

ORIGINAL

No. 26-351

FILED

AUG 14 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

JUSTIN PAUL DREILING

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Justin Paul Dreiling
112 Highland Woods Dr.
Waynesville, MO 65583
(515) 520-9302
speier.justin@gmail.com

Pro Se Petitioner

AUGUST MMXXVI

QUESTIONS PRESENTED

The Honorable Judge Pauline Newman was prohibited in participating in an appeal brought by the petitioner in the United States Court of Appeals for the Federal Circuit due to an order by the Judicial Council of the Federal Circuit. It is presumed this order is in full congruence with the Constitution; that the order is, in and of itself, not an impeachment. The primary underlying issue in this petition is *who* can determine when a judge is not in good behavior, and once determined, *who* can apply punishment.

The Questions Presented Are:

1. Whether 28 U.S.C. § 354(a)(2)(A)(i) is unconstitutional?
2. Does 28 U.S.C. § 455, when an appeal brought before the Federal Circuit alleges claims against the *Judicial Council* of the Federal Circuit, require the members of Judicial Council to recuse themselves, even though the named defendant is the United States?
3. Do the petitioner's original claims satisfy the plain language of the Tucker Act, and if so, is he entitled to rely upon that plain language?

PARTIES TO THE PROCEEDING

Petitioner, and plaintiff-appellant below, is Justin Paul Dreiling.

Respondent, and defendant-appellee below, is the United States of the America acting on behalf of the Judicial Council of the Federal Circuit.

RELATED PROCEEDINGS

Court of Appeals for the Federal Circuit (CAFC):

Dreiling v. United States, No. 2026-1409 (May 22, 2026) (judgment entered Apr. 15, 2026)

United States Court of Federal Claims:

Dreiling v. United States, No. 1:25-cv-02133-LAS (Jan. 7, 2026) (judgement entered Aug. 21, 2025)

Supreme Court of the United States:

In Re Justin Paul Dreiling, No. 25-1217 (petition for writ of mandamus filed Apr. 20, 2026; denied June 22, 2026)

Dreiling v. United States, No. 26-9 (petition for writ of certiorari filed July 2, 2026)

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceeding	ii
Related Proceedings.....	ii
Table of Authorities	vi
Petition for Writ of Certiorari	1
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved....	2
Statement of the Case	3
Reasons for Granting the Petition	7
I. 28 U.S.C. § 354(a)(2)(A)(i) is Unconstitutional..	7
A. What is meant by the phrase good behavior?.....	7
B. When is a judge not in good behavior?	9
C. Who can make such a determination?....	17
D. Can those who make such a deter- mination convict punishment?.....	23
E. Can punishment only occur upon conviction in a trial of impeachment, or can Congress delegate this power through legislation?.....	27
Summary	31
II. The Federal Circuit Erred in its Order Granting Summary Affirmance	32
Conclusion.....	36

Appendix

Appendix A

Order, United States Court of Appeals for the Federal Circuit, <i>Justin Paul Dreiling v. United States</i> , No. 26-1409 (May 22, 2026).....	App-1
--	-------

Appendix B

Defendant-Appellee's Motion for Summary Affirmance, United States Court of Appeals for the Federal Circuit, <i>Justin Paul Dreiling v. United States</i> , No. 26-1409 (Mar. 20, 2026)	App-4
---	-------

Appendix C

CAFC ECF No. 11, United States Court of Appeals for the Federal Circuit, <i>Justin Paul Dreiling v. United States</i> , No. 26-1409 (Mar. 30, 2026).....	App-11
Plaintiff-Appellant's Response to Defendant-Appellee's Motion For Summary Affirmance, United States Court of Appeals for the Federal Circuit, <i>Justin Paul Dreiling v. United States</i> , No. 26-1409 (Mar. 24, 2026).....	App-11
Application For Circuit Justice Allotment To The United States Court Of Appeals For The Federal Circuit In Accordance With 28 U.S.C. § 42, Supreme Court of the United States, <i>Justin Paul Dreiling v. United States</i> , No. _____ (Feb. 25, 2026).....	App-28

Response Letter of Clerk of the Supreme Court of
the United States: RE: "Application for Circuit
Justice Allotment to the United States Court of
Appeals for the Federal Circuit in Accordance with
28 U.S.C. 42",
(Mar. 4, 2026)..... App-34

Appendix D

Order [complaint dismissed], United States Court of
Federal Claims, *Justin Paul Dreiling v. The United
States*,
No. 25-2133 (Jan. 7, 2026)..... App-39

TABLE OF AUTHORITIES

Cases

<i>Dreiling v. United States</i> , No. 26-9.....	1, 4, 35
<i>Hayburn's Case</i> , 2 U.S. (2 Dall.) 409 (1792).....	29
<i>In re Justin Paul Dreiling</i> , No. 25-1217.....	5
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803).....	30
<i>Martin v. Hunter's Lessee</i> , 14 U.S. (1 Wheat.) 304 (1816).....	8-9
<i>Northern Pipeline Co. v. Marathon Pipe Line Co.</i> , 458 U.S. 50 (1982).....	9
<i>Trump v. Slaughter</i> , 609 U. S. ____ (2026).....	11
<i>United States v. Jones</i> , 131 U.S. 1 (1889).....	4
<i>Vanhorne's Lessee v. Dorrance</i> , 2 U.S. (2 Dall.) 304 (1795).....	36-37

Constitutional Provisions, Statutes, and Rules

U.S. Const. Art. I, § 2, cl. 5.....	2, 21, 23
U.S. Const. Art. I, § 3, cl. 6.....	2, 25
U.S. Const. Art. I, § 3, cl. 7.....	2, 14, 23
U.S. Const. Art. I, § 5, cl. 2.....	34
U.S. Const. Art. II, § 4.....	10, 13
U.S. Const. Art. III, §1.....	7, 27
U.S. Const. Art. VI.....	11

28 U.S.C. § 1254(1)	2
28 U.S.C. § 1491(a)(1)	2-4, 37
28 U.S.C. § 354(a)(2)(A)(i)	3, 4, 7, 26-29
28 U.S.C. § 453.....	7
28 U.S.C. § 455.....	3, 5, 36

Other Authorities

Henry Adams, <i>History of the United States of America During the Administration of Thomas Jefferson</i> (1986)	9-10
Stephen Breyer, <i>Making our Democracy Work: A Judge's View</i> (2010).....	15
Edward S. Corwin, <i>John Marshall and the Constitution</i> (1921)	12, 14
1 Elliot's Debates (2nd ed. 1836).....	8, 18-20
Max Farrand, <i>The Framing of the Constitution of the United States</i> (1913).....	7
The Federalist No. 65 (Alexander Hamilton)	16, 24
The Federalist No. 66 (Alexander Hamilton)	24-25
The Federalist No. 78 (Alexander Hamilton)	8
The Federalist No. 79 (Alexander Hamilton)	16
The Federalist No. 81 (Alexander Hamilton)	26, 34
Neil Gorsuch, <i>A Republic, If You Can Keep It</i> (2019)	29, 32-33
James Madison, <i>James Madison Writings</i> (1999)...	11
Robert L. Owen, <i>Judicial Recall</i> , S. Doc. No. 62-249 (1912)	22

Joseph Story, <i>Commentaries on the Constitution of the United States</i> (1st ed. 1833).....	8, 25, 28
--	-----------

(This page is intentionally left blank.)

PETITION FOR A WRIT OF CERTIORARI

The issues presented in this petition and a related pending petition—*Dreiling v. United States*, No. 26-9—evinced the necessity of this Court's granting of certiorari. They involve the very fabric of our Constitution, the independence of the judiciary, and the ability of the People to assert, defend and protect their rights according to the plain language of the law.

The related petition, No. 26-9, addresses the independence of the judiciary and the right to follow the plain language of the law to assert, defend and protect one's rights.

Dreiling humbly submits this petition to determine on how and when a judge can be forbidden from hearing a case. Namely, *who* has the power to determine when a judge is not in good behavior and *who* has the power to prevent or remove a judge from performing their Constitutionally mandated duties; whether the order forbidding the Honorable Judge Newman from voting on Dreiling's petition for *en banc* hearing was constitutional; and whether bias was conspicuous in the Federal Circuit's order of summary affirmance. An issue of the utmost Constitutional concern.

OPINIONS BELOW

The Federal Circuit's order granting summary affirmance is reproduced in the Appendix at App. 1-3. The Court of Federal Claims' dismissal order is reproduced in the Appendix at App. 39-41.

JURISDICTION

The Federal Circuit's decision which certiorari is instantly sought was entered on May 22, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

U.S. Const. Art. I, § 2, cl. 5, as relevant: "The House of Representatives ... shall have the sole power of impeachment."

U.S. Const. Art. I, § 3, cl. 6, as relevant: "The Senate shall have the sole power to try all impeachments."

U.S. Const. Art. I, § 3, cl. 7, as relevant: Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy an office of honor, trust, or profit, under the United States.

28 U.S.C. § 1491(a)(1), as relevant:

"The Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

28 U.S.C. § 354(a)(2)(A)(i): “In general.—Action by the judicial council under paragraph 1(C) may include ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint.”

28 U.S.C. § 455(a): “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

28 U.S.C. § 455(b)(5)(i) in relevant part: “He shall also disqualify himself ... [if] [h]e ... [i]s a party to the proceeding.”

STATEMENT OF THE CASE

The petitioner, Justin Paul Dreiling, an active duty Sergeant First Class in the United States Army, brought suit in United States Court of Federal Claims claiming the United States Army was unable to mandate an influenza vaccination for his son to play sports sponsored by the Army. The claims were dismissed due to the (erroneous) money-mandating precedent of 28 U.S.C. § 1491(a)(1). See pending Petition for Writ of Certiorari, United States Supreme Court, No. 26-9 (Jul. 2, 2026). Dreiling appealed to Federal Circuit and submitted an initial petition for *en banc* hearing—addressing the money-mandating error upon the jurisdictional precedent of the Court of Federal Claims. The Federal Circuit denied the petition, noting that “Circuit Judge Newman did not participate.”

The Honorable Judge Newman did not participate due to an order by the Judicial Council of the Federal Circuit (Judicial Council). Dreiling, believing a judicial council has no constitutional authority to prevent the Honorable Judge Newman from voting on his *en banc* petition, subsequently brought a new suit in the United States Court of Federal Claims. Dreiling claimed the law cited by the Judicial Council for removing the Honorable Judge Newman from voting on his petition for *en banc* hearing, 28 U.S.C. § 354(a)(2)(A)(i), was not in standing with the manifest tenor of the Constitution; that only Congress can forbid a federal judge from performing their constitutionally mandated duties; and that Congress cannot delegate that responsibility at all, for the People only conferred such power and authority to Congress and Congress alone through impeachment.

These claims were dismissed, once more, due to the (erroneous) money-mandating precedent of the Tucker Act under 28 U.S.C. § 1491(a)(1). Dreiling appealed to the Federal Circuit, arguing the precedent set by the Supreme Court in *United States v. Jones*, 131 U.S. 1 (1889) was in error; that the Court of Federal Claims jurisdiction is not limited to money-mandating claims; that the plain language of 28 U.S.C. § 1491(a)(1), in which Dreiling is entitled to rely, forbids such an interpretation; that all judges have the constitutional judicial power to correct error—to declare the law; that Courts are not bound to egregious precedent in error. App. 19-24. See also Pet. for Writ of Cert., *Dreiling v. United States*, S. Ct. No. 26-9.

The underlying claims brought, however, were against the Judicial Council of the Federal Circuit. The very judges to adjudge upon the appeal were also *de facto* parties to the appeal. Dreiling notified the appellate judges of their obligation to recuse themselves as required under 28 U.S.C. § 455. Dreiling even submitted a petition for writ of mandamus to this Court, No. 25-1217 (Apr. 20, 2026), addressing this issue of bias and specifically asked the Court:

“Are all the active, sitting circuit judges of the United States Court of Appeals for the Federal Circuit parties to the petitioner’s appeal whereby they are subsequently bound to recuse themselves in accordance with 28 U.S.C. § 455?”

The Federal Circuit, however, was unmoved, and instead of waiting for this Court to rule upon the petition for writ of mandamus, granted the United States’ motion for summary affirmance, believing there was no bias in their decision; believing they were not parties to the appeal; and that they had “no power to overturn long-standing and binding Supreme Court precedent holding the Court of Federal Claims’ jurisdiction is limited to monetary claims against the government.” App. 2-3. The petition for writ of mandamus was later denied by this Court.

The Court of Appeals for the Federal Circuit erred in granting summary affirmance. The Federal Circuit abrogated their responsibility under the Constitution, deprived Dreiling from having his appeal heard by an impartial, unbiased panel, refused to address a single

error from the trial court, and violated their solemn oath by not faithfully and impartially discharging their duties incumbent upon them under the Constitution and laws of the United States. Dreiling hereby and humbly submits this petition for writ of certiorari, and prays the Court grants this petition and overrules the Federal Circuit's iniquity and insidiousness.

REASONS FOR GRANTING THE PETITION

I. 28 U.S.C. § 354(A)(2)(A)(I) IS UNCONSTITUTIONAL¹

Every justice and judge takes an oath to “administer justice” and to “faithfully and impartially discharge and perform all duties incumbent upon [them] ... under the Constitution and laws of the United States,” 28 U.S.C. § 453, and the People, under the Constitution, have emphatically declared judges shall hold their offices during good behavior. U.S. Const., Art. III, §1.

This begs the questions: (1) What is meant by the phrase “good behavior”? (2) When is a judge not in good behavior? (3) Who can make such a determination? (4) Can those who make such a determination convict punishment? (5) Can punishment only occur upon conviction in a trial of impeachment, or can Congress delegate this power through legislation?

A. What is meant by the phrase good behavior?

In the words of Max Farrand, “there is surprisingly little on the subject [of the judiciary] to be found in the records of the convention.” Farrand, *The Framing of the Constitution of the United States*, p. 154, Yale University Press (1913). But nonetheless,

¹ Technically the issue of impeachment and the constitutionality of the order issued by the Judicial Council was not addressed by the trial court or the appellate court (and thus may not be reviewable at this time by this Court). However, this issue is related to the third question presented in this petition and may need to be addressed to determine if remand back to the Court of Federal Claims is warranted.

from the *outset* of the Federal Convention at Philadelphia in 1787, through the Ninth resolution offered by Mr. Edmund Randolph (The Virginia Plan), judges of the judiciary were to "hold their offices during good behavior." 1 Elliot's Debates, pg. 144 (2nd ed. 1836). When the resolution was considered by the convention on June 5th, 1787, no apparent disagreement upon 'good behavior' was found, and on the next day, the portion of the 9th resolution respecting good behavior passed in the affirmative. *Id.* at 144-145.

Justice Story, in his Commentaries on the Constitution, upon the tenure of which judges hold their office, stated, "the Federalist has spoken with so much clearness and force, that little can be added to its reasoning." 3 Story, Commentaries on the Constitution of the United States § 1594 (1st ed. 1833).

The Federalist No. 78, penned by Alexander Hamilton, in which Justice Story cites, claims:

"If then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty." The Federalist No. 78 (Alexander Hamilton).

This Court has also confirmed this interpretation. See *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 328-329 (1816) ("Could congress create or limit any

other tenure of the judicial office? ... But one answer can be given to [this] question: it must be in the negative.") See also *Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59 (1982) ("The 'good Behaviour' Clause guarantees that Art. III judges shall enjoy life tenure, subject only to removal by impeachment. (citation omitted)").

Furthermore, the purpose of this 'good Behaviour' clause, as stated by this Court in *Northern Pipeline* at pg. 59, footnote 10, (with emphasis added,) states, "The guarantee of life tenure insulates the individual judge from improper influences not only by other branches *but by colleagues as well*, and thus promotes judicial individualism. (citation omitted)."

The good behavior clause, therefore, unquestionably provides lifetime tenure for those brave enough to accept the solemn, arduous duty to interpret and declare the law while serving as a judge or justice within the judiciary; it shields judges and justices from the whims of passion, prejudice, and outside influence from not only the executive and legislative branches, but also from their colleagues, peers and the People themselves—for nothing else guarantees complete judicial independence.

B. When is a judge not in good behavior?

Since judges and justices have lifetime tenure, when then can they be deemed not in good behavior? When can their tenure be affected? In other words, what constitutes bad behavior? History is rather perplexing on the issue. The trial of Justice Chase seems to be a logical source to inquire and research upon, but as Henry Adams noted, "The acquittal of

Chase proved that impeachment was a scarecrow ... *No point* [upon impeachment] *was decided.*" Henry Adams, *History of the United States of America During the Administration of Thomas Jefferson*, pg. 465 (The Library of America, New York, N.Y., 1986). (emphasis added).

A number of arguments over the centuries have been made, by brilliant and capable minds, but none seem to have been conclusive – no precedent has been set. A fresh perspective may be wise, from someone who is outside of the legal profession; from a mere citizen with an open mind free to read the words as written without any inherent or unconscious bias. An independent review from someone who is not a member of the judiciary; from someone who is not a lawyer; from someone who is not in a position which can reasonably benefit from any decision, for or against. The only benefit Dreiling could be presumed to receive, upon any decision made by this Court (in favor or against), is that the Constitution is faithfully applied—for that is all Dreiling is asking for in his complaint and this petition.

It has been argued that judges can only be impeached and removed when convicted of treason, bribery, or other high crimes and misdemeanors. Dreiling is unconvinced by the plain import of the Constitution in this regard. No argument has been found by Dreiling to be conclusive upon this claim.

This claim is founded, along with historical analogies with England, upon the interpretation of U.S. Const. Art. II, § 4, whereby it states, "The President, Vice-President, and all civil officers of the United States, shall be removed from office, on

impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.”

Are judges and justices “civil officers” in relation to this clause under Article II of the Constitution? Why does Article II have this language while Article III uses the word “judges”? Why does Article VI mention oaths for “all executive and judicial Officers” instead of just “civil officers”? Can it truly be assumed that the founders meant to have the language of “civil officers” under Article II to be coincident with and applicable to judicial officers (who shall hold their office during good behavior)?

The President rightfully has the Constitutional authority to remove civil officers at will when he believes they are not faithfully executing their duties. *Trump v. Slaughter*, 609 U. S. ____ (2026). See also James Madison, *James Madison Writings*, pg. 435-436 (The Library of America, New York, N.Y., 1999).²

² In a speech to Congress on May 19, 1789, James Madison has said, upon the ability of the President to remove an executive officer without impeachment, “that it comports with the nature of things, that those who appoint, should have the power of removal, but I cannot conceive that this sentiment is warranted by the constitution; I believe it would be found very inconvenient in practice. It is one of the most prominent features of the constitution, a principle that pervades the whole system, that there should be the highest possible degree of responsibility in all the executive officers thereof; any thing therefore which tends to lessen this responsibility is contrary to its spirit and intention, and unless it is saddled upon us expressly by the letter of that work, I shall oppose the admission of it into any act of legislature. Now, if the head of the executive departments are subjected to removal by the president alone, we have in him security for the good behaviour of the officer: If he does not conform to the

If judges and justices are considered civil officers in regards to Article II, then, with this reasoning, certainly the President can then determine if a judge (or justice) is in bad behavior and subsequently remove them from office. Such claims, however, approach improbability. If such is a true interpretation, why then would, immediately following the acquittal of Justice Chase, a resolution "proposing an amendment to the Constitution, requiring that judges of the United States shall be removed by the President on joint address of both Houses of Congress" be required? Corwin. *John Marshall and the Constitution*, pg. 84, Yale University Press (1921). If judges were civil officers, the President could just remove the judge/justice if their behavior is questioned; there would be no need for this amendment.

Furthermore, it is highly doubtful that the definition of "good behavior" is the *negative* of "treason, bribery, or other high crimes and misdemeanors." Presume, for example, a judge consistently refuses to adjudge upon cases from *pro se* litigants. Perhaps the judge routinely cavils about *pro*

judgment of the president, in doing the executive duties of his office, he can be displaced; this makes him responsible to the great executive power, and makes the president responsible to the public for the conduct of the person he has nominated and appointed to aid him in the administration of his department; but if the president shall join in a collusion with this officer, and continue a bad man in office, the case of impeachment will reach the culprit, and drag him forth to punishment." James Madison, *James Madison Writings*, pg. 435-436 (The Library of America, New York, N.Y., 1999).

se litigants to his/her law clerks and deplores upon their cases as a waste of time. Is such behavior a high crime or misdemeanor? Would it be considered good behavior becoming of a judge? Or instead, presume a judge has sat on an assigned case ready for judgment for well over a year, and once transferred to a different judge, the case is finalized in a mere few weeks (such as that alleged against the Honorable Judge Newman). Is this behavior a high crime or misdemeanor? Could it be considered good behavior of a judge?

The only permissible import of U.S. Const. Art. II, § 4 is the People have forced Congress' hand upon a charge of treason, bribery, or other high crimes and misdemeanors when the President, Vice-President, or a civil officer is convicted in a trial of impeachment. If convicted, the officer *must* be removed from office. The People have not given Congress any latitude in this punishment – they **SHALL BE REMOVED**.

No deductive inference, however, can be concluded, with any force of strength, that U.S. Art. II, § 4 citation to "civil officers" is applicable to judges or justices. The clause also does not limit the charges of impeachment; it only forces Congress to apply specific punishment upon conviction against treason, bribery, or other high crimes and misdemeanors *upon the President, Vice-President, and civil officers*. (emphasis added). It may indeed be wise and prudent for Congress to apply the same punishment upon conviction of these charges against judicial officers, however, no proper import or discern can claim this. And once more, the definition of 'good behavior' cannot be interpreted as the negative of what constitutes a

high crime or misdemeanor; that a judge is in good behavior if no crime or misdemeanor is committed. The language of 'good behavior' clearly imports a much larger breadth of actions.

For example, Senator Giles, upon the impeachment proceedings against JUSTICE CHASE, argued, "[t]he power of impeachment was given without limitation to the House of Representatives; the power of trying impeachment was given equally without limitation to the Senate." Corwin, *John Marshall and the Constitution*, p. 74, Yale University Press (1921). "For impeachment was not a criminal prosecution, it was no prosecution at all." *Idem*.

There can be no truer words. The clear language of the Constitution can only import this reasoning that impeachment proceedings are available upon an unlimited number of reasons; for any reason at all. Although, contrary to Senator Giles' statement, the power of impeachment is not "without limitation." *Idem*. The People have indeed placed restrictions upon this power. One such limitation was just mentioned *supra* for civil officers convicted of a high crime or misdemeanor; they shall be removed from office. Another limitation, upon which *all* impeachments are limited, is the punishment; it "*shall not exceed further* than to removal from office" and disqualification to hold any future office. U.S. Const. Art. I, § 3, cl. 7.³

³ It is interesting that the founders used the phrase "shall not exceed further." If upon *every* conviction of impeachment the officer is to be removed from office and disqualified to hold any future office, why not just say 'shall be' so as to read, viz. "Judgement in cases of impeachment *shall be* removal from

Senator Giles arguments were also blinded by party spirit, as he believed the independence of the judiciary was a fallacy. Senator Giles, along with the Jefferson administration, wanted their party to obtain complete control of the government. See Breyer S., *Making our Democracy Work: A Judge's View*, p. 14, Alfred A. Knopf (2010) ("[T]he [Jefferson administration] tried to use the power that the Constitution gave Congress to impeach federal officials to rid the government of Federalist-appointed judges."). The impeachment of Justice Chase, the first real *national* use of impeachment, was brought primarily for party control, biasing and skewing all arguments upon those involved. But even so, Senator Giles words upon impeachment are true nevertheless.

What then is the definition of good behavior in regards for holding office—for being allowed to execute constitutionally mandated duties for the office of a judge? For brevity, Dreiling simply claims the definition of good behavior, in this regard, is when a judge, who wholeheartedly in the execution of their duties, adheres to their oath with the utmost fidelity. Thus, for a judge to be considered for impeachment, the People's representatives must allege to the House that the judge abused or violated his/her oath. And

office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States." The language of "shall not exceed further" clearly imports a discretion upon lesser punishment. Impeachment does not force removal – it is up to Congress to determine the punishment, and that punishment, upon conviction, simply cannot *extend farther than* to removal from office and disqualification to hold any future office (emphasis added).

such an allegation is solely of the opinion of the People's representatives. Nothing more, nothing less. Whether this warrants removal from office, or a lesser punishment, is for further debate and discussion for the members of the House.

If this definition by Dreiling is insufficient, then perhaps the words of Alexander Hamilton can be more persuasive? See The Federalist No. 79:

"The precautions for their responsibility [(the responsibility of judges)] are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges."

See also The Federalist No. 65:

"The subjects of [the Senate's] jurisdiction [upon courts of impeachment] are those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated *political*, as they relate chiefly to injuries done immediately to the society itself" The Federalist 65 (Alexander Hamilton) (emphasis in original).

It follows then that Alexander Hamilton's definition of good behavior can be construed as when no malconduct, misconduct, or an abuse/violation of a public trust has been made by a judge. Is this not another way of saying a judge is in good behavior whilst fidelity is applied to their oath? If a judge ever allegedly deviates from their oath—whether from malconduct, misconduct, or some other abuse/violation of public trust, then certainly the People's Representatives can bring forth charges of impeachment upon the accused.

C. Who can make such a determination?

In summary so far, judges unquestionably have life tenure while in good behavior, and if found not in good behavior by violating their solemn oath, their tenure may be affected by charge through impeachment. The punishment upon conviction of impeachment shall not *extend* further than removal from office and the inability to hold any future office. This, however, is not to be construed to require removal as the only punishment available upon impeachment. The Constitution has not provided any import to such a conclusion. Instead, any punishment not to *exceed further than* removal can be made; punishment such as removing a judge from hearing cases for a period of one year (which is certainly less than, and does not extend farther than, removal from office). But who can actually determine when a judge has violated their oath; that their behavior was unbecoming of a United States judge? What has the Constitution provided upon such a question?

If the records of the convention are reviewed, the Virginia Plan had no plan for removing judges, or any officers, from the government. But, on the same day the Virginia Plan was submitted, a draft submitted by Mr. Charles Pinckney stated, the "House of Delegates shall exclusively possess the power of impeachment" while the *judiciary* shall have jurisdiction "to the trial of impeachment of officers of the United States" where the Supreme Court would retain appellate jurisdiction upon impeachments for all but ambassadors and public ministers. 1 Elliot's Debates, pg. 146, 149 (2nd ed. 1836) (emphasis added).

The draft by Mr. Pinckney wasn't specifically addressed in the convention like the Virginia Plan, but on June 13th, Mr. Randolph, seconded by Mr. Madison, submitted a resolution adopting the "jurisdiction of the national judiciary" to "extend to cases which respect ... impeachments of any national officers." *Id.* at 174.

From the early start of the convention, it seems the plan was for the House to have the power of impeachment, with the judiciary to *try* the impeachment (with the Supreme Court having appellate jurisdiction upon the matter).

On June 15th, Mr. Patterson, whose delegation preferred to amend the Articles of Confederation, submitted a resolution (the New Jersey Plan) which included similar language as Mr. Pinckney's draft where "the judiciary ... shall have authority to hear and determine, in the first instance, on all impeachments of federal officers." *Id.* at 176.

Then, a few days later, on June 18, by a motion from Mr. Dickinson, a plan from Colonel Hamilton to

amend the Articles of Confederation was submitted which included language that "governors, senators, and all officers of the United States to be liable to impeachment for mal and corrupt conduct; and, upon conviction, to be removed from office, and disqualified for holding any place of trust or profit. All impeachments to be tried by a court, to consist of the chief or senior judge of the superior court of law, in each state." *Id.* 180. The resolution passed in the negative.

Now it seems, at least, the whole convention was in agreeance that impeachment was a judicial function to be tried by the judiciary.

However, a month later, on July 18th, the jurisdiction of the national judiciary was amended to remove the power of "impeachments of national officers." *Id.* at 210. It passed in the affirmative. After this vote, the judiciary had *no power* over impeachments at all; no power to adjudge upon the behavior of judges or any officer of the United States—None.

All these resolutions and amendments, both affirmed and rejected, along with the Articles of Confederation were then considered by the Committee of Detail, and on August 6th, the committee reported their draft constitution which included (regardless of past votes): (1) "The House of Representatives shall have the sole power of impeachment, (2) that each house "may punish its members for disorderly behavior; and may expel a member, (3) the President "shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption." (4) appellate jurisdiction for the Supreme Court "to the trial of impeachments of officers of the United States,"

and (5) "Judgment, in cases of impeachment, shall not extend farther than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States." *Id.* at 224-229.

The Committee of Detail, disregarding the affirmative vote on July 18th, reverted back to the judiciary having the power to try impeachments (with the Supreme Court having appellate jurisdiction).

Then, on August 20th, propositions were submitted to the Committee of Five which included that each officer within a "council of state" (which included the chief justice of the Supreme Court nonetheless) "shall be liable to impeachment and removal from office, for neglect of duty, malversation, or corruption." *Id.* at 251. It passed in the negative. It seems, though, the convention believed impeachment was for more than just high crimes and misdemeanors, but also smaller infractions such as "neglect of duty" and "malversation."

It wasn't until September 4th, upon nearing the closing of the convention, that the power to try impeachments was reverted to the Senate, *Id.* at 283, which was finally agreed to on September 7th. *Id.* at 291. It wasn't until this point in time, a mere week from the revised draft of the Constitution, with language nearly identical to the one which we all now enjoy, was the power of impeachment completely removed from the judiciary.

The unwavering theme, throughout the entire length of the convention, however, upon *who* can determine when impeachment proceedings are warranted, upon *who* can determine whether a judge

is in good behavior, upon *who* can bring charges alleging misbehavior or malversation, was always the House of Representatives—the People's representatives. It was never debated, modified or contested from the initial outset of the convention to the very last day. U.S. Const. Art. I, § 2, cl. 5.

It is the *People's Representatives* then who are capable of affecting the tenure of a judge; to hold them accountable for a violation of public trust. They investigate and charge, whether *sua sponte* or upon complaint from a constituent, claims alleging misbehavior, malconduct, misconduct, malversation, or an abuse/violation of a public trust; whether a judge violated their oath. And, upon concurrence of the allegations from a majority the People's representatives, to be impeached.⁴

It should also be noted that it has been argued upon removing judges from office:

“that impeachment is too severe a remedy in certain cases and is impracticable for offenses requiring removal but not deserving impeachment. Impeachment should only be invoked for actual personal corruption or

⁴ Three judges of the Federal Circuit have failed to adhere to their oath (at least in the opinion of Dreiling) by not recusing themselves upon his appeal. Dreiling contacted his representative, and, unfortunately, his representative's assistant—clearly conversant with the law—believed the determination upon impeachment is a role for the Executive under the Department of Justice – not the House themselves. It is a sad day when a Representative of the People fails to understand a portion of their true role in our Constitutional Republic. Or is Dreiling so blind and delusional that he misunderstands the plain import of the Constitution?

serious criminal conduct; but the *legislative recall* may be necessary and properly invoked even in cases where there is no personal delinquency whatever. It may be invoked for senility, for insanity, for imbecility, for paresis; or, again, it may be invoked upon willful neglect of duty; for inefficiency, for gross incompetency, for intemperance, or for any persistent, tyrannical, malicious, or detestable conduct. Any or all of these things may arise in the life of an individual, due to physical, mental, or moral decadence." Owen, *Judicial Recall*, S. Doc. No. 62-249, at 5-6 (1912) (emphasis added).⁵

But it is quite clear that impeachment is the proper (and only) remedy for such situations as well. At some point, in any of the listed situations by Senator Owen, a judge would eventually violate their oath (even if by no intentional fault or willful neglect of their own). For example, a senile judge may very well become forgetful, miss a deadline or argument, and thus be unable or incapable of faithfully discharging their solemn duties. Impeachment is not a criminal proceeding; it is simply a judicial *process*, formed by the People under the Constitution, to hold officers of the federal government accountable, whose faith and trust have been conferred upon oath by election, appointment, etc., but whom, unfortunately, have violated that public trust. The punishment can

⁵ Available at:

<https://www.senate.gov/about/resources/pdf/address-owen-judicial-recall-1912.pdf>

be tailored to the severity of the charge, but as the will of the People have spoken, it cannot extend past removal from office and the inability to hold any future office. The People themselves, through the regular judicial process, through normal indictments, beholden to all, can charge greater punishment according to law. U.S. Const. Art. I, § 3, cl. 7.

**D. Can those who make such a
determination convict punishment?**

Can those who impeach also convict; to prevent the performance of the duties incumbent upon judges and justices enshrined in the Constitution; to affect their tenure; to prevent them from hearing cases or controversies? The House of Representatives clearly has the power, by the Constitution, to determine when a judge has violated their oath; that a judge should be held accountable. U.S. Const. Art. I, § 2, cl. 5. But can the House also determine if punishment is warranted? To enforce the punishment? A trial must be had for the accused to defend themselves. Must this trial be before the very same people who have accused guilt? Surely not.

As was mentioned in the preceding section, it wasn't until a mere week before the initial draft of the final Constitution that the judiciary was removed from all power over impeachment. Why then was the Senate chosen over the judiciary at the last minute? In the words of Alexander Hamilton:

“[w]here else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What

other body would be likely to feel *confidence enough in its own situation*, to preserve, unawed and uninfluenced, the necessary impartiality between an *individual* accused, and the *representatives of the people, his accusers?*" (emphasis in original).

* * *

"The necessity of a numerous court for the trial of impeachments, is equally dictated by the nature of the proceeding ... There will be no jury to stand between the judges who are to pronounce the sentence of the law [the sentence of the impeachment], and the party who is to receive or suffer it. The awful discretion which a court of impeachments must necessarily have, to doom to honor to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of person." The Federalist No. 65 (Alexander Hamilton)

It was further said by Alexander Hamilton, that:

"[t]he division of [of powers] between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution, from the prevalency of a

factionous spirit." The Federalist No. 66
(Alexander Hamilton).

The framers of our great Constitution wisely chose the Senate, whose authority alone could determine guilt and punishment. U.S. Const. Art. I, § 3, cl. 6. This body was the best body and the only body, especially when a judge was accused, to try an impeachment. As Justice Story eloquently stated, "[f]ew parts of the constitution have been assailed with more vigour; and few have been defended with more ability." 2 Story, Commentaries on the Constitution of the United States § 743 (1st ed. 1833).

There is no other body in our Constitutional Republic better suited to try impeachments than the Senate, the *representatives of the States*. It matters not if party spirit devolves the entire impeachment proceeding. This situation has already been observed and attempted through the impeachment of Justice Chase—it failed; history has proven, time and again, only those whom truly have violated their oath, those whom truly deserve punishment, can be both impeached *and* convicted. (emphasis added).

An evil upon judges being impeached, convicted, and removed from office for simply declaring acts of the legislature contrary to the Constitution is certainly possible, but such is the natural case upon the power of impeachment. But there is no proof or evidence that party spirit will convolute impeachment proceedings; that impeachment will be successful in obtaining party control. Furthermore, there is no evidence that judges will simply declare congressional acts unconstitutional from their own will.

"[T]he supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is, in reality, a phantom. * * * This may be inferred with certainty from the general nature of the judicial power; * * * from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check, which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body instructed with it, while this body possessed the means of punishing their presumption, by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the senate a court for the trial of impeachments." The Federalist No. 81 (Alexander Hamilton).

Furthermore, upon every source perused, those who accuse can never be those who punish. The fact that 28 U.S.C. § 354(a)(2) provides that very capability is worthy of granting certiorari.

E. Can punishment only occur upon conviction in a trial of impeachment, or can Congress delegate this power through legislation?

Congress believes a judicial council is capable of adjudging upon the good behavior of a judge; to determine if any malconduct was prevalent upon a judge's actions or behavior; to prevent a judge from hearing future cases for a time certain—where forth the judge also has no ability to contest the removal. 28 U.S.C. § 354(a)(2)(A)(i). For is this not the purpose behind § 354? To determine malconduct, misconduct, or malversation upon a complaint, and to provide discretion to the judicial council, for a time certain, to remove the judge from hearing cases?

If this is the true interpretation of § 354, where in the Constitution have the People provided Congress this power to legislate upon? The Constitution allows Congress to establish "inferior courts" from time to time. U.S. Const., Art. III, § 1. Is this the article upon which Congress cites for the authority to legislate § 354? Does establishing courts also grant Congress the ability to create judicial councils that can determine and adjudge upon the conduct of judges? To remove judges from performing their constitutional duties regardless of the veracity of the complaint? Dreiling is interested on what arguments can be presented upon such. This Court should order the Department of Justice (or more properly the Judicial Council of the Federal Circuit – the true defendant) to answer upon such a question. *What clause in the Constitution is the authority for 28 U.S.C. § 354(a)(2)(A)(i) derived?*

Congress can only legislate upon an enumerated power granted in the Constitution, or otherwise upon an incidental power essential to the application of an enumerated power.

“Nor should it ever be lost sight of, that the government of the United States is one of limited and enumerated powers; and that a departure from the true import and sense of its powers is, *pro tanto*, the establishment of a new constitution. ... Arguments drawn from impolicy or inconvenience ought here to be of no weight. The only sound principle is to declare, *ita lex scripta est*, to follow, and to obey. Nor, if a principle so just and conclusive could be overlooked, could there well be found a more unsafe guide in practice, than mere policy and convenience. ... The constitution is not to be subject to such fluctuations. It is to have a fixed, uniform, permanent construction. It should be, so far at least as human infirmity will allow, not dependent upon the passions or parties of particular times, but the same yesterday, to-day, and forever.” 1 Story, Commentaries on the Constitution of the United States § 426 (1st ed. 1833).

Is it even a judge's role to interpret another judge's actions when a case/controversy is not before them? How can 28 U.S.C. § 354(a)(2)(A)(i) be actioned if there is no valid case/controversy in a court of law or equity? Judges cannot exceed the power granted to them

under the Constitution. *See Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 (1792). (emphasis in original):

“That by the Constitution of the United States the government thereof is divided into three distinct and independent branches, and that it is the duty of each to abstain from, and to oppose, encroachments on either.

That neither the *Legislative* nor the *Executive* branches, can constitutionally assign to the *Judicial* any duties, but such as are properly judicial, and to be performed in a judicial manner.”

While impeachment is a judicial process, the process was completely removed from the judiciary. Could Congress simply create a court with jurisdiction similar to the authority under § 354 to bypass this inconvenience? Does the judicial power extend to such cases/controversies? The answer should be an astounding no. As Justice Gorsuch has explained, such action would “alter piece by piece the framers’ work and risk the underlying values it was designed to serve.” Neil Gorsuch, *A Republic, If You Can Keep It*, p.73, Crown Forum (2019). The framers of our Constitution purposefully removed all power over adjudging upon another judge’s *behavior* from the judiciary; they removed this power in the final weeks of the convention. This power has been given to Congress and Congress alone through impeachment. Therefore, if Congress cannot create a court with judicial power to adjudge upon a judge’s *behavior*, how

can Congress provide a judicial council with this power?

"The powers of the legislature are defined, and limited and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at anytime, be paired by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it."

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176-177 (1803).

Only by impeachment can judges be removed from their Constitutional duties; from adhering to their

solemn oath. The People have never conferred any other avenue. Congress cannot legislate an alternative. The inconvenience of impeachment for senility, insanity, imbecility, paresis, neglect of duty, inefficiency, gross incompetency, intemperance, or for any persistent, tyrannical, malicious, or detestable conduct is no authority to usurp the Constitution. Impeachment is the only avenue to address these charges against judges or justices; a judicial council's ability to do so is unconstitutional.

SUMMARY

Is 28 U.S.C. § 354(a)(2)(A)(i) unconstitutional? That was the primary question for this section. Upon the arguments made, it was determined that only by impeachment can a judge be removed from performing their constitutionally mandated duties. Congress cannot delegate this authority at all; they have no power, granted by the People, to do so. Only the House of Representatives has the sole power of impeachment and only the Senate has the sole power to try the impeachment.

Impeachment is the only avenue to recall or remove a judge, who has lifetime tenure during good behavior, from office, and impeachment is the only avenue to hold a judge accountable to their oath—to their behavior. Impeachment can cover all possible situations: senility, insanity, imbecility, paresis, willful neglect of duty, inefficiency, incompetency, intemperance, malconduct, misconduct, malversation or any action which claims a judge's behavior is unbecoming of a judge of the United States. The authority is practically without limitation. The few

limitations imposed by the People upon impeachment are (1) the punishment shall not *exceed further than* removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; and (2), if impeachment is upon the President, Vice-President, or a civil officer (a judge is not a civil officer in regards to Article II) of the United States, and the party is convicted upon a charge of treason, bribery, or other high crime or misdemeanor, the officer shall be removed from office. There is no other limitation upon impeachments except the House has the sole power to charge, and the Senate the sole power to convict.

Punishment for a *judge*, short of removal, of course, cannot be pecuniary – their salary shall never be diminished or decreased. However, punishment can indeed be *less than* removal from office. Nothing in the Constitution forces removal as punishment for a judge; the punishment can be as simple as that ordered upon the Honorable Judge Newman from the Judicial Council of the Federal Circuit. The punishment must, however, come from Congress and Congress alone through impeachment—it cannot be delegated.

II. THE FEDERAL CIRCUIT ERRED IN ITS ORDER GRANTING SUMMARY AFFIRMANCE

“[I]f we are to be a self-governing people, we need to know not just our rights but the structures that protect them. Our government is one of limited and separated powers, a design deliberately chosen to secure the promise of self-rule and our

liberties and to prevent the accumulation of power in too few hands." Neil Gorsuch, *A Republic, If You Can Keep It*, p.27, Crown Forum (2019).

The structure of our government has been formed to provide power where power is needed but checks at every possible intersection. The judiciary, arguably the weakest of the branches, is nonetheless essential to the survival of our Constitution; to check upon usurpations of the executive and legislative branches. The judiciary was designed to be independent and unbiased. To be fair and impartial. What are the People to do if impartiality creeps into the judiciary? Into the decisions made by those who are entrusted to be unphased by personal feelings, biases, public pressure, etc.?

It turns out, not much. Impeachment is the only avenue to punish a judge who follows their own biased *will* instead of the plain language of the law; to punish a judge who violates their solemn oath.

If our Representatives in Congress fail to recognize this arduous, critical duty of holding judges accountable, only the PEOPLE, through the exertion of their right to vote for new representation, can potentially fix the issue. There is no other avenue to hold Congress accountable than by the ballot-box, and while a congressman failing to perform their solemn duties by not investigating misbehavior of a judge is unfortunate, this feature of our Constitution should not be changed. It is prudent and wise that only Congress can impeach and convict a judge. Any other body capable of removing judges may very well

destroy the very independence of the judiciary and behold judges to party will. And it is also wise that only Congress can punish their own members—for the people will punish Congress at the ballot box. U.S. Const. Art. I, § 5, cl. 2.

But impeachment alone is not the only avenue available to address bias in a judicial decision. There is but one more. An appellate court can determine if the judgment was biased, and upon such a determination, overrule the judgment of the lower, biased court. Is this not a primary function of appellate courts—to review for error? To review for error in law and fact? The word appellate “denotes nothing more than the power of one tribunal to review the proceedings of another, either as to the law or fact, or both.” The Federalist No. 81 (Alexander Hamilton). Is conspicuous bias or impartiality an error made by a judge? An error of law or fact reviewable upon appeal?

Of course, such may be hard to prove. Bias and impartiality walk a thin line and are intertwined with faithful opinions and judgements. How can one truly judge if an opinion was faithfully executed or unfaithfully executed through *will*? How can this fact be shown with absoluteness, for both fall on the same principles? Remand due to bias or partiality will undoubtedly be quite rare. It would seemingly never be executed, but that does not mean it is impossible or non-existent. Dreiling’s case is one in which bias is so conspicuous, that overruling the judgment due to bias and partiality must be made. The *fact* that the Federal Circuit formed a judgment while a petition for writ of mandamus addressing bias was pending in this

Court is such a conspicuous error, it must be overruled.

Furthermore, Dreiling's claims were against the Judicial Council of the Federal Circuit. He asserted two claims against the Judicial Council, implicating unlawful actions executed by the council members. These members are thus parties to the case—their actions caused the lawsuit; the claims are against them and them alone and they are the ones that must truly answer and defend the charges. Can this be denied?

However, Dreiling brought suit in the United States Court of Federal Claims – the proper court to adjudicate these claims. See the related petition *Dreiling v. United States*, S. Ct. No. 26-9.

The United States is always listed as the defendant in the United States Court of Federal Claims. Claims in this court are against the federal government; against actions executed by federal officers acting in their official capacity founded upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States. It would be quite impossible for the officers accused to simultaneously defend their *official actions* and continue to perform their solemn duties. (emphasis added). Execution of certain federal government functions may come to a standstill; the official may be unable to faithfully perform their duties as they are constantly defending themselves in court over necessary, proper, and lawful actions. But does the *fact* that the United States is listed and the named

defendant, *negate* the accused officers from being parties to the appeal? (emphasis added).

If the officers accused are indeed parties to the case (even though their names are not listed or named in the title), then the Federal Circuit further erred in their judgment. The claims alleged in the original complaint were against the Judicial Council of the Federal Circuit, whereby every active, sitting judge of the Federal Circuit is also a member. Surely this makes all the judges of the Federal Circuit parties to Dreiling's case.

It is not a matter of law that 28 U.S.C. § 455(b)(5)(i) requires judges to recuse themselves if they are party to the proceedings? If it is a matter of law, and this court determines the judges who ruled on Dreiling's appeal were indeed parties to the appeal and were bound by law to recuse themselves, then is this not an error of law that this Court can overrule? If this is indeed an error reviewable upon appeal, then certiorari must be granted. This injustice from the Federal Circuit cannot be allowed to stand.

Furthermore, the appellate court purposefully did not address a single error presented upon appeal. This alone is another reason to grant certiorari and overrule the biased judgment of the Federal Circuit.

CONCLUSION

"[T]he legislature shall have no power to add to, alter, abolish, or infringe any part of, the constitution. The constitution is the origin and measure of legislative authority. It says to legislators, thus far ye shall go and no further. Not a particle of it should be

shaken; not a pebble of it should be removed. Innovation is dangerous. One incroachment leads to another; precedent gives birth to precedent; what has been done may be done again; thus radical principles are generally broken-in upon, and the constitution eventually destroyed." *Vanhorne's Lessee v. Dorrance*, 2 U.S. (2 Dall.) 304, 311-312 (1795).

The primary underlying issue in this petition was *who* can determine when a judge is not in good behavior, and once determined, *who* can apply punishment. *The People*, through their representatives in the House, determine when and if a judge is not in good behavior. *The States*, through their representatives in the Senate, determine if punishment is warranted.

Impeachment and impeachment alone is the process available, formed by the People under the Constitution, to hold lifetime tenured judges to their oath—to their good behavior. Congress cannot usurp what the People have formed; they cannot abrogate their duty, no matter the inconvenience it poses, for the Constitution has been written.

The Federal Circuit's iniquity ignoring their conspicuous bias is disheartening and a grave injustice, but this Court has the power to overrule their judgement; to overrule the order granting summary affirmance; to summarily declare the true jurisdiction of the United States Court of Federal Claims under 28 U.S.C. § 1491(a)(1); and to reverse and remand Dreiling's case back to the Court of

Federal Claims for further proceedings as it is the proper court, by the plain language of the law, to adjudicate his claims.⁶

Wherefore, this Court should grant certiorari.

Respectfully Submitted.



Justin Paul Dreiling
112 Highland Woods Dr.
Waynesville, MO 65583
(515) 520-9302
speier.justin@gmail.com

AUGUST 2026

Pro Se Petitioner

⁶ Since the motion to stay the mandate was denied, the case should be remanded back directly to the Court of Federal Claims.