No. _____

In the Supreme Court of the United States

IN RE SEAN MURPHY, ET AL.,

Petitioners,

On Petition for an Extraordinary Writ of Mandamus to the United States Court of Appeals for the Sixth Circuit

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Russ Egli
THE EGLI LAW FIRM
11109 Lake Ridge Dr., FL3
Knoxville, TN 37934
(865) 304-4125
theeglilawfirm@gmail.com

Van R. Irion
Counsel of Record
LAW OFFICE OF VAN R. IRION, PLLC
800 S. Gay St., Ste. 700
Knoxville, TN 37929
(865) 766-4040
van@irionlaw.com

May 19, 2025 *Counsel for Petitioners*

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QUESTIONS PRESENTED

1. Whether the Sixth Circuit clerks had the authority to render judgment on dispositive motions without judicial review or proper delegation?

2. Whether the unauthorized actions of the Sixth Circuit clerks violates a litigants' right to have their case and controversy heard before a judge rather than a clerk?

3. Whether the Sixth Circuit erred in denying the Petitioner his right to a fair and accurate record on appeal pursuant to Fed. R. App. P. 10 when the evidence showing adulteration of the record was uncontroverted?

4. Whether the district court erred in failing recuse or assign the recusal for hearing to another judge violated § 144 and as a result the Petitioners' fundamental rights afforded under U.S. Const. amend. V?

PARTIES TO THE PROCEEDINGS

Petitioners

- Sean Murphy, on behalf of V.M., A.M., E.M., A.M.
- Denise Pagels, on behalf of V.M., A.M., E.M., A.M.

Respondents

- Farragut, TN
- Mayor Ron Williams,
  in both official and individual capacities
- Vice-Mayor Louise Poplin,
  in both official and individual capacities
- JA Fielden, Inc.
- Republic Newspapers, Inc.,
  d/b/a Farragut Press Enterprise
- Joe Fielden
- Kirk Swor
- Farragut Business Alliance, Inc.
- Biddle Farms Residential, LLC

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit

Nos. 24-5646/5678

Sean Murphy, et al v. Farragut, TN, et al

Date of Final Order: December 20, 2024

U.S. District Court for the Eastern Division of Tennessee, Knoxville

No. 3:23-cv-402

Sean Murphy, et al., *Plaintiffs*, v. Town of Farragut, et al. *Defendants*.

Date of Final Order: June 26, 2024

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JUDICIAL RULES

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

The petitioner respectfully petitions for an extraordinary writ of mandamus to review the judgment/orders of the Sixth Circuit Court of Appeals case managers and clerks and for the relief specified below.

The Clerk lacked authority under the Federal Rules of Appellant Procedure (FRAP), the Sixth Circuit Court of Appeals Local Rules and the U.S. Constitution to prepare, sign and enter a Joint Order dismissing the Petitioners appeal and denying the Writ of Mandamus requesting the Sixth Circuit issue a mandamus that the District Judge be recused, (Pet.App.1a), making it a legal nullity and therefore it is void. The Clerk's Joint Order is filled with misstatements and a false narrative further violating the Petitioners due process rights. Prior, the Sixth Circuit case manager issued a "Ruling Letter" and denied the Petitioners Motion to correct the trial court record under FRAP Rule 10 by mooting the motion, Pet.App.13a.

OPINIONS BELOW

The joint order prepared, signed and entered by the Sixth Circuit Court Clerk dismissing the Petitioners appeal and denying the Petitioners Writ of Mandamus requesting that the Sixth Circuit issue a mandamus that Judge Travis McDonough and Magistrate Jill McCook be recused from *Murphy, et al. v. Town of Farragut, et al.,* EDTN, 3:32-cv-402. Pet.App.1a. A prior

"ruling letter" entered by two Sixth Circuit Case Managers denying or "mooting" the Appellants motion to correct the record under FRAP Rule 10(e). Pet.App. 13a. The District Court Joint Order denying the Petitioners Rule 59 motion and Motion to Recuse. Pet.App.6a.

JURISDICTION

A Joint Clerk Order by the Sixth Circuit Court Clerk, dismissing Petitioners' Appeal and Writ of Mandamus was entered on December 20, 2024. Pet.App.1a. Thereafter, the Petitioners' sought to void the Clerks joint order in which the clerks refused to unlock the motion until May 9, 2025. Pet.App.59a. On March 12, 2025, Justice Kavanaugh granted an extension to file a petition for writ of certiorari until and including May 19, 2025. (No. 24A874). Upon further review, Petitioner has determined that a Petition for an Extraordinary Writ of Mandamus is a more appropriate filing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1651, the All Writs Act.

RULE 20 STATEMENT

Petitioner asks that this Court grant this petition and issue a writ of mandamus directing the following relief:

(i) That the Sixth Circuit to void the Clerk's Joint Order and correct the material misstatements in this case; and also that the Sixth Circuit ends its practice of permitting the Clerk to issue ruling letters.

(ii) That the judgment of the U.S. District Court, ED Tennessee be vacated, and that Judge McDonough be recused from the case.

The Petitioner has exhausted all other avenues of relief, having previously been denied a writ of mandamus by the Sixth Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The relevant constitutional provisions involved are U.S. Const. amend. I, V and XIV.
- The All Writs Act 28 U.S.C. § 1651(a) and both 28 U.S.C. § 455 and § 144.

STATEMENT OF THE CASE

This case involves an adulterated trial court record, as well as the Sixth Circuit appellate record directly impacting the Petitioners' rights afforded to them under U.S. Const. amend. V. Petitioners moved both the trial court and the appellate court to correct the trial court record and when it was denied they asked the appellate court itself to correct the record attaching uncontroverted evidence that the adulteration of the records in fact occurred. To add to this deprivation of fundamental liberties, the Sixth Circuit Court of Appeals clerks and case managers took it upon themselves to issue "ruling letters" without authority dismissing the Petitioners' motion to correct the record brought under Federal Rules of Appellate Procedure Rule 10(e), (Pet.App.13a) and in further deprivation of the rights the Sixth Circuit Clerk prepared, signed and issued a joint order dismissing the Petitioner appeal and denying the Petitioner writ of mandamus. Pet.App.1a.

The Clerk's Order is full of misstatements and a false narrative including falsely stating that the Petitioners did not timely file a Rule 59(e) motion that stated with particularity citing to *Intera Corp. v Henderson*, 428 F.3d 605, 611. Pet.App.1a. However, the Petitioners did file a timely Rule 59 seeking to set aside the Judgement in totality because it was not final and did not align with the facts. The Petitioners Motion also stated that further reasoning was to be set forth in the Memorandum of Fact, (Pet.App.24a), and unlike what the District Judge states in his Joint Order denying both the Petitioners Rule 59 Motion and Motion to Recuse the forty-nine page Memorandum was filed

within hours of filing the motion and the District Clerk entered an Administrative Order to refile in which the Petitioners did on May 15, 2024. Pet.App.59a. However, like the Clerk the District Judge misstates the law and the narrative stating the Memorandum of Law was not filed for days. Pet.App.24a.

This underlying case arises out of a conspiracy to defraud the United States Government and the American taxpayers of billions of dollars and a cover-up where the district court ignored federal felonies and promoted the theft of billions of dollars disregarding the rights of the Petitioners, Sean Murphy, his wife Denise Pagels, their four minor children and others similarly situated residents of the Town of Farragut ("TOF"). The Petitioners moved from Connecticut to Tennessee and purchased a home in the TOF, which is listed as one of the most expensive zip codes in Tennessee. Unfortunately, after arriving, Mr. Murphy uncovered corruption within TOF and in order to expose the corruption, the Petitioners exercised their First Amendment Rights. Mr. Murphy with support from his homeowner's association founded a political action group which would meet at the homeowner's clubhouse and discuss the corruption in TOF and in addition, would attend and speak at the TOF's Board of Mayor and Alderman ("BOMA") meetings and co-founded Uncontrolled Opposition™ and started the Farragut Free Press. Thereafter, Mr. Murphy launched a podcast for both media ventures. The articles and podcast discussed the corruption regarding mayoral campaign violations, unlawful rezoning and BOMA holding closed meetings to push through their unlawful agenda. The Murphy family also placed political yard artwork in their front yard.

To silence the Murphy family, TOF would gavel Mr. Murphy down when he attempted to speak at the BOMA meetings, blocked and censored Mr. Murphy from posting on various social media platforms, attacked and spread lies regarding Mr. Murphy, including making a false police report placing him in a false light, drove by the Murphy's home admittedly up to sixty times a month to the point that the Petitioners' minor children are afraid to go in their front yard, conspired with the Murphy's homeowners association to cancel the political action meetings, doxed the family's vehicle license plate, sent an armed officer to deliver a sign ordinance violation, sent a death threat in the U.S. Postal Service, and much more. On November 8, 2023, Petitioners filed suit against TOF and the other co-conspirators for violating their right to free speech, First Amendment Retaliation and for violating the Petitioners' and other similarly situated TOF resident's procedural and substantive due process rights under the Fourteenth Amendment. Chief District Court Judge Travis McDonough and Magistrate Judge Jill McCook were added to the case.

Finally, the district court violated the Petitioners due process rights by failing to recuse in the face of clear appearance of impropriety, thereafter adulterated the trial court record and refused to correct it to ensure the Petitioners would not prevail on appeal with the Sixth Circuit, falling in line with this same deprivation of fundamental liberties by failing to correct uncontroverted evidence of adulteration of the trial court record thereafter dismissing both the appeal and writ of mandamus by the Sixth Circuit clerks.

A. Background

1. This Court has the authority over the local rules of the circuit courts, as well as the lower federal courts. This authority stems from the Judicial Conference of the United States, which drafts rules that are then submitted to the Supreme Court for adoption. While circuit and circuit and district courts can also create their own rules, they must be consistent with the general rules established by the Supreme Court.

2. 6th Cir. R. 45 addresses the orders that a clerk may enter or otherwise dispose of without submission to the court or appellate justices, unless otherwise directed.

3. The federal courts of appeals review district courts orders and judgements on the basis of a closed record which is limited to materials in the record when the district court made the decision under. *See e.g., Fassett v. Delta Kappa Epsilon,* 807 F.2d 1150, 1165 (3d Cir. 1986). This limitation is "fundamental" because appellate courts "lack the means to authenticate documents" and must rely on the district court's designation of submitted documents as part of the record. *See Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003).

B. Procedural History

1. The Petitioners filed their lawsuit on November 8, 2023 and on February 9, 2024, the Plaintiffs filed a motion for spoliation and despite the docket now showing it was heard or decided it was not making the case non-final. App.41a.

2. On April 15, 2024, the District Court while the Petitioners' Motion for Spoliation was pending, entered an Order/Opinion dismissing Petitioners' Complaint.

However, it was not a final Order and did not address all the Plaintiffs nor all the Plaintiffs individual claims. The Court's Order/Opinion also misstated the averments of the Petitioners' Complaint, refers to facts that were not pled, did not address all the Petitioners' claims including the TOF's residents' and the Petitioners' Fourteenth Amendment due process rights claims. Instead injecting its own falsehoods and narratives into the factual averments of the case, opining falsely that while the Plaintiffs motion was filed within 28 days the memorandum was not and it was not filed until days later which is patently false. Pet.App.10.

3. Petitioners moved for the recusal of Judge McDonough under both 28 U.S.C. §§ 455(a) & 144. Section 144 of the Federal Rules of Procedure requires a judge to recuse if a party files a timely and sufficient affidavit showing personal bias or prejudice against the judge or in favor of any adverse party. The parties filed proper affidavits yet here again the District Court made up his own false facts again and stated that the declarations were not certified counsel. Pet.App.11a.

4. On June 26. 2024, the District Court entered a Motion denying both Petitioners' Rule 59 Motion and the Motion to Recuse which underscored Judge McDonough's inability to be impartial and provided further evidence of the District Courts complete disrespect for the FRCP and his Judicial Cannons.

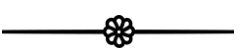
5. On July 16, 2024, pursuant to 28 U.S.C. § 1651, the Petitioners filed for a Writ of Mandamus which contained over 300 pages with exhibits.

6. On July 25, 2024, the Petitioners timely filed a notice of appeal and went through Mediation. Pet. App.59a.

7. Under the Federal Rules of Appellate Procedure, (FRAP), the Petitioners filed motions under both Rule 10 and 48, which a case manager ruled and denied or "mooted" in her capacity as a Clerk, not an Article III judge. Pet.App.16a.

8. On December 20, 2024, the Circuit Clerk, prepared, signed and enter a joint order to dismissing both the Appellees Appeal and their Writ of Mandamus seeking review of Judge McDonough's and Magistrate McCook's summary denial of the trial court recusal motion. Pet.App.1a.

9. On January 13, 2025, Petitioners filed a Motion to Void Mrs. Stephens Order. Pet.App.16a. The case manager refused to unlock the Petitioners' Order. Thereafter, the firm's legal assistant reached out to Mrs. Anne Brown, Operations Manager of the U.S. Courts of Appeals in which she ignored. Pet.App.15a. Thereafter, on May 9, 2025, the Sixth Circuit unlocked the Petitioners Motion to Void the Clerk's Joint Order and although the Docket Sheet states that the motion is for En Banc it is not as it is a motion to void the order. Pet.App.1a and 59a.



REASONS FOR GRANTING THE PETITION

Review is urgently needed to resolve conflicts between the Circuits. This case requires the Supreme Court to exercise its supervisory authority because the actions of the clerks of the United States District Court for the Eastern Division of Tennessee as well as the Sixth Circuit are in violation of a fundamental right to have a case or controversy heard and decided by a judge and impacts precedent on a matter of Federal Constitutional application, highlighting an ongoing circuit split as to the authority of clerks and whether they can opine on and render judgments on pleadings such as writ of mandamus and dispositive motions on appeal.

This Court has the authority over the local rules of the circuit courts, as well as the lower federal courts. This authority stems from the Judicial Conference of the United States, which drafts rules that are then submitted to the Supreme Court for adoption. While circuit and district courts can also create their own rules, they must be consistent with the general rules established by the Supreme Court. 6th Cir. R. 45 addresses the orders that a clerk may enter or otherwise dispose of without submission to the court or judge, unless otherwise directed. Because this case is an optimal vehicle for addressing the exceptionally important questions presented, the petition for a writ of mandamus should be issued to ensure that a continuing deprivation of litigants fundamental rights are addressed and stopped.

The Supreme Court opinion in *Offutt v. United States* is relevant to granting this petition. While the

case concerns summary criminal contempt and not recusal directly, it addresses the appearance of impropriety standard in the context of a judge's conduct during a trial. The Court states, "justice must satisfy the appearance of justice," and applies the rule from *Cook v. United States*, suggesting that another judge should preside over the contempt hearing due to the trial judge's personal entanglement with the attorney's misconduct. This highlights the principle that a judge should not sit in judgment where their impartiality might reasonably be questioned, even if there is no actual bias, thus supporting the idea that the appearance of impropriety is a considerable concern for the Supreme Court, especially with the current state of affairs regarding the judiciary. 28 U.S.C. § 455(a): "Any justice, judge, or magistrate judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned;" *see also* 28 U.S.C. § 144.

Supreme Court review of the instant case is also required to secure settlement of an important question of public interest. Specifically, this Court's determination of whether clerks of the federal courts may adjudicate and enter judgment on dispositive motions, as well as emergency writs when no authority exists in the rules to allow them to do so creating an emergency situation among the federal judiciary for violations of U.S. Const. amend. V. Left without review by this Court concerning the actions federal judicial clerks violating the duties of impartial judicial review will be free to repetition yet evade review. Elevating the importance of a writ of mandamus by this Court is the simple fact that this Country presently finds itself in a situation where many citizens of this Country have complete distrust of the federal judiciary due to recent

actions by Article III judges who are actively issuing orders to derail what the citizens of this Country voted for in 2024.

I. The Decision Below Creates a Critical Question as to Proper Recusal of Judges to Meet with Principles of Due Process, Adulterated Record on Appeal and the Authority of the Clerks to Opine on and Enter Orders.

A. Recusal Required.

A judge shall perform the duties of judicial office impartially, competently, and diligently. This document, specifically Canon 2 of the Model Code of Judicial Conduct, is highly relevant. It directly addresses the ethical obligations of judges, including the requirement of impartiality and the avoidance of even the appearance of impropriety. This is central to a legal argument for recusal based on the appearance of impropriety, as it establishes the ethical standard that the judge is expected to uphold. *see also* Canons 2.1, 2.2, and 2.3; *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988).

The Fifth Amendment guarantees that no person shall "be deprived of life, liberty, or property, without due process of law." Central to due process is the right to an impartial judge. As the Supreme Court has long held, even the probability or appearance of bias denies a fair hearing. Although § 455 of Title 28 uses the phrase "appearance of impropriety," the constitutional Due Process Clause similarly protects against circumstances that would lead a reasonable observer to question a judge's impartiality. Under *Caperton*, the test is objective: would the average person, fully

informed of the facts, have a legitimate basis to doubt the judge's neutrality? *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 877-78 (2009). This equally applies to evidence a litigant discovers after the judge denies recusal.

Several circuits have relied on Caperton's "objective probability" test to require recusal even where § 455 might not apply: *In re Mason*, 916 F.2d 384, 386–87 (9th Cir. 1990) (due process demands recusal where personal friendship could create an improper appearance); *In re United States*, 158 F.3d 26, 32 (D.C. Cir. 1998) (appearance of bias in hiring relationships), and *United States v. Antar*, 53 F.3d 568, 574 (7th Cir. 1995) (appearance of financial ties requires recusal under Due Process). Recusal based on appearance safeguards not only the litigants' right to a fair hearing, but also "public confidence in the integrity of the judicial process." *Tumey*, *Ward*, and *Caperton* all emphasize that justice must satisfy the appearance of justice.

B. The District Court Clerk Preparing, Signing, and Entering an Order to Dismiss the Petitioners' Appeal and Allowing the Respondents to File Motions to Dismiss and Denying the Petitioners' Right to Respond.

Where a court pretermits a litigant's right to respond to the allegations made against her it constitutes a deprivation of their due process rights to be heard on the matter. In the case at bar, the Sixth Circuit Court of Appeals granted the Respondents' motion to dismiss the Petitioners' appeal as of right from the district court and granted the same without providing

the Petitioners with their right to respond to the arguments made against them.

This Court's opinion in *Londoner v. City and County of Denver*, 210 U.S. 373 (1908), directly addressed whether a lack of notice and opportunity to be heard before an assessment violates due process. *Id.* The Supreme Court held that while the initial stages of the improvement process could occur without a hearing, due process requires that landowners be given notice and an opportunity to be heard before the assessment itself is made. *Londoner*, 210 U.S. 373 at 386. The court found that the plaintiffs in error were not afforded a hearing, and the assessment was therefore in violation of due process. *Id*.

This Court's opinion in *Mullane v. Central Hanover Bank & Trusty Co.*, also addressed the constitutional sufficiency of notice, a critical component of due process, in the context of judicial settlements. *Mullane v. Central Hanover Bank & Trusty Co.*, 339 U.S. 306 (1950). The Supreme Court explicitly states that due process requires "notice and opportunity for hearing appropriate to the nature of the case" before deprivation of property. The court emphasizes that notice must be "reasonably calculated" to inform interested parties and afford them an opportunity to object, thus supporting the argument that failing to provide such an opportunity violates due process.

In *Sterling Hotels, LLC v. Scott McKay*, the Sixth Circuit opined on the failure of a court to provide an opportunity to respond. *Sterling Hotels, LLC v. Scott McKay*, 71 F.4th 463, 467 (6th Cir. 2023). This case involved a building inspector that sealed the hotel's elevator for code violations and the hotel owner was provided no opportunity to be heard on the matter. *Id.*

The hotel brough suit arguing in part that the building inspector had violated its due process rights by failing to provide the hotel an opportunity to be heard in its defense. *Walsh v. Cuyahoga County*, 424 F.3d 520, 513 (6th Cir. 2005). The Sixth Circuit found that a deprivation of an opportunity to be heard to provide a defense was in fact violative of the hotel's claim and reversed the decision of the lower court as a result. In the case at bar the Sixth Circuit deprived the Petitioners of their right to be heard on the Respondents' motion to dismiss their appeal as of right and by doing so prevented the Petitioners from arguing that the trial court record was in fact adulterated thereby ratifying that due process violation by both the Sixth Circuit and the district court below.

C. Adulteration of the Trial Court Record, Sixth Circuit Record and Unauthorized Issuance of Orders by Sixth Circuit Clerks.

This case establishes with uncontroverted evidence that the district court and Sixth Circuit allowed an adulterated record on appeal in violation of the Petitioners due process rights.

In *Cunningham v. German Ins. Bank*, 103 F. 932 (6th Cir. 1900), the Sixth Circuit addressed a motion to dismiss an appeal based on the appellant's failure to file a "properly certified and full transcript of the record." *Cunningham*, 103 F.932 at 933. The court discussed the requirements for an appellate record, emphasizing that it should contain all papers and proceedings "necessary to the hearing" and that the appellee has a responsibility to point out deficiencies. *Id.* Although the court does not explicitly state a litigant is entitled to a true and accurate record, it implies this right by

outlining procedures for ensuring the record's completeness and accuracy and discussing the consequences of an incomplete record. *Id*. Thus, the court's discussion of what constitutes an adequate record and the process for supplementing it is relevant to understanding a litigant's rights regarding the appellate record before the Sixth Circuit. Here the Petitioners moved both the district court and the Sixth Circuit to correct the adulterated record on appeal and both summarily denied the same.

In *Frederick v. Wyndham Vacation Ownership, Inc.*, 2024 U.S. Dist. LEXIS 153692, 2024 WL 3955450, the District Court for the Middle District of Tennessee is informative as to the distinction between dispositive and non-dispositive motions. *Frederick v. Wyndham Vacation Ownership, Inc.*, 2024 U.S. Dist. LEXIS 153692, 2024 WL 3955450. Specifically, the case analyzes such motions and the role of magistrate judges, and by implication clerks, in handling them. *Id.* The court noted that motions to amend are generally considered non-dispositive, which magistrate judges can rule upon. *Frederick v. Wyndham Vacation Ownership, Inc.*, 2024 U.S. Dist. LEXIS 153692, at *3. Courts have uniformly held that motions to amend complaints are non-dispositive matters that may be determined by the magistrate judge and reviewed under the clearly erroneous or contrary to law standard of review. *Frederick v. Wyndham Vacation Ownership, Inc.*, 2024 U.S. Dist. LEXIS 153692, at *2-3, citing *Gentry v. The Tenn. Bd. of Judicial Conduct*, 2017 U.S. Dist. 83215, at *1 (M.D. Tenn. May 13, 2017).

Clearly, under general procedural and due process principles dispositive motions (*e.g.*, dismissals) must

undergo judicial oversight, not the administrative action of clerks.

Review is urgently needed to resolve the authority of the clerks of the court to sign and enter dispositive orders absent of judicial oversight.

CONCLUSION

For the foregoing reasons, the Court should issue a writ of mandamus directing the court of appeals to execute remedies (i) and (ii) as stated in the Rule 20 Statement, *supra.*

Respectfully submitted,

Van R. Irion
Counsel of Record
LAW OFFICE OF VAN R. IRION, PLLC
800 S. Gay St., Ste. 700
Knoxville, TN 37929
(865) 766-4040
van@irionlaw.com

Russ Egli
THE EGLI LAW FIRM
11109 Lake Ridge Dr., FL3
Knoxville, TN 37934
(865) 304-4125
theeglilawfirm@gmail.com

Counsel for Petitioners

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