No. 20A- _______

In the Supreme Court of the United States

John Doe, a duly registered and qualified voter, representing all duly registered and qualified voters in Arizona, Georgia, Nevada, Michigan, Pennsylvania and Wisconsin, Applicants,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; Katie Hobbs, in her official capacity as Secretary of State of the State of Arizona; Brian Kemp, in his official capacity as Governor of the State of Georgia; Brad Raffensperger, in his official capacity as the Secretary of State of the State of Georgia; Gretchen Witmer, in her official capacity as the Governor of the State of Michigan; Jocelyn Benson, in her official capacity as Secretary of State of the State of Michigan; Stephen Sisolak, in his official capacity as Governor of the State of Nevada, Barbara K. Cegavske, in her official capacity as Secretary of State of the State of Nevada, Tom Wolf, in his official capacity as Governor of the Commonwealth of Pennsylvania; Kathy Boockvar, in her official capacity as the Secretary of State of the Commonwealth of Pennsylvania; Tony Evers, in his official capacity as Governor of the State of Wisconsin; and the Wisconsin Elections Commission, Respondents

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Emergency Application for Writ of Injunction, Relief Requested by Friday, November 20, 2020

To the Honorable Amy Coney Barrett, Associate Justice
of the United States Supreme Court

Rudolph Martin Palmer, Esq.

Law Offices of Martin Palmer & Associates
21 Summit Avenue
Hagerstown, MD 21740
301-790-0640
Counsel for Applicants

The Angels - Storm the Bastille | By Eugene Delacroix

LIBERTY *Leading the People*

Sometimes throughout history, it is often the women, braver than we, who lead the men.

Questions Presented

1. Does Defendants' failure to enforce the state laws requiring transparency of the vote counting process in each and every county of the States in question, including especially of the process of counting mail-in and absentee ballots, violate the Elections Clause, U.S. const., art. I, § 4, cl. 2, and the Electors Clause, Art. II, § 1, cl. 2, by displacing the "Manner" prescribed by the Legislature?

2. Do Defendants' actions and/or inaction violate the right to vote by creating a substantial risk of vote-dilution disenfranchisement by allowing in certain counties mail-in and absentee ballots to be counted in secret and behind closed doors, without the meaningful access by representatives of all political parties, in direct contravention of state election laws that the Legislature in its expert balancing of election access and integrity concerns deemed necessary to counter the dangers to election integrity posed by mail-in and absentee ballots?

3. Do Defendants' actions and/or inaction violate the right to vote by creating a substantial risk of direct disenfranchisement of by lost, tardy and/or disqualified ballots by sudden floods of mail-in and absentee ballots, by allowing such ballots in certain counties to be counted in secret and behind closed doors, without the meaningful access by representatives of all political parties, in direct contravention of the state election laws that the Legislature in its expert balancing of election

access and integrity concerns deemed necessary to combat the dangers to election integrity posed by mail-in and absentee ballots?

4. Does Defendants' failure to enforce the state laws requiring transparency of the vote counting process in each and every county of the States in question, including especially of the process of counting mail-in and absentee ballots, violate the one-person-one-vote, equal-protection rights, under the Fourteenth Amendment, of voters in counties which properly observe the required transparency of the vote counting process?

5. Does the Court have the power and obligation, in appropriate circumstances, to invalidate a national election in one or more States and order that a new election be held in that State or States?

Parties to the Proceeding

The caption contains the names of all parties.

Corporate Disclosure Statement

No party is a corporation, so none has a parent corporation or stock.

Jurisdiction

This Court has jurisdiction over this Application under 28 U.S.C. § 1651(a).

Constitutional Provisions Involved

This case involves U.S. Constitution Article I, § 4, clause 1 ("Elections Clause"), Art. II, § 1, cl. 2 ("Electors Clause") and the First and Fourteenth Amendments.

REASONS FOR GRANTING THE APPLICATION

If we were to ask a sampling of those in the November 14^{th} "Million MAGA March" why they came today as this application is being dictated, they would give us the reasons of their heart, not shouted reasons of their voice.

These people, gathered from all over the nation, came of their own volition and at their own expense, following their heart, feeling helpless to understand the outcome of the election. They are wanting to come to support this man who has been their president and his very gracious wife, their first lady of these past four years.

He has been willing to do it again – being impeached for another four years, for them. This man loves America and truly wants to make America great again. He loves them and they love him back.

As he went to the people holding his "Trump Rallies" (sometimes with only 24 hours' notice), 20, 30 and 40,000 people showed up. This is a wealthy businessman who became the hero of the common man.

They liked it from the beginning that he had his own money and could not be bought. He was a non-politician of whom democratic politicians have been jealous. Their jealousy is palatable. I guess we could say that the politicians of the opposite party who are arrayed against him have cause to be jealous with all the attention and accolades and outright love and devotion of the people that he has engendered.

When they hold a rally, four people show up instead of 40,000.
When former president Obama seeks to come to the rescue by holding a rally in support of Joe Biden, 200 people show up instead of 20,000. Why is that? If Joe Biden truly has the support that the vote count would ostensibly indicate, where were they at his rallies? Any child would ask this question and would want to know the answer. Did the people vote or did the democratic machine vote?

All the improprieties – observers being kicked out of counting houses; the same observers trying to get a look see with binoculars; card board over windows; thousands of mail-in ballots all showing up in the middle of the night - all for the same candidate (Biden) and not a one for Trump. All this disgraceful activity is on the part of Democrats, not on the part of Republicans.

The Democrats are disgracing their nation in the eyes of the world. Those who support them want to take America by force, breaking windows, burning police cars, shooting police officers, looting and robbing as they seek to have their way and trample underfoot the established order such that Law and Order itself is a casualty.

With Donald Trump, they love the man; with Joe Biden, they love only what the man can do for them. He will support the misguided so-called ‘constitutional right’ of the woman, if she so desires, to kill the preborn child within her and this is indeed the elephant in the room anymore in every national election, at every confirmation hearing for Supreme Court justice and at the family dinner tables in America.

History does not always repeat itself, but it rhymes. Roe v. Wade was the modern equivalent of Dred Scott. The Dred Scott case of the United States Supreme Court held that the black man was not person but property. As such, he was not thought to be an equal member of the community of man. Tempers flared and a war was fought.

The words of Lincoln, carved on the interior north wall of the Lincoln Memorial and spoken at the president’s second inaugural address, sum up his wise reflection during the heart of the Civil War:

> “Fondly do we hope--fervently do we pray--that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn by the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, "The judgments of the Lord are true and righteous altogether."

Ironically, the same amendment (the 14^{th}) that was passed following the Civil War to invite the black man into the community of man as an equal member thereof, was used by Justice Blackmun (author of the majority opinion in Roe) to divest all preborn men and women, red and yellow black and white, of their equal humanity, treating them as property not persons.

History is rhyming and it brings us to this moment in time. Families at Thanksgiving dinner tables are again divided, brother against brother; sister against sister.

If the Court is to retain the respect of the people, its newest and youngest member may be providentially placed to lead it. Sometimes throughout history, it is often the women, braver than we, who lead the men.

Without having asked for it, perhaps not realizing they can make such a request of America's new Associate Justice, Amy Coney Barrett, the voters of the aforementioned states need to be made to vote again using the same ballots as before in each of their states; voting for their respective representatives in Congress on those ballots, with a choice between President Donald Trump and former Vice President Joe Biden. Seemingly, paper ballots are the only thing secure anymore. Computer ballots are more easily falsified.

The date for said election could logically be set in for January 5th, 2021 (on which date the state of Georgia will additionally choose both senators).

The former vice president, who has been so bold as to start choosing his cabinet and is even demanding national security briefings, is behaving like the president he wants to be when we have a president who is.

Only after a new, transparent, fully monitored and honest election, to be held in the aforementioned states on January 5^{th}, will the nation's cloak of shame be removed in the eyes of the world in order that our free government, including our elections of those who govern in this land of the people, by the people and for the people shall not perish from the earth.

The former vice president should welcome, indeed embrace and be thankful for the court's order that these aforementioned states hold their election all over again on January 5, if he is confident that the votes he received are the votes of the people and not the 'votes' of those misusing machines and doctoring software because they thought the end justified the means.

Additionally, the former vice president needs the cloud of suspicion lifted from these states if he is to have a mandate to lead. This is assuming he wants such a mandate and would not seek to seize and enforce power without the proper mandate.

Having discussed the why's, we now turn to the wherefore of the law and the words delineating same, a switch from the Saxon prose to the 'legalese' of the lawyer speaking to the ear of the jurist.

Granting of the affirmative action sought will also moot any and all cases pending in the above mentioned states or on their way to this court on appeal which have been filed since the November 3rd election.

Affirmative injunctions may be issued by Circuit Justices "[i]f there is a 'significant possibility' that… irreparable injury will result if relief is not granted." *Am. Trucking Associations, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) "[t]o obtain injunctive relief from a Circuit Justice, an applicant must demonstrate that 'the legal rights at issue are 'indisputably clear.''" *Id.* at 1306 (citation omitted). But the Court may issue injunctions, "based on all the circumstances," without having that "construed as an expression of the Court's views on the merits." *Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius*, 571 U.S. 1171, 1171 (2014).

This case presents this Court with the opportunity to address important Constitutional issues and to provide needed guidance to the lower courts regarding the flood of election law cases already pending and expected, regarding the failure of election officials in the States in question to enforce the full transparency of the vote counting process, including the counting of absentee and mail-in ballots, required by state law by preventing or restricting meaningful access by representatives of all political parties to the vote counting process. This Court has the opportunity to decide in this case whether the actions of state officials in deliberately and intentionally preventing or restricting meaningful access by all political parties to the vote counting process, or in failing to stop such interference with the transparency required by state law, violates Voters' constitutional rights to vote and to the equal protection of the laws. This is particularly urgent because lower courts are not getting it right and there is a flood of election law litigation that threatens to overwhelm the lower courts, as well as this Court, regarding the November 3rd election. This Court can provide this needer guidance by granting this motion and by ultimately granting certiorari. And it is likely that this Court will do so.

Voters have standing to challenge the actions of Defendants. Voters meet the requirements of *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), as they suffer personal harm, traceable to the actions of Defendants, redressable by requested relief. Their equal-protection claim provides standing under the analysis of *Bush v. Gore*, 531 U.S. 98, 107 (2000), for voters in counties where vote counting is conducted with full transparency disadvantaged by the increased voting power of voters in counties where such full transparency has been denied. See also *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) ("[A] person's right to vote is 'individual and personal in nature,'" so "'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage" (citations omitted)).

And the Voters claims aren't generalized grievances under *Lujan*'s two formulations of that doctrine:

> [1] a plaintiff raising only a generally available grievance about govern- ment—claiming only harm to his and every citizens'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,

id. at 560-61 (emphasis added), and

> [2] an injury amounting only to the alleged violation of a right to have the Government act in accordance with law [is] not judicially cognizable ... [and] cannot alone satisfy the requirements of Art. III ...,"

id. at 575-76 (internal quotation marks and citation omitted). *Lujan* establishes two questions that need to be answered: (1) whether the claimant is just a citizen trying only to make the government do its job and (2) whether the claim is the same held by “every citizen.” As the first issue is more specific, it is the core of the analysis.

Voters here are not asserting generalized grievance under either question. First, Voters don’t bring their claims under mere “citizen” standing. Rather, they assert personal harms from the violation of their own fundamental right to vote that is protected by the First and Fourteenth Amendments, U.S. Const. art. I, § 4, cl. 1 (Elections Clause), and U.S. Const. art. II, § 1, cl. 2 (Electors Clause). Given the Supremacy Clause, U.S. Const. art. VI, para. 2, state officials must obey constitutional mandates. Voters’ claims are also particularized. They don’t challenge anything not directly bearing on their claims, so they are not just trying to make the government do its job in some general way but rather challenge what violates their rights.

Second, Voters assert a harm that is not the same as for every “citizen.” “[D]enying standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody.” *United States v. SCRAP*, 412 U.S. 669, 686-68 (1973); *see also, FEC v. Akins*, 524 U.S. 11, 24 (1998).

Voters' harms are non-speculative. As a matter of law, mailed ballots pose a greater risk of fraud as recognized in *Crawford v. Marion County Election Bd.*, 553

U.S. 181, 192-197 (2008). They also pose a risk of ballot "floods", where sudden dumps of ballots strain or exceed the capacity of State officials to properly process such ballots. To counter these dangers, State legislatures require signatures, signature-matches, proof of timely receipt and/or mailing, etc. *See Buckley v. Valeo*, 424 U.S. 1, 27-28 (1976) (Legislatures may prophylactically eliminate harms).

But in those counties where the transparency of elections mandated by state law is denied or unduly restricted, these safeguards become largely meaningless, and the door is open to significant fraud and counting errors. This in turn leads to large numbers of illegal votes in counties that deny transparency, thereby diluting the votes of Voters in counties where transparency is properly maintained and denying such Voters the equal protection of the laws.

The Elections Clause mandates that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .." U.S. Const. art. I, § 4, cl. 1. That applied to the November 3rd general election, as does the similar Electors Clause, Art. II, § 1, cl. 2, which also entrusts the Electors' election to the manner determine by the legislature. The "Manner" encompasses "*supervision of voting,* protection of voters, *prevention of fraud and corrupt practices* . . . .'" *Cook v. Gralike*, 531 U.S.

510, 523-24 (2001) (emphasis added and citation omitted). In *Bush v. Gore*, three Justices would have reached the Electors Clause issue as "additional grounds." 531 U.S. at 111 (Rehnquist, C.J,, joined by Scalia and Thomas, JJ.) ("A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.").

Underlying reasons for designation by the Elections Clause and Electors Clause of the State Legislatures to determine election procedures include that the State Legislatures have the expertise to balance election access with integrity issues, along with the cost of elections as compared to available resources. The U.S. Constitution thus "confers on states broad authority to regulate the conduct of elections, including federal ones." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (citing U.S. Const. art I, § 4, cl.1). "[S]triking . . . the balance between discouraging fraud and other abuses and encouraging turnout is quintessentially a legislative judgment . . . ." *Id.* at 1131 (emphasis added). "[S]tates that have more liberal provisions for absentee voting may well have different political cultures . . . . One size does not fit all." *Id.*

There is, of course, no right to vote by either mail or by absentee ballot and mailed-in and absentee ballots pose special fraud risks, so only the legislature has been given the authority design voting procedures because it is equipped to balance election access and integrity issues, including in the mail and absentee balloting contexts. *Id.* at 1130-31. One factor is vote fraud, which poses two serious problems. First, it violates the right to vote of legitimate voters by diluting their votes. "[T]he Constitution of the United States protects the right of all qualified citizens to vote" and have that vote counted, *Reynolds v. Sims,* 377 U.S. 533, 554 (1964), which right "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise," *id.* at 555. Second, "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust in government," since "confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy," *Purcell v. Gonzalez,* 549 U.S. 1, 4 (2006).

As a matter of law, a substantial risk of voter fraud is not speculative. First, voting fraud connected to mail-in and absentee voting is well-established as a cognizable harm, along with the related needs to protect election integrity and safeguard voter confidence. *See Crawford,* 553 U.S. at 192-97 (citing and relying on (inter alia) the Report of "the Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James A. Baker III"); *see also Griffin,* 385 U.S. at 1130-31 (absentee ballots require the legislature to balance to limit risk). "As Justice Stevens noted, 'the risk of voter fraud' is 'real.'" *Texas Democratic Party v. Abbott*, 961 F.3d 389, 413 (5th Cir. 2020) (Ho, J., concurring) (quoting *Crawford*, 553 U.S. at 196 (plurality op. of Stevens, J.). According to the bipartisan Carter-Baker Report, mailed ballots are "the largest source of potential voter fraud" and are "likely to increase the risk of fraud and contested elections." Building Confidence in U.S. Elections 35, 46 (Sept. 2005), available at bit.ly/3dXH7rU.

As noted above, Legislatures may also employ prophylactic laws to eliminate potential harms they find require such protection, see, e.g., *Crawford*, 553 U.S. at 196; *Buckley v.Valeo*, 424 U.S. 1, 27-28 (1976). Defendants, however, by failing to ensure the full transparency of elections as mandated by state law in each and every county in the States in question, and by thereby obviating the state legislative protections against the dangers of fraud and error in the counting of mailed-in and absentee ballots, have opened the door wide to substantial ballot fraud and sudden-ballot-flood harms that the State Legislatures sought to keep cabined.

This state legislative balancing cannot be gainsaid on the notion that a particular safeguard, e.g., transparency, isn't needed because the legislature provided others. The legislature thought they all were required in its balancing. Specifically, as *Griffin* and *Crawford*, 553 U.S. at 193-96, recognize, there is a known greater integrity risk with mailed-in and absentee ballots, so legislatures control the counting of mailed and absentee ballots based on the perceived risks to confine the risks to a level it finds acceptable, given the resources it has. Maintaining the legislative balance is vital because "confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy and "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell*, 549 U.S. at 4.

In sum, the primacy of, and deference to, the Legislative enactments is fully justified and enshrined in the Elections Clause. The Constitution mandates respect for legislative balancing, since only legislatures have the expertise for it, election-integrity requires it, and straying from the protections mandated by the State Legislatures can cause harm and a flood of litigation.

Because of the mandate of the Elections and Electors Clauses giving primacy for legislative enactment of state election laws, this Court has the *Anderson-Burdick* test and the *Purcell* principle to protect those laws. *Burdick v. Takushi*, 504 U.S. 428 (1992) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983), is used to evaluate "state election law[s]," *Burdick*, 504 U.S. at 434, and is relatively deferential to duly enacted state election laws, as evidenced in its application to upholding voter ID laws in *Crawford*, 553 U.S. 181. However, it is inappropriate for state officials or state courts to use the *Anderson-Burdick* test to displace the legislatures' balancing. Such displacement should be presumed unconstitutional, not deferred to as under *Anderson-Burdick*, and any claimed authority (such as emergency authority due to Covid-19) by state officials to act on the legislature's behalf should be rejected if the authority is used to displace Legislative enactments and create new election law.

The denial of full transparency of the vote counting process in certain counties in the States in question was not a product of the legislative balancing of access and integrity resulting in the Legislature's adoption of a new election law but the unilateral displacement of the Legislature's choice with the Defendant state election officials' view of access and integrity. This is contrary to the Elections and Electors Clauses.

Purcell, 549 U.S. 1, was designed to also protect long-standing state election laws, adopted by the Legislature, from being displaced by court orders near an election. But the *Purcell* principle does not protect state officials, as here, or state courts from upsetting "long-established expectations that might have unintended consequences," *Lair v. Bullock*, 697 F.3d 1200, 1212-14 (9th Cir. 2012), on the eve of an election or, as here, during the counting of the votes. *Purcell* favors maintaining long-established expectations arising from long-standing state election laws to prevent "voter confusion and consequent incentive to remain away from the polls," *Purcell*, 549 U.S. at 4-5, if the long-established expectations are upset on the eve of an election, *and should likewise favor maintaining such expectations during the counting of the votes.*

In addition to violating Voters' right to vote in an election governed by the Elections and Electors Clauses, the actions of Defendants in failing to maintain full transparency of the vote counting process as mandated by state law violates their right to vote by (1) creating a substantial risk of vote-dilution disenfranchisement, (2) creating a substantial risk of direct disenfranchisement, and (3) diminishing the power of voters in counties that properly adhere to transparency mandates compared to those in other counties that flout such state mandates.

As a matter of law, a substantial risk of vote-dilution and direct disenfranchisement exists when an election is not conducted in the legislature's prescribed manner because it has the exclusive authority and expertise to balance voting access with election-integrity issues, including the higher risk of fraud posed by mailed-in and absentee ballots established in *Griffin* and *Crawford*. So the "legislative balance" in state election law is the binding finding of what is safe for *this* state in *this* election to prevent such vote-dilution and direct disenfranchisement. Consequently, the actions of Defendants in failing to afford and ensure the full transparency of vote counting by representatives of all political parties, as required by state law, violates the right to vote as a matter of law by allowing what the legislature did not allow in its legislative balancing, thereby posing a substantial risk of such disenfranchisement.

So the substantial risk of illegal votes diluting legal votes is real and cognizable, as a matter of law, and vote dilution is forbidden disenfranchisement. "[T]he Constitution of the United States protects the right of all qualified citizens to vote" and have that vote counted, *Reynolds*, 377 U.S. at 554, which right "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.* at 555. "[W]hile *Reynolds v. Sims* was a case involving reapportionment, there appears to be little distinction, insofar as the fourteenth amendment is concerned, between dilution of a citizen's vote through malapportioned political districts and dilution of valid ballots through votes cast by ineligible voters." *Donohue v. Board of Elections of State of New York*, 435 F.Supp. 957, 965 (E.D.N.Y. 1976). As failing to maintain the transparency of the vote counting process mandated by state law, particularly with regard to the counting of mailed-in and absentee ballots, creates a volume of illegal votes the legislative balancing determined unsafe, Voters suffer a substantial risk that their votes will be diluted by illegal votes, which establishes vote-dilution disenfranchisement.

The state legislatures have the authority and expertise to balance access and integrity, and they required transparency of vote counting, including meaningful access by representatives of all political parties, in general elections. That is reasonable, nondiscriminatory, and rationally based on its expert balancing to keep the matter-of-law risks of ballot-fraud and sudden-flood risks to a safe level. That should end the matter. Defendants' purported justification for preventing or unduly restricting full transparency is Covid-19, which is not compelling. Meaningful access can be provided while complying with Covid-19 health protocols.

The failure to maintain full transparency of the ballot counting process also poses a substantial risk of direct disenfranchisement by lost, tardy and disqualified ballots, when there are sudden floods of mailed-in and/or absentee ballots.

Finally, the failure to maintain full transparency of the ballot counting process in all of the State's counties leads to more illegal votes being counted in some counties than in others. Empowering a county's voters at the expense those in other counties the right to vote (by vote dilution) and the Equal Protection Clause as discussed in *Bush v. Gore*:

> An early case in our one-person, one-vote jurisprudence arose when a State accorded arbitrary and disparate treatment to voters in its different counties. *Gray v. Sanders*, 372 U.S. 368 (1963). The Court found a constitutional violation. We relied on these principles in the

> context of the Presidential selection process in *Moore v. Ogilvie*, 394 U.S. 814 (1969), where we invalidated a county-based procedure that diluted the influence of citizens in larger counties in the nominating process. There we observed that "[t]he idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government." *Id.*, at 819.

531 U.S. at 107.

This analysis doesn't turn just on *Bush* because it relied on a case line. In *Bush*, the Florida Supreme Court's plan was to include totals from two counties though they "used varying standards to determine what was a legal vote. Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties." *Id.* Because of this and similar equal-protection violations causing vote dilution, "[s]even Justices of the Court agree[d] that there [were] constitutional problems with the recount ordered by the Florida Supreme Court that demand[ed] a remedy." *Id.* at 111.

Just as the Florida Supreme Court should have implemented a recount system without affording greater voting strength for one group, the States in question here must have a neutral, uniform voting system. Every county in each of theses States – not just some counties – must comply with state laws mandating full transparency of the vote counting process.

Applicants thus have demonstrated a strong likelihood of success on their claims.

Voters have also demonstrated irreparable harm for reasons tracking their claims. They have no remedy at law if full transparency of the vote counting process as mandated by state law is flouted and the election continues to be held in violation of Voters' rights to vote in and have an Elections-Clause/Electors-Clause-compliant election, not be disenfranchised, and have equal protection. Because "the right of suffrage is a fundamental matter in a free and democratic society." *Reynolds*, 377 U.S. at 561-62, "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury," *League of Women Voters of N.C. v. North Carolina* ("LWVNC"), 769 F.3d 224, 247 (4th Cir. 2014) (collecting cases). This irreparable harm is continuing, given that vote counting has either not been completed in the states in question, or that recounts are either pending or likely.

Finally, the balance of equities and the public interest support injunctive relief. As Voters will continue to suffer violations of their constitutional rights, the equities and public interest require protection. A state suffers no harm if likely unconstitutional actions are preliminarily enjoined. *See, e.g., Giovani Carandola v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). "[U]pholding constitutional rights surely serves the public interest." *Id.*

It should also be pointed out that the federal courts, including this Court, "have not hesitated to take jurisdiction over constitutional challenges to the validity of local elections *and, where necessary, order new elections*." *Donohue v. Board of Elections of State of New York*, *supra*, 435 F.Supp. 957, 967-68 (E.D.N.Y. 1976) (emphasis added), citing in footnote 19, among other authorities, *Hadnott v. Amos*, 394 U.S. 358 (1969), *Bell v. Southwell*, 376 F.2d 659 (5th Cir. 1967), *Hamer v. Campbell*, 358 F.2d 215 (5th Cir.), *cert. denied*, 385 U.S. 851 (1966), and *Ury v. Santee*, 303 F.Supp. 119 (N.D.Ill. 1969).

Certainly, the power, where necessary, to order new elections also extends to national presidential elections held within a particular State or States. As Chief Judge Mishler of the Eastern District of New York observed:

> The point, however, is not that ordering a new Presidential election in New York State is beyond the equity jurisdiction of the federal courts. *Protecting the integrity of elections particularly Presidential contests is essential to a free and democratic society.* See *United States v. Classic*, [313 U.S. 299 (1941) (holding that right to vote may not be denied by alteration of ballots)]. *It is difficult to imagine a more damaging blow to public confidence in the electoral process than the election of a President whose margin of victory was provided by fraudulent registration or voting, ballot-stuffing or other illegal means.* Indeed, entirely foreclosing injunctive relief in the federal courts would invite attempts to influence national elections by illegal means, particularly in those states where no statutory procedures are available for contesting general elections. . . . *The fact that a national election might require judicial intervention, concomitantly implicating the interests of the entire nation, if anything, militates in favor of interpreting the equity jurisdiction of the federal courts to include challenges to Presidential elections*.

Donohue, 435 F.Supp. at 967-68 (footnote omitted and emphasis added).

Of course, "a party contesting a Presidential election carries a heavy burden," requiring proof of "conduct of a most egregious nature, approximating criminal activity." *Donohue,* 435 F.Supp. at 968. Specifically, the party challenging the election must prove the following:

> (1) that specific acts of fraud or other unlawful behavior were committed in the conduct of the election;
>
> (2) the fraud or other unlawful behavior was committed with the intent or purpose of depriving qualified voters of their constitutionally protected right to vote;
>
> (3) the fraud or other unlawful behavior was committed by persons acting under the color of state law; and
>
> (4) the fraud or other unlawful behavior changed the outcome of the election.

Id. at 968. *See also Armstrong v. Adams*, 869 F.2d 410 (8th Cir. 1989), upholding district court's refusal to dismiss an action alleging that various election officials committed fraudulent and racially discriminatory acts in order to influence the outcome of a local option liquor election. The district court had reasoned that

> The Court is persuaded that, upon reviewing the allegations, plaintiffs have pleaded fraud with the requisite degree of specificity. *See* Rule 9(b) of the Federal Rules of Civil Procedure. It is also clear that the complaint meets the remaining elements of the *Donohue* test in that plaintiffs contend that defendants' unlawful behavior was intended to deprive qualified voters of their constitutionally protected right to vote, that the actions were committed by persons acting under color of law and that defendants' actions changed the outcome of the election.

Id. at 413 n. 2, citing *Donohue*, 435 F.Supp. at 968.

Thus, if the Court is satisfied that the *Donahue* criteria have been met in one or more of the States in question here, the Court may and should declare the national election in that State or States void and order that a new election be held in that State or States.

CONCLUSION

To prevent continued irreparable harm to the Voters of Arizona, Georgia, Nevada, Michigan, Pennsylvania and Wisconsin, the Court should issue the requested writ of injunction and (a) enjoin Defendants from any further counting and/or recounting of votes in the jurisdictions in question unless and until fully transparency of vote counting as mandated by state law is fully implemented in every county, including allowing observers from all political parties to meaningfully view and monitor such vote counting, and, if Defendants continue to refuse or deny such full transparency, the Court should enforce the injunction by all appropriate means, including mandating the presence of U.S. Marshals in the counting rooms of non-compliant counties; and (b), if the Court is satisfied that substantial and irreparable violations of Voters' constitutional rights have already occurred in one or more of the

States in question, to order such State or States to schedule a new national election, to take place not later than Tuesday, January 5, 2020.

Respectfully submitted,

R. Martin Palmer

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Rudolph Martin Palmer, Esq.

CERTIFICATE OF SERVICE

I certify that on Monday, November 16, 2020, a copy of the foregoing Emergency Application for Writ of Injunction was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

Doug Ducey
Governor's Office
1700 W. Washington Street
Phoenix, AZ 85007

Katie Hobbs
Arizona Secretary of State
1700 W. Washington Street, Fl 7
Phoenix, AZ 85007

Brian Kemp
Office of the Governor
206 Washington Street
Suite 203, State Capitol
Atlanta, GA 30334

Brad Raffensperger
Secretary of State
214 State Capitol
Atlanta, GA 30334

Gretchen Witmer
Governor of Michigan
P.O. Box 30013
Lansing, MI 48909

Jocelyn Benson
Secretary of State
430 W. Allegan St.
Richard H. Austin Building
4th Floor

Lansing, MI 48918

Stephen Sisolak
Governor of Nevada
State Capitol Building
101 N. Carson Street
Carson City, NV 89701

Barbara K. Cegavske
Secretary of State
Nevada State Capitol Building
101 N. Carson Street, Suite 3
Carson City, NV 89701

Tom Wolf
Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120

Kathy Boockvar
Secretary of the Commonwealth
302 North Office Building
401 North Street
Harrisburg, PA 17120

Tony Evers
Governor of Wisconsin
P.O Box 7863
Madison, WI 53707

Wisconsin Elections Commission
212 East Washington Avenue
Third Floor
P.O. Box 7984
Madison, WI 53707-7984

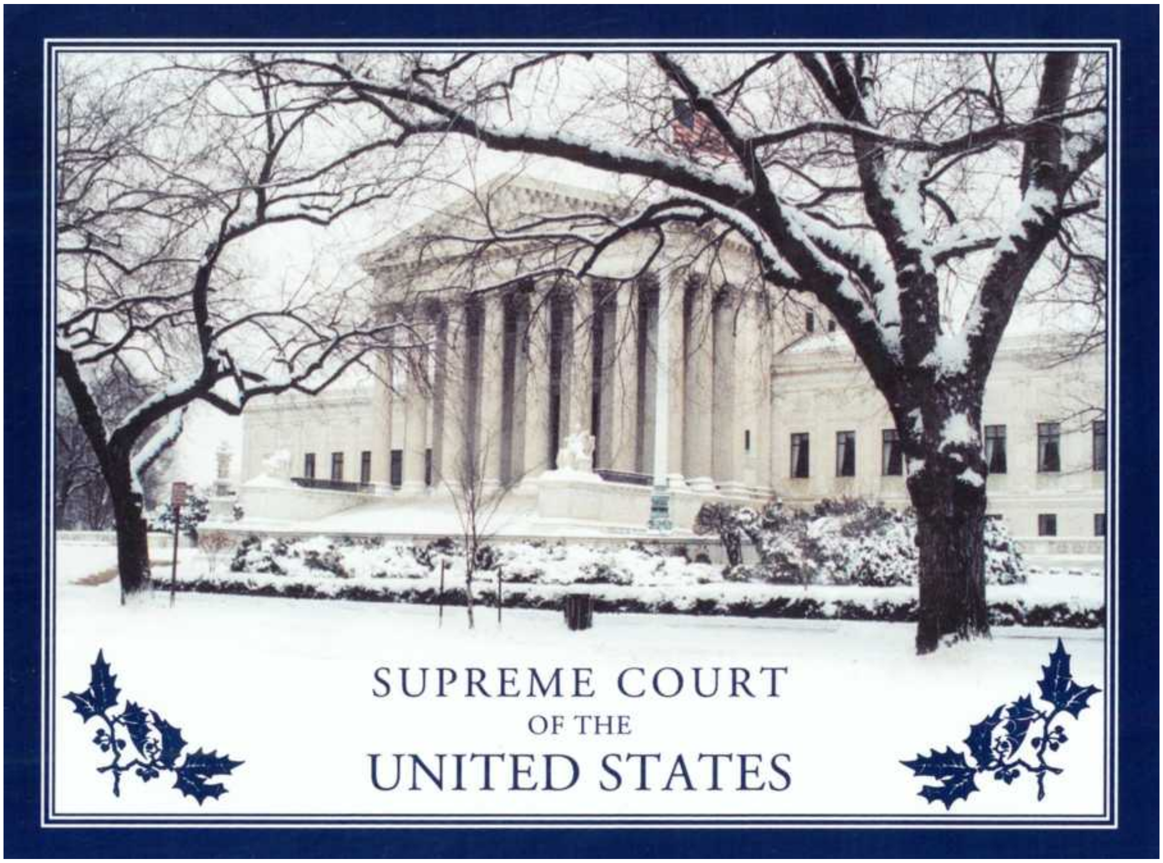
R. Martin Palmer

Rudolph Martin Palmer, Esq.

Million man march on Saturday Nov. 14th from liberty plaza to steps of the Supreme Court in support of President Trump, not understanding the vote count.

Supporters of President Trump sang the National Anthem.

Marchers heading in the direction of the Supreme Court make their way along Pennsylvania Avenue.

Natural Snowfall is to be preferred over the snowfall of lawyer briefs.

Granting of the injunction serves the purpose of
"Judicial Economy" by mooting pending litigation.

Just as a child starts a snowball by scooping snow together between his hands then turns it on the ground to create an increasingly larger snowball, Jefferson could foresee that the idea of interpreting the Constitution would snowball and he had this to say about it:

> "The Constitution...is a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please. It has long been my opinion, and I have never shrunk from its expression...that the germ of dissolution of our federal government is in the constitution of the federal Judiciary; working like gravity by night and by day, gaining a little today and a little tomorrow and advancing its noiseless step like a thief, over the field of jurisprudence, until all shall be usurped." (Letter from Thomas Jefferson to C. Hammond, 18 August 1821)
>
> "It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions. It is one which would place us under the despotism of an oligarchy (rule by a few)." (Letter to W.C. Jarvis 1820)

BOSTON,
Plymouth & Sandwich
MAIL STAGE,

CONTINUES TO RUN AS FOLLOWS:

LEAVES Boston every Tuesday, Thursday, and Saturday mornings at 5 o'clock, breakfast at Leonard's, Scituate; dine at Bradford's, Plymouth; and arrive in Sandwich the same evening. Leaves Sandwich every Monday, Wednesday and Friday mornings; breakfast at Bradford's, Plymouth; dine at Leonard's, Scituate, and arrive in Boston the same evening.

Passing through Dorchester, Quincy, Wyemouth, Hingham, Scituate, Hanover, Pembroke, Duxbury, Kingston, Plymouth to Sandwich. *Fare*, from Boston to Scituate, 1 doll. 25 cts. From Boston to Plymouth, 2 dolls. 50 cts. From Boston to Sandwich, 3 dolls. 63 cts.

N. B. Extra Carriages can be obtained of the proprietor's, at Boston and Plymouth, at short notice.— STAGE BOOKS kept at Boyden's Market-square, Boston, and at Fessenden's, Plymouth.

LEONARD & WOODWARD.

BOSTON, [illegible]

"CIRCUITS PRESS HARD *on us all," moaned Chief Justice John Jay. A 1789 Act of Congress, requiring Supreme Court jurists to preside twice a year over circuit courts scattered throughout the Union, meant months of rugged travel.*

Broadside (left) depicts one common mode of transportation. After jolting in a stagecoach many hours daily over savage roads of ruts and rocks or helping lift the stagecoach from quagmires of mud, the Justices passed restless nights in crowded way stations such as Fairview Inn on the Frederick road (above) near Baltimore, Maryland.

Battered and exhausted by the rigors of travel, Judges often arrived at the circuit courts too late or too sick to hold a session. Still, their visits served to acquaint the people with the new judiciary branch.

It seems doubtful that our nations High Court could have accomplished the social engineering they have, had they remained in the borrowed file room beneath the Senate floor.

They failed to provide a building for the Supreme Court. Why was this? Surely it could not have been an oversight. What was their wisdom? They had had it with King George, which resulted in the Declaration of Independence, and they had had it with powdered wig judges in England that acted like Kings.

President George W. Bush was often heard to say, "The Supreme Court needs to stop legislating."

President Taft (the only U.S. president to be both chief judge of the U.S. Supreme Court and president of the United States in his lifetime – he said he did the presidency to please his wife; he liked the court) lobbied the Congress to appropriate the money to build the Supreme Court its own building (had our forefathers overlooked it or was their wisdom greater than our own? Egos expand to fill the nature and size of the space granted to them. Give a seaman second class an admiral's uniform and the admiral's own quarters and see what happens.)

Taft served as U.S. President (1909-1913). In 1921, President William G. Harding appointed Taft chief justice of the United States. Taft regarded the appointment as the greatest honor of his life.

When Taft was appointed chief justice, the Supreme Court met in the Old Senate Chamber in the U.S. Capitol Building (they had started out in borrowed space in a converted file room beneath the Old Senate Chamber).

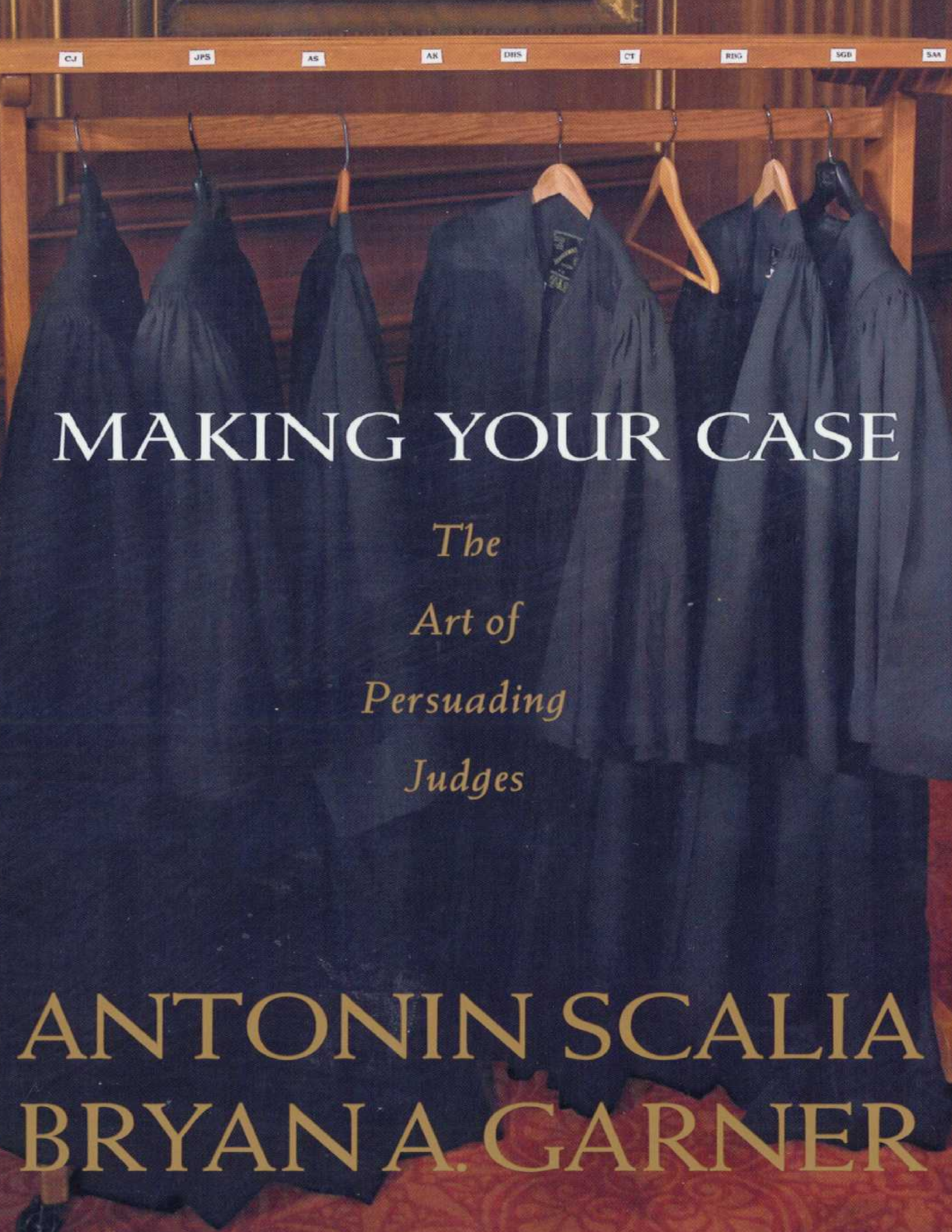
Taft wanted something more glorious than the Old Senate Chamber above the file room for what was now to be his court. He lobbied Congress to appropriate money to build the present Supreme Court building across the street. Construction began in 1930 and Taft died on March 8th of that same year, age 73. He never got to enjoy his new 'temple of the gods'. He never presided behind the gargantuan white marble columns as the chief judge (perhaps having hoped to do so a ripe old age).

Taft achieved passage of the judiciary act. This law gave the courts greater control over the number and kinds of cases it would consider.

A number of years ago when I was at the court, they had a large display in the lobby under glass of the architect's original model of the Court and a photograph of President Taft and others admiring the model. Where are the social psychologists? What can they tell us? Do human egos expand to fill the space allotted to them? Or is it the grandeur of the space? When a Supreme Court Justice dies, they lie in state in the statutory hallway of their own building. During these 'covid-19 times', Justice Ginsberg was moved outside under the front portico of the Supreme Court, high up under the vaulting white Carrera marble Corinthian columns of the court, where President Trump came to pay his respects on September 24th.

The Washington Post newspaper once reported that Justice Blackmun, who authored Roe v. Wade, while addressing his daughter's graduating class at Hood College in Frederick, Maryland, said that he often liked to enter the Supreme Court building by means of the front steps to take in its beauty. This was perhaps a 'Freudian Slip'. The building itself was a 'power trip' to Justice Blackmun.

Much to be preferred is the original Supreme Court chamber, as humble as it is, in a borrowed file room on the ground level of the U.S. Capitol building. This room where the Supreme Court originally held court was directly beneath the floor of the old Senate Chamber. Daniel Webster argued cases in this small courtroom. The judges were literally and figuratively 'beneath' the people (the people's representatives in the senate) – not above the people as the judges feel they are today.


CJ
JPS
AS
AK
DHS
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RBG
SGB
SAA
MAKING YOUR CASE
The Art of Persuading Judges
ANTONIN SCALIA
BRYAN A. GARNER

> before him. He need not wait for the legislature to intervene: because that can never be of any help in the instant case.[8]

To be sure, Denning was a renowned judicial activist—or a notorious one, if that is your view of things. But a similar, if not quite identical, approach was endorsed by the famous Chancellor James Kent of New York:

> I saw where justice lay and the moral sense decided the cause half the time, and then I sat down to search the authorities until I had exhausted my books, and I might once in a while be embarrassed by a technical rule, but *I most always found principles suited to my views of the case . . . .*[9]

Now you may think that the "principles" contained in the "authorities" ought to *lead* a judge to his or her conclusion, rather than merely provide later support for a conclusion arrived at by application of the judge's "moral sense." And you'd be entirely right. We're giving advice here, however, not to judges but to the lawyers who appear before them. You can bet your tasseled loafers that some judges, like Lord Denning, will be disposed to change the law to accord with their "moral sense"; and that many more will, like Chancellor Kent, base their initial decision on their "moral sense" and then scour the law for some authority to support that decision. It is therefore important to your case to demonstrate, if possible, not only that your client does prevail under applicable law but also that this result is reasonable. So you must explain why it is that what might seem unjust

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8 Lord Denning, *The Family Story* 174 (1981).

9 *An Unpublished Letter of Chancellor James Kent*, 9 Green Bag 206, 210 (1897).

The Old Supreme Court Chamber (home of the Supreme Court, 1801–1860). Photograph by The Architect of the Capitol. *(Architect of the Capitol)*

The Old Senate Chamber (home of the Supreme Court, 1860–1935). *(Collection of the Supreme Court of the United States)*