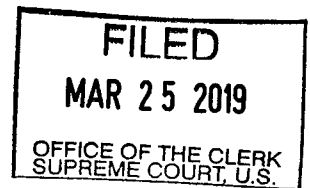


18-1242

NO. \_\_\_\_\_



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IN THE  
SUPREME COURT OF THE UNITED STATES

---

Endre' Glenn (Pro SE)

*Petitioner*

v.

NORDIC SERVICES, INC.

*Respondents*

---

On Petition for a Writ of Certiorari to the  
Washington State Supreme Court

---

PETITION FOR WRIT OF CERTIORARI

---

Endre' Glenn(ProSE)  
10518 165th PL NE  
Redmond, WA 98052

## QUESTIONS PRESENTED

This dispute between homeowner and contractor pertains to the replacement of damaged carpet when the water heater failed. Contractor retained a subcontractor to identify and procure the replacement carpet. Contractor and subcontractor coordinated the delivery and installation of the carpet. Dispute arose when contractor failed to bring sufficient personnel to install the carpet when the homeowner advised them of an impaired shoulder, and he would require them to move the furniture. Homeowner exasperated the injury by assisting contractor personnel to move the furniture when no one showed up for the job except one installer.

Whether a contractor and subcontractor violated homeowner's rights to due process when they ignored subpoena duces tecum, and failed to comply with arbitrator's order; depriving the homeowner of material testimony, and a reasonable opportunity to prepare for the hearing?

Whether King County Superior Court Judge violated due process for homeowner and equal protection of the laws by failing to order the contractor to follow Washington State public policy for initiating arbitration procedures?

## **RULE 14.1 (b) STATEMENT – PARTIES**

The following parties participated in the proceedings at the Washington State Supreme Court, Washington State Court of Appeals, trial court, and arbitration proceedings. Attorney Wendy Kent NORDIC's personal injury attorney for NORDIC Services participated only in the trial court and arbitration proceedings.

1. Endre Glenn, Petitioner on Review  
Defendant-Appellant  
10518 165<sup>th</sup> PL NE  
Redmond, WA 98052
  
2. NORDIC Services, Inc. Respondent on Review, Plaintiff-Appellee.  
Steven Hanson  
Hansen McConnel & Pelligrini  
1636 Third Street  
Marysville, WA 98270  
steve@thirdstreetlaw.com
  
3. Wendy M. Kent  
Attorney at Law  
319 SW Washington Street, Suite 1200  
Portland, OR 97204  
kent@bodyfeltmount.com  
www.bodyfeltmount.com

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	I
RULE 14.1 (B) STATEMENT – PARTIES .....	II
TABLE OF CONTENTS.....	III
APPENDIX.....	IV
TABLE OF AUTHORITIES .....	V
OPINIONS .....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	1
STATEMENT OF THE CASE.....	2
A. FACTUAL BACKGROUND.....	5
B. THE PROCEEDINGS BELOW .....	5
REASONS FOR GRANING THE WRIT OF CERTIORARI.....	8
A. REASONABLE OPPORTUNITY TO PREPARE. ....	8
B. EQUAL PROTECTION. WHETHER KING COUNTY .....	10
C. THE DECISION IS EXCEPTIONALLY IMPORTANT.....	12
CONCLUSION.....	13

## APPENDIX

Washington State Court of Appeals 76501-9-I (April 23, 2018).....	App 1
King County Superior Court 15-2-17386-3 (January 27, 2017) .....	App 18
Washington State Supreme Court 96044-5 (October 3, 2018).....	App 28
Other Relevant Information (June 25, 2015).....	App 30

## TABLE OF AUTHORITIES

### Cases

<i>Commonwealth Coatings Corp. v. Cont'l Cas. Co.</i> , 393 U.S. 145, 146–50, 89 S. Ct. 337, 338–40, 21 L. Ed. 2d 301 (1968).....	11
<i>Forbes v. Trigg</i> , 976 F.2d at 315. ....	10
<i>Fuentes v. Shevin</i> , 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972).....	2, 4
<i>Life Receivables Tr. v. Syndicate 102 at Lloyd's of London</i> , 549 F.3d 210, 218 (2d Cir. 2008) .....	9
<i>Pennwalt Corp. v. Durand-Wayland, Inc.</i> , 708 F.2d 492, 495 (9th Cir. 1983) .....	8
<i>Southland Corp v. Keating</i> 456 U.S. 1, 6-8 (1984) .....	1
<i>Stamtec, Inc. v. Anson</i> , 195 F. App'x 473, 474 (6th Cir. 2006) .....	9

### Statutes

RCW 7.04.150(3). ....	4
U.S. Constitution Title XIV .....	12
Washington Uniform arbitration act RCW 7.0A.090 .....	12
Washington Uniformed Arbitration Code, Chapter 7.04A.090 RCW .....	11

### Other Authorities

<i>16B Am.Jur 2d §1008 Requirement for Full Evidentiary Hearing</i> . ....	3
<i>16B Am.Jur 2d Time §991</i> .....	2
<i>16B AMJUR § 1008 Requirement Full Evidentiary hearing</i> .....	10
<i>16B AMJUR §991 Time</i> .....	9

## OPINIONS

Trial court King County Superior Court confirmed arbitration award, and entered judgment January 27, 2017. Washington State Court of Appeals unpublished opinion April 23, 2018 affirmed judgment for plaintiff NORDIC Services. On June 6, 2018 Court of Appeals denied appellant(s) motion for reconsideration by a majority of panel. Washington Supreme Court denied Petition for Certiorari October 3, 2018.

## JURISDICTION

The Supreme Court of Washington denied Certiorari on October 3, 2018. This Court has jurisdiction under 28 U.S.C. 1257(A) *see e.g. Southland Corp v. Keating* 456 U.S. 1, 6-8 (1984)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

U.S. Constitution XIV **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const. amend. XIV*

## STATEMENT OF THE CASE

This case arises from the Supreme Court of Washington failure to provide due process under U.S. Constitution Title XIV Amendment; depriving a person of life, liberty or property without due process of law and equal protection under the laws.

Procedural due process requires a real opportunity to be heard at a meaningful time and in a meaningful manner; in other words, to qualify under due process standards, the opportunity to be heard must be meaningful, full, and fair and not merely colorable or illusive. *U.S.C.A. Const.Amend. 14*. Moreover, to comply with due process requirements, notice must be given sufficiently in advance of scheduled court proceedings so that a reasonable opportunity to prepare will be afforded. *16B Am.Jur 2d Time §991. See Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972)*

NORDIC Services subcontractor VAN WILD Furniture willful disregard of subpoena duces tecum, and failure to comply with arbitrator order to produce evidence, and employee address information of key witness, deprived the homeowner Glenn of a reasonable opportunity to prepare for the hearing. NORDIC Services attorney Steve Hansen subsequently acquired discovery information on October 14, 2016; the same day the arbitrator required both parties to submit prehearing statements; arbitrator extended deadline providing homeowner, only 1 business day to prepare; CP 200 i.e. submit prehearing statements without the benefit of key testimony, depositions of key witnesses, Rob Tooley, VAN WILD Furnishing, and John Rossnagle, NORDIC Services. Conversely arbitrator previously granted NORDIC's Services personal injury attorney Wendy Kent's request to reschedule the arbitration hearing from September 28, 2016, to October 28, 2016 because several medical providers required additional time to compile



records CP 205. Ms. Kent never disclosed expert witness, or expert witness report. CP 609 Neither Arbitrator nor King County Judge extended the same courtesy to reschedule the hearing to Mr. Glenn when VAN WILD Furnishings failed to comply with subpoena, and order compel discovery. *16B Am.Jur 2d §1008 Requirement for Full Evidentiary Hearing.*

The limited discovery information provided to the homeowner was clearly material to his personal injury claim. Civil Rule 26 (k) similar to FRCP Rule 26 (a) (1) Required NORDIC Services to disclose all individuals likely to have discoverable information. That would include correspondence between their project manager John Rossnagle, and Rob Tooley VAN WILD Furnishings. NORDIC failed to disclose CP337. The communications between Rob, and John confirmed NORDIC Services was aware of the impaired shoulder. Arbitrator dismissed the personal injury claim in the award. He excluded any opportunity for the homeowner Mr. Glenn to obtain their testimony.

Washington Court of Appeals declined to review Glenn's second argument related to the denial of the emergency motion to extend arbitration schedule, because he does not demonstrate that the denial of the motion to extend the arbitration schedule prejudicially affected the order confirming arbitration award

The U.S Supreme Court stated in dispute Fuentes v. Shevin challenging the constitutionality of Florida and Pennsylvania prejudgment replevin statutes, "The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing."

It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing on the contractual right to continued possession and use of the goods. See *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972)

King County Superior Court (KCSC) judge Catherine Shaffer denied homeowner Glenn equal protection under the law; Washington State public policy for initiating arbitration procedures, RCW 7.04.150(3).

Washington State public policy Uniform Arbitration Act, Chapter 7.04A.090 RCW requires Plaintiff to give notice of his intent to arbitrate dispute pursuant to statute governing arbitration procedures.

- (1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by mail certified or registered, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.
- (2) Unless a person interposes an objection as to lack or insufficiency of notice under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing, the person's appearance at the hearing waives any objection to lack of or insufficiency of notice.

Superior Court judge granted NORDIC's motion to compel arbitration, and Attorney Steve Hansen's selection of arbitrators regardless of Glenn's objection to lack of notice to initiate arbitration CP 103. The Court never required NORDIC Services to comply with RCW 7.04.150(3). Due to illness Mr. Glenn missed the hearing with good cause CP 591, 597.

Washington Court of appeals ruled based on the arbitration agreement any party may apply to King County Superior Court for an appointment of arbitrator. NORDIC attempted to reach Glenn on selection of arbitrators and requesting an alternative before court hearing CP110. Washington Court of Appeals erred when it failed to consider the notice provided by NORDIC Services did not comply with statutory provision for initiating arbitration. Washington Supreme Court denied Certiorari.

## **A. Factual Background**

The dispute between NORDIC Services and Mr. Glenn pertains to disagreement about contract performance and personal injury claim which occurred during the replacement of water damaged carpet caused by a defective water heater in the client's home.

August 14, 2014, NORDIC Services and Mr. Glenn entered into a contract for the replacement of water damaged carpet in homeowner's basement. CP 50-51. On June 25, Homeowner signed NORDIC's proposed settlement agreement to avoid litigation App. 19. NORDIC filed a complaint July 20, 2015 in King County Superior Court, Judge Catherine Shaffer, presiding. CP 1 – 11. Defendant retained Attorney Ray Brooks, personal injury attorney, to respond to the complaint. He raised issues of NORDIC's Services contract breach; improperly installed CAT5E cabling, CP 315 and failure bring sufficient personnel to move the furniture because the homeowner could not assist due to an impaired shoulder CP 35 – 37. Mr. Glenn advised Rob Tooley, VAN WILD Furnishings and John Rossnagle, NORDIC Services project manager CP 337 about the impaired shoulder. On several occasions the subcontractor Rob Tooley requested John Rossnagle, confirm his schedule for moving the furniture CP 355. When John requested a copy of the signed contract before moving forward with the carpet repair and replacement, the homeowner Glenn reiterated to NORDIC project Manager NORDIC should show up onsite one day before the scheduled carpet installation to move the furniture. CP 362. NORDIC Services and VAN WILD Furnishings willfully withheld this information by their flagrant disregard of the arbitrator's subpoena, and order to compel discovery. CP 577-579, 580-581. CP 129.

## **B. The Proceedings Below**

NORDIC filed a complaint in Superior Court July 20, 2015, and requested arbitration.

NORDIC's construction services contract required the arbitration of the dispute "by a single arbitrator to be selected upon agreement of the parties under the auspices of Judicial Arbitration and Mediation Services (JAMS), Judicial Dispute Resolution Service (JDR) or Washington Arbitration and Mediation Service (WAMS). If the parties cannot agree upon an arbitrator, either party may apply to King County Superior Court for an appointment of a qualified arbitrator from the above services, or if those services no longer exist, from the AAA roster." CP10.

NORDIC's construction services agreement never mentioned how parties would initiate arbitration. NORDIC failed to comply with Washington State public policy for initiating arbitration, Uniform Arbitration Act, Chapter 7.04A.090 RCW. King County Superior Court Judge Catherin Shaffer never required NORDIC to follow public policy.

Mr. Glenn objected to NORDIC'S unilateral selection of arbitrators Charles Burdell, George Finkle, or Steve Scott all from Judicial Dispute Resolution. CP 15. On March 4, 2016 Trial Court ordered the parties to participate in arbitration.

Homeowner filed "Emergency Motion for Relief" October 17, 2016 with Superior Court when subcontractor VAN WILD failed to comply with the arbitrator's order to compel discovery. CP 307. The homeowner requested additional time to conduct discovery authorized by the arbitrator's June 14, 2016 discovery order. He advised the court of Rob Tooley, project manager, VAN WILD refusal to participate in the deposition, or testify in the matter. This information was consistent with VAN WILD furnishings refusal to comply with subpoena, and order. Mr. Glenn initially filed request with arbitrator Judge Charles Burdell but received no response. KCSC Judge Catherine Shaffer denied homeowner's motion for emergency relief.

Arbitrator convened the hearing October 28, 2016 even though the homeowner Glenn requested rescheduling the proceedings in light of NORDIC's

subcontractor failure to comply with the subpoena by August 25, 2016, and order granting motion to compel production of discovery by September 26, 2016 CP 325 – CP 329. Arbitrator declined to reschedule the hearing or impose sanctions (CP 321) on subcontractor; apparently accepting Stephen Hansen plea that he did not see the benefit to Mr. Glenn. (CP 320) Arbitrator provided the homeowner only 1 business day to prepare arbitration pre-hearing statements by Monday, October 17, 2016; originally scheduled Friday, October 14, 2016. King County Superior Court Judge denied defendants / Appellant's Emergency Motion for Relief.

Judge Catherine Shaffer granted the Plaintiffs motion for sanctions against the defendant for filing "Motion for Emergency Relief". Judge Shaffer did not hold a formal hearing on the matter, just based her decision strictly on the affidavits submitted. Trial Court erred by imposing sanction without a hearing on the propriety or the reasonableness of the award Appendix B15-16. *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 495 (9th Cir. 1983)

In U.S. Court of Appeals Ninth Circuit a civil contempt proceeding is "a trial within the meaning of Fed.R.Civ.P. 43(a) rather than a hearing on a motion within the meaning of Fed.R.Civ.P. 43(e)[:] ... the issues may not be tried on the basis of affidavits." *Hoffman v. Beer Drivers & Salesman's Local Union No. 888*, 536 F.2d 1268, 1277 (9th Cir.1976).

Arbitrator issued the award December 4, 2016. Unfortunately Mr. Glenn could not attend the hearing due to illness, (App. 24) and required home care. He filed several motions following the post deprivation of his interest with the King County Superior Court for a trial de novo, CP 467 – 472. King County Superior Court Judge Catherine Shaffer summarily denied the motion, and issued an order confirming the award, CP 545 – 549. See *Barr v. Young*, 187 Wash. App. 105, 111–12, 347 P.3d 947, 951 (2015)

On February 27, 2017 homeowner filed an appeal with Washington State Court of Appeals. Appellate Court affirmed judgment. Washington State Supreme Court denied Certiorari.

## REASONS FOR GRANTING THE WRIT OF CERTIORARI

- A. Reasonable Opportunity to Prepare. Whether a contractor and subcontractor violated homeowner's rights to due process when they ignored subpoena duces tecum, and failed to comply with arbitrator's order; depriving the homeowner of material testimony, and a reasonable opportunity to prepare for the hearing?

NORDIC Services subcontractor VAN WILD Furnishings failed to comply with subpoena, and order to produce discovery information by August 25, 2016, or September 26, 2016. NORDIC's attorney Steve Hansen could have provided this information per the initial disclosures request LCR 26 but delayed until the arbitrator ordered pre-hearing statements due by Friday October 14, 2016. See *Life Receivables Tr. v. Syndicate 102 at Lloyd's of London*, 549 F.3d 210, 218 (2d Cir. 2008). *Arbitrators' power to order any person to produce documents, as long as the person is called as a witness to a hearing.. 9 U.S.C. § 7.*

Supreme Court stated if a party has the ability to comply with a discovery order and does not, dismissal is not an abuse of discretion. *Stamtec, Inc. v. Anson*, 195 F. App'x 473, 474 (6th Cir. 2006)

This Court has recognized that the most severe in the spectrum of sanctions provided by statute or rule must be available to the District Court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, **but to deter those who might be tempted to such conduct in the absence of such a deterrent.**

Neither Arbitrator Judge Charles Burdell nor King County Superior Court Judge Catherine Shaffer imposed any of the spectrums of sanctions available to the court on NORDIC's subcontractor VAN WILD for its non-compliance. The court or arbitrator declined to consider even granting additional time for the homeowner to prepare for the hearing in light of the subcontractor's malfeasance.

The Due Process Clause requires the States to afford civil litigants a meaningful opportunity to be heard by removing obstacles to their full participation in the judicial proceedings. *Tennessee v. Lane*, 541 U.S. 509, 523, 124 S. Ct. 1978, 1988, 158 L. Ed. 2d 820 (2004)

The due process right to notice must be granted at a meaningful time and in a meaningful manner. Notice must be given sufficiently in advance of scheduled court proceedings so that a reasonable opportunity to prepare will be afforded. *16B AMJUR §991 Time*. A notice which fails to give an adequate length of time is invalid.

The framework to evaluate the due process sufficiency of particular procedures requires consideration of three distinct factors: (1) the private interest that will be affected by official action; (2) the risk of an erroneous deprivation of such an interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

In examining the claims the Court must first determine whether there was a deprivation of a protected interest. If so the court decides if the procedures surrounding the deprivation were constitutionally sufficient. *Forbes v. Trigg*, 976 F.2d at 315.

Mr. Glenn lost a protected interest his home without due process. The notice was insufficient because NORDIC's subcontractor violated a court order to compel discovery. Though NORDIC raised the issue of homeowner's non-participation, appearance at the hearing, his absence was with cause. The King County Superior Court judge denied all motions post-judgment for a hearing on the issue.

Arbitrator afforded NORDIC every opportunity to conduct discovery outlined in his June 14, 2016 order but denied the defendant similar opportunity. CP 315, 316. A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument a showing fairly adequate to establish the propriety or impropriety from the standpoint of justice and law of the step asked to be taken. 16B AMJUR § 1008 *Requirement Full Evidentiary hearing*.

The hearing afforded the homeowner was not fair, or equitable, denying him the opportunity of due process to protect his interest.

U.S. Supreme Court said any tribunal permitted by law to try cases and controversies not only must be unbiased but must also avoid even appearance of bias.

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the **appearance of bias**. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably be thought biased against one litigant and favorable to another. *See.. Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 146–50, 89 S. Ct. 337, 338–40, 21 L. Ed. 2d 301 (1968)*

B. Equal Protection. Whether King County Superior Court Judge violated due process for homeowner and equal protection of the laws by failing to order the contractor to follow Washington State public policy for initiating arbitration procedures?

Washington King County Superior Judge Catherine Shaffer failed to require NORDIC Services to initiate arbitration consistent with Washington Uniformed Arbitration Code, Chapter 7.04A.090 RCW, considering the amount in dispute it would have been saved valuable court resources..



NORDIC filed a complaint in superior court for the demand. Superior Court stayed the litigation pending outcome of arbitration. Prior to the March 4, 2016 hearing, NORDIC sent a request to the homeowner for the selection of arbitrators which failed to comply with the statutory requirements for initiating arbitration request. Denying the homeowner the opportunity to participate in the selection of the arbitrator, Superior Court Judge Catherine Shaffer granted NORDIC's motion to compel arbitration and its selection of arbitrators.

Supreme Court of Vermont held in *Hermitage Inn Real Estate Holding Co. LLC v. Extreme Contracting*, the AAA rules applicable in the case, the Commercial Arbitration Rules defined "the initiating party" as the claimant and provided that the claimant shall initiate arbitration through a "demand" containing a statement setting forth the nature of the dispute, the amount involved. *Hermitage Inn Real Estate Holding Co., LLC v. Extreme Contracting, LLC*, 2017 VT 44, 170 A.3d 604 (Vt. 2017)

Texas Supreme Court reached a similar conclusion in *In re Bruce Terminix Co.*, 988 S.W.2d 702, 706 (Tex. 1998); the duty to define the nature of the dispute and the remedy as provided by AAA rules naturally and logically falls on the claimant.

Under these rules, arbitration is initiated when the "initiating party ('the claimant')" files a demand for arbitration with the AAA, along with the administrative filing fee and a copy of the applicable arbitration agreement from the parties' contract. See AAA Construction Industry Rules, *supra*. The "claimant" must provide a copy of the demand and agreement to the opposing party ("the respondent"). *Id.* The demand must include "a statement setting forth the nature of the claim including the relief sought and the amount involved." *Id.* As above, the filing fee depends on the size of the claim.

Washington Uniformed Arbitration Code, Chapter 7.04A.090 RCW requires the plaintiff to follow similar procedure to initiate arbitration with one exception notice must be sent by as follows:

A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by mail certified or registered, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

Supreme Court of Vermont emphasized in its decision that much of the delay in Hermitage Inn Real Estate Holding Co. LLC v. Extreme Contracting and any resulting prejudice arose from the plaintiff's failure to seek and initiate arbitration when it became ripe.

NORDIC Services had a valid arbitration agreement but instead of following the procedures for initiating arbitration pursuant to Washington Uniform arbitration act RCW 7.0A.090 they filed law suit. The defendant raised this issue at the trial court hearing, and again at the Court of Appeals. Both trial court, and appellate court failed to consider NORDIC's non-compliance with statutory requirement; therefore denying the defendant equal protection under the laws of Washington State.

#### C. The Decision is Exceptionally Important.

U.S. Constitution Title XIV protects all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Any tribunal permitted by law to try cases and controversies not only must be unbiased but must also avoid even appearance of bias. The failure to accord an accused a fair hearing violates even minimal standards of due process. A hearing must be an orderly proceeding, adapted to the nature of the case, in which the

person to be affected has an opportunity to defend, enforce and protect his or her rights. In order to determine whether a due process violation has occurred, a court must consider the entire spectrum of pre-deprivation and post-deprivation processes provided by the state. *16B AMJUR 1011 Time of Hearing*. The state must apply public policy equally to all individuals, and require compliance.

### CONCLUSION

The petition for a writ of certiorari should be granted. Request the Court provide any just and equitable relief as the Court deems necessary.

Dated March 12, 2019;

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Endre' Glenn". The signature is fluid and cursive, with a large initial 'E' and a stylized 'G'.

Endre' Glenn (Pro SE)  
10518 165th PL NE  
Redmond, WA 98052