No. _____ DISTRICT 30A

NORTH CAROLINA SUPREME COURT

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STATE OF NORTH CAROLINA	)	
	)	
	)	FROM COUNTY OF MACON
v.	)	NO. 10 CRS 050329
	)	COA11-299
Isaac Hutchison Birch	)	

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NOTICE OF APPEAL

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TO: THE HONORABLE CHIEF JUCTICE AND ASSOCIATE JUSTICES OF THE NORTH CAROLINA SUPREME COURT:

Comes now Isaac Hutchison Birch ("Appellant"), for himself, appearing specially[1] and not generally, hereby gives notice of appeal to the NORTH CAROLINA SUPREME COURT from the order and final judgment of the NORTH CAROLINA COURT OF APPEALS, entered 28 June 2011 which dismissed the Appellant's Action. The issue presented by the Appellant is based upon a constitutional claim, which is to be presented to this SUPREME COURT for review is as follows:

[1] This is a case of first impression and there is no set precedent, that the Appellant is aware of, where de jure authority challenges de facto authority, procedurally overcoming the quagmire of 'jurisdiction'. A judicial system without lawful, provable jurisdiction is nothing more than a caricature of law to which the Appellant does not consent to or recognize as lawful.

The Reconstruction Act of 2 March 1867 ("Act"), *see 14 STAT. 428-429, Ch. 153,* is unconstitutional upon its face and has completely overthrown the fundamental constitutional principles of federalism upon which this nation and its countries are founded; *See Federalist Paper #39*. This 'Act' utilized Bills of Attainder; *See U.S. Const. Art. I § 9 cl. 3,* denied the dejure State of North-Carolina representation in Congress; *See U.S. Const. Art.5,* deprived the freemen; *See N.C. Const. of 1776 pmbl.,* of life, liberty, and property without due process of law; *See U.S. Const. Amend.5,* and infringed upon rights reserved to the People; *See U.S. Const. Amend.10,* to established a new state (the de facto State prosecuting this action, deriving its pedigree from the NORTH CAROLINA CONSTITUTION OF 1868) within the territorial boundaries of the State of North-Carolina de jure, usurping the claim of the freemen; *See U.S. Const. Art. 4 § 3*. This resulted in the erroneous creation of a nationalized citizenship; a new body politic, without the consent of the free people of North-Carolina, in particular. Annulling the status and standing of a lawful body politic - annulment of their laws, subjugating them to laws based upon an 'Act' that exceed enumerated powers - attained by using military occupation and martial law. The conflicts of law are: two States named North-Carolina have entered the American Union, one de jure[2] the other de facto[3].

[2] Government de jure /gə́vərnmənt dìy júriy/. A government of right; the true and lawful government; a government established according to the constitution of the nation, and lawfully entitled to recognition and supremacy and the administration

Both claim the right to exercise lawful jurisdiction over the soil and upon individuals within its borders. The first entered the Union in 1789 as the de jure 12th State established free and independent 18 December 1776, the second was established and entered the Union on 25 June 1868 as the de facto 39th State. Their only commonality is the soil claimed, though not defined in the de facto

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of the nation, but which is actually cut off from power or control. A government deemed lawful, or deemed rightful or just, which, nevertheless, has been supplanted or displaced; that is to say, which receives not presently (although it received formerly) habitual obedience from the bulk of the community. *Black's Law Dictionary 5th Edition*

[3] Government de facto. A government of fact. A government actually exercising power and control, as opposed to the true and lawful government; a government not established according to the constitution of the nation, or not lawfully entitled to recognition or supremacy, but which has nevertheless supplanted or displaced the government de *jure.* A government deemed unlawful, or deemed wrongful or unjust, which, nevertheless, receives presently habitual obedience from the bulk of the community. There are several degrees of what is called *"de facto* government." Such a government, in its highest degree, assumes a character very closely resembling that of a lawful government. This is when the usurping government expels the regular authorities from their customary seats and functions, and establishes itself in their place, and so becomes the actual government of a country. The distinguishing characteristic of such a government is that adherents to it in war against the government de *jure* do not incur the penalties of treason; and, under certain limitations, obligations assumed by it in behalf of the country or otherwise will, in general, be respected by the government de *jure* when restored. Such a government might be more aptly denominated a "government of paramount force," being maintained by active military power against the rightful authority of an established and lawful government; and obeyed in civil matters by private citizens. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less by military force. Thorington v. Smith, 75 U.S. (8 Wall.) I, 19 L.Ed. 361. *Black's Law Dictionary 5th Edition*

constitution of 1868, and the name. Their differences are the body politics and constitutions.

The fundamental issues resulting from the constitutional question surrounding the 'Act' are:

(1) Is the de facto 39th State a continuation of the posterity that is mentioned in the Constitution for the United States of America, or an unconstitutional new creation;

(2) Which body politic holds the lawful and constitutional authority to exercise jurisdiction and demand obedience within the territorial boundaries of North-Carolina; which can withstand the test of jurisdiction when challenged, a basic concept of jurisprudence? Is it State Citizens and Freemen with a sworn allegiance to the Constitution of the de jure 12th State, or the Nationalized people, of an unconstitutional body politic, who have an allegiance to Congress and the de facto 39th "State" in which they reside where Congress exercises its powers, unconstitutionally, derived from *U.S. Const. Art.1§8 cl.17;*

(3) Can a Citizen of North-Carolina have a reasonable expectation that a lawful challenge to jurisdiction will have a good faith answer prior to loss of life, liberty, or property, or did the Act create a situation in which there is "*no legal State government or adequate protection for life or property*" upon the soil of North-Carolina?

There is no doubt that unless this issue is resolved, any man or woman of appropriate status and standing shall continually be faced with the 'Chilling Effect Doctrine' and overt abuse of power as the de facto State continues to attempt to evade the most significant constitutional question this American republic has ever faced: Was the 'Act' constitutional?

No evidence has been presented by the de facto District Attorney's Office (Union county, Mecklenburg county, Forsyth county, Iredell county, Gaston county, Macon county, Wilkes county, Haywood county) or Attorney General's Office that supports the idea that the original State body politic/posterity "re-entered" the Union in 1868, nor that the de facto State has jurisdiction over a de jure Citizen. Likewise, no evidence, no rebuttal, nor good faith response has been presented that supports Congress's authority to annul the original State body politic and their organic laws, nor that the 'Act' was, in fact, constitutional.

The Appellant is a Freeman/Citizen of, has an oath of allegiance to and recognizes the jurisdiction of the de jure 12th State as the lawful, legitimate State government that has never been lawfully annulled. Appellant knows that there is no known principle of law that demands legal obedience to unconstitutional laws or the usurpation of laws. See 16 Am. Jur. 2d, § 177 late 2d, § 256. I, therefore, am challenging the jurisdiction created by the 'Act', imbued into de facto 39th State, and the constitutionality of the 'Act' itself, in good faith with full

expectation of this Conflict in Law being resolved. See Am. Jur. 2nd Conflicts of Law, Constitutional Law§1-359. *"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. If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution." See Federalist Papers #78.*

As a Freeman of the de jure 12th State of the Union, all of Appellant's inherent rights, expressed and guaranteed protections, in the North-Carolina Constitution of 18 December 1776 and those of the Constitution for the United States of America, are being violated. Until there is recognition of lawful jurisdiction there is no recognition of the rights of the "People"; the organic state body politics.

The fundamental principles of constitutional federalism have been overturned; the foundations of law have been removed and replaced with the concept that coercion and fraud, with the passage of time and the appearance of consent, has somehow created a legally binding obligation that has cured this unconstitutional Act, and the results of it. This is enforced with violence and the threat of violence, exercised through the de facto courts.

A recent U.S. Supreme Court decision best articulates the point of how the individual and the state; the freeman and the body politic are intertwined; how acts of Congress directly affecting the state/body politic can bring injury to the individual and their interest in the proper function of government for the protection of rights:

> *"…federalism protects the liberty of the individual from arbitrary power. When government acts in excess of its lawful powers, that liberty is at stake.*
>
> *The limitations that federalism entails are not therefore a matter of rights belonging only to the States. States are not the sole intended beneficiaries of federalism. See New York, supra, at 181. An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of*

those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate.

The recognition of an injured person's standing to object to a violation of a constitutional principle that allocates power within government is illustrated, in an analogous context, by cases in which individuals sustain discrete, justiciable injury from actions that transgress separation of-powers limitations. Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well.

In the precedents of this Court, the claims of individuals—not of Government departments—have been the principal source of judicial decisions concerning separation of powers and checks and balances… individuals, too, are protected by the operations of separation of powers and checks and balances; and they are not disabled from relying on those principles in otherwise justiciable cases and controversies.

… Just as it is appropriate for an individual, in a proper case, to invoke separation-of-powers or checks-and balances constraints, so too may a litigant, in a proper case, challenge a law as enacted in contravention of

constitutional principles of federalism. That claim need not depend on the vicarious assertion of a State's constitutional interests, even if a State's constitutional interests are also implicated.

… Impermissible interference with state sovereignty is not within the enumerated powers of the National Government and action that exceeds the national Government's enumerated powers undermines the sovereign interests of States." See BOND v. UNITED STATES 564 U. S. ____ (2011)

It cannot be denied that Congress executed arbitrary power, in excess of its enumerated powers, and in contravention of constitutional principles of federalism. The process of recession[4] has begun, the de jure State was taken out of abeyance 1 December 1997, with notice given to President William Jefferson Clinton, and de facto governor of THE STATE OF NORTH CAROLNA, James B. Hunt Jr. As previously stated, no good faith attempt has been made by the de facto government of North-Carolina to cede to the lawful body politic.

To further articulate the point 'with particularity', the Appellant has recognized standing in law, as stated in John Locke's treatise, as one of the "posterity" and can "*renew his appeal, till he recover his right." See* John Locke,

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[4] RECESSION. The act of ceding back; the restoration of the title and dominion of a territory, by the government which now holds it, to the government from which it was obtained by cession or otherwise. 2 White, Recop. 516. *Black's Law Dictionary 2nd Edition*

Of Civil Government- The Second Treatise (Wildside Press LLC, 2008) §175 & 176:

> *§175. THOUGH governments can originally have no other rise than that before mentioned, nor polities be founded on any thing but the consent of the people; yet such have been the disorders ambition has filled the world with, that in the noise of war, which makes so great a part of the history of mankind, this consent is little taken notice of: and therefore many have mistaken the force of arms for the consent of the people, and reckon conquest as one of the originals of government. But conquest is as far from setting up any government, as demolishing a house is from building a new one in the place. Indeed, it often makes way for a new frame of a commonwealth, by destroying the former; but, without the consent of the people, can never erect a new one.*
>
> *§176. That the aggressor, who puts himself into the state of war with another, and unjustly invades another man's right, can, by such an unjust war, never come to have a right over the conquered, will be easily agreed by all men, who will not think, that robbers and pyrates have a right of empire over whomsoever they have force enough to master; or that men are bound by promises, which unlawful force extorts from them. Should a robber break into my house, and with a dagger at my throat make me seal deeds to convey*

my estate to him, would this give him any title? Just such a title, by his sword, has an unjust conqueror, who forces me into submission. The injury and the crime is equal, whether committed by the wearer of a crown, or some petty villain. The title of the offender, and the number of his followers, make no difference in the offence, unless it be to aggravate it. The only difference is, great robbers punish little ones, to keep them in their obedience; but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world, and have the power in their own possession, which should punish offenders. What is my remedy against a robber, that so broke into my house? Appeal to the law for justice. But perhaps justice is denied, or I am crippled and cannot stir, robbed and have not the means to do it. If God has taken away all means of seeking remedy, there is nothing left but patience. But my son, when able, may seek the relief of the law, which I am denied: he or his son may renew his appeal, till he recover his right. But the conquered, or their children, have no court, no arbitrator on earth to appeal to. Then they may appeal, as Jephtha did, and repeat their appeal till they have recovered the native right of their ancestors, which was, to have such a legislative over them, as the majority should approve, and freely acquiesce in. If it be objected, This would cause endless trouble; I answer, no more than justice

does, where she lies open to all that appeal to her. He that troubles his neighbour without a cause, is punished for it by the justice of the court he appeals to: and he that appeals to heaven must be sure he has right on his side; and a right too that is worth the trouble and cost of the appeal, as he will answer at a tribunal that cannot be deceived, and will be sure to retribute to every one according to the mischiefs he hath created to his fellow subjects; that is, any part of mankind: from whence it is plain, that he that conquers in an unjust war can thereby have no title to the subjection and obedience of the conquered.

This issue was timely raised in the de facto trial tribunal, and in the de facto COURT OF APPEALS, and it has not been determined.

Submitted this 12th day of July 2011.

By.../s/ Isaac Hutchison Birch

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing, NOTICE OF APPEAL , upon the STATE OF NORTH CAROLINA by placing a copy of same in custody of the United States Post Office, first class postage paid, addressed as follows:

Jess D. Mekeel
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

This the 12th day of July, 2011.

By.../s/ Isaac Hutchison Birch