

No. 21-7124

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SUPREME COURT OF THE UNITED STATES

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Pamela Jo Polejewski,

Petitioner,

Vs,

State of Montana,

Respondent.

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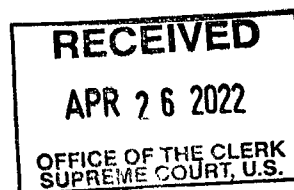
On Petition for a Writ of Certiorari Leave of Court to file Reply Brief  
Appeal from Montana Supreme Court  
Judgment November 2nd, 2022  
Animal Cost for Caring Civil Forfeiture Bills Are Unconstitutional

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PETITION FOR A WRIT OF CERTIORARI REPLY BRIEF

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REPLY BRIEF TO OPPOSITION REGARDING  
CONSTITUTIONAL RIGHT VIOLATIONS UNDER SB 320 QUASI CRIMINAL  
“PROCESS” AND ITS UNCONSTITUTIONAL UNDERPINNINGS

Regardless of what “process” or procedure the State argues is allowed under the bill it is all foundationally unconstitutional on its face or as applied.

SUMMARY OF THE ARGUMENTS

I. USING UNCONSTITUTIONAL SB 320 QUASI-CRIMINAL CIVIL PROCEEDING  
INSTEAD OF CRIMINAL STATUTES THAT HAVE CONSTITUTIONAL SAFEGUARDS

A civil proceeding that results in a penalty akin to a criminal penalty such as forfeitures, sanctions , excessive fines and fees with the intent to punish is quasi-criminal . Little vs. streater 452 US 1, 10 (1981.) The US Supreme Court has described punitive damages as quasi-criminal punishment. Pacific Mut Life Ins. Co vs Haslip 499 US 1, 19 (1991.) A defendant in a quasi-criminal proceeding is entitled to due process protections given to a criminal defendant that I was not afforded.

II. RIGHT TO REMAIN SILENT RESULTS IN LOSS OF PROPERTY RIGHTS BY  
THE LOW BARR OF UNPROVEN ALLEGATIONS THEREFORE LOSING ONE  
CONSTITUTIONAL RIGHT TO PROTECT ANOTHER IS AN UNCONSTITUTIONAL  
PROCEEDINGS Boyd vs US

III. EVEN UNCONTESTED CIVIL FORFEITURES ARE UNCONSTITUTIONAL  
Law enforcement become prosecutor, decision maker and profiteer.

IV. CONFLICT OF INTEREST BY ALL PARTIES ON THE STATE PAYROLL VIOLATES  
CONSTITUTIONAL RIGHTS OF PLAINTIFF

No accountability of public money is being used for public interest vs private parties that have an invested interest in confiscating private property for personal use therefore

any entity not accountable to anyone should not be trusted. Nor is it conducive of fairness.

V. UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY TO STATE AGENCY AND PRIVATE ENTITIES challenging agency actions as being in excess of statutory authority Article III Section I US Constitution Proctor vs Andrews Boll weevil Oklahoma Supreme Court (1999) Supreme Court of Texas Boll Weevil Eradication Foundation Inc vs Lewellen (1997) MCA 2-1-402 Montana Constitution Article 5. Section 1.

PRIVATE ENTITIES in my case are not subject to meaningful govt review. Refer to Authorities 1-8 factors are listed Page\_\_1\_\_.

Thus Legislative authority to a private entity, violating a majority of the eight factors set forth constitute the statute cannot stand since it is an unconstitutional delegation of authority to a private entity. Boll Weevil Proctor vs. Andrews

VI. UNLAWFUL DELEGATION OF PRIVATE ENTITIES when people are affected by

private delegates actions not adequately represented in the decision making.

When private delegations are not subject to meaningful review by the state

agency or branch of govt. These same entities taking public funds need to be

reviewed by the public for evaluation for the purpose of "public good" which the

State of Montana, law enforcement, animal groups are never held accountable for.

VII. MONTANA CONSTITUTION prohibits gratuitous payments of public money to individuals.

VIII. UNLAWFUL DELEGATION OF OTHER GOVT ENTITIES TO CARRY OUT PURPOSES When it has not established reasonable standards to guide the

entity to which powers are delegated or they were ignored in my case.

IX. UNLAWFUL DELEGATION OF POWERS VESTED IN JUDICIAL BRANCH TO

STATE AGENCIES if they are using SB 320 as the authority to determine the

nature and extent of property owners right to have a nonprofit entity operating on the property that's mission statement is to take care of animals with special needs. The power to determine controverted rights to property by means of a binding judgment is in the judicial branch not by DVM, sheriffs & animal shelters.

#### X. MONTANA STATE LIMITS DELEGATION OF LEGISLATIVE POWER TO AGENCIES

The Legislature shall have no power to make any grant or authorize the making of any grant of public money to individuals, associations of individuals, municipalities or corporations. Courts should be willing to overturn State Legislation that invades privacy rights, statutes that allow law enforcement to trespass onto private property and allows a mob of people to overrun a citizen's property that ends up destroying that citizen's property, liberty, dignity and right to be safe in one's own home. These are all constitutional violations of a matrix of constitutional provisions. The right to be protected against govt overreach, abuse of power and unreasonable govt intrusion into one's privacy rights when the granting of aid in cases of calamity was not the goal.

#### XI. SUBSTANTIVE DUE RIGHT VIOLATIONS

Justice Clarence Thomas, who wrote the Fourteenth amendment's Due Process Clause is not a secret repository of substantive guarantee against unfairness." Judge Stephan J. Field who, in a dissenting opinion to the Slaughterhouse Case wrote that "the Due Process Clause protected individuals from state legislation that infringed upon their "privileges and immunities" under the federal constitution. Field's opinion is a step

toward the modern doctrine of substantive due process, a theory that the Court has developed to defend rights that are not mentioned in the constitutions. Those rights include my right to have a 501C3 that takes care of elderly animals with medical conditions, disabilities without the govt killing them without due process. There must be substantive requirements that must be met in order to ensure the constitutional guarantee of a fair trial.

## XII. ALL BILL OF RIGHTS VIOLATED ATTORNEY, JURY, DISCOVERY

Public Defenders cannot be involved in civil cases per Title 47 of the Legislature.

## XIII. IMMUNITIES CLAUSE AND PRIVILEGES CLAUSE VIOLATIONS

Quoting Samuel Adams "Among the natural rights of the colonists are these: First a right to life, secondly to liberty, and thirdly to property, together with the right to defend them in the best manner they can." US Constitution Article II Section V. 14th Amend

## XIV. PROCEDURAL RIGHT VIOLATIONS

My Motion for an animal welfare hearing was never heard that outlined my constitutional arguments regarding Senate Bill 320 . All should receive the ordinary fair procedural processes of law. Thus, it is not always enough for the govt to just act in accordance with whatever law they happen to contrive. Actions denying the a process that is "due" would be unconstitutional. It is long accepted that when it is sought to deprive a citizen of life, liberty or property it did so through criminal law, for which the Bill of Rights explicitly states quite a few procedures that had to be followed like the right to a jury trial. Rights and traditions well understood in the courtrooms operating from English Common Law. Judge Henry Friendly generated a list of "required procedures"

that due process requires. Procedural pretrial discovery is nonexistent as it would be in a criminal proceeding. This hybrid nature of a proceeding implements a policy that does not afford a defendant's constitutional guarantee of a fair trial. Quasi criminal proceedings are governed in a confusing body of case laws and miscellaneous statutory provisions. Because of this uncoded nature of the hybrid procedure, there is no clear, authoritative guideline for the judge to follow. The net result is wide variance in the practice among the various courts throughout the State. The allowance of judicial discretion on the issue of discovery in hybrid proceedings lends itself to not only to variances among state courts, but also to arbitrary and discriminatory practices of the court of the same district or even among different defendants before the same judge. The limited scope and arbitrary practices in quasi-criminal prosecutions is an infringement and violation of due process rights and equal protection rights of defendants, rights of individuals to liberty and their property. The power of the courts to allow or disallow discovery in quasi-criminal prosecutions is inconsistent with US supreme court decisions on due process and equal protection areas. These decisions lean towards affording defendants greater and more defined rights in procedural matters and tip the scale in favor of individual rights vs state interest. Discovery rules should be designed for efficiency and fairness, all litigants are entitled to rights and privileges as a matter of rights. Legal disputes are not fairly decided when one party enters a trial without the relevant evidence needed prejudicing the rights and privileges of one party

over another. The arbitrary discovery rules provide a standard for appellate review of discretionary abuses. Criminal discovery is geared toward the protection of defendant rights governed by the constitutions. The hybrid nature places defendant in a duality of civil/criminal proceedings where neither statutory schemes apply thus violating the defendant's rights to fairness by due process equal protection under the constitutional provisions. Both property loss and penal fines/fees resulting from quasi-criminal convictions indicate defendants are denied procedural due process when their right to present an adequate defense is obstructed and not given discovery.

#### XV. STATUTORY RIGHT VIOLATIONS calling citizens “ hoarder” is discriminatory

This Bill 320 was just passed in April 19th, 2019 against even Legislatures stating it was unconstitutional. Montana taking federal funds while discriminating against a “class” of citizens is unconstitutional. “Remember also that the smallest minority on earth is the individual. Those who deny individual rights, cannot claim to be defenders of minorities,” quote by Ayn Rand. US Constitution Article II Section V. 14th Amendment

#### XVI. GUILTY UNTIL PROVEN INNOCENT VIOLATES CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS

XVII. DOUBLE STANDARD OF SB 320 and Montana animal abuse cases in general when elitists, politicians and law enforcement are not prosecuted for cruelty to animals but the common citizen trying to save animals from two disasters is. EXHIBITS\_\_O\_\_

#### XVIII. DUE PROCESS VIOLATIONS

The Fifth Amendment says to the Federal government that no one shall be “deprived

Of life, liberty or property without due process of law.” The State of Montana was killing my animals before any hearing was even held. The State of Montana murdered NavaJoe May 8th, 2020. A pony was murdered prior to any hearings.

Constitution does not require due process for establishing laws; the provision applies when the state acts against individuals “in each case upon individual grounds” when some characteristic unique to the citizen is involved. Whether state action against an individual was deprivation of life liberty or property was initially resolved by a distinction between “rights” and “privileges.” PROCESS IS DUE IF RIGHTS ARE INVOLVED but a the state will act like they can do as it pleases to the individual if in relation to privileges. State laws are relationships with the citizens where the citizen was entitled to keep property and privileges until there is some reason to take them away. The Supreme Court indicated that when property rights are at stake and particularly if there is some demonstrable urgency for public action the Court found before the State terminates rights/privileges the State must provide a full hearing. My animals were killed before any hearings ever took place. The hearing that is constitutionally due depends on whether it is a criminal trial where the Bill of Rights is applied. Civil trials where the long history of English practice provides the landmarks. The Goldberg Court successor is Mathews vs Eldridge . The Supreme Court went with what the Constitution required would inevitably be dependent on the individual situation. First, the private interest that will be affected by the official action. Second, the risk of an erroneous deprivation of such interest



through the procedures used, vs additional or substitute procedural safeguards. Thirdly, the govt interest , function involved, fiscal and administrative burdens that additional or substitute procedural requirements. In my case scenario if this had been settled by criminal statutes as established the State of Montana would not have had the financial burdens of appeals and counter suits for constitutional violations. My property rights and constitutional rights are to be protected by the due process clause. Cases that appeal to the appellate courts are characterized by individual facts make a strong case for proceduralization and to be dealt with by having constitutional safeguards in place. Required procedures that due process required by Judge Henry Friendly :1-10 were violated in my case.

#### XIX. LIBERTY RIGHTS VIOLATED

May 7th, 2020 8000 my person, property and liberty was violated by physically blocking me from my animals, bullied supporters, seized my property , lied to about a warrant , threatened with an arrest if I didn't leave my property This is not indicative of a free society based on human dignity, equality and freedom to be on my premises and associate with people of my choosing. Liberty is violated if I am not free to defend my animals from being ruthlessly needlessly murdered by Cascade County Officials.

. Meyer Justice McReynolds said about Meyers liberty “denotes not merely freedom from body restraint but also the right of the individual to contract, engage in any common occupations of life, to acquire knowledge, establish a home, to

worship Godly( pro life) dictates of one's own conscience, and generally enjoy those privileges long recognized at COMMON LAW as essential to the orderly pursuit of happiness by free men.” Pierce INCLUDING PRIVACY AND DIGNITY RIGHTS

## XX. FOURTEENTHAMENDMENT INCORPORATES THE FEDERAL RIGHTS INTO PROTECTED STATE RIGHTS

The 14th Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of govt. Must operate within the law and provide fair procedures. Chicago, Burlington and Quincy Railroad Company vs. City of Chicago (1897). EQUAL PROTECTION guarantees an individual will be treated equally under the laws is a goal of the judicial system honoring the constitutional process to place every defendant in a position of equity under the law. However labeling someone as a “hoarder” in a quasi-criminal category places that individual at a tremendous discriminatory disadvantage. There is

no state interest that outweighs violating an individual’s constitutional rights. The rights afforded

the citizens of a state, cannot be arbitrarily denied to a specific class of persons. There are relevant constitutional restraints which restrict the power of the state to extinguish an entitlement whether it is classified a right or a privilege. The other aspect of unequal protection under SB 320 is if the previous governor Steve Bullock passed HB 0463 in 2014 reforming civil forfeitures so that they could not occur outside of a criminal conviction. SB 320 regarding animal civil forfeitures occurring without

convictions then the citizens having their (animals) property seized are not receiving the same protections as criminal civil forfeitures. This is discriminatory unequal protection under the laws therefore unconstitutional proceedings.

#### XXI. CONTRACTUAL CLAUSE Article 1 Section 10

States that "no state shall...pass any ...law impairing the obligation of contracts..."

The State of Montana has no right obstructing me from caring for elderly, disabled, animals with special medical needs under the care of my veterinarians by unlawfully removing them and killing them. I have 501c3 status Hooves, Paws and Clause with the mission statement to care for the animals described. The ANIMAL SHELTERS, ranchers, politicians are not held to the same standards as private citizens which is unequal protection under the laws. EXHIBITS\_O\_. HB 224 HB 225 HB 163 HB 138 HB 367 SB 98

#### XXII. TAKINGS CLAUSE FIFTH AMENDMENT

Provides that "private property shall not be taken for public use, without just compensation. " Thomas Jefferson was an opponent of a strong central govt advocated for the Bill of Rights with the idea of protecting private property from the govt. The Magna Carta, state constitutions during Articles of Confederation all had the same intent in mind. Barron vs. Mayor and City Counsel of Baltimore, 32 US 243 (1833) "The provision in the 5th & 14th Amend US Constitution declaring that private property shall not be taken for public use, without just compensation.." In Burlington and Quincy RR vs City

of Chicago, 166 US 226 (1897) . Pennsylvania Coal Co. vs Mahon, 260 US 393 (1922) which provides that the govt need not physically dispossess a person from his property in order for a takings claim to be raised. Rather, the govt could restrict or regulate the use of the property to such a degree that the state action was tantamount to a physical taking. The two clauses contract and takings work together when a state govt takes an action that causes an impairment or modification of a contract, an aggrieved party can assert claims under both clauses. US Trust vs New Jersey 431 US 1 (1977) . Allied Structural Steel Co vs Spannaus 438 US 234 (1978) hold that clause still has to be squared with "the inherent police power of the State to safeguard the vital interests of its people." Energy Reserves Group Inc vs Kan. Power & Light Co. 459 US 400, 410 (1983).

## ARGUMENTS

- A. PUNITIVE PUNISHMENT Convictions under quasi-criminal proceedings have serious collateral damages. Mayer vs City of Chicago. The imposition of fees, fines, sanctions forfeitures is a great burden and excessive upon the individual who can ill-afford to pay for it. These consequences raise due process violation considerations. Both the loss of property in the nature of fines which result from a quasi-criminal conviction indicate a defendant is denied constitutional rights.
- B. VAGUE ARBITRARY STATUTES ARE UNCONSTITUTIONAL allowing govt overreach
- C. POLICE FOR PROFIT ABUSING POWER UNDER COLOR OF LAW

There are no boundaries or guidelines for law enforcement to follow with SB 320.

The effect is uncompensated transfer or destruction of vested property rights in the the killing of my animals is subject to challenges as an unconstitutional govt. taking and destruction of private property without due process where there is no just compensation.

The statute should regulate, restrict, control and prohibit policing power in order to ensure the health, safety, morals, comfort and welfare of the public and their property rights. The mere interest of a public officer enforcing a law that has not been deemed adequate to enable him to challenge the constitutionality of the law under the 14th Amend. Law enforcement should according to their oath of office resist an "endeavor to prevent the enforcement of statutes in relation to official duties", and accordingly, apply federal laws and courts to "review decisions in state courts declaring some state statutes, which they seek to enforce, to be repugnant to the 14th Amend of Federal Constitution. Griswold Glucksberg To promote and assist The financial interest in the conduct of, decisions made, in law enforcement violates due process as determined by the US Sup Ct. in Tumey vs Ohio 273 US 510(1927). D.CONFLICT

OF INTEREST which offends the reality of fairness by DVM, animal shelters who have direct monetary interest and results from their pecuniary interest without accountability.


E. DUE PROCESS CLAUSE OF THE CONSTITUTION VIOLATIONS by the cumulative effect of constitutional failings at all levels of SB 320 proceedings without assistance of Counsel are not fair and meaningful as required by the Constitutions.

Protects against the arbitrary deprivation of property privileges or benefits that constitute property is entitled to protection. Because an existing right of action to recover damages for an injury is property, that right of action is protected by the CLAUSE. Thus, the taking of property without a criminal conviction is a violation of State Bill 0468 MCA 44-12-101 and constitutional rights without DUE PROCESS. Although property is not constitutionally protected but is guaranteed only the preservation of a F. SUBSTANTIAL RIGHT TO REDRESS by an effective meaningful procedure. Davidson vs New Orleans

Justice Miller counseled the departure from conventional application of due process”It is not a little remarkable”, he observed, “that while this provision has been in the Constitution of the US, as a restraint upon authority of the Federal Govt. for nearly a century, and while, during all that time, the manner in which the powers that govt have been exercised has been watched with jealousy, and subjected to the most rigid criticism in all its branches, this special limitation upon its powers has been rarely invoked in the judicial forum or the more enlarged theatre of public discussion. But while it has been a part of the Constitution, as a restraint upon the power of the States, only a very few years, the docket of this court is crowded with cases in which we are asked to hold that State courts and State Legislatures have deprived their own citizens of life, liberty or property without due process of law. There is abundant evidence that there exists some strange misconception of the scope of this provision as found in the 14th Amendment. In fact, it would seem, for the character of many cases before us, and the arguments

made in them, G.LIBERTY OF INDIVIDUALS may be infringed by the coercive conduct of private individuals no less than by public officials. The Court in effect transferred the DUE PROCESS CLAUSE into a source of encouragement to State Legislatures to intervene affirmatively to mitigate the effects of such coercion. By such modifications of its views LIBERTY IN THE CONSTITUTION SENSE OF FREEDOM resulting from restraint upon the govt. Was replaced by civil liberties in which an individual enjoys virtue of the restraints which govt on his behalf, imposes on his neighbors."

Respectfully submitted,

  
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Dated April 22nd, 2022

## CONCLUSION

- 1.) This Court has jurisdiction over this case under 28 USC 1257 (a)
- 2.) I have made numerous Direct Appeals over the unfairness and unconstitutionality of the Proceedings under SB 320. The petition for writ came after all court efforts exhausted
- 3.) My arguments regarding the unconstitutionality of the proceedings the State courts have refused to hear but were dissed as "moot" verbally with no court order therefore the petitions for rehearings they now want to render as barred by res judicata
- 4.) SB 320 is a civil proceeding and forfeitures occur under the proceeding which is punitive.
- 5.) The State continuously misrepresents the facts which oral argument could bring clarity to
- 6.) The State is trying to prove its case with false allegations, biased opinions not heard by a trier of facts which is a jury of peers and by the high standard of burden of proof placed on the State and representation by an attorney
- 7.) I have the right to remain silent until my trial which the State of Montana is violating with SB 320 proceedings which renders this action unconstitutional
- 8.) Law enforcement did not have a warrant until the afternoon of May 7th, 2020 after they had been on the property taking pictures for 2 days and the property was already swarmed with Cascade County affiliates. They did not help with any animals and should have gave forewarning if they felt they were being confined cruelly. They used the same crates to remove them in.



## EXHIBITS

- A. Statutes 45-8-211 criminal
- B. Statute 45-8-217 criminal
- C. Statute HB 0468 MCA civil forfeitures cannot happen outside a criminal conviction
- D. Healthy Animal Assessments by Dr. Kelly Manzer DVM paid by the State and animals were still seized by State of Montana under SB 320
- E. Affidavits by Appellants supporters
- F. May 26th, 2020 Hearing transcripts
- G. Pictures of Appellant's animals in State custody
- H. Detective Krause report discovered six month after initial hearing documenting Appellants animals murdered while in State custody
- I. Pictures of Appellant's animals prior to the illegal seizure
- J. PETA involved in creating these bills and law enforcement training for convictions regardless of the truth of the matter or justice
- K. Bullied by State Attorneys wanting the courts to deem Appellant "a vexation to the system" for defending my constitutional rights
- L. Media is an activist propaganda arm of the Montana Judicial System also involved in bullying Appellant and influencing the outcome by brainwashing the cancel culture mob to be involved
- M. Tyler Fries request for change of venue due to media involvement in the case
- N. Montana Forfeitures are not held accountable to anyone therefore no accountability it is not a process to be trusted or deemed constitutional

O. Montana Corruption in the Judicial Process, among law enforcement and with politicians DOUBLE STANDARDS

P. Mark Higgins State Attorney arguing against giving discovery and that there has not been any constitutional right violations regarding Appellant