No. 22-977

IN THE
Supreme Court of the United States

JENNY & JEREMY BRUNS,
Petitioners,

v.

USAA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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April 6, 2023

QUESTIONS PRESENTED

1. The conspiracy theory of personal jurisdiction ("CTPJ") is nebulous and has no consensus in State and Federal courts. Does the theory satisfy the Fourteenth Amendment's Due Process concerns for nonresident federal antitrust co-conspirators under the Supremacy Clause, without resort to a State's long-arm statutes for a private cause of action under 15 U.S.C. §15, when 15 U.S.C. §22 attaches one co-conspirator for venue and personal jurisdiction, in a District where the victim also resides and experiences the injury?

2: In the alternative, whether the gap-filling All Writs Act reaches co-conspirators for personal jurisdiction with a private cause of action, by using the analogous 15 U.S.C. §5, which allows courts on behalf of United States attorneys under §4 to invoke nationwide jurisdiction over nonresidents to restrain antitrust conspiracies for the ends of justice.

3. Also in the alternative, whether *Georgia v. Pennsylvania Railroad Co.,* 324 U.S. 439 (1945), should be overruled to include private attorneys general in 15 U.S.C. §§4's and 5's scope because the semicolon in §4 insulates the clause that governs district courts' jurisdiction to prevent and restrain violations of sections 1 to 7 of the Sherman Act.

4. By burking the gravamen of our complaint's Judicial Code Canon 3D claim, did the courts below deny our due process and equal protection rights guaranteed by the Fourteenth Amendment, thus repudiating *Rooker-Feldman* and res judicata principles, while permitting an objectively self-imposed disqualified State court judge to play "velvet blackjack" with impunity?

5. Under incorporation of the Ninth Amendment through the Fourteenth Amendment, can direct crime victims assert the fundamental, deeply rooted federal constitutional right for repose to compel a State to enforce the minimum time that a convicted felon must serve under the published rules governing a lawfully issued incarceration sentence?

6. In the alternative, whether the Court should overrule the *Slaughter-House Cases* so victims of crime can vindicate the powerful interest in punishing the guilty, shared by the State and Nation alike.

7. Did USAA violate the Sherman Antitrust Act by combining with State court judges (agency capture) to coercively and unreasonably restrain trade, by using categorically forbidden cheating tactics that harm both competition and consumers, frustrating clear, compulsory public policy statutes, whose very purposes are to be extremely protective of vulnerable victims?

8. Whether USAA's relationship with the District Court judge reasonably questions his impartiality, disqualified him under 28 U.S.C. §455(a), and voids his orders.

PARTIES TO THE PROCEEDING

USAA; Reuben F. Young; Robert N. Hunter, Jr.; Wanda G. Bryant; Richard Dietz; Mark Martin; Cheri Beasley; Samuel J. Ervin IV; Robin E. Hudson; Barbara Jackson; Michael R. Morgan; Paul Martin Newby; Linda M. McGee; John S. Arrowood; Philip E. Berger, Jr.; Ann Marie Calabria; Mark A. Davis; Robert Christopher Dillon; Richard A. Elmore; Lucy Inman; Jeffrey Hunter Murphy; Donna Stroud; John M. Tyson; Valerie Zachary; James "Jim" Floyd Ammons; Jr.; Claire V. Hill; Roy A. Cooper III; Josh Stein; Thomas M. "Matt" Woodward; Frank L. Perry; Eric A. Hooks; J. Eric Boyette; Mike Causey; Merrick B. Garland; Matthew M. Graves; Denis McDonough; Michael Carvajal; Steven Cliff; Stephanie Pollack; Pete Buttigieg; Elizabeth Prelogar; John I. Malone, Jr.; Philip H. Cheatwood; Dalton Bryant Junior; Dalton Bryant Senior; and Rhonda Renee Sutton Bryant.

RELATED PROCEEDINGS

This petition arises out of the following cases:

- United States Court of Appeals for the District of Columbia, No. 22-5011, Bruns v. USAA et al., 7 November 2022.
- United States Court of Appeals for the District of Columbia, No. 22-5011, Bruns v. USAA et al., 11 August 2022.
- United States District Court for the District of Columbia, No. 20-cv-501 (RCL), Bruns v. USAA et al., 21 December 2021.
- United States District Court for the District of Columbia, No. 20-cv-501 (RCL), Bruns v. USAA et al., 29 March 2021.

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OPINIONS BELOW

This petition arises out of the following cases: United States Court of Appeals for the District of Columbia, No. 22-5011, Bruns v. USAA et al., 7 November 2022, Pet. App. 13a; United States Court of Appeals for the District of Columbia, No. 22-5011, Bruns v. USAA et al., 11 August 2022, Pet. App. 1a; United States District Court for the District of Columbia, No. 20-cv-501 (RCL), Bruns v. USAA et al., 21 December 2021, Pet. App. 4a; United States District Court for the District of Columbia, No. 20-cv-501 (RCL), Bruns v. USAA et al., 29 March 2021, Pet. App. 8a.

JURISDICTION

The D.C. Court of Appeals entered judgment on 11 August 2022. And the D.C. Court of Appeals denied our petition for rehearing en banc on 7 November 2022. Pet. App. 13a. On 7 February 2023, Chief Justice John Roberts granted our Application No. 22A614 and further extended the filing time to and including 6 April 2023; he also granted our application No. 22A716 that this petition may not exceed 20,000 words. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

Fed. R. Civ. P. 4(k)(1)(C) provides: "Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant...when authorized by a federal statute."

15 U.S.C. §3 Trusts in Territories or District of Columbia illegal; combination a felony. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in

any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or foreign nations, and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

15 U.S.C. §4 Jurisdiction of courts; duty of the United States attorneys; procedure. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several Unites States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. ..."

15 U.S.C. §5 Bringing in additional parties. Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

15 U.S.C. §15 (also Section 4 of the Clayton Act) **Suits by persons injured. (a) Amount of recovery; prejudgment interest.** Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only — **(1)** whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith; **(2)** whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and **(3)** whether such person or the opposing party, or either party's representative, engaged

in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

15 U.S.C. §22 District in which to sue corporation. Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

15 U.S.C. §26 Injunctive relief for private parties; exception; costs. Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provide, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring...In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of the suit, including a reasonable attorney's fee, to such plaintiff.

15 U.S.C. §1011: Declaration of policy. Congress hereby declares that the continued regulation and

taxation by the several States of the business of insurance is in the public interest, and that the silence on the part of the Congress shall not be construed to imposed any barrier to the regulation or taxation of such business by the several States.

15 U.S.C. §1013: Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation. (b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

28 U.S.C. §455(a): Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. **(e):** No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

28 U.S.C. §1337(a) (in relevant part): "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies"

28 U.S.C. §1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

42 U.S.C. §1983 (in relevant part): "Every person who, under color of any statute, ordinance, regula-

tion, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

North Carolina Code of Judicial Conduct Canon 3D. Remittal of Disqualification. Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's potential disqualification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, pro se parties shall be considered lawyers.

Canon 3C. Disqualification. (1) (in relevant part): On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned.

State of North Carolina Department of Public Safety Prisons Policy and Procedure, Chapter: B, Section: .0100, Title: Sentence Credits. .0113 Earned Time Credits (f): Ineligible Inmates: Inmates characterized structured as follows are not eligible for Earned Time for the purpose of reducing their confinement or calculating an unconditional release date: **(7)** Inmates convicted of DWI.

N.C.G.S. 15A-1368.2. Post-release supervision eligibility and procedure. (in relevant part): **(a)** A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less nine months, less any earned time awarded by the Department of Correction...If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months.

N.C.G.S. §20-4.01. Definitions. (24a) Offense Involving Impaired Driving. Any of the following offenses: (in relevant part): **(b)** Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving.

N.C.G.S. §20-71.1 Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation. (a) "In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving a motor vehicle, proof of ownership of such motor vehicle at the time of such accident or collision shall be prima facie evidence that said motor vehicle was being operated and used with the authority, consent, and knowledge

of the owner in the very transaction out of which said injury or case of action arose.

N.C.G.S. §20-141.4(a3). Felony Serious Injury By Vehicle. A person commits the offense of felony serious injury by vehicle if: (1) The person unintentionally causes serious injury to another person, (2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and (3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury. **(b) Punishments.** (4) Felony serious injury by vehicle is a Class F felony.

N.C.G.S. §20-279.21(b)(3)(b) (in relevant part): For the purpose of this section, and "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance...or there is that insurance but the insurance company writing the insurance denies coverage thereunder."

N.C.G.S. §20-279.21(f)(1) (in relevant part): the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs.

N.C.G.S. §20-279.21(f)(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

N.C.G.S. §58-63-15. Unfair methods of competition and unfair or deceptive acts or practices defined. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance: **(11) Unfair Claim Settlement Practices.** – Commit-

ting or performing with such frequency as to indicate a general business practice of any of the following: Provided, however, that no violation of this subsection shall of itself create any cause of action in favor of any person other than the Commissioner: **a.** Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; **b.** Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; **c.** Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; **d.** Refusing to pay claims without conducting a reasonable investigation based upon all available information; **e.** Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed; **f.** Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; **g.** Compelling [the] {sic} insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insured; **h.** Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled; **i.** Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; **j.** Making claims payments to insureds or beneficiaries not accompanied by [a] statement setting forth the coverage under which the payments are being made; **k.** Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or

compromises less than the amount awarded in arbitration; **l.** Delaying the investigation or payment of claims by requiring an insured claimant, or the physician, of [or] either, to submit a preliminary claim report and then requiring the subsequent submission of formal proof-of-loss forms, both of which submissions contain substantially the same information; **m.** Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and **n.** Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

N.C.G.S. §75-1.1(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

N.C.G.S. §75-16. Civil action by person injured; treble damages. (in relevant part): If any person shall be injured...by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person...so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.

STATEMENT OF THE CASE

I. Introduction: If men must turn square corners when they deal with the government, then

why won't the government turn square corners when it deals with us? During the past decade, our case constantly makes us ask this question: ***Why***? Why won't USAA pay us the actually available contractual policy limits for our injuries that vested through the mandatory minimum automobile liability statutes ("FRA") at the moment of The Calamity? Why won't USAA treat us with good faith and fair dealing as required under the insurer statutes that specifically forbid the deceptive acts that they've committed against us? Why have the judges arbitrarily imposed invented conditions that aren't in the statutes or controlling precedents, blocking our enforcement remedies as intended beneficiaries of the FRA laws for USAA's breach of contract and bad faith laws? Why won't the government officials enforce the DUI laws and the minimum term of a felon's lawfully issued structured sentence? Why won't the judges enforce the compulsory consequences contained in their own judicial code against the judges who acted in all absence of jurisdiction? Why won't the federal courts read the applicable facts and unambiguous texts of nondiscretionary laws cited in our complaint and grapple with the gravamen of our claims instead of choosing to chase red herrings to unconstitutionally dispose of our case? Why are the wrongdoers being protected from accountability and rewarded for their conscious corruption? For all of these "why" questions, we have only conjecture. But for all of the "how" questions, our record is replete with ample proof delineating the defendants' objective violations. Yet all these facts and laws are meaningless unless the Court looks at our record and decides to apply the relevant facts to the controlling laws as they exist, *i.e.*, how the Court finds them

— not how one might wish them to be. We benevolently brought our State and Federal cases at great personal cost, burdening ourselves largely for the purpose of promoting the public good, in addition to vindicating our personal rights, of course. We are fighting for the State's sovereign interests, as drawn from their explicitly stated public policies, because the officials who are charged with the duty to show such solicitude have repudiated their responsibilities owed to us and to the people. Our case has always been bigger than us. And we want justice. So for that end, we need the Court's "magic words" because the courts below have inexplicably concluded that clear words won't do what they say and intend. Words are humanity's most inexhaustible source of magic, capable of both inflicting injury and remedying it. Words are how the law constrains power. So why have the government officials been allowed to make up their own rules that defy fundamental interpretive principles and precedent, violating our private property and constitutional rights, simultaneously using their powers to subvert public rights? There have been no accidents in our case because their concerted conduct committed contrary to controlling laws that we've continually complained about has been deliberately, knowingly, and willingly inflicted upon us, cruelly and unapologetically. We are here at the pleading stage, and our complaint was thorough with facts and laws to support our claims and is sufficient to withstand the defendants' motions to dismiss.

II. Our former life. Raised in Minnesota, Army Sergeant Major Jeremy Bruns enlisted as airborne infantry in 1991, amidst the Gulf War because he felt a patriotic duty to protect the Constitution and

the American way of life; he spent the second half of his career in Special Operations Civil Affairs. After basic training, he married Jenny; we are high-school sweethearts. We have one son. We loved traveling and hiking together. Jenny was a homemaker and avid volunteer, and she earned a life and health insurance agent license from the N.C. Department of Insurance in 1997. Jeremy returned home safely from nine deployments, but now he's constantly mistaken for a war victim.

III. On 10 November 2012, The Calamity happened in our front yard during Veterans Day weekend, and it was no accident: Senior, at the scene, yelled at Rhonda, while she bobbed behind the wheel of his car: "What did you do now?" (Compl. p. 34). On this sunny, Saturday morning, Jeremy was behind his truck, loading his kayak to go fishing, when Rhonda smashed into him, speeding 45 in a 25, in the wrong lane, down a wide residential street, near an elementary school, pinning him for about an hour between vehicles. Rhonda broke both of his femurs, cut off his legs above his knees, broke and dislocated his left arm, punctured his lungs, crushed every bone in his right hand, he lost his thumb, and later his index finger despite a painful flap procedure and leeches. There were more injuries then and since, too many to remember or recite here. The medics were freaking out because Jeremy was losing blood faster than they could give it to him, as Jenny, from the middle of our front yard, watched it flow down the street into the gutter, because the police torturously held her back to spend what looked like the last moments of Jeremy's life together, forcing her to watch him suffer agonizing pain, which, to the dozens of emergency officials and

dozens more neighbors, in shared anguish, looked utterly unsurvivable. It's a miracle that Jeremy lived: a credit owed to the first responders who arrived upon the scene swiftly, (and maybe because of the neighbors' prayers), and to the many providers during the following weeks in the ICU, and to the teams of medical professionals at Walter Reed, where we lived for more than two years recovering from Jeremy's permanent and catastrophic injuries, involving dozens of follow-up surgeries and procedures, and countless physical, occupational, and other forms of specialized therapy sessions. One of our neighbors said that when she opened the car door, it reeked of alcohol. "I truly was concerned for [Rhonda] until I got the door open as much as I could to try and calm her down and that's when I smelled the alcohol. The concern then turned into anger...I really did not think [Jeremy] would survive...I saw how mangled his body was and how much blood he lost...I thought my heart was going to break into pieces when [Jenny] came out and saw Jeremy. It could have been me going to the mail box or my son walking to school."

IV. Continuous pain, ten years and counting. Like the weather changes continuously, without stopping, so too our pain. Jeremy's physical pain never stops, and he's a constant fall risk. Every night Jeremy has regular intervals of what we call "the shakes." A session can last minutes or hours, and the intervals of shaking happen every 5 to 55 seconds — you can set a clock to them during a particular session. Sessions happens throughout the night, usually with breaks that span minutes to hours. The shaking is mild or violent. And it usually disturbs Jenny's sleep more than Jeremy's. But

when Jeremy has an "active" night, with particularly violent or constant shaking, he is wrecked the next day. The shakes are caused from the nerve damage by the traumatic way that Rhonda amputated his limbs (versus in a controlled surgical setting where doctors take care to perform necessary amputations properly). Jenny had to drive to Fayetteville from D.C. every few weeks to ensure that Rhonda's case wouldn't be dismissed. Because of the trauma associated with driving back to the scene of the Calamity, Jenny gets severe panic attacks behind a wheel and hasn't driven since January 2015, and because of this lawsuit trying to vindicate our rights and keep our case alive, in addition to being Jeremy's full-time caregiver (officially recognized and documented by the U.S. Dept. of Veterans Affairs), Jenny hasn't been able to properly take care of her medical and psychological needs. The continuance of our sham lawsuit (because the defendants refuse to follow the laws or correct their misconduct) has forced us to relive this horror over and over, preventing us from moving forward, and disabling us from pursuing happiness. None of the events since The Calamity have been an accident. The defendants' combined crimes against us have been committed with conscious minds.

V. A cop at The Calamity warned us that USAA wouldn't treat us fairly because we all had the same insurer: the two discretely liable tortfeasors (the negligently entrusting car owner and the intoxicated driver) who caused damages, and we the two discrete bodily injury victims. This is why we continually asked USAA to deal with us in writing, which they repeatedly ignored. Rhonda and Senior are married. Senior alone owned the

car that Rhonda drove while drunk and high (active cocaine and other drugs in her system). Both are named on a single USAA automobile liability insurance policy, and each are covered for the minimum statutory amounts as required by the N.C. FRA laws (30/60/25) as owner and licensed driver (or household member) for their discrete acts of negligence. Later we learned that it's at least Rhonda's fourth known DUI, atop many other tickets for reckless driving (her records have been scrubbed). We didn't know then that USAA owes us $120,000 under the State's compulsory mandatory minimum automobile liability insurance statutes because Rhonda and Senior each carried the minimum limits. Unfortunately, the cop was correct because since that day and through today, USAA has treated us in bad faith by violating more than a dozen of the explicitly prohibited unfair and deceptive practices laws under Chapter 58 that cover us as intended beneficiary FRA claimants. See, *e.g.,* Compl. Prelude pp. VII to XI. And we were shocked because we trusted USAA. They wrap themselves up in the flag with ubiquitous advertising targeting military members, pretending to care about us, so we expected full, prompt, and hassle-free payment for injuries that obviously exceed the statutory mandatory minimum.

VI. Meanwhile, the military's mandatory insurance paid its policy limits immediately after The Calamity for Jeremy's catastrophic injuries: his right thumb alone was worth $50,000, and it capped at $100,000. But USAA, instead of offering us the actual total policy limits available for our injuries caused by their tortfeasors, decided to betray us at every juncture, stating unlawful reasons for lowballing the real value of our

claims. USAA first offered just Jeremy their purported "policy limits" of $30,000 in January 2013, which we much later realized referenced Senior's name and not Rhonda's. A few months later, we consulted a lawyer informing us that Jenny has a separate bodily injury "bystander claim," which is a common, long-recognized liability insurance claim in N.C. So at that time, we thought that we were only entitled to $60,000 in policy limits from Rhonda's coverage as a negligent driver because we didn't think about the ownership of the car. And we didn't think that we needed to hire a lawyer because our claims are clear and easy to ascertain with a cursory investigation, which is an insurer duty required under §58-63-15(11)(c) and (d). In August 2013, USAA sent a release letter for Jeremy "and Spouse" for $30,000 to forever discharge "Dalton Bryant and Rhonda Bryant" and USAA. Jenny mailed her first bodily injury claim letter 8 November 2013. See R. pp. 243–255.

VII. A year after The Calamity, in a letter addressed to Jeremy, USAA rejected Jenny's first claim letter for her discrete bodily injury, so she immediately sent a second claim letter to eliminate any possible confusion or misunderstanding: USAA refused to acknowledge or process it. We sent it certified on 25 November 2013, repeating the first claim letter: "I attempted to initiate a claim with you...but clearly USAA did not read it because my claim was not acknowledged...I, Jenny Bruns, hereby submit a bodily injury claim...as a direct consequence from the calamity that occurred in my front yard...where Rhonda Bryant catastrophically and permanently injured my husband...According to the police report, the policy

number above belongs to vehicle owner Dalton Bryant Jr." We purposely crafted this letter to be short and simple, to explicitly eliminate any misunderstandings that Jenny was asserting a discrete bodily injury claim. And we still didn't realize the $60,000 at stake because Senior owned the car. But after USAA didn't respond, their misconduct prompted Jenny to spend more than 1000 hours studying at the Library of Congress' Law Library to learn about bad faith laws and our rights to force USAA to pay us fairly. Surprisingly, that's when we learned about our negligent entrustment claims against the owner of the car, which N.C. has also long recognized. Negligent entrustment necessarily triggers two occurrences, or two discrete coverages for separate tortious acts, on the policy. See R. pp. 257–265.

VIII. In June 2015, we sent USAA a pre-litigation letter demanding full payment for Jenny's discrete bodily injury claim, and for both of our claims against the car's owner for negligent entrustment, but USAA still insisted $30,000 "is the maximum available limit under the Bryant's policy." Stupidly believing that USAA would do the right thing, we sent this letter pointing out their bad faith acts. In the ensuing weeks, through a series of email exchanges that went nowhere, USAA admitted in writing that both of their policyholders are liable to both of us, yet USAA still insisted that $30,000 was the total amount of policy limits available. Here are some excerpts showing our frustration (and these facts are objective evidence showing how USAA violated the per se unfair and deceptive acts under

§58-63-15(11)(a)(b)(c)(d)(e)(f)(g)(h)(j)(m) and (n)):

- June 24 from us: USAA has never addressed Jenny's claim attempts. Offering 30K for the both of us is insulting, if that's in fact what you did.
- June 25 from USAA: USAA has addressed Jenny Bruns' loss of consortium claim by certified letter dated 11/15/13. Her claim is a derivative of Jeremy's injury claim. I understand a $30,000 offer is not acceptable to you...This policy only has $30,000 available which is the maximum USAA can pay.
- June 26 from us: Jenny explicitly attempted to assert her valid, direct, independent, and separate bodily injury claim — not a consequential injury or a derivative loss of consortium claim from Jeremy's claim...Jenny was a separate victim as a bystander in close proximity to the calamity and contemporaneously perceived it. Furthermore, USAA continues to ignore the fact that we have valid claims against both Bryants' policies: Rhonda as the driver and Dalton as the owner. The truck damages have also not been fully compensated.
- June 26 from USAA: If Jenny asserts that she was a separate victim as a bystander in close proximity to the calamity and contemporaneously perceived it, we would request from her a narrative or statement regarding her location and what she observed...You are correct that you have cause of action against the driver and owner of the vehicle, however, the policy provides coverage on a per incident basis.
- June 27 from us: Whose policy limits of 30K were offered? Rhonda's or Dalton's?

- June 29 from USAA: The policy is for both Rhonda and Dalton Bryant, as they are husband and wife. They do not have two separate policies.

See R. pp. 266–288. Also see, *e.g.,* Compl. 15–18.

IX. USAA's fraud against catastrophically injured victims is awesome. USAA lies in open court and judges welcome it by allowing ill-gotten gains to live long and prosper. See, *e.g.,* Compl. pp. 26–27, citations from the State trial court transcript where USAA's lawyer lies about the law that we need a civil judgment to enforce the vested contract rights, lies that $60,000 is the statutory limit that we're entitled to, lies about USAA's bad faith conduct, lies about two occurrences for negligent entrustment, admitted that both Senior and Rhonda are named as insured in the policy, and admitted that there's one policy that covers two different individuals. Then we cited: "Restatement of the Law (Second) Contracts §§9 and 10 recognize that multiple promisors and promisees under one contract don't restrict discrete full coverages. Malone concedes that there are two separate, fully covered policyholders under the umbrella of one policy."

X. After our complaint to the N.C. Department of Insurance, 32 months after The Calamity, USAA increased their offer to $60,000, which is still half of the actual $120,000 policy limits available under the compulsory mandatory minimum FRA statutes, but it was too late to hire a lawyer. Accordingly, as we promised in our pre-litigation letter, we filed a complaint with the NCDOI. But we didn't say anything about our negligent entrustment claims because we were solely focused on making USAA recognize Jenny's discrete

bodily injury claim. USAA finally acknowledged Jenny's claim, increasing their policy limits offer to $60,000, which is still half of what they owe us under the contract that names both tortfeasors for their discrete causes of negligence, as required by the FRA statutes. Then we tried to hire a lawyer but failed, because, they said, it was too close to the statute of limitations, too hard, and not enough payout to make it worth enduring years of litigation.

XI. For 17 months, Rhonda tried to escape accountability. She finally pleaded guilty to felony DUI and was issued an active 29-month maximum under structured sentencing (with at least three prior DUIs not on her record for sentencing purposes). See, *e.g.,* Compl. Prelude p. VIII, and p. 15, 188–206. In February 2014, Jenny wrote an email to a neighbor witness: "DA Billy West called today. Bryant's attorney expressed she won't plead guilty." That whole time, indisputably guilty, Rhonda never apologized. But when seeking sentence mitigation, she did in court. But her lack of remorse is evidenced from neighbors who saw her speeding through the neighborhood after The Calamity, and later still, they saw her driving on a suspended license. As a recidivist offender, she didn't go to the alcohol treatment programs in prison because, Rhonda told a prison official who wrote it into her record: it was too far to walk. Rhonda missed the irony that she has legs to walk with. From Rhonda's sentencing transcript, 13 CRS 53766, 9 April 2014, R. p. 336 and 374:

> "The Court: Do you understand that you are pleading guilty to the Class F felony of serious injury by vehicle which carries a possible maximum punishment of 59 months? Defendant:

> Yes, ma'am. The Court: You're pleading guilty as well to one count of driving while impaired, that being a misdemeanor, with a maximum punishment of 36 months? The Defendant: Yes, ma'am. The Court: And you are pleading responsible to the infraction of driving left of center. Do you understand that? The Defendant: Yes, ma'am." (Tr. p. 6).

The court ordered Rhonda to serve an active structured sentence for the maximum term of 29 months. (Tr. p. 44).

XII. The N.C. Department of Public Safety ("DPS") unlawfully released Rhonda early from prison on the preposterous pretext that she wasn't sentenced for or convicted of a DUI offense at all. See, *e.g.,* Compl. Prelude p. VIII, pp. 29–31, 14–42, Claim 9 pp. 15, 188–238. Felons work their sentences down from the maximum. Because Rhonda is a Class F felon, she got nine months automatically lopped off the top under §15A-1368.2 for "Post-release supervision." But because she was convicted of felony DUI, "DPS Prisons Policy and Procedure .0100 Sentence Credits" excludes her from getting any "Earned Time" to further reduce her sentence. So when the State notified us that she would be unlawfully released four months too early, we vigorously protested. See, *e.g.,* correspondence with executive officials R. pp. 227–242. DPS officials said that Rhonda wasn't convicted of DUI at all because the title of §20-141.4(a3) said so: "Felony serious injury by vehicle." But Rhonda's DUI statute is a more specific a type of DUI than its title reflects with DUI in the elements — but DPS said that elements don't matter! They also all agreed that "if" she was convicted of felony DUI, then she would be ineligible for

Earned Time to reduce her sentence from the maximum. Furthermore, the DOT suspended Rhonda's license while she was in prison, which doesn't serve the purpose of the law, giving her yet another free pass from the consequences for her criminal conduct. All of the State courts did nothing to help us. So after futilely exhausting every State remedy, we brought Claim 9 to the federal district court for relief under §1983, the Ninth and Fourteenth Amendments, and Ex parte Young.

XIII. At the threshold of our State case, the trial court acted in all absence of jurisdiction because he disqualified himself from the bench by voluntarily disclosing that he had been the DPS secretary, a party we were suing, thus triggering Canon 3D of the judicial code without obeying its prescription to make him "no longer disqualified." He unconstitutionally proceeded, openly disobeying 3D's controlling commands by asking us from the bench for oral waivers, thus not complying with his duty to obey 3D's explicit, nondiscretionary written prescription that must be made outside of his presence and placed in the record before he can become "no longer disqualified." We didn't know anything about the judicial code, and nobody told us anything about it. See, *e.g.,* Compl. 20–28; also see pp. 7–8 of the hearing transcript, 25 January 2016, 15 CVS 8375:

> "The Court: I mentioned to you folks earlier [after a lawyer dropped dead six feet in front of us and delayed the court's start time by an hour] that I would give you an opportunity to object to the Court hearing these matters because in my previous life I served as the Secretary of the Department of Public Safety, and before that,

> the Secretary of the Department of Crime Control and the Public Safety before it was consolidated. So, before we proceed with regard to these motions, I want to give each party as they are represented an opportunity to object to me hearing this matter, and I will decide from that point with regard to whether we will proceed or not. So. Ms. Bruns: No objection. The Court: Anything from the Bruns'? Mr. Woodward. No objection from the State. Ms. Bruns. No objection. The Court. Okay. All right. Mr. Cheatwood: No objection on behalf of the Defendant's Bryant, Judge. The Court: Okay. All right. Mr. Malone: No objection on behalf of USAA, Your Honor. The Court: Okay. Thank you very much. All right. The -- let's -- let's do this." (Tr. pp. 7–8).

To be clear, Jeremy didn't speak or say anything — he didn't give oral consent for a waiver — which doesn't comply with 3D's due process requirement anyway; Jenny's oral consent doesn't satisfy 3D's nondiscretionary conditions. By pp. 9–10 of the transcript, the trial court clarified that we couldn't ask him any questions whatsoever, reinforced on p. 30 when he wouldn't let us make our point, and on p. 36 he shut us down from making an objection, and again on p. 43 he cut us off, so by p. 44 when USAA's lawyer Malone passed the judge an ex parte binder without allowing us to inspect its contents, which we didn't hear or understand what was happening until we read the transcript, supposedly describing its contents. But how would anyone but Malone and the Judge know what was in the binder?

> Ms. Bruns: Do we change the captions for the case or do we continue to put Tata? The Court: Well, I -- I -- I'm not gonna give you any legal

advice. Ms. Bruns: Okay. The Court: So, I mean, you're representing yourself with regard to this matter. The question that I have is whether you have any objection to the Motion to Substitute? Ms. Bruns: We do not, but that's technical advice. The Court: Okay. Ms. Bruns: I'm not sure that that's legal advice. The Court: I'm not gonna give you technical advice. Ms. Bruns: Okay. The Court: All right? If that clarifies that. (Tr. pp. 9–10).

XIV. We sued the DPS secretary in an official capacity to force the State to enforce Rhonda's minimum sentence. But even the trial court was incredulous that there was a dispute that Rhonda was/wasn't convicted of felony DUI. See excerpts from Tr. pp. 24–25, Compl. pp. 24–26:

The Court: So, under what authority does this Court have to order Ms. Bryant back to jail to serve her sentence? Ms. Bruns: Because it's the law. The Court: What law are you relying on? Ms. Bruns: 143 [misspoken or mistranscribed, it's §141.4(a3)] that she was sentenced to, and also, the policy, in Appendix -- Appendix 2 in the Complaint. The -- and, all these are in the responses and Complaint, as -- as well. Yes, Appendix 1 has the Motor Vehicle Driver Protection Act of 2006....they claim that she's not in prison for DWI, but Appendix 1 is very clear that she was in prison for DWI, and -- and the State is claiming she was not in -- in prison for DWI. The Court: I mean, I'm assuming that's what -- that's what she went to jail for. I don't think there's any dispute about that. Ms. Bruns: They're disputing it. The Court: Hold on. Mr. Cheatwood: Your Honor -- Your Honor, she

> was -- what she was doing -- she was convicted for felony serious injury by vehicle, which a component of that is driving while intoxicated. As far as a brief explanation, as this Court well understands, that sentence re -- has a mandatory minimum. The Court: Right. Mr. Cheatwood: She earned down to the mandatory minimum. She didn't earn past the mandatory minimum. The Court: right. Okay.

In Appendix 1 and 2, we provided the entire General Assembly's Session Law 2006-253 House Bill 1048: An act to provide 10 improvements for impaired driving offenses, including §20-141.4(a3), see R. pp. 433–473; and the entire DPS .0100 sentence credits rules, including felony DUI offenders under .0113(f)(7), which explicitly says that inmates with structured sentences convicted of DWI are ineligible for Earned Time for the purpose of reducing their confinement, see R. pp. 474–486. It's a fact that Rhonda as an felony DWI offender is ineligible for Earned Time credits to reduce her sentence, but DPS gave her four months of unlawful Earned Time because they denied that her conviction was for DUI. These State officials' admissions are in writing, see R. pp. 227–242.

XV. We handwrote on Page One of our bypass appeal about the trial court's 3D violation, but the North Carolina Supreme Court ("NCSC") breached their duty to us by ignoring it. We raised this issue at our first opportunity, shortly after discovering it. We filed our Bypass and Mandamus petition 1 August 2016 and also wrote on Page 1 of every defendant's copy: "Judge Young violated NC Code of Judicial Conduct Canon 3, D. Remittal of disqualification. 25 January 2016 We didn't agree in

writing nor independently of the judge's participation." See, *e.g.*, Compl. pp. 28, 72–73. The NCSC denied all of our petitions and refused to use their supervisory powers to void the trial court's and NCCOA panel's void ab initio orders, and remand our case to a new, impartial judge in the first instance. Each judge owed us this constitutional duty upon learning about the 3D violation. It's not a judicial act to allow subordinate judges to act ultra vires — or to knowingly join a criminal conspiracy to unreasonably restrain trade in violation of the Sherman Act.

XVI. The State Court of Appeals ("NCCOA") explicitly decided not to address the 3D issue, which is the basis for their own derivative jurisdiction, thus they also acted ultra vires and issued void ab initio orders. The judges had no jurisdiction to rule on the merits atop the trial court's void orders, and we cited a NCSC case showing that the issue of a court's lack of jurisdiction can be raised even for the first time on appeal, see, *e.g.*, Compl. pp. 29, 67. The panel's page 7 orders expressly refused to rule on the 3D issue, making the fox guard the henhouse (or a judge being a judge in his own case) by unlawfully asserting: "Plaintiffs did not raise Issues 1 [etcetera] with the trial court, thus, we lack jurisdiction to address those issues on appeal. Accordingly we dismiss Issues 1 [etcetera]." Issue 1 is the trial court's 3D violation, see Compl. pp. 69–70. The panel lied that *Murray* controlled our Chapter 75 claims, and ignored *Chantos,* both which say our privity derives from statute, not through the policyholders, see, *e.g.,* Compl. p. 33, 70. The COA panel joined the criminal conspiracy to unreasonably restrain trade in violation of the Sherman Act.

XVII. Not a single judge from the NCCOA en banc performed their duty to take action on the 3D violation, thus also joining the conspiracy. All of these judges, too, upon learning about the 3D violation, owed us the constitutional duty to void his orders and remand our case to a new, independent judge in the first instance. Each of these judges also knowingly joined the criminal conspiracy with USAA to unreasonably restrain trade in violation of the Sherman Act, which is also not a judicial act. See, e.g., Compl. p. 70-71: "all COA judges consider each motion filed for en banc review...Our motion was denied without a single dissent, demonstrating their solidarity in joining the conspiracy against us."

XVIII. The Federal Courts refused to address the gravamen of our federal claims, which arose from facts that occurred after filing our State complaint. For our federal antitrust claim, the lower courts ignored 15 U.S.C. §22 as the basis for USAA's personal jurisdiction and venue — and their co-conspirators under the CTPJ. Before filing our federal complaint, a printout in our records dated 2/10/20 from the D.C. Department of Consumer and Regulatory Affairs website specified USAA's address for service as 1090 Vermont Ave NW, Washington DC 20005. Because USAA rejected our initial service in Texas (CSC's generic form letter dated 4/3/20 didn't say why), to ensure proper service, we hired a process server on 5/7/22 to serve USAA in four places: Raleigh, NC CSC; Austin, TX CSC; Washington, DC CSC; and headquarters in San Antonio, TX. And our process server received USAA's D.C. return service receipt on 5/21/20, signed by Corporation Service Company Agent Ivory Graham. The federal courts also mischaracterized our claims

against the State's dangerous malfeasance of not enforcing Rhonda's sentence on the pretext that she wasn't convicted of DUI at all. But worst of all, the federal courts are committing the cardinal sin of judicial interpretation: ignoring Canon 3D's mandatory, nondiscretionary text and refusing to analyzing the most serious concern in our case: judicial misconduct that aids and immunizes wrongdoers against unambiguous, established laws that are enacted for the general public welfare. Furthermore, the district court judge failed to disclose his special financial relationship with USAA even though Claim 4 specifically alleges that USAA has captured the courts. Agency Capture is when a government regulatory or enforcement body acts antithetically to clearly established public policy to benefit a powerful interest group. See, *e.g.*, Compl. pp. 92, 156-160: The judges and USAA are in cahoots. "Captured courts ignore insurance regulations and consumer protection laws so that insurers can treat victims in [bad faith] with impunity." Also, If a party files a Rule 12(b) motion to dismiss, it may not subsequently assert any Rule 12(b)(2)–(5) defenses that were available when the first Rule 12(b) motion was filed. See, Fed. R. Civ. P. 12 Notes of Advisory Committee on Rules — 1966 Amendment ("The specified defenses are lack of jurisdiction over the person...A party who by motion invites the court to pass upon a threshold defense should bring forward all the specified defenses he then has and thus allow the court to do a reasonably complete job. The waiver reinforces the policy of subdivision (g) forbidding successive motions.") The N.C. official defendants forfeited their personal jurisdiction defense under 12(b)(2) and venue under 12(b)(3) by failing to press them in their

motions to dismiss at the outset of the case. Motion to dismiss filed 5/29/20 on behalf of Young, Hunter, Bryant, Dietz, Martin, Beasley, Ervin, Hudson, Jackson, Morgan, Newby, McGee, Arrowood, Berger, Calabria, Davis, Dillon, Elmore, Inman, Murphy, Stroud, Tyson, Zachary, Ammons, and Hill didn't invoke 12(b)(2) or (3); nor DOT Boyette's Motion to amend Pleading filed 06/01/20; nor DPS for Perry and Hooks filed 05/30/20; nor the Cooper, Stein, Hall, and Woodward submission dated 5/30/20.

XIX. Because our federal complaint is complex, we created cheat sheets: our "Prelude Posters" mixed the facts and laws controlling our case to aid understanding. See Compl. pp. I–XIX. Most of the acronyms used throughout the complaint are on the upper right-hand corners of the Posters and expounded in the body of the Posters' text. The purpose, as stated on the first Poster, was image-driven advocacy for civics education to advance public understanding of the law, inspired by Chief Justice Roberts. We also structured our complaint using Garner's "deep issue" method, meaning that the legal answers to an "issue" are usually "yes." Thus, the claims, gravamen of our claims, crux of our issues, arguments, controlling laws and facts, causes of action, and the parties involved, are compiled in the index on Compl. pp. i–xxi.

REASONS FOR GRANTING THE PETITION

Introduction: In *Zivotofsky v. Clinton,* 566 U.S. 189 (2012), the Court faulted the court of appeals for refusing to adjudicate a straightforward separation-of-powers question. Statutory construction involves familiar principles such as careful examination of the textual, structural, and historical evidence put for-

ward by the parties, which are the bread-and-butter of judicial work. Our efforts to vindicate our statutory, contractual, and constitutional rights raise justiciable questions that the courts won't touch because of who we are (pro se) and who the consequences will harm (fellow judges). "In general, the Judiciary has a responsibility to decide cases properly before it, even those it 'would gladly avoid.'" Justice Sotomayor's concurrence stated: "Nor may courts decline to resolve a controversy...simply because...the consequences weighty. The exercise of such authority is among the 'gravest and most delicate dut[ies] that this Court is called on to perform."

So we start by addressing the D.C. Circuit panel's orders. First, we don't understand what they mean when they said that we forfeited any challenges to the district court's denial of our motions to alter or amend the judgment, for sanctions, and for certain disclosures by not addressing those denials in our oppositions to the motions for summary affirmance. Because it's our understanding that at the pleading stage, the appellate court's review for questions of law is supposed to be the de novo standard, meaning that everything in our complaint and subsequent filings are operative, but the panel didn't seem to read or apply anything we wrote and asserted. So we haven't intentionally or knowingly waived or forfeited any of our claims in our federal complaint.

Now addressing the rest of the panel's four decisions in turn: First, they mischaracterized the gravamen of our claim about Rhonda's felony DUI sentence. We don't have any interest in seeing her criminally punished or prosecuted because the State already did that: Cumberland County's district attorney did a fine job, and the judge issued the maxi-

mum sentence under the structured sentencing laws. The issue is that they unlawfully released Rhonda early from prison on the pretext that she wasn't convicted of DUI at all, which is absurd, dangerous — and so very wrong. There's no precedent for such conduct. Therefore, we are pressing our fundamental, deeply rooted constitutional right under the Ninth and Fourteenth Amendments that victims can force a state to enforce a felony DUI offender's minimum sentence as published under the State's nondiscretionary laws.

Second, the panel didn't analyze Canon 3D's text at all, which is crucial for validly disposing the gravamen of our claim that the trial court acted in all absence of jurisdiction and issued void ab initio orders, which gave rise to new facts and claims for our federal case under 42 U.S.C. §1983, antitrust, etcetera. Instead, the panel cited an irrelevant case, *In re Z.V.A.,* 373 N.C. 207 (2019), which says nothing about 3D and has no bearing on 3D or its necessary results. The transcript proves that the trial court voluntarily triggered 3D from the bench, thus making its nondiscretionary rules inescapable, with harsh consequences. Therefore, 3C is a red herring, using a strawman argument to avoid punishment for malfeasance.

Third, the panel ignored that 15 U.S.C. §22 acquires jurisdiction and venue over USAA under the Sherman Act. Instead, the panel alluded to the irrelevant CTPJ standard in *World Wide Minerals, Ltd. v. Republic of Kazakhstan,* 296 F.3d 1154 (D.C. Cir 2002), which is used in non-antitrust cases requiring an "overt act" with a State's long-arm statutes, but this requirement is irreconcilable with this Court's

precedent (and the plain text of the Act) because an overt act isn't an element for antitrust claims.

And fourth, the panel mischaracterizes our claim against Lamberth and distorts *Liteky v. United States,* 510 U.S. 540 (1994), because we didn't seek Lamberth's disqualification solely because we are unhappy with his orders (though it's true we don't like that he ignored the gravamen of our complaint's claims and dismissed the defendants on legally impossible grounds). Instead, as *Liteky* requires, we cited an *extrajudicial* source: we charged Lamberth with a financial and personal relationship with USAA spanning decades, trusting them with his and his wife's special tax-benefit nest-egg IRAs, and receiving annual dividends from USAA for an unknown amount based on a secret formula (the SSA), thus violating at least 28 U.S.C. §455(a) because his impartiality is reasonably questioned, especially since our federal complaint specifically alleges in Claim 4 that USAA has captured the courts. So if Lamberth really has nothing to hide about his relationship with USAA, then why did he duck making a full disclosure on the record at the threshold of our case under §455(e) and let us decide? And why did he get so defensive and continue to duck disclosure of his full relationship with USAA after we called him out about it in the wake of our accidental discovery from a news article that opened our eyes about USAA's tentacles intimately reaching him? It strains credulity that Lamberth doesn't have a special affinity for USAA, especially given his apoplectic quacking response, which also rejected without reason our complaint's reasonable $6.66 billion demand against USAA, for which he didn't know the grounds (even though they were alluded to in the complaint), since

we're not at the damages phase yet, and he didn't ask us, so we stated the reasons in our appeal. The bottom line is that if Lamberth had ruled in our favor, given the facts in our complaint, then the outcome of our proceeding could substantially affect the value of his financial interest in USAA, which would require his disqualification not just under (a), but (b).

Our federal suit is about vindicating our vested rights: against insurer fraud; as victims of a felony DUI driver; and the inviolable constitutional requirement of having an impartial judge at all times. Our case is important because these rights and expectations also belong to the public. These wrongs committed against us personally were also committed against the State and National public interests. In sum, the D.C. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the D.C. District Court, as to call for an exercise of this Court's supervisory power. Neither court properly stated the governing rules of law or addressed the gravamen of our claims.

Q.P.1.A. The lower courts' blindness to USAA'S capture under 15 U.S.C. §22 and requiring an overt act for the CTPJ clashes with this court's precedent that antitrust claims don't require an overt act.

The D.C. Court of Appeals decided an important question of federal law — the conspiracy theory of personal jurisdiction ("CPTJ") — that has not been, but should be, settled by this Court. Moreover, they decided it in ways that conflict with relevant decisions of this Court.

Antitrust requires a conspiracy. Strangely, the lower courts ignored our continual invocations of §22 as the basis for personal jurisdiction over USAA and their co-conspirators, which satisfies the "minimum contacts" due process inquiry to reach all of them. But the judges wouldn't give this controlling statute even cursory consideration — not one word! Instead, the panel danced to a different story. By citing *World Wide Minerals,* they said that we haven't established the CTPJ because "the plaintiff must plead with particularity overt acts within the forum taken in furtherance of the conspiracy. For one, that condition conflicts with this Court's precedent in *Nash v. United States,* 229 U.S. 33 (1913), which held that there is no overt act requirement in federal antitrust claims, adding: "This Court can see no reason for reading into the Sherman Act more than it finds there." The antitrust agreement constitutes the offence, not an overt act in furtherance of the conspiracy. Second, the blunt reality of §22's rule and reach is obvious. For example, in *BNSF Railway Co. v. Tyrell,* 581 U.S. _____ (2017), the Court said:

> "Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process. See, *e.g.,* 15 U.S.C. §22 (Clayton Act provision stating that 'all process in [cases against a corporation arising under federal antitrust laws] may be served in the district of which [the defendant] is an inhabitant, or wherever [the defendant] may be found')."

See also Footnote 4 in *Goldlawr, Inc. v. Heiman,* 369 U.S. 463 (1962) (Section 22 deals with both venue and personal jurisdiction in antitrust actions against corporations). Therefore, §22 is a prima facie show-

ing of personal jurisdiction and venue over USAA in the D.C. District Court.

In *World Wide Minerals v. Republic of Kazakhstan,* 116 F.Supp.2d 98, 107–108 (D.D.C. 2000), Lamberth acknowledged: "a comparison of the Clayton Act service provisions and the RICO statute provisions does show a substantial similarity." He recognized that it provides personal jurisdiction for co-conspirators when one of the defendants has minimum contacts in the forum. In our 59(e) motion for reconsideration to the district court, we mentioned §22 four times, see pp. 30–33. And we pointed out Lamberth's knowledge of §22's jurisdictional reach, as accepted in *FC Inv. Grp. LC v. IFX Mkts., Ltd.,* 479 F.Supp.2d 30 (D.D.C. 2007) ("This Court is persuaded by the analysis of Judge Lamberth... . Thus, in considering plaintiff's RICO jurisdiction claim, the Court will read Section 1965(a) to require that at least one defendant have had minimum contacts with the District of Columbia.") p. 33. The D.C. Circuit affirmed this case by explicitly adopting the Second Circuit's reasoning: "a civil RICO action can only be brought in a district court where personal jurisdiction based on minimum contacts is established as to at least one defendant." *FC Inv. Grp. LC v. IFX Mkts, Ltd.,* 529 F.3d 1087 (D.C. Cir. 2008).

And it wasn't our first time invoking §22. For example, in our opposition motion to dismiss USAA, filed 13 April 2020, we cited its entire text on Page 6 and asserted:

> "Because USAA is registered with the DC Department of Consumer and Regulatory Affairs to transact business here, the venue and personal jurisdiction are satisfied. And because the anchor claim in our federal case is an antitrust

> conspiracy, 15 U.S.C. §5 brings USAA's co-conspirators to the DC District for personal jurisdiction. As Plaintiffs, our antitrust claims govern our choice of forum in the DC District Court."

And it wasn't the last time, see our opposition for summary affirmance filed 9 June 2022 where we mention §22 five times. See pp. 15–18, where the last reference is under the heading "Circuit Split," where we referenced the Second Circuit's ruling in favor of the CTPJ (this case also shows the heated arguments nationwide about the theory's scope and whether it comports with due process, since it has been brought to this Court for review, see, *e.g.,* Petition Nos. 21-1503 and 21-1237):

> "see *Schwab Short-Term Bond Market Fund v. Lloyds Banking Group PLC,* Case 17-2376, Document 525-1 (A co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with a forum to subject that co-conspirator to jurisdiction in that forum, explicitly rejecting the argument that conspiracy-based jurisdiction requires a relationship of direction, control, and supervision before a co-conspirator's forum contacts me be imputed to absent defendants for jurisdictional purposes)."

Naturally, we pressed §22 in our en banc petition: "For these reasons, our federal antitrust claim hasn't 'fallen away' simply because the judges refuse to address it whatsoever, and §22 indisputably attaches to USAA for personal jurisdiction in DC — and to their co-conspirators." See pp. 1–5.

B. Under a criminal statute, this Court decided the CTPJ a century ago, making USAA and their co-conspirators fugitives from justice by

ditching "*Hyde*" to escape from accountability by geography.

The antitrust statutes define the *combination* as a felony, so it's immaterial where the conspiracy is formed or if or where any overt acts take place for jurisdiction under §22, thus a State's long-arm laws are irrelevant. And Congress enacted §22 in 1914, two years after the Court's decision in *Hyde v. United States,* 225 U.S. 347 (1912). That case defined a criminal conspiracy statute with an element that required an overt act by at least one conspirator. However, it has three important holdings that are relevant to our case. First, as long as there's evidence of an agreement between two or more co-conspirators, then it doesn't matter if only one member of the conspiracy is held accountable. So why did the lower courts dismiss USAA when §22 and evidence of their conspiracy exist? Second, the *Hyde* Court decided the CTPJ: "In determining the place of trial, there is no oppression in taking the conspirators to the place where the overt act was performed, rather than compelling the victims and witnesses to go to the place where the conspiracy was formed." The Court pointed out that courts must not give solicitude to criminals and give them immunity because of geography. And third, because the nature of a conspiracy is ongoing, a conspirator is consciously offending and remains in it until he affirmatively withdraws from it.

In the twin case *Brown v. Elliot,* 225 U.S. 392 (1912), the Court said that the Constitution isn't intended as a facility for crime; it's meant to prevent oppression. "The criminal himself makes the venue of his trial." So too with the Fourteenth Amendment's Due Process Clause: it's not offensive to hail

co-conspirators to a far-flung location where one member may be found.

The Court affirmed *Hyde's* principles in *Pinkerton v. United States,* 328 U.S. 640 (1946). Here the Court held that the act of one conspirator, in furtherance of an unlawful plan, is imputed to his co-conspirator. Or stated differently, if one conspirator commits an offense which was the object of the wrongful combination, then the co-conspirator is guilty of that offense without having done more than join in the conspiracy. So even though there was no evidence that one of two conspirators participated directly in the commission of the substantive offenses charged in the indictment, that conspirator could still be convicted of the substantive offenses based on the principle that the act of one partner committed in furtherance of the conspiracy may be the act of all. Ultimately, once a conspiracy is shown to exist, the *Pinkerton* doctrine permits the conviction of one conspirator for the substantive offense that the other conspirators committed during and in furtherance of the conspiracy, even if the offense is not an object of the conspiracy.

C. The core message of the Supremacy Clause is simple: the Constitution and federal laws take priority over any conflicting rules of state law.

The Supremacy Clause establishes that the Constitution and federal laws made pursuant to it constitute "the supreme Law of the Land." Art. VI, §2. The Clause isn't a source of federal rights, but it secures federal rights by according them priority when they come into conflict with state law; therefore, States can't interfere with or control the operations of the Federal Government.

Section 22 was enacted in 1914, two years after *Hyde*. And on its face, §22 applies to USAA, yet our federal antitrust claim went unaddressed, even though Congress provided unambiguous authorization. The defendants acted in concert to unreasonably restrain of our overdue insurance proceeds, as mandated by the State's public policies under the FRA, Chapter 58, Chapter 75, and contract law. And participation in a conspiracy supplies the minimum contacts for co-conspirators, as mentioned above by the standards supplied in *Hyde* and *Pinkerton*. But the lower courts flipped antitrust's known CTPJ's standard, and they impermissibly discriminated against us by ignoring §22 and imposing D.C.'s long-arm laws, requiring an overt act as a bar to dismiss USAA and their co-conspirators with judge-made theory. The judges violated Congress' specific jurisdictional and venue authorization that captures corporations wherever they may be found. Also see Rule 4(k)(1)(C), which establishes personal jurisdiction over a defendant "when authorized by a federal statute," showing that the long-arm inquiry is irrelevant. By statute, Federal courts are charged with enforcing the antitrust laws, but the lower courts dismissed our claim on pretext — not only by conflating and confusing the legal standards for antitrust claims, but by substituting the real test for the CTPJ when one party is reached under §22. In sum, against the Sherman Act's public policy for strong, broad enforcement to protect overall competition throughout the country, the lower courts twisted the established law on the CTPJ to immunize USAA and their co-conspirators from accountability.

D. The district court dismissed USAA with res judicata and *Rooker-Feldman* defenses, which

are legally impossible to apply, since federal antitrust claims have exclusive federal jurisdiction, and this is our first federal complaint.

This heading should be a full stop because the State court couldn't have adjudicated our federal antitrust claim — not only because State courts lack jurisdiction to entertain federal antitrust claims, but because this claim didn't exist when we filed our State complaint. So res judicata and *Rooker-Feldman* aren't judicially cognizable defenses. Period. And we've asserted this inescapable matter of law in multiple filings. After we filed our State complaint, the defendants conspired to oppress our rights, creating new sets of facts upon which new claims arose. And because this Court's *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. _____ (2020), decision was delivered after we filed our federal complaint, our subsequent filings have repeatedly cited it, including in our 59(e) motion. See, *e.g.*, pp. 18–19, 25–26: "Events that occur after the plaintiff files suit often give rise to new material operative facts that in themselves, or taken in conjunction with the antecedent facts, create a new claim to relief." We also re-recited this Court's authority on res judicata and *Rooker-Feldman* from our opposition to USAA filed 10 June 2020:

> "Our federal suit challenges different conduct and raises different claims that are ineligible for res judicata. Claim preclusion doesn't bar claims that are predicated on events that postdate the filing of the initial complaint because events occurring after a plaintiff files suit give rise to new material operative facts creating new claims to relief. Our State and Federal suits involve different conduct occurring at dif-

> ferent times. *Rooker-Feldman* doesn't apply because we didn't "lose" in NC State court — NCC arbitrarily and unconstitutionally shut us out from getting a valid and fair judgment on our merits by an impartial judge and competent court. Void orders are unreviewable...Void orders aren't a judgment because they don't have any effect and don't establish any rights. Thus, the void orders and USAA's evil conduct after filing our NC Complaint deprive USAA from using res judicata and *Rooker-Feldman* as defenses. To be sure, this Court can't void the TC's and COA's orders, but this Court can notice and declare the material fact of their voidness for adjudicating our new claims that are in this federal suit." pp. 5–6. (NCC refers to the NCCOA and NCSC, also all N.C. judges/courts.)

Furthermore, our federal complaint included some discussion about res judicata's inapplicability: "Res judicata and collateral estoppel are inapplicable because no competent NC court issued a valid order on the merits of our NC Complaint, and after it was filed, the Defendants combined to create new causes of action against them for damages in their personal capacities." pp. 19–20. And on Page 63 we quoted from *Sawyers v. Farm Bureau Insurance of N.C., Inc.*, 170 N.C. App 17, 682 S.E.2d. 184 (2005): "It is fundamental that any judgment rendered against a party over which a court has no jurisdiction is void." And we added: "The Court explained that for res judicata (claim preclusion) or collateral estoppel (issue preclusion) to apply, the prior action must have been a final judgment on the merits in a court of competent jurisdiction."

E. The Delaware Supreme Court crafted an elegant, easy to administer, five-prong model for the CTPJ that this Court should adopt because it coheres with state-court jurisdiction precedent and provides a comprehensive, uniform, national standard with useful guidance for the lower courts.

First, because it's important to support our petition, the Delaware Court recognized that cases based in antitrust law indicate that the venue provision of the Clayton Act is based upon special policy considerations, which differ from those underlying the minimum contacts due process test; therefore, again, a State's long-arm statutes are irrelevant for determining the CTPJ in a Sherman Act cause of action.

Here's the Delaware Court's chef's kiss standard to establish the CTPJ over a nonresident defendant governing state-court jurisdiction, from *Instituto Bancario Italiano v. Hunter Eng. Co,* 449 A. 2d 210 (Del. 1982):

> "(1) a conspiracy to defraud existed; (2) the nonresident defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or the effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy."

Especially in the state-court CTPJ context, jurisdictional rules should be simple. The Nation needs this Court's guidance so parties have notice and can know how to conduct themselves — especially be-

cause not all jurisdictions recognize the theory, which allows conspiratorial corruption to flourish. The Delaware model provides a national standard that would reduce the various outcomes in cases with the same set of facts. And recognizing the split in authority then (which is worse now), primarily due to applications of differing States' long-arm laws, the Delaware jurists thoughtfully analyzed this Court's personal jurisdiction jurisprudence to devise its workable standard. Above all, it satisfies a defendant's Fourteenth Amendment's Due Process concerns of "minimum contacts" and doesn't offend traditional notions of fair play and substantial justice; the defendant must have contacts, ties, or relations with the forum. See, *International Shoe v. State of Washington,* 326 U.S. 310 (1945) (the gold standard for state-court jurisdiction over nonresident defendants). The Delaware Court was convinced that the conspiracy theory has merit: "We find that under certain circumstances, the voluntary and knowing participation of an absent nonresident in a conspiracy with knowledge or reason to know of an act or effect in the jurisdiction can be sufficient to supply or enhance the contacts required with the jurisdiction for jurisdictional purposes." The CTPJ attributes acts of each co-conspirator to the other co-conspirators; therefore, any act by a conspirator in furtherance of the conspiracy that takes place in the jurisdiction is attributable to the other conspirators. Consequently, if the purposeful act or acts of one conspirator are of a nature and quality that would subject the actor to the jurisdiction of the court, then all of the conspirators are subject to the jurisdiction of the court. Thus, a defendant who has voluntarily participated in a conspiracy with knowledge of its

acts in or effects in the forum state can be said to have purposefully availed himself of the privilege of conducting activities in the forum state, thereby fairly invoking the benefits and burdens of its laws.

Q.P.2. Congress perceived its interest in securing jurisdiction over corporations in any district where it may be found, and with §22, enacted a statute clearly designed to protect that interest.

Unfortunately, for private causes of action, it looks like there's a gap that courts can't reach co-conspirators. Fortunately, the All Writs Act can fill that gap for private attorneys general by using the analogous §5 that covers United States attorneys. The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. §1651(a). The Act applies if: there is no statute, law, or rule on the books to deal with the specific issue at hand; a nexus between parties; extraordinary circumstances that justify its use; and if compliance isn't an unreasonable burden.

On Page 1 of our complaint's "Jurisdiction and Venue" section, we invoked the District Court's jurisdiction for federal antitrust under 28 U.S.C. §1337. We further invoked 15 U.S.C. §§4 and 5 for nationwide jurisdiction over the defendants as USAA's co-conspirators. However, our complaint accidentally omitted §22, though we invoked it in our subsequent filings. Then, one of the defendants pointed out that the Court's decision in *Georgia v. Pennsylvania Railroad Co.,* 324 U.S. 439 (1945), forecloses jurisdiction over them because these statutes only apply to antitrust actions brought by Unit-

ed States attorneys. Thus, is seems like these statutes bar private suits under §15 from acquiring national jurisdiction to reach antitrust co-conspirators.

But the law provides at least two other roads to prevent geographical co-conspirator judicial fugitives from escaping accountability, permitting consolidation into one proceeding: (1) the CTPJ; and (2) the All Writs Act.

Section 4 of the Sherman Act establishes a cause of action for United States attorneys to prevent and restrain violations of the antitrust laws, and §15 provides a private right of action incentivized with treble damages for redress and deterrence of antitrust injuries. Section §4 also grants district courts the power to prevent and restrain any violation of the antitrust laws. The lack of restrictive language in §15 reflects Congress' expansive remedial purpose of creating a private enforcement mechanism to deter violators and deprive them of the fruits of their illegal actions by providing ample compensation to victims of antitrust violations. Because the statutory phrase "any person" is naturally broad and inclusive in its meaning, the Sherman Act "does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers...The Act is comprehensive in terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated." *Blue Shield of Virginia v. McCready,* 457 U.S. 465 at 472 (1982) (quoting *Mandeville Island Farms, Inc., v. Am. Crystal Sugar Co.,* 334 U.S. 219, 236 (1948)).

Importantly, we must underscore that there's no chance of a duplicative recovery because the Bryants and their lawyer joined the conspiracy to unreasonably deprive us of our insurance proceeds. They never

withdrew from it, and they never asserted that USAA owes the full coverage under the contract, as named owner and driver who paid extra in premiums for both to have the minimum statutory coverage for their discrete acts of negligence. Hence, we are the direct victims of the antitrust injury, and we are the only intended beneficiaries who lost the expected benefits of the FRA's statutory mandatory minimum automobile liability policy proceeds.

Therefore, using the All Writs Act as a statutory gap-filler to reach USAA's co-conspirators would be in a court's aid of jurisdiction, agreeable to the usages and principles of law to capture co-conspirators of antitrust violations, and analogous to §5 to effectuate Congress' intent. The Sherman Act provides flexibility, but it doesn't permit the arbitrary, disparate treatment of similarly situated co-conspirators to escape accountability based on geography. This gap for private causes of action thwarts the otherwise proper exercise of federal district courts' jurisdiction to prevent and restrain antitrust violations.

Q.P.3. The semicolon is integral to realizing the Sherman Act's objectives: robust and effective enforcement of conspiracies to unreasonably restrain trade.

Apparently, the district court's ability to bring in additional parties under §5 for personal jurisdiction over co-conspirators nationwide exists only for United States attorneys invoking causes of actions under §4. It seems like a weird omission that Congress didn't provide the same reach for private plaintiffs. Yet, under *Georgia v. Pennsylvania Railroad Co.*, the Court said: "since [15 U.S.C.] §4 is limited to suits brought by the United States, §5 is similarly confined." But that decision's cursory mention of those

statutes doesn't make sense when thinking about the scope and purpose of the Antitrust Act. Why wouldn't Congress provide any means for private parties to bring in additional parties when conspiracy is the essential element of the crime, especially given that Congress heavily relies on private enforcement actions for vigorous enforcement of the Act?

On closer inspection, the text includes semicolons, which is why we thought that §§4 and 5 were available to us in the first place and tried to hail all the defendants to D.C. In *Reading Law* 161, the punctuation canon says that punctuation is a permissible indicator of meaning. Punctuation and other marks are a part of our system of writing, and can often determine whether a modifying phrase or clause applies to all that preceded it or only to a part. "Periods and semicolons insulate words from grammatical implications that would otherwise be created by the words that precede or follow them." Therefore, by interpreting §4's first clause in the title as isolated: "Jurisdiction of courts;" — and the corresponding clause in the body: "The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title" — this reading opens up the district court's jurisdiction for private causes of actions and accords with the purpose and function of the entire Act, again because a conspiracy is an essential element. So it doesn't make sense to exclude private attorneys general from bringing in additional parties who are co-conspirators, thus allowing wrongdoers to escape accountability by geography, when United States attorneys don't have the same struggle because their cause of action is mentioned in the same statute —

separated by a semicolon. The body of a legal instrument can't have a clear meaning without taking its punctuation into account. The point of encouraging a private cause of action with treble damages is because of the government's limited resources against overwhelming criminal conduct. Accordingly, it doesn't seem logical that Congress intended to provide antitrust co-conspirators with this gaping loophole to hide in.

Above all, *stare decisis* is not an inexorable command. Because *Georgia's* interpretation of §§4 and 5 wasn't well reasoned, renders their operation irreconcilable with competing legal doctrines in the Antitrust Act, and is detrimental to coherence and consistency of the Act's goals, it should be overruled.

Q.P.4.A. Burke means to suppress quietly or indirectly, bypass or avoid, a cover-up: The 3D violation runs throughout our entire case history.

See, *e.g.,* Compl. Poster p. V. The judges unconstitutionally decided that they aren't bound by their judicial code: they are exempt from following 3D's rules. But judges have the duty to adjudicate the gravamen of parties' claims. Therefore, they burked 3D's text because it's impossible to overlook its meaning and purpose. Here, again, is its full text:

> **"North Carolina Code of Judicial Conduct Canon 3D. Remittal of Disqualification.** Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's potential disqual-

ification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, pro se parties shall be considered lawyers."

B. Pay no attention to that 3D judge behind the curtain!

The lower courts reached remarkable conclusions for our 3D claim given that this Court habitually hammers home the fundamental tool of judicial interpretation that when there's a dispute over text, then there you start. And when the text is unambiguous, then there you stop. See, *e.g., Reading Law* 56, supremacy-of-text principle ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means"). However, the Courts below didn't grapple with the governing text in the gravamen of our 3D claim because (we suppose) the consequences are too harsh to handle, since fellow judges' and government officials' immunities are pierced, thus they are subject to civil damages. So, refusing to admit that stark reality, the lower courts shirked their duty to enforce the defendants' accountability for malfeasance under color of law. By arbitrarily rejecting our §1983 claims with the 3C red herring to deflect attention from the true nature of this 3D due process violation, the lower courts unconstitutionally cabin the fallout that must follow from the facts of the defendants' acts. The tri-

al court dropped the 3D bomb, thus we had no duty to make a motion under 3C's misdirected ball of flame for the trial court's recusal because he was already in fact disqualified — this is the central falsehood that the defendants assert. The lower courts' silence about 3D's actual text shows the pretense of not peaking behind the curtain because looking at the unequivocal language reveals the levers that 3D's nondiscretionary text pulls. Put simply, 3D's inflexible standards disqualifies a judge who discloses 3C factors, and prohibits him from proceeding until the parties sign a written agreement outside of his presence. And we did not.

C. A classic due process claim: The trial court and his superior judges violated our rights by failing to follow their own judicial procedural rules because Canon 3D provides a clear statement of inflexible, nondiscretionary standards defining a judge's duties.

The trial court didn't comply with 3D's specified requirements to make him "no longer disqualified." Once the trial court voluntarily disclosed his 3C factors from the bench, he triggered 3D, which speaks directly to judges. And because he wanted to proceed, the only way for him to "remit" or cure his disqualification and constitutionally proceed was by securing the written agreement. Canon 3D isn't a general rule — it's specific and nondiscretionary once triggered, which is what happened in our case as indisputably proven by the words of the judge himself in the transcript. See *Reading Law* 183 ("If there is conflict between a general provision and a specific provision, the specific provision prevails"). See also, *RadLAX Gateway Hotel, LLC v. Amalgamated Bank,* 566 U.S. 639, 645 (2012) ("It is a commonplace of

statutory construction that the specific governs the general"). Here, where general and specific authorizations exist side-by-side, the general/specific canon avoids rendering superfluous a specific provision that is swallowed by the general one. Although the canon can be overcome by other textual indications of statutory meaning, the defendants and lower courts point to none here. And though the general language of 3C is broad enough to include parts of 3D, 3C can't be held to apply to the matter specifically dealt with in 3D. Canon 3C permits precisely what 3D proscribes — a voluntary motion for recusal made by the parties versus an absolute disqualification triggered by the judge's sua sponte disclosure of 3C factors that can only cured by a written agreement from the parties signed outside of his presence. The language throughout 3D, and its repeated use of "shall," is manifestly designed to be mandatory upon the judiciary. Its obligatory force is so impetrative that the judges could not, without a violation of their duty, refuse to carry it into operation.

Canon 3D's title "Remittal of Disqualification" translates to "cancellation of punishment," making clear its effect and scope: depriving the court of the power to preside without fulfilling its precedent conditions. It doesn't reflect careless or mistaken drafting, for the title is reinforced by its text, especially with the buttressing clause: "the judge is no longer disqualified, and may participate in the proceeding" solely because of the written agreement signed outside his presence. See *Almendarez-Torres v. United States,* 523 U.S. 224, 234 (1998) ("the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute" (cleaned up)); also *Reading Law:* 221 ("The

title and headings are permissible indicators of meaning."). Let's parse it further with *Webster's Third* 1920: remittal says to see remission: "the act of pardoning sin or offense;" "relief from a forfeiture or penalty;" "the act or procedure of so restoring property or of so remitting a penalty." Remit: "to release one from the guilt or penalty of;" "to lay aside;" "to restore or consign to a former status or condition." Disqualification 655 "the state of being disqualified" disqualify "to deprive of the qualities, properties, or conditions necessary for a purpose: to make unfit" "to deprive of a power, right, or privilege: disbar." Disbar 643: "to exclude from a place or condition: disqualify." Of 1565: "used as a function word to indicate the place or thing from which anything moves, comes, goes, or is directed or impelled." Therefore, "Remittal of Disqualification" means that Canon 3D contains the cure to restore the judge's power to the judge who wishes to preside because he disbarred himself by voluntarily disclosing 3C factors.

Canon 3D can't be clearer in describing both its trigger and cure. But the lower courts have rendered its entire text nugatory — surplusage — when in truth, it has more value and importance than 3C, underscoring the necessity of enforcing the integrity of the judiciary because 3D forcefully realizes disqualification from a voluntary disclosure when a judge still wants to preside. It commands a written agreement with mandatory language that when a judge discloses 3C factors, then he becomes absolutely disqualified without anyone's motion or judgment. Triggering 3D means that the only way for a judge to regain power over the parties and subject matter is to first obtain the written agreement. Courts must

not be able to contravene the consequences of 3D by simply ignoring its existence and control over a case. While 3C governs an "appearance-of-bias" test, burking 3D demonstrates actual bias, prejudice, and a willingness to disobey laws. Canon 3D crisply confirms that a judge isn't permitted coerce us from the bench and orally ask for an oral waiver of his disqualification. And because the trial court, the NCCOA, and the NCSC willfully and knowingly ignored this violation, this conduct objectively proves their judicial misconduct.

D. The Court should bristle at the fact that lower judges burked 3D because the judicial game of "velvet blackjack" is a bigger problem for barred attorneys who regularly appear before a judge than for pop-up pro se parties.

The North Carolina Code of Judicial Conduct was modeled after the federal code. A judge is required to disqualify himself if under any statute or canon he is directed to do so. The strictest standard necessarily prevails. In the federal judicial codes, one of the purposes of the 1974 amendments was to limit the possibility of (express) waiver. Previous interpretations allowed parties to waive their rights to seek disqualification of a judge. Congress felt that waiver defeated the purpose of the disqualification statutes: it was suggested that waiver permitted the judge to wield a "velvet blackjack." Justice Traynor gave the following example how "velvet blackjack" is used:

> "Where the judge says, I have, say, 10 shares of General Motors: Do you mind if I sit? And they fall all over each other to be the first one to say, 'Oh, no, your honor.' And you can see their fists

> clench below the desk and they are saying 'the so and so should not put us in that spot.'"

Proposed Amendment to Broaden and Clarify the Grounds for Judicial Disqualification: Hearings on S. 1064 Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 93d Cong., 2d Sess. 11 (1974) at 20.

No party should be put in the position of indicating to a judge that he does not trust his ability to try the cause fairly. Even if the judge isn't an intimate participant of the decision to waive his disqualification, the old "velvet blackjack" will still be swung, especially if the lawyer appears often before the same judge. See John Frank in Senate Hearings on S. 1064 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 93d Cong. 1st Sess. (July 1971–May 1973) at 115, who described the use of this weapon: "The practicalities of life are that waiver can be a kind of velvet blackjack in which the lawyer who is going to appear before the same judge at another time really has very little choice."

In 1975, the Judicial Conference deleted Canon 3D, which had permitted waiver; as a result, "a remittal of disqualification is [no longer] ...permitted under any circumstances." Code of Judicial Conduct for United States Judges, 69 F.R.D. 273, 279 (1975). Courts considering waiver since the 1975 revision have concluded that it's prohibited by the code. The Code was amended again in 1979 to bring it into conformity with the statutory waiver provisions. Thus, the congressional judgment to permit waiver of the broadest grounds for disqualification has been affirmed.

The ABA committee's comments to Canon 3D indicate that hardship to litigants who would not be able to substitute judges was a major consideration in the creation of this waiver provision; see Reporter's Notes to the Code of Judicial Conduct 43 (1973), note 2 at 71. The ABA Code's waiver provision is expressly designed to protect the judge from a claim of judicial misconduct (Reporter's Notes, note 2, at 72) rather than to aid the parties or guarantee the validity of the decision (at 73). And Reporter's Notes, note 2, at 73 indicated that the signatures of the litigants should be required to "reduce the likelihood that a waiver agreement will be entered into because of judicial pressure." The should/shall terminology is crucial by specifically indicating that the written agreement is mandatory, not discretionary.

E. Judges who act in all absence of jurisdiction pierce their immunity, likewise for judges who perform "not a judicial act" ("NAJA").

This Court didn't really explain what NAJA standards are under *Stump v. Sparkman,* 435 U.S. 349 (1978). NAJA is mentioned throughout our complaint, see, *e.g.,* pp. 2–15. We submit that at the very least, it's not a judicial act for judges to join a criminal conspiracy with one party against their opposing party in a lawsuit who are under their control. The filing that we'd really like you to look at for purposes of this section is our opposition to the defendant judges, filed 15 August 2020, pp. 15–19. It contains five Posters inspired by *Stump*: (1) Top Ten Rules of Being a Judge (*e.g.,* "Rule #7: Propagate the truth. Suppression or omission of the truth is equivalent to falsity."); (2) Notes on Judging Judges (*e.g.,* "Rules ## 6 and 7: The law punishes falsehood, fraud, pretext, and bad faith. No one is able to do a thing un-

less one can do it lawfully. Obedience is the essence of law. The laws help people who have been deceived, not those who are doing the deceiving."); (3) NAJA: Judicial immunity exists solely to protect independence the North Carolina judges violated all ten rules thus piercing their immunities for lack of independence (*e.g.*, "Rule # 5: they shut their doors to us at the threshold — and at every subsequent juncture — predetermined to be prejudiced against us: NAJA"); (4) Constitutional judicial acts, duties, scope and capacity (*e.g.*, "The Law is Superior to the government, and It binds the government and all officials to Its precepts."); and (5) Not a judicial act and not acting in a judicial capacity (*e.g.*, "The Judicial Code is inviolable. Intentional breaches are inexcusable"). These Posters demonstrate how the judges and the justice system have failed us and the public. The judges below ignored the trial court's 3D violation; therefore, res judicata and *Rooker-Feldman* defenses can't attach to void ab initio orders because legal nullities don't bind any rights or parties. This Court should clarify what is NAJA and hold the judges in our case accountable for knowingly and willingly repudiating their duties under the Constitution. The judges were willfully blind because every judge knows the requirements in the entire code, they intentional disregarded binding law, and there is no reason to forgive or be lenient toward judges who disregard an explicit jurisdictional bar to proceed in a case because there was no good-faith reason to believe there was a misunderstanding of the code and that it was triggered. Canon 3D created a constitutional straightjacket requiring judicial adherence. And its violation necessarily constitutes a violation of the Constitution, therefore it is "the deprivation of [a]

right ... secured by the Constitution" under 42 U.S.C. §1983 because the judges pierced their immunities.

Q.P.5.A. The Ninth Amendment is necessary, not superfluous, and it applies to the States.

North Carolina's lack of DUI enforcement makes the roads more dangerous and doesn't accord with what this Court has said about DUI enforcement, see, *e.g.*, Compl. p. 197: Under *Mitchell v. Wisconsin*, 588 U.S. _____ (2019), Justice Alito said that highway safety is a vital public interest, and for decades, they've strained their vocal chords to give adequate expression to the stakes. They've called highway safety a compelling interest, paramount, and have referred to the effects of irresponsible driving as a slaughter comparable to the ravages of war.

So we ask the Court to incorporate the Ninth Amendment via the Fourteenth Amendment. Also, the proper remedy is an injunction ordering the NCDPS Secretary, Attorney General, and Chief Justice to satisfy Rhonda's minimum sentence under Ex parte Young, or put Rhonda in Federal prison for four more months under 18 U.S.C. §5003, making N.C. pay for it, without further delay because this approach carries out the law and vindicates the victims', State's, and Federal society's shared interest. The States have sovereignty to pursue criminal charges against individuals. NC did that. But they didn't abide their laws to satisfy Rhonda's minimum required sentence for the benefit of victims and the public, and they don't have discretion to ignore the terms of her imposed sentence, which is felony DUI.

B. Rhonda pled guilty to felony DUI, and the state prosecuted and convicted her for it — so that's not the gravamen of our claim: DPS un-

lawfully released her early by denying that her crime is a DUI.

By its explicit terms, DPS policy doesn't authorize Earned Time to reduce a felony DUI offender's maximum sentence: they are expressly prohibited from getting Earned Time to reduce their sentences. But the lower courts didn't address this evidence; instead, they mischaracterized our claim, reframing our issue to prevent Rhonda's lawfully issued judgment from being enforced. Our case is unprecedented because everyone — the public and especially crime victims — expects that States will incarcerate convicted felons and satisfy the minimum terms of validly-issued sentences as the laws prescribe, but N.C. officials betrayed their constitutional duties to uphold the felony DUI laws. How? By falsely insisting that Rhonda wasn't convicted of DUI at all! This Court has never ruled that a victim has the right to enforce the satisfaction of a criminal's minimum lawful sentence. And the closest analogs that we can find are from habeas cases. This Court has a vital role to guard against extreme malfunctions in the state criminal justice systems and promote fundamental fairness. Our federal complaint invoked Rhonda's unlawful early release with the Ninth and Fourteenth Amendments, and with the Fifth through Eighth Amendments, which inversely recognize victims' rights by holding criminals accountable to prevent vigilante justice, also with Ex parte Young, and in the alternative we asked for overruling the *Slaughter-House Cases*. See, *e.g.,* Compl. Claim 9, pp. 187–238.

The North Carolina officials bled one of its strongest DUI laws to death. Almost 20 years ago, the Legislature was clear in Session 2005, Senate Bill 61,

Short Title: Felony Death/Serious Injury by Vehicle. Its headnote says (all-caps theirs): "AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE." <https://www.ncleg.net/Sessions/2005/Bills/Senate/HTML/S61v2.html>. See also, *Reading Law* 217 prefatory-materials canon ("A preamble, purpose clause, or recital is a permissible indicator of meaning"). It was enacted in HB 1048 from in Session Law 2006-253. Rhonda pled guilty to and was sentenced for §20-141.4(a3). Felony Serious Injury by Vehicle. (b) Punishments. (4) Felony serious injury by vehicle is a Class F felony. And §20-4.01(24a) specifically defines §20-141.4 as an "Offense Involving Impaired Driving" Compl. pp. 189–190. See also *Reading Law* 225 interpretive-direction canon ("Definition sections and interpretation clauses are to be carefully followed"). The Sentencing Commission classifies offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. The Legislature's stricter felony DUI policy is reflected in DPS's regulations forbidding Earned Time to reduce a felony DUI offender's sentence.

On p. 198, our complaint cited *Goble v. Bounds,* 281 N.C. 307, 188 S.E.2d 347 (1972), which said: "the legal right to the mitigation is not [a prisoner's right]" and "the executive branch takes over the custody of the prisoner and effects the judgment." And the NCCOA in *Vest v. Easley,* 145 N.C. App. 70, 549 S.E.2d 568 (2001), said: "We note there is no right to be released before the expiration of a valid sentence."

And this Court in *Regents v. Roth,* 408 U.S. 564 (1972) said: "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence...the conviction, with all its procedural safeguards, has extinguished that liberty right." Rhonda has no legitimate claim or entitlement to Earned Time as a felony DUI offender because DPS issued the objective standards that explicitly forbid them for felony DUI offenders to reduce a prison sentence. So why is the Rhonda's unlawful early release and lie about the character of her conviction elevated above the victims' actual rights to enforce not applying Earned Time to reduce her sentence? Why is there ad hoc clemency for Rhonda, which disrespects the gravity of felony DUI and Jeremy's permanent and catastrophic injuries? The prison policy of no Earned Time to reduce felony DUI offenders' sentences creates a legitimate expectation from victims and the public that the Executive will carry out these terms. By unlawfully releasing Rhonda early on dangerous and preposterous pretext, the N.C. officials violated our unenumerated Ninth Amendment and Fourteenth Amendment Due Process, Equal Protection, and Privileges or Immunities rights as victims, a fundamental right, deeply rooted in our history, which forms the skeleton of our Constitution. DPS adopted procedures to preserve the appearance of fairness and the confidence of prisoners and the public about their decisionmaking process. This Court needs to assure the appearance and the existence of fairness with a criminal's minimum sentence satisfaction for the benefit of victims and society. DPS doesn't have a license to arbitrary exclude Earned Time procedure with felony DUI offenders, and

there's no discretion to deviate from it because it's binding law. DPS established these exacting standards so there wouldn't be arbitrary or variable punishment and deterrence outcomes for offenders of the same sort. Why is Rhonda getting special treatment when what she did was especially bad? N.C. officials have betrayed unambiguous laws that are fundamental to the American scheme of ordered liberty and deeply rooted in our Nation's history and tradition.

C. Victims' rights of repose with the satisfaction of criminals serving their minimum sentences align with important State and Federal interests: to ensure public safety, timely enforcement of a sentence, punishment, and deterrence.

Courts and Executives have the responsibility to ensure that lawful sentences are carried out fairly and expeditiously, not allowing criminals to go free arbitrarily. What N.C. has done to us is akin to *Shinn v. Martinez Ramirez,* 596 U.S. _____ (2022), with abuse of habeas: "our overarching responsibility to ensure that state-court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of federalism." (citation and internal punctuation omitted). So N.C.'s contrary conduct with Rhonda's felony DUI conviction constitutes an end-run around the statute and a breach of DPS and judicial duties. By falsely labeling her conviction as not a DUI at all, they're evading punishment of felony DUI as prescribed by the laws, rendering her felony DUI conviction a nullity, and defeating the established State public policy to be stricter with felony DUI crimes. Society — the will of the people through the Legisla-

ture — has the right to punish admitted offenders, and N.C. officials don't have the power to override the published laws for carrying out the minimum terms of Rhonda's expected punishment with endless and unlawful delay. "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Calderon v. Thompson,* 523 U.S. 538, at 556. "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Id.* N.C. officials' conduct imposes significant costs on its criminal justice system. They're disturbing the State's significant interest in repose for concluded litigation, undermining their investment in their criminal trials, detracting from the perception of the trial of a criminal case in state court as a decisive and portentous event, and they hurt the police who work hard to punish and prevent DUI offenders. We are entitled to the State satisfying Rhonda's minimum sentence. Justice requires this relief because the State Legislature and DPS set out strict, mandatory, binding rules of incarceration, with no Earned Time for felony DUI offenders under structured sentencing. No fairminded jurist could have reached the same judgment as the State judges, we raised our claim with DPS itself before filing suit, and at every level in the courts, and we don't know why they dismissed our claims arbitrarily. Why have the judges ignored §20-141.4(a3)'s requirements? Courts can't decline to give it effect. They have no power to redefine the binding rules of the published statutes and prison policies. They have no authority to redefine Rhonda's felony DUI crime as not a DUI crime at all to circumvent her proper punishment for nearly kill-

ing Jeremy. The N.C. officials arbitrarily undermine the finality that is essential to both the retributive and deterrent functions of criminal law. Their actions are perverse and illogical because it makes no sense to excuse a felony DUI offender from serving the minimum sentence prescribed under unambiguous commands. In doing so, the courts gut the felony DUI laws' purposes: to protect people from needless deaths and injuries caused by DUI offenders who commit this 100% preventable crime, which isn't a mistake or an accident. See also, *Oklahoma v. Castro-Huerta,* 597 U.S. _____ (2022) held: "the State has a strong sovereign interest in ensuring public safety and criminal justice within its territory, and in protecting all crime victims."

D. Shameful statistics: In 2019, one person every 63 seconds was injured in an alcohol-involved crash, and 39 people were killed every day.

According to the National Safety Council for 2020: there are 276 million registered vehicles. Motor vehicle deaths: 42,338 (in 39,000 crashes); 4.8 million medically consulted injuries (in 3,4000,000 crashes), with an estimated cost of $473.2 billion. Costs include wage and productivity losses, medical expenses, administration expenses, motor-vehicle property damage, and employer costs.
<https://injuryfacts.nsc.org/motor-vehicle/overview/introduction>

More from the NHTSA: 2020 Data for alcohol-impaired driving: 11,654 alcohol related fatalities (67% ≥.015 BAC), totaling 30% of all traffic fatalities for the year; fatalities increased by 14.3% from 2019; there is one alcohol-impaired fatality every

45 minutes. <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813294>

For comparison, motor vehicle crashes cost American society $340 billion in 2019; killed 36,500 people, injured 4.5 million people, and damaged 23 million vehicles. Alcohol-involved crashes with >.08 BAC: 14,219 fatalities (39 people per day), 497,000 non-fatal injuries (1,361 injuries per day, or one every 63 seconds), and $68.9 billion in economic costs, accounting for 20% of all crash costs. Crashes involving ≥.08 BAC are responsible for more than 84% of the total economic cost of all alcohol-involved crashes.

And from the report in February 2023: "in cases of serious injury or death, medical care cannot fully restore victims to their pre-crash status and human capital costs fail to capture the intangible value of lost quality-of-life that results from these injuries...In the case of serious injury, the impact on the lives of crash victims can involve extended or even lifelong impairment or physical pain, which can interfere with or prevent even the most basic living functions."
<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813403>

North Carolina cheats the federal government out of contingent federal funding by not enforcing their DUI laws. Not only do officials refuse to acknowledge that Rhonda was convicted of felony DUI, and the State's DUI statistics have worsened since The Calamity, but our complaint included some investigative journalism with objective proof showing how the State lies in their federal filings about their DUI metrics to fraudulently get the contingent federal funding from the DOT, see Compl. pp. 220–233. The NCDOT maintains 1,410 miles of

its 19 interstate highways, 8 primary and 11 auxiliary, entirely or partially existing in the State: I-26, I-40, I-73, I-74, I-77, I-85, I-87, I-95. Almost everyone uses the roads. And it should go without saying that there are important safety reasons for speed limits, functioning brake lights, and DUI laws.

Q.P.6. Everyone agrees that the *Slaughter-House Cases,* 16 Wall. 36 (1873), rendered the protection of the Fourteenth Amendment's Privileges or Immunities Clause dead letter, and because no word in the Constitution's text should be meaningless and without effect, the Court should overrule it to restore Americans' fundamental citizenship rights against unlawful State intrusion.

We pressed this alternative in Claim 9, see, *e.g.,* Compl. pp. 188, 233–237. Adherence to precedent — *stare decisis* — is a foundation stone of the rule of law because it promotes evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.

And the principle of finality is essential to the operation of our criminal justice system. So when a convicted criminal goes free merely because officials arbitrarily decide that the offender's DUI crime isn't a DUI at all, then the public suffers, as do the victims because DUI is hazardous to national safety. There is both a Federal and State public interest for criminals to serve sentences for punishment and deterrence purposes. In fact, by refusing to perform their duties and depriving us of expected repose, the defendants inflicted wretched pain because we're forced to constantly relive and endure the agony of

injustice to vindicate our rights that they have no authority to eviscerate. The State officials' conduct conflicts with clearly established law, which is so obviously wrong that it's beyond any possibility for fairminded disagreement. They acted atextually, defying state public policies and the Constitution. Why? The right for a victim to insist that the State enforce a lawfully issued minimum sentence is a right and privilege of both State and Federal citizenship because criminal justice is a building block of the Constitution itself, and the Privileges or Immunities Clause should prevent State abridgment of this right because it is essential to ordered liberty. It's a fundamental federal right as much is the right to travel. The State owes us this duty because Rhonda's crime was vested by the final judgment, conclusive on the entire world, and the State officials had no right to disregard its full force. The State officials are bound to execute the judgment.

But we recognize that State victims demanding enforcement of a sentence doesn't quite fit under the Fourteenth Amendment's Due Process or Equal Protection Clauses; however, it does fall squarely within the gutted Privileges or Immunities Clause because victims' rights with this issue is simultaneously a State and a Federal right. Therefore, the Court should overrule the *Slaughter-House Cases* and apply the entire Bill of Rights against the States to protect victims against State oppression, as the Fourteenth Amendment's authors intended. The Privileges or Immunities Clause protected all U.S. citizens from State violations of fundamental Federal rights. With that in mind, *stare decisis* is weakest when the Court interprets the Constitution because it's not an inexorable command, though it requires

special justification. So the usual factors for deciding whether to overrule a past decision, are: (1) quality of its reasoning; (2) workability of the rule it established; (3) consistency with other related decisions; (4) reliance on the decision; and (5) legal developments since the decision. Unquestionably, the *Slaughter-House Cases* rest on a rotten foundation, and nobody can make a better case than Justice Thomas' concurrence did in *McDonald v. City of Chicago,* 561 U.S. 742 (2010), so here we rest.

Q.P.7.A. The business of insurance is clothed with a peculiar public interest, so it's subject to legislative regulation for the common good.

Insurance is practically a necessity to business activity and enterprise, essentially different from ordinary commercial transactions, and "is of the greatest public concern." *German Alliance Ins. Co. v. Kansas,* 233 U.S. 389, 414–415 (1914). Under pressure from the States and the insurance industry, Congress enacted the McCarran-Ferguson Insurance Act in 1945, 15 U.S.C. §§1011–1015. This Act was a lightning response to the Court's decision in *United States v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533 (1944), which held that the "business of insurance" is commerce under the Commerce Clause, thus subject to federal regulation under the Sherman Antitrust Act for interstate transactions that violate the Act. The Court impressed that insurance companies conduct a substantial part of their business transactions across state lines, and insurance touches almost every person in the United States. The Court also recognized that the insurance trade is subject to widespread abuses, thus there is an imperative need for states to pass regulatory legislation. Section 3(b) of the McCarran-Ferguson Act

carves out an exception to States' exemption from the Sherman Act, by excluding from the statute's protective shield, acts and agreements amounting to boycott, intimidation, or coercion. These terms are neither defined in the statute nor limited in scope, which accords with the Act's purpose, considering that its text is broad and flexible by design to capture novel and diverse illegal conduct as society progresses. "Congress intended the Sherman Antitrust Act's reference to 'restraint of trade' to have changing content, and authorized courts to oversee the term's dynamic potential." *New Prime Inc. v. Oliveira,* 586 U.S. _____ (2019) (punctuation and citations omitted). In other words, deciding what conduct counts for boycott, intimidation, or coercion isn't limited to Congress' dictionaries in 1890 or 1945 because the language in both acts can't be more unrestricted.

B. "FRA": Statutory mandatory minimum automobile liability insurance.

The N.C. General Assembly has long shown a concern for laws surrounding automobile liability insurance. In 1931, the Legislature required automobile operators to carry a minimum amount of insurance coverage to show financial responsibility for personal injury and property damages. This Act was patterned after one by the American Automobile Association. See Public Laws of 1931, Chapter 116. In 1945, after this Court's *South-Eastern* decision and McCarran-Ferguson Act, the Legislature instituted the Administrative Office, requiring all automobile liability insurance companies to be members. In 1947, the Legislature adopted the "Motor Vehicle Safety and Responsibility Act." See Chapter 1006, N.C. Session Laws of 1947. The Act provided that

automobile liability insurance would serve as one of the methods of establishing financial responsibility, setting out minimum amount provisions. In 1953, the Legislature adopted the "Motor Vehicle Safety and Financial Responsibility Act of 1953." Chapter 1300, N.C. Session Laws of 1953. It's still in force under Chapter 20, Article 9A; §§20-279.1–20-279.39. In 1957, N.C. became the third state to adopt a compulsory automobile liability insurance law, so every owner of a motor vehicle in the State has to prove financial responsibility before he is permitted to operate a motor vehicle on the State's highways. The principle method of proving this responsibility is through automobile liability insurance. Chapter 1393, N.C. Session Laws of 1957.

To be clear, it *seems* like 48 states and D.C. require drivers to have automobile liability insurance. To satisfy North Carolina's FRA laws, contracting with an insurer *appears* mandatory when you look at "The Official North Carolina DMV Website." <https://www.ncdot.gov/dmv/title-registration/insurance-requirements/Pages/default.aspx> In huge letters, the landing page's title says "Insurance Requirements." First it says: "All vehicles with a valid North Carolina registration are required by state law (G.S. 20-309) to have continuous liability insurance provided by a company licensed to do business in North Carolina." It further says: "North Carolina law (G.S. 20-279.21) also requires insurance coverage for uninsured/underinsured motorist, as well as minimum bodily injury and property damage limits." Still more, it warns about penalties: "North Carolina's liability insurance law is strictly enforced, and insurance companies are required to notify the N.C. Division of Motor Vehicles if liability insurance on a

vehicle is canceled or coverage lapses for any reason." Everyone thinks that it's mandatory. But it's not quite, because like New Hampshire and Virginia and other states, there are other ways to prove financial responsibility in lieu of contracting with an insurer. See N.C.G.S. §20-309(b) ("Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer...") Also, New Hampshire has exceptions, *e.g.,* drivers with DUIs are required to purchase insurance. N.H. Rev. Stat. §264.2. The Virginia Uninsured Motor Vehicle fee costs $500 annually. See their website: "Payment of this fee allows a motor vehicle owner to operate an uninsured motor vehicle" for 12 months. <https://www.dmv.virginia.gov/vehicles/#uninsured_fee.asp>

C. USAA's game is Gaslighting FRA intended beneficiaries ("FRA IBs") for unjust enrichment: It couldn't be clearer, after 10 years and counting with not one cent yet paid, USAA combined with ultra vires judges to unreasonably deprive us of our $120,000 vested insurance property through boycott, intimidation, and coercion. No judge will enforce the contract, despite that USAA admitted the liabilities of both of their policyholders in writing, our injuries obviously exceed the minimum statutory amounts, and the public policy demands prompt payment.

The FRA is societally important, see, *e.g.,* Compl. Claim 4 pp. 92–160 and Claim 7 pp. 169–187, see also Posters pp. IX-XII, XV. Let's start with a brief list of USAA's lies to underpay, delay, and not pay the

proceeds that became due at the moment of The Calamity:

1. Claiming $30,000 is the maximum policy limits for Jeremy only.
2. Ignoring the owner's negligent entrustment coverage.
3. Pretending Jenny only has a derivative loss of consortium claim.
4. USAA to this day ignoring Jenny's second discrete bodily injury claim letter.
5. Not letting us make the burglary claim in writing, insisting oral only, and we wouldn't.
6. Contending June 2015 that Jenny needed to submit proof of being a bystander.
7. Denying there was only one occurrence on the policy when negligent entrustment is necessarily two occurrences.
8. Rhonda and Senior aren't each fully covered for their discrete acts of liability because they're married (despite both named on the policy, Restatement §§9 and 10, both required to have coverage under FRA, no chattel or coverture laws) when USAA admitted they're both liable to both of us insisting $30,000 pays for both of them covering both of us. (The fact that they're married is irrelevant for full minimum statutory contractual coverage.)
9. Ignoring the truck depreciation claim.
10. Only recognizing Jenny's claim after NCDOI complaint in July 2015 with lowball $30,000 offer.
11. The court-case-discredited *Baggett* claim exclusion.
12. Ignored our "first-party" claim under §20-279.21(b)(3)(b).

13. Invented the precedent condition that FRA IBs need a tortfeasor liability judgment before USAA owes us duties under Chapter 58...
14. ...and before we can enforce the contract or sue for its enforcement...
15. ...and before we can directly sue USAA under Chapter 75.
16. Ignoring §20-279.21(f)(1) and (2) which say insurer liability is absolute at the moment of injury or damage and duty to pay without precedent condition of a judgment.
17. Ignoring controlling *Chantos* and *Gray*.
18. Citing and twisting non-controlling and irrelevant lower-court *Murray* and *Wilson*, turning them on their heads with out-of-context cherry-picking.
19. USAA is still only offering us $60,000 total for 10 years of hell.

D. Chapter 58 is a preventative statute in its essence because it tells insurers exactly what not to do against all claimants, the types of unfair and deceptive acts that are categorically forbidden, while Chapter 75 incentivizes insurers not to do the prohibitions in Chapter 58. Both protect FRA IBs who don't first obtain a tortfeasor liability judgment (it's not required in any text or precedent, nowhere says that FRA IBs can't sue an insurer directly for violations or must first sue the tortfeasors).

The two best cases that we relied on are N*ationwide Mutual Insurance Co. v. Chantos*, 238 S.E.2d 597, 293 N.C. 431 (N.C. 1977), and *Gray v. N.C. Ins. Underwriting Ass'n*, 352 N.C. 61, 529 S.E.2d 676 (2000). First extensive quotes from *Chantos*, emphasis ours:

> "the language of [the FRA] making it clear that the Legislature intended to make all financially irresponsible persons, including minors, subject to its provisions. ...it was not incumbent upon plaintiff to wait until suit was filed or judgment entered before seeking to mitigate the absolute liabilities imposed upon it by statute. ...**The mandatory coverage required by the Financial Responsibility Act is solely for the protection of innocent victims** who may be injured by financially irresponsible motorists. ...Under the Financial Responsibility Act, all insurance policies covering loss from liability growing out of the ownership, maintenance and use of an automobile are mandatory to the extent coverage is required by G.S. 20-279.21. ...**The victim's rights against the insurer are not derived through the insured, as in the case of voluntary insurance. Such rights are statutory and become absolute upon the occurrence of injury or damage inflicted by the named insured, by one driving with his permission,** or by one driving while in lawful possession of the named insured's car. ...**the Financial Responsibility Act does impose liability upon an insurer as a matter of public policy.**"

Gray held, because such conduct is inherently unfair, unscrupulous, immoral, and injurious to consumers: "conduct that violates subsection (f) of the N.C.G.S.S §58-63-15(11) constitutes a violation of N.C.G.S. §75-1.1, as a matter of law, without the necessity of an additional showing of frequency indicating a 'general business practice.'" §75-1.1 provides that "[u]nfair methods of competition in or affecting

commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." §75-16 creates a cause of action to redress injuries caused by violations of Chapter 75 of the General Statutes and provides that any damages recovered shall be trebled. These two statutes establish a private cause of action for consumers. See, *Hyde v. Abbott Laboratories, Inc.*, 473 S.E. 2d 680 (1996) (Chapter 75 applies to indirect purchasers, who may sue without regard to privity of contract). See, *Marshall v. Miller,* 302 N.C. 539, 276 S.E. 2d 397 (1981): "Absent statutory language making trebling discretionary with the trial judge, we must conclude that the Legislature intended trebling of any damages assessed to be automatic once a violation is shown." See, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), Compl. p. 142: "USAA and the judges destroyed our protected property because: 'A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause.'"

Section 58-63-15(11)(f) says: "Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear." See Compl. p. 99: Session Laws 1986, S.B. 873, Chapter 1027, the Legislature amended Chapter 58 "to make changes in certain insurance market practices for the benefit of consumers." And deleted the prior heading "in connection with first-party claims" to what's now §58-63-15 to eliminate insurer shenanigans of paying so-called third-party claimants unfairly. In other words, the Session Laws deleted the prefatory phrase "first-party" thereby removing any limitation on which kind of claimant Chapter 58's rules protect. By deleting the phrase, there is no textual limitation only to

first parties, so the Legislature made it clear that Chapter 58 would apply to any claimant. See also *Kemp v. United States,* 596 U.S. _____ (2022) ("In 1946, however, the Rule's amenders deleted the word "his," thereby removing any limitation on whose mistakes could qualify").

FRA §20-279.2 (f)(1) begins: "the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs."

FRA §20-279.21(f)(2) says: "The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury of damage."

To establish a violation of N.C.G.S. §75-1.1, a plaintiff must show: (1) an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) which proximately caused injury to [the] plaintiff. A tortfeasor liability judgment first is not required for an FRA IB to sue an insurer directly for a violation under Chapter 58.

E. We are FRA Intended Beneficiaries being arbitrarily denied from the protection of N.C.'s laws that were expressly enacted for our benefit.

In *Vogel v. Reed Supply Company,* 277 N.C. 119, 17 S.E.2d 273 (1970), the NCSC said:

> "The practice of allowing third-party beneficiaries not in privity of contract to bring an action in their own name to enforce the contract made for their benefit was recognized in North Carolina as early as 1842. ...the law in this State as to direct third party beneficiaries is synony-

> mous with the Restatement categories of donee and creditor beneficiaries. Restatement §133 correctly states the law of this State and we therefore expressly approve the Restatement formula."

In *Raritan River Steel Co. v. Cherry, Bekaert & Holland,* 329 N.C. 646, 407 S.E.2d 178 (1991), the NCSC said:

> "This Court has adopted the analysis of the Restatement (Second) of Contracts for purposes of determining whether a beneficiary of an agreement made by others has a right of action on that agreement. The Restatement (Second) of Contracts (1981) provides as follows: §302. Intended and Incidental Beneficiaries (1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. (2) An incidental beneficiary is a beneficiary who is not an intended beneficiary."

F. Two tortfeasors caused The Calamity.

Please take heed to the following hypothetical showing how automobile liability insurance normally operates with negligent entrustment claims (or with multiple tortfeasors who cause an accident). If there were four different insurers involved with two tortfeasors who caused injuries to two parties, A, B, C, and D, and A covers Rhonda (paying Jenny and Jer-

emy each $30,000, totaling $60,000), B covers Senior (paying Jenny and Jeremy each $30,000, totaling $60,000), C covers Jeremy, and D covers Jenny, then we would have been promptly paid $120,000. But if A and B refuses to pay us the total $120,000 of coverage available under the minimum FRA, then C and D would pay us and go after A and B for collection. But obviously USAA won't cover us, and USAA won't go after itself for not paying us. See mandatory UIM coverage under §20-279.21(b)(3)(b) ("or there is that coverage but the insurance company writing the insurance denies coverage thereunder"). This is our "first-party" complaint against USAA. See, *e.g.,* Compl. p. 165.

N.C. is a cause-based state that recognizes negligent entrustment. See, *e.g., Young v. Baltimore and Ohio railroad Company,* 266 N.C. 458, 146 S.E.2d 411 (1966): "'The mere fact that another is also negligent and the negligence of the two results in injury to the plaintiff does not relieve either.' (citation omitted). This Court has said many times: 'There may be two or more proximate causes of an injury. These may originate from separate and distinct sources or agencies operating independently of each other, yet if they join and concur in producing the result complained of, the author of each cause would be liable for the damages inflicted, and action may be brought against any one or all as joint tortfeasors." Comp. p. 111.

Also see Restatement (Second) Contracts:

> "§9: Parties Required "There must be at least two parties to a contract, a promisor and a promisee, but there may be any greater number." c. Multiple parties. "Under §1 a contract may be a 'set of promises', and there may be

> multiple promisors and multiple promisees in one set. §10 Multiple Promisors and Promisees of the Same Performance (2) Where there are more promisees than one in a contract, a promise may be made to some or all of them as a unit, whether or not the same or another performance is separately promised to one or more of them. b. Multiple promises. As a matter of substantive law, an indefinite number of persons may contract with one another, and there may be three or more individuals or groups, each with distinct rights and duties. Promises may be made by individuals or by groups acting together, and they may be made to individuals or to groups acting together."

Rhonda pleaded guilty and is liable for her discrete act of negligence against each Jenny and Jeremy, so her policy limits are $60,000. And Senior is liable not only under negligent entrustment, but also under §20-71.1 as the car's owner.

And USAA used the debunked *USAA v. Baggett,* 209 Cal. App. 3d 1387 (1989), to unlawfully "exclude" our claims for two occurrences, see Compl. pp. 110–115.

G. A victim's reliance on mandatory statutory automobile liability insurance is high because it's an expected public policy entitlement.

See, *e.g.,* Black's 673 entitlement "An absolute right to a (usu. monetary) benefit, such as social security, granted immediately upon meeting a legal requirement. Also see, *In re Banks,* 244 S.E.2d 386, 295 N.C. 236 (1978):

> "When the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give the statute

its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein. But where a statute is ambiguous or unclear in its meaning, resort must be had to judicial construction to ascertain the legislative will, and the courts will interpret the language to give effect to the legislative intent." (citations omitted).

H. Cheating is universally condemned and is per se illegal.

The purpose of the antitrust laws is to protect and promote competition to maximize consumer welfare. Competition protects the public by increasing efficiency and output, lowering prices, and improving the quality of the products and services available. But cheating is prohibited because it always — inherently — harms competition and decreases output, rather than increasing economic efficiency or promoting competition. Chapter 58 covers insurer rules, including a non-exhaustive list of categorically forbidden practices under §58-63-15, titled "Unfair methods of competition and unfair or deceptive acts or practices defined." The Legislature's public policy dictates that when an insurer intentionally violates any of these explicit rules, then the harm to competition and consumers is automatically knowable and obvious. Thus, an insurer's objective violation under this section means an analysis under the rule of reason is unnecessary because cheating is per se anticompetitive conduct, so it doesn't require actual proof of detrimental effects on competition. Therefore, on its face, even a "quick look" at cheating's actual effects on competition is unwarranted because no justifications for cheating are allowed. Cheating

is a naked restraint, analogous to a horizontal price-fixing agreement. See, *St. Paul Fire & Marine Ins. Co., v. Barry,* 438 U.S. 531 (1978), holding that the language of §3(b) is broad and unqualified: it covers "any" act or agreement amounting to a boycott, coercion, or intimidation. If Congress intended to limit its scope and preclude all Sherman Act protections from intended beneficiaries, it presumably would have made this explicit. The object of the conspiracy is to not pay FRA IBs fairly, fully, or promptly by arbitrarily restricting us from enforcing the contract directly against an insurer, forcing us to take the tortfeasors to court and obtain a liability judgment first, terms USAA dictated but found nowhere in the statutes, precedent, or contract. The generic concept of boycott refers to a method of pressuring a party with whom one has a dispute by withholding, or enlisting others to withhold, patronage or services from the target. FRA IBs are a class of cognizable antitrust victims because *Chantos* and *Gray* state our rights. USAA's and the judges' agreement effectively bars FRA IBs from enforcing the contract, protection from Chapter 58, and relief from Chapter 75. Their pact serves as an oppressive weapon for USAA's unjust enrichment at victims' expense. N.C.'s conduct lacks fair or substantial support in prior State law. Their actions are so unfounded as to be arbitrary, groundless, imposing novel and unforeseeable requirements, and conflict with prior NC law. Equity doesn't allow a statute to be twisted as a cloak for fraud or a wrongdoer to profit by a wrong.

By ignoring USAA's blatant Chapter 58 violations against FRA IBs, the courts allow USAA to profit by cheating vulnerable victims with impunity. The defendants cite no controlling authority for its ipse dix

it that an FRA IB must seek and obtain a judgment against the tortfeasors before the insurer has a duty to treat us with good faith and before we can sue the insurer directly for bad faith under Chapter 75 using Chapter 58's forbidden unfair and deceptive practices. The NC judges exercised raw judicial power to unjustly enrich USAA and encourage them to continue cheating victims. This Court always has jurisdiction to intervene in cases where state courts act lawlessly to obstruct federal rights. This Court may reject a state court's interpretation of state law that is so grievously wrong as to significantly depart from the well-established meaning of state law and thus render it absurd, inconceivable, and beyond what any reasonable person could conclude. See, *e.g., Bush v. Gore,* 531 U.S. 98 (2000) at 119 & N.4. Federal courts may intrude where there exists no plausibly defensible basis for the state court's determination and the decision infringes a clear federal interest. Our case is important because the judges are helping USAA commit fraud against FRA IBs with impunity, which is criminal indifference to their civil obligations owed to us, and an intentional failure to perform a manifest duty owed to the public in the performance of which the public and the party injured has an interest: FRA, 3D, and DUI — these are intertwined.

Q.P.8. Lamberth has a special affinity with and loyalty to USAA.

Having his IRAs with USAA for decades surely subconsciously influences his protection toward them rather than impartially to us. No reasonable observer would believe that Lamberth's financial interest in USAA is insignificant and that he could properly oversee and adjudicate our claims against them.

USAA uses a secret formula for their annual Subscriber Savings Account for non-taxable dividends. And the standard under §455(b) for recusal is a financial interest "however small," and Lamberth admitted to at least a small financial interest, though he glossed over this statutorily dispositive fact requiring his mandatory disqualification by saying that it was too small to affect his judgment in our case. Lamberth adds poison to the well of our "USAA's judicial agency capture" Claim 4.

CONCLUSION

We witnessed a miracle when Jeremy impossibly survived his injuries. The surgeon tried to save the skin from Jeremy's severed calves, for good, for a graft, but it died. Meanwhile, the defendants' conspiracy to save each other's skins is necrosis, and their bad acts should be cut off for the good of society. Honorably, we brought our case to the federal forum for the vindication of our constitutional rights because the State officials conspired with the defendants to prevent accountability for their misconduct, contrary to the explicit public policies. And the lower courts' conduct shocks the conscience because they sidestepped their duty to fairly adjudicate the gravamen of our claims in accordance with the governing laws: they wouldn't acknowledge or address that the State trial court triggered 3D and issued void ab initio orders, or apply 15 U.S.C. §22 with the CTPJ for personal jurisdiction in our federal antitrust claim, both giving no glue to attach res judicata and *Rooker-Feldman* defenses. They left Canon 3D with no work to perform — its terms dead letters all. They bizarrely turned a blind eye to this very important subsection because it strikes at the heart of

a judge's jurisdiction, since it addresses realized disqualification. Is this Court permitted under the All Writs Act and 15 U.S.C. §26 to immediately issue a permanent injunction against USAA for the $120,000 that statutorily vested at the moment of the Calamity? Our case presents important national-interest questions needing this Court's authoritative voice. And our complaint is sufficient to survive the defendants' motions to dismiss. Therefore, we ask the Court to grant our petition, vacate the lower courts' orders, remand to a new district court judge in the first instance, and order USAA to pay us our FRA money that is over a decade overdue.

In other words:

We ask the Court for a minor miracle.

Respectfully submitted,

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