Syllabus

# ITALIAN-AMERICAN CIVIL RIGHTS LEAGUE EX RELS. ANTHONYPANCI ET AL *v.* NEW HAVEN COUNTY SHERIFF'S OFFICE ET AL.

ON APPEAL FROM THE DISTRICT COURT FOR THE DISTRICT OF NEW HAVEN COUNTY

No. 06-08. Argued December 6, 2022—Decided December 10, 2022.

The Italian-American Civil Rights League brought forth a suit on behalf of three plaintiffs, two of which were tourists, against the New Haven County Sheriff's Office, and the Plymouth Police Department, alleging that the departments violated a string of rights that are secured by every person in our state. The Appellants submitted a motion to recuse to the presiding judge, alleging that there was a strong possibility of bias. The presiding judge denied the motion citing that there was not a strong possibility of bias. Appellants then submitted a notice of appeal, and a jurisdictional statement to this Court invoking our automatic review, pursuant to the appeal by right mechanism located in our state Constitution.

*Held*: The presiding judge in the lower court was constitutionally required to recuse from the action. Pp. 38–45.

(a) The right to a fair trial, with a fair and neutral arbiter presiding, is engrained into the Due Process Clause. P. 38.

(b) A judge is constitutionally required to recuse from a case under the Due Process Clause in any situation where they have "a direct, personal, substantial, pecuniary interest," *Tumey* v. *Ohio*, 273 U. S. 510, 523, in the disposition of a case; or where "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionnally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47. Determining whether a situation meets the constitutional level of intolerance is something that must be decided on a case-by-case basis. There need not be any actual bias, rather, the mere probability of such is enough. *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. 868. Pp. 40–42.

(c) The comments made by the presiding judge in the lower court indisputably met the constitutional level of intolerance. The disparaging comments targeted a class *en masse*, accompanied by the various legal declarations that he made, creates a strong possibility where the partiality of the presiding judge may be reasonably

questioned, and the mere appearance of such cannot be tolerated. Pp. 42–45.

Judgement reversed and remanded.

TURNTABLE5000, J., delivered the opinion for a unanimous court. PARMENIONN, J., filed a concurring opinion.

Justice Turntable5000 delivered the opinion of the Court.

Arbiters of the law swear an oath prior to assuming the duties of their respective office: it is our emphatic duty to "hold no prejudice and administer justice irrespective of the persons before [us]," Art. XIV, Mayf. St. Const, and we are obligated to "impartially discharge the duties of our office." *Ibid*. Such is the manifest duty of the arbiters of law; this recognition is what has placed the foundations of what we now recognize as the various Due Process protections levied upon the masses.

Our federal Constitution, and our state Constitution both address the Due Process Clause. With the Due Process Clause, a plethora of protections are granted to everyone in the country. One of these protections include the right to have a fair arbiter preside over a trial. After all, "[i]t is axiomatic that [a] fair trial in a fair tribunal is a basic requirement of due process." *Caperton* v. *AT Massey Coal Co., Inc*.,

556 U. S. 868, 876 (2009) (internal quotation marks omitted) (citing *In re Murchison*, 349 U. S. 133, 136 (1955)). And "[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." *Ibid*., (citing The Federalist No. 10, p. 59 (J. Cooke ed.1961) (J. Madison)).

We are presented with a case where the presiding

judge in the lower court denied a motion for his recusal. Appellants submitted a jurisdictional statement, invoking our automatic review of any case, so long as it meets the stringent standards located in our state Constitution. Art. XI, Sec. 3, Mayf. St. Const.

We noted probable jurisdiction to determine whether the judge was constitutionally required to recuse under the Due Process Clause. We hold that he was.

## I

In October 18, Appellants initiated a lawsuit against two departments: the New Haven County Sheriff's Office, and the Plymouth Police Department. Appellants alleged a string of grievances, targeted towards two law enforcement officers being sued in their official capacity. Appellants claimed that the Defendants utilized excessive force, engaged in an arbitrary arrest, and that they ultimately deprived the Appellants of their rights.

The Italian-American Civil Rights League brought an *ex rel* suit, on behalf of three Plaintiffs; two of the three were tourists. The Appellants submitted a motion for the presiding judge to recuse from the action, on October 20, citing that that presiding judge, *inter alia*, has made disparaging comments towards tourists en masse. The Presiding Judge then denied the motion for his recusal, citing that he was not constitutionally required to recuse from the action.

Appellants submitted their notice of appeal, and their jurisdictional statement asserting that their situation qualifies for automatic review pursuant to the appeal by right clause of our state Constitution. We agree that a motion for a judge's recusal may be brought to this Court in the form of an interlocutory

appeal. As such, we noted probable jurisdiction to consider whether the presiding judge was constitutionally required to recuse from the matter under the Due Process Clause.

## II

We must first consider the expansive nature of the constitutional requirement to recuse from an action, prior to applying it to the actions exhibited by the presiding judge in the lower court.

Receiving a fair trial is one of the most fundamental protections that the Due Process Clause guarantees to the people. A trial cannot truly be fair with a partial arbiter, one with their duties and obligations elsewhere. The Framers noted this, and it is patently clear that judges are to constitutionally recuse themselves from any action where their impartiality may be reasonably questioned.

Initially, the Supreme Court adopted a stringent standard that required a judge to recuse from a case when they have "a direct, personal, substantial, pecuniary interest" in the disposition of a case. *Tumey* v. *Ohio*, 273 U. S. 510, 523 (1927). However, the Court has since then expanded the Due Process Clause to require a judge to recuse when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975). By considering the mere probability of actual bias, the Supreme Court noted that there need not be any *actual* bias.

But what factors contribute to the rise of such probability? When does the probability rise to a standard that is constitutionally intolerable? Each case presents distinct facts, which is precisely why it is so hard to

pinpoint a steadfast principle that all arbiters can turn to; there is no one-size-fits-all approach here, rather, this unconstitutional probability of bias "cannot be defined with precision." *Aetna Life Ins. Co.* v. *Lavoie*, 475 U. S. 813, 822 (1986) (quoting *Murchison*, *supra*, at 136). This is precisely why it will require the Court to analyze the facts uniquely, and delicately on a case-by-case basis, to ultimately determine whether the probability has risen to a level of constitutional intolerance. The essence of these facts comports with the constitutional standards that this Court has supported thus far, and it is vital for it to be adhered to.

But once more, there need not be *actual* bias. The mere probability of such is enough. The simple fact remains that "[d]ue process may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *Caperton*, 556 U. S., at 886 (quoting *Murchison*, 349 U. S., at 136). Failure to recuse when one is constitutionally required to do so, indisputably trudges deep into a dangerous territory. It would label itself as a violation of due process, which is precisely why our state Constitution outlines the failure to recuse as one of the *six* situations where an individual may appeal *by right*, directly to this Court meriting its automatic review. Extreme cases where the circumstances likely cross into constitutional limits demands "this Court's intervention and formulation of objective standards." *Caperton*, *supra*, at 887.

Nonetheless, there are two situations where a judge is constitutionally required to recuse himself from an action: (1) the judge must have a financial interest in

the outcome of a case; or (2) there must be a strong *possibility* that the judge's decision will be partial. *Caperton* v. *AT Massey Coal Co., Inc.*, 556 U. S. 868 (2009). We are bound to follow the ruling produced by the Supreme Court, and it is binding on this land without a doubt.

The issue that has percolated in the lower court primarily revolves around the second situation where a judge is constitutionally required to recuse under the Due Process Clause. We will not consider the first situation, as that matter is not before us, therefore, we will not expand on it incessantly. *Ex Parte Syneths*, 6 M. S. C. 21, 30 (2022).

## III

With a firm standard in mind, we can move to analyze the actions taken in the lower court. Appellants in the lower court alleged that the presiding judge exhibited behavior that would indeed invite reasonable uncertainty as to the judge's impartiality. We agree.

The presiding judge made numerous comments that were indisputably disparaging to the class of non-citizens. It is evident that the presiding judge attempted to substantiate these claims as he verbally stated that tourists are not protected by the Privileges and Immunities Clause of the Fourteenth Amendment. Such a legal declaration absent any case would indisputably create uncertainty in the mind of a reasonable person. Ordinarily, if such a claim was substantiated through "opinions formed by the judge on the basis of facts introduced or events occurring in the course of . . . prior proceedings," *Liteky* v. *United States*, 510 U. S. 540, 555 (1994), only then would it not constitute as the basis for recusal. However, here

we are presented with a series of statements, most of them unprovoked, where the presiding judge has openly shared such disparaging comments that would indisputably be presented in a future case, and that case has arrived here.

The possession of standing is one of the most vital components of a case. By making numerous statements regarding the validity of a tourist's ability to seek redressal and remedy from the judicial system, the presiding judge has virtually made it intolerable for him to preside over any case that directly involves a tourist's ability to litigate. Such a topic is certainly not settled law in our State, and it is still ripe for fierce debate; nonetheless, the presiding judge's comments have raised the probability of bias to a level of constitutional intolerance.

Regarding the order refusing to recuse from the case, the presiding judge noted that these comments were "simply made for the gag." See Order Denying Recusal. It certainly does not appear this way. A reasonable person can peruse through the context, and they will inevitably be led to the same conclusion: the presiding judge has made bold claims, substantiated by legal arguments furthered by him, and a large amount of these statements were unprompted. A contextual analysis does not yield fruitful results in favor of the presiding judge, instead it does quite the opposite. The guise of a gag cannot be asserted to cloak situations where the messages sent indubitably mark the presiding judge in a position where his decision and impartiality may be questioned. In this instance, there is certainly a strong possibility present, therefore, the

presiding judge is constitutionally required to recuse from the action.

## IV

This decision today revolves around an ancient tenet revered by scholars, and analysts alike: the constitutional standard of recusal under the Due Process Clause. It is reserved for the very two situations that we have reiterated above; for anything else, the state may adopt stricter standards of recusal. *In Re Xolaaz*, 6 M. S. C. 15 (2022).

The situation before us is one that must be decided in an interlocutory appeal, as it is vital for the arbiter to remain neutral and disjunct from all forms of partiality. In this matter, the presiding judge failed to recuse when he was constitutionally required to do so, as such, the Court has taken the proper measures to remedy the error. This is a situation that should very rarely find itself on our docket, the constitutional implications of the Due Process Clause will solely revolve around the situations we have noted above here.

The presiding judge's disparaging comments create a strong possibility of bias against tourists *en masse*, due to his open declarations that cannot reasonably be defended under any claim of them being mere jests. The sanctity of the judiciary is paramount. We have "always carried a special duty to 'jealously guar[d]' the Constitution's promise of judicial independence." *Kisor* v. *Wilkie*, 139 S. Ct. 2400, 2438 (2019) (ROBERTS, C. J., concurring) (citing *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 60, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (plurality opinion). After all, "[i]t is the design of the law to maintain the purity and impartiality of the courts." *McClaughry* v. *Dem-*

*ing*, 186 U. S. 49, 67 (1902). There are only so many steps that we can take, to ensure the impartiality and the paramount nature of the judicial branch; judges must recuse when they are constitutionally required to do so, and failure to do so indisputably stains the image of our impartiality, and the very oath that we swore prior to wearing our robes.

* * *

The judgment of the Mayflower District Court for the New Haven District is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

Justice PARMENIONN, concurring in the judgment.

I concur with my colleagues on the Court entirely. I write separately to only voice on one topic: an interlocutory appeal. This method of appeal has never been opined on in our Court's history. I wish to write separately on this topic alone to bring light to it, so it is at the forefront of our legal community.

I

The Supreme Court of the United States opined that an appeal may be made during the proceedings of a court case if it satisfied three prongs—(1) the matter appealed was conclusive on the issue presented; (2) the matter appealed was collateral to the merits; and (3) the matter appealed would be effectively unreviewable if immediate appeal were not allowed. See *Lauro Lines s.r.l.* v. *Chasser*, 490 U. S. 495 (1989). The prongs in the cited case comes out of a federal stat-

ute—one which is not applicable in our courts, Title 28, section 1291 of the United States Code. While the code is not applicable in our courts, for we are not a federal court; we are a state one—we are still able to apply *Chasser* to our legal affairs. For our purposes, we consider a final judgment as "a decision by the district court that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 521 (1988), quoting *Catlin* v. *United States*, 324 U. S. 229, 233 (1945). Therefore, when a party feels as though a judge has erred along the way—on the basis of a constitutional, statutory, or procedural matter—they may appeal, given the "narrow exception to the normal application of the final judgment rule [that] has come to be known as the collateral order doctrine." *Midland Asphalt Corp.* v. *United States*, 489 U. S. 794, 798 (1989). That exception is for a "small class" of prejudgment orders that "finally determine claims of right separable from, and collateral to, rights asserted in the action, [and that are] 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*, at 546. Our colleagues on the esteemed and highest Court of the land have said that for one "to fall within the *Cohen* exception, an order must satisfy at least three conditions: "It 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.'" See *Lauro Lines s.r.l.* v. *Chasser*, 490 U. S. 495 (1989), quoting *Richardson-Merrell Inc.* v. *Koller*, 472 U. S. 424, 431 (1985) and *Coopers* & *Lybrand* v. *Livesay*, 437

U. S. 463, 468 (1978).

For present purposes, I need not go into exploring these three prongs; the majority already does so in a swiftly fashion.

It was reiterated that the "general rule" of an order is "effectively unreviewable" only "where the order at issue involves 'an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.'" *Midland Asphalt Corp.*, *supra*, at 798, quoting *United States* v. *MacDonald*, 435 U. S. 850, 860 (1978). In civil cases, it has been held that the denial of a motion to dismiss based upon a claim of a motion to dismiss based upon a claim of absolute immunity is immediately appeal prior to final judgment, *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742-743 (1982), "for the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action," *Mitchell* v. *Forsyth*, 472 U. S. 511, 525 (1985). And claims of qualified immunity may be pursued by immediate appeal, because qualified immunity "is an immunity from suit." Id., at 526. Similarly, in criminal cases, it has been held that the deprivation of a right not to be tried is effectively unreviewable after final judgment and is immediately appealable. *Helstoski* v. *Meanor*, 442 U. S. 500 (1979) (denial of motion to dismiss under the Speech or Debate clause); *Abney* v. *United States*, 431 U. S. 651 (1977) (denial of motion to dismiss on double jeopardy grounds). See *Midland Asphalt Corp.*, *supra*, at 801 ("A right not to be tried in the sense relevant to the Cohen exception rests upon an explicit statutory or constitutional guarantee *that trial will not occur*") (emphasis added).

On the other hand, the collateral order doctrine has not been decided whether it is applicable in situations where a district court has denied a claim, not that the defendant has a right not to be sued at all, but that the suit against the defendant is not properly before the particular court because it lacks jurisdiction. In *Van Cauwenverghe* v. *Biard*, 486 U. S. 517 (1988), a civil defendant moved for dismissal on the ground that he had been immune from service of process because his presence in the United States had been compelled by extradition to face criminal charges. It was noted that, after *Mitchell*, "[t]he critical question. . . is whether 'the essence' of the claimed right is a right not to stand trial," 486 U. S., at 524, and held that the immunity from service of process defendant asserted did not amount to an immunity from suit—even though service was essential to the trial court's jurisdiction over the defendant. See also *Catlin* v. *United States*, 324 U. S., at 236 (order denying motion to dismiss petition for condemnation of land not immediately appealable, "even when the motion is based upon jurisdictional grounds").

When first formulating the doctrine in *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949), we said that it permits interlocutory appeal of final determinations of claims that are not only "separable from, and collateral to, rights asserted in the action," but also, it was immediately added, "too important to be denied review." *Id.*, at 546 (emphasis added). Later cases have retained this significant requirement. For example, in *Abney* v. *United States*, 431 U. S. 651 (1977), in order to qualify for immediate appeal, the order must involve "an *important* right which would be 'lost, probably irreparably,' if review had to await

final judgment." Id., at 658 (emphasis added), quoting *Cohen*, *supra*, at 546. And in *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463 (1978), the order must "resolve an *important* issue completely separate from the merits of the action." Id., at 468 (emphasis added). See also *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 522–527 (1988); *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 276–277 (1988); *Richardson-Merrell Inc.* v. *Koller*, 472 U. S. 424, 431 (1985); *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U. S. 1, 12 (1983); *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742 (1982).

Nevertheless, the same judgment applies—if anything, *a fortiori*—when the right has been created by private agreement. See *Lauro Lines s.r.l.* v. *Chasser*, 490 U. S. 495 (1989) (Scalia, J., concurring).