Case No.

In the Supreme Court of the United States

LAURA COZZA,

Appellant-Petitioner,

v.

PNC BANK, NATIONAL ASSOCIATION,

Appellee-Respondent.

On Petition for Writ of Certiorari from
Washington State Court of Appeals Division One

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did judicial officer, the Honorable Robert E. Olson, legitimately exercise the judicial power of the Superior Court for Whatcom County, Washington as a judge of that court when he failed to address challenges to his partiality made pursuant to the Fourteenth Amendment and a comparable state statute?

Did judicial officer, the Honorable Robert E. Olson, after refusing to consider a request for his recusal, violate the Fourteenth Amendment when he refused to accept the party's contention that the judicial foreclosure of Cozzas' property was within that court's equity jurisdiction and then failed to make any findings of fact with regard to his fashioning equitable relief in favor of PNC Bank and other hypothetical plaintiffs?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

The Plaintiff named in the "Complaint for Deed of Trust Foreclosure (Complaint)" is identified as "PNC BANK, NATIONAL ASSOCIATION, its successors in interest and/or assigns". The Plaintiff shall be referred to herein as PNC Bank and others so as to emphasize Plaintiffs' indefinite and amorphous nature.

The Defendants named in the Complaint are Laura Cozza, Matthew Cozza, Citifinancial, Inc. and Occupants of Premises. Laura Cozza is the only Petitioner herein.

Laura Cozza is a natural person.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are related to this case:

PNC Bank, National Association, its successors in interest and/or assigns, Plaintiffs, v. Matthew Cozza; Laura Cozza; Citifinancial Inc.; and Occupants of the Premises, Defendants, Whatcom County Superior Court Case No. 16-2-01090-0. (Trial court granting judgment, App. 33a–35a)

PNC Bank National Association, its successors in interest and/or assigns, v. Laura Cozza, Appellant; Matthew Cozza; Citifinancial, Inc.; Occupants of the Premises, Defendants, Washington Court of Appeals, Case No. 80966-1-I (Court of Appeals affirming judgment, App. 6a–32a)

PNC Bank, National Association v. Lara Cozza, Washington Supreme Court Case No. 99796-9 (Supreme Court's refusal of discretionary review, App. 2a–3a)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Laura Cozza respectfully petitions for a writ of certiorari to review the summary judgments entered by the Superior Court for Whatcom County, Washington, through judicial officer, the Honorable Robert E. Olson, foreclosing on her real property, and denying her counterclaims for relief. These judgments were affirmed by Division One of the Washington Court of Appeals.

DECISIONS BELOW

The judgment of the Whatcom County, Washington Superior Court is unpublished. Appendix 4 (App.). The decision of the Washington Court of Appeals for Division One affirming that decision is unpublished. App. 3. The decision of the Washington Court of Appeals denying Cozza's Motion for Reconsideration is unpublished. App. 2. The decision of the Washington Supreme Court denying Cozza's Petition for Discretionary Review is also unpublished. App. 1.

JURISDICTION

The Supreme Court of Washington denied discretionary review of the Washington Court of Appeals decision affirming the Superior Court's grant of summary judgment in favor of PNC Bank and its successors or assigns on October 6, 2021. *See* App. 2a. Accordingly, Cozza's Petition for Certiorari is being timely filed within this Court's 90-day filing period and jurisdiction is being invoked pursuant 28 U.S.C. § 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions involved in this matter are reproduced in Appendix six.

STATEMENT

This Petition seeks review of judgments adjudicating cross motions for summary judgment by Washington State judicial officer, the Honorable Robert E. Olson, in favor of PNC Bank and unidentified successors and assigns and against Laura Cozza, a single person and parent, who is now divorced.

The case below involved a judicial real estate foreclosure in which the Washington state judicial officer assigned to adjudicate the action refused to consider a challenge to his neutrality as a judge under the Fourteenth Amendment based on precedents of this Court as well as pursuant to a comparable Washington statute, Wash. Rev. Code 2.28.030(1). This statute imposes an essentially identical duty on Washington State judicial officers to recuse themselves from adjudicating any case as a judge in which they have an interest in the outcome. That statute provides in pertinent part:

> A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:

> (1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.; . . .

After PNC, its successors and/or assigns moved for summary judgment foreclosing on the Cozzas' property and dismissing the Cozzas' counterclaims, the Cozzas defended against those motions and filed cross motions for summary judgment, including one which sought a summary judgment that the foreclosure action be adjudicated within the superior court's equity jurisdiction.[1]

This motion regarding the necessity for the superior court deciding the foreclosure claim in equity was denied, notwithstanding the contention that the superior court must resolve this claim pursuant to its equity jurisdiction was unopposed and clearly correct; PNC and "associates" admitting that the foreclosure should occur in equity. "PNC agrees that the claims for judicial foreclosure are equitable in nature." In fact, PNC argued that "the balance of equities in this case leads to a clear result in PNC's favor."

The case below, like most cases occurring within courts' equity jurisdiction, was a very fact intensive litigation which Cozza asserts should have been resolved by a factfinder after a trial. Cozza never got

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[1] *See* Wash. Const. art. IV, Section 6 (Superior courts and district courts have concurrent jurisdiction in cases in equity. . . ." *Cf. Blanchard v. Golden Age Brewing Co.,* 188 Wash. 396, 415, 63 P.2d 397, 405 (1936) (Holding that because Washington's constitution vests judicial power over cases in equity the political powers cannot abrogate or frustrate such authority.)

such a trial—or even the semblance of fact-finding on summary judgment—before a neutral judge because the challenged judicial officer held that this would be superfluous. In this regard, judicial officer Olson ruled orally:

> It is well settled in Washington State that findings of fact and conclusions of law are not required in summary judgment proceedings, with some reviewing courts describing them as completely superfluous. *See Sinclair v. Betlach*, 1 Wash. App. 1033 at 1034. This is undoubtedly because any reviewing court will do so de novo engaging in the same inquiry as this Court. *See Columbia Community Bank v. Neuman Park, LLC*, 177 Wash. 2d 566 at 573.
>
> Following oral argument and after considering the pleadings and cross-pleadings of the parties in the light most favorable to the other party, the Plaintiff's [PNC and successors' or assigns'] motion for summary judgment is granted. The Defendants' [Cozzas'] motion for summary judgment is denied.

Verbatim Report of Proceeding Friday October 11, 2019, p. 7.

Then Judicial Officer Olson had counsel for PNC and "whoever" prepare two Orders: One granting summary judgment to PNC, its successors, or assigns and the other denying summary judgment to the Cozzas. Both Orders contained the same operative language, which stated: "IT IS ORDERED that

Plaintiff's Motion for Summary Judgment on Judicial Foreclosure Claim and for Dismissal of Defendants' Cross-Motion for Summary Judgment is granted and that Defendants' Cross-Motion for Summary Judgment is denied."

This Petition seeks review of the judicial officer's and Court of Appeals' (1) Refusal to consider Cozza's challenge to the judicial officer's neutrality pursuant to the Fourteenth Amendment and Washington statutory provision, Wash. Rev. Code 2.28.030; and (2) Refusal to accept the position of the parties that the judicial foreclosure should be resolved within the superior court's equity jurisdiction, which required that a neutral judge engage in fact-finding capable of appellate review before granting the equitable remedy of foreclosure or fashioning some other remedy to achieve a just result.

REASONS FOR GRANTING THE PETITION

A. Introduction

This nation's founders agreed that "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." James Madison, *Federalist Paper No. 51* (February 8, 1788).[2]

Unfortunately, it appears the government of Washington is ready to sacrifice justice as a goal for litigants defending against foreclosures occurring in

[2]Accessble at: https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-51

this State. In fact, Washington's Supreme Court admits justice has been lost in Washington for many of those who must seek it from this State's courts. The Executive summary of the Washington State Civil Legal Needs Study Update released by the Washington State Supreme Court in October 2015 begins: "Justice is absent for low-income Washingtonians who frequently experience serious legal problems."[3]

And as this case makes clear, the problem of lack of justice in Washington's court system for people who are not rich, especially the victims of inequitable foreclosures, has grown worse in recent years as many of this State's judicial officers ignore those important lessons about justice which history has provided humanity.

B. Review should be granted because judicial officers are required to consider judicial partiality before exercising judicial power as judges

Since the dawn of civilization human beings have sought justice. And they have intuitively understood that those who would be responsible for providing justice in the context of adjudicating cases and controversies must be impartial decision-makers. *See e.g.,* Fabian Gelinas, *The Dual Rationale of Judicial Independence* 1, 9-10 (2011) (discussing ancient roots of the concept of adjudicatory justice, which trace back to Egypt's First Intermediate

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[3] The Washington Supreme Court's "Civil Legal Needs Study Update" can be accessed at: https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

Period and also appear in Babylonian inscriptions about this same period of time.) *See also* Clifford S. Fishman, *Old Testament Justice*, 51 Cath. U. L. Rev. 405, 411-414 (2002); Leviticus 19:15; Deuteronomy 10:17-18. *Cf.* New Living translation, Matthew 6:24.

The classic principle of judicial neutrality, and the one to which we in the United States still give lip service today, is "*ne quis in sua causa judicet vel jus sibi dicat*," which means "no one shall be his own judge or decide his own case." History documents that this principle was part of Roman law as early as 376 AD, *see e.g.,* Justinian *Codex* 3.5.1, imperial decree of year 376 AD, which stated: "We [Emperors Valens, Gratian and Valentinian] direct by this general law that no one shall be his own judge or decide his own case. For to give anyone power to render a decision in his own case would be iniquitous."

This principle of Roman law became a part of European legal principles well before the founding of the United States. Indeed, the principle that a judge at common law was not *competent* to adjudicate a matter in which he had a direct financial interest was recognized as early as 1563, *see Sir Nicholas Bacon's Case* (1563) 2 Dyer 220b., and was well established before the lack of such justice in the King's courts of North America became a rallying cry for revolution. *See e.g., Dr. Bonham's Case*, 8 Co. Rep. 107a, 118a, 77 Eng. Rep. 638, 652 (C.P. 1610); *Earl of Derby's Case*, 12 Co. Rep. 114, 77 Eng. Rep. 1390 (K.B. 1614); and *Day v. Savage*, Hobart (3d ed. i67i) 85 (K. B. 1614).

By the time the Constitution of the United States was written this principle of judicial

neutrality was so well established around the world that it was incorporated into this nation's organic law by its Framers both as a component of its separation of governmental powers framework and as a procedural aspect of federal due process under the Fifth Amendment. Indeed, James Madison observed in *Federalist Paper No. 10* in 1787—just before the ratification of the Constitution on June 1, 1788—that "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." And Alexander Hamilton wrote in *Federalist Paper No. 80* on June 21, 1788 (three weeks after the Constitution's ratification) that "[n]o man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias."

As can be seen from these facts, the principle that justice must be afforded to litigants through neutral adjudicators has long been the practice of civilized nations generally and the United States specifically. So, it is no surprise that in 1891 the political branches of Washington State carefully codified this principle into law in such a way as to make clear that a judicial officer has no authority to act as a judge of a court of justice unless s/he first determines that s/he has no interest in the case being adjudicated. *See* Wash. Rev. Code 2.28.030 (1). *Cf. Todd v. United States*, 158 U.S. 278, 15 S. Ct. 889, 39 L. Ed. 982, (1895)(" A court is not a judge, nor a judge a court. A judge is a public officer, who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which justice is judicially administered." *Id.* 158 U.S. at 284.)

Under these long-established principles of justice both judicial officer Olson and the Court of Appeals were required to acknowledge and conduct a judicial inquiry with regard to those challenges made to judicial officer Olson's partiality.

Judge Olson erred by not considering the challenge to his partiality at all. The Court of Appeals did essentially the same thing by reinterpreting the nature of Cozza's challenge from being one based on the Fourteenth Amendment and Wash. Rev. Code 2.28.030 to one based solely on a Washington Court Rule. In this regard, the Court of Appeals essentially devised the argument it decided:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Id.* at 90 (quoting *Marshall v. Jerrico, Inc.,* 446 U.S. 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 1980)). But because "the common law and state codes of judicial conduct generally provide more protection than due process requires" courts typically "resolve questions about judicial impartially (sic) without using the constitution." *JPMorgan Chase Bank, N.A. v. Stehrenberger*, noted at 193 Wn. App 1035, slip op. At 3-4 (2016); see GR 14.1. Under the Code of Judicial Conduct, a judge must recuse if their impartiality may reasonably be questioned. *West v. Washington Ass'n of County Officials,* 162 Wn.App. 120, 136-37, 252 P.3d 406 (2011). But recusal is unnecessary if a judge's interest is de minimis. *Kok v. Tacoma Sch. Dist. No 10,* 179 Wn. App 10,

> 26, 317 P.3d 481 (2013). De minimis interests are insignificant and include "an interest in the individual holdings within a mutual or common investment fund." Stehrenberger, slip op. At 5 (quoting Comment 6 to the CJC 2.11)[4]

App. 2a

The problem with the Court of Appeals' analysis is that Cozza did not challenge judicial officer Olson's partiality based on Washington's Code of Judicial Conduct, but did so on the basis of the Fourteenth Amendment to the United States Constitution and the explicit language of Wash. Rev. Code 2.28.030, which paraphrases the holdings of this Court's Fourteenth Amendment precedents, which set an objective standard for recusal and make clear that recusal is required when partiality or an appearance of partiality exists. *See e.g., Rippo v. Baker,* 137 S. Ct. 905 (2017); *Williams v. Pennsylvania,* 136 S. Ct. 1899 (2016). *See also infra.*

This is significant for at least three reasons. First, Fourteenth Amendment precedent sets different legal standards for recusal based on partiality—and appearance of partiality—than does Washington's Appearance of Fairness Doctrine and Code of Judicial Conduct.

For example, Courts applying federal due process principles have held that where state laws put state

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[4] There is no evidence in the record which suggests that judge's retirement accounts are a mutual fund or common investment fund.

judges in situations which compromise or appear to compromise those judges' neutrality the decisions of those judges are void. *See e.g., Cain v. White*, 937 F.3d 446 (5th Cir. 2019) *cert. denied* 140 S. Ct. 1120 (2020); *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019) *cert. denied* 140 S. Ct. 1120 (2020). *Caine* and *Caliste* demonstrate that a state's political branches can create institutional federal due process problems under the Fourteenth Amendment by enacting statutes that compromise or appear to compromise the impartiality of state judges.

This case presents a similar issue, i.e., whether Washington's political branches enactment of laws requiring judges' retirement accounts be commingled with other government workers retirement accounts[5], before judicial questions which would have an impact on the value of those investment were about to be decided, calls into question the impartiality of judges to make decisions regarding such matters which increase the value of state workers' (and their own) retirement investments.

The second reason the Court of Appeals reliance on Washington's Appearance of Fairness Doctrine based on Washington's Code of Judicial conduct analysis is not appropriate here is because it ignores that evidence offered by Cozza that at the time her case was being litigated judges and co-workers retirement accounts had billions of dollars invested in mortgages and mortgage-backed securities, which

[5]*See e.g.,* Wash. Rev. Code 2.10.040, App 47a-48a; 2.14.114, App. 48a-49a; 41.40.023, App. 49a-57a; 41.40.095, App. 58a-59a; 41.40.124, App. 59a-61a.

would likely lessen in value if courts sitting in equity were required to factually analyze whether fraud and illegality were involved in these subprime loans. But nowhere does the Court of Appeals acknowledge the magnitude of these numbers; much less provide any reasoning explaining why this billion plus dollars of retirement fund assets constitutes a *de minimis* amount for purposes of resolving the institutional Fourteenth Amendment claim being asserted by Cozza.

Finally, a third problem with the Court of Appeals resolution of the neutrality issue Cozza posed is that the Court of Appeals imposes the burden on Cozza to come forward and identify the partiality problem for judicial officers. Under this Court's Fourteenth Amendment precedent and the clear language of Wash. Rev. Code 2.28.030, it is the judicial officer who must determine whether he is—or appears to be—a neutral adjudicator before exercising the judicial power of a judge of a court of justice adjudicating the merits of a case.

And it should not be overlooked that appellate courts in other States interpret identical language from their Codes of Judicial Conduct to require judges to consider these types of conflicts without the necessity of any party having raise them or prove facts about which judges and judicial officers should be aware. *See e.g., Lake v. State Health Plan for Teachers & State Emples.*, 376 N.C. 661, 852 S.E.2d 888 (2021)(Members of North Carolina Supreme Court recuse themselves pursuant to N.C. Code Jud. Conduct 3(D) from adjudicating a case in which their relatives might have benefit as a result of a

challenge to government worker's retirement plan, like the one being challenged here.)

Why don't the same CJC principles apply in Washington? [6]

Cozza asserts that the judicial officer's refusal to consider recusal at all and the Court of Appeals' bait and switch tactics, i.e., resolving the issue pursuant to Washington's CJC rather than pursuant to the arguments Cozza asserted, appear to be evidence of partiality because the role of courts and their judges is to act as neutral arbiters of those matters the parties present, not to change the arguments so that they can be decided in ways judicial officers prefer. *See also, infra.*

C. Review should be granted because Judicial Officer Olson failed to act as a neutral adjudicator when he refused to resolve the judicial foreclosure claim in equity

Similarly, Judicial Officer Olson also violated other judicial neutrality principles long applicable to adjudicators in common law countries when he refused to resolve the judicial foreclosure claim against Cozza within the superior court's equity jurisdiction by applying its principles.

Since before the birth of Christ until now there has been an omnipresent tension, greater or lesser at various times depending on governmental oppression, between governments' enforcement of laws and

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[6] Arguably the same standards do apply under the plain language of Washington's Code. *See e.g.,* Washington CJC Rule 2.11, Comments 1, 2, 3, 4, and 5. *But see* Comment 6.

governments' need to provide justice for the people being governed. *See e.g.,* Howard L. Oleck, Historical Nature of Equity Jurisprudence, 20 Fordham L. Rev. 23, 25-40 (1951).

By the eleventh century it became apparent in England that enforcement of law did not always result in justice, particularly in cases where fraud, duress, unconscionable behavior, and inflexible rules were involved in obtaining equitable remedies. *Id. See also* Joseph J. Story LL. D, *Commentaries on Equity Jurisprudence as Administered in England and America*, Vol. I (Fourth Edition 1864). *Cf.* Federal Judicial Center, Jurisdiction: Equity.[7]

Because rigorous application of law in some cases often resulted in outright injustice, the King of England (who was obligated by natural law to provide justice for the people) began to do so through the separate courts of the Chancery. Since that time equity jurisprudence has been a primary means by which kings, the English Commonwealth, and later the republican forms of government in the United States attempted to provide justice to citizens against the "rigour, hardness and edge of the law." Howard L. Oleck, *supra.*, 20 Fordham L. Rev. at 25–40.22. *See also* Hudson, Alastair, Principles of Equity and Trusts, 2nd ed., p. 5 (London: Cavendish Publishing, 2001).

Although law courts and equity courts merged in the Nineteenth Century in England, its commonwealth, and most United States courts, including

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[7] Last accessed on January 2, 2021, at:
https://www.fjc.gov/history/courts/jurisdiction-equity

Washington's courts, *see* Oleck, *supra.*, 20 Fordham L. Rev. at 42-3, this did not mean that equity lost its ability to provide justice in cases like this one, involving fraud and illegality, perpetrated to obtain an equitable remedy, like foreclosure. *See e.g., Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2052, 198 L. Ed. 2d 584, 595 (2017); *Columbia Cmty. Bank v. Newman Park*, LLC, 177 Wn.2d 566, 569, 304,P.3d 472, 473 (2013). *Cf.* Federal Judicial Center, Jurisdiction: Equity, *supra.*; Hudson, Alastair, Principles of Equity and Trusts, 2nd ed., *supra.*, p. 5.

The superior court of Washington failed to exercise legitimate judicial power over the judicial foreclosure sought and awarded in this case because its judicial officer refused to acknowledge that this case was grounded in the superior court's equity jurisdiction, notwithstanding that the parties agreed this was so. Judicial Officer Olson had no authority under these circumstances to grant a summary judgment denying equity jurisdiction because as a general rule, our system of justice is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579, 206 L. Ed. 2d 866, 871 (2020). *See also Greenlaw v. United States*, 554 U.S. 237, 128 S. Ct. 2559, 2564, 171 L. Ed. 2d 399 (2008)("[W]e rely on the parties to frame the issues for decision and assign to the courts the role of neutral arbiter of the matters the parties present." *Id.* 128 S. Ct. at 2564.)

Here, the judicial officer's refusal to let the parties resolve the jurisdictional issue before the court smacks of bias because after denying Cozza's summary judgment motion that the case should be resolved in equity, the court granted PNC and "others" a judgment affording them the equitable relief of foreclosure. But the judicial official does so at the same time he claims he does not have to provide any reasoning supporting the equitable remedy he grants because he is deciding it as a matter of law which is reviewable on appeal de novo. But this is not correct, and the judicial officer should have known this.

The refusal of Judicial Officer Olson to state his reasoning for granting equitable relief—and the Washington Court of Appeals affirmation of that decision by way of the bait and switch analysis previously discussed—is problematic under our system of adjudication because equity has always required factually intensive analyses to justify those results necessary to secure justice when a legal remedy won't do. *See e.g., Holland v. Florida*, 560 U.S. 631, 649-50, 130 S. Ct. 2549, 2563, 177 L. Ed. 2d 130, 146 (2010); *Young v. United States*, 535 U.S. 43, 49-51, 122 S. Ct. 1036, 1040-41, 152 L. Ed. 2d 79, 86-87 (2002).

Indeed, the Washington Supreme Court made clear recently (while this case was pending before the Court of Appeals) that the necessity for intensive fact-finding regarding the fashioning of equitable remedies requires appellate courts to apply an abuse of discretion, rather than de novo, standard of review when granting equitable relief by way of

summary judgment. *Borton & Sons, Inc. v. Burbank Props., LLC*, 196 Wn.2d 199, 206-07, 471 P.3d 871, 874-75 (2020). Notwithstanding the parties' agreement this case was within the trial court's equity jurisdiction and the trial court's grant of an equitable remedy, both the Court of Appeals and Washington Supreme Court refused to apply this abuse of discretion standard of review to the judicial officer's fashioning of equitable relief in order to affirm the judicial officer's decision.

How could neutral judges fairly applying precedent explained to them have reached such a result?

Mr. Tumey may have wondered the same thing at the end of the Roaring Twenties when a judicial officer, who had a pecuniary interest in the outcome of his case, convicted him of unlawfully possessing intoxicating liquor. *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927).

D. Review should be granted because of the importance of judicial neutrality to the People and the operation of their government

Cozza is aware that she has an uphill battle in obtaining review from this Court. But certainly, this Court has the discretion to grant her Petition. *See* Supreme Court Rule 10. And it should.

In his 2021 Year-End Report on the Judiciary, Chief Justice Roberts addresses the growing concerns of the People and other branches of government regarding federal judges' compliance with financial disclosure and recusal obligations like the ones being asserted here. At page 3 of his yearly report, Chief Justice Roberts writes:

> Beginning this past September, the Wall Street Journal published a series of articles stating that, between 2010 and 2018, 131 federal judges participated in a total of 685 matters involving companies in which they or their families owned shares of stock. That was inconsistent with a federal ethics statute, 28 U.S.C. § 455, which requires that a judge recuse in any matter in which the judge knows of a personal financial interest, no matter how small. Let me be crystal clear: the Judiciary takes this matter seriously. We expect judges to adhere to the highest standards, and those judges violated an ethics rule. But I do want to put these lapses in context.

Year-End Report on the Federal Judiciary, Chief Justice Roberts (2021)

The Chief Justice then goes on to explain why he believes this is not a big problem for our country. He concludes that we can rest assured most federal judges comply with ethical rules requiring disclosure.

Of course, what we are dealing with in this case is different. Here, in 2007, Washington judges were forced out of their own retirement program and system—in which their retirement benefits were guaranteed by the state government—into the same retirement programs Washington provides for all state workers. This retirement system is not guaranteed by Washington's taxpayers but is dependent upon the investment strategies of the Washington

State Investment Board, an agency of Washington's executive branch of government, and its investment partners, which include banks and others promoting and selling mortgage-backed securities. And since then, the time Washington's judges were forced and/or incentivized into these commingled retirement programs the value of their (all government workers and judges) retirement investments has been heavily dependent upon the ease with which mortgages can be foreclosed upon and reduced to a monetary value.

If state judges can be incentivized by government itself to make judicial decisions which financially benefit all government workers (including judges) this creates the appearance of a conflict situation for those Washington judges who have been forced by law to participate in commingled retirement programs, which invest heavily in mortgages and mortgage-backed securities.

Federal judges do not have a similar conflict problem because their retirement benefits are funded by annuities, which are not dependent on investments and therefore pose no similar risks. The fact the federal government has opted for such a system, which promotes the neutrality and appearance of neutrality by judges, is not something this Court should ignore.

Just as was the case in *Tumey*–and more recently in *Cain*, supra., and *Caliste, supra.,* the conflicts and appearance of conflicts exist because the political branches enacted laws, which purposely created them for the benefit of government workers. These conflicts do not go away simply because

judges, who are wealthier than most, may think billions of dollars in the scheme of retirements is not significant. We need for judicial officers to show us why these investments are not impacting their exercise of judicial power.

We were warned about this about this problem. *See* Alexander Hamilton, *The Federalist No. 78* (1788). And it doesn't matter whether this Court characterizes the requirement of neutral judicial decision-making as a necessary component of that justiciability which is necessary for the exercise of judicial power, or as a part of that Due Process which was visited upon us by the civilization of our species, or as a privilege and immunity which existed at the time of the Constitution's ratification. Judges must not be made allies of other government workers and their wealthy supporters where the result is to suggest that the goal of equal justice for all has been compromised.

CONCLUSION

Cozza's Petition for Certiorari should be granted.

DATED this 4th day of January 2022.

Respectfully Submitted,

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