RIDGEWAY

REPORTS

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RIDGEWAY REPORTS

VOLUME 1

CASES ADJUDGED

IN

THE SUPREME COURT

AT

MARCH TERM, 2022

Beginning of Term

March 27, 2022 Through March 27, 2023

Together With Opinion of Individual Justice in Chambers

LEWIS F. POWELL, JR.

reporter of decisions

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WARREN E. BURGER, Chief Justice.
ROBERT H. JACKSON, Associate Justice.
NEIL M. GORSUCH, Associate Justice.
CLARENCE THOMAS, Associate Justice.
HARRY A. BLACKMUN, Associate Justice.

RETIRED

LEWIS F. POWELL, JR., Associate Justice.

OFFICERS OF THE COURT

LEWIS F. POWELL, JR., Reporter of Decisions.
TACUSS, Clerk of the Court.
TECHIEY, Attorney General.
TOTORO987123, Solicitor General.

TABLE OF CASES REPORTED

Note: All undesignated references herein to the Ridgeway State Code are to the 2022 edition.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE STATE OF RIDGEWAY

AT

MARCH TERM, 2022

RIDGEWAY PARKS SERVICE, ET AL. *v.* STEKING

APPEAL FROM THE ADMINISTRATIVE COURT OF RIDGEWAY

No. 22-02. Argued May 13, 2022 —— Decided May 15, 2022

Appellee, a former Ranger for the Ridgeway Parks Service, was caught dispensing and distributing several police-grade firearms to another account. Following an investigative report, the Ridgeway Parks Service found appellee's conduct to be intentional, and dishonorable discharged him. The Parks Service also forwarded the incident to the Ridgeway Law Enforcement Training Center (LETC), which regulates all certifications granted to peace officers in the State of Ridgeway. The LETC then revoked appellee's peace officer certification and blacklisted him from obtaining future certifications from the LETC. The Administrative Court set aside the blacklist, holding that it was a blacklist from employment under 2 R. Stat. § 3134. The Administrative Court also set aside appellee's dishonorable discharge from the Parks Service on other grounds.

Held: The Administrative Court misapplied the law in construing a LETC blacklist from obtaining certifications as a blacklist from employment under 2 R. Stat. § 3134. Pp. 9-16.

(a) In reviewing the decision of the Administrative Court, this Court looks to whether the Administrative Court, in rendering its judgment, relied on a blatant misapplication of the law, violated a constitutional right or liberty, or abused its discretion. 2 R. Stat. § 3323. P. 9.

(b) 2 R. Stat. § 3134 states that "[i]t is a violation of law to blacklist an individual from employment." The first presumption in statutory interpretation is that a legislature says in a statute "what it means" and means in a statute "what it says there." *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 253-254. Thus, the Court must give undefined terms their ordinary meaning. See, *e.g.*, *Taniguchi* v. *Kan Pacific Saipan, Ltd.,* 566 U. S. 560, 566; *Asgrow Seed Co*. v. *Winterboer*, 513 U. S. 179, 187. Pp. 9-10.

(1) The term "employment" involves an individual's state of being employed. The term "employ," in turn, has traditionally encompassed the scenario of an individual being given work to be done with some sort of income or pay, both legally and in the ordinary sense. The term "from," in turn, is used in this context to indicate physical separation or an act or condition of removal, abstention, exclusion, *et cetera.* P. 10.

(2) Under the phrase's ordinary meaning, a LETC certification cannot be considered a blacklist from employment under 2 R. Stat. § 3134, because an individual does not receive automatic employment upon earning their certification. Rather, a certification represents the idea that LETC believes the individual being certified is qualified to be a peace officer in the State of Ridgeway. Although it is true that a LETC certification serves as a requisite for an individual to serve in specific positions for virtually all law enforcement agencies in the state, the fact that no employment is directly tied to obtaining a LETC certification counsels against holding LETC blacklists as blacklists from employment. The plain text is also unambiguous in its command; by limiting the prohibition against blacklists specifically against employment, § 332 is consistent with Developer Oversight's view that "[a]ll persons who maintain good behavior… have the right to employment." 2 R. Stat. § 4101. Furthermore, a LETC certification blacklist is not considered the end of the world for an individual's prospects of obtaining any job. Pp. 10-13.

(c) Appellee's argument that the phrase "from employment" should be construed broadly is rejected by the fact that the plain

meaning is unambiguous. Appellee failed to identify an indication that Developer Oversight, in drafting 2 R. Stat. § 3134, intended for the phrase to take on some other meaning instead of its ordinary meaning. Cf. *Williams* v. *Taylor,* 529 U. S. 420, 431; *Walters* v. *Metropolitan Ed. Enterprises, Inc*., 519 U. S. 202, 207. Appellee's reliance on the title of the Administrative Procedures Act is rejected for the reason that the title of a law is only useful in resolving ambiguous words or phrases in a statute. *Whitman* v. *American Trucking Association,* 531 U. S. 457, 483. Pp. 10-12.

(c) The Administrative Court's holdings were based on the fact that "prolonged consequences" of a LETC blacklist could hinder individuals in gaining employment. But such raw consequentialist calculations have been discouraged and play no role in the Court's decision. *Niz-Chavez* v. *Garland,* 141 S. Ct. 1474, 1486. When interpreting a statute, our task is to apply the law's plain meaning "as faithfully as we can," not "to assess the consequences of each approach and adopt the one that produces the least mischief." *BP p.l.c.* v. *Mayor and City Council of Baltimore,* 141 S. Ct. 1532, 1542. Such a rule ensures that courts do not disregard the plain text of the case because of "extratextual considerations," *Bostock* v. *Clayton County,* 140 S. Ct. 1731, 1749. Pp. 13-16.

1 R. Adm. 1, affirmed in part and reversed in part.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and GORSUCH, J., joined.[*] JACKSON, J., took no part in the consideration or decision of this case.

Then-Attorney General CIifford2 argued the cause for the appellants. With him on the briefs were *Assistant Solicitor General Turntable* and *Assistant Solicitor General Harumune.*

HolyRomanRyan argued the cause for appellee. With him on the briefs was *Asianible*.

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[*] The Honorable NEIL M. GORSUCH, then-Superior Court Judge, sitting by designation.

JUSTICE POWELL delivered the opinion of the court.

2 R. Stat. § 3134 states that "[i]t is a violation of law to blacklist an individual from employment." In this case, appellee was dishonorably discharged from the Ridgeway Parks Service after he was caught dispensing and dealing several police-grade firearms to another account. In addition, his certification from the Law Enforcement Training Center was revoked, and he was blacklisted from obtaining such a certification in the future. This appeal requires us to determine whether such a blacklist issued to prevent an individual from obtaining a prerequisite certification is lawful. We hold that such blacklists are not blacklists from employment under 2 R. Stat. § 3134.

I

A

The Ridgeway Law Enforcement Training Center (LETC) was established as part of the Public Safety Act, 2022 Session Laws s. 6, with the purpose of certifying "all peace officers in the State of Ridgeway." 8 R. Stat. § 1101. Although certification is not a statutory requisite for employment as a peace officer in law enforcement departments except the Ridgeway Parks Service, see 7 R. Stat. § 1106, virtually all law enforcement departments in the State of Ridgeway have enacted some sort of policy requiring that employees possess a certification issued by the LETC. See, e.g., Rid. State Police, Department Policy Guide §§ 101.1-101.2, p. 7 (2021); Ridgeway Parks Service, Department Handbook on Differences Between Volunteers and Full Rangers (2022), online at https://trello.com/c/8Uy2aDJ2/39-differences-between-volunteers-and-full-rangers (as visited Apr. 30, 2022). Thus, a certification from LETC has

been widely sought after by citizens as more and more individuals seek to become peace officers in the State of Ridgeway.

Nevertheless, a LETC certification is not necessarily permanent. The Director of the LETC possesses the power to revoke a certification when due process is afforded and "proper demonstration of reasoning and evidence" is provided for such a revocation. 8 R. Stat. § 1206. Lesser offenses can result in strikes and warnings, which are less severe but nonetheless reflect punishment for misconduct. See *id.* § 1207. Thus, peace officers may face disciplinary records on their certifications as a result of misconduct that has occurred on their part.

The Administrative Procedure Act, 2022 Session Laws s. 2, codified at 2 R. Stat. § 3101 *et seq.,* was enacted along with the Public Safety Act. Recognizing that "[a]ll persons who maintain good behavior… have the right to employment," 2 R. Stat. § 4101, Developer Oversight enacted the Administrative Procedure Act to protect employees of the government against arbitrary punishment. 2 R. Stat. § 3135. Under 2 R. Stat. § 3134, it is therefore illegal to blacklist someone from "employment."

B

Appellee was a former ranger of the Ridgeway Parks Service, certified by the LETC. According to appellee's administrative claim, appellee had to leave his computer for about 15 to 20 minutes on March 13th, 2022.[1] Adm. Cl. for

[1] Appellee notes that the Inaugural Laws, of which the Public Safety Act is part of, was not enacted until after the date the Inaugural Laws were enacted. That issue is not presented before us in this case, however, so we decline to address it. Cf. *Intel Corp. Investment Policy Comm.* v. *Sulyma*, 140 S. Ct. 768, 775 n. 2 (2020).

Appellee, at 2. Appellee's brother, who owned a different account, promptly logged onto appellee's computer and logged onto Ridgeway County on appellee's account. *Id.*, at 2-3. Having logged onto Ridgeway County, appellee's brother then utilized his account to dispense several police-grade firearms while he was on the Ridgeway Parks Service team, and distributed the dispensed firearms to an account allegedly owned by appellee's brother (recipient account).[2]

A restricted State of Ridgeway Discord contains several logs to prevent abuses of certain features reserved to government officials. The lead investigator for the Ridgeway Parks Service in appellee's investigation was notified of the incident after noticing numerous firearms being dispensed by appellee through one of such "drop logs" on Discord. See Ridgeway Parks Service, Internal Affairs Unit Case Report (5-22-0084-RPS, 2022). After noticing the unusual number of drop logs, the investigator notified several other high-ranking officials of the Parks Service, who promptly joined the server that appellee and the recipient account had exchanged the firearms in. By this point, appellee had already returned to his computer, only to realize that he had been placed on administrative leave and was requested to appear before the lead investigator to be questioned for the incident. Following the lead investigator's questioning of appellee, the Parks Service investigator concluded that appellee intentionally and unlawfully dispensed and distrib-

[2] According to the Ridgeway Parks Service, appellee, as a certified peace officer and Park Ranger, was able to legally dispense the police-grade firearms. See Ridgeway Parks Service, Internal Affairs Unit Case Report (5-22-0084-RPS, 2022); Ridgeway Parks Service, Department Handbook on Differences Between Volunteers and Full Rangers (2022), online at https://trello.com/c/8Uy2aDJ2/39-differences-between-volunteers-and-full-rangers (as visited Apr. 30, 2022).

uted police-grade firearms to another account, and recommended appellee's dishonorable discharge from the Parks Service. The Parks Service dishonorably discharged and blacklisted appellee from the department on the same day of the incident.

The trouble did not end there for appellee, however. The Parks Service also forwarded the incident to the LETC, which immediately ordered the revocation of appellee's LETC certification and a blacklist preventing appellee from obtaining a new certification. *In re SteKing2008,* RSC-AD-268 (Apr. 23, 2022), p. 2.

C

On April 12th, 2022, appellee filed suit in the Administrative Court, challenging his dishonorable discharge from the Ridgeway Parks Service, as well as his blacklist from obtaining a certification from LETC. Appellee argued that his dishonorable discharge from the Parks Service was unlawful under 2 R. Stat. § 3113, that he was not afforded due process before the LETC revoked his LETC certificate under 8 R. Stat. § 1205, and that his blacklist from LETC was unlawful because it operated as a *de facto* employment blacklist as prohibited under 2 R. Stat. § 3134.

The Administrative Court agreed with appellee, and set aside his dishonorable discharge and LETC blacklist. *In re SteKing2008,* 1 R. Adm. 1 (2022). The Administrative Court held that the LETC blacklist operated as a *de facto* blacklist from employment under 2 R. Stat. § 3134 because it appeared that appellee would be unable to obtain such employment. *Id.,* at 1. The Administrative Court also held that because both the Parks Service and LETC did not afford due process to appellee at the time of his dishonorable dis-

charge and blacklists, the administrative actions were unlawful, and thus had to be set aside. *Id.,* at 2-3. The Administrative Court ordered an administrative hearing on the issue of appellee's dishonorable discharge from the Ridgeway Parks Service under 2 R. Stat. § 3309, which found that appellee's conduct was intentional and that a dishonorable discharge from the Parks Service was warranted.[3] See RSC-AD-268, at 4. We initially noted probable jurisdiction limited to a question regarding judicial disqualification, *post,* at 509, but amended our order to note probable jurisdiction limited to the following question: whether the Law Enforcement Training Center has the power to blacklist individuals from obtaining a certification. *Id.*

II

We have jurisdiction over this appeal under 2 R. Stat. § 3322. We must determine whether Administrative Court, in rendering its judgment, relied on a blatant misapplication of the law, violated a constitutional right or liberty, or abused its discretion. See 2 R. Stat. § 3323.

As noted above, 2 R. Stat. § 3134 states that "[i]t is a violation of law to blacklist an individual from employment." The Parks Service and LETC claim that based on the text of 2 R. Stat. § 3134, Developer Oversight did not intend to prohibit blacklists against obtaining certifications, and thus the blacklist issued by LETC was lawful. As both parties acknowledge, the phrase in contention in this case is "from employment." See Brief for Appellee 5, also cf. Brief for Appellant 8. Both parties also attempt to point out ambiguities in the text and advocate for us to use various canons of statutory construction to resolve those ambiguities. But both

[3] A blacklist from LETC was not recommended by the presiding tribunal-at-large in its final judgment.

the Parks Service and LETC and appellee are jumping the gun – our first task is to presume that a legislature says in a statute "what it means" and means in a statute "what it says there." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253-254 (1992). Because the phrase "from employment" is undefined in the Public Safety Act or any other relevant statute, we must give the phrase its ordinary meaning in order to satisfy this first step. See, *e.g.*, *Taniguchi* v. *Kan Pacific Saipan, Ltd.*, 566 U. S. 560, 566 (2012); *Asgrow Seed Co.* v. *Winterboer*, 513 U. S. 179, 187 (1995).

In general, the term "employment" involves an individual's state of being employed. Merriam-Webster's Collegiate Dictionary 408 (11th ed. 2020). The term "employ," in turn, has traditionally encompassed the scenario of an individual being given work to be done with some sort of income or pay. *Id.* (defining the term "employ" as "to provide with a job that pays wages or a salary"); see also American Heritage Dictionary 585 (5th ed. 2016) ("[t]o provide work to (someone) for pay"); Black's Law Dictionary 604 (9th ed. 2009) (defining employment as "[w]ork for which one has been hired and is being paid by an employer"). The term "from," in turn, is used in this context to indicate physical separation or an act or condition of removal, abstention, exclusion, et cetera. Merriam-Webster's Collegiate Dictionary, at 503; see also American Heritage Dictionary, at 705.

Under the phrase's plain meaning, then, 2 R. Stat. § 3134 is unambiguously clear: a department may not prevent someone from receiving a paid job. Here, an LETC certification is not an opportunity for employment, standing alone. Simply receiving a certification does not mean an individual is necessarily gaining employment. Rather, a certification represents the idea that LETC believes the individual being certified is qualified to be a peace officer in the

State of Ridgeway. Of course, it is true that a LETC certification serves as a requisite for an individual to serve in specific positions for virtually all law enforcement agencies in the state, see *infra,* at 1-2.[4] But there is no indication that those who receive certifications from LETC are automatically assigned a position in a certain law enforcement agency, with little wiggle room. The plain text of 2 R. Stat. § 3134 cannot be stretched to claim that employment also applies to certifications acting as requisites for certain types of employment. One who receives a certification from LETC is not being offered a job with a salary or pay, and, consequentially, a LETC blacklist from obtaining a certification is not, under the ordinary meaning of "employment," a blacklist from employment under 2 R. Stat. § 3134.

Appellee tries to argue that the phrase "from employment" signals a broad prohibition on *all* blacklists relating to employment. Brief for Appellee 6. He claims that the term "employment" is ambiguous because it could mean "100 different things to 100 different people," Tr. of Oral Arg. 9, but fails to point out and offer an indication that Developer Oversight did not intend for the terms' ordinary meanings to apply in § 3134.[5] Cf. *Williams* v. *Taylor,* 529

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[4] Interestingly, the Ridgeway County Sheriff's Office has a unit that is specifically comprised of "non-certified persons." See 6 R. Stat. § 2204. The Parks Service and LETC also noted the existence of such a division in their oral argument, as did appellee. Tr. of Oral Arg., at 16. Thus, the Administrative Court's assertion that appellee cannot and will not obtain a job at "any law enforcement agency" is called into serious doubt. 1 R. Adm., at 1.

[5] Indeed, appellee seems to have not realized that we must first look towards the phrase's ordinary meaning when it is undefined in a statute. Such an instruction is useful because it allows us to determine the exact context of a phrase based on what the terms "conveyed to reasonable people at the time they were written." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 16 (2012). As one scholar put it, the "prime directive in statutory interpretation is to apply the meaning that a reasonable reader

U. S. 420, 431 (2000); *Walters* v. *Metropolitan Ed. Enterprises, Inc.*, 519 U. S. 202, 207 (1997). Appellee does attempt to point towards the original title of the Administrative Procedure Act, see Tr. of Oral Arg. at 14, to indicate Developer Oversight's intent of adopting a broader definition of "employment," but fails to realize that the title of a legislative act may not "limit the plain meaning of text." *Pennsylvania Dept. of Corrections* v. *Yeskey,* 524 U. S. 206, 212 (1998). Rather, the title of a statute is useful in statutory interpretation only to "she[d] light on some ambiguous word or phrase in the statute itself." *Whitman* v. *American Trucking Association,* 531 U. S. 457, 483 (2001) (brackets in original) (quoting *Carter* v. *United States,* 530 U. S. 255, 267 (2000)).

On the other hand, however, the plain text of the statute clearly demonstrates Developer Oversight's intentions in enacting § 3134. By limiting the prohibition against blacklists specifically against employment, § 3134 is consistent with Developer Oversight's view that "[a]ll persons who maintain good behavior… have the right to employment." 2

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would derive from the text of the law," so that "for hard cases as well as easy ones, the ordinary meaning (or the `everyday meaning' or the `commonsense' reading) of the relevant statutory text is the anchor for statutory interpretation." W. Eskridge, Interpreting Law 33, 34-35 (2016) (footnote omitted). Thus, "[s]tatutory construction must begin with the language employed by [the legislature] and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Milner* v. *Department of Navy,* 562 U. S. 562, 569 (2011) (quoting *Park 'N Fly, Inc.* v. *Dollar Park & Fly, Inc.*, 469 U. S. 189, 194 (1985)). Of course, such a rule is not absolute; where the "the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters . . . the intention of the drafters, rather than the strict language, controls." *United States* v. *Ron Pair Enterprises, Inc.,* 489 U. S. 235, 242 (1989) (citation omitted).

R. Stat. § 4101, *supra*.[6] As both parties noted, a LETC certification blacklist is not considered the end of the world for an individual's prospects of obtaining any job. Appellee concedes that even though an individual's chances of obtaining employment in, for example, the Sheriff's Office Corrections Division is unlikely because "a LETC Certification plays a big part in how departments view a person," Tr. of Oral Arg., at 16, it is still probable that an individual could be employed in such a capacity even with a LETC blacklist. Furthermore, an interpretation that a blacklist against obtaining certifications from LETC is not unlawful under § 3134 is not unreasonable. Blacklists, like other forms of disciplinary methods such as certification revocation or strikes and warnings, are meant to reflect a peace officer's previous misconduct. Cf. *infra,* at 2. Thus, Developer Oversight's intent to guarantee employment to those "in good behavior," 2 R. Stat. § 4101, would not be frustrated by an LETC blacklist against obtaining a certification. Developer Oversight clearly did not intend for 2 R. Stat. § 3134 to be a blacklist over requisites of employment, especially within the ordinary meaning of the term "employment." To hold otherwise would be an attempt to disregard the plain language of the statute simply because the legislature "must have intended something broader," *Michigan* v. *Bay Mills Indian Community,* 572 U. S. 782, 794 (2014), when it clearly did not intend to do so.

III

[6] This view is consistent with our duty to interpret the statute before us in "'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose." *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U. S. 609, 631-632 (1973) (quoting *Clark* v. *Uebersee Finanz-Korp.,* 332 U. S. 480, 488 (1947)).

The Administrative Court held that appellee's LETC certification blacklist, however, was more of a *de facto* employment blacklist from law enforcement departments because appellee would be "hindered in gaining employment" in law enforcement departments with such a blacklist. See 1 R. Adm., at 1. The Administrative Court also argued that such a blacklist could not reasonably viewed as merely a blacklist from certification because of its "prolonged consequences." *Id.,* at 2.

We disagree. First, when interpreting a statute, our task is to apply the law's plain meaning "as faithfully as we can," not "to assess the consequences of each approach and adopt the one that produces the least mischief." *BP p.l.c.* v. *Mayor and City Council of Baltimore,* 141 S. Ct. 1532, 1542 (2021) (quoting *Lewis* v. *Chicago,* 560 U. S. 205, 217 (2010)). As the Supreme Court stated, the fact that the legislature failed to foresee all the consequences of a statutory enactment is not a sufficient reason for "refusing to give effect to its plain meaning." *Lockhart* v. *United States,* 546 U. S. 142, 146 (2005) (quoting *Union Bank* v. *Wolas,* 502 U. S. 151, 158 (1991)). The statute is unambiguous in that blacklists excluding individuals from *receiving* jobs is unlawful, but clearly does not state that a blacklist excluding individual from obtaining a certification, even one that serves as a requisite for some jobs, is prohibited.

The Administrative Court therefore based its judgment on a "raw consequentialist calculation" of the effects a blacklist from obtaining a LETC certification may result to an individual. *Niz-Chavez* v. *Garland,* 141 S. Ct. 1474, 1486 (2021). Appellee also tries to advocate for a consequentialist interpretation of the legality of LETC blacklists, but to no avail. Although such considerations certainly seem extremely tempting, evaluating the consequences "plays no

role in our decision." *Id.* Our job is "neither to add nor to subtract, neither to delete nor to distort [the words of the legislature]," *62 Cases of Jam* v. *United States*, 340 U. S. 593, 596 (1951), but to "give the law's terms their ordinary meaning." *Niz-Chavez,* 141 S. Ct., at 1486.[7] In that small way, we ensure that our government does not "exceed its statutory license," see *id.,* and that courts do not disregard a statute's plain terms on some "extratextual consideration." *Bostock* v. *Clayton County,* 140 S. Ct. 1731, 1749 (2020). Regardless of the consequences that may result when a blacklist from obtaining a certification from LETC is ordered against an individual, such a blacklist is not explicitly prohibited by 2 R. Stat. § 3134. As the Parks Service and LETC note, § 3134 prohibits blacklists "on" employment, not "around" employment. See Tr. of Oral Arg. 6. By incorrectly assuming that 2 R. Stat. § 3134's restrictions against blacklists from employment also includes blacklists from obtaining a certification considered a requisite by some departments for certain positions, the Administrative Court mistakenly distorted the text of 2 R. Stat. § 3134 in holding that a LETC blacklist from obtaining a certification is unlawful.

* * *

For the reasons stated above, we hold that blacklists issued by the Ridgeway Law Enforcement Training Center

[7] See also *Borden* v. *United States,* 141 S. Ct. 1817, 1829 (2021) (plurality opinion) ("[a] court does not get to delete inconvenient language and insert convenient language to yield the court's preferred meaning"); *Michigan* v. *Bay Mills Indian Community,* 572 U. S. 782, 794 (2014) (courts do not have the power to disregard clear language simply because the legislature "must have intended something broader") (internal quotation marks omitted); *Pavelic & LeFlore* v. *Marvel Entertainment Group, Div. of Cadence Industries Corp.,* 493 U. S. 120, 126 (1989) (noting that a reviewing court's task is to "apply the text, not improve on it").

against obtaining a certification in the future are lawful under 2 R. Stat. § 3134, and that the Administrative Court misapplied the law when it held otherwise. Insofar as the Administrative Court held that blacklists from the LETC from obtaining certifications were unlawful, its judgment is reversed. The judgment of the Administrative Court is otherwise affirmed.

Affirmed in part and reversed in part.

IN RE RIDING CIRCUIT AMENDMENT ACT

No. —. Decided May 25, 2022

The Riding Circuit Amendment Act is repealed by the Court. The Senate's action in enacting the act is an attempt to tell this Court how it should administer itself, beyond the reaches of the constitution. A case or controversy is not required because this action is merely an administrative order of the Court, nullifying the effects of a rule unlawfully promulgated by the Senate.

Riding Circuit Amendment Act repealed.

PER CURIAM.

When evaluating a matter such as riding justices, it is entirely an administrative matter. It becomes a concourse of impossible dilemmas with no equilibrium. Hopefully this order puts confusion at ease. We begin with saying what this order is not. This order is not a departure from the status quo; it is not the court attempting to usurp the power and forge its own veto with constitutional provision, and it is not the court attempting to superimpose its own whim on the other branches of government or onto a private citizen. This lack of exercise of any power onto a surrounding branch thereby makes the matter entirely internal. The issue lies precisely within the judicial branch with its only vector of escape is with the Senate attempting to, beyond constitutional authority, tell the court how it should administer itself.

I

When the court decrees that a law is unconstitutional, it is not enjoining any party. It is a statement of the court that the law will not be followed because it is unconstitutional, and will be seen as, in the words of Chief Justice Marshall,

"void." Furthermore, how is a court ought to proceed and uphold a perceived violation of the constitution institutionalized in its rules? The simple fact of the matter is that the court need not provide a constitutional reason to throw out a rule.

The exercise of the court rulemaking process is prescribed entirely onto the Supreme Court, with a tertiary grant to the legislature granting it the ability to revise. The language of the constitution gives the legislature essentially revise and repeal powers over the rules, however it specifically and unambiguously created this power onto a rule previously adopted by the court. This however, does not give the power to the legislature to introduce new rules. When the legislature created a prohibition on a practice that the Court was involved in, and that prohibition is manifestly emanated into the operation of the court, it has created a rule. The Constitution, through its language, does not allow for this to happen.

Through our administrative power to handle as to how we conduct the day-to-day business of the court, we are simply stating that the incursion of that power is beyond the authority of the legislature and ought not to be followed. We do not need to derive any additional power from the case or controversy clause to assert a power that exists entirely outside of it, that being the rulemaking power and the administrative power. If we hold the power, at the same time to make a rule, then we duly hold the power to rescind. That is where we derive our legal authority. When we take a deterministic stance in a matter like this, where we disregard a law as it applies, how else are we to avoid saying the words "the law ought not to be followed?"

When Chief Justice Marshall, in *Marbury* v. *Madison*, 1 Cranch 137 (1803), was trying to resolve the conundrum as

to whether a judge should enforce a law they determine to also be unconstitutional, he looked squarely to the oath he took to resolve this matter. He stated:

> "Why does a judge swear to discharge his duties agreeably to the Constitution of the United States if that Constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him? If such be the real state of things, this is worse than solemn mockery. To prescribe or to take this oath becomes equally a crime." *Id.*, at 179.

The grey area then becomes the fact that this is a matter that applies exclusively to ourselves, and is enforced entirely by our own good behavior. Its why this matter cannot exist as any case or controversy, and it is why it is inherently administrative. With that, how are we to hold ourselves to a standard and rule which we find to be unconstitutional and illegitimate? To what principle are we obedient to if we take active enforcement of this? Do we serve the Constitution or the will of the Senate? We cannot as interpreters of this Constitution, hang ourselves with something antithetical to it. Neither in case, nor controversy, nor in chambers. The Constitution ceases to become our master if we refuse to enforce it unto ourselves.

II

A great source of debate regarding this order arises from the fact that it is proceeding as if it were not a case. Firstly, it is an asinine belief that the case or controversy clause applies to the rulemaking process of the court. For the court does not need case nor controversy to adopt, revise, or repeal a rule of the court. Likewise, it needs neither case or controversy to refuse adherence to a *de facto* rule clothed as law. The arguers of this point of view fail to contend how this would proceed as a case or controversy, other than the

fact that it "should." This Court was able to examine two possible routes, and we were able to generate two adamant reasons as to why these routes ought to be avoided as matter of necessity.

The first route is if a justice decided that he wished to sue for the power to ride the Superior Court. Remedy and law be obvious, but where does the injury exist? How does a lack of ability to take a case generate injury beyond a generalized grievance? The injury from this prohibition is incognizable, and unrecognized by our current case or controversy jurisprudence. The second route is for a justice to just ride the Superior Court anyways, and deal with the inevitable appeals on the matter. What a shame it is for the justice system if the court invented and schemed its own controversies to deal with matters it thought wrong. Unraveling parties into a nuanced discussion not on the merits of their case but on the authority of the Senate to act in a way nowhere near related to the controversy at hand. It is a disgusting practice for the court to engage in intentional disobedience of rule or law for the sake of proving its unconstitutionality. It is also a manifestly dangerous maneuver for a justice to act like he is now somehow above the law, and it puts the court in a more dangerous point of public perception if the citizenry sees a justice disregard law without putting pen to paper as to why he made such a decision. How is this fair for any party involved? For the defendant whose appeal now turns away from his remedy to the legitimacy of his presiding judge. Plaintiffs and defendants alike would be caught in a vicious crossfire over silly and otherwise inconsequential constitutional law blather.

Skeptics then attempt to argue that because we have now just proven inherit lack of case or controversy means that it should not have had any adjudication, but it has more

power being argued as evidence that this matter is, in fact, administrative. The lack of a case or controversy arises because this is something we enforce exclusively onto ourselves, rather than onto others. Then follows the argument that the matter should have been received and afforded some sort of process such as briefs and oral arguments. The case or controversy clause requires no such thing. It just requires adversarial parties, an injured party, entitlement of law, and remedy. It does not require briefs, oral arguments, or petitions. Those would fall under the spectacle of due process.

Due process arguments are entirely a different ballgame than case or controversy arguments because they are evaluated onto a different lens. Due process only is afforded by the Constitution when there is some injury at hand. It is hard to find or clearly establish any injury caused by having riding justices other than the fact that it is looked upon disfavorably. There has been no offer of empirical evidence that by the court making today's decision will result in some injury. For example, in *RPS* v. *SteKing*, *ante,* at 1, the court reversed the opinion of their fellow justice, thereby disproving the notion that the court is now somehow a fraternity of organized stakeholders wishing to impose their will if one their own gets entoiled in controversy. Currently preponderance only exists in proving that the process, while looked upon disfavorably, produces no harm to neither party in a claim. So, with the court now affirming its rulemaking powers and reversing a rule imposed by the legislature, it has not violated any principle nor prong of due process. Briefs, oral arguments, and all other appendages of due process are only required when there is injury at stake. If the court had a scintilla of belief that its actions would place undue burden on any party proceeding before the court now or in the future, it would have undergone some sort of process to

ensure stakeholders be heard. But, when the matter is over the general disadvantages of a practice and actual harm going inarticulate, it makes little sense as to why it ought to be afforded due process. We understand that people want to be heard over this matter, but it is not viable to afford them that right over matters strictly involving the interior of the judiciary and not the exterior. The lack of any cognizable injury or dead-set requirement of due process only serves to strengthen the theme of this order, and that this is inherently an administrative matter with the effects only being felt on the inside, with litigator's only articulate gripe being disdain for the procedure and not cognizable harm or prejudice to either party in a matter.

The administrative rule promulgated by the Senate is repealed.

It is so ordered.

Syllabus

STATE *v.* INFINITY

APPEAL FROM THE SUPERIOR COURT OF RIDGEWAY

No. 22-04. Argued June 6, 2022 —– Decided June 15, 2022

On May 8th, 2022, the State charged appellee InfinityTurtleXD with second-degree murder. The State filed four exhibits, A-D. Exhibit A was a video of the accused committing the offense, exhibit B was an interview of the complaining witness, exhibit C was an interview of the defendant, and exhibit D was the police report generated by the State Bureau of Investigations. The defense then moved to strike exhibits B, C, and D for failing to authenticate the evidence without a "gif-refresh" and "ID display." The Superior Court suppressed exhibits B and C on the grounds that they failed to contain a "gif-refresh" and "ID display." The State subsequently appealed.

Held: The Superior Court erred in holding that Discord evidence must be authenticated by a refresh of the Discord client and obtaining an ID of the person in question. Pp. 24–33.

(a) As the motion presented resembles a motion to exclude, rather than a motion *in limine*, the appropriate standard of review in this case is *de novo*, as the Superior Court did not rely on factual determinations in its ruling. Pp. 24–26.

(b) The first clause in Rid. Rule Evid. 55 states that "Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to the following[.]" Such a clause acts as the parent clause in which all other enacting clauses ought to be read into, a similar interpretation scheme to *NLRB* v. *SW General, Inc.*, 137 S. Ct. 929. Pp. 27-28.

(c) The first clause of Rule 55, in which its contents directly stem from, sets a boundary of the application of the rule that the rule ought to be applied as a fallback when "[e]xtrinsic evidence of authenticity" is not provided by the parties. Thus, the rule provides that self-authentication of Discord evidence is merely optional, not a prerequisite for its admission. Pp. 29-30.

(d) The hearsay question is better left to the Superior Court to make the first determination, as the issue is far more complex and deals directly with the evidence below. P. 33.

Vacated and remanded.

JACKSON, J., delivered the opinion of the Court, in which BURGER, C. J., and THOMAS, J., joined, and which POWELL, J., joined in part. POWELL, J., filed an opinion concurring in part and concurring in the judgment, *post,* p. 28. GORSUCH, J., took no part in the consideration or decision of this case.

Solicitor General Turntable argued the cause for the State of Ridgeway. With him on the briefs was *then-Attorney General CIifford2.*

HolyRomanRyan argued the cause for appellee. With him on the briefs was *TaxesArentAwesome* and *OfficerVideoGame.*

JUSTICE JACKSON delivered the opinion of the Court.

On May 8th, 2022, the State charged appellee InfinityTurtleXD with second-degree murder. The State filed four exhibits, A-D. Exhibit A was a video of the accused committing the offense, exhibit B was an interview of the complaining witness, exhibit C was an interview of the defendant, and exhibit D was the police report generated by the State Bureau of Investigations. The defense then moved to strike exhibits B, C, and D for failing to authenticate the evidence without a "gif-refresh" and "ID display." The Superior Court suppressed exhibits B and C on the grounds that they failed to contain a "gif-refresh" and "ID display." The State appealed on May 22nd, and we noted probable jurisdiction, *post,* at 509.

I

When reviewing this matter, the Superior Court misinterpreted the law.

A

To begin, there is a large difference between a motion to exclude/suppress and a motion *in limine*. The errors that this court ran into are predicated on the incorrect application of what type of review ought to be engaged in either situation. The erroneous legal conclusions become blatant when revealed that they were weighed with an incorrect analysis of the facts before the court.

Motions to exclude or suppress evidence, are used exclusively for constitutional or statutory prohibitions on the inclusion of the evidence rather than upholding the "more probative than prejudicial" principles of a fair trial. On the other hand, motions *in limine* are directly aimed at the admissibility of evidence. *Mansur* v. *Ford Motor Co*., 197 Cal. App. 4th 1365, 1387, 129 Cal. Rptr. 3d 200, 217 (Cal. Ct. App. 2011). Motions *in limine* are directly aimed at offering evidentiary arguments, which are a matter of discretion, see *United States v. Abel*, 469 U. S. 45, 54 (1984), rather than posing a question of law, which falls under a wider blanket for review than an evidentiary one. While it is true that evidentiary exclusions *in limine* are reviewed as abuses of discretion, See *Sprint/United Management Co.* v. *Mendelsohn,* 552 U. S. 379, 384 (2008), there is a greater amount of deference to the trial courts on their decisions of evidence which would otherwise make these arguments much harder to assert under abuse-of-discretion review.

The first hurdle that must be decided is as to whether the motion presented by the defense, in their form notwithstanding their function are either a motion to exclude, or a *de facto* motion *in limine.* Motions *in limine* are entirely

predicated on factual arguments and offers for proof in furtherance of their factual arguments. Exclusion motions are, for the most part, arguments based off legal than factual pretext. The motion entered by the defense, the responses from the government, and the order entered by the Superior Court reads like a legal argument, not like an evidentiary argument more akin to a motion *in limine,* thus not entitling appellate deference to the trial court. This then triggers our review *de novo*.

The next part to be determined is whether it ought to be reviewed in the way that it was. As mentioned earlier, the goals of a motion in these two categories are different, and therefore are reviewed under completely different standards. The goal of a question of law is to beg the meaning of a given statute, canon, or clause and further apply that piece of text as to the facts presented. Evidentiary arguments are entirely predicated on balancing the prejudicial and probative values of a piece of evidence and reviewing them in the context of their usage, and applying that context of usage with the Rules of Evidence. Our rules grant general admissibility for all relevant exhibits that do not violate the Constitution, statutory law, or other provisions of the Rules of Evidence. See Rid. Rule Evid. 11. The rules of evidence are clarifications as to what evidence is by its nature of composure - prejudicial. We find that the motion was reviewed as a question of law, and not as an evidentiary question. The rules of evidence are not meant to be answered, or reviewed by any court as a legal question in the same manner of which the Superior Court ruled. This is largely in part due to the subjective nature of evidence, and that a hyper-technical approach to evidence is only warranted unless you are dealing with a subliminal question of Constitutional or statutory provision. The hyper-technical

approach to reviewing the evidence utilized by the Superior Court ultimately led to its erroneous decision.

B

The usage of the due process clause by appellee to justify the exclusion of evidence is fundamentally flawed. The due process clause does not exist as a raw mineral to manufacture constitutional arguments where the text otherwise abandons you.

As previously ascertained, in most cases other than the one presented here today, rulings over evidence by a judge is reviewed under an abuse-of-discretion standard with deference to the decisions of the trial court. See *Mendelsohn, supra* ("a district court's familiarity with the details of the case and its greater experience in evidentiary matters, courts of appeals afford broad discretion to a district court's evidentiary rulings"). To argue the exclusion of prejudicial evidence under a due process standard turns the entire question into a constitutional one, which will ultimately fall onto our Court to figure out what exactly is a "fair trial." The problem is, is that we already have our own guidebook as to what we find to constitute a "fair trial." They are the Rules of Evidence. Other courts agree. See *People* v. *Partida*, 37 Cal. 4th 428, 435, 122 P. 3d 765 (2005) ("[The] defendant may make a very narrow due process argument on appeal. He may argue that the asserted error in admitting the evidence over his Evidence Code section 352 objection had the additional legal consequence of violating due process.") The argument that appellee attempts to make what would normally be an evidentiary argument, which is reviewed as an abuse of discretion by our court, into an overarching constitutional argument, which is reviewed with a lot less deference to the trial court. If we were to allow even the slight manifesting of any due process rights in evidence

other than what it inserted in the Rules of Evidence, we would be foreclosing fairness for a technical approach to evidence, and creating a second Rules of Evidence - the rulings of this court over trivial matters, something of which is to be avoided at all costs.

C

To begin, let's take a pragmatic look at the reasoning as to why self-authentication exists in the first place. It would be extremely time consuming to have the county clerk personally attest to every deed, record, or other instrument held in his custody, so we created a set of processes such that the county clerk does not need to be called to testify. Instead, we allow the clerk to certify or endorse a given document and accept that, bearing his signature, the document is unaltered, original, and authentic. Self-authentication is only one means of proving the authenticity of a piece of evidence, and if you so truly wanted, you can get the in-court attestation as to the authenticity of a given record by the clerk. The role of the self-authentication rule by no means to place limits on what evidence is and ought to be considered authentic, but instead a route for the ease of use of all parties that wish to introduce a record as evidence. The purpose of the rule is not to prohibit, but to expand the possibilities for establishing authenticity.

Rule 55 should only be looked upon when a party refuses to authenticate evidence through Rule 54. The very first clause of Rule 55 defines the extent of its application. "Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to the following[.]" This clause acts as the parent clause in which all other enacting clauses ought to be read into. This is a similar interpretation scheme to *NLRB* v. *SW General, Inc.*,

137 S. Ct. 929 (2017), in which the Court reviewed the construction of a law and seeks a higher clause to provide context for its lower clauses. It can only then be reasonably assumed, that if first clause of Rule 55, in which its contents directly stem from, sets a boundary of the application of the rule that the rule ought to be applied as a fallback when "[e]xtrinsic evidence of authenticity" is not provided by the parties. In no other case should the rule ought to be engaged. If the rule was to be forcefully applied as to the evidence, then it would give an imperative command that the rule must engage. Instead, it is not offered imperatively, but as a secondary means. Furthermore, "[Extrinsic proof of authenticity] not required with respect to the following[]" backs up this claim by clearly making it optional for a party to authenticate through Rule 55 and gives them a choice of using Rule 54. If the authors of the rules intended for Rule 55 to be used for Discord evidence, it would have been done so with an imperative command, not an optional requirement in a rule otherwise designed for efficiency.

Appellee's argument would only be successful as to this matter if we were to ignore every single provision surrounding the words "[t]hose displaying Discord must, however, authenticate identities through a client reload and display of Discord ID." We do not believe such a strict constructionist theory is palatable for interpreting the rules of evidence. As previously mentioned, evidence is a highly consequential, yet also highly subjective realm of law and to strictly construct the rules of evidence would inflict catastrophic consequences onto the trial courts. If the rules were meant to be, in any way, strictly constructed, then our regular standard of review regarding evidentiary decisions would be *de novo* and not an abuse of discretion. The doctrine of deference, is based on the fact that a judge knows best about their case, their facts, and the nuances that

drove their decision. If we were to accept a strict construction, then the judge would be none the wiser compared to the justice. Instead, we have opted with a plain meaning approach using the framework previously ascertained. The plain meaning of Rule 55(d) is that those who wish to admit Discord evidence, and do not wish to call someone to testify as to its state, may do so if there is a client reload and display of a Discord ID. This conclusion was made taking into account the narrowed jurisdiction Rule 55 provides for itself.

The authors of the rule clearly intended for the refresh requirement to only be under evidence authenticated through Rule 55, and that evidence authenticated through other means does not require such. Rule 55 and Rule 54 have parallel clauses, those being Rule 54(b)(8) in which the rules allow for the authentication of "digital communications" by the submission of extrinsic evidence or testimony which allows the trial courts to make a "reasonable" determination. The only standard that the government must meet in the authentication of its exhibits B and C, is that they offer additional proof, through testimony or further evidence, which would allow a reasonable trial judge to confirm its authenticity. What a trial judge requires for evidence to be considered authentic, through Rule 54, is of his own judgment - so long he is reasonable and does not abuse his discretion. If we were looking at this case as if it was an abuse of discretion, and not a question of law based on an erroneous interpretation of Rule 55, it would be much harder for appellant to be successful in their arguments. If the authors had true intention to insert a requirement for Discord evidence in general, it would have been positioned under Rule 54(b)(8) and demand that Discord evidence be

authenticated in a certain way rather than completely leaving the authentication of a "digital communication" up to the discretion of the judge.

II

Appellee attempts to argue that *Greenlaw* v. *United States*, 554 U. S. 237 (2008), is a blanket prohibition on the party presentation rule. We disagree. Its holding is much narrower to say that "an appellate court may not alter a judgment to benefit a nonappealing party." See *Dan Ryan Builders, Inc.* v. *Crystal Ridge Development, Inc.*, 783 F. 3d 976 (CA4 2015) (citing Greenlaw, 554 U. S., at 244).

On face value the party presentation rule seems like a perfectly logical doctrine to adopt as is, with then-Judge Scalia opining, "[t]he premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them[]." See Carducci v. *Regan*, 714 F. 2d 171, 177 (CADC 1983). Unfortunately, we do not believe this doctrine is palatable for our system of laws. This is not to say that we are attempting to grant ourselves *carte blanche* to right every perceived wrong.

We cannot do our own outside factual research to come to a conclusion as to a question. Therefore, any determination that we wish to make *sua sponte* must entirely be composed of the facts entered by the parties and the trial court. To do such a thing would create due process concerns over the evidence. See Frost, The Limits of Advocacy, 59 Duke L. J. 447 (2009). Furthermore, in doing so we would go beyond our appellate authority by, on our own measure, trying additional facts in a case. See *Mickens* v. *Taylor*, 535 U. S. 162, 177 (2002) (Kennedy, J., concurring) ("Our role is to defer

to the District Court's factual findings unless we can conclude they are clearly erroneous"). Because of this, we cannot insert and answer our own question, if the facts surrounding that question do not share the same facts as the other questions, or cannot be found in the trial record.

Appellee's own argument facets leniency around pro se litigants because they are not normally expected to actually know the law. Our bar examination is nothing more than a basic competency test with the word "versus" thrown around every so often with fancy citations. Our lawyers do not spend 3 painstaking years of their life in the study of the laws, and further have completed a strenuous examination of basic ability to be a successful advocate. If we were comparing knowledge, we would be closer to a pro se litigant more than an admitted attorney. This coupled with an enclave of 250 years of precedent, makes it an overwhelming task to expect anyone, including our most veteran and well learned attorneys to completely know the entirety of law. At an objective stance, we all have the legal intellect akin to a pro se litigant. Judges and justices alike need to be afforded the opportunity to act upon their discretion and say what the law is, notwithstanding the briefs they are predicated upon. If we were to zip-tie ourselves then we lose our fundamental concern to "say what the law is." See *Crystal Ridge, supra* ("A party's failure to identify the applicable legal rule certainly does not diminish a court's responsibility to apply that rule."). One caveat to this, is that we were to add grounds for *sua sponte* decision making and question additions, they must only be on grounds where parties did not intentionally exclude them. We do not find it acceptable to answer a question where both parties intended for the controversy to not be adjudicated upon.

Another concern which provides legs to the party presentation rule is that when a Judge or Justice goes *sua sponte*, they lose their black robes and become an adversarial party. We do not agree. Impartiality is not lost when the court invites parties to submit briefs on a question it deems relevant or inevitable for solving the controversy. Instead, just as in this case, it is a proactive measure to address a matter the court finds that it will not avoid in its decision making. By creating an additional question, or in the case of the Superior Court, requiring supplemental pleadings on law not originally plead to, is a way of the court affording the parties to be heard on the controversy and not be victim to a runaway court esteeming to resolve the issues of the world unilaterally. We believe that if we are ought to insert an additional question, both parties must be able to brief and argue on it. To do so would be depriving parties the ability to be heard, and thereby an abuse of discretion. See *Ms. S.* v. *Regional School Unit 72*, 916 F. 3d 41 (CA1 2019). We also cannot go beyond what was adjudicated in the Superior Court. See *Hankins* v. *Lyght*, 441 F. 3d 96, 114 (CA2 2006) (Sotomayor, J., dissenting); *Tylicki* v. *Schwartz*, 401 F. App'x 603, 604 (CA2 2010). There are however some exceptions to this rule where "the proper resolution is beyond any doubt" or "injustice might otherwise result," see *Singleton* v. *Wulff,* 428 U. S. 106 (1976), as well as a situation in which a court considers an issue "antecedent to ... and ultimately dispositive of' the dispute before it, even an issue the parties fail to identify and brief." See *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.,* 508 U. S. 439, 447 (1993). The court may also entertain additional legal theories to apply the proper construction of law. See *Kamen* v. *Kemper Financial Services*, Inc., 500 U. S. 90, 99 (1991).

Due to the fact that the hearsay issue has not been heard by the Superior Court, and the issue is an evidentiary decision best left for the Superior Court, we decline to answer it. The judgment of the Superior Court is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Gorsuch took no part in the consideration or decision of this case.

Justice Powell, concurring in part and concurring in the judgment.

I join the opinion of the Court insofar it holds that the Superior Court's judgment regarding the self-authentication of Discord evidence should be vacated. In my (and, as I see, the Court's) view, the drafters of the Ridgeway Rules of Evidence did not intend to require that all Discord evidence be self-authenticating – rather, Discord evidence that includes a refresh of the Discord client, as well as the ID of the user, is automatically self-authenticating. See Rid. Rule Evid. 55 ("Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to the following..."). I also agree that the hearsay issue raised by us should be decided by the Superior Court in the first instance. We are a court of "review, not of first view." *Adarand Constructors, Inc.* v. *Mineta,* 534 U. S. 103, 110 (2001); *Cutter* v. *Wilkinson,* 544 U. S. 709, 718 n. 7 (2005). I do not, however, agree with the majority's rationale in holding that *de novo* review was appropriate for the authenticating issue.

Ordinarily, when reviewing a decision from the Superior Court, "decisions on questions of law are reviewable *de novo*, decisions on questions of fact are reviewable for clear

error, and decisions on matters of discretion are reviewable for abuse of discretion." *Highmark Inc.* v. *Allcare Health Management System, Inc.,* 572 U. S. 559, 563 (2014) (internal quotation marks omitted); see also *Pierce* v. *Underwood*, 487 U. S. 552, 558 (1988). Although it may not be obvious at first glance, the standard of review may be critical to the outcome of the case. See *Dickinson* v. *Zurko*, 527 U. S. 150, 162 (1999) ("The upshot in terms of judicial review is some practical difference in outcome depending upon which standard is used"). For example, though substantial deference is afforded to the lower court's findings and ruling when reviewing for abuse of discretion or clear error,[1] "[w]hen *de novo* review is compelled, no form of appellate deference is acceptable." *Salve Regina College* v. *Russell*, 499 U. S. 225, 238 (1991). As the majority correctly points out, thus, judicial deference might as well be a major factor in the outcome of a certain case.[2]

The majority is correct in stating that motions to exclude or suppress are a matter of law. After all, the basis for such motions comes from the Fourth Amendment's exclusionary rule, which requires state courts to exclude evidence "obtained in violation of the Fourth Amendment." *Wright* v. *West,* 505 U. S. 277, 293 (1992); see also *Mapp* v. *Ohio*, 367

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[1] *E.g.*, *Easley* v. *Cromartie*, 532 U. S. 234, 242 (2001) (noting that an appellate court reviewing for clear error cannot reverse a lower court's finding of fact simply because [it] would have decided the case differently") (internal quotation marks omitted); *Concrete Pipe & Products of Cal, Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 623 (1993) (similar); *Anderson* v. *Bessemer City*, 470 U. S. 564, 573 (1985) (similar); *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 403-404 (1990) (emphasizing the deferential nature of abuse of discretion); *Koon* v. *United States*, 518 U. S. 81, 98-99 (1996) (same); *General Electric Co.* v. *Joiner*, 522 U. S. 136, 143 (1997) (same).

[2] As I explain below, however, that is not the case here.

U. S. 643, 654-660 (1961); *Simmons* v. *United States,* 390 U. S. 377, 389 (1968). Thus, as a matter of law, the grant or a denial of a motion to suppress evidence on constitutional grounds is most certainly a matter of law, to be reviewed *de novo.* On the other hand, motions *in limine* are evidentiary challenges rooted in the Ridgeway Rules of Evidence, which accord the Superior Court a "wide discretion" in order to determine whether evidence should be admitted under it. Cf. *United States* v. *Abel,* 469 U. S. 45, 54 (1984). Such a practice allows the trial court, with its "familiarity with the details of the case and its greater experience in evidentiary matters," to resolve such issues without expecting the appellate court to undertake its own independent analysis of the matter at hand. *Sprint/United Management Co.* v. *Mendelsohn*, 552 U. S. 379, 384 (2008). Thus, as the majority correctly points out, the Superior Court's rulings on motions *in limine* would necessarily be reviewed for abuse of discretion. *Id.*

I agree with the majority that the motion presented below was erroneously titled as a "motion to strike." Those motions are presented when testimony during the trial has been successfully objected to, or, in the civil context, when a pleading contains "any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter." Rid. Rule Civ. Proc. 12(c). I do not, however, believe that the motion was a motion to exclude, as the majority ultimately holds. For one, the issue presented before us centers solely on whether certain evidence must be self-authenticating under Rid. Rule Evid. 55(d). As the majority has already pointed out, a matter under Rule 55(d) is a matter under the Ridgeway Rules of Evidence, and should be reviewed for abuse of discretion, as the Supreme Court has held for nearly 140 years. Abandoning a line of rulings holding that

evidentiary matters are matters of discretion would seem unwise, especially when such a holding has been reaffirmed only recently. Second, the original grounds for the motion *in limine* below all relied on some section of the Ridgeway Rules of Evidence, see App. 6-7 (citing Rid. Rule Evid. 55(d), then citing Rid. Rule Evid. 50(c), and finally citing Rid. Rule Evid. 10(1)). In none of the arguments supporting the motion to suppress did appellee raise a constitutional claim, and no such issue is presented here by the State. The evidentiary motion is more akin to a motion *in limine,* and therefore the deferential abuse-of-discretion standard applies to the Superior Court's ruling on the motion. The majority claims that the motion presented was *not* a motion *in limine,* simply because ultimately, the Superior Court's judgment rested on a purely legal determination. But the fact that the Superior Court did not rely on factual determinations does not change the type of motion presented, as the majority suggests. Again, a motion *in limine* attacks evidence sought to be admitted based on its relevance or admissibility under the Ridgeway Rules of Evidence, and again, those rules provide the Superior Court with a wide discretion to determine the admissibility of such evidence. See *Abel, supra*; also cf. *Spring Co.* v. *Edgar,* 99 U. S. 645, 658 (1879).

The majority's opinion suggests that the adoption of the *de novo* standard in this case is simply because it is a lower burden for the State to meet. *Ante,* at 24. We should not, however, attempt to change the appropriate standard of review, especially one that has been well-settled for 140 years, simply because one party would face a higher burden under

that standard than another.[3] To do so would be a weak attempt to skirt the proper administration of justice, and we risk besmirching the sound administration of justice and respect for the lower court's decision that is associated with the deferential nature of abuse-of-discretion review. *Cooter & Gell* v. *Hartmarx Corp.,* 496 U. S. 384, 403 (1990). As the court that exercises original jurisdiction over all criminal cases, see Rid. Const. Art. V, § IV, the Superior Court is in a far better position to decide evidentiary matters. See *Sprint/United Management, supra,* also cf. *Miller* v. *Fenton,* 474 U. S. 104, 114 (1985). We should respect the Superior Court's judgment in this case, as this Court does not regularly deal with evidentiary matters, nor factfinding, at a comparable rate of that with the Superior Court. Furthermore, the abuse-of-discretion standard applies in this case does not affect our ability to correct the Superior Court's legal or factual error, as the majority may claim. *Highmark, supra,* at 563 n. 2; also cf. *Cooter & Gell*, *supra,* at 402 ("[I]f a [trial] court's findings rest on an erroneous view of the law, they may be set aside on that basis.") (quoting *Pullman-Standard* v. *Swint,* 456 U. S. 273, 287 (1982)). The Superior Court would necessarily abuse its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. See *Dart Cherokee Basin Co.* v. *Owens*, 574 U. S. 81, 91 (2014); *Cooter & Gell*, 496 U. S., at 405; see also *Koon* v. *United States*, 518 U. S. 81, 100 (1996) ("A [trial] court by definition abuses its

[3] Another factor counselling against *de novo* review of evidentiary issues is that it would require the appellate court to invest time and energy in the unproductive task of determining "not what the law now is, but what the Government was substantially justified in believing it to have been." *Cooter & Gell, supra,* at 403 (quoting *Pierce, supra,* at 561).

discretion when it makes an error of law").[4] Thus, although we review for an abuse of discretion, the deference to the Superior Court's judgment is lost when it relies on an erroneous legal determination.

I concur in the judgment because I believe that the Superior Court abused its discretion in striking Exhibits B and C below. Here, like the majority, I believe the Superior Court misconstrued the text of Rule 55(d) in holding that Discord evidence must be self-authenticating to be admissible. The first clause, as the majority points out, indicates that no "[e]xtrinsic evidence of authenticity" would be required in the case that the Discord evidence being provided contains a refresh, as well as the ID of the subject. And in this context, extrinsic would mean external or outside. See, *e.g.*, American Heritage Dictionary 629 (5th ed. 2016); New Oxford American Dictionary 615 (3d ed. 2010). By interpreting Rule 55(d) as a rigid mandate for all Discord evidence to be self-authenticating, the Superior Court committed an error of law. Rule 55(d)'s purpose is to afford broad discretion to trial judges as to whether Discord evidence is admissible, not incorporate a strict "all-or-nothing" mandate.[5]

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[4] Indeed, some members of the majority believe that the deferential nature of abuse-of-discretion review requires us to adopt the Superior Court's views without any sort of action. This view, however, is mistaken; the deference given to the Superior Court's decision merely means that we should affirm the decision of the Superior Court unless we find a reliance on a legal or factual determination that is "manifestly erroneous." *General Electric Co., supra,* at 142. As I explain in the next paragraph, I agree with the majority that the Superior Court relied on an erroneous view of the law, and thus its judgment should be vacated.

[5] Of course, the discretion granted to judges is not a freestanding power for the judge to do whatever he wants. *Martin* v. *Franklin Capital Corp.,* 546 U. S. 132, 139 (2005) (noting that a court's "[d]iscretion is not whim"). Discretionary choices should not be guided by a "court's inclination, but [by]

For the foregoing reasons, I join the opinion of the Court insofar as it holds that the Superior Court misapplied the law in excluding exhibits B and C below, and that the hearsay issue should be decided in the Superior Court first, but concur in the judgment only insofar as the majority holds that review *de novo* is the appropriate standard of review for evidentiary matters.

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its judgment; and its judgment is to be guided by sound legal principles." *United States* v. *Taylor*, 487 U. S. 326, 336 (1988) (internal quotation marks omitted).

Per Curiam

IN RE CENTURION

PETITION FOR MANDAMUS TO THE SUPERIOR COURT OF RIDGEWAY AND APPLICATION FOR STAY

No. 22-07 (22A001). Decided July 23, 2022

Petitioner was charged with several crimes of various severity, and requested a jury trial. After the Superior Court scheduled the trial to begin on July 23, 2022, and ordered that the trial be conducted on Discord, petitioner argued that the Superior Court's refusal to conduct a jury trial in-game constituted a violation of his rights under Rid. Const., Art. I, §VI. The Superior Court denied a stay, and petitioner filed a petition for a writ of mandamus in order to compel the Superior Court to hold the trial in-game.

Held: Petitioner has not demonstrated that the Superior Court erred in ordering the trial to be conducted on Discord. Pp. 42-45.

(a) To obtain a stay pending the disposition and filing of a writ of certiorari or appeal, an applicant normally must demonstrate (1) a reasonable probability that three Justices will consider the issue sufficiently meritorious to grant certiorari or note probable jurisdiction; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. See, e.g., *Times-Picayune Publishing Corp.* v. *Schulingkamp*, 419 U. S. 1301, 1305 (Powell, J., in chambers); *Hollingsworth* v. *Perry,* 558 U.S. 183, 190 (*per curiam*). In close cases the issuing Justice or the Court should balance the equities and weigh the relative harms to the applicant and to the respondent. *Id.,* see also *Lucas* v. *Townsend*, 486 U. S. 1301, 1304 (Kennedy, J., in chambers); *Rostker* v. *Goldberg*, 448 U. S. 1306, 1308 (Brennan, J., in chambers). In a case where a petition for a writ of mandamus is sought, an applicant seeking a stay pending the filing and disposition of such petition "must show a fair prospect that a majority of the Court will vote to grant mandamus and a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth*, 558 U. S., at 190. Pp. 42-43.

(b) Under the Ridgeway Constitution, this Court has the authority to issue all writs necessary or appropriate in aid of its appellate jurisdiction." Rid. Const. Art. V, § 3, see also 1 R. Stat. § 2201 ("All courts may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law"). Because a writ of mandamus is an "extraordinary remedy" never granted as of right, *Ex parte Fahey*, 332 U. S. 258, 259, and is designed for "really extraordinary causes," *Ex parte Collett*, 337 U. S. 55, 72, a petitioner seeking a writ of mandamus must establish that (1) "no other adequate means [exist] to attain the relief he desires," (2) the party's "right to issuance of the writ is 'clear and indisputable,'" and (3) "the writ is appropriate under the circumstances." *Hollingsworth, supra* (quoting *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 380 (some internal quotation marks omitted)). Pp. 43-44.

(c) Petitioner has not demonstrated that his right to mandamus is "clear and indisputable." The Superior Court's decision was committed to discretion, and the right to a jury trial under § VI does not include a right to freely select a venue for trial. Pp. 44-45.

Mandamus denied; stay denied.

Per Curiam.

In this case, petitioner was charged with crimes of ranging severities, from felonies such as murder, to misdemeanors such as petty theft and armed robbery. Petitioner asks us to issue a writ of mandamus preventing the Superior Court from conducting a jury trial via Discord on July 23, 2022. Petitioner also requests that we stay the Superior Court's order scheduling the trial to be set to begin on that date. In both his petition for a writ of mandamus and application for a stay, petitioner argues that a trial conducted on Discord would cause unfair prejudice against him. Petitioner also claims that historical and public implications require that a jury trial be conducted in-game. We deny the

petition for a writ of mandamus, and, subsequently, the application for a stay.

As a preliminary issue, petitioner utilizes the incorrect standard for a stay before this Court.[1] Instead of the four-factor test laid out in *Nken* v. *Holder*, 556 U. S. 418, 434 (2009), an applicant seeking a stay pending a petition for a writ of certiorari or appeal before this Court must demonstrate (1) a reasonable probability that three Justices will consider the issue sufficiently meritorious to grant certiorari or note probable jurisdiction; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. See, e.g., *Times-Picayune Publishing Corp.* v. *Schulingkamp*, 419 U. S. 1301, 1305 (1974) (Powell, J., in chambers); *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (*per curiam*); *Barefoot* v. *Estelle,* 463 U.S. 880, 895 (1983).[2] In close cases the issuing Justice or the

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[1] The four-factor test that both parties rely on requires the issuing court to determine "'(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" *Nken* v. *Holder*, 556 U. S. 418, 426 (2009) (citing *Hilton* v. *Braunskill,* 481 U. S. 770, 776 (1987)). The factors we analyze applications for stays overlap most of the factors of the four-factor test. For example, analyzing the prospects of whether the Court is likely to grant a petition for a writ of mandamus or certiorari, as well as the prospects of whether the Court is likely to reverse the judgment below, undoubtedly mirrors the likelihood of success on the merits factor. Irreparable harm is required in both scenarios, and a balance of the equities is almost always conducted as well. We think the four-factor test is the appropriate standard for stays sought in the Superior Court or an intermediate appellate court, but not here.

[2] This Court does not abide by the so-called "Rule of Four" that the Supreme Court of the United States adopts. Therefore, applicants must

Court should balance the equities by weighing the relative harms not only to the applicant and respondent, but also the public at large. *Id.,* see also *Lucas* v. *Townsend,* 486 U. S. 1301, 1304 (1988) (Kennedy, J., in chambers); *Rostker* v. *Goldberg*, 448 U. S. 1306, 1308 (1980) (Brennan, J., in chambers). In a case where a petition for a writ of mandamus is sought, an applicant seeking a stay pending the filing and disposition of such petition "must show a fair prospect that a majority of the Court will vote to grant mandamus and a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth*, 558 U. S., at 190. Because petitioner has already presented the issues surrounding his petition for a writ of mandamus to us, we look towards the merits in determining whether the writ should issue.

Under the Ridgeway Constitution, this Court has the authority to issue all writs necessary or appropriate in aid of its appellate jurisdiction." Rid. Const. Art. V, § 3, see also 1 R. Stat. § 2201 ("All courts may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law"). "The traditional use of the writ [of mandamus] in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 380 (2004).

But the writ of mandamus is a "drastic one," see *Kerr* v. *United States Dist. Court for Northern Dist. of Cal.*, 426 U. S. 394, 402 (1976). It is an "extraordinary remedy" never granted as of right, *Ex parte Fahey*, 332 U. S. 258, 259

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demonstrate that it is likely that at least a majority of the Court will vote to grant certiorari or note probable jurisdiction,

(1947), and is designed for "really extraordinary causes." *Ex parte Collett*, 337 U. S. 55, 72 (1949). Described as one of "the most potent weapons in the judicial arsenal," *Will* v. *United States*, 389 U. S. 90, 107 (1967), a petitioner seeking a writ of mandamus must establish that (1) "no other adequate means [exist] to attain the relief he desires," (2) the party's "right to issuance of the writ is 'clear and indisputable,'" and (3) "the writ is appropriate under the circumstances." *Hollingsworth, supra* (quoting *Cheney, supra*, at 380–381 (some internal quotation marks omitted)).

We have no doubt that petitioner has no other adequate means to attain the relief he desires – to prevent the Discord trial from occurring on July 23rd, 2022. We do not, however, believe that petitioner has demonstrated his right to mandamus to be "clear and indisputable." To start, for a litigant to succeed in proving a "clear and indisputable" entitlement to the writ, they must be correct in showing that the challenged matter is not "committed to discretion." *Will* v. *Calvert Fire Ins. Co*., 437 U. S. 655, 666 (1978) (plurality opinion); *Allied Chemical Corp*. v. *Daiflon, Inc*., 449 U. S. 33, 36 (1980). "Where a matter is committed to discretion, it cannot be said that a litigant's right to a particular result is 'clear and indisputable.'" *Ibid;* see also *Calvert,* 437 U. S., at 666. Determining the proper venue is entirely within the Superior Court judge's discretion, and we do not believe that petitioner is entitled, by the Constitution, to an in-game trial.[3] For one, "the public trial right [under Chapter

[3] Petitioner cites Rid. Const. Art. I, §VI, as requiring that a "speedy public trial" be held in-game. §VI states in full:

"That in all prosecutions for criminal offenses, a person hath a right to be heard by oneself and by counsel; to demand the cause and nature of the accusation; to be confronted with the witnesses; to call for evidence in the person's favor, and a speedy public trial by an impartial jury of the country,

I, Article 10 of the Vermont Constitution] is founded upon the dangers inherent in secret trials," *State* v. *Rusin*, 153 Vt. 36, 39, 568 A. 2d 403, 405 (1989), and exists primarily to prevent the courts from becoming "instruments of persecution." *State* v. *Mecier,* 145 Vt. 173, 184, 488 A. 2d 737, 744 (1984). Here, the Superior Court has not barred, nor made effort to discourage, the public from attending the trial. The "good solid reasons" and historical contentions that petitioner raises simply do not demonstrate that a Discord trial would unfairly burden his right to a public trial, particularly when attention to the trial can be brought by the use of "everyone mentions" in the main Discord server. Cf. *Rusin,* 153 Vt. at 40, 568 A. 2d at 406. The claim that setting history is a basis for a constitutional violation simply does not hold water, and the right to a speedy public trial is not a right for the defendant to freely select the venue to be tried in. The other reasons provided by petitioner also prove to be uncompelling. The Superior Court therefore did not abuse its discretion in setting a Discord trial for July 23rd, 2022.

For the foregoing reasons, the petition for a writ of mandamus is denied. The application for a stay is denied.

It is so ordered.

Justice Jackson took no part in the consideration or decision of this case.

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when so required; nor can any person be justly deprived of liberty, except by the laws of the land, or the judgment of the person's peers;"

This provision mirrors that of Vt. Const., Ch. I, Art. 10. Although we do not determine whether we should defer to the interpretation of a state's highest court when interpreting a provision of our constitution derived from that state's, we believe that, at the least, such interpretations should be analyzed.

Syllabus

STATE *v.* LX1NAS

CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-06. Argued July 15, 2022 —– Decided August 2, 2022

7 R. Stat. §2202 classified individuals wearing "cat ears" or a "fake tail" as "wildlife." In turn, that same statute prohibited wildlife from "possessing weapons." Respondent was arrested after it was found that he was possessing weapons as wildlife. Respondent filed suit challenging 7 R. Stat. §2202, arguing that the statute violated Rid. Const. Art. I, §V, as well as the First Amendment to the United States Constitution. After the State moved for summary judgment on sovereign immunity grounds under the Eleventh Amendment to the United States Constitution, the Superior Court granted summary judgment in favor of respondent, holding that §V created a right requiring the government to "do its due diligence with regards to the rights of its citizens, regardless of their beliefs." The Superior Court subsequently issued an injunction against the enforcement of Section 3 of the Wildlife Conservation Act, 2022 Session Laws s. 6, by the State. This Court previously twice denied certiorari. See *post,* at 501-502.

Held: The Superior Court abused its discretion by failing to consider the four-factor test required for permanent injunctions as laid out in *eBay Inc.* v. *MercExchange, L. L. C.*, 547 U. S. 388. Pp. 51-58.

(a) Rid. Const. Art. I, § V is nearly copied verbatim from Vt. Const., Ch. I, Art. 9, although half of the original article in the Vermont Constitution is omitted. Where a provision from our Constitution has obviously been derived from a provision of a real-life state constitution, the Court should adopt the interpretation of the provision from that state's highest appellate court. Article 9, which is known as the Proportional Contribution Clause by the Vermont Supreme Court, requires citizens of Vermont to "'contribute his proportion towards the expence [sic] of' government." *Alexander* v. *Town of Barton*, 152 Vt. 148, 157, 565 A. 2d 1294, 1299. As the Vermont Supreme Court has noted, the Proportional Contribution Clause has almost always been applied in the "taxation context,"

id. In fact, many challenges under Article 9, but unrelated to taxation (almost all of which were adjudicated in the federal courts) have failed. See, e.g., *Benning* v. *State*, 161 Vt. 472, 480, 641 A. 2d 757, 761; *Billado* v. *Perry*, 937 F. Supp. 337, *Logan* v. *Bennington College Corp*., 72 F. 3d 1017. Pp. 48-49.

(b) The inclusion of the phrase "cases and controversies" in Rid. Const., Art. V, § IV, was intended to create a state analogue to the Cases and Controversies Clause of the United States Constitution. See U. S. Const., Art. III, §2, cl. 1. Under the Cases and Controversies Clause, this Court is bound by the doctrine that it "will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of." See *Slack* v. *McDaniel*, 529 U. S. 473, 485. Because two antecedent questions regarding the propriety of the injunction were raised by this Court, they should be addressed prior to the constitutional issue. Pp. 47-49.

(1) This Court's holding in *State* v. *Infinity, ante,* at 22, in which the Court held that it "cannot insert and answer [its] own question, if the facts surrounding that question do not share the same facts as the other questions, or cannot be found in the trial record," *id.,* at 31, does not apply here. In *Infinity,* this Court specifically noted several exceptions to the party presentation rule: where the proper resolution is beyond any doubt, where injustice may otherwise result, or where the Court considers an issue antecedent and ultimately dispositive of the issue presented, regardless of whether the parties identified and brief the issue. *Id.,* at 32. Given the case in *Infinity* was still at a preliminary stage, the Superior Court was in a better position to resolve the hearsay question raised by this Court in the first instance. *Id.,* at 33. Here, however, resolving the injunction before the constitutional question is more appropriate, especially when the proceedings have essentially concluded and the judgment is final. Pp. 49-51.

(c) Under *eBay, supra,* a party seeking a permanent injunction must demonstrate "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would

not be disserved by a permanent injunction." *Id.,* at 391, see also *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. 139, 156-157. Traditionally, these factors had formed the basis of equitable relief in the English courts of equity, and were especially prominent in early precedent. See, *e.g., Parker* v. *Winnipiseogee Lake Cotton & Woollen Co.*, 2 Black 545, 552. A century after the founding of the United States, the standard for a permanent injunction was already established, and the factors set out in *eBay* continued to serve as the standard throughout the 20th century. Much like how a preliminary injunction does not follow "as a matter of course from a plaintiff's showing of a likelihood of success on the merits," *Benisek* v. *Lamone*, 138 S. Ct. 1942, 1943-1944 (citing *Winter* v. *Natural Resources Defense Council*, 555 U. S. 7, 32), a permanent injunction cannot be issued simply because actual success on the merits is established. Cf. *TVA* v. *Hill*, 437 U. S. 153, 193. Rather, the Superior Court should have considered the adequacy of other remedies at law, the conveniences of the parties, as well as the public interest in determining whether to issue the injunction. Because it did not consider those factors, the Superior Court's issuance of the injunction was an abuse of discretion. Pp. 51-56.

(d) Furthermore, the Superior Court was overbroad in enjoining the entirety of Section 3 of the Wildlife Conservation Act, 2022 Session Laws s. 6. The original complaint filed by respondent merely challenged 7 R. Stat. § 2202, or Section 3(b). Because "[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people," *Ayotte* v. *Planned Parenthood of Northern New England*, 546 U. S. 320, 329, a court must find prospective relief that fits the remedy to the wrong or injury that has been established, see *Salazar* v. *Buono*, 559 U. S. 700, 718 (plurality opinion). The Superior Court's failure to properly take consideration of future opportunities at reintroducing hunting in the State, as well as the overbroad scope of the injunction issued, warrants its vacatur. Pp. 56-58.

1 R. Supp. 1 and 1 R. Supp. 3, vacated and remanded.

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

Then-Deputy Solicitor General CIifford2, Department of Justice, Palmer, R. W., argued the cause for the State.

HolyRomanRyan argued the cause for the respondent.

JUSTICE POWELL delivered the opinion of the Court.

In this continuously ongoing litigation, this is the third time this case has come before us on a petition for writ of certiorari to the Superior Court. Unlike the past two times, however, we granted certiorari in this case in order to determine whether an act criminalizing the possession of weapons by those who wear cat ears, a fake tail, or a combination of both violates both Rid. Const. Art. I, § V, as well as U. S. Const., amend. XIV. We hold that the Superior Court abused its discretion in issuing a permanent injunction without applying the four-factor test as set out in *eBay Inc.* v. *MercExchange, LLC,* 547 U. S. 388 (2006), and by failing to narrowly tailor the injunction in its opinion.

I

Respondent, a resident of the State of Ridgeway, was arrested on April 10th, 2022 for possessing a firearm as "wildlife." 7 R. Stat. § 2202 states that "any person with a tail or cat ears" is deemed "wildlife." § 2202 also states that any person deemed as wildlife "may not possess weapons." Respondent was allegedly stopped after a Ridgeway Parks Service Ranger suspected that he was wearing a tail. After the ranger discovered that respondent was carrying weapons, the ranger arrested respondent for possessing a weapon as wildlife. Following his arrest, respondent filed suit in the Superior Court, alleging that § 301 violated Art. I, § V of the Ridgeway Constitution, as well as the First Amendment to the United States Constitution. The State of Ridgeway moved to dismiss the case on the grounds that

the case was improperly filed against the government, that no exception applied to the state's sovereign immunity, and that because respondent was considered an "animal" at the time of his arrest, he had no right to file a lawsuit. The Superior Court denied the State's motion to dismiss, stating, *inter alia*, that the State could face a private lawsuit because it had "produced the first set of laws and acts, of which the wildlife act [sic] falls under and is being challenged by plaintiff." *Lx1nas* v. *State*, 1 R. Supp. 1 (2022) (*Lx1nas I*). We denied certiorari, *post,* at 501, after which the State moved for summary judgment in the Superior Court. The State renewed its argument that it had sovereign immunity in the case, that it was the incorrect defendant in the original case, and that the lawsuit was a pre-enforcement challenge in nature. The State also argued that respondent lacked standing to bring the suit in general, and that respondent's second claim was meritless. The Superior Court granted the State's motion for summary judgment, but held that the act was unconstitutional, in effect ruling for respondent. *Lx1nas* v. *State*, 1 R. Supp. 1, 2 (2022) (*Lx1nas II*). The Court held that Rid. Const. Art. I, § V, created an enforceable blanket protection of all rights that the State was required to honor. *Id.,* at 2. The State then entered a permanent injunction barring the enforcement of the act by the State, and "by proxy all of its actors, agents and otherwise enforcement officers and other applicable law enforcement officers," from enforcing 7 R. Stat. § 2202. See 1 R. Supp. 3 (2022) (*Lx1nas III*). In addition, the Superior Court enjoined the enforcement of the entirety of Section 3 (of which the relevant statutes are under), arguing that the injunction rendered the rest of the section useless. *Id.* After the State petitioned this Court for a writ of certiorari on the same issues that we denied certiorari on in *Lx1nas I*, we once again denied certiorari, *post,* at 502.

On July 5th, 2022, the State filed a collateral attack on the injunction issued in *Lx1nas III*. The State argued that the Superior Court misinterpreted the prefatory clause of Rid. Const. Art. I, §V as granting a right that provided a cause for action following unconstitutional activity. We granted certiorari, *post,* at 510, but have also requested the parties to brief two other issues regarding the propriety of the permanent injunction issued by the Superior Court. We now vacate the injunction as an abuse of discretion.

II

The State argues that the Superior Court misinterpreted the prefatory clause of Rid. Const. Art. I, §V as creating a right requiring the government to "do its due diligence with regards to the rights of its citizens, regardless of their beliefs." *Lx1nas III*, 1 R. Supp., at 3.

Rid. Const. Art. I, § V is nearly copied verbatim from Vt. Const., Ch. I, Art. 9, although half of the original article in the Vermont Constitution is omitted. We believe that where a provision from our Constitution has obviously been derived from a provision of a real-life state constitution, we should adopt the interpretation of the provision from that state's highest appellate court. We therefore defer to the Vermont Supreme Court's interpretation of Section V.

Article 9, which is known as the Proportional Contribution Clause by the Vermont Supreme Court, requires citizens of Vermont to "'contribute his proportion towards the expence [sic] of' government." *Alexander* v. *Town of Barton,* 152 Vt. 148, 157, 565 A. 2d 1294, 1299 (1989). As the Vermont Supreme Court has noted, the Proportional Contribution Clause has almost always been applied in the "taxation context," *id.* In fact, many challenges under Article 9, but unrelated to taxation (almost all of which were adjudicated

in the federal courts) have failed. See, *e.g., Benning* v. *State,* 161 Vt. 472, 480, 641 A. 2d 757, 761 (1994); *Billado* v. *Perry,* 937 F. Supp. 337 (Vt. 1996), *Logan* v. *Bennington College Corp.,* 72 F. 3d 1017 (CA2 1995). Assuming that the Proportional Contribution Clause has some application outside the taxation context, the Vermont Supreme Court has stated that the clause is to be read as the "practical equivalent of the equal protection clause of the Fourteenth Amendment to the United States Constitution." *In re Prop. of One Church St. City of Burlington*, 152 Vt. 260, 266, 565 A. 2d 1349, 1352 (1989). The purpose of the Proportional Contribution Clause is to focus on the individual and the social calculus of what is required to treat each individual in the society equally, and to protect the individual from "unfair government action." *Id.,* at 263, 565 A. 2d, at 1350. Thus, the Vermont Supreme Court has held that "the test of validity of governmental action under the proportional contribution clause must be the rational basis test used for federal equal protection analysis." *Alexander*, 152 Vt. at 157, 565 A. 2d at 1299. Rational basis review only requires the government to demonstrate that there is a "rational relationship between the disparity of treatment and some legitimate governmental purpose." *Board of Trustees of Univ. of Alabama* v. *Garrett,* 531 U. S. 356, 367 (2001). In other words, distinctions will be found unconstitutional only if similar persons are treated differently on "wholly arbitrary and capricious grounds." *Alexander,* 152 Vt., at 157; 565 A. 2d, at 1299 (citing *Smith* v. *Town of St. Johnsbury*, 150 Vt. 351, 357, 554 A. 2d 233, 238 (1988)).

But before we resolve the constitutional issue, we must acknowledge that we also granted certiorari on two issues regarding the propriety of the Superior Court's injunction. These two issues are equitable in nature. Thus, the Su-

preme Court's rule that it "will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of," see *Slack* v. *McDaniel*, 529 U. S. 473, 485 (2000), should control in this case. We acknowledge that the constitutional avoidance doctrine as described here was intended to apply only in the federal courts. That is only the case, however, because the doctrine is a "corollary offshoot of the case and controversy rule." *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 570 (1947). Although we have not held such, we believe that the cases and controversies requirement applies in this state. To start, Art. V., § IV of the Ridgeway Constitution limits the Superior Court's jurisdiction to "cases" and "controversies." Although such an inclusion bears a striking similarity with the Cases and Controversies Clause of the United States Constitution, see U. S. Const., Art. III, §2, cl. 1, it does not immediately seem clear that the clause in our Constitution is a state analogue of the federal Cases and Controversies Clause. However, we note that when this State was still a county under Nightgaladeld's United States of America, there was no specific clause indicating a jurisdictional bar requiring a valid "case" or "controversy." This lack of inclusion led to much debate over whether such a requirement existed, a debate mooted by the eventual formation of the State of Ridgeway. We read the inclusion to indicate that, in enacting the Ridgeway Constitution, Developer Oversight intended to include a state analogue to U. S. Const., Art. III, § 2, in order to limit the jurisdiction of the Superior Court. Therefore, we hold that the jurisdictional doctrines under Article III's Cases and Controversies Clause, see *Allen* v. *Wright*, 468 U. S. 737, 750 (1984) (citing *Vander Jagt* v. *O'Neill*, 226 U. S. App. D. C. 14, 26-27, 699 F. 2d 1166, 1178-

1179 (1983) (Bork, J., concurring)), abrogated on other grounds by *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U. S. 118 (2014), also apply to the Superior Court's jurisdictional limits to "cases" and "controversies" under Rid. Const., Art. V, § IV. We also hold that, as a result, the cases and controversies requirement applies to cases in the State of Ridgeway.

Regardless of the constitutional avoidance doctrine, respondent also argues that the party presentation rule precludes our review of the first issue regarding the injunction: whether the four-factor test for permanent injunctions under *eBay Inc., supra,* should be adopted. Respondent argues that this Court should not address this issue because no party raised an argument regarding the impropriety of the injunction in the Superior Court. Respondent cites to our recent case, *State* v. *Infinity, ante,* at 22, for guidance, arguing that under *Infinity,* "we cannot insert and answer our own question, if the facts surrounding that question do not share the same facts as the other questions, or cannot be found in the trial record." *Id.*, at 31.

We disagree. Respondent's concerns are well-intentioned, but he fails to realize that the party presentation rule is not unlimited. We have noted that exceptions to the party presentation rule exist in several circumstances: where the proper resolution is beyond any doubt, where injustice may otherwise result, or where we consider an issue antecedent and ultimately dispositive of the issue presented, regardless of whether the parties identified and brief the issue. *Infinity, ante,* at 32 (internal quotation marks omitted). In this case, analyzing whether the Superior Court abused its discretion by failing to follow the four-factor test is indeed an antecedent question to the constitutional question presented, and the facts regarding the injunction are the same as those applied when the Superior

Court granted summary judgment for the respondent, especially coupled with the constitutional avoidance doctrine we described above. The propriety of the injunction necessarily precedes the constitutional issue in this case. In addition, this case comes to us after a final judgment was issued. Comparing this case with *Infinity,* which we heard as an interlocutory appeal authorized under 1 R. Stat. § 2203, shows why distinguishing *Infinity* is appropriate. We held that, given the case in *Infinity* was still at a preliminary stage, the Superior Court was in a better position to resolve the hearsay question in the first instance. *Id.,* at 33. Here, however, resolving the injunction before the constitutional question is more appropriate, especially when the proceedings have essentially concluded and the judgment is final.

We therefore resolve the issues regarding the injunction before turning to the application of the Proportional Contribution Clause.

III

Two issues regarding the injunction are clear from first blush: first, the Superior Court did not utilize the four-factor test counseled by *eBay Inc.* v. *MercExchange, LLC,* 547 U. S. 388 (2006), and second, the injunction issued extended to other unchallenged provisions of the Wildlife Conservation Act. We review the Superior Court's grant of a preliminary injunction for abuse of discretion. See *eBay,* 547 U. S. at 391. The abuse of discretion standard is highly deferential, and we only reverse the trial court 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). Nevertheless, the Superior Court's legal findings underpinning the injunction are reviewed *de novo*, and its factual findings are reviewed for

clear error. See *Infinity, supra,* at 28 (POWELL, J., concurring in part and concurring in the judgment). A factual finding is clearly erroneous "when although there is evidence to support it, the reviewing [body] on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.,* 508 U. S. 602, 622 (1993) (quoting *United States* v. *United States Gypsum Co.,* 333 U. S. 364, 395 (1948) (brackets in original)).

For the foregoing reasons, we hold that the Superior Court abused its discretion in failing to abide by the four-factor test laid out in *eBay, supra,* and by issuing an overbroad injunction.

A

In *eBay,* the Supreme Court stated that traditional principles of equity dictated the issuance of permanent injunctive relief. As such, the Court held that the standard for permanent injunctions in federal courts comprised four factors — litigants seeking such relief must demonstrate "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay, supra,* at 391, see also *Monsanto Co.* v. *Geertson Seed Farms,* 561 U. S. 139, 156-157 (2010). Other state courts have also generally adopted this test, though variations of the test have included additional factors or omitted factors from the four-pronged test in *eBay*. See, *e.g.*, *North River Ins. Co.* v. *Mine Safety Appliances Co.,* 105 A. 3d 369, 379 n. 47 (Del. 2014); *Ifill* v. *District of Columbia,* 665 A. 2d 185,

188 (D.C. 1995); *Kuznik* v. *Westmoreland County Bd. of Commissioners,* 588 Pa. 95, 117, 902 A. 2d 476, 489 (2006). We hold that the federal standard for permanent injunctions should apply in a court's determination of issuing injunctive relief.

1

In order to determine what factors are appropriate in the Superior Court's determination to issue a preliminary injunction, we must look toward traditional principles of equity as well as the history of the injunction.[1] It has long been claimed that the concept of the injunction was derived from the interdicts of Roman law, though whether interdicts and injunctions were related continues to be disputed. 4 J. Pomeroy, Equity Jurisprudence §1337, p. 2664-2665 and n. 1 (3d ed. 1905); see also Raack, A History of Injunctions in England Before 1700, 61 Ind. L. J. 539, 540-541 (1986). Such interdicts were generally used to preserve the plaintiff's property, and could be described with three categories: prohibitory, exhibitory, and the restutitory (or restorative). *Id.* In addition, such interdicts were entirely within the Roman magistrate's equitable discretion. See *id.*; 4 Pomeroy § 1337, at 2 n. 1.

Another historical development was the rise of the Court of Chancery in England during the late 14th century and the early 15th century and the issuance of writs. Prior to the establishment of the English Court of Chancery, the King and his officers were routinely called upon to settle private disputes between feudal lords. Raack, *supra,* at 541-

[1] Readers should note that this opinion does not intend to serve as an exhaustive account of the history of the injunction, but does offer a brief account in order to provide context for the factors a court should consider when determining whether to issue injunctive relief.

544. The King could, after hearing both sides, issue a writ commanding the defendant to perform a certain duty owed to the plaintiff. The writs from this time are also considered an ancestor to the modern-day injunction. *Id.*

The rise of chancery in England began with the power of the Chancellor to issue common law writs. Given a wide equitable discretion to issue writs based on a variety of circumstances, the common law courts soon argued that the Chancellor's power should be limited. This occurred just as the common law courts began rigidly applying the law, signaling the end of equity in said courts. *Id.,* at 550-552. Although injunctions were widely issued in the 16th and 17th centuries, a 1616 dispute between the common law courts and the Chancellor would eventually solidify the propriety of injunctions as equitable relief.

The resolution of the dispute, however, provided the basis of the traditional principles of equity referenced in *eBay, supra.* For example, King James I approved of the commission report that ultimately settled the dispute, and issued an order ensuring that the Court of Chancery "provide equity to his subjects where they were denied relief by the rigor and extremity of the law." Raack, *supra,* at 582. It was also at that time, however, that the Chancellors tempered the use of injunctions, and began to cite cases in support of their holdings, much like the common law courts of the time. These Chancellors would also begin to establish procedural guidelines for injunctions, reducing the friction between the Court of Chancery and the common law courts.

2

By the time the United States of America gained its independence from Great Britain, the majority of states had already adopted the English common law for its usage. See, *e.g.*, N. Y. Const. art. XXXV (1777), 9 Statutes At Large of

Pennsylvania 29-30 (Mitchell & Flanders eds. 1903). In fact, the Supreme Court of the United States held as early as 1863 that an injunction would issue only "where the right is clearly established — where no adequate compensation can be made in damages, and where delay itself would be a wrong," *Parker* v. *Winnipiseogee Lake Cotton & Woollen Co.,* 2 Black 545, 552, consistent with principles of equity at the time. See 2 J. Story, Equity Jurisprudence §924 p. 252 (5th ed. 1849) (noting purpose of courts of equity was to "give a more complete and perfect remedy, than is attainable atlaw, in order to prevent irreparable mischief…"). A century after the founding of the United States, the standard for a permanent injunction was already established. Inherent among the required factors was a clear showing of irreparable harm, 1 J. High, Law of Injunctions § 22, p. 20 (2d ed. 1880), *id.* § 34, at 28 ("mere allegation of irreparable injury" is insufficient); but other factors included a balance of the conveniences, *id.* § 13, at 11-12; and a lack of adequate remedies at law. See *id.* § 28, at 24-25.

By the 20th century, the Supreme Court made clear that "[i]t is in the public interest that … courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy." *Pennsylvania* v. *Williams,* 294 U. S. 176, 185 (1935). Recognizing that equity is "the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims," *Hecht Co.* v. *Bowles,* 321 U. S. 321, 329-330 (1944), the Supreme Court recognized that a court, in deciding whether an injunction should be issued, should "balance[] the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction." *Yakus* v. *United*

States, 321 U. S. 414, 440 (1944). Furthermore, when an injunction that would "adversely affect a public interest" is sought, "the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff." *Id.* These factors would soon be accompanied by the long-recognized doctrine that equitable relief (in the federal courts) should be granted only when the plaintiff demonstrates "irreparable injury and the inadequacy of legal remedies." *Weinberger* v. *Romero-Barcelo,* 456 U. S. 305, 312 (1982); see also *Rondeau* v. *Mosinee Paper Corp.*, 422 U. S. 49, 61 (1975); *Sampson* v. *Murray*, 415 U. S. 61, 88 (1974); *Beacon Theaters, Inc.* v. *Westover*, 359 U. S. 500, 506–507 (1959).

3

Together, the four factors in *eBay, supra,* reflect the traditional principles of equity first laid out in English law and preserved throughout the nearly 250-year history of the United States, which the Supreme Court stated should be the point of analysis in determining whether to issue injunctive relief. *Grupo Mexicano de Desarrollo S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 318-319 (1999) ("[T]he substantive prerequisites for obtaining an equitable remedy as well as the general availability of injunctive relief … depend on traditional principles of equity jurisdiction.") (quoting 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 2941, p. 31 (2d ed. 1995)). In fact, the Superior Court's decision appears to suggest that it granted the injunction merely because summary judgment was granted in respondent's favor.

Much like how a preliminary injunction does not follow

"as a matter of course from a plaintiff's showing of a likelihood of success on the merits,"[2] *Benisek* v. *Lamone,* 138 S. Ct. 1942, 1943-1944 (2017) (citing *Winter* v. *Natural Resources Defense Council,* 555 U. S. 7, 32 (2008)), a permanent injunction cannot be issued simply because actual success on the merits is established. Cf. *TVA* v. *Hill,* 437 U. S. 153, 193 (1978) ("[A] federal judge sitting as a chancellor is not mechanically obligated to grant an injunction for every violation of law."). Rather, the Superior Court should have considered the adequacy of other remedies at law, the conveniences of the parties, as well as the public interest in determining whether to issue the injunction, all of which are "appropriate in almost any case as a guide to the chancellor's discretion." *Id.* (quoting D. Dobbs, Remedies 52 (1973)). Because it did not consider those factors, the Superior Court's issuance of the injunction was an abuse of discretion.

B

The Superior Court also enjoined the entirety of Section 3 of the Wildlife Conservation Act, 2022 Session Laws s. 7. Some of the provisions in that Section relate to hunting permits issued by the Ridgeway Parks Service. We hold that the Superior Court abused its discretion in issuing an overbroad injunction preventing the enforcement of Section 3.

To start, the constitutionality of the entirety of Section 3 was not before the Superior Court when it rendered its judgment. Rather, respondent challenged only 7 R. Stat.

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[2] "The standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success." *Amoco Production Co.* v. *Gambell,* 480 U. S. 531, 546, n. 12 (1987); see also *Winter* v. *Natural Resources Defense Council,* 555 U. S. 7, 32 (2008).

§ 2202, which had forbade the possession of weapons by "wildlife." However, the entire section was enjoined with little explanation. The Supreme Court previously held that when a court declares certain parts of a statute unconstitutional, as was done here, it must tread carefully, as "[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people." *Ayotte* v. *Planned Parenthood of Northern New England,* 546 U. S. 320, 329 (2006) (quoting *Regan* v. *Time, Inc.,* 468 U. S. 641, 652 (1984) (plurality opinion)). Thus, the Supreme Court has held that in some cases, "partial, rather than facial, invalidation is the required course," such that a "statute may . . . be declared invalid to the extent that it reaches too far, but otherwise left intact." *Id.* (quoting *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 504 (1985)).

Partial invalidation is also consistent with traditional principles of equity. The hallmark of equity has long been the flexibility to formulate equitable relief based on the circumstances of a case. *Weinberger, supra,* at 312. But a court must find prospective relief that fits the remedy to the wrong or injury that has been established, *Salazar* v. *Buono,* 559 U. S. 700, 718 (2010) (plurality opinion), and such relief cannot be overbroad for the reasons above. Under Rid. Rule Civ. P. 47(d), therefore, injunctions issued by the Superior Court must be "specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." "Because of the rightly serious view courts have traditionally taken of violations of injunctive orders, and because of the severity of punishment which may be imposed for such violation, such orders must in compliance with [Rule 47(d)] be specific and reasonably detailed." *Pasadena City Bd. of Education* v. *Spangler,* 427 U. S. 424, 439 (1976).

We think that this case calls for partial invalidation,

where only § 2202 should be invalidated. Although hunting permits may not serve a purpose after § 2202's invalidation, we think that there may be a chance that such permits may be useful in the distant future. For example, developers of the State of Ridgeway could include animals in Ridgeway County that could be hunted, in order to allow for hunting, under regulations enacted by the Parks Service and the Senate.[3] The Superior Court's failure to properly take consideration of future opportunities at reintroducing hunting in the State, as well as the overbroad scope of the injunction issued, warrants its vacatur.

* * *

Because the Superior Court erred when it issued an overbroad injunction, its judgment should be vacated on that ground already. Having resolved this case on that issue alone, we need not resolve the constitutional issue presented before us.

For the foregoing reasons, the injunction issued by the Superior Court is vacated, and the case is remanded to allow the Superior Court to tailor narrower injunctive relief consistent with this opinion.

It is so ordered.

[3] Such a concept has been introduced in other governmental entities on ROBLOX, such as the Nation of Aigio.

RIDGEWAY DEPARTMENT OF STATE ET AL. *v.* PRIMAQUORUM

CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-14. Argued July 15, 2022 —— Decided August 28, 2022

Held: The Superior Court erred in granting default judgment only five days after the civil summons was delivered to petitioner, even though it gave petitioner seven days to file a response to the complaint.

RSC-CV-596, vacated and remanded.

PER CURIAM.

Rid. Rule Civ. P. 4(d)(2) requires that a summons in a case against an agency of the State be delivered to its department head. The Superior Court in this case allowed the Department of State seven days to answer the response. But after respondents filed a motion for default judgment five days after the summons was issued, the Superior Court granted that motion, despite its earlier order. Petitioners argued that the Superior Court erred in doing so. We agree.

The judgment of the Superior Court is therefore vacated, and the case is remanded for further proceedings consistent with this order.

It is so ordered.

Syllabus

STUDSPERSECOND *v.* EDGAR

CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-08. Decided September 5, 2022[*]

On July 3rd, StudsPerSecond filed suit against Fooxaddict in the Superior Court for trover relating to the defendant's alleged unlawful possession of a company clipboard. StudsPerSecond requested judgment consisting partially of monetary relief totalling $4,000. The defendant did not appear when summoned, and a motion for default judgment was accepted. However, the Superior Court awarded total monetary damages of $10 USD. The trial judge determined the appropriateness of this figure through a novel methodology created by the judge. In a separate case filed on July 10th, 2022, StudsPerSecond initiated civil proceedings against BPD_Edgar in the Superior Court, alleging in part that he had taken clipboards dispensed from in-game spawners owned by StudsPerSecond and gave them away to other people, in violation of the company policy of StudsPerSecond. The defendant moved to dismiss for lack of standing, and asserted that the items had no "market value." StudsPerSecond moved to amend their complaint. The Superior Court refused to admit the amended complaint due to its submission six days after the start of proceedings, and subsequently dismissed the case.

Held: In Fooxaddict, the Superior Court abused its discretion when it awarded judgment "different in kind from that prayed for in the demand for judgment," as required by Rid. Rule Civ. P. Rule 36. In BPD_Edgar, the Superior Court incorrectly determined that objects which can be dispensed from in-game spawners infinitely are of no value. It largely relied on this conclusion in granting the motion to dismiss, and incorrectly determined that the case was mooted by the fact that BPD_Edgar was no longer employed by StudsPerSecond. Furthermore, in BPD_Edgar, the Superior

[*] Together with No. 22-09, *StudsPerSecond* v. *Addict*, also on certiorari to the Superior Court of Ridgeway.

Court did not abuse its discretion in refusing to allow the amended complaint filing when the complainant moved to admit an amended complaint six days after the commencement of proceedings. Pp. 67-72.

RSC-CV-510, vacated and remanded; RSC-CV-523, affirmed in part, vacated in part, and remanded.

HAND, J., delivered the opinion for a unanimous Court. POWELL, J., filed a concurring opinion.

JUSTICE HAND delivered the opinion of the Court.

Petitioner StudsPerSecond is a shipping and delivery company in the State of Ridgeway. In order to meet its business objectives, StudsPerSecond provides its employees with clipboards. Employees can obtain these clipboards from the company's offices through a "dispenser" — a device which is able to infinitely produce clipboards upon demand. There are many other items in the State of Ridgeway which are acquired by the same means; for example, police obtain equipment such as firearms through a similar dispenser. BPD_Edgar was an employee of StudsPerSecond who was entitled to dispense clipboards as part of his position at the company, but was alleged to have distributed these clipboards to other individuals contrary to corporate policy, in a lawsuit filed by StudsPerSecond. At the time of the proceedings, BPD_Edgar was not employed with StudsPerSecond. The defendant moved to dismiss, asserting that the clipboards had "no value." Further, the defendant asserted that the matter was moot because BPD_Edgar was no longer employed with StudsPerSecond. In response, StudsPerSecond attempted to amend their complaint, to no avail — the Superior Court refused the amended complaint and dismissed the case, agreeing with the defendant. In another case, filed days later, StudsPerSecond brought

Fooxaddict to court on the basis that he possessed a company clipboard while not on the job as an employee of StudsPerSecond, also contrary to corporate policy. The Superior Court assigned a concrete monetary value to the clipboard and awarded it to StudsPerSecond. To the question of whether clipboards had real value in the eyes of the law, these cases yielded outcomes that were quite different indeed.

I

Before we examine the conflict with respect to the valuation of the clipboard, we will first address the question regarding the amended complaint in *BPD_Edgar*. The petitioner in *BPD_Edgar* asserts that the Superior Court's refusal to admit their amended complaint amounts to an abuse of discretion. According to the petitioner, Rid. Rule Civ. P. 4(f) entitles them to an amended complaint "unless it clearly appears that material prejudice would result in the substantial rights" of the opposing party. We consider this to be an incorrect interpretation of Rule 4(f).[1] Apart from proofs of service, which a civil complaint is certainly not, the scope of this clause is limited to processes. A process "is generally defined to be the means of compelling the defendant in an action to appear in court (...) or a means whereby a court compels a compliance with its demands." Black's Law Dictionary 1370 (4th ed. 1968). Processes refer to writs generally. The civil complaint is not the means by which a defendant is compelled to appear before the court;

[1] Rid R. Civ. P. 4(f) reads, in full: "At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result in the substantial rights of the party against whom the process is issued."

indeed, this is the role of the summons. The Rules of Civil Procedure provide no standard for when civil complaints may be amended. It does implicitly permit judges to allow amending of complaints in Rid. Rule Civ. P. 13: "In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider (...) [t]he necessity or desirability of amendments to the pleadings". Broad discretion is given to trial judges to determine when amendments to pleadings, such as civil complaints, may be admissible. The Superior Court considered the timing of the amended complaint inappropriate when the petitioner submitted it six days after proceedings began, and refused to admit it. This does not run afoul of the rules, and we intend to give broad deference to trial judges in deciding matters of whether amendments to pleadings ought to be admitted. As a result, we affirm the Superior Court's rejection of the amended complaint in *BPD_Edgar*.

II

Dispenser-based items are common. However, there's a snag as far as determining damages is concerned when things go awry: there's no obvious indication of the monetary value of items that are dispensed. In *BPD_Edgar*, the Superior Court dismissed the suit largely on the basis that the clipboards had "unsubstantiable value" because they originate from a dispenser, and so the court was unable to redress the alleged injury. But in *Fooxaddict*, the Superior Court devised a unique method for determining the value of the clipboard. Through novel calculations involving comparisons and taking ratios of market values between ingame items and real-world equivalents, the trial judge determined that the monetary value of a clipboard was $2 USD, and awarded a further $8 in damages. So, is the value of a clipboard "unsubstantiable," as the decision in

BPD_Edgar, RSC-CV-523 (Jul. 22, 2022), at *1, puts it? Or was the approach in *Fooxaddict* correct? We review the conclusions with respect to valuation of clipboards in these cases de novo, as the question of whether a dispensed item has any value is a question of law. See, *e.g.*, *Highmark Inc.* v. Allcare *Health Management System Inc.*, 572 U. S. 559, 563 (2014).

III

We agree that the task of determining the value of an item obtained from a dispenser is not trivial, but to close the issue by describing its value as "unsubstantiable" represents a wholly unreasonable shirking of judgment. A clipboard is a tangible object. It serves as a legitimate business tool for StudsPerSecond. It makes no difference for the purpose of valuation that the clipboard can be dispensed without end. If a clipboard is unlawfully taken from StudsPerSecond, they have still lost a clipboard, even if they can produce another. The *existing* pool of clipboards under the control of StudsPerSecond has been reduced, even if StudsPerSecond has access to an infinite *theoretical* pool of clipboards which do not exist. The task of how to determine the value of dispensed items such as clipboards is left to the trial judge. As a result, the Superior Court erred in its dismissal of *BPD_Edgar*, which significantly relied on the trial judge's belief that no relief could be provided because in essence, it could not figure out how to provide the relief. Accordingly, the judgment in *BPD_Edgar* is vacated and remanded.

So, how about the valuation framework imposed in *Fooxaddict*?[2] We decline to impose a universal framework

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2

on how trial judges should assess the value of dispensed items. There is simply no satisfactory "one-size-fits-all" solution to this issue. At its core, the duty of assigning a monetary value to an item is an exercise in evidentiary analysis; as such, this issue is properly left to the trial courts, to whom significant discretion is afforded for these assessments. While the methodology used in *Fooxaddict* was perhaps unusual, it does not represent a departure from acceptable limits of judicial discretion, so we need not perform any further analysis.

IV

The judgment in *Fooxaddict* is not saved, however. The Superior Court should not have done any sort of novel value analysis, because the judgment was in default. Rid. Rule Civ. P. 36 provides, in part, that "[a] judgment by default shall not be different in kind from that prayed for in the demand for judgment." The complaint from StudsPerSecond requested monetary damages totalling $4,000, yet the trial judge's analysis left StudsPerSecond with only $10. There was no explanation as to why the Superior Court departed from the rule, and we discern no special circumstance warranting the same. Having decided that all damages prayed for should have been awarded, we reserve judgment on whether the $8 in punitive damages awarded by the trial judge would have otherwise been appropriate. The judgment of the Superior Court in *Fooxaddict* is vacated, and is remanded for the awarding of damages consistent with this opinion.

V

We now confront the issue of standing in BPD_Edgar. We previously decided that "the jurisdictional doctrines under [the United States Constitution] Article III's Cases and

Controversies Clause (...) appl[y] to cases in the State of Ridgeway." *State* v. *Lx1nas*, *ante,* at 53-54. In *BPD_Edgar*, the Superior Court found the case to be mooted by the fact that the defendant was no longer employed by StudsPerSecond at the time of the proceedings. "A case becomes moot—and therefore no longer a "Case" or "Controversy" for purposes of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC* v. *Nike Inc*., 568 U. S. 91 (2013) (quoting *Murphy* v. *Hunt*, 455 U. S. 478, 481 (1982)). Before we decide on the mootness question, however, we must be satisfied that StudsPerSecond had standing to pursue their claim in the first place. The seminal test for standing is defined in three elements: "[f]irst, the plaintiff must have suffered an "injury in fact" - an invasion of a legally protected interest which is concrete and particularized, (...) and actual or imminent, not 'conjectural' or 'hypothetical'(...). Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. (...) Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be redressed by a favorable decision." *Lujan* v. *Defenders of Wildlife,* 504 U. S. 560, 561 (1992) (some internal quotations omitted). The relevant question is whether StudsPerSecond's claims in the unamended civil complaint, if accepted as true, establish standing. We find that they do. StudsPerSecond suffered concrete injury when BPD_Edgar gave away the company's clipboards to other individuals. The first and second prongs of the *Lujan* test are therefore satisfied. As previously discussed, the clipboards have real

monetary value. StudsPerSecond lost control and possession of the clipboards when they were distributed by the respondent. Consequently, it is foreseeable that a favorable decision would redress the injury suffered by StudsPerSecond by, for example, allowing them to acquire new clipboards.

Having found that the petitioner had standing to pursue their original claim in *BPD_Edgar*, we further find that the claim is not mooted by the respondent's termination. The respondent contends that because he is no longer able to dispense clipboards, the matter is no longer justiciable. This argument cannot be accepted because the injury to StudsPerSecond persists, regardless of whether the respondent is employed with them. The clipboards that the respondent is alleged to have distributed to others remain out of the control of the petitioner. Therefore, StudsPerSeconds retains their "legally cognizable interest in the outcome." *Already, LLC, supra.* As an illustrative example, if the respondent had returned all clipboards to StudsPerSecond, then the case may well have been mooted.

* * *

The judgment of the Superior Court in No. 22-08 is vacated, and the case is remanded for further proceedings consistent with this opinion. The judgment of the Superior Court in No. 22-09 is vacated, and the case is remanded with instructions to award damages consistent with this opinion.

It is so ordered.

Syllabus

LABSON *v.* LABBS

CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-11. Decided September 18, 2022

Held: Judgment of the Superior Court reversed, and case remanded for further proceedings.

RSC-CV-421, reversed and remanded.

PER CURIAM.

The judgment of the Superior Court is reversed, and the case is remanded with instructions to compel the return of any damages already paid to respondent by petitioner.

It is so ordered.

Syllabus

STATE *v.* GAVIN

APPEAL FROM THE SUPERIOR COURT OF RIDGEWAY

No. 22-15. Decided December 11, 2022

Appellee, then a law enforcement officer, was indicted by a grand jury for voluntary manslaughter, involuntary manslaughter, and aggravated assault on November 13, 2022 after being accused of a shooting against another individual ten days before. Several days passed before the State entered evidence according to a discovery order issued by the Superior Court, after which appellee raised an objection against the filing due to its untimeliness. Appellee then filed a verbal motion to dismiss the case, and the Superior Court granted the motion with prejudice.

Held: The state trial court holds the power to dismiss with prejudice as a sanction intended to prevent undue and unnecessary delays within the judicial process. The power of the state trial courts to invoke this action as a sanction is deeply rooted in English common law, specifically in the judgements of *non prosequitur*. 3 Blackstone, Commentaries 295-296 (1768). This power is reaffirmed by the Supreme Court of the United States in civil matters before the federal district court, in a proceeding which involves a similar set of circumstances. *Link* v. *Wabash R. Co.*, 370 U. S. 626. The delay of proceedings itself presents an actual prejudice in a defendant as it creates an opportunity for the defendant's reputation to suffer injury as well as their employment, hence one of the many reasons why a constitutional protection exists in favor of grand jury indictments for public officials. Thus, it was within the court's discretion to disregard the excuse provided by the State's co-counsel regarding their failure to comply with the court's order, and it was unreasonable to claim the State could not foresee the very avenues that appellee could take because of its failure to comply with the order for discovery. Pp. 75-79.

Affirmed.

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

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The State of Ridgeway challenges the Superior Court's involuntary dismissal with prejudice of this criminal action under the circumstances that follow.

The action resulted from a shooting which took place on November 3rd, 2022, between appellee, who was actively serving in his capacity as a law enforcement officer, and an individual. Ten days later, on November 13th, 2022, a grand jury returned an indictment against appellee, which charged them with voluntary manslaughter, involuntary manslaughter, and aggravated assault. On the same date, appellee was arraigned before the Superior Court of the State of Ridgeway during which he pleaded not guilty, with the proceedings then being assigned to a trial judge. Subsequently, appellee was released on his own recognizance. The Superior Court, on November 13th, 2022, duly notified counsels for each side of the scheduling of pre-trial motions, discovery, appearances, and all other pre-trial matters. On November 14th, 2022, appellee filed a motion to dismiss for selective prosecution. In response, appellant's co-counsel provided notice to the court that it would provide a response to the motion while also noting that it would request to have certain evidence filed in the response sealed. The State filed a response to the motion to dismiss on November 15th, 2022, after which the Superior Court held a discussion between the two parties which ultimately resulted in the decision to decline to the motion to dismiss with the court instead opting to issue an additional discovery order for evidence relevant to appellee's argument of selective prosecution. No additional proceedings took place on the date, including the submission of discovery which had been set for

that date. Additional discussions took place on November 16th, 2022, regarding appellee's claims regarding selective and vindictive prosecution, during which time it was also raised that the State had not submitted discovery. Appellee objected to the State submitting discovery beyond the discovery deadline. The State then submitted discovery before the court on November 17th, 2022, at which appellee objected to the State's submission. The court then granted appellant's co-counsel with the opportunity to provide the court with an excuse sufficient to justify the tardiness, which co-counsel argued was because of the order being entered before he had become co-counsel. After additional discussion between the parties and the court, the court declined the admission of evidence, which was then followed by a verbal motion to dismiss the indictment entirely on the basis that the State failed to produce evidence, which the court then granted. On November 21st, 2022, the State filed for an appeal before the Supreme Court of the State of Ridgeway, under 1 R. Stat. § 2203(i). We then noted probable jurisdiction, *post,* at 511.

I

The State argues that a failure of a state attorney to comply with the orders of the court is insufficient to fulfill the requirement of weighing merit behind the court's authority to dismiss a proceeding with prejudice. We disagree. It cannot be left to doubt as to whether a state trial court has the authority or the discretion to dismiss a plaintiff's action with prejudice based on a failure to prosecute the offense brought before it. The state trial court holds the power to dismiss with prejudice as a sanction intended to prevent undue and unnecessary delays within the judicial process. The power of the state trial courts to invoke this action as a sanction is deeply rooted in English common law, specifically in

the judgements of *non prosequitur*. 3 Blackstone, *Commentaries* 295-296 (1768). This power is reaffirmed by the Supreme Court of the United States in civil matters before the federal district court, in a proceeding which involves a similar set of circumstances. *Link* v. *Wabash R. Co.*, 370 U. S. 626 (1962).

The State additionally attempts to argue that *Costello* v. *United States*, 365 U. S. 265 (1961), establishes that if a proceeding is dismissed on the basis that the plaintiff party fails to file pretrial documentation, the proceeding is not able to be dismissed as an adjudication of merits. We disagree. Under the same precedent provided by the State, it is affirmed that a failure to prosecute, or to otherwise comply with the orders of the court, would "primarily involve situations in which the defendant must incur the inconvenience of preparing to meet the merits because there is no initial bar to the Court's reaching them." *Ibid,* at 286. When analyzing how this precedent can be applied in the State of Ridgeway, we must analyze the rule which the court applied when making this decision. In this matter, Rid.R. Civ. P. 28(b) is relevant, yet it also originates from Rule 41(b) of the Federal Rules of Civil Procedure, which is the rule applied in the original precedent. The opinion of the court reenforces that authority of the lower court to employ an adjudication on the merits as a potential resolution to a failure of a plaintiff to prosecute, or to comply with the rules and orders of the court.

A third concern can be raised regarding the potential prejudice that may be brought before a defendant in a criminal proceeding because of the state's failure to prosecute or comply with the orders and rules of the court. A plaintiff is required to conduct their due diligence in pursuing an action before the court, and because of this pursuit, there may

be a prejudice against the defendant. An unnecessary delay of the proceedings can elongate the period during which the defendant is prejudiced. The delay of proceedings itself presents an actual prejudice in a defendant as it creates an opportunity for the defendant's reputation to suffer injury as well as their employment, hence one of the many reasons why a constitutional protection exists in favor of grand jury indictments for public officials. *Lyell Theatre Corp.* v. *Loews Corp.*, 682 F. 2d 37, 43 (2d Cir. 1982). We have carefully reviewed this case. The superior court's decision to dismiss the proceedings with prejudice is supported by the injury presented because of the failure of the state to prosecute the action in a timely manner. As it is a right of the defense to a speedy trial, the court did not err in granting the dismissal motion with this consideration in mind.

II

With all these considerations in mind, we cannot reach the conclusion that the Superior Court's dismissal of the State's action due to their failure to prosecute, namely because of the State's failure to submit the relevant evidence and information within a timeline manner, would be consistent with an abuse of discretion. We hold that it was within the court's discretion to disregard the excuse provided by the State's co-counsel regarding their failure to comply with the court's order. The State voluntarily selected to prosecute this action within this timeline, it additionally voluntarily selected counsel and co-counsel which could not provide sufficient attention to the proceedings as to enter compliance with the discovery order within the permitted time. The State is responsible for the action and inaction of their counsel and co-counsel, and as such, they have "notice of all facts, notice of which can be charged upon the attorney." *Smith* v. *Ayer*, 101 U. S. 320, 326 (1879).

Finally, the failure to comply on the part of the State does not come because of its uncontrolled conduct nor does it come because of circumstances beyond their control. The State's counsel and co-counsel were granted due notice of the scheduling of the proceedings up until the point of replies to motions, with the court specifically providing a timeline for the submission of discovery. It would be unreasonable to then say that the State could not foresee the very avenues that appellee could take because of its failure to comply with the order for discovery.

We decline to answer the issue on the applicability of double jeopardy regarding pre-trial matters.

Affirmed.

Syllabus

TITANIC, GOVERNOR OF RIDGEWAY *v.* NEV

CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-16. Argued December 31, 2022 —— Decided January 13, 2023

In 2022, the Senate passed the Modified Sedition Act, codified at 6 R. Stat. § 8101 *et seq*., which created prohibitions against certain persons from receiving expungements, as well as obtaining and retaining employment. Respondents serve in both the Ridgeway County Sheriff's Office, as well as the Boulder County Transit Authority. They therefore filed suit, arguing that they are being unconstitutionally barred from filing an expungement and that their employment in the Sheriff's Office is jeopardized by the Modified Sedition Act. Respondents moved for a preliminary injunction. The Superior Court granted the injunction and "enjoined the Modified Sedition Act as challenged[.]" 2 R. Supp. 7, 8. The State then filed this petition for a writ of certiorari, arguing that respondents lacked standing and that the Superior Court abused its discretion in issuing a preliminary injunction.

Held: The Superior Court abused its discretion in issuing a preliminary injunction, and respondents lack standing to bring suit in this case. Pp. 85-100.

a) When a court enters a negative injunction against a law, an order prohibiting certain conduct, it is not removing that law or making it inoperative, but enjoining those who are charged with enforcing that law. But it is a feature of equitable doctrine that judicial officers, including their clerks, are totally immune from equitable remedy. *Whole Woman's Health* v. *Jackson*, 142 S. Ct. 522. When the law is violated, appeal is usually sufficient to remedy those errors. Pp. 85-86.

(b) To satisfy the "irreducible constitutional minimum" of standing, respondents must have demonstrated 1) an injury in fact; 2) connection between the injury and the conduct being complained about; and 3) the ability of a court to remedy such injury. *Spokeo, Inc.* v. *Robins,* 578 U. S. 330, 338. Respondents in this case are in no capability to benefit from a favorable ruling regarding expungements. Respondents claim that they "would have the ability to

claim imminent harm if [they were] able to suggest in [their] pleadings that [they were] subject to the provisions of the law." This Court disagrees to the extent that it is incomplete. Respondents would need to additionally show that being subject to those pleadings caused injury in fact. "Fact" is the keyword that separates conjecture from imminence, and actual from hypothetical. Respondents plead no single fact that demonstrates injury beyond a societal wrong or grievance, which is prohibited. Pp. 86-88.

(c) Because subject-matter jurisdiction may be dispositive of a case, it is exempt from the party-presentation rule this Court explained in *State* v. *Infinity, ante,* at 22. Under the law, administrative courts have the right to review administrative "actions[,] policy[,] [and] rules[.]" 2 R. Stat. § 3305. The Senate has created a civil cause of action that allows the Superior Court to review any "policy, order, procedure, or directive." for whether it is legally or constitutionally compatible. 1 R. Stat. § 3201. The legislature clearly intended for the administrative courts to exclusively review these issues, by creating a specific grant of jurisdiction compared to a generalized cause of action specified in 1 R. Stat. § 3201. Under the canons of statutory construction, when a specific clause and a general clause conflict, the specific clause prevails. The administrative court retains subject-matter jurisdiction, and the Superior Court may not hear claims which have been entrusted to a different court. Employment cases are therefore within the Administrative Court's jurisdiction, not the Superior Court's. Pp. 88-89.

(c) 6 R. Stat. § 8301(a) states that a discharge under that section cannot be reviewed by any court. The impasse becomes clear when the respondents allege a violation of constitutional rights. Federal courts have faced this problem thanks to a practice known as "jurisdiction stripping," which occurs when there is clear and convincing legislative intent. This jurisdiction-stripping practice can also occur within the Superior Court where the legislature can narrow the applicability of a given statute. While this Court holds that jurisdiction-stripping may occur, it cannot preclude review over alleged violations of the State or Federal constitution. Pp. 90-92.

(d) The legislature does not mean the public office canon to be a *de jure* requirement by arguing whether a person is in public office as a question of law, but instead to be a *de facto* requirement. This

requirement is met when a person holds some agency to act on behalf of a sovereign. The law places no specifics as to comparative minima or maxima on the power held and instead creates a general specification that all persons who hold positions in an agency, no matter how trivial or insignificant, satisfy the requirement. Petitioner contends that because there are no legally defined public offices in Boulder County or Pauljkl's United States, there are no public offices. Because of this, there is no way to claim imminent injury. This court, however, is not in the business of interpreting foreign laws, and that conclusions are predicated on us interpreting a foreign constitution or statute to determine its own applicability as to this State's must be avoided. Furthermore, this Court disagrees with the respondent's application of the substantial risk standard. In this case, the certainly impending standard is the applicable way to review. When it comes to the State's locality the substantial risk standard is mostly irrelevant. The respondents have made no proof as to the certainty of whether such harm would occur. Pp. 93-98.

(e) To obtain a preliminary injunction, the plaintiff must demonstrate that 1) they are likely to succeed on the merits; 2) they are likely to suffer irreparable harm without the injunction; 3) the balance of equities and hardships is in favor of the plaintiff; and 4) whether that injunction is in the public interest. See *Winter* v. *Natural Resources Defense Council, Inc.,* 555 U. S. 7, 20. The public interest and the balance of equities factors combine when the government is a party in an action. *Nken* v. *Holder*, 556 U. S. 418, 435. Pp. 98-99.

(f) One showing a plaintiff must make to obtain a preliminary injunction is likelihood of success on the merits. *Winter, supra,* at 20. Those merits encompass not only substantive theories but also establishment of jurisdiction. *Electronic Privacy Info. Center* v. *Dept. of Commerce,* 928 F.3d 95, 104. If, in reviewing the lower court's judgment on whether to issue a preliminary injunction, this Court determines that a litigant cannot establish standing as a matter of law, the proper course is to remand the case for dismissal. *Id.* Because that is the case here, dismissal is appropriate. Pp. 99-100.

2 R. Supp. 7, reversed and remanded.

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

JUSTICE JACKSON delivered the opinion of the Court.

On November 8th, 2022, petitioner, the Governor of the State of Ridgeway, signed the Modified Sedition Act, codified at 6 R. Stat. § 8101 *et seq*., into law. The Modified Sedition Act, among other things, created prohibitions against certain persons from receiving expungements, as well as obtaining and retaining employment.[1] Respondents NevPlaysGames and TheAvengerNick are employed in the Ridgeway County Sheriff's Office, as well as the Boulder County Transit Authority of Nightgaladeld's United States of America. Their claims are twofold: they argue that they are being unconstitutionally barred from filing an expungement and that their employment in the Sheriff's Office is jeopardized by the Modified Sedition Act. In the Superior Court, respondents moved for a preliminary injunction. The Superior Court granted the injunction and "enjoined the Modified Sedition Act as challenged[.]" *Nev v. Titanic,* 2 R. Supp. 7, 8 (Super. Ct. 2023). The State then filed for certiorari, arguing that respondents lacked standing, and that the Superior Court abused its discretion in issuing a preliminary injunction.

We granted certiorari. *Post,* at 511.[2]

I

Our Case and Controversy Clause, found at Article V, Section IV of the Ridgeway Constitution, is identical to the

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[1] We did not grant review as to the constitutionality of the law, and therefore this opinion will not consider the merits of those arguments.

[2] The only questions we granted on were whether respondents had standing, and whether the preliminary injunction was issued in accordance with the law.

clause found in Article III of the United States Constitution,[3] and we have generally held that when we have structurally and practically similar clauses, we may use United States court precedent when creating our decisions. See *State* v. *Lx1nas, ante,* at 46, 51, 52-54 (*Lx1nas III*). In determining the standard of review for issues presented on appeal, we look towards the nature of the question presented. "Decisions on questions of law are reviewable de novo, decisions on 'questions of fact' are reviewable for clear error, and decisions on matters of discretion are reviewable for abuse of discretion." *Highmark Inc.* v. *Allcare Health Management System, Inc.*, 572 U. S. 559, 563 (2014) (quoting *Pierce* v. *Underwood*, 487 U. S. 552, 558 (1988) (internal quotation marks omitted)). Standing is a question of law and thus reviewed *de novo*. *Muransky* v. *Godiva Chocolatier, Inc.,* 979 F. 3d 917, 923 (CA11 2020); see also *Hunstein* v. *Preferred Collection & Mgmt. Servs.*, 48 F. 4th 1236, 1241 (CA11 2022); *Abraugh* v. *Altimus*, 26 F. 4th 298, 302 (CA5 2022). As a result, no deference given to the lower court's decision, and we must adjudicate the question as if it were presented before us for the first time. Cf. *State* v. *Infinity, ante,* at 34 (Powell, J., concurring in part and concurring in the judgment in part) (citing *Salve Regina College* v. *Russell,* 499 U. S. 225, 238 (1991)).

A

Respondents' civil complaint has severe issues as to the cause of action being pleaded. They attempt to plead their claim under "Civil Action for Deprivation of Rights," however it is unclear what statute authorizes their claim. The State gives itself immunity from any claim except for a few in which the legislature explicitly authorizes suit against the

[3] U.S. Const., Art. III, §2, cl. 1.

government. 1 R. Stat. § 3203. The only way for respondent's claims to hold legal entitlement is if they were able to plead under 1 R. Stat. § 3201. Luckily for the respondents, this cause of action is extremely general and incorporates generally recognized doctrine regarding sovereign immunity. While lower courts ought to be extremely zealous in ensuring the right causes of action are being stated, we will liberally construct the pleadings to best preserve and dispose of the controversy.

Due to respondents' drastically different claims being compounded in this case (expungements and termination), we will bifurcate them into separate issues that will be addressed individually starting with expungements.

For an injunction to be enforceable, it needs a person who it can be enforced upon. When a court enters a negative injunction against a law, an order prohibiting certain conduct, it is not removing that law or making it inoperative, but enjoining those who are charged with enforcing that law. See *Massachusetts* v. *Mellon*, 262 U. S. 447, 488 (1923). While this court has never made a settled opinion regarding statewide injunctions, it has attempted to discuss the propriety of such relief. *State* v. *Lx1nas, post,* at 502, 506 (JACKSON, J. concurring in the denial of certiorari) ("A statewide injunction is inherently unenforceable.") (*Lx1nas II*). Now, this is not to say that statewide injunctions are prohibited by equitable doctrine contrary to the discussion in *Lx1nas II*. They are a useful remedy in the federal courts which refer to when an injunction has universal application beyond the parties to the case, as seen when a court enjoins the enforcement of a provision of law for everyone rather than just the plaintiffs raising the issue. *Rodgers* v. *Bryant*, 942 F. 3d 451 (CA8 2019). The nuance which increases the difficulty is when there is no specific officer enjoined and it is

just the "State of Ridgeway." Respondents argue that, because of the state at large being enjoined, an injunction was not issued against judicial officers regarding expungements. We disagree.

In the technical form of the order, this is true as no judicial officer is specifically named in the order. In the functional aspect, however, the only persons able to carry into effect such an order are judicial officers. The governor has no authority to deny an expungement, nor does any executive officer. The ability to hear and grant expungements has been placed in the exclusive jurisdiction of the judiciary, thereby making it a whole judicial process. See Rid. Const. Art. V, § IV. It is a feature of equitable doctrine that judicial officers, including their clerks, are totally immune from equitable remedy. *Whole Woman's Health* v. *Jackson*, 142 S. Ct. 522 (2021). This is not due to the courts cloaking themselves with immunity arbitrarily, but because the courts have a different measure for relief when the law or constitution is violated - appeal. Even if the law prohibited clerks from docketing these matters, there are still the usual appellate remedies for when a court fails to act upon a non-discretionary action, such as the extraordinary writ of mandamus. This comes from the notion that courts are not robotic, and apply the law that they see to be right, meaning it is within a court's jurisdiction to come to a finding that the expungements portion of the Modified Sedition Act is unconstitutional and therefore refuse to apply it as to an expungement case before it. Likewise, the State and the parties could seek appellate review for a misapplication of the law in which appellate remedy can be dispensed.

There are three requirements for standing under the Case and Controversy clause of the United States Constitution. We have already held that the jurisdictional doc-

trines under that clause apply to cases in the State of Ridgeway as well. *Lx1nas III, supra,* at 53-54. To satisfy the "irreducible constitutional minimum" of standing, respondents must have demonstrated 1) an injury in fact;[4] 2) connection between the injury and the conduct being complained about; and 3) the ability of a court to remedy such injury. *Spokeo, Inc.* v. *Robins,* 578 U. S. 330, 338 (2016).

As to the first prong, the injury must be actual or imminent. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555 (1992). A person is not able to use the courts as a vehicle for a remedy against a governmental or societal wrong unless that person benefits more than the average member of the public from a favorable ruling. *Id.,* see also *Fairchild* v. *Hughes*, 258 U. S. 129 (1922). Respondents in this case are in no capability to benefit from a favorable ruling regarding expungements. Respondents claim that they "would have the ability to claim imminent harm if [they were] able to suggest in [their] pleadings that [they were] subject to the provisions of the law." We disagree to the extent that it is incomplete. Respondents would need to additionally show that being subject to those pleadings caused injury in fact. "Fact" is the keyword that separates conjecture from imminence, and actual from hypothetical. Respondents plead no single fact that demonstrates injury beyond a societal wrong or grievance, which is prohibited. See *Mellon, supra,* at 488.

The third prong of standing is redressability. Under the law, legal damages are prohibited in a case against the government, meaning the only other option is an equitable remedy. 1 R. Stat. § 3204. However, no equitable remedy is

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[4] An injury-in-fact refers to an injury that is concrete, particularized, and actual or imminent, not conjectural or hypothetical. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555 (1992).

available pertaining to this case due to the doctrines of equity prohibiting the enjoinment of a judicial officer, and therefore there is no means for whatever injury is being alleged to be redressed through either legal damages or equity.

This claim fails the *Lujan* test for standing and therefore the controversy is nonjusticiable.[5]

B

The next issue, in this case, is regarding claims of imminent termination – specifically, whether or not the Superior Court had subject-matter jurisdiction to decide a claim about a termination. Respondents argue that we should not consider an argument because it was not raised by the petitioners. We disagree. In our holdings regarding the party presentation principle, we consider arguments that are not briefed upon if those arguments are "ultimately dispositive" of the issue before our court. See, *e.g., State* v. *Infinity, ante,* at 32 (quoting *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 447 (1993)); *Lx1nas III, ante,* at 54. The justiciability of a claim is always dispositive, for they are not merits arguments but considerations of a court's legal authority to even hear a claim in the first place. A finding of nonjusticiability is a rug pull on an entire case, as the court cannot continue with a nonjusticiable case, making it dispositive of the controversy. Furthermore, it is our prerogative to determine whether we have subject-matter jurisdiction over the case, even if the parties have not briefed us on the issue. See, *e.g., Hertz Corp.* v. *Friend,* 559 U. S. 77, 94 (2010); *Arbaugh* v. *Y & H Corp.,* 546 U. S. 500, 514 (2006). Otherwise, it would allow the parties to exclusively determine whether the

[5] As pertaining to the justiciability of the expungement claim.

court has the judicial authority to even preside over it, something less than desirable if both parties conspire to demand the court adjudicate a controversy it has no legal right to decide; it would strongarm the court into the issuance of advisory opinions.

Under the law, administrative courts have the right to review administrative "actions[,] policy[,] [and] rules[.]" 2 R. Stat. § 3305. The law has thoroughly defined what is administrative action. Title 2, Chapter 3, Subchapter 1 of the Ridgeway Code of Statutes defines the spectrum of; and authorizes the actions the government may take against an employee of the State. Termination itself is an administrative action but just colored under the law with modifiers that surround the character of the discharge.

The question now is whether this grant of jurisdiction is exclusive to the Administrative Court, or if the Superior Court can hear these issues as well. The Constitution grants the authority to the Superior Court to have original jurisdiction over "civil and criminal cases or controversies." Rid. Const. Art. V, § IV. The Senate has created a civil cause of action that allows the Superior Court to review any "policy, order, procedure, or directive." for whether it is legally or constitutionally compatible. 1 R. Stat. § 3201. This now creates a divergence as to who can claim original jurisdiction in the dispute. Both courts, at face value, appear to have the entitlement of law to hear the claim. Two legally separate courts, however, cannot share original jurisdiction. An issue close to this posture has been heard in the federal courts where the court has held that the creation of separate administrative procedures precludes district court review. *Elgin* v. *Dept. of Treasury*, 567 U. S. 6 (2012) (citing *Thunder Basin Coal Co.* v. *Reich*, 510 U. S. 207 (1994)), see also *United States* v. *Fausto*, 484 U. S. 443 (1988). We hold

that 2 R. Stat. § 3305 precludes review of such by the Superior Court. If we were to adjudicate this in the other direction then it renders moot any lawful authority an administrative court may have, obviously an asinine result. The legislature clearly intended for the administrative courts to exclusively review these issues, by creating a specific grant of jurisdiction compared to a generalized cause of action specified in 1 R. Stat. § 3201. Under the canons of statutory construction, when a specific clause and a general clause conflict, the specific clause prevails. See *Long Island Care at Home, Ltd.* v. *Coke*, 551 U. S. 158, 170 (2007); *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384-85 (1992). The administrative court retains subject-matter jurisdiction, and the Superior Court may not hear claims which have been entrusted to a different court.

There exists, however, a large elephant in the room when looking at statutes where judicial review has been precluded. 6 R. Stat. § 8301(a) states that a discharge under that section cannot be reviewed by any court. The impasse becomes clear when the respondents allege a violation of constitutional rights. We have to decide as to whether the court ought to just ignore this statute and be allowed to proceed, or that the judicial power is ever so subordinate to the will of the legislature that it can annul judicial review with clever clauses. Since judicial review became the law of the land, it has ushered in an American tradition where there is no greater thing that our society respects more than the law. It has forced the political branches to adhere to the written word, and the courts have inserted themselves as the ultimate arbiter as to what that word says. There is strong evidence showing, however, that this principle only exists because Congress allows it to. Our federal courts have faced this problem thanks to a practice known as "jurisdiction stripping," which occurs when there is clear and

convincing legislative intent. See *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 141 (1967) (citing *Rusk* v. *Cort*, 369 U. S. 367, 369, 379-380 (1962)). This doctrine relies on the Exceptions Clause found in the United States Constitution where the limitations of the court's jurisdiction occur "with such Exceptions, and under such Regulations as the Congress shall make[.]" See U.S. Const., Art. III, § II. We have held that we may only apply these doctrines if we are able to find an equivalent clause in our own constitution. Our constitution, however, does not contain an equivalent clause, therefore the cases may not be applied. Our constitution does allow courts the "trial of all causes proper for their cognizance[]" See Rid. Const. Art. V, § I. There is textual evidence in the constitution supporting the power of the legislature to create additional courts beyond what was specified in the constitution, albeit not explicitly stated, so there is little doubt as to the authority of the legislature to create additional courts, including courts of limited-jurisdiction and handing them original jurisdiction. Administrative courts, compared to the Superior Court, are created with an act of the legislation, and therefore may have their jurisdiction modified by the legislature in a matter they decide. This jurisdiction-stripping practice can also occur within the Superior Court where the legislature can narrow the applicability of a given statute. While we hold that jurisdiction-stripping may occur, it cannot preclude review over alleged violations of the State or Federal constitution. While federal courts have allowed jurisdictional stripping of constitutional arguments, they do not fit within the structure and text of our constitution. See *Ctr. for Biological Diversity* v. *Bernhardt*, 946 F. 3d 553 (CA9 2019). Our constitution guarantees a remedy when its provisions are violated. See Rid. Const, Art. I, § I. We have held that we are

to apply Vermont case law when interpreting our Constitution. See *Lx1nas III, supra,* at 51. Vermont treats this canon of our constitution as a "due process" clause. See *Levinsky* v. *Diamond*, 151 Vt. 178, 197, 559 A. 2d 1073, 1086 (1989), overruled on other grounds by *Muzzy* v. *State*, 155 Vt. 279, 583 A. 2d 82 (1990). This clause has been further constructed to guarantee access to the judicial process. See *Shields* v. *Gerhart*, 163 Vt. 219, 223, 658 A. 2d 924, 928 (1995). To deny access to a review of a constitutional violation would be a violation of our constitution. The legislature has the full power to withdraw the fangs of enforcement as to its own laws, but it may not detain the enforcement and subsequent adjudication of a constitutional liberty interest. As to the statute, we do not think that the clause provided in the law was aimed at precluding constitutional review, instead, it was aimed at preventing unwanted and burdensome litigation over a proscribed action the legislature has authorized. Such actions are reasonable and constitutionally sound. For a constitutional bar to even be constructed, the Senate must show clear, explicit, legislative intent to bar a constitutional challenge. *Bernhardt, supra*. While we expect the government to be zealous prosecutors of crimes, which is why we afford a plethora of due-process rights to ensure that such zealousness does not compromise civil liberty, we hold the view that the government is able to administer itself, including the civil service. To the most likely dismay of those who comprise this court's bar, the courts were never constructed to play babysitter of the government, but to resolve cases and controversies when so legally defined. Ultimately, we are bound by the rules to which the government wishes to apply itself, including rules that reorganize or remove jurisdiction to hear a legal claim. This means that the government, through the lawmaking process, gets to

define where, when, why, and how they are prosecuted. Absent of material due process concerns, the courts must follow suit.

The complexity of this issue expands when viewed in the context of the administrative court being also composed of Superior Court judges. 2 R. Stat. § 3302. While a Superior Court judge has the legal authority to hear these matters, they cannot do so while acting under the authority of the Superior Court. There are two different ballgames being played which have drastically different procedural foundations. Administrative courts are constructed on the notion that factual disputes in administrative claims are never really considered, and claims are mostly disputed as questions of law. These claims, by their procedure, consist entirely of whether the given actions violate the law. 2 R. Stat. § 3314. When there are claims of fact, these claims of fact are decided not by a single judge, but by the members of the department which administered the action being contested. 2 R. Stat. § 3309-3310. This is in direct contrast to a civil proceeding where all issues of fact are determined in a bench trial and decided solely upon by a single judge. The standards of review pertaining to each individual action are quite different compared to that of a civil court. Because of these overwhelming differences, it is not enough to say because of the two hats the Superior Court judge wore, they comingle subject-matter jurisdiction. The jurisdiction they are acting under is revealed by what procedures they followed and there is no evidence found to prove that the lower court judge was acting in anything other than their capacity as a Superior Court judge.

C

We now move to whether there was an imminent injury proved in the pleadings.

Petitioner contends that because there are no legally defined public offices in Boulder County or Pauljkl's United States, there are no public offices. Because of this, there is no way to claim imminent injury. We disagree. The petitioner brings forth a rigid interpretation of what a public office is by constructing it as something which gains its authority from a piece of paper set forth by a "foreign hostile power." Petitioner's Merits Brief, at 11-13. This court, however, is not in the business of interpreting foreign laws, and that conclusions are predicated on us interpreting a foreign constitution or statute to determine its own applicability as to ours must be avoided. We doubt that there is any dispute as to what a public officer means beyond the petitioner attempting to grasp for straws and ask this court to adopt an overly technical approach to statutory construction. We agree with respondents' assertion that this interpretation was devised in a "vacuum." Reply Br. of Respondents, at 6. We further agree that this practice of shop-vac construction is incompatible with governing law. See *Sturgeon* v. *Frost*, 577 U. S. 424 (2016). Public office in its ordinarily understood terms means that a person is employed by a given government. Some governments do not have written laws or a constitution, but some individuals still wield the sovereign's power. The legislature does not mean the public office canon to be a *de jure* requirement by arguing whether a person is in public office as a question of law, but instead to be a *de facto* requirement. This requirement is met when a person holds some agency to act on behalf of a sovereign. The law places no specifics as to comparative minima or maxima on the power held and instead creates a general specification that all persons who hold positions in an agency, no matter how trivial or insignificant, satisfy the requirement. If we were to adopt the petitioner's construction of the law, it would effectively neuter the clause passed by

the legislature. It is asinine to think that the legislature would pass a law they would expect to be wholly inoperative, and for the court to construct it that way is a violation of accepted statutory construction doctrine. *Husted* v. *A. Philip Randolph Institute*, 138 S. Ct. 1833, 1858 (2018). We find that respondents were employed in public office in Boulder County, as pleaded by their complaint.

Pre-enforcement claims still involve factual exercises just as in regular cases where the alleged injury already occurs. Pleading standards are still in effect, and standing remains just as pertinent of an issue. In a case where the injury already occurred, the burden of proof is on the plaintiff to prove with preponderance that there was an injury in fact, and likewise when the injury is imminent - the burden is on the plaintiff to prove such with preponderance. *Lujan, supra*, at 561. Imminence is purely a factual exercise, and therefore to prove such, sufficient facts must be pleaded that injury must be "certainly impending" or "substantial risk" to prove injury-in-fact and that "[a]llegations of possible future injury" are not enough to prove injury. *Whitmore* v. *Arkansas,* 495 U. S. 149, 158 (1990); *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 399 (2013) The *Clapper* court defaults to the "certainly impending" standard and not the "substantial risk" standard except when plaintiffs "incur costs to mitigate or avoid that harm." *Id.,* see also *Beck* v. *McDonald*, 848 F. 3d 262, 275 (CA4 2017).

When the petitioners attempted to get the matter dismissed in the lower court, the lower court opined that a suit is actionable "if there is a probable causal relation between the relief they seek, the facts they bring and the arguments[.]" *Nev* v. *Titanic,* RSC-CV-798 (Super. Ct. Dec. 10, 2022). While we do not disagree with the Superior Court's determination, it applied a deficient standard for a chal-

lenge against standing, which the courts must infer is nonexistent until pleaded otherwise. See *Bender* v. *Williamsport Area Sch. Dist.*, 475 U. S. 534, 546 (1986), This means that it is the duty of the lower court judge to recognize and apply all measures relating to standing including *Lujan* and other pleading tests. The lower court also ruled that "factual arguments should be limited in scope if presented in motions to dismiss and rather they're indicative for a trial matter[.]" See *Titanic, supra.* We disagree. At each part of the judicial process, there is a requirement for factual review. A trial is an exercise not to determine the number of whole facts, but the veracity of a fact pleaded by the plaintiff. That' is why the courts endeavor in prima facie review when evaluating whether they fit the factual requirements of a legal test. These tests do not involve testing the veracity of a given fact, but instead whether that fact if accepted as true, satisfies the legal requirement. See *Bell Atlantic Corp.* v. *Twombly*, 550 U. S. 544 (2007). Finally, the lower court states that "contravening angle of technical definitions of the statute are simply arguments for trial[.]" *Titanic, supra.* As a matter of best practice, courts ought to settle as many legal disputes before heading to trial. Including technical definitions of law. Petitioner's flawed, but relevant, motion to dismiss centered on the "public office" definition was ripe for adjudication as, while its arguments had factual precursors, the dispute was not a factual one. They were not attempting to challenge any fact pleaded by the plaintiff through their motion, and instead were creating a dispute of law. The source of the lower court's error is when it incorrectly probed the spirit of the controversy, which does not lie in any fact, but in how the law ought to be interpreted to the facts already plead. Trials do not suddenly make clear statutory or constitutional ambiguity.

When attempting a *de novo* review of standing on the

pleadings, it is a closed universe problem, and the court cannot consider any information or allegations not wholly contained in the pleadings.[6] *Turtle, supra,* at 32. The respondents in their civil complaint allege that because they hold office in what was determined to be a hostile foreign power, their position is being put at substantial risk pursuant to 6 R. Stat. § 8301. The plaintiffs, through their factual allegations, prove that their client is most certainly subject to the statute. We disagree with the respondent's application of the substantial risk standard. In this case, the certainly impending standard is the applicable way to review. When it comes to our locality the substantial risk standard is mostly irrelevant. The respondents have made no proof as to the certainty of whether such harm would occur. The Governor's Executive Order makes no mention nor offers any directive as to how a department would or ought to enact 6 R. Stat. § 8301. This statute places the power entirely within the hands of the discretion of the executive. There is no canonical evidence that the statute is an imperative command. Furthermore, the plaintiffs have not pleaded that their employing department was even considering exercising such discretion, nor have they shown any proof of that discretion being exercised on another person. There is no certainty as to the imminence of any action taking place. Furthermore, the statute does not grant a blank check to a department head, as the law requires that there be a finding that a person is a security risk. Even if we were to apply the substan-

[6] Respondents attempted to introduce facts in their statement of the case contained in the merits brief, the and further alleged new evidence. We cannot consider what is not originally on the trial court record. Even if we were to consider such evidence, the claim would not pass the standing test laid out in *Lujan*, *supra*.

tial risk standard, there is no offer of proof, nor factual modifier, which makes the risk of adverse action substantial. The existence of a discretionary clause alone does not generate substantial risk, nor does it prove action is certainly impending.

This claim fails the *Lujan* test for standing, and the Superior Court lacked subject-matter jurisdiction to hear the claim. Therefore, the controversy is nonjusticiable.

II

Both petitioner and respondent stipulate that the *Winter* test is the proper test to use when evaluating whether to grant preliminary relief. To obtain a preliminary injunction, the plaintiff must demonstrate that 1) they are likely to succeed on the merits; 2) they are likely to suffer irreparable harm without the injunction; 3) the balance of equities and hardships is in favor of the plaintiff; and 4) whether that injunction is in the public interest. See *Winter* v. *Natural Resources Defense Council, Inc.,* 555 U. S. 7, 20 (2008). Generally, we have held that common law doctrines, including doctrines of equity, are incorporated into our system of laws as well, and therefore federal precedent relating to such may be used as precedent. *State v. Lx1nas*, *post,* at 501 (Jackson, J. concurring in the denial of certiorari) (*Lx1nas I*), see also *Lx1nas III, supra*. Preliminary injunctions are equally as manifest in equity as a permanent one, and *Winter* represents a whole interpretation of not only the federal government's *modus operandi* but other states as well. Several states including but not limited to California, Pennsylvania, Texas, and Vermont have similar understandings of preliminary injunctions. See, *e.g., IT Corp.* v. *County of Imperial*, 35 Cal. 3d 63, 672 P. 2d 121 (1983); *Summit Towne Center, Inc.* v. *Shoe Show of Rocky Mt., Inc.*, 573 Pa. 637, 828 A. 2d 995 (2003); *Butnaru* v. *Ford Motor Co.*, 84

S. W. 3d 198, 204 (Tex. 2002); *In re J.G.*, 160 Vt. 250, 255 n.2, 627 A. 2d 362, 365 n. 2 (1993). Some states make the elements more abstract or not worry themselves over whether the injury is irreparable. They, however, put these principles to the other corresponding elements of the test. For example, irreparable injury significantly tips the balance of equities and hardships in favor of the plaintiff. Furthermore, the federal courts have held that the public interest and the balance of equities combine when the government is a party in an action. *Nken* v. *Holder*, 556 U. S. 418, 435 (2009). We ultimately hold that the Winter test shall be used to probe for whether to enter a preliminary injunction, and in a case against the government, the public interest is already accounted for in the balance of equities portion of the test and is therefore not required to be explicitly proven or denied. We further agree with the federal court's assertion that, contrary to the position of the respondents, preliminary injunctions are an "extraordinary remedy never awarded as of right." *Winter, supra* (citing *Munaf* v. *Geren*, 553 U. S. 686 (2008)). We review preliminary injunctions as an abuse of discretion. See *Brown* v. *Chote*, 411 U. S. 452 (1973); *Doran* v. *Salem Inn, Inc.,* 422 U. S. 922 (1975).

In this case, we find no need to determine whether respondents are likely to succeed on their constitutional claims. One showing a plaintiff must make to obtain a preliminary injunction is likelihood of success on the merits. *Winter, supra,* at 20; see also *Glossip* v. *Gross,* 576 U.S. 863, 876 (2015); *Whole Woman's Health* v. *Jackson,* 141 S.Ct. 2494, 2495 (2021); *Ramirez* v. *Collier,* 142 S.Ct. 1264, 1275 (2022); *Perry* v. *Perez,* 565 U.S. 388, 394 (2012) (*per curiam*). Those merits "encompass not only substantive theories but also establishment of jurisdiction." *Electronic Privacy Info. Center* v. *Dept. of Commerce,* 928 F.3d 95, 104

(CADC 2019). "[I]f, in reviewing [the lower court's judgment on whether to issue] a preliminary injunction, we determine that a litigant cannot establish standing as a matter of law, the proper course is to remand the case for dismissal." *Id.* Because that is the case here, dismissal is appropriate.

* * *

We find that there is no standing for the respondents to bring this claim against the government, and therefore the preliminary injunction was issued beyond the legal jurisdiction of the Superior Court. We therefore reverse the judgment of the Superior Court, vacate the injunction issued below, and remand with instructions to dismiss the case.

It is so ordered.

Syllabus

LAZERIFY *v.* STUDSPERSECOND

CERTIFICATE TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-17. Decided January 30, 2023[*]

On December 30, 2022, xLaZerify submitted a civil complaint against StudsPerSecond, citing the tort of negligence per se, after he was demoted from the rank of Supervisor to Delivery Driver. On January 2, 2023, in response to the civil complaint, StudsPerSecond denied that Impediage, the General Manager of StudsPerSecond, committed the tort of negligence per se. On January 3, 2023, StudsPerSecond submitted a motion to dismiss the case, arguing that xLaZerify failed to state a claim. On January 7, 2023, the lower court denied the motion to dismiss finding "conceivable allegations" in the civil complaint. On January 8, 2023, StudsPerSecond filed a supplemental pleading, urging the lower court to reconsider its ruling and thereby grant their motion to dismiss. See *xLaZerify* v. *StudsPerSecond*, RSC-CV-832 (Super. Ct.). On January 8, 2023, epidermisgupta69, filed a civil complaint against iCitruzx, citing the tort of official misconduct, after he was searched despite his refusal. On January 8, 2023, iCitruzx, represented by the government, filed a motion to dismiss, arguing that epidermisgupta69 insufficiently pled his claim in the civil complaint. See *epidermisgupta69* v. *iCitruzx*, RSC-CV-856 (Super. Ct.). Following both motions to dismiss, the Superior Court certified three questions to this Court regarding the appropriate remedy for an insufficiently-pleaded complaint. This Court set two of the three questions for briefing.

Held: The questions are answered in the negative. Pp. 2-9.

(a) It is imperative that a civil complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." See Rid. R. Civ. P. 8(a)(1). Similarly, federal rules require a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." See Fed. R. Civ. P.

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[*] Together with No. 22-18, *Gupta* v. *Citruzx*, also on certificate to the Superior Court of Ridgeway.

8(a)(2). Owing to the mirroring of these rules, this Court tends to rely on federal precedent to guide its interpretation of relative issues. See *Titanic* v. *Nev*, *ante,* at 84; *State* v. *Lx1nas*, *ante,* at 51, 52-54. Pp. 103-104.

(b) A party may move to dismiss a case where the plaintiff fails to "to state a claim upon which relief can be granted." Rid. Rule Civ. P. 12(b)(5). To survive a Rule 12(b)(5) dismissal motion, therefore, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft* v. *Iqbal,* 556 U. S. 662, 678; *Bell Atlantic Corp.* v. *Twombly,* 550 U. S. 544, 570. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Pp. 104-105.

(c) The complaints in the two cases before us do not satisfy that standard. In *xLazerify,* the plaintiff's inability to tie these facts to the tort of negligence per se by explaining the defendant's duty of care to him and how certain administrative policies—in this case, shown in the StudsPerSecond handbook—were designed to prevent the alleged injury, makes the civil complaint fall short of stating a claim. In *epidermisgupta69,* the complaint did not adequately combine the factual allegations with legal conclusions that address all parts of the tort in question. Pp. 104-110.

(d) The lower court can exercise its discretion when choosing to dismiss a civil complaint, and in effect, an entire civil case, with or without prejudice. The issues found in the civil complaints of xLaZerify and epider-misgupta69 are not dire enough to the point where a dismissal with prejudice would necessarily be warranted. A dismissal without prejudice could give enough room for the errors of the civil complaints to be corrected in a timely fashion before a case is refiled. The lower court is afforded the ability to utilize the findings of the Court, in this case, to come to a determination as to how a faulty civil complaint should be handled in each case as it pertains to prejudice applied to the dismissal. Pp. 110-111.

Questions answered in the negative.

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

JUSTICE GORSUCH delivered the opinion of the Court.

On December 30, 2022, xLaZerify submitted a civil complaint against StudsPerSecond, citing the tort of negligence per se, after he was demoted from the rank of Supervisor to Delivery Driver. On January 2, 2023, in response to the civil complaint, StudsPerSecond denied that Impediage, the General Manager of StudsPerSecond, committed the tort of negligence *per se*. On January 3, 2023, StudsPerSecond submitted a motion to dismiss the case, arguing that xLaZerify failed to state a claim. On January 7, 2023, the lower court denied the motion to dismiss finding "conceivable allegations" in the civil complaint. On January 8, 2023, StudsPerSecond filed a supplemental pleading, urging the lower court to reconsider its ruling and thereby grant their motion to dismiss. See *xLaZerify* v. *StudsPerSecond,* RSC-CV-832 (Super. Ct.).

On January 8, 2023, epidermisgupta69, filed a civil complaint against iCitruzx, citing the tort of official misconduct, after he was searched despite his refusal. On January 8, 2023, iCitruzx, represented by the government, filed a motion to dismiss, arguing that epidermisgupta69 insufficiently pled his claim in the civil complaint. See *epidermisgupta69* v. *iCitruzx,* RSC-CV-856 (Super. Ct.).

On January 8, 2023, the lower court certified three questions to this court. The first asked: [s]hould insufficiently pleaded facts in a civil complaint only result in a dismissal with prejudice? The second asked: [a]re the prerequisites for a civil complaint met in both xLaZerify and epidermisgupta69's cases? The third asked: [a]re the prerequisites and requirements in *Bell Atlantic Corp.* v. *Twombly,* 550 U. S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U. S. 662 (2009) relaxed for *pro se* litigants and to what extent? On January

10, 2023, this Court consolidated *xLaZerify* v. *StudsPerSecond* and *epidermisgupta69* v. *iCitruzx* and elected to only accept briefs as to questions 1 and 2.[1]

This Court looks first at the second certified question as answering it would provide clarity towards the first certified question. The second question asks [if] the prerequisites for a civil complaint [are] met in both *xLaZerify* and *epidermisgupta69*. Across the board, it is imperative that a civil complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." See Rid. R. Civ. P. 8(a)(1). Similarly, federal rules require a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." See Fed. R. Civ. P. 8(a)(2). Owing to the mirroring of these rules, this Court tends to rely on federal precedent to guide its interpretation of relative issues. See *Titanic* v. *Nev*, *ante,* at 84; *State* v. *Lx1nas*, *ante,* at 46, 51, 52-54. It would be best to individually look at the civil complaints below and determine if they muster up to the guidelines set out in our rules and federal interpretations.

A – Analysis of *xLazerify* Civil Complaint

Our rules require a plaintiff to make "a short and plain statement of the claim" to demonstrate the relief to which they are entitled. See Rid. Rule Civ. P. 8(a)(1). However, a party may move to dismiss a case where the plaintiff fails to "to state a claim upon which relief can be granted." Rid. Rule Civ. P. 12(b)(5).[2] To survive a Rule 12(b)(5) dismissal motion, therefore, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that

[1] *Post,* at 512.

[2] This subsection is copied verbatim from Rule 12(b)(6) of the Federal Rules of Civil Procedure.

is plausible on its face.'" *Ashcroft* v. *Iqbal,* 556 U. S. 662, 678 (2009) (quoting *Bell Atlantic Corp.* v. *Twombly,* 550 U. S. 544, 570 (2007)). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* (quoting *Twombly*, 550 U. S., at 556). Nonetheless, the details of a civil complaint must incorporate relevant facts and their relation to the tort(s) in question. The United States Supreme Court has cautioned that a mere "formulaic recitation of elements of a cause of action will not do." *Twombly*, 550 U. S., at 555. We must carefully dissect the civil complaint in *xLaZerify* to determine if this mistake is present. The civil complaint contains several facts that provide context of the plaintiff's situation before his demotion. It even portrays the plaintiff's attempts to notify the defendant of the reasons pertaining to his sudden inactivity. While this can be appreciated by the lower court as painting a picture of the events leading up to the point where the plaintiff allegedly suffered harm, they do not highlight a cause of action.

In fact, most of the facts stated in the civil complaint were admitted by the defendant in their response to the civil complaint. The only discernible denials by the defendant of the plaintiff's allegations came in relation to paragraph 12 of the civil complaint which reads "[d]ue to the violations of StudsPerSecond Administrative policy, Mr. Impediage had tortuously committed Negligence per se." *xLaZerify* v. *StudsPerSecond*, RSC-CV-832. This is the only attempt that the plaintiff makes to describe a causal relationship between the defendant's actions and their alleged harm in connection to the tort of negligence per se. This statement can be construed as a legal conclusion made without any true analytical backing and is a weak attempt at best to show the weight of the facts stated previously. The plaintiff

did not even go as far as to make a "formulaic recitation of elements" when referring to the aforementioned tort. They did not even bother to break down the tort. *Twombly, supra*. A lack of regard for even lightly going over the elements of the tort of negligence per se does not properly draw up a cause of action that this Court can identify.

On the topic of mere legal conclusions, "while legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, *supra,* at 679. The civil complaint contains several factual allegations such as "[o]n the 4th of December, the defendant was demoted from his position as a supervisor in StudsPerSecond for 'Inactivity'"; "[f]ollowing this, the defendant made clear that he was in fact not inactive and was up to date with his work, even going so far as to restate that he was on LOA"; "[a]t the time of his demotion, Mr. xLazerify did not have any disciplinary actions taken against him." RSC-CV-832. These factual allegations do not lead to the formation of a coherent legal conclusion as to the defendant's satisfying the elements of negligence *per se*.

Further, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, supra, at 678. What we see in the civil complaint is a list of events describing what the plaintiff experienced leading up to his demotion. These facts are not construed in a manner to demonstrate how the defendant "[was] prescribed a duty by statute or administrative policy, and that [the defendant] breached such statute or administrative policy resulted in injury against another individual." See 1 R. Stat. § 3106. Additionally, "[t]he statute or administrative policy must be intended to prevent the injury suffered." *Id.,* § 3106(i). The civil complaint shows the plaintiff attempting to refer the court to the administrative

policies by which the defendant is bound through a quotation from the StudsPerSecond handbook. Paragraph 10 reads "the punishment listed for inactivity in the StudsPerSecond handbook section 115.4 is a "Recorded Warning", [sic] with section 116 following stating that an employee who has more than three recorded warnings shall be terminated." RSC-CV-832. To describe how he did not receive appropriate punishment as it pertained to StudsPerSecond's policies on inactivity, the plaintiff cited two sections from the company's handbook. The plaintiff's neglect towards explaining, even briefly, how these facts related to the tort of negligence per se prohibits us from understanding how the defendant is responsible for the alleged harm experienced by the plaintiff. It is not the job of the defendant or the court to guess how the facts and torts are related—that duty rests with the plaintiff. Even if we respected all of the plaintiff's factual allegations and took them as true, the plaintiff would have to demonstrate how those facts related to the alleged injury suffered and thereby the tort in question. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Lewis* v. *Casey*, 518 U. S. 343 (1996) (quoting *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 561 (1992)). While the facts in the civil complaint are straightforward and for the most part, general, they suffice on their own as factual allegations. It is the plaintiff's inability to tie these facts to the tort of negligence per se by explaining the defendant's duty of care to him and how certain administrative policies—in this case, shown in the StudsPerSecond handbook—were designed to prevent the alleged injury that makes the civil complaint fall short of stating a claim. "The plausibility standard [under *Bell Atlantic Corp.* v. *Twombly,* 550 U. S. 544 (2007)] is not akin to a 'probability requirement,' but it asks for more than a sheer possibility

that a defendant has acted unlawfully." *Iqbal,* 556 U. S., at 678 (quoting *Twombly, supra,* at 556). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Ibid.* (internal quotation marks omitted). That is the case here.

Therefore, the prerequisites for a civil complaint have not been met in *xLaZerify*.

B – Analysis of *epidermisgupta69* Civil Complaint

When looking at the civil complaint in *epidermisgupta69*, we notice many of the shortcomings evident in *xLaZerify*. In the civil complaint, the plaintiff states several facts which, while detailed and attempt to attach the defendant to the alleged tortious behavior, fail to completely demonstrate how all the elements of official misconduct were fulfilled. See *epidermisgupta69* v. *iCitruzx*, RSC-CV-856 (Super. Ct.). The civil complaint would need to have facts such that, if accepted as true, "state a claim to relief that is plausible on its face." *Ashcroft* v. *Iqbal, supra*, at 570. The plaintiff would have to indicate that the defendant "commit[ed] an act relating to his office but [that] constitutes an unauthorized exercise of his official functions, knowing that such act is unauthorized; or refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office." See 1 R. Stat. § 3114. In the civil complaint, the plaintiff went as far as to cite the Ridgeway State Police Department Policy Guide, stating in paragraph 28: "[t]he Ridgeway State Police Department Policy Guide, in detailing policy for on-duty law enforcement officers, states that 'All employees within the Ridgeway State Police shall only exercise authorities as granted to them by legal statutes, as provided by the State Senate and approved by

the Governor.' (Plaintiff's Exhibit B, Page 6, 100-2)" (internal emphasis omitted). See RSC-CV-856. This paragraph can be reasonably construed to apparently set the foundation for explaining how the defendant sidestepped his duties and effected an allegedly illegal search.

However, perusing down the civil complaint, paragraph 31 reads: "[w]hile the defendant was performing an act apparently related to his duties as a public servant, he knowingly and intentionally effected an illegal search of the plaintiff, which constituted an unauthorized exercise of his official functions, in violation of 1 R. Stat. § 3114." Here, we see yet another example of a "formulaic recitation of elements of a cause of action" that simply "will not do." *Twombly, supra*, at 555. There is no attempt to scratch the surface of the tort and potentially explain how the defendant knowingly and intentionally committed an action outside of the purview of his defined duties. While paragraph 31 may be considered valid as a factual statement if the defendant conducted an illegal search, the plaintiff did not explain if the defendant intended to perform an illegal search and was fully aware of it. Again, "while legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal, supra*, at 679. Factual allegations and strong legal conclusions go hand in hand—one cannot survive without the other to adequately form a sound civil complaint. The plaintiff can claim that the defendant acted intentionally but they must go beyond the basics to prove that intent was present, especially if the tort requires it. The civil complaint here does not adequately marry the factual allegations with legal conclusions that address all parts of the tort in question.

Even if this Court were to "liberally construe" the civil complaint since it was submitted by a *pro se* plaintiff, it would be harmful to give such leeway to the plaintiff that an

omission of legal conclusions with respect to all elements of the tort could be overlooked. *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This is not to say that many of the alleged facts did not show some attempt to depict a correlation between the defendant's actions and tortious conduct. However, the civil complaint simply did not address all elements of the tort, such as intent. No amount of loose reading of the civil complaint in its current state could amend this deficiency. Therefore, the prerequisites for a civil complaint have not been met in *epidermisgupta69*.

II

Having answered the second question and found that the prerequisites for a civil complaint were not met in *xLaZerify* and *epidermisgupta69*, we can now assess how inadequate civil complaints ought to be handled. The first question asks if insufficiently pleaded facts in a civil complaint should only result in a dismissal with prejudice. Judging from the nature of the question, it can be comfortably agreed upon that a civil complaint with insufficiently pleaded facts should be rejected by a court. Additionally, claims can be outright dismissed if they do not entitle the plaintiff to relief. *Iqbal, supra*. A court can act within its own discretion when choosing to dismiss a charge or case with or without prejudice. *United States* v. *Taylor*, 487 U. S. 326 (1988). The United States Supreme Court found that a district court was correct in dismissing a particular action without prejudice. *Heck* v. *Humphrey*, 512 U. S. 477 (1994).

The lower court can exercise its discretion when choosing to dismiss a civil complaint, and in effect, an entire civil case, with or without prejudice. The issues found in the civil complaints of *xLaZerify* and *epidermisgupta69* are not dire enough to the point where a dismissal with prejudice would necessarily be warranted. A dismissal without prejudice

could give enough room for the errors of the civil complaints to be corrected in a timely fashion before a case is refiled. The lower court is afforded the ability to utilize the findings of the Court, in this case, to come to a determination as to how a faulty civil complaint should be handled in each case as it pertains to prejudice applied to the dismissal. *Link* v. *Wabash R. Co.,* 370 U. S. 626 (1962). Dismissing a case with prejudice would indicate that there is something so gravely wrong with the plaintiff's assertions in their complaint that such a case should never return to the court. As this Court analyzed the civil complaints of both *xLaZerify* and *epidermisgupta69*, we recognized the various attempts at addressing the elements of the respective torts in question. There should be no reason why, with a dismissal without prejudice, the plaintiffs can not make minor adjustments to yield sound civil complaints.

* * *

We find that insufficiently pleaded facts in a civil complaint can result in a dismissal of such complaint or case with or without prejudice at the discretion of the lower court. The prerequisites for a civil complaint were not met in either xLaZerify or epidermisgupta69. We therefore answer both questions in the negative.

It is so ordered.

REPORTER'S NOTE

The next page is purposefully numbered 501. The numbers between 111 and 501 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 Ridgeway Reports.

ORDERS FOR MARCH 28, 2022, THROUGH MARCH 27, 2023

March 30, 2022

Miscellaneous Order

No. 22M001. IN RE DISMISSAL OF CASES IN THE RIDGEWAY COUNTY COURT. On motion by the Supreme Court of the State of Ridgeway, it is so ordered that all untried claims, civil or criminal, currently pending in the Ridgeway County Court be dismissed without prejudice. All defendants are to be discharged until summoned in the Superior Court.

April 14, 2022

Certiorari Denied

No. 22-01. STATE V. LX1NAS. Super. Ct. Certiorari denied. Reporter below: 1 R. Supp. 1.

JUSTICE JACKSON, concurring in the denial of certiorari.[*]

Sovereign immunity is a very tricky concept with a lot of nuances around it. Petitioners cited *Ex parte Young*, 209 U. S. 123 (1908), many times as precedent, yet they do not address its material discontinuity, which is the fact that the opinion was authored by a federal court over a manner of State immunity in federal court. This is clear throughout the opinion when the court makes legal determinations such as, "[t]he State has no power to impart to its officer[s] immunity from responsibility to the supreme authority of the United States." Furthermore, the foundation of Ex parte Young is one that does not hold any merit in the State courts because its application is narrowly centered around the federal courts regarding how the federal courts deal with State immunity. This interpretation of *Ex parte Young* has already been affirmed numerous times by the Supreme Court. "[*Ex parte Young*] allows certain private parties to seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law." See *Whole Woman's Health* v.

[*] [NOTE: This opinion was filed April 18, 2022.]

Jackson, 142 S. Ct. 522, 532 (2021). Young is about federalism and where the courts play in protecting the immunity of the States, and when such immunity ought to be denied when demanded by federal law.

Finding precedent over nuanced common law doctrines such as sovereign immunity can be tough because often-times they are intertwined and knotted with local constitutional provision or statutes of that jurisdiction. As a preference, I only invoke case law from the Supreme Court of the United States when there is a controversy or claim of a right incorporated by the Constitution of the United States, or when there is a common-law precedent. In other occasions, one must be diligent and careful as to where you step when citing precedent. If respondent-plaintiffs were suing on grounds of a violation of a liberty or right ensured by the United States Constitution and creating a cause of action out of that violation using *Young* as a conduit for their claim, then the application of *Young* would be perfectly valid. Here, however, the cause of action arises out of a state statute.

The doctrine of sovereign immunity, without a bunch of legal technicalities can be summed up quite simply. The State cannot be sued without its consent. However, the State did give consent. Their consent is quite clear and no amount of case law may usurp the law passed by the Senate unless it is a direct interpretation of constitutional provision. It may be savvier to cite several cases than interpret a single statute, but it is clear as to where it resides in this action. If petitioners cannot identify a constitutional reason as to why the statute ought not to be applied then it must be applied notwithstanding any pre-existing case law. Case law cannot render obsolete nor circumvent the lawful authority of the Senate to legislate. It is a fool's errand to argue case law when there is a clear statutory basis for the claim.

April 23, 2022

Certiorari Denied

No. 22-03. STATE V. LX1NAS. Super. Ct. Certiorari denied. Reported below: 1 R. Supp. 1 and 3.

JUSTICE POWELL, with whom JUSTICE JACKSON joins, concurring in the denial of certiorari.

I concur in the denial of certiorari. I write to address an issue that has seemed to have been made obvious throughout this litigation.

This is the second time this case has come up before us, and this is the second time that we have denied certiorari on the issues presented by the State. Each time, the State has renewed the same question before the lower court through different motions, and, when an adverse ruling has been rendered, filed a petition for a writ of certiorari in this Court. Cf. *Lx1nas* v. *State*, 1 R. Supp. 1 (2022), cert. denied, *ante,* at 501 (denying motion to dismiss), 1 R. Supp. 1 (2022) (granting the State's motion for summary judgment, but ruling in respondent's favor, leading to the present petition). Following the Superior Court's grant of summary judgment, the State filed the present petition before us. In both cases, the State included the following question in its petitions for writs of certiorari: "Whether the State of Ridgeway may be the named defendant in a suit seeking to enjoin, and declare as unconstitutional, an act of the State Senate."

We think the State is running on thin ice in attempting to present questions of law before us that we have previously denied review on. Although the denial of certiorari "imports no expression of opinion upon the merits of the case," *United States* v. *Carver*, 260 U. S. 482, 490 (1923), we think it suffice to say that efforts to convince us to hear an issue renewing a question in successive petitions for writs of certiorari is futile in nature, and highly discouraged by this Court.[*]

This State does not have a statute requiring that all appeals before us come from final judgments of the Superior Court, like federal law. See 28 U. S. C. §1291. And even if we did, the State, in their first opinion, correctly noted that sovereign immunity was an issue that could be presented in an interlocutory appeal. See Pet. for Cert., in *State* v. *Lx1nas*, M. T. 2022, No. 1, p. 6-7. But the renewed issues indicate that in the future, other parties may use the same solution of moving to dismiss, then petitioning the court, and renewing their claims in a

[*] Of course, there are instances where we should reconsider a case we have decided or a petition for a writ of certiorari following subsequent developments in law that could demand a different result. In those instances, a party could file for rehearing under this Court's Rule 34 (pun not intended). The present case before us, however, would most likely not be sufficient for rehearing.

motion for summary judgment if we deny certiorari for issues that would not fall under the collateral order doctrine. Such actions would be designed and used to "harass opponents and to clog the courts through a succession of costly and time-consuming appeals," *Flanagan* v. *United States*, 465 U. S. 259, 264 (1984), skirting the fact that delay is "undesirable in civil disputes." *Richardson-Merrell, Inc.* v. *Koller*, 472 U. S. 424, 433-434 (1985). The time has come, therefore, where a solution through our two coordinate branches is needed to ensure that litigation is not repeatedly disrupted by "piecemeal appellate litigation" that a litigant knows is baseless, frivolous in nature, or has been intentionally filed to delay and disrupt proceedings in a lower court. *Id.*, at 430.

JUSTICE JACKSON, with whom THE CHIEF JUSTICE joins, and with whom JUSTICE POWELL joins in part, concurring in the denial of certiorari.[*]

Petitioners have attempted this argument four times in two different courts of record and the court, on each occasion including this, have rejected it. When a matter is denied, it is denied. Attempting, for all intents and purposes, to get a rehearing on a question by filing two of the same petitions for writ of certiorari is bad practice and as evident through our decisions - a rejected one. While some of their arguments have merit, I do not believe they push it over the threshold of substance required for review.

One thing that is absolutely scary is the increased deference to case law than doing statutory analysis. The Court, historically, is the weakest of the branches of government and not intended to be some sort of gate-keepers of the Constitution as some have poised. Instead, through matters of interpretation - we "say what the law is." Marbury v. Madison, 1 Cranch 137, 177 (1803). Other than crude debates of liability, no party nor the judge in his opinion, attempted to interpret and "say what the law is." as pertaining to 1 R. Stat. § 216 and 7 R. Stat. § 302. Attempting to analyze the cause of action (1 R. Stat. § 216) will give the reasons as to why this court denied certiorari.

My approach to law has always been a pragmatic one - I care far more about material and substance than words on a page. I will not vote in favor of any petition for certiorari which does not demonstrate

[*] JUSTICE POWELL only joins the first paragraph of this opinion.

itself to be material. A good argument, or even correct legal argument does not give entitlement to relief just as here it does not give entitlement to certiorari. An erroneous legal argument would have a better chance of getting certiorari if it is coupled with substance.

I would consider substance to be something other than the words on a page, if a matter only exists on paper and not in reality then it is a matter that does not hold substance. An argument does not hold merit if it does not hold substance, and I would consider merits to be the antithesis of technicality. Therefore, if your argument is only contingent on mere technicality then it is not worthy of appeal, unless you are able to demonstrate substance arising out of that technicality that exists in reality and not words on a page.

Petitioner, in their argument about parties, attempts to grasp for straws as to who the actual defendant is. In the respondent's civil complaint, they make their statement of parties very clear: "The Parks and Wildlife Officer was acting in his official capacity as an agent for the State of Ridgeway, therefore, representing the State." See Compl., at 1, ¶ 3. Petitioner attempts to overcomplicate the matter and draw technical grounds through the nomenclature of the complaint when in reality, their name was set that way because "Cases against an individual in official capacity as an agent of the government shall be construed as cases against the government." 1 R. Stat. § 220. Whether the name of the case ought to be "Lx1nas v. AdamAxer33" or "Lx1nas v. State of Ridgeway" is not of material concern to the court because it is harmless error at best. Its statement of parties still reflects the nature of the suit and the party seeking to be enjoined by the respondent-plaintiffs.

The legislature is clear about its standing on pre-enforcement claims. They are rejected. 1 R. Stat. § 218 grants the government a wide range of immunity to claims, except for 1 R. Stat. § 216. 1 R. Stat. § 216 creates a cause of action for injury that is "concrete, [and] non-hypothetical[.]" The legislature uses two words to describe the type of injury that must be asserted for them to get standing under this claim. The first being "concrete" which is "[e]xisting in reality or in real experience[.]" American Heritage Dictionary Online (5th ed. 2022). The next requirement is non-hypothetical, meaning the harm cannot just exist on paper. No matter the likelihood of that hypothetical, it still remains just a hypothetical, explicitly not in-

cluded by law. There is no constitutional right to seek pre-enforcement review over a claim, furthermore the statute does not preclude the review of the constitutionality of an action. When the Senate commands, the court must follow.

The capacity to issue an injunction is contingent, among other things, the ability to enforce it. A statewide injunction is inherently unenforceable. What remedy would the court have if its order was violated by those enjoined? Take deputy John Doe before the judge for a contempt hearing? The ridiculous means for enforcement of this injunction thereby serve as its principal flaw.

The statute does not permit statewide injunctions. It also does not word itself as a vehicle for judicial review of an enactment by the legislature. Attempting to use the statute as a vehicle for judicial review, when other mechanisms exist, gave rise to its ambiguity and the confusion as seen in this case. It exists entirely to review executive actions and its relief package is narrowly tailored to providing relief from those specific actions. This is evident in the wording of the language "policy, order, procedure, or directive" which, for all intents and purposes, is any executive action. The legislature authorizes two remedies for this cause of action "permanent restraining order against the government prohibiting them from enacting this policy, order, procedure, or directive[]" and "injunctive relief reversing any harm done."1 R. Stat. § 216. Other than the initial arrest, plaintiff-respondents did not identify any "policy, order, procedure, or directive" which exists to systematically deprive their rights. While I find that in some way shape or form the initial arrest falls under this category, the relief demanded must be narrowly tailored around the action being disputed. In the same manner the court cannot enjoin the entire government from making identical policies to one it has found unconstitutional, it cannot enjoin the entire government from making identical arrests to the one it has found unconstitutional here.

The court has an additional action that it can take to ensure justice thereon - judicial review. While petitioners are correct that the courts cannot erase law in the statute books, it does however have the ability to make declarative constitutional findings and comport them into precedent. A declaration that a given action, empowered by law, was unconstitutional due to the law being contrary to the constitution in the first place is not outside the scope of equitable remedy afforded

to the courts. A declaration is much different than a specific performance injunction, and judicial review of a statute is hardly any different than the circumstances I provided. Just because the Supreme Court severs an unconstitutional law does not mean that they simultaneously enjoin the entire government preventing them from enacting it. Instead, it is just a declaration that the given law is unconstitutional, and any action emanating from it will be inherently unconstitutional as well and will be seen in such light by the courts who will subsequently reverse it. It is within the scope of the Superior Court to make a declarative finding that an action contingent on a statute was unconstitutional, and therefore sever from the law that it finds to be repugnant to the Constitution. *Marbury* v. *Madison*, *supra.*

While I sustain and generally agree with the spirit of the arguments petitioners make about pre-enforcement review, I do not believe that this case is pre-enforcement review, and I quite frankly have no absolute understanding as to what substance they derive their argument from. The usage of past-tense verbs in respondent-plaintiffs pleadings and their statement of facts "stopped[,]" "asked[,]" or "arrested" creates a discontinuity from the arguments petitioners are making about a pre-enforcement challenge and then the actions being disputed are past-tense. What I imagine is that petitioners are attempting to state that seeking an injunction against all officers of the State is itself a pre-enforcement action, as part of a multi collateral argument against the statewide injunction demanded by respondent-plaintiffs. This however, makes very little sense as to the merits of the case. The respondent-plaintiffs, at no point did they allege facts or make a claim in their cause of action which would cause the implication that they were seeking pre-enforcement review on future acts in the legislation, only review of the parts of the legislation they are in collateral with. The argument that this was a pre-enforcement challenge would be valid only if the respondent-plaintiffs made a claim which is contingent on a future set of acts rather than ones that have already transpired. But, because respondent-plaintiffs made their claim entirely on facts that have already transpired, it is a *post-facto* review.

I was close to granting review entirely because of one of the reliefs ordered by the Superior Court. According to the Superior Court, "[t]he State of Ridgeway as a whole; and by proxy its actors, agents

and otherwise enforcement officers shall be prohibited from enforcing this act through an injunction." 1. R. Supp. 1 (2022). It is erroneous, using the aforementioned legal theory I previously ascertained. The question then turns to whether this error ought to warrant review. Ordering briefs is a pesky process, and takes a lot of time for a case to proceed through the briefing process and oral argument. Parties ought to only be burdened to such lengthy and scrupulous procedure when the court is in a position to make a correction of substance. It is bad policy for the court to enjoin parties to the appellate process when a prima facie review of the merits would not dictate a change of substance beyond an amendment of record or, a recurring analogy in this opinion, changing words on a paper. If we were to overturn the injunction, law enforcement officers still wouldn't be able to arrest others for a violation which was declared unconstitutional. Furthermore, I highly doubt that the Superior Court would be calling deputy John Doe in for a contempt hearing because he violated its orders. Furthermore, albeit a hap-hazard approach without due regard to the power of its prescription, the Superior Court at face value seems to have used "injunction" as a means to give clear instructions to law enforcement officers and ease ambiguity about whether the law ought to be enforced or not. Because of its usage as a tool to ease ambiguity than actually compel a person with court order to take a specific or overt action, a correction to this would not result in any change in substance. In fact, if the court were to grant review of just this issue alone, it would raise the confusion if we were to strike down an injunction while preserving other parts of the judgment. The fact that it would not produce a change in substance, and would only serve to make the matter more complex for the enforces and the general public, then the matter ought not to be taken up.

Law is built on a foundation of statute and reason. Two things have been neglected in these proceedings. If both parties attempted to really understand the statute and its spirit, a lot of the confusion would be resolved. Statute should be principally relied on in a legal argument as foundation with precedent to fill in its ambiguities. If you cannot find your answers directly in statute, or you need guidance as to how to interpret it to your facts, only then should you defer to case law.

April 24, 2022

Probable Jurisdiction Noted

No. 22-02. RIDGEWAY PARKS SERVICE, ET AL. V. STEKING2008. Appeal from Adm. Ct. It is hereby ordered that the Honorable Judge zac2524 of the Superior Court be designated to hear this action as a member of the Supreme Court, pending the disposition of the appeal, under the Riding Circuit Amendment Act, 2022 Session Laws s. 20, § 3.1. Probable jurisdiction noted limited to Question 1 presented by the statement as to jurisdiction. Reported below: 1 R. Adm. 1, RSC-AD-268. JUSTICE JACKSON took no part in the consideration or decision of this case.

April 25, 2022

Order in Pending Case

No. 22-02. RIDGEWAY PARKS SERVICE, ET AL. V. STEKING2008. Probable jurisdiction noted, *ante,* at 509. Order noting probable jurisdiction is amended as follows: It is hereby ordered that the Honorable Judge zac2524 of the Superior Court be designated to hear this action as a member of the Supreme Court, pending the disposition of the appeal, under the Riding Circuit Amendment Act, 2022 Session Laws s. 20, § 3.1. Probable jurisdiction noted limited to Question 4 presented by the statement as to jurisdiction. JUSTICE JACKSON took no part in the consideration or decision of this case.

May 26, 2022

Probable Jurisdiction Noted

No. 22-04. STATE V. INFINITY. Appeal from Super. Ct. Probable jurisdiction noted. In addition to the question presented by the jurisdictional statement, the parties are directed to brief and argue the following question: Whether evidence obtained on Discord is admissible and not hearsay.

July 4, 2022

Certiorari Denied

No. 22-05. LABSON V. LABBS. Super. Ct. Certiorari denied.

July 5, 2022

Certiorari Granted

No. 22-06. STATE V. LX1NAS. Super. Ct. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following questions: Whether the Superior Court should consider the factors listed in *eBay Inc.* v. *MercExchange, L. L. C.*, 547 U. S. 388 (2006), in deciding whether to issue a permanent injunction; and whether the Superior Court abused its discretion in permanently enjoining the entirety of Section 3 of the Wildlife Conservation Act. Briefs for the Petitioner and Respondent are to be filed and served upon opposing counsel on or before 11:59 p.m. Eastern Daylight Time, Friday, July 8, 2022. Reported below: 1 R. Supp. 1, 1 R. Supp. 3.

August 1, 2022

Certiorari Granted

No. 22-08. STUDSPERSECOND V. BPD_EDGAR. Super. Ct. Certiorari granted.

No. 22-09. STUDSPERSECOND V. FOOXADDICT. Super. Ct. Certiorari granted.

August 10, 2022

Certiorari Granted

No. 22-11. LABSON V. LABBS. Super. Ct. Certiorari granted.

Certiorari Denied

No. 22-12. MATRIX V. VIRUS. Super. Ct. Certiorari denied.

August 12, 2022

Certiorari Granted

No. 22-13. DRACONICLAW V. STATE. Super. Ct. Certiorari granted.

No. 22-14. DEPARTMENT OF JUSTICE V. QUORUM. Super. Ct. Certiorari granted.

November 22, 2022

Certiorari Dismissed

No. 22-13. DRACONICLAW V. STATE. Certiorari granted, *ante,* at 510. Super. Ct. Certiorari dismissed.

November 29, 2022

Probable Jurisdiction Noted

No. 22-15. STATE V. GAVIN. Appeal from Super. Ct. Probable jurisdiction noted.

December 15, 2022

Miscellaneous Order

No. 22-16 (22A003). LARGETITANIC2, GOVERNOR OF RIDGEWAY V. NEV. Super. Ct. Application for stay pending the filing of a petition for a writ of certiorari, presented to Justice Jackson and by him referred to the Court granted, and the Superior Court's December 14, 2022 order granting a preliminary injunction, as well as the proceedings in case RSC-CV-798, are stayed pending disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

December 18, 2022

Probable Jurisdiction Noted

No. 22-16. LARGETITANIC2, GOVERNOR OF RIDGEWAY V. NEV. Super. Ct. Certiorari granted limited to questions four and seven presented by the petition.

January 10, 2023

Certified Question

No. 22-01. xLAZERIFY V. STUDSPERSECOND,

No. 22-01. EPIDERMISGUPTA69 V. ICITRUZX. Questions One and Two of the certificate from the Superior Court set for briefing, and the cases are consolidated. Question Three is dismissed by the Court. No reply briefs or oral arguments will be scheduled for these cases.

January 16, 2023

Miscellaneous Orders

No. 22A004. JOAOISHUMAN, LIEUTENANT GOVENOR V. TOASTEDPUERI. Application for stay pending the filing of a petition for a writ of certiorari presented to JUSTICE JACKSON, and by him referred to the Court, granted. The Superior Court's January 16, 2023 order granting a preliminary injunction, as well as the proceedings in case RSC-CV-870, are stayed pending disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

February 19, 2023

Impeachments

No. 22-19. IN RE ZLATOUSTOVO, ADMINISTRATIVE JUDGE OF RIDGEWAY,

No. 22-20. IN RE ARTHURSPRINGS, ADMINISTRATIVE JUDGE OF RIDGEWAY. Judgment of conviction entered against respondents. Their offices are to be vacated as of the entry of this order.

March 10, 2023

Certiorari Denied

No. 22-22. AFIK4333 V. STATE. Super. Ct. Certiorari denied.

REPORTER'S NOTE

The next page is purposefully numbered 701. The numbers between 60 and 701 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

LABSON *v.* LABBS

ON APPLICATION FOR STAY

No. 22A002. Decided August 9, 2022.

Application to stay the judgment of the Superior Court against applicant, requiring him to pay fines to defendant after being found liable for tortious interference and fraud, denied. This Court recently elaborated on the standard for obtaining a stay pending the filing and disposition of a petition for a writ of certiorari or appeal. See *In re Centurion, ante,* at 37. One of the factors evaluated is the likelihood of irreparable harm - "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to demonstrate irreparable harm. *Sampson* v. *Murray*, 415 U. S. 61, 90 (quoting *Virginia Petroleum Jobbers Assn.* v. *FPC*, 259 F. 2d 921, 925 (*per curiam*)). In the event that applicant is successful in this Court, the Superior Court has several enforcement mechanisms to require respondent to return the payment to applicant.

JUSTICE POWELL, in chambers.

I have before me an emergency application for a stay of the Superior Court's judgment requiring applicant to pay $3,500 to respondent by tomorrow, August 10th. Applicant claims that he purchased advertisements suggesting that respondent, a former Judge of the Superior Court, "kicks dogs" and "endorses fake condiments." Application for Stay 2. Although applicant viewed those advertisements as satirical and "pok[ing] fun at a political official," respondent filed suit in the Superior Court, arguing that the advertisements

constituted tortious interference and fraud. The Superior Court, after a bench trial, found that applicant did defame respondent with his advertisements, and entered a judgment requiring applicant to pay $1,500 on the claim of tortious interference, as well as $2,000 on the claim of fraud. Applicant then filed this application with me, in my capacity as an Associate Justice of the Supreme Court.

This Court recently explained the standard for obtaining a stay pending a petition for a writ of certiorari or a stay pending appeal. The applicant must demonstrate "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari or note probable jurisdiction; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *In re Centurion,* 1 Rid. 35, 37 (2022); see also *Indiana State Police Pension Trust* v. *Chrysler, LLC*, 556 U. S. 960 (2009) (*per curiam*). Furthermore, "[i]n close cases the issuing Justice or the Court should balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* Of course, a stay issued by a single Justice of this Court is certainly "extraordinary relief," *Teva Pharmaceuticals USA, Inc.* v. *Sandoz, Inc.,* 572 U. S. 1301 (2014) (Roberts, C. J., in chambers), and the applicant "bears a heavy burden" of demonstrating that they have satisfied the factors described above. *Philip Morris USA Inc.* v. *Scott,* 561 U. S. 1301, 1302 (2010) (Scalia, J., in chambers). Therefore, "[d]enial of such in-chambers stay applications is the norm." *Conkright* v. *Frommert,* 556 U. S. 1401, 1402 (2009) (Ginsburg, J., in chambers).

I do not believe that applicant has proven he will suffer irreparable injury absent a stay. Applicant argues that not only "living day-to-day without the $3,500 nearly impossible in the meantime, it also is profoundly difficult to get it back

once the judgement is reversed." But "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to demonstrate irreparable harm. *Sampson* v. *Murray*, 415 U. S. 61, 90 (1974) (quoting *Virginia Petroleum Jobbers Assn.* v. *FPC*, 259 F. 2d 921, 925 (CADC 1958) (*per curiam*)). "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Id.*; see also *Conkright, supra,* at 1403 ("trouble recouping . . . funds" does not constitute irreparable injury where it is not impossible for applicants to do so). But cf. *Philip Morris, supra,* at 1304-1305 (noting that where "expenditures cannot be recouped" or monetary awards will appear to be "irrevocably expended" before the reviewing court can hear applicant's case, payment of money may be considered irreparable injury). In the event that applicant is successful in this Court, the Superior Court has several enforcement mechanisms to require respondent to return the payment to applicant.

Applicant's failure to demonstrate that it would be impossible to recoup his losses if the Superior Court's judgment is reversed, as well as the fact that the Superior Court can require respondent to repay applicant following such a reversal, indicates that he will not suffer irreparable injury absent a stay. "An applicant's likelihood of success on the merits need not be considered . . . if the applicant fails to show irreparable injury from the denial of the stay." See *Ruckelshaus* v. *Monsanto Co.,* 463 U. S. 1315, 1317 (1983) (Blackmun, J., in chambers); *Whalen* v. *Roe,* 423 U. S. 1313, 1317 (1975) (Marshall, J., in chambers).

I therefore deny the application for a stay.