

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT  
OF INDIANA**

|   |   |                 |
|---|---|-----------------|
| Jane <b>GRAHAM</b> , and                | § |                 |
| V. Z. <b>LAWTON</b>                     | § |                 |
| Citizens of the State of Oklahoma,      | § |                 |
| Plaintiffs                              | § |                 |
|   | § |                 |
| v.                                      | § |                 |
|   | § | Cause No. _____ |
| Harley <b>LAPPIN</b> , Warden           | § |                 |
| United States Penitentiary              | § |                 |
| Terre Haute, Indiana,                   | § |                 |
| Defendant                               | § |                 |
|   | § |                 |
| The Honorable Steve <b>CARTER</b> ,     | § |                 |
| Attorney General, State of Indiana,     | § |                 |
| a necessary party for matters involving | § |                 |
| public charitable trusts doing business | § |                 |
| in Indiana,                             | § |                 |
| Necessary Party                         | § |                 |

**PLAINTIFFS BRIEF**

This Brief intends to satisfy the requirements regarding a brief to support the relief requested by way of the Original Complaint, Plaintiffs Motion for (Emergency) Temporary Restraining Order, Plaintiffs Motion for Temporary Injunction, Plaintiffs Motion for Permanent Injunction (not yet filed), and any other relief Plaintiffs may request as based on the merits of the claims filed. Should additional matters need to be addressed, Plaintiffs reserve their interest in submitting supplemental or additional Briefs, as the court may request or permit.

**Point 1:** Does the transferee (Colorado) trial court lack subject matter jurisdiction to try a criminal matter that arose in Oklahoma?

**Summary.** Yes. This point examines into the entirety of the trial proceedings in Colorado. Article III, section 2, Article IV, section 2, and the Sixth Amendment are clear that the

jurisdictional limit for any criminal matter is the State in which the act(s) took place. Since every criminal charge against McVeigh arose in the State of Oklahoma, only the courts in Oklahoma have subject matter jurisdiction to try those criminal Cases.

**Facts.** All these facts are eligible for admission by judicial notice.

1. Oklahoma is a State.
2. The Murrah Federal Building was located in Oklahoma City, Oklahoma County, Oklahoma.
3. Thus, the crimes took place within a State, namely the State of Oklahoma.
4. The trial of all matters that arose in Oklahoma took place in Denver, Colorado.

**Authority.**

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held *in the State* where the said Crimes shall have been committed; but when not committed in any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. U.S. CONST. art. III, § 2 (emphasis added).

A person charged *in any State* with Treason, Felony, or other Crime, who shall flee from Justice, and be found *in another State*, shall on Demand of the executive Authority *of the State* from which he fled, be delivered up, to be removed *to the State having Jurisdiction of the Crime*. U.S. CONST. art. IV, § 2 (emphasis added).

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury *of the State and district* where in the crime shall have been committed, which *district* shall have been previously *ascertained by law* & U.S. CONST. amend. VI (emphasis added).

**Discussion.**

In addition to the analysis found in the Original Complaint, here incorporated by reference, Plaintiffs add the following. The primary point of acceptance of the transfer to Denver is the notion that the language on which the indictment is based is so-called federal law. Upon reflection, this acceptance runs into a couple of problems. First, where the one crime defined in the Constitution, itself, namely Treason, cannot be tried anywhere except the State in which such activity took place, it follows that there is nothing about a (mere) Act of Congress, defining or punishing a crime, that could expand a court's subject matter jurisdiction beyond the limits set in the Constitution, itself. That line of thought is well addressed in *Marbury v Madison*. Further, that list in Article IV, section 2, namely Treason, Felony, or other Crime, covers all possible definitions of crime, whether in the Constitution, in an Act of Congress, or in an Act of the State Legislature. Therefore, the source of the language at issue, whether of the Constitution, Congress, or the State Legislature, is not what matters. What matters is that it is a criminal Case.

Secondly, by using the phrase federal law, the suggestion is made that the language is admissible evidence of Law of the United States. More on this in the next Point, but it's not within the legislative Power granted to Congress to address the subject of murder, for purposes of making admissible evidence of Law of the United States. Some may forget that Congress has *two* bases for enacting Bills: one is the legislative Power, through which admissible evidence of Law of the United States can be generated, and the other is the exclusive legislative Authority, through which admissible evidence of Law of the District can be generated. Thus, to lump all legislative products from Congress into one bucket, so-called federal law, can produce some faulty analysis.

**Conclusion.** In sum, while there very well may exist authority that allows transfer of venue of a criminal Case, that transfer authority in no way authorizes transfer beyond the

State line. What has happened in the matters regarding McVeigh and Nichols has turned extradition on its ear. Because there is no authority in any court in Colorado to try a criminal Case that arose in Oklahoma, it follows that the judgments and orders from that court are void and unenforceable regarding each and every Case adjudicated in Colorado. Because those judgments and orders are void and unenforceable, there is no basis for an execution. Because there is no basis for an execution, this court is fully within its authority to grant the relief here requested, namely to grant Plaintiffs relief in equity in the form of a Temporary Restraining Order, a Temporary Injunction and a Permanent Injunction, each ordering the Warden to stand down from and proceed no further with any execution of Timothy McVeigh. And, not only do Plaintiffs have a direct and specific interest in that practical result, but it may be, and it is most certainly Plaintiffs intent and purpose, that the Warden and his staff would also benefit, directly and specifically, from the court s granting the relief here requested.

**Point 2:** Does every United States District Court lack subject matter jurisdiction to try murder cases?

**Summary.** In general, Yes. (There are exceptions, but this Case isn t one of those.) This Point examines into the murder charges, specifically. First, Congress has zero authority to address the subject of murder for purposes of generating admissible evidence of Law of the United States. Thus, it s just simply not possible for such language ever to become admissible evidence of Law of the United States. Secondly, while it is fully within Congress exclusive legislative Authority to define and punish murder, it is also the case that Article III, section 2, does not recognize admissible evidence of Law of the District as a basis for activating the Article III judicial Power. Thus, even if this case were properly subject to Law of the District,

such Case *must* be tried in the State judicial system, not the United States judicial system.

**Authority.**

Since this is a matter that examines into what *is not* found in the Constitution, about the only approach is to identify the exhaustive list of what *is* found in the Constitution, so as to see clearly what is not there. But as regards two provisions that are there, we find this:

[The Congress shall have Power] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square [10 miles on a side, or 100 square miles] as may, by Cession of the particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places **purchased by the Consent of the Legislature of the State in which the Same shall be**, for the Erection of Forts, Magazine, Arsenals, dock-yards, and other needful Buildings[.]

U.S. CONST. art. I, § 8 (cl. 17) (emphasis added).

The judicial Power shall extend  
to all Cases, in Law and Equity, arising under  
    this Constitution,  
    the Laws of the United States, and  
    Treaties made, or which shall be made, under their authority;

--to all Cases affecting Ambassadors, other public Ministers and Consuls;

--to all Cases of admiralty and maritime Jurisdiction;

--to Controversies to which the United States shall be a party;

--to Controversies

    between two or more States;

    --between a State and Citizens of another State;

    --between a State and Citizens of another State;

    --between Citizens of different States,

    --between Citizens of the same State claiming Lands under Grants of different States, and  
    between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. CONST. art. III, § 2.

What follows here is the exhaustive list of matters on which Congress has the authority to act, whether by Resolution (which never produces admissible evidence of Law ) or by Bill. Not in this list is anything granting to Congress authority to define and punish murder, outside the military and admiralty contexts. As each is identified, the question to ask is this: Does this

subject include, as necessary and proper, the authority to define and punish murder? The bold titles are the subjects where murder is properly addressed.

Direct Taxes. Representatives and direct Taxes shall be apportioned among the several States, which may be included within this Union, according to their respective Numbers[.] U.S. CONST. art. I, § 2 (third paragraph).

The Enumeration. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten years, in such Manner as they shall by Law direct. *Id.*

House Officers; Impeachment. The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. *Id.* (fifth paragraph).

Classes. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. Art. I, § 3 (first paragraph).

Senate Officers; Impeachment. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States. *Id.* (fifth paragraph).

Impeachment. The Senate shall have the sole Power to try all Impeachments. *Id.* (sixth paragraph).

House, Senate Election Procedures. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators. U.S. CONST. art. I, § 4 (first paragraph).

Opening Day. The Congress shall assemble at least once in every year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day. U.S.

CONST. art. I, § 4 (second paragraph).

Election Review; Attendance. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. U.S. CONST. art. I, § 5 (first paragraph).

In-house Procedure; In-house Discipline. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member. *Id.* (second paragraph).

Journal Content. Each House shall keep a Journal of its Proceedings, and from time to time publish the Same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the at the Desire of one fifth of those Present, be entered on the Journal. *Id.* (third paragraph).

Adjournment Duration. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting. *Id.* (fourth paragraph).

Compensation. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. U.S. CONST. art. I, § 6 (first paragraph).

Raising Revenue. All Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills. U.S. CONST. art. I, § 7 (first paragraph).

Pay Debts, Provide Common Defense and general Welfare, of United States. The Congress

shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts, and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States[.] U.S. CONST. art. I, § 8 (cl. 1).

Borrow Money. [The Congress shall have Power] To borrow Money on the credit of the United States[.] *Id.*(cl. 2).

Regulate Commerce. [The Congress shall have Power] To regulate Commerce with foreign Nations, among the several States, and with the Indian Tribes[.] *Id.*(cl. 3).

Naturalization; Bankruptcy. [The Congress shall have Power] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States[.] *Id.* (cl. 4).

Money Coin, Value; Weights and Measures. [The Congress shall have Power] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures[.] *Id.* (cl. 5).

Counterfeiting. [The Congress shall have Power] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States[.] *Id.* (cl. 6).

Post Office; Roads. [The Congress shall have Power] To establish Post Offices and post Roads[.] *Id.* (cl. 7).

Intellectual Property. [The Congress shall have Power] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries[.] *Id.* (cl. 8).

Trial and Appellate Courts. [The Congress shall have Power] To constitute Tribunals inferior to the supreme Court[.] *Id.* (cl. 9).

**Admiralty, Maritime Offenses.** [The Congress shall have Power] To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations[.] *Id.* (cl. 10).

It should be clear from this clause that it is necessary and proper that Congress can (and arguably must) define and punish murder in the admiralty, maritime context. Since admiralty and maritime jurisdiction in the courts extends only to matters involving ships, vessels, inland waterways, coastal waterways and the high Seas, such legislation won't (can't) exceed those limits, either.

**War, Marque and Reprisal, Captures.** [The Congress shall have Power] To declare War, grant Letters of Marque and Reprisal and make Rules concerning Captures on land and Water[.] *Id.* (cl. 11).

Letters of Marque and Reprisal, having to do with acts shy of acts of war, in response to acts done against us as a Sovereign Nation, include the authority of Congress to respond to acts done against the United States, such as killing of prisoners. In order to have a Letter of Reprisal, it follows that Congress must first have a definition of what constitutes the problem, such as the killing of prisoners. While this concept may be part of the famous Geneva Convention, it is still within Congress' necessary and proper authority to define what it is that justifies a Letter of Reprisal issued by and in the name of the United States. Note, though, that a Letter of Marque or of Reprisal is *not* something sued out in a court of Law. Thus, while the definition may be on the books, the punishment is *not* a judicial process. It's more in line with military activity. To contrast, the suing out of indictments of war crimes *is* a judicial process, although this is more likely conducted in a Court Martial.

**Financing Armies.** [The Congress shall have Power] To raise and support Armies, but no

Appropriation of Money to that Use shall be for a longer term than two Years[.] *Id.* (cl. 12).

Financing a Navy. [The Congress shall have Power] To provide and maintain a Navy[.] *Id.*  
(cl. 13).

Regulation of Land and Naval Forces. [The Congress shall have Power] To make Rules for  
the Government and Regulation of the land and naval Forces[.] *Id.* (cl. 14).

It should be clear that it is necessary and proper that Congress have the authority to define  
and punish murder as that may occur within the context of the military, whether in peacetime  
or in war.

Calling forth the Militia. [The Congress shall have Power] To provide for calling forth the  
Militia to execute the Law of the Union, suppress Insurrections and repel Invasions[.] *Id.* (cl.  
15).

Organizing, Arming and Disciplining the Militia.[The Congress shall have Power] To  
provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them  
as may be employed in the 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[.] *Id.*(cl. 16).

It should be clear that Congress has the authority (arguably, the duty) to organize, arm and  
discipline the Militia. This discipline is the same concept as that for the land and naval forces,  
and arguably is necessary and proper that this discipline must include the defining and  
punishing of murder in that context.

Exclusive Legislative Authority. [The Congress shall have Power] To exercise exclusive  
Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square [10 miles  
on a side, or 100 square miles] as may, by Cession of the particular States, and the Acceptance of

Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places **purchased by the Consent of the Legislature of the State in which the Same shall be**, for the Erection of Forts, Magazine, Arsenals, dock-yards, and other needful Buildings[.] *Id.* (cl. 17) (emphasis added).

This is the provision relied upon to justify as Law the language used as basis for the indicted murder charges against McVeigh and Nichols. On the one hand, it should be clear that it is necessary and proper that Congress have the authority (and arguably the duty) to define and punish murder for the District, and for all United States Government property, wherever situated.

On the other hand, the party alleging that Article III, § 2, subject matter jurisdiction exists has the burden to prove it. Here, since no part of Oklahoma City is in the District, fulfilling that burden entails proof that the State Legislature Consent[ed] to the purchase of the land claimed to be United States Government property. Unless the property comes within the exclusive legislative Authority, language applicable solely to such property cannot possibly be admissible evidence of Law. The failure of proving Consent by the State of Oklahoma isn't merely a no evidence point, but is, rather, a lack of subject matter jurisdiction point, because Article III subject matter jurisdiction is limited, and the burden to show that such jurisdiction exists for any case rests with the party alleging that the jurisdiction exists.

Authority to Carry Out Their Authority. [And, the Congress shall have Power] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof. *Id.* (cl. 18).

This necessary and proper clause is not a blanket grant of legislative Power on just any

and every topic whatsoever. Quite to the contrary, it is nothing more than the reasonably necessary reality that if Congress, for example, is going to set up trial and appellate courts, then Congress had also better be able to compensate the court staff personnel necessary to make the judicial process function, e.g., the judges and justices, clerks, computer operators, mail room staff and janitorial staff, as well as for the equipment, e.g., desks, air conditioners, lights, security equipment, computers, copy machines, fax machines, filestamp machines, as well as the supplies, e.g., paper, pens, pencils, erasers, receipt books, as well as space in which to perform their duties, e.g., whether by buying property outright, and building on that property, or simply renting space in privately owned buildings.

The analogy here is that a court always has the authority to determine whether it has subject matter jurisdiction. In the same way, Congress has the authority to determine and protect its authority. If this authority were understood to be so broad as to include defining and punishing murder, there would be no such thing as State Law for any subject or topic. Why enumerate a list of subject matters, and then subsume them with a blanket grant clause? That makes no logical sense.

Further, as has already been noted in context, the bolded subject titles are the ones for which it is arguably necessary and proper for Congress to define and punish murder. And, it is because there exists the necessary and proper clause that the topic of murder *can* be addressed under those subject matters.

Immigration. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight [1808], but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. U.S. CONST. art. I, § 9 (first paragraph).

Habeas Corpus. The Privilege of Habeas Corpus shall not be suspended, unless when in Cases of rebellion or Invasion the public Safety may require it. *Id.* (second paragraph).

Direct Tax. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. *Id.* (fourth paragraph).

Appropriations. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. *Id.* (seventh paragraph).

Gifts. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. *Id.* (eighth paragraph).

State-based Imposts and Duties. No State shall, without the Consent of the Congress lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress. U.S. CONST. art. I, § 10 (second paragraph).

**States War Preparedness; Compacts.** No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. *Id.* (third paragraph).

It seems reasonably necessary and proper for Congress to have the authority to distinguish between acts of War and acts of murder, when actions are undertaken by, and in the name of, a

State.

Counting Elector Votes for President. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. U.S. CONST. art. II, § 1 (third paragraph).

Electing the President. [A]nd if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. *Id.*

Electing the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President. *Id.*

Setting the Electoral Vote Day. The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States. *Id.*(fourth paragraph).

Officer to Succeed to Office of President. In Case of the removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected. *Id.* (sixth paragraph).

Vote on Treaties. He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur[.] U.S. CONST. art. II, § 2 (second paragraph).

Vote on Appointments; Establishment of Offices. [A]nd he shall nominate, and by and with

the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, who Appointments are not herein otherwise provided for, and which shall be established by Law. *Id.*

Vesting Appointment Authority. [B]ut the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. *Id.*

Establishing Trial and Appellate Courts. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. U.S. CONST. art. III, § 1.

Appellate Jurisdiction of Supreme Court. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. U.S. CONST. art. III, § 2 (second paragraph).

Place of Trial when Crime not Committed in any State. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. *Id.* (third paragraph).

Punishment of Treason. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person

attainted. U.S. CONST. art. III, § 3.

As another example of the difference between legislative Acts that could become admissible evidence of Law of the United States, and legislative Acts that can't, any statutory provisions created by Act of Congress that purport to *define* Treason are not admissible evidence of Law of the United States. Congress has no authority to *define* Treason, but only to *Punish* it, and then, only within the given restrictions. (And, the States don't even have the authority to Punish it.)

Manner of Proof of Public Acts, Records and Proceedings. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. U.S. CONST. art. IV, § 1.

New States. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. *Id.* at § 3 (first paragraph).

U.S. Government Property. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States[.] *Id.* at § 3 (second paragraph).

Guarantee of Republican Form of Government.[This actually applies for all three branches of the United States Government, not just Congress.] The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. U.S. CONST. art. IV, § 4.

Amendments. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress[.] U.S. CONST. art. V.

Imminent Domain Compensation. [N]or shall private property be taken for public use, without just compensation. U.S. CONST. amend. 5.

When the United States Government exercises imminent domain, and upon Consent by the Legislature of the State in which the property is found, Congress then exercises its Appropriations authority.

Electing the President [as amended]. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, then House of Representatives shall choose immediately, by ballot, the President. U.S. CONST. amend. 12.

Electing the Vice-President [as amended]. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President[.] *Id.*

Slavery. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation. U.S. CONST. amend. 13.

Removal of Disability. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. U.S. CONST. amend. 14, § 3.

Enforcement of 14<sup>th</sup> Amendment. The Congress shall have power to enforce by appropriate legislation, the provisions of this article. U.S. CONST. amend. 14, § 5.

The topics of the 14<sup>th</sup> Amendment are these: Citizenship of U.S., and of State; States are prohibited from abridging privileges and immunities; due process of law; equal protection; apportionment, and how the number of each State is determined; adjustment of such number if voting by those age 21 or above is abridged without cause; disability and removal of disability; validity of public debt; void obligations from insurrection or rebellion, and from emancipation of slaves.

Protection of right to vote. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate

legislation. U.S. CONST. amend. 15.

Confirmation of Source of Income. Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. U.S. CONST. amend. 16.

[18<sup>th</sup> Amendment Prohibition]

Protection of right to vote. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation. U.S. CONST. amend. 19.

Opening Day. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day. U.S. CONST. amend. 20, § 2.

Officer to Succeed to Office of President. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified. U.S. CONST. amend. 20, § 3.

Election of President and of Vice President. The Congress may by law provide for the case of the death of any of the person from whom the House of Representative may choose a President whenever the right of choice shall have devolved upon them, and for the case of the

death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them. U.S. CONST. amend. 20, § 5.

Electors from Seat of U.S. Government. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment. The Congress shall have power to enforce this article by appropriate legislation. U.S. CONST. amend. 23.

Protection of right to vote. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or by any State by reason of failure to pay any poll tax or other tax. The Congress shall have the power to enforce this article by appropriate legislation. U.S. CONST. amend. 24.

Confirmation of Vice President. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress. U.S. CONST. amend. 25, § 2.

Body to determine President s Ability to Discharge the Office; Determination of Ability Issue. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representative their written

declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the power and duties of the office as Acting President. Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the power and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or if Congress is not in session, within twenty-one days after Congress is required to assemble, determine by two-thirds vote of both House that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office. *Id.* at § 4.

Protection of Right to Vote. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation. U.S. CONST. amend. 26.

## **Discussion.**

In general, there is not only item listed here that grants, directly, and also not as a matter of

the necessary and proper clause, indirectly, the authority to Congress to define and punish murder as a matter of Law of the United States. However, since there is application of the necessary and proper clause for military matters, admiralty matters, and matters arising in the District, it follows that in such Cases, the language produced by Congress would be applicable.

It may help to mention at this point an exception, in order to add some perspective. In the event a murder Case involves an Ambassador, *then* it follows without question that the U.S. trial courts would have subject matter jurisdiction over that Case. But, key to note is that such Case *is not* a murder Case, in that the basis for activating the Article III judicial Power is not the nature of or basis for the Case, namely murder. The basis for activating the Article III judicial Power in such a Case would be the *party* to the litigation.

Murder is a matter for the State governments. Outside the military and maritime contexts, Congress has zero authority to define and punish murder by way of admissible evidence of Law of the United States. There is nothing about renaming murder, into, say, terrorism, that alters either the nature of the crime of murder (intentionally taking the life of another) or Congress expressly limited authority to address the subject matter of murder.

Congress can, and arguably must, define and punish murder, as a necessary and proper part of the authority granted for several identified subject matters. However, outside the military and admiralty contexts, the authority to do so arises solely from the exclusive legislative Authority found in the second to last clause in Article I, § 8. By such authority, any Bill defining and punishing murder that Congress might propose can become admissible evidence of Law *only* for cases geographically limited to

- (1) the Seat of the Government of the United States (the District ), and
- (2) the property owned by the United States Government.

Does the fact that this was a so-called federal building matter? Perhaps, but the two items of proof required to establish the indictment language as admissible evidence of Law were not offered at trial, and neither can that crucial evidence be anywhere found, generally. In other words, since the required evidence doesn't exist, it's somewhat difficult to offer it as the necessary proof in a court of law.

For the United States Government to own a parcel of land, there must be at least two documents: (1) some form of receipt, such as a deed, and (2) a Joint Resolution by the State in which that parcel is found Consenting to the transfer into the ownership of the United States Government. This, too, is set forth in Article I, § 8. Since neither of these items of documentary evidence appears of Record in the Cases against McVeigh, or in the Oklahoma County records, or in the records of the Oklahoma State Legislature, it follows that we're not talking about United States Government property, but rather private property.

From there, the rest follows as a matter of course.

(A) The language in the indictment, on which are based the charges of murder, is not admissible evidence of Law in this case (not in Oklahoma, not in Colorado, not in *any* State); meaning

(B) the United States Grand Jury had zero authority to indict any such murder charge;

(C) the Attorney General's Office had zero authority to prosecute any such murder charge; and

(D) the indictment is insufficient on its face, as regards those charges of murder.

Thus, (E), those murder charges in no way belong in any United States District Court, not even one in Oklahoma.

Should proof of Consent by the Oklahoma Legislature, at some point, be produced, it still follows that such charges as were brought here can only be tried in the State (county) courts. The

Article III subject matter jurisdiction does not extend to matters arising under Law of the District.

**Conclusion.** As regards the murder charges in the Cases against McVeigh, there is no subject matter jurisdiction to try those in a forum that derives its authority from Article III. The rest follows from there. The orders on those Cases are void and unenforceable. There is no basis for an execution. This court has full authority to grant the relief Plaintiffs here request.

**Point 3:** Is there an interest in maintaining the evidence possible to obtain from McVeigh that outweighs the interests in continuing with the execution?

**Discussion.** Yes. This point examines into the issue of preservation of evidence. For matters in equity, weighing the merits is necessary, and the decision turns more upon the facts and circumstances than principles of law. Further, it is unlikely to find an existing ruling that deals on all fours with the fact pattern presented in this proceeding.

Since there is no legal basis to carry out any execution, it follows that just about any meritorious need for that evidence outweighs the interest in continuing with the execution. Further, since there exists a substantial need, possibly for all the pending matters, and certainly for the matter in Oklahoma in which Plaintiffs are involved, Plaintiffs interest in having all the relevant and available evidence that still exists, and in being able to present a complete account of the facts available, thus obtaining a just and fair resolution of the pending litigation, should legitimately outweigh any particular hurry up timing for an execution.

If this were a matter regarding a document, or an object, the best evidence rule would naturally come to mind. In this matter, the best evidence is not from the representatives McVeigh has been heard to speak through (doctors, lawyers, journalists), but rather is from

McVeigh, himself. And, based on those disclosures, of what is arguably privileged information, it follows that the Government's prohibition in forcing someone to incriminate himself is neither relevant, at this stage, nor something that provides a barrier to obtaining from McVeigh the evidence he can bring into the resolution of the litigation.

There are additional details along this line of thought that may prove helpful in the analysis of this particular Point, and Plaintiffs will supplement this brief with such information at the first available moment that information is possible to submit to this court.

### **Additional Thought.**

One question that Plaintiffs expect the court will have regards the thought of collateral attack. To address that, briefly, and frankly, as a conceptual matter, that's exactly what this proceeding amounts to.

However, what's different, as a matter of interests to be adjudicated, is this. First, the criminal proceedings are not exactly the forum by which to determine the interests raised in this proceeding by these parties. The criminal proceedings properly focus on adjudication of the criminal matter(s) at hand. Therefore, as a simple matter of practicality, for these issues to be heard, and for these interests to be adjudicated, at all, they'd have to be initiated through a separate proceeding, anyway. Secondly, while the possibility of inconsistent rulings is of prime concern, until these parties have a reason to recognize the jeopardy of their interests, as a consequence of other legal proceedings, their legal interests are but speculative. At this stage, there is no speculation about their interests. Thirdly, for this court to consider this proceeding as akin to a motion for new trial, based on new evidence, the court would be fairly close, as a practical matter. The reason for suggesting this perspective is that we recognize, through the

new trial procedures, that there are times when certain interests or facts are just not known or available at the time of the first proceeding. Further, we recognize that the interests of justice allow the taking of time to determine whether that new interest or evidence would change the outcome of the original proceeding. Here, the original proceeding (the civil matter in Oklahoma) has yet to go to trial. Such evidence may have a significant impact on the outcome of the civil matter in which these Plaintiffs are parties. We lose nothing to take a moment to allow the evidence to exist long enough to become part of the trial record, for that case, and perhaps for some additional matters currently pending.

Thus, this isn't really a collateral attack through a different proceeding and different parties. It's an independent proceeding that results from recognition that interests are in jeopardy as a direct consequence of a prior proceeding, in which prior proceeding there just is no opportunity for these Plaintiffs to be heard.

### **Summary.**

No court in Colorado, whether State or United States, had subject matter jurisdiction to try the Cases against McVeigh, which Cases arose in Oklahoma.

No United States District Court has the subject matter jurisdiction to try a murder Case, when that charge is the basis for alleging subject matter jurisdiction over such Cases.

In order to encourage the fair and just resolution of all pending litigation arising from the disaster in Oklahoma City, preserving the evidence possible to obtain from McVeigh outweighs any interest in carrying out a hurry up execution.

### **Prayer for Relief**

Wherefore, premises considered, Plaintiffs request that the court grant the following relief:

1. Issue a temporary restraining order, probably ex parte, as the circumstances may initially

require, which should allow time to schedule a hearing for a temporary injunction.

2. Issue a temporary injunction, upon hearing, effectively staying the execution of Timothy McVeigh.
3. Grant a permanent injunction, upon trial, to stay the execution of Timothy McVeigh.
4. Grant any and all other relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

Harmon L. Taylor  
Texas State Bar No. 19693800

Lawyer and Counselor  
P.O. Box 516104  
Dallas, Texas 75251  
Telephone: (214) 361-0401  
Facsimile: (214) 361-0306

Lawyer for Plaintiffs

#### **CERTIFICATE OF SERVICE**

On this the 10<sup>th</sup> day of May, 2001, I certify that I have served upon the following parties, by process server, the foregoing Plaintiffs Brief:

Warden Lappin  
United States Penitentiary  
4200 Bureau Rd N  
Terre Haute, Indiana 47808

Attorney General Carter  
Indiana Government Center South, 5th Floor  
402 West Washington Street  
Indianapolis, Indiana 46204

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Harmon L. Taylor

