

(ORDER LIST: 4 U.S.)

WEDNESDAY, NOVEMBER 8, 2017

CERTIORARI GRANTED

04-22 ORIGINALGLO V. UNITED STATES OF AMERICA
(Appeal)

Chief Justice Holmes filed an opinion concurring in the grant of certiorari. Justice Bork filed an opinion dissenting from the grant of certiorari.

CERTIORARI DENIED

04-21 ORIGINALGLO V. UNITED STATES OF AMERICA
(Appeal)

HOLMES, C. J., concurring

SUPREME COURT OF THE UNITED STATES

No. 04–22

ORIGINALGLO, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEVADA

[November 8, 2017]

The petition for a writ of certiorari is granted.

CHIEF JUSTICE HOLMES, with whom JUSTICE MARSHALL joins, concurring.

Aside from the final disposition of a case, no action of ours “imports [any] expression of opinion upon [the case’s] merits.” *United States v. Carver*, 260 U. S. 482, 490 (1923). Some of my colleagues apparently disagree. See, *e.g.*, *AIMLOCKED v. United States*, 4 U. S. ____, ____ (2017) (slip op., at 3) (BORK, J., concurring) (after engaging in an exhaustive analysis of the petitioner’s legal claims, concluding that certiorari was improvidently granted). Those disagreements notwithstanding, the simple truth remains: a vote on certiorari should not begin and end with the merits of the case. This is especially true for appeals. The resolution of the legal arguments the raised by an appeal should be left to the “crucible of adversarial testing.” *Maslenjak v. United States*, 582 U. S. ____, ____ (2017) (slip op., at 2) (Gorsuch, J., dissenting).

The dubiousness of the petitioner’s claims aside, this Court exists as a forum for them to be sufficiently argued. I concur in the grant of certiorari.

BORK, J., dissenting

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JUSTICE BORK, dissenting.

In its rush to provide “a forum for [appeals] to be sufficiently argued,” *ante*, at 1 (HOLMES, C. J., concurring), the Court has regrettably forgotten to ask what is undeniably the most important question in these types of matters: What exactly is being appealed? Regardless of our views on the discretionary grant of appeals (they are, in fact, discretionary), we must always seek to answer the types of “antecedent and factbound questions” which our jurisdiction itself is conditioned on. *Scenic America, Inc. v. Department of Transportation*, 583 U. S. ___, ___ (2017) (slip op., at 3) (statement of Gorsuch, J., respecting the denial of certiorari). They are, after all, the most important check on this Court of nine unelected lawyers, and all that stands between it and absolute, unfettered power. In the interest of democracy and the Constitution, I would respect our limitations.

I dissent.