

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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In re, JESSIE D. McDONALD, Ph.D.  
Petitioner,

Appellate Court No. 18-5566

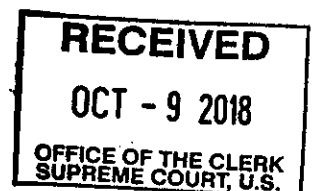
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On application for a writ of certiorari to the  
U.S. Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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### QUESTIONS PRESENTED

1. Whether the appellate court departed from the accepted and usual course of judicial proceedings?
2. Whether the district court judgment is void?
3. Whether there is judicial misconduct in this case?

### **LIST OF PARTIES**

The Petitioner, Jessie D. McDonald is the only petitioner in this case;

Herbert H. Slatery, III, Attorney General for Tennessee, respondent;

Aleta Trauger, U. S. District Judge for the Middle District of Tennessee, 801 Broad Street, Room 800, Nashville, Tennessee 37203;

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## AUTHORITIES

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<i>Brown v. Vankeuren</i> , 340 Ill. 118, 122 (1930);	6
<i>Bush Jewelry Co. v. Bessemer</i> , 266 Ala 492, 98 So. 2d at 650	4
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<i>Shephard v. Marbley</i> , 23 F. App'x 491, 493 (6 <sup>th</sup> Cir., 2001).	5,7
<i>United States v. District Court</i> , 334 U.S. 265;	7
<i>Windsor v. McVeigh</i> , 93 U.S. 274 (9 <sup>th</sup> . Cir.);	5

### **OPINION BELOW**

July 17, 2018, the Court of Appeals denied the application for writ of Prohibition to prohibit the enforcement of the final judgment in case no. 3:05-0243, entered on June 13, 2011.

August 9, 2018, the court denied a motion to rehear.

### **STATEMENT OF JURISDICTION**

In aid of this Court's appellate jurisdiction under 28, U.S.C., §1254(1) this court has jurisdiction to act pursuant to Rule 10 of this Court Rules, on grounds, the appellate court has abused its judicial discretion and has so far departed from the accepted and usual course of judicial proceedings, by refusing to prohibit the enforcement of a void judgment, as to call for an exercise of this Court's supervisory powers, for refusing to prevent the enforcement of a judgment that was entered in the district court in the absence of jurisdiction and without a show cause hearing as required by Rule 11 of Federal Rules of Civil Procedure.

### **STATUTORY PROVISION**

28, §1254(1), USC

1.

## CONSTITUTION INVOLVED

### Fifth and Fourteenth Amendments

Guarantee all citizens the right to equal protection under the laws and due process in all courts from being deprived of life, liberty and property, without due process under the laws of the land.

## STATEMENT OF THE CASE

This case originated in the Sixth Circuit Court of Appeals, on May 31, 2018 seeking an extraordinary writ to prohibit the enforcement of a void judgment from the district court in Case No. 3:05-0243 entered on June 13, 2011. [ Exhibit #1, Petition for Writ of Prohibition ]

On June 13, 2011, without a complaint or petition being filed accusing petitioner of any wrong doings, the district court proceeded without a show cause hearing and entered an order imposing monetary sanctions against the petitioner for abusing the judicial process and directing the clerk of the court not to accept any pleadings filed by the petitioner in Case No. 3:05-0243.

On June 18, 2012, on direct appeal, the Court of Appeals affirmed the judgment from the district court and denied a Motion to Rehear in Case No. 11-5821.

July 17, 2018, the Court of Appeals denied an application for writ of prohibition to prevent further enforcement of the void judgment imposed by the district court.

On July 27, 2018, a Motion to Rehear was filed.  
[ Exhibit #2 – Motion to Rehear ] and DENIED.

### Concise Argument

The final judgment from the Court of Appeals abused its discretion and has so far departed from the accepted and usual course of judicial proceeding, by refusing to prohibit the enforcement of a district court's void judgment for lack of jurisdiction; and the court proceeded in the absence of a show cause hearing in violation of Rule 11, FRCP.

There were no further rights to an appeal, as a matter of right and 28, §1651, USC allows prospective litigants the opportunity to seek extraordinary relief when there is no other relief available from enforcement of void judgments and frauds upon the court.



### REASONS WHY RELIEF SHOULD BE GRANTED

When the district court lacked jurisdiction to enter the aggrieved judgment in the beginning, the only remedy is by Relief from Judgment under Rule 60(b), FRCP since there is no right to an appeal when the district court lack jurisdiction.

Even though the case was appealed as a matter or right, petitioner failed to state ‘lack of jurisdiction’ as a ground for an appeal and it was the appellate court’s duty to determine jurisdiction first before proceeding on the merits of the case.

Under Tennessee law, when the trial court lack jurisdiction, this state proceeds in matters involving jurisdiction by following previous decisions from this court which states, “The rule that jurisdiction of the subject matter cannot be conferred by agreement of the parties applies to appellate proceedings as well.”. *Little v. Bowers*, 134 U. S. 547, 33 L. Ed. 1016, 10 S. Ct. at 620; also see, *Elgin v. Marshall*, 106 U. S. 578, 27 L. Ed. 249, 1 S. Ct. 484, which is consistent with other jurisdictions. See case, *Busch Jewelry Co. v. Bessemer*, 266 Ala 492, 98 So. 2d at 50, accordingly there is no dispute, when the

trial court proceeded in absent of jurisdiction, the judgment from the direct appeal was also void for lack of jurisdiction.

Since the judgment from the district court has threatened petitioner with criminal contempt of court charges for filing any further pleadings in that court, the appellate court was asked for permission to seek relief in the trial court by seeking relief from judgment by Rule 60(b), which was never considered.

In essence, petitioner has been barred from having access to the district court, contrary to a previous ruling from the Sixth Circuit Court of Appeals in case, *Ortman v. Thomas*, 99 F. 3d 807, 811(6<sup>th</sup>. Circuit, 1996); *Shephard v. Marbley*, 23 F. App'x 491 (6<sup>th</sup> Cir., 2001). There has never been a show cause hearing in the district court to determine jurisdiction in the district court as required under Rule 11 of FRCP. This court has said, "A judgment issued in the absence of a hearing, is a violation of due process renders that judgment void. *Johnson v. Zerbst*, 304 U. S. 458, 58 S. Ct. 1019. It is the denial of the opportunity to defend which renders the judgment void. *Windsor v. McVeigh*, 93 U. S. 274 (9<sup>th</sup> Cir.)

There has never been a complaint or petition before the district court against petitioner to justify sanctions being imposed against the petitioner. An order restricting and limiting petitioner of access to the district court, by acting with bias and prejudice to single out the petitioner in a situation that has never been done in the history of the court, without a complaint or petition being sought against petitioner is a violation of due process. *Brown v. Vankeuren*, 340 Ill. 118, 122 (1930). Where there are no justifiable issue is presented to the court through proper pleadings, the judgment is void. *Ligon v. Williams*, 264 Ill. App. 3d 701 (1994). There has been no complaints or proceedings filed against petitioner at any time to justify the district court issuing sanctions against the petitioner.

If the clerk is restricted from filing such a motion for relief under Rule 60(b) of FRCP, petitioner is being denied access to the court to seek relief and there was no other relief available other than an application for extraordinary relief in the Sixth Circuit. The Sixth Circuit Court of Appeals has clearly said that, "*A person can [not] be absolutely foreclosed from initiating an action in a court of the United States.*" *Supra case*,

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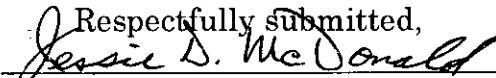
*Ortman v. Thomas*, 99 F. 3d 807, 811 (6<sup>th</sup> Cir., 1996) and *Shephard v. Marbley*, 23 F. App'x 491, 493 (6<sup>th</sup> Cir., 2001). Petitioner was never given the opportunity to show the case had merits as required by Rule 11 of FRCP in a show cause hearing.

#### Conclusions of Law

Extraordinary writ has customarily been allowed to prohibit a lower court from exceeding its lawful jurisdiction or acting in a complete absence of jurisdiction. See, *United States v. District Court*, 333 U.S. 841, *Reversed*, 334 U.S. 265.

#### Relief Sought

For the reasons as shown herein, Petitioner, Jessie D. McDonald, Pro se asks this court to GRANT this application for review by certiorari, to prevent a miscarriage of justice; and all other and further relief the court deems to be proper; including an order instructing the district court to refund all monetary funds obtained under the fraudulent judgment.

Respectfully submitted,  
  
Dr. Jessie D. McDonald, Ph. D.