

Supreme Court, U.S.
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No. 24-313

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTINE A. ARAKELIAN

Petitioner,

v.

CITY OF FALLS CHURCH, Et Al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Supreme Court of Virginia err as a matter of federal, constitutional law by dismissing Petitioner's appeal for failure "to timely file the notice of appeal in the Court of Appeals and the petition for appeal" in the Supreme Court of Virginia" (App. 1a), notwithstanding the fact that the Arlington County Circuit Court violated the Petitioner's 14th Amendment due process right to a fair hearing in a fair tribunal and hence, never had jurisdiction over the case such that all Motions to Dismiss (entered by each of the Circuit Court, Court of Appeals and Supreme Court) are void ab initio and the cited Rules of the Supreme Court of Virginia are irrelevant?
2. Are the Tax Injunction Act 42 U.S.C. § 1341 and the doctrine of comity unconstitutional as applied for requiring Petitioner to litigate her § 1983 claims first in Virginia notwithstanding the fact that (a) the Arlington County Circuit Court held that Virginia law does not recognize a § 1983 cause of action in the context of Board of Equalization hearings and dismissed her claim with prejudice and (b) over 22 months have passed with no 14th Amendment protections in place for the Petitioner in the context of BOE hearings?
3. Are damages barred in all § 1983 state taxation lawsuits brought in federal courts against local jurisdictions that violate an individual's 14th Amendment rights?

PARTIES TO THE PROCEEDINGS

Christine A. Arakelian is a U.S. citizen who has maintained a residence in the City of Falls Church since the year 2014. Christine Arakelian was the plaintiff in the Arlington County Circuit Court and the Appellant in the Court of Appeals of Virginia and the Supreme Court of Virginia.

The City of Falls Church is an independent City organized under the laws of the Commonwealth of Virginia with county-level governance status. The City of Falls Church was a defendant in the Arlington County Circuit Court and an Appellee in the Court of Appeals of Virginia and the Supreme Court of Virginia.

Arlington County is a County organized under the laws of the Commonwealth of Virginia. Arlington County was a defendant in the Arlington County Circuit Court and an Appellee in the Court of Appeals of Virginia and the Supreme Court of Virginia.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings.

- Christine A. Arakelian v. City of Falls Church, et al., Supreme Court of Virginia, Record No. 240142; Judgment entered May 7, 2024.
- Christine A. Arakelian v. City of Falls Church, et al., Court of Appeals of Virginia, Record No. 0560-23-4; Judgment entered September 29, 2023.
- Christine A. Arakelian v. City of Falls Church, et al., Arlington County Circuit Court, No. CL22-4539-00; Judgment entered March 24, 2023.
- Christine A. Arakelian v. City of Falls Church, et al., Arlington County Circuit Court, No. CL22-4539-01; Judgment entered June 12, 2023 and corrected on June 27, 2023.
- Christine A. Arakelian Board of Equalization Appeal, City of Falls Church Board of Equalization, Appeal # 005-22AB, November 10, 2022. Note: The BOE never sent the Petitioner a final decision as required by Virginia Code § 58.1 – 3384 (App. 36a). Hence, it cannot be included in the Appendix. However, there is a videotape of the hearing: <http://www.fallschurchva.gov/webcasts>, Hour: Minute 1:57

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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OPINIONS BELOW

Appendix A is the Order to Dismiss from the Supreme Court of Virginia. Appendix B is the Order to Dismiss from the Court of Appeals. Appendix C is the Order to Dismiss with Prejudice from the Circuit Court. Appendix D is the transcript of the Circuit Court hearing during which conclusions of law were reached by the Judge. Appendix E is the Final Order entered after the Circuit Court denied the Petitioner's Motion for a Mistrial and a New Trial in an impartial venue in Virginia. Appendix F is the Correction Order.

JURISDICTION

The Supreme Court of Virginia entered its Motion to Dismiss on May 7, 2024. Petitioner contests the constitutional validity of this Motion to Dismiss and argues that the Supreme Court of Virginia erred as a matter of federal law due to the Circuit Court's violation of Petitioner's 14th Amendment rights to a fair hearing in a fair tribunal such that there was no jurisdiction from the outset. On July 26, 2024, the Chief Justice extended the time within which to file this petition to and including October 1, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) and this Court's holding in *McKesson Corp. v. Div. of AB & T*, 496 U.S. 18 (1990) ("this Court has appellate jurisdiction over cases involving state tax actions brought in state court"). This petition is timely filed pursuant to this Court's Rule 13.1 and Rule 13.5. Petitioner has served the Solicitor General pursuant to this Court's Rule 29.4(b) due to the potential applicability of 28 U.S.C. § 2403(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause, U.S. Const. Article VI, Cl. 2, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The 11th Amendment, U.S. Const. Article XI, provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The 14th Amendment, U.S. Const. Amend. XIV, § 1, provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a) provides:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 2016 provides:

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2403(a) provides in pertinent part:

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit

the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

42 U.S.C. § 1341 provides:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

42 U.S.C. § 1988 provides in pertinent part:

In any action or proceeding to enforce a provision of sections...1983...of this title..., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

All state statutes are set forth in Appendix G through Appendix J.

INTRODUCTION AND STATEMENT OF THE CASE

A. Introduction

This case is of the utmost importance -- not only to the Petitioner, but also to the approximately 8.7 million people who live in the Commonwealth of Virginia and countless other U.S. citizens who will need this Court's definitive decision and opinion so they can protect themselves, their families and their property from abusive local government officials in local taxation hearings. This case arose in the context of a local board of equalization hearing, but the core issues in the case are really about an abuse of power and fraud by local Virginia government officials in dereliction of their duty to support and defend the U.S. Constitution at the expense of the Petitioner and countless other Virginia citizens who do not have the time or money to bring suit.

Petitioner is an Armenian American whose father emigrated to the U.S. from Egypt. Petitioner's family is originally from Turkey where their family home was seized during the Armenian genocide. Petitioner's family then sought refuge in Egypt and rebuilt their assets. During the 1950s, President Nasser nationalized all private property in Egypt based on Arab nationalism and a culture of grievance, and Petitioner's family yet once again lost all of their assets. Petitioner's family had to decide whether to emigrate to France or the U.S. and intentionally chose the U.S. due to its Constitution and guarantees. Petitioner knows from her family's experience that there is no such thing as "de minimis property seizures." All property seizures begin small and then

become more brazen over time. The fact that the Virginia courts have refused to draw any bright line on what is and is not permissible in Board of Equalization hearings in the entire Commonwealth highlights the significance of this case. Petitioner's family did not come to the U.S. so they can fall victim to the same things they were fleeing in Turkey and Egypt and then seek redress after the fact.

Christine A. Arakelian therefore respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Virginia which held that (i) the Arlington County Circuit Court did not violate the Petitioner's 14th Amendment due process right to a fair hearing in a fair tribunal by failing to recuse itself in its entirety for its conflict of interest (i.e., appointing the BOE and subsequently adjudicating the constitutionality of its own BOE Rules of Procedure), and hence, (ii) the Arlington County Circuit Court had jurisdiction from the outset. Petitioner has consistently stated that the Circuit Court violated the core precept in any judicial hearing: *nemo judex in causa sua*, i.e. no man may be his own judge. Petitioner also raises two new questions for this Court that could not be raised in Virginia courts because they lack the authority to determine whether the Tax Injunction Act and doctrine of comity are constitutional as applied and whether damages are barred in all § 1983 state taxation lawsuits brought in federal courts against local jurisdictions that violate an individual's 14th Amendment rights.

This Court has authority to hear these two new questions per 28 U.S.C. § 2016 ("...require such further proceedings to be had as may be just under

the circumstances") and its holding in *Allen v. State Bd. of Elections*, 393 U.S. 544, 554 (1969) in which it states the following.

The Virginia legislation was generally attacked on the ground that it was inconsistent with the Voting Rights Act. Where all the facts are undisputed, this Court may, in the interests of judicial economy, determine the applicability of the provisions of that Act even though some specific sections were not argued below.

Petitioner's goals are to ensure that she can continue living in the Commonwealth of Virginia with the full rights, privileges and immunities of a U.S. citizen without any risk of retribution through the local taxation system and to ensure that what transpired here never happens again.

B. Factual Background

1. Hearing in the Arlington County Circuit Court

The facts of this case are not in dispute.¹ In November 2022, six different Virginia government

¹ Each Respondent filed a demurrer in response to the Petitioner's initial Complaint. Under Virginia law, a demurrer admits the truth of the facts contained in the pleading to which it is addressed, as well as any facts that may be reasonably and fairly implied and inferred from those allegations. See *Cox Cable Hampton Roads, Inc. v. City of Norfolk*, 242 Va. 394, 397 (1991).

officials – 2 of whom are employed by the City of Falls Church (the “City”) and 4 of whom are City of Falls Church Board of Equalization (“BOE”) members -- cooperated to introduce false, secret and material evidence in a legal proceeding after two arguments, rebuttal and BOE questions had concluded and then denied Petitioners the ability to defend herself based on its BOE Rules of Procedure. The BOE is appointed by the Arlington County Circuit Court, and each and every judge on the Arlington County Circuit Court appointed one or more of the BOE members. At the time Petitioner filed her original lawsuit, Petitioner was not aware of this key fact (i.e., Petitioner thought some but not all of the judges had appointed BOE members) and assumed that if there were an absolute conflict of interest, the Circuit Court judges would recuse themselves per Virginia Code § 17.1 -105(b) (App. 40a).

At the hearing in March 2023 on the Demurrers, the City’s counsel stated during his argument that Petitioner had the ability to appeal the assessment under Virginia Code § 58.1-3382 (App. 35a – 36a) and present evidence to the Arlington County Circuit Court on why the assessment was incorrect. Instead, the Petitioner pursued a constitutional attack on the process even though those causes of action failed to state a claim for which relief can be granted. Petitioner had full due process because she had a remedy under the Virginia Code and elected not to pursue it. Instead, “she has embarked on a challenge to whether she should even bring a cause of action against the Chief Judge of this Court.” (App. 7a) Hence, what has been pled in this case should be dismissed with prejudice.

Petitioner opposed the Demurrers and argued that Circuit Court judges are not permitted to outsource their obligations for fair hearings and due process to BOE members, and those who choose to do so are subject to suit if BOE members subsequently violate citizens' 14th Amendment rights. Petitioner stated that Circuit Courts cannot be the enforcement arms of constitutionally deficient BOE hearings and that BOE hearings in Virginia violate the Equal Protection Clause. Petitioner offered to transfer the case to another venue in Virginia and add all of the judges who appointed the BOE members as defendants. (App. 9a – 14a)

The Circuit Court judge entered an Order to Dismiss with Prejudice and stated the following at the hearing:

This action is an attempt to make a collateral attack whereas there was an opportunity for a direct attack. The court finds that the factual allegations are fatally deficient and lack sufficient basis in the law, resulting in the Court finding that an amendment to the pleadings would not cure the defect. So the demurrer as to the City of Falls Church is sustained without leave to amend. (App. 15a – 16a)

2. Petitioner's Due Process and Equal Protection Claims

Petitioner asserted in her pleadings that Virginia courts must give her a venue in which she can assert her constitutional claims because judicial

review without the appropriate level of scrutiny is no judicial review at all. Petitioner indicated that she believed she was targeted by the City on the basis of vocal, public opposition to its governance, and hence, was entitled to know whether the City violated her 1st Amendment rights through its real estate taxation hearings.

Petitioner asserted that she is entitled to due process in BOE hearings pursuant to this Court's holding in *Hagar v. Reclamation District* 111 U.S. 701 (1884). Petitioner also challenged the constitutionality of the BOE Rules of Procedure (App. 45a – 47a) and the section of the Virginia Code that establishes the Boards of Equalization (App. 21a – 38a). With respect to the former, Petitioner asserted the Rules of Procedure violate the due process and equal protection clauses of the 14th Amendment. With respect to the latter, Petitioner asserted that the Virginia Code is unconstitutionally vague and violates the Equal Protection Clause of the U.S. Constitution.

Petitioner's original complaint demonstrates that the City's BOE Rules of Procedure differ in material respects from neighboring jurisdictions such as Fairfax County (App. 53a – 55a). Specifically, the Rules of Procedure require no sworn testimony by witnesses or government officials such that perjured or false testimony can be submitted without any legal prohibitions or consequences whatsoever. In contrast, other Virginia counties such as Fairfax County require testimony in Board of Equalization hearings to be sworn (App. 54a). Moreover, the Rules of Procedure adopted by the City of Falls Church Board of Equalization allow new evidence to be

submitted by the Board of Equalization itself after the Property Owner's opportunity to challenge it has lapsed, whereas the Rules of Procedure adopted by the Fairfax County Board of Equalization do not. For example, in Fairfax County, evidence is closed prior to questions from BOE Members, and BOE Members can only ask questions about testimony and evidence presented by the government and homeowner. (App. 55a). In the City, the record is closed only after the BOE members have an unlimited amount of time to ask questions (App. 47a). Hence, City BOE members can introduce new or false evidence on behalf of the government that cannot be rebutted or addressed by a homeowner in the BOE hearing itself. Petitioner asserted that she should not have to move to a different jurisdiction in Virginia in order to protect herself from further constitutional violations from the City of Falls Church, and there is no rational basis for the differences in substantive due process rights between the City of Falls Church and Fairfax County.

An examination of the section in the Virginia Code that establishes the Board of Equalization -- Virginia Code § 58.1 Article 14 Boards of Equalization (App. 21a – 38a) – reveals that there are no explicit requirements for minimum due process. In contrast, Virginia Code § 16.1 – 122.5 (pertaining to Small Claims Court) requires all witnesses to be sworn (App. 39a). It also requires the judge to act as an intermediary between the parties so as to accomplish “substantial justice”, but it does not permit the judge to interject himself or herself into the merits of the case (App. 39a). It is notable that these two components (i.e., sworn witnesses and an impartial Board of Equalization) are present in the Fairfax County Rules of Procedure and mirror the

requirements in Virginia Small Claims Court, but are completely missing from the City of Falls Church Rules of Procedure and the Virginia Code itself.

3. Widespread 14th Amendment Violations in Virginia

Petitioner submitted statements to the Arlington County Circuit Court from the public record indicating that (i) the City exerted control over both the BOE members and BOE hearings and (ii) 14th Amendment violations were routine and widespread. On December 10, 2022 at a public videotaped hearing, a BOE member stated to other BOE Members “I told you guys this, the City Manager does not want us doing that.” (App. 10a – 11a) On November 10, 2022 at a public videotaped meeting, a BOE member stated that people should stop complaining about the manner in which the BOE operates because in prior years, homeowners were routinely told “Nope, denied, get out of here” such that there was no hearing whatsoever.

Petitioner also submitted statements to the Arlington County Circuit Court demonstrating that the City previously violated the Petitioner’s due process rights in other contexts and hence, engaged in a pattern of due process violations spanning multiple years. Specifically, the City Council, Police Chief and Fire Marshal refused to comply with two separate written requests for a copy of the fire inspection report such that the Petitioner could challenge it in a court of law. Petitioner inadvertently discovered that the City failed to enforce the fire code in her condominium building for over 10 years. Petitioner stated that the BOE due process violations must be

placed in a larger context of multiple Virginia government officials denying citizens due process over multiple prior years, and that citizens have a right to know whether they are being targeted through the real estate taxation system in Virginia for political speech.

Petitioner also submitted FOIA requests to each and every county and city in Virginia for their BOE Rules of Procedure such that a comparative analysis can be done.² Many counties in Virginia state that no such document exists, e.g. Carroll County, Giles County, Roanoke, Floyd, Patrick, Prince William, Halifax, Clarke, Charlotte, Tazewell, Botetourt, Lunenburg, Alleghany, Frederick, Rockbridge and Pulaski Counties. Hence, a hearing is whatever the government says it is on any given hour or day of the week with zero baseline protections in place from the Virginia Code or the Virginia courts.

Northampton County is one example of what transpires at BOE hearings in the absence of any written rules of procedure. (App. 69a) In August 2024, the BOE had a hearing for a couple contesting their real estate taxes. After the couple made their case, the minutes record shows that they were then “excused” from the BOE hearing such that they were not even present in the room when the government made its counterargument. The minutes record has no detail on what was discussed between the County Assessor and the BOE, and there is no videotape of

² Petitioner respectfully requests this Court take judicial notice of the BOE Rules of Procedure and Minutes per Federal Rule of Evidence 201. These are all judicial documents produced under the authority of the Va. Circuit Courts.

the hearing. If the homeowner challenges the assessment at the Circuit Court, the homeowner has incomplete knowledge of what took place at the hearing with no record to review. When a homeowner challenges an assessment at the Circuit Court, there is a presumption in favor of the government. *See* Va. Code § 58.1-3379 (App. 31a).

Even in counties where there are Rules of Procedure, fundamental fairness and equal protection are lacking. Loudoun County and Albemarle County have a swearing in requirement, but Fauquier County does not. Chesterfield County closes the evidentiary record in a formal manner and limits evidence to that submitted by the parties, but most jurisdictions do not. New Kent County allows homeowners to speak for an unlimited amount of time, whereas Prince William County allows up to 5 minutes. The City of Norfolk limits homeowners to 5 minutes but the government has no upper time limit during which it can rebut the homeowner. The vast majority of jurisdictions do not expressly allow homeowners to rebut the government's argument (e.g. Arlington County), but a small number of jurisdictions do (e.g. Fairfax County). Hence, there are no minimum standards statewide on BOE hearings.

Let's take another example from the BOE Rules of Procedure used in Prince George County (App. 56a). Section 8.6 states that homeowners can make arguments based on "witnesses, documents or other evidence", whereas Section 8.7 states that the government can make its case and cite "legal authority". There is no legal basis for Prince George County to restrict a citizen's ability to raise legal arguments and authorities in a BOE hearing.

Mecklenburg County cautions BOE members in its BOE records that a deputy can come and remove citizens they find to be threatening or disrespectful. Virginia is violating fundamental, basic concepts of fairness in judicial proceedings that date back to the Magna Carta and then using its own police powers to dispose itself of citizens who are angry and object to its illegal conduct at hearings. These are the tactics of a police state.

4. Other FOIA Discoveries Subsequent to the Order to Dismiss with Prejudice

Subsequent to the entry of the Order to Dismiss with Prejudice, Petitioner submitted a FOIA request to the City for the appointment of all BOE members and discovered that each and every judge on the Arlington County Circuit Court had appointed one or more of the BOE members. (App. 57a – 64a) Hence, each judge had a personal stake in the outcome of Petitioner's case. Petitioner filed motions in the Circuit Court to have the Order to Dismiss with Prejudice declared void ab initio based on the FOIA request and attempted to refile the case in another neutral venue, but these were rejected by the Arlington County Circuit Court (App. 17a -20a). The City opposed Petitioner's efforts and submitted a request to the Arlington County Circuit Court to impose attorney's fees on the Petitioner.

Petitioner also uncovered evidence that the Circuit Court had actual personal knowledge of disputed key evidentiary facts prior to the commencement of the Petitioner's lawsuit (App. 65a – 68a). A BOE member emailed the Civil Division Supervisor, Clerk of the Arlington County Circuit

Court on November 28, 2022 and stated as follows: "I now do have questions about procedure that I might follow to contact the Court regarding irregularities that influence our review of appeals." Petitioner filed her lawsuit in the Arlington County Circuit Court on December 4, 2022. Hence, the Circuit Court had actual knowledge of "irregularities" in the BOE hearings 6 full calendar days prior to the date on which Petitioner filed her original lawsuit.

5. New 42 U.S.C. § 1983 Lawsuit filed in Prince William County Circuit Court

Petitioner knew that she was at maximum risk for retribution as long as there was not a judgment in her favor vindicating her constitutional rights, so she filed a brand-new § 1983 lawsuit in the Prince William Circuit Court against two individuals³ instrumental to the deprivation of Petitioner's constitutional rights, with even more definitive evidence of fraud, corruption and abuse. This was literally the only avenue open to the Petitioner to vindicate her constitutional rights because the federal

³ This is not listed in the Statement of Related Proceedings because it was a different § 1983 lawsuit with 2 different Defendants sued in an individual capacity. One Defendant is an employee of the City of Falls Church and the other is an employee of Arlington County (Civil Division Supervisor, Clerk of the Arlington County Circuit Court). The underlying facts are identical. Petitioner received notification on September 11, 2024 from the Supreme Court of Virginia (Record No. 240233) that her petition for appeal has been refused. It will be promptly appealed to this Court. Twenty-two months have passed since Petitioner's original BOE hearing with two, separate § 1983 lawsuits, and Virginia citizens still have no right to a fair BOE hearing nor constitutional judicial review of BOE hearings in Virginia courts.

courts were closed to her and some of Petitioner's evidence, motions and pleadings (properly submitted to the Arlington County Circuit Court via overnight or 2-Day tracked delivery) had been deleted from the tribunal record sent to the Court of Appeals. The records deleted include Plaintiff's Opposition to Defendants' Demurrers, an Exhibit of the appointments of the BOE members with each judge's respective signature on the documents and Plaintiff's Motions for a Mistrial and New Trial. To this day, no explanation has been forthcoming on why Petitioner's submissions were missing from the tribunal record.⁴

Meanwhile, the City threatened the Petitioner with sanctions both prior to filing the lawsuit in Prince William County Circuit Court (via a private letter) and multiple times during the duration of the Prince William County Circuit Court case. No action was taken by any Virginia court to protect Petitioner from the unlawful demands for sanctions. Petitioner asserts that the unlawful request for sanctions in an effort to intimidate citizens from bringing legitimate § 1983 lawsuits in state courts is in substance no different than harassment or obstacles to prevent people from reaching the ballot box. It's Jim Crow.

C. Proceedings Below

Petitioner's Board of Equalization hearing was in November 2022, and she filed her § 1983 lawsuit in December 2022. The Arlington County Circuit Court

⁴ It is noteworthy that two, separate Oppositions to Plaintiff's Motion for a New Trial and Mistrial are included in the tribunal record sent to the Court of Appeals of Virginia, but not the Petitioner's original Motions.

had a hearing in March 2023 on the Defendants' Demurrers (App. 5a – 16a) and entered a Motion to Dismiss with Prejudice (App. 3a – 4a). Upon learning that the entire Arlington County Circuit Court had signed one or more BOE members' appointments (App. 57a – 64a), Petitioner filed motions with the Arlington County Circuit Court in an attempt to get the Order to Dismiss with Prejudice thrown out and declared void ab initio, plus refile the case in a neutral venue. All efforts failed (App. 17a – 20a).

Petitioner filed a notice of appeal with the Circuit Court and the Court of Appeals. Petitioner also asked for an extension from the Court of Appeals of Virginia due to the inexplicable deletion of key pleadings and records in the tribunal record sent to the Court of Appeals of Virginia. The Court of Appeals granted Petitioner's request for a stay and extended the deadline to file the opening brief until September 5, 2023.

Petitioner misunderstood the Court of Appeal's directive and unintentionally missed the deadline. Arlington County then filed a Motion to Dismiss. Petitioner filed an Opposition to the Motion to Dismiss and reiterated her argument that the Arlington County Circuit Court lacked subject matter jurisdiction as a matter of federal constitutional law and cited this Court's cases on the necessity of fundamental fairness in all judicial proceedings. Petitioner stated that (i) lack of subject matter jurisdiction may be raised at any time and (ii) the Arlington County Circuit Court never had subject matter jurisdiction due to its violation of my 14th Amendment right to a fair hearing in a fair tribunal.

The Court of Appeals issued an Order to Dismiss on September 29, 2023 (App. 2a).

Rather than appeal this decision immediately, Petitioner decided to pursue her new § 1983 lawsuit in Prince William County Circuit Court. Petitioner reasoned that lack of subject matter jurisdiction can be raised at any time, and hence, she should focus on the one and only case that could actually yield her the relief requested. Once Prince William County Circuit Court entered an Order to Dismiss with Prejudice in late 2023, it became abundantly clear that all Virginia courts refuse to entertain any constitutional challenges whatsoever to anything that transpires in a Virginia BOE hearing.

Hence, in early 2024, Petitioner appealed both the Arlington County § 1983 case and the Prince William County § 1983 case to the Supreme Court of Virginia. Regarding the former, the sole issue raised with the Supreme Court of Virginia is whether the Arlington County Circuit Court and Court of Appeals had subject matter jurisdiction as a matter of federal constitutional law. Petitioner stated that the Court of Appeals of Virginia was required by law to address this question and failed to do so. The fact that Petitioner missed a deadline for an opening brief was irrelevant to the question of jurisdiction. Petitioner also pointed out specific cases from this Court as precedent indicating that fundamental fairness is required in all judicial proceedings.

The Supreme Court of Virginia failed to write an opinion on whether the Arlington County Circuit Court violated Petitioner's 14th Amendment rights and instead stated that Petitioner "failed to timely file

the notice of appeal in the Court of Appeals and the petition for appeal in this Court, the Court dismisses the petition for appeal filed in the above styled case" (App. 1a). Hence, the Supreme Court of Virginia ruled that the Arlington County Circuit Court had jurisdiction and did not violate constitutional requirements for a fair hearing in a fair tribunal.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

A. The Tax Injunction Act 42 U.S.C. § 1341 and the doctrine of comity, as previously applied by this Court and the 4th Circuit Court of Appeals, denied Petitioner any forum in which her constitutional claims could be heard in a timely manner and hence, are unconstitutional.

In *Malinski v. New York*, 324 U.S. 401, 414 (1945), Justice Felix Frankfurter stated that "the history of American freedom is, in no small measure, the history of procedure." This insight is particularly true for plaintiffs who bring § 1983 lawsuits against state or local government officials. The determination of whether a constitutional claim must be heard in federal or state courts is in many instances outcome-determinative because the first court system to hear a given case is likely to be the last.

With the foregoing in mind, Petitioner challenges the constitutionality of the Tax Injunction Act ("TIA") as applied by this Court and the 4th Circuit Court of Appeals. In theory, the TIA does not prohibit federal district courts from enjoining, suspending or restraining the assessment, levy or

collection of any tax under any State law if a “plain, speedy and efficient remedy” does not exist in the courts of such State. In practice, the ordinary and plain meaning of the words “plain, speedy and efficient” have been rendered meaningless. See *Tully v. Griffin, Inc.*, 429 U.S. 68, 75 (1976) (“It also seems clear that, under New York law, Griffin can fully preserve its right to challenge the amount of tax due while litigating its constitutional claim that no tax at all can validly be assessed against it.”) and *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514-515 (1981) (“Respondent does not allege any procedural defect in the Illinois remedy, other than delay, that would preclude preservation and consideration of her federal rights.”).

In theory, the TIA only permits federal jurisdiction if a state fails to provide a process for plaintiffs to contest the constitutional validity of a tax. In practice, no federal court has held that a state's court system is incapable of supplying a constitutional plaintiff with a plain, speedy, and efficient remedy when challenging state taxes.⁵ As a result, Petitioner was forced into the Virginia courts. The Virginia courts have concluded that Petitioner has zero constitutional rights in BOE hearings whatsoever, notwithstanding this Court's holdings in both *Hagar v. Reclamation District*, 111 U.S. 701, 710 (1884) (“But where a tax is levied on property not specifically, but according to its value...a different

⁵ If the federal courts were available to the Petitioner for her two different § 1983 lawsuits, it is conceivable that the due process violations that took place in Northampton County in August 2024 never would have occurred. (See Appendix T.) The judicial system as a whole fails to recognize the collateral damage it has caused by its decisions.

principle comes in. The officers, in estimating the value, act judicially") and *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20 (1907) ("The action of a state board of equalization...is reviewable in the federal courts at the instance of one claiming to be thereby deprived of his property without due process of law and denied the equal protection of the law.).

Petitioner cannot locate any federal case law indicating that this Court's holdings in (i) *Hagar v. Reclamation District* nor (ii) *Raymond v. Chicago Union Traction Co.* have been squarely overturned or narrowed -- other than shifting the forum from federal courts to state courts. But as Justice Felix Frankfurter aptly noted, procedure and freedom go hand-in-hand, and now Virginia citizens can be (a) refused a BOE hearing and told they need to "get out of here", (b) "excused" from a BOE hearing such that they are not even physically present in the room when the government makes its argument, (c) told they have 5 minutes to present their case whereas the government has no upper time limit, (d) told that the government can cite legal authority but they are restricted to "witnesses, evidence or other documents" and (e) threatened with sanctions prior to and during a constitutional challenge to a state taxation system with no reference to or concern for this Court's case law on when sanctions are appropriate in the context of § 1983 litigation -- and evidently this poses no 14th Amendment issues for Virginia courts whatsoever. Even worse, this is now a backdoor to illegal discrimination through the tax code that is not subject to any judicial review whatsoever. It's Jim Crow by another name. By the time Petitioner realized that the Virginia courts will not provide a forum in which her constitutional claims against the state taxation

system can be heard, an Order to Dismiss with Prejudice had been entered such that her claim was permanently extinguished in both Virginia and federal courts.

It is also imperative that the comity restrictions imposed by the federal courts be reconsidered or re-articulated. If the Motion to Dismiss with Prejudice is declared null ab initio by this Court, the Petitioner intends on refileing her case in the U.S. District Court for the Eastern District of Virginia and absent a reconsideration of the doctrine of comity as applied, the Petitioner will be blocked. The City has been hiding behind a fraudulently procured Motion to Dismiss with Prejudice for months and must be held accountable for its actions in denying citizens elementary due process rights for over two decades. Absent a reliable, accessible forum in which constitutional claims can be heard, rights don't exist. The Petitioner no longer trusts Virginia courts to respect and enforce her 14th Amendment rights with local government officials.

The 4th Circuit held in *Directv v. Holson*, 513 F.3d 119, 127 (4th Cir. 2008) that "the comity principle underlying the TIA is broader than the Act itself, and its scope is not restricted by § 1341." Hence, even if Petitioner is no longer blocked by the TIA and is permitted to file in federal courts, the 4th Circuit will block the Petitioner's lawsuit on the basis of comity. Petitioner respectfully requests that this Court overrule this 4th Circuit opinion, or Petitioner will not be able to re-file her case in federal court. The 4th Circuit relied on this Court's holding in *Fair Assessment in Real Estate Assn. v. McNary*, 454 U.S. 100 (1981), but Petitioner contends that the holding

in *Fair Assessment* was limited only to taxpayer damages actions under § 1983, rather than § 1983 cases in general.

This Court held in *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582 (1995) that § 1983 provides no basis for courts to issue injunctive or declaratory relief in state tax cases when there is an adequate remedy at law but also acknowledged in Footnote 6 that “as our opinions reveal, there may be extraordinary circumstances under which injunctive or declaratory relief is available even when a legal remedy exists.” *Id.* at 591. Similarly, in *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010), this Court held that under the comity doctrine, a taxpayer’s complaint of allegedly discriminatory state taxation must proceed in state court but also acknowledged that comity’s constraint has particular force in commercial activity and “strong cause” may warrant federal interference in state taxation systems. *Id.* at 413. The time has come to determine what precisely constitutes “extraordinary circumstances” for state taxation cases under § 1983 such that injunctive and declaratory relief can be sought, what constitutes “strong cause” such that federal action is warranted regarding state taxation systems and what are the differences between comity’s constraints in commercial activity versus individuals. Otherwise, Petitioner believes that 14th Amendment rights will ultimately be extinguished in BOE hearings across the country for private citizens.

B. A per se rule (whether under the doctrine of comity or the Tax Injunction Act) barring damages for 42 U.S.C. § 1983 state taxation lawsuits against local jurisdictions is preventing citizens from asserting their 14th Amendment rights in federal courts and is unconstitutional.⁶

This Court held in *Fair Assessment in Real Estate Assn. v. McNary*, 454 U.S. 100 (1981) that

The principle of comity bars taxpayers' damages actions brought in federal courts under 42 U.S.C. § 1983 to redress the allegedly unconstitutional administration of a state tax system. Because the principle of comity bars federal courts from granting damages relief in such cases, it is not necessary to decide whether the Tax Injunction Act, standing alone, would bar such actions.

On the other hand, this Court acknowledged in *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 591 (1995) Footnote 6 that there are "exceptional circumstances" in which injunctive and declaratory relief is available, notwithstanding the general holding set forth therein that "§ 1983 provides no basis for courts to issue injunctive or declaratory relief in state tax cases when there is an adequate remedy at law." *Id.* at 582. This Court further reasoned that because no relief could be

⁶ Petitioner is seeking damages against localities with no 11th Amendment immunity. The analysis will differ if damages are sought against the state itself and is not addressed here.

awarded under § 1983, no attorney's fees could be awarded under 42 U.S.C. § 1988. *Id.* at 100.

These two decisions cannot be reconciled as is. According to the logic set forth in *National Private Truck Council*, in so far as there are "exceptional circumstances" such that injunctive or declaratory relief in state tax cases is merited, then attorney's fees can be awarded under § 1988. In so far are there are attorney's fees available under § 1988 due to "exceptional circumstances", ipso facto it no longer makes any sense to have a per se rule under the doctrine of comity barring damages under § 1983 in situations where there are "exceptional circumstances." Both are monies paid such that there is deterrence against flagrant abuses of citizens' 14th Amendment rights. In so far as this Petitioner is concerned, she had no attorney and represented herself. "Damages" are nothing more than compensating her for her time such that she could continue living in Virginia and owning property with the full rights, privileges and immunities of a U.S. citizen. Hence, the Petitioner respectfully requests that this Court narrow its holding in *Fair Assessment* and expressly permit damages against local jurisdictions in the same "extraordinary circumstances" in which injunctive or declaratory relief is available under § 1983.

As set forth by this Court in *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819), "the power to tax involves the power to destroy". This case involved Maryland's attempt to impose taxes on the Second Bank of the United States. What is true for the federal government is equally true for individuals. The notion that one constitutional right is more

important than another is false. The ability to target individuals and families in their homes through a lawless real estate taxation regime with no constitutional judicial review literally threatens and undermines every other constitutional right. Absent damages, there is literally no deterrent in Virginia to local government jurisdictions actively discriminating against citizens through the real estate taxation system. Did the Petitioner's family leave Turkey and Egypt for nothing at all? We came here for the U.S. Constitution. At what point does the exception become the rule?

Not all states have taken the same path as the Commonwealth of Virginia. For example, the Supreme Court of North Carolina has held that a real estate taxation statute that did not explicitly provide for due process in BOE hearings violates the 14th Amendment of the U.S. Constitution. See *Bowie v. Town of West Jefferson*, 231 N.C. 408, 409 (1950) ("Its constitutionality must rest not only on what it contains, but on what it lacks. A delegation of power may be valid in itself under proper constitutional limitations; without them, invalid."). Moreover, the General Statutes of North Carolina provide that a taxpayer asserting a valid defense to the enforcement of a tax assessed upon his property may state that the tax was imposed by clerical error, was an illegal tax or a tax levied for an illegal purpose. See N.C. Gen. Stat. § 105-381 (App. 41a). Even with the protections afforded to North Carolina citizens under N.C. Gen. Stat. § 105-381, the North Carolina Supreme Court held in *Edward Values, Inc. v. Wake County*, 471 S.E.2d 342, 347 (1996) that "where, as in the present case, a taxpayer asserts civil rights violations under Section 1983 based upon a substantive constitutional

right, he or she may pursue Section 1983 remedies regardless of the state statutory or administrative remedies.” In reaching its decision, the North Carolina quoted this Court’s holding in *Zinermon v. Burch* 494 U.S. 113, 124 (1990) (“Overlapping state remedies are generally irrelevant to the question of a cause of action under § 1983.”). *Id.* at 347. The disparity in treatment between Virginia citizens and North Carolina citizens is arbitrary and capricious as a matter of federal law.

The City has made it abundantly clear by its actions that absent the involvement of the federal courts, they refuse to change their Rules of Procedure. In December 2023 – i.e., approximately one year after Petitioner had her initial BOE hearing in November 2022 and after two separate 42 U.S.C. § 1983 lawsuits had been filed – the City sent her a new hearing packet for the following tax year that had the identical Rules of Procedure. Petitioner withdrew her property tax appeal so that the BOE could not retaliate against her in the hearing. This is a separate, additional due process violation that is not incorporated into the Arlington County Circuit Court lawsuit. There is zero rational basis for why a local Virginia jurisdiction refuses to include a requirement for sworn testimony or to limit the role of the Board of Equalization to that of a neutral arbiter in its Rules of Procedure. The City complains about excessive legal fees and trivial constitutional litigation, but then in the same breath steadfastly refuses to take the most obvious, straightforward path to zero legal fees, a.k.a. compliance with the law.

Freedom isn’t free, either abroad or in the U.S. The City’s legal bills are being paid for with taxpayer

monies for the sole purpose of ensuring that taxpayers have no constitutional rights in BOE hearings and no constitutional judicial review. Damages at a bare minimum level the playing field between the individual taxpayer and the government. It has taken almost 2 years of the Petitioner's life at great personal expense and risk to ensure that BOE hearings in Virginia do not become a free-for-all against herself and other citizens and had zero help or assistance from a single Virginia government official even though all Virginia government officials take an oath to support the U.S. Constitution. Anyone who thinks illegal property seizures cannot happen here in the U.S. at this point is delusional.

C. The Supreme Court of Virginia has decided an important federal question in a way that conflicts with relevant decisions of this Court 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.

The entire Arlington County Circuit Court was conflicted because each judge on the Circuit Court signed one or more BOE member appointments. The Circuit Courts are ultimately responsible for BOE decisions to have no Rules of Procedure or a constitutionally deficient Rules of Procedure. Notwithstanding the obligation of Circuit Courts to comply with this Court's holdings in *Hagar v. Reclamation District*, 111 U.S. 701 (1884) and *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20 (1907), the Petitioner has demonstrated through the Virginia courts' own legal documents and records that

BOE hearings throughout the Commonwealth of Virginia lack fundamental fairness, due process and equal protection under the law.

The Circuit Court violated the most basic legal principle of our entire legal system: *nemo judex in causa sua*, i.e., no one may be his own judge. Although the terms disqualification and recusal are frequently used interchangeably, the two concepts are distinct. The failure of a judge to recuse can constitute a violation of the Code of Judicial Conduct but may not rise to the level of disqualification. See *FTC v. Cement Institute*, 333 U.S. 683, 702 (1948) ("most matters relating to judicial disqualification [do] not rise to a constitutional level"). If a judge is disqualified, however, he or she lacks subject matter jurisdiction, acts in an ultra vires capacity and any judgment rendered by him or her is void ab initio. Failure to recuse may rise to the level of disqualification when it impacts a litigant's right to 14th Amendment due process.

This Court has placed limitations on state courts and state court judges pursuant to 14th Amendment to ensure there is fundamental fairness in civil and criminal cases. In the case *In Re Murchison*, 349 U.S. 133 (1955), a Michigan state judge served as a one-man grand jury under Michigan law in investigating a crime. Later, the same judge, after a hearing in open court, adjudged two of the witnesses guilty of contempt and sentenced them to punishment. The Michigan Supreme Court upheld the sentence and sustained the trial judge's holding that it violated neither the Michigan Constitution nor the U.S. Constitution. This Court acknowledged that it was bound to accept the Michigan Supreme Court's

interpretation of the Michigan Constitution as binding but rejected its interpretation of the due process clause.

A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end, no man can be a judge in his own case, and no man is permitted to try cases where he has an interest in the outcome. *Id.* at 136.

The state judge's information acquired from a prior proceeding was deemed a critical fact in the Court's analysis. "Having been part of that process, a judge cannot be, in the very nature of things, wholly disinterested." *Id.* at 137. The Circuit Court's appointment of the BOE and knowledge about "irregularities" are analogous to "having been part of that process" per this Court's unequivocal holding.

This Court relied upon its holding in *Tumey v. Ohio*, 273 U.S. 510, 532 (1927), which held that "every procedure which would offer a possible temptation to the average man as a judge... not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law." *In Re Murchison*, 349 U.S. at 136. The Court concludes by acknowledging that this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But, to perform its high function in the best way, "justice

must satisfy the appearance of justice." *In Re Murchison*, 349 U.S. at 136, quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954).

Each of the preceding three cases involved criminal matters, but even in state civil cases, this Court has held that there are hard limits imposed by the 14th Amendment. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), was a case initially brought in the West Virginia state courts culminating in a \$50 million judgment for fraudulent misrepresentation, concealment, and tortious interference with existing contractual relations. This Court addressed the 14th Amendment due process concerns implicated in a request for the disqualification or recusal of a judge on the West Virginia Supreme Court and held that it was not the justice's own beliefs, nor the presence of actual bias which mattered, but instead, the "objective risk of actual bias that required recusal." *Id.* at 886.

These basic principles have been consistently upheld in Virginia case law in other contexts. See, for example, *Wilson v. Commonwealth*, 272 Va. 19, 22 (2006) ("failure to recuse himself was an abuse of discretion because the record shows that the judge's actions reflected a personal bias and prejudice against defense counsel and raised concerns about the judge's impartiality in the case and about the public's perception of his fairness") and *Buchanan v. Buchanan*, 14 Va. App. 53, 55 (Va. Ct. App. 1992) ("a judge must not only consider his or her true state of impartiality, but also the public's perception of his or her fairness, so that public confidence in the integrity of the judicial system is maintained."). The failure to apply the identical standards in the context of BOE

hearings demonstrates the self-interested nature of this case.

The Circuit Court violated the Petitioner's 14th Amendment rights and undermined the Supremacy Clause from the outset. The violation of the Petitioner's due process rights -- in a case that is paradoxically about her due process rights -- thereby demonstrates the Circuit Court's complicity in and support of the City's pattern of illegal conduct. Hence, the Circuit Court lacked subject matter jurisdiction as a matter of federal law from the outset, and its entry of the Motion to Dismiss with Prejudice must be declared void *ab initio*.

The Virginia Courts have been dodging the questions of fundamental fairness, the 14th Amendment and subject matter jurisdiction from the outset. The Circuit Court denied Petitioner's motions to have the Order to Dismiss with Prejudice set aside and declared null *ab initio*. The Court of Appeals then entered its Order to Dismiss based on a missed deadline, even though less than 2 months earlier, the same Court of Appeals held in *Choi v. Choi*, Record No. 0727-22-4 (Va. Ct. App. 2023) that "It is axiomatic that before considering the merits of a case, we must have subject matter jurisdiction." As George Orwell stated in *Animal Farm*, "all animals are equal, except some animals are more equal than others."

In the Petitioner's appeal to the Supreme Court of Virginia, she argued that (i) the Court of Appeals acted without authority in ignoring its obligation to address subject matter jurisdiction under federal, constitutional law and (ii) the Orders to Dismiss entered by each of the Circuit Court and the Court of

Appeals are void ab initio. Petitioner stated that a court lacks the authority to grant itself subject matter jurisdiction by virtue of Rule 5A:26 of the Rules of the Supreme Court of Virginia ("If an appellant fails to file a brief in compliance with these Rules, this Court may dismiss the appeal."). (App. 44a)

The Supreme Court of Virginia regretfully continued this same pattern and entered an Order to Dismiss with a reference to Rule 5:14(a) and Rule 5:17(a)(2). (App. 42a and 43a). These rules are irrelevant if a court had no jurisdiction from the outset. Hence, the Supreme Court of Virginia made a substantive decision that the Circuit Court (i) did not violate the Petitioner's 14th Amendment due process right to a fair hearing in a fair tribunal and (ii) had jurisdiction. The Supreme Court of Virginia is attempting to obscure its real holding by referencing procedural matters that have no relevance. Subject matter jurisdiction may be raised at any time. See *Morrison v. Bestler*, 239 Va. 166, 169-70 (1990) and *Barnes v. American Fertilizer Co.*, 144 Va. 692, 705 (1925) ("An order entered by a court lacking subject matter jurisdiction "may be impeached directly or collaterally by all persons, anywhere, at any time, or in any manner."). As a result, a challenge asserting a circuit court lacked subject matter jurisdiction may be raised for the first time on appeal, including by the Court of Appeals itself *sua sponte*. *Morrison* 239 Va. at 170. A judge acting without subject matter jurisdiction acts in an ultra vires capacity rather than with the authority of the law. This is why judges are not entitled to judicial immunity if they act in the absence of any subject matter jurisdiction. See *Bradley v. Fisher*, 80 U.S. 335, 336 (1871).

CONCLUSION

In an essay entitled *Property*, James Madison wrote the following: “Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.” See James Madison, *Property* (1792), reprinted in *Selected Writings of James Madison* 222, 223 (Ralph Ketcham ed. 2006).

Notwithstanding the passage of time, the truth of this statement could not be more self-evident. The Virginia courts have refused to acknowledge any 14th Amendment rights whatsoever in BOE hearings throughout the Commonwealth. Hence, the federal courts are our last resort, and this Court’s decision will impact the lives of millions of people. For all of the foregoing reasons set forth herein, Petitioner respectfully requests that the Supreme Court of the United States issue a writ of certiorari to review the judgment of the Supreme Court of Virginia.

Respectfully Submitted,

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