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Table of Authorities

CASES

BOOKS, ARTICLES, AND OTHER SOURCES

ARISTOTLE, *Politics*, many editions.....24

ASHCROFT, Attorney General John, Department of Justice Memorandum Opinion for the Attorney General, "Whether the Second Amendment Secures an Individual Right," August 24, 2004. http://www.usdoj.gov/olc/secondamendment2.htm.....6, 21, 24, 33

ASPMA, *American State Papers Military Affairs*. Links to Library of Congress archive at http://www.potowmack.org/ASPMA057.html, .../washknox.html (ASPMA No. 2), .../milret.html (ASPMA, No. 52).....11

BALDAS, Tresa, "'Shoot First' Laws Hit Courtrooms," *National Law Journal* , 17 July 2006, http://www.law.com/jsp/article.jsp?id=1152867927379.....7

BLACKSTONE, William, *Commentaries on the Laws of England* (1763-69) http://www.yale.edu/lawweb/avalon/blackstone/blacksto.htm.....24n

BROWN, Janice Rogers, "'A Whiter Shade of Pale': Sense and Nonsense, The Pursuit of Perfection in Law and Politics", The Federalist Society, University of Chicago Law School, April 20, 2000. http://www.constitution.org/col/jrb/00420_jrb_fedsoc.htm.....31

BRUCE-BIGGS, Barry, "The Great American Gun War," *Public Interest*, 1976. Contained in Lee Nesbit, ed., *The Gun Control Debate: You Decide*, Prometheus Book, Buffalo, NY (1990).....9

CARNOY, Martin, *The State and Political Theory*, Princeton University Press, 1984.....15

CHAMBERS, Whittaker, "Big Sister is Watching You," *National Review*, 1959. http://www.potowmack.org/aynrand.html.....34n

CHICAGO-KENT Symposium on the Second Amendment, *Chicago-Kent Law Review*, Summer 2000. Vol. 76, no. 1.....4

Citizens Committee for the Right to Keep and Bear Arms, *amicus curiae, US v. Emerson*, http://www.potowmack.org/ccrkba.html.....7n

COOLEY, Thomas, *General Principles of Constitutional Law in the United States of America* (1881).....33n

CRAIG, Sen. Larry, Senate Debate on S. 1801, C-Span recording, March 1, 2004, on file with your Amicus.....13

CRANE, Edward, *Cato Policy Report 13*, no. 1 (January/February 1991).....31

CRESS, Lawrence, *Journal of American History*, Vol. 71, No. 1, June 1984, http://www.potowmack.org/lcress.html.....25

DALY, James, *Sir Robert Filmer and English Political Thought*, University of Toronto Press, 1979.....15

Declaration of Independence (DOI).....4, 6, 23

Dorr Rebellion Documents (Appendix G).....20, 21

FERLING, John, *A Leap in the Dark: The Struggle to Create the American Republic,* Oxford University Press, 2003.....23

GREIDER, William, "Rolling Back the Twentieth Century," *The Nation*, May 12, 2003. http://www.thenation.com/doc.mhtml?i=20030512&c=1s=greider.....31

HAAG, Ernest van den, "Conservatism and Libertarianism," *National Review*, 1979. Available at http://www.potowmack.org/emerappg.html.....19, 34

HALBROOK, Stephen P., *That Every Man Be Armed: The Evolution of a Constitutional Right*, The Independent Institute, 1984.....5, 8

HAYEK, Friedrich A., *The Road to Serfdom*, University of Chicago Press,1944; renewed 1972.....34

HEATH, J. Norman, "Exposing the Second Amendment: Federal Preemption of State Militia Legislation", 79 *U. Det. Mercy L. Rev.* 39 (2001). http://guncite.com/journals/heath.html.....10

HEYMAN, Stephen J., "Natural Rights and the Second Amendment," *Chicago-Kent Law Review*, Vol. 76, No. 1, 2000.....15

HOGELAND, William, *The Whisky Rebellion: George Washington, Alexander Hamilton, and the Frontier Rebels who Changed America's Newfound Sovereignty*, Scribner, 2006.....27, 27n

HUMMEL, "The American Militia and the Origins of Conscription: A Reassessment," *Journal of Libertarian Studies*, 2001. http://www.mises.org/journals/jls/15_4/15_4_2.pdf.....12, 26

IRONS, Peter, *A People's History of the Supreme Court*, Chapter 19, "The Specter of Socialism."....33n

KONIG, David Thomas, "The Second Amendment: A Missing Transatlantic Context for the Historical Meaning of 'the Right of the People to Keep and Bear arms' ", *Law and History and History Review*, April, 2004.....10, 27 http://www.historycooperative.org/journals/lhr/22.1/forum_konig.html.

KOPEL, David, "Trust the People: The case against gun control," *Cato Institute Policy Analysis No. 109*, 1988. http://www.cato.org/pubs/pas/pa109.html.....8n

LENIN, V. I., *The State and Revolution* (1917), Foreign Languages Press, Peking, 1970.....16, 18, 20, 30, 32, 33n http://www.marxists.org/archive/lenin/works/1917/staterev/

LEVY/HEALY, Levy, Robert, and Healy, Gene, "The Battle of the Gun Ban," *Washington Times*, July, 2003.....9 Search http://groups.google.com/advanced_group_search for "Healy Levy 6859r".

Libertarian Party Platform, 1994, http://www.potowmack.org/emerappf.html.....5n

LIDDY, G. Gordon, The G. Gordon Liddy Show, January 25, 2005, interview with Libertarian Party presidential candidate Michael Badnarik. Recording on file with your Amicus.....14

LINCOLN, Pres. Abraham, First Inaugural Address (1861).....17

1LOCKE, Locke, John, *The Second Treatise of Civil Government* (1689), many editions, referenced by sections, 1689.....6, 16, 19

2LOCKE, Locke, John, *An Essay Concerning Human Understanding* (1689), The MacMillan Company, A Collier Book Original, 1965.....15

MAHON, John K., *History of the Militia and the National Guard*, MacMillan, 1983.....26
Chapter 3: http://www.potowmack.org/mahonch3.html
Chapter 4: http://www.potowmack.org/mahonch4.html
Chapter 5:http://www.potowmack.org/mahonch5.html

McDOWELL/FRIEDMAN, McDowell, Gary and Friedman, George, "The Libertarian Movement in America," *Journal of Contemporary Studies*, 1983, http://www.potowmack.org/libmovam.html.....34

MEYER, Frank S., "Libertarianism or Libertinism," *National Review*, 1969. http://www.potowmack.org/libertin.html.....34n

MINORITY DISSENT, "The Address and Reasons of the Minority of the Convention of Pennsylvania to their Constituents", 3 *The Complete Anti-Federalist* (Herbert J. Storing ed., 1981).....22, 23
http://www.constitution.org/afp/penn_min.htm

NRA MEMBER GUIDE, insert, *American Rifleman*, March, 1991.....9

PARSSINEN, Terry, *The Oster Conspiracy of 1938: The Unknown Story of the Military Plot to Kill Hitler and Avert World War II,* HarperCollins, 2003.....19

RAWLE, William, *View of the Constitution of the United States,* (1825).....27n

ROMANS, St. Paul's Epistle to the, New Testament.....15

ROSSITER, Clinton, *The Federalist Papers*, Mentor Books, The New American Library of World Literature, 1961.....4, 17, 23, 24

ROWLAND, John Kenneth, Appendix A, Potowmack *Emerson Amicus* ,1999. http://www.potowmack.org/emerappa.html.....22

RUMMEL, R. J., *Death by Government*, Transaction Publishers, 1994.....18n

SLAUGHTER, Thomas, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution*, NY Oxford University Press, 1986.....27

STORY, Joseph, *Commentaries on the Constitution*, 1833.....21

UVILLER/MERKEL, Uviller H. Richard, and Merkel, William G., "The Second Amendment in Context: The Case of the Vanishing Predicate", *Chicago-Kent Law Review*, Vol. 76, No. 1, 2000.....21, 25

WEIGLEY, Russell, *History of the United States Army*, The MacMillian Company,1967.....12

Wimmershoff-Caplan, Sue, "The Founders and the AK-47," *Washington Post*, July 6, 1989, p. A17, Appendix E.....7, 13, 16, 18

WORKMAN, David, "NRA Under Fire For Entering DC Gun Ban Suit Fray," http://www.gunweek.com/2003/nra060103.html.....9

WOOD, Gordon, *The Creation of the American Republic, 1776-1787*, W. W. Norton and Company, 1969.....24

YASSKY, David, "The Second Amendment: Structure, History, and Constitutional Change," 99 *Mich. L. Rev.* 588 (Dec, 2000).....5, 12, 30

CASES AND SOURCES NOT REFERENCED IN THE BRIEF

Houston v. Moore, 18 US 5 (Wheaton) 1 (1827)

Martin v. Mott, 25 US 12 (Wheaton) 19 (1820)

Nordyke v. King, 319 F.3d 1195 (2003)

Nordyke v. King 364 F. 3.d 1025, dissent to *en banc* rehearing denial.

Dennison, George M., *The Dorr War: Republicanism on Trial, 1831-1861*, University Press of Kentucky (1976).

Friedman, Leon, "Conscription and the Constitution," *Michigan Law Review*, June 1969. http://www.potowmack.org/conscri1.html

Hennigan, Dennis, "Arms, Anarchy, and the Second Amendment," *Valparaiso Law Review* (1989).

Kittrie, Nicholas N., *The War Against Authority: From the Crisis of Legitimacy to a New Social Contract*, The Johns Hopkins University Press (1995)

Merkel, William G. Uviller H. Richard, "Scottish Factors and the Origins of the Second Amendment: Some Reflections on David Thomas Konig's Rediscovery of the Caledonian Background to the American Right to Arms," *Law and History Review*, vol. 22, no. 1, Spring, 2004. http://www.historycooperative.org/journals/lhr/22.1/comment_uviller.html

Morgan, Edmund S., *Inventing the People: The Rise of Popular Sovereignty in England and the United States*. WW Norton & Co. (1988). Chapter 7, "The People in Arms: The Invincible Yeoman."

Newmeyer, R. Kent, *Supreme Court Justice Joseph Story, Statesman of the Old Order*, University of North Carolina Press (1985).

Second Amendment Foundation, *amicus curiae*, *US v. Warin* (1976) http://www.potowmack.org/emerappe.html

Smith, Adam, *The Wealth of Nations*, 1776, many additions.

Snyder, Jeffrey, "Fighting Back: Crime, Self-Defense, and the Right to Carry a Handgun," *Cato Institute Policy Analysis, No. 284*.
http://www.cato.org/pubs/pas/pa-284.html

Trenchard, John, *Argument Shewing that a Standing Army is Inconsistent with a Free Government, and Absolutely destructive of Constitution of the English Monarchy*. (1697). http://www.potowmack.org/trench.html

Wills, Garry, *A Necessary Evil: A History of American Distrust of Government*, Simon & Shuster, 1999.

Vizzard, William J., *Shots in the Dark: The Policy, Politics, and Symbolism of Gun Control*, Bowman & Littlefield (2000).

Webb, James, *Born Fighting: How the Scots-Irish Shaped America*,
New York:Broadway Books, 2004.

GLOSSARY

ASPMA	American State Papers Military Affairs
DC	District of Columbia
DOI	Declaration of Independence
NRA	National Rifle Association
NICS	National Instant Check System
WSJ	*Wall Street Journal*

APPENDICES

SUMMARY

What is before the court in the Plaintiff's claim of a civil right to armed individual self-defense is as vital and fundamental as the Framing and Ratification of the Constitution itself. The right sought is ultimately a right to individual sovereignty, a right in the State of Nature before there is law and government, a right to be armed outside of the law, outside of the knowledge and reach of government, outside of any legally authorized or permitted purpose, outside of any military or militia purpose.

Individual sovereigns by definition do not consent to be governed. They make a treaty not a government. Armed self-defense is a backdoor mechanism to the right to individual sovereignty. The right of armed self-defense or individual sovereignty includes in it the treasonous right of armed self-defense against the government itself, the same government the Plaintiffs want to secure the right.

The right has no validity in law, constitutional doctrine, political theory or in the militia concepts and practices of the early Republic. The right to individual sovereignty cannot accommodate to lists of gun owners maintained by government regardless that the *Militia Act of 1792* required state militia officers to maintain inventories of the militiamen's privately owned weapons and report the inventories to the state governors and to the president of the United States who in turn

reported them to Congress. The purpose was military readiness. There was no issue of maintaining private weapons off of the militia inventory. The sole ultimate specific policy objective of gun rights ideologies today is to defeat any hint of government lists of gun owners and their private weapons.

A right to individual sovereignty, manifest as the "armed populace at large," which the National Rifle Association has argued to the Supreme Court, would reduce the Constitution from a frame of government to a treaty among sovereign individuals. Relations between individuals would become as precarious as relations between and among sovereign states.

Gun rights claims are part of a larger, very cynical political agenda to dismantle the twentieth century transformation of the United States into a modern state capable of managing an industrial society, securing liberty and justice for all, and preforming on the world stage as a great power.

Carried to its logical conclusion the anarchic doctrine of individual armed self-defense leads to the same tyranny the gun rights ideologies fear the most. The doctrine of vigilante policing latent in the Plaintiffs claims was actually articulated in V. I. Lenin's *State and Revolution* (1917).

ARGUMENT

> We must never forget that it is a constitution we are expounding.
>
> —*McCulloch v. Maryland*

I. WHAT PLAINTIFFS SEEK IN A RIGHT TO INDIVIDUAL ARMED SELF-DEFENSE IS ULTIMATELY A RIGHT TO INDIVIDUAL SOVEREIGNTY. INDIVIDUAL SOVEREIGNTY IS THE ESSENCE OF THE LIBERTARIAN FANTASY THAT LAW AND GOVERNMENT CAN BE DISPENSED WITH.

A. Unenforceable law does not create a civil right.

Plaintiffs seek relief against the Defendants' restrictive policies regulating individual possession and use of firearms. Plaintiffs aver that the Defendants' policies violate a "fundamental right" of private individuals under the Second Amendment to possess and use firearms for self-defense. Insofar as the courts have never recognized a fundamental or even a procedural right to individual gun ownership for private purposes, Plaintiffs petition the court to invent and secure a new civil right.

The DC gun law is bad law because, without a national firearms policy that addresses the illegal firearms traffic between and among jurisdictions, it is unenforceable before the event of firearm use. Your Amicus once lived in DC and kept, unbeknownst to the authorities, a loaded, operational shotgun (gratefully, never use) and knew others similarly armed. Bad law creates many

inconveniences but does not create a new civil right. What it does is create opportunity for an anarchic claim. Ultimately what the Plaintiffs want in a civil right to individual armed self-defense is a right to individual sovereignty.

Politics substitutes for violence. Law is the product of politics. A sovereign gives law. It does not accommodate to a law giving authority. Individual sovereigns by definition do not consent to be governed. They make a treaty not a government (ROSSITER, p. 204, CAPS refer to Authorities). The right to individual sovereignty is the right to be armed outside the law, outside the knowledge and reach of law and government, outside of any militia or military purpose, outside of any legally *authorized* or *permitted* purpose (Appendix A). It is a right in the State of Nature before there is law and government—and, it is a logical absurdity. If there is no "consent of the governed" there are no "just powers" (DOI) of government to secure the right.

The fundamental relationship between citizen and state, between the Constitution as a frame of government and the Constitution as a treaty among sovereign individuals, is as vital and fundamental as the Framing and Ratification of the Constitution itself. Your Amicus, as the Potowmack Institute, introduced the fundamentals in *US v. Emerson*[1] . Since then, CHICAGO-KENT and

[1]*Emerson* briefs: http://www.potowmack.org/emeramic.html

YASSKY have appeared. The fundamental issue, however, has not yet been addressed. A burden falls on the courts to articulate fundamental concepts when the politicians (Appendix B) and news organs (Appendix C) are completely derelict.

The NRA is an interested party in this case. NRA attorney Stephen HALBROOK acknowledges that the NRA's "philosophy is akin to radical libertarianism" and fabricates a doctrine of "libertarian republicanism" (p. 9, 195), where the citizenry is armed first, consents to be governed second, but keeps its private weaponry outside the law. The Libertarian Party Platform asserts a right to individual sovereignty[2]. If the problem is bad law, the solution is good law, not no law. No law, as a viable proposition, is the libertarian fantasy.

If the courts will now initiate departure from the fundamental concepts, the departure must be explicitly and unequivocally justified. If the courts will adhere to the fundamental concepts, given the poverty of public discourse, that adherence needs also to be explicitly and unequivocally stated.

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[2]http://www.potowmack.org/emerappf.html. In political theory there is no meaningful distinction between libertarian and liberal. Both, however, are distinguishable from any proper definition of conservative. Most libertarians accept the minimalist state that maintains the monopoly on violence. Extreme libertarians do not.

B. The explicit manifestation of the libertarian fantasy is the right to maintain the "armed populace at large," which is armed outside of accountability to a governing authority.

The NRA argued to the Supreme Court in its *Perpich v. DOD amicus* for the militia as the "armed populace at large,"[3] —that is, a collection of sovereign individuals who made a treaty. In *Parker*, it is the hidden argument in the NRA's *amicus*: (page 9) the federal government can draw on the armed populace to organize a militia but cannot disarm individuals. But, can states? Fourteenth Amendment incorporation would be against the states. But, for what purpose, a federalized militia?

Plaintiffs' claim that the "people" and the "militia" are synonymous . ASHCROFT (IIC2) gives an expanded exposition. But, are they citizens bound by law? Do they consent to be governed, give "just powers" (DOI) to government, quit "the executive power of the law of Nature" (1LOCKE, §89)?

ABSOLUTELY THE ONLY POLICY the "armed populace at large" cannot accommodate is accountability of gun ownership to a governing authority. Accountability means specifically registration of ownership. Registration is the *sine qua non* of an effective regulatory scheme. It is the gun ownership equivalent of prior restraint. Only First Amendment rights are protected against prior

[3]http://www.potowmack.org/nraperp.html

restraint. Registration in gun rights ideologies means any government list of gun owners and/or their guns. The present political cynicism is that lists are the basis for confiscation. In response to NRA lobbyists, Congress prohibits any system of registration[4]. Florida, under NRA pressure, has enacted a draconian prohibition against government officials maintaining lists (Appendix D). Registration also includes retaining sales receipts and NICS background check records. Maintaining NICS records is what the NRA argued to this court to defeat in *NRA v. Reno*. Lists serve three constitutional purposes: 1) taxation (*Sonzinski v.US*), 2) public safety regulation, 3) militia call up. The doctrine that ultimately seeks certification before the court is a childish political fantasy (Appendix E) that manifests a childish concept of the political self and a malignant vision of social and political life (BALDAS).

The childish political fantasy cannot succeed explicitly. It is not within judicial powers to dissolve law and government and institute anarchy. Individual armed self-defense, with its demagogic appeal, is the indirect method. A right to individual armed self-defense, unaccountable to any regulatory authority, is a right in the State of Nature and is in fundamental conflict with what a constitution is. It would create a pernicious legal doctrine of irreconcilable competing civil rights

[4]http://www.potowmack.org/ccrkba.pdf, p. 16-32

and governmental powers.

There is no conflict in principle between gun ownership for self-defense and accountability to public authority. Self-defense is a right defined in law and protected by law. It cannot be a right to be armed outside the law. The self-defense security of lawful gun owners is to apply legal standards of gun ownership against the lawless. If all citizens are armed for self-defense and there are no effective legal standards, armed predators will simply ambush their victims. The counter argument is that gun laws do not work. Criminals do not obey laws. That is why they are criminals. Well, why have any laws at all? Some of the same people demand draconian enforcement of laws against illegal immigrants. No one says, Immigration laws do not work. Illegal immigrants don't obey laws. That is why they are illegal. The solution is laws that make sense, enjoy broad support, are enforceable and are enforced.

The "armed populace at large" goal is different. Law is irrelevant and contemptible:

> Regardless of what the nine justices of the Supreme Court may rule, it seems likely that millions of Americans will continue to exercise the constitutional right to keep and bear arms. (HALBROOK, p. 197)

The Plaintiffs, Cato[5] and its lawyers may truly believe, but the primary efforts of

[5]For what Cato promotes see KOPEL. President Reagan said, Trust but verify.

the NRA are not in court to make the case for a constitutional right but in the legislatures to defeat legislation that would regulate or to loosen or repeal legislation that does already regulate.

C. A civil right as an article of faith becomes an anarchic cultural right.

Defeating legislation keeps the "belief"[6] in a right alive by keeping laws out of court. NRA antics to control and sabotage the Plaintiffs' action are illustrative (LEVY/ HEALY, WORKMAN). Rights become articles of faith. As the United States goes off on a global campaign against terrorism, the ultimate goal is to create in dysfunctional states a viable concept of nationhood where the rule of law, the state's monopoly on violence, and the state's internal sovereignty all mean the same thing. We have not arrived at any conclusion on those concepts in this country. See BRUCE-BIGGS.

II. TWO GREAT CONFUSIONS

Second Amendment claims are built on two great confusions: 1) The difference between a civil right secured to individuals and the Second Amendment republican right of the people to participate as conscript citizen soldiers in the military functions of the state; 2) the difference between a civil right secured by government and a revolutionary right in the State of Nature.

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[6]"...what we share is a belief in a right...", NRA MEMBER GUIDE.

A. A civil right to maintain the "armed populace at large" has no validity in historic militia concepts and practices or in constitutional doctrine.

1. The militia inventory

The *Militia Act of 1792*[7] required state militia officers to "enroll"—conscript, *register*—all men 18 to 45 for militia duty except those explicitly exempted. It was the antecedent of twentieth century *Selective Service Acts*. There are no individual sovereigns in a conscript military organization. The Militia Act required militiamen to provide their own weapons. That was a tax not the "armed populace at large" as imagined today. Militia officers were then required to compile inventories—called "Returns of Militia"—of militia resources including privately owned weapons (Appendix F) and report them to the president of the United States. President Jefferson enforced the requirement and was sorely disappointed in militia readiness. No one, whosoever, in the Founding period objected to the inventory requirement—that is, lists of gun owners. In the early Republic, the public had a claim on private arms for public purposes.

The individual right versus collective right is a false dichotomy (KONIG). HEATH makes a mockery of the collective right but does not prove an individual right. The Supreme Court has protected neither a collective right of the states

[7] http://www.potowmack.org/emerappc.html

against the powers of the Federal Government in matters of military organization nor an individual right against the "just powers" of government to maintain lists or to conscript, requisition, or simply tax. Fourteenth Amendment protection against the states would be to maintain a federalized militia and require federal lists.

In fifty years of ASPMA, which include the annual Return of Militia, the language is solely in terms of military organization not individual or collective rights.

The best that can be said of the political leaders of the early Republic is that they were comfortable with the presence of private arms in the general population. They were also comfortable with conscripting the possessors of those arms into public duty and maintaining inventories of their private arms.

2. The right of the people to keep and bear arms in the twentieth century

The larger context of the Second Amendment is the republican right of the people to participate as citizen soldiers in the military functions of the state rather than leave those functions up to a standing army which in the eighteenth century, from European experience, was the army of empire, a "distinct order of the state"[8], usually composed of foreigners, mercenaries and/or social misfits. The Second Amendment only makes sense in that context. Gun rights ideologies confuse an

[8] *Emerson*, 46 F.Supp.2d 604

individual civil right with the communitarian republican right of the people manifest in the militia. Militia duty was conscript duty (HUMMEL). The US Army, modeled after the British Army (WEIGLEY, p. 83), was not. If, in the Constitution as originally drafted, conscription into the regular army had been enumerated among the "just powers" of the Federal Government, it is unlikely it would have been ratified by a single state. The Framers created a delicate military balance, now anachronistic, between state and federal government (YASSKY, p. 607-610).

The twentieth century *Selective Service Acts* combined the previously antagonistic concepts of the militia's conscript citizen soldier and regular army's voluntarily enlisted professional. The US Army became in a sense a national militia and the United States became a modern state (*infra*, p. 29) . The Fourteenth Amendment was relevant (YASSKY, p. 647) in a way very different from securing an individual right.

B. Plaintiffs' Claim of a Right of Armed Self-Defense Contains in it the Treasonous Right of Armed Self-Defense against the Government Itself.

A right of armed self-defense against the government is a right of revolution, treason. The right to revolution, nevertheless, possessed even by individuals, is read into the Second Amendment. A government must have the

"just powers" *necessary and proper* to its own self-defense against the "armed citizen guerrillas" who would "outflank[]" it (Appendix E, p. A-40) or the Constitution truly becomes a "suicide pact[9]."

Your Amicus, as the Potowmack Institute, gave numerous examples to the Fifth Circuit in *Emerson* . There are others more recent:

Senator CRAIG regarding defenders of the Alamo:

> My only observation was if that fight had occurred under modern law and with gun control advocates it would not have been a gun fight. It would have been a knife fight.

Does the senator think that the purpose of all those guns—or knives—in private hands is to exercise a right to treason; that, if today, the situation were reversed and Mexicans born in Mexico now living in Texas should declare their independence from the United States and undertake an armed struggle with the eventual purpose of annexing Texas to Mexico they have a civil right secured by the federal judiciary to their private arms for that purpose? Mexicans today would have a stronger moral claim. Texas in 1836 had never been part of the United States. It was, however, once part of Mexico. Senators take an oath to preserve, protect, and defend the Constitution against all enemies, foreign and domestic. Those enemies would have to include the NRA's "armed citizen guerrillas,"

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[9] *Terminello v. Chicago*, J. Jackson dissenting.

Mexican freedom fighters, domestic and foreign terrorists, etc., who would "outflank" this government.

G. Gordon LIDDY, nationally syndicated talk show host:

> The way they [the Founders] attempted to guard against the tendency [of a central government] to grow and become tyrannical was twofold. One was to say, the only powers this new central government will have are the ones specifically enumerated herein. Everything else is reserved to the states and to the people. Then there was the Second Amendment which was designed so that the people would remain armed so that if once again the central government became tyrannical the people would have the means to overthrow it and free themselves.

Political cynicism demands a permanent pre-revolutionary situation. The tyranny is the modern state (*infra*, p. 29). The Constitution becomes perverted. It defines treason as the waging of war against the United States and then secures a civil right to the same. While a big supporter of Second Amendment rights, Liddy is also a big supporter of military service. On one side, there is only the most tenuous accommodation to a governing authority in Civil Society; on the other, complete surrender to military command. And, of course, national conscription is not enumerated in the Constitution.

The assertions have already been addressed by the Supreme Court:

> We reject any principle of governmental helplessness in the face of preparations for revolution, which principle, carried to its logical conclusion, must lead to anarchy. —*Dennis v. United States*

A burden falls on the courts when no one else will tell some people they cannot have their childish political fantasy.

III. THE FORMATION OF POLITICAL COMMUNITY

In Christian Europe at the advent of the modern era, political authority was sanctioned by scripture (ROMANS 13:1-2). Subjects obey the law because law is given by divine right. Disobedience is sacrilege. The transformation to secular, popular sovereignty—the "consent of the governed"—was centuries long. The US Constitution was an important stage in the evolution of modern concepts of sovereignty and the state that had begun centuries before with Machiavelli, Bodin, Hobbes, Locke and others (DALY, chapter 2, fn 1; CARNOY, chapter 1).

The vessel of sovereign public authority by the nineteenth century became the nation-state culminating in Max Weber's famous characterization: the state maintains the monopoly on violence (Appendix A). The concepts were already anticipated in Locke and the Framers.

When sovereign individuals enter into political community, the one right they give up is the right to exercise force except as authorized or permitted by law (HEYMAN):

> Men uniting into politick societies, have resigned up to the public the disposing of all their Force, so that they cannot employ it against any Fellow-Citizen, any farther than the Law of the Country directs. (2LOCKE, p. 203).

A burden falls on the courts to explain that whatever right there is in the Second Amendment has to be consistent with what a constitution is, consistent with the

difference between “Civil Society” and the “State of Nature”—Or, the courts become “Patron[s] of Anarchy.” (1LOCKE, §94)

IV. THE INDIVIDUAL RIGHT TO ARMED SELF-DEFENSE FULLY IMPLEMENTED MEANS THE DISSOLUTION OF LAW AND GOVERNMENT AND LEADS INEVITABLY TO THE TYRANNY OF THE ONE PARTY STATE.

A. The Libertarian Fantasy and the Marxist-Leninist Precedent

LENIN, the last Marxist tract before there was Marxism in power, has numerous references to the "armed people", "armed masses", “armed workers”, no different from the NRA's "armed populace at large". LENIN rejected public authority:

> So long as the state exists there is no freedom. (p.114)

The "armed people" will abolish the bourgeois state which protects capitalist property and replace it with the “dictatorship of the proletariat” which would not govern persons but would administer things (p. 19) in a transition period called "socialism". This state serves no perpetual purpose and will "wither away" into stateless communism.

The political cynicism of our present gun rights ideologies is that governmental authority is tolerable only as long as there are “armed citizen guerrillas” (Appendix E, p. A-40) pointing guns at it in a permanent pre-

revolutionary situation. Either way there is no viable concept of public authority. Checks and balances, separation of powers, regular elections, a bill of rights are restraints on sovereignty. Will the courts now initiate a process that will add "armed citizen guerrillas" as a restraint?

The Founding generation had clear ideas about containing political power through legal, constitutional structures and balances:

> The science of politics, however, like most other sciences, has received great improvement. ... The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times.
> —ROSSITER, p. 72

> In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control of the government; but experience has taught mankind the necessity of auxiliary precautions.
> —ROSSITER, p. 322

The governed who were armed were controlled in the militia. Their private weapons were controlled on the militia inventory. They and their private weapons were not auxiliary precautions.

Neither were they for LINCOLN:

> A majority held in restrain by constitutional checks is the only true sovereign of a free people. Whoever rejects it flies immediately to despotism or anarchy.

The majority was not the "armed populace at large" majority.

In extreme libertarian consciousness, any governing authority is oppressive. Private interests will maintain order, restraint and control. The fatal flaw in the libertarian fantasy, whether the Marxist-Leninist version or our present gun rights version, is that, without any concept of sovereignty and constitutional restraints, it leads inevitably to the same result: the tyranny of the great leader and one party state that the "armed populace at large" promises to insure us against (Appendix E, p. A-45).

B. The German Model

Stalinist Russia was the culmination of LENIN's vision. Another great horror of gun rights fantasies is the Nazi Party state[10]. We find the same failure. The Weimar Republic was a government which did not have the political will to maintain its internal sovereignty. The strong gun laws were in 1919 and 1928. Rival political factions fought gun battles in German cities during the Weimar period. When Adolf Hitler wanted a constitutional amendment that would empower him to rule by decree, he brought his "armed citizen guerrillas", called Stormtroopers, into the legislative chambers with him to ensure the vote (March 23, 1933). The Nazi regime actually loosened the 1928 gun law in 1938.

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[10]See RUMMEL, for other often cited examples. Rummel, nevertheless, advocated a viable concept of restrained sovereignty not the "armed populace at large."

The only internal opposition to Nazi Party rule with any possibility of success came not from the "armed populace" of gun rights fantasies but from within the German army (PARSSINEN).

C. Vigilante Policing

Then what of maintaining public order without law and government?

> We are not utopians [*sic*], and do not in the least deny the possibility and inevitability of excesses on the part of individual persons, or the need to suppress such excesses. But, in the first place, no special machine, no special apparatus of suppression is needed to do this; this will be done by the armed people itself,... (LENIN, p. 108)

The Plaintiffs' right to individual armed self-defense leads ultimately to the same utopian doctrine of vigilante policing. Ultimately, the self-defense sought is self-defense in the State of Nature which is the state of anarchy. There is no individual self-defense in the state of anarchy. HAAG:

> In fact anarchy is actually impossible. The monopoly of legitimate force held by the state can be replaced only by polyarchy which cannot but be worse.

Our local warlord, "the strongest[,] carries it" (1LOCKE, §1). Witness Iraq. This apprehension pervaded the consciousness of the Founders.

Also, from HAAG:

> The individual would be fully sovereign in the libertarian non-society and peace would be as precarious among individuals as it is now among the [state] powers.

A government which fails to function as a government invites vigilantism. We see an explicit example on the Mexican border where frustrated citizens form vigilante

militias to defend against illegal immigrants. Vigilantism is the latent claim in the challenge to DC's gun law.

When federal judges in dissent to the Ninth Circuit denial of an *en banc* rehearing of *Silveira* speak of an "amorphous body" of the armed people, no different from the NRA's "armed populace at large" or LENIN's "armed masses", a burden falls on the federal judiciary to define and defend constitutional government against anarchy.

V. THE RADICAL DOCTRINE OF POPULAR SOVEREIGNTY IS NOT NEW IN CONSTITUTIONAL HISTORY.

Luther v. Borden is the one case to reach the Supreme Court from the Dorr Rebellion. The Dorr Rebels' attorney cited the same sources cited today by gun rights advocates from political philosophy and the Founding period to argue for a right of "peaceful revolution" without legal sanction.[11]

Those arguments and Daniel Webster's arguments for the Rhode Island government were published as pamphlets and we can assume widely read. The Supreme Court rejected the arguments by ignoring them.

The right sought today is for armed revolution. If a right to peaceful

[11]Thomas Dorr as governor under the unauthorized constitution led a militia and was convicted in state court of treason.

revolution was rejected, a right to armed revolution must also be rejected. Justice STORY, much cited and distorted for his "palladium of the liberties of a republic" (§1890[12]), adamantly opposed the actions of the Dorr Rebels. (Appendix G).

VI. THE ARMED POPULACE DOCTRINE IS FABRICATED BY A DELUSIONAL WILL TO BELIEVE THAT HAS MADE ITS WAY INTO FEDERAL COURT.

To have its desired anarchic purpose, the individual right to be privately armed has to expand its Second Amendment interpretation to a right outside of any military or militia purpose and from there to a right outside of any legally authorized or permitted purpose. This is achieved by reading the "armed populace at large" into the generality of conscript militia duty (ASHCROFT, IC2). Plaintiffs cite Judge Garwood's lengthy, gratuitous *dicta* in *Emerson* to assert this right. Garwood embraced the gun rights "fraud" that the late Chief Justice Berger denounced (UVILLER/MERKEL, p. 410n). The embrasure manifests a reprehensible politicization of the federal judiciary to further partisan demagoguery. *Emerson* meant nothing as law for gun rights claimants. Emerson was remanded to the district court for trial and convicted.

Garwood relies on three sources (VC1b) to fabricate a right to be armed outside of the militia context:

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[12]Also §1194-1210 on militia; §1791-1792 on treason; §1830-1831 on supremacy.

1) Jefferson's "bear a gun" (1785)

2) Noah Webster's "arms in a coat" (1828) and

3) "defense of themselves" from the Pennsylvania MINORITY DISSENT (*Silveira*, footnotes 28, 46, 47) and state rights declarations. All other sources Garwood cites are vague references to "personal liberties", "private rights" and "private arms" usually from private expressions; Or, his sources describe in general terms the need for a bill or rights and for the militia as a balance against a standing army. Your Amicus, as the Potowmack Institute, gave the Fifth Circuit panel an examination of over 300 uses of "bear arms" in an overwhelming and unambiguous military context compiled by a PhD historian of the Second Amendment (ROWLAND).

Garwood's fabrication is not just fallacious but comical:

1) Jefferson's "bear a gun" has a very different connotation from "bear arms" and immediately fails.

2) Noah Webster's definition "bear arms in a coat" is read to mean "bear arms in a coat [pocket]" when the meaning is "bear arms in a coat [of arms]". On this kind of comical fabrication we will dissolve law and government and institute anarchy.

3) What did "defense of themselves" mean? Garwood's state constitutions

also asserted a right of the people to "alter or abolish" their government (from DOI, a charter for revolution) but only to assemble and petition *peaceably*.

"Defense of themselves" originated in the 1776-1790 Pennsylvania Constitution. James Madison concluded from his study of history that for consolidation under a central government to be viable the government had to draw at least some of its authority directly from the people. The MINORITY DISSENT wanted a confederation of states and rejected consolidated government.

The Framers, some of whom had direct experience with political violence (FERLING, p. 221), wanted security and order through law and a strong central government. It is preposterous today to assert that, after Shays' Rebellion and other civil disorders, maintaining the "armed populace at large" was part of their consciousness and intent.

But, did the Pennsylvania Constitution maintain it? Enactments under the Pennsylvania Constitution required gun owners to swear a loyalty oath to the Revolution and the revolutionary Pennsylvania government—*or, be disarmed*. (Appendix H)

Judge Garwood goes on to the most ubiquitous words to support the individual right, James Madison's "advantage of being armed" (ROSSITER, p. 299). Madison was not describing a civil right of private individuals as *Silveira*

points out (footnote 41).

Garwood cites to "keep" arms (VC1d2). The first mention in any document of Anglo-American fundamental law of "keep" arms, was the revolutionary 1780 Massachusetts Constitution, which was treasonous against the Crown and the only one of the original state constitutions still in force. It was "keep [from the Crown]" for the "common defense [against the Crown]" (ASHCROFT, IIB1, IIIB2). The original context gets lost as the words are repeated.

VII. FROM THE BRITISH CONSTITUTION TO THE US CONSTITUTION

In the eighteenth century, the British Constitution was regarded as a model of political perfection[13]. It combined the three forms of government identified by ARISTOTLE—democracy, aristocracy and monarchy, manifest in the estates of the realm—in one government thereby maintaining the virtues of each and avoiding the vices. The American Revolutionaries made revolution initially to save the British Constitution from imperial corruption but succeeded in transforming the concepts. The 1689 English Bill of Rights was a contract between rulers and ruled (ROSSITER, p. 512). WOOD describes the transformation from the concepts of the British Constitution to the US

[13]BLACKSTONE, much cited, was a paean to the British Constitution.

Constitution, where, under representative self-government, rulers and ruled became one and the same.

The Founders grew up under the British Constitution. The Anti-Federalists insisted on the Second Amendment because they projected their understanding of the "corporatist" (UVILLER/MERKEL, p. 556) political concepts from the British Constitution onto the US Constitution. In Anti-Federalist consciousness, the states were the people, the ruled, analogous to the people in the House of Commons (at the time elected by less than 10 percent of the people) and in the local militias; and the rulers, analogous to the monarchy, its magistrates, and standing army, were the Federal Government. They wanted to preserve a vestige of state sovereignty through control of the state militias which would preserve the constitutional balance of the British Constitution (CRESS, UVILLER/MERKEL). However, the concepts had changed. The Second Amendment was an anachronism when ratified.

The *conscript* militia institution died a natural death by the 1840s. No one wanted it and, unlike in the British Constitution, it served no theoretical purpose. Despite the radical republicanism of the revolutionary period, colonial society was hierarchical and communitarian. After the Revolution, American society expanded to fill a continent. It became mobile and individualistic. Radical

republicanism, most explicitly manifest in the Pennsylvania Constitution, was beaten back by the US Constitution only to reemerge, less radically, in the new transAppalachian states. Hierarchy became muted. Voting became universal, without property requirements, at least for adult white men. Property requirements persisted much longer in the original states. Wyoming Territory admitted women's suffrage as early as 1869. South Carolina, meanwhile, did not provide for popular election of the Electoral College until after 1865. A restless, propertyless industrial working class, demanding other rights and protections, was not anticipated by the Founding generation.

President Jefferson tried to emphasize reliance on the militia over the regular army (HUMMEL, p. 51, APPENDIX F), but poor performance in the War of 1812 led the Monroe Administration to abandon militia for the regular army (MAHON, Chapter 5). The conscript militia, a communitarian institution, never became established as a viable system in the new states but survived into the 1840s in Connecticut and Massachusetts. The Federal Government, dispenser of large tracts of land, became a benevolent factor in Westward Expansion. The US Army did not become, as had the regular army in seventeenth century England, a feared instrument of political intrigue. One great fear of the Founding generation never materialized.

VIII. THE INFLUENCE OF SCOTLAND AND IRELAND

Regardless of the forgoing, the American gun rights culture does not have its roots in Anglo-American law but in the rebellious traditions of Scotland and Ireland which are not only not a part of the English legal tradition but have been constantly and ambiguously at war with it. The rebellious traditions transferred across the Atlantic. Patrick Henry, famous for "If this be treason, let's make the most of it," grew up in a Scottish household. He had no allegiance to the Crown. The Whiskey Rebels of the 1790s were mostly Scots-Irish (SLAUGHTER). See HOGELAND for political context.[14] The Scots-Irish influence became manifest as a cultural right. (*infra*, p. 9).

KONIG argues that it was the neglected Scottish militia after Union in 1707 that inspired much of Second Amendment consciousness.

IX. A NATIONAL MILITIA POLICY

Preambles to gun control bills usually begin with a Commerce Clause justification. The strategies are public health. Gun violence is a public health problem. It does not have a public health solution. The solutions are political.

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[14]US Attorney RAWLE, a favorite gun rights citation, prosecuted the Whiskey Rebels. Tench Coxe, another favorite, was Hamilton's chief deputy at Treasury (HOGELAND).

Failing to achieve a legal regulatory structure, one strategy is to enforce self-policing on manufacturers and merchants through liability law suits.

A strategy has to proceed from the fundamental relationship between citizen and state. A regulatory scheme can find its justification in the militia clauses and start by defining a difference between militia arms and civilian arms (*Brown*) and their respective purposes.

The defining starts with knowledge. Your Amicus was at the Million Mom March in 2000 and 2004 and could not find a single person, out of hundreds asked, who had heard of the cases in court. The gun controllers missed a great opportunity to change public discourse on gun violence in September, 2001. With proper knowledge and an educated constituency, they could have advocated creation of a Homeland Security Militia modeled after the *Militia Act of 1792*. From historical practices, it is completely within Congressional powers to declare privately owned weapons to be a militia resource and placed on militia inventories with those inventories subject to requisitioning (confiscation in present gun rights consciousness) for public purposes (Appendix I). The court would then have opportunity to make a meaningful ruling on an individual civil right to maintain the "armed populace at large" outside of the militia inventory.

If DC wants to be able to enforce its gun control law—or, some more

sensible variant thereof—it needs to make common cause with state and local jurisdictions to petition the Federal Government for a national firearms policy that addresses the illegal traffic between and among jurisdictions through registration and reporting of private sales. The Federal Government need do little more. The obstacles are political and practical not constitutional.

X. DISMANTLING THE MODERN STATE.

A. From the Bourgeois State to the Modern State

The Anti-Federalists feared Alexander Hamilton's Republic, a centralized mercantile state with manufacturing, stock markets, finance ministers, and a central bank, all buttressed by a standing army. The militia was a check on and a constitutional balance against centralized government. Hamilton's Republic, nevertheless, is what we became. The militia/standing army antagonism disappeared early.

In the twentieth century, the Federal Reserve, national conscription, Sixteenth Amendment, New Deal Constitutional Revolution, and Civil Rights Revolution all involved expansions of federal authority and transformed the United States into a modern state capable of managing an industrial economy, performing on the world stage as a great power, and securing liberty and justice for all. The right to individual sovereignty is a cynical hedge against those

transformations—what are called the "socialism" (*infra*, p. 31). Much of those transformations were an American version of social democracy or the modern state social contract. Much of LENIN is a diatribe against social democracy, but it was the social contract that enabled the bourgeois state to survive. In the twentieth century property rights protections expanded to civil, labor and consumer rights. The modern state, the vessel of law and government, became also the vessel of the social contract.

YASSKY observes (p. 662) that as federal authority expanded in the mid-twentieth century to create the modern state there was a parallel expansion of protections for civil liberties against the new leviathan. The Supreme Court passed on the opportunity in *US v. Miller* to incorporate Second Amendment protections. Those protections are precisely what the gun rights ideologies want now. Ironically and in conflict with the broader political agenda (*infra*, p. 31), incorporation under the Fourteenth Amendment would be another expansion of federal authority.

B. The Second Amendment's Political Role.

The libertarian revolt against the modern state is a revolt on sweeping ideological principles not merit or national need. The revolt is not against LENIN's utopian—that is, libertarian—vision but against modernity, the modern

state, the social contract, the “socialism”, the mixed economy—*the twentieth century*. It is a cynical revolt against politics, a defeatist retreat from political life. Locke’s social contract was the original political social contract that protected property. The libertarian fantasy will throw out the original social contract baby with the modern state social contract bathwater.

GREIDER quotes Grover Norquist, President of Americans for Tax Reform: "...the history of the country for the first 120 years, up until Teddy Roosevelt, when the socialists took over." Judge BROWN, now on this court, has said:

> At this moment, it seems likely leviathan will continue to lumber along, picking up ballast and momentum, crushing everything in its path. Some things are apparent. Where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

Cato's CRANE in Moscow in 1990: "When looking to the West you must reject those who promote democratic socialism, . . . or even the so-called mixed economy of the United States. Yours is a unique opportunity to reject all forms of statism, whether in its most pernicious form, communism, or in its more insidious form, the mixed economy."—And, then, degenerate into gangster capitalism. The “socialism” is statism. Law becomes statism. Law now no longer secures, protects, and makes free. Law only oppresses.

The libertarian revolt is most explicitly a revolt against a governing authority—the state. The forty hour work week, Social Security, and collective bargaining for labor, enacted by the New Deal, were originally proposed by the Socialist Party. To regulate guns, to enforce the state's monopoly on violence, becomes statism—to impose a socialist agenda on America. Any viable concept of government infringes on individual sovereignty and becomes the dreaded socialism.

The extreme difficulty accommodating to a governing authority serves other political purposes. The gun rights constituency is a point of leverage to control electoral outcomes in a much broader political agenda. Grover Norquist is an influential force on the NRA's National Board. He also counsels the Bush Administration. When the *WSJ*, among the national media, becomes the biggest promoter of gun rights ideologies, the crass class connection is inescapable. The political fantasy is also revealed. LENIN's "armed workers" are not a threat to *WSJ* readers' capitalist property.

The Lockean, property protecting elites of the Founding generation would find this turn bizarre. We can argue regulatory policy and social justice policy on their merits, but, regardless of merits, the libertarian ideologies on sweeping ideological principles will return domestic policy to the bourgeois state of robber

baron capitalism and *Lochner* Era property protecting jurisprudence as the golden age of political liberty[15]. If we return to LENIN's bourgeois state, we activate his "armed workers". Do they still have an individual right secured by the same bourgeois state?

ASHCROFT, and Ashcroft's letter to the NRA, May 17, 2001,[16] are examples of demagogic constituency building. The letter was sent to coincide with the NRA's convention. It reads like an NRA tract[17]. ASHCROFT and the letter are suspect for having been written by NRA operatives. Ashcroft himself is an NRA life member. To the chagrin of gun rights advocates, Ashcroft added his reasonable restrictions footnote. If the right is a right to individual sovereignty, there are no *reasonable* restrictions because there is no "consent of the governed" and therefore no "just powers" of government to make and enforce restrictions. What is reasonable to some is a police state to others. Are lists reasonable? Can lists have a compelling state purpose? Can confiscation have a compelling state purpose?

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[15]Gun rights polemicists cite Thomas COOLEY as does *Emerson*. Cooley educated a generation of lawyers and jurists to the protection of capitalist property rights against the aspirations of the laboring classes. See IRONS, Chapter 19. Did Cooley also advocate a right of armed assault on capitalist property by LENIN's "armed workers"?

[16]http://www.vpc.org/studies/ashapa.htm

[17]See http://www.vpc.org/studies/ashcont.htm for a deconstruction.

XI. LIBERTARIANS AND CONSERVATIVES.

The most severe criticisms of libertarian anarchy has come from conservatives. They have a commitment to political community (Appendix J). HAAG has been cited. Conservative legal scholars MCDOWELL/FRIEDMAN characterize contemporary libertarianism as a "caricature" of American freedom[18].

HAYEK is dedicated to "Socialists of all Parties." Gun rights is a political movement, imbued with a delusional will to believe, infecting, among others, federal judges and Plaintiff *amici*'s host of "scholars", which abuses history, logic, law and language. There is nothing new here. Hayek wrote volumes on the rule of law. He also wrote:

> The most effective way of making people accept the validity of the values they are to serve is to persuade them they are really the same as those which they, or at least the best among them, have always held, but which were not properly understood or recognized before. The people are made to transfer their allegiance from the old gods to the new under the pretense that the new gods really are what their sound instinct had always told them but what before they had only dimly seen. The most efficient technique to this end is to use the old words but change their meaning. Few traits of totalitarian regimes are at the same time so confusing to the superficial observer and yet so characteristic of the whole intellectual climate as the complete perversion of language, the change of meaning of words by which the ideals of the new regimes are expressed. (HAYEK, p. 157)

We have an intellectual climate that has fabricated and tolerated fabrication by the same techniques of a preposterous doctrine of political liberty. That doctrine is before the court.

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[18]See also CHAMBERS, MEYER

XIV. CONCLUSION

Addressing the doctrine begins and ends with the constitutional forest not the legal and linguistic trees that Plaintiffs and their *amici* argue. Your Amicus respectfully petitions this honorable court to affirm the District Court ruling with an explicit, unequivocal opinion that the Constitution is a frame of government not a whimsical notion.

Respectfully submitted July____, 2006