REASONS FOR GRANTING THE WRIT

The Constitution of the United States(hereinafter, the Constitution) and six cases of the Supreme Court of the United States(hereinafter, the Supreme Court) demonstrate that Metcalf is ACTUALLY INNOCENT of the crimes of which he was charged.

The two most recent Second Amendment cases of the Supreme Court, District of Columbia v. Heller, 171 L. Ed2d 637 (2008) and McDonald v. City of Chicago, 177 L. Ed2d 894 (2010), both reaffirm the second article of amendment to the Constitution (hereinafter, the Second Amendment) to be an INDIVIDUAL RIGHT of the people to keep and bear arms.[1]

During Metcalf's trial, he continually asserted that the Second Amendment is an INDIVIDUAL RIGHT. The trial judge nullified Metcalf's assertions by citing to the jury, the absurd 6th Circuit case of : United States v. Warin, 530 F. 2d 103 (1976), which stated that the Second Amendment was actually a "state's right to form a militia."

NO SUCH ANIMAL

First, there is no such animal as a "state's right." A scouring of the Constitution will reveal that rights are only guaranteed to living breathing human beings. Governmental entities (states, courts legislatures, the executive, et.al.) are only designated powers and authorities. Nowhere in the Constitution, nor in any of its amendments, is there a right afforded to anyone but a human being. This is not by accident.

Second, at no time in U.S. history was the notion of a "state's right to form a militia" ever postulated prior to the 1905 Kansas Supreme Court case of Salina v. Blaksley, 72 Kan. 230, 83 P. 619.

Metcalf was right all along and was convicted because the trial judge nullified Metcalf's defense with, as was later affirmed by this Court, bad case law of the 6th Circuit. Metcalf asserts he would not have been convicted if the jury had not been misinstructed.

The case of United States v. Miller, 83 L. Ed 1206 (1939), was effectively an ex parte proceeding because Miller was not

represented. Since our system of law is adversarial based, the Miller Court should have appointed an attorney to represent Miller's(and our nation's) interests. The Miller Court consequently made bad decisions based upon incorrect information presented in the flawed ex parte proceeding(e.g. Miller's "sawed-off shotgun" was an example of military weapons, which were often used in the "trenches" during WWI). The Miller Court would have been more correct to cite United States v. Cruikshank, infra, refusing review because there was no federal jurisdiction to hear the Miller case.

But the Miller Court did make some useful observations, especially in respect to Metcalf's case. On page 1 of Metcalf's indictment, the government stated that Metcalf was a "member of a militia..." Miller's reasoning fully exonerates Metcalf of his alleged crimes:

> ...that adequate defense of country and laws could be secured through the Militia---civilians primarily, soldiers on occasion...the signification attributed to the term Militia appears from the debates in the convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. "A body of citizens enrolled for military discipline." And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.
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> Miller @ 1209, emphasis added

Those weapons in common use use today would include 7.62mm NATO and .50 caliber fully automatic weapons, as well as destructive devices(e.g. grenade launchers) and sound suppressors(misnamed"silencers" by the Government), all weapons which Metcalf was accused of possessing, but none of which he actually had. Metcalf continues to maintain that the "weapons" he was accused of possessing were no weapons at all(per the evidence provided by the Government---but denied admission at trial), or were legal by simple definition of the law. According to the Miller Court, Metcalf would have been fully within his rights to possess machineguns, suppressors and destructive devices. The federal statutes of which Metcalf was charged are unconstitutional, as applied.

The 2008 Heller case stated:

> Just as the First Amendment protects modern forms of communications,..., and the Fourth Amendment applies to modern forms of search,..., the Second Amendment extends prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.
> Heller @ 651

Immediately following this statement, the Heller Court addressed the definitions of "to keep" and "to bear."

To keep:

> "'Keep arms' was simply a common way of referring to possessing arms, for militiamen and everyone else."(endnote 7)
> Heller @ 652, emphasis added

To bear:

> ...Justice Gins-<* pg. 653>burg wrote that "[s]urely a most familiar meaning is, as the Constitution's Second Amendment ...indicate[s]: 'wear, bear, or carry...upon the person or in the clothing or in a pocket, for the purpose of offensive or defensive action in a case of conflict with another person.'" ...We think that Justice Ginsburg captured the natural meaning of "bear arms."
> Heller @ 652, 653

Indeed, the government has already addressed the "carriability" of small arms by delineating the difference between "small arms" and "destructive devices." A .50 caliber Browning machinegun is at the top of the carriable curve, at 84 lbs.---the largest of small arms. Any firearm larger than .50 caliber(excepting the 12 ga shotgun) is considered a cannon, and as such, is classified as a "destructive device"(something which currently requires "more" in a $200 transfer stamp and registration in the National Firearms Registry).

The real crux of this matter though, is that the cases of United States v. Cruikshank, 23 L. Ed 588 (1876) and Presser v. Illinois, 29 L. Ed 615 (1886) emphatically stated (and reiterated) that there was(is) no jurisdiction for any federal firearms statutes. The recent (2010) McDonald case again, reaffirms Cruikshank:

> The court reversed all of the convictions including those relating to the deprivation of the victims' right to bear arms. Cruikshank, 92 U.S., at 553, 559, 23 L. Ed 588. The Court wrote that the right of bearing arms for a lawful purpose "is not a right granted by the constitution" and is not "in any manner dependent upon that instrument for its

existence." Id., at 553, 23 L.Ed 588. "The second amendment," the Court continued, "declares that it shall not be infringed; but this...means no more than that it shall not be infringed by Congress." Ibid. "Our later decisions in Presser v. Illinois, 116 U.S. 252, 265 [6 S. Ct. 580, 29 L.Ed 615](1886), and Miller v. Texas, 153 U.S. 535, 538[14 S. Ct. 874, 38 L. Ed 812] (1894), reaffirmed that the Second Amendment applies only to the Federal Government." Heller, 554 U.S., at --, n.23, 128 S. Ct. 2783, 171 L. Ed2d 637

McDonald v. Chicago, 177 L. Ed2d 894, 908 (2010)

The 1900 Supreme Court case of Maxwell v. Dow, 44 L. Ed 597 also cited Cruikshank:

> ...it was held that the Second Amendment to the Constitution, in regard to the right of the people to bear arms, is a limitation only on the power of Congress and the national government and not the states. It was therein said, however, that as all citizens capable of bearing arms constitute the reserved military force of the national government, the states could not prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government.
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> Maxwell v. Dow, @ 603

Both of the most recent Supreme Court 2nd Amendment cases (Heller, 2008 and McDonald, 2010) cite Cruikshank. As we have seen, there can be NO constitutional federal firearms statutes. Does this portend a kind of firearms anarchy? Are ALL firearms statutes unconstitutional? Not at all! Cruikshank "covered the bases" when the Court cited, City of New York v. Miln, 11 Pet. 139. Any firearms statutes must be passed at the municipal level---but must still pass constitutional muster.

The McDonald Court stated what Metcalf has asserted for over two decades, to no avail. It appears that it is up to this Court to tell Congress---again---that they may NOT infringe the right of the people to keep and bear arms.

It should be noted that an Amendment to any document trumps any contradictory clause in the original document. Therefore, the Second Amendment overrules any arguments against it, the "commerce," "general Welfare" or "necessary and proper" clauses preceeding the Amendment, notwithstanding.

If the Constitution still has any force and effect, then ALL federal firearms statutes are unconstitutional. There was NO subject matter jurisdiction and Metcalf is ACTUALLY INNOCENT of the crimes.

CONCLUSION

The benefit of the States being able to pass their own firearms legislation, is that a citizen may "vote with his feet." If one finds gun laws too oppressive in, say [New York/California/Illinois], he need only move to [Kentucky/Wyoming/or any other gun-friendly state]. Problem solved. The Founders certainly understood the concept when they drafted and ratified the Second, Ninth and Tenth Amendments.

...the right of the people to keep and bear arms, SHALL NOT BE INFRINGED(period). (not if a firearm once moved in "interstate commerce")(not if one of "the people" had been previously convicted of a felony and since released)(not if someone thinks that the "general welfare" of the U.S. would be improved by banning firearms). SHALL. NOT. BE. INFRINGED. (period)

For over 21 years, Metcalf has suffered incarceration for crimes which are not crimes at all. An unconstitutional statute is not valid law and the statutes with which Metcalf was charged were unconstitutional, as Metcalf has herein demonstrated. To avoid a further MISCARRIAGE OF JUSTICE, Metcalf requests this Court to afford him the same Constitutional considerations as are due to all citizens(also known as EQUAL TREATMENT).

1. Since the typing of this petition, Metcalf has been apprised of yet another of this Court's decisions pertaining to the Second Amendment. In a Per Curiam decision, the case of Caetano v. Massachusetts, 194 L. Ed2d 99 (2016), reasserted the "individual" nature of the right to keep and bear arms.