05-5359

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

We The People, et al.,	)	
	)	
Appellants	)	
	)	No. 05-5359
v.	)	
	)	
United States, et al.,	)	
	)	
Appellees	)	

BRIEF FOR AMICUS CURIAE CONSTITUTIONAL DEFENDER ASSOCIATION AND JOHN WOLFGRAM

Dated: March 31, 2006

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Defender Association and John Wolfgram:

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FOR REVERSAL

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SUMMARY OF AMICUS ARGUMENT

The necessary implications of the Petition Clause are as important as its wording. From the words "Congress shall make no law abridging the right of the people to petition the Government for a redress of grievances" (because only Congress, not the Judiciary or the Executive, can make law), it necessarily follows that there shall be no special laws protecting the government from all avenues of redress available to the people generally.

In this case the issue is the right to declaratory relief under an instrument binding on both parties: The United States Constitution.

The choice of wording in the Petition Clause makes it logically certain that with respect to the grievances of the people with their government and obtaining redress therefore, there shall be, and is lawfully, only one Supreme Law of the Nation as equally applicable between government and governed as it is among the governed themselves.

Amicus refers to a law review article, *How the Judiciary Stole the Right of Petition,* 31 UWLA Law Rev. 257 which he published in the summer of 2000. In that article Amicus demonstrates historically how the present state of affairs characterized by an ever-increasing entanglement of special laws, mostly judicially made, protecting government from the just redress of the people that it injures in the course of governing, emerged. There is no way a reasonable person can examine the research cited therein and conclude that the present state of affairs is rational, lawful or moral.

Amicus so entitled that article because there is no rational conclusion to the research but that "The Judiciary Stole the Right to Petition" and that is extremely important because America without that stolen right is an entirely different nation than the one designed into the Constitution when the Bill of Rights was adopted.

Amicus' brief develops the logic of the necessary interpretation of the Petition Clause, then points to that same meaning in its origins in the Magna Carta and then demonstrates that the same necessary meaning is expressly stated in the Declaration of Human Rights and in the International Covenant on Civil and Political Liberties.

The "democracy" that we propose to export to the rest of the world while in contempt of that Petition Clause and of the similar clauses in humanitarian treaties that we inspired, is seen by the world as a fundamental duplicity of American Democracies: A Just Democracy that we claim to be governed by and aspire to is contrasted to the stark reality of an unjust institutionalized governing process that has little care for the unjust injuries that it causes because it is not accountable to the people it injures, at home or abroad, for the injuries it causes in violation of its own law; and of international law.

Given the military power of the United States, that projection is as fearsome as it is uncomplimentary. It projects the image of a giant brute of force unrestrained by the reason of its own laws that have inspired new reaches of civilized law among nations.

While there are rules for interpreting the Constitution, including "Original Intent", the first rule is its plain meaning as it is written. As written it is not rationally possible for there to be special burdensome laws for petitioning government for redress. That such strict interpretation concurs with any reasonable understanding of the Original Intent and the developments of express International Law, is compelling evidence that it is long past due for the judiciary to graciously return this most important right to its lawful heirs.

It is submitted that the Amicus Brief accurately reflects the importance of the Petition Clause issues that underlie the dispute between We the People and the Government of the United States in this lawsuit.

INTEREST OF AMICUS CURIAE

Amicus Constitutional Defender Association was organized in 1989 for the sole purpose of advancing and defending the general right of the people, individually and in association, to ***effectively*** petition the government for redress of grievances through the compulsory processes of law as a First Amendment right necessary for the orderly development of civilization, in America and throughout the world.

Amicus John Wolfgram is one of the founders and president of the Constitutional Defender Association. In the summer of 2000 he published the cornerstone thesis of the Association, "How the Judiciary Stole the Right to Petition" at *31 UWLA Law Review 257*, available broadly on the internet under that title. He is a United State Marine Corps Vietnam veteran whose avocation after Vietnam and reason for becoming a lawyer was to understand, formulate and teach such alternatives to unjust war so as to make unjust war impractical. On a broader scale, that means ***effectively*** subjecting government to the rule of law … not just in name, but in reality; both at home, and abroad, wherever United States interests must be asserted as part and parcel to the democracy that we export.

Amicus has no interest in the other issues presented by the parties, except as those issues impact or are impacted by the ***effective*** First Amendment Right of Petition, and in particular, through the judicial system.

SCOPE OF THE ISSUE:

In 1989 Amicus, while studying the Petition Clause issue, the right to compel government to obey the law or to pay damages for its violation,[1] determined that the Petition Right was much broader than our Judiciary had interpreted and much more important to developing civilization than our government, torn by the conflicts of interest and corruptibility incidental to the general unaccountability caused by immunities, would openly admit.[2]

The problem was not in what the Petition Clause says … its breadth and importance to developing civilization is clear on its face: How much more clearly can it be stated than "Congress shall make no law abridging … the right of the people … to petition the Government for a redress of grievances"? (Petition Clause) It is not as if the Framers were charlatans or fools; nor as if they did not know the English history respecting the right to petition government for a redress of grievances. Surely, they must be understood to have meant what they wrote in the context of the First Amendment to the United States Constitution.

It seemed more to Amicus that the issue was one of simple logic, or more correctly, the failure of simple logic; a failure to reason from the First Amendment, as it is written, to its necessary and unavoidable result:

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[1] It is simply commonsense that any unjust injury that government inflicts upon citizens, as inevitably incidental to its governing processes is in effect, if uncompensated, a special tax upon those it injures. The most fundamental concepts of justice, of right and wrong and of accountability of government to governed, demands that such injury be spread throughout the tax base by just compensation in damages to the injured. If it is not, it is a taking of private property (as any injury can be translated into damages) for public use without just compensation; a Fifth Amendment violation.

[2] That is generally, the topic discussed in "How the Judiciary Stole the Right to Petition" by Amicus Wolfgram, *31 UWLA 257*

If “Congress shall make no law … abridging … the right of the people to petition the Government for a redress of grievances,” including through the compulsory process of law by and through the courts, then it necessarily follows that a citizen suing the government has all of the rights to use those compulsory processes of law to obtain just redress under the law, as such a citizen has against any other wrongdoer.[3] The fundamental question of a right to remedy in any such suit against the government had to be whether the remedy sought was appropriate when viewed as if the lawsuit was against any other party.

The instant case, at its bottom, is simply a suit for declaratory relief under a written instrument binding on the parties to determine their respective rights and duties. That the document is the Constitution of the United States does not change the character of the lawsuit for declaratory relief, but if anything, makes diligent attention to the subject matter all the more compelling for the courts, for among other things, the judiciary is a branch of government and it should not be seen to be biased in favor of the government, but instead, to conscientiously strive to achieve neutrality of interpretation and application of the Constitution as between government and governed under the neutrality principle that must govern any judicial proceeding.

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[3] Indeed, in addressing the English Right of Petition, but in failing to even mention our own Petition Clause, in *United States v. Lee* 106 U.S. 196 (1882) Justice Miller discusses the English "Right to Petition.” He observes that after the Right of Petition was established, it "was practiced and observed in the administration of justice in England (and) has been as effective in securing the rights of suitors against the Crown, in all cases appropriate to judicial proceedings, as that which the law affords in legal controversies between the subjects of the King among themselves." See “How the Judiciary Stole the Right to Petition” 31 UWLA Law Rev. 257 at 262-263.

The Legal Foundations of the Right to Petition as a Substantive Right

As Amicus sees it, the foundational issue between the parties is whether the Right to Petition Government for a Redress of Grievances through the compulsory processes of law, is merely a procedural right, or also necessarily implies a substantive right to just redress.

From its inception in the *Magna Carta* to its inclusion in International Treaties such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Liberties, the Right to Petition has been established as the peacemaker between government and governed at all levels, in all nations and is being established as among nations.

Its place in the First Amendment; followed by the Second Amendment Right to bear arms historically means that, while vigorously denied by government, If the people's right to petition according to the general processes of law for justice be denied or obfuscated, they have the **lawful** right to seek justice through violence or any other means against government.

But, of course, that conclusion begs the question here before the Court:

Is it lawful to rebel against government by withholding payment of taxes, when government abridges the People's Right to Petition it for a redress of Grievances?

While that is what Article 61 of the *Magna Carta* literally says, its purpose was not to legalize rebellion, for that is the point where law and justice break down. The purpose of setting out the conditions when rebellion is lawful is to intimidate government to prevent the conditions that cause rebellion from arising.

As history records that is exactly what, in the spring of 1215, the *Magna Carta,* and the King's promise to respect the Right to Petition, did.

When King John arrived at Runnymede with his army to put down the English insurrection, he was met with what he saw at the time as a reasonable alternative to facing the thousands of raised pitchforks all around: A substantive, not merely procedural, Right of Petition that required under pain of lawful rebellion, that substantive justice be delivered to those aggrieved by His Majesty's acts.

The importance of the *Magna Carta* is that it is the legal ancestor of our written Constitution and the Rule of Law as a limitation on government's raw power to run roughshod over the people. This Honorable Court is asked to read Article 61 to refresh its own understanding of the Right of Petition, as it was conceived and written.

The *Magna Carta*, Chapter 61.

> "Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we […] or any one of our officers shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offence be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us […] and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression […] within forty days, reckoning from the time that it has been intimated to us […], the four barons aforesaid shall refer that matter to the rest of the five and twenty

> barons, and those five and twenty barons shall together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations toward us. And let whoever in the country desires it, swear to obey the orders of the said five and twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to everyone who wishes to swear, and we shall never forbid anyone to swear. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid […].[4]

The development of our common law understanding of the right of petition began, but did not end with the *Magna Carta*. Over the next 450 years kings abridged it and the people reasserted it until it became the cornerstone on which the House of Commons developed its relationship with a succession of kings who sought to conceal and ignore this crowning legal achievement. Then in 1669, Commons resolved that every commoner in England had "the inherent right to prepare and present petitions" to Commons "in case of grievance" and for Commons to receive the same and judge its fitness. Twenty years later, after the "glorious revolution" the 5th right of the "Bill of Rights" of 1689 declared the right of the subjects to petition the King directly, and "all commitments and prosecutions for such petitioning to be illegal."[5]

[4.] The rest of Chapter 61 guarantees that the King and his heirs shall never interfere with the petitioning process or punish or intimidate anyone for assisting the barons to coerce just redress from the government.

[5.] CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION 1188 (1992); *see generally* 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 98 (1934).

That is our "common law." It explains why our Supreme Court said of it:

> The right to sue and defend in the *courts is the alternative of force*. In an organized society, *it is the right conservative of all other rights*, and lies at the foundation of orderly government.[6] (Italics added)

That is what the Right of Petition is. It is the right conservative of all others. We most often think of the right of petition as a right to ask government for its favor, but that is by no means its most important function.

When the Framers wrote it into the First Amendment with the words "Congress shall make no law abridging", and because petitioning through the courts is an appropriate method of petitioning that evolved along with the importance of the judiciary both here and in England, both for the people among themselves and as between government and governed, it necessarily follows that government no less than any other party, can be subjected to judicially enforced compulsory process of law … the same law left unabridged that is enforced among the people or by government against the people.

The Petition Right was designed from its inception, to bring government to account under the law of the land, by unabridged compulsory process if government respects that process, and by threat of lawful force if it does not.

That Right is designed to be so powerful that its free use will prevent the hostilities of war between government and governed and the mere promise to respect it can restore peace to warring factions because it is the instrument of justice under law, as between government and governed.

It is intended to subject government to the compulsory process of law *especially when, as in this case, government does not want to fairly redress the*

[6.] *Chambers v. Baltimore & Ohio R.R.,* 207 U.S. 142, 148 (1907)

grievance. It is so important that “law” without it, is “law without justice”, and that is another name for the same kind of oppression that is incidental to the government becoming an occupation force over its own people.

What else but “oppression” is it, where government is above the common law of the land, either by design, or by the imposed fact of its organization and power?

This is just simple logic and as applied to the facts of this case begs us to realize how states of war between government and governed arise. The people are themselves bound and accept that they are bound by government under the Constitutional Supreme Law of the Land; as is the government. They accept that if they do not like the Constitution as it is, they can change it through the process that it allows. But they expect and ultimately insist that government do the same.

The Plaintiffs in this case simply ask government to state the Supreme Law of the Land under which it claims authority for specified acts that affect their compelling interests. The government either has such lawful authority, or it does not. If it does, what is the problem with stating it?

But when it so refuses, and when reasonable persons trained in the law cannot find it, only fools would continue to accept that authority on blind faith.

It can hardly be said with more authority than to simply observe the meaning of the English language, that all of the civilization that we know, and all of the civilization that we hope to develop and pass to posterity, depends upon an objectivity in the rule of law such that government can and will reasonably show upon demand, that the law it relies on, flows directly and logically from the Constitution, as it is written. That alone is its source of moral and legal power.

Under such conditions, it is not the Appellants who rebel against the government by withholding taxes, but the government that has rebelled against any reasonable understanding of the limits of authority imposed by the Constitution; and it is therefore, not acting as government, but as an organized gang of thugs under a perverse color of “law”.

In issues of war and peace between government and governed, it is almost as important that government appear to operate under the Constitution, as it is that it actually does so confine itself. That too is a maxim of jurisprudence.

This Honorable Court should observe exactly what it is that defendants expect of this Court. Defendants not only refuse to state what the law is on which they rely, openly and reasonably so that all can understand that it is the LAW, but they expect this Court to ratify their refusal so that all of government can appear to be united in open rebellion against the People and the Constitution that binds them both in that sacred relationship of Government to Governed.

Who will believe under these premises that the courts are anything but government puppets giving effect to government’s irrational and arbitrary will, if courts pretend that under a lawfully unbridgeable right to petition, courts have no duty to determine the law pursuant to the Constitution under which the rights and duties of the parties are to be declared ... when government is a party.

If that also be the rule of the courts, then the court should state it outright:

> “As between government and governed, government need show no lawful authority for its acts and therefore, under the rule of the courts, government need have no lawful authority for its acts.”

That is the necessary implication of what Defendants expect this Court to say, and this Honorable Court ought to take great umbrage from the silent but

necessarily implied expectations of its co-equal branches of government: This Court, and the Judiciary, is *expected* to violate their judicial oath to support the Constitution so that the rest of government may ignore the Constitution.

While this line of logic follows from the Right of Petition as it is founded upon the common law and common sense of the *Magna Carta,* it is legitimate to ask whether that is also the rule of law that mankind and this Nation should aspire to. That is, The People and the Government can admit that civilization fluctuates over time and that the Rule of the *Magna Carta* also fluctuated over time, being more and less followed in our common law history, then, and now.

The People and Government can look at the state of the Nation, to its future no less than its past, and ask which way of the two directions of the fluctuation reason bids that it should go, as a legitimate way of determining the present meaning of the Petition Clause; for that right, and duty of constitutional interpretation is written right into the Preamble.

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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.

Forming a more perfect Union and better accomplishing its values for civilization; for “ourselves and our Posterity” is what the Constitution is all about.

If a court is offered two possible interpretations of the Petition Clause, one of which obviously tends to accomplish the six values stated in the Preamble and the other of which just as obviously tends to frustrate those values, there can be no doubt which interpretation is right and proper.

When it comes to the choice between an interpretation that would say that the right to petition through the courts is procedural only and another just as plausible that the procedural right to petition through the courts necessarily implies the right to substantive justice under law, that same sense of reason requires the Court to apply the latter and ignore the former lest it ascribe to the First Amendment's Framers an intent to play a sarcastic joke upon the People.

What is the right to petition through the compulsory processes of law unless it be the right to obtain just redress under the law?

But enough said of logic and reason alone. It does speak for itself.

The rule of law that our Petition Clause states for posterity, it also states for the democracy that the United States has undertaken to export and teach to the world. That statement has been set out undeniably, not only for the civilization that we are, but for the civilization that we as a Nation, seek to promote and accomplish for ourselves, for the world, and for our posterity in a shrinking world.

The Right of All Peoples to Effective Remedies on a World Stage

Amicus emphasizes the "**effective**" right to petition, not only because the right is nothing if not **effective,** but to draw attention to that word. On the one hand, would the framers really intend that the right should not be **effective**? On the other, that is the word used to describe the right of the people to redress in the formality of the Treaties that bind our civilization to the world.

As is stated by Amicus in "How the Judiciary Stole the Right to Petition" 31 UWLA Law Rev. 257 at 266:

> **"Sovereign Immunity Violates International Law**: As shown, sovereign immunity finds no support in our history. It was not in our common law before the Constitution; it is actually prohibited by the Constitution, and its assumption is a living contradiction to the very idea of limited government designed into the Constitution. Sovereign immunity is inconsistent with government accountability for injuries caused in violation of its own law.
>
> "Beyond arguments arising out of history and the clear language of the Petition Clause itself, the future prospects of governments remaining unaccountable to their own citizens for the injuries they cause in violation of rights, is not very persuasive either. On that point, The *Universal Declaration*, *(of Human Rights)* Art. 8, states the essence of our Petition Clause, as to all governments:
>
> > 'Everyone has the right to an **effective remedy** by the competent national tribunals for acts violating the fundamental rights granted him by constitution or by law.'
>
> "Notice the words "*right to an effective remedy*." What is an "effective remedy" for rights violations if it is not the right to sue government for just redress under law? That is a founding treaty of the United States with the United Nations forbidding our government from exercising immunity from its citizens for its violations of constitutional rights. Notice for later consideration, that the right to an *effective remedy* is a *substantive right*.
>
> "The International Covenant[7] Article II, §§ 2, 3 declare:

[7.] The International Covenant on Civil and Political Rights was adopted by the United Nations on 12/16/66, and signed by the United States on October 5, 1977. The Senate by

> ‘2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, *in accordance with its constitutional processes* and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.[8]
>
> ‘3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated *shall have an effective remedy*, notwithstanding the violation has been committed *by persons acting in an official capacity.*
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;[9]’ (emphasis added)”

These treaties are, of course, the Supreme Law of this Land, and the International Covenant is ultimately enforceable, under our own ratification instrument, by the International Human Rights Commission.

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resolution of 4/2/92 gave its advice and consent to ratification, subject to Reservations, Understandings and Declarations. The Instrument of Ratification was signed by (the first) President George Bush, 6/1/92. The Instrument (of ratification) Art. III, § 3 declares: "That the United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under Art. 41 in which a State Party clams that another State Party is not fulfilling its obligations under the Covenant".

[8.] In the present context, the emphasized clauses obligate the United States Judiciary to free the Constitution's petition clause to do its work by undoing the assumption of sovereign immunity (laws abridging the right to petition). The Covenant is presented for both its binding force as "Supreme Law of the Land", and also for its persuasive force in reason, to help understand the nature of our own petition clause, that it is a law of reason freely chosen by our founders: If we now choose it freely as a basis for the organization of free nations, why should we presume that it was less compelling when our founding fathers brought the thirteen colonies together under one constitution?

Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political[9.] The International Covenant's preamble states the purpose of effective judicial remedies notwithstanding the violation is committed by persons acting in official capacity, as follows: "Recognizing that, in accordance with the freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights." A condition necessary for enjoyment of rights is compulsory process of law to protect those rights; and to obtain just redress for their violation.

But that, as a threat, misses the point: That the Right to Petition includes the right to use the compulsory processes of law against government usurpation is a matter of great pride and accomplishment in the development of civilization. While the concept was born in England, the integration of it into a written Constitution was "Made in America" and that we should have to cite the treaties to prove that fact, denigrates our own intellectual and legal achievements and contributions to the principles of the Rule of Law.

The argument is not that we did, or should, inherit the real meaning of the Petition Clause from our human rights treaties. The undeniable fact is that those treaties got their Petition Clause meaning from the United States Constitution, and we should be proud of that, and proclaim it loudly.

CONCLUSION

The rule of law started in the year 1215, seven hundred and ninety one years ago when the People rose up against the King to subject Him to the common law of the land. That rule of law, what we call "civilization" is still developing. Of course it is still developing. Could it, should it be otherwise? We, this day in this court, our arguments, for and against the clear meaning of the Petition Clause applied to a judicial context, and this Court's Opinion, whether it publishes an opinion that it can be proud of; or attempts to hide or obscure the issue, are a part of that development, for ourselves, and for our posterity; or a government obstruction to that development based on political expediency.

In a developing civilization, we have to ask a very important question:

Is the best of government's version of republican democracy to be its own organizational ability to overwhelm the People with its armies of lawyers before its very own biased courts as the kings of old have always tried to capture the

courts for their own bidding; or are the courts bound to distribute justice under the Constitution, all of the other forces of government notwithstanding?

The question is: “What does it take to get the courts to take the problem seriously … that a civilized government cannot just say, ‘take government’s authority on faith?’ Question it if you must, but government stands united against the People and its judiciary, their own oath notwithstanding, need compel no reason under law, other than that “government says that it is so”.

Is the People’s faith in their government to be based on an unspoken rule of the courts that says that the “Law of the Land” is government’s organized ability to force its own contentions of law down their throat; or are the people to have the right, under one of the oldest and most settled rules of the Due Process of Law, that they not only have the right to know what government contends the law to be, but to have reasonable assurance that what the government contends the law to be, is indeed, the real law of the land?

Insofar as the development of civilization depends on a just development and application of law, the government’s contention would turn the clock backwards to wallow in the Dark Ages where the fact that the “King said it is so,” is all that is required to be the Effective Law of the Land.

Respectfully submitted:

March 31, 2006

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Cyrus Zal, Attorney for Amicus Wolfgram and
The Constitutional Defender Association

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28.1 and 32(a), this brief contains 4,159 words.

PROOF OF SERVICE

At Sacramento, California, I declare that I am a citizen of the United States, a resident of California, over the age of eighteen and not a party to this action. This date I placed into the United States Mail, postage prepaid, a copy of this Amicus Brief, and of a "Notice of Consent/Non Consent of Parties for Amicus Participation" addressed to each of the attorneys for the Parties, addressed as follows:

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I declare the foregoing to be true under penalty of perjury of the laws of the United States.

March 31, 2006

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Cyrus Zal, Attorney for Amicus Wolfgram and
The Constitutional Defender Association