No. 20-1105

In The
Supreme Court of the United States

ANTHONY FUTIA, JR. and ROBERT L. SCHULZ,

Petitioners,

v.

STATE OF NEW YORK; ANDREW CUOMO, individually and in his official capacity as Governor of the State of New York; JOHN J. FLANAGAN, individually and in his former capacity as Majority Leader of the New York State Senate; ANDREA STEWART-COUSINS, individually and in her former capacity as Minority Leader of the New York State Senate; CARL E. HEASTIE, individually and in his official capacity as Speaker of the New York State Assembly; THOMAS P. DINAPOLI, in his official capacity as Comptroller of New York State; and BRIAN M. KOLB, individually and in his official capacity as Minority Leader of the New York State Assembly,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is Petitioners' Guarantee Clause claim justiciable?

2. Are Respondents obligated to respond to Petitioners' Petition for Redress of violations of the New York State Constitution and law?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

All parties to the proceeding are listed in the caption. Rule 29.6 does not apply to these Petitioners.

PROCEEDINGS DIRECTLY RELATED TO THIS CASE

1. United States Court of Appeals for the Second Circuit
   Case 19-2842-cv
   ANTHONY FUTIA, Jr., and ROBERT L. SCHULZ,

   Plaintiffs-Appellants,

   -v-

   STATE OF NEW YORK, ANDREW CUOMO, individually and in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN, individually and in his former capacity as Majority Leader of the New York State Senate, ANDREA STEWART-COUSINS, individually and in her former capacity as Minority Leader of the New York State Senate, CARL E. HEASTIE, individually and in his official capacity as Speaker of the New York State Assembly, THOMAS P. DINAPOLI, in his official capacity as Comptroller of New York State, and BRIAN M. KOLB, individually and in his official capacity as Minority Leader of the New York State Assembly,

   Defendants-Appellees.

Date of entry of Mandate: December 18, 2020
Date of Summary Order: November 24, 2020

PROCEEDINGS DIRECTLY RELATED TO THIS CASE – Continued

2. United States District Court, Northern District of New York
Case 1:19-cv-00056
ANTHONY FUTIA, Jr., and ROBERT L. SCHULZ,

Plaintiffs,

-v-

STATE OF NEW YORK, ANDREW CUOMO, individually and in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN, individually and in his former capacity as Majority Leader of the New York State Senate, ANDREA STEWART-COUSINS, individually and in her former capacity as Minority Leader of the New York State Senate, CARL E. HEASTIE, individually and in his official capacity as Speaker of the New York State Assembly, THOMAS P. DINAPOLI, in his official capacity as Comptroller of New York State, and BRIAN M. KOLB, individually and in his official capacity as Minority Leader of the New York State Assembly,

Defendants.

Date of entry of Decision and Order: August 22, 2019

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CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE

1. The Summary Order by the United States Court of Appeals for the Second Circuit is reported at 2020 U.S. App. LEXIS 37156. Appendix A.

2. The Decision and Order by the United States District Court for the Northern District of New York is reported at 2019 U.S. Dist. LEXIS 142694. Appendix B.

JURISDICTION

Article III, Section 2 of the Constitution for the United States provides, "The judicial power shall extend to all cases, in law and equity, arising under this Constitution."

This case arises under the Guarantee and Petition Clauses of the Constitution for the United States.

The Summary Order of the United States Court of Appeals was entered on November 24, 2020; the Mandate was entered on December 18, 2020.

In accordance with Rule 13.1 of this Court, this petition is filed within 90 days of the date of the entry of the Summary Order.

The jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution for the United States and 28 U.S.C. Section 1254.

FEDERAL CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment to the Constitution for the United States of America provides: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for redress of grievances."

2. Article IV, Section 4 of the Constitution for the United States of America provides: "The United States shall guarantee to every State in this Union a Republican Form of Government. . . ."

3. The Fifth Amendment to the Constitution for the United States of America provides: "No person shall be . . . deprived of . . . liberty, or property, without due process of law. . . ."

4. The Fourteenth Amendment to the Constitution for the United States of America provides: "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."

STATEMENT OF THE CASE

In 2018, Futia and Schulz (hereinafter "Plaintiffs" or "Petitioners") were confronted with the fact that members of the legislative and executive branches of the Government of the State of New York (hereinafter "Defendants" or "Respondents") were violating their Right to a Government "Republican in Form," a Right guaranteed by Article IV, Section 4 of the U.S. Constitution, by operating outside the boundaries drawn around their power by the will and consent of the People as expressed in the New York State Constitution and laws pursuant thereto.

Among those violations were violations of Articles III, VI and VII of the New York State Constitution, and Section 801.2 of the State Education Law.

Thus, on 11/28/2018, pursuant to the First Amendment's Petition Clause, Plaintiffs formally petitioned Defendants to rectify those violations. However, as further evidence of an apparent disrespect for the authority of the People and their Constitution, Defendants did not respond to Plaintiffs' written First Amendment Petition for Redress of the Grievances.

In sum, this case arose from a threat to republicanism in the State of New York as Defendants: a) **violated the Guarantee Clause** of Article IV, Section 4 of the Constitution for the United States by violating existing law, and b) **violated the Petition Clause** of the First Amendment to the Constitution for the United States by failing to respond to Plaintiffs' Petition for Redress of the grievances.

A. STATEMENT OF FACTS

1. Committee on Legislative and Executive Compensation

Article III, Section 1 of the New York State Constitution mandates, "The legislative power of this state **shall be vested in the senate and assembly**." (emphasis added).

Article III, Section 6 of the New York Constitution reads in relevant part, "Each member of the Legislature shall receive for his or her services a like annual salary, **to be fixed by law . . . Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation. The provisions of this section and law enacted in compliance therewith shall govern and be exclusively controlling, according to their terms.**" (emphasis added).

Likewise Article XIII, Section 7 reads, "Each of the state officers named in this Constitution shall, during his or her continuance in office, receive compensation to be **fixed by law**, which shall not be increased or diminished during the term for which he or she shall have been elected or appointed, nor shall he or she receive to his or her use any fees or perquisites of office or other compensation." (emphasis added).

In other words, the People of New York State have not given the New York State Legislature the power to have legislative and executive salaries fixed by any means **other than a bill passed by the assent of a majority of the members elected to each branch of the Legislature**, much less the power to have their salaries that were fixed by law increased during, and with respect to, the term for which he or she shall have been elected.

On or about April 1, 2018, Bill #S.7509-C/A.9509-C, including its Part HHH, was passed by the Legislature and delivered to defendant Governor who signed it on or about April 12, 2018, when it became Chapter 59 of the Laws of 2018.

Part HHH of Chapter 59 of the Laws of 2018—the **Governor's** 2018 Revenue Bill S.7509-C/A.7509-C, established a Committee outside of and apart from the Legislature known as the **Committee on Legislative and Executive Compensation**.

The Committee on Legislative and Executive Compensation was established to "examine, evaluate and make recommendations, with respect to adequate levels of compensation, non-salary benefits and allowances pursuant to Section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law," where "Each recommendation . . . **shall have the force of law and shall supersede, where appropriate, inconsistent provisions of section 169 of the executive law, and sections 5 and 5a**

of the legislative law, unless modified or abrogated by statute prior to January 1, of the year as to which such determination applies to legislative and executive compensation." (emphasis added).

The Committee was required by Part HHH to make recommendations by December 10, 2018, **after the general election in November, 2018**, which recommendations would have the force of law and would be effective January 1, 2019, in time for the 2019-2020 Legislature. **In other words, contrary to law, there would be no intervening general election between the date of the recommendations and the date those recommendations would take effect.**

The Committee's 12/10/18 Report recommended substantial and significant **increases in compensation for Legislators, Statewide Elected Officials and appointed Commissioners**. Those increases became effective January 1, 2019 ***without a bill*** passed by the assent of a majority of the members elected to each branch of the Legislature—that is, the increases were **not exclusively fixed by law**.

Part HHH is an evasion of the law expressed in Articles III and XIII of the New York State Constitution.

The adoption of Part HHH of Chapter 59 was the final word by the Legislature and the Governor on the subject before they and the appointed Commissioners began collecting their salary increases.

2. The Amazon Deal

On or about November 12, 2018, the New York State Urban Development Corporation d/b/a Empire State Development and amazon.com Services, Inc. ("Amazon") signed a Memorandum of Understanding ("MOU").

The MOU includes a commitment by the State of New York to provide Amazon with refundable tax credits and annual monetary grants valued at $1.75 billion.

Under the MOU, monetary grants totaling $505 million, would begin in 2019 with a grant in the amount of $33.4 million and continue for fifteen years with a final grant in 2033 of $60 million.

Under the MOU, the annual tax credits would total $1.2 billion and would begin in 2019.

In September of 2018, Amazon's corporate value reached $1 trillion.

Between October 2017 and October 2018, the net worth of Amazon CEO Jeff Bezos increased by approximately $78 billion, raising his personal net worth to $150 billion.

The MOU violates New York State Constitution, including:

a) the prohibition against giving or lending the money of the State "to or in aid of any . . . private undertaking." (Art. VII, Section 8.1);

b) the prohibition against giving or lending the credit of the State "to or in aid of any . . . public or private corporation or association or private undertaking," (Art. VII, Section 8.1);

c) the prohibition against contracting debt "unless such debt shall be authorized by law," which law shall not take effect "until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election," (Art. VII, Section 11).

Article VII, Section 8.1 of the New York Constitution provides, "The money of the state shall not be given or loaned to or in aid of any private corporation or association or **private undertaking**; nor shall the credit of the state be given or loaned to or in aid of any individual, or **public or private corporation or association or private undertaking**, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the State for educational, mental health or mental retardation purposes." (emphasis added).

Article VII, Section 11 of the New York Constitution provides, "[N]o debt shall be hereafter contracted by or in behalf of the State, unless such debt shall be **authorized by law, for some single work or purpose, to be distinctly specified therein**. No such law shall take effect until it shall, at a general election, have been **submitted to the people, and have**

received a majority of all the votes cast for and against it at such election. . . ." (emphasis added).

3. Civic Education

New York State Education Law, Section 801.2 reads in full, "The regents shall prescribe courses of instruction in the **history, meaning, significance and effect of the provision of the constitution of the United States, the amendments thereto, the declaration of independence, the constitution of the state of New York and the amendments thereto, to be maintained and followed in all of the schools of the state**. The boards of education and trustees of the several cities and school districts of the state shall require instruction to be given in such courses, by the teachers employed in the schools therein. All pupils attending such schools, **in the eighth and higher grades**, shall attend upon such instruction . . . Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools in grades or classes corresponding to the instruction in the eighth and higher grades of the public schools shall attend upon such courses. If such courses are not so established and maintained in a private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to pupils in the public schools of the city or district in which such pupils reside." (emphasis added).

The New York State Grades 9-12 Social Studies Framework does not include and makes no reference whatsoever to the New York State Constitution, much less the history, meaning, significance and effect of its provisions.

The New York State Grades 9-12 Social Studies Framework does not include the history, meaning, significance and effect of the provisions of the U.S. Constitution and Declaration of Independence.

Thomas Jefferson, in his 1801 inaugural address referred to the State Governments as "the surest bulwarks against anti-republican tendencies."

The U.S. Supreme Court has repeatedly emphasized the role of the nation's schools in inculcating basic values, describing the schools as places for the conveyance of the "shared values of a civilized social order" referring to education as "the very foundation of good citizenship."

The regents and boards of education and trustees of the several cities and school districts of the State of New York are in violation of the State Education Law Section 801.2, notwithstanding the United States Constitution's guarantee of a republican form of government in the State.

The overwhelming majority of the citizens of New York State do not know there is a New York State Constitution, much less whether their local and state governments are in compliance with its mandates and prohibitions.

Defendants are in violation of Section 801.2 of the State Education Law by not equipping and anchoring each rising generation with such republican virtues "thereby enabling slavery to ensue." Thomas Paine, *Common Sense*.

4. The New York State Judiciary

Article VI, Section 6(c) of the New York State Constitution provides, "The justices of the supreme court shall be chosen **by the electors of the judicial district in which they are to serve**. The terms of justices of the supreme court shall be fourteen years from and including the first day of January next after their election." (emphasis added).

However, many of the New York State Supreme Court Justices now serving in Judicial Districts in New York State were appointed by Defendant Governor or his predecessor(s) to the Court of Claims and then immediately assigned to the State Supreme Court where they serve long terms as Acting State Supreme Court Judges and rule on civil and criminal cases, including cases brought against the legislative and executive departments in the State for violating the Constitution.

For instance, of the ten Supreme Court Justices holding office in the Third Judicial District, where this case would have to have been filed if it were filed in State Court, seven are Acting State Supreme Court Justices who are beholden to the Governor rather than the People for their judicial appointments.

5. The First Amendment Petition For Redress

On November 28, 2018 Plaintiffs served each Defendant with a First Amendment Petition For Redress of Grievances regarding: a) said Part HHH of Chapter 59 of the New York State Laws of 2018 and the Committee on Legislative and Executive Compensation; b) the Amazon Deal; and c) the lack of Civic Education.

Defendants failed to respond to Plaintiffs' First Amendment Petition for Redress of Grievances.

B. STAGES OF PROCEEDING WHERE FEDERAL QUESTIONS WERE RAISED

Plaintiffs' Article IV, Section 4 Guarantee Clause question and Plaintiffs' First Amendment Petition Clause question were raised in Plaintiffs':

i. Complaint, filed 1/16/19, and

ii. Motion for summary judgment, filed 1/24/19, and

iii. Motion for Reconsideration, filed 2/4/19, and

iv. Appellants' Brief, filed 1/5/2020

v. Appellants' Reply Brief, filed 5/27/2020

REASONS FOR GRANTING THE WRIT

1. The Lower Court Misinterpreted *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019) In Ruling Plaintiffs' Guarantee Clause Claim Non-justiciable

A violation of existing law by the political branches is not a political question to be entrusted to the political branches.

The lower court's quote from *Rucho* was taken out of context and is misleading. While the Supreme Court has held, on occasion, depending on the nature of the case and controversy before it, that the Guarantee Clause did not provide a basis for a justiciable claim, no court has ever held that as a class, all claims alleging a violation of the Guarantee Clause present non-justiciable political questions.

The following is what the *Rucho* Court actually held:

> Chief Justice Marshall famously wrote that it is "the province and duty of the judicial department to say what the law is." *Marbury* v. *Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L. Ed. 60 (1803). **Sometimes, however, "the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights."** *Vieth* v. *Jubelirer*, 541 U. S. 267, 277, 124 S. Ct. 1769, 158 L. Ed. 2d 546 (2004) (plurality opinion). **In such a case** the claim is

said to present a "political question" and to be nonjusticiable—outside the courts' competence and therefore beyond the courts' jurisdiction. *Baker* v. *Carr*, 369 U. S. 186, 217, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). **Among the political question cases the Court has identified are those that lack "judicially discoverable and manageable standards for resolving [them]."** *Ibid.* See *Rucho* at 2494. (Emphasis added).

In addition, the *Rucho* Court also held:

In suits in which appellees challenged their states' congressional districting maps as unconstitutional partisan gerrymanders, the Supreme Court held that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions. **[J]udicial action must be governed by standard, by rule, and must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws.** *Vieth*, 541 U.S., at 278, 279, 124 S. Ct. 1769, 158 L. Ed. 2d 546 (plurality opinion). Judicial review of partisan gerrymandering does not meet those basic requirements. **None of appellees' tests for evaluating partisan gerrymandering claims met the need for a limited and precise standard that was judicially discernible**

> **and manageable.** (*Rucho* at 2507). (Emphasis added).

Thus, rather than "As a class, claims alleging a violation of the Guarantee Clause present nonjusticiable political questions," the Supreme Court actually held, "Among the political question cases the Court has identified are those that lack 'judicially discoverable and manageable standards for resolving [them]'" and "Judicial action must be governed by standard, by rule, and must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws." (*Rucho*, 2494, 2507).

In the instant case, the Guarantee Clause claim does not suffer from a lack of judicially discoverable and manageable standards for resolving it and the record demonstrates a clear distinction between the Government's conduct and certain prohibitions and mandates of our Constitutions and existing law. Thus, this case does not present a political, nonjusticiable question.

To be clear, Plaintiffs seek judicial action based upon a clear distinction between the conduct of the Government and the requirements of the law as plainly expressed in our State and Federal Constitutions and law.

Lawlessness by the State's political branches is not a matter to be entrusted to the State or Federal political branches, out of the reach of the Guarantee Clause and this Court.

There is more than a causal connection between Defendants' violations of existing law and the Guarantee and Petition Clauses that are designed to provide Plaintiffs with federal constitutional protections against such a complete and dangerous breakdown of our republican ideology within the halls of Government in the New York State Constitutional Republic.

By this action, Plaintiffs are endeavoring to keep the government of the State of New York within the boundaries of the State and Federal Constitutions and prevent its being authoritarian in practice. The real ground of the complaint is to preserve the State Legislature pure and independent of the Executive, to restrain the State's Executive, Legislative and Judicial to republican forms and principles and prevent the State Constitution and laws from becoming warped in practice into the principles and pollutions of an oligarchy.

2. In Ruling Defendants Were Not Obligated To Respond To Plaintiffs' Petition For Redress Of Violations Of The New York State Constitution And Law, The Lower Court Misapplied Both *Minnesota v. Knight* And *We The People v. United States*, And The Court Overlooked Both *Garcetti v. Ceballos*, And *Borough of Duryea v. Guarnieri*

By disregarding Plaintiffs' private-sector status and their claim of government **lawbreaking** as opposed to **lawmaking**, the lower court misapplied

Minnesota v. Knight, 465 U.S. 271 (1984), and *We The People v. United States*, 485 F.3d 140 (D.C. Cir. 2007), and overlooked *Garcetti v. Ceballos*, 547 U.S. 410 (2006) and *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011).

In dismissing Plaintiffs' Petition Clause claim, the lower court's relied on *Minnesota State Bd. v. Knight*, 465 U.S. 271 (1984), which is irrelevant not only because the petitions involved in *Knight* were aimed at government **policymaking** rather than government **lawbreaking**, but also because the petitioners in *Knight* were public sector employees whose speech and petition rights are limited to begin with. Some rights of public sector employees, especially union activity, and speech and petition regarding employment-related policy questions are limited so that the government agencies may perform their functions and because these employees often hold positions of trust in the Society. "[A] citizen who accepts public employment 'must accept certain limitations on his or her freedom.' *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 386 (2011).

In addition, the lower court overlooked incongruities extant in *We The People Foundation v. United States*, 485 F.3d 140 (D.C. Cir. 2007).[1]

While the petitions for redress at issue in *We The People*, as in this case, were against lawbreaking by government officials, and the petitioners were not

[1] Futia and Schulz were among the petitioners-appellants in *We The People v. United States*, 485 F.3d 140 (D.C. Cir. 2007).

public employees, the *We the People* court nonetheless felt bound by *Knight* to hold the government was not obligated to respond to the petitions for redress.

However, the concurring opinion by Judge Rogers has the hallmarks of a dissent, admitting: 1) that the historical record of the Petition Clause, which was before her court, was not before the Court in *Knight*; and 2) that there is an emerging consensus of scholars' embracing appellants' interpretation of their rights under the Petition Clause.

In her "concurring opinion," Judge Rogers held:

> As the court points out, we have no occasion to resolve the merits of appellants' historical argument, given the binding Supreme Court precedent in *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 99 S. Ct. 1826, 60 L. Ed. 2d 360 (1979), and *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 104 S. Ct. 1058, 79 L. Ed. 2d 299 (1984). Op. at 9. **That precedent, however, does not refer to the historical evidence and we know from the briefs in *Knight* that the historical argument was not presented to the Supreme Court.** *We The People* at 145. (Emphasis added).

Judge Rogers' "concurring opinion" went on to say:

> Appellants point to the long history of petitioning and the importance of the practice in England, the American Colonies, and the United States until the 1830's as suggesting that the right to petition was commonly

understood at the time the First Amendment was proposed and ratified to include **duties of consideration and response**. *See* Julie M. Spanbauer, *The First Amendment Right to Petition Government for a Redress of Grievances: Cut From a Different Cloth*, 21 HASTINGS CONST. L.Q. 15, 22-33 (1993); Norman B. Smith, *"Shall Make No Law Abridging . . . ": An Analysis of the Neglected, but Nearly Absolute, Right of Petition*, 54 U. CIN. L. REV. 1153, 1154-68, 1170-75 (1986). **Based on the historical background of the Petition Clause, "most scholars agree that the right to petition includes a right to some sort of considered response."** James E. Pfander, *Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government*, 91 NW. U. L. REV. 899, 905 n.22 (1997); *see* David C. Frederick, *John Quincy Adams, Slavery, and the Right of Petition*, 9 LAW & HIST. L. REV. 113, 141 (1991) ; Spanbauer, *supra*, at 40-42; Stephen A. Higginson, Note, *A Short History of the Right to Petition*, 96 YALE L.J. 142, 155-56 (1986); Note, *A Petition Clause Analysis of Suits Against the Government: Implications for Rule 11 Sanctions*, 106 HARV. L. REV. 1111, 1116-17, 1119-20 (1993); *see also* Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1156 (1991) **(lending credence to Higginson's argument that the Petition Clause implies a duty to respond)**. Even those who take a different view, based on a redefinition of the question and differences between

> English and American governments, acknowledge that there is **'an emerging consensus of scholars' embracing appellants' interpretation of the right to petition**. *See* Gary Lawson & Guy Seidman, *Downsizing the Right to Petition*, 93 NW. U. L. REV. 739, 756 (1999). *We The People* at 147. (Emphasis added).

Plaintiffs are not government employees and the Petition at issue here is against government officials who have clearly strayed from their proper course. Their Petition challenges not the legitimate power of those government officials to make law; their Petition seeks to rectify lawbreaking by those government officials.

3. Plaintiffs' Reliance On The Historical Record Of The Petition Clause Comports With *Borough of Duryea v. Guarnieri*

Plaintiffs' reliance on the historical record of the petition clause comports with numerous principles set forth by this Court in *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011) as follows:

> "The First Amendment's Petition Clause states that 'Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.' The reference to 'the right of the people' indicates that the Petition Clause was intended to codify a pre-existing individual right, which means that **we must look to historical**

> **practice to determine its scope**. *See District of Columbia v. Heller*, 554 U.S. 570, 579, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)." (emphasis added). *Guarnieri* at 403.
>
> "The right to petition is in some sense the source of other fundamental rights, for petitions have provided a vital means for citizens to . . . assert existing rights against the sovereign." *Guarnieri* at 397.
>
> "Rights of speech and petition are not identical. Interpretation of the Petition Clause must be guided by the objectives and aspirations that underlie the right. A petition conveys the special concerns of its author to the government and, in its usual form, requests action by the government to address those concerns." *Guarnieri* at 388-389.
>
> "There is abundant historical evidence that Petitions were directed to the executive and legislative branches of government, not to the courts." *Guarnieri* at 402.

Consistent with the direction given by the Supreme Court in *Guarnieri*, Plaintiffs rested their Petition Clause claim on a detailed Historical Review of the origin, scope, purpose and line of growth of the Right to Petition, from the 1215 English Magna Carta to its addition to the U.S. Constitution's Bill of Rights in 1791, through the "Gag Rule" of 1836-1844. Clearly evident is the Right of the People to a meaningful response to a proper Petition for Redress of government oppressions. HISTORICAL RECORD: RIGHT TO PETITION, Appendix C.

4. Plaintiffs' Petition Exceeds Any Rational Standard

Plaintiffs' Petition for Redress of Defendants' violation of existing law exceeded any rational standard requiring a meaningful response in that it:

a. provided legal Notice seeking substantive Redress to cure the infringement of a right leading to civil legal liability;

b. was serious and documented, not frivolous;

c. contained no falsehoods;

d. was not absent probable cause;

e. had the necessary quality of a dispute;

f. came from citizens outside the formal political culture and involved a legal principle not political talk;

g. was punctilious and dignified, containing both a "direction" and a "prayer for relief";

h. addressed a public, collective grievance with widespread participation and consequences;

i. was an instrument of deliberation not agitation.

5. The Opinion Of This Court Regarding The Rights of the People And Obligations Of The Government Under The Petition Clause Would Be Of Tremendous National Importance

The history of the People's natural Right to Petition the Government for redress of grievances shows the Right was recognized and meant to remain as one of the most, if not the most powerful check and balance embodied in America's Constitutional Republic, her political ideology—a principal means, in addition to the electoral and judicial processes, for holding the government accountable to the rule of law, from our federal and state constitutions on down.

To use the words of Thomas Paine in *Common Sense*, Plaintiffs are an example of People who are "recklessly petitioning"—that is, repeatedly petitioning the Government for redress of Government's violations of existing law, only to have their repeated petitions answered only with repeated injury.

This is another case of Government stepping outside the boundaries drawn around its power, gaining ground as individual Liberty loses ground. No government can continue good except under control of the People.

This Court has not declared the rights of the People and the obligations of the Government under the Petition Clause. Doing so now would be of great moment for the Republic and its People, helping to ensure

that the ultimate power in our society remains with the People where it was meant to reside.

CONCLUSION

Plaintiffs' legally protected interests that have been invaded by Defendants include the Power-and-Liberty-oriented interests of: a) the Right to a government in the State of New York that is republican in form and substance as guaranteed by Article IV, Section 4 of the U.S. Constitution; and b) the Right to Petition a State Government for Redress of its violations of existing law, including the right to a response, as guaranteed by both the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the New York Constitution.

Defendants have invaded Plaintiffs' Right to a republican form of government by violating their will as plainly expressed in their State Constitution and State Education Law, and by refusing to respond to their Petition for Redress of the Grievances.

Plaintiffs' injuries are actual, stated in detail, connected to Defendants' actions that have been challenged and are rectifiable by a favorable ruling.

"Governments are instituted among Men, deriving their just powers from the consent of the governed," Declaration of Independence, paragraph 2. The high courts of the United States of America and the State of New York have confirmed that this principle of popular

sovereignty or self-government—government based upon the consent of the governed, is the foundation of our system of governance as reflected in the Federal and State Constitutions, where no word can be added or removed but by a vote of the People.

"[T]he Constitution's conception of the People [is] as the font of governmental power. As Madison put it: 'the genius of republican liberty seems to demand . . . not only that all power should be derived from the people, but that **those entrusted with it should be kept in dependence on the people**.' . . . Our Declaration of Independence, paragraph 2, drew from Locke in stating: 'Governments are instituted among Men, deriving their just powers from the consent of the governed' . . . **And our fundamental instrument of government derives its authority from 'We the People.'** U.S. Const., Preamble." *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S. Ct. 2652, 2674-2675 (2015) (emphasis added).

As a consequence of Defendants' **seizure of power**—their violation of existing law and their refusal to be "kept in dependence on the People" as evidenced by their refusal to respond to the Petition for Redress of the grievance, Plaintiffs have suffered a strong, sweeping injury, a concrete and particularized **loss of power**, a blow to popular sovereignty and **their right to a republican form of government**.

Plaintiffs respectfully seek the entry of an Order:

a. Declaring Plaintiffs' Article IV, Section 4 Guarantee Clause claims are justiciable; and

b. Declaring Defendants violated Plaintiffs' fundamental, unalienable Right, guaranteed by the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the Constitution for the State of New York, by failing to respond to Plaintiff's November 28, 2018 Petition for Redress of Grievances; and

c. Declaring Part HHH of S. 7509-C/ A. 9509-C of the Laws of 2018, and the 2018 Committee on Legislative and Executive Compensation and its recommendations to be unconstitutional, null and void and directing Defendant Comptroller to reduce the compensation of members of New York State's legislative and executive branches commensurate with any increase in their compensation resulting from Part HHH of S. 7509-C/ A. 9509-C; and

d. Declaring the November 12, 2018 Memorandum of Understanding between the State of New York, Amazon.com Services, Inc. and the City of New York and any agreements pursuant thereto to be unconstitutional, null and void; and

e. Remanding and directing Defendants to notify the Lower Court within ninety (90)

days how Defendants intend to bring the State of New York into compliance with the requirements of Section 801.2 of the State Education Law; and

f. On remand, directing Defendants to notify the Lower Court within ninety (90) days that they have arranged to personally pay for a series of three, two-hour courses of public instruction, scheduled to be held in a library located in each county of the State of New York, on the history, meaning, significance and effect of the provisions of the Constitution for the State of New York and the provisions of the Constitution for the United States and the provisions of the Declaration of Independence; and

g. On remand, directing Defendants' to notify the Lower Court within ninety (90) days the specific steps to be taken by Defendants to ensure that all State Supreme Court Justices will have been elected in accordance with Article VI, Section 6(c) of the New York State Constitution; and

h. Granting such other and further relief that the Court may deem just and proper.

Respectfully submitted,

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