UNITED STATES

REPORTS

# 4

AUGUST TERM 2017

# UNITED STATES REPORTS
## VOLUME 4

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CASES ADJUDGED

IN

# THE SUPREME COURT

AT

AUGUST TERM, 2017

AUGUST 15, 2017 THROUGH FEBRUARY 14, 2018

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

END OF TERM

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TIMOTHY F. GEITHNER

REPORTER OF DECISIONS

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# JUSTICES

OF THE

# SUPREME COURT

DURING THE TIME OF THESE REPORTS

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OLIVER W. HOLMES (KOTwarrior), Chief Justice.
R. B. GINSBURG (MrYosemite), Associate Justice.
T. MARSHALL (SamuelKing22), Associate Justice.
NEIL GORSUCH (Bob561), Associate Justice.
C. THOMAS (Frostbleed), Associate Justice.
ROBERT BORK (KarlCRove), Associate Justice.
SANDRA D. O'CONNOR (Apteria), Associate Justice.

RETIRED

F. FRANKFURTER (Anim.Dannyo), Associate Justice.
A. SCALIA (AntoninGScalia), Associate Justice.
S. ALITO (SuddenRush12G), Associate Justice.
W. REHNQUIST (Sufferpoop), Associate Justice.
H. BALDWIN (SurpriseParty), Associate Justice.
HUGO BLACK (AdamStratton), Associate Justice.
G. SUTHERLAND (Ryan_Revan), Associate Justice.

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# CASES ADJUDGED

IN THE

# SUPREME COURT OF THE UNITED STATES

AT

AUGUST TERM, 2017

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## UNITED STATES *v.* CITY OF LAS VEGAS

CERTIORARI TO THE MUNICIPAL GOVERNMENT OF LAS VEGAS

No. 04–02. Decided August 23, 2017.

The United States petitioned for a writ of certiorari to review the Federal Traffic Enforcement Act passed by the Las Vegas City Council—but vetoed by their Mayor. It prohibits federal law enforcement from arresting individuals for speeding violations; the Federal Government contends this is outside of the Municipality's power to do so.

*Held*: The Act in question was vetoed, and thus not in effect. The Court cannot and will not issue a ruling where there is no injury to be redressed. To do so would violate the requirement that adjudication be limited to cases and controversies. *Muskrat* v. *United States*, 219 U. S. 346.

Scalia, J., delivered the opinion for a unanimous Court.

Justice Scalia delivered the opinion of the Court.

In comes the big, bad Federal Government and her agents to force upon the private citizens of Las Vegas their evil agenda: enforcing the law. From this apprehension materialized the Federal Traffic Enforcement Act, passed by the Las Vegas City Council (hereafter "Council")—but not signed into effect by the City's Mayor. Its intention? "To reduce dangerous reckless driving to a possible minimum, while not giving federal agencies total municipal law enforcement powers." The United States formally entered proceedings against this Act, citing that it prohibits federal officers from arresting for speeding violations, §II(b). The Court granted certiorari, 4

U. S. 21 (2017), despite the bill still being that: a bill. On August 20, after reviewing options with counsel, the Mayor vetoed the Act.

This Court has reviewed the constitutionality of laws passed by the City's municipal government or ones relating to it by Congress on many an occasion. See *United States* v. *City of Las Vegas*, 2 U. S. 4 (2016) (the Federal Government had no lien over the Tow Truck Service); *United States* v. *City of Las Vegas*, 2 U. S. 24 (2017) (municipal government has no inherent right to pass legislation of any kind); *Ryan_Revan* v. *United States*, 2 U. S. 34 (2017) (the Fauxtillion Home Office Act of 2017 presented an unconstitutional delegation of power to the City government); *Idiotic_Leader* v. *City of Las Vegas*, 3 U. S. 18 (2017) (the Business Limits Act is legislative in effect and thus unconstitutional). Everyone—even if reluctantly—agrees that municipal governments hold no inherent right to pass laws (and thus in effect govern). Our opinions have cemented that into reality. But what about passing traffic regulations and then limiting who may enforce them—is the latter permissible? That is the question before us, but it is one we will not entertain.

The Court erred by granting certiorari in the first place; the Federal Traffic Enforcement Act never made its way in envelope to the Mayor's desk; it never became *law* (and had it, readers would be reading a much different opinion today). The exercise of judicial power is limited to "cases" and "controversies." Beyond, it cannot extend. *Muskrat* v. *United States*, 219 U. S. 346, 356 (1911). Bound by this requirement, we have "an obligation to assure ourselves" of litigants' standing under Article III before entering judgement. *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 180 (2000). In doing so, we remember that the concept of judicial review is not inherent, but rather a byproduct of proper adjudication of these cases and controversies. See *Marbury* v.

*Madison*, 1 Cranch 137, 177 (1803). To make this determination of standing and controversy, we must—logically—assume the Federal Judiciary respects "'the proper—and properly limited—role of the courts in a democratic society,'" *Allen* v. *Wright*, 468 U. S. 737, 750 (1984) (quoting *Warth* v. *Seldin*, 422 U. S. 490, 498 (1975)). If a dispute is not a proper case or controversy, "the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006). To maintain the "'tripartite allocation of power'" in the Constitution, the Court has recognized this requirement as crucial. *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 474 (1982) (quoting *Flast* v. *Cohen*, 392 U. S. 83, 95 (1968)). In sum, "'[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases and controversies.'" *Raines* v. *Byrd*, 521 U. S. 811, 818 (1997) (quoting *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 37 (1976)).[*] That core component, that a litigant has standing to invoke the authority of a federal court, will remain unchanged. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992).

In order to have standing, the plaintiff must "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen*, *supra*, at 751. True, we have been asked to resolve a fairly substantial constitutional question: Can municipal governments regulate where federal officers are permitted to operate under the law? But before doing so, "we must find that the

[*] While this case is one entertained under Anytime Review, and thus not *officially* bound by the cases and controversies clause, the longstanding tradition of this Court has been to—absent *extraordinary* circumstances—incorporate that requirement into Anytime Review jurisprudence. See, *e. g.*, *Psychodynamic* v. *Technozo*, 2 U. S. 77 (2017) (Holmes, C. J., statement respecting denial of certiorari); *Ex parte HHPrinceGeorge*, 2 U. S. 30, 32 (2017) (Scalia, J., concurring in denial of certiorari).

question is presented in a 'case' or 'controversy' that is, in James Madison's words, 'of a Judiciary Nature.'" *DaimlerChrysler*, *supra*, at 342 (quoting 2 Records of the Federal Convention of 1787, p. 430 (M. Farrand ed. 1966)). As the party asserting federal jurisdiction, the United States must establish standing. It has not.

Standing requires an injury that is "concrete, particularized and actual or imminent; fairly traceable to the challenged action and redressable by a favorable ruling." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. 139, 149 (2010); see *Horne* v. *Flores*, 557 U. S. 433, 445 (2009). Petitioner fails on the first: We accordingly cannot further proceed. The Act which the United States contends is unconstitutional was never in effect; this makes the alleged injury not "actual or imminent," but instead "conjectural or hypothetical." *Defenders of Wildlife*, *supra*, at 560 (internal quotation marks omitted). And given the veto of the Act, we have no assurance that the "injury is 'imminent'—that it is 'certainly impending.'" *DaimlerChrysler*, 547 U. S., at 345 (quoting *Whitmore* v. *Arkansas*, 495 U. S., 149, 158 (1990) (internal quotation marks omitted)); see also *Defenders of Wildlife*, 504 U. S., at 564–565, n. 2. With it obvious that no injury actually exists, to make a ruling would be to effectively issue an advisory opinion—something we are unable to do. See, *e. g.*, 4 The Correspondence and Public Papers of John Jay 258 (H. Johnston ed. 1893). Given the aforementioned reasons, we refuse to make a judgement on the merits. Were the question before us focused on *effective* regulations, the Government would have standing—and we a chance to adjudicate. But it is not, and we have never been in a position to resolve baseless disputes. We refuse to start today simply because the petitioner failed to dot his i's and cross his t's.

*It is so ordered.*

Syllabus

## SEABORN *v.* LUKASSIE

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

No. 04–08. Decided September 2, 2017.

The petitioner, Sam4219, was placed under contempt by the respondent, KingLukassie, while presiding over his own trial. Petitioner argues that the respondent had no jurisdiction to issue the contempt, that the issuance violated due process, and that his actions do not fall under criminal contempt issued under 18 U. S. C. §401.

*Held*: The respondent had no authority to issue the contempt citation, as he was not the presiding judge under the case in which contempt was given.

(a) Criminal contempt is punitive in nature, while civil contempt is remedial.

(b) Whether contempt is criminal or civil rests not only on the purpose, but also on the character of the relief itself. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441. If the relief is coercive, it is civil. If it involves a fixed punishment, it is criminal.

(c) 18 U. S. C. §401(1), under which respondent issued the citation, requires that the obstruction occur "in the presence" of the court in question. Because the respondent was not presiding, the action for which the petitioner was placed under contempt does not qualify as being "in the presence" of the court.

(d) With it resolved that there was no jurisdiction to issue the contempt, the Court refused to proceed to answer the last tqo questions posed by the petitioner, as answering would not bear influence on the case's outcome.

Contempt citation no. 148541970, reversed.

Scalia, J., delivered the opinion for a unanimous Court.

Justice Scalia delivered the opinion of the Court.

We decide whether contempt of court citations may be issued by a court not in session against an actively presiding judge.

### I

During the trial for *United States* v. *Banelock*, C.R. 17–0065 (2017), respondent KingLukassie watched events unfold while petitioner Sam4219 presided. At trial, the defense moved for a combat resolution, citing precedent from *United States* v. *Tastles*, C.R. __–____ (2017). Petitioner denied the motion

based on due process considerations. But the respondent was not satisfied with that result. From his perspective, trial by combat, at least until the Supreme Court rules on its constitutionality, must be considered a legitimate process by which cases are tried because of *Tastles*—a view which respondent aired with in-game admin powers. In response, petitioner gave him one warning to—as an onlooker—be quiet and respect the venue. It remained unheeded, and so a contempt citation for "obstruct[ing] the administration of justice," 18 U. S. C. §401, was issued.

Respondent then ordered that petitioner be escorted out by federal agents, but was ignored by virtue of his private capacity. See App. 1a to Brief for Petitioner. Petitioner again cited contempt against the respondent. Respondent decided he had enough. He issued eleven criminal contempt citations against the petitioner, each carrying a 42-day sentence totaling 462 days. Immediately thereafter, petitioner filed with the Court for a writ of certiorari to appeal the contempt proceeding. We granted certiorari. 4 U. S. 21 (2017). He asks three questions: (1) whether a court not in session may issue contempt against a presiding judge during his case, (2) whether lack of jurisdiction by a judge who issues a contempt citation violates due process, and (3) whether the merits of the situation appropriately required criminal contempt under §401. We answer the first, but refuse to resolve the second and third.

## II

Contempt of court is a remedy available to judges for two purposes: to punish disorderly or criminal behavior in the presence of a court (criminal) or to ensure equity for disobedient acts past (civil). In deciding whether the contempt citation levied falls under the criminal or civil category, courts will look to the characteristics of the charge itself, and the motivations behind its issuance. See *Mine Workers* v. *Bagwell*, 512 U. S. 821, 826–827 (1994). Relying alone on the stated purpose of a citation would prove inconclusive. *Ex parte HaCtzKomi*, 2 U. S.

40, 41 (2017) (Scalia, J., dissenting from the denial of certiorari). Upon analysis of both these "prongs" in relation to this case, it is clear that the citation issued by respondent was undeniably criminal in nature. "Criminal contempt is a crime in the ordinary sense," *Bloom* v. *Illinois*, 391 U. S. 194, 201 (1968), whose penalties demand "protections that the Constitution requires of such . . . proceedings," *Hicks* v. *Feiock*, 485 U. S. 624, 632 (1988). Those include protection from double jeopardy, *In re Bradley*, 318 U. S. 50 (1943); rights to notice of charges, assistance of counsel, summary process, and to present a defense, *Cooke* v. *United States*, 267 U. S. 517, 537 (1925); and privilege against self-incrimination as well as a requirement that the individual issuing contempt prove beyond a reasonable doubt that the actions in question occurred, *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444 (1911). In cases involving imprisonment of more than six (real) months, a right to jury trial must be guaranteed should the defendant request. *Bloom*, 391 U. S., at 199; see also *Taylor* v. *Hayes*, 418 U. S. 488. 495 (1974).[*] These protections, however, need only exist in the case of indirect contempt—contempt occurring outside the courtroom. If the action for which contempt is issued transpires in the immediate presence of a judge, it may be "immediately adjudged and sanctioned summarily," *Mine Workers*, 512 U. S., at 827, n. 2; see also, *e.g.*, *Ex parte Terry*, 128 U. S. 289 (1888), except in the case of contempts in which jury trial is required. *Bloom*, *supra*, at 209–210.

Despite the procedures for civil and criminal contempts being "well established, the distinguishing characteristics of civil versus criminal contempts are somewhat less clear." *Mine Workers*, *supra*, at 827. Whether a contempt is civil or criminal

[*] Our criminal system applies the time conversion of one real year being equivalent to one and a half months on roblox. Under this, in accordance with the *Bloom* v. *Illinois*, 391 U. S. 194 (1968), standard, contempts exceeding 40 days must be accompanied by a right to trial by jury should the defendant request it.

turns on the "character and purpose" of the citation involved. *Gompers*, *supra*, at 441. If remedial and for the benefit of the complainant, it is civil. But if penal, to ensure the authority of a court, the citation is criminal. *Ibid.* We look, however, to the character of the relief itself rather than just its purpose—that is so because "[m]ost contempt citations, like most criminal punishments, to some extent punish a prior offense as well as coerce an offender's future obedience." *Mine Workers*, 512 U. S., at 828. "[W]hen a court imposes fines and punishments on contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order." *Hicks*, 485 U. S., at 635. The "subjective intent of a State's laws and its courts" are alone simply indeterminate. *Ibid.*

A standard civil contempt involves confining a contemnor indefinitely until he complies with an affirmative command such as an order "to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance." *Gompers*, 221 U. S., at 442; see also *McCrone* v. *United States*, 307 U. S. 61, 64 (1939) (failure to testify). Likewise, imprisonment with the offer of release should compliance be given to the imprisoned is civil in nature. *Shillitani* v. *United States*, 384 U. S. 364, 370, n. 6 (1966) (upholding as civil "a determinate . . . sentence which includes a purge clause"). Because the contemnor is able to secure his own release by acting in assent with the court, he "'carries the keys of his prison in his own pocket.'" *Gompers*, *supra*, at 442 (quoting *In re Nevitt*, 117 F. 448, 451 (CA8 1902)).

Oppositely, a fixed sentence of imprisonment if imposed retroactively for a "completed act of disobedience," *Gompers*, 221 U. S., at 443, is criminal so long as the contemnor cannot "avoid or abbreviate the confinement through later compliance." *Mine Workers*, 512 U. S., at 829. Absent a coercive effect,

when the contempt involves prior, prohibited conduct, the citation cannot be considered civil; "the defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense." *Gompers*, 221 U.S., at 442. Nevertheless, no matter the type of contempt, it "should not be used for trivial matters," *Zeyad567alt* v. *SteffJonez*, 2 U. S. 70, 75 (2017) (HOLMES, C. J., dissenting).

## III

Respondent issued contempt against petitioner under 18 U. S. C. §401, which gives to courts the power to "punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other." These contempts of authority include—

> "(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> "(2) Misbehavior of any of its officers in their official transactions;
> "(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." §§401(1–3).

No limit on either the size of the fine or imprisonment term issued exists under the statute. The contempt issued was not coercive, but rather punitive in nature. Thus, under *Gompers*, we must assume the contempt was criminal. Whether the actions of the petitioner, however, adequately satisfied an obstruction of the administration of justice is irrelevant to the matter before us today. We need not consider that, nor need we consider whether the issuance of the citation itself violated due process. We only consider one issue: whether the court entering judgement had the authority to decide in the first place. We hold unequivocally that it did not.

Respondent reads "in its presence" under §401(1) in a very basic light. Under his interpretation, "in its presence" would signify something as simple as conduct occurring *in the presence* of a judge—regardless of whether that judge is presiding over a case. We cannot join with that explanation. We instead

read it to mean in the presence of a court, a court in session: A court adjudicating. Jurisdiction must always control, and control it does under §401(1). Even as an "officer of the Judiciary, [respondent] is not entitled a right to violate procedure," *Bob561* v. *Mindy_Lahiri*, 2 U. S. 44, 49 (2017). Were respondent the judge presiding and petitioner an observer (like respondent was *in actuality*), then the contempt may have been issued—and we would proceed to analyze whether it was criminal or civil, and if the procedure used was in accordance with statutory and common law guidelines. But we will not proceed further, with it established that the respondent had no jurisdiction to issue the citation.

It is not our job to answer questions that will hold no bearing on the outcome of the case; it is "always important at the outset to focus *precisely* on the controversy before the Court." *Regents of the University of California* v. *Bakke*, 438 U. S. 265, 408 (1997) (opinion of Stevens, J.) (emphasis added). Furthermore, our "settled practice . . . is to avoid the decision of a constitutional issue if a case can be fairly decided on a statutory ground." *Id.*, at 411. We continue that practice here.

* * *

Because the respondent was not the presiding judge, he had no authority to issue contempt against the petitioner. The judgment of the District Court is reversed, and the contempt citation is

*Expunged.*

Syllabus

## 12904 ET AL. *v.* KHEMISTS

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

No. 04–03. Decided September 21, 2017.

Petitioner 12904 ended respondent Khemists' employment with the Tow Truck Service, a privately owned company operating in Las Vegas. Respondent sued in the District Court, arguing that her termination constituted an act of at-will employment, and that without a valid reason to fire her, the action was illegal.

*Held*: At-will employment exists in the private sector and is constitutional based on history and this Court's previous precedents.

(a) Employees in the public sector enjoy more protections than do those in the private sector, but those in either cannot be fired for adhering to statutory or common law in the course of their work.

(b) At the beginning of our common law, employment was assumed to last for one year absent a specific length of service being articulated by the employer.

(c) At-will employment came about in the late 19th century after Horace Wood, a popular treatise writer, created it as a concept in his treatise, Master and Servant.

(d) The Fourteenth Amendment provides employers the right to make decisions regarding their business makeups. *Lochner* v. *New York*, 198 U. S. 45, 53. Because employers and employees have the equal right to either choose who works in their business or leave service in one, an employer can, "for whatever reason, . . . dispense with the services of such employé." *Adair* v. *United States*, 208 U. S. 161, 175.

#94J3H36T49Z1, reversed.

Scalia, J., delivered the opinion of the Court, in which HOLMES, C. J, and GINSBURG, MARSHALL, Alito, Rehnquist, Sutherland, and THOMAS, JJ., joined. GORSUCH, J., concurred in the judgment.

Justice Scalia delivered the opinion of the Court.

The question presented in this case is whether the District Court for Nevada erred in ruling that the Tow Truck Service of Las Vegas illegally fired respondent Khemists for membership in an allegedly criminal organization.

## I

The Tow Truck Service is a private business licensed to operate in the Municipality of Las Vegas, see *United States* v. *City of Las Vegas*, 2 U. S. 4, 6–7 (2016) ("the service is opwned and operated privately . . . ."). Its employees perform towing services to the residents of Las Vegas on a day-to-day basis. Among its employment practices, the Tow Truck Service has a policy against affiliation—by the company as a whole or an employee as an individual—with criminally suspect bodies (*e. g.* PS–35). Whether those bodies are proven to have committed crime(s) is irrelevant in the eyes of the Tow Truck Service's leadership: To them, the mere appearance of criminality is enough damage to the company's reputation to warrant terminating an employee's place in the company.

Respondent Khemists is one of six members of an organization which calls itself the "Japanese Mafia." On August 9, 2017, petitioner 12904 confronted Khemists about her affiliation with the gang, telling her "TTS does not allow gang members." In rebuttal to 12904, Khemists stipulated that because there was no "proven gang activity," there would be no reason to terminate her employment with the company. He disagreed with that analysis and whether it was relevant if true. In 12904's assessment, (1) the CIA had evidence of criminal activity by the organization, and (2) if there was no evidence, he had a right to fire her regardless. The next day, after being removed from the company, Khemists sued the Tow Truck Service and its Director, the petitioner, for wrongful termination. 12904 asserted the existence of at-will employment; in his opinion he *does not need* a valid reason to fire an employee, but the affiliation with the Japanese Mafia qualified nonetheless. The District Court disagreed. In summary judgement, the judge ordered $20,000 in damages within 48 hours of issuance for "illegally firing her"—that was so because Khemists' gang "has not shown any harm to Las Vegas or Washington, D. C." *Khemists*

v. *12904*, CV–17–0004, 1 (2017). 12904 disagreed and filed an immediate appeal. We granted certiorari. 4 U. S. 21 (2017).

## II

Khemists correctly acknowledges that private-sector employees may not be fired for *any* cause—indeed, employees in the private sector are subject to certain protections in the workplace just like their public-sector counterparts. For example, one could not be fired for reporting potential work safety violations under the Occupational Safety and Health Act of 1970, 84 Stat. 1590, 29 U. S. C. §651 *et seq.* See also, *e. g.*, The Family and Medical Leave Act of 1993, 107 Stat. 6, 29 U. S. C. §2601 *et seq.* (employers cannot retaliate against their employees for taking family or medical leave). At-will employment, however, by virtue of tradition and common law is broad indeed.

At-will employment's roots trace back to the early days of English common law. During that early period, employment was viewed as contractual, which bound the employer and his employee to a continuing relationship. If the employment itself did not articulate a particular length for service, it was assumed to last one year. 1 W. Blackstone, Commentaries on the Laws of England 413 (1769). If the parties, however, could present facts showing different intent, or evidence such as industry customs or pay period lengths, then that assumption could be challenged. The United States, while basing much of its practices on the English common law, did not follow this one-year practice. If there were disputes, courts would look to facts and circumstances individual to each case. When, for example, there was a specific length of time for pay stated, a court would assume that to be the hiring period. See J. Chitty, Law of Contracts 532–534 (10th ed. 1876). But some courts ignored presumptions entirely and adjudicated according to the facts alone. This resulted in a confused jurisprudence across the America, and by 1870, jurists were generally unsure of how to

handle termination disputes. In 1877, Horace Wood, a respected treatise writer, wrote to clarify the debate—

> "With us, the rule is inflexible, that a general hiring or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is on him to establish it by proof. A hiring at so much a day, week, month or year; no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve." Horage G. Wood, Master and Servant §134."

This became known as "Wood's Rule" and imported a blanket rule that *any* indefinite hiring was *by definition* at will; to arrive at this conclusion, Wood relied on common law that never actually supported his proposition.[*] While this rule would soon be accepted by American courts across the country, it was not so easily received as one today might suggest it was. New York's Court of Appeals shortly after the treatise's release still applied the pay period presumption: "[i]n this country, at least, if a contract for hiring is at so much per month, it will readily be presumed that the hiring was by the month, even if nothing was said about the term of service." *Adams* v. *Fitzpatrick*, 26 N. E. 143, 145 (N.Y. 1891). Opposition to the rule was short-lived, however; that same appellate court ruled with Wood's Rule just four years later. See *Martin* v. *New York Life Insurance Co.*, 42 N. E. 416, 417 (N.Y. 1895). This reversal in approach by the New York court gave "credibility and dominant authority to the employment at-will doctrine, and by 1930, the doctrine had become embedded in American law." Summers, Employment at Will, 3 U. Pa. J. Bus. L. 67–68 (2000).

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[*] There was "unanimous[s]" agreement that Wood's Rule "was not supported by the authority on which he relied, and that he did not accurately depict the law as it then existed." *Magnan* v. *Anaconda Industries, Inc.*, 479 A. 2d 781, 784, n. 8 (Conn. 1984). See also, *e. g.*, *Toussaint* v. *Blue Cross & Blue Shield of Michigan*, 292 N. W. 880, 887, n. 14 (Mich. 1980).

Courts "had no doubt that the great preponderance of the best-considered cases in this country recognize and affirm the rule laid down by Wood in his work on *Master and Servant,* and which he terms the 'American rule,' . . . ." *Greer* v. *Arlington Mills Mfg. Co*, 43 A. 609, 612 (Del. Super. 1899); see also *id.*, at 610 ("Wood . . . very clearly states the difference between the rule which obtains in this country and the one in England").

This doctrine of at-will employment's proposition is quite clear: the employee is subordinate to his employer, who retains total control except as to the extent he has expressly granted rights to his employees. The doctrine expresses a hierarchical structure with employees at the bottom; their terms of employment may be changed and their place within the company may be terminated at any time without reason and notice.

## III

Khemists demands two points of inquiry. First, she wishes us to ascertain whether there was actual evidence of criminal activity by the Japanese Mafia, and second, whether she could be fired for membership therein. We decline the first. This Court need not consider an issue that at its face fails to be outcome determinative. See *Seaborn* v. *Lukassie*, 4 U. S. 5, 10 (2017); *Regents of the University of California* v. *Bakke*, 438 U. S. 265, 408 (1977) (concurring opinion). That is so because 12904 had the right to terminate Khemists' employment even if there was no evidence supporting the premise on which that dismissal was ordered.

Employers have a "general right to make a contract in relation to [their] business" because "liberty of the individual [is] protected by the Fourteenth Amendment of the Constitution." *Lochner* v. *New York*, 198 U. S. 45, 53 (1904) (citing *Allgeyer* v. *Louisiana*, 165 U. S. 578, 591 (1897)). While the Federal Government is within its right to promulgate rules and restraints that ensuring the general welfare may require, it is not within that purview to compel an employer to retain service or an employee to perform it. "The right of a person to sell his labor

upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it." *Adair* v. *United States*, 208 U. S. 161, 174 (1908). Under this framework of "liberty," which is cemented into precedent, an employer can, "for whatever reason, . . . dispense with the services of such employé." *Id.*, at 175. There is, it follows, an equity of relationship between employers and employees—the former are free to terminate their employees (regardless of the reasonability of such a decision) and the latter are free to quit services in which they are engaged (regardless of the viability of doing so). *Ibid.* Absent a contract between both parties setting forth terms of an employment agreement, there is no civil action which could provide an employee relief for what he may feel was unjust termination.

Khemists' plea for remedy is made with the common (but mistaken) belief by Americans that private employment is subject to protections like those in the public sector. It is not. Whether or not the termination was based on actual evidence, or whether it was even a good decision, is totally irrelevant. Our task is to decide on whether the Constitution prohibits at-will employment; it does not. As such, the judgment of the District Court for Nevada is reversed, and the case is remanded for further proceeds not inconsistent with this opinion.

*It is so ordered.*

JUSTICE GORSUCH concurs in the judgment.

Syllabus

## AIML0CKED *v.* UNITED STATES

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

No. 04–19. Decided October 18, 2017.

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted. *It is so ordered.*

JUSTICE BORK, concurring.

There is perhaps no maxim more recognizable in American law than "innocent until proven guilty." On that foundation, the First Congress proposed the Sixth Amendment which protects, along with several other things, the right to a speedy trial. We have long recognized that relationship as not just significant but ancillary to the meaning of the Speedy Trial Clause. The "major evils" against which the right to a speedy trial, as originally understood, was directed are "undue and oppressive incarceration" and the "anxiety and concern accompanying public accusation." *United States* v. *Marion*, 404 U. S. 307, 320 (1971). Based on a well-reasoned conclusion that the petitioner's treatment did not even touch on the Speedy Trial Clause's "core concern" of preventing the "impairment of liberty," I concur in the dismissal of the writ. *United States* v. *Loud Hawk*, 474 U. S. 302, 312 (1986).

I

The facts of this petition are summarized as follows. On August 18, 2017, Vinblob242 filed a complaint with the U. S. Attorney's Office for the District of Nevada, alleging that the petitioner had committed three murders. The U. S. Attorney indicted petitioner on September 2nd. Nineteen days later, the petitioner was convicted; in addition to the three counts of murder, he was sentenced for a total of eight contempt charges associated with jury tampering and disruption of proceedings. His total sentence was 36 days.

In the instant case, the petitioner appealed his conviction. He argues that he had been deprived of his right to a speedy trial because in the nineteen days between his indictment and conviction, he had found a job. He continues that, presumably under the Speedy Trial Clause, he is entitled to notice of a proceeding's expected length so that he may plan accordingly.

## II

This opinion must first recognize that large delays between trial and the crime in its first instance can prejudice the defendant "in any number of ways." *Doggett* v. *United States*, 505 U. S. 647, 660 (1992) (Thomas, J., dissenting). The "Speedy Trial Clause does not purport to protect a defendant from all effects flowing from a delay before trial." *Id.*, at 660–661 (Thomas, J., dissenting) (quoting *Loud Hawk*, *supra*, at 311). Instead, the focus of its protections are delays which affect liberty. "The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *United States* v. *MacDonald*, 456 U. S. 1, 8 (1982). This gives way to the principle that "when defendants are not incarcerated or subjected to other substantial restrictions on their liberty, a court should not weigh that time towards a claim under the Speedy Trial Clause." *Loud Hawk*, *supra*, at 312.

As we know, petitioner was never incarcerated under his indictment. More likely, he was "blissfully unaware of his indictment all the while, and thus was not subject to the anxiety or humiliation that typically accompanies a known criminal charge." *Doggett*, *supra*, at 660 (Thomas, J., dissenting). This opinion must also recognize that petitioner's proceedings were *rather fact* when compared with many other cases. In opposition to this conclusion, petitioner notes that over a month had passed from the crime before he was convicted. But the right

to a speedy trial does not attach until after indictment or arrest. See *Dillingham* v. *United States*, 423 U. S. 64, 64–65 (*per curiam*). For that reason, the time-from-commission argument must fail.

I concur in the dismissal of the writ as improvidently granted.

Syllabus

## SNOWBLEED *v.* NEVADA HIGHWAY PATROL

CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 04–26. Decided February 24, 2017.

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE GINSBURG, JUSTICE THOMAS, and JUSTICE O'CONNOR took no part in the consideration or decision of this case.

JUSTICE BORK, concurring.

Though the Court affirms the judgment of the lower court only be an equally divided vote, I feel it necessary to clarify the effect of this decision.

The D. C. City Council may continue to lawfully operate and make laws governing the District of Columbia, which is the seat of government, not a Municipality. The City Council, consisting of an elected council and a development council, operating under the same rules and procedures that it did during the effect of the previous Constitution, is a federal organ; Congress may, by law, alter its structure and powers. The Nevada Highway Patrol may continue to act as law enforcement within the District of Columbia as permitted by D. C. local law.

Because, in reaching this decision, the Court has not expressed an opinion on the matter, I will also refrain from doing so in accord with established convention.

ORDERS FOR AUGUST 6, 2017, THROUGH FEBRUARY 22, 2018

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August 7, 2017

*Certiorari Granted*

No. 03–09. UNITED STATES *v.* CONGRESS. Certiorari granted.

August 15, 2017

*Certiorari Granted*

No. 04–01. UNITED STATES *v.* TASTLES. Certiorari granted.

August 18, 2017

*Certiorari Granted*

No. 04–02. UNITED STATES *v.* CITY OF LAS VEGAS. Certiorari granted.

No. 04–03. 12904 *v.* KHEMISTS. Certiorari granted.

August 25, 2017

*Certiorari Denied*

No. 04–09. BAKERLEY *v.* SURPRISEPARTY. Certiorari denied.

Justice Scalia, with whom CHIEF JUSTICE HOLMES and JUSTICE GINSBURG join, statement respecting the denial of certiorari.

Can the President of the United States appoint an individual to serve as an "advisor" in the Department of Justice who will

then exercise the powers of the Office of the Attorney General after delegation from the Acting Attorney General? Even muddier, does that acting Officer even have the authority to delegate those powers under 28 U. S. C. §510? That is the nub of the dispute before us, but, similar to our reasons in *United States* v. *Las Vegas*, 4 U. S. 1 (2017), we decline to entertain argument. Petitioner has failed to articulate what injury he has suffered to submit his case, a crucial component for the Judiciary to ordinarily enter judgment of any kind. *Muskrat* v. *United States*, 219 U. S. 346, 356 (1911). Absent a significant constitutional question requiring extraordinary intervention, granting certiorari—and by extension ignoring the lack of standing—would cut against our "proper . . . role," *Allen* v. *Wright*, 486 U. S. 737, 750 (1984), and go against our Anytime Review conventions. *ChristianFeliz* v. *InfernoByteII*, 2 U. S. 81 (2017); but see *Stratton* v. *Technozo*, 2 U. S. 88, 89 (2017). Were a petitioner with proper standing to come before this Court, we very well may answer the aforementioned questions.

*Certiorari—Summary Disposition*

No. 03–09. UNITED STATES *v.* CONGRESS. Certiorari dismissed.

August 27, 2017

*Certiorari Granted*

No. 04–10. ANTONINGSCALIA *v.* RYAN_REVAN, AESCIA, ET AL. Certiorari granted.

August 28, 2017

*Certiorari—Summary Disposition*

No. 04–10. ANTONINGSCALIA *v.* RYAN_REVAN, AESCIA, ET AL. The motion by petitioner to dismiss is granted.

August 30, 2017

*Bar Certifications*

No. 00–00. AnimatedDannyo. The motion to extraordinarily admit AnimatedDannyo to the Bar of the Supreme Court is denied.

September 2, 2017

*Certiorari—Summary Disposition*

No. 04–08. Seaborn *v.* Lukassie. The judgment of the United States District Court for Nevada is vacated and the contempt order against petitioner is expunged.

*Freedom of Information Act Request*

No. 04–11. Powell *v.* United States. Petitioner's Freedom of Information Act request is denied.

Memorandum of Justice Scalia.

The Freedom of Information Act, 5 U. S. C. §552 (FOIA), allows for the full—or partial—disclosure of unreleased documents and information to the American public by an "agency," as defined by §501. These requests are colloquially known as "FOIA requests." Petitioner asks for a release of omitted lines from the oral argument transcript in *SigmaHD* v. *United States Marshals Service*, 2 U. S. 2 (2017). FOIA is actually part of a broader law known as the Administrative Procedure Act, 5 U. S. C. §500 *et seq*. (APA). *Department of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U. S. 749, 754 (1989). As enacted in 1946, section 3 of the APA gave agencies wide latitude in deciding which governmental records ought to be released. *Ibid.* In 1966, however, Congress amended the section to implement " 'a general philosophy of full *agency* disclosure.' " *Department of the Air Force* v. *Rose*,

425 U. S. 352, 360 (1976) (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)) (emphasis added). The change requires, for example, agencies to make available in the Federal Register their rules of procedure. 5 U. S. C. §552(a)(1)(C). Section 551 of the APA lays out the definition of "agency" as used throughout sections 552 through 556. It defines "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency," §551(1), but exempts "the courts of the United States," §551(1)(B), among other entities of government like, *e. g.*, "the Congress," §551(1)(A). The Supreme Court is a member of the Judiciary, see U. S. Const., Art. III, §1, and is consequently exempt from FOIA requests. As such, the request for the omitted lines in the oral argument transcript from *SigmaHD*, *supra*, is

*Denied.*

September 4, 2017

*Certiorari Granted*

No. 04–12. Louislin *v.* GNC Financial Services Group, Inc. Certiorari granted.

September 8, 2017

*Certiorari Granted*

No. 04–13. FederatedLaw *v.* Mr_Barron. Certiorari granted.

*Constitution*

No. 00–00. The Constitution is approved.

*Expulsions*

No. 00–00. Mythbusters2000. The motion to expel Mythbusters2000 is approved.

No. 00–00. KingLukassie. The motion to expel KingLukassie is approved.

No. 00–00. Kyle9003. The motion to expel Kyle90038 is approved.

September 9, 2017

*Certiorari Granted*

No. 04–14. LordiousHulaios *v.* Snowbleed. Certiorari granted.

*Expulsions*

No. 00–00. Infly. The motion to expel Infly is approved.

*Bar Revocations*

No. 00–00. KingLukassie. The motion to revoke the bar certification of KingLukassie is approved.

No. 00–00. Kyle90038. The motion to revoke the bar certification of Kyle90038is approved.

No. 00–00. JedBartlett. The motion to revoke the bar certification of JedBartlett is approved.

September 17, 2017

*Certiorari—Summary Disposition*

No. 04–01. United States *v.* Tastles. Certiorari dismissed.

September 23, 2017

*Certiorari Granted*

No. 04–16. Punisher5665 *v.* United States Senate. Certiorari granted.

Justice Scalia, dissenting from the granting of certiorari.

The Court grants certiorari in a case to do with whether the Senate may promulgate rules to allow a committee of theirs to "suspend" for three sessions Senators who act "unruly" or "immaturely" in their duties on the floor of their chambers from proposing motions. It was my understanding that each House of Congress "may determine the Rules of its proceedings, punish its Members for disorderly behavior, and, with the Concurrence of two thirds, expel a Member and or Office," Art. I, §5, cl. 2. This to me seems like a simple exercise of that Article I power. Notwithstanding my opinion of the case's merits, I believe we improperly granted certiorari here. While our Court has extra jurisdiction to "at any time when it deems necessary to exercise a Review of the . . . Legislative branc[h]," Art. III, §4, our primary jurisdiction is confined to "actual cases and controversies." *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006). Known colloquially as our "Article III power," this limitation is generally extended to our Anytime Review jurisprudence. See, *e. g.*, *Bakerley* v. *SurprisеParty*, 4 U. S. 21 (2017) (cert. denied); *AdamStratton* v. *Technozo*, 2 U. S. 88, 90 (2017) (HOLMES, C. J., dissenting); *Psychodynamic* v. *Technozo*, 2 U. S. 77 (2017) (HOLMES, C. J., statement respecting the denial of certiorari); *Ex parte HHPrinceGeorge*, 2 U. S. 30, 32 (2017) (HOLMES, C. J., statement respecting the denial of certiorari). The Court justifies its foray into the unnecessary by claiming this case presents a question of great seriousness and significance—as though the responsibility to resolve it lies uniquely with our Court of Nine elitists. I disagree with that interpretation, as I believe this is a clear-cut exercise of the Senate's constitutionally granted power to create its own rules for operation. And if such ocntentions arise in that process, the task of resolving them is confined to the branch from which they arose. For this reason, I would deny the petition for certiorari.

October 4, 2017

*Certiorari Denied*

No. 04–18. Ex parte VinexyRaps. Certiorari denied.

Justice Scalia, with whom Justice Alito joins, statement respecting the denial of certiorari.

I write to highlight that the question presented before us is "uncommonly silly." *Griswold* v. *Connecticut*, 381 U. S. 479, 527 (1965) (Steward, J., dissenting). Petitioner asks us to seriously consider whether an individual in public office—especially civil office—may submit a resignation (here, alas, is where all normalcy is thrown from the balcony) but then retract it and return to service. Why would this be allowed? Simply put, because the petitioner wishes it to be so. Except the Constitution mentions nothing of retraction of resignations for civil offices, nor do any statutes as they relate to offices created by the Congress. Owing to these deficiencies, I cannot vote to grant certiorari to answer a question so abound with what one wishes the reality to be rather than what it in actuality is.

I grieve for the petitioner's recently deceased newborn brother, but it is not the place of my Court to help him by effectively amending the Constitution to reverse his resignation from the bench—all because it was done when his state of mind may have been amiss. Our role is limited to deciding cases and controversies in a manner agreeable with our Article III powers. See *Lawrence* v. *Texas*, 539 U. S. 558, 605 (2003) (Thomas, J., dissenting).

October 5, 2017

*Certiorari Denied*

No. 04–17. ADVICE *v.* United States. Certiorari denied.

October 6, 2017

*Certiorari—Summary Disposition*

No. 04–12. LOUISLIN *v.* GNC FINANCIAL SERVICES GROUP, INC. Certiorari dismissed.

October 7, 2017

*Certiorari—Summary Disposition*

No. 04–13. FEDERATEDLAW *v.* MR_BARRON. Certiorari dismissed.

October 8, 2017

*Certiorari—Summary Disposition*

No. 04–14. LORDIOUSHULAIOS *v.* SNOWBLEED. Certiorari dismissed.

October 13, 2017

*Certiorari Granted*

No. 04–19. AIML0CKED *v.* UNITED STATES. Certiorari granted.

October 14, 2017

*Certiorari Granted*

No. 04–20. VINEXYRAPS *v.* NEVADA HIGHWAY PATROL. Certiorari granted.

JUSTICE BORK, dissenting from the granting of certiorari.

This Court has two sources of original jurisdiction. The first applies "in all cases affecting ambassadors, other public ministers and consuls, and those in which a municipality shall be a

party." Art. III, §2, cl. 2. The second, referred to as the Constitution's Anytime Review Clause, allows us to "exercise a review of the executive or legislative branches" to ascertain the constitutionality or legality of any "law, executive order, or other action" they take. Art. III, §4. Our hearing of this case is authorized by neither. The respondent, the Nevada Highway Patrol, is not a component of the executive or legislative branch, nor is it an ambassador, public minister, consul, or municipality. I agree that the petitioner's claim is meritorious, but the "responsibility to resolve it" does not lie "uniquely [or at all] with our Court of Nine elitists." *Punisher5665* v. *United States Senate*, 4 U. S. 26 (2017) (Scalia, J., dissenting from the granting of certiorari). For that reason, I would deny the petition for certiorari.

*Certiorari—Summary Disposition*

No. 04–16. PUNISHER5665 *v.* UNITED STATES SENATE. The motion by petitioner to dismiss is granted.

October 18, 2017

*Certiorari—Summary Disposition*

No. 04–19. AIML0CKED *v.* UNITED STATES. Certiorari dismissed as improvidently granted.

No. 04–20. VINEXYRAPS *v.* NEVADA HIGHWAY PATROL. Certiorari dismissed. Case remanded to the federal district court.

November 4, 2017

*Certiorari Granted*

No. 04–22. ORIGINALGLO *v.* UNITED STATES. Certiorari granted.

*Certiorari Denied*

No. 04–21. ORIGINALGLO *v.* UNITED STATES. Certiorari denied.

November 14, 2017

*Certiorari—Summary Disposition*

No. 04–22. ORIGINALGLO *v.* UNITED STATES. Certiorari dismissed.

November 16, 2017

*Certiorari Denied*

No. 04–23. JACOBKIRKMAN *v.* UNITED STATES. Certiorari denied.

November 27, 2017

*Certiorari Denied*

No. 04–24. SNOWBLEED *v.* UNITED STATES. Certiorari denied.

December 27, 2017

*Certiorari Denied*

No. 04–25. IN RE ISAACTHECOP. Certiorari denied.

December 29, 2017

*Certiorari Granted*

No. 04–26. SNOWBLEED *v.* NEVADA HIGHWAY PATROL. Certiorari granted.

January 5, 2018

*Certiorari Denied*

No. 04–27. LeoKirkman *v.* United States Secret Service. Certiorari denied.

January 18, 2018

*Certiorari Denied*

No. 04–28. Slyfulness *v.* Katotoo. Certiorari denied.

January 21, 2018

*Certiorari Granted*

No. 04–29. RonnShadow *v.* Snowbleed. Certiorari granted.

*Certiorari—Summary Disposition*

No. 04–29. RonnShadow *v.* Snowbleed. Certiorari dismissed.

January 23, 2018

*Bar Certifications*

No. 00–00. Null2234_2. The motion to certify Null2234_2 as a member of the Supreme Court bar is approved.

January 28, 2018

*Expulsions*

No. 00–00. SNOWBLEED. The motion to expel SNOWBLEED is approved.

January 29, 2018

*Certiorari Denied*

No. 04–30. EX PARTE SNOWBLEED. Certiorari denied.

February 3, 2018

*Certiorari Granted*

No. 05–01. XSONICRAINBOOM *v.* EZURAS. Certiorari granted.

No. 05–02. AIDANTHEGAMERGOD *v.* BANK OF AMERICA. Certiorari granted.

February 5, 2018

*Certiorari Denied*

No. 05–03. EX PARTE STIPS2000. Certiorari denied.

February 7, 2018

*Certiorari Denied*

No. 05–04. CALEBKINGRB *v.* UNITED STATES. Certiorari denied.

No. 05–05. TOWKEO *v.* UNITED STATES. Certiorari denied.

*Certiorari—Summary Disposition*

No. 05–02. AidanTheGamerGod *v.* Bank of America. Certiorari dismissed.

February 15, 2018

*Certiorari Denied*

No. 05–06. Intrisic *v.* Skizzo. Certiorari denied.

February 16, 2018

*Certiorari—Summary Disposition*

No. 05–01. xSonicRainboom *v.* Ezuras. The motion by petitioner to dismiss is granted.

February 21, 2018

*Certiorari Denied*

No. 05–07. in re Shawn_Schmidt. Certiorari denied.

No. 05–08. TahaEuduN7Omar *v.* Federal Bureau of Investigation. Certiorari denied.

REPORTER'S NOTE

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