

First Judicial District Division 8 CourtRoom 520 100 Jefferson County Parkway Golden, Colorado 80401	▲ Court Use Only ▲
PEOPLE OF THE STATE OF COLORADO , Plaintiff v. STEVE D. GARTIN, Defendant	
First Secured Party for “Defendant” in Propria Persona: Steve Gartin P.O. Box 70185 Albuquerque, NM 87197 Email: sheriffsteve@justice.com	Case Number: 04CR2541 Division 8 CourtRoom: 520
First Amendment Petition for Redress of Grievance <i>in the Nature of a</i> MOTION TO DISMISS DUE TO UNCONSTITUTIONALITY OF STATUTE §18-5-114 ON ITS FACE AND AS APPLIED	

Standing:

Steve Douglas Gartin, is *First Secured Party for the above captioned* “Defendant” deliberately and consistently spelled in all capital letters presumably to denote a Transmitting Utility pursuant to U.C.C. Security Agreement #SDG0911200-SA or a strawman “corporate person,” in Admiralty/Maritime Prize and Booty courts and is *designated in this secret and undisclosed lawform as* STEVEN DOUGLAS GARTIN.

Secured Party’s priority interest is legally established as first-in-line and first-in-time and remains unrefuted by official record: U.C.C. # SDG9112000-SA on file with the Colorado Secretary of STATE.

First Secured Party appears, Non-voluntarily, by Special Visit in propria persona by the Doctrine of Necessity; under credible threat of assault and incarceration by heavily armed Police, under duress induced by numerous forcible imprisonments based upon an unbroken chain of groundless and frivolous charges, *including this instant matter*, and coercion compelled by threat of economic damages and forcible imprisonment or death by Police due to the slanderous entry in the NCIC/CCIC database recorded by the Colorado State Attorney General’s Office Investigator Gary Clyman.

Jurisdiction:

First Secured Party is *Child of יהוה* (YHVH-the EverLiving God), a sovereign Inhabitant of the California Republic, currently sojourning in New Mexico and claims all Rights secured by the 1849 California Constitution, the New Mexico Constitution, the Treaty of Hildago, the Colorado Constitution, as well as the Original Jurisdiction Constitution for the united States of America, the Supreme Law of the Hebrew People, the Torah of יהוה, and the Common Law and hereby provides Notice of Foreign Law in good faith accordance with your colorable codes.

📖 [C.R.S. 24-12-101. Form of oath. Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in the following form: The person swearing, with his hand uplifted, shall swear "by the everliving God".]

First Secured Party has denied and squarely Challenged Jurisdiction at each and every Special Appearance under threat, duress and coercion and continues to protest the court’s unjustified seizure of jurisdiction sans appellate record and without due process of law or adherence to constitutional or statutory mandates.

📖 Where jurisdiction is denied and squarely challenged, jurisdiction cannot be assumed to exist “sub silentio” but must be proven. *Hagens v. Laving*, 415 U.S. 528, 533, n. 5; *Monell v. N.Y.*, 436 U.S. 633. Mere “good faith” assertions of power and authority (jurisdiction) have been abolished. *Owen v. Indiana*, 445 U.S. 622; *Butz v. Economou*, 438 U.S. 478; *Bivens v. 6 unknown agents*, 403 U.S. 388.

Special Appearance

First Secured Party has never knowingly, deliberately nor intentionally joindered with this Court of Un- Disclosed Jurisdiction. Any and all interaction with the First Colorado STATE Judicial District, Inc. has been under threat, duress and coercion. At no time has either the “Defendant” nor its First Secured Party volunteered into or in any manner contracted with the First Judicial District, Inc. to adjudicate any aspect of the matter known in un-disclosed legal fiction as 04CR2541.

First Secured Party hereby in the interests of justice and full disclosure moves the Honorable Court to Dismiss the above captioned matter for prosecutorial misconduct, to-wit, Vindictive prosecution and as grounds therefore states for the record:

First Secured Party believes and therefore asserts that the above titled case has been brought before the Honorable Court by FRAUD in a mis-construction of statutes, by an unlawful seizure of foreign jurisdiction, by deprivations of constitutionally secured due process and by the commencement of a vindictive prosecution by a prosecutor unauthorized to prosecute this case without express written authorization from Governor Bill Owens.

C.R.S. §20-1-102 Note 8. Attorney general

📖 Absent command from governor or general assembly, Attorney General was not authorized to prosecute criminal actions. *People ex rel. Tooley v. District Court In and For Second Judicial District*, 1976, 549 P.2d 774, 190 Colo. 486.

Relying upon the well settled Right to Petition the Government for Redress of Grievance, the First Secured Party for the fictional Defendant encaptioned above moves the Honorable Court to Dismiss the above captioned case based upon the unconstitutionality of the statute both on its face and as applied and as grounds therefore states:

STEVE DOUGLAS GARTIN is charged with one count of “Offering a False Instrument for Recording in the First Degree, in alleged violation of §18-5-114 C.R.S. This statute states that “(1) A person commits offering a false instrument for recording in the first degree if, knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee.”

According to the sparse and incomplete discovery the Defense PAID the First Judicial District Attorney’s Office for, MR. GARTIN apparently violated the code relating to Financial Instruments, although the specifics elements of the “violation” are also vague and unclear and cause a reasonable person to guess as to the what the actual proscribed act was, or what the government’s compelling interest was that would justify such a profound intrusion upon the privacy interests of Mr. GARTIN.

C.R.S. §18-5-114. Offering a false instrument for recording is unconstitutionally vague and overly broad both on its face and as applied to this case. Additionally the statute is ipso facto unconstitutional in

light of the fact that it proscribes punishment prior to due process of law and without any safeguards of liberty guaranteed by both the United States and the Colorado Constitutions.

18-5-114. Offering a false instrument for recording. (1) A person commits offering a false instrument for recording in the first degree if, knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee. (2) Offering a false instrument for recording in the first degree is a class 5 felony.

📖 The 14th Amendment to the United States Constitution and Article II §25 of the Colorado Constitution require specificity in criminal laws in order to give fair warning of the prohibited conduct. Criminal statutes are unconstitutionally vague if they “forbid or require the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess as to its meaning and differ as to its application.” *Connelly v. General Construction*, 269 U.S. 385, 391 (1926). This interest in fair notice requires that the **statute be sufficiently definite** in order to notify persons of the proscribed conduct.

The language of the statute is **unduly vague** since it does not sufficiently define PRESENTS, OFFERING or INSTRUMENT and persons of common intelligence would guess as to the meaning of “**Offering**”; or “a false instrument” or “for recording.”

The statute then defines a ‘statutory person’ ~ not the Accused

A person commits offering a false instrument for recording in the first degree if,

What basis of knowledge and how does the “motion” affect real or personal property?

knowing that a written instrument relating to or affecting real or personal property

What contractual relationship has the corpus delicti directly affected?

or directly affecting contractual relationships

What statement is materially false?

contains a material false statement

What information is materially false?

or material false information,

Defraud whom, of what?

and with intent to defraud,

Who presents or offers?

he presents or offers it to a public office

What public employee?

or a public employee,

What act constitutes “knowledge” of any such enumerated outcomes?

with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee.

The statute is **overly broad** in that it could lead to criminalization of behavior in cases such as this, where STEVE GARTIN sought only to offer Forgiveness to criminal government tortfeasors named in Federal Civil Rights & R.I.C.O. actions which is an activity protected by both statute and constitution.

📖 **Statutes must give notice of proscribed conduct.** To the extent that a statute places a penalty upon completed acts, concepts of fairness require that it be sufficiently definite to give notice as to what conduct is necessary to avoid those penalties. *Memorial Trusts, Inc. v. Beery*, 144 Colo. 448, 356 P.2d 884 (1960).

Even if the statutory requirement of notice of proscribed conduct was met, *which in this case was not*, the language of the statute itself is so vague and ambiguous as to cause confusion regarding the legislative intent as to the acts and actions that were intended to be proscribed and the public good it was intended to further. If indeed filing a Motion of Forgiveness is legislatively proscribed, that legislative act is anti-constitutional and it is the Honorable Court's solemn duty to declare it so.

📖 **Inherent in due process is the concept of fairness** which requires the general assembly to frame criminal statutes with sufficient clarity so as to inform persons subject to such laws of the standards of conduct imposed, i.e., give a fair warning of the forbidden acts. *People v. Heckard*, 164 Colo. 19, 431 P.2d 1014 (1967).

As is clearly defined in Defense's motion on file entitled "Notice of Standing and Capacity," the Accused is NOT a "person" by statutory construction and is not subject to the "codes" or "statutes" at issue herein. Even if Accused were a "person" – which he is NOT – the statute at issue contains such broad and far-reaching language that ALL "persons" and ALL actions could be construed by over zealous law enforcement personnel and prosecutors to be within the purview of such anti-constitutional legislation.

📖 The terms of a penal statute creating a new offense must be sufficiently explicit to inform **those who are subject to its provisions** of what conduct on their part will render them liable to its penalties. *Memorial Trusts, Inc. v. Beery*, 144 Colo. 448, 356 P.2d 884 (1960).

If indeed filing Motion of Forgiveness & Petition to Seal, in good faith, has recently become an act subject to criminal sanctions, sufficient notice must be given before that act can be prosecuted as a crime. No such notice of proscribed conduct has been given to this Accused.

📖 Any criminal statute where vagueness is alleged must be closely scrutinized. *People v. District Court*, 185 Colo. 78, 521 P.2d 1254 (1974).

The Defense in this matter implores the Honorable Court to closely scrutinize the statutes relative to purported "OFFERING FALSE INSTRUMENTS FOR RECORDING. . ." and to weigh the Accused's NON-VIOLENT Motion of Forgiveness and Petition to Seal having no relation to such actions, but attempting to define "SECURITIES FRAUD," as behavior proscribed as contrary to the interests of Society. The Defense is confident that the probity of the Honorable Court will find no correlation between the Accused's innocent actions and the fraudulent behavior intended to be proscribed by legislation.

📖 If a statute gives fair descriptions of the conduct forbidden and men of common intelligence can readily apprehend the statute's meaning and application, it will not be declared unconstitutional for vagueness. *Howe v. People*, 178 Colo. 248, 496 P.2d 1040 (1972); *People v. District Court*, 185 Colo. 78, 521 P.2d 1254 (1974).

The Defense alleges that the Accused has been vindictively selected for malicious prosecution based upon a religious and political discriminatory animus and in retaliation for his seeking Redress of Grievance as guaranteed by the First Amendment for damages proximately caused by government actor's unlawful actions against the Accused committed by conspiracy and under color of authority. {See Federal Civil Rights Actions entitled: 97S1523 – 97D1036 – 97N1501 – 01-ES-1145 – 95B1747 }

📖 Criminal laws must be drafted to provide police and prosecution with clearly defined standards to lessen the effect of personal judgment and discrimination upon enforcement processes. *People v. Heckard*, 164 Colo. 19, 431 P.2d 1014 (1967).

There is apparently an unequal application of the statutes relating to SECURITIES FRAUD when there have been NO OTHER CASES in which anyone has been prosecuted under C.R.S. § 18-5-114 for filing a Motion of Forgiveness and Petition to Seal. No contractual nexus, expectation of reward, commercial value of the alleged “instrument” or detrimental reliance has been alleged, either in Information or in incomplete Discovery. It would therefore be impossible to construct a factual defense where no set of facts defining the alleged crime exist. Dismissal is the proper sanction for such failure to properly define the crime charged.

📖 Generally speaking, where the law imposes criminal liability for certain conduct, the scienter element requires "no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law." *United States v. Dashney*, 937 F.2d 532, 538 (10th Cir. 1991), *dismissal of post-conviction relief rev'd*, 52 F.3d 298 (10th Cir. 1995). This general rule is based on the deeply-rooted principle that ignorance of the law or mistake of law is no defense to criminal prosecution. *See, e.g., Cheek v. United States*, 498 U.S. 192, 199 (1991); *Lambert v. California*, 355 U.S. 225, 228 (1957); *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 182 (1820) (Livingston, J., dissenting). "Based on the notion that the law is *definite* and *knowable*, the common law presumed that every person knew the law." *Cheek*, 498 U.S. at 199 (emphasis supplied).

In the matter at hand, there is no act alleged that could be construed in a light most favorable to the Prosecution to constitute a “knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships. . .” What real or personal property is it relative to or affecting? What contractual relationship is this alleged crime directly affecting? How would anyone come to “knowledge” of a statute so vague, consisting of so many undefined terms, as to preclude comprehension by a reasonable person.

📖 The rule that ignorance of the law will not excuse its violation is limited, however, by the constitutional demands of due process. *See Lambert*, 355 U.S. at 228. "Engrained in our concept of due process is the requirement of notice." *Id.* Thus, a law violates due process if it is so vague that its prohibitions are not clearly defined. *See Rickstrew v. People*, 822 P.2d 505, 506-07 (Colo. 1991) ("Due process also requires that a penal statute provide fair warning of the conduct prohibited"); *Smith v. Charnes*, 728 P.2d 1287, 1290 (Colo. 1986) (statute must provide "fair notice of the conduct that has been determined to be unlawful").

📖 Vague laws offend due process in at least two important ways. First of all, "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *High Gear & Toke Shop v. Beacom*, 689 P.2d 624, 630 (Colo. 1984) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)); *see also People v. Buckallew*, 848 P.2d 904, 907 (Colo. 1993). Secondly, laws must supply explicit standards for those who apply them in order to prevent arbitrary and discriminatory enforcement. *See Buckallew*, 848 P.2d at 907; *People v. Nissen*, 650 P.2d 547, 549 (Colo. 1982).

Selective enforcement of legislative enactments, such as the facts relating to the government’s conduct establish in this instant matter, offend justice in a heinous and sinister manner. When such power is vested in law enforcement and prosecutors as to enable them to **completely destroy a man’s life, family and career** based on such an innocuous allegation as the act of filing a claim of lien in an attempt to protect his liberty interests and financial investments from an abusive Crime Cartel or offering to Forgive criminal government actors enumerated as Prosecution Witnesses in this matter at hand, American jurisprudence and law enforcement has reached a sad state.

- 📖 Indefinite standards of enforcement violate due process. Indefiniteness which leaves to officer, court, or jury the determination of standards in a case-by-case process invalidates legislation as being violative of due process. *Dominquez v. City & County of Denver*, 147 Colo. 233, 363 P.2d 661 (1961).
- 📖 The due process requirement that a statute clearly define the prohibited conduct is not relaxed simply because the statute delegates certain decisions to an agent or agency. In such a situation, "[t]he responsibility to promulgate clear and unambiguous standards is on the [agency]." *United States v. Trident Seafoods Corp.*, 60 F.3d 556, 559 (9th Cir. 1995). Furthermore, where a violation of an agency regulation subjects a party to criminal sanctions, "a regulation cannot be construed to mean what an agency intended but did not adequately express [and] the [administrative head of the agency] has the responsibility to state with ascertainable certainty what is meant by the standards he has promulgated." *Gates & Fox Co. v. Occupational Safety & Health Review Comm'n*, 790 F.2d 154, 156 (D.C. Cir. 1986).
- 📖 Thus, in assessing the propriety of a criminal law, a reviewing court must balance the general rule that ignorance of the law is no defense with the due process requirement of notice. As the Second Circuit explained, in attempting to achieve this balance: "*The primary purpose of law, and the criminal law in particular, is to conform conduct to the norms expressed in that law. When there is no knowledge of the law's provisions, and no reasonable probability that knowledge might be obtained, no useful end is served by prosecuting the "violators." Since they could not know better, we can hardly expect that they should have been deterred. . . . There is little to recommend incarcerating those who would obey the law if only they knew of its existence.*" *United States v. Mancuso*, 420 F.2d 556, 559 (2d Cir. 1970).

The Defense asserts that the acts alleged in this matter does not rise to the level of proscribed conduct, that **no notice of proscribed conduct was provided as required by law**, and that the conduct alleged in this matter is statutorily and constitutionally protected; and righteous by any standard of ethics.

- 📖 **Test of unconstitutional vagueness.** A statute which either requires or forbids an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application violates the first essential of due process of law. *Memorial Trusts, Inc. v. Beery*, 144 Colo. 448, 356 P.2d 884 (1960); *People v. Heckard*, 164 Colo. 19, 431 P.2d 1014 (1967)

The Defense petitions the Honorable Court under the protection of the First Amendment to the U.S. Constitution, to order the immediate Dismissal of all charges, with prejudice and to Order the Immediate Release of the Accused's cash bond.

- 📖 **Trial courts have jurisdiction to determine Federal Constitutional questions**, and it is their duty to do so by virtue of paragraph 2 of article VI of the United States Constitution, which provides that the constitution of the United States and all laws made in pursuance thereof shall be the **supreme law of the land and the judges of every state shall be bound thereby** and by §8 of Article XII of the Colorado Constitution requiring officers to take an oath to support the constitution of the united States and of the state of Colorado, notwithstanding the provisions of the 1913 amendment to this section which provided that the supreme court should have exclusive jurisdiction to determine such matters. *People v. Western Union Tel. Co.* 70 Colo. 90, 198 P.146 (1921).
- 📖 And **any attempt to take away this jurisdiction is null and void**. When a federal constitutional question is raised in any of the trial courts of Colorado the **right is given and the duty is imposed** upon those courts, by that instrument itself, to adjudicate and determine

it. **That right so given can neither be taken away nor that duty abrogated by the state of Colorado**, by constitutional provision or otherwise, and any attempt to do so is null and void. Such pretended constitutional inhibition is no part of the constitution of the state of Colorado, and the judge's oath binding him to the support and enforcement of that instrument has no relation to such void provisions. *People v. Western Union Tel. Co.* 70 Colo. 90, 198 P.146 (1921).

📖 A state constitutional provision prohibiting trial courts from passing on constitutional questions takes from a defendant the right of interposing the defense that the act under which he is prosecuted is unconstitutional, and is invalid as violating the "due process of law" clause. *People v. Max*, 70 Colo. 100, 198 P.150 (1921).

Therefore, C.R.S. 18-5-114, failing to provide due process notice of proscribed conduct in terms understandable to the common person, fails a constitutional due process challenge. Additionally, the First Judicial District Attorney Dave Thomas, Esquire's Information fails to adequately define the alleged crime, the alleged victim, or the mens rea, let alone a definition of the terms used in the statutes.

So the statute fails both on its face and as it applies to the Defendant herein. The Defense moves the Honorable Court to protect each person's constitutional right to Due Process by imposing Summary Dismissal with Prejudice as the proper sanction for such prosecutorial misconduct and to prevent the institution of selective prosecutions in the future.

In good faith,

Monday, November 21, 2005

Non-voluntary ~ Under Threat, Duress & Coercion ~ All Rights Reserved
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Certificate of Service by U.S. Postal Service, Inc.

I, Steve Douglas Gartin, oversigned, do hereby certify that a true and correct copy of the foregoing, **First Amendment Petition for Redress of Grievance** *in the Nature of a* MOTION TO DISMISS DUE TO UNCONSTITUTIONALITY OF STATUTE ON ITS FACE AND AS APPLIED was deposited in the U.S. Mail, addressed with sufficient postage to the Honorable Court and the Prosecution on the Twenty Second day of the Eleventh month in the Year of our Lord Two Thousand and Five.

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