

NO. 18 - _____

In The
Supreme Court of the United States

MICHAEL S. BENT,
Petitioner,

v.

TALKIN, et al.,
(JEFFREY SMITH, in his official capacity
as Chief of Police, Real Party in interest),
Respondent.

On Petition for a Writ of Certiorari
to The United States Court of Appeals
for The District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

Michael S. Bent, Petitioner, pro se
1115 SE 164 Ave Suite 210-N-8
Vancouver, WA 98683
Tel: 360.907.1860 | Email: msgbent@gmail.com

QUESTIONS PRESENTED FOR REVIEW

Statutory authority for the Chief of Police of this Court is established under 40 U.S.C. § 6121(a). Under this unrestrained authority a Police Booth Operation was erected on the north side of the courthouse. Litigants must surrender all papers to the Police Booth Officers with no assurance papers will be presented timely and untampered to the Clerk.

1. Does the Chief of Police via his Police Booth Operation violate Bent's right to be secure in his papers and his right to Due Process by seizing, without probable cause shown, papers intended for this Court?
2. Does the District Court abuse its discretion to deny use of that court's Electronic Case Filing system without any reason whatsoever or otherwise to test Bent's ability to overcome that court's obstacles?
3. Does Bent have supplemental standing under *Flast* given Congress has exceeded its constitutional authority to establish a Chief of Police for this Court who is not under the full supervisory authority of this Court?

PARTIES TO THE PROCEEDING

Petitioner pro se Michael S. Bent (herein, "Bent") is a resident of the County of Clark in the State of Washington. He is Plaintiff - Appellant below.

Appellee Jeffrey Smith operates as the Chief of Police of the Supreme Court of the United States under 40 U.S.C. § 6121.1 Appellee Smith directs the numerous federal officers assigned to the Police Booth on north side of the Supreme Court building.

1 § 6121. General

(a) AUTHORITY OF MARSHAL OF THE SUPREME COURT AND SUPREME COURT POLICE.—In accordance with regulations prescribed by the Marshal of the Supreme Court and approved by the Chief Justice of the United States, the Marshal and the Supreme Court Police shall have authority— (1) to police the Supreme Court Building and grounds and adjacent streets to protect individuals and property.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	v - viii
OPINIONS BELOW	1
JURISDICTION	1
RELEVANT STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
Statutory Background	3
Alternate Grounds for Standing under <i>Flast</i>	10
Proceedings Below	14
REASONS FOR GRANTING PETITION	19
I. Decisions Below Denying Jurisdiction	
Lack the Clearest of Justifications and Aberrantly Conflicts this Court's Precedent.	20
II. Decisions Below Aberrantly Conflict Precedent of this Court and Other Circuits Assuring Perceived Judicial Integrity.	22
III. Decisions Below Conflict Precedent Requiring Opportunity for Pre-compliance Review	25
IV. Decisions Below Conflict Precedent Requiring Strict Scrutiny Review.	27
V. Decisions Below Conflict Precedent and Reveal Circuit Conflict.	31
CONCLUSION	33

APPENDIX

APPENDIX A: Mandate of District Of Columbia Circuit (No. 18-5001)	1a
APPENDIX B: Order of District Of Columbia Circuit (No. 18-5001) Affirming District Court Memorandum Opinion	2a
APPENDIX C: Order of District Court (17-2320 (CKK))	4a
APPENDIX D: Memorandum Opinion of District Court Denying Jurisdiction (17-2320 (CKK))	5a
APPENDIX E: Order Denying Use Of ECF (17-2320 (CKK))	15a
APPENDIX F: District of Columbia Local Civil Rule Lcvr 5.4	16a
APPENDIX G: US Constitution Provisions	18a
APPENDIX H: Federal Statutes and Agency Regulations	19a

TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
<i>Adickes v. S. H. Kress & Co.</i> , 398 U. S. 144 (1970)	30
<i>Arnett v. Kennedy</i> , 416 U.S. 134, 94 S.Ct. 1633 (1974)	28
<i>Bullfrog Films Inc. v. Wick</i> , 847 F.2d 502 (9th Cir.1988))	32
<i>Caperton v. Massey Coal Co.</i> , 129 S. Ct. 2252 (2009)	12, 27, 29
<i>City of Los Angeles v. Patel</i> , 135 S. Ct. 2443 (2015)	25, 26
<i>Cox v. State of Louisiana</i> , 379 U.S. 559, 85 S.Ct. 476 (1965)	24
<i>Cruz v. Beto</i> , 405 U.S. 319 (1972)	19
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007)	19
<i>Estelle v. Williams</i> , 425 U.S. 501, 96 S.Ct. 1691 (1976)	9
<i>Flast v. Cohen</i> , 392 U.S. 83, 88 S.Ct. 1942 (1968)	10, 12
<i>Grayned v. City of Rockford</i> , 408 U.S. 104, 92 S.Ct. 2294 (1972)	6, 32
<i>Griffin v. Thompson</i> , 43 U.S. (2 How.) 244 (1844)	14, 17, 21

TABLE OF AUTHORITIES – Continued

Page	
<i>Hilderbrand v. Suter</i> , Dist. Court Civil Action No. 14-1449, Dist. of Columbia, 2014	9
<i>In re Marin</i> , 956 F.2d 339 (D.C. Cir. 1992))	14, 16, 21
<i>Kentucky v. King</i> , 563 U.S. 452, 131 S.Ct. 1849 (2011)	25
<i>Marshall v. Jericho</i> , 446 U.S. 238 (1980)	13
<i>McCullen v. Coakley</i> , 573 U. S. ___, 134 S.Ct. 2518 (2014)	7
<i>Mistretta v. United States</i> , 488 U. S. 361 (1989)	23
<i>Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.</i> , 460 U.S. 1, 103 S.Ct. 927 (1983)	22
<i>Patsy v. Board of Regents</i> , 457 U.S. 496, 102 S.Ct. 2557 (1982)	21
<i>Pennekamp v. Florida</i> , 328 U.S. 331, 66 S.Ct. 1029 (1946)	23
<i>Quackenbush v. Allstate Ins. Co.</i> , 517 U.S. 706, 116 S.Ct. 1712 (1996)	20
<i>Reno v. Flores</i> , 507 U.S. 292, 113 S.Ct. 1439 (1993)	29
<i>Republic of Philippines v. Westinghouse Elec. Corp.</i> , 43 F.3d 65 (3d Cir. 1994)	22

TABLE OF AUTHORITIES – Continued

	Page
<i>Republican Party of Minnesota v. White</i> , 536 U.S. 765, 122 S.Ct. 2528 (2002)	6, 23
<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> , 411 U.S. 1, 93 S.Ct. 1278 (1973)	30
<i>So. Dakota v. Dole</i> , 483 U.S. 203, 107 S.Ct. 2793 (1987)	11
<i>Stern v. Marshall</i> , 131 S. Ct. 2594 (2011)	13
<i>United States v. Butler</i> , 297 U.S. 1, 56 S.Ct. 312 (1936)	11
<i>United States v. Diebold, Inc.</i> , 369 U. S. 654 (1962)	30
<i>US v. Will</i> , 449 U.S. 200 (1980)	13, 27
<i>Weber v. Aetna Casualty & Surety Co.</i> , 406 US 164 (1972)	30
<i>Williams Yulee v. Florida Bar</i> , ____ U.S. ___, 135 S.Ct. 1656 (2015)	28, 30

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTION, STATUTES & REGULATIONS

U.S. Const., Amend. I	2, 11, 12, 18a
U.S. Const., Amend. IV	2, 4, 12, 20, 25, 18a
U.S. Const., Amend. V	2, 5, 12, 20, 18a
18 U.S.C. § 1345(b)	2, 20, 19a
28 U.S.C. § 671	2, 24, 19a
28 U.S.C. § 672	2, 13, 24, 20a
28 U.S.C. § 1254	1, 2, 20, 21a
28 U.S.C. § 1331	1, 2, 20, 21a
28 U.S.C. § 1367	1, 2, 20, 21a
40 U.S.C. § 6102(a)	2, 23a
40 U.S.C. § 6121	Passim, 23a
42 U.S.C. § 654(7)	2, 15, 24a

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 65	20
--------------------	----

PETITION FOR A WRIT OF CERTIORARI

Bent respectfully petitions pro se for writ of certiorari to review the unpublished ORDER of the United States Court of Appeals for the District of Columbia Circuit (hereafter, "Appellate Court") in this proceeding.

OPINIONS BELOW

The ORDER of the Appellate Court affirming the District Court MEMORANDUM OPINION is included at Appendix B ("Pet.App.B"). The MEMORANDUM OPINION of the United States District Court for the District of Columbia (hereafter, "District Court") summarily dismissing is included at Pet.App.D. The ORDER of the District Court denying Motion for Use of that court's electronic filing system (CM/ECF) Username and Password is included at Pet.App.E.

JURISDICTION

The judgment of the Appellate Court was entered on August 14, 2018. This Court granted filing extension to January 11, 2019 (18A498) and has jurisdiction under 28 U.S.C. § 1254(1). Federal jurisdiction in the court of first instance was under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367, given that claims for relief derive from the United States Constitution and the laws of the United States.

RELEVANT STATUTORY PROVISIONS

U.S. Constitution Amendment I, IV and V are reproduced at Pet.App. at 18a.

Federal Statutes:

18 U.S.C. § 1345(b); 28 U.S.C. § 671; 28 U.S.C. § 672; 28 U.S.C. § 1331; 28 U.S.C. § 1254; 28 U.S.C. § 1367; 40 U.S.C. § 6102(a); 40 U.S.C. § 6121; and 42 U.S.C. § 654(7) are reproduced at Pet.App. at 19a-24a.

STATEMENT OF THE CASE

The Appellate Court decision authorizes federal officers, without probable cause shown, to freely intercept, confiscate and potentially manipulate briefs intended for this Court.

Below Bent sought to prevent confiscation of his petitions, without probable cause shown, as is standard practice of officers stationed at the Police Booth on the sidewalk north of the Supreme Court. The courts below deny jurisdiction on basis that they cannot "compel the Clerk of the Supreme Court to take any action." Pet.App.D at 14a. The Clerk is clearly not himself a party in the case nor does Bent's requested relief implicate the Clerk. Neither the courts below nor Appellees show that the Clerk must alter his operation, directly or indirectly by imposing on the Appellees. Yet, on a whim the courts below deny jurisdiction on irrelevant basis that Bent seeks to impose on the Clerk of this Court and the unsubstantiated basis that the Chief of Police is an officer of this Court. Unlike the Clerk of this Court, the Supreme Court Justices have no supervisory authority over the Chief of Police and

hence he is not, within the meaning used below, an officer of this Court.

Under the questioned operation, the Clerk receives briefs from the Police Booth Officers supposedly after inspection and in this regard, the operation is unchallenged. Bent only challenges the confiscation of briefs, without probable cause shown, by the Police Booth Officers directed by the Chief of Police.

Only this Court can clarify its precedent as to whether the Chief of Police is an officer of this Court under precedent of this Court.

Statutory Background

Statutory authority for the Supreme Court Police is established under 40 U.S.C. § 6121(a). Pet.App. at 23a. Under this unrestrained authority a Police Booth Operation was erected outside the courthouse. Guides for Counsel "*Delivery of Documents to the Clerk's Office*"² is the only source of information on the Police Booth Operation and provides:

"Briefs that are delivered to the police booth at the North Drive of the Supreme Court building before 2:00 p.m. on a day that the Court is open for business will be delivered to the Clerk's Office that same day, provided that they are submitted in an open container. To be considered an "open container," the package containing the briefs may not be sealed or taped shut, and no envelopes or other containers

² <https://www.supremecourt.gov/deliveryofdocuments.aspx>; Internet site: last visited December 27, 2018.

within or attached to the package may be sealed or taped shut. Parties to merits cases are strongly encouraged to have briefs hand-delivered to the police booth at the North Drive of the Supreme Court building, rather than having those briefs delivered by U.S. mail or commercial carrier."

This guide does not definitively indicate, but the Police Booth Officers do in fact require all papers to be surrendered. Litigants must first stuff all papers into a garbage bag provided by the Police Booth Officer. The papers are then hauled away to an undisclosed location by the officer.

While not explicit, the Police Booth Operation effects a seizure under a presumption of legitimacy and mandated voluntary action. It only demands delivery to the Police Booth, but once concealed in possession of the Police Booth Officer, the documents may be searched, diverted, or even replaced. As such, the integrity of documents delivered to the Clerk cannot be assured and thus the Police Booth Operation directly violates Bent's right to be secure in his papers as guaranteed by the Fourth Amendment. Undoubtedly, this Court would not approve though under § 6121, only "[i]n accordance with regulations ... approved by the Chief Justice ... the Supreme Court Police ... have authority ... to police the Supreme Court Building." This hints to illegitimacy as there are no indications that the Chief Justice sanctions the Police Booth Operation, as is provided under Building Regulations for policies relating to policing of grounds.³

This and many other aberrant conflicts with precedent of this Court suggests the Police Booth Operation lacks this Court's approval and reinforces concerns of illegitimacy and foul play.

Police Booth Seizure Violates Bent's Right to Due Process.

Bent has a federal statutory right of meaningful access to petition this Court protected by the Due Process clause of the Fifth Amendment. Meaningful access requires the Court assure Bent's filings are in fact the papers he has submitted to communicate his requests, arguments and pleas. If the Court fails to protect the integrity of Bent's Petition, then, in a practical sense the Court has in fact denied Bent meaningful access.

Viewed for what it is, a clandestine seizure, it becomes evident that the Police Booth Operation requires Bent to compromise, if not surrender, his right of access to petition this Court. This Bent is assured is a step this Court would not sanction as every court to consider the issue has affirmed that the government has a compelling interest in the appearance and actuality of an impartial judiciary. See *Republican Party of Minnesota v. White*, 536 U.S. 765, 775-76, 122 S.Ct. 2528 (2002).

This Court Discourages Vague Statutory Requirements.

Additionally, Due Process requires that insufficiently clear regulations be held void for

3 <https://www.supremecourt.gov/about/buildingregulations.aspx>
Internet site: last visited December 27, 2018.

vagueness. "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2299 (1972). Here however, the underlying policies clarifying the Police Booth Operation are entirely lacking. If in fact the Chief Justice has approved the Police Booth Operation, it was incumbent on the Chief of Police to ensure the approval and guidelines for the Booth were prominently published especially considering public concern regarding opacity of this Court⁴.

Police Booth Operation Compromises Integrity but Does Not Enhance Security.

Visitors routinely enter this Court with personal baggage screened under security procedures at the visitor entrances. As may be obvious, whatsoever devices, undetectable by visitor screening, that the Police Booth Officers seek to detect via the Police Booth Operations, are permitted into the open court in even greater amounts in baggage readily transported by visitors. As such, whatsoever security risk paper booklets present, is simply not mitigated even by seizure of briefs at the Police Booth. Hence, the Police Booth's location outside the court building offers no added security benefit over what is now provided at the

⁴ "[T]he opacity and non-reviewability of the process has already threatened to undermine the [Supreme] Courts integrity." A Question of integrity: Politics, Ethics and the Supreme Court, p4, Alliance for Justice.

<https://www.afj.org/wp-content/uploads/2013/11/recusal-afj-memo.pdf> Internet site: last visited December 27, 2018.

courthouse entrance to screen visitors.

Accordingly, even if to promote the important objective of Court personnel safety, prudent inspection by the Court Police in a secure manner in view of the litigant at the Supreme Court entrance offers the same level of security effectiveness. Instead the Police Booth Operation intervenes in the case-filing process and renders Supreme Court Clerks unable to assure the integrity of case documents now filed in this Court.

Arranging for officers to intercept case documents via the unmonitored Police Booth Operation may be efficient. However, it unnecessarily compromises integrity especially here because, this Court assures that while intrusive means are "easy to enforce, the prime objective of the [Constitution] is not efficiency." *McCullen v. Coakley*, 573 U. S. ___, 134 S.Ct. 2518, 2540 (2014).

This gross deficiency raises doubt that the Police Booth Operation is actually for the Court's security.

Police Booth Operation Destroys Perception of Integrity

It makes little difference how lack of integrity is manifested within this Court operations as it is the impact of the deficiency that is relevant. Additionally, the integrity and perceived impartiality of this Court can be no better than the perceived impartiality of its weakest link. Litigants lose sight of documents once deposited with the Police Booth Officer with no assurance that booklets reviewed by this Court are affirmatively what was submitted.

Clearly, the Chief of Police holds the power to filter-out undesirable briefs without detection or recourse by litigants. In so doing, the Police Booth Operation establishes the Chief of Police as a master adjudicator. By his action he can ensure this Court reliably denies any petition he intercepts.

Police Booth Officers Established as Adjudicators.

To assure the federal judiciary would be impartial and not under congressional control, the founders assured Congress could not manipulate their wages. Here however, the Chief of Police and his army of Police could readily lose their prestigious posts at Congress' whim and thus are likely to ensure no case is presented to this Court that might compromise their continued employment or the power they possess. This clearly conflicts with precedent whereby this Court established "the probability of deleterious effects on fundamental rights calls for close judicial scrutiny." *Estelle v. Williams*, 425 U.S. 501, 504, 96 S.Ct. 1691 (1976).

As such the perceived integrity of this Court, while paramount, is undermined by the Police Booth Operation.

Irrational to Accept Police Booth Operation as Legal.

Federal law, 40 U.S.C. § 6121 et seq., establishes that only in "accordance with regulations ... approved by the Chief Justice" does the Chief of Police have authority "to police the Supreme Court Building and grounds." However, the Police Booth Operation

exceeds the authority granted to simply police the courthouse and grounds. It also undermines Rules 1, 12, 13 and 29 of the Supreme Court that unambiguously establish that litigants are to deliver case documents to the Clerk. This understanding is also evident to lower courts holding that “[t]he Clerk of the Supreme Court is the designated recipient of all documents filed with the Supreme Court ...” *Hilderbrand v. Suter*, Dist. Court Civil Action No. 14-1449, Dist. of Columbia, 2014.

Given the many aberrant conflicts with this precedent of this Court and the Rules of this Court, it is not rational to assume the Police Booth Operation is actually approved by the Chief Justice and raises concerns of integrity and impartiality.

Alternate Grounds for Standing under *Flast*

Bent anticipates needing to again submit briefs to this Court, either for the originating action from the Ninth Circuit Court of Appeal or for this action. In either situation, Bent again will need to surrender his rights to the Police Booth Officers in handing over his briefs with no assurance they will be presented timely and untampered to the Clerk. As such, Bent asserts constitutional Standing to raise this Petition.

Should this Court find deficiency or Respondent challenge this basis for standing, Bent herein argues that *Flast*’s⁵ central holding extends to congressional violation of Bent’s right to petition for redress, to be Secure in his Papers and right of Due Process. *Flast* established Standing for taxpayer under the spending

⁵ *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942 (1968).

clause where, as here, an act of Congress directly violated constitutional constraints. By extension *Flast* therefore provides alternate grounds for Standing to challenge the statutory authority granted the Supreme Court Chief of Police under 40 U.S.C. § 6121(a)6. Pet.App. at 23a.

Congressional authority, though broad, is limited and enactments of Congress cannot directly conflict with the Constitution nor require others to act in conflict with the Constitution. As this Court proclaimed:

"Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted [sic] to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land." *United States v. Butler*, 297 U.S. 1, 69, 56 S.Ct. 312 (1936).

This "independent constitutional bar" limitation on the spending power reflected in this Court's "opinions stands for the unexceptionable proposition that the power may not be used to induce the [government officials] to engage in activities that would themselves be unconstitutional." *So. Dakota v. Dole*,

6 40 U.S.C. § 6121(a) — Authority of Marshal of the Supreme Court and Supreme Court Police. —In accordance with regulations prescribed by the Marshal of the Supreme Court and approved by the Chief Justice of the United States, the Marshal and the Supreme Court Police shall have authority—

(1) to police the Supreme Court Building and grounds and adjacent streets to protect individuals and property;

483 U.S. 203, 209, 107 S.Ct. 2793 (1987).

As noted under *Flast*, "[t]he Establishment Clause was designed as a specific bulwark against such potential abuses of governmental power, and that clause of the First Amendment operates as a specific constitutional limitation upon the exercise by Congress of the taxing and spending power conferred by Art. I, § 8." *Flast v. Cohen*, 392 U.S. 83, 104, 88 S.Ct. 1942 (1968). Here, Congress has directly contravened the First, Fourth and Fifth Amendments⁷ and enables the Chief of Police to freely infringe Bent's right of access to this Court. These constitutional guarantees are revered no less than the Establishment Clause on which *Flast* is grounded. Clearly, to the degree the Chief of Police may operate without direct supervision by the Chief Justice, it cannot be said this Court, from the Police Booth drop-off through to case disposition, is "'likely' to be neutral", and therefore there exists "an unconstitutional 'potential for bias.'" *Caperton v. Massey Coal Co.*, 129 S. Ct. 2252, 2259-2262 (2009). As this Court has long held:

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts of law at the same time, it

7 Amendment I: Congress shall make no law ... prohibiting the free exercise thereof ... to petition the Government for a redress of grievances.

Amendment IV: The right of the people to be secure in their ... papers, and effects, against unreasonable searches and seizures, shall not be violated.

Amendment V: No person shall ... be deprived of ... liberty, or property, without due process of law.

preserves both the appearance and reality of fairness by ensuring that no person will be deprived of his interest in the absence of a proceeding in which he may present his case with the assurance the arbiter is not predisposed to find against him." *Marshall v. Jericho*, 446 U.S. 238, 242 (1980).

In failing to assure the Chief Justice holds direct supervisory authority of the Chief of Police, under 40 U.S.C. § 6121 in concert with 28 U.S.C. § 672, Congress has crossed the constitutional limit of their Spending Power and it is the painful duty of this tribunal to intervene.

While the importance of protecting judicial compensation has long been recognized by the highest of Courts, there are no safeguards for the Police Booth Officers. Surely, Police Booth Officers are no less prone to human weakness and "[i]n the general course of human nature, a power over a man's subsistence amounts to a power over his will." See *US v. Will*, 449 U.S. 200, 214 (1980) and *Stern v. Marshall*, 131 S. Ct. 2594, 2609 (2011). Obviously here, there are no safeguards for the Police Booth Officers and as such, with 40 U.S.C. § 6121 et seq., Congress has done the unthinkable in establishing an adjudicator authorized to intercept briefs without adequate safeguards. It is undoubtedly the Courts' painful duty to intervene.

Failure to assure the Justices maintain direct supervisory authority over all who may compromise the integrity of this Court conflicts precedent of this Court, establishing "it is the right and duty of the [Supreme] Court ... to correct the irregularities of its officer and

compel him to perform his duty." *In re Marin*, 956 F.2d 339, 340 (D.C. Cir. 1992), citing *Griffin v. Thompson*, 43 U.S. (2 How.) 244, 257 (1844). It also contravenes the Constitution, exceeds Congressional authority and therefore establishes Standing under *Flast*.

Proceedings Below

Originating Petition For Certiorari

Prior to initiating the lawsuit below, Bent sought clarification of this Court's case-filing process via an Application to Honorable Justice Kennedy on October 5, 2017. The Application requested this Court to clarify requirements for delivery and filing of documents, citing inconsistencies between the published *Rules of the Supreme Court*⁸ and the Police Booth Operation. The Clerk clarified by phone that the Supreme Court lacks jurisdiction for direct review of the Police Booth Operations and hence the below action was initiated to ensure Bent's briefs intended for this Court would not be compromised prior to delivery to the Clerk.

Bent sought to ensure uncompromised delivery of his Petition for Certiorari under a separate case involving the Acting Assistant Secretary for the Administration for Children and Families. That action challenges the constitutionality of the federal *Child Support Enforcement Program*, 42 U.S.C. §§ 651-669 (herein, "Title IV-D"). Under Title IV-D, the Secretary has authority to provide for "Incentives" payable by his

⁸ RULES OF THE Supreme Court of the United States; Adopted April 19, 2013 and Effective July 1, 2013. Applicable sections are unchanged in rules Adopted September 27, 2017 and Effective November 13, 2017.

agents to any court or law enforcement officer his agents consider "appropriate." 42 U.S.C. § 654(7). Pet.App. at 24a. That ghastly provision of federal law allows the agency to legally entice courts and law enforcement officers to do as the agency pleases. Given the potential for impropriety, Bent sought to minimize risk of his briefs being compromised and assure access to an impartial tribunal.

Bent filed Verified Complaint for declaratory and injunctive relief on October 31, 2017. Bent motioned for an injunction prohibiting the Police Booth Officers from confiscating Bent's paper booklets intended for this Court. Instead suggesting that inspection be performed in view of a witness (for example, Bent himself or the Supreme Court Clerk).

Anticipating the courts below would prefer to avoid imposing unless necessary, in his Complaint Bent recorded his prior engagement with the Clerk of this Court and all that had been done preliminarily seeking to enable uncompromised delivery. However, the courts below misconstrue that Bent seeks to impose on the Clerk even without the Clerk being a party or being affected by Bent's requested relief.

Separately, given Bent does not reside in the District of Columbia but had urgent need for timely relief to ensure successful submission of his petition papers to this Court, Bent also sought approval to utilize that court's electronic filing system ("ECF") used by the defendants attorney. Having equivalent access proved necessary to submit pleadings to that court, in one instance having only 4 hours to respond to defendant's motion. Anticipating potential for

impropriety, Bent was forced to travel to the district in advance for lack of access via electronic filing.

Dismissal and Summary Judgment

On November 17, 2017, the District Court denied Bent's motion for Use of CM/ECF Username and Password. Under local rule of that court, approval is at "the discretion of the judge to whom the case is assigned." Pet.App.E at 15a and F at 16a. That court denied access, preferring instead to have "a better sense of how this litigation will proceed." *Id.* Seemingly that court believes it has discretion to deny use of the ECF system on any basis. At best that court denied access on basis of absolutely no reason whatsoever but, more seemingly, to test Bent's ability to overcome that court's obstacles.

On November 30, 2017, the District Court released a Memorandum Opinion denying Bent's motion for preliminary injunction that would have ensure inspection be performed in view of the Supreme Court Clerk. However, the decision was based on the wholly inapplicable,

"threshold reason that district courts may not compel the Clerk of the Supreme Court to take any action." *In re Marin*, 956 F.2d 339, 340 (D.C. Cir. 1992). [Citing *Griffin v. Thompson*, 43 U.S. (2 How.) 244, 257 (1844).] The Supreme Court itself has exclusive inherent supervisory authority over its own Clerk and, for that reason, district courts lack jurisdiction over cases challenging the filing practices of the Supreme Court. See *id.* (affirming dismissal of case in which plaintiff "claim[ed] the Clerk erroneously rejected certain

of his filings"); *Gillenwater v. Harris*, No. CV 16-CV-495 (TSC), 2016 WL 8285811, at *1 (D.D.C. Apr. 12, 2016), *aff'd*, No. 16-5107, 2016 WL 6915556 (D.C. Cir. Oct. 5, 2016), *cert. denied*, 137 S. Ct. 1346, 197 L. Ed. 2d 521 (2017) (dismissing case for lack of jurisdiction where plaintiff sought "a declaratory judgement that a statute and rule governing filings in the Supreme Court [were] unconstitutional"); *Miller v. Harris*, No. CV 14-1330, 2014 WL 3883280, at *1 (D.D.C. Aug. 5, 2014), *aff'd*, 599 F. App'x 1 (D.C. Cir. 2015) (dismissing case where plaintiff "sue[d] the Clerk of the United States Supreme Court and other employees of that office for returning his petition for writ of habeas corpus" because the court lacked "jurisdiction to review the decisions of the United States Supreme Court, including those of its Clerk of Court.")."

Pet.App.D at 11a.

The court did not reveal how Bent's requested relief would require the Clerk to alter his operation. Instead, the court denied its jurisdiction on merely a whim and simultaneously dismissed Bent's Complaint simply asserting "[i]t is clear that the Court lacks jurisdiction over Plaintiff's lawsuit. ... (district courts may not "compel the Clerk of the Supreme Court to take any action")." Pet.App.D at 14a.

Appeal Summary Affirmation

On December 27, 2017, Bent timely filed Notice of Appeal seeking review of the Memorandum Opinion and on August 14, 2018, the Appellate Court issued an Order summarily affirming the memorandum on yet

another whim that "the district court ... concluded that it lacked authority to enjoin or to order ... Supreme Court police officers to take specific action." Pet.App.B at 3a. Firstly, the district court had only concluded that it lacked authority to enjoin the Clerk and not the Police. Secondly, the Appellate Court decision of affirmation itself rests on a whim that the Chief of Police is truly an officer of this Court and therefore under the supervisory authority of the Chief Justice of this Court.

The Appellate Court does not address Bent's arguments below but instead downplayed the gravity of disturbing the perceived impartiality of this Court. It believed Bent alleged injury was insignificant, asserting that Bent's "speculative assertion that his filings would be tampered with did not demonstrate irreparable injury." *Id.*

Bent hereby petitions pro se for a writ of certiorari to review the judgments below and seeks leniency afforded pro se litigants especially given the gravity of the rights implicated. "Pro se pleadings are always to be construed liberally and expansively, affording them all opportunity in obtaining substance of justice, over technicality of form." *Cruz v. Beto*, 405 U.S. 319, 322 (1972). Such leniency was not evident below. While this Court also assures, "a pro se complaint, ... must be held to "less stringent standards than formal pleadings drafted by lawyers,'" the courts below have gravely misconstrued the relief Bent seeks so as to shun responsibility under their jurisdiction. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

REASONS FOR GRANTING PETITION

It is difficult to imagine a case more critical for this Court to review as the required integrity of this Court's operation, though paramount, is compromised. Federal authority is required to properly interpret and constrain statutes that establish the Chief of Police. Bent trusts this Court will agree his Police Booth Operation cannot be tolerated for the good order of society and will enjoin constitutionally valid security operations.

Bent does not challenge or question the importance of assuring the security of the Justices of this Court and other personnel. However, Bent argues that 1. probable cause must be shown before briefs can be confiscated, 2. there must be assurances that the policing function does not compromise the integrity of papers intended for this Court and 3. there must be assurance that the police operation is actually approved by the Chief Justice as required under 40 U.S.C § 6121(a).

The importance of review to each American and to this Court cannot be overstated.

I. Decisions Below Denying Jurisdiction Lack the Clearest of Justifications and Aberrantly Conflicts this Court's Precedent

The suit below raises federal questions under the United States Constitution, particularly the Fourth and Fifth Amendments, and under Federal Law including 40 U.S.C. § 6121. The District Court federal question jurisdiction arose under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1337, given that claims for relief derive from the United States Constitution and the laws of the United States.

That Court had authority to award the requested injunctive and declaratory relief under 18 U.S.C. § 1345(b) and Fed. R. Civ. P. 65. However, the District Court denied this clear jurisdiction on its unsubstantiated and clearly erroneous assertion that the requested relief somehow requires "to dictate how [the Supreme] Court's Clerk must accept filings in the future." Pet.App.D at 14a.

Assuredly, more than a mere assumption of conflict is needed to justify denial of jurisdiction. For this Court has "often acknowledged that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress [and] have a virtually unflagging obligation to exercise the jurisdiction given them." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716, 116 S.Ct. 1712 (1996). Here, aberrantly conflicting precedent, the courts below casually set aside jurisdiction on unsubstantiated insinuations of conflict. The courts below fail to even attempt to show how Bent's claims impact the Clerk of this Court or to show the Chief of Police to be an "officer" of this Court within the meaning of cited precedent wherein "it is the right and duty of the [Supreme] Court ... to correct the irregularities of its officer and compel him to perform his duty." *In re Marin*, 956 F.2d 339, 340 (D.C. Cir. 1992), citing *Griffin v. Thompson*, 43 U.S. (2 How.) 244, 257 (1844).

Clearly this Court did not indicate it could command any arbitrary officer and therefore it was incumbent on the courts below to assure the Chief of Police is affirmatively an officer of this Court before denying jurisdiction. Clearly, those courts hold jurisdiction where not otherwise reserved under federal

law, "recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights" and to compel federal officers established by acts of Congress. *Patsy v. Board of Regents*, 457 U.S. 496, 500, 102 S.Ct. 2557 (1982). Furthermore, this Court instructs and:

"emphasize that [the court's] task in cases such as this is not to find some substantial reason for the exercise of federal jurisdiction...; rather, the task is to ascertain whether there exist...the 'clearest of justifications,' that...justify the surrender of that jurisdiction." *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 26, 103 S.Ct. 927 (1983).

Given the District Court was a proper forum to challenge the Police Booth confiscation of briefs, the courts below gravely conflict precedent of this Court in denying jurisdiction.

The decisions of the courts below conflict with extensive precedent of this Court in failing their paramount role assigned them by Congress to protect constitutional rights and cannot stand.

II. Decisions Below Aberrantly Conflict Precedent of this Court and Other Circuits Assuring Perceived Judicial Integrity.

Without question, the Judicial Branch should always be held in the highest confidence and trust. As the Third Circuit wisely noted: "Our legal system will endure only so long as members of society continue to believe that our courts endeavor to provide untainted, unbiased forums in which justice may be found and

done." *Republic of Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65, 73 (3d Cir. 1994). While the District of Columbia Circuit is silent and does not reveal its opinion, it clearly maintains a aberrantly casual approach to judicial integrity in conflict with the Third Circuit. Additionally, while the Third Circuit has not addressed the precise question below, their opinion reveals commitment to take actions necessary to protect the sovereignty and the inaction enveloping the District of Columbia Circuit clearly conflict.

Moreover, decisions below are in violent conflict with extensive precedent of this Court urging that the mere appearance of impropriety, regardless of whether it is supported by fact, can compromise the public confidence in the courts. Firstly, this Court places substantial weight on the perception of judicial integrity, requiring "justice must satisfy the appearance of justice." *Republican Party*, 536 U.S. at 817. Secondly, this Court's "cases have jealously guarded that basic concept, for it ensures that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Id.* at 814. Thirdly, opinions of this Court reflect profound respect for the people but also reflects the immense importance to the judiciary. As this Court keenly recognizes, "[Courts'] authority ultimately rests on public faith in those who don the robe." *Mistretta v. United States*, 488 U. S. 361, 407 (1989).

Failure to Protect Integrity of this Court

Surely this Court should have that presumed authority since "Courts must have power to protect the

interests of ... litigants before them from unseemly efforts to pervert judicial action." *Pennekamp v. Florida*, 328 U.S. 331, 347, 66 S.Ct. 1029 (1946). However, unlike the Clerk⁹, the Chief of Police is not under the direct supervisory authority of the Justices and is not subject to removal by this Court. In fact, the Chief of Police is not subject to removal even by the Marshal¹⁰ who is to oversee the police and assure they are paid. Obviously, to correct the irregularities of its officer and compel him to perform his duty, it is essential that this Court hold authority over all officers assigned this the courthouse. Moreover, this is necessary not only for this Court but is essential to preserve the republic.

"Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. [This] Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy." *Cox v. State of Louisiana*, 379 U.S. 559, 562, 85 S.Ct. 476 (1965).

Congress' failure to assure direct supervisory control of the Chief of Police by the Supreme Court Justices disrupts the essential separation of governance

⁹ 28 U.S.C. § 671(a). The Supreme Court may appoint and fix the compensation of a clerk and one or more deputy clerks. The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the approval of the Court or the Chief Justice of the United States.

¹⁰ 28 U.S.C. § 672(c). The marshal shall: ... (8) Oversee the Supreme Court Police.

whereby the Justices must hold authority to manage all affairs of this Court. Decisions of the courts below conflict precedent of this Court in failing their paramount duty to protect the interests of the people, this Court and the judiciary.

The courts below fail to undertake review, in clear conflict with precedent of this Court and fail their constitutional duty to protect the integrity of this Court.

III. Decisions Below Conflict Precedent Requiring Opportunity for Pre-compliance Review.

The Police Booth Operation, imposes seizure and unmonitored search of Bent's documents. While "the text of the Fourth Amendment does not specify when a search warrant must be obtained, the Supreme Court has inferred that a warrant must generally be secured." *Kentucky v. King*, 563 U.S. 452, 459, 131 S.Ct. 1849 (2011). The question then is whether the warrantless search established by the Police Booth Operation is reasonable.

Because the Police Booth Operation enables a "special need" other than conducting criminal investigations, it is considered "an administrative search." *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2453 (2015). Even so this Court assures, "absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain pre-compliance review before a neutral decisionmaker." *Id.* at § III A ¶ 3. Given that the Police Booth Operation affords no opportunity whatsoever, under the Supreme Court's controlling

precedent, it is presumptively "facially invalid". *Id.* at § III A ¶ 3.

In other words, the administrative search poses risk of violating a fundamental right and in lacking provision for pre-compliance review, it is rendered unconstitutional, for "[i]f a law impinges upon a fundamental right ... secured by the Constitution it is presumptively unconstitutional." *Harris v McRea*, 448 US 297, 312 (1980). Moreover, Bent's Complaint effects a plea for pre-compliance review, but the courts below deny Bent's plea for review. By denying review, the courts below clearly conflict *Patel*, but also conflicts with precedent of this Court emphasizing the importance of prudent judicial action wherein:

"a court "must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by, because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them.". *Will*, 449 U.S. 200 at note 19.

IV. Decisions Below Conflict Precedent Requiring Strict Scrutiny Review.

Police Booth Operation Interposes a Partial Adjudicator.

The many questions surrounding the Police Booth Operation raises question of legitimacy. Yet, implicit in their judgments, the courts below hold that the Chief of Police (as adjudicator authorized to intercept briefs) is to be given the benefit-of-doubt, asserting Bent's concerns are merely "speculative" and tampering would not "demonstrate irreparable injury." Pet.App.B at 3a. This thinking clearly violates *Caperton* where this Court advised "[t]he inquiry is an objective one. The Court asks not whether the [adjudicator] is actually, subjectively biased, but whether the average [adjudicator] in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias."¹⁰ *Caperton*, 129 S. Ct. at 2259-2262. Meaning, the adjudicator must be affirmatively, "likely to be neutral." Any lesser standard of "might be neutral," or "not believed to be partial" or even "no evidence that anyone will tamper with [Bent's] filings," (Pet.App.D at 12a) is inadequate.

It is clearly reasonable to question the Chief of Police impartiality in any case plausibly relevant to the him (such as this case) or to the Congress, given: a) the direct pecuniary interest to the Chief of Police; b) the Chief of Police dependence on Congress (via 40 U.S.C. § 6121, etc.) to maintain his army of Police operatives; and c) secrecy of policies governing his Police Booth Operations.

Strict Scrutiny Review Necessary but Ignored.

Under the facts of Bent's cases, it can hardly be assumed the Police Booth Officers are impartial and, given they have been interposed in this Court's

operation, the "impartiality [of the Supreme Court operation] might reasonably be questioned." *Id.* at 1043.

That of course is not the end but just the beginning for this Court's "decisions have stressed, in situations analogous to the one faced here, that the right to an impartial decision-maker is required by due process." *Arnett v. Kennedy*, 416 U.S. 134, 197, 94 S.Ct. 1633 (1974). As such, by interposing a decision-maker with authority to intercept Bent's briefs, who is not assuredly likely to be impartial, the Police Booth Operation violates Bent's fundamental right of access to an impartial tribunal.

Unquestionably, the federal government's interest in maintaining the integrity of an independent judiciary is beyond compelling and this Court "recognized the vital [governmental] interest in safeguarding public confidence in the fairness and integrity of the nation's [courts]." *Williams Yulee v. Florida Bar*, ___ U.S. ___, 135 S.Ct. 1656, 1666 (2015). However, the unfettered discretion afforded the Chief of Police extinguishes necessary safeguards established by the Rules of this Court. For example, those rules prohibit removal of briefs from this Court once filed but the Chief of Police need not respect any such boundary.

Here the District Court erred in seemingly resorting to mere rational basis to evaluate Bent's claim, asserting "[t]he most fundamental reason that Plaintiff's Application ... will be denied is that he has not established a likelihood of success on the merits of his claims." Pet.App.D at 10a. However, the fact is

undeniable that Bent's guarantee to experience the perception of impartiality has been violated by the Police Booth Operation, and the courts requirement for Bent to show the partiality of the Police Booth Operation conflicts *Caperton* and other controlling precedent, for the:

"guarantee of "due process of law" ... forbids the government to infringe certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439 (1993).

This, strict scrutiny,

"means that the [government] rather than the complainants must carry a "heavy burden of justification." ... We must decide, first, whether the [potential partiality of the Police Booth Operation] impinges upon a fundamental right ... protected by the Constitution, thereby requiring strict judicial scrutiny." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17, 93 S.Ct. 1278 (1973). See also *Weber v. Aetna Casualty & Surety Co.*, 406 US 164, 172 (1972).

Furthermore, under strict scrutiny contexts this Court assures "any doubt as to the **existence of a genuine issue** of material fact must be **resolved against ... the moving party**." *Adickes v. S. H. Kress & Co.*, 398 U. S. 144, 157-159 (1970). Furthermore, "[o]n summary judgment the inferences to be drawn from the underlying facts ... must be viewed in the light

most favorable to the party opposing the motion." *United States v. Diebold, Inc.*, 369 U. S. 654, 655 (1962). (Emphasis added.)

Decisions below conflict with precedent of this Court requiring preliminary assessment of context and strict scrutiny when considering reasonable claim of perceived partiality. It was not for Bent to prove partiality but instead for the Chief of Police to demonstrate his Police Booth Operation clears scrutiny.

The District Court errs in failing to apply the correct adjudication standard. The government have not shown that either 40 U.S.C. § 6121 et seq. or the Police Booth Operation are narrowly tailored to achieve a compelling interest. Additionally, interpreting *Williams Yulee*, their challenge is yet more daunting in having to show their scheme does not compromise the vital and yet more compelling interest in public confidence in this Court. Instead, the courts below aberrantly conflict this Court in requiring Bent to "Establish a Likelihood of Success on the Merits." Pet.App.D at 10a. In fact, the Police Booth Operation begs to be even rationalized and it is for the government Appellees to show the Police Booth Operation to be the least restrictive means of achieving a compelling governmental interest. The courts below err in requiring Bent to have shown what was not his to show.

V. Decisions Below Conflict Precedent and Reveal Circuit Conflict.

Each Circuit maintains its own ECF system (or

an equivalent) and Bent has long had access to the ECF systems managed by the clerks of the Ninth Circuit. He has used this access responsibly and effectively for several years. This was noted in Bent's motion for access to use the ECF of the District of Columbia ("DC ECF") but ignored by the courts below.

In affirming the District Court's casually denial to use the DC ECF, the Appellate Court grossly conflicted the Ninth Circuit. Not only because the Ninth Circuit had granted access to their ECF, but because the Appellate Court authorized, in conflict with the Ninth Circuit, "officials to act in an arbitrary and discriminatory manner ... and still be completely within the scope of their regulations. This kind of unfettered discretion is patently offensive to the notion of due process." *Bullfrog Films Inc. v. Wick*, 847 F.2d 502, 514 (9th Cir.1988).

Additionally, Due Process requires that insufficiently clear regulations be held void for vagueness. "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2299 (1972). Here however, the underlying policies clarifying the District Court the discretion is entirely lacking.

While it may seem that access to the DC ECF is merely a matter of convenience and not worthy of any more than rational-basis consideration, in fact lack of access equivalent to the defendant's attorney markedly Bent's hampered his equal access to justice.

Additionally, the unbridled discretion assumed by the District Court disturbs Bent's perception of the District of Columbia courts as impartial tribunals. Yet worse, the Appellate Court affirmation authorize continued arbitrary and clearly discriminatory discretion afford the District Court.

CONCLUSION

All considered, judicial approval of the Police Booth Operation is unfathomable. The operation violates Bent's right to be secure in his papers and his right to Due Process. These considerations raise question of its legitimacy especially given the many contrasting opinions of this Court on the topic of judicial integrity.

In light of the many conflicts noted herein with federal law and controlling precedent, this Court should grant certiorari to review the contrary holdings below.

Respectfully submitted January 11, 2019.

Michael S. Bent, Petitioner, pro se
1115 SE 164 Ave Suite 210-S33
Vancouver, WA 98683
Tel: 360.907.1860 • Email: msgbent@gmail.com