No. 11-157

In The Supreme Court of the United States

SCOTT BEASON, LARRY SPENCER, ALLISON SLAPPY, LISA PAYNE, AND MARY AMBRIDGE,

Petitioners,

v.

ROBERT BENTLEY, GOVERNOR OF THE STATE OF ALABAMA, AND COLONEL F. A. "BUBBA" BINGHAM, DIRECTOR OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, IN THEIR OFFICIAL CAPACITIES,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Alabama

AMICUS CURIAE BRIEF OF PROENGLISH IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Alabama courts may deny Petitioners' federal constitutional rights through another aberrant and errant misapplication of common law *res judicata* doctrine that defies this Court's unanimous reversals of similar Alabama decisions in *Richards v. Jefferson County, Alabama*, 517 U.S. 793 (1996) and *South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160 (1999) and ignores this Court's unanimous recent holding denouncing the doctrine of "virtual representation" in *Taylor v. Sturgell*, 553 U.S. 880 (2008).

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AMICUS CURIAE BRIEF OF PROENGLISH IN SUPPORT OF PETITIONERS

Becker Legal Center, LLC respectfully submits this *amicus curiae* brief on behalf of ProEnglish in support of Petitioners Scott Beason, *et al.* Pursuant to Supreme Court Rule 37.2(a), this *amicus curiae* brief is filed with the written consent of the parties.[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Founded in 1994 under the name English Language Advocates, ProEnglish is a self-governing project of U.S., Inc., a 501(c)(3) tax-exempt organization. ProEnglish is the nation's leading advocate of official English, working through the courts and in the courts of public opinion to defend English's historic role as America's common, unifying language, and to persuade lawmakers to adopt English as the official language at all levels of government.

[1] Counsel for the Petitioners and Counsel for the Respondents consented to the filing of this *amicus curiae* brief with the Clerk of the Court. In compliance with Supreme Court Rule 37.6, Becker Legal Center, LLC represents that no counsel for either party authored this brief in whole or in part and that no person or entity, other than ProEnglish made a monetary contribution toward the preparation or submission of this brief. The parties were notified ten days prior to the filing of this brief of the intent to file.

Believing that while the right to use other languages must be respected, in a pluralistic nation such as the United States, the function of government should be to foster and support the similarities that unite us, rather than institutionalize the differences that divide us.

In an effort to foster and support such similarities, the ProEnglish action plan includes adopting laws or constitutional amendments declaring English the official language of the United States, of individual states, and defending the right of individual jurisdictions to make English the official language of government operations.

Since its creation, ProEnglish has gained expertise and considerable experience in the rapidly evolving field of language law, and repealing federal mandates for the translation of government documents and voting ballots into languages other than English.

Although ProEnglish has no affiliation whatsoever with Petitioners in this case, ProEnglish respectfully submits this *amicus curiae* brief because issues critical to their membership and of national importance are at stake in this case.

SUMMARY OF ARGUMENT

This Court should grant *certiorari* when "serious issues of constitutional magnitude"[2] exist, a "state or federal court . . . has failed to give sufficient recognition to a federal constitutional claim,"[3] issues of "national importance" present themselves,[4] or where a court has "so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's judiciary power."[5] Any one of these conditions should alone be sufficient and warrant the granting of *certiorari*, yet, the instant case is one in which each and every one of these conditions are present.

More specifically, in this case, the Court should grant *certiorari*: (1) to restore Petitioners' constitutional right of due process; (2) to restore Petitioners' constitutional right of equal protection under the law; (3) to restore Petitioners' First Amendment right to petition government; and (4) because vital issues of "national importance" are at stake in this case.

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[2] *See Heutsche v. U.S.*, 414 U.S. 898, 903-04 (1973) (Douglas, J., dissenting).

[3] *See National Broadcasting Co., Inc. v. Niemi*, 434 U.S. 1354, 1354 (1978).

[4] *See Camreta v. Greene*, ___ U.S. ___, 131 S.Ct. 2020, 2033 (2011); and *Tarver v. Smith*, 536 U.S. 915, 915 (2002) (Kennedy, J., and O'Connor, J., dissenting).

[5] *See Hollingsworth v. Perry*, ___ U.S. ___, 130 S.Ct. 705, 713 (2010) (citing Supreme Court Rule 10(a)).

ARGUMENT

I. Constitutional Rights Supercede Alabama's Justifications of Judicial Efficiency.

In its Conclusions of Law, the Circuit County Court of Montgomery County, Alabama cited "wasted use of the judicial machinery" (¶ 3) and that "the judicial system be used economically" (¶ 4) in justifying its application of the doctrine of *res judicata* to deny Petitioners their day in court.

Especially poignant in this discussion are the matters of individual rights – this case, like many others, demonstrates that rights rest with the individual – there are no group or collective rights. On the topic of rights of minority groups, citing *Arizona Governing Committee v. Norris*, 463 U.S. 1073 (1983), Justice O'Connor writes in *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S. 547 (1990). "Government must treat citizens as *individuals*, not as simply components of a . . . class." *Metro Broadcasting,* 497 U.S. at 602 (O'Connor, J., dissenting) (emphasis added). "Social scientists may debate how peoples' thoughts and behavior reflect their background, but the Constitution provides that the Government may not allocate benefits and burdens among *individuals* based on the assumption that race or ethnicity determines how they act or think." *Id.* (emphasis added). The Court was "the government

entity esteemed above all others to protect the rights of the *individual* as a counterweight to popular rule."[6]

The logic and philosophy are as compelling as the law. The unit of analysis with respect to rights can only be the individual actor.[7] Only individuals act; only individuals exercise liberty.[8] Any legal rights analysis not cognizant of the individual as the unit of analysis is plagued with the insurmountable obstacle of the fact that an individual can at the same time belong to more than one group.[9]

Despite this, relying on the fact that some former group of individuals litigated a case against the state

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[6] Bernard H. Siegan, *Economic Liberties and the Constitution*, 88 (University of Chicago Press 1980).

[7] Ludwig von Mises, *Human Action,* 42-43 (3rd rev. ed.) (Yale University Press 1969) ("All actions are performed by individuals. A collective operates always through the intermediary of one or several individuals whose actions are related to the collective as the secondary source. It is the meaning which the acting individuals and all those who are touched by their action attribute to an action, that determines its character. The hangman, not the state, executes a criminal. . . . For a social collective has no existence and reality outside of the individual member's actions. The life of a collective is [only] lived in the actions of the individuals constituting its body. Those who want to start the study of human action from the collective unity encounter an insurmountable obstacle in the fact that an individual at the same time can belong and – with the exception of the most primitive tribesman – really belongs to various collective entities.").

[8] *Id.*

[9] *Id.*

of Alabama some years ago challenging the same state action, Alabama now hopes to deny an unrelated individual (or group of individuals) access to the justice system. This abuse of rights is not only untenable but this Court has held as much. *Taylor v. Sturgell*, 553 U.S. 880 (2008). It seems, instead, the state of Alabama hopes to permanently insulate itself from (and any legal actions challenging) the means by which its public officials carry out their respective duties.

There is, of course, a certain appeal to the apparent "efficiency" Alabama hopes to achieve in limiting its citizenry to one bite at the apple of government gone astray. Such an appeal is particularly resonant in these times of dwindling tax bases and skin-tight budgets.[10] However, the fiscal peril in which most national, state, and local governments now "happen" to find themselves are quite arguably the necessary consequences of these same governments having

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[10] Time Magazine, *In the U.S., Crisis in the Statehouses*, http://www.time.com/time/magazine/article/0,9171,1997457,00.html ("Almost no one – and no place – is exempt. Nearly everywhere, tax revenue plummeted as property values tanked, incomes dwindled and consumers stopped shopping. Falling prices for stocks and real estate have made mincemeat of often underfunded public pension plans. Unemployed workers have swelled the demand for welfare and Medicaid services. Governments that were frugal in the past are just squeaking by. Governments that were lavish in the good times, building their budgets on optimism and best-case scenarios, now risk being wrecked like a shantytown in an earthquake.") (last viewed August 22, 2011).

previously gone astray, the likes of which Petitioners, here, hope to challenge in a court of law, yet, are being denied.[11] Matters can only worsen if tight budgets (and so-called judicial efficiency) are allowed to become the justification for a judicially-unchecked legislature or executive branch which when, further unchecked, may pursue policies that result in even more dire consequences.

Even the matter of derision of rights in the name of "efficiency" is a misdirection play, however, as the quintessential and proper role of government is not pure fiscal efficiency but rather the efficient protection of individual rights.[12] When analyzed in terms of financial efficiency, many safeguards to individual rights are horribly "inefficient" but yet are prudently maintained because, for example, the expense of jury trials are far less invasive of rights than the much cheaper alternative of sodium pentothal.

Nevertheless, we find the state of Alabama instead resorts to ignoring this principal and, in so doing, denies its citizens their rights to: (1) due

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[11] For example, the additional expenditure (resulting from Alabama's departure from its state constitutional requirement to give driver's exams in only English) must not be used as a justification for why there are no funds remaining to adjudicate cases challenging the constitutionality of that previous departure.

[12] *See generally* Richard A. Epstein, *Principles for a Free Society* (Perseus Books 1998).

process;[13] (2) equal protection under the law;[14] and (3) petition government under the First Amendment[15] all made applicable to the states by the Fourteenth Amendment to the United States Constitution.[16].

A. Alabama Violated Petitioners' Rights of Due Process

It is long held and well-established that "[a]n essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)).

Because, as explained above, rights vest with the individual, due process is not satisfied and it is insufficient that some other unrelated individual or group of individuals enjoyed a right to be heard on some similar transgression by government. Having "one's [own] day in court" is a principle "essential in the administration of our system of justice." *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 396 fn. 16 (1977) (citing *American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co.*, 3 F.R.D. 162, 164 (S.D.N.Y 1942)).

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[13] U.S. Const. amend. XIV, § 1.

[14] U.S. Const. amend. XIV, § 1.

[15] U.S. Const. amend. I.

[16] U.S. Const. amend. XIV, § 1.

So what, then, are governments (and their courts) to do with a pesky citizenry who, as individuals, return not again and again, but as different individuals or different groups of individuals, each challenging the same, arguably errant act or misdeed by public officials. One seemingly rational possibility is, of course, to revisit the issue. It may well be that some new convincing argument or new circumstance warrants reconsideration. In the case upon which Alabama relies to impose the doctrine of *res judicata* on Petitioners, the substantive issue was ruled upon by a strongly divided Alabama Supreme Court (5-4) with significant dissent in 2007. *See Cole v. Riley*, 989 So. 2d 1001 (Ala. 2007). Of particular note is that *the lack of evidence presented* in that case was pivotal in the outcome. *Id.* at 1003. The denial to Petitioners of their day in court under the doctrine of *res judicata* is particularly egregious given the likelihood that they could provide evidence arguably lacking in the previous iteration, especially given the narrowness and sharp division among Alabama's nine justices.

B. Alabama Violated Petitioners' Rights to Equal Protection.

"Equal protection requires that all persons 'under like circumstances and conditions' be treated alike." *Oregon v. Mitchell*, 400 U.S. 112 (1970) (citing *Hayes v. Missouri*, 120 U.S. 68 at 71 (1887)). Legislatures, as well as courts, are bound by the provisions of the Fourteenth Amendment. *Cooper v. Aaron*, 358 U.S. 1, 18-20 (1958).

"The controlling legal principles are plain. The command of the Fourteenth Amendment is that no State shall deny to any person within its jurisdiction the equal protection of the laws." *Id.* at 16. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws." *Id.* at 16-17. "This must be so, or the constitutional prohibition has no meaning." *Id.* at 17.

"Moreover, because access to the courts is a fundamental right, government-drawn classifications that impose substantial burdens on the capacity of a group of citizens to exercise that right require searching judicial examination under the Equal Protection Clause." *Woodford v. Ngo,* 548 U.S. 81, 122-23 (2006) (citing *Lewis v. Casey,* 518 U.S. 343, 346 (1996)).

Under Alabama's contorted expansion of *res judicata* in the decision below, however, only those first to the courthouse steps are entitled to adjudicate their fundamental constitutional rights against Alabama. Although not altogether unrelated to the due process "right to be heard" discussed above, by granting one citizen "his or her day in court" and denying the subsequent, Alabama has violated that subsequent citizen's right to equal protection under the law.

Importantly, this also creates an incentive system very poorly suited for resolving important questions of constitutional law and policy. If only the first to the courthouse steps will be heard, then arguably only the least-well-prepared to litigate will be heard and arguments that could and should have been developed and potentially shaped the law and legal outcome will never be presented simply because, in the opinion of the Alabama Supreme Court, legal challenges relating to significant matters of public policy may only be heard by the winner of the race to the courthouse steps, whomever and however ill-prepared they may be.

C. Alabama Violated Petitioners' Rights to Petition Government

"The First Amendment provides, in relevant part, that 'Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.' We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights,' *Mine Workers v. Illinois Bar Assn.,* 389 U.S. 217, 222, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967), and have explained that the right is implied by '[t]he very idea of a government, republican in form,' *United States v. Cruikshank,* 92 U.S. 542, 552, 23 L.Ed. 588 (1876)." BE & *K Construction Co. v. N.L.R.B.*, 536 U.S. 516, 524-25 (2002).

The First Amendment right to petition government[17] includes the right to sue them. "[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances." *Woodford v. Ngo*, 548 U.S. 81 (2006) (quoting *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 741 (1983)). As such, Alabama's denial of a fair hearing on *res judica* grounds violates Petitioners' First Amendment right to petition government.

And, of particular import here, "even unsuccessful but reasonably based suits advance some First Amendment interests. Like successful suits, unsuccessful suits allow the public airing of disputed facts, and raise matters of public concern. They also promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around. Moreover, the ability to lawfully prosecute even unsuccessful suits adds legitimacy to the court system as a designated alternative to force." *BE & K Construction Co. v. N.L.R.B.*, 536 U.S. 516, 532 (2002) (internal citations and quotations omitted).[18]

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[17] U.S. Const. amend. I.

[18] *See also* Carol Rice Andrews, *A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right*, 60 Ohio St. L.J. 557, 656 (1999) (noting the potential for avoiding violence by the filing of unsuccessful claims).

II. Vital Policy Issues of National Importance Warrant *Certiorari*.

Absent the judicial consideration resulting from misapplication of the *res judicata* doctrine by the Alabama courts, substantive issues of national importance fail to receive due and prudent judicial attention and are instead dismissed out-of-hand.

A. The Potential Divisiveness and Inefficiency of Multiple Languages Are of National Importance and Alabama's Errant Approaches to *Res Judicata* and "Virtual Representation" Undermine the Past Efforts of the Alabama Citizenry Who Amended Their State Constitution to Address This Critical Issue.

The issue of multiple language "regulation" is of vital importance and warrants serious and thoughtful consideration. According to political scientist Alan Patten, "language policy is an issue of considerable ethical, political, and legal importance in jurisdictions around the world."[19]

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[19] Alan Patten, *Political Theory and Language Policy*, Political Theory, Vol. 29 No. 5, October 2001 691-715. *See also* Cody L. Knutson, *National Language Policy in the United States: A Holistic Perspective,* Nebraska Anthropologist, January, 1996 (Abstract: English is not the official national language of the United States of America. However, this issue has often come to the forefront of many political debates, since language encompasses a wide array of political, economic and various

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In this country, at least thirty-one states (including Alabama) have enacted some form of legislation or constitutional amendment making English the official language of their states.[20] Although certain limited exceptions apply based on age, the federal government, too, requires a working knowledge of the English language for those hoping to become a naturalized citizen of the United States. 8 U.S.C. § 1423.

Further indication that language regulation remains at the forefront of policy debate can be found in the diversity of politicians among whom these issues have been vigorously discussed and the span of time over which this discussion has occurred. For example, former Colorado Governor Richard Lamm wrote, "A nation needs a common language as it needs a common currency[21] . . . [w]e need many things

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other social implications.), http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1095&context=nebanthro&sei-redir=1#search=%22politicians%20english%20language%20policy%22 (last viewed August 22, 2011).

[20] http://www.us-english.org/view/13 (last viewed August 22, 2011).

[21] Interestingly, much understanding can be garnered in Governor Lamm's likening of the inefficiencies of barter among trading partners to the inefficiencies among communications partners who lack a common language or means of communication. Money emerges in the marketplace as a consequence of self-interested parties hoping to exchange goods and services more easily than would be possible by means of barter. Simple logic allows most anyone to understand the benefit and efficiency gains to be had by a society that employs a common medium of exchange. For example, the use of such a medium results in efficiency because it eliminates search costs by solving the

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to tie us together, but one indispensable element must be that we all speak one common language."[22] From President Theodore "Teddy" Roosevelt to Senator S.I. Hayakawa, the list of policy makers deeply concerned with this issue of multiple languages and

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double-coincidence-of-wants problem. The first difficulty in barter is to find two persons whose disposable possessions mutually suit each other's wants. There may be many people wanting and my possessing those things wanted; but to allow for an act of barter there must be a double coincidence, which will rarely happen. That is, the producer of carrots who wants beef must not spend inordinate amounts of time seeking out the seller of beef who also wants carrots in exchange. Rather, by trading his carrots for "money," the trader may find much more easily a seller of beef who will gladly accept "money" thus allowing him to locate the beef he seeks before his carrots rot as he seeks out the one seller of beef who coincidentally also wants carrots. "Simple logic" also allows most anyone to grasp that the efficiencies to be gained by being able to communicate with one's countrymen or neighbors are equally critical. Even with a common currency, being unable to communicate with potential trading partners about price, goods, and other terms, means transactions do not occur. The only other economic principles one need understand to fully appreciate the disutility of *transactions lost* are that voluntary exchanges are *pareto optimal* (meaning at least one trading partner gains utility and no one suffers a loss of utility) and that the extent to which one (due to loss of trading opportunities) must be self-sufficient (thus lacking the benefit of specialization and division of labor), he is necessarily poorer.

[22] http://kgab.com/language-culture-and-country-2/ (last viewed August 30, 2011).

resultant potential for divisiveness goes on and on.[23] Academics, too, have devoted significant research to this issue.

For example, noted American Sociologist and "one of the most influential scholars of the past half century," Seymour Martin Lipset, son of Russian Jewish immigrants most known for his quote that "[t]hose who only know one country know no country"[24] also wrote:

> The histories of bilingual and bicultural societies that do not assimilate are histories of turmoil, tension, and tragedy. Canada, Belgium, Malaysia, Lebanon – all face crises of national existence in which minorities press for autonomy, if not independence. Pakistan and Cyprus have divided. Nigeria suppressed an ethnic rebellion. France faces difficulties with its Basques, Bretons, and Corsicans.

Significantly more could be written here to demonstrate the weightiness of the issue sought to be fully litigated by Petitioners. Much thought, political activity, research, and journalism have been devoted

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[23] *See* http://www.us-english.org/inc/official/quotes/ for an expansive list of policymakers' quotations on topic.

[24] Patricia Sullivan, *Political Scientist Seymour Lipset, 84; Studied Democracy and U.S. Culture*, Washington Post, January 4, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/01/03/AR2007010301793.html (last viewed August 22, 2011) (describing Lipset as "a leading scholar of democracy and one of the most influential scientists of the past half century).

to whether the lack of a common language makes inefficient, divides, or, at worst destroys, a society. It should be noted by this Court that, in 1990, the citizens of Alabama took this issue seriously enough to amend their state constitution in an attempt to address, at a minimum, public safety concerns attributable to this issue and, as importantly, included language therein granting expansive standing to bring suit.[25]

B. "Virtual Representation" is Inadequate Where Public Safety is at Stake

Most specifically, the substantive issue central to the case is that of foreign-language driver's license exams and the extent to which they threaten public safety.

Drivers who cannot read and understand English are a threat to the safety of all motorists, including themselves. Such drivers cannot understand traffic signs and directions, read highway warning signs or read hazard signs on other vehicles. And they cannot communicate with police or public safety officials in the event of an accident or other emergency. Alabama's substitution of "virtual representation" for constitutional rights (discussed in Section I of this brief) pre-empted this Petitioner's ability to introduce evidence to that effect into the record. However,

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[25] Ala. Const. art. I, § 36.01

further indication of the issue being of national import is significant and the following should be noted.

Federal Motor Carrier Safety Administration regulations that govern motor carriers engaged in interstate commerce require drivers to "read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records." 49 C.F.R. § 391.11(b)(2). If reading and speaking English is required for driver's safety in interstate commerce, it should be within the province of the states to so regulate, as well. Arguably, under the Supremacy and Interstate commerce clauses, states acting otherwise are arguably pre-empted.

In 2004 a U.S. Bureau of Labor Statistics official attributed a sharp increase in work fatalities in Alabama including a 72% increase in work related traffic fatalities, to the fact that increasing numbers of employees and drivers could not read or understand warning signs in English.[26] Numerous motor vehicle fatality accidents are attributable to the lack of driver's English fluency.[27]

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[26] Roy Williams, *State Workplace Perils Deadly*, Birmingham News, September 23, 2004.

[27] ProEnglish, http://www.proenglish.org/data/backgrounders/169-why-drivers-must-know-english (last viewed August 22, 2011) (Four Newton, Massachusetts. teenagers were killed when their school bus crashed in New Brunswick during a high school band trip. The victims' parents blamed the accident on the

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Moreover, foreign-language driver's license exams invite fraud and increase the risk of cheating. For example, in Colorado, federal agents uncovered a Department of Motor Vehicle ring they accused of using foreign-language driver's tests to put hundreds of illegal aliens behind the wheels of heavy trucks and cars. The alleged mastermind of the ring said he would sit next to applicants who did not speak English and pose as a translator while giving test-takers answers to test questions he had memorized.[28] The Wisconsin Division of Motor Vehicles reviewed its test procedures after discovering that it had issued up to one thousand fraudulently obtained commercial and regular driver's licenses. A Polish interpreter and ringleader of the scam, was accused of giving test answers to those taking the written driving exam.[29]

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driver's inability to read and understand traffic signs in English. In Pennsylvania, a truck driver who could not understand English ran into and killed an entire family of five. The driver failed to heed a warning sign banning trucks over ten tons on the road he was traveling. His truck weighed forty tons. In Milwaukee, a family of eight perished after a truck's tail light assembly fell off directly in front of their minivan. The truck driver did not speak English and did not understand other drivers who had tried to warn him of the imminent danger).

[28] Michael Riley and Alicia Caldwell, *DMV Inquiry to Expand*, Denver Post (February 13, 2005), http://www.justicejournalism.org/projects/riley_michael/riley_021305.pdf (last viewed August 22, 2011).

[29] Michael Crowley, *Outrageous; License to Kill*, Reader's Digest (July 2007), http://www.rd.com/travel/illegal-truck-drivers-given-a-license-to-kill/ (last viewed August 22, 2011).

The Pennsylvania Department of Transportation stopped using Russian, Vietnamese, and Chinese language driver's tests after discovering widespread cheating that raised serious safety concerns fifteen months after the tests were introduced.[30]

In recent years, 32 states have reported cases of commercial license fraud, with arrests ranging everywhere from Florida to Ohio to Colorado. A 2006 report from the U.S. Department of Transportation (DOT) identified about 15,000 "suspect" license holders in 27 states, over a third of whom ultimately had their commercial driver's licenses taken away or voluntarily gave them up.[31]

Foreign-language driver's license exams can also obstruct and endanger law enforcement and emergency response personnel. Courts are also overturning convictions for driving under the influence of drugs or alcohol in cases in which violators are not given breathalyzer instructions and warnings in their native language. Courts have held that allowing drivers to take licensing tests in their native language creates an obligation for states to issue traffic warnings and citations in that same language.[32]

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[30] Monica Rhor, *For Immigrants, Driving Tests Are Roadblock*, Philadelphia Inquirer (November 24, 2000).

[31] *Supra* note 29.

[32] Aisling Swift, *DWI Law Hits Language Barrier*, Raleigh News Observer (November 13, 2003).

CONCLUSION

This Court should grant *certiorari* when serious constitutional issues are ignored or circumvented by either a state or federal court, especially where issues of national importance are at stake, or when a court below strays well beyond the accepted course of judicial proceedings. In the instant case, we have a decision below that warrants the granting of certiorari on all of these bases.

The State of Alabama has once again applied its judicial figment of "virtual representation" in the context of *res judicata* to the detriment of these Petitioners and many unnamed citizens, not only from Alabama but other states, as well. Alabama has not only strayed far afield from the accepted course of judicial proceedings but, in so doing, has deprived petitioners of their constitutional rights to due process, equal protection, and their right to petition government to redress grievances. All of this has been done against a backdrop where significant issues of national importance are at stake – so much so, in fact, that the citizens of Alabama (and many other states) have amended their respective constitution(s) in an attempt to rectify public safety issues springing from the State's failure to adhere to its own constitutional provisions.

As such, and for all the foregoing reasons, Petitioners' writ of *certiorari* should be granted.

Respectfully submitted,

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