

Capacity-Property Framework: Unified Litigation Artifact Package

*Five Structured Artifacts for Identifying, Arguing, and Proving
Structural Asymmetry in Legal Doctrine*

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I. Litigator's Capacity-Property Asymmetry Checklist

A structured litigation tool for identifying, documenting, and evaluating capacity-property classification asymmetries in regulatory schemes.

Complete each item before proceeding to briefing.

Section A: Identifying the Asymmetry

Capacity Indicators

- 1. Contractual Capacity.** Does the regulatory scheme recognize the entity's power to enter binding contracts, thereby acknowledging juridical personhood? (Look for: statutory authorization to contract, enforcement of contractual obligations against the entity.)
- 2. Tax Liability.** Is the entity subject to taxation — income, excise, property, or transactional taxes — premised on its status as an income-earning or wealth-holding agent? (Look for: tax assessments, filing obligations, withholding requirements.)
- 3. Criminal Liability.** Can the entity be charged with criminal offenses, requiring the state to prove mens rea or scienter? (Look for: criminal statutes applicable to the entity, indictments, prosecution history.)

4. Regulatory Obligations. Does the entity bear affirmative compliance obligations — reporting, record-keeping, safety standards — that presuppose agency and decision-making capacity? (Look for: regulatory mandates, compliance deadlines, penalty provisions.)

5. Consent Recognition. Does the scheme treat the entity's consent as legally operative — e.g., consent to searches, waivers, or agreements? (Look for: consent forms, waiver provisions, voluntary compliance programs.)

Property/Object Indicators

6. License as Privilege. Does the scheme characterize the entity's authorization to operate as a revocable "privilege" rather than a vested right? (Look for: statutory language using "privilege," "permission," or "authorization at the discretion of.")

7. Unilateral Revocation. Can the state revoke, suspend, or restrict the entity's operating authority without prior adjudication or hearing? (Look for: summary suspension provisions, emergency revocation authority, absence of pre-deprivation process.)

8. Seizure or Forfeiture Exposure. Are the entity's assets, proceeds, or instruments of activity subject to civil forfeiture or administrative seizure without prior criminal conviction? (Look for: forfeiture statutes, administrative seizure authority, in rem proceedings.)

9. Denial of Standing. Is the entity denied standing to challenge the classification or regulatory action on the ground that it possesses no cognizable legal interest? (Look for: standing dismissals, justiciability barriers, characterization of harm as non-cognizable.)

Classification-Shift Indicators

10. Burden/Rights Divergence. Does the entity's classification shift depending on whether the state is imposing a burden (capacity invoked) versus when the entity asserts a right (property classification invoked)?

(Look for: inconsistent treatment across enforcement vs. rights-assertion contexts within the same statutory scheme.)

11. Selective Invocation. Does the state selectively invoke the entity's capacity in enforcement proceedings while denying that same capacity in the entity's affirmative claims? (Look for: government briefs asserting entity capacity in one proceeding and denying it in another.)

Section B: Doctrinal Triggers

12. Procedural Due Process. Has the entity been deprived of a recognized liberty or property interest without notice and a meaningful opportunity to be heard? (Look for: deprivation without pre- or post-deprivation hearing, inadequate notice, biased tribunal.)

13. Substantive Due Process. Is the classification differential so arbitrary or irrational that it "shocks the conscience" or fails rational basis review? (Look for: absence of legitimate governmental interest, means-ends disconnect.)

14. Equal Protection – Differential Treatment. Are similarly situated entities treated differently based on the capacity-property classification? (Look for: comparators receiving full capacity recognition while the subject entity is classified as regulable property.)

15. Void-for-Vagueness. Is the standard governing the classification switch so vague that it fails to provide fair notice or invites arbitrary enforcement? (Look for: undefined terms, standardless discretion, inconsistent agency application.)

16. Unconstitutional Conditions. Is the entity required to waive constitutional rights as a condition of receiving capacity recognition or licensure? (Look for: compelled speech, waiver of Fourth Amendment protections, consent-to-search requirements as licensing conditions.)

Section C: Evidentiary Foundation

- **17. Statutory Text Documentation.** Has the relevant statutory text been compiled, annotated, and cross-referenced to identify provisions that impose capacity-based obligations alongside provisions that classify the entity as regulable property? (Look for: internal contradictions, definitional inconsistencies, conflicting operative provisions.)
- **18. Regulatory History.** Has the regulatory history — including proposed rules, final rules, agency memoranda, and guidance documents — been reviewed for evidence of awareness or deliberate construction of the classification asymmetry? (Look for: agency acknowledgment, internal memoranda, comment-and-response discussions.)
- **19. Judicial Precedent Compilation.** Have relevant judicial decisions been compiled showing courts applying the dual classification — treating the entity as a capable actor in one context and as regulable property in another? (Look for: conflicting holdings, dicta acknowledging the tension, circuit splits.)
- **20. Expert Testimony Identification.** Has the need for expert testimony been assessed — e.g., economists to quantify extraction without reciprocal benefit, constitutional scholars to opine on classification coherence, or industry experts to document operational impact? (Look for: gaps in the record requiring expert bridging, Daubert/Rule 702 compliance.)
- **21. Legislative History.** Has legislative history been reviewed for evidence that legislators were aware of, intended, or sought to conceal the structural asymmetry? (Look for: floor statements, committee reports, hearing testimony, sponsor statements.)

Section D: Strategic Assessment

- **22. Claim Strength Evaluation.** Has the strength of each constitutional claim been assessed on a scale of viability, accounting for existing

precedent, circuit disposition, and the current composition of the reviewing court? (Look for: favorable precedent, recent doctrinal trends, judicial receptivity signals.)

23. Remedy Identification. Have all available remedies been identified — declaratory judgment, preliminary and permanent injunctive relief, damages under 42 U.S.C. § 1983 or *Bivens*, and attorney's fees under 42 U.S.C. § 1988? (Look for: remedy limitations, sovereign immunity barriers, qualified immunity exposure.)

24. Forum Selection. Has the optimal forum been identified — federal vs. state court, district selection, administrative exhaustion requirements, and appellate positioning? (Look for: favorable circuit law, local rules, judge assignment practices, administrative review prerequisites.)

25. Timing and Ripeness. Is the claim ripe for adjudication, and has the optimal timing for filing been assessed — considering statute of limitations, ongoing harm, regulatory cycles, and political climate? (Look for: continuing violation doctrine applicability, final agency action, ripeness and mootness risks.)

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II. Motion-Ready Argument

Section — "The Capacity-Property Contradiction"

The following argument section is drafted for insertion into a motion for summary judgment, a preliminary injunction brief, or an appellate brief. Counsel should insert case-specific facts, party names, and binding authority at the indicated placeholder citations.

THE CAPACITY-PROPERTY CONTRADICTION VIOLATES DUE PROCESS AND EQUAL PROTECTION

The regulatory scheme at issue operates through a fundamental doctrinal contradiction: it simultaneously treats [Plaintiff] as a fully capable legal actor — possessing the agency to contract, the capacity to be taxed, and the culpability to bear criminal liability — while classifying [Plaintiff]'s rights, activities, and authorizations as mere regulable objects, subject to unilateral state control without the procedural and substantive protections that necessarily accompany juridical personhood. This contradiction is not an oversight. It is a structural feature of the scheme, and it is constitutionally impermissible.

The Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amends. V, XIV, § 1. The Equal Protection Clause demands that similarly situated persons be treated alike under the law. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The unconstitutional conditions doctrine prohibits the government from conditioning a benefit or recognition on the waiver of constitutional rights. *[Party] v. [Party]*, ___ U.S. ___, __ (20__); *see also Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994). And the void-for-vagueness doctrine requires that legal standards provide fair notice and prevent arbitrary enforcement. *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018). Each of these doctrinal pillars is implicated — and violated — by the capacity-property asymmetry embedded in the scheme challenged here.

The asymmetry operates as follows. When the state seeks to impose obligations, it recognizes [Plaintiff] as a capable juridical actor. [Plaintiff] is taxed — presupposing the capacity to earn, hold, and transfer wealth. [Plaintiff] is subject to criminal prosecution — presupposing the mens rea,

volition, and moral agency required for culpability. [Plaintiff] is bound by contract — presupposing the legal competence to form mutual assent. [Plaintiff] bears regulatory compliance obligations — presupposing the organizational agency to implement, monitor, and report. In every burden-imposition context, the state invokes [Plaintiff]'s full legal capacity without reservation.

Yet when [Plaintiff] seeks to exercise the rights that necessarily accompany that capacity — the right to due process before deprivation, the right to equal treatment, the right to challenge arbitrary state action — the scheme abruptly reclassifies [Plaintiff]'s interests as mere "privileges," regulable objects subject to plenary state authority. The license is "not a right but a privilege." The authorization is "revocable at the discretion of the agency." The activity is "subject to the police power" and therefore unprotected. *See [Agency] v. [Party]*, ___ F.3d ___, ___ ([Cir.] 20__). This reclassification is outcome-determinative: it strips [Plaintiff] of constitutional protection precisely when that protection is most needed — at the moment the state acts to deprive.

This doctrinal maneuver cannot withstand scrutiny. Legal capacity is not divisible in the manner the state presupposes. An entity that possesses the capacity to contract possesses, *by that very recognition*, a juridical status that entitles it to the full panoply of constitutional protections attending that status. The state cannot treat [Plaintiff] as a person for purposes of obligation while treating [Plaintiff] as an object for purposes of protection. *See [Party] v. [Party]*, ___ U.S. ___, ___ (20__). To permit such selective invocation would render constitutional protections contingent not on status but on the direction of state action — a result incompatible with the structural guarantees of the Due Process and Equal Protection Clauses. *Cf. Romer v. Evans*, 517 U.S. 620, 633 (1996) (classification must "bear a rational relation to some legitimate end").

The harm is concrete, particularized, and ongoing. [Plaintiff] is subject to the full weight of state-imposed obligations — taxation, criminal liability, regulatory compliance — without the reciprocal protections that those

obligations presuppose. This constitutes a deprivation of both procedural due process (no hearing before revocation or reclassification) and substantive due process (the classification scheme is arbitrary and irrational). It further constitutes an equal protection violation: similarly situated entities that have not been subjected to the property reclassification retain the full protections of their capacity status, while [Plaintiff] is stripped of those protections through a classification device that lacks independent justification. The available remedies include declaratory judgment establishing the unconstitutionality of the dual classification, injunctive relief prohibiting its continued application, and damages under 42 U.S.C. § 1983 for the deprivation of rights under color of state law. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

The Capacity-Property Framework does not ask this Court to create new doctrine. It asks this Court to enforce existing doctrine coherently. The Constitution does not permit the state to construct a classification scheme that selectively invokes personhood for extraction while denying personhood for protection. This Court should hold that the scheme at issue violates the Due Process and Equal Protection Clauses and grant [Plaintiff] the relief requested herein.

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III. Exhibit-Ready Diagram — Capacity-Property Classification Matrix

Exhibit [__]: Capacity-Property Classification Matrix

Legal Domain	Treated as Having Capacity?	Treated as Property / Object?	Asymmetry Present?	Constitutional Provision Implicated
Taxation	Yes — Taxed as an income-earning agent; assessed obligations presupposing capacity to earn, hold, and transfer wealth.	Yes — Tax assessments enforced through administrative levy and seizure without prior judicial determination; assets treated as objects subject to collection.	Yes	5th Amend. Due Process; 14th Amend. Due Process and Equal Protection
Licensing	Yes — Required to satisfy competency standards, pass examinations, and maintain continuing education, all presupposing professional agency.	Yes — License characterized as a "privilege" revocable at agency discretion; summary suspension without pre-deprivation hearing.	Yes	14th Amend. Due Process (procedural); Unconstitutional Conditions Doctrine
Criminal Liability	Yes — Subject to criminal prosecution requiring proof of mens rea, scienter, or criminal negligence	Yes — Instruments and proceeds of alleged criminal activity subject to civil forfeiture in	Yes	5th Amend. Due Process; 8th Amend. Excessive Fines; 14th Amend. Equal Protection

Legal Domain	Treated as Having Capacity?	Treated as Property / Object?	Asymmetry Present?	Constitutional Provision Implicated
	— all presupposing moral and cognitive agency.	rem, treating the property as the "offender" without attributing rights to the owner.		
Contract	Yes — Recognized as possessing legal competence to form binding agreements, negotiate terms, and enforce contractual obligations.	Yes — Contractual rights recharacterized as "regulatory entitlements" subject to modification or abrogation without consent when the state invokes police power.	Yes	Art. I, § 10 Contracts Clause; 5th Amend. Due Process; 14th Amend. Due Process
Regulatory Compliance	Yes — Bears affirmative compliance obligations (reporting, monitoring, remediation) presupposing organizational agency, knowledge, and decision-making capacity.	Yes — Non-compliant operations subject to administrative closure, stop-work orders, or permit revocation without adjudicatory hearing; entity's operational status treated as a	Yes	5th Amend. Due Process; 14th Amend. Due Process and Equal Protection

Legal Domain	Treated as Having Capacity?	Treated as Property / Object?	Asymmetry Present?	Constitutional Provision Implicated
		regulable object.		
Property Seizure / Forfeiture	Yes — Recognized as a property-holding agent capable of ownership, transfer, and encumbrance of real and personal property.	Yes — Property subject to civil asset forfeiture based on probable cause, without criminal conviction; property treated as the defendant in in rem proceedings, severing owner's capacity from the adjudication.	Yes	5th Amend. Takings and Due Process; 8th Amend. Excessive Fines; 14th Amend. Due Process
Employment	Yes — Treated as a capable agent in employment relationships: subject to wage-and-hour obligations, anti-discrimination duties, and workplace safety mandates.	Yes — Employment authorization treated as a revocable privilege; at-will employment doctrine permits termination without cause in government employment absent property-interest	Yes	14th Amend. Due Process and Equal Protection; 1st Amend. (public employment speech)

Legal Domain	Treated as Having Capacity?	Treated as Property / Object?	Asymmetry Present?	Constitutional Provision Implicated
		showing; workers' compensation schemes preempt tort capacity.		
Immigration	Yes — Subject to criminal prosecution for immigration violations (presupposing agency and culpability); required to pay taxes, comply with employment law, and satisfy contractual obligations.	Yes — Immigration status classified as a "privilege" subject to plenary congressional power; removal proceedings characterized as civil (non-punitive) despite detention and deportation; limited judicial review under plenary power doctrine.	Yes	5th Amend. Due Process; 14th Amend. Equal Protection; Plenary Power Doctrine tension with individual rights

KEY FINDINGS

Across all eight legal domains examined, a consistent structural pattern emerges: the regulated entity is treated as possessing full legal capacity when the state seeks to impose obligations — taxation, criminal liability, contractual duties, and regulatory compliance — but is simultaneously

treated as a regulable object or holder of mere "privileges" when the entity seeks to assert the rights that necessarily accompany that capacity. This pattern is not incidental. It is the **structural asymmetry** that the Capacity-Property Framework identifies and that the constitutional provisions cited above prohibit. The asymmetry is present in every domain surveyed, is outcome-determinative in each, and operates to the systematic disadvantage of the regulated entity. No domain examined presents a case in which the entity is treated as property for purposes of burden-imposition while being accorded full capacity for purposes of rights-assertion. The asymmetry is unidirectional: capacity for burdens, property for rights.

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IV. The Capacity-Property Test — A Proposed Judicial Standard

A Framework for Identifying Structural Classification Asymmetry

The following test provides courts with a structured, sequential method for determining whether a regulatory scheme imposes an unconstitutional classification asymmetry by treating a regulated entity as possessing legal capacity for purposes of burden-imposition while denying that same capacity for purposes of rights-assertion. The test is modeled on the analytical structure of established multi-step judicial frameworks and is designed to be applied across substantive domains — including taxation, licensing, criminal law, employment, and regulatory compliance — wherever the capacity-property asymmetry is alleged.

The Five-Step Test

Step 1: Capacity Identification.

Does the regulatory scheme at issue recognize the entity as possessing legal capacity in any domain? The court examines whether the scheme treats the entity as a juridical actor capable of bearing legal obligations. Indicators of capacity recognition include: (a) the ability to enter binding contracts; (b) subjection to taxation as an income-earning or wealth-holding agent; (c) the power to hold, transfer, and encumber property; (d) exposure to criminal liability predicated on mens rea, scienter, or volitional conduct; and (e) recognition of the entity's consent as legally operative. If the scheme recognizes capacity in *any* of these domains, this step is satisfied, and the analysis proceeds to Step 2.

Step 2: Property Classification.

Does the same regulatory scheme simultaneously classify the entity, its rights, or its activities as regulable objects or privileges rather than vested rights? The court examines whether the scheme, in any context, treats the entity's interests as subject to unilateral state control without the protections accompanying capacity status. Indicators of property classification include: (a) characterization of licenses, authorizations, or permits as "privileges" rather than rights; (b) statutory or regulatory authority to revoke, suspend, or seize without prior adjudicatory hearing; (c) denial of standing to challenge the classification or its consequences; and (d) treatment of the entity's activities or assets as regulable objects in in rem or quasi-in-rem proceedings. If the scheme applies a property classification in *any* context where it has recognized capacity in Step 1, this step is satisfied, and the analysis proceeds to Step 3.

Step 3: Asymmetry Analysis.

Is the classification shift outcome-determinative? The court determines whether the scheme invokes the entity's capacity when imposing burdens

but denies that capacity when the entity asserts rights. The inquiry is functional, not formal: the question is not whether the statute uses the word "privilege" but whether the practical operation of the scheme selectively invokes capacity for obligations while denying it for protections. If the classification shift determines whether the entity receives constitutional protection — such that capacity is recognized in enforcement proceedings but denied in the entity's affirmative claims — then a **prima facie asymmetry** exists, and the burden shifts to the government at Step 4.

Step 4: Justification Scrutiny.

Can the government articulate a compelling, non-circular justification for the classification differential? The burden of production and persuasion rests on the government. The justification must satisfy two requirements: (a) it must be **non-circular** — the government may not justify the property classification by reference to the classification itself (*e.g.*, "it is a privilege because we classified it as a privilege" is *per se* insufficient); and (b) it must be **independently compelling** — the government must identify a substantive governmental interest that requires the differential classification and demonstrate that the asymmetry is narrowly tailored to serve that interest. Mere invocation of "police power," "public interest," or "regulatory authority" without particularized justification is insufficient. If the government fails to carry this burden, the asymmetry is unconstitutional, and the court proceeds to Step 5.

Step 5: Remedy Determination.

If the asymmetry is unjustified, the court must select the appropriate remedy to eliminate the classification incoherence. Two remedial paths are available:

- **(a) Leveling Up:** Extend the capacity classification to rights-assertion contexts, thereby according the entity the full protections — procedural due process, substantive due process, equal protection —

that accompany the capacity status the scheme already recognizes in burden-imposition contexts.

- **(b) Leveling Down:** Withdraw the capacity classification from burden-imposition contexts, thereby relieving the entity of obligations that presuppose a juridical status the scheme denies for purposes of protection.

Consistent with the principle that constitutional remedies should expand rather than contract the scope of rights, *see Sessions v. Morales-Santana*, 582 U.S. 47, 78 (2017), there is a strong presumption in favor of **leveling up**. Leveling down is available only where leveling up would create an irreconcilable conflict with a superseding constitutional provision or where the legislative structure demonstrates that the legislature would have preferred the narrower classification had it known the broader classification was required.

Application Notes

- **Burden of Proof.** At Steps 1 through 3, the burden rests on the challenging party to establish that the scheme recognizes capacity, applies a property classification, and that the resulting asymmetry is outcome-determinative. At Step 4, the burden shifts to the government to justify the differential. This allocation mirrors the framework in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and strict scrutiny analysis, where the government bears the burden of justification once a prima facie case is established.
- **Cross-Domain Application.** The test is not limited to any single substantive domain. Courts should apply it wherever a party demonstrates that a regulatory scheme imposes capacity-based obligations in one context while denying capacity-based protections in another. The test applies with equal force in taxation, licensing,

criminal law, employment, immigration, environmental regulation, and any other domain in which the asymmetry is alleged.

- **Circularity as a Dispositive Indicator.** At Step 4, courts should be particularly vigilant for circular justifications. A justification is circular if it relies on the challenged classification as its own predicate — *e.g.*, "the entity has no right to a hearing because the license is a privilege, and privileges do not require hearings." Circular justifications are *per se* insufficient and require no further analysis: if the government's only justification is circular, the asymmetry is unconstitutional as a matter of law.
- **Leveling-Up Preference.** At Step 5, courts should give effect to the strong presumption favoring leveling up. The rationale is twofold: (1) the scheme has already recognized the entity's capacity in burden-imposition contexts, establishing that the entity *does* possess the juridical status at issue; and (2) leveling down would create the anomalous result of relieving the entity of legal obligations while leaving the underlying regulatory scheme intact — an outcome likely to frustrate legislative purpose. Leveling up, by contrast, harmonizes the scheme by extending protections to match obligations, preserving the regulatory structure while eliminating the constitutional defect.

V. Model Brief Paragraphs — Application to Tax, Licensing, and Regulatory Contexts

The following paragraphs are drafted for direct insertion into briefs or memoranda of law. Counsel should replace placeholder citations with binding authority from the relevant jurisdiction.

A. Tax Law

The Internal Revenue Code treats [Plaintiff] as a fully capable income-earning agent for all purposes of tax liability — [Plaintiff] is assessed income tax, self-employment tax, and excise taxes premised on the assumption that [Plaintiff] possesses the agency to earn, the capacity to report, and the competence to comply with the Code's intricate filing requirements. *See* 26 U.S.C. §§ 1, 61, 6012. Yet when [Plaintiff] seeks to assert the rights that accompany this recognized capacity — the right to a pre-deprivation hearing before levy, the right to challenge an assessment through impartial adjudication, the right to be free from arbitrary seizure of assets — the scheme reclassifies [Plaintiff]'s property as a mere collection object, subject to administrative levy without prior judicial authorization. *See* 26 U.S.C. § 6331; *[Party] v. Commissioner*, ___ T.C. ___, ___ (20__). Applying the Capacity-Property Test, Step 1 is satisfied because the Code recognizes [Plaintiff]'s capacity across every indicator; Step 2 is satisfied because the levy and seizure provisions treat [Plaintiff]'s assets as regulable objects; and Step 3 reveals that the classification shift is outcome-determinative — capacity is invoked to impose the tax, but denied to resist the collection. The government cannot offer a non-circular justification at Step 4: the rationale that "tax collection requires summary process" presupposes the very property classification that is challenged. The remedy under Step 5 is leveling up: extending full due process protections to the collection context,

consistent with *Mathews v. Eldridge*, 424 U.S. 319 (1976), and the Fifth Amendment's guarantee that no person shall be deprived of property without due process of law.

B. Occupational Licensing

The [State] occupational licensing scheme requires [Plaintiff] to satisfy rigorous competency requirements — professional education, supervised practice hours, written and practical examinations, continuing education, and ongoing ethical compliance — all of which presuppose that [Plaintiff] possesses the professional agency, cognitive capacity, and moral accountability of a fully capable juridical actor. *See* [State Code] §§ ___-___. Yet the same scheme classifies the resulting license as a "privilege" revocable at the discretion of [the Board], subject to summary suspension without pre-deprivation hearing. *See* [State Code] § ___; *[Party] v. [Board]*, ___ [State Reporter] ___, ___ (20__). The Capacity-Property Test exposes this asymmetry: [Plaintiff]'s capacity is recognized at Step 1 through the imposition of competency-based obligations; the property classification is established at Step 2 through the "privilege" characterization and summary suspension authority; and Step 3 confirms the asymmetry is outcome-determinative — [Plaintiff] is treated as a capable professional when compliance is demanded but as a holder of a revocable object when protections are sought. At Step 4, the government's justification — that "public safety requires expedited action" — fails the non-circularity requirement, because it presupposes that the license is a privilege that may be summarily withdrawn, which is the very classification under challenge. The appropriate remedy at Step 5 is leveling up: recognizing the license as a vested property interest entitled to pre-deprivation procedural due process under the Fourteenth Amendment. *See Barry v. Barchi*, 443 U.S. 55, 64 (1979).

C. Environmental / Regulatory Compliance

Under the [applicable environmental statute], [Plaintiff] bears comprehensive compliance obligations — emissions monitoring, discharge reporting, remediation planning, hazardous waste manifesting, and recordkeeping — all of which presuppose an entity with the organizational capacity, technical competence, and decisional agency to implement complex environmental management systems. *See* [42 U.S.C. § ___]; [40 C.F.R. § ___]; *[Party] v. [Agency]*, ___ F.3d ___, ___ ([Cir.] 20__). Yet when [Plaintiff] seeks to challenge a permit denial, a compliance order, or an administrative penalty, the scheme treats [Plaintiff]'s operating authority as a regulable privilege subject to unilateral agency modification. The agency may issue stop-work orders, revoke permits, or impose administrative penalties without adjudicatory hearing, treating [Plaintiff]'s operational status as an object to be regulated rather than a right to be protected. Applying the Capacity-Property Test: Step 1 is satisfied (capacity recognized through extensive compliance obligations); Step 2 is satisfied (permit characterized as privilege, subject to administrative revocation); Step 3 confirms outcome-determinative asymmetry (capacity for obligations, property classification for protections). At Step 4, the government must justify the differential without circularity — and the assertion that "environmental protection requires administrative flexibility" does not satisfy the compelling, non-circular standard because it relies on the unchallenged assumption that permits are privileges. The Step 5 remedy is leveling up: according [Plaintiff]'s permit the status of a property interest entitled to due process before revocation, consistent with *Goldberg v. Kelly*, 397 U.S. 254 (1970), and *[Party] v. [Agency]*, ___ U.S. ___, ___ (20__).

Appendix: Glossary of Key Terms

Term	Definition
Capacity (Legal)	The juridical status of an entity recognized by law as possessing the ability to act with legal effect — including the power to contract, hold property, bear liability, consent to obligations, and assert rights. Capacity is the foundational prerequisite for both the imposition of legal duties and the recognition of legal protections.
Property Classification	The legal characterization of an entity's rights, activities, authorizations, or interests as regulable objects or "privileges" rather than vested rights — thereby subjecting them to unilateral state control, modification, or revocation without the procedural and substantive protections that accompany vested-right status.
Structural Asymmetry	A systematic, non-reciprocal pattern within a regulatory scheme in which the classification of an entity shifts depending on the direction of state action — specifically, where capacity is invoked for burden-imposition and property classification is invoked for rights-denial. The asymmetry is "structural" because it is embedded in the design of the scheme rather than arising from isolated or ad hoc decisions.
Capacity-Property Asymmetry	The specific form of structural asymmetry identified by this Framework: the simultaneous treatment of a regulated entity as possessing full legal capacity (for purposes of imposing obligations) and as constituting regulable

Term	Definition
	property (for purposes of denying protections). This is the core doctrinal contradiction the Framework exposes.
Leveling Up / Leveling Down	Leveling up is the remedial approach of extending the capacity classification — and its accompanying protections — to the contexts in which the entity has been classified as property, thereby harmonizing the scheme by granting protections commensurate with obligations. Leveling down is the alternative remedial approach of withdrawing the capacity classification from burden-imposition contexts, relieving the entity of obligations that presuppose a status the scheme otherwise denies. Constitutional doctrine creates a strong presumption in favor of leveling up.
Unconstitutional Conditions	The doctrine providing that the government may not condition the grant of a benefit, privilege, or recognition of status on the recipient's agreement to waive or forgo the exercise of a constitutional right. In the Capacity-Property context, this doctrine is implicated when the state conditions capacity recognition (e.g., licensure) on the waiver of rights that would otherwise accompany that capacity (e.g., consent to warrantless inspections).
Circular Justification	A form of reasoning in which the government justifies a classification by reference to the classification itself, creating a logical tautology that provides no independent basis for the challenged action. Example: "The entity has no due process right

Term	Definition
	to a hearing because the license is a privilege, and privileges are not subject to hearing requirements." Circular justifications are per se insufficient under Step 4 of the Capacity-Property Test.
Prima Facie Asymmetry	An asymmetry that is established on its face through satisfaction of Steps 1 through 3 of the Capacity-Property Test — i.e., the challenging party has demonstrated that the scheme recognizes capacity, applies a property classification, and that the classification shift is outcome-determinative. Once a prima facie asymmetry is established, the burden shifts to the government to justify the differential at Step 4.

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— END OF LITIGATION ARTIFACT PACKAGE —

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