# *In the Supreme Court of the United States*

No. _____

HENRY L. KLEIN, *PRO SE,* THE SUCCESSION
OF FREDERICK P. HEISLER AND
LEVY GARDENS PARTNERS 2007 LP,

*Applicants*

*versus*

LEWIS TITLE INSURANCE COMPANY, INC
AND LISKOW & LEWIS, PLC.,

*Respondents*

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**Application to the Honorable Justice Samuel A. ALITO, Jr., Circuit Justice for the Fifth Circuit, seeking a stay of proceedings at Louisiana Supreme Court Docket 2025-C-01544 so that Applicants can file an Extraordinary Writ of Prohibition and Mandamus to enforce *Group Life v. Royal Drugs,* 440 U.S. 205 (1979) on the seminal question:**

**Is a title policy a "...contract of insurance..."?**

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**EMERGENCY RULE 22 AND 23 APPLICATION FOR STAY**


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## PREAMBLE

On December 23, 2025, the Louisiana Supreme Court DENIED an application for a Writ of Mandamus and Request for Stay on Applicants' Petition for Declaratory Judgment that the United States Supreme Court decision in *Group Life v. Royal Drugs,* 440 U.S. 205 (1979) was "...the supreme law of the land..." as to the title insurance industry, Exhibit A. The fundamental national question posed was this:

**Is a title policy a "...contract of insurance..."**

The December 23 Louisiana Supreme Court denial AFFIRMED an appellate ruling that October 13, 2025, **Christopher Columbus Day**, could not be included in computing the 14-day deadline for Applicants' Petition for *En Banc* Reconsideration. Thus, the Louisiana Supreme Court did not address the issue presented. This Application does not seek a remand to the state high court. This case should be decided by the same court that decided *Group Life* on *national* issues. In *United States v. South-Eastern Underwriters*, 232 U.S. 523 (1944), this Court made the following observation:

> "Perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance business. Insurance touches the home, the family, and the occupation or the business of almost every person in the United States."

## QUESTIONS PRESENTED

[1] Did the Louisiana Supreme Court err by counting **Christopher Columbus Day** *against* Applicants in computing the 14-day deadline for filing a Request for *En Banc* reconsideration at the Court of Appeal?

> [2] Given the gravity of *Group Life* as to the title insurance industry, should Louisiana proceedings be stayed so Applicants can present the question directly to the United States Supreme Court pursuant to 28 U.S.C. §1651(a) and the *Supremacy Clause of the United States Constitution?*

The first question is subsumed by the second question. In *Klein v. Lewis Title,* the district and appellate courts accepted the Louisiana Title Insurance Act as controlling, notwithstanding *Group Life.* The *Supremacy Clause* is clear:

> "...the judges in every state shall be bound thereby, **anything in the constitution or laws of any state to the contrary notwithstanding.**"

In the case at bar, the Louisiana Title Insurance Act ("the ACT") would be the "...law to the contrary of *Group Life*[1]..." This is not a complicated case.

## COMPELLING REASONS FOR A STAY

Applicants are not new to the issue before the Court and can address all matters quickly and efficiently[2]. *Klein v. The American Land Title Association (and the four sisters),* D.C. Docket 12-1061, (*"Klein v. ALTA"*) was dismissed on Clayton Act standing, not the merits. Certiorari to SCOTUS was denied at Docket 13-1560. In *Klein v. Steven Turner Mnuchin,* D.C. Docket 18-769 (*"Klein*

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1 The ACT was created in response to the 1945 *McCarran-Ferguson Act,* 15 U.S.C. § 1011, ceding regulation of "...the business of insurance..." to the states in exchange for immunity from the Sherman Act.

2 Based on the undisputed evidence developed, Applicants suggest that the Full Court can *sua sponte* issue the necessary order to take up the matter expeditiously. Abundant *Amici* will support the proposition that a title policy is not "...a contract of insurance..", page 3, *infra.* Applicants can fully brief the issues in 30 days.

*v. Mnuchin*"), mandamus was sought to require the Treasury Secretary to declare that he did NOT include the industry in his annual Dodd-Frank reports because it was NOT engaged in the "...business of insurance..." as described in *Proctor v. State Farm*, 561 F. 2nd 262 (D.C. Cir. 1977) and *Proctor v. State Farm,* 675 F.2d 308 (D.C. Cir. 1982). In *Klein v. Mnuchin,* the court held:

> "The Court won't question Levy Gardens' financial loss, as the developer claims to have suffered a $9 million setback. The difficulty is how the Secretary's failure to include title insurance in his annual report caused the injury or how this Court can redress the loss. If malfeasance by another precipitated the loss, **the malfeasor is Lewis Title, not the Secretary.**"

That said, in 2019 Applicants returned to state court, urging enforcement of *Group Life.* During the long life of *Klein v. Lewis Title*, the highly-esteemed state judge expressed a sentiment that the issue should be decided by a federal court with the necessary prowess to overthrow an industry nationally derided for "THE FLEECING OF AMERICA", Exhibit B.

## SUPERABUNDANT *AMICI*

Applicants are not alone. Forbes contributor Scott Woolley put it thus at *"Inside America's Richest Insurance Racket"* in November, 2006:

> **"TITLE INSURANCE FIRMS RAKE IN $18 BILLION A YEAR FOR A PRODUCT THAT IS OUTDATED, LARGELY UNNEEDED — AND PROTECTED BY LAW."**

It has been 81 years since *South-Eastern Underwriters* was decided and 80 years since *McCarran-Ferguson* turned the regulation of the business of insurance to the states. Since then, the detractors of *title* insurance have called

for the guillotine to fall, cited to all courts since ¶ 28 in *Klein v. ALTA*:

> 28. The McCall Declaration gives credence to all of those who have been calling for the guillotine to fall: *Inside America's Richest Insurance Racket*, Scott Woolley, Forbes, November 13, 2006; *Why Title Insurance?*, Albert Rush, Mortgage Banker, August 2000; *How Long Will the Good Times Roll?* Auden and Palowski Special Report, March 20, 2008; *Title Insurance: is it wanted here?* New South Wales Law Journal, November 2002; *Title Insurance: Getting Ripped Off?* Les Cristie, Good Morning America, January 11, 2006; *Title Insurance Profits Excessive by Any Reasonable Measure*, Bernard Birnbaum, Report to California Insurance Commissioner, December, 2005; *The Antitrust Suits and the Public Understanding of Insurance*, George L. Priest, Vol 63, Tulane Law Review; *Despite Fines, Insurers likely to Keep Giving Kickbacks*, Los Angeles Business Journal, November 1, 1999; *Fidelity Title to Refund $2.2M to Florida Residents, Fined $1M*, The Title Report, September 2005; *Major Players in Title Industry Stifle Reform*, Jack Guttentag, Inman News, July 3, 2006; *The American Title Insurance Industry: How a Cartel Fleeces the American Consumer*, Eaton & Eaton, NYU Press, 2007.

Replication of parts of the Appellant's brief in the DC Circuit is of value[3]:

> The result of the research was stunning: (i) the *title* insurance industry is *oligopolistic*, (ii) demand for *title* insurance is *inelastic*, (iii) price competition is *non-existent*, (iv) product costs to the consumer are *excessive*, (v) the market relationship between insurers and *title* agents is *captive*, (vi) *title* insurer profits are *supernormal*, and (vii) kickback schemes result from *reverse competition*. HUD, the Department of Justice, the Government Accountability Office and the Federal Trade Commission all *agree*, but no one has taken any action.

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3 Additional excerpts from the United States Court of Appeal for the D.C. Circuit, at USCA Docket 13-7035, Doc 145023, are of substantial value in measuring the need for SCOTUS intervention as to "...THE FLEECING OF AMERICA...".

In the Court of Appeal for the District of Columbia Circuit, Applicant-Klein provided the following litany of governmental outcry:

> By now, the industry analysts must be exhausted: *Analysis of Competition in the California Title Industry*, Birny Birnbaum, Report to California Commissioner, December 2005; *Reverse Competition*, Peat Marwick, Report to HUD, 1980; *The Title Insurance Market is Not Competitive*, J. Robert Hunter, Testimony at the National Conference of State Legislators, April 20, 2007; *Congressman Calls for Title-Insurance Investigation*, Stephen Gandel, Money, February 24, 2006; *Title Insurance Fees Paid by Borrowers Include Referral Costs*, Jack Guttentag, March 21, 2005; *Banks as Insurance Referral Agents? The Convergence of Financial Services*, Boyer & Nyce, *Scientific Series*, Centre Interuniversitaire de Recherche Analyse des Organisations, September 2002; *Suit Calls for Reform, Refund*, Wendy Brown, The New Mexican, March 30, 2006; *Top Four Title Insurers Pay an Average of About 80% of Title Insurance Premiums to Their Title Agents in Form of Commissions*, Robert Hunter, Title Insurance Costs and Competition, April 20, 2007 @ 11; and *Insurance Division Alleges Kickbacks*, Erin Johansen, Denver Business Journal, January 14, 2005.

## "...AGENT RETENTION..."

The most cancerous of all is the practice by the entire industry wherein captive title agencies keep over 80% of the premiums paid by unwitting consumers thinking that premiums paid at a real estate closing are going to the title insurance underwriter. Not so. Demotech, Inc., the statistician for the title insurance industry, reported the following RESPA "kickbacks", replicated here in the same color Applicant-Klein uses every time:

**In 2018, Affiliated Agent Retention was $ 10,496,599,881 = 84.52%**

**In 2019, Affiliated Agent Retention was $ 10,460,462,313 = 84.32%**

**In 2020, Affiliated Agent Retention was $ 11,225,827,052 = 84.48%**

**In 2021, Affiliated Agent Retention was $ 14,128,959,910 = 84.51%**

**In 2022, Affiliated Agent Retention was $ 19,209,649,564 = 84.34%**

**In 2023, Affiliated Agent Retention was $ 16,020,852,730 = 83.85%**

**Total** **$ 81,541,351,450 = 84.34%**

In *(i) Klein v. ALTA, (ii) Klein v. Mnuchin* and *(iii) Klein v. Lewis Title*, the fact that captive title agencies split the premiums with affiliated law firms was not denied. *It is a national practice.* At the 2008 closing in the case at bar, Lewis Title sent 20% of the premiums to Commonwealth Land Title Insurance Company for three title policies aggregating $35,063,618 in illusory coverage. After years of litigation, Levy Gardens received $605,000 on the Owner's Policy, 1.7%. The two Lender Policies paid **ZERO**. In all cases, the following statistics are undisputed, taken from ¶¶ 95 and 96 of the Original Complaint:

95. Predictably, the loss ratios reported by the title insurance industry, taken from statistics by Demotech, Inc. for ten years from 2000 to 3Q 2011 for the entire United States and Louisiana, are nothing short of vulgar:

| *Sector* | *Premiums Written* | *Losses Paid* | *% of PW paid* |
|---|---|---|---|
| All Groups United States | $164,047,576,699 | $7,444,147,455 | 4.542% |
| All Groups Louisiana | $ 3,421,720,315 | $ 62,318,521 | 1.821% |

96. These statistics do *not* account for the diminished value of losses paid when the delay in making the payments is taken into account; insurers receive the premiums and *immediately* invest the money, while the insureds' payments *languish* for years in delayed claims-processing and tortured litigation at a Fabian pace.

## NAIC ABANDONMENT OF RBC REPORTING

Pursuant to *Group Life,* the DNA of all real insurance is the spreading of risk among as large a group of insureds as possible. For that to occur, insurance companies file Risk-Based Capital ("RBC") reports with regulators, a Filed-Rate Doctrine *sine qua non*[4]. The National Association of Insurance Commissioners ("NAIC") regulates insurance through subgroups. On December 13, 2013, the NAIC subgroup on title insurance abandoned its efforts to create an RBC formula and obtained "...permission to disband..." The formulas, (reproduced from the Joint Appendix in the DC Circuit), admittedly intimidating — were impossible for NAIC to apply to title insurance, which produces no actuarial data; spreads no risk and charges a one-time fee, not premiums[5]:

> **The Formulas**
> The formulas apply a covariance calculation to determine the appropriate risk-based capital. Simply stated, the covariance calculation reduces the aggregate amount of RBC because it is unlikely that all of the risk components will be impaired simultaneously.
>
> Life Covariance Calculation = C0 + C4a + Square Root of $[(C1o + C3a)^2 + (C1cs + C3c)^2 + (C2)^2 + (C3b)^2 + (C4b)^2]$
> P/C Covariance Calculation = R0 + Square Root of $[(R1)^2 + (R2)^2 + (R3)^2 + (R4)^2 + (R5)^2]$
> Health Covariance Calculation = H0 + Square Root of $[(H1)^2 + (H2)^2 + (H3)^2 + (H4)^2]$
>
> The levels of regulatory action are determined from the risk-based capital after covariance. The covariance adjustment reflects the fact that the cumulative risk of several independent, components is less than the sum of the individual risk. The formulas do not include the insurance affiliate equity investment risk and off-balance sheet risk inside of the covariance adjustment. The covariance adjustment follows the steps of adding together items that are believed to be correlated, leaving the balance of risks that not correlated. The covariance adjustment then squares these resulting groups, adds the resulting squares together and takes the square root of the sum of the squares. The covariance adjustment reduces the volatility of the smaller risks and increases the importance of the largest risks affected by the adjustment.

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4 See, *Klein v. ALTA*: Section IX **" THE FILED-RATE DOCTRINE, MCCRAY AND THE 8(a) MOVING TARGET".**

5 Included in the Joint Index filed at DC Docket 13-7035, Document 1463506.

The title industry finally surrendered at the end of 2013[6]:

> "The Capital Adequacy Task Force received an update on the Title Insurance Risk Based Capital Subgroup, which ascertained that developing risk-based capital requirements for title insurers is not feasible at this time. **The Subgroup will disband at the end of 2013.**"

For the last twelve years, the one-time payment made at an Affiliated Business Arrangement ("ABA") closing was NOT supported by a formula based on actuarial statistics.

## SHERMAN ACT VIOLATIONS

*Without* a formula, title insurance "rate-makers" fix the prices paid by consumers at a RESPA closing out of thin air, a *per se* violation. *Without* McCarran-Ferguson protection, a consumer purchasing property with bank financing is forced to purchase an Owner's Policy for himself and a Lender's Policy for his banker, a tying agreement violating Section 1 of the Sherman Act. On attempts to monopolize, the structure of the market was presented at ¶84 in *Klein v. ALTA* — now more oligopolistically-concentrated, violating Section 2:

84. The oligopolistic nature of the industry creates an even greater imbalance regarding the adhesionary title policies, given the following present distribution of financial strength, measured in assets:[21]

| | |
|---|---|
| Fidelity Family | $4,314,415,250 |
| First American Family | $2,298,966,275 |
| Stewart Title Family | $ 952,930,282 |
| Old Republic Family | $ 724,494,530 |

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6 Debevoise & Plimpton, LLP, *Client Update, RBC Developments*, December 13, 2013, page 15.

On January 25, 1945, Senator Homer Ferguson said the following:

MR. FERGUSON:

> At the present time, every state rate-fixing authority violates the Sherman Act or the Clayton Act or both[7].

Further along in the January 25, 1945 Congressional Record, Wyoming Senator Joseph C. O'Mahoney was attacking while Michigan Senator Homer Ferguson was protecting, at 480:

MR. O'MAHONEY:

> Does the Senator from Michigan desire that the bill, if it shall be passed by this body, shall be interpreted anywhere as an intention of Congress to permit monopoly to be established in the insurance industry?

MR. FERGUSON:

> No. By no means does the bill anticipate that any act would or should be passed which would create a monopoly.

By that measure, the title insurance industry crashed the party.

## STATE DEREGULATION OF TITLE INSURANCE

No previous case has established the fact that *every* state in the union exempts (deregulates) title insurers from RBC reporting[8]: Alabama: Code §27-Chapter 2B; Alaska: A.S.A. 21:09.070; Arizona: R.S. §20-1561; Arkansas:

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7 Taken from *Klein v. ALTA, Section XIV:* Oligopoly Power, Abuse of Oligopoly Power, De Minimis Claim Payments and Protection of Supernormal Profits.

8 These Statistics are based on a NAIC survey conducted during *Klein v. ALTA,* asking the question: "What actions are taken to file RBC reports as to title insurance?" The accuracy of the responses by NAIC were not independently confirmed and the responses are replicated *verbatim.*

Ark. Code Ann. §23-63-1302(8)(B); California: RBC not mentioned; Colorado: RBC not mentioned; Connecticut: Insurance Code §38a-72-1(h); Delaware: Title 18, §5801(7); District of Columbia: DC Statutes §31-2001(10); Florida: Title XXVII, Chapter 624.4085(j); Georgia: Georgia Code §33-56-1(8); Hawaii: RBC not mentioned; Idaho: Insurers Act §41-5401(8); Illinois: 215 I.C.S. §5/35A-5; Indiana: Indiana Code § 27-7-3; Iowa: Title insurance not allowed; Kansas: RBC not mentioned; Kentucky: 806 K.R. 3:190§ 7; Louisiana: La. R.S. 22:6(9); Maine: Title 24, M.R.S. §6451; Maryland: RBC not mentioned; Massachusetts: 211 C.M.R. §20.01; Michigan: RBC not mentioned; Minnesota: M.S.A. §60A.60(8); Mississippi: Miss. Code Ann. §83-5-401(g); Missouri: Title 18 §5801(7); Montana: M.C.A. §33-2-1902.210(iii)(b); Nebraska: Statute §44-214, Risk Based Capital Act; Nevada: RBC not mentioned; New Hampshire: NH R.S.A. §416-A; New Jersey: N.J.S.A. §17:46B-10.1; Minnesota: MN Stat. §60A.60(8); New York: NY Insurance Law §1324; N. Carolina: RBC not mentioned; N. Dakota: RBC not mentioned; Ohio: response delayed; Oklahoma: O.S. Title 365 §203-5; Oregon: NAIC regulations apply; Pennsylvania: NAIC regulations apply; S. Dakota: S.D.C.L. §58-4-48; Tennessee: TCA § 56-35-112; Texas: 28 TAC §7.401(a)(2); Utah: RBC not mentioned; Vermont: NAIC reg(s) apply; Virginia: VA Risk-Based Capital Act §8.2-5500; Washington: R.C.W. §48.05.340; W. Virginia: W. Va .Code §33-3-5b; Wisconsin: RBC not mentioned and Wyoming: Statutes §26-48-101(a)(iii) & (iv).

## THE IOWA PLAN

In Iowa, the state issues a certificate of title based on the Torrens system, which confers "...indefeasible title..." to the purchaser of property. Its name derives from Sir Robert Richard Torrens (1812–1884), who designed, lobbied for

and introduced a bill enacted as the 1858 Real Property Act in the colony of South Australia — the first version of Torrens title enacted in the world. The system eliminates the need to hire abstractors who search paper records for thirty years and nine months so title insurance companies can issue a document that is NOT a "...contract of insurance..." The 30-years-and-9-months covers the adverse possession statute in most states and the theoretical time from conception to birth. It IS America's richest insurance racket. A declaration that a title policy is not a "...contract of insurance..." would pave the way for all states to adopt the Iowa Plan and end the $49 million per day corruption[9].

## THE PROPER FORUM

The Louisiana state court system is not the proper forum to level the playing field. *Klein v. ALTA* was a class action, as it should have been. The damages to class members will be the return of their one-time fee for a product made of dust, trebled pursuant to the Clayton Act. The time period may be four years for antitrust violations, but fraudulent concealment and other equitable remedies may apply. The real analysis and factual development has taken place under the watchful eyes of District of Columbia Judges Reggie B. Walton in *Klein v. ALTA* and James E. Boasberg in *Klein v. Mnuchin.* This Court has the inherent power "...in aid of its jurisdiction..." to enforce *Group Life* as the supreme law of the land as quickly and efficiently as Federalist 33 demands:

> "It is said that the laws of the Union are to be the SUPREME LAW of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? **It is evident they would amount to nothing."**

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9 The $18 billion yearly fleecing is an old number.

No disrespect intended, but the enforcement of *Group Life* cannot be ceded to Louisiana state courts. The trek will take years while the American consumer and American economy will be drained for nothing of value. This Court is in a *parens patriæ* role. Applicants are devoted whistle-blowers.

**INDUSTRY DEATH-KNELL — *PROCTOR V. STATE FARM I***

In *Proctor v. State Farm*, 561 F,2d 262, 267 *("Proctor I")*, the D.C. Circuit made it clear that the "...business of inSURANCE... was different from the "...business of inSURERS...". Clearly, the second form seeks to (i) make as much money as possible, (ii) pay as few claims as possible and (iii) monopolize the industry to the greatest degree possible:

> "But whatever the exact scope of the statutory term, it is clear where the focus was: it was on the relationship between the insurance company and the policyholder. Statutes aimed at protecting or regulating this relationship, directly or indirectly, are laws regulating 'the business of insurance'."

In the title insurance arena, the relationship is poisoned on **DAY ONE**, when an unwitting consumer's payment gets split 80/20 between the captive title agency and its ABA captor. Sending 20% to an underwriter is a *disincentive* to the four families in control of the marketplace: First American, Stewart, Old Republic and Fidelity[10]. The relationship turns rancid the moment that a claim is made. In the case at bar, no adjustor *ever* came. Only a mega-lawyer and a 900-day fight to get $605,000 on over $35 million in alleged coverage.

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10 Fidelity is the largest with a multitude of subsidiaries, including Alamo Title; Commonwealth Title; Chicago Title; Lawyers Title; TransAmerica Title; Fidelity National Title, Charter Title and at least 25 others.

## TIME IS OF THE ESSENCE

The Circuit Justice is respectfully urged to stay the Louisiana case asap. There is a clear and present danger that the September 29 ruling will be used to count the 90-day period for seeking Certiorari or other SCOTUS relief. Applicants are still stinging from the loss of **Christopher Columbus Day** as a national holiday.

## COMPLIANCE WITH RULE 23.2 AND 28 U. S. C. § 2101(f).

Applicants plan to file for Certiorari, Mandamus and/or Extraordinary Relief as soon as practicable and will not need 90 days to do so, see footnote 2, *supra.* The level of detail in this Applications to Circuit Justice ALITO is intended to give the Court a sense of how far *Klein v. ALTA* has advanced since Certiorari was denied on October 6, 2014 at Docket 13-1560 and Mandamus was denied on January 22, 2024 at Docket 23-518. In the last iteration, the question Presented was:

> "Did the Louisiana district court violate the Supremacy Clause of the United States Constitution by giving higher deference to the Louisiana Insurance Code over Group Life & Health v. Royal Drug Company, 440 U.S. 205 (1979), declaring that title insurance policies were protected by Louisiana law despite the lack of spreading risk as an indispensable characteristic of insurance, and other uncontested flaws?"

At Docket 23-518, *In Re: Henry L. Klein, Petitioner,* the reasons why a title policy is not "...a contract of insurance..." was set forth at page ii, as follows:

A writ pursuant to 28 U.S.C. § 1651(a) is justified by the following Rule 20.1 bases:

> "Title insurance policies (i) are retrospective, (ii) protect nothing a futuro, (iii) do not pool claims, (iv) cannot spread risk, (v) are deregulated by state law, (vi) cannot provide actuarial reports to meet the rigors of the filed-rate doctrine, and (vii) did not meet the indispensable characteristics of insurance pursuant to Group Life."

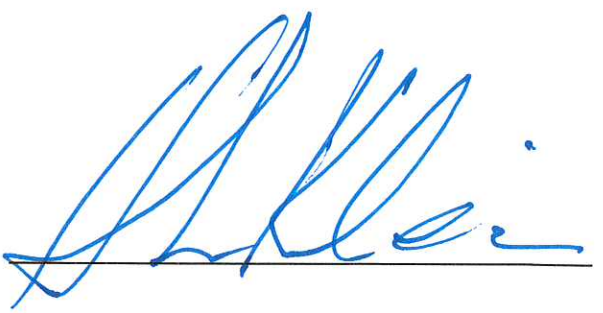
## ***SUA SPONTE* ACTION**

The nine Justices of this Court have the inherent power to protect the public interest, enforce its lawful mandates and make sure the "...supreme law of the land..." does NOT "...amount to nothing...". Applicants are more than ready to brief and argue. A *sua sponte* invitation would be better than a writ application saying the same Applicants said here.

## **28 U.S.C. §1746 DECLARATION**

Due to the gravity of issues presented, I, Henry L. Klein declare under penalty of perjury that all statements of fact contained in the Application to Circuit Justice ALITO are true, correct and well-documented. In addition, as a member of the Bar of the Court since September 4, 1976, I declare that all parties requiring service are set forth in the Proof of Service submitted separately here from.

December 27, 2025



Respectfully submitted,

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