ORIGINAL

21-8242

No. 21-_____

In The
Supreme Court of the United States

MAJOR MIKE WEBB, D/B/A FRIENDS FOR MIKE WEBB, MAJOR MIKE WEBB FOR U.S. CONGRESS (VA8), MAJOR MIKE WEBB FOR VA and MAJOR MIKE WEBB FOR ARLINGTON PUBLIC SCHOOL (APS) BOARD,

Pro Se Applicant,

v.

ANTHONY S. FAUCI, in official and individual capacities, NATIONAL INSTITUTE FOR ALLERGY & INFECTIOUS DISEASE (NIAID), ROCHELLE WALENSKY, in official and individual capacities, CENTERS FOR DISEASE CONTROL & PREVENTION (CDC), JANET WOODCOCK, in official and individual capacities, FOOD & DRUG ADMINISTRATION (FDA), MOHAMMED NORMAN OLIVER, in official and individual capacities, VIRGINIA DEPARTMENT OF HEALTH (VDH), PFIZER, INC., BIONTECH SE, MODERNATX, INC., JOHNSON & JOHNSON, INC., JANSSEN GLOBAL SERVICES, LLC, FACEBOOK, INC., DIONNE HARDY, in official and individual capacities, OFFICE OF MANAGEMENT & BUDGET (OMB), JENNIFER R. PSAKI, in official and individual capacities, WHITE HOUSE COMMUNICATIONS AGENCY, VIVEK MURTHY, in official and Individual capacities, OFFICE OF THE SURGEON GENERAL, MARK R. HERRING, in official and individual capacities, OFFICE OF THE STATE ATTORNEY GENERAL, RALPH S. NORTHAM, in official and individual capacities, LLOYD J. AUSTIN, in official and individual capacities,

DEPARTMENT OF DEFENSE (DOD), CHRISTINE E. WORMOTH, in official and individual capacities, DEPARTMENT OF THE ARMY (DA), XAVIER BECCERA, in individual and official capacities, DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS), TED BRITT FORD OF FAIRFAX, RICHARD D. HOLCOLM, in individual and official capacities, VIRGINIA DEPARTMENT OF MOTOR VEHICLES, INGRID H. MORROY, in individual and official capacity, COMMISSIONER OF REVENUE FOR COUNTY OF ARLINGTON, CAPITAL INVESTMENT ADVISORS, LLC, A-1 TOWING OF NORTHERN VIRGINIA, and JOHN and JANE DOES

Respondents.

Webb v. Fauci, Case Number 3:21CV432 (E.D.Va. 2021), on appeal Record Number 212394 (4th Cir. 2021)

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

"Globally, as of 5:24pm CEST, 17 June 2022, there have been 535,863,950 confirmed cases of COVID-19, including 6,314,972 deaths, reported to WHO", Staff, "WHO Coronavirus (COVID-19) Dashboard," *WHO*, https://covid19.who.int/ (accessed June 17, 2022), and, the present case rises on appeal, to raise assignments of error, in an action brought, *inter alia*, under the *Freedom of Information Act (FOIA)*, 5 U.S.C. § 552, and the provisions protecting the entrances to places of worship, a case of first impression for this Honorable Court, under the *Freedom of Access to Clinic Entrances (FACE) Act*,18 U.S.C. § 248(a)(2), and presenting the following questions:

1. Whether, on a valid claim arising under the *FOIA*, a Trial Court may not properly dismiss, *sua sponte*, a case, without decision, where the requested Agency has failed to issue any response or explanation for delay.

2. Whether, on a valid claim arising under the *FOIA*, or, in the alternative, any other claim, a Trial Court may not, in departure from Fed.R.Civ.Pro. 4(b), refuse a plaintiff's self-prepared summonses, on a claim that the Trial Court prepares the summons, and yet fail to do so even after receipt of duly filed praecipes to effect the same.

3. Whether, on a valid claim arising under the *FOIA*, or, in the alternative, any other claim, a Trial Court may not refuse to docket any matter for hearing, under the rationale that there was no evidence that the respondents had received notice in actions in which the Trial Court had ignored duly filed praecipes and had refused to issue a summons to be served upon respondents.

4. Whether, on a valid claim arising under the *FOIA*, a Trial Court, knowledgeable that, under 5 U.S.C. § 552(a)(6)(C)(i), a requestor is deemed to have exhausted all remedies, and, therefore, suffering irreparable harm, is by, statutory right, entitled to injunctive relief, 5 U.S.C. § 552(a)(4)(B), is required, *sua sponte*, under its inherent powers, or after docketing a matter for hearing, to enjoin an Agency and/or compel such agency to show cause why it has refused or delayed its reply.

5. Whether, on a claim arising under the *FACE Act*, where there is a continuing harm, in derogation of rights guaranteed under the *Free Exercise Clause*, a Trial Court must at least enjoin the offending conduct, and, under the *Citizenship Clause*, or, in the alternative, under *Due Process Clause*, a Trial Court must decide the presented matter on the merits.

6. Whether a Trial Court may not exercise its powers against a candidate for office to stifle free speech.

PARTIES AND RULE 29.6 STATEMENT

Appellant is MAJOR MIKE WEBB, hereinafter referred to as "WEBB". Appellant has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock.

The Appellees are: ANTHONY S. FAUCI, in official and individual capacities, National Institute for ALLERGY & INFECTIOUS DISEASE (NIAID), ROCHELLE WALENSKY, in official and individual capacities, Centers for Disease Control & Prevention (CDC), JANET WOODCOCK, in official and individual capacities, FOOD & DRUG ADMINISTRATION (FDA), MOHAMMED NORMAN OLIVER, in official and individual capacities, VIRGINIA DEPARTMENT OF HEALTH (VDH), PFIZER, INC., BIONTECH SE, Moderna TX, Inc., JOHNSON & JOHNSON, INC., JANSSEN GLOBAL SERVICES, LLC, FACEBOOK, INC., DIONNE HARDY, in official and individual capacities, OFFICE OF MANAGEMENT & BUDGET (OMB), JENNIFER R. PSAKI, in official and individual capacities, WHITE HOUSE COMMUNICATIONS AGENCY, VIVEK MURTHY, in official and Individual capacities, OFFICE OF THE SURGEON GENERAL, MARK R. HERRING, in official and individual capacities, OFFICE OF THE STATE ATTORNEY GENERAL, RALPH S. NORTHAM, in official and individual capacities, LLOYD J. AUSTIN, in official and individual capacities, DEPARTMENT OF DEFENSE (DOD), CHRISTINE E. WORMOTH, in official and individual capacities, DEPARTMENT OF THE ARMY (DA), XAVIER BECCERA, in individual and official capacities, DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS), TED BRITT FORD OF FAIRFAX, RICHARD D. HOLCOLM, in individual and official capacities, VIRGINIA DEPARTMENT OF MOTOR VEHICLES, INGRID H. MORROY, in

individual and official capacity, COMMISSIONER OF REVENUE FOR COUNTY OF ARLINGTON, CAPITAL INVESTMENT ADVISERS, LLC, A-1 TOWING OF NORTHERN VIRGINIA, and JOHN AND JANE DOES.

DECISIONS BELOW

All decisions in this case in the lower courts are styled *Webb v. Fauci.* A Verified Complaint was filed with the U.S. District Court for the Eastern District of Virginia (Richmond Division) on July 7, 2021, with an Order to Amend, dated July 13, 2021 and an Order to Dismiss, Dated August 29, 2021, attached hereto. The matter was timely raised on appeal, which dismissed the action, without prejudice, on May April 20, 2022, as attached hereto.

JURISDICTION

Appellant had a pending appeal, in the U.S. Court of Appeals for the Fourth Circuit, pursuant to 28 U.S.C. § 1295(a)(1), and a writ of certiorari may only be granted for compelling reasons, to include when a "court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has *decided an important federal question in a way that conflicts with a decision by a state court of last resort*; or *has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power*", S.Ct.R. 10(a) (emphasis added), or when "a United States court of appeals 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*". S.Ct.R. 10(c). (emphasis added)

I. An Important Question of Federal Law

A. "We Know What We Need to Do"

One historical figure of contemporary controversy who had engaged in sober retrospection prayed that he "may be spared to accomplish something for the benefit of mankind and the honour of God", Staff, "Our Name," *WLU*, https://www.wlu.edu/the-w-l-story/university-history/ (accessed June 17, 2022), and it was his thought that "[t]rue patriotism sometimes requires of men to act exactly contrary, at one period, to that which it does at another, and the motive which impels them—-the desire to do right—-is precisely the same." Robert E. Lee, *Letter to General P. G. T. Beauregard*, October 3, 1865.

Yet, in the present age, in another election year, according to some elected representatives, vested with the separated power of the legislature, "[t]he cause of our democracy remains in danger", and "[t]he conspiracy to thwart the will of the people is not over," and, according to news sources, "[t]he House January 6 committee plans. . . to produce shocking new evidence about Donald Trump's bid to steal the last presidential election", while it is the claim that the former President "and his loyalists don't care" and "[t]hey are already positioning to fix the next one, undercutting the panel's mission of saving American democracy." Stephen Collinson, "Trump-allied candidates threaten democracy as January 6 probe tries to protect it," *CNN*, June 16, 2022, while some report that the ruling of this Honorable Court on the issue of abortion "will determine control of Congress and the future of President Biden's agenda — the court's expanded conservative majority has injected new volatility into an already turbulent political atmosphere, leaving both parties to game out the

potential consequences." Carl Hulse & Lisa Lerer, "Supreme Court Case Throws Abortion Into 2022 Election Picture," *New York Times*, May 20, 2021.

Meanwhile in the patchwork fabric of freedom called America, "months of discord about the coronavirus epidemic have transformed the cloth mask into a potent political symbol, touted by Democrats as a key part of communal responsibility, labeled by some GOP leaders as a sign of government overreach and as a scarlet letter pinned on the weak", Ben Guarino, Chelsea Janes & Ariana Eunjung Cha, "Spate of new research supports wearing masks to control coronavirus spread," *Washington Post*, June 13, 2020, prompted by a virus that "isn't stupid", while public health officials, included amongst the named Appellees, have said "[w]hat we can't really predict is human behavior", adding that "human behavior in this pandemic hasn't served us very well." Meg Tirrell, "CDC director says the Covid pandemic's end date depends on human behavior," *MSNBC*, October 8, 2021.

"My trust is in the mercy and wisdom of a kind Providence, who ordereth all things for our good," Staff, "Robert E. Lee Quotes," *American Civil War History*, http://www.americancivilwarstory.com/robert-e-lee-quotes.html (accessed June 17, 2022), and it is disturbingly compelling in this panoply of human affairs, the fact remains that 1,008,196 American deaths have been attributed to a novel coronavirus, Staff, "COVID Data Tracker," *CDC*, June 17, 2022, https://covid.cdc.gov/covid-data-tracker/#datatracker-home (accessed December 5, 2021), including some 20,453 residents of Virginia, Staff, "COVID-19 Data in Virginia," June 17, 2022, https://www.vdh.virginia.gov/coronavirus/see-the-numbers/covid-19-in-virginia/

(accessed December 5, 2021).

Over 80% of those fatalities were over the age of 65, Meredith Freed , Juliette Cubanski & Tricia Neuman, "COVID-19 Deaths Among Older Adults During the Delta Surge Were Higher in States with Lower Vaccination Rates," *Kaiser Family Foundation*, October 1, 2021, despite the reported fact that "[c]lose to 100% of U.S. adults ages 65 and older have now received at least a first dose of a Covid-19 vaccine, according to the Centers for Disease Control and Prevention," Alison Durkee, "Stunning Vaccine Stat: 98.5% Of U.S. Seniors Have Had Shot," *Forbes*, November 11, 2021, and a known high fatality risk from the inception of the public health crisis, and for whom all nations were diligently advised that there were "guidelines for elderly care specifically targeting prevention in individuals and introduction of COVID-19 to nursing homes", *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),* dated February 16-24, 2020.

Just days before the events that precipitated this litigation, and placing this nation on "a war footing", the President had said "we know what we need to do to beat this virus", and one Appellee, the President's top medical adviser, coincidentally recently afflicted with the same, Dan Mangan, "Dr. Anthony Fauci tests positive for Covid, is having mild symptoms," *CNBC*, June 15, 2022, has conceded that "this virus has fooled us before," Eamon Barrett, "'This virus has fooled us before': Here's how Fauci predicts stealth Omicron will spread across the U.S.," *Fortune*, March 24, 2022, while world public health authorities have advised that "[s]urely we have learned by now, that we underestimate this virus at our peril." Staff, "2021 Year in Review: 'We

underestimate this virus at our peril'," *UNSDG*, December 28, 2021. However, "[h]ow long their subjugation may be necessary is Known & ordered by a wise & merciful Providence", Robert E. Lee, *Letter to Mary Randolph Custis Lee*, December 27, 1856, but it is abundantly clear throughout that "groups tend to be less moral than individuals." Martin Luther King, Jr., *Letter from a Birmingham Jail*, April 3, 1963.

B. **The Preamble**

At the outset of a prior case brought raising the powers of the state to mandate vaccinations, raised on appeal by the attorneys retained by an immigrant parson, this Honorable Court decided to "pass without extended discussion the suggestion that the particular section of the statute of Massachusetts now in question (§ 137, c. 75) is in derogation of rights secured by the *Preamble of the Constitution of the United States*", noting that, a "We the People" notwithstanding, *see* Thomas P. Crocker, "Don't Forget the First Half of the *Second Amendment*," *The Atlantic*, June 8, 2022, "[a]lthough that *Preamble* indicates the general purposes for which the people ordained and established the *Constitution, it has never been regarded as the source of any substantive power* conferred on the Government of the United States or on any of its Departments." *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). (emphasis added) But recently a former First Lady, addressing a "We the People", has nonetheless promoted the idea that "we don't have to stand idly by while others try to turn back the clock on progress," imploring "every American who cares about our democracy not to just get angry or dejected", Timothy Nerozzi, "Michelle Obama warns 'our democracy is fading' in speech boosting voter participation," *Fox News*, June 14, 2022, and, with an eye towards higher office, has urged a "We the People" to "[v]ote like the

future of our democracy depends on it," Robby Soave, "Michelle Obama WADES into '22 waters, 'Vote like the future of our democracy depends on it'," *The Hill*, January 10, 2022, perhaps not "woke" to the fact that "[a] new poll found that 75 percent of Black Americans are worried that they or a loved one would be physically attacked because of their race", Fatma Khaled, "Poll: 75% of Black Americans Fear Being Physically Attacked Because of Race," *Newsweek*, May 21, 2022, or that 81% of her people, "see COVID-19 as a major threat", "[a]bout a third of Black adults (35%) are very concerned that they themselves will get the coronavirus and require hospitalization, and another 29% are at least somewhat concerned about this possibility." Courtney Johnson & Cary Funk, "Black Americans stand out for their concern about COVID-19; 61% say they plan to get vaccinated or already have," *Pew Research Center*, March 9, 2021. And the answer to them from their politicians is "one man, one vote."

C. E Pluribus Unum (Out of Many One)

Appellant is grandson of a franchise martyr who of public record had built a church that today sits on the North Carolina State Historic Preservation Officer, *National Historic Registry, National Register of Historic Places*, "Mount Sinai Baptist Church," April 9, 1987, but he "ain't really black." Eric Bradner, Sarah Mucha & Arlette Saenz, "Biden: 'If you have a problem figuring out whether you're for me or Trump, then you ain't black'," *CNN*, May 22, 2020. Although his name has never appeared on a ballot in any federal election, for purposes of imposing fines for his activities, Appellant has been recognized as a candidate seeking 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).

This Honorable Court has suggested that "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office", *Monitor Patriot Co. v. Roy*, 401 U. S. 265 (1971), and yet, in a congressional district where the press has acknowledged that "[b]ookies probably wouldn't even lay odds on the chance of Republicans picking up the 8th Congressional District seat," Scott McCaffery, "GOP challengers to Beyer hope to gain traction," *Inside NOVA/Arlington Sun Gazette*, January 29, 2016.

And, it is abundantly clear that, under the *FOIA*, in unambiguous language that "[o]n complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant", 5 U.S.C. § 552(a)(4)(B), and is at that compelling point deemed to have exhausted all remedies, 5 U.S.C. § 552(a)(6)(C)(i), but yet, over a year after a request under the *FOIA* had been acknowledged in receipt by the White House, almost a year after litigation authorized under the controlling statute had been commenced, on an issue now presented before this Honorable Court for the second time, by a litigant who has been described by the

Federal Judiciary as a "litigation hobbyist"; Order, *U.S. Navy SEALs v. Biden*, Civil Action No. 4:21-cv-01236-O (N.D.Tex. May 23, 2022), and whose apparently "inartfully pleaded" allegations, "subjected to 'less stringent standards than formal pleadings drafted by lawyers'", *Brice v. Jenkins*, 489 F. Supp. 2d 538 (E.D. Va. 2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), have been dismissingly characterized as "enigmatic allegations" and "mere criticisms", *Webb v. Northam*, Order, *Webb v. Northam*, Civil Action No. 3:20CV497 (E.D.Va. August 25, 2020), apparently in contravention to *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

It was known early a chimeric virus was involved, a coronavirus with 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, 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, 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 conceded injury to places of worship. 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.

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

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

This Honorable Court has provided that, "[i]f this choice [of a regulatory agency] represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned", *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984) (citations omitted), that "'[j]udicial review of agency action. . . is limited to 'the grounds that the agency *invoked when it took the action*,'" *DHS v. Regents of the University of California*, 591 U.S. ___ (2020) (quoting from *Michigan v. EPA*, 576 U. S., at 743) (emphasis added), that, without more, mere "views could not affect the validity of the statute, nor entitle him to be excepted from its provisions". *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (citing *Commonwealth v. Connelly*, 163 Massachusetts 539; *Commonwealth v. Has*, 122 Massachusetts 40; *Reynolds v. United States*, 98 U.S. 145; *Regina v. Downes*, 13 Cox C.C. 111.), or that "[t]he only 'competent evidence' that could be presented to the court to prove these propositions was the testimony of experts, giving their opinions." *Id.* (quoting *Commonwealth v. Jacobson*, 183 Massachusetts 242 (1904). *See also* Fed.R.Evid. 701.

It has oft been repeated that "'[i]t is emphatically the province and duty of the judicial department to say what the law is'," *U.S. v. Nixon*, 418 U.S. 683 (1974) (quoting *Marbury v. Madison*, 1 Cranch 137 (1803)), and, empirically, the 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, 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, a disproportionate response 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.

Viruses are 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 219 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, 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), of which a total of five emerged between 2003 and 2005. Jeffrey S. Kahn & Kenneth 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.

It is of at least probative value that not one of the Appellees have yet entered an appearance, and, 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 "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).

A right to some level of due process has been afforded under various circumstances, of less significance, *Greene v. McElroy*, 360 U.S. 474 (1959); *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any citizen is afforded "the process that is due," *Sec'y of Labor v. T.P. Mining, Inc.*, 8 FMSHRC 687 (1986), an irreparable harm, in derogation or abnegation thereof. *Cohen v. Rosenstein*, 691 F. App'x 728, (Mem)–730 (4th Cir. 2017).

"The first step in risk management is to identify the hazards associated with a task and/or subtask, operation, process, facility, or equipment", DA Pam 385-30, *Safety: Risk Management*, Chapter 2-1, December 2, 2014, and this Honorable Court has suggested that, "[u]nless it has that effect on her right of choice, a state measure designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), and, here, there is no need to consider abstract considerations

"advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence", *Roe v. Wade*, 410 U.S. 113 (1973).

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

Of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid", *U.S. v. Salerno*, 481 U.S. 739 (1987), and, 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).

One jurist has opined that, "[w]here the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction", *In re Adoption of Doe*, 156 Idaho 345 (2014), and, it is abundantly clear to Appellant, that the plain language of the federal law suggests that mandatory rule that "'racketeering activity' means. . . any act or threat involving murder, . . . which is chargeable under State law and punishable by imprisonment for more than one year", 18 U.S.C. § 1961(A), and may further include as a predicate offense conspiracy to commit transnational terror, in violation of 18 U.S.C. § 2332b. 18 U.S.C. § 1961(G).

Equally clear notice, at least to a member of the laity, outside the profession of litigation, is the requirement for not simply an efficacy test, as was used for the release of the COVID-19 countermeasures for an *Emergency Use Authorization*

(EUA), see Marion F. Gruber, *Emergency Use Authorization (EUA) for an Unapproved Product Review Memorandum (Pfizer-BioNTech COVID-19 Vaccine/ BNT162b2)*, December 11, 2020, but rather a test of satisfactory effectiveness, 21 CFR § 314.125, which, under a plain word meaning would preclude a mere preprint of an efficacy study, Stephen J. Thomas, *et al.*, *Six[-]Month Safety and Efficacy of the BNT162b2 mRNA COVID-19 Vaccine*, $MedR_xIV$, July 28, 2021, https://doi.org/10.1101/2021.07.28.21261159, but yet reasonably comprehensible to an amateur sleuth, perhaps, where , "[t]he infectious dose of SARS-CoV-2 needed to transmit infection has not been established", Staff, "Scientific Brief: SARS-CoV-2 Transmission," *CDC*, May 7, 2021, a metric required to determine the proper correlates of protection to develop an effective vaccine, without the requirement for large stage three clinical trials, Shuo Feng, *et al.*, *Correlates of protection against symptomatic and asymptomatic SARS-CoV-2 infection*, MedRix, June 24, 2021, doi: https://doi.org/10.1101/2021.06.21.21258528, a metric not even discussed by Dr. Anthony Fauci in a White House Briefing, Joe La Palca, "New Evidence Points To Antibodies As A Reliable Indicator Of Vaccine Protection," *NPR*, August 23, 2021, until the same day that the Pfizer vaccine was rushed to approval at the Food & Drug Administration. New Release, "FDA Approves First COVID-19 Vaccine; Approval Signifies Key Achievement for Public Health," *FDA*, August 23, 2021.

Granting the deference due, under *Chevron*, how might one explain an assignment of an R-Naught of 2 to 2.5, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, a measure of transmissibility risk 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), and clinically determined to possess a SAR, 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, in revalidation in the largest sample size tracer contacts study to date, over three million laboratory cases, which found an SAR of only 4.6%. Ramanan Laxminaraya, *Epidemiology and transmission dynamics of COVID-19 in two Indian states*, pp. 691-697, Science 370 (2020)?

In an "evolving science", Gregory S. Schneider and Laura Vozzella, "Despite Northam's public health credentials, some Virginians question his leadership during pandemic," *Washington Post*, May 30, 2020, would this validated threat assessment no longer be 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)?

Like the classification of the yet unknown infectious dose, Staff, "Scientific Brief: SARS-CoV-2 Transmission," *supra*, for a biological agent that had increased in infectiousness, with "no wider community spread," a clinically aberrant finding for a

"highly contagious disease", even after the attempts of school administrators to employ a "de-densification process" to decrease on campus population during an outbreak that found, Genevive R. Meredith, *Routine Surveillance and Vaccination on a University Campus During the Spread of the SARS-CoV-2 Omicron Variant*, 5 JAMA Netw Open. 5, pp. e2212906. doi:10.1001/jamanetworkopen.2022.12906, a robust household trace contacts study in Europe had clinically determined recently that the most infectious virus that Appellee Walensky had claimed to have ever seen possessed a SAR of only 19.4%, Silje B. Jørgensen, *et al.*, *Secondary Attack Rates for Omicron and Delta Variants of SARS-CoV-2 in Norwegian Households*, *supra*, not, by the science, even an infectious virus, even if close, Julia Belluz, "China's cases of Covid-19 are finally declining. A WHO expert explains why," *supra*, and three times to low to validate as a highly contagious disease, like smallpox, with a SAR of 60%. Staff, "Transmission," *CDC*, December 5, 2016, https://www.cdc.gov/smallpox/clinicians/transmission.html (accessed August 25, 2020), neither the fact that, under Fed.R.Civ.Pro. 6(a),

"We who are seeking truth and not victory, whether right or wrong, have no reason to turn our eyes from any source of light which presents itself, and least of all from a source so high and so respectable as the decision of the supreme court of the United States." *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807) (a case brought for treason), and "[t]he ultimate purpose of the judicial process is to determine the truth". *Caldor, Inc. v. Bowden*, 330 Md. 632 (1993).

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 SAR, 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 SAR 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).

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 SAR 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 SAR and infectious dose were classified information, which, under *Classified National Security Information*, April 17, 1995, 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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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 Fourth Circuit Court of Appeals, without prejudice, permitting him to begin anew litigation to seek a response to a simple, not designated as complex, *FOIA* request, and to further seek redress for a disabling of a social media account, in clear violation of the *FACE Act*, on all evidence, under the time/decision rule, *Reid v. MSPB*, 508 F.3d 674 (Fed. Cir. 2007), in retaliatory censorship of free speech of a congressional candidate.

STATEMENT OF THE CASE

In a matter in which Appellant had found no response nor justification for nonresponse to a request presented under the *FOIA* to the White House on March 23, 2021, requesting whether standard epidemiological metrics of infectious dose and the SAR for COVID-19 were classified, expressly stating that under Executive Order 12,958, if such were determined to be classified, the causative biological agent would, as a matter of law, have to be under the control or ownership of the Government, and hence, would, by operation of law have to have originated in a laboratory, *see Association for Molecular Pathology*, Docket No. 12-398, 566 U.S., at ___; *Diamond*, 447 U.S., at 303, Myriad, immediately after the tolling of the deadline for a response, the White House engaged in a dubious scheme, tasking the Director of National

Intelligence (DNI) and the Intelligence Community to consider only two potential origin scenarios for a novel coronavirus, *see* Kate Sullivan, Donald Judd & Phil Mattingly, "Biden tasks intelligence community to report on Covid origins in 90 days," *CNN*, May 26, 2021, that by March 7, 2021, had found a loss of "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, as well as attributed to the fatalities of some 22,177 veterans, Staff, "Department of Veterans Affairs COVID-19 National Summary," *Veterans Administration*, June 17, 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.

Appellant describes the scheme as dubious because a less than five percent secondary attack rate pathogen, incapable of being transmitted from person-to-person, could neither zoonotically evolve or escape from a laboratory to set off a pandemic. And, just two days after the Trial Court had issued an order to amend the original complaint, it was announced that the White House would be coordinating with social media platforms to target "problematic accounts", Lawrence Richard,

"Biden administration 'flagging problematic posts for Facebook,' Psaki says," *Washington Examiner*, July 15, 2021.

Just four days later, Appellant's Facebook account, the primarily used for the political campaign page for which he served as administrator, was permanently disabled expressly for "security reasons", but thereby also blocking his access to the worship services broadcasted by his church of membership, the First Baptist Church of Alexandria, while it had been advised that for unvaccinated persons this was the safest option to enjoy free exercise rights in a pandemic.

The Trial Court thereafter refused to accept any summons prepared by Appellant, under the rational that the local rule permitted only the Clerk to prepare such documents, which were never issued, precluding service of process by the U.S. Marshal, pursuant to the duly filed praecipe therefor, and, before dismissal, refused to docket any matter for hearing, including a temporary restraining order, on rationale that there was no evidence in the record that Appellees had been served process.

REASONS FOR GRANTING CERTIORARI

I. Whether, on a valid claim arising under the *FOIA*, a Trial Court may not properly dismiss, *sua sponte*, a case, without decision, where the requested Agency has failed to issue any response or explanation for delay.

Under 5 U.S.C. § 552(a)(4)(B), a requester is expressly, unconditionally and unambiguously granted a statutory right to injunctive relief where an Agency fails to respond to a *FOIA* request, which, to date, had not occurred, constituting a compounding of an irreparable harm in denial of a substantive right. Conversely,

under 5 U.S.C. § 552(b)(1)(A), an Agency is granted an exemption from disclosure if the requested documents are determined to be classified, and the existence of the rule confirms the express provisions in Executive Order 12,958, which establish that the disclosure that material is classified is not deemed to be classified information, and, under the *FOIA*, and agency has a time limit to respond to state the reason in exemption to justify nondisclosure, and/or to notify the requestor that more time is required to respond, which, to date, has not occurred.

Under *Nixon*, this Honorable Court expressed its opinion that "[a]bsent a claim of need to protect military, diplomatic, or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for *in camera* inspection with all the protection that a district court will be obliged to provide", which, too, has yet to occur. Moreover, Article III Courts have determined that "[i]t is clear that the *FOIA* contemplates that the courts will resolve fundamental issues in contested cases on the basis of *in camera* examinations of the relevant documents", *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976) (citing *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976); 5 U.S.C. § 552(a)(4)(B), *as amended* (Supp. V 1975)), and such *in camera* inspections yet to be found, while any hearings have been denied.

Accordingly, Appellant being deemed to have exhausted all remedies, availing to him a defense of necessity, *U.S. v. Bailey*, 444 U.S. 394 (1980), beyond the statutory right to injunctive relief, a grant of certiorari to proceed to oral

arguments would be proper, in addition to any and all equitable relief deemed appropriate by this Honorable Court therefor.

II. Whether, on a valid claim arising under the *FOIA*, or, in the alternative, any other claim, a Trial Court may not, in departure from FedR.Civ.Pro. 4(b), refuse a plaintiff's self-prepared summonses, on a claim that the Trial Court prepares the summons, and yet fail to do so even after receipt of duly filed praecipes to effect the same..

At least in the Commonwealth, the state's highest court has repeatedly warned against attempts to short-circuit litigation, denying litigants a right to a day in court and opportunity to be heard on the merits. *RML Corp. v. Lincoln Window Prod., Inc.*, 67 Va. Cir. 545 (2004). On this Honorable Court, the former Chief Justice Rehnquist, joined by Justices Thomas and O'Connor, in dissent expressed his objection, when "[t]he Court. . . erect[ed] a novel prudential standing principle in order to avoid reaching the merits of the constitutional claim." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004), *abrogated by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). And similarly, on this Honorable Court in dissent, Justice Stevens exasperatingly expressed his objections, stating, in adherence to multiple prior precedents, "I would deny these petitions for writs of certiorari without reaching the merits of the motions to proceed in forma pauperis", noting that "[i]n the future, however, I shall not encumber the record by noting my dissent from similar orders denying leave to proceed in forma pauperis, absent exceptional circumstances." *Day v. Day*, 510 U.S. 1 (1993).

Accordingly, if only under the time/decision rule, the burden is shifted to the offending party to demonstrate good cause why such actions should not be deemed

retaliatory, and a grant of certiorari to proceed to oral arguments would be proper, in addition to any and all equitable relief deemed appropriate by this Honorable Court therefor.

III. **Whether, on a valid claim arising under the *FOIA*, a Trial Court, knowledgeable that, under 5 U.S.C. § 552(a)(6)(C)(i), a requestor is deemed to have exhausted all remedies, and, therefore, suffering irreparable harm, is by, statutory right, entitled to injunctive relief, 5 U.S.C. § 552(a)(4)(B), is required, *sua sponte*, under its inherent powers, or after docketing a matter for hearing, to enjoin an Agency and/or compel such agency to show cause why it has refused or delayed its reply.**

Under 5 U.S.C. § 552(a)(4)(B), a requester is expressly, unconditionally and unambiguously granted a statutory right to injunctive relief where an Agency fails to respond to a *FOIA* request, and, under 5 U.S.C. § 552(a)(6)(C)(i), a requester is deemed to have exhausted all available means. Hence, under a common law entitlement to injunctive relief, without good reason expressed, such right should be honored by a trial court, along with such other equitable relief is deemed proper by this Honorable Court, and a grant of certiorari to proceed to oral argument therefor would be appropriate and just.

IV. **Whether, on a claim arising under the *FACE Act*, where there is a continuing harm, in derogation of rights guaranteed under the *Free Exercise Clause*, a Trial Court must at least enjoin the offending conduct, and, under the *Citizenship Clause*, or, in the alternative, under *Due Process Clause*, a Trial Court must decide the presented matter on the merits.**

This Honorable Court had opined thatenactments that "by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based." (citing *Bartnicki v. Vopper*, 532 U.S. 514 (2001) (quoting *Turner Broad. System, Inc. v. FCC*, 512 U.S. 622 (1994)), and, in a matter

familiar to Appellant, having stood up the counterintelligence operations cell in response to the Oklahoma City bombing, in a case involving a pro-life activist, at most engaged in creative free speech, generally granted wide latitude, "a jury verdict finding him guilty on two misdemeanor counts under 18 U.S.C. § 248," which was affirmed. *U.S.A. v. Hart*, 212 F.3d 1067 (8th Cir. 2000).

Similarly, the Department of Justice (DoJ) has gone to the extent to retroactively parse the arrest records of the District of Columbia Police Department to select for a grand jury a misdemeanor trespass that had occurred in the previous Administration, in a matter that law enforcement agency did not pursue in prosecution, to indict pro-life activists, Press Release, "Nine Defendants Indicted on *Federal Civil Rights Conspiracy* and *Freedom of Access to Clinic Entrances Act (FACE Act)* Offenses for Obstructing Patients and Providers of a Reproductive Health Services Facility," DoJ, March 20, 2022, a *cause celebre* familiar to Appellant, as a participant in Red Rose Rescues, of some distinction, *see Webb v. Commonwealth*, Civil Action No. 1-18-00-1251 (E.D.Va. 2018); *on appeal U.S.A. v. Webb/Webb v. Commonwealth*, Record No. 19-6403 (4 th Cir. 2018) (affirming nullification of 28 U.S.C. §1455, which had been recognized by the Supreme Court in *Georgia v. Rachel*, 384 U.S. 780 (1965) during the integration of lunch counters in Atlanta).

"The *FACE Act* was first proposed by then-Congressman Chuck Schumer, D-NY, in 1993. Democrats overwhelmingly supported the legislation, and it was signed into law by Democratic President Bill Clinton in 1994." CV Newsfeed, "Analysis: FACE Act, Backed by Pro-Abortion Politicians, Also Protects Churches", *Catholic*

Vote, May 6, 2022, "NARAL worked towards the passage of the *Freedom of Access to Clinic Entrance (FACE) Act* which forbids anyone from threatening or physically obstructing individuals entering abortion clinics." (citing "Timeline." NARAL Pro-Choice America. Accessed May 1, 2020. https://www.prochoiceamerica.org/timeline/). Staff, "NARAL Pro-Choice America," *Influence Watch*, https://www.influencewatch.org/non-profit/naral-pro-choice-america/ (accessed June 17, 2022).

"Between the passage of FACE in 1994 and 2005, the Department of Justice (DOJ) obtained the convictions of 71 individuals in 46 criminal prosecutions for violations of *FACE*", and "DOJ brought 17 civil lawsuits under *FACE*, which have resulted in injunctive relief, damages, and/or penalties", Staff, "National Abortion Federation: *Freedom of Access to Clinic Entrances (FACE) Act*," *ProChoice*, http://prochoice.org/pubs_research/publications/downloads/about_abortion/face_act.pdf (accessed June 17, 2022) (citing National Task Force on Violence Against Health Care Providers, Department of Justice, *Report on Federal Efforts to Prevent and Prosecute Clinic Violence 1998-2000*), but no actions to date have been commenced by DoJ in defense of places of worship, even with the Virginia Governor's concession that he had exceeded his authority in blocking access to places of worship. Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *supra.* But now, no longer asleep in the faith, after Appellant's second case brought under the *FACE Act*, *Webb v. Northam*, Civil Action No. 3:2022-cv-00222 (E.D.Va. June 10, 2022) "CatholicVote

President Brian Burch on Friday called on Attorney General Merrick Garland to enforce the *Freedom of Access to Clinic Entrances (FACE) Act.*" CV Newsfeed, "Analysis: FACE Act, Backed by Pro-Abortion Politicians, Also Protects Churches", *supra.*

Actions speak louder than words, and Appellant has presented an unanswered *FOIA* to DoJ regarding the rationale for the recent charges brought under the *FACE Act*, in conjunction with the unprecedented charges brought under 18 U.S.C. § 241 to warrant the convening of a grand jury, while it is clear that the present posture of DoJ is that access to worship, guaranteed under the *First Amendment*, is subordinated to a women's right to terminate her pregnancy, which would, under traditional jurisprudence, find contributory negligence, barring recovery under assumption of risk.

Accordingly, if only under the time/decision rule, the burden is shifted to the offending party to demonstrate good cause why such actions should not be deemed retaliatory, and a grant of certiorari to proceed to oral arguments would be proper, in addition to any and all equitable relief deemed appropriate by this Honorable Court therefor, if the *Free Exercise Clause* has any legal effect.

V. Whether a Trial Court may not exercise its powers against a candidate for office to stifle free speech.

At least under the plain word meaning of the controlling statute, "[w]hoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to. . . evade legal process summoning that person to appear as a witness, or to

produce a record, document, or other object, in an official proceeding. . . shall be fined under this title or imprisoned not more than 20 years, or both", 18 U.S.C. § 1512(b)(2)(C), and refusal to issue a summons, actions not judicial in nature, as well as a predicate offense under the federal racketeering statute, 18 U.S.C. § 1961(B), pierce the veil of judicial immunity. *Battle v. Whitehurst*, 831 F. Supp. 522 (E.D. Va. 1993), aff'd, 36 F.3d 1091 (4th Cir. 1994).

Fed.R.Crim.Pro. 6(a) suggests that a grand jury would have been convened, yet even the inherent powers of the Court of Appeals found not even any cause for suspicion, and "it emphatically the province and duty of the judicial department to say what the law is"? *Marbury*, 1 Cranch, at 137.

CONCLUSION

For the reasons stated above, Appellant, Webb respectfully requests the Court to grant certiorari for oral arguments to determine whether the decision by the Fourth Circuit Court of Appeals 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: 6-15-22
(Date)

Subscribed, acknowledged and sworn to before me, the undersigned Notary Public in the County of Prince Georges, in the Commonwealth of Virginia, this 19 day of June, 20 22.

NOTARY PUBLIC

VICKI MCCLENTON-GILMORE
PRINCE GEORGES COUNTY, MD
NOTARY PUBLIC
MY COMMISSION EXPIRES
APR 16 2026

My commission expires: 4/16/26 Registration Number: _____