No. 22-_____

In The
Supreme Court of the United States

JACK JORDAN,

Petitioner,

v.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal appeals court has the power to disbar an attorney by denying the attorney an evidentiary hearing (which the attorney requested) based on judges' cursory conclusory contention that the attorney's "arguments" are "largely frivolous and conclusory."

2. Whether a federal appeals court has the power to disbar an attorney based on nothing more than judges' mere conclusory contention that some unidentified "evidence" of some unidentified attorney "misconduct" merely was "set forth" in inadmissible hearsay in a prior "order."

3. Whether federal judges have the power to create (or imply) an evidentiary privilege for judges to allow judges to avoid testifying (under oath subject to cross-examination) when judges' hearsay is the purported "evidence" used to justify disbarring an attorney.

4. Whether a federal court may disbar an attorney based on a prior court's purported disciplinary action without affording such attorney notice identifying particular purported misconduct and all facts material to proving such misconduct and affording such attorney a reasonable opportunity to respond to such notice.

QUESTIONS PRESENTED—Continued

5. Whether a federal court may disbar an attorney without issuing a decision identifying the attorney's purported misconduct, stating findings of material facts and identifying clear and convincing evidence of each such fact.

6. Whether a federal court may punish an attorney because such attorney stated in federal court filings that a judge (while presiding over court proceedings) asserted falsehoods the judge knew were false and committed federal offenses (*e.g.*, 18 U.S.C. 241, 242, 371, 1001, 1343, 1349, 1512(b) or 1519) before the disbarring court shows or identifies clear and convincing evidence of all facts material to proving that the attorney statements were factually false, *i.e.*, the judge did not assert such lies or commit such crimes.

RELATED PROCEEDINGS

Kansas Supreme Court:

In re Jordan, 518 P.3d 1203 (Kan. 2022).

The Kansas Supreme Court based its decision on contentions in the following:

U.S. District Court (Western District of Missouri):

Ferissa Talley v. U.S. Dept. of Labor, No. 19-00493CV-W-ODS, Order of Chief Judge Phillips fining Petitioner $1,000 for criminal contempt (Mar. 4, 2020); Order of Judge Smith fining Petitioner $500 for criminal contempt (Jul. 30, 2020).

U.S. Court of Appeals (8th Cir.):

Ferissa Talley v. U.S. Dept. of Labor, No. 20-2439 (Jul. 30, 2021) (aff'g criminal contempt fines).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jack Jordan respectfully petitions for a writ of certiorari regarding disbarment by the U.S. Court of Appeals for the Tenth Circuit.

DECISIONS BELOW

The Tenth Circuit order (App. 1-3) and denial of rehearing (App. 6) are unreported. They were predicated solely on the Kansas Supreme Court's disbarment order (App. 11-114), reported at *In re Jordan*, 518 P.3d 1203 (Kan. 2022), available at 2022 Kan. LEXIS 111, 2022 WL 12128182.

JURISDICTION

The Tenth Circuit order was entered on January 3, 2023. App. 1-3. A timely-filed motion to reconsider was "construed as a petition for rehearing" and "denied" on January 20. App. 6. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Art. III, §2:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and

> Treaties made, or which shall be made, under their Authority . . . [and] to Controversies to which the United States shall be a Party. . . .

U.S. Const. Art. VI:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. . . .

U.S. Const. Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

28 U.S.C. 2071(a)

> The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of

> Congress and rules of practice and procedure prescribed under section 2072 of this title.

28 U.S.C. 2072:

> (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates [magistrate judges] thereof) and courts of appeals.
>
> (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

28 U.S.C. 2074(b):

> Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

STATEMENT OF THE CASE

Tenth Circuit judges summarily "disbarred" Petitioner. App. 3. They "denied" Petitioner's "request for an evidentiary hearing" because Petitioner's "arguments" were merely purportedly "largely frivolous and conclusory." *Id*.

Tenth Circuit judges also lied. They lied about seeing (an unidentified quantum of unidentified) "evidence" that Petitioner's speech/petitions constituted

(unidentified) "misconduct." App 2. They knowingly misrepresented that "in its disbarment order" Kansas "set forth" all "the evidence" required to prove Petitioner's speech/petitions constituted "misconduct." *Id*.

Tenth Circuit judges repeatedly failed and expressly refused to identify any relevant evidence, any material fact, any purported misconduct or even any relevant rule of conduct. *See* App. 1-3, 6, 7. They prevented other Tenth Circuit judges from reviewing their lies and their knowing violations of federal law and the Constitution. *See* App. 8, 9.

They knew they could not (and they knew Kansas did not) identify any evidence that any Petitioner speech/petition violated any rule of conduct. They knew Kansas judges lied about evidence and controlling legal authority, including to shift Kansas's burden of proof onto Petitioner.

Kansas judges had admitted that "[a]ny discipline imposed here is premised on" Petitioner's purportedly "baseless assertion of frivolous factual issues" in written "federal court" filings. App. 97. Kansas did not even attempt to prove (with any evidence of any fact) that any Petitioner speech/petition violated any rule of conduct.

In federal courts, Petitioner had filed motions and responses to show cause orders in which Petitioner stated (and showed) that judges and attorneys lied about evidence, knowingly violated federal law and the Constitution, and committed particular federal offenses. *See*, *e.g.*, App. 16-35, 38-46.

To this day, Petitioner's statements are undisputed. No one ever even contended that any Petitioner statement was factually false. No one ever even asserted any fact that might establish that any Petitioner statement was false. No one ever even contended that any judge or attorney did not lie or commit any crime exactly as Petitioner stated.

Solely and expressly for Petitioner's speech/petitions, above, Judges Phillips and Smith (Mo. W.D.) fined Petitioner $1,000 and $500. *See* App. 29, 50, 57, 61, 75, 84.

Solely and expressly for Petitioner's speech/petitions, above, Judges Phillips and Smith sought to have Petitioner disbarred by Kansas, and Eighth Circuit judges affirmed the fines and the attempts to have Petitioner disbarred and they even *sua sponte* disbarred Petitioner. *See* App. 32, 36, 38, 42-43, 45, 62.

Solely and expressly for Petitioner's speech/petitions, above, Kansas and Tenth Circuit judges disbarred Petitioner. *See* App. 1-3, 48, 49, 113.

Petitioner repeatedly proved that this Court's precedent and the Constitution "require[d]" Kansas to "prove that the statements he made about judges in his filings were false" and Kansas "failed to prove" Petitioner "made any false statement." App. 66 citing such precedent. Petitioner emphasized "his assertions" must be but "have not been prove[d] false." App. 12. Petitioner emphasized that Kansas "fail[ed] to demonstrate" Petitioner's "assertions about judges lying and committing crimes were false." App. 97. Petitioner

emphasized that Kansas "failed to prove" that "any" Petitioner "assertion" was "false." App. 108.

Kansas attorneys merely "disagree[d]" that Kansas "must prove that" Petitioner "made a false statement." App. 70. So Kansas judges merely contended that Kansas attorneys somehow "determined" that Kansas "was not required to prove" any Petitioner "statements were false." App. 109.

Kansas judges also pretended Kansas's "rule" established Kansas must prove only "reckless disregard for [a] statement's truth." App. 108. Then, they contended that "[t]he outlandish nature, abusive tone, frequency, and breadth of" Petitioner's statements "and their" purportedly "seemingly indiscriminate application" somehow "render them" merely "incredible." App. 109.

Petitioner emphasized "[n]o one even contended, much less attempted to show, that any statement by [Petitioner] was false regarding any fact or that it in any way adversely affected the administration of justice." App. 105. Kansas judges ignored copious evidence and knowingly violated Kansas statutes and the U.S. and Kansas Constitutions. They merely contended "that clear and convincing evidence" proves Petitioner's speech/petitions violated "each rule" at issue. *Id*. *Accord* App. 12.

Instead of identifying any such evidence, Kansas attorneys and judges misrepresented or pretended that Petitioner "has the burden to disprove" so-called "findings" by federal judges. App. 49, 56, 60, 71, 102,

110. They merely contended that Petitioner "presented" or "provided" "no evidence" to prove that federal judges lied and committed federal offenses. App. 47-48, 50, 55, 58, 61, 65, 72.

They merely contended that Petitioner "failed to come forward with evidence" to prove the judges lied, and that, alone, was the basis for "Judge Phillips' ruling that" Petitioner's statements "were baseless and made" with purported "reckless disregard for their falsity." App. 110-111. But Judge Phillips never even contended that Petitioner "disregard[ed]" any statement's "falsity." *Id*.

Kansas judges also pretended they could fabricate a "presumption" so Petitioner was required to rebut so-called "findings" by federal judges. App. 105, 106. But they failed to identify even one fact found by any federal judge. Instead, they quoted only vague conclusory contentions.

Kansas judges' contention that Petitioner "violated KRPC 8.2(a)" was "based" on "Judge Phillips' [so-called] finding that" Petitioner "made" some "baseless allegations" and Petitioner "acted with reckless disregard to their truth or falsity" and Petitioner's "failure to disprove" such so-called "finding." App. 109-110.

To pretend to justify fining Petitioner $1,000, Judge Phillips merely contended that Petitioner asserted "baseless allegations that Judge Smith intentionally and knowingly issued legally incorrect rulings, engaged in criminal misconduct, lied, and

conspired" with government attorneys to conceal evidence. App. 71.

So Kansas judges contended that Judge Phillips's "contempt order" purportedly "found" Petitioner "failed to establish a factual basis for" his statements "or a likelihood that such basis could be developed" and purportedly "found" Petitioner's "accusations lacked a reasonable basis in fact. These [so-called] findings [purportedly] established" Petitioner's "contentions were frivolous." App. 105.

Kansas attorneys and judges merely contended that Judge Phillips's vague conclusory contentions (inadmissible hearsay) constituted "evidence that" Petitioner "made" some unidentified "statement" with "reckless disregard as to its truth or falsity." App. 57, 71.

Kansas and federal judges knew some of their contentions were false. Regarding Petitioner's $500 fine, they vaguely alluded to "violations" of unidentified purported "Orders." App. 106. But they knew Judge Smith did not order, he expressly merely "warns" and issued "warnings." App. 32, 62. *Accord* App. 79 ("warned"). Judge Smith also merely contended that more than "ten" entire "motions" somehow were "largely frivolous, unprofessional, and scurrilous" and maybe "defamatory." App. 32, 62.

Kansas judges knew the hearing panel attorneys lied presenting "clear and convincing evidence that" Petitioner "violated KRPC 8.2(a)." App. 64. In particular, Kansas judges knew the attorneys lied about

"evidence" that Petitioner "had not read an unredacted version of Powers' email" and lied about "evidence" of Petitioner's "knowledge that he lacked evidence of what Powers' email actually said." App. 49. *See also* App. 54-55, 63 ("evidence" Petitioner "had not read an unredacted version of Powers' email"); App. 17 ("had not read" "what was contained in Powers' email").

Kansas judges emphasized that Kansas attorneys "concluded" that Petitioner "violated KRPC 8.2(a)" only "because" Petitioner purportedly "never read an unredacted version of the Powers e-mail." App. 100. Kansas judges pretended that Kansas attorneys' bare assertions and lies about such evidence somehow constituted evidence that Petitioner's "assertions" that "judges lied about Powers' email, concealed evidence, and committed crimes" clearly "had to have been made with reckless disregard to their truth or falsity." *Id*.

Kansas judges lied when they contended that "clear and convincing evidence establishes a KRPC 8.2(a) violation." *Id*. They lied when they contended that "clear and convincing evidence establishes" Petitioner's "violations of KRPC 3.1, 3.4(c), 8.2(a), and 8.4(d) and (g)." App. 2. They lied when they contended that "clear and convincing evidence supports each rule violation the panel found." App. 95.

Kansas attorneys and judges failed to identify any evidence (or even state any fact) that could support any conclusion that any Petitioner statement was false, frivolous, prejudiced any administration of

justice, or violated any Kansas rule of conduct in any way.

Kansas judges pretended that they had the power to create a rule that converted judges' mere hearsay and conclusory contentions into "evidence" of Petitioner's "commission" of "conduct" without any judge testifying to any material fact. App. 48-49, 56, 60, 70, 102 *quoting* Kan. Sup. Ct. R. 220(b).

Kansas judges also lied about Kansas attorneys "admit[ting]" the hearsay of Judges Smith and Phillips as "evidence of" Petitioner's "misconduct." App. 102. The Kansas attorneys expressly and repeatedly refused to admit such hearsay as evidence to "prove the truth" of any "matter asserted" by Judges Smith and Phillips about Petitioner's conduct. App. 88-90. Kansas attorneys emphasized that such hearsay was "admitted" only "to prove the content of" court "record[s]," *i.e.*, to prove what judges merely wrote "and the panel considers" such hearsay "only for that purpose." App. 90.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for many compelling reasons.

I. This Is a Clean Vehicle to Address Issues of Profound Constitutional Importance, Including Appeals Court Judges' Knowing and Vicious Violations of the Constitution.

Tenth Circuit judges lied about seeing "the evidence" (somewhere "in" the Kansas "order") that Petitioner's speech/petitions constituted some unidentified kind of "misconduct," and Kansas judges lied about seeing "clear and convincing evidence" that Petitioner's speech violated five rules of conduct. *See* pages 3-4, 6-7, above. Tenth Circuit and Kansas judges openly admitted (and proved) that, in fact, they disbarred Petitioner solely because his speech/petitions exposed and opposed the lies and crimes of judges. *See* pages 3-5, above.

The conduct of Kansas and Tenth Circuit judges highlights outrageously unconstitutional tactics abused by judges to pretend to justify "disciplining" attorneys. Judges use their opinions and orders expressly and specifically to fabricate "evidence" that they know constitutes inadmissible hearsay. Worse still, they fabricate false "evidence" by including knowing falsehoods in their opinions or orders.

The facts are clean and straightforward. No material facts are or can be in dispute. The controlling legal

authorities and issues are clear and compelling. Tenth Circuit and Kansas judges failed to identify any fact or evidence establishing that any Petitioner statement (about lies or crimes of judges) was false or constituted misconduct. Such judges proved beyond reasonable doubt that some judges knowingly violate federal law and the Constitution and flout this Court's precedent merely because they want to and think they can.

Tenth Circuit judges clearly and repeatedly flouted this Court's precedent. They clearly, knowingly and repeatedly violated judges' duties and Petitioner's rights under many provisions of the Constitution and federal law. Their misconduct was so illegal it was criminal. *Cf*. 18 U.S.C. 241, 242 (below). Such judges pretend to have the power to thwart, flout, violate and undermine their own court, this Court, federal law, Congress, and the Constitution.

Twice, Tenth Circuit judges emphasized that they knew this Court's precedent (and the Constitution) clearly precluded disbarring Petitioner without "proof of misconduct." App. 1 citing *Selling v. Radford*, 243 U.S. 46 (1917). *Accord* App. 3 (reiterating *Selling*'s emphasis on "insufficient proof of misconduct").

Petitioner's "admission to the Bar of" a federal "court" is a "right" that "may not be taken away" merely because other judges merely sought Petitioner's "disbarment." *Selling* at 48. "[T]he character and scope of the investigation" required of a federal court considering reciprocal discipline "must depend upon the character" of "acts of misconduct and wrong"

committed "and the nature of the proof" necessary "to establish" the "existence" of "misconduct." *Id*. at 49.

This Court "authoritatively expounded in *Selling*" the irrefutable "responsibility that remains in the federal judiciary" regarding reciprocal discipline. *Theard v. United States*, 354 U.S. 278, 282 (1957). This Court also explained the reason.

Petitioner is "an officer" of this Court and was "an officer" of the Tenth Circuit and Kansas courts, "and, like" each such "court," Petitioner is "an instrument or agency to advance the ends of justice." *Id.* at 281. So any "power of disbarment" may be used only "for the protection of the public." *Id*. It clearly may not be used to protect judges who are undermining and attacking the Constitution and the public by lying or knowingly violating litigant rights guaranteed by law (including federal criminal law) and the Constitution.

Tenth Circuit judges further knowingly violated federal law (and the Constitution) requiring that Petitioner "be given" a reasonable "opportunity to show good cause" why he cannot constitutionally be "disbarred." FED.R.APP.P. 46(b)(2). They knew a "hearing" must be "held" because it was "requested." FED.R.APP.P. 46(b)(3).

Tenth Circuit judges summarily "denied" Petitioner's "request for an evidentiary hearing" (App. 3) to knowingly deny him additional due process of law. The judges expressly pretended that a mere conclusory allusion to hearsay "set forth" by Kansas judges "in" their "disbarment order" was all the "evidence" they

needed to disbar Petitioner. App. 2. They knew (Petitioner briefed) that such hearsay was not admissible evidence of (so it could not prove) misconduct by Petitioner. They knew there was no proof.

"Hearsay" by Kansas or prior federal judges clearly was "not admissible" against Petitioner. FED.R.EVID. 802. Exceptions exist for certain findings of fact or judgments, but such exceptions were irrelevant. *Cf*. FED.R.EVID. 803(8)(iii), 803(22), 803(23).

Moreover, before federal courts can treat any judge's "hearsay" as true and use it against Petitioner, it must be "admitted in evidence" (at a hearing) and Petitioner must be afforded an opportunity to call "the declarant as a witness" and "examine the declarant" as if "on cross-examination," and "the declarant's credibility may be attacked" by "any evidence that would be admissible for those purposes if the declarant had testified as a witness." FED.R.EVID. 806. If any federal court wishes to use any judge as a witness, Petitioner "is entitled to cross-examine the witness." FED.R.EVID. 614.

Tenth Circuit judges knew (Petitioner briefed) that "rules of practice and procedure" or "rules of evidence" bound the judges, and such rules cannot be abused to "abridge" or "modify any substantive right" of Petitioner. 28 U.S.C. 2072(a), (b). They knew (Petitioner briefed) that no rule (or ruling) could protect judges from testifying under oath and being cross-examined by Petitioner if such judges' hearsay was used against Petitioner. Any "evidentiary privilege" not

expressly authorized by "Congress" is illegal and unconstitutional. 28 U.S.C. 2074(b).

Tenth Circuit and Kansas judges knew they could not identify any evidence that Petitioner's speech constituted misconduct. They knew Petitioner's disbarments were illegal, unconstitutional, fraudulent shams.

II. The Tenth Circuit Judges Engaged in the Foregoing Misconduct to Further Flout *Selling* and Knowingly Violate the Constitution.

Twice, Tenth Circuit judges emphasized that they knew this Court's precedent (and the Constitution) clearly precluded disbarring Petitioner for another "grave reason" making disbarment "unjust." App. 1 citing *Selling*, 243 U.S. 46. *Accord* App. 3 (reiterating *Selling*'s emphasis on such "grave reason").

Tenth Circuit and Kansas judges specifically and expressly disbarred Petitioner solely for his speech exposing and opposing the lies and crimes of judges. *See* pages 3-5, above. Tenth Circuit and Kansas judges knew (Petitioner briefed) that disbarring Petitioner for such speech/petitions would be so unjust that Congress made it criminal.

Each disbarment order was issued specifically and expressly to "injure, oppress, threaten, or intimidate" Petitioner "in the free exercise or enjoyment of any right or privilege secured to" him "by the Constitution"

or federal "laws" and because Petitioner "exercised" such "right or privilege." 18 U.S.C. 241.

Each disbarment order was issued specifically and expressly to act "under color of any" legal authority to "willfully subject[]" Petitioner to "the deprivation of any rights, privileges, or immunities secured or protected by the Constitution" or any federal "laws." 18 U.S.C. 242. The "qualification" regarding "alienage, color and race" in Section 242 does not apply "to deprivations of any rights or privileges." *United States v. Classic*, 313 U.S. 299, 326 (1941).

"Even judges" clearly "can be punished criminally" under Sections 241 or 242 "for willful deprivations of constitutional rights." *Imbler v. Pachtman*, 424 U.S. 409, 429 (1976). "The language" is "plain and unlimited" and it "embraces all of the rights and privileges secured to citizens by all of the Constitution and all" federal "laws." *United States v. Price*, 383 U.S. 787, 800 (1966).

III. This Court Should Re-emphasize that Neither Judges Nor Attorneys Are Exempt from the Constitution.

"[T]he law gives judges as persons, or courts as institutions" absolutely "no greater immunity from criticism than other persons or institutions." *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839 (1978) (cleaned up). "The operations of the courts and the judicial conduct of judges are matters of utmost public concern." *Id*. So "speech cannot be punished" merely "to

protect the court as a mystical entity or the judges as individuals or as anointed priests set apart from the community and spared the criticism to which" all "other public servants are exposed." *Id*. at 842.

There also is "no room in the" Fifth or Fourteenth Amendments to discriminate based on mere "classifications of people so as to deny it to some and extend it to others. Lawyers are not excepted from the words 'No person'" in the Fifth Amendment, and courts "can imply no exception." *Spevack v. Klein*, 385 U.S. 511, 516 (1967). The "views" from the following dissent "need not be elaborated again." *Id.* at 514.

> [T]he important role [of] lawyers [] in our society [makes it] imperative that they not be discriminated against with regard to the basic freedoms that are designed to protect the individual against the tyrannical exertion of governmental power. For [] the great purposes underlying [such] freedoms [include affording] independence to those who must discharge important public responsibilities. [Lawyers], with responsibilities as great as those placed upon any group in our society, must have that independence.

Cohen v. Hurley, 366 U.S. 117, 137 (1961) (Black, Douglas, JJ., and Warren, C.J., dissenting).

Judges and "courts depend" on an "independent bar" for "the proper performance of [judges' and courts'] duties and responsibilities." Restricting conscientious, capable "attorneys" from "presenting arguments and analyses to the courts distorts the legal

system by altering the traditional" and constitutional "role" of "attorneys." *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 544 (2001). "An informed, independent judiciary" must have "an informed, independent bar." *Id*. at 545. Courts cannot "prohibit[] speech and expression upon which courts must depend for the proper exercise of the judicial power." *Id*. Judges cannot "exclude from litigation those arguments and theories" they deem "unacceptable but which by their nature are within the province of the courts to consider." *Id*. at 546.

IV. This Court's Silence Encourages Judges to Violate the Constitution.

So many judges on so many courts have so openly and "so far departed from the accepted and usual" (constitutional) "course of judicial proceedings" that their misconduct cries out for prompt and decisive "exercise[s] of this Court's supervisory power." U.S. Sup. Ct. R. 12(a). Many lower court and state court judges are flagrantly eviscerating important laws and the Constitution. Such judges will not follow this Court or comply with the Constitution unless this Court leads and disciplines them. When this Court is enforcing unchallenged precedent (as here), it could do so with minimal effort.

This Court's silence will deny "the People" the benefits for which the "Constitution" was written, ratified and repeatedly amended, *i.e*., to make "a *more* perfect Union," to "*establish* Justice," to "*insure* domestic

Tranquility," to "*promote* the general Welfare," and to "*secure* the Blessings of Liberty." U.S. Const. Preamble (emphasis added).

Too often, this Court has emphasized purported mere "due process." Amends. V, XIV. Too often, it has ignored the extent to which Americans are "entitled to all Privileges and Immunities of Citizens" who (to protect themselves and each other) designed the Constitution and constituted federal government to "guarantee" truly "Republican Form of Government." Art. IV.

This Court should not sit silent while inferior courts thwart all the foregoing. Such silence renders this Court in some areas essentially superfluous and far from "supreme." Art. III. Federal and state court and agency judges (and their attorneys) far too commonly and routinely treat this Court, its precedent, and the Constitution as irrelevant rather than controlling.

The misconduct of Kansas and Tenth Circuit judges cannot be defended. They openly conspired to commit fraud as vicious and vile as Madoff's. They abused the respectability of their courts – and they are counting on the silence of this Court – to defraud Petitioner and deprive him of everything he has worked for and earned with a lifetime of hard work. Judges are committing crimes to oppress critics.

This Court, the Constitution and the people are being attacked by too many mutinous judges. This Court should not sit silent and allow judges to silence

lawyers supporting the Constitution by exposing and opposing egregious judicial misconduct.

V. This Court Should Emphasize that Freedom of Expression Is *from* Judges' and Legislators' Historical Oppression and Repression.

The Constitution expressly guarantees freedom of expression precisely because of the long, dark history of brutal repression of expression by judges and legislators. Judges drove the descent into darkness to its blackest depths.

"Blackstone" and his "*Commentaries on the Laws of England*" and "Sir Edward Coke" and "his report of the case *De Libellis Famosis* in 1606" provide compelling reminders of judges' terrifying abuses of power to punish criticism of people in power. Stephen D. Solomon, *Revolutionary Dissent: How the Founding Generation Created the Freedom of Speech* (2016) at 100.

The infamous Star Chamber enforced Parliament's cruel fiction that exposing "corrupt or wicked Magistrates" was a "criminal act" ("seditious libel") *because* such expression (merely) revealed the greatest "scandal of government," *i.e.*, that "corrupt or wicked Magistrates" had been "appointed." *Id*. at 39. But "with *De Libellis Famosis*, the Star Chamber" judges fabricated the even more absurd and cruel fiction that "a true statement" must be punished. *Id*. Such monstrous "precedent" of so-called "common law" became a

horrific "common maxim," *i.e.*, "the greater the truth, the greater the libel." *Id*.

That vile, poisonous "common law" of repression "lived on" in England and was "exported to the colonies." *Id*. The so-called "common law" and "legal commentators in America" blindly "followed the lead of Coke and Blackstone," ruining how American "lawyers and judges viewed freedom of expression" for many "years" even after "the Revolution." *Id*. at 100. Even to this day.

In 1765, "Blackstone" wrote that "freedom of the press meant" only "the right" to print "without prior censorship," *i.e.*, not freedom from punishment for seditious libel. *Id*. at 4. Bizarrely, many judges viewed Blackstone's history as more important than their own present (decades of demonstrations of the freedom of speech and press, including *Common Sense* and writing and ratifying the Declaration of Independence, the Constitution and the Bill of Rights). Even the wise Justice Holmes initially was deceived and believed that because the common law of "criminal libel" required "punishment" of even "true" criticism, such "rule" (somehow absurdly) "applies" even to purported "contempts." *Patterson v. Colorado*, 205 U.S. 454, 462 (1907).

The horrific history of repression of expression by judges and legislators is why good and great Antifederalists and Federalists (and the people) demanded and created documentation of "the freedom of speech" and "press" and "the right of the people peaceably to

assemble, and to petition the Government." U.S. Const. Amend. I. Such history is why good and great judges (including Justice Holmes and this Court's current justices) have defended First Amendment freedoms.

In the colonies, judges and legislators viciously wielded the law of seditious libel to perpetuate a reign of terror. They cruelly and brutally abused critics. "Most convictions" carried "fines and imprisonment," which could physically or fiscally crush critics. Solomon, *Revolutionary Dissent* at 19. Sometimes, vicious officials made their point with extreme violence. "Courts sometimes ordered" critics "ears be cropped or cut off entirely." *Id*. One critic was "lashed thirty-nine times on his bare back." *Id*. Another "was fined" *and* "whipped" *and* "both his ears" were "cut off" *and* he was "banished." *Id*. at 20. Another "had his arms broken" and *then* was forced "to run a gauntlet of men beating him with" muskets *and then* "authorities pierced his tongue with an awl." *Id*. at 19-20.

Despite the 1774 and 1776 Declarations of Congress (below), the Constitution and the Bill of Rights, the ghosts of Blackstone and the Star Chamber haunt American courts to this day. The dead hand of the Star Chamber still strangles speech of American attorneys who did or would expose and oppose judicial misconduct.

Petitioner's disbarments are quintessentially Star Chamber practices, prejudices and oppression. The documents judges created to commit or justify their misconduct were devoid of intelligence or integrity.

They are compelling evidence of dangerous deceit or dangerous incompetence.

VI. This Court Should Re-emphasize Why and How the Freedom of Speech and Press Are the Bulwark of Liberty.

Wise people "always" have "widely understood that" the Bill of Rights "codified" multiple "pre-existing right[s]," which were not "granted by the Constitution" or "in any manner dependent upon" the Constitution for their "existence." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). Many judges, however, fail to grasp or refuse to respect the significance of that truth. This Court needs to re-emphasize prior precedent to protect attorneys exposing or opposing egregious judicial misconduct.

"Constitutional rights are enshrined with the scope they were *understood* to have when the *people* adopted them, whether or not future *legislatures*" or "*judges* think that scope too broad." *Id*. at 634-35 (emphasis added). "Constitutional rights" are "enshrined with the scope they were understood to have *when the people adopted them*." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111, 2136 (2022) (emphasis by the Court).

The First Amendment "is the very product of an interest balancing by the people" and it clearly "elevates above all other interests the right of law-abiding, responsible citizens" to use speech and petitioning "for self-defense" against abusive public officials. *Bruen* at

2131 *quoting Heller* at 635. "It is this balance—struck by the traditions of the American people—that demands" the "unqualified deference" of all public servants. *Id*.

This Court must *compel* judges to defer to "the traditions of the American people." *Id*. This Court must *compel* judges to cease dismissing as irrelevant this Court's precedent putting justice before judges. Repeatedly, this Court issued clarion calls (which many judges ignore) for defense of truthful criticism of public servants. This Court must enforce its judgments or they will be as irrelevant as many judges and government attorneys pretend.

No "public servants" can give themselves "an unjustified preference over the public they" purport to "serve." *New York Times Co. v. Sullivan*, 376 U.S. 254, 282 (1964). "[T]he censorial power is in the people over the Government, and not in the Government over the people." *Id*. (*quoting* James Madison speaking to Congress).

The Constitution and copious precedent expressly and emphatically included judges among such public servants. *See id.* at 272-73 (citations omitted; cleaned up) (emphasis added):

> Where judicial officers are involved [any] concern for the dignity and reputation of the courts does not justify the punishment [] of criticism of [any] judge or his decision. . . . [Any] *repression* can be *justified*, if at all, *only* by a *clear and present danger* of the

> *obstruction* of *justice*. [All] judges are to be treated as 'men of fortitude, able to thrive in a hardy climate,' [exactly as is] true of other government officials [ ]. *Criticism* of their *official conduct* does not lose its *constitutional protection* merely because it is effective criticism and hence diminishes their official reputations.

Many times in many ways, this Court has emphasized that under the Constitution "public men" are "public property," so "discussion" of their conduct "cannot be denied and the right, as well as the duty, of criticism must not be stifled." *Id.* at 268 (citation omitted). Public servants cannot abridge "the privilege" of "the citizen-critic of government. It is as much his duty to criticize as it is the official's duty to administer." *Id*. "[S]uch a privilege is required by the First and Fourteenth Amendments." *Id*. at 283.

This Court strongly emphasized the need to cease pernicious and fictitious judicial practices that "reflect the obsolete doctrine that the governed must not criticize their governors." *Id*. at 272; *id*. at 301 (Black, Douglas, JJ., concurring). "The protection of the public requires" both "discussion" and "information" and "[t]he interest of the public" far "outweighs the interest" of "any" offended "individual." *Id*. (majority and concurring opinions).

This Court should emphasize again that *Zenger* is crucial to America's tradition of freedom of expression. *See id*. at 301 (concurrence):

> The American Colonists were not willing, nor should we be, to take the risk that "men who injure and oppress the people under their administration [and] provoke them to cry out and complain" will also be empowered to "make that very complaint the foundation for new oppressions and prosecutions." *The Trial of John Peter Zenger*, 17 Howell's St. Tr. 675, 721-722 (1735).

The relevant American traditions clearly also include how printers, lawyers and juries used *Zenger* and *Cato's Letters* to understand, establish, defend and describe Americans' freedom to think and speak critically about public men and measures.

Perhaps the most famous expression (from the 1720's to today) about the freedom of expression was and is that "Freedom of speech is the great bulwark of Liberty." Jacob Mchangma, *Free Speech: A History from Socrates to Social Media* (2022) at 124 *quoting Cato's Letters* No. 15.

That statement is famous, in part, because of the particular reasoning supporting it. Most succinctly stated, "Freedom of speech" is "the terror of traitors and oppressors," which makes it an effective "barrier against them." *Id*. (both sources). *See also Cato's Letters* at https://oll.libertyfund.org/title/trenchard-catos-letters-4-vols-in-2-lf-ed.

Benjamin Franklin certainly agreed. Perhaps his first revolutionary act and first important exercise and defense of freedom of expression consisted of republishing most of *Cato's Letters* No. 15 (specifically to oppose repression of criticism of government).

"Without Freedom of Thought, there can be no such Thing as Wisdom" and there can be "no such Thing as publick Liberty, without Freedom of Speech." Benjamin Franklin, Silence Dogood No. 8, The New-England Courant (July 9, 1722) (https://founders.archives.gov/documents/Franklin/01-01-02-0015). "Freedom of Speech" is a "sacred Privilege" that "is so essential to free Governments" that "the Security of Property, and the Freedom of Speech always go together" because "in those wretched Countries" (and courts) "where a Man cannot call his Tongue his own, he can scarce call any Thing else his own. Whoever would overthrow the Liberty of a Nation" (or people) "must begin by subduing the Freeness of Speech." *Id*.

"Men ought to speak well of *their Governours*" but *only* "while *their Governours* deserve to be well spoken of" because for public servants "to do publick Mischief, without" the public "hearing of it, is only the" corrosive and dangerous "Prerogative" of "Tyranny" (tyrants). *Id*. "Government" is "nothing" but "Trustees of the People" acting "upon the Interest and Affairs of the People: And" it "is the Part and Business of the People" to actually "see whether" such "publick Matters" have been "well or ill transacted." *Id*.

The "bulwark of Liberty" expression and *Cato's Letters* were quoted often to oppose abusive public officials. Starting in the 1720's, excerpts from *Cato's Letters* were "printed in virtually all the newspapers in the colonies and widely quoted in political essays, making them among the most influential political essays for the American founding generation." Solomon,

Revolutionary Dissent at 44. Many "pamphleteers of the founding generation put talismanic weight" on "*Cato's Letters*" precisely because they presented "political liberty" together with "freedom of the press." *Id*. at 187.

Cato's Letters also were phenomenally important in prompting many juries and assemblies to nullify the so-called common law and despicable judicial or legislative practices by thwarting prosecutions for seditious libel starting in 1735 with *Zenger*.

Zenger's attorney (the famous Philadelphia lawyer, Andrew Hamilton) insisted that without "falsehood" there is no "scandal." *Id*. at 51. Criticism that is not "false" cannot be "scandalous." *Id*. at 53. "[I]n a free government," officials "will not be able to stop people's mouths when they feel themselves oppressed" by a "ruler" who "brings his personal failings" or "vices" into "his administration." *Id*. The people have the right of "exposing and opposing arbitrary power by speaking the truth." *Id*. The people "have the right publicly to remonstrate" any "abuses of power, in the strongest terms, to put their neighbors upon their guard, against the craft or open violence of men in authority." *Id*.

Officials "who injure and oppress the people under their administration" and "provoke them to cry out and complain" cannot "make that very complaint the foundation for new oppressions and prosecutions." *Id*. New York's Governor and Chief Justice disagreed, but they and the common law were defeated by the lawyer and the jury.

To the "people," the "idea that a man could be" punished "for speaking the truth" about abusive officials or "expressing a critical opinion" about them "was an affront to liberty." *Id*. at 55. So "in less than thirty minutes," the jury found Zenger "not guilty of seditious libel." *Id*. at 54.

Of vastly greater importance was the tradition including Zenger, Hamilton, and *Cato's Letters*. "News of the verdict spread" like wildfire "up and down the coast," and Zenger also "published a book" about the "trial, which was probably the most popular book in America up to that time." *Id*. As a result of *Cato's Letters*, Hamilton's arguments, the jury's verdict, newspaper coverage, and Zenger's book, "until independence, common law cases against dissidents [for seditious libel] all but disappeared," and Zenger's "acquittal is often noted as a landmark in the history of freedom of the press" and speech. *Id*. at 55.

In 1767, the Massachusetts popular assembly also thwarted a seditious libel prosecution by famously echoing *Cato's Letters*. *See* Solomon, *Revolutionary Dissent* at 83-87. "The Liberty of the Press is a great Bulwark of the Liberty of the People: It is, therefore," the "Duty of those who are constituted the Guardians of the People's Rights to defend them [rights] and maintain it [the bulwark]." *Id*. at 86.

In 1767 "Samuel Adams, writing" as "Populus" in the *Boston Gazette* also attacked the Massachusetts Governor and Chief Justice by re-emphasizing that freedom of expression was "*the bulwark of the People's*

Liberties;" indeed, "THERE is nothing so *fretting* and *vexatious*; nothing so justly TERRIBLE to tyrants, and their tools and abettors, as a FREE PRESS." Mchangma, *Free Speech* at 162.

In another famous seditious libel trial in 1770, another writer ("Father of Candor") echoed *Cato's Letters* and Hamilton's famous argument in *Zenger*. "The liberty of exposing and opposing a bad Administration by the pen is among the necessary privileges of a free people, and is perhaps the greatest benefit" of "the liberty of the press. [Officials,] who by their misdeeds provoke the people to cry out and complain," cannot "make that very complaint the foundation of new oppression, by prosecuting the same as a libel." Solomon, *Revolutionary Dissent* at 144-45.

Immediately before the Declaration of Independence, George Mason and Virginia's legislature (including James Madison) strongly emphasized that "the freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained but by despotick Governments." Virginia Declaration of Rights §12 (June 12, 1776).

The obsolescence of the "doctrine that the governed must not criticize their governors" (and the scope of the freedom of speech and press) was emphasized by Congress, itself, in 1774, and again by this Court in 1940. Specifically to induce Quebec to join America, "Congress" emphasized that "the freedom of the press" was one of Americans' "five great rights" especially because it serves "diffusion of liberal sentiments on the

administration of Government" precisely so that "oppressive officers" can be "ashamed or intimidated, into more honourable and just modes of conducting [public] affairs." *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940) *quoting* Address to the Inhabitants of Quebec, First Continental Congress (Oct. 26, 1774). The foregoing clarified and emphasized the meaning of more formal declarations by Congress days earlier.

The "people" of America "elected" their "Congress," which declared all Americans' rights and colonial America's constitution. Declaration of Rights and Grievances (Oct. 14, 1774) ¶5. Congress "claim[ed], demand[ed], and insist[ed] on" Americans' "indubitable rights and liberties; which cannot be legally taken from them" or "altered or abridged by any power whatever, without their own consent." *Id*. ¶17. Congress emphasized Americans' "right peaceably to assemble" and to discuss "grievances," and further emphasized that "all prosecutions, prohibit[ions]" and "commitments for the same, are illegal." *Id*. ¶14.

The wise and illustrious members of such Congress included such champions of liberty and freedom of expression as John Dickinson, John Adams, John Jay, George Washington, Patrick Henry, Samuel Adams and Roger Sherman.

John Adams and Roger Sherman served with Thomas Jefferson on the Committee of Five who composed the Declaration of Independence for the Second Continental Congress. Samuel Adams also signed the 1776 Declaration. George Washington also was in the

Second Continental Congress until he left to lead the people actually fighting for what Congress promised and guaranteed the people in the 1776 Declaration.

The obsolescence of the "doctrine that the governed must not criticize their governors" permeated the Declaration of Independence. Arguably the most famous words of any American Congress are the promise and guarantee that government would be *for* the people. Congress declared and construed the new American constitution: "We hold" that "all men are created equal" and equally "endowed" with "unalienable Rights," including "the Right" to "alter" or "abolish" any aspect or "any Form of Government" to secure their "Life, Liberty" and "pursuit of Happiness." Declaration of Independence (1776) ¶2. Moreover, when government "abuses and usurpations" evidence "Despotism," the people have the "right" and "duty, to throw off such Government" and "provide new Guards for their future security." *Id*.

The 1776 Congress consisted primarily of lawyers, and the 1776 Declaration consisted almost entirely of their harsh criticism of public officials including King, Parliament, judges and prosecutors. *See id*. ¶¶1-3, 5-7, 10-12, 15, 17, 20-24, 30. *See*, *esp.*, ¶17 ("mock Trial"); ¶20 ("depriving" people of "Trial by Jury"); ¶21 (people "tried for pretended Offences"); ¶10 ("obstructed the Administration of Justice").

Madison (in his proposed version of the First Amendment) emphasized that "[t]he people" have the "right to speak, to write, or to publish their sentiments"

so "the freedom of the press" is crucial as "one of the great bulwarks of liberty." 1 Annals of Cong. 434 (1789).

Jefferson urged that the First Amendment discourage "false facts affecting injuriously the life, liberty or reputation of others," but he also emphasized that "[t]he people" must "not be deprived of their right to speak, to write, or otherwise to publish anything" else. Letter Thomas Jefferson to James Madison (Aug. 28, 1789) (https://founders.archives.gov/documents/Jefferson/01-15-02-0354).

Jefferson also emphasized that the freedom of speech and press is "the only safeguard of the public liberty." Letter Thomas Jefferson to Edward Carrington (Jan. 16, 1787) (https://press-pubs.uchicago.edu/founders/tocs/amendI_speech.html). "The people" must be "censors of their governors" to "keep" public servants "to the true principles of their institution." *Id*. "The basis of our governments being the opinion of the people, the very first object should be to keep that right." *Id*. If the people do not keep public servants honest, then "under pretence of governing" they will act like "wolves" and attack people like "sheep." *Id*. "If" the people "become inattentive" to "public affairs," then "[legislators], judges and governors shall all become wolves." *Id*.

VII. This Court Should Emphasize that Officials Must Speak to Support and Defend the Constitution, Not Abusive Officials.

The Constitution states and implies much about the freedom of expression and the right and duty of people to represent and govern themselves and each other. Such rights and duties were not granted or defined by, and cannot depend on parsing, the words in any single provision. The words of the Preamble, above, are instructive.

Initially, the Constitution commanded federal judges and legislators to speak for the people (and for the Preamble's purposes), and the Constitution protected such speech. It is important to emphasize such speech and protections to understand the significance of the First Amendment thereto.

"Congress" has the "Power" and duty to "make all Laws" that are "necessary and proper" to "all" federal "Powers vested by" the "Constitution in" absolutely "any Department or Officer" of federal "Government." U.S. Const. Art. I, §8. For "any" related "Speech or Debate," Congress may "not be questioned in any other Place." *Id*. §6.

Federal "judicial Power shall extend to all Cases, in Law and Equity, arising under" the "Constitution." Art. III, §2. So federal judges may "hold their Offices during good Behaviour" and their "Compensation" cannot "be diminished" while they remain "in Office." *Id*. §1.

The Constitution also expressly limited the ability of public servants to engage in bad behavior. The "Constitution" is "the supreme Law of the Land" and all "Judges in every State" are "bound thereby" despite "any Thing" in any other purported source of federal or state power. Art. VI. Every member of Congress or "State Legislatures, and all" state and federal "executive and judicial Officers" must "be bound by Oath or Affirmation" (so they are bound) "to support" the "Constitution" in all official conduct. *Id*.

The Founders knew that people who "govern" are not "angels," so the Constitution and the law "oblige" them "to control" themselves. Federalist No. 51 (James Madison) (https://guides.loc.gov/federalist-papers/full-text). They emphasized that two overarching purposes of the Constitution of "great importance" to our "republic" were, first "to guard" our "society against the oppression of its rulers," and, second, "to guard" parts of "society against the injustice of" any "other part." *Id*.

The Constitution was designed to compel all "judges to do their duty as faithful guardians of the Constitution." Federalist No. 78 (Alexander Hamilton) (https://guides.loc.gov/federalist-papers/full-text). Hence, the duty of exercising jurisdiction (derived from "JUS and DICTIO, juris diction," *i.e*., "speaking and pronouncing" the "law." Federalist No. 81, n.3 (Alexander Hamilton) (https://guides.loc.gov/federalist-papers/full-text)).

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection

of the laws," and "[o]ne of the first duties of government is to afford that protection." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (Marshall, C.J.). Clearly, the "very essence of judicial duty" is to "decide" every matter "conformably to the constitution." *Id.* at 178. "It is emphatically" judges' "duty" to "say what the law is" (not knowingly misrepresent or violate the law or the Constitution). *Id*. at 177. When applying any "rule," judges "must" expressly "expound and interpret that rule" (not merely falsehoods about such rule or about lawyers or litigants). *Id*.

Thanks in great measure to great Founders (including Antifederalists such as George Mason) who created and defended the Constitution and the Bill of Rights, such parchments expressly emphasize the power of all the people to speak directly for themselves and represent each other against judges and legislators.

Even "Congress" cannot make any "law" (grant any judicial or executive officer any power) "abridging the freedom of speech" and "press" and "the right of the people peaceably to assemble, and to petition the Government." U.S. Const. Amend. I. "No person" may "be deprived" by any federal official "of life," or any "liberty" or any "property, without due process of law." Amend. V. "In all criminal prosecutions," defendants are entitled to a "public trial" by "an impartial jury" with "Assistance of Counsel" and the right to confront "witnesses" and compel "witnesses" to testify. Amend. VI.

Judges who pretend that lawyers do not enjoy the full extent of rights and freedoms guaranteed by the Constitution should bear in mind that most people responsible for writing the Declaration of Independence and the Constitution were lawyers. Many people in Congress and state legislatures were and were expected to be lawyers. It defies common sense to think they did not intend to protect themselves.

Prosecutions for seditious libel in the 1700's accentuated that very point. In the 1700's, "the press" clearly did not refer to any non-existent press corps. "The press" meant means of mass communication. Often, the people whose words were protected were lawyers who submitted pieces to printers (with printing presses) for publication. Then, as now, lawyers represent people or "the people" against public officials, regardless of whether their writing consists of court filings, law review articles or letters to newspaper editors.

> The liberty of the press [] necessarily embraces pamphlets and leaflets[, which] have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The [freedom of the] press [protects] every sort of publication which affords a vehicle of information and opinion. . . . [Courts should emphasize] the vital importance of protecting this essential liberty from every sort of infringement. . . .

Lowe v. SEC, 472 U.S. 181, 205 (1985) *quoting Lovell v. Griffin*, 303 U.S. 444, 452 (1938). *Accord Hill v. Colorado*, 530 U.S. 703, 781 (2000) (Scalia, Thomas, JJ., dissenting).

VIII. This Court Should Re-emphasize Why and How the Constitution Protects Truthful Criticism.

To repress attorney criticism, judges commonly ignore and flout this Court's repeated precedent supporting the Constitution.

The Constitution and this Nation's history evidence *both* "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, *and* that [such debate] may well include vehement, caustic" and "unpleasantly sharp attacks on government and public officials." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) *quoting New York Times*, 376 U.S. at 270 (emphasis in *Rosenblatt*). *See also id*. (emphasis added):

> [The people and our system of government have], first, a strong interest in debate on public issues, and, second, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues. *Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free*, lest criticism of government itself be penalized.

Any "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) *quoting Connick v. Myers*, 461 U.S. 138, 145 (1983) (cleaned up). It "is a bedrock principle underlying the First Amendment" (and the entire Constitution) that "the government" clearly "may not prohibit the expression of an idea" by citizens "simply because" some public servant "finds the idea" merely "offensive or disagreeable." *Id*. *quoting Texas v. Johnson*, 491 U.S. 397, 414 (1989). Clearly, "the [very] point of all speech protection" is "to shield just those choices of content" that someone considers "misguided, or even hurtful." *Id*. (citation omitted).

Any "speech concerning public affairs" is "the essence of self-government" so "debate on [such] issues should be uninhibited, robust, and wide-open," and it "may well include vehement, caustic," and "unpleasantly sharp attacks on government and public officials." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). *Accord Snyder*, 562 U.S. at 452. *See also id.* at 453 (addressing scope of matters of public concern).

The "public interest in a free flow of information to the people concerning public officials, their servants" is "paramount," so "anything which" even "might touch on an official's fitness for office is relevant," including "dishonesty, malfeasance, or improper motivation." *Garrison*, 379 U.S. at 77.

"Truth" in "discussion of public affairs" especially "may not be the subject of" any type of content-based

"sanctions" ("civil or criminal"). *Id.* at 74. The Constitution "absolutely prohibits" any type of content-based "punishment of truthful criticism" of any public official's official conduct. *Id*. at 78.

Clearly, "[t]hose who won our independence had confidence" (not in public officials, alone, but) "in the power of free and fearless reasoning and communication of ideas" among the people and public servants "to discover and spread" the "truth." *Thornhill*, 310 U.S. at 95.

IX. This Court Should Stop Judges from Flouting and Misrepresenting this Court's Decisions.

This Court can easily dissuade judges from flouting this Court's precedent, and it should actively do so. Many abusive public officials apparently could not care less what this Court writes about how the Constitution protects the people from abusive public officials. For example, Eighth and Tenth Circuit and Kansas judges essentially followed district court judges (and each other) and pretended that what they wrote was dispositive but this Court's precedent was irrelevant. Such misconduct is shockingly common in American courts.

State courts commonly pretend their punishment of criticism of judges is "objective" and pretend this Court's precedent can be dismissed as "subjective." They use such words specifically to flout this Court's precedent requiring clear and convincing evidence that

criticism constituted a "falsehood." *New York Times*, 376 U.S. at 279. *Accord Pickering v. Board of Ed*., 391 U.S. 563, 574 (1968) (precluding discharge of government employee); *Garrison*, above. *See* App. 97, 100; pages 5-7, above.

Many judges shockingly deceitfully (or incompetently) dismiss this Court's precedent and analysis in *New York Times* or *Garrison* as irrelevant by merely contending or pretending they are relevant only to "defamation" or "criminal" cases. *See*, *e.g*., App. 97.

In striking contrast, some of the same judges (even in the same decisions) also pretend to justify punishing attorney criticism of judicial conduct by treating as controlling (or relevant) mere *obiter dicta* in *Gentile v. Nevada State Bar*, 501 U.S. 1030 (1991).

The Kansas judges explicitly (and the Tenth Circuit judges implicitly) engaged in both types of such absurd deceit. *Compare* App. 66, 97, 100 (flouting *New York Times*; *Garrison*; *Milkovich*) *with* App. 99 touting *Gentile*.

One of the most deceitful tricks judges play is abusing a warning in *Gentile* to deceive the people. The point of the warning is to avoid prejudice to the administration of justice, so it necessarily applies to everybody "in" a "courtroom" actually "during a judicial proceeding" (lawyers, litigants, witnesses, spectators, jury and even the judge). *Gentile*, 501 U.S. at 1071. Moreover, criticism of judicial conduct was not even potentially at issue in *Gentile*. Yet, *Gentile's dicta* is the

darling of judges repressing attorney criticism of judges.

The Ohio Supreme Court (majority) recently provided an excellent illustration. Apparently knowing they previously misrepresented the holding in *Gentile*, they merely "stated" their previous falsehood: "In *Gardner*, we stated" that *Gentile* "held" that "in the courtroom" and "during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." *Cleveland Metro. Bar Ass'n v. Morton*, 185 N.E.3d 65, 70 (Ohio 2021) *quoting Gentile* at 1071.

Gentile clearly did not involve attorney speech either "in" a "courtroom" or "during a judicial proceeding." *Id*. *Cf*. *Gentile* at 1033 ("press conference" mere "[h]ours after his client was indicted"). Moreover, this Court reversed the state court. *See id.* at 1058. The reasons are relevant to (but not addressed by) judges abusing *Gentile* to repress attorney speech. "Nevada's application of" its disciplinary "Rule" clearly "violate[d] the First Amendment" because the attorney speech "neither in law nor in fact created any threat of real prejudice to" any administration of justice. *Id*. at 1033. Furthermore, Nevada's "Rule" was "void for vagueness," because it "misled" the attorney. *Id*. at 1048. The same conclusions apply to Petitioner's speech and Kansas's rules.

Petitioner's Kansas judges even blatantly misrepresented that "assertions made in court filings" constitute "in-court advocacy" that "is not protected speech under the First Amendment." App. 98. They blatantly

misrepresented that attorneys "filing motions" somehow "voluntarily accepted almost unconditional restraints" on their "speech rights." *Id*. *quoting Mezibov v. Allen*, 411 F.3d 712, 720 (6th Cir. 2005).

Many judges abuse *Gentile* to mislead attorneys about and deprive them of their or their clients' constitutional rights. *See Mezibov* at 717; *In re Marshall*, 2023 N.M. LEXIS 50, at *17 (Mar. 13, 2023); App. 99. Eighth Circuit judges also cited *Gentile* to pretend to justify fining Petitioner for exposing and opposing the lies and crimes of judges. *See Talley v. U.S. Dept. of Labor* (8th Cir.), Cert. Pet. No. 21-1320 App. 3.

X. This Court Should Not Allow Judges to Eviscerate the Constitution.

Many generations of exceptional Americans have struggled mightily to undo pernicious 1700's misperceptions of supremacy. *Cf*., *e.g*., Declaration of Independence; U.S. Const. Preamble, Art. VI, Amends. I, X, XIII, XIV, XV, XIX, XXIV, XXVI. Misperceptions of judicial supremacy must not be allowed destroy their accomplishments.

Judges are eviscerating the Constitution to usurp power. Judges Holmes, Kelly and Phillips and Kansas judges merely pretended that they were above the law of the land and that their courts were supreme. They knew they had no evidence that Petitioner's speech/petitions violated any rule. They pretended that when they want to ruin someone, they cannot be stopped by any legal authority or lack of evidence. No appeal to

the Constitution, law, logic, common sense or common decency mattered to any of them.

The way these judges treated their own and other judges' hearsay underscored a crucial truth. These judges were not adjudicating. They were fabricating. Judges abused court resources to pretend to make "clear and convincing evidence" out of absurdly vague contentions and obvious falsehoods. They intended other judges to pretend their hearsay constituted proof, and judges did pretend. These judges are con men playing a confidence game that is as pernicious as doctors prescribing fatal doses of poison as purported medicine.

CONCLUSION

Our systems of law and justice need strong leadership and much more discipline. Far too many judges (and government attorneys) feel free to violate the Constitution and flout this Court instead of following it. For the foregoing reasons, *certiorari* should be granted.

Respectfully submitted,

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