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CASES ADJUDGED

IN

THE SUPREME COURT

AT

AUGUST TERM, 2016

AUGUST 15, 2016 THROUGH MAY 14, 2017

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

END OF TERM

HARVEYRSPECTER

REPORTER OF DECISIONS

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

KOTWARRIOR, CHIEF JUSTICE.
JUSTYOURDAILYNOOB, ASSOCIATE JUSTICE.
MRYOSEMITE, ASSOCIATE JUSTICE.
ANIMATEDDANNYO, ASSOCIATE JUSTICE.
SAMUELKING22, ASSOCIATE JUSTICE.
BOB561, ASSOCIATE JUSTICE.
QOLIO, ASSOCIATE JUSTICE.
MINDY_LAHIRI, ASSOCIATE JUSTICE.

RETIRED

BONNIESBENNETT, ASSOCIATE JUSTICE.
SECRETLYJACOB, ASSOCIATE JUSTICE.
BOB561, ASSOCIATE JUSTICE.
MRSHIBE, ASSOCIATE JUSTICE.
BILLY22371, ASSOCIATE JUSTICE.
SUFFERPOOP, ASSOCIATE JUSTICE.
ANTONINGSCALIA, ASSOCIATE JUSTICE.
KOLIBOB, ASSOCIATE JUSTICE.

OFFICERS OF THE COURT

KOLIBOB, ATTORNEY GENERAL.
HARVEYRSPECTER, ATTORNEY GENERAL.
GSHOCK2369, ATTORNEY GENERAL.
QOLIO, ATTORNEY GENERAL.

SAM4219, ACTING SOLICITOR GENERAL.
APTERIA, SOLICITOR GENERAL.
RYAN_REVAN, SOLICITOR GENERAL.
BILLY22371, SOLICITOR GENERAL.
HARVEYRSPECTER, REPORTER OF DECISIONS.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

AUGUST TERM, 2016

JEDBARTLETT, ET AL. *v.* FEDERAL ELECTIONS COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES FEDERAL ELECTIONS COMMISSION

No. 38HT1. Argued August 14, 2016—Decided August 14, 2016

The petitioner has filed a petition for review of his disqualification by the Federal Elections Commission under the Congressional Electoral Law, alleging that the disqualification violated the CEL's provision barring "biased motions" by the Federal Electoral Commission.

Held: The Congressional Electoral Law's prohibition on "evidently biased" motions is a requirement by negative implication that the motion itself not be biased, not necessarily a limitation on the bias of the Commission members; a motion is biased only if it constitutes a prejudicial and non-uniform application of election rules or enforcement practices or if evidence to support the claim of the motion is lacking.

FEC motion, affirmed.

KOTWARRIOR, C.J., delivered the opinion of the Court, in which Sufferpoop, MRYOSEMITE, ANIMATEDDANNYO, BonnieSBennett, and SecretlyJacob, JJ., joined. JUSTYOURDAILYNOOB and BOB651, JJ., took no part in the decision of the case.

JedBartlett argued the cause for the petitioner.

SurpriseParty argued the cause for the Federal Elections Commission. With her on the brief were *2NQ* and *Apteria*.

CHIEF JUSTICE KOTWARRIOR delivered the opinion of the Court.

The Congressional Electoral Law of 2016 outlines an indirect

prohibition on "evidently bias" motions by the Federal Elections Commission, including motions to disqualify. Accordingly, motions to disqualify must be examined for potential violations of this specific prohibition.

I

This case was brought before the Supreme Court, under the review clause of the Congressional Electoral Law. See §IV(a)(4). It prescribes that if a motion of the Federal Elections Commission is flagged by one of its overseers as "illegal/unlawful/evidently bias . . ." it shall be reviewed by the Supreme Court. The petitioner is a person who was disqualified from the House of Representatives election for criminal trespassing, who claims that the Commission was prejudiced against him.

II

The Congressional Electoral Law's provisions relating to review by the Supreme Court pose an interesting challenge in interpretation. While the law does not otherwise declare a meaning or definition for bias, or specifically prohibit it, it does permit the Supreme Court to review "evidently bias" motions, thereby delegating the duty to the Supreme Court to determine the meaning and extent of bias in each case.

III

The petitioner's claim is likely unsubstantiated as no clear evidence of prejudice has been submitted before the Court, therefore eliminating any possibility of declaratory relief in favor of the petitioner. For the sake of argument, however, the Court entertained the possibility of a bias from a member of the Commission. To address this scenario, we considered a negative implication, see *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244 (1991), in the meaning of evidently bias. Under this view, the provision requires that the bias of the motion of itself be evident, not necessarily bias by any member of the Commission. Evidence of a biased motion could be non-uniform enforcement of election rules, or motions where evidence is lacking. The petiti-

oner failed to prove that either existed.

* * *

The disqualification of the petitioner was legal as the petitioner failed to prove that the rules were non-uniformly applied, or that the evidence from the motion was lacking.

It is so ordered.

Syllabus

UNITED STATES, ET AL. *v.* CITY OF LAS VEGAS, ET AL.

ON WRIT OF CERTIORARI TO THE CITY OF LAS VEGAS

No. 38G17. Argued November 27, 2016—Decided November 28, 2016

The Federal Government brought before the Court a property claim to the Tow Truck Service, challenging the city ordinance which purported to remove the service from the control of the Department of Transportation. The government requested that the court enjoin the city to return the Tow Truck Service to the operational control and management of the Transportation Department.

Held: If the city ordinance truly did remove the service from the control of the Transportation Department, then it would be void. However, the government has failed to adequately prove any lien where the Tow Truck Service is concerned. The government could not prove that the creation of the service, and placement under the department was done by statute, therefore eliminating any claim to [sovereign] supremacy in this case. In addition, the entity which was previously under the control of the Transportation Department was known as the 'Tow Truck Company,' an entirely different entity from the existing service.

KOTWARRIOR, C.J., delivered the opinion for a unanimous Court.

Billy22371, Solicitor General of the United States, argued the cause for the petitioner.

Technozo and *Pauljkl* argued the cause for the respondents.

CHIEF JUSTICE KOTWARRIOR delivered the opinion of the Court.

In our system of government, the federal authority, by virtue of its sovereignty, holds supremacy over the city governments constituted within its jurisdiction. Despite this, arbitrary claims of lien or propriety by the federal government hold no value in court. The federal government must still prove that it holds a valid claim to that property; if it cannot, there is no lien to be ruled upon.

I

This case was brought before the Supreme Court, under the Anytime Review Clause of the Constitution, which grants the Court jurisdiction to review any unconstitutional or unlawful ac-

tions of the executive or legislative branch. By consequence however, this also permits review of actions taken by entities authorized by the laws or regulations enacted by the same, or actions directly resultant of actions directly included in the anytime review power ("[a penumbra] formed by emanations from those [clauses] that help give them life and substance."). See *Griswold* v. *Connecticut*, 381 U. S. 479 (1965). The city governments were constituted by the City Government Act of 2015 (which was overturned *in part* by previous rulings of this Court), therefore including them within the review authority of the Court under the Anytime Review Clause. The petitioner is the federal government, which asserts a lien over the Tow Truck Service and claims that the service is property of the United States, not a city of private entity, citing its sovereign supremacy.

II

Under the doctrine of sovereign supremacy of the federal government, states [and localities] have no authority to act contrary to the rule of federal law. This has been expanded to also mean that the lower governments have no authority over any federal institutions, even federally-chartered corporations. See *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819). However, in finding that federally-chartered corporations cannot be bound by state or local ordinance, it did acknowledge that the local governments do have authority where the citizens thereof hold a "proprietary interest." *Id.*, at 318. That stipulation is held to mean, in this case, that the city holds limited authority (of course consistent with federal law) over corporations owned by citizens, and where operation is exclusively limited to that municipality.

Further, on the issue of supremacy, it is important to note that a mere claim to lien over an institution by the federal government does not in itself hold supremacy over the claim by the local government. The federal government must be supported by Act of Congress, and not merely unfounded avarice. Supremacy precludes local laws only when they "[stand] as an obstacle to t-

he accomplishment and execution of the full purposes and objectives of Congress." See *Edgar* v. *MITE Corp.*, 457 U. S. 624 (1982).

III

The burden is on the federal government in proving its proprietary claim over the Tow Truck Service; in that sense, the United States, as the petitioning party bears the risk of not being able to prove its claim. See *Schaffer ex rel. Schaffer* v. *Weast*, 546 U. S. 49 (2005). The government seeks to change the current state of affairs and cannot possibly have any expectation of success without a "substantial factual basis supporting its claim." 2 J. Strong, McCormick on Evidence §337, 412 (5th ed. 1999). The Court applied a simple three-pronged test in deciding whether a proprietary claim by the federal government against a locality meets the necessary burden of proof (considering both the burden of production and persuasion):

1. Is the existing property the property which the Federal Government has claim to?

2. Was the property, or the acquisition of the property, constituted or authorized by federal law?

3. Was the property removed from the control or possession of the federal government without its lawful consent?

If to any of these questions the answer is no, then the claim must fail, and the federal government has failed to meet the necessary burden of proof in asserting a lien. See *Schaffer* v. *Weast*, 546 U. S. ___ (2005).

The developer of Las Vegas, Pauljkl, testified before the Court that the present Tow Truck Service is entirely different from the previous "Tow Truck Company," which was administered by the Department of Transportation; the previous federally-administered company is now defunct and their team was replaced in Las Vegas by a privately-run entity (the service). For that reason, the claim already must fail, for the answer to question 1 of the property dispute test is no. However, the Court proceeded to consider the other two questions in the three-pro-

nged test for sake of argument.

The respondent correctly pointed out that there is no legislation on record authorizing the formation of the Tow Truck Company or placing it under the administration of the Department of Transportation. Because of that, the answer to question 2 is also no. The answer to question 1, also, is a conditional no because the property was not truly removed from the control of the federal government, but the city ordinance purported to do such. The city ordinance could not legally remove the company from the control of the federal government, and if not for the other two prongs to the test, the federal government would have a valid claim to the ownership of the service.

* * *

The federal government holds no valid claim of propriety or lien to the Tow Truck Service; the service is owned and operated privately; the city ordinance constituting the Tow Truck Service is invalid to the extent that it purports to remove the service from the jurisdiction of the Department of Transportation as the service was never under the management of the department to begin.

It is so ordered.

Syllabus

HHPRINCEGEORGE *v.* CAPITALIZED

ON WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS

No. 1–10. Argued December 28, 2016—Decided December 29, 2016

Section 16 of Article I of the Constitution requires Chairmen and Vice Chairman of Congressional committees to be elected by Congress. U.S. Const. art. I, §16. In August of 2016, the House of Representatives, led by their then-Speaker of the House (Swordmaker), passed a resolution to create the House Committee on Foreign Affairs; included in the resolution was the granting of power—to the Speaker—to appoint the committee's Chairman and Vice Chairman. Soon, a second resolution was passed in the House, removing the Vice Chairman position in committees, but still upholding this newfound "power" of the Speaker to appoint Chairman. Petitioner brought before the Court a request to review now Speaker Capitalized's actions, after noticing he appointed Congressman Helleoh to the position of Chairman of the House Foreign Affairs Committee. Petitioner has asked that this Court enjoin the further use of the two resolutions in question, and reverse the appointment of Helleoh to the position of committee chairman.

Held: The resolution permitting the Speaker to appoint the Chairman (as well as its replacement, which permits the of the Vice Chairman) is unconstitutional. Furthermore, Section 16 of Article I of the Constitution applies to intra-house Congressional committees—not just those that are joint.

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

Gwope argued the cause for the petitioner.
FearedVexation argued the cause for the respondent.

JUSTICE ANTONINGSCALIA delivered the opinion of the Court.

It has long been understood by our governmental institutions that the Congress is awarded, by constitutional virtue, the ability to set its own rules (see U.S. Const. art. I, §5, cl. 1.). However, the content and scope of those rules do have limits, as prescribed in several constitutional articles. For a resolution and action derived thereof to be upheld, it must be proven that they were constitutionally permitted.

I

This particular issue before the Court lacked particular grey

area. That is, to say, it was a fairly straightforward question: can the Speaker of the House, or any Congressional officer for that matter, appoint committee chairmen and vice chairmen? The answer is an unequivocal "no." As Section 16 of Article I of the Constitution says, "The Chairman/woman and Vice Chairman/woman; shall be voted by Congress." U.S. Const. art. I, §16. It is true, though, the Court did discuss the possibility of what the Constitution means by "voted by Congress," as there is possible irregularity therein.

II

One could assume the sole use of the wording "Congress" could mean it only applies to joint-congressional committees. In debating this very issue, the Court relied on discussion about it made back in August, 2016. It was decided that it is false that "the [C]onstitution ordains that they must have the entirety of Congress or their house elect them." Discussion, August 2016. The Court has decided to read into the word as it was most likely intended, not as it simply stands on the page; indeed, sometimes it is the job of the Court to interpret where the makers failed to specify. And with consideration, it is clear that it means that it applies both to committees individual to the House and Senate, and to joint-congressional ones as well.

III

That is not to say that the House and Senate cannot dictate their own rules regarding the process by which other members of committees are appointed, or decide the lengths of their terms. The Constitution makes no mention of either—it only makes illegal the appointment of committee chairmen and vice chairman.

IV

The Court had declined to hear a near-identical case to this one today back in August because the House had seemingly "corrected its committees." *HHPrinceGeorge* v. *Swordmaker*, 1

U. S. ___ (2016) deliberations. However, given that the Speaker has appointed another Chairman and the resolutions were not repealed, the Court felt it necessary to take this case with intention to set important precedent.

* * *

The two resolutions in question are undeniably unconstitutional. They are hereby struck down. The appointment of Congressman Helleoh to Chairman of the House Committee for Foreign Affairs is unconstitutional. It is to be reversed immediately.

It is so ordered.

Syllabus

QOLIO *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS

No. 2–3. Argued January 13, 2017—Decided January 14, 2017

The United States Congress has adopted and passed a new law that prohibits judges and justices from expressing political views, campaigning, and joining campaigns in any capacity. While serving on the Federal Court Circuit, petitioner Qolio filed this suit seeking a declaration that the Judicial Branch Political Act violates the First Amendment and an injunction against its enforcement.

Held: The Judicial Branch Political Act violates the First Amendment.

(a) The record demonstrates that the Judicial Branch Political Act prohibits judges, justices, the Chief Justice, and special judges from: (1) having any title related to the mere action of campaigning, (2) campaigning on any medium, including the group wall, social media of any form, discord, skype, and more, (3) showing any political expression for political parties, and (4) campaigning without stepping down or "fac[ing] the consequences of their actions." Judicial Branch Political Act of 2017 §I–III. The "consequences" outlined, for failing to adhere to the bill, are impeachment. Id at §IV, cl. (b).

(b) The Judicial Branch Political Act both prohibits speech based on its content and places burden on categories of speech at the core of First Amendment rights granted to all Americans.

ANTONINGSCAIA, J., delivered the opinion for a unanimous Court. SufferPoop, J., filed a concurring opinion.

Qolio argued the cause for the petitioner.

Ryan_Revan, Solicitor General of the United States, argued the cause for the respondent.

JUSTICE ANTONINGSCALIA delivered the opinion of the Court.

The question presented in this case is whether the Judicial Branch Political Act passed by Congress violates the First Amendment of the Constitution.

I

Since the very founding of the United States, the fundamental concept of free speech has been the most formative right within our country; it is, quite literally, the paradigm on which our freedoms and values are built. Conceived from the restrictive means

of the British Empire, the First Amendment was first and foremost created to end the fear of law banning seditious libel, that is, speech criticizing government and laws passed thereby. This concept further developed into the wide-ranging right to speech that the First Amendment guarantees today. As Benjamin Franklin wrote in in 1736, "[f]reedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins." The Pennsylvania Gazette.

It has always been the policy of government and precedent of common law to uphold the right to free speech—even inflammatory speech—in the interest of protecting the citizenry: in the interest of preventing government tyranny. Thus it is no question that political speech forms a crucial element of the First Amendment's many protections; to strip that speech away via legislation, no matter how justified a legislative body may feel doing so, is dangerous and sets worrisome precedent.

II

Since the very formation of our court system within NUSA, the process of recusal and objective judicial ruling has been the norm for judges and justices of the Judicial Branch. While a many judicial officers have run for President, none have done so without making their intent clear to recuse themselves from their duties within the courts.

Senator Apolloqi, on January 7th, 2017, proposed the Judicial Branch Political Act to the Senate for approval. It passed the Senate, then the House of Representatives, and was signed by the President of the United States on January 13th. This act, promulgated by the Congress, restricts judges and justices from "hav[ing] any title related with the action of campaigning . . . campaign[ing] on [the] nUSA wall, agency walls, Skype, discord, twitter, or any other outlet used . . . [and from] show[ing] expression for political parties." Furthermore, it states that judges who violate it will be subject to impeachment. Judicial B-

ranch Political Act of 2017 §I–IV.

On January 13th, 2017, Federal Judge Qolio believed his Constitutional rights, specifically those within the First Amendment, to be infringed on by this act, and petitioned to this Court for an Anytime Review Clause review of the legislation's legality. We granted review, 2 U. S. ___ (2017).

The Court held a hearing, with the petitioner representing himself, and Solicitor General Ryan_Revan representing the United States, the respondent. The respondent ceded unconstitutionality to the Court, stating that the act "arbitrarily deprives United States [c]itizens of their First Amendment rights. This is wholly indefensible, and something that Government is created to avoid. Momentary shifts of public opinion do not, and should not, lead to the deprivation of rights."

III

Before considering the very constitutionality of the Judicial Branch Political Act, we must first dissect and clarify its meaning and intention. Indeed, while at face value it would seem to be a straightforward piece of legislation, its scope and potential ramifications run deep.

It is clear that prohibiting "political expression for political parties" goes much further than just judges and justices announcing support for a political party itself. The author of the bill, Apolloqi, admitted himself that the bill limits political speech: "[c]laiming that this bill will restrict [f]reedom [o]f [s]peech...[i]t may do so." He went on to admit that the bill limits speech, in very broad and vague terms. His justification for the bill is that all politically-oriented speech by judges and justices amounts to "active[] support." However, he doesn't specify in the legislation what exactly is active support.

Thus, in any event, it is clear that what amounts to political speech banned by this bill is not just announcing support for a particular political party, but making any politically-related comment publicly; furthermore, near all political commentary will revolve around a candidate or party. Apolloqi believes that

this bill is justified because it is inspired from the real version of the Judicial Ethics Code, and because it is—in his opinion—a political (oh, the irony) necessity. It is true, there exists a Judicial Ethics Code in real life with very real guidelines regarding political speech by judicial officers; though it is merely an ethics guideline, with no legal bearing whatsoever. While it may be something we agree should be followed, this does not mean it holds legal authority. Whether the bill's intentions, common law in authority, and the very text of the Constitution, prove sufficient enough to satisfy the First Amendment's guarantee of freedom of speech is the question to which we now consider.

IV

In considering the constitutionality of the Judicial Branch Political Act, the Court applied strict scrutiny, the level of review a court will apply when a fundamental constitutional right (most notably those within the Bill of Rights) is possibly being infringed or when government actions involve "suspect classification." See *Korematsu* v. *United States*, 323 U. S. 214 (1944); see also *United States* v. *Carolene Products Co.*, 304 U. S. 144 (1938). Under strict scrutiny, in order for a law or policy to be upheld, it must pass a three-pronged test: (1) it must be justified by a compelling government interest, (2) it must be narrowly based, and thus not overbroad, to achieve its goal, and (3) it must use the least restrictive means available to achieve its purpose.

V

It is clear that the Judicial Branch Political Act is very much a content-based law; it restricts speech of judges and justices based on its content; the content being, of course, political. The Court has made clear that content-based restrictions of speech may only be upheld if they serve a compelling government interest. *R.A.V.* v. *St. Paul*, 505 U. S. 377 (1992); see also *Eu* v. *Democratic Cent. Committee*, 489 U. S. 214 (1989). The Court, moreover, has defined content-based restrictions as those that

apply to speech due to the topic, message, or idea expressed/discussed. *Sorrell* v. *IMS Health, Inc.*, 564 U. S. 552 (2011). The bill attempts to justify its restrictions as being a compelling state interest because it claims they preserve the impartiality of the judiciary and prevent possible bias. The issue, however, is that it never specifies what exactly that bias is; it never defines it.

Judicial impartiality would, in the case of a judicial context, mean not having bias for or against any party in any proceeding. Where we come to a crossroads, however, is the fact that the process (and also convention) of judicial recusal already exists and is widely practiced by judges and justices; never once has there been an instance of a judicial officer using their position on a court to advantage a political party, candidate, or issue that they've vocally came out in support for. Furthermore, already statutes exist that require judges and justices who reasonably believe they may have a legitimate bias to recuse themselves. See 28 U. S. C. §455.

Even more so, it would prove futile—wholly impossible, even––to attempt to remove all possible bias from the courts; as Justice Rehnquist observed, "it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another." *Laird* v. *Tatum*, 409 U. S. 824, 835 (memorandum opinion). What Justice Rehnquist is saying is that it is impossible to assume that judges and justices won't have preconceived notions about particular issues and law; no act of Congress can prevent that. It is incumbent on the officer himself to analyze the situation, and recuse if necessary. As we have already observed the fact that recusal is used, this Court does not find sufficient evidence for this to be a compelling government interest to reasonably allow for there to be content-based speech restrictions on judges and justices.

The act of restricting—for all intents and purposes— all political speech by judges and justices (who we note are, too, American citizens) is neither narrow nor the most restrictive path av-

ailable for Congress to use. Given that the ramifications of this bill reach far and wide by banning all political speech on any medium, it cannot be argued that it is narrowly-based. This Court believes that this bill was authored with the recent 2017 presidential election in mind, in which two Supreme Court justices entered the race and one—for a short while— ran a campaign. Thus, we do not find it to be a stretch to assume that this bill was authored specifically with the intention to be far-reaching to clamp down on political speech; because it offers no sufficient reason to carry out these prohibitions, this Court finds no justification therein for them to be so broad.

Furthermore, we find that the one-sum action of impeachment in the face of violating this bill is the opposite of looking to use least-restrictive means. Given that statutes and conventions exist already to dictate the process by which possible conflicts of interest exist, and that the law fails to specify clearly what exactly constitutes political speech, we find the Judicial Branch Political Act to be in violation of the third test of strict scrutiny.

* * *

Our very own Court has outlined the—very few—instances where the right to free speech may be limited. It employs doctrines such as Fighting Words, Incitement, and more. See *Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (1942); *R.A.V.* 505 U. S.; *Street* v. *New York*, 394 U. S. 576 (1969); *Texas* v. *Johnson*, 491 U. S. 397 (1989); *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969). In each of those cases, the laws in question were able to provide adequate justification for their free speech restrictions; strict, indeed, are the situations where the courts have upheld limitations on the First Amendment. Nothing is more inalienable than the right to free speech; it is what our nation is founded on; it is our defining principle. Where other countries failed to provide freedom in the 18th Century, we succeeded. There is no question that this Court believes all judges and justices ought to remain objective and ethical, but the Constitution provides rights that Congress (and also the Executive and Judicial) may

not usurp arbitrarily. It is our job to interpret and uphold the Constitution. The opposition to political activism is well-meant and well-taken, but it does not justify taking rights away from Americans—because judges and justices are Americans. The principle on which we follow is that all men are created equal. Many believe it to be not only required but inevitable that some Constitutional liberties be waived in the face of what they feel to be political necessity. Regardless of the merits of such arguments, such views have no place in the interpretation of the Constitution, and, subsequently, its application. To believe that would be...pure applesauce.

The Judicial Branch Political Act of 2017 prohibiting judges and justices from exercising political speech violates the First Amendment. Correspondingly, we hereby strike down the law and remind Congress that they cannot pass unconstitutional legislation in the interest of what they feel is political necessity.

It is so ordered.

Justice Sufferpoop, concurring.

This bill is the most unconstitutional piece of shit to ever cross my path in my almost 2-year time on the court. It is complete and utter applesauce. This shit is worse than 1 ply toilet paper when you need to wipe your ass after you had diarrhea. The fact that Congress passed this horrible legislation restricting the rights of Judicial Officials shows the lack of intelligence that has fallen upon that branch. Nightgaldeld should purge everyone from Congress that supported such an Unconstitutional Act. How would Congress feel if we stripped them of their rights? They wouldn't like it and they would scream from the rooftops. This is why I, Justice Sufferpoop, should become Dictator.

Syllabus

CODYGAMER100 *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES FEDERAL COURT FOR THE DISTRICT OF LAS VEGAS

No. 2–4. Argued January 10, 2017—Decided February 12, 2017

Petitioner CodyGamer100 was charged in the case of *United States* v. *Savage Ops*, as part of the organization, with over a thousand counts of felony murder. See 18 U. S. C. §1111(a). The judge issued summons orders to two of the gang's leaders, who he decided on his own, would represent every defendant. None of the defendants were given an opportunity to be heard, and were all sentenced after the leaders admitted guilt on their behalf. No trial occurred and guilty pleas were entered against all of their names, including the petitioner.

Held: A person is denied their constitutionally-protected right of due process (both formative and procedural) when they are sentenced without trial. Furthermore, it violates those rights along with the right to jury trial when a person is sentenced based off a guilty plea entered by another. A joinder is permissible, and trials may be conducted together, but each person must still be convicted individually; no verdict may be issued against every defendant at once.

Fed. Ct. 'Dyb9PvSa', *United States* v. *CodyGamer100 (Savage Ops)*, vacated.

KOTwarrior, C.J., delivered the opinion for a uninamous Court.

Blastattack argued the cause for the petitioner.
Ryan_Revan, Solicitor General of the United States, argued the cause for the respondent.

CHIEF JUSTICE KOTwarrior delivered the opinion of the Court.

Occasionally, for the sake of efficiency, cases are consolidated in the Federal Court. This is done either by the filing of a single indictment against multiple defendants by the Department of Justice, or upon order of the court. Fed. R. Crim. P. 13. In this case, we consider whether the case of *United States* v. *Savage Ops* below was a permissible joinder under Rule 13 and whether the court erred in sentencing all the organization's members upon the guilty plea of the organization's two leaders.

We hold that the joinder was proper under Rule 13 but that t-

he Due Process Clauses of the Fifth and Twelfth Amendments as well as the Jury Trial Clause of the Sixth Amendment were violated in what amounts to the summary conviction of the organization's members on testimony from the organization's leaders.[1]

I

The Federal Government charged petitioner CodyGamer100 as part of the organization Savage Ops, then a street gang, with the felony offense of murder on several counts. See 18 U. S. C. §1111(a). A Federal Judge moved the case to trial, and compelled the gang's two leaders' attendance. Soon afterward, the two leaders entered a plea of guilty at the trial; the court below sentenced them, and every member of the organization, to back-to-back life imprisonment terms.

Following this decision, petitioner CodyGamer100 filed appeal with this Court, initially seeking a reduction of his sentence, but its expungement entirely. We granted certiorari, 2 U. S. ___ (2017), to resolve the matter of whether the case was tried properly and if the life sentence issued was a violation of the Eighth Amendment's protection against cruel and unusual punishment.

II

Two of the essential constructs of due process, which are the vein of nearly every other application of the clause, are to guarantee to all the ordinary processes of law and proper notice of what the law is. See *Johnson* v. *United States*, 576 U. S. ___, ___ (2015) (slip op., at 3). Equipped with this basic understanding of due process, we must now analyze the different branches of due process, and review their application to this specific case.

A

[1] The Jury Trial Clause provides that a person is entitled to an "impartial jury of the state and district" in all criminal prosecutions. U.S. Const. amends. VI, cl. 1.

Procedural due process is the more present of the two established branches. It serves to provide basic guarantees of procedure, or to return to the language of the constructs: the ordinary processes of law. *Ibid.* Among its many guarantees are the rights to an impartial judge[2] and the right to discovery. See *Brady* v. *Maryland*, 373 U. S. 83 (1963). These guarantees shape the course of a trial and litigation. They come in varying degrees of complexity, but all ultimately are for fulfilling the mandate of the ordinary processes construct. Each guarantee of procedural due process is linked to that construct in some way or the other.

As a matter of procedure, every person accused of a crime is presumed innocent until shown to be guilty. That sentiment is best described by the Court in *Coffin* v. *United States*, 156 U. S. 432 (1895), which said that the "principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Id.*, at 453. This inclusion was intended by the Framers to prevent the institution of courts of admiralty as had been done by the British, which required that a person prove their innocence, which in effect is asking a person to prove a negative, a virtual impossibility.

Under Hagar v. Reclamation Dist., 111 U. S. 701 (1884), a defendant is entitled to an "opportunity to be heard." *Id.*, at 708. This finding applies equally to criminal, as it does to civil, proceedings. This was, also, a finding of procedural due process, but one which contributes to a more formative whole.

B

Substantive due process originated in the infamous case of *Dredd Scott* v. *Sandford*, 60 U. S. 393 (1856), in which the Court held that as a matter of substance, a law which has the effect of depriving a person of property violates the guarantee of due pr-

[2] "[R]ecusal [must be required] where the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Capterton* v. *A. T. Massey Coal Co., Inc.*, 556 U. S. 868 (2009) (quoting *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975)).

ocess, see *Id.*, at 626. While this principle was initially used for conservative activism, to preclude valid change in law, it quickly developed as an instrument of liberal activists in the 19th and 20th centuries to essentially create law. See, *e.g.*, *Meyer* v. *Nebraska*, 262 U. S. 390 (1923); *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *Lochner* v. *New York*, 198 U. S. 45 (1905); *Roe* v. *Wade*, 410 U. S. 113 (1973), etc.

Substantive due process was the root of the right to privacy, and a "liberty of contract". *Lochner*, *supra*, at 56. The application of substantive due process has clearly changed hugely over time. This case, however, does not relate to substantive due process, although its characteristics do contribute, just as some features of procedural due process do, to a more formative whole.

III

The Court believes that a third branch of due process exists to further the basic constructs of the clause, and is consistent with the natural progression of this Court's jurisprudence on due process. This third branch is formative due process. Formative due process is simply a matter of form. Was there actually a process? What process was it? Was that process sufficient? These are the matters of form included and discussed in formative due process. This case specifically relates to this branch of due process. The Court now must answer the three questions of formative due process as applied in this case.

A

Was there actually a process? Even here, the court below is on shaky grounds. While there in fact was an opportunity for trial, no jury was impaneled,[3] and only two of the accused were present and entered pleas. For the sake of argument, the Court entertains the possibility that a process was provided.

B

[3] In Duncan v. Louisiana, 391 U.S. 145 (1968), the Court found that a "general grant of jury trial . . . is a fundamental right." *Id.*, at 158.

What process was provided? This question is simple: the leaders of the organizational defendant, Savage Ops, acted as the representatives of every individual defendant without their consent, and entered pleas of guilty. It is well grounded in this Court's jurisprudence that an opportunity to be heard must be afforded to "parties whose rights are to be effected." *Mathews* v. *Eldridge*, 424 U. S. 319, 333 (1976). The petitioner, and the other organizational defendants, were denied this opportunity—no summons was even issued to them, so no absentia argument is relevant here.

C

Was the process sufficient? Absolutely not. A plea of guilty by the leaders of the organization applies only to them, not to any of the other individual defendants. As noted above, a joinder of cases and the issuance of a collective name (in this case "Savage Ops") does not make the defendants all the same; that would not be a permissible joinder. Even in a joined jury trial, each defendant must be declared guilty by the jury; there is no group verdict.

IV

The matter of sentencing is far more nuanced than the due process portion of the case. However, during the pendency of this case, the President commuted the sentences of the defendants in the Savage Ops case to time served, so the matter may only be addressed in *obiter dicta*.

The appropriate test for whether a punishment is cruel is whether it contravenes "evolving standards of decency." *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958). Furthermore, per the text, we must also review whether the punishment is 'unusual.'

A

We must address the actual nature of our country in determining whether the punishment is cruel in its context. Simply put, our country is a roleplaying group. In effect, a life sentence is the punishment of permanent exclusion; it is certainly indecent to exclude permanently a person from the group's activities except for the most severe of offenses. *Ibid.* Murder, in context,

is not one of these offenses; victims simply respawn seconds later. While it is a punishable offense per law, the imposition of a life sentence for it is cruel.

B

In addition to being cruel, a life sentence for a crime which is not of the greatest degree of severity is unusual. It is rarely imposed, and the case below is one of two examples of it being done; the other case was not on charges of murder either, but of more severe offenses. Accordingly, a life sentence is both cruel and unusual, except for very severe offenses which warrant permanent exclusion.

* * *

The court below erred in sentencing the petitioner despite him not having been properly convicted in accordance with the rules of formative due process, and its judgement is, accordingly, vacated.

It is so ordered.

Syllabus

UNITED STATES *v.* LAS VEGAS

ON WRIT OF CERTIORARI TO THE UNITED STATES FEDERAL COURT FOR THE DISTRICT OF LAS VEGAS

No. 2–5. Argued January 25, 2017—Decided February 1, 2017

The City of Las Vegas' City Council has passed four new laws that directly run contradictory to this Court's ruling made in summer of 2015, which stipulated that the Constitution affords no right to local municipalities to pass laws. The Government of the United States then petitioned to this Court for a review of the Council's actions.

Held: The City Council of Las Vegas has repeatedly passed legislation unconstitutionally.

(a) The City Council violates the Constitution when it passes ordinances with legislative weight. *Overturning of Part in City Council Bill* (2015); *Clarify to the Councils that they Cannot Pass Anything of Legal Force – Rules, Laws, Ordinances, etc*, (2015).

(b) The concept of federalism derives out of the 10th Amendment in real life; we have no such amendment, and thus no legislative power can be afforded to municipalities without an act of Congress so long as it does not run contrary to the nondelegation doctrine. See U.S. Const. art. I, §1.

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

Ryan_Revan, Solicitor General of the United States, argued the cause for the petitioner.

Technozo argued the cause for the respondent.

JUSTICE ANTONINGSCALIA delivered the opinion of the Court.

The question presented in this case is whether the city of Las Vegas can legally pass ordinances that carry legislative weight.

I

The entire concept of states and local municipalities has plagued our country for years. While states exist in real life, their application on ROBLOX is questionable. There exists serious contention among supporters and doubters about the applicability of states in our United States, and whether they can truly be created. Our Constitution is clear: they cannot. In passing our Constitution, the entire concept of the "state" was omitt-

ed on purpose; the lawmakers responsible felt that it would be too difficult to organize and put into practical use in our country. This case concerns the issue of the Las Vegas City Council repeatedly passing ordinances and legislation, despite the Court ruling that they are prohibited from doing so by the Constitution. Where we come to an important distinction is the lack of a 10th Amendment in our Constitution. While states do not exist in our United States of America, local municipalities do.

II

Petitioner believes that federalism exists in our country so far as relating to the relationship between the federal government, whose responsibility is to "perform[] the task of Government," and the clan managers, whose responsibility is to "develo[p]." Hearing Transcript, p. 2 ¶ 39-42. The United States believes that this "has come into being through Constitutional amendments and situational precedent." *Id.*, at 42–43.

Respondent, in contrast, believes that there is no local law being passed or enforced, and wonders why the federal government has now twice raised this very issue. *Id.*, at 56- 59. This claim is demonstrably false, given that several laws have been passed by the Council over the past two years. On April 19, 2015, the Council passed the *Tazer War Prohibition Act* (2015), which made tazing friends illegal, and ordering that those responsible be arrested.[1] On April 20, 2015, *Las Vegas Official Spray Paint Laws* (2015) was passed. It set regulations regarding the use of the spray paint tool, and declared that breaking them would result in arrest. On January 29, 2016, the *Tow Truck Service Bill* (2016) was passed. It removed the Tow Truck Service from the control of the Department of Transportation and remanded it to the control of the private sector. On November 6, 2016, the *Speed Limit Adjustment and Specification Bill* (2016) was pas-

[1] While this act did not specifically order those responsible be arrested, it declared that the act of tazing friends "[would] result in an arrest." Tazer War Prohibition Act (2015), ¶ 2. Given that the Las Vegas Police Department is subordinate to the Council and legislation passed thereby, this Court sees this act as ordering those responsible to be arrested.

sed and signed by the respondent, Technozo, into law. It set speed regulations within the city of Las Vegas. All of these bills reflect the Council's action of passing ordinances with legislative effect, despite the ruling this Court made in 2015, declaring it unconstitutional for local municipalities, specifically those of Las Vegas, to pass legislation. *Overturning of Part in City Council Bill*, (2015); see *Clarify to the Councils that they Cannot Pass Anything of Legal Force – Rules, Laws, Ordinances, etc.* (2015).

The Court made this ruling by looking at the concept of federalism and the nondelegation doctrine in Article I of the Constitution which proscribes one branch of government from authorizing another entity to exercise its constitutional authorities. See U.S. Const. art. I, §1. However, respondent claimed that he was not aware of this Court's ruling made in 2015. Furthermore, the petitioner seeks a more in-depth ruling on the matter, given the clear confusion that has arisen.

III

In real life, power is given to the states by the 10th Amendment of the Constitution: "The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified." *United States* v. *Sprague*, 282 U. S. 716, 733 (1931). While some claim that the 10th Amendment grants people the power over their own personal liberty, such argument is misplaced and reflects a misunderstanding of federalism. *Ibid*. Thus we dive into the issue of federalism and how it works. While no 10th Amendment exists in our Constitution, the legal theory surrounding it can be applied to this situation.

A

Often government faces a crux when it comes to the tug-of-war that occurs between federal and local entities. When a government-sponsored national bank, The Bank of the United Stat-

es, attempted to establish branches in the state of Maryland, the state attempted to tax the organization for existing in its territory. The Court stated that "States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into effect the powers vested in the national Government." *McCulloch* v. *Maryland*, 17 U. S. 316, 317 (1819).

When Virginia's court refused to follow a ruling by the Supreme Court, the Court held that "the appellate power of the Supreme Court of the United States does not extend to this Court, under a sound construction of the Constitution of the United States." *Martin* v. *Hunter's Lessee*, 14 U. S. 304, 323 (1816). The Court's reasoning was that Virginia's government was not coequal to the federal government of the United States; the same line of logic applies to the Las Vegas City Council. Simply put, local governments are afforded power if such is delegated to them, but do not retain independent sovereignty. *McCulloch*, *supra*, at 404.

B

The Constitution has not afforded any legislative rights to the Las Vegas City Council, in fact it hasn't afforded any rights whatsoever. The Court has held that the Council may advise developers, but do nothing further. But let us assume for a moment that the Council is afforded the right to legislate. Still, these ordinances run into trouble legally. When the question of whether state courts could issue rulings on law that contradict those of federal courts, the Court explained that "conflicting decisions would unavoidably take place . . . The Constitution and laws and treaties of the United States, and the powers granted to the Federal Government, would soon receive different interpretations in different States, and the Government of the United States would soon become one thing in one State and another thing in another." *Ableman* v. *Booth*, 62 U. S. 506, 517-518 (1858). Just as in *Martin*, the Court held that local courts were inferior to federal ones.

Even when local ordinance is passed legally, if it conflicts with

federal law, authorities must defer to the federal legislation and follow it, rather than that passed by the local entity. *Edgar* v. *MITE Corp.*, 457 U. S. 624, 634 (1982). When looking at the ordinances passed by the Las Vegas City Council, it appears to be obvious that they were passed without taking into account regulations passed by Congress. As held in *Martin*, we contend that city ordinances are undoubtedly inferior to federal ones.

B

It is true that this Court analyzed the legality of the *Tow Truck Service Bill* (2016) and upheld it in *United States* v. *Las Vegas*, 2 U. S. 4 (2016). In Las Vegas, however, the issue at hand was whether the federal government had a proper claim of lien on the Tow Truck Service. We held that it did not. The issue was not whether the ordinance was passed legally; we consider that issue now. The issue for the Council is that without a proper 10th Amendment in our Constitution, no powers—not reserved to the federal government—are given to them. In real life, powers not specifically enumerated to the federal government are reserved to the states (in this case, the "states" would be local municipalities, instead). See, *e.g.*, *Bond* v. *United States*, 564 U. S. 211 (2011). Even in *Las Vegas*, the Court held that "the federal authority, by virtue of its sovereignty, holds supremacy over the city governments constituted within its jurisdiction." *Las Vegas*, supra, at 4.

IV

Federalism derives out of the 10th Amendment; all legislative powers and other authorities not given to the federal government by the Constitution are reserved to local entities. We do not have a 10th Amendment, thus any power afforded to the City Council to legislate must be given to them by an act of Congress that remains in line with the nondelegation doctrine. The Council has, for years now, operated contrary to *stare decisis* set forward by this Court and the very text of our Constitution. Oft it is difficult for ordinary persons to differentiate between our Constitution and the one we retain in real life; we understa-

nd such difficulty, but do not waive the authority of the law because of it.

* * *

We hold that all ordinances passed by the Las Vegas City Council are unconstitutional because neither a 10th Amendment exists to afford them the right to pass laws nor an act of Congress delegates to them legislative authority. Today's decision does not touch upon the extent of legislative authority Congress may or may not delegate to the Council.

We strike down any and all ordinances passed by the Council[2] and require law enforcement officers and any subordinates to the city government to be informed of this ruling for the future.

It is so ordered.

[2] By "any and all ordinances" we mean those with legislative intent and or force. The Council may continue to pass recommendation notes to the developers, but nothing more.

EX PARTE HHPRINCEGEORGE, ET AL.

WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS DENIED

No. 2–6. Decided February 8, 2017

Statement of CHIEF JUSTICE KOTWARRIOR, respecting the denial of certiorari.

This case was brought before the Court by petitioner HHPrinceGeorge, a former Vice President and Speaker of the House. He is also a candidate in the current Class 1 House elections, as well as a candidate in the Las Vegas Mayoral elections. Under the Supreme Court's ruling in *Ex parte Arpyc*, 1 U.S. 5 (2016), municipal offices qualify as civil offices. Although this decision was deeply flawed and relied on an obsolete version of the Nineteenth Amendment, the decision has yet to be overturned. The Petitioner filed this suit to ascertain whether it would be permissible for him to take office as a Representative but then subsequently resign and take office as Mayor under the Ineligibility Clause.

The Ineligibility Clause prescribes that "no Senator or Representative shall, during the time for which he was elected, be appointed to any other public government position, under the authority of the United States." U. S. Const. art I, sec. 5, cl. 4.

The consensus among the Court is that the case should not be heard because it is already a decided issue, that there is no further debate to be had and that there already is a clear understanding of what the clause means. In the words of my colleague, JUSTICE ANTONINGSCALIA, "the clause is clear enough," and so no further "clarification" or "interpretation" is necessary.

The general understanding of the clause is that its prohibitions are limited to actual appointments. In the context of this clause, the term appointment may appear vague, and so we should defer to the basic rule of statutory interpretation: *noscitur a sociis*; simply put, to look to the other provisions of the Co-

nstitution to extract the meaning as used here. *Yates* v. *United States*, 574 U. S. ___, ___ (2015) (slip op., at 13) (Kagan, J., dissenting) ("... this Court uses *noscitur a sociis* and *ejusdem generis* to resolve ambiguity...").

The term appointment is used throughout the Constitution only twice. Once in the Appointments Clause, and the other in the Senate Vacancy Clause. These clauses respectively provide for the appointment of civil officers, and for the filling of vacancies in the Senate. It can be assumed that the Senate Vacancy Clause is not intended to be bound by the Ineligibility Clause because the original intent behind the clause was to confer equal status to that of the other Senators upon these Senators appointed by the President to fulfill a vacancy, until the next "election" for that class. U. S. Const. art. I, sec. 3, cl. 2. The Appointments Clause on the other hand appears to be the targeted part of the Constitution where the Ineligibility Clause appointment ban is concerned. The Appointments Clause states that "he [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

The Appointments Clause declares the process of appointment for essentially all offices to which appointment is constitutionally required. It provides the means for Congress to, by law, vest the appointment of "inferior officers" in other officers of the government. Congressmen do not fall within this definition and are therefore not "appointed" positions. The Constitution draws a clear distinction which is evident from the reading of the basic language thereof.

This case was properly denied because there is no actual controversy to rule upon and the petitioner asks the Court to issue

an advisory opinion, which it declines to do. *Muskrat* v. *United States*, 219 U. S. 346, 347 (1911) ("A case or controversy, in order that the judicial power of the United States may be exercised thereon, implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication."). Furthermore, there is no substantial legal question to be answered as the plain meaning of the Ineligibility Clause is quite clear, even as applied to this circumstance: elected offices are not appointed offices.

While it is not a constitutional requirement that a person have standing to file a suit in an anytime review case, it is the convention of the Court to demand such.

JUSTICE ANTONINGSCALIA, concurring.

Petitioner, HHPrinceGeorge, asks this Court to clarify on the meaning of the Ineligibility Clause of the Constitution, which states that "No Senator or Representative shall, during the time for which he was elected, be appointed to any other public government position, under the authority of the United States." U. S. Const. art. I, §5, cl. 4. The Constitution is clear enough. The Ineligibility Clause derives out of the founders' intent to prevent dual office holding, which Alexander Hamilton described as "an important guard against the danger of executive influence upon the legislative body." The Federalist No. 76, p. 230 (Springer ed. 2009) (A. Hamilton) (spelling altered). The meaning of the clause is elementary; no person in Congress may take up another civil office—primarily aimed at those within the purview of the Executive—for the duration of their term to which they were elected. Petitioner asserts the possibility of confusion arising out of whether individuals in Congress may be elected to another office before their term expires and take up that duty without violating this clause. A noble question, indeed, but wholly irrelevant and non sequitur. The clause makes no mention of those those elected being in violation, and in looking at it noscitur a sociis, the mention of election to office was specifically omitted to impress the jurisdiction of the clause: the jurisdiction, of course, relating to appointments. Now, one could try to

argue what exactly being "appointed" means—though they would be wasting their, and our, time. The Court has already ruled that the sole act of nominating fulfills the constitutional definition of appointing. *Marbury* v. *Madison*, 5 Cranch 137, 161 (1803). There is no construction that could, legally speaking, argue one being elected to another office before their term ends violates the Ineligibility Clause so long as they resign one of the offices.

The constitutional law question aside, what would bother me most if we had granted Anytime Review is the judicial activism it would express. As JUSTICE ANIMATEDDANNYO pointed out, "this case lacks controversy. This petition is nothing but a question of law and the petitioner has not sustained any injury relevant to this clause." *Ex parte HHPrinceGeorge* Deliberation, ¶5 (capitalization altered). And while the Constitution offers no inherent requirement for standing in Anytime Review cases by this Court, it has been the convention that we retain from taking them when controversy is not present. Some Justices, in their quest to tinker and rewrite the Constitution to conform it to their worldview, feel that we ought to take cases without real controversy to, in this circumstance, clarify the meaning of the clause. As already discussed, the clause is clear enough. Moreover, the very function of Anytime Review should be reserved for cases of grave importance to our Nation; using it blithely would be a slippery slope toward an abusive Supreme Court.

* * *

This Court should only act as the interpreter of law in proper situations; taking this case merely to engineer stare decisis as we see fit would be dangerous and a disservice to the American system of government.

I respectfully concur in the denial of certiorari.

Syllabus

RYAN_REVAN *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS

No. 2–7. Argued February 20, 2017—Decided February 20, 2017

The *Fauxtillion Home Office Act of 2017*, Fauxtillion Home Office Act of 2017, 50th Cong. (2017) (punctuation altered), provides for "limited law-making at the city level in order to promote realism and regulate certain items specific to cities."1 Respondent, Congress, passed the law. Petitioner, Ryan_Revan, alleges that it violates the nondelegation doctrine and filed suit with this Court requesting a writ of certiorari to the United States Congress to review the law under Article 3's Anytime Review Clause of the Constitution. U. S. Const. art. III, §4.

Held: The Fauxtillion Home Office Act of 2017 delegates an unconstitutional amount of authority to the Las Vegas City Council. It violates the intelligible principle, set forth in *J. W. Hampton, Jr. & Co.* v. *United States*, 276 U. S. 394 (1928), which condones delegation of authority so long as it is within clear and ordained limits. *Id.*, at 404–405.

ANTONINGSCAIA, J., delivered the opinion of the Court, in which KOTWARRIOR, C.J., and Sufferpoop, JUSTYOURDAILYNOOB, ANIMATEDDANNYO, SAMUELKING22, and BOB561, JJ., joined. MRYOSEMITE, J., took no part in the consideration or decision of this case.

Ryan_Revan, Solicitor General of the United States, argued the cause for the petitioner.

SurpriseParty argued the cause for the respondent. With her on the brief was *Twittered*.

JUSTICE ANTONINGSCALIA delivered the opinion of the Court.

The Fauxtillion Home Office Act of 2017 delegates legislative authority to the Las Vegas City Council in an attempt to provide an easier process for law-making by the local city government. The question presented is whether this law violates the nondelegation doctrine of the Constitution.

I

We summarize the facts in the light most favorable to the United States Congress, given their fair intention in passing this law. The City Council of Las Vegas has oft presented a problem to this Court; just two weeks ago we ruled in *United* S-

tates v. *Las Vegas*, 2 U. S. 24 (2017) that city government is not constitutionally entitled a right to pass laws. We, accordingly, struck their previously passed laws and ordinances down in our landmark decision.

Respondent, the Congress, saw our decision and heard the complaints from city councillors and acted in what they felt was the best interest of both the local and federal government. Senator SurpriseParty presented the *Fauxtillion Home Office Act of 2017* on January 22, 2017. After passing the Senate, it passed the House of Representatives on February 1, 2017. It was—on that same day—then signed by the President of the United States, TheySinned. Petitioner, Ryan_Revan, then filed suit with this Court, petitioning for a writ of certiorari to the United States Congress; he alleged that the law's delegation of authority is a "crass and brash violation of the nondelegation doctrine." Brief for the Petitioner, p. 2. We granted certiorari. 2 U. S. ___ (2017).

Shortly thereafter, the Equal Rights Law Firm submitted an amicus brief for the respondent. Amici believe that the statutes in the law "kee[p] in line with the constitutional requirements set forth throughout the past century by the Supreme Court." Brief for the United States as *Amicus Curiae* 2.

Numerous attempts at scheduling oral argument were made—none succeeded. JUSTICE ANTONINGSCALIA, after a third attempt failed, submitted a motion to bypass hearing and move straight to deliberation on February 19, 2017. It passed.

II

The *Fauxtillion Home Office Act of 2017* delegates legislative authority to the Las Vegas City Council "in order to promote realism and regulate certain items specific to cities." Fauxtillion Home Rule Act of 2017, 50th Cong. (2017) (punctuation altered). It also provides three subject areas where the Council is authorized to regulate:

> "(1) traffic and road safety;
> "(2) possession or use of certain substances; and
> "(3) possession or use of firearms." *Id.*, at §2(1–3).

Respondent and *amici* believe these three clauses provide sufficient regulatory standards to satisfy the nondelegation doctrine. To review the legitimacy of this belief, we must first dive into its true meaning and apply it to the situation at hand.

The founding-era understanding of the nondelegation doctrine was explicit; it was heavily influenced by the writing of John Locke, who said:

> "The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others . . . And when the people have said, We will submit to rules, and be governed by laws made by such men, and in such forms, nobody else can say other men shall make laws for them." J. Locke, Second Treatise of Civil Government, §141, p. 66 (Hackett Publishing Company ed. 2004) (Locke).

Over time, however, this hard-line[1] stance was slowly picked apart by the Court. Respondent and *amici* believe that the Constitution is "not a contract of the people, but a manifestation of the states, the states being sovereign entities established by social contract." Brief for the United States as *Amicus Curiae* 4. Several issues are at hand here.

They first mistakenly base their argument for delegation on this pretence; to do so is to ignore incredibly important and relevant Constitutional law. The states in real life do not derive their power from Congress, rather they derive it from the 10th Amendment. *Las Vegas*, *supra*, at 26. As we discussed in *Las Vegas*, no such amendment exists in our Constitution. Second, they believe that this law acts in accordance with the intelligible principle. This principle first began to develop in *Wayman* v. *Southard*, 23 U. S. 1 (1825), when Congress delegated to the co-

[1] It is important to note that by "hard-line," we mean that the original interpretation of the nondelegation doctrine was simplistic. At the time of the creation of the Constitution, the many organs and departments of the federal government could not have been envisioned, and the Court has felt it necessary to authorize the Congress to allow non-congressional bodies to regulate accordingly.

orts the power to regulate judicial procedure. Chief Justice Marshall, for the majority, explained that there exist differences between subjects and ordinary details: "a general provision may be made and power given to those who are to act under such general provisions to fill up the details." *Id.*, at 43. Furthermore, it was explained that Congress "concludes its enumeration of granted powers with a clause authorizing [it] to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." *Id.*, at 22. This standard was upheld in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935), where a provision granting the President the authority to prohibit the interstate shipment of petroleum was struck down because it provided "no criteria to govern [his] course." *Id.*, at 415. Then, in A. *L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935), because Congress had not explicitly outlined what regulations the President could use to approve trade codes, this Court struck down the provision for allowing the President to "approve or disapprove [of business'] proposals as he may see fit." *Id.*, at 538.

A pattern emerged; the Court found that delegation of regulatory power so long as it was within very clear, restrictive limits was constitutional. As Justice Scalia noted, "'The true distinction . . . is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. *The first cannot be done*; to the latter no valid objection can be made.'" *Mistretta* v. *United States*, 488 U. S. 361, 418 (1989) (Scalia, J., dissenting) (citing *Field* v. *Clarke*, 143 U. S. 649, 693-694 (1892) (emphasis added)), quoting *Cincinnati, W. & Z.R. Co.* v. *Commissioners of Clinton County*, 1 U. S. Ohio St. 77, 88-89 (1852). Although municipal regulation by Congress can present a "significant degree of complexity," Brief for the United States as *Amicus Curiae* 3, strict standards must be implemented if they wish to give local government the ability to regulate. The Court cannot waive proper jurisprudence in the face of what is seemingly easier or more convenient.

III

Thus, we now come to the main argument of the respondent: that the intelligible principle, most clearly outlined in *J. W. Hampton, Jr. & Co.* v. *United States*, 276 U. S. 394, 404-405 (1928), authorizes them to delegate legislative authority to Las Vegas's City Council. The intelligible principle is based on the theory that Congress may "describ[e] with clearness what its policy and plan [is], and then authoriz[e] a member of the executive branch to carry out its policy and plan and to find the changing difference from time to time and to make the adjustments necessary to conform the duties to the standard underlying that policy and plan." *Id.*, at 405.[2] The Court held that entities could make public regulations so long as they remain in line with statutes passed by Congress and "direct[] the details of its execution[.]" *J. W. Hampton, Jr., supra*, at 406 (citing *United States* v. *Grimaud*, 220 U. S. 506, 518 (1911)); accord *United Bridge Co.* v. *United States*, 204 U. S. 364 (1907); *Buttfield* v. *Stranahan*, 192 U. S. 470 (1904). The entire point of this principle is to authorize other agencies of government to carry out the laws prescribed by Congress so long as they're within clearly ordained limits; no such limits exist in Senator SurpriseParty's law.

Furthermore, in *Loving* v. *United States*, 517 U. S. 748 (1996), the Court held that Congress "may not delegate the power to make the law," but may delegate to others the authority or discretion to execute the law under and in pursuance of its terms." *Id.*, at 749 (citing *Field*, *supra*, at 693–694). Here is where the *Fauxtillion Home Office Act of 2017* conflicts with stare decisis set forth by this Court; it quite literally reads that it delegates to city councils the power to "enact laws." Fauxtillion Home Office Act of 2017, 50th Cong. §2 (2017). And while city councils may be afforded delegation because they are "federal actors or instr-

[2] Respondent's amici misrepresent our holding in *J. W. Hampton, Jr.* by editing and omitting crucial excerpts from a quote they included in their brief. Brief for the United States as *Amicus Curiae* 2, citing *J. W. Hampton, Jr., supra*, at 407. They present the Court's ruling as if it gave Congress carte blanche authority to allow other bodies to regulate without outlined limits; such line of thought is out of touch with the holding and false.

umentalities," the delegation here is overly broad and does not satisfy the intelligible principle. *Dept. of Transportation* v. *Ass'n. of American Railroads*, 575 U. S. ___, ___ (2015) (slip op. at 11) (spelling altered).

The Constitution reads that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." U. S. Const. art. I, §1 (capitalization altered). And while the temptation to allow delegation to go forth unchecked is strong, given the circumstances, this Court is authorized to exercise "neither force nor will but merely judgement." The Federalist No. 78, p. 456 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). Under the Constitution, "judges have the power to say what the law is, not what it should be." *Obergefell* v. *Hodges*, 576 U. S. ___, ___ (2015) (slip op. at 2) (Roberts, C.J., dissenting).

* * *

The nondelegation doctrine is clear. Respondent and *amici* misinterpreted it. We overturn the *Fauxtillion Home Office Act of 2017*.

It is so ordered.

EX PARTE HACTZKOMI

WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT OF LAS VEGAS DENIED

No. 2–8. Decided February 21, 2017

JUSTICE ANTONINGSCALIA, with whom KOTWARRIOR, C.J., joins, dissenting in the decision to deny certiorari.

Petitioner, HaCtzKomi, was put under contempt of court by retired Supreme Court Justice—acting in delegated capacity as a federal judge—Psychodynamic and given an arrest-on-sight order lasting for three days. HaCtzKomi submitted a petition for a writ of certiorari to this Court on February 14, 2017, alleging that he followed his friend, AmmarLewis, into the courtroom mid-trial not realizing what was occurring. HaCtzKomi, in his petition, explains that AmmarLewis "told me to follow him [into the courtroom]," where he was then "frozen, arrested on site, and banned" from the server all while being away from the keyboard. App. to Pet. for Cert. NV6VC33D863A §1 (spelling altered). Our Court, upon deliberation, denied his petition; we erred.

"Criminal contempt is a crime in the ordinary sense," *Bloom* v. *Illinois*, 391 U. S. 194, 201 (1968), and "criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings," *Hicks* v. *Feiock*, 485 U. S. 624, 632 (1988). *Mine Workers* v. *Bagwell*, 512 U. S. 821, 826 (1994) (inner-quotations omitted).[1] Such rights include those such as "privilege against self-incrimination [and the] right to proof beyond a reasonable doubt." *Ibid* (citing *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444 (1911)).[2]

Furthermore, the Court has gone into detailed discussion ab-

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[1] See *In re Bradley*, 318 U. S. 50 (1943) (double jeopardy); *Cooke* v. *United States*, 267 U. S. 517, 537 (1925) (rights to be notified of charges, counsel assistance, summary process, and to present a defense).

[2] These rights apply to those under criminal proceedings, and such include being under criminal contempt. *Mine Workers*, *supra*.

out what differentiates between criminal and civil contempt, for the confusion arising from the two can disorient many in the legal profession. We emphasized strongly that whether contempt is civil or criminal rests on the "character and purpose" of the contempt sanction issued. *Gompers*, *supra*, at 441. It was found that contempt citations are civil if they are "remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." *Ibid*. *Gompers*, however, too recognized that stated purposes of a contempt citation are alone insufficient to be determinative. *Id*., at 443. And we found "when a court imposes fines and punishments . . . 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*, *supra*, at 635. The *Hicks* Court further held that conclusions regarding the nature of a contempt citation are drawn "from an examination of the character of the relief itself," *id*., at 636, not only the "subjective intent [of] . . . its Courts." *Id*., at 635.

And thus contempt citations are criminal and punitive if they are imposed retroactively for a "completed act of disobedience." *Gompers*, *supra*, at 443. Given such, the *Gompers* Court held that a 12-month contempt sentence on an individual "for violating an antiboycott injunction was criminal." *Mine Workers*, *supra*, at 829 (citing *Gompers*, *supra*). It would indeed be clear that the citation here issued against HaCtzKomi was criminal; the case undergoing included the use of prosecutors, App. to Pet. for Cert. NV6VC33D863A §1, and the citation was not issued to provide proper relief "for the benefit of the complainant." *Gompers*, *supra*, at 441. Thus the question where the Court failed to properly analyze is whether the petitioner satisfied the standard for being issued a contempt citation.

United States law defines the situation in which contempt of court is appropriate:

> "A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
> "(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." 18 U. S. C. §401.

Further, in section 402, statute defines what constitutes crimes within the sphere of contempt citations as any "person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States." §402. The elements to satisfy issuing criminal contempt are in the U.S. Attorney's Manual outlined as:

> "misbehavior of a person . . . in or near to the presence of the court . . . which obstructs the administration of justice; and . . . which is committed with the required degree of criminal intent." 9 U.S.A.M. §753 (citing *United States* v. *McGainey*, 37 F.3d 682, 683 (D. C. Cir. 1994)).

When looking at these several elements and resources compiled, it simply is ludicrous that the Court decided to ignore the very real implications and error on behalf of Psychodynamic's contempt citation.

HaCtzKomi, like many Americans, is not well-versed with legal procedure; his petition for a writ of certiorari explained that in the plainest of terms. And, certainly he did not have the criminal intent required in the issuing of criminal contempt citations. Psychodynamic then punishing him, while he was away, for simply being in the wrong place at the wrong time demonstrates an abuse of judicial power and error on his part.

* * *

The function of our Court, as outlined by the Constitution, see U.S. Const. art. III, §5,[3] is to provide the final jurisprudence on

[3] Section 5 of Article III reads: "any decision made in the federal courts can be appealed to . . . the Supreme Court," *ibid.*

issues already decided in the federal court circuit; how can we claim to do so when we deny cases in which such clear breaches of proper justice occur?

Our Court erred in denying the petitioner's writ. I respectfully dissent.

Syllabus

BOB561 *v.* MINDY_LAHIRI

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT OF LAS VEGAS

No. 2–9. Argued March 9, 2017—Decided March 11, 2017

Respondent, Mindy_Lahiri, placed Bob561 under criminal contempt of court for interfering with a case she was hearing. Bob561 shortly thereafter filed suit with this Court, alleging a violation of contempt procedure, which, inter alia, requires that there be a jury trial for cases in which the contemnor is found to have committed a crime equivalent to that as outlawed by Acts of Congress.

Held: Mindy_Lahiri acted in accordance with statute and common law set forth by the Courts in placing petitioner under contempt of Court.

(a) Contempt of Court procedure is outlined in 18 U. S. C. §401–403. A United States court has the authority to punish individuals "at its dis cretion" for "[m]isbehavior . . . in its presence . . . [m]isbehavior of its officers . . . [and] disobedience or resistance to its lawful writ, process, order, rule, decree, or command." §401(1–3). Pp. 47–48.

(b) Petitioner's claim that a lack of hearing invalidates the contempt citation, Brief for Petitioner 9, is misplaced. For a hearing to be required, one must have committed an act or thing that "constitutes a criminal offense under any Act of Congress," 18 U. S. C. §3691. Pp. 49–52.

F. 3d 746466, affirmed.

ANTONINGSCALIA, J., delivered the opinion of the Court, in which KOTWARRIOR, C.J., and JUSTYOURDAILYNOOB, MRYOSEMITE, ANIMATEDDANNYO, and SAMUELKING22, JJ., joined. KOLIBOB, J., filed a dissenting opinion. BOB561, J., took no part in the consideration or decision of this case.

Bob561 argued the cause for the petitioner.

Mindy_Lahiri argued the cause for the respondents. With her on the brief was *SurpriseParty*.

JUSTICE ANTONINGSCALIA delivered the opinion of the Court.

Title 18 of the United States Code provides statutory guideline for United States courts and their proper use of contempt citations. We first consider whether the presence of a Supreme Court Justice in that of a case to which he is not privy to is sufficient enough to satisfy the standard for criminal contempt. An-

d second, whether the application of that criminal contempt was in line with statutory law.

I

Contempt of Court is divided into two types: civil and criminal. Both have different procedure, and both are issued under different circumstance. Civil contempt is exercised when a court of law wishes to compel future compliance with a court order, 9 U. S. A. M. 754, and may "be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury nor proof beyond a reasonable doubt is required." *International Union, UMWA* v. *Bagwell*, 512 U. S. 821, 114 S. Ct. 2552, 2557 (1994). By contrast, "[c]riminal contempt is a crime in the ordinary sense." *Bloom* v. *Illinois*, 391 U. S. 194, 201 (1968). The case before the Court today concerns criminal contempt and the procedure required thereof.

Petitioner Bob561 (hereafter Bob) is a now twice-serving Supreme Court Justice. On March 2nd, 2017, Bob commented on the case *United States* v. *Frosty6540*, F. 3d Y5MWLZT28N16 (2017), requesting that respondent Mindy_Lahiri (hereafter Mindy) recuse herself after it was discovered she had prior history with the defendant involved. After argument on the card ensued, Mindy warned Bob to "not comment on [the] case again." Brief for Petitioner 7. Bob, alleging that he did not see Mindy's warning, continued to comment, and was shortly placed under contempt of court thereafter. He was sentenced to thirty days in prison, which was then reduced to one week.

On March 5th, Bob filed suit with this Court, requesting a writ of certiorari to review Mindy's actions and appeal his contempt citation. We granted certiorari to decide whether the issuing and then application of the contempt citation was constitutional. 2 U. S. ___ (2017).

II

To decide whether contempt is civil or criminal, the stated purpose of a contempt citation is "alone insufficient to be determinative." *Ex parte HaCtzKomi*, 2 U. S. 40, 41 (2017) (ANTONING-

SCALIA, J., dissenting) (citing *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 443 (1911)). We found that in drawing conclusions regarding the nature of a contempt citation, not only is an examination of the "subjective intent" of a court required, but also the "character of the relief itself." *Hicks* v. *Feiock*, 485 U. S. 624, 635–636 (1988). We, too, look to the distinction set by *stare decisis* regarding the chief difference between the two types of contempt; whether the citation serves as a compelling act or one as punishment. We see this as one imposed for a "completed act of disobedience." *Gompers*, 221 U. S., at 443. Looking to the *Gompers* case, it is clear that acts which are in in clear violation of either procedure or courtroom orders are liable for criminal contempt. Indeed, in *Gompers*, the Court held that a 12-month contempt sentence on an individual for violating an antiboycott injunction was criminal. *Gompers*, 221 U. S. In this case, Mindy admits that the citation issued here was criminal—Bob made no effort to deny this, either. Oral Arg. Transcript 11. Thus our standard of review must be that of what is applied in cases in which criminal contempt citations are challenged.

Criminal contempt presents a unique difficulty to judicial review, given the complications that often arise. Because contempt power uniquely is "'liable to abuse,'" *Mine Workers* v. *Bagwell*, 512 U. S. 821, 831 (1994) (quoting *Bloom* v. *Illinois*, 391 U. S. 194, 202 (1968)), our jurisprudence in the area of contempt has "attempted to balance the competing concerns of necessity and potential arbitrariness." *Id.*, at 832.[1] We've found that at the pinnacle of necessary contempt adjudication is when unfavorable conduct threatens a court's "immediate ability to conduct its proceedings." *Ibid.* And we've also held that summary procedure is required and proper when doing so "maintain[s] order in the courtroom." *Codispoti* v. *Pennsylvania*, 418

[1] See, *e.g.*, *Young* v. *United States ex rel. Vuitton et Fils*, 481 U. S. 787, 820–821 (1987) (Scalia, J., concurring in judgement) (judicial contempt power is one of "self-defense," limited to punishing those who "interfere with the orderly conduct of [court] business or disobey orders necessary to the conduct of that business").

U. S. 506, 513 (1974).

Bob's primary argument is that he was "unjustly cited" and was not given a "full effective warning." Oral Arg. Transcript 24. In contrast, Mindy's is that he had no business being on the card and that she was within her right as a federal judge to issue the contempt. *Id.*, at 25. We consider both points of Bob's argument now.

II

We first turn to Bob's contention that he was improperly placed under contempt of court. Brief for Petitioner 9. To decide whether the action of contempt citing Bob was legally sound, we look to the statutes in question. The bulk of contempt power is found in Title 18; we look to it now. It reads:

> "A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
> "(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." 18 U. S. C. §401(1–3).

Though this is not the only relevant section:

> "Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States . . . by doing any act or thing therein, or thereby for bidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States . . . shall be prosecuted for such contempt *as provided in section 3691* of this title . . . This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts co-

> mmitted in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted," §402 (emphasis added).

Given the language, we must, too, look at section 3691, which requires that the "act or thing done or omitted also constitutes a criminal offense under any Act of Congress" in order to qualify for the right to a jury. §3691.

A

When interpreting statutory law, we "begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself." *CPSC et al.* v. *GTE Sylvania, Inc., et al.*, 447 U. S. 102, 108 (1980). And upon doing so, we find that sometimes the plain meaning of the statute can be ambiguous—that certain words or phrases may only become evident when placed into context. Thus, to decide if the language is plain enough, we read the words "in their context and with a view to their place in the overall statutory scheme." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000). Simply put, "[a]bsent a clearly expressed legislative intention to the contrary, [the] language must ordinarily be regarded as conclusive." *CPSC et al.*, 447 U. S., at 108. Section 401 of Title 18 is clear enough in that it provides the basis power of contempt to United States courts; the language is plain enough. Where we come to a contention is deciding first whether Bob satisfied the standard for contempt.

The Court looked to the U.S. Attorney's Manual in analyzing the standard for contempt. It explains that there are "four . . . elements . . . (1) misbehavior of a person; (2) in or near to the presence of the court; (3) which obstructs the administration of justice; and (4) which is committed with the required degree of criminal intent." 9 U. S. A. M. 753, citing *United States* v. *McGainey*, 37 F. 3d 682, 683 (D.C. Cir. 1994). Bob clearly satisfied the first point, "misbehavior" of a person, and second point, "in or near to the presence of the court," *ibid.*, by wilfully

going onto the case card and arguing with Mindy—in a case he was not a party to. The question is whether his actions fall under points three and four. We hold that his actions were sufficient enough. We must always defer to the language of statutes over that of manuals or resources that are not considered common law, and the statute is clear enough. Bob's actions fall under 18 U. S. C. §401(3), which says that "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command" is liable to contempt. *Ibid.* As Bob himself admitted, he was not a party to the case. Oral Arg. Transcript 11. Just as an everyday American cannot burst into the courtroom or comment on case trello cards, Bob, even if he is an officer of the Judiciary, is not entitled the right to violate procedure in the same way; his actions indeed made him liable to be held under contempt.[2] The now pertinent question, with it resolved that he *did violate* procedure, is whether it obstructed—within reasonable interpretation—the administration of justice.

Mindy believes that Bob's actions interfered with her case, that his actions provided no benefit whatsoever to the matter. We agree. Bob is a member of the Supreme Court; we find it incredulous that he would not know that you cannot interfere with cases. And despite his excuses that he was merely advising Mindy to recuse, we cannot waive procedural rules in the face of what some would call noble action—the law must reign supreme. Furthermore, we look to the Judicial Ethics Code to determine if Bob had any pressing reason to be there: was he allo-

[2] Bob believes that he was entitled the right to insert himself into the case. Despite acknowledging that "it is frowned upon," he believes it is allowed if an "officer of the Department of Justice or Judiciary has a reason for doing so." Oral Arg. Transcript 6. We find that line of thought to be, quite plainly, nonsense. In no situations are individuals not parties to cases allowed to simply insert themselves into the business of a courtroom; procedure exists and procedure must be followed. When it is broken, it is within the right of a Court to contempt those who violate it. Indeed, the power of a court to issue contempt is inherent. See, *e.g.*, *Ex parte Robinson*, 19 Wall. 505 (1874) (where it was explained by Justice Field that the existence of contempt power is essential to the preservation of order in judicial proceedings).

wed? The answer is an unequivocal "no." As discussed above, he is not afforded a right to enter a court case and interfere.

Bob claims that he was an "informal party," Oral Arg. Transcript 22, once the defense contacted him to seek assistance. *Ibid*. However, Bob should not have answered their calls for help in the first place. "A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family." Code of Conduct for United States Judges §4(A)5. Bob certainly is not a member of the family of Frosty6540, and thus had no reason to be there that is adequate in the eyes of our Court. Establishing that the issuing of the contempt itself was legally sound, we must now consider whether proper procedure was followed afterward.

B

The relevant statute in our discussion today is 18 U. S. C. §3691. We find its language to be plain enough, satisfying the first half of the standard set out in *CPSC*, 447 U. S. and *FDA*, 529 U. S. Thus, we move into the placement of the statute in context with the actions we consider today and review them appropriately.

Section 3691 is simple enough; it states that actions—for which individuals are placed under contempt of court—not criminal under Acts of Congress on their own do not necessitate the involvement of a jury in sentencing. Our Court has held the same. In *Bloom*, 391 U.S., we stated that "direct contempts also cannot be punished with serious criminal penalties absent the full protections of a criminal jury trial." *Mine Workers*, 512 U. S., at 833 (citing *Bloom*, 391 U. S., at 210). When combining this with §3691, we see two integral prongs that must be satisfied: (1) do the person's actions which satisfy contempt fall under violation of an Act of Congress, and (2) was the punishment applied serious enough to require the full protections of a jury as

outlined in Bloom, 391 U.S., and did it follow proper procedure?

To the first, it is a clear "no." The act of interfering with a case is not criminal in its nature; furthermore, we must remember that the distinction between civil and criminal contempt rests on the reason for its application—not the type of action warranting the retaliation. See, *e.g.*, *Gompers*, 221 U. S., at 443; see also *Miller* v. *Miller*, 375 S. C. 443, 652 S. E. 2d 754 (Ct. App. 2007). Thus we move onto the second prong of the test: whether the punishment applied was done so appropriately in accordance with the law.

We hold that the punishment applied was not serious enough to require a jury protection and was done so appropriately. While initially Mindy put Bob under arrest for thirty days, it was revised one day later to be a one-week sentence, Oral Arg. Transcript 13; we find that to be an appropriate measure of time. Given this, we decide now whether the process by which Mindy issued the contempt citation was proper. "Longstanding precedent confirms the power of courts to find summary contempt and impose punishment." *Pounders* v. *Watson*, 521 U. S. 982, 987 (1997).[3] In *Cooke* v. *United States*, 267 U. S. 517 (1925), we said:

> "To preserve order in the court room for the proper conduct of business, the court must act instantly to suppress disturbance or violence or physical obstruction or disrespect to the court when occurring in open court. There is no need of evidence or assistance of counsel before punishment, because the court has seen the offense. Such summary vindication of the court's dignity and authority is necessary. It has always been so in the courts

[3] See, *e.g.*, *Ex parte Terry*, 128 U. S. 289, 290 (1888) (where it was decided that "it is within the discretion of the court either to at once make an order of commitment founded on its own knowledge of the facts or to postpone action until the offender can be arrested on process, brought back into its presence, and given an opportunity to make formal defense against the charge of contempt, and any abuse of that discretion is, at most, an irregularity or error not affecting the jurisdiction of the court.").

> of the common law and the punishment imposed is due process of law." *Id.*, at 534–535.

Yet we have found that the contempt power of courts is liable to abuse, which is why we've held that the summary contempt exception to normal due process requirements[4] "includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public." *In re Oliver*, 333 U. S. 257, 275 (1948), quoting *Cooke*, 267 U. S., at 536.

To curb this possible abuse, we have stressed the importance of "confining summary contempt orders to misconduct occurring in court." *Pounders*, 521 U.S., at 988. Simply put, where it is misconduct that warrants the contempt citation, summary vindication is justified. See *In re Green*, 369 U. S. 689, 692 (1962) (relying on due process cases); *Harris* v. *United States*, 382 U. S. 162, 164 (1965) (defining difference between ordinary and summary contempt under Fed. Rule Crim. Proc. 42). Indeed, the failure to comply with a court order itself "constitute[s] an affront to the court, and when that kind of refusal disrupts and frustrates . . . summary contempt must be available to vindicate the authority of the court." *United States* v. *Wilson*, 421 U. S. 309, 316 (1975). Even the dissent in Wilson admitted contempt convictions "would have been warranted if the witnesses had engaged in 'insolent tactics.'" *Pounders*, 521 U.S., at 989 (citing *Wilson*, 421 U.S. at 326 (Brennan, J., dissenting) (quoting *Harris*, 382 U.S., at 165)).

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[4] These requirements include freedom from double jeopardy, In re Bradley, 318 U. S. 50 (1943); rights to be notified of charges, counsel assistance, summary process, and to present a defense, Ex parte HaCtzKomi, 2 U. S. 40, n. 1 (2017) (ANTONINGSCALIA, J., dissenting) (citing *Cooke*, 267 U. S., at 537); and "privilege against self-incrimination [and the] right to proof beyond a reasonable doubt," *Cooke*, supra, at 537 (citing *Gompers*, 221 U. S., at 444).

Bob's actions disrupted the ability of the court to properly function. He, as a Supreme Court Justice, should have known that procedure bars him from inserting himself into the business of cases he is not privy to; his actions began an argument and Mindy responded with an appropriate contempt charge that was reasonable in punishment. As *Pounders* and *Wilson* show us, we find that the lack of jury protection was constitutional in this case. The ability of a judge to conduct his or her courtroom well cannot be stressed enough. See *Cooke*, 267 U.S.

The argument that he did not see the warning posted by the judge is both hard to believe and non-sequitur in its entirety, Oral Arg. Transcript 19, given the fact that trello comments are updated in real-time. Furthermore, Bob argues that he did not take his comment down, post-warning, out of fear "of a [harsher] punishment." *Ibid.* Similar to what CHIEF JUSTICE KOTWARRIOR observed during oral argument, we "don't particularly see the logic behind that line of thought," *id.*, at 20. Given it was the intent of Mindy to maintain decorum in the court, why the immediate response of Bob was not to delete his comments after being warned is unknown to us. Establishing that both the conduct of Bob warranted contempt punishment and the application of the contempt citation was legally sound, we address Bob's argument of unequal application of justice.

IV

Bob believes that he is the "victim of discrimination" because he advised Mindy to disqualify herself from the case—he alleged that she had a conflict of interest. Brief for Petitioner 9. We wholly reject this argument. Some on the Court, primarily JUSTICE KOLIBOB, agree with Bob, believing that Mindy's argument that she has discretion regarding her choices of who to contempt is "[s]pecious, at best." Oral Arg. Transcript 16. Where we come to an important difference again is the discretion available to judges with the power of contempt they wield in court.

Whether one agrees with this or not, judges are offered nearly

unlimited, certainly very wide, discretion regarding their power to issue contempt citations. As already discussed, the interest of upholding the function of the court gives them this latitude. Petitioner failed to show adequately that the decision to charge him with contempt, and not the others, was an abuse of the respondent's discretion. We refrain from over-examining decisions if parties cannot, or do not, strongly show abuse. See, *e.g.*, *Wilton* v. *Seven Falls Co.*, 515 U. S. 278 (1995).

Judges can choose whom they wish to charge with contempt; it is their courtroom. We would be remiss to remove that ability from judges, especially since—in this particular case—Bob's interference with the case proceedings was wholly, undeniably out of line and out of procedure.

* * *

"In a democracy, the power to make the law rests with those chosen by the people. Our role is more confined—'to say what the law is.'" *King* v. *Burwell*, 576 U. S. ___, ___ (2015) (slip. op., at 21) (quoting *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803)). And while easier said than done in some cases, we strive to always act in accordance with our role: to interpret, not create, the law.

Respondent charged the petitioner for interference with contempt in line with 18 U. S. C. §401, 3691 and precedent set by this Court.

The contempt charge of the United States District Court of Las Vegas is

Affirmed.

JUSTICE KOLIBOB, dissenting.

The question presented in this case is whether the Respondent was allowed and acted accordingly to Title 18 and the Federal Rules of Criminal Procedure, along if sentence was deemed as cruel and unusual, originally.

I

Mindy_Lahiri, the Respondent, a retired Associate Justice of the Supreme Court that has been "designated and assigned by the Chief Justice of the United States to perform such judicial duties", as per 28 U. S. C. §294, has held the Petitioner, Justice Bob561, under direct criminal contempt, see 18 U. S. C. §401, for commenting on the *United States* v. *Frosty6540* case.

The actions of Mindy_Lahiri were *intra vires*, although it is my belief that, given the circumstance, one must be entitled to a jury trial in this case, see F. R. Crim. P., R. 42 (a) (3).

The authority of the Court to hold persons in contempt is outlined in 18 U.S. Code Chapter 21.

A jury trial should've been granted, as the Respondent claims that the Petitioner has disrespected the "court order", see 18 U. S. C. §1509, which constitutes an "Act of Congress", under 18 U. S. C. §3691.

II

Title 18 and the Federal Rules warrant the use, most of the times, of criminal contempt at the Court's own discretion, and have little to no limitations regarding the use of it.

Unfortunately, this puts in contrast many problems and situations such as the one I'm dissenting on, and it is my own opinion that the Supreme Court should ensure, from now on, that regulations are put into place.

III

The Respondent has stated that she has held the Petitioner in *direct* criminal contempt of court due to the fact that the Petitioner has not respected the lawful order from herself, and as such this constitutes the imprisonment of the Petitioner, as per 18 U. S. C. §401—I strongly believe that this is not the case, whereas F. R. Crim. P., R. 42 (a) (3) states that:

> "A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so provides . . . If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified

> from presiding at the contempt trial or hearing unless the defendant consents . . . "

Due to this, I think that the Petitioner should have been granted a jury trial, along with the disqualification of Mindy_Lahiri from presiding, due to the fact that the contempt constitutes more of an "outside" issue rather than a direct "attempt at obstructing the administration of justice".

I also believe that the law should be more clear on those circumstances and penalties, hence why I have dissented.

IV

The precedent that this case has done will have a major impact on the authority of a federal district judge, whereas it has granted even more unbounded powers of contempt, via allowing them to hold in direct contempt of court anyone they deem, at their own discretion, contemptible. Of course, only if one has commented on a case that the respective Judge is presiding over.

The punishment for interfering with cases via commenting on them should've been left up to the administrators and handlers of the board or an indirect contempt of court of the presiding judge, rather than summary punishment when it is deemed acceptable by the Judge.

V

In regards with the original punishment given by the Respondent, I *very strongly* believe that it was too long, ergo I believe that both Congress and the Supreme Court should set forth regulations for such cases.

* * *

In conclusion, Mindy_Lahiri has acted de jure overall, but due to poorly made regulations, the Supreme Court should have intervened. I dissent.

Per Curiam

DONALDJTRUMP *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT OF D. C./WEB

No. 2–10. Decided March 20, 2017

PER CURIAM.

A United States District Court issued a court order against petitioner DonaldJTrump alleging that he was in violation of recent law passed by Congress while running in the recently concluded election for a seat in the United States Senate, class 1. The law relevant to the court order is H. R. 17, 50th Cong. §1–3 (2017), which was enacted "to bar high office individuals in the Executive Branch from running for office while holding their [current] offices." *Ibid.* The District Court, relying on the new law, issued a summary order against the petitioner disqualifying him from his elected seat in the Senate. DonaldJTrump petitioned for a writ of certiorari to review the District Court's actions making a due process clause violation claim. We granted certiorari to address his argument. 2 U. S. ___ (2017). We then, upon looking to the immediacy of the case subject, voted to summarily vacate the lower court's order for lack of jurisdiction. *Ibid.*

We do not address whether the law, H. R. 17, was applied properly; DonaldJTrump makes no such argument regarding that. We instead look to his due process claim. Central to the due process clause of the fifth amendment is procedural due process—that is, has fair procedure been followed before depriving a person of the life, liberty, or property mentioned in the clause itself? The Court in *Matthews* v. *Eldridge*, 424 U. S. 319 (1976) outlined a 3-pronged balancing test for procedural due process claims:

> "[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's i-

> nterest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*, at 335.

Also relevant to our decision is the issue of personal jurisdiction on behalf of the District Court; did it have the right to issue that order? We hold that it, quite simply, did not. No case was initiated; due process requires that there, at the most basic of levels, be a case first established by a plaintiff with a defendant involved. Courts may not on their own action issue orders or injunctions; a case must first exist. Thus, while 28 U. S. C. §1331 gives district courts "original jurisdiction of all *civil actions* arising under the Constitution, laws, or treaties of the United States," *ibid.* (emphasis added), an action must be present for there to be jurisdiction to carry out any judicial function in the first place. No such action existed preceding the order in question. With this established, we now consider DonaldJTrump's due process claim.

When applying the Matthews test, we find the answer to the first prong to be straightforward; there is a substantial private interest being affected by the District Court's order. DonaldJTrump is an American citizen who has spent considerable time and effort attempting to win elections at all levels over the past year; his coming in first place is no doubt a sign of strenuous work to achieve over seventy votes in the election. It would be ignorant and illogical for us to not consider his retention of his elected seat a private interest of his. The second prong, in layman's terms, expresses the requirement that we analyze the risk factor of deprivation of rights by use of procedure and whether additional safeguards exist to curb that risk. We find that the procedure, or—in this case—lack of procedure, used prevents an incredible risk of rights deprivation. One cannot construct an interpretation where unfettered authority to issue orders, injunctions, and subpoenas that carry the full weight and authority of the law without cases first existing with parties initiating motions for such actions do not present a grave risk to

individuals and their afforded due process clause rights. And while one could then argue that the appellate function of our very own Court provides a sufficient enough safeguard against judicial abuse, we hold simply that our appellate authority is wholly inadequate under the Matthews test.

Finally, we consider the third prong—is there a government interest substantial enough to warrant the deprivation of rights? We do not consider whether DonaldJTrump while running was a member of an office defined in §1 of H. R. 17, 50th Cong. (2017). *Id.*, at §1. We do, however, consider whether the District Court had enough interest to warrant issuing in sua a court order disqualifying, unilaterally, DonaldJTrump from his elected Senate position. We, as discussed *ante*, believe that there simply is no sufficient government interest that would justify allowing courts to simply issue orders without controversies.[1] Thus we hold that the District Court erred in its applilication of a court proceeding without a case existing first and vacate its order.

It is so ordered.

[1] See U. S. Const. art. III, §2 (the case or controversy requirement of the Constitution, which, inter alia, requires a case or controversy to exist before judicial review can be applied); see also *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006) ("No 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 or controversies."); *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. ___, ___ (2010) (slip. op., at 7) (emphasis added) (Article III standing requires an injury be "fairly traceable to the challenged action").

Syllabus

LIKEANUB *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT OF LAS VEGAS

No. 2–11. Argued March 10, 2017—Decided March 11, 2017

In No. 2—9, petitioner Likeanub was prosecuted and subsequently convicted on two charges of deprivation of rights under color of law, which were the result of two apparent false arrests which he made in his official capacity. Pp. 60–61. Within four days of being charged, his trial had occurred; he claimed he had been given notice of his trial date and that counsel had been appointed for him. Furthermore, he argued that he'd been tried by jury despite his request to bench trial. This, he said, violated his procedural rights.

Held: Under Rule 43, a person may not be tried in absentia unless they were notified of the trial date five days in advance. Pp. 60–65. Additionally, a person must be given ample opportunity to acquire their own legal counsel, and assigned legal counsel must be given sufficient time to prepare a defense. Pp. 64–68.

(a) An absentia trial may only occur if a defendant is given five days' notice of the trial date and then fails to attend, as specifically stated in Rule 43. Pp. 66–67. Additionally, the voluntary waiver provisions of Rule 43 withstand strict scrutiny and are a valid benchmark for the "opportunity to be heard" requirement outlined in *Hagar* v. *Reclamation Dist.*, 111 U. S. 701 (1884) at 708. Pp. 63-66.

(b) *Powell* v. *Alabama*, 287 U. S. 45 (1932) establishes a right for a defendand to receive "fair opportunity to secure counsel of his own choice." *Id.*, at 53. Under this right, it was improper for the court below to prevent the defendant from choosing their own attorney. Pp. 67–68.

KOTwarrior, C.J., delivered the opinion of the Court, in which all other members joined except Bob561, J., who took no part in the consideration or decision of this case.

Apteria, Solicitor General of the United States, argued the cause for the respondents.

CHIEF JUSTICE KOTwarrior delivered the opinion of the Court.

The process by which a person is punished for committing a crime is simple. They are accused, prosecuted, then tried by a jury of their peers. Occasionally, a defendant (with the consent of the government and the court's approval) may waive their ri-

ght to trial by jury and agree to trial by bench. Fed. R. Crim. P. 23(a). This process is enshrined in the doctrine of due process. See *CodyGamer100* v. *United States*, 2 U. S. 18, 22 (2017). In this case, we consider to what extent a defendant is entitled to a right of presence at their trial and the weight of their request to trial by bench under the law and Constitution.

I

The Federal Government charged petitioner Likeanub, then an officer of the Special Weapons and Tactics (SWAT) division, with two counts of deprivation of rights under color of law on February 23, 2017. See 18 U. S. C. §242. These charges stemmed from evidence of two false imprisonments he made in his official capacity.[1] Just four days after being charged, he was convicted in absentia and was sentenced to twenty days of federal imprisonment.

The petitioner claims he was not given proper notice of the time of his trial and that an attorney was appointed for him despite him planning to contract his own. The Solicitor General agreed. We granted certiorari, 2 U. S. ___ (2017), to determine the extent to which the petitioner's constitutional rights were violated and to remedy any such violations if existent. We now vacate the decision below.

I

The criminal justice system of the United States is designed to fulfil three basic purposes: retribution, incapacitation, and deterrence. See *Miller* v. *Alabama*, 567 U. S. ___, ___ (2012) (Roberts, C.J., dissenting) (slip op., at 3). If punishment is imposed upon those who are not truly guilty, these purposes are evaded. For that reason, our Constitution guarantees to defendants several, admittedly tedious, protections. Among these is the right "to be heard", which the Court has held "applies equally to criminal, as it does to civil proceedings." *Hagar* v. *Reclamation Di-*

[1] https://youtu.be/Rr_hbrR7JyU, https://youtu.be/FsaAddFJl2o

st., 111 U. S. 701, 708 (1884); *CodyGamer100*, *supra*, 21.

A defendant does not strictly have to be present at their trial, but they must be given an "opportunity" to be. *Hagar*, *supra*. This is settled law and not a debatable point. The nuance here lies in the question of what degree of opportunity must they be afforded.

The Court held previously in *Crosby* v. *United States*, 506 U. S. 255 (1993), that while a defendant is entitled the right to be present at their trial, certain actions constitute a "knowing and voluntary waiver" of that right. *Id.*, at 261. While the *Crosby* Court stated specifically that "midtrial flight" should be treated as a voluntary waiver, there are numerous other forms. *Ibid.* For example, a defendant makes a voluntary waiver of their right to be present if they engage in "disruptive conduct." *Illinois* v. *Allen*, 397 U. S. 337, 346 (1970).

In the case of *Allen*, the respondent therein had been convicted in the Illinois state courts of armed robbery and was sentenced to a 30-year prison term, with parole eligibility at 10. His conviction was affirmed by the Illinois Supreme Court, and this Court declined certiorari. He petitioned the federal district court for habeas corpus, arguing he'd been deprived of his right to be present by his trial judge; the district court denied this petition, but was reversed by the Court of Appeals. Allen had been removed from the courtroom by his Illinois trial judge because he had made several abusive and threatening remarks towards the judge and other persons present in the courtroom. This, the Court held, in reversing the Court of Appeals, could not be conduct allowed in a courtroom, saying that "if our courts are to remain what the Founders intended, the citadels of justice, their proceedings cannot and must not be infected with the sort of scurrilous, abusive language and conduct paraded before the Illinois trial judge in this case." *Id.*, at 347. They concluded that the decision to exclude Allen from his trial was properly made because he had made the requisite voluntary waiver by way of his conduct, not necessarily any express statement.

The onerous duty of balancing the rights of a defendant, who

is guaranteed the privilege of being "confronted with the witnesses against him", and the core interests of the criminal justice system often befalls this Court. *Crawford* v. *Washington*, 541 U. S. 36, 40 (2004). For example, in the Crosby case the Court held that "Federal Rule of Criminal Procedure 43 [does not] permit the trial in absentia of a defendant who absconds prior to trial and is absent at its beginning." *Id.*, at 256. The petitioner (in *Crosby*) was not present at the beginning of the trial and was therefore improperly tried because Rule 43 provided only for the absence of a defendant 'after the trial had begun.'

Rule 43—itself a restatement of existing law—was issued in 1946 to codify several exceptions and applied nuance created by earlier decisions of this Court. In *Hopt* v. *Utah*, 110 U. S. 574 (1884), we said that "the legislature has found it essential to the protection of one whose life or liberty is involved in a prosecution for felony that he shall be personally present at the trial; that is at every stage of the trial when his substantial rights may be affected by the proceedings against him." *Id.*, at 579. The codified Rule 43 created several notable exceptions to *Hopt*, including the voluntary waiver exception and the midtrial flight exception.

Rule 43, at the time of *Crosby*, enumerated the following exceptions:

> "(A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;
>
> "(B) in a noncapital case, when the defendant is voluntarily absent during sentencing; or
>
> "(C) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom."

Our modern system of justice belies the interpretation in *Cros-*

by for one notable reason: Rule 43 was amended.[2] At the end of Rule 43, as amended in 2016, there now is a provision which states that:

> "If a Defendant shall have been notified of a case within 5 days of its scheduled time, and fails in making all due haste in appearing, they shall formally and permanently forfeit right to self-representation at this Trial, and shall be represented by legal counsel appointed by the Court."

This provision entirely changes the mechanics of the rule's enforcement and its overall effect. Under the newer Rule 43, a court will acknowledge a voluntary waiver of the right to be present if they neglect to attend after being provided sufficient notice. This is a significant departure from this Court's developed jurisprudence, because "our cases recognize that the right to personal presence at all critical stages of the trial" is a "fundamental right of each defendant." *Rushen* v. *Spain*, 464 U. S. 114, 117 (1983). We briefly discussed earlier that a person does not "strictly have to be present at their trial", but that they must be "given an 'opportunity' to be." *Ante*, at 61. This is the law despite the seemingly unequivocal declaration in *Rushen* that the right to be personally present is fundamental. This is a result of Rule 43. It is consistent with the recurring jurisprudence of this Court that fundamental rights may be permissibly burdened if "justified by a compelling government interest", if the burden is "narrowly based, and thus not overbroad", and if only the "least restrictive means" is employed. *Qolio* v. *United States*, 2 U.S. 8, 15–16 (2017).

A

Rule 43, to begin, is justified by a compelling governmental interest. In *City of Richmond* v. *J. A. Croson Co.*, 488 U. S. 469 (1989), we clarified the basis for determining whether there is a viable interest is generally evidence from the past. See *id.*, at 470. The petitioner in *J.A. Croson*, the City of Richmond, wish-

[2] https://trello.com/c/kEJC2cAZ/611-frcrmp-rule-43-defendant-spresence

to use a race-based test in awarding contracts to private entities. The Court disallowed this, saying that "the record revealed no prior discrimination by the city itself" which would authorize the use of a race-based test in a corrective manner. *Ibid.* Similarly, we looked to the record in *Qolio* to determine if the limitations imposed on political speech and activity by judges by the 'Judicial Branch Political Act' were justified by a compelling governmental interest. We asked whether there were any "prior instances" of political bias in the courts and whether existing law had failed to prevent that from occurring. *Id.*, at 6. Existing law, we concluded, was altogether sufficient in catering to the governmental interest, removing the need for passing the new, less accommodating law. For this case, to determine whether Rule 43 was justified in burdening the right to physical presence, we must apply the same standard.

It is common knowledge that non-cooperative defendants regularly cause delay in the judicial system. Every judge has experience with this: it is an undoubted truth. This problem resulted in the passage of laws in 2015 substantially expanding the voluntary waiver of the right to presence. This, however, proved to be insufficient; it would be necessary for the efficiency of the court process to shift the control over scheduling from the defendant to the court itself. Rule 43, as amended, accomplished this purpose.[3]

B

The amended Rule 43 cannot reasonably be viewed as "overbroad". *Ibid.* It, in fact, is designed to be accommodating. It is consistent with the constitutional right to an "opportunity to be heard" in that it permits a defendant to be a *participant* in case scheduling and merely denies them operative control of it. *Hagar*, *supra*. In our system, a defendant has a much higher [de facto] degree of control over scheduling than what is permitted

[3] The amended Rule 43 authorizes the court to select a time and if, given five days' notice, a defendant fails to appear, proceed to trial in absentia.

in real life. This is an immediate consequence of our justice system's non-physical nature. We have no ability to detain and physically bring a person to trial: it's not possible. So, previously we depended upon their cooperation which made it possible for a person to evade prosecution merely by declining every proposed time.

Rule 43 is narrowly tailored to permit the court itself to conclude upon a time; if a defendant is given ample opportunity (a full business week) and fails to attend, that is treated as a voluntary waiver. *Crosby*, *supra*. With that established, it must be noted that an application of the Rule which is so stringent as to effectively deny its accommodations would render it unconstitutional as applied.

III

Equipped with the knowledge that Rule 43's assessment of the voluntary waiver is constitutional and valid we must now address the considerably simpler question of whether the terms of Rule 43 were complied with. In accordance with the Solicitor General's confession of error, we can reasonably assume that those terms were not. Furthermore, as we noted earlier, the conviction occurred only four days after criminal information was filed against the petitioner; this means that the five-day notice requirement of Rule 43 couldn't possibly have been followed.

At this point, the violations of procedure are themselves enough to require this Court to vacate the judgement below, but for the sake of discussion, we consider the other claims submitted by the petitioner.

IV

The petitioner stated in his initial submission to the Court "I wasn't at the trial, they assigned a random time and a random defense." Submission by Petitioner 8-9. While we have already found that the fact that he was not ever informed of a time for his trial, and then tried in absentia without regard to the time frame set forth in Rule 43 deprived him of his right to an opport-

unity to be heard, there is the question of whether his assignment of a random defense also infringed upon his rights.

The right to a public defender, for essentially all purposes with which we are concerned, originated in the Court's decision in *Gideon* v. *Wainright*, 372 U. S. 335 (1963), where we affirmed the belief that a person's "right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law." *Id.*, at 344-345 (quoting *Powell* v. *Alabama*, 287 U. S. 45, 68-69 (1932)). This belief was first accepted by the Court in *Powell*.

Nine African-American youth, on the date March 25, 1931, allegedly raped two white girls. They were charged for that offense by the State of Alabama and they entered pleas of not guilty. They were tried in three groups, following a successful joinder; each of the three trials "was completed in a single day." *Id.*, at 50. They were found guilty and sentenced to death by the jury. Their conviction and sentence was sustained at every level of appeal within the Alabama judicial system, including at its Supreme Court (this notwithstanding a vigorous dissent by Chief Justice Anderson). 224 Ala. 524; *id.*, at 531; *id.*, at 540, 141 So. 215, 195, 201.

At the time, there was not considered to be any right to counsel, however Alabama law did require that attorneys be appointed for defendants in capital cases. The defendants, according to the record, were "ignorant and illiterate". *Powell*, *supra*, at 52. This made the effectiveness of their counsel all the more important to ensuring a fair trial. Despite this, however, the attorneys which they were assigned did not speak to them before the trial, and did not argue on their behalf in any meaningful way at the trial. In finding this, we reversed the Alabama Supreme Court and ruled for the petitioners.

As part of this Court's ruling, we found that a "defendant should be afforded a fair opportunity to secure counsel of his own choice." *Id.*, at 53. The Alabama trial court had "appointed all the members of the bar for the purpose of arraigning the def-

endant" and "until the very morning of the trial, no lawyer had been named or definitely designated to represent the defendants." *Id.*, at 56. This was unacceptable in the eyes of the Court. How could counsel be effective if it had no prior knowledge of the case? What legitimate purpose would it serve then? Apparently, none. The Court found that the appointment of counsel in that case was "little more than an expansive gesture." *Ibid.* In *Betts* v. *Brady*, 316 U. S. 455 (1942), we departed from the *Powell* holding as a rigid and determinative construct of law.[4] Instead, we found that it was limited to the specific circumstances surrounding the case and concurrently held that the Sixth Amendment imposed no obligation upon the government.

In *Gideon*, we returned to the general rule that whenever a defendant is "unable to employ counsel", it is the duty of the government to provide such. *Id.*, at 340. Generally, this refers either to indigent defendants or defendants without the means to acquire counsel, or those who were simply unable to. Rule 43, of course, recognizes a voluntary waiver of the right of a defendant to a "fair opportunity to secure counsel of his own choice" when they do not appear at their scheduled trial given five days' notice. *Ante*, at 67. Again, as we stated above, sufficient time had not passed to trigger the waiver included in Rule 43 and so the failure of the court below to permit the defendant to appoint his own counsel was in violation of his constitutional right to the due process of law.

IV

[4] In *Powell*, the Court wrote that "under the circumstances . . . , the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process," but added "whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that, in a capital case, where the defendant is unable to employ counsel and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law, . . ." *Betts*, *supra*, at 463–464 (quoting *Powell*, *supra*, at 73).

The final contention raised by the petitioner is that the court below deprived him of his procedural rights by trying him by jury when he requested a jury trial. He argued "people who hated me could've been in the jury without my notice." He also pointed out that the government had agreed to a bench trial; this was not disputed by the Solicitor General. Submission by Petitioner 10–12. The procedural rules which our district courts are bound by spell out a clear process for the waiver of a jury trial. It, in fact, is not a two-step process, but rather a 3-step one. It requires the agreement of the defendant, the government *and* the trial court. Fed. R. Crim. P. 23(a). We can reasonably conclude that it did not receive the consent of the court, because if it did, a bench trial would've been provided. The third claim has no merit.

* * *

Our system of justice is designed to ensure that every defendant, no matter if they face minor charges, or the most serious of charges, is entitled to a fair trial. Fulfillment of every protection, every procedural nuance, is the only way this system of fairness can be maintained. In this case, numerous of these protections were denied, and nuances forgotten. Our mandate to protect these rights is clear; the judgement below is vacated.

It is so ordered.

Syllabus

ZEYAD567ALT *v.* STEFFJONEZ

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT OF D. C./WEB

No. 2–12. Decided April 6, 2017

Petitioner, Zeyad567ALT, was held in direct criminal contempt of court by the respondent, SteffJonez, as per 18 U. S. C. §401–403. The petitioner, believing that the Judge's warrant was violating the Conflict of Interest rule and multiple ethics, has submitted this case to the Supreme Court. The Court was left to assume that the petitioner's claims made against the respondent were true, as the respondent refused to appear to any proceeding, ergo the Court has went directly to the deliberation process.

Held: The respondent has failed to prove that the arrest warrant issued via the contempt order was *intra legem*.

(a) direct criminal contempt of court may only be summarily issued when the contemptuous act, which is defined as "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command" and "[m]isbehavior . . . in its presence or so near thereto as to obstruct the administration of justice", as per F. R. Crim. P. and 18 U. S. C. §401.

(b) Respondent's actions were tremendously unethical and illegal, as he hesitated to comment on the reasons of the order, whereas he is obligated to ". . . must recite the facts", see F. R. Crim. P. (3).

F. 3d 34535052, vacated.

KOLIBOB, J., delivered the opinion of the Court, in which KOTWARRIOR, C.J., and JUSTYOURDAILYNOOB, MRYOSEMITE, ANIMATEDDANNYO, SAMUELKING22, and BOB561, JJ., joined. KOTWARRIOR, C.J., filed an opinion concurring and dissenting in part, joined by JUSTYOURDAILYNOOB, J. ANTONINGSCALIA, J., took no part in the consideration or decision of this case.

Zeyad567ALT argued the cause for the petitioner.
SteffJonez argued the cause for the respondent.

JUSTICE KOLIBOB delivered the opinion of the Court.

As the respondent was unable to present a proper reason for the issuance of the writ and has failed to present himself in front of the Supreme Court when asked, the petitioners claims were taken as being true without question; as whether or not SteffJonez ". . . overstepped his authority or misused his power? Was he in the right? Were my rights infringed?", as per the petitioner.

I

The respondent, him being a federal judge, has abundant constitutional and legally described authority, some of which he has attempted to use in this case *animus nocendi*, displaying clear bias against Zeyad567ALT, while ignoring an affidavit written as per 28 U. S. C. §144, "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge *shall proceed no further* therein, but another judge shall be assigned to hear such proceeding" (emphasis added), and continuing to preside over *United States* v. *Zeyad567ALT*.

The respondent was obligated, under the law, to cease presiding over the case and allow another judge to do so. After many arguments being discussed on the case card, between the Judge, the Department of Justice and other federal judges, SteffJonez still refused to leave— after a writ of mandamus has been issued, the respondent stated that ". . . The defendant has yet to provide any evidence of a conflict until this is provided I will not be recusing." Quickly after stating that, he has recused himself from the proceedings.

II

The claims made by the petitioner were unchallenged by the respondent, therefore we had nothing to do but rule in favor of the petitioner.

While the respondent claims that the petitioner is "corrupt," he decided that he shall preside over the case, a clear indicator that the actions taken by the Judge were not bona fide from the start. The Court had nothing to do but agree that the respondent failed to prove himself and his actions and agree with the petitioner—perhaps, if he came before us and explained his actions thoroughly, the outcome would've been different, but he refused to.

The Court would, as proven many times in the past, usually give broad authority and agreement to the lower court, but the

actions taken were unexplained.

III

The summary and immediate issued criminal contempt is defined in multiple laws, which include 18 U. S. C. §21 along with the Federal Rules of Criminal Procedure, "[a]lthough Rule 42 is based in part on the premise that it is not necessary specially to present the facts of a contempt which occurred in the very presence of the judge, it also rests on the need to maintain order and a deliberative atmosphere in the courtroom." *Bloom* v. *Illinois*, 391 U. S. 194 (1968). To be noted that we ". . . think 'summary' as used in this Rule does not refer to the timing of the action with reference to the offense, but refers to a procedure which dispenses with the formality, delay and digression that would result from the issuance of process . . . and all that goes with a conventional court trial." *Codispoti* v. *Pennsylvania*, 418 U. S. 506 (1974).

In those laws, it is stated that contempts must fulfill some basic requirements in order to be issued. Requirements that were not fulfilled by the respondent, making the order itself void, yet it was still enforced by the Court. This is proof of how the Court was unable to follow basic procedural law, procedures that are meant to prevent unethical orders, "[t]he courts also proved sensitive to the potential for abuse which resides in the summary power to punish contempt." *Bloom* v. *Illinois*, *supra*.

The United States Courts should always follow the procedures, not doing so only gives an impression that, as per this situation, the Courts do not maintain utmost selfless decisions and actions.

IV

Due to the fact that there was not much deliberation on the unanimous decision, the case has been deemed as being very evident, therefore the opinion of the court should be kept as concise as possible.

* * *

The Courts should always follow legal procedures when taking action, and should always remain as ethical as it is possible. The respondent has failed to do both of them and refused to represent his actions. As such, we vacate the district court's contempt citation.

It is so ordered.

Chief Justice KOTwarrior, with whom JustYourDailyNoob, AnimatedDannyo, and SamuelKing22, JJ., join, concurring in part and dissenting in part.

I join Part II of the principal opinion, holding that because of the respondent's failure to make an argument to us, we are left to assume that the appellant's claims are true, and I also partially join Part III, in which the Court recognized that orders may only be issued by a court when doing so serves some legitimate purpose, see *ante*, at 73 (principal opinion). But I respectfully dissent from Part I, which found that the respondent acted with "clear bias against" the appellant, *ante*, at 1 (principal opinion).

This case began with a contempt citation issued by the respondent, who is a Federal District Judge. His order, issued against appellant Zeyad567 (hereinafter referred to as the petitioner for convenience), was apparently issued because of comments the petitioner had made in the court's presence. See Submission by Petitioner 9-10. While certainly, we permit the issuance of summary contempt orders, and ordinarily grant broad deference to the lower courts in doing so when it relates to the punishment of "misconduct occurring in court," some situations are deserving of stricter review. *Bob561* v. *Mindy_Lahiri*, 2 U. S. 44, 52 (2017) (quoting *Pounders* v. *Watson*, 521 U. S. 982, 988 (1997)).

I

It is undoubtedly the right of a defendant to an impartial decision maker. See *Capterton* v. *A. T. Massey Coal Co., Inc.*, 556 U. S. 868, 872 (2009) ((quoting *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975)) (internal quotation marks omitted). What exactly, th-

ough, would disqualify a judge from the moniker "impartial decisionmaker" in any given case? For the time being, we should depart from rigid procedural requirements, and instead view this as we would view a criminal determination of guilt.

Our jurisprudence recognizes, in most cases, the impossibility of proving a negative. See *Smith* v. *United States*, 568 U. S. ___, ___ (2013) (slip op., at 7) (citing 9 J. Wigmore, Evidence §2486, p. 288 (J. Chadbourn rev. 1981)). That, in essence, is the reason why a defendant is entitled to a "presumption of innocence" in all criminal cases. *Coffin* v. *United States*, 156 U. S. 432, 453 (1895). Similarly, it is not unreasonable to expect a party accusing a judge of bias to show cause for that allegation; after all, they are making the "affirmative allegation." 568 U. S., at ___ (slip op., at 7). This view is generally reflected by statute, which requires that a party to a case not merely accuse a judge of bias, but rather show the "facts and the reasons" which lead them to believe that the judge is prejudiced against them. 28 U. S. C. §144. The principal opinion correctly found that the law "obligated" the recusal of the respondent from the proceedings below after he was served with a timely affidavit under section 144 of title 28, United States Code. Part I, *infra*, at 70–71. JUSTICE KOLIBOB also relied upon the fact that recusal was required (might I add, after the contempt citation had already been issued) to make the profound claim that the respondent acted with "clear bias" towards the petitioner, *ante*, at 71 (principal opinion).

It's important, now, to draw a distinction between the procedural safeguard given to a defendant by Congress (that being section 144), and actual, substantive bias. An affidavit filed by a party is not determinative of fact, and is merely a claim made in "good faith." 28 U. S. C. §144. It has no greater preponderance in ascertaining bias than an indictment has in demonstrating the guilt of a defendant. Neither is remotely conclusive. An indictment serves merely as an accusation, and not as an actual verdict; similarly, an affidavit made under section 144 is nothing more than an accusation, with slightly enhanced effect under the law. To determine if the respondent was actually biased for

the purposes with which we are concerned requires more than merely an affidavit, and rather an actual, substantial showing of bias, supported by evidence and grounded in provable fact.

II

It goes without saying that "our jurisprudence in the area of contempt has attempted to balance the competing concerns of necessity and potential arbitrariness." *Bob561*, 2 U. S., at 46 (quoting *Mine Workers* v. *Bagwell*, 512 U. S. 821, 832) (internal quotation marks omitted)). These two concerns are not irreconcilable. What it requires, however, to fulfill this need is a clear-cut reason for issuing a contempt citation. Whether this reason is connected to the maintaining of decorum, the enforcement of process, etc., the reason must be identifiable and the purpose legitimate. The power of contempt should not be used for trivial matters, for to do so would be a "breac[h] of proper justice." *Ex parte HaCtzKomi*, 2 U. S. 40, 43 (2017) (ANTONINGSCALIA, J., dissenting from denial of certiorari).

Because of the failure of the respondent to establish necessity for the issuance of the contempt citation below, we were left with no choice but to vacate it, see *ante*, at 71 ("the claims made by the petitioner were unchallenged by the respondent."). This should not be construed as a decision based on any bias we concluded was present in the respondent, and I disagree with the principal opinion's implication that it was.

III

This case was a simple one, see ante, at 71. While it was certainly the judgement of the Court that the citation below was improper, largely because the respondent declined to justify it to the Court and since we were unable to determine if there actually was necessity behind the issuance of the order as a result, our decision should not be taken to mean that an affidavit filed under section 144 nullifies all prior actions by a judge on that case, as that would entail a greater burden of proof than what is required by section 144.

I would go no further here than to vacate the contempt citation

on the basis that we could not ascertain any necessity behind the order.

Statement of KOTWARRIOR, C.J.

EX PARTE HACTZKOMI

WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS DENIED

No. 2–13. Decided April 10, 2017

Statement of CHIEF JUSTICE KOTWARRIOR, respecting the denial of certiorari.

The respondent, Technozo, is a United States Senator, elected in the third class. Additionally, he is a candidate for the United States House of Representatives class one elections. The petitioner, Psychodynamic, is also a United States Senator, and he alleges that the respondent's candidacy for the House violates the Constitution's Ineligibility Clause, which states that "no Senator or Representative shall, during the time for which he was elected, be appointed to any other public government position, under the authority of the United States." U. S. Const. art. I, sec. 5, cl. 4. The petitioner claims he is affected by the candidacy because it would "have an impact on Congress", of which he is a member. See Submission by Petitioner 16. On the whole, this claim of standing is totally ridiculous.

Standing, we observe, is not intrinsically a requirement in petitions for anytime review (which this is), but it is required by this Court's "convention." *Ex parte HHPrinceGeorge*, 2 U.S. 30, 32 (2017) (KOTWARRIOR, C.J., statement respecting denial of certiorari). In determining if a person has standing, we apply, in general, the same rules required in regular cases: that they must be substantially, and directly affected by the event or action in contention. The fact is, the petitioner is not affected nearly enough to create any actual standing to file suit.

The actual legal claim raised by the petitioner is generally without merit. In denying *HHPrinceGeorge*, we said that the Ineligibility Clause was not intended to be applied to other elected offices. Reading it using the doctrine of *noscitur a sociis*,[1] we found it applied only to positions appointed under the

[1] "... this Court uses noscitur a sociis and ejusdem generis to resolve ambigui-

Appointments Clause. See *HHPrinceGeorge*, *supra*, at 30. We also recognize that, in line with our precedents, the "act of nominating" is necessary to an appointment as used in the Constitution. *Ex parte HHPrinceGeorge*, 2 U. S. 30, 33 (2017) (AntoninGScalia, J., concurring) (citing *Marbury* v. *Madison*, 5 Cranch 137, 161 (1803)).

In light of these facts, there is no reason to hear this case.[2]

JUSTICE ANTONINGSCALIA, concurring with the denial of certiorari.

Psychodynamic is a United States Senator serving alongside Technozo. He filed a petition for a writ of certiorari alleging that should Technozo win in his race for a seat within the House of Representatives, he will be unable to serve until his current term in the Senate concludes in May, 2017. Psychodynamic believes Technozo cannot under the Constitution take office should he win his congressional election. He cites his standing to bring forth a petition in our Court being that of the fact that, under his interpretation of the Constitution, "a seat in the house will be left open for a month, which can have an impact on Congress." Pet. for Cert. 2. Similar to THE CHIEF JUSTICE, I write to expand on why Psychodynamic's assertions are "generally without merit." *Ante*, at 77.

The constitutional law relevant to our discussion today is the Ineligibility Clause of the Constitution, which reads: "no Senator or Representative shall, during the time for which he was elected, be appointed to any other public government position, under the authority of the United States." U. S. Const. art. I, §5,

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ty . . ." *Yates* v. *United States*, 574 U. S. ___, ___ (slip op., at 13) (2015) (Kagan, J., dissenting). In essence, this means to rely on the other text in a document to clarify the meaning of any part which is not clear.

[2] Specifically addressing this question, we said "there is no construction that could, legally speaking, argue one being elected to another office before their term ends violates the Ineligibility Clause so long as they resign one of the offices." *Ibid.* This should conclude any debate on the matter because it isn't supported by any of our precedents, and any interpretation provided by any of our opinions directly contradicts what the petitioner is arguing.

cl. 4. We in the current term of the Court first visited this clause in *Ex parte HHPrinceGeorge*, 2 U. S. 30 (2017), wherein we denied certiorari for the simple fact that we had no true controversy to rule on. See *id.*, at 31 (The "case was properly denied because there is no actual controversy to rule upon . . ."); see also *id.*, at 33 ("Some Justices, in their quest to tinker and rewrite the Constitution to conform it to their worldview, feel that we ought to take cases without real controversy to, in this circumstance, clarify the meaning of the clause. As already discussed, [it] *is clear enough*.") (emphasis added). We hold the same today.

Again, there exist competing definitions regarding what it means to be "appointed" to an office within the context of the Ineligibility Clause; Psychodynamic proposes it covers being "elected." Others, however, believe the specific mention of both being "elected" and "appointed" in the clause signal to a narrower, specific meaning. We agree with the latter. To choose between competing definitions, "we look to the context in which the words appear." *McDonnell* v. *United States*, 579 U. S. ___, ___ (2016) (slip op., at 15). Thus under the interpretive canon noscitur a sociis, "a word is known by the company it keeps." *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961); see also *Yates* v. *United States*, 574 U. S. ___, ___ (2015) (slip op., at 13) (Kagan, J., dissenting). Applying this, it is clear that to be "elected" to an office does not fall under the umbrella of being "appointed." This more reasonable, limited reading accords with the presumption that a law's "language is not superfluous." *Arlington Central School Dist. Bd. of Ed.* v. *Murphy*, 548 U. S. 291, 299, n. 1 (2006). If the words "elected" and "appointed" were identically applicable as Psychodynamic suggests, then the mere inclusion of "appointed" following "elected" would serve no purpose in the clause itself. However, under a more "confined interpretation," 579 U. S., at ___ (slip op., at 16), the inclusion of "appointed" may be understood to signal a key process by which one falls under the Ineligibility Clause. Once we reach this distinction, the rest falls into place by virtue of our precedents. Indeed, in *HHPrinceGeorge*, it was explained that

"the sole act of nominating fulfills the constitutional definition of appointing." 2 U. S., at 33 (ANTONINGSCALIA, J., concurring) (citing *Marbury* v. *Madison*, 5 Cranch 137, 161 (1803)). Thus there is "no construction that could, legally speaking, argue one being elected to another office before their term ends violates the Ineligibility Clause so long as they resign one of the offices." *Ibid.* The Ineligibility Clause is targeted at appointments to the Executive Office, see 2 U. S., at 30 (KOTWARRIOR, C.J., statement respecting denial of certiorari), not at elected office. No precedent of ours comports with the interpretation that one cannot resign upon winning another elected office before their term ends.

Even if the merits of Psychodynamic's argument were sound, it is the convention of our Court to apply standing requirements to Anytime Review cases like we are bound to by the Case or Controversy Clause in our appellate function. 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. ___, ___ (2010) (slip op., at 7); see also *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006); *Clapper* v. *Amnesty International*, 568 U. S. ___ (2013).

* * *

Psychodynamic fails to show true standing in his petition and lacks proper merits. For these reasons, and these alone, I respectfully concur with the denial of certiorari.

Statement of KOTWARRIOR, C.J.

CHRISTIANFELIZ, ET AL. *v.* INFERNOBYTEII

WRIT OF CERTIORARI TO THE UNITED STATES GOVERNMENT DENIED

No. 2–14. Decided April 14, 2017

Statement of CHIEF JUSTICE KOTWARRIOR, respecting the denial of certiorari.

While the submission by the petitioner is largely incoherent, it is apparent that his allegations center on what he claims was a false termination from the United States Military. He seeks to challenge this directly in the Supreme Court by a writ of certiorari to the Federal Government (anytime review). See U. S. Const. art III, §4. In general, it is the discretionary policy of this Court not to take a case unless the petitioner has "exhausted their claims" in the lower courts. *O'Sullivan* v. *Boerckel*, 526 U. S. 838, 839 (19–99). This includes all remedies they are entitled to by statute. We rarely take exception to this policy, and then only where there is a substantial constitutional question.

In our government, false termination cases are, for the most part, dictated by the Civil Service Reform Act of 2017. The Act provides that it is unlawful for an "officer of the United States" to take any personnel action against an employee on account of their "political affiliation or activity", "exercise of their [Constitutional] rights", "gender", "race", "time zone", or "membership in ... a union." CSRA §3. Without this law, there are very limited circumstances under which a person is entitled to judicial review of an adverse personnel action because there is no explicit or implicit right to work for the government. See *Adler* v. *Board of Education*, 342 U. S. 485, 492 (1952).[1]

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[1] While this Court has acknowledged several notable exceptions to this rule, see, *e.g.*, *Pickering* v. *Board of Education*, 391 U. S. 563 (1968); *Mt. Healthy* v. *Doyle*, 429 U. S. 274 (1977), we do continue to observe that reasonable limitations are appropriate and that speech pertaining to official conduct is not protected. S ee *Garcetti* v. *Ceballos*, 547 U. S. 410, 423 (2006). This is partially due to the fact that an employee of the government has inherently accepted limitations on their speech. *Waters* v. *Churchill*, 511 U. S. 661, 671 (1994) (plurality opinion) ("[T]he government as employer indeed has far broader powers

A false termination case does not necessarily present a constitutional question; and while the Anytime Review Clause does permit the review of "unlawful" actions as well as unconstitutional ones, the operational mechanism for the Civil Service Reform Act was included in the statute. U. S. Const. art III, §4. It specifically states that to enforce its provisions, judicial review may be sought "in the United States district court." CSRA §3(b). There is no way to construe this command as giving this Court primary jurisdiction on the matter, and in light of these facts, there is no way the petitioner has legitimately exhausted available remedies without having actually filed a case in the district court.

The remedies provided by the Civil Service Reform Act provide ample opportunity for the petitioner to resolve any potential infringements of his constitutional rights (the Act's prohibition on public employers taking adverse action against an employee for exercising their constitutional rights) without anytime review, rendering his filing here unnecessary.

The Government is an employer just the same as any corporation or company. Still, it is undoubtedly restrained by the Constitution in many ways in the process of employment which other employers are not. This does not mean any person has a constitutional right to work for the government. The principle which guided *Adler* remains in place because it was not overturned. Our assessment in it that the First Amendment did not

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than does the government as sovereign").

Indeed, the government may not "condition employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression." *Connick* v. *Myers*, 461 U. S. 138, 142 (1983). This, however, does not mean that "every employment decision [should become] a constitutional matter." *Id.*, at 143. It does mean that a public employer cannot "leverage the employment relationship to restrict . . . the liberties employees enjoy in their capacities as private citizens." *Garcetti*, 547 U. S., at 419 (citing *Perry* v. *Sindermann*, 408 U. S. 593, 597 (1972)).

In summary, although public employees are entitled to certain rights under the Constitution, in their capacity as private citizens, this does not empower them to "constitutionalize" grievances with their employer. *Connick*, 461 U. S., at 154.

protect employees of the government from adverse personnel action was correct.

Most claims however can be sufficiently addressed under the Civil Service Reform Act's provided process and anytime review is not needed in this case. After all, it was never the intent of the Framers that disputes between a government employee and the government should be "constituteionalized." *Connick*, 461 U. S., at 154. It would be appropriate for the petitioner to file this case with us after exhausting all other available statutory remedies.

Opinion of Mindy_Lahiri, J.

12904 *v.* KINGLUKASSIE

WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT OF LAS VEGAS DENIED

No. 2–15. Decided April 16, 2017

Justice Mindy_Lahiri, concurring with the denial of certiorari.

The Arrest on Sight (AOS) system in our government is perhaps one of—if not—the most disliked utilities of our judiciary. Article III, §7 of the Constitution authorizes the courts to issue "arrest on sight" warrants. This power is to be exercised while a defendant is "pending trial," and the trial must occur "within 72 hours" of the warrants issuance, or it must be revoked. *Ibid.* Because of these limitations, as THE CHIEF JUSTICE explained, the order is regarded as a "preliminary order."

I too have my own personal dislikes for the existing system, which is open to abuse. I take comfort in the several limitations imposed upon the system. Rule 62, for example, was promulgated for the explicit purpose of "protecting the rights of the public." Fed. R. Crim. P. 62. My aversions are further eased by the fact that I am entitled a fair opportunity to appeal. See *Ex parte HaCtzKomi*, 2 U.S. 40, 42, n. 3 (2017) (ANTONINGSCALIA, J., dissenting) ("any decision made in the federal courts can be appealed to . . . the Supreme Court") (internal quotes omitted) (citing U.S. Const. art III, sec. 5, cl. 1.).

One of the greatest concerns possessed by the Framers was that the judiciary would be "viewed with a jealousy inconsistent with its usefulness." 1 Records of the Federal Convention of 1787, p. 341 (M. Farrand ed. 1911). To remedy this concern, many proposals were abandoned, including one to create a national judiciary which would extend into the states. The same frame of thought which guided those decisions should also be used in interpreting and applying the Arrest on Sight Clause.

There are three basic standards of review which this Court applies in appeals. Firstly, there is the de novo standard, which would require the appellate court to consider the case as though it was the first time it was being considered by a court; this is d-

one without any deference to the trial court's findings. Second, there is abuse of discretion review, in which the appellate court will affirm the trial court unless its findings are unreasonable. Lastly, there is clear error review. In clear error review, an appellate court will reverse a factual finding only if it is "left with the definite and firm conviction that a mistake has been committed." *Pullman-Standard* v. *Swint*, 456 U. S. 273, 284–285, n. 14 (1982). A preliminary order is not based on any final finding of fact, however. For that reason, we apply abuse of discretion review as opposed to clear error review.

In justifying his vote on the petition for certiorari in this case, THE CHIEF JUSTICE enunciated a simple test to be used in reviewing a preliminary Arrest on Sight order. He said that we should determine whether the trial court had "sufficient cause" to issue the order. George C. Pratt, Standard of Review, 19 James Wm. Moore et al., Moore's Federal Practice §206.08 (3d ed. 2003) at 206–39 to 206–43, n. 6. Because there were a multitude of witnesses listed on the warrant, and Rule 62's requirements were met, there is no reason to believe the lower court did not have sufficient cause to issue the warrant and therefore there is no reason for us to hear the case.

Per Curiam

SUDDENRUSH12G, ET AL., PETITIONERS *v.* HELLEOH, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS

No. 2–16. Decided April 29, 2017

PER CURIAM.

On April 28, 2017, the House of Representatives approved the 'House Committees Resolution' by a vote of 5-1-1. This resolution made several changes to the structure of committees within the House. Notably, it empowered the Speaker to "appoint Committee chairmen." House Committee Resolution, §2. At issue here is whether that grant of power to the Speaker violates the Constitution's dictate that every committee chairperson and vice chairperson "shall be voted" upon by their respective House. U. S. Const., Art. I, §16. In light of *HHPrinceGeorge* v. *Capitalized*, 1 U. S. 8 (2016), our answer is an unequivocal yes.

Our review rests on the finding in *HHPrinceGeorge* that the clause applies to "committees individual to the House and Senate" and not exclusively to their "joint-congressional" counterparts. *Id.*, at 9. The appropriate test here is whether the process gives a sufficient say to the members of the House in deciding the committee leaders. True, the Speaker is elected by the members of the House "every two months." U. S. Const., Art. I, §2, cl. 3. This does not entitle him to cast the votes of every member of the House on any matter. It is important to remember that the chairperson and vice chairperson must actually be "voted" on. U. S. Const., Art. I, §16. That is a necessary component of the process. It cannot be left out. It would be permissible for the House to create a system in which the Speaker retains appointive power but is bound to appoint a person chosen by vote. It, however, is not permissible for the Speaker to entirely decide who the chairperson shall be on their own.

We hold that the House Committee Resolution is an unconstitutional violation of the Committee Leadership Clause and is accordingly null and void.

It is so ordered.

Syllabus

ADAMSTRATTON, PETITIONER *v.* TECHNOZO

ON WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS

No. 2–17. Decided May 8, 2017

Respondent, Technozo, was nominated for the civil office, Secretary of Transportation, and approved by the Senate. The Petitioner, AdamStratton, submitted a petition for a writ of certiorari on the merits that the Respondent was appointed to Secretary of Transportation illegally under the ineligibility clause. The petitioner backed up his petition with the basis that the Respondent was still ineligible due to the fact that his elected term as ___ had not ended prior to his nomination.

Held: The nomination and approval of the Respondent is unconstitutional and violates the Ineligibility Clause of Article I, Section 5, of the U.S. Constitution.

(a) The Ineligibility Clause of Article I, Section 5., defines when a Representative or Senator whom is elected into office, they are deemed ineligible to be appointed to any public government position, under the authority of the United States (for the time in which they were elected for); which is defined as a civil office.

(b) The Respondent was nominated for the office of Secretary of Transportation. He was approved with the consent of the Senate shortly after without scrutiny to his eligibility status. This is in direct violation of the Constitution and can result in unethical behavior.

BOB561, J., delivered the opinion of the Court, in which ANIMATEDDANNYO, MRYOSEMITE, QOLIO, and Mindy_Lahiri, JJ., joined. KOTWARRIOR, C.J., filed a dissenting opinion, in which JUSTYOURDAILYNOOB and SAMUELKING22, JJ., joined.

AdamStratton argued the cause for the petitioner.
Technozo argued the cause for the respondent.

JUSTICE BOB561 delivered the opinion of the Court.

The question presented in this case is whether the Respondent's nomination and approval for the civil office of Secretary of Transportation is unconstitutional under the ineligibility clause.

I

The Respondent started off his argument in the hearing about the Petitioner and his standing in the case. The Respondent stated that the Petitioner, Senator AdamStratton, was not personally injured by the nomination of the Respondent, and that

he had no legal standing to pursue appellate litigation towards him. The Anytime Review Clause (Article 3, §4) of the Constitution vests power in the Supreme Court to hear cases in which a law, or action of government is questioned to be unconstitutional; regardless of standing in litigation. The Supreme Court voted to hear the case and exercise anytime review.

II

The Respondent argued not only that the Petitioner had no standing, but that he was not assuming the office of Secretary of Transportation because he had not taken an oath of office. The process of becoming a civil officer is defined in the Appointment Clause of the U.S. Constitution (Article 2, §2, cl 1): "[H]e (President of the United States) *shall nominate, and by and with the advice and consent of the Senate, shall appoint* ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law" (emphasis added). Appointment to public office is a process of three steps: Nomination, Consent, Appointment. See *Marbury* v. *Madison* 5 Cranch 137 (1803).

III

The respondent's status of employment within Congress does not affect whether he is ineligible for employment elsewhere in the government. The Ineligibility clause of the Constitution (Article 1, §5, cl 4) establishes that, "No Senator or Representative shall, during the Time for which he was elected, be appointed to any other government position, under the authority of the United States." The respondent was, at the time of the appointment, an elected member of the United States House of Representatives. When a member of congress is elected, with the exception of appointed members (Senators) of Congress, they are ineligible to be appointed to any other public government office until the time in which their elected office has ended. See *Ex parte HHPrinceGeorge*, 2 U. S. 30 (2017) (KOTWARRIOR, C.J., statement respecting denial of certiorari).

* * *

We conclude that the oath of office is not a requisite step of appointment for the purposes of the Ineligibility Clause, and that the Respondent's appointment is unconstitutional and herein, reversed.

It is so ordered.

CHIEF JUSTICE KOTWARRIOR, with whom JUSTYOURDAILYNOOB and SAMUELKING22, JJ., join, dissenting.

The petitioners make a very compelling argument. In fact, under ordinary circumstances, I would join the majority in adopting it. In this case, however, I will not. I respectfully dissent because I am of the view that this Court erred in hearing this case to begin with.

This Court's pretence for issuing its decision here today is that unless heard by us, the matter would be effectively insulated from judicial review. See Commentary of JUSTICE ANIMATEDDANNYO, Cert. Pet. at 4 ("We receive cases like this very often where there is basically one person with direct standing."). This sort of argument isn't supported by reality; because in reality, there are quite a few people who would have standing in this case. For example, the Department of Transportation itself employs approximately 110 people. The Federal Aviation Administration? Another eight. Each of these people has standing to challenge the legitimacy of the respondent as Secretary of Transportation, but the Court—in its infinite wisdom—has found that because 'so few people' (in the majority's view: one) have standing here, we should just forget about that requirement. Interestingly, this Court found that in a case where the legitimacy of a city Mayor was at issue, its "convention" required that the person filing suit must have standing. *Ex parte HHPrinceGeorge*, 2 U. S. 30, 32 (2017) (KOTwarrior, C.J., statement respecting denial of certiorari). We did this despite the fact that the city council, which we can reasonably assume standing would be confined to, has merely nine members. How, then, do we now waive standing requirements here when there

is a considerable surplus of people who meet them? Apparently, because "the Court has failed to remedy these injustices in the past and we cannot simply watch them slip by due to carelessness by uninterested parties." Commentary of JUSTICE ANIMATEDDANNYO, Cert. Pet. at 4 (capitalization altered). What? Why should previous inaction by this Court have a bearing on current proceedings? The Framers intended for this Court to exercise "neither force nor will but merely judgement." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). Judgement, it would seem, is confined to resolution of "issues raised by the pleadings and proofs" in a case. Black's Law Dictionary 976 (4th ed. 1968). That being said, a case should be decided on its own merits, not based on some unwritten obligation of this Court to "tinker and rewrite the Constitution to conform it to [its] worldview." *HHPrince-George*, supra, at 33 (ANTONINGSCALIA, J., concurring).

Our constitutional mandate is to exercise judgement in cases where it is appropriate for us to do so. This decision was inconsistent with that mandate. I would dismiss the writ as improvidently granted.

I

On April 15, 2017, President Sufferpoop nominated respondent to the post of Secretary of Transportation. Three days later, the Senate voiced its consent, and the President appointed him. See Tr. of Oral Arg. 225 (April 23, 2017) (respondent confirming that the President indeed completed the appointment process). What was either forgotten or ignored was that the respondent, just days earlier, had been a House Representative (class 1). Furthermore, he also had recently stepped down as a Senator (class 3). This Court indeed recognizes that "no precedent of ours" would prevent him from having assumed the role of Representative. *Psychodynamic* v. *Technozo*, 2 U. S. 77, 80 (2017) (ANTONINGSCALIA, J., concurring). Nonetheless, the plain meaning of the Ineligibility Clause, which states that "no Senator or Representative shall, during the time for which he was elected, be appointed to any other public government position,

under the authority of the United States" prevents him from becoming the Secretary of Transportation. Why? Simply because his Senate term is not set to expire until this May 26th, and his term as Representative: June 12th.

The intent behind the Ineligibility Clause is quite clear. It is designed to pre-empt any quid pro quo which could occur between the executive and legislative branches.[1] And while those who ratified our Constitution significantly altered it from the original version, the intent of the Framers remains constant. I do not disagree with the majority's conclusion that the respondent violated the Ineligibility Clause in the slightest. My disagreement lies in the vehicle used by the majority to arrive at the disposition of this case, which I believe is inconsistent with this Court's convention and policy.

II

As we briefly touched upon earlier, this Court's convention requires that a person have standing to bring a petition for anytime review. Some of my colleagues—principally JUSTICE ANIMATEDDANNYO—accurately noted that standing in an anytime review case is not necessarily a written requirement. See Tr. of Oral Arg. 183–184 (April 23, 2017). While they are correct in that observation, they forget a few important points.

A

First, this Court was created by the Framers to have virtually "no original jurisdiction", to be appellate in nature. 1 Annals of Congress, Seventh Congress, First Session, I, 78–79, 86–87. This intent was clearly written into the Constitution. It is this Court's duty to provide the "final jurisprudence on issues alrea-

[1] In the records of the Virginia Convention on ratifying the Constitution, it reads "whether any Members of the Legislature should be capable of holding any Office during the time for which he was elected created much division in sentiment in Convention; but to avoid as much as possible *every motive for Corruption*, was at length settled in the form it now bears by a very large majority." 3 The Records of the Federal Convention of 1787, at 148 (Max Farrand ed., rev. ed. 1966) (capitalization altered) (emphasis added).

dy decided in the" district courts. *Ex parte Hactzkomi*, 2 U. S. 40, 43 (2017) (slip op., at 4) (ANTONINGSCALIA, J., dissenting). Under Art. III., §5, "any decision made in the [district courts] can be appealed to ... the Supreme Court." Ibid. Some of my colleagues in the majority even recognize themselves that providing a "fair opportunity to appeal" is one of this Court's eminent responsibilities. *12904* v. *KingLukassie*, 2 U. S. 84 (2017) (Mindy_Lahiri, J., concurring in the denial of certiorari). The intent of the Framers and those who ratified our Constitution could not be clearer: this Court is intended to be, under most circumstances, the court of last resort.

As part of being the court of last resort, this Court should only exercise its authority of anytime review when it's actually necessary. Perhaps to address a "substantial [or significant] constitutional question." *Christianfeliz* v. *InfernoByteII*, 2 U. S. 81 (2017) (KOTWARRIOR, C.J., statement respecting denial of certiorari). Or maybe when available statutory remedies prove to be insufficient in redressing a constitutional claim. *Id.*, at 82. This is not the case here. The Court had no reason to take this case whatsoever.

B

Second, conventions govern essentially the whole of how we treat anytime review cases. To dismiss of any one convention is to eliminate any semblance of expectancy or order litigants are accustomed to in this Court. While it is unclear what the majority's views are, seeing as they neglected to even recognize the jurisdictional question throughout their opinion, see *ante*, at 88–89, I, for one, am not comfortable with the proviso that we should just "sweep away what has so long been settled." *Town of Greece* v. *Galloway*, 572 U. S. ___, ___ (2014) (slip op., at 8).

What evades me, though, is the motive of the majority in taking its actions in this case (with our customs and conventions as collateral damage). What reason could there possibly be for them to cast aside the Court's traditions and practices? In my view: there is none. This Court has long accepted that the Ineligibility Clause "is clear enough." *HHPrinceGeorge*, *supra*. Cla-

rifying the clause couldn't be my colleagues' motive, especially given that the decision today does nothing more than restate what is already obvious.

III

There may, of course, be rare cases where anytime review should be exercised by the Court outside of the scenarios outlined above, but I believe that its use should be confined to only when absolutely necessary. For example, to enforce our previous judgements, see, *e.g.*, *SuddenRush12G* v. *Helleoh*, 2 U. S. 86 (2017) (per curiam), or to ensure the continued function of government. None of these conditions, or any comparable interests, are met by this case.

It is an undoubted truth that cases of perceived significance—what some might call great, others hard—often make for bad law. See *Northern Securities Co.* v. *United States*, 193 U. S. 197, 364 (1904) (Holmes, J., dissenting). And these cases, in fact, may not even be considered great "by reason of their real significance in shaping the law of the future, but because of some accident of overwhelming interest which . . . distorts the judgement." *Ibid.* This feeling is apparent from the comments made by JUSTICE ANIMATEDDANNYO, and some of my other colleagues, during deliberation. Notably, his comment about how this Court has failed to remedy similar injustices in the past and how we cannot let this opportunity slip by to set the record straight. I understand the temptation, but it should not control how we make our decisions. Because I believe the Court should not have granted certiorari here, I respectfully dissent.