23-347

No. 23-_____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ROWLAND J. MARTIN, JR.

Petitioner

v.

EDWARD BRAVENEC, et al,

Respondents

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Students for Fair Admissions v. Harvard*, the Court said "Eliminating racial discrimination means eliminating all of it." Before the Court is a novel Progress Clause controversy and civil rights case that presents several nationally significant issues about terms for implementing the new doctrine, and other recent rulings on judicial review, rules against advisory opinions, and online speech policy. Two important questions inquire into the nexus between the intervening decisions, the constitutionally enumerated right to invent, and the public interest in transformative innovation:

1. Whether statutory provisions for removal of a state court case to federal court in 28 USC 1443 and 1454 authorize judicial review, where the removal proceeding is an alleged sham SLAPP suit brought allegedly in violation of 42 USC 1985(a), and the removing party is a covered micro entity inventor under patent office laws in 35 USC 123 whose goal is quiet title relief on a purchase money lien claim for patent franchise purposes?

2. Whether under 28 USC 1295(a), the Federal Circuit erred by applying Progress Clause exceptions from judicial review where the removing party is an inventor under patent office regulation claiming that his invention promotes transformative innovation in a specified field?

PARTIES TO THE PROCEEDINGS AND TO THE RELATED PROCEEDINGS

The parties to the proceeding below are as follows.

The Petitioner is Rowland J. Martin. He was the defendant in the district court and the appellant in the Federal Circuit.

The Respondent is Edward Bravenec, et al. He was the plaintiff in state court and district court, and appellee in the Federal Circuit.

The related proceedings are:

(1) Right To Sue Notice of the Administrative Office of the United States Courts, dated March 15, 2023 (citing Federal Tort Claims Act);
(2) *In re Martin*, Case No. 22-51111 (5th Cir. Order denying motion filed June 20, 2023.);
(3) *Martin v. County of Bexar, Texas, the City of San Antonio, Texas, and the San Antonio Independent School District v Martin*, Case No. 23-141, (docketed August __, 2022), and
(4) *Martin v. US*, Case No. 1987 2022 WL 793142 (Fed. Cl. Mar. 15, 2022), aff'd in Case 22-1810 (Fed. Cir., Feb. 10, 2023).

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PETITION FOR WRIT OF CERTIORARI

Rowland J. Martin petitions the Court for a writ of certiorari to the Federal Circuit.

OPINIONS BELOW

The appendix contains *inter alia* two orders of the U.S. Court of Appeals for the Federal Circuit in Case No. 2191 dated February 23, 2023 and April 7, 2023 respectively; a related order of the U.S. Court of Appeals For The Fifth Circuit dated December 28, 2022, and a transcript of an order of the U.S. District Court for the Western District of Texas dated September 29, 2023.

JURISDICTION

The Court has jurisdiction under 28 U.S.C. §1257, and also under 28 U.S.C. 1331, 1367, 1443, 1454, 1631, and 1651. The filing of the petition for Case No. 22-2191 falls within ninety days of the last decision in that case on April 7, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The controlling constitutional and statutory provisions in this case are the following: (1) Articles I and III of the Constitution, and the First Amendment of the Bill of Rights; (2) statutory

grants of jurisdiction in 28 U.S.C. 1295((a)(1), 1338, 1443 and 1454; (3) the patent related legislation in the Federal Courts Improvements Act of 1982, Section 19 of the America Invents Act, Pub. L. 112 - 29, the "Study of Underrepresented Classes Chasing Engineering and Science (SUCCESS) Act of 2018, Pub. L. 115-273, and the micro entity statute in 35 U.S.C. 123; and (4) the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.002.

STATEMENT OF THE CASE

A. The Civil Rights Case

Before the Court is a civil rights case from the U.S. District Court for the Western District of Texas. The events that account for the case stem from a failed attorney-client relationship with Plaintiff Respondent Edward Bravenec that led to *Martin v. Bravenec*, 627 F. App'x 310 (5th Cir. 2015), cert denied, 137 S. Ct. 1137 (2016) (*Martin v. Bravenec I*), and from strategic litigation against public participation on his part that was described in the interlocutory judgment of the Texas Fourth District Court of Appeals in *Martin v. Bravenec*, 2015 WL 2255139, (Tex. 4th Dist. 2015) (*Martin v. Bravenec II*).

Laws against strategic litigation against public participation such as the Texas version that formed

the basis of *Martin v. Bravenec II*, are generally designed to protect citizens against predatory suits where the goal of the plaintiff is not necessarily a court victory, but is instead to silence a defendant, or to punish a defendant for having engaged in otherwise protected speech. The factor that distinguishes this case is that, while implicates both the Anti-SLAPP laws of Texas and the prevailing circuit split on federal Anti-SLAPP jurisprudence, it is covered under the anti-retaliation civil rights remedies in 42 USC 1985(2) and 28 USC 1443, and at the same time involves a substantial Progress Clause controversy.

The events that led to Bravenec's SLAPP litigation in this case are as follows. In his former role as a fiduciary, Bravenec and his late law partner, Albert McKnight, provided legal advice, court appearances and advanced funding to a third party affiliate. The transaction ended later in 2005 without the benefit of an accounting and settlement of outstanding attorney client disputes, when Bravenec's law partner unilaterally withdrew from court appearances. The premise of the withdrawal from attorney client relations was that a third party entity in which Petitioner was interested, Morocco Ventures, had defaulted on a loan advanced by Bravenec and his partner during the attorney client relationship.

Later in 2014, after Petitioner's appeal in *Martin v. Bravenec I*, an appeal to resolve a dispute about alleged due process violations and gag orders from an earlier litigation in a shareholders derivative suit, Bravenec sued Petitioner preemptively for tortious interference to enjoin the filing of lis pendens notices, while the federal appeal was pending, and in that way attempted to enjoin Petitioner from enforcing the underlying purchase money lien claims.

Relying on a take nothing judgment from an earlier derivative suit which had upheld his second lien chain of title to the subject property, Bravenec claimed that the res judicata effect of a 2013 take nothing judgment in the derivative suit invalidated Petitioner's claim of a superior interest in title as a purchase money contributor to the grantor of his second lien interest. After securing a temporary injunction on that basis, Bravenec and his attorney of record filed a state court motion for contempt that falsely accused Petitioner of filing a lis pendens notices in Bexar County Deed Records in violation of the TRO. In fact, Martin filed the disputed lis pendens notice in the case docket and not the county deed records specified by the TRO.

Petitioner has answered these accusations in due course with an affirmative defense, a federal retaliation counterclaim, and an Anti-SLAPP motion to dismiss, all alleging in essence that

Petitioner's chain of title based on a purchase money lien interest is, by definition, superior interest to Bravenec's second lien chain of title, and that the tort suit was a pretext for retaliation his then pending appeal to the Fifth Circuit.

In an appeal to the Texas Fourth District Court of Appeals from the denial of his Anti-SLAPP motion, Petitioner disclosed the discovery that Bravenec had secretly transferred title prior to the Anti-SLAPP hearing, despite the legal theory of his tort claim that he had been unable to do so. Later, in 2015, Petitioner prevailed on one of two points of error in an appeal to the Fifth Circuit to preserve his right to petition for enforcement of his purchase money lien claim. The Texas Fourth District Court of Appeals in *Martin v. Bravenec II*, however, did not conform to the legal theory the Fifth Circuit eventually adopted in *Martin v. Bravenec I.*, leading to a substantial difference between the decreal effect of the Fifth Circuit's final judgment and the outcome of the state appellate court's interlocutory judgment.

In 2017, Petitioner joined Bravenec as a counterclaim defendant in a related case, *County of Bexar v. Martin*, whereupon Bravenec filed a plea to jurisdiction falsely suggesting that all prior litigation had concluded in his favor and that he enjoyed a right to repose on that basis. Inexplicably, the docket record for the still pending

tort suit contained entries that obscured the interlocutory status of the tort suit, and from that point forward, Bravenec took no further action to prosecute the tort suit of the contempt proceeding that he had commenced as the plaintiff in 2014.

B. The Progress Clause Controversy

The Progress Clause controversy lies at the intersection of the federal civil rights laws and the federal patent laws in 35 USC 123 and 28 USC 1454, and as such turns on Petitioner's status as an inventor under patent office regulation. The Progress Clause controversy is directly implicated by the SLAPP case removed from state court because the anti-SLAPP law for Texas, the Texas Citizens Participation Act (TCPA), is specifically designed to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law." Tex. Civ. Prac. & Rem. Code § 27.002.

Participating in government to the maximum extent in this case means participating in a removal of the SLAPP case from state court to overcome conditions that made it impossible to enforce quiet title rights in state court. Faced with a controversy involving similar dynamics, Justice Story opined in *Ex parte Wood*, 22 U.S. 603 (1824), that "property in ... inventions ... is often of very great

value," so that Congress should not lightly be understood to have "institute[d] a new and summary process, which should finally adjudge upon [the inventor's] rights ... without a right of appeal, and without any of those guards with which ... it has fenced around the general administration of justice." Id., at p. 606.

Petitioner's major patent related investment expectations here is the opportunity to monetize his purchase money lien claim as a means to prosecute patent protection and a proof of concept market trial for the invention specified in USPTO #13/026, 246. Petitioner first filed that application with the U.S. Patent and Trademark Office in 2010 with the prescribed fee for Small Entity inventors. The PTO granted issued a micro entity inventor designation for the '246 application in 2019 prior to its involuntary abandonment subject to revival in 2021, and a separate micro entity designation for the application filed in USPTO #63,577, 251 on April 8, 2023.[1] Petitioner is also the holder of a micro entity designation codified by 35 USC 123, and is the beneficiary of a patent pending

[1] See Pet's Brief for Federal Circuit Case 2191 (citing Letter of Priscilla Golden, Director, Office of Governmental Relations, U.S. Patent and Trademark Office, to Rep. Lloyd Doggett, dated February 1, 2019 ("On November 8, 2018, Mr. Martin was accorded micro entity status, and any further requested fees for prosecution of the application will be based on micro entity status."); and see, Letter of Rowland J. Martin to Dr. Andrew A. Toole, Chief Economist U.S. Patent and Trademark Office dated August 2019, available on-line at http//www.pto.gov.).

monopoly in the '255 case and a revivable right to exclusability against competing interests in the '246 case.

> Defendant can show that his specification for the 'System For Wireless CyberMedia Services' is calculated in good faith to meet the need that ARPA identified. Considering the compelling need for a pro-competitive market economy in communications commerce, it is reasonable to recognize ARPA's recognition of operational need for information service supply chain diversity as a covered matter under the "Information Service" covenants in Article 7 of the CERD Treaty Convention.

Defendant's Consolidated Motion To Dismiss, at p. 49, filed in *County of Bexar v. Martin*, Case 5:22-cv-00374-XR, ECF 18, June 28, 2022.[2]

Based on the latter patent related disclosure, Petitioner stands on a claim for patent related competitor standing to invoke removal jurisdiction and to prosecute appeals. See, *Dep't of Commerce*

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[2] Article 7 reads as follows: States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups. State Dept., Treaties in Force 422-423 (June 1996).

v. New York, 139 S. Ct. 2551, 2565 (2019) (competitor standing); and see *Whittemore v. Cutter*, 29 F. Cas. 1120 (C.C. D. Mass. 1813) (a patent application is cognizable to show patent related standing based on ownership of a patent interest and a right to excludability of competing parties).

C. The Proceedings Below.

In 2021, Petitioner commenced a Tucker Act suit in the U.S. Court of Federal Claims to secure compensation for financial injuries that the government allegedly caused in connection with the breach of duty adjudicated in *Martin v. Bravenec I*. *Martin v. US*, Case No. 1987 2022 WL 793142 (Fed. Cl. Mar. 15, 2022), aff'd in Case 22-1810 (Fed. Cir., Feb. 10, 2023). The original complaint alleged injury to patent related investment expectations ancillary to the Fifth Circuits 2015 decree. An appeal was taken to the Federal Circuit and that court affirmed the Claims Court judgment of dismissal without prejudice of various Tucker Act claims.

In 2022, coinciding with the appeals process in *Martin v. US*, Petitioner executed the removal to federal court that forms the basis of this appeal from the district court's order of remand. On September 29, 2022, after the filing of Petitioner's consolidated motion to dismiss *County of Bexar v.*

Martin and *Bravenec v. Martin* in ECF 18 in Case 5:22-cv-00374-XR on patent related grounds, the federal district court issued an order of remand in the latter case noting that the state court case "appeared to be closed" at the time of its removal. In fact, the state court of appeals had reopened the case in December 2014 on the order of Chief Judge Catherine Stone of the Fourth District Court of Appeals, based on steps that Petitioner had taken to perfect the interlocutory Anti-SLAPP appeal. Appendix E. The district court then transmitted the notice of appeal to both the Fifth Circuit and Federal Circuit. On December 28, 2022, a panel of the Fifth Circuit dismissed the case noting that the notice designated the Federal Circuit as the court for the docketing the appeal and was transmitted in error to the Fifth Circuit. Appendix C.

Subsequently, the Clerk of the Court for the Federal Circuit issued an order to show cause why the case should not be dismissed or transferred. Petitioner briefed the Federal Circuit about its patent related jurisdiction in the case removed from the 285th State District Court, and claimed status as a micro entity inventor under the patent acts of 2011 and 2018. The brief included court records showing that Judge Pulliam authored an order in the cashew removed from state court and in Case SA22-cv-00522. Appendix F. The Clerk for the Federal Circuit responded by dismissing the appeal on February 23, 2023 with the stated

justification that the Federal Circuit's exclusive appellate jurisdiction under 28 USC 1295(a)(1) is limited to patent related subject matter. Appendix A.

Petitioner submits that the Court has discretion to grant the writ, vacate the order below and remand to the Federal CIrcuit based on two points of error: (1) the district court committed error under the rule against advisory opinions by entering ordering remand after the the Federal Circuit docketed the notice of appeal; and (2) the Federal Circuit committed error by applying a correct statement of the jurisdictional law to a inapposite construction of jurisdictional facts pertaining to inventor status.

Further, the circumstances of the appeal here present an exceptional opportunity to evaluate terms of judicial review for Anti-SLAPP removals, alternative measures for avoidance of advisory opinion errors, and methods of holistic inquiry for de novo choice of law review in cases where Anti-SLAPP civil rights intersect with Progress

Clause investment expectations.[3] Careful examination reveals that among the seven federal circuits that come to review the matter of Anti-SLAPP procedures in federal court, five circuits disallow it,[4] four circuits have issued decisions allowing it,[5] and two have intra-circuit splits within their own circuit, the Second and Fifth Circuits. This unique state of affairs presents the

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[3] Strategic Lawsuits Against Public Participation Protection Act of 2022, H.R.8864 — 117th Congress (2021-2022) Congressman Jamie Raskin (D-MD); see also, Shannon Jankowski and Charles Hogle, *SLAPP-ing Back: Recent Legal Challenges to the Application of State Anti-SLAPP Laws*, ABA March 16, 2022 (SLAPPs are often brought by the wealthy or influential against the less-well-resourced or powerful), and Caitlin Daday, *(Anti)-SLAPP Happy in Federal Court?: The Applicability of State Anti-SLAPP Statutes in Federal Court and the Need for Federal Protection Against SLAPPs*, 70 Cath. U. L. Rev. 441 (2021).

[4] The Second, Fifth, Tenth Eleventh, and D.C. Circuits have each held that the various iterations of an anti-SLAPP special motion are inapplicable in federal court because they conflict with the Federal Rules of Civil Procedure. *La Liberte v. Reid* (2d Cir. 2020) (Anti-SLAPP law inapplicable in federal court because it conflicted with Federal Rules of Civil Procedure 12 and 56); *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019); *Los Lobos Renewable Power, LLC v. Americulture, Inc.*, 885 F.3d 659, 662 (10th Cir. 2018), cert. denied, 139 S. Ct. 591 (2018) (finding that New Mexico's anti-SLAPP law does not apply in federal court); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345 (11th Cir. 2018) (whether the motion-to-strike procedure of the Georgia anti-SLAPP statute, applies in federal court), and *Abbas v. Foreign Policy* Group, LLC, 783 F.3d 1328 (D.C. Cir. 2015)

[5] The First, Second, Fifth, and Ninth Circuits are on record as finding no conflict between the federal rules and various anti-SLAPP special motions. See, *Godin v. Schencks*, 629 F.3d 79 (1st Cir. 2010); *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014) (finding application of certain Nevada anti-SLAPP provisions in federal court "unproblematic"); *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164 (5th Cir. 2009); (Maine anti-SLAPP statute must be applied); and *Stephanie Clifford v. Donald Trump*, (9th Cir. 2020).

Court with the opportunity to decide here that *Shady Grove Orthopedic v. Allstate Ins.*, 559 U.S. 393, 403 (2010) in no way restricts judicial power to exercise jurisdiction on covered removals under 28 USC 1443 and 28 USC 1454. Three decisions from the final days of the Court's 2022 term provide doctrinal support for reliance on that proposition here: *Moore v. Harper*, 600 U.S. ___ (June 27, 2023), *303 Creative LLC v. Elenis*, Case No. 21-476, 600 U. S. ____ (June 30, 2023), and *Students for Fair Admissions v. Harvard*, Case No. 20-1199, 600 U. S. ____ (June 29, 2023).

REASONS TO GRANT THE WRIT

A. *De Novo* Review Aids Federal Jurisdiction To Uphold Judicial Review And To Diffuse New Threats To The Separation Of Powers.

The Court reviews de novo federal-versus-state choice-of-law questions. See e.g., *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1294 (11th Cir. 2008). The Court should grant the writ to conduct de novo choice of law review and review on the merits of an apparent violation of *Marbury v. Madison*, 5 U.S. 137 (1803) in defiance of the rule of law that "subject-matter jurisdiction ... involves a court's power to hear a case [and] can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002)' accord, *Amgen Inc. v. Amneal Pharmaceuticals LLC*, 328 F. Supp.

3d 373 (Fed. Cir. 2020). Article III of the federal constitution implements the rule by enumerating in the text of Article III that "[t]he judicial Power of the United States ... in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 2, cl. 1. As explained below, this case is governed by waivers of state sovereignty interests, and manifestations of consent by the States, at the respective Federal Constitutional Conventions. *Allen v. Cooper*, 140 S. Ct. 994 (2020).

1. The Tribunals Clause Supports A Duty To Ascertain Arguable Removal Jurisdiction. Separate from the Progress Clause, Article one of the federal Constitution provides that "The Congress shall have Power . . . To constitute Tribunals inferior to the Supreme Court .. " U.S. CONST. art. I, § 8. Congress constituted the district courts with removal jurisdiction in Section 3 of the Civil Rights Act of 1866. Act of April 9, 1866, ch. 31, § 3, 14 Stat. 27.

The civil rights removal statute provides for removal from state court in a case "[a]against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof .." 28 USC 1443. The text is interpreted to mean that claims directed to

constitutional or statutory provisions of general applicability or under statutes that do not protect against racial discrimination will not suffice. The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed against removal jurisdiction. *City of Greenwood v. Peacock*, 384 U.S. 808, 825 (1966)

The scope of the 1866 Act, however, is also schematically defined to mean that "citizens, of every race and color ... shall have the same right ... to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, *any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding*." 42 USC 1981. (emphasis added).

Here, the predicate law removal therefore consists of 42 USC 1985 and CERD Treaty RUDs adopted by the U.S. Senate in furtherance of eliminating racial discrimination, and which state " ... the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention ... " U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of

Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994) (CERD Treaty RUDs); and see, *Murray v. The Charming Betsey*, 6 U.S. 64 (1804).

In Justice Ginsburg's concurrence in *Grutter v. Bollinger*, 539 U.S. 306 (2003) she noted that the CERD Treaty endorses "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." (citing Annex to G. A. Res. 2106, 20 U. N. GAOR, 20th Sess., Res. Supp. (No. 14), p. 47, U. N. Doc. A/6014, Art. 2(2) (1965)).

Although the Court expressed no opinion in *Fair Admissions* about the implications of that decision for the U.S. CERD Treaty implementation, the outcome unambiguously conforms to Justice Ginsburg's observation about that treaty covenants holding that race-conscious programs "must have a logical end point," and are consistent with the international understanding that such measures "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." Id.

To the extent that the *Fair Admissions* decision signals deference to the continuing necessity of CERD Treaty implementation, the decision has ancillary implications for the civil rights removal apparatus in 42 USC 1443. In a conventional civil rights removal, the removing party must ordinarily show that the right in jeopardy pertains to a federal law "providing for specific civil rights stated in terms of racial equality" in order to demonstrate the justiciability of a removal action under 28 U.S.C. § 1443. *Georgia v. Rachel,* 384 U.S. 780, 792 (1966). Under an analysis that gives meaning to the common nucleus of neutral principles underlying the *Fair Admissions* decision and the CERD Treaty paradigm, it follows that the scheme consisting of CERD Treaty and 42 USC 1443 reasonably qualify as a federal law "providing for specific civil rights stated in terms of racial equality." *Rachel*, Id.

The other predicate law for removal in 42 USC 1985(2) states: "If two or more persons conspire for the purpose of ... defeating, in any manner, the due course of justice ... or to injure [a person] or his property ... the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators." Id. The Court should grant the writ, therefore, to ascertain multi-factor removal jurisdiction based on the qualifying status of property interests in question.

Applying that construction, it appears that a removing party qualifying under 28 USC 1443 is entitled to a federal court forum to oppose retaliation in violation of 42 USC 1985(2). *Haddle v. Garrison,* 525 U.S. 121 (1998) (retaliation judgment enforcing 42 USC 1985(2)). In this case, the transactional facts establish a concrete and particularized injury to Petitioner's property and his person.[6] *Goss v. Lopez*, 419 U.S. 565 (1975) (discussing stigmatic injury to reputation). There were multiple public disclosures of the supposed contempt in the underlying motion, in the show cause order that ensued from the motion, in a published interlocutory state appellate court judgment. *Bishop v. Wood,* 426 U.S. 341, 348 (1976) (public disclosure element). [7]

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[6] The injury is traceable to a form of stigma plus deprivation by a person acting under color of state law as a moving party for criminal contempt. Lastly, the harm is redressible by a removal proceeding that lies directly within the zone of interest established by 28 USC 1443 and 42 USC 1985(2), as augmented by the ICERD Treaty.

[7] The presiding judge who, according to the Fifth Circuit's opinion in *Martin v. Bravenec I* erred by acting on Bravenec's demands for sanctions, authored a similarly situated decision in the same line of adjudications in *Green v. Arnold*, 512 F. Supp. 650 (W.D. Tex. 1981). There, he cited the rule that "no one is above the law," in the course of describing the litigant there as a "Loki" character "sowing mischief everywhere he goes," and explaining that "[w]hen the Teutonic gods tired of Loki's troublemaking, they chained him to the rocks with a poisonous snake suspended above him, dripping poison on Loki ... That case arose prior to the Eighth Amendment." Id.

Lastly, the changes of legal status traceable to the contempt proceeding in 2014 - in the state court, the federal district court, and in the Federal Circuit - have adversely affected Progress Clause and patent related investment expectations. *Paul v. Davis*, 424 U.S. 693 (1976) (discussing change in legal status element).[8] Thus, the argument can be made that the removal of a SLAPP case from state court, under the circumstances described above, lies directly within the scope of the congressional powers enumerated in Tribunals Clause. *Torres v. Texas Department of Public Safety*, 597 U.S. ___ (2022) (slip opinion at p 4–6),

2. The Progress Clause Supports A Duty To Ascertain Removal Jurisdiction. Federal preemption of state sovereignty interests is clearly sustainable on Progress Clause grounds. Under the doctrine in *Sperry v. Florida*, the power to

[8] Petitioner notes in his capacity as a covered inventor under 35 USC 123 that he is aggrieved by the disparity in treatment, that he has received as a non-white person and compared to the treatment that Bravenec received in the relevant proceedings as a person who is white, and which implicate the views of the presiding judge on matters of Teutonic heritage. *Green v. Arnold*, Id.; but see, *Williams v. City of Alexander, Ark.*, 772 F.3d 1307, 1311 (8th Cir. 2014) ("A reasonable jury could find that Walters fabricated the officer's memo and intentionally included a false statement in the affidavit to make good on his promise to 'destroy' Williams."); and *Berry v. Stevinson Chevrolet*, 74 F.3d 980 (10th Cir. 1996)(Title VII's anti-retaliation provision protected an African-American employee against whom an employer filed false criminal charges because the employer believed he was going to file an EEOC charge)

prescribe terms of jurisdiction for Progress Clause purposes can and should be read to incorporate an affirmative waiver of state interests in sovereign immunity. There, the Court set aside unconstitutional conditions that had been created by a state's purported regulation of the practice of law. It concluded there that "Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority." Id. at 385.

In re Queen's University At Kingston, 820 F.3d 1287 (Fed. Cir. 2018) (citing *Sperry v Florida*), a similarly situated case involving a patent agent's invocation of privilege, the Federal Circuit crafted a three prong standard standard to assess eligibility for testimonial privilege; namely, (1) whether there is an important patent related issue of first impression, (2) whether the privilege would be lost if review were denied until final judgment, and (3) whether immediate resolution would avoid the development of doctrine that would undermine the privilege. Id. To the extent that *Sperry* and *Queens University* mean that an agent of a patent applicant is eligible to invoke privilege, it is not clear how the removal below was fatally flawed as the district court suggested.

Relying on doctrinal authority in *Torres*, Petitioner seeks intervention by the Court to vindicate his Progress Clause interest in making

his inventions available to improve the deployment of broadband infrastructure and to enable private sector implementation of the "information services" treaty covenants that the Senate adopted for domestic policy purposes in 1994.

Historically and structurally, the Federal Courts Improvement Act of 1982 as amended authorized various grants of original and appellate jurisdiction, including removal jurisdiction in 28 USC 1454, and unfair competitive practices arising under 28 USC 1338. Textually, it leads to an undesirable "canon of donut holes" to read Article III and of the court improvements statute to presume here that Congress's failure to speak directly to a specific case creates a tacit exception from an otherwise mandatory duty of implementation). *Bostock v. Clayton County.*, 140 S. Ct. 1731, 1747 (2020).

Thus, to the extent that patent related investment expectations form the basis of retaliation claim under 42 USC 1985(2), the removal of a SLAPP case from state court lies within the scope of congressional powers enumerated in Progress Clause independently of the jurisdictional grant in 28 USC 1443. Cf., *Stebbins v. Nationwide Mutual Insurance Company*, 993 F.2d 913 (D.C. Cir. 1993) (discussing the necessity to accord "conceptual integrity" to the distinction between the Civil

Rights Act of 1866 and the augmentative purposes of the Civil Rights Act of 1871).

3. Judicial Power To Conduct *De Novo* "Choice of Law" Review Survived Removal. The Court should grant the writ to acknowledge the power to conduct judicial review survives removal to federal court under authority of the intervening decision in *Moore v. Harper*, Id., a decision citing the teaching of *Marbury v. Madison* as authority for rejecting the so-called "independent legislature theory," as persuasive authority for judicial review by the lower courts in this case. See e.g., *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

In *Moore*, the Court extended that reasoning to reject the proposition that an exception from judicial review exists under the Electors Clause. Noting that Alexander Hamilton maintained in the Federalist papers that courts of justice have the duty "to declare all acts contrary to the manifest tenor of the Constitution void," the Court went on to observe that "the idea that courts may review legislative action was so 'long and well established' by the time we decided Marbury in 1803 that Chief Justice Marshall referred to judicial review as 'one of the fundamental principles of our society.' 1 Cranch, at 176–177." Id., (slip at p. 14) Citing *Phillips v. Washington Legal Foundation*, 524 U. S. 156, 167 for the core principle that States "may

not sidestep the takings Clause by disavowing traditional property interests," the Court went on to acknowledge that "federal courts must not abandon their duty to exercise judicial review," not to mention its own "obligation to ensure that state court interpretations of state law do not evade federal law." Id., at pp. 26-29.

Ordinarily, avoidance of constitutional error justifies allowances for curing a defective claim of statutory standing where the previously omitted patent-related facts are timely disclosed to the tribunal with competent jurisdiction. See, *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014), and Lone Star Silicon Innovations LLC v. Nanya Technology Corp., 925 F.3d 1225, 1236 (Fed. Cir. 2019) (allowing curing of statutory standing defects). Equally important, the modern practice is consistent with the founding era understanding that "[t]he constitution and [the patent acts], taken together, give to the inventor, from the moment of invention, an inchoate property therein, which is completed by suing out a patent." See, *Evans v Jordan*, 13 U.S. (9 Cranch) 199 (1815).

Ultimately, the Court should categorically reject the district court's interposition of a dual Tribunal Clause and Progress Clause exception to judicial review based on the structural factors that led the Court reject an Electors Clause exception to

judicial review in *Moore*: "courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in .... legislatures." *Bush v Gore*, Id., at 133 (expressing caution about whether the reading of a legislative scheme "transcends the limits of reasonable statutory interpretation to the point of supplanting the statute enacted by the 'legislature' within the meaning of Article II.")

B. The Remand Event Presents An Opportunity To Harmonize Inter Circuit Splits On Federal Anti-SLAPP Jurisprudence.

The Court should grant the writ in deference to the observation of the dissenters in *Moore v Harper* that federal courts are "without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it," *Moore v Harper*, Id. (citing *St. Pierre v. United States*, 319 U. S. 41, 42 (1943) (per curiam)), and that to do so would be to violate "the oldest and most consistent thread in the federal law of justiciability." Id. (citing *Flast v. Cohen*, 392 U. S. , 83, 96 (1968) (internal quotation marks omitted). Given today's threatening climate of social unrest, it is also vitally important for the Court to acknowledge, as the D.C. Circuit did faithfully in *Abbas v. Foreign Policy Grp., LLC*,. 783 F.3d 1328 (D.C. Cir. 2015), that Anti-SLAPP laws sometimes fail for reasons

beyond a litigant's control. The major safeguard for a removal involving a civil rights case and a Progress Clause controversy is the understanding that the judicial power to conduct *de novo* choice of law review survives remand by advisory opinion.

1. The FCIA Bars The District Courts From Instigating Concurrent Jurisdiction In The Federal Circuit And In The State Courts. Section 8 of Article I of the Federal Constitution delegates authority to the Congress "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

According to the understanding that "Congress has the authority to set the terms of the patent right ... and to delegate that authority ..." *Christy, Inc. v. United States*, 971 F.3d 1332 (Fed. Cir. 2020), the Federal Court Improvements Act of 1982 as amended can and should be vigorously applied. Consistent with Progress Clause objectives, the Federal Court Improvement Act of 1982 codified the judicially-authorized preemption analysis in *Sperry v. Florida* with a provision in Section 1338 stating that "No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents ..." 28 U.S.C. 1338. Due to the incorporation into

Section 1338 of *Sperry* Supremacy Clause analysis, the outcome here can and should turn to a great extent on the reviewability of Bravenec's plea to jurisdiction under a legislative scheme with a plain statement authorizing complete preemption of state court review, and with parallel exceptions for patent related removal actions in 28 USC 1454.

In cases where Section 1338 is applicable, moreover, the structure of the legislative scheme necessarily forecloses the extension of the rule that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise." Where, however, "the question . . . on appeal is . . . whether the district court exceeded the scope of its [statutory] authority by issuing [a] remand order" on grounds not specified in the statute invoked as authorizing remand. In such cases, federal courts are effectively called upon "to review the 'district court's interpretation and construction of a federal statute[]' ... de novo." *LeChase Constr. Servs., LLC v. Argonaut Ins. Co.*, 2023 U.S. App. LEXIS 6976 (2d Cir. Mar. 23, 2023).

In *LeChase*, the First Circuit resolved a similar issue of first impression in favor of

removal: "We must therefore decide, as a matter of first impression, whether our appellate jurisdiction under section 1447(d) is controlled by what the district court purported to be doing, or by what the district court was actually doing. In other words, we must decide ... 'whether [section] 1447(d) permits appellate review of a district-court remand order that dresses in jurisdictional clothing' - here, the 'clothing' of section 1447(e) - 'a patently non jurisdictional ground ...' " Id., at 234 (citing *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 234 (2007)).

In conjunction with the FCIA, the Full Faith And Credit Act, further substantiates the rationale for Petitioner's claim of immunity from coram non judice behavior which the district court predicated on nonexistent concurrent jurisdiction. Here, the proposition that the process due was a transfer to state court is unsupported by any instrument that meets the requirements Full Faith and Credit, and is unsustainable in accordance with the eligibility criteria for transfers under 28 USC 1631. Section 1631 provides that "Whenever a civil action is filed in a court ... or an appeal is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court ... in which the action or appeal could have been brought at the time it was filed or noticed ..." 28 U.S.C. 1631.

None of the conditions that Section 1631 requires are plausibly met by the district court's transfer to the Fifth Circuit. See, *Cruz-Aguilera v. INS*, 245 F.3d 1070, 1074 (9th Cir. 2001). By statute, patent related jurisdiction lies in federal district courts and the Federal Circuit, not in the regional circuit courts or the courts of the host state. Consequently, the "transferring court" in this case had dormant patent related jurisdiction from the outset, and this disqualifies it as a transferring court. The transferee court, the 285th Judicial District Court for Texas, could have no patent related jurisdiction under the multi circuit litigation panel statute in 28 U.S.C. 1338. Last, the transfer was unrelated to the interests of justice embodied by the Full Faith And Credit Act because the orders of record establish conclusively that Bravenec's case remained open at the time it was removed.

2. The FCIA Bars The District Courts From Instigating Concurrent Jurisdiction In The Federal Circuit And The District Courts. Section 8 of Article I of the Federal Constitution also delegates authority to the Congress "To constitute Tribunals inferior to the supreme Court..." The Court should grant the writ to validate the Fifth Circuit's deference to patent related jurisdiction and to emphasize that "... jurisdiction of a Circuit Court of the United States

is limited in the sense that it has no other jurisdiction than that conferred by the Constitution and the laws of the United States." *Hanford v. Davies*, 163 U.S. 273, 279 (1896).

It is significant in the first instance that prior to when the FCIA granted topical jurisdiction over patent related matters to the Federal Circuit under 28 USC 1295(a)(1). In *Jaskiewicz v. Mossinghoff*, 802 F.2d 532, 534 (D.C. Cir. 1986), the D.C. Circuit described the effect of the new jurisdictional scheme by concluding that it lacked jurisdiction to review a patent related appeal: "We wholeheartedly agree with our sister circuit's assessment of congressional intention regarding the applicability of section 1338. ... [W]e conclude that it cannot be doubted that [this] action is one 'arising under [an] Act of Congress relating to patents.' "

Under the circumstances, the Court's decision in *Osborn v. Haley*, 549 U.S. 225 (2007) serves as an appropriate analogue for giving effect to appeals invoking exclusive appellate jurisdiction granted by 28 USC 1295(a). In *Osborn*, a federal employee removal case, the federal government certified that a federal employee defendant was acting within the scope of his employment, and removed the case to federal court. Whereas Section 1338 bars state court jurisdiction outright, the text of the Westfall Act upheld in *Osborn* treats a

certification by the Attorney General of a defendant's status as "conclusiv[e] ... for purposes of removal." §2679(d)(2). The argument can be made that proof of patent office registration is the functional equivalent of a certification of a person's status as a federal officer by the Attorney General.

3. Judicial Power For *De Novo* "Choice Of Law" Review Confers Appellate Authority To Enforce Rules Against Advisory Opinions. It aids conflict preemption jurisdiction to apply federal Anti-SLAPP jurisprudence to distinguish the Anti-SLAPP posture of this case from the posture of cases that implicate *Shady Grove* on the basis that the question at bar is unrelated to whether Rules 12 and 56 standards govern a motion to dismiss or for summary judgment. Calling attention to the distinction will help to reduce "the uncertainty that. [SLAPP case] defendants face under the current regime threatens to create the very chilling effect on speech that anti-SLAPP laws aim to remedy." [9] Contrary to the test applied in *Abbas*, the district court's remand process ensnared an intolerably broad swath of free speech scenarios by adopting the "alternate

[9] Reporters Committee for Freedom of the Press, "D.C. Circuit decision highlights need for federal anti-SLAPP law," (4/27/15) https://www.rcfp.org/dc-circuit-decision-highlights-need-federal-anti-slapp-law/

universe" of Bravenec's SLAPP suit and plea to jurisdiction. Id.

In *Elenis*, the Court held that "[s]peech conveyed over the internet, like all other manner of speech, qualifies for the First Amendment's protections" including a case where the speaker is a website designer who elects to withhold services for diverging viewpoints. The same free speech rationale protects a specification for advancing the state of the art for internet communication, the right to petition for ancillary quiet title relief to support patent related research and development, and the right to petition for anti-retaliation relief under the civil right laws. See, *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1163 (2021).

Compliance with the two prong standard followed in *Elenis* calls for (1) a showing that compelling speech or silence of a protected progress clause speaker would serve a compelling governmental interest, and (2) that no less restrictive alternative exists to secure that interest. Id. The district court's order of remand, especially as interpreted as a violation of the rule against advisory opinions, is facially incapable of withstanding review under *Elenis*.

On the first prong, the remand proceeding fails to pass muster for two reasons. First, the process of the district court was unrelated to the

"consent of the governed," as reflected in the Rules of Decision Act, because the removal arose under, is covered by, "the Constitution, treaties of the United States, [and] acts of Congress."[10] Second, the outcome of the district court's process was unrelated to the "consent of the governed," as reflected by the statutory scheme in 28 USC 1447, because the docketing of the appeal by the Federal Circuit left that court without plenary judicial powers to act. See, *In re Federal Facilities Realty Trust*, 227 F.2d 651, 653-54 (7th Cir. 1955) (enforcing rule that a trial court has no power after notice of appeal to modify its judgment or take other action affecting the cause)

On the second prong, at least four distinct statutory schemes hold that the District Court had no administrative capacity to act on September 29, 2022: the Federal Courts Improvement Act,[11] the Full Faith And Credit Act,[12] and the Rules

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[10] See, 28 USC 1652 ("The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.")

[11] The District Court fails to pass muster under the first prong because a trial court has no power after the filing of a notice of appeal to modify its judgment or take other action affecting the cause. *In re Federal Facilities Realty Trust*, 227 F.2d 651, 653-54 (7th Cir. 1955).

[12] See, 28 USC 1738. The Full Faith And Credit Act requires an authenticated state court record to substantiate an attribution of full faith and credit in a particular case, consequently reliance on the unsupported conclusion that the case "appeared to be closed" abrogated the Full Faith And Credit Act.

Enabling Act.[13] Since the result of the district court's exertion of remand authority involve a pattern of jurisdictional and constitutional errors in excess of all jurisdiction in the district court, see *Mireles v. Waco*, 112 S.Ct. 286 at 288 (1991),[14] The outcome of its moot process should have "no effect on rights of the litigants in the case before it" for all the reasons explained by the dissent in *Moore v. Harper*, Id.[15]

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[13] Judge Pulliam adjudicated a part of the same case in prior government employment as a state appellate court judge. See, Code of Conduct for U.S. Judges, Canon 3C(1)(e) (prior government employment) cited in *Holland v. Florida*, Case 22-6206 (2023) (noting denial of petition for rehearing in which Justice Kagan took no part in the consideration or decision of this petition due to prior government employment).

[14] There, the Court recognized that the "judicial nature" defense is intended for application in cases where judicial branch behavior qualifies as "judicial" in nature. The same limiting principle was classically explained by the courts of England to mean that " ... when the court has no jurisdiction of the cause, then the whole proceeding is coram on judice, and actions will lie against [court officers] without any regard of the precept or process..." See, *The Case of the Marshalsea*, 77 Eng. Rep. 1027 (1612).

[15] Congress spoke to make clear the unacceptability of coram non judice behavior by officers of a federal court in 1982 when it aseerted jurisdiction to regulate "an act or omission taken in such officer's judicial capacity [that is] clearly in excess of such officer's jurisdiction',' 42 U.S.C. 1988(b). See, *Pulliam v. Allen*, 466 U.S. 522 (1984) (citing legislative history to confirm that attorney's fees are available despite "immunity doctrines and special defenses, available only to public officials." H.R.Rep. No. 94-1558, p. 9 (1976))

C. The Federal Circuit's Dismissal Order Is Vacatable For Clear Error.

The Court should grant the writ to acknowledge that, in connection with accepting the district court's conclusion of law about the necessity of remand pursuant to 28 USC 1447, the Federal Circuit dispensed with applying the test approved in its *Queens University* decision for ascertaining patent related privilege. But for this departure from circuit rules on privilege, the Federal CIrcuit would have ascertained that it had exclusive appellate jurisdiction under 28 USC 1295(a), "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). Here, all three three prongs of the Federal Circuit's test for *Sperry's* privilege suggest error by the Federal Circuit in deferring to the district court's reliance on 28 USC 1447 in ascertaining its exclusive appellate jurisdiction. These include (1) whether there is an important patent related issue of first impression, (2) whether the privilege would be lost if review were denied until final judgment, and (3) whether immediate resolution would avoid the development of doctrine that would undermine the privilege. *Queen's University*, Id.

1. The Case Presents An Issue Of First Impression About Allowing Exceptions From Judicial Review In A Progress Clause Matter. On the first prong of the proposed test for *Sperry* privilege in a micro entity case, the two important issues of first impression are whether the district court erred by interposing de facto Progress Clause exceptions to the rule against advisory opinions when it remanded the case after the filing of a notice of appeal to the Federal Circuit, and conversely whether the Federal Circuit erred by interposing de facto Progress Clause exceptions to judicial review on appeal. Among the two issues, the more serious of the two is the error of the Federal Circuit in applying a correct statement of the law to a construction of the facts that gives deference to advisory opinion founded on viewpoint discrimination.

The manner in which the Federal Circuit allowed exceptions to Progress Clause expectations of judicial review is indicated by the legislative history of the jurisdictional schemes that Congress enacted in 1982, 2011, and 2018, with the goal of improving the judicial aspects of patent franchise implementation. In 1982, the Congress used the word "Improvements" in the caption of the 1982 statute granting patent related jurisdiction in 28 USC 1925(a) to signal its intent to foreclose departures from the authorized legislative scheme as counterproductive to the

implementation of "Progress Clause" objectives that it authorized. In 2011, the Congress took steps to improve the patent franchise by enacting the Leahy-Smith America Invents Act, Pub. L. No. 112-29 (2011), to adopt a "First to File" system of patent rights, and to recognize a subclass of small business entities with the "micro-entity" classification codified in 35 U.S.C. 123.

In 2018, Congress solicited improvements for the patent franchise by enacting the "Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018." Public Law No: 115-273 (2018). The SUCCESS Act legislation cis notable for a bipartisan finding "that the United States has the responsibility to work with the private sector to close the gap in the number of patents applied for and obtained by women and minorities to harness the maximum innovative potential and continue to promote United States leadership in the global economy." Id. Public Law No. 115-273, Sec. 1(b).

In the interest of transformative innovation for the bridging of the digital divide, Petitioner has sought to monetize his ownership of real and intellectual property interests as a means to devise improved methods for the mitigation of internet access disparities. To fulfill these patent related expectations, Petitioner's claims continuing ownership of the '246 specification in 2021, and

the filing of a new patent application styled as USPTO #63/577, 251 on April 16, 2022. Viewed from that perspective, the settling of accounts is "governed by Federal Circuit law [because] the issue pertains to patent law, [because] it bears an essential relationship to matters committed to the exclusive control of the Court of Appeals for the Federal Circuit by statute, [and because] it implicates the jurisprudential responsibilities of the Federal Circuit in a field within its exclusive jurisdiction." *Queen's University*, Id. As to these issues, the lost privilege issue is undeniably material.

2. There Is A Clear Risk Of Lost Privilege Due To Prior Restraints By The Lower Courts. The second prong of the test for privilege inquires whether the privilege would be lost if review were denied until a final judgment. Petitioner submits that the adverse effects from the loss of privilege accrued at the point of the remand to state court, and that the adverse effects will become final if review is denied until a final judgment, and both will have collateral consequences for the Petitioner's patent-related investment expectations as well as for the patent franchise.

Addressing a similarly situated cause for avoidance of constitutional error in the *Oil States* decision, the Court said that its decision there "should not be misconstrued as suggesting that

patents are not property for purposes of the Due Process Clause or the Takings Clause." *Oil States*, 138 S. Ct. at 1379. Here, it leads to an absurd result to apply a method of evaluating risk of lost privilege to exclude cases that seek quiet title relief founded on an "abandoned but revivable" patent proceeding. One of several questions that policy analysts have considered in attempting to assess patent application abandonment is the "whether the inventor ran out of funds necessary to continue patent prosecution ..."[16] In that case, working with a micro entity inventor means extending privilege based on a quiet title claim that will enable a vulnerable inventor to resume patent prosecution.

3. The Anti-Discrimination Doctrine In *Fair Admissions* Overrules The District Court's Preferential Treatment In 2014 And 2022. The third prong of the test for privilege inquires into avoidance of disfavored doctrinal developments. If the rule of law for the post-*Gruttner* paradigm announced in *Fair Admissions* means what the Court said it did - in "[e]eliminating racial discrimination means eliminating all of it" - the district court can and should be held accountable for prior restraints within the meaning of the

[16] Christopher A. Cotropia & David L. Schwartz, The Hidden Value of Abandoned Applications to the Patent System, 61 B.C. L. Rev. 2809 (2020). See also, Laerdal Med. Corp. v. Ambu, Inc., 877 F. Supp. 255, 259 (D. Md. 1995) ("it is almost surely preferable for a reviewing court not to involve itself in the minutiae of Patent Office proceedings and to second-guess the Patent Office on procedural issues at every turn.").

Court's decision in *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981). See also Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979).

There is a compelling transactional and evidentiary foundation for intervention in this case on that basis. Petitioner has already explained how the process, outcome and tailoring of the district court's 2022 remand action fail to pass muster under strict scrutiny standards of review. Petitioner has also previously noted good faith exceptions to race conscious decision making on the part of a presiding judge of the district court in connection with the undue striking, by that judge, of objections to preferential treatment in favor of Bravenec. In *Martin v. Bravenec I*, the Fifth Circuit both acknowledged the improper striking of those objections as a ground for its vacatur decision, and took steps to vindicate the striking with decretal clause provision for "further proceedings."[17] A legitimate Progress Clause rationale for avoiding disparate treatment of Petitioner's protected property interests compared to Bravenec is found in the legislative history of the U.S. Senate on what

[17] The presiding judge whose actions in the same time period led to the vacatur in *Martin v. Bravenec I*, retired U.S. DIstrict Court Judge Harry Lee Hudspeth, allowed the "Loki" treatment to be applied by prosecutors in *Calhoun v. United States*, 133 S. Ct. 1136 (2013). The order cited by the Texas Fourth District Court of Appeals to conclude that Bravenec had a prima facie case is a product of solicitations for the same type of stigmatizing adjudication. Judge Hudspeth coincidentally attended law school with Bravenec's father at the UNiversity Of Texas School of Law.

might fairly be described as the Design Patent Compromise of 1993.

In 1993, after a century of renewing design patent rights held by a non-assignee, the Daughters of the Confederacy, the Senate voted the renewal down. the remarks of Sen. Carol Mosely-Braun of Illinois and Sen. Howard Heflin of Alabama cited to the Declaration of Independence, and to the undesirability of conferring preferential treatment on the non-assignee party. Appendix H. The following year, the Senate went beyond the Design Patent Compromise of 1993 by enacting the CERD Treaty and its information services covenant. In summary, the Design Patent Compromise of 1993, the CERD Treaty RUDs of 1994, and the patent laws of 1982, 2011 and 2018, establish a legitimate nexus between entertaining quiet title relief on equal protection grounds and the Progress Clause goal of transformative innovation.

D. Patent Related Jurisdiction Confers Sound Discretion To Entertain Quiet Title Relief.

The Court should grant the writ to clarify that coverage under 35 USC 123 entitles a micro entity party to patent related appeal, and other similarly situated litigants, to invoke judicial power to grant ancillary quiet title relief from financial chilling effects of a system of governmental prior restraints

in excess of all jurisdiction. *New York Times, Co. v. United States,* 403 U.S. 713 (1971); cf., *FCC v. NextWave Personal Communications Inc.*, 537 U.S. 293 (2003). Under holistic inquiry, the law of the case and the purchase money lien record in Appendix G preserve Martin's right to petition for quiet title relief from a federal court with competent jurisdiction. See, *Martin v. US* Case No, 22-1810 (Fed. Cir., February 10, 2023) (taking notice of Martin's "purchase money lien claim"); see also, *Shurtleff v. Boston*, 142 S. Ct. 1583 (2022), *Matal v. Tam*, 137 S. Ct. 1744 (2017), and *Walker v. Texas Division, Sons of Confederate Veterans*, 576 U.S. 200 (2015).

1. The Right To Seek Quiet Title Relief Is Claimable Under Authority Of *Martin v. US*. *Shurtleff's* first prong inquires into the history of the speech in question. As explained before, the appeal here involves an interlocutory proceeding in an alleged sham tort case that previously came under review in state court on Petitioner's Anti-SLAPP motion to dismiss. The judgment of dismissal without prejudice in *Martin v. US* and the AO's March 15th Right To Sue Letter consequently suggest that Petitioner's right to invoke anti-retaliation immunity from the Anti-SLAPP content of Bravenec's suit remains justiciable with no new legislation under the existing framework in 35 USC 123 and 42 USC

1985. See, *BP P.L.C., et al. v. Mayor and City Council of Baltimore*, 539 U.S. __ (2021)

2. The Remand Wrongfully Perpetuates Stigmatic Confusion From Past Legal Errors. *Shurtleff's* second prong revolves around public perceptions towards governmental regulation of speech, and the likelihood of confusion due to the public's inability to identify the true source of the speech in question. *De novo* review in *audita querela* here permits the Court to unravel stigmatizing confusion about the law of the case. *Colorado Interstate Gas Co. v. Nat. Gas Pipeline Co. of Am.*, 962 F.2d 1528, 1534 (10th Cir. 1992) ("[T]o decide whether the district court violated the mandate, it is necessary to examine the mandate and then look at what the district court did")

The law of the case doctrine posits in general that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618 (1983), decision supplemented, 466 U.S. 144 (1984). Where new facts are presented that materially affect the questions at issue, a court may apply the law to the new facts as subsequently found. Id.

Here, it is a matter of public record that the federal law of the case in *Martin v. Bravenec I*

became final when this Court ordered the denial of Martin's first petition for certiorari in 2016. As the Fifth Circuit stated in 2015 in vacating the Rule 11 sanctions process that Bravenec had wrongfully solicited, when "Bravenec moved the district court to expunge a lis pendens lien," he "did not comply with the safe harbor provision," so "the district court [was] deemed to have [acted] on its own motion, which is improper under Rule 11." *Martin v. Bravenec I*, Id. (bracketed language added). Thus, the Fifth Circuit's law of the case holds that "the district court ... fail[ed] to comport with the requirements of Rule 11 and denied Martin due process...." Id.

Further, the text of the opinion establishes conclusively that the Rule 11 orders relied upon in 2013 have no effect as adjudicative facts: "the district court abused its discretion when it struck Martin's objections. Notably, Martin withdrew the lis pendens lien of which Bravenec complained upon receiving Bravenec's motion for sanctions and *filed a subsequent lis pendens lien that referenced only state court litigation.*" *Martin v. Bravenec I*, Id. (emphasis added). Thus, both the Federal Circuit that controls jurisdiction and the Fifth Circuit law of the case validate the cognizability of Martin's purchase money lien claim.

3. Relief From Past Gag Order Proceedings In 2014 and 2022 Is Cognizable In *Auditas Querelas* For Avoidance Of Legal Errors. *Shurtleff's* third prong inquires into the circumstances bearing on the nature of the controls that a governmental unit employs to regulate private speech. In *National Veterans Legal Services Program, et al. v. United States*, 235 F. Supp. 3d 32, 37-38 (D.D.C. 2017) aff'd No. 19-1081 (Fed. Cir. 2020) (conducting judicial review of a judicial branch fee dispute involving the PACER system), in a dispute about PACER subscriber fee administration, the D.C. District Court and the Federal Circuit approved measures for avoidance of constitutional error in a case about financial chilling effects on technological innovation in the judicial branch context. The Court should grant the writ to extend *National Veterans* for the proposition that Section 1447 is not a license to restrain removals that are permissible under 28 USC 1443 and 28 USC 1454.

Here, measures for avoidance of constitutional error are justified on due process grounds according to the norm that "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," compliance with due process standards is required. *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). There is controlling authority on point for name clearing and title clearing measures

based on *Martin v. US* in the Court's decision on due process grounds to reverse the judgment of the Texas Fourth District Court of Appeals in *Roller v. Holley*, 176 U.S. 398 (1900). The Court's decision in *Cordova v. Hood*, 84 U.S. 1 (1872) enforcing Texas common law precedent establishes that the legal status as a purchase money lien holder is not affected by ownership of an equity interest in a vendee-grantee entity, and likewise that equity in a vendee-grantee entity does not cause a waiver of the claimant's vested lien rights. Id. Lastly, *LeGrand v. Darnell* confirms that federal courts are under no obligation to tolerate retaliatory behavior by plaintiff parties under color of state law. Id., cf, *In re Young*, 209 U.S. 123 (1908).

CONCLUSION

The Court should grant the writ, vacate the dismissal, and remand to the Federal Circuit to affirm the national commitment to the bridging of the digital divide under the doctrine that "[e]liminating racial discrimination means eliminating all of it."

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