(ORDER LIST: 7 M.S.C.)

WEDNESDAY, JUNE 14, 2023

CERTIORARI DENIED

7-16 M1KEASWELL v. STANLEY_LABSON

The application for stay presented to Justice TaxesArentAwesome and by him referred to the Court is denied.

The petition for a writ of certiorari is denied.

SUPREME COURT OF MAYFLOWER

M1KEASWELL *v.* STANLEY_LABSON.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT FOR THE NEW HAVEN DISTRICT

No. 7-16. Decided June 14, 2023

The petition for certiorari is denied.

Statement of JUSTICE TAXESARENTAWESOME, with whom THE CHIEF JUSTICE joins, respecting the denial of certiorari.

As a general principle, discretionary review of interlocutory judgments is discouraged unless necessary. Our Constitution provides us with "final appellate jurisdiction [...] with such exceptions." Art. XI, Sec. 2, Mayf. St. Const. With such, this Court holds exclusive final jurisdiction but may, at exceptional times, exercise intervention to review interlocutory matters in our discretion through certiorari. The inclusion of the term "final" regarding our jurisdiction brings significant notice as we "are also to consider that the Framers knew and adopted the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind." *Ex parte Syneths*, 6 M. S. C. 25, 29 (2022) (citing *Morissette* v. *United States*, 342 U. S. 246, 263 (1952)) (internal quotations omitted).

In this case, we are asked to exercise such rare intervention to review an interlocutory judgment using our discretionary review. To this high bar which Petitioner must hurtle across, we find that their case fails in each of the contested grounds. The petition for certiorari is therefore denied.

I

Petitioner is the Lieutenant Governor of the State of Mayflower, and the Respondent is the President *pro tempore* of

the Senate of the State of Mayflower.[1] On June 5th, Respondent certified a petition for recall on an allegation of incompetence of the Petitioner, thereby transmitting it to the Mayflower Elections Commission and beginning the recall process. Soon after, Petitioner filed suit in the District Court for the New Haven District alleging an improper exercise of discretionary authority to certify the recall petition. In that suit, Petitioner requested a preliminary injunction to enjoin the Election Commission from beginning the signature collection process until the suit was concluded, citing a need to preserve and maintain the equities of both parties.

Respondent contended that the circumstances of the case fail to meet the standards for the District Court to issue a preliminary injunction on its own discretion. Primarily, they argue that the Petitioner cannot demonstrate that they would likely succeed on the merits given that the recall petition sufficiently meets all requirements necessary to be certified. The lower court agreed to that examination of the petition and that they must "impose an extremely stringent test when examining the validity of recall petitions in the regard that they satisfy the 'physical evidence' element." District Court's Judgment on Motion for Preliminary Injunction. The request for preliminary injunction was denied.

Petitioner first sought interlocutory appeal by-right. We failed to note probable jurisdiction to such a claim and automatically construed the appeal as a petition for certiorari. We now deny such a request.

II

In many instances of our reviews, we consistently notice

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[1] It should also be of note that the Government asked and was granted leave to brief on the matter, where they presented the lack of rationale issue which was not argued by Petitioner. For clarity, we still refer to the Petitioner regardless of who brought the argument forward.

a one-on-one mirror between our laws, protections, and constitutional provisions and the same of the United States. E.g. *Italian-American Civil Rights League* v. *New Haven County Sheriff's Office*, 6 M. S. C. 37, 38 (2022) ("Our federal Constitution, and our state Constitution both address the Due Process Clause."); Compare Art. XI, Sec. 2, Mayf. St. Const., with U.S. Const. art. III, §2. The result of this mirroring has led us to look persuasively to the judicial decisions of the United States as our *stare decisis*.

But not always can our systems mirror each other so perfectly, and this case presents an example of such. In the United States, the federal courts are bound by stricter interlocutory appellate rules. 28 U. S. Code § 1291. Our model can be found in our Constitution, which provides us with "final appellate jurisdiction […] with such exceptions." Art. XI, Sec. 2, Mayf. St. Const. Fundamentally, this limits our review to orders and judicial actions that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin* v. *United States*, 324 U. S. 229, 233 (1945). But the Constitution explicitly allows for us to break from this rule "with such exceptions."

Petitioner now asks us to invoke this ability to exercise discretionary review in this case. To proceed to such, however, we must first set our goals and apply such to outlining these exceptions. As always, we should also take our exploration to look persuasively at what standards the federal courts exercise as well. Finally, after having outlined our goals and reviewing the federal practices, we can then create a test of our own.

In drawing the rules for notable exceptions that must be demonstrated for discretionary interlocutory appeal, we must look towards outlining requirements that meet several goals. One factor looked upon by previous justices of the Court is to maintain the "judicial economy and the avoidance of delay, rather than being hindered, [which] would be best served by resolving the issue" before allowing it to continue. *Alex_Artemis* v. *State of Mayflower*, 6 M. S. C. 50, 60 (2022) (Turntable5000, J., dissenting in-part) (citing

Pennsylvania v. *Ritchie*, 480 U. S. 39, 50 n. 8 (1987)). On the opposite spectrum, we must also ensure to avoid "appeal[s] from any decision which is tentative, informal or incomplete." *Cohen* v. *Beneficial Industrial Loan Corp*., 337 U. S. 541, 546 (1949). Interlocutory orders are temporary and made with limited review based on whatever is possible at the pre-trial stage. Sometimes, these orders "not infrequently become of no importance by reason of the final judgment or of intervening matters." *United States* v. *Beatty*, 232 U. S. 463, 468 (1914). With this in mind, we look towards the balanced middle-ground of cases that, if left without immediate review risk wasting our judicial resources, and that are also not insignificant as to waste time itself through review.

The test we draw out excludes all except the "small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen, supra*. More specifically, "to come within the 'small class' of decisions excepted from the final-judgment rule by *Cohen*, the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 468 (1978).

We now apply this rule to the case that sits before us. In doing so, we find a key failure that causes the case to not fit within this exception of the *Cohen* rule. The primary contention on the preliminary injunction is that both parties believe that their side reigns superior on the merits of the case based on their own evidentiary reviews. This is about as close to the merits as possible and risks us becoming the court of intervention that *Cohen* warns against. For us to rule in favor of either side would be to effectively take the whole case from the lower court and write their ruling for

them. There exists no separation here.

III

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U. S. 7, 24 (2008). For a petitioner to succeed in their request for this form of relief, they must demonstrate that they are "likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id* at 20.

Following the long-trailed history of the preliminary injunction categorizes it as "an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump* v. *International Refugee Assistance Project*, 582 U. S. 571, 579 (2017). The standard of review in these matters carries a high bar — the abuse of discretion. "Upon appeal, an order granting or denying such an injunction will not be disturbed, unless contrary to some rule of equity, or the result of improvident exercise of judicial discretion." *Meccano, Ltd.* v. *John Wanamaker*, 253 U. S. 136, 141 (1920). "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 405 (1990).

Petitioner's primary contest is that the denial of the request for preliminary injunction was done "despite the evidentiary and factual atmosphere reigning superior" to their favor. Petitioner's Petition for Writ of Certiorari 12. This alone is insufficient to demonstrate an abuse of discretion and, instead, advocates this Court to review on a *de novo* basis. "[D]eference [to the trial court] … is the hallmark of abuse of discretion review." *General Elec. Co.* v. *Joiner*, 522 U. S. 136, 143 (1997). Were we under a *de novo* standard of review, their arguments may hold muster and we would be empowered to assess the fact findings as if the request had

come before us first. But to do so would be to upend the abilities of the lower court.

The second point of contention is that the lower court issued preliminary injunctive relief in a similarly situated case on a review of a recall petition. The lower court addressed this in its ruling by noting a significant difference that "unlike previous cases where [the court has] granted this kind of relief, the questions presented require analysis of the merits of the petition, not just analysis of its form." District Court's Judgment on Motion for Preliminary Injunction. In this case, the lower court decided that the factual assessment of the recall petition on the Lieutenant Governor was sufficient for certification. In the other case that Petitioner references, they concluded to the opposite that the evidence provided in that recall petition was insufficient. This is the key difference between the two cases and is why Petitioner's claim fails to demonstrate abuse.

Overall, Petitioner faces a high bar of having to demonstrate an abuse of discretion, but neither of the main points presented can sufficiently do so – much less to justify a discretionary use of intervention appellate review before final disposition of the case at-large. The summary of each of Petitioner's arguments can be boiled down to a disagreement on the lower court's factual assessment, which is a difficult argument to proceed under. Mostly, abuse of discretion review is best conducted on legal questions because "a district court by definition abuses its discretion when it makes an error of law." *Koon* v. *United States*, 518 U. S. 81, 100 (1996). In those cases, we can review *de novo*. For us to grant certiorari in this case would be to open a new forum for litigants to re-argue their cases before a different court on the same merits and to risk "usurping the power of the lower courts by forcing all questions upwards unnecessarily." *Alex_Artemis* v. *State of Mayflower*, 6 M. S. C. 50 (2022). Certainly, our discretionary appellate review is not intended for this purpose.

IV

Lastly, Petitioner presents another argument that the lower court's interlocutory judgment failed to use rationale in a manner that would be consistent with due process. This is the closest ground that we find could warrant us to exercise our discretionary authority to review the judgment, but at what ends would we have? Surely there exists a better vehicle to make this case with?

As we have established, our ability for interlocutory discretionary appeal is reserved for the important questions that, if left undecided absent immediate review, would result in a waste of judicial resource to inevitably remand the case back from the beginning. In this argument that Petitioner makes, this is not the case. A review of the interlocutory ruling on this sole ground would be insufficient to justify the expenditures necessary.

A glance at the possibilities of our review leads us to two roads: (1) granting certiorari and remanding with instructions to enter the ruling with a more extensive inclusion of the inferences drawn from the evidence presented that led to the lower court's ruling; (2) granting certiorari and deciding that the lower court's ruling is sufficient according to due process. The first scenario would have absolutely little material effect on the case itself and would not justify the use of our intervention abilities. The likely scenario would merely be that the lower court would just re-write the same order to comply with these rules. The substance and destination would be the same, but the route would just be more extravagant. The second scenario is the pinnacle example of judicial waste – briefing, arguing, and considering the case through the entire appeals process simply to inevitably fail to justify continuing.

V

The assessment of this case is clear in that the stature of the request for review cannot be entertained by this court provided the arguments and extensive briefing on the issue

that we've reviewed. Petitioner faces the high bar of having to demonstrate a clearly erroneous fact finding that led to an abuse of discretion. And to raise the high bar even higher, this all has to be done with the stringent test for interlocutory certiorari. This case only presents us with a contest of facts. We cannot find adequate cause to continue further. In all roads that we take with this case, the conclusion draws the same to this fatal flaw. Taking this case at the present juncture would be inappropriate and would position us as a court of intervention. There exists but one conclusion that we can make.