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No: 20-5815

IN THE
SUPREME COURT OF THE UNITED STATES

SETH JOHN WILCOX - PETITIONER

VS.

STATE OF WASHINGTON - RESPONDENT

PETITION FOR AN EXTRAORDINARY WRIT
OF MANDAMUS AND/OR
PROHIBITION

PRO SE

SETH JOHN WILCOX

#408935 BB571L

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QUESTIONS PRESENTED

I - CAN A STATE CREATE AND ENFORCE
CONTRARY LAW, THAT DEPRIVES ITS
CITIZENS OF THEIR FUNDAMENTAL
RIGHTS, GUARANTEED BY THE
UNITED STATES CONSTITUTION?

II - DOES PROSECUTING AN INDIVIDUAL,
FOR A CAPITAL OR INFAMOUS CRIME, BY
INFORMATION ALONE WITHOUT A
PRELIMINARY HEARING, PROVIDE A
GREATER VALUE OF FUNDAMENTAL
RIGHTS TO THAT INDIVIDUAL, RATHER
THAN THOSE GUARANTEED BY A
GRAND JURY PROCEEDING?

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LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page.
A list of all the parties subject to the challenge of State Law involved,
are as follows:

- Governor Jay Inslee
- Attorney General for Washington State

RELATED CASES

Ramos v. Louisiana

18-5924

139 Sct. 1318, 203 L Ed 2d 563:2019 U.S. LEXIS 1833

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OPINIONS BELOW

Hurtado v. People of California

28 LED 232, 110 U.S. at 516, 538
(1884)

In the opinion of the court, it was held that because both, the 5th and 14th Amendments, contain similar passages of due process, and due to the fact that the 5th Amendment has express declarations to perpetuate the institution of a Grand Jury, yet the 14th Amendment doesn't, than the Grand Jury must only bind to federal courts. It was concluded, "We are unable to say that the substitution for a presentment or indictment by a Grand Jury of the proceeding by information... is not due process of law," and therefore the court ruled that States could substitute prosecutions of felony crimes by indictment of a Grand Jury with information.

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JURISDICTION

ARTICLE III SECTION 2 CLAUSE 2 OF THE UNITED STATES CONSTITUTION

"IN ALL CASES AFFECTING AMBASSADORS,
OTHER PUBLIC MINISTERS AND CONSULS, AND
THOSE IN WHICH A STATE SHALL BE A PARTY,
THE SUPREME COURT SHALL HAVE ORIGINAL
JURISDICTION."

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

- V Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

- XIV Amendment

"nor shall any State deprive any person of life, liberty, or property, without due process of law"

WASHINGTON STATE CONSTITUTION

- Article I section 25

"Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law."

- Article I section 26

"No Grand Jury shall be drawn or summoned in any county, except the superior judge thereof shall order."

STATEMENT OF THE CASE

I- CAN A STATE CREATE AND ENFORCE CONTRARY LAW THAT DEPRIVES ITS CITIZENS OF THEIR FUNDAMENTAL RIGHTS, GUARANTEED BY THE UNITED STATES CONSTITUTION?

A. Supremacy Clause of the United States Constitution and the meaning of contrary law

Petitioner respectfully submits this Extraordinary Writ to the United States Supreme Court, challenging Article I Section 25 and Article Section 26 of the Washington State Constitution.

The Supremacy Clause of Article VI Clause 2 of The United States Constitution States that "This Constitution, and The Laws of The United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of The United States, shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." It is very clear by the usus loquendi of this passage, that the Framers of The United States Constitution, intended that the laws of this great doctrine were to be the foundation in which all State laws derive from. Proof of this is in the careful choice of words in which the Framers scribed. The key word

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written in this clause is "shall", because this word as defined in Merriam-Webster Dictionary, is an "auxillary to express a command." When the Framers wrote that "The Constitution and all its Laws shall be the Supreme Law of the Land, and the judges in every State shall be bound thereby," Their intention was that the Constitution and all its laws are to be superior to those created by states and that the guarantees written within are not to be infringed upon by any state. This interpretation is supported by the last line of the clause which reads "any Thing in the Constitution or laws of any State to the contrary notwithstanding." Therefore all contrary state law to that which is written in the United Constitution, shall be deemed null and void as the Supremacy Clause clearly states.

If the United States Constitution is the Supreme Law of the Land and a State cannot create contrary law, as written in the Supremacy Clause, it must be then determined what contrary law is. Contrary as defined by Merriam - Webster is 1.) "opposite in nature or position" 2.) "counter, opposed", whereas law is defined as "a rule of conduct or action established by custom or laid down and enforced by a governing authority." In composition

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of these definitions one would concede that contrary law should be defined as such "a rule of conduct or action in opposition to that established by custom or laid down and enforced by another governing agency." The Framers of the United States Constitution implemented the Supremacy Clause to create boundaries that States could not infiltrate, to protect those guarantees and fundamental rights established for its citizens.

B. Washington State Supreme Court opinion of contrary law

Washington State Supreme Court notes that "The Supreme Court application of the United States Constitution establishes a floor below, which state courts cannot go, to protect individual fundamental rights. However states of course can raise the ceiling to afford greater protections under their own constitutions.

Washington retains the "sovereign right to adopt in its own constitution, individual liberties more expansive than those conferred by the Federal Constitution." *State v. Gunwall* 106 Wn 2d 54, 59, 720 P2d 808 (1986) (quoting *Prune Yard Shopping Ctr. v. Robbins* 447 U.S. 74, 81, 100 Sct. 2035, 64 LEd 741 (1980))

In *Gunwall*, the opinion of Washington State Supreme Court clarifies that a State cannot create laws that deprive its citizens of their fundamental rights, as it can only adopt laws into its own constitution that provide its citizens such rights

"more expansive than those conferred by the Federal Constitution." Any State

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law depriving its citizens of their fundamental rights, guaranteed by the United States Constitution, is indisputably contrary law.

II- DOES PROSECUTING AN INDIVIDUAL FOR A CAPITAL OR INFAMOUS CRIME BY INFORMATION ALONE WITHOUT A PRELIMINARY HEARING, PROVIDE A GREATER VALUE OF FUNDAMENTAL RIGHTS TO THAT INDIVIDUAL, RATHER THAN THOSE GUARANTEED BY A GRAND JURY PROCEEDING?

A. Fundamental Rights and the meaning thereof

Previously, it has been concluded that a State cannot create or enforce contrary law and one must discern that contrary law is unequivocally any law that deprives individuals of their fundamental rights guaranteed by the United States Constitution. However, Fundamental Right must be defined to further evaluate the question presented above.

Fundamental, according to Merriam-Webster Dictionary, is defined as 1.) "serving as an origin: Primary" 2.) "basic, essential", whereas Right is defined as 1.) "something (as power or privilege) to which one has a just or lawful claim" 2.) "just action or decision: the cause of justice." One may perceive that fundamental right must be defined as "something essential (as power or privilege) to which one

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has a just or lawful claim derived from a primary legal action or decision." Based on this definition, a fundamental right is an essential guarantee or privilege conferred to national citizens ensued upon the ratification of the Federal Constitution and its Bill of Rights.

B. History of the Grand Jury and evaluating the ruling of *Hurtado v. California*

The preliminary proceeding of a Grand Jury has been a fundamental instrument of Anglo-American jurisprudence for over 800 years, indoctrinated into English Common Law, after the Magna Charta was drafted in 1215. To this day, federal courts still use this institution as the primary preliminary mode of proceeding in criminal adjudications.

Up until the Supreme Court ruling in *Hurtado v. California* (1884), all Territories and

States, as free governments, still used this established mode of preliminary proceeding.

Since then, many states have fully disposed of preliminary hearings, including the

Grand Jury, to expedite criminal adjudications, as did the State of Washington upon ratification of its Constitution in 1891.

"IT is maintained on behalf of the plaintiff in error that the phrase 'due process of law' is equivalent to the 'law of the land' as found in the 29th chapter of the Magna Charta; that by immemorial usage, it has acquired a fixed definite and technical meaning, that it refers to and includes, not only the general principles of public liberty and

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private right, which lie at the foundation of all free governments, but the very institutions, which venerable by time and custom, have been tried by experience and found fit and necessary for the preservation of those principles, and which having been the birthright and inheritance of every English subject, crossed the Atlantic with the colonists and were transplanted and established in the fundamental law of the State; that having been originally introduced into the Constitution of the United States as a limitation upon the powers of the government, brought into being by that instrument, it has now been added as an additional security to the individual against oppression by the States themselves; that one of these institutions is that of a Grand Jury, and indictment or presentment, by which against the accused in cases of alleged felonies, is an essential part of due process of law, in order that he may not be harassed and destroyed by prosecutions founded only upon private malice or popular fury." *Hurtado v. People of California* 28 LED 232, 110 U.S at 521

"The view is certainly supported by the authority of the great name of Chief Justice Shaw and of the court in which he presided, which in *Jones v. Robbins* 8 Gray 329, decided that the 12th Article of the Bill of Rights of Massachusetts, a transcript of the Magna Charta in this respect, made an indictment or presentment of a Grand Jury essential to the validity of a conviction in cases of prosecutions for felonies. In delivering the opinion of the court in that case Merrick J. alone in dissent, the chief justice said: "The right of individual

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citizen to be secure from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial before probable cause is established by the presentment and indictment of a Grand Jury, in cases of high offenses, is justly regarded as one of the securities to the innocent against hasty, malicious and oppressive public prosecutions, and as one of the ancient immunities and privileges of English liberty ... It having been stated" He continued "by Lord Coke, that by the 'law of the land' was intended a due course of proceeding according to those established rules and practices of the courts of common law, it may perhaps, be suggested that this might include other modes of proceeding, sanctioned by the common law, the most familiar of which are, by informations of various kinds, by the officers of the crown in the name of the King. But, in reply to this, it may be said that Lord Coke himself explains his own meaning by saying 'law of the land' as expressed in the Magna Charta, was intended 'due process of law', that is by presentment and indictment of good and lawful men. Further it is stated, on the authority of Blackstone, that informations of every kind are confined by the constitutional law to misdemeanors only." 4 Bl. Com 310 Referring again to the passage from Lord Coke, He says P. 343 "This may not be conclusive, but being a construction adopted by a writer of high authority before the emigration of our ancestors, it has a tendency to show how it was then understood." *Hurtado* 110 U.S. at 522

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"We are unable to say that the substitution for a presentment or indictment by a Grand Jury of the proceeding by information, after examination and commitment by a magistrate, certifying the probable guilt of the defendant, with the right on his part to the aid of counsel, and to cross-examine the witnesses produced for the prosecution, is not due process of law." *Hurtado* 110 U.S. at 538

Blackstone says "But to find a bill there must be at least 12 jurors agree, for so tender is the law of England of the lives of subjects, that no man can be convicted at the suit of the King, of any capital case, unless by a unanimous voice of 24 of his equals and neighbors, that is by 12 at least of the Grand Jury, in the first place, assenting to the accusation, and afterwards by the whole petit jury, of 12 or more, finding him guilty upon his trial." 4 Bl. 306 "The founders of English Common Law have, with excellent forecast, contrived that no man shall be called to answer to the King for any capital crime, unless upon preemptory accusation of 12 or more of his fellow subjects, the Grand Jury, and that the truth of any accusation, whether preferred in the shape of indictment, info or appeal, should afterwards be confirmed by the unanimous suffrage of 12 of his equals and neighbors, indifferently chosen and superior to all suspicion. So that the liberties of England cannot but subsist so long as the palladium remains sacred and inviolate, not only from all open attacks (which none will be so hardy as to make)

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but also from all secret mechanisms which may sap and undermine it, by introducing new and arbitrary methods of trials, by justices of peace, commissioners of the revenue, and courts of conscience, and however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are most convenient) yet let it be again remembered that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for liberty in more substantial matters; that these inroads upon the sacred bulwark of the nation are fundamentally opposite to the spirit of the Constitution, and that, though begun in trifles, the precedent may gradually increase and spread to the utter disuse of jurors in questions of the most momentous concerns." 4 Bl. Com 349-50
Hurtado 110 U.S. at 544-45

" Hawkins in his Pleas of the Crown Bk. 2 Ch. 26, after saying that it is everyday practice to proceed by information in certain cases says, "but I do not find it anywhere holden that such an information will lie for any capital crime, or for misprison of treason." Bacon in his abridgement lays it down, "But though as my Lord Hale observes, in all criminal cases, the most regular safe way, and most consonant to the statute of the Magna Charta is by presentment or indictment of 12 sworn men, crimes inferior to capital or infamous proceedings may be information." Title Information

A see also Hal. Hist. PC ch. 201; Jacobs L Dic Title info 4 Broom Com. Laws

England 396 Story Const. Sec. 1784. " I omit further citations of authorities,

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which are numerous to prove that according to the settled usage and modes of proceeding existing under the common and statute law of England at the settlement of this country, information in capital cases was not consistent with the ' law of the land ' or with due process of law." *Hurtado 110 U.S. at 545* (J. Harlan dissenting)

It is quite clear that the paragon of usage of the institutions and modes of proceedings established by English Common Law, which venerable by time and custom, have been tried by experience and found necessary to preserve those principles that safeguard the inherent rights of its citizens deemed fundamental to ensure liberty and justice in Anglo-American jurisprudence. The Framers of the Bill of Rights understood that just as the trial by jury right is necessary, which was written in the 6th Amendment of the United States Constitution, the preliminary proceeding of a Grand Jury is equally fundamental, as not only was it scribed in an entirely different amendment, it was drafted in the 5th Amendment, the one before that, securing the right to a fair and impartial trial by jury. It is by no mistake that the Framers constructed the Bill of Rights as they did, every word was carefully written and not only was it intentional that they separated these modes of proceedings, as one could not replace the other, it was also sequential, as the Framers understood the utmost importance of a preliminary proceeding and the fundamental rights secured by the procedure of such institutions as a Grand Jury,

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hence why everything written in the 5th Amendment secures the rights to individuals pertaining to preliminary proceedings, whereas the 6th Amendment defines the rights guaranteed to individuals that pertain to trial proceedings.

The Grand Jury Clause of the 5th Amendment of the United States Constitution reads as such "No person shall be held to answer for a capital, or otherwise infamous crime, unless upon a presentment or indictment of a Grand Jury." Once again one must closely examine the choice of words written in this provision and similarly to that of the Supremacy Clause, the key word that appears is "shall". As previously defined, shall is an "auxillary to express a command," therefore the Framers intended this provision to be absolute and if their intentions were any different, shall could have been substituted with a word such as "may" which the meaning would then be indefinite and open for options for substitution of the preliminary proceeding of a Grand Jury. However that is not how it was written and one must keep in mind that the Bill of Rights and all of its provisions, were concisely drafted by some of the best scholars during that period of time.

In the case of *Hurtado v. People of California* 28 LED 232, 110 U.S. at 538, the opinion of the court was held that "We are unable to say that the substitution for a presentment or indictment by a Grand Jury of the proceeding by information... is not due process

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of law." In the same respect, one could fairly argue that the court was equally unable to prove that the substitution for a Grand Jury proceeding, after examination and commitment of a magistrate, by information, is indeed due process of law as well. The rationale of this decision was based on the analysis of the similarities in the usus loquendi of the 5th and 14th Amendments. It is expressed by the court that because both amendments contain the phrase "nor be deprived of life, liberty, or property, without the due process of law," and respectively the 14th Amendment binds the same due process to the states by the addition of the line "nor shall any State deprive any person," that the 5th Amendment due process of a Grand Jury proceeding, binds only to the federal courts.

"We are to construe the phrase in the 14th Amendment by the usus loquendi of the Constitution itself. The same words are contained in the 5th Amendment... it declares that "no person shall be held... it then adds nor be deprived of life, liberty, or property, without the due process of law" according to the recognized canon interpretation... we are forbidden to assume, without clear reason to the contrary, that any part of this most important amendment is superfluous. The natural and obvious inference is, that in the sense of the Constitution, "due process of law" was not meant or intended to include, ex vi termini, the institution and procedure of a Grand Jury... when the same phrase was employed in the 14th Amendment to restrain the action of the States, it was used in the same

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sense with no greater extent: and that if in the adoption of that amendment it has been part of its purpose to perpetuate the institution of the Grand Jury in all states, it would have embodied as it did the 5th Amendment, express declarations to that effect."

Hurtado 110 U.S. at 534-35

With all due respect to the courts, this rationale of thinking and analysis of the 5th and 14th Amendments was heavily flawed for several reasons, as specific words and punctuation can ultimately prove this. The opinion of the court conceded that due process of the 5th Amendment attaches to the Grand Jury Clause, however that is not correct. Punctuation is just as critical as choice of words and that all provisions in the Amendments are separated by semicolons " ; ". When carefully examining this canon " ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; " it is very clear that the due process here is written only in the provision that protects a person from being forced to testify against themselves, as before and after this passage, are semicolons. If the due process was intended to attach only, by the rules of grammar, to the Grand Jury Clause, then it would have been compounded within, separated by a comma ", " as in the passage above, but that is not the case.

Now there is perhaps another important word missing above that would infer that the due process attaches to the double jeopardy clause as well, and that is " person. "

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When both passages are read together, grammatically it makes more sense as it reads,

" ; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; " In the latter provision, it only contains the pronoun " himself " in the predicate, yet it is clearly missing the subject noun to support the pronoun, which would infer, as previously conceded, that the double jeopardy clause must attach to the due process as well as it provides the subject noun " person " that supports the pronoun in the latter provision.

However, when evaluating the first provision, the Grand Jury Clause, of the 5th Amendment, it begins with " No person shall ", which contains its own subject noun and finishes with a semicolon at the end of the provision, as a complete sentence. Any modern scholar, would concede, due to the rules of grammar, that the Grand Jury Clause was separate and never intended to attach to the due process of law in the 5th Amendment, or else the provisions would have been compounded, sharing the same subject noun, but that is not how it was written, as the first states " no person " and the latter two share " nor shall any person. "

If the intention of the Framers of the Bill of Rights were to incorporate the due process of the 5th Amendment, attaching to all its provisions, it would have most

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likely been written as a complete sentence, as a separate provision, much like that written in the 14th Amendment, at the end of the 5th Amendment, separated by semicolons, but that is not the case either. One must concede with logic and reason, that the due process of the 5th Amendment attaches only to its second and third provisions, not the first, which is the Grand Jury Clause.

In the opinion of the court held in *Hurtado*, it was stated that if the due process of the 5th Amendment attaches to the Grand Jury, and no "express declarations" were written in the 14th Amendment to perpetuate the institution of the Grand Jury to all States; as written in the 5th Amendment, then the institution of a Grand Jury must bind only to the federal courts. However, as previously analyzed grammatically, one must concede that the Grand Jury Clause indisputably does not attach to the due process of the 5th Amendment, therefore much like the First, Second, Fourth, and Sixth Amendments, which are considered fundamental rights, the Grand Jury Clause must bind to the States respectively, through the due process clause of the 14th Amendment.

If the same standard of evaluation is used toward the Second and Third provisions in the 5th Amendment, that was declared in *Hurtado*, then those two provisions would be bound only to the federal courts, however today those provisions bind

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to the States as well. Proof that the Framers of the Bill of Rights intended those provisions to bind to the States, even though they are attached to the due process of the 5th Amendment, relies on one small phrase in those provisions, and that is "in any criminal case." This phrase distinguishes that the intention of the Framers was to implement these provisions in all criminal courts as it would have specified otherwise, much like the Grand Jury Clause specifies that the institution must be implemented for prosecuting cases where an individual is accused of greater felony offenses.

If the Grand Jury Clause does not attach to the due Process of the 5th Amendment and the second and third provisions do, yet those provisions bind to the States, then the due process of that Amendment was never intended to restrict any provision within, from the States, but rather to reiterate the essential value of the fundamental rights in those provisions, because they were never established in English common law. However the due process of the 5th Amendment was not needed to reiterate the value of fundamental rights from institutions of a Grand Jury, because they had already been established, tried true and tested, through immemorial usage and experience by English Common Law, for nearly 600 years, before the ratification of the first ten articles of the Bill of Rights in 1791.

Lastly, when the court held its opinion in *Hurtado*, as it analyzed the 5th and 14th Amendments and interpreted the meaning of both due processes, the court misconstrued

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their meaning, resulting in a decision which set a precedent denying individuals of their fundamental right to a Grand Jury proceeding in State courts.

"We are to construe the 14th Amendment by the usus loquendi of the Constitution itself. The same words are contained in the 5th Amendment... according to the recognized canon interpretation... we are forbidden to assume, without clear reason to the contrary... due process of law was not meant to include, *ex vi termini*, the institution and procedure of a Grand Jury... when the same phrase was employed in the 14th Amendment to restrain the action of the States... if in the adoption of that Amendment it has been part of its purpose to perpetuate the institution of the Grand Jury in all the States, it would have embodied, as did the 5th Amendment, express declarations to that effect." *Hurtado* 110 U.S. at 534-35

In accordance to the 9th Amendment of the Bill of Rights, as it reads "The enumeration in the Constitution, of certain rights, shall not be construed to, deny or disparage others retained by the people," it clearly states that the (list of laws) in the Constitution, of (fixed, settled) rights, shall not be (interpreted) to (deprive) or (lessen, degrade) others (possessed, reserved) by the people.

The opinion of the court in *Hurtado*, as stated above, when analyzing the due processes of the 5th and 14th Amendments, holds the phrase "we are to construe," if

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then follows by stating that both Amendments contain due process and because the 5th Amendment contains "express declarations," to "perpetuate the institution of a Grand Jury," yet the 14th Amendment does not, then the Grand Jury must only apply to federal courts. However, when considering the grammatical evaluation of the 5th Amendment, previously presented to the Court in this document, in contrast to the opinion of the court in *Hurtado*, one must concede that the court ultimately misinterpreted the intention of due process in the 5th Amendment and the provisions within, it attaches to, thus resulting in the deprivation of the fundamental right of a Grand Jury proceeding, established and settled by immemorial usage of English Common Law, inherent to the citizens of all United States, therefore those individuals were deprived of the guarantee set forth in the 9th Amendment, unequivocally as well.

Washington State used the standard set in *Hurtado*, five years prior to the adoption of its Constitution in 1889, to construct its laws written in Article I section 25 and 26, which deprives its citizens the guaranteed fundamental right of a Grand Jury proceeding. The State relies on the *Hurtado* precedent and still considers it good law to support the prosecution of higher felony crimes by information alone, without any equivalent preliminary proceeding to that of the Grand Jury, however that mode of proceeding is contrary to the standard set forth in

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Hurtado, as it requires a preliminary proceeding.

The ruling in Hurtado v. People of California shall not be despotic as "These later cases establish that notwithstanding the sweeping character of the language in the Hurtado case, the rule laid down is not without exceptions. The rule is an aid to construction, and in some cases may be conclusive, but it must yield to more compelling considerations whenever such considerations exist. The fact that the right involved is of such a character that it cannot be denied without violating those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." Powell v. Alabama 77 LED 158, 287 U.S. at 67 (citing *Herbert v. Louisiana* 272 U.S. 312, 316, 71 LED 270, 272, 48 ALR 1102, 47 Sct. 103)

The final decision in Hurtado concludes that "We are unable to say that the substitution for a presentment or indictment of a Grand Jury proceeding by information... is not due process of law," *Id* at 538 and equally they were unable to prove that it was in fact, due process as well, which brings this ruling into question, as the prosecution of felony crimes by information must provide a greater value of fundamental right than that guaranteed by a Grand Jury proceeding, or else it is deemed contrary law as "any Thing in the Constitution or laws of any State to the contrary notwithstanding," which is unequivocally, without due process of law.

In a relatively recent case, the Supreme Court overturned a nearly century old case

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Apodaca v. Oregon 406 U.S. 404, which allowed the accused to be convicted by a two-third majority jury verdict, however the court ruled that anything less than a unanimous verdict is unconstitutional, and in this case Justice Alito gave this opinion: "Even now, our cases do not hold that every provision of the Bill of Rights applies in the same way to the federal government and the United States. A notable exception is the Grand Jury Clause of the 5th Amendment, a provision that like the 6th Amendment jury trial right, reflects the importance that the founding generation attached to jury as safeguards against oppression. In *Hurtado v. People of California* 110 U.S. 516, 538 (1884), the court held that the Grand Jury Clause does not bind the States and that they may substitute preliminary hearing at which the decision was based on reasoning that is not easy to distinguish from Justice Powell's opinion in *Apodaca v. Oregon* 406 U.S. 404. *Hurtado v. California* remains good law and is critically important to 28 states that allow defendants to be prosecuted for a felony without a Grand Jury indictment. If we took the same approach to the *Hurtado* question that the majority takes in this case, the holding in that case could be called into question." *Ramos v. Louisiana* # 18-5924, 139 Sct. 1318, 203 L Ed 2d 563: 2019 U.S. LEXIS 1833

C. Differences between Federal and State Constitutional provisions and the evaluation of fundamental rights

Washington State holds its own standard set in *State v. Gunwall* 106 Wn 2d 54, 59, 720 P2d 808 (1986), which recommends six nonexclusive neutral criteria

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for determining when and how the Washington State Constitution provides different protection than the United States Constitution guarantees, listed as follows:

- (1.) The texts
- (2.) Significant differences in parallel provisions
- (3.) State Constitution and Common Law history
- (4.) Preexisting State law
- (5.) Structural differences between State and Federal Constitutions
- (6.) Matters of particular State interest

This standard shall be used to evaluate Article I section 25 and 26 of the Washington State Constitution, in comparison to the Grand Jury Clause of the 5th Amendment in the United States Constitution, to determine whether or not the State laws provide different or less protection to its citizens.

1.) Article I section 25

"Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law"

Article I section 26

"No Grand Jury shall be drawn or summoned in any county, except the superior judge thereof shall order"

5th Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury"

2.) When analyzing the significant differences between Article I section 25 and 26 in comparison to the Grand Jury Clause of the 5th Amendment, the provision in

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the 5th Amendment guarantees and requires felony crimes to be prosecuted upon presentment or indictment of a Grand Jury, whereas Article I section 26 forecloses on counties to draw or have a Grand Jury on standby, except when a superior court judge orders, and Article I section 25 states felony crimes that were required to be prosecuted, up until (heretofore) this law, by indictment of a Grand Jury, may be prosecuted by information or indictment. Therefore the Federal Constitution guarantees felony crimes to be prosecuted by a Grand Jury indictment, whereas the State Constitution forecloses on summoning a Grand Jury with exceptions and felony crimes may be prosecuted by information or indictment, which leaves information as the primary form of prosecution. (nothing guarantees a preliminary hearing)

3.) The fundamental right guaranteed by a Grand Jury proceeding, written in the 5th Amendment, was established over 800 years ago in English Common Law and is still used today in Anglo - American jurisprudence (History cited pgs. 8 - 13). Washington as a Territory, until ratification of its Constitution in 1891, still used this mode of proceeding, even for seven years after the precedent set in the ruling of *Hurtado v. California*. When Washington established its Constitution, it completely disposed of its Grand Jury proceeding in State courts and substituted that mode of proceeding with "information filed by a prosecuting attorney" as written in RCW 10.37.105.

4.) Washington State has primarily prosecuted felony crimes by information

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alone, without the equivalent of a preliminary hearing to that of a Grand Jury, since the ratification of its State Constitution.

5.) This section is same as (2.) as the 5th Amendment guarantees a Grand Jury proceeding for prosecuting felony crimes where the State does not.

6.) The main interest of the State during construction of Article I section 25 and 26 of its Constitution, due to the fact that majority of its population was rural at the time, was to dispose of empaneling a Grand Jury by substituting indictment prosecutions with information to expedite State criminal adjudications.

It is indisputable that Washington State Law, when considering the analysis set in the Gunwall standard stated above, does not provide the same guarantee towards the Grand Jury proceeding as was written in the 5th Amendment, 100 years prior to ratification of the State Constitution. It must now be determined whether prosecuting felony crimes by information provides individuals greater protection than those fundamental rights guaranteed by a Grand Jury proceeding already established in English Common Law many centuries ago.

¹¹ The Duncan standard was designed to determine whether rights fundamental to the American scheme of justice, are necessary to an Anglo-American regime of ordered liberty. This standard has four factors which are weighed to determine whether a

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Bill of Rights provision warrants incorporation to the "Due Process Clause" of the 14th Amendment of the United States Constitution."

- (1.) The rights historical underpinning
- (2.) State's initial regard for the right in its Constitution
- (3.) Recent trends and popular view regarding the right
- (4.) Purpose served by the right

State v. Sieyes 168 Wn 2d 276 (2009) (citing *Duncan v. Louisiana* 391 U.S. 145, 149, 88 Sct. 1444, 20 LED 2d 491 (1968))

The Grand Jury Clause of the 5th Amendment must now be applied to the *Duncan* standard to evaluate whether or not this provision warrants incorporation to the due process of the 14th Amendment.

1.) As previously stated in the History of the Grand Jury, pages 8 - 13, this mode of proceeding was established in English Common Law over 800 years ago, which through immemorial usage and experience, it has proven to be one of the fundamental principles in Anglo-American jurisprudence that ensures and safeguards the liberties, inherent to national citizens, ensued upon the ratification of the Bill of Rights in the United States' Constitution in 1791, and is still implemented today.

2.) Due to the precedent set by *Hurtado v. California* in 1884, Washington State substitutes the prosecution of felony crimes by indictment of a Grand Jury with information filed by a prosecuting attorney.

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3.) Over the last few years, nationwide there has been an exponential increase of citizens, from peaceful protests to riots and civil upheaval, demanding that all of their Bill of Rights be protected and restored, as the majority, voice many concerns of States encroaching and stripping away those rights conferred to them by the United States Constitution. This concern has been brought up numerous times through major news networks by not just average citizens, but government officials as well including the President of the United States, Donald Trump.

4.) A Grand Jury proceeding serves as a checks and balances procedure to protect the accused from hasty, malicious prosecutions, as well as a superior fact-finding process to determine if probable cause exists, including the ability, with aid of counsel, to confront and cross-examine the witnesses and accuser(s), safeguarding the innocent from subjugation of public ridicule, unless by unanimous verdict of 12 of his peers, prior to trial.

After weighing the four factors, established while evaluating the Grand Jury Clause of the 5th Amendment with the Duncan standard, which was a standard set by the United States Supreme Court in the case of *Duncan v. Louisiana* to determine whether or not the provision guaranteeing a trial by jury, written in the 6th Amendment, was a fundamental right that binds to the due process of the 14th Amendment, one must concede that equally as the holding of *Duncan* and English Common Law considered the right

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to a trial by jury as fundamental to those principles of ordered liberty in Anglo-American jurisprudence, the Grand Jury proceeding is a fundamental right that should bind to the States as well.

Nothing written in the United States Constitution or any provision of its Bill of Rights allows the prosecution of felony crimes by information, as was established in English Common Law, which is written in USC 18 § 555, that prosecuting crimes by information is reserved for misdemeanors only. However, even though that this mode of proceeding is nowhere written in any provision, if applied to the same standard set in Duncan, it would ultimately fail and prove not to be a fundamental right as "Lord Coke explains... the 'law of the land' as expressed in the Magna Charta, was intended due process of law, that is, by indictment and presentment of good and lawful men. And further, it is stated, on the authority of Blackstone, that informations of every kind are confined by the Constitutional law to misdemeanors only." (4 Bl. Com 310)

Hurtado v. People of California 28 LED 232, 110 U.S. 522 (citing *Jones v. Robbins* 8 Gray 329)

REASONS FOR GRANTING THIS PETITION

This petition for Extraordinary Writ has been brought forth upon the discretionary review of this court, invoking its original jurisdiction through Article III section 2 of the United States Constitution, with aid of its appellate jurisdiction, to evaluate the questions and all facts presented in this writ, and determine with scrutiny, whether or not the Grand Jury provision of the 5th Amendment shall attach to the due process clause of the 14th Amendment of the United States Constitution. The ruling of *Hurtado v. People of California* 28 LED 232, 110 U.S. 516, 538, is also being called into question, when considering the same approach of questioning taken by the majority in *Ramos v. Louisiana* # 18-5924 139 Sct. 1318, 203 LEd 2d 563:2019 U.S. LEXIS 1833, as the precedent set by *Hurtado v. California* established the new standard adopted into Washington State Law upon ratification of its Constitution, shaping the construction of Article I section 25 and 26, which are the laws being challenged in this petition, that deny its citizens the guarantee of the due process of a grand jury proceeding established in Anglo-American jurisprudence. Due to the complexity of the exceptional circumstances that exist within the questions of this writ and the Constitutional laws being challenged, of the State of Washington as the adverse party in this petition, the United States Supreme Court holds the only jurisdiction as acting authority to review such considerations of momentous

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concerns involving the deprivation of fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.

In respect to current events, as well as modern views and concerns of the public, regarding the encroachment by States upon those principles deemed so fundamental that safeguard the rights of its citizens to ensure ordered liberty, embedded in the Bill of Rights of the United States Constitution, through actions of peaceful protest to civil upheaval, retrospectively speaking, society is repeating a pattern which was a precursor that led to the ratification of the 14th Amendment in 1868. However this trend seems to be spiraling out of control as the society of today appear to be more animus in fear of oppression as well as the suppression and dissolution of intrinsic rights due to the perceived stigma given to free governments by their arbitrary actions. Balance within our nation relies upon the cohesive nature of all governments to cognitively transcend beyond the limitations presumptuously established by oppositions of systematic process and reinstate such rights inherent to citizens of all United States guaranteed by the Bill of Rights of the United States Constitution.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to

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institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness... but when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

Much like the people that broke away from tyranny and formed our nation, inscribing into the Declaration of Independence, the pleas of their endeavor to achieve a supreme scheme of justice to secure certain rights that guarantee life, liberty and the pursuit of happiness, similarly Americans today, share some of the same struggles that inspired such a substantial change. Our nation is undoubtedly broken, but not beyond repair, as many significant triumphs, are the result of great endurance and the will to persevere, through untold suffrage. The fractures of society can only be mended by the mortice applied by government institutions through American jurisprudence, as it only takes one just decision to create great change, immortal through time.

By the pleas of this petition, as scribed by one man, for the voices of many, and for future generations to come, it is respectfully requested that this court, as guardians of those rights rooted in the Bill of Rights, and to prevent a miscarriage of justice from occurring further, grant this petition and restore those fundamental rights guaranteed by Grand Jury proceedings, inherent to citizens in the State of Washington.

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CONCLUSION

This petition for an Extraordinary Writ of Mandamus and/or Prohibition should be granted.

Respectfully submitted,

Seth J Wilcox

Date: 17th day of September, 2020

Appendix B

Declaration of Explanation to Relevance of this Petition

This Petition for Extraordinary Writ of Mandamus and/or Prohibition is an original criminal /civil action brought forth in this court under the jurisdiction of Article III section 2 of the United States Constitution. This petition is not a challenge of petitioner's judgement and sentence, or conviction, asking for discretionary review from this court, therefore it does not meet the criteria to be filed as a Writ of Certiori or Habeas Corpus, as the relief sought is not release from confinement. This petition is brought forth to this court against the State of Washington, the Governor of the State, Jay Inslee, and Robert W. Ferguson, the Attorney General of the State, as well, as adverse parties in this petition, challenging Article I section 25 and 26 of Washington State Constitution.

Petitioner is respectfully requesting discretionary review from this court upon all questions and fact brought forth in this petition, with aid of its appellate jurisdiction, reviewing the United States Supreme Court decision of *Hurtado v. People of California* 28 LED 232, 110 U.S. 516, 534-38 (1884) (Appendix A).

This case is relevant to the challenge of Washington State law as Washington

State holds the precedent set in *Hurtado* as valid law to support the substitution of the preliminary proceeding of a grand jury with information filed by a prosecuting attorney, as this case set the standard which influenced the construction of Article I section 25 and 26 of the Washington State Constitution, seven years prior to its ratification in 1891. Therefore the laws being challenged in this petition cannot be reviewed without appellate review of *Hurtado v. People of California*.

The exceptional circumstances that pertain to this petition are as follows; this Writ of Mandamus and /or Prohibition is a mixed criminal /civil petition challenging the laws of Washington State solely. Washington State will not consider challenges of these laws unless the decision of *Hurtado v. People of California* is overturned, as the State considers it valid law, therefore this petition cannot be filed in any state court for fair adjudication or discretionary review. The State laws being challenged in this petition are proven to be enforced without due process of law, as a State cannot create laws that deprive its citizens of their fundamental rights conferred by the United States Constitution. Prosecuting felonies by information alone must provide its citizens greater protection, and or a higher value of fundamental rights than that guaranteed by a grand jury.

proceeding as was determined by the Duncan standard in this petition, or else it is contrary law without the due process of law.

Since this petition does not, in whole, fit the criteria for a § 1983 suit in district court, or habeas corpus it cannot be filed in the district court. The only option for a petition of this nature, is to invoke the United States Supreme Court's original jurisdiction under Article III section 2 of the United States Constitution, through an Extraordinary Writ of Mandamus and /or Prohibition. Petitioner is respectfully requesting the Court, through its appellate jurisdiction, to review the decision of *Hurtado v. People of California* with the questions and facts presented in this petition, as questions of momentous concerns have arised pertaining to due process and the validity of the previous Supreme Court decision of *Hurtado*. The relief sought in this Writ, if the court agrees to the facts relevant and the posture of this petition, is to Mandate the State of Washington to change its laws and guarantee a grand jury proceeding in all felony state court adjudications, and or prohibit the State to immediately stop enforcing law that allows individuals with alleged felony charges to be prosecuted by information alone, filed by prosecuting attorneys. The United States Supreme Court holds the only authority, through its original and

appellate jurisdiction to grant this petition and the relief sought against a
State as an adverse party.