ORIGINAL

In the
Supreme Court of Ohio

CITY OF CLEVELAND,	:	Case No. 2008-2230
	:	
Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
DESTINY VENTURES, LLC,	:	
	:	Court of Appeals Case
Appellant.	:	No. CA-08-091018
	:	

BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL RICHARD CORDRAY IN SUPPORT OF APPELLEE CITY OF CLEVELAND

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INTRODUCTION

Because of the inchoate nature of corporations—that is, the fact that they cannot be arrested and physically brought to justice—the Ohio General Assembly enacted R.C. 2941.47, which allows a corporation to be tried *in absentia* if it fails to respond to a criminal summons. The statute is one of the only tools available to deter corporations from avoiding legal accountability and to hold corporations accountable when they do flout the justice system.

As a testament to the deterrent power of R.C. 2941.47, there are scant few cases discussing the statute, even though it has existed in its current form since 1953. As a result, most of Ohio's corporate citizens are respectful of and responsive to the justice system. But that is not the case with Destiny Ventures and various other corporations that have sought to capitalize on Ohio's foreclosure crisis by buying up foreclosed properties in bulk and then trying to "flip" them for a quick profit. With little incentive to care for these properties—since they hope to sell them off quickly—these companies are often cited for housing code violations. For several years now, many of these companies have been disregarding the criminal summonses issued by Ohio's housing courts and failing to appear on the designated trial date. Several of these companies have therefore been tried *in absentia* pursuant to R.C. 2941.47.

Destiny Ventures now claims that R.C. 2941.47 is unconstitutional because it violates a defendant's Sixth Amendment right to be present at trial; but that is wrong. It is well-established that a defendant can waive its Sixth Amendment right to be present in a variety of ways, including by its knowing absence from trial. It is also well-settled that the constitutional rights of corporations are often more limited than those of natural persons, since a corporation's liberty is never at stake and since the corporate status could otherwise easily be exploited to avoid legal accountability. Indeed, 27 other States have statutes or rules similar to R.C. 2941.47, and none has been found to violate the Sixth Amendment.

For these reasons and for the reasons set forth below and in the brief of the City of Cleveland, this Court should affirm the decision of the Eighth District.

STATEMENT OF AMICUS INTEREST

The Ohio Attorney General is Ohio's chief law officer and therefore has a strong interest in ensuring that Ohio's laws are properly applied. R.C. 109.02. The Ohio Attorney General also has a strong interest in ensuring that state and city officials have the tools necessary to hold corporations accountable for their criminal conduct. The inchoate nature of corporations—that is, the fact that they cannot be arrested and physically brought to justice—should not allow them to flout Ohio's criminal justice system. The Ohio Attorney General's interest in these matters is particularly acute in cases like this one, where the corporation's behavior exacerbates the damage caused by Ohio's foreclosure crisis.

STATEMENT OF THE CASE AND FACTS

The Ohio Attorney General adopts the statement of the case and facts presented by the Eighth District and in the brief of Appellee, the City of Cleveland.

Also relevant to this case is a broader constellation of facts regarding Ohio's foreclosure crisis and the role that real estate wholesalers, like Destiny Ventures, have played in the deterioration of Ohio's cities. These facts are vital to understanding why trying corporations *in absentia* under R.C. 2941.47 is one of the most important—and one of the only—tools for holding companies like Destiny Ventures accountable for the havoc they are wreaking on Ohio's neighborhoods.

A. Ohio's Foreclosure Crisis and the Role of Real Estate Wholesalers

Ohio's position at the forefront of the national foreclosure crisis has been well documented. See generally, POLICY MATTERS OHIO, *Foreclosure Growth in Ohio 2009*; MORTGAGE BANKERS ASSOCIATION, *National Delinquency Survey, Fourth Quarter 2008*, Special Summary Edition,

p. 3. As far back as 2002, Ohio began seeing an alarming growth in foreclosure filings. See generally POLICY MATTERS OHIO, *Home Insecurity 2004: Foreclosure Growth in Ohio*, 2004. But as distressing as the totals for new foreclosure filings were in the first years of the crisis, those numbers now pale in comparison to current levels. Whereas there were just under 45,000 new foreclosure filings in 2002, there were approximately 85,782 in 2008. *Foreclosure Growth in Ohio 2009*, at 1.

The cost of this crisis to individuals has been immense—the loss of homes, the displacement of families, and the dissipation of assets and credit are just a few examples. More recently, however, the devastating cost to *communities* has also come into focus, and that is the stage on which this case plays out.

Municipalities around Ohio that have been hit hard by foreclosures now face masses of vacant properties that are overtaking their neighborhoods. After foreclosure, most of these vacant houses are owned by the lenders who foreclosed on the properties or by real estate wholesalers, like Destiny Ventures, who are "sweeping in to pick up houses in bulk, as if they were trading in baseball cards." See Alex Kotlowitz, *All Boarded Up*, N.Y. TIMES MAGAZINE, Mar. 8, 2009, p. 28.

But these lenders and wholesalers are often neglectful property managers. Accordingly, a vast number of these vacant homes fall quickly into disrepair, dragging down surrounding property values where homeowners remain and providing cover for those who use the empty houses for criminal activity. *Id.* Looters raid vacant and unsecured homes to strip them of appliances and copper piping, and gangs and other criminals capitalize on the cover and anonymity of vacant properties. Violent crime has also increased in areas with high foreclosure rates and where remote corporate property owners neglect to maintain and secure the properties

that they own. See Dan Immergluck & Geoff Smith, *The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime*, HOUSING STUDIES, Vol. 21, No. 6, 851-866, at 863 (Nov. 2006). In 2008, for instance, the Slavic Village neighborhood in Cleveland experienced 60 fires in neglected post-foreclosure homes. See Kotlowitz, *All Boarded Up*. Not only have these problems destabilized once-vibrant communities, but they also hamstring the prospects for re-selling these properties to residential homeowners.

What is even more tragic and insidious is that neglected post-foreclosure homes have now become a lethal problem for Ohio. In the City of Cleveland alone, there have been at least three murders attributable to the explosion of vacant and neglected post-foreclosure houses. In 2007, 12-year-old Cookie Thomas was shot from a stray bullet during a gang fight. The gang had been using one of the neighborhood's vacant houses to store its weapons. See Les Christie, *Crime Scene: Foreclosure, Cleveland's mortgage meltdown has sparked a crime wave in the nation's hardest hit area for troubled homeowners*, CNNMONEY.COM, Nov. 17, 2007.[1] That same year, Joe Krasucki was beaten to death on his 78th birthday as he tried to stop looters from stripping the aluminum siding off of his house after they had finished stripping the vacant house next door. See James Rokakis, *The Shadow of Debt*, WASH. POST, Sept. 30, 2007, at B01. And in March 2008, Cleveland Police Officer Derek Owens was killed after chasing criminals from a vacant house. See *Cleveland Officer Slain, Man 19, Is Arrested After Massive Manhunt*, CLEVELAND PLAIN DEALER, Mar. 1, 2008, at A1.

B. The Enforcement of Housing Codes

City officials, police, residents, and judges across Ohio are struggling to stem the ruin caused by neglected post-foreclosure properties owned by lenders and real estate wholesalers.

[1]http://money.cnn.com/2007/11/16/real_estate/suprime_and_crime/index.htm?postversion=2007111908, last visited May 4, 2009.

But there are few tools for holding these owners accountable for their vacant and decaying houses. However, in Cleveland today, and in other Ohio cities, one tool that can keep a city from disintegrating is the city's housing code.

Housing codes, which were established in the mid-19th century, set minimum standards for housing quality and thereby help maintain a city's safety and aesthetics. In 2007, Cleveland's housing court judge began noticing that lenders and real estate wholesalers routinely failed to show up in court after being cited for code violations. But the inchoate nature of corporate entities makes it almost impossible to compel them to respond to a criminal summons. Indeed, criminal summonses against corporations are mostly ineffective, since corporations (unlike natural persons) cannot be arrested, and since many corporate officers live out of state, beyond the reach of state and city law enforcement officials. This predicament makes it simple for companies like Destiny Ventures to thumb their noses at Ohio's housing codes and its courts—and that is exactly what these companies have been doing.

It is in this light that the Court should view the power to try corporations *in absentia* under R.C. 2941.47 after they fail to respond to a criminal summons. Simply put, the statute was promulgated for exactly this type of problem, and it provides one of the only tools that Ohio officials have to compel corporations to respond to criminal summonses. More immediately, it is one of the only tools available to hold lenders and real estate wholesalers accountable for the masses of vacant properties that they neglect and that are devastating Ohio's communities.

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law:**

It does not violate the Sixth Amendment to try a corporation in absentia after it fails to appear in response to a criminal summons.

Destiny Ventures' sole claim is a facial constitutional challenge to R.C. 2941.47. The company claims that it violates the Sixth Amendment to try corporations *in absentia* when they fail to appear for trial in response to a criminal summons. That claim is meritless.

This Court has repeatedly held that "[a]ll statutes enjoy a presumption of constitutionality" and that Destiny Ventures must therefore prove "beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *Burnett v. Motorists Mut. Ins. Co.*, 118 Ohio St.3d 493, 2008 Ohio 2751, at ¶ 28 (quotation and citation omitted).

It is well-settled that a defendant's Sixth Amendment rights are tempered by the practical aspects of conducting a criminal trial, and that a defendant can forfeit its right to be present by failing to appear. Contrary to Destiny Ventures' claim, there is nothing controversial about limiting a corporate defendant's right to be present at trial after the corporation fails to respond to a criminal summons. In fact, at least 27 other States have statutes or rules similar to R.C. 2941.47, and not a single one has been found to violate a corporate defendant's Sixth Amendment rights.

Destiny Ventures' reliance on Ohio Crim. R. 43(A) is also mistaken. The company suggests that the rule creates a substantive right to be present that can only be waived "in writing or on the record." But Rule 43(A) is only a *procedural* rule, and the Modern Courts Amendment to the Ohio Constitution is clear that Ohio's criminal rules cannot "abridge, enlarge, or modify any *substantive* right." Section 5(B), Article IV, Ohio Constitution (emphasis added). Where a procedural rule conflicts with a statute, the rule controls for procedural matters, but the statute

controls for matters of substantive law. Here, R.C. 2941.47 defines the substantive rights of corporations to be present at trial and provides that there is no right to be present if the corporation fails to appear on or before the return day of the summons. Accordingly, as to a corporation that has failed to appear and no long possesses a substantive right to be present at trial, the procedures in Ohio Crim. R. 43 are inapplicable.

For all of these reasons, and the reasons below, Destiny Ventures' constitutional claim has no merit. This Court should therefore affirm the judgment of the Eighth District.

A. The Sixth Amendment right to be present at trial is not absolute and can be waived in a variety of ways, including when a corporate defendant fails to appear in response to a criminal summons.

The right to be present at trial arises from the Confrontation Clause of the Sixth Amendment. *United States v. Gagnon*, 470 U.S. 522, 526 (1985) (per curiam); *Illinois v. Allen* (1970), 397 U.S. 337, 338. But it is well-established that this right is not absolute and can be waived. *Allen*, 397 U.S. at 342 (the suggestion that a trial cannot proceed in a defendant's absence "ha[s] been expressly rejected."). Moreover, contrary to Destiny Ventures' unsupported claim, the U.S. Supreme Court long ago resolved that, for Sixth Amendment purposes, the waiver does *not* have to be express or on the record, but rather can be triggered by a defendant's behavior. For instance, in *Taylor v. United States,* 414 U.S. 17, 19-20 (1973) (per curiam), the Supreme Court held that even if the defendant has not given express consent to conducting the trial in his absence, "mere voluntary absence from . . . trial" may constitute "effective[] waiver" of the right to be present. See also *Smith v. Mann* (2d Cir.), 173 F.3d 73, 77, *cert. denied* (1999), 120 S. Ct. 200 (no Sixth Amendment violation where defendant "knew the precise time and place he was to appear for trial, and that the consequence of his failure to appear would be a trial *in absentia*). In *Illinois v. Allen*, the Court made clear that, even when a defendant insists on being present, he may be excluded from the courtroom if he behaves so disruptively as to prevent

the trial from proceeding. 397 U.S. at 343. And in *Gagnon*, the Supreme Court held that a defendant waived his right to be present at an *in camera* hearing when no objection was made at trial. 470 U.S. 522.

Although the Supreme Court's decisions in these cases did not involve a defendant who failed to appear for the beginning of trial, as is the case here, the reasoning of those decisions demonstrates that a waiver of the right to be present can just as easily occur in that context. Those decisions, and others, were based on the principle that a criminal defendant should not be allowed to defeat a trial by his own misconduct. Thus, in *Diaz v. United States*, 223 U.S. 442, 458 (1912), the Court stated:

> The question is one of broad public policy, whether an accused person, placed upon trial for crime and protected by all the safeguards with which the humanity of our present criminal law sedulously surrounds him, can with impunity defy the processes of that law, paralyze the proceedings of [the] courts and juries and turn them into a solemn farce. . . . Neither in criminal nor in civil cases will the law allow a person to take advantage of his own wrong. And yet this would be precisely what it would do if it permitted . . . an absconding from the jurisdiction ... to operate as a shield.

In *Taylor*, the Court similarly reasoned that "the governmental prerogative to proceed with a trial may not be defeated by conduct of the accused that prevents the trial from going forward." 414 U.S. at 20 (quotation and citation omitted). In *Allen*, the Court rejected the notion that a criminal defendant's right to be present extended so far as to "permit[] [the defendant] by his disruptive conduct indefinitely to avoid being tried on the charges brought against him." 397 U.S. at 346.

The principle that an accused's misconduct should not be permitted to prevent a trial on the charges is directly applicable here. Requiring courts to order an open-ended postponement of trial would reward the defendant's misconduct by preventing a trial "until the accused person himself should be pleased to permit it." *Diaz*, 223 U.S. at 457 (quotation omitted). The U.S. Supreme Court's decisions on the Sixth Amendment right to be present make clear that the Constitution does not require such a result and does not prohibit a court from trying a defendant,

like Destiny Ventures, that knowingly fails to appear for trial. In short, Destiny Ventures is mistaken in suggesting that the right to be present at trial is absolute. (Destiny Ventures Br. at 5-7.) It is not.

Indeed, given how well-settled it is that the Sixth Amendment right to be present can be waived by a defendant's behavior, the majority of States have codified the effect of a corporation's failure to respond to a criminal summons. At least 27 other States have statutes or rules similar to R.C. 2941.47 and allow a corporation to be tried *in absentia* if it fails to appear in response to a criminal summons. See Exhibit 1. In fact, in four of those States—Massachusetts, New Hampshire, New York, and Wisconsin—a corporation's failure to appear for trial results in an automatic default judgment or guilty plea. *Id.* By comparison, Ohio's statute, R.C. 2941.47, is more lenient, since it directs a court to enter a plea of "not guilty" and to proceed to trial. Significantly, none of the other 27 trial-in-absentia statutes or rules has been found to violate a corporate defendant's Sixth Amendment right to be present.

Finally, the specter of a constitutional problem is significantly diminished given that these statutes apply to *corporations*, and not natural persons. That is, because of the inchoate nature of corporations and the fact that their liberty is not stake in criminal proceedings, it is widely recognized that their constitutional rights are more limited than those of natural persons. For instance, while the Fourth Amendment protects corporations from unreasonable government searches and seizures, *Marshall v. Barlow's, Inc.* (1978), 436 U.S. 307, 325, "corporations can claim no equality with individuals in the enjoyment of a right to privacy." *United States v. Morton Salt Co.* (1950), 338 U.S. 632, 652. The Supreme Court regards this reduced Fourth Amendment protection as a kind of trade-off: in exchange for "the privilege of acting as artificial entities," corporations are subjected to "an enhanced measure of regulation" that entails a

diminished expectation of privacy. *Id.* Likewise, corporations do not enjoy a Fifth Amendment privilege against self-incrimination. *State v. Pussycat Cinex* (1973), 36 Ohio St.2d 108, 112 (citing *United States v. Kordel* (1970), 397 U.S. 1). Courts have recognized that restricting the Fifth Amendment privilege as to corporations is necessary to promote effective enforcement of federal and state laws and to prevent corporations from using their corporate status to avoid legal accountability. *United States v. White* (1944), 322 U.S. 694, 700; *Braswell v. United States* (1988), 387 U.S. 99, 115. Similarly, corporations appear to lack the right to a grand jury, which applies only where the defendant is accused of "capital or infamous" crimes. U.S. Const. 5th Am.; Ohio Const., Art. I., § 10. Infamous crimes are those punishable by imprisonment. *Mackin v. United States*, 117 U.S. 348, 352. Because corporations cannot be sentenced to prison, they cannot commit infamous crimes and do not have a right to a grand jury. Finally, corporations do not have a right to appointed counsel. For example, R.C. 120.16(A)(1) limits the appointment of counsel to individuals threatened with "the potential loss of liberty." The statute reflects both United States and Ohio Supreme Court case law, which has only found the right to appointed counsel where the charged crime is punishable by imprisonment—a penalty not applicable to corporations. See *State v. Gerwin* (1982), 69 Ohio St.2d 488, following *Scott v. Illinois* (1979), 440 U.S. 367.

These same concerns justify R.C. 2941.47 and the laws of the 27 other States that allow corporations to be tried *in absentia* after they fail to appear for trial. These laws are premised on the unique obstacles to bringing a corporation to justice in the criminal system. As with the limitations on a corporation's Fourth and Fifth Amendment rights, allowing corporations to be tried *in absentia* after they fail to appear for trial is the only way to deter corporations from using their corporate status to avoid legal accountability. Indeed, without the trial-*in-absentia* tool,

criminal summonses against corporations are mostly ineffective, since corporations cannot be arrested, and since many corporate officers live out of state, out of the reach of state and city officials. Thus, construing R.C. 2941.47 to authorize the trial of a corporation *in absentia* is logical as a matter of criminal procedure and policy, and comports fully with the reasonable limitations imposed on the constitutional rights of corporate defendants.

In short, it does not violate the Sixth Amendment to try corporations *in absentia* after they fail to appear for trial.

B. Whether or not the trial court should have granted a continuance in light of Destiny Ventures' purported attempt to seek counsel is irrelevant, because it is a prudential question not a constitutional one.

Destiny Ventures claims that the housing court "could have granted a brief continuance of the hearing" to enable it to retain counsel after it dispatched someone to the court on the day of trial to request an extension (although this person was not an attorney or a corporate officer, as the law requires). The company claims that the trial court's failure to grant a continuance deprived the company of its constitutional right to be present at trial. (Destiny Ventures Br. at 6-7.) But that claim is wrong, and it confuses a constitutional issue with a prudential one.

As discussed above, nothing in the Constitution prohibits a trial from proceeding in a corporate defendant's absence where the corporation has failed to appear in response to a criminal summons. While *prudential* concerns might animate the need for a balancing of interests before a trial court actually exercises its discretion to try a corporation *in absentia*, this balancing is not a *constitutional* imperative. *Smith*, 173 F.3d at 76-77. All that the Constitution requires is that the corporate defendant received the summons, had notice of the return date, and failed to appear through counsel or a corporate officer. That is exactly what happened here. Once Destiny Ventures forfeited its constitutional right to be present, the question of whether or not the housing court should have used its discretion to grant a continuance is only a prudential

one—not a matter of constitutional dimensions—and therefore not a question before this Court on appeal and not an issue that threatens the facial integrity of R.C. 2941.47.

In sum, because Destiny Ventures waived its right to be present at trial by failing to appear in response to the criminal summons, there is no merit to its constitutional claim and this Court should not credit the company's attempt to trump up a prudential issue into a constitutional one.

C. Ohio Crim. R. 43(A) does not prevent the trial of a corporation *in absentia* under R.C. 2941.47 where the corporation has failed to respond to a criminal summons.

Destiny Ventures' reliance on Ohio Crim. R. 43(A) is also misplaced. That rule does not apply to a corporation that has already waived its right to be present at trial by failing to respond to a criminal summons.

Ohio Criminal Rule 43(A) provides that a defendant must be physically present at trial unless, among other things, the defendant "waive[s], in writing or on the record, the defendant's right to be physically present." Destiny Ventures seems to suggest that Rule 43(A) creates a substantive right to be present. (Destiny Ventures Br. at 4-6.) That is wrong. Pursuant to the Modern Courts Amendment of the Ohio Constitution, the Ohio Rules of Criminal Procedure are exactly that—rules of *procedure*—and they cannot "abridge, enlarge, or modify any *substantive* right." Section 5(B), Article IV, Ohio Constitution (emphasis added). This Court has defined "substantive" as law that "creates, defines and regulates" the rights of a party. *Proctor v. Kardassilaris,* 115 Ohio St.3d 71, 2007-Ohio-4838, at ¶ 17. And where a procedural rule conflicts with a statute, the rule will control for procedural matters, but the statute controls for matters of substantive law. *Id.*

Here, R.C. 2941.47 defines the substantive rights of corporations to be present at trial. Pursuant to the statute, a corporation does not have a substantive right to be present if it fails to appear on or before the return day of the summons. Because a corporation has no substantive

right to be present if it fails to appear at the outset of a case, Rule 43(A)(3)—the procedure for waiving "the defendant's right to be present"—does not apply to that corporation. That is, having failed to appear, the corporation no longer possesses a substantive right to be present, and so the procedural rule governing waiver of such a right is inapplicable.

Accordingly, Rule 43(A) does not overcome R.C. 2941.47 and does not prevent the trial of a corporation *in absentia* where the corporation has failed to respond to a criminal summons.

* * *

In the final two paragraphs of its brief, Destiny Ventures momentarily steps away from its constitutional claim to argue that it is not subject to R.C. 2941.47 for sheer statutory reasons. (Destiny Ventures Br. at 8.) The company relies on the Eighth District's decision in *City of Cleveland v. Washington Mutual,* 8th Dist. No. 91379, 2008-Ohio-6956, which overturned penalties imposed after a *trial-in-absentia* on statutory (not constitutional) grounds. This Court should reject those claims because they have never been raised by Destiny Ventures and because the company's sole claim on appeal is that R.C. 2941.47 and the practice of trying a corporation *in absentia* is facially unconstitutional. However, should the Court nevertheless reach Destiny Ventures' eleventh-hour arguments regarding the proper application of the statute or the reasoning set forth in *Washington Mutual*, this Court should ensure that the resolution of those claims is detached from the constitutional analysis of R.C. 2941.47. For all the reasons set forth above, there is nothing at all unconstitutional about trying a corporation *in absentia* after it fails to respond to a criminal summons, as the statute prescribes. Accordingly, the Court should not replicate Destiny Ventures' mistake of conflating constitutional issues with statutory ones.

CONCLUSION

For the reasons above, R.C. 2941.47 is constitutional and this Court should affirm the judgment of the Eighth District.

Respectfully submitted,

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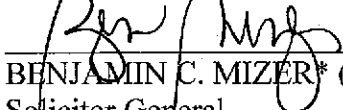

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I hereby certify that a copy of the foregoing Brief of *Amicus Curiae* Ohio Attorney General Richard Cordray in Support of Appellee City of Cleveland was served by U.S. mail this 22nd day of May, 2009, on the following counsel:

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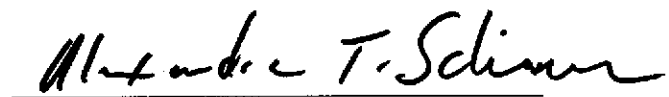

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EXHIBIT 1

Failure to appear results in entry of a plea of not guilty and trial

1) **Alabama Code § 10-7-3**

   "If the defendant corporation fails to appear and plead to the indictment, the court must cause the plea of not guilty to be entered for it, and the trial shall proceed as if the corporation had appeared and pleaded not guilty; but, in such case, proof must be made to the court that the person upon whom the notice and copy of the indictment were served was an officer or agent of the corporation authorized by law to receive such service."

2) **Alaska R. Crim. Pr. 4**

   "If a defendant corporation fails to appear after having been duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process. If the court is not so empowered it shall proceed as though the defendant has appeared."

3) **California Penal Code § 1396**

   "If [the corporation] does not thus appear, a plea of not guilty shall be entered, and the same proceedings had thereon as in other cases."

4) **Florida Statutes § 901.14**

   "If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued, and the court shall proceed to trial and judgment without further process."

5) **Georgia R. Crim. Proc. § 17-7-92**

   "At the trial, if the defendant corporation fails to appear, or appearing, fails to plead, the judge shall cause a plea of not guilty to be entered, and the trial shall proceed as though the defendant had appeared and pleaded. Upon the conviction of any corporation in any such trial, there shall be rendered against it a judgment for the fine imposed, together with the costs of the prosecution. Upon judgment, an execution shall issue against the property of the defendant."

6) **Hawaii R. Penal Proc. 9**

   "If a corporation or any legal entity other than a natural person fails to appear in response to a summons, a plea of not guilty may be entered by the court, and the court may proceed to trial and judgment."

7) **Idaho Code of Crim. Proc. § 19-3607**

   "If [the corporation] does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases."

8) **Indiana Code § 35-33-10-7**

"The court attendance of a corporation for purposes of commencing or prosecuting a criminal action against it may be accomplished by the issuance and service of a summons. (a) A corporation shall be deemed in attendance for purposes of commencing or prosecuting a criminal action against it whenever an officer, director or counsel for such corporation is present. If such officer, director or counsel fails or refuses to appear, the court shall proceed with trial and judgment."

9) **Illinois Code of Crim. Proc. § 107-13(c)**

"If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued, and such court shall proceed to trial and judgment without further process."

10) **Iowa Code of Crim. Law and Proc. § 807.4**

"If the corporation does not appear or plead at the time and place specified in the summons, the court shall make inquiry into the service of process, and being satisfied that same has been carried out as provided herein, the court may proceed with the matter without further process."

11) **Kansas Code of Crim. Proc. §§ 22-3209(4) and 22-2409(3)**

Sec. 22-3209(4): "If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty on behalf of the defendant."

Sec. 22-2409(3): "If, after being summoned, the corporation does not appear, the court shall proceed to trial and judgment without further process."

12) **Louisiana Code of Crim. Proc. art. 212(C)**

"If the corporation, or partnership, or other association of persons not incorporated, fails to appear as ordered, a plea of not guilty shall be entered by the court. Without further process, the trial shall be held and the court shall proceed to judgment and sentence as though the defendant had appeared."

13) **Maryland Code of Crim. Proc. § 4-203(d) and (e)**

"(d) Return of summons as appearance. -- (1) If a sheriff or other officer returns a summons served under this section as "summoned" or "served": (i) the corporation or limited liability company to whom the summons was issued shall be considered as in court and as appearing to the charging document; and (ii) the court shall order the clerk to enter an appearance for the corporation or limited liability company and to endorse a plea of not guilty on the charging document. (2) After the clerk makes the entry and endorsement specified in paragraph (1)(ii) of this subsection, further proceedings may occur concerning the charging document in the same manner as if the corporation or limited liability company had appeared and pleaded not guilty.

(e) Execution. -- (1) If a corporation or limited liability company is served a summons under this section and is convicted on the charging document, a court may: (i) pass a judgment concerning the charging document; and (ii) issue process of execution to the sheriff of the county against the property of the corporation or limited liability company for the amount of the fine and costs that may be awarded against the corporation or limited liability company in the same manner as on a judgment in a civil action. (2) A sheriff shall sell the property of the corporation or limited liability company on an execution under paragraph (1) of this subsection in the same manner as on an execution issued in a civil suit."

14) Minnesota R. Crim. Proc. 14.02

"If a defendant corporation fails to appear, the court upon proof of the commission of the offense charged may enter judgment of conviction and impose such sentence as may be appropriate."

15) Mississippi Code of Crim. Proc. § 99-9-7

"If the corporation shall not appear . . . then, on due proof of the mailing and publication, or of the publication, the court shall order the clerk to enter an appearance and plea of not guilty for said corporation, and, thereupon, further proceedings may be had on such indictment as if the corporation had appeared and pleaded thereto."

16) Montana Code of Crim. Proc. § 46-6-212

"If after being summoned the corporation does not appear, a plea of not guilty must be entered in accordance with 46-12-204 and the matter must proceed to trial and judgment without further process."

17) Nebraska Rev. Statutes § 29-1608

"Upon its failure to make [an] appearance and answer, the court clerk shall enter a plea of not guilty; and upon such appearance being made, or plea entered, the corporation shall be deemed thenceforth continuously present in the court until the case is finally disposed of."

18) New Jersey Court R. 3:3-1(f)

"A summons rather than an arrest warrant shall issue if the defendant is a corporation. If a corporation fails to appear in response to a summons, the court shall proceed as if the corporation appeared and entered a plea of not guilty."

19) North Dakota R. Crim. Proc. 4

"If a defendant corporation fails to appear in response to a summons, a magistrate who is empowered to try the offense for which the summons was issued must enter a plea of not guilty and may proceed to trial and judgment without further process; a magistrate who is not so empowered must proceed as though the defendant had appeared."

20) Oklahoma Statutes, Crim. Proc. § 22-1307

"If [the corporation] do[es] not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases."

21) Tennessee R. Crim. Proc. 9

"If a corporation, limited liability company, or limited liability partnership does not appear after being summoned, the court having jurisdiction to try the offense for which the summons was issued shall enter a not guilty plea and may proceed to trial and judgment without further process."

22) Texas Code Crim. Proc. art. 17A.07(b)

"If a corporation or association does not appear in response to summons, or appears but fails or refuses to plead: (1) it is deemed to be present in person for all purposes; and (2) the court shall enter a plea of not guilty in its behalf; and (3) the court may proceed with trial, judgment, and sentencing."

23) Virginia Code § 19.2-238

"A summons against a corporation to answer an indictment, presentment or information may be served as provided in §§ 8.01-299 through 8.01-301; and if the defendant after being so served fail to appear, the court may proceed to trial and judgment, without further process, as if the defendant had appeared, plead not guilty and waived trial by jury."

<u>Failure to appear results in verdict of guilty or default judgment</u>:

1) **Massachusetts Laws, Title II, Ch. 279, § 41**

"If a corporation, after being duly served with process, fails to appear and answer to an indictment or complaint brought against it under the laws of the commonwealth, its default shall be recorded, the charges in the indictment or complaint taken to be true, and judgment rendered accordingly."

2) **New Hampshire Crim. Code § 651:28**

"Whenever a corporation indicted under a statute fails to appear, after being duly served with process or an order of notice, its default shall be recorded, the charges in the indictment taken to be true, and judgment shall be rendered accordingly."

3) **New York Crim. Proc. Law § 600.20**

"Upon failure of appearance at the time such defendant is required to enter a plea to the accusatory instrument, the court may enter a plea of guilty and impose sentence."

4) **Wisconsin Statutes § 973.17**

"If a corporation or limited liability company fails to appear within the time required by the summons, the default of such corporation or limited liability company may be recorded and the charge against it taken as true, and judgment shall be rendered accordingly."