

CASE #02-15541

D.C. No ev-01-02313-GGH

:

IN THE

Supreme Court of the United States

DONALD M. BIRD APPELLANT

v.

GRAY DAVIS
GOVERNOR OF CALIFORNIA APPELLEES
BILL LOCKYER
ATTORNEY GENERAL OF CALIFORNIA

On Petition For Writ Of Certiorari
To The Ninth Circuit Court of Appeals
San Francisco, California

PETITION FOR WRIT OF CERTIORARI ✓

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**These
are the
key
pages
from
Bird's
Petition
to the
Supreme
Court**

STATEMENT OF THE CASE

Honorable Justices of the Supreme Court of the United States of America

This case originated as a Civil Rights infringement against the Appellant's Second Amendment Rights on June 11, 2001. The following is a portion of the Attorney General's response to that filing.

{Plaintiff herein cannot establish the first prong of the standing requirement because he has not suffered an "injure in fact." That is, Plaintiff has no legally recognized right to bear arms under the Second Amendment to the United States Constitution. Hence even though there already exist statutes that impose conditions on private gun ownership, Plaintiff cannot state a claim under any of them because the Constitution does not provide a private right to bear arms. That is, the Second Amendment secures to the states the right to maintain an armed militia and it is the "states alone [that] stand in the position to show legal injury when this right is infringed." Hickman v. Block, 81 F.3d 98, 102 (9th Cir. 1996.) As a result, the Second Amendment does not protect the possession of a weapon by a private citizen. Id., at p.101. Because Plaintiff does not have an interest protected by the Second Amendment, he cannot base standing on an existing statute that imposes restrictions on the private right to own "militia firearms and magazines." *A fortiori*, he cannot base the "injury in fact" standing requirement on a statute that has not yet been enacted.}

In accordance with Rule 20 3.a The Appellant has been denied relief from the Ninth Circuit Court of Appeals. They have stated in the Order they have "No Authority" to grant the Writ of Mandamus. The Writ of Mandamus is directed to California Governor Gray Davis and California Attorney General Bill Lockyer. The Appellant, when advised by the United States District Court for Eastern California that his



**Untruthful
remarks
made by
California
Attorney
General**

case was not “Ripe”, responded by amending with a Writ of Mandamus on December 18, 2001 (Noted in the Appendix.) The Appellant had only sought two demands. The Governor of California Gray Davis and the Attorney General of California Bill Lockyer affirm that the Appellant does have an Individual Right to Keep and Bear Arms in the State of California and obey their Oath of office to protect and preserve the Constitution of the United States of America. The Appellant’s Brief to the Ninth Circuit Court again stated that this Sovereign Citizen has a First Amendment Right to petition his Government for a Grievance. The Appellant can not in any manner discover where when filing a grievance the Appellant is required to have suffered damages or injury to obtain relief. Per Blacks Law Dictionary, the key words are (injustice) and (wrong). The Writ of Mandamus states the remedy for this case very clearly. Hopefully this Court will recognize this.



**Objective of
citizen
Donald Bird**

End of “Statement of the Case”.

INTRODUCTION

This Appellant has spent every possible argument to convince and persuade this Ninth Circuit Court to support the Appellant's Writ of Mandamus and the Constitution of the United States. The Appellant reluctantly accepts the futility of trying to reason with the Ninth Circuit's (No Decision) when the Appellant filed the Petition for Rehearing. The pompous and overbearing statement they have "No Authority" to make a decision in this case is absolute lunacy. This Appellant is confident he meets the criteria of Rule 10. Based on the U.S. vs. Emerson case, this meets Rule 10, paragraphs (a), (b) and (c). Refer to Rule 10:

1. The Ninth Circuit Court of Appeals failed to produce a decision.
2. The Appellant is absolute in his belief this is a compelling reason for the Supreme Court to review and decide this case.
3. The Ninth Circuit Court of Appeals has departed from its obligations. (see the Supreme Court past opinions) The Supreme Court's supervisory power is definitely required in this case.
4. Though not mentioned in any of the Court Rules, the Appellant's case is a "First Impression Case". No other case has been decided in the relief sought by this Appellant. See page 16 of the Appellee's Brief dated May 29, 2002. The case has No precedent. Therefore this Court will be required and expected to define "Jurisdiction".

This case is of "imperative public importance" as quoted in Rule 11 and requires immediate determination by this Court. The undetermined count of law abiding sovereign citizens has a right to demand this Court to affirm our Second Amendment Right. The time is now to define the word "People". The Appellant being of reasonable intelligence understands People and Individual as synonymous.

The Appellant will use this opportunity to reveal his



**Argument
made by
Appellant
Donald Bird**

passionate feelings in a “colloquial” plea rather than in legalese. The Appellant is hopeful the Court Clerks that review this case will decide it is worthy of the Supreme Court’s consideration. If this Court finds this case worthy to review in its entirety, the Appellant is positive the Justices will find No Reason to Dismiss The “Writ of Mandamus”. This should be the time this Court steps off the Fence. The Writ of Mandamus is asking this Court as was asked of the Ninth Circuit Court to make a very simple decision: That is to Order the Governor of the State of California, Gray Davis and the Attorney General of the State of California, Bill Lockyer to Affirm this right. The Appellant, Donald M. Bird has an “INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS IN THE STATE OF CALIFORNIA”. This first impression case is unique in that no matter how many negative precedent arguments cited, it will forever hinge on one fact. Any decision by any Court that conflicts or abuses the Second Amendment is and always will be incorrect. The Justices, in order to be faithful to their oath, the Appellant will be entitled to have the Writ of Mandamus enforced. It is not complicated in any way. When an elected official swears to uphold the “OATH” of office, that individual accepts the Constitution of the United States and the Bill of Rights as it is written and is not privileged to interpret what they believe it to be. If the elected official is unable to understand the wording, that person is not qualified to swear to the Oath. Spoken words mean everything. The Bill of Rights and in particular the Second Amendment is a God given Right. It was NOT given to the “PEOPLE” (INDIVIDUAL) BY ANY HUMAN BEING. This Right for Self Defense was bestowed by the GOD that enlightened and guided the Founding Fathers. Is that fact so difficult to comprehend????

This recent Ninth Circuit Court ruling by Circuit Judges Reinhardt, Rymer, and Silverman once again reveals blatant arrogance and defiance of our Second Amendment.

The Appellant implores this Supreme Court to decide this case for the sake of our Republic. Those of us Sovereign

**Argument
made by
Appellant
Donald Bird**

**End of Bird's
argument,
and prior to
drafting
Petition for
Writ of
Certiorari**

Citizens of this beloved Republic are becoming increasingly frustrated by the depletion of our basic Rights. It would be prudent in the opinion of this Appellant for this Court to make a supportive decision of this case. If this Republic remains divided on this issue, the results could have very serious consequences. This Appellant as an Individual Sovereign Citizen of this beloved Republic will never peacefully surrender any of his weapons to anyone-ever!!!! This Appellant pleads and begs this Court to honor their OATH to Preserve and Protect the Constitution of the United States and order the Ninth Circuit Court of Appeals to Order the Governor and Attorney General of the State of California to Affirm that the Appellant has an "INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS IN THE STATE OF CALIFORNIA".

COURT OPINIONS AND FACTUAL STATEMENTS

**Additional
research
presented
to the
Supreme
Court**

The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1,78 S.Ct. 1401 (1958).

Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason. Having taken at least two, if not three, oaths of office to support the Constitution of the United States. Any judge who has acted in violation of the Constitution is engaged in an act or acts of treason.

The U.S. Supreme Court, in Scheuer v.

**Additional
research
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Court**

Rhodes, 416 U.s. 232, 94 S.Ct. 1683, 1687 (1974) stated that “when a state officer acts under a state law in a manner violative of the Federal Constitution, he “comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.”

If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

The 14th Amendment to the Constitution plainly and in unduplicitous words makes it irrevocably clear that the right to keep and bear arms is an individual right. 42U.S.C. paragraph 1983, accredits “to anyone protection for redress, if he is deprived of any rights, privileges... to which he is entitled under the Constitution of the United States.” Negroes had their guns confiscated and successfully sought their remedy under the 14th Amendment. It is difficult to see how remedies could be granted, if no individual right to keep and bear arms existed.

The *Bill of Rights* was drafted for the entire nation. California’s “Act of Admission to the Union” provided for this state to enter the

Union “*on an equal footing with the original States in all respects whatever*”. By this provision the *Bill of Rights* including the right to arms, became confirmed and applied to all California citizens. The *Bill of Rights* is not repealable.

The California Constitution obligates the legislature to adhere to the principles of *liberty* in Article I Sections 1,2,4, and 7. Liberty is important because it is more than just a right! Liberty is a condition, a state of being, under which sacred endowments are secured, and by which one may exercise his rights and abilities “free from restraints”. Liberty is a condition free from infringement and coercion, unhampered by adverse laws written by government officials.

If the condition to exercise a right in a manner “free from restraints” is taken away, *it is liberty that is lost, but not the right itself.* Rights that are endowed to man by the Creator will always exist. These sacred endowments can never be taken away by our fellow man; however, the use -or- exercise of these endowments can only be prevented or denied by a corrupt government. No government can *take away* these endowed rights per se!

The right to arms is dependent upon *the existence of liberty* in order for it to be exercised. No person can ever *lose* his essential rights, because they are unalienable, *but one can lose, or be denied, liberty.* Liberty is the undergirding energy force that makes



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possible the actualization of a right.

The *Bill of Rights* has an exclusive and unique power for which there is no equal! The *Bill of Rights* is a palladium which provides inviolability for sacred rights and is still higher law than the first seven articles in the Constitution. The first seven articles were written by the hand of man, but the *Bill of Rights* contains the endowments from the Creator. It is unrepealable! No man can nullify the laws of God! Its sphere of authority is supreme in guarding the rights of the law-abiding people. It is the *American Magna Carta!* No public official can lawfully override, set aside or repeal any of its provisions. The first Ten Amendments (Articles) in the *Bill of Rights* can NOT be superseded by a law in any form, including executive orders, executive agreements, treaties, state or federal pre-emption, etc.

Our sovereignty, our independence, our right to be self-governing, our liberty, our freedom and our right to the pursuit of happiness under a republican form of government are all guarded by the existence of the *Second Amendment* in the *Bill of Rights*. Additionally, all of the other nine amendments in the *Bill of Rights*, for their existence, depend upon the existence of the *Second Amendment*. The right is necessarily and apparently absolute! To detrude the *Second Amendment* by use of state pre-emption, is unforgivable!

The Fifth Circuit Court of Appeals
U.S. vs. Timothy Emerson - Case No.

**End of
additional
research
to the
Supreme
Court**

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Appendix. See VII of Conclusion, third
paragraph. PLEASE READ IT! “We agree
with the district court that the Second
Amendment protects the right of individuals
to privately keep and bear their own firearms
that are suitable as individual, personal
weapons and are not of the general kind or
type excluded by *Miller*, regardless of
whether the particular individual is then
actually a member of a militia.”

The Revolutionary War was not fought for
“rights”. The founding fathers knew that our
rights were inherent. What they fought for
was “independence and liberty”. Denial of the
exercise of our rights is a denial of liberty.

CONCLUSION

Conclusion

This Appellant is asking this Court to reason with logic and
common sense. No precedents should be their guide. It is
time to recognize they all swear to the identical oath to the
one and only Constitution. The Appellant implores and
pleads this Supreme Court to put aside pride, ego and
political views. The Appellant respectfully requests this
Court to accept the Appellant’s unorthodox presentation of
the Writ of Certiorari. The Appellant offers no excuse or
apology for the written arguments/statements as presented.
Many others have entered this Court with great hope and
expectations. This Appellant feels no different and prays all
nine Justices vote to support their oath and will finally accept
the true meaning of The Second Amendment.

**Formal Copy Will Be
Mailed To 9 You If YOU
Send Self-Addressed
Stamped Envelope.**

***This panel unanimously finds this case suitable for
decision without oral argument. See Fed. R. App. 0. 34(a)(2).
Accordingly, we deny Bird’s request for oral argument.