No.

In The
Supreme Court of the United States

Donald Sullivan *Petitioner*

v.

Robert Wayne Pugh and *Defendants*
Karen Lloyd Pugh, his wife

+++++++

TOG PROPERTIES, LLC *Respondent*

v.

Karen Pugh *Defendant*

On Writ of Certiorari
To the North Carolina Supreme Court

PETITION FOR WRIT OF CERTIORARI

Donald Sullivan, *Without Representation*
Lt. Col., USAFR(R)
PO Box 441
Atkinson, North Carolina
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Questions Presented for Review

Question: Whether or not the presiding judge in the lower court, the judges of the Court of Appeals of North Carolina and the justices of the North Carolina Supreme Court, acted in violation of their oaths of office by denying Petitioner's demanded constitutional trial by jury over his objections, committing reversible error in their orders allowing and affirming Respondent's motion for summary judgment and motion to dismiss appeal, while denying Petitioner's Notice of Appeal of Right to the North Carolina Supreme Court from said orders.

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Petitioner takes this petition for a writ of certiorari from the decision in North Carolina Superior Court of 14 February, 2017 (#'s 14CVS124 and 15CVS348); the affirmation of said decision by the North Carolina Court of Appeals on 3 April, 2018 (#17-450); and Petitioner's Appeal of Right to the North Carolina Supreme Court denied on 14 August, 2018 (#136A18). From that order of the North Carolina Supreme Court this petition for a writ of certiorari issues.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a), and the Constitution of the United States at Article III, Section 2.

Constitutional/Statutory Provisions Involved

Constitution of the United States, Article III, Section 2:

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

Constitution of the United States, Article VI, Clause 3:

> "...all...judicial Officers, both of the United States and of the Several States, shall be bound by Oath or Affirmation, to support this Constitution..."

Constitution of the United States, 7th Amendment:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

Constitution for North Carolina, Art. I, Sec. 5:

> "Allegiance to the United States. Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force."

Constitution for North Carolina, Article VI, Section 7:

> "Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:
> 'I,_____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God.'"

Constitution for North Carolina, Article 1, Section 25:

> "In all controversies in law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people and shall remain sacred and inviolable."

NCGS 1A-1, Rule 38, Jury trial of right:

> "(a) The right of trial by jury as declared by the Constitution or statutes of North Carolina shall be preserved to the parties inviolate."

NCGS 1A-1, Rule 56, Summary Judgment:

> "(a) A party seeking to recover upon a claim, counterclaim, or crossclaim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof."

Statement of Facts

1. This case results from a debris fire started by neighbors (Defendants Pugh) of the Petitioner (Sullivan) which burned out of control to adjoining land then belonging to the Respondent (TOG) on or about April 14, 2012, destroying 500 acres of vegetation, along with several of Petitioner's structures on the property. The land, but not the buildings and structures, was sold to the Respondent by the Petitioner thru B & N Properties of Pender, LLC, on a two-year note and deed of trust on June 1, 2006. Kenner E. Day signed for Respondent on both the promissory note benefitting B&N and the deed of trust generated at the closing on said property on or about June 1, 2006, with a maturity date of or about June 1, 2008.

2. Kenner E. Day signed for Respondent on a Mortgage Modification Agreement executed on or about February 22, 2008, which extended Respondent's maturity date three years to June 1, 2011, on both the abovementioned promissory note and deed of trust, with an option for three more years on the agreement. No further payments were received on the note prior to its expiration date.

3. Respondent filed for bankruptcy protection in federal bankruptcy court under 11USC1123 on or about July 16, 2010, listing Petitioner as a secured creditor with Matthew Weinstein as authorizing agent. Said bankruptcy was voluntarily dismissed by Respondent in 2011. Upon information and belief, nothing in the bankruptcy filings showed Matthew Weinstein as an owner of Respondent, although mention was made of the termination of Mr. Day as president of TOG (An office which, upon information and belief, did not exist, Respondent "TOG Properties, LLC" consisting of only "member managers") on May 9, 2010. Otherwise, Mr. Day's relationship with the Respondent and position as registered agent for the Respondent in North Carolina remained apparently unchanged.

4. On or about November 5, 2010, B&N Properties of Pender, LLC, issued an Assignment of Mortgage making Petitioner the holder of said deed of trust and promissory note, recorded in the Pender County Records in Book 3847, Page 131.

5. Upon information and belief, after June 1, 2011, Respondent was in default on the aforementioned note, deed of trust and mortgage

modification. Said default was noticed to Respondent on or about August 8, 2011, and several times thereafter, always addressed to both Matthew Weinstein and Kenner Day, Mr. Day being the Registered Agent of record in North Carolina. Thus, by the time of the fire, Respondent had been notified that it was in default on said note and deed of trust. After the fire, attempts by Petitioner to contact Mr. Weinstein by phone, letter and email regarding the fire and the default became unsuccessful and were discontinued in or about September, 2012. Foreclosure action was initiated on or about June 6, 2012 and concluded November 19, 2012. All documents related to the foreclosure were sent to both Mr. Day and Mr. Weinstein, each at their two last known addresses.

6. A foreclosure sale was held on October 24, 2012. Petitioner was the only bidder at the sale, and the foreclosure against RESPONDENT was completed on or about November 19, 2012.

7. After foreclosing on said lands and receiving a trustee deed, Petitioner contacted Defendants Pugh to make his initial damages claim known to them. After being told Respondent, in the person of Matthew Weinstein, had made some efforts at making the same claim prior to the foreclosure and that Farm Bureau Insurance was now handling the matter, Petitioner contacted Farm Bureau in the person of Nathan Pecnik and began a written correspondence on March 29, 2013, informing him that Petitioner was owner of the lands and that Kenner Day, on behalf of Respondent, had notified Farm Bureau that all claims from the fire, including damage to structures, belonged to Petitioner. This

negotiation failed to reach a settlement, resulting in Petitioner's filing an amended complaint for damages on or about February 3, 2014 (Ca #14CVS124), which included a demand for a trial by jury. Over a year later, Respondent filed a complaint for similar damages on April 9, 2015 (Ca #15CVS348). On or about January 18, 2016, the court joined Respondent's complaint with that of Petitioner upon request of the parties.

8. It became clear during the progress of this case that Respondent, TOG Properties, LLC, originally consisted of three-member managers: Richard S. Weinstein (Manager, now deceased); Kenner Day (Manager); and Spencer Goliger (Manager). Its application with the North Carolina Secretary of State's office for recognition as a legally operating entity in said state was filed on June 2, 2006, and signed by Kenner E. Day.

9. Mr. Day was the original signatory on the purchase agreement, note and deed of trust for the land, and the authorized agent of the Respondent throughout the life of said note and deed of trust. Mr. Day had, upon information and belief, signed every document related to the subject transaction through the years including, but not limited to, a certification of authenticity by Petitioner and Respondent on June 23, 2009.

10. Mr. Day remained as registered agent for the Respondent until May, 2015, with apparent authority to speak for the Respondent and, on November 20, 2014, issued further assurance that any claims for damages from the fire belonged to Petitioner. As stated in Respondent's cross claim,

Kenner E. Day, "by letter addressed to Farm Bureau Insurance...purported to release Respondent's 'interest in the claim and/or proceeds recovered from the property damage that occurred on or about April 14, 2012...to Donald Sullivan" in exchange for Petitioner's agreement not to sue Respondent for failing to maintain insurance coverage on the property. Thus, any and all interest that Respondent may have had in the Property was apparently transferred to Petitioner by Day, who had been an owner and was registered agent of Respondent thru April, 2015, and the only point of contact for Petitioner to Respondent throughout the duration of the project.

11. Evidence produced during this instant action showed Day had been removed as a member/manager in or about 2006 when 2Map, LLC became the managing member with Richard Weinstein, Sr., as registered agent in Florida (R. p115), but this information was not made available to Petitioner; nor was it relevant, because Mr. Day continued to reside in Wilmington, North Carolina, and to conduct business normally with regard to the Petitioner and the property for many years thereafter including, but not limited to, that shown herein, with the blessing of Respondent's members.

12. Respondent filed a cross claim for declaratory judgment on April 6, 2016, seeking a judgment "declaring that Respondent is the owner of any claims for damages...;" and, "Kenner Day did not have the authority to waive or release any claims owned by Respondent...". Respondent then filed a motion for summary judgment (MSJ) with its brief in support on or about May 16, 2017, seeking the same

relief. On 28 December, 2016, Petitioner filed his objection to the motion for summary judgment.

13. Respondent's motion for summary judgment was heard by the lower court on February 6, 2017. After the hearing, the court took the case under advisement.

14. The order allowing Respondent's motion for summary judgment was presented to the court by Respondent on February 13, 2017. It was signed within minutes of receipt that same day. Petitioner did not receive for review his copy of the proposed order allowing summary judgment until February 15, 2017. Petitioner's Objection to the proposed order allowing summary judgment was belatedly filed on February 16, 2017, prior to Petitioner's becoming aware said order had already been issued, but was moot.

15. Petitioner's notice of appeal was filed on March 7, 2017, with the clerk of superior court for Pender County.

Reasons for Granting the Petition.

16. This Case affects all citizens of the several States on the issue of the constitutionally protected right to a trial by an impartial jury in a civil case. The judgments of the courts below directly involve a substantial question arising under the Constitutions of the United States and of the State of North Carolina as follows: Said judgment directly involves a substantial question arising under the Seventh Amendment to the Constitution of the United States and under Article 1, Section 25, of the Constitution of the State of North Carolina, in that, by the denial of

his constitutional right to a trial by jury in a civil case, it deprives Petitioner of an inviolable right secured thereunder. This constitutional issue was timely raised in the lower tribunal by Petitioner's Objection to Respondent's Motion for Summary Judgment and during the appeals process. This constitutional issue was determined erroneously by the North Carolina Court of Appeals and denied hearing by the North Carolina Supreme Court.

17. The lower court's judgment order, allowing Respondent's motion for summary judgment, is a final judgment on Respondent's cross claim. Although other parties remain in the action, the order effectively eliminates Petitioner's claim for any damages in this matter, including structures belonging only to him, and removes him as a plaintiff. This final order by the trial court is certification that there is no just reason for delay in pursuing this action, and the order denies a substantial right recognized and protected by the Constitution, that of the right to a trial by jury in a civil proceeding. The North Carolina Court of Appeals and North Carolina Supreme Court have denied Petitioner's Appeals. Certiorari, therefore, lies to this Supreme Court of the United States.

8. Argument

ISSUE PRESENTED: Whether the trial court committed plain, reversible error by denying Petitioner's demanded trial by jury. (NC Const. Article I, Section 25; US Constitution, Seventh Amendment)

18. The Revolutionary War was fought to wrest "freedom" from the clutches of the King of England. The 27 grievances of the American colonists in the Declaration of Independence (DOI) make this very clear. Over the centuries since that momentous war, Americans have been cunningly coerced into waiving their rights and their freedom to the point of having no clear understanding of what those rights are. (See *US v. Mincker*, 350 US 179, at page 187 (1956), where, "Because of what appears to be a lawful command on the surface, many Citizens, because of their respect for what appears to be law, are cunningly coerced into waiving their rights due to ignorance.")

19. At its simplest, "freedom" is just another word for the unhindered enjoyment of life, liberty and right of property ownership. "Liberty", aka, the right of locomotion, is the right of unrestricted movement from point A to point B. As such, it is the constitutional "right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business [using the] ordinary and usual conveyances of the day" (See *Thompson v. Smith*, 154 SE 579, 11 American Jurisprudence, Constitutional Law, section 329, page 1135). However, this right has been legislated out of existence by a matrix of highway traffic and safety laws, allegedly in the interest of the public safety, but, in reality, only in the interest of creating a revenue stream whose main result is the restriction of liberty. The right to a trial by jury, established precisely to guard against legislative usurpation of rights in a civil matter, has been similarly legislated out of existence by the judicial

interpretation of Rule 56 of the Rules of Civil Procedure.

20. There can be no argument that there is an agenda at work here. Since the 1960's, public schools have taught that the Constitution is a living document, subject to modification to adapt to a changing society; that paper currency, backed by nothing, is money; that our form of government is a democracy instead of a republic; that God is not necessary, nor the author of our rights; that diversity is good; that multiculturalism builds strength; that killing unborn children is a mother's right; and that our government is not only the source of all rights and authority, but is also responsible for policing the entire world. Our law schools no longer taught the original precepts of the Constitution, but instead taught the judicial precedents which have "interpreted" it. Definitions of words began to change and assume meanings which resulted in confused understandings of right and wrong, legal and illegal, constitutional and unconstitutional. Over two generations educated by the unconstitutionally created Department of Education have learned, not what is so eloquently presented in the DOI and the Constitution, but what judges have said about them in precedent rulings, now referred to as "law".

21. The result over the past seventy years has been that the courts have been reshaping the Constitution while we, trustingly, slept in our ignorance. Although this country was founded on the principles set out in the DOI, which recognized that every American's rights come from the Lord God as Sovereign and not from a king, the government, or

even from the Constitution, the courts have gone out of their way to attack any public acknowledgement of God in an apparent effort to render all rights into privileges which can then be regulated by the "sovereign" government. Chief Justice Charles Evans Hughes made it clear in his 1973 autobiography (Damelski and Tuchin, editors) why our God-given rights were no longer safe from our activist judicial system when he said, "We are under a constitution, but the Constitution is what we say it is". This legal philosophy was not new: Roscoe Pound, as dean of Harvard Law School laid it out for his students in his 1924 book, Law and Morals at Page 14, "...the state is the unchallengeable authority behind legal precepts. The state takes the place of Jehovah handing down the tables of the law to Moses." By removing God from His historical place as the giver of rights, the goal of using judge-made law to make government the supreme and ultimate authority has been accomplished.

22. Thomas Jefferson pointed to this danger in an 1819 letter when he wrote: "The Constitution is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please" (Jefferson Writings, Literary Classics of the US, Inc. 1984, pg 1426). These "twists" have resulted in the right of the individual States and their people to govern themselves having been transferred from the several States to Washington and its federal courts. The authority of the States to control education and schools, the conduct of elections, highways, supervision of the criminal and civil justice systems, commerce, pornography laws, financing and control of welfare programs, marriage, abortion, etc., has been transferred from the States

to Washington and its federal courts. While the Ninth and Tenth Amendments were written to specifically avoid this transfer of power, this nine-member Court has been systematically overturning the wall of separation between the States and the federal government those States created.

23. Jefferson again anticipated this usurpation of power when he wrote to Charles Hammond in 1821 that, "...the germ of the dissolution of our Federal government is in the constitution of the Federal judiciary, an irresponsible body...advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped from the States and the government shall be consolidated into one. Of this I am opposed."

24. These concerns of Jefferson began to become apparent in the 1960's when this Court outlawed State laws which allowed prayer and Bible reading in public schools (*Engel v. Vitale*, 370 US 421 (1962); *Abington School District v. Schempp*, 374 US 203 (1963)). Not long after that, this Court stepped in to acknowledge that killing unborn babies was protected by the Constitution in the landmark *Roe v. Wade*, 410 US 113 (1973) decision. Then, when the Constitution was no longer able to support the collusion, this Court defaulted to foreign precedents to overturn any sense of common decency or morality when it found that laws against sodomy and homosexuality were unconstitutional and allowing that the Constitution provides, "a right to engage in sodomy, a health-threatening, AIDs producing perversion which God calls 'sin'" (*Lawrence v. Texas*, 539 US 558 (2003)).

25. The result of all this "redacting" of the Constitution is that, whereas "The Constitution that was actually enacted and formally amended creates islands of government powers in a sea of liberty", we now wind up with, "...islands of liberty rights in a sea of governmental powers". (See Barnett, Restoring the Lost Constitution, Princeton University Press, 2004)

26. A most serious victim of this "judicial activism" has been the constitutionally protected right to a trial by jury in a civil case. While no one doubts we have a guaranteed right to trial by jury, to wit:

i. The right to trial by jury is a right which "shall be preserved" and is protected by the United States Constitution at Amendment Seven;
ii. The right to trial by jury is a "sacred and inviolable" right protected by the North Carolina Constitution at Article I, Section 25;
iii. The United States Congress mandated that the right to trial by jury would not be violated by the rules of procedure newly authorized in 48 Stat. 1064, 73d Cong. Sess. II. Ch. 651, (1934), which rules have been largely adopted by the State of North Carolina;
iv. Rule 38 of the NC R. of Civ. P. mandates that the trial by jury "shall be preserved to the parties inviolate";
v. Article I, Section 5, of the North Carolina Constitution mandates that, "Every citizen of this State owes

paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof shall have any binding force." Therefore, any act or rule to overthrow a Constitutional mandate is void on its face, *ab initio*;

vi. The Declaration of Independence provides evidence of the acts of tyranny committed by the King of England against the colonists by its listing of 27 grievances, the most pertinent to this case being his "depriving us in many cases of the benefits of Trial by Jury". The lower courts have exercised that same level of tyranny in this instant matter by denying the Petitioner his Constitutional right to a trial by jury; and,

vii. Regardless of what opinion has been conveyed by the judiciary, and unlike the other several States of the Union, North Carolina juries are sworn to rule on the law and the facts pursuant to their proper oaths as mandated in North Carolina General Statute 11-11 and as clarified by Senate Bill 528, aka Session Law 2013-164, entitled: **"AN ACT TO CLARIFY THAT PETIT JURORS ARE TO TAKE THAT OATH SET FORTH IN THE NORTH CAROLINA CONSTITUTION AND TO PROVIDE CONSISTENCY BETWEEN THE STATUTES SETTING FORTH THE OATH TO**

BE TAKEN BY PETIT JURORS"
(Effective 1 October, 2013);

in this case, Petitioner's demand for a trial by jury was ignored in the ruling by the lower court in its order of February 13, 2017, and that ruling blessed by both the North Carolina Court of Appeals and the North Carolina Supreme Court.

27. Congress even provided for the protection of our right to trial by jury from the courts in 48 Stat. 1064, 73d Cong. Sess. II. Ch. 651, (1934), the act which originally enabled the rules of procedure:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant...The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: **Provided, however, That in such union of rules the right of trial by jury at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate... ."**

28. These organic laws make it very clear that the trial by jury, when demanded by a party to a civil lawsuit, may not be imperiled by any legislative or judicial act. All officers of the court in this instant matter have taken oaths to support and maintain the Constitutions of both the United States and North Carolina; or, at least, they are supposed to. To foster the idea that a rule, such as Rule 56 on summary judgment, is superior to the Constitution, is a violation of that oath and tantamount to treason to that Constitution. To wit:

> "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401 (1958).

29. The inclusion of the words "shall be preserved" and "shall remain sacred and inviolable" in the Constitutions leave no room for doubt. Yet the people do not protest or revolt when the judiciary cavalierly overwhelms our Constitutions and our right to a trial by jury with its corrupted interpretation of Rule 56.

30. The "trial by jury" we thought we had won in the Revolution has apparently fallen prey to the cunning coercion of our appointed and elected officials as witnessed by this instant matter. Similar to the situation prior to the Revolution, when a specific grievance listed by the Founders in the DOI was that the King was "depriving us, in many cases of the benefits of trial by jury", we are now deprived of that same right by a modern interpretation of the rules of procedure. Instead of being restricted "in the

interest of public safety" (as with other rights such as the right to keep and bear arms and the right to property), the right to a trial by jury, originally instituted not only to protect us from offenses to our rights and liberties by individuals but also from egregious acts of the legislature, has now been relegated to the discretion of a judge, not unlike the "Star Chambers" of sixteenth century England.

31. It is certainly strange that our constitutionally protected rights have been so easily abandoned when this Honorable Court has correctly opined that, "*Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them*" (*Miranda v Arizona*, 384 U.S. 436, p 491). What is much worse is that we the People have allowed it to happen, given that we were warned by the Founders that "the price of liberty is eternal vigilance". It appears no one has been watching the watchers.

32. Thus, it is easy to recognize, with little or no imagination, that our freedom and liberty no longer exist in what used to be "America", the result of our leaders allowing our "Republic" to be morphed into a democracy, or, more correctly, into fascism. The purpose of this appeal is to correct that problem, at least in the area of the trial by jury.

33. Rule 56 is not "bad law". It serves a necessary and meaningful purpose, but its authority has been unconstitutionally expanded since its introduction in 1938. If both parties agree to decision by summary judgment, certainly no trial by jury is warranted; however, when any party demands his guaranteed right to that trial by jury, the right is sacrosanct; and

no rulemaking or legislative act to the contrary can have any effect. Petitioner demanded a trial by jury in his answers to all allegations contained in Respondent's complaint and cross claim, but his demand of his right was disregarded.

34. Acts of the legislature and the judiciary must conform to, and be pursuant to, our Constitutions. It is not legally possible for a rule to overwhelm the Constitution, yet that is what the lower court and the Respondent would have this Court believe occurs with Rule 56. However, summary judgment, as defined in Rule 56, can only be available when neither party makes a demand for trial by jury; and neither objects to it.

35. Petitioner realizes that in North Carolina all judges are required by law to be lawyers. He also realizes that all lawyers are taught that jurors may only rule on the facts and not the law. This construct has been cunningly created and nurtured by lawyers and judges for decades to the point that it is now accepted dogma. Woe be to any man who takes issue with that construct, or with the admonition that jurors must rule on the law as judges give it to them. This is the rationale used to perpetrate the fraud on the American people that Rule 56 allows the court to dispense with the right to a jury trial because "everybody knows" the jury can only rule on the facts and not the law; thus, the unconstitutional concept that, when no "material fact" is in question, the court can freely deny a trial by jury. It is time for a paradigm shift in the way the judiciary views Rule 56 and the authority it has provided for the courts to routinely dispense with the trial by jury, a presumed

authority which is an abomination to our Constitutions.

36. Upon information and belief, this expanded interpretation of the rule has succeeded because jurors through the years have been sworn only to rule impartially on the facts and evidence presented at trial. All that changed in North Carolina on June 15, 2013, when, through the efforts of Petitioner, North Carolina governor McCrory signed Senate Bill 528, aka Session Law 2013-164, as described in Item #24, *supra.*

37. Because of this "clarification" (The law has actually been on the books since 1875 in the form of NCGS 11-11.), Rule 56 can no longer trump the Constitution in North Carolina. The 7th amendment, and Article 1, Sec. 25, protect the people from the construct of authority found in Rule 56, appropriately created by the Supreme Court of the United States in 1938 to reduce the docket and increase judicial power. Jurors in North Carolina are now sworn by law to look at both the facts and the law as to constitutionality. They are once again the fourth branch of government, empowered to correct executive, legislative and judicial mistakes.

38. North Carolina juries have always had the Constitutional authority to decide the facts and the law. This authority was codified in 1875 by NCGS 11-11, but the courts ignored this mandate for decades (if not longer) until the modern clarification in 2013, regardless of what lawyers and judges are taught in school or by their peers. The oath provided in the North Carolina Constitution (Art. VI, Sec. 7) makes that a fact. Upon information and belief,

North Carolina is the only state in the union which guarantees jurors that authority; and the federal courts certainly do not. Thus, summary judgment, as defined in Rule 56, can only be available when neither party makes a demand for trial by jury; and no party objects to it.

39. As stated, *supra*, Petitioner demanded a trial by jury in his original complaint on all issues raised in this instant matter. He has not waived his Article 1, Section 25, or Seventh Amendment right to said trial by jury. Inasmuch as this honorable Court, pursuant to Article VI, Clause 3, has sworn an oath to support and maintain the Constitution of the United States, including but not limited to the Seventh Amendment, the Court must find that the lower court's decision to invoke Rule 56 was invalid, unless we admit that we have allowed Congress, the US Supreme Court and the North Carolina General Assembly to illegally overwhelm the Constitution thru Rule 56, a circumstance for which this Petitioner finds no lawful process. The power of the judiciary to dictate whether a trial by jury may or may not be had in a civil case is limited by Article 1, Section 25, of the North Carolina Constitution which demands the right to trial by jury in a civil matter "shall remain sacred and inviolable", and is reinforced by the Seventh Amendment's language, "shall be preserved".

40. While Rule 56 is a commendable attempt by the judiciary to extend its power in order to reduce its docket and render the courts more efficient, it is blatantly unconstitutional except when all parties agree to it and waive their rights to a trial by jury. Arguments over the increased judicial efficiency of

summary judgment miss the point. The jury is the institutional check on the power of judges and central authority in the judicial branch. The government's use of judges instead of juries to decide cases was a principal grievance of the American revolution addressed by the Seventh Amendment as mirrored in Article 1, Section 25. Petitioner is at a loss to explain how such treason to the Constitution by the liberal use of summary judgment can be tolerated.

41. Trial by jury is necessary to: (1) protect against unwise legislation and judicial practices; (2) vindicate the rights of citizens against the government; and (3) protect litigants against overbearing judges.

42. The Federal Rules of Procedure, upon information and belief, enabled in 1938 by 48 Stat. 1064, *supra*, limited the use of summary judgment to debt collection cases in contractual matters and analogous circumstances. This rationale lasted 38 years until the explosion in summary judgments began with three 1986 opinions of this Court (*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)). "In each decision, Justice Brennan dissented. The Court has transformed summary judgment from a device limited to ascertaining whether there is any dispute about what the truth is to a trial on the merits by paper. Justice Rehnquist joined by Chief Justice Burger also dissented in *Anderson, supra.* They believed the court's requirement that the judge determine whether there was sufficient evidence to meet the particular burden

of proof imposed by the substantive law invaded the jury's province of weighing the evidence." ("The Recent Explosion In Summary Judgments Entered By The Federal Courts Has Eliminated The Jury From The Judicial Power", Richard L. Steagall, Southern Illinois Law Journal, Vol. 33, P469).

43. The Justices who decided the Supreme Court's first interpretations of summary judgment post-1938 were intimately familiar with the deliberations of the Advisory Committee. By contrast, the Justices who decided the trilogy in 1986 had no institutional memory of the events of 1938, giving a perfect example of the "generational ignorance" prevalent in our society today. The majority opinions in the trilogy made no mention of the Seventh Amendment right to jury trial, the absence of a common law procedure for summary judgment, or the court's limitation of summary judgment to cases where it was "quite clear what the truth is". Sir William Blackstone put it this way:

> "But if [the impartial administration of justice] be entirely intrusted (sic) to the magistracy, a select body of men, and those generally selected by the prince or such as enjoy the highest offices in the state, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias toward those of their own rank and dignity: it is not to be expected from human nature, that the few should always be attentive to the interests of the many...". (Blackstone, Commentaries, 369–70, Note 19 (1769))

44. In this instant matter, Petitioner demanded his trial by jury. For the lower court to have signed the order offered by Respondent granting summary judgment in contradiction to that demand is, therefore, treason to our oaths and to the Constitution, and merits reversal by this tribunal and remand.

24. Conclusion

45. The right to a trial by a jury of one's peers is meant to be the fourth branch of the government. It is the final opportunity for the people, individually, to achieve justice before the law. While the Founders and Framers obviously intended to bind the other three branches of the government by the "chains of the Constitution", the People were to be left with the ultimate and absolute power to overwhelm that "unwilling servant and...fearsome master" by their power in the jury box. What the judiciaries in the United States, North Carolina and the other several states have done over the past unknown number of years is to subvert that power by castrating it from the beginning and taking the power of those Constitutional chains away from the jury, simply by taking the Constitution out of their oaths. This, along with the arguably treasonous application of "summary judgment", has been a useful tool for the judiciary to absolutely control outcomes, not only in bench trials, but also in jury trials. North Carolina has gone so far as to require all cases which question the constitutional validity of a statute be decided by a three-judge panel in the Wake County (Raleigh) jurisdiction (NCGS 267.1(a1); Rule 42(b)(4) of the NCRofCivP). By "relieving" juries of any responsibility for interpreting constitutionality of the

law, the trial court judges have become tyrants, despots and dictators. I do not accept that the learned men and women of the judiciary who ignore these constitutional dictates are uninformed. Their opinions fly in the face of both the law and the Constitution and are nothing less than treason to the Constitution and the law.

46. It is imperative in the name of justice and the law that this honorable supreme Court grant my petition for certiorari, reverse the orders of the lower courts and remand this matter with the finding that I was denied a proper trial by jury with instructions that the case must be heard before a properly sworn jury. The unconstitutional expansion of the interpretation of Rule 56 (Summary Judgment) to allow the denial of the right to a trial by jury guaranteed by the Constitution and all organic documents subordinate to it cannot be allowed to stand.

47. The failure of this honorable Court to act justly in this instance would be exactly what was anticipated in its 1882 landmark ruling in United States versus the heirs of Robert E. Lee regarding the unlawful taking of Arlington Plantation in 1861:

> "It seems to be opposed to all the principles upon which the rights of the citizen, when brought in collision with the acts of the government, [106 U.S. 196, 219] must be determined. In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government, professing to act in its name. ***There remains***

> ***<u>to him but the alternative of resistance, which may amount to crime.</u>*** *US v. Lee*, 106 U.S. 196 (1882). (Emphasis mine)

48. I fear of late that we have been seeing some results of this prophecy all around this once free and respected country. The people are becoming very frustrated with the near total disregard of their Constitution, their rights, and invasions thereof, by "officers of government", especially the judiciary. It is up to us to begin putting an end to it. The DOI and the Constitution are "absolutes". Our failure to maintain them as absolutes condemns us to chaos.

49. If this petition does not fully explain my objectives and support therefor, I welcome the opportunity to more fully brief this issue for the Court either in writing, or in oral arguments before the panel.

This petition for a writ of certiorari is respectfully re-submitted on this the 15th day of January, 2019, by:

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