

No. 21-7124

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 14 2022

OFFICE OF THE CLERK

Pamela Jo Polejewski,

Petitioner,

Vs,

State of Montana,

Respondent.

On Petition for a Writ of Certiorari
Appeal from Montana Supreme Court
Judgment November 2nd, 2021
Animal Cost for Caring Civil Forfeiture Bills Are Unconstitutional

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

The Montana State Supreme Court has decided an important question of federal law that has not been, but should be, settled by this Court, and it conflicts with relevant decisions of this Court. Are Animal Cost for Caring Civil Forfeiture Laws Constitutional On Its Face and/or as applied regarding Montana Senate Bill 320 Statute 27-1-434. Case File No. DA 21-0150. Judgment date of November 2nd, 2021. Petition for Writ of Certiorari is filed under United States Supreme Court Rule 11.

QUESTIONS PRESENTED

- 1.) The hybrid nature of forfeiture proceedings support adoption of clear and convincing standards of proof.
- 2.) The Montana Supreme Court's rejection of my initial Motion for an Animal Welfare Hearing to hear my constitutional arguments and to protect the lives of my animals violates my procedure and due process rights. It violates my constitutional "rights" that are recognized as "privileges" and "immunities" under the Constitutions. The Courts continue to build on an unconstitutional foundation with excessive fines, punitive seizure and forfeitures and the resultant cruel and unusual punishment as acceptable under these civil forfeiture laws that are lawless and unconstitutional.
- 3.) Adjudication and prosecuting tribunals direct pecuniary interests in an outcome of forfeitures proceedings infringe on the neutrality requirements of due process and creates a culture of inherent conflict of interest.
- 4.) Whether criminal proceedings procedure (disguised as civil proceedings) as applied in this line of cases is impermissibly vague in enumerating innocent-owner expectations. There are no innocent-owner provisions in Senate Bill 320.
- 5.) The killing of Petitioner's animals without due process and without a criminal Conviction is a due process rights violation and substantive due process rights violations.

QUESTIONS PRESENTED CONTINUED

6.) The Montana Supreme Court's ruling constitutional arguments were not raised in the Eighth Judicial District Court is erroneous. Now the Appel's Court stance is all future constitutional arguments are further barred by res judicata when the proceedings were unconstitutional, vague, and all the harm and infliction of violation constitutional rights were not known until month(s) later is a travesty of justice.

7.) Legislatures creating bills that state "a notice of seizure can be posted on the owner's property " in the event the owner is not home. MCA 27-1-434 3. The Petitioner shall serve a copy of the petition upon the respondent. If the name and address of the respondent are not available after reasonable investigation, the petition must be conspicuously posted by a law enforcement officer at the premises where the animal was seized. In my case scenario my physical body was seized and barricaded by law enforcement without giving a reason nor did they have a search warrant to block me from my animals and from my home. They blocked my friends from coming to help also. They even followed one supporter to his home. Then they used five days to manufacture citations on only five of the animals. This was done the day after I had filed constitutional violations against the County Officials involved in violating my rights May 15th,

2020. The State Courts have all refused to acknowledge those constitutional right violations I filed May 14th, 2020 but stated they were “moot” in the court Hearing of May 26th, 2020. Now they ruled constitutional violations are barred by res judicata. Montana Supreme Court Opinion November 2, 2021.

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:

Representing the State of Montana;
Jordan Crosby Attorney
Ugrin Alexander Zadick Law Firm
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RELATED CASES

Cascade County Officials vs. Pamela Jo Poljejewski
John and Jane Doe
Constitutional Rights Violations

Representing Cascade County Officials;
Mark Higgins Attorney
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JURISDICTION

[] For cases from **federal courts:** N/A

The date on which the United States Court of Appeals decided my case was Nov. 3rd, 2021.

[] 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 Nov. 3rd, 2021. A copy of that decision appears at Appendix P.

A timely petition for rehearing was thereafter denied on the following date: Nov. 14th 2021, and a copy of the order denying rehearing appears at Appendix P.

An extension of time to file the petition for a writ of certiorari was granted to and including 60 days (date) on From 11/19/2021 (date) in Application No. A _____. See attached letters

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

Statutes

Senate Bill 320 MCA 27-1-434

MCA 45-8-211

MCA 45-8-217

Constitutional Amendments

1st Amendment

4th Amendment

5th Amendment

6th Amendment

7th Amendment

8th Amendment

14th Amendment

Statement of the Case

In most recent opinion from this Court Supreme Court Justice Clarence Thomas Has stated he was willing to review modern day civil forfeiture bills that are being passed. In Lisa Olivia Leonard vs. Texas 580 US (March 6th, 2017) Justice Thomas respected the denial of certiorari. However, Justice Thomas honored the important question that the petition was asking: whether modern civil-forfeitures statutes can be squared with the Due Process Clause and our Nation's history.

Petitioner now challenges the constitutionality of the procedures used to adjudicate the seizure of her property. In particular, I argue the Due Process Clause requires the State to carry its burden by clear and convincing evidence not by mere allegations and preponderance of the evidence.

Modern day civil forfeitures such as Senate Bill 320 brought to Montana on April 19th, 2019 was presented as a civil statute for the purpose of cost of caring for animals seized under “vague allegations” of abuse. The Statute 27-1-434 are plainly designed to punish the owner of the property under a “guilty until proven innocent” charge against the citizen. See Austin vs. United States 509 US 602, 618-619 (1993). When a State wishes to punish one of its citizens, it ordinarily proceeds against the defendant personally as in “in personam”, and in many cases it must provide the defendant with full criminal procedural protections. Nevertheless, prosecutors who lobbied for this bill seized all of petitioner's animals under the bill and petitioner lost her property when she could not pay the State approx \$30,000.00 per month they demanded until she went to trial on the

“allegations”. Petitioner still has not gone to trial and this seizure and forfeiture happened on May 7th, 2020. The forfeiture bond at \$30,000.00 per month for 22 months would now be \$660,000.00. The State seized and removed 172 animals of various species, ages, sizes but only cited petitioner for five of the animals. The animals were part of a No Kill Reserve. This removal of 167 animals without any citations being given as to the purpose of the seizure, any documentation regarding cruelty, abuse or neglect violates statutory provisions and my due process rights. It also violates substantive due process rights as I have every right to take in and care for unwanted animals and animals with medical conditions.

This whole case scenario started on May 6th, 2020 when petitioner had a fire on her property that burned down a barn, multiple shelters for the animals and confinement areas for the animals. A torrential downpour of rain was also taking place at the same time. Cascade County Law Enforcement used the two disasters as an opportunity to go about the property taking pictures without a warrant. I saw law enforcement going into a storage camper I was using at the time to keep animals out of the storm, keep them away from the fire and to warm myself as there was no longer electricity on the property. I used a propane heater in the camper to keep myself and the animals warm while I continued to place them up temporarily for safety purposes. See Caglia vs Strom

I was up all night monitoring animals doing safety checks until the fire and the storm subsided. In the morning of May 7th, 2020 I was out attending to the

animals needs and was met with supporters coming out to help me. Friends and supporters had brought out a generator, more additional feed and offered their physical labor. Sheriff O'Neill was on my property that following morning barring me from doing chores and barred me from having access to my animals. Deputy O'Neill barred my supporters from helping, barred them from the property and stated they could not leave any materials they had brought out to help me and the animals. Deputy O'Neill refused to show me a warrant stating "we have one", physically got in my face and stated if I did not get off the property he was going to arrest me. See US vs Daniel Good Real Property 510, US 43, 56-57 (1993). I asked him to identify what animals he had any concerns about and he stated "I do not know I am not a vet". I explained where food was kept, what animals were currently under veterinary care and that to leave these animals loose without my supervision was going to result in brutality for the animals. It was uncovered later on this is exactly what happened to the animals and for many to their demise under Cascade County's cruelty and neglect under the umbrella of Senate Bill 320. In rem enables the govt to seize the property and all my animals without any explanation as "in rem" civil procedure without any pre deprivation judicial process and obtain forfeiture of the property and the animals even when the owner is personally innocent (this statute 27-1-434 does not provide for an innocent -owner defense.) I was barred from my property from May 7th-May12th, 2020 without any explanation. I submitted various letters to Cascade County

Attorneys stating my concern for the safety and welfare of my animals .On May 14th, 2020 I filed for an Animal Welfare Hearing in order to protect the animals from being needlessly murdered by the State. I also filed civil right violations against Cascade Municipal and Officials. On May 15th, 2020 the State retaliated by citing me with five charges of alleged animal abuse. All my animals were removed even if they were given an assessment and did not demonstrate any cruelty, abuse or neglect.

On May 26th, 2020 an Animal Welfare Hearing was held without any procedural protections such as I was before a very biased Judge Pinski, no jury of peers, no discovery and no heightened standard of proof to demonstrate guilt. Judge Pinski stated my Motion for An Animal Welfare Hearing was "moot" in regard to protecting the lives of my animals and to mitigate damages.The State had already engaged in needlessly killing my animals before any type of hearing, without my input and without obtaining a second opinion from my own veterinarian that has the past medical history on the animals. The Court and the State at this point in time hid the fact many more animals were murdered by Cascade County Officials and their affiliates then was revealed in the Court Hearing. In fact, in a two week period approx 25 of my animals were needlessly killed by predators, placed in "makeshift" pens where other dogs were able to get into the pens in order to rip the animals to shreds, and lack proper supervision and veterinary care. This transpired while in State custody after the seizure This fact was not uncovered until November, 2020 when I inadvertently obtained a

sheriff report documenting the deaths in a pile of receipts given to my criminal defense attorney. This will be important information regarding res judicata claims by the State when I brought this information forward in a request for a new hearing based on the newly obtained information . I requested a Motion for a rehearing December, 2020 in Judge Michelle Levine's Eighth Judicial District Court.

In regard to the May 26th, 2020 hearing with Judge Pinski , Tyler Fries Criminal Defense Attorney argued to give the other 167 animals back I had not been given citations for . Judge Pinski denied the request and Mr. Fries gave the constitutional arguments that current proceeding gave the State "an open checkbook" and undue leverage (excessive sanctions, penalties and fees) against the defendant until her criminal trial." I could not raise the \$30,000.00 per month the State demanded and to pay for animals that were not even cited as being negligently care for. I appealed to the Montana Supreme Court June 1st, 2020 that the May 26th, 2020 hearing was unconstitutional. Judge Pinski on June 6th, 2020 gave an order to forfeit the animals because I could not pay the excessive cost for caring extortion fee.. The State without giving me any notification or paperwork ordered them to all be adopted, fostered or killed on June 9th, 2020. On June 11th, 2020 I placed an emergent plea and appeal to the Montana Supreme Court to order a Stay to the June 6th, 2020 order rendered in the Eighth Judicial District Court to disperse and or kill animals. It was discovered later on that Cascade County Attorney Joshua Racki did not obey this Montana

Supreme Court Order to Stay the Judgment as also documented in the Sheriff report by Detective Krause.

I believe it has come to this Court's attention that civil forfeitures of recent have become widespread and profitable for those that lobby for them such as County Attorneys, County Officials, Veterinarians for the State , special interest groups and law enforcement agencies. See Institute for Justice, D. Carpenter, L Knepper, A Erickson And J. McDonald, Policing for Profit:The ABuse of Civil Asset Forfeiture 10 (2d ed. Nov 2015) Department of Justice Assets Forfeiture Fund took in \$4.5 billion in 2014 alone. <https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd -edition.pdf> as last documented February 27th, 2017. Also see Montana Forfeiture Exhibits omitted

And because the law enforcement entity responsible for seizing the property and managing the funds derived from the property without any oversight , these entities have strong incentives to pursue seizures/forfeitures. There is no emphasis on protecting the citizens civil rights as outlined by an oath of office to protect the constitution and bill of rights. The flow of money goes to the County Attorney's Office, law enforcement, the veterinarians on the State payroll and all the animal shelters and affiliates involved in seizing the animals. I had over 100 people ransacking my property, destroying my property, stealing my property and subsequent destruction from doxxing me in the media. The State of Montana was playing my case out in the media before I was even charged. Therefore, the

media also stands to gain by all the publicity they generate from whatever narrative they want to sell to the public to sway public opinion and create a cancel culture. My criminal defense attorney has grave concerns about finding an untainted jury pool at this point.

This devised system of using a disguise of being civil but is actually so punitive it is a criminal proceeding without any constitutional safeguards has led to egregious and well-known abuses. Interestingly, a Montana Republican Legislature Munzella argued that the bill is criminalizing a citizen without burden of proof and gave an example of a case where it demonstrated the bill's abuse but voted for it anyway? Follow the money trail and lobbying incentives behind the bill.

These forfeiture operations target the socio-economic disadvantaged but give a pass to livestock growers, animal husbandry and no doubt the elites because first of all they won't be singled out. They would also be able to defend their interests in a forfeiture proceeding because they have the means to hire a civil defense attorney. I have suffered in my daily life not only because my property was totally destroyed but helpless animals were murdered through no fault of their own but were caught in the middle of a govt power play. The animals had no choice in the matter and every attempt I made to verbalize a grievance I was muted in the State court proceedings.

The Courts are not justified to promote, condone or in my case cover up the facts with statements like "the animals were humanely euthanized" because that

is blatantly false. The State Courts have placed me on a hamster wheel of "this was not argued at the District Court level" which is also false to "now you cannot argue it because it is barred by res judicata. Facts that could not have been argued in the first hearing of May 26th, 2020 because they were not known until seven months later. Civil forfeitures are no longer the civil forfeitures of past history and tradition. Civil forfeitures are no longer about stolen cargo, pirates and even the drug trade. See *Bennis vs Michigan*, 516 US 442, 446-448 (1996). "English law provided for statutory forfeitures of offending objects used in violation of the customs and revenue laws." *Austin* *supra* at 612 quoting *Calero-Toledo vs. Pearson Yacht Leasing Co.* 416 US 663, 682 (1974). This practice "took hold in the United States", where the "First Congress passed laws subjecting ships and cargo involved in customs offenses to forfeiture." 509 US at 613. Early statutes also provided for forfeitures of pirate ships. *United States vs. Parcel of Rumson, N.J. Land* 507 US 111, 119 (1993). These early statutes permitted the govt to proceed in rem under the fiction that the thing itself was guilty of the crime. See *Calero-Toledo* 684-685 Act of August 4th, 1790. Because these suits were in rem vs in personam, they proceeded civililily vs criminally. See *United States vs La Vengance* 3 Dall. 297, 301 (1796). Civil forfeitures have replaced criminal proceedings and then prosecutors are able to put you through another proceeding if they were not able to get a defendant to incriminate themselves in the first "quasi-criminal" civil proceeding. See *Boyd vs. United States*

Since this historical practice of governing stolen cargo from pirates the Constitution would require the Courts to align its distinct doctrine regarding civil forfeitures with doctrines that govern other forms of punitive state action and property deprivation. See Bennis at 454. Justice Thomas opinions and concurring. Justice Thomas stated “One unaware of the history of forfeiture laws and 200 years of this Court’s precedent regarding such laws might as well assume that such a scheme is lawless-a violation of due process.” Justice Clarence Thomas “I am skeptical that this historical practice is capable of sustaining , as a constitutional matter, the contours of modern practice for two reasons. First, Historical forfeiture laws were narrower in most respects than modern ones. James Daniel Good, 510 U.S. at 85 (Justice Thomas noting that “ambitious modern statute and prosecutorial practices have all but detached themselves from the ancient notion of civil forfeiture”) . Most obviously , they were limited to a few specific subject matters,such as customs and piracy. Proceeding in rem in those cases was often justified by necessity, because the party responsible for the crime was frequently located overseas and thus beyond the personal jurisdiction of United States courts. See Herpel, Toward a Constitutional Kleptocracy:Civil forfeiture in America, 96 Mich. L. Rev. 1910, 1918-1920 (1998). Also see id, at 1925-1926(arguing that a founding-era precedent does not support the use of forfeiture against purely domestic offenses where the owner is plainly within the personal jurisdiction of both state and federal courts). These laws were also narrower with respect to the type of

property they encompassed. For example, they typically covered only the instrumentalities of the crime (such as the vessel used to transport the goods). See Rumson, *supra*, at 121-122, 125 (Forfeiture of criminal proceeds is a modern innovation). Second, it is unclear whether courts historically permitted forfeiture actions to proceed civilly in all respects. Some of the Court's early cases suggested that forfeiture actions were in the nature of criminal proceedings. See *Boyd vs. United States*, 116 U.S. 616, 633-634 (1886) ("We are.....clearly of {the} opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in nature criminal"); but see *R. Waples, Treatise on Proceedings In Rem* 29-30 (1882) (collecting contrary authorities). Whether forfeiture is characterized as civil or criminal carries important implications for a variety of procedural protections, including the right to a jury trial and the proper standard of proof. Indeed, as relevant in a {this} case, there is some evidence that the government was historically required to prove its case beyond reasonable doubt. See *United States vs. Brig Burdett*, 9 Pet. 682, 690 (1835) ("The object of persecution against Burdett is to enforce a forfeiture of the vessel, and all that pertains to it, for a violation of a revenue law. This prosecution then is a highly penal one, and the penalty should not be inflicted, unless the infractions of the law shall be established beyond reasonable doubt"). A punitive punishment of a forfeiture only administered to petitioner by mere unproven allegations and excessive fines/fees by "cost of caring" extortion.

I. Cost of Caring is a lie as there is no documentation that the animals everreceived medical care under State custody but were just murdered without any proof they were suffering and that this was the only alternative available for them. This is a violation of my due process rights and substantive due process rights in that I am obstructed from taking care of injured, elderly ,disabled animals and implementing an alternative plan of care other than to just kill them. Petitioner is criminalized for this mission statement and a political view other than what is politically correct with the mob mentality in Cascade County and administered by their affiliated animal groups.

II. The State has denied giving me any discovery that I have requested.
III. A Direct Appeal was made to the Montana Supreme Court on June 1st, 2020regarding the vague and arbitrary "civil" proceedings and the constitutionality of Senate Bill 320 masquerading as a civil action where I lost all my property rights without due process. The criminal defense attorney present is forbidden under Title 47 from representation in a civil action. Tyler Fries did make constitutional arguments about the excessive fees and the undue leverage of the May 26th, 2020 proceedings against a defendant. All his arguments and attempts at objections were ignored by the Court. Judge Pinski even went so far as to deny my animals were under any veterinary care when Mr. Fries tried to assert this fact in court. This biased Judge obstructed my right to a fair and impartial hearing on May 26th, 2020 and to have the facts established by a jury of peers. The right to receive discovery so I could build a

defense against the allegations .I have been denied access to any type of discovery as a pro se litigant.

III. At the May 26th, 2020 hearing I chose not to self incriminate myself prior to a criminal trial. Although every aspect of Senate Bill 320 is a criminal statute and proceeding is a criminal proceeding without constitutional safeguards. It was obvious Judge Pinski was not interested in a fair and unbiased hearing. It was obvious that Judge Pinski was supplementing the record with his own bias. Boyd

Vs United States

IV. On Direct Appeal to the Montana Supreme Court an attorney Mr. Klinkhammer agreed to write an opening brief and a reply brief. Mr. Klinkhammer argued the civil proceedings were punitive and excessive as all the animals were removed. He also argued I had submitted Motions on May 14th, 2020 ADV 20-274 in the Eighth Judicial District regarding constitutional right violations prior to the May 26th hearing that went unheeded by the State Courts . The Montana Supreme Court erroneously ruled in November, 2020 that constitutional arguments had never been raised at the District Court level which is false they were just ignored, rendered “moot” and never ruled on at the District Court level. Direct Emergent appeals should not be barred because of the gross mis justice of the Courts violating constitutional rights and the irreparable harm this injustice inflicts on a citizen.

V. The reason I refiled for a rehearing in the Eighth Judicial District Court with Judge Michelle Levine in December, 2020. In addition to inadvertently finding a sheriff report in November, 2020 that demonstrated over 25 of the animals had been needlessly murdered while in State Custody due to negligence. State of Montana hides under a bill that is purely punitive as being a civil statute and for the purpose of “caring” about animals which is blatantly false. I filed for a Stay of Judgment in this Court until all my constitutional arguments could be addressed and all avenues for appeals were exhausted. Multiple briefs were filed in this Court in regard to my case. On February 18th, 2021 I argued against the State prosecutor Susan Weber that this Statute 27-1-434 known as Senate Bill 320 is not a civil process and it is foundationally based on violating constitutional rights from the very beginning starting with;

Summary of the Arguments

- 1.) unreasonable search and seizures prohibited by the constitutions
- 2.) procedurally I was not allowed to argue my constitutional right violations argued in my Motions filed with the Court on May 14th, 2020.
- 3.) the statute is vague and arbitrary therefore unconstitutional
- 4.) the very acts the petitioner is charged for as animal abuse the State is allowed to get away with without being held accountable in any manner
 - a.) using makeshift pens the animals end up not being protected in against the onslaught of attacks by other “predators”

b.) animals not given adequate veterinary care as it is cheaper to kill them instead (by the history of the govt when have they ever advocated for animals unless the federal govt steps in to protect the animals with federal laws)

c.) there is a provision in the statute 27-1-434 t6. (d) that states I can petition for a hearing which was ignored by the Courts

d.) that citations are to be given as to why the animal(s) are being removed, nature of the injury, the medical condition, and alleged neglect and cruelty cited which was not done for over 167 of my animals 27-1-434 2. (a) (b) (c) (d)

e.) constitutionally I should be able to retrieve my animals once I am cleared of all criminal charges but this cannot be done when the State is killing them

f.) if the State does not want to render medical care they should not have obstructed petitioner from getting her animals to their already scheduled veterinary appointments with Dr. Ethel Connelly DVM and to the farrier

g.) 27-1-434 (d) the livestock inspector in conjunction with the (state) veterinarian is to submit a report along with the veterinary assessment as to why the livestock had to be removed. Instead the animals were given a clean bill of health while they were loading them up to remove them from the property. And then charge the petitioner for the cost of caring when there was no valid reason to remove them in the first place. The livestock Inspector declared the horses were now his property

h.) there is no innocent owner doctrine in the statute

- j.) there is no burden of proof by the State in the statue before a seizure just relying on gossip
- k.) there is no conviction before a defendant loses their property rights. It is a guilty until proven innocent statute that violates constitutional rights.
- l.) there is no compensation for the killing of previously healthy animals that cannot be returned to their rightful owner upon adjudication of "allegations of guilt" which is nothing more than gossip, biased opinions and outright lies and this is unconstitutional See Louisville Kennel Club, Inc. vs Louisville/Jefferson County Metro Govt No. 3:2007 CV00230-S Docu 57 W.D. Ky. 2009 Oct. 1st , 2009
- m.) this is cruel and unusual punishment to inflict on a person trying to run a No Kill Mission for unwanted, disabled and animals with special needs. There is no compensation for this mental, emotional and psychological abuse.
- n.) the Statute 27-1-434 3. 4. gives a provision where law enforcement can go on a citizens property and leave a "notice" that an animal(s) have been removed without mention of obtaining a warrant
- o.) unequal protection under the law because Senate Bill 320 was also created to give ranchers a pass if their cattle got stuck in the mountains without food, water and shelter for days , an offense others would be criminalized for (Livestock Producers and Cattlemen Associations lobbied for Senate Bill 320) This argument was given at the Legislature by F. Moore and Rep. Salomon of Polson MT in defense of SB 320

p.) my horses, pigs, poultry, goats, chickens, rabbits were all removed that would fall under livestock and animal husbandry exceptions without any citations or explanations

5.) I have never been given discovery in which I can build a defense because the State refused to do so after Discovery was requested

6.) petitioner is expected to put on a defense “criminal trial” in matter of 10 days without discovery, without representation and without triers of fact , relying on facts established by a jury of peers be able to argue evidentiary rules, gather witnesses, argue constitutional law as a pro se litigant in an unreasonable amount of time is unconstitutional

7.) this is not for the purpose of “caring for animals” as the State uses this excuse to defend SB 320 because the animals are ruthlessly murdered in State custody

8.) the State argues the events that take place under the umbrella of Senate Bill 320 are not punitive or unconstitutional which is false

9.) an unrepresented pro se litigant who cannot afford a civil attorney so if you can even find one in Montana at \$250.00 per hour would be expected to know the rules of evidence, all constitutional arguments regarding a bill that has only been in effect for approx a year, so basically this is a case of first impression, no case law to fall back on, and be able to argue against biased Judges who violate your right to argue your Motions to redress constitutional violation grievances.

That is an impossible task for a pro se litigant. There are no allowances given by the Courts to an unrepresented citizen.

9.) cost of caring for animals that did not need to be removed at \$30,000.00 per month is punitive and excessive fines and fees that result in a forfeiture of the animals if the ransom is not paid to the State currently that excessive fine would be \$6660,000.00

Arguments

Arguments in the Case Given at the Hearing Unheeded by the State Courts

Boyd vs United States 116 US 616 (1886) Argued December 11th, 14th, 1886 and decided February 1st, 1886 It does not require entry upon premises and search and seizures to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment: I believe a compulsory hearing where you have to give up the right to remain silent, but placed in a position where you could prejudice yourself before a criminal trial but your silence is then taken as an admission to be able to forfeit one's property is an unconstitutional proceeding. I am having to give up one constitutional right, the 5th Amendment in order to protect my property rights and running the risk of having the prosecutor being given another opportunity to use any statements I make against me in a criminal trial. A proceeding to forfeit one's goods for an offense against the laws, though civil in form, and whether in rem or in personam, is a "criminal case" within the meaning of that part of the Fifth Amendment which declares that no person "shall be compelled, in any criminal case, to be a witness against himself." The seizure to be used against oneself to be used as evidence against him is equivalent to compelling him to be a witness against himself, and, in a

prosecution for a crime, penalty or forfeiture, is equally within the prohibition of the Fifth Amendment. Both the Fourth and Fifth Amendments relate to the personal security of the citizen. Constitutional provisions for the security of person and property should be liberally construed. Granted the search and seizure for stolen goods or goods liable to duties is a different scenario. By history and tradition discussions on the subjects of liberty and unreasonable searches and seizures go back to English Law. Lord Camden's memorable discussion was that of Entick vs. Carrington and Three Other King's messengers, reported at length in 19 Howell's State Trials 1029. Lord Camden pronounced the judgment of the court in Michaelmas Term, 1765 and the law expounded by him has been regarded as settled from that time to this, and the judgment is considered as a landmark of English Liberty. It is applauded by the lovers of liberty in the colonies, as well as in the mother country. It is a permanent monument of the British Constitution, and is quoted as such by English authorities to present time. As every American statesmen. During the revolutionary and formative period as a nation, was familiar with English freedom, and considered it an expression of constitutional law, it is asserted that its propositions were in the minds of those who framed the Fourth Amendment to the Constitution, and is sufficient to explain what is meant by unreasonable searches and seizures. Lord Camden says: "Such is the power, and, therefore, one would naturally expect that the law to warrant it should be clear in proportion as the power is exorbitant, If it is law, it will be found in our books: if it is not to be

found there, it is not law." "The great end for which men entered into society was to secure their property. That right is preserved, sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. "The Fourth Amendment says: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or thing to be seized." The framers of the Constitution no doubt were aware of the abuses of this power of searching private houses and intended to restrain abuse . Hence, unreasonable searches and seizures are forbidden, and the means of securing this protection was by abolishing searches under warrants, which are called general warrants because they authorize searches in any place for anything. This is forbidden, while searches founded on affidavits, and made under warrants which describe the thing to be searched for, the person and place to be searched is permitted. This whole case scenario started with unreasonable search and seizure. There is no provision in Senate Bill 320 MCA 27-1-434 that states it can seize all animals from my property. The fact this took place is unconstitutional. There is no law that authorizes approx 100 strangers to be allowed to trespass onto my property for any reason that ultimately ends up ransacking, demolishing and stealing a private citizen's property without their knowledge or consent.

Excessive Fines Clause in the Montana Constitution Article III Section 22.

The

US Supreme Court unanimously held the excessive fines clause does apply to the States. Justice Ruth Bader Ginsburg expressed that the Excessive Fines Clause is incorporated by the Due Process Clause of the Fourteenth Amendment. Justices Gorsuch and Thomas expressed the Excessive Fines Clause should be incorporated through the Privileges or Immunities Clause of the Fourteenth Amendment. A forfeiture constitutes an unconstitutional fine if it is “grossly disproportionate” to the offense, determined by reference to four factors: (i) the nature and extent of the crime (ii) whether the violations was related to other illegal activities (iii) the other penalties that may be imposed for the violation, and (iv) the extent of the harm caused. See People vs Estes (2013) 218 Cal.App. 4th Supp. 14, 21: US vs. Bajakajian (1998) 524 US 321, 327-40. See Tyson Timbs vs Indiana February 20th, 2019 Justice Thomas, concurring in the judgment. “I agree with the Court that the Fourteenth Amendment makes the Eighth Amendment’s prohibition on excessive fines fully applicable to the States. Instead of reading the Fourteenth Amendment’s Due Process Clause to encompass a substantive right that has nothing to do with “process,” I would hold that the right to be free from excessive fines is one of the “privileges or immunities of citizens of the United States” protected by the Fourteenth Amendment. The Fourteenth Amendment provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States.” “On its face, this appears to grant....United States citizens a certain collection of rights-i.e. , privileges or immunities-attributable to that status.” McDonald vs Chicago, 561 US 742,808 (2010) (THOMAS, J., concurring in part and concurring in judgment).

The Court ordinarily says, as it does today, that the Clause protects rights that are “fundamental.” Sometimes that means rights that are “deeply rooted in this Nation’s history and traditions.” Ante, at 3, 7 (quoting McDonald, *supra*, at 767 (majority opinion). Petitioners argue that the forfeiture of property is an excessive punishment. An argument that does not necessarily argue the courts failed to “proceed according to the “law of the land”—that is, according to written constitutional and statutory provision,” or that the State failed to provide “some baseline procedures.” Nelson vs Colorado, 581 US (2017).

When the Fourteenth Amendment was ratified, “the terms ‘privileges’ and ‘immunities’ had an established meaning as synonyms for ‘rights.’ *Id.*, at 813. Those “rights” were the “inalienable rights.” of citizens that had been “long recognized”, and “the ratifying public understood the Privileges or Immunities Clause to protect constitutionally enumerated rights” against interference by the States. *Id.*, at 822, 837. Many of these rights had been adopted from English law into colonial charters, then state constitutions and bills of rights, and finally the Constitution. “Consistent with their English heritage, the founding generation generally did not consider many of the rights identified in {the Bill of Rights} as new entitlement, but as inalienable right of all men, given legal effect by their

codification in the Constitution's text." Id., at 818. The Eighth Amendment's prohibition on excessive fines is considered such a right. The historical record overwhelmingly demonstrates that it is. The Excessive Fines Clause "was taken verbatim from the English Bill of Rights of 1689." *United States vs. Bajakajian*, 524 US 321, 335 (1998), which itself formalized a longstanding English prohibition on disproportionate fines. The Charter of Liberties of Henry I, issued in 1101, stated that " {i}f anymen shall have committed an offense he shall not give security to the extent of forfeiture of his money,but according to the measure of the offense so shall he pay....." . Sources of English Legal and Constitutional History 8, p.50 . Expanding this principle Magna Carta required that "amergements (the medieval predecessors of fines) should be proportioned to the offense" Bajakajian, *supra*, at 335:"A free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude,.....Magna Carta, ch 20 (1215), in A Howard, *Magna Carta:Text & Commentary* 42 (rev. D. 1998). The English Courts have long enforced this principle. See Richard Godfrey's Case 11 Co. Rep 42a, 44a, 77 Eng. Rep. 1199, 1202 (1615) (excessive fines are "against law"). 14 Journals of the House of Lords 210 (May 14th, 1689). The Declaration of rights was drafted which included prohibition on excessive fines that was enacted into the English bill of Rights of 1689. Article 10 of the Declaration declared "{t}hat excessive Bayle ought not be required nor excessive fynes imposed nor cruel and unusual

Punishment inflicted." See Trial of Hampden, (1684) , Trial of Oates (1685), Case of Earl of Devonshire (1687), Harmelin vs. Michigan 501 US 957,971 (1991). In sum, at the time of the founding, the prohibition on excessive fines was a long standing right of Englishmen.

"As English subjects, the colonists considered themselves to be vested with the same fundamental rights as other Englishmen", McDonald , 561 US at 816 (opinion of THOMAS, J.), including the prohibition on excessive fines. Thus, the text of the Eighth Amendment was "based directly on....the Virginia Declaration of Rights, which adopted verbatim the language of the English Bill of Rights. See Browning-Ferris Industries of Vt., Inc. vs Kelco Disposal, Inc. 492 US 257, 266 (1989) , quoting Solem vs Helm, 463 US 277, 285, n. 10 (1983); See Jones vs. Commonwealth, 5 Va 555, 557 (1799) (opinion of Carrington, J.) (explaining that the Clause in the Virginia Declaration of rights embodied the traditional legal understanding that any "fine or amercement ought to be according to the degree of the fault and the estate of the defendant"). A prohibition on excessive fines was essential to "the security of liberty" and was "as necessary under the general government as under that of the individual states ; for the power f th former is as complete to the purpose of requiring bai, imposing fines, inflicting punishments....seizingproperty....a the other." Brutus II (Nov, 1st, 1787). Patrick Henry pointed to Virginia's own prohibition on excessive fines and said that it would "depart from the genius of your country " for the Federal Constitution to omit a similar prohibition. Henry continued: "{W}hen we come to punishments,

no latitude ought to be left, nor dependence put on the virtue of representatives" to "define punishments without this control." Governor Edmund Randolph responded to Henry, arguing "the exclusion of excessive bail and fines....would follow itself without a bill of rights," for such fines would never be imposed absent "corruption in the House of Representatives, Senate and President," or judges acting contrary to justice." Id at 467-468. And when the Bill of Rights was ratified, most of the States had a prohibition on excessive fines in their constitutions. Justice Story, had explained that the Eighth Amendment was "adopted, as an admonition to all departments of the national government, to warn them against such violent proceedings, as had taken place in England in the arbitrary reigns , when "{e}normous fines and amercements were....sometimes imposed." 3 J. Story, *Commentaries on the Constitution of the United States* 1896, pp . 750-751 (1833). Story included the prohibition on excessive fines as a right , along with the "right to bear arms" and others protected by the Bill of rights, that "operates, as a qualification upon power, actually granted by the people to the government"; without such a "restrict{ion} ", the government's exercise or abuse" of its power could be "dangerous to the people." Id., 1858 at 718-719. I believe this statement by Judge Story is the whole crux of this case scenario and why Senate Bill 320 was drafted in the first place.

This same bill was introduced back in 2005/2006 by Cascade County Officials and prosecutors by the Legislatures at that time period were "horrified "by the bill so it never passed into law. A Montana Governor Steve Bullock in 2015 passed

legislation that stated a forfeiture could not transpire absent a criminal conviction. There are criminal statutes in place that address cost of caring, property rights and other penalties that are implemented upon a conviction. There was no justifiable reason to bring this horrific unconstitutional bill to inflict on the citizens of Montana other than the greed for government overreach and power by politicians and the current Judicial system. Special interest groups coming into Montana are manifesting their influence on our culture and way of life by being behind these bills like PETA. Montanans by history and tradition have always lived among animals without being called derogatory names.

Many of the animals were given to me as "feeling entities" entrusted to me by Chris Kicking Woman of the Blackfeet tribe. Mr. Kicking Woman believed that I would take care of them and that was not a trust relationship I took lightly. Also, by tradition and culture the dogs residing on the Blackfeet Reservation have always played a huge role in their history. Montana western values are influenced by our First Nations.

Likewise, the Eighth Amendment is part of the "right of personal security"....guarded by provisions which have been transcribed into the constitutions in this country from magna carta, and other fundamental acts of the English Parliament. The Eighth Amendment is to "guard against abuse and oppression". . prohibition against abuses as "founded on the plainest principles of justice". But abuses continued, i.e. the Balck Codes and Congress addressed these abuses during its debates on the Fourteenth Amendment., the Civil Rights

Act of 1866. The Eighth Amendment and Fourteenth Amendment applies in full to the States.

The “cost for caring” misnomer the State wants to hide behind is utterly deceptive. The State also wants to argue and hide behind res judicata by insinuating that I should have known all the deception and unconstitutional infringements behind Senate Bill 320 from the onslaught. The correct terminology affiliated with Senate Bill 320 is “charge for killing” petitioner’s animals illegally seized from her by the State without a criminal conviction. A fact hidden from the petitioner but protected by the Judges and the Courts. Involved in the case. The other new meaning they give is to the words “humanely euthanized .” This definition is given to all the atrocities I inadvertently discovered six months after the initial seizure. When I petitioned for a rehearing to address the record that this “cost for caring” forfeiture bond is a blatant lie the State ruled my arguments are now barred by res judicata . This order and this opinion renders the absolute gross unconstitutional injustice of Senate Bill 320 and protected by the judicial system. I apparently was to “have known” ;

- 1.) The animals would be murdered by State’s inability to properly take care of the animals, place them in “make shift” pens where their safety is not protected
- 2.) There would be no access to veterinary care but they would be murdered instead because after all that is cheap and easy to do
- 3.) That the State can kill a citizen’s animals without a guilty conviction

- 4.) That the State can remove every animal on a citizens property without a citation that is a provision in the statute 27-1-434 2. Petition must contain the reason(s) an animal is removed
- 5.) I was to be responsible for paying for animals that have not been established as even being alive
- 6.) That law enforcement can become judge, jury , executioner and profiteer without any oversight on what they are doing to livestock property that it seizes and who they hand them out to and in turn what these parties are doing to the animals no legislative or IRS oversight to all the money incentives that transpire
- 7.) That law enforcement doesn't have to account for any property that it destroys, sells and inflicts injury on but the citizens would be criminalized over these same acts
- 8.) I am a 501c3 non profit entity to protect and defend unwanted animals and animals with special needs, I depend on donations given to me by supporters and organizations , I do not know too many people who could write a check for \$30,000.00 every month to the court system, and for animals that did not have to be removed from the premises, if there was a need to remove them it would have come to law enforcement attention bs they would not have had to use two disaster to illegally gain access to the property for the purpose of "taking down political opposition" since they advocate and are affiliated with "kill" animal shelters

The Montana Judicial System then gets to hide behind res judicata that the citizen "should have known" all these atrocities are taking place from the onset of the illegal seizure. A non convicted citizen at this point in time only has one chance in the court system to argue every aspect of her case even if she is not aware of all these horrific details otherwise the constitutional arguments are forever barred under res judicata. And have all this background knowledge about your case without ever being given any discovery requested. This is an insane stance to take as settled law governing this case. The Supreme Court has held that claims in a second suit based on events that had not occurred or were not known at the time of the first suit were not barred. The Court further held claims in a second suit survive res judicata to the extent that those claims alleged a worsening of the earlier wrongful conduct. See Portage Cty Bd of Comm'r's vs. City of Akron 808, 846 NE 2d 444, 478,495 (Ohio Court of Apps 2004d and 2006) Hapgood vs Warren 127 F3d 490,493 (6th Cir 1997) Lawlor vs. National Screen Service Corp. 349 US 322 (1955), Darney vs. Dragon Ponds Co. LLC 592 F. Supp 2d 180 (D. Me. 2009), Rawe vs Liberty Mutual Fire Ins. Co. 462,F 3d 521,529-530 (6th Cir 2006), Brown vs. Potter 248 App 712 (6th Cir 2007) , Airline Prof'l Assn of Intl Bhd of Teamsters vs. Airborne Inc. 332 F3d 983, 988 (6th Cir) 2003) Duncan vs. Peck 752 F 2d 1135 1139 (6th Cir 1985) , Quality Ready Mix Inc. vs Mamone 520 NE 2d 193, 197 (ohio 1988), Hines vs. Kline Eng. 689 NE 2d 104 (Ohio Ct App 1996).

Senate Bill 320 militarized law enforcement to work for the elites and special interest groups in the community violating their oath of office to protect and defend the constitutions.

Unreasonable search and seizures. No warrant and the warrant did not state the purpose of the search and what was to be searched. Over one hundred people were on my property for close to a week destroying the premises. There is no law that can justify a citizen's property being overridden with approx one hundred people (strangers) totally demolishing a citizen's possessions and property. When my person was obstructed and seized from attending to my animals on my own property the whole unconstitutional process was set into play. And somehow the State's argument is that it is allowed under Senate Bill 320 They also violated my Freedom to Assemble on my own property with people who came out to help feed, reconstruct burned shelters , donate items and help in general with the animals. See Caglia vs. Strom

Cruel and Unusual Punishment Forbidden by the Constitutions .United States Supreme Court Unanimously Rules Civil Asset Forfeitures are Subject to Eighth Amendment. On February 20th, 2019, the US Supreme Court decided Timbs vs Indiana, holding for the first time that the Eighth Amendment to the US Constitution's prohibition of excessive fines being imposed, nor cruel and unusual punishments inflicted. The destruction of one's animals for no good reason is mental, emotional and psychological abuse towards the victim on whom this was inflicted. See Timbs vs. Indiana

Vague and arbitrary nature of Senate Bill 320 arguments of hoarding, "makeshift" cruelly confined, are all based on biased subjective "opinions" not based on specific concrete tangible descriptions of what is to be expected especially while in the middle of two disasters. If law enforcement was so concerned with temporary setups why did they not raise that as an issue and constructively help to address the concern. When they used the same temporary crates, kennels, pet carriers to strap the animals on the back of a flat bed truck to haul twelve miles away to make shift pens the animals were later murdered in. Judge Michelle Levine's erroneous order. On March 26th, 2021 Judge Levine of the Eighth Judicial District Court in Great Falls, Montana erroneously stated in her Order that 1.) The Livestock Inspector had filed a report which is false as to why he claimed the horses are now his property without any citations given.

Refer to Exhibit P on the healthy horse assessment documented by the State Veterinarian Dr. Kelly Manzer DVM. 2.) that there was no provision in the Statute where I could petition for an Animal Welfare Hearing which is MCA 27-1-434 6. (d). Refer to Exhibit A which is the Senate Bill 320 Statute and provisions contained within. 3.) that the Order of June 6th, 2020 by Judge Pinski in the District Court to forfeit the animals because I did not pay the "cost of caring" (killing) extortion of \$30,000.00 is settled law. I have Appealed every Court Order so this is not "settled law." I had placed an Appeal to the Montana Supreme court on June 1st, 2020 on the foundation that Senate Bill 320 is unconstitutional on its face or as applied in my case. 4.) my constitutional

arguments were barred by res judicata. The Courts hide behind res judicata when they do not want to do a hard case study on the constitutionality of a proceeding or a law. I raised issues and arguments I was not aware of until November, 2020 so how could I have known or “should have known” of these issues on May 26th, 2020. I do not believe a court can hide behind res judicata when there is evidence of gross mis justice and arguments about the unconstitutionality of civil forfeitures. The supreme laws of the land cannot be swept away and excused under a cloak of res judicata. 5.) In the Order was her opinion that an animal cost of caring forfeiture has never been ruled against which is also false. See Louisville Kennel Club, Inc. vs Louisville/Jefferson County Metro Govt No. 3:2007CV00230_S Docu 57 (Oct 10th, 2009) District Court Judge Simpson .

Opinion Of Judge Charles Simpson stating the cost of caring for animal forfeitures are unconstitutional.In his opinion he writes (page 18) “The result is that a person whose dog has been confiscated, and against whom there is probable cause that he violated one of humane treatment requirements, will lose his dog permanently unless he posts bond, even if he is ultimately found innocent of the underlying charges. This possibility presents a legitimate due process claim. Claims under the “procedural “ arm of Due Process Clause are governed by the balancing framework set up by Mathews vs. Eldridge, 424 US 319 (1976). Determining how much process is due in a given case involves consideration of three factors: 1.) “the private interest that will be affected by the official action” 2.) “the risk of an erroneous deprivation of such interest through the procedures used, and the

probable value, if any, of additional or substitute procedural safeguards" and 3.) "the Government's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail." Id at 335

Animal owners clearly have a property interest in their animals. See Bess vs Bracken County Fiscal Court, 210 S. W. 3d 177, 180 (Ky. 2006). (recognizing dogs are personal property). The government is not permitted to deprive an animal owner of their property without due process of law. How much due process is required is the second prong of the Mathews test. If a person is unable to put up the cost of caring for forfeiture bond immediately upon the probable cause in finding, his animal is forfeit and he has no apparent recourse for its recovery, even if he is ultimately found innocent of the underlying charge. There is a high risk of erroneous deprivation, which some sort of additional hearing, appeal or late -payment process could remedy. The govt should not be keeping ownership of pets belonging to innocent citizens. Presumably most of the animals kept under an ordinance or statute have to be euthanized, lest the burden of boarding and caring for them grows too high. Consequently this Judge in the District Court held that the portion that would permanently deprive a pet owner of his property , absent a finding of guilt, is unconstitutional. The State of Montana has no authority to be killing my animals absent a guilty verdict after a constitutionally protected trial which makes Senate Bill 320 unconstitutional on its face and how it has been applied to my case. I have been obstructed from the State of Montana Judicial system whenever I have attempted to argue this constitutional issue. A constitutional issue of this magnitude cannot be justifiably dismissed by a res judicata claim by the State of

Montana. A fact hidden by the Cascade County prosecutors, Cascade County Officials (law enforcement) along with their affiliates and the Judges involved in my court hearings. A fact I was not aware of until a sheriff report outlined that these atrocities were occurring ,occurring from the onset of the illegal seizure and involved a huge number of animals confiscated if not all of them. The State refuses to give the petitioner discovery so she could uncover how many of the animals were murdered or going to be murdered unless a Court intervenes. The State of Montana Court's have refused to grant me Stay of Judgments requests until all avenues for appeals have been exhausted .

The Montana Supreme Court rendered an order and opinion on November 2nd, 2021 stating this second appeal is barred by res judicata. I filed a petition for a rehearing and it was denied. This leads to a petition for a writ of certiorari in the United States Supreme Court regarding the unconstitutional statute on its face or as it is applied in my case.

Conclusion

A sovereign individual citizen will not have their constitutional rights protected without this Court's intervention. The attorneys for the State have all petitioned the Courts to "teach me a lesson that the courts are not for my use" to have me fined, sanctioned and penalized as a "vexation" to the judicial system. Therefore ,I humbly request to have this Court intervene in regard to the injustice and unconstitutionality of animal civil forfeitures under the pretense of welfare laws. And if feasible to assign an attorney to the case for clarity and brevity sake. Render animal civil forfeitures cost for caring laws unconstitutional on its face or as applied.

Reason For Granting the Writ : The Framers of the Constitution recognized the natural proclivity of government actions to have their own self-interests when they render judgments and opinions. These actions require clearly defined and strictly enforced constitutional rules.

If men were angels, no government would be necessary. If angels

Were to govern men, neither external or internal controls on govt

Would be necessary.....A dependence on the people is, no doubt,

the primary control on the government; but experience has taught

Mankind the necessity of auxiliary precautions . James Madison

Constitutional restraints on the exercise of power are particularly needed when

Government agencies are granted authority to deprive individuals of private property.

Natural Laws have been replaced by modern secular laws that no longer abide by the

Constitutions. The sovereignty of the individual and his inalienable rights have been

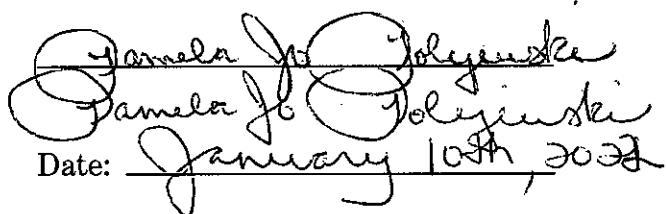
replaced by big govt as God and “mob rule” unless adheres to the Constitutions reign

this overreach and abuse of power in.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Pamela J. Polenicki
Date: January 10th, 2022