8/8/2023

ORIGINAL

No. 23-159

In the Supreme Court of the United States

ANTONIO PEREZ,

Petitioner,

v.

CITY OF MIAMI, FLORIDA, CODE ENFORCEMENT BOARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner, a US citizen, was deprived of the granny flat in his home by a board where the city had a 99.4% win rate. Review was by appeal only. The city pays a pension to appellate judge. Disqualification was denied. Administrative order received one-word affirmance. 4 unexplained dispositions followed. *Pro se* briefs were respectful and motivated: Petitioner, a shy Harvard MBA graduate [GMAT entry test 760 vs. 708 class average], and foreign-trained attorney, had studied intensively in a Jesuit law school in Spain.

Local entities and FDR share regulatory nature. An entity can also be as aggressive to a lower court as FDR was to this Court. In 1816 Jefferson noticed that lower courts lack protections: He was not amused.

The questions presented are:

1. Whether the "appellate review model" is contrary to evidentiary standard protections, one of them being *Addington v. Texas*, 441 U.S. 418 (1979).

2. Whether elaborated dispositions in non-*en banc* courts are a substantive due process protection.

3. Whether preponderance of the evidence is insufficient standard in civil enforcement.

4. Whether *Brady v. Maryland*, 373 U.S. 83 (1963) applies to civil enforcement.

5. Whether a private party retains one peremptory disqualification in non-*en banc* courts.

6. Whether judges hold office during good behavior.

7. Whether State Supreme Court's discretionary jurisdiction is a substantive due process protection.

PARTIES TO THE PROCEEDING

Petitioner is a US citizen. Respondent, City of Miami, Florida, Code Enforcement Board, is the city itself. Petitioner's friends below were city employees in the Office of the City Attorney.

RELATED PROCEEDINGS

- *Antonio Perez, vs. City of Miami, Florida, Code Enforcement Board*, No. 3D22-2130, District Court of Appeal of Florida, Third District. Judgment March 30, 2023.
- *Antonio Perez, vs. The City of Miami, Florida, Code Enforcement Board*, No. 2021-000017-AP-01, Circuit Court of Florida, Eleventh Judicial Circuit. Judgment November 18, 2022.
- *Antonio Perez, vs. City of Miami, Florida, Code Enforcement Board*, No. 3D22-1450, District Court of Appeal of Florida, Third District. Judgment August 8, 2022.
- *Antonio Perez, vs. The City of Miami, Florida, Code Enforcement Board*, No. SC22-805, Supreme Court of Florida. Judgment June 20, 2022.
- *Antonio Perez, vs. The City of Miami, Florida, Code Enforcement Board*, No. 3D22-0874, District Court of Appeal of Florida, Third District. Judgment May 26, 2022.
- *The City of Miami, Florida, Code Enforcement Board vs. Antonio Perez Perez*, No. CE2020003515, Miami Code Enforcement Board. Final Order March 12, 2021.

No other proceedings; Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner asks this Court for a writ of certiorari to review the judgment of District Court of Appeal of Florida, Third District in this case (1a).

OPINIONS BELOW

- District Court of Appeal of Florida, Third District:
  - Certiorari electronically reported:
    - 2023 WL 4102807 (1a)
    - 2022 WL 18359406 (11a)
  - Prohibition unreported (8a)
- Supreme Court of Florida. Prohibition dismissed by Clerk, unreported (10a)
- Circuit Court of Florida, Eleventh Judicial Circuit. Appellate affirmance unreported (3a)
- Administrative order unreported (13a)

JURISDICTION

Third District Court of Appeal of Florida is court of last resort. Judgment entered March 3, 2023. Timely rehearing denied May 10, 2023. Provision: 28 U.S.C. § 1257(a). 28 U.S.C. § 2403(a) and (b) may apply; no certifications below. Solicitor General of the United States and Florida Attorney General service provided: Rules 29.4(b),(c).

PROVISIONS INVOLVED

Florida Constitution, Article V § 1, in relevant part:

> Courts.- ... Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices.

Florida Statutes, § 162.11, in relevant part:

> Appeals.- An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board.

Florida Constitution, Article V § 10, in relevant part:

> Retention; election and terms.— Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law.

Florida Constitution, Article V § 3(b), in relevant part:

> JURISDICTION.- Supreme Court.- (3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision

> of another district court of appeal or of the supreme court on the same question of law.

City of Miami Code, § 2-826(j), in relevant part:

> The special magistrate... must find that a preponderance of the evidence indicates that... a violation does/did in fact exist.

U.S. Const. amend. XIV, § 1, in relevant part:

> No State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

When Josiah Franklin bought a small lot of land on Boston's Hanover Street, he did not build a mansion. Josiah built a humble home, some residential rentals, and his shop. His son Benjamin lived there when he was 10. Josiah's modest prosperity allowed him to dedicate more time[1] to Benjamin compared to his previous 14 children.

[1] Nick Bunker, Young Benjamin Franklin, 2018

STATEMENT

As per record:

Petitioner owns a residential property with 3 dwellings: 2 units form one rectangular structure, and a granny flat is a square structure, both built in 1926. Petitioner resides in one unit. The granny flat features period correct window sills matching the main structure. The most recent tax card indicates triplex use, and taxes are paid accordingly. Cities, such as neighboring Coral Gables, use permit books for old properties. Miami does not. It is apparent that Miami lost permits. It is alleged that a city losing permits might seek other documents outside their building departments, such as tax cards from the finance department or permits from public works. A 1940 tax card indicates the rear structure as a garage/storage, and the city aims to enforce it. The old tax card is undated and lacks permit markings. The city's pre-hearing file includes a 1936 public-works permit with a drawing of a square structure labeled as a dwelling. This 1936 permit may be exculpatory. The first zoning code is from 1934. It is unpublished [contains bigotry]. It was effective until 1960, permitting 4 units per lot; 2 main units plus 2 "accessory apartments for servant' quarters". Before 1934, unit density was unrestricted. Surrounding homeowners write motivated letters asking to close the case. Tenants of granny flat, a retired couple [US citizens], write about mobility issues and residing in property as early as 1988: Petitioner requested hearing extension, which was denied.

Code enforcement hearing, No. **CE2022003515**:

Petitioner asked to enter plea. Pleads not guilty. No evidentiary weight is given to window sills or neighbors' letters: Board attorney acts as prosecutor aid: Prosecutor declares preponderance of the evidence applicable: Petitioner explains use of tax cards as sword and shield: Petitioner explains permit loss: Chairman asks:

> Do you have anything that would go towards or hint at the existence of this structure or the units being legal prior to the 1940s tax card, or is it just a theory that you think may have happened?

Prosecutor does not disclose 1936 permit:

> And there is no indicia to rely on in his wants and wishes based upon the facts as they exist in the oldest record that exists, which is, in fact, the [1940] tax card.

Prosecutor represents historic zoning:

> This property has been zoned duplex at least -- as far as I can go back in the City code, it has been nothing but that.

Final Order: Guilty (3-1 vote) & $250 daily fine (13a).

[Context per record: State law banning cases opened by anonymous complaints passed soon after the hearing. Petitioner's case originated from an anonymous complaint about vehicles, with no complaints even made about the granny flat. The new law should apply retrospectively to pending appeals, as alleged in petitioner's appellate brief.]

Petitioner retains attorney.

Circuit Court Appeal, No. **2021-17-AP-01**:

Petitioner's attorney files notice of appeal.

Notice of appearance of city attorney.

Appellate judge assigned.

Petitioner's attorney files initial appendix.

[The record contains alleged quotes from local lawyers, such as "when dealing with the city of Miami, there is often a difference between being right and winning", and circuit court decisions with similar facts but different outcomes when Miami is a party.]

Petitioner dismisses his attorney.

Petitioner proceeds *pro se*.

Mediation attempts unsuccessful.

Notice of appearance of a 2nd city attorney.

Initial brief and supplemental appendix filed jointly.

City requests opposed extension. Granted.

Notice of appearance of 3rd city attorney [The record includes an assertion that this attorney is a former employee of the 3rd DCA]

City requests 2nd opposed brief extension. Petitioner provides case number of another cause:

> Petitioner mentioned that the city was concurrently filing an answer brief for another case without any extensions. [As alleged in DCA, the other cause pertains to the home of a

political opponent. The written affirmance was ultimately authored by the same appellate judge sitting with Petitioner. Affirmance of this other appeal indicates that the case began anonymously.]

Timely motion for disqualification (4a): Petitioner had discovered, 2 days prior, that the judge is collecting a city pension of $38,822/year (6a) and had received a small but very early campaign donation from the head City Attorney. [The record's pleadings allege that early funding is referred to as "friends and family" in business, the City has normative authority over pensions, the Canon and Ethics Code include a recusal duty for pensions, and that *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) is applicable.]

Second extension to file answer brief granted. [Duty was to rule on disqualification first]

Motion to disqualify denied (7a).

DCA Petition for Writ of Prohibition (disqualification). No. **3D22-0874**. Denied, unelaborated (8a). Rehearing denied (9a).

Emergency Petition for Writ of Prohibition. Florida Supreme Court. No. **SC33-805**. Dismissed by Clerk (10a). No jurisdiction over unelaborated opinions.

[The record presents a case from the smaller yet more affluent City of Coral Gables, where Judge Santovenia voluntarily recuses herself; there is no indication of her having worked for Coral Gables.]

On the last week of the second extended deadline to file the appellate answer brief, the city filed a motion to strike the supplemental appendix. The first page of the motion indicates that it produces a stay. Petitioner responded in opposition. The supplemental appendix was filed months prior and included only the 1934 zoning ordinance (an authority) and two expanded versions of city documents that were already present in the initial appendix.

Order grants motion to strike. Order does not require to remove 1934 ordinance references from the briefs. Order does not have specific explanations. There is a case quote about possible sanctions:

> it is entirely inappropriate and subjects the movant to possible sanctions to inject matters in the appellate proceedings which were not before the trial court.

Motion for clarification. Order denying clarification is unelaborated but repeats the same quote about sanctions.

> Petitioner files DCA Petition for Writ of Certiorari of non-final order. No. **3D22-1450**. Certiorari Denied (Unmotivated) (11a). Rehearing denied (12a).

Oral argument scheduled.

The city files a motion to reschedule oral argument, gallantly acknowledging the importance of the case:

> Deputy City Attorney [XYZ] informed undersigned that he would not reassign the case to an attorney who lacked years of appellate experience.

Oral Argument: Two judges join the panel. By default, the same panel handles all cases.

Appellate decision: One-word affirmance, issued one day after oral argument (3a). Mandate issued.

Third DCA Final Review, No. **3D22-2130**:

> Petitioner files Petition for Writ of Certiorari of final order by Circuit Court.
>
> The order to file a response was issued one day later.
>
> City requests 1st extension. Petitioner answers 12 pages with various arguments, including the existence of other appellate attorneys in city staff [city is using former 3rd DCA employee]. Petitioner's opposition includes:
>
> > Petitioner has congratulated his City friend on his upcoming wedding and understands that he is well intended City employee who follows orders.
> >
> > Petitioner also has a family. Petitioner's 10-year-old daughter has been reading her Civics textbook and complaining *sua sponte* to Petitioner that what it says about the Courts is not true. Petitioner is eager to prove to his daughter that the role of the Courts is true and fundamental.

1st Extension Granted. City requests 2nd extension. 2nd Extension Granted.

City files motion to dismiss. Allegations; unelaborated decision; no due process errors.

Petitioner responds in opposition pointing out due process errors, including disqualification errors alleged.

Petitioner files notice of supplemental authority with 3rd DCA opinions that reversed unelaborated affirmances of code enforcement cases.

Motion to dismiss granted (unmotivated) (1a). The one-paragraph judgment contains *dicta*[2] about unelaborated opinions that appears to contradict the holding of the very same case, which is that DCA certiorari corrects legal errors constituting a miscarriage of justice.

Rehearing denied (2a). This Petition follows. [Disclosures in Appendix. (34a)]

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[2] *Department of Highway Safety & Motor Vehicles v. Alliston*, 813 So. 2d 141 (Fla. Dist. Ct. App. 2002)

REASONS FOR GRANTING THE WRIT

QUESTION 1: THE APPELLATE REVIEW MODEL IS A SUSPECT SUBSTANTIVE DUE PROCESS VIOLATION THAT EVISCERATES THE EVIDENTIARY STANDARD MANDATED BY ADDINGTON V. TEXAS, 441 U.S. 418 (1979) AND THAT WAS IDENTIFIED BY AXON ENTERPRISE, INC. V. FEDERAL TRADE COMMISSION, 598 U.S. ___ (2023) (THOMAS, J., CONCURRING).

Axon Enterprise, Inc. v. Federal Trade Commission, 598 U.S. ___ (2023), (Thomas, J., concurring) identifies this suspect issue.

Brief below: (appendix omitted, brackets added)

"If Petitioner's case had started in court:

1) A judge would use de novo interpretation of the law, and the code of evidence.
2) The judge would not align with the City right off the bat.
3) A judge would have not been paid and selected by the prosecutor, nor acted as prosecutor's aid.
4) The judge would have not testified as eye witness nor impersonated a preservation architect.
5) A judge would have provided at least one extension of the hearing (as requested) to allow for complex discovery.
6) The prosecutor would not be [the one] denying extensions of time needed for Petitioner's discovery and witnesses.

7) A judge might have waited until the end of the eviction moratorium [instead of declaring necessary removal of elderly couple].
8) The knowledge that a new [exculpatory] law was advancing in the Senate would have played no role in granting extensions.
9) There might have been a jury. The jury would not be selected and paid a daily stipend by the prosecutor.
10) Members of the jury would be different for every case, and would not have amicable chats with the prosecutor during breaks.
11) There would be disclosures that no ties exist between jurors or the judge and the prosecutor.
12) The jurors would not be tainted by judge's repeated strong opinions about the verdict.
13) The judge would use clear and convincing evidence standard.
14) A judge would have allowed an evidentiary hearing longer than 20 minutes and would have not requested Petitioner's evidence to be submitted after the verdict.
15) A judge would not have a prior-year record of 150 wins for the City and 0 wins for the residents [166 to 1 if substitute prosecutors are included]. Petitioner would not need to recognize that it is not practical to plead not guilty.
16) The judge would have allowed rebuttal of a motion for summary judgment and might allow a rehearing if the prosecution withheld evidence, or if new evidence was discovered.

> 17) A judge would have examined old City code de novo, and confirmed that a third unit was allowed by right up to 1960.
> 18) A judge would not immediately change topic when it is argued that the City was using tax cards as sword and shield.
> 19) A judge would have welcomed all acceptable evidence, not just evidence coming from authority.
> 20) A judge would have not reprimanded Petitioner for trying to defend his property and liberty."
> ....
> Point 19 had an appendix reference the hearing:
>
> Chairman: ...and if there are more letters like this, these types of letters are irrelevant because the people who are writing them have no authority.

The "appellate review model" grants municipalities and agencies the responsibility of applying evidentiary standards.

The findings of fact become adjudicated by an entity of the executive. Final orders are reviewed as appeals [second-tier certiorari in some cases]. Lady Justice loses much of her ability to use scales. Appeals often do not reweigh evidence. Some judicial reviews under this model [Texas, for example] allow reweighing of evidence, but the evidentiary standard is too low [substantial evidence], and trial niceties are missing.

Addington v. Texas, 441 U.S. 418 (1979) mandates clear and convincing evidence for cases like Petitioner's (Q3). *Addington* becomes a parchment right for most cases under "appellate review model". Evidentiary standards are delicate creatures that require pure hands to hold the scales; often not even judges are entrusted with them [jury trials]. Everybody sitting on any of these boards [hired and paid by party] would have been rejected in jury selection. An attorney would have faced sanctions just for trying to introduce jurors paid and selected by party. Enabling *Addington* to become a parchment right is repugnant. Laws became parchment rights when Framers faced crown's magistrates. Evidentiary standards need to be treasured and structurally protected; they are the most basic tool against encroachments of the administrative state on an individual's liberty. Evidentiary standards need a specific nurturing environment; an independent judiciary.

An agency under this scheme can become unrestrained. Connections of executives with board members can lead to *ex-parte* communications and lower standards for opponents. Any evidentiary standard can be reduced, under color of law, to probable cause or lower. Well-intended prosecutors can get used to an artificially low bar, which creates an excessive number of cases and wrongful convictions. Well-intended attorneys can be forced to do what they are told to keep their jobs.

Uninfringed access to a *de novo* trial that uses a constitutional evidentiary standard would enable

adjudication by the judiciary, and proper application of mandatory evidentiary standards. Adjudication by party, and, in particular, by the executive is infirm. The rooted principle is that the executive is not allowed to encroach on the courts, as exemplified in the Declaration of Independence (1776):

> He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

The Framers were political scientists. They were driven by an obsession to eliminate tyranny because they got a taste of it, and because they found and developed exciting new political tools to create an experiment of liberty. The basic principle of the experiment is safety. Safety means not mixing separate departments of government. Framers identified the strong tendency of government to revert to concentration of powers. They called it "encroaching nature" (The Federalist, No. 48). Franklin, allegedly, called the entire experiment "a republic, if you can keep it".

Framers tested that if the crown pays the magistrate, that magistrate is often not independent. Payments can be creative. A form of payment they identified was tenure. The Revolutionary War was fought, in part, to eliminate harmful incentives that influenced court outcomes.

The Federalist, No. 51:

> It is equally evident, that the members of each department should be as little dependent as

possible on those of the others, for the emoluments annexed to their offices.

According to The Federalist, No. 47, if judicial power is added to any of these entities, the result is tyranny; a technical term for concentration of powers. Framers, being scientists, used "tyranny" as a precise term. While not dramatic, it should be as frightening as submarine implosions. Scalia called it "game over"[3].

"*Quasi*-judicial" pretends to mean two contradictory things, to try to find legal justification; (i) that no real judicial work is done by the entities, and (ii) that entities have the safeguards of a court. Three [out of seven] Florida State Justices called it by its name in 1990; "a mockery of separation of powers"[4].

To suppress State constitutional issues, these non-deliberative forces are able to inject the "naughty word" into State Constitutions (PROVISIONS). Some State Constitutions are easy to amend. Public interest or understanding of the implications of administrative procedure appears to be low. These 40,000 executive departments have robust and coordinated State lobbying machines, with Hawaii being the only exception. Legislatures might feel reassured that they are replicating federal law, and State executives appreciate the power it

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[3] Justice Scalia, Senate Judiciary Committee Hearing, October 5, 2011

[4] *Department of Agriculture & Consumer Services v. Bonanno*, 568 So. 2d 24, 35 (Fla. 1990) (Ehrlich, J., concur. in part, dissent. in part)

grants them. It is as if these executive departments were passing the "appellate review model" into law.

This is the trial court's version of FDR's Court-packing plan. FDR was successful in convincing a substantial part of the legislature. Here, the encroacher succeeded and "makes a mockery of"[5] constitutional evidentiary standards and substantive due process.

Jefferson[6]:

> It was fundamentally wrong to submit freemen to laws made by officers of the Executive.

Petitioner could not agree more.

For the Framers, there was no *quasi* in judicial. That should be the rooted principle for core property rights. The crown's magistrates were full-fledged courts and did not pass the Framer's test. Anything "quasi-judicial" would have never been approved. The Framers put their lives on the line to eliminate a few minor [almost imperceptible to the naked eye] incentives in an otherwise fully judicial court. That was the standard of care employed to combat encroachments on courts: deep analysis, zero tolerance, monumental courage, and corrective action. That was the standard of care observed in *Marbury*[7]. That would have to be the standard of care for this Petition to succeed. It is not an easy case. It is an extreme test of the rule of law; how

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[5] Id.

[6] The Writings of Thomas Jefferson, The Thomas Jefferson Memorial Association, p371 (1904)

[7] *Marbury v. Madison*, 5 U.S. 135 (1803)

someone facing these odds [adjudication by the executive at all levels, with some undue help from the legislature] can still achieve the correct application of the law. There are many more facing unfavorable odds. Almost every municipality in America seems to have access to this model. State and Federal agencies also employ it.

Zero tolerance is important because evidentiary standards, and the application of any other law, need a clean environment, as Framers found out with crown's magistrates. The executive and the legislature can tolerate a dose of biases and poor incentives. The judiciary needs to be pure.

The moment a judicial payment incentive is questionable, it should be considered a suspect substantive due process violation. The Revolutionary War should be honored. It is futile to scrutinize whether these entities resemble courts or if its members are reputable. The crown's magistrates were real judges and good legal professionals. The Declaration of Independence (1776) only blames the encroacher and the incentives.

Framers did not trust color of law. Jefferson wrote[8] that law is always the tyrant's will "when it violates the right of the individual". Tyranny hides often under color of law; it is governmental power that looks departmentalized only on the surface. Constitutional means of defense need to be implemented to restore it to proper form.

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[8] Thomas Jefferson: "Letter to Isaac H. Tiffany", 1819. Library of Congress

Lower courts are often the only means for the minority and the individual to preserve liberty. Lower courts exercise the rule of law where it counts the most; against the government, and by parties that often have no means to appear before higher courts. Jefferson made it clear[9]:

> The principle of Beccaria is sound. Let the legislators be merciful, but the executors of the law inexorable.

Laws are the only fair and feasible defense against the government for the minority and the individual. If lower courts face encroachments and fail to apply the law correctly (with evidentiary standards being the most basic), the enforcers become the judge, and hence, the tyrant. Zero tolerance with court encroachments is exceptionally important and rooted.

Jefferson appears to acknowledge, after the fact, that there were omissions regarding the defense of lower courts (Q5B). Perhaps it was more pressing to debate the executive and the legislature.

Justice Scalia emphasized[10] how federal law has more procedural niceties than laws in any other country, and considered it a positive aspect.

Lower courts are the weakest link of the weakest department. Protections need to be "commensurate to the danger of attack" (The Federalist, No. 51).

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[9] Thomas Jefferson: Observations on DéMeunier's Manuscript, 22 June 1786. Library of Congress

[10] Justice Scalia, Senate Judiciary Committee Hearing, October 5, 2011

Madison was asserting that lower courts require the most significant procedural niceties.

There might have been some oversight. The arsenal seems to lack sufficient niceties. Petitioner would agree after his field test, and it appears Jefferson shares this sentiment (Q5B).

Marbury applied the Framers' standard of care, which involved deep analysis, no tolerance for encroachments, courage, and corrective action, to address two significant early encroachments on the courts and uncover a larger nicety within the root system. But Marbury was unavoidable, and pressure creates diamonds. This one is avoidable if the Petitioner is honest. But according to Scalia's "Structure is everything" (25a) principle, eliminating encroachments becomes the most crucial task. A base model vehicle would be parchment review for many. A *pro se* vehicle may start the job. A few clinics and groups asked to "keep them informed". The preparation of the Constitution seems to have originated as a *pro se* effort[11] by someone who was smarter and less prone to errors.

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[11] In 1785, James Madison asked Jefferson to purchase more books during his travels in Europe and offered to tutor Jefferson's nephews in exchange:

> ...treatises on the ancient or modern federal republics, on the law of Nations, and the history natural and political of the New World; to which I will add such of the Greek and Roman authors where they can be got very cheap, as are worth having and are not on the common list of School classics. [James Madison: "Letter to Thomas Jefferson", April 27, 1785.]

Lady Justice wants her scales back (Q1): Her scales repaired (Q3): Her scales free of cheating (Q4): Her eyes shut (Q2Q5Q6Q7). When Lady Justice is not functioning properly, the opposing party wields the sword and can oppress people. Frequently, that party is the executive, which can mistake it for "business as usual". Madison and Jefferson wrote about safeguarding the rights of the people against government as if it were their mission. Reducing these risks to so many people is exceptionally important.

QUESTION 2: EXAMINING THE COMMON PRACTICE OF UNELABORATED OPINIONS IS EXCEPTIONALLY IMPORTANT

A. This is an encroachment on lower courts and a suspect substantive due process violation that was condemned by the American Bar Association. James Madison, Thomas Jefferson, Justice Marshall, Justice Harlan, and those who fought the Revolutionary War, among others, should be honored.

Over 90% of judicial cases appear to take place at the State level. Multiple States use affirmances. When resources are insufficient, all others can resort to cursory opinions.

The American Bar Association Resolution, February 14, 2000, urged to terminate the practice (15a-23a). The ABA tried to do what it could:

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

February 14, 2000

RESOLVED, That the American Bar Association urges the courts of appeals, federal, state and territorial, to provide in case dispositions (except in those appeals the court determines to be wholly without merit), at a minimum, reasoned explanations for their decisions.

FURTHER RESOLVED, That the American Bar Association urges the Congress and state and territorial legislatures to provide the courts of appeals with resources that are sufficient to enable them to meet this responsibility.

Declaration of Independence (1776):

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

The Revolutionary War was fought, in part, to secure judges for the people since their legislature was also failing to provide them with judges. This implies judges for everyone; otherwise, only those who could obtain judges would have fought.

There are at least two crucial effects of writing:

(i) Changing outcomes
(ii) Contribution to separation of powers by way of ambitious opinions

James Madison wrote; "ambition must be made to counteract ambition" (The Federalist, No. 51). A fundamental form of a judge's ambition, and of separation of powers, is to associate a judge's name with a well-written opinion. This disappears with unelaborated opinions. If an unelaborated opinion was contrary to law, the opinion would not write well; the ambitious judge would change the outcome.

Unelaborated opinions are particularly dangerous in the presence of the executive. The executive has means and inclination[12] to present itself in the form of a likeable very familiar face. An equal application of law is fundamental.

The classic manifestation of concentration of power is to silence opponents. Unelaborated opinions offer a perfect hideout for other encroachments. Risk should be reduced.

Due to insufficient resources, courts may have to prioritize who receives an opinion. Prioritization is for business. Some judges "struggle every day to resist it" (21a).

Plessy v. Ferguson 163 U.S. 537, 559 (1896) (Harlan, J. dissenting):

> The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings...

The ABA Report (15a-23a) includes:

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[12] The Federalist, No. 48

> A member in Oregon responded... about affirmances.... known there as "AWOP.": "AWOP makes cursory consideration of appeals a judicial convenience. Novel issues get AWOPed. Judges should write decisions, however brief, because when they have to write they have to think.
>
> ....
>
> Chief Judge Richard A. Posner of the Seventh Circuit... has characterized decisions with one word affirmances and no opinions as "a formula for irresponsibility".

Justice Scalia; [13] "the judge who always likes the results he reaches is a bad judge". Unmotivated opinions make the temptation harder to resist. Reducing risks is fundamental.

Jefferson[14]: (*emphasis added*)

> I am convinced that those societies (as the Indians) which live without government enjoy in their general mass an infinitely greater degree of happiness than those who live under European governments. Among the former, public opinion is in the place of law, and restrains morals as powerfully as laws ever did anywhere. Among the latter, under pretence of governing they have divided their nations into two classes, wolves and sheep. I do not exaggerate. This is a true picture of Europe. Cherish therefore the spirit of our people, and keep alive their attention. Do not be

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[13] Justice Scalia, Conference at Southern Methodist University, 2013

[14] Thomas Jefferson to Edward Carrington, 16 Jan. 1787

> too severe upon their errors, but *reclaim them by enlightening them*. If once they become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions; and experience declares that man is the only animal which devours his own kind...

Marbury v. Madison, 5 U.S. 135, 177 (1803):

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.

An unmotivated opinion does not say what the law is; it says who the winner is. It does not lay open the meaning of the law. It gives the impression of rapid raw power, instead of principled judgment. It invites to prioritize based on condition of man. It increases risk of encroachments. Reducing risk is fundamental.

Virginia's Chief Justice Cynthia Kisner[15] [no longer in office] was asking for help (See 32a-33a) in an unprepared interview. It appears to be a ruthless, yet polite encroachment. The Framers wanted "constitutional means, and personal motives to resist the encroachments of others" (The Federalist, No. 51).

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[15] Interview: Virginia's Supreme Court Justices, The College of William and Mary, 2013

Starving the judiciary (Q2) and giving the role to the executive (Q1) contradict basic principles. It needs to be corrected.

B. The budget savings do not compensate for the harm caused by this practice and are not a compelling government interest

National annual cost[16] may be $300 million.

The damage: (i) investing confidence of losing parties, (ii) errors in outcomes (iii) ease of encroachments (iv) excessive number of cases reaching this Court (Q7).

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[16] 2023 Florida budget is $115 billion. DCAs cost 0.06%. Shortage may be 0.03%, which is $30 million. Florida is most affected. National total may be 10 times Florida's.

QUESTION 3: REVIEWING THE EVIDENTIARY STANDARD IN CIVIL ENFORCEMENT IS EXCEPTIONALLY IMPORTANT

A. *Addington v. Texas*, 441 U.S. 418 (1979) is not as clear as it needs to be and may be insufficient for core property rights that the Government can use as effective leverage to silence individuals. In the words of Jefferson, it "must be refreshed". Coherent treatment with Q1 should be addressed.

Addington, at 424 requires clear and convincing evidence in civil cases if the interests at stake are "more substantial than mere loss of money". *Addington*, at 425:

> ...adopting a "standard of proof is more than an empty semantic exercise." Tippett v. Maryland, 436 F.2d 1153, 1166 (CA4 1971) (Sobeloff, J., concurring in part and dissenting in part), cert. dismissed sub nom. Murel v. Baltimore City Criminal Court, 407 U.S. 355 (1972). In cases involving individual rights, whether criminal or civil, "[t]he standard of proof [at a minimum] reflects the value society places on individual liberty." 436 F.2d, at 1166.

Jefferson supported[17] a high standard of guilt in punitive government:

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[17] Thomas Jefferson to Mrs. Sarah Mease, 1801. FE 8:35

> The sword of the law should never fall but on those whose guilt is so apparent as to be pronounced by their friends as well as foes.

Executors are of "encroaching nature" (The Federalist, No. 48) and have a tendency to seek ways to act as the adjudicator. Lowering the standard is in their "nature" (The Federalist, No. 48).

Addington could be more excuse-proof and more well-known. That becomes a liability to liberty. Some executors may say that it is criminal law or does not apply to large fines, others use suspect regulation (see PROVISIONS). A home is more valuable than mere money. A fine that would bankrupt an average family is more than just money.

Liberty is the main ingredient of an evidentiary standard.

Jefferson[18]:

> The tree of liberty must be refreshed from time to time...[19]

There should be more clarity on something as crucial as the first weapon of liberty against encroachments from the administrative government. Refreshing the first tool of liberty, Lady Justice's scales, becomes essential when restoring the scales

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[18] Thomas Jefferson, Letter to William S. Smith, 13 Nov 1787

[19] "...with the blood of patriots and tyrants". No blood necessary as the Constitution is already in it.

to Lady Justice in Q1. She could use "refreshed"[20] scales; "liberty must be refreshed"[21].

B. Beyond reasonable doubt standard seems applicable to those core property rights that the government can use as credible leverage to silence individuals. The treatment by Framers of arbitrary imprisonments should be followed.

Framers aimed to prevent flawed men from using the government to oppress people or silence their adversaries. The Federalist, No. 84:

> ...the practice of arbitrary imprisonments have been, in all ages, the favourite and most formidable instruments of tyranny.

These days, individuals can be silenced by the fear of losing essential property rights. A home is not portable.

Had the crown possessed a non-deliberative zoning code and 100% successful prosecutions [this last part they had], they could have demolished Franklin's home instead of resorting to stealing some books and tampering with papers. Stealing books by breaking into the house is a tactic for amateurs. Framers would have paid attention to the house.

City of Miami v. Airbnb, Inc., 260 So. 3d 478, 488 (Fla. 3rd Dist. Ct. App. 2018) (Lagoa, J. dissenting in

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[20] Id.
[21] Id.

part, concurring in part) (footnotes omitted, emphasis in original): [these people are not in office]

> ...the parties stipulated to a number of facts for purposes of the evidentiary hearing, including:
>
> > ...(2) ...the City Manager stated: "We are now on notice *for people who did come here* and notify us in public and *challenge us in public*. I will be duly bound to request our personnel to enforce the city code." (*emphasis added*); and
> >
> > (3) ...the Mayor stated: (a) "With that lawsuit, [Airbnb is] precipitating things because I think it's their fault that they brought these people to City Hall knowing... that they have to give their name and addresses."; (b) "The city attorney is planning on sending out cease-and-desist orders in the coming weeks specifically to the hosts who spoke up at the meeting."; and (c) "This is more than taking the temperature. This is about sending a message to the residents."

Prison is simply not an option under the color of law for some executives.

Justice Brandeis[22]:

> Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should

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[22] *Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J. concur. at 375)

> prevail over the arbitrary. They valued liberty both as an end, and as a means. They believed liberty to be the secret of happiness, and courage to be the secret of liberty.
>
> ...Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty.

Administrative procedures can lead to harsh outcomes. Petitioner during hearing;

> So let's put it this way -- and I know this is a civil case, but for me and for my tenants, if we have this scenario where we only have two options and one was the unfair taking of the house and the other one was the unfair stay of two months in jail, I would take two months in jail every time. So, for me, it's like a criminal case....

However, the better deal has the highest standard.

QUESTION 4: APPLYING THE BRADY RULE IN CIVIL ENFORCEMENT IS EXCEPTIONALLY IMPORTANT

A. The example of Peyton Randolph as Attorney General of Virginia should be followed. Coherent treatment with Q1 should be addressed.

Jefferson wrote[23] about Peyton Randolph, the first (and third) President of the Continental Congress and Attorney General of Virginia:

> He was indeed a most excellent man;... in that office [of the Attorney General] he considered himself equally charged with the rights of the colony, as with those of the crown; and in criminal prosecutions, exaggerating nothing, he aimed at a candid and just state of the transaction, believing it more a duty to save an innocent than to convict a guilty man.

With a negligent prosecution, the result is adjudication party. It is almost the same question as Q1. In Q1 the executive steals the scales. In this question, the executive cheats the scales. Treatment should be coherent with Q1.

Attorney Kara Rollins wrote[24] (27a-31a) about the federal version of this question and how there is

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[23] Thomas Jefferson: Biographical Sketch of Peyton Randolph. ME 18:139

[24] Kara Rollings, It's time for agencies to adopt the Brady rule in civil enforcement actions.

some adoption of *Brady v. Maryland*, 373 U.S. 83 (1963).

When an agency independently adopts a due process protection, it may suggest its fundamental nature.

There is no compelling government interest in withholding exculpatory evidence to deprive individuals of core property rights.

QUESTION 5: A STRUCTURAL ALTERNATIVE TO *CAPERTON* IS EXCEPTIONALLY IMPORTANT FOR 31 STATES

The elimination of payments by the crown to colonial magistrates was not resolved with pleadings to the magistrates. It was the natural and uninfringed right of the people to break the encroachment with the Revolutionary War. It could not be more rooted. It just needs to be organized as orderly liberty.

A. *Caperton* is a suspect parchment right and the executive's nature (The Federalist, No. 48) is to encroach on lower courts. A solution seems necessary.

An encroachment on a lower court creates concentration of all three powers of government, as applied to a case: The encroacher will be able to factually define what the law is in its case, will obtain a favorable ruling adjusted to his "law", and execution of the mandate. Jefferson did the same analysis in 1816 with a lower court (Q5B) and called it tyranny.

Madison said that concentration of powers is "the very definition of tyranny" (The Federalist, No. 47).

John Loke, who was a major source for Framers, wrote[25] that "where-ever law ends, tyranny begins", which, like basic math, can be rearranged backward; where-ever tyranny begins, law ends.

Therefore, the famous words can be rephrased:

> Where-ever an encroachment on the lower court begins, the law in *Caperton* ends.

Justice Scalia[26] wrote that "Structure is everything", and that bills of rights become useless during concentration of power (24a-26a).

Locke and Madison predicted *Caperton*. The West Virginia canon clearly required the judge to recuse himself. Recusal was denied on three occasions.

Same pattern in STATEMENT.

In 1816, Jefferson observed the same unavoidable bias (Q5B).

Disqualification for cause is parchment; in theory, and in practice. Framers never advocated for resignation in the face of tyranny. Resignation only belongs in Freedom of Religion. Tyranny against the individual does not understand pleadings of law to an encroached entity.

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[25] John Locke, Second Treatise of Civil Government, Ch. XVIII (1690)

[26] Antonin Scalia, Foreword: The Importance of Structure in Constitutional Interpretation, 83 NOTRE DAME L. REV. 1417 (2008)

B. Jefferson seems to have arrived at the same conclusion in 1816. This vehicle is just an accidental messenger. Jefferson's wish should be honored.

In 1816, when he was a retired statesman and often confined to his home due to illness[27], Jefferson identified this problem.

Jefferson described[28] an encroachment on a county court, and the need to solve the issue, as if he were pleading to this Court today: (*emphasis added*)

> ...*I wish to correct, to find some means of breaking up* a Cabal, when such a one gets possession of the bench. When this takes place, it becomes the most afflicting of tyrannies, because its powers are so various, and exercised on everything most immediately around us.

When Jefferson writes "find some means", he was asking for creativity. This question is ripe. The solution is not as groundbreaking as in *Marbury*, as 19 states have already adopted it (Q5D).

Jefferson's writes "means of breaking up". Madison uses "means" in:

> ...necessary constitutional means... to resist encroachments of the others. (The Federalist Papers, No. 51)

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[27] Ill-financed sherry and Château Lafite may have been detrimental to his digestive system.

[28] Thomas Jefferson: "Letter to John Taylor", Monticello, July 21, 1816, Wikisource (2012)

In the presence of the word "tyranny" Jefferson wrote "breaking up", not pleading.

Protections against tyranny are the essence of the Constitution. Tyranny toward local groups of people is repugnant.

Disqualifications can be unsightly and may be misinterpreted as an attack on the judiciary, which is incorrect. Invoking *Caperton* serves as a defense against encroachers. The judiciary is also a victim in this situation. During the Revolutionary War, the fight was against the crown, not the magistrates. People went to war to defend their judiciary because they cherish it.

It ensures their freedom.

Jefferson's "wish"[29] should be accepted.

Perhaps Jefferson was not exhibiting Madisonian ambition. It's possible that he felt guilty because he discovered local groups of oppressed people, and he perceived flaws in the Constitution. It should not be flawed.

C. The writings of John Locke, and the Framer's treatment of the English Bill of Rights of 1689 should be honored

If Madison was the father of the Constitution, then John Locke was the grandfather. Locke[30]:

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[29] Id.

[30] John Locke, Second Treatise of Civil Government, Ch. XVIII (1690)

> Where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another.

The provision for defense of individual liberty should mirror the means of the majority to resist perceived tyranny.

The majority can effectively and orderly oppose perceived tyranny[31] with Arms in an uninfringed way. It is orderly because the majority becomes the new order. It is what people have done against tyrants throughout history. There was no Second Amendment in the first version.

The natural right of the individual should remain consistent; to resist perceived tyranny in an orderly, effective, and uninfringed manner.

In the English Bill of Rights (1689) arms were "...suitable to their conditions, and allowed by law". The Framers only removed the last portion.

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[31] "The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government." Thomas Jefferson, Papers p. 334, 1950

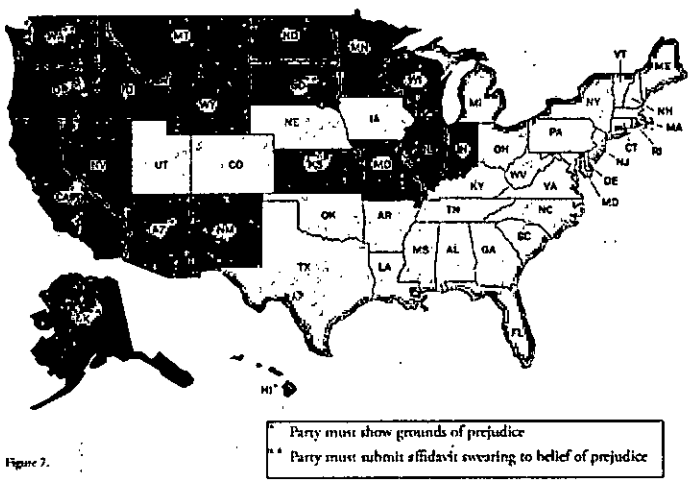
D. 19 States, from both sides of the aisle, use peremptory disqualifications as a provision of orderly liberty that is structural defense against encroachers.

Caperton did not come from Montana.

Montana allows one "free-pass" disqualification.

The 19 States[32] [in darker color]:

19 States Allowing Peremptory Disqualification



* Party must show grounds of prejudice
** Party must submit affidavit swearing to belief of prejudice

Figure 7.

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[32] James Sample *et al.*, Fair Courts: Setting recusal standards, p. 26. https://www.brennancenter.org/sites/default/files/2019-08/Report_Fair-Courts-Setting-Recusal-Standards.pdf

QUESTION 6: EXAMINING WHETHER PERMANENT TENURE OF STATE JUDICIAL OFFICES IS SECURED BY THE DUE PROCESS AND EQUAL PROTECTION CLAUSES IS OF EXCEPTIONAL IMPORTANCE

Without this protection, others falter.

When a colonist had a meritorious claim against the crown, the magistrate had two options:

(a) Apply the right law, and get fired later
(b) Apply the wrong law, and keep his job

Framers noticed that magistrates often selected (b) due to human nature. The Revolutionary War was partly fought to eliminate poor incentives that influenced judicial outcomes.

An elective judge needs 4 things to keep his job:

(1) Popularity
(2) Funding
(3) Little or no competition in the next election
(4) Good behavior

He can "get fired" in 4 SITUATIONS:

(1) He does something unpopular
(2) He loses funding
(3) He encounters new judicial candidates
(4) Bad behavior

The crown's magistrate risked losing his job for upsetting the crown and possibly for bad behavior.

With elective judges, the tenure and emoluments problem that the Framers faced is tripled. It will be alleged that Situation (3) closely mirrors the problem the Framers confronted. Situations (1) and (2) introduce tenure and emolument issues that did not exist in the colonial period.

SITUATION 1 [doing something unpopular]

The example[33] of *Snyder v. Phelps*, 562 U.S. 443 (2011) can be used. This was a case where a funeral was desecrated. The law sides with the desecrator. [apologies to Justice Alito who dissented]

An elective judge would have two choices:

(a) Apply the right law, and get fired later
(b) Apply the wrong law, and keep his job

This situation is so rooted in the Revolutionary War that it should almost be an automatic substantive due process issue. Disqualification would not alter the outcome as other judges would be elective as well. The due process clause has been duly invoked in less noticeable situations. Equal protection clause is also in PROVISIONS.

Jefferson[34]:

> An equal application of law to every condition of man is fundamental.

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[33] Chief Justice Roberts might have mentioned this example. Petitioner does not find the source.

[34] Thomas Jefferson to George Hay, May 20, 1807. Library of Congress

Plessy v. Ferguson 163 U.S. 537, 559 (1896) (Harlan, J. dissenting):

> The law regards man as man, and takes no account of his surroundings...

The Asian Americans who endured discrimination from the city of San Francisco during the 1900-1904 plague found uncharacteristic relief with Federal Judge William W. Morrow.

Due process and equal protection in States and the Union should not feel like they exist in two different universes. Individual liberty should not depend on majority's whims. Such reliance was for Roman colosseums.

Some Revolutionary War battles were closely won or lost. Even morally undesirable colonists played a role in the victory. Maybe they fought fiercely due to a newfound sense of belonging. Their bravery should be recognized. Had they known the Republic would forsake them for the rule of the majority, they might have stayed home. The crown's magistrates would have been more impartial. The crown had no elections.

SITUATION 2 [upsetting donors]

The West Virginia judge who was involved in *Caperton* had to decide between siding with the donor or with the meritorious party.

Petitioners' record includes a list of campaign donors. These lists can resemble a directory of local law firms. This is not be a positive incentive for those who do not contribute. Supermarkets offer free

samples because human brains exhibit gratitude after receiving complimentary goods.

In theory, networks of local lawyers could also be gossipy and spread the word that it is not worth donating money to certain judges.

But the worst issue with SITUATION 2 is that these are actual payments. It also constitutes an emoluments problem. Elective judges often have to finance large portions of campaigns themselves, as seen in Record:

2012	Q1	03/31/2012	10,000.00	SANTOVENIA MARIA DE JESUS
2012	Q1	03/31/2012	5,000.00	SANTOVENIA MARIA DE JESUS
2011	Q2	06/28/2011	500.00	SANTOVENIA MARIANA
2011	Q2	06/29/2011	92,185.00	SANTOVENIA, MARIA
2011	Q2	06/29/2011	7,815.00	SANTOVENIA, MARIA

[In this case, the judge had to fund 84% of her own campaign, with contributions increasing towards the end of the campaign]

A small contribution is money that an elective judge can retain personally because the campaign shortfall is reduced. Giving $1,000 to a judge before a trial is improper, and campaign contributions should not be treated any differently.

In court, a judge may recognize a donor.

A *pro se* party, the petitioner in *Caperton*, or a solo practitioner who does not donate would fare better with the crown's magistrate.

In states with elective offices, case law implicitly acknowledges some degree of bias but declares that it must be tolerated due to State Constitutions. (PROVISIONS).

The "deliberative forces"[35] that shaped the Constitution "should prevail over the arbitrary"[36] donors, over the arbitrary wishes of the majority, and over the arbitrary encroachments of executives.

SITUATION 3 [new judicial candidates]

A crown's magistrate, aware that a case could establish an unavoidable precedent favoring the crown's opponents, would avoid such a case or favor the crown. A similar issue can arise today in venues strongly influenced by entities.

A city can possess a budget of more than $1 billion and employ dozens of attorneys. The entity's executive often wields significant influence over those attorneys.

In contrast, the local judge is akin to a solo practitioner, with a modest campaign budget that is often partially self-funded (example in the record). Judicial office is a cherished profession, because *ius est ars aequi et boni* and there are few superiors. [more liberty]

Entities are of encroaching nature (The Federalist, No. 51).

An encroacher [it could happen unintentionally] could groom (one such allegations is included in the record) one or several judicial candidates and quickly send the message to the local courts: Upsetting the executive can provoke tough competition in the next election. Tough competition creates two issues for an

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[35] *Whitney*, at 375 (Brandeis, J. concurring)
[36] Id.

elective judge: (a) risk of "being fired" and (b) needing to self-fund a more expensive campaign. These two issues are equivalent to (a) tenure and (b) emoluments. The risks and the encroacher are the same as in colonial times.

The situation bears a stronger resemblance with colonial times when the executive's counterparty does not belong to a donor network, nor is a party in a mediatic case. Record shows how DCA provided disqualification relief in a case with no governmental parties. In Petitioner's case, nine elective offices, within a venue with a strong presence of the executive, did not intervene (1a,3a,8a,11a). This might not have occurred in Federal Court.

Government serves as a safeguard for the rights of the people when it functions as a machine of the law. Elective offices pose a risk to safety. Permanent tenure should be a substantive defense for these professionals and for people's rights.

There may be no real compelling government interest in elective offices. Good behavior would still be regulated. Permanent offices would be cost-effective as there are no elections and judges can focus better. Judges would not need to fund their own campaigns. With better resolution of errors and partiality, fewer cases would reach higher courts. The rights of the people would be better protected.

QUESTION 7: SENDING THIS COURT'S REVIEW OF STATE APPELLATE DECISIONS BACK TO STATE SUPREME COURTS IS OF EXCEPTIONAL IMPORTANCE FOR THE

PROTECTION OF APPELLATE COURTS AND OF THIS COURT

Petitioner in brief below:

"H.R.497 - A Bill For the admission of the States of Iowa and Florida into the Union (1845) says the Florida Constitution is Republican, which was a condition for admission. Art I §9 of the Florida Constitution (1838)[37], which fulfilled conditions for admission, said that: (emphasis added)

> That **all Courts shall be open, and every person**, for an injury done him, in **his lands**, goods, **person, or reputation**, shall have remedy by due course of law; and right and justice administered **without** sale, **denial**, or delay."

State Constitutions may look different these days. Some Constitutions, which are easy to amend, may only allow State Supreme Court discretionary Jurisdiction for elaborated opinions ("expressly" in PROVISIONS). Other States may require certified conflict, for example. These circumstances are often controlled by the appellate court below.

Jefferson[38]:

> No nation can answer for perfect exactitude of proceedings in all their inferior courts. It suffices to provide a supreme judicature where all error and partiality will be ultimately corrected.

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[37] Florida Constitution, Article I §9 (1838)

[38] Thomas Jefferson to George Hammond, 1792. ME 16:255

Jefferson did not write that the lower court will decide by themselves if they eliminated all error and partiality. Jefferson did not write that the lower court could become its own supreme court. This should be rooted.

Without discretionary access to State Supreme Courts encroachers can control the entire State judiciary by focusing on one appellate court. The natural tendency, according to Madison (The Federalist, No. 48), of a municipality would be to try to encroach on its appellate court, which may be located nearby. One successful encroachment can affect millions of Americans. The encroacher may have relative impunity under color of State law. It would be "the very definition of tyranny" (The Federalist, No. 47) for many.

Trying to encroach on a State Supreme Court is an entirely different proposition. The weaker court would be much better protected with the jurisdiction of its State Supreme Court. Madison advocated for means to resist the encroachments of others (The Federalist, No. 51). Jefferson was not amused with encroached courts (Q5B). This protection should be rooted and is critical for people who depend on appellate courts [potentially everyone].

This Court would receive all of its State appellate cases from State Supreme Courts, which was probably the original intention. States would resolve more controversies inside their jurisdictions since

their "supreme judicature"[39] can correct "error and partiality"[40].

For the Framers, legislatures were strong encroachers. Virginia Chief Justice Kisner's interview[41] (32a-33a) is a testament to how legislatures can attempt to avoid funding the judiciary.

With 9 Justices, this Court can handle 8,000 Petitions, equivalent to 890 cases per Justice. In Florida, the number was 270 last year. It may increase to 350 with this protection in place: It is feasible with adequate funding.

This Court receives a significant number of Florida DCA cases that previously went to the Florida Supreme Court. State legislatures appear to outsource cases to this Court and encroach on this Court by eliminating State Supreme Court discretionary jurisdiction, instead of providing State Supreme Courts with better funding.

There are two more encroachments from State legislatures, mentioned in Q2 and Q1. When considering Q2, [appellate courts are forced to issue unelaborated opinions] this Court is receiving some of these cases almost directly from circuit courts [with untouched errors and partialities[42] from circuit courts]. When the "appellate review model" is

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[39] Id.

[40] Id.

[41] Interview: Virginia's Supreme Court Justices, The College of William and Mary, 2013

[42] Id.

incorporated (Q1+Q2), cases can arrive almost raw from administrative boards, accompanied by judgments that resemble jurisdiction denials. The issue with other States might be comparable.

All questions in this petition should help correct error and partiality below.

Several States restrict access to their Supreme Courts. Other State legislatures might be inclined to do the same in the future if Madison is right, and he often is. This Court should not be artificially over-swamped. People who depend on this Court and on appellate courts should be protected.

CONCLUSION

Liberty thrives in an experimental submarine amidst tyrant waters. Management neglects protection. Safety officers work strictly by the book and do not report to management. Work orders require 4 votes. The petition for certiorari should be granted.

Respectfully submitted,

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