. Sandford***, 15 L.Ed. 691 @ 699, 19 How. 393 @ 401-402(1857). The "Constitution is the supreme law of the land, and no Act of Congress is of any validity which does not rest on authority conferred by that instrument," as set forth in United States v. Germaine, 99 U.S. 508 @ 510(1879).

Section 922(g)'s history begins in 1938, when Congress passed the Federal Firearm's Act ("FTA"). The FTA prohibited "individuals under indictment for, or convicted of, a crime of violence from shipping or transporting any firearm's or ammunition in interstate commerce." The Act only covered those under indictment in federal court and "crimes of violence" was commonly understood to include only those offenses "ordinarily committed with the aid of firearms.

According to legislative history, Congress implemented the FTA to combat roaming criminals crossing state lines. Without federal laws, ex-cons would simply cross state lines to circumvent conditions of probation or parole. The FTA's main goal then was to eliminate the guns from the bandits' hands, while interfering as little as possible with the so-called white law-abiding citizen. In Congress's eye, those under indictment for, or convicted of, a crime of violence had already "demonstrated their unfitness to be entrusted with such dangerous instrumentalities. The only problem being that Congress had exceed its authority under Article V's Amendment mandates to make any such laws. No matter how good its intentions were.

Almost 25 years later, in 1961, Congress amended the FTA to cover "all individuals under indictment, regardless of the crime they were accused of. Congress also removed the "crimes of violence" language, replacing it with "crime punishable by imprisonment for a term exceeding one year."

Congress expanded gun regulations yet again with Gun Control Act of 1968 ("GCA"). Key amendments included defining "indictment" to mean "an indictment ... in any court, thus adding persons indicted under state law. In full, the GCA criminalized receipt of a firearm or ammunition "by any person ... who is under indictment for, or who has been convicted in any court of a crime punishable by imprisonment fort a term exceeding one year. In 1968, Congress combined all prohibitions against persons not only indictment, but to include those who had been previously convicted of a felony in any state or federal court, regardless of whether a firearm had been used to commit the prior offense. An act which was primarily designed and historically intended to target and disenfranchise only those United Citizen's of Color from a clearly established historical analysis.

Until federalized by the FFA, prohibiting possession of a firearm, even by those convicted of violent crimes, was a rare occurence. For instance, it wasn't until 1886 that a state court held that a firearm regulation that " the condition of a person-rather than directly regulating his manner of carryin" was purportedly justified without any challenge to whether such regulation violated the Amendment clause of the Constitution. See, Missouri v. Shelby, 90 Mo. 302, 2 S.W. 468(Mo. 1886)(Upheld a ban on carrying a deadly weapon while intoxicated).

And even though other state courts eventually ruled on laws regulating the condition of a person, very few states prohibited felons-or any other type of person for that matter-from possessing a firearm. Indeed, by the mid-1920s, only six states had laws banning concealed carry by someone convicted of a crime involving a concealed weapon. See and compare State v. Kerner, 181 N.C. 574, 107 S.E. 222(N.C. 1921)(upholding ban on carrying a deadly weapon while intoxicated); State v. Hogan, 63 Ohio St. 202, 58 N.E. 572, 575-76(ohio 1900) (upholding a ban on carrying a firearm by 'a tramp'); C. Kevin Marshall, Why Can't Martha Stewart Have A Gun?, 32 Harv. J.L. & Pub. Pol'y 695, 708(2009) (New York is not included in the six because New York's Sullivan Law automatically revoked one's concealed carry license upon a felony conviction).

Whether this Nation has a history of disarming felons is arguably unclear-it certainly isn't clearly "longstanding." And what's even more unclear-and still unproven-is any historical justification for disarming those after they served their debts to society while allowing those under a judgment of conviction serving a sentence inside a prison for a felony offense of violence to be trusted to guard other convicted felons, armed with shotguns and rifles.

Furthermore, there's no historical justification for circumventing the Amendment Clause of the Constitution for the purpose of converting the free exercise of an enumerated right into a crime, other than for the purpose of disenfranchising those deemed the inferior race by those claiming to be the superior race. See, again, **Dred Scott v. Sandford**, 15 L.Ed. 691 @ 701, 19 How. 393 @ 407(1856)("We must inquire into who, at that time, were recognized as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared thier independence, and assumed the powers of government to defend their rights by force of arms." There were no "Negroes" or black ex-cons in those people that they were talking about!).

According to **Miller v. United States**, 422 U.S. 1025, 45 L. Ed. 2d 683, 95 S.Ct. 2620(1975)("The claim and exercise of a constitutional right cannot thus be converted into a crime."); **Elkison v. Deliesseline**, 8 F. Cas. 493 (1823 CA4)("It is in effect a repeal of the laws of the United States, pro tanto, converting a right into a crime.")

The Heller's statement that it does not cast doubt on the longstanding prohibitions against felon firearm possession, did not involve a felon-in possession law, was nothing more than deux ex machina dicta. That portion which expressed without any explaination of how they would fare in light of the Second Amendment or Article 5's Amendment Mandates. Especially where it had been more than 170 years between the passage of the Second Amendment in 1791 upto the illicit Congressional Amendment to that Second Amendment in 1961. Given the uncertain pedigree of felon dispossessions laws, though, the dictum sanctioning their application while simultaneously sidestepping the Second Amendment's original meaning is extremely odd and racially suspect.

Therefore and notwithstanding the fact that 18 U.S.C. §§ 922-924 were put into effect in violation of the Second Amendment, contrary to the Amendment Clause prescribed Article V, of the U.S. Constitution, such was not authorized under the Commerce Clause of Article I, § 8 cl. 3, of the U.S. Constitution to make any such arms and ammunition prohibition laws. Because "The power to regulated commerce does not include the power to prohibit, "the right of the people to keep and bear Arms' under the pain of imprisonment for mere simple possession of those Arms or ammunition by U.S. Citizens, without doing anything more, solely on account of race, colour, previous condition of penal servitude or prior conviction of the people. "To regulate" is not synonymous [or interchangeable] with to prohibit," according to **Ballentine's Law Dictionary 3d Ed.** The power to regulate does not include the power to prohibit. See, e.g., ***Miller v. Jones***, 80 Ala. 89, ***Bronson v. Oberlin***, 41 Ohio St. 476, 52 Am.Rep. 90; ***Ex parte Patterson***, 42 Tex. Crim. Rep. 256, 51 L.R.A. 654, 58 S.W. 1011; ***Duckwall v. New Albany***, 23 Ind. 283; ***McConvill v. New Jersey City***, 39 N.j.L. 38; ***People v. Gadway***, 61 Mich. 285, 1 Am. St.Rep. 578, 28 n.W. 101; ***Menaugh v. Orlando***, 41 Fla. 433, 27 So. 34; Re Hauck, 70 Mich. 396, 38 N.W. 275; ***State v. Debar***, 58 Mo. 395; ***Sweet v. Wabash***, 41 Ind. 7; ***Andrews v. State***, 3 Heisk, 165, 8 Am.Rep. 8; ***Ex Parte Byrd***, 84 Ala. 17, 5 Am.St.Rep. 328, 4 So. 397; ***State Mhlenbrink, Prosecutor v. Long Branch***, 42 N.J.L. 364. To engage in interstate commerce is a constitutional right, and not a privilege; therefore Congress can-not prohibit the exercise of such right. See, e.g., ***Crucher v. Kentucky***, 141 U.S. 47, 35 L.Ed. 649, 11 S.Ct. 851; ***Reid v. Colorado***, 187 U.S. 137, 47 L.Ed. 108, 23 S.Ct. 92; Employers' Liability Cases (***Howard v. Illinois C.R. Co.***) 207 U.S. 463, 52 L.Ed. 297, 28 S.Ct. 141; ***Western U. Teleg. Co. v. Kansas***, 216 U.S. 1, 54 L.Ed. 355, 30 S.Ct. 190; ***Paul v. Virginia***, 8 Wall. 168, 19 L.Ed. 357; ***Pullman Co. v. Kansas***, 216 U.S. 56, 54 L.Ed. 378 S.Ct. 232. In ***Cummings v. Missouri***, 71 U.S. 277, 18 L.Ed. 356 (1867), the Court, dealing with the prohibition of the Constitution against bills of attainder, expressed the view that punishment is not restricted to the deprivation of life, liberty, or property, but also embraces deprivation or suspension of political or civil rights. The court explained that the theory upon which the political instructions of the United States rest is that all men have certain inalienable rights, including life. liberty, and the pursuit of happiness, and that in the pursuit of happiness all avocations, all honors, and all positions are alike, open to everyone, that

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in the protection of all such rights all are equal before the law. It was said that any deprivation or suspension of any of these rights for past conduct is punishment, and cannot be otherwise defined."

If Congress was authorized by the U.S. Constitution to prohibit the mere simple possession of firearms and ammunition by citizens based upon their previous condition of penal servitude under **Article I, § 8, cl. 3**, of the U.S. Constitution's **Commerce Clause**; or if the **Commerce Clause** could be read as broadly as Congress has sought to legislatively modify it to read, to prohibit the right of property expressly given to "All Americans" "to keep and bear Arms [and ammunition] solely on account of a citizen's race, color, previous condition of penal servitude, or previous conviction under **Article I § 8, cl. 3** of the U.S. Constitution, then there would not have been any reason for creating the **18th Article in Addition** to, and Amendment of the Constitution of the United States of America, Proposed by Congress on December 18, 1917, and Ratified by the Legislatures of the Several States on January 29, 1919, Pursuant to the Fifth Article of the Original Constitution "prohibit[ing""**the manufacture, sale or transportation of intoxicating liquors within the United States ...**" or for the **21st Article in Addition to, and Amendment** of the Constitution of the United States of America, Proposed by Congress on February 20, 1933, and Ratified by the Legislature of the Several States on December 5, 1933, Pursuant to the **Fifth Article** of the **Original Constitution** repealing the **18th Amendment** to the Constitution of the United States of America. See, e.g., ***Rhode Island v. Palmer***, 253 U.S. 350, 64 L.Ed. 946(1920)("The declaration in the **[18th] Amendment** to the Federal Constitution that "the Congress and the several states shall have concurrent power to enforce this article by appropriate legislation" does not enable Congress or the several states to defeat or thwart the prohibition, but only to enforce it by appropriate means.").

Thereby wholly divesting the United States of America of any authority to substitute the Penal Code of state laws with federal criminal codes, and therefore lack jurisdiction to enforce **18 U.S.C. §§ 922(g) & 924(e)**, et seq., against non-federal employees, private citizens or in or on properties not expressly owned or lease by the United States.

Thus, clearly demonstrating that our United States Congress sitting or standing alone tapping on bathroom stalls and chasing underage pagers, had no delegated legislative authority under **Article V** of the U.S. Constitution to pass or to put into effect **Gun Control Act** of 1968, (viz., The Negro Control Act of

1968), or any provision of **18 U.S.C. §§ 922(g)-924(e)** but more specifically, **§ 922(g)**, the enforcement of in practice has operated to Amend or Repeal both **Commerce Clause, the 2nd and 14th** Amendments of the Constitution of the United States. Which violates the "Separations of Powers Doctrine," the **"Amendment Clause"** and **"the Supremacy Clause"** of the United States Constitution. Congress, cannot merely by legislating amend the Constitution. ***Myers v. United States***, 47 S.Ct. 21(1926); see also, ***Counselman v. Hitchcock***, 142 U.S. 547 @ 565(1891)("Legislation cannot detract from the privileged afforded by the Constitution. It would be quite another thing if the Constitution had provided that no person shall be compelled in any criminal case to be a witness against himself, unless it should be provided by statute that criminating evidence extracted from a witness against his will should not be used against him. But a mere Act of Congress cannot amend the Constitution, even if should engraft thereon such a proviso."); "Due process in the constitutional sense mean a prosecution under a valid law conducted according to the settled course of judicial proceedings, which includes notice and a hearing before a court of competent jurisdiction according to established modes of procedures. "***Frank v. Mangum***, 237 U.S. 309, 326, 59 L.Ed. 969, 979, 35 S.Ct. 582. "The legislative authority of the Union must first make an act a crime [in all of the manner prescribed by the constitution], affix a punishment to it, and declare the Court that shall have jurisdiction of the offence." ***United States v. Hudson***, 7 Cranch (US) 32, 34, 3 L.ed 259, 260(1806). If "[t]he Federal government is one of delegated and limited powers which derive from the Constitution. 'It can exercise only the powers granted to it.' Powers claimed must be denied unless granted; and, as with other writings, the whole of the Constitution is for consideration when one seeks to ascertain the meaning of any part." ***Perry v. United States***, 294 U.S. 330 @ 362, 79 L.Ed. 912, 923(1935). See, ***Ex parte Siebold***, 100 U.S. 376: ("An unconstitutional law is void, and is no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment."); ***Keeler v. Mayor of Cumberland***, 928 F.Supp. 591, 599(D. Md. 1996)("Of course, the label 'restoration' in this context is inappropriate. Congress writes laws -- it does not and cannot overrule the Constitution and thus is unable to restore' a prior interpretation of the First Amendment." (Memo. of United States at 19 (quoting H.R. Rep. No. 88 at 14 n. 3);) ***Rhode Island v. Palmer***, 253 U.S. 350, 64 L.Ed. 946(1920)("The prohibition of the manufacture, sale, transportation, importation, and

exportation of intoxicating liquors for beverage purposes, as embodied in the 18th Amendment to the Federal Constitution, is within the power to amend reserved by the 5th article of such Constitution."); *Igartua-de la Rosa v. United States*, 417 F.3d 145(2005 CA1), cert den, motion gr (2006) 547 U.S. 1035, 126 S.Ct. 1569, 164 L.Ed.2d 326(Right to vote in presidential election was fundamentally political right, pursuant to *U.S. Const. art. II, § 1, cl.2*, and could not be implemented as to Puerto Rican voters by courts in absence of statehood or amendment to Constitution, pursuant to *U.S. Const. Art. IV, § 3, cl. 1* or U.S. Const. art. V.); and *West Coast Hotel Co. Parish*, 300 U.S. 379, 404(1937)("The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase 'supreme law of the land' stands for and to convert what was intended as inescapable and enduring mandates into mere moral reflections."); compare with *Rhode Island v. Palmer*, 253 U.S. 350, 64 L.Ed. 946(1920); and *City Of Boerne v. Flores*, 138 L.Ed.2d. 624, 628(1997)("if Congress could define its own powers by altering the Fourteenth Amendment's meaning, then (a) the Constitution would no longer be superior paramount law, unchangeable by ordinary means, (b) it would be difficult to conceive of a principle that would limit congressional power, and (c) shifting legislative majorities could change the Constitution and effectively circumvent the difficult and detailed amendment process contained in Article V of the Constitution."

III.

PETITIONER'S SUBSTANTIAL RIGHTS WERE AFFECTED SUFFICIENT ENOUGH TO MERIT REVERSAL UNDER RULE 52(b) PLAIN ERROR STANDARD WHERE THE JURY WAS NOT INSTRUCTED TO FIND THAT THE FIREARM PETITIONER ALLEGEDLY POSSESSED HAD BEEN SHIPPED OR TRANSPORTED IN INTERSTATE COMMERCE DUE TO FACT THAT REHAIF V. UNITED STATES, 139 S.Ct. 2191(2019) WAS DECIDED AFTER PETITIONER WAS CONVICTED AND GREER V. UNITED STATES, 141 S.Ct. 2090(2021) DID NOT ADDRESS WHETHER GOVERNMENT HAD TO PROVE DEFENDANT KNEW THE FIREARM HE ALLEDGELY POSSESSED HAD BEEN SHIPPED OR TRANSPORTED IN INTERSTATE OR FOREIGN COMMERCE AS AN ESSENTIAL ELEMENT OF THE OFFENSE

On appeal, Carlyle contended that he was entitled to relief under Rehaif v. United States, 139 S.Ct. 2191(2019), which was decided after he was convicted and sentenced, that the evidence was insufficient for the jury to find that he knowingly possessed the firearm; and the district court erred at sentencing by applying an obstruction-of-justice enhancement under USSG 3C1.1.

However, the appellate court affirmed the judgment and conviction on its belief that Carlyle had not met his burden of showing that (1) an error, (2) that is plain, (3) and that affects substantial rights sufficient for a jury to have acquitted him. Notwithstanding the fact that there was plain error committed with regard to the failure to instruct the jury on whether Carlyle knew he was a prohibited felon, but never addressed whether the Government still had to prove that Carlyle knew the Arms he kept and bore had been moved in or affected interstate commerce under **Greer v. United States**, 141 S.Ct. 2090(2021), even after he brought this matter to its attention in his Motion for Rehearing and/or rehearing en banc.

Prior to Rehaif courts held that the Government need not prove that felon knew that the firearm was in or affected interstate commerce as set forth in **United States v. Privett**, 68 F.3d 101(1995 CA5), reh'g den. 77 F.3ds481(1996 CA5), cert. den. 517 U.S. 1226(1996); **United States v. Thetford**, 806 F.3d 442 (2015 CA8). However, this court never solely addressed this question when presented by Greer in **Greer v. United States**, 141 S.Ct. 2090(2021), but only focused on whether the government must prove that defendant knew he possessed a firearm and that he knew he was a felon when he possessed the firearm, not whether the defendant knew that the firearm he possessed had been moved in or affecting, shipped or transported in interstate or foreign commerce. According to Rehaif, now the Government must prove that the possession (or receipt or transportation) charged was in or affecting interstate (or foreign) commerce was known by the defendant at the time of possession./

IV.

WHETHER 922(g)'s IMPLIED CONSTRUCTIVE POSSESSION PROVISION IS AN UNCONSTITUTIONAL STRICT LIABILITY PROVISION WHICH REQUIRES ONLY THAT A DEFENDANT VOLUNTARILY BE IN A MOTOR VEHICLE OR OTHER PLACE WHEN HE KNOEW THAT A FIREARM IS THE SAME AS THE D.C. CODE § 22-2511 STATUTE DECLARED UNCONSTITUTIONAL IN CONLEY V. UNITED STATES, 79 A.3d 270(D.C. 1970)

The D.C. Court of Appeals, in the case of **Conley v. United States**, 79 A.3d 270(2013 D.C.) held that whether defendant's conviction of violating **D.C. Code § 22-2511**(2012), which made it a felony for a person to be in a motor vehicle if the person knew the vehicle contained a firearm, even if he or she had no connection to or control over the weapon and was not involved in any wrongdoing, had to be reversed on grounds **§ 22-2511** was unconstitutional, be cause the statute violated due process by imposing the burden on the defendant to prove, as an affirmative defense, that his presence in the vehicle was involuntary, thus shifting of the burden of persuasion on a critical component of the crime and it also violated due process by criminalizing innocent behavior--remaining in the vincinity of a firearm in a vehicle, which the average citizen would not suppose was wrongful-without requiring the government to prove the defendant had notice of a legal duty to behave otherwise.

By the same token **18 U.S.C. § 922(g)** violates due process by criminalizing the very same conduct declared unconstitutional in **Conley** as well as the Second Amendmentrwhich does not place the average citizen on notice that "the right of the people to keep and bear Arms, shall not be infringed" [except those "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year..."], which violates the Amendment Clause where the Constitution does not reference any felon prohibition in the same manner as it does not reference abortion as laid out by **Dobbs v. Jackson Women's Health Org**., 142 S.Ct. 2228(2022)

V.
WHERE THE CONSTITUTION GUARANTIES ALL CITIZENS THE RIGHT TO KEEP AND BEAR ARMS THEN IT CAN ONLY BE A CRIME TO EXERCISE THIS RIGHT IN SUCH A MANNER AS TO TERRIFY PEOPLE UNNECESSARILY

The power to regulate Arms under the **Commerce Clause**, merely gives Congress the power to tax, license dealers of Arms and at the most seize Arms found on those who failed to meet the tax or licensing requirements, but not to prohibit the mere possession of those Arms on the pain of imprisonment, if such has not been possessed or used in "**Piracies and Felonies committed on the High Seas**, and Offences against the Law of Nations," or "**Insurrections**," "**invasions**," or "**Treason**" against the united States, or any other act Congress is expressly authorized [t]o define the punishment" for under **Article I, § 8, cls. 6, 10, 17; Article III, § 3; Article IV, § 4** of the Original U.S. Constitutions; and under **Amendments 13 § 2; 14 § 5; 15 § 2; 19 § 2; 21**; and **26 § 2** to the Original U.S. Constitution. But not to prohibit the mere simple possession of Arms by U.S. Citizens, solely on their previous condition of penal servitude. The center piece of the Court's textual argument in Heller, is that the words "the people"[2] as used in the 2nd

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2 **8 U.S.C. § 1481(a)(7)** which states in pertinent part that:

"A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality -- ...
'(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section of 2385 of title 18, United State Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court marital or by a court of competent jurisdiction,'" is the only way that a person in the United States can lose or forfeit the Right to keep and bear Arms or any other Right prescribed under the Constitution. That's assuming that *8 U.S.C. § 1481*(a)(7) is itself constitutional.

Amendment must have the same meaning, and protect the same class of individuals, as when they are used in the preamble, the First, Fourth and Fourteenth Amendments to the Constitution. See, again, ***District of Columbia v. Heller***, 128 S.Ct. 2738, 171 L.Ed.2d 637, 2008 WL (2008). Which includes ex-felons and even citizens actually serving a sentence under a felony conviction. See, e.g, ***Worthing v. United States***, 166 F.2d 557(C.A. 6 1948)(Protection afforded by Fourth Amendment reaches all alike whether offenders, or suspected offender, or innocent, and duty of giving to it force and effects is obligatory upon all entrusted under our federal system with enforcement of laws."); ***National Fed'n of Fed. Employees v. Greenberg***, 789 F.Supp. 430, 440(D.D.C. 1992)("But in this country the Constitution protects all citizens, the guilty as well as the innocent, and a person need not prove himself innocent to be left alone."); ***United States v. King***, 587 F.2d 209, reh den (1979 CA5 Ga), 589 F.2d 1114, cert.den. 440 U.S. 972, 59 L.Ed.2d 789, 99 S.Ct. 1536(1979)("Jail inmate was citizen within meaning of 18 U.S.C. §§ 241-242 making it a federal felony to interfere with citizen in the enjoyment of Constitutional right); and ***United States v. Price***, 383 U.S. 787, 800, 86 S.Ct. 1152, 1160, 16 L.Ed.2d 267(1965)("The language of § 241 is plain and unlimited. As we have discussed, its language embraces all of the rights and privileges secure to citizens by all of the Constitution and all of the laws of the United States.").

Congress and the Courts by creating and enforcing "The ***Gun Control Act*** of 1968" (1968), **18 U.S.C. §§ 922(g)-924(e)**, have themselves become a willful participant in an ongoing conspiracy with the late Ku Klux Klansman Senator Byrd of West Virginia, et al., to violate the Negro citizens' 2nd Amendment rights. Which constitutes a felony under **18 U.S.C. §§ 241-242** and its 1940 predecessor.

Although it is acclaimed that **18 U.S.C. §§ 241-242**, creates no private rights, however, the statute create penalties which are applicable to anyone, including State and Federal Judges, Members of Congress and Executive Officers found in violation of its provisions. "The creation of the sanction in itself creates a duty on a Federal Officer not to commit acts which would invoke the imposition of the penalty." See, 94 Cong.Rec. 8075 (80th Cong., 2nd Sess.). The mass incarceration of U.S. Citizens of color for exercising our **2nd Amendment** "right to keep and bear Arms, based either "[up]on account of [our] race, color, or previous condition of [penal] servitude," is no different than having Federal officers lynching us based solely "[up]on account of [our] race, color, or previous condition of [penal] servitude. If Arms are not used

by that class of citizens to commit piracies or felonies upon the High Seas, rob, kill, or to rise in rebellion, insurrection or treason against the United States, the Second Amendment to the Constitution says that it is not a crime against the United States, even if "We The People" have a so-called felony conviction record. "In ***Nunn v. State***, 1 Ga. 243, 251 (1846), the Georgia Supreme Court construed the Second Amendment as protecting the 'natural right of self-defence' and therefore struck down a ban on carrying pistols openly." "A compendium of the Constitution of the Common Law in force in Kentucky 482(1822)('[I]n this country the constitution guaranties to all person the right to bear arms; then it can only be a crime to exercise this right in such a manner, as to terrify people unnecessarily." Quoting from ***District of Columbia v. Heller***, 128 S.Ct. 2738, 171 L.Ed.2d 637,(2008). More recently, the North Carolina Supreme Court in Britt v. State, N.C. No. 488Ao7, 8/28/2009, in rebutting the presumption of the validity of felon simple possession laws based on ***District of Columbia v. Heller***, 128 S.Ct. 2738, 171 L.Ed.2d 637, (2008), clearly stating that there is an "individual right" of "all Americans to keep and bear Arms," ruled that "Application of Felon-in-Possession Statute Offends Constitutional Right to Bear Arms." In Light Of ***McDonald v. Illinois***, 2010 WL2555188 (U.S.) * 11, 12, 170 S.Ct. 3020, 177 L. Ed. 2d 894(2010) and in further rebuttal of that presumption, several states including but not limited to Arizona, Alaska, Mississippi and Vermont Wyoming, have enacted laws allowing people to take guns to sporting events, into bars, churches and colleges. See **USA TODAY**, Monday, April 25, 2011, p. 8A.

V.I.

18 U.S.C. § § 922(g) & 924(e) VIOLATES 5TH & 8TH AMENDMENT's PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT BECAUSE IT SEEKS TO PUNISH THE ACCUSED FOR THE EXERCISE OF A CLEARLY WRITTEN CONSTITUTIONAL RIGHT

There can be no sanction or penalty imposed upon one because of his exercise of any constitutional rights. In ***Spevack v. Klein***, 385 U.S. 511, 87 S.Ct. 625, 17 L. Ed. 2d 574 (1967), for example, the Supreme Court held that an attorney could not be disbarred solely because he claimed his privileged against self-incrimination in refusing to provide records and testimony for an investigation into his alleged professional misconduct. "In this context 'penalty' is not restricted to fine or imprisonment. It means, as we said in *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L. Ed. 2d 106 (1965), the imposition of any sanction which makes assertion of the Fifth Amendment privilege 'costly.'" Id., at 515, 87 S.Ct. at 628." In ***Garrity v. New Jersey***, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), a companion case to *Spevack*, police

officers were convicted in a state court of conspiring to obstruct justice. During their trial, the prosecution was allowed to introduce inculpatory statements taken by investigators after the officers had been advised that refusal to give answers would lead to discharge from their positions. The Supreme Court reversed the convictions, holding that "The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent." Id. at 497, 87 S.Ct. at 618. See ***Boyd v. United States***, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886)(a statute offering the owner of goods in a forfeiture action an elections between producing a document or forfeiture of the goods at issue was held to be a form of compulsion in violation of both the Fourth and Fifth Amendments).

"To punish a person because he has done what the [Second Amendment to the Constitution] plainly allows him to do is a due process violation 'of the most basic sort." ***United States v. Goodwin***, 457 U.S. 368, 372, 73 L.Ed.2d 74, 102 S.Ct. 2485(1982)(quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 363, 54 L.Ed.2d 604, 98 S.Ct. 663(1978)). Accordingly, courts considering the issue have concluded that judges may not increase a criminal defendant's sentence based on the defendant's decision to plead not guilty. See, ***U.S. v. Frost***, 914 F.2d 756, 774(1990 CA6)(while insufficient evidence to support defendant's argument in this case, "'it is improper for a district judge to penalize a defendant for exercising his constitutional right to plead not guilty and go to trial'"); ***U.S. v. Citro***, 842 F.2d 1149, 1153-54(CA9), cert. den., 488 U.S. 866, 102 L.Ed.2d 140, 109 S.Ct. 170(1988)(disparity in sentences of coconspirators could indicate that constitutional right to stand trial impinged); ***U.S. v. Crocker***, 788 F.2d 802, 809(1986 CA1)(improper to punish defendant for bringing to trial case the judge considered frivolous); ***Hutchings***, 757 F.2d 11, 14 (CA2), cert.den., 472 U.S. 1031, 87 L.Ed.2d 640, 105 S.Ct. 3511(1985)("the 'augmentation of sentence' based on a defendant's decision to 'stand on [his] right to put the Government to its proof rather than plead guilty' is clearly improper"); ***U.S. v. Roe***, 670 F.2d 956, 973(CA11), cert.den., 459 U.S. 856, 74 L.Ed.2d 109, 103 S.Ct. 126(1982)("sentencing court may not present the defendant with a choice between admitting his guilt and enduring a harsher sentence for failing to do so"); ***U.S. v. Wright***, 533 F.2d 214, 216(1976 CA5)(even after defendant guilty by a jury, court cannot compel defendant to admit guilt prior to the imposition of sentence). But cf. ***U.S. v. Jones***, 973 F.2d 928, 937(CA DC), reh'g granted, 980 F.2d 746(1992)(interpreting

Supreme Court decisions on right to trial to hold that defendant's decision to plead not guilty could support judge's inference that defendant has not accepted responsibility); see also Appendix C Attachments to the [U.S.] Sentencing Guidelines Manual Amendment 347 ("This provision is not intended to punish a defendant for the exercise of constitutional right. A defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury), refusal to admit guilt or provide information to a probation officer, or refusal to enter a plea of guilty is not a basis for application of this provision. In applying this provision, the defendant's testimony and statements should be evaluated in a light most favorable to the defendant.").

The Supreme Court has long recognized that the exercise of a constitutional right can be burdened by penalties for short of jail time. See, e.g., ***Murdock v. Pennsylvania***, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292(1943)(invalidating $ 7 per week solicitation fee as applied to religious group); see also ***Forsyth County v. Nationalist Movement***, 505 U.S. 123, 136, 112 S.Ct. 2395, 120 L.Ed.2d 101(1992)("A tax based on the content of speech does not become more constitutional because it is a small tax") The penalty provisions under **18 U.S.C. §§ 922(g) & 924(e)** as they relate to the mere possession of a firearm violates the **5th & 8th Amendment's** prohibition against cruel and usual punishment, because it seeks "[to] punish a [U.S. citizen] because he has done what the [2nd Amendment to the U.S. Constitution] plainly allows him to do. As stated by Circuit Judge Merritt, in ***United States v. Pruitt***, 2008 U.S. App. Lexis 21843; 2008 Fed. Appx. 0384P(2008 CA6)("The defendant here is not an abstraction or a legalistic category. He is real-life person addicted to drugs, guilty of growing marijuana plants at his house -- where he also had three firearms like the 'Arms' the Supreme Court recently held "the people have the right to keep and bear" under the Second Amendment."). Thus, where the constitution, itself, is the Supreme Law of the Land, being superior to all other laws, Congress is prohibited by that very same Constitution from making any law that punishes any citizen for exercising a right expressly written in the Constitution. Thereby rendering all provisions of **18 U.S.C. § 922(g)** and **§ 924(e)** a nullity and anyone convicted thereunder, actually innocent in both fact and in law.

For it is not guns who kill people, it is people who kill people. It is how those Arms are used which should be the focus of Congress and not the previous condition of penal servitude of the Citizen found to be possessing Arms. If the people have a preference as to which citizens should and should not have "the right

to keep and bear Arms," then they are required to express their desire to be so said, in the manner prescribed by **Article V** of the original U.S. Constitution. Until then, "The Gun Control Act of 1968," **18 U.S.C. 922(g)-924(e)** are acts of Congress passed in violation of the Constitution, or in total disregard to its mandatory provisions, and is to the extent of such repugnance absolutely void. Thereby imposing upon the courts a non-discretionary duty to declare "The Gun Control Act of 1968," 18 U.S.C. 922(g)-924(e), unconstitutional and void ab initio, as mandated by the ***Federalist No. 78*** (11-23-1789), **Articles III & VI** of the U.S. Constitution, **Marbury v. Madison**, 5 U.S. 1, 137, 177(1803); and **Scott v. Sandford**, 15 L.Ed. 691, 699(1803). A law that criminalizes citizens for exercising their ***2nd Amendment*** "right to keep and bear Arms," solely based upon their previous condition of penal servitude, is no different than a law that criminalized acts of homosexuality. As indicated by the Supreme Court in **Lawrence v. Texas**, 539 U.S. 558(2003), striking down a Georgia Law which made it a felony to engage in homosexual acts and a Texas Law which made it a misdemeanor to do the same. The Constitution clearly gives all Americans an expressly stated "right to keep and bear Arms," but nowhere does it state in our Constitution that "the right of the people to engage in same sex sodomy shall not be infringed!" The Supreme Court held in **Hellenic Lines, Ltd v. Rhoditis**, 398 U.S. 306, 26 L.Ed.2d 252, 90 S.Ct. 1731(1970) that the Fifth Amendment [] by the due process clause of the Fourteenth Amendment extends their inalienable privileges to all 'persons' and guard against any encroachment on those rights by federal or state authority.' 398 U.S. 309 n.5, 26 L.Ed.2d 257 n. 5.

"As long ago as **Marbury v. Madison**, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60, it was said *** it is a general and disputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded: And in **Peck v. Jenness** 7 How. 612, 48 U.S. 612, 12 L.Ed. 841, it was recognized that "A legal right without a remedy would be an anomaly in the law.' In **Delima v. Bidwell**, 182 U.S. 1, 21 S.Ct. 743, 745, 45 L.Ed. 1041, it was said: 'If there by an admitted wrong, the courts will look far to supply an adequate remedy ... 'A disregard of the command of the statute is a wrongful act, and where it results in damage to one ... the right to recover the damages from the party in default is implied.'" ***Laughlin v. Riddle Aviation, Co.***, 205 F.2d 948, 949(1953 CA5).

CONCLUSION

Where petitioner brings forth a claim that the exercise of a constitutional right cannot thus be converted into a crime and where this court itself has held that "An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void." More than 132 years ago, in **Ex Parte Siebold**. That "a mere act of Congress cannot amend the Constitution", more than 128 years ago, which includes implying things that are not expressly written in the constitution as recently held in **Dobbs v. Jackson Womens's health Org.**, 142 S.Ct. 2228(2022), this court is obligated by its oath to support the Constitution of the United States to either grant certiorari and itself do a historical analysis of the felon disenfranchisement laws or grant, vacate and remand back to the Fourth Circuit for furtherrconsideration in light of New York State Rifle & Pistol Assn v. Bruen, 597 U.S. ____, 142 S.Ct. 2111, 213 L. Ed 2d 387(2022) as to whether 18 U.S.C. § 922(g·) violates either the Second Amendment itself or Article V Amendment Clause.

Resepctfully Submitted on 1-23-2023 By: Kenneth Ray Carlyle

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