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CASES ADJUDGED

IN

THE SUPREME COURT

IN

JANUARY TERM, 2024

WHOLE TERM

January 1, 2024, through December 31, 2024

Reported by Brenda Popplewell† and Justice Khaled††
Mayflower Independent Reporter

By appointment to the Supreme Court
LANDER, MF : 2025

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† BrendaPopplewell, Visting Professor of Law, Mayflower State University; Committee on Legal Certification, Mayflower State Bar; Legal Director, Black Youth Project (BYP100); Former Chief State Attorney for Fraud & Compliance; Attorney-at-law since 2001.

†† Shah_Khaled, Associate Justice of the Mayflower Supreme Court.

Erratum

JUSTICES

OF THE

SUPREME COURT

AT THE TIME OF THESE REPORTS

TURNTABLE, *Chief Justice*,
TOTORO, *Associate Justice*,
DAVID, *Associate Justice*,
STICKZA, *Associate Justice*,
CABOT, *Associate Justice*,
XIQAQ, *Associate Justice*,
KHALED, *Associate Justice*,
MANDATORY, *Associate Justice*,
NOTABLE, *Associate Justice.*

RETIRED

GIORDANO, *Associate Justice.*

OFFICERS

NOTABLE, *Clerk of Court.*

TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the Mayflower State Code are to the Department of State's 2024 edition.

Cases reported before page 15 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 15 *et seq.* are those in which orders were entered.

CASES ADJUDGED

IN

THE SUPREME COURT

AT

JANUARY TERM, 2024

JERRY'S FLOWER BARN, ET AL. *v.* STATE OF MAYFLOWER*

No. 01-03. Decided November 10, 2024

STICKZA, J., delivered the opinion of the Court.

Jerry's Flower Barn regularly engages in intrastate commerce by hiring and paying employees, advertising its services, and, of course, selling colorful bouquets of flowers to local consumers. Those functions are *purely* commercial activities subject to state laws and regulations governing businesses. As a *de facto* business entity, the Flower Barn is responsible for acquiring "proper licensure and registration" through the state. 1 M.S.C. § 1406. If a business knowingly advertises its services without the required licenses, the Attorney General may seek "an order enjoining... business activity or any fraudulent or illegal acts." *Ibid.*

The Flower Barn has advertised its services several times without a valid license, prompting the Attorney General to file a civil action seeking injunctive relief under §8223. After short proceedings, the district court entered two injunctions. The first injunction prohibits the individual owners of the Flower Barn from owning a business; the second prohibits them from holding a managerial position in *any* company. Those injunctions are far-reaching and have no basis in the statutory text. We reverse.

I

Each year, millions of customers flock to florist shops to buy flowers. Some gift roses to commemorate a wedding; others use lilies to offer their condolences at a memorial. Jerry's Flower Barn sells both; it is the largest flower shop—indeed, the only flower shop—in Mayflower. But when the

*On Petition for Writ of Certiorari to the District Court.

Flower Barn opened its doors three months ago, it left out a crucial step: applying for a business license. Despite that hiccup, the owners of the business pressed forward. In a public statement, the owners announced the "official[] launch[]" of the Flower Barn (Gov't Comp. 3). They also announced hiring opportunities for what they called "the first developer-supported business in Clark County" (at 3). From the moment that the Flower Barn opened its doors, it was not a legally registered business.

In September 2024, the Attorney General announced an investigation into the Flower Barn. He subpoenaed the business owners for "documents to confirm the company's registration status" (at 3). The business owners said that they were registered but "failed to appear…[or] provide any [registration] documents or testimony" supporting that position (at 4). After *weeks* of noncompliance, the Flower Barn still had no proof of a business license. In response, the Attorney General filed a civil action against the business on September 19, seeking an injunction "to prevent further operation of [the Flower Barn]"until it was registered as a business and in compliance with local business laws (at 5). Both owners of the business were summoned but did not file a response.

After five days, the District Court entered a default judgment. In its order, the District Court issued two injunctions and monetary relief. The first injunction prohibits the Flower Barn's owners from "operating any business entity…until they comply with all applicable business registration…requirements" CV-0014-24. The second injunction prohibits the business owners from "holding any officer, managerial, or leadership positions in any business…within the State of Mayflower" *Ibid.* The only way to dissolve those restrictions, the District Court states, is to "[f]ully register the business entity" *Ibid.* The business owners must also pay "civil penalties up to…$150,000" *Id.* at 2. Neither condition of the ruling has been satisfied, meaning that both injunctions remain in effect.

I

At its roots, this is a statutory interpretation case. The owners of Jerry's Flower Barn say that an injunction under §8223 is limited to specific acts; the Government says that courts can enjoin activity they deem "proper" to effectuate their judgment. The latter view is inconsistent

with both plain meaning and legislative intent. The only injunctions that are issuable under §8223 prohibit specific, limited forms of illegal activities. Nothing more. Indeed, §8223 limits injunctions to two narrow categories of conduct: fraudulent or illegal [business] activities. See §8223. An injunction can only be issued under the statute to enjoin the "continuance of such business activity…or any fraudulent or illegal acts" *Ibid.* (emphasis added). Consistent with that understanding, courts can only prohibit a business from continuing to carry out fraudulent or illegal activities; they cannot, however, ban individuals from engaging in all business activity.

Both parties agree that §8223 permits injunctive relief but disagree on *what* the injunctions can prohibit. Consider an example that best illustrates both viewpoints. Bob is a contractor who is being sued under §8223 for building homes without a contractor's license. After a long day in court, the judge issued two injunctions. The first prohibits him from building homes until he has the required license; the second prohibits him from working for *any* contractor until he is licensed. Petitioners suggest that the first injunction is lawful because it prohibits *specific* conduct—the operation of an illegal business. They contend, however, that the second injunction is unlawful because it prohibits activities unrelated to the *specific* illegal conduct. The Government agrees with both injunctions. In its view, because Bob built homes without a contractor's license, he should not be allowed to work for another contracting business—as a secretary at the office or a site sweeper—simply because he broke the law.

A

Sometimes the legislature uses words and phrases for a specific purpose. *See Morrison-Knudsen Construction Co. v. Office of Workers' Compensation Programs*, 461 U.S. 624, 639 (1983) ("Legislative words are not inert, and derive vitality from the obvious purposes at which they are aimed…"). That is why, then, we "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Arlington Central School Dist. Bd. of Ed. v. Murphy*, 548 U.S. 291, 296 (2006). Here, that task is easy, and the specific, purposed language of the statute guides our judgment.

As we understand §8223 injunctions, courts can prohibit two things: the continuance of illegal *or* fraudulent activity. See §8223. The former is part of a broad class of offenses, and the latter is confined to instances of fraud and misrepresentation. By its general terms, §8223 allows courts to enjoin *any* illegal activity. For good reason. Indeed, if Business A is illegally using Business B's trademark for profit, the courts ought to issue an injunction to prohibit Business A from *continuing* to use the trademark. But the courts cannot stop Business A from doing other activities—such as advertising—if it is not using the trademark. That is because the statute limits injunctive relief to "**such** [fraudulent/illegal] **acts**." *Ibid.*

And there is a lot of support for that conclusion. As one Idaho court put it, "[t]he phrase 'such acts' obviously refers to the *specific conduct* the legislature seeks to prohibit." *State v. Flegel*, Docket No. 35117, 4 (Idaho Oct. 18, 2011). The last antecedent rule also teaches that "a limiting clause or phrase . . . should be read as modifying only the noun or phrase that it immediately follows." *Decker v. Nw. Envtl. Def. Ctr. Ga.-Pac. W., Inc.*, 568 U.S. 597, 44 (2013); see also Black's Law Dictionary 1532–1533 (10th ed. 2014) ("[Q]ualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote…"). Here, § 8223's use of the phrase "such acts" refers to acts "described in the preceding sentence." *Nationwide Insurance Company v. Clark*, 3:05CV615DPJ-JCS, 12 (S.D. Miss. Dec. 13, 2006). Under the *Flegel* and *Clark* reading, the legislature did not use the phrase "such acts" to extend judicial authority, but instead to limit it.

The related canon of *expressio unius est exclusius alterius* carries equal weight—if not more weight—than the last antecedent rule. Under that canon, the "express[ion] [of] one item of [an] associated group or series excludes another left unmentioned." *United States v. Vonn*, 535 U.S. 55, 65, (2002) (emphasis added). Under the statute, there are two offenses: illegal or fraudulent acts. See § 8223. Both activities embody a wide range of specific illegal or fraudulent offenses. In this case, the specific "illegal or fraudulent offense" is the Flower Barn's alleged unlawful operation of a business. But the District Court did not enjoin the Flower Barn from running the business without a license; instead, it prohibited its owners from owning any business and working for any employer. Because owning

and working for a legal business is unmentioned in the list of "illegal or fraudulent" activities in § 8223, the District Court's injunction is unlawful.

B

Finally, we reject the Petitioners' argument that the injunctions violate their rights to due process. That argument was raised in this appeal but not in the lower court. The inexorable party presentation rule commands that we will not consider issues that were not raised in the lower court, neither now nor later. Accordingly, we decline to answer the question. The issue simply was not preserved.

IV

To issue an injunction under § 8223, courts must enjoin specific "illegal or fraudulent activities" *Ibid*. Injunctions that bar activities unrelated to the specific illegal or fraudulent conduct exceed our understanding—indeed, the legislature's intended effect—of § 8223. The judgment of the District Court is therefore vacated, and the case is remanded for further proceedings consistent with this opinion. On remand, the District Court may consider if the activities of the Flower Barn's owners are "fraudulent or illegal activities" by owning (or working for) a legal business. That consideration must be guided by our interpretation of § 8223.

It is so ordered.

POPPLEWELL *v.* LAW ENFORCEMENT TRAINING INSTITUTE*

No. 01-05. Decided November 25, 2024

TOTORO, J., delivered the opinion of the Court.

At issue in this case is whether the District Court abused its discretion by dismissing this matter without providing the parties with notice or an opportunity to be heard. We conclude that, where such a *sua sponte* dismissal is based on a lack of subject matter jurisdiction, a District Court neither errs nor abuses its discretion.

I

Petitioner filed suit against the Mayflower Law Enforcement Training Institute, alleging that its requirement that applicants exhibit a "positive personality and attitude" violated, inter alia, the Equal Protection Clause of the United States Constitution. Petitioner claims to suffer from chronic illness that makes maintaining a consistently positive personality and attitude challenging. We do not address Petitioner's constitutional claims in this case. Two weeks after Petitioner initiated her suit, the District Court dismissed her case for lack of subject matter jurisdiction without adjudicating the merits of the underlying claims. The dismissal occurred without prior notice or an opportunity for Petitioner to respond. *BrendaPopplewell v. Mayflower Law Enforcement Training Institute*, CV-0038-24 (Mayfl. Dist. 2024).

Petitioner sought review from this Court, and we granted certiorari to determine whether the District Court abused its discretion in dismissing the case. Because the Government agrees with Petitioner on the merits of her appeal, we appointed Insertreality to defend the District Court's judgment as amicus curiae. He has ably discharged his responsibilities

II

The Mayflower Constitution provides: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the

*On Petition for Writ of Certiorari to the District Court.

laws of the State of Mayflower, and treaties made, or which shall be made, under the authority;—to all cases affecting ambassadors, other public Ministers and Consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the State of Mayflower shall be a party;—to controversies between two or more municipalities;—to controversies to which the State of Mayflower shall be a party;—between residents of different municipalities;—between residents of the same municipality claiming lands under grants of different municipalities, and between a municipality, or the residents thereof, and foreign municipalities, residents or subjects." Mayfl. Const., art. X, § 2.

This clause closely mirrors Article III of the United States Constitution. See U.S. Const., art. III, §2. Where provisions of the Mayflower Constitution parallel those of the United States Constitution, well-settled federal interpretations are presumptively applicable. In construing constitutional or statutory texts, we are guided by their original public meaning. Antonin Scalia, *Common Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, 38 (1997); *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022). Provisions in the Mayflower Constitution that clearly mirror the United States Constitution were evidently intended to carry the same meaning, and would have to ordinary readers at the time of ratification.

The Supreme Court of the United States has long interpreted Article III's conferral of judicial power as a limited one: federal courts can only entertain legitimate "cases and controversies." *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Accordingly, the Supreme Court has recognized several doctrines which limit exercises of judicial power to only those cases where, among other things, concrete and redressable harm has been alleged. Id. Without such a limitation, judges would be free to opine on any matter that they pleased, issuing abstract opinions completely divorced from immediate fact. These constraints, we hold, are equally binding on Mayflower courts at all levels.

III

For a court to exercise judicial power, it must first establish that it has subject matter jurisdiction. Failure to do so risks exceeding constitutional

limits. Indeed, when jurisdiction is lacking, dismissal is mandatory. Consequently, a court must determine with certainty whether it has subject matter jurisdiction over a case pending before it. If necessary, the court has an obligation to consider its subject matter jurisdiction *sua sponte*. *Joseph v. Leavitt*, 465 F.3d 87, 89 (2d Cir. 2006) ("Although neither party has suggested that we lack appellate jurisdiction, we have an independent obligation to consider the presence or absence of subject matter jurisdiction *sua sponte.*"), cert. denied, 549 U.S. 1282 (2007); *see also, e.g., Univ. of South Alabama v. American Tobacco Co.,* 168 F.3d 405, 410 (11th Cir. 1999) ("a federal court is obligated to inquire into subject matter jurisdiction sua sponte whenever it may be lacking"); *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 107–08 (2d Cir.1997) (holding that district court may raise issue of subject matter jurisdiction sua sponte at any time)). It is, in fact, "common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction; and, if it does not, dismissal is mandatory." *Manway Constr. Co. v. Housing Auth. of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983).

In this case, the District Court determined that it did not have subject matter jurisdiction because the case was not "ripe." Because the "ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction," courts can raise it *sua sponte* at any time. *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 58 n. 18 (1993). Consequently, the District Court did not abuse its discretion by considering the issue of ripeness *sua sponte*.

IV

The more pertinent question is whether the District Court erred by failing to provide notice or an opportunity to respond before dismissing the case. We conclude it did not. While it is certainly preferable for a District Court to allow parties to brief issues of jurisdiction before dismissal, lest the Court dismiss the case on a mistaken theory of law, a failure to do so does not rise to the level of legal error. Where a Court concludes that it lacks jurisdiction, no bar prevents the Court from acting upon that

conclusion and dismissing the case. In fact, Courts have an affirmative obligation to act upon a lack of jurisdiction once it is identified.

Where, as here, the District Court dismissed the case without prejudice, the Petitioner remains free to refile her case if jurisdictional deficiencies are addressed. We reserve judgment on whether a different analysis would apply in the case of a dismissal with prejudice. Likewise, since Petitioner does not challenge the District Court's conclusion that it lacked jurisdiction, we do not consider whether jurisdiction was present.

V

"Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869). Accordingly, we affirm the judgement of the District Court.

It is so ordered.

CABOT, J., filed a concurring opinion.

POPPLEWELL *v.* LAW ENFORCEMENT TRAINING INSTITUTE*

No. 01-05. Decided November 25, 2024

CABOT, J., concurring.

I write independently from the so eloquently written judgement of the court to address the profound importance of the adversarial process. In this case, the government failed to defend the ruling of the District Court, forcing this Court to appoint an *amicus curiae* to do so in its place.

I

I would first like to address the importance of the adversarial process, especially in appellate proceedings. The government's failure to contest the merits of this case on appeal presents a controversy that the Supreme Court of the United States recognized in *United States v. Windsor*, 570 U.S. 744, 759 (2013). The position that the government has taken in this case jeopardizes the adversarial process that underpin the common law traditions of this union. The government's decision not to contest or even participate in these proceedings damages the fabric of our adversarial system, which "crystallizes the pertinent issues and facilitates appellate review of a trial court [ruling] by creating a more complete record of the case." *Brandon v. District of Columbia Board of Parole*, 734 F.2d 56, 59 (1984), cert. denied, 469 U.S. 1127 (1985).

It is damaging simply put, because an adversarial system is not just for both sides to be heard, although of course the right to be heard is integral in our system. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976); *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). It is also because it provides the opportunity for better decision-making. It does so by exposing judges to different points of view and identifies deficiencies alongside strengths which should addressed in any opinion of the court.

The failure to participate in proceedings with important questions, especially in the early stages of this judicial system do not just harm the

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principles of justice, the rule of law, and our adversarial system. They also harm our current attorney-pool and our new and developing system where the rulings of the court now will set the future for this hopefully long-lasting and prosperous state. While the merits in this case were hardly pressing constitutional questions, these types of cases relating to procedure are nonetheless important and the government should treat them as such because "concrete adverseness [...] sharpens the presentation of issues upon which the court so largely depends for [the] illumination of difficult [...] questions." *Baker v. Carr,* 369 U. S. 186, 204 (1962).

II

Now as I have briefly highlighted *why* the government should engage in that process, I will address some of the factual issues in play here and the discretion which the government exercised when they refused to 'contest' this appeal

While the absence of a constitutional question of significant importance in this case might lessen the burden on the government to participate in adversarial proceedings, the decision not to contest the appeal remains egregious. In my view, this is because such a decision, even in the absence of immediate statutory consequences, risks implicating serious separation-of-powers concerns. These concerns necessitated the appointment of an *amicus curiae* to address the void left by the government's failure to participate.

This concern was similarly acknowledged in the *obiter dicta* of *United States v. Windsor*. It is particularly troubling because "friendly, non-adversary, proceeding . . . [in which] a party beaten in the legislature [seeks to] transfer to the courts an inquiry as to the constitutionality of the legislative act" pose a serious threat to the principle of separation of powers. *See Ashwander v. TVA*, 297 U. S. 288, 346 (1936) (BRANDEIS, J., concurring) (quoting *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U. S. 339, 345 (1892)). Although that specific issue is not at play here, I emphasize it to underscore the varying degrees of egregiousness with which we must evaluate failures to uphold the adversarial process.

III

While the practice of the Solicitor General refusing to contest a decision is not unheard of, this discretion ought to be exercised sparingly. Indeed, in the case of legislative, it is an admission that the work of the legislature is *prima facie* unconstitutional. *See, e.g., Dickerson v. United States*, 530 U. S. 428 (2000). Again, this is not the case here so I will not belabour the point.

We should expect the government to defend lower court decisions on procedural matters just as vigorously as legislative acts, unless the lower court's decision is so egregious and outrageous that no reasonable lawyer could, in good faith, defend it. This is because, if the respondent is not prepared to defend the decision, who else reasonably could? An *amicus curiae* cannot serve as a blanket solution, particularly since they have not participated in the case at the lower court level and thus cannot bring the full record and factual context with them. It is not the first choice of an appellate court. It is the last choice. The government, along with all parties appearing before this court, must recognize their responsibility

For the reasons above, I concur with the judgement of the court.

IN RE DIVINECRIME, PETITIONER*

No. 01-15. Decided November 10, 2024

PER CURIAM.

The Mayflower Constitution grants this Court "the ability to issue all Warrants and Writs." Mayfl. Const., art. X, § 5. However, this Court functions as a court of review, not of first view. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n. 7 (2005)). We cannot usurp the role of the District Court by assuming jurisdiction over matters not properly within our purview to crown ourselves king of both law and fact in any dispute that we fancy. No. The power to issue warrants or writs does not enlarge this Court's jurisdiction; any warrant or writ that we issue must be in aid of our existing appellate jurisdiction. Our authority to issue writs extends to cases where an appeal is not yet pending but could be perfected in the future. *See F.T.C. v. Dean Foods Co.,* 384 U.S. 597, 603 (1966).

Because the writ of mandamus presented to this Court does not concern this Court's appellate jurisdiction, Petitioners must seek relief in the proper forum — the District Court. This Court is not at liberty to entertain their petition.

Therefore, the petition for a writ of mandamus is denied.

It is so ordered.

ETHOS, J., took no part in the consideration or decision of this petition.

*On Petition for Writ of Mandamus to the Mayflower Elections Commission.

Reporter's Note

The following pages contain the orders of the Supreme Court from September 25, 2024 through January 20, 2024. The orders are available in original, paper form and for sale at 6492A King George Plantation Ln., Medford, MF 19025 in Offices:

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ORDERS FOR SEPTEMBER 25, 2024, THROUGH
DECEMBER 20, 2024.

SEPTEMBER 25, 2024

Certiorari Denied

No. 01-01, TREXEODEV, ET AL. *v.* STATE OF MAYFLOWER

October 3, 2024

Certiorari Denied

No. 01-02, BrendaPoppleewll. *v.* Law Enforcement training Institute

Stickza, J., filed a dissenting opinion in which Giordano, J., joined.

Stickza, J., dissenting, joined by Giordano, J.

Presented as a question of justiciability, this case is stretched beyond its original scope. By the time the petition hit our docket for consideration, the District Court undercut this Court's jurisdiction and dismissed the case *sua sponte*. No motions. No requests. Now, this Court is voting to deny the petition. That is a classic case of judicial finesse, and this Court's appellate jurisdiction is worse for it. Because the district courts are beholden to our consideration, I would *grant* the petition for certiorari.

I

Brenda Popplewell claims that she suffers from chronic, debilitating illnesses. Despite her conditions, Brenda applied to Class One of the Law Enforcement Training Institute. As a general requirement, the Institute requires applicants to exhibit a "positive...attitude." There are "no exceptions" to this requirement. Because of her symptomatic discomfort, Brenda claims that her application will be denied under the personality requirements, for she cannot maintain a positive attitude.

In September of 2024, Brenda filed a lawsuit against the Institute, alleging that its personality requirement is unconstitutional under the Fourteenth Amendment. She subsequently filed a motion for preliminary injunction. On September 25, the District Court addressed the justiciability of Brenda's claims. In a written decision, the District Court *denied* her motion, holding that Brenda's allegations do not suggest that she will be injured by personality requirements. On September 27, Brenda appealed that decision.

This Court received Brenda's petition for the writ of certiorari in the early hours of September 27. But before a decision could be made, the District Court *dismissed* Brenda's claims *sua sponte*; her emergency application for stay was also denied. Several of my prominent colleagues also switched their votes. I maintain that my colleagues are erroneous in that judgment. The moment an appeal hits our desk, the district courts must await our decision. Until we give our word, lower courts must wait.

II

Start with appellate jurisdiction. Article X, Section 2 of the Mayflower Constitution vests appellate jurisdiction with the Supreme Court "in *all cases of appeal* on civil and criminal matters, and expungements." Mayf. Const. Art. X, §2. The rules and processes for such appeals are left to the discretion of the Supreme Court. Id. at §2. In our state, appeals—by right or by request—are "distribute[d]...to the [Supreme Court] for its consideration..." Mayf. R. Sup. Ct. 10; see also Mayf. R. Sup. Ct. 9. The moment that an appeal hits our desk, we unequivocally acquire jurisdiction.

Appellate jurisdiction is acquired when an appeal is first taken to the appellate courts. *See, e.g., Kelley v. Metropolitan Cty. BD, Ed., Nashville*, 463 F.2d 732, 745 (6th Cir. 1972); *Ideal Toy Corporation v. Sayco Doll Corp.,* 302 F.2d 623, 625 (2d Cir. 1962) ("Once the appeal is taken ... jurisdiction passes to the appellate court."). A notice of appeal or petition for a writ of certiorari is sufficient to divest the district court of its jurisdiction over a case that is being appealed.[1]

Multiple circuit courts of appeals have similarly held that the filing of an appeal is enough to strip the district courts of their jurisdiction in the pendency of an appeal. *See, e.g. Cochran v. Birkel,* 651 F.2d 1219, 1221 (6th Cir. 1981) ("The filing...of [an] appeal divests the district court of

[1] In big bold letters, Part III of the Rules of the Supreme Court provides that a petition for a writ of certiorari is under our appellate jurisdiction. Mayf. R. Sup. Ct. III. Rule 10 provides that, upon the filing of a petition for a writ of certiorari, this Court begins its "consideration"—or, in other words, the 'pendency' phase. From the point that an appeal is filed—either by right or for discretionary review—we acquire jurisdiction, and the district courts cannot commandeer our proceedings.

jurisdiction..."); *Shepherd v. International Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004) ("[A] perfected appeal divests the district court of jurisdiction.").[2] This appeal is perfect: The arguments cleanly tee up the question presented; the petition is timely and in accordance with local rules; and the appeal notes our appellate jurisdiction to hear the case. Until the District Court forced our judgment, this Court agreed.

It is a melancholy reflection that the future of our appellate jurisdiction is weak. We are the highest court in the state—the ink in our pens *must* hold weight on paper. But if the district courts can freely alter—or, in some cases, *abolish*—the appellate posture of a case, judicial usurpation will become all too common, and our appellate jurisdiction will suffer because of it.

For fear that we are turning blind to the imperfections and cautionary tales of preceding judicial branches of our time, I respectfully dissent from the denial of certiorari.

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[2] While federal common law is not binding to state courts, it is guiding light on unfamiliar issues and matters of first impression. Neighboring states also incorporate federal precedent. *See, e.g., largeTitanic2 v. NevPlaysGames*, 1 Rid. 80, 98 (2023) ("[F]ederal precedent relating to [common law] may be used as precedent."). I maintain that litigants should use *text*, *history*, and *purpose* to solve disputes. But when deference to federal precedent is necessary to guide our judgment, it must be respected.

October 15, 2024

Briefing Schedule

No. 01-03, Jerry's Flower Barn, ET AL. *v.* State of Mayflower. The briefing schedule for Rule 12 and 13 briefs is *stayed* pending further notice from the Clerk.

Petitioners and Respondents are allowed until 10/21/2024 to submit supplemental briefs, containing at most five pages of argument, addressing whether the Court possesses jurisdiction to entertain this appeal under Rule 9.

Xiqaq, J., took no part in the consideration or decision of this order.

October 17, 2024

Application for Stay of Injunction Granted

No. 01-03, Jerry's Flower Barn, ET AL. *v.* State of Mayflower. The application for stay presented to the Court is *granted*, and the District Court's October 15, 2024 order granting a permanent injunction is *stayed*, except as to the provision requiring that Petitioners comply with applicable business registration and requirements, pending the disposition of this appeal. This stay shall terminate upon the sending down of the judgment of this Court.

Totoro, J., filed a majority opinion joined by Turntable, C.J., David, Cabot, and Xiqaq, JJ.[3]

Certiorari Granted; Briefing Schedule

No. 01-05, BrendaPoppleewll. *v.* Law Enforcement training Institute. The petition for a writ of certiorari is *granted*.

Petitioners and Respondents are allowed until 10/22/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk

Dismissed

No. 01-06, ISpilledMyTacos v. State of Mayflower. The appeal is *dismissed* for want of jurisdiction.

Totoro, J., delivered the opinion of the Court.

I join the Court's decision to grant a stay in this case because I believe such relief to be warranted. However, I write separately to clarify the tests that this Court ought to diligently apply in future emergency docket litigation. I likewise implore future advocates be- fore this Court to clearly and precisely demonstrate how their case satisfies the requirements set forth below.

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[3] The Mayflower Independent Reporter observes that the Clerk of Court designated this a "concurring opinion," but reports it as a majority opinion due to it being joined by 5 of the Court's 9 justices.

I

Emergency relief before this Court comes in two distinct forms: injunctions pending appeal and stays pending appeal. The former "directs the conduct of a party" while the appeals process unfolds. *Nken v. Holder*, 556 U.S. 418, 428 (2009). For example, a petitioner might ask this Court to prevent the State of Mayflower from enforcing a new law while we consider its legality. A stay, however, "operates upon the judicial proceeding itself." *Id.* "It does so either by halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability." *Id.* There is certainly overlap between what these two sources of relief accomplish: both pause some action before its legality can be conclusively determined. The difference, however, is that "a stay achieves this result by temporarily suspending the source of authority to act — the order or judgment in question — not by directing an actor's conduct." *Nken*, 556 U.S. at 428–9.

The distinction between a stay and an injunction may, to many, seem academic. However, in litigation before this Court, it is essential. When considering whether emergency relief is warranted, this Court considers different factors depending on the type of relief requested. Successful applications for stay must begin by identifying the appropriate test.

When a petitioner seeks to stay a lower court's ruling pending the filing of a petition for a writ of certiorari, he must demonstrative that: (1) a reasonable probability that four justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *See, e.g., Times-Picayune Publishing Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (POWELL, J., in chambers); *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In close cases, the issuing justice or Court should consider the balance of equities and weigh the relative harms to both parties. *Id.*, *see also Lucas v. Town- send*, 486 U.S. 1301, 1304 (1988) (KENNEDY, J., in chambers); *Rostker v. Goldberg,* 448 U.S. 1306, 1308 (1980) (BRENNAN, J., in chambers).

A petitioner seeking an injunction pending appeal must instead make

four showings: (1) that he is likely to succeed on the merits; (2) that he is likely to suffer irreparable harm; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public in- terest. *Winter v. Natural Resources Defense Council*, Inc., 555 U.S. 7, 20 (2008). Such a request, however, "'demands a significantly higher justification' than a request for a stay.'" *Respect Maine PAC v. McKee*, 562 U.S. 996, 996 (2010) (quoting *Ohio Citizens for Responsible Energ, Inc. v. Nuclear Regulatory Commission*, 479 U.S. 1312, 1313 (1986) (SCALIA, J., in chambers)). Increased scrutiny is demanded be- cause, "unlike a stay, an injunction 'does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.'" *Id.* (quoting *Ohio Citizens for Responsible Energ, Inc.*, 479 U.S. at 1313). Thus, this Court must be cautious of granting injunctive relief at the appellate level when the answer to the dispute at hand is not indisputably clear.

II

The present application requests that we stay the decision of the lower court; it does not ask us to impose an injunction previously withheld. Although Petitioners failed to specifically articulate why they should prevail under our three-factor test for stays of judicial decisions pending appeal, I nonetheless conclude that they have suc- cessfully demonstrated, in their petition for certiorari, that: (1) a reasonable probability that four justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a ma- jority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth*, 558 U.S. at 190. I would, however, caution future litigants that a more explicit demonstration of these factors will not only be expected but required.

Because I believe our traditional three-factor test for stays of judicial decisions has been satisfied, I concur in the grant of stay.

October 22, 2024

Appointment of Amicus Curiae

No. 01-05, BrendaPopplewell *v.* Law Enforcement Training Institute. Insertreality, Esquire, of Lander, Mayflower, is invited to brief and argue this case, as *amicus curiae*, in support of the judgment below.

November 3, 2024

Arthur_Chen Removed from the Bench

No. 01-07, In Re Arthur_Chen. The Court disposes of the Rule 35 complaint by ordering the *removal* of Judge Arthur_Chen from the bench on which he serves.

Certiorari Granted; Briefing Schedule

No. 01-08, State of Mayflower *v.* Trexeodev. The petition for a writ of certiorari is *granted*, limited to the following question: Whether the trial court misapplied the *Barker v. Wingo*, 407 U. S. 514 (1972), factors in dismissing the case based on a claimed violation of the defendant's right to a speedy trial.

Petitioners and Respondents are allowed until 11/11/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk.

November 5, 2024

Certiorari Denied

No. 01-09, State of Mayflower *v.* ISpilledMyTacos. The petition for a writ of certiorari is *denied*.

November 22, 2024

Case Dismissed

No. 01-04, Nexuvz *v.* State of Mayflower. The appeal is *dismissed* for want of jurisdiction.

Certiorari Granted; Briefing Schedule

No. 01-11, Law Enforcement Training Institute *v.*, RRP_SAM10, ET AL. The petition for a writ of certiorari is granted, limited to the following question: Whether forbidding individuals with arrest records from enrolling in the Law Enforcement Training Institute offends the Equal Protection Clause of the Mayflower State Constitution.

Petitioners and Respondents are allowed until 11/30/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk.

December 2, 2024

Certiorari Granted

No. 01-12, CASH_MONEY3838 *v.* COMBATROLE, ET AL. The petition for a writ of certiorari is *granted*.

Petitioners and Respondents are allowed until 12/13/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk.

Probable Jurisdiction Noted

No. 01-13, State of Mayflower *v.* ISpilledMyTacos. Probable jurisdiction is noted.

Petitioners and Respondents are allowed until 12/13/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk.

December 20, 2024

Appointment of Amicus Curiae

No. 01-11, Law Enforcement Training Institute *v.* RRP_SAM10, ET AL. ItzARandomBoi, Esquire, of Lander, Mayflower, is invited to brief and argue this case, as amicus curiae, in support of the judgment below.

Upon its own motion, the Court will hold oral arguments on this case, consistent with Rule 30 and a forthcoming schedule.

Certiorari Granted

No. 01-14, ZRIHEM, ET AL. *v.* TDARK99. The petition for a writ of certiorari is *granted*.

Petitioners and Respondents are allowed until 12/27/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk.

No. 01-18, EX PARTE SINISTERINFERNAL. The application for stay presented to the Court is *denied*.

The petition for a writ of certiorari is *granted*.

Petitioners and Respondents are allowed until 12/27/2024 to submit Rule 12 and 13 briefs. Further extensions are at the discretion of the Clerk.

Complaint Referred

No. 01-17, IN RE JUDGE ACERXTRO. The Court disposes of the Rule 35 complaint by referring it to the chief judge of the bench upon which Judge acerxtro sits.