ORIGINAL

25-67
No. ____

IN THE
Supreme Court of the United States

ABHIJIT BAGAL,
Petitioner (Pro Se),

v.

KSHAMA SAWANT;
LISA HERBOLD;
AND
BRUCE HARRELL,
Respondents.

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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June 28, 2025

QUESTIONS PRESENTED

1. What constitutes a cognizable injury to establish standing in a federal court to challenge an unconstitutional law?

2. Whether a geographical connection to the unconstitutional law need to be demonstrated sufficiently for standing to establish a claim?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. The petitioner *(Pro Se)* is Abhijit Bagal, an American citizen. The respondents are officials of the Seattle City Council.

CORPORATE DISCLOSURE STATEMENT

The petitioner has no parent corporation or publicly held company that owns 10% or more of its stock.

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The opinion of the United States Court of Appeals for the Ninth Circuit (Pet. App. A) is available at 2025 WL 251427. The opinion of the United States District Court for the Western District of Washington (Pet. App. B) is available at 2024 WL 1012908.

JURISDICTION

The Ninth Circuit entered judgment on January 21, 2025 (Pet. App. A). The Ninth Circuit denied the Petition for rehearing and Petition for rehearing en banc on February 25, 2025. The Final Mandate of the Ninth Circuit was published on March 5, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Constitution. Federal Rules of Civil Procedure.

INTRODUCTION

The original meaning of an Article III "Case" is a legal claim that arose fortuitously, was submitted in a recognized form of action, and would benefit from legal exposition by an independent federal court well-versed in the Constitution. The Ninth Circuit misinterpreted this meaning by denying standing to the Petitioner. In so doing, the Ninth Circuit failed to remedy several constitutional violations and ignored Petitioner's recognizable injury.

According to established standing doctrine of the Supreme Court, a Plaintiff has standing only if one has experienced a tangible "injury in fact" directly linked to the defendant's actions and is likely to be remedied by a favorable decision. *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000). The injury must be concrete, not abstract, and actual or imminent, not conjectural or hypothetical.

However, the Court has not defined a "concrete injury" but has categorized some as concrete and others as abstract. Aside from physical injury and financial loss, very few harms recognized by the Court can be directly observed or felt. Additionally, this Court has not precluded the recognition of psychological or stigmatic harm as injury-in-fact. Standing should be contingent upon whether relevant substantive law provides the Plaintiff with a cause of action. Fear-based Standing permits fear of future or present harm to constitute injury-in-fact.

This Court also accepts the constitutionally recognized injury of self-censorship as a sufficient basis for standing in cases involving First Amendment rights. A physical exposure requirement for standing based on stigmatic harms contradicts the Supreme Court precedent. Hence, this Court should grant review and reverse.

STATEMENT OF THE CASE

A. Factual Background

On February 21, 2023, Seattle City Council ("SCC") discussed and voted to approve caste-related Council Bill (CB) 120511. The Bill was introduced by Councilmember Kshama Sawant ("Sawant") and sponsored by Councilmember Lisa Herbold. Mayor Bruce Harrell signed CB 120511, as Ordinance 126767 ("Ordinance"), on February 23, 2023.

SCC purposefully did this to target South Asians in Seattle, specifically Hindu Americans, as made clear by Sawant, both before and after the Bill became an Ordinance. This was done despite a lack of caste discrimination data in Seattle, as acknowledged by SCC itself in its internal memo dated February 16, 2023.

SCC deliberately chose the word "caste," used several archetypal Hindu terms like "Brahmin," "Dalit," and "varna," thus tracing the origins of caste to Hinduism in India. SCC purposefully did this to target Hindu Americans and improperly define their religion.

The First Amendment prohibits Government entities from taking positions on religious doctrine, which SCC did by using caste and other archetypal Hindu terms in the Ordinance. The mere fact that SCC took a position on religious doctrine requires reversal.

B. The Unconstitutional Ordinance

Petitioner asserts that this Ordinance violates the Establishment Clause by adopting an official position that caste is part of Hinduism. Indeed, the only evidence in the record as to why SCC included the term caste in its Ordinance was Sawant's invidious intent to target South Asians using Artifacts that attributed the origins of caste to Hinduism. By adopting that position under the guise of facial neutrality, SCC violated the Establishment Clause.

It is also well settled under the First Amendment that the Government may not take an official position on religious doctrine (i.e., by asserting either directly or indirectly that caste originated from Hinduism and that Hinduism contains an oppressive caste system) without running afoul of the Establishment Clause. In *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415 (2d Cir. 2002), the Second Circuit considered whether defining the term "kosher" to mean "prepared in accordance with orthodox Hebrew religious requirements" violated the Establishment Clause in the context of New York statutes addressing fraud in the kosher food industry. *Id.* at 421.

SCC relied on Artifacts asserting caste discrimination originated from and is a part of Hinduism. That was an impermissible attempt to define Hindu doctrine by a Government entity. Anytime the Government starts "[d]eciding" doctrinal questions, it "risk[s] judicial entanglement in religious issues." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2069 (2020).

The Supreme Court has recognized defining religious doctrine not only violates the Establishment Clause, it violates the Free Exercise clause also. Specifically, *Guadalupe* held that anytime the Government starts "[d]eciding" doctrinal questions, it "risk[s] judicial entanglement in religious issues." *Guadalupe*, 140 S. Ct. at 2069. Such "interference . . . obviously violate[s] the free exercise of religion."

C. Injury to Petitioner

On March 29, 2023, Petitioner, an alumnus of Seattle University, received a personal invitation from Dr. Amit Shukla, Dean of Seattle University, to attend an in-person annual Projects Day event on June 2, 2023, at the Seattle University Campus in Downtown Seattle. However, due to apprehensions about the SCC caste Ordinance, the Petitioner had to cancel his travel plans and was denied the opportunity to travel to his alma mater despite being personally invited by the Dean.

Indeed, it is an active Ordinance of SCC with enforcement provisions contained therein, with a full-time employee and a separate annual budget of

$185,000 to enforce the Ordinance. Accordingly, Petitioner has standing to assert a pre-enforcement challenge to the Ordinance because it causes him to self-censor, and he fears enforcement; he should not be forced to wait until the Ordinance is enforced to mount an as-applied challenge when the requirements of a facial challenge are satisfied.

D. District Court Proceedings

The District Court, in its decision to deny standing to Petitioner, ruled: "But abstract stigmatic injuries are insufficient to confer Standing under the Fourteenth Amendment. *See Allen v. Wright*, 468 U.S. 737, 755 (1984); see also *Kumar v. Koester*, No. 2:22-cv-0755-RGK-MAA, 2023 WL 4781492, at *3 (C.D. Cal. 2023) (Hindu university professors lacked Standing ...). The injury of stigma confers Standing 'only to those persons who are personally denied equal treatment [by the challenged discriminatory conduct].' *Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984)."

Subsequently, the District Court dismissed Petitioner's complaint with prejudice and without leave to amend as such amendment would be "futile." Petitioner appealed to the Ninth Circuit.

E. Ninth Circuit Ruling

The Ninth Circuit ruled that Petitioner has not established standing for his claims under the Free Exercise or Equal Protection Clauses since Petitioner has not lived in Seattle since 1997 and does not allege that he was, or is likely to be, denied equal treatment or prosecuted by an Ordinance that reaches only within Seattle city limits.

The Ninth Circuit also ruled that Petitioner has not demonstrated that he has a geographical connection to the Ordinance sufficient for standing for an Establishment Clause claim. Subsequently, the Ninth Circuit also denied Petitioner's petitions for panel rehearing and rehearing en banc.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition for several reasons. The circuits use different standards to establish cognizable injury-based standing. Additionally, the Ninth Circuit's opinion conflicts with and substantially distorts the standards for standing. The need for clarity is long overdue. Resolution of these circuit conflicts is urgently needed. The issues presented do not warrant further percolation because each new decision only breeds more division and confusion. Employers, employees, governments, schools, lower courts, and attorneys need clarification now. It is untenable that Courts are resolving claims differently depending entirely on the circuit where they arose. Either way, this Court's immediate intervention is required.

I. There is an entrenched circuit split over cognizable injury-related standing.

The Court should grant certiorari because there is a circuit split on the question presented. In *Acheson Hotels, LLC v. Laufer*, 601 U.S. ___ (2023), the First Circuit found that Laufer has standing. The Eleventh Circuit has found that, if Laufer can prove her allegations of emotional injury, she has standing. By contrast, the Second, Fifth, and Tenth Circuits have held that Laufer and others similarly situated lack standing.

The First Circuit held that Laufer had standing because of the alleged "informational injury" she sustained from the absence of accessibility information on Coast Village's website. The Eleventh Circuit has also found that Laufer's allegations, if true, would establish standing, but it relied on a different theory from the First Circuit. In *Laufer v. Arpan LLC,* 29 F.4th 1268 (11th Cir. 2022), the Court reversed the dismissal of Laufer's suit concerning the online reservation system of the America's Best Value Inn in Marianna, Georgia.

The Court concluded that it was bound by precedent to find that "Laufer ha[d] alleged a concrete intangible injury." *Id.* at 1273. It acknowledged that "Laufer's alleged injury—her inability to access certain information on a hotel's website and her resulting emotional disquiet— bears no 'close relationship' to any traditional common-law cause of action." *Id.* at 1272. Yet, in the court's view, circuit precedent constrained it to hold that "the emotional injury that results from illegal discrimination" is a "concrete stigmatic injury." *Id.* at 1274.

In *Laufer v. Mann Hospitality, LLC,* 996 F.3d 269 (5th Cir. 2021), the Fifth Circuit held that Laufer lacked standing to pursue her ADA claim concerning the online reservation system of the Sunset Inn in Caldwell, Texas. In *Laufer v. Looper,* 22 F.4th 871 (10th Cir. 2022), the Tenth Circuit concluded that Laufer lacked standing to pursue her ADA claim concerning the online reservation system of the Elk Run Inn in Craig, Colorado.

In *Brintley v. Aeroquip Credit Union*, 936 F.3d 489 (6th Cir. 2019), the Sixth Circuit held that the plaintiff lacked standing to challenge the adequacy of two credit unions' websites because "[s]he has not conveyed any intent to join either credit union." *Id.* at 493. "And just as a sighted individual with no inclination to join a union could not raise, say, an Age Discrimination in Employment Act claim about a credit union's hypothetical age-based membership policies, so she cannot bring an ADA claim." *Id.* Remarkably, the Sixth Circuit's *reductio ad absurdum* is now First Circuit law. This entrenched circuit split on a frequently recurring question calls for Court review.

II. The Ninth Circuit's decision misreads self-censorship, pre-enforcement, and threat of prosecution, thereby adding to a confusing and inconsistent body of case law.

Petitioner should not have to bear a Hobson's choice of refraining from core protected speech and religious activities or "risking costly [administrative] proceedings." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 168 (2014). The Supreme Court recognized this constitutionally prohibitive self-censorship in *Driehaus*, where the Court held advocacy organizations possessed standing to assert a pre-enforcement facial challenge to a statute criminalizing false statements made about candidates during political campaigns.

Ironically, the Ninth Circuit has recognized, "in the context of pre-enforcement challenges to laws on First Amendment grounds, a Plaintiff 'need only

demonstrate a threat of potential enforcement will cause him to self-censor.'" *Tingley v. Ferguson*, 47 F.4th 1055, 1068 (9th Cir. 2022) (quoting *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 839 (9th Cir. 2014)). The Ninth Circuit also held a state's "failure to disavow enforcement" weighs in favor of standing. Additionally, the fact there is no history of enforcement "carries little weight when the challenged law is relatively new." *Tingley*, 47 F.4th at 1069 (cleaned up).

Since 2000 and the Supreme Court's decision in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 184 (2000) (discussing reasonable fear as a basis for Standing) Courts have expressed a willingness to grant

Standing to fear-based Claims. *Me. People's Alliance v. Mallinckrodt, Inc.*, 471 F.3d 277, 285 (1st Cir. 2006) (finding injury-in-fact sufficient for Standing in "increased risk" which "rendered reasonable the actions of the Plaintiffs' members in abstaining from their desired enjoyment of the Penobscot"); *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 950 (9th Cir. 2002) (finding injury-in-fact on the basis of "a credible threat of harm" to environmental interests); *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (finding injury-in-fact sufficient for Standing in a Plaintiff's member's "reasonable fear and concern about the effects of Gaston Copper's discharge, supported by objective evidence," fear and concern which "directly affect his recreational and economic interests").

One Court has found fear to be independently cognizable as injury-in-fact. *Denny v. Deutsche Bank AG,* 443 F.3d 253, 264 (2d Cir. 2006) ("An injury in fact may simply be the fear or anxiety of future harm."). Even since 2010, the Second Circuit has followed a more permissive approach to fear-based Standing. *Amnesty Int'l USA v. Clapper*, 638 F.3d 118, 122 (2d Cir. 2011) ("Because Standing may be based on a reasonable fear of future injury and costs incurred to avoid that injury, and Plaintiffs have established they have a reasonable fear of injury and have incurred costs to avoid it, we agree they have Standing.").

A physical exposure requirement for standing based on stigmatic harms contradicts Supreme Court precedent. This Court's review is needed to address these conflicting case laws and bring clarity to the muddled mess.

III. This Court should also grant certiorari to consider whether Seattle City Council's caste Ordinance satisfies strict scrutiny.

The Supreme Court established that the "question of governmental neutrality is not concluded by the observation [a policy] on its face makes no discrimination between religions, for the Establishment Clause forbids subtle departures from neutrality . . . as well as obvious abuses." *Gillette v. United States*, 401 U.S. 437, 451 (1971) (citing *Walz v. Tax Commission*, 397 U.S. 664, 696 (1970) (Harlan, J., Concurring)).

Nearly twenty years later the Supreme Court cautioned that a law does not *per se* comply with the Establishment Clause merely because it appears facially neutral, explaining "the Establishment Clause[] extends beyond facial discrimination." 508 U.S. at 534. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993).

In *Lukumi,* a Santeria church brought a First Amendment action after the City of Hialeah banned ritual animal slaughter through a series of enactments. *Id.* at 526-28. In evaluating whether the city's actions violated the First Amendment, the Supreme Court (unlike the Ninth Circuit and the District Court here) focused on the underlying purpose of the city's actions and examined the record to conclude the Ordinances targeted the Santeria religion. *Id.* at 534-35.

The Court reached its decision even though the Ordinances did not mention Santeria, explaining while "use of the words 'sacrifice' and 'ritual' does not compel a finding of improper targeting of the Santeria religion, the choice of these words is support for our conclusion." *Id.* at 534.

The Supreme Court also noted Resolution 87-66 recited the concerns of city residents over certain religious practices. *Id.* at 535. Accordingly, the Court concluded "[n]o one suggests, and on this record it cannot be maintained, that city officials had in mind a religion other than Santeria."

The same is true here. Given the Ordinance's references to Hinduism—including Artifacts

highlighting the explicit connection between caste and Hinduism—and Sawant's declaration to target Hindu Americans in Seattle, SCC cannot suggest, and on this record, it cannot be maintained, that SCC had in mind a religion (or anything else) other than Hinduism. *Lukumi*, 508 U.S. at 535. Just like the city's choice to use "sacrifice" and "ritual" in *Lukumi* suggested the city's intent to target Santeria, SCC's choice to use the word "caste", coupled with archetypal Hindu terms like "Brahmin," "Dalit," and "varna", also suggests its intent to target Hinduism. SCC could have used a generic and facially neutral term like "inherited social class or status" instead of caste to remove any connection to the Hindu religion. It did not, and in addition to caste, it used archetypal Hindu terms in its Ordinance, and that failure is telling; thereby requiring strict scrutiny from the Supreme Court.

IV. The questions presented are important and recurring, and this case is jurisprudentially and practically important.

Although the Supreme Court has radically reduced the number of its published decisions, it continues to devote disproportionate attention to Article III standing, the doctrine that determines who can sue in federal court. For example, five of the Court's fifty-eight cases in its 2022–23 Term involved standing. Such detailed consideration, however, has not improved this doctrine's coherence.

According to the Court, standing promotes separation of powers by confining the federal judiciary to its properly limited role of remedying

actual injuries inflicted by an adverse defendant, thereby leaving policy decisions to the elected branches.

Unfortunately, the injury, traceability (i.e., causation), and redressability standards are so malleable that they can be easily manipulated depending upon whether a judge wishes to reach the merits, as even some Justices have candidly recognized.

Relatedly, although the Justices portray standing as a threshold issue of jurisdiction, they often distort the doctrine in light of their substantive legal views. In general, liberal Justices apply standing principles loosely to allow plaintiffs to vindicate progressive federal laws but strictly to foreclose challenges to such laws, whereas conservatives relax standing to help their preferred plaintiffs (such as private corporations) but rigorously enforce the doctrine to shut out leftist plaintiffs (e.g., those who seek to enforce civil rights and environmental laws). The result is that the Court's standing cases are inscrutable, as the Justices have at times admitted.

The fundamental problem is that, contrary to the Court's assertions, its standing rules have no discernible basis in Article III's language or history or the Constitution's structure. As originally understood, Article III authorized parties to litigate a federal law "Case" if they met three conditions. First, a plaintiff had to assert a legal right in a form prescribed by law, which, since 1789, has included a variety of *ex parte* proceedings with no adversarial

defendant. Second, a plaintiff's claim had to arise fortuitously, that is, he or she had no control over the liability-triggering act or event and no intent to deliberately manufacture a lawsuit.

Third, a "Case" had to present a legal question that called for interpretation by an independent federal judge who was an expert in federal law. Article III thereby furthered the separation of powers because federal Courts would accept jurisdiction over all "Cases" that Congress had validly conferred on them.

In sum, recent standing decisions continue their pattern of applying the vague injury, traceability, and redressability standards in arbitrary ways. The stakes are too great—and the impacts too substantial—for this Court to let these questions go unreviewed.

V. This case is an ideal vehicle for addressing the important questions presented.

This case raises pure questions of law featuring novel and important legal issues that require interpretation and application by the Supreme Court, which is well-versed in constitutional law. The Court should use this case as the vehicle for bringing clarity and uniformity to standing decisions in cases of stigmatic or emotional injury due to fear.

The Seattle caste Ordinance infringes upon the religious and free speech rights of the Petitioner and others similarly situated. The Ordinance's broad and

vague definition of caste could chill religious practices, lead to misinterpretation and arbitrary enforcement, potentially discriminating against Hindu Americans, and stifle legitimate caste discussions, undermining free speech rights.

Genuinely originalist Justices should abandon the common law of standing and instead incorporate the original meaning of an Article III "Case": a legal claim that arose fortuitously, was submitted in a recognized form of action, and would benefit from legal exposition by an independent federal court.

Moreover, the liberal, non-originalist Justices would achieve more favorable results through the application of this legally principled approach to Article III instead of the current impressionistic standing doctrine. Accordingly, the Court should grant review here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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