Occasional Originalism: How the Supreme Court of North Carolina Discarded Centuries-Old Constitutional Law in *State v. Singleton*[*]

The North Carolina Constitution expressly guarantees that "no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment." For centuries, if the State's indictment was constitutionally defective, any resulting conviction was automatically vacated on appeal because the trial court lacked jurisdiction to hear the case. In State v. Singleton*, the Supreme Court of North Carolina discarded that centuries-old jurisdictional rule, adopting harmless error analysis in its place. Following* Singleton*, when the State's indictment is defective, the defendant must show prejudice to obtain relief. This Recent Development argues that* Singleton *is nonoriginalist and explores the decision's impact on state criminal defendants in North Carolina.*

INTRODUCTION

Last year marked a century since Franz Kafka's *Der Prozess* (*The Trial*) was first published.[1] In the novel, Joseph K. is arrested, tried, and ultimately executed without being informed of his charges.[2] Though K.'s story is fictional, the opaque legal system he faced was inspired by then-existing practices in continental Europe.[3] Austrian courts, like ones in which Kafka practiced, were "highly secret."[4] At the time of the American Revolution, the systems used in Germany, Italy, and France were faulted for "keeping even the defendant in the dark about the content of the accusation and the investigation."[5]

The founders wisely rejected the secretive approach of those continental courts. The framers of the North Carolina Constitution were unusually protective of criminal defendants. The "right to be informed of the accusation" was the first individual right listed in North Carolina's first constitution.[6] North

1. *See* FRANZ KAFKA, THE TRIAL xxvii (Ritchie Robertson ed., Mike Mitchell trans., Oxford Univ. Press 2009) (1925); *see also* Algis Valiunas, *Franz Kafka's* The Trial *at 100*, NAT'L REV. (Oct. 23, 2025, 16:44 ET), https://www.nationalreview.com/magazine/2025/12/franz-kafkas-the-trial-at-100/ [https://perma.cc/M5HV-A4RR (staff-uploaded archive)].

2. *See generally* KAFKA, *supra* note 1.

3. *See* Theodore Ziolkowski, *Law*, *in* KAFKA IN CONTEXT 188–89 (Carolin Duttlinger ed. 2018).

4. Lívia Gergi-Horgos, *A Legal Historical Survey of the Development of Hungarian Public Prosecution with Special Emphasis on Ius Puniendi Becoming a State Monopoly*, BÜNTETŐJOGI SZEMLE 10, 12 (2014).

5. *See* Maximo Langer, *On the Origins of the Accusatorial/Inquisitorial Divide in Comparative Law*, AM. SOC'Y COMPARATIVE L.: BLOG (Oct. 11, 2024), https://ascl.org/on-the-origins-of-the-accusatorial-inquisitorial-divide-in-comparative-law/ [https://perma.cc/W4LQ-M6LE (staff-uploaded, dark archive)].

6. *See* N.C. CONST. of 1776, art. I, § VII. The preceding six articles in the original Declaration of Rights identified broader, societal rights. *See, e.g.*, *id.* art. I, § I ("That all political power is vested in

Carolina's founding constitution was also the only early state constitution to require that criminal accusations come from a grand jury's indictment.[7] Those rights were taken very seriously. For centuries, when the grand jury's indictment failed to adequately inform a defendant of his charges, any resulting conviction was vacated on appeal because the trial court lacked jurisdiction.[8]

In *State v. Singleton*,[9] the Supreme Court of North Carolina eliminated that centuries-old jurisdictional rule.[10] Disparaging the jurisdictional rule as a "disease of the law,"[11] the court divorced the rule from its constitutional footing.[12] The court instead construed the jurisdictional rule as a common law remedy and held that the General Assembly abrogated the jurisdictional rule in the nineteenth century.[13] In its place, the court established harmless error, requiring that a defendant also show prejudice—a hurdle that will prove insurmountable.[14] Justice Earls dissented.[15]

This Recent Development argues that *Singleton* is nonoriginalist. It proceeds in three parts. Part I discusses the majority and dissenting opinions in *Singleton*, focusing on the conflicting interpretations of the state constitution. Part II contends that the majority's construction of the jurisdictional rule as a common law remedy rather than a constitutional rule defies the state constitution's text, history, and precedent. Part III identifies potential consequences flowing from the *Singleton* decision.

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and derived from the people only."); *id.* art. I, § IV ("That the legislative, executive, and supreme judicial powers of government, ought to be forever separate and distinct from each other.").

7. *See id.* art. I, § VIII ("That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment."). This provision is unique among the first thirteen colonies, all of which adopted some form of a declaration of rights (either incorporated into or as a separate document from their state constitutions) between 1776 and 1818. *Compare id.* (including a specific requirement of "indictment, presentment, or impeachment" before any criminal charge in § VIII of its Declaration of Rights), *with* CONN. CONST. of 1818 (providing no such requirement), *and* DEL. DECLARATION OF RTS. of 1776 (same), *and* GA. CONST. of 1777 (same), *and* MASS. CONST. of 1780 (same), *and* MD. DECLARATION OF RTS. of 1776 (same), *and* N.H. BILL OF RTS. of 1784 (same), *and* N.J. CONST. of 1776 (same), *and* N.Y. CONST. of 1777 (same), *and* PA. CONST. of 1776 (same), *and* VA. CONST. of 1776 (same), *and* VT. CONST. of 1777 (same). Of these original thirteen colonies, the first adopted constitutions of Delaware, Maryland, New Hampshire, and South Carolina were omitted, as they functioned solely as plans of government rather than as documents enumerating specific rights. *See generally* DEL. CONST. of 1776; MD. CONST. of 1776; N.H. CONST. of 1776; S.C. CONST. of 1776.

8. *See, e.g.*, State v. Adams, 1 N.C. (Mart.) 56, 58 (1793); State v. Rankin, 371 N.C. 885, 895, 821 S.E.2d 787, 795–96 (2018).

9. 386 N.C. 183, 900 S.E.2d 802 (2024).

10. *Id.* at 184–85, 900 S.E.2d at 805.

11. *Id.* at 189, 900 S.E.2d at 808 (quoting State v. Moses, 13 N.C. (Dev.) 452, 463 (1830)).

12. *Id.* at 201–02, 900 S.E.2d at 815.

13. *Id.* at 189, 900 S.E.2d at 808.

14. *Id.* at 210, 900 S.E.2d at 821.

15. *See id.* at 218, 900 S.E.2d at 826 (Earls, J., concurring in part and dissenting in part).

I. *STATE V. SINGLETON*

In March 2018, a grand jury indicted Chuck Singleton for second-degree forcible rape, first-degree kidnapping, and felonious restraint.[16] After a jury trial, Singleton was convicted on the rape and kidnapping charges.[17] On appeal, Singleton argued that his rape conviction should be overturned because his indictment was fatally defective, thereby depriving the trial court of jurisdiction.[18] The state court of appeals unanimously agreed and vacated the rape conviction.[19]

The Supreme Court of North Carolina granted review.[20] In its principal brief to the state supreme court, the State contended that the North Carolina Court of Appeals disregarded precedent by requiring the short-form indictment for second-degree rape to identically comport with the statute.[21] Instead, the State explained, the Court of Appeals should have examined whether the language was "synonymous" with the language used in the statute.[22] Alternatively, if the court rejected that argument, the State argued that the court should eliminate the jurisdictional rule altogether.[23] Singleton argued that the jurisdictional rule was constitutionally required under the court's precedent.[24] The State acknowledged that the court would have to overrule itself but maintained that the state constitution does not "explicitly require an indictment to confer jurisdiction on the trial court."[25]

16. *Id.* at 186–87, 900 S.E.2d at 806 (majority opinion).

17. *Id.* at 187, 900 S.E.2d at 806–07 ("[While] the jury found [Singleton] guilty of all charges, ... [t]he trial court arrested judgment for defendant's felonious restraint conviction.").

18. *See* Defendant-Appellant's Brief at 14, State v. Singleton, 285 N.C. App. 630, 858 S.E.2d 653 (2022) (No. COA22-114) ("Because the State failed to allege an essential element of second-degree forcible rape and because the State failed to track the language of the short form indictment statute, the State's superseding indictment was fatally defective, and the trial court lacked subject matter jurisdiction.").

19. *See* State v. Singleton, 285 N.C. App. 630, 636, 858 S.E.2d 653, 657 (2022).

20. *Singleton*, 386 N.C. at 188, 900 S.E.2d at 807.

21. *See* New Brief for the State at 12, *Singleton*, 386 N.C. 183, 900 S.E.2d 802 (No. 318PA22) ("The Court of Appeals improperly analyzed the indictment's short form language, effectively requiring it to state an element of the offense rather than just the equivalent of the statutory language.").

22. *See id.*

23. *Id.* ("Finally, *and in the alternative*, this Court should reexamine its jurisprudence regarding the jurisdictional nature of indictments." (emphasis added)).

24. *See* Defendant-Appellee's Amended New Brief at 23–24, *Singleton*, 386 N.C. 183, 900 S.E.2d 802 (No. 318PA22) ("Both of our appellate courts have held that Article I, Section 22 of the North Carolina Constitution requires the return of a valid indictment to give a trial court jurisdiction to try and enter judgment against a defendant.").

25. *See* Reply Brief for the State at 6–7, *Singleton*, 386 N.C. 183, 900 S.E.2d 802 (No. 318PA22).

All seven justices agreed with the State's first argument.[26] But the majority went further.[27] Construing the jurisdictional rule as "a disease of the law,"[28] the court concluded that the rule was merely a common-law remedy.[29] The court further found that the General Assembly abrogated the jurisdictional rule over two centuries ago.[30]

Both Singleton and the State agreed that, under the court's precedent, the jurisdictional rule was constitutionally mandated.[31] Nevertheless, the court did not begin its analysis with the state constitution. Instead, the court first discussed the history of the jurisdictional rule.[32] That history, by the court's reading, shows that the jurisdictional rule has long been considered "a disease of the law."[33] Apparently ridding itself of that disease, the General Assembly abrogated the jurisdictional rule in either 1811 or 1854.[34] But practitioners and judges missed this abrogation because "entrenched ideas yield reluctantly."[35] Consequently, in 1975, the General Assembly eliminated "any doubt regarding

26. *See Singleton*, 386 N.C. at 215, 900 S.E.2d at 824 (Earls, J., concurring in part and dissenting in part) ("[E]very member of this Court agrees that Mr. Singleton's indictment was not defective and thus did not divest the trial court of jurisdiction . . . .").

27. According to the court, its analysis is not dicta because jurisdiction can be raised at any time. *See id.* at 188 n.4, 900 S.E.2d at 807 n.4 (majority opinion) ("[T]he State's couching of its jurisdictional argument as an alternative argument has no bearing on the force or validity of our holding on that issue. Even if the State had not presented this argument (and the defendant had not responded to it), the issue of jurisdiction can be addressed *sua sponte* . . . ."). Justice Earls strongly disagreed. *See id.* at 215–16, 900 S.E.2d at 824 (Earls, J., concurring in part and dissenting in part) ("In a sprawling ruling—largely dicta because it is unnecessary to the holding—the majority upends centuries of precedent and announces its view that constitutional and statutory defects in an indictment are non-jurisdictional. This is not originalism, constitutional conservatism, or respect for stare decisis."). Interestingly, shortly after stating that discussions of jurisdiction cannot be dicta, the court describes its prior decision in *State v. Rankin*—which discussed the jurisdictional rule—as dicta. *See id.* at 195–96, 900 S.E.2d at 812 (majority opinion) ("At a minimum, the discussion in *Rankin* concerning our indictment jurisprudence is self-acknowledged dicta as the majority correctly noted that 'discussion of this issue [was] outside the scope of review applicable to this case.'" (quoting State v. Rankin, 371 N.C. 885, 895, 821 S.E.2d 787, 796 (2018))).

28. *Id.* at 189, 900 S.E.2d at 808 (quoting State v. Moses, 13 N.C. (Dev.) 452, 463 (1830)).

29. *See id.* at 201–02, 900 S.E.2d at 815.

30. *Id.* at 189, 900 S.E.2d at 808.

31. *See* Defendant-Appellee's Amended New Brief at 23–24, *Singleton*, 386 N.C. 183, 900 S.E.2d 802 (No. 318PA22); Reply Brief for the State at 6–7, *Singleton*, 386 N.C. 183, 900 S.E.2d 802 (No. 318PA22).

32. *See Singleton*, 386 N.C. at 188–96, 900 S.E.2d at 807–12.

33. *Id.* at 189, 900 S.E.2d at 808 (quoting *Moses*, 13 N.C. (Dev.) at 463). That is hardly the only insult hurled at the jurisdictional rule. The court also described the rule as an "unduly burdensome" "shadowy nothing[]," which was not only "inconsistent with the modern criminal justice system," but also "brought the administration of justice into disrepute." *See id.* at 188–91, 900 S.E.2d at 807–09.

34. *See id.* at 189, 191, 900 S.E.2d at 808, 809.

35. *See id.* at 192, 900 S.E.2d at 810.

the continued application" of the jurisdictional rule by enacting the Criminal Procedure Act.[36]

After a lengthy discussion of the jurisdictional rule's history, the court finally turned its attention to the constitution. Well, the *Federal* Constitution. Rather than analyzing the constitutional provision at issue—Article I, Section 22 of the North Carolina Constitution—the court instead narrowed its sights on the Grand Jury Clause of the Fifth Amendment of the United States Constitution.[37] Notably, that clause does not apply to state prosecutions,[38] and it was ratified *after* North Carolina's indictment provision.[39] Nevertheless, the court used the Federal Constitution "for illustrative purposes,"[40] relying heavily on *United States v. Cotton*,[41] which held that the jurisdictional rule under the Fifth Amendment was not constitutionally required.[42]

Only after examining the history of the jurisdictional rule and the Fifth Amendment did the court discuss the state constitution. Even then, the discussion was minimal. In its sprawling, forty-eight-page opinion, the majority spent just four pages on its analysis of the state constitution.[43] In those four pages, the majority made three arguments. First, the jurisdictional rule cannot be constitutionally mandated because short-form indictments are allowed.[44] Second, the jurisdictional rule is not constitutionally mandated because *other* constitutional rights do not automatically require vacatur.[45] And, third, the jurisdictional rule is not constitutionally required because a defendant may

36. *Id.* at 194, 900 S.E.2d at 810–11; *see also* An Act to Amend the Laws Relating to Pretrial Criminal Procedure, ch. 1286, § 28, 1974 N.C. Sess. Laws 490. Some doubt must have lingered, however, because the state supreme court upheld the jurisdictional rule in 2018. *See* State v. Rankin, 371 N.C. 885, 895, 821 S.E.2d 787, 795–96 (2018).

37. *See Singleton*, 386 N.C. at 197–98, 900 S.E.2d at 812–13; *see also* U.S. CONST. amend. V, cl. 1.

38. *See generally* Hurtado v. California, 110 U.S. 516 (1884) (holding that the grand jury clause is not fundamental under the Due Process Clause of the Fourteenth Amendment). However, the *Singleton* court strangely suggests that Fifth Amendment precedent is not binding because of standing requirements applicable to civil cases. *See Singleton*, 386 N.C. at 197, 900 S.E.2d at 812 ("'While the federal constitution limits the federal judicial [p]ower . . . our Constitution, in contrast, has no such case or controversy limitation to the judicial power.' We reference federal case law for illustrative purposes, mindful that these holdings are not binding upon this Court's consideration of the North Carolina Constitution." (quoting Comm. to Elect Dan Forest v. Emp.'s Pol. Action Comm., 376 N.C. 558, 591, 853 S.E.2d 698, 722 (2021))).

39. While the Fifth Amendment was ratified in 1791, *see* U.S. CONST. amend. V, North Carolina's indictment provision was ratified fifteen years prior, *see* N.C. CONST. of 1776, art. I, § VIII.

40. *Singleton*, 386 N.C. at 197, 900 S.E.2d at 812.

41. 535 U.S. 625 (2002).

42. *Id.* at 631 ("Thus, this Court some time ago departed from *Bain*'s view that indictment defects are 'jurisdictional.'").

43. *See Singleton*, 386 N.C. at 199–202, 900 S.E.2d at 814–16.

44. *See id.* at 199–200, 900 S.E.2d at 814–15.

45. *Id.* at 200, 900 S.E.2d at 815.

waive indictment.[46] Following those three arguments, the court finally examined the text of the provision, positing that the jurisdictional rule is not textually supported because the provision "contains no language regarding jurisdiction."[47]

After eliminating the jurisdictional rule, the court discussed indictment challenges in future cases. The court noted that the State must still "draft indictments in a manner that 'satisf[ies] both statutory strictures and . . . constitutional purposes."[48] But, for the defendant's conviction to be vacated, the defendant must show both error and prejudice.[49] In other words, following its federal counterpart,[50] the state supreme court injected harmless error review into indictment challenges.[51] However, unlike the federal courts,[52] indictment errors are automatically preserved in state courts,[53] though "the better practice is for defendants to raise the issue in the trial courts" because "the longer a defendant waits to raise issues related to deficient criminal pleadings, the more difficult it would be to establish prejudice."[54] Unsurprisingly, the court found no prejudice in Singleton's case.[55]

While the court's reversal was unanimous, its reasoning was not. Justice Earls penned a vigorous dissent.[56] Dismissing the court's discussion of the jurisdictional rule as "largely dicta,"[57] Justice Earls concluded that the rule is firmly rooted in the state constitution.[58] Justice Earls reasoned that the indictment provision "reflect[ed] the framers' distrust of untrammeled State

46. *Id.* at 200–01, 900 S.E.2d at 815.

47. *Id.* at 201, 900 S.E.2d at 815.

48. *See id.* at 210, 900 S.E.2d at 820 (alteration and omission in original) (quoting State v. Lancaster, 385 N.C. 459, 462, 895 S.E.2d 337, 340 (2023)).

49. *Id.*, 900 S.E.2d at 821 (citing State v. Alston, 307 N.C. 321, 339, 298 S.E.2d 631, 644 (1983)). The court also notes that the harmless error statute applies in determining whether a particular error was prejudicial. *See id.* at 211, 900 S.E.2d at 821 (citing N.C. GEN. STAT. § 15A-1443 (2023)).

50. *See* United States v. Cotton, 535 U.S. 625, 631 (2002).

51. *See Singleton*, 386 N.C. at 210, 900 S.E.2d at 821.

52. *Cotton*, 535 U.S. at 631 ("Freed from the view that indictment omissions deprive a court of jurisdiction, we proceed to apply the plain-error test of Federal Rule of Criminal Procedure 52(b) to respondents' forfeited claim." (citing United States v. Olano, 507 U.S. 725, 731 (1993))).

53. *See Singleton*, 386 N.C. at 210, 900 S.E.2d at 821 (explaining that "issues related to alleged indictment defects, jurisdictional or otherwise, remain automatically preserved despite a defendant's failure to object to the indictment at trial"). Notably, however, the appellate rules are the only reason that indictment claims are not waived. As the court explained in *Singleton*, the state supreme court is given the "exclusive authority to make rules of procedure and practice for the Appellate Division" under our state constitution. *Id.* (quoting N.C. CONST. art. IV, § 13(2)). Thus, the court could simply amend the appellate rules to require waiver of untimely defective indictment claims. *See id.*

54. *Id.* at 210–11, 900 S.E.2d at 821.

55. *Id.* at 214, 900 S.E.2d at 823.

56. *See id.* at 215–36, 900 S.E.2d 824–38 (Earls, J., concurring in part and dissenting in part).

57. *Id.* at 215, 900 S.E.2d at 824.

58. *See id.* at 222, 900 S.E.2d at 828 ("Since defendants have a constitutionally enshrined right to a valid indictment, the absence of that safeguard disempowers the presiding court, as proceedings and judgments rendered in contravention of that right must yield to constitutional guarantees.").

power and their intentional construction of procedural guardrails."[59] Earls further reasoned that indictments are "integral to due process" because they allow the defendant to prepare for trial and defend against subsequent prosecutions.[60] Perhaps most importantly, Earls argued that this constitutional issue is not one of first impression, and the court simply ignored "case after case in which th[e] [c]ourt has rooted the jurisdictional remedy for defective indictments in the [North Carolina] Constitution itself."[61]

II. *SINGLETON* IS NONORIGINALIST

Prompted by its federal counterpart,[62] the Supreme Court of North Carolina has increasingly espoused originalist principles when interpreting the North Carolina Constitution.[63] An originalist construction considers only the text, history, and precedent of a provision.[64] This Part—using text, history, and precedent as guideposts—argues that the court's holding that the jurisdictional rule was merely a common law remedy—divorced entirely from the state constitution—was nonoriginalist.

A. *Text*

The *Singleton* court suggests that the constitutional analysis begins and ends with the text.[65] The North Carolina Constitution expressly guarantees that, in felony cases, "no person shall be put to answer any criminal charge but

59. *Id.* at 221, 900 S.E.2d at 828.

60. *See id.* at 222–23, 900 S.E.2d at 828–29.

61. *See id.* at 234–35, 900 S.E.2d at 837 (first citing State v. Stevens, 264 N.C. 364, 365, 141 S.E.2d 521, 522 (1965); then citing State v. Jenkins, 238 N.C. 396, 397–98, 77 S.E.2d 796, 797 (1953); then citing State v. Nugent, 243 N.C. 100, 101, 89 S.E.2d 781, 783 (1955); then citing State v. Harris, 145 N.C. 456, 458, 59 S.E. 115, 115–16 (1907); then citing State v. Greer, 238 N.C. 325, 326–27, 77 S.E.2d 917, 918–19 (1953); then citing State v. Cole, 202 N.C. 592, 596, 163 S.E. 594, 596–97 (1932); then citing State v. Hunter, 299 N.C. 29, 41, 261 S.E.2d 189, 197 (1980); then citing McClure v. State, 267 N.C. 212, 215, 148 S.E.2d 15, 17–18 (1966); and then citing State v. Simpson, 302 N.C. 613, 616, 276 S.E.2d 361, 363 (1981)).

62. *See, e.g.*, New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022); Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407 (2022); *see also* Michael Waldman, *Originalism Run Amok at the Supreme Court*, BRENNAN CTR. FOR JUST. (June 28, 2022), https://www.brennancenter.org/our-work/analysis-opinion/originalism-run-amok-supreme-court [https://perma.cc/ZUM8-BG6U].

63. *See, e.g.*, Cmty. Success Initiative v. Moore, 384 N.C. 194, 213, 886 S.E.2d 16, 33 (2023).

64. *See id.* ("Our interpretative endeavor begins with the text of the provision. . . . If the text does not resolve the matter, we examine the available historical records in an effort to isolate the provision's meaning at the time of its ratification. We also seek guidance from any on-point precedents from this Court interpreting the provision." (citation omitted)); McKinney v. Goins, 290 N.C. App. 403, 413, 892 S.E.2d 460, 468 (2023) (considering only "the text of the constitution, the historical context in which the people of North Carolina adopted the applicable constitutional provision, and our precedents" (quoting McCrory v. Berger, 368 N.C. 633, 639, 781 S.E.2d 248, 252 (2016))).

65. *See Singleton*, 386 N.C. at 201–02, 900 S.E.2d at 815 ("The common law rule that indictments are jurisdictional and must allege each element of an offense with precision has no support in the *plain text* of our Constitution." (emphasis added)).

by indictment, presentment, or impeachment," though defendants may voluntarily "waive indictment in noncapital cases."[66] The *Singleton* court's reading of the state constitution is straightforward: "Where it discusses indictments, it does not discuss jurisdiction—where it discusses jurisdiction, it does not discuss indictments."[67] Holding otherwise would "inject jurisdiction into a provision that is silent on the matter."[68]

The court's constitutional analysis—albeit straightforward—makes little sense. Even the most ardent supporters of originalism do not require every term to be expressly stated. Consider, for instance, the United States Supreme Court's opinion in *Ramos v. Louisiana*.[69] There, Justice Gorsuch—a self-proclaimed originalist[70]—said that the Sixth Amendment's right to a jury trial requires a unanimous verdict, though the Sixth Amendment makes no mention of unanimity.[71] Justice Gorsuch's opinion is difficult to square with the *Singleton* court's reasoning. The *Singleton* majority would also struggle to explain why an indictment must come from a grand jury, given that Article I, Section 22 makes no mention of a grand jury.[72]

The *Singleton* court's construction also lacks textual support. Article I, Section 22 *does* express jurisdictional concerns. The provision states that "no person *shall be put to answer* any criminal charge" unless the charge is brought by indictment.[73] In other words, without a valid indictment, the defendant cannot be obligated to respond to the State's accusation. Yet, in an adversarial system of criminal adjudication, the court cannot decide a case if the defendant has no obligation to respond to the charge. Thus, at a minimum, Article I, Section 22's text is ambiguous on whether a valid indictment is necessary to invoke a court's jurisdiction.

B. *History*

Where the text does not resolve an issue of constitutional interpretation, originalists turn to the "history and tradition" of the provision.[74] When

66. N.C. CONST. art. I, § 22. Often coupled with the indictment provision, the following provision further requires that "[i]n all criminal prosecutions, every person charged with crime has the right to be informed of the accusation . . . ." *Id.* art. I, § 23.

67. *Singleton*, 386 N.C. at 201, 900 S.E.2d at 815.

68. *Id.*

69. 140 S. Ct. 1390 (2020).

70. *See* Brent Kendall, *Judge Neil Gorsuch Backs Scalia's 'Originalist' Approach*, WALL ST. J. (Jan. 31, 2017, at 20:22 ET), https://www.wsj.com/articles/judge-neil-gorsuch-backs-scalias-originalist-approach-1485912175 [https://perma.cc/9ALB-75CR (staff-uploaded, dark archive)].

71. *See* U.S. CONST. amend. VI.

72. *See* N.C. CONST. art. I, § 22.

73. *Id.* (emphasis added).

74. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (explaining that unenumerated rights "must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty'" (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997))); *see*

examining the history of a provision, originalists typically consult a variety of sources, including "the common law, state practices in the founding era, [and] opinions and treatises written soon afterward."[75] The *Singleton* court briefly discussed the English heritage of the indictment provision, but did not examine the provision's pre- or post-ratification history.[76] As explained below, the history of the state constitution's indictment provision demonstrates that the jurisdictional rule is rooted in the constitution.

When analyzing the history of the North Carolina Constitution, an overarching question looms: *which* history should one examine?[77] North Carolinians have lived under three different state constitutions.[78] The first state constitution was ratified in 1776.[79] It ensured that "no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment."[80] During Reconstruction, North Carolina was required to ratify a second constitution.[81] It eliminated "freeman" from the provision, providing that "[n]o person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment, or impeachment."[82] Finally, North Carolina's third and current constitution—again enacted in

also Reva B. Siegel, *The History of History and Tradition: The Roots of* Dobbs*'s Method (and Originalism) in the Defense of Segregation*, 133 YALE L.J. F. 99, 159 (2023) ("The voice of *Plessy* speaks through *Dobbs* when the Court declares that the Constitution is indifferent and impotent to intervene.").

75. Ramos v. Louisiana, 140 S. Ct. 1390, 1395 (2020). Of course, the necessary historical research is much easier said than done. *See* Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CINN. L. REV. 849, 864 (1989) (explaining that "historical research is always difficult and sometimes inconclusive").

76. *See* State v. Singleton, 386 N.C. 183, 199–202, 900 S.E.2d 802, 814–16 (2024).

77. *Compare* Harper v. Hall, 384 N.C. 292, 351–52, 886 S.E.2d 393, 432 (2023) (arguing that the 1776 meaning of the Free Elections Clause controls because subsequent adoptions in 1868 and 1970 did not contain "substantive revision[s]" to the provision), *with id.* at 393, 886 S.E.2d at 457 (Earls, J., dissenting) (reasoning that a later understanding of the Free Elections Clause should be used because "historical events have inspired an evolved understanding of the clause"). For a deeper analysis of this problem, see also Anthony Sanders, *A Practical Guide to Using State History to Overcome Federal Precedent*, STATE CT. REP. (May 7, 2025), https://statecourtreport.org/our-work/analysis-opinion/practical-guide-using-state-history-overcome-federal-precedent [https://perma.cc/D2UQ-MUQV] (suggesting that the meaning should be used from "when the state constitutional equivalent was adopted," but noting that "readopted" provisions spark "a whole separate debate" (referencing Jason Mazzone & Cem Tecimer, *Interconstitutionalism*, 132 YALE L.J. 326 (2022))).

78. *See, e.g.*, Marcus Gadson, *North Carolina's Constitution of Contrasts*, STATE CT. REP. (Apr. 9, 2025), https://statecourtreport.org/our-work/analysis-opinion/north-carolinas-constitution-contrasts [https://perma.cc/PK9P-FQPW] ("Like many of the original 13 colonies, North Carolina wrote its first constitution during the American Revolution in 1776 and its second during Reconstruction in 1868. Its third—and current—was ratified in 1970.").

79. *See id.*

80. N.C. CONST. of 1776, art. I, § VIII.

81. *See* Gadson, *supra* note 78.

82. N.C. CONST. of 1868, art. I, § 12.

response to the federal government—kept nearly identical language, adding that defendants may "waive indictment in noncapital cases."[83]

The 1776 history likely controls. The 1868 and 1970 constitutions did not "substantively revis[e]" the indictment provision.[84] In 1868, the constitution merely eliminated—as it did in a number of provisions—the slavery-based "freeman" language from the indictment provision.[85] In 1968, the commission charged with proposing amendments stated that the proposed amendments were only technical changes, typically to update outdated language.[86] This technical purpose seems especially applicable to the indictment provision, where the commission simply "ma[de] clear in the constitution what previously could be learned only from an obscure constitutional provision and its judicial gloss: that misdemeanants need not be tried upon indictment in most cases."[87]

The 1776 provision's history plainly supports the jurisdictional rule. The provision's pre-ratification history shows North Carolina's unique appreciation for grand juries and English indictment rules. Prior to the founding, "English courts were powerless to try a defendant for certain serious crimes" without a valid indictment.[88] The jurisdictional rule—like grand juries more broadly—was held in high esteem by the founding generation,[89] and especially so in North Carolina. North Carolina's first state constitution was the only founding state

83. *See* N.C. CONST. art. I, § 22. The 1970 state constitution was ratified in response to the United States Supreme Court's decisions in *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964).

84. *Cf.* Harper v. Hall, 384 N.C. 292, 351–52, 886 S.E.2d 393, 432 (2023) (explaining how later versions of the constitution retain the earlier meanings from the 1776 constitution regarding the free elections clause).

85. *See* N.C. CONST. of 1868, art. I, § 12. For instance, in the Declaration of Rights, the 1868 constitution eliminated "freeman" from the jury trial provision, *see id.* art. I, § 13, the "land of the law" provision, *see id.* art. I, § 17, and the habeas provision, *see id.* art. I, § 18.

86. *See* N.C. STATE CONST. STUDY COMM'N, REPORT OF THE NORTH CAROLINA STATE CONSTITUTION STUDY COMMISSION 9 (1968). The commission also noted other goals not relevant to indictments, including modifying "the structure of the executive branch" and "the allocation of powers among the branches and levels of government." *Id.*

87. *Id.* at 74. Notably, the commission proposed an amendment to Section 22 to allow prosecution via information, rather than indictment. *Id.* at 125. The commission reasoned that "the grand jury, in the vast majority of cases, has become a mere time-consuming and expensive arm of the solicitor, no longer serving its historical, screening function between the police and the trial jury." *Id.* at 126. However, the people of North Carolina—through their elected representatives—rejected that proposal, insisting instead that felony prosecutions must still be approved by a grand jury through its indictment. *See* N.C. CONST. art. I, § 22.

88. *See* Roger A. Fairfax, Jr., *The Jurisdictional Heritage of the Grand Jury Clause*, 91 MINN. L. REV. 398, 409 (2006).

89. *See id.* at 410 ("The role of the grand jury in the colonies gave it 'enhanced prestige' and special respect among American colonists during the pre-Revolution period." (footnote omitted)). "Colonial grand juries also played a part in expressing colonists' dissatisfaction with the exercise of monarchical power by nullifying attempted prosecutions of critics of the Crown and aggressively issuing 'angry and well-publicized presentments and indictments' against representatives of the Crown." *Id.* (footnote omitted).

constitution to expressly prohibit criminal prosecutions without a valid indictment.[90] Consistent with the founding generation's appreciation of grand juries and indictment requirements, the provision's immediate post-ratification history confirms that the state constitution incorporated the jurisdictional rule.[91]

Even if the 1776 history is not controlling, the 1868 and 1970 provisions also support the jurisdictional rule. Members of the General Assembly, convention delegates, and the ratifying voters are presumed to know the law.[92] Thus, because the 1868 and 1970 indictment provisions did not alter the substantive text of the preceding provisions, both provisions implicitly endorse and incorporate any precedent interpreting those provisions.[93] For the 1970 provision, incorporated precedent—including two cases from the 1960s—described the jurisdictional rule as constitutionally rooted.[94]

C. *Precedent*

Originalists also consult precedent to determine a provision's meaning,[95] though stare decisis has notably fallen out of favor in both federal and state courts.[96] While these prior decisions are entirely missing from the *Singleton* majority opinion, the state supreme court had previously found the jurisdictional rule to be constitutionally required in a number of cases.[97] Most notably, the state supreme court upheld the jurisdictional rule only six years prior to *Singleton*.[98]

Thus, while the indictment provision in the North Carolina Constitution may not include the word "jurisdiction," it expressly prohibits defendants from "be[ing] put to answer any criminal charge" without a valid indictment.[99] Even assuming that the text is ambiguous, the historical practices—from common-

90. *See supra* note 7 and accompanying text.

91. *See* State v. Adams, 1 N.C. (Mart.) 60, 62 (1793).

92. *But see* Heien v. North Carolina, 574 U.S. 54, 61 (2014) (allowing officers to make "reasonable mistake[s] of law" without violating the Fourth Amendment).

93. *See generally* Mazzone & Tecimer, *supra* note 77 (exploring how predecessor constitutions "routinely influence how a new constitution is interpreted and applied").

94. *See* State v. Stevens, 264 N.C. 364, 375, 141 S.E.2d 521, 522 (1965); McClure v. State, 267 N.C. 212, 215, 148 S.E.2d 15, 18 (1966).

95. *See* Cmty. Success Initiative v. Moore, 384 N.C. 194, 213, 886 S.E.2d 16, 33 (2023) ("We also seek guidance from any on-point precedents from this Court interpreting the provision.").

96. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2284 (2022) (overturning Roe v. Wade, 410 U.S. 113 (1973)); Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024) (overturning Chevron, USA v. Natural Res. Def. Council, 467 U.S. 837 (1984)); Harper v. Hall, 384 N.C. 292, 379, 886 S.E.2d 393, 449 (2023) (overturning Harper v. Hall, 383 N.C. 89, 881 S.E.2d 156 (2022)).

97. *See* State v. Singleton, 386 N.C. 183, 234–35, 900 S.E.2d 802, 837 (Earls, J., concurring in part and dissenting in part).

98. State v. Rankin, 371 N.C. 885, 895, 821 S.E.2d 787, 795–96 (2018).

99. N.C. CONST. art. I, § 22.

law England through each iteration of North Carolina's state constitution—show that the jurisdictional rule is rooted in Article I, Section 22 of the state constitution. Any residual doubt from the text, history, and tradition ought to be resolved by the countless decisions from the state's highest court affirm the jurisdictional rule.

III. CONSEQUENCES OF *SINGLETON*

What consequences flow from *Singleton*? As the court notes, prosecutors should still "draft indictments in a manner that 'satisf[ies] both statutory strictures and . . . constitutional purposes.'"[100] But where the prosecution drafts an improper indictment, a defendant's conviction will not be vacated unless the defendant was prejudiced by the error.[101] Practically speaking, appellate defendants—who have been unanimously found guilty beyond a reasonable doubt by a petit jury—likely cannot show prejudice from the grand jury's improper determination of probable cause.[102] Post-*Cotton* precedent from federal appellate courts confirms this prediction.[103]

Without automatic reversal, prosecutors will have less incentive to draft sufficient indictments. In the aggregate, those poorly drafted indictments may infringe upon other constitutional rights as described by Justice Earls. For example, more defective indictments may provide less notice to defendants, thereby disabling some from meaningfully preparing for trial.[104] Increased defective indictments may also jeopardize double jeopardy rights if indictments do not allege facts sufficient for defendants to defend against subsequent prosecutions.[105]

Despite identifying several collateral consequences of the *Singleton* decision, Justice Earls missed a notable impact: reduced bargaining power for defendants. Indictments are notoriously difficult to draft.[106] And, for

100. *Singleton*, 386 N.C. at 210, 900 S.E.2d at 820 (alteration and omission in original) (quoting State v. Lancaster, 385 N.C. 459, 462, 895 S.E.2d 337, 340 (2023)).

101. *See id.* at 234, 900 S.E.2d at 837 (Earls, J., concurring in part and dissenting in part) (describing the court's harmless error rule as "functionally impenetrable" for indictment defects).

102. *See* Justin Murray, *A Contextual Approach to Harmless Error Review*, 130 HARV. L. REV. 1791, 1809 n.102 (2017) ("Once the petit jury has returned a guilty verdict upon finding proof beyond a reasonable doubt, that verdict is powerful evidence that, even if no error had occurred during the grand jury phase, the grand jury likewise would have found the prosecution's evidence sufficient to indict under the far less demanding probable cause standard." (citing United States v. Mechanik, 475 U.S. 66, 67 (1986))).

103. Professor Fairfield, for example, opined on review of federal circuit court decisions immediately following *Cotton* that the decision merely "bec[ame] an excuse to affirm without close analysis." *See* Joshua A.T. Fairfield, *To Err Is Human: The Judicial Conundrum of Curing* Apprendi *Error*, 55 BAYLOR L. REV. 889, 937 (2003).

104. *See Singleton*, 386 N.C. at 222, 900 S.E.2d at 828.

105. *Id.* at 223, 900 S.E.2d at 829.

106. So difficult, in fact, that Professors Jeffrey B. Welty, Christopher Tyner, and Jonathan Holbrook at the UNC School of Government created a manual specifically for drafting warrants and

overworked state prosecutors, time spent in front of a grand jury may feel like wasted time. Moreover, cases like Chuck Singleton's—and the other appellate cases addressing defective indictments—are exceedingly rare in the modern system of pleas.[107] Thus, while the jurisdictional rule was enforced by North Carolina's appellate courts, its force was mostly felt during pretrial plea negotiations. Generally, defendants could use the jurisdictional rule in one of two ways during pretrial negotiations. First, unindicted defendants could use the indictment requirement as leverage to bargain for better plea offers. The jurisdictional rule added bite to the defendant's bark because, with per se dismissal looming, the prosecution would have to take its time meticulously drafting the indictment. If the prosecution made a mistake, it might have to restart the entire process. Second, indicted defendants with defective indictments could use the prospect of dismissal to sway the prosecution toward a more favorable disposition.

Beyond plea negotiations, *Singleton* also takes away from the grand jury's historic power. The indictment provision states that the State may prosecute a defendant if—and only if—the State has the grand jury's permission.[108] That requirement is a double-edged sword. On the one hand, defendants are secured from "arbitrary imprisonment"—what the founders labeled "the principal force of tyranny in all ages."[109] While some see that role as unfulfilled—sometimes labelling the grand jury as the prosecution's "rubber stamp[]"[110]—current headlines illustrate the grand jury's extraordinary power in preventing politically charged prosecutions and halting an overbearing executive.[111] On the other hand, the grand jury's decision is not subject to judicial review. When a grand jury finds probable cause to hold a defendant, a judge will not overrule

indictments. *See generally* JEFFREY B. WELTY, CHRISTOPHER TYNER & JONATHAN HOLBROOK, ARREST WARRANT AND INDICTMENT FORMS (2022) (explaining how to draft criminal pleadings).

107. *See* WILSON CTR. FOR SCI & JUST. AT DUKE UNIV., PLEA TRACKING IN THE DURHAM COUNTY DISTRICT ATTORNEY'S OFFICE: ONE-YEAR REPORT 4 (2023) ("In North Carolina and most other states, roughly 90-95% of criminal cases are resolved through plea bargaining.").

108. *See* N.C. CONST. art. I, § 22.

109. *See* PROCEEDINGS AND DEBATES OF THE CONVENTION OF NORTH-CAROLINA, CONVENED AT HILLSBOROUGH, ON MONDAY THE 21ST DAY OF JULY, 1788, FOR THE PURPOSE OF DELIBERATING AND DETERMINING ON THE CONSTITUTION RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA, THE 17TH DAY OF SEPTEMBER, 1787: TO WHICH IS PREFIXED THE SAID CONSTITUTION, at 170 (1789).

110. *See, e.g.*, NEIL P. COHEN, STANLEY E. ADELMAN, LESLIE W. ABRAMSON, TIFFANY R. MURPHY, MATT BENDER & D'LORAH L. HUGHES, CRIMINAL PROCEDURE: THE POST-INVESTIGATIVE PROCESS 232 (6th ed. 2025).

111. *See, e.g.*, Alan Feuer, *Grand Juries in D.C. Reject Wave of Charges Under Trump's Crackdown*, N.Y. TIMES (Sep. 6, 2025), https://www.nytimes.com/2025/09/06/us/trump-dc-national-guard-grand-juries-crime.html [https://perma.cc/3AXP-U5X5 (staff-uploaded, dark archive)]; Alan Feuer, Devlin Barrett & William K. Rashbaum, *Prosecutors Fail To Obtain Indictment Against Man Who Threw Sandwich at Federal Agent*, N.Y. TIMES (Aug. 27, 2025), https://www.nytimes.com/2025/08/27/us/politics/trump-sandwich-assault-indictment-justice-department.html [https://perma.cc/F7MX-VUMC (staff-uploaded, dark archive)].

that finding.[112] Without the jurisdictional rule, a clever prosecutor could skirt the grand jury's nullification power by omitting a weak element of the offense, potentially allowing defendants to be detained where they might otherwise not be if the jury were presented with all of the elements of the offense.

Singleton's most impactful consequences, however, extend far beyond indictments. The decision illustrates the court's relentless determination to eliminate structural error in all facets of the criminal process. In recent years, the court has extended the harmless error doctrine to violations of a defendant's right to court-provided trial transcripts,[113] erroneous jury instructions,[114] and DWI sentencing.[115] The court is currently considering whether to apply harmless error to *Harbison* errors under the Sixth Amendment.[116] If *Singleton* is any indication, the court will not yield.

Singleton also demonstrates the court's unflinching dedication to lockstep the state constitution to its federal counterpart. While the jurisdictional rule under the Fifth Amendment was much less established compared to the jurisdictional rule under the North Carolina Constitution, *Cotton* was almost immediately criticized as nonoriginalist.[117] The state constitution's unique history as the only founding-era constitution to expressly require indictments did not seem to impact the court's lockstep approach. Nor did centuries of precedent affirming the jurisdictional rule. The majority's reasoning, then, rests on a thin view of state constitutional protections and an even thinner view of stare decisis.

Finally, *Singleton* is paradigmatic of the conservative court's liberal use of dicta. Though the majority was apparently "perplex[ed]" by Justice Earls's calls

112. *See, e.g.*, *118.1 Probable Cause Hearings*, N.C. PROSECUTORS' RES. ONLINE, https://ncpro.sog.unc.edu/manual/118-1 [https://perma.cc/J22S-UBMK] (last updated July 18, 2025) ("After an indictment has been returned in a case, or after an information is filed in superior court upon waiver of indictment, the case is within the jurisdiction of superior court and the district court has no jurisdiction to hold a probable cause hearing. Therefore, the state can avoid a probable cause hearing by obtaining an indictment before the probable cause hearing." (citations omitted)).

113. *See* State v. Gaddis, 382 N.C. 248, 252, 876 S.E.2d 379, 381–82 (2022). For an excellent discussion of the preceding case, see generally Dylan T. Silver, Recent Development, *Blowing Away the Smoke: Revealing the Harm in* State v. Gaddis*'s Harmless Error Analysis*, 102 N.C. L. REV. 1259 (2024).

114. *See* State v. Malachi, 371 N.C. 719, 740, 821 S.E.2d 407, 422 (2018).

115. *See* State v. King, 386 N.C. 601, 605, 906 S.E.2d 808, 812 (2024); *see also generally* William J. Etringer, Case Brief, State v. King, 104 N.C. L. REV. F. 32 (2025) (discussing the preceding case).

116. *See* New Brief for the State at 19–20, State v. Farook, No. 457P20-2 (N.C. Ct. App. Aug. 11, 2025) (citing *Malachi* at length).

117. *See* Fairfax, Jr., *supra* note 88, at 455 (describing the Court's approach in *Cotton* as the "pragmatic approach" in contrast with originalism). The Court in *Cotton* likely disavowed the jurisdictional rule because it posed serious threats to the existing criminal process, *see* Fairfax, Jr., *supra* note 88, at 456 n.243 (explaining that the jurisdictional rule "arguably would entail abolishment of all waiver of grand jury indictment, including pre-indictment plea bargaining," which would be "far too expensive").

for judicial restraint,[118] the court's discussion of the jurisdictional rule is dicta.[119] Of course, that sweeping use of dicta seems less the exception and more the rule for the current court. In *State v. Tirado*,[120] for example, the court's "gratuitous and sweeping commentary on Section 27 and its overlap with the Eight Amendment" was "pure dicta."[121] In *State v. Borlase*,[122] the court repeated the same dicta discussion.[123] In *State v. Walker*,[124] the court overruled *State v. Allen*[125] and imposed a heightened a pleading burden for post-conviction defendants despite the State not asking it do so.[126] In *State v. Gillard*,[127] the court offered dicta discussion to "substantially expand" the validity of nonconforming jury instructions.[128] The court's expansive use of dicta is not limited to criminal cases. Most notably, the court attempted to limit the scope of several state constitutional provisions in *Harper v. Hall*[129] despite claiming that it could not hear the claims.[130]

CONCLUSION

Singleton will not turn North Carolina's criminal courts into the nightmarish labyrinth described by Kafka. But the state supreme court's decision is a step in the wrong direction. The court's hyper-fixation on both ferreting out structural error and strictly lock-stepping the state constitution to its federal counterpart caused the court to miss the constitutional heritage of the jurisdictional rule. Article I, Section 22's text, history, and precedent each

118. *Compare* State v. Singleton, 386 N.C. 183, 188 n.4, 900 S.E.2d 802, 807 n.4, *with Singleton*, 386 N.C. at 215, 900 S.E.2d at 824 (Earls, J., concurring in part and dissenting in part).

119. *See, e.g.*, *Obiter Dictum*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining dicta as comments "unnecessary to the decision in the case and therefore not precedential"). The majority's sweeping discussion of the jurisdictional rule is "unnecessary to the holding." *See Singleton*, 386 N.C. at 215 n.1, 900 S.E.2d at 824 n.1 (noting that "counsel for the State affirmed that this Court need only reach the jurisdictional issue if it concluded that Mr. Singleton's indictment was fatally defective" under the then-existing standard).

120. 387 N.C. 104, 911 S.E.2d 51 (2025).

121. *Id.* at 136, 911 S.E.2d at 74 (Earls, J., concurring in the judgment).

122. 387 N.C. 295, 912 S.E.2d 795 (2025).

123. *Id.* at 315, 912 S.E.2d at 810 (Earls, J., dissenting) (arguing that "the majority's invocation of its dicta in *State v. Tirado* is yet again, beside the point and properly disregarded as dicta" (citation omitted)).

124. 385 N.C. 763, 898 S.E.2d 661 (2024).

125. 378 N.C. 286, 861 S.E.2d 273 (2021).

126. *See Walker*, 385 N.C. at 772, 898 S.E.2d at 667 (Earls, J., concurring in part and dissenting in part) (contending that the majority's reversal of *Allen* "is mere dicta and should be treated as such").

127. 386 N.C. 797, 909 S.E.2d 226 (2024).

128. *Id.* at 907, 909 S.E.2d at 305 n.13 (Earls, J., concurring in part and dissenting in part).

129. 384 N.C. 292, 886 S.E.2d 393 (2023).

130. *Compare id.* at 301, 886 S.E.2d at 401 (expressly "hold[ing] that partisan gerrymandering claims present a political question that is nonjusticiable" before delineating the scope of the constitutional rights at issue), *with* Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019) ("conclud[ing] that partisan gerrymandering claims present political questions beyond the reach of the federal courts," and, therefore, refusing to address the scope of the constitutional rights at issue).

show that the jurisdictional rule is rooted in the constitution itself. In addition to obscuring the original meaning of the indictment provision, the court's opinion ignores time-honored appellate norms by overruling precedent even when all parties agree that it should not. In the end, perhaps *Singleton* can be chalked up to another inconsistent application of originalism. As Professor Bill Marshall once quipped, "The governing rule of originalism seems only to be that it must be applied rigidly in every case—except when it isn't."[131]

WILLIAM J. ETRINGER[**]

131. William P. Marshall, *Progressive Constitutionalism, Originalism, and the Significance of Landmark Decisions in Evaluating Constitutional Theory*, 72 OHIO STATE L.J. 1251, 1275 (2011); *see also* Richard H. Fallon, Jr., *Selective Originalism and Judicial Role Morality*, 102 TEX. L. REV. 221, 223 (2023) ("As the Justices become more originalist, however, another phenomenon grows equally striking. This is the selectiveness of the Court's reliance on originalist analysis.").

** J.D. Candidate, University of North Carolina School of Law, 2026.