No. 18-569

IN THE SUPREME COURT OF THE UNITED STATES

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LINDA SHAO, AKA Linda Shao
Petitioner - Appellant,
vs.
TSAN-KUEN WANG,
Respondent - Appellee.

—o0o—

On Petition For A Writ Of Certiorari To the California Sixth District Court of Appeal regarding its Order of Dismissing Appeal on May 10, 2018 which is an appeal from California Santa Clara County Court's Nov. 4, 2013's continuous parental deprival order

[H040395/S249444]

PETITION FOR REHEARING

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I.

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner respectfully petitions this Court for rehearing of this Court's order of January 7, 2019 denying the Petition for Writ of Certiorari. This Petition for Rehearing is based on the extraordinary circumstances of a substantial or controlling effect that (1) the Amicus Curiae motion was not decided, that (2) the Request for Recusal was irregularly docketed and not decided, and that (3) Chief Justice John G. Roberts, Associate Justice Clarence Thomas, Associate Justice Samuel Alito, Associate Justice Stephen Beyer, Associate Justice Elena Kagan and Associate Justice Sonia Sotomayer should not have participated in the voting of the Petition for Writ of Certiorari as these Justices have direct conflicts of interest because they were requested to enter default in 1:18-cv-01233 that is pending with the U.S.D.C. for the District of Columbia and because of their membership and financial interest in the American Inns of Court.

I. THE ABOVE IRREGULARITIES INVOLOVED IN THE PETITION CONSTITUTE A VIOLATION OF 18 U.S.C. §371 WHICH EGREGIOUSLY OBSTRUCTED THE JUSTICE, NOT ONLY PREJUDICING PETITIONER'S RIGHT TO APPEAL, ACCESS TO THE COURTS, TO APPEAL, AND HER SUBSTANTIVE DUE PROCESS RIGHT OF CHILD CUSTODY

A. The extraordinary circumstances involve the basic function of a court

1. Refusing to decide

Refusing to rule is a clear violation of judicial duty. *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 477. The Amicus Curiae motion was properly filed on Nov. 8, 2018 but this Court did not decide. While the court delayed filing of the Request for Recusal, it was docketed as being "received" by this court on November 20, 2018. The docketing itself is irregular in that Jeff Atkins (who is in charge of request for recusal) did not enter the mailing date but the receipt date. In addition, Mr. Atkins altered the

file by concealing all supporting evidence from posting.

The court has a duty to decide recusal (*O'Hair v. Hill*, 641 F.2d 307 (5th Cir. 1981) in ft.1, which is "absolute" (*Comer r v. Murphy Oil USA,* 607 F.2d 1049, 1057 (5th Cir. 2010)) and is Constitutionally imposed (*National Education Assoc. v. Lee County Board of Public Instruction,* 467 F.2d 477 (5th Cir. 1972)

The determination of the issues presented by the Request for Recusal is necessary prior to any substantive ruling on the merits of the Petition as required by 28 USC §455. *Caperton v. A.T. Massey Coal Company*, 556 US 868 (2009).

2. Alteration of the Request for Recusal and irregular entry on the date of filing

In addition, the Clerk's Office of this Court has a ministerial duty to file and the Chief Justice of this Court has a duty to supervise the function of the Clerk's Office.

In *Critchley v. Thaler*, 586 F.3d, 318 (5th Cir. 2009) and in *Wickware v.* Thaler, 404 Fed. Appx. 856, 862 (5th Cir. 2010), the court held that the clerk has a ministerial duty to file and that a delay in filing constitutes a violation of Due Process. In *Voit v. Superior Court,* 201 Cal.App.4th 1285 (6th

Dist. 2011), the California Sixth Appellate District Court also held that the clerk's office has such ministerial duty to file and did not have the authority to set a condition of filing of motion.

Jeff Atkins's removal of the appendix from the Request for Recusal and delayed posting by about 2 weeks and, failed to comply with local rule in docketing the date of filing as the date of mailing, suggests the actual prejudice that is caused by the direct conflicts of interest that was stated in the Request for Recusal. Such alteration of court's file further constitutes violation of 18 U.S.C. §2071.

3. **Discriminative practice in repeatedly failing to decide Petitioner's Requests for Recusal**

This constitutes the 4th time that this Court refused to decide on the Request for Recusal. This time, this Court further failed to decide on the motion filed by the Amicus Curiae, Mothers of Lost Children.

In *State v. Allen, 2010 WI 10 at Page 35 (2010)*, Wisconsin Supreme Court researched the history of the US Supreme Court's ruling on disqualification motion and stated:

"An examination of recusal practice at the United States Supreme Court reveals that even while the

Court has, as a matter of tradition or general practice, left recusal decisions to individual justices, the Court appears always to have retained jurisdiction over recusal motions and maintained the authority to guarantee a fully qualified panel of justice. At least once, the members of the Court have, by majority vote, curtailed another sitting justice (Justice William O. Douglas) from participation in the court's decision."

According to *State v. Allen,* the decision of recusal has been left to the hands of the Justice that is asked to be recused.

Justice Rehnquist issued a lengthy opinion in *Laird v. Tatum*, 409 U.S. 824 (1972) regarding a request for recusal of himself. Other requests for recusal were denied without stating a reason, but every recusal was decided, except those filed by Petitioner. E.g., *Earnest v. U.S. Attorney for the S. Dist. Of Alabama,* 474 U.S. 1016 (1985) (J. Powell),

The 6 present Justices named above at this Court have created the history of lack of decision on the Requests for Recusal in the Petitions filed by Petitioner, including Petition No. 17-256, 17-613 (twice), and now this one. Such discriminative practice of the 6 Justices constitutes a violation of the 1st Amendment of the Constitution.

4. For this first time in history, this Court failed to decide the Amicus Curiae Motion of Mothers of Lost Children

Amicus Curiae motion is well-recognized to be material to this Court's decision on whether to grant certiorari. This is the first time in 226 years' history of the Supreme Court that the court failed to decide on an Amicus Curiae motion.

II. SUCH IRREGULARITIES WERE WILLFULLY MADE THAT CAUSE THE EXTRAORDINARY CIRCUMSTANCES TO BE EXTREME THAT REHEARING SHOULD BE GRANTED AS THE JANUARY 7, 2019'S ORDER SHOULD BE VOID FOR BEING MADE IN VIOLATION OF DUE PROCESS

A. The Petition for Writ of Certiorari

This is case about California court's extreme obstruction of justice that involves criminal conspiracies and massive irregularities where the courts conspired with James McManis's law firm to stall Petitioner's child custody return for already 7 years after the initial parental deprival orders were

vacated, in order to create its only defense against Petitioner in Petitioner's malpractice case (112CV220571/2011CV-1-220571) against the firm that Petitioner is still unable to get back her child custody such that there was no causation of their malpractice in not taking any action to get Petitioner's child custody back, by way of multiple relationship that James McManis's law firm has with the courts.

These relationships include (1) James McManis being an attorney for Santa Clara County Court, some judges there, and a Justice at California Sixth District Court of Appeal, and a Justice at California Supreme Court, (2) regular social relationship with many judges/justices through the American Inns of Court, and (3) quasi-employment relationship by serving as a Master at Santa Clara County Court and the USDC in San Jose. James McManis's law firm further irregularly obtained vexatious litigant orders against Petitioner from his client, Santa Clara County Court, and has used such improper judiciary relationship to stay the jury trial of Shao v. McManis Faulkner, James McManis, Michael Reedy (112CV220571/2012-cv-1-220571 pending at Santa Clara County Court) causing the case to be delayed for about 7 years. And the Santa Clara County

Court has used such void vexatious litigant orders to stall Petitioner from filing any motion to ensure continuous parental deprival.

The Petition for Writ of Certiorari appears to be implementation of such common scheme. James McManis's law firm influenced the Sixth District Court of Appeal to fraudulently dismissed this child custody appeal by concealing orders, after Santa Clara County Court refused to prepare the records on appeal for about 4 years following appeal and disallowed the court reporter to file the trial hearing transcripts that Petitioner had paid ($3072). In prior attempts to dismiss this custody appeal, Santa Clara County Court and California Sixth District Court of Appeal committed alteration of docket, generating false notices and docket entries, destroying court files, deterring filing, and concealing notices. These crimes violated California Penal Code §§278.5, 6200, 96.5, California Government Code §§68151-53, and California Rules of Court Rule 8.54 and 8.57 as well as the First and 14th Amendment of the Constitution.

James McManis and his firm orally moved the Santa Clara County Court to stay jury trial on Dec.10, 2015 based on the sole ground that Santa

Clara County Court is waiting for the Sixth District Appellate Court to dismiss this custody appeal, while it has deterred appeal from taking place by blocking records on appeal to be filed with California Sixth District Court of Appeal. Then, there were many attempts done by California Sixth District Court of Appeal to dismiss the custody appeal with many false notices. [Petition for Writ of Certiorari, App. 124-156, Declaration of expert witness Attorney Meera Fox in the civil malpractice case against James McManis, Michael Reedy and McManis Faulkner, LLP.] Eventually, Justice Mary J. Greenwood, the wife of the judge who started the conspiracy, Judge Edward Davila who made the first unconstitutional orders of parental deprival on August 4, 2010, became the Presiding Judge of California Sixth District Court of Appeal and caused her Acting Presiding Justice Adrienne Grover, to dismiss the child custody appeal in violation of Rule 8.54 of California Rules of Court on May 10, 2018.

Most importantly, the crimes involve separating mother and child. While the nation is focusing on the immigration wall that could separate the parent and child, the highest court of this nation irregularly ignored the severe crimes involved in the Petition for Writ of Certiorari. Parental rights are

substantive due process rights and are fundamental rights. *Santosky v. Kramer* (1982) 455 US 745.

Right to access the court for divorcing proceedings was a substantive right. *Robinson v. Robinson, 2017 Ohio 450 (Court of Appeals of Ohio, 4th Appellate District, Meigs County, released on 1/31/2017)*

B. Conflicts of interest for the 6 Justices that caused the failure to decide to be "willful"

All of Petitioner's prior appeals up to this Court were unsuccessful. In 2017, James McManis's influence was then exposed to have stepped into the US Supreme Court and its clerk's office in 2017--The Justices of this Court have had close relationship with James McManis through the American Inns of Court and have financial interest at the American Inns of Court.

James McManis is the leading attorney of the American Inns of Court. He himself is a master at San Francisco Bay Area Intellectual Property American Inn of Court. His partner, Michael Reedy, has been in the Executive Committee of the William A. Ingram American Inn of Court for more than a decade and is the President-Elect. James McManis published has close relationship with

Chief Justice John G. Roberts at his firm's website on 08/13/2012 that Justice Roberts was the second one and he was the third one who received the highest honor that the Inns can offer--- Honorable Bencher. His firm published:
"Prior to the election of McManis and two other Fellows of the International Academy of Trial Lawyers (Tom Girardi and Pat McGroder), the only Americans so honored were U.S. Supreme Court Chief Justice John Roberts and Justice Antonia Scalia. Election as an honorary bencher is the highest accolade that the Inn can confer."

All Justices received awards, gifts and sponsored their clerks, i.e., research attorneys, to apply and receive "Temple Bar Scholarship" which is estimated to have at least $7,000 value, where an unknown dollar amount of stipend was given to each recipient. From 1996 through 2017, the American Inns of Court issued gift totally about $260,000 to the research attorneys at the US Supreme Court when many members of the American Inns of Court appear in front of the Justices. Pursuant to Guide to Judiciary Policy, Vol.2C, §620.25(g), the scholarship is not exempt from being classified as a gift as it is targeted at the judicial function of the

recipients. Petition for Writ of Certiorari, App.215-224.

Retired Justice Kennedy and Justice Ginsburg further have chapters of the American Inns of Court using their name. All American Inns of Court receive donations from these attorney members and James McManis's law firm is the leading one.

The exposure of such conflicts of interest in 2017 explained many irregularities that took place at the US Supreme Court, with the same types as what happened at California Sixth District Court of Appeal, including deterring filing of the Amicus Curiae motion of Mother of Lost Children in 17-82, alterations of docket entries in 17-613, falsifying notice of non-compliance in 17-613, altering the 3 Requests for Recusal in 17-256 and 17-613. In trying to defile the Petition in 17-613, an appeal from child custody appeal, that also arising from the identical divorce case, Jeff Atkins, Supervisor at the Clerk's Office, specifically cautioned his clerk to ensure the names of James McManis and Michael Reedy not to be shown as the case names for the Petitions arising from Shao v. McManis, et al. (Petition 17-82, Petition 17-344 and now, Petition 18-800).

Based on the Justices' failure to decide on the three Requests for Recusal, failure to disclose the conflicts of interests, and refused to recuse themselves in 17-256, and 17-613, Petitioner filed a civil right lawsuit at the U.S.D.C. for the District of Columbia on May 21, 2018 and requested to enter default against all of them on October 19, 2018 as shown in ECF 122-132 in 1:18-cv-01233.

Therefore, the Court's January 7, 2019's Order made without disclosing the conflicts of interest and without deciding on the recusal issues should be void and were willfully made. Such willful refusing to decide Amicus Curiae motion when the Clerk's Office had a prior history to refuse to file in 17-82, may explain that Jordan Bickel's irregular blocking the filing of the Amicus Curiae motion in 17-82 was actually directed by the Chief Justice and/or other Justices among the named 6 Justices of the United States.

According to State v. Allen, as each individual Justice is vested with their duty to decide recusal, the lack of decision by all 6 in this Petition for Writ of Certiorari cannot logically be done without a conspiracy that none of them would decide. Such willful refusing to decide in concert constitutes repeated violations of 18 U.S.C. §371 and §1001.

C. The 6 Justices are unlikely to be impartial that should have recused themselves pursuant to Canon 3

They are related to the interested third parties James McManis, Michael Reedy and McManis Faulkner by way of the American Inns of Court. It is impossible for them to be impartial when they have substantial financial interests at the American Inns of Court as the Petition for Writ of Certiorari asked the US Supreme Court to decide these conflicts of interest and disclosure issues in Questions No. 3, 4, 11, 12. See Petition for Writ of Certiorari, front pages i, ii and iii. The conflicts of interest are well beyond mere being sued.

D. The 1/7/2019's order should be vacated

*Caperton v. A.T. Massey Coal Company,*556 US 868 (2009) has similar facts where the main issue is "whether the Fourteenth Amendment was violated when one of the majority justices refused to recuse himself due to receiving large campaign contributions." The court held that absent recusal, the judge would review a judgment of his biggest donor, which was "a serious objective risk of actual bias that required recusal." See, also, Canon 3(c)(1) of Code of Conduct for the U.S. Judges.

This Court in *Caperton* held that actual bias is not necessary and proof of actual effect on the consideration of the Petitions is not necessary, even if such proof were possible.

Further, pursuant to *Liljeberg v. health Services Acquisition Corp.* (1988) 486 US 847, vacatur is a proper remedy to an order made in violation of Fed.R.Civ.P. Rule 60(b)(6) and that the judge should have recused himself pursuant to 28 USC455 if a reasonable person knowing the relevant facts would have expected that judge to have been aware of the conflicts of interests, even if the judge was not conscious of the circumstances creating the appearance of impropriety.

Here, as discussed above, the 6 Justices named above, for already 5 times, did not disclose their conflicts of interest with James McManis and American Inns of Court; for already 4 times that they abandoned their duty to rule on recusals and should have recused themselves. The Clerk's Office had deterred Amicus Curie motion from filing once, and had altered the Requests for Recusal for already 5 times (17-256, 17-613, 18-334, 18-569). Therefore, the 1/7/2019's Order denying Petition for Writ of Certiorari should be vacated and rehearing granted.

Dated: January 19, 2019
Respectfully submitted,

/s/ Yi Tai Shao
Yi Tai Shao

VERIFICATION

I swear under penalty of perjury under the law of the U.S. that the foregoing is true and accurate to the best of my knowledge and made in good faith.

Dated: January 19, 2019
Respectfully submitted,

/s/ Yi Tai Shao
Yi Tai Shao

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay. Respectfully submitted,

/s/ Yi Tai Shao
Yi Tai Shao
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4900 Hopyard Road, Ste. 100; Pleasanton, CA 94588-7101

App.1

ORDER OF JANUARY 7, 2019

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 9, 2019

Linda Shao
4900 Hopyard Road, Suite 100
Pleasanton, CA 94588

Re: Shao v. McManis Faulkner, LLP
NO. 18-569

Dear Ms. Shao:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
/s/ Scott S. Harris
Scott S. Harris, Clerk