ORIGINAL

21-8142

No. 21-_____

In The
Supreme Court of the United States

MAJOR MIKE WEBB
PETITIONER, *PRO SE*,

Appellant,

v.

BRYAN L. PORTER, in Individual and Official Capacity, RESPONDENT,

Appellee.

Webb v. Porter/In re: Major Mike Webb, Case Number CL21001829 (Alexandria Cir. 2020), on appeal Webb v. Northam, Record Number 220089 (Va. 2021)

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

"Globally, as of 6:09pm CEST, 10 June 2022, there have been 532,201,219 confirmed cases of COVID-19, including 6,305,358 deaths, reported to WHO", Staff, "WHO Coronavirus (COVID-19) Dashboard," *WHO*, https://covid19.who.int/ (accessed June 11, 2022), and, the present case rises on appeal, to raise assignments of error, in an action brought in petition for writ of mandamus to compel a prosecutor to charge a sheriff, who had, despite a duly filed praecipe, in malfeasance of office, Va. Code § 2.2-3122, and contempt of court, Va. Code § 16.1-264, failed to serve process upon fellow partisan Commonwealth Respondents, in what became the first and longest surviving litigation brought in challenge against the lockdown orders in the State of Virginia, *Webb v. Northam*, Case No. CL2001624 (Alexandria Cir. 2020), *on appeal* Record No. 210536 (Va. 2022), with that related action being raised upon appeal and presenting the following questions:

1. Whether, on a claim raising or connected to a derogation or violation of a *First Amendment* right, where evidence, beyond a shadow of doubt, establishes a pattern of unlawful conduct, under color of law, to silence or quash the same, presents the availability of a defense of necessity.

2. Whether, "[i]t is emphatically the province and duty of the judicial department to say what the law is", *Marbury v. Madison*, 1 Cranch 137 (1803), where, upon a mere pretext, or when the "proffered explanation is unworthy of credence", *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981), a state court may dismiss a case brought by an unrepresented litigant, in derogation of the principle that "[t]he fundamental requisite of due process of law is the opportunity to be heard", *Grannis v. Ordean*, 234 U.S. 385 (1914), and that such should occur "at a meaningful time and in a meaningful manner", *Armstrong v. Manzo*, 380 U.S. 545 (1965).

3. Whether in exercise of its " 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases", *Link v. Wabash R. Co.*, 370 U.S. 626 (1962), the "solicitude for a civil rights plaintiff with counsel must be heightened when a civil rights plaintiff appears *pro se*", *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978), extending so as to ensure that a "demurrer should not be granted if its effect would be to incorrectly 'short-circuit' litigation and erroneously deprive parties of trials on the merits." *Vogen Funding, LP v. Wener*, 78 Va. Cir. 448 (2009) (citing *Fultz v. Delhaize America, Inc.*, 278 Va. 84 (2009); *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22 (1993).

4. Whether, upon review, there is evidence in the record, clearly indicating attempts of state agencies and departments to evade the personal jurisdiction of the court, at least, under federal law, constituting felonies in conspiracy to

evade a summons, in violation of 18 U.S.C. § 1512, and/or conspiracy to violate rights, as contemplated under 18 U.S.C. § 241, in the public interest, "the court must order that one or more grand juries be summoned." Fed.R.Crim.Pro. 6(a).

PARTIES AND RULE 29.6 STATEMENT

Appellant is MAJOR MIKE WEBB, hereinafter referred to as "WEBB". Appellant was the Petitioner in *Webb v. Northam*, Case No. CL20001624 (Alexandria Cir. 2020), which gave rise to the present matter, brought in petition for writ of mandamus, *In re: Major Mike Webb*, Case No. CL21001829 (Alexandria Cir. 2021), seeking redress and remedy for a duly filed affidavit seeking issue of an information, authorized under Va. Code § 19.2-217, to an unresponsive prosecutor, with a mandatory obligation, under Va. Code § 15.2-1627(B), to "prosecut[e] all warrants, indictments or informations charging a felony," to effect the same, who, upon filing of the action did successfully evade the sheriff, who had even failed to serve process upon himself, and, thereafter had attempted to evade service of process from a commercial process server, whereupon he had presented the dubious claim to the trial court that it was within his discretion, under Va. Code § 15.2-1627(B) to prosecute felonies, in rejection of the plain word meaning of the controlling statute. Appellant has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock.

The sole Appellee is BRYAN L. PORTER, in Official Capacity, hereinafter referred to as "PORTER".

DECISIONS BELOW

All decisions in this case in the lower courts are styled *In Re: Major Mike Webb*, or, in the alternative *Webb v. Porter*, except that the final dismissal order carries the

case caption of the original precipitating action: *Webb v. Northam*. A Verified Complaint was filed with the Circuit Court for the City of Alexandria on June 4, 2021, at least coincidentally followed by the abrupt decision of the City of Alexandria Chief of Police, Michael Brown, to retire. Colleen Kelleher, Alexandria police chief to retire," *WTOP*, June 4, 2021, with a final Dismissal Order, as to Appellant, *Porter*, was entered on January 7, 2022, and attached hereto, whereupon the State Supreme Court denied appeal on May 26, 2022, attached hereto.

JURISDICTION

Pursuant to Sup.Ct.R. 10, "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion", and "[a] petition for a writ of certiorari will be granted only for compelling reasons." Moreover, in accordance with Sup.Ct.R. 10(c), "although neither controlling nor fully measuring the Court's discretion," this Honorable Court may consider for review, when "a state court. . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court", and, as was expressed so eloquently by this Court, and reiterated in multiple historic decisions, "'[i]t is emphatically the province and duty of the judicial department to say what the law is.'" *Nixon*, 418 U.S., at 683 (quoting *Marbury*, 1 Cranch, at 137).

I. An Important Question of Federal Law

A. Equal Protection

Some scholars have opined that "[t]he Constitution[,] as originally adopted[,] assumes that there is citizenship of the United States, and of the States, but does not

explicitly provide a rule that tells whether anyone is a citizen of either (other than by giving Congress the power to naturalize)." Akhil Reed Amar & John C. Harrison, "Common Interpretation: The Citizenship Clause," *Constitution Center*, https://constitutioncenter.org/interactive-constitution/interpretation/amendment-xiv/clauses/700 (accessed June 11, 2022). However, some, subject to derisive controversy, Mark Joseph Stern, "Clarence Thomas' Jurisprudence Is Only Getting More Chaotic," *SLATE*, April 22, 2022, have contended that the *Citizenship Clause* "was adopted against a longstanding political and legal tradition that closely associated the status of 'citizenship' with the entitlement to legal equality." *U.S. v. Vaello Madero*, 596 U.S. ___ (2022) (Thomas concurring) (citing R. Williams, *Originalism and the Other Desegregation Decision*, 99 Va. L. Rev. 493, 501 (2013) (Williams);A. Amar, *Intratextualism*, 112 Harv. L. Rev. 747, 768–769 (1999)). Yet, in this matter, raised in assignments of error from the highest court of a state, the controlling rule is illuminated by a bright line: "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; nor deny to any person within its jurisdiction the equal protection of the laws." *Fourteenth Amendment.*

The matter raised in assignment of error, committed by a state's highest court, and involving a "litigation hobbyist" Order, *U.S. Navy SEALs v. Biden*, Civil Action No. 4:21-cv-01236-O (N.D.Tex. May 23, 2022), who "could not sit idly by", Martin Luther King, Jr., *Letter from a Birmingham Jail*, April 16, 1963, and, in pandemic,

even familiar to this Honorable Court. *See Webb v. Northam*, Record No. 21-6170 (U.S. 2021); *Webb v. Fauci*, Record No. 21-6868 (U.S. 2022); *Webb v. U.S. Dist. Ct. (E.D.Va.)*, Record No. 21-7806 (U.S. 2022). And, it raises for notice what has been established in the records as an undeniable pattern of robust litigations commenced by an unrepresented litigant, all denied a trial on the merits, invoking an existential question any and all rights guaranteed. "Injustice anywhere is a threat to justice everywhere", Martin Luther King, Jr., *Letter from a Birmingham Jail, supra.*

And, if not so, as honest men, we must concede that "[i]t is obvious today that America has defaulted on this promissory note," Martin Luther King, Jr., *I Have a Dream*, August 28 1963, tendering a "We the People", Thomas P. Crocker, "Don't Forget the First Half of the Second Amendment," *The Atlantic*, June 8, 2022, "a bad check, a check which has come back marked 'insufficient funds.'" Martin Luther King, Jr., *I Have a Dream, supra.* And, accordingly, "[a]ll we say to America is, 'Be true to what you said on paper.'" Martin Luther King, Jr., *I've Been to the Mountaintop*, April 3, 1968.

B. A Right to Be Heard

In a cacophony of human voices, during what, historically, have been a "time of fear, confusion and helplessness." Jeremy Howard, *et al.*, "Face Masks Against COVID-19: An Evidence Review," *Preprints*, doi:10.20944/preprints202004.0203.v2 (May 13, 2020), Appellant, not an elected nor appointed official, but yet officially having been acknowledged as a candidate seeking election to a federal office, *Webb v. FEC*, Civil Action No. 3:2022-CV-00047 (E.D.Va. 2022), albeit, at sufferance to "stifling effect upon these legitimate activities," *Hodgkins v. Goldsmith*, No. IP99-

1528-C-T/G, 2000 WL 892964, at *1–28 (S.D. Ind. July 3, 2000), *amended sub nom. Hodgkins v. Peterson*, No. IP 99-1528-CTG, 2000 WL 1201599 (S.D. Ind. July 20, 2000), with impunity, removed from the medium of social media, *see Webb v. Fauci*, Civil Action No. 3:21CV432 (E.D.Va. 2021), *on appeal* Record No. 21-2394 (4th Cir. 2021), *on petition for cert.* Record No. TBD; *Webb v. OMB*, Civil Action No. TBD (E.D.Va. 2022); *see also Webb v. Fauci*, Record No. 21-6868 (U.S. 2022); *but see also Webb v. National Archives*, Civil Action No.1:2022-CV-00432 (D.C. 2022); *U.S. Navy SEALs v. Biden*, Civil Action No. 4:21-cv-01236-O (N.D.Tex. May 23, 2022), *on appeal* Record No. TBD (5th Cir. 2022); with is essentially only one voice of many, *e pluribus unum*, out of many, one.

However, as of the present, 1,006,062 American lives have been lost, Staff, "COVID Data Tracker," *CDC*, https://covid.cdc.gov/covid-data-tracker/#datatracker-home (accessed June 11, 2022), inclusive of only a total of 95 uniformed members of the military force on active duty, in the reserve component force and members of the national guards, Staff, "Coronavirus: DoD Response," *DoD*, https://www.defense.gov/Spotlights/Coronavirus-DoD-Response/ (accessed June 11, 2022), attributed in causation to what, on March 27, 2020, the former Health & Human Services (HHS) Secretary, "on the basis of. . . [his] determination of a public health emergency that has a significant potential to affect national security[1] [2] or the

[1] "Regular retired members and members of the retired Reserve must be managed to ensure they are accessible for national security and readiness requirements." DoD Directive 1352.01, *Management and Mobilization of Regular and Reserve Retired Military Members*," Section 1.2(c), December 8, 2016.

[2] Under 8 U.S.C. § 1189(d)(2), "the term 'national security' means the national defense, foreign relations, or economic interests of the United States".

health and security of United States citizens living abroad", 85 Fed. Reg. 63, 18250, April 1, 2020, and known early to present an aberration for coronaviruses that only infect mammalian and avian species, Justyna Miłek & Katarzyna Blicharz-Domańska, *Coronaviruses in Avian Species – Review with Focus on Epidemiology and Diagnosis in Wild Birds,* J. Vet. Res. (September 2018), *epub.*, December 10, 2018, *i.e.*, an ophidian codon usage bias, Wei Ji, *et al.*, *Cross-species transmission of the newly identified coronavirus 2019-nCoV*, J. Med. Vir. (April 2020), *epub.* February 19, 2020, raising a reasonable inference of suspicion, *Terry v. Ohio*, 392 U.S. 1 (1968), as to a chimerical departure from nature, *see Association for Molecular Pathology v. Myriad Genetics*, Docket No. 12-398, 566 U.S. ___ (2013); *Diamond v. Chakrabarty*, 447 U. S. 303 (1980), in injury to places of worship, conceded, at least by the former Virginia Governor. Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *Breitbart*, December 10, 2020, that, in every commenced litigation, a recipient of a letter from the Congregation for the Causes of Saints, at the Vatican, Major Mike Webb for Congress, "Letters of the Law: Postage Due," *YouTube*, July 27, 2017, has zealously defended, albeit to no reward. *But see* Jaclyn Cosgrove, "L.A. County could pay $400,000 settlement to church that fought COVID-19 mandates," *L.A. Times*, August 27, 2021.

Moreover, if such phenomenon were to be if classified, it could only be owned and/or controlled by the government, Executive Order 12,958, *Classified National*

Security Information, April 17, 1995[3]; *see also* Executive Order No. 12,356, *National Security Information*, April 2, 1982[4], yet, as well as attributed to the fatalities of some 22,132 veterans, Staff, "Department of Veterans Affairs COVID-19 National Summary," *Veterans Administration*, June 11, 2022, https://www.accesstocare.va.gov/Healthcare/COVID19NationalSummary, (accessed June 11, 2022), despite a proactive decision on March 10, 2020, to prohibit " visitors to enter its 134 nursing homes and 24 major spinal cord injury and disorder centers", Press Release, "Timeline on how VA prepared for COVID-19 outbreak and continues to keep Veterans safe", *Veterans Affairs*, April 2020, the day before the pandemic declaration, Staff, *Coronavirus disease 2019 (COVID-19), Situation Report – 51*, WHO, March 11, 2020, and, reflecting on just these facts, one might, rather than tender conclusory declaration that one's remarks are "mere criticisms" and "enigmatic allegations", Order, *Webb v. Northam*, Civil Action No. 3:20CV497 (E.D.Va. August 25, 2020), find sufficient pause to consider the words attributed to a revered playwright and poet of the past: "No, this my hand will rather [t]he multitudinous seas in incarnadine, [m]aking the green one red. William Shakespeare, *Macbeth*, Act II, Scene 2, *supra.*

Certainly, to noted success, Mark Herring, "AG Mark Herring Again Successfully Defends Virginia's COVID Safety Measures," *Blue Virginia*, August 24,

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[3] "'Information' means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is *owned by, produced by or for, or is under the control of the United States Government.*" *Id.* Part I, Section 1.1(b).

[4] "'Information' means may information or material, regardless of its physical form or characteristics, *that is owned by, produced by or for, or is under the control of the United States Government.*" *Id.*, Section 6.1(b), Executive Order No. 12,356, *National Security Information*, April 2, 1982.

2020 ("This is at least the fifteenth decision Attorney General Herring and his team have won in defense of the Commonwealth's COVID mitigation efforts that were put in place to prevent the spread of the virus and keep Virginians and their families and communities safe and healthy."), compared to a generalized footnote mention, by a national progressive organization, Staff, Democrat: Mary Kadera," *Progressive Voters Guide*, September 15, 2021, https://progressivevotersguide.com/virginia/2021/general/mary-kadera?language_content_entity=en (accessed November 3, 2021)[5], about a candidate in an insignificant school board race for which the eventual victor had begun celebration of a "coronation" the day upon which Appellant had qualified for the ballot, Scott McCaffery, "Kadera gets company in School Board race," *Arlington Sun Gazette/Inside NOVA*, June 9, 2021, the former Virginia State Attorney General has described in pleadings the current public health crisis as a "a once-in-a-century pandemic", characterized as "threaten[ing] irreparable harm to an unknown (and unknowable) number of people", *but see Sancho v. U.S. Dept. of Energy*, 578 F. Supp. 2d 1258 (D. Haw. 2008)[6]; *Sancho v. Dep't of Energy*, No. 08-17389, D.C. No. 1:08-cv-00136-HG-KS, (9th Cir. 2010)[7], and prompting the argument that "the scope of [a court's] review . . . must be limited to a determination of whether the [executive's] actions were taken in good faith and whether there is some factual basis for [the

[5] "Kadera is facing a challenge from Major Mike Webb, who previously ran for school board in 2017 but was unsuccessful. Webb also ran for Virginia Governor in 2020. He is a member of the Red Rose Rescue, a group aimed at defunding reproductive healthcare services. He is also against current government efforts and recommendations for safety during the COVID-19 pandemic." *Id.*

[6] "Speculative fear of future harm does not constitute an injury in fact sufficient to confer standing." *Id.* (citing *Mayfield v. U.S.*, 599 F.3d 964 (9th Cir. 2010)).

[7] Expressly rejecting the UNESCO precautionary principle.

Governor's] decision that the restrictions he imposed were necessary to maintain order." Opp. Brief, *Hughes v. Northam*, Civil Action No. CL20-415 (Russell Cy. Cir.) (quoting *U.S. v. Chalk*, 441 F.2d 1277 (4th Cir. 1971)). The esteemed former State Attorney General.

However, even if "not a serious option", Scott McCaffery, "Sun Gazette endorsement: Mary Kadera for Arlington School Board," *Arlington Sun Gazette/Inside NOVA*, September 23, 2021; *see also* Scott McCaffery, "Republicans pass on endorsing School Board contender," *Arlington Sun Gazette/Inside NOVA*, October 8, 2021, Appellant suggests that these words, in legalese, be they holding or dicta, wholly unfamiliar to those engaged in the scattered ramblings, "inartfully pleaded" of an unrepresented litigant, compelling the mercy and patience of the courts to labor, endeavoring, in equity, to subject to "less stringent standards than formal pleadings drafted by lawyers." *Brice v. Jenkins*, 489 F. Supp. 2d 538 (E.D. Va. 2007) (citing *Estelle v. Gamble*, 429 U.S. 97 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519 (1972)), at least reasonably had appeared to suggest that such license is plenary, and eternal, and, further appear to omit the bounds upon that license even acknowledged by that precedential authority, which expressly articulated the condition that "'[a]ll power may be abused if placed in unworthy hands'", *id.* (quoting *Luther*, 48 U.S. (7 How.), at 1, and that "[t]he courts cannot prevent abuse of power, but can sometimes correct it". *Id.*

Yet, while neither a practicing nor licensed, nor even formally trained, litigator, Appellant is yet aware that "[t]he fundamental requisite of due process of

law is the opportunity to be heard", *Grannis*, 234 U.S., at 385, and that such should occur "at a meaningful time and in a meaningful manner", *Armstrong*, 380 U.S., at 545.

Similarly, this unrepresented litigant recalls that somewhere he may have even read that, in due process, not derogated, is defined as "the process that is due under particular circumstances and does not invariably mandate trial-type proceedings", *Sec'y of Labor v. T.P. Mining, Inc.*, 8 FMSHRC 687 (1986), which at least one case within the confines of his federal jurisdiction had described as a substantive right derogated in irreparable harm, *Cohen v. Rosenstein*, 691 F. App'x 728, (Mem)–730 (4th Cir. 2017), a material finding for at least, in equity, a grant of injunctive relief upon infringement thereof, a legal cause of action even recognized, even if in dissent, by the Virginia State Attorney General. *See* Opp. Brief, *Hughes v. Northam*, *supra.* (quoting *School Bd. of Richmond v. Wilder*, 73 Va. Cir. 251 (City of Richmond Cir. Ct. 2007))[8].

II. Has Not Been, But Should Be, Settled by This Court

It has oft been repeated that "'[i]t is emphatically the province and duty of the judicial department to say what the law is'," *Nixon*, 418 U.S., at 683 (quoting *Marbury*, 1 Cranch, at 137.), and, in *Webb v. Northam*, Record No. 21-6170 (U.S. 2021), *Webb v. Fauci*, Record No. 21-6868 (U.S. 2022), and *Webb v. U.S. Dist. Ct. (E.D.Va.)*, Record No. 21-7806 (U.S. 2022), this Honorable Court has become

[8] "[a] party seeking injunctive relief 'must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Id.*

acquainted with Appellant, in actions all related to a febrile infection, attributed to a pneumonia of unknown etiology that had, of report, according to the controversial "top medical adviser", Adriana Cohen, "Why hasn't Fauci been fired and put under FBI investigation yet?" *New York Post*, January 28, 2022, had arisen from a zoonotic evolution in a wet market, Jenni Fink, "Timeline of What Dr. Fauci Has Said About the Wuhan Lab and COVID's Origins," *Newsweek*, May 25, 2021.

This suspected wet market is the size of nine American football fields, Jeremy Page, "Virus Sparks Soul-Searching Over China's Wild Animal Trade," *WSJ*, January 26, 2020, but in which only a total of 27, Mandy Zuo, *et al.*, "Hong Kong takes emergency measures as mystery 'pneumonia' infects dozens in China's Wuhan city," *South China Morning Post*, December 31, 2019, of the total 41 cases in China had been associated by January 14, 2020, Staff, "Archived: WHO Timeline - COVID-19," WHO, April 27, 2020, https://www.who.int/news/item/27-04-2020-who-timeline---covid-19 (accessed January 15, 2021), and only 43 by May 17, 2020[9], Kenji Mizumoto, Katsushi Kagaya Gerardo Chowell, *Effect of a wet market on coronavirus disease (COVID-19) transmission dynamics in China, 2019–2020*, 97 Int. J. Infect. Dis., pp. 96-101, June 2, 2020, doi: 10.1016/j.ijid.2020.05.091, which were international news about , in the 42nd largest city in the world, Staff, "Wuhan: The London-sized city where the virus began," *BBC*, January 23, 2020[10], a disproportionate response

[9] Michaeleen Doucleff, "Striking new evidence points to Wuhan seafood market as the pandemic's origin point,"*NPR*, March 3, 2020 (Identifying 29 vendors at wet market associated with COVID-19 infections by March 3, 2020).

[10] "Wuhan is the provincial capital of Hubei Province and the fifth largest city in China. Its name comes from 'the three towns of Wuhan' – Wuchang, Hankou, and Hanyang. The Triple Cities of China's Heartland are known as "Wuhan." Wuchang and Hankow are known to Westerners as the "Twin Cities of China," comparable to Saint Paul and Minneapolis of the United States. Hanyang. the third city of

resulted in sharing of the genetic sequence around the world by January 12, 2020. Staff, "Archived: WHO Timeline - COVID-19," WHO, April 27, 2020, https://www.who.int/news/item/27-04-2020-who-timeline---covid-19 (accessed January 15, 2021), with few fatalities. Amy Qin & Javier C. Hernández "China Reports First Death From New Virus," *NYT*, January 10, 2020, *updated* January 21, 2020.

This is a biological particle from what have been described as the most abundant biological particles in the world, Patrick Forterre, *Defining Life: The Viral Viewpoint*, 40 Orig. Life Evol. Biosph. 2, pp. 151-160 (April 2010), but, around the time of the emergence of MERS, there were only a total of 119 viruses harmful to mankind. Mark Woolhous *et al.*, *Human viruses: discovery and emergence*, Phil. Trans. R. Soc. B, 367, pp. 2864-2871 (2012), infinitesimally small, when considering the Law of Large Numbers. *See generally* Kelly Sedor, *The Law of Large Numbers and Its Applications*, Lakehead University (2015); Juan M. Sanchez, *An Exercise in Sampling: The Effect of Sample Size and Number of Samples on Sampling Error*, 4 World Journal of Chemical Education 2, pp. 45-48 (2016).

Beyond the early doubts expressed by Kristian G. Andersen, Kristian Andersen Email to Anthony Fauci, "Re: FW: Science: Mining coronavirus genomes for clues to outbreak's origin," January 31, 2020 ("The unusual features of the virus make up a really small part of the genome (<0.1%) so has to look really closely at all

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the Triple Cities is not so well known. Wuchang was the political, educational and cultural center; Hankou was the transportation hub and commerce and trade center; and Hanyang was the cradle of China's modern industry." Staff, "Wuhan," *Global Security*, https://www.globalsecurity.org/military/world/china/wuhan-city.htm (accessed June 27, 2021).

the sequences to see that some of the features (potentially) look engineered.")[11], which directly contradict what has become the most relied upon zoonotic evolution report advocating the zoonotic evolution theory, Kristian G. Andersen, *et al.*, *The proximal origin of SARS-CoV-2*, 26 Nature Medicine, pp. 450-455 (April 2020), and beyond the intriguing reports regarding HIV inserts, Prashant Pradhan, *et al.*, *Uncanny similarity of unique inserts in the 2019-nCoV spike protein to HIV-1 gp120 and Gag*, bioRxiv, February 2, 2020, a reasonable trier of fact might expect in a discipline in which "[r]eproducibility and replicability are fundamentally important aspects of the scientific method", Robert Gerlai, *Reproducibility and replicability in zebrafish behavioral neuroscience research*, 178 Pharmacol. Biochem. Behav., pp. 30-38, March 2019, doi: 10.1016/j.pbb.2018.02.005, *Epub.* February 23, 2018, far more than just seven human coronaviruses, Staff, "Human Coronavirus Types," *CDC*, February 15, 2020, https://www.cdc.gov/coronavirus/types.html (accessed October 1, 2021)[12]; *but see* Edward C. Holmes, *et al. The origins of SARS-CoV-2: a critical review.* Cell 2021, *published online* August 19, 2021. https://doi.org/10.1016/j.cell.2021.08.017[13], of which a total of five emerged between 2003 and 2005. Jeffrey S. Kahn & Kenneth

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[11] "I should mention that after discussions earlier today, Eddie, Bob, Mike and myself all find the genome inconsistent with expectations from evolutionary theory." *Id.*

[12] "The seven coronaviruses that can infect people are: [(]Common human coronaviruses[)] 1. 229E (alpha coronavirus)[;] 2. NL63 (alpha coronavirus)[;] 3. OC43 (beta coronavirus)[;] 4. HKU1 (beta coronavirus) [(]Other human coronaviruses[)] 4. MERS-CoV (the beta coronavirus that causes Middle East Respiratory Syndrome, or MERS)[;] 5. SARS-CoV (the beta coronavirus that causes severe acute respiratory syndrome, or SARS)[;[] 6. SARS-CoV-2 (the novel coronavirus that causes coronavirus disease 2019, or COVID-19)". *Id.*

[13] "Coronaviruses have long been known to present a high pandemic risk" and that }[s]evere acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is *the ninth documented coronavirus* that infects humans and the seventh identified in the last 20 years (Lednicky *et al.*, 2021; Vlasova *et al.*, 2021)." *Id.*

McIntosh, *History and recent advances in coronavirus discovery*, 24 Pediatr Infect Dis J. 11(Suppl.), S223-7, discussion S226 (November 2005), doi: 10.1097/01.inf.0000188166.

Beyond a reasonable doubt, on issues arising during the current public health crisis, there is no other unrepresented litigant who has brought a total of three prior cases that had been docketed for certiorari, and yet not even one has, to date, found a trial on the merits, and, as in the present action, found defendants electing a dubious right to remain silent, while, as stated in *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807), "if the gentleman had believed this decision to be favorable to him, we should have heard of it in the beginning of his argument, for the path of inquiry in which he was led him directly to it", and even today, "evidence of . . . flight. . . [is] admissible even if offered solely to prove his consciousness of guilt as to that predicate act." *U.S. v. Pungitore*, 910 F.2d 1084 (3d Cir. 1990).

This Honorable Court has held, in the past, that a person employed in national security has a right to some type of due process, even when there were suspicions of his loyalty to the United States by reason of his wife's associations with communists, *Greene v. McElroy*, 360 U.S. 474 (1959), and granted the status of a property-like right to a welfare entitlement, meriting some level of due process, *Goldberg v. Kelly*, 397 U.S. 254 (1970), and it is at least often said, even if in dicta, under the *Fifth Amendment*, beyond Appellee's right to remain silent, any citizen is afforded "the process that is due," *Sec'y of Labor v. T.P. Mining, Inc.*, 8 FMSHRC 687 (1986) ("Due process is the process that is due under particular circumstances and does not

invariably mandate trial-type proceedings."), often at least represented to represent an irreparable harm. . *Cohen v. Rosenstein*, 691 F. App'x 728, (Mem)–730 (4th Cir. 2017), but this could be a gross misreading, by one not practiced in jurisprudence.

III. Decided in a Way That Conflicts with Relevant Decisions of This Court

In review of what may be perceived in complaint as a departure from established norms and precedent, this Court had prudently determined, in the past, that the test is whether there is "no reasonable basis for the state court to deny relief." *Estep v. Ballard*, 502 F. App'x 234 (4th Cir. 2012) (citing *Harrington v. Richter*,131 S.Ct. 770 (2011). *See also Strickland v. Washington*, 466 U.S. 668 (1984).

And, relevant to the initial litigation that, after commencement of this action had found the Sheriff, approaching retirement, apparently finding Jesus and ceremoniously joining Appellant's church, Staff, "Sunday, October 17, 2021 (FULL SERVICE)," *FBC Alexandria*, October 17, 2021, https://subspla.sh/jb2b7y8 (accessed October 31, 2021), after having conspicuously endorsed his fellow partisan, the former State Attorney General, Mark Herring, "Local Leaders Across Virginia Endorse Attorney General Mark Herring For Re-Election," *Blue Virginia*, February 19, 2021, shunning the medical advice of his fellow partisan Virginia Governor, who had warned, even after conceding, in obeisance to the orders of this Honorable Court, that he had heard reports "heard reports" and had "blamed churches for contributing to the spread of the virus," Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *supra*.

This conduct, at least, raises the specter regarding a sincerely held faith belief.

See Cardew v. New York State Dep't of Corr. Servs., No. 01 CIV. 3669 (BSJ), 2004 WL 943575, at *1–9 (S.D.N.Y. Apr. 30, 2004) (citing *Farid v. Smith*, 850 F.2d 917, 926 (2d Cir.1988).); *see Clay v. U.S.*, 403 U.S. 698 (1971), tainting the final decision of the state's highest court, and, in tragic coincidence, just before Easter at the church where the Sheriff had joined, and after the pastor had announced his sudden retirement, hosting a reception, *see generally* Lindsey Paulsen, "Pastor's Blog: Thanks for the Memory," *FBC Alexandria*, December 14, 2021, "Thanks for the Memory" | First Baptist Alexandria (fbcalexandria.org), albeit during a spike in infections, James Cullum, "Alexandria sees 'exponential' increase of COVID-19 infections, ACPS asks students and staff to get tested before returning from winter break," *Alexandria Times*, December 17, 2021, that had caused the cancellation of the annual Christmas concert by the choir, shortly before Easter Sunday, tragically, the choir director, choked and suffered a cardiac arrest, dying just before the celebration of the rising of his Savior.

As suspect as what the Alexandria Sheriff may have known before the commencement of the original action on April 2, 2020, which might give cause for his record failure to perfect service of process, from a court at which no summons ever gave issue despite a duly filed praecipe therefor, and without even issue of refund from the Alexandria Circuit Court for the non-performance of that office, obtaining money on false pretense, a Class 4 felony under Va. Code §18.2-178, is what he may have reasonably conceived as what was essentially a security problem, not a public health crisis, having been responsible for the COVID-19 response at the Alexandria

City correctional facility, which houses over 400 inmates and "[i]n recent years, the jail has housed high profile figures, including Chelsea Manning, Paul Manafort and Emma Coronel Aispuro, the wife of drug lord Juan 'El Chapo' Guzman." Mark Eaton, "Ahead of retirement, Sheriff Dana Lawhorne reflects on 43 years in law enforcement," *Alexandria Times*, December 16, 2021. The Sheriff had boasted of conferring with "other judges across the country whose courts effectively shut down because of jail outbreaks and inability to transport prisoners" and rather "quickly set up virtual access to federal court and went several months without an outbreak." Rachel Weiner, "Stepping down after 16 years, Alexandria sheriff laments mental health crisis in jails," *Washington Post*, January 3, 2022.

Regardless of what leadership the Sheriff may have provided, it is the state policy that "[i]n-person visitation is dependent upon favorable pandemic conditions at the facility", in facilities with strict security posture protocols, and, to date, in a corrections system that includes 1,376 Department of Corrections facilities, there have been only a total of 59 fatalities in these congregant settings, Staff, COVID-19/Coronavirus Updates," *VADOC*, https://vadoc.virginia.gov/news-press-releases/2022/covid-19-updates/ (accessed June 11, 2022), compared with 22,132 fatalities amongst inpatient residents at veterans care facilities, Staff, "Department of Veterans Affairs COVID-19 National Summary," *supra*, where on March 10, 2020, to prohibit " visitors to enter its 134 nursing homes and 24 major spinal cord injury and disorder centers", Press Release, "Timeline on how VA prepared for COVID-19 outbreak and continues to keep Veterans safe", *supra*.

After the report of the first fatality to COVID-19 in China, it was reported that "[t]he coronavirus, which surfaced in the city of Wuhan, has put the region on alert, but there is no evidence that it can spread among humans", Amy Qin & Javier C. Hernández, "China Reports First Death From New Virus," *The New York Times*, January 10, 2020, and for a biological agent with that transmissibility risk profile to cause a pandemic, it could only be deployed to provide mass exposures, a security problem, and not a public health issue. Nor would that assessment be altered after a robust examination conducted by 1,800 teams of at least five epidemiologists in China of 55,924 laboratory cases would that threat profile change, finding a less than five percent secondary attack rate, the standard measure, *Principles of Epidemiology in Public Health Practice, Third Edition: An Introduction to Applied Epidemiology and Biostatistics*, "Lesson 3: Measures of Risk: Section 2: Morbidity Frequency Measures," *CDC*, May 18, 2012, with clustered outbreak reports, prompting the clinical conclusion, belying an assignment of an R-Naught of 2 to 2.5, a measure that had, in the past, been expressly rejected by the Centers for Disease Control & Prevention (CDC), Paul Delameter, *et al.*, *Complexity of the Basic Reproduction Number (R_0)*, 25 Emerging Infectious Diseases 1 (January 2019), that "it is not clear whether this correlates with the presence of an infectious virus." *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),* dated February 16-24, 2020.

This low threat assessment would later be validated in the largest sample size tracer contacts study, to date, finding a secondary attack rate of only 4.6% for the original strain in an examination of over three million laboratory confirmed cases in

India, Ramanan Laxminaraya, *Epidemiology and transmission dynamics of COVID-19 in two Indian states*, pp. 691-697, Science 370 (2020). And, claims of following the science notwithstanding. Andy Fox, "Gov. Northam takes questions on COVID-19 vaccine one-on-one with 10 On Your Side," *WAVY*, June 17, 2021 ("'We will have to follow the science," said Northam, referring to the potential of the Delta variant of the coronavirus, which is now classified as a "variant of concern' to the CDC."), clinically, this validated threat assessment is four times too low to confirm the presence of a virus being transmitted from person-to-person, Julia Belluz, "China's cases of Covid-19 are finally declining. A WHO expert explains why," *Vox*, March 2, 2020, *updated* March 3, 2020, and 12 times too low to set off a superspreader event. Martin J. Blaser & Lee S. Newman, *A Review of Human Salmonellosis: I. Infective Dose*, 4 Reviews of Infectious Diseases 6, pp. 1096–1106 (November 1982). *But see* Stephen Nelson, "Anthony Fauci calls Rose Garden Amy Coney Barrett event a 'super spreader'," *New York Post*, October 9, 2020; *see also* Staff, "Faith Based Organizations," *VDH*, https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/faith-based-organizations/ (accessed August 29, 2021) ("Singing and playing wind instruments are considered to be high risk activities for unvaccinated individuals due to the increased amount of respiratory droplets and aerosols that may contain the COVID-19 virus if a person is infected").

Relying upon the authority of this Honorable Court, the Courts of the Commonwealth have, in the past, held that "[t]he defense of necessity traditionally addresses the dilemma created when physical forces beyond the actor's control render

'illegal conduct the lesser of two evils", *Buckley v. City of Falls Church*, 7 Va.App. 32 (1988) (quoting *U.S. v. Bailey*, 444 U.S. 394 (1980)), and, in *stare decisis*, had reiterated the rule: "The essential elements of this defense include: (1) a reasonable belief that the action was necessary to avoid an imminent threatened harm; (2) a lack of other adequate means to avoid the threatened harm; and (3) a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of the harm. [footnote omitted]" *Id.* (citing *U.S. v. Cassidy*, 616 F.2d 101 (4th Cir.1979)). And, in a time, before evolving science, it was the considered opinion of the Courts of the Commonwealth that "[o]ne principle remains constant in modern cases considering the defense of necessity: if there is 'a reasonable, legal alternative to violating the law, 'a chance both to refuse to do the criminal act and also to avoid the threatened harm,' ' the defense is not available." *Id.* (quoting *Bailey*, 444 U.S. at 410 (quoting W. LaFave & A. Scott, *Criminal Law* § 49 at 379 (1972)).

Hence, even if it were to be determined that the Certificate of Service that appeared at the bottom of the Petition for Appeal was not present, or even that Appellant, a *pro se* litigant without authority or access to online filing, had failed to do so, while the State Supreme Court stands on the technical authority of Va.S.CtR. 5:6(a); Va.S.Ct.R. 5:1B; Va.S.Ct.R. 5:17(h)(i), presenting a claim that "the Court may dismiss an appeal 'for non-compliance with these Rules,", Order, *Webb v. Northam*, Record No. 220089 (Va. May 26, 2022), even this Honorable Court, in the past, has held that a necessity defense might be available when even the most contagious disease that the CDC Director had claimed she had ever seen, Edmund Demarche,

"Delta variant one of the most infectious respiratory viruses I've seen: Walensky," *Fox News*, July 23, 2021, had been found to possess a secondary attack rate of only 19.4%, , Silje B. Jørgensen, *et al.*, *Secondary Attack Rates for Omicron and Delta Variants of SARS-CoV-2 in Norwegian Households*, 327 JAMA 16, pp. 1610–1611, April 26, 2022, doi:10.1001/jama.2022.3780, *Epub*. March 7, 2022, three times lower than validated highly contagious diseases like smallpox, Staff, "Transmission," *CDC*, December 5, 2016, https://www.cdc.gov/smallpox/clinicians/transmission.html (accessed August 25, 2020), and 70% lower than the most contagious diseases, like chickenpox, and measles. Staff, "Transmission of Measles," *CDC*, February 5, 2018, https://www.cdc.gov/measles/transmission.html (accessed August 20, 2020), *Staff*, "Chickenpox (Varicella): For Healthcare Professionals," *CDC*, December 31, 2018, https://www.cdc.gov/chickenpox/hcp/index.html (accessed August 29, 2020) .

At least by report, "SARS-CoV-2, the causative agent of COVID-19, emerged in late 2019" and "[t]he highly contagious B.1.617.2 (Delta) variant of concern (VOC) was first identified in October 2020 in India and subsequently disseminated worldwide, later becoming the dominant lineage in the US", but it became "the dominant variant causing a wave of infections from April to May of 2021," prompting designation as a variant of concern by the World Health Organization (WHO) not until that time. Eleanora Cella, *et al.*, *Early Emergence Phase of SARS-CoV-2 Delta Variant in Florida, US*, 14 Viruses 6, p. 766, April 6, 2022, doi: 10.3390/v14040766.

When the President spoke, in sobering tones, on occasion marking the first anniversary of the pandemic declaration and announcing the American Rescue Plan,

but before the arrival of the delta variant, he had publicly acknowledged that, "[a]s of now, total deaths in America 527,726[,]. . . more deaths than in World War I, World War II, the Vietnam War and 9/11 combined." The Associated Press, "Transcript: President Joe Biden on the Coronavirus Pandemic," *NBC New York*, March 11, 2021.

By the time of those official remarks, and, before the emergence of the delta variant, it was known that "COVID-19 is affecting Black, Indigenous, Latinx, and other people of color the most", and that "[w]e've lost at least 73,462 Black lives to COVID-19 to date", finding "Black people account for 15% of COVID-19 deaths where race is known." Staff, "The COVID Racial Data Tracker," *The COVID Tracking Project*, March 7, 2021, and marking the anniversary of the decision of The Atlantic and Boston University to discontinue collecting disaggregated data on COVID-19 fatalities by race, this Court had decided to pass on proceeding to oral argument on an issue where the White House had asserted a presumptive claim of executive privilege, *see" Nixon*, 418 U.S., at 683, having elected a dubious right to remain silent in response to a *Freedom of Information Act (FOIA)*, 5 U.S.C. § 552, request, under which a requestor is deemed to have exhausted his available remedies, vesting in him a right to injunctive remedy, to determine if the metrics of secondary attack rate and infectious dose were classified information, which, under *Classified National Security Information*, April 17, 1995[14]; *see also* Executive Order No. 12,356, *National Security*

[14] "'Information' means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is *owned by, produced by or for, or is under the control of the United States Government.*" *Id.* Part I, Section 1.1(b).

Information, April 2, 1982[15], could only mean, if so classified, the novel coronavirus that had he had noted that has been attributed to the deaths of 442 children under the age of four, and 815 between the ages of 5 and 18, Staff, "Provisional COVID-19 Deaths: Focus on Ages 0-18 Years: NCHS" *CDC*, June 2, 2022, https://data.cdc.gov/NCHS/Provisional-COVID-19-Deaths-Focus-on-Ages-0-18-Yea/nr4s-juj3 (accessed June 11, 2022), is, presumptively, attributed to a biological agent that the government can neither confirm nor deny it owns, *Webb v. Fauci*, Record No. 21-6868 (U.S. March 7, 2022); *see also Phillipi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976), and, it has been said, "[i]t is emphatically the province and duty of the judicial department to say what the law is'," *Nixon*, 418 U.S., at 683 (quoting *Marbury*, 1 Cranch, at 137.).

And it is clear, and consistent with relevant decisions of this Court that "the government may not establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds." *Lee v. Weisman*, 505 U.S. 577 (1992). And, in that case this Court observed that "[t]he mixing of government and religion can be a threat to free government, even if no one is forced to participate," because "[w]hen the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored belief."

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[15] "'Information' means may information or material, regardless of its physical form or characteristics, *that is owned by, produced by or for, or is under the control of the United States Government.*" *Id.*, Section 6.1(b), Executive Order No. 12,356, *National Security Information*, April 2, 1982.

Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ON PETITION FOR CERTIORARI TO THE UNITED STATES SUPREME COURT

Pursuant to Rule 10, incorporating Rules 10-14, 29, 30, 33.2, 34 and 39 for *pro se* filers *in forma pauperis*, Guidance Concerning Clerk's Office Operations, dated November 13, 2020 and 28 U.S.C. § 1651, Appellant Major Mike Webb ("Applicant" or "Webb") respectfully petitions for grant of certiorari regarding a dismissal ordered, in error, by the State Supreme Court for the Commonwealth of Virginia, in an apparently unlawful attempt to quash an action, under the dubious pretext of a rule violation.

STATEMENT OF THE CASE

After the dismissal of the first and longest surviving litigation challenge brought against the lockdown orders, under the *Free Exercise Clause*, in an action during which the court record corroborates that no summons had ever been issued with which the City Sheriff, pursuant to a duly filed praecipe, might serve process upon the Commonwealth Respondents, thereby permitting the state, under a claim of failure to prosecute, brought under a special appearance so as to avoid the preclusion of an affirmative defense of defective service, *see generally Lyren v. Ohr*, 271 Va. 155 (2006), Appellant, after filing an affidavit seeking the issue of an information, commenced the present action, brought on petition for writ of mandamus to compel the Commonwealth Attorney, who had, in pleading and oral argument, conceded, at least constructive notice of the action, to bring charges against the Sheriff, for malfeasance of office, contempt of court, conspiracy to evade a summons and conspiracy to violate rights.

In recognition that mandamus was an extraordinary remedy, Appellant, in due diligence preparation of the case, attempted using an expansive definition of notice, presenting a praecipe to direct service of process upon the City of Alexandria, the Sherriff and the Commonwealth Attorney, and, as expected, found the Sheriff failing to serve process upon himself, and his copartisan elected official, the Commonwealth Attorney, who then, subsequently, managed so successfully evade a commercial process server, surrendering only after Appellant had managed to secure a copy of the summons from the Trial Court to distribute, *via* email, to the prosecutor's colleagues at the Office of the Commonwealth Attorney and the General Counsel for the City, whereupon the Commonwealth Attorney brought a claim that his duty to prosecute felonies under the controlling statute was merely discretionary.

Appellant presented a request for reconsideration of a draft order, attached hereto, and prepared by the Counsel for the City, who had been acknowledged as not a party to the case, to raise the objection that the Trial Court had found material evidence, but denied a motion for summary judgment, before dismissing the case for failure to state a legal cause of action, a jurisprudential impossibility.

Nonetheless, the Trial Court dismissed the action in January, with Appellant filing a Petition for Appeal in February, which not until late May was denied by the State Supreme Court on a claim that Petitioner had failed to certify service, ignoring a Certificate of Service in the document, and presenting a claim that Appellant had not filed electronically, a procedure available to attorneys, and not unrepresented litigants.

REASONS FOR GRANTING CERTIORARI

I. Whether, on a claim raising or connected to a derogation or violation of a First Amendment right, where evidence, beyond a shadow of doubt, establishes a pattern of unlawful conduct, under color of law, to silence or quash the same, presents the availability of a defense of necessity.

Consistent with relevant decisions of this Court, poignantly observed in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein," and, it was a relevant decision of this Court that "[w]hatever the power of the state to control public dissemination of ideas inimical to the public morality, it cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts." *Stanley v. Georgia*, 394 U.S. 557 (1969).

In evidence in the public record, the principal actor for the Commonwealth of Virginia, Ralph Northam, had unrepentantly conceded that he had violated the religious liberties of places of worship, with impunity under 18 U.S.C. 241(a)(2), an action recently brought from which he has continued to establish a purpose of evasion. *See Webb v. Northam*, Civil Action No. 3:2022-CV-00222 (E.D.Va. 2022). Moreover, evidence in the record, beyond a shadow of doubt, establishes that the Commonwealth Attorney did, in fact, first seek to ignore the filed affidavit seeking publishing of an information, giving rise to the complaint, and then further sought to evade service of a summons by the Sheriff, who, in turn, also elected not to serve process upon himself.

Yet, the State Supreme Court, which might have, in its inherent power, addressed these violations of law, stands, at the eleventh hour, on the slender reed of a technicality under the court rules that evidence in the record establishes to be false, *i.e.*, failure to present a certification of service, and a claim that an unrepresented litigant, for whom the court electronic service system is not available, had violated the rules by filing the appeal on paper. And one Justice on this Honorable Court has suggested that he found "no difficulty in concluding that Congress intended the defenses of duress and necessity to be available to persons accused of committing the federal crime of escape", *Bailey*, 444 U.S., at 394 (Blackmun dissenting), while this Honorable Court had established that "the escapee is not entitled to claim a defense of duress or necessity unless and until he demonstrates that, given the imminence of the threat, violation. . . was his only reasonable alternative." *Id.* (citing *U.S. v. Boomer*, 571 F.2d 543 (10th Cir. 1974), *cert. denied sub nom. Heft v. United States*, 436 U.S. 911 (1978); *People v. Richards*, 269 Cal. App. 2d 768, 75 Cal. Rptr. 97 (1969).

There being clearly no other reasonable means, on the record, the availability of a necessity defense, regarding any possible violation of the State Supreme Court rule would be proper.

II. Whether, "[i]t is emphatically the province and duty of the judicial department to say what the law is", *Marbury v. Madison*, 1 Cranch 137 (1803), where, upon a mere pretext, or when the "proffered explanation is unworthy of credence", *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981), a state court may dismiss a case brought by an unrepresented litigant, in derogation of the principle that "[t]he fundamental requisite of due process of law is the opportunity to be heard", *Grannis v. Ordean*, 234 U.S. 385 (1914), and that such should

occur "at a meaningful time and in a meaningful manner". *Armstrong v. Manzo*, 380 U.S. 545 (1965).

In *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981), this Honorable Court had revisited the evidentiary burden of a defendant in a case involving unlawful discrimination, and had held that a plaintiff attempting to shift the burden "may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence", *Id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)), which the defects in the technicalities cited by the Reviewing Court indisputably would reasonably find a "reviewing court on the entire evidence. . . left with a definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564 (1985) (citing *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364 (1978)).

Moreover, within the Federal Judiciary, it is well-established that, under the time/decision rule, articulated in *Reid v. MSPB*, 508 F.3d 674 (Fed. Cir. 2007), wherein a complainant "need not demonstrate the existence of a retaliatory motive. . . to establish that [the protected activity]. . . was a contributing factor", *Kewley v. HHS*, 153 F.3d 1357 (Fed. Cir. 1998) (quoting *Marano v. DoJ*, 2 F.3d 1137(Fed. Cir. 1993))[16].

[16] "Once the knowledge/timing test has been met, an administrative judge must find that the appellant has shown that. . . [the protected activity] was a contributing factor. . . , even if, after a complete analysis of all of the evidence, a reasonable factfinder could not conclude that the appellant's [protected activity]. . . was a contributing factor". *Schnell v. Department of the Army*, 114 M.S.P.R. 83 (2010).

Accordingly, under the facts in the record, it would be proper under 28 U.S. § 1651 to issue a writ nisi to compel the State Supreme Court to show cause why its conduct should not be considered retaliatory and unlawful.

III. Whether in exercise of its " 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases", *Link v. Wabash R. Co.*, 370 U.S. 626 (1962), the "solicitude for a civil rights plaintiff with counsel must be heightened when a civil rights plaintiff appears *pro se*", *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978), extending so as to ensure that a "demurrer should not be granted if its effect would be to incorrectly 'short-circuit' litigation and erroneously deprive parties of trials on the merits." *Vogen Funding, LP v. Wener*, 78 Va. Cir. 448 (2009) (citing *Fultz v. Delhaize America, Inc.*, 278 Va. 84 (2009); *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22 (1993).

"The Supreme Court of Virginia has stated that trial courts should not incorrectly short-circuit litigation at the pretrial stage by deciding the dispute without permitting the parties to have a trial on the merits. *RML Corp. v. Lincoln Window Prod., Inc.*, 67 Va. Cir. 545 (2004) (citing *CaterCorp, Inc.*, 246 Va., at 22). Moreover, this Honorable Court has insisted that "[t]he fundamental requisite of due process of law is the opportunity to be heard", *Grannis*, 234 U.S., at 385, and that such should occur "at a meaningful time and in a meaningful manner", *Armstrong*, 380 U.S., at 545. And whether found under an expansive view of the guarantee for equal protection under the *Fifth Amendment*, or in the *Citizenship Clause*, in the facts of the record, Appellant has clearly suffered harm in equal protection, while, 20,441 residents of Virginia have had deaths attributed to a novel coronavirus, Staff, "COVID-19 Data in Virginia," *VDH*, June 10, 2022, https://www.vdh.virginia.gov/coronavirus/see-the-numbers/covid-19-in-virginia/

(accessed June 12, 2022), with "over 75% of COVID-19 deaths in fully vaccinated people had occurred among those with at least four risk factors", according to the CDC, and, according to the cited study, "all those with severe outcomes had at least one risk factor while 78% who died had at least four", Reuters Fact Check, "Fact Check-CDC study found that over 75% of COVID-19 deaths in vaccinated people were among those with at least 4 comorbidities," *Reuters*, January 12, 2022, just as "[s]enior citizens - people over 65 - account for 16% of the U.S. population but 75% of deaths from COVID-19", Scott Simon, "Elderly people make up 75% of COVID-19 deaths. Many more have died from isolation," *NPR*, February 19, 2022, facts raised in Appellants litigations the Virginia Governor had evaded, and known from the beginning, *see Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19).*

This Honorable Court has stated in the past that "[m]eans of knowledge with the duty of using them are, in equity, equivalent to knowledge itself." *Cordova v. Hood*, 84 U.S. 1 (1872), while one tribunal reviewing crimes against humanity found dispositive that "undoubtedly he knew the value of the tale about 'administration of tonics,' to which he put his signature". *Government of Israel v. Eichmann*, 36 I.L.R. 5 (Supreme Court of Israel, 1961). However, ultimately, "[i]t is emphatically the province and duty of the judicial department to say what the law is'," *Nixon*, 418 U.S., at 683 (quoting *Marbury*, 1 Cranch, at 137.).

IV. Whether, upon review, there is evidence in the record, clearly indicating attempts of state agencies and departments to evade the personal jurisdiction of the court, at least, under federal law, constituting felonies in conspiracy to evade a summons, in violation

of 18 U.S.C. § 1512, and/or conspiracy to violate rights, as contemplated under 18 U.S.C. § 241, in the public interest, "the court must order that one or more grand juries be summoned." Fed.R.Crim.Pro. 6(a).

Under Fed.R.Crim.Pro. 6(a), "[w]hen the public interest so requires, the court must order that one or more grand juries be summoned", a prudent rule and consistent with the inherent powers vested in Article III courts, which would certainly serve to curb the partisan flavor of transgressions evinced in the record of this matter raised on review, and remove the whim and fancy of a popularly elected prosecutor to decide, in his discretion, who merits prosecution and who does not, based solely upon illegitimate state interests.

CONCLUSION

For the reasons stated above, Appellant, Webb respectfully requests the Court to grant certiorari to determine whether the decision by the State's Highest Court, should be reversed and remanded, as well as such other equitable relief that the Court may deem proper, under the circumstances.

CERTIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Name of Party (Print or Type): Major Mike Webb, 955 S. Columbus Street, Unit # 426, Arlington, Virginia 22204, GiveFaithATry@gmail.com, 856-220-1354.

Signature of Party

Executed on: 6-13-22 (Date)

State of Virginia

County of Alexandria

Subscribed and sworn to (or affirmed) before me on this 13th day of June, 2022 by Mike Webb

Notary Name Elsa Kore

Notary Signature

My commission expires on 2/28/2026

ELSA A KORE
NOTARY PUBLIC
REG. #7983648
MY COMMISSION EXPIRES
02/28/2026
COMMONWEALTH OF VIRGINIA