

No. 19-1224

IN THE
SUPREME COURT OF THE UNITED STATES

JEREMIAH F. MANNING,

Petitioner,
v.

LUCY J. KIM,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of California

PETITION FOR REHEARING

JEREMIAH F. MANNING
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Palo Alto, CA 94306
(917) 742-6157

QUESTIONS PRESENTED

I. The public record shows that Judge Susan Greenberg of the California Superior Court of San Mateo County accepted campaign contributions from Respondent's attorneys well in excess of the statutory limit (\$1500) that required her disqualification and she declined to recuse herself and failed to disclose this to Petitioner for over a year thereby depriving him of the exercise of his peremptory challenge as provided to him by California law, and then refused to recuse herself upon motion, instead striking Petitioner's disqualification motion and later entering judgment on child custody against Petitioner. The question presented is whether Judge Greenberg's refusal to recuse herself and failure to timely and accurately disclose the campaign contributions to the Petitioner violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

II. The record also shows that Judge Greenberg accepted campaign contributions from Respondent's attorneys well in excess of the \$100 that under California law required Judge Greenberg to timely and accurately disclose them, and that Judge Greenberg failed to disclose them for over a year in contravention of said statute while making ruling after ruling against Petitioner, including rulings involving the fundamental Constitutional rights to an attorney and cross-examination, and then made an incomplete, inaccurate and misleading disclosure after the child custody phase of trial had been completed and subsequent to her almost contemporaneous recusal of herself for the same reason in a similar matter also involving child custody. The question presented is whether Judge Greenberg's failure to recuse herself where she had accepted excessive campaign contributions and failed to disclose them as required by law, but did contemporaneously recuse herself in a similar matter where both parties were represented by counsel, violated the Fourteenth Amendment.

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

There are no additional parties to this case other than those named in the caption, and neither party is a non-governmental corporation for which disclosure is required as specified in Rule 29.6.

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PETITION FOR REHEARING

Petitioner Jeremiah F. Manning respectfully submits this supplemental brief in support of his petition for a writ of certiorari to review the judgment of the Supreme Court of California.

OPINION/REVIEW BELOW

The denial of Petitioner's Petition for Review by the Supreme Court of California was ordered on June 26, 2019. Pet. App. A27. The Opinion of the California Court of Appeals for the First District dated April 10, 2019 is available in the Appendix. Pet. App. A2. The Court of Appeals denied Petitioner's Rehearing Petition on April 30, 2019. Pet. App. A25. Judge Greenberg's September 16, 2016 Judgment is available in the Appendix. Pet. App. A29. Petitioner includes his motion to disqualify Judge Greenberg and his Rehearing Petition to demonstrate that the Constitutional issues raised herein were raised below and for the arguments and information contained therein. Pet. App. A86 and A109, respectively.

JURISDICTION

The Supreme Court of California entered its denial of Petitioner's Petition for Review on June 26, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides, in relevant part:

No State shall . . . 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.

US. Const. amend. XIV, § 1.

PETITION FOR REHEARING

I. Introduction

A party who has made significant campaign contributions to a trial judge has an advantage over an adversary who has not, particularly where the judge and the contributing party do not disclose such campaign contributions to the non-contributing party.¹ This can affect the contributing party's litigation strategy, resulting in that party making unreasonable demands, foregoing fair settlement opportunities, and conducting scorched earth battles over clear-cut issues that are antithetical to justice and contrary to the best interests of the parties and

¹ In this case, these campaign contributions were *de jure* significant under California law and were required by statute to be disclosed at the earliest reasonable opportunity. California Code of Civil Procedure § 170(a)(9)(C).

their families. This high conflict strategy is made possible where the finger of campaign contributions weighs heavily on the scales of justice. Such is the situation in this case.

II. Basis for Rehearing Petition

Pursuant to Supreme Court Rules 44.2 and 21.2(c), Petitioner asks this Court to grant his rehearing petition and take judicial notice of the April 20, 2016 Trial Court Order, attached hereto as Exhibit A, that evidences the fact that Petitioner was in fact a resident of the city of Palo Alto, CA as of the date of judgment (September 16, 2016), and for approximately five (5) months prior to the time of the judgment of the trial court in this matter. This is an intervening circumstance of substantial effect

because Petitioner sought to introduce this material by motion prior to the Court's denial of his writ of certiorari, but apparently it was not considered by the Court as it was submitted to close to the Court's day for consideration of the underlying writ.

Petitioner obtained the April 20, 2016 Order in Exhibit A from the public trial record in this case at the San Mateo Superior County Courthouse in Redwood City, California. It is signed by the trial judge in this matter, Hon. Susan Greenberg. It is therefore a directly related court proceeding and satisfies Federal Rule of Evidence Rule 201(c).

Granting Petitioner's Petition for Rehearing and taking judicial notice of the Order in Exhibit A would serve to correct a misstatement of fact in the lower California appellate court's opinion. *See Pet.*

App. at A13. The specific lower appellate court misstatement to be corrected was the mistaken allegation that Petitioner did not at the time of the trial court judgment have “a permanent address in California.” *Id.*

This statement was inaccurate. The lower appellate court’s misstatement is material because the panel used this as a basis for its decision and further, the circumstances under which Petitioner became a Palo Alto resident, and the reasons therefor, highlight the unfair effects of a judge’s failure to timely and accurately disclose campaign contributions as required by California law. It may also be that the April 20, 2016 Order was inadvertently omitted from the record the lower appellate court reviewed as it rendered its decision,

and therefore this is an additional basis for this Court's judicial notice and granting of this rehearing petition. Fed. R. App. P. 10(e)(2)(C); Fed. R. Evid. Rule 201(c)(2); *See, e.g., White v. Gaetz*, 588 F.3d 1135, 1137 n. 2 (7th Cir. 2009)(taking judicial notice of lower court transcript); *Daniel v. Paul*, 395 U.S. 298, 305 (1969)(approving lower court taking judicial notice).

III. Factual Background and Argument

As further stated in his Writ of Certiorari and Supplemental Brief, Petitioner was kept in the dark for over a year of pre-trial litigation, and then through settlement discussions and multiple days of trial, about the campaign contributions that the

Respondent's attorneys made to the trial judge in this matter. The Respondent conducted a scorched earth litigation strategy because she and her attorneys likely believed they could count on the judge for a favorable ruling as result of the contributions. One example of this is the position Respondent and her attorneys took concerning the education of the parties' eldest son.

Trial in this matter commenced in late September 2015 and concluded in mid-May 2016. During this trial of custody and financial issues, Petitioner learned Respondent was planning to send the parties' eldest son to a dangerous school with a very low national ranking (under 1600). At great personal expense and during trial of this matter

where he appeared *pro se*, Petitioner established residency in the Barron Park section of Palo Alto, CA so that his son could instead attend a much better school in the Palo Alto Unified School District.

The Respondent vigorously opposed the parties' eldest son attending Palo Alto schools. She and her attorneys fought this move, even though the Palo Alto schools scored more than 10x better in national and state rankings in comparison to the school she wanted him to attend. Respondent forced special litigation over this issue and a separate mini-trial on educational choice was held. During this mini-trial, Petitioner entered overwhelming evidence that the Palo Alto high schools were clearly better for the parties' son. Petitioner was forced to fight this battle as a separate mini-trial, even while also

fighting for custody and on financial issues.

Tellingly, in its opinion, the Court used the fact that Petitioner went to bat for the best education for his son as a cudgel to say he was “more an advocate than a father.” In fact, it is highly likely the Respondent and her attorneys’ belief that they would obtain favorable rulings from the trial court judge – as a result of their campaign contributions -- made them vexatiously litigate every matter, even those that were totally antithetical to best interests of the parties’ eldest son. In most cases, they were correct about the judge’s rulings – they repeatedly obtained favorable rulings on issues, including those involving constitutional deprivations.

For the purposes of this motion, Petitioner would like this Court to take judicial notice of the

fact that he was a resident of Palo Alto as evidenced by Exhibit A and grant this Petition for Rehearing. Exhibit A clearly states that "...Petitioner, resides in the Gunn School District at 781 Encina Grande Drive, Palo Alto, CA 94306..." This was true on the date of the April 20, 2016 Order and it was true on the date of the trial court's judgment (September 16, 2016). As a result of the attached court order and Petitioner's residency in Palo Alto, which was part of the trial record below and was submitted to the appellate court but appears to have been misplaced, the parties' eldest son was enrolled at the Henry M. Gunn High School in the Palo Alto Unified School District. The trial court's April 10, 2016 ruling is a publicly- available record. It directed the parties' eldest son was to attend Palo Alto schools, where the

Petitioner had established residence in California.

In April 2016, five months prior to judgment, the trial court so ordered this, the Petitioner established residence, and the Court was aware that the Petitioner established residence.²

IV. Conclusion

Petitioner requests that this Petition for Rehearing be granted because the new and intervening fact of the Trial Court's Order

² The parties' eldest son then attended Gunn High School for four (4) years and recently graduated because the Petitioner fought for him, and established and maintained residence in Palo Alto, CA from April 2016 to the present. By virtue of this, the parties' eldest son gained one of the best educational experiences possible in California in cutting-edge science and math, in top-notch theatre and English programs, and in computer science. Now, he has been accepted to and will attend an Ivy League institution in Fall 2020 (subject to coronavirus/covid19 restrictions).

demonstrates in a new way how Petitioner and his son were harmed by the constitutional deprivations at trial and also by the lack of legitimate appellate review. Petitioner respectfully requests that this Court take judicial notice of the facts in the April 20, 2016 Order attached hereto as Exhibit A to correct misstatements in the lower appellate court's opinion, and consider the effect of this Order and that Petitioner established residency in California well-before the date of the trial court's judgment on September 16, 2016. In summary, Petition was denied his due process rights to a fair trial and to fair and accurate appellate review, and he asks this Court to grant this Petitioner for Rehearing and grant his Writ of Certiorari so that he might have his

appeal to this Court heard and correct the due process and other Constitutional infirmities that occurred in his trial and appeal.

For the foregoing reasons, the Petitioner's Petition for Rehearing should be granted.

Respectfully submitted,



Jeremiah F. Manning

JEREMIAH F. MANNING

Pro Se Petitioner

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Dated: July 17, 2020

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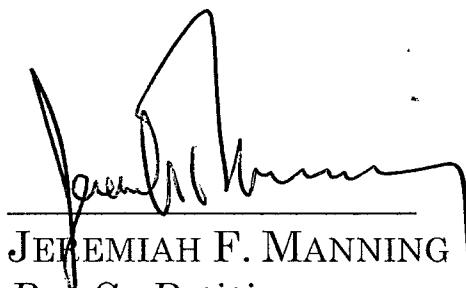
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RULE 44.2 CERTIFICATION

JEREMIAH F. MANNING
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Petitioner Jeremiah F. Manning,
pursuant to Supreme Court Rule 44.2, hereby
certifies that the foregoing attached Petition
for Rehearing is limited to other substantial
grounds not previously considered and is
made in good faith and not for delay.

Respectfully submitted,



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**Additional material
from this filing is
available in the
Clerk's Office.**