No. 24-606

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTINE A. ARAKELIAN,
Petitioner,

v.

ASHLEY POLLARD, et al.,
Respondents.

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

REPLY BRIEF OF PETITIONER

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ARGUMENTS

A. The Court of Appeals Violated Federal Law When It Dismissed the Appeal, and the Supreme Court of Virginia Violated Federal Law When It Refused the Petition for Appeal.

In Argument A of his Brief in Opposition, Falcon argues that certiorari must be denied here because "Arakelian's appeal to this court is really an issue of state rules of appellate procedure." Falcon contends this is so because the Rules of the Virginia Supreme Court and the Court of Appeals' holding in *Uninsured Employers' Fund v. Coyle*, 22 Va. App. 157 (1996), allowed the Court of Appeals to dismiss Petitioner's appeal and the Supreme Court of Virginia to refuse the Petition for Appeal. This is wrong as a matter of fact and law.

First, *Uninsured Employers' Fund v. Coyle* is irrelevant. Rather, the controlling case is *Proctor v. Town of Colonial Beach*, 15 Va. App. 608, 610-611 (Va. Ct. App. 1993). *Proctor* held that once an appellant has complied with the first two elements of Rule 5A:8(c), he has established *prima facie* compliance with the rule and the trial judge must sign the statement, correct the written statement and sign it, or, in cases where the judge cannot in good faith recall or accurately reconstruct the relevant proceedings, order a new trial. *Id.* at 610-611. Further, the Court of Appeals "**will not** dismiss an appeal where an appellant has established prima facie compliance with Rule 5A:8(c)(1)." (emphasis added) *Id.* at 611. The foregoing rights will collectively be referred to herein as "**Proctor Rights**". Falcon never challenged

Petitioner's *prima facie* compliance with Virginia Supreme Court Rule 5A:8(c)(1) such that she was entitled to assert her **Proctor Rights**. Hence, he **admits it**.

Second, *Uninsured Employers' Fund v. Coyle* was overturned by the Supreme Court of Virginia in *Belew v. Commonwealth,* 726 S.E.2d 257 (Va. 2012). Belew filed a timely notice of appeal, but the court reporter failed to file transcripts of proceedings from the date on which the circuit court heard testimony such that there was a missing transcript. The circuit court later entered an order making the missing transcript part of the record pursuant to Virginia Code § 8.01–428(B) and ordered the clerk of court to transmit the missing transcript to the Court of Appeals. Belew then filed his petition for appeal in the Court of Appeals.

The Court of Appeals denied Belew's petition for appeal, stating that Belew did not timely file the missing transcript within 60 days nor request an extension, and without the transcript, the record on appeal was insufficient to allow the court to review assignments of error. The Supreme Court reversed, holding that "Rule 5A:8(a) **did not** require Belew to file a motion in the Court of Appeals for an extension of time to make the Missing Transcript part of the record. The circuit court's statutory authority to correct the record **superseded** the requirements of the Rule." (emphasis added) *Id.* at 260.

If, as the Supreme Court of Virginia held in *Belew*, the Virginia Code supersedes Rule 5A:8, then ***a fortiori,*** constitutional and federal law may ***also*** supersede Rule 5A:8. Petitioner specifically cited

Belew on page 32 of her Petition for Appeal as an example of how and why the Court of Appeals' discretion under Rule 5A:26 ("If an appellant fails to file a brief in compliance with these Rules, this Court may dismiss the appeal.") is circumscribed. *Hathorn v. Lovorn*, 457 U.S. 255, 263 (1982), held that state courts "may not avoid deciding federal issues by invoking procedural rules that they do not apply evenhandedly to all similar claims", yet that is precisely what the Virginia courts did here.

As it pertains to 42 U.S.C. § 1983 cases in state court with state procedural rules, this Court's holding in *Felder v. Casey,* 487 U.S. 131 (1988), is applicable and hinges on two questions: does the state procedure conflict with the remedial intent of § 1983 and will it produce different outcomes in state versus federal courts. The answer to both questions is yes. Rule 5A:26 is clearly being used to extinguish federal claims repugnant to state and local officials.

Petitioner cited *Roberts v. Ferman,* 826 F.3d 117 (3d Cir. 2016), on page 19 of her Petition for Appeal to demonstrate that federal and state outcomes will differ if the Supreme Court of Virginia did not reverse the Court of Appeals' dismissal. The Third Circuit Court of Appeals had to determine whether the District Court's decision to dismiss a § 1983 case due to the appellant's decision not to attempt to recreate the trial record pursuant to Rule 10(c) of the Federal Rules of Appellate Procedure[1] for nine continuous months after being explicitly ordered to do so by the District Court was an abuse of discretion. *Id.* at 117 and 121. The Third Circuit held

[1] Rule 10(c) is the federal equivalent of Virginia Rule 5A:8(c).

that dismissal for failure to prosecute must be a sanction of "last, not first, resort" and that a dismissal for a failure to prosecute is only appropriate for a "willful refusal" or "blatant failure to comply with a district court order." *Id.* at 122-123. Petitioner did not refuse to comply with a court order or sit idly on her rights. Rather, Petitioner filed a motion with the Court of Appeals to protect her **Proctor Rights** and was waiting for a decision.

Petitioner cited *Foman v. Davis*, 371 U.S. 178, 181 (1962), and *Conley v. Gibson*, 355 U.S. 41, 48 (1957), in her Petition for Appeal to support her assertion that legal decisions should be made on the merits. See also *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 383 (1966). If Virginia courts are not held to these standards, then Virginia courts have the authority to alter federal rights by their own procedures.

B. This Court Has Full Authority to Reverse the Circuit Court's Dismissal of her Complaint and Denial of her Motion for Summary Judgment.

In Argument B of his Brief in Opposition, Falcon argues that the Circuit Court's dismissal is not an issue before this Court and that the "only issue is the Supreme Court of Virginia's opinion that there was no reversible error in the lower court." But that is wrong as a matter of law. This Court has **full authority** to decide all issues set forth in the Petition for Writ of Certiorari.

This Court held in *Reece v. Georgia*, 350 U.S. 85, 87 (1955), that it has "jurisdiction to consider all

of the substantial federal questions determined in the earlier stages of the litigation." See also *Urie v. Thompson*, 337 U.S. 163, 172 (1949) ("Local rules of practice cannot bar this Court's independent consideration of all substantial federal questions actually determined in earlier stages of the litigation by the court whose final adjudication is brought here for review.") and *Hathorn v. Lovorn*, 457 U.S. 255, 261 (1982).

The reason why Virginia courts wanted to extinguish Petitioner's federal claim at an early stage is obvious: Virginia has statewide, local adjudicative bodies called "Boards of Equalization" operating under the authority of Circuit Courts in which there are no guaranteed 14th Amendment rights. There is an old adage that one should "***show*** and not tell." The earlier case -- *Arakelian v. City of Falls Church, Virginia* et al., Record No. 24-313 – was important not because it was the best vehicle through which this Court could make a determination on the merits. Rather, it ***shows*** in vivid detail exactly what takes place when an ordinary citizen shows up and complains that local government officials are manipulating Rules of Procedure and submitting false evidence in judicial proceedings. They are told Virginia doesn't recognize the federal claim.

Neither Respondent bothered to dispute the accuracy of judicial records documenting egregious 14th Amendment violations across the state. Yet in the same breath, Falcon continues to claim that this case is about a $500 tax dispute. **It's a logical non-sequitur.** There are approximately 2,270,000

households in Virginia that own their own homes[2]. Suppose each household is charged $100 more per annum than would otherwise be the case if they had procedural and substantive due process rights. That amounts to $227,000,000. So isn't this case actually about $227,000,000 and not $500? It's a mass constitutional tort analogous to the BP oil spill. The only two questions at this point are (1) where is the money going and (2) how is the power being abused?

The Motion for Summary Judgment had 4 separate requests. First and second, that Pollard and Falcon are each liable in an individual capacity under § 1983. Petitioner requested a finding that Pollard and Falcon acted under the color of state law and with reckless or callous indifference to Petitioner's constitutional rights, thereby depriving the Plaintiff of her 14th Amendment due process rights. Third, Petitioner asked for a declaratory judgment that the Rules of Procedure are unconstitutional under the Virginia Constitution. This is excluded from the Petition for Writ of Certiorari. Fourth, Petitioner asked for a declaratory judgment that Article 14 (§58.1-3370 et seq.) of Chapter 32 of Title 58.1 ("**BOE Act**") is unconstitutionally vague and violates the 14th Amendment. Petitioner submitted a memorandum of law in support of her Motion for Summary Judgment. Both Respondents filed oppositions to the Motion for Summary Judgment.

Petitioner argued in favor of her summary motion at a hearing on August 18, 2023, which is the

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[2] The U.S. Census estimates there are 3.29 million households in Virginia, and the Virginia Realtors Association states that approximately 69% of Virginia households own their homes.

same date on which there was a hearing on Respondents' Demurrers. Subsequent to the Circuit Court's dismissal, Petitioner filed a written statement in lieu of a transcript that memorialized her verbal arguments in support of her Motion for Summary Judgment and the judge's articulated reasoning for denying it, namely, sovereign immunity. Falcon's counsel admitted in his Opposition to Petitioner's Written Statement that it was accurate.

Pursuant to this Court's holding in *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928), the constitutionality of a state statute may be regarded as having been "adequately presented" if "the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time." See also *Street v. New York*, 394 U.S. 576, 584 (1969), and *Hemphill v. New York*, 595 U.S. ___, pages 6-7 (2022). Petitioner has met **all** of these legal requirements.

If this Court does not grant certiorari, local officials will have absolute immunity in Board of Equalization hearings and local Rules of Procedure will be modified accordingly to harm citizens even more than it already does. *Arakelian v. City of Falls Church, Virginia* demonstrates that citizens will not be able to assert their federal rights in state courts. Standardless real property taxation laws may spread to additional states. Hence, this Court not only has full authority to act but also the **duty to act**. See *Stone v. Powell*, 428 U.S. 465, 493 Footnote 35 (1976) ("State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law.").

C. Petitioner Preserved Her Right to Request This Court's Reversal of the Circuit Court's Dismissal and the Denial of her Motion for Summary Judgment by Excluding Both from Her Assignments of Error in the Petition for Appeal.

Petitioner **preserved** her right for this Court to reverse the Circuit Court's dismissal and denial of her Motion for Summary Judgment by **excluding** both from the Assignments of Error in her Petition for Appeal. It is the **exact opposite** of what Falcon states in his Brief in Opposition.

The reason is very simple. Virginia Supreme Court Rule 5:11 states in part that "When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of error, any assignments of error affected by the omission will not be considered." Hence, Petitioner could not win on the merits until the Virginia courts made a decision on her **Proctor Rights** motion filed with the Court of Appeals. Hence, her Assignments of Error in the Petition for Appeal focused exclusively on errors pertaining to her **Proctor Rights**. Had she included the dismissal or summary judgment motion as Assignments of Error, she would waive her Proctor Rights because she would be asking the Supreme Court of Virginia to make a decision on the merits notwithstanding the unresolved Proctor Rights motion. If Petitioner waived her Proctor Rights by prematurely asking for a decision on the merits, she would not only lose the case but also waive her right to have this Court review this case in its totality. Hence, Petitioner stuck to her

guns and demanded that the Virginia courts resolve her Proctor Rights **first**.

The Court of Appeals and Supreme Court of Virginia **refused** to make a determination on Petitioner's Proctor Rights motion, thereby violating federal law by discriminating against federal claims. Hence, the **only** reason the Court of Appeals and the Supreme Court of Virginia didn't make a decision on the merits regarding the Circuit Court's dismissal and denial of the Motion for Summary Judgment is that they both violated federal law. This is fully supported by the record. Petitioner stated on pages 33-34 of her Petition for Appeal that she was eager for the Virginia courts to uphold her Proctor Rights so that she could oppose "the Circuit Court's dismissal with prejudice" and support her "motion for partial summary judgment as a matter of law as soon as possible." Petitioner **never waived** her right to challenge the Circuit Court's underlying, substantive decisions. But **not** at the expense of her Proctor Rights.[3]

What Falcon is asking this Court to do is to **reward** the Court of Appeals and Supreme Court of Virginia for refusing to enforce Petitioner's Proctor Rights by extinguishing Petitioner's claims on the merits. Falcon's logic is as follows: "Heads I Win, Tails I Win." Is it any wonder that citizens have **no constitutional rights in Virginia courts**? The Court of Appeals and the Supreme Court of Virginia had **every opportunity** to decide all of the issues on

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[3] These arguments were made on pages 37 - 38 of the Petition for Writ of Certiorari regarding the reason Petitioner did not file an Opening Brief with the Court of Appeals.

the merits and **failed to do so by their own violation of federal law**. That is all they are entitled to.

D. All Other Arguments Set Forth in the Brief in Opposition are Meritless

The Brief in Opposition asserts that "this case is not a proper vehicle for any of Arakelian's arguments relating to the City of Falls Church Board of Equalization's procedures for hearings." Petitioner contacted the Virginia Governor, Virginia AG, Virginia State Police, DOJ/OCR and FBI without any response. If local officials refuse to abide by the U.S. Constitution and federal officials fail to protect citizens' federal rights, then U.S. citizens can file suit under §1983 to vindicate their constitutional rights.

Both Respondents portray Petitioner as a disgruntled opportunist who files spurious lawsuits when in fact, this case and *Arakelian v. City of Falls Church, Virginia* are the first two lawsuits Petitioner has ever filed on her own accord. Other than this, Petitioner hired an attorney in New York approximately 15 years ago to litigate an employment contract matter and won. This is an **existential lawsuit** for Petitioner brought in self-defense. Pollard has already admitted by her failure to file a Brief in Opposition that Petitioner was targeted for her 1st Amendment rights, and Petitioner **cannot** be at risk in future years for more retribution.

The verbiage in the Brief in Opposition regarding damages is superfluous because damages are not an issue before this Court at the moment. In addition to herself, Petitioner has five individuals

who are willing to testify in a court of law: one government whistleblower who will testify against the government, two current residents of the City of Falls Church who have been unlawfully targeted by the Board of Equalization and two former City of Falls Church residents who relocated to different states due to unlawful targeting by the Board of Equalization. Their testimony is being blocked because the Virginia courts refuse to allow this lawsuit to move forward.

The BOE Act details the government's obligations to citizens before, during and after a Board of Equalization hearing. Hence, Falcon's physical presence or lack thereof at Petitioner's hearing is irrelevant. Speir had statutory authority to speak with the Circuit Court about fraudulent activity taking place under its own authority and the employment of an independent attorney, and Falcon unlawfully disintermediated him. Petitioner was harmed as a result.

CONCLUSION

Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the Supreme Court of Virginia.

Respectfully Submitted,

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