

No. _____

**In The
Supreme Court of the United States**

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AUTUMN STAVELY, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE TO HER CHILDREN,

Petitioner,

v.

JEFFERY G. NORMAN, DC; PETERSON WELLNESS
CENTER; JCNORMAN, INC. D/B/A PETERSON
WELLNESS CENTER; BRANDON DURFEE, PA-C;
RYAN J. STOLWORTHY, MD; IHC HEALTH SERVICES,
INC. D/B/A INTERMOUNTAIN MEDICAL GROUP
(ROBERT DUNCAN, MD); LOGAN REGIONAL
HOSPITAL; AND IHC HEALTH SERVICES, INC.
D/B/A LOGAN REGIONAL HOSPITAL,

Respondents.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Utah**

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Supreme Court of Utah violate Petitioner Autumn Stavely's and her counsel's Fourteenth Amendment's due process rights when it sanctioned both Ms. Stavely and her counsel for merely seeking appellate review of the district court's decision not to change venue or to disqualify the district court judge based upon allegations of bias? (The U.S. Supreme Court had previously decided that it is a violation of the Fourteenth Amendment to sanction a party or their attorney for seeking a judge's disqualification or change of venue. *See Holt v. Virginia*, 381 U.S. 131, 136, 85 S.Ct. 1375, 14 L.Ed.2d 290 (1965)).

Is an Appellate Court required to review a district court's denial of a motion to disqualify a judge or motion for a change of venue when the district judge had extrajudicial relationships with two defendants: one who he had over to his home for dinner; and a second defendant who was his brother-in-law's lifelong friend starting from high school?

PARTIES TO THE PROCEEDING

Petitioner Autumn Stavely, individually and personal representative to her children, is the Plaintiff in the district court proceedings and was the Petitioner to both the Court of Appeals of Utah and the Supreme Court of Utah. Respondents Jeffery G. Norman, DC; Peterson Wellness Center; JC Norman, Inc. d/b/a Peterson Wellness Center; Brandon Durfee, PA-C; Ryan J. Stolworthy, MD; IHC Health Services, Inc d/b/a Intermountain Medical Group (Robert Duncan, MD); Logan Regional Hospital; and IHC Health Services, Inc. d/b/a Logan Regional Hospital are the Defendants in the district court proceedings and were the Respondents in the Court of Appeals of Utah proceeding and Supreme Court of Utah proceeding.

RELATED CASES

Stavely v. Norman, No. 20190891 Utah Supreme Court, Order entered April 1, 2020.

Stavely v. Norman, No. 20190787-CA Utah Court of Appeals, Petition Denied September 27, 2019.

Stavely v. Norman, No. 150100054 First District Court of Utah, Order entered on September 11, 2019.

Stavely v. Norman, No. 20190056 Utah Supreme Court, Order entered on May 7, 2019.

Stavely v. Norman, No. 20190110-CA Utah Court of Appeals, Petition Denied, on February 28, 2019.

Stavely v. Norman, No. 20180049-CA Utah Court of Appeals, Petition Denied on January 9, 2019.

RELATED CASES—Continued

Stavely v. Norman, No. 20180884-CA Utah Court of Appeals, Petition Denied on November 19, 2018.

Stavely v. Norman, No. 20180779-CA Utah Court of Appeals, Petition Denied on October 29, 2018.

Stavely v. Norman, No. 20180294-CA Utah Court of Appeals, Petition Denied on May 9, 2018.

Stavely v. Norman, No. 20180213-CA Utah Court of Appeals, Petition for extraordinary relief denied on April 25, 2018.

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PETITION FOR WRIT OF CERTIORARI

Autumn Stavely, individually and on behalf of her children, petitions for a writ of certiorari to review the Supreme Court of Utah's Order sanctioning Ms. Stavely and her counsel for Petitioning the Supreme Court of Utah to review the District Court's denial of a Motion to Disqualify the District Court Judge (or change of venue) based upon the Judge's appearance of bias related to his extrajudicial relationships with two Defendants/Respondents.

**OPINIONS BELOW**

The First District Court of the State of Utah, Cache County's opinion is not published in the Pacific Reporter; it is reproduced in its entirety at App. 1-28 and the relevant portion of the district court's opinion is found at App. 24-28. The Court of Appeals of Utah's opinion is not published in the Pacific Reporter; it is reproduced at App. 29. The Supreme Court of Utah's first opinion awarding sanctions is not published in the Pacific Reporter; it is reproduced at App. 30. The Supreme Court of Utah's second opinion awarding sanctions is not published in the Pacific Reporter; it is reproduced at App. 31-32. Ms. Stavely's petition for certiorari is reproduced in its entirety at App. 33-61.



JURISDICTION

Statute Conferring Jurisdiction On The Supreme Court Of The United States Of America

This Court has jurisdiction to review the decision of the Supreme Court of Utah pursuant to 28 U.S.C. §1257(a). This Petition comes from a final order from the Supreme Court of Utah on the only Federal issues present in this case. The Federal questions are whether or not the U.S. Constitution's Fourteenth Amendment's guarantee of a non-biased tribunal requires an appellate court to review allegations of bias of a judge who has extrajudicial relationships with parties and whether or not an appellate court can sanction a party and her attorney for merely seeking appellate review of a judge's failure to recuse himself or review a motion to disqualify or change venue based upon those extrajudicial relationships.

Title 28 U.S.C. §1257(a) authorizes the United States Supreme Court to review "final judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any title, right, privilege or immunity is specifically set up or claimed under the Constitution." *Florida v. Thomas*, 532 U.S. 774, 777, 121 S.Ct. 1905, 150 L.Ed.2d 1 (2001). The United States Supreme Court has not "in practice, interpreted the finality rule so strictly. In certain instances, [the U.S. Supreme Court has] treated state-court judgments as final for jurisdictional purposes although there were further proceedings to take place in the state court." *Id.* (internal citations omitted). The

Supreme Court of the United States noted in *Cox* that jurisdiction over a State's highest court could occur, when "there are further proceedings—even entire trials—yet to occur in the state courts." *Id.* at 479. In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975), the Supreme Court divided cases of this kind into four categories. In this instance, the order of the Supreme Court of Utah fits squarely in the *Cox* second category. *Id.* at 480.

The second category expressed in *Cox* are those cases in which "the federal issue, finally decided by the highest court in the State, will survive and require [a] decision regardless of the outcome of future state-court proceedings." *Id.* In *Cox*, the U.S. Supreme Court interpreted its decision in *Radio Station WOW v. Johnson*, 326 U.S. 120, 65 S.Ct. 1475, 89 L.Ed. 569 (1945) to illustrate the second category, recognizing:

In *Radio Station WOW*, the Nebraska Supreme Court directed the transfer of the properties of a federally licensed radio station and ordered an accounting, rejecting the claim that the transfer order would interfere with the federal license. . . . Nothing that could happen in the course of the accounting, ***short of settlement of the case***, would foreclose or make unnecessary decision on the federal question. See *Cox*, 420 U.S. at 480, 95 S. Ct. 1029.

The *Cox* Court recognized its similarity to *Radio Station WOW*, "that a failure to decide the question now will leave the press in Georgia operating in the

shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt—we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality.” *See id.* at 485-486. Similar to *Cox*, delaying a final decision on Ms. Stavely’s Fourteenth Amendment claim until after trial will leave unanswered an important question of a party’s right to petition an appellate court to escape a biased tribunal under the Fourteenth Amendment, an uneasy and unsettled constitutional posture that could only further harm the right to a fair and unbiased tribunal. *Id.* In this instance, Ms. Stavely and her counsel were sanctioned for merely seeking appellate review of a district court judge’s decision not to recuse himself and denial of a motion to have him disqualified based on bias, after he had had a Defendant/Respondent over to his home for dinner and after he had admitted that his brother-in-law was a longtime friend of another Defendant/Respondent. In this instance, the federal question revolves around the right to have a fair and unbiased tribunal and to seek unfettered an appellate review of the decision of a district court not to have the presiding judge be recused or disqualified.

Like in *Cox*, the Supreme Court of Utah’s judgment is final on the federal issue and is not subject to further review in the state courts. *Id.* at 485. Like in *Radio Station WOW*, nothing that could happen in the course of the trial, short of settling the case, would foreclose or make unnecessary a decision on the federal constitutional questions as the sanctions

levied against Ms. Staveland and her counsel will remain after the trial.

The disquieting impact of not granting Certiorari is that nothing would require a judge to recuse himself or herself or to be disqualified when they know that the party seeking their recusal will or can be sanctioned if they merely attempt to appeal the decision and without an actual appellate review of that decision. Whichever way the U.S. Supreme Court were to decide on the merits, it would be intolerable to leave unanswered, under these circumstances, an important question of right to seek an unbiased tribunal without the fear of retaliation or sanctions under the Fourteenth Amendment; an uneasy and unsettling constitutional posture could only further harm the unbiased operation of the courts. *See Cox*, 420 U.S. at 484-485.



CONSTITUTIONAL PROVISIONS

CONSTITUTION OF THE UNITED STATES:
AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS;
EQUAL PROTECTION; . . .

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, §1.

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STATEMENT OF THE CASE

NATURE OF THE CASE: On June 11, 2013 thirty-eight-year-old Autumn Stavely presented to Jeffery Norman DC for chiropractic treatment of her neck in Logan, Utah. Dr. Norman manipulated her neck, and almost immediately afterwards Ms. Stavely exhibited neurological symptoms of a stroke. Dr. Norman evaluated Ms. Stavely but he did not call 911; rather, he had his assistant drive Ms. Stavely to Logan Regional Medical Center. Ms. Stavely and the assistant stayed in the emergency department waiting room for an hour before Brandon Durfee, PA-C and Ryan Stolworthy, MD evaluated her. They performed several radiological studies and discovered she had suffered multiple strokes. Three hours passed and Mr. Durfee and Dr. Stolworthy failed to treat her known strokes. Mr. Durfee and Dr. Stolworthy consulted with Logan Regional's hospitalist Robert Duncan, DO. Dr. Duncan did not treat Ms. Stavely's known strokes but instead sent her to the University of Utah using ground ambulance transportation, a several-hour trip. The University of Utah physicians missed the three-hour window to treat Ms. Stavely's strokes.

COURSE OF PROCEEDINGS: On February 2, 2015 Ms. Stavely filed her complaint in the case against Dr. Norman, Dr. Stolworthy, Dr. Duncan, Mr. Durfee and Logan Regional Hospital. On March 12, 2015 Ms. Stavely, as a professional courtesy, amended the complaint and substituted Dr. Duncan's employer IHC Health Services, Inc. d/b/a Intermountain Medical Group as the Defendant for Dr. Duncan personally. Since Dr. Duncan was its employee, Intermountain Medical Group was liable for the actions or inactions of Dr. Duncan.

On February 2, 2015 Ms. Stavely's case was assigned to the Honorable Brian Cannell. On August 16, 2016 Judge Cannell *sua sponte* recused himself because Dr. Duncan was his neighbor. The case was transferred to the Honorable Thomas Wilmore. On March 31, 2017 fact discovery ended. On August 4, 2017 Judge Wilmore recused himself because Defendant/Respondent Logan Regional Hospital employed his daughter in a representative capacity. On August 4, 2017 Ms. Stavely's case was transferred to the Honorable Kevin Allen. On October 2, 2017 Judge Allen had arranged for oral argument on several motions, including a motion to change venue, but when the date came he was unprepared to hear any of the motions. The hearing became a "meet and greet."

During this meeting, Judge Allen disclosed that Defendant Dr. Stolworthy and his brother-in-law were close friends stemming back to high school and Dr. Duncan's attorney revealed that Judge Allen had had Dr. Duncan over to Judge Allen's home for dinner.

During this hearing and after these disclosures were made, Judge Allen did not give the parties the required opportunity to discuss his relationships with two of the Defendants/Respondents or to discuss his extrajudicial relationships with their respective clients so that they could decide if they were willing to waive his disqualification pursuant to the Utah Rules of Judicial Conduct, Rule 12 Canon 2 Rule 2.11(C). Rule 2.11 provides:

A trial court judge subject to disqualification under this Rule, other than bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding. (See Canon 2, Rule 2.11(C) Utah Rules of Judicial Conduct).

Contrary to the rule, Judge Allen stated:

[T]here is a judicial ethic [rule] that requires us to take cases that are tough, it requires us to make decisions that are tough and I take that very seriously, I don't punt cases unless it is crystal clear that I need and I should. I don't feel that [my extrajudicial relationships

with Defendants] precludes me from presiding over the case.

Ms. Stavely's counsel's response was:

[a]nd that [Judge's relationship with defendants] is one of my bases for changing venue, because everybody knows everybody here [in Logan UT].

Judge Allen then stated:

I suggest what we do is that we go forward with the motions [including motion for change of venue], the arguments, let me make some rulings on those things and we can go from there.

On April 11, 2018, despite that the fact that Canon 2, Rule 2.11(C) was not followed and the parties had not and could not waive his disqualification, Judge Allen entered a new scheduling order reopening all discovery for the Defendants/Respondents. On October 12, 2018 the district court denied Ms. Stavely's motion for change of venue. The basis for the motion for a change in venue was judicial bias and widespread community bias. In addition to the fact that two judges had recused themselves based upon their extrajudicial relationships and a third disclosed his extrajudicial relationships with two of the defendants, Ms. Stavely's motion for change of venue was based upon widespread community bias and the fact that she was constructively fired from her job as a teacher's assistant at the Logan School District for filing a lawsuit against the local hospital.

On October 31, 2018 Ms. Stavely sought interlocutory review of the denial of change of venue. On November 9, 2018 Ms. Stavely motioned the court for Judge Allen's recusal or disqualification from the case for the appearance of bias and his extrajudicial relationships with two of the Defendants/Respondents. On December 17, 2018 the district court denied Ms. Stavely's motion for recusal or disqualification of Judge Allen for his extrajudicial relationships with the defendants and the appearance of judicial bias. On December 26, 2018 Ms. Stavely sought interlocutory review of the denial on disqualification of Judge Allen based upon bias. Both petitions for interlocutory review were poured-over to the Court of Appeals of Utah from the Supreme Court of Utah. Both interlocutory appeals were denied. On January 28, 2019 Ms. Stavely requested certiorari at the Utah Supreme Court pursuant to Utah Rules of Appellate Procedure, Rule 46 on the Motion to Disqualify Judge Allen based upon bias.

The Supreme Court of Utah, without argument and without briefing, denied the petition for certiorari and sanctioned Ms. Stavely pursuant to Utah Rules of Appellate Procedure, Rule 33 (Damages for delay or frivolous appeal; recovery of attorney's fees) for merely seeking certiorari to obtain an unbiased tribunal. The Supreme Court of Utah remanded the case to the trial court with the instruction to determine the amount of attorney fees. On May 16, 2019 the Defendants submitted their affidavits of attorney fees. On May 30, 2019 Ms. Stavely filed her objections and specifically argued

how such sanctions violated the U.S. Constitution's Fourteenth Amendment as revealed by the U.S. Supreme Court in its decision in *Holt v. Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 290 (1965) (holding that sanctions for seeking an unbiased tribunal were found to violate the Fourteenth Amendment to the U.S. Constitution). Ms. Stavely requested that the district court either deny the sanctions or seek a Certified question of law to the Supreme Court of Utah pursuant to Article 8 § 3 of Utah's Constitution.

The district court did neither; rather Judge Allen decided:

Plaintiff's constitutional arguments challenging the grant of attorney fees should be addressed to the court that granted such fees, the Utah Supreme Court or, alternatively, to the U.S. Supreme Court. Therefore, the Court finds that Defendants' requested attorney fees of \$8,796 are appropriate and the fees are thus granted. (See App. 27)

As instructed by the district court, Ms. Stavely petitioned interlocutory review of this order to the Supreme Court of Utah. The Supreme Court of Utah once again poured it over to the Court of Appeals of Utah. The Court of Appeals denied the interlocutory appeal.

THE SUPREME COURT OF UTAH: At the direction of the district court, Ms. Stavely again sought certiorari at the Supreme Court of Utah, based upon her Fourteenth Amendment right to seek an unbiased tribunal as expressed in *Holt v. Virginia*, 381 U.S. at

136 (See App. 33-61). The Supreme Court of Utah denied certiorari and also sanctioned Ms. Stavely's attorney for seeking certiorari in order to obtain an unbiased tribunal with the Supreme Court of Utah.

In summary, Judge Allen, a Utah District Court Judge, had extrajudicial relationships with two Respondents: one Respondent he had over to his home for dinner; the second Judge Allen disclosed was and is a close friend of his brother-in-law, a friendship stemming back to high school. Judge Allen did not follow Canon 2, Rule 2.11, which required him to disclose his relationships and required that he have the parties waive his disqualification on the record. Ms. Stavely motioned the district court for change of venue and motioned the district court judge to recuse or disqualify himself on the appearance of judicial bias. The motions were denied. Ms. Stavely petitioned for an interlocutory appeal with the Utah Appellate Courts and the Court of Appeals denied the petition. Ms. Stavely then sought certiorari at the Supreme Court of Utah, which was denied and Ms. Stavely was sanctioned for merely requesting appellate review. The Supreme Court of Utah remanded it back to the district court for a determination of the amount of sanctions. Ms. Stavely alerted the district court to this U.S. Supreme Court's holding in *Holt v. Virginia*, 381 U.S. 131, which had ruled that sanctions against a party or their attorneys for seeking a change of venue, recusal or disqualification of a judge for bias violated the Fourteenth Amendment to the constitution. The district court refused to address the constitutional issues, stating that the

Utah Supreme Court or the U.S. Supreme Court should decide the constitutional issues. Ms. Stavelly thereafter again petitioned the Supreme Court of Utah to review the constitutional issues and rather than addressing the constitutional issues, the Supreme Court of Utah, without any analysis or review, sanctioned Ms. Stavelly's counsel for seeking an unbiased tribunal.



REASONS FOR GRANTING THE WRIT

The United States Supreme Court should grant certiorari pursuant to Rule 10(c) of the Supreme Court Rules as the Supreme Court of Utah has decided an important question of constitutional Federal Law in direct conflict with this U.S. Supreme Court's prior relevant decision that this Court expressed in *Holt v. Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 290. In *Holt*, the U.S. Supreme Court recognized: "A fair trial in a fair tribunal is a basic requirement of due process, it necessarily follows that motions for change of venue [and/or a judge's recusal] to escape a biased tribunal raise constitutional issues both relevant and essential." *Id.* at 136. In *Holt*, the Petitioners had requested that a judge recuse himself or that the party be granted a change of venue because the judge had "been making a independent investigation and inquiry of Holt [the attorney's] conduct in this contempt defense, and the Judge" said "he would 'deal with' said [attorney] after he, the judge, had dealt with said E.A. Dawley Jr. [the defendant]." *Id.* at 133. In *Holt*, the Virginia Supreme Court rejected the Petitioners'

contentions that a \$50 fee taxed against them for seeking a judge's recusal and a change in venue "violated the Due Process Clause of the Fourteenth Amendment." *Id.* at 132-133, 136. The U.S. Supreme Court granted certiorari and concluded that the "Petitioners were punished by Virginia for doing nothing more than exercising their constitutional right" to seek a "fair trial in a fair tribunal." *Id.* at 138.

This present appeal is substantially similar to the *Holt* case and *Holt's* holding is directly on point with this present appeal. In the present case, Ms. Stavely and her attorney were both sanctioned for seeking a change in venue and the recusal of a judge because the judge had had a Respondent over to his home for dinner and a second Respondent was a lifelong friend of the Judge's brother-in-law. Thereafter, the similarities diverge, because in *Holt* the Virginia Supreme Court at least considered and ruled on the constitutional issues presented by the petitioner. In this case, Ms. Stavely petitioned the Utah Supreme Court to review the district court's denial of the change of venue and the district court's denial of the motion to disqualify or recuse the district court judge based upon bias and extrajudicial relationships with parties. The Utah Supreme Court denied both petitions and sanctioned Ms. Stavely for merely seeking certiorari on the motion to recuse and remanded it back to the district court.

In this instance, the constitutional issues were brought up to the district court. The district court ruled that the Utah Supreme Court or the United States Supreme Court were required to determine the

constitutional issues and it specifically deferred the constitutional issues to a higher court. The district court thereafter levied an \$8,796.00 sanction against Ms. Stavely. Then Ms. Stavely, as directed by the district court, sought interlocutory appeal based upon the constitutional issues. The Utah Supreme Court again denied the petition for certiorari and awarded additional sanctions, but this time against Ms. Stavely's attorney. The Utah Supreme Court ignored the *Holt* holding that a court cannot sanction a party or their attorney for seeking a change of venue or disqualification of a judge based upon bias or extrajudicial relationships with parties, and rather the Utah Supreme Court sanctioned Ms. Stavely and her counsel for merely bringing it to the Utah Supreme Court's attention, and without any analysis as to why the United States Supreme Court's holding in *Holt* would not apply to this present case.

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CONCLUSION

The U.S. Supreme Court has determined that it is a fundamental basic requirement of due process for a party to have a fair trial in a fair tribunal and that it necessarily follows that motions for change of venue to escape a biased tribunal or motions to recuse or disqualify a judge for bias raise constitutional issues both relevant and essential. The U.S. Supreme Court recognized that it violates a party's due process right when a State Supreme Court (Virginia's at the time) sanctions a party for seeking a change in venue or change

in judge. The Supreme Court of Utah, without any analysis or decision, sanctioned Ms. Stavely for seeking a new judge or a change of venue, and when her attorney pointed out that the U.S. Supreme Court had previously determined that such sanctions were unconstitutional, the Supreme Court of Utah, again without any analysis, sanctioned Ms. Stavely's attorney for merely pointing out that such sanctions violate the Fourteenth Amendment to the Constitution (see *Holt v. Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 290). As such, Ms. Stavely respectfully requests that this U.S. Supreme Court grant certiorari.

Respectfully submitted this 16th day of June 2020.

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