{Venue}

{Plaintiff}, Plaintiff vs. {Defendant}, Defendant	}	Case Number: {Case Number} Memorandum of Points and Authorities

I. THE NATURE OF SUBJECT MATTER JURISDICTION

The jurisdiction of a court over the subject matter has been said to be essential, necessary, indispensable and an elementary prerequisite to the exercise of judicial power, 21 C.J.S., "Courts," Sec 18, p. 25. Courts cannot proceed with a trial or make a judgment without such jurisdiction existing.

It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. Matter of Green, 313 S.E.2d 193 (N.C.App. 1984).

Subject matter jurisdiction cannot be conferred by waiver or consent, and may be raised at any time. Rodrigues v. State, 441 So.2d 1129 (Fla.App. 1983). The subject matter jurisdiction of a criminal case is related to the cause of action in general, and more specifically to the alleged crime or offense which creates the action.

> The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute. Stillwell v. Markham, 10 P.2d 15, 16 135 Kan. 206 (1932).

An indictment or complaint in a criminal case is the main means by which a court obtains subject matter jurisdiction, and is "the jurisdictional instrument upon which the accused stands trial." State v. Chatmon, 671 P.2d 531, 538 (Kan. 1983). The complaint is the foundation of the jurisdiction of the magistrate or court. Thus if these charging instruments are invalid, there is a lack of subject matter jurisdiction.

> Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime. Honomichl v. State, 333 N.W.2d 797 (S.D. 1983).

> A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties, and where the indictment or information is invalid the

court is without jurisdiction. Ex parte Carlson, 186 N.W. 722, 725, 176 Wis. 538 (1922).

Without a valid complaint any judgment or sentence rendered is "void ab initio" Ralph v. Police Court of El Cerrito, 190 P.2d 632.634, 84 Cal. App.2d 257 (1948).

Jurisdiction to try and punish for a crime cannot be acquired by the mere assertion of it, or invoked otherwise than in the mode prescribed by law, and if it is not so acquired or invoked any judgment is a nullity. 22 C.J.S., "Criminal Law," Sec. 167, p 202.

The charging instrument must not only be in the particular mode or form prescribed by the constitution and statute to be valid, but it also must contain reference to valid laws. Without a valid law, the charging instrument is insufficient and no subject matter jurisdiction exists for the matter to be tried.

Where an information charges no crime, the court lacks jurisdiction to try the accused. People v. Hardiman, 347 N.W.2d 460. 462, 132 Mich.App. 382 (1984).

{W}hether or not the complaint charges an offense is a jurisdictional matter. Ex parte Carlson, 186 N.W. 722, 725, 176 Wis. 538 (1922).

An invalid law charged against one in a criminal matter also negates subject matter jurisdiction by the sheer fact that it fails to create a cause of action. "Subject matter is the thing in controversy." Holmes v. Mason, 115 N.W. 770, 80 Neb. 454, citing Black's Law Dictionary. Without a valid law, there is no issue or controversy for a court to decide upon. Thus, where a law does not exist, or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter jurisdiction to try one for an offense alleged under such a law.

> If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case. 22 C.J.S. "Criminal Law." Sec. 157, p. 189; citing People v. Katrinak, 185 Cal. Rptr. 869, 136 Cal. App.3d 145 (1982).

> Where the offense charged does not exist, the trial court lacks jurisdiction. State v. Christensen, 329 N.W.2d 382, 383, 110 Wis. 2d 538 (1983).

Not all statutes create a criminal offense. Thus where a man was charged with "a statute which does not create a criminal offense," such person was never legally charged with any crime or lawfully convicted because the trial court did not have "jurisdiction of the subject matter," State ex rel. Hansen v. Rigg, 258 Minn. 388, 104 N.W.2d 553 (1960). There must be a valid law in order for subject matter to exist.

In a case where a man was convicted of violating certain sections of some laws, he later claimed that the laws were unconstitutional which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

> If these sections are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be a legal cause of imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law. Kelly v. Meyers, 263 Pac. 903, 905 (Ore. 1928).

These authorities and others make it clear that without a valid law, there can be no crime, and where there is no crime or offense there is no controversy or cause of action, and without a cause of action there can be no subject matter jurisdiction to try a person. The court then has no power or right to hear and decide a particular case involving such invalid or nonexistent laws. Invalid or unlawful laws make the complaint fatally defective and insufficient, and without a valid complaint, there is a lack of subject matter jurisdiction.

The Accused asserts that the laws charged against him are not valid and do not constitutionally exist, as they do not conform to certain constitutional prerequisites, and therefore are no laws at all, which prevents subject matter jurisdiction to the above-named court.

The complaint(s) in question allege that the Accused has committed "Infractions" by the violation of certain laws, which are listed in said complaints, to wit:

1. {Title of Offense} – {RCW Violated}

These laws or statutes used in the complaints against the accused are located in and derived from a collection of books entitled "Revised Code of Washington." Looking up these laws in this publication, it is readily apparent that they do not adhere to several constitutional provisions of the Washington Constitution.

By Article 2 of the Constitution of Washington (1889) all lawmaking authority for the State is vested in the Legislature of Washington. This Article also prescribes certain forms, modes and procedures that must be followed in order for a valid law to exist under the Constitution. It is fundamental that nothing can be a law that is not enacted by the Legislature prescribed in the Constitution, and which fails to conform to constitutional forms, prerequisites or prohibitions. These are the grounds for challenging the subject matter jurisdiction of this court, since the validity of a law on a complaint or indictment goes to the jurisdiction of a court. The following explains in authoritative detail why the laws cited in the complaints against the Accused are not constitutionally valid laws.

II. ISSUES

A. The Revised Code of Washington Makes No Claim To Be Law

The Revised Code of Washington makes absolutely no claim to be the law. To the contrary, it specifically disclaims any authority of law, it specifically states that it cannot change "the law", to wit, vide infra.

B. The Revised Code of Washington Specifically Disclaims Authority of Law

The Revised Code of Washington specifically disclaims any authority of law, to wit:

> RCW 1.04.021 Rule of construction--Prima facie law.
> The contents of said code shall establish prima facie the laws of this state of a general and permanent nature in effect on January 1, 1949, **but nothing herein shall be construed as changing the meaning of any such laws**. In case of any omissions, or any inconsistency between any of the provisions of said code and the laws existing immediately preceding this enactment, the previously existing laws shall control. [1950 ex.s. c 16 § 2.] (emphasis added)

Is it possible that something which is the law cannot change the law? Absolutely not. Such a statement would be exceedingly ridiculous if the RCW were actually law. However, such is not the case.

While it is true that the Revised Code of Washington purports to be "prima facie" evidence of the laws. This does not mean that it is the laws, nor is its claim of prima facie authenticity necessarily valid.

First, there must be legal authority to create such a presumption. As we shall see later, this authority simply does not exist.

Secondly, even if the presumption was legally created, this is merely a rebuttable presumption; this merely means that it looks like law “at first sight” or “on its face”.

Therefore, it is with intent to rebut this false and unfounded presumption, that I write this brief.

C. The Washington State Supreme Court Has Said It Is Not The Law

The Washington Supreme Court has specifically stated that the compilation entitled “Revised Code of Washington” is not the law.

"In this respect, the 1951 legislature was following its own unconstitutional device for amending a section of an act in disregard of the specific constitutional mandate. **The act before us does not purport to amend a section of an act, but only a section of a compilation entitled "Revised Code of Washington," which is not the law.** Such an act purporting to amend only a section of the prima facie compilation leaves the law unchanged." PAROSA v. TACOMA, 57 Wn.2d 409, 415, (1960) (emphasis added)

This court drew upon a previous ruling dealing with the issue of codes versus laws, as well.

"But we think that the fundamental error into which the court fell was in assuming that the several sections cited are concurrent in point of time. A glance at the chapter alone will show that it is not composed of any single enactment of the legislature. On the contrary, it is a composite of several independent acts of the legislature ranging from territorial days down to the session of the state legislature of 1907; it is so to speak, the compilers idea of what now remains as law of the many enactments of the legislature. But the compilation has no official sanction in the sense that it controls the construction the court must put upon the several acts." Spokane P.& S. R Co. v. Franklin County., 106 Wash 21, 26,(1919).

The reasons behind these court decisions shall be shown by the remainder of this brief.

D. It Claims Authority Only By The Unratified 1889 Constitution

The compilation entitled "Revised Code of Washington" claims its authority rests exclusively in the 1889 Constitution, which is published in Volume 0 of the "Revised Code of Washington" compilation.

This Constitution, which was allegedly ratified in 1889, was in fact not ratified and, as such, it carries absolutely no legal authority whatsoever, it is null and void, ab initio.

The true Constitution for The State of Washington was ratified and approved in 1878, 11 years earlier. Therefore, the controlling laws in this state are the Session Laws passed during our first 11 years of statehood.

Though discovery has been intentionally hampered by the de-facto government, we have managed to acquire documentation and proof that such is in fact the case. Please see the annexed Affidavit and its Exhibits, as an Offer of Proof in this regard. {The Affidavit and Exhibits are in folder 3-2-2 and 3-2-3}.

E. This "Code of Washington" Is Unlawfully Revised

The compilation entitled "The Revised Code of Washington" is not the work of our legislature, or any elected body of legislative representatives. Instead, it is a private compilation, a private "law", which is written for private purposes, private agendas, and private gain.

The code reviser himself is an appointed officer; he is not elected by We The People. Furthermore, he is appointed directly by the Governor, and as such, he is an **executive** agent. Yes, that's right. The Revised Code of Washington is the work of our executive branch. Of all the possible scenarios, the executive operating legislatively is perhaps the most dangerous of all. As John Locke once said:

> "It may be too great a temptation to human frailty, apt to grasp at power, for the same persons, who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making, and execution, to their own private advantage, and thereby come to have a distinct interest from the rest of the community, contrary to the end of society and government: therefore in well ordered commonwealths, where the good of the whole is so considered, as it ought, the legislative power is put into the hands of divers persons, who duly assembled, have by themselves, or jointly with others, a power to make laws, which when they have done, being

separated again, they are themselves subject to the laws they have made; which is a new and near tie upon them, to take care, that they make them for the public good." John Locke's Second Treatise of Civil Government, Chapter 12.

Nowhere does the Constitution authorize such an abuse of powers. To the contrary, this is a direct and blatant violation of the Separation of Powers doctrine, which states that one person may not hold positions in two of the three branches at any one time. This man, the Code Reviser, does not hold positions in two branches, he is only executive; but he does operate as a legislative agent by claiming his compilation is "prima facie" the law. This court must not allow the executive branch to create such a presumption.

It is not even within the power of the legislature, should they so desire, to delegate their powers to the executive branch. The authority to delegate the powers of legislation, adjudication, and enforcement has always been held by We The People, the Sovereign Body Politic. The only way such powers could be delegated to the executive branch would be by Constitutional amendment.

If laws produced, published, and compiled by private individuals carry no legal validity, how much more should those laws produced, published, and compiled by the executive branch be null and void. Yes, it would be much better for a private man to have legislative powers, than for the executive

to have legislative powers. For the private man could not enforce what he wrote.

F. The Revised Code of Washington is Copyrighted And Private

It is an undeniable and undisputable fact that the compilation entitled "Revised Code of Washington" is in fact copyrighted by a private corporation. Yes, it is true. The RCW just like its predecessors, Remingtons, & Balinger's is copyrighted. Arthur Remington compiled the statutes of Washington, and the work was copyrighted by the Bancroft-Whitney Company, originally in 1910.

The copyright of this compilation implies, or rather proves, that the author has in fact altered the work of the legislature.

U.S.C. Title 17 Sec. 103 Subject matter of copyright: Compilations and derivative works

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material."

When confronted with the same issue, the Supreme Court of the United States denied a State legislature the authority to obtain a copyright, and cited Wheaton v. Peters, 8 Pet. 591, as controlling.

"Although the Constitution of the United States, in § 8 of article 1, provides that the Congress shall have power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries," yet the means for securing such right to authors are to be prescribed by Congress. It has prescribed such a method, and that method is to be followed. No authority exists for obtaining a copyright, beyond the extent to which Congress has authorized it. A copyright cannot be sustained as a right existing a common law; but, as it exists in the United States, it depends wholly on the legislation of Congress. Wheaton v. Peters, 8 Pet. 591, 662, 663." Banks v. Manchester, 128 U.S. 244 (1888)

In the Wheaton v. Peters case relied upon, the Court went on to say in its lengthy opinion:

"It is attempted to put judicial decisions on the same ground as statutes. It is the duty of legislators to promulgate their laws. It would be absurd for a legislature to claim the copyright; and no one else can do it, for they are the authors, and cause them to be published without copyright. Statutes never were copyrighted. Reports

always have been. It is said that one employed by congress to revise and publish the statutes, might as well claim a copyright as a reporter. The difference is, one is employed to act as a mere agent or servant, or clerk of the legislature, to prepare the laws to be properly promulgated. He is engaged to do what it is well understood never is copyrighted, and does not admit of copyright. There is a distinct understanding, a contract, that he is to do the work for his compensation, and not to claim a copyright. But a reporter is not an agent employed by congress." Wheaton v. Peters, 33 U.S. 591 (1834), 8 Pet. 591

Public law is public domain; only private code can be privately copyrighted. This copyright is irrefutable proof that the compilation is in fact **private code, not public law.**

G. The Revised Code of Washington Has No Enacting Clauses

By Constitutional Mandate, all Laws Must Have an Enacting Clause

One of the forms that all laws are required to follow by the Constitution of Washington (1889) is that they contain an enacting style or clause. This provision is stated as follows:

"The style of the laws of the State shall be: 'Be it enacted by the Legislature of The State of Washington.'" Article II, Sec. 18.

None of the statutes cited in the complaints against the Accused, as found in the "Revised Code of Washington" contain any enacting clauses.

The constitutional provision which prescribes an enacting clause for all laws is not directory, but is mandatory. This provision is to be strictly adhered to as asserted by the Supreme Court of Washington:

"Upon both principle and authority, we hold that article 4, Sec. 13, of our constitution, which provides that "the style of all laws of this state shall be, 'Be it enacted by the legislature of The state of Washington,'" is mandatory, and that **a statute without any enacting clause is void.**" Sjoberg v. Security Savings & Loan Assn, 73 Minn, 203, 212 (1898); The Seat of Government 1 Wash. T. 115, 123 (1861).

The Purpose of the Constitutional Provision for an Enacting Clause

To determine the validity of using laws without an enacting clause against citizens, we need to determine the purpose and function of an enacting clause; and also to see what problems or evils were intended to be avoided by including such a provision in our State Constitution. One object of the constitutional mandate for an enacting clause is to show that the law

is one enacted by the legislative body which has been given the lawmaking authority under the Constitution.

> The purpose of thus prescribing an enacting clause--"the style of the acts"--is to establish it; to give it permanence, uniformity, and certainty; to identify the act of legislation as of the general assemble; to afford evidence of its legislative statutory nature; and to secure uniformity of identification, and thus prevent inadvertence, possible mistake and fraud. State v. Patterson, 4 S.E. 350, 352, 98 N.C. 660 (1887); 82 C.J.S. "Statutes," Sec. 65, p. 104; Joiner v. State, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

> What is the object of the style of a bill or enacting clause anyway? To show the authority by which the bill is enacted into law; to show that the act comes from a place pointed out by the Constitution as the source of legislation. Ferrill v. Keel, 151 S.W. 269, 272, 105 Ark. 380 (1912).

To fulfill the purpose of identifying the lawmaking authority of a law, it has been repeatedly declared by the courts of this land that an enacting clause is to appear **on the face of every law** which the people are expected to follow and obey.

> The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. The purpose of

> an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act. 73 Am. Jur.2d, "Statutes," Sec. 93, p. 319, 320; Preckel v. Byrne, 243 N.W. 823, 826, 62 N.D. 356 (1932).

For an enacting clause to appear on the face of a law, it must be recorded or published with the law so that the public can readily identify the authority for that particular law which they are expected to follow. The "statutes" used in the complaints against the Accused have no enacting clauses. They thus cannot be identified as acts of legislation of The State of Washington pursuant to its lawmaking authority under Article II of the Constitution of Washington (1889), since a law is primarily identified as a true and Constitutional law by way of its enacting clause. The Supreme Court of Georgia asserted that a statute must have an enacting clause, even though their State Constitution had no provision for the measure. The Court stated that an enacting clause establishes a law or statute as being a true and authentic law of the State:

> The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity. Joiner v. State, 155 S.E.2d 8, 10 (Ga. 1967).

The failure of a law to display on its face an enacting clause deprives it of essential legality, and renders a statute which omits such clause as "a nullity and of no force of law." Joiner v. State, supra. The statutes cited

in the complaints have no jurisdictional identity and are not authentic laws under the Constitution of Washington.

The Court of Appeals of Kentucky held that the constitutional provision requiring an enacting clause is a basic concept which has a direct affect upon the validity of a law. The Court, in dealing with a law that had contained no enacting clause, stated:

> The alleged act or law in question is unnamed; it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for it. ***By an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it were, upon each enactment for the sake of identity, and to assume and show responsibility. * * * While the Constitution makes this a necessity, it did not originate it. The custom is in use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, which Holy Writ records, were not the first to be prefaced with a statement of authority. The law was delivered to Moses in the name of the Great I Am, and the prologue to the Great Commandments is no less majestic and impelling. But, whether these edicts and commands be promulgated by the Supreme Ruler or by petty kings, or by the sovereign people themselves, they have always begun with some such form as a evidence of power and

authority. Commonwealth v. Illinois Cent. R. Co., 170 S.W. 171, 172. 175. 160 Ky. 745 (1914).

The "laws" used against the Accused are unnamed. They show no sign of authority on their face as recorded in the "Revised Code of Washington." They carry with them no evidence that the Legislature of Washington, pursuant to Article II of the Constitution of Washington (1889), is responsible for these laws. Without an enacting clause the laws referenced to in the complaints have no official evidence that they are from an authority which I am subject to or required to obey.

When the question of the "objects intended to be secured by the enacting clause provision" was before the Supreme Court of Minnesota, the Court held that such a clause was necessary to show the people who are to obey the law, the authority for their obedience. It was revealed that historically this was a main use for an enacting clause, and this its use is a fundamental concept of law. The Court stated:

> All written laws, in all times and in all countries, whether in the form of decrees issued by absolute monarchs, or statutes enacted by king and council, or by a representative body, have, as a rule, expressed upon their face the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. If such an enacting clause is a mere matter of form, a relic of antiquity,

serving no useful purpose, why should the constitutions of so many of our states require that all laws must have an enacting clause, and prescribe its form. If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted, so that the people who are to obey them need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a constitution, or unworthy of such an instrument, to prescribe a uniform style for such enacting clause.

The words of the constitution, that the style of all laws of this state shall be, "Be it enacted by the legislature of the state of Minnesota," imply that all laws must be so expressed or declared, to the end that they may express upon their face the authority by which they were enacted; and, if they do not so declare, they are not laws of this state. Sjoberg v. Security Savings & Loan Assn, 73 Minn, 203, 212-214 (1898).

This case was initiated when it was discovered that the law relating to "building, loan and savings associations," had no enacting clause as it was printing in the statute book, "Laws 1897, c 250." The Court made it clear that a law existing in that manner is "void" Sjoberg, supra, p. 214.

The purported laws in the complaints, which the Accused is said to have violated, are referenced to various laws found printed in the "Revised Code

of Washington." book. Upon inspection of this "Code", it is readily and inarguably apparent that no enacting clause can be found. A Citizen is not expected or required to search through other records or books for the enacting authority. If such enacting authority is not "on the face" of the laws which are referenced in a complaint, then "they are not laws of this state;" and thus are not laws to which anyone is subject. Since they are not laws of this State, the above-named Court has no subject matter jurisdiction.

In speaking on the necessity and purpose that each law be prefaced with an enacting clause, the Supreme Court of Tennessee quoted the first portion of the Sjoberg case cited above, and then stated:

> The purpose of provisions of this character is that all statutes may bear upon their faces a declaration of sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in the enforcement of laws. State v. Burrow, 104 S.W. 526, 529, 119 Tenn. 376 (1907).

The use of an enacting clause does not merely serve as a "flag" under which bills run the course through the legislative machinery, Vaughn & Ragsdale Co. v. State Bd. Of Eq., 96 P.2d 420, 424 (Mont. 1939). The enacting clause of a law goes to its substance, and is not merely procedural Morgan v. Murray, 328 P.2d 644, 654 (Mont. 1958).

Any purported statute which has no enacting clause on its face, is not legally binding and obligatory upon the people, as it is not constitutionally a law at all. The Supreme Court of Michigan, in citing numerous authorities, said that an enacting clause was a requisite to a valid law since the enacting provision was mandatory:

> It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law. People v. Dettenthaler, 77 N.W. 450, 451, 118 Mich. 595 (1898); citing Swann v. Buck, 40 Miss. 270.

The laws in the "Revised Code of Washington." do not show on their face the authority by which they are adopted and promulgated. There is nothing on their face which declares they should be law, or that they are of the proper legislative authority in this State.

These and other authorities then all hold that the enacting clause of a law is to be "on its face." It must appear directly above the content or body of the law. To be on the face of the law does not and cannot mean that the enacting clause can be buried away in some other volume or some other book or records.

Face. The surface of anything, especially the front, upper, or outer part or surface. That which particularly offers itself to the view of a spectator. That which is shown by the language employed, without any explanation, modification, or addition from extrinsic facts of evidence. Black's Law Dictionary, 5th ed., p. 530.

The enacting clause must be intrinsic to the law, and not "extrinsic" to it, that is, it cannot be hidden away in other records or books. Thus the enacting clause is regarded as part of the law, and has to appear directly with the law, on its face, so that one charged with said law knows the authority by which it exists.

Laws Must be Published and Recorded with Enacting Clauses

Since it has been repeatedly held that an enacting clause must appear "on the face" of a law, such a requirement effects the printing and publishing of laws. The fact that the constitution requires all laws to have an enacting clause makes it a requirement on not just bills within the legislature, but on published laws as well. If the constitution said "all bills" shall have an enacting clause, it probably could be said that their use in publications would not be required. But the historical usage and application of an enacting clause has been for them to be printed and published along with the body of the law, thus appearing "on the face" of the law. Thus, to be valid on its face, an act must be able to be removed from it's binding, and be complete with enabling act.

"Strip this act from its outside appendages, leave it "solitary and alone", is it possible for any human being to tell by what authority the seat of government of Washington Territory was to be moved from Olympia to Vancouver?" Seat of the Government case, 1 Wash. T.115, 123 (1861).

It is obvious, then, that the enacting clause must be readily visible on the face of a statute in the common mode in which it is published so that citizens don't have to search through the legislative journals or other records and books to see the kind of clause used, or if any exists at all. Thus, a law in a statute book without an enacting clause is statute books with a defective enacting clause, the Supreme Court of Nevada held:

Our constitution expressly provided that the enacting clause of every law shall be, "The people of the state of Nevada, represented in senate and assemble, do enact as follows." This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the authority by which they were enacted; and, since this act comes to us without such authority appearing upon its face, it is not a law." State of Nevada v. Rogers, 10 Nev. 120, 261 (1875); approved in Caine v. Robbins, 131 P.2d

516, 518, 61 Nev. 416 (1942); Kefauver v. Spurling, 290 S.W. 14, 15 (Tenn. 1926).

The manner in which the law came to the court was by the way it was found in the statute book, cited by the Court as "Stat. 1875, 66," and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a law." It is only by inspecting the publicly printed statute book that the people can determine the source, authority and constitutional authenticity of the law they are expected to follow.

It should be noted that laws in the above cases were held to be void for having no enacting clauses despite the fact that they were published in an official statute book of the State, and were next to other laws which had the proper enacting clauses.

The preceding examples and declarations, concerning the use and purpose of the enacting clause, prove beyond doubt that nothing can be called or regarded as a valid law in this State, which is published without an enacting clause on its face. Nothing can exist as a state law except in the manner prescribed by the state constitution. One of those provisions is that all laws must bear on their face a specific enacting style--"Be it enacted by the Legislature of The State of Washington." (Washington Constitution (1889), Art II, Sec. 18). All laws must be published with this clause in order to be

valid laws, and since the "statutes" in the "Revised Code of Washington" are not so published, they are not valid laws of this State.

If the legislature feels this Constitutional mandate burdensome, they may make amendment to the Constitution. However, until such a time, the laws of this state must be in strict conformance to the Constitutional requirement for Enacting Clauses. There are no legal exceptions.

H. The Revised Code of Washington Lacks Proper Titles

The laws listed in the complaints in question, as cited from the "Revised Code of Washington," contain no titles. All laws are to have titles indicating the subject matter of the law, as required by the Constitution of Washington (1889):

> Article II, Sec. 19. No law shall embrace more than one subject, and that shall be expressed in the title.

By this provision, a title is required to be on all laws. The title is another one of the forms of a law required by the Constitution. This type of constitutional provision "makes the title an essential part of every law," Thus the title "is as much a part of the act as the body itself." Leininger v. Alger, 26 N.W.2d 348, 351, 316 Mich. 644 (1947).

The title to a legislative act is a part thereof, and must clearly express the subject of legislation. State v. Burlington & M. R.R. Co., 60 Neb. 741, 84 N.W. 254 (1900).

Nearly all legal authorities have held that the title is part of the act, especially when a constitutional provision for a title exists. 37 A.L.R. Annotated, pp. 948, 949. What then can be said of a law in which an essential part of it is missing, except that it is not a law under the State Constitution.

This provision of the State Constitution, providing that every law is to have a title expressing one subject, is mandatory and is to be followed in all laws, as stated by the Supreme Court of Minnesota:

> We pointed out that our constitutional debates indicated that the constitutional requirements relating to enactment of statutes were intended to be remedial and mandatory,--remedial, as guarding against recognized evils arising from loose and dangerous methods of conducting legislation, and mandatory, as requiring compliance by the legislature without discretion on its part to protect the public interest against such recognized evils, and that the validity of statutes should depend on compliance with such requirement * * *. Bull v. King, 286 N.W. 311. 313 (Minn. 1939).

The constitutional provisions for a title have been held in many other states to be mandatory in the highest sense. State v. Beckman, 185 S.W.2d 820, 816 (Mo. 1945); Leininger v. Alger, 26 N.W.2d 384, 316 Mich, 644; 82 C.J.S. "Statutes," Sec. 64, p.102. The provision for a title in the constitution "renders a title indispensable" 73 Am. Jur. 2d, "Statutes." 99,P.325, citing People v. Monroe, 349 Ill. 270, 182 N.E. 439. Since such provisions regarding a title are mandatory and indispensable, the existence of a title is necessary to the validity of the act. If a title does not exist, then it is not a law pursuant to Art. II, Sec. 19 of the Constitution of Washington (1889). In speaking of the constitutional provision requiring one subject to be embraced in the title of each law, the Supreme Court of Tennessee stated:

> That requirement of the organic law is mandatory, and, unless obeyed in every instance, the legislation attempted is invalid and of no effect whatever. State v. Yardley, 32 S.W. 481, 482, 95 Tenn. 546 (1895).

To further determine the validity of citing laws in a complaint which have no titles, we must also look at the purpose for this constitutional provision, and the evils and problems which it was intended to prevent or defeat.

One of the aims and purposes for a title or caption to an act is to convey, to the people who are to obey it, the legislative intent behind the law.

The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. Megins v. City of Duluth, 106 N.W. 89, 90, 997 Minn. 23 (1906); Hyman v State, 9 S.W. 372, 373, 87 Tenn. 109 (1888).

In ruling as to the precise meaning of the language employed in a statute, nothing, as we have said before, is more pertinent towards ascertaining the true intention of the legislative mind in the passage of the enactment than the Georgia legislature's own interpretation of the scope and purpose of the act, as contained in the caption. Wimberly v. Georgia S. & F.R. Co., 63 S./E. 29, 5 Ga. App. 263 (1908).

Under a constitutional provision * * * requiring the subject of the legislation to be expressed in the title, that portion of an act is often the very window through which the legislative intent may be seen. State v. Clinton County, 76 N.E. 986, 166 Ind. 162 (1906).

The title of an act is necessarily a part of it, and in construing the act the title should be taken into consideration. Glaser v. Rothschild, 120 S.W. 1, 221 Mo. 180 (1909).

Without the title the intent of the legislature is concealed or cloaked from public view. Yet a specific purpose or function of a title to a law is to "protect the people against covert legislation' Brown v. Clower, 166

S.E.2d 363. 3365. 225 Ga. 165 (19969). A title will reveal or give notice to the public of the general character of the legislation. However, the nature and intent of the "laws" in the "Revised Code of Washington" has been concealed and made uncertain by its nonuse of titles. The true nature of the subject matter of the laws therein is not made clear without titles. Thus another purpose of the title is to apprise the people of the nature of legislation, thereby preventing fraud or deception in regard to the laws they are to follow. The U.S. Supreme Court, in determining the purpose of such a provision in state constitutions, said:

> The purpose of the constitutional provision is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation. * * * Courts strictly enforce such provisions in cases that fall within the reasons on which they rest, * * * and hold that, in order to warrant the setting aside of enactments for failure to comply with the rule, the violation must be substantial and plain. Posados v. Warner, B. & Co., 279 U. S. 340, 344 (1928); also Internat. Shoe Co. v. Shartel, 279 U. S. 429, 434 (1928.

The complete omission of a title is about as substantial and plain a violation of this constitutional provision as can exist. The laws cited in the complaints against the Accused are of that nature. They have no titles at all, and thus are not laws under our State Constitution.

The Supreme Court of Idaho, in construing the purpose for its constitutional provision requiring a one-subject title on all laws, stated:

> The object of the title is to give a general statement of the subject-matter, and such a general statement will be sufficient to include all provisions of the act having a reasonable connection with the subject-matter mentioned. * * * The object or purpose of the clause in the Constitution * * * is to prevent the perpetration of fraud upon the members of the Legislature or the citizens of the state in the enactment of laws. Ex parte Crane, 151 Pac. 1006, 1010, 1011, 27 Idaho 671 (1915).

The Supreme Court of North Dakota, in speaking on its constitutional provision requiring titles on laws, stated that, "This provision is intended * * * to prevent all surprises or misapprehensions on the part of the public." State v. McEnroe, 283 N.W.57, 61 (N.D. 1938). The Supreme Court of Minnesota, in speaking on Article 4, Sec. 27 of the State Constitution, said:

> This section of the constitution is designed to prevent deception as to the nature or subject of legislative enactments. State v. Rigg, 109 N.W.2d 310, 314, 260 Minn. 141 (1961; LeRoy v. Special Ind. Sch. Dist., 172 N.W.2d 764, 768 (Minn. 1969).

> {T}he purpose of the constitutional provision quoted is * * * to prevent misleading or deceiving the public as to the nature of an act

by the title given it. State v. Helmer, 211 N.W. 3, 169 Minn. 221 (1926).

The purposes of the constitutional provision requiring a one-subject title, and the mischiefs which it was designed to prevent, are defeated by the lack of such a title on the face of a law which a citizen is charged with violating. Upon looking at the laws charged in the complaint from the "Revised Code of Washington," one is left to ask, "What is the subject and nature of the laws used in the complaints against me?" What interests or rights are these laws intended to affect? Since the particular objects of the provision requiring a one-subject title are defeated by the publication of laws which are completely absent of a title, the use of such a publication to indict or charge citizens with violating such laws is fraudulent and repugnant to the Constitution.

> It is to prevent surreptitious, inconsiderate, and misapprehended legislation, carelessly, inadvertently, or unintentionally enacted through stealth and fraud, and similar abuses, that the subject or object of a law is required to be stated in the title. 73 Am. Jur. 2d, "Statutes," Sec. 100, p. 325, cases cited.

Judge Cooley says that the object of requiring a title is to "fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered." Cooley, Const. Lim., p. 144. The State Constitution requires one-subject

titles. The particular ends to be accomplished by requiring the title of a law are not fulfilled in the statutes referred to in the "Revised Code of Washington." Thus the laws charged in the complaints against me are not valid laws.

III. ESTABLISHED RULES OF CONSTITUTIONAL CONSTRUCTION

The issue of subject matter jurisdiction for this case thus squarely rests upon certain provisions of the Constitution of Washington (1889), to wit:

> Article II, Sec. 18. The style of all laws of this State shall be: "Be it enacted by the Legislature of The State of Washington."
>
> Article II, Sec. 19. No law shall embrace more than one subject, which shall be expressed in its title.

These provisions are not in the least ambiguous or susceptible to any other interpretation than their plain and apparent meaning. The Supreme Court of Montana, in construing such provisions, said that they were "so plainly and clearly expressed and are so entirely free from ambiguity," that "there is nothing for the court to construe" Vaughn & Ragsdale Co. v. State Bd. Of Eq., 96 P.2d 420, 423, 424. The Supreme Court of Minnesota provisions are to

be construed, when it was considering the meaning of another provision under the legislative department (Art. 4 & 9):

> In treating of constitutional provisions, we believe it is the general rule among courts to regard them as mandatory, and not to leave it to the will or pleasure of a legislature to obey or disregard them. Where the language of the constitution is plain, we are not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. * * * The rule with reference to constitutional construction is also well stated by Johnson, J., in the case of Newell v. People, 7 N.Y. 9, 97, as follows: "If the words embody a definite meaning, which involves no absurdity, and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument; and neither courts nor legislatures have the right to add to or take away from that meaning. * * * It must be very plain,--nay, absolutely certain-- that the people did not intend what the language they have employed in its natural signification imports, before a court will feel itself at liberty to depart from the plain reading of a constitutional provision." State ex rel. v. Sutton, 63 Minn. 147, 149, 150, 65 N.W. 262 (1895) affirmed, State v. Holm, 62 N.W. 2d 52, 55, 56 (Minn. 1954); Butler Taconite v. Roemer, 282 N.W. 2d 867, 870 871 (Minn. 1979).

It is certain that the plain and apparent language of these Constitutional provisions are not followed in the publication known as the "Revised Code of Washington" which contain no titles and no enacting clauses, and thus it is not and cannot be used as the law of this State under our Constitution. No language could be more plain and perspicuous than that used in Art. 2, Sec. 18 and Sec. 19 of our Constitution. There is no room for construction! The contents of these provisions were written in ordinary language, making their meaning self-evident, as said by the Supreme Court of Minnesota:

> In construing a provision of our constitution, however, we are governed by certain well-established rules. Foremost among these is the rule that, where the language used is clear, explicit, and unambiguous, the language of the provision itself is the best evidence of the intention of the framers of the constitution. If the language is free from obscurity, the courts must give it the ordinary meaning of the words used. State v. Holm, 62 N.W.2d 52, 55, (Minn. 1954).

No matter how much the courts of this State have relied upon and used the publication entitled "Revised Code of Washington" as being law, that use can never be regarded as an exception to the Constitution. To support this publication as law, it must be said that it is absolutely certain, that the framers of the Constitution did not intend for titles and enacting clauses to be printed and published with all laws, but that they did intend for them to

be all stripped away and concealed from public view when a compilation of statutes is made. Such an absurdity will gain the support or respect of no one. Nor can it be speculated that a revised statute publication which dispenses with all titles and enacting clauses must be allowed under the Constitution as it is more practical and convenient than the "Session Law" publication. The use of such speculation or desired exceptions can never be used in construing such plain and unambiguous provisions.

> {T}he general rule of law is, when a statute or Constitution is plain and unambiguous, the court is not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. A Constitution is intended to be framed in brief and precise language. * * * It is not within the province of the court to read an exception in the Constitution which the framers thereof did not see fit to enact therein. Baskin v. State, 232 Pac, 388, 389, 107 Okla. 272 (1925).

There is of course no need for construction or interpretation of these provisions as they have been adjudicated upon, especially those dealing with the use of an enacting clause. The Supreme Court of Washington has made it clear that Art. 2, Sec. 19 of our constitution is clear, direct, and mandatory in its nature". Seattle Elec. Co. v. Superior Court, 28 Wash 317, 68 P. 957 (1902). Being that the statutes used against the accused, are without enacting clauses and titles they are void, which means there is no offense, no valid complaints, and thus no subject matter jurisdiction.

The provisions requiring an enacting clause and one-subject titles were adhered to with the publications known as the "Session Law" and "General Laws" for The State of Washington. But because certain people in government thought that they could devise a more convenient way of doing things without regard for provisions of the State Constitution, they devised the contrivance known as the "Minnesota Statutes," and then held it out to the public as being "law." This of course was fraud, subversion, and a great deception upon the people of this State; fortunately, it has now been revealed and exposed (Matthew 10:26, Luke 12:2).

There is no justification for deviating from or violating a written constitution. The "Revised Code of Washington." cannot be used as law, like the "Session Laws" were once used, solely because the circumstances may have changed and we now have more laws to deal with. It cannot be said that the use and need of revised statutes without titles and enacting clauses must be justified due to expediency. New circumstances or needs do not change the meaning of constitutions, as Judge Cooley expressed:

> A constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to be modified by public opinion.* * * {A} court or legislature which should

> allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. * * * What a court is to do, therefore, is to declare the law as written. T. M. Cooley, A Treatise on the Constitutional Limitations, 5th edition, pp. 54. 55.

There is great danger in looking beyond the constitution itself to ascertain its meaning and the rule for government. Looking at the Constitution alone, it is not at all possible to find support for the idea that the publication called the "Revised Code of Washington." is valid law of this State. The original intent of Article 2, Sec. 18 and Sec. 19 of the Constitution cannot be stretched to cover their use as such. These provisions cannot now be regarded as antiquated, unnecessary or of little importance, since "no section of a constitution should be considered superfluous." Butler Taconite v. Roemer, 282 N.W.2d 867, 870, (Minn. 1979). The Constitution was written for all times and circumstances, because it embodies fundamental principles which do not change with time.

Judges are not to consider the political or economic impact that might ensue from upholding the Constitution as written. They are to uphold it no matter what may result, as that ancient maxim of law states: "Though the heavens may fall, let justice be done."

III. CONCLUSION

The so-called "statutes" in the "Revised Code of Washington" are not only absent enacting clauses, but are surrounded by other issues and facts which make their authority unknown, uncertain and questionable. To wit:

1. The Revised Code of Washington Makes No Claim To Be Law
2. The Revised Code of Washington Specifically Disclaims Authority of Law
3. The Washington State Supreme Court Has Said It Is Not The Law
4. It Claims Authority Only By The Unratified 1889 Constitution
5. This "Code of Washington" Is Unlawfully Revised
6. The Revised Code of Washington is Copyrighted And Private
7. The Revised Code of Washington Has No Enacting Clauses
8. The Revised Code of Washington Lacks Proper Titles

While the title page of the "Revised Code of Washington" states that the statutes therein "Contain all laws of a general and permanent nature through the 1996 regular session, adjourned sine die", it does not say that they are the official laws of the Legislature of Washington. The official laws of The State of Washington had always been listed in the "Session Laws" of Washington. The title page to the Session Laws makes it clear as to the

nature of the laws therein, to wit "Session Laws of The State of Washington, passed during the Forty-Fourth session of the State Legislature."

The "Session Laws" were also published by the Secretary of the State, who historically and constitutionally was in possession of the enrolled bills of the Legislature, which became State law. The Constitution for The State of Washington (Art. III, Sec. 17 (1889)) required that the Secretary of State "shall keep a record of the official acts of the legislature and executive department of the state." Therefore, in The State of Washington, as in nearly all other states, all official laws, acts and records were to be kept and published by the Secretary of State.

The "Revised Code of Washington" is published by the Reviser of Statutes, and is copyrighted by him or his office. The "Session Laws" were never copyrighted, as they were a true public document. In fact, no true public document of this state or any state or of the United States has been or can be under a copyright. Public documents are in the public domain. A copyright infers a private right over the contents of a book, suggesting that the "laws" in the "Revised Code of Washington" thus are not true public laws at all.

The Code Reviser, in the preface to his code book, "The Revised Code of Washington", admits that the "Code" is <u>only</u> "prima facie the law" and that the language had in many instances been so changed as to effect the substance of the law. Furthermore, he went on to say that the committee has devoted a

substantial portion of its efforts toward restoring session law language and republishing portions thus corrected, to the end that the Revised Code of Washington, when this work is completed, will represent an accurate codification of all laws of Washington.

In order to understand and use statutory law, it is necessary to know the meaning of the terms used and the inclusiveness and authority of the laws found in the various arrangements. The terms laws, acts, statutes, revisions, compilations, and codes are often used indiscriminately.

The Code Reviser does not say that the codes in his book are the official laws of The State of Washington. He indicates that these codes contain errors or omissions. There thus are many confusing and ambiguous statements made by the Code Reviser as to the nature and authority of the codes in the "Revised Code of Washington." It is not at all made certain that they are laws pursuant to Article II of the Constitution of Washington. That which is doubtful and uncertain cannot be accepted as true or valid in law.

"**Uncertain things are held for nothing.**" Maxim of Law

"**The law requires, not conjecture, but certainty.**" Coffin v. Ogden, 85 U.S. 120, 124.

"**Where the law is uncertain, there is no law.**" Bouvier's Law Dictionary, Volume 2; "Maxims," (1880 edition)

The purported statutes in the "Revised Code of Washington" do not make it clear by what authority they exist. The statutes therein have no enacting authority on their face. In fact, there is not a hint that the Legislature of Washington had anything at all to do with these so-called statute books. Thus, the statutes used against the Accused are just idle words, which carry no authority of any kind on their face.

Because of the nature of the RCW, the pleadings of the plaintiff do not plead subject matter upon which the defendant has a duty to respond, nor does the court have authority to act upon it. While codes may be a useful tool in organizing the enactments for ease of study, they have no official sanction. A claim that merely alleges a code violation is, of itself, no violation of law.

V. CAVEAT

It is just and necessary to give fair warning to this court of the consequences of its failure to follow the Constitution of Washington and uphold its oath and duty in this matter, being that it can result in this court committing acts of treason, usurpation, and tyranny. Such trespasses would be clearly evident to the public, especially in light of the clear and unambiguous provisions of the Constitution that are involved here which leave

no room for construction, and in light of the numerous adjudications upon them as herein stated. The possible breaches of law that may result by denying this motion are enumerated as follows:

1. The failure to uphold these clear and plain provision of our Constitution cannot be regarded as mere error in judgment, but deliberate **USURPATION**. "Usurpation is defined as unauthorized arbitrary assumption and exercise of power." State ex rel. Danielson v. Village of Mound, 234 Minn. 531, 543, 48 N.W.2d 855, 863 (1951). While error is only voidable, such usurpation is void.

> The boundary between an error in judgment and the usurpation of judicial power is this: The former is reversible by an appellate court and is, therefore, only voidable, which the latter is a nullity. State v. Mandehr, 209 N.W. 750, 752 (Minn. 1926).

To take jurisdiction where it clearly does not exist is usurpation, and no one is bound to follow acts of usurpation, and in fact it is a duty of citizens to disregard and disobey them since they are void and unenforceable.

> {N}o authority need be cited for the proposition that, when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable. Hooker v. Boles, 346 Fed.2d 285, 286 (1965).

The fact that the "Revised Code of Washington." has been in use for over fifty years cannot be held as a justification to continue to usurp power and set aside the constitutional provisions, which are contrary to such usurpation, as Judge Cooley stated:

> Acquiescence for no length of time can legalize a clear usurpation of power, where the people have plainly expressed their will in the Constitution. Cooley, Constitutional Limitations, p. 71.

2. To assume jurisdiction in this case would result in **TREASON**. Chief Justice John Marshall once stated:

> We {judges} have no more right to decline the exercise of jurisdiction which is given than to exercise jurisdiction which is not given. The one or the other would be treason to the constitution. Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404 (1821).

The judge of this court took an oath to uphold and support the Constitution of Washington and his blatant disregard of that obligation and allegiance can only result in an act of treason.

3. If this court departs from the clear meaning of the Constitution, it will be regarded as a blatant act of **TYRANNY**. Any exercise of power which is done without the support of law or beyond what the law allows is tyranny.

It has been said, with much truth, "Where the law ends, tyranny begins." Merritt v. Welsh, 104 U.S. 694, 702 (1881).

The law, the Constitution, does not allow laws to exist without titles or enacting clauses. To go beyond that and allow the "Revised Code of Washington." to exist as "law" is nothing but tyranny. Tyranny and despotism exist where the will and pleasure of those in government is followed rather than established law. It has been repeatedly said and affirmed as a most basic principle of our government that, "this is a government of laws and not of men; and that there is no arbitrary power located in any individual or body of individuals." Cottiing v. Kansas City Stock Yards Co., 183 U.S. 79, 84 (1901). The Constitution requires that all laws have enacting clauses and titles. If these clear and unambiguous provisions of the State Constitution can be disregarded, then we no longer have a constitution in this State, and we no longer live under a government of laws but a government of men, i.e., a system that is governed by the arbitrary will of those in office. The creation of the "Revised Code of Washington." is a typical example of the arbitrary acts of government which have become all too prevalent in this century. Its use as law is a nullity under our Constitution.

Dated on this the {Date}.

_____

{Name}