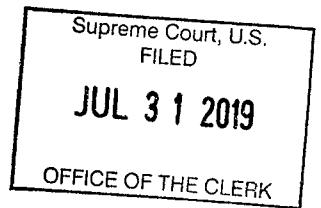


No. 19-451

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

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EDWARD RONNY ARNOLD, Pro Se,

*Petitioner;*

v.

BURNS PHILLIPS, Commissioner,  
Tennessee Department of Labor and Workforce  
Development,

*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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Edward R. Arnold  
5036 Suter Drive  
Nashville, TN. 37211  
(615) 999-8044

July 31, 2019

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## QUESTIONS PRESENTED

The position of Clerk of the Court is an appointed position and is not an arbitrator of civil actions.

The Clerk of the United States District Court for the Middle District of Tennessee is the officer of the United States District Court responsible for overseeing filings with the Court and maintaining its records.

The United States District Court Clerk's duties are prescribed by Rule 45 - Clerk's Duties and by the Court's customs and practices. The Clerk's Office is responsible for maintaining the dockets and records of the Court.

Rule 45 (a) (b) does not allow the Court Clerk to modify records. Rule 55 (a) requires the Court Clerk to Enter a Default if the record does not show a party responded to a civil action within the required time, *Fisher v. Taylor*, 1 F.R.D. 448, 448 (E.D. Tenn. 1940); *United States v. Jackson*, 25 F. Supp. 79, 79-80 (D. Or. 1938); see 6 J. Moore, *Federal Practice* 55.03[1] (2d ed.1976); 10 C. Wright & A. Miller, *supra* note 10, § 2682.

In this case, the Court Clerk for the United States District Court for the Middle District of Tennessee denied an Entry of Default in *Edward Ronny Arnold v. Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development* 3:18-cv-0541.

The questions presented are:

1. Whether the United States Court of Appeals for the Sixth Circuit incorrectly dismissed the civil action in conflict with existing rules of appellate procedure; placing the plaintiff and the defendant in violation of due process; circumventing the process of default judgment and due process under U.S. Const. Amend. 1 and U.S. Const. Amend. 14.
2. Whether the Court Clerk for the United States District Court for the Middle District of Tennessee denied an entry of default in violation of Rule 55 (a).
3. Whether the Court Clerk for the United States District Court for the Middle District of Tennessee's acceptance of documents transmitted more than eight (8) months after the date of default constitutes a violation of Fed. Rule 5.4.9 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS which requires both parties to consent to electronic filing and constitutes an unequal access to the courts by the low-income, fixed-income Pro Se litigant.

## **PARTIES TO THE PROCEEDING**

The party to this proceeding is identified in this petitions caption.

Tenn. R. Civ. P. 4.04(6) requires the Defendant, Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development, to be served through the State of Tennessee Office of the Attorney General and Reporter, Herbert Slatery III. Rachel Jackson Building 320 6<sup>th</sup> Avenue North. Nashville, Tennessee 37243.

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I. The United States Court of Appeals for the Sixth Circuit incorrectly dismissed the civil action in conflict with existing rules of appellate procedure.

- A. The court erred in referencing *Firestone Tire & Rubber Co. v. Risford*, 449 U.S. 368, 373-74 (1981) and *Bonner v. Perry*, 564 F. 3d 424, 426-27 (6<sup>th</sup> Cir. 2009).
- B. The court erred in referencing *McNutt v. Cardox Corp*, 329 F. 2d 107, 108 (6<sup>th</sup> Cir. 1964).

II. The Court Clerk for the United States District Court for the Middle District of Tennessee denied an entry of default in violation of rule 55 (a).

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Edward Ronny Arnold, Pro Se, respectfully petitions for a writ of certiorari to review the judgement of the Sixth Circuit in this case.

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### **OPINION AND ORDERS BELOW**

The Sixth Circuit's May 15, 2019 panel opinion for 19-5362 filed 05/15/2019 is not published and reproduced at App. 4-5.

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### **JURISDICTION**

This Court has jurisdiction under Rule 10 - Considerations Governing Review on Certiorari compelling reason (a), (c).

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important question in a

way that conflicts with relevant decisions of this Court.

In this case, the United States District Court for the Sixth Circuit dismissed a civil action which conflicts with the case *United States v. Jackson*, 25 F. Supp. 79, 79-80 (D. Or. 1938); *Fisher v. Taylor*, 1 F.R.D. 448, 448 (E.D. Tenn. 1940), and established rules of civil procedure; see 6 J. Moore, Federal Practice 55.03[1] (2d ed.1976); 10 C. Wright & A. Miller, *supra* note 10, § 2682.

Under Rule 55, Rules of Civil Procedure, 28 U.S.C.A. following section 723c, this default of the Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, should be entered by the clerk as of course without any application to the court, provided an appropriate affidavit is filed.

In this case, the Court Clerk for the United States District Court for the Middle District of Tennessee denied the Plaintiff's Entry of Default in violation of Fed. Rule 55(a) circumventing the process of Default Judgment and due process under U.S. Const. amend. 1 and U.S. Const. Amend. 14.

The dismissal allowed the United States District Court for the Middle District of Tennessee to dismiss, with prejudice, the case to which the Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, by and through the State of Tennessee Office of the Attorney General and Reporter, was in default by violation of Fed. Rule 55 (a).

The actions or inactions of the Court Clerk for the United States District Court for the Middle District of Tennessee, in denying Entry of Default, presents to this Court the judicial issue of the authority of the Court Clerk to adjudicate cases without judicial authority and requires an evaluation of Rule 55 (a) and Rule 45.

Case 19-5362 was dismissed May 15, 2019 and this Petition On Writ of Certiorari in the Supreme Court of the United States was filed within the time period of ninety (90) days before the judgment of the United States District Court for the Sixth Circuit was mandated on August 11, 2019.

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#### **STATUTORY PROVISIONS INVOLVED**

28 U.S.C § 1291 provides, in part, courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348.)

In addition to the jurisdiction conferred by this chapter, the courts of appeals also have appellate jurisdiction in proceedings under Title 11, Bankruptcy, and jurisdiction to review.

One issue before this court is the authority of the Court Clerk for the Middle District of Tennessee's denial of Entry of Default in the case of *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Work Force Development* No. 3:18-cv-0541 constitutes a final judgement in proceedings *see* App. 1-3.

In essence, is the position of Court Clerk for the Middle District of Tennessee a judicial position? If the response is yes, the United States District Court for the Sixth Circuit had jurisdiction and erred in dismissing the case.

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## STATEMENT

1. Citizens and residents of the State of Tennessee have a legal right to redress public officials for knowingly violating federal and state statute U.S. Const. amend. I, Tenn. Const. Art. I, § 17. This right is not reserved only for attorneys 28 U.S.C. § 1654 but the current legal system is changing to which only attorneys and their clients, companies, state and federal departments and agencies have access to the legal system creating an unequal access for minorities.

For a period of time, the Pro Se litigant has been slowly removed from the United States judicial system due to the introduction of electronic filing, Electronic filing (CM/ECT) and CaseLink, to which low-income, fixed-income, minority Pro Se litigants have an unequal access to the courts.

The electronic filing system has moved from a repository of data, as required by Title 44 of the United States Code (44 U.S.C. § 3301 (1) (2)) to a method of administering the court to which an unequal access to the court for low-income, fixed-income, minority Pro Se litigants have an unequal access to Federal and State Courts as shown in this case.

In this case, the Court Clerk for the United States District Court Middle District of Tennessee Nashville Division violated Rule 55(a) in accepting electronic documents submitted more than eight (8) months after the Defendant's default in a failure to respond to civil action 3:18-cv-0541 to deny an entry of default in

violation of Rule 55(a), in essence backdating electronic documents to which the Plaintiff did not have initial access to and responded to as per App. 18.

2. The State of Tennessee Department of Labor and Workforce Development introduced a new on-line reporting system first quarter 2016 named JOBS4TN.GOV and At.newappeals@tn.gov. The system experienced problems in accurately reporting unemployment benefits partially attributed to documents were not available in electronic format as required by Title 44 of the United States Code (44 U.S.C. § 3301 (1) (2). As a result of the failure of the State of Tennessee Department of Labor and Workforce Development to provide documents in an electronic format for use by the new on-line systems, JOBS4TN.GOV and At.newappeals@tn.gov. the Chancery Court, Davidson County, Tennessee could not determine Tenn. Code. Ann § 50-7-303 (a) (11) and Tenn. Code. Ann. § 50-7-303 (a) (12). To which, there was no available evidence the State of Tennessee Department of General Services complied with Tenn. Code Ann. § 50-7-211.

It should be noted before this court, the issue of Tenn. Code Ann. § 50-7-211 did not give employees of the State of Tennessee, or any employee of a company having fifty (50) or more employee, additional unemployment benefits but provided for a more efficient process to which those employees, whose position was eliminated in a Reduction in Force (RIF), were automatically approved for unemployment benefits. In this case, the Plaintiff was entitled under Tenn. Code Ann. § 50-7-211 to unemployment benefits for the period of October 26, 2015 to November 24, 2015.

3. This case began in the year 2011 when employees of the State of Tennessee were notified of a Reduction in Force (RIF) due to a change in position titles. This notification affected the State of Tennessee Department of General Services to which the Plaintiff / Appellant, Edward Ronny Arnold, was employed as an Information Resource Support Specialist 4 (IRSS4). At this time, the Plaintiff / Appellant's position was in Contract Administration.

To prepare employees for potential layoffs, representatives of the State of Tennessee Department of General Services held Town Hall Meetings to which representatives of the State of Tennessee Department of Labor and Workforce Development and the Tennessee Consolidated Retirement System (TCRS) presented options for early retirement and options for a different position title as required by Tenn. Code. Ann. § 50-1-602. In this case, the Plaintiff / Appellant transferred from his current position March 12, 2012, in Contract Administration, to Information Systems Management (ISM) to which he worked supporting the computer-based infrastructure of the State of Tennessee Department of General Services.

State employees potentially affected were presented with Worker Adjustment and Retraining Notification (WARN) notices as required by 29 U.S.C. §§ 2101 to 2109. State employees of the Department of General Services, unable to secure a different position, were placed on Administrative Leave with Pay for a period of thirty (30) days to which they did not return.

The Plaintiff / Appellant was informed on October 26, 2015 his position was eliminated in a Reduction in Force (RIF) and he was placed on Administrative

Leave with Pay from October 26, 2015 to November 24, 2015.

The Plaintiff / Appellant filed for unemployment benefits on October 28, 2015 as Tenn. Code. Ann. § 50-7-213 does not classify Administrative Leave with Pay as wages. The claim was denied and the Plaintiff / Appellant appealed the denial to which the Appeals Tribunal reversed the denial stating, "The petitioner was not employed when he applied for unemployment benefits on October 28, 2015." This ruling affected as many as one hundred (100) former employees of the State of Tennessee Department of General Services as to a denial of benefits estimated as \$100,000.00.

4. Representatives of the State of Tennessee Department of Labor and Workforce Development reversed the decision of the Appeals Tribunal claiming the Plaintiff / Appellant was not on Administrative Leave with Pay but was paid Wages in Lieu of Notice. This reversal activated Tenn. Code Ann. § 50-7-303 and Tenn. Code Ann. § 50-7-211. This law exempts employees whose position was eliminated in a Reduction of Force if the employer complied with the law prior to July 1, 2012; entitling the petitioner to unemployment benefits for the contested period. This decision by representatives of the State of Tennessee Department of General Services affected as many as five hundred (500) former employees of the State of Tennessee Department of General Services as to a denial of benefits estimated as \$500,000.00.

5. A Petition for Judicial Review in the Chancery Court of Davidson County, Tennessee Department of Labor and Workforce Development, Appeal 1603333AA – Denial of Unemployment Benefits was

initiated in Davidson County Chancery Court Part IV in Nashville, Tennessee 16-1174-IV.

The main issue before the Chancery Court was the Respondent / Appellee's position Administrative Leave with Pay is the same as Wages Paid in Lieu of Notice. The court erred in not ruling Administrative Leave with Pay is not wages as stated in Tenn. Code Ann. § 50-7-213.

A second issue before the Chancery Court is representatives of the Tennessee Department of Labor and Workforce Development violated Tenn. Code Ann. § 50-7-304 (c) in applying remedy before the appeals process was complete. The Chancery Court erred in ruling Tenn. Code Ann. § 50-7-304 (c) does not apply to appeal 15-13932AA.

6. At this point, the case split; affecting a second case. In a case which involved the collection of wages earned for the Federal holiday of Columbus Day, the second Monday in October, substituted in the State of Tennessee for the Friday after Thanksgiving, the fourth Thursday in November, *Edward Ronny Arnold v. Bob Oglesby, Commissioner of the State of Tennessee Department of General Services 17C133*, the Plaintiff / Appellant was informed in a telephone conversation by the Attorney of Record, representing the State of Tennessee Attorney General and Reporter, the Defendant / Appellee refused to settle the wage claim of \$180.00 minus withholding because the Plaintiff / Appellant filed an appeal. At the time of the filing of a civil action to recover the earned wages on November 24, 2016, the only appeal filed by the Plaintiff / Appellant was 15-13932AA on November 24, 2015 to which the Appeals Tribunal of the State of Tennessee Department of Labor and Workforce Development

overturned a denial of unemployment benefits to which Administrative Leave with Pay is not wages as defined by Tenn. Code. Ann. § 50-7-211. (Tr., 1, p. 6-8. L. 1-25).

In a Motion to Dismiss by the Defendant / Appellee, represented by the State of Tennessee Office of the Attorney General and Reporter, the Defendant / Appellee claimed the defense of sovereign immunity as codified in Tenn. Code. Ann. § 20-13-102 (a). The trial court, Sixth Circuit Court of Davidson County, Tennessee, ruled it did not have subject matter jurisdiction based on Tenn. R. Civ. P. 12.02 (1).

It should be noted before this court, the Defendant / Appellee as represented by the State of Tennessee Office of the Attorney General and Reporter did not deny the Plaintiff / Appellant was owed the earned wages and did not deny the Defendant / Appellee knowingly did not respond to seven (7) attempts to collect the earned wages which included a certified letter to the State of Tennessee Commissioner of Human Resources Rebecca Hunter.

The ruling of the trial court, Sixth Circuit Court of Davidson County, Tennessee was overturned in the case of *Edward Ronny Arnold v. Bob Oglesby, et al. M2017-00808-COA-R3-CV.* (Tenn. Ct. App. 2017). The case was remanded back to the trial court (Opinion p 4). At the present time, the case is progressing through the state and federal courts.

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## ON-LINE REPORTING SYSTEM

The State of Tennessee Department of Labor and Workforce Development introduced a new on-line reporting system first quarter 2016 named JOBS4TN.GOV and At.newappeals@tn.gov. The system experienced problems in accurately reporting unemployment benefits to the Plaintiff / Appellant as two (2) weekly unemployment benefits were inaccurately reported as an overpayment to the Plaintiff / Appellant and two (2) weekly unemployment benefits were reported as paid when they were not.

The problems with the new on-line systems is partially attributed to documents were not available in electronic format as required by Title 44 of the United States Code (44 U.S.C. § 3301 (1) (2). As a result of the failure of the State of Tennessee Department of Labor and Workforce Development to provide documents in an electronic format for use by the new on-line systems, JOBS4TN.GOV and At.newappeals@tn.gov, the Chancery Court ruled in its MEMORANDUM AND FINAL ORDER / CONCLUSIONS OF LAW p.6:

“Here, the record lacks sufficient evidence to find that the exception under section T.C.A. §50-7-303 (a) (11) is applicable to the reduction in force which affected the Claimant in 2015”.

“The record lacks sufficient evidence to find the exception under T.C.A. §50-7-303 (a) (12) is applicable to the reduction in force which affected the Claimant in 2015.”

On June 14, 2017, a Motion to Augment Record on Appeal was denied by the Chancery Court to which the Defendant / Appellee, objected to the motion for the inclusion of records, claimed to have not been received by certified mail from the United States Postal Service, which presented evidence before the court the State of Tennessee Department of General Services complied with Tenn. Code Ann. § 50-7-211 which exempts employees whose position was eliminated in a Reduction In Force (RIF) if the employer complied with the law prior to July 1, 2012.

The Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, as represented by the State of Tennessee Office of the Attorney General, was aware of issues with the new on-line system as recorded during the Oral Arguments before the Tennessee Court of Appeals Middle District at Nashville February 5, 2018, M2017-01103-COA-R3-CV. The representative for the State of Tennessee Office of the Attorney General could not answer a basic question related to the case before the court as evidenced by the recording section 15:40 – 16:16:

Oral Arguments 2/5/2018 Recording Section 15:40 – 16:16

Question from Justice Frank G. Clement Jr. to the representative of the State of Tennessee Office of the Attorney General Derek Green:

“Did he get 26 weeks benefits after the period he is contesting here?”

Response from Counselor Derek Green:

"As he admits You're Honor. The state will admit there is not [sic] evidence in the record outside his admission."

As stated during the oral arguments, representatives of the State of Tennessee Department of Labor and Workforce Development did not know if the Petitioner / Plaintiff received 26 weeks of unemployment benefits after the contested period of October 26, 2015 to November 24, 2015. The system would show two payments were recorded in the on-line system as paid but the Petitioner / Plaintiff's bank records do not show the two deposits.

The Petitioner / Plaintiff was not paid unemployment benefits for two weeks to which he was eligible.

The Tennessee Court of Appeals for the Middle District at Nashville dismissed the case based on inaccurate information provided by the new online systems, JOBS4TN.GOV and At.newappeals@tn.gov.

An Application to Appeal to the Tennessee Supreme Court was denied and a civil action was filed with the United States District Court for the Middle District of Tennessee *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development, No. 3:18-cv-0541.*

The remedy, in addition to two (2) week's pay of unemployment compensation incorrectly filed as paid by the new on-line reporting system, at the time, JOBS4TN.GOV and At.newappeals@tn.gov., is a

judicial review of all claims made and errors reported as to problems the new systems inaccurately reported related to unemployment claims, by citizens and residents of the State of Tennessee, during the time period of October 26, 2015 – July 1, 2016.

Tenn. R. Civ. P. 4.04 (6) requires the Defendant to be served in State or Federal Courts or the United States Supreme Court through the State of Tennessee Office of the Attorney General and Reporter, Herbert Slatery III.

In this case, the Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, did not respond to Civil Action 3:18-cv-0541 as required by Fed. Rule 55(a) and is in default.

The court record records the Defendant was properly served on June 13, 2018 as required by Tenn. R. Civ. P. 4.04(6). The court record records the Defendant did not respond to the civil action in the required time period and the court record records the Defendant did not request an extension to respond.

The defaulting party loses his standing to contest the truth of all facts that are in the non-defaulting party's complaint *Thomson v. Wooster*, 114 U.S. 104, 112-14 (1885); *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *Trans World Air-lines, Inc. v. Hughes*, 449 F.2d 51, 63-64, 69-70 (2d Cir. 1971), rev'd on other grounds sub nom. *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363(1973); *Clifton v. Tomb*, 21 F.2d 893, 897 (4th Cir. 1927); 6 J. Moore, Federal Practice 55.03[2], at 55-

32 (2d ed. 1976); 10 C. Wright & A. Miller, *supra* note 10, § 2688, at 280.

The Defendant did not respond and entered into Default judgment as per Rule 55(a):

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

In this case, the Court Clerk was required to Enter a Default, *Fisher v. Taylor*, 1 F.R.D. 448, 448 (E.D. Tenn. 1940); *United States v. Jackson*, 25 F. Supp. 79, 79-80 (D. Or. 1938); see 6 J. Moore, *Federal Practice* 55.03[1] (2d ed. 1976); 10 C. Wright & A. Miller, *supra* note 10, § 2682, but the Court Clerk denied an Entry of Default in Civil Action 3:18-0541, *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development*.

The Court Clerk's denial of Request for Entry of Default exceeded its authority and this denial was appealed to the United States Court of Appeals for the Sixth Circuit April 9, 2019, Docket No. 19-5362.

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## REASONS TO GRANT THE PETITION

**I. The United States Court of Appeals for the Sixth Circuit incorrectly dismissed the civil action in conflict with existing rules of appellate procedure; which placed the plaintiff and the defendant in violation of due process; circumventing the process of default judgment and due process under U.S. const. Amend. 1 and U.S. const. Amend. 14.**

**A. The court erred in referencing *Firestone Tire & Rubber Co. v. Risford*, 449 U.S. 368, 373-74 (1981) and *Bonner v. Perry*, 564 F. 3d 424, 426-27 (6<sup>th</sup> Cir. 2009).**

The referenced citations do not address the issue of the Court Clerk for the Middle District Court for the Middle District of Tennessee denying an Entry of Default in violation of 28 U.S. Code § 604. Duties of Director General as the Director does not have the authority to allow the Court Clerk to adjudicate cases. U.S. Code § 711. Clerks and employees does not allow the Court Clerk to adjudicate cases,

**B. The court erred in referencing *McNutt v. Cardox Corp*, 329 F. 2d 107, 108 (6<sup>th</sup> Cir. 1964).**

The referenced citation does not address the issue of the Court Clerk for the Middle District Court for the Middle District of Tennessee denying an Entry of Default. The reference to § 1291 Final decisions of districts courts does not apply as the district court, at that time, had not issued a final decision in the case of *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development* No. 3:18-cv-00541.

28 U. S. Code § 1291 limits the court to final decisions of the court but the statute does not prevent the court from ruling on the violation of the Court Clerk's abuse of authority.

The dismissal allowed the United States District Court for the Middle District of Tennessee to dismiss, with prejudice, *Edward Ronny Arnold vs. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development* No. 3:18-cv-0541, the case to which the Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, by and through the State of Tennessee Office of the Attorney General, was in default by violation of Fed. Rule 55 (a).

The court record records the Defendant was properly served on June 13, 2018 as required by Tenn. R. Civ. P. 4.04(6). The court record records the Defendant did not respond to the civil action in the required time period and the court record records the Defendant did not request an extension to respond.

The defaulting party loses his standing to contest the truth of all facts that are in the non-defaulting party's complaint *Thomson v. Wooster*, 114 U.S. 104,

112-14 (1885); *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *Trans World Air-lines, Inc. v. Hughes*, 449 F.2d 51, 63-64, 69-70 (2d Cir. 1971), rev'd on other grounds sub nom. *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363(1973); *Clifton v. Tomb*, 21 F.2d 893, 897 (4th Cir. 1927); 6 J. Moore, Federal Practice 55.03[2], at 55-32 (2d ed. 1976); 10 C. Wright & A. Miller, *supra* note 10, § 2688, at 280.

The Defendant did not respond and entered into Default judgment as per Rule 55(a):

**II. The court clerk for the United States District Court for the Middle District of Tennessee denied an entry of default in violation of Rule 55 (a).**

**A. U.S. Code § 604. Duties of Director.**

U.S. Code § 604 does not give the Director of the Administrative Office of the United States Courts authority to adjudicate cases to the Court Clerk.

**B. U.S. Code § 711. Clerks and employees.**

U.S. Code § 711 does not give the Court Clerk authority to adjudicate cases.

**C. Servicemembers Civil Relief Act does not apply.**

Form AO 440 (Rev. 12/09) Summons in a Civil Action does not address the Servicemembers Civil Relief Act (SCRA). The Plaintiff is not required to submit verification of military service or the

defendants capacity of age, minor, or mental capacity, incompetent.

Form AO 440 (Rev. 12/09) Summons in a Civil Action, as filed, states:

Appeal No. M2017-01103-COA-R3-CV On Appeal from Chancery Court for Davidson County Case No. 16-1174-IV Russell T. Perkins Chancellor.

Tennessee Supreme Court APPLICATION FOR PERMISSION TO APPEAL denied May 16, 2018.

The failure of the State of Tennessee Department of Labor and Workforce Development's compliance with the Federal Records Act, 44. U.S.C § 3301 (1) (2), to classify and include records from the State of Tennessee Department of Labor and Workforce Development on-line systems JOBS4TN.GOV and AT.newappeal@tn.gov., in the case of *Edward Ronny Arnold v. Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development*, Case No. 16-1174-IV, prejudiced the Tennessee state courts of the Chancery Court for the State of Tennessee Twentieth Judicial District, Davidson County, Part IV; State of Tennessee Court of Appeals of Tennessee at Nashville; and the Tennessee Supreme Court, in that inaccurate and incomplete information was presented to the state courts to deny unemployment benefits to the Plaintiff for the period of October 26, 2015 to November 24, 2015.

Plaintiff is owed unemployment benefits for the

period of October 26, 2015 to November 24, 2015. Electronic records for the Plaintiff's claim, JOBS4TN.GOV, differ from the Plaintiff's bank records of deposits , TN UI PAYMENTS, indicating a minimum of two weeks unemployment benefits unpaid.

The Court should order Burns Phillips, Commisisoner of the State of Tennessee Department of Labor and Workforce Development, to comply with 44. U.S.C § 3301 (1) (2) to classify and include records from the State of Tennessee Department of Labor and Workforce Development on-line systems JOBS4TN.GOV and AT.newappeal@tn.gov. as specified in Tenn. Code. Ann. § 47-10-113.

The Court should order a review of the system based on errors reported by the Plaintiff during the appeal process for benefits denied for the period of October 26, 2015 to November 24, 2015. It is estimated 100,000 Tennessee residents are required monthly to use the online systems and the Defendant, Burns Phillips, Commisisoner of the State of Tennessee Department of Labor and Workforce Development, through his representative, the State of Tennessee Office of the Attorney General, has not indicated a willingness to investigate reported errors. These errors include the inability to process appeal docket No.2016008726-AT and the inability to process a document request to the separating employer, the State of Tennessee Department of General Services, for documentation related to Federal

Law 100-379 and Tenn. Code. Ann. § 50-1-610.

The Court may impose fines on the State of Tennessee for knowingly not complying with 44. U.S.C § 3301 (1) (2) to classify and include records from the State of Tennessee Department of Labor and Workforce Development on-line systems JOBS4TN.GOV and AT.newappeal@tn.gov.

Jurisdiction in this Court over the Plaintiffs' claims brought pursuant to 42 U.S.C. § 1983 is provided by 28 U.S.C. §§ 1331 and 1343(3). The declaratory and injunctive relief sought is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §1983, and Rule 57 of the Federal Rules of Civil Procedure.

The Court Clerk in the United States District Court for the Middle District of Tennessee was required to Enter a Default based on the record, *Fisher v. Taylor*, 1 F.R.D. 448, 448 (E.D. Tenn. 1940); *United States v. Jackson*, 25 F. Supp. 79, 79-80 (D. Or. 1938); see 6 J. Moore, *Federal Practice* 55.03[1] (2d ed.1976); 10 C. Wright & A. Miller, *supra* note 10, § 2682.

The Court Clerk denied an Entry of Default in Civil Action *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development* No. 3:18-cv-0541 based on electronic documents received more than eight (8) months after the Defendant entered into default. In essence, the electronic documents were backdated more than eight (8) months in violation of Rule 55 (a).

1. The Court Clerk in the United States District Court for the Middle District of Tennessee certified proper service in Civil Action 3:18-cv-0541 was complete on June 13, 2018 as evidenced by certified mail return receipt 7017 0660 0000 2312 9967 mailed June 11, 2018.

The court record records the Defendant was properly served on June 13, 2018 as required by Tenn. R. Civ. P. 4.04(6). Tenn. R. Civ. P. 4.04(6) requires the Defendant to be served through the State of Tennessee Office of the Attorney General and Reporter, Herbert Slatery III. The court record records the Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, by and through the State of Tennessee Office of the Attorney General and Reporter, did not respond to the civil action in the required time period and the court record records the Defendant did not request an extension to respond.

2. The Defendant, Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development, by and through the State of Tennessee Office of the Attorney General and Reporter, did not respond to Civil Action *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development No. 3:18-cv-0541* as required by Fed. Rule 55 (a) and is in default.

Rule 55(a):

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has

failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

3. The Court Clerk in the United States District Court for the Middle District of Tennessee denied the Plaintiff's Entry of Default.

The Court Clerk's denial of Request for Entry of Default exceeded its authority and this denial was appealed to the United States Court of Appeals for the Sixth Circuit April 9, 2019, Docket No. 19-5362. The United States Court of Appeals for the Sixth Circuit dismissed the appeal May 15, 2019 based on the appeal was not a final ruling or order.

The United States District Court for the Middle District of Tennessee further erred in rendering its decision without jurisdiction. The United States Court of Appeals for the Federal Circuit was established under Article III of the Constitution and the United States Court of Appeals for the Sixth Circuit obtained jurisdiction from the United States District Court for the Middle District of Tennessee when appeal 19-5362, *Edward Ronny Arnold v. Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development*, was filed April 9, 2019.

Appellate jurisdiction is the power of an appellate court to review, amend and overrule decisions of a trial court or other lower tribunal. In this case, the Court Clerk in the United States District Court for the Middle District of Tennessee exceeded their authority in denying Default Entry in Civil Action No. 3:18-cv-0541 filed March 11, 2019. As shown in the record, the

Defendant did not respond to the Civil Action filed June 11, 2018 to which the Court Clerk in the United States District Court for the Middle District of Tennessee certified service was complete on June 13, 2018 as evidenced by certified mail return receipt 7017 0660 0000 2312 9967 mailed June 11, 2018.

The Defendant did not respond and entered into Default judgment as per Rule 55(a).

The Court Clerk for the United States District Court for the Middle District of Tennessee further exceeded its authority in the case of *Edward Ronny Arnold v. Burns Phillips, Commissioner State of Tennessee Department of Labor and Workforce Development*, No. 19-5737 as shown in App. 50.

As stated in the Plaintiff / Appellant's Notification of Violation of Rule 45 (b) filed July 23, 2019, the Court Clerk for the United States District Court for the Middle District of Tennessee changed the name of the case without judicial authority or motion before the court and in so doing changed the nature of the case.

This case is an appeal for a civil action *Edward Ronny Arnold v. Burns Phillips, Commissioner of the State of Tennessee Department of Labor and Workforce Development No. 3:18-cv-00541* to which the Court Clerk removed the name Burns Phillips and replaced it with the name Jeff McCord. The removal of the name Burns Phillips gives the impression the civil action is a new action.

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## CONCLUSION

To protect and preserve the right of low-income, fixed-income, minority Pro Se litigants to continue to participate in the United States legal system, as guaranteed in U.S. Const. Amend. 1 and U.S. Const. Amend. 14, the petition should be granted.

Respectfully submitted,



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