Syllabus

AWESOMEPIAYS *v.* NEW HAVEN COUNTY SHERIFF'S OFFICE ET AL

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

No. 06-10. Argued December 10, 2022—Decided December 28, 2022.

AwesomePIays brought forth a lawsuit against the New Haven County Sheriff's Office, alleging a string of violations while invoking three other individuals in their official capacity, and joining them to the lawsuit. JasonDeLuca, a District Court Judge, was the presiding judge over the matter. Appellant, AwesomePIays submitted a motion for his recusal, citing an interaction that they both shared over a year ago. During this interaction, the Appellant threatened litigation against the presiding judge. The presiding judge denied the motion for his recusal. Appellant then submitted a notice of appeal triggering our appeal "by right" jurisdiction pursuant to our state Constitution.

Held: District Court Judge JasonDeLuca was not constitutionally required to recuse from the action, under the Due Process Clause of our state and federal Constitution. Pp. 71–78.

(a) Our appellate jurisdiction is forked into two categories: (1) discretionary appellate jurisdiction; and (2) mandatory appellate jurisdiction. This matter was brought forth under our "mandatory" appellate jurisdiction that revolves around the appeal "by right" clause in our Constitution. Art XI., Sec. 3, Mayf. St. Const. Our appeal "by right" jurisdiction is limited to the questions where we noted probable jurisdiction. Any other question that does not interact well with the situations in Art. XI., Sec. 3, of our state Constitution must be filed under a writ of certiorari and fall under the category of our discretionary appellate jurisdiction. Pp 72–74.

(b) In determining whether a judge is constitutionally required to recuse from an action, we have already established that it must be reviewed on a case-by-case basis. *Italian-American Civil Rights League* v. *New Haven County Sheriff's Office*, 6 M. S. C. 33. We have decided to add an extra step that was previously glossed over: one where we employ the "average" judge as a pincushion model that is designed to face the exact circumstances that the presiding judge endured in the lower court. Pp. 75–78.

(1) The "average" judge is one of commitment and dedication. They are poised and held to the oath that they swore prior to putting on their robes. They are certainly no dullard, and they are armed with a judicial arsenal; one filled with tools that they are well-versed with. Pp. 76–77.

(2) The average judge is also expected to withstand the most menial attacks on their characteristics and their ability to interpret the law. They are hardened individuals who stick true to their word. Pp. 76–77.

(c) The mere threat of litigation does not rise to a level of "constitutional intolerance," *Withrow* v. *Larkin*, 421 U. S. 35, 47, and we cannot require a judge to recuse because of it. The "average" judge would likely remain impartial under the threat of litigation, and the circumstances before us do not indicate otherwise. The probability of any sort of bias is effectively null. The precedent we set in *Italian-American Civil Rights League* v. *New Haven County Sheriff's Office*, 6 M. S. C. 33, is reaffirmed. Pp. 77–78.

Judgment affirmed

TURNTABLE5000, J., delivered the opinion of the Court, in which BLCVLCL, C. J., and LIAMDOSEN, TAXESARENTAWESOME, JJ., joined. PARMENIONN, J., took no part in the consideration or decision of this case.

JUSTICE TURNTABLE5000 delivered the opinion of the Court.

Once more, we are presented with a case that discusses the topic of judicial disqualification; this matter requires more dissection, as it involves a niche subsection of the law that invokes the constitutional standard, where judges must recuse under a subset of standards. We noted probable jurisdiction to solely review the lower court's decision to deny the motion for his recusal.

In the past, we have analyzed the constitutional standard of recusal, and we have clarified that a judge must recuse when "the likelihood of bias on the part of the judge is too high to be constitutionally tolerable." *Williams* v. *Pennsylvania*, 136 S. Ct. 1899, 1903 (2016)

(internal quotation marks omitted) (citing *Caperton* v. *A.T. Massey Coal Co.*, 556 U. S. 868, 872 (2009); *Italian-American Civil Rights League* v. *New Haven County Sheriff's Office*, 6 M. S. C. 33 (2022).

In this matter, we hold that the presiding judge in the lower court did not err in his decision to deny the motion for his recusal. After applying the standards from past Court precedent, we affirm the lower court's decision.

I

On September 27, Appellant initiated a lawsuit against the New Haven County Sheriff's Office, and simultaneously named three separate employees of the Sheriff's Office in their official capacity. Appellant alleged that he was arbitrarily dismissed from the Sheriff's Office, and that such an action constituted as a deprivation of his liberties.

Appellant then submitted a motion for the presiding judge's recusal, citing a string of cases that established the constitutional requirement, that judges are bound to adhere to, cf. *Caperton*, *supra*. The presiding judge then denied the motion for his recusal, citing that the circumstances did not make it evident that there was any strong possibility for his decisions to be partial. Appellant then approached this Court, invoking our appeal "by right" jurisdiction pursuant to the State Constitution. Art. XI, Sec. 3, Mayf. St. Const.

We noted probable jurisdiction solely to remedy and clarify the issues surrounding when a judge is constitutionally required to recuse from an action. In this matter, we hold that he was not.

II

There were many extraneous matters that were

briefed on during this case. Namely the issue revolving around the disqualification of opposing counsel in the lower court, and the request for a mistrial. Under the State Constitution, our jurisdiction is set into three separate categories: (1) original jurisdiction; (2) discretionary appellate jurisdiction; and (3) mandatory appellate jurisdiction.[The word "mandatory" is used here in a way to differentiate our standards of discretionary review. For our "mandatory" review, we are obligated to note probable jurisdiction in matters where it discusses one of the six situations discussed, infra.]

The topic of appeal "by right," most often falls under the ambit of the third set of our cumulative jurisdiction. It is mandatory in the sense that we must note probable jurisdiction when a matter is being appealed, and that very matter involves one of the six different factors, where at least one must be satisfied prior to a party's wish to approach the Court. Our State Constitution names a total of six situations where a case may be directly appealed to Supreme Court, some of which include interlocutory orders which has been expanded upon before under our precedents. *E.g.*, *Italian-American Civil Rights League* v. *New Haven County Sheriff's Office*, 6 M. S. C. 33 (2022) (PARMENIONN, J., concurring). In short, an appeal may be pursued directly to the Supreme Court, so long as one of the six situations are the same as the one the Petitioner is currently in:

> "(1) from an interlocutory or final order or judgment deciding a constitution question; (2) from a final judgment ex-

> ceeding $3,000 in monetary damage; (3) from a final judgment of a sentence exceeding two hours in prison; (4) from an interlocutory or final order directing a government official perform a duty; (5) from a final judgment deciding a question of false arrest; or (6) from an order refusing to recuse from an action." Art. XI, Sec. 3, Mayf. St. Const.

The Petitioner has approached this Court under the guise of the sixth situation in our State Constitution that permits an appeal "by right." See Petitioner's Notice of Appeal. We solely noted probable jurisdiction for the question of whether the presiding judge should have recused from the action. We did not recognize the other two questions. Simply put, "[w]e do not address [an issue that] falls outside the questions on which we [noted probable jurisdiction]." *Lexecon Inc.* v. *Milberg Weis Bershad Hynes & Lerach*, 523 U. S. 26, 42 n. 5 (1998); *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U. S. 87, 103 (1982); *Mayor* v. *Educational Equality League*, 415 U. S. 605, 623 (1974). There are notable exceptions to such a rule, however, we decline to address them at this juncture.

We will not be answering whether the presiding judge in the lower court erred in denying the motion for the disqualification of opposing counsel and whether the presiding judge erred in denying the motion for a mistrial. Our appeal "by right" jurisdiction solely confines us to answer whether the presiding judge erred in denying the motion for his recusal.

III

There is an exigent importance that is embedded into our Due Process Clause: the right to have "[a] fair trial in a fair tribunal." *In re Murchison*, 349 U. S. 133, 136 (1955). Such a right has been expounded upon ever the Supreme Court's analysis in *Tumey* v. *Ohio*, 273 U. S. 510 (1927). Under our own precedent, we have established that a judge is constitutionally required to recuse himself from an action when one of the two situations are satisfied: "(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." *Italian-American Civil Rights League* v. *New Haven County Sheriff's Office*, 6 M. S. C. 33 (2022) (citing *Caperton*, *supra*).

Firstly, the motion for the judge's recusal solely revolved around the "strong possibility" situation of recusal, and not the former that requires a financial interest embedded in the case. It is axiomatic that a judge recuses himself from an action when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitution-ally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975). We have previously held that such a determination is reviewed "on a case-by-case basis, to ultimately determine whether the probability has risen to a level of constitutional intolerance." *Italian-American Civil Rights League*, *supra*. To pinpoint such a level of intolerance would be imprudent, as it "cannot be defined with precision." *Aetna Life Ins. Co.* v. *Lavoie*, 475 U. S. 813, 822 (1986) (quoting *Murchison*, *supra*, at 136).

In this matter, we are presented with a situation where the Petitioner alleges that there is an ambivalent relationship between themselves and the presid-

ing judge. The Petitioner threatened to initiate litigation against the presiding judge a year ago, in the original Mayflower created by KarlXYZ.[In this matter, it should be noted that only the threat of litigation was passed around. No case was ever filed against the presiding judge.] It is true that there need only be a strong possibility of bias, and there need not be any actual bias, for a judge to be constitutionally required to recuse from an action. *Lavoie*, *supra*, at 825. The Supreme Court has employed a different method of review, that revolves around a "model" figure—the "average" judge. *Williams* v. *Pennsylvania*, 579 U. S. ___, ___ (2016) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias") (internal quotation marks omitted)). For this matter, we have chosen to employ such a standard. Under common circumstances, "most matters relating to judicial disqualification does not rise to a constitutional level." *FTC* v. *Cement Institute*, 333 U. S. 683, 702 (1948). However, the case before us contains a series of allegations that revolve around the Due Process Clause.

A

We must cumulatively consider all factors in this matter, and then turn to whether it can be labelled as a point of constitutional intolerance. In all matters, there is a presumption of impartiality, "honesty[,] and integrity in those serving as adjudicators." *Withrow*, *supra*, at 47. We trust the "average" judge to stay true to their oath, and so that they will apply the law impartially, absent any form of external bias. *Republican*

Party of Minn. v. *White*, 536 U. S. 765, 796 (2002) (Kennedy, J., concurring). Nonetheless, the average judge is no dullard, and he is presumed to be acquainted with the law.

B

Now that we have employed an accurate representation of the "average judge," we may now move to consider whether the "model," *inter alia*, would have been neutral in lieu of the presiding judge in the lower court when assigned with the exact same circumstances.

Litigation is certainly an attack on an individual, however, it primarily revolves around the target of litigation. There is a significant reason as to why capacities are invoked in a lawsuit, as well as the "personal" sector of litigation. It is important to note that "not every attack on a judge…disqualifies him from sitting." *Mayberry* v. *Pennsylvania*, 400 U. S. 455, 465 (1971); *Ungar* v. *Sarafite*, 376 U. S. 575, 584 (1964) (holding that an attorney's "disruptive, recalcitrant and disagreeable commentary" was not "an insulting attack upon the integrity of the judge," therefore, the judge was not required to recuse). The *Caperton* Court also employed an "objective" inquiry that revolved around the "average" judge, and whether they would likely be neutral in a similar situation.

The capacity of a lawsuit certainly matters, however, in this instance we will express no opinion as to whether the decision would have resulted differently, if a lawsuit as actually filed against the presiding judge in KarlXYZ's Mayflower. *E.g*., *United States* v. *Mechanik*, 475 U. S. 66 (1986) (declining to comment on what the remedy would be if circumstances were different). In this matter, the mere threat of litigation

is not enough to constitute itself as "a strong possibility that the judge's decision will be partial." *Italian-American Civil Rights League*, *supra* (citing *Caperton*, *supra*).

The threat of litigation is not enough to constitute itself as "an insulting attack upon the integrity of a judge," *Ungar*, *supra*, at 584. To hold the opposite would unduly open the floodgate for several litigants who wish to subvert the system and reach their ideal judge simply by threatening litigation. The "average" judge model in this instance would likely remain impartial, and there is not an unconstitutional potential for bias. We cannot continually extend the Due Process Clause to satisfy the whims of the litigants when ordinary circumstances do not support their requests.

IV

One of the many central tenets of our jurisprudence revolve around the "impartiality of [our] judges in fact and appearance." *Liteky* v. *United States*, 510 U. S. 540, 558 (1994). The Due Process Clause is not an endless book of remedies, it too, has its limitations. Under our precedent, we cannot continually extend its protections outside of what it is ordained to protect. In this matter, the average judge would likely remain impartial under the mere threat of litigation. The judgment of the lower court is affirmed.

Affirmed.