Docket No. 20-1577

The Supreme Court of the United States

John Barth,
Petitioner
v.
Adam Buckley, Jason Panos,
City of Peabody, Marianne Bowler,
Respondents and Defendants

On Petition for Writ of Certiorari
to the First Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Are the 120 paragraphs of detailed factual statements in the Complaint and Appendix, together with numerous public record exhibits of defendant perjuries and abuses of office, sufficiently detailed to rise above mere "speculation," the perjury of the lower court?

The questions of fact are readily decided:
a. Did defendants Buckley and Panos commit perjury in the original case?
b. Did magistrate Bowler commit perjury and abuse of public office in the original case?
c. Did these perjuries and abuses of office have the effect of violation of plaintiff rights under Amendments V and XIV to Due Process of Law, to Equal Protection of Law, and against the taking of property without compensation?
The Plaintiff demands full compensation and removal of the corrupt lower court judges.

2. Are matters of perjury at trial and abuse of trial process *res judicata*, when no such claims were even possible in the prior case, and only one of four defendants is common to the cases?

3. Will this Court grant absolute immunity to a magistrate proven on public record to have committed extreme perjury and abuse of judicial office? Shall the US accept its constitutional responsibility for her actions? Will this Court order the Court of Federal Claims to accept tort claim jurisdiction as provided by the Tucker Act?

PARTIES

1. Plaintiff John Barth is the owner of land at 4 Lynn Street, Peabody, Essex County, Massachusetts (Peabody Assessor Map 102 Lot 255 shown in Appendix B and Exhibits 6-8 and 42-49), hereinafter "property of Plaintiff" or "subject property." Although appearing pro se, the Petitioner is very able to argue the issues.
The Plaintiff is also prosecuting theft of $120 million in conservation funds by Florida politicians and a state judge who turned out to be of one party. That case has been blocked by Republican judges for two years. This is the motive of Bowler and the First Circuit in using false pretexts to injure and deny rights of the Plaintiff.

2. Defendant City of Peabody ("city") is a municipality of Massachusetts which unlawfully denied permission to continue the established residential use of the property by rebuilding a home there, using zoning ordinances under state law that exempts the rebuilding of homes.

3. Defendant Adam Buckley is a wholly dishonest city lawyer who made extreme perjuries in the original case.

4. Defendant Jason Panos is an extremely dishonest city zoning board chair responsible for unlawful application of the city zoning ordinance, the sole ZBA vote against the rebuilding of the home, who made extreme perjuries as witness for defendant city in the original case.

5. Defendant Marianne Bowler is a dishonest magistrate who made perjuries and abuses of office to obstruct justice throughout the original case, for benefit to her political party, knowing that the plaintiff is prosecuting its racketeering crimes in another case.

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Definition of Just Compensation

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60. *Standards for Just Compensation*, M. Leroy
61. *The Measure of Just Compensation,* K. Wyman, NYU

Orders Entered

Date	Court	Item
02/22/2021	Court of Appeals, Massachusetts	
	No. 20-1242	(denial of appeal)
02/12/2020	Massachusetts District Court	
	1:19-cv-12152 Walker	
06/15/2020	Court of Appeals, Massachusetts	
	DAR-22399	(denial of appeal)
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Other Authorities

It is the unjust judge, that is the capital remover of landmarks, when he defineth amiss, of lands and property... Nothing doth more hurt in a state, than that cunning men pass for wise... Persons that are full of sinister tricks and shifts, whereby they pervert the plain and direct courses of courts, and bring justice into oblique lines and labyrinths.
-Francis Bacon, Essays

Here let those reign, whom pensions can incite,
To vote a patriot black, a courtier white,
Explain their country's dear-bought rights away,
And plead for pirates in the face of day.
-Samuel Johnson, London, 1738

The United States has been... a government of laws, and... will cease to deserve this... if the laws furnish no remedy for the violation of a vested legal right.
- John Marshall, Marbury v. Madison, 1803

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.
- Louis Brandeis, Olmstead v. U.S., 1928

The rights of every man are diminished when the rights of one man are threatened.
- John F. Kennedy, report on civil rights, 1963

Jurisdiction

Jurisdiction of the United States Supreme Court is conferred by Article III §§ 1,2 of its Constitution; 28 USC §2106 confers jurisdiction to modify or reverse any judgment or order of court brought for review.

This petition is brought under the Civil Rights Act (42 USC §§1983 to 1986), for violation by defendants of Plaintiff rights guaranteed by the United States Constitution, including his right against property taking without compensation (Amendment V) and without due process of law (Amendment XIV §1), and his right to equal protection of law (Amendment XIV §1). The Massachusetts statutes M.G.L. Ch. 40A and 79, are unconstitutional as applied to deny the Plaintiff relief.

The federal courts have jurisdiction under 28 USC §1331 of claims herein of violations of rights guaranteed by the Constitution; and under 28 USC §1343(1-3) of claims herein of deprivation of civil rights in violation of 42 USC §§ 1983-1986; and under 28 USC §1332 of all claims herein, as Plaintiff is a resident of Maine, whereas the defendants are of Massachusetts.

The First Circuit Court of Appeals incorrectly affirmed the false decision of the Massachusetts District on February 22, 2021. This petition is timely brought within 90 days thereof, per Supreme Court Rule 13.1.

Provisions of the United States Constitution

Amendment V:

> "No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV Section 1:

> "... 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."

Statutes of the United States

Statutes of Massachusetts

Ordinance of the defendant City of Peabody

Statement of the Case with Pertinent Facts

1. A dwelling upon the subject property of Plaintiff was constructed c. 1800 AD, a log frame rural dwelling. Over two centuries adjacent lots were carved off and homes built; all became "nonconforming" with later zoning ordinances, but residential use continued as usual.

2. The property was foreclosed in 2009. Neighbors alleged health concerns, city officials issued careless orders, the lack of FHLMC response outraged them, and they offered its use to neighbors for parking. The city improperly ordered demolition, and the structurally sound antique home was demolished 4/9/2011.

3. Plaintiff knew constitutional and land use law through charity work, and that zoning nonconformity has no effect upon the title right to rebuild a home. He needed a Boston residence to continue engineering work despite recent medical problems limiting commuting time, had the permitting and construction skills and cash to build, and without competition acquired the property 9/8/2011 at a minimal price. But the value to him was the full value of a residential lot near Boston. He proceeded rightfully with plans to replace the home, (Appendix B), fortunate to recover his working ability.

4. Plaintiff promptly had a site plan drawn showing the proposed home to be "no more nonconforming" (within the former footprint, with no other nonconformities) and therefore exempt from zoning ordinances under state law: MGL Ch. 40A §6. All defendants knew that zoning ordinances cannot be lawfully applied in this case.

5. Plaintiff application for building permit to replace the home was denied by the city. Despite echoing the Ch. 40A§6 exemption, the city zoning ordinance §1.5.1 unlawfully requires a "variance" from its Dimensional Controls from its Zoning Board of Appeals (ZBA), as noted in the denial letter, in violation of MGL 40A§6.

6. Plaintiff applied for the demanded variance, for hearing at ZBA meeting November 2011, citing the constitutional, statutory, and ordinance provisions that

permit rebuilding. The ZBA thus knew that denial would violate state law, and would constitute taking of property requiring just compensation, which at that point was land value plus design and permit costs.

7. Many city officials believed that, if Plaintiff obtained land at a low price, then magically the city had a right to take it for that price for purposes of neighbors, or to destroy its value. They endlessly cited the price paid to recruit others to oppose him. But these notions have no basis in law, and are no less than rationales for crime.

8. Efforts were made by city officials to force use of the property for parking to benefit neighbors. Contractors were asked to charge many times customary fees for services to Plaintiff, and numerous city proceedings (building, ZBA, and conservation) were demanded despite statutory exemptions, requiring six successive complete home designs, many months of work, hiring surveyors and an environmental consultant, and attending many meetings far from Plaintiff's home. Plaintiff made these investments (Exh. 21) with assurance of law that "reasonable investment-backed expectation of value" [9, 7] must be compensated.

9. To educate ignorant officials that they cannot seize property for the lowest price ever paid, Plaintiff advised the ZBA (Exh 10) that "just compensation" means fair market value, whereupon the city fraudulently reduced its sworn assessed value by more than 97 percent from $112,200 to $3,200 (Exh 20, 30-38) while increasing the assessed land value of both adjacent parcels in the same prior use. This proves intent and admission of taking substantially all value of the property, and is an act of perjury (MGL Chapter 66 §§5A, 6, 16). Based upon adjacent parcel land assessments, the 2014 FMV was $139,440, to which development investment is added.

10. Every objection was overcome by Plaintiff investments: the plans met all regulations, the city engineer approved, neighbors approved, and Conservation approval was obtained 5/7/2012 (Exh. 13).

11. The zoning ordinance Use Table (Exh. 40 zone R1A) permits only Residential, Educational, Church, and Agricultural uses. All require structures except agricultural use, which is uneconomic. The newer minimum yard dimensions leave no area for structures on the old lot, so no use is permitted under present ordinance except continuation of residential use. Therefore denial of residential use would take "all or nearly all value" of the lot value plus development costs.

12. On 7/16/2012 the five-member ZBA (four present) voted with only one member (defendant Panos) opposing the variance, insufficient under MGL 40A to approve a motion. The city thereby unlawfully denied the variance Panos unlawfully demanded to replace the home. Plaintiff demanded compensation at the hearing, but chair Panos refused. The notice of denial of variance (Exh 14) proves public taking of the principal use of the property by defendant city, and proves deliberate violation by Panos of MGL Ch. 40A§6.

13. This refusal to award damages concurrent with taking or petition is in violation of MGL Ch 79 §§ 6, 7B, and 10, and owner rights to compensation and equal protection under the U.S. Constitution, Amendment V and XIV, and the Civil Rights Act 42 USC §§1983-1988.

14. Under MGL Chapter 79 §14 Plaintiff filed action for compensation 8/2/2012 in Superior Court in Salem, MA.

15. The property is in part of Salem that later became Peabody, whose court succeeds that of the 1640s Salem Witchcraft Trials when similar property was taken by judicial corruption, recorded in Hawthorne's House of Seven Gables. The Essex court now embodies the Mafia subculture celebrated in Peabody. Defendant Buckley made endless perjuries there, his primary skill.

16. Compensation was denied without cognizable argument by the Salem court, appealed at state level, and appellate review by the state court of last resort was denied. Perjury and corruption still rules there.

17. The case was brought to U.S. District Court (MADC 15-13794), where defendants Buckley and Panos made the endless perjuries detailed in this perjury case.

18. The corrupt magistrate Bowler denied Motions for Summary Judgment without cognizable argument, denied the Plaintiff the mandated pre-trial and trial briefs of defendant, prevented jury viewing of plaintiff exhibits, instructed the jury to ignore essential plaintiff statements, and committed numerous perjuries in instructions to the jury, with false statements of fact and false standards of judgment, to deny rights of the plaintiff guaranteed by the United States Constitution. These are crimes, for which Bowler has no immunity.

19. That decision was appealed to the First Circuit court of appeals which corruptly affirmed, claiming absurdly that absence of a transcript prevented judgment of claims and facts unrelated to trial process.

20. The *present* defendants were prosecuted for their *perjuries and abuses of office in the original action*, again in the Massachusetts district, where the corrupt judge Walker dismissed the action on absurd claims of res judicata, insufficient allegation, and absolute immunity, claiming these to be "axioms of black-letter law," an admission of corruption. Appeal to the First Circuit brought an unsupported affirmation to protect comrade Bowler, an act of paleolithic tribalism to advance their anti-Constitutional cabal.

21. These facts establish perjury and abuse of office by defendants to deny statutory exemptions that permit rebuilding homes. The defendants are principals in the first degree by commission, solicitation, protection, and ratification, and accessories before and after the fact, in perjury and abuse of office, in collusion to deny compensation and violate Constitutional rights. *These are not claims in the original action, and the operative facts are clearly distinct, hence not res judicata. Related facts only show consequent damage by property taking.*

22. The 97% city assessed land value reduction in sworn 2010-2012 records, while increasing the land value of same-use adjacent parcels, admits its intent and belief that it had taken, nearly all value of the property.

23. The Plaintiff is not a member of a political party, but is now prosecuting theft of $120 million in conservation funds by Florida politicians and a state judge who turned out to be of one party. That case has been blocked by Republican judges for several years. This is the motive of Bowler, Walker, and the First Circuit in using false pretexts to deny rights of the Plaintiff.

Reasons for Granting Certiorari

The original case unconstitutionally denied compensation to the plaintiff for constructive Taking of Property by application of an *ex post facto* city zoning ordinance to prohibit rebuilding of a home, in violation of statutory exemption. It ignored the unconstitutional denial of Equal Protection of Law by defendant failure to apply that ordinance to adjacent properties. The city lawyer Buckley and zoning chair Panos simply made profuse perjuries as to the facts, law, and course of proceedings, to cover up city theft, and were joined by the corrupted magistrate Bowler in numerous perjuries and extreme distortions of trial process. Upon prosecution for perjury, the notorious judge Walker resorted to more perjuries to cover his friend's perjuries: the unsupportable excuses of res judicata, lack of factual allegation, and absolute immunity.

The perjuries of the defendants on the record are sufficient for summary judgment. The district and circuit judges sought to cover up undeniable perjuries and abuses of office by their friend Bowler, in deliberate subversion of the United States Constitution. These are acts of extreme corruption which must be reversed.

Question 1.c deals with the constructive taking of property and denial of due process and equal protection, which injured the plaintiff by preventing employment. Decision of this question permits compensation.

The judgment is repugnant to the Constitution, based upon improper influence, and without ruling by this Court will set an unacceptable precedent requiring later intervention. The questions merit certiorari due to conflict of the judgment with decisions of this Court per Rule 10(c.), and with decisions of the U.S. courts of appeals per rule 10(a) and 10(b).

Reasons for Certiorari for Question 1 (allegation)

1. Are the 120 paragraphs of detailed factual statements in the Complaint and Appendix, together with numerous public record exhibits of defendant perjuries and abuses of office, sufficiently detailed to rise above mere "speculation," the perjury of the lower court?
a. Did defendants Buckley and Panos commit perjury in the original case?
b. Did magistrate Bowler commit perjury and abuse of public office in the original case?
c. Did these perjuries and abuses of office have the effect of violation of plaintiff rights under Amendments V and XIV to Due Process of Law, to Equal Protection of Law, and against the taking of property without compensation?

This question is of critical importance in the protection of constitutional rights and judicial process from perjury and abuse of public office.

The perjuries and abuses of office by Buckley, Panos, and Bowler are fully stated and evidenced in 95 Complaint paragraphs, 25 Appendix paragraphs of detailed factual statements, and many exhibits. It is clear on the evidence that the defendants were aware that their actions were perjuries, abuses of public office, or both. These statements and evidence are sufficient for summary judgment. The lower court perjury that this detailed evidence is insufficient *even for allegation* and mere "speculation" is a *prima facie perjury* and was "supported" by nothing: *a single immaterial citation.*

The unsupportable false claim by the corrupted judge Walker, anxious to cover for his friend Bowler, that a very well-stated and fully-evidenced case is magically insufficient even to allege claims, is a crime as injurious to the United States as the original claims.

Sufficiency of Allegation

Standard of Judgment

A court may dismiss a claim for insufficient allegation only where "no construction of the factual allegations will support the cause of action." [40] *Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist.*

The district court corruptly equivocated allegation with proof, absurdly presenting only the extreme case *Bell Atlantic Corp. v. Twombly* [10] where no specific allegations at all were made to support a claim of price-fixing. This is plainly immaterial. The lower court sought to sleaze its way to discretionary denials of constitutional rights, an attack upon the Constitution by judges loyal only to political gangs.

Application of the Standard to the Case

The Complaint far exceeds the standard for sufficient allegation in 95 Complaint paragraphs and 25 Appendix paragraphs of detailed factual statements, which with the exhibits and record prove beyond reasonable doubt the perjuries and abuses of office by the defendants. This evidence is *sufficient for summary judgment* against the defendants, which was denied without argument by the lower court. Any challenge to sufficiency of allegation is an admission of perjury.

The decision deliberately violated the admitted standards of judgment of dispositive motions and of sufficiency of allegation, ignored the clear fact allegations, claimed falsely that proof rather than fact allegation is required, failed to find any specific insufficiency of allegation, and falsely stated the established law to create fake barriers. No cognizable grounds for dismissal was argued.

The lower court decision claiming that these statements and evidence offer mere "speculation" is a *prima facie perjury* of the district court, evident upon a first reading of the Complaint and Appendix. This is solid evidence of corruption of

Walker: the district and appeals judges should be removed from office for seeking and stating absurd excuses to dismiss without cause.

Perjury by Buckley and Panos

Defendant Buckley made hundreds of perjuries and deceptions as city counsel in eight years of litigation, and made no true material statement except as a prelude to deception. Many of these were repeated at trial to prejudice a jury without knowledge of the law. Buckley sought to injure the plaintiff for personal gain.

Buckley committed numerous rules violations to obstruct justice, including failure to send motions to the Plaintiff, hiding dispositive motions in other documents, sending parts of documents excluding dispositive motions, and failing to serve a pretrial memorandum and trial brief. Nearly all Buckley oaths are perjuries.

Perjury in Pretrial Process

Buckley failed to serve the Pretrial Memorandum required by the FRCivP, denying Plaintiff opportunity to prepare for hearing. The lower court sent this *after* the Pretrial Conference. The permission of this abuse by Bowler is an extreme abuse of office.

Buckley also failed to serve the Trial Brief required by the FRCivP, denying the Plaintiff the mandated opportunity to prepare for trial. The permission of this abuse by Bowler is an extreme abuse of office with intent to deny constitutional rights.

Perjury at Trial

1. Perjuries by Defendant Buckley

Buckley was allowed at trial to restate long-discredited perjuries about his depositions of the Plaintiff, which were in fact dirtbag attempts to deceive the court with perjuries. He tried to prevent the Plaintiff from recording a second deposition

so that he could lie about what was said. Such a demand is without FRCivP basis and is an admission of intent of perjury. The Plaintiff recorded an eight-minute conversation in which Buckley refused to allow the session to be recorded, and the Plaintiff stated that there would be no deposition if he could not record it. That recording filed with the court establishes many more perjuries by dirtbag Buckley to the lower court, including his intent to commit perjury.

2. Perjuries by Defendant Panos

Panos was the city ZBA chair and sole vote against the variance he had unlawfully demanded. The Plaintiff was repeatedly interrupted by defendant Bowler in questioning witness Panos, who committed many perjuries on the ZBA process, to slander the Plaintiff and prejudice the jury, for personal gain.

At issue were ordinary lot drawings for the ZBA, the first (1) by a dishonest surveyor, lacking required details, but with false notes of a non-existent easement.

The city engineer noted details missing from that first drawing, so Plaintiff submitted (2) his clearly-marked revision thereof to include the details requested. The dishonest surveyor, angry that the Plaintiff would not pay him seven times as much to correct his drawing, falsely claimed to the ZBA that this was a "forgery" although very clearly marked as a revision. The Plaintiff retracted the revision and submitted (3) the same drawing without reference to the dishonest surveyor. The ZBA declined that without a surveyor seal, whereupon the Plaintiff filed (4) a drawing by a better surveyor, which was accepted by the ZBA.

Panos repeatedly committed perjury as a witness in denying that any drawing had been submitted to the ZBA but the withdrawn plaintiff revision. But he admitted other documents that prove that he knew of all of the drawings. His denials were perjuries under oath, fully documented in the brief.

Panos admitted the ZBA letter he signed, denying the permit on unlawful grounds of zoning controls, also proving that the ZBA had accepted the fourth

drawing. Panos admitted three perjuries of essential facts, to deceive the jury *to permit theft by his employer.*

The perjurer Panos repeatedly shouted that the revision was somehow a "forgery" rather than a clearly-marked revision. When asked several times to read to the court the *statement on the drawing that it is a revision*, Panos repeatedly changed the subject, and Bowler refused to demand that he answer, but instead demanded that the Plaintiff not ask the question. These are deliberate perjuries and abuses by Panos and Bowler, intended to deny rights of the plaintiff.

MGL Ch. 40A requires at least four members of a five-member ZBA to approve variances. Three of the four who attended the ZBA meeting voted to *approve* the variance. Only Panos voted against the variance he had unlawfully demanded, leading to eight years of losses and litigation, his motive for perjury.

The Plaintiff questioning of Panos was cut short many times by Bowler, preventing exposure of his perjuries to the jury. Bowler blocked the Plaintiff introducing the actual ZBA drawings used (exhibits 17, 13) until just before closing statements, allowing the jury to be deluged with perjuries by Panos, whose unlawful acts caused the property taking, and blocked explanation of the real drawings. Bowler acted in knowing criminal collusion with criminals.

3. Buckley, Panos , and City are Liable for Perjury

The deceitful district judge Walker constructs an excuse for Buckley and Panos, that city liability for their acts as employees and agents exonerates them [App. p. 60], which is *prima facie* false argument. He copies the absurd deceit of the defendants that their common liability is res judicata due to prior action, although fully aware that ***THERE IS NO "COMMON NUCLEUS OF OPERATIVE FACT" OF PERJURY*** **BETWEEN THE CASES, BECAUSE THE OPERATIVE FACTS ARE PERJURIES** ***AFTER THE PERIOD OF OPERATIVE FACTS OF THE PRIOR CASE.*** **GOT THAT, WALKER?** Walker simply proved himself another perjurer to be prosecuted and removed from office.

Perjury and Abuse of Office by Bowler

Perjury and Abuse in Pretrial Process

Bowler allowed the defendants to violate essential Rules of Civil Process by refusing to serve their Pretrial Memorandum or Trial Brief upon the Plaintiff, denying the Plaintiff the ability to prepare for pretrial conference or trial.

The Plaintiff complained at pretrial conference, but Bowler took no action, clearly intending to deny due process and equal protection of law.

The Plaintiff complained before trial that he was not sent the defendant's trial brief, and could not prepare evidence or witnesses, but Bowler ignored this extreme violation, to deny fair trial to the Plaintiff.

These abuses by Bowler clearly denied a fair trial with intent to deny due process and equal protection of law, and to deny the right against government taking of private property, based solely upon perjuries and abuses of office. These abuses are clear on the record.

Perjury and Abuse in Conduct of Trial

1. Abuse of Office by Bowler in Communications With the Defendants and Jury

At the outset of trial, it was clear that there were corrupt arrangements between Bowler and Buckley, who showed a suddenly positive relationship.

On the second and third days of trial, it was clear that the jury had been coached to favor the defendant, as the defendant had no defense other than perjuries, with no evidence or cognizable argument whatsoever.

2. Abuse of Office by Bowler in Trial Process

Bowler repeatedly denied the Plaintiff right to fully question a city employee witness who committed many perjuries on *non-determinative* issues of zoning process, to prejudice the jury by constructing a false *rationale for theft of property.* The Bowler denial of defendant Trial Brief denied opportunity to prepare for the

false witness. Plaintiff questioning was repeatedly stopped by Bowler, and he was not permitted to introduce contrary exhibits until the day after these perjuries, so as to prejudice the jury.

Bowler demanded the Plaintiff stand about thirty feet away to make statements to the jury, so that his 3 ft. by 4 ft. displays of the exhibits could not be read. Bowler blocked him passing smaller exhibit displays to the jurors. His exhibits of treatments for thrombosis which limited his commuting range and necessitated residence at the property were withheld from the jury. His exhibits of thousands of employment applications which failed due to out of state residence due to the denial of residential use of the property, were withheld from the jury. No exhibit restrictions were placed upon the defendant. These were all deliberate denials of Due Process and equal protection of law by Bowler, with intent to deny rights of the Plaintiff.

This evidence was only admitted by Bowler on the last day of trial, after the jury had been subjected to endless perjuries by the defendants, another deliberate denial of Due Process and Equal Protection of Law, with intent to deny rights of the Plaintiff.

The Bowler jury instructions were shown to the Plaintiff with a mere 15 minutes to study and object to the 65-page memorandum of law in the footnotes. They consisted solely of perjuries as to the law. The Plaintiff nonetheless made the major objections argued in the brief at *Lower Court Errors of Instructions to Jury*, which were ignored by the magistrate, saying only "I have ruled." These perjuries are an extreme denial of Due Process and Equal Protection by Bowler, with intent to deny the plaintiff rights against taking of private property. The evidence is on the record.

Perjury in Instructions to the Jury

The issues of federal law were fully briefed by the Plaintiff with definitive arguments of federal law on each point. Bowler had these clear statements, and

chose instead to subvert the United States Constitution and the rights of its People, by inventing utterly false standards of judgment, asserting those as the law, and demanding IN ALL CAPS that the jury act accordingly.

Bowler gave the jury carefully-distorted instructions on each issue, using a *single anomalous state decision*, invoking *long-superceded decisions*, and inventing *non-existent "principles of law,"* with all-capitalized demands that the jury decide accordingly.

These Bowler perjuries and abuses of office were deliberate denials of Due Process and Equal Protection, with intent to deny the plaintiff rights against government taking of private property.

1. Perjury in Hiding the State Standard of Property Taking

The instructions to the jury failed to apply the state standard of property taking, which is even more inclusive than the federal standard, and is the correct standard of judgment in cases of state takings. In James G. Cayon vs. City of Chicopee & another [108] the court ruled that

> It is well settled that a taking of private property for which compensation must be paid is not necessarily restricted to an actual physical taking of the property. See Nichols, Eminent Domain (Rev. 3d ed.) Section 6.1. This rule has long been recognized in this Commonwealth. In Old Colony & Fall River R.R. v. County of Plymouth, 14 Gray 155 , 161 [107], we stated that private property can be "appropriated" to public use "by taking it from the owner, or depriving him of the possession or **some beneficial enjoyment** of it." Likewise, the Supreme Court of the United States has stated that "[g]overnmental action short of acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of **all or most** of his interest in the subject matter, to amount to a taking." United States v. General Motors Corp. 323 U.S. 373, 378 [105]

The state standard of taking of property is that the owner has been deprived of "some beneficial enjoyment" of it. That is the standard applicable to this case.

2. Perjury as to the Federal Standard of Property Taking

The instructions to the jury falsely and absurdly stated (p.21) that *all property value* must be taken by government to constitute a taking of *any* property (!):

> "THIS FORM OF TAKING IS LIMITED TO THE EXTRAORDINARY CIRCUMSTANCE WHEN NO PRODUCTIVE OR ECONOMICALLY BENEFICIAL USE OF THE LAND IS PERMITTED, IN OTHER WORDS, THE PROPERTY IS RENDERED ECONOMICALLY USELESS."

This statement has no basis in law whatsoever, is plainly false, and intended to throw the case to the city for bribes and political party benefit.

In fact this Supreme Court in Palazzolo v. Rhode Island, 99-2047 (2001) [1] well summarizes its prior judgments on public taking of private property, quoted below at Taking of Private Property, *Conflict With Rulings of this Supreme Court.* This Court recognized that even the Lucas [102] criterion of "all economically beneficial use" having been taken is met despite uses of minor economic value which may remain after the principal use is taken (in Lucas as in this case, agricultural use remained when residential use had been taken):

> Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest.

Citizens may not rob banks with impunity, with the defense that not everything was taken, that the bank property is still worth something, or that a nickel was thrown at a victim on the way out. *No such principle has ever been applied* in civil or criminal cases of property taking, nor in cases of federal or state property takings. Bowler's statements were outright perjuries.

The criterion of property taking under US law is "all or most" of the property value, and this is indisputably met by the defendant taking of over 97 percent of the value of the subject land by its sworn admission, and over 99 percent of the value of

the land plus development costs. There is no question of fact or law, that the present case fully meets both the state and federal criteria of property taking. But the jury instructions deliberately contradicted case law, admitting that *immaterial case law* was substituted *at the request of the defendant*(!). The false jury decision resulted from false instructions as to the law by Bowler.

The jury instructions stated falsely that no property is taken unless it is all taken, exonerating the bank robber on the grounds that he dropped a nickel on the way out, and therefore took nothing. This egregious and ludicrous argument would never have been made had the property of Bowler been taken. The Plaintiff moved that the court take *97 percent of city or Buckley property* and give it to him, to find what they really think about property taking, and *Bowler denied this.*

Bowler admitted in the jury instructions (footnote p.21) that this contradiction of state and federal law was based solely upon a *defendant request* to substitute a *single immaterial state case* for the entirety of state and federal case law (!):

> "DEFENDANT REQUESTS THE "ECONOMICALLY USELESS" LANGUAGE... WHICH THE LAW SUPPORTS."
>
> (citing *Giovanella* [1])

But *Giovanella* is just another case of *proposed new uses* of land, utterly immaterial to the present case of denial of *established land uses.* These are completely different areas of case law, as fully argued by the Plaintiff in the Memorandum of Law.

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[1] *Giovanella v. Conservation Comm. Of Ashland,* 857 N.E. 2d, 451, 461 (Mass. 2006) This case concerns a *proposed new land use* and is immaterial to the present case. It also (1) ignored the state criterion of property taking and so had no validity under state law. It also (2) ignored modern case law and misstated even the antiquated *Penn Central* standard for property takings. Finally (3) the case tampered the definition of the subject property, adding an adjacent parcel to dilute the effect of taking all value of the subject lot, to conclude that not enough of the two lots was taken. This is an exercise in false legal argument, in addition to being immaterial to the present case of denial of *established land uses.* This citation further establishes the corruption of the district judge.

Established land use is an unconditional *vested right*, unlike proposed new land uses which may conflict with a public interest.

The jury instructions falsely and absurdly stated (p. 21, citing Lucas) that over 95 percent of property value must be taken by government to constitute a taking of private property.

> "A CATEGORICAL TAKING WOULD NOT APPLY EVEN IF THE DIMINUTION IN THE VALUE WERE 95% INSTEAD OF 100%"

But in fact, in Palazzolo, the Supreme Court recognized that even the Lucas [102] criterion of "all economically beneficial use" having been taken is met despite uses of minor economic value which may remain after the principal use is taken:

> Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest.

The jury instructions also stated falsely (p. 25) that

> THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT DOES NOT REQUIRE COMPENSATION WHEN A PROPERTY OWNER IS BARRED FROM PUTTING HIS PROPERTY TO A USE THAT IS PROSCRIBED BY EXISTING RULES OR REGULATIONS.

This statement falsely instructed the jury to ignore the determinative facts, that the defendant zoning ordinance (1) was *specifically barred from use against home rebuilding* by MGL Chapter 40A, and (2) was enacted over two centuries after the residential land use was established, by city admission, and was therefore an *unconstitutional ex post facto law as applied.*

Although the jury instructions later admit that Massachusetts law Chapter 40A specifically allows the rebuilding of a one or two-family house that is nonconforming with subsequent zoning ordinances as long as the rebuilding is *not more nonconforming* therewith than the original house, it falsely instructs the jury (p.28-9) that the proposed rebuilding was *more nonconforming* only because a second floor was added:

> "ADDING A SECOND STORY TO A PREEXISTING NONCONFORMING CARRIAGE HOUSE MAY INCREASE THE NONCONFORMING NATURE

OF THE CARRIAGE HOUSE TO PRECLUDE THE PROPOSED RECONSTRUCTION."

But in fact the new height in this case (about 27 ft.) conformed with the 35-foot height restriction under the later zoning ordinance, so again the instruction was completely false. The Plaintiff was denied the right to introduce the state law or zoning ordinance to show that the rebuilding was no more nonconforming than the original. Again perjury in jury instructions and abuse of process caused the erroneous verdict.

The jury instructions falsely state (p. 34) that property is not taken by regulation where the regulation intends to "serve the common good" as do all regulations.

> "I INSTRUCT YOU THAT A TAKING IS MORE READILY FOUND WHEN THE GOVERNMENT INTERFERENCE WITH THE PROPERTY CAN BE CHARACTERIZED AS A PHYSICAL INVASION BY GOVERNMENT. IN CONTRAST, WHEN THE INTERFERENCE BY GOVERNMENT REGULATION ARISES FROM A PUBLIC PROGRAM THAT ADJUSTS THE BENEFITS AND BURDENS OF ECONOMIC LIFE TO PROMOTE THE COMMON GOOD, IT IS LESS LIKELY THAT THE CHARACTER OF THE GOVERNMENT ACTION WILL SUPPORT FINDING A TAKING." (citing [2])

But in fact all regulations are presumed to be intended to serve the common good. Issues of regulatory intent are considered when a *proposed new land use* is taken, but not in denial of *established land uses* where the Takings Clause of Amendment V is "self-executing." The federal law is correctly stated in the Plaintiff Memorandum of Law. The jury instructions were willfully falsified, and the resulting erroneous jury decision cannot be allowed as precedent.

The jury instructions (p. 35) further stated falsely that

> "ZONING LAWS WHICH CONTROL DENSITY AND LIMIT OVER DEVELOPMENT ARE ANOTHER EXAMPLE OF GOVERNMENT REGULATION THAT SERVES THE COMMON GOOD BECAUSE THEY PRESERVE OPEN SPACES, AND ARE THEREFORE LESS LIKELY TO CONSTITUTE A TAKING."

(citing [2, p.36] as follows)

> "in instances in which a state tribunal reasonably concluded that that the "health, safety, morals, or general welfare" would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests.

But again the cited case *Quinn* dealt with a *proposed new land use*, not an *established land use*, for which the state and federal standards are different. The case is again *immaterial*, and the jury instruction was falsified.

Regulatory intent is material only where a *proposed new land use* conflicts. The jury instructions falsely applied that criterion to the taking of *established land uses* in contradiction of the "self-executing" Fifth and Fourteenth Amendments.

Bowler willfully committed perjury, substituting false criteria, ignoring the federal law clearly before her in the Plaintiff Memorandum of Law, Pretrial Memorandum, and Trial Brief. Bowler falsified the jury instructions, committing a deliberate abuse of office.

3. Perjury in Statement of the Federal Standard of Equal Protection

The right of citizens under Amendments V and XIV of the United States Constitution to Equal Protection of Law was violated by the city in denying the established use of the subject land, for nonconformity with dimension rules of a zoning ordinance unlawfully applied, while permitting the same use to continue on *both adjacent properties* with *identical nonconformity* with the inapplicable rules.

Defendant Bowler stated falsely in the jury instructions that Equal Protection is not denied unless the government entity is shown to have acted with "malice" toward the victim.

> "NOW, IN ADDITION TO THESE TWO ELEMENTS, THE PLAINTIFF MUST PROVE THAT, COMPARED WITH OTHERS SIMILARLY SITUATED, HE WAS SELECTIVELY TREATED AND THAT SUCH SELECTIVE TREATMENT WAS BASED ON IMPERMISSIBLE CONSIDERATIONS SUCH AS RACE, RELIGION, INTENT TO INHIBIT OR PUNISH THE EXERCISE OF CONSTITUTIONAL RIGHTS, OR MALICIOUS OR BAD FAITH INTENT TO INJURE A PERSON."

In fact the Supreme Court held in Parratt v. Taylor, 451 U.S. 527 (1981) that section 1983 action does not require showing of a state of mind such as malice for liability [10]:

> Section 1983, unlike its criminal counterpart, 18 U.S.C. 242, has never been found by this Court to contain a state-of-mind requirement. 2 The Court recognized as much in Monroe v. Pape, 365 U.S. 167 (1961), when we explained after extensively reviewing the legislative history of 1983, that
>
> "[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth [451 U.S. 527, 535] Amendment might be denied by the state agencies." Id., at 180.

Clearly this instruction to the jury was completely and willfully falsified, an act of perjury and abuse of office by Bowler, which caused an erroneous verdict.

Bowler stated falsely in the jury instructions that Equal Protection requires comparison with treatment of properties having *exactly identical* circumstances with the subject, rather than properties "similarly situated."

> "ZONING DECISIONS WILL OFTEN, AND PERHAPS ALMOST ALWAYS, TREAT ONE LANDOWNER DIFFERENTLY FROM ANOTHER. THEREFORE, IN A LAND-USE CASE SUCH AS THIS ONE, THE PLAINTIFF MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE AN EXTREMELY HIGH DEGREE OF SIMILARITY BETWEEN HIMSELF AND THE NEIGHBORS TO WHOM HE COMPARES HIMSELF."

The Plaintiff properly argued (exhibits 1, 2, 6,11,13,17, Memorandum of Law, *Denial of Equal Protection of Law*) that the adjacent lots had non-conformities with zoning rules for distance from lot boundaries, passed after the property use was established, as did the subject property, and that the same rules applied unlawfully to deny the same established use to the Plaintiff, were not applied to the adjacent properties. This wholly falsified instruction by Bowler ordered the jury to make an erroneous decision, with intent to deny Due Process and Equal Protection Law to the Plaintiff.

The city has not denied continuation of established use of other "nonconforming" properties similarly situated, such as both *adjacent homes*, but denied this *for the Plaintiff*. The city permits rebuilding of homes, but despite the clarity of the laws, complaint, and argument, the city refused to enforce the law *for the Plaintiff*, as established clearly by public record.

There is no more common abuse of public office than local authorities taking sides regardless of law for real or perceived gains to their political, religious, or other tribal group. When judges show the same motives, winking at obvious and admitted abuses, deliberately misstating law and distorting trial process, they abuse their office in league with local officials, often seeking rewards as payments to their political party operatives.

> The... United States has been... a government of laws, and... will cease to deserve this... if the laws furnish no remedy for the violation of a vested legal right. - *John Marshall, Marbury v. Madison, 1803*

Allowing such unlawful acts as perjuries in jury instructions, and distorting trial process, is itself a brazen abuse of office, and an attack upon the Constitution and the People of the United States.

Abuse of Office in Verdict Form Questions

The verdict form, consisting of Yes or No questions to be answered by *unanimous* vote of the jury, was phrased to ensure that a jury unable to reach unanimity on any of the complex matters *would find for the defendant*. The Plaintiff specifically advised Bowler that all such questions could be phrased oppositely so that a jury would find for the Plaintiff. Defendant Bowler said "I know all about that" and went right ahead and phrased all questions to force the decision to favor the defendants.

The erroneous verdict resulted from Bowler's perjury in jury instructions, and distortions of the verdict form, which are perjuries and abuses of office, and cannot be allowed as precedent.

These extreme abuses of office and perjuries of law by the corrupt magistrate Bowler are proven on public record of the proceedings. The denial thereof by Walker is an extreme and obvious perjury, for which he too must be censured and removed from office.

Federal Laws Violated by Bowler

Violations of the United States Constitution

Art. III § 2

> "Judges... shall hold their Offices during Good Behavior"

Amendment V

> "No person shall... be deprived of... property without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV

> "No state shall... deprive any person of... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Violations of Federal Laws

18 USC § 242 Denial of Constitutional Rights under color of law

18 USC § 371 Fraud and Conspiracy Against the United States

18 USC § 1341 Fraud and Violation of Honest Services

18 USC § 1621 Perjury

18 USC §§ 1952-1968 Racketeer Influenced Corrupt Organizations Act (RICO)

42 USC §§ 1981-1986 Civil Rights Act

Bowler violated these laws in the belief that a magistrate could get away with anything, just as her version of property takings law asserted that no compensation at all is necessary, so long as the robber throws a nickel at the victim. Bowler knew this to be an extreme subversion of the United States Constitution, deliberately pursued this abuse of public office with intent to cause severe losses to the Plaintiff, and is a criminal under all of these federal laws.

Violations of Due Process and Equal Protection

Violations of Equal Protection of Law

Although Massachusetts law exempts from zoning ordinances the rebuilding of homes, as fully argued by the Plaintiff before the ZBA and state and federal courts, the city, the state courts, and the federal courts ignored that mandatory exemption. The exemption has been applied as intended thousands of times, but was denied to the plaintiff, a clear denial of equal protection of law, fully known to the lower courts.

Although both properties adjacent to the subject property have similar nonconformities with the *ex post facto* zoning ordinance, and were allowed to continue in residential use, as argued in memoranda of law before the ZBA and state and federal courts, the city denied continued use to the plaintiff, a clear denial of equal protection of law, fully known to all lower courts.

Although the plaintiff demanded that the absurd standard of property taking invented by Bowler, that over 97 percent of value must be taken to constitute a taking of any property, be applied equally to the city and its lawyer, so that the plaintiff must be allowed to take all of their property for 3 percent of its value, the corrupt magistrate denied this, a clear denial of equal protection of law, fully known to the lower courts.

These systematic violations of constitutional right to equal protection will be fully briefed upon certiorari.

Violations of Due Process of Law

The numerous violations of the right of the plaintiff to due process of law include all of the deliberate distortions of pre-trial and trial process argued herein and in the lower courts, and will be fully briefed upon certiorari. These violations sought to attack the plaintiff for prosecuting racketeering by the Republican party. This is also clearly a crime.

Taking of Private Property

Although Massachusetts law correctly exempts from local zoning ordinances the rebuilding of homes after destruction, the city and state courts denied both the exemption and compensation, misapplying state law so as to nullify constitutional rights.

In the original case, the Plaintiff made Motion for Summary Judgment, which was purely a matter of law, as the defendant had admitted the facts of property taking under both state and federal standards. There was no dispute as to the determinative facts, and no cognizable issue of law. The defendant objections consisted exclusively of cases in which a *proposed new land use* was denied, a body of law quite unrelated to denials of *established land use*, which violate *vested rights*. These were completely immaterial cases, and the defendant had no other objection. This law was fully explained to the district court, which denied summary judgment with extreme perjuries as to the standard of judgment on every point: Bowler knew very well that there was no valid argument against the motion, and had been motivated to commit abuse of public office.

The original state and district decisions contradict rulings of this Supreme Court in several areas, as well as consistent rulings of lower federal and state courts. Without intervention by this court, this precedent for unconstitutional taking of property would jeopardize the largest investment of millions of citizens, and nullify the Civil Rights Act and Amendments V and XIV, wasting substantial resources in redundant litigation, necessitating later intervention by this Court.

Conflict With Rulings of this Supreme Court

This Supreme Court established the standard of review in this matter by summary of its prior judgments on public taking of private property in Palazzolo v. Rhode Island, 99-2047 (2001)[7]:

> "The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226 (1897), prohibits the government from taking private property for

> public use without just compensation. The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal "permanent physical occupation of real property" requires compensation under the Clause. Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 427 (1982). In Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 (1922), the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes' well-known, if less than self-defining, formulation, "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking." Id., at 415.
>
> Since Mahon, we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, see infra at 19-21, that a regulation which "denies all economically beneficial or productive use of land" will require compensation under the Takings Clause. Lucas, 505 U. S., at 1015; see also id., at 1035 (Kennedy, J., concurring); Agins v. City of Tiburon, 447 U. S. 255, 261 (1980).
>
> Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. Penn Central, supra, at 124. These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 US 40, 49 (1960)

The Court recognized that the Lucas [4] criterion of "all economically beneficial use" having been taken is met despite minor value uses that remain after the principal use is taken (in Lucas as here, uneconomic agricultural use remained when residential use was taken):

> Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest.

Therefore the Lucas [4] criterion is met in this case: because all uses of the property under the ex post facto zoning ordinance require structures (except non-viable agricultural use), and no structures can be built there under that ordinance, so that

defendant denial of established residential use denied "all economically beneficial use" despite uneconomic use that may remain. The unlawful decision to prohibit rebuilding the former home therefore effected a taking of private property.

State Law Is Consistent With Federal Law

In James G. Cayon vs. City of Chicopee & another [3] the Massachusetts court ruled that:

> It is well settled that a taking of private property for which compensation must be paid is not necessarily restricted to an actual physical taking of the property. See Nichols, Eminent Domain (Rev. 3d ed.) Section 6.1. This rule has long been recognized in this Commonwealth. In Old Colony & Fall River R.R. v. County of Plymouth, 14 Gray 155 , 161 [6], we stated that private property can be "appropriated" to public use "by taking it from the owner, or depriving him of the possession or some beneficial enjoyment of it." Likewise, the Supreme Court of the United States has stated that "[g]overnmental action short of acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking." United States v. General Motors Corp. 323 U.S. 373, 378 [10]

Under the law of the United States and of Massachusetts, municipal denial of nearly all economic value of a property is a public taking of private property and must be compensated.

The Law Applied to the Case

Prior decisions of this Court establish that the interest of prior owners of the subject property in its long-established residential use, was not diminished by subsequent zoning ordinances, was conveyed to the Plaintiff at purchase, was destroyed by denial of that use by the defendant city, and comprised nearly all of the value of the property. By prior decisions of this Court, the city denial of residential use permitted to continue on adjacent properties, denied the Plaintiff equal protection of law, and denied "substantially all" value and the "reasonable investment-backed expectation of value" to the Plaintiff, and so constitutes a taking of private property, and must be compensated.

Defendant Bowler rejected these prior decisions of this Supreme Court, put clearly before her, and chose to invent impossible criteria. These were willful attempts to subvert Constitutional rights. Certainly Bowler and the First Circuit judges, subject to property taking by government, would jealously defend the very rights they denied to the Plaintiff.

False Instructions to Jury on the Takings Clause

In the original case, the issues of federal law were fully briefed by the Plaintiff in definitive Memoranda of Law, Pretrial Memorandum, and Trial Brief in the original case, with a clear statement of federal law on each point, all ignored by Bowler.

Bowler gave the jury carefully-distorted instructions on each federal issue, using one immaterial state decision, long-superceded standards, and invented "principles of law," and demanded IN ALL CAPS that the jury decide the federal issues accordingly. Bowler chose to ignore the definitive Plaintiff memorandum of law on each issue, and instead subverted the United States Constitution and the rights of its People. The false jury instructions are detailed for Question 1 Proof of Perjury and Abuse of Office by Bowler.

Bowler's instructions to the jury failed to apply the state standard of property taking, far more inclusive even than the federal standard, and the applicable standard of judgment in cases of state takings. The state standard of property taking is that the owner has been deprived of "some beneficial enjoyment" of it.

Bowler's instructions to the jury falsely stated the federal standard, claiming that *all property value* must be taken to constitute a taking of *any* private property. This statement has no basis in law, is plainly false, and was clearly intended to throw the case to the defendant for bribes or party benefits.

The original district judgment contradicted prior judgments of this Supreme Court, is repugnant to the Constitution of the United States, and will stand as a precedent for blatantly unconstitutional seizures of private property, absent

correction by this Supreme Court, in reviewing these judgments. Certiorari should be granted and the judgments reversed with specified compensation. Plaintiff is prepared to argue these issues with civil rights law [30-38] and zoning cases [40-50].

Reasons for Certiorari for Question 2 (res judicata)

2. Are matters of perjury at trial and abuse of trial process *res judicata*, when no such claims were even possible in the prior case, and only one of four defendants is common to the cases?

The law of *res judicata* does not include claims which were not asserted, and could not have been asserted, in prior action between the same parties. Therefore no claim of perjury *at trial*, or abuse of trial process in a prior action between the same parties, can be subject to res judicata, because no such claim could have been asserted between parties of the prior action.

These are not claims in the original action, and the operative facts are clearly distinct, hence not res judicata. The related facts only show consequent damage by property taking.

The lower court obstructed this civil action without cognizable argument, absurdly claiming res judicata despite the clearly distinct claims and only one defendant shared with the related action. The decision deceitfully equivocates *any common facts* between cases with a "common nucleus of operative fact" a very deliberate perjury, as *none of the operative facts are the same*, beyond the original facts of property taking. The first circuit merely cited the immaterial Hatch v. Trail King Ind., Inc., 699 F.3d 38, 45 (1st Cir. 2012) wherein *new claims* were pursued between the same parties for the *same incident* involved in prior civil action, which might have been prosecuted in the prior action. Both are quite immaterial here, where *all claims are of perjuries and abuse of office since the prior case operative facts*, denying due process and equal protection in the prior action, against new defendants.

None of the claims of this action could have been claims in the prior action, because the factual basis of that action ended before the factual basis of this action began. Only one of the four defendants was a party to the original case: the city remains a defendant because two if its agents or employees were involved in the perjuries that denied due process in the prior action, which establishes that no decision thereof can be valid.

The fake claim of *res judicata* by the lower court is not mere error, it is deliberate perjury as to the law, a criminal abuse of public office in subversion of constitutional rights, and in pursuit of personal gain via political party, which must be reversed to protect the People of the United States.

It is clear that these decisions sought to attack the plaintiff for prosecuting racketeering by the Republican party.

Reasons for Certiorari for Question 3 (immunity)

3. Will this Court grant absolute immunity to a magistrate proven on public record to have committed extreme perjury and abuse of judicial office? Shall the US accept its constitutional responsibility for her actions? Will this Court order the Court of Federal Claims to accept tort claim jurisdiction as provided by the Tucker Act?

The First Circuit was also asked whether, in a case of abuse of office by a judge causing civil damages, that court would presume or substitute the United States as defendant, or whether it would try to hide government wrongdoing behind an immunity for its employees? The First Circuit took the sleaze option, absurdly claiming that no one is responsible for crime in judicial office causing violation of civil rights (!).

The lower court also ignored the question of the clear statutory jurisdiction of the Court of Federal Claims in tort claims against the United States, under the Tucker Act that created that court, which that court now corruptly denies at its discretion, on the basis of a carefully-buried false quotation of the Act that simply

deletes its tort claims jurisdictions (!). This Court should order the COFC to accept tort claims against the United States as clearly mandated by the Tucker Act.

Standard of Judgment of Immunity

Judicial immunity is warranted for subtle errors of judgment, compromises between conflicting principles of law, and uncertainties of evidence. It is not warranted for extensive, deliberate abuses of office with intent to deny constitutional rights. Those are crimes.

Inevitably attempts to defend judges accused of criminal acts over-generalize necessary protections, to simplify matters or to invent impunity for crime, both of which motives are improper.

Abuses of the immunity doctrine have been approved by judges seeking to benefit themselves. Every group having social or economic dependencies has rogues who construct doctrines of infallibility and immunity, and attack those who oppose abuses. Even professional groups have tribal doctrines to protect their interests, and rogues who exploit those doctrines for personal gain. Such doctrines have no foundation in law, and are not legal argument when violations occur.

Absolute Immunity is Unconstitutional

Article III § 2 of the United States Constitution provides that judges shall serve "during good behavior" which provides that <u>they shall be removed for behavior that is not good, certainly including protracted and willful violations of federal law</u>.

Although wrongful judicial acts may be appealed, the tribalist refusal to admit error prevents redress, and proceedings for removal or discipline rarely succeed due to tribalism, or do not provide compensation. [1]

The Immunity Travesty is Political Tribalism

The problem here is Tribalism, the oldest and worst scourge of humanity. All groups congratulate themselves as the source of good, and claim that wrongs originate beyond the tribal boundary. All groups have social and economic dependencies that cause members to seek gain from group loyalty, and to fear any appearance of disloyalty, as Aristotle noted. Professional tribe members dare not impugn one another, at risk of tribal rejection. Political tribalism organizes within agencies, when a case involves their political party.

The Plaintiff is not a member of a political party, but is now prosecuting the theft of $120 million in conservation funds by Florida politicians and a state judge who turned out to be of one party. That case has been blocked by Republican judges for several years. This is the tribal motive of the lower courts in claiming false pretexts to deny rights of the Plaintiff, in pursuit of personal gain via political party, which must be reversed to protect the People of the United States.

Absolute immunity is not a necessary defense. It is extremely unlikely that judges would wrongly convict judges in cases of subtle interactions of principles of law, judgment of uncertain facts, or errors of minor consequence, without evidence of corrupt influence. The rules of judicial conduct review already prohibit that. Withholding absolute immunity in no way endangers the honest judge. But absolute immunity ensures wrongdoing, and must be denied if the judicial branch is to retain self-regulatory capacity.

The Dubious Origins of Immunity Doctrine

The federal judiciary was not empowered to regulate itself, but was not subjected to the checks and balances upon other branches, due to the fallacious argument that their small number would chasten them.

The US Supreme Court first defined immunity in *Randall v. Brigham* [2] (1868)

> They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, *unless perhaps where the acts, in excess of jurisdiction, are done maliciously or corruptly.*

But in passing the Civil Rights Act of 1871, both sides of the debate in Congress clearly understood that it abolished judicial immunity [1 at 739]:

> Thus, a careful review of the legislative history of section 1983 and of contemporary case law indicates that the legislature intended to impose liability on those judges who violated section 1983. The *Pierson v. Ray* decision is typical of many decisions, both federal and state, which have unjustifiably upheld judicial immunity without adequately analyzing the doctrine.

The Civil Rights Act of 1871 explicitly provided liability of "all persons" for violations, yet in early cases, the tribalism of judges granted immunity to state judges clearly guilty of violations.

> a survey of 19th century case law ... shows that in nine states the prevailing rule was absolute immunity, in four states immunity depended upon the judge's good faith...[1]

By 1945 the Third Circuit held in *Picking* [3] that judicial immunity was not a valid defense to a suit brought under the Civil Rights Act (42 USC 1983)

> The privilege as we have stated was a rule of the common law. Congress possessed the power to wipe it out. We think that the conclusion is irresistible that Congress by enacting the Civil Rights Act sub judice intended to abrogate the privilege to the extent indicated by that act and in fact did so.

But the US judiciary refused to admit that it must also be held to federal law, with reasonable immunities in subtler cases. The *Picking* decision was reversed by the Supreme Court, but that was overturned in *Bauers* [5].

In *Pierson* [4] (1967, where black clergymen were convicted of breach-of-the-peace for accessing a "white only" area) the Court denied immunity to officers for their arrest but granted it to a state judge for their conviction, clearly showing no better motive than protecting their kind. Judge Warren falsely claimed that Congress did not intend to abolish common-law immunities, but this was refuted by judge Douglas: "Mr. Rainey of South Carolina noted that 'The courts are in many

instances under the control of those... inimical to the impartial administration of law..."

Because courts must have sufficient freedom to apply the law where (1) principles and laws may conflict, requiring judgment of legislative intent, and (2) questions of evidence require judgment of probabilities, disputes arise on the proper bounds of that freedom. Some form of judicial immunity from meritless and vexatious litigation is warranted, but of course not immunity for deliberate or extreme abuse of office.

Application of the Standard to the Case

The criteria of reasonable judicial immunity do not apply in this case. In the original case, magistrate Bowler abused public office to deny the plaintiff the pre-trial brief and trial brief of the city, denied him the right to vet jurors or display his exhibits where the jury could see them, denied him cross-examination of witnesses, instructed the jury to ignore most of his very accurate statements of fact and law, and willfully committed extensive perjury as to the law throughout her instructions to the jury, and distorted the verdict form questions to prejudice the outcome. These are deliberate and systematic perjuries and abuses of office. None of these acts are mere errors, and none of them involve any subtleties of judgment or fact in which immunity can be appropriate. These are crimes.

These decisions also sought to attack the plaintiff for prosecuting racketeering by the Republican party. That is an act of racketeering.

But of course the deceitful district judge Walker leapt to the defense of corrupt magistrate Bowler, asserting [App. C p. 61-2] that *there can be no corruption* in judicial office because (1) he absurdly equivocates all acts of judges with honorable performance of the duties of office; and (2) he absurdly asserts that judicial divine perfection is an "axiom of black letter law" in the first circuit. These are low tribalist scams, admissions by Walker of advanced corruption of public office.

"There is no greater heresy than that the office sanctifies the holder of it." – *Lord Acton.*

The belief that necessary immunity includes impunity for crime has resulted in these abuses of office by defendant Bowler, and is a delusion that must be extinguished. This case offers the Court the opportunity to restrict the immunity doctrine to necessary and proper uses, before Congress restricts or abolishes it.

Should this Court review *de novo* to avoid bias?

In the original case, the First Circuit showed prejudice in ignoring groundless denials of summary judgment, and claiming that it could not review due to lack of a trial transcript, despite the documents provided (Instructions to Jury and Verdict Form). Only one of eight issues of appeal (perjuries at trial) involved other conduct of trial. The court of appeals affirmed all district court errors on this absurd pretext, showing extreme prejudice.

In the present perjury case, the First Circuit showed prejudice in ignoring all fact and argument so as to exonerate the corrupt magistrate, and made an unsupported and unsupportable affirmation. Therefore this matter would not be fairly handled on remand, and should be judged de novo by this Court.

Conclusion on Certiorari

Under the law of the United States and of Massachusetts, the right to continued residential use of the property passed to the Plaintiff upon purchase. The Massachusetts Zoning Act Ch. 40A specifically exempts rebuilding of the former home from zoning ordinances. The ex post facto city zoning ordinance prohibited all economically-viable uses except residential use, which was permitted to continue on the adjoining properties similarly situated. Therefore the defendant city unlawfully and unconstitutionally took substantially all value of the subject property by denying permission to rebuild the former home, as admitted by its sworn 97 percent reduction of assessed value thereof, and violated the plaintiff right to equal

protection of law, in allowing both adjacent properties to remain in residential use despite similar zoning nonconformities.

The defendant city thereby violated the Civil Rights Act (42 USC §§1983 to 1986), by violation of rights of the Plaintiff guaranteed by the Constitution of the United States, including his right against the taking of property without just compensation (Amendment V); his right against deprivation of property without due process of law (Amendment XIV §1), and his right to equal protection of the laws (Amendment XIV §1).

In the original case, the extensive perjuries of the defendant city agents Buckley and Panos, and the perjuries and abuses of office by defendant Bowler, extended these violations in full knowledge that their acts were unlawful, in collusion to commit theft and violation of constitutional rights.

The decision of the district and First Circuit is a travesty of excuses to steal property, a series of prima facie perjuries to defend judicial perjuries, the result of tribalist loyalty overcoming public duty.

The unsupportable excuse that the fully-evidenced case, ready for summary judgment, was magically insufficient even to allege claims, is a clear perjury, as injurious to the people as property taking.

The excuse of *res judicata* does not apply, as it excludes claims that could not have been asserted in the prior action, such as perjury and abuse of process. The lower court made no cognizable argument.

The lower court tried to evade liability by inventing absolute immunity for judicial crime, and ignoring the residual government liability. But immunity never extends to crime in public office, and never immunizes government for employee acts prohibited by its Constitution. Absolute immunity is not needed to defend honest judicial acts.

The resulting conflict of the lower court decision with the long-established standards of judgment of claims of property taking, denial of equal protection,

perjury and abuse of office, require de novo review by this court, to preserve the Constitution and laws of the United States from a poisonous precedent.

The decision in this case sought to prevent enforcement of the Civil Rights acts, under excuses repugnant to the Constitution. Without intervention by this court, this precedent for abuse of public office causing unconstitutional taking of private property jeopardizes the investments of millions of Americans, nullifies the Civil Rights Act and Amendments V and XIV, and would waste resources in redundant litigation, necessitating later intervention by this Court.

The grave and pervasive conflicts of the judgment under review with the decisions of this Court and other U.S. courts of appeals call for certiorari: the judgment should be reversed, and specific compensation ordered to prevent nominal compensation upon remand.

OATH

I hereby certify that all statements in the foregoing document are true and correct to the best of my knowledge and belief, and that service has been made in accordance with Rule 29 of the Rules of the Supreme Court, upon all parties hereto, as shown by the Proof of Service filed herewith.

For Petitioner:

_____

John S. Barth, pro se,
Petitioner and Plaintiff
Dated this _____ day of _____, 2021

List of Counsel

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