No. 22-1198

In the
Supreme Court of the United States

Joe Patrick Flarity,
a marital community, *pro se*
Petitioner

v.

Argonaut Insurance Company,
Kenneth Roberts,
Pierce County, WA, *et al*
Respondents

On Petition for Writ of Certiorari
To The United States Court of Appeals
for the 9th Circuit

PETITION FOR WRIT OF CERTIORARI

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May 31, 2023

QUESTION PRESENTED: 9th Circuit Prejudice Against *Pro Se* Plaintiffs Bolsters State Abuses

Joe Flarity, a retired marital community, petitions to protect their property from egregious administrative penalties from State practices that attack the "core rights" of domiciles. The State presents a multi-fronted attack on property owners:

> 1) administrative courts are closed to the public;
> 2) evidence from trespass is allowed;
> 3) all citizen petitions for delay are denied;
> 4) the State demands infinite delays;
> 5) in Superior courts, no jury review is allowed with further sanctions applied to chill the people from checking official misconduct.

In consequence of these practices, 100% of the administrative reviews favored Pierce County. The people need Federal Court help to "keep our republic."

Pro se challengers typically appear as if flung from an Ayn Rand novel, from the times when heroes could "kill a bear when they were only three." They

see their "duty clear" and intend to "patch up the crack in the Liberty Bell." *Pro se* plaintiffs believe their rights will be preserved by the 9th Circuit without any license necessary from super-law groups, such as the American Civil Liberties Union or the Pacific Legal Foundation. The people believe the founders' words gave single individuals the power to restrain officials by logic, hard work and the force of law itself.

Trusting *pro se* petitioners read the 9th Circuit's clearly stated rules and have no clue the precedents they relied upon will be ignored, the rules riddled, and the law mocked. They are unaware the *Haines Doctrine*[1] is no longer observed.

Splitting from other circuits, the 9th Circuit considers all *pro se* challenges to state officials an indication of a character flaw, an element of an underlying vexatious nature. Plaintiffs are sent away with no real examination of their issues. They leave bitter, disenfranchised, and transformed into agents of contempt.

The Panel might take this opportunity to explain differences between Davy Crockett and Don Quixote with explicit details provided so the people can identify to which they camp they belong.

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[1] *Haines v. Kerner*, 404 U.S. 519 (1972)

As an alternative to 9th Circuit correction, Flarity proposes an update to *The Haines Doctrine* evenly applied across all circuits to restore the people's confidence by either bolstering or modifying U.S.C. § 1654.

Regardless of class assignment to plaintiffs, the 9th Circuit should not be allowed to gaslight their people.

1. IDENTITY OF PARTIES

PETITIONERS

Petitioners Joe Patrick Flarity are plaintiffs-appellates, hereafter Flarity, a retired marital community on a fixed income that appears *pro se* not by choice. Numerous quality law firms were approached for representation. Their consensus: this is a "small tail, low payout" case of which they decline to front the substantial costs that would be required to correct the government.

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2. STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

21-35580, 9th Circuit Court of Appeals: Flarity attempted to undo Pierce County's re-enactment of the *British General Writ of Assistance* of 1752. The

9th Circuit's Order was issued March 7, 2023, preserving the trespass policy. **AP-16**. The Confirmation is shown in **AP-18**. The District Court's Order closing is shown in **AP-23**.

21-2-06124-1, Pierce County, WA Superior Court: Flarity attempted to undo an unconstitutional Washington law allowing arbitrary denials of ALL petitions for delays on tax appeal petitions. This cause was dismissed with prejudice for failure to state a claim with zero specificity included in the Order on July 30, 2021. **AP-30.**

22-2-02806-34, Thurston County, WA Superior Court: While the people get ZERO delays as argued in **21-2-06124-1**, the State demands infinite delays. This cause was dismissed with prejudice for failure to state a claim with zero specificity included in the Order. In addition, sanctions were applied to Flarity for asking for a delay and filing in the "wrong venue" as a further *chilling* of the right of the people to be heard. The Order is dated January 6, 2023. **AP-33.**

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5.1 State Officials Have Crossed The Line and Require Correction.

Contrary to the press releases, Washington State is likewise entangled in an ominous state trend corroding the core rights of citizens. The bulk of "law-abiding"[2] *pro se* petitioners check their governments in two major areas: traffic courts and administrative appeals. As noted in *Axon* and *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019), states have a *home court prejudice* for aggressive tax collection that can easily suppress core rights.

Per *Axon*, Washington State demonstrates a complete collapse of its judicial function in the interests of revenue collection. By the numbers, the Administrative Courts described in *Axon* appear generous in comparison to Pierce County. The win record before the "closed to the public" BOE court was 100%, which defies the 9th Circuit's own precedent for a fair hearing in the "first instance."[3] The corresponding jury reviews of administrative

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[2] Justice Reichardt's dissent in *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1985), **AP-53,** identified the precipice on which the *Haines Doctrine* teetered.

Orders are also decided 100% in favor of the state, because jury reviews are commonly denied by abuse of CR12, a Washington State copy of Federal Rule 12. **AP-30, AP-33.**

The described judicial collapse is a continuation of a trend in Washington State. In *State v. Moreno*, 58 P.3d 265, 147 Wash.2d 500 (Wash. 2002), the Washington State Supreme Court authorized a similar collapse for infractions, which the state then uses as a basis for later "imprisonment in jail" and egregious never ending court charges with usury interest rates. *Moreno* was a hypocritical departure from the State's projection for civil rights protection considering the "weakness of the individual."[4] The hypocrisy is particularly striking when the State later moved to protect the identical civil rights described in Flarity's Complaint in Federal Court for the enhanced collection of local court fees and fines on illegal immigrants.[5]

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[3] *Clements v. Airport Authority of Washoe County*, 69 F.3d (9th Cir. 1995), citing *Ward v. Village of Monroeville*, 409 U.S. 57, 59-60, 93 S.Ct. 80, 83, 34 L.Ed.2d 267 (1972).

[4] *Snyder v. Ingram*, 48 Wn.2d 637, 639, 296 P.2d 305 (1956)

[5] 2:19- cv-02043-TSZ: "FIFTH CLAIM (Right of Access to the Courts)...constitutional right of access to the courts **prohibits systemic official action that bans or obstructs access to the courts**, including the filing or presenting of suits....Defendants' actions deprive Washington and its residents of meaningful access to the courts in violation of rights under the First, Fifth,

In a further demonstration of what appears to be *official anger* at the people's unwillingness to embrace a state income tax, the Washington State Supreme Court targeted "disproportionately white" households[6] in an end run around the State Constitution's prohibition of an income based tax. From the *Quinn* dissent, P22, Justice McCloud. Emphasis in all quotations is added:

> When we deal with broad, general constitutional rights and values (**such as "due process" or "equal protection"**), we have a duty to interpret and apply those rights and values in a way that will **protect all Washingtonians**....

Justice Gorsuch expressed a similar warning in *Direct Mktg. Ass'n v. Brohl*, 814 F.3d 1129 (10th Cir. 2016):

> ...judges distinguish themselves from politicians by the oath they take to apply the law as it is, **not to reshape the law as they wish it to be.**

Sixth, and Fourteenth Amendments."

[6] *Quinn v. State, No. 100769-8.* Racists policies are decried by J. Thomas, *Grutter v. Bollinger*, 539 U.S. 306 (2003), but they were first proven by attorney Ginsburg as damaging to all parties. *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

Washington State courts defy core rights in numerous areas convenient to revenue collection while their BAR simultaneously postures about the morals of this Panel. King County Bar Association, Resolution 400:

> **"No man is above the law."**
>
> –Chesterfield Smith, President, American Bar Association, October 22, 1973
>
> An independent judiciary is the cornerstone of the rule of law and our constitutional republic. It protects the liberty of the people. Yet public support for an independent judiciary can only be sustained if there is public confidence in the legitimacy of the judiciary.
>
> Public confidence requires that the public believe judges act ethically according to standards firmly grounded in **judicial independence, integrity, and impartiality**.

This Panel need look no further than the sanction Flarity received in 22-2-02806-34, **AP-33**, for a first time request for a delay to understand the duplicity of Resolution 400. Case 22-2-02806-34 was

against the Board of Tax Appeals (BTA) and challenged the position that the State has a right to INFINITE delays. Such an absurd and clearly unconstitutional claim is only possible to sustain if the judicial branch has collapsed for revenue collections. The sanction indicates the court is joining with Administrators to *chill* the people's right to check official misconduct. The Sanction flies in the face of the State Constitution, Art. 1, Sec. 32, Fundamental Principles:

> A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

Washinton courts kick the already dismissed Flarity illuminating the "weakness of the individual" by assigning a $200 sanction for filing in the wrong venue per ambiguious RCW 4.84.080. *See* **AP-33**. In fact, the venue is specifically allowed by RCW 4.92.010:

> The venue for such actions shall be as follows:
>
> ...
>
> (5) Thurston county.

Flarity does not challenge the good intentions of the Washington State Supreme Court, but with its

latest trifecta[7] of race-based decisions, the classic decline of Rule of Law as described in *A Republic, If You Can Keep It,* by Neil Gorsuch, is obvious. (P40) By defying the necessity of an independent branch focused on defending the Constitutions, the activist Washington State Supreme Court ironically becomes entangled into similar misdirection tragically illustrated by *Dred Scott v. Sanford* 60 U.S. (19 How.) 393 (1857).

In the face of deliberate judicial abdication of defense of "all the people's core rights," Flarity needs Federal help to "keep our republic." The State makes a mockery of explicit directions the State founders put up front in the State Constitution:

> Article 1, Section 1 Political Power. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and **are established to protect and maintain individual rights.**
>
> Article 1, Section 2 Supreme Law of the Land. The Constitution of the United States is the **supreme law of the land.**

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[7] In addition to *Quinn*, people of color are allowed to give false information to police, *State v. Sum*, No. 99730-6, and may defy demands to show proof of transit payment, *Meredith v. State*, No. 100135-5.

Yet, officials are enthusiastic about core rights when it enhances revenue collection: 2:19-cv-02043-TSZ: FIFTH CLAIM (Right of Access to the Courts)

This case, and the related cases, in consideration of *Moreno* and *Quinn,* show Washington Courts have little respect for Federal precedent or core rights when those rights conflict with revenue collections. Washington State has not tested unconstitutional waters with caution; rather, they have boldly crossed the Rubicon. They have "invited anarchy."[8] Federal Court help is essential to restrain lawbreaking State officials.

5.2 9th Circuit Devoid of Due Process for *Pro Se* Class

Justice Kagan, **AP-53**:

> ...court is legitimate when it's acting like a court....Judges create legitimacy problems for themselves when they instead stray into places where it looks like they're an extension of the political process or when they're imposing their own personal preference....

Mindful of the Star Chamber and the Privy Council, our founders protected the right of the people to represent themselves at the Constitution's

[8] *Olmstead v. United States*, 277 U.S. 438 (1928)

formation in the Judiciary Act of 1789. The right was later confirmed by Justice Marshall in *Osborn v. Bank of the United States* (1824), and then set into law in 1948 by U.S.C. § 1654.

However, that right is bleached into Justice Gorsuch's "worthless paper" if not respected by the courts. In a split from other circuits, the 9th Circuit demonstrates the right has been abridged. Their *de facto* practice conflicts with otherwise excellent rules specific to advance *pro se* appeals.

The 9th Circuit's signature hollowing of rules rests upon a philosophy that all *pro se* plaintiffs are infected with a vexatious element simply by appearing without representation.[9] The *pro se* class is denied in bulk the gravitas of Davy Crockett, and is instead shuttled into the "troublesome fringe."[10] **AP-59**. In keeping with this philosophy, the 9th Circuit goes beyond the defined "callous indifference" and actively discriminates by refusing to follow its own rules for *pro se* plaintiffs. **AP-55**, protect its records for submission to this Panel, **AP-41**, or publish its precedence busting decisions. **AP-58**.

The 9th Circuit was once a vanguard of *pro se* civil rights actions. The Court established the *Haines*

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[9] *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007).

[10] Professor Steven Landsman, Lewis and Clark Law Review, Volume 13:2.

Doctrine which uniquely advanced small civil rights causes. No repudiation of *Haines* has been published. The practice of opacity is sporadic in other circuits, but doctrine in the 9th Circuit. This prejudice demonstrates a dramatic split from other circuits.

The *de facto* removal of *pro se* standing in the 9th Circuit gives State officials the confidence of swashbuckling princes for other egregious violations of core rights besides open courts and a fair hearing in the "first instance:"

a) trespass: 21-35580.

b) denial of all residential petitions for delay: 21-2-06124-1.

c) unlimited delays are demanded by the State in proceedings: 22-2-02806-34.

The 9th Circuit should be instructed to give equal protection to *pro se* causes on the merits of the pleadings, not the class of the applicant per the posturing given this Panel in King County Bar Association, Resolution 400. Flarity provided Judge Bryan a pleading sufficient to state a claim, **AP-104**, and demonstrated ability to amend to state a claim if necessary.

Do not gaslight the people. If the 9th Circuit's *de facto* policy is legitimate, this Panel should apply

it evenly across all circuits for transparency and court efficiency.

Alternatively, adoption of the *Flarity Doctrine* will substantially reduce court workloads and improve the perception of court legitimacy by a Panel recognized policy for all circuits.

6. OPINIONS BELOW

The 9th Circuit's Order denying an *en banc* hearing is reported at **AP-1** on March 6, 2023. The Order Confirming is shown at **AP-3.** The District Court's opinion is reported at **AP-8**.

21-35580: The Order denying an *en banc* hearing is reported at **AP-16** on March 7, 2023. The Memorandum allowing trespass is attached to Flarity's Motion at **AP-18**. The District Court's ruling allowing trespass is reported at **AP-23.**

21-2-06124-1: Pierce County in the Superior Court of Pierce County, was dismissed by CR12, a copy of Federal Rule 12, with ZERO specificity included in the "with prejudice" dismissal on July 30, 2021. **AP-30.**

22-2-02806-34: Washington State, in Superior Court of Thurston County, was dismissed by CR12, with Sanctions applied to Flarity for requesting a delay

and for filing in the wrong venue on January 6, 2023. **AP-33.**

7. JURISDICTION

The 9th Circuit issued its opinion on March 6, 2023, **AP-1.** This Court has jurisdiction under 28 U.S.C. § 1254(1). For the related case, 21-35580, the opinion was issued on March 7, 2023. **AP-16.**

8. STATEMENT OF THE CASE

8.1. Legal Framework

COMMON LAW. Open courts are protected from common law, as described in *Richard Newspapers, Inc. v. Virginia*, 488 U.S. 555 (1980). Open courts don't simply protect the the right of people to speak, but the right of all citizens to hear as described in *Wash v. Sublett*, 176 Wash.2d 58, 292 P.3d 715 (Wash. 2012) and the Washington State Constitution, Art. 1, Section 10:

> *See* John H. Bauman, Remedies Provisions in State Constitutions and the Proper Role of the State Courts, 26 Wake Forest L.Rev. 237, 284–88 (1991) (collecting open courts provisions)....

> Thus, our constitution contains a **stand-alone open administration of justice clause that was entirely unique to our constitution when it was adopted.** This suggests our framers were especially preoccupied with the open administration of justice.
>
> Under article I, section 10, every part of the administration of justice is presumptuously open. Section 10 says that justice in all cases must be administered openly, **the purpose being to ward off corruption and enhance public trust in our judiciary**...

Flarity appeals to the 9th Circuit to force Washington State to observe Article 1, Section 10 of our own Constitution so the people can "ward off corruption."

"FAIR IN THE FIRST INSTANCE" LOST. A bedrock of Flarity's Petition is *Ward v. Village of Monroeville*. With a closed court and 100% adverse rulings, Pierce County has made a farce of justice in the "first instance." Unlike criminal based *Ward*, the 9th Circuit ruled in *Clements* that administrative courts must also be fair in the first instance. Confirmation denied the Panel's own precedent.

DELIBERATE OPACITY. Again, per the 9th Circuit's own warning in *Hart v. Massanari*, 266 F.3d 1155, 1180 (9th Cir. 2001):[11]

> Omitting relevant facts will make the ruling unintelligible to those not already familiar with the case...

It appears the 9th Circuit believes Memorandums give license to omit the details necessary for the public to determine the fairness of the Panel. Per 20-55038 filed March 16, 2023:

> Plaintiff-Appellant Phillip Camillo-Amisano appeals the district court's order dismissing with prejudice his *pro se* complaint alleging several constitutional claims against Bureau of Prison....**Because the parties are familiar with the facts of this case, we do not recite them here**.

CLASS IMPACTED. The open court issue was precisely why this Cause was filed separately by Federal Rule 23.[12] With closure, Pierce County has

[11] (quoting Joseph Story, Commentaries on the Constitution of the United States §§ 377 (1833)).

[12] Class identification long ago escaped the narrow limitation of race or gender. **AP-62,** attachment (not shown) to allow Complaint amendment. *Azar v. Conley*, 456 F.2d 1382 (6th Cir. 1972) (a single family is a sufficient class). *See* also *Harrison v.*

broadly insulted every citizens' 1st Amendment right to "hear" besides the easily identified petitioners forced to appear in a closed court where they had zero chance of prevailing.

ENTICING OTHERS TO CLOSE COURTS. By confirmation, the 9th Circuit has enticed every municipality in the 9th Circuit to similarly close their hearings and institutionalize administrative court misconduct.

AUTHORITY TO PROCEED AT ALL. By *Axon*, closure of a public court is an indication the administrative court has no authority to proceed at all. To add insult to the 1st Amendment violation, the closed BOE Court also violated the State Constitution, specific State laws, and Pierce County's own Desk Operating Procedure. These violations impacted the 14th Amendment for equal protection of the law. **AP-105, AP-106.**

TRESPASS AS STATE POLICY. In the related case, 21-35580, Judge Bryan also allowed curtilage intrusion by "enforcement agent" trespass. In their Response to the 9th Circuit, Pierce County insists the trespass policy is ongoing and allowed per *State v Vonhof* 751 P2d 1221 51 WnApp 33 Wash App 1988, a situation never confirmed by the State's Supreme

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Brooks, 446 F.2d 404 (1st Cir. 1971).

Court.[13] Yet the State's highest court insists privacy to be "sacred"[14] even to the extent of protecting private trash containers on a public street.[15] Then the Washington State Supreme Court declined to review the wrongful imprisonment of Jason Youker after an illegal search. The counties now cite *Youker v. Douglas Cty.*, 162 Wn. App. 448, 457 (2011) with glee as *de facto* state policy. The 9th Circuit refused to send these conflicts back as Federal Questions. **AP-62.**

SPECIFICITY INDICATES ERRORS. Washington State Courts took advantage of their ability to sign proposed orders that avoided all notions of specificity. **AP-30, AP-33.** Federal Courts are not allowed the state level of opacity, per *Wolff v McDonnel*, 418 U.S. 539, 565 (1974). To contort 1st and 4th Amendment rights into *Olech* and *Gerhart* road easements should be embarrassing to a first year law student. When legal experts make such an obvious mistake, that is an overt display to the world the courts have declined to follow the law. The people should receive such insults with the outrage the

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[13] After John Vonhof, Dean Ridgway was arrested by appraiser trespass. *State v Ridgway* 790 P2d 1263 57 WnApp 915 Wash App 1990

[14] *T.S. v. Boy Scouts of America*, 138 P.3d 1053, 157 Wn.2d 416 (Wash. 2006).

[15] *State v. Boland,* 115 Wash.2d 571, 800 P.2d 1112 (1990).

courts intended. The 9th Circuit has here attacked the rule of law at its foundation.

ONGOING TRESPASS POLICY TOLLS. By Pierce County's own argument—the policy is ongoing. Tolling is allowed by another ignored 9th Circuit precedent. *Maldonado v. Harris,* 370 F.3d 945 (9th Cir. 2004). The limitation time starts when the policies **cease**. Because the 9th Circuit defied its own rules and denied Flarity's right to Reply, this contradiction is not on the record at the 9th Circuit.

RICO TOLLS. In addition, RICO tolls to four years. Flarity's request to Amend to add RICO was not addressed by the District Court nor the 9th Circuit. This would have immediately solved Judge Bryant's tolling problem. While RICO is a tenuous claim to prove,[16] the reasonableness of the claim is all that is needed to survive a Rule 12 Motion for lack of a claim.

COMMERCE CLAUSE. Any removal from the "bundle of sticks" of property rights should depress property values. The District Court and the Panel ignored this claim for amendment even though it was a charge from the case AIC cited in their defense, *Life Ins. Co. of N. Amer. v. Reichardt,* 591 F.2d 499,

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[16] Justice Alito, *The RICO Racket,* National Legal Center For The Public Interest 1989.

501–02 (9th Cir. 1979), where Ms. Reichardt prevailed and made the insurance companies in California treat women fairly—a duty the California Insurance Commissioner failed to provide to their citizens. Likewise, the Insurance Commissioner of Washington State failed to make AIC provide a real civil rights liability policy to Pierce County for the $307K payment they received from taxpayers.

HAINES DOCTRINE REVERSAL HIDDEN. The 9th Circuit has a duty to rule all cases on the merits even for small "core rights" issues. For Flarity and hundreds of unsuspecting *pro se* appellants, due process has failed by a hidden policy. These are not independent decisions of rogue judges, but a deliberate policy of prejudice directed at the "law abiding" *pro se* class.[17]

9TH CIRCUIT RULE BREAKING. Exceeding "callous indifference," the Court actively discriminates by breaking their own court rules by denying Flarity a Reply, **AP-55** by allowing muddling of records, **AP-41,** and by refusing to publish rulings overturning precedents, **AP-58.**

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[17] Per *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1985) : The majority opinion creates **two classes of indigent litigants**, those who are poor and law abiding, and those who are poor and not. **It then affords lesser rights and protections to the former**. In this respect, the majority's actions are contrary to the view our circuit has previously expressed.

ALL PETITIONERS DENIED ORAL HEARINGS. While *pro se* arguments are not allowed by rule at the Supreme Court, there is no similar rule at the 9th Circuit. Yet *pro se* plaintiffs are denied oral hearings as a class. This policy by itself is indicative of prejudice and not supported by any published conclusion that all *pro se* plaintiffs lack oratory skill.[18] The policy gives notice that the oral arguments are futile, because the outcome is predetermined. In contrast, the last *pro se* oral petitioner before the Supreme Court, Samuel H. Sloan, won his argument.

8.2. Facts

COURT CLOSURE: The "quasi-judicial board" did not close the proceedings to the public nor choose the closet sized room to hold their proceedings. The "courtroom" selection and its subsequent closure was ordered by unknown county officials, whom refused to identify themselves in Flarity's requests for disclosure prior to the case filing. At discovery, these "et al" officials would be added to the Complaint with *Kalina v. Fletcher*, 522 U.S. at 127 (1997), denying

[18] The "right to be heard" was specifically denied for Flarity. **AP-49.** Flarity gives effective oral arguments: https://tvw.org/video/division-2-court-of-appeals-2023051060

them immunity. The Rule 12 dismissal denied Flarity a right to examine the facts and add appropriate parties. At the very least, the BOE Chairman, Kenneth Roberts, should answer as to who was responsible for the Court's closure. Rule 12(b) dismissal allows no examination and is an obvious abuse of discretion.

BOE PERSONNEL: The BOE members in 2018 had no legal nor real estate experience. BOE members are hired yearly on the recommendation of the County Administrator. As garnered from the Petitioners in 2018, the BOE members show limited grasp of their own operational manual and are not aware of Article 1, Section 10 at all. Even if they were constitutional experts, no official can claim absolute immunity for the complete closure of a public court in defiance of the State Constitution, Article 1, Section 10. In the unlikely event the BOE members did themselves close the court to the public, total closure should be examined by Limited Immunity on a case by case basis. This is not applicable for rule 12 dismissals. Complete closure of the BOE court generated hundreds of witnesses that should be available for examination.

DISTRICT COURT PREJUDICE. Some judges show overwhelming prejudice for officials. This is not true for the Honorable Judge Bryan in the Western

District at Tacoma. Judge Bryan has established a long record of excellence. For proof, Flarity's Cause proceeded in parallel to another 1st Amendment case. For Robin Hordon, Judge Bryan denied the 12(b) Motion to Dismiss and Kitsap County immediately retracted its unconstitutional law. Look at the *Hordon* Order Flarity filed back to Judge Bryan by Reconsideration, **AP-97, AP-98**:

> 11. MANIFEST ERROR (10). PREJUDICE AGAINST *PRO SE* PLAINTIFF. Flarity cannot state that this Court is prejudice against civil rights plaintiffs. The Court did just provide a forum for Mr. Robin Hordon, CASE NO. 20-5464 RJB, represented by renowned law firm MacDonald Hoague and Bayless. Consequently, first amendment rights to display a "Go Vote" sign in a Kitsap County public park have been restored for residents as a CLASS. **From this Court's Order**, p6, L9:
>
> **"The Port Commission's Rule #10 is invalid, unconstitutional, and unenforceable...."**

Had the Honorable Judge Bryan given Flarity the same consideration as MacDonald Hoague and

Bayless (renowned for *Kalina v Fletcher*), a similar unconstitutional practice would have ended. Flarity would have opened the BOE court to the public, like Robin Hordon opened the park for protests.

STATE'S RIGHT TO TRESPASS. There is no dispute that county officials trespassed on Flarity's property, that this policy is authorized by Pierce County, and that this policy is ongoing. This trespass resulted in removal of Flarity's farm status and enormous penalties assigned to Flarity—damages a Federal Court can correct—like the 9th Circuit did for *Boule* which was then pending before this Panel.

8.3. Proceedings Below

Petitioners were retired on a family farm successfully ranching on 23 acres in Buckley, WA since 1993. The land had been farmed since the Valley sawmill closed in 1910 and the land then short platted into the Valley Garden Estates. The pasture property is visible from a public road.

Flarity's construction of a barn was necessary to store hay and farm equipment. The County then removed all the property from farm status and applied the maximum back taxes and penalties with no hearing granted for Flarity to challenge the removal of farm status. The penalties and "best use"

taxes made farming impossible. This Cause was filed after Flarity was threatened with arrest for trespass at the closed BOE court in 2018. A subsequent review of dozens of rulings showed that 100% of the petitions had failed. With closure of the BOE to the public, the BOE has no authority to proceed as a legitimate court. Flarity's petition to reverse barn status and restore farm status was stillborn. State courts refused to assign a jury to hear the issues as shown in the related cases. Washington State also charges a substantial jury fee that is not refundable.

The District Court began by granting dismissal by rule 12(b) to Pierce County by giving the BOE absolute immunity, even though it was never determined who actually closed the BOE to the public. Moreover, it was never determined if complete closure is itself is a protected judicial action. AIC was later dismissed, and Motion to Amend denied as shown in **AP-15.**

In a remarkable departure from established legal theory, the Honorable Judge Bryan insisted Flarity show a "class of one" prejudice of the BOE per, *Gerhart v. Lake Cnty., Mont.*, 627 F.3d 1013, 1022 (9th Cir. 2011). **AP-28** Mr. Gerhart had arrogantly put his driveway over the septic drain field of the very commissioner responsible for approving driveway easements—before the easements approval! Judge Bryan had found a case

where there is no dispute about "class of one" applicability.

Rather than cite *Gerhart* to Confirm the lower court, the 9th Circuit used *Olech* to pervert the public's 1st Amendment right to an open hearing into a street easement. **AP-5.** Multipurpose *Olech* was also used to confirm the ongoing trespass policy. **AP-20**.

Maldonado v. Harris, 370 F.3d 945 (9th Cir. 2004) could toll, but Flarity was NOT allowed to submit a Reply in either case. **AP-55.**

9. REASONS FOR GRANTING THE PETITION

9.1. Heal Circuits Splits by enforcing equal treatment

The other circuits do NOT agree with the 9th Circuit's paradigm as recently shown by the 5th Circuit's *Martinez v. Anderson County* 6:22-cv-171-JCB-KNM:

> The fact that a lay person cannot specifically categorize his claims and injuries into legal terminology, however, does not mean that he is an inadequate representative. Adequacy of

> representation asks whether the representative is willing and able to "take an active role in and control the litigation and protect the interests of absentees.

Justice Gorsuch makes similar claims for the 10th Circuit.[19]

> Time and time again on the Tenth Circuit, I saw *pro se* cases with real merit face daunting odds because the litigant did not know how to navigate the wildly complex rules of modern civil litigation. My colleagues and I did our best to catch cases like these....

Chief Judge Diane Wood, 7th Circuit, as reported by the ABA Journal, September 15, 2017:

> "...the judges and our staff attorneys take great care with *pro se* filings, and the unanimous view of the eleven judges on the 7th Circuit (including actives and seniors) is that our staff attorneys do excellent work, comparable to the work done by our chambers law clerks. We are lucky to attract people of such high caliber for these two-year positions.

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[19] *A Republic, If You Can Keep It,* by Justice Neil Gorsuch, P242.

9.2. A Split is Born

The 5th/9th split emerged about the time of Judge Reinhardt's warning in *Jacobsen.* The Southern District's often cited *Elmore v. McCammon,* 640 F. Supp. 905 (S.D. Tex. 1986) is a significant departure from *Jacobsen.* In *Elmore*, the court similarly complains about a deluge of *pro se* filings. But the Panel may notice the judge took care to investigate the claims and does not dismiss by rule 12 nor ignore precedents like the 9th Circuit. The right to a jury trial was much better preserved by the 5th Circuit in 1986.

9.3. 5th Circuit Caseload Analysis in 2023

Case analysis in the 5th Circuit shows the *Elmore* Court's refusal to abuse Rule 12 has continued support among circuit judges. Selecting on Memorandums, *pro se*, 42 U.S. § 1983, shows only two cases for the entire year of 2023 as of the date of this printing: 21-60885 and 21-40626.

9.4. 9th Circuit Caseload Analysis in 2023

In contrast, a similar sort on the 9th Circuit's Memorandums shows 79 cases thus far in 2023. Ten prisoner petitions were reversed. Only one non-prisoner Memorandum was reversed. That case, 21-35270, is worth exploring, because it concerned an

illegal search for previously mentioned Jason Youker. The Panel should study the dissent for the case that sent Mr. Youker to jail, a case that the State Supreme Court refused to review, and that officials continue to cite with enthusiasm in support of illegal searches as *de facto* State policy:

> ...the sheriff's deputies were approached by JoAnn Youker, who informed them that Jason Youker—whom she identified as her ex-husband, not her current husband—had a rifle in his home that she offered to show them: **one red flag**. She told them that her ex-husband was a convicted felon, and she knew that his possession of a rifle was forbidden: **another red flag**. Before traveling to the home with Ms. Youker, the sheriff's deputies learned that Mr. Youker had a no-contact order in effect against Ms. Youker: **a third red flag**....Ms. Youker had an outstanding arrest warrant...for violating the no-contact order....**he should have been permitted to proceed to trial.**

9.5. *Pro Se* Hurdle Height

After five years of examination, Flarity now has two data points to determine when the 9th

Circuit considers a *pro se* plaintiff to have hurdled the stain of a vexatious plaintiff: Jason Youker, 21-35270, whom the 9th Circuit allowed tolling for 42 U.S. § 1983, and permanently blinded Bryd from a beating by Phoenix police for riding his bicycle at night without a headlight, *Byrd v. Phoenix Police Dep't*, 885 F.3d 639, 642 (9the Cir. 2018).

Obviously, these levels of damage are far above the "small claims" indicated should be investigated and enforced by the *Haines Doctrine.* The people have no reasonable mark for estimation of the level of damage necessary to state a claim in the 9th Circuit. This is unacceptable opacity and easily corrected by this Panel.

9.6. 9th Circuit Unfairness Decried Nationwide

Numerous authorities were cited to the 9th Circuit indicating observed unfairness with no acknowledgment by the Panel.

Procedural Due Process Rights of Pro Se Civil Litigants by Julie, M. Bradlow, University of Chicago Law Review, Citations from the Brief, DK#6, For brevity, Flarity's Brief is not attached:

> The very point of the Haines approach is to determine if, when a *pro se* civil

> plaintiff has not said the "magic words" (or has said the wrong words), **a cause of action may be small**, it is essential that these complaints be recognized. The protection of federal court litigants' interest in a meaningful opportunity to be heard while litigating is **a central aspect of procedural due process**.

No Good Deed Goes Unpublished: Precedent Striping And The Need For A New Prophylactic Rule, By Edward Cantu, UMKC School of Law. **AP-43**.

Professor Steven Landsman, Lewis and Clark Law Review, Volume 13:2, **AP-43**

> When courts appear to curtail access, to avoid the merits, or to **act against an identifiable group of litigants**, they are likely to kindle onlooker skepticism about judicial legitimacy....

Conley v. Gibson, 355 U.S. 41 at 48 (1957):

> The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that **the purpose of pleading is to**

facilitate a proper decision on the merits.

This case is the ideal opportunity to explain to the people—or to the 9th Circuit—the circumstances when precedents and the merits will be considered.

10. THE FLARITY DOCTRINE

Flarity proposes the following guidelines be established as consistent rules in all circuits.

INTRODUCTION

That an ordinary citizen might reverse the inertia of unconstitutional government practices is the stuff of legends on the order of Paul Bunyan. A real life example of this misconception is the crusade of Rosa Parks in ending discrimination in the Jim Crow south. In fact, before Ms. Parks, many others had been arrested for similar civil rights violations and were beaten in jail with no consequences to officials or changes in official policies. Rosa Parks was a renowned Civil Rights advocate spearheading a carefully orchestrated campaign. Like Martin Luther King Jr., mistreating Rosa Parks would have caused an immediate nationwide backlash to officials. Plaintiffs should first look in a mirror—do

you see a renowned figure in a movement? If not, courts are likely to deliver an emotional and financial beating. The cited example of Robin Hordon before Judge Bryan was a similar example of a carefully orchestrated campaign oblivious to most prospective *pro se* plaintiffs.

DUE DILIGENCE

1) DUE DILIGENCE REQUIRED. When the people feel their rights have been violated, they should appeal directly to those officials in a thoughtful discussion. All the legal concepts a good lawyer would present in court can be shown to the officials with no motion for oral argument necessary. This first step is mandatory. If a potential plaintiff cannot discuss rationally the issues in person, court is not an option. A follow up letter is necessary to document what was discussed. This step will create a vital public record and establish a toehold for standing.

2) APPEAL TO HIGHER RANKED OFFICIALS. If the direct discussion was unsuccessful, a followup discussion should be conducted with supervisors, followed by the lowest level of elected representatives. These direct meetings should also be documented. If unsuccessful, meetings with higher officials should be attempted. And finally, public meetings with local officials should be attended with

the issues brought to the attention of the group in the public comments portion. These comments are then public records and further establish standing.

3) DISCUSSIONS WITH ATTORNEYS. The same arguments one plans to submit to a court should be presented to attorneys capable of challenging officials. These firms are rare, as challenges to officials generally exceed a million dollars. Most attorneys in this rarefied category will grant a short interview for the plaintiff to present their case. DO NOT discuss the issues over the phone or in emails. The potential plaintiff should present themselves to the attorney exactly as they would to the Supreme Court. If the potential plaintiff cannot personally appear before an attorney with the gravitas of a million dollar client, the same problem will deny any meaningful standing in court. Plaintiffs should keep a detailed log of the lawyer meetings.

Plaintiffs should also ask if the attorney will "coach" if plaintiff proceeds *pro se*.

REVISED FEDERAL PROCEDURE FOR *PRO SE*

1) ACKNOWLEDGE *HAINES DOCTRINE REVERSAL.* The 9th Circuit has significant procedures granting *pro se* exceptions. These procedures are relics of a time when the *Haines Doctrine* was policy. Except for prisoners, all

references to *pro se* attorneys should be removed from the rules. *Pro se* plaintiffs should be held to the exact standard as appellate attorneys. This should then provide an equal right to an oral hearing based on the merits. Circuits should be corrected for refusing to grant oral hearings to *pro se* plaintiffs.

2) ALLOW ATTORNEY COACHING. The Washington State Bar Association actively discourages "coaching" on *pro se* pleadings to the extent that revoking the BAR license is threatened. This is the equivalent of the death penalty for littering. Attorneys in Washington State are terrified to give any advice, even when payment is offered. Like sanctions on good faith *pro se* pleadings, the Panel should declare this practice an unconstitutional "chilling" of the right to be heard.

3) EXTRAORDINARY BENEFITS OF COACHING. Like the Clerks reading this Petition, a good lawyer in five minutes can spot the flaws in briefs and offer corrections. Without retribution, the coaches should be allowed to be posted on the filings so the courts have some confidence that the filings have a validated narrative worth reading. The more coaches listed, the better the court's confidence. This is NOT the current practice. The state BARs (not the ABA) have exacerbated a treacherous gulf between

class of plaintiffs as indicated in *Jacobsen* and in defiance of the BAR's own Resolution 400.

4) NO *PRO SE* CASE ACCEPTED WITHOUT CLERK REVIEW. The rules should be changed so that all *pro se* cases are reviewed for diligence BEFORE filing fees are accepted. This review should include proof of due diligence as described herein. If any attorney has agreed to coach, that agreement would exempt review of the attorney log.

11. CONCLUSION

It it is extremely damaging to the Rule of Law for the 9th Circuit to turn away every *pro se* civil rights petition with precedent mockery, rule breaking, opaqueness and sanctions beyond dismissal for failure to state a claim.

The 9th Circuit's practice has allowed Washington State to escalate their misconduct and politicize State courts to corrode a magnificent constitution. Adoption of the *Flarity Doctrine* will eliminate an enormous number of filings clogging the courts while giving prospective plaintiffs training in responsible citizenship. Adoption of the doctrine gives notice to judges that the *pro se* plaintiffs have been pre-screened and are not members of Landsman's "troublesome fringe." Hard working *pro se* plaintiffs should be afforded equal protection of

the law and oral hearings. From Henry David Thoreau, *On the Duty of Civil Disobedience*:

> ...and, if they should not hear my petition, what should I do then?

Indeed. What should the people do then? This Court should grant the Petition for Certiorari and tell us directly.

RESPECTFULLY SUBMITTED, May 31, 2023

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No attorney coach is listed.
The practice is not allowed in Washington State.