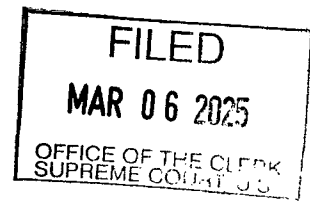


No. 24-6937



IN THE  
SUPREME COURT OF THE UNITED STATES

ANTHONY CRAIG WEIMER  
*Petitioner,*

VS.

STATE OF MONTANA  
*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE of MONTANA

PETITION FOR WRIT OF CERTIORARI

ANTHONY WEIMER  
Prisoner ID # 3029890  
Tallahatchie County Correctional Facility  
19351 US HWY 49 N.  
Tulwiler, MS. 38963

## QUESTIONS PRESENTED

1. Whether the initial Court erred in that the Flathead County ten Commandment monument does not violate the Establishment Clause and Petitioner was in fact wrongfully injured by its display on public property and thus guaranteed in the Free Exercise Clause to remove it.
2. Whether the initial Court violated Article VI, Cl. 2 of the United States Constitution by denying Petitioner his Statutory right of abatement of a public nuisance as an injured party and the use of force under Montana law.
3. Whether the initial Court violated Article VI, Cl. 2 of the United States Constitution by enforcing a State Criminal Statute that Conflicts with a federal Criminal Statute.
4. Whether Petitioner was denied his Sixth Amendment right to face his accuser at trial.
5. Whether Petitioner was left with an unconstitutional Conviction based on the factual circumstances of this particular case.

## LIST OF PARTIES

*All parties appear in the Caption of the Case on the Cover page.*

## RELATED CASES

*Mont. Eleventh Judicial District Court*

*DC 20-207*

*Supreme Court of the State of Montana*

*DA 23-0100*

*Petitioner has searched diligently with the tools available and has not found any active related cases other than those proceedings directly sought review of in this case as provided above.*

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

*Petitioner respectfully prays that a writ of Certiorari issue to review the judgement below.*

OPINIONS BELOW

*The opinion of the highest State Court to review the merits appears at Appendix A to the petition and is*

*reported at 2024 Mont. LEXIS 1166*

*The decision of Montana's Eleventh Judicial District Court appears at Appendix C; D; X; and Z to the petition and is*

*unpublished.*

## BASIS FOR STATE JURISDICTION

*The State District Court had Jurisdiction under the Montana Constitution Article VII § 4 and § 3-5-302, MCA. The Montana Supreme Court had Jurisdiction under the Montana Constitution Article VII § 2 and § 3-2-203, MCA.*

## JURISDICTION

The date on which the highest State Court decided my case was October 23<sup>rd</sup>, 2024. A copy of that decision appears at Appendix A .

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

An extension of time to file the petition for a writ of certiorari was granted to and including March 22<sup>nd</sup>, 2025 on December 19<sup>th</sup>, 2024 in application No. 24A605.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### *First Amendment, Religion Clauses*

*Congress shall make no law respecting an Establishment of religion, or prohibiting the Free Exercise thereof...*

### *Sixth Amendment, Confrontation Clause*

*In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him.*

### *Fourteenth Amendment, Section 1, Due process and Equal protection Clauses*

*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.*

### *U.S. Const. Article VI, Cl. 2, Supremacy Clause*

*This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treatises 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 following codes are appended to this petition at Appendix S.*

*18 U.S.C. § 241. Conspiracy against rights*

*18 U.S.C. § 242. Deprivation of rights under color of law*

*18 U.S.C. § 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs*

*§ 1-1-108, MCA. Common law - applicability of*

*§ 27-30-204, MCA. Abatement of a public nuisance by ... injured party*

*§ 45-6-101, MCA. Criminal mischief*

*§ 49-1-103, MCA. Right to use of force*

## STATEMENT OF THE CASE

The Respondant's Complaint on oath alleged that Petitioner Committed felony criminal mischief by causing damage to a ten Commandment monument located on Flathead County property. Defendant moved for an evidentiary hearing Challenging the Constitutionality of the Monument under the First Amendment Establishment Clause of the United State Constitution and his statutory self-help right under Montana law to abatement of a public nuisance by injured party. The record Contains no Written ruling in this first instance.

Approximately within five days of Defendant being Sentenced, the Flathead County reerected the monument.

Appealing pro se, the Montana Supreme Court reversed and remanded for a new trial. The Defendant in pretrial motions moved to dismiss the Charge raising the First Amendment religion clauses, his statutory right under Montana law to self-help in abating a public nuisance as injured party, and his right to use of force from wrongful injury under Montana's basic rights statutes. Among the First Amendment clauses and statutes, Defendant pressed the Plaintiff's burden of proving his conduct was done with a conscience object to damage the monument. This followed by a motion for a second evidentiary hearing regarding the Constitutionality of the Flathead County ten Commandment monument.

The District Court entered its Findings of Fact and Conclusions of Law on the pretrial motion defenses, providing particularly no analysis, evaluation, or fact intensive assessment on the Constitutionality of the Counties ten Commandment monument, but set forth in total

"A [t]en [C]ommandment monument on public land placed among other monuments representing legal, and political history does not violate the Establishment Clause. Van Orden v. Perry, 545 U.S. 677, 125 S. Ct. 2854 (2005). Given this authority, the Counties placement of a [t]en [C]ommandment statute [sic] among other historical sources of law years before Defendant's alleged conduct cannot constitute a wrongful injury."

The District Court further made personal accusations of unnecessary injury and breach of the peace, determinations of fact, where a jury was involved, while stating that the Defendant did not seek removal of the ten Commandments through legal proceedings, that abatement of a public nuisance by an injured party is unavailable, along with applying a Montana Human Rights Act employment and housing discrimination remedial scheme to justify Montanas basic right use of force statute also unavailable.

The District Court then denied the admittance into the record, evidence and testimony, at the second evidentiary hearing, and based her Findings of Fact and Conclusions of Law ruling on the pretrial motions Findings of Fact and Conclusions of Law.

In a subsequent order on a second motion in limine by the Plaintiff, the District Court ruled on the Free Exercise Clause, stating

"... Green v. Haskell Cnty. Bd. of Comm'rs, actually forecloses any Free Exercise argument in these circumstances in it's observation that "[P]ermanant monuments displayed on public property typically represents government speech" before concluding that Free Exercise jurisprudence is inopposite. Green v. Haskell Cnty. Bd. of Comm'rs, 568 F.3d 784, 797 n.8 (10<sup>th</sup> Cir. 2009) (Citing Pleasant Grove City, Utah v. Summan, 555 U.S. 460, 129 S. Ct. 1125, 1132, 172 L. Ed. 2d (2009))."

Prior to the second trial, Defendant petitioned the Montana Supreme Court for Supervisory Control. The Montana Supreme Court denied to issue the writ stating

"The District Court made findings based on the record before it, drawing its conclusions on Montana law. Weimer's Citations to federal law are unavailing in a State Court."

Defendant petitioned for rehearing citing federal criminal statutes the Court would be violating by proceeding, as well as, the Supremacy Clause.

The Montana Supreme Court denied and dismissed rehearing "declin[ing] to insert itself in the administration of a trial."

At trial the accuser was called to the stand. Deputy County attorney, Complaint on oath, affirmed by the District Court initial arrest warrant, objected, the Court denying, followed by objection by the Defendant grounding on his Sixth Amendment right to face his accuser.

Before sentencing, Defendant moved to set aside the conviction. Instead of the District Court construing what it ought to do by ordering the ten commandments monument removed and dismissing the case. It denied the motion.

During sentencing Defendant recommended/stated that a sentence should not be imposed in this matter, again, based on the unconstitutionality of the monument and his right to freedom of religion and religious liberty.

On direct appeal, appellant motioned to remove Counsel and proceed pro se in order to prevent failure to seek review by Montana's highest court on the questions substantially related to those herein that are cause of bar to a petition for writ of Certiorari in and from this Court. The Montana Supreme Court denied the request. Stating

"...[I] may seek review in the U.S. Supreme Court after [the] appeal has concluded."

Immediately thereafter, Counsel moved to withdraw pursuant to an Anders brief. Defendant provided an opening brief previously drawn raising the questions present in this petition. The Montana Supreme Court passed by dismissing the appeal.

## REASONS FOR GRANTING THE PETITION

### A. Significant Constitutional Problems

#### i. First Amendment Religion Clauses

The Establishment and Free Exercise Clauses guaranteed in the First Amendment at the core of this case are very similar to the other clauses provided in the First Amendment that this Court has in previous cases granted certiorari where criminal convictions were reversed as unconstitutional. For example, in *Street v. New York*, 394 U.S. 576 (1969), Street was convicted of Malicious Mischief in violation of N.Y. Penal Code § 1425(16)(d), for burning an American flag and speaking unconstitutional speech concomitantly. This Court reversed and remanded stating that either Street's words might have been the sole basis for his conviction or he might have been convicted for both his words and his deeds. *id.*, at 594.

Like *Street*, *United States v. O'Brien*, 391 U.S. 367, involved a crime of knowingly destroying a selective service registration certificate as prohibited by the 1965 amendment to the Universal Military Training and Service Act of 1948, codified as 50 U.S.C.A. app. § 462(b). O'Brien burned a registration certificate before a sizable crowd in order to influence others to adopt his anti war beliefs. Here this is government property unlike *Street*, where Street took his own flag to a public sidewalk and set fire to it. In *O'Brien*, however, this Court reinstated the judgment and sentence based on the 1965 amendment to the Universal Military Training and Service Act being constitutional as enacted and as applied. But in so ruling, the opinion received concurrence. Albeit, and at the crux.

"a government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

*O'Brien*, at 387, Mr. Justice Harlan Concurring. Justice Harlan followed up

making clear that his concurring selected passage does not foreclose considerations of First Amendment claims in those rare instances when an "incidental" restriction upon expression, imposed by a regulation which furthers an "important or substantial" government interest and satisfies the Court's other criteria, in practice has the effect of entirely preventing a "speaker" from reaching a significant audience with whom he could not otherwise lawfully communicate.

A selective service registration certificate does not violate any section of the First Amendment clauses. This specific government property or its message did not offend the Constitution or the provisions to whom they are guaranteed.

Another flag example is a non speech expression where this Court granted the State of Texas certiorari in *Texas v. Johnson*, 491 U.S. 397 (1989), to examine a Texas criminal appellate court's decision that reversed a conviction of desecration of a venerated object in violation of Texas Penal Code Ann. § 42.09(a)(3), after Johnson burned an American flag during a 1984 republican national convention and the renomination of president Ronald Reagan in Dallas, Texas, after marching the streets, while protesters chanted. Under the circumstances, the conviction was inconsistent with the U.S. Constitution's First Amendment. *Id.*, at 402-420. Disorderly conduct is not at issue in this case. There are no complaints from any citizens of the state of Montana other than a county deputy attorney. Eye witnesses reporting what they saw are not complainants nor victims.

Closer to First Amendment clause defenses. In *Wisconsin v. Yoder*, 406 U.S. 205 (1967), this Court held convictions for compulsory school attendance invalid under the First Amendment guarantee of the Free Exercise Clause. Holding, "although neutral on its face, the compulsory school attendance law unduly burdened the Free Exercise Clause. See also *Fulton v. City of Philadelphia*, 593 U.S. 522, 556, hard hitting the *Yoder* Court's point. "[T]here are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability"; "[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality if it unduly burdens the free exercise clause of religion"; insisting that Amish

Children abide by the compulsory attendance requirement was unconstitutional even though it "applie[d] uniformly to all citizens of the State and di[d] not, on its face, discriminate against religion or a particular religion, [and was] motivated by legitimate concerns." Citing, Yoder, at 220, Justice Barrett; Alito; Gorsuch; Kavanaugh; and Breyer concurring. (emphasis added).

None of these cases mentioned resolve on both the Establishment and Free Exercise Clauses. Nor do they include any wrongful injury inflicted, other than criminal prosecution.

But, like the compulsory school attendance statute. Montana's Criminal mischief statute (§ 45-6-101, MCA), neutral on its face, places an unduly burden on the Free Exercise of religion, resulting in criminal punishment. Which seems to appear why these decisions *supra*, rest on verbal and nonverbal expressions of conduct that is not attached to any part of the Constitution in the sense that the behavior the individuals engaged in was not because it violated some provision of the Constitution itself, thereby causing them to remedy a wrongful injury, at such a constitutional level. In other words, there was no constitutional injury that was the cause of conduct, i.e., no claim of wrongful injury by the American flag itself or a selective service Registration Certificate offending a personal fundamental constitutional right. And then see *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 485 (2020). Our federal system prizes state experimentation, but not "state experimentation in the suppression of free speech," and the same goes for the free exercise of religion. (quoting *Boy Scouts of America v. Dale*, 530 U.S. 640, 660 (2000). Reason to flex Yoder.

The initial court's citation to *Green v. Haskell Cnty. Bd. of Comm'rs*, 568 F.3d 797, 118 (10<sup>th</sup> Cir. 2008), on the Free Exercise Clause crafted a serious legal issue that alone appears to hinge upon whether Petitioner has been unconstitutionally convicted. The Haskell Board's argument that they opened a limited public forum for monuments on the courthouse lawn to claim their ten commandment monument as government speech falls flat on its face. The dilemma is the Board reaching

to free speech. The initial court erred on this. A further reading of n. 8 provides a "limited circumstance form doctrine for permanent monuments." Citing, *Pleasant Grove City v. Summan*, 555 U.S. 460, 479-80 (2009), for purposes of a governments free speech protection. What the initial court in this matter got wrong is that Pleasant Grove City's court noted: "This does not mean that there are no restraints on government speech. For example, government speech must comport with the Establishment Clause." *Id.*, 467-68; accorded at *Id.*, 481, (Stevens, J, concurring) ("for even if the Free Speech Clause neither restricts nor protects government speech, government speakers are bound by the constitutions other proscriptions, including those supplied by the Establishment and Equal Protection Clauses.") The court found that the message was not difficult to tell whether the ten commandments was government speech or was providing a forum for private speech. *Id.*, at 468-69. In this case, the Flathead County ten commandment monument display appears to fail under the facts and circumstances whether if it were government or forum doctrine speech.

Another point is what the Free Exercise Clause authorizes or does not authorize. Petitioner exercised his religious liberty right to freedom of religion by removing the Flathead County ten commandment monument. Similarly, many parents exercise that right by sending their children to religious schools, a choice protected by the constitution. See *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 486 (2020). At the bow, the Montana Supreme Court held "[T]he Free Exercise Clause is nothing more than a protective shield against government interference in the Free Exercise of a citizens chosen religion or religious views." Arming a "sword or affirmative right" to the Free Exercise Clause, but not for the purpose to receive government aid. *Espinoza v. Mont. Dep't of Revenue*, 2018 MT 306, ¶ 80 (Justice Dirk Sandefur concurring).

The Free Exercise right that apparently authorizes a citizen to remove a religious object off public property could only be achieved if, as expounded on above and below, the object violates the Establishment

Clause, and if so true, indicates Petitioner executed professional legal judgement. The Free Exercise Clause protects against even "indirect coercion..." *Espinoza*, 591 U.S., at 478.

Merriam-Webster dictionary defines exercise as 1a: the act of bringing into play or realizing in action; b: the discharge of an official function or professional occupation; c: the act or instance of carrying out the terms of an agreement. (Verb) 1a: to make effective in action; b: to bring to bear; c: to implement the terms of. The implicit contract by and through the United States Constitution between we the people and between we the people and the government is indicative of what is being inferred.

The Flathead County was aware and conscience of the unconstitutionality of the monument and was aware and conscience of adverse legal consequences. APPENDIX M, N, and O. When those adverse legal consequences did in fact materialize in the form of Petitioner removing the monument, the Flathead County stayed the course reerecting it immediately after Petitioner was sentenced. Refer to Green, at 801.

Prejudice defined by the Merriam-Webster dictionary is: Injury or damage resulting from some judgement or action of another in disregard of one's rights; especially: detriment to one's legal rights or claim.

There is no explicit language within the U.S. Constitution authorizing or prohibiting damage to public property, nor to Petitioner's research, any precedent by this Court on such conduct. Under the circumstances of this particular case, normal legal proceedings such as a request to have the monument removed, submitting a criminal complaint, or a civil action is ineffective.

Freedom of Religion as defined by Bouvier Law Dictionary (2012) provides: "The freedom to practice or change one's own religion or not believe in or practice a religion at all. Freedom of religion is the constitutional principle underlying both the Free Exercise Clause and Establishment Clause. In general, these clauses both require consonant action from the state in monitoring what Thomas Jefferson described as a "wall

of separation between church and state" in which the state does not become an avenue of religious indoctrination, leaving the freedom to choose one's religious principles to the individual." Sourced by and through LEXIS NEXIS Services.

Where the Flathead County Ten Commandment monument violates the Establishment Clause, Petitioner exercising his right in the Free Exercise Clause by removing it protects him as a matter of law.

This court has held that "we may not, however, vitiate Constitutional guarantees when they have the effect of allowing the guilty to go free." Cf. *Kyllo v. United States*, 533 U.S. 27 (2001). But there are principles that, as acknowledged, can lead one to such conduct. See *Goodwin v. U.S.*, 457 U.S. 368, 372-73 (1982) (To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.") Citing *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). Continuing to state; (In a series of cases beginning with *North Carolina v. Pearce*, [395 U.S. 711 (1969)] and culminating in *Bordenkircher v. Hayes*, the court has recognized this basic and in itself -- principle. For while an individual may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or Constitutional right.) See also *Bordenkircher*, at 363 (quoting *Chaffin v. Stynchcombe*, 412 U.S. 17, 32-33, n. 20). ("[F]or an agent of the state to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional."). Or in essentially plain language, See *Olmstead v. U.S.*, 277 U.S. 438 (1927) ("In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously." "Crime is contagious. If government becomes a law breaker, it breeds contempt for the law; It invites every man to become a law unto himself; it invites anarchy." "To declare that in the administration of the criminal law that the end justifies the means [a teleological approach] -- to declare that the government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution..."). *Id.*, at 485, Justice Brandeis dissenting. But see also *Trump v. U.S.*, 603 U.S. 593, 705 (2024). (quoting the same).

Petitioner did not merely remove the monument because he had a good faith belief that what he was doing was justified. Which the Montana Supreme Court recognizes, even if a defendant is mistaken, as a complete defense. *State v. Mills*, 2018 MT 254, 99 21, 24. But this court has held, "observing that, to hold a person criminally liable, 'the concurrence of... an evil-meaning mind [and] an evil-doing hand' must be proved." *U.S. v. Bailey*, 444 U.S. 394, 402 (1980) (quoting *Morrisette v. U.S.*, 342 U.S. 246 (1952)). Where is the satisfaction upon the exercise of constitutional right, including consideration of the factual evidence of the history of the Flathead County's ten Commandment monument. There is an absence of criminality.

Partiality in judgement is picking the winner on a basis other than according to facts, the law, and the principle of justice. There is no argument quite capable of saying there is no inferred language in the text of the Free Exercise Clause that prohibits damaging - as a by product - a religious object on public property while it is being removed because it violates the Establishment Clause. There is no precedent on this. However, anyone who is a citizen with a basic understanding of this nations constitutional framework should be able to deduce from history and simple observation, the Second Amendment ensuing the First. Justices Sotomayer, Gorsuch, Kavanaugh, and Jackson's concurrence in *United States v. Rahimi*, 144 S. Ct. 1889 (2022) can aid this court in setting judicial precedent for the Free Exercise Clause being enforced on Establishment Clause violations expanding common sense. Explanations of at least two other amendments are covered in *Rahimi*, including the Second Amendment "right of the people to keep and bear arms" "that guarantee[s] the individual right to possess and carry weapons in case of confrontation.", even though the plain language in the Second Amendment is the "right to keep and bear arms." *Id.*, at 1904-30.

## ii. Sixth Amendment Confrontation Clause

The initial courts denial of Petitioner's right to face his accuser

violates the Sixth Amendment. The fact that the accuser happened to be a Flathead County deputy attorney makes no difference. That deputy county attorney requested leave of the county district court to file an information in and for said county district court charging Petitioner with felony criminal mischief for damage to a ten commandment stone monument without consent in excess of \$1500.<sup>00</sup> dollars. When the court issued the arrest warrant, it stated, "COMPLAINT ON OATH having been made this day before me by Stacy Boman, deputy Flathead County Attorney, charging that the offense of CRIMINAL MISCHIEF, a felony, has been committed within said county of Flathead and accusing the above named defendant thereof." The difference between accusing and charging. Here, it was done in both her individual and official capacities. See APPENDIX P.

Denial to confront an accuser and cross-examine her and try to expose her accusation as a lie is denial of the essential feature of a jury trial which lies in the interposition between the accused and accuser. *Apodaca v. Oregon*, 406 U.S. 404, 410 (1972); *Williams v. Florida*, 399 U.S. 78, 100 (1970). Confrontation between accused and accuser is essential to a fair trial. *Pointer v. State of Texas*, 380 U.S. 400 (1965). *City of Grants Pass v. Johnson*, 144 S. Ct. 2202 and *Crawford v. Washington*, 541 U.S. 36, 43, 54 (same or similar). Also, Justice Gorsuch's concurrence in *United States v. Rahimi*, 602 U.S. 680, 710 (2024), according *Crawford*, at 54, recognizing the Sixth Amendment pre-existing right: the right to confront [ ] accusers at trial. For while there may not always be a victim. There is always an accuser.

The Ninth circuit has held that calling a prosecutor to testify is without absolute bar. *United States v. Pranti*, 764 F.2d 548, 554 (9th Cir. 1985), citing *United States v. Tamura*, 694 F.2d 591, 601 (9th Cir. 1982), recognizing the possibility for abuse, however, requiring a defendant demonstrate a "compelling need" before a participating prosecutor will be permitted to testify. ("The compelling need is a reiteration of the judicial antipathy toward any deviation from the advocate-witness rule").

### iii. Fourteenth Amendment

The amendments to the United States Constitution were made applicable to the states by and through the Fourteenth Amendment. *Everson v. Bd. of Ed.*, 330 U.S. 1 (1947). The preceding First and Sixth Amendment questions apply to the several states and the state of Montana. "No state shall... 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 any person within its jurisdiction the equal protection of the laws." U.S. Const., Fourteenth Amendment, Section 1.

The First Amendment guarantees religious freedom and liberty. i.e., freedom from an established religion, and liberty to exercise freely.

The Sixth Amendment guarantees the right to the accused to face his accuser in the Confrontation Clause.

The enforcement of Montana's mischief statute abridges the noncriminality conduct immunity by the First Amendment religion clauses, the denial of the prosecutor as the sole accuser called to stand and face the accused denies the protection guaranteed in the Sixth Amendment. See *Gideon v. Wainwright*, 372 U.S. 355 (1963) (The Fourteenth protects from infringement by the states, the privileges, protections, and safe guards granted in the Bill of Rights).

### iv. U.S. Const. Art. VI, Cl. 2 Supremacy Clause

Petitioner sought supervisory control by way of writ in the Montana Supreme Court. APPENDIX G and I.

Going back to 1803 this court put well: The supremacy clause provides that Judges in every state shall be bound by the Federal Constitution, any Thing in the Constitution or laws of any state to the contrary notwithstanding. U.S. Const. art. VI, cl. 2. This clause creates a rule of decision directing state courts that they must not give effect to state laws that conflict with federal law.

*Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 178, 2 L. Ed. 60 (1803).

There are two state laws and three federal laws at issue here. § 27-30-204, MCA provides for the self-help abatement of a public nuisance by injured party and § 49-1-103, MCA provides for a basic personal right to the use of force. Both of these statutes are found in the Montana Code Annotated (MCA).

In the initial Courts Finding of Fact and Conclusion of Law order on Defendant's pretrial motions (APPENDIX L), The court made an erroneous conclusion on public nuisance law. The Petitioner is in fact wrongfully injured by the ten commandment monument on government public property and the court made accusation outside the charge, arguing breach of the peace and unnecessary injury occurred. What exactly is the charge. See *Thompson v. City of Louisville*, 362 U.S. 199, 204 (1960).

§ 27-30-204, MCA, is simply a self-help remedy available to Montanans where special injury is. The statute historically for over 100 years has never had any requirement of prior notification or formal legal proceedings before abating a public nuisance unlike Montana's private nuisance law. APPENDIX B at p. 8.

The court then made an erroneous conclusion on Montana's statutory basic right to use of force in protecting from wrongful injury. APPENDIX B at p. 10. Use of force under § 49-1-103, MCA, is not limited in application to employment and housing discrimination. Such claims the subject of administrative exhaustion. See also § 1-1-108, MCA, regarding conflict between common law and statute. Statute rules.

When Petitioner cited federal laws that conflict with the conviction and the enforcement of Montana's criminal mischief statute, or vice versa, both in writ of supervisory control and motion to dismiss post-trial; by the lower courts eschewing federal law, it is in effect invalidating federal law. ("As usual when a lower court has invalidated a federal statute, we granted certiorari.") *Ianca v. Branetti*, 588 U.S. 388, 392 (2019).

Again, returning to *Olmstead*, at 485, *supra*. In order to secure a conviction while the government commits a crime while doing so is patently absurd. 18 U.S.C.A. §§ 241; 242; and 247(a)(2) are crimes,

crimes committed by officers of the court following their force of a conviction on the Defendant, where even the jury acknowledged its limited roll of deciding mere questions of fact.

Instead of the Montana Supreme Court granting supervisory control to the initial court, it stated federal law is unavailing in a state court. Followed by declining to insert itself in the administration of a trial, a trial that had not yet started, after being caught red-handed. APPENDIX F and H.

To make matters worse. The initial court punished the Defendant for calling out the court on the above mentioned federal offenses and suggesting the court ought to set aside the verdict, order the ten commandment monument removed, and dismiss the case. APPENDIX E p. 7 lines 2-9.

Instead of securing Defendant's rights, the court secured the Defendant. "[A]ll officials must pause to remember their own high duty to the Constitution and to the rights secured." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 547 (2018). Where rights secured by Constitution are involved, there can be no rulemaking or legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

Where a court convicts a defendant of a crime, but in so doing commits a criminal offense itself against the defendant is noncoherent with the U.S. Constitution's Supremacy clause. See *Marbury v. Madison*, *Supra*.

#### B. Conflicts with the Decision of other Courts and this Court

The Finding of Fact and Conclusion of Law ordered by the initial court that the Flathead County ten commandment monument does not violate the Establishment Clause and thus Defendant was not wrongfully injured is contrary to this court's holding in *Van Orden v. Perry*, 545 U.S. 677 (2005), and a mixture of holdings from both this court and other U.S. circuit courts. See e.g., *McCreary County v. ACLU*, 545 U.S. 844 (2005); *Pleasant Grove v. Summan*, 555 U.S. 460 (2009); *Card v. City of Everett*, 520 F.3d 1009 (9<sup>th</sup> Cir. 2008); *Green v. Haskell Cnty. Bd. of Comm's*, 568 F.3d 784 (10<sup>th</sup> Cir. 2009),

among others.

The Sixth Circuit held on a ten commandment monument, "Given that (1) common wealth of Kentucky intended to display ten commandments document that is inherently religious; (2) display would be on grounds of state capitol; (3) format of monument emphasized commandments religious directives; (4) ten commandments would be largest monument in display; (5) intended "cultural and historical display" lacked readily discernible unifying theme, and; (6) resolution, which would be posted with monument, tended to amplify religious message, display could not be made without impermissibly endorsing religion. *Adland v. Russ*, 307 F.3d 471 (6<sup>th</sup> cir. 2002), reh'g en banc denied, 2002 U.S. App. LEXIS 21054 (6<sup>th</sup> cir. 2002), cert denied, 538 U.S. 999 (2003).

The Tenth circuit in *Green v. Haskell Cnty. Bd. of Comm'rs*, 568 F.3d 784 (10<sup>th</sup> cir. 2009), also held that the Haskell County Courthouse context does not bear a close resemblance to the monument setting in *Van Orden*. Justice Breyer concurring. ("describing the monument sitting in [Texas State Capitol complex] containing 17 monuments and 21 historical markers..."). Further holding "we cannot construe a display of a ten commandment monument not to be an endorsement of religion merely because it is accompanied by the Mayflower Compact or other secular documents. *Green*, at 808. Citing *McCreary*, 545 U.S., at 854, 856. Accorded by *Van Orden*, at 702.

The Ninth circuit in *Card v. City of Everett*, 520 F.3d 1009 (9<sup>th</sup> cir. 2008), landed squarely on the same issue, including whether to apply the *Lemon* test or *Van Orden* in deciding the constitutionality of Everett's ten commandment monument. It found *Van Orden* carved out a limited exception to the *Lemon* test: (*Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971)) ("Courts should inquire whether the challenged law or conduct has a "secular purpose", whether "its principle or primary effect... advances or inhibits religion," and whether it creates an "excessive entanglement of government with religion.")). See also *Lemon* test modified in *Agostini v. Felton*, 521 U.S. 203 (1997).

For certain displays, the Card court found that the exception included the display at issue in *Everett*, and considered the history and context of the display to determine that it passed constitutional

Scrutiny, finding that the history of the display suggested a secular purpose and that nothing about the setting of the display suggested the sacred.

There was no petition for writ of certiorari in Card. But according to the factual analysis of other cases, and this Court, the monument even after being moved in 1988 to create space for a war memorial consisting of three eight-foot tall black granite towers approximately ten feet away still left the monument isolated. An appearance similar to that of Great Falls, Montana, County Courthouse version, sitting directly in front of the building with only a cannon on either side, displaying a message that threatens physical violence to anyone that opposes such religion.

Based on the identical ten commandment monuments placed on government public property among Montana, Washington, Texas, and many other states, the symbolic underpinnings and other symbolic imagery on the monuments themselves, ultimately obscuring any true ancient historical context, that of whom the twelve tribes of Israel accepted from Moses to be subjected to such commands and sanctions in creating a church-state nation, but then rather, the symbology directly connecting to Catholicism. Content with a blatant obviousness to any reasonable observer, where and when the pope "addressed" U.S. congress in person on September 15<sup>th</sup>, 2015.  
APPENDIX Q at p.6-7.

As Justice Breyer stated in Van Orden,

"If the relationship between government and religion is one of separation, but not of mutual hostility and suspicion, one will inevitably find difficult borderline cases. And in such cases, I see no test-related substitute for the exercise of legal judgment... rather, to determine the message that the text conveys, we must examine how the text is used. And that inquiry requires us to consider the context of the display."

Card, at 1016.

Because of this, the Card court examined under both McCreary and Van Orden, avoiding Lemon, exercising their own legal judgement to determine whether Everett's monument passed constitutional muster. Although, looking deep, failing to take in full McCreary.

In *McCreary County v. ACLU*, 545 U.S. 844 (2005), this Court addressed ten commandment monuments displayed through government on the subject of law, or American history. Not forgetting in the McCreary litigation having been frequently reminded, the United States Supreme Court's own courtroom frieze was deliberately designed in the exercise of governmental authority so as to include the figure of Moses holding tablets exhibiting a portion of the Hebrew text of the later, secularly phrased commandments; in the company of 17 other lawgivers, most of them secular figures, showing there is no risk that Moses would strike an observer as evidence that the national government was violating neutrality in religion. *Id.*, at 874.

The governmental authority to exercise in the conduct of building a courtroom frieze of such nature is synonymous with the Petitioner exercising in the conduct of removing a religious object that is in violation of the First Amendment.

The initial court erred in concluding that the Flathead County ten Commandments, even when the Respondant conceded the monument as its own, distinct and separate from any other monument it was purportedly a part of, is constitutional. Of the many state attorney generals that filed amicus briefs in Van Orden supporting ten commandment monuments. Montana did not.

The Seventh circuit has held that in the context of the Establishment Clause, cases have required that to allege properly that an individual has suffered an injury in fact from the display of a religious object the individual may show he has undertaken a special burden or has altered his behavior to avoid the offensive object. *City of Elkhart v. Books*, 235 F.3d 292, 299 (7th Cir. 2000), cert. denied. 532 U.S. 1058 (2001).

Defendant altered his behavior to the point of removing the Flathead

County Ten Commandment monument. He undertook a special burden where the government was aware and conscience of him enforcing his constitutional rights and agreed to it. APPENDIX R. at p. 611.

The initial courts decision in this case provides no analysis aligned with Van Orden's context of the message presented or history for determining whether there has been actual wrongful injury.

The Seventh circuit continued in that a display is unconstitutional, "only when its message, evaluated in the context in which it is presented, is nonsecular." *Id.*, at 302. (Citing *County of Allegheny*, 492 U.S. 573, 652 (2022)). And that the format itself hardly dilutes its religious message. Stating this court has cautioned that government sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents that they are outsiders, and not full members of the political community, and the accompanying message that they are insiders, favored members of the political community." *Id.*, at 306. (Citing *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring))).

Not only does the initial court in this case conflict with circuit courts and this court as expounded on above. But this court through Justice Thomas' dissent in *Utah Highway Patrol Ass'n v. Am. Atheists, Inc.*, 565 U.S. 994 (2011) (cert. denied), acknowledged the confusion since Van Orden and McCreary, of lower courts, recognizing Justice Breyer's concurrence as the controlling opinion as envisioned for "difficult borderline cases" distinguishing between using *Lemon* or some other Establishment clause test and the exercise of legal judgement.

Van Orden expressly establishes an "exception" to the *Lemon* test in certain borderline cases regarding "constitutionality" of some longstanding plainly religious displays that convey a historical or secular message in a

non-religious context. *Id.*, at 1107. Citing *Card*, 530 F.3d at 1016.

Van Orden does not authorize all ten commandment monuments and does not give a judge an option to selectively decide his or her own preferred outcome in a case they preside over. "... Justice Breyer's concurring opinion in *Van Orden* considered the "context of the display" and the "message" it communicated. *Id.*, at 1001. according *Van Orden*, 545 U.S., at 701-02.

Further Thomas dissented to the point of "A display of the ten commandments on government property also violates the Establishment Clause except when it does not." Compare *Green*, 568 F.3d, at 790 (holding unconstitutional a monument depicting the ten commandments and the Mayflower Compact on the lawn of a county courthouse, among various secular monuments and personal message bricks, with a sign stating "Erected by citizens of Haskell County." *Utah Highway Patrol Ass'n*, at 1003. Then citing his own concurrence in *Van Orden*. *Id.*, at 1006. (Citing *Van Orden*, 545 U.S., at 697.

The Flathead County ten commandment monument in this matter is factually not comparative to a "borderline case." Even with the *Lemon* test made bad law. See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 546, 569, 572 (2022). That ruling is *ex post facto* or retrospective to initiation of criminal prosecution against Defendant. APPENDIX B and I. And it was more of a personal effort by justices in an attempt to prevent the removal of the many of these monuments scattered across the states.

The initial courts decision was selective in convicting Defendant. According to the case law of this court, a labyrinth of inconsistent (whether state or federal) decisions have been rendered. Especially those, particularly such as in this instant case, that directly connect to the pope and vatican; with those same symbolic underpinnings placing a man without sin/crime below the law, that he corrected, and in the appearance of him in his eternal grave, among other symbolism such as the all-seeing-eye found in catholic cathedrals and on the

one dollar bill, the Chi-Rho (✠) greek letters representing the same man as noted above worn upon the garments of the pope fulfilling his claim as head of the church as though he were God himself, and the American flag in the eagle talons, all entangle government with religion, among the religious commands themselves.

If the initial courts decision is in conflict with such circuits and this court. Petitioner is wrongfully injured by the ten commandments monument on government property, has been wrongfully convicted, and wrongfully punished. The uneducated or common man was well in thought when the founding fathers and those who made the Second Amendment to immediately precede the First. "The Free Exercise Clause protects against governmental hostility which is masked as well as overt." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (2018).

### C. Importance of Questions Presented

#### i. Unconstitutional Conviction

But for the Flathead Countys action and inaction, Petitioner would not have suffered injury. APPENDIX M at exhibit F. But for the lower courts ignorance or what actually appears to be deceit, Petitioner would not have been convicted or punished.

Its a courts duty to avoid a decision of constitutional issue unless avoidance becomes evasion. The decision by the initial court in this matter rendered a decision that departs from this courts own decision, creating a conflict that resulted in continued injury to Petitioner, and Petitioner being made a criminal convict and punished.

Whether civil or criminal, an unconstitutional judgement against the Bill of Rights is closely related, if not, breach of contract. The agreement the United States Constitution guaranteed to Petitioner.

ii. A Proper Occasion for Granting Certiorari on Issue that Should be Settled by this Court.

The conflicting decisions between the circuits and this Court combined with federal criminal offenses starkly committed by the State of Montana in order to force a conviction in usurpation of Anthony Weimer's authority as a citizen of the United States, including the noncriminality of his action is a opportunity to clarify and set precedent where states have overreached and abused their executive and judicial functions.

The Montana's Supreme Courts decision does not rest on adequate and independent state grounds. In the absence of a plain statement to this effect, however, the decision is reviewable, and a capital contribution to the development of national law.

iii. National Importance

The questions on the religion clauses of the First Amendment, the Confrontation clause of the sixth Amendment, the provisions of the Fourteenth Amendment and Article VI, clause 2 Supremacy clause, the noncriminality, and the federal criminal law, that conflict with conviction directly impact we the people of the United States and the relationship between us and the operation of the judicial branch of government. The issues resolved or left unresolved will affect every citizen and how courts, whether state or federal, local or district, behave in conducting fair proceedings ensuring rights are upheld and protected in the administration of justice by cleaning up a quagmire of case law and the lack of guidance, or the necessity thereof, from this court to lower courts on these issues. Ultimately assisting the Sovereign. See *Trump*, 603 U.S., at 687 (Jackson, J., dissenting).

#### IV. Importance to others Similarly Situated

This is a non-isolated occurrence. An alleged constitutional violation that could not recur may not support a petition for a writ of certiorari. At any point in time, another may engage in the same or similar action unbeknownst. The objective may not be or have been the same, but could provide relief to those and their convictions, or better, before.

#### CONCLUSION

The petition for a writ of certiorari should be granted and the application for bail reconsidered.

Respectfully executed this 27<sup>th</sup> day of February , 2025.

A handwritten signature in black ink, appearing to read "M. J. Wa", with a long horizontal stroke extending to the right.