App. No. ____ - _____

In the Supreme Court of the United States

JOHN A. GENTRY, PETITIONER

v.

THE TENNESSEE BOARD OF JUDICIAL CONDUCT;
STATE OF TENNESSEE; et al, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGEMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This is a profound case challenging Tennessee's sovereignty, being used as a cloak to usurp and subvert constitutionally protected rights and to protect corrupt interests. This petition presents the Court with **unique arguments of constitutional law**, and raises questions of constitutional and federal court authority, to effect reform of a state government that is no longer republican in character or form and has enacted into law, statutes that are unconstitutional, and which were enacted to protect corrupt conduct commonly occurring in the state's legal system.

The questions presented are:

1. Whether a state's sovereign immunity is vitiated when the state government is no longer republican in character or form.
2. Whether a citizen of a state has a right to effect reform of the state government through suit in federal court, when a state's constitution expressly guarantees its citizens an unalienable and indefeasible right to reform the government in such manner as they may think proper.
3. Whether constitutionally guaranteed rights are usurped when they are not enforceable in either state courts or federal courts, under false cloak of sovereign and judicial immunity even when a plaintiff seeks only equitable relief.

PARTIES TO THE PROCEEDINGS

John A. Gentry is the appellant in the court of appeals and was plaintiff in the district court.

Respondents, The State of Tennessee; Pamela Anderson Taylor; Brenton Hall Lankford; and Sarah Richter Perky were defendants in district court, and are presently appellees in the U.S. Court of Appeals For The Sixth Circuit. This matter is pending decision in the U.S. Court of Appeals For The Sixth Circuit.

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In the case styled Gentry v. Tennessee Board of Judicial Conduct; et al, Petitioner respectfully petitions for a writ of certiorari before judgement of the United States Court of Appeals for the Sixth Circuit, since this matter is of imperative and exceptional public importance.

OPINIONS BELOW

In the case styled Gentry v. Tennessee Board of Judicial Conduct; et al, the opinion of the Dist. Ct. dismissing that case is not yet published, but is included in appendix to this petition, See Appendix D. Since this petition is made before judgement, judgement has not yet been rendered by court of appeals.

In the related case styled Gentry v. Thompson, the court of appeals order affirming dismissal was labeled "**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**". The court of appeals order is included in appendix to this petition, See Appendix A.

JURISDICTION

In the case styled Gentry v. Tennessee Board of Judicial Conduct; et al, the matter is still pending decision United States Court Of Appeals For The Sixth Circuit. Pursuant to 28 U.S.C. §2101(e), an application for a writ of certiorari to review a case before judgment in the court of appeals may be made at any time before judgement. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and 28 U.S.C. §2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. See Appendix E through H, and K.

STATEMENT

Here before the Court is a matter of exceptional public importance, necessitating imperative of this Court to exercise its supervisory power so as to re-

institute the republican principles upon which our country was founded. In state court proceedings, Tennesseans are routinely subjected to federal law and rights violations and have no means to seek redress and no means to enforce constitutionally guaranteed rights. The government of the State of Tennessee has so far departed from the principles upon which our country was founded, the State has forsaken its republican character and subjects it people to absolute despotism. The facts of this case are undisputed and prove beyond any doubt the State is no longer republican in character or form.

In the case styled Gentry v. Thompson, Petitioner, hereinafter "Mr. Gentry", brought suit against Judge Joe H. Thompson for repeated and gross violations of due process under 42 U.S.C. § 1983. Not only did Judge Joe H. Thompson repeatedly and grossly violate Mr. Gentry's rights, he also perpetrated federal crimes against him as follows: Conspiracy to violate rights, extortion under color of law, witness tampering, and subpoena evasion. Mr. Gentry humbly sought the protection of his state government which was wrongfully denied through intentional gross negligence and further conspiracy to deprive rights.

Mr. Gentry then sought redress and only equitable relief in federal court only to find his case dismissed by the Dist. Ct. under the Rooker-Feldman Doctrine (proven in error) with dismissal upheld in appellate court through erroneous abrogation of jurisdiction under sovereign and judicial immunities, See Appendix A. The uncontested facts of that case and decisions of the Dist. Ct. and 6th Cir. leave no doubt that a right of due process is no longer enforceable. The facts of that case and

the case styled Gentry v. Tennessee Board of Judicial Conduct; et al, prove that state court judges and legal professionals can violate rights and perpetrate federal crimes with impunity.

In the case styled Gentry v. Tennessee Board of Judicial Conduct; et al, Petitioner, hereinafter "Mr. Gentry", has brought suit against the State of Tennessee, et al., challenging corruption that routinely occurs at all levels of Tennessee's legal and judicial system, under various RICO and civil rights statutes and as a reform action under the State's constitution. State court judges routinely conspire with attorneys to perpetrate federal crimes, and violate protected rights. State agencies put in place to provide oversight and prevent this conduct: through conspiracy, and or, gross negligence, fail to provide any oversight, thus permitting such conduct to occur unchecked. So as to protect unconstitutional conduct and violations of federal laws by state officials, the state has enacted into law, unconstitutional immunity for rights violations, federal crimes, and other scandalous conduct by its state officials. ***Actus repugnans non potest in esse produci.***

The State has forsaken the republican form of government in character and form leaving no doubt the State must be reformed. These are not conclusory allegations but undisputed facts, which are well-evidenced in the record, state statutes, and Annual Reports of state oversight agencies.

Many of the grievances stated in our Declaration of Independence are the same injustices to which Tennessee litigants are routinely subjected. These "long

train of abuses and usurpations" provide sound justification for demanding reform, just as the grievances stated in our Declaration of Independence justified our independence from Great Britain. Due to the fact the state's constitution grants right to Mr. Gentry, to effect reform in such manner as he thinks proper, and further states that nonresistance is "absurd" (See Appendix K), Mr. Gentry must seek reform through the supervisory power of this Court. To prove this, let fair and impartial court consider facts and arguments of constitutional law as follows;

REASONS FOR GRANTING THE PETITION

I. Constitutionally Guaranteed Rights Are Unenforceable In Any Court And Under Any Circumstance

The undeniable fact that constitutionally guaranteed rights are no longer enforceable for Tennesseans, alone provides sound basis for this Court to exercise its supervisory power. No matter how heinous the crime or rights violation, Tennesseans cannot enforce their rights against state court judges, even when only seeking equitable relief. **(1)** If a citizen complains of rights violations or crimes perpetrated against them by a state court judge to the State's judicial oversight agency, The Tenn. Bd. of Judicial Conduct (TBJC), the complaint is wrongfully dismissed. The State does not dispute the fact that the TBJC dismisses 100% of complaints filed by non-legal professionals. **(2)** If suit is brought against the state court judge in state or federal court, the state asserts that "sovereign immunity" protects them in their official capacity and state and federal courts always dismiss these cases, even when only equitable relief is sought. **(3)** In both federal and state

courts, if suit is brought against a state court judge in his personal capacity, the state asserts "judicial immunity" protects them in their personal capacity, and again, the courts always dismiss these cases too, even when only equitable relief is sought. **(4)** If suit is brought against the state for rights violations, the same defense of "sovereign immunity" is used as a cloak to deny enforcement of constitutionally guaranteed rights. **(5)** If a Tennessean attempts to bring suit against a "governmental entity" for rights or federal law violations, the state has enacted unconstitutional statute providing false and unconstitutional immunity from suit (further evidenced below) as well the sovereign immunity defense.

The undisputed facts of this case leave no doubt that Tennesseans are provided no means to address grievances against the state or its officials for rights violations. This singular fact provides sound basis for this Court to assert its supervisory power.

II. Rights Violations And State Official Corruption Have Devastating and Far Reaching Consequences

In a recent Executive Order, our President recognized the harm caused by corruption as follows:

> **Human rights abuse and corruption undermine the values that form an essential foundation of stable, secure, and functioning societies; have devastating impacts on individuals; weaken democratic institutions; degrade the rule of law; perpetuate violent conflicts; facilitate the activities of dangerous persons; and undermine economic markets.** *Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,* December 21, 2017

These harms enumerated by our President, are the exact same harms Mr. Gentry has argued are the result of state court corruption, and why the State must be reformed. Since these same harms enumerated by our President are the same harms caused by corrupted state court proceedings, hereto is imperative for this Court to exercise its supervisory power **before judgement**.

III. The Constitution of Tennessee Guarantees An Unalienable And Indefeasible Right To Seek State Government Reform

The Const. of the State of Tenn., art I. Declaration of Rights, § 1 (See Appendix K) states;

> "That **all power is inherent in the people**, … **they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper**."

There is no doubt Mr. Gentry seeks to reform the government of Tennessee as evidenced in the record at; D. Ct. Dkt. No. 36, ¶¶ 9 – 11, PageID #1023, D. Ct. Dkt. No. 106, PageID #2428, and D. Ct. Dkt. No. 47, PageID #1369. Mr. Gentry plainly stated in his complaint that he seeks reform, and has asserted his right to reform the state government.

In the case, Marbury v. Madison, 5 US 137, 2 L. Ed. 60, 2 – Sup. Ct. 1803, quoting Blackstone: "*it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law,…"* (at 163). Further in the Marbury opinion, the Supreme Court plainly states the people have an original right to establish for their future government, such principles as shall conduce their

own happiness and federal courts have jurisdiction over unconstitutional conduct. (*id* at 176, 179)

Considering the evidence of the case proving multiple federal law violations and rights violations inflicted upon Mr. Gentry, unconstitutional state statutes enacted to protect corruption, and the Annual Reports of state oversight agencies evidencing intentional gross negligence, there is no doubt of the necessity of reform in the Tennessee government.

These rights and federal law violations are not unique to this case: they are routine practices by the State. Given the fact that 1.48 complaints against state court judges are filed **per day** with the Tennessee Board of Judicial Conduct (TBJC) D. Ct. Dkt. No. 36, ¶ 179 PageID #976, and D. Ct. Dkt. No. 90, Ex 1, PageID #1928 and #2058-2059, and the further fact that the state has enacted unconstitutional laws to protect the usurpation of constitutionally protected rights, the need to reform is undeniable. See D. Ct. Dkt. No. 106 and D. Ct. Dkt. No. 111, and Appendix E through H and K.

Moreover, the facts show that the TBJC only acts on complaints filed by members of the legal community, a distinct class of persons, dismissing all other complaints in violation of the Fourteenth Amendment Equal Protection Clause. **In and of itself, that failure to provide Equal Protection is sufficient harm to give Plaintiff standing**. As stated by the U.S. Supreme court in the case, *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville, FL* 508 U.S. 656, 113 – Sup. Ct. 1993.

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, **a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit**. (at 666).

In the case, Pacific States Telephone & Telegraph Co. v. Oregon, 223 US 118, 32 – Sup. Ct., 1912, the supreme court stated:

> … **to afford no method of testing the rightful character of the state government, would be to render people of a particular State hopeless in case of a wrongful government**. (at 146)

In Cruikshank, the Supreme Court stated: "*the very idea of a government, republican in form, implies a right of its citizens to petition for redress of grievances.*" *United States v. Cruikshank*, 92 US 542, 23 – Sup. Ct, 1876 (at 553).

In Tennessee, this right is guaranteed to its citizens in the state's constitution, Article I, Section 1 (Appendix K), thus sovereign immunity is irrelevant in a cause of action demanding reform. In *Cruikshank,* the Sup. Ct. acknowledged the separate governments of the separate states, were not sufficient for the promotion of the general welfare of THE PEOPLE, and established the United states to "secure the blessings of liberty." (at 550). The very purpose of our national government is to address state reform actions such as the one before the court today. Although the Court must accept a Plaintiff's allegations as true, *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 – Sup. Ct. 1974, the following unconstitutional laws leave no doubt that reform is required.

A. State Statute Providing Unconstitutional Immunity – TCA 29-20-205; *Actus repugnans non potest in esse produci*

State statute encoded in Tennessee Code Annotated (TCA) 29-20-205 (Appendix E), is repugnant to the principles upon which our Republic was founded. This law is self-incriminating, and prima facia evidence the state must be required to reform. Knowing that conduct such as; *"gross negligence, false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, infliction of mental anguish, invasion of privacy, civil rights violations, and malicious prosecution without probable cause,"* should all be anomaly conduct by governmental entities, this begs the question: "*Why would the State enact in statute, and provide immunity for conduct that should be an anomaly..., conduct for which redress should be available*?" The only answer to this question is that this conduct by state officials and "governmental entities" is not the occasional anomaly, but common occurrence, and the state seeks to protect its corrupt activities by unlawfully preventing suits against the state through the enactment of unconstitutional law.

The purpose of our legal system is to prevent not punish crime. By enacting TCA 29-20-205, the state removes all deterrent for such heinous conduct. For the state to nullify deterrent law by enacting a law providing unconstitutional immunities, and then through its oversight agencies to grossly and negligently dismiss all complaints made against state court officials (D. Ct. Dkt. No. 90, Ex 1, PageID #1928 and #2058-2059) demonstrates a profound necessity of reform. Here

before the court is undeniable evidence that the state has forsaken its republican form and character.

Moreover, the conduct of the state government is in violation of oath of office, and contrary to the well-being of the people, in violation of both state and federal constitutions. The Const. of the State of Tenn., art. X. § 2 (See Addendum K) states;

> Each member …, shall … take an oath … : I ____ do solemnly swear (or affirm) … that **I will not propose or assent to any bill**, vote or resolution, **which shall appear to me injurious to the people**, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this state.

Most certainly TCA 29-20-205, is injurious to the people, usurping their guaranteed right to bring suit against the state and seek redress for false arrest, malicious prosecution, civil rights violations, etc., etc. Tenn. Const. Art I § 17, states all courts shall be open for an injury done him in his lands, goods, person, or reputation (See Appendix K). TCA 29-20-205 usurps this right for redress of harms caused by the State.

In 1916, the United States Supreme Court affirmed in opinion, that a law "*must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.*" *United States v. Jin Fuey Moy, 241 U.S. 394, 401, Sup. Ct. (1916)*; see also *Clark v. Martinez, 543 U.S. 371, 380–81. Sup. Ct. (2005).* Here, TCA 29-20-205 is repugnant to the constitution. Again, ***Actus repugnans non potest in esse produci.***

B. State Statute Corrupting Due Process – TCA 24-9-101

TCA 24-9-101 (Appendix F) is a statute in violation of Amendment XIV, § 1 due process clause. Our entire system of jurisprudence rests on the well-established procedures of direct and cross-examination of witness testimony. TCA 24-9-101 unconstitutionally provides that certain persons are exempted from testifying at trial, but subject to subpoena to a deposition. In recent legislation, the state voted to expand the list of persons exempt from testimony through proposed legislation which makes licensed clinical social workers exempt from subpoena to trial. TCA 24-9-101 sets the stage for economically disadvantaged litigants to be subjected to one-sided deposition testimony. The likely and devastating outcomes resulting from unconstitutional legislation such as this are deprivation of due process, children wrongfully taken, persons wrongfully declared mentally unfit, etc. Such outcomes are the clear intent and purpose of this unconstitutional law.

The final clause of TCA 24-9-101, grants the state trial courts authority to award attorney fees to a party successfully defending against a subpoena to trial which is nothing more than an unjust punishment, and seizure of property without jury, inflicted upon a party merely seeking fair due process.

C. TCA 28-3-104 is Unconstitutional Under Both State and Federal Constitutions

"*Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action.*" *Wilson v. Garcia*, 471 US 261 - Supreme Court

1985, 471 US 261, 105, 1938, 85 L. Ed. 2d 254 - Supreme Court, 1985. "*The relative scarcity of statutory claims when § 1983 was enacted makes it unlikely that Congress would have intended to apply the catchall periods of limitations for statutory claims that were* ***later enacted by many States***." (at 278).

"*Thus, in considering whether all § 1983 claims should be characterized in the same way for limitations purposes, it is useful to recall that § 1983 provides "a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation*." *Mitchum v. Foster*, 407 US 225, 92 S. Ct. 2151, 32 L. Ed. 2d 705 - Supreme Court, (1972).

TCA 28-3-104(a)(1)(B) states: "…the following actions shall be commenced within one (1) year after the cause of action accrued: **Civil actions** for compensatory or punitive damages, or both, **brought under the federal civil rights statutes**" See Appendix G.

Suits brought under the federal rights statutes are brought in federal court, not state courts. Yes, the state legislatures have authority to enact law setting time limitations for civil suit for state law violations and torts. Yes, if the U.S.C. does not define a statute of limitations, federal courts turn to state statutes for time limitations in "like-kind" causes of action. Regardless of this precedence, states do not have authority to create statutes of limitations for federal laws. Only U.S. Congress has authority to set time limitations in statute on suits brought under federal law. TCA 28-3-104(B) is nothing more than an unconstitutional attempt by

the state to enact a federal law providing a time bar on suits brought forth under federal civil rights statutes in federal court. Due to the fact that this law explicitly states: "*Civil actions… brought forth under the federal civil rights statutes*": (1) this subsection of statute does not set time limitations on state suits brought in state courts under state law, (2) this law is expressly directed at federal suits brought in federal courts which makes this law unconstitutional. **Congress has never granted power to the various states to set time limit bars on suits in federal courts under federal laws, and TCA 28-3-104 does exactly that – and TCA 28-3-104 is therefore unconstitutional.**

Again, State of Tenn. Const., art. X. § 2 states:

> Each member …, shall … take an oath … : I ____ do solemnly swear (or affirm) … that **I will not propose or assent to any bill**, vote or resolution, **which shall appear to me injurious to the people**, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this state.

The state constitution explicitly states that legislators are to swear oath to not propose or asset to any bill which shall "appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to "**lessen or abridge their rights and privileges**", as declared by the Constitution of this state."

Tenn. Const., art. I. § 17 (See Appendix K) states:

> That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Clearly TCA 28-3-104 unjustly lessons and abridges remedy by due course of law, and administration of justice, and the legislators enacting TCA 28-3-104 are in violation of their oath of office, and therefore TCA 28-3-104 is unconstitutional under the State's constitutional provisions. It must be obvious that in enacting TCA 28-3-104, the state is circumventing the intent of congress's enactment of federal civil rights statutes and lessoning the right of its people to seek redress of harm caused by rights violations and discriminatorily privileged "certain professionals".

TCA 28-3-104 is also in violation of the equal protection clause of U.S. Const. Amend. XIV § 1, Tenn. Const., art. I. § 30, and U.S. Const. Art. I § 9. TCA 28-3-104(c) clearly grants special privilege to persons of "trust"; attorneys and CPA professionals, while denying that same "privilege" to medical professionals. The title alone of TCA 28-3-104 "Personal tort actions; actions against certain professionals" tells us TCA 28-3-104 is unconstitutional. "Certain Professionals"? What about other professionals? Why aren't other professionals provided equal protection of the law as required by U.S. Const. Amend. XIV § 1? TCA 28-3-104 is nothing more than a "special privilege" granted in violation of federal and state emolument clauses.

TCA 28-3-104 is in violation of U.S. Const. Amendment XIV, equal protection clause. TCA 28-3-104 (c)(1) states: "*Actions and suits against licensed public accountants, certified public accountants,* ***or attorneys for malpractice shall be commenced within one (1) year after the cause of action accrued****…*" Conversely, there is a larger deadline for medical malpractice lawsuits encoded in TCA 29-26-

116 (Addendum F): "*In no event shall any such action be brought more than three years after the date on which the negligent act or omission occurred…*" Considering that the professions of accountancy, medicine, and law are professions that are self-regulated, provide service to society, and require formal education and qualification, the statute of limitations provided in the law should be equal for these professions. Obviously, this law was enacted to eliminate legal malpractice suits, while preserving revenue streams to the legal profession from medical malpractice suits.

The unconstitutional immunities and shorter statute of limitations provided for in TCA 29-20-205 and 28-3-104, are also in violation of the emoluments clause, U.S. Const. art I § 9, in that persons holding office, and or, trust under them are granted special privilege and emolument.

TCA 29-20-205 is also in contradiction of TCA 28-3-104 which provides a one-year statute of limitations for false imprisonment, and malicious prosecution, etc. False imprisonment and malicious prosecution are most often tortious actions perpetrated by the state through its "governmental entities" (agents). To provide a statute of limitations in TCA 28-3-104 for false imprisonment and malicious prosecution, and then provide immunity from these torts in TCA 29-20-205 is contradictory law.

Here before the Court, evidenced by unconstitutional state statutes, is undeniable evidence proving the necessity of government reform, and that Mr. Gentry's case cannot be dismissed, pursuant to Tenn. Const. art. I § 1. These unconstitutional laws prove the state has conspired to interfere with civil rights, in

violation of 42 USC § 1985, against a distinct class of persons, typically high-earners. These unconstitutional laws are the catalyst and underlying cause that permitted the defendants of this case to conspire and inflict federal crimes upon Mr. Gentry and to deprive him due process and equal protection of the laws. Considering these unconstitutional laws and intent therein, the need for reform is undeniable.

IV. Eleventh Amendment State Sovereignty Is Vitiated When A State Government Acts Contrary To Federal And State Constitutions

A state's sovereignty is established through its constitutional authority.

> **Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not**. …, **the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority**. *Luther v. Borden, 48 US 1, 12 L. Ed. 581, - Supreme Court, 1849*.

Mr. Gentry has proven that the state has transformed itself from a sovereign government into a corrupt enterprise (See D. Ct. Dkt. No. 36, PageID #971 – 1005, D. Ct. Dkt. No. 111 PageID 2536, D. Ct. Dkt. No. 106 PageID 2442). The Supreme Court repeated in Sheehan, officials who knowingly violate the law are not entitled to immunity. *San Francisco v. Sheehan 135, 1765 – Sup. Ct., 2015 (at 1774)*.

The doctrine of judicial immunity exists to protect mistaken but reasonable decisions, not purposeful criminal conduct. Similarly, sovereign immunity is established by a state government republican in form and character. The state has clearly enacted several laws that are repugnant to our federal constitution: laws whose decipherable intent is to protect corrupt state court proceedings. The state's Office of Attorney General defends such conduct and takes no action to prevent

future unconstitutional and criminal conduct and the TBJC "looks the other way" and dismisses 100% of complaints. In so doing, the state effectively aides and abets rights and federal law violations and is guilty as principle, and no longer republican in character or form. In the Gentry v. Thompson case, the panel ruled Eleventh Amendment immunity extended to the defendant judge in that case (Appendix A). By the same logic, crimes committed by state agents and agencies reflect back, and extend to the state, resulting in the state's loss of republican character. A state that is no longer republican in form or character vitiates sovereign immunity just as a judge vitiates judicial immunity when acting criminally. To hold otherwise renders the people of a state hopeless in circumstance of a wrongful government as referenced in the Pacific States Telephone v. Oregon case above.

Herein, Mr. Gentry has provided sound legal argument that a state vitiates sovereign immunity when its agents and agencies act criminally and unconstitutionally. Collectively, with enactment of unconstitutional laws to protect unconstitutional and criminal behavior, the state has abandoned its republican character. Based on sound legal argument, Mr. Gentry seeks *First Impression* opinion on whether a state vitiates its immunity when it has forsaken its republican character.

V. A Suit Against The State With The State As Defendant And Judge Violates Due Process Clause

Const. of the State of Tenn., art I. Declaration of Rights, § 17 states: "That **all courts shall be open**; and every man, …, **shall have remedy by due course of law**,

and **right and justice administered without sale**, denial, or delay. **Suits may be brought against the state in such manner and in such courts as the Legislature may *by law* direct.**"

The state constitution clearly permits suits against the state. The phrases "*shall have remedy by due course of the law,*" "*and right and justice administered without sale*" and the Amendment XIV, U.S. Const., require a fair and impartial court in which to be heard. Both federal law, 28 U.S.C. § 455 – Disqualification of justice, judge, or magistrate judge, and Tennessee Supreme Court Rule 10: Code of Judicial Conduct Canon 2 Rule 2.11 **require a judge to disqualify in any proceeding in which the judge's impartiality might reasonably be questioned.**

Due to the fact that the State Constitution permits suits against the state, proceedings in a suit against the state must be conducted in accordance with the due process clause. Due process cannot be provided in a proceeding where the defendant is both defendant and judge. Mr. Gentry has proven that corrupt activities routinely occur in state court proceedings and he demands reform of the state's legal system. Mr. Gentry cannot possibly expect a fair and impartial hearing before a state court judge who may be a participant in corrupted state court proceedings. Tennessee Sup. Ct. Rule 10, Canon 2 Rule 2.11 requires state court judge disqualification in a case such as this. Therefore, due process requires his suit be heard by a fair and impartial federal court. The District Court's determination that a suit against the state cannot be brought in federal court unless a state's

constitution expressly provides for federal court jurisdiction is in violation of the due process clause.

VI. The Doctrine of Nonresistance is "Absurd" And The Intent Of The State's Congress To Permit Reform Actions Is Clear

Considering Sections 1 and 2 of Article I of the state's constitution, the intent of the state's constitutional convention in 1870 was obvious in establishing popular sovereignty and power inherent in THE PEOPLE. Joshua W. Caldwell, author of *STUDIES IN THE CONSTITUTIONAL HISTORY OF TENNESSEE*, and who had the "good fortune" to be acquainted with members of 1870 convention, conveyed this fact in his book. "*No Tennessean… fails to quote Mr. Jefferson's (Thomas) declaration that the Constitution was "the least imperfect and most republican of the state constitutions.*" Ironically, Caldwell tells us the records of the state indicate the most frequent and pronounced dissatisfactions with the government at the time were occasioned by the judicial system (p. 164) and quoting Governor Carrol's 1822 message to the general assembly "***A well regulated and independent judiciary is so essential to the character of the State… that it has a strong claim upon your attention at all times.***" (p. 169). In Tennessee today, the state is grossly negligent in regulating the judiciary, as evidenced in the Annual Reports of the Tennessee Board Of Judicial Conduct. This being essential to the character of the state, the state has forsaken its republican character and vitiated its sovereign immunity, thus necessitating reform. The intent of the state's congress and Mr. Gentry's right to seek reform through federal court intervention is unalienable and indefeasible.

VII. The Legal Profession Fails to Police Itself

Recently, state court judge Casey Moreland was arrested by federal authorities See D. Ct. Dkt. No. 72, 72-1, 72-2, 72-3 and, 72-4. Judge Moreland had been on the bench since 1998, and the TBJC admitted to the media, that multiple complaints to the board, against Judge Moreland had been received and dismissed. A USA Today reporter stated in her article: "*Documents suggest Moreland had continued control in those cases, and that may be* ***symptom of a larger problem***." See D. Ct. Dkt. No. 72-1 PageID #1700. Further in that article is a quote of David Cook, a former member of the TBJC: "*It could just be a bureaucratic mix-up, but it certainly has every appearance of a conflict and* ***does not inspire confidence in the judicial system***." *Id at PageID #1703.*

In a Tennessean news article, it was reported Moreland kept a list of 13 people on his iPhone labeled "witnesses" and he paid more than $6,000 so a woman would recant her allegations against Moreland and he plotted to have drugs planted in her car to be "discovered" in a staged traffic stop. D. Ct. Dkt. 72-2 PageID #1706. Judge Moreland's wife testified he moved out of their home due to infidelity allegations, was diagnosed with a depressive disorder in 2009, and struggled with mental illness and alcohol abuse *id at Page ID #1707.*

The fact that the TBJC received and dismissed multiple complaints against a judge of such character, evidences the state provides no objective oversight of its judiciary. The fact he remained on the bench since 1998, despite multiple complaints against him to the TBJC, evidences a profound need of reform.

Furthermore, the Office of the Attorney General & Reporter for the State of Tennessee, as counsel for the state in this case, has been noticed on all pleadings, motions, and memorandums filed into these cases. Knowing the facts of the case and federal crimes and rights violations perpetrated against Mr. Gentry, and codes of conduct violated, the Office of the Attorney General does not recommend any corrective actions against the perpetrators (state officials and attorneys in positions of public trust) of crimes and rights violations. Instead the Office of the Attorney General provides legal counsel for the perpetrators of crimes and rights violations and ignores the misconduct of attorney defendants.

Tenn. Sup. Ct. Rule 8: Rules of Professional Conduct, Rule 8.3(a) states: "*A lawyer who knows that another lawyer has committed a violation*" of the rules, "***shall inform*** *the Disciplinary Counsel of the Board of Professional Responsibility*." Rule 8.3(b) states: "*A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct … **shall inform** the Disciplinary Counsel of the Board of Judicial Conduct.*"

Through Mr. Gentry's evidence, facts, motions, memorandums, etc. in his cases before the MD Tenn. Dist. Ct. and Sixth Circuit, Mr. Gentry has made the Office of the Attorney General well aware of the misconduct of attorneys and judges. Despite clear knowledge of attorney and judicial misconduct, the Office of the Attorney General takes no action to inform the Board of Professional Responsibility or Board of Judicial Conduct. Due to this fact, state attorneys; Joseph Ahillen, Jaclyn L. McAndrew (Case No. 17-5204), Stephanie A. Bergmeyer and Attorney

General Herbert H. Slavery III, all attorneys with the Office of Attorney General & Reporter are in violation of Tennessee Supreme Court Rule 8. The same is true of counsel for the other Defendants, Attorneys William S. Walton, Lauren Paxton Roberts and Erika R. Barnes. They too are in violation of Tenn. Sup. Ct. Rule 8. The Preamble to Sup. Ct. Rule 8 states: "*The legal profession's relative autonomy carries with it special responsibilities of* ***self-government***." Clearly the legal profession is not policing itself in the State of Tennessee which necessitates reform.

It is understandable for the Office of Attorney General to defend the state and its agents against suit, but to also not recommend whatsoever any corrective action, to not report judicial and attorney misconduct, is nothing less than state endorsed commission of federal crimes and rights violations.

In D. Ct. Dkt. 16, Mr. Gentry raised this issue and motioned for the Attorney General to withdraw due to the facts that: (1) defending criminal and unconstitutional conduct is not in public interest, (2) the Attorney General has a duty to recover state funds used for improper actions by state officials and, (3) ethical issues resulting from obligation to dual interests. The Attorney General Herbert H. Slatery III himself responded: "*All decisions made by the Attorney General and Reporter are final and cannot be reviewed by* ***"any court,"*** *and certainly not by Plaintiff.*" See D. Ct. Dkt 17.

The statement "… cannot be reviewed by **"any court"** …" evidences the fact that the Attorney General is under the misconception that he is above judicial review even by this our highest Court. Here is clear evidence that the State and

Attorney General exempt themselves from the supreme law of the land further evidencing the state has lost its republican character and must be reformed expeditiously. Clearly the state and its Attorney General have forsaken the State's constitution art. I which establishes that power is inherent in THE PEOPLE.

Mr. Gentry also complained to the TBJC of judicial misconduct by the state court judge presiding over his case. His allegations were supported by undeniable evidence in certified court reporter transcripts and court orders. See Dist. Ct. Dkt. No. 19-1, PageID #100 – 155. As evidenced in the record: D. Ct. Dkt. No. 90-1, PageID #1928 and #2058-2059, all complaints filed against state court judges by non-legal professionals are dismissed as a matter of practice and intentional gross negligence, and so too was Mr. Gentry's complaint wrongfully dismissed. This barrier established by the TBJC, dismissing 100% of complaints filed by non-legal professionals, violates the equal protection clause of the fourteenth amendment: *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville, FL* 508 U.S. 656, 113 – Sup. Ct. 1993, and this fact alone provides standing to Mr. Gentry. Moreover, this fact, and the further fact that judges and attorneys are above the law, proves the necessity of state government reform.

As stated by Mr. Gentry in his complaint, "**The conduct of the State through its agencies, agents and arms of the state is no different than a law enforcement officer watching a gang rape and taking no action to stop such abhorrent behavior.**", D. Ct. Dkt No. 36 PageID #975. Mr. Gentry does not use the term "gang rape"

lightly, or to be overly dramatic. This term simply best describes the reality of the devastation caused by the TBJC's gross negligence. Indeed, the resulting symptoms of these rights deprivations and betrayal of public trust, inflicted by judges and attorneys, are very much similar to the symptoms of rape. Karin Huffer, M.S., M.F.T. has defined this trauma as Post Traumatic Stress Disorder in her book: LEGAL ABUSE SYNDROM.

As judges yourselves, who only "see" pro se litigants through court filings, and state court judges who only see litigants in court for short periods of time, it is likely that Courts cannot understand the emotional devastation that results from rights deprivations and federal crimes committed against parties by attorneys and judges.

Mr. Gentry does not contend that all members of the state's legal system engage in corrupt activities or that all proceedings are corrupt. Mr. Gentry alleges and has already proven that corrupt conduct does occur; and when it does occur, the state, through its agents and agencies intentionally **fails to provide proper oversight and protects such conduct**. A single occurrence of effectively state sanctioned corrupt conduct in state court proceedings suggests reform is needed. The facts that (1) 1.48 complaints are received per day by the TBJC and wrongfully dismissed, (2) unconstitutional state statutes were enacted to protect corrupt conduct, (3) a judge such as Judge Casey Moreland was allowed to remain on the bench despite multiple complaints, (4) judges and attorneys are not subject to the supreme law of the land and, (5) the Office of the Attorney General defends unconstitutional and criminal conduct, without recommending corrective action, demonstrates a profound need of

reform. In his complaint, D. Ct. Dkt. No. 36, PageID #1023, Mr. Gentry has sought the following redress:

- For the federal court to issue order upon the State to put in place proper legislation and oversight of the Board of Professional Responsibility, Board of Judicial Conduct, and the Court of Appeals;
- For the federal court to issue order causing dissolution or reorganization of the State's corrupt racketeering enterprises;
- For the federal court to issue order upon Defendant State of Tennessee to Provide Equal Protection under the law, and provide litigants due process in fair and impartial courts;

There is no doubt Mr. Gentry seeks reform of the state government and such right is guaranteed to him in the state's constitution, art. I § 1. As a Force Reconnaissance Marine (D. Ct. Dkt. 128, 128-1 through 128-13), and Certified Public Accountant, Mr. Gentry has the intellect and intestinal fortitude to withstand and survive state court corruption. Many others do not have this same strength, and fall as helpless victims to substance abuse and sometimes suicide as a result of state court corruption when it occurs. Mr. Gentry is prepared to present proof of this assertion at trial. **Mr. Gentry demands reform of the state in hope that others do not suffer the same emotional and financial harm inflicted upon him.**

This harm inflicted upon the people is not only harmful to the involved parties, it is harmful to the country as a whole. **In the present case, corrupt conduct during state court proceedings has adversely affected foreign and interstate commerce and our balance of trade, See D. Ct. Dkt. No. 36 PageID #936 - 937**. As a whole, corrupted state court proceedings adversely affect our nation's GDP. Mr.

Gentry has presented the court with compelling argument, "For The Good Of The People And In Public Interest" D. Ct. Dkt 109 PageID #2469 – 2477, that our nation's GDP output is adversely affected further evidencing that the state government must be reformed. See also Sixth Circuit DktEntry, 37-1 through 37-15.

Given the number of complaints filed against judges with the TBJC each day, and the facts that constitutionally protected rights are unenforceable in federal and state courts, this Court should exercise jurisdiction **before judgement** in the Sixth Circuit. Further given the emotional and financial harm arising from corrupt state court conduct and Tennessee litigants being forced to have their cases heard before courts without the protection of the fifth and fourteenth amendment provisions, further necessitates supervisory power of this Court before judgement.

The unconstitutional state statutes themselves cause recognized injury to the interests of the United States. See generally, Bowen v. Kendrick, 483 U.S. 1304, (1987), New Motor Vheicle Bd. v. Orrin W. Fox Co. 434 U.S. 1345, (1977), and see also Walters v. Nat'l Ass'n of Radiation Survivors, 468 U.S. 1323, 1324 (1984).

Furthermore, the continuing harm to Tennessee litigants being forced to have their cases heard in courts by judges with unconstitutional immunities must be resolved expeditiously so as to guarantee enforceability of constitutional rights.

VIII. This Court Should Exercise Its Supervisory Power

Pursuant to U.S. Sup. Ct. Rule 1(a), reasons for which review on a writ of certiorari is appropriate include when a United States court of appeals has so far

departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power. Petitioner respectfully suggests such is the case in this matter. During Dist. Ct. proceedings, Petitioner was repeatedly denied due process as follows: (1) wrongfully denied evidentiary hearing, (2) the Dist. Ct. refused to grant TRO to stop a federal crime in progress being perpetrated against him by Respondents TAYLOR and LANKFORD, (3) wrongfully denied amended complaint as a matter of course pursuant to Fed. R. Civ. P. R. 15(a)(1)(B), (4) wrongfully denied leave of court to amend, (5) **and the Magistrate's conduct toward Petitioner was such that it appears impeachable in nature**. See Appendix I, which is a memorandum Petitioner filed in Dist. Ct. that evidences the conduct of the magistrate that appears impeachable in nature. Petitioner complained in Dist. Ct several times about the conduct of the magistrate in Dict. Ct. DktEntries 112, 115, 117, 120, 121, and 125. This court should take note of the order by the Dist. Ct. Judge (Appendix D, footnote 1) where the Dist. Ct. Judge only referred to DktEntry 120. This and earlier statements by the Dist. Ct. Judge, suggest Petitioner's complaint in Dist. Ct. may have been dismissed by the Dist. Ct. Judge in an effort to protect the conduct of the Magistrate.

During appellate court proceedings, Petitioner sought disqualification of two active judges, due to profound personal bias. Petitioner also petitioned for initial hearing en banc. While the 6th Cir. was not in session, and only after two weeks filing, and during which occurred the Thanksgiving holiday, the two judges for whom disqualification was sought issued a defective "two judge panel" order, in

violation of 28 USC § 46(b), denying initial hearing en banc, and denying disqualification without stating any basis for denial whatsoever and without denying evidenced personal bias. See second motion to disqualify attached as Appendix J, evidencing further conduct of appellate court proceedings contrary to due process. As this Court knows, "A court may take steps to use the en banc power sparingly, **but it may not take steps to curtail its use indiscriminately**." *Western Pacific Railroad Corp. v. Western Pacific Railroad Co.* 345 US 247, 73 S. Ct. 656, 97 L. Ed. 986, (1953) (at 261).

There is no doubt the Dist. Ct. and the appellate court have departed from the accepted and usual course of judicial proceedings requiring the supervisory power of this court to ensure the integrity of our federal courts.

CONCLUSION

The Petition for writ of certiorari should be granted.

If this Court denies separate motion to proceed as a veteran and leave to proceed on papers, this Court should permit amended pleadings compliant with Sup. Ct. Rule 33.1 and sixty (60) days in which to prepare and file an amended brief.

DATED: February 11, 2018

Respectfully submitted,

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Appendix A

Sixth Circuit Order Affirming Dismissal – Related Case

Gentry v. Thompson

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-5204

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 14, 2017
DEBORAH S. HUNT, Clerk

JOHN ANTHONY GENTRY, Plaintiff-Appellant, v. THE HONORABLE JOE H. THOMPSON, Circuit Court Judge, Defendant-Appellee.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

O R D E R

Before: GUY, BATCHELDER, and COOK, Circuit Judges.

John Anthony Gentry, a pro se Tennessee plaintiff, appeals the district court's judgment dismissing his civil rights complaint under 42 U.S.C. § 1983 pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Gentry also moves the court to stay his state-court appellate proceedings pending resolution of his appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Gentry filed an amended complaint under § 1983 that alleged that the Honorable Joe H. Thompson, the judge who presided over his divorce in state court, violated his right to due process in those proceedings by repeatedly denying him his right to be heard, and through other alleged misconduct during the case. Judge Thompson moved to dismiss the complaint under Rule 12(b)(1) on the ground that Gentry's claims are barred under the *Rooker-Feldman* doctrine, or under Rule 12(b)(6) on the ground that he is entitled to absolute judicial immunity. *See*

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923). To the extent that Gentry sued him in his official capacity, Judge Thompson argued that Eleventh Amendment sovereign immunity barred Gentry's claims.

A magistrate judge issued a report and recommendation that concluded that the district court lacked subject matter jurisdiction over the complaint under *Rooker-Feldman*, and that Judge Thompson is entitled to absolute judicial immunity from suit in his individual capacity and to Eleventh Amendment sovereign immunity from suit in his official capacity. The district court denied Gentry's motion to strike the report and recommendation and adopted the magistrate judge's conclusion that the court lacked subject matter jurisdiction pursuant to *Rooker-Feldman*. Because of that conclusion, the district court declined to reach the question of absolute judicial immunity. The district court therefore dismissed Gentry's complaint with prejudice. The district court also denied Gentry's motion for an evidentiary hearing, his Rule 59(e) motion to alter or amend the judgment, and his Rule 15 motion to amend the complaint.

Gentry filed a timely notice of appeal. Gentry argues that the district court erred in dismissing his complaint pursuant to *Rooker-Feldman*, and in denying his motions to amend, to strike the report and recommendation, and for an evidentiary hearing. Gentry also claims that the district court erred by failing to provide notice of the magistrate judge's report and recommendation. Finally, Gentry argues that his claims are not barred by judicial immunity or Eleventh Amendment sovereign immunity. Gentry also filed a motion asking the court to enjoin the state court of appeals from ruling on his appeal of the judgment in his divorce case pending the disposition of this appeal because that court is allegedly subjecting him to due process violations as well.

We normally review de novo the district court's conclusion that the *Rooker-Feldman* doctrine precludes federal subject matter jurisdiction. *See McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006). We may, however, affirm the district court's judgment based on any ground supported by the record. *See Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002).

Accepting the amended complaint's factual allegations as true, and construing them in the light most favorable to Gentry, *see Bright v. Gallia Cty.*, 753 F.3d 639, 648 (6th Cir. 2014),

all of the alleged due process violations resulted from actions taken by Judge Thompson in his capacity as a judicial officer presiding over Gentry's divorce proceedings. None of the allegations shows that Judge Thompson acted in the complete absence of all jurisdiction. Judge Thompson therefore is entitled to absolute judicial immunity from suit under § 1983 in his individual capacity. *See Mireles v. Waco*, 502 U.S. 9, 11-13 (1991); *Barrett v. Harrington*, 130 F.3d 246, 254 (6th Cir. 1997). Eleventh Amendment sovereign immunity bars Gentry's claims to the extent that he sued Judge Thompson in his official capacity. *See Colvin v. Caruso*, 605 F.3d 282, 289 (6th Cir. 2010); *Hessmer v. Bad Gov't*, No. 3:12-cv-590, 2012 WL 3945315, at *11 (M.D. Tenn. Sept. 10, 2012) (holding that judges in Tennessee are state officials and that therefore Eleventh Amendment sovereign immunity bars official capacity suits against state judges) (collecting cases).

Gentry's remaining assignments of error are without merit. Accordingly, we **AFFIRM** the district court's judgment and **DENY** as moot Gentry's motion to stay the state-court appellate proceedings.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix B

Sixth Circuit Order Denying Rehearing En Banc – Related Case Gentry v. Thompson

No. 17-5204

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 27, 2017
DEBORAH S. HUNT, Clerk

JOHN ANTHONY GENTRY,

Plaintiff-Appellant,

v.

THE HONORABLE JOE H. THOMPSON, CIRCUIT COURT JUDGE,

Defendant-Appellee.

O R D E R

BEFORE: GUY, BATCHELDER, and COOK, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

Sixth Circuit Order Denying Disqualification and Petition For Initial Hearing En Banc

No. 17-6171

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 30, 2017
DEBORAH S. HUNT, Clerk

JOHN ANTHONY GENTRY,

Plaintiff-Appellant,

v.

TENNESSEE BOARD OF JUDICIAL CONDUCT, ET AL.,

Defendants,

STATE OF TENNESSEE; PAMELA ANDERSON TAYLOR; BRENTON HALL LANKFORD; SARAH RICHTER PERKY,

Defendants-Appellees.

O R D E R

The court having received a petition for initial hearing en banc, and the petition having been circulated to all active judges of this court, and no judge of this court having favored the suggestion,

It is **ORDERED** that the petition be and hereby is denied.

It is further **ORDERED** that the motion for Judges Guy, Batchelder and Cook to recuse or disqualify be and it hereby is **DENIED** as to Judges Batchelder and Cook. Judge Guy did not participate in this ruling**.**

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix D

District Court Order and Memorandum Dismissing Gentry v. Tennessee Board of Judicial Conduct; et al

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JOHN ANTHONY GENTRY	)	
	)	
v.	)	NO. 3:17-cv-00020
	)	
THE TENNESSEE BOARD OF JUDICIAL CONDUCT, et al.	)	

O R D E R

The referral to the magistrate judge is hereby WITHDRAWN.[1] For the reasons set forth in the accompanying Memorandum, the court GRANTS the Motion to Dismiss of Pamela Taylor and Brenton Lankford (Docket Entry No. 45), the Motion to Dismiss of Sarah Richter Perky (Docket Entry No. 49), and the Motion to Dismiss of the State of Tennessee (Docket Entry No. 51), and this action is DISMISSED WITH PREJUDICE.

All pending motions are DENIED as moot, in light of the dismissal of this action.

This order constitutes the final judgment in this action, and the Clerk is directed to close this case upon entry of this order.

It is SO ORDERED.

ENTER this 26th day of September 2017.

ALETA A. TRAUGER
United States District Judge

[1] The withdrawal of the referral to the magistrate judge is for the purpose of resolving the dispositive motions without further delay and is not based upon any of the reasons set out by the plaintiff in his motion for recusal of the magistrate judge (Docket Entry No. 120).

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JOHN ANTHONY GENTRY	)	
	)	
v.	)	NO. 3:17-cv-00020
	)	
THE TENNESSEE BOARD OF JUDICIAL CONDUCT, et al.	)	

M E M O R A N D U M

Pending before the court is the Motion to Dismiss of defendants Pamela Taylor and Brenton Lankford (Docket Entry No. 45), the Motion to Dismiss of defendant Sarah Richter Perky (Docket Entry No. 49), and the Motion to Dismiss of defendant State of Tennessee (Docket Entry No. 51). For the reasons discussed herein, the motions will be granted.

I. Background

During 2014 through 2016, John Anthony Gentry ("plaintiff"), a resident of Goodletsville, Tennessee, was involved in divorce proceedings with his ex-wife ("Ms. Gentry") in the Circuit Court for Sumner County, Tennessee ("the Divorce Proceeding(s)"). The Honorable Judge Joe H. Thompson ("Judge Thompson") presided over the Divorce Proceedings. The Gentrys were declared divorced in May 2016, *see* Docket Entry No. 36-1 at 37-38, and Judge Thompson thereafter entered an order in July 2016 as to the division of marital property. *See* Docket Entry No. 49-3. Although Judge Thompson declined to grant Ms. Gentry attorney's fees in the July 2016 order, Judge Thompson had previously awarded attorney's fees to her in the amount of $4,134.21[1], and he denied plaintiff's motion to reconsider this award. *Id*. The plaintiff thereafter filed a *pro se* appeal of the Divorce Proceedings. The appeal is currently pending before the Tennessee Court of Appeals. *See Gentry v. Gentry*, 2016 WL 7176981 (Tenn. Ct. App. Dec. 9, 2016).

[1] *See* Second Amended Complaint (Docket Entry No. 36) at ¶ 36.

The plaintiff was represented in the Divorce Proceedings by Sarah Richter Perky ("Perky") for a short period of time, from February through June 15, 2015, when she withdrew from the case. *See* Docket Entry No. 49-1. The plaintiff appears to have acted *pro se* in the Divorce Proceeding subsequent to Ms. Perky's withdrawal. Ms. Gentry was, and continues to be, represented by Pamela Anderson Taylor ("Taylor") and Brenton Hall Lankford ("Lankford') for matters related to the divorce.

The plaintiff was not pleased with numerous aspects of the Divorce Proceedings and expressed that displeasure by filing two administrative actions during the pendency of the proceedings. On September 18, 2015, he filed a lengthy complaint of professional misconduct against Taylor with the Tennessee Board of Professional Responsibility ("TBPR"), alleging that Taylor violated several Rules of Professional Conduct during the Divorce Proceedings. *See* Docket Entry No. 36-1 at 75-99. That complaint was dismissed on March 23, 2016, without action being taken against Taylor. *Id.* at 101. On February 26, 2016, he filed a lengthy complaint of judicial misconduct against Judge Thompson with the Tennessee Board of Judicial Conduct ("Judicial Board"), alleging that, during the course of the Divorce Proceedings, Judge Thompson had made false statements and had violated due process, the Code of Judicial Conduct, and statutory provisions. *See* Amended Complaint at ¶ 188. That complaint was dismissed on March 11, 2016, without action being taken against Judge Thompson. *Id*. at ¶ 189.

Plaintiff did not confine his attempts to seek redress to filing administrative complaints. He also filed two *pro se* civil lawsuits on October 3, 2016, for matters occurring in the Divorce Proceedings. He brought a civil lawsuit against Taylor and Lankford in the Circuit Court for Davidson County, Tennessee ("Davidson County Case"), seeking compensatory and punitive damages and asserting claims of constructive fraud, fraud, abuse of process, civil conspiracy, and intentional infliction of emotional distress based upon their alleged wrongful conduct. *See* Docket Entry No. 45-2. On January 26, 2017, that lawsuit was dismissed with prejudice upon the motion of Taylor and Lankford. *See* Docket Entry No. 45-3. He also filed a lawsuit in this court against

Judge Thompson under 42 U.S.C. § 1983 for alleged federal civil rights violations committed during the Divorce Proceedings. *See John Anthony Gentry v. John H. Thompson*, 3:16-2617. By Order entered January 27, 2017, that lawsuit was dismissed with prejudice on the basis that the court did not have jurisdiction to hear the case under the *Rooker-Feldman* doctrine. *See* Docket Entry No, 27 in *Gentry v. Thompson*. On September 14, 2017, the Sixth Circuit Court of Appeals affirmed the dismissal, finding that absolute judicial immunity barred any claims against Judge Thompson in his individual capacity and that Eleventh Amendment sovereign immunity barred any claims against him in his official capacity. *See* Docket Entry No. 42 in *Gentry v. Thompson*.

A few months after filing his lawsuits, plaintiff filed the instant action *pro se* on January 9, 2017, naming as defendants: the State of Tennessee; the Judicial Board; Judge Chris Craft ("Craft"), the Chairperson of the Judicial Board; Timothy R. Discenza ("Discenza"), Disciplinary Counsel for the Judicial Board; "unnamed members of investigative panel;" and "unnamed liability insurance carriers." *See* Complaint (Docket Entry No. 1) at 2-5. Plaintiff alleged that these defendants violated his federal constitutional rights by failing to fulfill their responsibilities and duties with respect to his administrative complaint against Judge Thompson and, further, that his equal protection rights were violated because, "as a matter of practice, Defendants routinely dismiss effectively one-hundred percent of the cases filed by non-members of legal profession." *Id*. at 14, ¶ 44.

After the originally named defendants filed a joint motion to dismiss, plaintiff filed two amended complaints in which he dropped Craft, Discenza, and the Judicial Board from the lawsuit but added Taylor, Lankford, and Perky as defendants. *See* Amended Complaint (Docket Entry No. 32) and Second Amended Complaint (Docket Entry No. 36).[2] In the Second Amended Complaint, the plaintiff alleges that he has been the victim of extortion, deprivation of honest services, racketeering, fraud, breaches of fiduciary duties, witness tampering, obstruction of justice,

[2] Although the plaintiff did not seek leave of the court to file his Second Amended complaint, the court permitted the Second Amended Complaint and, thus, it is the operative pleading in this lawsuit. *See* Order entered April 26, 2017 (Docket Entry No. 55). The plaintiff was denied leave to file a third amended complaint. *See* Orders entered May 15 and 31, 2017 (Docket Entry Nos. 60 and 69), and September 13, 2017 (Docket Entry No. 118).

and a conspiracy, as well having had his due process and equal protection rights violated by the defendants. *See* Second Amended Complaint at 21, 28, and 49. The plaintiff asserts specific violations of several criminal statutes – 18 U.S.C. §§ 2(a) & (b), 1341, 1346, 1512, 1951, 1952, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq*. ("RICO"), 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), and the Fourteenth Amendment. *Id*. As relief, he seeks $3,458,095.00 in compensatory damages and an award of punitive damages. *Id*. at p. 100 and ¶ 297. He also seeks injunctive relief in the form of: 1) orders to the State of Tennessee "to put in place proper legislation and oversight of the Board of Professional Responsibility, Board of Judicial Conduct, and Court of Appeals" and "to provide equal protection under the law, and provide litigants due process in fair and impartial courts;" 2) an order "causing dissolution or reorganization of the State's corrupt racketeering enterprises;" and 3) an order, if appropriate, for criminal investigation and grand jury review. *Id*. at p. 101.

The underlying factual allegations set out in the 103-page Second Amended Complaint center around the Divorce Proceedings and the plaintiff's belief that Perky, Taylor, and Lankford engaged in unlawful conduct during the Divorce Proceedings and conspired together, along with Judge Thompson, to engage in "racketeering activities" in order to deprive him of his property and his constitutional rights, to commit federal crimes, and to benefit themselves. *Id*. at ¶¶ 57-162. The plaintiff further expands upon his allegations against the State of Tennessee to allege that, not only is the State of Tennessee failing to ensure that the TBPR and Judicial Board are functioning to protect the rights of Tennessee's citizens, but the State of Tennessee's judicial system is itself corrupt and in need of reform in order to ensure that the constitutional and statutory rights of Tennessee's citizens are protected. *Id*. at pp. 3-4 and ¶¶ 169-177 and 295. Additionally, the plaintiff contends that the Tennessee Court of Appeals, through its judges and clerks, has acted to deny him his property, due process, and equal protection under the law and has intentionally taken steps to deny him a fair appeal of the Divorce Proceedings by: wrongfully dismissing his petition for recusal appeal; attempting to have his Rule 3 appeal dismissed; concealing court records; ignoring and

encouraging attorney misconduct; issuing an order with a misleading title; and attempting to entrap him for contempt of court. *Id*. at ¶¶ 178-296.

II. Standard of Review

A. Rule 12(b)(1)

The State of Tennessee seeks dismissal, in part, for lack of subject-matter jurisdiction under Rule 12(b)(1) by raising a facial attack to the plaintiff's lawsuit. A facial attack "questions merely the sufficiency of the pleadings." *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). In reviewing such a challenge, the court will accept the allegations in the complaint as true. *Id*.

B. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) requires a complaint to contain "enough facts to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). To be facially plausible, a claim must contain sufficient facts for the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. However, Rule 12(b)(6) requires more than a "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. While *Twombly* does not require "detailed factual allegations," it does require "more than labels and conclusions." *Id*. A legal conclusion couched as a factual allegation need not be accepted as true on a motion to dismiss, nor are recitations of the elements of a cause of action sufficient. *Iqbal*, 556 U.S. at 678; *Fritz v. Charter Township of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010).

In its review of a Rule 12(b)(6) motion, the court must accept as true all of the well-pleaded allegations contained in the complaint, resolve all doubts in the plaintiff's favor, and construe the complaint liberally in favor of the *pro se* plaintiff. *See Kottmyer v. Maas*, 436 F.3d 684 (6th Cir.

2006); *Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999); *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 11-12 (6th Cir. 1987). Although the court is required to liberally construe the *pro se* pleadings, this does not require the court to apply a more lenient application of the substantive law. *See Bennett v. Batchik*, 1991 WL 110385 at *6 (6th Cir. 1991) (citing *Wolfel v. United States*, 711 F.2d 66, 67 (6th Cir. 1983)); *Lyons v. Thompson*, 2006 WL 463111 at *4 (E.D. Tenn. Feb. 24, 2006).

The court has appropriately considered filings from the relevant state and federal legal and administrative proceedings in review of the motions to dismiss. *See Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir. 1999), *overruled on other grounds by Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (in ruling on a Rule 12(b)(6) motion, the court may "consider public records, matters of which a court may take judicial notice, and letter decisions of governmental agencies"); *Vaughn v. Metro. Gov't of Nashville & Davidson Cty.*, 2014 WL 234200, at *3 (M.D. Tenn. Jan. 22, 2014); *Lee v. Dell Products, L.P.*, 236 F.R.D. 358, 361 (M.D. Tenn. 2006).

III. Analysis

A. Jurisdiction/Abstention

The *Rooker–Feldman*[3] doctrine bars federal district courts from hearing "cases brought by state-court losers complaining of injuries by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Fieger v. Ferry*, 471 F.3d 637, 642 (6th Cir.2006) (citing *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005)). As an initial matter, the court notes that, although the application of the *Rooker-Feldman* doctrine to the type of convoluted lawsuit brought by the plaintiff is a thorny matter, *see Alexander v. Rosen,* 804 F.3d 1203, 1206-07 (6th Cir. 2015), and although the plaintiff has taken great steps to craft his lawsuit in a manner so as to bypass

[3] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923).

application of the *Rooker-Feldman* doctrine, the alleged injuries complained about by the plaintiff are, at their essence, ones that resulted from the state court judgments made by Judge Thompson, judgments which the plaintiff contends are tainted by "corrupt racketeering activities." Specifically, the assessment of attorney's fees against him, the finding that he is not entitled to certain marital assets, and the rulings made by Judge Thompson on procedural and evidentiary matters in the course of the Divorce Proceedings. Indeed, the plaintiff's damage summary reflects this focus. *See* Second Amended Complaint at ¶ 297.

The Sixth Circuit has explained that the *Rooker-Feldman* doctrine applies not only when a party attempts to expressly appeal a state court decision to a lower federal court, but also whenever the issues raised in the federal action implicate the validity of the state court proceedings. *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2007). In the court's view, that is exactly the scenario raised by the plaintiff in the instant lawsuit. The plaintiff contends that the judgments made by Judge Thompson were not based upon the law, but were instead based upon "corrupt racketeering activities" that were violations of federal law and of the plaintiff's constitutional rights. Any decision by the court in the plaintiff's favor on his claims would necessarily invalidate the underlying judgements made by Judge Thompson in the Divorce Proceedings. Such a situation is barred by *Rooker-Feldman*. *Mcmormick*, 451 F.3d at 394 (*Rooker-Feldman* applies "when a plaintiff asserts before a federal district court that a state court judgment itself was unconstitutional or in violation of federal law. In such a situation, the plaintiff seeks appellate review of the state court judgment, and the federal district court has no subject matter jurisdiction over such an action.").

Further, it is apparent that what the plaintiff also seeks is for the court to intrude upon the state court appeal in the Divorce Proceeding that is currently before the Tennessee Court of Appeals and to halt the appeal.[4] However, the state has an important interest in the area of family law and in the enforcement of the divorce court orders. S*ee e.g. Shafizadeh v. Bowles*, 476 Fed.App'x 71,

[4]*See* the plaintiff's Emergency Motion for a Temporary Restraining Order (Docket Entry No. 86); Emergency Motion to Stay State Court Proceedings (Docket Entry No. 122); and Emergency Motion to Alter Judgment (Docket Entry No. 128).

73 (6th Cir. 2012) (requested federal injunctive relief would grossly and impermissibly interfere with divorce proceedings in state court). The plaintiff's arguments for why the court should intrude in the state court appeal are unpersuasive, and his allegation that a conspiracy now exists at the state appellate level to commit crimes against him and to deprive him of his constitutional rights is entirely conclusory and unsupported by factual allegations. While the plaintiff is correct that an exception to the Anti-Injunction Act, 28 U.S.C. § 2283, which prohibits a federal court from issuing an injunction to stay proceedings in a state court, exists when a plaintiff pursues claims under 42 U.S.C. § 1983 for constitutional violations, *Mitchum v. Foster*, 407 U.S. 225, 242-43, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972), as set out below, the plaintiff has not set forth any plausible and viable claims against the defendants. In the absence of plausible legal claims, the plaintiff has no basis upon which to seek intrusive and extraordinary injunctive relief directed at the state court appeal.

B. The Motion to Dismiss of the State of Tennessee

The State of Tennessee raises several grounds for dismissal. However, the court need not address each of the defenses because the State of Tennessee's assertion of sovereign immunity from suit under the Eleventh Amendment is a threshold defense and an entirely sufficient basis for its dismissal from this action.

The Eleventh Amendment provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of Subjects of a Foreign State.

U.S. Const. Amend. XI. As the Sixth Circuit succinctly stated in *Thiokol Corp. v. Dep't. of Treasury, State of Mich, Revenue Div.*, 987 F.2d 376 (6th Cir. 1993):

> This immunity is far reaching. It bars all suits, whether for injunctive, declaratory or monetary relief, against the state and its departments, *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100-01, 104 S.Ct. 900, 908, 79 L.Ed.2d 67 (1984), by citizens of another state, foreigners or its own citizens. *Hans v. Louisiana*, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890).

987 F.2d at 381. *E.g. Tennessee v. Lane*, 541 U.S. 509, 517, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004); *Pennhurst State Schs. & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782, 98 S.Ct. 3057, 57 L.Ed.2d 1114 (1978). For the purposes of the instant lawsuit, the immunity provided to a state by the Eleventh Amendment is abrogated in only two circumstances: 1) where the state has itself waived its immunity from federal suit; and 2) where Congress has acted to abrogate the state's immunity. *See Alden v. Maine*, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996).[5] Although the plaintiff set out 17 pages of arguments as to why the Eleventh Amendment's grant of sovereign immunity should not apply, *see* Memorandum of Law (Docket Entry No. 106), his arguments lack merit and fail to negate the valid defense raised by the defendant.

The plaintiff argues that the State of Tennessee has consented to being sued in federal court and has, thus, waived its sovereign immunity. *See* Memorandum of Law at 2-11. This argument is legally baseless. The test for determining whether a State has waived its immunity from federal-court jurisdiction is a stringent one, and, in order for a state statute or constitutional provision to waive Eleventh Amendment immunity, it must specify the State's intention to subject itself to suit in federal court. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985). A State will be deemed to have waived its immunity "only where stated 'by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction.'" *Id*. at 239-249 (quoting *Edelman v. Jordan*, supra, 415 U.S. 651, 673, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). The plaintiff has not pointed to any such waiver by the State of Tennessee. The two Tennessee Constitutional provisions that he refers to in his memorandum, Article I, § 1 and Article I, § 17 simply do not set forth a wavier of sovereign

[5]In some circumstances, the Eleventh Amendment does not preclude actions against state officials sued in their official capacity for prospective injunctive or declaratory relief. *See Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). However, because a state official is not named as a defendant in this action, this exception is not relevant.

immunity. Indeed, the Supreme Court in *Atascadero State Hospital* found that language in the California Constitution[6] that is largely identical to the language of Article 1, § 17 did not set out an express waiver of sovereign immunity but merely authorized the state legislature to waive the state's sovereign immunity if it chose to do so. 472 U.S. at 241. *See also Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). Further, the Sixth Circuit found many years ago that the Tennessee legislature, by virtue of Tenn. Code. Ann. § 20-13-102(a), has retained the sovereign immunity of the State of Tennessee for lawsuits brought against it in federal court. *Berndt v. State*, 796 F.2d 879, 881 (6th Cir. 1986). Finally, the plaintiff contends that provisions of the Tennessee Governmental Tort Liability Act ("TGTLA"), Tenn. Code. Ann. §§ 29-20-101 *et seq*., specifically Tenn. Code Ann. §§ 29-20-201 and 29-20-205, are both, 1) an express a waiver of Eleventh Amendment immunity, and, 2) unconstitutional. This contention is meritless. The TGTLA certainly does not expressly or implicitly waive Eleventh Amendment sovereign immunity. Additionally, the TGTLA applies to cities and counties within the State of Tennessee, but not the State of Tennessee itself. *Chapman v. Sullivan County*, 508 S.W.2d 580, 582 (Tenn. 1980); *Tennessee Dep't of Mental Health and Mental Retardation v. Hughes*, 531 S.W.2d 299, 300 (Tenn. 1975). Plaintiff's arguments about the constitutionality of the TGTLA are simply irrelevant to the case at hand.

The plaintiff also asserts that Eleventh Amendment immunity is somehow abrogated in his case because: 1) he is asserting violations of due process and equal protection, and Section 5 of the Fourteenth Amendment can be enforced to protect this right despite the Eleventh Amendment; 2) the State of Tennessee receives "funding from the federal government;" 3) his claims implicate the Interstate Commerce Clause, and, thus, are not subject to Eleventh Amendment immunity; and 4) the State of Tennessee should no longer be entitled to the protection of Eleventh Amendment immunity because it is corrupt and not protecting the rights of its citizens. *See* Memorandum of Law at 11-17. These arguments are based upon a faulty and incorrect reading of the law. Abrogation of a state's

[6] The language of Article III, § 5 of the California Constitution at issue in *Atascadero State Hospital* stated "Suits may be brought against the State in such manner and in such courts as shall be directed by law."

Eleventh Amendment immunity does not arise from the type or nature of the claims brought by the party attempting to sue a state in federal court. Abrogation can only arise from an unequivocal expression from Congress of its intent to abrogate Eleventh Amendment immunity – an intent that must be obvious from a clear legislative statement. *Seminole Tribe of Florida*, 517 U.S. 44 at 55. The plaintiff has not shown that a Congressional abrogation of Eleventh Immunity exists for any of the claims he brings against the State of Tennessee. In the absence of a clear abrogation of immunity by Congress for these claims, his argument that Section 5 of the Fourteenth Amendment and the Interstate Commerce Clause can provide the constitutional underpinning for a Congressional abrogation of Eleventh Amendment immunity is one that simply misses the mark.

C. The Motion to Dismiss of Sarah Richter Perky

Defendant Perky contends that a claim against her for legal malpractice under Tennessee law is barred by the applicable statute of limitations and is further lacking on its merits because the plaintiff's allegations fail to show legal malpractice that caused him actionable harm. *See* Memorandum in Support of Motion to Dismiss (Docket Entry No. 50) at 5-6. However, the plaintiff specifically disavows that he is bringing such a claim. *See* Response in Opposition (Docket Entry No. 54) at 4. Accordingly, a claim for legal malpractice under state law is not a part of this action.

With respect to the plaintiff's assertion of federal claims, Perky contends that: 1) she is not a state actor for the purposes of a claim under 42 U.S.C. § 1983 and that a Section 1983 claim is also barred by the applicable statute of limitations; 2) the plaintiff's allegations fail to state a cause of action under 42 U.S.C. § 1985; 3) private causes of action do not exist under 18 U.S.C. §§ 2, 1341, 1346, 1512, 1951 and 1952; and 4) the plaintiff's allegations against her based upon her limited representation of the plaintiff in the Divorce Proceedings are insufficient to state a RICO claim against her. *Id*. at 6-7.

The plaintiff does not state a viable claim against Perky under Section 1983. A necessary showing for a claim under Section 1983 is that the defendant acted under color of state law. *Handy*

Clay v. City of Memphis, Tenn., 695 F.3d 531, 539, 96 (6th Cir. 2012). However, it is well-settled that a attorney representing a client is not a state actor who has acted under the color of state law within the meaning of Section 1983 merely by representing a client in a court proceeding. *Dallas v. Holmes*, 137 Fed.App'x 746, 752 (6th Cir. 2005); *Otworth v. Vanderploeg*, 61 Fed.App'x 163, 165 (6th Cir. 2003). The plaintiff's argument that Perky should be deemed to be a state actor because she is cloaked with the authority of the state by virtue of being licensed to practice law in Tennessee and by having a "relationship" with the state judicial system, *see* Response in Opposition (Docket Entry No. 54) at 11-14, lacks merit under the well-established principle set out in *Dallas*. *See Polk County v. Dodson*, 454 U.S. 312, 318, 102 S. Ct. 445, 70 L.Ed.2d 509 (1981). The plaintiff's contention that Perky acted under color of state law because she was part of a conspiracy and because she engaged in "corrupt racketeering activities" in the Divorce Proceeding, *id*. at 14-16, is conclusory and is unsupported by any factual allegations.

The plaintiff also does not state a viable claim against Perky under Section 1985(3). To establish a claim under Section 1985(3), the plaintiff must show that Perky was involved in misconduct that was motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." *Bartell v. Lohiser*, 215 F.3d 550, 559-60 (6th Cir.2000) (quoting *United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 829, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (1983)); *Newell v. Brown*, 981 F.2d 880, 886 (6th Cir. 1992). The Second Amended Complaint contains no factual allegations that Perky acted because of any racial or class-based animus. *See Keppler v. Haslam*, 2013 WL 1668254 at *4 (M.D. Tenn. Apr. 17, 2013).

Additionally, the plaintiff's claims against Perky under Sections 1983 and 1985(3) are barred by the statute of limitations. It is well-settled that the one-year statute of limitations set out at Tenn. Code Ann. § 28-3-104(a)(3) is the applicable statute of limitations for civil rights claims arising in Tennessee that are brought under Section 1983, *Merriweather v. City of Memphis*, 107 F.3d 396, 398 (6th Cir. 1997); *Jackson v. Richards Med. Co.*, 961 F.2d 575, 578 (6th Cir. 1992); *Berndt*, 796 F.2d at 883, as well as under Section 1985(3). *See Carver v. U-Haul Co.*, 830 F.2d 193 (6th Cir.

1987); *Brown v. Metro. Gov't of Nashville*, 2011 WL 465855 at *7 (M.D. Tenn. Feb. 3, 2011) (Haynes, J.). The Section 1983 and Section 1985 claims against Perky must have been brought within one year of when the claims accrued. *See Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005); *Merriweather*, *supra*. Perky's representation of the plaintiff ended in June 2015, and thus he had until June 2016 to pursue a claim against Perky under Sections 1983 and 1985. However, this lawsuit was not filed until January 9, 2017, and Perky was not named a defendant until March 16, 2017, well beyond the one-year statute of limitations. The plaintiff's argument that Tenn. Code. Ann. § 28-3-104 is unconstitutional, *see* Docket Entry No. 54 at 5-10 has no legal merit, and he otherwise fails to show why his Section 1983 and 1985 claims are not barred by the one-year statute of limitations.

To the extent that the plaintiff seeks to state independent claims for relief against Perky under 18 U.S.C. §§ 2(a) & (b), 1341, 1346, 1512, 1951 and 1952, s*ee* Second Amended Complaint at 21 and ¶¶ 17-18 and 20-23, he fails to state viable claims for relief. Although criminal statutes may be relied upon to establish predicate acts for a RICO claim, unless there is a clear congressional intent to provide a civil remedy, a plaintiff cannot generally recover civil damages for an alleged violation of a criminal statute. *See Ryan v. Ohio Edison Co.*, 611 F.2d 1170 (6th Cir. 1979); *Federal Sav. & Loan Ins. Corp. v. Reeves*, 816 F.2d 130, 137-38 (4th Cir. 1987). The plaintiff has not shown that these criminal statutes provide for private causes of action,[7] and such a conclusion would be against the prevailing law. *See Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190-91, 114 S. Ct. 1439, 128 L. Ed. 2d 119 (1994) (18 U.S.C. § 2); *Morganroth & Morganroth v. DeLorean*, 123 F.3d 374, 386 (6th Cir. 1997) (18 U.S.C. § 1341); *Ward v. Thompson*, 2015 WL 3948190 at *15 (W.D. Mich. June 29, 2015) (18 U.S.C. § 1346); *In re Morris*, 2010 WL 4272868 at *4 (Bankr. M.D. Tenn. Oct. 22, 2010) (18 U.S.C. § 1346); *Parton v. Smoky Mountain Knife Works, Inc.*, 2011 WL 4036959 at *12 (E.D. Tenn. Sept. 12, 2011) (18 U.S.C. § 1512); *Drake*

[7] In his Response in Opposition, the plaintiff appears to acknowledge this shortcoming for at least some of these statutes. *See* Docket Entry No. 54 at 26.

v. Enyart,2006 WL 3524109 at *5 (W.D. Ky. Dec. 4, 2006)*(*18 U.S.C. § 1512*); Command v. Bank of Am., N.A.*, 2014 WL 4104719 at *13 (W.D. Mich. Aug. 19, 2014) (collecting cases) (18 U.S.C. § 1951); *Barrett v. City of Allentown*, 152 F.R.D. 50, 55-56 (E.D. Pa. 1993) (18 U.S.C. § 1952).

The plaintiff's remaining claims against Perky are based on allegations that she is liable for damages under the RICO provisions of 18 U.S.C. §§ 1962(a)-(c). The plaintiff alleges that: 1) Perky made weak and "false" legal arguments and statements and intentionally withheld strong legal arguments during a March 10, 2015, hearing in the Divorce Proceedings concerning his interest in marital property; and 2) Perky failed to properly issue a subpoena for evidence pertinent to the Divorce Proceeding, leading to a motion to quash the subpoena being filed. S*ee* Second Amended Complaint at ¶¶ 40-85. Based upon these acts, the plaintiff contends that Perky intentionally acted to his detriment and colluded with opposing counsel as part of a scheme to defraud him out of his property and his right to due process and that the "scheme therefore, must by default, include some form of pecuniary return involving kickbacks, be they in the form of actual financial gain or in the form of 'you win this case, I get to win the next case.'" *Id*. at ¶¶ 62 and 83.

To state a RICO claim under 18 U.S.C. § 1962(c), the plaintiff must set out sufficient factual allegations to show the following elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Ouwinga v. Benistar 419 Plan Servs., Inc.*, 694 F.3d 783, 791 (6th Cir. 2012). In order to establish the existence of an "enterprise," the plaintiff is required to show: (1) an ongoing organization with some sort of framework or superstructure for making and carrying out decisions; (2) that the members of the enterprise functioned as a continuing unit with established duties; and (3) that the enterprise was separate and distinct from the pattern of racketeering activity in which it engaged. *Id*. at 793. The "pattern of racketeering activity" element requires allegations showing at least two predicate acts of racketeering activity that are related and that amount to or pose a threat of continued criminal activity. *Id.* at 795. Furthermore, a Section 1962(a) claim requires a showing of an injury that is distinct from any injury caused by the predicate acts of racketeering and that is directly related to the investment or use of tainted money in the RICO enterprise, *see*

Craighead v. E.F. Hutton & Co., 899 F.2d 485, 494 (6th Cir. 1990); *Eby v. Producers Co-op, Inc.*, 959 Fed.Supp. 428, 432 (W.D. Mich. 1997), and a Section 1962(b) claim requires a showing that the plaintiff was injured by reason of the defendant's acquisition or maintenance of an interest in or control of the enterprise. *See Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F.3d 315, 329 (6th Cir. 1999).

Even when given a liberal construction, the court finds no support for a plausible RICO claim against Perky based on the plaintiff's allegations. There is no factual support provided for the allegations that Perky was involved in intentional fraud, collusion with opposing counsel, a scheme to defraud the plaintiff, and the receipt of unlawful pecuniary returns. These allegations are speculative and conclusory. Further, to find that the actions of Perky at issue constitute unlawful predicate acts supporting a RICO claim requires a strained and tortuous interpretation of the facts, which is inconsistent with the principles of *Iqbal* and *Twombly*. The plaintiff may not have been happy with Perky's representation of him for the four short months that she was involved in the Divorce Proceedings, but his contention that her actions amounted to criminal behavior and a pattern of racketeering activity supporting a RICO action is baseless and self-serving. Similarly, there are no facts alleged that even plausibly show that Perky was engaged in the conduct of a RICO enterprise. Finally, although the plaintiff appears to acknowledge the unique nature of the showings required for claims under Sections 1962(a) and 1962(b), *see* Second Amended Complaint at ¶¶ 40-56, he fails to set forth any factual allegations that plausibly satisfy these requirements.

D. The Motion to Dismiss of Pamela Taylor and Brenton Lankford

Taylor and Lankford move the Court to dismiss the Second Amended Complaint on the grounds of *res judicata,* application of the *Rooker-Feldman* doctrine, and litigation privilege. The plaintiff responds in opposition to each of these arguments. *See* Response in Opposition (Docket Entry No. 46).

The court finds that the assertion of *res judicata* by Defendants Taylor and Lankford is a sufficient basis to grant their motion to dismiss and dismiss the claims brought against them in this action. The doctrine of *res judicata* provides that a final judgment on the merits of an action precludes the "parties or their privies from relitigating issues that were or could have been raised" in the prior action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981); *Kane v. Magna Mixer Co.*, 71 F.3d 555, 560 (6th Cir. 1995). Courts apply the doctrine of *res judicata* to promote the finality of judgments, which in turn increases certainty, discourages multiple litigations, and conserves judicial resources. *Sanders Confectionary Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992). *See also Moulton v. Ford Motor Co.*, 533 S.W.3d 295, 296 (Tenn. 1976) ("[R]es judicata is not based upon any presumption that the final judgment was right or just. Rather, it is justifiable on the broad grounds of public policy which requires an eventual end to litigation.").

When, as in this lawsuit, a party raises *res judicata* based upon a prior state court action, a federal court must give the same preclusive effect to the state court judgment as the judgment would receive in courts of the rendering state. *Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir. 2007); *Davis v. JPMorgan Chase Bank*, 2015 WL 4422687 at * 3 (M.D. Tenn. July 16, 2015). In Tennessee, a party asserting res judicata must show that: (1) a court of competent jurisdiction rendered the prior judgment; (2) the prior judgment was final and on the merits; (3) the same parties or their privies were involved in both proceedings; and, (4) both proceedings involved the same cause of action. *Lien v. Couch*, 993 S.W.2d 53, 56 (Tenn. Ct. App. 1998).

In the instant lawsuit, there is no real dispute that the Davidson County Circuit Court is a court of competent jurisdiction, that the judgment entered in the Davidson County Case was final and on the merits, and that the plaintiff and Taylor and Lankford were involved in both the Davidson County Case and the instant lawsuit. Although Plaintiff argues that his allegations of a conspiracy invalidate any conclusion that the Davidson County Circuit Court is a court of competent jurisdiction, *see* Docket Entry No. 46 at 5, this argument lacks merit. The state court's jurisdictional

competency to render decisions on the matters before it is simply not negated by the plaintiff's allegations. Likewise, the plaintiff has not shown how the dismissal of his action in the Davidson County Case was not rendered on the merits. The order by the Davidson County Circuit Court was a dismissal with prejudice on the merits of the plaintiff's claims and resolved the case. Such a decision is clearly on the merits. *See Creech v. Addington*, 281 S.W.3d 363, 378 (Tenn. 2009); *In re Estate of Ridley*, 270 S.W.3d 37,40 (Tenn. 2008).

With respect to the final element, requiring that both proceedings involve the same cause of action, the plaintiff argues that this element cannot be satisfied because the causes of action brought against Taylor and Lankford in the Davidson County Case were for fraud, constructive fraud, abuse of process, and intentional infliction of emotional distress,[8] which he contends are completely separate causes of action from the ones he brings in the instant lawsuit. *See* Docket Entry No. 46 at 5. He further asserts that "it does not matter that the same set of facts pertain to multiple causes of action and in different jurisdictions of state and federal courts. *Id*. at 6.

Plaintiff's argument lacks merit. The Tennessee Supreme Court has stated that, *res judicta* bars "a second suit between the same parties or their privies on the same cause of action with respect to all of the issues *which were or could have been litigated in the former suit*." *Creech*, 281 S.W.3d at 376 (emphasis added). Two suits will be deemed the same cause of action for purposes of *res judicata* where they arise out of the same transaction or a series of connected transactions. *Id*. at 381*; Roberts v. Vaughn*, 2009 WL 1608981,*5 (Tenn.Ct.App. June 10, 2009). Although the plaintiff's causes of action against Taylor and Lankford in the instant lawsuit are undisputedly based upon different legal theories and upon principles of federal, not state, law, these causes of action nonetheless arise out of the same series of operative facts and events that were at issue in the Davidson County Case; namely, the Divorce Proceedings that occurred in Sumner County and the

[8] The plaintiff also alleged a count for civil conspiracy in the Davidson County Case. *See* Docket Entry No. 45-2 at 30.

alleged wrongful conduct of Taylor and Lankford in the Divorce Proceeding. *Res judicata* is intended to prevent exactly the situation at hand.

The plaintiff also contends that he could not bring suit in the state court for violations of 18 U.S.C. §§ 1341, 1346, 1512, 1951, 1952, 1961 and 1962, 42 U.S.C. § 1983, 42 U.S.C. § 1985, and the Fourteenth Amendment because those are matters of federal jurisdiction, not state court jurisdiction. *Id*. This argument is legally baseless. Initially, as the court has already noted herein, there are no viable causes of action under the several criminal statutes referred to by Plaintiff. Further, the Plaintiff has not shown any legal support for his assertion that he could not proceed in state court on claims brought under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and RICO, statutes for which concurrent jurisdiction exists. *See Tafflin v. Levitt*, 493 U.S. 455, 467, 110 S. Ct. 792, 107 L. Ed. 2d 887 (1990); *Maine v. Thiboutot*, 448 U.S. 1, 3, n. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980).

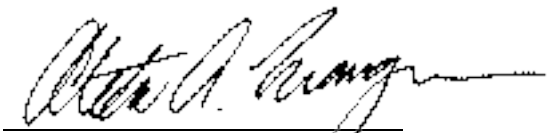
The court need not address the defendants' assertion of a litigation privilege defense because *res judicata* is a sufficient basis upon which to dismiss the claims against Taylor and Lankford.

CONCLUSION

Based of the foregoing, the court shall grant the defendants' motions to dismiss and dismiss this action in its entirety as to all claims. An appropriate order will enter.

It is so ORDERED.

ENTER this 26th day of September 2017.



ALETA A. TRAUGER
United States District Judge

Appendix E – Tenn. Code Ann. § 29-20-205; *Actus repugnans non potest in esse produci*

Tenn. Code Ann. § 29-20-205

*** Current through 2017 Regular Session (Chapter 493). ***

Title 29 Remedies and Special Proceedings
Chapter 20 Governmental Tort Liability
Part 2 Removal of Immunity

Tenn. Code Ann. § 29-20-205 (2017)

29-20-205. Removal of immunity for injury caused by negligent act or omission of employees -- Exceptions -- Immunity for year 2000 computer calculation errors.

Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment except if the injury arises out of:

(1) The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

(2) False imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights;

(3) The issuance, denial, suspension or revocation of, or by the failure or refusal to

issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;

(4) A failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property;

(5) The institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(6) Misrepresentation by an employee whether or not such is negligent or intentional;

(7) Or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances;

(8) Or in connection with the assessment, levy or collection of taxes; or

(9) Or in connection with any failure occurring before January 1, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if, and only if, the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but a reasonable plan or design or both for identifying and preventing the failure or malfunction was adopted and reasonably implemented complying with generally accepted computer and information system design standards. Notwithstanding any other law, nothing in this subdivision (9) shall in any way limit the liability of a third party, direct or indirect, who is negligent. Further, a person who is injured by the negligence of a third party contractor, direct or indirect, shall have a cause of action against the contractor.

HISTORY: Acts 1973, ch. 345, § 10; T.C.A., § 23-3311; Acts 1999, ch. 458, §§ 3, 4.

Appendix F

Tenn. Code Ann. § 24-9-101

Title 24 Evidence and Witnesses
Chapter 9 Depositions
Part 1 General Provisions

Tenn. Code Ann. § 24-9-101 (2017)

24-9-101. Deponents exempt from subpoena to trial but subject to subpoena to deposition -- Award of fees and expenses if court grants motion to quash.

(a) Deponents exempt from subpoena to trial but subject to subpoena to a deposition are:

(1) An officer of the United States;

(2) An officer of this state;

(3) An officer of any court or municipality within the state;

(4) The clerk of any court of record other than that in which the suit is pending;

(5) A member of the general assembly while in session, or clerk or officer thereof;

(6) A practicing physician, physician assistant, advanced practice registered nurse, psychologist, senior psychological examiner, chiropractor, dentist or attorney;

(7) A jailer or keeper of a public prison in any county other than that in which the suit is pending; and

(8) A custodian of medical records, if such custodian files a copy of the applicable records and an affidavit with the court and follows the procedures provided in title 68, chapter 11, part 4, for the production of hospital records pursuant to a subpoena duces tecum.

(b) If the court grants a motion to quash a subpoena issued pursuant to subsection

(a), the court may award the party subpoenaed its reasonable attorney's fees and expenses incurred in defending against the subpoena.

HISTORY: Acts 1986, ch. 750, § 1; 1991, ch. 456, § 1; 2006, ch. 729, § 1; 2009, ch. 55, § 1; 2012, ch. 678, § 1; 2014, ch. 590, § 1; 2016, ch. 980, § 1.

Appendix G

Tenn. Code Ann. § 28-3-104

Title 28 Limitation Of Actions
Chapter 3 Limitation of Actions Other than Real
Part 1 Miscellaneous Limitations

Tenn. Code Ann. § 28-3-104 (2017)

28-3-104. Personal tort actions; actions against certain professionals.

(a) (1) Except as provided in subdivision (a)(2), the following actions shall be commenced within one (1) year after the cause of action accrued:

(A) Actions for libel, injuries to the person, false imprisonment, malicious prosecution, or breach of marriage promise;

(B) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes; and

(C) Actions for statutory penalties.

(2) A cause of action listed in subdivision (a)(1) shall be commenced within two (2) years after the cause of action accrued, if:

(A) Criminal charges are brought against any person alleged to have caused or contributed to the injury;

(B) The conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year by:

(i) A law enforcement officer;

(ii) A district attorney general; or

(iii) A grand jury; and

(C) The cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct.

(3) This subsection (a) shall be strictly construed.

(b) For the purpose of this section, in products liability cases:

(1) The cause of action for injury to the person shall accrue on the date of the personal injury, not the date of the negligence or the sale of a product;

(2) No person shall be deprived of the right to maintain a cause of action until one (1) year from the date of the injury; and

(3) Under no circumstances shall the cause of action be barred before the person sustains an injury.

(c) (1) Actions and suits against licensed public accountants, certified public accountants, or attorneys for malpractice shall be commenced within one (1) year after the cause of action accrued, whether the action or suit is grounded or based in contract or tort.

(2) In no event shall any action or suit against a licensed public accountant, certified public accountant or attorney be brought more than five (5) years after the date on which the act or omission occurred, except where there is fraudulent concealment on the part of the defendant, in which case the action or suit shall be commenced within one (1) year after discovery that the cause of action exists.

(d) Any action to recover damages against a real estate appraiser arising out of the appraiser's real estate appraisal activity shall be brought within one (1) year from a person's discovery of the act or omission giving rise to the action, but in no event shall an action to recover damages against a real estate appraiser be brought more than five (5) years after the date the appraisal was conducted.

HISTORY: Code 1858, § 2772 (deriv. Acts 1715, ch. 27, § 5); Shan., § 4469; mod. Code 1932, § 8595; Acts 1967, ch. 283, § 1; 1969, ch. 28, § 1; 1969, ch. 293, §§ 1, 2; 1972, ch. 669, § 1; T.C.A. (orig. ed.), § 28-304; Acts 1990, ch. 970, § 2; 1990, ch. 1056, § 2; 2014, ch. 618, §§ 1, 2; 2015, ch. 388, § 1; 2017, ch. 234, § 1.

Appendix H

Tenn. Code Ann. § 29-26-116

Title 29 Remedies and Special Proceedings
Chapter 26 Health Care Liability
Part 1 General Provisions

Tenn. Code Ann. § 29-26-116 (2017)

29-26-116. Statute of limitations -- Counterclaim for damages.

(a) (1) The statute of limitations in health care liability actions shall be one (1) year as set forth in § 28-3-104.

(2) In the event the alleged injury is not discovered within such one-year period, the period of limitation shall be one (1) year from the date of such discovery.

(3) In no event shall any such action be brought more than three (3) years after the date on which the negligent act or omission occurred except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after discovery that the cause of action exists.

(4) The time limitation herein set forth shall not apply in cases where a foreign object has been negligently left in a patient's body, in which case the action shall be commenced within one (1) year after the alleged injury or wrongful act is discovered or should have been discovered.

(b) In any action for damages for personal injury or death, whether based on tort or contract law, or otherwise, a counterclaim for damages for malicious prosecution (on the ground that the principal action was instituted with improper intent and without probable cause) or malicious abuse of process (on the ground that there was

an improper use with improper intent of the process) in filing such action may be filed and litigated in the same action; provided, that the counterclaim shall be based upon substantial allegations.

HISTORY: Acts 1975, ch. 299, § 15; 1976, ch. 759, § 16; T.C.A., § 23-3415; Acts 2012, ch. 798, § 8.

Appendix I

Memorandum of Law Evidencing Conduct of Magistrate That May Be Impeachable In Nature

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
CIVIL RIGHTS DIVISION

JOHN ANTHONY GENTRY, sui juris/pro se	
Plaintiff	**CASE NO. 3:17-0020**
vs.	
THE STATE OF TENNESSEE; PAMELA ANDERSON TAYLOR; BRENTON HALL LANKFORD; SARAH RICHTER PERKY; UNNAMED LIABILITY INSURANCE CARRIER(S); Et al	**JURY TRIAL DEMANDED(12)**
Defendants	

MEMORANDUM SUPPORTING PLAINTIFF'S EMERGENCY MOTION FOR COURT REVIEW OF MAGISTRATE'S ORDER DATED AUGUST 29, 2017

Pursuant to Local Rule 72.02(b) and the Magistrate's Order issued on August 29, 2017, this memorandum is filed concurrently with Plaintiff's Emergency Motion for Court Review of Magistrate's Order Dated August 29, 2017.

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Cases

INTRODUCTION

Plaintiff's strongest objection pertains to the fact that the magistrate did not rule or make recommendation upon Plaintiff's TRO against Defendants PAMELA ANDERSON TAYLOR and BRENTON HALL LANKFORD (Docket Entries 86 and 87). Currently before the Court in another of Plaintiff's motions for Court Review, is the Magistrate's denial of Plaintiff's request

for an Emergency TRO hearing (Docket Entry 112). Plaintiff requested an Emergency TRO hearing seeking the Court's protection from an active federal crime in progress being inflicted upon Plaintiff. Due to this fact, the Magistrate must be aware of the dire circumstances from which Plaintiff seeks the Court's protection.

Plaintiff draws the Court's attention to the fact that the Magistrate's Order did not cite one single supporting authority or rule as basis for her decisions in the Magistrate's Order dated August 29, 2017 (Docket Entry 113). Due to the fact that the Magistrate did not make an effort to support her decisions, and merely stated her opinions and decisions without supporting authority, suggests the Magistrate could just have easily drafted an R&R stating her rulings and decisions regarding Plaintiff's **Emergency** Motion for TRO. Moreover, rather than addressing an **Emergency** motion, the Magistrate chose to address motions filed subsequently to Plaintiff's TRO motion. Plaintiff strongly objects to the Magistrate's possible unwillingness to provide timely ruling. Plaintiff daily suffers anxiety in fear of being subjected to a federal crime under color law that will likely cause Plaintiff to become homeless. To delay ruling, needlessly inflicts harm and mental anguish upon Plaintiff. Plaintiff will expand in more detail of this objection below.

Plaintiff also objects to the Magistrate's rulings that DENIED Plaintiff's: **(1)** Motion for Evidentiary or Other Appropriate Hearing (Docket Entries 73, 79, 80, and 96), **(2)** Motion to Reconsider Customized Case Management (Docket Entry 89), **(3)** Motion for Leave of Court to Depose Judge Joe H Thompson (Docket Entry 88), and **(4)** Motion For Leave To Amend (Docket Entries 92, 93, and 101). Plaintiff complains these various unsupported rulings are clearly erroneous and contrary to law.

LEGAL DISCUSSION - Standard of Review

> **Fed. R. Civ. P. Rule 72. Magistrate Judges: Pretrial Order**
> (a) NONDISPOSITIVE MATTERS. When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. **The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law**.
>
> **LR72.02- NONDISPOSITIVE MATTERS**
> **(b) Objections to Orders of Magistrate Judges on Nondispositive Matters.**
> **1. Motions for Review**. Objections to decisions of Magistrate Judges on nondispositive matters in civil cases shall be in accordance with Fed.R.Civ.P. 72(a) by way of a "motion for review." The motion for review shall be served and filed in accordance with Rules 5 and 7 of Fed. R. Civ. P. Such motions shall be filed within fourteen (14) days after service of the order to which objection is raised, unless a different period of time is specified. The motion for review shall state with particularity that portion of the order for which review is sought and shall be accompanied by sufficient documentation including, but not limited to, briefs, affidavits, pertinent exhibits, and if necessary, transcripts of the record to apprise the District Judge of the basis for the appeal. **The order of the Magistrate Judge may be modified or set aside if it is clearly erroneous or contrary to the law or in the interests of justice.**

PLAINTIFF SEEKS THE COURT'S EMERGENCY AND IMMEDIATE PROTECTION FROM FEDERAL CRIMES IN PROGRESS BEING COMMITTED AGAINST HIM

Plaintiff respectfully reminds this Honorable Court that as a pro se litigant, Plaintiff neither has knowledge of, nor understands the inner workings of federal judicial process. Due to this fact, Plaintiff can only rely upon the facts of proceedings thus far, and common-sense reasoning to

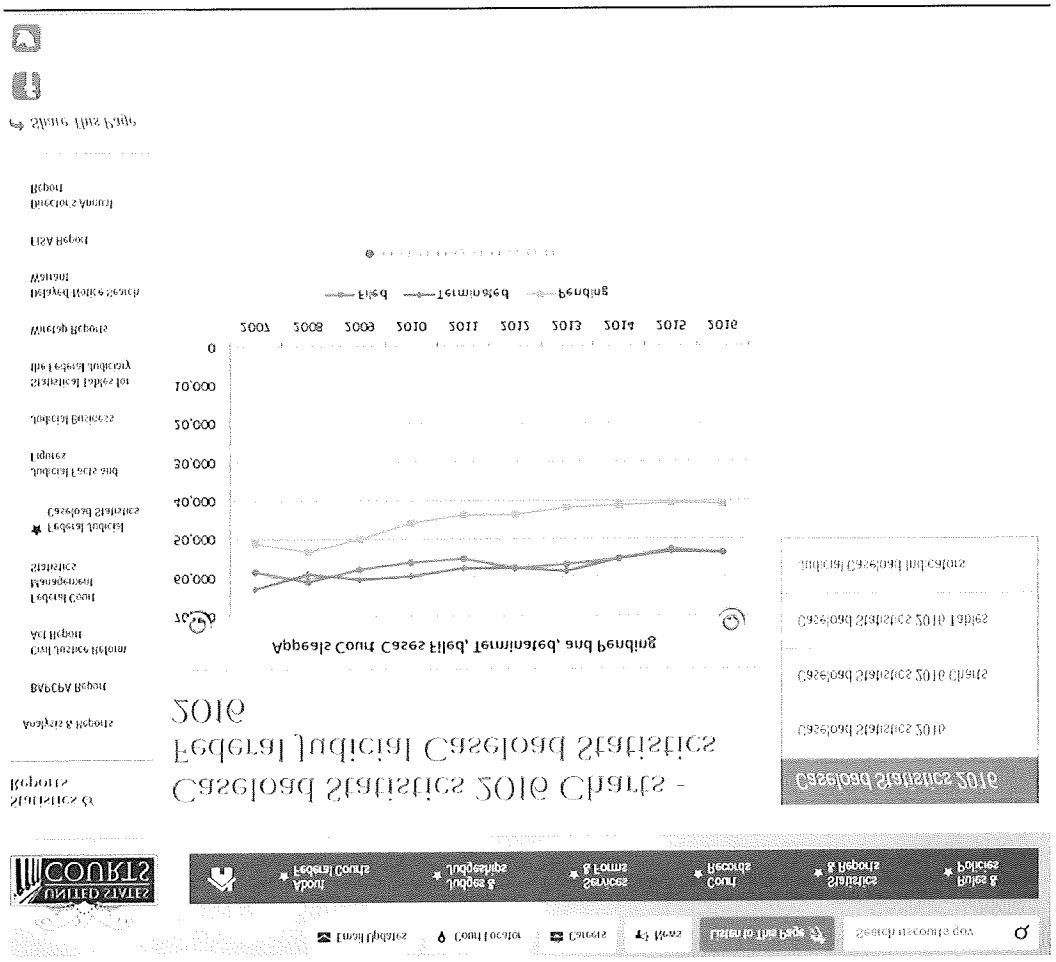
understand the federal judicial process. Perhaps there is sound reasoning to the Magistrate's rulings thus far that Plaintiff does not understand, but based on the facts of procedural history of the case and common-sense reasoning, there is an appearance of intentional delay of a ruling on Plaintiff's **Emergency** TRO motion and other misconduct.

Appearance of Intentional Delay of Rulings

In the Magistrate's Order, the Magistrate stated: "By the instant Order, the Court has ruled on all pending motions, **except for** Defendants' motions to dismiss and **Plaintiff's motion for a temporary restraining order and preliminary injunction, which the Court will address through reports and recommendations as soon as possible given the Court's heavy docket of cases.**"

Again, as a non-legal professional and pro se litigant, Plaintiff does not understand the federal judicial process. However, as a businessman, Plaintiff knows volume tends to trend out on a fairly predictable trendline and under that assumption, the case load of the courts is likely static and does not vary dramatically from one time-period to the next. In support of this assumption, Plaintiff attaches **EXHIBIT 1** which a national statistical analysis of the Federal Judicial Caseload and the below chart available at http://www.uscourts.gov/caseload-statistics-2016-charts-federal-judicial-caseload-statistics-2016.

As evidenced in the below chart and EXHIBIT 1, the US Courts Caseload Statistics suggest a downward trendline in caseload at the appellate court level. It his highly probable there is a similar trending at the District Court level.



Plaintiff next draws attention to the fact that although the magistrate referred to Plaintiff's TRO as "*a motion for temporary restraining order and preliminary injunction*," the actual title is "*Plaintiff's* ***Emergency*** *Motion For A Temporary Restraining Order and Preliminary Injunction…*" Clearly this was an "**Emergency"** motion on the part of plaintiff, the key word being "**Emergency**" Rather than choosing to issue order upon an "Emergency" motion seeking protection of the Court from a crime in progress, the Magistrate chose to issue multiple rulings on non-emergency motions. Plaintiff respectfully suggests this demonstrates an inability to properly

prioritize tasks, or perhaps suggests an intentional delay of ruling on Plaintiff's TRO motion (Docket Entry 86).

To further demonstrate the possibility of intentional delay, consider the fact that the Magistrate ruled on later motions rather than addressing an "Emergency" motion. The Magistrate issued rulings on the following of Plaintiff's motions:

- **Docket Entry 108** – Plaintiff's Motion For Status Update On Plaintiff's Pending Motions, filed 7/31/2017, seven (7) pages.
- **Docket Entry 90** – Plaintiff's Motion for Exhibit 1 Docket Entry 85: Auditor's Compilation Report, To Be Properly Reflected In The Record, filed 7/3/2017, three (3) pages.
- **Docket Entry 107** – Plaintiff's Motion For Exhibits Attached To Docket Entry 54 Be Properly Reflected In The Record, filed 7/31/2017, two (2) pages.
- **Docket Entry 97** – Plaintiff's Motion To Consider Docket 73 Motion And Properly Reflect In The Record His Motions Pending Consideration And Motion For PACER Filing Privileges And Notification And Incorporated Memorandum of Law, filed 7/12/2017, four (4) pages.
- **Docket Entry 89** – Plaintiff's Motion To Reconsider Customized Case Management And Initial Disclosures, filed 7/3/2017, three (3) pages.
- **Docket Entry 88** – Plaintiff's Motion For Leave Of Court For Deposition Of Honorable Judge Joe H Thompson Or In The Alternative Ex Parte Hearing, filed 6/29/2017, two (2) pages.
- **Docket Entry 92** – Plaintiff's Motion (supporting memorandum) For Leave Of Court To Amend Complaint, filed 7/10/2017, motion four (4) pages, supporting memorandum thirty-two (32) pages.

Plaintiff directs this Honorable Court's attention to the fact that the Magistrate chose to rule on all of the above pending motions which were all filed subsequent to Plaintiff's **"Emergency"** TRO Motion Docket Entry 86 filed on 6/26/2017. This begs the questions: "*Why would the Magistrate choose to rule on and give priority to non-emergency motions, when an "**Emergency**" motion was filed first, and pending decision?*" and "*Why would the Magistrate at*

least not permit an "Emergency TRO hearing requested by Plaintiff?" Plaintiff respectfully asserts the answers to these questions becomes clear, considering all the facts of the procedural history of this case thus far.

Considering that the Magistrate issued all of these rulings the day after Plaintiff filed "*Plaintiff's Emergency Motion For Court Review of Magistrate's Oral Ruling on August 23, 2017 And/Or* ***Petition for Writ of Mandamus*** *And Incorporated Memorandum of Law*" (Docket Entry 112), gives the appearance that the magistrate issued the above rulings to avoid a writ of mandamus, while still not ruling on the presently most important and "**Emergency**" motion before the court causing Plaintiff great mental anguish from the fear of losing his home since 2004.

Under further consideration, should be the rulings and R&Rs issued by the Magistrate thus far in the case.

- Without motion and only sixteen (16) days after assignment to the case by the District Court Judge, the Magistrate issued an order exempting the case from customized case management and initial disclosures and requiring the Clerk's Office to notice Plaintiff by "first class mail (only)"
- Upon Plaintiff's motioned for clarification (Docket Entry 9), the Magistrate issued an order **the very next day** (Docket Entry 12)
- Upon Defendant's motion for extension of time (Docket Entry 11), the Magistrate granted the order **the very next day** (Docket Entry 13)
- Upon Plaintiff's motion for extension of time (Docket Entry 24), the Magistrate issued order **the very next day** (Docket Entry 25)
- Upon Plaintiff's motion for withdrawal of counsel for Defendant State of TN (Docket Entry 16), the Magistrate ruled seventeen (17) days later (Docket Entry 26)
- Upon Plaintiff seeking "Emergency" Court review and a writ of mandamus instructing the magistrate to issue rulings on multiple pending motions (Docket

Entry 112), the Magistrate issued three (3) page order **the very next day** (Docket Entry 113)

Considering the timing of the above rulings by the Magistrate, suggests the Magistrate rules quite timely when it is to the benefit of the Defendants or in the Magistrate's interest. Considering the latest ruling by the Magistrate on multiple motions (Docket Entry 113), it may be true the Magistrate had been carefully considering those pending motions for some time and they were "ripe" for decision. However, considering the fact the Magistrate issued the order the very next day after Plaintiff sought a writ of mandamus, and further considering the order did not contain a single supporting authority, one can reasonably assume, the order was hastily drafted and the matters not long considered.

To further demonstrate, the possibility of intentional delay of ruling by the Magistrate, Plaintiff refers the Court to his TRO motion against Defendant State of Tennessee to prevent the State from destroying Plaintiff's evidence (Docket Entry 19). Plaintiff filed that motion on February 27, 2017, and requested a status update on May 30, 2017. After Plaintiff sought a status update on May 30, 2017, the Magistrate issued a four (4) page R&R on June 5, 2017, just six (6) days after Plaintiff's request for status update. Plaintiff's TRO motion was before the Magistrate pending decision for a total of ninety-eight (98) days before the Magistrate finally provided her R&R to the District Court Judge. During this time, the Defendant State of Tennessee had ample time to destroy records as permitted by Rules Of Practice And Procedure Of The Board Of Judicial Conduct [1].

[1] See Docket Entry 109 and EX109-1, proving Defendant State of Tennessee regularly destroys Plaintiff's evidence.

Appearance of Intent to Deny Leave to Amend As Matter Of Course

Plaintiff respectfully asserts the Magistrate's previous orders demonstrate a strong appearance that the Magistrate may have attempted to "dupe" Plaintiff, and cause him denial of leave to amend as a matter of course. Plaintiff is greatly concerned the Magistrate has made and continues to make every effort to deny Plaintiff leave to amend in a plain abuse of discretion. Plaintiff respectfully presents to the Court, the following facts, establishing cause for Plaintiff's concern in this regard. In Docket Entry 24, Plaintiff's motion for extension of time, Plaintiff sought an extension of time to file **two documents**, (1) his response to defendant's 12b motion and (2) his Amended Compliant as a right of course. Plaintiff could not have been clearer that he was requesting an extension of time for filing **two documents** in this very brief one-page motion. In "**Plaintiff's Motion For Extension of Time**" (Docket Entry 24), Plaintiff stated twice as follows:

- "Plaintiff, John Anthony Gentry hereby moves for additional time to file a response to Defendants' Rule 12 Motion to Dismiss **and** to file an Amended Complaint."
- "…Plaintiff will file an amended complaint **and Plaintiff will also file** a response to Defendants' Rule 12 Motion to Dismiss."

Clearly, Plaintiff was requesting an extension of time to file **two documents**: a "**Response**" **and** an "**Amended Complaint**." In response to Plaintiff's motion, the Magistrate issued order the very next day (Docket Entry 25) as follows:

- "Plaintiff shall have until March 31, 2017, to file a response to the motion to dismiss."

It is of critical importance to note that the Magistrate did not GRANT Plaintiff's Motion For Extension of Time. It is of further critical importance to note the Magistrate specifically did not state when Plaintiff should file his Amended Complaint. Plaintiff respectfully asserts there is a strong appearance that the "intent and hope" of the Magistrate was that Plaintiff would not carefully read the order and would file both documents, his amended complaint and response to motion to dismiss, on March 31, 2017. Under these circumstances, Plaintiff would be "duped" into filing his Amended Complaint out of compliance with Fed. R. Civ. P. Rule 15(a)(1)(B) which requires that amendments before trial, as a matter of course, must be filed within twenty-one (21) days of service of a 12(b) motion. Upon "untimely filing" of an amended complaint as a matter of course, the complaint would then be rejected.

Plaintiff respectfully invokes the canon of constitutional doubt which allows courts to choose among constructions which are "fairly possible" *Crowell v. Benson, 285 U. S. 22, 62 (1932)*. Moreover, the vagueness of the order also calls into question, the doctrine of vagueness. "*It is a basic principle of due process that an enactment* (order) *is void for vagueness if its prohibitions are not clearly defined*" Grayned v. City of Rockford, 408 US 104 – Sup. Ct (1972) (at 109)

In further support of the plausibility of Plaintiff's assertion, Plaintiff directs the Courts attention to Docket Entry 13 which is Defendant State of Tennessee's Motion For Extension Time. In ruling upon that motion, the Magistrate simply "stamped" the motion "*Motion, DE11 is GRANTED* (top right of Defendants' motion). This begs the question: "*Why didn't the Magistrate "stamp" Plaintiff's motion GRANTED but instead troubled herself with drafting an order.*" This

may be especially true "given the Court's heavy docket of cases" [2] Furthermore, not only did the Order suggest the possibility of "trickery," but also Plaintiff was treated "differently" than Defendants and perhaps discriminatorily.

Out of great concern, regarding the Magistrate's possible intent, Plaintiff filed his "*Plaintiff's Motion For Clarification Of the Magistrate's Order Dated March 2, 2017*" (Docket Entry 28). In this motion, plaintiff respectfully reminded the Magistrate, he had requested extension of time for **two documents** and asked the Magistrate to clarify the vagueness of the order.

In the Magistrate's Order issued in response to Plaintiff's motion for clarification (Docket Entry 31), the Magistrate issued the following ruling:

> Plaintiff's motion (Docket Entry No. 24) for an extension of time is GRANTED. Plaintiff is given until March 31, 2017, to file a first amended complaint and a response to the pending motion to dismiss. In light of this extension, Plaintiff's motion to clarify (Docket Entry No. 28 is DENIED as moot. (Docket Entry 31 ¶ 1)

This order unfortunately establishes the fact, Plaintiff was treated differently and further establishes need for the question: "*Why didn't the Magistrate simply "stamp" Plaintiff's motion for extension of time as she did Defendant's motion for extension of time?*". In further consideration of the Magistrate's ruling: "*In light of this extension, Plaintiff's motion to clarify (Docket Entry No. 28 is DENIED as moot.*", suggests the Magistrate's attempt to take out of consideration, the apparent intent of the previous order, and possibly to "side-step" having to explain the error.

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[2] In Docket Entry 113, the Magistrate stated she would issue R&R's as soon as possible "given the Court's heavy docket of cases."

In a similar situation in this case, the District Court Judge made an understandable typographical error. In Docket Entry 82, the District Court Judge Ordered that Plaintiff may have until June 26, 2017 to respond to Docket Entry 77. Plaintiff sought clarification of the District Court Judge's ruling due to the fact, Plaintiff gave notice of intent to respond to Docket Entry 76 and not Docket Entry 77. Rather than declaring Plaintiff's motion for clarification as "moot," the District Court Judge took responsibility for error stating "*Indeed, the courts Order of June 21, 2017 (Docket No. 82) contained a typographical error. It should have ordered the plaintiff to respond to Docket No. 76 by June 26, 2017, not Docket No. 77. It is so ORDERED.*" (Docket Entry 84).

Contrasting the two erroneous orders, the harmlessness error of the District Court Judge is made apparent with the Court's accepting responsibility, while in contrast the Magistrate seems to side-step explaining the error by declaring Plaintiff's motion for clarification as "moot." This further establishes the plausibility of intent to "subvert" Plaintiff from amending his complaint as a matter of course.

Do The Facts Of The Procedural History Of The Case Establish Cause To Initiate Impeachment Proceedings?

In Docket Entry 112, which is "*Plaintiff's Emergency Motion For Court Review Of Magistrate's Oral Ruling On August 23, 2017 And/Or Petition For Writ Of Mandamus And Incorporated Memorandum Of Law*," Plaintiff established the likelihood that the Magistrate Judge (1) is in violation of Code of Conduct for United States Judges, (2) has refused to provide equal access and equal protection of laws, (3) has used unconstitutional local court rule to deny equal

access to the courts, (4) has denied Plaintiff due process and a right to be heard, (5) delays rulings necessary to prevent a federal crime being committed against Plaintiff, (6) continues to preside over this matter, while there is an apparent Conflict of Interest, and (7) plausibly made an attempt to dismiss Plaintiff's complaint through improper or no notice of court rulings.

Herein this supporting memorandum, Plaintiff has further established: (1) probable intentional delay of rulings in further denial of due process, (2) a highly probable attempt to subvert Plaintiff from filing amended pleadings, (3) and delay in issuing a ruling to prevent a federal crime.

Plaintiff suggests to this Honorable that any single set of facts summarized in the above two proceeding paragraphs establish cause to initiate some course of corrective action. Taken together, the facts detailed in Docket Entry 112 and herein clearly establish cause to initiate further proceedings, perhaps even impeachment proceedings.

Citing the evidence and timeline of the Magistrate's conduct suggests this conduct falls under one or more or following doctrines: fraud in the function, fraud in the inducement, canon of constitutional doubt, canon of vagueness, and ineptness in application of judicial function.

Plaintiff seeks this Court's guidance as to whether the corrective action is necessary and if that action is an administrative function requiring executive intervention, or if this conduct is impeachable in nature requiring legislative intervention. Plaintiff does not know if the Magistrate is an elected or appointed official. Plaintiff further seeks guidance as to whether this matter should be referred to the Chief Justice of the U.S. District Court for the Middle District of Tennessee.

QUESTION FOR COURT: IS DELAY OF RULING AIDING AND ABETTING AND/OR VIOLATION OF CODE OF CONDUCT FOR UNITED STATES JUDGES?

Knowing the facts and procedural history of the case, Plaintiff is concerned the Magistrate's conduct amounts to aiding and abetting. Again, Plaintiff is a pro se litigant and does not understand the inner workings of the judicial process. Plaintiff further seeks the Court's guidance as to whether unnecessary delay in issuing a ruling to prevent a federal crime is perhaps aiding and abetting. Plaintiff is concerned that permitting unnecessary delay of ruling to prevent a federal come is an act that helps make the crime succeed. Plaintiff respectfully refers the Court to the following US Supreme Court opinions:

> Rosemond v. US, 134 S. Ct. 1240 – Sup. Ct. (2014)
> The District Judge accordingly instructed the jury on aiding and abetting law. He first explained, in a way challenged by neither party, the rudiments of § 2. Under that statute, the judge stated, "[a] person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself." App. 195. And in order to aid or abet, the defendant must "willfully and knowingly associate[] himself in some way with the crime, **and ... seek[] by some act to help make the crime succeed."** *Id.,* at 196. (at 1244)
>
> The federal aiding and abetting statute, 18 U.S.C. § 2, states that **a person who furthers — more specifically, who "aids, abets, counsels, commands, induces or procures" — the commission of a federal offense "is punishable as a principal."** That provision derives from (though simplifies) common-law standards for accomplice liability. See, e.g., Standefer v. United States, 447 U.S. 10, 14-19, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980); United States v. Peoni, 100 F.2d 401, 402 (C.A.2 1938) (L. Hand, J.) ("The substance of [§ 2's] formula goes back a long way"). And in so doing, § 2 reflects a centuries-old view of culpability: **that a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission.** See J. Hawley & M. McGregor, Criminal Law 81 (1899). (at 1245)

Plaintiff further suggests plausible intent to permit this attempted crime to run it course, and then later declare Plaintiff's TRO motion against Defendants TAYLOR and LANKFORD as "moot." It is highly probably that Defendants PAMELA ANDERSON TAYLOR and BRENTON HALL LANKFORD, have notified the Tennessee Court of Appeals, of Plaintiff's actions in federal court and his seeking protection. Knowing their "Confidence Game" has been found out and evidenced in the record of this Honorable Court, perhaps this harm will not be inflicted upon Plaintiff. Plaintiff certainly does not desire to find out.

Regardless of whether or not this crime is ultimately carried out, does not negate the fact of the intent, nor does it negate the facts supporting plausible conclusion, that the Magistrate is perhaps intentionally withholding issuance of an order restraining and enjoining Defendants.

It is also plausible that Defendants fully intend to carry out this crime and use a fraudulent state appellate court order to extort and garnish Plaintiff's wages, and perhaps in this way, make Plaintiff so insolvent, that he can no longer continue his pursuit of justice in federal court. Again, Plaintiff does not desire to learn of the outcome without the protection of this court.

DENIAL OF LEAVE TO AMEND WITHOUT BASIS IS ABUSE OF DISCRETION, CLEARLY ERRONEOUS, AND CONTRARY TO LAW

In the case, *Kottmyer v. Maas, 436 F. 3d 684 – Ct. App., (2006)*, the 6th District Court of Appeals stated;

> Under Federal Rule of Civil Procedure 15(a), a district court should freely grant a plaintiff leave to amend a complaint "**when justice so requires**." Fed. R. Civ. Pro. 15(a) (at 692).

Surprisingly, in denying Plaintiff's motion for leave to amend, the Magistrate's Order stated: "*As set out in the Court's prior Order denying* ***Plaintiff's earlier request to file a third amended complaint****, there are significant reasons that support the denial of allowing additional amended pleadings in this case. See Order Entered April 26, 2017 (Docket Entry No. 55).*"

Plaintiff respectfully asserts the Magistrate's order is clearly erroneous in that the above statement in completely inaccurate and false. Plaintiff was not making a "**request**" to file a third amended complaint. Plaintiff simply provided notice of intent to amend as a courtesy to the Court and opposing parties. Plaintiff continues to complain his right to amend as a matter of course was wrongfully denied in violation of the Federal Rules of Civil Procedure. Regardless, the fact of the matter is that Plaintiff did not make "request" for leave to amend and the magistrate's statement is a complete mischaracterization of fact. Plaintiff respectfully reminds the court, according to the Code of Conduct for Federal Judges, "A Judge should avoid impropriety **and the appearance** of impropriety in all activities" and "A Judge … should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" Canon 2 (A).

Furthermore, considering the facts detailed and evidenced herein and above, that it is highly likely the Magistrate attempted to subvert Plaintiff from previously filing an amended complaint, Plaintiff requests de novo review of Plaintiff's request for leave to amend.

Plaintiff draws attention to the fact that **the Magistrate did not reference the docket entry of plaintiff's supporting memorandum filed concurrently with his motion for leave to amend (Docket Entry 93).** In Plaintiff's supporting memorandum, Plaintiff presented additional facts, new facts, supplemental facts, and new causes of action. Plaintiff painstakingly detailed the

how, what and why Plaintiff should be granted leave to amend and even included referenced supporting exhibits. For this court deny leave to amend without stating a basis is a plain abuse of discretion and is clearly erroneous and contrary to law. In the case, *Foman v. Davis, 371 US 178 -Sup. Ct. (1962)*, the Supreme Court stated:

> **...outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules**. (at 182)

DISCOVERY STAYED IS ABUSE OF DISCRETION, CLEARLY ERRONEOUS AND CONTRARY TO LAW

Plaintiff objects to the Magistrate's rulings that DENIED his motion to depose Judge Joe H Thompson and STAYED his discovery. Again, the Magistrate did not provide any supporting decision for her ruling. In the case, *Lavado v. Keohane, 992 F. 2d 601 – Ct. App. (1993)*, the 6th Circuit referenced Supreme Court Opinion that: "*The Supreme Court has clearly stated that discovery in litigation against government officials should be halted until the threshold question of immunity is resolved.*" (at 605). Plaintiff draws attention to the following facts: (1) Plaintiff in this case, currently does not seek redress against public officials, and (2) Plaintiff has proven beyond any doubt whatsoever that the State's defense of state sovereignty is an utter and complete failed argument. Therefore, there are no immunity issues of concern in this case.

Plaintiff directs the Court attention to Docket Entry 106, which is Plaintiff's "*Memorandum of Law Proving State Of Tennessee Waives Amendment XI US Constitution Immunity And Challenge of Unconstitutional State Law*" In considering this matter, Plaintiff highly encourages and begs the Court's indulgence to read and consider the legal arguments contained in this

document. The title of the memorandum speaks for itself and some of the content is disturbing to say the least. The state government should be appalled with itself.

In the case, Bell Atlantic Corp. v. Twombly, 550 US 544 – Sup. Ct. (2007), the Supreme Court stated:

> …**for we have observed that "in antitrust cases, where the proof is largely in the hands of the alleged conspirators,' ... dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly.**" Hospital Building Co. v. Trustees of Rex Hospital, 425 U.S. 738, 746, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976)

In this case, Plaintiff has clearly alleged "legal monopoly" established through "corrupt racketeering activities" and Plaintiff's discovery should not be stayed regardless of the Magistrate's delay in denying Defendants' motions to dismiss. Moreover, the Magistrate should not even be considering dismissal without first allowing Plaintiff the opportunity to obtain and present his evidence. While the Supreme Court recognizes the importance of permitting discovery prior to dismissal in an antitrust suit, which this case is in part, Plaintiff also alleges "anti-trust" on the part of the State in abrogating constitutional rights. Plaintiff has specifically alleged "breach of fiduciary duty," "monopoly," (See Docket Entry 36 Complaint p. 3). Breach of public trust is the gravest of antitrust cases. Consider the further statements of the Supreme Court in the Bell v. Twombly opinion as follows;

> "Congress itself has placed the private antitrust litigant in a most favorable position .... In the face of such a policy this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws**". It is therefore more, not less, important in antitrust cases to resist the urge to engage in armchair economics at the pleading stage.** (id at 1983)

> **And as the Court recognizes, at the motion to dismiss stage, a judge assumes "that all the allegations in the complaint are true (even if doubtful in fact)."** Ante, at 1965. (id at 1985)
>
> If the allegation of conspiracy happens to be true, today's decision obstructs the congressional policy favoring competition that undergirds both the Telecommunications Act of 1996 and the Sherman Act itself. **More importantly, even if there is abundant evidence that the allegation is untrue, directing that the case be dismissed without even looking at any of that evidence marks a fundamental — and unjustified — change in the character of pretrial practice.** (at 1989)

Plaintiff also objects to the Magistrate's Order that DENIED Plaintiff's Motion to Depose Judge Joe H Thompson. Federal Rules of Civil Procedure Rule 30 states a party may depose any person, including a party. Rule 30(a)(1) states a party may depose without leave of court. Rule 30(c)(3) states a party may depose though written questions.

DENIAL OF EVIDENTIARY HEARING IS CLEARLY ERRONEOUS AND CONTRARY TO LAW

Plaintiff also objects to the Magistrate's ruling that DENIED Plaintiff's Motion for Evidentiary Hearing (Docket Entry 73 and 80). In the case, Haines v. Kerner, 404 US 519 – Sup. Ct. (1972), the Supreme Court ruled a pro se complaint, however inartfully pleaded is sufficient to call for the opportunity to present supporting evidence.

> **The only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence on his claims.**
>
> **Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.** We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it

> appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U. S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F. 2d 774 (CA2 1944).
>
> **Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof.** The judgment is reversed and the case is remanded for further proceedings consistent herewith. Haines v. Kerner, 404 US 519 - Supreme Court 1972 (at 520-521)

Except through violation of the due process clause, Plaintiff's case cannot be dismissed without permitting him to obtain discovery, and subsequently permitting him to present that evidence in a hearing.

BASIS OF EXEMPTION OF CASE FROM CUSTOMIZED CASE MANAGEMENT IS UNCONSTITUTIONAL

Plaintiff further objects to the Magistrate's ruling that DENIED his motion to reconsider customized case management. **Local Rule 16.01(b)(2)(b) which states "All actions in which one of the parties appears pro se;" is a case Exempt from Customized Case Management, is discriminatory, denies equal access to the court, and is plainly unconstitutional.** Plaintiff unequivocally challenges this 16.01(b)(2)(b) as unconstitutional. There is no good reason to require blanket, across the board, exemption of pro se cases from customized case management. Clearly this rule is intended to deny pro se litigants due process and equal protection.

CONCLUSION

Plaintiff's Motion For Leave To Amend (and supporting memorandum) Docket Entries 92 and 93 should be granted without delay and Plaintiff should be provided 30 days to prepare and submit this Third Amended Verified Complaint

1. Plaintiff's Motion for Evidentiary or Other Appropriate Hearing (Docket Entry 73, 79, and 80) should be granted and a date set for hearing subsequent to compliance with Plaintiff's Initial Request For Production of Documents.
2. Plaintiff's Motion for reconsideration of Customized Case Management should be granted as the basis of the court's exemption is unconstitutional.
3. Plaintiff should be granted leave to depose Judge Joe H Thompson (Docket Entry 88) as a matter of course.
4. The Magistrate's Order STAYING discovery should be reversed and Defendants notified to resume commencement of discovery.
5. This Court should take into serious consideration and under proper advisement as to whether the Magistrate's conduct amounts to violations of the Code of Conduct for Federal Judges, and whether the Magistrate's conduct establishes sufficient cause to initiate impeachment or other administrative proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed with the Court Clerk's Office personally, and will be filed electronically by the Court Clerk's Office, and notice served through the electronic filing system on this the 5TH day of September 2017 to:

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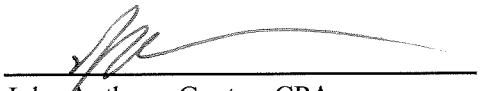


John Anthony Gentry, CPA

Appendix J

Second Motion To Disqualify Sixth Circuit Judges

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN ANTHONY GENTRY, Plaintiff – Appellant v. TENNESSEE BOARD OF JUDICIAL CONDUCT, et al Defendants and STATE OF TENNESSEE; PAMELA ANDERSON TAYLOR; BRENTON HALL LANKFORD; SARAH RICHTER PERKY Defendants – Appellees	)	No. 17-6171

SECOND MOTION FOR CIRCUIT COURT JUDGES; BATCHELDER AND COOK TO RECUSE OR DISQUALIFY

Pursuant to 28 U.S. Code Section 455(a): Disqualification of justice, judge, or magistrate, Plaintiff-Appellant again respectfully requests The Honorable Judges: Judge Alice M. Batchelder, and Judge Deborah L. Cook to disqualify themselves from these proceedings, due to facts strongly suggesting actual bias, loss of impartiality, and denial of due process. Pursuant to 28 U.S.C. § 455(a): Any justice, judge, or magistrate judge of the United States shall disqualify in any proceeding in which their impartiality might reasonably be questioned. In addition to facts stated

in Plaintiff-Appellant's first motion to recuse or disqualify which proves profound personal bias in favor of state court judges, Plaintiff-Appellant, hereinafter "Mr. Gentry" presents additional facts requiring the disqualification of Judges Batchelder and Cook.

As previously stated to this court, the law with regard to recusal or disqualification under § 455 is straightforward and well-established in the Sixth Circuit. A federal judge is required to recuse "only if a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonable be questioned." *United States v. Story*, 716 F.2d 1088, 1091 (6th Cir. 1983) (quoting *Trotter v. International Longshoreman's & Warehousemen's Union*, 704 F.2d 1141, 1144 (9th Cir. 1983)). This standard is objective and is not based "on the subjective view of a party." Browning v. Foltz, 837 F.2d 276, 279 (6th Cir. 1988). Prejudice or bias must be personal, or extrajudicial in order to justify recusal. *Id.* 279. Mr. Gentry previously sought disqualification of Judge Alice M. Batchelder and Judge Deborah L. Cook through proper motion and for good cause pursuant to facts stated in his motion to recuse or disqualify. See DktEntry 16. **Mr. Gentry hereby incorporates those facts in this second motion to disqualify and presents further facts as follows;**

In a defective order (DktEntry 21-1) that did not identify the ruling panel, Mr. Gentry's motion for disqualification was denied without stating any basis for denial

and without denying evidenced personal bias. Mr. Gentry sought review of that defective order through proper motion pursuant to Fed. R. App. P. Rule 40 and his Rule 40 petition for rehearing was erroneously returned unfiled by the En Banc Coordinator. See DktEntry 23. Mr. Gentry has motioned for reconsideration of the En Banc Coordinator's erroneous action, with said motion still pending panel consideration. See DktEntry 27. Very clearly Fed. R. App. P. Rule 40 provides for petition for panel rehearing, and the En Banc Coordinator's denial of entry into the record, is contrary to due process provisions. Due to further facts stated below, denial of entry into the record of a petition for panel rehearing on denial of a motion to disqualify, suggests Judges Batchelder and Cook may be "issuing orders" guised as coming from the Clerk's Office thus circumventing due process.

As evidenced in the image to the right, Mr. Gentry engaged in a twenty-eight-minute phone conversation with Case Manager, Amy Gigliotti on December 11, 2017. During that phone conversation with the Case Manager, in response to Mr. Gentry's inquiry into how possibly his Motion to Expedite Appeal And Petition For Initial Hearing En Banc, DktEntry 17, could be misconstrued as a "*motion to expedite further briefing*", she communicated that

the "Ruling Letter", DktEntry 22 was provided to her and she was instructed to enter the "Ruling Letter" into the record. When Mr. Gentry inquired as to who provided her the "Ruling Letter", and who gave her instruction to enter it into the record, she communicated the "Ruling Letter" was provided to her by the "Deputy Clerk".

During that same conversation, the Case Manager also communicated that she is presently managing two-hundred and fifty-three (253) cases (previously she had communicated 300, Dkt Entry 24 PageID 4 ¶ 4). Assuming the Case Manager's statement is true that she manages 200 to 300 cases at any given time, and considering there are presently fourteen (14) case managers presently listed on the Court's website, one can reasonably assume, there are approximately 3,000 cases docketed in the U.S. Court of Appeals for the Sixth Circuit at any given time.

Knowing these facts, the probability of the Chief Deputy Clerk, providing direct case management over that many cases is so improbable that it becomes an impossibility that the Chief Deputy Clerk was self-aware of pending motions to expedite in this case, upon which the Clerk's Office should issue "Ruling Letter". This begs the question: "***Who notified the Chief Deputy Clerk, or what circumstance prompted her to provide instruction to the Case Manager to enter a "Ruling Letter" denying motions for which the Clerk's Office has no authority to deny?***"

Knowing the fact that the Clerk's Office had no authority to issue such a "Ruling Letter" denying motions to expedite, and the further fact the "Ruling Letter" was in defect and in violation of 6 Cir. R. 45(b) which states: "*A clerk's order must show that it was authorized under 6 Cir. R. 45(a).*", **which it did not**, renders these proceedings suspect and provide great cause for concern that due process is possibly being intentionally circumvented.

Intending no disrespect to this Honorable Court, Mr. Gentry asserts the most plausible explanations are that: (1) Circuit Court Judges Alice M. Batchelder and Deborah L. Cook, are "issuing orders" guised as coming from Clerk's Office personnel, or (2) the Defendant's of this case are conspiring with Clerk's Office personnel to deny Mr. Gentry proper due process. While these possibilities might not be true, impartial consideration of these facts certainly makes this scenario an unfortunate possibility and perhaps probable.

If it is true, that Judges Batchelder and Cook are rendering decision guised as if coming from the Clerk's Office, which appears more than plausible, then this would suggest an attempt by the Court to take advantage of a pro se litigant's lack of knowledge of court rules. As this Court knows, pursuant to 6 Cir. R. 27(g), a litigant may request reconsideration of an action of a panel, of a single judge or of the clerk. Unfortunately, further pursuant to 6 Cir. R. 45(c) a motion to reconsider must be filed within 14 days of service of notice of entry of the order. Since the

timing for reconsideration of a clerk's action is defined in a separate rule, it is improbable that any pro se litigant, (or attorney for that matter) would timely file a motion to reconsider a clerk's action. In this way, an erroneous Clerk's Order would become unappealable and the action of the clerk irreversible. Unfortunately, since the rules are structured so, suggests that the intent of these rules are to provide a means to the court, to issue unlawful orders without proper due process for reconsideration or rehearing.

Again, Mr. Gentry is a pro se litigant, and as such, does not understand the inner workings of the federal judicial process. Nevertheless, the structuring of these rules so, most certainly facilitates erroneous orders issued though the Clerk's Office to become unappealable and thus circumvent due process. Certainly, this court must recognize how easily 6 Cir. Rules 27 and 45 can be exploited to deny proper due process as has been made possible to occur in this case. **Mr. Gentry respectfully recommends to this Honorable Court to restructure these rules so as to ensure they cannot be so easily exploited to deny due process.** Fortunately, Mr. Gentry is diligent in his pursuit of justice and his cause of demanding state court reform, and he is able to identify these "nuances" of the federal court rules, and successfully navigate around them. As the record shows, Mr. Gentry timely filed motions to reconsider both the case manager and en banc coordinator's erroneous "orders", DktEntries 26 and 27.

This same analysis of facts and court rules also applies to the erroneous determination by the En Banc Coordinator that denied entry into the record of Mr. Gentry's Rule 40 Petition For Rehearing. See DktEntries 23-1 and 23-2, suggesting another possible "order" guised as if rendered by the Clerk's Office. Again, it makes no sense, the Clerk's Office would know to issue these rulings, and because they have no authority to issue such order, the only likely conclusion is that the Clerk's Office is receiving instruction most likely initiated by Judges Batchelder and Cook.

The likelihood of Judges Batchelder and Cook issuing orders guised as coming from the Clerk's Office becomes even more plausible considering the following: (1) in Sixth Circuit Case No. 17-5204, Judges Guy, Batchelder, and Cook erroneously determined constitutional rights unenforceable even when only seeking equitable relief due to sovereign and judicial immunity, (2) the decision in Case No. 17-5204 was intentional due to denial of Fed. R. App. P. Rule 35 petition for rehearing, (3) the "coincidence" of the same judges apparently issuing order denying initial hearing en banc in this case, while refusing to recuse or disqualify without stating basis and without denying personal bias, (4) the very "prompt" issuance of order denying disqualification and denying initial hearing en banc in only two weeks and while the court was not in session, and during which occurred a Thanksgiving holiday , (5) the order being issued in defect without identifying the ruling panel, and (6) the likely issuance of order by a "two-judge panel". Considering all these

unfortunate and suspicious facts, it appears most probable that Judges Batchelder and Cook are providing instruction to Clerk's Office to issue "Orders and Determinations" for which the Clerk's Office has no authority with the possible intent of denying due process and proper consideration.

During the same conversation with the Case Manager on December 11, 2017 evidenced above, Mr. Gentry also complained about how his filings are not being entered into the record timely. In response, the Case Manager communicated to Mr. Gentry statements to the effect that his filings do not fit the norm, and the Clerk's Office doesn't know how they should be entered into the record and so they are being routed to other desks for consideration, before they are routed to her for entry into the record. During the same conversation, the Case Manager also stated that Mr. Gentry is "very articulate" and his legal work would "stack up against any attorney".

As this Court knows, and as evidenced in each and every motion, petition, and brief filed by Mr. Gentry, he properly states pursuant to which court rule his motion, petition or brief is being filed. Due to the facts that Mr. Gentry properly states which court rule he files pursuant to, and the fact of the number of cases handled by this Honorable Court and by the Case Manager, there should be no need for the Clerk's Office to consider "how" Mr. Gentry's filings should be entered into the record. Mr.

Gentry's filings, like any other litigants, should be received, scanned, and uploaded into the court's database, without being routed for consideration to other desks.

In another conversation with another Case Manager "Jeanine", evidenced in DktEntry 25, PageID 6, Mr. Gentry was complaining about a motion that had been received by the Clerk's Office but had not been entered into the record. During that conversation, "Jeanine" stated she had searched Case Manager Amy Gigliotti's desk and could not locate his filing, thus proving his motion had been "routed to another desk" instead of going straight to the appropriate Case Manager.

In another instance, Mr. Gentry also complained about his motion to expedite that had been received by the Clerk's Office on November 17, 2017 at 10:57 and as of the date/time of their conversation, November 22, 2017, 11:14AM still had not been entered into the record. Had this Court properly considered and read Mr. Gentry's Motion to Expedite Initial Hearing En Banc, DktEntry 19, the Court would know that document evidences gross negligence and unconstitutional conduct of state oversight agencies and state officials including the state's Attorney General. Mr. Gentry's respectfully asserts, and the facts suggest, that it is because his motion to expedite evidenced gross negligence and unconstitutional conduct of state oversight agencies and state officials, and because of bias of Judges Batchelder and Cook, the Court desired not to consider that document because it demonstrates the

necessity of federal court intervention affecting the unconstitutional and "unrepublican" conduct of the state.

These facts and statements by the Case Manager strongly suggest Mr. Gentry's case is being "managed" contrary to due process and possibly suggests that Judges Batchelder and Cook, the Clerk's Office, and the Defendants of the case, together and/or separately are "strategizing" or "conspiring" about how or whether to enter Mr. Gentry's filings into the record. The fact that Mr. Gentry's Rule 40 Petition, DktEntry 23-1 was denied entry into the record in obvious "error" makes this assertion not only plausible but probable.

Whether or not these facts are concrete evidence of conspiracy to deny due process and/or obstruct justice, these facts make these concerns at least plausible, and of course the Courts should avoid the appearance of impropriety and therefore Judges Batchelder and Cook should recuse or disqualify themselves. Knowing that the Court's should desire to maintain the appearance of impartiality so as to ensure public trust, and further knowing that the facts of appellate court proceedings strongly suggest conspiracy to deny Mr. Gentry fair due process of law, a reasonable and prudent person would expect Judges Batchelder and Cook to readily recuse or disqualify so as to maintain public trust. This begs the question: "*Why would Judges refuse to disqualify in light of such facts?*" The only reasonable answer to this question is that Judges Batchelder and Cook do in fact have a strong personal bias

in favor of the Defendants, and having such bias, refuse to disqualify so as to ensure ruling in favor of the Defendants.

The combination of facts become even more disturbing considering the content of Mr. Gentry's Petition For Initial Hearing En Banc, DktEntry 17, and accompanying Motion to Expedite Initial Hearing En Banc, DktEntry 19. Mr. Gentry has presented this Honorable Court with facts that are uncontested and which prove the government of the State of Tennessee is no longer republican in character or form.

This Court should know that in studying the history of our country, admission of states to the republic, was dependent upon the character of each state being republican in character and form. Whether a state was republican in character or form was partly determined by US Congress through examination of each state's constitution. Various states were initially denied admission because their constitutions were not republican in form, having made lawful such practices as slavery, bigamy, indentured servitude, etc. and various constitutions were revised prior to those states admission to the United States. In this case, Mr. Gentry has shown the Court, state statutes that subvert and usurp constitutional rights. The usurpation of constitutional rights is just as "unrepublican" as are slavery, bigamy, and indentured servitude. Mr. Gentry has further proven the state provides no means to address grievances against the state for due process violations. In Cruikshank,

the Supreme Court stated: "*the very idea of a government, republican in form, implies a right of its citizens to petition for redress of grievances.*" *United States v. Cruikshank*, 92 US 542, 23 – Sup. Ct, 1876 (at 553). Since Tennessee provides no means to petition for redress of due process violations, the state has forsaken its republican character.

In this present matter before the Court, Mr. Gentry has presented this court with the question: "*Whether a state's sovereign immunity is vitiated when the state government is no longer republican in form or character.*" and Mr. Gentry has proven the state is no longer republican in character or form due to facts evidenced in state statutes, annual reports of state oversight agencies, and Orders of this Court finding constitutional rights unenforceable. Such a matter very obviously necessitates at least en banc consideration.

Due to the fact that admission of the states to the union was dependent upon full consideration by the entire U.S. Congress, for this Court to deny en banc consideration and refer this case for panel consideration suggests a profound bias in favor of the Defendants thus providing sound and irrefutable basis for disqualification of Judges Batchelder and Cook. How possibly can this Court deny initial hearing en banc of such a matter of great public importance and national significance except through bias?

Mr. Gentry has also proven that constitutional rights are unenforceable against state court judges and attorneys and a right that is no longer enforceable is no longer a right. This unfortunate fact tears at the foundation of republican principles upon which our country was founded. In the case, Marbury v. Madison, 5 US 137, 2 L. Ed. 60, 2 – Sup. Ct. 1803, quoting Blackstone: "*it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law,...*" (at 163). Due to the undeniable fact that rights are not enforceable for Tennesseans and they have no means to address grievances against the government, and the fact that Judge Batchelder and Judge Cook denied initial hearing en banc, and the appearance of issuance of orders guised as if coming from the Clerk's Office further demonstrates a strong and unfortunate bias in favor of the Defendants. How possibly can this Court let stand a circumstance wherein the litigants of an entire state do not have enforceable constitutional rights except through profound bias?

Since Judges Batchelder and Cook were apparently the judges who issued order denying initial hearing en banc, and because the order was in defect, and because that order was issued so promptly, and because full and proper consideration could not have been possible due to the fact that the accompanying motion to expedite was not timely disseminated or not disseminated, strongly suggests a rush to judgement and denial of the full court's proper consideration. "A court may take steps to use the en banc power sparingly, **but it may not take steps to curtail its**

use indiscriminately." *Western Pacific Railroad Corp. v. Western Pacific Railroad Co.* 345 US 247, 73 S. Ct. 656, 97 L. Ed. 986, (1953) (at 261).

In Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 11477, 127 L.Ed.2d 474, 1994, the Supreme Court stated § 455(a) **requires recusal under the appearance of bias** and that actual bias is not required (at 548). The Supreme Court went on to say in Liteky;

> and the reason we said in *American Steel Barrel* that the recusal statute "was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, . . . ***but to prevent his future action in the pending cause***," 230 U. S., at 44.

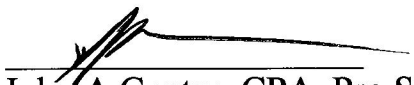
Again, this case is about reforming the state government to reinstitute Amendment XIV rights back into state court proceedings, and to provide objective oversight of the State's judiciary. Due to the nature of this case, and since this case includes many of the same facts as 6th Cir. Case No. 17-5204, Mr. Gentry cannot expect a fair and impartial hearing when such apparent personal bias exists. Plainly Mr. Gentry seeks recusal to prevent future bias in favor of Defendants. Mr. Gentry hereby respectfully objects to further proceedings conducted by and/or determined by Judge Batchelder and Judge Cook.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF-APPELLENT PRAYS:

1. That Judge Batchelder, and Judge Cook recuse or disqualify themselves from these proceedings;

2. That Judge Batchelder, and Judge Cook, not be assigned as panel judges to preside over this case;
3. That Judge Batchelder, and Judge Cook recuse or disqualify themselves from voting or rendering decision on Plaintiff-Appellant's RULE 40 PETITION FOR REHEARING OF ORDER DENYING INITIAL HEARING EN BANC AND ORDER DENYING DISQUALIFICATION AND OBJECTION TO DEFECTIVE ORDER;
4. That Judge Batchelder, and Judge Cook recuse or disqualify themselves from rendering decision on Plaintiff-Appellant's MOTION FOR RECONSIDERATION OF CASE MANAGER'S DEFECTIVE AND MISLEADING "RULING LETTER";
5. That Judge Batchelder, and Judge Cook recuse or disqualify themselves from rendering decision on Plaintiff-Appellant's MOTION FOR RECONSIDERATION OF EN BANC COORDINATOR'S ERRONEOUS DETERMINATION AND DENIAL OF ENTRY INTO THE RECORD;
6. And for any other action deemed appropriate by this Honorable Court.

Respectfully submitted,



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TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure Rule 27(d)(1)(D) and (E) and Rule 27(d)(2), MR GENTRY hereby certifies that this SECOND MOTION FOR CIRCUIT COURT JUDGES; BATCHELDER AND COOK TO RECUSE OR DISQUALIFY complies with the type-volume limitation in Rule 27 because, as counted by the Microsoft Word 2016 word count tool, this brief contains 3,390 words and does not exceed 20 pages. This brief complies with the typeface and type-style requirements in Rule 27(d)(1)(E) requirements because this brief has been prepared in proportionally spaced 14-point Times New Roman font. Dated December 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of SECOND MOTION FOR CIRCUIT COURT JUDGES; BATCHELDER AND COOK TO RECUSE OR DISQUALIFY was sent via email and will be filed electronically by the Clerk's Office, and notice served through the electronic filing system on this the 14th Day of December, 2017 to;

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On this the 14th day of December, 2017

John Anthony Gentry, CPA

Oath

State of Tennessee)

County of _____)

I, John Anthony Gentry, after being first duly sworn according to law, do hereby make oath, verify, state, and affirm, pursuant to the penalties of perjury under the laws of the United States, and by the provisions of 28 USC § 1746, that all statements included in the above and foregoing SECOND MOTION FOR CIRCUIT COURT JUDGES; BATCHELDER AND COOK TO RECUSE OR DISQUALIFY, are true and correct representations, to the best of my knowledge, information and belief. Dated: December 14, 2017

_____
John Anthony Gentry

Sworn to and subscribed before me, this
the _____ day of _____, 2017

Notary Public _____

My Commission Expires _____

Appendix K

The Constitution of the State of Tennessee (excerpts)

Constitution of The State of Tennessee Art I Section 1

That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Constitution of The State of Tennessee Art I Section 2

That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

Constitution of The State of Tennessee Art I Section 17

That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the state in such manner and in such courts as the Legislature may by law direct.

Constitution of The State of Tennessee Art X Section 2

Each member of the Senate and House of Representatives, shall before they proceed to business take an oath or affirmation to support the Constitution of this state, and of the United States and also the following oath: **I_____ do solemnly swear** (or affirm)

that as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and **that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this state.**