No._____

In The

Supreme Court of the United States

Isaac Hutchison Birch,

Petitioner

v.

STATE OF NORTH CAROLINA,

Respondent

_____

On Petition for Writ of Certiorari to the

SUPREME COURT OF NORTH CAROLINA

_____

PETITION FOR WRIT OF CERTIORARI

_____

Isaac Hutchison Birch
462 Judd Duvall Lane
Franklin, North-Carolina
Macon County [28734-6517]
(828)421-0417

22 January 2012

QUESTIONS PRESENTED

That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty. *N.C. Declaration Rights of 1776, §21*. The nature, and origin of the questions to be presented for the consideration of this Court are of huge constitutional significance; ones which have remained non-adjudicated and avoided over the course of the last 143 years − namely, the unconstitutionality of the Reconstruction Acts of 1867 and 1868[1]. These Acts have upset the constitutional balance between the National Government and the States; they have compromised the very fabric of the constitutional principles of federalism expressed, in part, in the *Federalist Papers #39*, and in the opinion of this Court in *Bond v. United States, 131 S. Ct. 2355 (2011)*. The questions for this Court are:

1. Did the Congress exceed its limited and enumerated powers when, through the Reconstruction Acts, it authorized military force to nullify the constitutional government of North Carolina and to substitute in its place an electorate and a government molded to the will of the Congress?

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[1] Act of March 2, 1867, ch.153, 14 STAT. 428-429, (Pet.App.11); Act of March 23, 1867, ch.6, 15 STAT. 2-5,(Pet.App.14.); Act of July 19, 1867, ch.30, 15 STAT. 14-16,(Pet.App.20); Act of March 11, 1868, ch.25, 15 STAT. 41-42, (*Pet.App.24)*

2. When challenged with substantial evidence to the contrary, must the existing government of North Carolina prove the lawfulness of its claimed jurisdiction over the Petitioner, one of the People of North Carolina?

PARTIES TO PROCEEDING

Petitioner, who was Respondent-Presumed Defendant-Appellant below, are: Isaac Hutchison Birch, sui juris, a Citizen of the original State of North Carolina, and of the United States of America according to Article 4 § 2 of the Constitution for the United States of America.

Respondents, who were Plaintiff-Appellee below, are: The State of North Carolina by and through its' Attorney General, Roy Cooper.

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JURISDICTION

On 5 May 2010, The State Of North Carolina General Court Of Justice District Court Division 30A Of Macon

County, Judge Danny Davis presiding issued order and judgment (Pet.App.267). On 10 September 2010, The State of North Carolina General Court Of Justice Superior Court Division 30A Of Macon County, Judge Mark E Powell presiding issued order and judgment (Pet.App.272). On 28 June 2011 North Carolina Court Of Appeals issued order (Pet.App.1). On 25 August 2011 North Carolina Supreme Court issued order (Pet.App.5).

This Court has jurisdiction over this appeal from the Supreme Court Of North Carolina pursuant to 28 U.S.C. § 1257(a), 28 U. S. C. § 2403(a) may apply and shall be served on the Solicitor General of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution for the United States of America's Preamble, Article I § 9 Cl. 3**,** Article 3 § 3, Article 4 § 3 cl.1, Article 4 § 4, Articles 5, Article 7 and Articles of Amendment 9th, 10th, and 14th, along with the Act of March 2, 1867, ch.153,14 STAT. 428-429, the Act of March 23, 1867, ch.6,15 STAT. 2-5, the Act of July 19, 1867, ch.30,15 STAT. 14-16, and the Act of March 11, 1868, ch.25, 15 STAT. 41-42, (collectively, "Reconstruction Acts" or "Acts") the Acts are reproduced in the appendix.

STATEMENT OF THE CASE

1. *An Act to provide for the more efficient Government of the Rebel States* and its' three supplementary acts

The Acts core purpose was the nationalization of citizenship within the federal jurisdiction; the creation of a new national body politic, by the militarily coerced adoption of the 14th Amendment and the nullification of original state body politics, their governments, and their constitutions - directly or indirectly, ultimately destroying State rights and nullifying the 9th and 10th Articles of Amendment.

> *"...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...*
>
> *...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....*
>
> *...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.

The consequences that flowed from this radical change in the basis of citizenship were numerous and weighty...

...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..." James G. Blaine, Twenty Years of Congress 1861 - 1881 Vol. 2, pp. 300, 303, 312-313 (The Henry Bill Publishing Company 1886)

The 14th Amendment was purposed by the 39th U.S. Congress 13 June 1866 and was either rejected or not acted upon prior to the Acts by all 'Rebel States' with the exception of Tennessee which ratified it on 19 July 1866. As a result of the rejection/no action the 39th U.S. Congress passed the Acts. These Acts declared that "…no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas…", Tennessee excluded as it had

ratified the purposed 14th Amendment.

A) Provisions and Mandates of the Acts

1) Act of March 2, 1867, ch.153, 14 STAT. 428-429 (Pet.App.11)***:***

§1 of this act places the 'rebel' states, which had not adopted the 14th Amendment, back under martial law; subject to military authority and divided them into military districts, subject to military authority. This was done in times of peace - eleven months after peace was declared by presidential proclamation[2], fifteen months after North-Carolina, among others, had adopted the 13th Amendment, and over Presidential veto. See: House Journal. 39th Cong., 2nd sess., 2 March 1867, 563 (Pet.App.25). There was no action taken by the State of North-Carolina declaring a state of insurrection or rebellion, or a petition to the Federal Government for the suppression of any insurrection within the said state by the executive or legislative branches of the original state government. See: U.S. Const. art.4 § 4.

Additionally, **§3** of the above referenced act placed the jurisdiction of local civil tribunals at the discretion of the congressionally sanctioned military authority, and declares that any State authority's interference with the exercise of military authority shall

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[2] Andrew Johnson: "Proclamation 153 - Declaring the Insurrection in Certain Southern States to be at an End," April 2, 1866

be seen as null and void. In **§4,** this act gives the final approval of the sentencing authority of any military commission or tribunal to the "officer in command of the district". Further enacted in **§5** were the conditions upon which the States shall be declared entitled to representation in Congress and the sanctions of martial law will be lifted. This act defines who the qualified electors are within the 'rebel States', orders the convening of State constitutional conventions for the adoption of new State constitutions, making the conventions and the convention results subject to the review and approval of Congress. This act in this section also places the adoption of the article fourteen (14th Amendment) as a contingent for the States to be declared entitled to representation in Congress and for martial law to be lifted. This act goes on to mandate the disenfranchisement; disqualification from voting, or holding office, all those who were deemed and declared 'rebels' or 'rebel sympathizers' as specified by third section of the 14th amendment and previously established by presidential proclamations and legislative action.

§6 of this act further enacts that until the people of the said 'rebel State' are admitted, by law, to representation in Congress, that any civil government that exists is provisional only and is subject to the "paramount authority of the United States", who at anytime may abolish, modify, control, or supersede that civil authority. This section of the Act goes on to reiterate the qualifications of the electors and those disenfranchised, mandated in **§5** of this act, and the

authority of the United States to abolish, modify, control, or supersede those qualifications.

2) Act of March 23, 1867, ch.6,15 STAT. 2-5 (Pet.App.14)**:**

§1 of this supplementary act establishes a registry for qualified electors. The registration is required to include an oath or affirmation, as given in the act, subscribed by the person claiming to be a qualified voter.

§ 2 of this supplementary Act gives authority to the commanding general of the newly established 'territories' to appoint and direct an election for delegates to attend a convention for the purposes establishing new constitutions and civil governments that are loyal to the United States.

§3 further enacts that the voters of each State shall vote for or against a convention to form a constitution as prescribed under this Act, giving the commanding general authority to tally and declare the results of the vote for or against the convention.

§5 enacts the mandate for Congresses' approval of the newly ratified constitution and Congresses' declaration of a States entitlement to representation in Congress. This act passed over presidential veto, which contained significant constitutional objections. See: House Journal. 39th Cong., 2nd sess., 23 March 1867, 98(Pet.App.49).

3) Act of July 19, 1867, ch.30,15 STAT. 14-16 (Pet.App.20)**:**

§1 of this supplementary act sets out to clarify the true intent and meaning of the mandate of Congress, mandating that there are no legal State governments in the 'rebel States' and if those governments were to be continued they would be subject, in all respects, to the military authority and the paramount authority of Congress, transferring from previous language, the paramount authority of the United States to that of Congress.

§2 gives the commanders of the 'districts' the arbitrary power to remove, replace, or fill any vacancy of any civil or military office of any so-called State or government thereof. This power is subject to the disapproval of the General of the Army of the United States and is only to be used when a commander deems it proper and necessary to the administration of this act.

§3 installs the same powers from the proceeding section on the General of the Army of the United States.

§4 confirms the removal of civil officers, whose removal was already performed by officers of the Army, and further mandates that the commanders of the districts or the General of the Army are to remove from office all "persons who are disloyal to the United States or who use their official influence to hinder, delay, prevent, or obstruct the due and proper administration of this act and the act to which it is supplementary".

§5 imbues powers and duties to the boards of registration to make determination as to whether or not a person is qualified to vote under the provisions of the Acts, giving them the power to examine under oath anyone in connection to the qualifications of any person claiming registration. The oath required by the Acts for registration is not considered sufficient or conclusive in determining someone's qualifications as an elector under these Acts.

§6 gives clarification on the intent and meaning of the oath prescribed in the previous supplementary act to include anyone having held civil offices created for the general administration of law or justice.

§7 nullifies the power of an executive pardon or amnesty, that counters anything that would disqualify a person from registering to vote.

§8 gives the commanding general the power of appointment and removal of any member of the board of registrations.

§9 requires all members of said boards of registration, all persons hereafter elected or appointed to office in said military districts, persons under any so-called State or municipal authority, or persons by detail or appointment of the district commanders, to take and to subscribe the oath of office prescribed by law for officers of the United States.

§10 grants immunity from the "opinion" of civil officer of the United States to the district commanders, members of the board of registration or any of the officers or appointees acting under them. **§11** instructs that the provisions of the Acts are to be

construed liberally, so the intent of the Acts may be fully and perfectly carried out. This act passed over presidential veto, which contained significant constitutional objections. See: House Journal. 39th Cong., 2nd sess., 19 July 1867, 232 (Pet.App.56).

4) Act of March 11, 1868, ch.25, 15 STAT. 41-42*:*

§1 enacts a qualification for voting – a qualified person has only to reside in the territory they wish to vote in ten days prior to the election and a majority of votes cast shall determine the elections. **§2** allows for the voting of officers as provided for by the new purposed constitution, and for members of the House Representatives of the United States, may be voted for at the same time as the vote for the ratification of the said constitution.

B) Proceedings of North Carolina Trial Division Courts

Isaac Hutchison Birch (hereinafter "Petitioner"), at all times relevant has been a claimant of the body politic of the freeman of North Carolina, under an oath of allegiance to the N.C. Constitution of 1776 § 40, was charged with an Implied Consent Driving Under the Influence of an Impairing Substance on 3 March 2010. The Petitioner specially appeared before The State Of North Carolina General Court Of Justice District Court Division 30A Of Macon County, Judge Danny E. Davis presiding, on 5 May 2010 and before The State Of

North Carolina General Court Of Justice Superior Court Division 30A Of Macon County on 1 & 2 June 2010, Judge Bradley B. Letts presiding, and on 28, 29, & 30 September 2010, Judge Mark E. Powell presiding. The Petitioners sole purpose in appearing specially was to challenge the jurisdiction, in personum and territorial, of the STATE OF NORTH CAROLINA (hereinafter “Respondent”). The Petitioner argued that the Respondent is a creation of the U.S. Congress, by the Acts, in contravention to the Constitution for the United States of America and therefore has no authority over the Petitioner as a lawful Citizen of the original State, nor does the Respondent have a clear chain of custody over the laws or over the soil of The

State of North-Carolina, but only exercises de facto[3] authority.

In both Courts the Respondent offered neither response nor any evidence to contradict the claim of the Petitioner or the evidence presented. The Courts treated the Plea in Bar, or Demurrer, as a motion and denied the jurisdictional challenge, thus assuming jurisdiction in the action. Each Court entered a plea of

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[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, 375 (5th ed. 1979)*

not guilty for the Petitioner and Waiver of Counsel (Pet.App.270 & 271) with a CERTIFICATE OF THE JUDGE stating that the Petitioner:

"…had voluntarily, knowingly, and intelligently elected in open court to be tried in this action".

The Petitioner never consented to be tried in this action and the Courts then proceeded to trials over the objection of the Petitioner, who did not participate in the trials. The Courts came to a verdict of guilt from the bench in DISTRICT COURT and a verdict of guilt from a jury of residents in SUPERIOR COURT – the jury was barred from hearing the argument for the jurisdictional challenge. No opinion was offered by either Court.

C) Proceedings of the North Carolina Appellate Division Courts

1) NORTH CAROLINA COURT OF APPEALS

The primary question brought before the Court by the Petitioner was: Does the body politic (the Respondent) operating through the procreator and the court have jurisdiction; actually hold lawful title demonstrating an unbroken chain of custody over the soil; territorial jurisdiction, and therefore the roads of North-Carolina, and does it have in personum jurisdiction over a claimant (the 'Appellant') of that organic body politic?

Upon motion by the Respondent (Pet.App.2) the Court dismissed the appeal on 28 June 2011, giving no opinion.

2) NORTH CAROLINA SUPREME COURT

Upon motion by the Respondent (Pet.App.6) the Court dismissed the appeal on 31 August 2011, giving no opinion.

REASONS FOR GRANTING PETITION

The Constitution for the United States of America, in its simplest form, appears to be a trust indenture; an express trust granting enumerated powers through the States, for the People, to a government for a union of States[4], which was intended to have both a national and federal nature. *See, Federalist Papers #39*.[5] In respect to the reservation of rights in the 9th and 10th Articles of Amendment, they are quite explicit in their wording:

> *"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people".* U.S. Const. Amend. IX

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[4] See generally Henry Baldwin, A General View of the Origin And Nature of the Constitution and Government of the United States...(Philadelphia, John C. Clark 1837)

[5] On the topic of citizenship, the union of States was never intended to have a national citizenship outside the scope of specific enumerations, and limitations, upon persons and things, as far as the national characteristics of the government established by the U.S. Const.

> *"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".* U.S. Const. Amend. X

If the power was not enumerated or restricted to the States there is no room to construe Federal power, or construe restriction upon the States, for the purposes of denying, or disparaging a right retained by the People.

This Court has a duty to be a bulwark of the People for a limited General government of the United States, against legislative encroachments[6], this issue has stood unresolved for over 143 years and is the greatest breach of trust and usurpation of law ever

[6] See *Federalist Papers #78*

seen in the history of the United States of America[7]. The most extraordinary instance in which this Court was denied an opportunity to perform its duty was in *Ex parte McCardle, 74 U.S. 506 (1868)*. Additionally, in the McCardle case, the actions taken by Congress demonstrate a clear intent to obstruct justice (Pet.App.87, 112 & 208). The Court, in the McCardle case, assumed jurisdiction based upon the Act of February 5, 1867, ch.28, 14 STAT. 385.

William H. McCardle, editor, *Vicksburg Times*, wrote a series of articles denouncing the Acts and

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[7] In *Mississippi V. Johnson, 71 U.S. 475 (1867),* the court dismissed on the technical ground that the court had *"no jurisdiction of a bill to enjoin the President in the performance of his official duties…"*but avoided the heart of the mater - the constitutionality of the Acts;

In *Georgia V. Stanton, 73 U. S. 50 (1868)* 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 *"…the rights in danger must be rights of persons or property, not merely political rights",* this is contrary to the Courts recent ruling in *Bond v. United States, 131 S. Ct. 2355 (2011*);

In *Ex Parte Yerger, 75 U.S. 85 (1869)* the 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 validly of the Reconstruction Acts, followed by another prohibiting the judicial review of any act of Congress; *see, Ernest Sutherland Bates, The Story of the Supreme Court, pp.181, 1st ed. 1936.* 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. *Ex Parte Yerger* was the last substantive challenge to the constitutional validity of the Reconstruction Acts; there have been no significant facial challenges to the Acts since.

military authority. On 8 November 1867 McCardle was arrested and charged with libel, disturbing the peace, and impeding Reconstruction. For McCardle's defense, the constitutionality of the Acts were being challenged and argued by David Dudley Field, Jeremiah S. Black (the former Chief Justice of the Pennsylvania Supreme Court, former Attorney General of the United States and Secretary of State under President Buchannan), Judge Sharkey and Robert J. Walker of Mississippi, and Charles O'Conor. Appearing for the United States, were Matthew H. Carpenter of Wisconsin, Lyman Trumbull of Illinois, and Henry Stanbery, the Attorney General of the United States.

Henry Stanbery wrote to Ulysses S. Grant advising him to obtain other counsel for the United States, as he did not purpose to appear, as his opinions were not in support of the Acts. His opinions had been published in the New York Times (New York Times, *Opinion of the United States Attorney General on the Clause in the Reconstruction Act Respecting the Right to Vote and Hold Office,* 26 May 1867) and submitted to the Senate in two separate opinions: one on 24 May 1867, the other 12 June 1867. See Exec. Rept. 40-1., no.14, 262 & 275, 6 July 1867). Mr. Stanbery also assisted President Johnson with his letters to Congress in regards to the Presidential vetoes of the Acts (Pet.App.25, 49 & 56). General Grant retained the counsel of Senator Trumbull of Illinois to argue on behalf of the United States.

The case was argued before the United States Supreme Court. A portion of the arguments of 17

January 1868 appear in the *New York Times 18 January 1868* (Pet.App.72). Senator Trumbull made no effort to argue the constitutionality of the Acts, but instead relied upon whether or not the United States Supreme Court even had jurisdiction to hear the case.

Senator Trumbull was the Chairman of the Senate Judiciary Committee of the 40th Congress, his counterpart in the House of Representatives was James F. Wilson of Iowa, Chairman of the House Judiciary Committee. Senator Trumbull, one of the fathers of Congressional Reconstruction was anticipating a possible adverse ruling from this Court in ex parte McCardle and initiated a bill, on 17 February 1868 in the Senate, defining the Acts as political questions and barring the U.S. Courts from hearing any case arising from issues with the Acts. S. 363, 40thCong. (1868)(Pet.App.78). Senator Trumbull, unable to get his legislation through Congress before the arguments to this Court were complete, solicited the help of Representative Wilson.

On 6 January 1868, Senator Williams, from the Committee of Finance, initiated a bill addressing civil actions in the circuit courts, and writs of error from this Court in such civil cases. S. 213, 40th Cong. (1868). Senator Williams's bill had passed the Senate, and on 12 March 1868 was before the House for its consideration, at which time Mr. Wilson of Iowa proposed a strangely un-debated amendment (Pet.App.82) to the bill; an amendment repealing the Act of February 5th, 1867, ch.34, 15 STAT.44(Pet.App.83), for the purpose of removing the

McCardle case from the jurisdiction of this Court. The amendment and the bill passed the House, and were returned to the Senate which submitted it to the President.

President Johnson vetoed the bill, and returned it to the Senate (Pet.App.84). On 25 March 1868 the bill was addressed again by the Senate, Mr. Trumbull attempted to rush the bill to vote to override the President's veto, claiming that the bill was of little importance in his estimation and that it effected no one, or anything that he was aware of (Pet.App.87). The bill was put off until the following day. Despite fervent objections by the minority of the Senate because the bill was intended to remove jurisdiction of the Supreme Court for the McCardle case, the bill was purportedly passed over presidential veto by 2/3 majority of the Senate with 33 ayes, 9 nays, and 12 not present (Pet.App.112) (Cong. Globe, 40th Cong.,2nd Sess. 2128). The bill also passed over presidential veto in the House, with the same objections prevailing from the House minority (Pet.App. 208). This Court postponed further consideration of the matter until the next term of December 1868.

While this Court heard and considered the most significant constitutional question in our nation's history, which has had the most profound effect upon our American institutions of government, for the first and only time, Congress removes the Court's jurisdiction to rule on a case already before the Court. This Court dismissed, for lack of jurisdiction, because of the repealing the Act of February 5th, 1867.

Congress's ability to control the results of a particular case by restricting the jurisdiction of the judicial branch of the United States, once jurisdiction had already been granted, was ultimately refuted by this Court in *United States v. Klein, 80 U.S.128 (1871)*.

These Acts are the very foundation of the legislative oligarchy established by the U.S. Congress, which exists to this day, and is demonstrated by its' repeated acts of federal encroachment upon the rights of the States and the People.

First, this Court should grant this Writ so that it may bring about that frequent recurrence to fundamental principles which is absolutely necessary to preserve or restore the blessings of liberty. This review should be granted because an unconstitutional act must not stand, and this Court has an obligation to deal with these unconstitutional Acts irrespective of the consequences, once the issue is presented. See 16 C.J.S. § 86; 16 Am. Jur. § 155.

This case is singular in that it provides a vehicle for this Court to address all the major objections of the People and the States against overreaching federal power. This is an extraordinary challenge with extensive implications within the doctrine of unconstitutional acts. *Marbury v. Madison*, 5 US 137 (1803); *Norton v. Shelby County*, 118 U.S. 425 (1886). The office or obligation which was ultimately created by these acts was a new body politic, a national citizenship subject to the Federal jurisdiction, through which every office within the United States of America has been in operation since 9 July 1868. However, the

issue presented is not whether the 14th Amendment was ratified, but the constitutionality of the Acts which forced the proposed amendment's ratification, and the right of the Petitioner to challenge the jurisdiction created by those Acts.

> *"… In regard to the Fourteenth Amendment, which the present Supreme Court of the United States has by decision chosen as the basis for invading the rights and prerogatives of the sovereign states, it is appropriate to look at the means and methods by which that amendment was foisted upon the Nation in times of emotional stress…" Dyett v. Turner, 20 Utah 2d 403(1968).*

These Acts demonstrate a construing of the Federal Constitution - on the part of the 39th Congress, that an enumerated power of Congress exists to annul governments lawfully established by the body politics of the States, either directly – as in the Acts annulling and making void the ten 'rebel States', or indirectly – by coercively creating a new body politic with a new national citizenship, making all persons, or things, subject to the federal jurisdiction of government. The federal government did not create the States, the States created the federal government; the original body politic of North-Carolina took part in granting those enumerated powers. How then does Congress have the authority to declare null and void the State body politic of North-Carolina? Only by the construing of the enumerations and in violation of the Constitution. The U.S. Const., art.4 § 4 is a grant of power to protect

each state, and not a grant of power to dismantle and recreate States at the prerogative of Congress.

Secondly, this Court should grant this Writ because if it does not deal with these unconstitutional Acts, the Petitioner's right to challenge the jurisdiction coercively created by the Acts, and the effects the Acts have upon the balance of power, will have no remedy in law. The 'Chilling Effect Doctrine' will continue to be utilized against those who are asserting a right for recession[8] - a right which has been expressed in the writings of John Locke[9].

The courts of the Respondent have continually chosen to deny the truth of this argument in law claiming it to be "a phantom without any foundation in law or fact", deeming the argument as "wholly frivolous without basis or merit", or as a not judiciable – falling within the political question doctrine. The Respondent, through its' various procreators, continues to: ignore the challenge to the presumed jurisdiction, offers no rebuttal or evidence contrary to the historical facts presented to them, stands upon the theory that consent cures an unconstitutional act, and continues to ply the political question doctrine (Pet.App.240, 246 & 252).

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[8] 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, pp.1443 (4th Ed. 1968)

[9] John Locke *Of Civil Government- The Second Treatise* §175 & 176 (Wildside Press LLC, 2008)

The issues being brought before this Court are not political questions. Do acts of treason and unconstitutional acts fall into the political question doctrine, or are they a political crime? In order for these issues to be political questions the branch of government exercising the power must have been granted that political power in order for it to be a prerogative. It is not the prerogative of the President, of Congress, or of the Supreme Court to ignore the Supreme Law of the Land, even of necessity or emergency. See: 16 Am. Jur § 98.

The Respondent ignores the dubious nature of its' creation and 'chills' anyone who seeks to "*renew his appeal, till he recover his right"* ,or who challenges the lawful authority presumed by the Respondent. It is the hope of this Petitioner that this Court will not ignore the flagrant violations of the Constitution, no matter how difficult the return to lawful government may be. This is a sacred, albeit difficult duty, yet, as Nelson Mandela says, "It always seems impossible until it is done." The heart of our great Union is not dead, it has been broken in two, and we, as honorable men and women, must face it.

A. The Court Should Grant This Petition So That A Meaningful Hearing May Be Had In The Lower Courts.

This Court has original jurisdiction. It can and should work towards resolving the issues that have spread from the Acts. The Respondent, cannot declare the Acts unconstitutional because the Acts are the

origin of its' pedigree and jurisdiction; the Respondent's chain of custody over the government, the laws, and the soil of the State of North-Carolina begins with these Acts. No clear chain of title has been demonstrated by the Respondent, nor can one be. However, no meaningful hearing has been held in the lower courts, or any court since *Ex parte McCardle, 74 U.S. 506 (1868)*.

The Respondent insists that there are no issues in regard to its jurisdiction or title, and ignores the evidence and legal arguments against their jurisdiction over the Petitioner. The Petitioner simply desires due process of law, the cornerstone of which is the fundamental power of a court to take action – jurisdiction. Either the Petitioner has a right to challenge jurisdiction with substantial evidence, or the Petitioner does not, and there should be a good-faith response by the Respondent, pertaining to the subject matter of the jurisdictional challenge itself, with an opportunity of multiple responses on the topic.

1. The Court Should Resolve Whether Acts Are In Violation Of Article I § 9 Cl. 3

The Acts declared that anyone who had engaged in insurrection or rebellion, or given aid or comfort to the enemies of the United States are not eligible to hold public office or to vote. These 'rebels,' as deemed by Congress, were not tried and found guilty of treason, sedition, insurrection or rebellion in a Court of Law. President Lincoln and Congress avoided, with great effort, the adjudication of their actions and

the secession of the 'rebel States'. *Habeas corpus* was suspended by President Lincoln in 1861 in spite of the ruling in *Ex parte Merryman, 17 F. Cas. 144 (1861)*, and by Congress in the *Act of March 3, 1863, ch.81, 12 STAT. 755*, which was maintained by the President until the *Act of February 5th, 1867, ch.28, 14 STAT. 385*.

President Lincoln and the 37th Congress, operating outside of the enumerated powers of their branches of government, made judicial determinations that secession was illegal and an act of rebellion against the General government of the United States. These actions are a Bill of Attainder which neither Congress, nor the President, has power to exercise.

2. The Court Should Decide Whether The Acts Are In Violation Of Article IV § 3 cl. 1

New States may be admitted by Congress; however no new State can be established within the jurisdiction of an existing State without the consent of both Congress and the said State's Legislature.

The body politics of the States, North-Carolina specifically, did not willingly consent to the formation of a new constitution.[10] No convention was called for by the original body politic according to its established laws.

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[10] "Each State, in ratifying the Constitution, is considered as a **sovereign** body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal*, and not a *national* constitution." Federalist Papers # 39 (emphasis added)

3. The Court Should Decide Whether The Acts Are In Violation of Article 5

Article 5 of the Constitution for the United States of America states, in part, as follows:

"*…and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."*

The Acts deprive the 'rebel states' of equal suffrage in the Senate without their consent, while the 14th Amendment was being acted upon, and they were required to ratify it.

B. The Court should resolve the status of the two states that have entered the American union as the State of North Carolina

Two State governments named 'The State of North Carolina' have entered the Union, the 12th State; the original State (herein after "12th State"), and the 39th State; the de facto State (herein after "39th State"). The 39th State's entrance was erroneously termed as the 12th States re-admittance into the Union, according to the United States Congress; see Act of June 25, 1868, ch.70, 15 STAT. 73-74. The 39th State was not the re-admitting of the 12th State, but rather the admitting of a new State with a different 'nationalized' body politic, government, and fundamental laws.

> *"The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature.... In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and* ***inviolable sovereignty*** *over all other objects."* Federalist Papers #39(emphasis added)

This original intent was overthrown by the three actions: (1) Reconstruction acts destroying the original body politic of North Carolina, (2) the coerced passage of the 14th Amendment nationalizing citizenship and, (3) the admittance of the new State named The State of North Carolina on June 25, 1868.

1. Two Distinct Body Politics Identifiable

a) By The Qualifications Of Suffrage

N.C. Const. of 1776

§VII. That all freemen, of the age of twenty-one years, ..., shall be entitled to vote for a member of the Senate.

§VIII. That all freemen of the age of twenty-one Years, ... shall be entitled to vote for members of the House of Commons

§XL. That every foreigner, who comes to settle in this State having first taken an oath of allegiance to the same, ... shall be deemed a free citizen.

And,

N.C. Const. of 1868

Article VI- SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Every male person born in the United States, and every male person who has been naturalized, twenty one years old or upward, who shall have resided in this State twelve months next preceeding the election, and thirty days in the county, in which he offers to vote, shall be deemed an elector.

The freemen of the State of North-Carolina were the ones that qualified as electors in the 1776 Constitution of North-Carolina. In the Constitution of 1868 every male person born in the United States qualified as electors.

b) By The Amending And Ratification Process Of The State Constitutions

The amending of the N.C. Constitution in 1835, and the process of ratification for the de facto Constitutions of 1868 are very distinct. The General Assembly of North-Carolina passed an act on the 6 January 1835, entitled “An Act concerning a convention to amend the constitution of the State” by which an election was to be opened in every precinct of the State, for the purposes of ascertaining the will of the

freemen of North-Carolina, whether there should be a convention of delegates to amend the constitution. The vote for the convention passed, the convention was held, and the purposed amendments were then submitted to the determination of all qualified voters. The authority for the amending of the constitution was derived from the original documents of 25 December 1776 and was amended according to the enumerated powers and due process to do so set out in the said document. See North Carolina, *Documents Printed By Order of The General Assembly, pp.43 (Raleigh, Weston R. Gales, Printer To The Legislature 1843).*

In the other instance, the Constitution of 1868 was mandated by Congress, under threat of perpetual military rule. The convention of delegates was mandated by the district commander. The qualified delegates, and voters for the delegates, were those not excluded by the Bills of Attainder decreed by Congress - it was to be determined who gave aid or support to the 'rebel states' by the registry boards[11], not a court of law. Ultimately, by the final supplemental act, anyone who was born in the United States and had resided within the territorial boundaries of North-Carolina for at least 10 days was qualified to vote on the ratification of the purposed Constitution of 1868, as mandated by Congress[12].

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[11] Act of March 2, 1867, ch.153, 14 STAT. 428-429,(*Pet.App.11);* Act of March 23, 1867, ch.6, 15 STAT. 2-5, (Pet.App.14.); Act of July 19, 1867, ch.30, 15 STAT. 14-16, (*Pet.App.20).*

[12] Act of March 11, 1868, ch.25, 15 STAT. 41-42, (*Pet.App.24)*

In regard to lawful due process and the enumerated powers within the State and Federal constitutions, only the body politic and the government established by them in 1776 is lawful. The political power vested in the government of the 12th State did not recognize the government that was being instituted to replace it by military force (Pet.App.263); the political power of the 12th State had not instigated the change by the due process of its supreme law which was previously recognized by Congress, as the lawful republican form of government. Just as stated in *Luther v. Borden*, 48 US 1 (1849), Congress is to decide what government is the established one in a State, but does Congress have the authority to withdraw that consent once it is given? The historical facts are that a new State was created by the Acts, without the consent, and through the disenfranchisement of, the original body politic of the State, and in violation to numerous Constitutional provisions.

There is no evidence that the State originally recognized by Congress "re-entered" the Union in 1868, the evidence points to a federal creation, one created in violation of the Constitution for the United States of America.

C. The Court Should Decide Whether The Union Under The Constitution For The United States Of America Is In Fact Perpetual, And If North-Carolina Had A Right To Secede.

In *Texas v. White*, 74 US 700 (1869), and in *White v. Hart*, 13 Wall. 646 (1872), it is asserted that the

American form of government is composed of "*an indestructible Union, composed of indestructible States*". If the Court's opinion that the Union is perpetual holds true, where then did Congress derive its' authority to annul any state? Or to form a new State within the territorial boundaries of an existing State, without the consent of the State's Legislature? Where did the authority to wage war against a State come from? Does military coercion hold as lawful consent?

Does Article 4 § 4, the Grantee Clause, grant Congress the power to arbitrarily withdraw its political decision that a State is republican in form, once it has been granted, so that Congress may achieve its political goals?

Does the Court's decision in *Texas v. White* 74 US 700 (1869), and in *White v Hart*, 13 Wall. 646 (1872), overturn the previous opinion of the Court? :

> *"That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent."* *Marbury v. Madison*, 5 US 137 (1803)

The lawfulness of North-Carolina's Ordinances of Secession passed by its' body politic has never been

adjudicated, and determined as illegal. See *Ordinance of Secession*, Secretary of State Records, North Carolina State Archives, SS.XX. Recordkeeping, Records of the State, State Constitutions, State Convention of 1861-1862, Vol. 2. There were no laws, nor was it enumerated in the Constitution, State or Federal, that succession is an act of rebellion prior to 1861. The 9th and 10th Articles of Amendment in the Bill of Rights leave no room for construing against such rights of the State or the People.

The enacting clause of the North-Carolina Constitution of 1776 states:

> *"The Constitution, or form of Government, agreed to and Resolved upon, by the Representatives of the freemen of the State of North Carolina, elected and chosen for that particular purpose, in Congress assembled, at Halifax, the eighteenth day of December , in the year of our Lord one thousand seven hundred and seventy-six.*
>
> *Whereas, allegiance and protection are in their nature reciprocal, and the one should of right be refused when the other is withdrawn…" N.C. Const. of 1776. Pmbl*

North-Carolina did not secede from the Union in concert with South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, or for the same reasons as her sister States listed above. The first call for the freemen of North-Carolina to consider the question of secession was voted down in February 1861. Why then did North-Carolinians change their

mind?

On April 14, 1861 the Secretary of War notified Governor Ellis of North-Carolina that the Federal Government expected North-Carolina to furnish two regiments of troops to make war on the seceded states - Governor Ellis refused:

> *"... Sir, Your dispatch is received, and if genuine which its extraordinary character leads one to doubt, I have to say in reply, that I regard the levy of troops made by the Administration for the purposes of subjugating the States of the South, as in violation of the Constitution, and as a gross usurpation of power. I can be no part 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..."* North Carolina State Archives*, reply by Governor Ellis to request by United States Secretary of War for troops from North Carolina, April 14, 1861,*GLB 49.

A convention was held in Raleigh on 20 May 1861 and an Ordinance of Secession was signed. See *Ordinance of Secession, Secretary of State Records North Carolina State Archives, SS.XX. Recordkeeping. Records of the State. State Constitutions. State Convention of 1861-1862, Vol. 2*.

North-Carolina seceded because of violations that were being perpetrated in contravention to the fundamental principles enumerated in the Declaration of Independence and in violation of the Constitution for the United States of America, specifically Article 3§3, the 9th Article of Amendment, and the 10th Article of

Amendment. President Lincoln had initiated a war of aggression because of the exercise of a right reserved to the People and the States – a right of self-determination.

The Court's opinion in *Marbury v. Madison*, 5 US 137 (1803) indicates the right of secession is a part of the very fabric upon which America was erected. The fundamental principle is also expressed in the Declaration of Independence:

> *"When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation…*
>
> *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 of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes…" U.S. Declar. Ind*

And in Federalist Papers #78:

"…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, 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. 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." Federalist Papers #78

The U.S. Congress and the Office of President under the U.S. Constitution were never granted the power to wage war against any of the States, for any reason. The 37th Congress and President Lincoln construed the enumerated power of the Constitution for

the sole purpose of denying and disparaging the rights retained by the people. No State Legislatures or Executives petitioned the General Government for aid in suppressing a rebellion of domestic violence. *See Luther v. Borden, 7 How. 1 (1849).*

Additionally, the body politic of North-Carolina followed the same procedure enumerated in the Constitution for the United States of America for its secession from the Articles of Confederation, and the adoption of a new form of government embodied in the federal constitution. Article 7 states this:

> "*The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."U.S. Const. art. 7*

North-Carolina in 1861, just as in 1790, called for the question of a convention to consider secession. In the first instance, in 1790, the question was whether to secede from the *Article of Confederation and Perpetual Union* and join the United States of America. In the later instance, in 1861, the question was whether to secede from the Union established in 1789 and join the Confederate States of America. Was this a right of self determination of a lawful body politic within the enumeration of their government and fundamental laws, or was it actually an act of rebellion working in contravention to federal constitution?

In July of 1861 both Houses of Congress pass Resolutions stating the object of the war (Pet.App. 265

&266(Congressional Globe, 37th Congress, 1st Session, Object of the War, pp. 257 *;* Congressional Globe, 37th Congress, 1st Session, Present Condition of the Country, pp.222). The purpose of the War declared by Congress was not to conquer, subjugate, overthrow or interfere with the rights of the seceded states or to overthrow or interfere with the institutions of the seceded states, but to "defend and maintain the supremacy of the Constitution" as construed by the President and Congress in violation of the 9th and 10th Articles of Amendment.

After the war was over, Congress recognized North Carolina as being a 'lawful' state sending the State a purposed amendment to abolish slavery and accepting their ratification of it on 4 December 1865. Congress then sent North Carolina the 14th Amendment on June 13, 1866 for their approbation or disapprobation; on 14 December 1866 North Carolina rejected the amendment. In time of peace the 39th Congress began claiming the right of a conqueror in an attempt to forcefully manipulate a reason for their actions to follow -Reconstruction, which was erroneously justified by the Law of Nations. See Cong. Globe, 40th Cong.,1st Sess., 981-991 (23 February 1866). An erroneous justification based upon the political passions of the day; a presumption and political position that President Lincoln and the U.S. Congress had executed a just war in accordance with the Law of Nations and the granted powers within the Constitution for the United States of America. See: Monsieur de Vattel*, The Law of Nations* (Joseph Chitty,

Esq. et al. eds., T.&J.W. Johnson 1853) Book III- OF WAR § 1, 3, 5, 26-32, 35, 38, 39, 183-185 & 201(1758).

This Court's opinion, though seated by a different group of individuals, in *Texas v. White*, 74 US 700 (1869), and in *White v Hart*, 13 Wall. 646 (1872) was based upon the presumption that secession was illegal, and the Acts were constitutional. There was no adjudication upon the legality of either question in law. In 1869 the intent of the framers and the adopters of the federal constitution were not applied upon the topic of secession and a perpetual union. See *16Am.Jur. §92*. A war unjustly waged does not wipe away constitutional violations; it simply puts the question into abeyance, under the threat of physical violence, until such a time the violation of rights can be reasserted.

It is the duty of this tribunal to adhere to the superior authority of the People; the issuers of the original grant of power, the body politics of the various countries which comprised these united States, who brought the Constitution for the United States of America into force and effect. The Petitioner is one of the People; one of the posterity, and is requesting specific performance in regard to the Constitution for the United States of America, as one of its beneficiary. These flagrant violations must be resolved as there is no statute of limitations on unconstitutional acts, and the duty falls upon this Court to apply that original intent as to whether or not the secession of North Carolina was a prescribed crime consented to by the freemen of North Carolina or an exercise of their

reserved rights.

CONCLUSION

The Respondent has chosen the path of avoidance and denial of due process, completely removing the Petitioner's expectation of finding justice, or the rule of law, within their courts. The Petitioner knows the Respondent lacks jurisdiction and cannot rebut or answer the evidence by which jurisdiction is being challenged. The problem is that they assume jurisdiction anyway, in order to maintain the usurpation of law and their de facto authority. The jurisprudence surrounding these past actions of Congress and the Office of the President cannot be ignored, as they are not within the enumerated powers of these branches of the federal government, and are having an adverse affect upon the basic fundamental principles of constitutional republicanism - established by the founders, and the body politics which instituted and adopted them for the purposes of preserving and protecting unalienable rights and freedom.

> *"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America." U.S. Const., pmbl.*

The Petitioner's rights have been adversely affected by the Acts, and the assumed jurisdiction of the Respondent. The petitioner is in no way attempting to find a path 'above the law or around the law', nor does he wish to destroy the equitable advancements that have been made in society, but only wishes to return to the foundations of law thereby securing the blessings of liberty for himself and his posterity. This Court can and should grant this writ.

Respectfully submitted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing and following Appendixes are true and correct. Executed on this 22nd day of January, 2012.

By..._____

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CERTIFICATE OF COMPLIANCE

No._____

Isaac Hutchison Birch,

Petitioner

v.

STATE OF NORTH CAROLINA,

Respondent

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 7404 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury under the laws of the United States of America that the foregoing CERTIFICATE OF COMPLIANCE is true and correct.

Executed on this 22nd day of January, 2012.

By..._____

Isaac Hutchison Birch