

Court also explained to the Defendant that under the holding in Gonzales v. Raich, 545 U.S. 1 (2005), and recent remand of United States v. Stewart, 451 F.3d 1071 (2006), the Supreme Court of the United States has made it abundantly clear that Congress “may regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce.” Raich, 125 S.Ct. at 2205.

The Defendant in his Motion For Arrest Of Judgment, urges this Court to examine the law PRIOR to Raich and Stewart. While this may provide for great debate, and may provide for a somewhat more plausible argument for the Defendant, Hale notwithstanding, unfortunately, it is not a proper analysis of the current law. Hale, Raich and Stewart simply leave no room for argument on the issue of whether the statutes under which Mr. Fincher was indicted are within the authority granted to Congress under the Constitution - they are. Furthermore, the elements of those statutes were properly presented to the jury and the jury found the Defendant guilty of same.

The Defendant’s Second Amendment arguments were also heard many times by this Court as well, and this Court, after hearing Mr. Fincher’s testimony “*in camera*,” found that The Militia of Washington County was not a well regulated militia as contemplated by the Second Amendment. During the Court’s ruling, this Court outlined and explained very clearly the history and case law as it pertains to this very issue. This Court began with the decision in U.S. v. Miller, 307 US 174 (1939) and continued with its analysis again citing the Hale decision wherein the 8th Circuit wrote a lengthy analysis of the defendant’s Second Amendment arguments and found that “The claimant of Second Amendment protection must prove that his or her possession of the weapon was reasonably related to a well regulated militia.” See id at 923. This Court also cited to the decisions in U.S. v. Oakes, 564 F.2d 384 (10th Cir. 1977) and U.S. v. Warin, 530 F.2d 103 (6th Cir. 1975) wherein it was discussed that “technical membership” or membership in an “unorganized” state

militia or non-governmental military organization is not sufficient to satisfy the reasonable relationship test of the Second Amendment.

This present motion adds nothing new to what has already been addressed by this Court numerous times before and during the trial of Mr. Fincher. For the reasons stated above, the United States respectfully requests that this motion be denied.

Respectfully submitted,

Robert C. Balfe
United States Attorney

By: **/s/ Wendy L. Johnson**
Wendy L. Johnson
Assistant U.S. Attorney
Arkansas Bar No. 94067
P. O. Box 1524
Fort Smith, AR 72902
479-783-5125

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Oscar Stilley
Attorney at Law

/s/ Wendy L. Johnson
Wendy L. Johnson
Assistant U.S. Attorney