

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

)

FROM COUNTY OF MACON

v. )

NO. 10 CRS 050329

)

Isaac Hutchison Birch )

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RECORD ON APPEAL

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CLERK COURT OF APPEALS  
OF NORTH CAROLINA

2011 MAY 20 PM 8:33

FILED

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**STATEMENT OF ORGANIZATION OF TRIAL COURT**

Isaac Hutchison Birch, maintaining his Special Appearance, appeals from the 30 September 2010 jury verdict and actions of Mark E. Powell, SUPERIOR COURT JUDGE, rendered during the 27 September 2010 CRIMINAL SESSION OF SUPERIOR COURT MACON OF COUNTY, Mark E. Powell, Judge presiding, and the actions of Bradley B. Letts, SUPERIOR COURT JUDGE, rendered during the 1 June 2010 CRIMINAL SESSION OF SUPERIOR COURT COUNTY OF MACON, Bradley B. Letts, Judge presiding. Isaac Hutchison Birch gave oral notice of appeal on 30 September 2010, and filed and served written notice of appeal on 8 October 2010.

The record on appeal was filed in the Court of Appeals on

\_\_\_\_\_ 2010 and was docketed on \_\_\_\_\_ 2010.

NOTE: All DWI, use AOC-CR-210 (protection, if active sentence to DCC, use AOC-CR-502. If superseded provision, use AOC-CR-504.1-100)

The named defendant has been arrested with a warrant issued by the clerk of court. The named defendant has been arrested with a warrant issued by the clerk of court.

Magistrate's Order - Misdemeanor Only. Includes sections for: COURT USE ONLY, PRIOR CONVICTIONS, MISO CLASS, VERDICT, and COURT USE ONLY.

In The General Court of Justice District Court Division. Includes sections for: NORTH CAROLINA UNIFORM CITATION, THE STATE OF NORTH CAROLINA VS, and DEPARTMENTAL USE ONLY.

Defendant's Information. Includes fields for: Name, Address, Date of Arrest, Driver's License No., Social Security No., Vehicle License No., and Name And Telephone No. Of Defendant's Employer.

Defendant's Information (continued). Includes fields for: Date of Birth, Sex, Race, Color, Hair, Eyes, Height, Weight, and Blood Type.

Defendant's Information (continued). Includes fields for: State, ZIP, County, and Departmental Use Only (Officer, Shift Code, Area, etc.).

Defendant's Information (continued). Includes fields for: Signature Of Defendant, Date, and Departmental Use Only (Injury Or Serious Injury, Passenger(s) Under 16, etc.).

Defendant's Information (continued). Includes fields for: Signature Of Officer, Date, and Departmental Use Only (Chemical Analysis, etc.).

STATE OF NORTH CAROLINA. Includes the text: The charged offense has probable cause to believe that on or about...

STATE OF NORTH CAROLINA (continued). Includes the text: 1. In the named county the named defendant did unlawfully and willfully operate a motor vehicle as defined in G.S. 20-126(a) (2) (a) (I) (2) (b) (I) (2) (c) (I) (2) (d) (I) (2) (e) (I) (2) (f) (I) (2) (g) (I) (2) (h) (I) (2) (i) (I) (2) (j) (I) (2) (k) (I) (2) (l) (I) (2) (m) (I) (2) (n) (I) (2) (o) (I) (2) (p) (I) (2) (q) (I) (2) (r) (I) (2) (s) (I) (2) (t) (I) (2) (u) (I) (2) (v) (I) (2) (w) (I) (2) (x) (I) (2) (y) (I) (2) (z) (I) (2) (aa) (I) (2) (ab) (I) (2) (ac) (I) (2) (ad) (I) (2) (ae) (I) (2) (af) (I) (2) (ag) (I) (2) (ah) (I) (2) (ai) (I) (2) (aj) (I) (2) (ak) (I) (2) (al) (I) (2) (am) (I) (2) (an) (I) (2) (ao) (I) (2) (ap) (I) (2) (aq) (I) (2) (ar) (I) (2) (as) (I) (2) (at) (I) (2) (au) (I) (2) (av) (I) (2) (aw) (I) (2) (ax) (I) (2) (ay) (I) (2) (az) (I) (2) (ba) (I) (2) (bb) (I) (2) (bc) (I) (2) (bd) (I) (2) (be) (I) (2) (bf) (I) (2) (bg) (I) (2) (bh) (I) (2) (bi) (I) (2) (bj) (I) (2) (bk) (I) (2) (bl) (I) (2) (bm) (I) (2) (bn) (I) (2) (bo) (I) (2) (bp) (I) (2) (bq) (I) (2) 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DEFENDANT'S COPY (SEE IMPORTANT NOTICE ON REVERSE)

ARREST REPORT


AGENCY INFO	Agency Name <b>Franklin Police Department</b>		ORI <b>NC0570100</b>	Date/Time of Arrest Mo. Date Yr <b>03 6   2010   2:30</b> Hrs.		OCA <b>1003A023</b>					
	<input type="checkbox"/> Taken Prints <input type="checkbox"/> Photos	Fingerprint Card Check Digit # (CKN)	Arrest Tract	Residence Tract	Arrest Number <b>1</b>						
ARRESTEE INFORMATION	Name (Last, First, Middle) <b>Birch, Isaac Hutchison</b>		D.O.B. <b>01/29/1975</b>	Age <b>34</b>	Race <b>W</b>	Sex <b>M</b>	Place of Birth				
	Current Address <b>462 Judd Duvall Ln, Franklin, NC 28734</b>		Phone	Occupation		<input checked="" type="checkbox"/> Resident <input type="checkbox"/> Unknown <input type="checkbox"/> Non-Resident					
	Employer's Name		Address		Phone						
	Also Known As (Alias Names)		Hgt <b>5'09"</b>	Wgt <b>195</b>	Hair <b>BLK</b>	Eye <b>BRO</b>	Skin Tone <b>FAR</b>	Consumed Drug/Alcohol <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk			
	Scars, Marks, Tattoos		Social Security #		OLN and State <b>22430272 NC</b>	Misc. # and Type					
Nearest Relative Name		Address		Phone							
ARREST INFO	If Armed, Type of Weapon <b>97 - Not Applicable/None</b>		<input checked="" type="checkbox"/> On-View <input type="checkbox"/> Criminal Summons <input type="checkbox"/> Order for Arrest <input type="checkbox"/> Citation <input type="checkbox"/> Warrant		Place of Arrest <b>Sunset Resturant / Harrison Ave. Franklin, NC 28734</b>						
	Charge #1 <b>DWI - Alcohol and/or Drugs</b>	<input type="checkbox"/> Fel <input checked="" type="checkbox"/> Misd	Counts <b>1</b>	DCI Code <b>2100</b>	Offense Jurisdiction (if not arresting agency)	Statute # <b>20-138.1</b>	Warr. Date Mo. Date Yr <b>03   26   2010</b>				
	Charge #2 <b>Failure to operate headlamps</b>	<input type="checkbox"/> Fel <input checked="" type="checkbox"/> Misd	Counts <b>1</b>	DCI Code <b>4010</b>	Offense Jurisdiction (if not arresting agency)	Statute # <b>20-129(a)(1)</b>	Warr. Date Mo. Date Yr <b>03   26   2010</b>				
	Charge #3	<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (if not arresting agency)	Statute #	Warr. Date Mo. Date Yr				
VEH. INFO	V/R <b>1983</b>	Make <b>Ford</b>	Model <b>F150</b>	Style <b>2d</b>	Color <b>TAN</b>	Lic/Lis <b>yye 2632 / NC</b>	Vin				
	Vehicle: 1. <input checked="" type="checkbox"/> Left at Scene <input checked="" type="checkbox"/> Secured <input type="checkbox"/> Unsecured 2. <input type="checkbox"/> Released to other at owner's request <input type="checkbox"/> Name of Other		Date/Time <b>03/26/2010</b>		Hrs. <b>2:35</b>			Inventory on File?			
CONFINED BOND INFO	Date/Time Confined <b>03/26/2010</b>		Place Confined <b>Macon County Jail</b>		Committing Magistrate <b>Andrew Norton</b>						
	Type Bond <input type="checkbox"/> Written Promise <input type="checkbox"/> Unsecured <input checked="" type="checkbox"/> Secured <input type="checkbox"/> No Bond <input type="checkbox"/> Other		Amt. Bond <b>\$500</b>		Trial Date <b>05/05/2010</b>	Court of <b>Macon County</b>	City <b>Franklin</b>				
	Assisting Officer Name/ID Number <b>Sgt. Tony E. Ashe - FP6</b>		Released By: Name/Dep/ID		Date/Time Released						
Status Codes	L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found (Check "DJ" column if recovered for other jurisdiction)										
DRUGS AT TIME OF ARREST	DCI	Status	Quantity	Type Measure	Suspected Type		Check up to 3 types of activity for each				
							Possess	Buy	Sale	Mfg.	Importing
COMPLAINANT	Name: Complainant <input type="checkbox"/> Victim <input type="checkbox"/>		Address				Phone				
	<p>On the date and time above R/D stopped suspect in a traffic stop for driving without headlights burning, and at that time I ran the registration plate and found it to be expired. I then activated my blue lights in the area of the Bryant and Grant Funeral home on Harrison Ave. The driver of the vehicle then proceeded to keep driving and took a long period of time to stop the vehicle. The driver did not stop until after the intersection of Harrison Ave.</p>										
STATUS	Arresting Officer Signature/ID # <b>Matthew T. Breadlove   FP15</b>		Date/Time Submitted Mo. Date Yr <b>03   26   2010   5:00</b> Hrs.		Supervisor Signature						
	Case Status: <input type="checkbox"/> Further Inv. <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> Closed		Case Disposition: <input type="checkbox"/> Cleared By Arrest / No Supplement Needed <input checked="" type="checkbox"/> Arrest/No Investigation		Arrestee Signature						

CONTINUATION PAGE

2. ORI Franklin Police Department NC0570100	3. CONTINUATION TO: <input type="checkbox"/> INVESTIGATION <input checked="" type="checkbox"/> ARREST <input type="checkbox"/> SUPPLEMENTARY INV.	4. OCA FILE NO. 1003A023 - 1
---------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------

Narrative

and Bidwell St. At the time that I approached the suspect vehicle I asked the driver for his drivers license and vehicle registration card. At that time the driver produced these items and I then asked the driver why it had taken him so long of a time to stop for the blue lights. The driver replied that the street was narrow. I then advised the driver that he had been driving with no headlights, and it was at that time the driver advised me that he was aware of that. During the time that I was talking with the driver I could smell a very strong odor of alcohol coming from his breath and person. I asked the driver if he had been drinking at that time, and he replied "not a lot since about 10:30". It was at that time I asked the driver to turn off the vehicle and step out of same. The driver hesitated to step out and asked the purpose. I then informed the driver that I was performing an investigation of his level of impairment for the purpose of Driving While Impaired. At that time the driver stepped out of the vehicle and stated that I might as well go ahead and give him the ticket because he was not blowing. At that time I asked the driver to submit to an alco sensor breath test and he refused. I then asked the driver to submit to field sobriety testing and he also refused all test. During this time I could see that the driver had red glassy eyes and a very strong odor of alcohol coming from his breath. It was at that time I placed the driver under arrest for Driving While Impaired. The driver was then transported to the Macon County Detention Center. While at the detention center the driver was asked to perform the intox ER /IC II Breath test and he also refused to take that test as well.

Officer Name / ID Matthew T. Breedlove - FP15	Officer Signature 	Date / Time Submitted 03/26/2010 5:00	Page 2 of 2
--------------------------------------------------	----------------------------------------------------------------------------------------------------------	------------------------------------------	----------------

STATE OF NORTH CAROLINA

MACON County

File No.

10CR 050329

In The General Court Of Justice
[X] District [ ] Superior Court Division

STATE VERSUS

Name Of Defendant

ISAAC HUTCHINSON BIRCH

DETENTION OF IMPAIRED DRIVER

Date Of Birth

01/29/1967

G.S. 15A-534.2, 20-38.4

FINDINGS

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

- 1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that (specify reasons):

THE DEFENDANT HAS A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS BREATH, HAS RED GLASSY EYES, AND HAS MADE VOLUNTARY STATEMENTS REGARDING DRINKING.

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that:

- 1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date

03/26/2010

Time

04:00

[X] AM [ ] PM

[X] Magistrate

[ ] Clerk Of Superior Court

[ ] Deputy CSC

[ ] District Court Judge

[ ] Assistant CSC

[ ] Superior Court Judge

Signature Of Judicial Official

A.P. NORTON

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because:

- [ ] 1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.
[X] 2. KERRY BIRCH (name), a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.
[ ] 3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

Date

03/26/2010

Signature Of Sober Responsible Adult

[Signature]

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date

03/26/2010

Time

05:00

[X] AM [ ] PM

[X] Magistrate

[ ] Clerk Of Superior Court

[ ] Deputy CSC

[ ] District Court Judge

[ ] Assistant CSC

[ ] Superior Court Judge

Signature Of Judicial Official

A.P. NORTON

NOTE: "If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed." G.S. 20-38.4(a)(3).

STATE OF NORTH CAROLINA

MACON County

File No. 10CR 050329

In the General Court of Justice  
District Court Division

No Image Available

Name And Mailing Address of Defendant  
ISAAC HUTCHINSON BIRCH  
462 JUDD DUVALL LANE  
FRANKLIN NC 28734

Appearance Bond No. 10AB 050329-01

APPEARANCE BOND  
FOR PRETRIAL RELEASE

Social Security No. Telephone No. Of Defendant

Total Bond Required \$500.00 Amount of This Bond \$500.00

G.S. Chapter 15A-531, 15A-534, 15A-544.2

Offenses and Additional File Numbers  
10CR 050329 DRIVING WHILE IMPAIRED; FAIL TO BURN HEADLAMPS

- Unsecured Appearance Bond - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.
- Cash Appearance Bond (See note on reverse side) - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.
- Surety Appearance Bond - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.
  - (licensed professional bondsman) - The "Affidavit Of Licensed Professional Bondsman" on the reverse side of this Bond is complete and true.
  - Cash Deposited by Surety (See note on reverse side) - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligation.

Date Of Execution Of Bond 03/26/2010

Signature Of Defendant  
*[Signature]*

ACCOMMODATION BONDSMAN

See Page Two for additional accommodation bondsmen executing this bond.

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Social Security No. Telephone No.

Social Security No. Telephone No.

PROFESSIONAL BONDSMAN

Name Of Bondsman

Name Of Runner, If Applicable

License No. Of Bondsman

License No. Of Runner

INSURANCE COMPANY

Name Of Insurance Company

Name Of Bail Agent

Power Of Appointment No. Of Bail Agent as Registered In The Clerk's Office

License No. Of Bail Agent

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN AND SUBSCRIBED TO BEFORE ME

SWORN AND SUBSCRIBED TO BEFORE ME

Date 03/26/2010 Signature ANDREW P NORTON III

Date Signature

Title MAGISTRATE

Title

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash

Name Of Official Accepting Cash (Type or Print)

Receipt No.

NOTE: If cash deposited, see note on reverse side.



**CONDITIONS**

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required and will at all times remain amenable to the orders and processes of the Court. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court. If the defendant appears as ordered and otherwise performs the foregoing conditions of the bond, then the bond is to be void, but if the defendant fails to obey any of these conditions, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on page two, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime.

**AFFIDAVIT OF LICENSED PROFESSIONAL BONDSMAN**

**NOTE:** "Licensed professional bondsmen must file with the clerk of court having jurisdiction over the principal, an affidavit, a form furnished by the Administrative Office of the Court." G.S. 58-71-140(d). Check all options that apply.

- 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.
- 2. I have been promised a premium in the amount shown below, which is due on the date shown below.
- 3. I have received a premium in the amount shown below.
- 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

Amount of Premium Promised \$	Date Due	Amount of Premium Received \$
Name of Person From Whom Collateral Received	Nature of Collateral	Value

**AFFIX STAMP OR  
POWER OF ATTORNEY  
HERE**

**RETURN OF CUSTODIAN OF DETENTION FACILITY**

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

Date Defendant Released	Signature of Custodian	<input type="checkbox"/> Sheriff <input type="checkbox"/> Deputy Sheriff <input type="checkbox"/> Other _____
-------------------------	------------------------	---------------------------------------------------------------------------------------------------------------

**NOTES ON CASH BONDS:**

- (1) *To Official Taking The Bond. Use this form for all cash bonds. Only magistrate or clerk may take cash bond. Jailer may not take cash bond. Complete this form as follows:*  
 When Cash Deposited By Defendant Or By Another Person Who intends For The Cash To Be Used To Satisfy The Defendant's Obligations: Enter defendant's name, address and SS# at the top of Side One. Check "Cash Appearance Bond." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.  
 When Cash Deposited By Another Person Who Does NOT intend For The Cash To Be Used To Satisfy The Defendant's Obligations. Enter defendant's name, address and SS# at the top of Side One. Check "Surety Appearance Bond." Also check "Cash Deposited By Surety." Have defendant sign. Enter name, address and SS# of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.
- (2) *To Bookkeeper: When case disposed, disburse cash as follows: (1) If "Cash Appearance Bond" checked on Side One, disburse to Defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" and "Cash Deposited by Surety" are checked on Side One, disburse only to person named under "Accommodation Bondsman."*
- (3) *Bond With Insurance Company As Surety Same As Cash Except In Child Support. G.S. 15A-531(4) provides that an appearance bond executed by a bail agent acting on behalf of an insurance company is the same as a cash bond, except in child support contempt proceedings where only cash may satisfy a cash bond requirement.*

STATE OF NORTH CAROLINA

MACON

County

File No. 10CR 050329

In the General Court of Justice  
District Court Division

No Image Available

STATE VERSUS

Name And Address of Defendant

ISAAC HUTCHINSON BIRCH  
462 JUDD DUVAL LANE  
FRANKLIN NC 28734

CONDITIONS OF RELEASE  
AND RELEASE ORDER

# 10RO 050329-01

G.S. Chapter 15A, Art 25.26

Amount of Bond

\$500.00

Offenses and Additional File Numbers

10CR 050329 DRIVING WHILE IMPAIRED; FAIL TO BURN HEADLAMPS

Location Of Court

FRANKLIN Room:00A1

District

Date

05/05/2010

Time

09:00 AM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel, family and friends.

Your release is authorized upon execution of your:

WRITTEN PROMISE to appear

UNSECURED BOND in the amount shown above

CUSTODY RELEASE

SECURED BOND in the amount shown above

ELECTRONIC HOUSE ARREST administered by (agency)

and the SECURED BOND above.

You may leave your residences for the purpose(s) of  employment  counseling  course of study  vocational training

You will be arrested if you violate the following restrictions:

Your release is not authorized.

The defendant has been  (i) charged with a felony while on probation (complete AOC-CR-272, Side One)  (ii) arrested for violation of probation with a pending charge or prior conviction requiring registration under G.S. 14 Article 27A (complete AOC-CR-272, Side Two)

The defendant was arrested or surrendered after failing to appear as required under a prior release order.  two or more times in this case.

Your release is subject to the conditions as shown on the attached  AOC-CR-270  Other

Additional Information

Date

03/26/2010

Signature Of Judicial Official

ANDREW P NORTON III

Title

MAGISTRATE

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to  produce him/her in Court as provided above.

hold him/her  as provided on the attached AOC-CR-272.  for the following purpose:

(Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)) produce him/her at the first session of district or superior court held in this county after the entry of this Order or, if no session is held before [enter date and time 48 hours after time of arrest] produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility

MACON COUNTY JAIL

Date

03/26/2010

Signature Of Judicial Official

ANDREW P NORTON III

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date

Signature of Defendant

Signature Of Person Agreeing To Supervise Defendant

Name of Person Agreeing to Supervise Defendant (Type or Print)

Address Of Person Agreeing To Supervise Defendant

DEFENDANT RELEASED ON BAIL

Date

Time

Signature of Jailer


**SUPPLEMENTAL FINDINGS AND ORDER**

It is further found that the person named herein appeared before the undersigned judicial official at  
3:42  AM  PM on this 26th day of March, 2010 and,

- 1. surrendered his/her drivers license to the Court.
- 2. was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the drivers license.
- 3. demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation of the drivers license of the person named herein:

- 1. remains in effect for at least thirty (30) days from the above time and date and until payment of a \$100 fee has been made to the Clerk of Superior Court.
- 2. (check this option if Findings For Probable Cause No. 5 on reverse side is checked) is indefinite and remains in effect for at least thirty (30) days from the above time and date and until a final judgment, including appeals, has been entered for the current offense and all pending offenses for which his/her license had been or is revoked under G.S. 20-16.5 and until payment of a \$100 fee to the Clerk of Superior Court.

Date <u>03/26/2010</u>	Signature of Judicial Official 
Name of Judicial Official (type or print) <u>ANDREW P. NORTON III</u>	MAGISTRATE

It is further found that a Pick-Up Order was issued for the license of the person named herein, and the person on the \_\_\_\_\_ day of \_\_\_\_\_

- 1. Surrendered his/her drivers license to the Court.
- 2. demonstrated to the officer serving the Pick-Up Order that he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation:

- 1. remains in effect for at least thirty (30) days from the above time and date and until payment of a \$100 fee has been made to the Clerk of Superior Court.
- 2. (check this option if Findings For Probable Cause No. 5 on reverse side is checked) is indefinite and remains in effect for at least thirty (30) days from the above time and date and until a final judgment, including appeals, has been entered for the current offense and all pending offenses for which his/her license had been or is revoked under G.S. 20-16.5 and until payment of a \$100 fee to the Clerk of Superior Court.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court
------	-----------	--------------------------------------------------------------------------------------------------------------------------------

**DISPOSITION OF LICENSE OR PRIVILEGE**

- 1. Drivers license of person named herein returned to him/her, and receipt by him/her is acknowledged below.
- 2. At the licensee's request, license returned to him/her by mail. License mailed on the date shown below.
- 3. License mailed to Division of Motor Vehicles on date shown below, since the person named herein is not eligible to use the license for the following reason:
- 4. Limited driving privilege withheld and record forwarded to \_\_\_\_\_ County.

Date	Signature
Date License Mailed	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court

**ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of my license.

Date	Signature of Licensee
Date \$100 Fee Paid	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court

IN THE MATTER OF

Name and Address

ISAAC HUTCHINSON BIRCH  
462 JUDD DUVAL LANE  
FRANKLIN NC 28734

REVOCATION ORDER  
WHEN PERSON PRESENT

G.S. 20-16.5

FINDING FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

1. A charging officer had reasonable grounds to believe that the above named person committed an offense subject to the implied-consent provision of G.S. 20-16.2(a);
2. The above named person has been charged with that offense as provided in G.S. 20-16.2(a);
3. Both the charging officer and the chemical analyst(s) complied with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above named person's submission to or procuring of a chemical analysis; and
4. The above named person:
  - a. willfully refused to submit to a chemical analysis
  - b. had an alcohol concentration of 0.08 or more at any relevant time after the driving,
  - c. had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle,
  - d. had any alcohol concentration of any relevant time after the driving, and at the time of the offense, was under 21 years of age.
5. The above named person has one or more pending offenses in the following county(ies) \_\_\_\_\_ for which the person's drivers license had been or is revoked under G.S. 20-16.5.

ORDER

It is ORDERED that the above named person's drivers license or privilege to drive be revoked, and the above named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation; and the revocation remains in effect at least thirty (30) days from:

1. this date
2. the date he/she surrenders his/her drivers license to the Court, or demonstrates that he/she is not currently licensed to drive.
3. (check this option if Findings For Probable Cause No. 5 above is checked) the date he/she surrenders his/her drivers license to the court, or demonstrates that he/she is not currently licensed to drive and indefinitely until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5.

This Revocation remains in effect until the expiration of the above period and until payment of \$100 fee to the Clerk of Superior Court. I informed the above named person of his/her rights to a hearing and gave him/her a copy of this Order.

Date 03/26/2010	Name of Judicial Official (Type or Print) ANDREW P NORTON III	Signature of Judicial Official 
--------------------	------------------------------------------------------------------	------------------------------------

NOTE: See reverse for supplemental findings and order, and for disposition of license.

MAGISTRATE

NOTICE

If at the time of the Revocation you were not licensed to drive by the North Carolina Division of Motor Vehicles and did not have a valid drivers license from another state, an additional \$50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

X You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right of a hearing.

X If your license is revoked under Paragraph 1 or 2 of this Order, at the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court.

If your license is revoked under Paragraph 3 of this Order, that revocation remains in effect at least thirty (30) days and until a final judgment, including appeals, is entered for this current offense and for all pending offenses for which your license has been or is revoked under G.S. 20-16.5. At the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior court. This fee is in addition to any fees you have paid or are to pay in connection with any other pending offense for which your drivers license has been revoked under G.S. 20-16.5.

The \$100 fee may be paid at any time, even prior to the end of the period of revocation, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be made in cash, by certified check or money order. Payment by mail must be made by certified check or money order, payable to the Clerk of Superior Court. If you wish to have your drivers license returned to you by mail, please enclose a stamped, self-addressed envelope with your payment.

IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO.

STATE OF NORTH CAROLINA

File No.

10CR 050329

MACON County

In The General Court Of Justice  
Before The Magistrate

STATE VERSUS

Name Of Defendant

ISAAC HUTCHINSON BIRCH

IMPLIED CONSENT OFFENSE NOTICE

G.S. 20-38.4

OBSERVATION PROCEDURE

TO THE DEFENDANT:

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

CONTACT PERSONS

TO THE DEFENDANT:

Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: (attach additional sheets if necessary)

Name

Telephone Number

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

I do not wish to contact anyone.

SIGNATURE

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact.

Date

Signature Of Defendant

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

- 1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
- 2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
- 3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
- 4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or to administer an additional chemical analysis.
- 5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.

- The defendant returned this form to the undersigned at the initial appearance.
- The defendant failed to return this form at the initial appearance.

Date

3/20/2010

Time

11:00

AM  PM

Signature Of Magistrate

The defendant returned this form to the undersigned after the initial appearance.

Date

Time

AM  PM

Signature

Magistrate  Assistant CSC  
 Deputy CSC  Clerk Of Superior Court

**NOTE:** If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4)

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF MACON FILE #2010CRS050329 Citation No. 0586611-1

NOTICE OF PRE ARRAIGNMENT SPECIAL APPEARANCE

TO CHALLENGE JURISDICTION

NCGS 15A-952(d)

STATE OF NORTH CAROLINA,

Presumed Plaintiff,

vs.

.....  
Isaac Hutchison Birch

Presumed Defendant

FILED  
16 0 20 10 11 003  
6.11.10

Notice

1) By your law and precedent and in accordance with the Supreme Court of the United States those untrained in de facto procedure MAY NOT be held to the same standard as a lawyer's and/or attorney's; and whose papers may ONLY be judged by their function and never their form. The use of the word *pro se* is in no way intended to express a diminished status or standing in Law of Isaac Hutchison Birch, and is only used to demonstrate that function is superior to form in order for Law and Equity to prevail.

See: Haines v. Kerner; Platsky v. CIA; Anastasoff v. United States; Litigants are to be held to less stringent pleading standards;

See: Haines v. Kerner, 404 U.S. 519-421; In re Haines: ... *pro se* litigants are held to less stringent pleading standards than admitted or licensed bar attorneys. Regardless of the deficiencies in their pleadings, *pro se* litigants are entitled to the opportunity to submit evidence in support of their claims.

See also: Platsky v. C.I.A., 953 f.2d. 25; In re Platsky: ... court errs if court dismisses the *pro se* litigant without instruction of how pleadings are deficient and how to repair pleadings.

See also: Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000); In re Anastasoff: ... litigants' constitutional (guaranteed)

rights are violated when courts depart from precedent where parties are similarly situated.

See also: Psalms 40; "...Sacrifice and offering thou didst not desire; my ears hast thou opened: burnt-offering and sin-offering hast thou not required...yea, thy law within my heart..."

2) This document is not intended to threaten, harass, hinder, or obstruct any lawful operations. It is for the purposes of obtaining lawful remedy as is provided by Law. This is to settle the matter contained herein and to establish facts relative to and for the record.

3) All exhibits stamped COPY, by Isaac Hutchison Birch hand and seal, are certified to be a true, correct, and complete copy of the original document as created by me or presented to me.

4) I, Isaac Hutchison Birch, a Citizen of the Lawful State of North-Carolina organized on December 18, 1776, put into abeyance by "Acts of Congress" on July 1, 1868 and re-established December 1, 1997 do hereby make Notice of Special Appearance into the above captioned "court" for the exclusive purpose of challenging personal jurisdiction, territorial jurisdiction and lawful standing of said state, in relation to Isaac Hutchison Birch. Respondent is not a resident of



the STATE OF NORTH CAROLINA create on July 1 1868, by the Reconstruction Acts of the 39<sup>th</sup> Congress. Isaac Hutchison Birch is appearing before this court by special appearance, not appearing generally. Take judicial notice that your de facto court of administrative power is being assembled before us for the purposes of this Jurisdictional Challenge.

It is an undisputed fact that **once jurisdiction is challenged it must be proven** (...James Brown v. Richard Keene; 33 U.S. 112, 115 (1834); ...Hagans v. Lavine, 415 U.S. 533 etc. etc.) **by the party asserting the jurisdiction** (...McNutt v GMAC, 298 U.S. 178).

Once jurisdiction is challenged with substantial evidence contrary to the presumed conclusion that the state has jurisdiction, the burden of proof is on the state to prove that the states courts have jurisdiction, beyond a reasonable doubt, overruling prior decisions.

The challenge must be answered on the record. State vs. Batdorf

238 SE 2d 497 North Carolina Supreme Court (1977)

Pursuant to your statute, NCGS 15A-952(d) and to, A Declaration of Rights made by the Representatives of the Freemen of the State of North Carolina,

December 17<sup>th</sup>, 1776, as amended, jurisdiction can be challenged at any time. As a matter of de facto statue and de jure Law, jurisdictional challenges must be addressed before the court can proceed in any action where jurisdiction is challenged. The STATE OF NORTH CAROLINA bears the burden to prove beyond a reasonable doubt to show it has an unbroken chain of custody, demonstrating clear title to jurisdiction over the land and over the Citizens of the North-Carolina republic December 18 1776.

Historical record shows that two States named "The State of North Carolina" have entered the Union. One entered on November 21, 1789 as an original party, having succeeded from the Articles of Conferation. The other entered the Union on June 25, 1868 as a "new State", under the Reconstruction Acts executed by the Provost Marshalls Office and the Federal Military.

Respondent challenges the lawfulness of said "new State" and all Congressional Reconstruction Acts which annulled the original State. This annulling is repugnant to and in violation of the Fifth Article of Amendment of the Constitution for the United States of America;

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

Congress, through the Reconstruction Act of March 2, 1867 deprived the Freemen of the North-Carolina republic of the property of the entire State soil to govern, and did so unconstitutionally with despotic prosecution.

The STATE OF NORTH CAROLINA prosecuting COUNTY OF MACON FILE #10CRS050329 does not meet the lawful requirements, which would give it legal standing as a state of Lawful Men whose government, and laws originate from the consent of the governed.

There can only be one de jure jurisdiction calling itself the State of North Carolina:

"No new state shall be formed or erected **within the jurisdiction of another State.**" United States Constitution Article 4 Section 3 clause 1. {emphasis added}

The United States Supreme Court state:

*Progress generally begins in skepticism about accepted truths. Intellectual freedom means the right to re-examine much that has been long taken for granted. A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all. Our Constitution relies on our electorate's complete ideological freedom to nourish independent and responsible intelligence and preserve our democracy from that submissiveness, timidity and herd-mindedness of the masses which would foster a tyranny of mediocrity. The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored.*

COMMUNICATIONS ASSN. v. DOUDS, 339 U.S. 382 (1950)

**REMEDY**

Isaac Hutchison Birch demands remedy in the following manner:

The STATE OF NORTH CAROLINA prosecuting COUNTY OF MACON FILE #10CR 050329, Citation No. 0586611-1 provide verified documentary evidence of the lawfulness and constitutionality of the Reconstruction Acts of Congress that created it. Show how the resulting STATE OF NORTH CAROLINA is a State of the consent of the posterity of the people who covenanted together with the North-Carolina Constitution of December 18 1776, and the Constitution for the United States of America. The STATE OF NORTH CAROLINA must prove its jurisdiction over the soil of the State of North Carolina and the free people inhabiting it. Isaac Hutchison Birch demands that the prosecution's proof be in writing, entered into record, and provided at least 30 days prior to arraignment in order to allow rebuttal.

Or, if this is not possible or the STATE OF NORTH CAROLINA prosecuting COUNTY OF MACON FILE #10CR 050329, Citation No. 0586611-1 simply refuses to put on the record its foundational and originating authority, an unbroken chain of custody demonstrating clear title to govern and the foundation of its authority over the Freemen inhabitants of North-Carolina organized under the Lawful Constitution of December 18, 1776, then Isaac Hutchison Birch demands this action removed as unlawful in accord with A Declaration of Rights made by the Representatives of the Freemen of the State of North Carolina, December 17<sup>th</sup>, 1776, as amended.

Or, if officers or agents prosecuting COUNTY OF MACON FILE #10CR 050329, Citation No. 0586611-1 continue in bad faith by attempting to coerce or intimidate Isaac Hutchison Birch into abandoning his right to participate in lawful provable government then all means necessary for a remedy in Law will be prosecuted by the Respondent.

Or, the Prosecution remove COUNTY OF MACON FILE #10CR 050329, Citation No. 0586611-1 to Federal Court for the reason that this is a controversy between THE STATE OF NORTH CAROLINA created on June 25, 1868 by the United States Congress through the Act of March 2, 1867 and the subsequent Acts of March 23, 1867 and July 19, 1867, against the free will and consent of the posterity of the Freemen of North-Carolina and a Citizen of the North-Carolina republic who recognizes the Constitution of North-Carolina of December 18, 1776 as still being valid, lawful and binding.

I am, very respectfully,

A handwritten signature in dark ink, appearing to read "Isaac Hutchison Birch". The signature is written in a cursive style with some flourishes.

Isaac Hutchison Birch

I hereby certify that a copy of NOTICE OF PRE ARRAIGNMENT SPECIAL APPEARANCE TO CHALLENGE JURISDICTION has been severed upon the parties listed below by hand delivery and/or Registered Mail.

The Clerk of Court of Macon County

The District Attorney of Macon County

This 21 day of May, 2010.



Isaac Hutchison Birch

462 Judd Duvall Lane

Franklin, North-Carolina,

Macon county

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF MACON

FILE #2010CRS050329 CITATION No. 0586611-1

STATE OF NORTH CAROLINA, )

Presumed Plaintiff )

v. )

Isaac Hutchison Birch, )

Presumed Defendant )

MEMORANDUM OF LAW

*Handwritten:* 12/21/10  
12/21/10  
12/21/10



Memorandum of Law in Support of Jurisdictional Challenge

Isaac Hutchison Birch, Citizen of the North-Carolina republic, organized under its organic Constitution of December 18, 1776, by declaration, as seen in Exhibit A, and having paid taxes to, as seen in Exhibit B. This Original Jurisdiction being the lawful BODY POLITIC of the State of North Carolina, a trust for the Freemen of the North-Carolina republic, is entitled to governing the laws of the State.

Two State governments named 'The State of North Carolina' have entered the Union. The 12th State on November 21, 1789 and the 39th State on June 25, 1868. The 39th State's entrance was erroneously termed as the 12th States re-admittance into the Union. The 39th State government was, in fact, not the re-admitting of the 12th State but rather the admitting of a new State government whose body politic, laws, and principals upon which it was founded, were not similar in purpose or intent to the 12th State government. They were similar in name only.

The historical facts are that a new State was created by the Reconstruction Acts of 1867 and 1868. There is no evidence that the original State "re-entered" the Union, created by the Constitution for the United States of America. Isaac Hutchison Birch recognizes the 12th State as the lawful, legitimate State government originated by the free people of the North-Carolina republic, as

opposed to the 39th State government that was put in place through the Reconstruction Acts and the coerced passage of the 14th Amendment. The 39th State does not have an unbroken chain of custody demonstrating a clear title to the land of North-Carolina and, by the nature of its creation, has no jurisdiction over Citizens of the 12th State; the North-Carolina republic.

The following historical facts are pertinent to the issue at hand:

**Mecklenburg Declaration of Independence:** Because of abuse by the Crown and Parliament, the freeman of North Carolina gathered in Mecklenburg County to declare their right to be a free, independent, self-governing people. These People set forth the principal that a government which habitually abuses the law and denies remedy to the people loses its right to govern, and any attempt to govern while denying justice and due process is but usurpation; as stated in the document as follows:

*“Resolved: That whosoever directly or indirectly abets or in any way form or manner, countenances the invasion of our rights, as attempted by the Parliament of Great Britain, is an enemy to his country, to America, and the rights of man.*

*Resolved: That we, the citizens of Mecklenburg County, do hereby dissolve the political bonds which have connected us with the mother country, and absolve ourselves from all allegiance to the British crown, abjuring all political connection with a nation that has wantonly trampled on our rights and liberties and inhumanly shed the innocent blood of Americans at Lexington.*

*Resolved: That we do hereby declare ourselves a free and independent people, that we are and of right to be, a sovereign and self-governing people under the power of God and the general Congress; to the maintenance of which independence we solemnly pledge to each other our mutual cooperation, our lives, our fortunes, and our most sacred honor."*

**North-Carolina Constitution of Dec. 18, 1776:** The fundamental relationship between a government and a people has long been universally recognized. This relationship consists of two parts: (1) Allegiance, and (2) Protection. Governments are instituted for the purpose of protecting the rights of the people. In return the people have a duty to give allegiance and affinity to support the government. This is stated in the opening sentence of the North-Carolina Constitution of 1776;

*"WHEREAS allegiance and protection are, in their nature, reciprocal, and the one should of right be refused when the other is withdrawn."*

This was the first government of the freemen of the North-Carolina republic recognized by 12 other countries/states as the legitimate and rightful government of the freeman of the North-Carolina republic. The freeman of the North-Carolina republic chose to - purposefully and expressly - place into their fundamental and organic law, this universal and reciprocal relationship.

**Declaration of Independence of the united States:** In the Declaration of Independence we read *"...That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, - That whenever any Form of Government becomes destructive to these ends, it is the Right of the People to alter or abolish it, and to institute new Government...but when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their security..."* The Declaration of Independence was an indictment against the King of his abuses and usurpations, which violated the universal reciprocal relationship between a government and a people. We, by definition, and of right, seceded from England by issuing the Declaration of Independence. This led to organizing a

Union of Sovereign States in the form of the Articles of Confederation, which instituted for us a new government.

**Treaty of Paris, 1783:** The War for Independence was won and Great Britain acknowledged the independence of the several "*free, sovereign and independent States*" in the Treaty of Paris. These States included the de jure State of North Carolina. The title to the property of North-Carolina was transferred from the King to the Freemen of the North-Carolina republic.

**Articles of Confederation:** The first form of government under which the several colonies/states/countries organized themselves into a Union, was the united States. This Union created the first government which styled itself as "*the government of the united States of America*". This government deemed itself a perpetual Union in article 13.

**The Several States secede from the Articles of Confederation to Unite under the Constitution for the United States:** The definition of "secede" according to American Dictionary of the English Language, Noah Webster, 1828 is "*to withdraw from fellowship, communion or association; to separate one's self; as certain ministers seceded from the church of Scotland about the year 1733*". The

several States, through the formation of the Constitution for the United States of America, seceded from the Articles of Confederation. The Union of States realized the form of Government under the Articles of Confederation did not best secure their rights and chose to alter and abolish that form of Government; secession was their method.

The fundamental principles of this country are the people of the several states had a right to change their form of Government of their own free will and without coercion. This was exemplified in our change from the Articles of Confederation to the Constitution for the United States of America. Each state freely chose to withdraw their consent from the form of government which expressly declared itself "a perpetual Union". The term "Perpetual Union" was left out of the Constitution for the United States of America, 1787.

**Article VII of the Constitution for the united States of America says,**

*"The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same."* There were thirteen States involved in the Articles of Confederation. The new proposed Constitution for the United States of America went into effect once nine of the thirteen united States, through convention, chose to voluntarily leave the Government organized under the Articles of Confederation. This process could in

effect have nine States organized under the new Constitution, leaving four States as independent nation States with full sovereignty to do as they chose.

Congress was informed that the Constitution was ratified by the requisite number of nine States on July 2, 1788. On August 13, 1788 Congress voted to inaugurate the new Government on March 4, 1789. When the new United States Government was inaugurated North-Carolina and Rhode Island were not a part of that Government. North-Carolina ratified the Constitution on November 21, 1789, leaving it as a sovereign nation State for approximately eight months. Rhode Island ratified the Constitution on May 29, 1790, leaving it as a sovereign nation State, outside the Constitution for the United States of America, for over one year and two months. These two States were not coerced by force of arms to join the Union formed by the Constitution for the United States of America. President Washington did not wage war on North-Carolina or Rhode Island.

North-Carolina voted to stay in Union: On Jan. 24, 1861, The North Carolina Legislature met and directed the people to vote on whether they wanted a convention to consider secession. On Feb. 28, 1861 the vote was held. The call for a convention was defeated by 651 votes, in other words, the freemen voted against even considering secession.

**Abraham Lincoln sent reinforcement troops to Fort Sumter:** On March 4, 1861

Abraham Lincoln, in his inaugural address declared that he would "hold, occupy, and possess the property and places belonging to the government, and collect the duties and impost." The seceded Southern States considered these words a declaration of war because the only way Lincoln could hold and occupy the forts in the South and collect the duties was by force. Abraham Lincoln sent reinforcement troops to Fort Sumter. South Carolina chose a preemptive strike on Fort Sumter on April 12, 1861, not allowing the reinforcement troops to land at Fort Sumter; therefore they could only watch the bombardment of the fort.

**North-Carolina Secedes:** On April 15, 1861 the Secretary of War notified

Governor Ellis of North-Carolina that the Federal Government expected the de jure State of North Carolina to furnish 2 regiments of troops to make war on the seceded states. In Governor Ellis's refusal he closed with these words "*I can be no party to this wicked violation of the laws of the country, and to this war upon the liberties of a free people. You can get no troops from North Carolina.*"

A convention was held in Raleigh on May 20, 1861 and an ordinance of secession was signed and on May 27, 1861 the North-Carolina republic became a member of the Confederate States of America.



Object of the War: In July of 1861 both Houses of Congress pass Resolutions stating the Object of the War:

*"Resolved, That the present deplorable civil war has been forced upon the country by dis-unionists of the Southern States now in revolt against the constitutional government and in arms around the capital; That in this national emergency Congress, banishing all feeling or passion or resentment, will recollect only its duty to the whole country; That this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor for the purposes of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made pursuant thereof, and to preserve the Union, with all the dignity, equality, and rights of the several states unimpaired; That as soon as these objects are accomplished the war ought to cease."* (Congressional Globe – Friday, July 26, 1861)

Please note; the congressionally stated object for the war was divided into two parts, (1) what the war was not for and (2) what the war was for. Congress tells us

that the United States Army is not authorized to conquer, subjugate, overthrow or interfere with the rights of the seceded states or to overthrow or interfere with the institution of slavery in the seceded states. The United States military was to be used for the purpose of *"defending and maintaining the supremacy of the Constitution and all laws made pursuant to it and to preserve the Union with all the dignity, equality, and rights of the several states unimpaired"*.

**The War was over:** In April/May 1865 after the surrender of the two largest confederate armies under Lee and Johnson.

**Peace is declared:** Peace is declared by Presidential Proclamations on April 2, 1866 (14 STAT 811-813) and August 20, 1866 (14 STAT 814).

**North-Carolina (the 12<sup>th</sup> state) was recognized as re-admitted into the Union:** In December 1865 the eleven previous Confederate States are considered as re-admitted into the Union as lawful states with lawful governments as evidenced by their participation in the amending of the Constitution for the United States of America abolishing slavery. (Virginia, February 9, 1865; Louisiana, February 17, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; South Carolina, November 18, 1865; Alabama, December 2, 1865; North Carolina,

December 4, 1865; Georgia, December 6, 1865; THE AMENDMENT WAS RATIFIED ON DECEMBER 6, 1865; subsequently ratified by Florida, December 28, 1865; and Texas, February 18, 1870

**Congress proposes the Nationalization of citizenship in the form of the 14<sup>th</sup>**

**Amendment:**

The 14<sup>th</sup> Amendment is proposed by the 39<sup>th</sup> Congress June 13, 1866. Congress sends the proposed 14<sup>th</sup> Amendment to all governments it recognizes as having lawful authority to pass or reject said Amendment. The Government of North-Carolina organized under the Constitution of Dec. 18, 1776 was recognized by Congress as having such authority. Only Tennessee ratified the proposed 14<sup>th</sup> Amendment (rejected by Texas, October 27, 1866; Georgia, November 9, 1866; North Carolina, December 14, 1866; South Carolina, December 20, 1866; Virginia, January 9, 1867; Louisiana, February 6, 1867; Not acted on prior to the Reconstruction Acts of March 1867 by Arkansas, Florida, Alabama, and Mississippi.)

**On March 2, 1867 the United States Congress passed the first Reconstruction Act over the president's veto; Congress passed said Reconstruction Acts based upon the principal that the Southern states were**

conquered territory. Said Reconstruction Act annulled and abolished the existing state governments of the 10 states which did not ratify the proposed 14<sup>th</sup> Amendment, imposed martial law on them in times of peace, ordered them to create a new constitution that was not composed of the freeman of the North-Carolina republic, and refused to allow them representation in Congress until such time as said states had (1) ratified the 14<sup>th</sup> Amendment (2) The 14<sup>th</sup> Amendment was made part of the Federal Constitution.

On June 25, 1868 Congress admitted its newly created STATE OF NORTH CAROLINA into the Union over the President's veto.

**On June 30, 1868 General Canby of the US Army issued general orders #120**

which states in part "to facilitate the organization of the new state Government, the following appointments are made: to be governor of NC, W. W. Holden, Government elect, *vice* Jonathan Worth removed...to take effect July 1, 1868 on the meeting of the General Assembly of North Carolina", as seen in Exhibit C.

**On July 1, 1868 Government Jonathan Worth surrendered the Government**

**of NC** organized under the constitution of Dec. 1776, under what he deemed military duress, and not of the consent of the governed. During this time of arguments before the Court, in times of supposed peace, Governor Jonathan Worth

of North Carolina, in a letter addressed to Governor W. W. Holden of North Carolina, surrenders the de jure State of North Carolina. The letter states, in part, as seen in Exhibit D:

*"...Yesterday morning I was verbally notified by Chief Justice Pearson that in obedience to a telegram from Genl Canby, he would today at 10 A.M. administer to you the oaths required preliminary to your entering upon the discharge of the duties of Civil Governor of the State; and that there upon you would demand possession of my Office...I intimated to the Judge my opinion that such proceeding was premature even under the Reconstruction legislation of Congress and that I should probably decline to surrender the Office to you...I do not recognize the validity of the late election, under which you and those cooperating with you claim to be invested with the Civil Government of the State. You have no evidence of your election, save the certificate of a Major General of the United States Army. I regard all of you as, in effect, appointees of the Military power of the United States, and not as deriving your powers from the consent of those you claim to govern. Knowing, however, that you are backed by Military force here, which I could not resist if I would, I do not deem it*

*necessary to offer a futile opposition but vacate the office without the ceremony of actual eviction, offering no further opposition than this, my protest. I would submit to actual expulsion in order to bring before the Supreme Court of the United States the question as to the Constitutionality of the legislation under which you claim to be the rightful Governor of the State, if the past action of that tribunal furnished any hope of a speedy trial. I surrender the office to you under what I deem Military duress, without stopping as the occasion would well justify. To comment upon the singular coincidence that the present State Government is surrendered, as without legality, to him whose own official sanction, but three years ago, declared it valid."*

(Certified copy of the original letter obtained from the North Carolina archives)

**The constitutionality of the Reconstruction Acts went before the US Supreme Court** in Mississippi v. Johnson, 4 Wallace, 475. The court dismissed it on the technical ground that the court had "*no jurisdiction of a bill to enjoin the President in the performance of his official duties...*"

The constitutionality of the Reconstruction Acts went to the Supreme Court a 2<sup>nd</sup> time in the case of Georgia v. Stanton, 6 Wallace, 50. The court found an equally technical, yet evasive, reason for declining jurisdiction by holding that the case concerned purely political matters, instead of personal and property rights, held that, *"A bill to restrain the defendants, who represent the executive authority of the government, from carrying into execution certain Acts of Congress, inasmuch as such execution would annul and totally abolish the existing State Government of Georgia, is not within the jurisdiction of this court."*

A third time, in Ex Parte McCordle, 6 Wallace, 318. The US Supreme Court assumed jurisdiction on the constitutionality of the Reconstruction Acts and were argued before the Supreme Court.

Before the Supreme Court could enter a judgment, the Radical Republicans in control of Congress, rushed thru a bill repealing the appellate jurisdiction of the Supreme Court under the Act of 1867 (which McCordle used as authority for the court to assume jurisdiction) prohibiting the Supreme Court from proceeding on any appeal already before it. The arguments in the McCordle case had been finished while the bill was still pending. The court waited until the bill was passed and then postponed further consideration of the matter until the next term. In McCordle, Chief Justice Chase stated, *"This court cannot proceed to pronounce judgment...for it has no longer jurisdiction of the appeal; and judicial duty is not*

*less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the constitution and the laws confer.*" In the biggest battle between Congress and the Supreme Court in this nation's history, for the first and only time, Congress removes the court's jurisdiction to hear a case.

The last attempt to obtain a definite ruling on the constitutionality of the Reconstruction Acts was made in the case of *Ex Parte Yerger, 8 Wallace, 85*. The Supreme Court assumed jurisdiction and this action was immediately answered by the introduction of a bill in the Senate explicitly prohibiting the Supreme Court from considering any case which involved the validity of the Reconstruction Acts, followed by another prohibiting the judicial review of any act of Congress. A compromise was reached outside of court whereby Yerger, upon being turned over to the civil authorities, withdrew his petition. The proposed Acts of Congress were therefore never enacted.

*US v. Kline 1872 Supreme Court ruling* held that Congress may not limit Supreme Court's jurisdiction to control the results of a particular case.

**Sources Claiming Reconstruction Acts Unconstitutional:**

On June 13, 1967 United States Representative Rarick of Louisiana, submitted to the United States Congress Louisiana House Concurrent Resolution



urging the United States Congress to declare the 14 Amendment illegal. He also entered a treatise on the illegality of the 14<sup>th</sup> Amendment prepared by a Louisiana Judge Leander H. Perez. The Resolution stated "*Whereas the Reconstruction Acts of Congress unlawfully overthrew their existing governments, removed the lawfully constituted legislatures by military force and replaced them with rump legislatures which carried out military orders and pretended to ratify the 14<sup>th</sup> Amendment*"

According to the SC Law Quarterly Vol. 11, 1959 in discussing the Political Question nature of the 14<sup>th</sup> Amendment it states in *Coleman v. Miller 307 U.S. 433* (1938), the court discussed the questionable nature of the adoption of the 14<sup>th</sup> Amendment, pointing out the incongruity of the failure to recognize the withdrawals of the ratifications by Ohio and New Jersey as compared to the subsequent ratifications of North-Carolina, South Carolina, Georgia, after such states had formally rejected it. The Court referred to the dubious first Proclamation of the Secretary of State and the following act of Congress was declared the 14<sup>th</sup> Amendment to have been adopted and the second Proclamation of the Secretary of State proclaiming adoption. The Court then stated:

*"This decision by the political departments of the Government as to the validity of the adoption of the 14<sup>th</sup> Amendment has been accepted. We think that in accordance with this historic precedent the question of the efficacy of ratifications of State Legislatures, in the light of*

*previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in Congress in the exercise of its control over the promulgation of the adoption of the amendment."*

The Tulane Law Review Vol. 28 of 1953 in the article entitled The Dubious Origin of the 14<sup>th</sup> Amendment by Walter J. Suthon, Jr., former President of the Louisiana State Bar Association, states;

*"The most extreme and amazing feature of the Act (Reconstruction Act of March 2, 1867) was the requirement that each excluded state must ratify the Fourteenth Amendment, in order to again enjoy the status and rights of a State, including representation in Congress. Section 3 of the Act sets forth this compulsive coercion thus imposed upon the Southern States.*

*The most apt characterization of this compulsive provision, placing these States under military authority, there to remain until they comply, inter alia with this requirement of ratifying the rejected Fourteenth Amendment, is found in a speech of Senator Doolittle of Wisconsin, a Northerner and a Conservative Republican. During the floor debate on the bill he said;*

*"My friend has said what has been said all around me, what is said everyday; the people of the South have rejected the constitutional amendment, and therefore we will march upon them and force them to adopt at the point of a bayonet, and establish military over them until they do adopt it." Congressional Globe 39<sup>th</sup> Congress 2<sup>nd</sup> Session, Part 3, at 1644 (1867).*

*Surely, the authors of our Constitution never contemplated or understood that ratification of a constitutional amendment proposal by a State could lawfully be compelled "at the point of a bayonet", and by subjecting all aspects of civil life in the recalcitrant State to continue military rule, until said State recanted its heresy in rejecting the proposed amendment and yielded the desired ratification to the duress of continued and compelling force."*

*The footnote of this last statement states "it is elementary that any consideration of an amendment proposal from Congress by a State legislature must involve equal freedom on the part of each State to ratify or reject, as its legislature in its deliberation and discretion determine. Constitutional right and power of a State legislature to ratify carries with it, by necessary implication, an unquestioned and unfettered right and power to refuse to ratify."*

The Legislative Act called Reconstruction expressly did not allow for rejection, Isaac Hutchison Birch in the absence of any information to the contrary, relying on historical facts and legal treatises, concluded that: the only lawful remedy remaining was to recognize and participate in the last legal Constitution of North-Carolina, which was put in abeyance by the Reconstruction Acts. A Declaration of Re-establishment was rendered and notice was given to the President of the United States, William Clinton, as well as, Governor Jim Hunt. After Notice was given, officers of the 39<sup>th</sup> State gave court summons in the form of uniform citations creating circumstances where these issues could be addressed in law. In every situation where these issues have been brought forth in the District and Superior Courts of the STATE OF NORTH CAROLINA, established by General Order 120, there has been a proven history of not allowing a meaningful hearing. These cases include: STATE OF NORTH CAROLINA v. Ainsworth No. 06-CRS-707182, STATE OF NORTH CAROLINA v. Ainsworth No. COA02-88, STATE OF NORTH CAROLINA v. Honeycutt No. 991F8737, STATE OF NORTH CAROLINA v. Reid Mecklenburg county, and STATE OF NORTH CAROLINA v Rose No. 09IF 708101. The history of each of these cases shows complete avoidance and lack of proof of jurisdiction over the man and over that, of the land.

THE STATE OF NORTH CAROLINA, as established by the Military Reconstruction Acts, has no lawful authority over a Citizen of the North-Carolina republic; I, Isaac Hutchison Birch, am a Citizen of North-Carolina, established December 18<sup>th</sup>, 1776 as amended. Nor does THE STATE OF NORTH CAROLINA have an unbroken chain of custody, demonstrating a clear title, over the land that is North-Carolina.

I. UNCONSTITUTIONAL ACT CREATES NOTHING

In Norton v. Shelby County, 6 S.Ct. 1121 the court agrees – “An unconstitutional act is not a law. It confers no rights. It imposes no duties. It affords no protection. It creates no office. It is in legal contemplation as inoperative as though it had never been passed. Therefore an unconstitutional act purporting to create an office gives no validity to the acts of a person acting under color of its authority.”

In this present matter, the STATE OF NORTH CAROLINA is, in fact, created by an unconstitutional act and without due process of law. This usurpation; this act against the Freemen of the North-Carolina republic, the 12<sup>th</sup> State, was not done constitutionally or by an act of the Freemen of the North-Carolina republic. This act was put into place by the Representatives of

Pennsylvania, New York, Illinois, etc. Nowhere in the Constitution for the United States of America does it authorize that any one of the several states is subject to the will of the Representatives of different or foreign states. Congress' duty is: to guarantee a republican form of government to North-Carolina, to protect the Freemen of the North-Carolina republic from invasion and usurpation, and not become the invaders and usurpers themselves. Congress' actions are a breach of trust. This duty necessitates that a specific people; a Body Politic, are the object of what is being guaranteed – in this case, a republican form of government and protection of life, liberty and property.

There has been a fundamental change, between 1787 and 1861, in the Federal Government's belief of whom the "People" are. In 1787, the People were the free citizens, the Lawful Men of any state in the Union. These were the people who could alter their form of Government through convention, as we saw in the Articles of Confederation to the Constitution for the United States of America. In the time frame of 1861 to 1867 we see that Congress' execution of usurpation, fratricide, and genocide. President Lincoln and the United States Congress followed the principal that the People were no longer the citizens of the several States, but rather, a nationalized people under the 14<sup>th</sup> Amendment, which is a contravention, and opposed to, Citizenship of the respective States, as independent countries brought together by the trust indentures called Declaration of

Independence and the Constitution for the United States of America. President Lincoln and Congress claimed that the people of any one State had no authority to alter or to abolish their Form of Government; that the authority to alter or abolish their Form of Government came solely from permission from the United States Congress.

Alexander Hamilton, one of our founders, tells us in The Federalist Papers, #78:

*"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid." (Emphasis added)*

*"It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. (Emphasis added) It is far more rational to suppose, that the courts were designed to be an intermediate body between the*

people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. (Emphasis added)

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

"Though I trust the friends of the proposed Constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or



abolish the established Constitution, whenever they find it inconsistent with their happiness, (emphasis added) yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. (Emphasis added) But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community."

Hamilton, in Federalist 78 cautions us to remember that "a constitution is as a fundamental law" and that the representatives cannot substitute their will for the will of the people.

In The American Annual Cyclopeda and Register of Important Events of the Year 1867 Vol VII, p.206, Entered according to Act of Congress, in the year 1868,

by D. Appleton & Company there is a quote from Thaddeus Stevens,

Representative of Pennsylvania, regarding Reconstruction, he says, "Though the President is Commander-in-Chief, Congress is his commander; and God willing, he shall obey. He and his minions shall learn that this is not a Government of kings and satraps, but a Government of the people, and that Congress is the people."

(Emphasis added)

This is in direct conflict to, and an overthrow of, the founding principle of this American form of government. The representatives of the people are not the people, and cannot substitute their will for the will of the people, just a Servant is not in command of his Master, just as a Trustee cannot breach the trust expressed by the Grantor.

We see here from The Federalist Papers that adhering to the Constitution for the United States of America was the intent of the founding fathers. It is clear that they would not consider a legislative act that was contrary to the Constitution for the United States of America as valid. When Congress begins to substitute their will for the will of the people, we no longer have a government of the people, by the people. We have a government of the government, by the government - a dictatorship - which is somewhat addressed from Mr. Eldridge, Representative of

Wisconsin, regarding Reconstruction – "...*There never was a more abominable doctrine, or one more fatal to this Government, than that which asserts its right and power to hold the late insurgent States as conquered territory, and the people as conquered subjects.*"

It is also important to note here that just because the term "freemen" evokes prejudicial and negative thoughts, in no way does it take away the legal definition and the rights associated with it.

The following Articles of the Constitution for the United States of America were violated through the forced creation of the 39<sup>th</sup> STATE OF NORTH CAROLINA:

Article I § 9 cl. 3 states, "*No bill of attainder or ex post facto law shall be passed.*" Black's Law Dictionary defines Bill of Attainder as "*Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial.*" United States v. Brown, 381 U.S. 437, 448-49, 85 S.Ct. 1707, 1715, 14 L.Ed. 484, 492; United States v. Lovett, 328 U.S. 303, 315, 66 S.Ct. 1073, 1079, 90 L.Ed. 1252. "*An act is a bill of attainder when the punishment is death and a "bill of pains and penalties" when the punishment is less severe; both kinds of punishment fall within the scope of the constitutional prohibition.*" The

United States Congress took the position that the people of the North-Carolina republic had committed treason in purportedly rebelling against the United States Government through the act of secession. The United States Congress provided the people of the North-Carolina republic with no due process of law in claiming that the people had committed treason.

*Art. III § 3 cl. 1 states, "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid, and Comfort..."*

A State within the United States cannot wage war on another, nor provoke violence. Abraham Lincoln never recognized the Southern States as leaving the Union ("Perpetual Union") and yet by the Constitution for the United States of America, the only way to wage lawful war is on a foreign nation. Abraham Lincoln committed treason by his own justifications, and waged an unjust war.

*Art. IV § 3 states, "New States may be admitted by Congress into this Union: but no new State shall be formed or erected within the Jurisdiction of any other State..."*

This applies to the present case, in that, this present STATE OF NORTH CAROLINA prosecuting Isaac Hutchison Birch was "*erected within the*

*Jurisdiction of another State*" which violates this article of the Constitution for the United States of America.

**Article V** states, *"The Congress...shall propose amendments to the Constitution... (and) shall be valid to all intents and purposes as part of the Constitution...; Provided...that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."*

The de-jure State of North Carolina was not allowed to send Representatives until they passed, ratified, and amended the Constitution with the 14<sup>th</sup> Amendment. These representatives from the North-Carolina republic were William A. Graham and John Pool, and they were denied seats in Congress, therefore the de jure State of North Carolina was denied Suffrage in the Senate in regard to the 14<sup>th</sup> Amendment.

**Amendment V** states, *"No person...shall be deprived of life, liberty, or property, without due process of law; nor private property be taken for public use without just compensation."*

The Freemen of the North-Carolina republic were denied due process when Lincoln waged war. The Freemen of the North-Carolina republic violated no laws by seceding from the Union, or by defending themselves against the Federal

Government's unjust war. The Federal Government violated International Law by not using all methods available to avoid war. The United States Government waged an unjust war; therefore denying themselves the rights associated with conquest. This applies to the present case, in that, Isaac Hutchison Birch is being denied his right to participate in provable, lawful government by those actors that demand he be subjugated, that he be compliant with, and agree to the loss of his rights associated with being a Citizen of the 12<sup>th</sup> State to the Constitution for the United States of America. He is being denied this without due process of law.

The binding law cited in the United States Senate justifying the conquest of North- Carolina was stated on February 23, 1866 by Senator Fessenden. He states:

*"If we have been in a state of war, the question arises – and it is a very simple one, ...is there any dispute as to what are the consequences of war? What are the consequences of successful war? Where one nation conquers another, overcomes it without qualifications, without terms, without limits, and after a bitter contest succeeds in crushing its enemy, occupying its enemy's territory, destroying its post, what are the consequences? The Senator is perfectly familiar with the writers on International law. Let him read the chapter in the book under my hand upon "Acquisitions by War."*

*Is there anything more certain than that the conquer has a right, if he chooses, to change the form of government, that he has a right to punish, that he has a right to take entire control of the nation and the people, ... with only the limitation that he shall not abuse them and conduct them in a manner contrary to humanity, in the ordinary acception of the term?"*

Senator Johnson replied, "What is the book?"

Senator Fessenden replied, "Vattel, which is perfectly familiar to the Senator as it is to everybody else who is master of the subject. I can take up the book and read passages to show precisely what I have stated, in the strongest possible terms. I did not think it necessary to hunt up a dozen authors, because the law is the same in all. There is no dispute about it. That principal, then, is settled."

Senator Fessenden goes on to state his abstract and absurd reasoning justifying the principals of conquest, in light of the fact that, Congress expressly stated that the War was not for any purpose of conquest or subjugation by stating;

*"We are told that we did not wage a war of conquest. Certainly we did not. Congress said precisely what it meant at the time it stated that this war was not waged for any purpose of subjugation. It was not*

*commenced with any such idea, but if it follows that subjugation must come in order to accomplish what we desire to accomplish and what we must accomplish, it is not our fault. If subjugation becomes necessary, although that was not the idea with which the war was commenced, who can complain?"* The Congressional Globe, First Session of the 39<sup>th</sup> Congress, p.988.

History shows us that Senator Fessenden position is the position ultimately accepted and exercised by Congress. Senator Fessenden's argument is based upon the Object of the War not being for any purpose of conquest or subjugation. He conveniently leaves out what the Object of the War was for. The Object of the War was to preserve the Union with all the dignity, equality, and rights of the several States unimpaired. Isaac Hutchison Birch declares that it is impossible to preserve the rights of a State in an unimpaired condition through an unjust war of conquest and subjugation. Also, preserving a Union of several States comprised exclusively of State Citizens cannot be preserved in an unimpaired condition through the Nationalization of citizenship, as was done through the 14<sup>th</sup> Amendment. Simply stated, the Union was destroyed by the Reconstruction Acts. It was not preserved in an unimpaired condition.



Senator Fessenden's position is based upon the assumption that Washington City's war upon the Southern States was, in accordance with International law, a just war. If Congress and the President had used Vattel as a source prior to invading the Southern States, it would have been proven quickly that the United States was prosecuting an unjust war in violation of The Law of Nations Book III- OF WAR, Chapter III – Of the Just Causes of war §'s 24 – 32, 35, 38 and 39.

The Law of Nations Book III- OF WAR, Chapter XII – Of

Acquisitions By War, and Particularly of Conquests §'s 202 states,

*"The whole right of conqueror is derived from justifiable self-defense which comprehends the support and prosecution of his rights." § 203 entitled "Whether we are to set at liberty a people whom the enemy has unjustly conquered.", states "...with regard to a people who the enemy had unjustly oppressed. For a people thus spoiled of their liberty, never renounced the hope of recovering it..."*

Senator Fessenden admits that Congress waged war against the North-Carolina republic. He fails to address the lawfulness and justness of the war that was waged.

History shows us that Abraham Lincoln refused to meet with any Representatives from the Confederate States of America to discuss peaceful negotiations for the transfer of United States Military Forts. Lincoln did not recognize the Confederate States of America as a sovereign nation. His position was not based upon the violation of any expressed statutes or laws. President Lincoln's position was that the Southern States ordinances of secession were null and void, and that they were still States in the Union in rebellion to lawful authority. President Lincoln made no attempt to pursue any judicial ruling on the lawfulness of his position or the unlawfulness of secession prior to sending troops to Fort Sumter. Lincoln's decision to wage war on Americans - exercising their right to alter their form of government to one that it's Citizens consented to - set precedent, and overturned the principals these united States were founded upon. Lincoln's new foundation for America is based upon the principal that he who is most powerful governs, and remedy through due process of law is dead.

Lincoln's disregard or lack of want for judicial ruling is further exemplified by ignoring a ruling from R. B. Taney, Chief Justice of the Supreme Court of the United States in Ex Parte Maryman, when Lincoln's suspension of writ of habeas corpus was found unlawful. Chief Justice Taney stated:

*"...These great and fundamental laws, which congress itself could not suspend, have been disregarded and suspended, like the writ of habeas corpus, by a military order, supported by force of arms. Such is the case now before me, and I can only say that if the authority which the constitution has confided to the judiciary department and judicial officers, may thus, upon any pretext or under any circumstances, be usurped by the military power, at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty and property at the will and pleasure of the army officer in whose military district he may happen to be found. In such a case my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer on me, but that power has been resisted by a force too strong for me to overcome. It is possible that the officer who has incurred this grave responsibility may have misunderstood his instructions, and exceeded the authority intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the District of Maryland, and direct the clerk to transmit a copy, under seal, to the President of the United States. It will then*

*remain for that high officer, in fulfilment of his constitutional obligation to "take care that the laws be faithfully executed," to determine what measures he will take to cause the civil process of the United States to be respected and enforced." (Emphasis Added)*

*R. B. Taney, Chief Justice of the Supreme Court of the United States  
Ex parte Merryman, 17 F. Cas. 144 (1861)*

Lincoln continued to adhere to the same practice in spite of this judicial ruling.

The STATE OF NORTH CAROLINA, in EVERY case in which jurisdiction has been challenged based upon the illegitimacy of the creation of the 39<sup>th</sup> of STATE OF NORTH CAROLINA, has never entered one word of rebuttal, nor answered any question concerning the lawfulness of their jurisdiction over Citizens of the 12<sup>th</sup> State, concomitant with the Judges allowing continued prosecution without allowing a meaningful hearing. The judges have continually violated their judicial Canon 1, to the point where Isaac Hutchison Birch can have no reason for the expectation of a fair trial in any court of the 39<sup>th</sup> State. The dominant power, the 39<sup>th</sup> State, demands obedience, yet has consistently used the

court to deny due process of law by not giving a meaningful hearing on these issues... STATE OF NORTH CAROLINA v. Ainsworth No. 06-CRS-707182, STATE OF NORTH CAROLINA v. Ainsworth No. COA02-88, STATE OF NORTH CAROLINA v. Honeycutt No. 991F8737, STATE OF NORTH CAROLINA v. Reid, STATE OF NORTH CAROLINA v. Birch No. 10CR050329

*Amendment IX states, "The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people."*

Under this foundation of the Reconstruction Acts, we have many issues before us today, with laws and policies in place, which are beyond the enumerated powers of Congress. Individual States will vote and pass particular legislation, not realizing their diminished status, and then the Federal government steps in to go flagrantly against the people's will. The Reconstruction Acts and the 14<sup>th</sup> Amendment are the foundation for every unconstitutional act prosecuted by Congress, and it is that usurpation that has been maintained and progressed by Congress and the de facto states to date.

**Amendment X states,** *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*

It is clear and beyond all reasonable doubt that gross violations of the Constitution for the United States of America and rights of the People of the several States took place and continues to take place. This fact cannot be ignored without perpetuating an already comprised legal system.

## **II. POLITICAL QUESTION**

In the Declaration of Independence we read *"...That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, - That whenever any Form of Government becomes destructive to these ends, it is the Right of the People to alter or abolish it, and to institute new Government...but when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their security..."*

In the Mecklenburg Declaration of Independence of May 20, 1775, we read, *"That whosoever directly or indirectly abetted or in any way, form or manner*

*countenanced to unchartered and dangerous invasion of our rights... is an enemy to this County - to America and to the inherent and inalienable rights of man."*

We see that our country was founded upon the principals that government was founded, by consent, for the purpose of securing the inalienable rights of man. And whenever government becomes destructive and abusive to the rights they have a duty to uphold, this becomes reason and cause for political dissolution.

It is a common historical fact that abusive and oppressive governments which intend to maintain their abuses seek justification in a multitude of manners. i.e., Germany claimed sovereign right to exterminate Jews. Some seek biased judiciaries; some seek dictatorial rights of a dictator. This list is virtually endless.

A long train of abuses and usurpations by the United States Federal government and by the Congressionally Reconstructed STATE OF NORTH CAROLINA unquestionably consists in the legislative and executive branches working together to usurp rights and commit egregious and wanton abuses. The Federalist Papers #78 tells us the judiciary should be a bulwark between the people and an over-reaching legislature. The Political question doctrine, if used as a defense in which governmental abuses and usurpations are procedurally given immunity, is yet another abuse and treason against the People. Our system of government consists of 4 parts: (1) the People (2) the Legislative (3) the Executive and (4) the Judiciary branches. We once had in our system a checks and balances

designed to prevent and stop abuses. In our system, the checks and balances are designed to operate between the executive, legislative, and judiciary in a just and honorable manner to where the People are not left with exercising their check and balance as occurred in the Declarations of May 20, 1775 and July 4, 1776. The concept that the governments can violate the laws, rights, and abuse the People until such time that the People rise up violently, is despotic and treasonous against the rights of the People.

In relation to Isaac Hutchison Birch, this Memorandum shows a long train of abuses and usurpations evincing a design to reduce the citizens of the several states to a subjugated people, not allowed to have a government of consent, and with a denial of remedy from the judicial branch.

Black's Law Dictionary Sixth Edition defines Political questions as:

*"Questions of which courts will refuse to take cognizance or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers. The "Political question doctrine" holds that certain issues should not be decided by courts because their resolution is committed to another branch of government and/or because those issues are not capable, for one reason or another, of*



*judicial resolution*". *Islamic Republic of Iran v. Pahlavi*, 116 Misc. 2d 590, 455 N.Y.S. 2d 987, 990.

The issues Isaac Hutchison Birch brings are: Congress's authority to annul states in times of peace, under the principle of conquest - which is war, denying equal suffrage in the Senate to a state, and coercing the adoption of the 14<sup>th</sup> Amendment to states that had previously rejected it. More succinctly, is Congress authorized to commit the political crime of treason by overthrowing State governments and ordering the amending of the Constitution for the United States of America, and does this set the precedent that coercion has binding force in law, which all persons are required to give obedience? The United States Supreme court in *Georgia v. Stanton* 6 Wallace 50 was presented with the argument of: whether the political overthrow of several Southern States, including North Carolina, through the use of force (coup d'état), carried more weight than the issue, was a political question as presented by the government. The Supreme Court, having full authority to act *sua sponte* if it felt that Congress's exercise of power, through non-refuted unconstitutional and despotic actions, or whether it was a purely political question which the court could not take cognizance of, held more weight. The Supreme Court abdicated its obligation and duty to protect the rights

of the American People and acted as a co-conspirator in the overthrow of the Constitution for the United States of America.

The Supreme Court had in front of it in the brief submitted by J.S. Black for the State of Georgia, the following undisputed facts:

*"The defendants avow their intention to take the government of the State of Georgia entirely into their own hands, to nullify her laws, to control the election of her officers to deprive her people of the right to be tried by their own courts and juries, to break up her whole social organization, to destroy her existence, and replace her and all her people to a state of complete slavery. Is it not possible to conceive how a greater wrong or a more grievous injury can be committed against any large body of persons. Nor is it pretended that these things are to be done in pursuance of any valid law. The Constitution makes Georgia a Free State, and the act of Congress which requires her to be enslaved is an attempt to repeal the Constitution. The counsel for the defendants will admit that the act of Congress is unconstitutional; and if that be true, it is of no more force than if the place it occupies on the statute-book were a blank. The defendants are, therefore, guilty of a great injury against Georgia, and are committing it without the show or color of legal excuse..."*

This applies to the present matter in that: the facts surrounding are the same as they were in Georgia v. Stanton as evidenced by Mr. Black's statement "*No defence has yet been suggested by the defendants' counsel, no denial of the facts, no assertion that they are justified by legal authority*".

In the brief written by the appellant in *ex parte McCordle* 7 Wallace 506 states:

*"... We know that whatever power is possessed by Congress, or any other department of the Federal Government, is contained in a written Constitution. Within its few pages are comprised, either in expressed language or by necessary intendment, every power which it is possible for the Federal Authorities of any kind to exercise under any circumstances. Show me, then, I say, the power to erect this military government. You cannot find it expressed in any one of the 18 subdivisions of the 8<sup>th</sup> section of the first article-----that section which contains the enumeration of the powers of Congress. If it is implied in any of them, tell me in which one. I cannot find it. Turn then to the 4<sup>th</sup> section of the 4<sup>th</sup> article, that which declares that "the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion, and, on*

*application of the Legislature or the Executive, ...against domestic violence."*

*"Is a Military Government here sanctioned? Certainly it is not expressed. It is implied? Suppose, for the sake of the argument that the United States, uninvited by its legislative or executive, can go into a State for the purpose of repressing disorder, or violence or of overthrowing an existing State Government on the ground that it is not republican. I deny that they can introduce a military government as a means to such an end. To avoid misapprehension, I carefully distinguish between the use of military power in aid of the civil, subordinate to it, and military government. The two systems are opposed to one another. In one case the civil power governs, in the other, the military. In one, the military power is the servant to the civil, in the other it is the master. My proposition is that a military government cannot be set up in the United States for any of the purposes mentioned, and the reason is this: military government is prohibited by the Constitution. Not disputing the proposition that Congress may pass all laws necessary or proper for carrying into effect any of the expressed powers conferred upon any department of the government, and that Congress is in general the judge both of the*

*necessity and the means, the proposition is to be taken with this qualification: that is, that the means must not be such as are prohibited by the Constitution. A lawful end, an end expressly authorized by the Constitution cannot be obtained by prohibited means."*

Isaac Hutchison Birch enters all arguments written and oral, and briefs submitted to the Supreme Court in ex parte McCardle 7 Wallace 506.

The purpose of the Military Government was to maintain Military control while a new government with a new Constitution was created by the dictates of Congress. This "new" government would not be allowed Representation in Congress until such time as it ratified the 14<sup>th</sup> Amendment and the 14<sup>th</sup> Amendment became part of the Federal Constitution. The new Constitution was not a government for the Freeman of the North-Carolina republic.

The change in Government of the State of North Carolina was in fact a "coup d'état", defined by Black's Law Dictionary, Sixth Edition, p.51 as "*a political move to overthrow existing governments by force*". It is incorrect for anyone to claim that this method of changing government is lawful, binding, or in any way indicates due process of law.

It is incorrect to claim that a 'coup d'état' is a political question. Yet, this is exactly what the United States Supreme Court did in Georgia v Stanton, S.C., 6

Wall., 50-78 when it stated that "...the rights in danger must be rights of persons or property, not merely political rights."

### **III. STATE'S POSITION IS UNLAWFUL**

History shows that the courts want to use avoidance, technicalities and incorrect reasoning as a means to not address this issue. This renders Justice impossible. The clarity of the unlawfulness of this position is apparent to a rational mind. To claim technicalities and avoidance as a legal position, in spite of well-known and well-documented facts, would be equal to claiming that Neil Armstrong and Buzz Aldrin worked together to rob a Wells Fargo Truck in Des Moines, Iowa on July 20, 1969 while the world was watching them on the surface of the moon. With the court systems constantly maintaining Armstrong and Aldrin's guilt, because the Prosecution brought up many *technical* reasons why, they could proceed in the case and convict.

The argument that the STATE OF NORTH CAROLINA's prosecution of this case is unlawful, and can never change until such time that the STATE OF NORTH CAROLINA makes a good faith attempt to prove the lawfulness and legitimacy of the overthrow of the original 12<sup>th</sup> State of North Carolina. The law presumes that men act fairly and honestly – that their dealings are in Good Faith

and without intention to harm, cheat, hinder, delay or defraud another. Therefore, in Good Faith, Isaac Hutchison Birch is not concluding that the STATE OF NORTH CAROLINA prosecuting this case is attempting to *act as despots* by asserting jurisdiction where none exists – and attempting to, through coercion and duress, forcing Isaac Hutchison Birch to commit treason by recognizing the overthrow of the lawful North-Carolina republic as legitimate, and for him to violate conscience and law.

**IV. PROPOSED CONCEPTS JUSTIFYING RECONSTRUCTED STATE CONSTITUTIONS AS HAVING BECOME VALID**

There is a concept that with time Reconstruction became valid. This concept is stated by Walter Suthon in the *Tulane Law Review* in which he states in the footnote on p. 41;

*“In 1877 the people in Louisiana succeeded in re-establishing their own government, and thus rid themselves of the puppet government excrescence which the Reconstruction Act had for a time imposed upon them by coercion from without. The present state government of Louisiana is the direct linear successor “Nichols Government” which*

*the people of Louisiana elected, installed and maintained in office in 1877.*

*The "Nichols Government" came into office in Louisiana over the bitter opposition of the predecessor puppet government. The latter sought to install the "Packer Government" in official power in Louisiana, and for several months Louisiana had two governments---- the puppet "Packard Government" spawned by the Reconstruction Act and the "Nichols Government" elected by the people. Upon the withdrawal of military support from it, the "Packard Government" disintegrated ... The "Nichols Government" thus came into power as in actuality a new government-----not as a successor in continuation of the "disintegrated" puppet government. This type of change was characteristic of what occurred in other Southern States, as the puppet governments which had gone through the form of ratifying the fourteenth amendment under the compulsion and coercion under the Reconstruction Acts, fell from power one by one and were succeeded by governments of the people".*

Mr. Suthon's Treatise on the unconstitutionality of Reconstruction and the 14<sup>th</sup> Amendment is lacking, his proceeding words fail to take several important issues into consideration. The Reconstruction Acts made three fundamental



changes in our government all through coercion: (1) It changed the Body Politic (2) this changed Body politic changed the fundamental laws of the states by executing new constitutions under federal dictates (3) Body Politics operating under new constitutions purportedly adopted the 14th amendment to the United States Constitution.

Mr. Suthon's belief, that the original Body Politics, removed by Reconstruction, taking 'charge of', and 'administering' the laws and governments resulting from Reconstruction somehow reverses Reconstruction and re-establishes lawful government, is incorrect. The only way for lawful government to be re-established, after usurpation, is for the people to go back to their organic Law. Only those that have a Title interest in the land first, and then the organic body politic, can exercise this right and it must be done in proper standing as a Citizen of the respective State/Country. A United States citizen by the 14<sup>th</sup> amendment has no interest in Title or Trust to the respective State in which they 'reside', and are in an adversarial relationship to the State by their upholding the overthrow of lawful government, perpetuating usurpation.

This relates to Isaac Hutchison Birch in that: this is exactly what has happened with the Re-establishment of the 12<sup>th</sup> State of North Carolina and his claim of being a Citizen of that State. Of the two "State of North Carolina" (the

12<sup>th</sup> and the 39<sup>th</sup>); the 12<sup>th</sup> State is the only lawful, constitutional and legitimate one.

**IV. RECONSTRUCTION CREATES SUBJUGATION OF ALL STATE  
CITIZENS TO NATIONAL CITIZENS AND DESTROYS STATES  
RIGHTS**

Prior to the adoption of the coerced 14<sup>th</sup> Amendment there was only one fundamental form of citizenship in these united States of America - State Citizenship. At that time the Federal Government had only enumerated authority over the Citizens or laws of the several states; in other words the Federal government's authority was confined to a very specific and limited subject matter jurisdiction with regard to the People or the laws of the several states.

This situation was reversed through the purported Congressional creation of the "*citizen of the United States*" or "*United States citizen*" and its coerced adoption into the United States Constitution through the 14<sup>th</sup> Amendment. After the unconstitutional and coerced Reconstruction Acts, America's foundation was changed. In the United States "*there is in our Political System, a government of the several states and a government of the United States. Each is distinct from the other and has citizens of its own.*" US vs. Cruikshank, 92 US 542 (1875).

A United States citizen is a federal citizen and not a State Citizen as defined in Black's Law Dictionary, 6<sup>th</sup> Edition, p. 610: **Federal citizenship** – Rights and obligation accruing by reason of being a citizen of the United States, State or status of being a citizen of the United States.

The Supreme Court ruled early on the degree of subjugation intended by the creation of "United States citizenship" - "'Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside...' The persons declared to be citizens are "All persons born or naturalized in the United States and subject to the jurisdiction thereof...' The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject." Elk vs. Wilkins, 112 US 94 (1884)

A United States Citizen does not possess the unalienable Rights enumerated in the Bill of Rights - "*The only absolute and unqualified right of a United States citizen is to residence within the territorial boundaries of the United States*" US vs. Valentine 288 F, Supp. 597, and is considered to be a citizen of the District of Columbia, "*A person may be a citizen of the United States and not a Citizen of any Particular state*" (Slaughter-House cases) "*This is the condition of citizens residing in the District of Columbia and in the territories of the United States, or who have taken up residence abroad.*" Hepburn vs. Ellzey, 6 US 445 from CJS. Later Courts

further our understanding of this change of fundamental Citizenship – *“The privileges and immunities clause of the 14<sup>th</sup> Amendment protects very few rights because it neither incorporates the Bill of Rights, nor protects all rights of individual citizens. Instead this provision protects only those rights peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship.”* Jones vs. Temmer, 829 F.Supp. 1226

There are misconceptions as to the creation of a *“United States citizen.”* There are some that believe that this was an extension of citizenship for the freed blacks only. We need only look at the writings and speeches from that time frame in order to understand the original intent. James G. Blaine, a radical Republican Congressman during Reconstruction, made a political speech on August 29, 1866 in Skowhegan, Maine on the purpose and object of the proposed 14<sup>th</sup> Amendment. Congressman Blaine is very clear that United States citizenship is intended as a national citizenship which includes both black and white citizens. He stated:

*“And in making this extension of citizenship, we are not confining the breadth and scope of our efforts to the negro. It is for the white man as well. We intend to make citizenship National. Heretofore, a man has been a citizen of the United States because he was a citizen of some one of the States: now, we propose to reverse that, and make him a citizen of any State where he chooses to reside, by defining in advance his*

*National citizenship — and our Amendment declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." This Amendment will prove a great beneficence to this generation and to all who shall succeed us in the rights of American citizenship; and we ask the people of the revolted States to consent to this condition as an antecedent step to their re-admission to Congress with Senators and Representatives.* Political Discussions 1856 – 1886 by James G. Blaine 1887 p.64

Congressman Blaine further explained the intentions of the 14<sup>th</sup> amendment and Reconstruction in his autobiography Twenty Years of Congress 1861 - 1881 Vol. 2 (1884), it must be remembered that Congressman Blaine was in full support of both the 14<sup>th</sup> Amendment and Reconstruction measures. The following quotes show the intention of the Nationalization of citizenship and the reasoning for fraudulently amending of the Constitution. In discussing the Constitutional Conventions ordered by Reconstruction Mr. Blaine states:

*"All were ordained in the spirit of liberty, all prohibited the existence of any form of slavery, and all heartily recognized the supreme sovereignty of the National Government as having been indisputably*

*established by the overthrow of the Rebellion which was undertaken to confirm the adverse theory of State-rights." p. 300.*

It was unnecessary for Congressman Blaine to add in the statement "...all prohibited the existence of any form of slavery" since slavery was abolished by constitutional amendment approximately two years earlier.

Congressman Blaine goes on giving justification for the Nationalization of citizenship and Congressional destruction of State's rights by stating:

*"As the vicious theory of State-rights had been constantly at enmity with the true spirit of Nationality, the Organic Law of the Republic should be so amended that no standing-room for the heresy would be left." P.303.*

And:

*"The first section of the Constitutional amendment which includes these invaluable provisions is in fact a new charter of liberty to the citizens of the United States; is the utter destruction of the pestilent heresy of State-rights, which constantly menaced the prosperity and even the existence of the Republic; and is the formal bestowment of Nationality upon the wise Federal system which was the outgrowth of our successful Revolution against Great Britain." P. 312.*

And:

*"Its opening section settled all conflicts and contradictions on this question by a comprehensive declaration which defined National citizenship and gave to it precedence of the citizenship of a State.*

*"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside" These pregnant words distinctly reversed the origin and character of American citizenship. Instead of a man being a citizen of the United States because he was a citizen of one of the States, he was now made a citizen of any State in which he might choose to reside, because he was antecedently a citizen of the United States". P. 313*

The unjust war waged upon the North-Carolina republic, the resulting conquest of the North-Carolina republic and her Citizens, the Reconstruction Acts of Congress and the Coerced amending of the United States Constitution have never been defended as Constitutional, lawful or just. In fact, just the opposite is true. All parties recognize the unconstitutional reality of all of the above. The only defense used by Congress and those maintaining the Governments unlawful position is avoidance of the matter in Court as in ex parte McCordle & ex parte Yerger. The Courts have co-conspired in allowing this by allowing legal

technicalities (Miss. vs. Johnson & Georgia vs. Stanton), outright delaying of issuing decisions, as in ex parte McCardle. In recent times, when these issues have been raised, the STATE OF NORTH CAROLINA prosecutors have never rebutted one word or one fact presented. The STATE OF NORTH CAROLINA District and Superior Courts have looked the other way on the STATE OF NORTH CAROLINA presenting no rebuttal and allowed continuation of prosecution without proof of jurisdiction... STATE OF NORTH CAROLINA v. Ainsworth No. 06-CRS-707182, STATE OF NORTH CAROLINA v. Ainsworth No. COA02-88, STATE OF NORTH CAROLINA v. Honeycutt No. 991F8737, STATE OF NORTH CAROLINA v. Reid, STATE OF NORTH CAROLINA v. Birch No. 10CR050329

V. COERSION CREATES NO BINDING OBLIGATION

It should be needless to state that usurpation and unconstitutional acts of coercion create no lawfully binding obligation on anyone. The matter at hand shows the necessity of having to state the most basic of concepts in Law. Isaac Hutchison Birch has become aware of information that requires an express statement of his status as a Citizen of the North-Carolina republic organized under its organic Constitution of December 18, 1776, and has done so. All facts prove



that the original laws of the North-Carolina republic were removed by unconstitutional and unlawful coercive measures resulting in usurpation. The STATE OF NORTH CAROLNA prosecuting this matter demands that Isaac Hutchison Birch recognizes usurpation as lawful, therefore attempting to bind Isaac Hutchison Birch to obey statutes put into force by an unconstitutional government, which Isaac Hutchison Birch is incapable of, and therefore must refuse to recognize the lawfulness of its authority and jurisdiction.

Isaac Hutchison Birch has never waived his unalienable right to participate in lawful republican government. *"Waivers of Constitutional Rights, not only must be done voluntarily, they must be knowingly intelligent acts, done with sufficient awareness of relevant circumstances and consequences."* Brady vs. US, 397 US 742.

*"Because of what appears to be a lawful command on the surface, many citizens, because of respect for the law are cunningly coerced into waiving their rights, due to ignorance"* US vs. Minker, 350 US 179.

## VI. CONCLUSION

Isaac Hutchison Birch stands in Law; unconstitutional acts and usurpations create no law, confer no rights, impose no duties, afford no protections, and create

no offices. Acts of such offices have no validity and are merely executed under the color of authority; the office is rendered inoperative as if it had never been in existence.

*"Progress generally begins in skepticism about accepted truths.*

*Intellectual freedom means the right to re-examine much that has*

*been long taken for granted. A free man must be a reasoning man,*

*and he must dare to doubt what a legislative or electoral majority may*

*most passionately assert. The danger that citizens will think wrongly*

*is serious, but less dangerous than atrophy from not thinking at all.*

*Our Constitution relies on our electorate's complete ideological*

*freedom to nourish independent and responsible intelligence and*

*preserve our democracy from that submissiveness, timidity and herd-*

*mindedness of the masses which would foster a tyranny of mediocrity.*

*The priceless heritage of our society is the unrestricted constitutional*

*right of each member to think as he will. Thought control is a*

*copyright of totalitarianism, and we have no claim to it. It is not the*

*function of our Government to keep the citizen from falling into error;*

*it is the function of the citizen to keep the Government from falling*

*into error. We could justify any censorship only when the censors are*

*better shielded against error than the censored."*

COMMUNICATIONS ASSN. v. DOUBS, 339 U.S. 382 (1950)

Isaac Hutchison Birch is faced with his conscience and duty in this situation. His choices are: deny history; facts; Law and lawful government; his duty to his posterity; his duty to the Self-Existing One, YWHW, which would cause him to knowingly participate in the 39<sup>th</sup> Congress' overthrow of the organic government of the North-Carolina republic and its unconstitutional subjugation to the Federal Congress -OR- to recognize lawful government; to stand on what is known to be Facts, Truth, and Law, which would cause him to be unable to adhere to the statutes of the de facto STATE OF NORTH CAROLINA. To so adhere, he must recognize the legitimacy of the long train of abuses and usurpations; thereby committing the unconseionable act of treason and rebellion.

It is clear that the individuals prosecuting this case, by their actions so far, are maintaining the overthrow of an organic State of the united States and the Constitution for the United States of America, Isaac Hutchison Birch wishes to be no party to this position.

The issue is the de facto STATE OF NORTH CAROLINA cannot prove its lawful creation and demonstrate an unbroken chain of custody over the land:

- (1) By claiming the unlawfulness of the de jure State of North Carolina's refusal to participate in coercing states to stay in a Union not of their consent and
- (2) By claiming the de jure State of North Carolina's secession (including the right of self-defense on the part of the North-Carolina republic, against the aggression of the Federal Government denying the de jure State of North Carolina a Government of consent) can be deemed treason and/or rebellion;
- (3) By claiming the lawfulness of Abraham Lincoln's war against the seceded states;
- (4) By claiming the Constitutional authority of the Federal Government to:
  - (a) Declare secession a criminal action;
  - (b) Annul states;
  - (c) Change the fundamental character of citizenship in the United States from being citizens of your own country/state to primary citizenship residing in the United States, thereby dissolving the Union and creating a Nation, and;

(d) Coerce the amending of the Constitution of the United States of America as it did with the purported 14<sup>th</sup> Amendment.

STATE OF NORTH CAROLINA should by Law, dismiss and vacate; or remove this case to the United States District Court. To do anything otherwise would be a complete usurpation and an excess of jurisdiction.

My yes meaning yes and my no meaning no, the foregoing is true, correct and complete to the best my knowledge and good faith belief. Teste meipso this

21 day of their MAY month, AD 2010 (G) by



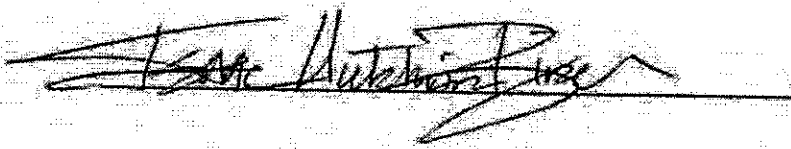
Grantor... Isaac Hutchison Birch, sui juris

I hereby certify that a copy of MEMORANDUM OF LAW has been severed upon the parties listed below by hand delivery and/or Registered Mail.

The Clerk of Court of Macon County

The District Attorney of Macon County

This 21 day of May, 2010.

A handwritten signature in black ink, appearing to read "Isaac Hutchison Birch", written over a horizontal line.

Isaac Hutchison Birch

462 Judd Duvall Lane

Franklin, North-Carolina,

Macon county

Exhibit A

239

STATE OF MISSOURI )  
                                  ) ss  
COUNTY OF HOWARD)

IN RECORDER'S OFFICE

I, Recorder of said County, do hereby certify that the within instrument of Writing was, at 11:44 o'clock A.M. on the 12th day of April 2010, duly filed for record in this office, and has been recorded in Book 445 Page 239, Doc. #20100477.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Fayette, Missouri, on the day and year aforesaid.



Charles J. Flaspohler  
Recorder of Deeds

Cindy A. Mowry Deputy

Enclosed is a Declaration of Status and Standing in Law. please file this in Miscellaneous, and return to me the original with a certified copy.

Sincerely,

Isaac Hutchison Birch  
Isaac Hutchison Birch

STATE OF MISSOURI )  
COUNTY OF HOWARD ) ss  
In testimony whereof, I have hereunto set my hand and affixed my official seal at Fayette, Missouri, on the 12th day of April 2010.  
By: Charles J. Flaspohler Recorder of Deeds  
Cindy A. Mowry Deputy

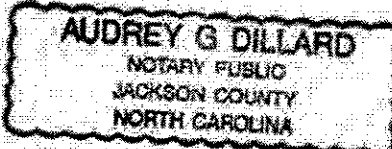
Enclosures:

Postal Money Order  
Declaration of Status and Standing in Law

The above signature is that of Isaac Hutchison Birch who appeared before, and is known to me.

Audrey G. Dillard  
Notary name  
Macon, NC  
Notary County and State

Audrey G. Dillard  
Notary Signature  
July 2, 2011  
My commission expires



240

AFTER RECORDING RETURN TO:  
Isaac Hutchison Birch  
c/o 362 1/2nd Street  
Franklin, North Carolina, Mason County  
private, zip 28731

**PUBLIC DECLARATION OF STATUS AND STANDING IN LAW**  
By Affidavit

I am Isaac Hutchison Birch, a white Christian man, a Natsarna, living upon the land of my nativity and within the geographic boundaries of the constitutional republic called North-Carolina. My Citizenship, however is in Heaven, in the Kingdom of my Father, the *Self-Existing One*, YHWH and of His Son, *Yahshua* Messiah, traditionally called Jesus Christ. I am not the unincorporated trust entity styled ISAAC HUTCHISON BIRCH, though I am its Settler and the Beneficiary of that dolus trust. I AM above the age of majority, have firsthand knowledge of all phereinment facts and am competent to testify. I hereby declare the following facts:

- 1) There is only one *Self-Existing* Creator, YHWH, of all that is or ever can be. He alone is the Absolute Sovereign.
- 2) He has but one begotten Son, *Yahshua* Messiah, commonly called Jesus Christ, who alone has been given all Power in Heaven and on earth. It is to Him alone that I owe my allegiance as lord and king.
- 3) Pursuant to the *Original Jurisdiction* of the First Delegation of Authority, also recorded at Genesis 1: 28, I AM the sovereign of my own private dominions.
- 4) I Accept the Book containing the Words of the *Self-Existing* Creator and His Prophets, Teachers of the Law, Apostles and Historians, the Book known universally as *The Holy Bible* as my primary source of Knowledge, Wisdom and Judgment. It alone is the final arbiter for all questions of law, government and religion.
- 5) I Accept the laws of men that have devolved from that great Book as they have developed, primarily in England and known as *English Common Law*.
- 6) I Accept the *Magna Carta*, the first law of the People limiting the powers of government.
- 7) I Accept the *Declaration of Independence*, the first law establishing the inherent rights of the People to government by consent only.
- 8) I Accept the *Alecklenburg Declaration of Independence* of 1775 and the *organic constitution of North Carolina* of 1776.
- 9) I Accept the *organic constitution of the Missouri republic* of 1820, from the land of my nativity.
- 10) I Accept the *Constitution for the United States of America* of 1787.



- 11) By this formal Acceptance of the foregoing law forms, I Declare myself a cosigner of these documents, *inno pro inno*, effective upon my attaining the age of majority, 20th of January, 1993, making me a party to the contract with standing.
- 12) I Declare my allegiance and affinity to the foregoing in order of appearance, the former being superior to the latter, the latter being subordinate to the former.
- 13) I Declare that I am not and never intended to be an enemy of my country, my nation or any aspect of its legitimate government or anyone serving as an officer or agent *de jure* thereof.
- 14) I Declare that I possess immunity to any manmade law that is not directly subordinate to the Biblical law form as revealed herein above.
- 15) I Declare that I AM entitled to full protection of all my inherent rights by every officer, agent and employee of every instrumentality, agency, division or branch of any government construct erected or created within the law form as outlined herein above.
- 16) I Declare that government exists for the protection of all people's inherent rights and that all officers, agents and employees thereof function as ministers of *Yahshua* and to that end and to that purpose my allegiance extends.

My religious training prevents me swearing an oath. My yes means yes and my no means no. The foregoing is true, correct and certain to the best of my knowledge and good faith. I believe. Teste meipso this 7<sup>th</sup> day of the April month, 2010 (C).

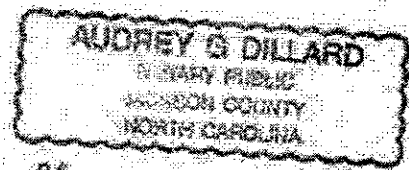
by grantor/beneficiary: Isaac Hutchinson Birch  
Isaac Hutchinson Birch

"At the mouth of two or three witnesses every matter shall be established." (Deuteronomy 17:15)

Macon county \_\_\_\_\_  
North-Carolina \_\_\_\_\_  
Public Witness 01

On this date Isaac Hutchinson Birch, appeared before me and executed the foregoing document in my presence. I am a duly authorized Notary Public in the state and county indicated above. In Acknowledgment of the foregoing, I set my hand and seal  
Date: 4-7-2010

Audrey G. Dillard  
Notary Public My commission expires: July 2, 2011



Private Witnesses:

#2 Jeffrey D. Johnson LS [Signature]  
#3 Kenny A. Birch LS [Signature]

COPY  
I. H. Hatcher

Affidavit of Citizenship and Domicile

Macon county  
North-Carolina American Republic

KNOW ALL MEN BY THESE PRESENTS, I, Isaac Hutchison Birch, having first hand knowledge of the facts as stated herein, hereinafter "affiant", do hereby declare my proper and lawful status with respect to Citizenship and Domicile, to-wit:

- 1. Affiant's natural birth occurred at (city) Fayette (state) Missouri on the 29th day of January ~~1976~~ 1976
- 2. Affiant has been an Inhabitant of North-Carolina from (month) May (year) 1999 until the present

- 3. Affiant understands clearly the difference between a "state Citizen" and a "United States citizen; affiant is not a Fourteenth Amendment federal "United States citizen"
  - (a) "We have in our political system, a government of each of the several states and a government of the United States. Each is distinct from the other and has citizens of its own." U.S. v. Crockett, 92 US 342.
  - (b) "The persons declared to be citizens are "...all persons born or naturalized in the United States and subject to the jurisdiction thereof." The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject." Elk v. Wilkins, 112 US 91.
  - (c) "The privileges and immunities clause of the 14<sup>th</sup> Amendment protects very few rights because it neither incorporates the Bill of Rights nor protects all rights of individual citizens. Instead this provision protects only those rights peculiar to being a citizen of the federal government. It does not protect those rights which belong to state Citizenship." Jones v. Temmer, 829 F. Supp. 1226 (1993).

- 4. Affiant understands clearly that the term "United States" has three different meanings, and must be defined with respect to issues of law and citizenship:
 

"The term 'United States' may be used in any one of the following senses: (1) It may merely be the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations; or (2) It may designate the territory over which the United States is sovereign or (3) It may be the collective names of the several states which are united by and under the Constitution." *Hoovert & Allison v. Hoyt*, 324 US 652 (telephonous hereinafter referred to as "1<sup>st</sup> Hoovert", 2<sup>nd</sup> Hoovert, 3<sup>rd</sup> Hoovert).

- 5. Affiant is not a person subject to the exclusive jurisdiction of Congress as defined in Article I, Section 8 (17) of the United States Constitution (2<sup>nd</sup> Hoovert). Affiant is an American Citizen of one of the several States (3<sup>rd</sup> Hoovert), not a 14<sup>th</sup> Amendment U.S. citizen.
- 6. Any and all contracts or agreements which would tend to indicate that affiant is a 14<sup>th</sup> Amendment "U.S. citizen", a citizen of the federal government, are hereby declared to be null and void. Affiant hereby declares that any such contract/agreement was not entered into knowingly, voluntarily and intentionally, and therefore was the result of Constructive Fraud.
- 7. Through a study of history, your affiant has discovered that the *de jure state of North Carolina* was purportedly annulled on 2 March 1867 by the 1<sup>st</sup> "Reconstruction Act" and that a new "State" named THE STATE OF NORTH CAROLINA entered the American union as the 39<sup>th</sup> State on June 25, 1868 in direct contravention of the July 1861 Resolutions of the United States Congress.
- 8. The *de jure state of North Carolina* existed as a republic prior to the formation of the United States (March 4, 1789 to November 21, 1789) and, as Article IV, Section 4 of the Constitution for the United States of America guarantees to each state body politic a republican form of government, affiant does not recognize the *de facto* State of North Carolina which purportedly entered the American union on June 25, 1868, as a lawfully created sovereign state. Said State is a *de facto* corporation, allowing only 14<sup>th</sup> Amendment U.S. citizens residing in North Carolina to vote and hold office therein. This action displaced the original State body politic composed of the Freeman of North Carolina, regulating their own affairs, with a body politic composed of residents of North Carolina who recognize the Federal United States government as their sovereign and sole governing power.
- 9. Affiant hereby declares that any and all contracts or agreements which may be claimed to exist between affiant and the *de facto* STATE OF NORTH CAROLINA to be null and void, as any such contract/agreement was not entered into knowingly, voluntarily and intentionally and constitutes constructive fraud.
- 10. **SERVE NOTICE:** The *de jure state of North Carolina* was re-established on 1 December 1997, of Right, Duty, and of necessity, and by the popular vote of state Inhabitants who were not and are not federal U.S. citizens.

returning to the organic state Constitution of 1776. A few Amendments were made to that Constitution, of necessity, and all have "sunset clauses" save one.

11. The one permanent Amendment passed, rescinded the secession Ordinance of 20 May 1861, as the inhabitants of the de jure republic do not wish to secede from the United States of America (3<sup>rd</sup> Heaven), rather, to re-establish the antebellum status of the state of North-Carolina in which the inhabitants are neither a conquered or a subjugated people, and where their Rights are both guaranteed and protected.

12. Affiant has, and hereby does, knowingly, voluntarily and intentionally:

- (a) Make a formal declaration of affinity to North-Carolina, a state established by constitution on December 18, 1776, paid taxes therein, thereby securing the right to vote in that state;
- (b) Declare that your affiant is a North-Carolina state Citizen and not a "U.S." federal citizen;
- (c) Declare that your affiant is not a "resident of", an "inhabitant of" or "domiciled within" the United States (2<sup>nd</sup> Heaven);
- (d) Enter into a covenant (common-law contract) with a state foreign to the United States (2<sup>nd</sup> Heaven) for the protection of rights and property and;

13. Affiant hereby reserves all of his/her common-law rights to not be compelled to perform under any contract agreement which your affiant did not enter into knowingly, voluntarily and intentionally, and further-more, your affiant does not accept the liability associated with the compelled benefit of any unrevealed contract or commercial agreement.

WHEREFORE: Affiant further saith naught.

NOTE: This affidavit is not intended for national expatriation. It is intended for renunciation of unconstitutional domestic 14th amendment Federal citizenship and claim to exclusive lawful state citizenship.

SIGNED [Signature] on this the 13<sup>th</sup> day of March 2010  
Affiant

Deuteronomy 19:15 On the evidence of two or three witnesses a matter shall be confirmed.

First Witness [Signature] Second Witness [Signature] Third Witness [Signature]

North-Carolina tax paid: 20 Dollars in silver coin of the United States of America 3-13-10

Received by: [Signature] title Chief Magistrate Date

This Affidavit is in compliance with Article 40, Constitution of North-Carolina-1776 as amended.  
Sealed unto my hand this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Authorized signature \_\_\_\_\_

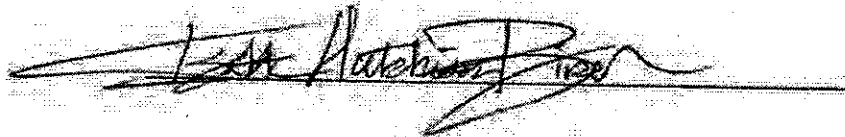
title \_\_\_\_\_

I hereby certify that a copy of AFFIDAVIT OF CITIZENSHIP AND DOMICILE has been severed upon the parties listed below by hand delivery and/or Registered Mail.

The Clerk of Court of Macon County

The District Attorney of Macon County

This 21 day of MAY, 2010.

A handwritten signature in black ink, appearing to read "Isaac Hutchison Birch", written over a horizontal line.

Isaac Hutchison Birch  
462 Judd Duvall Lane  
Franklin, North-Carolina,  
Macon county



National Archives and Records Administration

700 Pennsylvania Avenue, NW  
Washington, DC 20408-0001

*Exhibit C*

April 21, 2010

NWCT1R-10-03818-KK

Isaac Hutchinson Birch  
462 Judd Duvall Lane  
Franklin, NC 28734

Dear Mr. Birch:

This is in reply to your inquiry which we received on April 9, 2010, concerning a General Order for the 2<sup>nd</sup> Military District of Georgia dated June 30<sup>th</sup>, 1868.

Based on the information you provided, we examined Record Group [RG] 94, Records of the Adjutant General's Office, under the series "General Orders, Second Military District, 1868" and found the document in question. We have included a complimentary copy enclosed in this letter for your use.

We hope this information is of assistance to you.

Sincerely,

T. JULIETTE ARAI  
Archives I Reference Section  
Textual Archives Services Division

Enclosures

**COPY**  
*[Handwritten signature]*

HEADQUARTERS SECOND MILITARY DISTRICT,

CHARLESTON, S. C., June 30, 1868.

GENERAL ORDERS,

No. 120.

In conformity with the law of the United States passed June 25, 1868, entitled "An Act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress," all officers of the States of North Carolina and South Carolina, duly elected and qualified under the Constitutions thereof, and not prohibited from holding office in said States by the third section of the proposed amendment to the Constitution of the United States, known as Article Fourteen, will, upon the ratification of the said amendment by the Legislature, be inaugurated without delay; taking the oath of office prescribed by the Constitutions of the States in which they have been elected, and otherwise qualifying, in conformity with the laws of said States.

1. So much of the provisions of General Orders No. 79, of May 2, and No. 83, of May 12, 1868, from these Headquarters, as designates the time for the officers elected under the new Constitution to enter upon their duties, and requires them to take the oath prescribed by the law of July 2, 1862, being superseded by the law above cited, is hereby revoked.

2. The third section of the proposed amendment to the Constitution, known as Article Fourteen, is republished for the information and government of those whom it may concern:

ARTICLE XIV.

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

Should the disabilities of any of the officers elect not have been removed, or if they should from any other cause be unable to qualify, the fact will be immediately reported to the Governor of the State, and the present incumbents, if they are charged with any active administrative duties, or with the care of public records, or with the custody of public money or public property, will, in conformity with the law, hold over until their successors be duly qualified.

3. To facilitate the organization of the new State governments, the following appointments are made:

To be Governor of North Carolina, W. W. Holden, Governor elect, *vice* Jonathan Worth, removed.

To be Lieutenant-Governor of North Carolina, Tad R. Caldwell, Lieutenant-Governor elect, to fill an original vacancy.

To take effect July 1, 1868, on the meeting of the General Assembly of the State of North Carolina.

2. To be Governor of South Carolina, Robert K. Scott, Governor elect, *vice* James L. Orr, removed.

To be Lieutenant-Governor, Lemuel Boozer, Lieutenant-Governor elect, to fill a vacancy.

To take effect July 5, 1868, on the meeting of the General Assembly of the State of South Carolina.

4. The County Courts of North Carolina and the District Courts of South Carolina having been abolished, the records of all such courts will be transferred to the custody of the Clerks of the Courts of the respective Counties, and all unexecuted processes or other unfinished business of the said Courts will be returned, in the former State to the Superior Court, and in the latter to the Court of Common Pleas and General Sessions, at the first ensuing session held in such County; and in like manner the records, papers and public property in the custody of the clerks of said County and District Courts, as well as in the hands of Clerks and Masters in Equity in North Carolina, shall be turned over to the incoming Clerks of said Superior Courts and Courts of Common Pleas.

5. Unless or until otherwise directed by the General Assembly of North Carolina, the duty of approving the bonds of public officers of Counties will be devolved upon the County Commissioners elected under the new Constitution.

6. For the purpose of organization, the County Commissioners elect of each County in the State of North Carolina shall, on the day provided by the Constitution for them to enter upon their duties, or as soon thereafter as practicable, assemble together at the

court house in each County, and elect one of their number chairman, who shall thereupon request the chairman of the retiring County Court to administer the oath of office to the said Commissioners; and the said chairman of the retiring County Court is hereby empowered and required immediately to administer to the said Commissioners, severally, the oath prescribed by said Constitution; which oath having been by them then and there taken and subscribed, said Board of County Commissioners shall be deemed duly qualified and inducted into office.

The County Commissioners elect in South Carolina will organize in like manner, the retiring Ordinary in each County administering the oath.

7. Until the General Assembly of the State of South Carolina shall expressly prescribe by law the duties of the Sheriffs, Coroners and Clerks of Courts chosen or authorized to be chosen at the election held in said State on the 2d and 3d of June, 1868, the officers so elected shall, after qualification, perform the duties prescribed for said officers by law under the existing provisional government of the State.

8. Until otherwise provided by law, the Judges of Probate elected in South Carolina shall perform the duties heretofore performed by Ordinaries; and in respect to business appertaining to minors, and the allotment of dower, and in cases of idiocy and lunacy, and persons *non compos mentis*, shall conduct their proceedings as far as possible in conformity with the rules and regulations governing the practice in like cases in the Courts of the provisional government now authorized by law to take jurisdiction of such business: and records and public property in the hands of Ordinaries will be transferred to the Probate Judges.

9. In like manner, until otherwise provided by law, the powers and duties of County Commissioners in South Carolina, shall include the powers and duties heretofore pertaining to Commissioners of the Poor, Commissioners of Roads, Bridges, Ferries and Cuts, Commissioners of Public Buildings, and Commissioners to Approve the Bonds of Public Officers, and in discharge thereof, said County Commissioners will be governed as far as practicable by the laws and usages regulating the functions of the offices, the powers and duties of which are hereby conferred upon them.

10. It shall be the duty of each of the Boards of County Commissioners in South Carolina, immediately after their organization, to appoint a Treasurer to act until otherwise provided by law, who shall be required, before entering upon his duties, to enter into bond to the Board, with sureties to be approved by the Board, and in amount to be fixed by the Board, conditioned for the faithful performance of his



duties, which bond shall be filed with the Clerk of the Court for the County; and such Treasurer shall safely keep and disburse all funds belonging to the Board; and for his services shall be allowed a commission, to be fixed by the Board, on all sums received and paid away, but no commission or other fee shall be allowed on the transfer of funds to the Treasurer from his predecessor, nor from the Treasurer to his successor, nor shall the commission allowed to the Treasurer exceed the rate of two per cent. on moneys received, and two per cent. on moneys paid away.

11. The Circuit Judges, who shall be chosen by the General Assembly, shall, until otherwise provided by law, be authorized to exercise in suits in equity hereafter commenced all the powers heretofore pertaining to Chancellors, subject to rules of procedure to be fixed by Justices of the Supreme Court; and until the adoption of such rules, the existing rules of chancery practice shall be followed.

BY COMMAND OF BVT. MAJOR-GENERAL ED. R. S. CANBY:

LOUIS V. OAZIARO,

*Aide-de-Camp,*

*Acty. Asst. Adjt. Genl.*

OFFICIAL:

I hereby certify that a copy of HEADQUARTERS SECOND MILITARY DISTRICT Charleston, S.C., June 30, 1868 GENERAL ORDERS No. 120 has been severed upon the parties listed below by hand delivery and/or Registered Mail.

The Clerk of Court of Macon County

The District Attorney of Macon County

This 21 day of May, 2010.



Isaac Hutchison Birch  
462 Judd Duvall Lane  
Franklin, North-Carolina,  
Macon county

Exhibit D

THE PAPERS OF  
WILLIAM WOODS HOLDEN

• Volume 1 •

1841-1868

Horace W. Raper  
*Editor*

COPY

Thornton W. Mitchell  
*Associate Editor*

~~State~~  
~~Archives~~  
~~Division~~

Raleigh  
Division of Archives and History  
North Carolina Department of Cultural Resources  
2000

Collection



*Jonathan Worth to Holden*

A&amp;H:GP

State of North Carolina  
Executive Department  
Raleigh, July 1st, 1868

Gov. W. W. Holden  
Raleigh, N.C.

Sir:—

Yesterday morning I was verbally notified by Chief Justice Pearson<sup>1</sup> that, in obedience to a telegram from Genl. Canby,<sup>2</sup> he would to-day, at 10 O'Clock A.M., administer to you the oaths required, preliminary to your entering upon the discharge of the duties of Civil Governor of the State; and that, therefore, you would demand possession of my office.

I intimated to the Judge my opinion that such proceeding was premature even under the reconstruction legislation of Congress, and that I should probably decline to surrender the office to you.

At sundown, yesterday evening, I received from Col. Williams,<sup>3</sup> commandant of this Military Post, an extract from the general orders, No. 120, of General Canby, as follows:—

Headquarters 2nd Military District.  
Charleston, S.C., June 30th, 1868.  
General Orders,  
No. 120.

(Extract)

"To facilitate the organization of the new state governments, the following appointments are made. To be governor of North Carolina, W. W. Holden, Governor elect, vice, Jonathan Worth removed. To be Lieutenant Governor of North Carolina, Tod R. Caldwell, Lieutenant Governor elect, to fill an original vacancy. To take effect July 1st 1868, on the meeting of the General assembly of North Carolina."

I do not recognize the validity of the late election under which you, and those co-operating with you, claim to be invested with the civil government of the State. You have no evidence of your election, save the certificate of a Major General of the United States army. I regard all of you as, in effect, appointees of the Military power of the United States—and not as "deriving your powers from the consent of those you claim to govern." Knowing, however, that you are backed by Military force here, which I could not resist, if I would, I do not deem it necessary to offer a futile opposition, but vacate the office without the ceremony of actual eviction, offering no further opportunity than this my protest. I would submit to actual

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expulsion in order to bring before the Supreme Court of the United States the question as to the constitutionality of the legislation under which you claim to be the rightful Governor of this State, if the past action of that tribunal furnished any hope of a speedy trial. I surrender the office to you under what I deem military duress, without stopping, as the occasion would well justify, to comment upon the singular co-incidence, that the present state government is surrendered, as *without legality*, to him whose own official sanction, but three years ago, declared it *valid*.

I am, very Respectfully  
Jonathan Worth  
Governor of North Carolina.

<sup>1</sup> Richmond Mumford Pearson.

<sup>2</sup> Major General Edward Richard Sprigg Canby.

<sup>3</sup> George Augustus Williams, New York; 1852, graduate U.S. Military Academy; captain, 1861; brevet lieutenant colonel, 1863; commanded Raleigh military post; retired, 1870. Heitman, *Historical Register and Dictionary of the United States Army*, s.v. "Williams, George Augustus."

TELEGRAM

Ed. R. S. Canby to Holden

A&H:GP

Charleston, July 3, 1868

His Excellency  
W. W. Holden, Govr. N.C.  
Raleigh, N.C.

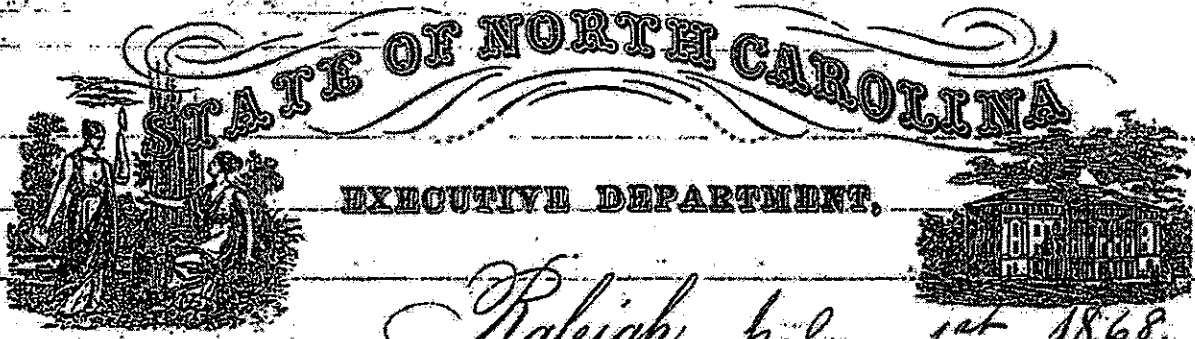
Your telegram announcing the ratification of the Constitutional Amendment<sup>1</sup> by the Legislature of No Ca has been recd., and instructions will be sent to-day to the Military Commanders in No Carolina to abstain from the exercise of any authority under the Reconstruction laws, except to close up unfinished business, and not to interfere in any civil matters unless the execution of the laws of June 25/68, should be obstructed by unlawful or forcible opposition to the inauguration of the new State Govt.

The RRd appointments made by Gov. Worth have been annulled.

Ed. R. S. Canby

<sup>1</sup> The General Assembly ratified the 14th Amendment to the U.S. Constitution by a vote of 34 to 2 in the state Senate and 82 to 19 in the state House of Representatives.

XEROGRAPHIC COPY BY  
JUN 6 2008  
NORTH CAROLINA  
STATE ARCHIVES



Raleigh July 1st 1868.

Gen. W. W. Holden

Raleigh, N. C.

Sir

Yesterday morning I was verbally notified by Chief Justice Pearson that, in answer to a telegram from Genl. Canby, he would today, at 10 O'clock A. M., administer to you the oaths required, preliminary to your entering upon the discharge of the duties of Civil Governor of the State; and that, thereupon, you would discontinue possession of any office.

I intimated to the Judge my opinion that such proceeding was premature even under the reconstruction legislation of Congress, and that I should probably decline to surrender the office to you.

At sundown yesterday evening, I received from Col. Williams, Commandant of this Military Post, an extract from the general orders, No. 120, of Genl. Canby, as follows: -

"Headquarters 2nd Military District  
Charleston, S. C., June 30th 1868.

Genl. Order }  
No. 120 } (Extract)

To facilitate the organization of the new State governments, the following appointments are made: To be Governor of North Carolina W. W. Holden; Governor elect, vice Jonathan Worth removed; To be Lieutenant Governor of North Carolina Lord R. Caldwell, Lieutenant Governor elect, to fill an original vacancy. To take effect July 1st 1868; on the meeting of the General Assembly of North Carolina.

I do not recognize the validity of the late elections under which you, and those cooperating with you, claim to be invested with the civil government of the State. You have no evidence of your election, save the certificate of a Major General of the United States Army. I regard all of you as, in effect, appointees of the Military power of the United States - and not as "deriving your powers from the consent of those you claim to govern." Knowing, however, that you are backed by military force here, which I could not resist, if I would, I do not deem it necessary to offer a futile opposition, but vacate the office without the ceremony.



any of actual eviction, offering us further opposition than this very protest. I would submit to actual expulsion in order to bring before the Supreme Court of the United States the question as to the constitutionality of the legislation under which you claim to be the rightful Government of the State, if the past action of that tribunal furnished any hope of a speedy trial. I cannot direct this office to stop until what I deem resistance is done, without stopping, as the occasion would well justify, to comment upon the singular coincidence that the present State Government is an organization, as without legality, to have whose own official sanction, but some years ago, declared it unlawful.

I am, Very Respectfully  
Your Obedient Servant  
J. Governor of North Carolina

XEROGRAPHIC COPY BY  
DEC - 6 2008  
NORTH CAROLINA  
STATE ARCHIVES

CERTIFIED TO BE AN ACCURATE  
COPY FROM RECORDS IN THE OFFICIAL  
CUSTODY OF THE NORTH CAROLINA  
STATE ARCHIVES.

RALEIGH, NORTH CAROLINA CHIEF, ARCHIVES AND RECORDS SECTION

December 6, 2008 Delbra A. Blake

I hereby certify that a copy of THE PAPERS OF WILLIAM WOODS HOLDEN-  
Jonathan Worth to Holden, Raleigh, July 1<sup>st</sup>, 1868 has been severed upon the  
parties listed below by hand delivery and/or Registered Mail.

The Clerk of Court of Macon County

The District Attorney of Macon County

This 21 day of May, 2010.



Isaac Hutchison Birch  
462 Judd Duvall Lane  
Franklin, North-Carolina,  
Macon county

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mike Bonfoey  
Haywood Co. Justice Center  
285 N Main St, Suite 3200  
Waynesville, NC 28786

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  Addressee  
*William P. Bonds*
- B. Received by (Print name)  Date of Delivery  
*William P. Bonds* *5-20-70*
- D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below.

3. Service Type  Express Mail  Registered  Insured Mail  C.O.D.  
 Certified Mail  Return Receipt for Merchandise

4. Restricted Delivery? (Extra Fee)  Yes  No

2. Article Number (Transfer from service label) **RA 690 863 286 US**

PS Form 3811, February 2004 Domestic Return Receipt 102555-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Isaac Hutchinson Birch  
40463 Judd Duell Lane  
Franklin, North-Carolina,  
Mecon County

-107-

AFFIDAVIT OF NOTARY PRESENTMENT

On May 21, 2010 Isaac Hutchison Birch appeared before me with the following documents listed below. I, the below signed notary, personally verified that these documents were placed in an envelope and sealed. They were prepared to be sent by United States Post Office Registered Mail; receipt number RA 690 863 286 US to Mike Bonfoey, Haywood Co. Justice Center, 285 N. Main Street, Suite 3200, Waynesville, NC 28786.

**List of Documents:**

1. Duplicate Original, NOTICE OF PRE ARRAIGNMENT SPECIAL APPEARANCE TO CHALLENGE JURISDICTION- STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION COUNTY OF MACON File #10CR050329 Citation No. 0586611-1, April 5<sup>th</sup>, 2010;
2. Duplicate Original, RESPONDENT Isaac Hutchison Birch's MEMORANDUM OF LAW IN SUPPORT OF CHALLENGE TO JURISDICTION- FILE #2010CR050329;
3. EXHIBIT A: DECLARATION OF STATUS AND STANDING IN LAW, STATE OF MISSOURI, COUNTY OF HOWARD, BOOK 455 PAGE 239, DOC. #20100477;

4. EXHIBIT B: Copy of AFFIDAVIT OF CITIZENSHIP AND  
DOMICILE WITH TAX RECIEPT;
5. EXHIBIT C: Copy of HEADQUARTERS SECOND MILITARY  
DISTRICT Charleston, S.C., June 30, 1868 GENERAL ORDERS  
No.120 with National Archives and Records Administration cover  
letter;
6. EXHIBIT D, Copy of THE PAPERS OF WILLIAM WOODS  
HOLDEN- Jonathan Worth to Holden, Raleigh, July 1<sup>st</sup>, 1868 with  
original letter from NORTH CAROLINA STATE ARCHIVES;
7. Duplicate Original, AFFIDAVIT OF NOTARY PRESENTMENT

Diana Ledbetter

Notary name

Diana Ledbetter

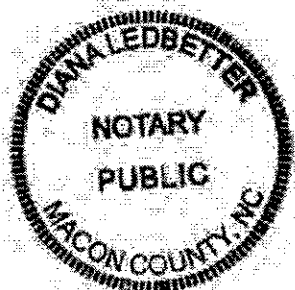
Notary Signature

Macon

Notary County

August 21, 2011

My commission expires



<b>STATE OF NORTH CAROLINA</b>		File No.
MACON County		10crs30329
		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
<b>STATE VERSUS</b>		
Name Of Defendant <b>ISAAC BIRCH</b>	<b>WAIVER OF COUNSEL</b>	
G.S. 7A-457, 15A-1242		

Additional File No. (s) And/Or Offense(s)  
**DWI**

**ACKNOWLEDGMENT OF RIGHTS AND WAIVER**

As the undersigned party in this action, I freely and voluntarily declare that I have been fully informed of the charges against me, the nature of and the statutory punishment for each such charge, and the nature of the proceedings against me; that I have been advised of my right to have counsel assigned to assist me and my right to have the assistance of counsel in defending against these charges or in handling these proceedings, and that I fully understand and appreciate the consequences of my decision to waive the right to assigned counsel and the right to assistance of counsel.

I freely, voluntarily and knowingly declare that:

(check only one)

1. I waive my right to assigned counsel and that I, hereby, expressly waive that right.

2. I waive my right to all assistance of counsel which includes my right to assigned counsel and my right to the assistance of counsel. In all respects, I desire to appear in my own behalf, which I understand I have the right to do.

<b>SWORN AND SUBSCRIBED TO BEFORE ME</b>		Date <b>10/2/2010</b>
Date <b>06-02-2010</b>	Signature	Signature Of Defendant <b>Defendant present in court and after being asked to sign refused.</b>
<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		

**CERTIFICATE OF JUDGE**

I certify that the above named defendant has been fully informed in open court of the charges against him/her, the nature of and the statutory punishment for each charge, and the nature of the proceeding against the defendant and his/her right to have counsel assigned by the court and his/her right to have the assistance of counsel to represent him/her in this action; that the defendant comprehends the nature of the charges and proceedings and the range of punishments; that he/she understands and appreciates the consequences of his/her decision and that the defendant has voluntarily, knowingly and intelligently elected in open court to be tried in this action.

(check only one)

1. without the assignment of counsel. Court finds the defendant refused to sign the waiver so the court finds the defendant refused court appointed counsel and has waived court appointed counsel.

2. without the assistance of counsel, which includes the right to assigned counsel and the right to assistance of counsel.

<b>NOTE: For a waiver of assigned counsel only, both blocks numbered "1" must be checked. For a waiver of all assistance of counsel, both blocks numbered "2" must be checked.</b>	Date <b>06-02-2010</b> Signature Of Judge <i>By Shotts</i> Name Of Judge (Type Or Print) <b>HONORABLE BRADLEY B. LETTS</b>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------

112



MACON County

In The General Court Of Justice
District Superior Court Division

STATE OF NORTH CAROLINA
Additional File Numbers
VERSUS
BIRCH, ISAAC, HUTCHINSON
SUBPOENA
G.S. 1A-1, Rule 45

Party Requesting Subpoena: State Plaintiff Defendant
NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

Name And Address Of Person Subpoenaed: SGT TONY ASHE, FRANKLIN PD
Alternate Address
Telephone No. 8283492864

- YOU ARE COMMANDED TO: (check all that apply)
[X] appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
[ ] appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
[ ] produce and permit inspection and copying of the following items, at the place, date and time indicated below.
[ ] See attached list. (List here if space sufficient)

TO BE PLACED ON STANDBY, PLEASE CALL D. A. OFC AT (828)349-2033.

REFERENCED CHARGES:
DRIVING WHILE IMPAIRED
FAIL TO BURN HEADLAMPS

Name And Location Of Court/Place Of Deposition/Place To Produce: FRANKLIN, N.C. ROOM: 000A
Date To Appear/Produce: 09/27/10
Time To Appear/Produce: 10:00 AM PM

Name And Address Of Applicant Or Applicant's Attorney
Date: 09/01/10
Signature: VICTOR H. PERRY

Telephone No.
Deputy CSC Assistant CSC Clerk Of Superior Court Superior Court Judge
Magistrate Attorney/DA District Court Judge

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- By [X] personal delivery.
[ ] registered or certified mail, receipt requested and attached.
[ ] telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
[ ] I was unable to serve this subpoena.

Service Fee \$
Paid Due
Date Served 9-1-10
Signature of Authorized Server A. S. Wright Deputy

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases. (Please See Reverse Side)

<b>STATE OF NORTH CAROLINA</b>		File No. <b>10-CRS-050329</b>
<b>MACON</b> County	In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
STATE OF NORTH CAROLINA		Additional File Numbers
<b>VERSUS</b>		<b>SUBPOENA</b> G.S. 1A-1, Rule 45
BIRCH, ISAAC, HUTCHINSON		
Party Requesting Subpoena <input checked="" type="checkbox"/> State/Plaintiff <input type="checkbox"/> Defendant	<b>NOTE TO PARTIES NOT REPRESENTED BY COUNSEL:</b> Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.	
Name And Address Of Person Subpoenaed <b>TO BREEDLOVE, M.T CPD 188 WEST MAIN ST FRANKLIN NC 28734</b>	Alternate Address	
Telephone No.	Telephone No. <b>8285242255</b>	

**YOU ARE COMMANDED TO:** (check all that apply):

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
- appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
- produce and permit inspection and copying of the following items, at the place, date and time indicated below.
  - See attached list. (List here if space sufficient)

TO BE PLACED ON STANDBY, PLEASE CALL D. A. OFC AT (828)349-2033.

REFERENCED CHARGES:  
DRIVING WHILE IMPAIRED  
FAIL TO BURN HEADLAMPS

Name And Location Of Court/Place Of Deposition/Place To Produce <b>FRANKLIN, N.C. ROOM: 000A</b>	Date To Appear/Produce <b>09/27/10</b>
	Time To Appear/Produce <b>10:00</b> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
Name And Address Of Applicant Or Applicant's Attorney	Date <b>09/01/10</b>
	Signature <b>VICTOR H. PERRY</b>
Telephone No.	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input checked="" type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Superior Court Judge <input type="checkbox"/> Magistrate <input type="checkbox"/> Attorney/DA <input type="checkbox"/> District Court Judge

**RETURN OF SERVICE**

I certify this subpoena was received and served on the person subpoenaed as follows:

- By  personal delivery.
- registered or certified mail, receipt requested and attached.
  - telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
  - I was unable to serve this subpoena.

Service Fee \$	<input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served <b>9-1-10</b>	Signature of Authorized Server <i>A.S. Wright</i>	Title <b>Deputy</b>
----------------	------------------------------------------------------------	------------------------------	------------------------------------------------------	------------------------

**NOTE TO PERSON REQUESTING SUBPOENA:** A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases. (Please See Reverse Side)

STATE OF NORTH CAROLINA <sup>ED</sup> IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

7/21/23 P 12:23

COUNTY OF MACON

C.S.C.

STATE OF NORTH CAROLINA,

FILE NO. 10 CRS 050329

Plaintiff,

vs.

Isaac Hutchison Birch,

Respondent

)  
)  
)  
)  
)  
)  
)

ADDENDUM TO  
MEMORANDUM OF LAW

"The proper administration of justice is essential to our way of life". Because it is well known that there must be remedy in law, the right to challenge personal jurisdiction is preserved. Respondent hereby makes Notice of Special Appearance (appearance de bene esse) into the above captioned court for the exclusive purpose as submitted below.

The State prosecuting this action has refused to provide proof of the lawfulness of its jurisdiction over Isaac Hutchinson Birch. The State has made it well known that they intend to proceed forward without bringing forth any evidence to prove jurisdiction over Respondent, or any rebuttal to the evidence presented by Respondent by the following actions:

- Judges Danny Davis in District Court and Bradley Lett in Superior Court signed a waiver of counsel, *in opposition to the facts that were before them*. Respondent was clearly in court on Special Appearance to Challenge Jurisdiction and had provided substantial evidence to warrant that challenge. Judge Davis and Lett signed the waiver which claimed,

"...that respondent has voluntarily, knowingly and intelligently elected in open court to be tried in this action".

- ADA ASHLEY HORNSBY WELCH, during roll call on September 27, 2010, after calling Respondent's name, stated that this matter was ready for trial.

Nothing could be further from the truth.

The State, thus far, has failed to adequately address the lawfulness of the Acts which created the State it represents. As a matter of law, jurisdictional challenges must be addressed before Court can proceed in any action where jurisdiction is challenged. The conflict of law here is that the State must have a lawful, provable jurisdiction that can withstand a legal challenge (see Am. Jt. 2<sup>nd</sup> Conflicts of Law, Constitutional Law§1-359) Lawful, provable jurisdiction is the foundation and beginning of due process.

Article 4, Section 3, Clause 1 of the Constitution for the United States of America states: "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; . . . , without the consent of the Legislature of the States concerned as well as of the Congress."

The facts of the matter are that two States named North Carolina have entered the American Union. The first one was on November 21, 1789 as the 12<sup>th</sup> State and the second one was on June 25, 1868 as the 39<sup>th</sup> State. The only thing common to these 2 States is the soil and the name.

Their differences are the body politics and constitutions. States are composed of 3 parts: (1) Body politic, organized under (2) Law, and (3) over defined soil. The pre-amble to the Constitution for the United States of America says that the constitution is "ordained

for ourselves and our Posterity". "Posterity" is a direct reference to the original Body politic, which has authority to create the laws over the soil. The legal question raised is whether the 39<sup>th</sup> State is a continuation of the body politic of the "Posterity" that is mentioned in the Constitution for the United States of America or a new creation?

If it is a new creation, is that creation lawfully authorized?

The Prosecution and Court, through their actions, are making a clear statement that unlawful coercion creates a legal obligation.

The State prosecuting this action is avoiding Respondent's legal argument of jurisdiction, which is a violation of due process of law.

In this present case, the issue is, does the State prosecuting this case actually hold lawful title (unbroken chain of custody) over the soil and therefore the roads of North Carolina? Does it have jurisdiction over a claimant of that organic body politic?

Respondent has provided substantial evidence to prove that in fact and in law it does not. This places the burden of proof upon the prosecution to prove that the de facto State maintains its purported jurisdiction and that it supersedes the lawful de jure state citizenship of Respondent, and brings him under its assumed authority.

#### DEMAND FOR RELIEF

1. That the action be dismissed for want of jurisdiction, or;
2. In the alternative, the Jurisdictional Challenge be rebutted and debated in a fair, impartial, and through manner in the Superior Court of Macon County. Note: To

deny this would affirm that the Court procedure and process is not bound by the parameters of due process, or;

3. In the alternative, the Court dismiss the action for an inability to receive a fair, just, and impartial hearing, or;

4. That the Court grant any additional relief in Respondent's favor as it deems just, or equitable.

This the 28 day of September, 2010.

  
Isaac Hutchinson Birch

I hereby certify that a copy of ADDENDUM TO MEMORANDUM OF LAW has been served upon the parties listed below by hand delivery and/or Registered Mail.

The Clerk of Court of Macon County

The District Attorney of Macon County

This 28 day of September, 2010.



Isaac Hutchison Birch  
462 Judd Duvall Lane  
Franklin, North-Carolina  
Macon county

North Carolina Department of Health and Human Services

Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration or Presence of an Impairing Substance Under N.C.G.S. 20-16.2(a)

Birch

Isaac

Hutchison

Last

First

MI

22430272/NC

Driver License Number / State

01-29-1976

Date of Birth

C0586611-1

Citation Number

[X] Breath [ ] Blood [ ] Subsequent Test

- 1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

Date 3/26/10 Time 2:55 [X] a.m. [ ] p.m.

[X] Refused to Sign Signature of Person Charged

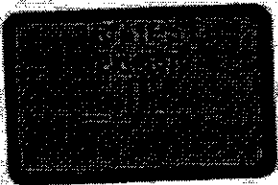
Did defendant call an attorney and/or witness? [X] NO [ ] YES Time 2:56 [X] a.m. [ ] p.m.

[ ] Blood Sample Taken [ ] a.m. [ ] p.m. on the \_\_\_ day of \_\_\_, 20\_\_

by \_\_\_, a person qualified to withdraw the blood sample pursuant to N.C.G.S. 20-139.1

[X] Refused Test 03:15 [X] a.m. [ ] p.m.

[Signature] Signature of Chemical Analyst Permit No. 19255E



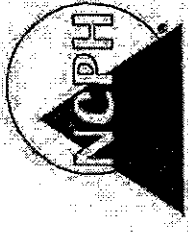
DISTRIBUTION OF COPIES:

- 1st - MAGISTRATE COPY
2nd - COURT COPY
3rd - DMV COPY
4th - DEFENDANT'S COPY
5th - ANALYST/OFFICER'S COPY



North Carolina Department of Health and Human Services

**PERMIT TO PERFORM CHEMICAL ANALYSES OF BREATH**



North Carolina  
Public Health

APPLICATION HAVING BEEN MADE, a permit is hereby granted, or a renewal of same, to:

**MATTHEW TODD BREEDLOVE**

**PERMIT NO. 19255-E**

to perform chemical analyses of the breath to determine alcohol concentration.

Evidence of qualifications has been examined and it has been determined that the applicant herein has met the standards prescribed by the law and regulations.

This permit is limited to the performance of chemical analyses of the breath in accordance with current regulations of the North Carolina Department of Health and Human Services, utilizing the **Intoximeters, Model Intox EC/IR II**.

This permit is non-transferable, and is issued under authority of G.S. 20-139.4 (b) and Rules and Regulations of the North Carolina Department of Health and Human Services.

Authority to perform chemical analyses of the breath under this permit shall be effective for the period specified herein.

In witness whereof, I set my hand and seal this

*Effective Date:* 12/1/2009

*Seventeenth day of November, 2009*

*Expiration Date:* 12/1/2011



Director, Division of Public Health

*Jeffrey P. Engel*  
Jeffrey P. Engel, M.D.



Intox EC/IR-II: Subject Test

Intox EC/IR-II: Subject Test

MACON COUNTY MACON COUNTY JAIL 550

MACON COUNTY MACON COUNTY JAIL 550

Serial Number: 008789  
Test Date: 03/26/2010

Serial Number: 008789  
Test Date: 03/26/2010

Citation Number: C0586611-1  
Subject's Name: BIRCH, ISAAC H  
Subject's Date of Birth: 01/29/1976  
Subject's Sex: Male  
Driver's License State: NC  
Driver's License Number: 22430272

Citation Number: C0586611-1  
Subject's Name: BIRCH, ISAAC H  
Subject's Date of Birth: 01/29/1976  
Subject's Sex: Male  
Driver's License State: NC  
Driver's License Number: 22430272

Analyst's Name: BREEDLOVE, MATTHEW T  
Permit Number: 19255E  
Effective: 12/01/2009-12/01/2011

Analyst's Name: BREEDLOVE, MATTHEW T  
Permit Number: 19255E  
Effective: 12/01/2009-12/01/2011

Officer's Name: BREEDLOVE, MATTHEW T  
Type of Agency: PD  
Agency: FRANKLIN P D  
Test Type: Breath Test

Officer's Name: BREEDLOVE, MATTHEW T  
Type of Agency: PD  
Agency: FRANKLIN P D  
Test Type: Breath Test

Lot Number: AG910501  
Exp Date: 04/15/2011

Lot Number: AG910501  
Exp Date: 04/15/2011

Test	g/210L	Time
DIAG	Pass	3:13am
AIR BLK	.00	3:13am
ACCY CHK	.07	3:14am
AIR BLK	.00	3:15am
SUB TEST	**	3:15am

Test	g/210L	Time
DIAG	Pass	3:13am
AIR BLK	.00	3:13am
ACCY CHK	.07	3:14am
AIR BLK	.00	3:15am
SUB TEST	**	3:15am

TEST REFUSED

TEST REFUSED



Signature of Chemical Analyst

Signature of Chemical Analyst

Court CVR

Court CR



STATE OF NORTH CAROLINA  
MACON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

10-CRS-50329

STATE OF NORTH CAROLINA

VS.

VERDICT

ISAAC HUTCHINSON BIRCH

---

We, the jury, unanimously find the defendant, ISAAC HUTCHINSON BIRCH,  
as follows:

Guilty of driving impaired

OR

Not guilty.

This the 30 day of September, 2010.

Catherine Crane  
Jury Foreperson

STATE OF NORTH CAROLINA

File No.

10CRS-50329 51

MACON

County

In The General Court Of Justice

District  Superior Court Division

STATE VERSUS

Name Of Defendant:

ISAAC HUTCHINSON BIRCH

IMPAIRED DRIVING  
DETERMINATION OF SENTENCING  
FACTORS

G.S. 20-179

- District Court: The defendant has been convicted of impaired driving (G.S. 20-138.1). Based upon the evidence presented at the trial and sentencing hearing in District Court, the Court determines that (1) the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt and (2) the defendant has proved the mitigating factors marked below by a preponderance of the evidence.
- Superior Court: The defendant has been convicted of impaired driving (G.S. 20-138.1). Based upon the evidence presented at the trial and sentencing hearing in Superior Court, (1) the jury has determined that the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt, or the defendant has admitted to these grossly aggravating factors and aggravating factors, and (2) the Court determines that the defendant has proved the mitigating factors marked below by a preponderance of the evidence. If grossly aggravating factor No. 1.a., 1.b., 1.c., 1.d., 1.e., or 1.f. is marked below, the Court determines that the State has proved that grossly aggravating factor beyond a reasonable doubt. If aggravating factor No. 8 or 9 is marked below, the Court determines that the State has proved that aggravating factor beyond a reasonable doubt. (Applies to offenses committed on or after August 30, 2007.)

I. GROSSLY AGGRAVATING FACTORS - G.S. 20-179(c)

(NOTE: Either Nos. 1 and 2 or No. 3 apply in each case except aiders and abettors. If No. 1 is checked, No. 2.a. or No. 2.b. must also be checked.)

- 1. The defendant
  - a. has been convicted of a prior offense involving impaired driving which conviction occurred within seven (7) years before the date of this offense.
  - b. has two or more convictions as described in No. 1.a. (Level One punishment is required.)
  - c. has been convicted of an offense involving impaired driving which conviction occurred after the date of the offense for which the defendant is being sentenced but before or contemporaneously with the sentencing in this case.
  - d. has two or more convictions as described in No. 1.c. (Level One punishment is required.)
  - e. has a prior conviction in District Court for an offense involving impaired driving, the conviction was appealed to Superior Court, the appeal has been withdrawn or the case has been remanded back to District Court, and a new sentencing hearing for the case has not been held pursuant to G.S. 20-38.7. (Applies to offenses committed on or after August 30, 2007.)
  - f. has two or more convictions as described in No. 1.e. (Level One punishment is required.) (Applies to offenses committed on or after August 30, 2007.)
  - g. drove, at the time of the current offense, while the defendant's drivers license was revoked under G.S. 20-28 and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
  - h. caused, by the defendant's impaired driving at the time of the current offense, serious injury to another person.
  - i. drove, at the time of the current offense, while a child under the age of 16 years was in the vehicle.
- 2. Therefore, the following level of punishment shall be imposed:
  - a. Level One punishment, because at least two grossly aggravating factors in No. 1 apply to this defendant. (NOTE: Each prior conviction is a separate grossly aggravating factor.)
  - b. Level Two punishment, because only one grossly aggravating factor in No. 1 applies to this defendant.
- 3. There are no grossly aggravating factors.

II. AGGRAVATING AND MITIGATING FACTORS - G.S. 20-179(d) AND (e)

AGGRAVATING FACTORS - G.S. 20-179(d):

(NOTE: Except for the factors in subdivisions 8 and 9 below, the conduct constituting the aggravating factor must occur during the same transaction or occurrence as this impaired driving offense.)

- 1. The defendant's faculties were grossly impaired at the time the defendant was driving.
- 2. The defendant had an alcohol concentration of at least  0.16  0.15 (use for offenses committed on or after December 1, 2007) within a relevant time after the driving.
- 3. The driving of the defendant was especially reckless.
- 4. The driving of the defendant was especially dangerous.
- 5. The negligent driving of the defendant led to an accident causing property damage of \$1,000.00 or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3.
- 6. The negligent driving of the defendant led to an accident causing personal injury.
- 7. The defendant was driving while the defendant's drivers license was revoked.
- 8. The defendant had at least two prior convictions of a motor vehicle offense not involving impaired driving, which occurred within five (5) years of this offense, and
  - a. all were offenses for which at least three (3) points were assigned under G.S. 20-16.
  - b. all were offenses for which the defendant's drivers license was subject to revocation.
  - c. at least one was an offense for which at least three (3) points were assigned under G.S. 20-16 and at least one was an offense for which the defendant's drivers license was subject to revocation.
- 9. The defendant had at least one prior conviction of an offense involving impaired driving that occurred more than seven (7) years before the date of this offense.
- 10. The defendant has been convicted under G.S. 20-141.5 of speeding while fleeing or attempting to elude apprehension.
- 11. The defendant has been convicted under G.S. 20-141 of speeding by at least 30 m.p.h. over the legal limit.

Original - File

Material opposite unmarked squares is to be disregarded as

(Over)

- 12. The defendant passed a stopped school bus in violation of G.S. 20-217.
- 13. Additional factors that aggravate the seriousness of this offense:

14. There are no aggravating factors.

**MITIGATING FACTORS - G.S. 20-179(e):**

**NOTE:** Except for the factors in subdivisions 4, 6, and 7 below, the conduct constituting the mitigating factor must occur during the same transaction or occurrence as this impaired driving offense.

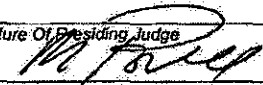
- 1. There was a slight impairment of the defendant's faculties resulting solely from alcohol; and, the defendant's alcohol concentration did not exceed 0.09 at any relevant time after the driving.
- 2. There was a slight impairment of the defendant's faculties resulting solely from alcohol; and, no chemical test was made available to the defendant.
- 3. The driving of the defendant was safe and lawful except for the impairment of the defendant's faculties.
- 4. The defendant has a safe driving record, having no convictions of any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the defendant's license is subject to revocation within five (5) years of the date of this offense.
- 5. The impairment of the defendant's faculties was caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the medical drug taken was within the prescribed dosage.
- 6. After being charged in this case with impaired driving, the defendant voluntarily submitted himself/herself to a mental health facility for assessment and has voluntarily participated in any treatment recommended by such facility, if such treatment was recommended.
- 6a. The defendant completed a substance abuse assessment, complied with its recommendations, and simultaneously maintained 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system of a type approved by the Department of Correction. (Applies to offenses committed on or after December 1, 2007.)
- 7. Additional factors that mitigate the seriousness of this offense:

8. There are no mitigating factors.

**DETERMINATION - G.S. 20-179(f):**

(NOTE: Check only one.)

- 1. The aggravating factors marked above substantially outweigh any mitigating factors marked above. Therefore, Level Three punishment shall be imposed.
- 2. There are no aggravating or mitigating factors. Therefore, Level Four punishment shall be imposed.
- 3. The aggravating factors marked above are substantially counterbalanced by the mitigating factors marked above. Therefore, Level Four punishment shall be imposed.
- 4. The mitigating factors marked above substantially outweigh any aggravating factors marked above. Therefore, Level Five punishment shall be imposed.
- 5. No findings of mitigating or aggravating factors were made because the defendant is an aider and abettor. Therefore, Level Five punishment shall be imposed.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
09/30/2010	HONORABLE MARK E. POWELL	

**STATE OF NORTH CAROLINA** File No. 10CRS-50329 51  
 MACON County FRANKLIN Seat of Court  
 In The General Court Of Justice  
 District  Superior Court Division

(NOTE: Except in cases involving a violation of both G.S. 20-138.1 and 138.2, this form should be used for only one DWI conviction, and no other offense should be consolidated for judgment with the DWI offense.)

**STATE VERSUS**  
 Name Of Defendant: ISAAC HUTCHISON BIRCH  
**IMPAIRED DRIVING - JUDGMENT SUSPENDING SENTENCE**  
 COMMITMENT ON SPECIAL PROBATION

Race: W Sex: M Drivers License No.: 22430272 State: NC DOB: 01/29/1976  
 Date Of Offense: 0-326-10 Attorney For State: ASHLEY H. HORNSBY WELCH  
 Def. Found Not Indigent  Def. Waived Attorney  
 Attorney For Defendant:  Appointed  Retained  
 G.S. 20-179

Offense:  Impaired Driving (G.S. 20-138.1)  Impaired Driving in a commercial vehicle (G.S. 20-138.2)  Operating a commercial vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2A)  Operating a school bus, school activity bus, child care vehicle after consuming alcohol and this was the defendant's second or subsequent conviction of this offense (G.S. 20-138.2B)

The defendant appeared in open court and  freely, voluntarily, and understandingly pled guilty to  was found guilty by the Court of  was found guilty by a jury of  pled no contest to the offense specified above. The Court, based upon the determinations as shown on the attached Determination of Sentencing Factors form (AOC-CR-311), has imposed the following punishment level:  
 Level One,  Level Two,  Level Three,  Level Four,  Level Five.

The Court, having considered evidence, arguments of counsel and statement of defendant, **ORDERS** that defendant be imprisoned for a minimum term of 60 DAYS for a maximum term of 60 DAYS in the custody of the  N.C. Department of Correction,  Sheriff of MACON County.

This sentence shall run at the expiration of sentence imposed in file number  
 The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge  and as an inpatient at a facility operated or licensed by the State for the treatment of alcoholism or substance abuse after the commission of the above offense. Credit shall be applied against the  minimum and maximum terms above.  
 imprisonment for special probation below. (NOTE: No credit may be given for the first 24 hours spent in confinement)

**SUSPENSION OF SENTENCE**

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  
 unsupervised probation for 12 months.  
 supervised probation for \_\_\_\_\_ months, the Court having received evidence and having found as a fact that supervision is necessary.

**SPECIAL PROBATION - G.S. 15A-1351**

As a condition of special probation, the defendant shall  serve an active term of \_\_\_\_\_  days  months in the custody of the  N.C. DOC,  Sheriff of this County,  (for offenses committed prior to December 1, 1997) submit to a combination of imprisonment and house arrest per attached AOC-CR-603, Page Two.  pay jail fees.  
 (NOTE: This term shall NOT be reduced by good time, gain time or parole, or, unless provided above, by jail or treatment time.)  
 The defendant shall report in a sober condition to begin serving this term on: Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM and shall remain in custody until: Day \_\_\_\_\_ Date \_\_\_\_\_ Hour \_\_\_\_\_  AM  PM  
 The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next consecutive weeks, and shall remain in custody during the same hours each week.  
 The defendant shall serve the active term above as an inpatient in (Name treatment facility) and shall follow the rules of that facility until discharged and not leave its premises except as authorized under those rules.

**MONETARY CONDITIONS**

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee, pursuant to a schedule  determined by the probation officer,  set out by the court as follows:

Costs	Miscellaneous	Fine	Restitution*	Attorney's Fee	Community Service Fee	EHA Fee/CAM Fee	Total Amount Due
\$ 264.50	\$	\$ 100.00	\$	\$	\$ 225.00	\$	\$ 589.50

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

**REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)**

NOTE: Any probationary judgment may be extended pursuant to G.S. 15A-1342.  
 The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court.  
 If the defendant is on supervised probation, the defendant shall also: (5) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (7) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (8) At a time to be designated by the probation officer, visit with the probation officer a facility maintained by the Division of Prisons. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the defendant may be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive. (10) Submit to warrantless searches by a law enforcement officer

of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-289 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

If the defendant is to serve an active sentence as a condition of special probation, the defendant shall also: (12) Obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned. (13) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

**SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1); 20-179**

- 14. Obtain a substance abuse assessment and all recommended education or treatment. *(Mandatory for offenses committed on or after December 1, 1997.)*
- 15. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles; and not operate a motor vehicle until the defendant's driving privilege is restored by that Division, except as may be permitted in a limited privilege.
- 16. Complete 24 hours of community service during the first 30 days of the period of probation, as directed by the judicial service coordinator. The fee prescribed by G.S. 143B-262.4 is:
  - (for offenses committed on or after December 1, 2009) not due because it is assessed in a case adjudicated during the same term of court.
  - to be paid  pursuant to the schedule set out under Monetary Conditions above  within \_\_\_\_\_ days of this Judgment and before beginning service.
- 17. Abstain from alcohol consumption for \_\_\_\_\_ days, as verified by a continuous alcohol monitoring system of a type approved by the Department of Correction.  The defendant shall pay to the Clerk the fees associated with the system, as set by the entity providing the system; but not to exceed a total cost of \$1,000.  The court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system and \_\_\_\_\_ the local government entity responsible for the incarceration of the defendant in the local confinement facility, has agreed to pay the costs of the system to the Clerk. *(Applies to offenses committed on or after December 1, 2007.)*
- 18. Other: \_\_\_\_\_
- 19. Comply with the Additional Conditions of Probation which are set forth on AOC-CR-603, Page Two, attached.

*(Check any that apply - G.S. 20-179(f))*

- The probation officer may transfer the defendant to unsupervised probation upon completion of  the community service required by Special Condition No. 16 above.  payment of all fines, costs and fees required above.
- A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

**SPECIAL ALCOHOL CONCENTRATION FINDING**

- The defendant's alcohol concentration was  0.16  0.15 *(use for offenses committed on or after December 1, 2007)* or greater.
- Other: \_\_\_\_\_

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. It is ORDERED that the Clerk deliver two certified copies of this Commitment on Special Probation to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order is modified as follows:  
NOTE: Upon notice of appeal, the District Court sentence is vacated. Withdrawal of appeal or remand to District Court requires that a new sentencing hearing be scheduled.
- 3. The defendant gives notice of appeal from the judgment of the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
09/30/2010	HONORABLE MARK E. POWELL	

**CERTIFICATION**

I certify that this Judgment and the attachment(s) marked below are true and complete copies of the originals.

- 1. Determination Of Sentencing Factors (AOC-CR-311);
- 2. Additional Conditions of Probation (AOC-CR-603, Page Two);
- 3. Restitution Worksheet, Notice And Order [Initial Sentencing] (AOC-CR-611).

Date Of Certification	Date Certified Copies Delivered To Sheriff	Signature And Seal
		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**NOTE TO CLERK:** If the defendant's conviction is based on a violation of an offense involving impaired driving while the defendant's drivers license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, report DWI Defendant Registration Stop to DMV using menu item #9 in STARS. Also report the defendant's conviction to DMV in the usual manner. If there is a non-defendant vehicle owner, report registration stop to DMV using menu item #10 in STARS (unless the owner has been found to be an innocent owner).

COUNTY OF MACON

IN THE GENERAL COURT OF JUSTICE

STATE OF NORTH CAROLINA

SUPERIOR COURT DIVISION

2010 09 30 10:07  
10 CVS 050329

STATE OF NORTH CAROLINA,

Plaintiff

*HCB*  
Notice of Appeal

v.

Isaac Hutchison Birch,

Defendant

TO THE COURT OF APPEALS OF NORTH CAROLINA:

Isaac Hutchison Birch hereby gives notice of appeal by Special Appearance to the COURT OF APPEALS OF NORTH CAROLINA from the actions of Mark E. Powell, SUPERIOR COURT JUDGE, entered on September 30, 2010 in the SUPERIOR COURT OF THE COUNTY OF MACON.



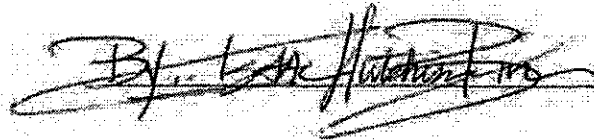
Isaac Hutchison Birch  
Box 462 Judd Duvall Lane  
Franklin, North-Carolina  
Macon county  
(828)421-0417  
restoreourrepublics@gmail.com



The undersigned hereby certifies that the foregoing Notice of Appeal has been served this day by depositing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first-class postage-prepaid envelope properly addressed as follows:

Ashley Hornsby Welch  
c/o DISTRICT ATTORNEY OFFICE  
MACON COUNTY COURTHOUSE  
5 WEST MAIN STREET  
FRANKLIN, NC 28734

This 8 day of October, 2010.



Isaac Hutchison Birch

Box 462 Judd Duvall Lane

Franklin, North-Carolina,

Macon county

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rule 9(c) the transcript of proceedings in this case, taken by Diane L. Thommes, court reporter, from 1 June 2010 to 2 June 2010 and 28 September 2010 to 30 September 2010 and consisting of 5 volumes, numbering a total of 79 pages is filed contemporaneously with this record, will be electronically filed by Jane Doe promptly once a docket number is assigned to this appeal.

STATE OF NORTH CAROLINA  
COUNTY OF MACON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
10-CVS-050329

STATE OF NORTH CAROLINA

v.

Isaac Hutchison Birch

REQUEST FOR TRANSCRIPT

Isaac Hutchison Birch hereby formally requests a transcript of the proceedings in the above-captioned action which took place 27 September through 30 September 2010, and 1, 2 June 2010. On September 30, the Jury selection question and answer by Mrs. Welch can be excluded as well as her closing arguments. Officer Ashe's examination and testimony can be excluded from the transcription as well.

Isaac Hutchison Birch left a telephone message with the COURT REPORTER regarding his request for transcript on 1 October 2010, but has received no return telephone call. Therefore, and pursuant to your Rule 7(a)(2) of the NORTH CAROLINA RULES OF APPELLATE PROCEDURE, Isaac Hutchison Birch, expressly maintaining his Special Appearance by the law of necessity (necessitate juris), serves this REQUEST FOR TRANSCRIPT as shown on the certificate of service below.

Submitted this 12 day of October, 2010

~~By~~ 

Isaac Hutchison Birch  
Box 462 Judd Duvall Lane  
Franklin, North-Carolina  
Macon county  
(828)421-0417  
restoreourrepublics@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing "REQUEST FOR TRANSCRIPT" was served by hand delivery, or by depositing the same into a Depository under the exclusive care and custody of the United States Post Office in plain wrappers with pre-paid first-class postage affixed and properly addressed to:

Diane Thommes, COURT REPORTER  
POST OFFICE BOX 1261  
FRANKLIN, NC 28744-1261

CLERK OF SUPERIOR COURT  
5 WEST MAIN STREET  
Franklin, NC 28734-3005

On this 12 day of October, 2010

By: 

COUNTY OF MACON

IN THE GENERAL COURT OF JUSTICE

STATE OF NORTH CAROLINA

SUPERIOR COURT DIVISION

2010 OCT 17 10:23

10 CVS 050329

STATE OF NORTH CAROLINA,

CRS

Plaintiff

*IL*

v.

TRANSCRIPTION DOCUMENTATION

Isaac Hutchison Birch,

Respondent

Pursuant to RULE 7(a)(1) of the NORTH CAROLINA RULES OF APPELLATE PROCEDURE, Respondent Isaac Hutchison Birch, not waiving his Special Appearance, hereby files a copy of his agreement with Diane Thommes, COURT REPORTER, PO BOX 1261, FRANKLIN, NC 28744 to contract for the transcription of the proceedings that took place from 27 September 2010 to 30 September 2010, and June 1 to 2 2010, in this action. (See Attachment A.)

By

*Isaac Hutchison Birch*

Isaac Hutchison Birch

Box 462 Judd Duvall Lane

Franklin, North-Carolina

Macon county

(828)421-0417

restorecourrepublics@gmail.com

Diane Thommes  
COURT REPORTER  
PO BOX 1261  
FRANKLIN, NC 28734

RE: FILE NO. 10 ~~CRS~~ 050329  
CRS

Ms. Thommes,

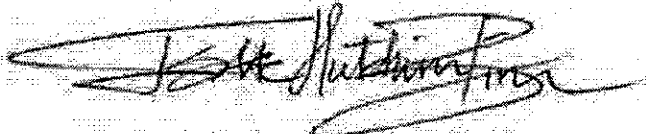
October 15, 2010

As we discussed by telephone today, per your voicemail left with me on October 14 2010 at 7:21 pm, and my instructions left on your voicemail October 1 2010 at 1:03 pm. We have agreed that you will prepare a complete set of transcriptions for the dates of September 27 thru September 30, and submit those which have already been transcribed for the dates of June 1 and June 2, in accordance with ARTICLE 7 of the NORTH CAROLINA RULES OF APPELLATE PROCEDURE (The jury selection question and answer by Mrs. Welch excluded as well as her closing arguments- officer Ashe's testimony excluded as well) for the amount of \$340 due before the submission of the transcriptions.

Rule 7(b) of the NORTH CAROLINA RULES OF APPELLATE PROCEDURE makes this transcript due in electronic "PDF" format sixty (60) days after service of this contract. We would appreciate receiving the transcript on December 13 or 14 2010. If, however, circumstances arise that will make it difficult for

you to meet that deadline, please let me know at once, and I will assist you in obtaining an extension. Please send a compact disc with the transcript in PDF format to Isaac Hutchison Birch at Box 462 Judd Duvall Lane, Franklin, North-Carolina, Macon county. If I can answer any questions, please feel free to call me at (828) 421-0417, or email me at the address provided below. Thank you for your help with this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Isaac Hutchison Birch", written in a cursive style.

Isaac Hutchison Birch

Attachment A



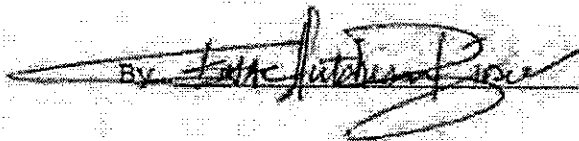
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing  
"TRANSCRIPTION DOCUMENTATION" was served by hand delivery, or by  
depositing the same into a Depository under the exclusive care  
and custody of the United States Post Office in plain wrappers  
with pre-paid first-class postage affixed and properly addressed  
to:

Diane Thommes, COURT REPORTER  
POST OFFICE BOX 1261  
FRANKLIN, NC 28744-1261

CLERK OF SUPERIOR COURT  
5 WEST MAIN STREET  
Franklin, NC 28734-3005

On this 15 day of October, 2010

By 

PURPOSED ASSIGNMENTS OF ERROR

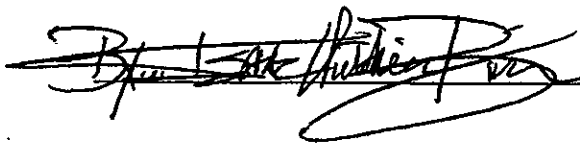
The court erred in not taking judicial notice with an issue of such gravity, that it brought harm to the interests of justice and maintaining the rule of Law in the United States of America.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I served the STATE OF NORTH CAROLINA with the proposed record of appeal by hand delivering a copy thereof to the ASSISTANT DISTRICT ATTORNEY as follows:

Ashley Hornsby Welch  
c/o DISTRICT ATTORNEY OFFICE  
MACON COUNTY COURTHOUSE  
5 WEST MAIN STREET  
FRANKLIN, NC 28734

This 28<sup>th</sup> day of January, 2011.

A handwritten signature in black ink, appearing to read "Isaac Hutchison Birch", written over a horizontal line.

Isaac Hutchison Birch  
Box 462 Judd Duvall Lane  
Franklin, North-Carolina,  
Macon county

IDENTIFICATION OF COUNSEL FOR THE APPEAL

Appellant:

Isaac Hutchison Birch  
462 Judd Duvall Lane  
Franklin, North-Carolina  
Macon county  
828-421-0417  
restoreourrepublics@gmail.com

For the Appellee:

DISTRICT ATTORNEY COUNTY OF MACON  
Ashley Hornsby-Welch, ASSISTANT DISTRICT ATTORNEY  
MACON COUNTY COURTHOUSE  
5 WEST MAIN STREET  
FRANKLIN, NC 28734