No. 19-6980

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

John Lyndon Williamson
Pro-Se Petitioner

vs.

City Of Wichita
Respondent

On Petition For Writ Of Certiorari To
The Kansas Supreme Court

PETITION FOR WRIT OF CERTIORARI

John Lyndon Williamson
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The Colony, Texas 75056
469-910-1380

QUESTIONS PRESENTED

1. Whether this courts holding against the individual mandate sanction in *NFIB v. Sebelious* 567 U S 519, 132, S. Ct. 2566, 183, L Ed 2d 450 (2012) on the basis that it compelled commerce instead of regulating commerce equally applies to Kansas mandatory vehicle liability insurance using criminal sanction under State Tenth Amendment police and welfare powers.

2. Whether the Highest Criminal Courts of Last Resort in Two Different States Can Decide the Same Question of Presumption of Innocence Where One State's High Court Violates This Courts Own Fourteenth Amendment Due Process Case Precedent in In Re Winship, is a Question of Critical Importance.

3. Whether Host States Who Impose Fines on Out of State Citizens for Unpaid Home State Vehicle Registration taxes for the Privilege of Egress and Regress through a Host State are in violation of the Dormant Commerce Clause, the Fourteenth Amendment Section One Citizenship Clause, the U.S. Constitutions Article IV Section One Full Faith and Credit clause, as well as Article IV Section Two Privileges or Immunities clauses.

PARTIES

Petitioner is John Lyndon Williamson.

Respondent is the City of Wichita, Kansas.

RELATED CASES

1. *City of Wichita v. John Lyndon Williamson* No. 16 TM 025948 Wichita Municipal Court, Wichita Kansas. Judgement entered November 22, 2016.

2. *City of Wichita v. John Lyndon Williamson* 16 CR 3428 MC Sedgwick County State District Court, Wichita Kansas. Judgement entered June 29, 2017.

3. *City of Wichita v. John Lyndon Willia*mson 17-118207-A Kansas Court of Appeals, Topeka Kansas. Judgement entered November 16, 2018.

4. *City of Wichita v. John Lyndon Williamson* 17-118207-A Kansas Supreme Court, Topeka, Kansas. Judgement entered September 27, 2019. Mandate Issued October 15, 2019.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the Kansas Court of Appeals to review the merits appears at Appendix B (App 2 a) to the petition and is unpublished.

The Kansas Supreme Court Order refusing discretionary review is unreported. Appendix A (App.1a). The Kansas Court of Appeals decision Appendix B (App. 2a) is unreported. The judgments entered by the Sedgwick County District Criminal Court and Wichita Municipal Court are unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 16, 2018 App. 2a. On September 27, 2019 the Kansas Supreme Court denied a timely petition for discretionary review. App. la This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUIONAL PROVISIONS

City of Wichita Insurance Ordinance 11.13.010 (a) [which tracks Kansas State Statute K.S.A. 40-3104 (also known as Kansas Automobile Injury Act 40-3101 et seq. (2000, 2016 SUPP)] provides:

(a) Every owner of a motor vehicle shall provide motor vehicle liability insurance coverage in accordance with the Kansas Automobile Injury Reparations Act, K.S.A. 40-3101 et seq. and amendments thereto, for every motor vehicle owned by such person, unless such motor vehicle: (1) is included under an approved self-insurance plan as provided in K.S.A. 40-3104(f) and amendments thereto; (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a

motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106; or (4) is expressly exempted under the laws of this state.

City of Wichita Registration Ordinance 11.38.300 (a) [which tracks Kansas State Statute K.S.A. 8-127 (2001, 2016 SUPP)] provides:

"It is unlawful for any person to: "(a) Operate, or for the owner thereof to knowingly permit the operation, upon a street or highway of any vehicle which is not registered, or for which a certificate of title has not been issued or which does not have attached thereto and displayed thereon the license plate or plates assigned thereto by the division of motor vehicles for the current registration year, including any registration decal required to be affixed to any such license plate pursuant to K.S.A. 8-134, and amendments thereto, subject to the exemptions allowed in K.S.A. 8-135, 8-198 and 8-1751a and amendments thereto."

Kansas State Statute K.S.A. 8-138a. Nonresident owners licensed in state of residence; reciprocal privileges provides:

The provisions of this section shall apply only to the nonresident owner or owners of any motor vehicle constructed and operated primarily for the transportation of the driver or the driver and one or more nonpaying passengers. Such nonresident owners, when duly licensed in the state of residence, are hereby granted the privilege of operation of any such vehicle within this state to the extent that reciprocal privileges are granted to residents of this state by the state of residence of such nonresident owner.

The Tenth Amendment of the United States Constitution:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Fourteenth Amendment to the United Sates Constitution Section 1 Citizenship Clause provides in part:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, *are citizens of the United States and of the state wherein they reside.* No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution amend XIV § 1

The United Sates Constitution Article IV Section 1 and 2 provides:

Section 1.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. ***(The people of each State shall free ingress and regress to and from any other State).***

STATEMENT OF THE CASE

A. City Mandatory Liability Insurance Ordinance and State Statute under Tenth Amendment Police and Welfare Powers.

Kansas law compels commerce by criminalizing failure to purchase auto liability insurance from a private insurance provider with jail sentences up to six months and monetary fines from $300.00 up to $2,500.00, or both fine and imprisonment under City of Wichita Ordinance 11.13.010 (a) [which tracks the State Statute K.S.A. 40-3106 (a)]. Purchase of auto insurance is a perquisite to legally drive on Kansas public streets and highways.

Many States in recent years have legislated similar criminal sanctions for failure to purchase mandatory vehicle liability insurance.

B. Kansas Supreme Court Refuses To Follow United States Supreme Court Case Precedent As Required Under In Re Winship.

Under Wichita city ordinance 11.13.010 (a) and State Statute K.S.A. 40-3106 (a) the Kansas Supreme Court, (Kansas Court of Last Resort), is in direct conflict with the Texas Court of Criminal Appeals, (Texas highest Criminal Court of Last Resort). The Kansas Supreme Court held in Petitioners case that they do not have to follow the "Presumption of Innocence" under U.S. Supreme Court Precedent; *In Re Winship* 397 U. S. 358, 364, 90 S. Ct. 1068, 1072, 25, L Ed.2d 368 (1970). The State of Kansas violated this Courts above cited case precedent by ignoring the requirement to prove each and every element of the charged offense in order to meet its burden of proof; *sufficiency of evidence,* for conviction which violates Fourteenth Amendment Due Process by shifting the "Burden of Proof" to defendants. Kansas Supreme court would have Petitioner self -produce proof of "Alternative Means", when the plain language in the body of the state statute at issue specifically requires law enforcement to "Request" proof of alternative means.

C. Kansas Registration Statutes Applied To Out Of State Residents Violates Dormant Commence Clause and Fourteenth Amendment Citizenship Clause

City of Wichita Registration Ordnance 11.38.300 (a) and Kansas State Registration Statue K.S.A. 8-127(2001 2016 SUPP) are used to ticket out of state drivers who are not Kansas residents treating all drivers who either merely pass through Kansas, or visit Kansas, as though they were permanent Kansas State Residents, ignoring the clear plain language of the Fourteenth Amendment Section One Citizenship Clause that all American citizens can only be Residents of the United States and their State of Domicile that they permanently reside in.

D. Petitioners, Citation, Convictions, and Appeal

On the night of June 8, 2016, Petitioner John Lyndon Williamson was stopped by a Wichita Police Officer for driving with expired Texas Registration. He was also ticketed and convicted for not having proof of liability Insurance, R. Vol. 4, p. 32. The citation issued, listed Williamson's address as 4020 Fiser Place in Plano, Texas. The officer only asked for proof of insurance, not for proof of financial security. R. Vol. 4, pp. 29-30.

Petitioner was convicted at trial in Wichita City Municipal Court on November 22, 2016 where his Motion to Dismiss was denied R. Vol. 1, p. 15. The Court convicted Williamson on both counts and sentenced him to 6 months of jail time, suspended to 6 months of non- reporting probation, and a $300.00 fine plus Court Costs. Petitioner then appealed De Novo to State District Court

on November 29, 2016 R. Vol. 1 p. 12, and stood trial in District Court on June 29, 2017 where his Motion to Dismiss the charges was again denied. Prior to trial, Petitioner Williamson filed *pro se* motions arguing that the Kansas registration and mandatory insurance laws were unconstitutional, R. Vol. 1, pp. 21-101, 102-221, 222-224., and that the vehicle registration law was a tax, and not a public safety issue falling under the Tenth Amendment police powers clause of the United States Constitution, R. Vol.1, p. 22, and thus, the law was subject to superseding federal rights under the U .S. Constitutions Article IV Section One Full Faith and Credit and Article IV Section Two Privileges or Immunities Clause, and violates the Dormant Commerce Clause in that this policy harms federal unity and is thus pre-empted by the Supremacy Clause when balanced against lessor [sic] State interest, whose legitimate State interest can be met by the far less burdensome means of regulating only bona fide State Residents, rather than unlawfully transforming temporary transient visitors into forced State residents; R. Vol. 1, p. 25.

Specifically, Petitioner Williamson argued that:
1. The proper level of review was strict scrutiny or heightened scrutiny since the right to travel is fundamental, R. Vol. 1, p. 29;

2. That mere physical presence did not make him a Kansas resident under K.S.A. 8-1,138, and thus was not subject to the personal jurisdiction of the State of Kansas, R. Vol. 1, pp. 37-41;

3. The city ordinance under which Williamson was charged [11.38.300 (a)] was constitutionally void for vagueness, R. Vol. 1, p. 45-46;

4. The city ordinance was unconstitutionally vague and arbitrary, R. Vol. 1, p. 48, since it failed to distinguish between a vehicle being registered, and being titled, as reflected by the presence of a registration sticker, R. Vol. 1, pp. 48-49. The ordinance thus invited arbitrary enforcement, R. Vol. 1, p. 51;

5. He fell under an exemption, the reciprocity statute, K.S.A. 8-138(a), R. Vol. 1, pp. 55-56;

6. The 60- or 90-day rule for residency applied only to those persons intending to permanently movel to Kansas, R. Vol. 1, pp. 56-57;

7. Since it was not a health and safety issue, the registration law was unconstitutional under the United States Constitution's Full Faith and Credit Clause, the Privileges and Immunities Clause, and the 9th and 14th Amendments, R. Vol. 1, p. 57. The right of a citizen to pass through, or reside in, another state for purposes of trade, agriculture, professional pursuits, or otherwise, is one of the privileges accorded to American citizens, and protected by the Constitutional provisions cited above;

8. The registration statute violates these rights by not requiring a bona fide inquiry at the time of the stop whether or not the driver is or intends to become a permanent resident, R. Vol. 1, p. 80;

9. Under California v. Buzzard, 382 U.S. 386, 86 S. Ct. 478, 15 L.Ed2d 436 (1966), no registration fee was owed to Texas since he had not driven in Texas in the previous two years, R. Vol. 1, p. 82;

Williamson also filed a motion asking for dismissal of the citation for not carrying liability insurance, R. Vol. 1, p. 102.

In that motion, he claimed that:

1. The statute in question, K.S.A. 40-3101 et seq., was a compulsory insurance law and financial responsibility scheme, and thus could not be passed nor enforced without due process provisions, R. Vol. 1,p. 108'

2. Since the arresting officer did not inquire whether or not Williamson had forms of insurance other than liability insurance, the State had not met their burden of proof, R. Vol. 1, p. 114;

3. The alternate form of insurance was proof of financial security, provided for under K.S.A. 40-3104(d). Without any finding on whether or not Williamson had financial security, the State could not lawfully charge him, R. Vol. 1, pp. 117-118;

4. In order convict under K.S.A. 40-3104, a vehicle must be registered in Kansas. Williamson's vehicle was registered in Texas (though he admits the registration had expired at the time of the stop), R. Vol. 1, p.123;

5. The Act was an unconstitutional infringement upon the right to travel granted to United States citizens, R. Vol. 1, p. 124;

6. The proper standard of review was strict scrutiny, R. Vol. 1, p. 126;

7. Under NFIB v. Sebelius, 567 U.S. 519 (2012), the power of a government to mandate insurance was unconstitutional (although the Court did uphold the mandate on the grounds that it was a tax‖), R. Vol. 1, pp. 129-130;

8. The Act was also unconstitutional since it criminalized non-harmful conduct, requiring a jail sentence for non-compliance. The existence of, or degree of, harm present should control whether punishment is required and what form it takes, R. Vol. 1, pp. 163-170;

The trial court heard the motions and overruled them, R. Vol. 1, pp. 229, 233. It found Williamson guilty and fined him $150 on the liability insurance count, R. Vol.1, p. 228. A notice of appeal was timely filed on June 30, 2017, R. Vol. 1, pp. 237-238.

Petitioner then appealed to Kansas Court of Appeals, which denied his request to reverse his lower court convictions on November 16, 2018.

Petitioner's last appeal was to the Kansas Supreme Court who denied his Petition for Review on September 27, 2019, and a Mandate was issued on October 15, 2019.

Petitioners appeal in all of the above courts was on the grounds that the City Ordinance 11.13.010 (a) and State Statute K.S.A. 40-3106 (a) as well as Kansas State Registration Statue K.S.A. 8-127(2001 2016 SUPP); and City of Wichita Registration Ordnance 11.38.300 (a) were all unconstitutional either on their face and/or as applied to Petitioner.

REASONS FOR GRANTING THE WRIT

I. Tenth Amendment Police and Welfare Powers should not permit state legislatures to compel mandatory auto liability insurance when Congress under the Commerce Clause and Necessary and Proper Clause lacked Due Process to compel health insurance under the Affordable Care Act.

II. The States of Texas and Kansas Both Have the Same Insurance Regulatory Scheme but the State of Kansas Refuses to Rule on the Presumption of Innocence in Accordance with this Court's Opinion in In Re Winship While Texas Honors This Courts Holding in In Re Winship. Stare Decisis should control.

III. Kansas Imposes Fines and even jail time on Out of State Citizens for Unpaid Home State Vehicle Registration taxes for the Privilege of Egress and Regress through Kansas. This Court should rule that this is a Violation of the Dormant Commerce Clause, the Fourteenth Amendment Section One Citizenship Clause, the U.S. Constitutions Article IV Section One Full Faith and Credit clause, as well as Article IV Section Two Privileges or Immunities clauses.

ISSUE 1

Tenth Amendment Police and Welfare Powers should not permit state legislatures to compel mandatory auto liability insurance when Congress under the Commerce Clause and Necessary and Proper Clause lacked Due Process to compel health insurance under the Affordable Care Act.

In *National Federation of Independent Business v. Sebelius 567 U.S. 519 (2012)* 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012) [***herein forward referenced as NFIB v. Sebelius***] the United States Supreme Court considered the constitutionality of the individual mandate in the Affordable Care Act. The Court upheld the assessment of a tax, should a person fail to carry health Insurance, *but they ruled that the Government did not have the power to force Americans to purchase Health Insurance.*

United States Supreme Court Chief Justice John Roberts who wrote the majority opinion in Sebelius stated in Part III–A that the individual mandate is not a valid exercise of Congress's power under the Commerce Clause or the Necessary and Proper Clause. Pp. 16–30.

Petitioner would argue that every level of Kansas Courts all made an erroneous ruling on this issue which affects literally millions of poor Americans in every state that criminalizes failure to purchase liability insurance.

Mandatory vehicle liability insurance is required in 48 states (*only New Hampshire and Virginia are exceptions*). As of 2019 nineteen states penal codes criminalized not having vehicle insurance by including various amounts of jail time in addition to fines and court costs for failure to purchase vehicle insurance. In recent years many cities have also begun to allow officers to immediately tow and impound driver's vehicles if ticketed for no insurance, even before the driver is convicted in a court of law at trial. When this is allowed drivers too poor to pay the tow fee and impoundment storage costs manty times end up having their vehicles sold at auction by the city to pay for towing and storage fees. Thus laws enforcing compelled purchase of vehicle liability insurance create major life crisis for the poor who can't afford high premiums and are almost always subject to discrimination of higher premiums due to their garaged zip codes which is a major determining factor in the individual premium costs of a liability policy. These penalties are done on a large scale nationally deserving this Courts review of imprisonment and loss of ones only transportation for failure to purchase a private insurance policy under mandatory state laws.

Petitioner John Lyndon Williamson asserts that the same legal rationale applied in *NFIB v. Sebelius* is applicable to Compulsory Automobile Insurance,

and that the state of Kansas has no more constitutional plenary authority under Tenth Amendment Police Powers to *compel commerce* than Congress had to compel the Affordable Healthcare Act using Congressional Plenary Powers under the authority of the Commerce Clause or the Necessary and Proper Clause.

The Constitution may restrict state government. State sovereignty is not an end in itself.

While State Tenth Amendment Police Powers are not limited by being "Enumerated" in the same way as Federal Congressional Authority under the United States Constitution, State Police Powers are not unlimited. Kansas should not be allowed to force citizens who are unwilling participants to purchase insurance products by imposition of State legislated criminal sanction to force them to buy what they do not want (no matter how well intentioned that premise may be) claiming it serves a legitimate "State Welfare Interest" under Tenth Ament Police Powers.

Chief Justice Roberts in delivering the opinion of the Court Declared;
"We do not consider whether the Act embodies sound policies. We ask only whether Congress has the power under the Constitution to enact the challenged provisions."

Petitioner like Chief Justice Roberts argues that the power

to *regulate* commerce presupposes the existence of commercial activity to be

regulated, whether on a State level, or federal level, and that those forced under criminal penalty to purchase auto insurance should not be labeled as taking part in existing commercial activity just because auto insurance is currently an offered product on the market similar to health insurance.

Chief Justice John Roberts in *NFIB v. Sebelius* stated;

"The Framers gave Congress the power to *regulate* commerce, not to *compel* it. Ignoring that distinction would undermine the principle that the Federal Government is a government of limited and enumerated powers.

Petitioner likewise argues that Kansas Mandatory Compulsory Insurance undermines the principle that State governments also have limited powers and that even the Tenth Amendment is not a "Card Blanche" legal authority for State Legislatures to solve economic public policy dilemmas on the backs of unwilling citizens.

This Court also reached their decision despite the huge influence played by judicial deference;

Chief Justice Roberts;

"Proper respect for a coordinate branch of the government" requires that we strike down an Act of Congress only if "the lack of constitutional authority to pass [the] act in question is clearly demonstrated." United States v. Harris, 106 U. S. 629, 635 (1883).

But this Court decided that there was no way to constitutionally save the individual mandate."

Unwilling Paticipants Are Not Active In Insurance Market

In *NFBS v. Sebelius* the government argued that because sickness and injury are unpredictable but unavoidable, ***"the uninsured as a class are active in the market for health care."*** Brief for United States 50.

But in Justices Scalia, Kennedy, Thomas, and Alito joint unsigned dissent they stated;

"The *proposition that Congress may dictate the conduct of an individual today because of prophesied future activity finds no support in our precedent.* --we have never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce. Each one of our cases involved preexisting economic activity. See, *e.g., Wickard*, 317 U. S., at 127–129 (producing wheat); *Raich*, *supra*, at 25 (growing marijuana).

Everyone will likely participate in the markets for food, clothing, transportation, shelter, or energy; that does not authorize Congress to direct them to purchase particular products in those or other markets today. "

Chief Justice Roberts in his Majority Opinion stated;

The Chief Justice does not dispute that all U. S. residents participate in the market for health services over the course of their lives. See *ante,* at 16 ("Everyone will eventually need health care at a time and to an extent they cannot predict."). But, The Chief Justice insists, the uninsured cannot be considered active in the market for health care, because "[t]he proximity and degree of connection between the [uninsured today] and [their] subsequent commercial activity is too lacking." *Ante,* at 27.

In *NFIB v. Sebelius* the government insisted that because more than 60% of those without insurance visit a hospital or doctor's office each year, and nearly 90% will within five years, that uninsured consumption of health care is proximate.

But a huge percentage of drivers go most of their lives without being at fault in ***any*** accident, let alone one a year or an accident every 5 years.

So auto insurance is NOT like the consumption of medical care, it is NOT "certain" to occur, with the sole uncertainty being the time it will take place. A driver is not in the insurance market just because he or she *may be* involved in an accident at some distant future time.

Thus State Legislatures cannot assert that wrecks are inevitable making auto insurance special and unlike conditions in other markets. The government in *NFIB v. Sebelius* also argued the individual mandate was within congress's power because the failure to purchase insurance "has a unique substantial and deleterious effect on interstate commerce" by creating the cost-shifting problem and that the solution is to require *more healthy individuals, whose premiums on average will be higher than their health care expenses* to *allow insurers to subsidize the costs of covering the unhealthy individuals*. Brief for United States 34.

Likewise, the auto liability insurance industry has persuaded the Kansas State Legislature on the premise that wrecks (like eventual health care in old age) are unavoidable, and that those who drive safely and do not have accidents must be made under criminal penalty to pay in aggregate to cover the industry's costs for insuring bad drivers. *But unlike health insurer's auto liability companies can and*

do regularly refuse to write policies on drivers with high risk driving histories are in the alternative charge that class of driver's considerably higher premiums by placing them with a County Mutual insurer to cover high risk drivers.

Petitioner would argue that if the Health Insurance Industry did not deserve to be privileged by a mandatory tax on all citizens under the Affordable Care Act, then the Auto Liability Industry as a whole has no more legal or moral standing to demand a similar privilege (unlike any other business in the entire United States) under criminal penalty to make liability insurance mandatory. Unlike Kansas mandatory auto insurance, the Affordable Healthcare Act penalty for not buying health insurance was NOT a criminal penalty;

Section 5000A(g)(1)'s command that the penalty be "assessed and collected in the same manner" as taxes That interpretation is consistent with the remainder of §5000A(g), which instructs the Secretary on the tools he may use to collect the penalty. See §5000A(g)(2)(A) (barring criminal prosecutions); §5000A(g)(2)(B) (prohibiting the Secretary from using notices of lien and levies).

The government also claims that unique attributes of the health-care market give rise to problems that do not occur in other markets." *Ante,* at 28.

But those differences do not show that the failure to enter the health-insurance market is an *activity* that Congress can "regulate.

The failure of some of the public to purchase American cars may endanger the existence of domestic automobile manufacturers. Under the theory of Justice Ginsburg's dissent, moving against those inactivity's will also come within the Federal Government's unenumerated problem-solving powers."

Petitioner asserts that Kansas drivers who have never been at fault in any vehicle accidents should not be under cohersive criminal penalty to purchase auto liability insurance in the present tense any more than all other Americans should be forced to purchase any other market product they may eventually use in the distant future. The fact that the State of Kansas forces this under State Tenth Amendment Police Powers, or Tenth Amendment Welfare Powers, rather than Congress forcing participation in the ACA Act under Commerce Clause plenary powers, should not make Kansas auto liability Insurance Mandate any more constitutionally acceptable. Unlike the non -criminal tax in the Affordable Care Act Mandatory Insurance is not a "financial inducement. It is totally cohersive. The financial mandate state legislatures have chosen is NOT a relatively "mild encouragement", like the tax under the ACA —it is a gun to the head.

Mandatory Insurance accomplishes a shift in kind, not merely degree.

It is estimated that four million people each year will choose to pay the IRS rather than buy insurance. See Congressional Budget Office, *supra,* at 71. But Congress was not troubled by the prospect if such conduct were unlawful. That Congress apparently regards such extensive failure to comply with the mandate as tolerable suggests that Congress did not think it was creating four million outlaws.

Yet, as of 2019 *approximately 13% of drivers nationally* do not have insurance. Nearly 215 million drivers carry car insurance in the U.S., meaning there are approximately 32 million ***uninsured*** drivers on the road; Data from Insurance Research Council.

In contrast, health insurance approximately 50 million people were uninsured, either by choice or, more likely, because they could not afford private insurance and did not qualify for government aid. See Dept. of Commerce, census bureau, c.denavas-walt, b. proctor, & j. smith, income, poverty, and health insurance coverage in the united states: 2009, p. 23, table 8 (sept. 2010).

As a group, uninsured individuals annually consume more than $100 billion in health-care services, nearly 5% of the nation's total hidden health tax: available at http://www.familiesusa.org (all internet material as visited June 25, 2012, and included in clerk of court's case file).

So there is even less aggregate loss from those uninsured with health insurance (50 Million) than those who have no auto insurance (32 Million), and not everybody drives. So if Congress can't force health insurance even under a non - criminal tax, State legislatures should not be able to force liability insurance through criminal penalty.

Furthermore, it is extremely significant to note that while virtually everyone that lives into old age will eventually require health care, not all Kansas drivers will be at fault in an auto accident in their lifetime, and that mandatory auto liability insurance is compulsory on all drivers regardless of their level of income, unlike the ACA tax which exempts people whose income falls below the poverty level; "Some individuals who are subject to the mandate are nonetheless exempt from the penalty—***for example, those with income below a certain threshold*** and members of Indian tribes. §5000A(e). Note 11: individuals do not face prosecution for failing to make the shared responsibility payment, see 26 U. S. C. §5000A(g)(2)). "

There is also the issue of economic discrimination of higher prices for those who live in poorer zip codes, or if homeless (like Petitioner) who no address even though a good driver with no history of wrecks, one can still be denied coverage leaving them unable to legally drive.

ISSUE II.

The States of Texas and Kansas Both Have the Same Insurance Regulatory Scheme but the State of Kansas Refuses to Rule on the Presumption of Innocence in Accordance with this Court's Opinion in In Re Winship While Texas Honors This Courts Holding in In Re Winship. Stare Decisis Should Control.

There is a compelling need for this Court to address Fourteenth Amendment Due Process where two state courts of last resort are in direct conflict where the State of Kansas Supreme Court is ignoring this Courts precedent in *In Re Winship.* The Kansas Supreme Court is in direct conflict with the Texas Court of Criminal Appeals (Texas highest Criminal Court of Last Resort). The Kansas Supreme Court held that they do not have to follow the "Presumption of Innocence" under U.S. Supreme Court Precedent; *In Re Winship* 397 U. S. 358, 364, 90 S. Ct. 1068, 1072, 25, L Ed.2d 368 (1970). The State of Kansas violated Fourteenth Amendment Due Process when they shifted the "Burden of Proof" to Petitioner to self -produce proof of "Alternative Means", when the plain language in the body of the state statute at issue specifically requires law enforcement to "Request" proof of alternative means.

This Court should confirm its previous case precedent set in *In Re Winship* as superior to state power to decide cases in direct conflict with this courts stare decisis. Its' hard to imagine a federal issue of more importance than the national universal enforcement of the "Presumption of Innocence" which is the very foundation of American Jurisprudence. Without the "Presumption of Innocence" the Bill of Rights would become mere superficial protection against prosecutorial abuse. The "Presumption of Innocence" is too important to judicial integrity to fall prey to a form of political judicial rivalry between two

states. Alternative means and proving each element of a criminal offense is not a Texas thing it is a Constitutional issue that must be reinforced if the criminal justice system is to maintain critical creditability.

In re Winship, 397 U.S. 358 (1970), held that "the Due Process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged, it established this burden in all cases *in all states*. In a criminal prosecution, every essential element of the offense must be proved beyond reasonable doubt. See, e.g., *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000); *Sullivan v. Louisiana*, 508 U.S. 275, 278 (1993).

While not controlling law, Petitioner argued that Kansas Courts were bound by *In Re Winship* and thus should adopt the reasoning and holding made by the Texas Supreme Court in *Coit v. State*, 808 S.W.2d 473 (Tex.Crim.App.1991) and *McDaniel v. State*, 820 S.W.2d 914 (Tex. App.-Houston [1st Dist.] 1991, no pet.).

The Defendants in these cases successfully challenged the *sufficiency of the evidence* when the citing officers failed to ask the drivers for evidence of financial responsibility other than liability insurance. In both *Coit* and *McDaniel*, the convictions were reversed because the State's sole evidence was

the officer's testimony that appellant did not have proof of insurance. *Coit*, 808 S.W.2d at 475; *McDaniel*, 820 S.W.2d at 915. See Also *Sanchez V. State*, __ S.W.2d __(Tex. App.-Houston [1st Dist.] No.01-03-00479-CR. (2004).

Petitioner John Lyndon Williamson was charged with Wichita City Ordnance 11.13.010 (a):

(a) "Every owner of a motor vehicle shall provide motor vehicle liability insurance coverage in accordance with the Kansas Automobile Injury Reparations Act, K.S.A. 40- 3101 et seq. and amendments thereto, for every motor vehicle owned by such person, unless such motor vehicle: ***(1) is included under an approved self-insurance plan as provided in K.S.A. 40-3104(f)*** and amendments thereto; (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; ***(3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered*** and the form prescribed in subsection (b) of K.S.A. 40-3106; or (4) is expressly exempted under the laws of this state."

d) Any person operating a motor vehicle upon a street or highway or upon property open to use by the public within the city limits, ***shall display, upon demand***, evidence of ***financial security***, as provided in K.S.A. 40-3107 and amendments thereto, to a law enforcement officer. The law enforcement officer shall issue a notice to appear to any person ***who fails to display evidence of financial security upon such demand***. The law enforcement officer shall attach a copy of the insurance verification form prescribed by the Secretary of Revenue to the copy of the citation or notice to appear forwarded to the court.

K.S.A. 40- 3104 provides:

(a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle

owned by such person, unless such motor vehicle: ***(1) Is included under an approved self-insurance plan as provided in subsection (f);*** (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-4005, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; ***(3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered*** and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto has been filed; or (4) is expressly exempted from the provisions of this act.

(d) (1) Any person operating a motor vehicle upon a highway or upon property open to use by the public ***shall display, upon demand***, evidence of ***financial security*** to a law enforcement officer. Such evidence of financial security which meets the requirements of subsection (e) may be displayed on a cellular phone or any other type of portable electronic device. The law enforcement officer to whom such evidence of financial security is displayed shall view only such evidence of financial responsibility. Such law enforcement officer shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. The law enforcement officer shall issue a citation ***to any person who fails to display evidence of financial security upon such demand***. The law enforcement officer shall transmit a copy of the insurance verification form prescribed by the secretary of revenue with the copy of the citation transmitted to the court.

Wichita City Ordinance 11.13.010 has four sections however, Subsection (b) addresses an owner loaning a vehicle which is a moot issue in petitioner's case since appellant was driving his own vehicle, and Subsection (c) refers to criminal "Intent", also not at issue.

The essential materially relevant language in both the State statute and the City Ordinance are identical. Both the City Ordnance and the collateral State

Statute provide different means on how a person can meet or violate the failure to maintain financial responsibility insurance law. The City failed to acknowledge the alternative means defense provision under the city ordinance and state statute it was proceeding under.

Petitioner argues that the method of charging resulted in a violation of the alternative means rule and its corollary super-sufficiency requirement as set out in State v. Timley, 255 Kan. 286, 875 P.2d 242 (1994). Both the State District Court and the Kansas Court of Appeals failed to consider Alternative Means under Wichita Ord. 11.13.010 (d) and KSA 40-3104 subsection (d) even if the statute itself is constitutional.

At trial Wichita City Prosecutor Kathy Eaton argued; "that defendant who was charged under section (a) was mistaken in his belief that the officer had to ask him for any proof of financial responsibility, R. Vol. 4 p. 12 lines 1-7.

In the above statement (R. Vol. 4 p 12) the City fully admitted at trial that defendant was charged under section (a) the very section that also includes the two specific exemptions under 11.13.010; (1) [KSA 40-3104 subsection (f)] and subsection (3) self-insurance under KSA 40-3106, and section (d) the "Upon Demand" requirement, as provided in KSA 40-3104.

The plain language of the statute itself clearly states; "UPON DEMAND".

The "Presumption of Innocence" demands that the burden of proof always remains with the State at trial, and cannot shift to the defendant, so there is no legal requirement for any driver to voluntarily offer proof of financial responsibility.

Yet Judge Ternes at Williamson's trial unconstitutionally ruled by shifting the burden of proof onto defendant, R. Vol. 4 pps.53, lines 2-5, as did Prosecutor Eaton R. Vol 4 p. 47 lines 3-11.

The only evidence offered at trial that Williamson *failed to maintain financial responsibility* was officer Donohue's testimony that petitioner did not have proof of *liability insurance.* R. Vol. 4 p. 43. There was *no proof* presented by the city showing that petitioner did not maintain proof of financial responsibility. To be lawfully convicted of not meeting Kansas insurance requirements under Wichita Ordinance 11.13.010 a driver MUST be found to have *neither* liability insurance, AND no means of meeting financial responsibility.

The Kansas Legislature clearly requires by the plain language of KSA-40-3104 (d) UPON DEMAND that financial security has to be requested at the time of the traffic stop. Wichita Ordinance 11.13.010 includes the same "UPON

DEMAND" requirement under section (d). The State Statute and City Ordnance share the same requirement.

Ordinance 11.13.010 under exception (a) (3) specifies "self-insurance plans approved by an agency of the State in which such motor vehicle is registered". Petitioner Williamson's van was registered in Texas but Officer Donohue failed to inquire about other forms of alterative insurance that Kansas allows, and other alternatives listed in the Texas insurance statutes as well, which includes five additional ways that financial security can be meet, e.g. Texas Transportation Code Section 601.051 (Vernon 1999) Section 601.053 which includes; by insurance binder, surety bond, a certificate of deposit, a copy of the certificate deposit, or a certificate of self-insurance issued under Section 601.124.

One of these alternatives e.g. by Bond, was asked about by petitioners trial attorney Denise Donnelly -Mills on cross exam of officer Donohue at trial R.Vol. 4 p. 43 lines 17-22.

In addition, the City prosecutor Mrs. Eaton was required under Wichita Ordinance 11.13.030 "Proof of Violation" to prove that petitioners van was either registered in Kansas, or required to be registered in Kansas to prove a violation of no insurance which was never addressed at trial.

The U.S.Supreme Court ruled in *In Re Winship* 397 U.S. 358,364, 90 S. Ct. 1068, 1072, 25L Ed 2d 368 (1970) that every element of a statute has to be proved at trial.

Regardless of Kansas case law *standard of review* precedent that sufficiency of evidence when challenged in a criminal case is viewed in a light most favorable to the prosecution, this standard cannot serve to diminish the requirement for the government's prosecutor to prove each element of the offense charge.

Wichita City Ordinance 11.13.010 subsections (1) and (3) of section (a) and section (d) are all ***required elements*** of the offense ***that must be proved beyond a reasonable doubt*** in order for the prosecution to carry its burden of production for a guilty verdict to be valid. Williamson asserted the above defense at trial, R.Vol. 4 p.16.

At trial Officer Donohue under cross exam by Williamsons attorney Mrs. Mills admitted that he only asked Williamson for proof of liability insurance, R.Vol. 4 p. 43 lines 13-16.

At trial Williamsons attorney Mrs. Mills properly requested (both at close of states case in Chief, and after Judges Ternes ruling) for a Directed Verdict based on insufficient evidence. R. Vol. 4 pps 45, lines 1-6, p.49 lines 12-19.

Yet Judge Ternes unconstitutionally ruled that the City only had to produce evidence at trial that Williamson did not provide proof of liability insurance when stopped. R. Vol. 4 p 52 lines 11-22.

Persuasive authority is commonly cited for reference for guidance to courts when primary authority in a state's case law is absent on providing direction. Williamson provided just such guidance attached to his Insurance Memorandum at trial in the case of; Sanchez v. State of Texas No. 01-03-00479-CR; (which case includes an itemized list of the alternative forms of financial security accepted under Texas law) R. Vol. 1 217-221. In Sanchez, the Texas Court of Criminal Appeals (which is Texas highest criminal court) ruled using the exact same legal rational that petitioner argued in his defense in Kansas State District Trial Court. Both states have an identical combination of no-fault insurance provisions and Compulsory statutory schemes of insurance enforcement.

Thus, the evidence produced at trial was insufficient to convict Petitioner.

ISSUE III.

Kansas Imposes Fines and even jail time on Out of State Citizens for Unpaid Home State Vehicle Registration taxes for the Privilege of Egress and Regress through Kansas. This Court should rule that this is a Violation of the Dormant Commerce Clause, the Fourteenth Amendment Section One Citizenship Clause, the U.S. Constitutions Article IV Section

One Full Faith and Credit clause, as well as Article IV Section Two Privileges or Immunities clauses.

Citizenship is defined in the first clause of the first section of the Fourteenth Amendment as:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States *and the State wherein they reside.*

Petitioner would argue that vehicle registration is a Home State "Tax", and not a Public Safety issue properly falling under State Police Powers, and thus is subject to superseding federal citizen rights under the U.S. Constitutions Article IV Section One Full Faith and Credit and Article IV Section Two Privileges or Immunities clauses.

Ticketing for out of state expired registration is a common and frequent police practice which exceeds a state's tenth amendment powers affecting countless thousands of American citizens and is thus a major issue of federal importance.

This Court needs to define federal citizenship rights under Fourteenth Amendment Section one citizenship clause to keep states from encroaching on important federal citizenship rights.

The law is clear that when a person *intents to reside* in Kansas and becomes a "permanent resident" that they have a 90 day grace period to change their vehicle title, registration, inspection, and driver's license.

The law is also equally clear that when an out of state citizens vehicle registration tax is currently paid up to date that the driver cannot be legally cited for any violation. ***The question presented in petitioner's case is what does the law hold when an out of state citizen's vehicle registration tax has expired.***

Petitioner argues that there is a compelling legal difference between expired "Registration" which is what appellant is charged with under City of Wichita Ordinance 11.38.300 [state statute KSA 8-127], and not having ones vehicle" Titled" in their name. Kansas registration laws present the legal fiction that an out of state tax owed only to a citizens Home State is the equivalent of their vehicles not being titled in their name. Vehicle "Titling" is a permanent act that lasts as long as the owner owns a specific vehicle, Vehicle Registration is an annual state tax owed to a person's Home State to pay for construction and maintenance of the drivers Home State's highways.

The Court of Appeals Memorandum Opinion 118207 at page 5 claims petitioners argument to that Court is that Registration is an unconstitutional burden. But this completely and disingenuously misstates petitioner's argument. Petitioner has never argued that States do not have Tenth Amendment police powers to require *their own states residents* to register their vehicles. Petitioners s' argument is that a Host State can't legally require an

Out of State resident *who has no intention of permanently residing in a Host state* to change their vehicle registration. In Kansas a citizen has to engage in at least one of the types of conduct set out in the Kansas state statute that defines residency; (K.S.A. 8-1,138: Registration of vehicles; residency exceptions); before they legally become subject to Kansas registration requirements.

The terms "domicile" and "residence" are often used synonymously, but the two terms have distinctly different legal meanings. Residence in a strict legal sense means merely a "place of abode." An individual may have many residences, or physical dwellings in which he temporarily resides, but can have only one permanent domicile residence to which he intends to return.

At trial, there was no proof offered by the State that Williamson met any of the criteria for residency based upon K.S.A. 8-1,138 (2001). The citation issued on June 8, 2016, listed petitioner Williamson's address as 4020 Fiser Place in Plano, Texas, R. 231,Vol. 1, p.

Thus, the evidence produced at trial was insufficient to convict Williamson.

If there is a single strong proof of appellants rational that the requirement for being registered in the state of Kansas hinges solely on residency one need look no further than the everyday business practices and written policies of the Kansas Department of Revenue itself. Appellant ***is homeless*** and is unable to

register his van in Kansas because he cannot prove that he lives in Kansas and has Kansas residency. In order to prove he is a resident appellant would have to have a utility bill or a rental lease agreement with his name on it bearing a Kansas address. Otherwise the Kansas Department of Revenue considers appellant an Out of State Resident. (Kansas Department of Revenue List C – Kansas Residency).

In petitioners Kansas Court of Appeal Opinion at page 6 the Court incorrectly states that petitioner did not meet the requirement to fall under Kansas reciprocal registration privilege exception; KSA 8-138 (a) because his Texas Registration annual fee was expired and cites *State v Wakola* 265 Kan. 53,54, 959 P2d 882 (1998) as its support.

But *State v. Wakola* only addressed whether the Indian nation registration was covered under the Interstate Compact Agreement as being part of the State of Oklahoma.

The test of the Privilege of Reciprocity is always cited as the holding in Hendrick v. Maryland. (Cite Omitted) *allegedly* requiring that an Out of State Driver has to be in Compliance with his own states registration law in order to bring a challenge of discrimination.

But Hendrick is a 1915 U. S. Supreme Court Case that involved a question of Interstate Commerce (not personal travel for non -commercial purposes) before the Interstate Compact Agreement came into existence. Maryland did not join the Interstate Compact Agreement until 1985. This case is also silent as to whether Hendrick had titled or registered his vehicle at all in his Home residency of the District of Columbia. The U.S. federal district of Washington, D.C. first required its residents to register their motor vehicles in 1903. Registrants provided their own license plates for display until 1907, when the district began to issue plates.

Petitioner argues that he falls under the protection of the KSA 8-138 (a) exception because this statute hinges on the interpretation of the phrase "Duly Licensed" which petitioner argues refers to a person's "Driver's License" NOT whether a vehicles annual registration fee is currently paid up to date.

Petitioner would argue that he is entitled to the everyday interpretation of "Duly Licensed", and that it is not reasonable to interpret the language in KSA 8-138 (a) as meaning "Duly Registered".

It is petitioner's position that Kansas Legislative "Reciprocity" under the Interstate Compact Act can only legitimately address a Host State interest ***in Public Safety*** NOT reciprocity of out of state vehicle registration since it is not

reasonable to interpret reciprocity as addressing vehicle registration since no state has subject matter jurisdiction over another states registration tax owed only to a citizens Home State.

But a citizen from any of the other 49 states who happens to be driving through Kansas in a continuous journey or to temporally visit Kansas, *with no intention to make Kansas their permanent residence,* cannot constitutionally be subject to Kansas Registration laws. Any other interpretation offends the Dormant Commerce Clause;

"the right to travel remains crucial in the formation and ongoing prosperity of our political union and common market". 24 *Crandall v. Nevada*, 6 Wall 73 U.S. 35, 39, 49 (1867). 25 Id. at 35 See also*; Edwards v. California* 314 US 160, (1941) 172, 178, 179.

There is a prevailing law enforcement policy of ticketing out of State drivers for expired Home State registration based on a Constitutionally infirm legal premise that anytime an out of state drivers vehicle Home State registration is expired any Forum State can treat such drivers as though they had permanently moved to the Forum state and ticket them the same way they would a State Resident. This policy is partially based on a false popular notion widely circulated among law enforcement personnel that all drivers have to have their vehicles registered tax paid up *in their Home state* or they are allowed to enforce a legal "Presumption" of a permanent change of residence.

But to petitioners knowledge there is no such "Legal Presumption" written into any states registration laws in any State in the United States.

Congress has not invited States to force Home State status on traveling visitors in Forum States. While State Reciprocity laws require all drivers to have valid state drivers licenses for public safety purposes, allowing police to ticket drivers for unpaid out of state registration taxes is a direct violation of the Dormant Commerce Clause and the Fourteenth Amendments Citizen Clause.

This policy of legally presuming a permanent change of domicile harms federal unity and is thus pre-empted by the Supremacy Clause when balanced against lessor State interest, whose legitimate State interest can be met by the far less burdensome means of only regulating bonifide State Residents, rather than unlawfully transforming temporary transient visitors into forced Resident status.

Petitioner also raised a constitutional argument, stating that registration taxes are a revenue measure and not a public safety issue. The Oklahoma Supreme Court recently ruled that a registration fee for electric and hybrid vehicles was in fact a revenue measure, Sierra Club v. State ex rel. Oklahoma Tax Commission, 405 P.3d 691 (10/24/2017). City v Williamson 17-118207-A Brief of Appellant Page 8

Rights such as the right to travel, outlined in the U.S. Constitution, are applicable to the States through the Privileges and Immunities Clause, U.S Constitution, Article IV, §2. The framers of the Constitution intended to protect a broad range of common law and natural rights against state interference, Timothy Sandefeur, —Privileges, Immunities and Substantive Due Process,‖ 5 NYU L.J. Law & Liberty 115, 172 (2010), in contrast to the ruling in the Slaughter House Cases, 83 U.S. 36 (1873).

Petitioner Williamson disagrees that the registration law imposes no barriers, See U.S. v. Eckhart, 569 F.3d 1263 (10th Cir. 2009). The barriers erected are not physical, such as roadblocks, but are legal. Travel may be interrupted by an unlawful arrest under the registration act, which results in detention by law enforcement at the City v Williamson 17-118207-A Brief of Appellant Page 10 roadside or even incarceration. Under a strict scrutiny or heightened scrutiny test, ticketing out of state drivers for expired Home state registration must fail.

CONCLUSION

For the foregoing reasons, the judgment of the Kansas Supreme Court upholding Kansas Failure to Maintain Liability Insurance; State Statute K.S.A. 40-3101-3106 et. seq. (2000, 2016, SUPP.) and Wichita City Ordinance 11.13.010 (a); and Kansas State Registration Statue K.S.A. 8-127(2001 2016

SUPP); and City of Wichita Registration Ordnance 11.38.300 (a) affirming Petitioners 'criminal convictions thereunder should be reversed.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John L. Williamson

December 11th 2019