III. Cover page – Rule 34

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

CASE NUMBER 23-6380

****

Noel Austin
Petitioner

VS.

STATE OF LOUISIANA,
Respondent

WRIT OF CERTIORARI – DIRECT COLLATERAL REVIEW

CRIMINAL DISTRICT COURT, PARISH OF JEFFERSON
DOCKET NO. 03-6329

TO THE COURT OF APPEAL, FIFTH CIRCUIT, NO. 23-KH-125

LOUISIANA SUPREME COURT

(In complete disregard of *Ward v. Love County*, 253 U.S. 17, 22; and *Staub v. Baxley*, 355 U.S. 313, 318-320, No State Court has addressed the merits of this claim, all State Courts skirted Federal-Preemption of State Law Question and resorted to procedural bars prohibited to claims of Federal-Preemption of State Law claims)

WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Respectfully Submitted By :

Noel Austin #305854
Main Prison, Ash-4
Louisiana State Penitentiary
Angola, La 70712

IV. QUESTIONS PRESENTED

1.) Whether this Honorable **United States Supreme Court, pursuant Article III**, once raised, is duty-bound to address the lower state court's deliberate transgression of jurisdictional barriers imposed by the Constitution of the United States pursuant the 14th Amendment?

2.) "Must" the issue of "jurisdiction be investigated and resolved once raised by one of the petitioning party(ies) to the litigation?

3.) Whether, when jurisdiction to adjudicate is wanting in the lower state court forum due to the black-letter of the Constitution of the United States, federally-preempting state law, can the lower State Court forum legally transfer jurisdiction to this Honorable United States Supreme Court, for a merit determination of the underlying claims or must jurisdiction be satisfied first?

4.) Whether the lower transferring State Court, while lacking jurisdiction to adjudicate, (due to the challenged judgment being the by-product of federally-preempted state law(s)), evade satisfying itself on the issue of Federal-Preemption of State law before attempted to reach any other judgment?

5.) Does Jurisdiction of the lower State Court becomes tainted by operation of Constitutional Amendments which forbade all State Legislatures from enacting certain types of laws? (i.e. No state shall make or enforce any law which shall abridge the privileges and immunities of the Citizens of the United States within their jurisdictions) When State Legislators openly declared their intent to disregard certain portions of the Federal Constitution?

6.) Whether an enforceable judgment can constitutionally arise out of application of Federally-Preempted State Laws, being used to deprive a person, recognized as enjoying substantive constitutional protections from the existence and operation of federally-preempted state laws?

7. Can the State District Court and Court of Appeals constitutionally invoke a State procedural Bar as the reason for declining to consider the Federal Preemption question in light of ***Ward v. Love County***, 253 U.S. 17, 22; ***Staub v. Baxley***, 355 U.S. 313, 318-320)?

8. Does the Question of Federal-Preemption go to the power of State Court over the subject matter of the controversy?

9. Can the question of jurisdiction be waived?

10. Can the question of jurisdiction be raised at any time, before any court in light of ***Seaboard Air Line Co. v. Daniel***, 333 U.S. 118, 122-123?

11. Does a claim of Federal Preemption of State Constitutional and State Statutory provisions properly raise a pure Federal Question of Law?

12. When pure Federal Questions of Law are properly presented in plain view of the court below, are such State Courts at liberty to disregard such a question?

13. Are State Courts allowed, under the existing decisions of the United States Supreme Court, to reject claims of Federal Preemption of State Laws which were expressly prohibited to all States to enact by the Constitution of the United States? (i.e. laws purposely designed to discriminate on the basis of race, color and/or previous condition of servitude)

14. Are Constitutional Articles and State Statutory Laws which are openly declared to and designed to discriminate against the negro on the basis of race, color and previous condition of Servitude, Federally Preempted from inception and *void ab initio*?

15. Because the 13th, 14th and 15th Amendments of the United States Constitution and 18 U.S.C § 242 prohibited discrimination or denial of rights, privileges, immunities on the basis of race color or previous condition of servitude, are State Actors obliged to give force to the federal provisions of law which allowed re-enslavement in violation of the United States Constitution?

16. Whether the Delegates of the Louisiana Constitutional Convent of 1898 launched a direct attack against the Supremacy of the United State's Constitution, in its ability to prohibit the enactment of State Laws which discriminate on the basis of race, color or previous condition of servitude?

17. Whether the Supremacy of the United States Constitution and the Federal Laws enacted with its Preemptive Power, require this Honorable Supreme Court of the United States, to strike down any/all laws which give effect to the Congratulatory Sentiment of Governor Mike Foster when he openly lamented:

> **The white supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the Constitution as a fundamental part and parcel of that organic instrument**, and that, too, by no subterfuge or other evasions. **With this great principle thus firmly imbedded in the Constitution**, and honestly enforced, there need be no longer any fear as to the honesty and purity of our future elections.

18. Whether Federal Preemption imposed by the Constitution of the United States, allowed the Delegates of the Louisiana Constitutional Convention of 1898 to enact laws under the openly declared and recorded umbrella of:

> "**The very reason of this Convention is, in morals, dishonest, for its purposes are to do in an indirect way what we cannot do directly**. The Fifteenth Amendment, to protect the negro and for that purpose alone, provides that the right of suffrage shall not be denied or abridged on account of race, color, or previous condition of servitude. **We propose to deny him that right on account of his race, color, or previous condition of servitude.** This **unconstitutional measure** we propose to enact through constitutional and honest means. **Well, I say it cannot be done through constitutional and honest means.** Whilst we might and must surround the right, after conferred, with proper safeguards, such as will secure an honest and fair expression of the suffragans' will at the polls, **we must limit the right to white men, and this we are of necessity compelled to do through dishonest means.**"
>
> Judge Coco

19. When the Delegates of the Louisiana Constitutional Convention of 1898, agreed upon the principle that:

> "every white man shall vote because he is white, and no black man shall vote, because he is black. We cannot put it in those words, ... but we can attain that result."

do that sufficiently reflect the intent to White-wash the language of the laws created yet, keep in place and full-force the objective to create State Laws in the form of a Constitution which would perpetually impose federally preempted deprivations of rights privileges and immunities guaranteed by the ***14th Amendment***, ***15th Amendment***, ***Civil Rights Act of 1866***, and the ***Voter's Rights Act of 1867***?

20. Did the Fifth Circuit Court of Appeal violate it's own decisions pursuant stare-decisis whereby claims of absolute nullities can be challenged at any time?

21. Did the Fifth Circuit Court of Appeal skirt its duties under the provisions of Federal Preemption as to Movant's un-counseled pleading regarding ***La. Const. Art. 1, § 17*** and ***La.C.Cr.P. Art. 782*** suffering Federal Pre-emption for violating the ***1st***, ***5th***, ***6th***, ***8th***, ***13th***, ***14th***, and ***15th Amendments of the United States Constitution*** by not addressing the claims in their judgment?

22. As a matter of documented Louisiana History: In 1898 Did Governor Foster commend (in derogation of the United States Constitution) the Delegates of the **1898 Constitutional Convention** for making 'White Supremacy' part and parcel of the State Constitution as an organic Instrument?

V. LIST OF THE PARTIES

[ ] All Parties appear in the caption of the case on the cover page

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

Appellant:

1. Noel Austin #305854
   Main Prison, Ash-4
   Louisiana State Penitentiary
   Angola, Louisiana 70712

RESPONDENTS:

2. Timothy Hooper, Warden, LSP
   Louisiana State Penitentiary
   Angola, LA 70712

3. Mr. Paul Connick, District Attorney (Respondent)
   24th Judicial District Court, State of Louisiana
   200 Derbingy, 5th Floor
   Gretna, La. 70054

4. Honorable Jeffrey Landry (Respondent)
   Attorney General
   Louisiana Department of Justice
   1885 North 3rd Street, 6th Floor, Livingston Bldg.
   Baton Rouge, La. 70802

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VII. INDEX OF APPENDICES INCLUDING OPINIONS DELIVERED IN THE COURTS BELOW

Appendix A	**State's Highest Court**
Court:	Louisiana Supreme Court –
Docket Number:	#
Date Decided:	October 10, 2023
Panel of Judges:	PDG, ILW, JDH, SJC, JTG, WJC, JBM
Disposition:	Jurisdictional challenge avoided to birth erroneous denial

Appendix B	Ruling **(jurisdictional challenge avoided by court again)**
Court:	Fifth Circuit Court of Appeal (State-level)
Docket Number:	23-KH-125
Date Decided:	Ruling: 2/02/2023
Judges:	PMS, DMM, & FJP
Disposition:	**writ denied**

Appendix C	Ruling **(jurisdictional challenge avoided by court)**
Court:	24th Judicial District Court
Docket Number:	03-6329
Date Decided:	January 6, 2023
Judges:	Hon. Fank A. Brindisi/Div. "E"
Disposition:	refused to acknowledge jurisdictional challenge and denied petition

TABLE OF AUTHORITIES

STATE CONSTITUTION

STATE STATUTES & COURT RULES

STATE CASES

Other Trusted Sources of Authority

IX. OPINIONS BELOW

Direct Collateral Review

State of Louisiana v. Noel Austin - *October 10, 2023 – La. Supreme court Denial*

State of Louisiana v. Noel Austin - *2/2/2023 – Appellate Court Denial*

State of Louisiana v. Noel Austin - *1/6/2023– Trial Court Denial*

X. JURISDICTION

The 24th Judicial District Court has engaged in practices forbidden by the United States Constitution (Supremacy Clause) and the express prohibitions in decisions rendered by this Honorable Court on the issue of Federal-Preemption of State Law. The 24th Judicial District Court reported in its decision that it received petitioner's pro se pleading challenging the State and Appellate Court jurisdiction and legal standing to make use of during a criminal prosecution despite those State laws Suffering Federal Preemption from their inception.

Ignoring the fact that the basis of petitioner's pleading was federal preemption of State Law, the trial court (in order to avoid adjudication of the primary federal issue) unexplainably treated petitioner's **Second and Successive Post-Conviction Relief** as a **Motion to Correct an Illegal** sentence (according to its June 1, 2022, judgment). This decision flies in the face of a myriad of decisions rendered by this Honorable Court, specifying; Local practice will not be allowed to defeat or put unreasonable obstacles in the way of a plain and reasonable assertion of Federal Rights." Davis, *General of Railroads vs.. Wechsler*, 263 U.S. 22, 44 S.Ct. 13.

In complete error, the 24th Judicial District Court and Subsequent reviewing State Courts, erroneously acted in total disregard of this Honorable Court's holdings in *English v. Electric Co.*, 496 U.S. 72, 78-79, 110 S.Ct. 2270 (1990), wherein it is specified that in order to properly adjudicate a claim of Federal Preemption of State Law, one must start with Congressional Intent. Failing to do this the Louisiana Fifth Circuit Court of Appeal, erroneously, denied petitioner's Writ of Review on 2/02/2023, the matter was challenged before the State Supreme Court, whom, in turn, disregarded the mandate set by this Honorable Court. The Court of Appeal conducted no search for Congressional Intent and denied relief.. To date, this remains the case. When Appellant learned of the existence of a judgment, he submitted a pleading to the State Supreme Court and again was denied relief. He sought rehearing, which remains pending, however, he did not wish to risk untimeliness before this Honorable Court. Movant has not, nor will he waive review before this Honorable Court. This issue is to important and fundamental to the continuing rule-of-law, nation-wide. Refusal to address the Federal Preemption of State-Law question serves as a State-Created impediment and frustrates the aims of the Constitution. The jurisdiction of this Honorable Court is hereby invoked pursuant *28 § 1254(1)* and/or *28 U.S.C. § 1257(a)* and/or *28 U.S.C. § 2101(e)*, alleging state laws as being repugnant to to the U.S. Constitution.

XI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *Fifth Amendment* to the United States Constitution provides, in pertinent part:

> No person shall .... in any criminal case .... be deprived of life, liberty, or property, without due process of law . . .

The *Sixth Amendment* to the United States Constitution, provides, in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to counsel . . .

The *Fourteenth Amendment* to the United States Constitution, provides, in pertinent part:

> "No State shall make or enforce and law which shall abridge the privileges and immunities of the Citizens of the United States within their jurisdiction.."
>
> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . .

In the court's below, petitioner set out a clear and unquestionable reason for raising this issue in the posture in which it is presented.. In constitutional error the courts below failed to honor the mandates of precedents of this Honorable Court, to adjudicate the Federal Question of Congressional Intent before the State Court's where is was duly raised. Louisiana State Court's have confronted this question in other cases and have fully adjudicated the issue until resolved. Here, the instant petitioner was not afforded the equal protection nor due process afforded to those litigants. Petitioner is without a remedy or recourse to any other state court because, in a concerted effort, they are refusing to adjudicate the question of: **Whether** *Article 1, § 17* **and** *Article 782 of the Louisiana Criminal Code of Procedure* **suffered federal-preemption from their inception as direct derivatives of** *Article 116 of the Louisiana Constitution of 1898*? All of which was (in violation of the substantive protections for Negroes in the *1st, 5th, 13th 14th and 15th Amendments* in conjunction with the operation of the *Supremacy Clause*) specifically enacted to discriminate against Negroes as a race and to disenfranchise the Negro from voting in areas of their Civil Existence. The *14th Amendment* forbade and withheld from all states, the legalized power to legislate Racism, Discrimination and White-Supremacy into the local State laws and practices.

XII. STATEMENT OF THE CASE

The State represents that it convicted Noel Austin of 2 Counts of Attempted Murder, 1 Count possession with intent to distribute cocaine, and one count of Agg. Battery, after a jury was composed using federally-preempted state laws, the trial court erroneously gave notice to the jury that it would accept a non-unanimous verdict from jurors pronouncing a conviction. This reliance is misplaced, as the verdict emerges from two (2) state laws which suffered Federal-Preemption as a matter of conclusive fact by existence and operation and express prohibitory language of the *14th Amendment*.

Lastly, petitioner has learned through decisions rendered by this Honorable Court, that the lower State Court forum and the lower federal court forum was without "legally enforceable jurisdictional standing" to proceed against his federal constitutional liberty interest and inherent birth-rights (protections) under the Constitution of these United States.

Particularly, those inalienable substantive rights which are covered by the *14th Amendment*. Here, appellant is a member and in the category of a protected class/race of people who have been singled out for disparate treatment through the foundation and functioning of the Louisiana Judiciary whose laws, this Court has recognized as rooted in proven and openly declared Racism as well as in furtherance of an openly declared White-Supremacist perpetual agenda.

XIII. REASONS FOR GRANTING THE PETITION

The petitioner contends that the lower State Court has grossly departed from proper constitutional proceedings as described in their own rules ***(S.Ct. Rule 10(a), 10(b) and 10(c))***, by ruling that: petitioner's had not established himself entitled to the relief sought as prescribed by the Constitution of the United States on the merits of the Federal Constitutional issues raised and that he was not entitled relief.

In accordance with this Court's ***Rules***, appellant Austin presents that the constitutional reasons for granting this writ application are as follows:

> This pleading inherently involves ***subject-matter jurisdictional to act barriers*** which were not addressed by the appellate court below. There is no tenable basis for failure and/or refusal of the lower court to consider

and address the Federal-Preemption question even if it is claimed that there was insufficient adherence to state procedural rules.

The Fifth Circuit Court has condoned the trial court's abuse of subject-matter jurisdiction to act, and the Fifth Circuit abused its requirement of assessing its subject-matter jurisdiction of a matter which falls squarely with the parameters of a "PURE QUESTION OF FEDERAL LAW" as presented and proceeded to render a decision erroneously affirming the lower trial court's judgment, which is contrary to the Supreme Law of the Land, and a gross departure from proper judicial procedures.

Gross Departure from Supremacy of the Federal Constitution and invocation of State Jurisdiction where there was none nor is there any.

It is likely that a majority of the court will vote to reverse the judgments below as having been secured in the absence of resolution of the issue of "jurisdiction" of the State Courts to proceed against his liberty interests

Under ***Article III, of the United States Constitution***, this Honorable Supreme Court, a Justice thereof, a Circuit Judge, or a district court shall entertain an application for a Writ of Certiorari in behalf of a person in custody pursuant to the judgment of a State court only if he is in custody in violation of the Constitution or laws or treatise of the United States. This appellant has no other remedy available before any other court wherein he can obtain the relief besides this one, due to the refusal of the lower State Court forums to "honor" the Supremacy of the United States Constitution, the clear and unambiguous language of the 14th Amendment.

Lastly, since the questions raised here (Federal-Preemption of: ***La. Constitution Article 116 (1898), La. Constitution Article 1, § 17 (1974),*** and ***La. Code of Criminal Procedure article 782)***, has never been decided, it would be both in furtherance of this Honorable Court's Supervisory and Appellate Jurisdiction to make a decisions upon which other courts can rely when confronted with the same question of law.

Contrarily, **the decisions of the State and lower Federal Courts squarely raises several Federal Constitutional Questions which have not previously been decided by this Honorable Court to the satisfaction of Louisiana Officials**. The questions of: ***What effect does a state court's prosecution facilitated in the absence of in jurisdiction due to reliance upon or usage of "known***

Federally-Preempted State Laws" have on subsequent proceedings rooted in the application of those known Federally-Preempted State laws?

This is not a limited question which will affect only a small portion of the citizens of this country. Rather it is one of the greatest importance, as it goes directly to the State and Federal Court's legal capacity/standing to act. Appellant urges that it would be proper for this Honorable Court to agree to entertain and answer the questions raised. The answering of the questions presented will be reflective of **Article III, Judges** commitment to the black-letter of the ***14th Amendment of the United States Constitution***. This decision will also be reflective of this countries ever-evolving standards of decency and justice for all. These questions are presented to inspire; in both concept and in practice, the uniformity of decision making in the state and federal courts throughout this great nation. The decision in this case will address the issue of: "When a question of federal law which calls into question the State Court's standing/jurisdiction to use laws which it knows or reasonably should know, suffer federal-preemption, can those preempted laws form the basis for the state level prosecution?" This matter has been placed squarely before the state judiciary for resolution, thus far, in desecration of the ***14th Amendment*** and rights which are supposedly inalienable, all have evaded the issue of whether entirely.

This Honorable Court is not called upon to alter a conviction or sentence (as a legal fact, he has none, because the prosecution was/is rooted in state laws which suffer federal preemption). Petitioner, asks for this Honorable Court to adjudicate: Whether the lower court forum, after being placed on "notice" that the lower State and Federal Courts rooted all their actions in State Laws which were preempted by the ***14th Amendment***, those courts can Constitutionally disregard settling the questions of federal Preemption of State Law as applied in the instant case?

Petitioner seeks to have this Honorable Court to end his illegal detention which he suffers as a result of arbitrary actions taken by a State Officials in violation of petitioner's substantive Federal Constitutional Protections, Privileges and Immunities; for the instant petition this is the court of last resort/remedy.

STANDING TO CHALLENGE SUBJECT-MATTER JURISDICTION

Objections to subject-matter jurisdiction may be raised at any time; thus, a party, after losing at

trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction, and indeed, a party may raise such an objection even if the party had previously acknowledged the trial court's jurisdiction. ***Henderson v. Shinseki***, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011)

NOTICE OF JURISDICTIONAL VIOLATION BY LOWER APPELLATE COURT

This matter was exhausted from the trial court, to the Fifth Circuit Court of Appeal and the Louisiana Supreme Court. However, ***the lower court forums failed to acknowledge that what was being argued was federal-preemption of identified state law(s)***. In fact, this case opposes the arguments urged in other cases by other claimants, as there was no need for them. This particular case urges a simple and straightforward declaration; the state law under review suffered federal preemption from inception. Louisiana litigants functioning under the false belief that they were convicted in truth never had a valid verdict; never had a valid conviction, nor have they every had a valid sentence. As derivatives of ***Art. 116 of the La. Const. Of 1898***, ***La. Const. Art.1,§ 17*** and ***La.C.Cr.P. art. 782***, all events occurring through the use of Federally-Preempted State Laws are absolute nullities, and the convened through the use of these laws could yield no valid verdict, conviction nor legally enforceable sentence.

X. JURISDICTION

The Louisiana Supreme Court as well as the State-level Fifth Circuit Court of Appeal, erroneously, denied Appellant's Direct Appeal at the time it was presented, jurisdiction was wanting.

The jurisdiction of this Honorable Court is hereby invoked pursuant ***Rule X***, the ***Louisiana Constitution of 1974*** and the ***14th Amendment, Section 2, United States Constitution as the Supreme Law of the Land.***.

XI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *First Amendment* to the United States Constitution provides, in pertinent part:

> Freedom of Speech

The *Fifth Amendment* to the United States Constitution provides, in pertinent part:

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

The Sixth *Amendment* to the United States Constitution, provides, in pertinent part: ...right to trial by jury....

The Thirteenth *Amendment* to the United States Constitution, provides, in pertinent part:

> ...prohibition against slavery...

The *Fourteenth Amendment* to the United States Constitution, provides, in pertinent part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

The *Fifteenth Amendment* to the United States Constitution, provides, in pertinent part:

> . . . nor shall any person be denied due process nor equal protection of the law on account of their race, color or previous condition of servitude . .

XII. STATEMENT OF THE CASE

The State of Louisiana convicted the Movant, Noel Austin, of two (2) counts of Att. 1st Degree Murder, a violation of ***La. R.S. 14:30***, and one count of possession with intent to distribute cocaine and one count of Agg. Battery. Austin plead not guilty at arraignment was later subject to a trial (wherein the jury had been illegally constituted and thus the verdict is not recognizable in law as it is *void ab initio* and Movant is under no legal obligation to recognize it) and the trial jury returned a legally void declaration of guilt.

Movant does not agree with the State's assessment that he was ever convicted of the underlying charged offense, as the act of carrying ***La. Const. Art 1, § 17*** and ***La.C.Cr.P. art. 782*** into effect carries with it fraud upon Movant and fraud upon society at large, as both laws are suffer Federal Preemption by the ***Supremacy of the Constitution of the United States*** as to several constitutional amendments contained therein. This legal atrocity is a violation of every substantive federal constitutional right and human right imaginable but the Appeals Court averred that:

> "The State of Louisiana charged the defendant, Noel Austin, by an amended grand jury indictment with six (6) counts of Att. first degree murder, and one count of possession with intent to distribute cocaine. He pled not guilty. After a trial was convened (using federally-preempted state laws), the trial jury returned a legally unacceptable "guilty as charged" on the counts presented.. The defendant was sentenced on count one as a habitual offender to life imprisonment at hard labor without the benefit of probation, parole or suspension of sentence. 50 yrs on count 2,

30 years on possession with intent to distribute., 10 years on count 5 and thirty-years on count eight. On the remaining counts three sentences of 50 years imprisonment was imposed at hard labor, to run concurrent to the sentence imposed on count one. The defendant appealed, but was not successful."

Movant explains throughout this pleading why he is in total disagreement with the crafted description of his experience(s) within the Louisiana Criminal Justice System. Movant was subjected to a mock-trial using Federally-Preempted States Laws to secure a false conviction against him was done to net the necessary documents in order to make his false imprisonment seem legally administered. This is a judicial atrocity, a deprivation of Federal Constitutional Rights facilitated under color of law and in violation of various Federal Criminal Statutory Prohibitions and Federal Civil Rights Acts.

XIII. REASONS FOR GRANTING THE PETITION EXPLAINED

The Appellant contends that the lower courts have grossly departed from proper constitutional proceedings *as described in S.Ct. Rule 10(a), 10(b) and 10(c),* by ruling that: Appellant's had not established himself entitled to the relief sought as prescribed by the Constitution of the United States on the merits of his issues raised. It is likely that a majority of the court will vote to reverse the judgment below, as the applicant has exhausted all state remedies and thoroughly presented Federal Questions of Law which affect the rights of those accused of crimes throughout the State of Louisiana.

Appellant remains in custody in violation of the Constitution or laws and/or treatise of the United States. This Appellant has no other remedy available before any other court wherein he can obtain the relief besides this one at this time. Lastly, since the most paramount question here is that of "jurisdiction of the lower courts", it would be both in furtherance of this Honorable Court's Supervisory and Appellate Jurisdiction to make a decisions upon which other courts can rely when confronted with the same Federal of Question of Law.

Further, **the decisions of the State Courts squarely raise several Federal Constitutional Questions which have not previously been decided by this Honorable Court** in a direct manner. However, this Honorable Court must first decide whether this Honorable Court has subject-matter jurisdiction over the pure federal law question of "Federal Preemption of *La. Const. Art. 1, § 17* and

La.C.Cr.P. art 782 respectively.

Should the court fail to establish proper subject-matter jurisdiction, this matter is immediately removable to the United States Supreme Court on grounds of State Court's acting without Subject-Matter Jurisdiction.

REASONS FOR GRANTING THE PETITION LISTED

1. The Supremacy Clause of the United States Constitution imposes Federal Preemption to restrict States from making laws (Louisiana especially) from returning to forms of racial-based discrimination prohibited by the *14th* and *Fifteenth Amendment* and the Lower State Courts refuse to adhere to the Supremacy of the United States Constitution wherein it operates to preempt the creation *La. Const. Art. I, § 17* and *La.C.Cr.P. art 782*?

2. State Court Judges are bound by the Supremacy of the United States Constitution as the Supreme Law of the Land. Louisiana Courts have not only recognized this in other cases, but the Federal Preemption/Prohibition against the States to restrain them from creating racially motivated enactments which install, promote and preserve White Supremacy as a hallmark of Louisiana Constitution and the laws enacted thereunder?

3. A Federal remedy is due on direct-review when the State Courts arrive at a decision which is "contrary to" clearly established Federal Law as determined by the United States Supreme Court?

4. Louisiana has a historically well-documented pattern of defiance towards the Supremacy of the Constitution of the United States and the Federal Civil and Criminal Statutes as well as several Civil Rights Acts passed by Congress. This is essentially more of the same, whereby, relief at the State level is near impossible to achieve when adherence to the Preemptive nature of the Supremacy of the Federal is sought in Louisiana. (See *U.S. v. Louisiana*, 81 S.Ct. 260; *U.S. v. Louisiana*, 225 F.Supp. 353 (U.S. E.D. La. 11/27/63); *Bush v. Orleans Parish School Board*, 190 F.Supp. 861 (U.S. E.D. La. 12/21/60); *Bush v. Orleans Parish School Board*, 187 F.Supp. 42 (U.S. E.D. La. 8/27/60)

ABSENCE OF AVAILABLE LOWER STATE COURT REMEDY

Your appellant herein has presented his claims to the lower Courts of the State, no effort resulted in a remedy which comports with the requirements and/or minimal standards of substantive Federal Constitutional Protections nor Prohibitions pursuant the *14th* and *15th Amendments* in conjunction with the operation of the Preemption of all State laws which are purposed to discriminate on the basis of race, color or previous condition of servitude.

The preemption question was in plain view of the court below and it regularly decides jurisdictional issues even if inartistically presented or not raised at all by the parties but noted *sua sponte*. Because no remedy has been made manifest in the courts below, appellant's only remedy lies with this

Honorable Court on direct review[1] as clearly provided for pursuant the jurisdictional nature of a claim of Federal Preemption. Preemption goes to the power of the State Court over the subject matter of the controversy (*In Re Green*, 369 U.S. 689), and is therefore jurisdictional. It "involves the fundamental question of whether the ... [state] courts had any power to adjudicate the dispute between the parties. Of course, the question of jurisdiction cannot be waived. Jurisdiction should affirmatively appear, and the question may be raised at any time." *Gainesville v. Brown-Cummer Investment Co.*, 277 U.S. 54, 59. Even the United States Supreme Court has *sua sponte* passed upon a state court's jurisdiction although it had been conceded below and not questioned before that Court. *Seaboard Air line Co. v. Daniel*, 333 U.S. 118, 122-123.

It has been the United States Supreme Court's unbroken practice to consider and decide a jurisdictional question even if not raised below or before them. As preemption goes to the subject matter jurisdiction of the lower state courts, there is on any hypothesis no tenable basis for barring review of that question at this time before this Honorable Supreme Court of the States of Louisiana, unless, this Honorable Court wishes to stay all proceedings on the matter, certify the Federal Question to the Supreme Court of the United States, and have them resolve the question of Federal Preemption of *La. Const. Art. I, § 17*, and *La.C.Cr.P.Art. 782*.

STATE COURTS HAVE REFUSED TO ACKNOWLEDGE THAT CLAIMS OF COMPLETE FEDERAL-PREEMPTION OF STATE LAW ARE JURISDICTIONAL IN NATURE AND NOT SUBJECT TO PROCEDURAL LACHES AND STATE PROCEDURAL BARS.

Movant brings to this Honorable Court's attention that the State of Louisiana has attempted to create an impediment to falsely circumvent this Honorable Court's review of his underlying claim. As the record lays bare, the court's below refused to address this pure question of Congressional Intent. State's are forbidden to refuse the proper adjudication of a federal Question of Law, simply because it is a federal

1 It has become a difficult task for Movant to assess whether he is proper in alleging direct review, because in truth, he has no conviction nor sentence of which to complain. Adherence to law provides that he is only accused of the underlying crime, as all the court this case has been thus far subject to have all exceeded their jurisdiction, which cannot be waived. And absent jurisdiction, which was inhibited by use of Federal Preempted State Laws, no adverse judgment could ever be secured against Mr. Austin under that premise and local practice. Movant must request that his "legal status" be properly determined in accordance with law.

question of law. From the trial court forward each state court has activity engaged in circumvention of the adjudication of this pure federal law claim.

THE COURT HAS STANDING TO DECIDE WHETHER THIS MATTER CAN BE RESOLVED IN RECOGNITION OF RIGHTS CONFERRED BY THE CONSTITUTION OF THE UNITED STATES OR CAN DECIDE TO REMOVE THIS MATTER TO FEDERAL COURT FOR RESOLUTION UNDER THE WELL-PLEADED DOCTRINE

The United States Eastern District for the State of Lousiana would have been a suitable jurisdiction under either *42 U.S.C.A. § 1971 or 28 §1443(1)&(2); 28 §1441(a) or (b) or (c)*, to present this matter to. However, state have an obligation to adjudicate federal questions of law when presented in their respective jurisdictions. Since this pleading challenges the validity of portions of the the State Constitution and State Statutes. This case presents substantial Federal Constitutional questions relative to the State Constitution and State Statutes directly in conflict with the Federal Constitution. Movant avers that this Honorable Court is the proper jurisdiction and this is a proper case to resolve the Federal Question of Preemption of "Whether Louisiana's *La. Const. Art. 1, § 17* and *La.C.Cr.P. Art. 782*.were federally preemption by the openly declared intention of the Delegates of the 1898 Constitutional Convention and the Governor (Mike Foster) who backed them for legislating permanence of White-Supremacy into the State Constitution. Id at 225 F.Supp. 353.

When the alleged wrongdoing is based on a State law which is contrary to the superior authority of the *United States Constitution*, the Nation, as well as the aggrieved individuals, is injured. In such a conflict with the State, the power of the Nation to protect itself and go into its own courts to prevent States from destroying federally protected rights of citizens derived from the Constitution would seem to be implicit in the *Supremacy Clause* and inherent in our federal system. Therefore, in verifying that this is a federal question, not only have Movant been injured, so has the Nation, by these laws which carry into action the very racist agenda the *14th* and *15th Amendments* were purposely created to end and prevent from recurrence in the future.

Noel Austin, who respectfully moves this Honorable Court to grant Certiorari and consider and the Federal Questions presented:

CHATTEL-SLAVERY IN LOUISIANA AFTER THE CIVIL WAR, INSTITUTED BY USE OF LAWS FEDERALLY-PREEMPTED BY SUBSTANTIVE PROVISIONS OF U.S.

CONSTITUTION
[AN ISSUE OF FIRST IMPRESSION FOR THIS HONORABLE COURT AND INHERENTLY OF BOTH LOCAL AND NATIONAL PUBLIC INTEREST]

PATENT ERROR REVIEW
IT IS HEREBY REQUESTED THAT THIS ISSUE BE INCLUDED IN THE COURT'S PATENT ERROR REVIEW OF PETITIONER'S CERTIORARI

MOVANT PLACES SQUARELY BEFORE THIS HONORABLE COURT, FOR SQUARE RESOLUTION THE QUESTION OF:

> **WHETHER LA. CONST. ART. 1, § 17 AND LA.C.CR.P. ART. 782 SUFFERED FEDERAL PREEMPTION FROM THEIR INCEPTION DUE TO THE RECORDED RACIST AND DISCRIMINATORY INTENT OF THE DELEGATES OF THE 1898 CONSTITUTIONAL CONVENTION, WHICH SOUGHT TO UNDERMINE THE CONSTITUTIONAL PROTECTIONS WHICH WERE TO BE AFFORDED THE NEGRO?**

IT IS THIS QUESTION AND THIS QUESTION ALONE, WHICH Movant SEEKS TO HAVE JUDICIALLY RESOLVED FIRST, AS THIS IS THE MOST IMPORTANT QUESTION OF ALL.

Movant requests the court take *Judicial Notice* pursuant ***La.C.E.Art. 201(B)(2);(D) and its corresponding fFederal Counter-part FRE 201*** over (Facts & Legal Conclusions):
U.S. v. State of Louisiana, 225 F.Supp. 353 (U.S. E.D. La. 11/27/63), and
Louisiana v. U.S., 380 U.S. 145, 88 S.Ct. 817, 13 L.Ed.2d 709 (U.S. La. 1965)

DIRECT CHALLENGE TO JURISDICTION OF STATE COURTS WHOSE ACTIONS ARE ROOTED IN THE FEDERALLY-PREEMPTED STATE CONSTITUTIONAL AND STATUTORY LAWS LA. CONST. ART. 1, § 17 AND LA.C.CR.P. ART. 782

STANDING TO CHALLENGE ABSOLUTELY NULL JUDGMENT ON STATE AND FEDERAL LEVEL

A person with interest in a null judgment may show such nullity in collateral proceedings at any time and before any court, for absolutely null judgments are not subject to venue and the delay requirements of the action of nullity. *Frisard v. Austin*, 1998-2837 (La. App. 1 Cir. 12/28/99. 747 So.2d 813, 819 n. 11, writ denied, 2000-0126 (La. 3/17/00), 756 So.2d 1145; *In re J.E.T.*, 2016-0384 (La. App. 1 Cir. 10/31/16). 211 So.3d 575, 581.

Objections to subject-matter jurisdiction may be raised at any time; thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction. Indeed, a party may raise such an objection even if the party had previously acknowledged the trial court's jurisdiction. *Henderson v. Shinseki*, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011).

Simply put, Movant's overall contention is this, "The initial trial court proceedings were masqueraded as having been a constitutionally compliant trial, whereas, in truth, those proceedings have no legal, nor binding existence in law. Also, the trial court exceeded its jurisdiction when it issued a jury instruction, directing a verdict in favor of the prosecution by reducing the State's burden of proof from twelve to just ten, thereby declaring to the jury, the court's willingness to engage in the unconstitutional acceptance of a non-unanimous jury verdict.

The court proceeded using as its foundation the State-Level Constitutional Article and State Statute which were both **Federally Preempted Nullities**, having no legal existence, void, no operation nor legal standing in law. Therefore, regardless of what verdict came out of the proceedings, the trial-mechanism suffered an "IRREDEEMABLE AND COMPLETE STRUCTURAL DEFECT." That defect being, since *La. Const. Art. 1, § 17* and *La.C.Cr.P. art 782*, could never legally exist, as applied, prior to January 1, 2019, then Movant was only subjected to a *mock trial* which had real life punitive consequences. If this remains a nation governed by law, An accused is not to be be "deprived of life, liberty, or property without due process of law." ***Bill of Rights-Const. Amendment 5***

Today, even Westlaw classifies both *La. Const. Art. 1, § 17* and *La.C.Cr.P. art. 782* as "Unconstitutional or Preempted", see heading in attached copies of the same. In the instant case, a trial occurred *pilloged of all legality*, thus, its legitimizing legal foundation is wholly absent. Due to the fact that the preempted laws of *La. Const. Art. 1, § 17* and *La.C.Cr.P. art 782* are legally non-existent, there was no legal state laws to govern the conduct of jury related matters within a trial mechanism.

Though initially Movant falsely believed that the trial court had jurisdiction to do those things which it has done, all of that goes for naught. Movant and the trial jury (in its entirety) were the victims of fraud. The jurors functioned under laws which had no legal existence in their effort to adjudicate the allegations against Movant; Movant submitted himself to the legal authority(ies) under the mistaken belief that they were operating in accordance with their sworn Oaths, duly executed pursuant *Artilce X, § 30, of the Louisiana Constitution,* then they proceeded in violation of the Supreme Law of the Land.

Movant, moves this Honorable Court by way of presenting the following claim(s) as an extension of Patent Error Review to be conducted in his case. Movant has present the instant direct appeal Writ of

Certiorari to this Honorable Court and this matter should have comes within the parameters of *State v. Jenkins*, No. 2019-K-00696, 2020 WL3423960, at *1 (La. 6/3/20) (part of mass remand, instructing the lower court that "[i]f the non-unanimous jury claim was not preserved for review in the trial court or was abandoned during any stage of the proceedings, the court of appeal should nonetheless consider the issue as part of its error patent review"); *State v. Ravy*, No. 2019-K-01536, 2020 WL3424030, at *1 (La. 6/3/20) (same) *State v. Vanardo*, No. 2020-K-00356, 2020 WL3425296, at *1 (La. 6/3/20) (same) *State v. Ulery*, 366 Or. 500, 501 (2020) (en banc) ("[A] defendant is entitled to reversal even where the challenge to a non-unanimous verdict was not preserved in the trial court and was raised for the first time on appeal because such a challenge may be raised as 'plain error' that an appellate court should exercise its discretion to correct."

Regardless of the vote count (9-3, 10-2, 11-1) the unconstitutionality of the jury instruction which authorized the return of the non-unanimous verdict remains and so does the Federal Preemption of *La. Const. Art. 1, § 17*, and *La. C.Cr.P. 782.*

The laws which authorized unconstitutional instructions to be given suffer federal conflict preemption by the **1st, 5th, 6th, 8th, 14th, and 15th Amendments.** These preempted laws were used to *illegally net false guilty verdicts against those charged with criminal offenses in the State of Louisiana.* They also perform a duplicitous role. These roles being, securing false and unconstitutional convictions as a means of justifying imprisonment, and as a means of voter disenfranchisement as part of a larger and continuous plan which was implemented by way of the **1898 Constitutional Convention,** under the leadership of E.B. Krittschnitt, to take care of the Negro problem.

In the elegant words of then Governor Mike Foster, to the 1898 legislature after the Convention, his words were clear. He said:

> **The white supremacy for which we have so long struggled** at the cost of so much precious blood and treasure, **is now crystallized into the Constitution as a fundamental part and parcel of that organic instrument**, and that, too, by no subterfuge or other evasions. **With this great principle thus firmly imbedded in the Constitution**, and honestly enforced, there need be no longer any fear as to the honesty and purity of our future elections. (See U.S. v. Louisiana, 225 F.Supp. 353 (1963))

For the lower State Court's to have denied petitioner "error patent" or "plain error" review on this

claim was to deny him substantive equal protection of the law pursuant, privileges and immunities set forth in the *14th Amendment of the United States Constitution*. The jury instruction inflicted injury upon petitioner before the return of the verdict, because it was those unconstitutional instructions given by the court upon which the trial jury relied when it went into the jury room to deliberate.

To give an instruction to a jury which lowers the State's burden of proof necessary to convict from all 12 (unanimous), to only 10 of the 12 (non-unanimous) is quintessential to directing a verdict in favor of the State, thereby injecting into the proceeding a "structural error" which destroys the parameters in which the jury functions when determining guilt. This was deemed constitutionally intolerable and so the same remains under *Sullivan v. Louisiana,* 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993).

Movant contends that all claims have both relevance and merit before the Constitution of the United States, as they identify clear and unequivocal deprivations of the substantive *privileges and immunities* set forth in the *14th Amendment*, the substantive protections arising from *Equal Protection Clause of the 14th Amendment*, as well as rights pursuant the *1st, 5th, 6th, 8th, 13th*, and *15th Amendments* as set out below.

Movant's Jury was given unconstitutional Jury Instructions as provided for by *La. Const. Art. I, Sec. 17*; *La.C.Cr.P. art. 782*. This occurred because the racist delegates of the **1898 Constitution Convention for the State of Louisiana**, committed crimes against humanity. There is no dispute that the original enactment which was carried over to the *1974 Constitution for the State of Louisiana* kept the same motivating factor behind that provision. Ref. *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265, 97 S.Ct. 555, 50 L.Ed. 450 (1977).

Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Id. Evidence of an improper motive may be gleaned from the "historical background" of the law, including the "specific sequence of events leading up to" it enactment, "particularly if it reveals a series of official actions taken for invidious purposes." Id. at 268. Another potential "highly relevant" source of such evidence includes "contemporary statements by members of the decision-making body, minutes of its meetings, or reports." Id. at 267. Yet another indication of an improper motive may include an otherwise

unexplained "substantive departure" from a law usually regarded as important. Finally, an indication of improper motive may arise when the impact of the law "bears more heavily on one race than another." Id. at 266.

As set forth in *Hunter v. Underwood*, 471 U.S. 22, 227-228, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985), these factors lead inexorably to the conclusion that Louisiana's constitutional abolition of the long-standing unanimous jury requirement was motivated by racial animosity. Moreover, just as the ordinary "sort of difficulties" typically associated with trying to ascertain congressional intent did "not obtain" in *Hunter*, so too are they absent in this case, as the background and circumstances of both offending laws are nearly identical, having arisen from the same overtly racist movement identified in *Hunter*.

In other words, as in *Hunter*, the historical background of the offending Louisiana law easily supports a finding discriminatory intent. Like delegates to the **1901 Alabama Convention** discussed in *Hunter*, Louisiana all-white delegates were "not secretive about their purpose."

As the President of the Convention, E.B. Kruttschnitt, stated in his opening address:

> I am called upon to preside over what is little more than a family meeting of the Democratic party of the State of Louisiana. . . . We know that this convention has been called together by the people of the State to eliminate from the electorate the mass of corrupt and illiterate voters who have during the last quarter of a century degraded our politics.
>
> Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 8-9 (1898).[2]

In his closing remarks, Convention President: Kruttschnitt bemoaned that the delegates had been constrained by the Fifteenth Amendment from achieving "**universal white manhood suffrage and the exclusion from the suffrage of every man with a trace of African blood in his veins.**" Id. at 380.

He went on to proclaim that:

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2 It is hereby requested that this Honorable Court, cause to be made a part of the record and to take "Judicial Notice" over the entire record of the proceedings of said Journal of the 1898 Louisiana Constitutional Convention and the Congressional Record Created in enacting the 14th Amendment, pursuant F.R.E. Art. 201.

> I say to you, that we can appeal to the conscience of the nation, both judicial and legislative and I don't believe they will take the responsibility of striking down the system which we have reared in order to protect the purity of the ballot box and to perpetuate supremacy of the Anglo-Saxon race in Louisiana. Id. at 381.

This sentiment was echoed in the closing remarks of Hon. Thomas J. Semmes, who stated that the "mission" of the delegates had been to "establish the supremacy of the white race in this state." Official Journal at 374.

On each business day between 1898 and January 1, 2019, in the Courts across the State of Louisiana, wherever felony trials are held, the racist objectives of the President of the Convention, E.B. Kruttschnitt, were being carried out, his vision fulfilled. Louisiana would be allowed to re-institute chattel slavery.

Louisiana's power-brokers of today, successfully called upon the United States Supreme Court to leave in place a legacy of discrimination and enslavement without legal nor binding verdicts, because the laws which govern the manufacturing of such verdicts were all federally preempted by the *14th* and *15th Amendments of the United States Constitution*. *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981). Under this premise, a state statute is void to the extent it conflicts with a federal statute. *La. Const. Art. 1, § 17* and *La.C.Cr.P. art.782* conflicts with all but not limited to the following: (i.e. *18 USCA §243, 18 USCA §242, 42 USCA §1988, 42 USCA § 1985, 42 USCA § 1986, 18 USCA § 245*). To this end, Governor Foster, was able to say this about the 1898 Constitutional Convention (and this is critical to preemption):

> The white Supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the Constitution as a fundamental part and parcel of that organic instrument, and that, too, by no subterfuge or other evasions. With this great principle thus firmly imbedded in the Constitution, and honestly enforced, there need be no longer any fears as to the honesty and purity of our future elections.

Unfortunately, things have unfolded just as President of the Convention, E.B. Kruttschnitt, openly lamented:

> I say to you, that we can appeal to the conscience of the nation, both judicial and legislative[3] and I don't believe they will take the responsibility of striking down the system which we have reared in order to protect the purity of the ballot box and to perpetuate supremacy of the Anglo-Saxon race in Louisiana. Id. at 381.

When faced with the question of the effect of subsequent history on the validity of the Alabama law, the court in hunter held:

> At oral argument in this Court, the appellant's counsel suggested that, regardless of the original purpose of Sect 182, events occurring in the succeeding 80 years had legitimated the provision. Some of the more blantantly discriminatory selections, such as assault and battery on the wife and miscegenation, have been struck down by the courts, and appellants contend that the remaining crimes-felonies and moral turpitude misdemeanors-are acceptable bases for denying the franchise. Without deciding whether Sect. 182 would be valid if enacted today without any impermissible motivation, we simply observe that its original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect. As such, it violates equal protection under *Arlington Heights*, 471 U.S. at 232-33.

As with the Alabama provision, the discriminatory impact intended by the drafters of the 1898 Constitution survives today, and as a result, the State cannot rely on the argument that Louisiana's non-unanimous verdict law no longer runs afoul of the *Equal Protection Clause*.

In short, from 1898-2019, Louisiana's non-unanimous jury system disproportionately, if not overwhelmingly, resulted in juries whose composition raised a risk that black jurors would be denied a guarantee of meaningful participation in jury deliberations---just as the original drafters of the law intended. If not corrected, things will be carried out just as President of the Convention, E.B. Kruttschnitt, said:

> I say to you, that we can appeal to the conscience of the nation, *both judicial* and *legislative* and *I don't believe they will take the responsibility of striking down the system which we have reared in order to protect the purity of the ballot box and to perpetuate supremacy of the Anglo-Saxon race in Louisiana*. Id. At 381.

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3 For example, on the occasion the Louisiana Legislature had to correct and remove the discriminatory act from the State Constitution and the Criminal Code of Procedure, instead of doing this as a matter of righteousness, it punted and called upon the public at large to vote out the unconstitutional measure. I think E.B. Kruttschnitt would be proud, to say the least. Likewise, on each occasion the judiciary has been called upon to provide a remedy, they reject the relief due despite both La.Const. Art. 1, § 17 and La.C.Cr.P. art. 782 suffering Federal Preemption.

First, the law disproportionately disenfranchises Black Citizens in a manner very similar to the law struck down in *Hunter*. Second, the law disproportionately results in black persons being convicted of crimes of which they would not otherwise be convicted; and other recognizable groups of society are immunized from this, therefore all do not stand equal before the law.

The effect of disproportionate disenfranchisement follows from Louisiana's constitutional prohibition of the right to vote for persons who are "under order of imprisonment," which includes any sentence of confinement, "whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled." *La. Const. Art. I, Sect. 10 (1974); La. R.S. 18:2(8) & La. R.S. 18:102(a)(1)*. As Blacks make up a disproportionate 70% of the inmate population, it follows statistically that they are convicted by non-unanimous juries in roughly the same proportion. It is readily apparent that the law in its design, operation and results, disproportionately puts black persons under an order of imprisonment inherently more than any other sector of society, thereby disenfranchising them disproportionately.

TRIAL COURT WITHOUT JURISDICTION TO USE STATUTES WHICH WERE PREEMPTED BY THE FEDERAL CONSTITUTION

AND

CHALLENGE TO THE ILLEGAL TRANSFER OF JURISDICTION TO THE APPELLATE COURT UNDER THE AUSPICES OF ENGAGING IN PREEMPTED DIRECT APPEAL REVIEW OF A LEGALLY NON-EXISTENT CONVICTION AND SENTENCE

It is not up for question, with regard to due process, it has long been established that "one may not be deprived of his rights, neither liberty nor property, without due process of law. *Boddie v. Connecticut*, 401 U.S. 371, 375, 91 S.Ct. 780, 784, 28 L.Ed.2d 113 (1971). Both the *14th Amendment to the United States Constitution* and *La. Const. Art. I, § 4* guarantee freedom from the deprivation of life, liberty, or property without due process of law, the crux of which is protection from arbitrary and unreasonable action. *City of New Orleans v. Duke*, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976). Likewise it is equally clear that "[p]rocedural due process rules are meant to protect persons not from the deprivation,

but from the mistaken or unjustified deprivation of life, liberty, or property.

Non-compliance with the mandates of the *1st*, *5th*, *6th*, *8Th*, *13th*, *14th*, and *15th Amendments* is unjustified, especially when as early as 1899, the crime committed by the Louisiana Constitutional Delegation in 1898, is *prima facie* as to the creation of laws targeting Negroes/Blacks/People with any trace of African Blood in their veins. It was specifically declared: "**We propose to deny him that right on account of his race, color, or previous condition of servitude**." This was clearly recorded in Harvard Law Review, under the title: **The Suffrage Clause in the New Constitution of Louisiana**, 13 HVLR 279, December, 1899.

Article X, § 30, constitutes an avowal made by all judges and prosecutors that they would endeavor to make the protections of the *United States Constitution* "Supreme" and always at the forefront of their practice in the Administration of Justice, thus, Movant is confident that: Because all State Court Judges are bound to the constitution of the United States Constitution by the *Supremacy Clause* and *Article X, § 30* of the *Louisiana Constitution of 1974*, that he will be "granted" the relief due pursuant the Rights, Privileges, Protections and Immunities deriving from the Constitution of the United States.

Movant contends that he is proceeding in this litigation under the title of "Movant" because the term "Appellant" is not befitting of him because he is without a legal or binding conviction and sentence to appeal

Previously and in error, after proceedings were had before the trial court (24th Judicial District Court, Parish of Orleans) it was misrepresented to Movant that he was the subject of a legally binding verdict against his liberty interests (in conformity with the *6th Amendment) which* had been reached by the trial jury in his case. Movant has since learned that the trial jury operating under the assumed authority conferred by *La. Const. Art. 1, § 17*, and *La.C.Cr.P. art. 782*, was actively Federally Preempted from reaching a binding-verdict, because any verdict reached would be in violation of the *1st*, *5th*, *6th*, *8th*, *13th*, *14th* and *15th Amendments of the Constitution*. This preemption prevented the trial jury from rendering a legal/binding verdict.

The instructions complained of effectively and unconstitutionally lowered the state's burden of proof from the constitutional mandate of all 12 jurors being required to vote in favor of guilt for a valid guilty verdict, to the lowered and mis-characterized/described burden of proof to only require 10 of 12 jurors to vote in favor of guilt for the court to accept it as a verdict by which the accused would be bound over for the imposition of a felony hard labor sentence.

As a factual matter, achieving a legal and binding verdict was forestalled by two Louisiana laws (i.e. *La. Const. Art. I, § 17* and *La.C.Cr.P. art. 782*) which are both unconstitutional and desecrate the Supreme Law of the Land (*1st, 5th, 6th, 8th, 13th, 14th and 15th Amendments*). ***The operation of those State Laws are federally preempted because their stated purpose was to override the 14th and 15th Amendments.***

Confronted with delays in filing, in *State v. Jones*, 209 La. 349, 20 So.2d 627 (1945), the court upheld a motion to set aside a verdict nine years after conviction and while defendant was serving a life sentence. Therefore, an unlawful verdict can be set aside and this pleading can be filed and recognized by a court at any time. The Movant's failure to object to the unconstitutional practices formerly incorporated as a part of Louisiana Law has no bearing upon this. No objection to the trial court's acceptance of the verdict complained of does not serve to waive Movant's right to argue the error herein. The verdict is part of the pleadings and proceedings reviewable under *La.C.Cr.P. Art 920(2)*, See *Craddock*, 307 So.2d 342 (La. 1975) and the authorities cited therein.

Not unlike *Article 1, § 17*, and *La.C.Cr.P. Art. 782*, the defendants in *Siebold*, attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." **Id., at 376**. A conviction under an unconstitutional law

> "is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But ... if the laws are unconstitutional and void, the Circuit Court Acquired no jurisdiction of the causes." Id. at 376-377
>
> Montgomery v. Louisiana

Most importantly, *Montgomery* goes on to state the following:

> "It follows, as a general principle that a court has no authority to leave

in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.."

In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold, 100 U.S. 371* Court explained that "[a}n unconstitutional law is void, and is no law." A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids.

FEDERAL PREEMPTION OF STATE LAW BY FEDERAL CONSTITUTIONAL AMENDMENTS

Movant contents that any State law which is in contradiction to or which purposely sets out to disobey, defile, and/or desecrate a substantive Federal Constitutional Protection, Privilege, Guarantee, and/or Immunity is void on arrival, has no legal existence, cannot be the cause of a right or defense to abuses of power nor justify the deprivation of a federal right set forth in the Constitution of the United States.

Movant offers that *La. Const. Art. 1, § 17* and *La.C.Cr.P. Art. 782*, suffer obstacle/conflict preemption[4] (are void, moot, have no legal existence, have no force in law) by the United States Constitution as to the *1st Amendment, 5th Amendment, 8th Amendment, 13th Amendment, 14th Amendment*, and *15th Amendment*. The whole of the undertakings of the delegates of the 1898 Louisiana Constitutional Convention are preempted due to the words spoken directly by those who partook in the Convention. Further, all related undertakings. Judge Semmes, the Chairman of the Judiciary Committee, the leader of the State Bar Association, in seconding the motion to approve and sign the final draft of the Constitution, said:

4 The delegates of the Louisiana Constitutional Convention openly set out to use the whole of that proceeding to craft laws which violated the ***Fifteenth Amendment***, but in that same Convention, they enacted multiple criminal laws/stautes in order to ensure that they could use them to disenfranchise the Negro through the criminal process alongside the enactment of the non-unanimous verdict system and the Jury-Instructions in-sync therewith. Multiple Unconstitutional Laws were enacted during this convention governing the Grand and Petit Jury Process, and as such, those laws and their offspring are likewise unconstitutional under the premise of U.S. Constitutional Preemption.

"we met here to establish the supremacy of the white race."

Thereafter, Lieut. Governor Snyder presided at a conference of 35 or 40 delegates, and said he was in favor of the proposition that:

> "every white man shall vote because he is white, and no black man shall vote, because he is black. We cannot put it in those words, ... but we can attain that result."

Judge Coco wrote to the Picayune:

> "**The very reason of this Convention is, in morals, dishonest, for its purposes are to do in an indirect way what we cannot do directly.** The Fifteenth Amendment, to protect the negro and for that purpose alone, provides that the right of suffrage shall not be denied or abridged on account of race, color, or previous condition of servitude. **We propose to deny him that right on account of his race, color, or previous condition of servitude.** This **unconstitutional measure** we propose to enact through constitutional and honest means. **Well, I say it cannot be done through constitutional and honest means.** Whilst we might and must surround the right, after conferred, with proper safeguards, such as will secure an honest and fair expression of the suffragans' will at the polls, **we must limit the right to white men, and this we are of necessity compelled to do through dishonest means.**"
>
> Note: Emphasis are Movant's own to enable him to point to the intent of the 1898 Constitutional delegation as declared by them which ultimately falls directly in the cross-hairs of preemption.

Ernest B. Kruttschnitt, President of the Convention, who spoke after Judge Semmes, closing the Convention, said:

> "We have not drafted the exact Constitution we should have liked to have drafted: otherwise we should have inscribed in it, if I know the popular sentiment of this State, universal white manhood suffrage and the exclusion from the suffrage of every man with a trace of African blood in his veins. We could not do that on account of the Fifteenth Amendment to the Constitution of the United States. ... What care I whether the test we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the negro from voting, **and isn't that what we came here for?**" (Applause.)

By far, the focus and most important matter passed upon was the question of suffrage, the admitted purpose being the adoption of a plan that would keep out the Negroes and admit the whites and

yet that would not be open to the charge of violating the *15th Amendment to the United States Constitution*. The records of the Convention, Movant asks that this Honorable Court take Judicial notice of and over them pursuant *La.C.E. art. 202*. The records of these events are possessed by Professor of History, Thomas Aiello, whom, should this matter be remanded for a hearing below, Movant aims to call as a witness and require him to bring forth his documentary evidence of these truths. If necessary, Movant would use the out-of-state, subpoena powers of the court.

At this time, Movant, implores this Honorable Court to to take Judicial Notice pursuant *La.C.E. Art. 202*, of all the sworn Testimony and Expert Evidence which was generated and submitted into the record[5] in the case of *State of Louisiana v. Melvin Cartez Maxie*, Docket No.: 13-CR-72522, 11th Judicial District, Parish of Sabine, State of Louisiana on February 7, 2018 and July 9, 2018, respectively.

In light of the quotes from the delegates alone, the Movant carries the burden of showing that any court constituted to make full use of *La. Const. Art. 1, § 17*, and *La.C.Cr.P. art. 782* to conduct a trial and send someone prison, suffers its demise in law at the hands of the Supremacy Clause where:

> In the case of a direct, obvious conflict between a federal and state statute, the resolution is clear: the state statute is simply invalid. The *Supremacy Clause of Article IV* provides that in case of conflict, state law must yield to federal law. Federal law is said to have "preempted" state law.

So, due to the documented racist motivations and specific intent to undermine the *15th Amendment*, in the creation of *La. Const. Art. 1, § 17*, and *La.C.Cr.P. art. 782*, they are thus, preempted. This preemption erases the jury instructions, the deliberations, and the verdict born out of the existence and operation of *La. Const. Art. 1, § 17*, and *La.C.Cr.P. art. 782*. All documents

5 Specifically, Exhibit 7, Exhibit 8, Exhibit 9, Exhibit 10, Exhibit 11, Exhibit 12, Exhibit 13, Exhibit 14, Exhibit 15, Exhibit 16, Exhibit 17, Exhibit 18, Exhibit 19, Exhibit 20, Exhibit 21, Exhibit 22, Exhibit 23, Exhibit 24, Exhibit 25, Exhibit 26, Exhibit 27, Exhibit 28. Exhibit 29, and Exhibit 30. Movant further requests that the transcript of the proceedings had on the dates specified above which was transcribed by Ms. Martha Walters Hagelin, CCR, CVR, CDR, 11th JDC Official Reporter, Sabine Parish, Certified Court Reporter, Stenomask Certificate #2010015, Certified Digital Certificate #4342010, be made a part of the record taken Judicial Notice for these proceeding, as true and correct on their own merit as having occurred before a duly empowered entity of the State of Louisiana.

showing that a legal trial was had, a jury rendered a binding verdict, the imposition of a sentence(s) and the orders for Movant's continued confinement are all based upon a false premise.

Movant is presently clothed in all the rights he is due as a pre-trial detainee, and he is "forced" to initiate these proceedings without the protections and guiding hand of Appointed Counsel to aid in the preparation of a defense to the charged allegations. With no legal nor binding verdict, all proceedings had are thence absolutely nullities and the only court which this case would be rightly before would be the trial court.

The Formula:

1st there is no legal nor binding verdict

2nd absent a verdict, there can be no legal pronouncement of conviction

3rd with no verdict, no legal pronouncement of conviction there is nothing in existence upon which to rest a valid sentence

4th with no verdict, no conviction, and no sentence, appellate jurisdiction cannot and does not attach, and there exists nothing to be finalized.

STRUCTURAL ERROR

Here, where the instructions administered to the jury clearly communicate to them that they can render a verdict against one accused of a crime (which is punishable by confinement and hard labor), on a requirement which falls below the demands of the *6th Amendment*. The Court was preempted by the Supremacy of the *14th and 15th Amendment of the United States Constitution*. All courts were and so remain preempted from giving the jury an instruction which ultimately removed from the jury the proper description and understanding of what "beyond a reasonable doubt" meant and means pursuant the *6th Amendment*. Most importantly *La. Const. 1974, Art. 1, § 17*, nor *La. C.Cr.P. art. 782*, never achieved legal existence, as both were preempted from the moment the intentions of the Delegates of the 1898 Constitutional Convention declared what they sought to Racist & Discriminatory objectives they sought to accomplish.

To give an instruction to a jury which lowers the State's burden of proof necessary to convict from

12 to 10 is quintessential to directing a verdict in favor of the State, thereby injecting into the proceeding a "structural error" which destroys the parameters in which the jury functions in determining guilt. This was deemed constitutionally intolerable and so the same remains under ***Sullivan v. Louisiana,*** 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993).

There are few errors more patently "structural" than the deprivation of the right to the type of jury process guaranteed by law. Where here the error occurs in the very design of the jury mechanism, it is, of course, impossible for an appellate court to know whether "the guilty verdict[s] actually rendered in this trial [were] surely unattributable to the error. 508 U.S. at 279. The Supreme Court has made this clear. See ***Sullivan,*** 508 U.S. at 282;, 113 S.Ct. 2078. The consequences of the deprivation of this right are "unquantifiable and indeterminate." see id. The error is "unquestionably" structural. See id. Structural errors are not subject to harmless error review, see ***Brecht v. Abrahamson,*** 507 U.S. 619, 629, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993) (1993); ***Sullivan,*** 508 U.S. at 280, 113 S.Ct. 2078; ***Arizona v. Fulminate,*** 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); this is true even on federal habeas review, see ***Crandell v. Bunnell,*** 144 F.3d 1213, 1216 (9th Cir. 1998); ***Bland v. California, Dep't. Of Corrections,*** 20 F.3d 1469, 1477 (9th Cir. 1994) (citing Bretch, 507 U.S. at 629-30, 113 S.Ct. 1710). The existence of such errors requires automatic reversal of the petitioner's conviction(s). ***Bretch,*** 507 U.S. at 629-30, 113 S.Ct. 1710). (citing ***Fulminate,*** 499 U.S. at 309-10, 309, 111 S.Ct. 1246),

The constitutional guarantees of due process extend to all defendants "regardless of the heinousness of the crime [and] the apparent guilt of the offender." ***Irvin v. Dowd,*** 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961).

In those instances where there is an opportunity for fairness in the Grand and Petit Jury Processes, the United States Supreme Court settled that issue as far back as 1939, when speaking directly and unequivocally to the State of Louisiana, the court wrote:

> "the rules which govern the petit jury are the same as those which govern the Grand Jury."
>
> ***Pierre v. Louisiana,*** 59 S.Ct. 536, 306 U.S. 354 (U.S. La. 1939)

There we have it. in the case of *Pierre v. Louisiana (1939)*, the United States Supreme Court directed that State of Louisiana to abandon all forms of discrimination in the Grand and Petit jury processes. So, the State of Louisiana was given "NOTICE" in 1939, that persistence in the practice of discrimination would someday visit legal consequences, still Louisiana kept with its tradition of discrimination. The petit jury process in criminal trials inherently includes the petit jury and this is a process which remains in progress until the trial jury is fully discharged by the court after the acceptance of a valid verdict. Since the jury process was still ongoing when the two jurors were systemically discriminated against so as to moot their verdicts. This is the Systemic Discrimination has long been "struck down" in Louisiana. Two provisions of Louisiana were specifically created to impose constitutionally prohibited discrimination, specifically: *La. Const. Art. 1, § 17* and *La.C.Cr.P. art 782.* This Honorable Court previously declared that these state laws allowed forbidden discrimination on the basis of race, color and previous condition of servitude. *Pierre v. State of Louisiana,* 306 U.S. 354, 59 S.Ct. 536, 83 L.Ed. 757 (U.S. 1939)

This institution rings uncomfortably close to the events set out in *The Amistad*, 40 U.S. 518 (January 1, 1841). In that case, it took the legal expertise of former President John Quincy Adams to aid the kidnapped Africans in obtaining their freedom. For they had been subjected to illegal processes and procedures throughout the entirety of all interactions with the judiciary and those who sought to enslave them by virtue of fraudulent documents which gave rise to only the appearance of legality in their continued enslavement under practices which were brought to a close on January 1, 2019, and not before. Presently, public entities have their files saturated with false public records and are "forced" to act as if valid, because their creation was the result of legislative acts commanding that the same be done. How are these false public records? These criminal records of non-verdicts, represent illusory convictions (falsely declared against subjects of the state), resulting in illegal and falsely imposed sentences, and fabricated prisoner transfer records illegally inducting them into the Louisiana Department of Corrections. This mass stripping of freedoms, rights, privileges of immunities, by-way of illegal use of false - never obtained convictions also had the effect of illegally depriving masses of people from either becoming registered voters, or stripping masses of people (already registered) of their right to vote "under color of

apply the interpretation test.

> ■In 1960, the State Constitution was amended to require every applicant thereafter to 'be able to understand' as well as 'give a reasonable interpretation' of any section of the State and Federal Constitution 'when read to him by the registrar.'
>
> The State Board of Registration in cooperation with the Segregation Committee issued orders that all parish registrars must strictly comply with the new provisions.

As made evident by the United States Supreme Court, in *Louisiana v. U.S.*, 85 S.Ct. 817, 380 U.S. 145 (U.S. La. 1965), the State Legislature has worked relentlessly to honor the ***status quo*** set in play by E.B. Kruttschnitt and his 1898 Constitutional Delegation. The Governor of the State of Louisiana stated in 1898 that he believed that the 'grandfather clause' solved the Negro problem of keeping Negroes from voting 'in a much more upright and manly fashion' than the method adopted previously by the State's of Mississippi and South Carolina, which left the qualification of applicants to vote 'largely to the arbitrary discretion of the officers administering the law. Even when given the opportunity to discontinue the legacy, the Legislature in 2018, refused to vote down the practices and instead, kicked the (proverbial can) down the road by way of adding the measure to the ballot and allowed the State electorate decide to continue with the unconstitutional practice or end it. They decided to end it seemingly because they began to understand that the law likewise voided protections due an accused pursuant the *8th*, and *13th Amendments*.

Concluding its decision in *Louisiana v. U.S.*, 85 S.Ct. 817, 380 U.S. 145 (U.S. La. 1965), the United States Supreme Court wrote:

> "...The need to eradicate past evil effects and to prevent the continuation or repetition in the future of discriminatory practices shown to be so deeply engrained in the laws, policies, and traditions of the State of Louisiana, completely justified the District Court in entering the decree it did and in retaining jurisdiction of the entire case to hear any evidence of discrimination in other parishes and to enter such orders as justice from time to time might require."

The purposeful exercise of State action to deny Americans their rights as citizens on the basis of race, color, economic or social group, or previous condition of servitude violates the *Fourteenth Amendment*:

> [T]he facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the Movants, as to all other persons, by the broad benign provisions of the fourteenth amendment to the constitution of the United States. Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with and evil eye and an unequal hand, so as to practically make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.
>
> *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74, 6 S.Ct. 1064, 1073 (1886).

[Where the state has violated the equal protection rights of citizens who are otherwise jury-eligible, the defendant may assert those rights in his criminal proceedings. *Powers v. Ohio*, 499 U.S. 400 (1986).]

STATE-CREATED 14th AMENDMENT LIBERTY INTEREST

[Where the state has violated the equal protection rights of citizens who are otherwise jury-eligible, the defendant may assert those rights in his criminal proceedings. *Powers v. Ohio*, 499 U.S. 400 (1986).]

It has been held by a federal court in *Hicks v. Oklahoma*, 447 U.S. 343, 344-45, 100 S.Ct. 2227, 65 L.Ed.2d 175 (1980):

> The jury was instructed that if it finds Hicks guilty it "**it shall** assess [the] punishment at forty (40) years imprisonment." An Oklahoma statute in effect at the time of Hick's trial, however, required that sentences be fixed by the jury. The Court rejected Oklahoma's argument that the denial of this state procedural right was "of exclusively state concern.":
>
> > Where ... a State has provided for the imposition of criminal punishment in the discretion of the trial jury, it is not correct to say that the defendant's interest in that discretion is merely a matter of state procedural law. The defendant in such a case has a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by the jury in the exercise of statutory discretion, ... and that liberty interests is one

that the Fourteenth Amendment preserves against arbitrary deprivation by the state.

In this matter, for the record to be clear, this Movant (Austin) is not claiming identical factual circumstances in the *Hicks* case, but rather, the same principles of law are at work in both situations.

Here, where the jury was instructed along the lines that:

> "...**when you reach a vote of ten to two** on any verdict you ***shall*** immediately stop the deliberations on the case..."

These instructions are contrary to the to the *6th* and *14th Amendment* Liberty Interests/Protections created by said amendments of the Constitution of the United States. These jury instructions given to the trial jury conveyed an explicit command that they were to return a non-unanimous verdict.

The jury instructions given here constitute the Judicial directed Non-Unanimous Verdict based upon jury instructions given by the same court which mis-described the state's burden of proof and lowered it from the *5th*, *6th* and *14th Amendment* substantive demands that verdicts in criminal trials be unanimous.

Unless the Constitution of this Country applies on some states and not others, or some Court's have to abide by the Constitution and others are left to disregard it at will and *La. Const. Art. X, § 30*, only applies to those public officials who feel the need to conform thereto, then Movant has a vested liberty interest in the United States Constitution as the Supreme Law of the Land, and that any State Law created and applied to him which is contrary thereto is extinguished in its existence by Federal Preemption and the Substantive Due Process envisioned by the *1st*, *5th*, *6th*, *8th*, *13th*, *14th*, and *15th Amendments*.

When the State of Louisiana proceeded to act in disregard of those substantive constitutional protections, it leaped into the realm of depriving those who were falsely deprived of their freedom using laws designed and implemented to install, promote and protect Systemic Racism and to preserve Supremacy of the White Race throughout the State of Louisiana for all time, said State transgressed over into violating the *8th Amendment* and the *13th Amendment* of the United States Constitution. The *8th*

Amendment violation occurs because one accused of a crime is himself deprived of his freedom in violation of the law. Imprisonment for years upon years without a valid conviction and to use a facially valid but proven invalid conviction to deprive an accused of his right to counsel in all stages after the fraudulently secured conviction is installed is an independent violation of human rights and a structural denial of counsel. The State violates the *13th Amendment* because in the absence of a valid conviction, being illegally transferred to the State Department of Corrections under an Illegal "Hard Labor" Sentence is just another itinerary for Re-Enslavement in violation of the *13th Amendment*. See. Federal Laws prohibiting - Conspiracy Against Rights, Human Trafficking and the like as well as related offenses.

13th Amendment and 14th Amendment Violation
by the mere existence and operation of La. Const. Art. 1, § 17 & Art. 782[7]

Movant complains that declaration of nullification of all prior proceedings are likewise constitutionally due and in order because the trial court remains in want of a valid verdict in the case before this Honorable Court. Because the non-verdict tendered required immediate rejection by the trial court, it was likewise a violation of State Statutory ministerial duty of the court pursuant *La.C.Cr.P. Art. 813*.

Art. 813

> If the court finds that the verdict is incorrect in form or is not responsive to the indictment, it **shall** refuse to receive it, and **shall** remand the jury with the necessary oral instructions. In such a case the court **shall** read the verdict, and record the reasons for refusal.

Given the structure of law in this country, the Constitution of the United States is the Supreme Law of the Land and any law (State or Federal) to the contrary, is null upon arrival and without effect. (i.e. *La. Const. Art. 1, § 17* and *La.C.Cr.P. Art. 782*) are non-excuses as they provide no safe-haven for the State Courts of Louisiana disregarding the constitutional requirement for the acceptance of only

7 Both of these Louisiana Laws are/were Preempted both as written and as applied before January 1, 2019. One of the Federal Statutes which preempt them is 16 Stat. 140, 42 U.S.C. s 1971(a) (1958 ed), because these laws in their operation falsely deprived citizens of their societal status as non-felons. When *La. Const. Art. 1, § 17* and *La.C.Cr.P. Art. 782* was applied to them, is resulted in the false declaration of their having been found guilty, and the immediate and attendant consequence to that was illegal disenfranchisement.

unanimous verdicts. The United States Supreme Court had set forth the precedents directly encompassing the issue as far back as 1898. *Thompson v. Utah*, supra. With that said, this is not a new-interpretation of law, rather it is the clarification of law for the only two States out of Fifty which got it all wrong, and amazingly, those two States got it all wrong for the exact same reason; RACISM.

Art. 872

A valid sentence must rest upon a valid and sufficient:

(3) Verdict, judgment, or plea of guilty

The Movant here has set forth, above, that he has no valid verdict, no valid judgment, and thus nothing valid and sufficient for the sentence to rest upon.

In the absence of so many essential elements necessary for the existence of a legally valid and binding verdict, under these facts there could never be a legal: 1.) acceptance of verdict, 2.) a legal/public pronouncement of the accused having been duly-convicted, and 3.) a sentence legally imposed as a result thereof. Movant's confinement is in violation the *1st, 5th, 6th, 8th, 13th*, and *14th Amendments*.

ARGUMENT CONCLUSION

Given the above and foregoing, the record reveals that the instant Movant was NEVER CONVICTED of the charged offense, the case is wholly without a verdict recognizable in the substantive Constitutional Law of the United States. As such, this case remains at the trial level and was never ripe for appellate review. Simply put, the Court is called upon to give full force to the Constitution of the United States as the Supreme Law of the Land. Movant is given assurance in said constitution that:

> 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, anything in the Constitution or laws of any State to the contrary notwithstanding
>
> U.S. Const., Article VI

Movant only needs the case of *Pierre v. Louisiana*, 1939, to be applied prospectively, and the relief requested becomes inherent. This is not an issue which is "new" to the State of Louisiana, as far back as 1939, the United States Supreme Court stipulated, in direct relation to Louisiana: "Principles which forbid discrimination in selection of petit juries governs selection of grand juries." *U.S.C.A. Const. Amend. 14.*" *Pierre v. State of Louisiana*, 59 S.Ct. 536, 306 U.S. 354 (U.S. La. 1939). *18 U.S.C.A. § 243.* Even then (just as urged here now), Louisiana acting through its administrative officers — deliberately and systemically excluded a readily identifiable class/group of people. Fast-forward to the present, Negroes/Coloreds/African-Americans/minorities those dependent upon public assistance and/or those who are handicapped and those sought to be protected by the *NVRA of 1993*, were discriminated against, in violation of the laws and Constitutions of Louisiana and the United States.

Not unlike *Article 1, § 17*, and *La.C.Cr.P. Art. 782*[8], the defendants in *Siebold*, attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." Id., at 376. A conviction under an unconstitutional law

> "is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But ... if the laws are unconstitutional and void, the Circuit Court Acquired no jurisdiction of the causes." Id. at 376-377
>
> *Montgomery v. Louisiana*

Most importantly, *Montgomery* goes on to state the following:

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8 For verification of the type and reason *La. Const. Art. 1, § 17* and *La.C.Cr.P. Art. 782* suffer preemption, Movant requests that this Honorable Court **take Judicial notice of the act/decision of the United States Supreme Court** in *Louisiana v. U.S.*, 85 S.Ct. 817, 380 U.S. 145 (U.S. La. 1965), because at (FN9) of said case, the Court set forth: "Although the vote-abridging purpose and effect of the (interpretation) test render it per se invalid under the Fifteen Amendment, it is also per se invalid under the Fourteenth Amendment. The vices cannot be cured by an injunction enjoining its unfair application.' 225 F.Supp., at 391-392."

Here, *La. Const. Art. 1, § 17* and *La.C.Cr.P. art. 782* as written and applied prior to January 1, 2019, suffer the same fate for the same reasons. Here the *1st, 5th, 6th, 8th, 13th, 14th*, and *15th Amendments* of the United State's Constitution, render *La. Const. Art. 1, § 17* and *La.C.Cr.P. art. 782* per se invalid and thus, preempted.

"It follows, as a general principle that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.."

In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that "[a}n unconstitutional law is void, and is no law." A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids.

CONCLUSION

Wherefore, Movant contends that under Federal Preemption, the open racist declarations of the Delegates of the 1898 constitute *prima facie* evidence of unconstitutional and racial motive as it was unequivocally uttered: "**We propose to deny him that right on account of his race, color, or previous condition of servitude.** This **unconstitutional measure** we propose to enact through constitutional and honest means. **Well, I say it cannot be done through constitutional and honest means.**" The inherent unconstitutionality was recognized by the Delegates themselves before the law went into effect. In light of these truths, the Movant is entitled as a matter of both law and fact, to the relief sought.

To deny Movant the relief to which he is entitled, is to carry forth the aims of the Delegates of 1898, and to promote further violations of the *1st, 5th, 6th, 8th, 13th,* and *14th Amendments* as a new injury. Such an act would launch into the face of the Supreme Court of the United States, "**an unquestionable direct challenge to the Supremacy of the United States Constitution**" within the borders of the State of Louisiana.

Respectfully submitted

Noel Austin

Noel Austin #305854
La. State Prison, Ash-4
Angola, La. 70712