**From:** Charles Fournier
**To:** AO Code and Conduct Rules
**Cc:** Boss Julia
**Subject:** Comments on proposed changes to the Code and the JC&D Rules, request to testify on the JC&D Rules
**Date:** Wednesday, October 10, 2018 2:30:11 PM
**Attachments:** 2018-10-07 - T1DF - Comment on JCD Rules - FINAL.pdf

---

Request to testify on the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules)
By Charles Fournier, J.D.
On behalf of the Type 1 Diabetes Defense Foundation

*Would you please confirm receipt?*

On September 13, 2018, the Judicial Conference committees on Codes of Conduct and Judicial Conduct and Disability released for public comment proposed changes to the Code of Conduct for U.S. Judges (Code) (pdf) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) (pdf).

**Please find attached comments on the proposed changed to the Code and JC&D Rules submitted on behalf of T1DF.**

I am also respectfully requesting to testify on behalf of T1DF at that public hearing on the proposed changes to the Code and JC&D Rules on October 30, 2018. The attached written comments will form the basis of my written statements; I may file a shorter version by October 25, 2018 or November 13, 2018.

As requested, I have included at the top of this email the name of the individual seeking to testify, the name of the organization I represent, and the documents I would like to testify one (JC&D Rules).

Charles Fournier, J.D.
Vice President
Type 1 Diabetes Defense Foundation
Charles.Fournier@t1df.org
(206) 643-1479

@t1df_advocacy
https://twitter.com/t1df_advocacy
https://www.linkedin.com/company/10518969/
https://www.facebook.com/T1DefenseFoundation/
www.t1df.org

On Oct 8, 2018, at 9:03 AM, postmaster@uscourts.gov wrote:

Your message to ao_code_and_conduct_rules_dca_ao@fedcourts.mail.onmicrosoft.com couldn't be delivered.

ao_code_and_conduct_rules_dca_ao wasn't found at fedcourts.mail.onmicrosoft.com.

**Action Required**

Unknown To address

How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: Fix email delivery issues for error code 5.1.10 in Office 365, and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

*Was this helpful? Send feedback to Microsoft.*

## More Info for Email Admins

*Status code: 550 5.1.10*

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

**The email address exists and is correct** - Confirm that the recipient address exists, is correct, and is accepting messages.

**Synchronize your directories** - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

**Errant forwarding rule** - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

**Recipient has a valid license** - Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

**Mail flow settings and MX records are not correct** - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see Fix email delivery issues for error code 5.1.10 in Office 365.

### Original Message Details

| | |
|---|---|
| Created Date: | 10/8/2018 4:03:05 PM |
| Sender Address: | charles.fournier@t1df.org |
| Recipient Address: | ao_code_and_conduct_rules_dca_ao@fedcourts.mail.onmicrosoft.com |
| Subject: | Comments on proposed changes to the Code and the JC&D Rules, request to testify on the JC&D Rules |

### Error Details

| | |
|---|---|
| Reported error: | *550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient ao_code_and_conduct_rules_dca_ao@fedcourts.mail.onmicrosoft.com not found by SMTP address lookup* |
| DSN generated by: | BY2PR09MB0707.namprd09.prod.outlook.com |

### Message Hops

| HOP | TIME (UTC) | FROM | TO | WITH | RELAY TIME |
|---|---|---|---|---|---|
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| 2 | 10/8/2018 4:03:10 PM | | mail-pf1-f174.google.com | SMTP | 3 sec |
| 3 | 10/8/2018 4:03:10 PM | mail-pf1-f174.google.com | mail3.uscourts.gov | ESMTP/TLS/AES128-GCM-SHA256 | * |
| 4 | 10/8/2018 4:03:11 PM | smtp1-i.sndg.gtwy.dcn | ushub06.uscmail.dcn | ESMTP | 1 sec |
| 5 | 10/8/2018 4:03:39 PM | unknown | ume.uscmail.dcn | ESMTP | 28 sec |
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| 8 | 10/8/2018 4:03:48 PM | BN3PR09CA0062.namprd09.prod.outlook.com | BY2PR09MB0707.namprd09.prod.outlook.com | Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) | * |

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by mail3.uscourts.gov with ESMTP/TLS/AES128-GCM-SHA256; 08 Oct 2018 12:03:10 -0400
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Return-Path: charles.fournier@tldf.org
Received: from [10.0.1.6] (c-71-236-241-81.hsd1.or.comcast.net. [71.236.241.81])
by smtp.gmail.com with ESMTPSA id o85-v6sm39364717pfk.94.2018.10.08.09.03.06
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From: Charles Fournier <charles.fournier@tldf.org>
Return-Receipt-To: ch.p.f@me.com
Disposition-Notification-To: ch.p.f@me.com
MIME-Version: 1.0 (Mac OS X Mail 11.5 \(3445.9.1\))
Subject: Comments on  proposed changes to the Code and the JC&D Rules, request
to testify on the JC&D Rules
Date: Mon, 8 Oct 2018 09:03:05 -0700
Message-ID: <41DB7D3C-A560-4059-A042-B4A716590553@tldf.org>
CC: Boss Julia <julia.boss@tldf.org>
To: CodeandConductRules@ao.uscourts.gov
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Received-From-MTA: dns;ume.uscmail.dcn
Arrival-Date: Mon, 8 Oct 2018 16:03:48 +0000

Final-Recipient: rfc822;ao_code_and_conduct_rules_dca_ao@fedcourts.mail.onmicrosoft.com
Action: failed
Status: 5.1.10
Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient
ao_code_and_conduct_rules_dca_ao@fedcourts.mail.onmicrosoft.com not found by SMTP address lookup

**From:** Charles Fournier <charles.fournier@tldf.org>
**Subject: Comments on proposed changes to the Code and the JC&D Rules, request to testify on the JC&D Rules**
**Date:** October 8, 2018 at 9:03:05 AM PDT
**To:** CodeandConductRules@ao.uscourts.gov
**Cc:** Boss Julia <julia.boss@tldf.org>

Request to testify on the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules)

By Charles Fournier, J.D.
On behalf of the Type 1 Diabetes Defense Foundation

To Whom It May Concern:

On September 13, 2018, the Judicial Conference committees on Codes of Conduct and Judicial Conduct and Disability released for public comment proposed changes to the Code of Conduct for U.S. Judges (Code) (pdf) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) (pdf).

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Regards,

Charles Fournier, J.D.
Vice President
Type 1 Diabetes Defense Foundation
Charles.Fournier@t1df.org
(206) 643-1479

@t1df_advocacy
https://twitter.com/t1df_advocacy
https://www.linkedin.com/company/10518969/
https://www.facebook.com/T1DefenseFoundation/
www.t1df.org

<2018-10-07 - T1DF - Comment on JCD Rules - FINAL.pdf>

TYPE 1 DIABETES
DEFENSE FOUNDATION

P.O. Box 10841
Eugene, Oregon 97440
p/f: 541.257.8878
info@t1df.org
www.t1df.org

October 8, 2018

Judicial Conference of the United States
Committees on Codes of Conduct and Judicial Conduct and Disability
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
**Sent via email**: CodeandConductRules@ao.uscourts.gov

**RE: Proposal to Change the Code of Conduct for U.S. Judges (Code) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules)**
Comment regarding Proposed Changes to JC&D Rules §3(c)(1) and Request to Testify on JC&D Rules §3(c)(1) by Charles Fournier, on behalf of the Type 1 Diabetes Defense Foundation

The Committees:

This year the Type 1 Diabetes Defense Foundation ("T1DF") became an accidental unrepresented consolidated plaintiff in three putative class actions pending in the District Court of New Jersey.[1] Since March 2018, T1DF has repeatedly sought permission to appear before the court *pro se,* so that we may pursue the claims that T1DF initiated through counsel in March 2017.[2] These unusual circumstances have placed us in an adversarial relationship in regard to

[1] Legal counsel we retained for our civil actions in February 2017 terminated our representation on December 2017 in order to join in a consolidated complaint that advances a competing fact pattern.

[2] On March 2, 2018, the Court initially denied T1DF's right to appear *pro se* in *In re Insulin Pricing Litigation,* Civil Action No. 17-699(BRM)(LHG) and related T1DF civil actions *Bewley, et al. v. CVS Health Corp*., et al, No. 17-12031 (BRM)(LHG) and *Prescott, et al. v. CVS Health Corp*., et al 17-13066 (BRM)(LHG). T1DF first petitioned the court for leave to brief its right to appear *pro se* on March 30, 2018 (*In re Insulin,* ECF No. 98) and petitioned again on September 21, 2018 (*In re Insulin,* ECF No. 217). The Court informed T1DF it will review this matter during the Case Management Conference set for October 25, 2018, before the Hon. Brian R. Martinotti. (*In re Insulin,* Order, EFC No. 213). T1DF may thus become the first corporate plaintiff to litigate a nonprofit corporation's right to *pro se* appearance in federal court based on the novel legal jurisprudence of corporate personhood and rights recently established by the Supreme Court.

plaintiffs' counsel long familiar to this Court,[3] as well as in the unexpected status of unrepresented corporate plaintiff litigating for its right to appear *pro se*. Should we believe that an emerging pattern of judicial harassment might merit the filing of a formal complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, we would thus confront not only the existing bias of the Bench against *pro se* complainants (many of whom are unsophisticated defendants in criminal proceedings as well as serial complainants under the JC&DA),[4] but also some residual ambiguity in the proposed Rule language, interpreted through the prism of local rules and legal precedents, regarding whether an unrepresented corporate plaintiff would be allowed to file such a complaint personally.

From our unusual, and possibly unique, perspective as an unrepresented nonprofit corporation awaiting a decision on a pending request to appear *pro se,* we would like to comment narrowly—and we respectfully request an opportunity to testify before the Committees—regarding those portions of the proposed Rule that refer to "persons" and "organizations."

[3] The plaintiffs' attorneys we now oppose, including Steve Berman and James Cecchi, have also litigated extensively in the United States District Court for the District of New Jersey. James Cecchi is also the spouse of the Hon. Claire Cecchi, a United States District Judge sitting in Newark, New Jersey. Furthermore, the PBM/insurer litigation track we are advocating for could engage the liability of over 30 state and local bar associations (e.g. Philadelphia, New Jersey) that jointly market via, e.g., USI Affinity, a certain type of high deductible health insurance plans, as well as the liability of midsize and large law firms—as employers offering these health insurance products. Since December 2017, our efforts to obtain new counsel have been unsuccessful.

[4] All complaints filed with the Judicial Council of the 3rd Circuit during the past three years have been denied. The average length of the decision is approximately 5 pages. Most reviews consist of a single *pro forma* sentence ("The Judicial Council has considered the petition for review and has concluded that the relief requested should be denied and the order of Chief Judge XXX should be affirmed for the reasons set forth in his Memorandum Opinion").

We believe that the Judicial Conference's reluctance to define "person" enables and perpetuates the ongoing prudential discrimination against unrepresented (and underfunded) nonprofit rights advocacies that represent disfavored causes and oppressed minorities.[5]

In light of U.S. Courts' ongoing refusal, despite evolving jurisprudence regarding corporations over the past 20 years, to apply the letter of the law governing appearance, it seems necessary that the Committees overseeing the current rulemaking process take all possible steps to adopt unified definitions of "person" and "organization" and to expressly recognize, in the Commentary section of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the right of an artificial entity to appear personally in the complaint process currently under review.

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[5] Anecdotal evidence would also suggest that unsustainable litigation costs are increasingly preventing local news organizations from challenging state agencies' breaches of State public record and sunshine laws and from opposing legislative attempts to progressively restrict transparency and access to public records, i.e. accountability. Unbundling legal services and allowing small media organizations to appear *pro se* would reduce the transactional cost of challenging States' infringements and level the playing field. Corporate plaintiffs may not avail themselves to the right to appear unrepresented for obvious practical reasons, but the mere right to do so would act as deterrent, entice voluntary compliance and thus reduce wasteful disputes.

## ISSUES

On September 13, 2018, the Judicial Conference committees on Codes of Conduct and Judicial Conduct and Disability released for public comment proposed changes to the Code of Conduct for U.S. Judges (Code) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules). These proposed changes respond to recommendations provided in the June 1, 2018, Report of the Federal Judiciary Workplace Conduct Working Group.

"Person" is mentioned 16 times in the JC&D Rules and 19 times in the Code. The term "person" is, however, left undefined in the Code and is only indirectly defined in the JC&D Rules. The proposed changes to the JC&D Rules amend the definition of "person" for the purpose of the rules but leave the term undefined in the Code. T1DF recommends that the Code and JC&D Rules expressly adopt a unified definition and require circuit Judicial Councils to update all local rules accordingly in order to bring local rules in compliance with the jurisprudence established by the U.S. Supreme Court ("Court") in *Hobby Lobby*[6] and *Janus.*[7]

The definition of "person" in the JC&D Rules is nested in the revised definition of "Complaint" in Section 3, General Definitions (JC&D Rules §3(c)(1) ¶ 6.):

> (c) **Complaint. A "complaint" is:**
>
> (1) **a document that, in accordance with Rule 6, is filed by, or on behalf of, any person, including a document filed by an ~~in his or her individual capacity or on behalf of a professional~~ organization; or**

By inference, this revised subsection broadens the definition of "person" to include "an organization." The JC&D Rules do not, however, define "organization." The Commentary on Rule 3(c)(1) relies on circular reasoning (JC&D Rules ¶ 8.), as it repeats the text of Rule 3(c)(1) verbatim—a document filed by or on behalf of any person, including an organization, is a document filed by or on behalf of any person, including an organization:

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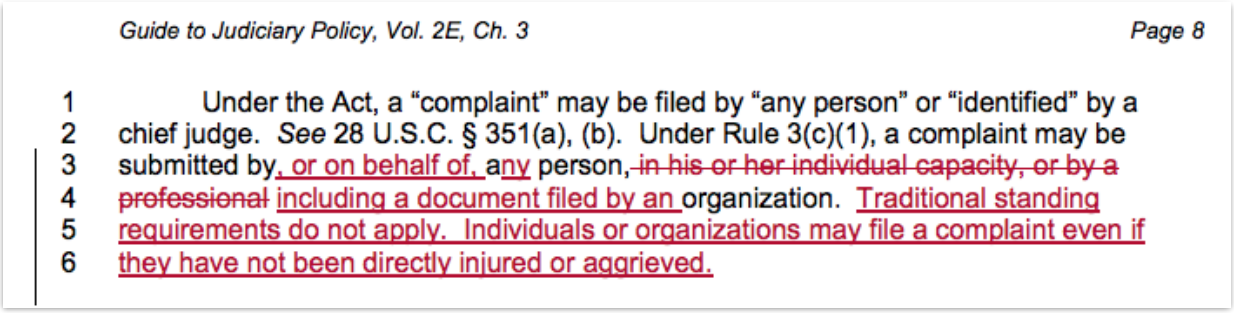
[6] *Burwell v. Hobby Lobby*, 573 U.S. ___ (2014) (recognizing a for-profit corporation's claim of protected religious belief under a federal statute.).

[7] *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. ___,



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Under the Act, a "complaint" may be filed by "any person" or "identified" by a chief judge. *See* 28 U.S.C. § 351(a), (b). Under Rule 3(c)(1), a complaint may be submitted by, or on behalf of, any person, ~~in his or her individual capacity, or by a professional~~ including a document filed by an organization. Traditional standing requirements do not apply. Individuals or organizations may file a complaint even if they have not been directly injured or aggrieved.

By inference, the JC&D Rules now recognize corporations' right to appear *pro se* and extend this right to all "organizations," instead of a smaller subset of "professional organizations," i.e. law firms.

The prior version of the JC&D Rules interpreted "person" for the purpose of 28 U.S.C. § 351(a) ("Any person … may file…") as comprised of two distinct groups, natural persons and corporate persons, subject to different appearance criteria. This bifurcated approach was prudential in nature; it is not supported by existing statutes; it conflicts with the due process and statutory rights of *pro se* corporate plaintiffs; and it is at odds with the evolution of the Supreme Court's jurisprudence governing the federal judiciary's prudential autonomy to interfere with parties' statutory rights and to limit its own jurisdiction. Recent cases from the Supreme Court—*Hobby Lobby*[8] and *Janus*[9]—have reversed the long held deference to the judiciary's assumed prudential right to discriminate between classes of artificial entities.

Many legal practitioners and federal judges are not fully aware of how these recent developments in jurisprudence may impact "customary" prudential practices as formalized in local rules and court precedents. The definition of "person" should thus be included in the revised Rules, and, to avoid further ambiguities regarding the scope and application of this new definition, an explanation of the post-Hobby Lobby jurisprudence on corporate rights should also expressly be included in the Commentary on JC&D Rules, Rule 3(c)(1).

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[8] *Burwell v. Hobby Lobby*, 573 U.S. ___ (2014) (recognizing a for-profit corporation's claim of protected religious belief under a federal statute.).

[9] *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. ___,

## ANALYSIS

A "complainant" is defined as a "person" filing a complaint under 28 U.S.C. § 351(a). (28 U.S.C. § 351(d)(2)). "Person" here seems to have the general meaning used throughout the U.S. Code.

The Section of Title 5 of the U.S. Code addressing judicial review of the action of agencies incorporates a definition of "person" by reference to the definition included in the Section addressing administrative procedure. 5 U.S.C. § 701(2) (referring to 5 U.S.C. § 551(2)). For the purpose of Title 26 concerning the Internal Revenue Code, the term "person" is "construed to mean and include an individual, a trust, estate, partnership, association, company or corporation." 26 U.S.C. § 7701(a)(1).

There is no equivalent definition in Title 28, and no contextual information would indicate that Congress intended to include in the definition of the term "person" only certain types of corporation,[10] e.g. professional organizations. Terms specifically defined for Chapter 16 are listed under 28 U.S.C. § 351(d). This section does not, however, define "person." Similarly, the section listing the terms with definitions specific to Title 28 — Judiciary and Judicial Procedure — does not list "person." (28 U.S.C. § 451). Appearance, for the purpose of Title 28, only refers to "parties"—not "complainants," and not "persons." 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel.") The definition of "person" provided in the Dictionary Act, 1 U. S. C. §1, applies. This definition can be varied but only if the statutory context indicates a Congressional intention to do so.

Pre-*Janus,* a long list of precedential decisions has imprinted in the minds of some counsel and judges the false belief that judicial prudential pronunciamentos advancing perceived judicial economy, procedural efficiency and, corporatist interests of the legal profession[11] have the force of law and can overrule, limit or alter an act of Congress or constitutionally protected rights.[12] "The regular contact between judges and lawyers thus looms even larger in the judicial

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[10] An organization can be either incorporated or unincorporated. Incorporated organizations include general corporations, B corporations, limited liability corporations, and nonprofit corporations, as well as partnerships.

[11] Barton, Benjamin H., *Do Judges Systematically Favor the Interests of the Legal Profession?* (October 2007). University of Tennessee Legal Studies Research Paper No. 1. Available at SSRN: https://ssrn.com/abstract=976478 or http://dx.doi.org/10.2139/ssrn.976478

[12] *Janus* addresses whether a constitutional right can be infringed solely on prudential grounds such as promoting "labor peace" (*Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977)).

worldview, and makes judges an easy target for formal and informal lawyer lobbying… In the advocacy system most judges rely on the lawyers to do the great bulk of the work in trying, briefing, researching, or investigating cases… The above factors consider the many conscious reasons for judges to favor lawyers"[13] over *pro se* plaintiffs.

In *Abood*,[14] for example, the Court openly recognized that its decision infringes on the constitutional rights of persons and squarely admitted that compelling public employees "financially to support their collective bargaining representative has an impact upon their First Amendment interests." 431 U.S., at 222.[15] The Court tried to draw a line between "collective-bargaining activities, for which contributions may be compelled, and ideological activities," but could not do so as "in the public sector the line may be somewhat hazier." 431 U.S., at 236. "The lack of factual concreteness … to aid [the Court] in approaching the difficult line-drawing questions" led the Court to set aside an "unnecessary decision of constitutional questions," 431 U.S., at 237, and instead to focus on freeing itself of these limitations. To infringe on constitutionally protected rights, the Court thus created for itself a "Constitutionally justified" and yet undefined prudential authority to arbitrage in favor of efficient "leadership of the groups," furtherance of a corporatist "common cause" or "common political goals" (as long as they advance important "governmental interests") and the integrity of a system or institution

[13] Barton, supra, at 6.

[14] *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

[15] The list of the compelled speech that the *Abood* Court forced upon all public employees is exhaustive ("The examples could be multiplied."): ideological, moral or religious objections "to a wide variety of activities undertaken by the union" and to "the desirability of abortion;" "limits on the right to strike;" "political objections to unionism itself" and objection to "wage policy [that] violates guidelines designed to limit inflation;" support for "racial discrimination;" support to "unions attempt to influence governmental policymaking" and to their political activities. 431 U.S., at 222-223, 231. In *Janus*, the Court actualized this list of controversial political subjects to include "climate change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions," but, strangely, omitted abortion—possibly the most controversial and divisive contemporary political issue. 585 U. S. at 30.

"established by Congress." 431 U.S., at 222-223, 234.[16] As to the injury caused to individuals, the Court deferred to "the voluntary utilization by the parties of [the union's internal remedies] as a possible means of settling the dispute." 431 U.S., at 242.

The Court has in more recent cases recognized that the *Abood* holding is "something of an anomaly," and that *Abood*'s "analysis is questionable on several grounds." *Janus*, 585 U. S. at 7 (citing *Knox v. Service Employees*, 567 U. S. 298, 311 (2012) and *Harris*, 573 U. S., at ___ (slip op., at 17)). While the Court in *Abood* labored, and ultimately failed, to uphold a bright constitutional line in furtherance of the First and Fourteenth Amendments, the Court in *Janus* decisively cut *Abood*'s Gordian Knot.[17] The Court reconciled its First Amendment jurisprudence on political patronage with its treatment of compelled union support and brought "a measure of greater coherence to our First Amendment law." *Janus*, 585 U. S. at 44. The Court in *Janus* was particularly troubled by *Abood's* deference to the prudential judgment of any government authority, including Congress and the U.S. Courts, in the arbitrage between the statutory rights and institutional welfare of an institution Congress created (here private-sector union shops under the Railway Labor Act) and the free speech rights of individuals that the institution is infringing upon (and *Abood's* further suggestion that any subsequent conflict arising from infringement on employees' constitutional rights could properly be addressed in a non-judicial grievance process). *Janus*, 585 U. S. at 36–37.

In *Janus*, the Court thus addressed the right of persons not to avail themselves to a statutory right or scheme created by an Act of Congress and the limitation on the Courts' authority to

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[16] The opinion in *Abood* is an example of flawed pseudo-contrapositive reasoning. The Court embraced the truism "that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments," 431 U.S., at 233, and thus concludes that "[t]o compel employees financially to support their collective bargaining representative has an impact upon their First Amendment interests … interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit." 431 U.S., at 222. But the Court then implicitly ruled that, because the 'common cause' so defined is somewhat constitutionally justified, the constraints on the employees' freedom to associate, advance ideas or refrain from doing so are not infringements on their constitutional rights.

[17] The Court in *Janus* posited that the absence of agency fees would not unduly damage public-sector unions, nor would it impair the efficiency of government operations. Two months after the decision, the proffered devastating consequences for unions had not yet materialized. See, e.g., Shira Schoenberg, *Mass. unions say Janus decision having little effect so far,* Boston Business Journal (September 3, 2018). Available at: https://www.bizjournals.com/boston/news/2018/09/03/mass-unions-say-janus-decision-having-little.html.

arbitrage against these persons' constitutional rights for the sole purpose of facilitating the administrative efficiency of that government scheme. In *Hobby Lobby,* the Court addressed the right of persons to join a statutory scheme or right in the absence of a clear intent from Congress to deny them that right. The Court developed this argument at two different levels. The Court first held that the rights of natural persons are not limited by the corporate structure they have chosen to further those rights. Then the Court held that in the absence of an Act of Congress a government agency cannot discriminate against a certain type of "person" on the basis of the corporate structure they have chosen to organize and further their businesses. *Hobby Lobby,* 573 U. S. at 2-3.

The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a *person*'s exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the *person*—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Hobby Lobby,* 573 U. S. at 16 (citing 42 U. S. C. §§2000bb–1(a), (b))(emphasis added). The United States Department of Health and Human Services (HHS) had already devised and implemented a least restrictive scheme that serves the government's compelling interests while respecting religious nonprofit corporations' objections to the contraceptive mandate. This existing scheme "achieves all of the Government's aims while providing greater respect for religious liberty," in compliance with RFRA. *Id*. HHS, however, refused to treat equally similarly situated for-profit corporations. At issue in *Hobby Lobby* is not HHS's authority to promulgate regulations under the Patient Protection and Affordable Care Act of 2010 (ACA), 124 Stat. 119 but rather HHS's prudential right to discriminate between different types of corporations included in the definition of "persons." *Hobby Lobby,* 573 U. S. at 9, 18, 20.

"Person," in a legal setting, also refers to artificial entities. *Hobby Lobby*, 573 U.S. at 19 (citing 1 U. S. C. §1, *FCC v. AT&T Inc*., 562 U. S. ___, ___ (2011) (slip op., at 6)). *Hobby Lobby* is ultimately grounded in the Court's holding that "[n]o known understanding of the term "person" includes some but not all corporations." *Hobby Lobby,* 573 U. S. at 20. "[N]o conceivable definition of the term includes … nonprofit corporations, but not for-profit corporations. Cf. *Clark v. Martinez*, 543 U. S. 371, 378 (2005) ("To give th[e] same words a different meaning for each category would be to invent a statute rather than interpret one")." *Id.*

(footnote omitted).[18] In addition to this jurisprudential holding, the Court in *Hobby Lobby*

[18] The Court's reliance on a new 'anthropomorphic merger' doctrine would suggest otherwise. The definition of "person" provided in the Dictionary Act can be varied if "there is something about the RFRA context that 'indicates otherwise.'" *Hobby Lobby,* 573 U. S. at 19 (referring to 1 U. S. C. §1). RFRA only applies to persons that can engage in the "exercise of religion," *Hobby Lobby,* 573 U. S. at 20, hence the Court's reliance on a novel merger doctrine that conveys to a subset of closely held corporations controlled by a religious association the religious beliefs of the controlling association—"the Greens" in *Hobby Lobby*'s case.

developed, *in passim*, what we might characterize as a new 'anthropomorphic merger' doctrine[19] that convey to closely held business corporations the beliefs of the "human beings" who own it (*Hobby Lobby,* 573 U. S. at 18), when these religious beliefs are memorialized in a private

[19] Although the Court's characterization of a for-profit corporation as strictly equivalent to the "human beings" who own it (*Hobby Lobby,* 573 U. S. at 18) has been questioned, we will here accept the Court's merger between corporate personhood and the common beliefs of its "human" shareholders, as this novel doctrine has no bearing on the jurisprudential analysis of the Court, although it is critical to the outcome in *Hobby Lobby.* It is T1DF's view that *Hobby Lobby* should be overturned on the basis that it is overbroad, unclear and inapplicable outside the unique fact pattern of the case itself—the key reasons the Court overturned *Abood*. The fact pattern of *Hobby Lobby* is unique. The Court assumes that all 5 shareholders of Conestoga Wood Specialties (a Pennsylvania for-profit corporation), Norman and Elizabeth Hahn and their three sons, hold identical and identifiable religious belief, and refers to them as an unincorporated association called "the Hahns." Similarly, Hobby Lobby, an Oklahoma for-profit corporation, is closely held by David and Barbara Green and their three children—similarly addressed as "the Greens." Pursuant to a private agreement among its controlling shareholders, "the Greens," Hobby Lobby engages in activities that do not further its profit-maximization purpose and divert corporate resources toward non revenue generating activities (e.g. buying hundreds of full-page newspaper ads inviting people to "know Jesus as Lord and Savior"); these decisions have resulted in the loss of millions in sales annually. *Hobby Lobby,* 573 U. S. at 14. Hobby Lobby's controlling shareholders could have amended the corporation's Articles of Incorporation to include religious ministry in its corporate purpose. Doing so could have, however, interfered with the corporation's ability to obtain public contracts or to recruit employees and would have raised issues of compelled religious speech for current employees. Instead, Hobby Lobby used litigation to circumvent corporate law by arguing that a private agreement between controlling shareholders binds the corporation itself even when the corporation has not formally agreed to be bound by the private agreement. But when all shareholders do not share the same religious beliefs, the use of corporate assets to pursue the religious belief of some corporate officers would be a misuse of these corporate assets in breach of the officers' fiduciary duty to use these assets to maximize profit. The mere assertion that a closely held for-profit corporation could have the religious belief of its majority shareholders—as stated in a private agreement between these shareholders—would give ground to allegations by minority shareholders of shareholder of oppression and compelled speech. The scope of the duty owed by corporate officers, directors, and controlling shareholders to the corporation and, through the corporation, to the corporation's shareholders is a matter of state law. See, e.g., *Regal-Beloit Corp. v. Drecoll*, 955 F. Supp. 849, 858 n.3 (N.D. Ill. 1996). States allow incorporators to customize the purpose of their corporation or, in the alternative, to choose one of the special corporate forms created for pursuing other purposes than profit maximization, e.g. religion (nonprofit corporation) or social good (B Corp.).

agreement between all its shareholders.[20] Under this analytical framework, "person," in a legal setting, also refers to artificial entities, *Hobby Lobby,* 573 U. S. at 19 (citing 1 U. S. C. §1, *FCC v. AT&T Inc.*, 562 U. S. ___, ___ (2011) (slip op., at 6)), and these artificial entities have the constitutional and statutory rights of all the "people (including shareholders, officers, and employees) who are associated with a corporation in one way or another." *Hobby Lobby,* 573 U. S. at 18. Less controversially, *Hobby Lobby* reaffirms that nonprofits are persons within the meaning of the Dictionary Act that had, at least until *Hobby Lobby*, greater First Amendment rights than general for-profit corporations—at least when they are religious employers availing themselves to the Free Exercise clause.

*Hobby Lobby* thus rejects an arbitrary distinction between classes of persons (corporations) as a valid basis for prudential arbitrage of statutory rights in the absence of a Congressional mandate to do so. *Janus*, meanwhile, overturned *Abood*'s embrace of a prudential authority to infringe on constitutional rights in order merely to enhance the efficiency of a statutory scheme; *Janus* also objected, although in passim, to a jurisprudence that would discriminate against persons even though these persons have similar free speech rights, e.g. political parties (political patronage) and public employees' unions (agency shop).

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[20] As noted by the Court in *Hobby Lobby*, a corporation can have any lawful purpose or business. As noted by the Court, the laws of Pennsylvania and Oklahoma permit for-profit corporations to pursue "any lawful purpose" or "act," including the pursuit of profit in conformity with the owners' religious principles. *Hobby Lobby,* 573 U. S. at 25 (citation of States' Constitutions and statutes omitted). But States require that this purpose be stated in the Corporation's articles of incorporation. While the constitutional and statutory rights of all the "people (including shareholders, officers, and employees) who are associated with a corporation in one way or another," *Hobby Lobby,* 573 U. S. at 18, can be ascertained with sufficient certainty to avoid the critical "vagueness problem" of *Abood*, *Janus* 585 U. S. at 40, the exact substantive nature of the collective religious beliefs of all these people can't. The Court thus defines the source of the corporation's procedural rights very broadly (the rights of all the people) but then arbitrarily defers only to the beliefs of the controlling shareholders (documented in a private agreement, not an act of the corporation) and certain officers (but not all officers) when defining the substantive content of these rights. Because these shareholders are distinct persons from the corporation, the beliefs they may or may not hold must be formally conveyed to the Corporation via an action of its Board, including but not limited to the amendment of its Articles of Incorporation. Absent of a formal adoption, by the corporation, of the religious purpose of its shareholders and of certain of its officers, no inference can be drawn regarding the substantive content of its 'beliefs.' *Abood*'s vagueness problem may be fatal to the substantive remedy sought by *Hobby Lobby;* it is, however, irrelevant to purely procedural matters, such as whether a corporation can appear "personally."

## PROCEDURAL IMPLICATIONS

> *Access to courts is crucial for making substantive rights that exist on paper real and enforceable in the real world. And access to federal courts requires having "standing" to assert those rights. For all practical purposes, standing is the key to the courthouse door.*[21] *... Judicially-created obstacles to enforcing substantive rights and obligations have long been critiqued as anti-democratic.*[22]

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[21] Adam N. Steinman, *Lost in Transplantation: The Supreme Court's Post-Prudence Jurisprudence*, Vand. L. Rev. en Banc, ¶ ¶ 289-290, citing Stephen Burbank and Sean Farhang, *Rights and Retrenchment: The Counterrevolution Against Federal Litigation* (Cambridge Univ. Press 2017); Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. Rev. 286, 288, 304 (2013) (arguing that "the distinguished proceduralists who drafted the Federal Rules believed in citizen access to the courts and in the resolution of disputes on their merits," but that recently the Supreme Court has "impaired both access to the federal courts for many citizens and the enforcement of various national policies"); Judith Resnik, *Revising Our "Common Intellectual Heritage": Federal and State Courts in Our Federal System*, 91 Notre Dame L. Rev. 1831, 1836 (2016) (criticizing "judicial overrides of new federal statutory rights and judge-made constraints on remedies"); Resnik, supra note 1, at 1890–98 (criticizing some of the Court's recent standing decisions); Daniel J. Meltzer, *Deterring Constitutional Violations by Law Enforcement Officials: Plaintiffs and Defendants as Private Attorneys General,* 88 Colum. L. Rev. 247, 295–306 (1988) (criticizing several of the Court's standing decisions from the 1970s and 1980s); Heather Elliott, *Standing Lessons: What We Can Learn When Conservative Plaintiffs Lose Under Article III Standing Doctrine*, 87 Ind. L.J. 551, 553 (2012) (describing how "standing doctrine has barred the federal courthouse door" for cases pursuing both liberal and conservative causes). Stated more precisely, establishing standing is the key to one of *many* locks on the courthouse door. *See* Miller, *supra* note 1, at 309 (describing how "federal courts have erected a sequence of procedural stop signs during the past twenty-five years that has transformed the relatively uncluttered pretrial process envisioned by the original drafters of the Federal Rules into a morass of litigation friction points"); Adam N. Steinman, *The End of an Era? Federal Civil Procedure After the 2015 Amendments*, 66 Emory L.J. 1, 14–17 (2016) (describing how pleading and discovery standards can constrict access to courts and enforcement of substantive rights).

[22] *Id,* at 291 citing Smith*, Undemocratic Restraint*, 70 Vand. L. Rev. 845, 849 (2017) (noting the argument that "such limits arguably undercut or subvert the role of the more politically accountable body—Congress"); *id.* at 850 (noting Justice Scalia's argument that "prudential limits writ large are overly 'judge-empowering' at the expense of democratically accountable bodies"); Gerald Gunther, *The Subtle Vices of the "Passive Virtues"—A Comment on Principle and Expediency in Judicial Review*, 64 Colum. L. Rev. 1 (1964).

Artificial entities' right for procedural due process has long been recognized.[23] Corporations' right to petition the Courts and to challenge legislation has been long held, since *Minneapolis & St. Louis Ry. Co. v. Beckwith*, 129 U.S. 26, 28 (1889). Corporations have exercised a range of constitutional rights, including those found under the Due Process Clause, Fourteenth Amendment Equal Protection Clause, and First Amendment. In a few specific cases, including the Free Exercise Clause until *Hobby Lobby*, the Court has recognized different rights belonging to nonprofit corporations and for-profit corporations. Post-*Janus* (equal treatment of political parties and public employees' unions)/*Hobby Lobby* (equal treatment of nonprofits and for-profit corporations), any attempt to curtail the newly expanded rights of corporations is unlikely to survive "even the more permissive standard applied in Knox and Harris." *Janus*, 431 U.S., at 11.

The U.S. Supreme Court has unambiguously reaffirmed in *Janus*[24] the primacy of constitutionally protected due process and free speech rights over previously imposed prudential

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[23] The Court has also recognized that some constitutional rights are human-centered and thus cannot plausibly be conveyed to artificial entities. Corporations cannot marry, procreate, be tried by a jury of peers (and serve on juries), and vote. The Court has ruled that artificial entities are not citizens under the Fourteenth Amendment, lack Fifth Amendment self-incrimination rights, Article IV Privileges and Immunities Clause rights, and Due Process Clause liberty rights—although *Hobby Lobby* would seem to call these precedents into question. It is thus T1DF's view that *Hobby Lobby*'s novel 'anthropomorphic merger' doctrine is intrinsically flawed. On this matter, we concur with Chief Justice Leo Strine. See, *e.g.*, Leo E. Strine, *Corporate Power Ratchet: The Courts' Role in Eroding 'We the People's' Ability to Constrain Our Corporate Creations* (2016). *Harvard Civil Rights–Civil Liberties Law Review* (CR-CL), Vol. 51, P. 423, 2016; Univ. of Penn, Inst. for Law & Econ Research Paper No. 15-37. Available at SSRN: https://ssrn.com/abstract=2680294. But *Hobby Lobby*'s 'anthropomorphic merger' doctrine is currently the law of the land, and thus does require that the Judicial Conference and Judicial Councils immediately amend local rules to convey artificial entities the same procedural rights that their directors/shareholders currently enjoy, including the right to appear personally (*pro se*) in every federal court, and to act personally as complainants under the Judicial Conduct and Disability Act.

[24] *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. ___,

limitations.[25] At this juncture, the Court has unambiguously banned discrimination between types of artificial entities solely based on a court's prudential discretion. And if there were any remaining doubt regarding an artificial entity's right to appear personally, *Hobby Lobby*'s 'anthropomorphic merger' doctrine obviously resolves it. Unfortunately, Judicial Councils have, to date, refused to allow nonprofit corporations to appear *pro se*.

The ongoing ban on *pro se* appearance by nonprofit corporations is prudential and arbitrary in nature, self-interested, contrapositive to the black letter statutory federal law it now purports to rely upon, based on jurisprudential limitations enabled by reliance on an outdated and long-overruled nineteenth-century view of corporations as merely fictional, lacking substantive constitutional rights[26]—and such a ban is antithetical to the Supreme Court's jurisprudence addressing corporate constitutional rights as recently expanded under *Janus* and *Hobby Lobby*.

28 U.S.C. § 1654 (1982) provides, "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts,

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[25] See also *Lexmark International, Inc. v. Static Control Components, Inc.,134 S. Ct. 1377 (2014).* "The Court's unanimous decision in *Lexmark* declared that the 'zone-of-interests' test should not be understood as a feature of 'prudential standing.' Rather, '[w]hether a plaintiff comes within the 'zone of interests' is an issue that requires us to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim.'" *Lost in Transplantation: The Supreme Court's Post-Prudence Jurisprudence ¶ 290 and n.5, 7.* "[S]everal Justices have [already] asserted that 'adverseness' between the parties is a constitutional requirement of Article III standing, rather than merely a 'prudential consideration.' Some other prudential doctrines—such as restrictions on third-party standing—have been flagged for potential reassignment in the future." Id ¶ ¶ 290-91, n. 10, 11, 12 and 13, citing *Lexmark*, 134 S. Ct. at 1387 n.3 (noting that "[t]his case does not present any issue of third-party standing, and consideration of that doctrine's proper place in the standing firmament can await another day.")

[26] See, e.g., *K.M.A. Inc. v. General Motors Acceptance Corp.*, 652 F.2d 398, 399 (5th Cir. 1981); *Brandstein v. White Lamps*, 20 F. Supp. 369, 370 (S.D.N.Y. 1937); See, e.g., *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."); *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985) ("The rule is well established that a corporation is an artificial entity that ... cannot appear pro se, and must be represented by counsel."); *United States v. Hagerman*, 545 F.3d 579, 581 (7th Cir. 2008) ("A corporation is not permitted to litigate in federal court unless it is represented by a lawyer licensed to practice in that court."); *Udoinyion v. The Guardian Security*, 2011 WL 3911087, *3 (11th Cir. Sept. 7, 2011) ("A corporation is an artificial entity that cannot appear pro se and must be represented by counsel.").

respectively, are permitted to manage and conduct causes therein." 1 U.S.C § 1 (1982) states "In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

Federal courts have, however, interpreted Section 1654 to prohibit non-lawyer representation of entities. *E.g., Move Organization v. United States Dep't of Justice*, 555 F. Supp. 684 (E.D.Pa. 1983); *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 US 194, 202, 113 S Ct 716 (1993) ("Thus, save in a few aberrant cases [left undefined], the lower courts have uniformly held that 28 USC §1654, providing that 'parties may plead and conduct their own cases personally or by counsel,' does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.")

This interpretation thus creates two types of corporation, each with different procedural rights: Corporations that can afford representation by counsel can avail themselves to the right to petition the Courts and to challenge legislation, rights held since *Minneapolis & St. Louis Ry. Co. v. Beckwith*, 129 U.S. 26, 28 (1889). Less affluent nonprofit corporations that can't afford representation by counsel are precluded from petitioning the Courts. The Judicial Conference's discrimination between types of corporations based on their ability to afford legal counsel is not grounded in an act of Congress nor congressional intent.

Contrary to the RFRA mentioned in *Hobby Lobby*, no context would suggest a Congressional intent to discriminate between corporations based on their ability to retain counsel. 28 U.S.C. § 351(a) expressly states that it applies to "any persons." Similarly, nothing in 28 U.S.C. § 1654 would suggest that only natural persons "may plead and conduct their own cases personally or by counsel," while artificial persons can only plead and conduct their own cases by counsel. Neither the literal meaning of "person" nor context justifies any form of discrimination between types of corporate entities for the purpose of the Sections of Chapter 28. And there is no indication that the meaning of person in Chapter 28 was meant to be tied to a judicial tradition grounded in British common law or to the Supreme Court's interpretation of corporations at the time this part of the Code was first enacted.

"For almost two hundred years, a basic tenet of American law has been that federal courts must generally exercise jurisdiction when they possess it… Federal courts have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." The failure to hear such cases "would be treason to the [C]onstitution.' More recently, the Court has reaffirmed that it is an "undisputed constitutional principle that Congress, and not the Judiciary,

defines the scope of federal jurisdiction within the constitutionally permissible bounds."[27] As noted by the Court in *Hobby Lobby*, "[w]hen Congress wants to link the meaning of a statutory provision to a body of this Court's case law, it knows how to do so." *Id*. at 25. There is no such context or ban, and this is the reason a corporation's right to appear *pro se* has been recognized by the 9th Circuit,[28] albeit under an "extraordinary circumstances" exception to a widely adopted jurisprudence that is much unconstitutional and arbitrary as the *Abood* decision.

In summary, when powerful corporations, represented by counsel, petition the federal courts, these courts are ready to bend corporate laws in order to convey to corporations represented by counsel the anthropomorphic right of free exercise of religion. When an unrepresented advocacy nonprofit then seeks the mere right to petition the Court to be heard, federal courts have refused to find that these 'artificial entities' have the same fourteenth amendment right to procedural due process—one of the first constitutional rights recognized to corporations.[29] This matter is therefore ripe for review.

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[27] Fred Smith*, Undemocratic Restraint*, 70 Vand. L. Rev. 845, 847 (2017) (citing, e.g., *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 358–59, 404 (1989)) (footnote omitted).

[28] *Church of the New Testament v. United States*, 783 F. 2d 771, 773 (9th Cir. 1986).

[29] "Between 1868, when the amendment was ratified, and 1912, when a scholar set out to identify every Fourteenth Amendment case heard by the Supreme Court, the justices decided 28 cases dealing with the rights of African Americans—and an astonishing 312 cases dealing with the rights of corporations. At the same time the court was upholding Jim Crow laws in infamous cases like *Plessy v. Ferguson* (1896), the justices were invalidating minimum-wage laws, curtailing collective bargaining efforts, voiding manufacturing restrictions, and even overturning a law regulating the weight of commercial loaves of bread. The Fourteenth Amendment, adopted to shield the former slaves from discrimination, had been transformed into a sword used by corporations to strike at unwanted regulation." Adam Winkler, *We the Corporations—How American Businesses Won Their Civil Rights* (2018), extract available at: https://lowellmilkeninstitute.law.ucla.edu/wp-content/uploads/2018/01/A.-Winkler-WE-THE-CORPORATIONS-Excerpts.pdf.

## RECOMMENDATIONS

The Judicial Conference has long recognized that "persons" for the purpose of the rules of procedures, local rules of U.S. Courts and the JC&D Rules includes artificial entities such as corporations. The proposed revision to the definition of "complaints," and thus "persons," in the JC&D Rules finally brings the Rules into compliance with existing laws; the proposed revision does not, however, go far enough:

1. "Person" (and thus "complainant") should be expressly defined in JC&D Rules §3(c) and in the Code by reference to the Dictionary Act, 1 U. S. C. §1;
2. The Commentary on that section should explain the reason for the revision and summarize the Court's evolving jurisprudence on the rights of artificial entities that led to that revision; and
3. Finally, the Judicial Conference should appoint a Working Group for the purpose of coordinating the Judicial Councils' rulemaking (and harmonizing local rules) on the definition of "person" and related procedural matters, e.g. *pro se* appearance, ECF registration, unbundled legal representation, legal assistance (without representation).

The suggested correction of JC&D Rules §3(c)(1) is a step in the right direction. The prior wording reflected the long-held belief that Courts had the prudential authority to discriminate between corporations. This right to discriminate has been enshrined in countless opinions, the Local Rules of the Courts and, until now, in the JC&D Rules. The proposed revision does not, however, expressly correct the definition of person; it does so implicitly. Without explicit definition and further clarification, the proposed language would allow long-held discriminatory biases to persist unaddressed.

Furthermore, the general rules of practice and procedure issued pursuant 28 U.S. Code § 2072(a) and the courts' rules pursuant to 28 U.S. Code § 2071(a) should be reconciled with the Acts of Congress as re-interpreted by the Rule recently updated by the Court. Adding a definition of "person" and, in the Commentary on Rule 3(c)(1),[30] adding a detailed explanation of the reasons and basis for the proposed change would encourage the Judicial Councils to act.

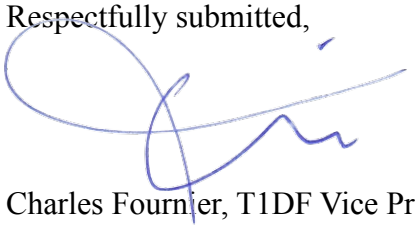
The Judicial Conference should instead expressly state that discrimination between artificial entities for the purpose of procedural matters addressed in the courts' Local Rules is now barred by *Janus* and *Hobby Lobby*. T1DF would thus recommend that the JC&D Rules

[30] The current commentary relies on circular reasoning that merely repeats, verbatim, the revised text of the rule, (JC&D Rules ¶ 8).

clarify that, for the purpose of the rules, the words "person" and "whoever" have the meaning given them by 1 U.S.C. § 1, i.e. that they include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. The Judicial Conference could also use this opportunity to remind the Councils that Courts are "obligated to be open and accessible to anyone who… is drawn into federal litigation, including litigants, lawyers, jurors, and witnesses"[31] and unrepresented rights advocacy nonprofits.

I also respectfully request an opportunity, on behalf of the Type 1 Diabetes Defense Foundation, to testify on October 30, 2018.

Respectfully submitted,



Charles Fournier, T1DF Vice President

[31] Judicial Conference of the United States, Strategic Plan for the Federal Judiciary (September 2015).