23-6155

No. 23-_____

In The
Supreme Court of the United States

MAJOR MIKE WEBB, D/B/A FRIENDS FOR MIKE WEBB (C00591537), A/K/A MAJOR MIKE WEBB FOR CONGRESS (H8VA08167), A/K/A MAJOR MIKE FOR VA, A/K/A MIKE WEBB FOR APS BOARD,

Petitioner-Appellant,

v.

JAMES CHRISTIAN KIMMEL, AMERICAN BROADCAST COMPANY, INC., d/b/a JIMMY KIMMEL LIVE!, WJLA TV, a/k/a NEWS CHANNEL 8, SINCLAIR BROADCAST GROUP, WUSA9, a/k/a CHANNEL 9, ABC LEGAL SERVICES, and JANE AND JOHN DOES,

Respondents-Appellee.

***Webb v. Kimmel, et al.*, No. 23-1580 (4th Cir. 2021), *on appeal Webb v. Kimmel, et al.*, 3:22-cv-00392-MHL (E.D. Va. 2020)**

Petition for Writ of Certiorari

MAJOR MIKE WEBB, *PRO SE*
Counsel of Record
1210 S. Glebe Road
#40391
Arlington, Virginia
(856) 220-1354
GiveFaithATry@gmail.com

PETITION FOR A WRIT OF CERTIORARI

Petitioner Major Mike Webb respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

QUESTIONS PRESENTED

I. **Whether a plaintiff is entitled under Fed.R.Civ.Pro. 55 to award of a default judgment after defendants have failed to provide an answer to a complaint within 21 days, as required under 12(a)(1)(A)(i).**

II. **Whether, for purposes of dismissal, under Fed.R.Civ.Pro. 12(b)(6), a civil remedy exists, under 18 U.S.C. § 1964(c), as a claim to which a plaintiff could expect a court of competent jurisdiction to award relief.**

III. **Whether, for purposes of a final order, treating in disparate treatment a litigant, *vis á vis* similarly situated others, it is a denial of equal protection under 42 U.S.C. § 1981, or, in the alternative, under the *Fifth Amendment*, to issue a nonprecedential order applying only to that case and litigant.**

PARTIES AND RULE 29.6 STATEMENT

Applicant-Appellant is MAJOR MIKE WEBB, d/b/a FRIENDS FOR MIKE WEBB (C00591537), a/k/a MAJOR MIKE WEBB FOR CONGRESS (H8VA08167), a/k/a MAJOR MIKE FOR VA, a/k/a MIKE WEBB FOR APS BOARD. Applicant/Appellee has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock.

Appellees include are various, but for the present application, in relevant part, include JAMES CHRISTIAN KIMMEL, hereinafter referred to as "Kimmel", AMERICAN BROADCAST COMPANY, INC., D/B/A JIMMY KIMMEL LIVE!, hereinafter referred to as "ABC TV", WJLA TV, a/k/a NEWS CHANNEL 8, hereinafter referred to as "WJLA", SINCLAIR BROADCAST GROUP, WUSA9, a/k/a CHANNEL

9, hereinafter referred to as "WUSA9", ABC LEGAL SERVICES, hereinafter referred to as "ABC Legal", and JANE AND JOHN DOES. Respondent-Appellants were Defendants in the United States District Court for the Eastern District of Virginia, Richmond Division, in an action commenced, pursuant to 18 U.S.C. § 1964(c), on May 23, 2022, for which an Amended Complaint, filed *sua sponte, see* Fed.R.Civ.Pro. 15, by Appellant on July 29, 2022, after the matter had languished, for the purpose of triggering notice under Fed.R.Civ.Pro. 5(d). Despite a grant of permission to proceed *in forma pauperis*, under 28 U.S.C. §1915, on October 24, 2022, and service of process perfected by the U.S. Marshals on all Appellees, Fed.R.Civ.Pro. 4(c)(3), Appellees WJLA, an ABC News affiliate, Sinclair and ABC Legal have, in contravention of Fed.R.Civ.Pro. 12(a)(2), have elected a *Fifth Amendment* right to remain silent regarding allegations raised under 18 U.S.C. §§ 1961 and 1962, predicate offenses arising from violations of state and federal law, having failed to even make an appearance in the matter, while all other remaining Appellees have only generally averred that pleadings were inscrutable as an affirmative defense, under Fed.R.Civ.Pro. 8 and 12, in direct contravention of the rule that "[t]o properly convict, the government must prove every element of each offense charged beyond a reasonable doubt". *U.S. v. Kimble*, 719 F.2d 1253 (5th Cir. 1983). Appellant is MICHAEL D. WEBB, A/K/A MAJOR MIKE WEBB, D/B/A FRIENDS FOR MIKE WEBB AND MAJOR MIKE WEBB FOR CONGRESS, hereinafter referred to as "Webb". Appellant was the Petitioner in the U.S. District Court for the Eastern District of Virginia and was the Appellant in the U.S. Court of Appeals for the Fourth Circuit. Appellant has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock.

DECISIONS BELOW

All decisions in this case in the lower courts are styled *Webb v. Kimmel, et al.*, commenced on May 23, 2022. From the Trial Court, docketed at Civil Action No. 3:22cv392, the following orders are attached in the Appendix of Authorities: *In forma pauperis*, "IFP Order", dated October 24, 2022 (Exhibit **A**); "Order to Amend", dated January 23, 2023 (Exhibit **B**); the Service of Process Order, "Service Order", dated December 12, 2022 (Exhibit **C**); the Affidavit Dismissal Order, dated May 3, 2023 (Exhibit **D**); and the Dismissal Order, dated May 18, 2023. No transcript record has been created, and none have been designated for publication in the Federal Supplement.

From the Appellate Court, docketed at Record No. 23-1152 and Record No. 23-1580, the following orders are attached in the Appendix of Authorities: Appellate Order, dated November 2, 2023 (Exhibit **E**), and the Mandate Order (Exhibit **F**).No transcript record has been created, and none have been designation for publication the Federal Reporter.

JURISDICTION

The Fourth Circuit entered judgment on November 2, 2023, and this Court's jurisdiction is invoked under 28 U.S.C. § 1254.

Table of Contents

TABLE OF AUTHORITIES

Cases

PETITION FOR WRIT OF CERTIORARI

Petitioner Major Mike Webb respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit in No. 23-1580.

STATEMENT OF THE CASE

"Whatever affects one directly, affects all indirectly", and "I can never be what I ought to be until you are what you ought to be", a statement defining "the interrelated structure of reality." Martin Luther King, Jr., *Strength to Love*, June 5, 1963. This case presents an important issue concerning basic statutory construction, and the disparate treatment suffered by unrepresented litigants, *vis á vis* similarly situated others, in the instant case being well-established, corporate defendants, in which the Trial Court, impugning any sense of impartiality, has positioned itself as a gatekeeper protecting defendants, and depriving Appellant of a right "to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C. § 1981.

Appellee Kimmel "grew up worshiping late night TV legends" and "now an institution himself", he is credited with "the longest-tenured late night TV host currently on the air, with 20 years in the game." Eric Deggans, "Jimmy Kimmel celebrates 20 years as a (reluctant) late night TV institution," *NPR*, January 6, 2023. Sone say that since his "newborn son faced a devastating health crisis", "his voice has started to really carry", when "the ABC host responded with a tearful monologue railing against a G.O.P. health-care reform effort that would have stripped away protections for people with pre-existing conditions." Laura Bradley, "Jimmy Kimmel Is a Reluctant Progressive Hero," *Vanity Fair*, October 30, 2017.

"Evidence of a defendant's flight after a crime has been committed is admissible to prove his consciousness of guilt." *U.S. v. Pungitore*, 910 F.2d 1084 (3d Cir. 1990) (citing *U.S. v. Eggleton*, 799 F.2d 378 (8th Cir.1986). And, "the admissibility of flight evidence does not depend on whether the flight was triggered by an actual indictment, as "it is the act of departure that is itself evidential."" *Id.* (quoting *Miles*, 468 F.2d, at 482 (quoting 2 *Wigmore on Evidence* § 276 (3d ed. 1970)).

"[P]ursuant to Federal Rule of Evidence 201, courts may take judicial notice of "matters of public record," but not of facts that may be "subject to reasonable dispute"," *U.S. v. Corinthian Colleges*, 655 F.3d 984 (9th Cir. 2011) (citing *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)), and, accordingly, it is of at least probative value that, the usually outspoken, *see* Abbey White, "Jimmy Kimmel Says He's Lost Half His Fan Base Over Trump Criticisms," *The Hollywood Reporter*, November 23, 2022, even while hosting the Academy Awards, Josh Rottenberg, "The Academy has found its next Oscar host. And no, it's not Chris Rock," *L.A. Times*, November 7, 2022; *see also* Dan Heching, "Jimmy Kimmel returning to host 2024 Academy Awards," *CNN*, November 15, 2023, has elected a right to remain silent regarding this litigation commenced in May 2022. *But see* Ryan Bort, "Jimmy Kimmel Tees Off on 'Snowflake' and 'Sociopath' Marjorie Taylor Greene for Reporting Joke to Capitol Police," *Rolling Stone*, April 8, 2022. *But see also* Ryan Bort, "Politicians and Porn: 10 Great Internet Fails," *Rolling Stone*, September 14, 2017.

And yet, while Appellant's notorious late-night talk show appearance, *see generally* Steven Primpro, "Mike Webb goes on Jimmy Kimmel Live to talk porn mixup," *WJLA*, May 20, 2016, had been uncompensated, outside the industry norm,

Francis, "How Much Do Guests Get Paid on Talk Shows?" *Healing Picks*, June 13, 2022, it is of at least probative value that former President Barrack Obama, in "at least his tenth time on late night", had used his debut appearance on the Appellee Jimmy Kimmel Live! Platform to "amortize the political costs of his cross-country trip to help the Democratic National Committee." Mark Knoller, "Knoller's numbers: President Obama's late-night TV appearances," *CBS News*, March 12, 2013.

Moreover, as he had in 2015, *see* German Lopez, "Jimmy Kimmel got doctors to swear at cameras to convince people to get vaccinated," *Vox Media*, March 1, 2015; *but see* Vineet D Menachery , *et al.*, *A SARS-like cluster of circulating bat coronaviruses shows potential for human emergence*, 21 Nat. Med. 12,1508-1513, November 9, 2015, *corrected* November 20, 2015, doi:10.1038/nm.3985; Kristopher M. Curtis, Boyd Yount, & Ralph S. Baric, *Methods for Producing Recombinant Coronavirus*, Patent No. US 7,279,327 B2, October 9, 2007, Application No. 10/474,962, April 19, 2002; *but see also* Kristopher M. Curtis, Boyd Yount, & Ralph S. Baric, *Methods for Producing Recombinant Coronavirus*, Patent No. US 7,279,327 B2, October 9, 2007, Application No. 10/474,962, April 19, 2002, "Jimmy Kimmel encouraged people to get a COVID-19 vaccine and featured a video of doctors and nurses across the country who talked about their experiences." Carolyn Crist, "Jimmy Kimmel Gets Help to Encourage COVID Vaccinations," *WebMD*, May 6, 2021. Further, "ABC late-night host Jimmy Kimmel took a shot at unvaccinated Americans on air Tuesday, saying they shouldn't be admitted to ICU beds." Alex Mitchell, "'Pan-dimwits': Jimmy Kimmel says the unvaxxed don't deserve ICU beds," *New York Post*, September 8, 2021.

Diametrically juxtaposed to Appellee Kimmel, of public record, Appellant, has

been identified as a "whistleblower", Order, *Webb v. Dep't of the Army*, Civil Action No. 1:22-cv-02236 (UNA) (D.D.C. Oct. 7, 2022), as well as essentially "a former biological warfare planner", Mark Hand, "2023 Candidate Profile: Major Mike Webb Running For House District 3," Patch, October 19, 2023, having been the recipient of a job offer, for which there is no evidence that he had even applied, for an admitted "expired mission", in a Top Secret billet, one of only three persons offered the opportunity, before the current public health crisis, from the Defense Intelligence Agency (DIA). *See Webb v. Dep't of the Army*, Civil Action 1:22-cv-02236 (UNA) (D.D.C. 2022), *aff'd* Record No. 22-5292 (D.C. Circuit 2022), *cert. denied* Record No. 22-7394 (U.S. 2022); *Webb v. DoD*, Docket Number DC-3443-18-0299-I-1 (MSPB 2018); *Webb v. DIA*, Civil Case No. 1:23-cv-02397 (D.C. 2023).

Notoriously, Appellant had been silenced even on Facebook expressly for "security reasons", *Webb v. Meta Platforms, Inc.*, Civil Action No. 1:2023cv00816 (D.C. 2023), within a reasonable time after the White House had expressed concerns regarding "problematic accounts", Steven Nelson, "White House 'flagging' posts for Facebook to censor over COVID 'misinformation'" *New York Post*, July 15, 2021, raising a burden-shifting inference of suspicion that adverse action had, in fact, been retaliatory. *Reid v. MSPB*, 508 F.3d 674 (Fed. Cir. 2007).

It is of note, in this regard, that while "Robert F Kennedy Jr, the nephew of John F Kennedy", who had "more than 300,000 followers on the platform", Donie O'Sullivan, "White House turns up heat on Big Tech's Covid 'disinformation dozen'," *CNN*, July 16, 2021, would take over a month before it had been announced that "Meta has permanently removed Facebook and Instagram accounts belonging to Children's

Health Defense, the anti-vaccine group led by Robert F. Kennedy, Jr., Meta confirmed to CNN", Brian Fung, "Meta suspends anti-vaccine group led by RFK, Jr.," *CNN*, August 19, 2021, Appellant's account had been permanently disabled within four days after the White House announcement, and further less than two weeks after he had commenced COVID-19 countermeasure related litigation against the White House. *See Webb v. Fauci*, Civil Action No. 3:2021cv00432 (E.D.Va. 2020), *aff'd* Record No. No. 21-2394 (4th Cir. 2022), *cert denied* Record No. 21-8242, 143 S.Ct. 79 (2022); *see also* Record No. 21-6868, 142 S.Ct. 1352 (2022); *Webb v. OMB*, Civil Action No. 3:2022cv00418 (E.D.Va. 2022), *aff'd* No. 22-1698 (4th Cir. 2023). *See also* Gabriel Rivera, "Facebook took down COVID-19 posts after pressure from the Biden administration. 'I can't see Mark in a million years being comfortable with that,' an exec said in newly uncovered emails," *Business Insider*, July 29, 2023.

Of public record, Appellant has been identified as having been "against current government efforts and recommendations for safety during the COVID-19 pandemic." Staff, "Mary Kadera: Democrat," *Progressive Voters Guide*, September 15, 2021, identified as a "litigation hobbyist", *see Order, U.S. Navy SEALs v. Biden*, Civil Action No. 4:21-cv-01236-O (N.D.Tex. May 23, 2022); Order, *State of Missouri v. Biden*, Record No. 22-30531 (5th Cir. August 1, 2022), with a penchant for "hot-button issues". Informal App. Opp. Brief, *Webb v. Garland*, Record No. 2022-2065(Fed. Cir. 2022), who has brought the first and longest surviving legal challenges against the lockdowns, *Webb v. Northam*, Case No. CL2001624 (Alexandria Cir. 2020), *aff'd* Record No. 210536 (Va. 2022), *cert. denied* Record No. 21-8142 (U.S. 2021); *Webb v. Porter*, Case Number CL2101829 (Alexandria Cir. 2021), *cert. denied*, Record No. 220089 (Va. 2021), *cert.*

denied Record No. 21-8142 (U.S. 2021); against the nonmedical grade facial coverings, *Webb v. Northam*, Civil Action No. 3:20CV497 (E.D.Va. 2020), *aff'd* Record Number 20-1968 (4th Cir. 2020), *cert. denied* Record No. 21-6170 (U.S. 2021); *see also Webb v. McDonough*, Civil Action No. 1:2023cv01344 (D.C. 2023), and against the COVID-19 countermeasures, *Webb v. Alfred Street*, 1:2023cv00096 (E.D.Va. 2023), on appeal Record No. 23-1397 (4th Cir. 2023). *See also Webb v. Wilson*, Case Number CL21001769 (Alexandria Cir. 2021). *But see also U.S. Navy SEALs v. Biden*, Civil Action No. 4:21-cv-01236-O (N.D.Tex. 2022); *State of Missouri v. Biden*, Record No. 22-30531 (5th Cir. August 1, 2022).

Still, "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office", *Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971), and Appellant, of record, has been throughout the public health crisis a political candidate, engaged in campaign activity, wherein "a candidate's expenditure of his personal funds directly facilitates his own political speech", *Buckley v. Valeo*, 424 U.S. 1. N. 58 (1976), yet with an experience contrary to the constitutional guarantees. *See Webb v. FEC,* Civil Action No. 3:2022cv00047 (E.D.Va. 2022); *Webb v. Dep't of Treas.*, Civil Action No. 1:2022cv02034 (D.C. 2022); *Webb v. Lopez*, Civil Action Number 1:2023cv01239, *on appeal* Record Number 23-7072 (D.C.C. 2023).

Of public record, Appellant, identified as a "whistleblower", Order, Civil Action, *Webb v. Dep't of the Army*, No. 1:22-cv-02236 (UNA) (D.D.C. Oct. 7, 2022), as well as essentially a former biological warfare planner and the recipient of a job offer, for which there is no evidence that he had even applied, for an admitted "expired mission", in a

Top Secret billet, one of only three persons offered the opportunity, before the current public health crisis, from the Defense Intelligence Agency (DIA), *see Webb v. Dep't of the Army*, Civil Action 1:22-cv-02236 (UNA) (D.D.C. 2022), *aff'd* Record No. 22-5292 (D.C. Circuit 2022), *on petition for cert.* Record No. 22-7394 (U.S. 2022); *see also Webb v. DoD*, Docket Number DC-3443-18-0299-I-1 (MSPB 2018), has been silenced even on Facebook expressly for "security reasons", *Webb v. Meta Platforms, Inc.*, Civil Action No. 1:2023cv00816 (D.C. 2023).

REASONS FOR GRANTING CERTIORARI

I. Whether a plaintiff is entitled under Fed.R.Civ.Pro. 55 to award of a default judgment after defendants have failed to provide an answer to a complaint within 21 days, as required under 12(a)(1)(A)(i).

Jurisdiction is proper where "a United States court of appeals. . . has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power". S.Ct.R. 10(a). However, Article III Courts have acknowledged that, "[b]ecause the 'mere assertion of a *RICO* claim ... has an almost inevitable stigmatizing effect on those named as defendants," suggesting a predisposition against plaintiffs, *Brookhaven Town Conservative Comm.*, No. 14CV6097JFBARL, 2016 WL 1171583, at *1–8, "courts have expressed skepticism toward civil *RICO* claims." *Id.* (citing *DLJ Mortg. Capital, Inc. v. Kontogiannis*, 726 F. Supp. 2d 225 (E.D.N.Y. 2010)). Still, as a rule, of record, "dismissals with prejudice are rare ... [,] because of the formal nature of the pleading requirements", *Pyke v. Laughing*, No. 92-CV-555, 1996 WL 252660, at *1–16 (N.D.N.Y. May 9, 1996) (citing Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure: Civil 2d* §1248 (2d ed. 1990)).

A. Statutory Construction

"It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 1 Cranch 137 (1803). Moreover, "no power can be exerted to that end by the United States unless, . . . it be found in some express delegation of power or in some power to be properly implied therefrom. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (citing 1 *Story's Const.* § 462). And, "'if a statute. . . has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to. . give effect to the Constitution'". *Jacobson*, 197 U.S., at 11 (citations omitted).

"A familiar canon of statutory construction cautions the court to avoid interpreting a statute in such a way as to make part of it meaningless", *Abourezk v. Reagan*, 785 F.2d 1043 (1987) (citing 2A N. Singer, *Sutherland Statutory Construction* § 46.06 (4th ed.1984)), while a basic rule of statutory construction dictates that "the plain meaning rule, [should control unless] the construction caused absurd results." *U.S. v. Al-Arian*, 308 F. Supp. 2d 1322 (M.D. Fla. 2004), and "we are unconvinced by anything in the legislative history that this definition should be given less than its full effect." *U.S. v. Turkette*, 452 U.S. 576 (1981).

"'Where a particular construction of a statute will result in an absurdity, some other reasonable construction which will not produce the absurdity will be found'". *Mayhew v. Commonwealth*, 20 Va.App. 484 (1995) (quoting *Miller v. Commonwealth*, 180 Va. 36 (1942)). And, "a statute should be read to give reasonable effect to the words used and to promote the ability of the enactment to remedy the mischief at which it is directed". *Id.*

Thus evolved the rule that, "[i]f the plain meaning of a provision is unambiguous, then this Court's inquiry is usually complete", *U.S. v. Al-Arian*, 308 F. Supp. 2d 1322 (M.D. Fla. 2004) (citing *Jackson v. State Bd. of Pardons and Paroles*, 331 F.3d 790 (11th Cir.2003)). And, "the basic rule of statutory construction is to first seek the legislative intention, and to effectuate it if possible, and the law favors constructions which harmonize with reason, and which tend to avoid unjust, absurd, unreasonable or confiscatory results, or oppression'". *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989) (quoting *State ex rel. Stern Brothers & Co. v. Stilley*, 337 S.W.2d 934 (Mo.1960)).

In this strict construction, the controlling rule provides that "if the legislature had meant. . . [any other factor] to be considered. . . , it would have said so explicitly", *Brown v. Payton*, 544 U.S. 133 (2005), and, in statutory construction, "[m]andatory words impose a duty; permissive words grant discretion", The Writing Center, A Guide to Reading, Interpreting and Applying Statutes, "Canons of Construction (Antonin Scalia & Brian Garner)," *Georgetown University Legal Center (2017)*, https://docslib.org/doc/12918148/a-guide-to-reading-interpreting-and-applying-statutes1-%C2%A9-2017-the-writing-center-at-gulc (accessed December 30, 2022).

Under the plain word meaning, Fed.R.Civ.Pro. 12(a)(1)(A)(i) provides expressly, and unambiguously, that "[a] defendant must serve an answer. . . within 21 days after being served with the summons and complaint". And yet, the court record unerringly establishes in fact that Appellees ABC Legal, Sinclair Broadcast Group and WJLA have neither entered an appearance, nor filed a responsive pleading in answer to the Amended Complaint. The court record establishes the unassailable fact that, pursuant

to the Service Order, dated December 12, 2022, Appellant having been granted leave to proceed *in forma pauperis*, in accordance with 28 U.S.C. § 1915, the Trial Court had "order[ed] that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court." Fed.R.Civ.Pro. 4(c)(3).

B. Racketeering Conspiracy

"[M]ere acquiescence or silence or failure of an officer to perform a duty does not make one a participant in a conspiracy *unless he acts or fails to act with knowledge of the purpose of the conspiracy 'and with the view of protecting and aiding* it," *Luteran v. U.S.*, 93 F.2d 395 (8th Cir. 1937) (quoting *Burkhardt v. U.S.*, 13 F.2d 841, 842 (6th Cir. 1926). (emphasis added) Moreover, "a defendant is presumed to continue his involvement in a conspiracy unless he makes a substantial affirmative showing of 'withdrawal, abandonment, or defeat of the conspiratorial purpose.'" *U.S. v. Heard*, 709 F.3d 413 (5th Cir. 2013)(quoting U.S. *v. Mann*, 161 F.3d 840 (5th Cir.1998) (quoting *United States v. Puig–Infante,* 19 F.3d 929 (5th Cir.1994)). "Mere cessation of activity in furtherance of the conspiracy is not sufficient to show withdrawal." *Id. (citing U.S. v. Torres*, 114 F.3d 520 (5th Cir.1997) (citing *U.S. v. Phillips*, 664 F.2d 971 (5th Cir. Unit B 1981)).

"The distinguishing mark of a 'manifestly unlawful order' should fly like a black flag above the given order, as a warning reading 'Prohibited!'", and should display "a flagrant and manifest breach of the law, certain and necessary illegality appearing on the face of the order itself." *Attorney-General of the Government of Israel v. Eichmann*, 36 I.L.R. 5 (Supreme Court of Israel, 1961) (quoting *Chief Military Prosecutor v. Melinki and others* (13 Pesakim Mehoziim, p. 90)). "[T]he clearly criminal character of

the order or of the acts ordered," should be sufficient, presenting "an illegality clearly visible and repulsive to the heart, provided the eye is not blind and the heart is not stony and corrupt", and "that is the extent of 'manifest illegality' required to release a soldier from the duty of obedience upon him and make him criminally responsible for his acts", *Id.* (quoting *Ibid.*)

"Under Virginia law, the elements of a common law civil conspiracy are (i) an agreement between two or more persons (ii) to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means, which (iii) results in damage to plaintiff" through an overt action done pursuant to the agreement", *Marcantonio v. Dudzinski*, 155 F. Supp. 3d 619 (W.D. Va. 2015) (citing *William v. AES Corp.*, 28 F.Supp.3d 553 (E.D.Va.2014)), and "[t]here must also be an underlying tort committed." *Id.* (citing *William,* 28 F.Supp.3d, at 553). This matter was commenced under the federal racketeering statute, 18 U.S.C. § 1964(c), and under this provision, civil liability for injury "may result from a. . . conspiracy", and yet "a conspiracy—an agreement to commit predicate acts—cannot by itself cause any injury". *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21 (2d Cir. 1990).

However, "although an overt act by itself (whether or not injury ensues) is not a requisite element of a. . . criminal conspiracy violation," *Id.*, (citing *U.S. v. Teitler*, 802 F.2d 606 (2d Cir.1986)), an "injury from an overt act is necessary and sufficient to establish civil standing for a *RICO* conspiracy violation." *Id.* Moreover, "[b]ecause of the nature of the offense, an agreement often may only be established by circumstantial and indirect evidence including the overt actions of the parties", *Jones v. Commonwealth*, 279 Va. 295 (2010) (citing *Floyd v. Commonwealth*, 219 Va. 575

(1978), and, accordingly, "[p]roof of an agreement to commit the overall objective of the *RICO* offense 'may be established solely by circumstantial evidence.'" *Solomon v. Am. Web Loan*, No. 4:17CV145, 2019 WL 1320790, at *1–22 (E.D. Va. Mar. 22, 2019) (quoting *Hecht*, 897 F.2d, at 21).

C. Rescue Doctrine

"The rescue doctrine, sometimes referred to as the humanitarian doctrine, rests on the premise that "[p]ersons are held justified in assuming greater risks in the protection of human life than would be sustained under other circumstances", and "[s]entiments of humanity applaud the act, the law commends it, and, if not extremely rash and reckless, awards the rescuer redress for injuries received, without weighing with technical precision the rules of contributory negligence or assumption of risk." *Kimble v. Carey*, 279 Va. 652 (2010) (citing *Commonwealth v. Millsaps*, 232 Va. 502 (1987) (quoting *Southern Ry. Co. v. Baptist*, 114 Va. 723 (1913)). However, "[i]t is not reasonable for a court. . . to speak on behalf of courts in other circuits in the country; those courts are capable of taking appropriate action on their own", *Sieverding v. Colorado Bar Ass'n*, 469 F.3d 1340 (10th Cir. 2006), and, when establishing standing, "[a] party asserting this defense must show that he, and not some third party, has been injured by the. . . conduct." *In re Perry*, 423 B.R. 215 (Bankr. S.D. Tex. 2010) (citing *Williams v. Robinson*, No. 12–08–00260–CV, 2009 WL 2356268, at *7–8, 2009 Tex.App. LEXIS 5982, at *19 (Tex.App.-Tyler, July 31, 2009, *no pet.*) (quoting *Omohundro v. Matthews*, 161 Tex. 367 (1960)).

"Health is a form of public good in that everyone else's health behaviors improve the health odds of everyone else", Jeremy Howard, *et al.*, *Face Masks Against COVID-*

19: An Evidence Review, Preprints (May 13, 2020) (citations omitted); however, while acts of a "Good Samaritan" may provide evidence of character, *Estep v. Ballard,* 502 F. App'x 234 (4th Cir. 2012), and "the law is well[-]settled that it is not contributory negligence *per se* for one voluntarily to risk his own safety or life in attempting to rescue another from imminent danger caused by the negligence of the defendant", such a party "would not be thereby relieved from the duty of exercising ordinary care for her own safety." *Wright v. Atlantic Coast Line R. Co.*, 110 Va. 670 (1910) (citation omitted).

And, of record, Appellee WUSA9 averred that "it is implausible that WUSA9 – a CBS affiliate – would conspire with the ABC network and its main late-night personality on anything", WUSA9 Motion to Dismiss Second Amended Complaint, and, contravening their own argument, on behalf, if not behest of the nonresponsive Appellees ABC Legal, Sinclair Broadcast Group and WJLA, codefenants in an action arising under the federal racketeering statute, 18 U.S.C. § 1964(c), they yet reject that, pursuant to Fed.R.Civ.Pro. 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

Clearly, while "the threat of a sanction should not be used to stifle counsel in advancing novel legal theories or asserting a client's rights in a doubtful case", *Buxton v. Murch,* No. 2026-03-2, 2004 WL 1091903, at *1–6 (Va. Ct. App. May 18, 2004) (quoting *Tonti v. Akbari,* 262 Va. 681 (2001)), "[b]y presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under

the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information." Fed.R.Civ.Pro. 11(b).

And, of record, such an Affidavit, authorized under Fed.R.Civ.Pro. 55(a), had been filed with the Trial Court, but to which, upon consideration of Appellee WUSA9's fierce objection, Appellant, in clear abuse of discretion, was, therefor, threatened with sanction for filing any similarly frivolous pleadings." Affidavit Dismissal Order.

Yet, all Appellees should be aware that, *inter alia*, in a motion for summary judgment, "[a] party asserting that *a fact cannot be or is genuinely disputed* must support the assertion by. . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, *affidavits or declarations*, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials", Fed.R.Civ.Pro. 56(c)(1)(A), identified as "Supporting Factual Positions", and "[a]n affidavit or declaration used to support or oppose a motion *must be made on personal knowledge, set out facts that would be admissible in evidence*, and show that the affiant or declarant is competent to testify on the matters stated." Fed.R.Civ.Pro. 56(c)(4). (emphasis added)

Yet, in a motion to dismiss, still at the preliminary pre-discovery stage, governed by Fed.R.Civ.Pro. 26 and 34, "[a] motion to dismiss under Rule 12(b)(6) tests [only] the *sufficiency of a complaint*; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses". *Republican Party of N.C. v. Martin*, 980 F.2d 943 (4th Cir.1992). (emphasis added) And, hence, prior to the discovery stage, or a motion for summary judgment, particularly in a matter brought under the federal racketeering statute, " "in a multiple party, multiple claims action such as this", *Laughing*, No. 92-CV-555, 1996 WL 252660, at *1–16, in which "Plaintiff must also adequately identify a *RICO* enterprise." *Lopez v. Pastrick*, No. 205-CV-452, 2007 WL 1042140, at *1–6 (N.D. Ind. Apr. 4, 2007), the rebuttal filed by Respondent-Appellee WUSA9 would be analogous to a motion to exclude evidence, at least prematurely under the controlling rules.

Far more intriguingly, certainly most are certainly aware, or should be aware that, "[t]o establish standing, the plaintiff must show: (1) an injury in fact, (2) a causal connection between the injury and the conduct complained of, and (3) that the injury is not speculative and will likely be redressed by a favorable decision". *Dobrich v. Walls*, 380 F. Supp. 2d 366 (D. Del. 2005) Moreover, "[t]o establish an 'injury in fact,' the plaintiff must 'show that he [or she] personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant'," *Id.* (quoting *Valley Forge Christian College v. Americans United For Separation Of Church And State, Inc.*, 454 U.S. 464 (1982) (citations omitted)).

And yet like the Trial Court, as to the plain and simply stated rule that, "[w]hen a *party against whom a judgment for affirmative relief is sought has failed to plead or*

otherwise defend, and that failure is shown by affidavit or otherwise, *the clerk must enter the party's default*", Fed.R.Civ.Pro. 55(a) (emphasis added), for unknown motivating reasons, Appellee WUSA9, acting as a Good Samaritan, "speaking for a friend", had taken early and strenuous exception to this well-established rule, with the Trial Court's complete acquiescence, as interpreted by Appellant, notwithstanding, the rule, certainly bounding and restricting Appellant, that "[t]he plaintiff cannot base his claims on the legal rights or interests of third parties or on 'generalized grievances' or "abstract questions of wide public significance.'" *Dobrich*, 380 F. Supp. 2d, at 366 (quoting *Valley Forge Christian College*, 454 U.S., at 464).

Clearly, Fed.R.Civ.Pro. 55(a) mandates that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default", and the record supports no other conclusion than that Appellees ABC Legal, Sinclair Broadcast Group and WJLA have yet to have appeared or presented a responsive pleading. On analogous facts, finding a party having been served notice, "even if not in the usual way", Courts of the Commonwealth have found, to prevent a manifest injustice, that "[i]t was not only competent for. . . [them] to speak in time and be made a party if. . . [they] had not been, but it was. . . [their] duty." *Hill v. Woodward*, 78 Va. 765 (1884). Finding one notoriously accused who had endeavored, through subterfuge and disguise to evade capture of a decade and a half, that tribunal had concluded, "undoubtedly. . . [they] knew the value of the tale about 'administration of tonics,' to which. . . [they] put. . . [their] signature." *Eichmann*, 36 I.L.R., at 5.

Clearly, jurisdiction is proper, where "a United States court of appeals has

entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and/or "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power". S.Ct.R. 10(a).

II. **Whether, for purposes of dismissal, under Fed.R.Civ.Pro. 12(b)(6), a civil remedy exists, under 18 U.S.C. § 1964(c), as a claim to which a plaintiff could expect a court of competent jurisdiction to award relief.**

Jurisdiction is proper where "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power". S.Ct.R. 10(a). It is axiomatic that "you do not kill women and children", and even a soldier "must use common sense", such that "[i]f they have a weapon and are trying to engage you, then you can shoot back, but you must use common sense." *Calley v. Callaway*, 519 F.2d 184 (5th Cir. 1975).

And, at least the law of soldiers dictates a rule that "[t]he acts of a subordinate done in compliance with an unlawful order given him by his superior are excused and impose no criminal liability upon him unless the superior's order is one which a man of ordinary sense and understanding would, under the circumstances, know to be unlawful, or if the order in question is actually known to the accused to be unlawful", and "[w]hether Lieutenant Calley was the most ignorant person in the United States Army in Vietnam, or the most intelligent, he must be presumed to know that he could not kill the people involved here." *U.S. v. Calley*, 22 U.S.C.M.A. 534 (1973).

A. **Beyond a Reasonable Doubt**

Courts considering the civil remedies available under the federal racketeering statute, 18 U.S.C. 1964(c), have suggested that "[a]t least three different standards of proof are within the realm of possibility: proof beyond a reasonable doubt, proof by clear and convincing evidence, and proof by a preponderance of evidence", *Spinelli, Kehiayan-Berkman, S.A. v. Imas Gruner, A.I.A., & Assocs.*, 602 F. Supp. 372 (D. Md. 1985). The nexus to criminal liability, of necessity invokes those proceedings contemplated under the Federal Rules of Criminal Procedure, dictating different tactics and strategies, if only to avert triggering the rule that "[w]hen the public interest so requires, the court must order that one or more grand juries be summoned." Fed.R.Crim.Pro. 6(a). And, Article III Courts have ruled that "[t]o properly convict, the government must prove every element of each offense charged beyond a reasonable doubt", *Kimble*, 719 F.2d, at 1253. Yet, "[i]f a matter is not admitted, *the answer must specifically deny it* or state in *detail why the answering party cannot truthfully admit or deny it*", Fed.R.Civ.Pro. 34(a)(4) (emphasis added), of imperative importance when within a civil complaint there exist elements that would require proof beyond a reasonable doubt.

"[T]he *Due Process Clause* protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358 (1970). And, in a criminal matter, "[i]t is elementary that the burden is on the Commonwealth to prove every essential element of the offense beyond a reasonable doubt", *Powers v. Commonwealth*, 211 Va. 386 (1970), and "[t]his fundamental precept has been the bedrock of Virginia's criminal jurisprudence since the inception of this Commonwealth." *Bishop v. Commonwealth*,

275 Va. 9 (2008). Moreover, "[i]n a criminal case, the defendant is entitled to an acquittal, unless his guilt is established beyond a reasonable doubt." *Savage v. Commonwealth*, 84 Va. 582 (1888).

Accordingly, "in cases where the acts of the defendant or the enterprise were inherently unlawful, such as murder. . . , the courts generally have concluded that the requisite threat of continuity was adequately established by the nature of the activity, even though the period spanned by the racketeering acts was short." *Eisert v. Town of Hempstead*, 918 F. Supp. 601 (E.D.N.Y. 1996) (citing *U.S. v. Aulicino*, 44 F.3d 1102 (2d Cir.1995)).

"'There is no such defect in the law. . . as that the person who intentionally inflicts a wound calculated to destroy life, and from which death ensues, can throw responsibility for the act upon either the carelessness or ignorance of his victim, or shield himself behind the doubt which disagreeing doctors may raise as to the treatment proper for the case", *Clark v. Commonwealth*, 90 Va. 360 (1893) (quoting 3 *Greenl. Ev.* § 139). Moreover, "[w]here an election is once made by a party bound to elect, either expressly or impliedly, with full knowledge of all the facts, it binds him and those who claim under him, although made in ignorance of the law." *Waggoner v. Waggoner*, 111 Va. 325 (1910) (citing *Penn v. Guggenheimer*, 76 Va. 839 (1882)).

B. **Facial Plausibility**

Stating a minimum, not a maximum, "Federal Rule of Civil Procedure 8(a)(2) *requires only* 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests". *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)

(quoting *Conley v. Gibson*, 355 U.S. 41 (1957)). On the other hand, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss *does not need detailed factual allegations*," *Id.* (citations omitted), nonetheless, "a complaint should not be dismissed for failure to state a claim *unless it appears beyond doubt that the plaintiff can prove no set of facts* in support of his claim which would entitle him to relief." . *Twombly*, 550 U.S., at 544 (quoting *Gibson*, 355 U. S., at 41).

The Trial Court concedes that Appellant's allegations "rely only on state violations, others rely on criminal violations which he cannot charge". Dismissal Order, and yet "[a] 'pattern of racketeering activity,' requires a showing of at least two related predicate acts of racketeering activity occurring within a ten year period", *Ferri v. Berkowitz*, 678 F. Supp. 2d 66 (E.D.N.Y. 2009) (citing 18 U.S.C, § 1961(5), and "[p]redicate acts of racketeering activity include a variety of federal and state criminal offenses." *Id.*

C. **Pattern of Racketeering Activity**

Like Appellee WUSA9, Appellees American Broadcast Company, James Christian Kimmel and the Jimmy Kimmel Live! Show concede that "Plaintiff asserts. . . that the absence of the Kimmel interview video from that particular website" had occurred, ABC Respondents' Motion to Dismiss, while yet ignoring averments in the Amended Complaint at ¶¶ 83 to 92, brought under 18 U.S.C. § 1519, for spoliation, a predicate offense under the federal racketeering statute, 18 U.S.C. § 1961(1)(B). And, , "[a] motion to dismiss. . . does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses". *Republican Party of N.C.*, 980 F.2d, at 943.

"To survive a motion to dismiss, a complaint must contain sufficient factual

matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (citing *Twombly*, 550 U.S., at 544). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged", *Id.* (citing *Ibid.*), a standard sufficiently met to find the nonresponsive Appellees evincing evidence to raise a reasonable inference of "consciousness of guilt." *Pungitore*, 910 F.2d, at 1084 (citation omitted). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Ibid.*).

D. "Murder Most Foul"[1]

"The civil *RICO* statute, which underlies the *RICO* tort claim at issue here, provides, in pertinent part, that it is illegal 'for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.'" *Whitney, Bradley & Brown, Inc. v. Kammermann*, 436 F. App'x 257 (4th Cir. 2011) (quoting 18 U.S.C. § 1962(c)). Further, under this provision, a complainant "must prove both the existence of an 'enterprise' and the connected 'pattern of racketeering activity'", *Turkette*, 452 U.S., at 576), while "[a] 'pattern' consists of two or more of these predicate acts within 10 years of each other." *Saine v. A.I.A., Inc.*, 582 F. Supp. 1299 (D. Colo. 1984) (citing 18 U.S.C. § 1961(5)).

[1] William Shakespeare, *Hamlet*, Act I, Scene 5 (1514).

Mindful that"[s]ome constitutional rights remain[] 'personal rights which ... may not be vicariously asserted'", including "the *Fifth Amendment* right against self-incrimination", *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), as revised (June 27, 2016) (citing *Rakas v. Illinois*, 439 U.S. 128 (1978)), and when "not raise[d]. . . in the trial court, may be waived when not expressed during trial". *Jones v. Commonwealth*, 293 Va. 29, *cert. denied sub nom. Jones v. Virginia*, 138 S. Ct. 81 (2017) (citing *Jones v. Commonwealth*, 230 Va. 14 n.1 (1985)), Appellees, in demurrer, assert as inscrutable the words appearing in the Amended Complaint at ¶ 140:

> Kimmel, the Kimmel Show and ABC TV, members of an enterprise, as alleged above, did, individually, jointly or severally, after on or about May 21, 2016, in violation of 18 U.S.C. § 1961(1)(A), which provides, in relevant part, that "'racketeering activity' means. . . any act or threat involving murder, . . . which is chargeable under State law and punishable by imprisonment for more than one year", did attempt the murder of Petitioner, a person known to be afflicted with a major depressive disorder, demonstrating reckless disregard for human life, *see Commonwealth v. Carter*, 474 Mass. 624 (2016), *see also Persampieri v. Commonwealth*, 343 Mass. 19 (1961), attempting to incite a person with a vulnerable mental and emotional condition to suicide, conditions that proved fatal for one depressed former White House Deputy Counsel General. David Emery, "Did Vince Foster Shoot Himself 'Three Times in the Back of the Head' to Avoid Testifying Against Hillary Clinton?" *Snopes*, September 20, 2018, updated September 21, 2018.

"As the Court held in *Twombly,* 550 U.S. 544, the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft*, 556 U.S., at 662 (citing *Ibid.*) (citing *Papasan* v. *Allain,* 478 U.S. 265 (1986))". "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do'", *Id.* (quoting *Ibid.*); "[n]or does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement", *Id.* (quoting *Ibid.*), a

threshold satisfied in the Amended Complaint. And, " a court must accept as true all of the allegations contained in a complaint", while "inapplicable to legal conclusions." *Id.* However, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* (quoting Fed. Rule Civ. Proc. 8(a)(2)) .

Accordingly, even "a wholly conclusory statement of claim would survive a motion to dismiss whenever the pleadings *left open the possibility* that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery". *Twombly*, 550 U.S., at 544.

Clearly, 18 U.S.C. § 1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962."

Clearly, the Congress has provided that, without exception, "[a]ny person injured in his business or property by reason of a violation. . . sue therefor in any appropriate United States district court", 18 U.S.C. § 1964(c), while a claim that any plaintiff, commencing suit under this provision, "rely only on state violations, others rely on criminal violations which he cannot charge", Dismissal Order, and "[a] finding is 'clearly erroneous' when. . . the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed'". *Anderson v. City of*

Bessemer City, N.C., 470 U.S. 564 (U.S. 1985) (quoting *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364 (1948)).

Accordingly, on the record, jurisdiction is proper, where "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and/or "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power". S.Ct.R. 10(a).

III. **Whether, for purposes of a final order, treating in disparate treatment a litigant, *vis á vis* similarly situated others, it is a denial of equal protection under 42 U.S.C. § 1981, or, in the alternative, under the *Fifth Amendment*, to issue a nonprecedential order applying only to that case and litigant.**

"A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case". *Com. v. Manigo*, 2010 WL 468084 (Va.Cir.Ct. 2010). And, where a party to litigation's "silence was not the result of guile or a desire to prejudice matters little, . . . for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair." *Id.*

"The term 'moral turpitude' refers to behavior 'that shocks the public conscience as being inherently base, vile, or depraved'," *Uribe v. Sessions*, 855 F.3d 622 (4th Cir. 2017) (quoting *Mohamed v. Holder*, 769 F.3d 885, 888 (4th Cir. 2014)(citations omitted), and "conduct deliberately intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level," rebutting even a claim in defense of sovereign immunity. *Cty. of Sacramento v. Lewis*, 523 U.S. 833 (1998). Moreover, the authority in exercise of inherent powers, is often rather limited to "the extraordinary circumstances where bad

faith or abuse can form a basis for doing so." *Hensley v. Alcon Labs., Inc.*, 277 F.3d 535 (4th Cir.2002) (citing *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991)).

"A nonprecedential order is one that. . . does not add significantly to the body of. . . case law", and "[p]arties may cite nonprecedential orders, but such orders have no precedential value", such that "judges are not required to follow or distinguish them in any future decisions", while "a precedential decision issued as an Opinion and Order has been identified. . . as significantly contributing to. . . case law." *Oglesby v. U.S.P.S.*, Docket Number DC-0752-20-0387-I-1 (MSPB May 10, 2022) (citing 5 C.F.R. § 1201.117(c)). And yet, "'[a]ll power may be abused if placed in unworthy hands'", but "'[t]he courts cannot prevent abuse of power, but can sometimes correct it.'" *U.S. v. Chalk*, 441 F.2d 1277 (4th Cir. 1971) (quoting *Luther v. Borden*, 48 U.S. (7 How.) (1849)).

In a recent decision, Justice Sotomayor had observed that "there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others" and had concluded that "[t]o hold otherwise, as the Court does, is irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the *Constitution*." *U.S. v. Vaello Madero,* 596 U.S. ___ (2022) (Sotomayor, J. dissenting). This is that case, for no reason has been stated, other than deeming the complainant's affidavit frivolous, even though expressly authorized under Fed.R.Civ.Pro. 55, for treating him in disparate treatment, *vis á vis* similarly situated others, to whom a default judgment would be awarded, where a defendant has failed to provide answer to a complaint, after being brought under the personal jurisdiction of the Trial Court, especially after service of process being

perfected by the U.S. Marshal, upon mandate by that court.

In that recent case, Justice Thomas had joined "to address the premise that the *Due Process Clause* of the *Fifth Amendment* contains an equal protection component whose substance is 'precisely the same' as the *Equal Protection Clause* of the *Fourteenth Amendment*", *Id.* (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, n. 2 (1975)) (Thomas J. joining). And, considering this question of statutory construction, Justice Thomas had suggested, regarding the *Civil Rights Act of 1866*, 42 U.S.C. § 1981, that it had "contained a citizenship clause similar to the *Fourteenth Amendment's*", and further had concluded that "[t]he provision immediately succeeding that citizenship guarantee clarified that 'such citizens, of every race and color' were entitled to 'the same right, in every State and Territory in the United States, . . . 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." *Vaello Madero,* 596 U.S. ___ (quoting 42 U.S.C. § 1981(a)). And, "[f]leshing out the implications of the citizenship declaration, this clause suggests that the right to be free of racial discrimination with respect to the enjoyment of certain rights is a constituent part of citizenship."

Clearly, at the founding of an inchoate, democratic republic, we held certain "truths to be self-evident", *Declaration of Independence*, to include the proposition "that all men are created equal," and the *Civil Rights Act of 1866* had embraced that claim, guaranteeing an enjoyment of equal protection "to all persons", 42 U.S.C. § 1981(a), not just citizens or residents, as had been "endowed by their Creator", and considered, accordingly, as "unalienable Rights". Yet, "to secure these rights, Governments are

instituted among Men," even if "deriving their just powers from the consent of the governed". *Declaration of Independence*. And, even then, most knew, as Lord Acton had observed, "[a]ll power tends to corrupt; absolute power corrupts absolutely". kentuck, "Power tends to corrupt and absolute power corrupts absolutely," Democratic Underground, June 8, 2018. https://www.democraticunderground.com/100210709299.

In remedy, one Founder had suggested, for checks and balances, and separated powers, an "extended republic of the United States, and among the great variety of interests, parties and sects", and, in that treatise had warned, therefore, that "the security for civil rights must be the same as for religious rights." James Madison, *Federalist 51*, February 6, 1788. Another Founder had suggested that "[o]ur *Constitution* was made *only for a moral and religious People*" and that "[i]t is wholly inadequate to the government of any other". John Adams, *Address to the Massachusetts Militia*, October 11, 1798. And yet, in the realm of those things once sacred, as religion, "we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure", Abraham Lincoln, *Gettysburg Address*, November 19, 1863, and a contentiously partisan politics where "months of discord about the coronavirus epidemic have transformed the cloth mask into a potent political symbol, touted by Democrats as a key part of communal responsibility, labeled by some GOP leaders as a sign of government overreach and as a scarlet letter pinned on the weak", Ben Guarino, Chelsea Janes & Ariana Eunjung Cha, "Spate of new research supports wearing masks to control coronavirus spread," *Washington Post*, June 13, 2020. However, " [a] house divided against itself cannot stand." Abraham Lincoln, *House Divided Speech*, June 16, 1858.

Although still "man holds in his mortal hands the power to abolish all forms of human poverty and all forms of human life", long past are the days where we "observe not a victory of party but a celebration of freedom--symbolizing an end as well as a beginning--signifying renewal as well as change." John F. Kennedy, *Inaugural Address*, January 20, 1961. But, at least that leader advised, "We dare not forget today that we are the heirs of that first revolution." *Id.*

Courts have observed that "[l]egislative action is reasonable if the matter in issue is fairly debatable", *Bd. of Supervisors v. Lerner*, 221 Va. 30 (1980), and "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *U.S. v. Salerno*, 481 U.S. 739 (1987).

Nonetheless, in a well-developed exposition regarding the distinction between a facial challenge and an as-applied challenge, one aspirational Negro clergymen, oft quoted, had opined that "[s]ometimes a law is just on its face and unjust in its application", noting in example that "there is nothing wrong in having an ordinance which requires a permit for a parade"; however proffering that " such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the *First-Amendment* privilege of peaceful assembly and protest." Martin Luther King, Jr., *Letter from a Birmingham Jail*, April 16, 1963. And, clearly, on the record, this is that case.

"[A] decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation", *Declaration of Independence*, and this Court has promulgated the rule that "[i]t is a 'foundational principle of administrative

law' that judicial review of agency action is limited to 'the grounds that the agency invoked when it took the action'", *Dep't of Homeland Security v. Regents of University of California*, 591 U.S. ___ (2020) (quoting *Michigan v. EPA*, 576 U.S. 743 (2015)), such that "[i]f those grounds are inadequate, a court may remand" and "the agency can offer 'a fuller explanation of the agency's reasoning at the time of the agency action.'" *Id.* (quoting *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633 (1990). *See also Alpharma, Inc. v. Leavitt*, 460 F.3d 1 (CADC 2006) (Garland, J.)).

"[T]here is a breakdown in the court's operations where an administrative board or body is negligent, acts improperly or unintentionally misleads a party." *Union Elec. Corp. v. Bd. of Prop. Assessment*, 560 Pa. 481 (2000). Accordingly, *nunc pro tunc* "is a far-reaching equitable remedy applied in certain exceptional cases, typically aimed at rectifying any injustice to the parties suffered by them on account of judicial delay." *Iouri v. Ashcroft*, 487 F.3d 76 (2d Cir. 2007) (internal citations and quotation marks omitted).

And, in an action commenced over a year ago, by a political campaign committed, about which "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office", *Monitor Patriot Co.*, 401 U.S., at 265,, clearly "[t]he loss of *First Amendment* freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury". *Doe v. Tangipahoa Par. Sch. Bd.*, 631 F. Supp. 2d 823 (E.D. La. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347 (1976)).

"It is to be pointed out here that even the jurists of the Third Reich did not dare to put on paper that obedience to orders is above all". *Eichmann*, 36 I.L.R., at 5. A court

of competent jurisdiction and reasonable trier of fact and law would conclude from a claim that repeals, with the stroke of a pen, the civil remedy in the federal racketeering statute, on the rationale that it would "not add significantly to the body of. . . case law", or that it had not "been identified. . . as significantly contributing to. . . case law", *Oglesby*, Docket Number DC-0752-20-0387-I-1 (citing 5 C.F.R. § 1201.117(c)), would conclude that the "proffered explanation is unworthy of credence", *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248 (1981).

In the case of *Brown v. Payton*, 544 U.S. 133 (2005), the Court poignantly observed, "If a prosecutor had stood before a jury and denied that a defendant was entitled to a presumption of innocence; if the judge refused to correct him and failed to give any instruction on the presumption of innocence; if the judge's instructions affirmatively suggested there might not be a presumption of innocence; would anyone doubt that there was a reasonable possibility that the jury had been misled?" This is that case.

Clearly, jurisdiction is proper, where "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and/or "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power". S.Ct.R. 10(a).

CONCLUSION

For the reasons stated in this application, Appellant respectfully requests grant of certiorari on the issues of the grant of default judgment, Fed.R.Civ.Pro. 55, and continued validity of a civil provision under the federal racketeering statute, 18 U.S.C.

§ 1964(c), as well as an as-applied challenge to the usage of nonprecdential opinions used, in this instance, to deprive a litigant of his rights to equal protection and due process, in derogation of 42 U.S.C. § 1981(a), and, in equity, such relief as this Honorable Court may deem required to ensure the administration of justice. *In re White*, No. 2:07CV342, 2013 WL 5295652, at *1–71 (E.D. Va. Sept. 13, 2013).

CERTIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Name of Party (Print or Type): Major Mike Webb, 955 S. Columbus Street, Unit # 426, Arlington, Virginia 22204, GiveFaithATry@gmail.com, 856-220-1354.

Signature of Party

Executed on: 11-28-23
(Date)

Subscribed, acknowledged and sworn to before me, the undersigned Notary Public in the County of Arlington, in the Commonwealth of Virginia, this 28 day of November, 2023.

NOTARY PUBLIC

My commission expires: 12/31/2027 Registration Number: 7800067

ANDREW ISAIAH MASON
NOTARY PUBLIC
REG. #7800067
MY COMMISSION EXPIRES
12/31/2027
COMMONWEALTH OF VIRGINIA