(ORDER LIST: 582 U.S.)

MONDAY, JUNE 26, 2017

CERTIORARI -- SUMMARY DISPOSITIONS

16-7835 JOHNSON, TOFOREST O. V. ALABAMA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Alabama Court of Criminal Appeals for further consideration in light of the position asserted by the respondent in its brief filed on May 10, 2017.

The Chief Justice, with whom Justice Thomas, Justice Alito, and Justice Gorsuch join, dissenting: The Court vacates the judgment below in light of the position asserted by the respondent in its brief. That position is that the Court should vacate a state court judgment for further consideration in light of *Ex parte Beckworth*, 190 So. 3d 571 (Ala. 2013). *Beckworth* is a state court decision that turns entirely on state procedural law. It was expressly called to the attention of the state courts, which declined to upset the decision below in light of it. Reply to Pet. for Cert. 2, n. 1. The question presented concerns state collateral review—purely a creature of state law that need not be provided at all. Whatever one's view on the propriety of our practice of vacating judgments based on positions of the parties, see *Hicks* v. *United States*, 582 U. S. ___ (2017), the Court's decision to vacate this state court judgment is truly extraordinary. I respectfully dissent.

ORDERS IN PENDING CASES

16M141 ANGHEL, MARIA-LUCIA V. ELIA, MARY E., ET AL.

16M142 SWART, HAMILTON H. V. CLARKE, DIR., VA DOC, ET AL.

16M143 COBBERT, JAMES C. V. STEVENSON, WARDEN

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

16M144 STANCU, JOHN V. STARWOOD HOTELS, ET AL.

The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is denied.

147, ORIG. NEW MEXICO V. COLORADO

The motion for leave to file a bill of complaint is denied. Justice Thomas and Justice Alito would grant the motion for the reasons stated in *Nebraska* v. *Colorado*, 577 U. S. ___ (2016) (Thomas, J., dissenting).

16-1071 SOKOLOW, MARK, ET AL. V. PALESTINE LIBERATION ORG.

16-1102 SAMSUNG ELECTRONICS CO., ET AL. V. APPLE INC.

16-1180 BREWER, GOV. OF AZ, ET AL. V. AZ DREAM ACT COALITION, ET AL.

16-1220 ANIMAL SCIENCE PRODUCTS, ET AL. V. HEBEI WELCOME, ET AL.

The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

16-1422 IN RE JOSEPH M. ARPAIO

The motion of petitioner to expedite consideration of the petition for a writ of mandamus is denied.

16-8508 IN RE JUNNE K. KOH

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

16-9003 DIAZ, JUAN C. V. SESSIONS, ATT'Y GEN.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until July 17, 2017, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI GRANTED

16-111 MASTERPIECE CAKESHOP, ET AL. V. CO CIVIL RIGHTS COMM'N, ET AL.

The motion of Foundation For Moral Law for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted.

16-1276 DIGITAL REALTY TRUST, INC. V. SOMERS, PAUL

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

15-888 GARCIA DE LA PAZ, ALEJANDRO V. COY, JASON, ET AL.

15-1305 BEAVEX, INC. V. COSTELLO, THOMAS, ET AL.

15-1345) ALI, YUSUF A. V. WARFAA, FARHAN M.
)
15-1464) WARFAA, FARHAN M. V. ALI, YUSUF A.

16-481 TV AZTECA, ET AL. V. RUIZ, GLORIA D., ET AL.

16-789 HINRICHS, FLORIAN V. GEN. MOTORS OF CANADA

16-879 ALVAREZ, SANTIAGO V. SKINNER, FELICIA, ET AL.

16-971 VILLARREAL, RICHARD M. V. R.J. REYNOLDS TOBACCO, ET AL.

16-975 MIDWEST FENCE CORP. V. DEPT. OF TRANSPORTATION, ET AL.

16-988 SILVER, JOELLE V. CHEEKTOWAGA CENT. SCHOOL, ET AL.

16-999 NEGRON, RAYMOND V. UNITED STATES

16-1010 BOMBARDIER AEROSPACE CORP. V. UNITED STATES

16-1013 FL DEPT. OF REVENUE V. GONZALEZ, IRAIN L.

16-1056 BLACK, STEVE V. DIXIE CONSUMER PRODUCTS, ET AL.

16-1075 COUTTS, RONALD V. WATSON, JOSEPH

16-1095 GRANADOS, HERSON R. V. SESSIONS, ATT'Y GEN.

16-1130 SANTANDER HOLDINGS USA, INC. V. UNITED STATES

16-1141 PAYNE, ENNIS C. V. WEST VIRGINIA

16-1172 HOFFMAN, HAROLD M. V. NORDIC NATURALS, INC.

16-1198 PATRIOTIC VETERANS V. HILL, ATT'Y GEN. OF IN

16-1208 BOURNE VALLEY COURT TRUST V. WELLS FARGO BANK, NA

16-1225 HEAVEN, JACQUELINE V. COLORADO

16-1237 WYATT, KATHLEEN V. GILMARTIN, PATRICK, ET AL.

16-1245 MUNOZ, ALANA V. GOLDEN EAGLE INSURANCE CORP.

16-1248 BHARDWAJ, SANJAY V. PATHAK, ANUPAMA, ET AL.

16-1254 JONES, NICHOLAS L. V. GROSS, TIMOTHY, ET AL.

16-1261 SWITZER, PATRICIA V. VAUGHAN, KAY

16-1262 SCHAFFER, JILL S., ET AL. V. BERINGER, BRIAN, ET AL.

16-1289 DCV IMPORTS, LLC V. BUREAU OF ALCOHOL

16-1291 SILVER, DAVID V. QUORA, INC.

16-1292 TRITZ, IRENE V. BRENNAN, POSTMASTER GEN.

16-1295 GRUMAZESCU, RADU D. V. SESSIONS, ATT'Y GEN.

16-1297 CHINNIAH, GNANA M., ET UX. V. USDC MD PA

16-1313 SEASIDE FARM, INC. V. UNITED STATES

16-1319 PADMANABHAN, BHARANIDHARAN V. KASSLER, WILLIAM, ET AL.

16-1328 BECK, RICHARD G., ET AL. V. SHULKIN, SEC. OF VA, ET AL.

16-1331 HAMPTON, JEROME V. McGABE, ACTING DIR., FBI, ET AL.

16-1338 FORD, FRANK G. V. ARTIGA, VICTOR, ET AL.

16-1345 COATY, EMILY V. BERRYHILL, ACTING COMM'R OF SSA

16-1346 STRAW, ANDREW U. V. INDIANA SUPREME COURT

16-1347 CALHOUN, VICTORIA V. DEPT. OF ARMY

16-1353 KORMAN, RON, ET UX. V. UNITED STATES

16-1368 APPISTRY, LLC V. AMAZON.COM, INC., ET AL.

16-1375 BARRETT, JOHN V. GREENUP, NOLAN, ET AL.

16-1379 LONG, TARA L., ET AL. V. COUNTY OF ARMSTRONG, PA, ET AL.

16-1388 EUGSTER, STEPHEN K. V. WA STATE BAR ASSOCIATION, ET AL.

16-1396 BORDA, CHRISTIAN F. V. UNITED STATES

16-1404 INTERMEC, INC., ET AL. V. ALIEN TECHNOLOGY, LLC

16-1412 ALTOMARE, RICHARD V. UNITED STATES

16-6387 LOOMIS, ERIC L. V. WISCONSIN

16-6725 JEFFERSON, ROBERT J. V. UNITED STATES

16-6925 MILLER, BRIAN A. V. UNITED STATES

16-7346 McFADDEN, ONAFFIA V. ILLINOIS

16-7503 SIMMONDS, ROGER A. V. SESSIONS, ATT'Y GEN.

16-7716 JACKSON, FANORIS V. BRYSON, COMM'R, GA DOC, ET AL.

16-7762 MARION, ALLEN V. JACKSON, WARDEN

16-7986 MATLACK, ROBERT F. V. UNITED STATES

16-7994 JENKINS, SHAEEN C. V. UNITED STATES

16-8037 SCOTT, ROBERT V. UNITED STATES

16-8043 WILLIAMS, MICHAEL L. V. ILLINOIS

16-8052 MINNIS, MARK V. ILLINOIS

16-8053 PERKINS, GREGORY V. ILLINOIS

16-8482 McCLOUD, AARON V. UNITED STATES

16-8526 BELTON, ANTHONY V. OHIO

16-8699 FERRER, MARIA, ET AL. V. YELLEN, CHAIR, BD. OF GOVERNORS

16-8710 AMODEO, FRANK L. V. UNITED STATES

16-8733 THARPE, KEITH V. SELLERS, WARDEN

16-8752 DAMPIER, JEROME V. ILLINOIS

16-8766 CORDOVANO, SALVATORE P. V. PETERSON, ET AL.

16-8771 YABLONSKY, JOHN H. V. PARAMO, WARDEN

16-8774 MUNOZ, RUBEN V. TEXAS

16-8781 FULLER, DONALD G. V. DAVIS, DIR., TX DCJ

16-8791 SHREVES, RICHARD E. V. PIRANIAN, SCOTT, ET AL.

16-8792 WILLIAMS, MATTHEW V. KELLEY, DIR., AR DOC

16-8793 DAVIES, AVON V. USDC ED CA

16-8802 EDWARDS, BRIAN D. V. SHERMAN, WARDEN

16-8804 CARPENTER, RONALD M. V. STRAHOTA, WARDEN

16-8807 LOVINGS, DARIUS D. V. TEXAS

16-8812 CUMMINGS, ANNETTE V. INT'L UNION SEC. POLICE, ET AL.

16-8813 WILLIAMS, GEORGE V. CALIFORNIA

16-8817 CARRASQUILLO, JOSUE V. FLORIDA

16-8821 BELL, SHICOLBE D. V. ALABAMA

16-8822 CROWDER, SJOLANTE Q. V. ILLINOIS

16-8823 BLAND, ANDRE V. TENNESSEE

16-8829 GABLE, MARK W. V. BLADES, WARDEN, ET AL.

16-8831 MACK, STEVE D. V. LAUGHLIN, WARDEN, ET AL.

16-8832 WHITE, TYRONE K. V. BETHESDA PROJECT INC.

16-8835 YANEY, MICHELLE S. V. SUPERIOR COURT OF CA, ET AL.

16-8836 WILLIAMS, DONALD O. V. FLORIDA

16-8837 THOMAS, SHARON V. PARKER, DAVIS M., ET AL.

16-8841 GREEN, RICHARD V. JONES, SEC., FL DOC

16-8843 GUERRERO, JOSE J. V. OFFICE OF ADMIN. HEARINGS

16-8852 FARQUHARSON, EARLTON, ET UX. V. CITIBANK, N.A., ET AL.

16-8853 ENCALADO, THEOPHIL V. ILLINOIS

16-8864 BEY, BABAESU V. WINGARD, SUPT., SOMERSET, ET AL.

16-8865 BROWN, MARIO T. V. THOMAS, WARDEN, ET AL.

16-8866 ARUANNO, JOSEPH V. DAVIS, SARAH, ET AL.

16-8869 HETTINGA, WYLMINA V. CANTIL-SAKAUYE, TANI G., ET AL.

16-8872 GOMEZ, JOSE G. V. DEPT. OF HOMELAND SECURITY

16-8876 FULMORE, AARON V. FLORIDA

16-8882 BROWN, GABRIEL J. V. DAVIS, DIR., TX DCJ

16-8883 BROWN, KEVIN A. V. MACLAREN, WARDEN

16-8886 ORDUNO, JORGE G. V. LACKNER, WARDEN

16-8891 KIM, WON I. V. HARRELL, KEVIN D., ET AL.

16-8892 MARTIN, LANCE R. V. PARAMO, WARDEN, ET AL.

16-8905 VENEY, JERMAINE V. VIRGINIA

16-8912 NEWELL, GARY T. V. LACKNER, WARDEN

16-8935 CARPIO, ANTHONY V. CALIFORNIA

16-8936 ELZEY, DISHAY D. V. KENT, WARDEN

16-8940 PARKER, JORDAN V. ILLINOIS

16-8946 SCOTT, WILLIE V. NAYLOR, RAYMOND, ET AL.

16-8963 WILLIAMS, MARCELLUS V. STEELE, SUPT., POTOSI

16-8975 CAMPBELL, EDWARD P. V. JONES, SEC., FL DOC, ET AL.

16-9010 HAWLEY, ROSS D. V. CLACKAMAS CIRCUIT COURT

16-9032 FIELDS, MARCIA V. UNITED STATES

16-9042 ADESANYA, ADEMOLA I. V. SESSIONS, ATT'Y GEN.

16-9044 CHARLTON, BOBBY S. V. OR DOC, ET AL.

16-9049 WELLS, LEVAR V. ILLINOIS

16-9065 DARDEN, HERBERT A. V. TEGELS, WARDEN

16-9067 MITCHELL, DENVER W. V. KELLEY, DIR., AR DOC

16-9074 CHI, ANSON V. JONES, DALLAS B.

16-9084 ARRIAGA, ANTHONY V. DIST. ATT'Y OF BRONX COUNTY, NY

16-9089 CURRIE, MICHAEL A. V. MSPB

16-9091 TASKOV, DRAGOMIR V. SESSIONS, ATT'Y GEN.

16-9105 RADILLA-ESQUIVEL, MIGUEL V. TEXAS

16-9116 RIVERA, MARLON V. LEWIS, WARDEN

16-9141 WYNTER, ORVILLE V. NEW YORK

16-9147 THOMPSON, REUBEN J. V. SPEER, ACTING SEC. OF ARMY

16-9149 PETERMAN, DOUGLAS V. KANSAS

16-9156 SILVA-HERNANDEZ, NICHOLSON V. UNITED STATES

16-9171 NUNN, STEPHEN R. V. KENTUCKY

16-9190 IOANE, MICHAEL S. V. UNITED STATES

16-9201 COVARRUBIAS, ABEL V. UNITED STATES

16-9208 GERIDEAU-WILLIAMS, LISA V. UNITED STATES

16-9221 SCHENCK, SHAWN V. UNITED STATES

16-9222 CAMPILLO-RESTREPO, IVAN R. V. UNITED STATES

16-9231 HINCKLE, DUSTIN W. V. UNITED STATES

16-9232 HILL, FORTUNE T. V. UNITED STATES

16-9233 GOMEZ-OLIVAS, GONZALO V. UNITED STATES

16-9234 EDGAR F. V. BALLARD, WARDEN

16-9237 FIELDS, MARVIN V. ILLINOIS

16-9243 SIGILLITO, MARTIN T. V. UNITED STATES

16-9247 WEBB, JOE E. V. UNITED STATES

16-9249 MORENO, GAMALIEL C. V. UNITED STATES

16-9252 POPE, WILLIAM D. V. UNITED STATES

16-9253 BITSINNIE, ROGER V. UNITED STATES

16-9257 BUCKLEY, GYRONNE V. RAY, KEITH, ET AL.

16-9264 VASQUEZ, JUAN V. UNITED STATES

16-9277 DICKSON, CONRAD E. V. UNITED STATES

16-9281 LaBELLE, RICHARD L. V. MERLAK, WARDEN

16-9283 SPENCER, JAMES V. UNITED STATES

16-9286 McDANIELS, ANDRE V. UNITED STATES

16-9298 VIERRA-GARCIA, FERNANDO V. UNITED STATES

16-9307 ROSADO-TORO, RAUL V. UNITED STATES

16-9311 REYNA-VASQUEZ, FRANCISCO V. UNITED STATES

16-9312 ROMERO, DAVIS M. V. RYAN, DIR., AZ DOC, ET AL.

16-9314 MITCHELL, TAYARI R. V. UNITED STATES

16-9316 PONCE-GUZMAN, DAVID V. UNITED STATES

16-9320 KELLY, TOM V. UNITED STATES

16-9322 McGREW, JOSEPH M. V. UNITED STATES

16-9324 CUADRA-NUNEZ, SILVESTRE V. UNITED STATES

16-9330 CASBY, CYRUS V. UNITED STATES

16-9340 ORANGE, RUDOLPH V. V. UNITED STATES

16-9343) COFFEE, KELSEY V. V. UNITED STATES
)
16-9367) DAVIS, KEENAN A. V. UNITED STATES

16-9366 CALDERON, ANTHONY V. UNITED STATES

16-9381 SANTIAGO, ARNALDO T. V. KAUFFMAN, SUPT., ET AL.

The petitions for writs of certiorari are denied.

16-26 BULK JULIANA, ET AL. V. WORLD FUEL SERVICES

The motion of Star Trident II, LLC, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

16-673 GORDON, CHANCE E. V. CONSUMER PROTECTION BUREAU

The petition for a writ of certiorari is denied. Justice Kennedy took no part in the consideration or decision of this petition.

16-847) SESSIONS, ATT'Y GEN., ET AL. V. BINDERUP, DANIEL, ET AL.
)
16-983) BINDERUP, DANIEL, ET AL. V. SESSIONS, ATT'Y GEN., ET AL.

The petitions for writs of certiorari are denied. Justice Ginsburg and Justice Sotomayor would grant the petitions for writs of certiorari.

16-964 MAGLUTA, SALVADOR V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

16-1006 DICKEY, TIMMY H. V. ALLBAUGH, DIR., OK DOC, ET AL.

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

16-1070 EAST HAMPTON, NY V. FRIENDS OF EAST HAMPTON AIRPORT

The motion of Committee to Stop Airport Expansion, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

16-1126 SOUTH CAROLINA V. HUNSBERGER, JULIO A.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

16-1142 SOUTH CAROLINA V. HUNSBERGER, ALEXANDER L.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

16-1168 AMERICAN MUNICIPAL POWER, ET AL. V. EPA, ET AL.

The motion of Southeastern Legal Foundation for leave to file a brief as *amicus curiae* is granted. The motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

16-1253 VENCIL, NANCY W. V. PA STATE POLICE, ET AL.

The motion of Autistic Self Advocacy Network, et al. for

leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

16-1255 LOCKETT, GARY V. FALLIN, GOV. OF OK, ET AL.

The motion of Austin Sarat, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this motion and this petition.

16-1355 PRATHER, JOHN C. V. AT&T, ET AL.

The petition for a writ of certiorari is denied. The Chief Justice and Justice Breyer took no part in the consideration or decision of this petition.

16-8825 HOPKINS, GLENN J. V. IL WORKERS' COMP. COMMISSION

16-8834 WILSON, DAVID W. V. CALIFORNIA

16-9085 AZEEZ, JAMAL A. V. WEST VIRGINIA, ET AL.

16-9305 ELLIS, PRISCILLA A. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

HABEAS CORPUS DENIED

16-9399 IN RE OTTO D. HARTMAN

The petition for a writ of habeas corpus is denied.

REHEARINGS DENIED

16-587 UNARA, DONATUS U. V. MSPB, ET AL.

16-6651 HORTON, NAKIA V. GARMAN, SUPT., ROCKVIEW, ET AL.

16-7966 NELSON, GERALD V. MV TRANSPORTATION, ET AL.

16-7987 LANDIS, LISA B. V. BUNCOMBE COUNTY, NC, ET AL.

16-8007 ORR, LINDSEY V. TATUM, WARDEN

16-8110 MONTE, FRANK V. MINGO, WARDEN, ET AL.

16-8663 IN RE FRANK MONTE

The petitions for rehearing are denied.

16-642 GROSSMAN, DENNIS A. V. WEHRLE, DAVID

The motion for leave to file a petition for rehearing is denied.

16-8625 MAEHR, JEFFREY T. V. CIR, ET AL.

The petition for rehearing is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

ATTORNEY DISCIPLINE

D-2959 IN THE MATTER OF DISBARMENT OF DAVID H. SAFAVIAN

David H. Safavian, of Alexandria, Virginia, having been suspended from the practice of law in this Court by order of April 17, 2017; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

It is ordered that David H. Safavian is disbarred from the practice of law in this Court.

Per Curiam

SUPREME COURT OF THE UNITED STATES

MARISA N. PAVAN, ET AL. *v.* NATHANIEL SMITH

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 16–992. Decided June 26, 2017

PER CURIAM.

As this Court explained in *Obergefell* v. *Hodges*, 576 U. S. ___ (2015), the Constitution entitles same-sex couples to civil marriage "on the same terms and conditions as opposite-sex couples." *Id.,* at ___ (slip op., at 23). In the decision below, the Arkansas Supreme Court considered the effect of that holding on the State's rules governing the issuance of birth certificates. When a married woman gives birth in Arkansas, state law generally requires the name of the mother's male spouse to appear on the child's birth certificate—regardless of his biological relationship to the child. According to the court below, however, Arkansas need not extend that rule to similarly situated same-sex couples: The State need not, in other words, issue birth certificates including the female spouses of women who give birth in the State. Because that differential treatment infringes *Obergefell*'s commitment to provide same-sex couples "the constellation of benefits that the States have linked to marriage," *id.,* at ___ (slip op., at 17), we reverse the state court's judgment.

The petitioners here are two married same-sex couples who conceived children through anonymous sperm donation. Leigh and Jana Jacobs were married in Iowa in 2010, and Terrah and Marisa Pavan were married in New Hampshire in 2011. Leigh and Terrah each gave birth to a child in Arkansas in 2015. When it came time to secure birth certificates for the newborns, each couple filled out paperwork listing both spouses as parents—Leigh and Jana in one case, Terrah and Marisa in the other. Both

times, however, the Arkansas Department of Health issued certificates bearing only the birth mother's name.

The department's decision rested on a provision of Arkansas law, Ark. Code §20–18–401 (2014), that specifies which individuals will appear as parents on a child's state-issued birth certificate. "For the purposes of birth registration," that statute says, "the mother is deemed to be the woman who gives birth to the child." §20–18–401(e). And "[i]f the mother was married at the time of either conception or birth," the statute instructs that "the name of [her] husband shall be entered on the certificate as the father of the child." §20–18–401(f)(1). There are some limited exceptions to the latter rule—for example, another man may appear on the birth certificate if the "mother" and "husband" and "putative father" all file affidavits vouching for the putative father's paternity. *Ibid.* But as all parties agree, the requirement that a married woman's husband appear on her child's birth certificate applies in cases where the couple conceived by means of artificial insemination with the help of an anonymous sperm donor. See Pet. for Cert. 4; Brief in Opposition 3–4; see also Ark. Code §9–10–201(a) (2015) ("Any child born to a married woman by means of artificial insemination shall be deemed the legitimate natural child of the woman and the woman's husband if the husband consents in writing to the artificial insemination").

The Jacobses and Pavans brought this suit in Arkansas state court against the director of the Arkansas Department of Health—seeking, among other things, a declaration that the State's birth-certificate law violates the Constitution. The trial court agreed, holding that the relevant portions of §20–18–401 are inconsistent with *Obergefell* because they "categorically prohibi[t] every same-sex married couple . . . from enjoying the same spousal benefits which are available to every opposite-sex married couple." App. to Pet. for Cert. 59a. But a divided

Arkansas Supreme Court reversed that judgment, concluding that the statute "pass[es] constitutional muster." 2016 Ark. 437, 505 S. W. 3d 169, 177. In that court's view, "the statute centers on the relationship of the biological mother and the biological father to the child, not on the marital relationship of husband and wife," and so it "does not run afoul of *Obergefell*." *Id.,* at 178. Two justices dissented from that view, maintaining that under *Obergefell* "a same-sex married couple is entitled to a birth certificate on the same basis as an opposite-sex married couple." 505 S. W. 3d, at 184 (Brill, C. J., concurring in part and dissenting in part); accord, *id.,* at 190 (Danielson, J., dissenting).

The Arkansas Supreme Court's decision, we conclude, denied married same-sex couples access to the "constellation of benefits that the Stat[e] ha[s] linked to marriage." *Obergefell*, 576 U. S., at ___ (slip op., at 17). As already explained, when a married woman in Arkansas conceives a child by means of artificial insemination, the State will—indeed, *must*—list the name of her male spouse on the child's birth certificate. See §20–18–401(f)(1); see also §9–10–201; *supra,* at 2. And yet state law, as interpreted by the court below, allows Arkansas officials in those very same circumstances to omit a married woman's female spouse from her child's birth certificate. See 505 S. W. 3d, at 177–178. As a result, same-sex parents in Arkansas lack the same right as opposite-sex parents to be listed on a child's birth certificate, a document often used for important transactions like making medical decisions for a child or enrolling a child in school. See Pet. for Cert. 5–7 (listing situations in which a parent might be required to present a child's birth certificate).

Obergefell proscribes such disparate treatment. As we explained there, a State may not "exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples." 576 U. S., at ___ (slip op.,

at 23). Indeed, in listing those terms and conditions—the "rights, benefits, and responsibilities" to which same-sex couples, no less than opposite-sex couples, must have access—we expressly identified "birth and death certificates." *Id.,* at ___ (slip op., at 17). That was no accident: Several of the plaintiffs in *Obergefell* challenged a State's refusal to recognize their same-sex spouses on their children's birth certificates. See *DeBoer* v. *Snyder*, 772 F. 3d 388, 398–399 (CA6 2014). In considering those challenges, we held the relevant state laws unconstitutional to the extent they treated same-sex couples differently from opposite-sex couples. See 576 U. S., at ___ (slip op., at 23). That holding applies with equal force to §20–18–401.

Echoing the court below, the State defends its birth-certificate law on the ground that being named on a child's birth certificate is not a benefit that attends marriage. Instead, the State insists, a birth certificate is simply a device for recording biological parentage—regardless of whether the child's parents are married. But Arkansas law makes birth certificates about more than just genetics. As already discussed, when an opposite-sex couple conceives a child by way of anonymous sperm donation—just as the petitioners did here—state law requires the placement of the birth mother's husband on the child's birth certificate. See *supra,* at 2. And that is so even though (as the State concedes) the husband "is definitively not the biological father" in those circumstances. Brief in Opposition 4.* Arkansas has thus chosen to make its birth certif-

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*As the petitioners point out, other factual scenarios (beyond those present in this case) similarly show that the State's birth certificates are about more than genetic parentage. For example, when an Arkansas child is adopted, the State places the child's original birth certificate under seal and issues a new birth certificate—unidentifiable as an amended version—listing the child's (nonbiological) adoptive parents. See Ark. Code §§20–18–406(a)(1), (b) (2014); Ark. Admin. Code 007.12.1–5.5(a) (Apr. 2016).

icates more than a mere marker of biological relationships: The State uses those certificates to give married parents a form of legal recognition that is not available to unmarried parents. Having made that choice, Arkansas may not, consistent with *Obergefell*, deny married same-sex couples that recognition.

The petition for a writ of certiorari and the pending motions for leave to file briefs as *amici curiae* are granted. The judgment of the Arkansas Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

MARISA N. PAVAN, ET AL. *v.* NATHANIEL SMITH

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 16–992. Decided June 26, 2017

JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

Summary reversal is usually reserved for cases where "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker* v. *Hansen*, 450 U. S. 785, 791 (1981) (Marshall, J., dissenting). Respectfully, I don't believe this case meets that standard.

To be sure, *Obergefell* addressed the question whether a State must recognize same-sex marriages. But nothing in *Obergefell* spoke (let alone clearly) to the question whether §20–18–401 of the Arkansas Code, or a state supreme court decision upholding it, must go. The statute in question establishes a set of rules designed to ensure that the biological parents of a child are listed on the child's birth certificate. Before the state supreme court, the State argued that rational reasons exist for a biology based birth registration regime, reasons that in no way offend *Obergefell*—like ensuring government officials can identify public health trends and helping individuals determine their biological lineage, citizenship, or susceptibility to genetic disorders. In an opinion that did not in any way seek to defy but rather earnestly engage *Obergefell*, the state supreme court agreed. And it is very hard to see what is wrong with this conclusion for, just as the state court recognized, nothing in *Obergefell* indicates that a birth registration regime based on biology, one no doubt with

many analogues across the country and throughout history, offends the Constitution. To the contrary, to the extent they speak to the question at all, this Court's precedents suggest just the opposite conclusion. See, *e.g.*, *Michael H.* v. *Gerald D.*, 491 U. S. 110, 124–125 (1989); *Tuan Anh Nguyen* v. *INS*, 533 U. S. 53, 73 (2001). Neither does anything in today's opinion purport to identify any constitutional problem with a biology based birth registration regime. So whatever else we might do with this case, summary reversal would not exactly seem the obvious course.

What, then, is at work here? If there isn't a problem with a biology based birth registration regime, perhaps the concern lies in this particular regime's exceptions. For it turns out that Arkansas's general rule of registration based on biology does admit of certain more specific exceptions. Most importantly for our purposes, the State acknowledges that §9–10–201 of the Arkansas Code controls how birth certificates are completed in cases of artificial insemination like the one before us. The State acknowledges, too, that this provision, written some time ago, indicates that the mother's husband generally shall be treated as the father—and in this way seemingly anticipates only opposite-sex marital unions.

But if the artificial insemination statute is the concern, it's still hard to see how summary reversal should follow for at least a few reasons. First, petitioners didn't actually challenge §9–10–201 in their lawsuit. Instead, petitioners sought and the trial court granted relief eliminating the State's authority under §20–18–401 to enforce a birth registration regime generally based on biology. On appeal, the state supreme court simply held that this overbroad remedy wasn't commanded by *Obergefell* or the Constitution. And, again, nothing in today's opinion for the Court identifies anything wrong, let alone clearly wrong, in that conclusion. Second, though petitioners' lawsuit didn't

challenge §9–10–201, the State has repeatedly conceded that the benefits afforded nonbiological parents under §9–10–201 must be afforded equally to both same-sex and opposite-sex couples. So that in this particular case and all others of its kind, the State agrees, the female spouse of the birth mother must be listed on birth certificates too. Third, further proof still of the state of the law in Arkansas today is the fact that, when it comes to adoption (a situation not present in this case but another one in which Arkansas departs from biology based registration), the State tells us that adopting parents are eligible for placement on birth certificates without respect to sexual orientation.

Given all this, it seems far from clear what here warrants the strong medicine of summary reversal. Indeed, it is not even clear what the Court expects to happen on remand that hasn't happened already. The Court does not offer any remedial suggestion, and none leaps to mind. Perhaps the state supreme court could memorialize the State's concession on §9–10–201, even though that law wasn't fairly challenged and such a chore is hardly the usual reward for seeking faithfully to apply, not evade, this Court's mandates.

I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

MARCUS DESHAW HICKS *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16–7806. Decided June 26, 2017

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of the position asserted by the Acting Solicitor General in his brief for the United States filed on May 1, 2017.

JUSTICE GORSUCH, concurring.

Everyone agrees that Mr. Hicks was wrongly sentenced to a 20-year mandatory minimum sentence under a now-defunct statute. True, Mr. Hicks didn't argue the point in the court of appeals. But before us the government admits his sentence is plainly wrong as a matter of law, and it's simple enough to see the government is right. Of course, to undo and revise a sentence under the plain error standard, a court must not only (1) discern an error, that error must (2) be plain, (3) affect the defendant's substantial rights, and (4) implicate the fairness, integrity, or public reputation of judicial proceedings. *United States* v. *Olano*, 507 U. S. 725, 732 (1993). And while the government concedes the first two legal elements of the plain error test, it asks us to remand the case to the court of appeals for it to resolve the latter two questions in the first instance.

I cannot think of a good reason to say no. When this Court identifies a legal error, it routinely remands the case so the court of appeals may resolve whether the error was harmless in light of other proof in the case—and so

decide if the judgment must be revised under Federal Rule of Criminal Procedure 52(a). After identifying an unpreserved but plain legal error, this Court likewise routinely remands the case so the court of appeals may resolve whether the error affected the defendant's substantial rights and implicated the fairness, integrity, or public reputation of judicial proceedings—and so (again) determine if the judgment must be revised, this time under Rule 52(b). We remand in cases like these not only when we are certain that curing the error will yield a different outcome, but also in cases where we think there's a reasonable probability that will happen. See, *e.g.*, *Skilling* v. *United States*, 561 U. S. 358, 414 (2010) (harmless error); *Tapia* v. *United States*, 564 U. S. 319, 335 (2011) (plain error); *United States* v. *Marcus*, 560 U. S. 258, 266–267 (2010) (plain error).

To know this much is to know what should be done in our current case. A plain legal error infects this judgment—a man was wrongly sentenced to 20 years in prison under a defunct statute. No doubt, too, there's a reasonable probability that cleansing this error will yield a different outcome. Of course, Mr. Hicks's conviction won't be undone, but the sentencing component of the district court's judgment is likely to change, and change substantially. For experience surely teaches that a defendant entitled to a sentence consistent with 18 U. S. C. §3553(a)'s parsimony provision, rather than pursuant to the rigors of a statutory mandatory minimum, will often receive a much lower sentence. So there can be little doubt Mr. Hicks's substantial rights are, indeed, implicated. Cf. *Molina-Martinez* v. *United States*, 578 U. S. ___, ___ (2016). When it comes to the fourth prong of plain error review, it's clear Mr. Hicks also enjoys a reasonable probability of success. For who wouldn't hold a rightly diminished view of our courts if we allowed individuals to linger longer in prison than the law requires only because

we were unwilling to correct our own obvious mistakes? Cf. *United States* v. *Sabillon-Umana*, 772 F. 3d 1328, 1333 (CA10 2014).

Now this Court has no obligation to rove about looking for errors to correct in every case in this large country, and I agree with much in Justice Scalia's dissent in *Nunez* v. *United States*, 554 U. S. 911, 911–913 (2008), suggesting caution. For example, it rightly counsels against vacating a judgment when we harbor doubts about a confession of error or when the confession bears the marks of gamesmanship. Nor should we take the government's word for it and vacate a judgment when we cannot with ease determine the existence of an error of federal law. Or when independent and untainted legal grounds appear to exist that would support the judgment anyway. Or when lightly accepting a confession of error could lead to a circuit conflict or interfere with the administration of state law. No doubt other reasons too will often counsel against intervening. But, respectfully, I am unaware of any such reason here. Besides, if the only remaining objection to vacating the judgment here is that, despite our precedent routinely permitting the practice, we should be wary of remanding a case without first deciding for ourselves the latter elements of the plain error test, that task is so easily done that in this case that I cannot think why it should not be done. Indeed, the lone peril in the present case seems to me the possibility that we might permit the government to deny someone his liberty longer than the law permits only because we refuse to correct an obvious judicial error.

SUPREME COURT OF THE UNITED STATES

MARCUS DESHAW HICKS *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16–7806. Decided June 26, 2017

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS joins, dissenting.

Petitioner Marcus Deshaw Hicks pleaded guilty to conspiracy to possess with intent to distribute crack cocaine in violation of federal law. Between the time Hicks was sentenced for that crime and his direct appeal, this Court decided *Dorsey* v. *United States*, 567 U. S. 260 (2012), holding that the Fair Sentencing Act applies to defendants like Hicks whose crimes predated the effective date of the Act but who were sentenced after that date. On direct appeal Hicks failed to argue that *Dorsey* entitled him to a reduced sentence. Presented with no such claim, the Fifth Circuit affirmed. Hicks now seeks certiorari.

The Government's response is not to concede that the Fifth Circuit's judgment was wrong. Rather it is to request that this Court vacate that judgment and send the case back to the Fifth Circuit so that the Court of Appeals may conduct plain error review. My colleague concurring in this Court's order "cannot think of a good reason to say no." *Ante,* at 1 (opinion of GORSUCH, J.). After all, Hicks was "wrongly sentenced to a 20-year mandatory minimum sentence under a now-defunct statute." *Ibid.* But, as the Government itself acknowledges, that gets us past only the first two prongs of this Court's four-prong test for plain error: There was an error and the error was plain in light of *Dorsey*. See *Puckett* v. *United States*, 556 U. S. 129, 134–135 (2009). The Government does not contend that Hicks also satisfies prongs three and four of the test for plain error and that the judgment below rejecting

Hicks's claim was therefore wrong. Brief in Opposition 12–13. No matter, says my colleague, because the outcome on remand is a no-brainer. But without a determination from this Court that the judgment below was wrong or at least a concession from the Government to that effect, we should not, in my view, vacate the Fifth Circuit's judgment. See *Nunez* v. *United States*, 554 U. S. 911 (2008) (Scalia, J., dissenting).

SUPREME COURT OF THE UNITED STATES

FREDDIE H. MATHIS *v.* DAVID J. SHULKIN, SECRETARY OF VETERANS AFFAIRS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 16–677. Decided June 26, 2017

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

This petition raises important questions about how the Government carries out its obligations to our veterans. The Board of Veterans' Appeals (Board) applies a rebuttable presumption when reviewing veterans' disability claims: The medical examiner whose opinion the Department of Veterans Affairs (VA) relied on to deny a veteran's claim is presumed competent, absent a specific objection by the veteran. To raise an objection, a veteran needs to know the medical examiner's credentials. And yet, the VA does not provide veterans with that information as a matter of course. Nor does it always provide veterans with that information upon request. The only road to guaranteed access to an examiner's credentials runs through a Board order. The Board, however, has sometimes required the veteran to have already raised a specific objection to an examiner's competence before ordering the VA to provide the credentials. This places a veteran in "a catch-22" where she "must make a specific objection to an examiner's competence before she can learn the examiner's qualifications." 834 F. 3d 1347, 1357 (CA Fed. 2016) (Reyna, J., dissenting from denial of rehearing en banc). As JUSTICE GORSUCH explains, see *post,* at 1, the Board's presumption is questionable. But the presumption is not the only problem. A decision by the VA to deny benefits in

reliance on an examiner's opinion, while denying the veteran access to that examiner's credentials, ensures that the presumption will work to the veteran's disadvantage. The petitioner here did not ask the VA to provide the examiner's credentials, and so this petition does not allow review of both the VA's practice and the Board's presumption. Full review would require a petition arising from a case in which the VA denied a veteran benefits after declining to provide the medical examiner's credentials. Until such a petition presents itself, staying our hand allows the Federal Circuit and the VA to continue their dialogue over whether the current system for adjudicating veterans' disability claims can be squared with the VA's statutory obligations to assist veterans in the development of their disability claims.

SUPREME COURT OF THE UNITED STATES

FREDDIE H. MATHIS *v.* DAVID J. SHULKIN, SECRETARY OF VETERANS AFFAIRS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 16–677. Decided June 26, 2017

JUSTICE GORSUCH, dissenting from denial of certiorari.

Lower courts often presume that Department of Veterans Affairs medical examiners are competent to render expert opinions against veterans seeking compensation for disabilities they have suffered during military service. The VA appears to apply the same presumption in its own administrative proceedings.

But where does this presumption come from? It enjoys no apparent provenance in the relevant statutes. There Congress imposed on the VA an affirmative duty to assist—not impair—veterans seeking evidence for their disability claims. See 38 U. S. C. §5103A(a)(1). And consider how the presumption works in practice. The VA usually refuses to supply information that might allow a veteran to challenge the presumption without an order from the Board of Veterans' Appeals. And that Board often won't issue an order unless the veteran can first supply a specific reason for thinking the examiner incompetent. No doubt this arrangement makes the VA's job easier. But how is it that an administrative agency may manufacture for itself or win from the courts a regime that has no basis in the relevant statutes and does nothing to assist, and much to impair, the interests of those the law says the agency is supposed to serve?

Now, you might wonder if our intervention is needed to remedy the problem. After all, a number of thoughtful colleagues on the Federal Circuit have begun to question the presumption's propriety. See *Mathis* v. *McDonald*,

834 F. 3d 1347 (2016). And this may well mean the presumption's days are numbered. But I would not wait in hope. The issue is of much significance to many today and, respectfully, it is worthy of this Court's attention.

SUPREME COURT OF THE UNITED STATES

EDWARD PERUTA, ET AL. *v.* CALIFORNIA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 16–894. Decided June 26, 2017

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, dissenting from the denial of certiorari.

The Second Amendment to the Constitution guarantees that "the right of the people to keep and bear Arm[s] shall not be infringed." At issue in this case is whether that guarantee protects the right to carry firearms in public for self-defense. Neither party disputes that the issue is one of national importance or that the courts of appeals have already weighed in extensively. I would therefore grant the petition for a writ of certiorari.

I

California generally prohibits the average citizen from carrying a firearm in public spaces, either openly or concealed. With a few limited exceptions, the State prohibits open carry altogether. Cal. Penal Code Ann. §§25850, 26350 (West 2012). It proscribes concealed carry unless a resident obtains a license by showing "good cause," among other criteria, §§26150, 26155, and it authorizes counties to set rules for when an applicant has shown good cause, §26160.

In the county where petitioners reside, the sheriff has interpreted "good cause" to require an applicant to show that he has a particularized need, substantiated by documentary evidence, to carry a firearm for self-defense. The sheriff's policy specifies that "concern for one's personal safety" does not "alone" satisfy this requirement. *Peruta* v. *County of San Diego*, 742 F. 3d 1144, 1148 (CA9 2014)

(internal quotation marks omitted). Instead, an applicant must show "a set of circumstances that distinguish the applicant from the mainstream and cause him to be placed in harm's way." *Id.*, at 1169 (internal quotation marks and alterations omitted). "[A] typical citizen fearing for his personal safety—by definition—cannot distinguish himself from the mainstream." *Ibid.* (emphasis deleted; internal quotation marks and alterations omitted). As a result, ordinary, "law-abiding, responsible citizens," *District of Columbia* v. *Heller*, 554 U. S. 570, 635 (2008), may not obtain a permit for concealed carry of a firearm in public spaces.

Petitioners are residents of San Diego County (plus an association with numerous county residents as members) who are unable to obtain a license for concealed carry due to the county's policy and, because the State generally bans open carry, are thus unable to bear firearms in public in any manner. They sued under Rev. Stat. §1979, 42 U. S. C. §1983, alleging that this near-total prohibition on public carry violates their Second Amendment right to bear arms. They requested declaratory and injunctive relief to prevent the sheriff from denying licenses based on his restrictive interpretation of "good cause," as well as other "relief as the Court deems just and proper." First Amended Complaint in No. 3:09–cv–02371, (SD Cal.) ¶¶149, 150, 152. The District Court granted respondents' motion for summary judgment, and petitioners appealed to the Ninth Circuit.

In a thorough opinion, a panel of the Ninth Circuit reversed. 742 F. 3d 1144. The panel examined the constitutional text and this Court's precedents, as well as historical sources from before the founding era through the end of the 19th century. *Id.,* at 1150–1166. Based on these sources, the court concluded that "the carrying of an operable handgun outside the home for the lawful purpose of self-defense . . . constitutes 'bear[ing] Arms' within the

meaning of the Second Amendment." *Id.*, at 1166. It thus reversed the District Court and held that the sheriff's interpretation of "good cause" in combination with the other aspects of the State's regime violated the Second Amendment's command that a State "permit *some form* of carry for self-defense outside the home." *Id.,* at 1172.

The Ninth Circuit *sua sponte* granted rehearing en banc and, by a divided court, reversed the panel decision. In the en banc court's view, because petitioners specifically asked for the invalidation of the sheriff's "good cause" interpretation, their legal challenge was limited to that aspect of the applicable regulatory scheme. The court thus declined to "answer the question of whether or to what degree the Second Amendment might or might not protect a right of a member of the general public to carry firearms openly in public." *Peruta* v. *County of San Diego*, 824 F. 3d 919, 942 (2016). It instead held only that "the Second Amendment does not preserve or protect a right of a member of the general public to carry *concealed* firearms in public." *Id.,* at 924 (emphasis added).

II

We should have granted certiorari in this case. The approach taken by the en banc court is indefensible, and the petition raises important questions that this Court should address. I see no reason to await another case.

A

The en banc court's decision to limit its review to whether the Second Amendment protects the right to concealed carry—as opposed to the more general right to public carry—was untenable. Most fundamentally, it was not justified by the terms of the complaint, which called into question the State's regulatory scheme as a whole. See First Amended Complaint ¶63 ("Because California does not permit the open carriage of loaded firearms,

concealed carriage with a [concealed carry] permit is the only means by which an individual can bear arms in public places"); *id.*, ¶74 ("States may not completely ban the carrying of handguns for self-defense"). And although the complaint specified the remedy that intruded least on the State's overall regulatory regime—declaratory relief and an injunction against the sheriff's restrictive interpretation of "good cause"—it also requested "[a]ny further relief as the Court deems just and proper." *Id.,* ¶152.

Nor was the Ninth Circuit's approach justified by the history of this litigation. The District Court emphasized that "the heart of the parties' dispute" is whether the Second Amendment protects "the right to carry a loaded handgun in public, either openly or in a concealed manner." *Peruta* v. *County of San Diego*, 758 F. Supp. 2d 1106, 1109 (SD Cal. 2010). As the Ninth Circuit panel pointed out, "[petitioners] argue that the San Diego County policy in light of the California licensing scheme *as a whole* violates the Second Amendment because it precludes a responsible, law-abiding citizen from carrying a weapon in public for the purpose of lawful self-defense in *any* manner." 742 F. 3d, at 1171. The panel further observed that although petitioners "focu[s]" their challenge on the "licensing scheme for concealed carry," this is "for good reason: acquiring such a license is the only practical avenue by which [they] may come lawfully to carry a gun for self-defense in San Diego County." *Ibid.* Even the en banc court acknowledged that petitioners "base their argument on the entirety of California's statutory scheme" and "do *not* contend that there is a free-standing Second Amendment right to carry concealed firearms." 824 F. 3d, at 927.

B

Had the en banc Ninth Circuit answered the question actually at issue in this case, it likely would have been compelled to reach the opposite result. This Court has

already suggested that the Second Amendment protects the right to carry firearms in public in some fashion. As we explained in *Heller*, to "bear arms" means to "'wear, bear, or carry upon the person or in the clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.'" 554 U. S., at 584 (quoting *Muscarello* v. *United States*, 524 U. S. 125, 143 (1998) (GINSBURG, J., dissenting); alterations and some internal quotation marks omitted). The most natural reading of this definition encompasses public carry. I find it extremely improbable that the Framers understood the Second Amendment to protect little more than carrying a gun from the bedroom to the kitchen. See *Drake* v. *Filko*, 724 F. 3d 426, 444 (CA3 2013) (Hardiman, J., dissenting) ("To speak of 'bearing' arms solely within one's home not only would conflate 'bearing' with 'keeping,' in derogation of the [*Heller*] Court's holding that the verbs codified distinct rights, but also would be awkward usage given the meaning assigned the terms by the Supreme Court"); *Moore* v. *Madigan*, 702 F. 3d 933, 936 (CA7 2012) (similar).

The relevant history appears to support this understanding. The panel opinion below pointed to a wealth of cases and secondary sources from England, the founding era, the antebellum period, and Reconstruction, which together strongly suggest that the right to bear arms includes the right to bear arms in public in some manner. See 742 F. 3d, at 1153–1166 (canvassing the relevant history in detail); Brief for National Rifle Association as *Amicus Curiae* 6–16. For example, in *Nunn* v. *State*, 1 Ga. 243 (1846)—a decision the *Heller* Court discussed extensively as illustrative of the proper understanding of the right, 554 U. S., at 612—the Georgia Supreme Court struck down a ban on open carry although it upheld a ban on concealed carry. 1 Ga., at 251. Other cases similarly suggest that, although some regulation of public carry is

permissible, an effective ban on all forms of public carry is not. See, *e.g., State* v. *Reid*, 1 Ala. 612, 616–617 (1840) ("A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional").

Finally, the Second Amendment's core purpose further supports the conclusion that the right to bear arms extends to public carry. The Court in *Heller* emphasized that "self-defense" is "the *central component* of the [Second Amendment] right itself." 554 U. S., at 599. This purpose is not limited only to the home, even though the need for self-defense may be "most acute" there. *Id.,* at 628. "Self-defense has to take place wherever the person happens to be," and in some circumstances a person may be more vulnerable in a public place than in his own house. Volokh, Implementing the Right To Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda, 56 UCLA L. Rev. 1443, 1515 (2009).

C

Even if other Members of the Court do not agree that the Second Amendment likely protects a right to public carry, the time has come for the Court to answer this important question definitively. Twenty-six States have asked us to resolve the question presented, see Brief for Alabama et al. as *Amici Curiae*, and the lower courts have fully vetted the issue. At least four other Courts of Appeals and three state courts of last resort have decided cases regarding the ability of States to regulate the public carry of firearms. Those decisions (plus the one below) have produced thorough opinions on both sides of the issue. See *Drake*, 724 F. 3d 426, cert. denied *sub nom. Drake* v. *Jerejian*, 572 U. S. ___ (2014); 724 F. 3d, at 440 (Hardiman, J., dissenting); *Woollard* v. *Gallagher*, 712 F. 3d 865 (CA4), cert. denied, 571 U. S. ___ (2013); *Ka-*

chalsky v. *County of Westchester*, 701 F. 3d 81 (CA2 2012), cert. denied *sub nom*. *Kachalsky* v. *Cacace*, 569 U. S. ___ (2013); *Madigan*, 702 F. 3d 933; *id.,* at 943 (Williams, J., dissenting); *Commonwealth* v. *Gouse*, 461 Mass. 787, 800–802, 965 N. E. 2d 774, 785–786 (2012); *Williams* v. *State*, 417 Md. 479, 496, 10 A. 3d 1167, 1177 (2011); *Mack* v. *United States*, 6 A. 3d 1224, 1236 (D. C. 2010). Hence, I do not see much value in waiting for additional courts to weigh in, especially when constitutional rights are at stake.

The Court's decision to deny certiorari in this case reflects a distressing trend: the treatment of the Second Amendment as a disfavored right. See *Friedman* v. *Highland Park*, 577 U. S. ___, ___ (2015) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 6) ("The Court's refusal to review a decision that flouts two of our Second Amendment precedents stands in marked contrast to the Court's willingness to summarily reverse courts that disregard our other constitutional decisions"); *Jackson* v. *City and County of San Francisco*, 576 U. S. ___, ___ (2015) (same). The Constitution does not rank certain rights above others, and I do not think this Court should impose such a hierarchy by selectively enforcing its preferred rights. *Id.*, at ___ (slip op., at 1) ("Second Amendment rights are no less protected by our Constitution than other rights enumerated in that document"). The Court has not heard argument in a Second Amendment case in over seven years—since March 2, 2010, in *McDonald* v. *Chicago*, 561 U. S. 742. Since that time, we have heard argument in, for example, roughly 35 cases where the question presented turned on the meaning of the First Amendment and 25 cases that turned on the meaning of the Fourth Amendment. This discrepancy is inexcusable, especially given how much less developed our jurisprudence is with respect to the Second Amendment as compared to the First and Fourth Amendments.

* * *

For those of us who work in marbled halls, guarded constantly by a vigilant and dedicated police force, the guarantees of the Second Amendment might seem antiquated and superfluous. But the Framers made a clear choice: They reserved to all Americans the right to bear arms for self-defense. I do not think we should stand by idly while a State denies its citizens that right, particularly when their very lives may depend on it. I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

BAY POINT PROPERTIES, INC., FKA BP PROPERTIES, INC. *v.* MISSISSIPPI TRANSPORTATION COMMISSION, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

No. 16–1077. Decided June 26, 2017

The petition for a writ of certiorari is denied and the pending motions for leave to file briefs as *amici curiae* are granted.

Statement of JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, respecting the denial of certiorari.

When a State negotiates an easement limited to one purpose but later uses the land for an entirely different purpose, can the State limit, by operation of statute, the compensation it must pay for that new taking? The Mississippi Supreme Court held that it may do just that. But this decision seems difficult to square with the teachings of this Court's cases holding that legislatures generally cannot limit the compensation due under the Takings Clause of the Constitution. See *Monongahela Navi. Co.* v. *United States*, 148 U. S. 312, 327 (1893). Tension appears to exist, too, between the decision here and decisions of the Federal Circuit. See, *e.g., Toews* v. *United States*, 376 F. 3d 1371, 1376 (2004). And the matter is one of general importance as well, for many states have adopted statutes like Mississippi's and the question presented implicates a fundamental feature of the compact between citizen and State. Given all this, these are questions the Court ought take up at its next opportunity.