

SEP 14 2020

OFFICE OF THE CLERK

20-5847

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

John James Hartz — PETITIONER
(Your Name)

VS.

Washington State DOC — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John James Hartz / DOC # 634679
(Your Name)

Coyote Ridge Corrections Center / P.O. Box 769
(Address)

Connell, WA 99326
(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.

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Constitutional and Statutory Provisions Involved

U.S. Constitution

Page Number(s)

- Article VI: U.S. Constitution "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."

4

- 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."

3, 4, 10, 11, 12, 14

- 14th Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

3-4

- 14th Amendment: "No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3, 4, 10, 12, 13, 14

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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 A 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☒ is unpublished.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 B 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 _____ 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 _____ 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.

[1.]

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 30, 2020.

☒ 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

Statement of the Case

The Washington State Constitution is in error, specifically Article I, Section 26, which states, "No Grand Jury shall be drawn or summoned in any county, except the superior judge thereof shall order." This is a direct conflict to the 5th Amendment of the U.S. Constitution, which states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

The 14th Amendment to the U.S. Constitution states, "No state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States." Yet, the State of Washington, through Article I, Section 26 of the State Constitution, did abridge the Privileges or Immunities of a Citizen of the United States, by not giving Petitioner his fundamental right to a Grand Jury when he was held to answer for an infamous crime.

Respondent will argue, "that there is no denial of Federal Constitutional rights involved in the substitution of the prosecuting attorney's criminal information for a grand jury indictment." However, the Respondent is wrong. No where in the Federal Constitution does it state, or even hint at, that an information can be used in place of an indictment; the wording is not even close enough to be misinterpreted as such. "Close enough is for horseshoes and handgrenades, not Constitutional interpretations." (*Ramos v. Louisiana*).

The fundamental right to a Grand Jury is for every person within the United States, because state and national citizenship co-exist in the same person. The 14th Amendment defines Citizen as: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

1 United States and of the state wherein they reside." Citizens of the United
2 States "And" of the state wherein they reside. It is not "either/or." A person
3 does not give up their U.S. Citizenship to become a Citizen of a state.

4
5 Petitioner is both a Citizen of the United States "And" a Citizen of the
6 State of Washington; they are one and the same, co-existing within Petitioner.
7 The State of Washington cannot remove Petitioner's citizenship as a U.S.
8 Citizen, nor remove or abridge the Constitutional guarantees that come with
9 that U.S. citizenship.

10
11 Article VI of the Federal Constitution states that the U.S. Constitution
12 "shall be the supreme law of the land; and the judges in every state shall
13 be bound thereby, anything in the Constitution or laws of any state to the
14 contrary notwithstanding."

15
16 Article I, Section 26 of the Washington State Constitution is contrary to
17 the Grand Jury Clause of the 5th Amendment of the U.S. Constitution.
18 The Superior Court Judge in Petitioner's case broke his Oath. The Judge
19 chose to violate the U.S. Constitution, and his Oath, by not giving Petitioner
20 a Grand Jury. The judge broke his Oath when he decided to only follow
21 the laws of Washington State by not giving Petitioner his fundamental
22 right to a Grand Jury.

23
24 Article I, Section 26 of the Washington State Constitution directly
25 contradicts the Grand Jury Clause of the 5th Amendment, which must be
26 enforced upon the states by the 14th Amendment of the U.S. Constitution. The
27 Superior Court Judge decided to place the laws of Washington State above
28 the laws of the United States, thus voiding out part of the Federal Constitution;

1 thus stating, through his actions and the upholding of Article I, Section 26
2 of the Washington State Constitution, that Petitioner is not a Citizen of the
3 United States, and is therefore not entitled to the guarantees provided by
4 the U.S. Constitution. This is wrong because Petitioner is an American
5 Citizen with the same and equal rights as all American Citizens, and is
6 both a Citizen of the U.S. and of the State of Washington. After hearing
7 this case, the Court must grant Petitioner his immediate relief from confinement.

QUESTION(S) PRESENTED

- Do "the privileges or immunities of citizens of the U.S. include, at minimum, the individual rights enumerated in the Bill of Rights?"
- Is a vague law a violation of due process?
- Because of the Supremacy Clause of the U.S. Constitution, any conflict between a federal and state law, does federal law preempt the state law?

Reasons for Granting the Petition

Section I

The right to a Grand Jury is "fundamental to the American scheme of ordered liberty... and deeply rooted in this Nation's history and traditions" (McDonald v. Chicago). It makes no difference if a person is being held to answer for a capital or infamous crime in a state court or in a federal court, because the right to a Grand Jury is given to all People within the United States equally. "It would be 'incongruous' to apply different standards 'depending on whether the claim was asserted in a state or federal court'" (Gonzalez-Oyarzun v. Caribbean City Builders, Inc.).

Indictment by a Grand Jury is a Privilege of citizenship, and has to be available to all on Equal terms. "Thus, if the jury trial requires a unanimous verdict in federal court, it requires no less in state court" (Ramos v. Louisiana). The same must apply to the Grand Jury, if it is required in federal court, it is also required in state courts, because if it meant anything else, it would not have been written down by the framers of the Federal Constitution.

The State of Washington must immediately stop abridging the Privileges and Immunities of Citizens, and immediately start honoring the Equal Protection of the Law given to all Citizens by the U.S. Constitution. The entire Bill of Rights must be incorporated and enforced against the states. "As an original matter, I acknowledge the appropriate vehicle for incorporation may well be the 14th Amendment's Privilege and Immunity Clause... Documenting evidence that the privileges or immunities of citizens of the U.S. include, at minimum, the individual rights enumerated in the Bill of Rights" (Tinker v. Indians).

1 The State of Washington's application of the Grand Jury is not only unequal,
2 but also vague. Some people who are within the borders of Washington State
3 get a Grand Jury, while others do not. If there is no daylight between
4 state and federal government, and if a right is required in the federal
5 court is also required in the state court; then why do some in Washington
6 State get a Grand Jury in capital or infamous crimes, while others get no
7 information?

8
9 United States v. Milovanovic and United States v. Ludwig are two of
10 the examples of Citizens getting a Grand Jury within the State of Washington.
11 Yes, both examples were under a Federal Grand Jury, but they were still Citizens
12 of the United States "And" Citizens of the State of Washington.

13
14 Not only is the State of Washington showing an inequality among People, but
15 they are also discriminating against certain People. The State of Washington may
16 argue that the right to a Grand Jury in state criminal proceedings do not
17 apply because Hurtado v. California, and its progeny, has been the law of the
18 land for over a century, and the laws of Washington allow them not to
19 indict by a Grand Jury, and therefore, the Federal Grand Jury cases highlighted
20 above do not apply to state procedures because they are Federal cases. Then
21 what about the State of Washington v. David D. Beck?

22
23 The State v. Beck is well after the establishment of Hurtado being the
24 law of the land. "In considering appellant's motion to quash the indictment,
25 we must bear in mind that appellant was indicted by a grand jury
26 impaneled in the State of Washington and not by a Federal grand jury or a
27 grand jury of a state whose statutes differ from ours" (State v. Beck).
28

Section II

Article I, Section 26 of the Washington State Constitution is vague on how a Grand Jury is summoned, e.g. Beck, yet "No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall order." Vague laws, and vague application of law are unenforceable. "It makes sense to scrutinize government action more closely when the state stands to benefit" (Timbs v. Indiana).

There is an unconstitutional vagueness on who gets a Grand Jury, and how a Grand Jury is drawn or summoned in Washington State. In State v. Reeder, the Washington State Supreme Court stated that, "Our state constitution clearly authorizes grand juries." However, in State v. Dunn, the Washington State Supreme Court stated that, "Indictment by grand jury is not required by due process of law, whether a defendant shall be charged by indictment or information is a matter entirely within the discretion of the prosecuting attorney."

Article I, Section 26 states that no grand jury, but it is up to the judge if there is one summoned; however, State v. Dunn states it is up to the discretion of the prosecuting attorney, not the judge if a Grand Jury is used or not. To confuse matters more, "On April 12, 1976, a majority of the Snohomish County Superior Court judges ordered the drawing and impaneling of a grand jury in Snohomish County" (State v. Fester). RCW 10.27.030 provides: "No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof."

1 The exception to Article I, Section 26 does not state, "except upon an
2 order signed by a majority of the judges thereof." No. The exception
3 to Article I, Section 26 states, "except the superior judge thereof
4 shall order." So is it one judge or multiple judges who summon the
5 Grand Jury? This unconstitutional vagueness does not come from comparing
6 the Washington State Constitution against the U.S. Constitution, it comes
7 from comparing the laws of Washington against other laws of Washington.
8 "When unfairness can be shown to infect any part of a criminal
9 proceeding, we should hold that the requirements of due process are
10 lacking" (Beck v. Washington).

13 Section III

14 When it comes to the Grand Jury in Washington State, specifically
15 Article I, Section 26 of the Washington State Constitution, there is a lot of
16 confusion due to the vagueness of the laws; judges, on all court levels, are
17 confused by these Grand Jury rules and applications provided for by Washington
18 state, and if judges are confused by the vagueness, so are the Citizens.

20 Does the 14th Amendment provide protection for the entire Bill of Rights, including
21 the Grand Jury Clause of the 5th Amendment, and therefore a Grand Jury
22 is required in all capital or infamous crimes? Or does the Washington State
23 Constitution supersede the Federal Constitution to where no Grand Jury shall be
24 drawn or summoned, as provided for in Article I, Section 26? And if a Grand
25 Jury is drawn, is it by the discretion of the prosecuting attorney as stated
26 in State v. Dunn? Or is it drawn per a single judge as stated in Article I,
27 Section 26? Or is it drawn by the majority of judges as stated in
28 State v. Fenter, which is backed by RCW 10.27.030?

To continue to show this vagueness, let us look at the State of Washington v. Robert W. Cor, where the court stated, "Indictments are rarely used in Washington courts because grand juries are impaneled only infrequently." Not how, when, why, where, but only that Grand Juries are impaneled infrequently. The court does not even know or understand how the Grand Jury system works in Washington State.

In State v. Keyes, the Court of Appeals for the State of Washington stated, "Grand juries today are used to investigate charges of public corruption." Where is that found in the laws of Washington? Or in Beck v. Washington, where the Court stated, "Grand juries in Washington are convened only on special occasions and for specific purposes." What constitutes a "special occasion?" And what are the "specific purposes?" Or in State v. Bell, where the Court stated, "The defendant in this case is charged, by an Indictment, issued by the Grand Jury, which was duly and regularly called in this community." "Regularly called," as in "often?" In the United States v. Davis, the U.S. Supreme Court held that, "In our constitutional order, a vague law is no law at all." Article I, Section 26 of the Washington State Constitution is vague, and therefore invalid. And since Petitioner did not receive a Grand Jury, Petitioner must be granted immediate relief from confinement.

Section IV

Is Article I, Section 26 equivalent to the the Grand Jury Clause of the 5th Amendment, and if so, does it offer the same interpretation?

Does Article I, Section 26 provide the same or greater protection as the 5th Amendment's Grand Jury Clause in investigating crimes and determining whether a crime occurred?

1 The Washington State Supreme Court, in State v. Reeder, stated, "Like
2 federal grand juries, grand juries in Washington were created to investigate
3 crime and determine whether a crime occurred." The U.S. Court of Appeals
4 for the 4th Circuit stated in Ex Parte Hart that, "We do not consider this a
5 compliance with the act of congress, which we think requires the copy of an
6 indictment found by a grand jury, and not the copy of an information filed by
7 the attorney for the state. An information cannot be regarded as a substitute
8 for an indictment." The Court of Appeals for the 9th Circuit states in
9 United States v. Navarro-Vargas that, "The Supreme Court has steadfastly
10 insisted that the grand jury remains a shield against unfounded prosecutions."
11 The Supreme Court of Washington stated in State v. Bell, "that in our country
12 the Grand Jury is the ultimate weapon, if I can use that phrase, of a free
13 people to protect themselves from dishonesty and corruption and tyranny by their
14 public officials." And according to the U.S. Supreme Court in Beck v. Washington,
15 "... the most valuable function of the grand jury was not only to examine
16 into the commission of crimes, but to stand between the prosecutor and the
17 accused, and to determine whether the charge was founded upon credible
18 testimony or was dictated by malice or personal ill will."

21 Section V

22 The U.S. Supreme Court states in Timbs v. Indiana that, "No state shall
23 abridge: the 14th Amendment and the Bill of Rights." The 5th Amendment of the
24 U.S. Constitution is a part of the Bill of Rights. More specifically, the Grand
25 Jury Clause of the 5th Amendment is a part of the Bill of Rights, which
26 must be protected and enforced upon the states by the 14th Amendment. Timbs
27 also states, "This Court has held that the 14th Amendment's Due Process Clause
28 incorporates the protections contained in the Bill of Rights, rendering them
29

1 applicable to the states... the 14th Amendment provides that 'No state shall
2 make or enforce any law which shall abridge the privileges or immunities
3 of citizens of the U.S.'

4
5 When a court is interpreting a state constitution, it may find that the
6 state constitution gives people within that state more rights than the same
7 language contained in the U.S. Constitution. However, because of the
8 Supremacy Clause of the U.S. Constitution, no state can give its people
9 "fewer" rights than those in the U.S. Constitution. Per the Supremacy Clause
10 of the Federal Constitution, the State of Washington cannot legally have
11 within its State Constitution, Article I, Section 26, because it would then
12 give Citizens "fewer" rights than those in the U.S. Constitution. And if
13 Article I, Section 26 is illegal, which it is, it is therefore invalid, and cannot
14 be enforced upon any Person within the United States.

15 16 17 Section VI

18 "Article I, section 12 of the Washington State Constitution provides in part:
19 'No law shall be passed granting to any Citizen, class of citizens, or privileges
20 or immunities which upon the same terms shall not equally belong to all
21 citizens'" (Whitfield v. Frokes). The right to a Grand Jury must equally
22 apply and belong to all Citizens, yet in the State of Washington, it does not.
23 Article I, Section 26 is in direct conflict with Article I, Section 12.
24 Article I, Section 12 states no law shall be passed that is not equal to all
25 citizens. Yet, Article I, Section 26 states no grand jury shall be drawn
26 or summoned, except if a judge says a grand jury shall be drawn or
27 summoned. If one person, which there have been many, gets a Grand Jury
28 while others do not, then there is a conflict between Section 12 and Section 26

of Article I of the Washington State Constitution. Because of this inequality,
Section 12 states that Section 26 cannot exist. However, there is also
the Federal Grand Jury in Washington State. Do federal criminal defendants
not fall under "all citizens" according to Article I, Section 12?
Article I, Section 12 voids Article I, Section 26.

Article I, Section 2: "The Constitution of the United States is the
supreme law of the land." It can be interpreted that Article I, Section 2
of the Washington State Constitution wholly incorporates the Federal Constitution
into the State's Constitution, applying it to the State of Washington. Even if
that interpretation is incorrect, Citizens should be able to fall back onto
Section 2 when other Sections of the State's Constitution are in direct
violation with one another, or when Sections, i.e. Section 26, create an
unconstitutional vagueness. Article I, Section 26 is vague and unequal,
and so like the People need to revert back to the U.S. Constitution as the
"supreme law of the land," which according to the 5th Amendment of the U.S.
Constitution, "No person shall be held to answer for a capital, or otherwise
infamous crime, unless on a presentment or indictment of a grand jury." This
must be enforced upon the states by the 14th Amendment. Article I, Section 2
of the Washington State Constitution allows for this. Thus, Petitioner must
be granted immediate relief from confinement.

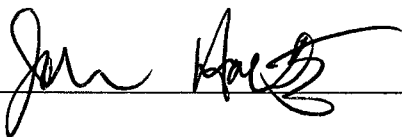
Section VII

All American Citizens, regardless of what state they live in or travel to,
have Constitutional guarantees that their Privileges, Immunities, and
Equal Protections are equal to all other American Citizens. Petitioner asks the
Court to do what is right, and that is to uphold the U.S. Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: September 13, 2020