

No. 18 - 917

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**In The  
Supreme Court of the United States**

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**MICHAEL S. BENT,  
Petitioner,**

**v.**

**TALKIN, MARSHAL, USSC, et al.,  
Respondent.**

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

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**PETITION FOR REHEARING**

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## 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.

Respondent Jeffrey Smith operates as the Chief of Police of the Supreme Court of the United States under 40 U.S.C. § 6121. Respondent Smith, a federal government contractor<sup>1</sup> directs the numerous federal contractors assigned to police the Supreme Court building and grounds.

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<sup>1</sup> Unlike the Clerk (per 28 U.S.C § 671), Marshal (per § 672), Reporter (per § 673), and Librarian of this Court (per § 674), the Chief of Police is not subject to removal by this Court and thus this Court lacks meaningful supervisory authority over the Chief of Police. Under the well accepted distinction between employees and contractors, the Chief and all who he directs, cannot be said to be employees of the federal government.

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## **PETITION FOR REHEARING**

Bent respectfully petitions pro se for rehearing of his petition No. 18-917. Having confiscated Bent's filing documents without probable cause, the Respondent Chief of Police invalidated Bent's required certificates. Bent's petition was thereby rendered non-conforming. Moreover, having usurped adjudicative power reserved under Article III, the Chief of Police disrupts the jurisdiction of this Court and nullified decisions as to Bent's petitions.

## **OPINIONS BELOW**

The ORDER of the United States Court of Appeals for the District of Columbia Circuit affirming the District Court MEMORANDUM OPINION is included at Appendix A.

The MEMORANDUM OPINION of the United States District Court for the District of Columbia summarily dismissing suit is included at Appendix B.

## **JURISDICTION**

Review was denied on March 18, 2019 and this Court holds jurisdiction under 28 U.S.C. § 1254(1).

## **RELEVANT STATUTORY PROVISIONS**

U.S. Constitution: Article III, Section 1, U.S. Const., Amend. IV and V at Pet.App. at 17a.

Federal Statutes: 28 U.S.C. § 671-4; 28 U.S.C. § 1254, 42 U.S.C. § 654 and 42 U.S.C. § 658a(b) reproduced at Pet.App. at 18a-22a.

### **SUMMARY OF GROUNDS**

Petitioner Bent seeks rehearing of petition 18-917 which directly challenges the unbridled confiscatory practices of the Chief of Police<sup>2</sup>. However, without cause or opportunity for pre-compliance review, those 18-917 booklets were confiscated by the Chief of Police and extensively processed prior to docketing. In so doing, he invalidated Bent's 18-917 certificates and the 18-917 booklets were rendered nonconforming. The Clerk dismissed Bent's plea to certify those compromised booklets prior to conference, resulting in this Court review of nonconforming and likely inauthentic booklets.

The Chief of Police has usurped absolute authority to decide what documents may be reviewed by this Court by interjecting himself and his army of police (hereafter, collectively, "Police Officers") in the document delivery process. He has

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<sup>2</sup> Statutory authority for the Supreme Court Police is established under 40 U.S.C. § 6121(a). Pet.App. at 21a. Under this unrestrained authority a Confiscatory practice of the Police Officers was erected outside the courthouse. Police Officers require all papers to be surrendered. Litigants must first stuff all papers into a garbage bag provided by the Police Officer. The papers are then seized and confiscated without an opportunity to obtain pre-compliance review before a neutral decisionmaker.

so alarmingly subverted this Court's document management processes as to establish himself as the Master Adjudicator of this Court, holding the power to substitute any document intended for this Court and thus decides what is presented to this Court.

Under the pragmatic perspective of this Court as incorporating all operations from receipt of delivery through to case disposition, by his actions the Chief of Police usurps adjudicative power reserved under Article III, invalidates the jurisdiction of this Court and renders decisions as to Bent's cases null.

**STATEMENT OF  
GROUNDS FOR REHEARING  
AND INTERVENING CIRCUMSTANCES OF  
SUBSTANTIAL AND CONTROLLING EFFECT**

**1. Unwarranted confiscation by the Chief of Police rendered Bent's Certificate invalid.**

At the direction of the Chief of Police and without probable cause shown, Police Officers had confiscated Bent's petition booklets and papers. Bent's 18-917 petition sought review of case directly challenging the confiscatory practices of the Chief of Police and sought procedural rigor to assure integrity of his police operation. Evident from his visceral opposition, he clearly prefers to set aside Bent's petition and hence Bent's 18-917 booklets, confiscated without probable cause, were not in safe hands and cannot be presumed authentic. In fact, Bent's underlying<sup>3</sup> petition concerns a lucrative federal program of keen interest to his many colleagues throughout Bar Associations and likewise, those confiscated 18-888 booklets cannot be presumed authentic.

As may be obvious, filing rules of this Court only apply to the Clerk and there are no requirements for Police Officers to preserve papers while in their possession. Nothing restricts Police Officers from substituting booklets prior to review and here their direct pecuniary interest in squashing Bent's petitions cannot be questioned. Police Officers rest assured that no one can ever detect alteration

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<sup>3</sup> The Chief of Police prior confiscation of Bent's documents below 18-888 spawned cause of action leading to 18-917.

because booklets are promptly destroyed after review. Considering these facts, it is reasonable to presume Bent's booklets reviewed by this Court were mere substitutes crafted to subvert Bent's petitions, if for no other reason, to circumvent Bent's controversy with the Chief of Police or simply in retaliation for Bent's burdensome suit.

All considered, given that Police Officers are not required to assure authenticity of booklets they present to the Clerk, Bent's original certification was rendered null and invalid<sup>4</sup> by Police Officers who confiscated and processed Bent's unpackaged booklets. Booklets they presented to the Clerk were not assuredly the same as the booklets Bent served on Respondents<sup>5</sup> and were thus rendered nonconforming. Bent verified the online published copies but the Clerk refused to verify the paper booklets then segregated for review.

Under *Caperton*, this Court advised that to properly consider such claims, "[t]he inquiry is an objective one. The Court asks not whether the [Chief of Police, having usurped the power of adjudicator] is actually, subjectively biased, but whether the average [Police Officer] in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias." *Caperton v. Massey Coal Co.*,

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<sup>4</sup> Certification of authenticity, as apparent under Rule 12.7, must be explicit and is not simply presumed.

<sup>5</sup> Certification of service required under Rule 29.5 and of document preparation under Rule 33.1 of this Court assuredly apply only to Bent's authentic version of his 18-888 petition served on Respondents. This is essential to the proper function of this Court.

129 S. Ct. 2252, 2259-2262 (2009). Meaning, for the proper functioning of this Court, it is essential that all who can disposition the controversy must be affirmatively “likely to be neutral.” Here however, the Police Officers cannot be presumed “likely to be neutral” when handling their adversary’s documents and any lesser standard of “might be neutral,” or even “no evidence that they will tamper with Bent’s petition,” is inadequate. As such, under *Caperton*, it is reasonable to question the authenticity of documents delivered by the Police Officers.

Bent’s underlying 18-888 petition sought review of his case challenging 42 U.S.C. §§ 651-669 (herein “Title IV-D”). Under Title IV-D, the federal Respondent Steve Wagner distributes \$500M<sup>6</sup> annually in unallocated federal “Incentives” paid to various state Bar Association affiliates. Wagner had assured below that the incentive paid under § 658a is “meant to incentivize” via “cooperative [financial] arrangements” with all “appropriate courts.” See § 654(7). Unquestionably, this aberrantly conflicts extensive precedent of this Court, observing, for example that:

“The concept of public confidence in judicial integrity does not easily reduce to precise definition ... But [it is] compelling [and] “the spectacle of ... handing over money to judicial[s] ... should be avoided if the public is to have faith in the impartiality of its

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<sup>6</sup> Unallocated federal “Incentive” grants under 42 U.S.C. § 658a(b) - *Amount of incentive payment*. See Pet.App. at 22a.

judiciary.”” *Williams Yulee v. Florida Bar*, \_\_\_\_ U.S. \_\_\_, 135 S.Ct. 1656, 1667 (2015).

Given the aberrant conflict with this vividly clear precedent of this Court, the Bar Association affiliates who benefit from Title IV-D were assuredly alarmed by Bent’s underlying 18-888 petition and likely resorted to any means necessary to circumvent review. As such, the Chief of Police, himself a celebrated Bar Association member, is reasonably presumed partial to petition 18-888 no less than to petition 18-917 wherein Bent challenges his unbridled adjudicative power. It is therefore likely, if not a surety, that even Police Officers not individually associated with Bent’s controversies have reason and means to undetectably intercept and substitute Bent’s booklets.

## **2. Confiscatory practice eradicates reasonable perception of this Court as an impartial tribunal fit to adjudicate controversies**

The import of nonconforming petitions cannot be overstated for it eradicates reasonable perception of this Court as an impartial tribunal under the pragmatic perspective of this Court as incorporating all operations from receipt of delivery through to case disposition. Failure of the Chief of Police to establish adequate procedural integrity to assure authenticity, clearly violates precedent imposing the affirmative duty to “protect the interests of … litigants before [this Court] from unseemly efforts to pervert judicial action.” *Pennekamp v. Florida*, 328 U.S. 331, 347, 66 S.Ct. 1029 (1946).

Federal law, 40 U.S.C. § 6121 *et seq.*, only provides the Chief of Police authority “to police the

Supreme Court Building and grounds.” Clearly, his confiscatory practice exceeds this basic authority but also severely conflicts Supreme Court Rules 1, 12, 13 and 29 that unambiguously establish that litigants are to deliver case documents to the Clerk. This basic understanding is evident even 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.

### **3. Indicia of Booklet Substitution**

Bent hand-delivered booklets for 18-888 on January 9, 2019 in an open container, followed likewise with 18-917 on January 10, 2019.

Booklets reviewed under 18-888 were docketed on the precise day of delivery but the contemporaneously delivered 18-917 booklets were delayed five days for extensive processing<sup>7</sup>. However, Bent’s 18-888 booklets were docketed without incident and left no reason for elevated concern to justify extensive screening of 18-917 on basis of Court security. Given that 18-917 was delivered in identical manner as 18-888 which had successfully cleared inspection in mere hours long before delivery of 18-917, the only logical inference is

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<sup>7</sup> Docket date is determined as 30 days prior to due date of response. Filing date is the date papers are confiscated by Police Officers outside the Court. Docket for 18-888 only reflects the initial date of delivery prior to requested correction. See Pet.App.C. Docket for 18-917 reflects date papers were confiscation. See Pet.App.D.

that the Police Officers deliberately held for reasons unrelated to security. Perhaps having previewed Bent's 18-888 arguments when first delivered November 15, 2018, substitute petitions could be pre-printed and immediately available to submit in place of Bent's booklets. However, some days would be needed to prepare substitute 18-917 booklets for docketing.

As noted, the 18-888 docket reveal two critical parties were missing from the case as delivered to the Clerk. However, the Solicitor General makes evident by his response that the 18-888 petition booklets reviewed by this Court differ from Bent's original received by the Solicitor General. If they were identical as expected, this Court would have likewise recognized that Wagner is a federal Respondent and awaited his waiver before distributing the 18-888 booklets. Instead, 18-888 booklets as delivered by the Police Officers must have listed a fictitious state actor causing the Clerk to distribute nine days prior to receiving waiver from the Solicitor General.

The 18-888 booklets reviewed by this Court were clearly not Bent's original booklets. Moreover, 18-917, though confiscated contemporaneously, was held in queue an extra 30 days while apparent substitute 18-888 booklets were distributed and eventually dispositioned.

#### **4. Confiscatory Practice Renders Chief of Police as Master Adjudicator and De-Facto Justice in Violation of Article III**

While the perceived integrity of this Court is paramount, it is undermined by the confiscatory practice of the Police Officers. Here, litigants lose sight of documents once confiscated by Police Officers with no assurance that documents reviewed by this Court are affirmatively what was submitted. Moreover, considering that documents are promptly destroyed after conference review, Police Officers can discretely replace briefs without detection or recourse by litigants. In so doing, the confiscatory practice of the Police Officers establishes the Chief of Police as a master adjudicator. By his action he establishes himself de-facto Master Adjudicator in violation of Article III and assures this Court reliably denies any petition he intercepts.

Clearly, the integrity and perceived impartiality of this Court is determined by its weakest link and here the confiscatory practice of the Police Officers imposes seizure and unmonitored search without recourse. In similar situations this Court advises that “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). Under precedent of this Court the practice is considered “an administrative search” because it enables a “special need” other than conducting criminal investigations. *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 2452. Given that the confiscatory practice affords no opportunity whatsoever, under this Court’s controlling precedent, it is presumptively “facially invalid”. *Id.* at 2453.

Moreover, here their administrative search poses risk of violating Bent’s fundamental right of access to an impartial tribunal 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). As such actions by the Police Officers clearly conflict with precedent of this Court and the perceived integrity of this Court, while paramount, is undermined by the Police Officers confiscatory practice.

##### **5. Confiscatory practices of the Chief of Police so Aberrantly Conflict Precedent of this Court that it Cannot be Presumed Legitimate.**

The confiscatory practice of the Police Officers effects a seizure under a presumption of legitimacy. They only demand litigants relinquish documents, but once concealed in possession of the Police Officer, the documents may be searched,

diverted, or even substituted. As such, integrity of documents delivered to the Clerk cannot be assured and thus the Police Officers directly violated Bent's right to be secure in his papers as guaranteed by the Fourth Amendment.

### **Police 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. By violating the integrity of Bent's Petition, then, in a practical sense Police Officers in fact deny Bent meaningful access.

Viewed for what it is, a clandestine seizure, it becomes evident that the confiscatory practice of the Police Officers requires Bent to 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).

### **Confiscatory practice 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 Officers seek to detect via their confiscatory practice, are permitted into the open court in even greater amounts in baggage readily transported by visitors. Hence, the confiscatory practice offers no added security benefit beyond visitor screening at the courthouse entrance.

Accordingly, even if to promote the important objective of Court personnel safety, prudent inspection in a secure manner in view of the litigant at this Court entrance offers the same level of security effectiveness. This gross deficiency raises doubt that the confiscatory practice is truly for Court security.

Given the readily apparent conflicts with precedent of this Court and the Rules of this Court, the confiscatory practice of the Police Officers is obviously not Court sanctioned and instead evidence of treasonous act of the Police Officers.

### **CONCLUSION**

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, has been destroyed. Federal law establishing the unsupervised Police Officers invalidates the very institution of justice established to safeguard the public. Under the pragmatic perspective of this Court as incorporating all operations from receipt of delivery through to case disposition, by his actions

the Chief of Police invalidates the jurisdiction of this Court and renders decisions as to Bent's cases null.

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).

Bent pleads for this Court to accept review and furthermore, to require the Clerk certify all unsigned papers intercepted by Police Officers, against the digital public copies published on the Court's website.

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

Respectfully submitted April 12, 2019.

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## CERTIFICATE OF PETITIONER

I hereby certify that this petition for rehearing is restricted to grounds limited to intervening circumstances of a substantial or controlling effect and to other substantial grounds not previously presented.

I hereby certify that this petition for rehearing is presented in good faith so that justice may be done, and is not for delay.



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## **APPENDIX**

## APPENDIX A

### UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 18-5001**

September Term, 2017

**1:17-cv-02320-CKK**

**MICHAEL S. BENT,**

**Filed On:**

Appellant, August 14, 2018

v.

Pamela Talkin,

In her official capacity as  
Marshal of the Supreme Court  
of the United States and  
JEFFREY SMITH,

In his official capacity as Chief  
of Police of the Supreme Court  
of the United States

Appellees.

**BEFORE:** Srinivasan, Millett, and Pillard, Circuit  
Judges

#### ORDER

Upon consideration of the motion for summary  
affirmance, the response thereto, and the reply, it is

**ORDERED** that the motion for summary  
affirmance be granted. The merits of the parties'  
positions are so clear as to warrant summary action.  
See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d  
294, 297 (D.C. Cir. 1987) (per curiam). Appellant's  
complaint challenges the United States Supreme  
Court's guidance governing delivery of documents to  
the Supreme Court Clerk's Office. Because the

challenged guidance and requested declaratory and injunctive relief relate to the Supreme Court's filing practices, the district court properly concluded that it lacked authority to enjoin or to order personnel in the Supreme Court Clerk's Office or Supreme Court Police Officers to take specific action. See In re Marin, 956 F.2d 339, 340 (D.C. Cir. 1992) (per curiam). The district court also did not abuse its discretion when it denied appellant's application for preliminary injunctive relief. See Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006). The district court properly determined that appellant's speculative assertion that his filings would be tampered with did not demonstrate irreparable injury. See id.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

## APPENDIX B

### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MICHAEL S. BENT,

Plaintiff,

Civil Action No.

v.

17-2320 (CKK)

PAMELA TALKIN, *et al.*,

Defendants.

### MEMORANDUM OPINION

(November 30, 2017)

The Plaintiff in this case is currently petitioning the United States Supreme Court for a Writ of Certiorari in a separate matter. He has brought this lawsuit, *pro se*, to challenge the method by which the Supreme Court has required him to deliver his petition. Before the Court is Plaintiff's [7] Application for Temporary Restraining Order and Preliminary Injunction. Upon consideration of the pleadings,<sup>8</sup> the relevant legal authorities, and the record as a whole, the Court will DENY Plaintiff's

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<sup>8</sup> The Court's consideration has focused on the following documents: • Pl.'s App. for Temporary Restraining Order and Preliminary Injunction ("Pl.'s App."), ECF No. 7;

• Defs.' Opp'n to Pl.'s App. for Temporary Restraining Order and Preliminary Injunction ("Defs.' Opp'n"), ECF No. 9; and  
• Pl.'s Reply to Defs.' Opp'n to Pl.'s App. for Temporary Restraining Order and Preliminary Injunction, ECF No. 10 ("Pl.'s Reply").

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision. See LCvR 7(f).

Application. The Court will also DISMISS this case for lack of jurisdiction.

## **I. BACKGROUND**

In a separate proceeding, Plaintiff has filed suit challenging the constitutionality of a federal program related to child support payments. The details of that lawsuit are not relevant to the Application before this Court. What is relevant, however, is that Plaintiff's claims in that lawsuit were dismissed, and he has allegedly filed a petition to the Supreme Court asking them to review that dismissal.

The case before this Court is about Plaintiff's struggles to ensure that an authentic copy of his petition makes its way to the Supreme Court in his other lawsuit. Plaintiff alleges that he first sent his petition through the United States Postal Service to the Clerk of the Supreme Court, but that the petition was "intercepted by Supreme Court police" and "sent to off-site inspection." Compl., ECF No. 1, at ¶ 17. Plaintiff alleges that "[a]fter four weeks of unexpected delay, the accompanying filing payment and certificates were reported missing." *Id.*

Plaintiff claims that he then arranged for the hand-delivery of his petition. *Id.* ¶ 18. His courier was allegedly informed that he was required by rule to leave the petition with Police Officers in a Police Officers outside of the Supreme Court building. *Id.* ¶ 21. The courier did so. *Id.* ¶ 22. Plaintiff was subsequently advised that the documents the courier had delivered had been—once again—sent off-site for inspection for safety purposes. *Id.* ¶ 23. The petition

was later returned to the Supreme Court and docketed, but Plaintiff is concerned that the documents that were docketed may have been "tampered with" and may not be "authentic." *Id.* ¶ 25.

The focus of Plaintiff's complaint is a rule that he alleges requires his petition be left at the Police Officers outside of the Supreme Court instead of directly with the Clerk of the Supreme Court. The rule Plaintiff challenges ("the Rule") states that:

Briefs that are delivered to the Police Officers 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 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 Officers at the North Drive of the Supreme Court building, rather than having those briefs delivered by U.S. mail or commercial carrier. *Id.* ¶ 3.

Plaintiff alleges that there is no authority for the Rule, and that in fact the Rule contravenes other Supreme Court rules and regulations. *Id.* ¶¶ 30-40. Plaintiff also claims that the Rule violates his rights under the Fourth and Fifth Amendments to the United States Constitution.

After filing his lawsuit, Plaintiff filed the pending Application for Temporary Restraining Order and Preliminary Injunction. Plaintiff asks the Court to enjoin Defendants, the Marshal of the Supreme Court and the Chief of Police of the Supreme Court, from enforcing the Rule. Plaintiff requested that his Application be resolved by December 1, 2017. Plaintiff's petition has already been denied by the Supreme Court, and December 1, 2017 is Plaintiff's deadline to file a petition for rehearing.

## II. LEGAL STANDARD

“A preliminary injunction is ‘an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.’ *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (“[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” (emphasis in original; quotation marks omitted)). “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (quoting *Sherley*, 644 F.3d at 392 (quoting *Winter*, 555 U.S. at 20) (alteration in original; quotation marks omitted)). “When seeking a preliminary injunction, the movant has the burden to

show that all four factors, taken together, weigh in favor of the injunction.” *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)). “The four factors have typically been evaluated on a ‘sliding scale.’” *Davis*, 571 F.3d at 1291 (citation omitted). Under this sliding-scale framework, “[i]f the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Id.* at 1291-92.

The Court notes that it is not clear whether this Circuit’s sliding-scale approach to assessing the four preliminary injunction factors survives the Supreme Court’s decision in Winter. *See Save Jobs USA v. U.S. Dep’t of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015). Several judges on the United States Court of Appeals for the D.C. Circuit have “read Winter at least to suggest if not to hold ‘that a likelihood of success is an independent, freestanding requirement for a preliminary injunction.’” *Sherley*, 644 F.3d at 393 (quoting *Davis*, 571 F.3d at 1296 (concurring opinion)). However, the Court of Appeals has yet to hold definitively that Winter has displaced the sliding-scale analysis. *See id.*; *see also Save Jobs USA*, 105 F. Supp. 3d at 112. In any event, this Court need not resolve the viability of the sliding-scale approach today as the Court determines that “a preliminary injunction is not appropriate even under the less demanding sliding-scale analysis.” *Sherley*, 644 F.3d at 393.

### III. DISCUSSION

The Court will deny Plaintiff's Application for preliminary injunctive relief because all four of the traditional factors that the Court considers when assessing such a motion weigh heavily against entering an injunction. Moreover, the Court must dismiss this case in its entirety because it is clear that it lacks jurisdiction.

#### A. Plaintiff Fails to Establish a Likelihood of Success on the Merits

The most fundamental reason that Plaintiff's Application for preliminary injunctive relief will be denied is that he has not established a likelihood of success on the merits of his claims. At its core, Plaintiff's lawsuit effectively asks this Court to decide that the Supreme Court—or certain components thereof, e.g., the Clerk, Marshall or Chief of Police—is wrong to require Plaintiff's petition be filed a certain way, and to dictate how that Court's Clerk must accept filings in the future. This lawsuit is quite unlikely to succeed—and indeed will be dismissed—for the 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). 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.”).

In Plaintiff's Reply, he responds to this argument by claiming that the Court does have jurisdiction over this case because the Rule at issue is allegedly in conflict with the official Rules of the Supreme Court. Even if this were true, it would go to the merits of Plaintiff's claim, not the Court's jurisdiction. The Court lacks jurisdiction regardless of *why* Plaintiff claims the Rule is invalid, because the Court simply cannot tell the Supreme Court how to handle its filing system. This jurisdictional hurdle makes it impossible for Plaintiff to succeed on the merits of his claims.<sup>9</sup> This not only weighs against

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<sup>9</sup> Defendants also argue that Plaintiff is unlikely to succeed on the merits because officers of the Supreme Court enjoy immunity from suits for monetary damages based on actions within their official duties. The Court agrees with Defendants

the Court granting Plaintiff's Application, it also requires that the Court dismiss this case for lack of jurisdiction.

### **B. Plaintiff Fails to Show Irreparable Injury**

Plaintiff's failure to demonstrate that he will suffer irreparable injury in the absence of preliminary injunctive relief also weighs against his Application. To show that a preliminary injunction is warranted, Plaintiff must demonstrate that there is a likelihood of irreparable harm. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) ("A movant's failure to show any irreparable harm is therefore grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief."). The Court of Appeals for the D.C. Circuit "has set a high standard for irreparable injury." *Id.* "First, the injury 'must be both certain and great; it must be actual and not theoretical.'" *Id.* (citation omitted). "Second, the injury must be beyond remediation." *Id.*

Here, any harm Plaintiff fears may befall him is entirely speculative. The Court understands that Plaintiff fears that his papers may be tampered with if he files them according to the Supreme Court's delivery rules. But Plaintiff has presented nothing but his own unfounded speculation to support that

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as a legal principle, but the Court does not rest its decision to deny Plaintiff's Application on this principle. Although Plaintiff's Civil Cover Sheet does state a demand of \$450, ECF No. 1-1 at 2, the Prayer for Relief in Plaintiff's actual Complaint does not request money damages, Compl. at 14.

theory. Not only is there no evidence that anyone will tamper with his filings, Plaintiff has not even offered a plausible motive or incentive for anyone to do so. Plaintiff does not explain why the individuals who are allegedly conducting the safety inspections of his documents—the identities of whom he does not know—have any reason to do him harm. Mere speculation is far from sufficient to establish an entitlement to preliminary injunctive relief. *Id.* (holding that an irreparable injury must be “actual and not theoretical”).

### **C. Public Interest and the Balance of Hardships**

Finally, the Court also finds that the balance of hardships and the public interest weigh against granting Plaintiff’s Application. Enjoining the challenged rule could harm Defendants and the public. As the Court understands it, the challenged Rule is in place to ensure the safety of the Supreme Court. This is clearly a weighty and legitimate public interest. The Court is well aware that our Nation’s federal courts—and the Supreme Court in particular—have been the target of attacks through the mail or other deliveries in the past. *See, e.g.,* Anne Gearan, *Supreme Court Mail Has Anthrax Scare*, WASHINGTON POST, Oct. 26, 2001, [http://www.washingtonpost.com/wp-srv/aponline/20011026/aponline134723\\_000.htm](http://www.washingtonpost.com/wp-srv/aponline/20011026/aponline134723_000.htm). No significant hardship to Plaintiff has been shown that would outweigh this important public safety interest. In fact, as explained above, the Court is not satisfied by Plaintiff’s showing that maintaining the Supreme Court’s filing rules will cause him any harm at all.

#### **D. Dismissal for Lack of Jurisdiction**

For the same reasons that the Plaintiff has not demonstrated a likelihood of success on the merits of his claims, the Court must dismiss this case. It is clear that the Court lacks jurisdiction over Plaintiff's lawsuit. *See In re Marin*, 956 F.2d at 340 (district courts may not "compel the Clerk of the Supreme Court to take any action"). Despite the fact that no motion to dismiss has been filed, the Court may not ignore this lack of jurisdiction. It must dismiss this case. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

#### **IV. CONCLUSION**

For the foregoing reasons Plaintiff's Application for Temporary Restraining Order and Preliminary Injunction will be DENIED and this case will be DISMISSED. An appropriate

Order accompanies this Memorandum Opinion.

/s/

COLLEEN KOLLAR-KOTELLY  
United States District Judge

## APPENDIX C

No. 18-888

Title: Michael S. Bent, Petitioner

v.

Cheryl Strange, et al.

Docketed: January 9, 2019

Lower Ct: United States Court of Appeals for the  
Ninth Circuit

Case Numbers: (17- 35962)

Decision Date: August 21, 2018

<b>Date</b>	<b>Proceedings and Orders</b>
Nov 15 2018	Petition for a writ of certiorari filed. (Response due February 8, 2019)
Jan 23 2019	Waiver of right of respondent Steven Wagner and Cheryl Strange to respond filed.
Jan 30 2019	DISTRIBUTED for Conference of 2/15/2019.
Feb 08 2019	Waiver of right of respondent United States to respond filed.
Feb 19 2019	Petition DENIED.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
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Party name: Steven Wagner and Cheryl Strange

3606862697

## APPENDIX D

No. 18-917

Title: Michael S. Bent, Petitioner

v.

Pamela Talkin, Marshal, Supreme Court of the  
United States, et al.

Docketed: January 15, 2019

Linked with 18A498

Lower Ct: United States Court of Appeals for the  
District of Columbia Circuit

Case Numbers: (18-5001)

Decision Date: August 14, 2018

Date	Proceedings and Orders
Nov 01 2018	Application (18A498) to extend the time to file a petition for a writ of certiorari from November 12, 2018 to January 11, 2019, submitted to The Chief Justice.
Nov 08 2018	Application (18A498) granted by The Chief Justice extending the time to file until January 11, 2019.
Jan 10 2019	Petition for a writ of certiorari filed. (Response due February 14, 2019).

Feb 14 2019 Waiver of right of respondent Talkin,  
Marshal, USSC, et al. to respond filed.  
Main Document

Feb 27 2019 DISTRIBUTED for Conference of  
3/15/2019.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
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Party name: Talkin, Marshal, USSC, et al.

202-514-2217

## **APPENDIX E**

### **CONSTITUTION PROVISIONS**

#### **Article III, Section 1**

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. Constitution Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### **U.S. Constitution Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**APPENDIX F**  
**FEDERAL STATUTES AND AGENCY**  
**REGULATIONS**

**28 U.S.C. § 671. Clerk**

- (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.
- (b) Repealed. Pub. L. 92-310, title II, § 206(c), June 6, 1972, 86 Stat. 203.]
- (c) The clerk may appoint and fix the compensation of necessary assistants and messengers with the approval of the Chief Justice of the United States.
- (d) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him. He shall make annual returns thereof to the Court under regulations prescribed by it.

**28 U.S.C. § 672. Marshal**

- (a) The Supreme Court may appoint a marshal, who shall be subject to removal by the Court, and may fix his compensation.
- (b) The marshal may, with the approval of the Chief Justice of the United States, appoint and fix the compensation of necessary assistants and other employees to attend the Court, and necessary custodial employees.
- (c) The marshal shall:
  - (1) Attend the Court at its sessions;
  - (2) Serve and execute all process and orders issued

by the Court or a member thereof;

- (3) Take charge of all property of the United States used by the Court or its members;
- (4) Disburse funds appropriated for work upon the Supreme Court building and grounds under the jurisdiction of the Architect of the Capitol upon certified vouchers submitted by the Architect;
- (5) Disburse funds appropriated for the purchase of books, pamphlets, periodicals and other publications, and for their repair, binding, and rebinding, upon vouchers certified by the librarian of the Court;
- (6) Pay the salaries of the Chief Justice, associate justices, and all Police Officers and employees of the Court and disburse other funds appropriated for disbursement, under the direction of the Chief Justice;
- (7) Pay the expenses of printing briefs and travel expenses of attorneys in behalf of persons whose motions to appear in forma pauperis in the Supreme Court have been approved and when counsel have been appointed by the Supreme Court, upon vouchers certified by the clerk of the Court;
- (8) Oversee the Supreme Court Police.

#### **§ 673. Reporter**

- (a) The Supreme Court may appoint and fix the compensation of a reporter of its decisions who shall be subject to removal by the Court.
- (b) The reporter may appoint and fix the compensation of necessary professional and

clerical assistants and other employees, with the approval of the Court or the Chief Justice of the United States.

- (c) The reporter shall, under the direction of the Court or the Chief Justice, prepare the decisions of the Court for publication in bound volumes and advance copies in pamphlet installments. The reporter shall determine the quality and size of the paper, type, format, proofs and binding subject to the approval of the Court or the Chief Justice.

#### **§ 674. Librarian**

- (a) The Supreme Court may appoint a librarian, whose salary it shall fix, and who shall be subject to removal by the Court.
- (b) The librarian shall, with the approval of the Chief Justice, appoint necessary assistants and fix their compensation and make rules governing the use of the library.
- (c) He shall select and acquire by purchase, gift, bequest, or exchange, such books, pamphlets, periodicals, microfilm and other processed copy as may be required by the Court for its official use and for the reasonable needs of its bar.
- (d) The librarian shall certify to the marshal for payment vouchers covering expenditures for the purchase of such books and other material, and for binding, rebinding and repairing the same.

#### **28 U.S.C. § 1254 Courts of appeals; certiorari; certified questions**

Cases in the courts of appeals may be reviewed

by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

**40 U.S.C. § 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;
  - (2) in any State, to protect—(A) the Chief Justice, any Associate Justice of the Supreme Court, and any official guest of the Supreme Court; and (B) any officer or employee of the Supreme Court while that officer or employee is performing official duties;

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**42 U.S.C. § 654 - State plan for child and  
spousal support**

(7) [A State plan must] provide for entering into cooperative arrangements with appropriate courts and law enforcement officials ...

(A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and

(B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

**42 U.S.C. § 658a(b) - Amount of incentive  
payment**

(1) In general

The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(2) Incentive payment pool

(A) In general

In paragraph (1), the term "incentive payment pool" means—

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(ix) \$483,000,000 for fiscal year 2008; and

(x) for any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year, multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year.