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SUPREME COURT OF THE U.S.

No. 23-1058

**ORIGINAL**

In The  
Supreme Court of the United States

ROBERT L. SCHULZ, ANTHONY FUTIA, JR.,  
JOSHUA TROST and WILLIAM C. JAMES  
Petitioners

v.

THE STATE OF NEW YORK, KATHY HOCHUL,  
GOVERNOR; THE NEW YORK STATE  
LEGISLATURE – ANDREA STEWART-COUSINS,  
PRESIDENT PRO TEMPORE AND MAJORITY  
LEADER and CARL E. HEASTIE, SPEAKER OF  
THE ASSEMBLY

Respondents

On Petition For Writ of Certiorari  
The New York State Court of Appeals

**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether defendant New York State officials violated Petitioners' federal Right to a republican form of government, secured to them by Article IV, Section 4 of the U.S. Constitution, by violating Article VII, Section 8 and Article VIII, Section 1 of the New York State Constitution in authorizing the use of \$600 million of the money of the State and \$250 million of the money of Erie County to aid a private undertaking of the Buffalo Bills, LLC – the construction of a new stadium to be primarily used by the Buffalo Bills to profit from making retail sales of goods and services to customers who personally visit the facility to purchase such goods and services.

## **PARTIES TO THE PROCEEDINGS**

All parties to the proceeding are listed in the caption. Rule 29.6 does not apply to these petitioners.

Respondents in the court below, Respondents here are the State of New York, Kathy Hochul, Governor, and the New York State Legislature, Andrea Stewart- Cousins, President pro tempore and Majority Leader, and Carl E. Heastie, Speaker of the Assembly. Appellants in the Court below, petitioners here, are Robert L. Schulz, pro se, Anthony Futia, Jr., pro se, Joshua Trost, pro se, and William C. James, pro se.

**TABLE OF CONTENTS**

	Page
QUESTION PRESENTED .....	i
PARTIES TO THE PROCEEDINGS .....	ii
TABLE OF AUTHORITIES .....	v
PETITION FOR WRIT OF CERTIORARI .....	1
OPINION BELOW .....	1
 CITATIONS: OF OPINIONS AND ORDERS	
ENTERED IN THIS CASE .....	1
JURISDICTION .....	3
CONSTITUTIONAL INVOLVEMENTS .....	4
STATEMENT OF THE CASE .....	6
REASONS FOR GRANTING THE WRIT .....	17
CONCLUSION .....	23
 APPENDIX	
A. New York State Court of Appeals Order	
entered Jan. 16, 2024 .....	App 1

B. New York State Court of Appeals Order entered Oct. 19, 2023 .....	App. 3
C. New York State Supreme Court Appellate Division Decision and Order entered June 29, 2023 .....	App. 5
D. New York State Supreme Court Appellate Division Opinion and Order entered May 11, 2023 .....	App. 7
E New York State Supreme Court Albany County Decision and Order Entered Aug. 9, 2022 .....	App. 30
F New York State Supreme Court Albany County Decision and Order entered July 20, 2022 .....	App. 36

**TABLE OF AUTHORITIES**

	Page
<b>CASES</b>	
<i>Bordeleau v. State of N.Y.</i> , 18 NY3d 305[2011]...	9,10
<i>Murphy v. Erie County</i> , 28 NY2d 80 [1971] .....	10
<i>Cohens v. Virginia</i> , 19 U.S. 264 [1821] .....	22
<i>Luther v. Borden</i> , 48 U.S. 1 [1849] .....	22
<b>UNITED STATES CONSTITUTION</b>	
Article IV, Section 4 .....	i,4,10,13,17
<b>NEW YORK STATE CONSTITUTION</b>	
Article VI, Section 3(b)(1) .....	15
Article VII, Section 8.1.....	i,4,11,12
Article VII, Section 8.3 .....	i,4,11
Article VIII, Section 1 .....	i,4,11,12
<b>FEDERAL STATUTES</b>	
28 USC 1257 .....	4

## OTHER REFERENCES

Judiciary Act of 1789, Section 25 .....	3
Federalist Paper 39 .....	18
Federalist Paper 43 .....	19

**PETITION FOR WRIT OF CERTIORARI**

Robert L. Schulz, Anthony Futia, Jr., Joshua Trost and William C. James respectfully petition for a writ of certiorari to review the order of the State of New York Court of Appeals.

**OPINION BELOW**

The New York State Court of Appeals Order of October 19, 2023, and its Order of January 16, 2024 denying a motion for reconsideration, affirmed the Opinion and Order of the State of New York Supreme Court, Appellate Division, Third Department, dated May 11, 2023.

**CITATIONS OF OPINIONS AND ORDERS ENTERED IN THIS CASE**

The New York State Court of Appeals Order, entered January 16, 2024, denying the motion for reconsideration of its October 19, 2023 Order is

reported at Slip Opinion 2024 NY Slip Opinion 60638. A copy is included at Appendix A herein.

The New York State Court of Appeals Order entered October 19, 2023 dismissing the appeal is reported at Slip Op. 2023. NY Slip Opinion 75360.

Copy at Appendix B.

The New York State Supreme Court Appellate Division Third Department Decision and Order entered June 29, 2023 denying the motion for reargument is reported at Slip Op 2023. Slip Op 69656(U). Copy at Appendix C.

The New York State Supreme Court Appellate Division Third Department Opinion and Order entered May 11, 2023 affirming the Order of the New York State Supreme Court, Albany County is reported at 216 AD3d 21, 2023 NY Slip Op 02575.

Copy at Appendix D.

The New York State Supreme Court Albany County Decision and Order dismissing the case, entered August 9, 2022, is unreported. Copy at Appendix E.

The New York State Supreme Court Albany County Docket 03231. Decision and Order entered July 20, 2022 is unreported. Copy at Appendix F.

### **JURISDICTION**

Date of Order sought to be reviewed: October 19, 2023.

Date of Order respecting motion for rehearing:  
January 16, 2024

Statutory provisions believed to confer on this Court jurisdiction to review on a writ of certiorari the order in question:

1. Judiciary Act of 1789, Section 25.

2. Article IV, Section 4 of the Constitution for  
the United States of America.

3. 28 USC 1257.

## **CONSTITUTIONAL INVOLVEMENTS**

U.S. Constitution, Article IV, Section 4:

“The United States shall guarantee to  
every State in this Union a republican  
Form of Government.”

New York State Constitution, Article VII, Section 8:

“The money of the state shall not be  
given or loaned to or in aid of any  
private corporation or association, or  
private undertaking”

“.3 Nothing in this constitution  
contained shall prevent the legislature  
from authorizing the loan of the money  
of the state to a public corporation,,, to

improve employment opportunities in any area of the state, **provided, however, that any such plants, buildings or facilities or machinery and equipment therefor shall not be** (i) **primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services ....”** (emphasis added)

New York State Constitution, Article VIII, Section 1:

“ No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking “

## STATEMENT OF THE CASE

On March 28, 2022, New York State officials announced the State had reached a deal with the Buffalo Bills LLC to use \$850 million in public money to help that private corporation build a \$1.4 billion stadium.<sup>1,2</sup> Shortly thereafter, in April of 2022, respondents adopted the 2022-2023 State Budget Bills which authorized the appropriation of \$800 million in New York State's public money and \$250 million in Erie County's public money to be

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<sup>1</sup> Exhibit A annexed to the Complaint was a copy of an article published by the New York Times on March 28, 2022 headlined, "*Buffalo Bills Strike Deal for Taxpayer-funded \$1.4 Billion Stadium.*" See Record on Appeal at A 21-22.

<sup>2</sup> Exhibit B annexed to the Complaint was a copy of an article published by the New York Post on March 28, 2022 headlined, "*Buffalo Bills secure deal for \$1.4B stadium thanks to record \$850M from taxpayers.*" Record A 23-27/

used in aid of said undertaking by said private corporation.<sup>3</sup>

**Federal Question:  
Court of First Instance**

**In New York State Supreme Court, Albany  
County, pro-se plaintiffs naturally focused on  
the violations of the State Constitution but also  
referred to the federal Constitution in claiming:**

1. **“New York State is a State in the  
Constitutional Republic known as the  
United States of America, under the  
Constitution of the State of New York  
and under the jurisdiction of the  
Constitution of the United States of  
America.” Record on Appeal at A 9.**

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<sup>3</sup> The Complaint included the full text of the subject Budget Bills. Record at 28-33.

2. Defendants were “unilaterally changing the meaning of... the Constitution ... without a constitutional amendment approved by the People.”

Record on Appeal at A 153.

3. “The challenged project is patently unconstitutional. It represents a foolish and dangerous escalation in the shift of the ultimate power in New York State’s Constitutional Republic from the People to the Government where it is not intended to reside.” Record at A 156

4. “What’s next? Will the day come when NY taxpayers will be required to fund multi-decked Cruise Ships, huge Concert Halls and Religious Cathedrals in aid of their ‘private owners,’ all

without a proper constitutional amendment, as government continues to amend the constitution by ignoring it?" Record A 125.

The New York State Supreme Court in Albany County dismissed the case on the ground that "the appropriated funds are for a public purpose," citing *Bordeleau v State of New York*, 18 NY3d 305 [2011]. See Appendix E and F.

**Federal Question:  
Appellate Division, Third  
Department**

In their opening Brief to the New York State Supreme Court, Appellate Division, Petitioners presented the federal question as follows:

"Whether, by extension, said violations of the New York State Constitution equate to a violation of the Guarantee

Clause of the Constitution for the United States of America – Article IV, Section 4.”

On May 11, 2023, the Appellate Division dismissed the appeal on “public purpose” grounds, citing the “public purpose” rulings by the New York State Court of Appeals (*Bordeleau v. State of New York*, 18 NY3d 305 [2011] and *Murphy v Erie County*, 28 NY2d 80 [1971]. See Appendix D.

However, in responding to Petitioners’ guarantee clause question the Appellate Division held:

“[W]e do not find this argument persuasive as nothing alleged here indicates a lack of representative government or the violation of a republican form of government [citation

omitted] inasmuch as the provision of appropriations such as these ‘do[es] not pose any realistic risk of altering the form or method of functioning of New York’s government’ [citation omitted].”

See Appendix D, fn 3.

In their motion for re-argument to the New York State Supreme Court Appellate Division Third Department, petitioners argued in part:

“Appropriations passed from the public treasuries of the State and its municipalities in aid of private, *for-profit* undertakings and corporations are always under the control of the State and subject to the prohibitions of Articles VII and VIII of the Constitution, even if passed to or

through one or more of the State's public benefit corporations as those public benefit corporations are creatures of the State and, as such, cannot function with a freedom and flexibility greater than their constitution-bound creator...

"The dismissal equates to a judicial repeal of Article VII, Section 8.1 and Article VIII, Section 1, allowing by its precedent, public taxpayer funds collected into public treasuries to be used in aid of *any and all private, for-profit corporations desiring new facilities and equipment to be used by the public for the purchase of their goods and services...*

“The dismissal cannot stand as it is treasonous not only to the State Constitution but also to the U.S. Constitution which, as the clearly expressed will of the People, guarantees the People in the State of New York a government republican in form and substance (Art. IV, Section 4).”

On June 29, 2023 the Appellate Division issued a Decision and Order which read in its entirety:

*“Motion for reargument.*

*Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is*

*ORDERED that the motion is denied, without costs.”* See Appendix C.

**Federal Question:  
New York State Court of Appeals**

In presenting the federal question to the New York State Court of Appeals Petitioners stated in part:

“Beyond any reasonable doubt, said Budget Bills violate the State Constitution and thus the U.S. Constitution’s guarantee of a government republican in form in New York State.”

Nonetheless, on October 19, 2023, the Court of Appeals issued an Order which stated in its entirety:

“Upon the papers filed and due deliberation, it is ORDERED, that the appeal is dismissed without costs, by the Court *sua sponte*, upon the ground

that no substantial constitutional question is directly involved.” See Appendix B.

On October 23, 2023, Petitioner Schulz, with the approval of each of the other three petitioners, quickly moved for reconsideration stating in part:

“[T]he matter directly involves the construction of the constitution of the State of New York ... The people have clearly prohibited the movement of money from the public treasuries of the State and the Counties to private corporations in aid of private undertakings ...

“[T]he will of the People of the State is also expressed in the Constitution of the State of New York at Article VI, Section

3(b)(1) as follows ... Appeals to the court of appeals may be taken ... As of right, from a judgment or order entered upon the decision of an appellate division of the supreme court ... wherein is directly involved the construction of the constitution of the state **or of the United States' ....”** (emphasis added)

On January 16, 2024, the Court of Appeals issued an ORDER stating in its entirety:

“Appellant Robert L. Schulz having moved for reconsideration of this Court’s October 19, 2023 dismissal order in the above cause;

Upon the papers filed and due deliberation , it is

ORDERED, that the motion is denied."

See Appendix A

**Argument:  
Reasons for Granting the Writ**

In dismissing the appeal New York State's highest Court has decided a federal constitutional question that has not been, but should be settled by this Court – that is, whether a violation by a State Governor and State Legislature of provisions of that State's Constitution is a violation of the Guarantee Clause of Section 4 of Article IV of the U.S. Constitution.

The Guarantee Clause mandates that all U.S. states must be grounded in republican principles such as the consent of the governed. By ensuring that all states must have the same basic republican philosophy, the Guarantee Clause is one of several

portions of the Constitution which mandates symmetric federalism between the states.

The values and ideals of republicanism are foundational in the constitution and history of the United States.

Federalist 39 reads in part:

“[W]e may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is *essential* to such a government, that it be derived from the great body of the society. Could any ... proof be required of the republican

complexion of this system, the most decisive ... might be found in its express guarantee of the republican form to each of the [States]."

Federalist 43 reads in part:

"In a confederacy founded on republican principles, and composed of republican members, **the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations.** The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist that the forms of government

under which the compact was entered into, should be substantially maintained. **But a right implies a remedy; and where else could the remedy be deposited, than where it is deposited by the constitution?**

(emphasis added).

If the interposition of the general (United States) government should not be needed, the provision for such an event will be a harmless superfluity only in the constitution. But who can say what experiments may be produced by the caprice of particular states, by the ambition of enterprizing leaders, or by the intrigues and influence of foreign powers? To the second question it may

be answered, that if the general government should interpose by virtue of this constitutional authority, it will be of course bound to pursue the authority. But the authority extends no farther than to a *guaranty* of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long therefore as the existing republican forms are continued by the states, they are guaranteed by the federal constitution. Whenever the states may chuse to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter."

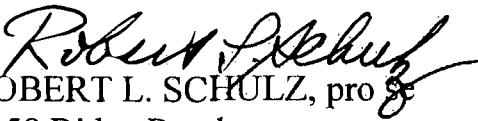
*Luther v Borden*, 48 U.S. 1 (1849) appears to be the first of the few guarantee clause cases decided by this Court. The issue before the *Luther* Court was held to be non-justiciable as it presented the Court with a purely political question rather than a legal question. *Luther* is inapplicable here as the constitutional duties involved in this case are clearly legal and specific, not political. And, as expressed in *Cohens v. Virginia*, 19 U.S. 264, 399-400 [1821], “It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.”

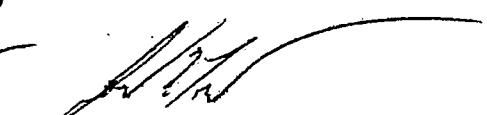
## CONCLUSION

The question presented herein is a substantial, first impression federal question that falls within this Court's jurisdiction and should be heard by the Court.

Respectfully submitted.

Dated: March 20, 2024

  
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