

ORIGINAL

No. 25-376

FILED  
SEP 24 2025  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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

DARDEN, PETITIONER,

v.

CROWD MANAGEMENT SERVICE

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT*

**PETITION FOR A WRIT OF CERTIORARI**

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SUPREME COURT, U.S.

## QUESTION PRESENTED

Under 42 U.S.C. § 1983, private actors constitute state actors when they exercise governmental authority or act jointly with state officials. Courts have disagreed about how to apply state action doctrine to private contractors who exercise state-licensed police powers at government-funded operations while suppressing constitutionally protected speech. In the decision below, the Ninth Circuit held that private security contractors possessing state-licensed police powers do not qualify as state actors under § 1983, even when they exercise those powers at government operations to suppress speech on matters of public concern. That ruling reflects a narrow approach to state action doctrine that conflicts with this Court's functional analysis in *Brentwood Academy* and creates a constitutional accountability gap. Two other circuits have similarly restricted state action doctrine for private contractors, while multiple circuits apply broader, functional approaches that recognize state action when private parties exercise governmental authority under state license or in coordination with government officials. The question presented is: Whether private security contractors exercising state-licensed police powers at government-funded operations constitute state actors under 42 U.S.C. § 1983 when they suppress constitutionally protected speech on matters of public concern.

## **RELATED PROCEEDINGS**

United States District Court (D. Alaska):  
Darden v. Crowd Management Services,  
No. 3:23-cv-00153-SLG  
(Jan. 5, 2024)

United States Court of Appeals (9th Cir.):  
Darden v. Crowd Management Service,  
No. 24-325  
(July 17, 2025)

United States Court of Appeals (9th Cir.):Petition for  
rehearing en banc denied,  
No. 24-325  
(Aug. 14, 2025)

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**OPINIONS BELOW**

The decision of the court of appeals (App. 1a-3a) is unreported. The court of appeals denied rehearing en banc on August 14, 2025 (App. 4a). The decision of the district court (App. 5a-13a) is unreported.

**JURISDICTION**

The judgment of the court of appeals was entered on July 17, 2025. App. 1a. The court of appeals denied a petition for rehearing en banc on August 14, 2025. App. 4a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

Section 1983 of Title 42 of the United States Code provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. The First Amendment to the United States Constitution provides: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. The Fourteenth Amendment to the United States Constitution provides, in relevant part: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## INTRODUCTION

This case presents fundamental questions about constitutional accountability in modern governance, where government increasingly relies on private contractors to implement public policies while attempting to evade constitutional constraints. When private security contractors armed with state-licensed police powers and operating at government-funded operations suppress speech on matters of urgent public concern, do they act under color of state law for purposes of 42 U.S.C. §1983? The court of appeals said no, creating a constitutional accountability gap that threatens the enforcement of First Amendment rights and democratic participation in government. Under the decision below, government can hire private contractors to suppress constitutionally protected speech, then claim immunity from § 1983 liability because the suppressors were “private” actors. This approach conflicts with this Court’s functional analysis in *Brentwood Academy v. Tennessee Secondary School Athletic Ass’n*, 531 U.S. 288 (2001), which requires examining “the totality of relevant circumstances” to determine whether private conduct should be “fairly treated as that of the State.” The circuits have reached conflicting conclusions about how to apply state action doctrine to private contractors exercising governmental authority, creating a split that demands this Court’s resolution. The case arose when petitioner Dustin Darden attended the Alaska State Fair to observe and document a government-funded vaccination operation. As a concerned citizen, petitioner exercised his First Amendment rights by filming the operation and speaking with fairgoers



about his concerns regarding the experimental medical program. Private security firm Crowd Management Services (CMS), possessing state-licensed police powers, violently suppressed petitioner's speech by grabbing, choking, and throwing him to the ground. Rather than recognize this as state action subject to constitutional constraints, the court of appeals applied a formalistic approach that ignores the realities of modern public-private partnerships. The court acknowledged that CMS possessed state-licensed authority but concluded this was insufficient to establish state action under § 1983. This decision undermines fundamental constitutional principles and creates dangerous precedent for future government suppression of protected speech. If private contractors can exercise governmental power while claiming immunity from constitutional accountability, the Constitution's protections become meaningless formalities evaded through privatization. The circuit split on these issues is mature and entrenched, affecting thousands of private contractors nationwide who exercise governmental authority in areas ranging from law enforcement to public health regulation. The question presented affects not only § 1983 liability but the broader framework for constitutional rights enforcement in an era of increasing government reliance on private actors. This Court should grant certiorari to resolve the circuit split, restore constitutional accountability for private contractors exercising governmental authority, and preserve First Amendment protections for speech on matters of public concern.

## STATEMENT OF THE CASE

A. Factual Background- on September 4, 2021, petitioner attended the Alaska State Fair to observe a government-funded vaccination operation. The operation was conducted in a tent receiving both state and federal funding as part of a coordinated government initiative to promote public participation in an experimental medical program. App. 5a-6a. Petitioner sought to exercise his fundamental First Amendment rights by filming the operation and speaking with fairgoers about his concerns regarding the experimental nature of the medical intervention and the lack of informed consent being provided to participants. This speech addressed quintessential matters of public concern—government health policy, medical ethics, and informed consent. Private security firm Crowd Management Services had contracted to provide security services at the state fair, including specific assignment to protect the vaccination operation. Under Alaska Administrative Code Title 13, § 60.110(b), CMS security guards possessed state-licensed authority to “stop, search, detain, and use reasonable force”—powers traditionally reserved to sworn law enforcement officers. App. 8a. While petitioner peacefully exercised his constitutional rights, CMS guards—acting at the direction of vaccination operation personnel—violently assaulted him. They grabbed, choked, and threw him to the ground, seized his personal property, and applied handcuffs to his left hand. App. 2a. When Anchorage Police officers arrived, rather than arresting the assaulting guards, they coordinated with CMS by applying handcuffs to petitioner’s right hand. The

court of appeals acknowledged that this coordination “goes unexplained” but found no joint action between public and private actors. App. 2a.

B. Procedural History Petitioner filed suit under 42 U.S.C. § 1983, alleging violations of his First and Fourth Amendment rights. The district court systematically denied petitioner the tools necessary to develop his case, including access to the federal law library for legal research, oral argument on dispositive motions, discovery to establish the extent of state involvement, and meaningful opportunity to amend his complaint. App. 10a-11a. Despite petitioner’s detailed allegations establishing multiple theories of state action —public function, joint action, symbiotic relationship, and government nexus—the district court dismissed the case at the pleading stage. The court acknowledged that CMS guards possessed state-licensed police powers but concluded this was insufficient to establish state action. App. 7a-9a. The Ninth Circuit affirmed in a summary memorandum disposition that failed to address the constitutional magnitude of suppressing speech on matters of urgent public concern. The panel acknowledged that police initially opposed CMS’s conduct but then handcuffed petitioner for reasons that “go unexplained,” yet concluded this demonstrated no joint action between public and private actors. App. 2a. The court of appeals applied an artificially narrow interpretation of state action doctrine, holding that “state licensing alone is not sufficient to show that the powers exercised here were endowed by the state” and that CMS’s conduct therefore “does not constitute a public function.” App. 2a. The court failed to apply this Court’s

functional analysis from *Brentwood Academy* or consider the totality of circumstances establishing state action. The court of appeals denied rehearing en banc without opinion. App. 4a. No judge requested a vote on en banc consideration, leaving the panel's restrictive approach to state action doctrine undisturbed.

C. The Decision Below Creates a Constitutional Accountability Gap the Ninth Circuit's approach creates a formalistic barrier to constitutional accountability that conflicts with this Court's precedents. By requiring formal delegation of sovereign authority rather than examining the functional realities of governmental power, the decision enables private contractors to exercise core governmental functions while claiming immunity from constitutional constraints. This approach ignores multiple factors establishing state action in this case: State Authorization: CMS guards possessed state-licensed authority to exercise core police powers including detention, search, and use of force—powers that go far beyond private security functions. Government Operations: The suppression occurred at a government-funded medical operation implementing official government policy to promote participation in a federal program. Joint Action: Police officers coordinated with CMS guards to detain petitioner after initially opposing the guards' conduct, demonstrating the type of public-private coordination this Court has recognized as state action. Constitutional Targeting: The suppression specifically targeted constitutionally protected speech criticizing government policy, precisely the type of conduct the First Amendment was designed

to prevent. The decision below effectively permits government to outsource constitutional violations to private actors, then claim immunity from § 1983 liability because the violators were technically “private.” This eviscerates the constitutional accountability that § 1983 was designed to provide.

**D. This Case Exemplifies Broader Constitutional Issues** This case represents the intersection of multiple constitutional crises in modern governance: **Privatization of Government Functions:** The increasing reliance on private contractors to implement government policies while evading constitutional accountability. **Suppression of Public Health Discourse:** The targeting of citizens who question government health policies, undermining democratic participation in critical policy debates. **Barriers to Constitutional Enforcement:** The systematic denial of legal resources to pro se litigants seeking to vindicate constitutional rights in complex litigation. The resolution of these issues affects not only this case but the broader framework for constitutional rights enforcement in modern America. If private contractors can exercise governmental power while claiming immunity from constitutional accountability, the Constitution’s protections become meaningless.

## **REASONS FOR GRANTING THE PETITION**

### **I. THE CIRCUITS ARE DIVIDED ON STATE ACTION DOCTRINE FOR PRIVATE CONTRACTORS EXERCISING GOVERNMENTAL AUTHORITY.**

The foundation of § 1983 liability rests on this Court's recognition that constitutional rights require enforcement mechanisms against those exercising governmental power. In *Monroe v. Pape*, 365 U.S. 167, 172 (1961), this Court established that § 1983 provides "a remedy against those who represent a state in some capacity, whether they act in accordance with their authority or misuse it." The decision below undermines this fundamental principle by creating a constitutional accountability gap where private contractors can exercise core governmental functions while claiming immunity from constitutional constraints. This approach conflicts with this Court's precedents and creates a circuit split requiring resolution. The courts of appeals have reached fundamentally different conclusions about when private contractors constitute state actors, creating nationwide confusion about constitutional accountability. Some circuits apply this Court's functional approach from *Brentwood Academy*, while others impose formalistic requirements that enable constitutional evasion through privatization. This split affects thousands of private contractors nationwide who exercise governmental authority in areas ranging from prison management to public health enforcement. The inconsistency creates a patchwork of constitutional protection that depends on geographic location rather than the nature of governmental power being exercised.

**A. Multiple Circuits Apply Functional Approaches to State Action.**

This Court's precedents establish a broad, functional approach to state action that examines the totality of circumstances rather than formal designations. In *Brentwood Academy*, 531 U.S. at 295, this Court rejected formalistic approaches, holding that state action requires examining "the totality of relevant circumstances" to determine whether "there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." Several circuits properly apply this functional analysis to find state action when private contractors exercise governmental functions under state authority: The Second Circuit recognizes state action when private parties exercise powers "traditionally and exclusively governmental" under state authorization, even absent formal delegation. See, e.g., *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970). The Fourth Circuit applies contextual analysis examining the degree of state involvement in private conduct, including licensing, funding, and operational control. The D.C. Circuit focuses on whether private actors exercise "sovereign authority" regardless of formal delegation, recognizing that modern governance often relies on hybrid public-private arrangements. These circuits properly recognize that constitutional accountability must adapt to modern governance structures where government frequently exercises power through private intermediaries. Their approach ensures that constitutional protections remain meaningful regardless of the formal structure of governmental operations. The approach applied by these circuits would find state action in this case based on CMS's exercise of state-licensed police powers at a

government-funded operation to suppress speech criticizing government policy. Such conduct satisfies multiple theories of state action under this Court's precedents.

### **B. Three Circuits Have Adopted Restrictive Approaches**

Three circuits, including the Ninth Circuit below, apply restrictive approaches to state action that enable constitutional evasion through privatization: The Fifth Circuit requires formal delegation of sovereign authority and rejects functional analyses that examine government involvement in private conduct. The Ninth Circuit, as demonstrated in this case, applies formalistic tests that ignore the realities of modern public-private partnerships. The Eleventh Circuit imposes heightened requirements for establishing state action that effectively immunize private contractors from constitutional accountability. These restrictive approaches conflict with this Court's functional analysis in *Brentwood Academy* and create constitutional accountability gaps that threaten the enforcement of constitutional rights. By focusing on formal designations rather than functional realities, these circuits enable government to evade constitutional constraints simply by hiring private actors to implement unconstitutional policies. The decision below exemplifies this problematic approach. Despite acknowledging that CMS possessed state-licensed police powers and operated at government-funded operations, the Ninth Circuit concluded that "state licensing alone is not sufficient" to establish state action. App. 2a. This formalistic analysis ignores



this Court's instruction to examine the totality of circumstances. Under the restrictive approach, government can hire private contractors to suppress constitutional rights, detain citizens, and implement government policies while claiming immunity from constitutional accountability. This eviscerates the protections that § 1983 was designed to provide.

### **C. The Circuit Split Creates Nationwide Inconsistency**

The circuit split creates a patchwork of constitutional protection that undermines the uniform enforcement of federal rights. Private contractors exercising identical governmental functions face different constitutional standards depending on their geographic location, creating systemic inequality in constitutional protection. This inconsistency affects numerous areas of modern governance: Law Enforcement: Private security contractors possess varying degrees of constitutional accountability depending on circuit precedent, creating unequal protection against constitutional violations. Public Health: The COVID-19 pandemic accelerated the use of private contractors to implement government health policies, with inconsistent constitutional standards across circuits. Prison Management: Private prison operators face different constitutional requirements across circuits, affecting thousands of incarcerated individuals. Government Operations: Private contractors at government facilities operate under varying constitutional standards, creating inequality in First Amendment protections. The mature and entrenched nature of this split requires this Court's

intervention. The circuits have reached firm positions based on different interpretations of this Court's precedents, and further percolation will not resolve the fundamental disagreement about the scope of state action doctrine. The question presented — whether private security contractors exercising state-licensed police powers at government operations constitute state actors— directly implicates this split and requires uniform national resolution.

#### **D. The Government's Increasing Reliance on Private Contractors Makes Resolution Critical**

The explosion of government contracting in recent decades has fundamentally altered constitutional accountability. Private contractors now exercise core governmental functions while potentially claiming immunity from constitutional constraints, creating a two-tiered system of constitutional protection. The COVID-19 pandemic accelerated this trend, with private entities implementing government policies affecting fundamental rights including freedom of movement, assembly, speech, and bodily autonomy. The lower courts' approach would immunize these contractors from constitutional accountability, permitting government to evade constitutional constraints through privatization. This case presents the ideal vehicle for resolving these issues because it involves the intersection of multiple constitutional principles: state action doctrine, First Amendment protections for speech on public concerns, and due process rights. The resolution will provide guidance for countless similar cases involving private contractors exercising governmental authority. The

time for this Court's intervention is now, before restrictive approaches to state action doctrine take root and undermine constitutional accountability in modern governance.

## **II. THE DECISION BELOW UNDERMINES CONSTITUTIONAL ACCOUNTABILITY AND FIRST AMENDMENT PROTECTIONS**

The decision below creates multiple constitutional violations that threaten fundamental democratic principles. By permitting private contractors to suppress constitutionally protected speech while claiming immunity from § 1983 liability, the court of appeals has created a blueprint for government evasion of First Amendment constraints.

**A. The Decision Permits Government to Suppress Speech Through Private Intermediaries** This Court has consistently rejected attempts by government to evade constitutional constraints through private intermediaries. In *Shelley v. Kraemer*, 334 U.S. 1, 19 (1948), the Court held that “State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms.” The principle applies with particular force to First Amendment violations. Government cannot achieve through private actors what it cannot do directly—suppress speech critical of government policy. Yet that is precisely what occurred here and what the decision below permits. CMS guards, armed with state-licensed police powers at a government operation, violently silenced petitioner's criticism of government health policy at a government-sponsored operation. This represents exactly the type of circumvention of constitutional

protections that this Court's precedents prohibit. The court of appeals' refusal to recognize this as state action creates a dangerous precedent permitting government to outsource constitutional violations while claiming immunity from accountability. This eviscerates First Amendment protections for speech on matters of public concern.

B. Petitioner's Speech Addressed Quintessential Matters of Public Concern the First Amendment's protection for speech on matters of public concern represents the foundation of democratic governance. In *Connick v. Myers*, 461 U.S. 138, 146 (1983), this Court established that speech addresses matters of public concern when it relates to "any matter of political, social, or other concern to the community." Petitioner's speech unquestionably addressed such matters: Content: Warnings about potential health risks of experimental medical interventions directly implicate public health policy, medical ethics, and informed consent—core issues of community concern. Context: The speech occurred at a government-sponsored medical operation designed to promote public participation in an experimental federal program, making citizen oversight essential to democratic accountability. Form: Petitioner engaged in classic forms of protected expression—filming government operations and speaking with citizens about public policy matters. Under this Court's precedents in *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), and *Snyder v. Phelps*, 562 U.S. 443, 452 (2011), such speech receives maximum constitutional protection because it enables "debate on public issues [that] should be uninhibited, robust, and wide-open." The violent

suppression of this speech represents a core First Amendment violation that cannot be immunized simply because government used private intermediaries to accomplish the suppression.

C. The Decision Creates Dangerous Precedent for Future Constitutional Violations the Ninth Circuit's approach creates a blueprint for future government evasion of constitutional constraints. Under the decision below, government can hire private contractors to violate constitutional rights at government operations, then claim immunity from § 1983 liability because the violators were "private" actors. This precedent threatens constitutional protections in numerous contexts: Political Speech: Private security at government events could suppress criticism of government officials while claiming immunity from First Amendment constraints. Press Freedom: Private contractors could exclude journalists from government operations without constitutional accountability. Protest Rights: Private actors could disperse peaceful protests at government facilities while evading constitutional review. Public Health Discourse: Private entities could suppress criticism of government health policies while claiming immunity from constitutional accountability. The implications extend far beyond this case. If upheld, the decision below would effectively permit government to outsource constitutional violations to private actors, eviscerating the protections that enable democratic participation and government accountability. This threatens the constitutional foundation of limited government and individual rights that defines American democracy.

Constitutional protections must adapt to modern governance structures or become obsolete formalities evaded through privatization.

D. The Decision Violates Due Process Rights of Access to Courts The systematic denial of legal resources to petitioner violated fundamental due process principles. In *Bounds v. Smith*, 430 U.S. 817, 828 (1977), this Court held that “the fundamental constitutional right of access to the courts requires [authorities] to assist [litigants] in the preparation and filing of meaningful legal papers by providing [them] with adequate law libraries or adequate assistance from persons trained in the law.” The state action doctrine represents one of the most complex areas of constitutional law, requiring analysis of multiple overlapping tests and evolving Supreme Court jurisprudence. Pro se litigants cannot meaningfully access courts without comprehensive federal legal resources. The district court’s denial of federal law library access while suggesting alternative libraries ignored the specialized nature of federal constitutional law. This created a two-tiered system of justice where represented parties have superior access to legal research while pro se litigants are relegated to inadequate resources. Under *Lewis v. Casey*, 518 U.S. 343, 351 (1996), such denial constitutes constitutional violation when it “hindered [the litigant’s] efforts to pursue a legal claim.” Here, the denial prevented petitioner from developing sophisticated legal arguments necessary to survive dismissal on complex constitutional questions. This issue affects thousands of pro se civil rights litigants nationwide who face systematic barriers to

constitutional enforcement due to economic constraints. Resolution will provide guidance for federal courts on their obligations to ensure meaningful access regardless of representation status.

### **III. THIS CASE PRESENTS AN IDEAL VEHICLE FOR RESOLVING QUESTIONS OF EXCEPTIONAL IMPORTANCE**

A. The Questions Presented Affect Fundamental Constitutional Principles: This case arises at a critical moment when government increasingly relies on private contractors to implement public policies while attempting to evade constitutional accountability. The questions presented affect the fundamental relationship between citizen and state in modern America. If private contractors exercising governmental authority can claim immunity from constitutional constraints, the Constitution's protections become meaningless. Citizens lose recourse against governmental power simply because government chooses to exercise that power through private intermediaries. This threatens the constitutional foundation of limited government and individual rights. The resolution will determine whether constitutional protections adapt to modern governance structures or become obsolete formalities evaded through privatization.

B. The Case Presents Clean Legal Issues Without Procedural Complications: This case provides an ideal vehicle for addressing state action doctrine because it presents clean legal issues decided at the pleading stage. The court of appeals' decision rests entirely on legal conclusions about state action

doctrine rather than disputed facts, making it suitable for this Court's review. The constitutional violations are clear and undisputed: private contractors exercising state-licensed police powers violently suppressed constitutionally protected speech at a government-funded operation. The only question is whether such conduct constitutes state action under § 1983. The procedural history demonstrates the systematic barriers facing pro se civil rights litigants, providing an additional vehicle for addressing access to courts issues that affect thousands of Americans seeking to vindicate constitutional rights.

C. The Issues Have Broad National Significance: The questions presented affect not only this case but the broader framework for constitutional rights enforcement in modern America: Government Accountability: The resolution will determine whether constitutional protections remain meaningful as government increasingly relies on private contractors to implement public policies. First Amendment Protection: The case affects speech rights in public health discourse and government accountability, critical issues in modern democratic governance. Access to Justice: The systematic barriers facing pro se litigants threaten to create a two-tiered system of justice based on economic status. Constitutional Enforcement: The case affects the fundamental mechanisms for enforcing constitutional rights against governmental power exercised through private intermediaries. These issues transcend the immediate parties and affect the constitutional framework governing the



relationship between citizens and government in the twenty-first century.

**D. The Case Requires Immediate Resolution:**  
The circuit split on state action doctrine is mature and entrenched, with no prospect for resolution absent this Court's intervention. The increasing reliance on private contractors to exercise governmental functions makes immediate resolution critical to prevent further erosion of constitutional accountability. The COVID-19 pandemic demonstrated the urgent need for constitutional accountability when private entities implement government policies affecting fundamental rights. The decision below would immunize such conduct from constitutional review, creating a dangerous precedent for future government suppression of constitutional rights. The systematic barriers facing pro se civil rights litigants require immediate attention as economic inequality increases and legal representation becomes less accessible. The resolution will determine whether federal courts have meaningful obligations to ensure access to constitutional enforcement for all citizens. The time for this Courts' intervention is now, before restrictive approaches to constitutional accountability become entrenched and undermine the democratic foundations of American governance.

## **CONCLUSION**

This case presents fundamental questions about constitutional accountability, democratic participation, and access to justice in modern America. The lower courts' decisions create dangerous precedents that threaten to immunize

private contractors from constitutional accountability while systematically disadvantaging citizens who seek to vindicate their rights. The questions presented affect not only this case but the broader framework for constitutional rights enforcement in an era of increasing government reliance on private contractors. When government sponsors operations and citizens seek to voice concerns about those operations, the Constitution demands that such speech receive the highest protection. When private contractors exercise governmental authority, they must be held to constitutional standards. The decision below creates a constitutional accountability gap that permits government to evade fundamental constitutional constraints through privatization. This Court's intervention is essential to restore constitutional accountability and preserve the democratic principles that define American society. For these reasons, petitioner respectfully requests that this Court grant the petition for writ of certiorari, reverse the judgment below, and remand for proceedings consistent with constitutional requirements.

Respectfully submitted,

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SEPTEMBER 2025