24-7354 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
1 First Street, N. E. Washington, D.C. 20543

SETH STEWART,
Petitioner and Defendant.

v.

AMERICAN FORK CITY,
Respondent and Plaintiff

Supreme Court Case No. _____

UT Supreme Court No. 20240329-SC

Appeal No. 20230223-CA

District Court No. 225103721

On Petition for a Writ of Certiorari to the United States Supreme Court

Appeal from Order of Affirmance in the Utah Court of Appeals

Originating in Fourth District Court, Utah County, Honorable Denise M. Porter

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PETITION FOR WRIT OF CERTIORARI

James "Tucker" Hansen, Bar No. 5711
Cherylyn M. Egner, Bar No. 15129
Melissa K. Mellor, Bar No. 10437
HANSEN LAW, P.C.
Attorneys for Plaintiff
233 S. Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380

Seth Stewart
47 S Lincoln Ave
American Fork, UT 84003

Pro se Appellant
Not presently incarcerated
Not an Anders brief

PARTIES

All parties to this action are listed in the above caption.

QUESTIONS PRESENTED

In *Ramos v. Louisiana*, 590 U.S. 83 (2020), this Court held:

> *"stare decisis* has **never** been treated as "an inexorable command." And the doctrine is "at its weakest when we interpret the Constitution" because a mistaken judicial interpretation of that supreme law is often "practically impossible" to correct through other means."

1. Do courts therefore err when they assert *stare decisis* as binding? Is there an explicit **constitutional basis for the doctrine of binding *stare decisis***, especially when used to undermine constitutional guarantees such as rights to liberty and property and the presumption of innocence, as when it is invoked to deny a defendant a jury trial contrary to State and Federal Constitutions?

2. Does classifying a charge as an 'infraction' or other designation, or perceived ambiguity in the treatment of a case as *criminal* or *civil* (or any other heading such as an "administrative" proceeding) allow for bypassing jurisdiction, procedural safeguards, and constitutional guarantees such as the **right to a jury trial**?

3. Under what constitutional authority can a state mandate the **confiscation of property** or compel the purchase of *securities* or other commodities, in a manner that contravenes enumerated taxation and regulatory powers and the due process clauses of both State and Federal Constitutions, and furthermore contradicts the principles underlying a State Constitution's provision safeguarding free market operations?

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement as required by Rule 29.6 is not applicable. This petition is not being filed by a nongovernmental corporation, but by an individual.

LIST OF ALL PROCEEDINGS

UT Supreme Court No. 20240329-SC, Petition for writ of certiorari denied on May 24, 2024

Appeal No. 20230223-CA, opinion issued January 25, 2024

District Court No. 225103721, American Fork City v. Seth Stewart, Feb 22, 2023

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OPINION BELOW

A panel of the Utah Court of Appeals unanimously affirmed Petitioner's convictions in an Order of Affirmance on January 25, 2024, included as Appendix A.

JURISDICTION

The Court of Appeals issued its decision on January 25, 2024. No petition for rehearing was filed. The jurisdiction of this court is invoked under 28 U.S.C § 1257(a), which allows the Supreme Court to review final judgments rendered by the highest court of a state when a question of federal law is involved. 28 U. S. C. §2403(b) may apply; this petition shall be served on the Attorney General of Utah.

CONTROLLING PROVISIONS

"No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (US Constitution, Fifth Amendment)

"The trial of all crimes ... shall be by jury" (US Constitution, Art. III § 2 Cl. 3)

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" (US Constitution, Sixth Amendment)

"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." (US Constitution, Fourteenth Amendment)

"**[Free market system as state policy -- Restraint of trade and monopolies prohibited.]** It is the policy of the state of Utah that a free market system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people. Each contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is prohibited. Except as otherwise provided by statute, it is also prohibited for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce." Article XII, Section 20, Utah Constitution

INTRODUCTION – Our Rights Were Dismantled – from 100% to 1%

When is a crime not a crime? How much infringement can a right bear until it is no longer regarded as a right? Through newly invented labels and interpretations, governments routinely deny constitutional guarantees including **trial by jury** and **property rights** as in this case, circularly appealing to precedent while protecting trillion-dollar public-private partnerships from the rigors of a free market.

Thomas Jefferson declared trial by jury "as the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution"[1]. As the ultimate check on overreach from all three traditional branches of government, it has practically disappeared from public awareness, relegated by complicit media only to high-profile televised cases. The powers exercised by the branches of government have **expanded** over time with the downsizing of checks and balances. Petitioner and millions of Americans have been deprived of property under claims that find no Constitutional justification. When amerced by the pretended requirements of the law, Petitioner sought due process in the Constitutional guarantee of a jury trial, but was summarily denied, with only "precedent" cited as a **binding** *power unto itself*: A self-contradictory doctrine ripe for judicial review.

In an era when "government efficiency" is in vogue, Suja Thomas notes that despite a nearly ubiquitous attitude of justification in pruning the size and scope of juries based on an argument that they were "inefficient", the Constitution grants

[1] Thomas Jefferson, *Letter to Thomas Paine*, July 1787

powers to various bodies of government "without mentioning efficiency or cost"[2]. The price the Founders placed on their liberties was such to warrant the mutual pledge of "our Lives, our Fortunes and our sacred Honor" (Declaration of Independence) to reclaim them in full, even when an infringed right was still *nominally* present and available in *some* cases. Arbitrariness in securing rights, or only *partially* granting them, is intolerable to the spirit of our nation. *Efficiency* as a priority above such guarantees is the harbinger of the total demolition of liberty.

Presently, "activist judges" are accused of overreach, exercising powers rooted in the flawed doctrine of binding precedent. This conundrum of judicial overreach is preventable simply by reversing the usurpation of power that led to the overreach: **Ending** proactive, sweeping rulings and binding precedents, and **restoring** the judiciary to act entirely within its Constitutionally enumerated powers.

The State of Utah highlights the pattern of gradual erasure of jury trials, shared in key respects by the nation, beginning with the strong constitutional emphasis that **no one accused of a crime should be denied this fundamental right**. The American Revolution of 1776 was fought to rectify, among other serious grievances, the British crown's "depriving us in many cases, of the benefits of Trial by Jury" (Declaration of Independence). The historical record attests strikingly that this right was upheld in *every known criminal prosecution* in both the Territory and State of Utah in its early days of statehood, even when the amount in controversy was ***a single dollar***, as found in the recent and extensive discovery with the Utah

[2] Thomas, S. A. (2016). The Missing American Jury, p. 144

Supreme Court in *S. Salt Lake City v. Maese*, 450 P.3d 1092 (Utah 2019), (Footnote 19)[3]. Despite strong originalist roots, the judiciary's enthusiasm for granting jury trials *waned* over time as the powers of the judiciary *expanded*. While juries at the national level also historically tried cases *without regard to the gravity of charges*, the proportion of cases being tried by juries today is **miniscule**, on the order of ***one percent* of criminal cases in the most populous states and federally**[4].

Utah was granted statehood at a time when its people had recently been under an order forbidding many believing adherents of the most populous religious sect—the predominant part of the population of the territory—from serving on a jury[5], but even after this treatment, the people still held that **trial by jury** should be sacrosanct[6]. Yet this assault entrenched a precedent that rights could be abridged **based on national minority status**, *with respect to an establishment of religion* in violation of express **First Amendment** guarantees, granted in name only via juries selected for bias, or denied arbitrarily. No constitutional provision has been cited during this appeal process to support the denial of defendant rights; only *precedent* as the sole justification for affirming such denial, which is a **circular argument.**

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[3] *also from the case:* "During oral argument, both Maese and the City commented that neither had unearthed evidence of a court denying a defendant's request for a jury trial during the territorial period. In our own review of newspapers from the time, we found no conflicting evidence. Defendants routinely requested and received jury trials for minor offenses—including those that the code designated as punishable only by a fine." (pp. 21-22). *The court then attempts to use later legislation to "interpret" the State Constitution.* **Can a legislature interpret its own legislation as though that were sufficient to deem it Constitutional, considering the separation of powers, especially when written laws and the Constitution conflict?**

[4] See Thomas, S. A. (2016). The Missing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries. United Kingdom: Cambridge University Press, 24-25.

[5] Jury oaths were administered in the Territory of Utah under the Edmunds-Tucker Act of 1887 targeting the predominant religion of the territory, further denying the right of defendants to an **impartial jury of their *peers***. See https://archives.utah.gov/2021/05/27/utahs-road-to-statehood-the-obstacle-of-polygamy/

[6] Official Report of the Proceedings and Debates of the Convention, Salt Lake City, Star Printing Co. 1898, 622.

The Magna Carta, often touted as a model for the American Constitution, established that fines shall correspond to the severity of the offence, mirrored in the **Eighth Amendment**; that regardless of amount, no "fines shall be imposed save upon oath of upright men from the neighbourhood", analogous to the **Sixth Amendment** guarantee of a jury trial in "**all criminal prosecutions**". Fines not individually amounting to large fortunes and other so-called "petty offenses" have been arbitrarily divorced from this promised protection, despite the right bearing no such qualification. It has been argued that for small fines, this is tolerable. However, this ignores **cumulative** economic realities: automobile insurance mandates protect a market valued globally at around $1 trillion dollars annually[7], a nontrivial portion of private property forcibly expended via a dubious precedent.

As illustrated in this case, the doctrine of binding precedent directly conflicts with express constitutional guarantees. This implies a defect in the doctrine itself. Binding precedent and jury trials are interrelated as demonstrated in this case, where the former was used to deny the latter. Restoration of the Constitutional standard requires unbinding judges to give actual judgment (and juries actual verdicts) rather than outsourcing these through habit or external compulsion.

Hence the three questions before the Court: Whether judicial precedent can be binding, whether Constitutions justify limitation of jury trials in criminal cases, and the legitimacy of socialistic amercements—are all closely interrelated.

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[7] See https://www.alliedmarketresearch.com/auto-insurance-market

STATEMENT OF THE CASE

In 2022, Petitioner Stewart (hereinafter "Petitioner") was served a notice of arraignment to appear for misdemeanor and infraction charges due to a traffic stop that occurred on or about October 2, 2022 (Trial Court Record, Appendix B, hereinafter "R".1, R.5). At arraignment on January 3, 2023, he requested a jury trial. In a premeditated and plainly collusory response, the prosecutor immediately amended two of the three charges from misdemeanors to infractions (R.3). Charges were: Operating a vehicle without insurance (41-12a-301, 41-21a-302), Driving on a suspended or revoked license, later modified to Driving without a valid registration (USC 41-12a-603), and Driving on a suspended or revoked vehicle registration (USC 41-1A-201, R.3). All three charges are consequent from the one statute, (41-12a-301, 41-12a-302), mandating the purchase of insurance on motor vehicles operated on public roads (the registration was revoked automatically due to a lapsed insurance payment). On Feb 8, 2023, Petitioner filed a demand for jury trial (R.8). The Court denied the demand on Feb 16th (R.15).

At an unconstitutional bench trial in the District Court on February 22, 2023, Petitioner moved to dismiss the information amending the charges to infractions. Motion was denied by the court (R. 5-6,39-40). Petitioner endeavored to provide evidence of the guarantee of jury trial in all criminal cases and the unconstitutionality of insurance mandates (R.54). The court ended all discussion of law, alleging that the trial permitted Petitioner to attest to *facts* of the case only, rather than raise **constitutional issues** or matters of **law according to right**.

This admission demonstrates a systemic misunderstanding, namely, that courts may arbitrarily refuse to hear matters of *law* or to refuse to allow a **jury** to hear and decide matters of law and fact. Petitioner made motion at trial to issue a Notice of Constitutional Challenge to the attorney general pursuant to URCrP 12 (i),(a) (R.60-62). The Court denied the motion, claiming that only *fact* relative to law, not law or the constitutionality of law was to be addressed in the hearing (R.55-56,63). The District Court claimed that a *binding* precedent prevailed above Constitutional guarantees. District Court convicted appellant of all three charges summarily (R.67). Petitioner filed a timely notice of appeal on March 22, 2023.

The Court of Appeals rendered an opinion on January 25, 2024 ordering an affirmance of the District Court's decision. Rather than rebut the plain wording of the Constitutions or address the matter of circularity in resorting to *precedent* to say that *precedent* itself is necessarily correct or warrants obedience notwithstanding legitimate matters of public right and outstanding constitutional challenges to the contrary, the opinion dodges these questions by transparently affirming precedent **as a power unto itself**, having no need to deal in or address the underlying constitutional matters involved, even when the authority of said precedent to the question is *only presumed* rather than established (see Order of Affirmance, pp. 1-2 in Appendix A).

Petitioner filed a Petition for Writ of Certiorari on March 25, 2024 with the Utah Supreme Court. The petition was denied by the Utah Supreme Court on May 24, 2024, and a Notice of Remittur was issued by that court on May 29, 2024.

Reasons for Granting the Petition

Petitioner Stewart recognizes that under the Judiciary Act of 1925, a writ of certiorari is not regarded by the Court as a matter of right, but an exercise of judicial discretion granted under compelling circumstances. This case highlights three compelling questions of constitutional law of foundational and timely national importance: (1) Whether it is constitutional to invoke *stare decisis* as though it had any binding power, (2) Whether administrative classifications, precedent, statute, prosecutorial discretion or any other power may justly frame a contest in a manner denying any defendant rights, including the right to a jury trial, and (3) Whether any government, state or federal, not acting within its enumerated powers of regulation or taxation, is constitutionally justified in mandating the purchase of securities or other items. Key discrepancies between the State's interpretation of these principles and those held by this Court beg the use of supervisory intervention. The quandaries posed before this Court are expanded as follows:

I. Is *Stare Decisis* Binding?

Throughout the trial and appeals process, the doctrine of binding precedent was exercised unilaterally to deny the defendant the federal and state constitutional guarantee of a jury trial in a criminal case and to dodge other constitutional questions of paramount importance, outsourcing them to mere *presumptions* rather than due process or actual judgment.

In *Ramos v. Louisiana*, 590 U.S. 83 (2020), this Court held:

> *"stare decisis* has never been treated as "an inexorable command." And the doctrine is "at its weakest when we interpret the Constitution" because a mistaken judicial interpretation of that supreme law is often "practically impossible" to correct through other means."

This position directly conflicts with that held by the Utah Court of Appeals[8], ultimately citing this Court's opinion for its justification, that:

> "Stewart asks us to overrule [...] precedent arguing the precedent does not equal constitutionality. However, both this court and the district courts are "bound by vertical stare decisis to 'follow strictly' the decisions rendered by the Utah Supreme Court." *Ortega v. Ridgewood Estates* LLC, 2016 UT App 131, ¶ 30, 379 P.3d 18"

It also conflicts with the District Court's statement[9], echoing:

"as a Judge I am required to follow the precedent set in front of me".

That the opinions of this Court and of State Courts are therefore perceived to be instruments of a proactive judicial ***will*** enacted through an alleged binding ***force***, is a fact that cannot be mitigated by any argument. Deepening the quandary, this Court's own past opinions have been cited as the alleged source of this binding force, creating a crisis of authority. Which precedent should prevail? The precedent that declares that *stare decisis* is not binding, or the precedent that insists that it is?

To bind implies a *lack of freedom* to choose otherwise. Precedent is used both to *reinforce* and *contradict* the notion that deviation is not allowable. Deeper examination of the Utah Court of Appeals' cited justification from *State v. Menzies* 889 P.2d 393 (1994) reveals *facets* of the doctrine:

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[8] See Order of Affirmance, UT Court of Appeals, Case No. 20230223-CA
[9] See American Fork City v. Seth Stewart, Case No. 225103721 TC, p.67

"We note that the doctrine of stare decisis, as it applies to a court of appeals, has two facets. **Vertical stare decisis**, the first of these two facets, **compels** a court to **follow strictly** the decisions rendered by a higher court. *See Jaffree v. Board of School Comm'rs*, 459 U.S. 1314, 1316, 103 S.Ct. 842, 843, 74 L.Ed.2d 924 (Powell, Circuit Justice 1983); *In re Marriage of Thorlin*, 155 Ariz. 357, 362, 746 P.2d 929, 934 (Ct.App. 1987). Under this mandate, lower courts are **obliged** to follow the holding of a higher court, as well as any "**judicial dicta**" that may be announced by the higher court. *See Lewis v. Sava*, 602 F. Supp. 571, 573 (D.C.N.Y. 1984); *Fogerty v. State*, 187 Cal.App.3d 224, 231 Cal.Rptr. 810, 815 (1986); *Ex parte Harrison*, 741 S.W.2d 607, 608-09 (Tex.Ct.App. 1987). *See generally* Robert E. Keeton, *Venturing To Do Justice: Reforming Private Law* 25-38 (1969); 21 C.J.S. *Courts* § 142, at 169-70 (1990). **Horizontal stare decisis**, the second facet, requires that a court of appeals follow its own prior decisions. This doctrine applies with equal force to courts comprised of multiple panels, requiring each panel to observe the prior decisions of another. *State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993). **Horizontal stare decisis** does not, however, require that a panel adhere to its own or another panel's prior decisions with the same **inflexibility** as does vertical stare decisis. *See Opsal v. United Servs. Auto Ass'n*, 2 Cal.App.4th 1197, 10 Cal.Rptr.2d 352, 356 (1991); *State v. Dungan*, 149 Ariz. 357, 361, 718 P.2d 1010, 1014 (1986). Instead, although it may not do so lightly, a panel may overrule its own or another panel's decision where."the decision is clearly erroneous or conditions have changed so as to render the prior decision inapplicable." *Dungan*, 149 Ariz. at 361, 718 P.2d at 1014." (bold emphasis added)

The first citation above, *Jaffree v. Board of School Comm'rs*, 459 U.S. states:

"What is a court to do when faced with a direct challenge to settled **precedent**? In most types of cases "it is more important that the applicable rule of law be settled than that it be settled right." *Burnet v. Coronado Oil Gas Co.*, 285 U.S. 393, 406, 52 S.Ct. 443, 447, 76 L.Ed. 815 (1932) (Brandeis, J., dissenting). This general rule holds even where the court is persuaded that it has made a **serious error** of interpretation in cases involving a statute. However, in cases involving the federal constitution, where correction through legislative action is practically impossible, a court should be willing to examine earlier precedent and to overrule it if the court is persuaded that the earlier precedent was wrongly decided. *Id.* at 407, 52 S.Ct. at 447. "A judge looking at a constitutional decision may have compulsions to reverse past history and accept what was once written. But he remembers above all else that **it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it**." Douglas, *Stare Decisis,* 49 Colum.L.Rev. 735, 736 (1949)." (bold emphasis added)

Peeling back the layers to *Burnet v. Coronado Oil Gas Co* 285 U.S. 393, 406 (1932), Justice Brandeis on that occasion wrote a dissenting opinion (the Court was divided 5-4). Within that opinion he noted (pp. 406-413):

> "Stare decisis is not, like the rule of res judicata, universal **inexorable command**. "The rule of stare decisis, though one tending to consistency and uniformity of decision, is **not inflexible**. Whether it shall be followed or departed from is a question **entirely within the discretion of the court**, which is again called upon to consider a question once decided." *Hertz v. Woodman*, 218 U. S. 205, 218 U. S. 212. Stare decisis is usually the wise policy, because, in most matters, it is more important that the applicable rule of law be settled than that it be settled right. Compare National Bank v. Whitney, 103 U. S. 99, 103 U. S. 102. This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. The court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function. Compare 281 *U. S. S. 409 Co. v. Hill*, 281 U. S. 673, 281 U. S. 681. Recently, it overruled several leading cases when it concluded that the states should not have been permitted to exercise powers of taxation which it had theretofore repeatedly sanctioned. In cases involving the Federal Constitution, **the position of this court is unlike that of the highest court of England**, where the policy of stare decisis was formulated and is strictly applied to all classes of cases. [...] After such opinions, judicially delivered, I had supposed that question to be settled so far as any question upon the construction of the Constitution ought to be regarded as closed by the decision of this Court. I do not, however, object to the revision of it, and am quite willing that it be regarded hereafter as the law of this Court that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter *depend altogether on the force of the reasoning by which it is supported.* [...] With as full respect for the authority of former decisions, as belongs, from teaching and habit, to judges trained in the common law system of jurisprudence, we think that there may be questions touching the powers of legislative bodies which can never be finally closed by the decisions of a court. [...] *It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations.* Those doctrines only will eventually stand which bear the strictest examination and the test of experience." (emphases added)

In contrast to *Res judicata* which refers solely to the matter adjudicated, *stare decisis* has since been presumed to have some **proactive**, **binding** force upon **cases** and **even legislation** external to the matter actually adjudicated, which further hazards both *ex post facto* and *double jeopardy* (forbidden by the Constitution in Article 1 Section 9 Clause 3 and the Fifth Amendment, respectively), since the interpretation of laws may **change** as though the interpretation were itself a law ("legislating from the bench"). If a court broadens the definition of a crime, a person acquitted under the old interpretation may now fall under a new expansive or intrusive interpretation, despite previously escaping liability. The problems attendant to proactive rulings would disappear if we held to the core claim that whether to follow the doctrine is **"entirely within the discretion of the court"**, "not an inexorable command", whether it be a higher court or a lower court. In *Burnet*, Justice Stone also gave a dissenting opinion:

> "It is plain that, if we place emphasis on the orderly administration of justice, rather than on a blind adherence to conflicting precedents, the *Gillespie* case must be overruled. [...] No interest which could be subserved by so rigid an application of *stare decisis* is superior to that of a system of justice based on a **considered and consistent application of the Constitution of the United States.**" (Ibid., bold emphasis added)

It is notable that both of these dissenting opinions, including the primary one cited to *affirm* stare decisis, in reality strongly oppose its overly rigid application, and require its suspension particularly in federal **constitutional** matters, opening wide the door to future wisdom and experience to remedy past decisions, *always with a view to correction*. Wisdom ought to be preferred above habit: "It is more

important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations." (Ibid.)

Horizontal stare decisis appears in great measure to reduce to the assertions that each of the higher courts is responsible for its own precedent, and that to prevail against the argument of any supposed wisdom of the past, greater wisdom is required in the present. For seasoned judges more amply informed by such trial and error than any of their predecessors, this should pose no indomitable obstacle. *Stare decisis* may be of no weight beyond its persuasive power in the face of cumulative wisdom, and when experience has risen to extensive levels, reversals of some past opinions are almost invariably to be expected (see *Loper Bright Enterprises v. Raimondo,* 603 US 369 (2024)). Even recognizing that *stare decisis* may be "usually the wise policy", it cannot be found to support the idea that it is irresistible.

Hutto v. Davis, 454 U.S. 370 (1982) approves the notion of **vertical** stare decisis:

> "unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be."

A similar doctrine is reiterated in *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989):

> "If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."

Whether **vertical** or **horizontal**, such a view explicitly imposes the **will** of a court outside of cases delivered to its jurisdiction and begs the use of **force** in its

application to extend rulings to other courts and panels, despite no constitutional provision justifying such forceful applications or proactive **rulings beyond the actual cases** (res judicata) heard by a judicial body. This is even true regardless of whether the matter in controversy may be deemed a "federal constitutional" issue.

Stare decisis recently exposed another gap in its armor. In his concurring opinion in *Gamble v. United States, No. 17-646 (2019),* Justice Thomas wrote:

> "In my view, the Court's typical formulation of the *stare decisis* standard does not comport with our judicial duty under Article III because it elevates demonstrably erroneous decisions—meaning decisions outside the realm of permissible interpretation—over the text of the Constitution and other duly enacted federal law. It is always "tempting for judges to confuse our own preferences with the requirements of the law," Obergefell v. Hodges, 576 U. S. ___, ___ (2015) (ROBERTS, C. J., dissenting) (slip op., at 3), and the Court's stare decisis doctrine exacerbates that temptation by giving the venire of respectability to our continued application of demonstrably incorrect precedents. By applying demonstrably erroneous precedent instead of the relevant law's text—as the Court is particularly prone to do when expanding federal power or crafting new individual rights—the Court exercises "force" and "will," two attributes the People did not give it. The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (capitalization omitted). We should restore our stare decisis jurisprudence to ensure that we exercise "mer[e] judgment," ibid., which can be achieved through adherence to the correct, original meaning of the laws we are charged with applying."

Are we therefore to understand that when judges undertake to cover a proceeding under the heading of allegedly binding "stare decisis"—whether vertical or horizontal—they are not acting as judges at all, but are rather punting on judgment without permitting *due examination* to take place, acting as mere perfunctory administrators of **force** and **will**, without a meaningful check on such power? Such is inherent in the notion of a "binding precedent", or *stare decisis* treated as an instrument of force or will. Would this not violate the clear charter of

judicial office? If the assertion is rather that the courts are **unbound**, taking only *advice* from precedent, then ought their judgments to reflect such *opinion* only, rather than citing a supposedly *binding* cause? If a judge lacks sufficient wisdom to contradict a precedent, ought not his ignorance to be entered as the rationale for outsourcing judgment, rather than blind obedience to external **compulsion**?

It has been argued that vertical stare decisis may be inferred from the appellate structure of the judiciary itself[10]: That is, if a lower court rules a certain way, then *on appeal*, a higher court may overturn the lower court's decision. That the decision of the higher court in such cases may be of "force" is true in a sense, however its purview is limited **solely to the case at hand** and must be jurisdictionally sound in keeping with the role of the judiciary, rather than constituting a *sweeping pronouncement* to be obeyed in all cases that appear similar in lower courts. Moreover, **it is *only* true that such a vertical effect takes place *if* a court chooses to convict or affirm a conviction in a criminal case, thereby giving possible cause for an appeal, or if a party to a civil case wishes further appeal after a lower court's decision is rendered**. If the lower court rules *acceptably* or with greater *clemency,* or *if a jury acquits*, **no appeal is necessary**, hence no pushback from a higher court would be warranted, nor could it be obtained in a criminal case. Hence lower courts ***by design*** in the appellate structure *necessarily* have latitude to ignore the presumed opinions of higher courts when

[10] See Hutto v. Davis, 454 U.S. 370 (1982), alleging that by defying a higher court's precedent, "the Court of Appeals ignored the hierarchy of the federal court system created by the Constitution and Congress"

erring *(if error it is to be called)* on the side of **fairness**, of preserving **defendant rights,** the **presumption of innocence,** and **upholding the Constitution** over precedent. This is in fact desirable. It could even have the benefit of reducing the caseload for the higher courts, since fewer causes for appeal from such decisions would issue. This phenomenon is worlds apart from proactive *edicts* from higher courts, prescribing how lower courts ought to function, as it behaves quite differently from such a policy. Hence **the appellate structure of the judiciary in fact does not affirm a notion of *binding stare decisis*.** This is also consonant with the federal rule of individual and state rights having supremacy over federal powers, save for its enumerated few (9th and 10th Amendments, United States Constitution). The current doctrine creates conflicts here. That feedback may be offered to the lower courts on appeal of their decisions to a higher court is true, but where there is no appeal, no such feedback may be given, and consequently the dictum that lower courts are to follow precedents of the higher courts in proactive or binding fashion is fallacious on its face. Higher courts may teach lower courts by offering their published opinions as *advice* but **cannot bind them.**

A further problem with *stare decisis*, both **vertical** and **horizontal**, is that it directly conflicts with each individual's oath of citizenship and each public officer's oath of office, wherein we enter a solemn oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic" and

"bear true faith and allegiance to the same"[11]. Such allegiance and performance would be impossible if there were higher allegiance than to the Constitution favoring any instruction contrary to the rights it protects. This includes "**binding precedent**". Even if a panel of higher judges insists through lengthy precedent and numerous rulings that 2+2=5, all people are **entitled as well as duty bound** to support the truth in contradiction to such claims; 2+2=4. A lower judge or juryman is derelict in his oath if he allows his faith and allegiance to a constitutional principle to be superseded by an opinion or edict from a higher officer or any other source. The Constitution itself is supreme above all such officers (Article VI), no matter their position or tenure, and each citizen and officer has authority and responsibility already entered into under oath to **oppose** all unconstitutional acts and unlawful orders by their superiors, as General Alexander Doniphan refused the unlawful execution order of his superior officer General Samuel Lucas, saying: "It is cold-blooded murder. I will not obey your order... If you execute these men, I will hold you responsible before an earthly tribunal, so help me God"[12].

In any event, if any support for preemptive, vertical *stare decisis* or binding precedent in general is to be found**, it would be circular to cite precedent as the justification for it**. Such precedent must be chased to its uttermost root, and if the doctrine is merely *advice*, then it deserves to be cited as such rather than as a controlling or forceful provision, or a matter of "law" unto itself. If on the other hand

[11] See the Naturalization Oath of Allegiance to the United States and the various Oaths of Office for public office in the United States

[12] *History of the Church*, Joseph Smith, Vol 3 pp. 190–91

it had been a binding Constitutional authority, citation to the Constitution itself without reliance on such a thing as "precedent" would be required to demonstrate it. Attempts in this direction have certainly been made. Chief Justice Marshall, cited in *Cooper v. Aaron*, 358 U.S. 1 (1958), has been interpreted as follows:

> "Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 5 U. S. 177, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3 "to support this Constitution." Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State.'"

Despite lipservice to the Constitution, where is the reliance on any Constitutional authority here, *without* reliance on a judicial interpretation previously made to expand that alleged authority? No clause grounding the claim that **judicial interpretation** "*is the supreme law of the land*" in the constitutional text was made; it was baldly asserted. This doctrine directly enthrones a precept of legislating from the bench, even admitting that an *interpretation* is to be regarded as *law*, ascribing to the *judiciary* the powers of the *legislature, and even overtly controlling the state legislatures*. This is supposedly pursuant to Article VI, and yet

the text of that clause makes **no reference** to any act, interpretation, opinion or ruling of the judiciary. Not only are judges unauthorized to make proactive edicts, but the precedent itself also contains numerous contradictions, often unresolved and without recourse for resolution until a new cause is heard by the court, lending clarification. The judiciary is manifestly unfit to *issue* laws, let alone the supreme law of the land. The text of Article VI clause 3 of the US Constitution is as follows:

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

Notably it requires that **the Judges themselves shall be bound by said supreme law**, in every state, no matter if it is contradicted by the Constitution or laws of said state. Quoting Justice Marshall again:

> "If the legislatures of the several States may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals." (*United States v. Peters*, 9 U.S. 115 (1809))

Would it not be a mockery of the Constitution to insist that a judiciary is itself capable of enforcing law, or of legislating? Is what is Constitutional a function of what is *fashionable* in the Supreme Court, or is it the express right and duty of **everyone** to exercise his own **conscience** in upholding his oath or affirmation of office or of citizenship to sustain the Constitution, free from the force or will of a judiciary? **Can a man's rights be curtailed owing to a suit in which he was not summoned to appear as a party?** Or do judgments properly confer rights to

be "acquired" as Marshall said? The Bill of Rights is *not* an exhaustive enumeration of rights. The Declaration of Independence asserts as *self-evident* that human rights are **God-given**, and the Constitution itself manifestly grants no rights, but only enumerates exhaustively the **limited powers of government** and confers certain *privileges* and *immunities* in connection with those powers, secured by that compact to the citizens of the states (Article IV Section 2 Clause 1).

"No active resolution" (Federalist No. 78) precludes and forever forbids legislating from the bench or enforcing an umbrella rule on others. Hence the "rule" of stare decisis can be an instrument neither of **force** nor **will**; these are forbidden to the judiciary; **it can only be taken as opinion outside of the *res judicata*.** If we were to enforce blindly the interpretation in *Hutto v. Davis,* lower courts could not exercise discretion **even in matters of rights expressly protected under the Constitution**, exposing officers to prosecution liability for having violated their oath of office to sustain the Constitution—yet it never was a judge's prerogative to decide upon a criminal verdict: It has always been the exclusive purview of the jury.

The Constitution itself grants nullification powers to juries. Further, the word "judge" derives from Latin *jus- dicere*, meaning "to say the **law**" or "to say according to the **law**", whereas "verdict" means "**true** saying". *Juror* means one having made an oath. Hence a juror is bound by oath to **speak the truth**. Truth and law are meant to mingle in this setting, but of the two, since truth and law are not always compatible, **truth alone** is to have binding power to punish the accused, acting as the final check against the abuse of the **rule of law** by resorting to the preeminent

domain of **conscience**, which trumps all others. Is the bona fide **supreme law of the land** and its **inexorable command** of due process equivalent to "anarchy"?

Further compelling citations could issue, but Petitioner considers that the quandary has been demonstrated. The present case offers a clear example of a situation where *stare decisis* ought to be suspended since it has repeatedly and falsely justified a direct and unconscionable violation of federal and state Constitutional guarantees of rights. This contradicts even many interpretations of precedent that are biased towards binding strictly; relief is always to be afforded in Constitutional matters and **never denied.** A supposedly **binding precedent** that purports to be able to nullify the right to a jury trial violates the rule of law.

Jury trial is the Rule of Law, per the Supreme Law. It is impossible for the fulfillment of a Constitutional mandate to constitute "anarchy", as contrasted with a failure to adhere to such rule of law. "The trial of all crimes... shall be by jury" (Article 3 Section 2 Clause 3, US Constitution). Juries are not bound by *stare decisis*, and are the only body authorized to render criminal verdicts or to find damages in civil litigation above a set value when requested by either party. Judiciaries, by being granted too much power, feel they must rule excessively, making them a scapegoat for many state and national issues. The lightning rod for this problem is the jury. The supreme law of the land dictates that the **conscience** and **consensus** of the local, impartial jury **is the uniform, predictable rule of law** that is to be meted out, absolving judges of the verdict and its attendant arguments. This brings us to the second question included in this petition:

II. Can the classification of a charge as an "infraction", ambiguity in its disposition as criminal or civil etc. or "precedent" circumvent proper jurisdiction and rights of the accused, for example, jury trial?

The United States Constitution states in Article 3 Section 2 Clause 3, "the trial of all crimes, except in cases of impeachment, shall be by jury". Petitioner was prosecuted for one or more alleged **crimes**, docketed as such in a **criminal** court (see R.5), with a local municipality acting as the Plaintiff, and yet was not accorded his defendant rights (see R.15). Utah Rule of **Criminal** Procedure 17(d) was cited as the reason for this denial, which in its entirety states:

> (d) Jury trial in other cases. All other cases shall be tried without a jury unless the defendant makes written demand at least 14 days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

If it is held that "an infraction is not a crime" as is sometimes publicly asserted[13] by the statutory distinction of being "not classified" per Utah Code 76-3-105[14], then it appears no court has **jurisdiction** to try the case. The Constitutions do not authorize governments to try offenses that are not crimes though a criminal justice system, or to deny defendant rights by changing labels or headings. Designations such as "infraction" did not exist at the time that the State Constitution was drafted, guaranteeing the right to a jury trial in **all classes of criminal cases**:

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[13] see https://www.utahcriminallaw.net/what-is-considered-infraction-utah/, accessed 3/25/2024

[14] *Utah Code 76-3-105 states in its entirety:* **Infractions.**

(1) Infractions are not classified.

(2) Any offense which is an infraction within this code is expressly designated and any offense defined outside this code which is not designated as a felony or misdemeanor and for which no penalty is specified is an infraction.

Article I, Section 10. [Trial by jury.]
In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

The relevant part of Article I, Section 12 of the Utah State Constitution states:

Article I, Section 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, to testify in the accused's own behalf, to be confronted by the witnesses against the accused, to have compulsory process to compel the attendance of witnesses in the accused's own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases.

The only way to skirt this requirement is to call the alleged offense "not a crime" or decide that "infractions" do not qualify as "criminal prosecutions". But *when is a crime not a crime?* This case was prosecuted and tried by a **criminal** court (R.63). Jurisdiction is unsatisfiable without defendant rights. "A rose by any other name..."

This matter fairly arises any time anyone is prosecuted under the guise of administrative proceedings, or whenever it may be questioned, Is this a civil suit or a criminal one? If civil, the right to a jury trial attaches based on the value (family for example is priceless), but if criminal, there is no dollar amount necessary to incorporate the right. It always attaches. No other types of prosecutions may issue.

If it is held that any of the alleged offenses is a crime, the Constitutionally protected rights attach regardless of whether these are affirmed or supposedly contradicted by statute. Otherwise, it would have to be prosecuted by the

government entity as the plaintiff under a civil heading, which is again a precedent invented by the courts, unoriginal to the Constitutionally enumerated powers, and would still qualify for a jury trial given the sum in controversy regardless (this includes family court and administrative hearings). A guarantee, the exercise of which is arbitrarily denied, is meaningless. If a court cannot tell whether the case is "criminal", the benefit of the doubt must favor of the Defendant and his rights.

The principle of lenity is one of the most well-established in all jurisprudence: "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity" (*United States v. Bass*, 404 U.S. 336 (1971), quoting *Rewis v. United States*, 401 U. S. 808, 401 U. S. 812 (1971). See also *Ladner v. United States*, 358 U. S. 169, 358 U. S. 177 (1958); *Bell v. United States*, 349 U. S. 81 (1955); *United States v. Five Gambling Devices*, 346 U. S. 441 (1953)). This must also be true when the *disposition* of a case is uncertain, or as labels and designations morph away from the types of cases authorized under written Constitutions, as in "administrative proceedings", "infractions", or any other heading. This Court has previously ruled that, in the presence of ambiguity, defendant rights should presumptively attach, affirming the principle of lenity **with respect to outcomes**, and not only with respect to administrative designations:

> "Deportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence. The collateral versus direct distinction is thus ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation. We conclude that advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel" (*Padilla v. Kentucky*, 559 U.S. 356 (2010))

The relevance of these observations about attachment of defendant rights in an era of mass deportations and prosecutions of whole groups is pungent and timely.

In consideration of whether a criminal court should hear a case under criminal auspices and afford the commensurate defendant rights,

> "It is most true that this Court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution." (*Cohens v. Virginia*, 19 U.S. 264 (1821)).

The question needing review pertaining to the District Court then is whether this matter of right be heard as properly within its criminal jurisdiction, or else, failing to establish jurisdiction, it must capitulate the issue. If jurisdiction is established as a criminal case, all criminal defendant rights must attach per the Federal and State Constitutions. A government plaintiff in a civil suit is a contradiction in terms.

While a jurisdictional gap has been afforded for charges denominated "infractions", giving courts latitude to prosecute them, but not to afford defendant rights in such cases, we have in the precedent that "Constitutional Rights cannot be denied simply because of hostility to their assertions and exercise; vindication of conceded Constitutional Rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." *(Watson vs. Memphis, 375 US 526).* Any rationale pertaining to **economy** or **efficiency** regarding prosecution,

including "infractions", used to deny rights, is invalid. If jurisdiction exists, the case must be heard and the rights accorded, *regardless of the dollar amount at stake.*

This case shakes the very foundation of influences perverting Utah's original Constitutional protections of jury trial and could set a national precedent finally favoring written Constitutions above unauthorized departures therefrom, even when given the color of law or of precedent. If national practices or *precedent* are ever cited as they have been by the states (Order of Affirmance, p.1, as *Lewis v. United States, 518 US 322, 325 (1996)*), it is thereby admitted that the Federally guaranteed right attaches to the State since the Federal opinion is embraced in questions pertaining to those rights. It is also admitted that States' powers reserved under both the Federal and State Constitutions are imperiled by subjecting a right doubly asserted in both the Federal and State Constitutions, or by the State Constitution alone, to a dubious or injurious precedent which reverses the Constitutional order protecting and reserving all unenumerated powers to the States, or to the people themselves. (Amendments 9 & 10, US Constitution). "...the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." (*Davis v. Wechsler*, 263 U.S. 22 (1923)). Can a court in Utah defeat a state or federal Constitutional demand for a jury trial for *all* crimes because of a practice of court precedent, or of statutory loopholes?

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." (*Miranda vs. Arizona, 384 US 436, 491*). Such is exactly the case here. The right to a jury trial in **all** criminal

prosecutions is required by both the Federal and State Constitutions, and contradicted only by statute, rules and customary judicial practice, the challenge to which on Constitutional grounds has been and continues to be summarily denied.

Can a Constitutional guarantee be limited by statute, and especially in such a manner as to make it immune to review? It is troubling that the Courts, including the state Supreme Court, would allow statute to gatekeep or *interpret* Constitutionally guaranteed rights, in questioning or denying a right, or requiring it to be restated as a so-called "statutory" right in order to be claimed. Statutes do not exist to grant, deny, or gatekeep rights—such is not their prerogative—they exist to implement Constitutionally enumerated powers of government, and to provide mechanisms to safeguard rights. "a law repugnant to the Constitution is void, and ... courts, as well as other departments, are bound by that instrument." (*Marbury v. Madison, 5 U.S. 137 (1803)*). In ironic collusion with the doctrine of stare decisis lies another doctrine, affirmed by the case history in one form as a "**presumption of constitutionality**" [15]. The prosecutor asserted that law is to be *presumed* constitutional, citing *stare decisis*. Thus, the two principles protect one another. Presumption of constitutionality is a practice that arrogates undue protection to the legislature from review, as *recommended* by the executive, and *affirmed by* the judiciary, which justifies its oversight to presume constitutionality by the circular

[15] As in the Appellee's brief in the Utah Court of Appeals case under review, UT Case No. 20230223-CA, which stated, "It is presumed a statute is constitutional and any doubts are to be resolved in favor of constitutionality. See Brown v. Cox, 387 P.3d 1040 (Utah 2017)" in answer to a Constitutional challenge against Utah Code §77-1-6(2)(e) and Utah R. Crim. P. 17(d), which were used to justify the denial of a jury trial and upheld by invoking *stare decisis*.

invocation of *stare decisis*, all **without** oversight from the people. Such utter failure to enforce checks and balances simply spells collusion across all three branches of government, as documented by this case. The only way to break the cycle is to allow the jury to nullify the acts of all three. The presumption of legitimacy of precedent and the presumption of constitutionality of laws are at odds with the presumption of innocence. It is a boondoggle to continue to reinforce such circular precepts.

As discovered in *S. Salt Lake City v. Maese*, 450 P.3d 1092 (Utah 2019), the exercise of the right to a jury trial in the state has declined massively, not least of the reasons for which would be the "infraction" trapdoor exemplified in this case. This is a highly illustrative example of an invention that did not exist, and has been demonstrated not to have existed, at the time the corresponding Constitution was written, but has subsequently been shoehorned in to prosecute the people, while denying them their human rights as defendants. "It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon." (*Boyd vs. United States*, 116 US 616). Considering these facts and the exposure of the history of the exercise of this vital right by the *Maese* case, this question is ripe for review by the highest court in the land. The reduced exercise of jury trial through statutory loopholes and fictitious designations is such an encroachment. It is the Court's duty to rectify and redress these assaults.

Foundationally, the matter of jury trials is at the heart of the rule of law, and of the ability of a populace to jumpstart judicial review, which is almost vanishingly rare otherwise. Petitioner raised this point on multiple occasions, that per the

charter of juries according to the founding fathers themselves, juries are empowered to hear matters **of both law and fact** when it suits them (R.55-56,63):

> "If the question before [the magistrates] be a question of law only, they decide on it themselves: but if it be of fact, or of fact and law combined, it must be referred to a jury. In the latter case of a combination of law and fact, it is usual for the jurors to decide the fact and to refer the law arising on it to the decision of the judges. But this division of the subject lies with their discretion only. And if the question relate to any point of public liberty, or if it be one of those in which the judges may be suspected of bias, the jury undertake to decide both law and fact. If they be mistaken, a decision against right which is casual only is less dangerous to the state and less afflicting to the loser than one which makes part of a regular and uniform system." *Thomas Jefferson: Notes on Virginia Q.XIV*, 1782. ME 2:179

This addresses the "anarchy" criticism in *Hutto v. Davis*, 454 U.S. 370 (1982). In this, the secret of the one true Anchor is revealed: Government **by** the people through jury trials is **not** anarchy! **It is the supreme law**. Prof. Suja Thomas called the American Jury the legitimate "Fourth branch of government", lamenting its disuse. The *Maese* case also showed that the practice of granting jury trials has waned from 100% of the time to a rarity in the present day. Jury trials were completely suspended in several jurisdictions during the COVID-19 pandemic.[16]

To demonstrate the irresistibility of the observation in the previous section that binding precedent effectively confers upon judicial rulings the weight of legislative authority, it cannot be argued that the Court of Appeals in this case did not treat the opinion of the courts about jury trials as though those opinions had the weight of law. Similarly, the judiciary in the ***Maese*** opinion and in the present case

[16] See https://www.uscourts.gov/data-news/judiciary-news/2020/11/20/courts-suspending-jury-trials-covid-19-cases-surge

granted powers which were not theirs to give, presuming the legislature competent to interpret and review its own laws for Constitutionality, a power exclusive to the judiciary. This trend would transform the whole government into a monolith, having no independent branches. A sitting president has declared intent to impeach so-called "activist" judges and replace them with partisan picks, consolidating the powers of all three branches of government under the unchecked management of a single party. To consolidate power under any head invariably leads to what James Madison warned was the very definition of tyranny (Federalist No. 47).

The Supreme Court has incorporated nearly all of the protections declared in the federal **Bill of Rights** under the **Due Process** clause but arbitrarily excluded the **grand jury** and so far has failed to uphold the full **trial jury** requirement against state overreach in all criminal cases (see *Duncan v. Louisiana*, 391 U.S. 145 (1968)). No citation to the Constitution itself has been advanced to justify these failures to incorporate rights against state encroachment. Some argue that grand juries and trial juries are merely procedural, not substantive, but similar arguments were rejected for the **right to counsel** *(Gideon v. Wainwright, 372 US 335 (1963))* and **unanimous juries** (*Ramos v. Louisiana, 590 U.S. 83 (2020)).* An extra-constitutional doctrinal rationale rather than a constitutional rationale was given for this arbitrary limitation—essentially the circular precedent conundrum this petition exposes. The precedent of incorporating protections of certain rights against state encroachment directly conflicts with other precedents of this Court wherein states are deemed to have sweeping police powers without a state constitutional

dispensation. Arbitrary selective incorporation is a false doctrine on its face (see *McDonald v. City of Chicago, 561 U.S. 742 (2010)).* Behind the dismantling and erosion of these unincorporated institutions, we find a government most paranoid against the possibility of actual oversight by the people. Attiacking this power:

III. What authority allows the State to compel purchase of "securities" or other items contrary to due process and the Utah Constitution's Free Market Clause?

The Fifth Amendment to the United States Constitution states in part:

> "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

This is echoed by the Constitution of the State of Utah[17].

In *National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012),* Chief Justice John Roberts, delivering the opinion of the court said,

> "Congress has never attempted to rely on that power [to regulate interstate commerce] to compel individuals not engaged in commerce to purchase an unwanted product. ... The individual mandate, however, does not regulate existing commercial activity. It instead compels individuals to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce. Construing the Commerce Clause to permit Con-gress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply fail to do it. Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could *potentially* make within the scope of federal regulation, and—under the Government's theory—empower Congress to make those decisions for him... Indeed, the

[17] Article I, Section 7 [Due process of law.] "No person shall be deprived of life, liberty or property, without due process of law." Article I, Section 22 [Private property for public use.] "Private property shall not be taken or damaged for public use without just compensation."

> Government's logic would justify a mandatory purchase to solve almost any problem"

Compulsory purchases impose immense overreach. In their dissenting opinion (the Court was divided 5-4), Justices Scalia, Kennedy, Thomas, and Alito wrote:

> "If Congress can reach out and command even those furthest removed from an interstate market to participate in the market, then the Commerce Clause becomes a font of unlimited power, or in Hamilton's words, "the hideous monster whose devouring jaws . . . spare neither sex nor age, nor high nor low, nor sacred nor profane." The Federalist No. 33, p. 202 (C. Rossiter ed. 1961)."

Both sides rule out the commerce clause, yet the ruling citing tax powers is tenuous at best (see *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922) and *Perry v. Sindermann,* 408 U.S. 593 (1972), "The government ... may not deny a benefit to a person on a basis that infringes his constitutionally protected interests").

Insurance mandates clearly violate due process because they constitute *presumptive* judgments and exceed enumerated powers. The underlying rationale is that an entity poses a *liability* upon society and must therefore be compelled to pay proactively to subsidize *potential* future damages, *speculatively* and without a **conviction** or any requirement to demonstrate guilt or actual injury—hence due process is directly violated. The value judgment that people are a liability finds its origin in the Communist Manifesto—not in the Constitution. Criminal courts have jurisdiction to try cases involving violations of criminal law on the roads, and civil courts have jurisdiction to award damages in suits between private parties. Hence compulsory insurance purchases subsume the proper province of the courts in settling disputes, sidestepping due process. It also runs afoul of Article 1 Section 10:

"No state shall... pass any ... Law impairing the Obligation of Contracts". A compulsory contract is not freely entered, but a law imposing insurance mandates impairs the obligation of contracts by substituting its own terms that are fundamentally incompatible with a free market. This Court held that governments do not have authority to prevent individuals from entering contracts freely (*Coppage v. Kansas, 236 U.S. 1 (1915)*). Consistent with both sides of the *Sebelius* decision, the imposition of a state-mandated contract in a market is mutually exclusive with the ability to enter or refrain from entering such contracts freely.

By assignment and presumption of liability, and similar to the issue of denying jury trials, **insurance mandates violate the presumption of innocence**. This Court has previously held that a state has no right to demand or retain fines or damages without a valid conviction. Further, "absent a final conviction, one is presumed innocent" (*Nelson v. Colorado, 137 S. Ct. 1249 (April 2017),* see also *Connecticut v. Doehr, 501 U.S. 1 (1991),* forbidding prejudgment attachments, *Tumey v. Ohio, 273 U.S. 510 (1927),* and *Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978)).*

This contrasts with the legitimate tax powers of a government. Legitimate taxation must be pursuant to the enumerated powers of the constitution of a government, be properly collected as such and appropriated by the authorized body and used for the specified purposes within the enumerated powers, with **full**

representation in government expressing the consent of those taxed[18]. It has been argued that taxes to support military and police forces may constitute presumptive judgments similar to those levied by insurance mandates, however unlike personal or property insurance or liability requirements of such mandates, military and police forces do not exist to punish individuals presumptively or extract damages for assumed *liability*. On the contrary, liability must always be established individually by due process of the law notwithstanding legitimate taxation for the purpose of raising a temporary army, funding a police force or enacting trials. These latter meet the description of duty as their sole prerogative is to **protect rights**, not to infringe on them. Laundering of liability through a socialized fund or collectivized damages stemming from *presumed* liability are not pursuant to enumerated powers. Socialism is not and cannot be lawful under the Constitution. The *Sebelius* decision sidesteps the fact of enumerated powers despite this Court's precedent elsewhere directly contradicting the use of tax powers to coerce compliance, for example in *United States v. Butler, 297 U.S. 1 (1936),* where the Court held that Congress's power to tax and spend must be for purposes authorized by the Constitution:

> "The power of taxation, which is expressly granted to Congress, may be adopted as a means to carry into operation another power also expressly granted, but not to effectuate an end which is not within the scope of the Constitution.
>
> It is not contended that this provision grants power to regulate agricultural production upon the theory that such legislation would promote the general welfare. The Government concedes that the phrase "to provide for the general welfare" qualifies the power "to lay and collect taxes." The view that the clause grants power to provide for the general welfare, independently of the

[18] Declaration of Independence, grievance stated as "For imposing Taxes on us without our Consent"

> taxing power, has never been authoritatively accepted. Mr. Justice Story points out that, if it were adopted, it is obvious that, under color of the generality of the words, to 'provide for the common defence and general welfare,' the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers.
>
> The true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare."

The arguments of this Court's predecessors and other courts to uphold insurance mandates frequently rely on appeals to "general welfare", and as just demonstrated, the proper definition of **general welfare** and other vague phrases is of paramount importance. Utah's Constitution states:

> **Article XII, Section 20 [Free market system as state policy -- Restraint of trade and monopolies prohibited.]**
> It is the policy of the state of Utah that **a free market system shall govern trade and commerce in this state** to promote the dispersion of economic and political power and the **general welfare** of all the people. Each contract, **combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is prohibited**.

"Health and Public Safety" is also a rationale cited in the Order of Affirmance (Appendix C) for affirming regulatory control over sundry vehicular affairs and purchasing decisions, but there is **no wording in the State Constitution** conveying power to regulate on this basis, nor even identifying it as an objective of the said government, the sole exceptions being for state employees (not the public) or in addressing the suspension of the privilege of Habeas Corpus. No broad authority is delegated on this topic. The order also cites "**general welfare**". The only things the State Constitution has to say about public general welfare is that "**all political power is inherent in the people",** that they have the right to alter

government for their own public welfare (Article I, Section 2), and that *a **free market** is vital to the condition of **general welfare** by definition* (Article XII, Section 20). These phrases exactly state the Constitutional matters in controversy in this case, and were summarily disregarded on the pretense that precedent may without limit overrule such concerns as are **explicitly identified by the framers of Utah's Constitution as constituting our general welfare**, *in the name of general welfare*. Being required to pay into a socialized fund not among the enumerated powers is not a legitimate implementation of general welfare.

In *Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007)*, this Court ruled that the standing requirement to demonstrate a concrete, particularized injury applied to the states as well as to private organizations and individuals seeking redress. This conflicts with the supposition that a state may levy damages presumptively or speculatively under whatever pretense. In *Bivens v. Six Unknown Named Agents, Fed, 409 F.2d 718*, the Court recognized an implied cause of action for individuals whose **Fourth Amendment** guarantees were violated by federal officers, demonstrating that standing is satisfied by the injury of constitutionally guaranteed rights, even in the absence of *tangible* damages. See also *Spokeo, Inc. v. Robins, 578 U.S. 330 (2016)*, reinforcing that the "injury in fact" requirement extends to *nontangible* violations of rights. Prepayment of speculative or *presumed* damages is not pursuant to an enumerated power. Hence the burden of *standing* by governments seeking presumptive damages in disguise as a tax or mandate etc. has not been satisifed, while the standing of citizens to sue their

governments for infringment upon their **rights** is fully satisfied per the Court's own rulings. The injury of the rights of a few is an injury in fact to the rights of the many. Even under populism, injury against the few is mere tyranny, antithetical to constitutional government. A government empowered to persecute minorities routinely shifts the window of minority to cover, in turn, the whole population.

These clear and inherent limitations on state and federal power conflict with other precedents that seek to invent general, unenumerated powers and confer them upon the states. In *Munn v. Illinois, 94 US 113 (1876)*, the Court upheld state regulation of private businesses affecting public interests, asserting broadly that states possess inherent "police powers" to regulate private property for the public good. In their dissenting opinions, Justices Field and Strong wrote:

> "It is true that the legislation which secures to all protection in their rights, and the equal use and enjoyment of their property, embraces an almost infinite variety of subjects ... What is termed the police power of the State, which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other, and in the use of their property, so far as may be required to secure these objects."

The decision in *National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012)* doubles down on a misleading definition of federalism:

> "The Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions. See, *e.g., United States* v. *Comstock*, 560 U. S. ___ (2010). The same does not apply to the States, because the Constitution is not the source of their power. The Constitution may restrict state governments—as it does, for example, by forbidding them to deny any person the equal protection of the laws. But where such prohibitions do not apply, state governments do not need constitutional authorization to act. The States

> thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the "police power." See, *e.g., United States* v. *Morrison*, 529 U.S. 598, 618–619 (2000)."

States have drawn from this copious federal grant of a supposed "general police power of governing" allegedly "reserved" to the states by the 10th Amendment, ignoring its further restriction ***"or to the people"*** and the principle of government **by the people**, in defining their powers. *This is not federalism at all* but overt usurpation by the state governments under the false assumption that they may claim all power not explicitly assigned to the federal government. State governments are **also** limited governments, bound not only by the federal but also their respective state constitutions (see *Bush v. Gore*, 531 U.S. 98 (2000)).

Jacobson v. Massachusetts, 197 U.S. 11 (1905) held that states have power to impose mandatory vaccinations to "protect public health", under the broad general heading of "police powers", which are not necessarily conferred on states by their people. Sweeping power is often only *assumed*, asserted, or pretendedly *conferred* by federal government, which is **not** how states' rights or federalism function. Legitimate governments operate on the exclusive basis of enumerated powers and consent of the governed. *States are no exception.* Insurance mandates pursuant to fictitious or overly broad police powers, constitutionally ungrounded definitions of general welfare, commercial regulation, tax powers, presumptive judgments or another disguise are not lawful—they are socialistic, confiscatory and perverse.

Summary of Reasons to Grant the Petition

Petitioner respectfully asks this Court to remand the case for a constitutional jury trial and to repudiate the doctrine of binding precedent. This would restore *stare decisis* to its Constitutionally compatible value as a potentially helpful suggestion rather than a proactive mandate in excess of enumerated powers. Precedent offers a venire of consistency, but it can exert no binding influence to constrain conscience, negate oaths of office or of citizenship, quash juries, or nullify constitutional guarantees. Defendant rights must attach in every case to which a government-connected entity is a plaintiff, fully incorporating the 5th and 6th Amendments, whether the case is styled as "civil", "infraction" or otherwise.

This petition calls on the Court to affirm three crucial principles:

1. **That stare decisis is not binding,** especially where it conflicts with the Constitution and in matters involving individual rights.
2. **That jury trials may not be denied** over statutory or administrative classification, claimed "civil" status or judicial policy. The right belongs to the people to exercise—not to courts, legislatures, or prosecutors to deny.
3. **That no government has authority** to compel transactions such as insurance mandates, absent enumerated constitutional power and due process.

An end to binding precedent is necessary for the preservation of the American people and the institution of the judiciary itself. As George Washington refused the crown of kingship, the judiciary must also retire its scepter of supremacy and defer

to the Constitution itself. Jury trials incentivize the proper application of **judicial review**, strengthening the judiciary against overreach from other branches. Today judicial review is almost vanishingly rare. This is not due to any shortage of unconstitutional executive acts or legislation to review, but rather to an inadequate incentive structure in the absence of jury nullification. The promised checks and balances of the nominal separation of powers are only a classroom myth unless acted upon by an external force, namely the will of the people. Juries also limit the scope of legal rulings to **res judicata**, insulating the judiciary against calls for impeachment originating from its own overreach. Without the citizen jury properly constituted and unfettered, government invariably usurps the roles of **judge, jury and executioner** unto itself. The presumption of innocence (see *Coffin v. United States*, 156 U.S. 432 (1895)) must prevail above "presumptions of constitutionality" and precedent. Efficiency cannot justify its erosion. A predictable but unjust process is no substitute for the proper rule of law. Jury trial is the consistent application of the law required by the Constitution. ***Today, we are rapidly arriving at a police state.*** **Immediate** intervention to restore constitutional safeguards is **required**.

Subsidies and economic coercion are simply socialism, which is theft. Theft destroys families. Erasing First Amendment protections on religious freedoms has paved the way for the entire dissolution of defendant rights and all human rights, which are God-given. Restoring these protections is necessary to the preservation of freedom and constitutional government. Socialized programs are all anti-family and hence anti-civilization, and we must end them, or they will end us. Sabbe Stewart

APPENDIX

See attachment.

PROOF OF SERVICE

I hereby certify that on the 24th day of May, 2025, true and correct copies of the foregoing PETITION FOR WRIT OF CERTIORARI was sent via first-class postage prepaid mail to the following:

UNITED STATES SUPREME COURT,
1 First Street, N. E. Washington, DC 20543

And by e-mail to the following, with physical mailed copies to follow shortly:

James "Tucker" Hansen, Bar No. 5711
Cherylyn M. Egner, Bar No. 15129
Melissa K. Mellor, Bar No. 10437
HANSEN LAW, P.C.
Attorneys for Plaintiff
233 S. Pleasant Grove Blvd., Suite 202
Pleasant Grove, Utah 84062
Telephone: (801) 443-2380
THansen@centralutahlaw.com,

Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
SLC UT 84114-2320
notices@agutah.gov

I certify under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2025

Seth Stewart