No. 14-1191

In the Supreme Court of the United States

QUICKEN LOANS INC.,

Petitioner,

v.

LOURIE BROWN AND MONIQUE BROWN,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

This *amicus* brief addresses the first question presented:

Whether a state court may evade its obligation to apply the United States Constitution and this Court's cases by asserting that expressly and pervasively raised federal constitutional claims were purportedly waived.

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INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.[1]

Businesses are regularly named as defendants in state-court lawsuits asserting claims that implicate the defendants' federal constitutional and statutory rights. The Chamber and its members therefore have a strong interest in ensuring the state courts' uniform, consistent, and accurate application of federal law as interpreted by this Court.

That cannot occur if state courts are able to insulate their holdings from this Court's review by disingenuously declaring a federal claim "waived" in order to thwart this Court's jurisdiction—as the West Virginia Supreme Court of Appeals did here. To ensure that federal law remains supreme and that this Court can perform its critical role as the final arbiter of that law, the Court should make clear that its review cannot be precluded by patent manipulations of state law, as the ruling below does.

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[1] *Amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission. Counsel of record for all parties received notice at least 10 days before the due date of *amicus*'s intention to file this brief. The parties' consents to the filing of this brief are on file with the Clerk's office.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below is an affront to the authority and dignity of this Court. As Justice Loughry explained in dissent, the Supreme Court of Appeals of West Virginia "has * * * chosen to brazenly ignore the United States Supreme Court's jurisprudence"—and not for the first time. Pet. App. 85a (Loughry, J., dissenting in part). The court "stubborn[ly] refus[ed] to review the punitive damage award in this case against the edicts of" *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559 (1996), and *State Farm Mutual Automobile Insurance Co.* v. *Campbell*, 538 U.S. 408 (2003). Pet. App. 90a (Loughry, J., dissenting in part). The majority below, in Justice Loughry's words, engaged in a "contumacious refusal to heed the United States Supreme Court's holdings and * * * insiste[d] on a result-oriented analysis to uphold plainly-excessive punitive damage awards." *Id.* at 93a (Loughry, J., dissenting in part).

That is not, however, the worst of what the court below did. It also sought to render unreviewable its flouting of this Court's authority by purporting to find waiver, in Quicken's first appeal, of the federal claims, despite Quicken's clear, consistent, and determined efforts to preserve those claims throughout all stages of the proceedings below. The court did so without identifying any state-law procedural requirements that Quicken failed to satisfy. And it did so over the objection of two of the court's own members—including the author of the majority opinion—who each conducted an "independent review" of the record and determined that there was no waiver (Pet. App. 53a-54a n.26 (note in majority opinion

stating separate opinion of Benjamin, J.); see also *id.* at 86a (Loughry, J., dissenting in part)).

It is hornbook law that this Court's interpretations of federal law apply just as much in state court as in federal court. And this Court's precedents make clear that pretextual findings of procedural default under state law do not deprive this Court of jurisdiction to review state-court judgments that implicate important questions of federal law and do not relieve a state court of its obligation to decide questions of federal law. These principles are critical to ensure not only that federal law remains supreme but also that it is honestly, faithfully, and uniformly applied.

To preserve the integrity of this Court and its precedents, the Court should grant the petition and summarily reverse the decision below. That strong message is necessary to ensure the fair and consistent application of federal law regardless of the venue in which particular lawsuits raising substantial federal issues may arise.

ARGUMENT

This Court has long and consistently held that a state-law procedural rule "cannot be used as a device to undermine federal law." *Haywood* v. *Drown*, 556 U.S. 729, 739 (2009). Thus, although this Court lacks jurisdiction to consider state-court rulings that are genuinely supported by independent and adequate state-law grounds, sham findings of procedural default under state law do not and should not preclude this Court's review. Similarly, such unreasonable applications of state procedural rules do not vitiate the state courts' obligation to address properly presented questions of federal law.

The West Virginia Supreme Court of Appeals employed its procedural rules to avoid that obligation: It purported to find waiver in what the dissenter below recognized to be a transparent attempt to use state-law procedure as a pretext for ignoring this Court's controlling precedents. See Pet. App. 85a-89a (Loughry, J., dissenting in part). Moreover, this is just the latest effort by the West Virginia Supreme Court of Appeals to circumvent federal law—not to mention part of a broader trend in the state courts to evade this Court's precedents. That trend should not be permitted to continue unaddressed. This Court should summarily reverse the decision below and remand with directions to consider on its merits Quicken's constitutional claim.

A. A Sham Finding Of Procedural Default—Such As The West Virginia Court's Determination Here—Neither Defeats This Court's Jurisdiction Nor Relieves The State Court Of Its Duty To Decide The Federal Question.

A federal question arising in a state-court case is properly preserved and, therefore, subject to review by this Court as long as the state courts had "a fair opportunity to address the federal question that is sought to be presented here." *Webb* v. *Webb*, 451 U.S. 493, 501 (1981); accord *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928) (federal claim must have been "brought to the attention of the state court with fair precision and in due time"); see also *PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 85 n.9 (1980).

This requirement serves the interest of comity by not "disturb[ing] the finality of state judgments on a federal ground that the state court did not have occa-

sion to consider." *Adams* v. *Robertson*, 520 U.S. 83, 90 (1997) (per curiam) (citing *Bankers Life & Cas. Co.* v. *Crenshaw*, 486 U.S. 71, 77-78 (1988); *Illinois* v. *Gates*, 462 U.S. 213, 221-222 (1983); *Webb*, 451 U.S. at 500). And it embodies "'practical considerations' relating to this Court's capacity to decide issues" by "not only avoid[ing] unnecessary adjudication in this Court by allowing state courts to resolve issues on state-law grounds, but also assist[ing] [this Court] in [its] deliberations by promoting the creation of an adequate factual and legal record." *Id.* at 90-91 (quoting *Bankers Life*, 486 U.S. at 79, and citing *Webb*, 451 U.S. at 500).

The Court generally respects state-court determinations that a federal claim was not properly presented. "[W]hen * * * there can be no pretence that the [state] Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong." *Nickel* v. *Cole*, 256 U.S. 222, 225 (1921); accord, *e.g.*, *Wolfe* v. *North Carolina*, 364 U.S. 177, 195 (1960).

But where, as here, the nonfederal ground for a state-court judgment is flatly contrary to the record and to the state court's interpretation and application of state-law procedural rules in other cases, it "is so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question" (*Enterprise Irrigation Dist.* v. *Farmers' Mut. Canal Co.*, 243 U.S. 157, 164 (1917)). In such cases, this Court's "jurisdiction is plain." *Ibid.*; see also, *e.g.*, *Walker* v. *Martin*, 562 U.S. 307, 131 S. Ct. 1120, 1130 (2011) ("A state ground, no doubt, may be

found inadequate when 'discretion has been exercised to impose novel and unforeseeable requirements without fair or substantial support in prior state law . . . .'") (quoting 16B Charles A. Wright et al., Federal Practice and Procedure § 4026 (2d ed. 1996), and citing *Prihoda* v. *McCaughtry*, 910 F.2d 1379, 1383 (7th Cir. 1990) (state-law ground "applied infrequently, unexpectedly, or freakishly" may "discriminat[e] against the federal rights asserted," and therefore is "inadequate")).

Indeed, this Court has recognized and applied that principle for more than a century. See, *e.g.*, *Ford* v. *Georgia*, 498 U.S. 411, 423 (1991) ("'Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.'") (quoting *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 457-458 (1958)); *James* v. *Kentucky*, 466 U.S. 341, 348-349 (1984) (independent state-law procedural bar is adequate to support state-court judgment only if it is a "firmly established and regularly followed state practice"); *Hathorn* v. *Lovorn*, 457 U.S. 255, 262-265 (1982) (state-law procedural requirement that had not been applied "evenhandedly to all similar claims" could not bar consideration of federal question); *Staub* v. *City of Baxley*, 355 U.S. 313, 318-320 (1958); *Ward* v. *Board of Comm'rs*, 253 U.S. 17, 22 (1920); *Hartford Life Ins. Co.* v. *Johnson*, 249 U.S. 490, 493 (1919) (when a state court's finding of procedural default is "'rendered in a spirit of evasion for the purpose of defeating the claim of federal right,'" this Court has jurisdiction to consider the federal issue) (quoting *Atlantic Coast Line R.R.* v. *Mims*, 242 U.S. 532, 535 (1917)); *Postal Tel. Cable Co.* v. *City of Newport*, 247

U.S. 464, 475-476 (1918); *Vandalia R.R.* v. *Indiana ex rel. City of S. Bend*, 207 U.S. 359, 367 (1907) (noting that "[a] case may arise in which it is apparent that a Federal question is sought to be avoided or is avoided by giving an unreasonable construction to pleadings," in which case this Court may review it); *Leathe* v. *Thomas*, 207 U.S. 93, 99 (1907) (where state court seeks "to evade the jurisdiction of this [C]ourt" by falsely purporting to rule on state-law grounds rather than federal ones, this Court has jurisdiction); *Rogers* v. *Alabama*, 192 U.S. 226, 230 (1904) (reversing and remanding denial of equal-protection claim on grounds of improper preservation where state court had applied statutory power to strike for prolixity the pleading asserting the claim).

That is precisely the subterfuge that the majority below employed in this case. And it did so with little subtlety or artifice: The West Virginia Supreme Court of Appeals pointed to no special state-law standard of formality that Quicken ignored; it mentioned no magic words that Quicken failed to use; and it identified no requirement of any kind that Quicken failed to meet. Cf. *PruneYard*, 447 U.S. at 85 n.9; *Zimmerman*, 278 U.S. at 67.

The majority simply stated in conclusory fashion that "Quicken failed in its brief and reply brief in the *first* appeal to raise any issue pertaining to *BMW* and *State Farm*," and that Quicken therefore "has waived that federal substantive due process challenge in this *second* appeal." Pet. App. 53a.

In fact, as the dissenters below recognized (Pet. App. 53a-54a n.26, 86a) and the petition describes in painstaking detail (Pet. 14-16), Quicken made Herculean efforts in *both* appeals to raise and preserve the federal issue, repeatedly invoking *State Farm* and

BMW. It is particularly striking that the author of the lower court's opinion specifically disavowed the majority's waiver determination. Pet. App. 53a-54a n.26.

The West Virginia majority's conclusory finding of procedural default—unsupported by any analysis and inconsistent with settled principles of West Virginia law—therefore does not foreclose this Court's review.

For the same reasons, the lower court's determination does not vitiate that court's obligation, imposed by the Supremacy Clause, to decide the question of federal law. "A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of 'valid excuse.'" *Howlett ex rel. Howlett* v. *Rose*, 496 U.S. 356, 369 (1990); see also *id* at 369 n.16 (citing cases); *Testa* v. *Katt*, 330 U.S. 386, 390-391 (1947).

When a state-court procedural rule has been applied unreasonably to bar consideration of a federal claim, it does not constitute a valid excuse. Hence, this Court may "remand[] [the case] to the [state court] for decision on the merits" or "proceed to the merits" itself. *NAACP* v. *Alabama ex rel. Flowers*, 377 U.S. 288, 302 (1964). Remand seems the appropriate course of action here, so that the state court may address the federal claim in the first instance.

B. The Court's Intervention Is Particularly Warranted In Light Of The Increase In State Courts' Efforts To Evade This Court's Binding Precedents.

State-court refusals to apply this Court's precedents are not new—and the Court has not hesitated to intervene when state courts explicitly reject its

precedents or apply principles contrary to those precedents. Similarly, state courts have frequently devised novel procedural standards to disallow federal statutory and constitutional defenses in order to avoid applying federal law faithfully—as the numerous decisions of this Court cited above demonstrate. Those efforts not only threaten the uniform and adequate enforcement of federal rights, but also risk undermining the presumption that state courts provide an adequate forum for the adjudication and vindication of federal rights. If federal law is to remain supreme, this Court should act decisively to demonstrate that its decisions cannot be circumvented in this manner.

1. The West Virginia Supreme Court of Appeals has with disturbing frequency ignored, sidestepped, or outright rejected this Court's holdings on questions of federal law. See *Marmet Health Care Ctr., Inc.* v. *Brown*, 132 S. Ct. 1201, 1202 (2012) (per curiam) (summarily vacating and remanding where "the Supreme Court of Appeals of West Virginia, by misreading and disregarding the precedents of this Court interpreting the FAA, did not follow controlling federal law implementing th[e] basic principle" that both "[s]tate and federal courts must enforce the Federal Arbitration Act"); *Youngblood* v. *West Virginia*, 547 U.S. 867, 870 (2006) (per curiam) (summarily vacating and remanding decision of West Virginia Supreme Court of Appeals that did not consider a "clearly presented * * * federal constitutional *Brady* claim"); *Flippo* v. *West Virginia*, 528 U.S. 11, 11-12 (1999) (per curiam) (summarily reversing denial of motion to suppress evidence seized in warrantless search because it squarely contradicted two-decades-old Supreme Court precedent, where West Virginia Supreme Court of Appeals had denied dis-

cretionary review); *National Mines Corp.* v. *Caryl*, 497 U.S. 922, 924 (1990) (per curiam) (summarily reversing trial court's decision that "failed to consider the constitutionality of the taxes assessed against National in light of [this Court's] decision in *Armco*" *Inc.* v. *Hardesty*, 467 U.S. 638 (1984), after denial of review by Supreme Court of Appeals); *Ashland Oil, Inc.* v. *Caryl*, 497 U.S. 916, 921 (1990) (per curiam) (summarily reversing decision of Supreme Court of Appeals on similar grounds); *U.S. Dep't of Labor* v. *Triplett*, 494 U.S. 715, 726-727 (1990) (reversing finding that federal limitations on attorney fees in black-lung cases violated due process, and noting that "[i]t is not clear to us what the West Virginia Supreme Court of Appeals meant by what it described as its 'independent basis' for finding a due process violation" that was irreconcilable with this Court's precedent).

The hostility of the court below to this Court's binding precedents is especially noticeable when it comes to punitive-damages cases. In *West Virginia ex rel. Chemtall Inc.* v. *Madden*, 655 S.E.2d 161 (W. Va. 2007) (per curiam), for example, the court below purported to apply *Philip Morris USA* v. *Williams*, 549 U.S. 346 (2007), in which this Court held that awards of punitive damages based on harms to nonparties violate due process. Yet the West Virginia Supreme Court of Appeals affirmed, purportedly under *Williams*, a trial plan mandating that punitive damages to a plaintiff class be addressed before a class had even been certified (655 S.E.2d at 167)—notwithstanding that the result of this irregular procedure would be that the defendants would "be left with no way to address individualized claims of particular plaintiffs" (*id.* at 169 (Benjamin, J., dissenting)), thus leaving no way for the state courts "to en-

sure that any punitive damages award is reasonably related to any actual harm suffered by any plaintiff," as *Williams* requires (*ibid.*).

Similarly, in *Jackson* v. *State Farm Mutual Automobile Insurance Co.*, 600 S.E.2d 346 (W. Va. 2004), the West Virginia Supreme Court of Appeals flatly refused to instruct a trial court on remand after *State Farm* that "single-digit multipliers are more likely to comport with due process," or even that, to be probative, out-of-state conduct that is lawful where it occurred "must have a nexus to the specific harm suffered by the plaintiff." *Id.* at 364-365 (Maynard, C.J., concurring in part and dissenting in part) (internal quotation marks omitted).

And on multiple occasions, members of the West Virginia Supreme Court of Appeals have openly expressed hostility toward *State Farm* and this Court's due-process holdings. See, *e.g.*, *In re Tobacco Litig.*, 624 S.E.2d 738, 749 (W. Va. 2005) (Starcher, J., concurring) ("As the members of this Court have noted before, *State Farm* v. *Campbell* * * * was nothing more than a summary, a collation, of prior case law.") (collecting West Virginia cases); *Jackson*, 600 S.E.2d at 367 (McGraw, J., concurring) (complaining that, in *State Farm*, "the majority of the nine justices did not focus on 'the degree of reprehensibility of the defendant's conduct,' but instead chose to substitute the jury's judgment with their own") (citation omitted); see also *id.* at 366 (Maynard, C.J., dissenting in part) ("I fear that the majority of this court rejected * * * proposed syllabus points because it does not like *Cambpell*. I fervently hope that the next time a punitive damages award is reviewed by this Court, the majority will abide by the United States Supreme Court's decision in *Campbell*, even if it does

not like or agree with *Campbell's* holdings. The rule of law demands that ordinary citizens follow laws with which they do not agree. Likewise, we as judges are bound by controlling legal precedent. *Campbell* is the law of the land, and it must be applied everywhere in the United States, including in West Virginia.").

2. Unfortunately, the stubborn refusal of the West Virginia Supreme Court of Appeals to apply this Court's binding precedents is part of a larger trend in which state courts are ignoring or refusing to apply this Court's decisions on substantial questions of federal law. See, *e.g.*, *Grady* v. *North Carolina*, 135 S. Ct. 1368, 1370-1371 (2015) (per curiam) (summarily reversing denial of Fourth Amendment challenge under state cases that were irreconcilable with this Court's clear, long-standing precedents); *Martinez* v. *Illinois*, 134 S. Ct. 2070, 2074 (2014) (per curiam) (summarily reversing ruling that jeopardy had never attached based on state court's "misread[ing] of our precedents" even though "[t]here are few if any rules of criminal procedure clearer than the rule" that the state court ignored); *American Tradition P'ship* v. *Bullock*, 132 S. Ct. 2490, 2491 (2012) (per curiam) (summarily reversing state court's decision that holding of *Citizens United* v. *Federal Election Comm'n*, 558 U.S. 310 (2010), does not apply to Montana state law); *Nitro-Lift Techs., L.L.C.* v. *Howard*, 133 S. Ct. 500, 502-503 (2012) (per curiam) (summarily reversing Oklahoma Supreme Court's decision that "chose to discount [this Court's] controlling decisions," and reminding lower courts that "'[i]t is this Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.'") (quoting *Rivers* v.

Roadway Express, Inc., 511 U.S. 298, 312 (1994)); *KPMG LLP* v. *Cocchi*, 132 S. Ct. 23, 26 (2011) (per curiam) (summarily reversing state court's refusal to compel arbitration as "fail[ing] to give effect to the plain meaning of the [Federal Arbitration] Act and to the holding of *Dean Witter*" *Reynolds, Inc.* v. *Byrd*, 470 U.S. 213 (1985)); *Sears* v. *Upton*, 561 U.S. 945, 946 (2010) (per curiam) (summarily reversing state-court ruling because "it is plain from the face of the state court's opinion that it failed to apply the correct prejudice inquiry we have established for evaluating * * * Sixth Amendment claim[s]"); *CSX Transp., Inc.* v. *Hensley*, 556 U.S. 838, 840-841 (2009) (per curiam) (summarily reversing state-court decision that "misread and misapplied this Court's" precedent by invoking "reasons" that "do not withstand scrutiny").

Again, the trend is particularly clear in the punitive-damages context. Thus, for example, in *State Farm* itself, the Utah Supreme Court on remand flatly ignored this Court's conclusion that "the *Gore* guideposts * * * likely would justify a punitive damages award at or near the amount of compensatory damages" (*State Farm*, 538 U.S. at 429), and instead affirmed a punitive award nine times the size of the compensatory damages (see *Campbell* v. *State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 410-411 (Utah 2004)). See also, *e.g.*, *Seltzer* v. *Morton*, 154 P.3d 561 (Mont. 2007) (9:1 ratio on $1.1 million compensatory damages); *Union Pac. R.R.* v. *Barber*, 149 S.W.3d 325 (Ark. 2004) (4.9:1 ratio on $5.1 million compensatory damages); *Kendall* v. *Wyeth, Inc.*, 2012 WL 112609 (Pa. Super. Ct. Jan. 3, 2012) (4.44:1 ratio on $6.3 million compensatory damages); *Beatty* v. *Doctors' Co.*, 871 N.E.2d 138 (Ill. App. Ct. 2007) (3.5:1 ratio on $1.28 million compensatory damages); *Boeken* v. *Philip Morris Inc.*, 26 Cal. Rptr. 3d 638 (Ct. App.

2005) (9:1 ratio on $5.5 million compensatory damages); *Henley* v. *Philip Morris Inc.*, 9 Cal. Rptr. 3d 29 (Ct. App. 2004) (6:1 ratio on $1.5 million compensatory damages); *Bocci* v. *Key Pharms., Inc.*, 79 P.3d 908 (Or. Ct. App. 2003) (7:1 ratio on $5.5 million compensatory damages).

Moreover, invocations of sham state-law grounds have long been a tactic that state courts have employed to sidestep federal law while attempting to evade this Court's review. See Steven M. Shapiro et al., Supreme Court Practice § 3.22, at 207-208 (10th ed. 2013); *id.* § 3.26, at 222-224 (collecting and analyzing cases); see, *e.g.*, *Yates* v. *Aiken*, 484 U.S. 211, 215 (1988) (reversing state court's ruling, made on state-law grounds, where this Court had previously directed state court to consider petitioner's federal claims); *Hathorn*, 457 U.S. at 262-266 (holding that "irregularly" and inconsistently applied procedural rule concerning issues raised for first time in petition for rehearing did not preclude Supreme Court review); *NAACP* v. *Alabama ex rel. Patterson*, 360 U.S. 240, 244-245 (1959) (per curiam) (summarily reversing state court's attempt to manufacture state-law ground for affirmance of original decision after reversal and remand from this Court on finding of federal constitutional defect); *Davis* v. *Wechsler*, 263 U.S. 22, 24 (1923) ("Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."); *Buell-Wilson* v. *Ford Motor Co.*, 73 Cal. Rptr. 3d 277, 290 (Ct. App. 2008) (holding that vacatur and remand by this Court to apply intervening Supreme Court decision "d[id] not require that we change any of the holdings in our original opinion," based on defend-

ant's purported forfeiture of its right to assert constitutional defense).

This Court has intervened repeatedly when state courts have ignored controlling precedents on questions of federal law. See, *e.g.*, *Nitro-Lift*, 133 S. Ct. at 502-503; *Marmet*, 132 S. Ct. at 1202. That intervention is critical, for without the disciplining effect of this Court's reversals, the departures from federal law would surely multiply. For the same reasons, state courts should not be permitted to use patently unreasonable waiver rulings to accomplish indirectly the noncompliance with this Court's holdings that they could not effectuate directly. Cf. *Yates*, 484 U.S. at 215; *Patterson*, 360 U.S. 243-244. Such flagrant disregard for federal law and for this Court's authority is not a reason to withhold review but instead "is all the more reason for this Court to assert jurisdiction." *Nitro-Lift*, 133 S. Ct. at 502-503.

The Court should act decisively, by summarily reversing the judgment below, to send a needed reminder that federal law as interpreted by this Court remains the supreme law of the land, no matter the court in which one is litigating.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the Supreme Court of Appeals of West Virginia should be summarily reversed, and the case should be remanded with directions to address petitioner's federal constitutional claim.

Respectfully submitted.

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