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# Reflections Upon the U.S. Supreme Court's Rejection of *Silveira*

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**K**eep**A**nd**B**ear**A**rms.com — Approximately 30 days ago I received a long email from someone. At the end was a moderate length, beautifully phrased quotation, the core essence of which was this idea: a person who devotes his adult life to try to hold government accountable so citizens do not have to resort to force is *noble* and is devoted to one of life's most noble pursuits. When I read that I thought of people I know, who have stretched me to grow. Those who are engaged in that noble cause know who they are.

Today, I am sad: The United States Supreme Court rejected the *Silveira v. Lockyer* case, and I do not feel free. I have not felt that way for a long time. My brain's rational thought processes convince me that I am not truly *free*. This is because I, and others, have been, and still are, denied one or more of our most fundamental rights enshrined in the U.S. Constitution. Instead, we have only the illusion of *freedom* and the reality of *oppression*. Oppression is enforced via perverted rules, misleaders and their subordinates.

These perverted rules exist. What follows is crucial. Please pay close attention. The perverted rule I will highlight is not complex, but it is vital that you comprehend this perversion.

Arguably, the most perverted key rule is this one: Immunity for government and its agents who abuse their powers and who disrespect citizens' rights. Example: the First Amendment's "right to petition government for redress of grievances" sounds wonderful. It *is* lovely. Ditto for the ban against *ex post facto* laws, and the entire Bill of Rights. But the core, corrosive, corrupting, over-all-arching problem, is this: None of these rights are self-enforcing nor worth anything when a) Citizens are too gutless to demand that their peaceful assertion of rights be honored, and b) Government has passed laws that make its Executive, its Legislature, its Judiciary, and its sworn peace officers, immune for their wrongdoing in contravention of citizens' rights.

What value is the "right to petition to redress grievances" or to file a lawsuit (which is a form of the right to petition government for a redress of a legitimate grievance) when the petition or lawsuit or both crashes into the solid legal wall of government immunity or the government refuses to hear the petition (lawsuit) or refuses to take it seriously or refuses to apply the applicable law correctly?

*That* is what happened with *Silveira* at the Federal 9th Circuit. A majority of judges at the 9th Circuit upheld its prior decisions that the Second Amendment does not guarantee an individual right to arms. The judges, in their prior decision, declared the Second Amendment does not guarantee an individual right to arms, and they reaffirmed that decision with their *Silveira* decision. They were given an opportunity to revisit their precedent, and they failed to do so. A handful of judges with a Constitutionally correct comprehension of the Second Amendment dissented , but their righteous message did not prevail. Hence, we have judges interpreting away a right in the guise of construction of a Constitutional provision. But the Second's text remains unchanged: "the right of the people" is still "the right of the people." The Second does not state, "the right of the army" nor "the right of the police." "[S]hall not be infringed." is, pragmatically, as clear, as strong and as bright a constitutional command as can be constructed with four words. The *militia* referenced in the Second's beginning was, for the Framer's time, a synonym for most of *the people* who merely functioned in a different capacity while still retaining their own privately owned fire arms. But, that is part of the problem. Rights are expressed in words. Words are plastic. Words are malleable. Judges are wordsmiths. Some like to stretch malleable words to conform to their bias, their judgment. And, judges are legally immune for their

judicial acts, because they said so.

The only "immunity" that expressly appears in the original U.S. Constitution, before it was amended, is stated at Article IV, Section 2, Clause 1:

> "The citizens of each state shall be entitled to all privileges and *immunities* of citizens in the several states."

"Entitled" is code for "a legally enforceable claim." "Immunity" is a synonym for freedom from prosecution or punishment for peacefully exercising a right, which is tantamount to a right to exercise a right, without government's permission being required and without fear of punishment.

The Constitution does not declare that the three branches of government and/or their agents, nor any of them, have *immunity* for what they do in office in contravention of peaceful citizens' rights or immunities.

Reformulated, the truth is this:

1) We are supposed to have rights;

2) Too often those rights prove to be illusory; and

3) They prove to be illusory because governments — *American* governments (federal/state/local) — can invade those rights and escape being held accountable because of the overlapping array of *unconstitutional immunities* governments now enjoy, with the blessings of the American Judiciary, which is supposed to function as "the Guardian of Liberty."

For a more detailed, scholarly elaboration of this "right to petition versus immunity" problem, everyone is strongly encouraged to read John Wolfgram's "How the Judiciary Stole the Right to Petition" which can be found on line at: http://www.constitution.org/abus/wolfgram/ptnright.htm .

We live in a perverted, disingenuous nation full of callous, cavalier, self-righteous, constitutional illiterates, in and out of government, who are dangerous and oppressive. Despite the best efforts of some of the best people I know (their passion, sustained commitment, critical, cerebral energy, delayed gratification, sacrifice, etc., ) I have serious reservations if any of us, including myself, individually or in the aggregate, have accomplished anything meaningful in terms of "the big picture" or of delaying open armed conflict with our own governments. I suspect that all we have done is this:

1) Peacefully communicated a principled protest to government, that continues to be rebuffed;

2) Clarified what the issues are;

3) Documented that we have compelling grounds to be disgusted, alarmed, alienated, and worse, and why;

4) Established that much of government and many of its most important agents are smug, arrogant, dangerous, oppressive, and constitutionally insensitive or callous or all of the above.

5) Failed to hold governments accountable for their abuse of powers.

6) Lost control of our own governments.

Free elections every two or four years do not allow us to control our government adequately. All we do is elect people to office who can abuse us and then hide behind the same set of immunities . . . and abuse us they do, regardless of their party affiliation or campaign promises.

Even the jury system is inadequate. The judges have declared they are the sole law giver in the courtroom and all jurors have to obey the law as they give it to them, *their* version of the law, the same law that legislators and judges often have immunity from when they declare what the law is.

Let me put it another way: Who would sign a contract with another person when the contract said that the other person gets to determine what the rules are, gets to change the rules arbitrarily, without being held accountable, gets to unilaterally interpret and apply the rules, and gets to force you to obey *his* rules, and you *must* obey his unilateral interpretation of *his* rules because that is one of *his* rules? And he has a monopoly on force?

Now, who feels *free*?

*Free* to pay taxes? Of course? Free to obey? Of course? Free to carry a firearm in a public place, responsibly, without government's permission, for the lawful exercise of the basic right of self-protection or lawful protection of another, to protect your hide from a criminal predator? If you do not feel *free* to do *that*, why? How *free* are you?

If you do not feel *free* to do *that*, do you sense that something is seriously wrong?

Do you sense that Government has violated your expression of Nature's First Law—the Law of Self-Preservation?

This is ironic: Government "lives" as a legal fictitious person but it does not have lungs, it does not bleed, it does not have emotions. It is a non-air breather. But Government tells the air-breathers (citizens with lungs, who bleed when cut, who have a mortal existence) they must circulate in public unarmed and vulnerable to criminal predators.

How viable is the "right of self-defense" if you must first beg government's permission to defend your life with a gun, when government thinks it has the power to withhold its permission, with *immunity*, and to criminally prosecute you if it catches you packing a gun without its permission?

*Rights* and *permission* are opposites. One cannot be the other as a male cannot be a female, absent a radical operation. But Government has performed that radical operation by tweaking definitions and interpretations and by imposing systemic changes (e.g., immunity for government) into our "American way of life." These tweaks and changes are radical. Our America is far from the Founder's America, more so in concept than in time.

I am sad because too many in government treat the U.S. Bill of Rights as a snot rag or worse, as toilet paper, and they do so smugly and arrogantly.

And worse: They are either Constitutionally insensitive, uninformed, misinformed, or callous and defiant.

I am sad because the entire purpose of the U.S. Bill of Rights was to take away government's unfettered discretion, but, guess what, government now claims it has that very discretion that the Framers intended to deny to government, and, to exacerbate matters, government now hides behind its immunities when it commits wrongdoing, and, still worse, it has the gall to accuse citizens of hiding behind their rights and being "gun nuts" or worse when they refuse to go along to get along, when they refuse to cooperate with government, when they refuse to be an enabler in the further destruction of the *Constitutional* Rule of Law.

This "right to petition versus immunity" problem is like an onion. Those who try to peel back the onion to expose the problem, to comprehend the truth, come away with stinging, weeping eyes and a profoundly sad heart and psyche. Why? They discover that government speaks with a forked tongue, acts like a professional card shark, and functions like a criminal enterprise or a mafia organization. Government's bottom line to all of us is this, "Listen to me. I have an offer you cannot refuse. Here is why . . . (X is the threat, subtle or overt or both.)"

I sometimes think I am a fool to invest so much in the name of liberty. Simultaneously, I beat myself up because I have invested so little in the name of liberty. Simultaneously, when I see more wrinkles on the top of my hands, more gray hairs on my spouse and on myself, when the knees creak more and take longer to lubricate, etc., I want to be free of the noble cause. I long to be free to be frivolous for a while. But I cannot be frivolous.

I do not know how long the center will hold. I suffer from a sad sense of foreboding. The glue that holds the Bill of Rights together has let go. Too many love their luxury and their plastic and their hair spray and

Monday night football more than they do Liberty under a Constitutional Rule of Law. Too many do not even know the difference between a *right* and *permission*. Too many think the proper norm is being required to get Government's permission.

When there is such a large mass that does not care, no law will save Liberty from indifference or ignorance or the pursuit of hedonism and *love* in the wrong places—the bottom of a bottle, at an ATM, between another woman's legs, at the point of a needle, at the race track, at the card tables. Sadly, some people have taken their unfettered "pursuit of happiness" too far with their reckless self-destruction. The July 4th, 1776 Declaration declared a right *to pursue* "happiness," not a right to secure that goal nor government's duty to provide it.

How long does one continue to devote his or her life to this noble cause, which most mock, do not understand, do not appreciate? People have different limits of tolerance for perceived injustice. I am convinced some are close to reaching their "wall" and others are already there, waiting for others to catch up to them, and, given certain stimuli, a significant flashpoint will erupt.

We are deep into a cold war with our own governments — governments which inexplicably persist with violating their own rules and hiding behind their immunities while demanding that citizens blindly obey their crimes which they call *laws*.

Who agrees with me that government is morally incongruous? Hypocritical? Inconsistent? Self-serving? Dangerous? Reckless? A criminal enterprise?

If a foreign occupying force did to us what our own government is currently doing to us we would resort to arms to stop the oppression and reduce the invader to maggot meat. Yet, we tolerate what our government is doing to us. Examples: Our governments have set us up to be easy prey for criminal plunder; have denied us the most basic right to defend our lives without their permission, which they callously withhold, and imprudently confirm—or assert—that we **do not** have a constitutional right to retain the pragmatic means to enforce our rights, namely, unregistered, privately owned, firearms.

Why do we tolerate our own government doing what we would not tolerate from a foreign occupying force?

Guess what? Our government is *the* occupying force.

Guess what? We live in a not so benign police state.

Guess what? Our government treats us as the enemy.

Guess what? Our government fears freedom and is Liberty's biggest thief!

Guess what? The Founders, the Framers, and the deceased combat vets are puking. We are unworthy of their vision, their hardships, their sacrifices, their courage. They gave up their todays and tomorrows so we could have ours, and what have we done with ours? We all blindly obey — in lock step unison — and some seek love in the wrong places.

We have proven unable to preserve our Constitutionally limited democratic republic with certain rights guaranteed for all at all times. We have not been minding the store. We deserve an "F" in civics. We are called *citizens* but we function more like relatively well kept *peons*.

I would love for the noble cause to prevail without violence. I simply do not expect that to happen in my lifetime. I am profoundly sad. The eternal whirlwind — anti-Liberty versus Liberty — spins on, sucking us up into its vacuum, holding us to it tighter and tighter. Is there no way out for us other than to "kill" our conscience, to abandon our civic duty, to kill ourselves, to kill our perceived oppressors, or to be successful in our noble cause? If so, what is that way "out"?

Who would elect to be "dropped" by this whirlwind if they could so elect?

Why?

Who would prefer to be a steer, incapable of critical thought, of a sense of tomorrow, of justice, "free" to

chew his cud and to wander in a closed field until the owner decides to put a bullet in your skull? Even then, as a steer, would you know? Would you care? Would you give a damn? We, as humans, know what steers do not know.

Now that the U.S. Supreme Court refused to take *Silveira*, condemning about 25% or more of the American population to live in a "no right to firearms" jurisdiction, when the gun grabbers send government goons to confiscate the guns, what then? Are those guns *recreational sticks* or *Liberty's teeth*?

Who is ready to surrender *Liberty's teeth* ? To peacefully step into the cattle cars? To live on your knees? To take the slap in the face once one is disarmed and rendered a pissant, forced to kiss, lick, and polish the statists' boots?

Can homicide be justified for a *noble* purpose? Adolf thought so. Can an anti-Adolf think likewise, with compelling justification? I think so. Patrick Henry thought so. So did tens of thousands or more of the people who brought America out from under the yoke of British tyranny not so long ago.

Everyone who signed the July 4th Declaration knew the king would not let them go in peace. They knew when they signed that they would have to be willing to commit homicide and encourage and equip others to do so if they were going to successfully enforce their declaration. Who finds it difficult to think of George Washington, Thomas Jefferson, Benjamin Franklin, James Madison, etc., as *killers* of human beings? I do not. People need to get realistic. The Founders were, in the eyes of the Crown, criminals, outlaws, and murderers.

Who thinks the gun grabbers are unwilling to be murderers themselves or unwilling to sanction murder under color of law to disarm the American civilian populace so they can impose their views on the rest of us?

The English in modern times surrendered their arms. What did they get in return? Their crime rate has increased meaningfully. Criminals love to prey on unarmed, vulnerable suckers. The English Government did away with the ban on double jeopardy. Now, if the Government cannot convict you on the first try, it gets to try again.

Do you think "it" or "that" will never happen here? If so, you are naïve. We are on an increasingly steeper slope toward a free fall into tyranny. The U.S. Supreme Court's rejection of *Silveira* made that slope steeper—much steeper. That fact is simply not appreciated by some.

I loathe ending on a sad note, with reference to homicide. That is, however, a candid measure of my disgust, alienation, outrage, sadness.

So far, constitutional parchments have not proven to be effective in curbing or reducing government's abuse of its powers.

I now have a greater appreciation for the enormity of, and the seriousness of, the problem, plus the size and complexity of possible solutions to the problem and the limitations of contending solutions.

Even though a firearm is a crude, inadequate solution to this type of a problem (namely, holding government accountable for its abuses of its powers, including its failure to take constitutional rights seriously), I now also appreciate better, at a higher, more intense level, what I perceive to be the true import—and value—of the Second Amendment.

Sadly, the U.S. Supreme Court, by rejecting the *Silveira* case, stiff-armed those who think like I do. That rejection was imprudent. Rejecting *Silveira* does not fix the problem. It aggravates the problem. The Supremes were the end of the line (legal line—at least judicially) not because they are mentally superior, but because they are the end of our legal judicial line to non-violently resolve an enormous, serious, festering problem that instantly got worse the moment the Supremes rejected *Silveira*.

We need to be disciplined, creative, resourceful, and suck it up to overcome this set back, this acute disappointment. But how? What viable alternatives exist? How long can one put a brake on meritorious outrage?

Absent some remedy that I do not foresee, I am afraid that a violent confrontation with our own Government

(s) looms ahead. I have a foreboding: Government officials will miscalculate once too often and U.S. citizens will be forced to demonstrate their commitment to their noble cause, forcing them to resort to violence as a last ditch effort to prevent Total Tyranny and to restore Liberty. That it would come to that, that my mind would even go there, makes me profoundly sad.

Simultaneously, I am comforted knowing I have access to "Liberty's teeth," others of like mind do, too, and I am convinced some have the courage to use "Liberty's teeth" when pressed too far, and it becomes morally justified. I am convinced there is a 1-3% of hardcore patriots spread throughout the nation who will fire, who are committed to doing so, who are waiting for an event to justify doing so while simultaneously pursuing, peacefully, with a deep commitment to a noble cause, a non violent resolution of this enormous problem. When that 1-3% fire, that will embolden another 5-10% to also fire. Perhaps a total of around 15-18% will openly resort to arms to enforce their rights. While those numbers are small in terms of percentage they are enormous in terms of numbers of human beings willing to wage war against government and its agents. I also foresee government reprisals backfiring and causing more to join the original 1-18%. That hard core nucleus of "Do Not Tread On Me" Patriots will prevail.

I suspect some naïve gun grabbers and those who are indifferent find it too incredulous to believe that some American citizens will kill other American citizens to retain their firearms. I suspect other gun grabbers know they will be Target No. 1 and they have been deterred by those privately owned guns.

The situation reminds me of a story a friend recently sent me. The story went like this: An air traffic controller received a pilot's request for clearance to 60,000 feet. The controller radioed back, "And what makes you think you can *get* to 60,000 feet?" The pilot radioed back, "I am requesting clearance *down to* 60,000 feet." The pilot flew an SR-71 Blackbird super spy plane. My point is: Too many do not fully comprehend that many in "the patriot movement" are *above* 60,000 feet in commitment and they *will* use *Liberty's teeth* as a last ditch method to avoid Total Tyranny and to restore the Constitutional Rule of Law. When they function that way, they will discharge their Constitutionally sanctioned duty, as an organized or unorganized militia, even if only as a militia of one, replicated tens of thousands of times or more throughout the nation.

I am profoundly sad. I foresee what a few who implement a lethal force offense can do. I reference what recently happened in the Washington, D.C. area when just two people apparently functioned as one sniper team. Imagine what many more snipers could do around the nation if they targeted those who championed more victim disarmament laws.

We live in snarly times, making pursuit of the noble cause more critical, more necessary, more noble. But, the peacemakers, the constitutionalists, will probably lose the noble fight. The gun grabbers will eventually grossly miscalculate and motivate some to implement a lethal force offense. The outcome will be determined on the battlefield — any town continental U.S.A. — not the courtroom. This is because too many judges, as a group, are no longer the guardians of liberty, most politicos are unscrupulous hacks or useful idiots for tyrant wannabes, and the majority keeps electing them or tolerating them. Simultaneously, too many Black Robes espouse a functional equivalent of legal bubonic plague, especially when it comes to the Second Amendment.

I have read many decisions on the First and Fourth Amendment by 9th Circuit judges who do not share my views on the Second Amendment. Their views on the First and Fourth are excellent. Reading *their* decisions on the those amendments is deeply satisfying and comforting. Their decisions convince me they are highly intelligent, articulate, extraordinarily logical and persuasive, and, for those amendments, they are superb Guardians of Liberty. Their views on the Second, however, are appalling. To go from one of their First/Fourth Amendment decisions to one of their Second Amendment decisions is like going from an A+ student's term paper to a D- student's term paper, from Madison to Stalin. I do not understand why these judges seem to have such an abrupt, illogical disconnect. I suspect it turns on power: They know that a man with a loaded firearm is empowered to kill a would-be oppressor. Can it be that simple?

We are in a downward spiral toward some flashpoint where a hardcore of no-nonsense "no more" constitutionalists will press the issue and not submit to perceived, insufferable oppression.

I regret that so far the Wolfgrams, Shamayas, Codreas, Pucketts, Zelmans, Gorskis, etc., have not scored a meaningful slam dunk clear, non-violent victory.

Sometimes, those who wage, peacefully, the noble fight, manifest sparks among themselves, but they pull the wagon in the same basic direction for the same basic excellent reasons. Thank you. Now, they need to

pull harder in a more unified manner and avoid becoming a vectored gaggle.

I would not bet, however, on how much longer their hearts and psyches can, or will, endure and stay focused and committed to a non-violent resolution. I am reminded of a man I know. He told me he is a Yale law school graduate, an Ex-U.S. Marine Corps A-6 Intruder attack pilot with hundreds of missions over North Vietnam, and, an ex-attorney. He quit the practice of law because the judges "tore [his] heart out".

Some U.S. citizens seem to be willing to wait their entire life for the noble cause to be successful and are willing to never resort to lethal force. I, on the other hand, am impatient. I do not want to wait. I want the birthright to be honored now. It is already long overdue. I experience *waiting* to be the functional equivalent of *enabling*—of giving our misleaders and their agents the functional equivalent of the green light to continue to oppress. I am reminded of Henry's "Give Me Liberty or Give Me Death" speech. I experience that title to be a misnomer. Anyone who has read that speech knows Pat Henry was not really saying he wanted liberty or death, and certainly not *death* for himself. Instead, he was saying to his countrymen, "Damn it, we shall have Liberty *now*. I [Henry] am willing *to risk death* for Liberty and die for Liberty. Who will join me [Henry] to kill the son-of-a-bitch who would dare deny me [Henry] and you Liberty? If the Crown will not back down, let us prey against the Crown! If not now, when? When we are weaker? Never!"

Simultaneously, I do not want to imprudently pre-empt. I know the dire consequences, and my moral code is repulsed by the idea of initiating a lethal mini-hell against anyone. On the other hand, those who tolerate indefinitely government's fecal matter give it a perpetual green light to bury all of us in a pile of more fresh fecal matter, higher and deeper.

The Founders did not wait indefinitely. They forced the issue with their declaration. They did so knowing that thousands of Redcoats were already embarked in ships for the colonies, to be followed by thousands more, and each was sent to "redress" the Founders' grievances at the point of a bayonet, bullet, or rope.

I *know* "the gun solution" (political assassination, open rebellion, etc.) is fraught with peril and inadequate and morally complex and legally illegal. But, what is left? When we peacefully claim our birthrights, peacefully pursue a lawsuit to the U.S. Supreme Court and are stiff-armed while we point to what is written in the Constitution, we are mocked, scorned, ridiculed, rebuffed, ignored, dismissed, and rejected. Symbolically, Government, like a modern main battle tank, rolls on, crushing us as if we were anthills.

The "organic law" of the United States is composed of three documents: the July 4, 1776 Declaration of Independence, the original U.S. Constitution, and the U.S. Bill of Rights.

Do you know what is considered to be the very first United States law? Per one of this nation's largest established print and electronic law book publishers, West, the very first United States law is: the July 4, 1776 Declaration of Independence. (One can confirm that by going to the beginning of the first volume of West's Annotated United States Code.)

*That* fact is significant. Independently of that fact, all readers are recommended to ponder ultra carefully—more than once—this excerpt from the July 4th Declaration's second paragraph:

> ". . . Whenever any form of government becomes so destructive of these ends, it is the **right** of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect **their safety** and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, **while evils are sufferable**, than to right themselves by abolishing the forms to which they are accustomed. But when a **long train of abuses and usurpations**, pursuing invariably the same object evinces a design to reduce them under absolute despotism, **it is their *right*, it *is* their *duty***, to throw off such government, and to provide new guards for their future security. . . ." [emphasis added]

In 1776, those words were potent, and from the King's perspective, they were political poison and the Declaration's signers signed the functional equivalent of their death sentence.

Now, let us briefly revisit key parts of these words and reflect critically.

". . . [D]estructive of these ends . . . ." What *ends*? For that, loop to the beginning of the Declaration's second

paragraph for context to find the “ends” referenced.

> “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it . . . .”

So, in context, the “ends” are securing the following core concepts:

> 1) All human beings are equal (which eliminates *elitists* and *elitism*);
>
> 2) They come into this world with certain rights, a special, unique kind of rights–*unalienable* rights, that come from a creator (*unalienable* means human beings just have them because they are human, they pre-existed the formation of society and government, and they survive the formation of society and government; this kind of right comes from a creator, and **not** society, **not** government, **not** the law, **not** a judge, **not** a legislature **nor** an executive, and human beings are incapable of even giving away or surrendering such *unalienable* rights);
>
> 3) Some of all human beings’ core *unalienable* rights are: “life, liberty and the pursuit of happiness”;
>
> 4) “that *to secure these rights* (these *unalienable* ones) “governments are instituted among men, . . . .”

So, let us step back and ponder and reflect some more about these words. What connection or relevance, if any, exists between these words and the U.S. Supreme Court’s rejection of *Silveira*? I submit there is an important connection.

The first part of the second paragraph of the July 4th Declaration is arguably probably still the most significant words ever expressed in any language by any human being at any time in all of human history. Why? Because the core idea is this: people have rights. They are born with those rights. Those rights do not come from a king, government, a lawmaker, nor society. A king, government, a lawmaker, and society cannot take those rights away. And, since the rights are *unalienable*, no human being can give them away nor surrender them. And the primary purpose, the sole real purpose of government, is strictly limited to securing these *unalienable* rights, “among” which are three core ones: right to live, right to liberty, and right to pursue happiness.

Are any or all three of these core rights shallow? Worthless? Are these inviolate rights or mere *aspirations*?

What good is a “right to life” or a “right to liberty” without the pragmatic means to enforce these rights?

What is a viable means to enforce these rights? Answer: viable means include the following: 1) enlightened adherence to a mutually agreed to set of rules, such as the United States Constitution. That document sets forth government’s specific, limited powers. Those powers are declared to be limited, via words, called “constiutional bright lines” or “commands” that separate the government’s *powers* from the peoples’ *rights*. But the only thing that makes that separation is: words. 2) arms—arms in the hands of citizens who, as a result of those arms in their hands, have a pragmatic means to insist that government obey the words that separate its *powers* from the citizens’ *rights*.

Government, citizens, lawmakers, executives, cops, soldiers, Marines, airmen, citizens, are supposed to obey the Constitution’s words, commands, and bright lines.

Some people, however, loathe some of these words. What do they do? They use their wordsmith skills and language as a weapon to bludgeon the Constitution’s text to try to reshape it to say what *they* want it to say. That is why we are in a state of intensely frigid cold war with our own governments: some people in government do use language and their wordsmith skills as a weapon against citizens and against the Constitutional rule of law—they are openly waging war against the United States Constitution under the guise of interpretation.

Government has certain legitimate Constitutional powers, but the people have certain legitimate Constitutional rights.

Here are some key, pivotal questions:

Are the government's powers unlimited or limited? Do government's powers stop at the foot of the U.S. Bill of Rights?

My answers:

Governments' powers are limited and its powers do stop at the foot of the U.S. Bill of Rights.

Now, the Second is found in the Bill of Rights. The Second Amendment says what it says:

> "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

The purpose of this opinion-editorial is not to do an in depth analysis of the Second's text and refer to all other relevant parts of the U.S. Constitution; however, to further illustrate why the U.S. Supreme Court's rejection of *Silveira* is so serious, a brief discussion of the Second's text follows:

> 1) "Well regulated" does not mean "government regulated." It is impermissible to read into the text "government".
>
> 2) Militia, in 1776, meant a large body of ordinary citizens who, as individuals or as a group, took the initiative to discharge a self-imposed civic duty, independently of being on any government's payroll: they enforced the law and protected the community and themselves from threats—Indians, foreign invaders, common criminals—and they deterred their own government from becoming tyrannical. So, *militia* was a synonym for a large body of ordinary citizens or an individual who discharged this civic duty. In those days, there were no sworn peace officers (cops), and the colonists loathed and feared a large, standing, professional army, and they strongly preferred "defense on the cheap" and they achieved "defense on the cheap" by providing it themselves, relying on their own courage and privately owned, unregistered firearms under their control.
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> 3) The Second's first clause is simply an introduction and an expression of intent. It is not a clear, expressed limitation on the right that is stated in the Second's second clause.
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> 4) The Second's second clause is the clause that states the right declared therein.
>
> 5) The right declared in the second clause is "the right of the *people* . . . ."
>
> 6) The second clause does not state, "the right of the *state/militia/armed forces/police/national guard*."
>
> 7) The Framers knew the difference between *people, state, soldier* , etc. Examples: the "right of the people" is stated in the First Amendment. Is not "the people" reference in the first the same "people" referenced in the second, only 30 words later? The Third Amendment mentions "soldier". The Fourth Amendment uses "the right of the people" again. The Ninth Amendment uses the term "people", and the Tenth Amendment uses the terms "states" and "people". It is respectfully submitted that the Framers, most of whom were learned lawyers with an excellent command of the English language and logical thought, understood well the distinctions among "right/permission" and "people/soldier/state".

So, what is really going on with our governments and the Second Amendment?

Answer: Again, some of government's wordsmiths have been, and are, using language as a weapon to write the Second as an individual right to arms, registered or unregistered, out of existence, probably, as a legal fig leaf justification to support an order to cops, soldiers, and Marines to confiscate them, to disarm the American civilian population, just as every tyrant U.S. armed forces fought against in the twentieth century

did to those tyrants' civilian population.

Why is the U.S. Supreme Court's rejection of *Silveira* really important?

Answer: it is not about guns. It never was about guns. It is really about this: 1) liberty; 2) ordinary citizens retaining a legally enforceable right to retain the most efficient, pragmatic means to enforce the rest of their rights enshrined in the U.S. Constitution—privately owned, registered or unregistered, firearms; 3) holding government accountable; 4) keeping government from indefinitely blowing through Constitutional red lights, violating the Constitution's commands; 5) forcing government to wear its Constitutional collar, connected to a Constitutional chain, staked firmly into the bedrock of Constitutional law.

Now, when government slips that Constitutional collar and refuses to put it back on and wear it compliantly and honor the Constitution's commands, with the judiciary's blessings, what then?

How does one make a snarly, robust, active, gargantuan government wear a collar it does not want to wear? How does one get close to the beast's teeth and claws to put on that collar and survive?

In the long run, being unduly submissive and unduly complaint is not the answer. That approach emboldens the beast and allows it to become bigger and badder (please excuse the poor grammar).

How does one achieve this goal?

Either legally or violently.

Per the July 4th Declaration, once one is convinced the government's "ends" are no longer "sufferable" as a result of "a long train of abuses and usurpations," one has a "right" and a "duty" to rebel. In that sense, the "violent" approach can also be a "legal" approach.

How does one confirm if the government is good or bad? Algernon Sidney, in his Discourses Concerning Government, published before July 4, 1776, influenced the Founders' July 4th Declaration. Sidney, in Section 36 of Chapter 3 — a chapter entitled "*The general revolt of a Nation cannot be called a Rebellion*." — opined this:

> ". . . By increasing the power of their master, they add weight to their chains . . . Rebellion . . . Of itself is neither good nor evil . . . But it is just or unjust according to the cause or manner of it. . . . They who know the frailty of human nature, will always distrust their own; and desiring only to do what they ought, will be glad to be restrain'd from that which they ought not to do . . . It being much better that the irregularities and excesses of a prince should be restrained or suppressed, than the whole nations would perish by them, . . . . All disputes about rights do naturally end in force when justice is denied (ill men never willingly submitting to any decision that is contrary to their passions and interest) . . . ." [emphasis added]

My interpretation of what Sidney intended here is this:

> 1) If one wants to find out if he lives under a good or a bad government, simply tell the government peacefully and clearly what your grievance is and see how the government reacts. If it is a good government it will gladly promptly conform to the law and be restrained without force being required;
>
> 2) Government's irregularities and excesses should be restrained; and
>
> 3) When government persists with its irregularities and excesses, it is better to rebel than to risk the government destroying the nation.

It is easy to understand how the core essence of this excerpt from Sidney's *Discourses* found its way into the July 4th Declaration.

Now, to complete the train of thought and tie up Sidney's *Discourses*, the July 4th Declaration, and the U.S. Supreme Court's rejection of *Silveira*, here is the stark rub—the *Silveira* petition was a meaningful, classic, formal, peaceful, legal, approved way to tell the government it needed to be restrained in terms of the

government violating certain unalienable rights and the Second Amendment, but the U.S. Supreme Court rejected *Silveira*, kissed it off with a behind closed doors vote, and instructions to a clerk to send out a notice of denial. So, the question remains, what now? What do we do now? What is legally and/or morally justified now? Tomorrow? The next day? When governments send their goons to confiscate the guns?

Algernon Sidney hinted at an answer to these questions when he also wrote:

> "This hand enemy to tyrants, By the sword seeks calm peacefulness with liberty."

My interpretation of Sidney's and the Founders' most probable answer to these questions: they would stand firm and fight with lethal force to retain their firearms.

My eyes, ears, brain tell me this, convince me of this: Government and its agents break their own rules and do so successfully, without being held accountable, precisely because they have made enough rules to let them do so and/or the judges will not pull the "legal trigger" to hold themselves and other government officials accountable. Government, its agents, and too many Black Robes are morally and legally hypocritical, inconsistent, and unscrupulous: They inexplicably flout the Constitutional rule of law while demanding that ordinary citizens, Louie Lunchbucket and Susie Seamstress, obey the law and turn perfectly square square corners.

The purpose of the Bill of Rights is to *prevent*, not to *redress*, government's abuse of its powers and violation of our rights. *Rights*, however, are not self-enforcing. It takes an air breathing human being, a Patrick Henry type, to breathe life into a *right*, to make it spring into life, to jump off a dusty law book's page, to vibrate and scream, "Hey, you! Yes! You! You, *the* oppressor, I am talking to *you*! Look at me. Take *me* seriously. *Now*! Or take *my* bullet—*an instant from now*," and, if rebuffed again, pull the trigger, terminate that problem on the spot, and move on to the next problem.

A right delayed is a right denied. A right delayed is not a right at all. A right delayed is a hollow sham, a cause of action for a lawsuit that will be verbally and conceptually machined gun to death in court by government lawyers, witnesses, and Black Robes.

Sometimes the "gun solution," despite all its limitations, is just simply quicker and easier, if only in the short run.

The Black Robes, as a group, have wasted their political capital for years regarding the Second. They have had their opportunity to prove themselves as Guardians of Liberty. As a group, too many are too much a part of the problem. Immunities stack the system against citizens.

For each of us who has had our rights denied on the spot, think about what would have happened if each of us had instead pressed hard the barrel of a loaded gun against the chest of the government official who oppressed us. What would the outcome have been then? Only God knows what would have happened. I suspect that an important message would have been sent, and some in government would react by becoming more oppressive while some would have heard the message, lightened up, and started to take rights seriously, if only out of fear that their lights would be terminated by an energized hunk of metal.

Before *Silveira* and now with *Silveira*, the peaceful, legal way was tried. It failed. It failed not because the plaintiffs in *Silveira* or *Silveira's* strategists, supporters, and lawyers were somehow deficient. It failed because the Black Robes and the system failed. There is a split in the federal circuits regarding the Second Amendment, the *Silveira* petition to the U.S. Supreme Court was excellent, but still the Supremes rejected *Silveira*. I will die without knowing for sure why. I suspect the Supremes' primary motivation was this: They wanted to avoid investing their political capital on such an important, potentially explosive decision. It was a no-win situation for them. It they ruled there is no individual right to arms there would have been a near cataclysmic reaction that would risk tearing this nation apart. That statement is not hyperbole. By rejecting this pivotal issue they perpetuated the controversy, avoided further political heat—for a while—and they got, for Government, the *de facto* benefit of the status quo, for better or worse.

That status quo works on balance in Government's favor, for a while, to a limited extent. On the other hand, the U.S. Supreme Court's rejection of *Silveira* will embolden the gun grabbers who will press on until they are stopped. But, what will it take to stop them? Another petition to the U.S. Supreme Court with a different ending? A change of heart? Legislation? Energized hunks of metal?

8,000 years of struggle for civilization (a mutually acceptable accommodation between Government and Citizens) have given us a piece of paper that is an inadequate "bulwark of liberty". Words are not an adequate substitute for mature decision making, adherence to core Constitutional principles, prudent and principled leadership, Constitutional vision, courage, and firearms in the hands of pissed off patriots willing to go for broke to hold Government to the Constitution's commands.

One's duty to pursue the noble cause is measured by one's life time because the sworn oath is eternal and the anti-Liberty/pro-Liberty whirlwind is eternal. There is no built in expiration date. The duty ends when the life ends. The oath omits how the duty shall be precisely discharged. It does not expressly rule out resort to lethal force.

Indulging despair is a waste of time but to do so is also a manifestation of one's humanity, reaction to stimuli, moral code, decency, rational capabilities, impulse control, reflective thought processes, our worthiness to claim, and to insist upon, our birthright being honored during our life times.

George Washington once opined, "The event is in the hands of God." When the gun grabbers press the issue, our duty to continue to support the U.S. Constitution is ongoing and endures for the duration of our lives. Hence, when they come for the guns—and they *will,* and in many places in America *already have* and still *are* —"the event [will be] in the hands of God."

Despite what all courts have written about the Second that end up with a "no individual right" holding, the Second's text, historically accepted definitions, and the Framer's comprehension, intent, and vision has not changed, and never will.

It remains our duty to be worthy of the Founders' and Framers' vision and to enforce it, with arms, if necessary, in a prudent, truly necessary, final, last, Herculean, effort to restore the Constitutional Rule of Law. Individuals will have to decide for themselves when the time to do that is upon them, if ever.

The peaceful, legal remedy needs to be sincerely pursued in earnest *before* resorting to arms. *That*, however, is precisely a major dynamic of the current problem and frustration. The *Silveira* plaintiffs tried *that* way. They tried all the way to the U.S. Supreme Court. They were turned away, after $75,000 and much critical cerebral seed was invested in their noble effort to find a non-violent, legal remedy. The Petitions for Writ of Certiorari were also denied, on President Bush's watch, in both *Emerson* and *Bean* — two meritorious cases that clearly deserved full review.

There is no assurance that another legal charge up to the U.S. Supreme Court's grand pillars will yield a different result.
So, where does that leave us—individually and as a nation?

Exhibit No. 1: Look at how government treats us when government officials know we are armed?

Question: How will government treat us if and when we are disarmed?

Exhibit No. 2: History.

Exhibit No. 3: The tyrant's pattern: Demonize privately owned firearms and their owners; regulate same; ban same; confiscate same; consolidate power; eliminate opposition; impose genocide; hand pick judges who rubber stamp hideous, horrific oppression; convert the brain of anyone who opposes the tyrant into a pink mist.

That *pink mist* drill can work two ways: For Tyranny. Against Tyranny and for Liberty.

A majority has an absolute duty to rule per the Constitutional Rule of Law, as a prudent fiduciary, and the Black Robes have a duty to be Guardians of Liberty. I am/we are faultless for their failure to be a prudent fiduciary or a Guardian of Liberty. I/we do not have to suffer them—nor their legal bubonic plague doctrine—forever.

Power still comes out of the barrel of a gun, but only for those with the courage and skill to convert that latent power to actual *kinetic* power.

A U.S. Supreme Court judge once opined, “The life of the law is not logic; it is experience.” I first heard that in law school over 30 years ago. When I first head that I disagreed. I thought, “The law is supposed to be logical.” I am sad because it is not. I am sad because some judges are, in my judgment, unscrupulous or well intended but somehow just wrong or at least not convincing in their reasoning-to-result. Too many of their Second Amendment decisions are nonmeritorious, regardless of their intent, which I do not claim to understand.

I am sad because I think as a result of the U.S. Supreme Court’s rejection of *Silveira*, the next major “life of the law” will be a violent confrontation to determine the festering “Second Amendment issue”. The Supremes ducked the issue by rejecting *Silveira*, but that did not make the problem disappear. Instead, they make it bigger, more snarly, more important. This problem is like a humongous, latent, legal avalanche on the top of the mountain, laying there—still, unseen but known to be there, waiting, waiting, waiting, for something to send it crashing down upon us, you, me, the judges, the gun grabbers, small town U.S.A., big city U.S.A. When that happens, undertakers, construction workers, and bonafide petty criminals, and the United States’ enemies will be happy. Life insurers, sworn peace officers, law makers, merchants, and ordinary citizens will be miserable.

When principled, well reasoned, correct, peaceful lawsuits are rejected by the nation’s highest court and the legislatures are packed with gun grabbers who are Freedom Haters, Liberty Thieves, and Traitors, what is left? Submission? Capitulation? Another lawsuit? More peaceful use of the First to support the Second? Resort to arms?

I do not know the answer. If I did I would share it.

I suspect millions are experiencing similar thoughts.

I suspect the real effect of the U.S. Supreme Court’s imprudent rejection of *Silveira* is this: Like the referenced Yale law school graduate attorney who quit practicing law because “the judges tore his heart out,” millions in this nation are intensely disgusted with the U.S. Supreme Court, and the Supremes ratcheted them down tighter, motivating them to take a hard, close, sobering, stark look at the *pink mist* solution. Many will, as a result, steel themselves to use *that* solution to breathe life into a right to keep it viable, to keep it relevant, to retain the pragmatic means to enforce the rest of the Bill of Rights, in the belief that that was their only remaining option, and that option was, and is, *noble*.

I remember Aaron Zelman sharing with me an incisive observation he made as a youngster with his Jewish relatives who railed against privately owned guns. He said he looked at black and white photographs of people inside the camps, and he told his relatives something to this effect, “Look! You are wrong! Those who are walking around in warm coats and look well fed *have guns* and those who are locked up, wear rags and look gaunt *do not* .” Enough said. Aaron was a youngster when he made that pivotal, crucial observation. Too many adults and judges do not see or refuse to come to terms with the obvious, but the obvious is not seen by most even when they look at it. *Seeing* is not the same as *comprehending*. One can look and not see or see and still not *comprehend* what one is looking at.

Adolf Hitler came to power in a “civilized” nation as the result of a free, democratic election — one that descended into horrors in only a few years, with the blessings of the German judiciary.

Do I trust the American judiciary to keep us from descending into hell? No! The American judiciary has greased the skids to get us where we are.

What do I trust? My sense of justice. My passionate commitment to what I believe. I know what I believe. I know why I believe what I believe. I know where I am on history’s time line. I know and believe I am on the right side, the good side, of history’s time line, of Western-Judaic morality, the *Constitutional* side that separates me from Sheeple and Elitists who are Freedom Haters, Liberty Thieves, and Traitors.

We cannot achieve freedom abroad for others when we abandon it at home for ourselves. How does the U.S. military go about establishing *freedom* overseas, in places like Iraq and Afghanistan? Disarm ordinary citizens. I feel sorry for the Iraqis and Afghanis should “American style freedom” take root in their nation. Why? Because that style involves *government immunities*.

It is probably just a matter of time before some despicable official sends sworn peace officers, soldiers, and Marines to disarm U.S. citizens, to enforce the 9th Circuit’s holding in *Silveira*. What then? Do we abandon

the Constitution's bright lines and run? Or do we stand firm and fight?

To close, here is what is ironic, and a major part of what makes me so sad:

1) Article VI, Section 2 of the U.S. Constitution expressly declares that it is the supreme Law of the Land. Section 3 says "and all executive and judicial officers, both of the United States and of the several states, shall be bound by Oath or Affirmation to support this Constitution, . . . ."

2) Article VII of the U.S. Constitution said, in context, that when enough states ratified the Constitution it (the Constitution) would be the supreme law, binding on the States.

3) Article V of the U.S. Constitution said, in context, that amendments to it, such as the Bill of Rights, are as much a part of the original Constitution as the original itself.

4) The Second Amendment is part of the U.S. Constitution. As such, it is binding on the States and all judges, including the 9th circuit judges who decided *Silveira* and the U.S. Supreme Court judges who rejected *Silveira*.

5) *Silveira* originated in California, arguably one of this nation's most rabid pro-victim disarmament laws states.

6) California's Constitution's preamble acknowledges the existence of "Almighty God" and thanks "God" "for our freedom."

7) Article 1, Section 1 of California's Constitution acknowledges that all people "have inalienable rights" and among these are "defending life and liberty, . . . Safety, . . . Privacy."

8) How can one defend life and liberty and obtain safety when disarmed?

9) How can one maintain privacy when so much requires government's prior permission, which requires substantial disclosures, which is the antithesis of maintaining privacy?

10) Article 1, Section 5 states, ". . . A standing army may not be maintained in peacetime. . . . ."

11) Article 1, Section 6 states, ". . . Involuntary servitude is prohibited except to punish crime." *Servitude* is distinct from and broader than *slavery*. *Servitude* involves the idea of being stripped of one's rights *before* being convicted of a crime.

12) Article 1, Section 26 states, "the provisions of this Constitution are mandatory and prohibitory . . . ."

13) Article 3, Section 1 states, "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land."

14) The California Supreme Court in *People v. Camacho* (2000) 23Ccal.4th 824, a Fourth Amendment case, at page 838, said, "[C]onstitutional lines are the price of Constitutional government." I am sad because they have never respected this Constitutional bright line: ". . . The right of the people to keep and bear arms shall not be infringed.," and that line is brighter than the one in the Fourth Amendment.

15) The U.S. Bill of Rights' purpose was to withdraw certain subjects from controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. *West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624* . One's right to life, liberty, property, and other fundamental rights may not be submitted to vote. Id. The Bill's philosophy is that the individual is the center of society and individual liberty is a paramount value that government must respect. Id.

16) Government must honor rights guaranteed in the U.S. Bill of Rights even when it is inconvenient. *Reid v. Covert (1957) 354 U.S. 1* . It is dangerous to allow inconvenience to

undermine individual rights. Id. To do so, would destroy the benefit of a written Constitution and undermine the basis of our government. Id. Constitutional provisions for the security of person and property should be liberally construed. Id. A close and literal construction leads to gradual depreciation of rights. Id.

17) The rights declared in the U.S. Bill of Rights are law. *Harmelin v. Michigan (1991) 501 U.S. 957, 966*.

18) The Forth Amendment (and much of the rest of the Bill of Rights) is designed to prevent, not simply to redress, unlawful police action. *Steagald v. United States (1981) 451 U.S. 204, 217*.

19) "A right that is not honored when invoked is no right at all." *People v. Neal (2003) 31 Cal.4th 63, 89*. (Justice Kennard concurring.)

Can these 19 points be logically reconciled with the 9th Circuit's *Silveira* decision? With the U.S. Supreme Court's rejection of *Silveira*? Does the government speak with a forked tongue? Shuffle the law like a professional card shark shuffles cards?

Are you, too, sad?

Why?

What now?

Why?

Governments' alleged basis to regulate firearms is based on what is called "the municipal police power to promote public health, safety, and welfare." Governments' argument is:

1) We have this power and duty to promote public safety;

2) Firearms are obviously dangerous and when misused members of the public are harmed or killed and public safety and welfare are threatened; and

3) We must, therefore, use our municipal police power to regulate firearms.

Superficially, this argument has plausible merit. It fails, however, to come to terms with the counter arguments:

1) Governments' municipal police power to regulate firearms cannot Constitutionally be used to circumvent nor to trump the U.S. Bill of Rights;

2) That police power stops at the foot of the Bill of Rights;

3) That police power crashes into, and destroys itself, against what is arguably one of the Constitution's clearest, absolute, unequivocal, bright lines: "the right of the people to keep and bear arms shall not be infringed.";

4) That language is really three Constitutional commands—First, Right of the People; Second, To keep and to bear arms; and Third, Shall not be infringed;

5) The declaration of that right coupled with "shall not be infringed" means this: Governments in this nation do not have any Constitutionally legitimate right to engage in any kind of prior restraint regulation of anything having to do with privately owned, controlled, possessed, carried, used, sold, bought, transferred, or manufactured firearms, period, end of discussion, except, perhaps, arguably, in one narrowly limited context: The maintenance of a Militia, namely, making suggestions to Militia members as to what type of arms and ammunition to possess, to train with, to standardize on, and/or maintaining records as to who has what for the strictly limited purpose of maintaining a well organized formal Militia.

Article I, Section 8, Clause 16 of the U.S. Constitution states, in context, Congress has the power,

> "To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

This Congressional power to "provide for organizing, arming, and disciplining the militia" is expansive. It is also phrased in a way that makes the exercise of this power 100% optional with Congress, namely, Congress can legitimately simply refrain from exercising this power. This language suggests that when Congress does elect to exercise this power it does have some Constitutionally legitimate right to exercise some kind of reasonable, narrow, strictly controlled, prior restraint regarding government owned arms provided to Militia members and/or regarding privately owned arms supplied by Militia members.

Some additional major aspects of this entire problem are stated below.

1) Congress has allowed the Militia concept to atrophy 100%—to wither away via non-use entirely. Congress, instead of relying upon the Militia, currently, and for decades, has relied totally upon a professional standing military, which has been frequently augmented by calling forth the National Guard and the Air National Guard to swell federal active duty military forces.

2) When Congress calls forth the National Guard and the Air National Guard to augment the federal forces, it strips the states of their military forces, and the governors of each state legally lose control of their own state Guard units.

3) Conceptually, the current system, with the approval of the U.S. Supreme Court, allows for this to happen: A wannabe tyrant U.S. President could federalize all state Guard units, and, as Commander in Chief, order those federalized units and all active duty federal units to wage war against the states and the citizens of each state.

4) *Silveira* held there is no individual right to arms outside of government employment. Reformulated, that means, if the 9th Circuit is correct, that governments have a monopoly on arms.

5) For government to achieve a monopoly on arms, the civilian population will have to be disarmed.

6) An attempt to disarm the civilian population that goes too far risks civil war and will trigger civil war.

7) If disarmament of the civilian population was ever achieved, if a U.S. President did strip the states of their Guard units and then ordered federal forces to subjugate the states and their citizens, how would the states defend themselves: They no longer have control over their Guard units and their citizens have already been disarmed? What can a state do: Use police to stop the armed forces? File a lawsuit? How can a judge force a President backed by the armed forces to obey a court order?

8) As long as the civilian population retains arms and is willing to fight ferociously to retain those arms, how can anyone enforce a court order declaring there is no right to arms? Or ordering disarmament of the civilian population?

9) As long as the American civilian population retains widespread control of arms, if you were the leader of an extremely powerful nation with the ability to cross oceans and national borders, and if you were looking for a country to invade, how appealing would the West coast of the United States look to you, from San Diego to Seattle? How appealing—or vulnerable—would the East coast of the United States look to you, from Key West to Bangor? Would you want to take on the U.S. Armed Forces and the Militia? Or would you look to Canada, Mexico, or Peru, etc.?

10) Returning to Patrick Henry, he was most incisive and alert. He railed against ratification of

the U.S. Constitution without a Bill of Rights that guaranteed, among other things, the individual right to arms. Henry forcibly argued, convincingly, that Article I, Section 8, Clause 16 of the U.S. Constitution (the part that grants Congress the *option* "To provide for organizing, arming, and disciplining the militia . . . .") was too dangerous to make a law binding on the nation under contemplation. Henry's reasoning was this: What happens if Congress elected to do this: Use its power per Article I, Section 8, Clause 12 of the U.S. Constitution ("To raise and support armies . . . .") but allow the militia to atrophy by failing to arm it? Is the people s' right to arms irrevocably tied to and 100% dependent on Congress using its optional power "To provide for organizing, arming, and disciplining the militia . . . ."? He said, emphatically, "No!"

11) James Madison, "the Father of the Constitution," agreed with Patrick Henry. Madison promised Henry: If the Constitution is ratified I will draft and submit a Bill of Rights that sets forth an individual right to arms that is 100% independent of the Militia to give you peace of mind if Congress fails to arm the Militia. Madison kept his promise to Henry.

12) With that condensed version of relevant U.S. history, perhaps now the Second Amendment's wording, and the Framers' intent regarding the Second Amendment, makes more sense, and it is now clear that the Second was intended to guarantee an individual right to arms, subject to no prior restraint, and it is a right that exists 100% independently of government employment of any kind and 100% independently of membership in the militia or any kind of government military or police.

> A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

13) But, per *Silveira*, this is what some federal judges who are sworn to obey the U.S. Constitution have done to the Second:

> A well regulated militia being necessary to the security of a free state, ~~the right of the people to o keep and bear arms shall not be infringed~~.

14) These judges struck this language and did a *de facto* gross amendment of the U.S. Constitution under the guise of interpretation.

15) The illegitimacy of what these judges did should now be plain.

16) Per the 9th Circuit's *Silveira* decision, the Second Amendment now reads something along these lines:

> State governments, now having a right to be free of reprisals by citizens who are angry over their rights being violated, the right of the States to keep and bear arms shall not be infringed.

17) But, how did the "right of the people" in 1791 ~~legitimately~~ morph into the "right of the states" in 2002?

18) How can the State of California have a right to an armed militia independently of its own citizens retaining a right to arms when the word "militia", when used correctly, is a synonym for ordinary citizens who are not on a government payroll who function as Constitutionally legitimate law enforcement officers?

19) How can the State of California have a right to an armed militia when Article I, Section 5 of California's Constitution states, "The military is subordinate to civil power. A standing army may not be maintained in peacetime. . . ."?

20) If the California militia has a right to arms which " shall not be infringed," how is that reconcilable with "The military is subordinate to civil power."?

Do you see the seams? Do you see the surgical scars? Do you see what the 9th Circuit's judges did in *Silveira*?

Is this not what they did, by way of analogy: Via *Silveira*, they did two things: First, they took a glove made to fit the right hand off that hand, turned it inside out, and made it fit the left hand, and second, they did plastic surgery on the U.S. Constitution, but they ended up with the belly button in the middle of the forehead and something else prominent where the mouth or chin should be and who knows where the eyes, nose, and mouth went. Perhaps they removed the eyes, nose and mouth because they knew what they did stinks, they did not want the patient to see the result, and they did not want the patient to be able to complain.

Governments' *Security versus Liberty* is a false choice. That is a bogus issue statists in Governments want the People to make. Statists want us to focus our attention on that phony issue. They want us to focus on that issue and not the U.S. Bill of Rights, not the concept of *Constitutionalism* (policy- making and law enforcement consistent with the U.S. Constitution's commands), not on how they are perverting our laws to achieve a statists' police state. Our misleaders want us to focus on, and chose between *Security versus Liberty* so we do not focus on a more important, more relevant issue, one that is calculated to have citizens remain empowered: *WHAT IS THE BEST WAY TO RETAIN OUR LIBERTY AND USE OUR LIBERTY TO ENHANCE OUR SECURITY WITHOUT GIVING UP OUR LIBERTY SO WE CAN HAVE THE GREATEST MEASURE OF SECURITY WITH LIBERTY?*

Governments' *Security versus Liberty* issue is a potentially dangerous choice for citizens. Governments, by presenting that choice to us, imply that we cannot have both, that both are mutually exclusive. They are not mutually exclusive. To chose *Security* over *Liberty* is to jettison, foolishly, in knee jerk fashion, everything that is grand and wonderful about the United States of America. A decision for Security is a huge step toward *Total Tyranny* without *Security*. The disingenuous Security choice increases Governments' powers over citizens while contracting Citizens' rights. We must expose this *Security versus Liberty* issue or choice for the fraud it is. Leaders who focus on that issue or choice are Misleaders. We must remain focused on the prize, the goal, and the challenge: *Liberty* and how to keep it.

When society's main components (Government—Executive, Legislative, Judiciary, Armed Forces, etc.—Churches, Academia, Media, etc.) fail completely to preserve Liberty under a *Constitutional* Rule of Law, there is only one component of society left that can do the job: Militia. I'm talking about the 1791 definition of "militia". 1791 is the year the Bill of Rights was ratified, and we are talking about *Original Intent* . The Militia, in that sense, was ordinary folks, the Peoples' army, who use their privately owned firearms to restore their rights, per a Constitutional Rule of Law. The Militia per 1791 is not the National Guard, not the Air National Guard, not the police. The National Guard, the Air National Guard, and the police are all part of the Governments' armies.

Notice the important qualifier—*Constitutional*. Appreciate this fact: The Rule of Law and the *Constitutional* Rule of Law are different. They are not the same. Currently, the United States is not lead, run, nor operated per its own Constitution's rules and commands. Our governments are out of control, and we, the People, have lost control of our own governments.

When Governments succeed in manipulating us to focus on, and to chose between, *Security versus Liberty*, they win. They win because the instant we choose either, we forfeit the other, and we will inevitably lose what we chose. We especially lose when we choose *Security*. That choice makes us too dependent on Governments to protect us. Governments cannot protect us in all ways at all times. Governments can, and do, however, use this issue to manipulate us against ourselves, to surrender more *Liberty* so it can increase its powers over us and tie us down with its chains rather than we tie it down with the Constitution's chains.

A real, viable *security* cannot exist without citizens retaining the pragmatic means to retain *Liberty* and to make their own *security* by being able to enforce their right to *Liberty*. The best pragmatic means to retain the greatest measure of individual *Liberty* with meaningful *Security* is a combination of the following:

1) Know well history and the U.S. Constitution;

2) Understand well *rights* versus *privileges* and *permission*;

3) Manifest personal, sustained courage;

4) Be committed to remain faithful to the Constitutional Rule of Law;

5) Publicly insist that everyone obey the Constitution's commands;

6) Widespread ownership and control of privately owned firearms;

7) Widespread skill and proficiency with accurate firearms;

8) A widespread, absolute, uncompromising willingness and unwavering commitment to use such firearms as *Liberty's teeth* to enforce one's rights, to prevent our nation's descent into Total Tyranny, to restore Liberty under a *Constitutional* Rule of Law;

9) A firm resolve to go for broke, to resort to arms, when absolutely necessary, to prevent a further descent into Total Tyranny;

10) A deep, mature, resilient self-reliance and devotion to selfless civic duty;

11) The ability to be mentally and emotionally mature and agile: Turn one's stumbling blocks (such as the U.S. Supreme Court's rejection of *Silveira* and one's fears of the consequences and being killed or maimed by Governments) into stepping stones, plus the ability to look at the end of one's arms when in need of a helping hand;

12) Have a vision;

13) Keep one's eye on the future;

14) Be firmly committed to secure for one's loved ones, if not for one's self, their entitlement: Liberty. Be willing to go for broke, to go for the gold ring that swings eternally—Liberty! Be willing to risk one's children becoming orphans because their parent refused to risk they or him or her becoming a peon. Be willing to risk not living out one's sunset years so that one's loved ones and strangers can enjoy their todays and tomorrows knowing *Liberty*.

After the U.S. Supreme Court's rejection of *Silveira*, who wants to put a mint or a rose on the Supremes' pillow cases?

I used to live in Hawaii. It was fairly common over there to see a certain woodcarving: three monkeys hanging from something in single file. The monkey on top was hanging onto something with the two on the bottom reaching up and hanging onto an extended hand from the monkey above. One monkey had his free hand over his eyes, one had his free hand over his ears, and one had his free hand over his mouth. All three monkeys were dependent on the grip of the monkey on top. Those wood carvings were referred to as "monkeys no can see, hear, speak."

That image reminds me of what our governments have been doing, and are doing, with the Second Amendment. Our governments have committed multiple, sustained, hideous, illegitimate, nonmeritorious, unpersuasive re-writes of the second. The Bill of Rights is like the invisible glue that holds us together as a nation. That glue is like the grip of the monkey on top. When that glue lets go, when that monkey releases his grip, the nation and the monkeys fall. Fall into what? What will the landing be like? Will it be a hard or soft landing? Will there be a bounce? Will there be broken bones? Broken necks? Rubble? Who will be around to pick up the pieces?

The U.S. Supreme Court, by rejecting the excellent *Silveira* petition, has, in effect, functioned somewhat like "the three monkeys—see no evil, hear no evil, speak no evil." but, they read the *Silveira* petition. So, they saw. As a result of seeing, they knew about the problem. I repeat, they knew, and they know. But, by rejecting that petition, the Supremes indirectly refused to speak. By refusing to speak, they condoned. By condoning, they spoke. They spoke evil. They know we are being cheated out of our birthrights and they condoned it. They know about the long train of abuses and they condoned it. They know about how other branches of governments have waged war against the U.S. Constitution and against citizens' rights and continue to do so and they condoned it. The Supremes were presented with the proverbial golden opportunity to resolve this dispute peacefully, based on sound Constitutional principles, and they irresponsibly rejected that opportunity. I am profoundly sad. "The event is in god's hands."

In Liberty for all per the *Constitutional* Rule of Law,

—Peter J. Mancus