

Supreme Court, U.S.  
FILED

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No. 24- 407

**In the  
Supreme Court of the United States**

BONNIE BURKHARDT,

*Petitioner,*

v.

PENNEY AZCARATE, CHIEF JUDGE  
OF THE FAIRFAX COUNTY CIRCUIT COURT,

*Respondent.*

**On Petition for a Writ of Certiorari to the  
Supreme Court of Virginia**

**PETITION FOR A WRIT OF CERTIORARI**

Bonnie Burkhardt  
*Petitioner Pro Se*  
8402 Gambrill Lane  
Springfield, VA 22153  
(703) 505-2793  
bonnie.burkhardt@blueridge-sw.com

October 7, 2024

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**QUESTION PRESENTED**

Does a citizen have a Constitutional and Common Law right to report evidence of felonious activity to the grand jury, especially when public safety officials block reports of their own criminal activity?

## LIST OF PROCEEDINGS

Supreme Court of Virginia

No. 230875

Bonnie Burkhardt, *Appellant* v. Penney Azcarate,  
Chief Judge, *Appellee*

Date of Final Opinion: April 15, 2024

Date of Rehearing Denial: June 10, 2024

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Court of Appeals of Virginia

No. 1908-22-4

Bonnie Burkhardt, *Appellant* v. Penney Azcarate,  
Chief Judge, *Appellee*

Date of Final Opinion: July 26, 2023

Date of Rehearing Denial: October 31, 2023

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Circuit Court of Fairfax County

No. CL-2022-7261

Bonnie Burkhardt, *Petitioner* v. Penney Azcarate,  
Chief Judge, *Respondent*

Date of Final Order: November 13, 2022

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## PETITION FOR A WRIT OF CERTIORARI

Bonnie Burkhardt, *pro se*, respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgments of the Fairfax County Circuit Court as affirmed by the Virginia Court of Appeals and the Virginia Supreme Court to clarify citizens' right to access the grand jury and report crimes, especially when public safety officials block reporting of their own continuing criminal activity.



## OPINIONS BELOW

- August 9, 2024 certified the order from October 3, 2023. Appellate Court of Virginia, *Bonnie Burkhardt v. Penney Azcarate, Chief Judge*, Record No. 230875. The order required Burkhardt to pay Chief Judge Azcarate damage, which Burkhardt paid. (App.5a)
- June 10, 2024. Virginia Supreme Court, *Bonnie Burkhardt v. Penney Azcarate, Chief Judge*, Record No. 230875. Order refusing the petition for rehearing and denying the motion to amend the appeal. (App.18a)
- April 15, 2024. Virginia Supreme Court, *Bonnie Burkhardt v. Penney Azcarate, Chief Judge*, Record No. 230875. Order refusing the petition for appeal. (App.1a)
- October 31, 2023. Appellate Court of Virginia, *Bonnie Burkhardt v. Penney Azcarate, Chief*

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- October 3, 2023. Court of Appeals of Virginia, *Bonnie Burkhardt v. Penney Azcarate*, Chief Judge, Record No. 1908-22-4. Unpublished decision affirming the Circuit Court decision. (App.7a)
- November 18, 2022. Circuit Court of Fairfax County. *Bonnie Burkhardt v. Penney Azcarate*, Chief Judge, No. CL-2022-7261. Order refusing the petition for Rehearing. (App.22a, Record ["R"] at 75)
- November 13, 2022. Circuit Court of Fairfax County. *Bonnie Burkhardt v. Penney Azcarate*, Chief Judge, No. CL-2022-7261. Final Order. Demurrer was sustained and Petition dismissed with prejudice. The principle of judicial immunity applies to judicial inaction, so the Petition was dismissed without prejudice. (App.12a, R. at 61-62)
- October 20, 2022. Circuit Court of Fairfax County. *Bonnie Burkhardt v. Penney Azcarate*, Chief Judge, No. CL-2022-7261. Oral arguments and Ruling against the Petition. (App.23a, R. at 128-138)
- June 21, 2022. Circuit Court of Fairfax County. *Bonnie Burkhardt v. Penney Azcarate*, Chief Judge, No. CL-2022-7261. Order recusing all Judges of the Circuit. (App.16a, R. at 42)



## JURISDICTION

Burkhardt invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Virginia Supreme Court's order denying a rehearing, June 10, 2024.

On October 20, 2022, the Fairfax County Circuit Court denied Burkhardt's Petition to appear before a grand jury, issuing the final order on November 13, 2022, declaring Burkhardt failed to properly plead a cause of action, ruling judicial immunity barred her claims, and ruling that the Court had no authority, statutorily or otherwise, to grant the relief sought.

The Virginia Appellate Court's three-judge panel denied Burkhardt's petition for appeal, October 3, 2023. The Virginia Appellate Court denied her petition for rehearing, October 31, 2023.

The Virginia Supreme Court denied Burkhardt's petition for appeal, April 15, 2024. The Virginia Supreme Court denied a petition for rehearing, June 10, 2024.



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **A. U.S. Constitution**

#### **U.S. Const. art. VI (pertinent text)**

The 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, anything in the Constitution or laws of any State to the contrary notwithstanding.

#### **U.S. Const. amend. I:**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

#### **U.S. Const. amend. IV:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**U.S. Const. amend. V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U.S. Const. amend. X:**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**U.S. Const. amend. XIV, § 1:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

**B. Virginia Constitution****Va. Const. art. I, Bill of Rights. § 2. People the source of power:**

That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

**Va. Const. art. I, Bill of Rights. § 10. General warrants of search or seizure prohibited.**

That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

**C. Federal Statutes****18 U.S.C. § 4 – Misprision:**

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

**18 U.S.C. § 1504 – Influencing juror by writing:**

Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties,

by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

**18 U.S.C. § 1512 – Tampering with a witness, victim, or an informant: (pertinent text)**

- (b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—
  - (1) influence, delay, or prevent the testimony of any person in an official proceeding; . . . shall be fined under this title or imprisoned not more than 20 years, or both.

...

(f) for the purposes of this section –

- (1) an official proceeding need not be pending or about to be instituted at the time of the offense; and
- (2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

**18 U.S.C. § 2515 – Prohibition of use as evidence of intercepted wire or oral communications.**

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing,

or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

#### **18 U.S.C. § 3332 – Powers and duties**

It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

#### **D. Virginia Statutes**

##### **Va. Code § 1-200 – The common law**

The common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and the Constitution of this Commonwealth,



shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly.

**Va. Code § 1-248 – Supremacy of federal and state law.**

The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.

**Va. Code § 19.2-191 – Functions of a grand jury:**

The functions of a grand jury are twofold:

- (1) To consider bills of indictment prepared by the attorney for the Commonwealth and to determine whether as to each such bill there is sufficient probable cause to return such indictment "a true bill."
- (2) To investigate and report on any condition that involves or tends to promote criminal activity, either in the community or by any governmental authority, agency, or official therefrom. These functions may be exercised by either special grand jury or a regular grand jury as hereinafter provided.

**Va. Code § 18.2-460(A) – Obstructing justice, resisting arrest; fleeing from a law-enforcement officer; penalties: (pertinent text)**

If any person without just cause knowingly obstructs a judge, magistrate, justice, juror,

attorney for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555, he is guilty of a Class 1 misdemeanor.



## STATEMENT OF THE CASE

### A. Background

Burhardt uncovered that Fairfax County officials were engaged in felony violations of Fourth Amendment federal and state wiretap-type laws. This ongoing criminal activity also occurs across Virginia and the country, affecting thousands nationwide. Those affected are branded felons for life and lose their reputations, liberty, employment, and property without due process of law. Virginia Courts and other sundry courts around the country have ignored the Fourth Amendment's protection from unwarranted search and seizure concerning electronic evidence. Respondent and many trial judges around the nation have effectively overruled This Honorable Court's law of the Fruit of the Poisonous Tree, *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 375 (1920) and *Wong Sun v. United States*, 371 U.S. 471 (1963). They have nullified 18 U.S.C. § 2515 and similar laws.

Burkhardt saw it as her moral obligation to report criminal activity of this nature as an expert in the lawful and unlawful use of interception and electronic surveillance systems for the Department of Defense. In contrast, her failure to report such crimes to a judge or civil authority would classify her as guilty of misprision, 18 U.S.C. § 4. Beginning in 2017, Burkhardt reported these Commonwealth and federal felonies to the Virginia Attorney General's office, County law enforcement, Virginia State police officers, the FBI, and a U.S. Attorney-all of whom intentionally took no action. (R. at 6). The criminal activity continues unabated, nationwide. (R. at 9). The perpetrators thereby enjoy *de facto* immunity. (CAV Appeal p. 13).

The Virginia Constitution, Article I, Section 2 states, in part: "That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them." (R. at 6). No official or magistrate was amenable to Burkhardt's complaints of criminal activity, so she decided to present her evidence to a grand jury as a citizen.

#### **B. Attempts to Appear Before a Grand Jury**

Virginia lacks any statute, case law, Rule of Court or guidance on how the public may report crimes to the grand jury. (CAV Appeal p. 27). Virginia courts and the Virginia State Bar only allow prosecutors to report criminal activity to the grand jury while preventing access to citizens and other attorneys. Attorney Neil Kuchinsky was charged with jury tampering for attempting to contact jurists, requesting permission to appear before the grand jury. (June 4, 2004, Kuchinsky hearing of VSB Docket Number 04-060-0660). (R at 71-72). To avoid possible criminal charges, Ms. Burkhardt

did not contact jurists. The net effect is that grand juries in Virginia are just a rubber stamp for the prosecutors, contrary to the grand jury's origin. (R. at 50, 120, CAV Appeal p. 5-6, 12, SCV Appeal p. 19)

Burkhardt petitioned to appear before the grand jury to present evidence of this criminal activity. She asserted her Constitutional and Common Law right to report these ignored crimes to the Fairfax County Grand Jury. Burkhardt attempted to file her Petition in the Fairfax County Circuit Court, but the court clerks declined the Petition until she identified who she was suing. Burkhardt followed the advice of the Clerk of Court who consulted with the Chief Judge. The Chief Judge provided administrative oversight to the grand jury and was also responsible for the Rules of Court. As noted in the filings, it evolved into this Petition against the current Chief Judge. (R. at 70-71)

Burkhardt's Petition detailed the historical intent of the grand jury from the origin of English law through the ratification of the Constitution and the Bill of Rights. She cited examples of citizens exercising their common law right to present claims and evidence to Colonial Virginia grand juries. Va. Code § 1-200 states that the common law of England shall continue in full force except as altered by the General Assembly. Our Founding Fathers had personal experiences with grand juries in Colonial Virginia which shaped the grand jury as specified in our Bill of Rights, Fifth Amendment. (R. at 5). This right was not delegated to the states, so states cannot deny or abridge it. (R. at 9). This right was most recently affirmed in Virginia by Winchester City Circuit Court Judge John Wetsel, Jr. in a letter dated, January 25, 2011. (R. at 2-8, 39-40)

A grand jury's investigation includes examining all witnesses to determine if a crime has been committed, *United States v. Stone*, 429 F.2d 138, 140 (2d Cir. 1970). The grand jury is functionally independent from the judicial branch, *United States v. Williams*, 504 U.S. 36 at 48 (1992). (R. at 3, CAV Appeal p. 12, SCV Appeal p. 20) Also, a citizen's right to request to appear before a federal grand jury existed long before it was protected by statute, 18 U.S.C. § 1504. (R. at 6, 50, 68, CAV Appeal p. 7, SCV Appeal p. 16).

Chief Judge Azcarate recused herself and all other Circuit Court judges from this case. (App.16a, R. at 42) Respondent filed a Demurrer and Plea in Bar of Judicial Immunity and Memorandum of Law in Support, August 2, 2022. Respondent argued that the Petitioner both lacked a cognizable right of action against Respondent and factually failed to state a claim against Judge Azcarate. It claimed that any claims against Judge Azcarate are barred by the doctrine of absolute judicial immunity. (R. at 44-48)

Burkhardt filed her opposition to the Demurrer on August 8, 2022. Respondent did not cite any authority to deny Burkhardt her fundamental right to present evidence to the grand jury. (R. at 51) Judge Azcarate did not perform her magisterial duty to deliver Burkhardt's petition to the grand jury. Burkhardt's position was that a judge has administrative responsibility but no judicial authority over the grand jury, and judicial immunity does not apply to administrative decisions. (R. at 49-55) Federal law protecting a citizen's request to appear preempts state law according to the Supremacy Clause within Article VI of the U.S. Constitution and the doctrine of preemption. (R. at 50, 69). Since no damage was claimed, this cause is

on the Equitable Side of the Court. As such, interpreting statutes and rules does not bar equity from seeing that justice is done. (R. at 52)

During oral arguments, Burkhardt enumerated the Constitutional issues and challenged the Constitutionality of claiming absolute judicial immunity:

It is every citizen's First Amendment right to petition the government for redress of grievances, but County officials are obstructing this right. The grand jury is the most appropriate forum to hear my grievance about criminal conduct since I have exhausted traditional methods of reporting these crimes.

The Fifth Amendment was ratified — ratified the grand jury as it was in Colonial times and its primary authors were Virginians. The Tenth Amendment guarantees that the rights of colonists carry forward as rights of the United States citizens. And in 1868, the Fourteenth Amendment was ratified which prevents any state from abridging these rights. The U.S. and Virginia Constitutions are the last word on a citizen's right and the function, role, and duties of the grand jury, and those rights continue.

The recent decision of the *New York Rifle and Pistol Association v. Kevin Bruen* was based on this exact principle. No statute has been passed to violate this constitutional right. (R. at 119-120)

Here, opposing counsel has taken an oath to defend the Constitution, yet, he is arguing a position that statutes, rules of the Court, and

social customs trump the Constitution. (R. at 124)

And unless opposing counsel can present a constitutional amendment modifying the First, Tenth, or Fourteenth Amendment, every citizen and lawful resident has right to present evidence of criminal activity to the grand jury. (R. at 125)

If our founding fathers wanted judges to have absolute judicial immunity, they needed to write it into the Constitution, but they did not. (R. at 123-124)

The Court could not identify a prohibition against citizens presenting suspected criminal acts to a grand jury. The Court found there was no authority statutorily or otherwise to grant the relief sought, and found the Petitioner failed to state a claim. (R. at 61-62) The Court also ruled that Judge Azcarate was entitled to absolute judicial immunity, even for judicial inaction. (R. at 130-132).

The Honorable Judge Sharpe noted, "Requests for submission of the grand jury usually come from public officials or from the jurors themselves." However, Fairfax County has over one million residents. It is impossible for a grand juror to learn of all criminal activity through personal contacts. (R. at 69)

### **C. Court of Appeals of Virginia**

The Fairfax County Circuit Court ruling created a conflict between the state circuits as Winchester City Circuit Court allowed a citizen to appear before a grand jury while the Fairfax County Circuit Court does not. The Appeal to the Court of Appeals of Virginia,

CAV, was filed on January 27, 2023. It was based on denying Common Law rights and right guaranteed by the First, Fourth, Fifth, Tenth, and Fourteenth Amendments. (CAV Appeal pp. 5-17).

Petitioner opposed the Plea in Bar of Judicial Immunity because Burkhardt felt that judicial immunity only applies to judicial activities. Respondent produced no authorities empowering judges over a grand jury. Petitioner suggests judicial immunity also does not apply to administrative decisions, especially ones that obstruct justice, Va. Code § 18.2-460 and 18 U.S.C. § 1512. "Truly judicial acts, however, must be distinguished from the administrative, legislative, or executive functions that judges may occasionally be assigned by law to perform." *Forrester v. White*, 484 U.S. 219 (1988). (CAV Appeal pp. 16, 22-24)

The Appellate Court affirmed the circuit court's decision. They limited their ruling to one of the three items and held that Burkhardt failed to state a claim against Judge Azcarate. They did not dispute the ruling that judicial immunity barred Burkhardt's Petition. That court also ordered Burkhardt to pay damage to the Chief Judge, which she paid. (App.5a). On September 9, 2024, Judge Azcarate notified Burkhardt through counsel that she received the check, but would not be cashing it.

The Motion to Reconsider invoked the *ends of justice exception* per Virginia Supreme Court Rule 5A:18. Burkhardt also identified that the Rule of Law requires citizens to report felonious activity to officials including judges, and it assumes officials will act, 18 U.S.C. § 4-Misprision. (CAV Motion to Reconsider p. 3). In response to Judge Sharpe refusing to answer Burkhardt's question on how to submit such a Petition,



she noted that the Canons of Judicial Conduct, Section I, "Providing information to unrepresented litigants" (such as Ms. Burkhardt) clearly states that "*a judge may explain the judicial process while maintaining impartiality.*" (CAV Motion to Reconsider p. 7, SCV Appeal p. 21)

#### **D. Supreme Court of Virginia**

Ms. Burkhardt's appeal to the Supreme Court of Virginia, SCV, replicated the same issues, filed November 29, 2023. A grand jury is supposed to operate without interference of a presiding judge, *United States v. Calandra*, 414 U.S. 338 (1974). Rules are not allowed that are contrary to the "whole history of the grand jury institution, in which laymen conduct their inquiries unfettered by technical rules." *Costello v. United States*, 350 U.S. 359 (1956). (SCV Appeal p. 12, 19)

Burkhardt did plead a simple cause of action-to appear before a grand jury to witness and present evidence of criminal activity. The Petition answered the questions of who, what, where, when, and why. The Appellate Court declined to rule on the core issue: whether a citizen has a right to witness before a grand jury about criminal activity. Respondent declined to file a reply. The Virginia Supreme Court upheld the prior ruling and denied Burkhardt's Motion to Reconsider on June 10, 2024.



## REASONS FOR GRANTING THE PETITION

The reason for granting this Writ is because law enforcement is criminally violating all three provisions of the Electronic Communications and Privacy Act of 1986, ECPA. In Virginia, there have been about 30,000 felonies and federal crimes committed by government officials. Evidence illegally obtained has been used to prosecute about 9,500 Virginians and about 180,000 people nationwide.<sup>1</sup> (SCV Motion to Reconsider p. 1). Prosecutors forget their constitutional obligations when they prosecute or obtain plea deals with illegal or fraudulent evidence. It is critical for a citizen to report this criminal activity to a grand jury when the FBI, local law enforcement, Virginia Attorney General's office, and state and federal prosecutors turn a blind eye to this criminal activity of their fellow employees.

### I. HISTORY OF THIS COMMON LAW RIGHT

In 1166 A.D., King Henry II made the grand jury more formal in England. A fair reading of King Henry II's consolidation of judicial power makes it clear that he wanted citizens to report on his courtiers and agents to ensure they did not undermine his rule. His son, King John, was forced to recognize the grand jury's role in the 1215 A.D. Magna Carta. (R. at 9) Virginia Colonists regularly exercised their common law right to appear before a grand jury in colonial times, when the U.S. Constitution was signed, and when

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<sup>1</sup> Burkhardt, B., MANUFACTURING CRIMINALS, 2ND EDITION: WIRETAPPING AND PLANTING EVIDENCE (2024).

the Bill of Rights was ratified.<sup>2</sup> (R. at 1-2, 10-38). The Tenth Amendment guarantees that the rights of Colonists were carried forward as Constitutional rights of United States citizens (CAV Appeal pp. 10-11). Va. Code § 1-200 specifies that common law continues in full force, and the General Assembly has not abridged this right. (R. at 2, 51) Unfortunately, the grand jury has been taken over by county and federal prosecutors, which is exactly contrary to the legislative history.

The prohibition of unlawful searches dates back to colonial times when George Mason wrote the Virginia Declaration of Rights, passed in June, 1776. (CAV Appeal p. 13) It became Article I, Section 10 of Virginia's Constitution. As recited in Burkhardt's briefs, Virginians James Madison, Thomas Jefferson, and George Mason exchanged letters and ideas for a Bill of Rights, including discussions on privacy rights. Madison also drew from Mason's work when writing the Fourth Amendment. (R. at 4-8) Holding public officials accountable was one of the intended functions of the grand jury when Madison wrote the Fifth Amendment. If these Founding Fathers did not believe citizens should access the grand jury, they had plenty of time to amend Virginia's Constitution or pass statutes after Virginia signed the Bill of Rights. (CAV Appeal p. 13) This history was summarized in *Costello v. United States*, 350 U.S. 359 (1956):

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<sup>2</sup> Morgan, Gwenda. *Law and Social Change in Colonial Virginia: The Role of the Grand Jury in Richmond County, 1692-1776*, THE VIRGINIA MAGAZINE OF HISTORY AND BIOGRAPHY, vol. 95, no. 4, 1987, pp. 453-480. JSTOR, [www.jstor.org/stable/4248973](http://www.jstor.org/stable/4248973). Accessed 21 Aug. 2021.

The grand jury is an English institution, brought to this country by the early colonists and incorporated in the Constitution by the Founders. There is every reason to believe that our constitutional grand jury was intended to operate substantially like its English progenitor.

In England, the grand jury served for centuries both as a body of accusers sworn to discover and present for trial persons suspected of criminal wrongdoing and as a protector of citizens against arbitrary and oppressive governmental action.

The Fourteenth Amendment (1868), Section 1, mandates, among other things, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." This case seeks to ensure the survival of that mandate. Citizens have the absolute right to hold government agents accountable for their brazen criminal activity, 18 U.S.C. § 3332(a). An order denying a citizen's right to report crimes to the grand jury is in direct abjuration of the Virginia and Federal Constitutions. It is also a denial of due process and equal protection guaranteed the Fourteenth Amendment and Virginia's Supremacy Clause, Va. Code § 1-248. (R. at 65-69, CAV Appeal p. 9).

Some legal scholars describe the grand jury as, "The fourth branch of government." It is called the shield because it protects Americans from an overreaching government and malicious indictments of individuals. It is called the sword because it was designed to protect citizens from those who would harm them. (R. at 3, 9) Virginia grand juries are authorized to investigate

and report on criminal activity by any government authority, agency, or official, Va. Code § 19.2-191(2).

The grand jury is not part of the Judicial, Legislative, or Executive Branches. Nevertheless, those bodies may accept the grand jury's decisions. The Judicial branch provides the grand jury with administrative support. The grand jury "requires no authorization from its constituting court to initiate an investigation." It is critical to maintain "the traditional functioning of the grand jury that the 'common law' of the Fifth Amendment demands." *United States v. Williams* (1992).

The grand jury's responsibility is so broad that it "may explore an anonymous charge . . . [or] a rumor." *In re Addonizio*, 53 N.J. 107, 126 (1968). (R at 8, CAV Appeal p. 15) Yet, citizens and attorneys who are not prosecutors are prohibited from providing evidence or rumors to jurists. The office of Chief Judge had a magisterial duty to deliver Burkhardt's petition to the grand jury. (R. at 1-2) Instead, both the current and prior Chief Judge restrained Petitioner from reporting criminal behavior to the grand jury. The prior Fairfax County Chief Judge also advised the Clerk of the Court<sup>3</sup> to restrain the Petitioner's efforts. (R. at 70) Respondent failed to cite any statute granting a judge the authority to refuse delivery of a petition to a grand jury or to prohibit a citizen from appearing. (R. at 50).

## II. ENFORCING FOURTH AMENDMENT LAWS

The fundamental purpose of laws is to ensure domestic tranquility. Government officials cannot cherry-pick which laws they like and ignore those less

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<sup>3</sup> The prior Fairfax County Chief Judge and that Clerk of Court have since retired.

appealing, thereby overruling legislatures. The Electronic Communications and Privacy Act of 1986 modernized the law so private electronic communications such as texts, emails, and file transfers are protected like phone calls. Intercepting communications or conducting electronic surveillance without a warrant devastates society unless it conforms to the law. Fourth Amendment wiretap-type laws protect citizens and hold the government accountable.

Starting in 2017, Burkhardt filed the first of several reports of criminal activity with Virginia Attorney General's office followed by reports to other government offices. Nothing happened. Then Burkhardt filed Petitions to exercise her Common Law and Constitutional right to appear before the grand jury. The Chief Judge, defended by the Attorney General's office, waged a multi-year court battle to block her, without citing any statute granting them such authority. (R. at 50, 72-73).

The Judicial branch should provide prompt justice when appraised of wiretap-type felonies, just like any other felony. Instead of pursuing the *ends of justice* (CAV Motion to Reconsider p. 1-6, SCV Appeal p. 11), intentional inaction and bureaucratic technicalities are used to obstruct justice, Va. Code § 18.2-460 and 18 U.S.C. § 1512. (R at 3, 49, 53-54, 72-73, 121; CAV Appeal p. 24-27). Wiretap-type laws are vacated by government officials whose duty is to uphold these laws.

### III. COURTS ERRED

The Circuit Court erred when it failed to recognize the common law right of citizens to report crimes to the grand jury while condoning Fourth Amendment criminal violations. The rights that existed when the

Constitution was ratified, survive and do not require a statute or amendment to regrant of the right, *New York Rifle & Pistol Association v. Bruen*, 597 U.S. \_\_\_\_ (2022) (R. at 66, CAV Appeal p. 20). This is the core issue of the case. The other issues are very important, but secondary to grand jury access.

In Colonial Virginia, Justices Grymes and Beale were indicted for failing to do their administrative duty to properly publish laws. See Gwenda, *Law and Social Change in Colonial Virginia: The Role of the Grand Jury in Richmond County, 1692-1776*. (R. at 4) So, modern Virginia judges do not have absolute judicial immunity when they fail to do their administrative duty. Instructions need to be published on how a citizen can exercise their right to access the grand jury. (R. at 54, 71, CAV Reply Brief p. 5)

Action or inaction to impede justice is discussed in Virginia's III. Canons of Judicial Conduct, Preamble (R. at 72-73):

In determining whether a judge's [Respondent] conduct is consistent with these Canons and standards, the judge should consider three questions:

- (1) Will the action or inaction threaten the judge's impartiality?
- (2) Will the action or inaction harm public trust in the fairness of the judiciary?
- (3) Will the action or inaction harm the efficient and effective delivery of justice?



## CONCLUSION

The people's Common Law right to access grand juries remains unmodified. This Common Law right was not delegated to the states, so states cannot deny nor abridge it. Statutes, administrative decisions, and Rules of Court lack the authority to amend Constitutional rights reinforced by the Fourteenth Amendment.

Until June 20, 1863, West Virginia shared Virginia's early history and it guarantees that "any person may go to the grand jury to present a complaint to it." *Miller v. Smith*, 285 S.E.2d 500 (W.Va. 1981). (R. at 6-7) The Petition and Appeals contain examples from several other states demonstrating how their citizens access the grand jury. Even California understands this Constitutional and Common Law right, providing online forms to fill out and email directly to the grand jury. (R. at 69, CAV Appeal p. 14-15). The lack of conformity among the states calls for unity within the guard rails of the U.S. Constitution.

Burkhardt respectfully prays that the United States Supreme Court grant this writ to review the state court's judgements and clarify whether this Common Law right remains intact.



Respectfully submitted,

A handwritten signature in cursive script that reads "Bonnie Burkhardt".

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Bonnie Burkhardt

*Petitioner Pro Se*

8402 Gambrill Lane

Springfield, VA 22153

(703) 505-2793

bonnie.burkhardt@blueridge-sw.com

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