20-5118

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Sean M. Donahue
(Your Name) — PETITIONER

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Superior Court of Pennsylvania
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean M. Donahue
(Your Name)

625 Cleveland Street
(Address)

Hazleton, PA 18201
(City, State, Zip Code)

570-454-5367
(Phone Number)

QUESTIONS PRESENTED

I. Do Pennsylvania appellate courts have the authority and jurisdiction to review and grant petitions of ancient writs ex statutory constraints?

Suggested Answer: Yes.

II. Are *Commonwealth v. Descardes, No. 27 MAP 2015, 136 A.3d 493 (Pa. 2016), Commonwealth v. Delgros, 183 A.3d 352 (2018)* and *Com. v. Holmes, 79 A.3d 562, 621 Pa. 595 (2013)* overruled?

Suggested Answer: Yes.

III. Are 42 Pa. C.S. §9542, 42 Pa. C.S. §9543, 42 Pa. C.S. §9543(a)(1)(i), 42 Pa. C.S. §9545, 42 Pa. C.S. §9545(a), 42 Pa. C.S. §9545(b)(1), 42 Pa. C.S. §9545(b)(4) and 18 Pa. C.S. §2709 et. seq struck for being constitutionally infirm?

Suggested Answer: Yes.

All parties appear in the caption of thé case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is (See Bates Stamp 3)

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was Dec 11, 2019. A copy of that decision appears at Appendix Bates Stamp 2.

[✓] A timely petition for rehearing was thereafter denied on the following date: Feb 14, 2020, and a copy of the order denying rehearing appears at Appendix Bates Stamp 1.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

US Const. Amend. I, Right to Petition for Relief (Appendix Bates Stamp 243)

"[42 Pa. C.S.]**§9542. Scope of subchapter.** This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction. Except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases." *(42 Pa C.S. §9542)* (Appendix Bates Stamp 238)

STATEMENT OF THE CASE

I. This Petition for a Writ of Certiorari seeks review of the state appellate court's claims that it cannot exercise its original jurisdiction over ancient writs outside of Pennstlvania's Post Conviction Relief Act (PCRA). (Appendix Bates Stamp 3) The Petitioner avers that it can. The Petitioner avers that the state court of last resort itself created two new common law writs, ex PCRA, when it created two precedent state collateral procedures through its rulings in *Com. v. Holmes, 79 A.3d 562, 621 Pa. 595 (2013)* (Appendix Bates Stamp 171-199) and *Commonwealth v. Delgros, 183 A.3d 352 (2018).* (Appendix Bates Stamp 200-209) The Petitioner avers that if the state courts can entertain common law writs under *Holmes* and *Delgros*, ex PCRA, then they can also entertain ancient writs ex PCRA.

II. The Petition also seeks review of the constitutionality of the Pennsylvania PCRA. The Petitioner avers that PCRA contains innate legal absurdities that are created by its own black letter language. The Petitioner avers that the black letter intent of the PCRA *(42 Pa. C.S. §9542)* are at conflict with its black letter filing constraints *(42 Pa. C.S. §9543(a)(1)(i), 42 Pa. C.S. §9545(b)(4), 42 Pa. C.S. §9545(a)* and *42 Pa. C.S. §9545(b)(1))*. (Appendix Bates Stamp 238-242) The Petitioner avers that the black letter of the statute's subparts cannot coexist because they create innate unconstitutional absurdities that render the PCRA uncertain and ineffective.(*1 Pa. C.S.§1922 et. seq.*)(Appendix Bates Stamp 231)

III. The Petition seeks review of the general authority of courts, under already existing statutes and under the general guiding principles of the state and federal constitutions, to review new evidence through the path of ancient writs, ex statute. The Petitioner avers that the trend of recent rulings of the Supreme Court of the United States is that the courts of our land do have jurisdiction to correct patent and plane errors and that this court emphasizes correcting wrongs and injustice over finality and statutory technical 'gotch'yas'.

IV. The Petition seeks review of the Pennsylvania case law precedent, *Commonwealth v. Descardes, No. 27 MAP 2015, 136 A.3d 493 (Pa. 2016)* (Appendix Bates Stamp 161-170), that was created by docketing a petition filed by a foreign national, from foreign soil, who had no ties to the US. That case law is being used to deny Americans and foreign nationals, who are convicted in Pennsylvania, access to ancient writs. Yet, the petitioner in that case had no standing in US courts and

therefore lacked the additional US Constitutional rights to appeal the matter further in US Federal Court, which a similarly situated American likely would have done. The Petitioner avers that PA state courts preempted federal supremacy by exercising extraterritorial jurisdiction abroad. Therefore, the state precedent in *Descardes* must be overruled and the Petitioner asks that this court quickly overrule *Descardes*.

V. This Petition also seeks review of the language of the Pennsylvania harassment statute in light of federal Second Circuit rulings that found identical language in the New York harassment statute to be infirm. This Petition asks the Supreme Court of the United States strike the Pennsylvania harassment statute for being equally as infirm as the old New York harassment statute.

WHY CERTIORARI SHOULD BE GRANTED

I. The state appellate court's claim that the state PCRA statute prevents it from exercising review of petitions for common law writs, ex PCRA, is incorrect and unconstitutional. (Appendix Bates Stamp 3) The Petitioner avers that the state court of last resort created two new common law writs when it ruled in *Holmes supra* and *Delgros supra*. The Petitioner asks this court to either overrule the Superior Court of Pennsylvania's finding that it cannot exercise jurisdiction over common law writs ex PCRA or that this Court overrule *Holmes* and *Delgros*, precisely because those two state law precedents carved out new common law writs that are reviewed by state courts ex PCRA.

II. The black letter of Pennsylvania's PCRA states that its intent is to avail access to ancient writs to those who have been convicted. However, the result of the PCRAs black letter is that it denies access to ancient writs. This is the direct result of the PCRA's scope being overbroad and vague.

42 Pa C.S. §9542 states *"[t]his subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence..."*. Yet, it does exactly that. *(Com. v. Volk, 138 A.3d 659 (Pa. Super. Ct. 2016); Commonwealth v. Turner, 622 Pa. 318, 80 A.3d 754 (2013))* Denying access to common law writs, per the plain language of *42 Pa C.S. §9542* and per *1 Pa.C.S. §1921(b)* (Appendix Bates Stamp 230) violates *42 Pa. C.S. §741* (Appendix Bates Stamp 237) and *Davis v. United States, 589 U.S. ____ (2020).*

The black letter of the PCRAs filing constraints serve to deny many petitioners access to the very ancient writs that *42 Pa C.S. §9542* purports to intend to give them access to.

> **"§ 9543. Eligibility for relief.**
> **(a) General rule.**—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:
> (1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:
> (i) currently serving a sentence of imprisonment, probation or parole for the crime;
> (ii) awaiting execution of a sentence of death for the crime;
> (iii) serving a sentence which must expire before the person may commence serving the disputed sentence; or
> (iv) has completed a sentence of imprisonment, probation or parole for the crime and is seeking relief based upon DNA evidence obtained under section 9543.1(d) (relating to postconviction DNA testing).
> (2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
(ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
(iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
(v) (Deleted by amendment).
(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
(vii) The imposition of a sentence greater than the lawful maximum.
(viii) A proceeding in a tribunal without jurisdiction.
(3) That the allegation of error has not been previously litigated or waived.
(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.
(b) Exception.—Even if the petitioner has met the requirements of subsection (a), the petition shall be dismissed if it appears at any time that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. A petition may be dismissed due to delay in the filing by the petitioner only after a hearing upon a motion to dismiss. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have discovered by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.
(c) Extradition.—If the petitioner's conviction and sentence resulted from a trial conducted in his absence and if the petitioner has fled to a foreign country that refuses to extradite him because a trial in absentia was employed, the petitioner shall be entitled to the grant of a new trial if the refusing country agrees by virtue of this provision to return him and if the petitioner upon such return to this jurisdiction so requests. This subsection shall apply, notwithstanding any other law or judgment to the contrary." *(42 Pa. C.S. §9543)* (Appendix Bates Stamp 239-240)

The Pennsylvania court of last resort found in *Holmes supra* and in *Delgros supra* that *42 Pa. C.S. §9543(a)(1)(i)* is unconstitutional in certain circumstances. The state court addressed this problem by creating access to new common law writs under *Holmes* and *Delgros*. The Petitioner avers that the state supreme court's findings in *Holmes* and *Delgros* actually serve to recognize the entire PCRA as violative to *1 Pa. C.S.§1922 et. seq.*

> "**§ 1922. Presumptions in ascertaining legislative intent.**
> In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:
> (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.
> (2) That the General Assembly intends the entire statute to be effective and certain.
> (3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.
> (4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.
> (5) That the General Assembly intends to favor the public interest as against any private interest."*(1 Pa. C.S.§1922)* (Appendix Bates Stamp 231)

In *Holmes* and *Delgros,* the state supreme court found unconstitutionality in the PCRA, which means it found PCRA to violate *1 Pa. C.S.§1922(3).* Because the PCRA violates another statute its results are at times "absurd", which violates *1 Pa. C.S.§1922(1).* Because the court found that the PCRA is often absurd and unconstitutional and because it created common law writs under *Holmes* and *Delgros* to circumvent the unconstitutional absurdities, it also found the PCRA to be ineffective and uncertain, which violates *1 Pa. C.S.§1922(2).* The state court of last

resort is bound by *Com. v. Bell, 516 A.2d 1172, 512 Pa. 334 (1986)* and *1 Pa. C.S.§1922(5)* to strike the PCRA.

> "The Statutory Construction Act, 1 Pa.C.S. §1501 *et seq.* [(Appendix Bates Stamp 227-228)], provides as its most basic principle that:
>
> When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.
>
> 1 Pa.C.S. § 1921(b) (Supp.1986).
>
> *Davis v. Government Employees Insurance Co.,* 500 Pa. 84, 89, 454 A.2d 973, 975 (1982); *Commonwealth v. Pierce,* 497 Pa. 437, 440 n. 4, 441 A.2d 1218, 1219 n. 4 (1982). When the language of a statute is clear and unambiguous, the judiciary must read its provisions in accordance with their plain meaning and common usage. 1 Pa.C.S. § 1903(a) (Supp.1986); *In re: Estate of Baker,* 496 Pa. 577, 582, 437 A.2d 1191, 1193 (1981); *Commonwealth v. Simione,* 447 Pa. 473, 480, 291 A.2d 764, 768 (1972); *In Re Stegmaier Estate,* 424 Pa. 4, 8, 225 A.2d 566, 568 (1967); *Commonwealth v. Rieck Investment Corp.,* 419 Pa. 52, 59-60, 213 A.2d 277, 281-82 (1965); *Southwest Delaware County Municipal Authority v. Aston Township,* 413 Pa. 526, 537, 198 A.2d 867, 873 (1964). It is not within judicial prerogative to disregard the principles of statutory construction and engage in a selective reading... The court below inappropriately inquired into the intent of the legislature and the history behind the Act. When the statute's meaning is plain, there is no occasion for resorting to rules of statutory interpretation or looking to the legislative history when doing so would alter the plain meaning of the statute. *Commonwealth, Department of Public Welfare v. Matic,* 509 Pa. 164, 501 A.2d 617 (1985); *Hellertown Manufacturing Co. v. Commonwealth,* 480 Pa. 358, 365, 390 A.2d 732, 735 (1978); *Davis v. Sulcowe,* 416 Pa. 138, 143, 205 A.2d 89, 92 (1964)" *(Com. v. Bell, 516 A.2d 1172, 512 Pa. 334 (1986))*

The state supreme court failed to strike PCRA and inquired into the intent of the legislature when it carved out new common law writs in *Holmes* and *Delgros.* Therefore, the Petitioner RESPECTFULLY REQUESTS that this court either strike Pennsylvania's PCRA or that it overrule *Holmes* and *Delgros.* The Petitioner avers

that the PCRA cannot coexist with its own constraints and that *Holmes* and *Delgros* cannot coexist with *1 Pa. C.S.§1922 et. seq.* Therefore, something must give.

The Petitioner further avers that *42 Pa. C.S. §9545(b)(4)* violates *1 Pa. C.S.§1922 et. seq.*

> "**§9545. Jurisdiction and proceedings.**
> **(a) Original jurisdiction.**—Original jurisdiction over a proceeding under this subchapter shall be in the court of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter.
> **(b) Time for filing petition.**—
> (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:
> (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
> (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.
> (2) Any petition invoking an exception provided in paragraph (1) shall be filed within one year of the date the claim could have been presented.
> (3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.
> (4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.
> **(c) Stay of execution.**—
> (1) No court shall have the authority to issue a stay of execution in any case except as allowed under this subchapter.
> (2) Except for first petitions filed under this subchapter by defendants whose sentences have been affirmed on direct appeal by the Supreme Court of Pennsylvania between January 1, 1994, and January 1, 1996, no stay may be issued unless a petition for postconviction relief which

meets all the requirements of this subchapter has been filed and is pending and the petitioner makes a strong showing of likelihood of success on the merits.
(3) If a stay of execution is granted, all limitations periods set forth under sections 9574 (relating to answer to petition), 9575 (relating to disposition without evidentiary hearing) and 9576 (relating to evidentiary hearing) shall apply to the litigation of the petition.
(d) Evidentiary hearing.–
(1) The following apply:
(i) Where a petitioner requests an evidentiary hearing, the petition shall include a certification signed by each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony.
(ii) If a petitioner is unable to obtain the signature of a witness under subparagraph (i), the petitioner shall include a certification, signed by the petitioner or counsel, stating the witness's name, address, date of birth and substance of testimony. In lieu of including the witness's name and address in the certification under this subparagraph, counsel may provide the witness's name and address directly to the Commonwealth. The certification under this subparagraph shall include any documents material to the witness's testimony and specify the basis of the petitioner's information regarding the witness and the petitioner's efforts to obtain the witness's signature. Nothing in this subparagraph shall be construed to contravene any applicable attorney-client privilege between the petitioner and postconviction counsel.
(iii) Failure to substantially comply with the requirements of this paragraph shall render the proposed witness's testimony inadmissible.
(2) No discovery, at any stage of proceedings under this subchapter, shall be permitted except upon leave of court with a showing of exceptional circumstances.
(3) When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated." *(42 Pa. C.S. §9545)* (Appendix Bates Stamp 231-242)

42 Pa. C.S. §9545(b)(4) enables counsel to abandon credible and winnable PCRA and direct appeal issues that are easily "in court". PCRA allows counsel to abandon a defendant or appellant without fear of accountability and the defendant or appellant is left with no recourse to seek redress for the wrong done to him.

(Com. v. Kimball, 724 A.2d 326, 555 Pa. 299, 313 (1999); Ross v. Varano, 712 F.3d 784 (3d Cir. 2013); United States v. Morgan, 346 U.S. 502, 505, 98 L. Ed. 248, 253(1954); U.S. v. Cronic, 466 U.S. 648(1984); Strickland v. Washington, 466 U.S. 668(1984); Commonwealth v. Pierce, 515 Pa. 153, 527 A.2d 973, 975(1987); Commonwealth v. Sheehan 446 Pa. 35, (1971)) The Petitioner avers that this result is unconstitutional, absurd and renders the PCRA ineffective and uncertain, all of which violate *1 Pa. C.S.§1922 et. seq.* And is not in the best interests of the public. *(1 Pa. C.S.§1922(5))* Again, the Petitioner asks this court to strike the Pennsylvania PCRA as infirm, as is required of the state supreme court by *Bell supra.*

42 Pa. C.S. §9545(a) also impedes a constitutionally viable path to relief during short sentence circumstances that provides an alternative to the new common law writs under *Holmes* and *Delgros.* State courts abuse *§9545(a)* to deny relief to most but not all. For example, Citizen Kane's appeal bail[1] preserved PCRAs availability to her by delaying her sentence. Identical relief should be available to any appellant whose counsel shirks the *"herculean task" (Holmes supra*

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[1] Comm v. Kane, Docket Number: CP-46-CR-0006239-2015, Montgomery County Pennsylvania;

Comm v. Kane, Docket Number: CP-46-MD-0002457-2015, Montgomery County Pennsylvania;

Comm v. Kane, Docket Number: CP-46-CR-0008423-2015, Montgomery County Pennsylvania

Baer Concurring 591, Todd Concurring 593, ¶3) of the new common law writs under *Holmes* and *Delgros*.

42 Pa. C.S. §9545(a) is unconstitutional because it denies access to relief that should be readily available under the constitution. The black letter of *42 Pa. C.S. §9545(a)* contradicts the black letter of *42 Pa C.S. §9542,* which states *"[t]his subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence...".* The Petitioner averst that the black letter of *42 Pa. C.S. §9545(a)* is specifically intended to limit access to common law writs, which is in conflict with *42 Pa C.S. §9542.* This conflict is an unconstitutional absurdity that renders PCRA ineffective and uncertain. Therefore, PCRA is violative to *1 Pa. C.S.§1922 et. seq.* Because the state court of last resort failed to strike this absurdity, the Petitioner asks this court to strike the Pennsylvania PCRA as infirm, as is required of the state supreme court by *Bell supra.*

The Petitioner avers that *42 Pa. C.S. §9545(b)(1)* is unconstitutional because it imposes time limits on correcting fraud, plain error and abandonment. *(Korematsu v. U.S., 584 F.Supp. 1406, 16 Fed. R. Evid. Serv. 1231 (N.D.Cal. Apr 19, 1984), Davis 2020 supra, Ross supra, Morgan supra, Sheehan supra, Olano supra)* The state, its courts and appellate counsel often exploit PCRA constraints to conduct willful fraud with impunity. *(Korematsu supra)* These statutes dissuade appellants and defendants from pursuing defense at trial, direct appeal and PCRA. The accused often (or may) fear insufficient time for both direct appeal and PCRA

and (or may) fear counsel's resistance to pursuing the new writs under *Holmes* and *Delgros* and often (or may) plead guilty to get shorter sentences in lieu of justice. Citizens at large may also be dissuaded from engaging in protected political activities because they fear being arrested for harassment of government employees and thrust into the same circumstance as the Petitioner. Therefore, *42 Pa C.S. §9542, 42 Pa. C.S. §9543(a)(1)(i), 42 Pa. C.S. §9545(b)(4), 42 Pa. C.S. §9545(a)* and *42 Pa. C.S. §9545(b)(1)* must be struck. *(Scales v. United States, 367 U.S. 203, 81 S. Ct. 1469, 6 L. Ed. 2d 782 (1961); Thornhill v. Alabama, 310 U. S. 88, 97-98 (1940); Brandenburg v. Ohio, 395 U.S. 444, 447-8 (1969); Broadrick v. Oklahoma, 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973); Dombrowski v. Pfister, 380 U.S. 479 (1965); Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940); Garner v. Louisiana, 368 U.S. 157, 17382 S. Ct. 248, 7 L. Ed. 2d 207 (1961), Harlan concurring pp201-201)*

III. The Petitioner avers that the Supreme Court has held in several rulings in recent years that getting the facts right and getting justice right is much more important than finality. *(Davis 589 U.S. ____ (2020) supra; U.S. v. Olano, 507 U. S. 725(1993); McKenzie v. Montana, 443 U.S. 903(1979); McKenzie v. Montana, 433 U.S. 905(1977); Sandstrom v. Montana, 442 U.S. 510(1979); Korematsu supr; Com. v. Holmes, 933 A.2d 57, 593 Pa. 601 (2007); U.S. v. Menichino, 497 F.2d 935, 945(5th Cir. 1974))*

The Petitioner further avers that when basic fundamental rights that are guaranteed by the US Constitution are involved, state courts are bound by those precedents. It is not enough for a state appellate court to simply claim that it lacks jurisdiction to consider requests for common law writs to address constitutional matters. According to recent Supreme Court rulings, the exact opposite is true. Therefore, the Petitioner asks the Supreme Court of the United States to rule that the Pennsylvania PCRA may not subsume, control and limit all access to common law writs. Because *42 Pa C.S. §9542* does exactly that, the Petitioner asks that this court strike the sentence in *42 Pa C.S. §9542* that states; *"...The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis....".*

In the instant case, newly discovered evidence warrants reversal of the conviction on constitutional grounds. New evidence was discovered in December 2018, on March 27, 2019, on May 3, 2019 and on May 10, 2019 that proves previously unknown facts and process errors that require reversal of conviction, acquittal of all charges, quashing of the trial and expunging the trial court record.

New evidence revealed the identity of a previously unknown police officer who collected the allegedtrial evidence that was adduced in the case. The Petitioner had a US constitutional right to confront this police officer at trial but was denied that right when a second police officer falsely testified that he collected the

evidence. (NT pp80-83, Appendix Bates Stamp 288-289; Affidavit of Probable Cause, Appendix Bates Stamp 307-308 of 304-314) The name Budman appears in two state trial exhibits (Appendix Bates Stamp 123, 126), which were were kept from the Petitioner during his trial. He saw them for the first time many months later, when the appellate counsel shared them with him. (Appendix Bates Stamp 117-130)

The Petitioner first searched for Budman's identity after he received his first copies of the trial exhibits on June 6, 2016. (id) At that time, he could not find Budman's identity. During the trial, the state never once indicated that Budman was a police officer. Prior to trial, the state never once indicated that it intended to adduce emails printed from Budman's email account. The prosecutor had only indicated an intent to use emails that were released in discovery, which did not contain Budman's name. There was no reason to research Budman's identity before trial. Appellate counsel told the Petitioner that several different Budmans may be working for different state agencies and that he couldn't be certain that Budman was a cop.

In December 2018, Appellant again researched Budman's name to discover that Budman was by then listed as the public point of contact for the Pennsylvania State Capitol Police. (Appendix Bates Stamp 131-144) The Petitioner immediately emailed Budman requesting an explanation of his role in collecting the evidence that was adduced at trial.*(id)* Budman never responded.

On May 10, 2019, the Petitioner again researched Budman to discover more evidence of Budman's identity on Linkedin (Appendix Bates Stamp 145-150), which confirmed Budman's involvement in collecting the alleged evidence.

It was not until this new evidence was discovered that the Petitioner discovered that it was Budman, not Schur, who collected the alleged evidence, whichis antithetical to both Schur's trial testimony and the AOPC. *(ante pp15-16)* The omission of this fact by the alleged victims and witnesses, and by the prosecutor, denied the Petitioner his US and state Constitutional Rights to confront Budman and to examine and scrutinize the technical chain of custody that was used against him. (Appendix Bates Stamp 267-296) (*Commonwealth v. Harper, 890 A.2d 1078(Pa. Super. 2006); U.S. Const. Amend. IV, VI, XIV §1* (Appendix Bates Stamp 247, 254, 260); *Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S. Ct. 2527, Part II 2531-2532, 174 L. Ed. 2d 314 (2009); Brady v. Maryland, 373 U.S. 83(1963); Estate of Smith v. Marasco, 318 F.3d 497, 510-511(3d Cir. 2003); Garner supra; Thompson v. City of Louisville, 362 U.S. 199(1960); 234 Pa.R.Crim.P. 573(B)(1); Pa.R.E. 901; Pa. Const. Art. I §1, §8, §9, §18, §19, §25* (Appendix Bates Stamp 297-303))

"Budman['s]" name appearing in the letterhead of the evidence reveals previously unknown information about the chain of custody. Knowing that Budman is a cop proves that Budmand collected the evidence, printed it out and then gave it to alleged witnesses and victims who then gave the very same hardcopies to a second cop. Budman's email does not appear in the email address list. Therefore,

he had to illegally intercept it. The alleged victims and witnesses falsely claimed that they got the emails from the Petitioner and then gave them to the police. However, the presence of Budman's name on the letterhead rebuts that false claim. The state cannot *"create a reasonable inference that the chain of custody was not broken". (Com. v. Alarie, 547 A.2d 1252, 378 Pa. Super. 11, p17 (1988); Com. v. Cugnini, 452 A.2d 1064, 307 Pa. Superior Ct. 113, 307 Pa. Super. 113 (Super. Ct. 1982))* The path from initial collection by illegal intercept, to alleged witnesses and victims and then back to police, constitutes a clear and intentional break in the chain of custody. *(Alarie supra pp16-18 citing Cugnini supra 1064-1065; Marasco supra)* A further review of discovery in light of this new evidence does reveal that there were additional interceptions of emails by Budman and Schur that were deemed by the state prosecutor to be free speech and were therefore not presented at trial. (Appendix Bates Stamps 156-160)

A comparison of the dates of all known electronic interceptions by Budman (id) reveal that he was intercepting emails without a warrant at least one month prior to the very first date that the arresting officer claims to have had probable cause to believe that criminal emails were being sent. (Appendix Bates Stamp 25-64, 156-160, 307-308) Pennsylvania does not have a "good faith exception" to the exclusion rule. There is no *"'good faith' exception to the exclusionary rule* [because it] *would frustrate the guarantees embodied in Article I, Section 8, of the Pennsylvania Constitution." (Com. v. Edmunds, 586 A.2d 887, 526 Pa. 374, 376 (1991), id pp406-407,* explicitly rejecting *United States v. Leon, 468 U.S. 897, 104*

S.Ct. 3405, 82 L.Ed.2d 677 (1984)) Even if it did, the police already attested that the very first date on which they believed that emails were criminal in nature was November 26, 2014. (Appendix Bates Stamp 304)[2] Yet, Budman was intercepting emails on October 29, 2014. (Appendix Bates Stamp 156)

On May 3, 2019, Pennsylvania aired a television commercial stating that everyone is entitled to CareerLink services. (Appendix Bates Stamps 151-155)

Pennsylvania's commercial stated;

"00:00 let PA CareerLink help you achieve your
00:02 career goals whether you're looking for
00:04 a job thinking about switching careers
00:06 are looking for new skills to get a
00:08 promotion PA CareerLink offers a variety
00:11 of in-person and online career resources
00:14 get the help you need for your
00:15 employment journey it's all in one place
00:17 and it's all free
00:19 let PA CareerLink help you discover
00:21 what's possible proud partner of the
00:23 American Job Center network
00:26 pay forward pennsylvania taxpayer
00:28 dollars" (Appendix Bates Stamps 151-153)

This commercial aired several times after May 3, 2019 and Similar commercials appear online. (Appendix Bates Stamps 151-155) The fact that the Petitioner is eligible for federally funded services fundamentally undermines claims that were made by the state prosecutor and the alleged victim that the Petitioner was harassing government workers in an attempt to gain access to services to which he isn't entitled. (Bates Stamp 267-296)

[2] See tiny print at bottom right hand corner of page.

New Evidence Proves That The Trial Judge Intentionally Used Subliminal Communications Techniques to Remove the Presumption of Innocence:

On March 27, 2019, the Petitioner discovered that on January 9, 2019 and February 4, 2019 (Appendix Bates Stamp 65-116), the trial judge's spouse, Joseph Curcillo, posted videos of himself impressing audiences with his MindShark skills. After watching some of the videos, the Petitioner further discovered that Joseph Curcillo, also known as the "MindShark", teaches others how to use the power of subliminal psychological suggestion to guide juries to reach a desired verdict, regardless of whether or not it is the true and correct verdict.

The Appellant then realized that the MindShark's spouse, Dauphin County Judge Debora E. Curcillo, used MindShark techniques during his trial on April 18-19, 2016. The trial judge used MindShark techniques to tell the jury, before opening arguments, that she expected a guilty verdict.

The state trial court *sua sponte* removed a *"presumtio juris"* for defense i.e., the presumption of innocence *(Coffin v. United States, 156 U.S. 432, 15 S. Ct. 394, 460-461, 39 L. Ed. 481 (1895), id p457 citing Morehead v. State, 34 Ohio St. 212 addressing the criteria for the "beyond doubt" standard* vs the *"beyond a reasonable doubt" standard at Sandstrom supra)* and *sua sponte* added a forbidden *"presumptio juris"* for the prosecution, i.e., the presumption that the Commonwealth would meet its burden of proof. *(Coffin 459; US Const. Amend. V, VI)* By instructing the jury that the Commonwealth would meet its burden *(NT. p4 ll14-17)*[3] and then giving

[3] For Notes of Transcript (NT), See Appendix Bates Stamp 267-296.

the *"does so or -- does so"* instruction *(NT. p8 l5),* the trial judge wrongfully suppressed essential evidence in favor of the accused *(Coffin 457, 460-461)* and wrongfully added forbidden evidence favoring the Commonwealth. All arguments and evidence where thenceforth heard in the forbidden light of guilt. *(NT p95 ll3-6)*

> *"...listen to the facts and render a verdict based on the evidence,* ***and that's after the Commonwealth has proven to you beyond a reasonable doubt that the defendant is guilty of the charge."*** *(NT. p4 ll14-17)*
>
> • • •
>
> *"We're going to be beginning opening statements very shortly. In the opening statements, the Commonwealth will give you a brief outline of what they intend to prove.*
>
> *The charges, as I indicated to you, are terroristic threats and two counts of harassment. As I indicated, the Commonwealth has to prove the elements of each of these charges to you beyond a reasonable doubt. And* ***whether the Commonwealth does so or – does so is your decision*** *when you go out to render the verdict.*
>
> *Because this is a criminal case, ladies and gentlemen, your verdict must be unanimous. That means all 12 of you must decide the case and you must agree to it." (NT. pp7-8)*

While the trial judge stated *"I am not...the judge of the facts"(NT p94 ll17-20),* her unconstitutional judgement of the facts were embedded in her unconstitutional jury instructions. Reasonable doubt instructions are inadequate to correct the removal of the presumption of innocence. *(Coffin 452-453; Francis v. Franklin, 471 U.S. 307, 322, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985); US v. Hernandez, 176 F.3d 719 , 730-734, (3d Cir. 1999))* The minimal proper relief in this kind of circumstance is to grant a mistrial or issue a correcting instruction *(Coffin 463).*

However, correcting instructions are only effective in cases where a trial judge is merely completing a previously incomplete instruction *(Guam v. Ignacio, 852 F.2d 459(9th Cir. 1987))*. They are ineffective in cases where judges give patently wrong instructions that a jury must be ordered to ignore. *(Franklin supra 322)* In the instant case below, the state trial judge did not give a correcting instruction and further instructed the jury to obey the instructions she had already given. *(Hernandez supra; Franklin supra)*

> "It is my responsibility to decide all questions of law; therefore, you must accept and follow my instructions and rulings on matters of law.*(NT p94 ll13-16)*
>
> "it is your responsibility as jurors to perform your duty and reach a verdict based on the evidence as it was presented during the trial". *(NT p95 ll3-6)*

The minimally appropriate remedy in this case is vacation and mistrial. (*id; Hernandez supra Part IV, Sloviter Dissenting)* The more appropriate remedy is full acquittal.

> *"[I]t has been held not error to refuse to charge the presumption of innocence where the charge actually given was, 'that the law required that the State should prove the material elements of the crime beyond doubt.' Morehead v. State, 34 Ohio St. 212." Coffin p457*

IV. Pennsylvania's Preemption in US Foreign Policy and US Immigration Law in *Commonwealth v. Descardes, 136 A.3d 493 (Pa. 2016)* (Appendix Bates Stamp 161-170)

The Supreme Court of Pennsylvania carved out an exemption to federal preemption in foreign policy in *Descardes.* The state court of last resort created a

pathway through which foreign nationals who have been previously deported by federal authorities can gain reentry into the US to attend state level post conviction hearings, regardless of the likely outcome of those hearings. In most cases, the moving parties will have long since completed all state sentences and it will not be possible to hold them in custody upon their reentry into the US. Therefore, they will be free to dissappear into the US population, assume new identies and live their lives as undocumented immigrants.

In the eyes of the law, *Descardes* is similarly positioned to *Dred Scott* in *Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857). Dred Scott* was overruled by civil war and through the Constitutional Amendments that followed, not by judicial precedent. *US Const. Amend. XIII, XIV & XV* changed the status of blacks from slaves and free men to free citizens of the United States. It also made all whites citizens of the United States, rather than citizens of their sovereign states.

Those amendments to the US Constitution had no bearing on the status of blacks located outside the United States. For example, black slaves in Brazil remained slaves until 1888. There have been no amendments since that time to the US Constitution that would grant US Constitutional Rights to foreign nationals, black or white, on foreign soil. Like *Dred Scott, Decardes* petitioned from a different soil where different laws applied. Our law does not apply on Hatian soil and *Descardes* does not have standing on our soil. So long as *Descardes* resides in Haiti, he has no recognizable rights to seek relief in the courts of Pennsylvania or the US.

Therefore, there can be no precedent derived from a case involving *Descardes* that can apply to a case involving a US citizen.

Descardes is not a citizen and, while descardes may be a person, his status as a person alone is not enough to warrant standing in a US or Pennsylvania court. *(Hobbs v. Fogg, 6 Watts 553, Pa. Supreme Court (1837)). Descardes'* only possible path to standing in Pennsylvania courts is through petition under *42 U.S. Code §1981-Equal rights under the law* (Appendix Bates Stamp 6-10), seeking to be treated equal to a white person under the same laws. However, that path was not available to *Descardes* because he petitioned from foreign soil. *§1981* requires that all non-whites be treated equal to whites under the law when the non-whites fall within the jurisdiction of the United States and its courts or the courts of its states. *§1981* does not grant equal standing and equal rights to non-whites who do not fall within the jurisdiction of the United States.

If *§1981* granted equal rights to all non-whites who reside beyond the jurisdictions of the United States, then all non-white people on planet earth would be able to claim the rights of citizens of the United States. However, all whites who reside beyond the jurisdiction of the US would not be able to claim the same equal rights. Surely this was not the intent of the US Congress.

§1981 was a compromise reached under the pressures of post civil war and the destruction it left behind. It was a deal struck while facing a difficult road to reconstruction. The Thirty-Ninth US Congress did not seek to welcome all the world's black people into that reconstruction. (Appendix Bates Stamps 9-10) The

moment *Descardes* left US soil and began residing in Haiti, equal rights under the law were no longer available to him, nor are such rights available to any other non white foreigner who resides on foreign soil and who has no contractual relationship with any party within the US or Pennsylvania. (*Scott supra; Fogg supra; United States v. Verdugo-Urquidez, 494 U.S. 259 (1990))* For the aforesaid reasons *Descardes* cannot stand as precedent over US citizens and must be overruled by this Court.

V. Language Present in the Pennsylvania Harassment Statute Is Infirm Under the US Constitution

Identical language in the Pennsylvania and the New York harassment statutes has been found to be violative under *US Const Amend. I* in New York but acceptable in Pennsylvania. This Court must resolve this matter. *(Broadrick supra; Brandenburg supra pp447-8; Virginia v. Black, 538 U.S. 343, 359-360 (2003); Thornhill supra p95; Pennsylvania LABOR ANTI-INJUNCTION ACT of Jun. 2, 1937, P.L. 1198, No. 308* (Appendix Bates Stamp 219-226)*; 18 Pa C.S. §2709(e)(2014)* (Appendix Bates Stamps 234-236)*; People v Golb, 23 N.Y.3d 455, NY Slip Op 3426; 2014 WL 1883943)*

> "**Universal Citation:** 18 PA Cons Stat § 2709 (2014)
>
> **§ 2709. Harassment.**
>
> **(a) Offense defined.**—A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:
>
> (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;

(2) follows the other person in or about a public place or places;

(3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;

(5) communicates repeatedly in an anonymous manner;

(6) communicates repeatedly at extremely inconvenient hours; or

(7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

(b) Stalking.–(Deleted by amendment).

(b.1) Venue.–

(1) An offense committed under this section may be deemed to have been committed at either the place at which the communication or communications were made or at the place where the communication or communications were received.

(2) Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

(c) Grading.–

(1) Except as provided under paragraph (3), an offense under subsection (a)(1), (2) or (3) shall constitute a summary offense.

(2) An offense under subsection (a)(4), (5), (6) or (7) shall constitute a misdemeanor of the third degree.

(3) The grading of an offense under subsection (a)(1), (2) or (3) shall be enhanced one degree if the person has previously violated an order issued under 23 Pa.C.S. § 6108 (relating to relief) involving the same victim, family or household member.

(d) False reports.–A person who knowingly gives false information to any law enforcement officer with the intent to implicate another under this section commits an offense under section 4906 (relating to false reports to law enforcement authorities).

(e) Application of section.—This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L.1198, No.308), known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

(e.1) Course of conduct.—(Deleted by amendment).

(f) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Communicates." Conveys a message without intent of legitimate communication or address by oral, nonverbal, written or electronic means, including telephone, electronic mail, Internet, facsimile, telex, wireless communication or similar transmission.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

"Emotional distress." (Deleted by amendment).

"Family or household member." Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood." (18 PA Cons Stat § 2709 (2014)) (Appendix Bates Stamp 232-233)

18 Pa. C.S. §2709 et. seq. is overbroad. *(Garner supra Harlan concurring pp201-201)* The above language was found to be unconstitutional at *Golb supra; id citing People v. Dietze, 75 N.Y.2d 47, 550 N.Y.S.2d 595, 549 N.E.2d 1166 (1989); People v. Dupont, 107 A.D.2d 247, 486 N.Y.S.2d 169 (App. Div. 1985); Vives v. City of New York, 305 F. Supp. 2d 289 (S.D.N.Y. 2003); Vives v. City of New York, 405 F.3d 115 (2d Cir. 2005); id Cardamone, J., dissenting in part, concurring in part;*

Schlagler v. Phillips, 985 F. Supp. 419 (S.D.N.Y. 1997); Schlagler v. Phillips, 166 F.3d 439 (2d Cir. 1999))

In order to make the above language meet US Constitutional muster, the NY state legislature struck the language *"...~~with intent to harass, annoy, threaten or alarm another person,..~~"* from the first line of *NY Penal Law §240.30(2013)*, where it subsumed the entirety of the old New York harassment statute. (Appendix Bates Stamp 14-16)

The language now only remains at *NY Penal Law §240.30(3)&(4)* which require that one

> *"subjects another person to physical contact" (id (3)&(4)) or "attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct". (ibid (3))* (Appendix Bates Stamp 11-24) *(Attachment 1.7.3-1.7.4)*

> *"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." (Schenck v. United States, 249 U.S. 47, 52, 39 S. Ct. 247, 63 L. Ed. 470 (1919))*

The language also exists at *NY Penal Law §240.26*, which is "violation" *(id)*, not a crime. (Appendix Bates Stamp 11-24)*(Attachment 1.7.5)*

> *"No Court of justice can be authorized so to construe any clause of the Constitution as to defeat its obvious ends, ... The [First Amendment] manifestly contemplates the existence of a positive, unqualified right....which no state law or regulation can in any way qualify, regulate, control, or restrain." (Prigg v. Pennsylvania, 41 U.S. 539, 612, 10 L. Ed. 1060, 1842 U.S. L.E.X.I.S. 387 (1842))*

"The prohibition upon the states [] [against quashing First Amendment rights] is absolute." (id Wayne Concurring 639) Identical state statutory language cannot be constitutionally sound in one US state but violative to the US Constitution in another state.

> *"... The rule of action which it prescribes was intended to be the same in all the states....If the effect of it depended, in any degree, upon the construction of a state by legislation or otherwise, its spirit, if not its letter, would be disregarded." (Prigg supra M`LEAN Concurring 661)*

If statutory language is unconstitutional in New York, or elsewhere in the union, then it is also unconstitutional in Pennsylvania. If *US Const. Amend. I* is not equally as *"absolute"* as *US Const. Art. IV §2, ¶3 (Prigg supra),* then *US Const. Amend. XIII* is also not absolute, which means there are circumstances in which a *"master"* may own as property *"blacks and persons of colour"* who may be *"held to service or labour".* Yet, no such exceptions to *US Const. Amend. XIII* are known to legally exist within our nation.

> *"[Any constitutional] clause [or amendment] manifestly contemplates the existence of a positive, unqualified right... which no state law or regulation can in any way qualify, regulate, control, or restrain... it may fairly and reasonably be said, that any state law or state regulation, which interrupts, limits, delays, or postpones the right... operates, pro tanto...[to quash the right]. The question can never be, how much the [the right is quashed] but whether [the right is quashed][] by the natural or necessary operation of state laws or state regulations. The question is not one of quantity or degree, but of withholding, or controlling the incidents of a positive and absolute right." (prigg supra 612-613)*

> *"... the owner of [this right] is clothed with entire authority, in every state in the Union, to seize and recapture his [right], whenever he can do it without any breach of the peace, or any illegal violence. In this sense, and to this extent this clause [or amendment] of the Constitution may properly be said to execute itself; and to require no aid from legislation, state or national." (id 613)*

"Under the Constitution it is recognised as an absolute, positive, right and duty, pervading the whole Union with an equal and supreme force, uncontrolled and uncontrollable by state sovereignty or state legislation. ....The natural inference deducible from this consideration certainly is, in the absence of any positive delegation of power to the state legislatures, that it belongs to the legislative department of the national government, to which it owes its origin and establishment. It would be a strange anomaly, and forced construction, to suppose that the national government meant to rely for the due fulfilment of its own proper duties and the rights which it intended to secure, upon state legislation; and not upon that of the Union. A fortiori, it would be more objectionable to suppose that a power, which was to be the same throughout the Union, should be confided to state sovereignty, which could not rightfully act beyond its own territorial limits." (id 623)

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." (US Const. Art. IV §2,¶1)

Speech that is protected by *US Const. Amend. I* in New York cannot be criminalized under *18 Pa. C.S. §2709 et. seq.* Yet, it currently is.

"In the next place, the nature of the [right][] and the objects to be attained by it, require that it should be controlled by one and the same will, and act uniformly by the same system of regulations throughout the Union. If, then, the states have a right.... to act upon the subject, each state is at liberty to prescribe just such regulations as suit its own policy, local convenience, and local feelings. The legislation of one state may not only be different from, but utterly repugnant to and incompatible with that of another....such a state of things never could have been intended, under such a solemn guarantee of right and duty." (prigg supra 623-624)

United States v. Peters, 9 U. S. (5 Cr.) 115 (1809); Farmers and Mechanics' Bank of Pa. v. Smith, 19 U.S. 131, 5 L. Ed. 224 (1821); Colautti v. Franklin, 439 U.S. 379, 99 S. Ct. 675, 58 L. Ed. 2d 596 (1979); Philadelphia Newspapers v. Hepps, 475 U. S. 767 (1986); American Trucking Ass'ns v. Scheiner, 483 U. S. 266 (1987); Bartnicki v. Vopper, 532 U. S. 514 (2001);

Dobbins v. Commissioners of Erie County, 41 U. S. (16 Pet.) 435 (1842); Case of the State Freight Tax, 82 U. S. (15 Wall.) 232 (1873)

> *"Conduct that annoys some people does not annoy others. Thus, the ordinance is vague..." Coates v. Cincinnati, 402 U.S. 611, 614, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971).*

> *"...we have repeatedly invalidated laws that provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them." Houston v. Hill, 482 U.S. 451, 465-66, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987)*
>
> *"[Q]uoting Thornhill v. Alabama...; Coates v. Cincinnati, 402 U. S. 611, 615-616 (1971) ([The] statute prohibiting "annoying" conduct "contains an obvious invitation to discriminatory enforcement"). Like many of the ordinances in these cases... effectively grants police the discretion to make arrests selectively on the basis of the content of the speech. Such discretion is particularly repugnant given "[t]he eternal temptation . . . to arrest the speaker rather than to correct the conditions about which he complains." Younger v. Harris, 401 U. S. 37, 65 (1971) (Douglas, J., dissenting)." (Houston v. Hill supra Footnote 15)*

Enforcing statutory language that has already been ruled unconstitutional by a federal court in another state creates an absurdity that puts the Pennsylvania court in violation of *1 Pa. C.S.§1922(1), (2) & (3). "[T]he constitutional questions must be reached and that [] make[s] reversal necessary." (Garner supra, Douglas concurring p177, Harlan concurring pp185-186, p205 Part (IV))* The proper remedy is for this Court to recognize the constitutional infirmity of *18 Pa. C.S. §2709(a)(4)* (Appendix Bates Stamps 232-233) and to then strike that statute. *(Broadrick supra; Scales supra)*

CONCLUSION

Certiorari should be granted.

The forgoing document is true in fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

July 11, 2020
Date

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