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CASES ADJUDGED

IN

THE SUPREME COURT

AT

AUGUST TERM, 2020

August 14, 2020 Through February 14, 2021

Together With Opinion of Individual Justice in Chambers

End of Term

LEWIS F. POWELL, JR.

REPORTER OF DECISIONS

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS[*]

OLIVER W. HOLMES, Chief Justice.
ROBERT BORK, Associate Justice.
POTTER STEWART, Associate Justice.
ELENA KAGAN, Associate Justice.
PIERCE BUTLER, Associate Justice.
JOHN JAY, Associate Justice. [1]
FELIX FRANKFURTER, Associate Justice.
AMY CONEY BARRETT, Associate Justice. [2]
LEWIS F. POWELL, JR., Associate Justice.

RETIRED

MAHLON PITNEY, Associate Justice.
SMITH THOMPSON, Associate Justice.
WILLIAM O. DOUGLAS, Associate Justice.

OFFICERS OF THE COURT

LEWIS F. POWELL, JR., Reporter of Decisions.
ALEX J. CABOT, Clerk of the Court.
ALEX J. CABOT, Attorney General.
SANURAHI, Solicitor General.

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[*] For Notes, see p. iv.

NOTES

[1] JUSTICE JAY was unable to participate in proceedings due to his blacklist from Nightgaladeld's United States by Clan Management from September 16th to October 23rd, 2020.

[2] JUSTICE BARRETT was unable to participate in proceedings due to his blacklist from Nightgaladeld's United States by Clan Management from December 20th to December 28th, 2020.

TABLE OF CASES REPORTED

Note: All undesignated references herein to the United States Code are to the 2018 edition.

Cases reported before page 201 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 201 *et seq.* are those in which orders were entered.

Errata

Cases from Term 9 continue the pattern listed in Errata for Bound Volume 9.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

AUGUST TERM, 2020

DASTIC *v.* DISTRICT OF COLUMBIA

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

No. 09-36. Argued July 7, 2020 —— Decided August 15, 2020.

Petitioner was charged with various offenses by the District of Columbia. Included in that list were murder, attempted murder, and evasion. He was convicted and sentenced to a 10-day stint in prison. He appeals and asserts that the District's prosecution was invalid because the alleged crime occurred on federal land and Municipal jurisdiction, in his view, does not extend to federal land. Additionally, petitioner contends that he lacked the required *mens rea* to support conviction because he claims that he mistakenly believed he was protecting the President when he committed his crimes, which involved attacking Secret Service agents.

Held:

1. Federal law authorizes Municipal prosecutions for offenses on federal lands. As such, a Municipal prosecution for a crime occurring on federal land does not violate federal sovereignty. Pp. 2-3.

2. Petitioner cannot invoke the mistake-of-fact *mens rea* defense because petitioner's asserted interpretation of the facts was not a reasonable one. Because District law does not specify the contours of defenses, the common law rule applies and reasonableness is the benchmark for invoking that defense. Pp. 3-4.

Affirmed.

STEWART, J., delivered the opinion for a unanimous court.

Travis_Kabob, Washington D.C., argued the cause for the petitioner. With him on the briefs was *Storm_Vinexy.*

SanurahI, Public Defender, Department of Justice, Washington D.C., argued the cause for the District of Columbia.

JUSTICE STEWART delivered the opinion of the court.

The petitioner was charged by the District of Columbia with murder, attempt to murder and evasion. After trial, the District Court convicted him and sentenced him to 10 days imprisonment. He appeals, claiming that he did not have the requisite *mens rea* to support conviction and that the District violated the dual sovereignty doctrine. We granted certiorari.

I

The petitioner alleges that his prosecution violates the dual sovereignty doctrine. Petitioner's brief correctly restates the doctrine but proceeds to bizarrely apply it to conclude that his arrest was unlawful.

This represents a misunderstanding of the doctrine. The dual sovereignty doctrine is not a wide-ranging doctrine but rather an exception to the Double Jeopardy Clause. "The dual sovereignty doctrine, as originally articulated and consistently applied by this Court, compels the conclusion that successive prosecutions by" two sovereigns "for the same conduct are not barred by the Double Jeopardy Clause." *Heath* v. *Alabama*, 474 U. S. 82, 88 (1985). Dual sovereignty should be understood as being separate, not in conjunction to, jurisdiction.

II

We now turn to the more fundamental issue of jurisdiction. Petitioner correctly asserts that municipal law does not ordinarily apply on federal land; however, he ignores that Congress passed laws to change this.

The Assimilative Crimes Act, 18 U. S. C. §13, incorporates on federal land by reference all the laws of "State, Territory, Possession, or District in which such place is situated." 18 U. S. C. §13(a). "The ACA's basic purpose is one of borrowing state law to fill gaps in the federal criminal law that applies on federal enclaves." *Lewis* v. *United States*, 523 U. S. 155, 160 (1998).

Ordinarily, matters incorporated as crimes under the ACA are tried by the federal government in federal courts; this is because 18 U. S. C §3231 provides that "[t]he district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." *Ibid.* However, our Constitution proscribes municipal courts—therefore all municipal prosecutions must be done in federal courts. See generally *United States* v. *District of Columbia*, 5 U. S. 95 (2018). Therefore, the District can prosecute laws validly incorporated under the ACA under current federal law as it stands. The District, however, is still subject to the usual caveats that the ACA provides, and this authority could be revoked by congressional modification.

III

We finally turn to *mens rea*. The petitioner claims that he did not have the requisite *mens rea* for the crimes he is alleged to have committed. We reject this.

Most crimes are generally composed of two elements: evil act (*actus reus*) and evil mind (*mens rea*). An exception to

this is of course strict liability offenses—these do not require the latter element.

The second-degree murder charge requires that the person have malice; the other charges do not contain explicit *mens rea* requirements. The petitioner states that it was his belief that he was protecting who he believed to be the President in the White House. It is not disputed that petitioner's actions caused the death of the agent. It is generally the rule that a person who attacks someone else with intent to cause grievous bodily harm has the necessary *mens rea*. See, *e.g.*, *People* v. *Carines*, 597 NW 2d 130, 136 (1999).

The petitioner essentially claims the defense of mistake of fact; that his incorrect information caused him to believe he was defending the President. The District of Columbia Criminal Code makes no specific provisions for defenses, so we adopt the common law rule that in order for the defense to apply the person's mistake must be a reasonable one that a reasonable person would make. See generally *Commonwealth* v. *Pierce*, 138 Mass. 165 (1884).

In this matter, we do not believe the mistake is a reasonable one. The petitioner did more than merely acknowledge the false information in the District Court discord but rather saw it as an invitation to form a *posse comitatus* and open fire on a Secret Service agent. He formed an unreasonable interpretation of the false information.

IV

The way our system is designed creates a jurisdiction nexus that allows this prosecution to occur. The mistake of fact that the petitioner proclaims is unreasonable to excuse his actions.

The judgment of the District Court is

Affirmed.

Syllabus

IN RE COMPLAINT AGAINST JUDGE JETPACKSOUP (a.k.a. JUDGE SHAPIRO)

JUDICIAL ETHICS COMPLAINT TO THE SUPREME COURT OF THE UNITED STATES

No. 09-68. Argued August 10, 2020 —— Decided August 17, 2020.

Judge Jetpacksoup, referred to as Judge Shapiro was caught practicing law on an alternate account while in office. A judicial ethics complaint was filed against him, calling for him to be reprimanded or expelled. In response, Judge Shapiro admits to having practiced law on an alternate account and to also having participated in the destruction of the evidence of his wrongdoing. He expresses his regret and asks the Court not to expel him, indicating he would welcome a less severe form of punishment.

Held: Judge Shapiro shall remain suspended until the end of August 18th, 2020. Pp. 6–13.

(a) The facts of this case are not disputed. Judge Shapiro admits to his wrongdoing and acknowledges that some punishment is warranted. The Court agrees that some punishment is in order but concludes that expulsion would be unnecessarily severe in light of the actual wrongdoing committed by Judge Shapiro. Pp. 6–13.

(b) Suspension is a constitutionally legitimate form of punishment as an adjunct of this Court's expulsion power, when considered in its judicial context. Suspension is also the most appropriate form of punishment for Judge Shapiro's behavior. Pp. 6–13.

BORK, J., delivered the opinion of the Court, in which HOLMES, C.J., and PITNEY, THOMPSON, KAGAN, and JAY, JJ., joined. FRANKFURTER, J., filed an opinion concurring in the judgment in part and dissenting in part, in which STEWART and BUTLER, JJ., joined, *post,* p. 13.

Jetpacksoup, Washington D. C., argued the cause *pro se*.

JUSTICE BORK delivered the opinion of the Court.

Judge Jetpacksoup, otherwise known as Judge Shapiro, admits to having "practiced law on an alternate account

while a judge."[1] Under federal law, that is a "high misdemeanor."[2] The only question before us is what to do about it. We've considered the full context of this case and concluded that while some punishment is necessary, expulsion would be excessively harsh. Thus, we order that Judge Shapiro shall remain suspended until the end of August 18, 2020.

I

The facts of this case are straightforward and undisputed. And there is no question they merit punishment.

A

Judge Shapiro is a judge of the federal district court. At the same time he was serving as a federal judge, he "authored [and submitted] a dismissal motion on an alternative account."[3] His conduct was quickly discovered by his colleagues on the district court, who matched the google drive account which uploaded the dismissal motion to the account he uses for his official judicial work. This matching was done using public metadata contained on the google drive document.

The other district judges submitted an ethics complaint to this Court, citing provisions of federal law which make the conduct of Judge Shapiro a "high misdemeanor."[4] They attached screenshots of the metadata to demonstrate that Judge Shapiro was in fact guilty.[5]

After Judge Shapiro became aware of the complaint, he submitted privacy claims to the web service that hosted the

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[1] Tr. of Oral Arg. 5.

[2] 28 U. S. C. §454.

[3] Tr. of Oral Arg. 5.

[4] Complaint 1.

[5] *Ibid.*

screenshots. These privacy claims resulted in the screenshots of the public metadata being removed. Judge Shapiro "brag[ged] . . . about it to [a] friend."[6] In his communication with his friend, he said he "want[ed] to see the expression of surprise" on congresspeople's faces "when they [tried to] present the evidence at committee."[7] The apparent objective of having the evidence removed was to obstruct the congressional investigation into his conduct.[8]

After these ethics proceedings began, legislation was introduced in Congress which would've had the effect of exonerating Judge Shapiro. While Judge Shapiro denies being involved in the authorship of the legislation, he admits to being "friends" with the responsible congressman.[9] He also attests to "frequently" voice calling the congressman and to having foreknowledge of the legislation.[10] This isn't a separate offense, but merely another factor our decision must take into account.

B

Judge Shapiro's conduct merits some form of punishment. We don't consider what he did all that severe, but we can't let it go unaddressed.

To start, Judge Shapiro clearly violated federal law's prohibition on judges practicing law while in office. And when rules are violated, there must be a penalty. The third

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[6] Tr. of Oral Arg. 4; see also id., at 5 (Judge Shapiro confirming that this is what he did).

[7] J. A. 3.

[8] Judge Shapiro disputes this point. He insists that the reason for his filing of the privacy claim was a genuine interest in privacy. We don't have any reason to doubt his sincerity and thus don't rely on this detail in forming our judgment.

[9] Tr. of Oral Arg. 9.

[10] *Ibid.*

branch of government, like all others, "must function."[11] And if that means we "must have rules" and be "effectively managed," then so be it. [12]Congress's power to adopt the rule against the judicial practice of law "cannot any longer be seriously doubted."[13] Consequently, Judge Shapiro's decision to break that rule cannot go unpunished, lest we create a sense of impunity within the courts.

At the same time, expulsion is a severe remedy. Removal from office, "[i]n an ideal world, [would] be reserved for the worst of the worst."[14] And while Judge Shapiro's conduct warrants punishment, it doesn't demonstrate that he "can't be trusted to remain in public office."[15] We thus turn to possible alternatives.

II

The most obvious potential alternative is suspension. While this case was pending, we turned to suspension as an interim remedy. That action firmly established our power to issue suspensions of district court judges as an adjunct of our expulsion power for purposes of precedent. But we have not yet offered a legal justification for this power. Our authority stands on two legs.

This Court's power of judicial suspension is based on the combined force of (i) our expulsion power and (ii) our broad administrative powers under Article III.

A

The expulsion power transforms the dynamic within our court system and provides the foundation for suspension.

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[11] *Hastings* v. *Judicial Conference of the United States*, 593 F. Supp. 1371, 1380 (D. C. 1984).

[12] *Ibid.*

[13] *Ibid.*

[14] *Kolibob* v. *United States*, 9 U. S. 104, 112 (2020).

[15] *Ibid.*

In real life, it should go without saying that this Court has no inherent disciplinary power over the lower court judges. Any such power must be conferred by statute. But our Constitution's Expulsion Clause reflects the framers' policy judgment that our courts work better when this Court has the capacity to provide for judicial discipline. We "have no commission" to second guess this policy choice.[16] Our duty is to give it real effect.

The granting of a power or duty "implies . . . all the authority necessary to make the grant effectual."[17] Indeed, any grant of "power carries with it all the usual, ordinary, and necessary means to effectuate the beneficial exercise of the power."[18] When the framers granted the expulsion power, which entailed a duty of judicial discipline, it can hardly be assumed they meant to deviate from this usual rule of thumb. The other powers needed to make the expulsion power an effective provision for judicial discipline are entailed in the grant of the expulsion power itself.

It is obviously "usual, ordinary, and necessary" that a person who has done something that merits consideration of expulsion may need to be restricted in their performance of judicial duties while the Court considers expulsion.

B

Reference to state-level supreme courts that share the same power of removal confirms the existence of the suspension power, at least preliminary to an expulsion decision, and we see no reason to cabin that power to a preliminary context. If the Court has the power to suspend a judge preliminary to an expulsion decision, it makes sense that

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[16] *Ibid.*

[17] *Pensacola Tel. Co.* v. *West,* 96 U. S. 1, 18 (1877).

[18] *Ventress* v. *Smith*, 10 Pet. 161, 169 (1836).

the Court could choose, a fortiori, to continue such a suspension for a fixed period of time instead of turning to the extreme option of expulsion.

1

As we've chronicled, "suspension falls within the ambit of the exercise of our constitutional authority" to expel.[19] And we, like other high courts, have never had a "tradition" of "refus[ing] to exercise judicial power when there was an established need for it and . . . no constitutional barrier to its exercise."[20] Life tenure presents no such barrier because "a suspended judge remains a judge and is merely denied the power to perform his judicial duties for a limited period of time."[21]

When discussing preliminary suspensions, there is no doubt as to "established need." When a judge has done something that raises the specter of expulsion, a temporary restriction is more than appropriate. The Constitution does not require we proceed zero-to-one-hundred where expulsions are concerned. Preliminary suspension allows this Court to fully review the case without the risk of an admin attack or other interim abuse of power by the judge under investigation.

2

There is no reason to draw the line at the termination of the preliminary context. There is no rational reason for the Court to be bound to terminate a preliminary suspension with a decision either to expel or not.

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[19] *In re Coffey's Case*, 949 A. 2d 102, 193–194 (N. H. 2008). State supreme courts who possess the power to "remove . . . judge[s]" have likewise found a subsumed power to "suspend." *In the Matter Turco*, 137 Wn. 2d 227, 249 (Wash. 1999),

[20] Coffey, *supra*, at 194.

[21] *Matter of Ross*, 428 A. 2d 858, 868 (Me. 1981).

We've established the legality of preliminary suspensions and it's easy to imagine the value in permitting this Court to gradually phase out such a suspension after the conclusion of proceedings in lieu of an expulsion upon a conclusion that some punishment is warranted. Judge Shapiro himself has expressed his preference for a narrower punishment than expulsion.[22]

The legality of extending a suspension for a reasonable fixed period past our resolution of an ethics complaint is clear.

C

Where we see clarity, however, JUSTICE FRANKFURTER sees question marks.

In his dissenting opinion, he cites the Congressional Expulsion Clause, which says: "Each House may . . . punish its Members for disorderly behavior, and, with the Concurrence of two thirds, expel a Member."[23] He reasons that the framers, in writing this clause, didn't understand "expel" to encompass anything other than expulsion (or they wouldn't have separately granted the power to "punish . . . for disorderly behavior") and so *our* power to expel can't possibly encompass suspension.[24] In making this argument, JUSTICE FRANKFURTER overlooks a few things.

To start, while we normally assume that in a legal document "identical words used in different parts . . . are intended to have the same meaning," we don't make that assumption for no reason.[25] The consistent-usage canon is

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[22] Tr. of Oral Arg. 13 (Judge Shapiro explaining that he "would welcome any result that meant [he] could continue being a district court judge").

[23] Art. I, §5, cl. 2.

[24] *Post,* at 1-2.

[25] *Environmental Defense* v. *Duke Energy Corp.*, 549 U. S. 561, 574 (2007).

based on the common sensibility that when a person writes a document, especially a legal document, they will probably avoid confusion by choosing their words carefully and remaining consistent. But "as [with] countless othe[r]" laws, the Constitution wasn't written entirely by one person and thus isn't a "*chef d'oeuvre* of legislative draftsmanship."[26] Importantly, the Congressional Expulsion Clause the dissenting opinion references was drafted in 1789, while the Judicial Expulsion Clause we rely on was drafted only a few years ago. The consistent-usage canon has some relevance, but it's one thing to assume a single writer consistently used one meaning of a word in their writings over the span of a year, and something completely different to assume different writers over the span of more than 250 years used that same meaning in *their* writings. We can't just invoke a canon and ignore all other context. On the contrary, actually, "the presumption of consistent usage *readily yields* to context."[27]

Regardless, our argument isn't even that the word "expel" on its own contains the power to suspend. We've seen that the power to suspend is an implied "*adjunct* of our expulsion power."[28] And that's only clear once we factor in "our broad administrative powers under Article III."[29]

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[26] *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 320 (2014).

[27] *Id.* (emphasis added; internal quotation marks removed).

[28] *Supra,* at 3 (emphasis added).

[29] *Supra,* at 4.

The dissenting opinion's consistent-usage argument doesn't address the meat of our reasoning.

III

We've determined that punishment is warranted here, but that expulsion would be too extreme and we've determined that a reasonable suspension is a constitutionally legitimate form of punishment. Thus, we order that Judge Shapiro shall remain suspended until the end of August 18, 2020.

It is so ordered.

JUSTICE FRANKFURTER, with whom JUSTICE STEWART and JUSTICE BUTLER join, concurring in the judgment in part and dissenting in part.

In this case, Judge Jetpacksoup is accused of practicing law on an alternate account. Judges are prohibited from practicing law by statute. Disobeying this not only puts Judge Jetpacksoup in an awkward position to pass judgment on defendants, but it also could permanently damage the reputation and trust of this institution. What he did is undisputed, and I concur in the Court's judgement to hold him to account. The Court, acknowledging Judge Jetpacksoup's honesty and remorse, set out to find a punishment that is less severe than expulsion. It is important to note that the majority is correct in their hunch that expulsion is not the only option. There are other actions the court can explore. For example, a censure would be acceptable. This type of punishment is what I would recommend in this case. We are not empowered, however, to suspend judges.

The Constitution grants the Supreme Court with the power to "expel . . . members of the federal district Court provided two thirds of the Court vote in favor." U. S. Const., amend. XVII. The majority argues that there is some secret, vague suspension power hidden in the word "expel."

But the Framers already had a beautiful framework to include a suspension power exhibited in the Congressional Expulsion Clause: "Each House may . . . *punish its Members for disorderly behavior*, and, with the Concurrence of two thirds, expel a Member." U. S. Const., art. I, §5, cl. 2 (emphasis added). Does "expel" stand mightily and broad before the Supreme Court only to blush and constrict in the face of Congress? Were the Framers just being redundant? Of course not! "Expel" does not mean "suspend"; it means "expel."

For support, the majority has to reach all the way to a New Hampshire Supreme Court opinion, and still fails to find supporting case law. The majority almost literally turns *In re Coffey's Case* on its head. In that case, the question was not whether the New Hampshire Supreme Court could suspend judges. It was whether they could suspend judges indefinitely, effectively expelling those judges (and perhaps encroaching on the New Hampshire legislature's power to impeach judges since the New Hampshire Constitution, unlike the U. S. Constitution, did not grant the judiciary with the power to expel). Our equivalent would be whether we could temporarily expel judges; neither side argues this, and the case is thus inapplicable.

Their analysis of *In the Matter Turco* is similarly mislead. The Pennsylvania Constitution, under which Judge Ralph Turco was suspended, explicitly states that a "judge . . . may be suspended, removed from office or otherwise disciplined for . . . misconduct in office." *In the Matter Turco*, 137 Wn. 2d 227, 242 (Wash. 1999). The question in that case was whether Judge Turco could be suspended for misconduct (pushing his wife to the floor in public) not performed in the course of his official duties. This case is taken out of context and similarly inapplicable.

With no case law, the majority contends that the wording of the Constitution just should not matter since, in the Congressional Expulsion Clause, "expel" was said in 1789 and, in the Judicial Expulsion Clause, "expel" was said in 2018. In 1755, "expel" was defined as "to throw out; eject." A Dictionary of the English Language: A Digital Edition of the 1755 Classic by Samuel Johnson. In 2018, "expel" was defined as "to force out; eject." Merriam-Webster Dictionary (2018). I am unable to find the tiny mouse hole "expel" scurried through.

Even despite this, the majority's assertion still would not be correct. While their argument may work for amendments to the United States Code, which the Congress modifies directly from the real-life version, it fails when applied to the Constitution. Both clauses were revised to fit the needs of our roleplay society and were enacted at the exact same time. The Congressional Expulsion Clause was also amended both in function and style. Our Framers were meticulous, and I doubt they would have allowed two contradicting definitions of the word "expel" to coexist but meanwhile amend "behaviour" to "behavior" just eight words earlier.

The Framers put the ball in Congress's court to determine whether the Supreme Court should have the power to suspend judges, or if it would be unwise to allow a judge the Supreme Court determined to be unethical to continue to adjudicate cases.

The majority's expansion of the language is not rooted in the Constitution and puts this Court's policy preferences on clear display. It is not our prerogative to promote our "ideal world." *Kolibob* v. *United States*, 9 U. S. 104, 112 (2020).

I respectfully dissent from the Court's decision to suspend Judge Jetpacksoup.

Syllabus

UNITED STATES *v.* INCELS UNION

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

No. 09-63. Argued August 11, 2020 —— Decided August 26, 2020.

After Congress enacted the Pride Act of 2020, which established a rule of nondiscrimination on the grounds of sexual orientation, an association known as Incels Union formed. That group filed a lawsuit in the Federal District Court contending that the Pride Act was unconstitutionally vague. The District Court ended up striking the counsel for the United States who appeared in response to the case after a series of back-and-forth motions. The District Court then entered default judgment blocking enforcement of the Pride Act after the United States failed to file a timely response to the civil complaint due to its counsel having been struck. The United States appealed the entry of default judgment.

Held: Respondent has not established Article III standing to challenge the Pride Act of 2020; the order of disqualification for the United States' counsel was an abuse of discretion, and the entry of default judgment was clearly erroneous. Pp. 19–31.

(a) The District Court abused its discretion by disqualifying the Federal Government's counsel in this case. Pp. 19–23.

(b) The entry of a preliminary injunction was erroneous because respondent lacked Article III standing and the equities did not support a preliminary injunction. Pp. 23-28.

(c) The order granting default judgment was clearly erroneous because the United States was participating in this case, as provided in *United States* v. *Maxonymous*, 9 U. S. 152. Pp. 28–30.

Orders for 4:20-2121, reversed and remanded.

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

Deputy Solicitor General Conjman argued the cause for the United States.

RandomIdiotOnline argued the cause for the respondents.

JUSTICE JAY delivered the opinion of the Court.

While we may have had cases regarding intense issues, one conflict inevitably bound to come before us perpetually is discrimination based on issues of sex and sexual orientation. Despite this, we must always ensure that lower courts follow the rules of procedure when conducting cases before it decides the issues before itself. Indeed, the rules of procedure were "designed to secure the just, speedy and inexpensive determination of every action." *Celotex Corp.* v. *Catrett*, 417 U. S. 317, 327 (1986). In this case, the United States asks us to review orders by the District Court regarding several issues, including whether counsel for the United States was erroneously dismissed, whether the court erroneously issued a preliminary injunction, and whether the court clearly erred when it issued default judgment against the United States for respondents. We hold that the District Court abused its discretion and committed clear error by deciding these issues as such, and accordingly reverse.

I

We start by outlining the facts regarding this case. Respondents are various officials within the United States federal government, self-described as "incels," who filed theoriginal suit to challenge the Pride Act of 2020, Pub. L. No. 80–13 (2020). Enacted to combat discrimination by both public and private employers in the United States based on an individual's sexual orientation, this bill made it unlawful "to terminate an employee from his or her employment in the Executive Branch based on their sexual orientation"

and prohibited similar terminations in businesses approved by the Department of Commerce and Labor. §3. In addition, the bill also prohibited discrimination based on sexual orientation, setting the punishment for these actions to be "fined under this title, imprisoned not more than 1 week, or both." §3. Respondents claim that the term used in Pub. L. No. 80–13, "sexual orientation," is unconstitutionally vague, and argue that this vagueness results in violations of their religious freedoms. Transcript for *Incels Union* v. *United States*, 4:20-2121. Accordingly, they cite *Grayned* v. *City of Rockford*, 408 U. S. 104 (1972), to make their point clearer to the District Court.

Along with the initial complaint was a motion for a preliminary injunction to "enjoin the United States from enforcing the challenged provisions as applied until a final hearing on the merits." Respondents' Mot. for Prelim. Injunction, at 1. The District Court accepted the complaint and issued the preliminary injunction without any sort of legal justification for their decision. The United States waived summons, proceeding with Conjman as its counsel. Immediately, the United States filed a motion to dismiss on Rule 12(b)(6) grounds, claiming that respondents did not state a claim upon which relief could be granted and to remove the preliminary injunction. This cat-and-mouse game of filing motions continued as respondents also proceeded to heckle counsel for the United States. Although Conjman requested several times for the heckling to stop, the District Court did nothing to assist him; in fact, it went against him, and struck him as counsel for "frivolous motions." And due to the disqualification of counsel resulting in no response from the United States, the District Court issued default judgment in favor of respondents, "striking down"

the Pride Act of 2020. The United States filed an interlocutory appeal regarding the questions of striking counsel and the preliminary injunction. This court denied certiorari, 9 U. S. 234 (2020). The case was then mandatorily reviewed by the Court of Appeals under its jurisdiction, but after the court was abolished while the case was pending before the court, 17 F. 4d —— (2020), the case was sent back to us, where we granted certiorari presently, 9 U. S. 234 (2020).

II

To analyze whether the District Court erred in its holdings, we must identify the standard of review for all of the issues. We previously recognized three standards of review we utilize when reviewing appeals from lower courts: *de novo* review, abuse of discretion, and clear error. *De novo* review requires us to "consider the case as though it was the first time it was being considered by a court . . . without any deference to the trial court's findings." *904* v. *Lukassie*, 2 U. S. 84, 84–85 (2017) (statement of Lahiri, J.). We discuss the standards of clear error and abuse of discretion below. We find that abuse of discretion is the appropriate standard for the first two issues at hand, and clear error for the third. A district court would "necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell* v. *Hartmarx, Corp*., 496 U. S. 384, 405 (1990). Usually, the district court's decision "whether to enter a default judgment is a discretionary one." *Aldabe* v. *Aldabe*, 616 F. 2d 1086, 1092 (CA9 1980). However, default judgment is not entirely discretionary in this case. Additionally, the United States' third issue takes on more of an appearance of a mixed question of law and fact where the "historical

facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard," *Ornelas* v. *United States*, 517 U. S. 690, 696 (1996), and where historical facts were "facts in the sense of a recital of external events and the credibility of their narrators." *Thompson* v. *Keohane*, 516 U. S. 99, 110 (1995). Fed. R. of Civ. P. Rule 55(d), however, allows for certain factual findings by the District Court of whether default judgment can be granted, and because "factual findings are reviewed for clear error," *Brown* v. *Plata*, 562 U. S. 493, 512 (2011) (citing *Anderson* v. *City of Bessemer*, 470 U. S. 564, 573–574 (1980)), we apply the "clear error" standard. The standard requires us to determine whether the District Court's order for default judgment was "clearly erroneous." *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 398 (1948). A finding is clearly erroneous when the reviewing court is "left with the definite and firm conviction that a mistake has been committed." *Easley* v. *Cromartie*, 532 U. S. 234, 242 (2001); *Concrete Pipe & Products of Cal, Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 622 (1993).

We now look towards the United States' arguments in turn. Because we hold that the District Court abused its discretion in adjudicating the first two issues presented, and committed clear error when deciding the third, we reverse the District Court's issuance of default judgment, the preliminary motion, and the disqualification of the United States' counsel.

A

Judges are inevitably granted some discretion when deciding common matters such as granting or denying a motion, so long as "discretionary choices are not left to a

court's 'inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" *United States* v. *Taylor*, 487 U. S. 326, 336 (1988) (citations omitted). We usually afford "the district court the necessary flexibility to resolve questions involving 'multifarious, fleeting, special, narrow facts that utterly resist generalization.'" *Koon* v. *United States*, 518 U. S. 81, 99 (1996).

The United States first asserts that the District Court erroneously struck its counsel without legal justification. We agree.

Disqualification of counsel is usually reserved for attorneys who are part of the worst of the worst. Disqualification has risen in light of the fact that inadequate performance of trial lawyers has become "a growing concern to the bench . . . and the public."[1] To counter this, we have repeatedly admonished that "judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courts." *McMann* v. *Richardson*, 397 U. S. 759, 771 (1970). See also *United States ex rel. Darcy* v. *Handy*, 203 F. 2d 407, 427 (CA3 1953) ("gross incompetence or faithlessness of counsel as should be apparent to the trial judge . . . call[s] for action by him"),

[1] Schwarzer, Dealing With Incompetent Counsel—The Trial Judge's Role, 93 Harv. L. Rev. 633 (1979). It is also important to note that inexperienced attorneys are not necessarily incompetent attorneys, and vice versa. As we and individual Justices have explained in the past, we usually "sympathize with inexperienced counsel and their submissions." *In re Complaint Against Judge AcidRaps*, 9 U. S. 167, 171 (2020) (statement of BUTLER, J.). As such, we usually refuse to impose sanctions and "employ Draconian consequences when faced with newer, more inexperienced litigants who are still learning," including disqualification. *Id.*, at 171, n. 11 (2020). But our expectations, naturally, will slowly be raised for seasoned attorneys who have practiced in the courts and are familiar with most intermediate legal concepts.

cert. denied, 346 U. S. 865 (1953); *Ceramco Inc.* v. *Lee Pharmaceuticals*, 510 F. 2d 268 (CA2 1975) (explaining that "the courts have not only the supervisory power but also the duty and responsibility to disqualify counsel for unethical conduct prejudicial to his adversaries"). As such, we recognize that the district court "bears the responsibility for the supervision of the" counsel appearing before it. *Hull* v. *Celanese Corporation*, 513 F. 2d 568, 571 (CA2 1975). The dispatch of this duty is discretionary in nature and the finding of the district court will be upset only upon a showing that an abuse of discretion has taken place. *Ibid,* See also *In re Gopman*, 531 F. 2d 262, 266 (CA5 1976) ("The proper standard for . . . review of a disqualification order is whether the trial judge abused his discretion").

A quick look at the motions filed by the United States[2] shows nothing of "frivolous motions." When a pleading is filed with the district court, the individual that files the complaint automatically certifies to the court that to the best of the person's knowledge, information, and belief, the complaint is

> "'not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation, [and

[2] The following motions were filed by the United States: a motion to dismiss on Rule 12(b)(6) grounds (denied), a motion to dismiss as respondents "failed to provide any evidence that all incels, or even a decent amount, in the world are in agreement that they may be represented by this legal team," 4:20–2121 (withdrawn), and a "motion" for dismissal for wasted time on the part of respondents (denied). In addition, as we mentioned, counsel for the United States repeatedly asked the District Court to sanction respondents after they repeatedly harassed him, and planned to file an affidavit for recusal under 28 U.S.C. §144 before he was disqualified as counsel for the United States by the court. *Ante,* at 2.

> that] the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.' Fed. R. of Civ. P., Rules 11(b)(1) and 11(b)(2)."

None of the motions seemed to have been presented for any improper purpose, and the claims were warranted by existing law or by nonfrivolous arguments establishing new law. But it also seems that Judge Kakashi based his disqualification on nothing but discretion—for the United States' supposedly "frivolous motions." As such, we find that the District Court abused its discretion when it disqualified counsel for the United States on an erroneous view of the law, in this case, without any supportive legal justification.

B

Next, the United States argues that the District Court erred when it issued a preliminary injunction barring the United States from enforcing the statute until proceedings concluded.

A preliminary injunction is an extraordinary remedy never awarded as of right. *Winter* v. *National Resources Defense Council*, 555 U. S. 7, 24 (2008). For a plaintiff's request for a preliminary injunction to move forward, he must establish that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.*, at 20. In addition, the lower court must also "consider the overall public interest." *Trump* v. *International Refugee Assistance Project*, 582 U. S. ——, —— (2017) (slip op. at 9) (*per curiam*).

We must therefore look as to whether the District Court properly analyzed the merits of the case before it exercised its discretion.

Start on respondent's motion. They claim that they have "probable success on the merits, [that they] will be irreparably harmed, [that] others will not be substantially harmed, [that] the public interest will be served, and [that] there is no adequate remedy at law." Respondents' Mot. for Prelim. Inj., at 1. But apart from that block of text, respondents state nothing about why they have satisfied all of these parts. This means that we would have to independently analyze each element of the Winter test to ensure that respondents are actually entitled to the preliminary injunction.

We look towards whether the respondents have probable success on the merits. We conclude that it does not, and promptly hold that the District Court abused its discretion.

First, there are virtually no merits to this case, because both the original complaint and the motion for a preliminary injunction are useless to determine actual merits. In the complaint, the only claims for relief is "Declaratory Judgement [sic] that the Pride Act, as written, is constitutionally vague," and "Injunctive relief against the United States from implementing, regulating, or otherwise enforcing the Pride Act." We assume, therefore, that respondent's general claim is that the Pride Act is unconstitutional on its face, and that the unconstitutionality is completely sufficient for them to acquire relief.

The general doctrine of standing determines whether a litigant is entitled to "have the court decide the merits of the dispute or of particular issues." *Warth* v. *Seldin*, 422 U. S. 490, 498 (1975). The party invoking federal jurisdiction bears the burden of establishing its existence. *Steel, Co.* v.

Citizens for Better Environment, 523 U. S. 83, 104 (2000). For a litigant to successfully establish standing within a federal court, they must first present "a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent,' not 'conjectural' or 'hypothetical.'" *Steel Co., supra*, at 103; *United States* v. *City of Las Vegas*, 4 U. S. 1, 4 (2017). Second, the harm must be "fairly traceable to the defendant's challenged action," and third, it must be "redressable by a favorable ruling." *Horne* v. *Flores,* 557 U. S. 433, 445 (2009) (citing *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992)). Under the current standing doctrine, respondents fail because they do not list an injury of which is concrete and particularized to have been caused by the Pride Act of 2020, only seemingly conjectural and hypothetical injuries (that a constitutionally vague statute has injured them). Thus, respondents had no standing to bring this case before the District Court.

Our decisions limit the application of the "judicial power" to "cases and controversies." *Ultiman* v. *United States*, 6 U. S. 19 (2018); see also *Kirkman* v. *Nevada Highway Patrol*, 5 U. S. 62 (2018) (*per curiam*) ("The judicial power is a power to decide not abstract questions but real, concrete Cases and Controversies"). Every criminal investigation conducted by the Executive is a "case," and every policy issue resolved by congressional legislation involves a "controversy." *Steel, Co., supra*, at 102. Otherwise, a plaintiff raising only a "generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Lujan, supra*, at 573–574; see also *Hollingsworth* v. *Perry*, 570 U. S. 693, 706 (2013) ("[A]n

asserted right to have the Government act in accordance with law is not sufficient, standing alone[.]"). If a dispute brought under the general "judicial power" is not a proper case or controversy, "the courts have no business deciding it, or expounding the law in the course of doing so." *City of Las Vegas, supra*, at 3 (2017) (quoting *DaimlerChrysler Corp.* v. *Cuno,* 547 U. S. 332, 341 (2006)). Federal courts, outside of anytime review, do not have a freestanding power to review and annul acts of Congress on the ground that they are unconstitutional. "That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." *Massachusetts* v. *Mellon*, 262 U. S. 448, 488 (1923). The party who invokes the power must be able to show not only that "the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Ibid.*

First, respondents rely on an excerpt of *Grayned* v. *City of Rockford*, 408 U. S. 104 (1972). In it, they claim the passage which says

> "vague laws offend several important values . . . because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," as their justification. *Id.*, at 108.

Respondents err in concluding that *Grayned* will assist in maintaining their claim that the Pride Act of 2020 is unconstitutionally vague. While *Grayned* did provide why vague laws are detrimental to the functions of our government, we did not list any standard in determining that a

statute is constitutionally vague. That argument must be made by the party challenging the statute on vague grounds.

In response, respondents claim that this argument was fulfilled in the original complaint. They say that "the evidence for these claims for relief were provided within the complaint submitted by counsellor BruceASnyder. Respondents cited [*Grayned*] as their primary evidence *proving* that the Pride Act of 2020 was unconstitutionally vague, thus making the claims for relief presented in the complaint valid." Brief for Respondent 6 (emphasis added). We reject this argument.

We have repeatedly emphasized that the tenet that a court must accept as true all of the allegations contained in a complaint is "inapplicable to legal conclusions." *Ashcroft* v. *Iqbal*, 556 U. S. 662, 678 (2009). Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Ibid.*

While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. *Iqbal*, *supra*, at 679. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Ibid.* Simply stating that a group of individuals believe that one term is "constitutionally vague" is nothing more than a legal conclusion consented on and reached by the group. What's more, respondents' initial claims in the complaint appear more as "legal conclusion[s] couched as a factual allegation[s]." *Papasan* v. *Allain*, 478 U. S. 265, 286 (1986). As such, we must reject respondents' standing argument, as well as respondents' arguments claiming that they were likely to succeed on the merits of the case.

Second, even if we reject the analysis above, note that it is "not enough that the chance of success on the merits be better than negligible." *Nken* v. *Holder*, 556 U. S. 418, 434 (2009) (quoting *Sofine*t v. *INS*, 188 F. 3d 703, 707 (CA7 1999)). In our view, "more than a mere 'possibility' of relief is required." *Ibid*. Again, we cannot conclude from a skeletal argument that respondents demonstrated that their path to relief was not just a mere "possibility of relief." We therefore conclude that the District Court abused its discretion when it erroneously issued the preliminary injunction without analyzing whether respondents actually were entitled to injunctive relief.

C

We now move on to the United States' final argument: that the District Court erroneously issued default judgment against the United States, and that per our recent decision in *United States* v. *Maxonymous*, 9 U. S. 152 (2020), the District Court's default judgment should be overruled. We agree, but also make certain points clarifying and identifying certain errors in *Maxonymous*, as well as establishing our reasoning as to why clear error is our standard for reviewing errors like the ones committed by the District Court while determining these issues.

Originally, the standard of review for default judgment issues would have also been abuse of discretion. See generally *Aldabe, supra*. However, we find that the clear error standard is more appropriate in this scenario, as will be explained below. Because Rule 55(d) of the Federal Rules of Civil Procedure requires a judge to determine "if the claimant establishes a claim or right to relief by evidence that satisfies the court [for issuance of default judgment against the United States]," the third issue would be a mixed question of law and fact for us to decide. And because the factual

findings would mostly underly a Rule 55(d) default judgment, we utilize this standard in order to analyze whether the District Court committed a mistake in declaring default judgment for respondents, as well as the fact that factual findings are reviewed under clear error. *Brown, supra.* A finding is clearly erroneous when the reviewing court is "left with the definite and firm conviction that a mistake has been committed." *Easley, supra.* In *Maxonymous*, we held that default judgment "enforces courtesy." *Id.,* at 153. Congress intended that default judgment would be a "strict and immediate backlash against parties who take it upon themselves to ignore civil proceedings." *Ibid.* Owing to this, we concluded that the issuing of default judgment is purely discretionary, for the judge ultimately decides whether the defendant has ignored the proceedings before him.

Did the United States ignore these proceedings? According to our past precedent in *Maxonymous*, they did not. They interacted during the proceedings of the case before us, and even filed motions to the District Court for the case. They could not have been ignoring the proceedings before them.

In addition, lower courts can enter default judgment "against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court." Fed. R. of Civ. P., Rule 55(d). As we stated above, no claim or right to relief by evidence was established in the original complaint. "A skeletal argument, really nothing more than an assertion, does not preserve a claim." *United States* v. *Dunkel*, 927 F. 2d 955, 956 (1991). None of the claims, as we have demonstrated, have any merit as to satisfy the District Court in any possible way. Thus, under Rule 55(d) and *Maxonymous*, we are left

with the firm conviction that the District Court made a mistake when it erroneously granted default judgment to respondents taking an erroneous view of Rule 55(d) and discarding it in favor of directly granting default to respondents without any other legal justification.

III

In light of the fact that the outcome of the issues leans towards the United States, respondents attempt to get us to seemingly forget what we have discussed above to solve the issue they have repeatedly asked us to decide: whether the Pride Act of 2020 is unconstitutional on its face. We decline to answer that question and reject respondents' arguments in full.

Respondents argue that we should prioritize determining the constitutionality of the Pride Act over the procedural issues provided before us by the United States. They claim that the issue outweighs the United States' issues. Tr. of Oral Arg. at 8. However, we reject their requests to review the Pride Act of 2020.

First, as we stated above, respondents have no standing to have us review the Pride Act. They have not established a valid case or controversy for us to resolve. The "judicial power" does not include "power *per se* to review and annul acts of Congress on the ground that they are unconstitutional" outside of a case or controversy. *Mellon, supra.* In order for respondents to raise such an argument, they must demonstrate "that they have justification for which some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." *Ibid.*[3] Nor is the

[3] It is crucial to know that during arguments, respondents claimed that their standing stemmed from the fact that the Pride Act violated their "First Amendment rights." That argument is immediately disposed of by the

power of anytime review relevant. Respondents made the choice to bring this case in the District Court under the "judicial power," and we will not convert a civil action into an anytime review action on appeal.

Secondly, even if respondents did establish standing, we still recognize our own judicial self-restraint. Resolution of procedural issues first is allowed and encouraged by the rule that this Court will not pass upon a constitutional question if there is also present some other ground upon which the case may be disposed of. *Slack* v. *McDaniel,* 529 U. S. 473, 475 (2000) (quoting *Ashwander* v. *Tennessee Valley Auth.*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring) (emphasis added).

We must always remember that in an appeal, it is not the "burden of the petitioner to show that his appeal has merit, [but it] is the burden of the respondent to show the appeal lacks merit." *Party* v. *Board of Law Examiners*, 7 U. S. 50, 52 (2019) (quoting *Coppedge* v. *United States*, 369 U. S. 438, 448 (1962)). Because respondent also declines to respond to the issues presented by the United States, we are to believe that they have conceded the issues for the purposes of this case.

Here, respondents did not make a "substantial showing of the denial of a constitutional right," but the United States sufficiently argued that the District Court's procedural rulings "were wrong." *Slack, supra*, at 485. We cannot take respondents' arguments as true on their face. We therefore cannot review respondents' issues on the constitutionality of the Pride Act of 2020.

Lujan standard we have repeatedly upheld, however, so we reject respondents' arguments of presence of standing.

As such, we decline to determine whether §3 of the Pride Act is unconstitutional.

* * *

"The judicial Power" created by Article III, §1, of the Constitution is not whatever judges choose to do, or even whatever Congress chooses to assign them. It is the power to act in the manner traditional for English and American courts. *Vieth* v. *Jubelirer*, 541 U. S. 267, 278 (2004) (plurality opinion). One of the most obvious limitations imposed by that requirement is that judicial action must be governed by standard, by rule. Laws promulgated by the Legislative Branch can be inconsistent, illogical, and ad hoc; law pronounced by the courts must be principled, rational, and based upon reasoned distinctions. *Ibid.*

Our Federal Rules should be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. of Civ. P., Rule 1. In short, the District Court must ensure that its judgments, orders, and decisions are fair, principled, and rational. That was not the case here.

Based on our reasons above, we cannot affirm the judgment of the District Court without tainting our administration of justice. Per our own rules on judicial self-restraint, including the doctrine of standing, we cannot answer respondents' questions on the constitutionality of the Pride Act either, as of today. The orders of the District Court for the District of Columbia granting respondents default judgment, the preliminary injunction, and the disqualification of counsel for the United States are reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

UNITED STATES *v.* CABOT

CERTIFICATE FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 09-29. Argued June 8, 2020 —Reargued August 1, 2020 —
Decided August 28, 2020.

After AlexJCabot was charged with murder and attempted murder by federal prosecutors for actions he allegedly committed in the District of Columbia, a Municipality, he moved to dismiss on the grounds that the crime had not occurred within the "special maritime and territorial jurisdiction of the United States" as defined by federal law. Like many other federal criminal statutes, the murder and attempted murder statutes only apply within SMT jurisdiction. The District Court certified to us the question whether the Municipalities—in their entirety— are within the "special maritime and territorial jurisdiction of the United States" as defined by, and for the purposes of, federal criminal law.

Held: As defined by, and for the purposes of, federal criminal law, all Municipal land is within the "special maritime and territorial jurisdiction of the United States." Pp. 33–66.

(a) All agree that prior to their respective municipalizations, the land which comprised the District of Columbia and the City of Las Vegas was statutorily within the "special maritime and territorial jurisdiction of the United States" for the purposes of criminal law. Subsequent to municipalization and for more than two years after that, nobody suggested that this had changed. Put differently, there was unanimous public understanding that crimes like murder, attempted murder, assault, and robbery continued to be crimes under federal law within the Municipalities. Thousands of arrests were made and hundreds of prosecutions, including many upheld by this Court, were pursued on this understanding. As such, to overcome this consensus, there must be a particularly strong interpretive showing that the Municipalities were disincluded as SMT jurisdictions. Pp. 33–38, 61–66.

(b) None of the arguments for disinclusion, either singly or in concert, provide the particularly strong interpretive showing required to establish disinclusion. Pp. 38–58.

(1) The Court is not persuaded by the three-part textual argument which suggests that (a) the phrase "exclusive or concurrent jurisdiction" in 18 U. S. C. §7 refers to the type of federal judicial jurisdiction present within the particular region, (b) "concurrent" judicial jurisdiction requires there to be multiple court systems which share jurisdiction and "exclusive" judicial jurisdiction requires that there be multiple court systems but with one excluded from jurisdiction, and (c) because there is only one court system in the Municipalities, there can be neither "exclusive" nor "concurrent" judicial jurisdiction. The type of jurisdiction referred to is not federal judicial jurisdiction, but sovereign jurisdiction and, in any event, the proposition that the federal courts have sole, but somehow not exclusive, jurisdiction makes little sense. Pp. 38–42.

(2) The Court also rejects the notion that Congress impliedly disincluded the District of Columbia by ratifying its revised City Charter, which codified its power to prosecute. Nobody has contended that the Federal Government having jurisdiction to prosecute and make arrests for crimes like murder, attempted murder, assault, and robbery somehow statutorily precludes the Municipal government from doing the same. Additionally, the revised Charter merely codified the power already constitutionally possessed by the Municipality and so this provision did not practically change anything. The Court will not infer congressional intent on one subject from a provision which speaks to something completely different. Pp. 42–49.

(3) The Court is not convinced by the proposition that Congress's recent consideration and failure to enact the Clearly Defined Jurisdiction Act somehow demonstrates disinclusion. That bill would have expressly affirmed that the Municipalities were SMT jurisdictions. But Congress made clear within the text of the bill that its intent was not to newly confer such status but to expressly affirm what it already believed to be the case: that the Municipalities were SMT jurisdictions. In any event, Congress's

failure to enact subsequent legislation cannot be the basis for our interpretation of existing law. Pp. 49–51.

(4) Defendant contends that 18 U. S. C. §7(3) has never been understood to include anything other than federal property. But defendant fails to explain the more than two years of contrary public understanding and precedent. Additionally, the grammatical rule of the last antecedent refutes his contention that the limiting clause of the second part applies to the first part of the paragraph. Pp. 51–53.

(5) Finally, the combined force of each of the prior arguments is insufficient to show disinclusion either. Each of the prior arguments was demonstrably flawed and meritless. The whole picture cannot be greater than the sum of its parts. P. 53.

(c) The constitutional arguments against SMT jurisdiction within the Municipalities are similarly inadequate. Pp. 53–56.

(1) The Double Jeopardy Clause does not present an obstacle. This argument was already disposed of in several earlier cases, recognizing that the same action may be prosecuted by both the federal and municipal governments without running afoul of the Double Jeopardy Clause. Pp. 54-55.

(2) As a facial matter, the SMT crimes being applicable throughout all Municipal land does not exceed Congress's power under the Commerce Clause. Virtually every activity touches on commerce in some respect. Individual prosecutions are still open for as-applied challenges under the Commerce Clause. Pp. 55–56.

(3) The equal sovereignty doctrine presents no problem because all Municipal land falls within SMT jurisdiction. As such, there is no disparate geographic coverage requiring special justification. P. 56.

Certified question, answered in the affirmative.

HOLMES, C. J., delivered the opinion of the Court, in which PITNEY, THOMPSON, BUTLER, JAY, and FRANKFURTER, JJ., joined. BORK, J., filed a dissenting opinion, in which STEWART and KAGAN, JJ., joined, *post,* p. 67.

Deputy Attorney General Nir2602, Department of Justice, Washington D.C., argued the cause for the United States. With him on the briefs was *Former Solicitor General Lewis F. Powell, Jr.*

Arrighi, Washington D.C., argued the cause for the respondent.

CHIEF JUSTICE HOLMES delivered the opinion of the Court.

At one level, this case is about the phrase "special maritime and territorial jurisdiction of the United States." 18 U. S. C. §7. Since the ratification of the United States Code, that phrase has universally been understood to include both the District of Columbia and the City of Las Vegas. In this case, against years of public understanding, defendant contends that the phrase no longer includes either Municipality. But he does not base this on some recent change to the law. Instead, he attributes it to their respective municipalizations, both of which took place more than two years ago. If his argument were to be accepted, his federal prosecution for murder in Washington, D. C., would have to be thrown out. Which brings us to what this case represents on a broader level. The phrase "special maritime and territorial jurisdiction of the United States" dictates the scope of various federal criminal statutes, including those relating to murder, attempted murder, assault, and robbery. If petitioner is right, those offenses (when committed in Washington, D. C., and Las Vegas) would be beyond the reach of federal prosecutors and federal law enforcement. To support such a dramatic departure from more than two years of settled understanding, one would expect a particularly strong interpretive showing. But all defendant and his proponents muster is a weak textual case that

hinges on ignoring entire words, an appeal to unrelated language in the D. C. Charter, some out-of-context citations to post-enactment legislative history, and some misguided references to constitutional law. None of this is at all sufficient to disturb more than two years of historical consensus. To make matters worse, defendant's case is further undercut by fundamental canons of statutory interpretation which require that major policy changes only be located in particularly clear legislative text. Defendant's case has no basis in the text, public understanding, precedent, or even legislative history. As such, we answer the certified question in the affirmative and remand the case for proceedings consistent with this opinion.

I

A

Like many other laws that define federal criminal offenses, the federal murder statute limits its coverage to the "special maritime and territorial jurisdiction of the United States." 18 U. S. C. §1111. That phrase is defined by 18 U. S. C. §7 to encompass, along with various other places, "[a]ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof." *Id.*, at (3). Prior to their admission as Municipalities, all on this Court agree that Washington, D. C., and Las Vegas fit within this definition. After all, before they had a local government with actual legal authority, they were inarguably under the "exclusive" jurisdiction of the United States. Subsequent to their admission, however, defendant contends that D. C. and Las Vegas ceased to be part of the "special maritime and territorial jurisdiction of the United States." This would likely come as a surprise to anyone working in the Federal Government over the course of the

two-and-a-half years since municipalization. In that time, nobody has ever suggested in any court filing that the murder statute (or the attempted murder, assault, and robbery statutes for that matter) did not apply to the two Municipalities. And for good reason. In the absence of any other American cities during that period of time, if those statutes did not apply in Municipal land then the entire statutes would be effectively surplusage: they would not apply anywhere. This Court, however, has consistently refused to assume that Congress "waste[s] words." *British* v. *Ozzymen*, 3 U. S. 60, 66 (2017); *Reset* v. *United States*, 9 U. S. 1, 25 (2020). We must presume that each word was intended to have some meaning. Treating an entire statute (or collection of statutes) as idle would be flatly inconsistent with this principle. Defendant nevertheless argues that municipalization stripped these federal criminal statutes of any scope, all without anyone noticing. He and his proponents rest this interpretation on a few planks. First, they contend that the Federal Government has neither "exclusive" nor "concurrent" jurisdiction over Municipal land. They support this argument by pointing to other usages of these phrases in the United States Code, in the context of the courts, and make the following assertions: (1) that there is no "concurrent" jurisdiction over the Municipalities because we have only federal courts and the phrase "concurrent" suggests two courts sharing jurisdiction, and (2) that there is no "exclusive" jurisdiction because there are only federal courts, so no other court is being "excluded." As we will explain, this argument simply does not supply a viable reading of the text. Second, they seize on the D. C. Charter's authorization of Municipal prosecutions as evidence that Congress meant to alter the Federal Government's jurisdiction to prosecute the crimes at issue here. After all, why would Congress intend for multiple entities to have jurisdiction

over the same crimes? While this argument may have some force as a policy matter, specific inferences about what Congress would have intended cannot be drawn from capacious language. Moreover, defendant's case must grapple with the fact that for more than two years after municipalization, no one understood the D. C. Charter to have this effect. Federal prosecutions and arrests for murder and the other "SMT crimes" continued without anyone doubting their legality. To the extent Congress's intent matters when not embedded in any specific text, defendant's interpretation of congressional intent is undermined by the unquestioned contrary public understanding since that time. Third, defendant and his proponents point to Congress's recent consideration of the Clearly Defined Jurisdiction Act, which would have expressly amended 18 U. S. C. §7 to include the Municipalities. Although that bill acquired majority support in both Houses of Congress, it failed to become law after being vetoed by President Technozo. As such, defendant and his proponents suggest that Congress does not understand D. C. and Las Vegas to be SMT jurisdictions under current law. But the only way to change the law is to actually enact a new one. Congress considering and rejecting new legislation cannot be the grounds for us changing our interpretation of an existing statute. Moreover, even to the extent post-enactment legislative history matters, the CDJA actually works against defendant's case. Fourth, defendant and his proponents make some vague gestures to constitutional law, including floating possible equal sovereignty problems and jurisdictional issues. We are ultimately unpersuaded by these arguments as well.

B

Defendant was charged by federal prosecutors with one count of murder and one count of attempted murder for actions he committed in Washington, D. C. He challenged the validity of the charges by alleging that the Municipality was not an SMT jurisdiction. The District Court certified the case to us, asking for guidance on the following l gal question: "Is the District of Columbia—in its entirety—within the special maritime or territorial jurisdiction of the United States?" It added: "[I]s it under exclusive jurisdiction of the United States or the District of Columbia?" We set the case for briefing and argument. 9 U. S. 227 (2020)

II

To begin with, none of defendant's arguments, either singly or in concert, provides the "particularly strong interpretive showing" needed to conclude that Congress's decision to admit D. C. and Las Vegas as Municipalities disincluded them as SMT jurisdictions.[1]

A

Defendant begins with a three-part textual argument. He first suggests that the phrase "exclusive or concurrent jurisdiction" with respect to a particular region refers to the type of federal judicial jurisdiction for crimes that exists in that region. Next, he advances an interpretation of that phrase which supposes that for "exclusive" jurisdiction to exist, jurisdiction must not just uniquely lie with the federal courts, it must actually come at the exclusion of another

[1] From this point forward, we use "defendant" to refer to both defendant himself and all of the proponents of his position, including the dissenting Justices. As such, we address not only those argument raised in the briefs or published opinions, but those raised in deliberation as well.

court. Additionally, he posits that for there to be "concurrent" jurisdiction there must be another court system that the federal courts share jurisdiction with. Finally, he reasons that because there is only a federal court system in Washington, D. C., and Las Vegas, there is neither "exclusive" nor "concurrent" jurisdiction for the federal courts in either Municipality.

As an initial matter, this line of argument suffers from a basic problem as a matter of English. Defendant concedes that the federal courts do have jurisdiction in the Municipalities. Indeed, his argument hinges on this point. His entire argument is that only the federal courts exist within their boundaries and that only they therefore can and do have jurisdiction. But he maintains that this jurisdiction is neither "exclusive" nor "concurrent." This is not possible. Either the federal courts do not have jurisdiction, they share jurisdiction with local courts, or they have sole jurisdiction. Of these three possibilities, defendant suggests that the third is correct, but points out an additional detail. He says that while it is true the federal courts have sole jurisdiction, that is only because Municipal courts cannot exist. Thus, "exclusive" jurisdiction is not an accurate descriptor.

In short, defendant contends that the federal courts—despite having sole jurisdiction over criminal prosecutions within the Municipalities—do not have "exclusive" jurisdiction because having "exclusive" jurisdiction is not possible under our Constitution due to the absence of anything to be excluded. Accepting this interpretation would treat the phrase "exclusive" as inoperative. We have an obligation, whenever reasonably possible, to give effect to the words used by Congress. As we mentioned earlier, we do not

lightly assume that Congress meant to "waste words." *British*, 3 U. S., at 66. See also *supra*, at 3. Accordingly, defendant's reading collapses even on its own terms.

Moreover, our analysis need not accept defendant's framing. Defendant's contention that the phrase "exclusive or concurrent jurisdiction" refers to federal judicial jurisdiction is plainly at odds with the text of 18 U. S. C. §7. After all, the "exclusive or concurrent jurisdiction" clause does not include only those words. First, it is immediately followed by "thereof." While defendant suggests that we consult outside sources like legal dictionaries and other congressional enactments to illuminate the meaning of "exclusive or concurrent jurisdiction," our first recourse must always be to the text. And the text provides a clear hint as to *whose* "exclusive or concurrent jurisdiction" it is referring. Second, what immediately *precedes* the four main words provides us with the object of "thereof." To recap, the full clause reads: "[a]ny lands reserved or acquired for the use *of the United States*, and under the exclusive or concurrent jurisdiction *thereof*." 18 U. S. C. §7(3) (emphasis added). It is abundantly clear that the "jurisdiction" at issue is not the jurisdiction of the federal courts, but the jurisdiction of the Federal Government as a whole.

Defendant's sources are insufficient to disturb the clear signal of the text. For one, legal dictionaries are a valuable tool, especially in textualist interpretation, but they are useful only to the extent they help to understand difficult text. They plainly cannot overturn the simple and clear language of a legislative enactment. Unlike Acts of Congress, legal dictionaries do not go through the "process of bicameralism and presentment." *In re Ratification of the Proposed Ridgeway Courts Amendment*, 9 U. S. 173, 181 (2020).

Moreover, while the default meaning of "exclusive or concurrent jurisdiction" might—if defendant's sources are

taken as the final word—refer to judicial jurisdiction, that default meaning can be modified by modifying text, as is the case here. Even in his legal dictionaries, defendant can find no support for the proposition that "exclusive or concurrent jurisdiction" cannot possibly refer to the jurisdiction of a sovereign entity.

Defendant also cites the usage of "exclusive jurisdiction" and "concurrent jurisdiction" in other statutes to show that the phrase usually refers to judicial jurisdiction. But in each of those examples, there is no modifying language and we cannot refer to the unmodified version of a phrase to discern the proper scope of modifying language. Defendant's examples are particularly weak because they fragment the relevant phrase into two parts. None of defendant's cited statutes use the compound phrase "exclusive or concurrent jurisdiction." All of them use the phrase broken into its parts.

For instance, defendant cites 28 U. S. C. §1334 as an example for the usage of "exclusive jurisdiction." The cited clause declares that "the district courts shall have original and exclusive jurisdiction of all cases under title 11." *Id.,* at (a). Because the jurisdiction referred to here is that of a court, defendant reasons that the phrases "exclusive jurisdiction" and "concurrent jurisdiction" must necessarily always refer to the jurisdiction of a court. But there are three problems with this extrapolation.

First, the text of this statute makes explicit reference to courts—when explaining the jurisdiction it is conferring, it directly references "the district courts." Defendant does not see this as a problem for his case. Rather, his position appears to be that this is *proof* that in every other usage of similar phrases, the "jurisdiction" spoken of must be that of

the courts. But this makes little sense. Why should the modifying language in one statute be overridden by modifying language in another? Defendant provides no good answer. The phrase "exclusive or concurrent jurisdiction," standing alone, gives no indication about whose jurisdiction is at issue. Only modifying language can provide that clarity. Defendant's example, far from refuting this basic point, actually illustrates it.

Second, even if the modifying language were absent from both statutes, we could not so easily transplant the usage of "exclusive jurisdiction" in 28 U. S. C. §1334 to "exclusive or concurrent jurisdiction" in 18 U. S. C. §7. While many reasons exist, one is especially worth mentioning: while Title 28 is actually *about* the courts and the justice system, Title 18 is a criminal code. It would be reasonable to infer that references to "jurisdiction" in Title 28 were related to the courts, but that same inference would not so easily apply in Title 18.

Third, the phrases "exclusive jurisdiction" and "concurrent jurisdiction" appear in more pertinent places than defendant's Title 28 example and these other examples tend to refute his argument. To begin with, the Constitution grants the Federal Government "exclusive" legislative jurisdiction over the seat of government and some other territories (subject to, in some cases, inherent limitations). Art. I, §8, cl. 13. And we have understood the Constitution to grant the Federal Government "concurrent authority over" all Municipal land. *Hamilton* v. *United States*, 9 U. S. 202, 213 (2020) (quoting *Printz* v. *United States*, 521 U. S. 898, 919–920 (1997)). As these examples speak to the jurisdiction of the Federal Government writ large, rather than merely the judicial jurisdiction, they are far more on point and speak directly to the modifying language in 18 U. S. C. §7. What these examples show is that Municipal

land can readily be deemed under the "concurrent jurisdiction" of the United States.

As such, defendant fails to show that D. C. and Las Vegas were disincluded as SMT jurisdictions upon municipalization by plain operation of 18 U. S. C. §7's text.

B

Defendant tries another, more focused, tack. Instead of attributing disinclusion to 18 U. S. C. §7 directly, defendant asserts that D. C. specifically was disincluded by the text of its revised City Charter. In particular, defendant suggests that by codifying the criminal power of the Municipal government, Congress indicated its intent to disinclude D. C. as an SMT jurisdiction. We are not persuaded.

1

As an initial matter, this argument has a common sense problem. Defendant fails to explain why Congress would have opted to enact disinclusion for D. C. by implying it into an only marginally related provision of the revised City Charter instead of simply amending the text of 18 U. S. C. §7 itself.

To be sure, nothing in the Constitution requires that Congress use only the most sensible approach to making changes in the law, but context is an indispensable aspect of statutory interpretation. Oftentimes, a statute's "meaning . . . only become[s] evident when placed in context." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 132 (2000). We are accordingly required to read the provisions of a law "in their context and with a view to their place in the overall statutory scheme." *Id.*, at 133. After all, our duty is "to construe statutes, not isolated provisions." *Graham County Soil and Water Conservation Dist.* v. *United States*

ex rel. Wilson, 559 U. S. 280, 290 (2010) (internal quotation marks omitted). And context requires us to consider details like whether it is likely Congress would have chosen such an obscure means of effectuating a change it could more easily have accomplished by direct means.

The broader context of this case suggests that is not likely correct. As we pointed out earlier, defendant tracks disinclusion to a point more than two years ago. Yet, in that time, nobody has suggested—not even in Congress—until now that disinclusion had actually happened. So the supposedly discrete nature defendant suggests disinclusion took is particularly suspect. We need a "particularly strong interpretive showing," *supra*, at 2, not a theory that Congress discretely and indirectly disincluded D. C. without anyone so much as mentioning it.

We are already hesitant to infer major policy changes from indirect provisions. To hold that such a major policy change not only came from an indirect provision, but also went without comment or objection would be farcical. Even in those rare cases where we infer a major substantive change from an ancillary provision, such a change is at least supported by a robust legislative record. Here, no such support is anywhere to be found.

Of course, it is possible to attempt to explain away this discrepancy. One could argue that the change, though major, was uncontroversial enough that nobody thought it necessary to comment on the matter. But besides the proposition that withdrawing federal criminal jurisdiction over crimes like murder and robbery could ever be "uncontroversial" barely passing the laugh test, the clear public understanding remains unexplained. Defendant can point to no evidence that federal law enforcement ceased its enforcement of SMT laws or that federal prosecutions for

those crimes stopped. And for good reason: neither happened. The reality is that if such a change did happen, its effects would be dramatic and noticeable. In the absence of evidence of such effects or extremely convincing textual proof that everyone to this point somehow just got it wrong, we will not abolish SMT jurisdiction in D. C. or Las Vegas.

2

Moreover, though packaged as an argument rooted in the text of the D. C. Charter, defendant's claim is not based in any specific text within that document. Instead, defendant cites the Charter as proof of Congress's *intent* to disinclude Washington, D. C. We have, however, repeatedly declined to attribute substantive legal effect to legislative intent. If Congress wishes to change the law, it must actually do so by passing legislation to that effect. Its unenacted intentions plainly lack the force of law.

The Constitution lays out a definite process for the making of law and there is no ambiguity about it. For a law to be enacted, Congress must pass it through both Houses and then obtain the President's approval. Alternatively, supermajorities in Congress may override a Presidential veto, or a law can take effect without the President's approval if he does not act on the bill within the prescribed period of presentment. As is clear, there are multiple ways a bill can become a law, and any of those avenues can be approached to effect a change in governmental policy. But Congress cannot change the law by its individual members simply willing it to happen in their minds.[2] Legislation requires concrete legislative action. Alternatives like "protest, strongly-

[2] In this case, not even that happened. There is no evidence that anyone in Congress at any point in time would have adopted the change pressed by defendant.

worded letters," or even especially powerful thoughts are not sufficient. *Cabot v. State Police*, 9 U. S. 227, 231 (2020) (BORK, J., dissenting from denial of certiorari).

As this Court's precedents make clear, neither legislative intent nor legislative history may be used for "the purpose of giving authoritative content to the meaning of a statutory text." *Wisconsin Public Intervenor* v. *Mortier*, 501 U. S. 597, 622 (1991) (Scalia, J., concurring in judgment). The reasons abound. First, while legislative intent can be gathered from a number of sources, the most usual places of reference are committee reports and the statements of individual Members of Congress. Neither possibility can be relied on to accurately represent congressional sentiment. To begin with, committee reports are especially weak. Take, for instance, a House Committee Report. When presented with such a report, "we have no reason to believe [it] was read (much less approved) by the Senate—or, indeed, by the Members of the House who were not on the Committee—or even, for that matter, by the members of the Committee, who never voted on the Report." *Samantar* v. *Yousuf,* 560 U. S. 305, 328 (2010) (Scalia, J., concurring in judgment). And statements by individual Senators or Representatives are equally unhelpful. The "statements in a legislative record by particular Representatives or Senators do not necessarily represent the views of their entire chamber or of Congress writ large." *Ridgeway Courts*, 9 U. S., at 181. Moreover, such statements are not subject to "the process of bicameralism and presentment" and therefore lack the force of law. *Ibid.*

The arguments in support of considering legislative intent and legislative history as a primary resource are also particularly unavailing. Proponents point to Justice White's admonition that "[judicial] inquiry benefits from reviewing additional information rather than ignoring it."

Martier, *supra*, at 611–612, n. 4. And they seize on Chief Justice Marshall's statement that "where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived." *United States* v. *Fisher*, 2 Cranch 358, 386 (1805). We, of course, agree with both of these sentiments. But neither axiom requires that legislative intent and history be assigned substantial weight. When unmoored from the text, neither provides useful "information" that could be used to "aid" our consideration. Our disciplined approach requires that our eyes be trained at all times on the text of the law we are interpreting. We consider extra-textual evidence only to help illuminate possible grey areas but "[w]hen there is no ambiguity in the pertinent text, an injection of legislative history cannot be the grounds for further examination." *Ridgeway Courts*, *supra*, at 182.

Naturally, therefore, we are wary of defendant's submission that Congress *intended* D. C.'s disinclusion as an SMT jurisdiction when it adopted the revised Charter. We are warier still because nothing in the legislative record supports defendant's position. As we have mentioned, there is no indication whatsoever that any person in Congress thought disinclusion had occurred. Defendant instead says that the evidence of this intent can be found in the text of the Charter. But we will not draw inferences about intent with respect to one issue from legislative text that speaks about an entirely separate issue. Nor will we ascribe to that supposed intent the force of law. If Congress intended for something to happen, it would presumably have said so.

3

The pertinent text of the Charter also does not convey the message defendant draws from it. It provides:

> "The council shall have power to provide for the enforcement of local laws by legal or equitable proceedings, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments. However, such proceedings must be held in the federal district court." D. C. City Charter, §7(b).

On its face, this provision does not affect the Federal Government's jurisdiction whatsoever. It merely affirms the Municipal government's power. Defendant, however, argues that it conveys Congress's clear intent to disinclude the District of Columbia. There are at least two problems with this line of argument.

First, the only way this argument actually works is if the Federal Government lost its *constitutional* power to prosecute certain offenses as a consequence of the conferral of such jurisdiction on the Municipal government. But nothing in the Constitution requires this. As mentioned earlier, the Federal Government and the Municipalities share "*concurrent authority*" over the People. *Hamilton*, 9 U. S., at 213 (emphasis added). It is abundantly clear that this includes the power to enforce constitutionally valid criminal laws. Additionally, the District of Columbia did not gain its prosecutorial power from the adoption of the revised Charter. In *United States* v. *District of Columbia*, 5 U. S. 95 (2018), we had already held that the Municipalities possessed the power of criminal prosecution as a constitutional matter. No additional legislative enactment was necessary to confer this power on them. The revised Charter merely codified this change which *District of Columbia* understood was traceable to municipalization itself.

Accordingly, defendant's claim here is best understood as a repackaged version of the last argument we rejected: that municipalization itself disincluded D. C. and Las Vegas. Once again, we reject this argument.

Second, defendant's point lacks any support in the text of this Charter provision. Conferring jurisdiction on one entity does not necessarily revoke it for another. Even if *District of Columbia* had not happened and the source of Municipal prosecutorial jurisdiction was this Charter provision, that conferral would not require the termination of federal jurisdiction. Prior to that conferral, the Federal Government would have had what might be called "exclusive" jurisdiction. Now it is "concurrent." Both are cognizable under 18 U. S. C. §7.

From here, defendant attempts to regain some ground by arguing that it would be bad policy to permit both federal and Municipal jurisdiction to prosecute the same offenses. But it is not our role to adopt "good policy"; our role in statutory cases is to understand and effectuate the policy laid out in the actual text of congressional enactments. *Reset*, 9 U. S., at 3–4, n. 3 (2020) (*per curiam*). We cannot graft what we consider the "best policy" onto congressional enactments. Congress is far from infallible and from time to time will make poor policy judgments. So long as those are constitutional, we have a duty to give effect to them. In this case, however, defendant's policy arguments would fail even if that were a consideration we took into account.

For one thing, we are not persuaded by the notion that it makes no sense to have federal and municipal jurisdiction over the same crimes. Not every potential case within either prosecutorial competence will be pursued and so having multiple prosecutorial offices increases the chance that accountability is pursued. Such separation also diminishes

the risk of corruption and favoritism. In order to benefit from either, a person must seek out two separate offices, compounding the risk of exposure. In presenting his policy arguments, defendant does not address these possible benefits. To put it differently, he "failed to consider . . . important aspect[s] of the problem" before him. *Motor Vehicles Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983).

C

Defendant next returns to his broader original position: that neither Municipality is an SMT jurisdiction. In support, this time he cites Congress's recent consideration of the Clearly Defined Jurisdiction Act. That law would have expressly stated that all American cities are SMT jurisdictions. In defendant's view, Congress's consideration of this law shows that it understood there was a problem with the existing state of the law. Defendant extrapolates this as a congressional concession that he is correct.

As an initial matter, we reiterate, legislative history is a "disfavored resource in this Court." *Ridgeway Courts*, 9 U. S., at 181. But whatever value legislative history generally may have in rare cases, *postenactment* legislative history is completely and utterly worthless. It lends no useful insight into what a previous Congress was thinking when it enacted an earlier law. Generally, "statements made significantly after the [adoption] of a [legislative] text are not especially probative as to their original meaning." *Reset*, 9 U. S., at 19 (citing *District of Columbia* v. *Heller*, 554 U. S. 570, 614 (2008*); Sprint Communications Co.* v. *APCC Services, Inc.*, 554 U. S. 269, 312 (2008) (Roberts, C. J., concurring)). Any speculation as to why "a later Congress declined to adopt new legislation offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a

different and earlier Congress did adopt." *Bostock* v. *Clayton County*, 590 U. S. ——, —— (2020) (slip op., at 20) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990) and citing *United States* v. *Wells*, 519 U. S. 482, 496 (1997)). An "argumen[t] based on subsequent legislative history . . . should not be taken seriously, not even in a footnote." *Sullivan* v. *Finkelstein*, 496 U. S. 617, 632 (1990) (Scalia, J., concurring in judgment). And this is all for good reason. The only way to legislate is to pass legislation. If Members of Congress could change the meaning of existing law with the mere act of introducing subsequent legislation that goes nowhere, the legislative power would be exposed to a serious potential for manipulation.

Consider a hypothetical. Suppose a Member of Congress introduced legislation that merely declared that "bribery shall be illegal." If Congress failed to enact that legislation, under defendant's theory, bribery would then be legal notwithstanding existing law that criminalizes bribery. After all, why would Congress have "considered" that legislation if bribery was already illegal? Plain meaning be damned. We decline to open the door to this backwards and anticonstitutional form of legislating.

The particular circumstances that led to the presentation of the CDJA further undercut defendant's argument. The bill was introduced only in response to this case. As the legislative record makes clear, the bill was authored by Luxciety, the prosecutor in this case, after the District Court certified this question. The most plausible explanation is the prosecutor sought to avoid the potentially devastating consequences of a negative answer by this Court by preemptively seeking legislation removing any potential doubt. This was a reasonable reaction.

The likelihood of this explanation is reinforced by the particular text of the CDJA. While defendant would have us consider only the fact of the bill's existence, the precise language within the proposed law explains that the problem it is addressing is the lack of a "clear stat[ement]" in existing law, not the lack of existing SMT jurisdiction. §2. We cannot read this the way defendant suggests by treating it as evidence Congress understood existing law not to include Municipalities as SMT jurisdictions.

D

Defendant next argues that "[18 U. S. C. §7(3)] has never been understood to encompass the [Municipalities] as a *whole*." Brief for Defendant 6. Instead, in his submission, it includes only land "acquired by the United States 'for the erection of a fort, magazine, arsenal, dockyard, or other needful building.'" *Id.*, at 7. But this argument runs into a number of problems.

First, defendant's claim that Municipal land has "never been understood" to be included "as a whole" within SMT jurisdiction would come as a surprise to anyone working in government over the more than two years since municipalization. In that time, it has "*universally* been understood" that Municipal land was wholly SMT jurisdiction. For his part, defendant provides no evidence to rebut this consensus. Nor could he. Likely thousands of arrests over that period of time would have been illegal under defendant's view, but no court or prosecutor (or defense attorney, for that matter) has taken that position in that time. Hundreds of prosecutions, including many upheld by our Court, would have been unlawful as well. If defendant were correct that 18 U. S. C. §7 has "never been understood" to authorize any of that, it certainly is inexplicable why that went unmentioned through all of this. Defendant's burden is to provide

a "particularly strong interpretive showing" to overcome more than two years of unquestioned public understanding, *supra*, at 2, not a paragraph of demonstrably untrue supposition.

Second, defendant appears to read 18 U. S. C. §7(3) to only apply to land that houses a "fort, magazine, arsenal, dockyard, or other needful [federal] building." He likely bases this on the final clause of the paragraph. But what defendant fails to note is that the paragraph has two parts. The first, which we quoted above, refers generally to "*lands* reserved or acquired for the use of the United States" that are within the "exclusive or concurrent jurisdiction thereof." The second, which contains the clause defendant cites, includes "any place purchased or otherwise acquired by the United States . . . for the erection of a fort, magazine, arsenal, dockyard, or other needful building." Defendant would have us apply the final clause, otherwise known as the limiting clause, to the first part of the paragraph even though it arises only in the second part.

But defendant's argument "disregards—indeed, is precisely contrary to—the grammatical rule of the last antecedent, according to which a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas*, 540 U. S. 20, 26 (2003). Here, that rule requires we apply the limiting clause only to the second part of 18 U. S. C. §7(3). Defendant's argument accordingly fails as a matter of grammar.

Third, defendant cites a D. C. Circuit precedent excluding a liquor store within the District's bounds from the SMT jurisdiction. See Brief for Defendant 7 (citing *Coleman* v. *United States*, 334 F. 2d 558, 565 (CADC 1964)). As defendant is aware, appeals court precedents are not binding in

this Court. But whatever relevance that precedent has, and notwithstanding the different context its analysis arose from, we must acknowledge the great weight of persuasive precedent lined up on the other side. As we mentioned, over the past two years there have been "hundreds of prosecutions, including many upheld by our Court" which would have been invalid under defendant's reading of the law. *Coleman* may inform our analysis, but its reasoning that arose in a different context cannot supplant the thrust of the hundreds of other precedents which disagree and which also happened to arise in context.

E

But maybe defendant's arguments were not meant to be considered on their individual merits. Perhaps only when taken together they provide the "particularly strong interpretive showing" we demand. But for a variety of reasons, we are not persuaded of this either.

To begin with, the whole picture cannot be greater than the sum of its parts. And as we illustrated, each of the parts of defendant's case lacks merit. The first argument was wrong as a matter of grammar and text, the second hinged entirely on a nonsensical reading of congressional intent, the third rested on post-enactment legislative history—a "completely and utterly worthless" interpretive tool, *supra*, at 16—and the fourth was founded on "untrue supposition," supra, at 18. None of these arguments has enough independent value to contribute to some bigger-picture argument. Taking a collection of baseless arguments and urging us to consider them "taken together" does not suddenly produce a persuasive point. See *McGirt* v. *Oklahoma*, 591 U. S. ——, —— – ——, n. 5, ——, n. 7 (2020) (slip op., at 12–13, n. 5, 17, n. 7). As such, in our view, defendant's argument remains unpersuasive.

And to make matters worse, producing a merely persuasive point is not even the burden defendant is required to meet. When assailing more than two years of consensus, as defendant does here, there must be a "particularly strong interpretive showing." *Supra*, at 2. We therefore conclude that Congress has not disincluded the Municipalities as SMT jurisdictions.

III

We turn next to defendant's constitutional arguments. Defendant contends on various grounds that SMT jurisdiction within the Municipalities would violate the Constitution. Of these claims, we deem none persuasive.

A

Defendant first claims that the Double Jeopardy Clause would prohibit the Federal Government from having jurisdiction over crimes Municipalities could prosecute. We reject this argument for two independent reasons.

Defendant first claims that the Double Jeopardy Clause would prohibit the Federal Government from having jurisdiction over crimes Municipalities could prosecute. We reject this argument for two independent reasons.

First, we doubt whether defendant has standing to pursue this argument. We are aware of no evidence in the record that defendant was previously prosecuted for the events underlying this case. As such, even if he were correct that the Double Jeopardy Clause precluded dual prosecution by Municipal and federal prosecutors, a holding in respect to that question would not materially affect his case. Or at least it typically would not. But defendant attempts to avoid this problem by suggesting that we adopt a prophy-

lactic rule barring federal prosecution for offenses criminalized at the Municipal level in order to avoid the *possibility* of a double jeopardy violation.

We, however, lack the authority to adopt prophylactic rules to prevent constitutional issues from arising. We may only enforce the plain terms of the Constitution when alleged violations do arise. As such, we continue to doubt defendant's standing to pursue this line of argument.

Second, even if defendant has standing to pursue this Double Jeopardy Clause argument, it lacks merit. We have already been explicit in reaffirming that "when a defendant in a single act violates the peace and dignity of two sovereigns by breaking the laws of each, he has committed two distinct offences" for double jeopardy purposes. *District of Columbia*, 5 U. S., at 105 (quoting *Heath* v. *Alabama*, 474 U. S. 82, 88 (1985)). The underpinning for this rule is the dual sovereignty doctrine, which was recently upheld in *Gamble* v. *United States*, 587 U. S. ___ (2018). We decline to reopen this issue and reaffirm once again that the Double Jeopardy Clause presents no issues here.

B

Defendant next contends that permitting federal prosecutions for crimes that are also criminalized at the Municipal level would in effect rob the Municipalities of their constitutional "police power." Brief for Defendant 5. That power assures them the right to "safeguard the vital interests of [its] people." *District of Columbia*, 5 U. S., at 99. Within the scope of that "police power" is the "power to make criminal laws." *Ibid.* Defendant reasons that if the Municipalities are thought to be SMT jurisdictions, there would be no geographical region where local murder statutes are applicable but their federal counterparts are not.

This would render the Municipal statutes mere "duplicates."

But for all this reasoning, defendant fails to identify any legitimate constitutional problem. Perhaps defendant means to argue that the vast federal criminal code contained in Title 18 exceeds Congress's power under the Constitution. We are not of that view. While we have held that the Commerce Clause and other sources of federal authority must not be treated as unlimited, they still do confer broad power. The Commerce Clause, for instance, is particularly broad. As we have acknowledged, "virtually every activity touches on commerce in some respect." *Hamilton*, 9 U. S., at 208. To be sure, that does not mean that everything is within its scope. But Congress has considerable power under that Clause to regulate private conduct. That includes the power to criminalize certain conduct.

We are not convinced that the various SMT crimes exceed Congress's power as a facial matter. There may be some discrete cases which are beyond Congress's authority, but those are not before us today. We are satisfied that Congress has the power, generally speaking, to criminalize the SMT crimes, even in the Municipalities.

Defendant attempts to recover some ground by asserting that allowing the Federal Government to prosecute such offenses "would be an affront to the doctrine of dual federalism." Brief for Defendant 6. But this policy argument is beyond our purview. The principles of federalism are embedded in legal doctrines and legal text. We will not devise a new rule solely for the purpose of deploying it in this case. Nor will we displace an otherwise valid Act of Congress (much less an entire criminal code) based on nothing but our own sense of good policy. And even here, de-

fendant's policy argument is identical to the one he presented (and we rejected) earlier at the statutory level. See *supra*, at 53–55.

C

Finally, defendant suggests that if we were to conclude that D. C. was an SMT jurisdiction, then 18 U. S. C. §7 would violate the equal sovereignty doctrine because Las Vegas, he believes, could not be an SMT jurisdiction. We agree that there is a "historic tradition that all the [Municipalities] enjoy equal sovereignty" which is protected by the Constitution. *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 202–203 (2009). And we further recognize that any "disparate geographic coverage" must be "sufficiently related to the problem it targets." *Id.*, at 203. But we have already concluded that all Municipal land is SMT jurisdiction. See *supra*, at 20. In reaching that holding, we did not exclude either Municipality. Defendant therefore cannot make the threshold showing of "disparate geographic coverage" required to trigger any equal sovereignty analysis.

IV

The dissent suggests that our analysis of the initial statutory question is flawed in two respects. But neither counterargument is correct.

A

First, the dissent objects to our presentation of the issue before us. This objection, however, appears to stem from the dissent's own mischaracterization of our point. We did not, as the dissent suggests, "start by *assuming* that the Municipalities are . . . SMT jurisdictions" only to see "if an-

ything in the text prohibit[ed] that." *Post*, at 1. To the contrary, we began by considering what the statute itself actually prescribes. For instance, we cited evidence of the statute's original "public understanding," *supra*, at 4, and invoked the surplusage canon as a lens for considering the text, *supra*, at 3. In our view, this evidence was sufficient to establish, as an initial matter, that Municipal land was SMT jurisdiction. At no point in this analytical process did we "assume" anything.

The second stage of our approach was to ascertain if anything changed this state of affairs. Put differently, we considered whether the Municipalities were "disincluded" as SMT jurisdictions by operation of any law. *Supra*, at 5. It is the dissent, not us, which seeks to escape its burden of persuasion. To avoid having to demonstrate disinclusion, a proposition for which there is no support "in the text, public understanding, precedent, or even legislative history," *supra*, at 2, the dissent seeks to reframe the ultimate question in this case as being to that effect.

Accordingly, the dissent focuses its energy on attempting to refute our analysis of public understanding and surplusage. But the dissent here is quite wrong on several points. First, the dissent questions the utility of public understanding as an interpretive resource. But in making this point, the dissent apparently forgets that the focus of textual analysis is to discern a statute's "ordinary public meaning . . . at the time of its enactment." *Bostock*, 590 U. S., at —— (slip op., at 4) (emphasis added). The words used in laws, except where context indicates otherwise, carry the meaning which would be known to the common man. Accordingly, statutes are "to be taken in the sense in which they w[ould] be understood by th[e] public." *United States* v. *Isham*, 17 Wall. 496, 504 (1873). To that end, Justice

Scalia said that "the good textualist is not a literalist." A. Scalia, A Matter of Interpretation 24 (1997). The good textualist pays attention to public understanding.

Remarkably, however, the dissent submits that our consideration of such public understanding is *at odds with* the principles of textualism. In support, the dissent cites our recent decision in *Ridgeway Courts*. In that case, we explained that "extratextual sources are usually only helpful as an aide for *clearing up* ambiguity." 9 U. S., at 181 (emphasis added). Put differently, extratextual evidence usually cannot be the basis for "further examination." *Ibid.* But the dissent misses two things. To begin with, in *Ridgeway Courts* itself and in related text-based cases, we have considered public understanding as pertinent textual evidence. For instance, in *Ridgeway Courts*, we explained that longstanding public "consensus" was "strong evidence of . . . original meaning." *Id.*, at 188. And, in *Reset*, we invoked the "uncontested early application and public understanding" of a provision as part of our textual analysis. 9 U. S., at 14. As such, the dissent's suggestion that public understanding is wholly "extratextual," *post*, at 73, is baseless. Public understanding reflects society's understanding of legal texts. Dismissing such understanding as simply not being "based on any consideration of what the text actually says" would be an "exercise in hubris." *Post*, at 74; *Ridgeway Courts*, *supra*, at 187. Caricatures are no substitute for disciplined analysis.

In any event, even if the dissent had been correct that considerations about public understanding are wholly extratextual, *Ridgeway Courts* does not preclude all consideration of extratextual evidence. It simply describes the "usua[l]" value of such evidence. *Id.*, at 181. But this case is far from "usual." The dissent's proposed interpretation

would upset years of settled understanding and would render illegal thousands of arrests and hundreds of prosecutions over that period of time. In addition, these changes would not be limited to the past. The prospective effect on federal law enforcement would be immediate, rendering outside of their jurisdiction some of the most common crimes seen at our cities. In the face of such dramatic upheaval, we cannot pretend that this proceeding is "usual."

Hoping to regain some ground, the dissent next contends that our consideration of public understanding is a "veiled appeal to policy preference." *Post*, at 9. Or, phrased differently, the dissent suggests that by considering public understanding we are merely preferring the status quo over an alternative state of affairs. But with the same credibility the opposite could be said for the dissent: that it prefers an alternative state of affairs over the status quo. At the end of the day, what matters is what the law says and how it is understood. Our arguments to this point have made no policy judgment that the status quo is preferable. As such, the charge that we are leaning on our "policy preference" is absurd. And in making this argument, the dissent also misapprehends the particularly strong public-understanding evidence here. Besides uncontested public practice, even Congress's own enactments confirm our interpretation of public understanding.

For instance, soon after municipalization, Congress enacted the Federal Infrastructure Reform Act, Pub. L. No. 53–2, which sought to clarify the process of business registration. The law's enacted text clearly suggests Congress's view that "the special maritime and territorial jurisdiction of the United States" extends to "anywhere in the United States." §§102 and 104(a). While speculation as to why Congress *declined* to adopt a particular proposal is "worthless"

in statutory interpretation, *supra*, at 16, Congress's actual enactments carry the force of law and are a meaningful point of reference. And FIRA appears to confirm our sense of public understanding regarding SMT status at the time of municipalization.

Second, the dissent challenges our reliance on surplusage. But the critical premise of the dissent's contention here—that we apply surplusage "[i]ndependent of [the] statutory text"—is demonstrably incorrect. *Post*, at 8. In this opinion, we merely use surplusage "as a lens for considering *the text*," *supra*, at 24 (emphasis added), which accords perfectly with how this Court has always applied similar canons of interpretation. The dissent can cite no support for its allegation that our usage of surplusage is atextual. And that is so for the simple reason that the charge is not true.

In response, now accepting our surplusage approach, the dissent claims that even under that approach we are incorrect. This is so because, as the dissent sees it, it makes no sense for Congress to have "spelled out so many specific areas where SMT crimes apply if they apply, as the [Court] sees it, essentially anywhere in the United States." *Post*, at 10. But the dissent fails to acknowledge that 18 U. S. C. §7 does not principally deal with identifying places within the United States. Instead, it is primarily consumed with listing places like "[t]he high seas," "vessel[s]," "island[s] . . . containing deposits of guano," "aircraft," and "vehicle[s] used . . . in space." 18 U. S. C. §§7(1), (2), (4), (5), and (6). Our analysis does not make any of these other paragraphs redundant and is therefore consistent with surplusage. And while the dissent suggests an alternative property based interpretation of paragraph (3), we are not persuaded by that reading. To begin with, it fails to explain away the contrary longstanding public understanding. Absent a "particularly

strong interpretive showing," *supra*, at 2, we will not adopt such a reading. And, additionally, under the dissent's reading the first part and the second part of paragraph (3) would cover essentially the same things: federal property. The dissent fails to offer an explanation for this apparent redundancy its reading produces. The fact that this redundancy arises from the dissent's attempted refutation of our surplusage argument illustrates our point.

Third, the dissent points to the "criminal context of this case" in hopes of saving its argument. *Post*, at 2. Invoking the "beyond-a-reasonable-doubt standard" which applies to each element of a crime, the dissent first suggests that the Government must face a heightened burden of proving inclusion within SMT jurisdiction to succeed in this case and that there should be no burden with defendant to show disinclusion, much less a heightened one. *Post*, at 4. We agree with the dissent that whether a crime took place in SMT jurisdiction is an elemental question which must be proved beyond a reasonable doubt. But the dissent conflates two things: (1) whether the crime happened in SMT jurisdiction (a question of fact) and (2) what constitutes SMT jurisdiction (a question of law). Questions of law are not subject to the beyond-a-reasonable-doubt standard. See *Addington* v. *Texas*, 441 U. S. 418, 428 (1979). And before us is only the second question. The beyond-a-reasonable-doubt standard is inapposite for present purposes.

The dissent also leans on the rule of lenity to suggest that any ambiguity in the pertinent statute must go in favor of defendant. But accepting this argument would require us to believe that there are two "equally persuasive readings" presented to us, *Kisor* v. *Wilkie*, 588 U. S. ——, —— (2019) (Gorsuch, J., concurring in judgment) (slip op., at 9), and the question is merely which reading to adopt. But "[i]f nature

knows of such equipoise in legal arguments, the courts at least do not." Scalia, Judicial Deference, 1989 Duke L. J. 511, 520. For the rule of lenity to apply, the law at issue must be "truly ambiguous" even "after a court has resorted to all the standard tools of interpretation." *Kisor*, *supra*, at ——– –— (opinion of the Court) (slip op., at 11–12). We have resorted to such tools and reached a conclusive answer. We therefore disagree with the dissent's view that lenity applies here.

B

The dissent also contends that our interpretation of the statute is wrong on both our terms and independent of them. But we have already addressed all of defendant and the dissent's statutory arguments in great detail, see, *e.g.*, *supra*, at 5–20, 27–28, and none, in our view, are persuasive. The dissent's final argument that "the statute, viewed neutrally," does not "encompas[s] the Municipalities in their entirety," *post*, at 12, is presented in conclusory fashion with no analytical support. We have already addressed extensively why this assertion is incorrect and the dissent's final threadbare reiteration of the point does nothing to disturb that conclusion.

* * *

We hold that all Municipal land is within the "special maritime and territorial jurisdiction of the United States" as defined by 18 U. S. C. §7. As such, we answer the certified question in the affirmative and remand.

It is so ordered.

Justice Bork, with whom Justice Stewart and Justice Kagan join, dissenting.

The majority "opinion is like a pirate ship. It sails under a textualist flag," but it charts a course destructive to the textualist method.[1] The majority presents the question before us as whether "Congress's decision to admit D. C. and Las Vegas as Municipalities disincluded them" from 18 U. S. C. §7.[2] either Municipality is within the "special maritime and territorial jurisdiction of the United States." The distinction might seem subtle but it makes all the difference. Under the majority's framing, we start by *assuming* that the Municipalities are (to borrow the majority's phrasing) SMT jurisdictions and then see if anything in the text *prohibits* that. Finding no such prohibition, the majority returns an affirmative answer to the certified question.

Under the neutral framing, we'd start by looking at the text. We'd look at each of the possible categories of SMT jurisdictions described in the statute and would see, from a neutral viewpoint (and without any background assumptions putting a thumb on the scale), if the Municipalities fairly fit into any of them. If they did, it'd be beyond reproach that they were SMT jurisdictions.

With its approach, the majority fails to prove that either Municipality is an SMT jurisdiction under 18 U. S. C. §7. All it shows is that they could be.

To its credit, the majority does provide some justification for its tilting of the playing-field, but none of these justifications are remotely adequate. In this dissent, I will en-

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[1] *Bostock* v. *Clayton Cty.*, 590 U. S. ——, —— (2020) (Alito, J., dissenting) (slip op. at 3).

[2] *Supra,* at 5.

deavor to make four points clear. First, the majority's framing is firmly inconsistent with the criminal context of this case. Not only is it the government's burden to prove all elements of the crime, including the jurisdictional element, but the benefit of any doubt regarding the scope of a criminal statute has to go to the defendant. Second, the majority's framing is contrary to the textualist method, which requires that the text (not some extratextual factor) be the starting point for our analysis. Additionally, even the majority's extratextual factors are based on flawed premises. Third, even accepting *arguendo* the majority's awkward starting point, the text clearly refutes the notion that Municipalities (in their entirety) can be SMT jurisdictions. And fourth, a straightforward approach to statutory interpretation would require us to conclude that Municipalities aren't entirely SMT jurisdictions, not because they were disincluded, but because they were never included in the first place.

For these reasons, I respectfully dissent.

I

The majority, in shifting the burden of proving disinclusion to the defendant, rather than first requiring the government to prove inclusion, ignores the criminal context of this case.

A

In any criminal prosecution, the "burden of proof" lies with the government because there is a basic presumption

"in favor of innocence."[3] To meet its burden, the government must prove guilt beyond a "reasonable doubt."[4] And this standard applies to every "element of the offense."[5]

To start, being in the "special maritime and territorial jurisdiction of the United States" is clearly one of the elements of each of the defendant's alleged crimes. As even the majority sees, the phrase "dictates the scope of" the "murder" and "attempted murder . . . statutes."[6] Unless the government proves in a given case that the murder or attempted murder in question occurred in an SMT jurisdiction, they have not proven a violation of federal law. This geographical element is just as essential as any other element of the offense. For example, it wouldn't be criminal murder under federal law without "the . . . killing of a human being."[7] Or without "malice aforethought."[8] Or without a number of other conditions.[9] But, relevantly, it isn't punishable under federal law unless the government shows the crime happened "[w]ithin the special maritime and territorial jurisdiction of the United States."[10] This makes the SMT jurisdiction question an actual element of the charged offense. The government must prove that element, as with any other, beyond a reasonable doubt.

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[3] *Victor* v. *Nebraska*, 511 U. S. 1, 8 (1994).

[4] *Ibid.*

[5] *Quinn* v. *United States*, 349 U. S. 155, 165 (1955).

[6] *Ante*, at 38.

[7] 18 U. S. C. §1111(a)

[8] *Ibid.*

[9] See *ibid.*

[10] 18 U. S. C. §1111(b)

This necessarily places the government on uneven footing. Requiring a showing beyond a reasonable doubt means that the government's case must be very strong. But the majority flips that burden pretty much entirely on its head.

It'd be one thing to simply reduce the threshold for the government. I can understand the argument for doing so since this is a question of statutory interpretation and our normal approach to statutory interpretation starts with a neutral perspective. At least under that approach, the burden would still be with the government to affirmatively show that the relevant geographic area is an SMT jurisdiction.

The majority goes even further. It doesn't merely reduce the government's burden: it removes it entirely. The majority starts with the presumption that the government is right and that Municipal land, in its entirety, is SMT jurisdiction. And it doesn't stop there. While this presumption automatically flips the burden of proof to the defendant, requiring him to show that Municipal land is *not* SMT jurisdiction, the majority apparently doesn't think that's far enough. The majority adds that it needs a "particularly strong interpretive showing" by the defendant.[11] This standard, though worded differently, is in practice (at least as the majority applies it in its opinion) indistinguishable from the beyond-a-reasonable-doubt standard I showed originally lied with the government. In other words, the majority has essentially asked the defendant to show, beyond a reasonable doubt, that his alleged crime wasn't in SMT jurisdiction.

I can think of no justification for this. Putting aside the obvious challenges which come with trying to prove a negative, the majority's approach is reminiscent of the very sys-

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[11] *Ante, at* 36.

tem that prompted the adoption of the beyond-a-reasonable-doubt rule: the British vice admiralty courts. During the colonial era, the British government utilized the vice admiralty courts to try any alleged breach of trade laws. In such trials, the burden rested with the accused to prove their innocence.[12] In light of its abusive applications, the Framers thought this system unacceptable and adopted the Due Process Clause to assure that in their new Nation criminal cases would always begin with a total presumption of innocence.

The majority's complete reversal of the burden of proof is offensive to the presumption of innocence.

B

Even ignoring the majority's "no you" burden of proof trick,[13] the rule of lenity requires that any ambiguities in criminal law go in favor of the defendant.

The rule of lenity has its roots deep in American legal history. Prior to the "19th century" and the rise of the modern vagueness doctrine, "courts addressed vagueness through a rule of strict construction of penal statutes, not a rule of constitutional law."[14] This rule is "known today as the rule of lenity."[15]

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[12] Grohman, Admiralty Law 1–3.

[13] Cf. NO U, Know Your Meme, Feb. 06, 2020 at 03:53AM EST, available at https://knowyourmeme.com/memes/no-u.

[14] *Johnson* v. *United States*, 576 U. S. 591, 613 (2015) (Thomas, J., concurring in the judgment).

[15] *Ibid.*

Unlike the majority's burden shifting approach, which was invented for the purposes of this case,[16] the rule of lenity is well established, having "first emerged in 16th century England." [17] The rule of lenity compels courts to "refus[e] to apply" ambiguous criminal statutes to circumstances they don't unambiguously reach.[18]

Now, unless I missed it somewhere in the opinion, I don't think the majority ever makes the claim that the statute *unambiguously* applies to all Municipal land.

And I don't blame them. It's just not an argument that's available to them. As we'll see soon, the plain text of 18 U. S. C. §7 doesn't encompass Municipalities in their entirety. But for now just focus on the majority's framing. A crucial premise of the majority's argument on framing is that public understanding until recently unanimously supported their side. But it wasn't that long ago the Court said "extratextual sources are usually only helpful as an aide for clearing up ambiguity," not creating it.[19] So for the majority's framing to be viable, the majority has to concede ambiguity in the text. Otherwise, the text has to be the beginning, middle, and end, and that just doesn't work for the majority's side.

So the majority's framing finds its way into a catch-22. If the text is unambiguous, the majority has to concede its

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[16] There's something ironic about the majority's insistence that it won't "devise a new rule solely for the purpose of deploying it in this case" in responding to the defendant's constitutional argument right after it got done reviewing his statutory arguments under a novel standard that made it next to impossible for him to win. *Ante*, at 62.

[17] *Johnson*, *supra*. See also Hall, *Strict or Liberal Construction of Penal Statutes*, 48 Harv. L. Rev. 748, 749–751 (1935); 1 Radzinowicz, A History of English Criminal Law and Its Administration From 1750, pp. 10–11 (1948).

[18] *Johnson*, *supra*.

[19] *In re Ridgeway Courts Amendment*, 9 U. S. 173, 181 (2020).

framing and that means losing on the merits. But if the text *is* ambiguous, that means the rule of lenity applies and the majority has to lose on those grounds too. The majority tries to have it both ways, but that just isn't possible.

II

The majority's framing also violates the textualist method.

A

Generally speaking, the starting point for our analysis has to be the text. The Court has recognized that time and time again, and the majority pays some lip service to that principle today as well. But in this case, when push comes to shove, the majority looks elsewhere.

1

To start, both precedent and today's majority acknowledge that the starting point for statutory interpretation has to be the text. As we just saw, *Ridgeway Courts* held that "extratextual sources are usually only helpful as an aide for clearing up ambiguity."[20] They can't be the source of ambiguity, which means they can't be "the grounds for further examination." [21] Today, the majority again recognizes that statutory interpretation requires "our eyes be trained at all times on the text of the law [we're] interpreting."[22] Any extratextual evidence which is "unmoored from the text" lacks value.[23]

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[20] *Ibid* (emphasis added).

[21] *Ante,* at 64.

[22] *Ibid.*

[23] *Ibid.*

Yet the starting point for today's majority is not the text. The starting point for the majority is its framing, which it lays on two beds. The first is public understanding and the second is surplusage. As we'll see, as the majority uses them here, these two considerations have no connection to the context and are consequently inconsistent with textualism

2

Let's begin with public understanding. The majority cites the fact that federal law enforcement and federal prosecutors have for multiple years made arrests and charged people with crimes limited to the "special maritime and territorial jurisdiction of the United States" when those crimes took place in general Municipal land, rather than on federally managed land. And "nobody . . . suggested in any court filing" that this was unlawful until now.[24] The two considerations at play here are (i) the actions of federal officials and (ii) the response to those actions. Importantly, neither of these considerations has any connection to the text of the relevant law. It's not even apparent that either of these things was based on any consideration of what the law actually says. The majority's argument seems to be that if the public proceeds one way for long enough after the enactment of a law, what the law actually says ceases to matter because "public understanding" has developed. In other words, time makes the law, not the legislature. It's curious to see this argument in a majority opinion which seems to trumpet the virtues of textualist interpretation.

[24] *Ante,* at 40.

The majority itself explicitly says that "[l]egislation requires concrete legislative action."[25] I agree. But if "[a]lternatives" to legislate action like the "especially powerful thoughts" of individual legislators are not sufficient to make law,[26] how can something as extratextual as "public understanding"—when mixed with a little bit of time—be enough to change the law's meaning? I say it isn't.

And the majority's reliance of surplusage is similarly misplaced. Surplusage is a canon of statutory interpretation. Independent of statutory text, it has no legal force. Its only utility is to help us discern the meaning of an enacted law. The majority uses surplusage very differently here. Instead of using it to address the meaning of specific text, the majority says that adopting a negative reading would deny effect to *entire statutes*. As we'll see, this is backwards, but even assuming that's true, it's not how surplusage works. All surplusage says is that if we have two plausible readings of a statute, we should go with the reading which gives full effect to all the statute's words. It doesn't mean we should stand back, ignore the text, and start with the rebuttable presumption that statutes are meant to have the *broadest scope possible*, which is what the majority does here. That isn't textualism.

B

But let's assume *arguendo* that these actually are appropriate modes of textualist inquiry. The majority somehow manages to *still* be wrong.

On public understanding, the majority is right that nobody (until recently) started advocating this case's negative

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[25] *Ante,* at 50.

[26] *Ibid.*

proposition. But that may've had more to do with a lack of *consideration* than any actual heretofore-settled understanding. The majority says that there were "[h]undreds of prosecutions, including many upheld by our Court" which assumed the affirmative proposition.[27] But the majority doesn't cite any analysis in any of those cases of the question before us. The reason is because while they necessarily assumed the affirmative proposition on their road to conviction, they didn't do so as a product of any analysis. They did so because *nobody raised the issue*. I fail to see how the majority finds support for its position in this pattern of obliviousness

Regardless, this Court has overridden consensus lasting longer than two-and-a-half years in the past, including as recently as *McGirt* v. *Oklahoma*, where the Court upset a half-century of public understanding and concluded that the eastern half of Oklahoma, including the State's most populous city, was Indian Country.[28] Or how about other cases on similar subjects where we've followed textualism even when it produced a result contrary to "120 years" of public understanding?[29] The "magnitude of a legal wrong is no reason to perpetuate it."[30]

In the end, the majority's appeal to "public understanding" sounds a lot like a veiled appeal to policy preference. The majority's main concern appears to be that a ruling that adopts the negative proposition would be disruptive to how things have been done for a while now. And that's true. But either people would learn to live with that change or they, through their elected representatives, would change

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[27] *Ante,* at 57.

[28] 591 U. S. ——, —— (2020) (slip op. at 42).

[29] *Id.,* at slip op. 37.

[30] *Id.,* at slip op. 38.

the law so it actually prescribes the state of affairs they want. We can't step in and revise the law to avoid that inconvenience. Perhaps we've been wrong for two years. And perhaps correcting course now would be disruptive. But we can't "perpetuate something we all know to be wrong only because we fear the consequences of being right."[31]

The majority's surplusage argument is likewise flawed. To start, adopting the negative proposition wouldn't mean that the SMT crimes would "apply [no]where."[32] As both we and the defendant agree, they'd apply on all federal land and in the territories.[33] It's actually the *majority's* argument which renders 18 U. S. C. §7 surplusage. Why would Congress have spelled out so many specific areas where SMT crimes apply if they apply, as the majority sees it, essentially anywhere in the United States? In purporting to avoid a surplusage problem, the majority steps into a much larger one.

III

Even if the majority's framing was right, however, the majority's end result is still wrong. The text of 18 U. S. C. §7 clearly rebuts the majority's affirmative presumption.

The majority is correct that the last-antecedent rule makes the "fort, magazine, arsenal, dockyard, or other needful building" clause applicable only to the second part of paragraph (3), but the first part has its own limitations as well. It applies only to "lands reserved or acquired *for the*

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[31] *Ramos* v. *Louisiana*, 590 U. S. ——, —— (2020) (Opinion of Gorsuch, J.) (slip op. at 26).

[32] *Ante,* at 38.

[33] *Cf. ante,* at 56.

use of the United States."[34] The majority seems to overlook this detail. But it's a crucial one.

If the paragraph applied to *all* "lands of the United States," the majority would have a point. But it doesn't. It applies only the land acquired or reserved "*for the use of* the United States." This necessarily requires that the federal government make not just the showing of sovereignty that the majority holds it to; the federal government must also show a *property* interest in such lands. And the federal government clearly doesn't have that for *all* Municipal land. If it did, Municipal sovereignty would be nothing more than theoretical. And applicable law makes clear that all land that doesn't house a federal building is the property of Municipal government barring some other private property interest.

So the majority has no leg to stand on when it turns down the rebuttals of its presumption. Only by excising the words "for the use of" could the majority treat the provision as only being concerned with sovereign rights. The distinction between sovereign and property rights can't be elided. Sovereign rights dictate governmental jurisdiction. Property rights dictate utility. For example, the federal government has sovereignty over the entire United States, but that doesn't mean it can just barge into any private building without a warrant. The private owners of those properties have the *property* rights for that land and that confers on them certain rights. They are still subject to governmental power, but within the confines of law they may utilize the property they own.

Section 7 doesn't apply to all land the federal government has a sovereign interest in. If it did, many provisions would be redundant. And such a provision could be much

[34] 18 U. S. C. §7(3) (emphasis added).

more concisely stated than 18 U. S. C. §7 happens to be. On the contrary, it applies only to those lands the federal government has a property interest in. And that doesn't include all Municipal land. So the majority's presumption is rebutted by the text.[35]

IV

Finally, under a proper framing the majority is wrong as well. And the reason why is short: nothing in the statute, viewed neutrally, encompasses the Municipalities in their entirety. That's the end of the matter.

I respectfully dissent.

[35] So even if you accept the majority's framing, it doesn't help. Even under that framing the majority is wrong.

Syllabus

CITRON *v.* UNITED STATES

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

No. 09-69. Decided December 12, 2020.

In his criminal prosecution for abuse of power, petitioner was barred from calling any witnesses in support of his case. During discovery, the prosecution indicated it would call two witnesses for its case-in-chief; petitioner did not indicate he would call any witnesses but said he would "us[e] the same witnesses" as the prosecution. At trial, the prosecution did not call any witnesses, instead resting on the strength of its exhibits. Petitioner's counsel attempted to call one of the previously disclosed government witnesses but the District Court struck the witness on the grounds of relevance, reasoning that they had already established "perfect knowledge as to the facts alleged" based on the exhibit presentations. The District Court ultimately convicted petitioner and sentenced him to prison. Petitioner appealed, challenging the District Court's refusal of his witness as a violation of the Sixth Amendment.

Held: The Sixth Amendment guarantees the right of a defendant to offer witnesses favorable to their defense. Although defendants must still comply with all rules of court procedure, including the Federal Rules of Evidence and Criminal Procedure, petitioner did not violate either Fed. R. Evid. 401 (the standard for relevance) or Fed. R. Crim. P. 16(b) (requirements for disclosing witnesses during discovery) as the District Court concluded.

Reversed and remanded.

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

Sinz_Esq, Washington D.C., argued the cause for the petitioner.

JUSTICE STEWART delivered the opinion of the Court.

The petitioner in this matter was convicted after a trial in the District Court during which the Court refused to let the petitioner call any witnesses. The question before us is whether petitioner's rights under the Compulsory Process Clause were violated. We hold that they were.

I

The United States charged the petitioner with abuse of power. During discovery, the government disclosed that it wished to call two witnesses; the petitioner did not disclose anything except for saying that "we will be using the same witnesses." No further dispute was raised until the trial began. During the trial, the prosecution did not call any witnesses and instead presented exhibits. The petitioner's counsel attempted to call one of the government witnesses. The Court proceeded to strike the witness on "relevance grounds" stating that "we already have perfect knowledge as to the facts alleged" and condemned the defense for not disclosing it during discovery. After that proceeded a confusing argument where the defense bizarrely stated it wanted to cross-examine a witness, despite none being called.

The Court convicted the petitioner and sentenced him to 5 days of imprisonment.

II

The Sixth Amendment guarantees the right for defendants to be able to obtain witnesses favorable to their defense and further provides that the government must assist in ensuring such witnesses are available. "Our cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attend-

ance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania* v. *Ritchie,* 480 U. S. 39, 56 (1987).[1] Indeed, we have previously noted that "right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." *Washington* v. *Texas*, 388 U. S. 14, 19 (1967). This right, however, is not unlimited; "[t]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence. *Taylor* v. *Illinois*, 484 U. S. 400, 410 (1988). The clause also does not override the responsibility for an accused to comply with court procedure. See *Montana* v. *Egelhoff*, 518 U. S. 37, 42 (1996) ("Relevant evidence may, for example, be excluded on account of a defendant's failure to comply with procedural requirements."). The Court refused to allow witnesses to be called for two reasons, which we address individually.

Firstly, the claim that the evidence was not relevant. The test for relevance is in Federal Rule of Evidence 401:

"Evidence is relevant if:

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[1] It bears noting that the ability of the government to provide assistance is considerably limited in this roleplaying environment. However, in this context, it is not necessary for us to determine the nature of assistance the government must render in criminal proceedings.

> (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
> (b) the fact is of consequence in determining the action." Fed. R. Evid. 401.

We review the District Court's decision for abuse of discretion. "A district court is accorded a wide discretion in determining the admissibility of evidence under the Federal Rules. *United States* v. *Abel*, 469 U. S. 45, 54 (1984). However, this discretion is not unlimited. "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *United States* v. *Incels Union*, *ante,* at 19 (2020) (citation omitted). "A trial court has wide discretion when, but only when, it calls the game by the right rules." *Fox* v. *Vice*, 563 U. S. 826, 839 (2011). The test for probability under Rule 401 is "The standard of probability under the rule is 'more probable than it would be without the evidence.' Any more stringent requirement is unworkable and unrealistic." Advisory Committee's 1972 Notes on Fed. R. Evid. 401 (quotations altered). [I]t is not to be supposed that every witness can make a home run." *Ibid.* In this case, the witnesses would provide details about policy and their interactions that could alter the probability of crucial matters. The District Court therefore abused its discretion in refusing to let the witnesses testify and the evidence should have admissible.

Secondly, it is claimed that the witnesses were not properly disclosed during discovery. While the Compulsory Process Clause does not a shield against the procedural rules of a court, a review of the record will find that at no point was the petitioner under an obligation to disclose lay witnesses. After the prosecution provided discovery, it

"Pursuant to Rule 16 of the FRCMP (b) would request any document, statement, witnesses or evidence the defense wishes to enter [sic]." However, Fed. R. Crim. P. 16(b) does not impose an obligation to disclose lay witnesses, only expert witnesses. The same also applies for the government. This does not preclude a district court from exercising its discretion to order that witness lists be turned over. See, e.g., *United States* v. *Colson*, 662 F. 2d 1389, 1391 (CA9 1981). However, there was no such order beyond the confines of Rule 16(b).

*

The Sixth Amendments grants the petitioner the right to present a defense and secure witnesses to support that defense. It requires the petitioner to comply with the rules of evidence and procedure, but such rules were complied with. The petitioner's rights were violated in a manner that deprived him of the right to a fair trial.

The judgment of the District Court is reversed, and the matter is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

UNITED STATES *v.* JETPACKSOUP

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

No. 10-04. Decided December 12, 2020.

The United States initiated criminal proceedings against Jetpacksoup in August of 2020. After respondent moved to dismiss on evidentiary grounds, the District Court dismissed the case *sua sponte* with prejudice for failure to state an offense. The United States appealed, arguing that because a trial had not occurred, a dismissal with prejudice could not occur.

Held: The Enhancing the Judiciary Act sets fourth specific requirements by which cases can be dismissed with prejudice. It requires that "[n]o case—in any criminal or civil action— shall be dismissed with prejudice unless the defendant has been put in jeopardy, which shall constitute (1) [e]mpaneling of a jury in a jury trial; or (2) [c]alling of the first witness or the presentation of the prosecution's case, whichever is first." Since neither requirement had been satisfied, dismissal with prejudice was not warranted.

4:20-2179, vacated and remanded.

PER CURIAM.

The Enhancing the Judiciary Act sets fourth specific requirements by which cases can be dismissed with prejudice. It requires that "[n]o case—in any criminal or civil action—shall be dismissed with prejudice unless the defendant has been put in jeopardy, which shall constitute (1) [e]mpaneling of a jury in a jury trial; or (2) [c]alling of the first witness or the presentation of the prosecution's case, whichever is first." Pub L. 67-4, § 201(a). Neither requirement had been met in this matter and yet the District Court dismissed the information with prejudice. Given that these requirements were not met, reversal is required. See *Kirkman* v. *Bank of America*, 6 U. S. 20 (2018). Having resolved the matter on

the basis of the Enhancing the Judiciary Act, we see no reason to resolve the government's other arguments.

Therefore, the judgment of the District Court is vacated, and the matter is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

ELLUS *v.* BOY

CERTIFICATE FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 10-08. Decided December 12, 2020.

After being presented with an affidavit calling for his recusal in this case, a District Court Judge certified a question to this Court seeking guidance on how to construe the mandatory recusal statute, 28 U. S. C. §144, in a manner that both prevents frivolous demands for recusal while mitigating the risk of prejudiced judges. In addition, he sought guidance on how to proceed in a case where the judge is accused of an extrajudicial bias "with little indication that such an impairment even exists." This Court set the certified questions for briefing and argument.

Held:

1. A judge must recuse under 28 U. S. C. §144 when an affidavit is filed that is timely and alleges facts that (1) are material and stated with particularity; (2) are such that, if true, they would convince a reasonable person that a bias exists; and (3) show that the bias is personal, as opposed to judicial, in nature. Such an affidavit must be accompanied by a certificate of good faith and a party may submit no more than one such affidavit in a case.

2. In considering an affidavit the court may only consider the contents of the affidavits and may construe all matters against the affiant. The party seeking recusal bears the burden of rebutting the presumption that the presiding judge was impartial.

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

Rafellus, Washington D.C., argued the cause *pro se*.

Conjman, Washington D.C., appeared for the respondents.

JUSTICE STEWART delivered the opinion of the Court.

Before us are two questions certified to us by the District Court. Firstly, "what are the objective requirements of a §

144 which both prevent frivolous affidavits and prejudiced judges?" and secondly, "How should one proceed in my situation, when a judge is accused of an extrajudicial bias with little indication that such an impairment even exists?"

For reasons that follow, we hold that a judge must recuse themselves under 28 U.S.C § 144 if an affidavit is filed that is timely and alleges facts that: (1) are material and stated with particularity; (2) are such that, if true they would convince a reasonable person that a bias exists; and (3) show that the bias is personal, as opposed to judicial, in nature. It also requires that the affidavit be accompanied by a certificate of good faith by counsel and that no affidavit be filed by that same party previously in the case. In considering an affidavit, the court may only consider the contents of the affidavits and may construe all matters against the affiant. The party seeking recusal bears the burden of rebutting the presumption that the presiding judge was impartial. *United States* v. *Melton*, 738 F. 3d 903, 905 (CA8 2013).

I

There are 3 main judicial disqualification statues: 28 U.S.C § 144, 28 U.S.C § 455 and 28 U.S.C. § 47. 28 U.S.C. § 47 provides that a Judge must disqualify themselves on cases which they sat on as a trial judge. 28 U.S.C § 455 is aimed at the appearance at partiality as well as circumstances that give rise to an appearance of partiality. Most importantly, 28 U.S.C § 144 is aimed at *actual* partiality, not the mere appearance of it; it also exclusively applies on the district level.

Section 144 states in its entirety:

> "Whenever 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.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

Most decisions around section 144 occur on the circuit court level as the "Court of Appeals is in a better position to evaluate the significance of a violation than is this Court. *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847, 862 (1988).

II

A section 144 affidavit must state facts with particularity. The statute, on its plain terms, requires this. "[T]he reasons and facts for the belief the litigant entertains are an essential part of the affidavit and must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *Berger* v. *United States*, 255 U. S. 22, 33–34 (1921). "Assertions merely of a conclusionary nature are not enough." *United States* v. *Haldeman*, 559 F. 2d 31, 134 (CADC 1976).[1] A Judge is furthermore en-

[1] It is in this matter that plaintiff's affidavit is legally insufficient. His affidavit does not allege any particular facts, only the mere conclusion that the

titled to determine the sufficiency of the affidavit, the command to proceed "no further" is only of effect once the affidavit is deemed sufficient. See *United States* v. *Azhocar*, 581 F. 2d 735, 738 (CA9 1978); *Berger, supra.*

The affidavit must allege such material and particularized facts as would convince a reasonable person that a bias exists. Importantly, and distinct from section 455, the facts must convince a reasonable person that a bias actually exists and not just the appearance of it. "Neither the truth of the allegations nor the good faith of the pleader may be questioned, regardless of the judge's personal knowledge to the contrary." *Mims* v. *Shapp*, 541 F. 2d 415, 417 (CA3 1976).

The judge's bias must be personal in nature. "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky* v. *United States*, 510 U. S. 540, 555 (1994). "Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administra-

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Judge is prejudiced against him because of Attention Deficit Hyperactive Disorder (ADHD). See *Griffith* v. *Edwards*, 493 F. 2d 495 (CA8 1974) ("scurrilities and generalities" fall short of the statute's requirements). In order for the affidavit to be legally sufficient, the plaintiff must allege facts that would cause a reasonable person to believe that the court was prejudiced against him on the basis of ADHD, not the mere conclusion that it is.

tion—remain immune." *Id*, at 555-556. Bias perceived during judicial proceedings are "[a]lmost invariably, . . . proper grounds for appeal, not for recusal." *Ibid.* A judge's action in prior proceedings is still judicial in nature. See *United States* v. *Gordon*, 61 F. 3d 263, 268 (CA4 1995)

In regard to the second question, the only issue that the court has to resolve is whether the affidavit adequately alleges facts that give rise to the impairment. It is not for the court to consider facts or evidence arising from something outside the affidavit; the only evidence for the court to consider is that inside the affidavit.

III

When the party can allege facts that cannot be challenged, the procedural requirements must be strictly followed. Section 144 provides three important procedural requirements.

Firstly, a certificate of counsel must accompany the affidavit. The affidavit must be sworn by the party themselves. This is to prevent abuse as counsel of record have an "obligation which he owes to the court as well as to his client, and he owes a public duty to aid the administration of justice, to uphold the dignity of the court and respect its authority." *United States* v. *Onan*, 190 F. 2d 1, 7 (CA8 1951). Various circuit courts have held that the certificate requirement requires an admitted counsel to provide the certificate, however, as there is currently no bar, we do not resolve how this statute might apply within this context. See, *e.g.*, *Currin* v. *Nourse*, 74 F. 2d 273 (CA8 1934).

Secondly, an affidavit can only be filed one by one party per case. This restriction is plain on the terms of the statute. This is to prevent section 144 from being used as a tool to judge shop and endless frivolous affidavits.

Thirdly, the affidavit must be timely. Generally, this means that a party must file the affidavit as soon as reasonably practicable once the party becomes aware of the biased conduct. "One of the reasons for requiring promptness in filing is that a party, knowing of a ground for requesting disqualification, cannot be permitted to wait and decide whether he likes subsequent treatment that he receives." *In re United Shoe Mach. Corp.*, 276 F. 2d 77, 79 (CA1 1960).

* * *

We answer the certified questions as follows:

1. Recusal is required under 28 U.S.C §144 if an affidavit is filed that is timely and alleges facts that: (1) are material and stated with particularity; (2) are such that, if true they would convince a reasonable person that a bias exists; and (3) show that the bias is personal, as opposed to judicial, in nature. It also requires that the affidavit be accompanied by a certificate of good faith by counsel and that no affidavit be filed by that same party previously in the case.
2. In considering an affidavit, the court may only consider the contents of the affidavits and may construe all matters against the affiant. The party seeking recusal bears the burden of rebutting the presumption that the presiding judge was impartial.

It is so ordered.

Per Curiam

SINZ v. NIR

CERTIFICATE FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 09-73. Argued August 20, 2020 —— Decided December 12, 2020

PER CURIAM.

This case concerns tort claims arising from an incident at a U. S. federal courthouse. Defendant moves to dismiss, positing that federal tort law does not extend to the federal courthouses because Congress has not formally designated them as within U. S. sovereignty. Plaintiff responds that formal congressional designation is unnecessary because, *de facto*, the federal courthouses are within U. S. sovereignty. As evidence of *de facto* sovereignty, plaintiff cites the regular use of these locations for official judicial business, the fact that their exclusive purpose is related to the U. S., the fact that no other sovereign possesses a valid legal claim to the land, and a clan manager statement certifying that the U. S. has factual control over the area.

We assume jurisdiction over the motion to dismiss in its entirety, under this Court's Rule 19, and now deny. The clan manager statement cited by plaintiff is clear and convincing evidence of *de facto* sovereignty, which—we hold— is sufficient to establish federal tort jurisdiction. The claims may proceed to trial.

* * * * * *

We begin with a simple proposition: Congress has not textually limited the geographic reach of the federal tort code. But nobody would suggest that federal tort law applies when you visit the Town of Robloxia or play Phantom Forces. Thus, to the extent any such geographic limitations

exist, they arise from background principles of law, not enacted legislative text. And as a result, we need not look to the text of the law to determine the contours of these limitations. We must consult the underpinnings of the background principles themselves.

In this case, the background principle which commands our attention is the presumption against extraterritoriality. The presumption is founded on the "basic premise . . . that, in general, '[U. S.] law governs domestically but does not rule the world.'" *RJR Nabisco, Inc.* v. *European Community*, 579 U. S. ——, —— (2016) (slip op., at 7) (quoting *Microsoft Corp.* v. *AT&T Corp.*, 550 U. S. 437, 454 (2007)). In the absence of a "clear indication" to the contrary, federal laws are construed to have only domestic effect. *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 255 (2010). The federal tort code contains no such contrary "clear indication" and so we proceed with the knowledge that it applies only domestically.

We next must consider whether the application of the federal torts to the federal courthouses would be non-domestic. We begin by acknowledging what is not in dispute: Congress has not formally designated the courthouses as within U. S. sovereignty nor do they fall within the geographic boundaries of anything which has received such designation. Nor is it asserted that any other source of positive law—treaties, international agreements, legitimate governmental declarations, etc.—establishes U. S. sovereignty over the area. As such, we can safely rule out the possibility of *de jure* sovereignty. But it is asserted that d*e facto* sovereignty will do the trick all the same. And, with substantial evidentiary support, it is alleged that the U. S. has de facto sovereignty over the federal courthouses. We consider each issue in turn.

Sufficiency of de facto *sovereignty*. The threshold question is whether *de facto* sovereignty—even if it could be established—is enough to support federal tort jurisdiction. Our answer is yes. We look to three primary considerations: (1) the purpose of the presumption; (2) its historic application; and (3) the public interest. Each supports our conclusion.

Consider first the purpose of the presumption. The presumption is targeted at avoiding the potential for complication which can arise from trying to apply U. S. rules to territory outside U. S. control. See, e.g., *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. 108, 115-116 (2013); *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 248 (1991); *Benz* v. *Compania Naviera Hidalgo, S. A.*, 353 U. S. 138, 147 (1957). In those locations where we are capable of exercising substantial authority—those places where we possess *de facto* sovereignty—it is easy to see how we could apply our laws. It is considerably more difficult to imagine U. S. courts issuing orders and granting remedies respecting conduct on foreign sovereign land (what practical reason would a foreign state generally have to give credit to our judgments?). But whatever may be said of that issue, it is entirely impossible to conceive of U. S. law being applied to nonsovereign, *i.e.,* out-of-genre, locations like Adopt Me or ROBLOX High School.

This analysis makes clear that our assessment under the presumption against extraterritoriality ultimately turns on the practicalities of applying our law to particular locations. This necessarily connotes an assessment of fact, not formal legal text.

Consider also the historic application of extraterritoriality principles, especially regarding the *de jure*/*de facto* distinction. An illustrative example is the case of *Boumediene*

v. *Bush*, 553 U. S. 723 (2008). There, in assessing whether U. S. law and procedure ran in Guantanamo Bay, we asked not whether the U. S. possessed a formal *de jure* claim to sovereignty over the area. Instead, we examined whether the U. S. possessed "complete jurisdiction and control"—"*de facto* sovereignty." *Id.*, at 755.

Finally, look to the public interest, which would be greatly disserved by a requirement of *de jure* sovereignty to establish federal tort jurisdiction. Federal tort law is ultimately about remedying injuries and there is a strong public interest in such remedies. The public interest therefore generally favors a broader conception of federal tort jurisdiction. More specifically, as well, if the courthouse doors were closed to injuries occurring within U. S. - controlled land on the basis of overly-legalistic technicalities, public access to justice would be undermined. Of course, nothing in the law requires that the law be construed in the way most beneficent to the public. But recall that we are not interpreting text enacted by Congress. We are exploring the contours of a judicially-created gloss on legislative text. And in doing so we must be mindful of the fact that policy judgments are ultimately the province of Congress. If such harm to the public interest is to be worked, it must be by the will of elected lawmakers.

We hold that *de facto* sovereignty is sufficient to establish federal tort jurisdiction.

Evidence of sovereignty. We consider now the evidence offered by plaintiff of *de facto* U. S. sovereignty over the federal courthouses. Plaintiff submits a good deal of evidence, including information about the regular use of the facilities, their exclusive purpose, and the absence of any foreign sovereign claim. But we think most salient the fourth piece of evidence submitted by plaintiff: a clan manager statement certifying that the federal courthouses are

within *de facto* U. S. sovereignty. We do not say this to diminish the other pieces of evidence offered, each of which may be helpful in establishing *de facto* sovereignty; we simply conclude that the clan manager statement, on its own, is highly probative evidence of *de facto* U. S sovereignty.

To begin with, defendant does not dispute the expertise of the clan managers in making a finding of factual sovereignty. And we are persuaded by plaintiff's argument that they do possess this expertise. As a result, in the absence of any contrary evidence—and since we have already rejected the necessity of *de jure* sovereignty—we conclude that the U. S. possesses sufficient *de facto* sovereignty over the federal courthouses to establish federal tort jurisdiction.

Accordingly, setting aside the particular certified question, we assume jurisdiction over the motion to dismiss in its entirety and now deny. The case is remanded to the District Court for trial on the merits.

It is so ordered.

CABOT v. UNITED STATES

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

No. 09-41. Argued July 20, 2020 —— Decided December 12, 2020

After petitioner was indicted in January of 2020, he had to wait more than a month before any verdict was rendered. He takes issue with several aspects of his prosecution. First, he alleges that this delay violated his right to a speedy trial, protected by the Speedy Trial Act and the Sixth Amendment. He also alleges that, in violation of his due process rights, his prosecutor improperly served as both affiant and investigator in his case. Finally, he questions the sufficiency of the probable cause stated in the affidavit against him.

Held: Petitioner's right to a speedy trial was violated because the Speedy Trial Act requires that a trial must commence within 9 days of criminal charges being filed. The Government's contrary arguments on this point are unpersuasive. Petitioner, however, fails to state a proper due process claim regarding his prosecutor's alleged conflict of interest nor does he properly overthrow the statement of probable cause in the affidavit against him. As such, petitioner prevails only on his first claim; the remaining claims fail. Petitioner's first claim is sufficient to require the reversal of his conviction.

Affirmed in part and reversed in part.

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

AlexJCabot, Washington D.C., argued the cause *pro se*.

Attorney General Kabob, Department of Justice, Washington D.C., argued the cause for the United States.

JUSTICE KAGAN delivered the opinion of the Court.

This case, like many that we hear before us, is quite complex and contains many parts. We originally began with

seven questions being asked of us. As argument went on, we were left with only three:

> 1. Were petitioners right to a speedy trial violated pursuant to the time frame set in 28 U.S. Code § 3161(c)(1)?
> 2. Were petitioners due process rights violated due to the prosecutor also being the affiant and investigator?
> 3. What suffices as an affidavit construed to provide probable cause to proceed [in court]?

On January 26, 2020, the United States (Respondent) indicted AlexJCabot (Petitioner). Around or at a month later, the presiding Judge Ho rendered a verdict in the case of Respondent following a recusal from Judge Kakashi. Petitioner alleges that, because his trial was not held within a timely manner, his sixth amendments rights were violated by the government. Furthermore, Petitioner argued that because the prosecutor in his case was the affiant on the relevant criminal information, the case should be voided because of a conflict of interest. While Petitioner makes persuasive arguments for the first question, arguments for the other two questions fall flat and are won by Respondent.

I

It is the Judiciary's constitutional duty to ensure that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy trial." Sixth Amendment. Under 28 USC § 3161(c)(1), defendants' trials must begin 70 days after charging. Under our conversion metric, this would amount to around 9 days. With the facts of this case, it is clear that the United States violated Petitioner's Sixth Amendment rights. However, the government proposed a curious argument to this Court. They argue that the 9-day statute simply outlines the maximum amount of time a trial may

last for. As for how long after charging a trial is scheduled, the government had a lackluster response. They gave no specific time. Only that, if it ran too long, then it would be a violation of Petitioner's rights. Unfortunately, the government is digging itself into a deeper hole than necessary.

The implications for taking the government's view would inevitably lead to an unnecessarily burdensome amount of litigation to identify an interpretive rule. Say Judge Doe 1 holds up a trial for one week. A lawsuit follows, with the defendant in the case arguing that his Sixth Amendment rights were violated—and perhaps the verdict is in favor of the judge. Hypothetical Judge Doe 2 holds up a trial for two weeks, Doe 3 for three, etc. What metric are we supposed to use to differentiate between how long is too long until it infringes upon an individual's rights? The government offered no response. Apparently, we are simply to use our judgment. Our judgment, simply put, is that this bizarre line of thinking is not how 28 USC § 3161 should be applied.

And what for this 9-day maximum offered by the government? Is this not in and of itself a potential miscarriage of justice? Granted, it is unlikely that a trial would last for as long on this platform, but the implications are serious. Should we ever put a cap on justice? Our system is not one that says a person only has nine days for trial argument and if more is necessary to achieve justice, "too bad." I cannot fathom a system that would aim to call itself one of "justice" that limits the ability for litigants to argue their case.

Though we will discuss how Petitioner's merits fall flat on the second and third questions, we find that his arguments are sound for the first.

II

It is clear that the Petitioner did not, at the time of the filing of this case, have a firm grasp on what exactly he was

arguing about. The document in question was the criminal information and was signed by a prosecutor. Of course, this is a legally binding document, so its contents must be believed to be true and those who affirm it, the Federal Bureau of Investigation, the Department of Justice, et al. In order for the public trust to be preserved in such events such as indictments, prosecutions, etc., there must be assurance that if documents are proven to be false, there are consequences. The prosecutor, in signing this document, was in fact ensuring that our process of law, that has stood for years, would continue to work its course. Furthermore, even in a hypothetical situation, as Petitioner alleges, that the prosecution was involved in producing investigative documents, a simple question is asked: So, what? It is, quite literally, the job of the Prosecutor—or their team, which may involve federal agents—to uncover and make known evidence against a current or incoming defendant. There is no supposed conflict of interest in this case: the prosecutors and investigators are on the same side.

It can be sure that there are prosecutors who are biased. Petitioner mentions this citing *Young* v. *United States ex rel. Vuitton et Fils*, 481 U. S. 787 (1987). However, Petitioner failed to illustrate any sort of compromising interests in this case. The only such possibility is if we as Justices were to assume that a criminal information counts as demonstrating bias. However, this claim is patently untrue as we have discussed, ante, that criminal information documents are traditional and normal in our system of law.

III

Lastly, Petitioner aims to convince us that, because the criminal information and charges against him were illegitimate, probable cause should be thrown out. Because we

have found that the prosecutions affirmation and assent to a criminal information does not demonstrate a bias that should preclude the prosecutor's involvement in a prosecution, this argument is hollow and is disregarded by this Court.

* * *

The judgment of the District Court is reversed on speedy trial grounds but affirmed in all other respects. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

REPORTER'S NOTE

The next page is purposefully numbered 201. The numbers between 103 and 201 were intentionally omitted, in order to make it possible to publish the orders with permanent page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR AUGUST 14, 2020, THROUGH FEBRUARY 14, 2021

AUGUST 14, 2020

Petition Withdrawn

No. 09-75. ATTORNEY_YADA v. ACIDRAPS. Petition withdrawn due to lack of documentation.

AUGUST 15, 2020

Petition Withdrawn

No. 09-76. JETPACKSOUP v. UNITED STATES. Petition withdrawn due to lack of documentation.

AUGUST 17, 2020

Miscellaneous Order

No. 09-77. IN RE MYTHICALSPARTAN. Petition for writ of habeas corpus denied.

AUGUST 23, 2020

Suspended

No. 10-2. IN RE COMPLAINT AGAINST JUDGE SHAPIRO.

On August 17th, 2020, this Court declined to expel Judge Jetpacksoup, otherwise known as Judge Shapiro. In reaching its decision, the Court "t[ook] into account" the fact that Judge Shapiro "denie[d] being involved in the authorship of . . . legislation" introduced in Congress which "would've had the effect of exonerating" him. *In re Judge Shapiro*, *ante,* at 7. Since then, evidence has come to light indicating that Judge Shapiro's denial was untruthful. The Court's motion to resuspend Judge Shapiro is therefore granted. Judge Shapiro is ordered to be suspended pending an additional hearing addressing this matter.

JUSTICE STEWART, JUSTICE BUTLER, and JUSTICE FRANKFURTER would deny the motion.

AUGUST 20, 2020

Review Granted

No. 10-1. MAMAGOBIES V. UNITED STATES EX REL. IMPERATORREBORNS. Petition for anytime review granted.

AUGUST 28, 2020

Review Dismissed

No. 10-1. MAMAGOBIES V. UNITED STATES EX REL. IMPERATORREBORNS. Dismissed as moot.

SEPTEMBER 6, 2020

Dismissed

No. 10-2. IN RE COMPLAINT AGAINST JUDGE SHAPIRO. Complaint dismissed.

SEPTEMBER 10, 2020

Mandamus Denied

No. 10-3. IN RE 6ROBLOX12. Petition for writ of mandamus denied.

Certiorari Granted

No. 10-4. UNITED STATES V. JETPACKSOUP. D. C. D. C.
Certiorari granted. Reported below: 4:20-2179.

No. 10-5. UNITED STATES EX REL WALTERMONDALE V. SULEMAN2003, ET AL. D. C. D. C.
Certiorari granted. Reported below: 4:20-2216.

Review Denied

No. 10-6. ELIJAHJUNAID V. LEGAL AND ILLEGAL PARKING. Review denied.

SEPTEMBER 13, 2020.

Petition Withdrawn.

No. 10-5. UNITED STATES EX REL WALTERMONDALE V. SULEMAN2003, ET AL. Withdrawn due to mootness.

SEPTEMBER 13, 2020.

Petition Withdrawn.

No. 10-7. JETPACKBOY, ET AL. V. BERNARDCALDWELL. Petition withdrawn.

SEPTEMBER 21, 2020.

Probable Jurisdiction Noted

No. 10-5. ELLUS v. BOY. D. C. D. C. Probable jurisdiction noted. Reported below: 4:20-2258.

Review Granted

No. 10-9. ARMED FORCES ASSOCIATION v. UNITED STATES. Review granted.

SEPTEMBER 28, 2020.

Petition Withdrawn

No. 10-11. PUPPYLOFTUS18 v. PUBLIC LAW 80-15. Petition withdrawn by petitioner.

No. 10-13. MAXONYMOUS v. LEWISFPOWELLJR. Petition withdrawn by petitioner.

No. 10-15. IN RE COMPLAINT AGAINST JUDGE KIND_YADA. Complaint withdrawn by petitioner.

OCTOBER 3, 2020.

Petition Withdrawn

No. 10-10. TONYGRONKOWSKI v. FORMATION OF CONSTITUTIONALIST PARTY. Petition withdrawn by Clerk of the Court for failure to file a petition within time.

OCTOBER 7, 2020.

Certiorari Granted

No. 10-12. AULGUR776 v. UNITED STATES. Certiorari granted.

Miscellaneous Order.

No. 10-M001. IN RE FRIVOLOUS LITIGATOR DESIGNATION OF DORKJACOB. Designation revoked following a majority vote of the court.

OCTOBER 25, 2020.

Review Denied

No. 10-15. TRAVIS_KABOB v. ALEXJCABOT. Review Denied.

NOVEMBER 1, 2020.

Withdrawn

No. 10-12. AULGUR776 v. UNITED STATES. Withdrawn by both parties pursuant to Rule 46.

Review Denied

No. 10-17. KHIVUS v. UNITED STATES. Review Denied.

NOVEMBER 2, 2020.

Review Denied

No. 10-16. ASTEROSINZ v. UNITED STATES. Review Denied.

NOVEMBER 4, 2020.

Complaint Denied

No. 10-20. IN RE COMPLAINT AGAINST JUDGE OLLIELFLETCHER. Complaint Denied.

NOVEMBER 7, 2020.

Petition Withdrawn

No. 10-18. CRAZYBRO234 v. PRIMISMONTAGUE. Petition withdrawn due to petitioner being blacklisted.

NOVEMBER 9, 2020.

Petition Withdrawn

No. 10-19. JACOBAKIRKMAN v. BANK OF AMERICA, ET AL. Petition withdrawn by petitioner.

NOVEMBER 12, 2020.

Petition Withdrawn

No. 10-24. ACONARTIST v. UNITED STATES DISTRICT COURT. Petition withdrawn by petitioner.

NOVEMBER 14, 2020.

Petition Withdrawn

No. 10-23. YIG5YURGID71 v. UNITED STATES. Petition was withdrawn by the Clerk of the Court for failure to file a petition within time.

NOVEMBER 21, 2020.

Certiorari Denied

No. 10-21. BLACK_RACKS v. UNITED STATES. Certiorari denied.

NOVEMBER 25, 2020.

Review Granted

No. 10-25. ASTEROSINZ V. UNITED STATES, ET AL. Review granted.

Statement of JUSTICE BUTLER: A long-standing precedent was set in *Qolio* v. *United States*, 2 U. S. 8 (2017), where a similar act—the Judicial Branch Political Act which related to the political speech of judges—was unanimously struck down as unconstitutional and as a violation of the 1st Amendment. It would be a grave mistake to ignore such a case where fundamental constitutional rights are possibly being violated by the legislature.

Statement of JUSTICE KAGAN: My thinking was similar to JUSTICE BUTLER in *Qolio*. I think there are serious alleged constitutional violations and I would love to hear arguments regarding it.

Miscellaneous Order

No. 10-22. IN RE DISTRICT OF COLUMBIA. Petition for writ of mandamus denied.

DECEMBER 1, 2020.

Review Granted

No. 10-27. CHRISTOPHERSHEPHERD V. UNITED STATES. Review granted.

DECEMBER 5, 2020.

Dismissed

No. 10-26. IN RE COMPLAINT AGAINST JUDGE PUPPYLOFTUS18. Judicial complaint dismissed.

Review Granted

No. 10-28. KIND_YADA V. UNITED STATES. Review granted.

DECEMBER 13, 2020.

Miscellaneous Order

No. 10-31. IN RE XCHASEFIELERX. Petition for writ of mandamus denied.

DECEMBER 14, 2020.

Probable Jurisdiction Noted

No. 10-30. UNITED STATES V. SPANISHED. D. C. D.C. Probable jurisdiction noted. Case below: 4:20-10001.

DECEMBER 18, 2020.

Miscellaneous Order

No. 10T0014. The motion to appoint Ultiman1 to the Supreme Court bar on the recommendation of AlexJCabot, et al. is granted.

DECEMBER 19, 2020.

Probable Jurisdiction Noted

No. 10-29. IN RE COMPLAINT AGAINST JUDGE KIND_YADA. Judicial complaint dismissed.

Statement of JUSTICE BORK: I don't believe we have discretion to deny leave to file an ethics complaint which alleges squarely ethical issues. If this complaint were resubmitted shorn of its non-ethical claims, I believe we'd have an obligation to hear it, even if it's unlikely to result in disciplinary action.

DECEMBER 22, 2020.

Miscellaneous Order

No. 10T0015. The motion to appoint AsteroSinz to the Supreme Court bar on the recommendation of AlexJCabot, et al. is denied. CHIEF JUSTICE HOLMES would grant the motion.

DECEMBER 23, 2020.

Miscellaneous Order

No. 10T0016. ASTEROSINZ V. UNITED STATES, ET AL.

The Court's *sua sponte* application for injunctive relief is granted. Respondents are enjoined from enforcing or otherwise giving effect to any part of Section 201 of the Court Reform Act of 2020 pending disposition of this matter or further order of this Court.

JUSTICE BARRETT was unable to take part in the decision of this matter. JUSTICE POWELL took no part in the consideration or decision of this matter.

DECEMBER 26, 2020.

Review Denied

No. 10-35. NEWPLAYERQWERTY V. UNITED STATES. Review denied. JUSTICE BARRETT was unable to take part in the decision of this matter.

JANUARY 2, 2021.

Petition Withdrawn

No. 10-33. CATINAARON1111 v. 08-0006L. Petition withdrawn by petitioner.

JANUARY 18, 2021.

Petition Withdrawn

No. 10-36. DASTIC v. UNITED STATES. Petition withdrawn by petitioner.

FEBRUARY 3, 2021.

Miscellaneous Order

No. 10-38. UNITED STATES HOUSE CONSTITUTIONALIST CAUCUS v. UNITED STATES.

The application for emergency injunction against the enforcement of the Rules of the United States House of Representatives presented to JUSTICE POWELL and by him referred to the Court is granted. Respondents are barred from enforcing Rule of the Rules of the United States House of Representatives pending the disposition of the petition for a writ of Anytime Review. Should the petition for writ of Anytime Review be denied, the injunction will terminate automatically. In the event the petition for writ of Anytime Review is granted, the injunction shall terminate upon issuance of the judgment of this Court.

Review Granted

No. 10-38. UNITED STATES HOUSE CONSTITUTIONALIST CAUCUS v. UNITED STATES. Review granted.

REPORTER'S NOTE

The next page is purposefully numbered 301. The numbers between 208 and 301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINION OF INDIVIDUAL JUSTICE
IN CHAMBERS

ELLUS *v.* BOY

ON APPLICATION FOR STAY

No. 10T0027. Decided January 11, 2021

Applicant's request to stay the proceedings of the United States District Court for the District of Columbia pending the filing of a petition for a writ of certiorari is denied. Applicant is incorrect in asserting that the District Court and the Supreme Court are legally obligated to issue a stay of the proceedings as of right; rather, an applicant seeking a stay pending the filing of a petition for a writ of certiorari from this Court must demonstrate a reasonable probability that the Court will grant certiorari, a fair prospect that the Court would then reverse the decision below, and that he is likely to suffer irreparable harm if a stay is denied. *Maryland* v. *King,* 567 U. S. 1301, 1302. Given that the rule suspension issued by the District Court was most likely erroneous, applicant has demonstrated that there would be a reasonable probability that the Court would grant certiorari, and a fair prospect that the Court would reverse the decision below. However, applicant has not demonstrated that irreparable harm will occur in the absence of a stay.

JUSTICE POWELL, Applications Justice.

Applicant Rafellus has asked me to stay the District Court for the District of Columbia's mandate suspending certain subsections of Fed. R. Civ. P. 5(d), which provides for certification of service requirements, pending the filing of a petition for a writ of certiorari. The application for a stay is accordingly denied.

The background for this application is fairly complex. As such, I do not go into vast detail here. Originally, Rafellus requested a stay of the proceedings below in order to appeal

an order of the District Court denying default judgment to him. The District Court initially rejected the notice of appeal as non-conforming to its filing rules, to which Rafellus responded by citing Rule 5 of the Federal Rules of Civil Procedure. The District Court suspended Rule 5(d), and Rafellus moved for a stay while he filed a petition for a writ of certiorari to this court, which the District Court denied. Rafellus then filed this application with me. Rafellus asserts that the District Court illegally denied their request for a stay, and that per my duty as Applications Justice, I am obligated to issue a stay based on his alleged success on the traditional four-factor stay test.[1]

An applicant seeking a stay of lower court proceedings pending the filing of a petition for a writ of certiorari must demonstrate a reasonable probability that the Court will grant certiorari, a fair prospect that the Court would then reverse the decision below, and that he is likely to irreparable harm if a stay is denied. *Maryland* v. *King*, 567 U. S. 1301, 1302 (2012) (Roberts, C. J., in chambers); *Hollingsworth* v. *Perry*, 558 U. S. 183, 190 (2010) (*per curiam*). Here, I believe that Rafellus has succeeded on demonstrating that four justices will grant certiorari and that a fair prospect that the Court would reverse the decision of the District Court suspending Rule 5(d). The suspension of federal

[1] On these points, Rafellus is incorrect. Crafting a preliminary stay is an exercise of discretion and judgement, often dependent as much on the equities of a given case as the substance of the legal issues it presents. *British* v. *Ozzymen*, 3 U. S. 88, 90 (2017) (*per curiam*). As we've repeatedly held, "[a] stay is not a matter of right, even if irreparable injury might otherwise result." *Indiana State Police Pension Trust* v. *Chrysler, LLC*, 556 U. S. 960, 961 (2009) (quoting *Nken* v. *Holder*, 556 U. S. 418, 427 (2009)).

In addition, as discussed in the next paragraph, the traditional four-factor stay test is not used by this Court for an application for stay pending the filing of a petition for a writ of certiorari. However, *the District Court* correctly determined that *it* was bound by the four-factor stay test in this case.

rules of procedure under Fed. R. Civ. P. 87, under which the District Court suspended parts of Rule 5(d), is "significant." Cf. *Monkey* v. *United States*, 9 U. S. 77, 78 (2020). As such, the District Court is required to give all parties "notice and opportunity to respond" when it suspends a rule. Fed. R. Civ. P. 87(b). From the record, I did not see such notice being afforded to Rafellus or Papasbestboy, and I believe that the suspension would be unwarranted. I am not convinced, however, that Rafellus has shown a likelihood of irreparable harm from denial of a stay. Rafellus claims that if a stay of the proceedings below were to be denied, a trial would take place in violation of the Seventh Amendment. This, however, is incorrect. The Seventh Amendment merely prevents against review of findings of fact by juries unless it is conducted "according to the rules of the common law." U. S. Const., amend. VII. As such, no irreparable injury would occur, contrary to Rafellus' assertions.

The application for a stay pending the filing of a petition for a writ of certiorari is therefore denied.

It is so ordered.

REPORTER'S NOTE

This Bound Volume is the work of Lewis F. Powell, Jr. Its contents' formatting, pagination, and other revisions were completed by him, based on former Reporters of Decisions David E. Racine, III and Timothy Geithner.