No. 23-990

3/4/2024

In The Supreme Court of the United States

GEORGE DUNBAR PREWITT, Jr.,

Petitioner,

v.

COUNTY OF YAZOO, MISSISSIPPI,

Respondent,

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court and the 5th circuit panel acted in the total absence of subject matter jurisdiction by illegally assuming the subject matter jurisdiction of the requested three-judge court?
2. Whether the well-pleaded notice of removal sufficiently alleged, pursuant to 28 U.S.C. § 1443(1), that I am immune from prosecution by a Mississippi state government whose existence is a nullity due to Mississippi's noncompliance with multiple federal laws that expressly provide for racial equality in the electorate's mandatory, voting ratification of post-Civil War constitutions in Mississippi?
3. Whether any federal court, other than a three-judge court under 28 U.S.C. § 2284, has jurisdiction over the notice of removal's claim that the 1890 Mississippi constitution unlawfully moved Mississippi's eastern boundary to include white majority counties in Alabama and thereby caused the improper apportionment of congressional districts and state legislative districts in Mississippi and Alabama?
4. Whether the present-day descendants of American Slaves, of which I am one, have been denied our prospective right, under multiple federal statutes, to vote for the ratification of post-Civil War constitutions in Mississippi in **properly apportioned** state legislative and congressional election districts, a subject matter jurisdictional issue that can only be determined by a three-judge court?
5. Whether the First Reconstruction Act, and Section 3 of the 14th Amendment to the U.S. Constitution, respectively (a) barred the creation of the 1890 Mississippi Constitution by those in rebellion, and (b)

was violated by the 5th circuit panel's November 7, 2023 decision which approved the 1890 Mississippi constitution and a Mississippi state government that (1) is in open rebellion against multiple federal laws providing for racial equality regardless of "race, color, or previous condition of servitude" and (2) is in open rebellion against the federal Reconstruction Acts which expressly found that all "rebel" states lacked legitimate governments, a finding vindicated when the 1890 Mississippi state government overthrew the 1868 Mississippi constitution that had complied with the 1867 Military Reconstruction Acts by being ratified by the Mississippi voters and approved by the Congress, facts which may disqualify the 5th circuit panel, and all Mississippi state government officials, from holding public office?

6. Whether the district court and the 5th circuit panel failed to follow U.S. Supreme Court precedent in *Shapiro v. McManus*, 136 S. Ct. 450 (2015), Johnson v. Mississippi, 421 U.S. 213 (1975), and the well-pleaded complaint rule for removal cases as outlined in *Walker v. State of Georgia*, 417 F.2d 5 (5th Cir. 1969)?

7. Whether the petty crime exception for misdemeanors, i.e., trial without a jury, violates the Sixth Amendment edict that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...." (emphasis added).

LIST OF ALL PARTIES

All parties are listed in the caption.

Corporate Disclosure Statement.
Inapplicable.

LIST OF PROCEEDINGS BELOW.

1. *County of Yazoo, Mississippi v. George Dunbar Prewitt, Jr.* No. 82CO1:19-cr-03822. Case removed from state court prior to trial de novo.
2. *Yazoo County, Mississippi v. George [Dunbar] Prewitt, Jr.* (emphasis added), No. 3:22-cr-113. January 23, 2023.
3. *County of Yazoo, Mississippi v. George Dunbar Prewitt, Jr.*, No. 23-60073. November 7, 2023.
4. Rehearing denied December 4, 2023.

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CONSTITUTION

U.S CODES,

PETITION FOR A WRIT OF CERTIORARI

Petitioners, George respectfully submit this petition for a writ of certiorari to the Fifth Circuit Court of Appeals.

CITATIONS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE.

The November 7, 2023 5th Circuit decision (App.1 Doc A), and the 5th Circuit's December 4, 2023 rehearing denial (App.5 Doc. B)are unpublished.

STATEMENT OF THE BASIS FOR JURISDICTION

The date of the judgment is November 7, 2023, (App.1-4 Doc.) and the date of the order denying rehearing is December 4, 2023 (App.5-6 Doc. B). 28 U.S.C. § 1254 provides the jurisdiction for a petition for writ of certiorari from a federal appellate court. .

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATION

Article IV, Section 3, Clause 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the

Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress."

Sixth Amendment, U.S. Constitution. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the

state and district wherein the crime shall have been committed.... (emphasis added)

Fourteenth Amendment, U.S. Constitution: .Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Fifteenth Amendment, U.S. Constitution:
Section 1.
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.
Section 2.
The Congress shall have power to enforce this article by appropriate legislation.

Reconstruction Acts of 1867

28 U.S.C. § 1254. Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal

case, before or after rendition of judgment or decree.... (emphasis added)

28 U.S.C. § 1443. Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens

of the United States, or of all persons within the jurisdiction thereof. (emphasis added.)

28 U.S.C. 1447(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

28 U.S.C. § 2284. Three-judge court; when required; composition; procedure

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

STATEMENT OF THE CASE

A notice of removal transferred this case from a Mississippi state court, **prior** to a trial de novo in the state court, to a federal district court based, in part, on 28 U.S.C. § 1443. Following the district court's January 23, 2023 decision, the case was appealed to the U.S. Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1447. The notice of removal is listed in the appendix

The notice of removal alleged, in paragraph 2, statutory violations of the 1867 Reconstruction Acts, found at 14 Stat. 428 (March 2, 1867), 15 Stat. 2 (March 23, 1867), which mandated **equal** voting rights, regardless of "**race, color, or previous condition**", in the 1890 Mississippi constitution. Those two federal statutes, in relevant part, state the following;

> March 2, 1867 An Act to provide for the more efficient Government of the Rebel States WHEREAS no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore, Be it enacted . . ., SECTION 5. And be it further enacted, That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in

all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, **of whatever race, color, or previous condition**, who have been resident in said State for one year previous to the day of such election, **except such as may be disfranchised for participation in the rebellion or for felony at common law**, and when such constitution shall provide that the elective franchise shall be enjoyed by all persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratify-cation who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen and when said article shall have become a part of the Constitution of the United States said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: Provided, **That no person excluded from the privilege of**

> **holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any person vote for members of such convention**.

Note that the First Reconstruction Act, above, denied the voting franchise, and the right to hold office under the proposed Section 3 of the 14th Amendment, to any person who had engaged in rebellion. If the First Reconstruction Act is a valid basis for removal under 28 U.S.C. § 1443 because it required racial equality in voting, then the replacement of the valid 1868 Mississippi Constitution with the 1890 Mississippi constitution, that was enacted without compliance with the First Reconstruction Act. is a void act.

The First Reconstruction Act's phrase of "race, color, or previous condition" also appeared in a February 23, 1870 Congressional enactment which readmitted, in 16 Stat. 67, Mississippi to representtation in the Congress on the following, fundamental conditions in the event that a future Mississippi government should nullify and replace the 1868 Mississippi Constitution that had been ratified by the Mississippi voters, including former American Slaves, and approved by the Congress;;

> "...That the State of Mississippi is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions: First, That the constitution of Mississippi shall never be so amended or changed

> as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: Provided, That any alteration of said constitution, prospective in its effects, may be made in regard to the time and place of residence of voters. Second, That it shall never be lawful for the said State to deprive any citizen of the United States, on account of his **race, color, or previous condition of servitude**, of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than are required of all other citizens. Third, That the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the constitution of said State." (emphasis added)

Yet, the courts below concluded that the above laws, with their express language on "race, color, or previous condition of servitude" did not provide for racial equality and therefore did not support removal under 28 U.S.C. § 1443. The 5th Circuit wrote the following;

> To remove a state case under § 1443(1), the defendant must show both that (1) the right allegedly denied arises under a federal law providing for specific rights stated in terms of

> racial equality and (2) the defendant is denied or cannot enforce the specified federal rights in the state courts due to some formal expression of state law. Johnson v. Mississippi, 421 U.S. 273, 279-20 (1975). significantly, the statute applies only to rights that are stated in terms of racial equality and not to generally applicable constitutional rights. see *Georgia v. Rachel*, 384 U.S. 780, 792 (1966). Prewitt appears to assert that the cited Reconstruction Era statutes constitute the federal civil rights laws stated in terms of racial equality, as required under the first prong of **Johnson**, 421 U.S. at 219. He also appears to contend that the 1890 Mississippi Constitution is the formal expression of state law by which he is being denied, or cannot enforce, his purported federal rights under the Reconstruction Era statutes, as required by the second prong of Johnson, 427 U.S. at 219-20. However, **Prewitt has not shown that the Reconstruction Era statutes "provide[] for specific civil rights stated in terms of racial equality**. " *Johnson*, 427 U.S. at 223 (internal quotation marks and citation omitted). (emphasis added).

Despite the clear, statutory language advocating racial equality, including voting rights, for former American Slaves and their descendants, the 5th Circuit panel of Haynes, Graves, and Higginson then revealed, in the very next sentence after the above paragraph, their intolerance of any legal matter that concerns racial equality by writing the following;

> Moreover, he fails to explain how the provisions in Mississippi's 1890 Constitution deprive him, or prevent the enforcement, of any **race-based civil rights** purportedly contained in the cited Reconstruction Era statutes. see *id.* at 219-20. Accordingly, Prewitt has not made the required showing for removal under s 1443(1). (emphasis added).

Most federal judges would comprehend the distinction between "specific civil rights stated in terms of racial equality" and "race-based civil rights" because the former is obviously aimed at racial equality while a "race-based" right is presumptively unconstitutional unless it is designed to remedy a prior racial injustice.

The 5th Circuit panel's judicial animus toward this case, as expressed in the "race-based" comment may be due to Haynes and Higginson's collegial solicitude for a fellow panel member, Graves, who having been a longtime Mississippi state employee, including a stint on the Mississippi judicial bench, has a sizable, **vested** Mississippi state pension that may be in jeopardy if the 1890 Mississippi constitution has not complied with the federal laws above. 28 U.S.C. § 455(b)(4) mandates disqualification in situations which indicate a "financial interest in the subject matter in controversy" and 28 U.S.C. § 455(a) requires disqualification of a judge "in any proceeding in which his impartiality might reasonably be questioned".

And, if Graves must disqualify himself because of 28 U.S.C. § 455(a)-(b)(4), then the entire panel is disqualified because of 28 U.S.C. § 46(b) which states that "In each circuit the court may authorize the

hearing and determination of cases and controversies by separate panels, each consisting of three judges...." The Federal Courts Improvement Act of 1982 emphasized the three-judge panel rule by the following;

> Current law seems to permit appellate courts to sit in panels of less than three judges, and some courts have used panels of two judges for motions and for disposition of cases in which no oral argument is permitted because the case is classified as insubstantial. In order for the Federal system to [preserve] both the appearance and the reality of justice, such a practice should not become institutionalized. **The disposition of an appeal should be the collective product of at least three minds**. (emphasis added).

Despite his financial interests in Mississippi state government, Graves denied my motion for his disqualification on November 29, 2023.

The 1890 Mississippi constitution, in violation of the above federal statutes, was not ratified by the Mississippi electorate, nor approved by the Congress, as was done for the 1868 Mississippi Constitution that was cast aside by the 133 whites and a lone sycophant named Isaiah Thornton Montgomery who was born a slave on the plantation owned by the brother of secessionist leader Jefferson Davis.

The notice of removal also alleged, in paragraph 3, a racial gerrymandering claim concerning the 190000 nonwhite voters and the 69000 white voters in 1890 Mississippi that was mentioned in *Williams*

v. Mississippi, 170 U.S. 213 (1898)("...[I]t is further alleged that the constitutional convention was composed of 134 members, only one of whom was a negro; that under prior laws there were 190,000 colored voters and 69,000 white voters.")(emphasis added). The 190,000 "colored" majority of Mississippi voters in 1890 Mississippi were, in effect, transferred to a newly created state, and became a minority of Mississippi voters which continues to this present day, that was caused by the 1890 Mississippi Constitution's express movement of Mississippi's east boundary from its Congressionally-approved site on the northwest corner of Washington County, **Mississippi**, i.e., the Pearl River, to a transient land site in Washington County, **Alabama** in violation of the U.S. Constitution's Equal Protection Clause and Article IV, Section 3, Clause 1 which states the following;

> *New States may be admitted by the Congress into this Union; **but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.**"* (emphasis added).

The state boundaries in the 1890 Mississippi Constitution were listed as follows;

> Sec. 3. The limits and boundaries of the State of Mississippi are as follows, to-wit: Beginning

on the Mississippi river (meaning thereby the center of said river or thread of the stream) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and W. Petrie, commissioners appointed for that purpose on the part of the State of Mississippi in A.D., 1837, and J. D. Graham and Austin Miller, commissioners appointed for that purpose on the part of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee river, six four-pole chains south of and above the mouth of Yellow Creek; thence up the said river to the mouth of Bear Creek; thence by a direct line to what was formerly the northwest corner of the **county of Washington, Alabama**; thence on a direct line to a point ten miles east of the Pascagoula river on the Gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne; thence up said Pearl river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the middle or thread of the stream of the Mississippi river; thence up the middle of the Mississippi river, or thread of the stream, to the place of beginning, including all islands lying east of the thread of the stream of said river, and also including any lands which were at any time heretofore a part of this State.

The March 1, 1817 Mississippi boundaries that was set by the Congress and admitted Mississippi to the Union read as follows;

> Sec. 2. And be it further enacted, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning on the river Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear Creek, thence by a direct line **to the north-west corner of the county of Washington**, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi River, thence up the same to the beginning. (emphasis added).

The northwest corner of Washington County, Mississippi, in 1817, was located on the Pearl River as indicated by the following proclamation establishing Washington County's boundaries;

> On June 4, 1800, Mississippi Territorial Governor Winthrop Sargent issued a proclamation that established Washington County whose western border was the Pearl River. "... I have thought proper ... to erect a new county, and by these letters made patent, do ordain

> and order that all and singular the lands lying and being within the following, viz. the territorial boundaries upon the north, east and south, **and the Pearl River on the west**, shall constitute the same to be named and hereafter to be called the County of Washington...." (emphasis added).

The overt movement of Mississippi's east boundary, in its 1890 Mississippi constitution, which absorbed predominantly white counties from Alabama in order to offset the 190,000 "colored" voting majority in 1890 Mississippi, was described by a hostile district court judge below, in the context of rejecting my request for a three-judge court to decide the above racial gerrymandering claim, as "a **cringe worthy** call to expel from the state its predominantly white counties." (emphasis added). That type of ad hominem attack on my request for a three-judge court, pursuant to 28 U.S.C. § 2284, is also a merits-based determination on a subject matter jurisdictional issue that cannot be decided by a single district court judge.

Because I requested a three-judge court to determine if the 1890 Mississippi constitution had engaged in racial gerrymandering by moving Mississippi's east boundary to include predominantly white Alabama counties and whether that boundary movement expressly violated Article IV, Section 3, Clause 1 of the U.S. Constitution by causing mal-apportioned congressional districts and state legislative districts in Mississippi and in Alabama, the sole determinative issue, under *Shapiro v. McManus*, 577 U.S. 39 (2015),"'is whether the 'request for three judges' is

made in a case covered by § 2284(a)—no more, no less.'" However, neither the district court nor the 5th Circuit cited *Shapiro* in their rejections of my request for a three-judge court. The 5th Circuit even wrote the following;

> Pursuant to § 2284(a), "[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." *Here, the district court determined that there was not an action challenging the constitutionality of the voting districts, given that the germane action in this case was Prewitt's criminal proceeding based on his speeding ticket, not his notice of removal. Because Prewitt has failed to specifically address and allege error in the district court's reasoning on this point, he has* ***abandoned*** *any challenge to the denial of this motion.* (emphasis added).

In my petition for rehearing, I pointed out that the jurisdiction of a three-judge court cannot be waived or abandoned because, as indicated in *NAACP v. Merrill*, 939 F. 3d 470 (2nd Cir. 2019), "the three-judge requirement in 28 U.S.C. § 2284 is jurisdictional", but the 5th Circuit summarily rejected my petition for rehearing on December 4, 2023 without addressing the jurisdictional issue or *Sha-piro v. McManus*. The 5th Circuit also ignored, in clear violation of *Shapiro v. McManus*, the district court's improper merit-based analysis of my request for a

three-judge court and wrote that "*the district court determined that there was not an action challenging the constitutionality of the voting districts,* ***given that the germane action in this case was Prewitt's criminal proceeding based on his speeding ticket, not his notice of removal.***" (emphasis added).

However, the controlling language is not the underlying criminal prosecution, but whether the allegations in the notice of removal fit within the narrow confines of 28 U.S.C. § 1443, as interpreted in *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975). "[I]t must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality'" and "it must [also] appear, in accordance with the provisions of § 1443(1), that the removal petitioner is denied or cannot enforce the specified federal rights in the courts of (the) State." "This provision normally requires that the 'denial be manifest in a formal expression of state law,' . . . such as a state legislative or constitutional provision, 'rather than a denial first made manifest in the trial of the case.'" (emphasis added). "Under § 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the Defendant to trial in the state court. Id.

In fact, the courts below violated Due Process by ignoring binding 5th Circuit precedent in *Walker v.*

State of Georgia, 417 F.2d 5 (5th Cir. 1969), which wrote the following;

> The test of removability is comparable to the test for the existence of federal jurisdiction — the well pleaded petition of the petitioner. *This test of removability is governed*, in the first instance, *by the content of the petition* ***and not the characterization given the conduct in question by the prosecution***. (emphasis added).

The questions presented for review include an assertion that the Sixth Amendment, which was included in the notice of removal from state court, does not authorize the "petty crime exception" for nonjury trials in misdemeanor proceedings that has been crafted by federal judges, but instead requires a jury trial in **all** criminal prosecutions. This court has declared, in *BP PLC v. Mayor & City Council of Baltimore* 141 S.Ct. 1532 (2021) that once a case is removed from state court to federal court, every issue in the federal court's remand order can be examined by an appellate court and in this case, the remand order cited the Sixth Amendment. Therefore, this court can decide whether the "petty crime exception" is authorized by the Sixth Amendment.

REASON FOR GRANTING THE PETITION

ARGUMENT

This case is not a mere academic exercise, but a case that, as will be seen below, is one where the failure to comply with the 1867 Reconstruction Acts and the 1870 Congressional Act readmitting Mississippi's representatives to the Congress has one

consequence totaling **$257,807,216** in federal money that should have been designated for Alcorn State University, a Mississippi university for nonwhites that became the first college-level institution in Mississippi established in 1871 following the Civil War. Instead that **$257,807,216** went to Mississippi State University, a predominantly white Mississippi college-level, agricultural institution that was established after Alcorn in 1878. The theft of the **$257,807,216** was revealed in a September 18, 2023 letter from Education Secretary Miguel Cardona and Agricultural Secretary Thomas Vilsack to the Mississippi Governor.

The purloining of the **$257,807,216** by white Mississippi officials, for a predominantly white agricultural college at the expense of a predominantly nonwhite agricultural college was made possible by the theft of an entire state from the 1890 "colored" voting majority of 190,000 which constituted over 73 percent of the 1890 Mississippi electorate while white voters numbered 69,000 or over 26 percent. This case points out how the state was stolen, i.e., (1) by Mississippi's failure to comply with the 1867 Reconstruction Acts by submitting the 1890 constitution for ratification to the "colored" majority and later approval by the Congress (2) by ignoring the conditions, particularly the school fund listed in the 1868 Mississippi Constitution that was jettisoned by the 133 white Mississippi officials who cobbled the 1890 Mississippi constitution, that was permanently tied to Mississippi's re-entry in the Congress as laid out in the 1870 Congressional Act at 16 Stat. 67 which readmitted Mississippi to the Congress on certain conditions, and (3) by moving

Mississippi's east boundary from the Pearl River in Mississippi to a site in Alabama which created an entirely new state in violation of the Equal Protection Clause and Article IV, Section 3, Clause 1, U.S. Constitution.

The theft of the **$257,807,216** is minor compared with the theft of the enormous amount of money stolen from the 1868 Constitution's School Fund that would have prevented discrepancies in school funding that plagues predominantly nonwhite public schools in Mississippi to this day. Article 8 of the 1868 Mississippi Constitution stated the following, in part;

> Sec. 6. **There shall be established a common school fund, which shall consist of the proceeds of the lands now belonging to the State, heretofore granted by the United States, and of the lands known as "swamp lands,"** except the swamp lands lying and situated on Pearl river, in the counties of Hancock, Marion, Lawrence, Simpson, and Copiah, **and of all lands now or hereafter vested in the State, by escheat or purchase, or forfeiture for taxes, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys received for licenses granted under the general laws of the State for the sale of intoxicating liquor, or keeping of dram shops; all moneys paid as an equivalent for persons exempt from military duty, and the funds arising from the consolidating of the Congressional township**

> **funds, and the lands belonging thereto, together with all moneys donated to the State for school purposes, which funds shall be securely invested in United States bonds, and remain a perpetual fund, which may be increased but not diminished, the interest of which shall be inviolably appropriated for the support of free schools**.
> Sec. 8. The Legislature shall, as soon as practicable, provide for the establishment of an Agricultural College, or Colleges, and shall appropriate the two hundred and ten thousand acres of land donated to the State for the support of such a college, by the Act of Congress, passed July 2d, A.D. 1865, or the money or scrip, as the case may be, arising from the sale of said lands, or any lands which may hereafter be granted or appropriated for such purpose.
> Sec. 10. The Legislature shall, from time to time, as may be necessary, provide for the levy and collection of such other taxes as may be required to properly support the system of free schools herein adopted; and **all school funds shall be divided pro rata among the children of school ages**. (emphasis added).

There would have been no need for the 1954 school integration case of Brown v. Board of Education if the school funds listed above had been divided pro rata among white and nonwhite schoolchildren in *Mississippi. Plessy v. Ferguson* could have remained the racially segregated law of the land for

parity, per pupil, in school funding would have allowed nonwhites in Mississippi to adequately prepare for intellectual competition so that historian John Hope Franklin and scientist George Washington Carver would not have been academic anomalies in their respective generations. And the 210,000 acres noted in the 1868 Mississippi Constitution, for the 1871 college that became Alcorn State University, would not have dwindled down in 2024 to the 1700 acres currently assigned to Alcorn.

Thus, the legacy of American Slavery and the "Lost Cause" myth still runs rampant at the highest levels of the Mississippi state government officials from 1890 to the present who have elevated the unashamed larceny of public funds to a stratospheric level, including the 2017 theft of public assistance funds, i.e. Temporary Assistance for Needy Families (TANF), in order to construct a volleyball court at a predominantly white university in Mississippi. Mississippi's present government is a void, amoral entity because of its deliberate failure to comply with the 1867 Reconstruction Acts, noted above, that required Mississippi officials to construct post-Civil War constitutions by submitting a new constitution to the voters, which included former American Slaves, for ratification and to the Congress for approval. As noted above, the Congress anticipated that some Mississippi officials, after initially complying with the above federal statutes by promulgating the 1868 Mississippi Constitution, might eventually return to their traitorous impulses.

Thus, on February 23, 1870 in 16 Stat. 67, the Congress readmitted Mississippi to the Congress, but imposed the following conditions in the event that a

future Mississippi government should nullify and replace the 1868 Mississippi Constitution that had been ratified by the Mississippi voters and approved by the Congress;

> "...That the State of Mississippi is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions: First, That the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: Provided, That any alteration of said constitution, prospective in its effects, may be made in regard to the time and place of residence of voters. Second, That it shall never be lawful for the said State to deprive any citizen of the United States, on account of his **race, color, or previous condition of servitude**, of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than are required of all other citizens. Third, **That the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured**

> **by the constitution of said State**." (emphasis added).

The federal statutes above have been violated for the reasons listed above all of which stem from the one reason that is horrific to Mississippi whites, i.e., racial equality as exemplified by the right to vote being extended to nonwhites. Although the 15th Amendment established the right to vote as a fundamental right on February 3, 1870, Dr. Martin Luther King, Jr., in a 1957 speech that took place 87 years after the 15th Amendment was ratified, stated that if nonwhite descendants of American Slaves obtained the right to vote, that right would enable nonwhite descendants of American Slaves to fend off those who do not wish us well. Dr. King said the following, in part;

> Three years ago the Supreme Court of this nation rendered in simple, eloquent and unequivocal language a decision which will long be stenciled on the mental sheets of succeeding generations. ... It came as a legal and sociological deathblow to the old Plessy doctrine of "separate-but-equal." It came as a reaffirmation of the good old American doctrine of freedom and equality for all people. Unfortunately, this noble and sublime decision has not gone without opposition. This opposition has often risen to ominous proportions. Many states have risen up in open defiance. The legislative halls of the South ring loud with such words as "interposition" and "nullification." ... But, even more, all types of conniving methods are still being used to

> prevent Negroes from becoming registered voters. ... So long as I do not firmly and irrevocably possess the right to vote I do not possess myself. I cannot make up my mind — it is made up for me. I cannot live as a democratic citizen, observing the laws I have helped to enact — I can only submit to the edict of others. ... Give us the ballot and we will no longer have to worry the federal government about our basic rights. Give us the ballot and we will no longer plead to the federal government for passage of an anti-lynching law; ... Give us the ballot and we will place judges on the benches of the South who will "do justly and love mercy," and we will place at the head of the southern states governors who have felt not only the tang of the human, but the glow of the divine.

That right to vote, under the federal statutes listed above, is being denied to the nonwhite voters in Mississippi today who have a prospective right, under the federal statutes, to vote at the present time for the ratification, or rejection, of the 1890 Mississippi constitution. To paraphrase the words of the Old Testament, can the bones of the 190,000 nonwhite voters in 1890 live again and rise from their dusty abodes to encourage their descendants to keep insisting on the right to vote that was denied their American Slave ancestors almost 134 years ago? I think those bones can be revived, and I ask this august court to lend a hand.

As stated in Rule 10 of this court's rules, the federal courts below have "**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" and "**has decided an important federal question in a way that conflicts with relevant decisions of this Court**," in particular, *Shapiro v. McManus*. Because the courts below have issued a decision that conflicts with *Shapiro v. McManus*, relating to the subject matter jurisdiction of a three-judge court pursuant to 28 U.S.C. § 2284, this court is asked to vacate the decisions of the courts below, and order that a three-judge court be immediately convened to determine whether, by the unlawful movement of Mississippi's east boundary from Mississippi's Pearl River to a site in Alabama, the congressional districts and state legislative districts in Mississippi and Alabama have been wrongfully apportioned in violation of the Equal Protection Clause and Article IV, Section 3, Clause 1 of the U.S. Constitution.

Finally, the Sixth Amendment explicitly provides for jury trials in **all** criminal prosecutions, a textual command that does not authorize the "petty crime exception" arbitrarily created by the federal judiciary which supports nonjury trials for misdemeanors. All federal judges are required by Article VI swear an oath to support the U.S. Constitution; therefore, the plain language of the Sixth Amendment should be enforced as written and the "petty crime exception" extirpated from the judicial landscape.

CONCLUSION

For the forgoing reasons, Petitioners request that the petition for a writ of certiorari be granted

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Respectfully Submitted

s/

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