No. _____

In The
Supreme Court of the United States

DERRICK TYRONE JENKINS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition For A Writ Of Certiorari To The Fourth District Court of Appeal Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Derrick Tyrone Jenkins sent a profane letter to an elected judge who dismissed his civil case with prejudice. Though the time for rehearing had expired, the court initiated indirect criminal contempt proceedings that resulted in jail time for Mr. Jenkins and a probation order that prohibited him from undertaking any "communication . . . intended to lessen the authority and dignity" of any judge or court in the judicial circuit.

The only case cited was *O'Brien v. State*, 248 So. 2d 252 (Fla. 4th DCA 1971), a decision that affirmed a contempt conviction for out-of-court speech that "tended to degrade the court or the judge as a judicial officer"—a lesser standard than the clear and present danger test. *O'Brien* also held that this Court's First Amendment cases had "no application whatsoever to [this] type of communication."

On appeal, Petitioner argued *O'Brien* conflicted with this Court's First Amendment decisions. He observed that his political speech could not satisfy the clear and present danger test because the time for rehearing had expired when he sent the letter. He also noted that a federal court on habeas review found the standard used *O'Brien* unconstitutional. The Fourth District Court of Appeal, over a dissent, affirmed his conviction, again citing only *O'Brien*.

Question Presented: Does the clear and present danger standard apply in contempt

proceedings brought to sanction a litigant's extrajudicial criticism of an elected judge after the conclusion of the case?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Derrick Jenkins was the Defendant-Appellant in the court below.

Respondent, who was the Plaintiff-Appellee in the court below, is the State of Florida.

Because Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

- *Jenkins v. Mitchell*, Case No. 50-2018-CA-000354 (Fla. 15th Jud. Cir. 2019) (case dismissed with prejudice on December 20, 2018)
- *State of Florida v. Derrick Tyrone Jenkins*, Case No. 50-2019-MM-001265-AXXX-MB (Fla. 15th Jud. Cir. County Ct. 2019) (Judgment and Sentence issued on April 12, 2019)
- *Derrick Tyrone Jenkins v. State of Florida*, Case No. 50-2019-AP-000071-AXXX-MB (Fla. 15th Jud. Cir. Ct. 2019) (Administratively transferred to Fourth District Court of Appeal on May 13, 2020)
- *Derrick Tyrone Jenkins v. State of Florida* Case No. 4D20-1171 (Fla. 4th DCA 2021) (Order denying motion for rehearing and rehearing en banc issued on August 11, 2021; mandate issued on August 27, 2021)

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Derrick Tyrone Jenkins, respectfully petitions the Court for a writ of certiorari to review the affirmance of his criminal conviction issued by the Fourth District Court Appeal of Florida.

DECISIONS BELOW

The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, entered a judgment against Mr. Jenkins for indirect criminal contempt. App. 8. The transcript of the contempt proceedings is reproduced in the appendix. App. 18-50.

The Fourth District Court of Appeal of Florida issued an unpublished order affirming the judgment and sentence. That order, along with the dissenting opinion of Judge Warner, is contained in the appendix. App. 1.

STATEMENT OF JURISDICTION

The Fourth District Court of Appeal issued its order on June 23, 2021. App. 1. The court denied a motion for rehearing en banc and written opinion on August 11, 2021. App. 10. This petition is timely, as it is submitted within ninety days of that order.

This Court has jurisdiction under 28 U.S.C. § 1257(a), because the Fourth District Court of Appeal, the state court of last resort, ruled on

Petitioner's claim that his conviction violated the First Amendment to the United States Constitution. *See*, *e.g.*, *Florida v. Rodriguez*, 469 U.S. 1, 2 (1984) (granting petition for writ of certiorari to the Third District Court of Appeal of Florida to review per curiam affirmance on issue of federal constitutional law); *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (jurisdiction lies where the decision in question "appears to rest primarily on federal law, or to be interwoven with the federal law," or where the "adequacy and independence of any possible state law ground is not clear from the face of the opinion").

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution states in relevant part: "Congress shall make no law. . . abridging the freedom of speech." U.S. Const. amend I.

The Fourteenth Amendment states in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1.

STATEMENT OF THE CASE

A. Mr. Jenkins Sends Judge Coates a Letter

On December 20, 2018, the Honorable Howard Coates, Jr., an elected judge assigned to the civil division of the Circuit Court of Florida's Fifteenth

Judicial Circuit, dismissed a civil action brought by Mr. Jenkins with prejudice. Mr. Jenkins, apparently displeased with the disposition of his suit, wrote Judge Coates a scathing letter criticizing his handling of the case. App. 12.

In the letter, which was sent after the expiration of the time for rehearing, Mr. Jenkins said Judge Coates should have recused himself. Mr. Jenkins complained that he did not "receive a fair and impartial review of [his] claim." He also called Judge Coates a "fucking hypocrite" who was "unfit" to serve as a judge. App. 12-16.

Mr. Jenkins went on to question the competency of all the judges of that judicial circuit, stating that he could not "wait til voters wake up and get rid of these fucking clowns you call judges." He could not "believe a military vet" like Judge Coates "fucked over a decorated . . . vet like [him]." Mr. Jenkins demanded "a fucking investigation." App. 16-17.

At another point in the letter, Mr. Jenkins recounted his perception of a moment during the proceedings in the civil case. According to Mr. Jenkins, Judge Coates addressed him and his co-plaintiff and said he was "ready to be entertained." Mr. Jenkins wrote, "did you mean that you were ready to be sexually entertained?" Mr. Jenkins alternatively asked, "did you mean you wanted me to paint my face black and act like a black face minstrel?" Though it contained numerous insults

and epithets, the letter contained nothing that could be construed as a threat. App. 12-16.

Nevertheless, upon receipt of the letter, Judge Coates issued an Order to Show Cause as to Why Plaintiff Derrick Jenkins Should not be Held in Indirect Criminal Contempt. At a pretrial hearing, Mr. Jenkins declined the assistance of counsel and was granted permission to represent himself. *See* App. 21.

B. The Contempt Proceedings

The case proceeded to a non-jury trial on April 12, 2019. App. 18. The State called Judge Coates as its first and only witness. Judge Coates confirmed that he received the letter in question from Mr. Jenkins but denied saying he was "ready to be entertained" during the civil proceedings. According to Judge Coates, the letter was "sent in response to [his] dismissing the case at the hearing." Judge Coates testified that the letter was "a direct attack on the judicial ruling. In fact, I dismissed it with prejudice at the hearing, so this letter came after that." App. 29.

In the view of Judge Coates, the "problem with these types of letters" is "when they go over the top in terms of their criticism . . . . [they] force the Judge, if the case is to continue, to have to recuse himself." In Mr. Jenkins's case, though, that concern was not implicated because the matter had already been dismissed with prejudice and the time for rehearing had expired. After the testimony of Judge Coates,

the State passed the witness to Mr. Jenkins for cross-examination.

When Mr. Jenkins asked whether the letter caused any harm, loss or injury, Judge Coates stated that it "impugned" his reputation, a concern that extended "to the judicial system as well." Mr. Jenkins remarked that Judge Coates "should have thick skin." App. 33.

The trial court then began its own inquiry of Judge Coates. The presiding judge asked whether Judge Coates "still had jurisdiction over the case at the time" Mr. Jenkins sent the letter. Judge Coates responded in the affirmative, even though the time for rehearing had expired when the letter was filed. The lower court also asked whether Judge Coates had to "expend judicial time and resources" reviewing the court file and drafting the Order to Show Cause. Judge Coates stated that it "required significant expenditure of judicial labor."

Judge Coates testified that the letter took his "attention and responsibilities" away from other cases. The trial court then asked Judge Coates whether he considered the letter a "serious and imminent threat to" his "orderly administration of justice in his case." Judge Coates, without explanation, testified that he did. App. 36-37.

The trial court then asked Judge Coates whether he believed the letter "was reasonably calculated by Mr. Jenkins" and was intended by Mr. Jenkins "to basically make a serious and imminent

threat to the administration of justice" and constituted "a clear and present danger" to Judge Coates's "orderly administration of justice in his case." Judge Coates agreed once more. App. 38.

Mr. Jenkins then took the stand on his own behalf. He testified to his belief that he had the "constitutional right to criticize, even ridicule Judges and other participants in the judicial system." App. 39-40. Mr. Jenkins testified that he believed when he wrote the letter he "was using free speech." He stated that he "had no intent to cause anyone any harm." He also questioned whether he had actually harmed anyone: "Where is the man or woman I have harmed?" App. 40.

The lower court then asked him if there was any reason why it should not find and adjudge him guilty of and sentence him for indirect criminal contempt of court. In response, Mr. Jenkins reiterated that he believed he "was using free speech" as "has been upheld by the Supreme Court." App. 41.

The trial court then announced its ruling. First, the lower court addressed the "free speech issue." Although it purported to apply the "clear and present danger" test, the court opined that the "phrase clear and present danger is merely justification for curbing utterance where that is warranted by the substantive evil to be prevented." App. 44.

As support for its order holding Mr. Jenkins in contempt, the lower court found as follows:

> Derrick Jenkins' impact through his communication, as indicated in [the letter], constitutes a clear and present danger to the orderly administration of justice. The Defendant's profanity and derogatory comments directed to Judge Howard Coates and published to the public by Mr. Jenkins' public filing with the Clerk diminishes the integrity and the authority of the Court and was intended by the Defendant to do so . . . . And, in fact, [the letter] in and of itself indicates that the Defendant, Derrick Jenkins, intentionally published this to the Clerk and specifically stated he wanted the public to read these scandalous and noxious allegations against Judge Coates. The intent was clear and the impact was clear to diminish the integrity and authority of the Court.
>
> The Court also finds that based on the testimony and additionally the prior filings of Mr. Jenkins that there was a clear intent to diminish the integrity and the authority of the Court and to impede the ability of the Court to remain neutral, and in essence to threaten the Court to reverse the

Court's decision and to make a decision that was more favorable or favorable to the Defendant.

The Court also finds that this was still an open case based on the filings that the Court has taken judicial notice of and that were referenced here today.

It is clear that Mr. Jenkins' threats and filing constituted a serious and imminent threat to the administration of justice. Also, as indicated by the filing subsequent to [the letter], by Defendant's request that the Court change its ruling or that Judge Coates issue other rulings, those threats constituted a serious and imminent clear and present danger to distort and coerce Judge Coates into his decision making in this particular case that he had handled. Other present and imminent impacts with respect to Judge Coates and the Court in which he presided included causing him to needlessly review the Court file based on the contemptuous filing of Mr. Jenkins and his subsequent filings. He also had to issue an Order to Show Cause, and to prepare to testify, testify today, had to consider potential rulings, and the perception of the litigants in his

> case that was presided over concerning Mr. Jenkins as Plaintiff. All of this took away from consideration of other cases and also seriously impacted his ability to perform his judicial duties in the case in which Mr. Jenkins was a Plaintiff. And again, for the record, that is case 18CA345.
>
> Mr. Jenkins' contemptuous filings also caused other Courts to have to get involved, caused the Judge to have to pass the Order to Show Cause for Trial onto another Court, and had serious present and real impacts on the judicial system.

App. 44-46.

The only legal authority cited by the trial court was *O'Brien v. State*, 248 So. 2d 252 (Fla. 4th DCA 1971). The judge observed that *O'Brien* also "dealt with a letter sent to a Judge. The Court found that it constitutes indirect contempt of court where a letter is intended or calculated to embarrass, hinder or obstruct the Court in the administration of justice or which is calculated to lessen its authority or its dignity, and that constitutes contempt." App. 46.

Based on *O'Brien*, the court found that it was "permitted in determining whether indirect criminal contempt occurred to consider whether or not the alleged offending act was such as to reasonably result in bringing the Judge of the Court into

contempt, disrespect, or shame in the public eye." The court found that "Mr. Jenkins' actions in his communications as exhibited by the letter referenced in the Show Cause Order and constituting Exhibit One here today, in fact, falls into that category." Again citing *O'Brien*, the judge concluded that "as a general rule, any publication tending to intimidate, influence, impede, embarrass or obstruct courts in the due administration of justice and matters pending before them constitutes contempt." App. 46.

The trial court then adjudicated Mr. Jenkins guilty of indirect criminal contempt and sentenced him to six months of probation and thirty days of incarceration. App. 48. In the order placing Mr. Jenkins on probation, the court imposed an additional restriction on his speech and prohibited him from undertaking "any communications . . . that are intended to lessen the authority and dignity of the court." App. 10; App. 55.

C. The Appeal

On appeal, Mr. Jenkins renewed his argument that his conviction ran afoul of the First Amendment. He pointed out that his civil case had already been dismissed with prejudice, and the time for rehearing had expired. Under Florida law, the trial court judge had no power to take any further action in the case. So, in the view of Mr. Jenkins, his commentary on a closed case, however incendiary, could not have possibly posed a clear and present danger of the obstruction of justice.

He also observed that the United States District Court for the Southern District of Florida had found the only authority cited by the trial court, *O'Brien v. State*, 248 So. 2d 252 (Fla. 4th DCA 1971), conflicts with binding precedent from this Court, as it "permits a contempt conviction for critical speech sent to a judge where the speech merely 'tended to degrade the court or the judge as a judicial officer'—a patently less stringent standard than the clear and present danger test." *Wilson v. Moore*, 193 F. Supp. 2d 1290, 1293 (S.D. Fla. 2002).

The Florida appellate court declined to credit those arguments. The cursory opinion reads, in full: "*Affirmed*. *See O'Brien v. State*, 248 So. 2d 252 (Fla. 4th DCA 1971)." App. 2. One judge dissented. Judge Warner disagreed with the majority's reliance on *O'Brien*, reasoning as follows:

> Because in this case the court had entered a final order of dismissal and the rehearing period had ended, there were no further proceedings before the circuit judge. Thus, the letter could not be interpreted as attempting to obstruct the judge in the performance of his duties. It was personally offensive and wrongful in impugning the character of the judge and his adherence to the rule of law, but it should not be punishable by the immense power of contempt.

App. 4-5.

Judge Warner also agreed with the dissent in *O'Brien*, where Judge Reed wrote that the letter "could have and should have been disposed of by relegation to the trash bin. The appellant's letter was clearly unfair and irrational, but as a matter of law it was not contempt." App. 5.

Mr. Jenkins moved for rehearing en banc and for a written opinion that would allow him to take the issue up in the Florida Supreme Court. The Fourth District Court of Appeal denied that motion. App. 10. Having exhausted all other remedies on direct review, Mr. Jenkins now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

This Court should clarify whether the clear and present danger standard applies in contempt proceedings brought to sanction a litigant's extrajudicial criticism of an elected judge after the conclusion of the case.

On more than one occasion this Court has ruled that there must be a "clear and present danger" to the administration of justice before out-of-court speech may be punished—even when the matter in question is still pending before the court. *See*, *e.g.*, *Craig v. Harney*, 331 U.S. 367, 372 (1947); *New York Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964); *Pennekamp v. Florida*, 328 U.S. 331, 333-34 (1946).

In *Craig v. Harney*, a newspaper publisher, editorial writer, and news reporter were held in contempt for publishing news articles that provided an "unfair" report of what had transpired before a judge. *Craig*, 331 U.S. at 378. In reversing the conviction, this Court held that the power to punish for contempt requires a more substantial showing than simply that the comments reflected on the competence of a judge in handling cases. *Id.* Instead, the trial court must ensure that the speech created an imminent and serious threat to the administration of justice. *Id.*

Similarly, in *Pennekamp v. Florida*, 328 U.S. 331, 333-34 (1946), a newspaper and an individual defendant were held in contempt of court for the publication of editorials critical of the attitude of judges in the jurisdiction toward criminal defendants. This Court applied the clear and present danger standard, and further held:

> What is meant by clear and present danger to fair administration of justice? No definition could give an answer. Certainly this criticism of the judge's inclinations or actions in these pending nonjury proceedings could not directly affect such administration. This criticism of his actions could not affect his ability to decide the issues. Here there is only criticism of judicial action already taken, although the cases

> were still pending on other points or might be revived by rehearings. For such injuries, when the statement amounts to defamation, a judge has such remedy in damages for libel as do other public servants.

Id. at 348.

Once more, in the seminal case *New York Times Co. v. Sullivan*, 376 U.S. 254, 272-73 (1964), this Court observed as follows: "Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision . . . . Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice." (internal citations and quotations omitted).

Yet, in *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 842-43 (1978), this Court openly questioned the applicability of the clear and present danger test as it related to the imposition of criminal sanctions for the publication of allegations of misconduct on the part of judges while those allegations remained under investigation.

Moreover, in *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991), an attorney who held a press conference after the indictment of his client was disciplined based on a finding that his remarks

had a "substantial likelihood of materially prejudicing" the adjudicative proceedings. This Court did not determine the constitutionality of this Nevada rule prohibiting attorney speech that has a "substantial likelihood of materially prejudicing" the proceedings because it held that the phrase could be interpreted as punishing "only speech that creates a danger of imminent and substantial harm." *Id.* at 1036. However, this Court did reject the disciplinary proceedings against the attorney and employed the "substantial likelihood of material prejudice" test in determining the constitutionality of the sanction: "Neither the disciplinary board nor the reviewing court explains any sense in which petitioner's statements had a substantial likelihood of causing material prejudice." *Id.* at 1038.

Significantly, this Court also noted that the "judicial system, and in particular our criminal justice courts, play a vital part in a democratic state," and observed that the attorney's speech critical of the prosecution was "classic political speech." *Id.* at 1034. That "central point," the Court held, "must dominate the analysis." *Id.*

In the wake of *Gentile*, some courts have continued to apply clear and present danger to extrajudicial speech. *See*, *e.g.*, *In re Kendall*, 712 F.3d 814, 826 (3d Cir. 2013) (applying clear and present danger when analyzing whether judge was improperly held in criminal contempt for speech contained in judicial opinion); *Standing Committee*

on Discipline v. Yagman, 55 F.3d 1430, 1443 (9th Cir. 1995) (applying clear and present danger to attorney speech outside of pending judicial proceeding); *United States v. Bingham*, 769 F. Supp. 1039, 1045 (N.D. Ill. 1991) (concluding that defense counsel's speech in televised interview on eve of jury selection constituted clear and present danger); *Wilson v. Moore*, 193 F. Supp. 2d 1290, 1293 (S.D. Fla. 2002) (applying clear and present danger test to speech of criminal defendant made during appeal process).

Other courts, however, have noted that there is a lack of clarity regarding the proper standard governing extrajudicial speech when the speech is uttered by parties to litigation. *Lafferty v. Jones*, 336 Conn. 332, 375, 246 A.3d 429 (2020), *cert. denied*, ___ U.S. ___, 141 S. Ct. 2467, 209 L. Ed. 2d 529 (2021) ("This lack of clarity surrounding clear and present danger . . . similarly leaves open the question of what standard applies to the speech of parties to the litigation."); *see also United States v. Brown*, 218 F.3d 415, 426-27 (5th Cir. 2000), *cert. denied*, 531 U.S. 1111, 121 S. Ct. 854, 148 L. Ed. 2d 769 (2001).

Moreover, in *Brown*, the Fifth Circuit decided that the "substantial likelihood of causing material prejudice" standard in *Gentile* extended to non-attorney participants in the litigation, as there was "no reason . . . to distinguish between [attorneys and parties] for the purpose of evaluating a gag order directed at them both." *Id.* at 428.

In the present case, by citing only to *O'Brien* and affirming Petitioner's conviction, Florida's Fourth District Court of Appeal cast its lot with those courts that have applied a standard lower than the clear and present danger standard to extrajudicial speech. In *O'Brien*, Florida's Fourth District Court of Appeal affirmed a contempt conviction where a litigant sent a disparaging letter to the trial judge while his criminal case was pending on appeal. *O'Brien*, 248 So. 2d at 253. Instead of applying the clear and present danger standard, the appellate court held that the conviction could be sustained if the communication "*tended to degrade* the court or the judge as a judicial officer." *Id.* at 257 (emphasis added). Notably, the *O'Brien* Court also held that this Court's First Amendment jurisprudence had "no application whatsoever to the type of communication" at issue. *Id*.

As noted above, at least one federal court has expressly rejected *O'Brien* because it "permits a contempt conviction for critical speech sent to a judge where the speech merely 'tended to degrade the court or the judge as a judicial officer'—a patently less stringent standard than the clear and present danger test." *Wilson*, 193 F. Supp. 2d at 1293. Nevertheless, though Mr. Jenkins cited to *Wilson* in his appellate briefing, the Fourth District Court of Appeal declined to adhere to that decision, apparently finding *O'Brien* to be binding precedent.

This Court should grant this petition, repudiate *O'Brien*, and reaffirm the applicability of the clear and present danger test to extrajudicial speech. Because *O'Brien* is the only Florida appellate decision addressing the question presented, *all Florida trial courts are required to follow that decision*. *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("in the absence of interdistrict conflict, district court decisions bind all Florida trial courts"). And *O'Brien* plainly contemplates that a contempt conviction can be predicated merely on criticism of trial court judges, who are elected, political officials, provided the extrajudicial speech "tends to degrade" the court or the judge as a judicial officer.

The trial court in this case clearly relied on the lower standard articulated in *O'Brien*, as it repeatedly alluded to its concern that the speech "diminishes the integrity and the authority of the Court." It also stated that the speech brought Judge Coates "into contempt, disrespect, or shame in the public eye." Perhaps more troubling, the trial court imposed a prior restraint on the future speech of Mr. Jenkins and prohibited him from issuing "*any* communications. . . that are intended to lessen the authority and dignity of the court." App. 10; App. 55. These rulings could not possibly pass constitutional muster under the clear and present danger test.

Even if the Court finds that the clear and present danger does not apply, the contempt order clearly violated Mr. Jenkins's rights under the First

Amendment. As in *Gentile*, Mr. Jenkins was engaged in political speech. His letter criticized an elected official—the sitting judge—and used starkly political discourse to do so. He said he could not "wait til voters wake up and get rid of these fucking clowns you call judges." That Mr. Jenkins's expressions were political must "dominate" the analysis, and such speech is entitled to the highest protection under the First Amendment.

Under *Gentile*, there must be a "substantial likelihood" of materially prejudicing a judicial proceeding. *Gentile*, 501 U.S. at 1076. But here, as recognized in Judge Warner's dissent, the timeframe to move for rehearing had already expired by the time the lower court issued the order to show cause. After the expiration of the time for rehearing, "the trial court lost jurisdiction to do anything other than enforce the orders previously entered." *Adelman v. Elfenbein*, 174 So. 3d 516, 518 (Fla. 4th DCA 2015) (citing *Hunt v. Forbes*, 65 So. 3d 133, 134 (Fla. 4th DCA 2011)); *see also Golden Gate Homes, L.C. v. L & G Eng'g Servs., Inc.*, 974 So. 2d 489, 490 (Fla. 3d DCA 2008) (holding that after trial court dismissed the complaint, the action could not be reinstated because the "trial court lost jurisdiction over the cause after the ten-day period for rehearing expired").

The speech of Mr. Jenkins could not have possibly impacted any further proceedings. Unlike other cases, such as *Brown*, where the pendency of

ongoing litigation justified restrictions on litigants' rights under the First Amendment, this case was closed and the time for rehearing had expired. All that was left to justify the contempt was the concern for the "dignity" of the elected judge who received the letter. This Court addressed that concern in *Craig*:

> Judges who stand for reelection run on their records. That may be a rugged environment. Criticism is expected. Discussion of their conduct is appropriate, if not necessary. The fact that the discussion at this particular point of time was not in good taste falls far short of meeting the clear and present danger test.

Craig, 331 U.S. at 377.

Because the political speech at issue in this case was protected by the First Amendment, this Court should grant this petition, clarify the proper standard to apply under these circumstances, and vacate Mr. Jenkins's unconstitutional contempt conviction.

CONCLUSION

A trial court in Florida deprived Derrick Jenkins of his liberty for criticizing an elected judge following the disposition of his case. The trial court based its ruling on binding Florida law that permits a contempt conviction for extrajudicial speech that

merely "tended to degrade the court or the judge as a judicial officer." That standard violates the First Amendment. This Court must address this case to prohibit future litigants from incarceration for political speech that cannot possibly impact the administration of justice.

Respectfully submitted on this 9th day of November, 2021.

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