No. 23-_____

IN THE
Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY;
HILCORP ENERGY COMPANY; AND SHELL OIL COMPANY,
Petitioners,

v.

PARISH OF CAMERON, LOUISIANA; STATE OF LOUISIANA,
EX REL. JEFF LANDRY, ATTORNEY GENERAL;
STATE OF LOUISIANA, THROUGH THE NATURAL
RESOURCES OFFICE OF COASTAL MANAGEMENT AND ITS
SECRETARY THOMAS H. HARRIS; CHEVRON U.S.A., INC.;
TEXAS PACIFIC OIL COMPANY, INC.; AND
TEXAS PETROLEUM INVESTMENT COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the 38th Judicial District Court for the Parish of Cameron, Louisiana

PETITION FOR A WRIT OF CERTIORARI

GEORGE ARCENEAUX III
LISKOW & LEWIS
1200 Camellia Boulevard
Suite 300
Lafayette, LA 70508
(337) 232-7424
Counsel for Petitioner BP America Production Company

DAVID C. FREDERICK
Counsel of Record
DANIEL S. SEVERSON
D. CHANSLOR GALLENSTEIN
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@kellogghansen.com)
Counsel for Petitioner Shell Oil Company

October 17, 2023

(Additional Counsel Listed On Inside Pages)

JAMES E. LAPEZE
LISKOW & LEWIS
701 Poydras Street
Suite 5000
New Orleans, LA 70139-5099
(504) 581-7979

NANCY G. MILBURN
JENNIFER R. KWAPISZ
ARNOLD & PORTER KAYE
SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8000

Counsel for Petitioner
BP America Production
Company

CRAIG ISENBERG
DAVID N. LUDER
KYLE W. SIEGEL
ALEXANDRA L. GJERTSON
BARRASSO USDIN KUPPERMAN
FREEMAN & SARVER, L.L.C.
909 Poydras Street
Suite 2350
New Orleans, LA 70112
(504) 589-9700

Counsel for Petitioner
Hilcorp Energy Company

R. KEITH JARRETT
MARK L. MCNAMARA
KELLY BRECHTEL BECKER
CHERRELL S. TAPLIN
LAURA SPRINGER BROWN
LISKOW & LEWIS
701 Poydras Street
Suite 5000
New Orleans, LA 70139
(504) 581-7979

AMY ALLUMS LEE
LISKOW & LEWIS
1200 Camellia Boulevard
Suite 300
Lafayette, LA 70508
(337) 232-7424

MICHAEL J. MAZZONE
HAYNES AND BOONE, LLP
1221 McKinney
Suite 4000
Houston, TX 77010
(713) 547-2115

Counsel for Petitioner
Shell Oil Company

QUESTION PRESENTED

Whether a transfer of venue is required before voir dire to ensure a civil defendant's due-process right to an impartial decisionmaker where the entire venire has an interest—both financial and otherwise—in rendering a verdict for the plaintiff.

PARTIES TO THE PROCEEDINGS

Petitioners BP America Production Company, Hilcorp Energy Company, and Shell Oil Company were defendants in the district court and applicants in the court of appeals and in the Supreme Court of Louisiana.

Respondent Parish of Cameron, Louisiana was the plaintiff in the district court and the respondent in the court of appeals and in the Supreme Court of Louisiana. Respondents State of Louisiana, ex rel. Jeff Landry, Attorney General, and State of Louisiana, through the Natural Resources Office of Coastal Management and its Secretary Thomas H. Harris, were plaintiffs-intervenors in the district court and respondents in the court of appeals and in the Supreme Court of Louisiana.

Chevron U.S.A., Inc. was a defendant in the district court and participated in the court of appeals and in the Supreme Court of Louisiana; pursuant to this Court's Rule 12.6, it remains a party to the case and is considered a respondent in the proceedings before this Court.

Texas Pacific Oil Company, Inc. and Texas Petroleum Investment Company were defendants in the district court but did not participate in the court of appeals or in the Supreme Court of Louisiana; pursuant to this Court's Rule 12.6, they remain parties to the case and are considered respondents in the proceedings before this Court.

Honeywell International, Inc. and Kerr-McGee Oil and Gas Onshore LP were defendants in the district court and participated in the court of appeals and in the Supreme Court of Louisiana. They since have reached settlements, and Kerr-McGee has been

dismissed without prejudice. A motion to dismiss Honeywell without prejudice is pending.

Freeport Sulphur Company, Gulfport Energy Corporation, Taylor Energy Company, LLC, and Vernon E. Faulconer, Inc. were defendants in the district court but did not participate in the court of appeals or in the Supreme Court of Louisiana. They since have reached a settlement and/or filed a motion to dismiss that remains pending.

Auster Oil and Gas, Inc., Apache Oil Corporation, Chevron U.S.A. Holdings, Inc., Chevron Pipe Line Company, Enervest Operating, L.L.C., Exxon Mobil Corporation, Samuel Gary Jr. & Associates, Inc., Shell Offshore, Inc., SWEPI LP, and The Texas Company were defendants in the district court but did not participate in the court of appeals or in the Supreme Court of Louisiana. They since have been dismissed from the case.

Darsey Operating Corporation, Resource Securities Corporation, Star Energy Inc., and Transcontinental Oil Corporation were named defendants but did not participate in the proceedings below.

RULE 29.6 STATEMENTS

Pursuant to Supreme Court Rule 29.6, petitioners BP America Production Company, Hilcorp Energy Company, and Shell Oil Company state the following:

BP America Production Company is an indirect wholly owned subsidiary of BP p.l.c., which is the only publicly owned company in that chain of ownership. BP America Production Company does not have any other companies, subsidiaries, or affiliates that have issued shares of stock to the public.

Hilcorp Energy Company is a privately held company and does not have a parent corporation.

Shell USA, Inc., formerly named **Shell Oil Company**, is a wholly owned indirect subsidiary of Shell plc (f/k/a Royal Dutch Shell plc), a publicly held UK company. No other publicly traded company owns 10% or more of the stock of Shell USA, Inc.

RELATED CASES

Parish of Cameron v. Auster Oil & Gas, Inc., No. 10-19582 (La. 38th Jud. Dist. Ct., Cameron Parish) (judgment entered May 17, 2023)

Parish of Cameron v. Auster Oil & Gas, Inc., No. CW 23-00381 (La. 3d Cir. Ct. App.) (judgment entered Aug. 25, 2023)

Auster Oil & Gas, Inc. v. Parish of Cameron, No. 2023-CC-1215 (La.) (judgment entered Oct. 10, 2023)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTION AND STATUTES

LEGISLATIVE MATERIALS

ADMINISTRATIVE MATERIALS

OTHER MATERIALS

Petitioners BP America Production Company, Inc., Hilcorp Energy Company, and Shell Oil Company petition for a writ of certiorari to review the ruling of the 38th Judicial District Court for the Parish of Cameron, Louisiana in this case.

OPINIONS BELOW

The ruling of the Louisiana district court (App. 1a-5a) is not reported. The order of the Louisiana Court of Appeal, Third Circuit (App. 6a), is not reported. The order of the Supreme Court of Louisiana (App. 7a) is not reported.

JURISDICTION

The Supreme Court of Louisiana entered judgment on October 10, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

> No State shall . . . deprive any person of . . . property, without due process of law.

INTRODUCTION

This Court long has held that "the Due Process Clause has been implemented by objective standards that do not require proof of actual bias." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883 (2009). In this extraordinary case brought by Cameron Parish against out-of-state companies in front of a jury in Cameron Parish and seeking $7 billion, every Parish resident has an interest (both financial and otherwise) in the outcome. That creates an objective basis for concluding that due process demands a jury venire from a different parish. A transfer of venue thus is required to ensure the sanctity of the jury trial.

Beginning on November 27, 2023, residents of Cameron Parish—a small community of fewer than 5,000 people—will be asked to decide whether several oil and gas companies should pay damages under a law enacted in 1978 for their drilling activities that allegedly violated permits dating back more than a century. The Parish filed this lawsuit—and 10 more like it—to offset the cost the State of Louisiana plans to spend to combat coastal erosion.

The Parish's lawyers publicly called this lawsuit's upcoming trial "judgment day." State and local media have touted these lawsuits as a way for residents to "control [their] own destiny." Cameron Parish residents have seen their homes and communities washed away by natural disasters. Every potential juror in the Parish has a personal and financial interest in a verdict in the Parish's favor. Thus, petitioners (as defendants in the upcoming trial below) cannot obtain a fair and impartial trial without a change of venue to a nearby parish.

No one disputes that land loss has been the subject of above-the-fold news stories for the better part of a decade, amplifying the community's existing interest in coastal land restoration. The potential jurors—of which there are fewer than 4,000—have been told that this trial will determine the very existence of their Parish and their continued way of life. And the amount the jury will be asked to award their home parish is more than it possibly could raise on its own. The jury will be asked to award approximately $7 billion in damages. To put that number in context, it is greater than 350 years' worth of the Parish's net

revenues[1] and translates to $1.4 million per resident. Any jury from the Parish therefore understands it will benefit directly and significantly from the outcome. Petitioners cannot receive an impartial trial under these circumstances.

The need for an unbiased jury in civil cases has been recognized since the Founding. Blackstone admonished that "[t]he administration of justice should not only be chaste, but (like Caesar's wife) should not even be suspected." 3 William Blackstone, *Commentaries* *383-84. The courts below, however, defied this fundamental principle. By holding that petitioners "have not shown that they . . . cannot obtain a fair and impartial trial because of the undue influence of an adverse party, prejudice existing in the public mind, or some other sufficient cause," App. 4a, the state courts below disregarded decades of this Court's precedent. The decision also arises in the context of a conflict among the highest courts of several other States. The question presented is whether denying a motion for transfer of venue where the entire pool of potential jurors has an interest in the outcome violates the Due Process Clause of the Fourteenth Amendment.

---

[1] *See* Cameron Parish Police Jury, Annual Financial Report and Independent Auditors' Reports – Year Ended December 31, 2021, at 11 (June 29, 2022) (annual Parish revenues are less than $20 million) (Stay Appl. Ex. 16), https://app.lla.la.gov/publicreports.nsf/0/89d2270ab46db9428625887e00641c8e/$file/000275cb.pdf. (References to "Stay Appl. Ex. _" are to the Exhibits attached to the concurrently filed Application for an Emergency Stay. Exhibits 4 through 26 were reproduced in the applicants' 15-volume submission as part of the proceedings before the Louisiana Court of Appeal, Third Circuit, No. CW 23-00381; they are attached to the Application—and referenced in this certiorari petition—for the convenience of the Court.)

Resolution of this question holds profound constitutional and national importance. Without immediate action by this Court, the petitioning energy companies will be forced to stand trial where every member of the jury pool has an interest in ruling in the state respondents' favor. The Constitution "entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Despite the deep-rooted history of the civil jury in our constitutional scheme, this Court has not squarely defined the parameters of an "impartial and disinterested tribunal" as it applies to a civil jury. Because no defendant—civil or criminal—should have to defend a case before a jury with such overwhelming financial incentives to rule against it, this Court should grant certiorari to clarify the parameters of the Due Process Clause's application to the civil jury.

STATEMENT

1. Statutory History

In 1972, Congress enacted the Coastal Zone Management Act "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." 16 U.S.C. § 1452(1). The statute encouraged States to manage their coasts through federally approved programs. *Id.* § 1452(2).

In response, in 1978, Louisiana enacted the State and Local Coastal Resources Management Act of 1978 ("SLCRMA"), La. Stat. Ann. §§ 49:214.21-49:214:42. SLCRMA established a permitting program for anyone wishing to start a "use" in Louisiana's coastal zone. *Id.* § 49:214.30(A)(1). Under SLCRMA, a "use" is an activity with "a direct and significant impact on coastal waters." *Id.* § 49:214.23(13). SLCRMA provides that Louisiana courts may impose civil liability

and damages and order other restorative measures for "uses conducted within the coastal zone without a coastal use permit . . . or which are not in accordance with the terms and conditions of a coastal use permit." *Id.* § 49:214.36(E).[2] But SLCRMA contains numerous exemptions and exceptions, including a grandfather clause that allows "uses legally commenced or established prior to the effective date of the coastal use permit program" without requiring "a coastal use permit." *Id.* § 49:214.34(C)(2). SLCRMA took effect in 1980.

2. Factual And Procedural History

This petition involves a denial of a motion to change venue from a small parish in southwest Louisiana where the entire community (and thus every member of the jury pool) has an interest in the outcome of this litigation. An eight-week trial is set to begin on November 27, 2023.

Over the past several years, prospective jurors have been told that they will determine the very existence of their Parish. This lawsuit asks members of the jury venire to conclude that coastal land loss creates an existential threat to Cameron Parish and that they can shift responsibility for this threat to oil and gas companies that operated in the Parish over many decades.

Cameron Parish—with more than 80% of its area constituting coastal marshland—is particularly at risk to coastal land loss and has suffered drastic loss from severe storms. Three devastating hurricanes—Rita in 2005, Ike in 2008, and Laura in 2020—have caused "mind-numbing losses" to the Parish and its

---

[2] SLCRMA also allows for criminal penalties. *See* La. Stat. Ann. § 49:214.36(F). To date, the Parish has not pursued those remedies.

people.[3] The State's 2017 Master Plan reported that Cameron Parish may continue to lose up to 40% of its land area over the next 50 years.[4] Parish leaders and residents understandably are concerned.[5]

In recent years, those major storms also dramatically affected the Parish population. *See Toerner v. Cameron Par. Police Jury*, 2011 WL 3584786, at *3 (W.D. La. Aug. 15, 2011) ("Since 2003, . . . Cameron Parish has experienced a significant demographic shift, due in large part to Hurricanes Rita and Ike."). Between 2000 and 2021, residents left Cameron Parish en masse—the Parish lost nearly half of its already small population, dropping from 9,991 to 5,080

---

[3] Cyndi Sellers, *America's Energy Coast Said To Be Under Threat*, Cameron Par. Pilot, June 11, 2019 (Stay Appl. Ex. 25); *see also* Rob Masson, *Cameron Parish Residents Ponder The Future of Hurricane Laura's "War Zone,"* Fox8Live.com (Sept. 2, 2020) ("There isn't much between the Gulf of Mexico and Cameron[,] Louisiana to take away the power of a category 4 hurricane and the devastation from Laura is overwhelming.") (Stay Appl. Ex. 26), https://www.fox8live.com/2020/09/02/cameron-residents-ponder-future-lauras-war-zone/.

[4] *See* Coastal Prot. & Restoration Auth., *2017 Coastal Master Plan – Attachment A9: Parish Fact Sheets* at 11 (Sept. 2017) (Stay Appl. Ex. 5), http://coastal.la.gov/wp-content/uploads/2017/04/Attachment-A9_FINAL_10.02.2017.pdf.

[5] *See* Steve Hardy, *How This Louisiana Parish Is Leveraging New-found Funds To Finance Coastal Protection*, Advocate (July 6, 2018) (Former Parish Administrator Bourriaque has warned prospective jurors in grave terms that, "[w]ith no projects constructed and with 300 linear feet of erosion a year, in 10 years the Gulf of Mexico would be at the Grand Chenier Ridge south of Highway 82. I say this not to cause pandemonium. Rather, this is an attempt for us to wake up and realize what is happening around us.") (Stay Appl. Ex. 4), https://www.theadvocate.com/baton_rouge/news/environment/how-this-louisiana-parish-is-leveraging-new-found-funds-to-finance-coastal-protection/article_80fba19c-7ee1-11e8-b475-ff4947aa66a1.html.

residents.[6] The State and the Parish attribute this dramatic population drop to adverse storm impacts. Media reports echo the belief that the Parish is losing residents because of land loss and storm damage.[7]

---

[6] *See* U.S. Census Bureau, *QuickFacts Cameron Parish, Louisiana; United States – Population Estimates* (July 1, 2021), https://www.census.gov/quickfacts/fact/table/cameronparishlouisiana,US/PST045221; Mike Smith, *Hurricane-hit Southwest Louisiana's Population Drop Among Steepest In Nation*, Advocate (Mar. 25, 2022) ("Cameron, meanwhile, continued a precipitous decline that began in the years after 2005's Hurricane Rita. The new figures show the population for the remote, coastal parish south of Calcasieu and bordering Texas down another 9.6% to 5,080. The 2020 decennial census showed an 18% decline from 2010.") (Stay Appl. Ex. 6), https://www.theadvocate.com/lake_charles/hurricane-hit-southwest-louisiana-s-population-drop-among-steepest-in-nation/article_44d67698-abb4-11ec-9763-a70b7b6adfc4.html.

[7] *See* Nomaan Merchant, *Hurricane Rita Flooded His Home in 2005. It Survived Ike in 2008. Laura Took Everything*, USA Today (Aug. 31, 2020) (explaining that damage from Laura reminded many residents of Rita, saying: "I don't know how many times you can restart from scratch.") (Stay Appl. Ex. 7), https://www.usatoday.com/story/news/nation/2020/08/31/hurricane-laura-damage-includes-cameron-parish-louisiana-homes/5678941002/; Claire Taylor, *We Went To Cameron To See Laura's Damage: 10 Feet of Water Crushed Homes and Washed-Up Caskets*, Acadiana Advocate (Aug. 31, 2020) ("About 1,965 people called Cameron home in 2000, according to the census. Ten years and two hurricanes later, the 2010 census showed only 406 residents remained in the parish seat.") (Stay Appl. Ex. 8), https://www.theadvocate.com/acadiana/news/we-went-to-cameron-to-see-lauras-damage-10-feet-of-water-crushed-homes-and/article_5bec7246-ebc7-11ea-a0b7-77caf120fdda.html; Erika Ferrando, '*Rita & Ike Had Nothing On This — Nothing'; Catastrophic Damage in Cameron Parish; Residents Prepare to Rebuild Again*, WWLTV.com (Sept. 3, 2020) ("I'm afraid a lot of people are going to leave and I don't blame them.") (Stay Appl. Ex. 9), https://www.wwltv.com/article/weather/hurricane/catastrophic-damage-in-cameron-parish-residents-prepare-to-rebuild-again/289-a24253

Against the backdrop of these concerns, Cameron Parish sued 18 oil and gas companies under SLCRMA's civil-enforcement provision, challenging operations spanning nearly 100 years in an area that covers more than 11,000 acres that purportedly violated coastal use permits for oil and gas operations. The Parish alleged that the violations caused land loss in Cameron Parish.

Governor John Bel Edwards directed the State's Department of Natural Resources to intervene as a co-plaintiff. The Governor described these lawsuits as a solution to the dual problems of land loss and the need for funding for coastal restoration: "Before we can ever have any hope of asking taxpayers around the country to come to Louisiana and help us restore our coast, we have to be able to show them that we did everything that we could" to address land loss.[8] Similarly, the *Cameron Parish Pilot*, the local newspaper, has reported that, "[w]ith Cameron Parish pursuing the claims, every dollar goes to the [P]arish for coastal restoration."[9] In May 2020, the Parish told the State Legislature: "We're about to come to a monumental time where these cases are coming to an end and

---

ea-2555-46ce-b832-abc931e025a5; Ashley Cusick, *Residents Get First Look at Cameron, La., Nearly Obliterated in Hurricane Laura*, Wash. Post (Aug. 30, 2020) ("This is our third time with this. I don't know about coming back.") (Stay Appl. Ex. 10), https://www.washingtonpost.com/national/hurricane-laura-cameron-damage/2020/08/30/c7c81cea-eafa-11ea-ab4e-581edb849379_story.html.

[8] Tegan Wendland, *To Fight Coastal Damage, Louisiana Parishes Pushed To Sue Energy Industry*, KUNC.org (Jan. 23, 2017) (Stay Appl. Ex. 11), https://www.kunc.org/2017-01-23/to-fight-coastal-damage-louisiana-parishes-pushed-to-sue-energy-industry.

[9] Cyndi Sellers, "*Time for Cameron Parish To control Its Own destiny*," Cameron Par. Pilot, Feb. 18, 2016 (Stay Appl. Ex. 12).

bringing hundreds and billions of dollars to the [S]tate and thousands and thousands of jobs and local contractors get preference."[10] The *Cameron Parish Pilot* reported that a global settlement in this and other land-loss cases brought by the Parish "could go a long way toward the [S]tate's master plan for the coast, projected to cost $50 billion over 50 years."[11] Additional reports claim that the potential awards in these cases are "likely to result in new jobs or infrastructure improvements, such as flood protection, 'without making Louisiana taxpayers pay for damages they did not cause.'"[12]

For Parish officials, this lawsuit's trial is the answer to these concerns—what the Parish has referred to as "judgment day."[13] Any money awarded to Cameron Parish here may be used for coastal protection and restoration of property throughout the Parish.[14]

---

[10] Tr. of Louisiana Senate Nat. Res. Comm. Hr'g 62:18-23 (May 7, 2020) ("Hr'g Tr.") (App. 9a). The Parish testified before the Legislature through its counsel, John Carmouche.

[11] John Maginnis, *Local lawsuits are more to Gov. Jindal's liking*, Cameron Par. Pilot, Nov. 21, 2013 (Stay Appl. Ex. 14).

[12] Mark Schleifstein, *Bellwether Plaquemines Lawsuit Against Oil, Gas Companies Again Returned To State Court*, NOLA.com (Dec. 13, 2022) (Stay Appl. Ex. 15), https://www.nola.com/news/environment/plaquemines-oil-gas-damage-suit-again-back-in-state-court/article_52fb1154-7a6a-11ed-b902-b3f5510f3b33.html.

[13] Hr'g Tr. 56:3 (App. 8a).

[14] *See* La. Stat. Ann. § 49:214.36(J)(1)(b) ('These funds [collected by the State under the provisions of this Section] shall be used only for projects consistent with Paragraph (O)(2) of this Section within or for the benefit of areas within the geographic borders of that parish."); *id.* § 49:214.36(O)(2) ("Any monies received by any state or local governmental entity arising from or related to a state or federal permit . . . shall be used for integrated coastal protection, including coastal restoration,

Cameron Parish risks losing 40% of its land over the next 50 years—not just in the area where petitioners conducted business. Every potential juror in Cameron Parish has an interest in the outcome of the Parish's claims.

Petitioners moved for a change of venue in the trial court, arguing that they will not be able to receive a fair trial in Cameron Parish because the potential jurors have a pecuniary interest in the outcome of the case and thus would be incapable of the impartiality required of a juror. The trial court denied that motion, concluding that, under the Due Process Clause, petitioners "ha[d] not shown that they . . . [could not] obtain a fair and impartial trial because of the undue influence of an adverse party, prejudice existing in the public mind, or some other sufficient cause." App. 4a. The trial court concluded that voir dire could empanel an impartial jury.

Petitioners filed a supervisory writ with the Louisiana Court of Appeal for the Third Circuit, again arguing that holding trial in Cameron Parish would violate their due-process rights. The intermediate appellate court denied petitioners' writ with no analysis and affirmed the trial court. App. 6a.

Petitioners then sought a supervisory writ with the Louisiana Supreme Court, reiterating that trial in Cameron Parish, where every juror has an interest in the outcome, violates due process. The Louisiana Supreme Court denied petitioners' writ with no analysis. App. 7a.

Petitioners have moved the district court in Cameron Parish for a continuance of trial until March

---

hurricane protection, and improving the resiliency of the coastal area.").

2024. That motion is pending. Concurrently with this petition, petitioners filed an application to stay the commencement of trial pending disposition of this petition.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition for at least three reasons. *First*, the lower court's decision cannot be squared with decades of this Court's precedent regarding the Due Process Clause's requirement that a decisionmaker must be impartial. *Second*, the lower court's decision lies in the minority view among supreme courts of other States. *Third*, this case presents an important question of constitutional law.

I. THE STATE COURT'S DECISION THAT DUE PROCESS DOES NOT REQUIRE A TRANSFER OF VENUE WHEN THERE IS A RISK OF BIAS IN THE ENTIRE JURY POOL CONFLICTS WITH THIS COURT'S DUE-PROCESS PRECEDENT

A. This Court Long Has Held That A Decisionmaker Cannot Have A Pecuniary Interest In The Outcome Of The Case They Are Deciding

1. "[A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." *Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. 145, 150 (1968). This Court has made clear in multiple contexts that a judge cannot be impartial if he has a financial stake in the outcome of a case. The same principle applies to a civil jury as decisionmaker.

In one of the earliest cases involving a due-process challenge to a judge's failure to disqualify himself, the petitioner challenged an Ohio law that financially

rewarded judges for convicting defendants of violations of the Prohibition laws. *See Tumey v. Ohio*, 273 U.S. 510 (1927). The Court concluded that "it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." *Id.* at 523. The Court reviewed the history of impartial judges at common law in England, noting "[t]here was at the common law the greatest sensitiveness over the existence of any pecuniary interest however small or infinitesimal in the justices of the peace." *Id.* at 525. Thus, the Court concluded, "[t]here was then no usage at common law by which justices of the peace or inferior judicial officers were paid fees on condition that they convicted the defendants, and such a practice certainly cannot find support as due process of law in English precedent." *Id.* at 526.

Similarly, in *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), the Court held that it violated due process for a state supreme court justice to participate in the review of a verdict for bad-faith refusal to pay an insurance claim because the justice was at that time the plaintiff in his own bad-faith case, and the legal principles established by the state supreme court had a direct impact on the justice's own case. *Id.* at 825. The Court explained that it was "not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama would offer a possible temptation to the average . . . judge to . . . lead him to not . . . hold the balance nice, clear and true." *Id.*

(third ellipsis added; internal quotation marks omitted).

And in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the Court noted that, in the context of judicial bias, "the Due Process Clause has been implemented by objective standards that do not require proof of actual bias." *Id.* at 883. Thus, the Court "has asked whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Id.* at 883-84 (internal quotation marks omitted). The Court concluded that there was "a serious risk of actual bias . . . when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.* at 884.

In *Tumey*, *Aetna*, and *Caperton*, this Court held that a judge's financial interest in the outcome of a case violates the Due Process Clause. This Court's precedent is clear that the Due Process Clause's guarantee of an impartial decisionmaker applies to *all* decisionmakers—not just judges, criminal juries, or the other areas where this Court has previously addressed the contours of the right. *See*, *e.g.*, *Commonwealth Coatings*, 393 U.S. at 150. There is no logical basis under the Constitution (and the Louisiana courts offered none) for treating a civil jury differently.

2. The decision below conflicts with that long line of precedent. The state court below held that petitioners "have not shown that they . . . cannot obtain a fair and impartial trial because of the undue influence of an adverse party, prejudice existing in the public mind,

or some other sufficient cause." App. 4a. That conclusion conflicts with decades of this Court's precedent requiring a disinterested fact-finder. Given the nature of the Parish's claims, the entire population of Cameron Parish—and thus the entire venire—has a personal and financial interest in a verdict for the Parish.

Cameron Parish residents have been told by the media, public officials, and the Parish's lawyers that coastal land loss—and this lawsuit seeking to remediate it—is the "great[est] issue" facing Cameron Parish.[15] This lawsuit strikes at the heart of residents' concerns that their property and community will be adversely affected by petitioners' alleged conduct, and the Parish has invited these residents—as prospective jurors in this case—to exercise self-help. For example, the Parish has stated: "With Cameron Parish pursuing the claims, every dollar goes to the parish for coastal restoration."[16] Here, where it is suggested that any potential recovery in this lawsuit will be used

---

[15] *SWLA and SETX To Work Together on Chenier Plain*, Cameron Par. Pilot, Dec. 2, 2014 (noting that "Cameron Parish has more wetland acres than any Gulf Coast state, county or parish and the second highest rate of net wetland decrease") (Stay Appl. Ex. 18); *see* Shannon Sims, *Climate Change Will Likely Wreck Their Livelihoods—But They Still Don't Buy The Science*, Guardian (Aug. 28, 2017) (quoting a Cameron Parish resident as saying the state mapping agency indicates his home will be submerged within 50 years because of land loss) (Stay Appl. Ex. 19), https://www.theguardian.com/us-news/2017/aug/18/louisiana-climate-change-skeptics-donald-trump-support; Theresa Schmidt, *Grasses Are Planted To Stop Erosion*, Cameron Par. Pilot, May 16, 2010 (quoting Cameron Parish teenager: "I'm excited because this means our homes aren't going to get eaten in 50 years, so there'll still be a Cameron Parish.") (Stay Appl. Ex. 20).

[16] Cyndi Sellers, "*Time for Cameron Parish To Control Its Own Destiny*," Cameron Par. Pilot, Feb. 18, 2016 (Stay Appl. Ex. 12).

to combat land loss—an issue central to Cameron Parish residents—all Parish residents have an interest in the outcome of this lawsuit.

Prospective jurors in Cameron Parish understand that a verdict for the Parish will benefit them financially and personally—and that a verdict for the defense will hurt them financially and personally. They have been told as much for years. For example, the Parish has said that, without the lawsuits, coastal residents will be forced to shoulder the costs of restoration through higher taxes—indeed, the Parish's counsel stated that "[t]he taxpayers of Louisiana . . . [are] not going to have to pay to restore the coast of Louisiana . . . . Big Oil, which damaged the coast, will have to pay."[17] Cameron Parish residents, who have seen their homes destroyed and friends and neighbors leave en masse, believe that the end of this lawsuit will be "judgment day"—the opportunity to save their homes from further destruction.[18] The confluence of these factors—the financial interest in rendering a verdict for the Parish, the personal interest in maintaining the Parish's land, the way that this lawsuit has been framed as "judgment day," and the small number of potential jurors—makes Cameron Parish a biased venue that the Due Process Clause forbids. *See Caperton*, 556 U.S. at 883.

---

[17] Tyler Bridges, *'We Ran Out of Time': Bill To Nullify Louisiana Parish Lawsuits vs. Oil and Gas Companies Is Dead*, Advocate (May 29, 2020) (quoting the Parish's counsel John Carmouche) (Stay Appl. Ex. 21), https://www.theadvocate.com/baton_rouge/news/environment/we-ran-out-of-time-bill-to-nullify-louisiana-parish-lawsuits-vs-oil-and-gas/article_994e1e00-a13a-11ea-b3b3-c7f7bd15897a.html.

[18] Hr'g Tr. 56:3 (App. 8a).

The drop in Cameron Parish's population exacerbates concerns about the ability of the Parish to receive funding for coastal restoration—the neighbors of prospective jurors are moving out of the parish because of concerns over coastal erosion. Thus, the ability of the remaining residents to assess the allegations dispassionately is compromised. Indeed, given Cameron Parish's small population, each resident bears a much larger share of the overall cost of storm protection and resiliency costs than do residents in other parishes. Residents have echoed the sentiment: "Once again it seems that with less people living in the parish, it is required for some reason they all pay more."[19] Acknowledging these frustrations, the Parish has told residents that these lawsuits provide the funding needed for coastal restoration.[20]

Relatedly, if a Cameron Parish jury awards the $7 billion that the Parish is seeking, then many Parish residents have been told and likely are to believe that they will receive significant financial benefits. The Parish publicly stated that it expects judgments in this and similar cases to bring "hundreds and billions of dollars to the [S]tate and thousands and thousands of jobs [for which] local contractors get preference."[21] Parish residents thus have a financial interest in both

---

[19] Coot McInnis, *Letter To The Editor*, Cameron Par. Pilot (July 7, 2011) (Stay Appl. Ex. 22).

[20] *See* Cyndi Sellers, "*Time for Cameron Parish To Control Its Own Destiny*," Cameron Par. Pilot, Feb. 18, 2016 (Stay Appl. Ex. 12); *cf.* La. Stat. Ann. § 49:214.36(O)(2) ("Any monies received by any state or local governmental entity arising from or related to a state or federal permit . . . shall be used for integrated coastal protection, including coastal restoration, hurricane protection, and improving the resiliency of the coastal area.").

[21] Hr'g Tr. 62:18-23 (App. 9a).

offsetting the costs of land loss and ensuring a massive influx of money into the Cameron Parish economy.

Not every Cameron Parish resident has to gain financially or otherwise from a verdict in this case for the Constitution to be implicated. The question is instead "whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Caperton*, 556 U.S. at 883-84 (internal quotation marks omitted). That is certainly the case here. This lawsuit is tied to the palpable concerns of Cameron Parish residents—that, without new funding, either coastal restoration projects will not be completed or the few remaining residents will be forced to shoulder the cost of restoration through higher taxes. In these circumstances, there is a serious risk that Cameron Parish residents will be unable to sit with the required indifference given that they have an interest in seeking to fund coastal restoration through these lawsuits.

B. The Decision Below Is In Tension With This Court's Precedent Requiring Transfer Where Publicity Has Tainted Criminal Juries

1. This Court also consistently has held that transfer of venue is constitutionally required when "the jury ha[s] been infected by community prejudice before the trial ha[s] commenced." *Groppi v. Wisconsin*, 400 U.S. 505, 508-09 (1971) (citing *Irvin v. Dowd*, 366 U.S. 717 (1961)). Although these cases involved juries in criminal cases, there is no principled basis for treating civil juries differently in this respect. The Due Process Clause prohibits a State from depriving "any person of life, liberty, or property, without due

process of law." U.S. Const. amend. XIV, § 1. Publicity—from the media, public officials, and the Parish's own lawyers—has been widespread and inflammatory since before the complaint was even filed in this case. The jury pool—consisting of fewer than 4,000 Cameron Parish residents—has been affected in a way that the Constitution does not allow.

This Court's many analogous decisions show how the state court erred. For example, in *Rideau v. Louisiana*, 373 U.S. 723 (1963), the defendant charged with bank robbery and murder was interviewed by the sheriff in the parish in which the robbery occurred. *Id.* at 724. In the "interview," Rideau was "in jail, flanked by the sheriff and two state troopers, admitting in detail to the commission of the robbery, kidnapping, and murder, in response to leading questions by the sheriff." *Id.* at 725. That "interview" was broadcast over a television station that same day, and it was viewed by "some 24,000 people." *Id.* at 724. It was shown again the next day "to an estimated audience of 53,000 people." *Id.* A day later, nearly 20,000 people viewed the segment. *Id.* The parish had a population of around 150,000 people. *Id.* Rideau moved for a change in venue, which the trial court denied, and he was convicted and sentenced to death. *Id.* at 724-25. This Court vacated Rideau's conviction, concluding "that it was a denial of due process of law to refuse the request for a change of venue, after the people of Calcasieu Parish had been exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged." *Id.* at 726. The Court noted that "[a]ny subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality." *Id.*

The Court has emphasized that "[*Rideau*'s] message echoes more than 200 years of human experience in the endless quest for the fair administration of . . . justice." *Groppi*, 400 U.S. at 511. Similarly, in *Sheppard v. Maxwell*, 384 U.S. 333 (1966), there were "five volumes filled with similar clippings from each of the three Cleveland newspapers" editorializing about the defendant and the crime. *Id.* at 340-42. Sheppard moved to change venue, which the trial court deferred until after voir dire. *Id.* at 354 n.8, 355. After trial, Sheppard petitioned for habeas corpus, contending that he did not receive a fair trial. The trial court denied Sheppard's habeas petition, and the court of appeals affirmed. This Court reversed, concluding that, "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity." *Id.* at 363.

2. As in *Rideau* and *Sheppard*, Cameron Parish residents—the potential jurors—"ha[ve] been exposed repeatedly and in depth" to this lawsuit. *Rideau*, 373 U.S. at 726. Indeed, in the proceedings below, petitioners submitted thousands of pages of news articles, book chapters, and other media that highlighted the pervasiveness of the publicity on the issue of coastal erosion—and on how this lawsuit could help mitigate the costs of remedying it.

Cameron Parish residents have a shared experience. They have seen their homes decimated by catastrophic natural disasters. They also know that the damage will keep coming unless something is done about it. But that something comes with an enormous price tag. This lawsuit has been touted as a solution to this problem—a way to offset the enormous costs

of restoring the Louisiana coastline. And publicity spanning many years has highlighted those costs for Parish residents.

The ruling below that an impartial jury could be empaneled in Cameron Parish despite coverage amplifying the community's concerns cannot be reconciled with this Court's precedent. The voir dire process is no cure. At best, it would determine only whether potential jurors hold a subjective belief reflecting the objective bias that already inheres in the extraordinary circumstances presented in this case.

In short, every potential juror in Cameron Parish stands to benefit from rendering a verdict for their Parish. And for the past decade, they have been told as much by their community leaders and state and local media sources. The Constitution does not allow a decisionmaker to have an interest in the outcome of the case she is deciding. Nor does the Constitution allow a trial in a venue where pretrial publicity amplifies community bias. This case is a combination of both. The decision below conflicts with one line of precedent from this Court and is in tension with another. Thus, the case presents an ideal vehicle for this Court to define the contours of the due-process right to an impartial decisionmaker as it applies to a pre-voir dire challenge to the venire in a civil trial. Regardless of what potential jurors may say during voir dire examination, the combination of pecuniary interest and pretrial publicity make Cameron Parish a venue biased in a way the Constitution forbids. As this Court long has held, due process forbids a trial where objective facts show "the probability of actual bias on the part of the . . . decisionmaker is too high to be constitutionally tolerable." *Caperton*, 556 U.S. at 872 (citation omitted). That is the case here.

II. STATE COURTS REACH DIFFERENT OUTCOMES IN DETERMINING WHEN JURY VENIRE BIAS REQUIRES A TRANSFER OF TRIAL

The decision below arises in the context of a conflict among the highest courts of several other States. On one side of the conflict are the state supreme courts of Mississippi, Alabama, and Minnesota, all of which have held that a trial court should transfer venue where the jury pool likely has an interest in the outcome of a case and thus is predisposed to render a verdict for one side. On the other side are courts in Nevada and Pennsylvania. The decision below lies among the minority view of courts in holding that there are no due-process concerns in empaneling a jury in a civil case where potential jurors are prejudiced against one party. This Court should grant certiorari to resolve that conflict.

A. Multiple State Courts Of Last Resort Disagree With The Louisiana Court

Contrary to the decision below, many courts have recognized the need to change venue to secure a neutral forum. The Mississippi Supreme Court has held the same on materially similar facts. In *Beech v. Leaf River Forest Products, Inc.*, 691 So. 2d 446 (Miss. 1997), a toxic tort case concerning dioxin, more than a tenth of the potential jurors were plaintiffs in similar lawsuits against the defendant or were potential plaintiffs in a class action against the same defendant. *Id.* at 450. There also were "over three hundred news articles printed on the dioxin cases in local newspapers between November of 1989 and February of 1993." *Id.* The Mississippi Supreme Court affirmed the trial court's order to transfer venue because "the excessive pre-trial publicity and large number of

potential jurors involved in similar litigation would prevent the defendants from receiving a fair trial in George County." *Id.* The Mississippi Supreme Court has recognized that this principle is grounded in federal due process. *See Janssen Pharmaceutica, Inc. v. Bailey*, 878 So. 2d 31, 49-50 (Miss. 2004) (citing *Irvin*, 366 U.S. at 722).

In *Ex parte Monsanto Co.*, the Supreme Court of Alabama considered whether a change of venue was warranted because the plaintiffs claimed that Monsanto had dispersed toxic chemicals into the county's "air, soil, surface, and groundwater." 794 So. 2d 350, 352 (Ala. 2001). Monsanto argued it could not receive a fair trial in the county because the plaintiffs' claims invited "any member of the jury [to] see himself or herself as a potential plaintiff." *Id.* at 354. The Alabama Supreme Court agreed, expressing concern that "Calhoun County citizens, while serving as jurors, could come to consider themselves to be in harm's way because of the alleged wrongdoing by Monsanto." *Id.* at 355. The trial court then granted a motion to change venue, which the Alabama Supreme Court affirmed. *Ex parte Monsanto Co.*, 862 So. 2d 595, 600 (Ala. 2003).

The Supreme Court of Minnesota, too, has held that local prejudices and pecuniary interest in the outcome require transfer because the risk of bias in the jury is too high to comport with due process. In *Berry v. North Pine Electric Cooperative, Inc.*, the court concluded that the trial could not be held in Pine County (where the accident from a power line occurred and the defendant co-op was headquartered). 50 N.W.2d 117, 122 (Minn. 1951) (per curiam). The court explained that the co-op had "approximately 1,300 stockholders who are residents of Pine [C]ounty" and

that, "of the petit jurors serving" in the county, "a large percentage were members and customers of defendant corporation." *Id.* "All of them would without doubt be conscious of the fact that a large verdict in the litigation might affect their rates for power furnished by defendant." *Id.* at 123. Transferring venue therefore was warranted because there was a "strong possibility that a fair trial might not be had in Pine [C]ounty." *Id.*; *cf. Castle v. Village of Baudette*, 125 N.W.2d 416, 419 (Minn. 1963) (holding that it would be "impossible [for plaintiff] to obtain a fair and impartial trial of his case in Lake of the Woods County because of local prejudices, feelings, and opinions").

The Appellate Division of the Supreme Court of New York similarly has held that venue transfer was necessary because the jury would see themselves as "in the same position as plaintiffs." *Althiser v. Richmondville Creamery Co.*, 215 N.Y.S.2d 122, 124 (App. Div. 3d Dep't 1961) (internal quotation marks omitted). In a case brought by dairy farmers against milk purchasers, the court noted that "the members of such other producers' families[] constitute a not inconsiderable part of the adult population of the small rural county in which the venue was laid and for which the jury list is of but 1,500 names." *Id.* (internal quotation marks omitted). A New York trial court granted a motion to transfer trial to a different venue under facts similar to the ones here. The court held that, "even if rebates will not or cannot be made to plaintiff's customers, jurors will assume that such might occur or that future rights might be affected by reduced fuel costs or increased funds available to Lilco [the plaintiff utility]. To even examine jurors concerning such an assumption on Voir dire would raise the

danger of unduly emphasizing prejudicial material." *Long Island Lighting Co. v. New England Petroleum Corp.*, 362 N.Y.S.2d 350, 355 (Sup. Ct., Queens Cnty., 1974).

These cases recognize that, when there is a risk of bias in the entire jury pool, due process requires transfer. The decision below conflicts with these decisions from other jurisdictions in multiple ways. First, the record shows that Parish residents view themselves as having a pecuniary interest in the outcome. Second, the record shows that Parish residents see themselves as in harm's way. And, finally, the record shows that pervasive pretrial publicity has *highlighted* these issues to every member of the venire.

No one disputes this, but the Parish and the courts below believe that voir dire could be sufficient to address any potential bias. Due process, however, requires a fair and impartial decisionmaker. No subjective response to voir dire questions can cloak the objective appearance of bias inherent in every venire member benefiting from a decision for the Parish. Petitioners cannot get a fair and impartial jury when every potential juror is biased in favor of the Parish.

B. Other Courts Permit A Tainted Jury Without Requiring Transfer

Other state courts have rendered rulings that are in accord with the erroneous decision of the Louisiana courts below. The Supreme Court of Nevada has held that due process does not require transfer of venue even when inflammatory articles are published about the defendant in a case. *See NCAA v. Tarkanian*, 939 P.2d 1049, 1051 (Nev. 1997). In *Tarkanian*, the NCAA moved for a change of venue before voir dire, arguing that it could not receive a fair trial in Clark County

because of "inflammatory and extensive" pretrial publicity that "created widespread community bias against the NCAA." *Id.* The NCAA pointed to 1,228 news articles and a poll by a public opinion expert that showed "bias in favor of Tarkanian and against the NCAA." *Id.* The record showed that "most people in Las Vegas want[ed] Mr. Tarkanian to win th[e] lawsuit, and almost three out of four believe[d] that the NCAA ha[d] done great damage to their university, UNLV." *Id.* at 1053 (Springer, J., dissenting). The trial court denied the NCAA's motion to change the venue, and the Supreme Court of Nevada affirmed. *Id.* at 1052 (majority). The dissenting justice would have reversed the district court because due process does not allow a trial where there is "an *appearance* of injustice." *Id.* at 1053 (Springer, J., dissenting) (citing *In re Murchison*, 349 U.S. 133 (1955)). Ultimately, the Supreme Court of Nevada determined that the evidence of community bias, shown through and amplified by pervasive media coverage of the NCAA's treatment of Tarkanian, did not mandate a change of venue.

A court in Pennsylvania, too, has held that due process does not require a change of venue where a large percentage of the jury pool has a financial interest in the outcome of a case. *See Pennsylvania Power & Light Co. v. Gulf Oil Corp.*, 411 A.2d 1203 (Pa. Super. Ct. 1979). There, the defendant put forth evidence that 98.5% of the residents of the county—and thus 98.5% of the potential jurors—were customers of the plaintiff power company. *Id.* at 1208. The defendant also showed that a verdict in favor of the power company would result in a benefit to all customers, either in the form of a cash payment (if the damages were redistributed to shareholders) or in reduced power

payments. *Id.* at 1208-09 & n.9. The defendant argued that a trial in front of jurors who stood to gain financially from a verdict violated due process, *id.* at 1207-08, and moved to transfer venue, *id.* at 1207. The trial court denied the venue change. *Id.* at 1207 n.6. The Pennsylvania Superior Court affirmed the denial of transfer. *Id.* at 1218. Although the court recognized that due process requires an impartial decisionmaker, it held that due process does not require transfer when "the only interest shown is a speculative and perhaps insignificant possibility of some future benefit." *Id.*

In sum, the holding below that petitioners "have not shown that they . . . cannot obtain a fair and impartial trial because of the undue influence of an adverse party, prejudice existing in the public mind, or some other sufficient cause," App. 4a, takes sides on an issue that divides the high courts of several States. The Court should grant review to confirm that due process requires a change of venue in this and similar civil jury trial cases.

III. THE STATE COURT'S DECISION THAT DUE PROCESS DOES NOT REQUIRE A TRANSFER OF VENUE WHEN THERE IS A RISK OF BIAS IN THE ENTIRE JURY POOL IS AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW THAT WARRANTS THIS COURT'S REVIEW

The question presented by this case holds profound legal importance. This case involves the due-process rights of defendants in civil cases—rights recognized since the Founding. The decision below contradicts the history of the civil jury and reaches a plainly unjust result. The Court has not defined the scope of a civil defendant's due-process right to an impartial

jury. This case is a prime vehicle for the Court to decide the contours of that right.

A. History Confirms That A Biased Jury Pool Is Constitutionally Impermissible

The right to an impartial civil jury has been recognized since the Founding. Blackstone stated that the civil jury was "co-eval with the first civil government." 3 Williams Blackstone, *Commentaries* *349. In explaining the need for "a fair, impartial, and satisfactory trial," Blackstone noted: "A jury coming from the neighborhood . . . is often liable to strong objections[,] especially in small jurisdictions . . . or where the question in dispute has extensive local tendency . . . . It is true that if a whole county is interested in the question to be tried, the trial by the rule of law must be in some adjoining county." *Id.* at *383-84 (footnote omitted).

At common law, English courts regularly adhered to this principle. In 1705, the Queen's Bench, in ordering a change of venue, explained that "this matter concerning the whole county, suggestion may be of any other county's being next adjacent, and *the venue* shall come from thence for the necessity of an indifferent trial." *Queen v. County of Wilts* (1705) 87 Eng. Rep. 1046, 1047 (KB). The courts in England applied this principle throughout the eighteenth century. In 1762, Lord Mansfield noted that, "[n]otwithstanding the locality of some sorts of actions, . . . if the matter can not be tried at all, or can not be fairly and impartially tried in the proper county, it shall be tried in the next adjoining county." *Rex v. Harris* (1762) 97 Eng. Rep. 858, 859 (KB). "A juror should be as white paper," Lord Mansfield remarked in 1764, "and know neither plaintiff nor defendant, but judge of the issue merely as an abstract proposition upon the evidence produced

before him." *Mylock v. Saladine* (1764) 96 Eng. Rep. 278, 278 (KB). Similarly, in *King v. County of Cumberland* (1795) 101 Eng. Rep. 507 (KB), Lord Kenyon stated that it would be an "anomalous case in the law of England" were the court not to have the power to order a change of venue where the "inhabitants of the county are interested" in the verdict. *Id.* at 507.

This practice continued in the early years of the Republic. The Massachusetts Supreme Judicial Court noted: "It is inconceivable that the people who had inherited the deeply cherished and hardly won principles of English liberty and who depleted their resources in a long and bloody war to maintain their rights of freemen, should have intended to deprive their courts of the power to secure to every citizen an impartial trial before an unprejudiced tribunal." *Crocker v. Justices of Super. Ct.*, 94 N.E. 369, 376 (Mass. 1911). Indeed, the court recognized that "[t]here can be no justice in a trial by jurors inflamed by passion, warped by prejudice, awed by violence, menaced by the virulence of public opinion or manifestly biased by any influences operating either openly or insidiously to such an extent as to poison the judgment and prevent the freedom of fair action. Justice cannot be assured in a trial where other considerations enter the minds of those who are to decide than the single desire to ascertain and declare the truth according to the law and the evidence." *Id.* at 376-77.

B. This Court Should Grant Certiorari To Clarify A Key Contour Of Due Process For Civil Juries

Over the past century, the Court has decided many cases clarifying the scope of the due-process right to an impartial decisionmaker in the context of judges, administrative bodies, and criminal juries. As

described above, there is a wealth of precedent from this Court describing when due process requires that judges recuse themselves when they have an interest in the outcome of a case. *See supra* Part I.A. This Court's precedent also shows that, when extensive pretrial publicity taints the jury pool in a criminal case, transfer is constitutionally required. *See supra* Part I.B. But despite the civil jury's important role in our constitutional history, the Court has not yet addressed the contours of the due-process right to an impartial decisionmaker as that right applies to the civil jury.

In addition to the contexts described above, the Court has decided many cases challenging the partiality of administrative bodies under the Due Process Clause. In *Withrow v. Larkin*, 421 U.S. 35 (1975), for example, the Court considered whether it violated due process "for the [medical licensing] board temporarily to suspend Dr. Larkin's license at its own contested hearing on charges evolving from its own investigation." *Id.* at 46. The Court rejected that claim, although it recognized that "a fair trial in a fair tribunal is a basic requirement of due process." *Id.* (internal quotation marks omitted). Ultimately, the Court concluded that "[t]he combination of investigative and adjudicative functions does not, without more, constitute a due process violation." *Id.* at 58.

And in *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980), the Court considered whether the provision of the Fair Labor Standards Act of 1938 providing that money collected as civil penalties would be returned to the agency to recoup costs from investigating the alleged violation violated the Due Process Clause's guarantee of an impartial decisionmaker. The Court concluded

that the allegations of partiality—that the administrative law judge had an interest in the outcome because the agency would receive money from a favorable verdict—were too attenuated to violate the Due Process Clause. *Id.* at 250-51.

The cases cited in this petition are but a few examples of the many cases this Court has decided regarding the due-process right to have an impartial decisionmaker. Notably absent from these decisions, however, is one defining the right as it applies to civil juries. Because the right to an impartial jury in civil cases is so deeply rooted in our constitutional history, the Court should grant certiorari to put the right on a level playing field with that of the right to an impartial judge, an impartial administrative body, and an impartial jury in criminal cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GEORGE ARCENEAUX III
LISKOW & LEWIS
1200 Camellia Boulevard
Suite 300
Lafayette, LA 70508
(337) 232-7424

JAMES E. LAPEZE
LISKOW & LEWIS
701 Poydras Street
Suite 5000
New Orleans, LA 70139-5099
(504) 581-7979

NANCY G. MILBURN
JENNIFER R. KWAPISZ
ARNOLD & PORTER KAYE
SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8000

Counsel for Petitioner
BP America Production
Company

CRAIG ISENBERG
DAVID N. LUDER
KYLE W. SIEGEL
ALEXANDRA L. GJERTSON
BARRASSO USDIN KUPPERMAN
FREEMAN & SARVER, L.L.C.
909 Poydras Street
Suite 2350
New Orleans, LA 70112
(504) 589-9700

Counsel for Petitioner
Hilcorp Energy Company

DAVID C. FREDERICK
Counsel of Record
DANIEL S. SEVERSON
D. CHANSLOR GALLENSTEIN
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@kellogghansen.com)

R. KEITH JARRETT
MARK L. MCNAMARA
KELLY BRECHTEL BECKER
CHERRELL S. TAPLIN
LAURA SPRINGER BROWN
LISKOW & LEWIS
701 Poydras Street
Suite 5000
New Orleans, LA 70139
(504) 581-7979

AMY ALLUMS LEE
LISKOW & LEWIS
1200 Camellia Boulevard
Suite 300
Lafayette, LA 70508
(337) 232-7424

MICHAEL J. MAZZONE
HAYNES AND BOONE, LLP
1221 McKinney, Suite 4000
Houston, TX 77010
(713) 547-2115

Counsel for Petitioner
Shell Oil Company

October 17, 2023