

No. 19-5989

IN THE
SUPREME COURT OF THE UNITED STATES

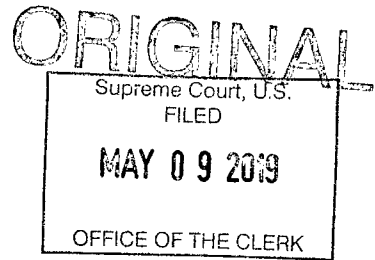
Rev. Errol Victor, Sr.,
Appellant

Versus

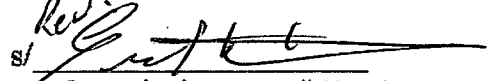
State of Louisiana
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI



Respectfully Submitted By:

Rev. Errol Victor, Sr.
s/ 
Rev. Errol Victor, Sr., #613100
Camp-D Eagle-1
Louisiana State Penitentiary
Angola, La. 70712

IV. QUESTIONS PRESENTED

1.

Whether it denies defendant's Fourteenth and Thirteenth Amendment Rights while on direct review not to retroactively vacate a non-unanimous jury verdict, when a state constitutional provision becomes effective requiring unanimous jury verdicts for conviction?

2.

~~Whether~~ ^{Whether} it denies pro se defendant Sixth Amendment Right to a speedy trial and right to counsel of choice, when defendant is incarcerated over 120 days and denied self representation without a Faretta Hearing?

3.

Whether it denied the Fourteenth Amendment and First Amendment Right to Freedom of Religion to force pro se incarcerated defendants by restraints to appear and participate in trial; on defendant's "Holy Sabbath Day" Saturday, a non-regular court date, without the aid of counsel?

4.

Whether it is a nullity, Obstruction of Justice and a denial of a fair hearing when judges-En Banc subject to an unresolved Recusal Motion deliberately have proceedings prior to Recusal Motion?

5.

Whether it violates defendant's Fourteenth Amendment Right, when Clerk of Court violates allotment Rules of the Court to allow Judge-Shopping?

i.

6.

Whether it is a denial of the Sixth Amendment Rights, when incarcerated, Pro Se defendants are denied a defense Expert Witness on the very day of trial?

7.

Whether it denies defendant Fourteenth and Ninth Amendment Rights reserved to the people, when the defendant's challenge to the State and Court's "status" and "jurisdiction" remains unresolved by hearing before commencement of trial?

8.

Whether it is inherently unfair and in bad faith and denial of the Fifth and Fourteenth Amendment, to supply two-opposite theories of prosecution simultaneously driven by Gender disciminative Motives.

9.

Whether it denied defendant's Fourth and Eighth Amendments, Defendant's husband and wife, arrested three separate times, same case, circumstances, material evidence, third arrest no warrant, judgment of forfeiture or previous bonds revoked. Six bonds totalling 4 million dollars unreturned and non-reinstated, illegal seizure and excessive bonds and fines.

V. PARTIES TO THE PROCEEDINGS

[X] All Parties appear in the caption of the case on the cover page

[] All Parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Appellant:

1. Rev. Errol Victor, Sr. #613100
Camp-D Eagle-1
Louisiana State Penitentiary
Angola, La. 70712

Respondent:

2. State of Louisiana
c/o Attorney General
Jeff Landry
P.O. Box 94005
Baton Rouge, La. 70804

VI. TABLE OF CONTENTS

	<u>PAGE:</u>
Affidavit “Motion to Proceed in Forma Pauperis”	i.
Cover Page	ii.
Question(s) Presented	iii., iv.
List of Parties	v.
Table of Contents	vi.
Index of Appendix	vii.
Table of Authorities	viii.
Opinions Below	1.
Jurisdiction	2.
Constitutional and Statutory Provisions Involved	2.
Statement of the Case	2-4
Reason for Granting the Petition	4.
Conclusion	37.
Certificate/Proof of Service	38.

VII. TABLE OF AUTHORITIES

<u>God's Law</u>	<u>Page</u>
Exodus 23:12	12
1 st Amendment.....	2,6,16,19,20
6 th Amendment	2,6, 9,12
14 th Amendment	2,6,37
Confrontation Clause	20
U.S. Constitution art. 1 § 17	7-8
<u>Federal Statutes</u>	
Federal Rules Title 18 Section 241-242.....	33
42 U.S.C. § 2000 cc et. seq.	15
Religious and Land use and Institutionalized Persons Act of 2000	15,19
<u>Federal Cases</u>	
Ake v Oklahoma,	29
Buck v Mass,	36
Caperton v A.T. Massey Coal Co., 556 U.S. 868, 881, 129 S.Ct 2252, 173 L. Ed.2d 1208...	
Caperton, 556 U.S. at 883, 129 S. Ct. 2252.....	
Dubose v Kelley, 187 F.3d 999 (C.A. 8(Minn) 1999)	12
Evans v Michigan, No. 11-1327, ---U.S.---, 133 S. Ct. 1069, 185 L. Ed.2d 124 (2013)	25
Faretta v Claifornia, No. 73-5772, Supreme Court, 422 U.S. 806, 95 S. Ct.2525	10
Fong Foo v U.S., 369 U.S. 141, 82 S. Ct. 671, 7 L. Ed.2d 629 (1962)	25

Griffith v Kentucky, 107 S. Ct. 708, 479 U.S. 314 (U.S. Okla. 1987)	7.
---	----

Federal Cases

Page

Haines v Kerner, 92 S. Ct. 594, 404 U.S. 519, 30 L. Ed.2d 652. rehearing denied, 92 S. Ct. 963, 405 U.S. 948, 30 L. Ed.2d	
Hey v Irving, 161 F.3d 7	12
Jackson v Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. ed.2d 560 (1979)	29
Mayberry v Pennsylvania, 400 U.S. 455, 465-66, 91 S. Ct. 499, 27 L. Ed.2d 532	
Pennoyer v Meff, 95 U.S. 714.....	33
Sanabria v United States, 437 U.S. 54, 98 S. Ct. 2781, 57 L. Ed.2d 43	25
Similow v United States, 465 F.2d 802 (2 nd Cir. 1972)	17
State of New Jersey v Chesimard, 555 F.2d 63 (1977)(en banc)	
Tibbs v Florida, 457 U.S. 31, 47, 102 S. Ct. 2211, 2218, 72 L. Ed.2d (1982)	36
Turney, 273 U.S. at 532, 47 S. Ct. 437	36
U.S. v Blue, 557 F.3d 682, 686 (6 th Cir. 2009)	36
United States v Brown, 26 M.J. 148, 150 (C.M.A. 1988)	30
United States v Fisher, 571 F. Supp. 1236 (S.D.N.Y.)	17
United States v Marion, 404 U.S. 307, 92 S. Ct. 455, 30 L. Ed.2d (1971)	10-11
United States v Robinson, 36 M.J. 190, 191 (C.M.A. 1989).....	30
United States v Turner, 28 M.J. 487 (C.M.A. 1989).....	29
Winthrow v Larkin, 421 U.S. at 47, 95 S. Ct. 1456	

State Constitution

Article 1 § 16 of the Louisiana Constitution	9
Louisiana Constitution Art. 1 § 2-3	28
Louisiana] Constitution Art. 1 §§ 2,3, and 8 of 1974	16
Louisiana Constitution Art.1 §9.....	33
Louisiana Constitution Article 1 § 17	9

State Statutes

La. C. Cr. P. art. 671(a) (5-6)	25
La. C. Cr. P. art. 782	29
La. C. Cr. P. art. 538	28
La. C. Cr. P. art 673	22
Title XXII, Recusation of Judges, Code of Criminal Procedure Article 671	
Title XXIV, La. C. Cr. P. art. 701(c)	10

State Cases

Evans v Michigan, No. 11-1327, --U.S.--, 133 S. Ct. 1069, 185 L. Ed.2d 124 (2013).....	
Res Mgmt, L.L.C. v Pirate Lake Oil Corp., 2012 1472 (La. 3/19/13), 112 So.3d 209...	8
State v Captville, 448 So.2d 676, 678 (La, 1984)	29
State v Davenport, 147 So.3d 137, 2013-1859 (La. 2013)	25
State v Draughter, 130 So3d 855 (La. 2013)	8.
State v McGee, 2009-CR-515, Div. "B"	27
State v Price, 274 So.2d 194 (La. 1973)	22

State v Pride, 1 S.W.3d 494 (Mo. App. W.D. 1999) cert. Denied, 529 U.S. 1004, 120 S Ct. 1269, 146 L. Ed2d 219 (2000)	22
State v Rideau, 802 So.2d 1280 (La. 2001).....	28

TABLE OF AUTHORITIES (CONTINUED)

	<u>Page</u>
State v Simpson, 551 So.2d 1303 (La. 1989)	28
State v Stewart, 2009-CR-387, Div. “C”	27
Strickland v Washington, 466 U.S. 668, 106 S.Ct. 2052.....	10
State v Warren, 2009 CR-554	27

VIII. INDEX OF APPENDIX

Appendix A	Ruling La. Supreme Court
Court:	La. Supreme Court
Docket Number:	2016-KO-1516
Date Decided:	February 11, 2019
Disposition:	Denied (Direct Review)
Appendix B	Direct Appeal Ruling, Lower Court
Court:	Fifth Circuit Court of Appeal
Docket Number:	15-KA-339, 15-KA-340
Date Decided:	May 26, 2016
Disposition:	Conviction and Sentence Affirmed

X. JURISDICTION

The Louisiana Supreme Court as well as the State level Fifth Circuit Court of Appeal, erroneously denied Appellant's Direct Appeal.

The jurisdiction of this Honorable Court is hereby invoked pursuant 28 § 1254(1) and/or 28 U.S.C. § 1257(a) and/or 28 U.S.C. § 2101(e).

XI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution:

The Fourth Amendment to the United States Constitution:

The Fifth Amendment to the United States Constitution:

The Sixth Amendment to the United States Constitution:

The Eighth Amendment to the United States Constitution:

The Ninth Amendment to the United States Constitution:

The Thirteenth Amendment to the United States Constitution.

The Fourteenth Amendment to the United States Constitution.

XII. STATEMENT OF THE CASE

The Victors were one happy family. As with every family with a large amount of children, issues will arise, be addressed and dissipate. In this respect, this family was no different. The Rev. Mr. Errol Victor, Sr. and wife Tonya Victor, came from different worlds (upbringing), but they met, fell in love and brought all their children under one roof. The Rev. Mr. Errol Victor, Sr. had six (6) sons from his marriage to his deceased wife (whom died of breast cancer)), and Mrs Tonya Victor had (5) five sons from several previously relationships. Mrs. Tonya Victor birthed two (2) additional sons to the marital union between her and Rev. Errol Victor, Sr., thereby

creating of this blended family of fifteen (15). An African American father and mother with thirteen (13) African American sons, whom were all well cared for.

Trying to make a smooth transition on from her previous life, Mrs Tonya Victor did not inform Rev. Errol Victor, Sr., that, their son M.L. from one of her prior relationships had asthma and associated breathing complications at times. A condition Mrs. Victor also severely has and is veritably hereditary in her family. At all times M.L. as did other children, enjoyed full acceptance as one family unit.

After an incident of disobedience, Mrs. Tonya Victor admittedly spanked M.L., shortly thereafter, M.L. had an unforeseen reaction, his breathing had become shallow and he was lethargic but conscious. Mrs Victor instructed one of her sons to call Rev. Errol Victor, Sr., and inform him that there was a medical/family emergency to return home from his work immediately. Mr. Victor, did and found that M.L. seemed to be without energy and soon after his arrival fainted. Rev. Errol Victor, Sr., instructed his eldest son to start the vehicle as they prepared to rush the child to the nearby hospital. Upon arrival, the child was brought into the emergency room, the Mother (Tonya Victor and the eldest Victor son left the hospital to return the eldest son home to look after the minor children still at the home). Between leaving the hospital and arriving home, Hospital staff rushed M.L. into the emergency room where he was pronounced dead. Child Services was asked to investigate. Rev. Errol Victor, Sr., was taken into custody at the hospital without investigation and Mrs. Victor would be taken into custody later.

Mrs. Tonya Victor, acknowledged that she was the only person who chastised the child and that Mr. Victor was not even home when any of this occurred. She proclaimed his innocence and maintains it today. The Victor's during the six (6) years they were detained pretrial, were

forced to represent themselves pro se after being defrauded and robbed of several million dollars of legally earned money and legally purchased property. The Court system gave way to the "fixing" of various judicial processes which are supposedly inviolate aims of justice. However, in this case, "justice" and "fairness" remain absent from the equation.

XIII. REASONS FOR GRANTING THE PETITION

The Appellant contends that the lower courts have grossly departed from proper constitutional proceedings as described in S. Ct. Rule 10(a), 10(b) and 10(c), by ruling that: Appellant's had not established himself entitled to the relief sought as prescribed by the Constitution of the United States on the merits of his issues raised. It is likely that a majority of this court will vote to reverse the judgment below, as the applicant has exhausted all state remedies and thoroughly presented Federal Questions of Law which affect the rights of those accused of crimes throughout the State of Louisiana.

Appellant remains in custody in violation of the Constitution or laws and/or treatise of the United States. This appellant has no other remedy available before any other court wherein he can obtain the relief besides this one. Lastly, since the question raised here have never been decided it would be both in furtherance of this Honorable Court's Supervisory and Appellate jurisdiction to make decisions upon which other court on direct review wherein he can obtain the relief besides this one. Lastly, since the question raised here have never been decided it would be both in furtherance of this Honorable Court's Supervisory Jurisdiction.

Further, the decision of the State Courts squarely raise several Federal Constitutional Questions which haven't been previously decided by this honorable court in a direct manner.

STATEMENT OF FACTS

On the morning of this tragedy, Mrs. Tonya Victor, acknowledged that she was the only person who chastised the child who subsequently died as a result of that chastisement and other medical complication. Mrs. Victor has openly disclosed that her husband was not home when she spanked M.L. (the triggering event) which complicated his breathing. She openly proclaimed his innocence and maintains it today.

The facts and circumstances raises additional Federal Constitutional Questions which all are incorporated within the realm of this pleading.

1. Whether Louisiana has established a pattern of adherence or defiance towards prior decisions of this Honorable Court?

RELEVANT HISTORY OF CASE

This case proceeded to trial on July 25th, 2010 and appellant and his wife took great care to invoke a variety of Federal Constitutional rights before the State Court and all of these invocations fell upon deaf ears. Appellant had filed a motion to recuse all state court judges from the judicial district wherein he was to be tried. After proving that the local District Attorney and the State's Attorney General were essentially two sides of the same coin, the District Attorney were recused, however, in a later proceeding which is questionable in legality, a judge from that same Judicial District was still allowed to proceed with the case with Recusal Motion unresolved.

Approaching trial, the appellants sent a formal notice to the judge that they were religiously prohibited from work on Saturdays as a matter of religious conviction. The trial court disregarded this "formal notice", knowing that the appellants were representing themselves. The

trial judge proceeded to do something it does not necessarily do, it demanded that the trial proceed into the weekend, knowing that in observing their religious convictions, these individuals would not partake in any part of making their defense. The trial judge worked with the state in preparing their case so that the most damaging evidence and critical witnesses on behalf of the state would all testify on Saturday and would later declare themselves unavailable on any other day. In consequence, the defendants were deprived of the right to observe their religious precepts without sacrificing their right to defend themselves in a criminal trial.

QUESTIONS OF LAW

Can the practices of the State of Louisiana which defy federal constitutional protections be usurped by local practice and/or a wanton disregard for prior decisions of this honorable United States Supreme Court.

THE ISSUES

Appellant alleges the unavailability of a state court remedy and gross deviation from federal constitutional protections in the following areas of constitutional law.

13th Amendment-slavery and involuntary servitude'

1st Amendment to freedom of religion;

6th Amendment right to a speedy trial, self-representation, Right to Counsel

14th Amendment right to Equal Protection of the law,

8th Amendment excessive bonds and fines

4th Amendment illegal seizure;

5th Amendment right not to be forced to witness against oneself'

9th Amendment right retained by the people.

IN THE ABSENCE OF AVAILABLE STATE COURT REMEDY

Your Appellant/petitioner, Rev. Errol Victor, Sr., herein has presented his claim to the several courts of the State of Louisiana, non-resulting in a remedy which comports with the requirements and/or minimal standards of constitutional protections due to one accused of a crime. Because no remedy is available at the State Court level while on direct, Appellant Review, appellant's only remedy lies with this Honorable United States Supreme Court on direct review as clearly set forth in this Honorable Court's decision in **Griffith v Kentucky, 107 S. Ct. 708, 479 U.S. 314 (U.S. OKLA. 1987).**

NOW INTO COURT comes, the Rev. Errol Victor, Sr., living soul, who respectfully moves this Honorable United States Supreme Court to grant Certiorari and consider the Federal Questions presented:

QUESTION NO. 1
ISSUE NO. 1

WHETHER IT DENIES DEFENDANT ON DIRECT REVIEW THE
FOURTEENTH AMENDMENT RIGHT NOT TO VACATE A NON-
UNANIMOUS JURY VERDICT RETROACTIVELY, WHENAS
A STATE NEW CONSTITUTIONAL AMENDMENT BECOMES
EFFECTIVE REQUIRING UNANIMOUS JURY VERDICTS FOR
FELONY CONVICTIONS.

The Rev. Errol Victor, Sr., petitioner/appellant have been on direct appellant review almost five (5) years since trial. (August 2014 to present).

In April 2018, the Louisiana Senate passed the Act by more than two-thirds majority. In May 2018, it passed the Louisiana House by a margin of 84 to 15. On November 6, 2018, this issue was presented before the electorate and the electorate overwhelming voted in favor to change the majority verdict scheme of Louisiana codified at **Louisiana Constitution Article 1 §**

17 and the Code of Criminal Procedure art. 782, to an amendment requiring unanimous juries for all felony convictions.

This United States Supreme Court has had a long history developing its jurisprudence on the issue of retro-activity. The decision of the Louisiana electorate is limited by holding in **Griffith v Kentucky**, where this Honorable Supreme Court stated, “that a new rule for conduct of criminal prosecutions is to be applied retro-actively to all cases, State and Federal, pending on Direct Review or not yet final. **Griffith v Kentucky**, 479 U.S. 314, 328 (1987); cf. **Quantum Res Mgmt, L.L.C. v Pirate Lake Oil Corp.**, 2012 1472 (La. 3/19/13), 112 So.3d 209.

For the purpose of the non-unanimous jury verdict as of January 1, 2019, the effective date of the new constitutional amendment supra, all cases that are currently pending trial, on direct review and not yet final must now be adjudicated subject to an unanimous jury requirement. (**State v Draughter**, 130 So.3d 855 (La. 2013).

The determination of the Louisiana Supreme Court judges in the Draughter case held, “although the amendment to article 1 section 11 became effective after Draughter allegedly committed the offense at issue. His criminal case was still pending at the time the amendment became effective.” It further states, “this court has endorsed Griffin as a matter of state law for review of non-final convictions still subject to direct appellant review. See: **State ex rel Taylor v Whitley**, 606 So.2d 1292, 1296 (La. 1992). Accordingly, we (the Louisiana Supreme Court) find the amendment to Article 1, Section II has prospective effect from its effective date of December 10, 2012, and has retro-active effect to this case and all cases pending on Direct Review or not yet final.”

There is no question and is an irrefutable infallible fact that the Rev. Errol Victor, Sr., petitioner/appellant herein was still on Direct Appellant Review by operation of law and case not yet final on January 1, 2019, when the new constitutional amendment Article I § 17, rule of law requiring unanimous jury verdicts for felony convictions went into effect. The Rev. Victor's case was still pending on direct appellant review on Re-Hearing in the Louisiana Supreme Court and not yet final. See, Appendix "A" date of re-hearing denial with no reason-February 11, 2019.

Accordingly, Appellant Rev. Errol Victor, Sr., invokes his 14th Amendment right pursuant to *Griffith v Kentucky*, and *State v Draugther*, *supras*, and prays respectfully for this Honorable United States Supreme Court to reverse/vacate the judgment of conviction based upon an invalid verdict in case entitled State of Louisiana versus Errol Victor, Sr., No. 2010-CR 172(1); In re Errol Victor, Sr., versus Louisiana as stare decisis principal and competent jurisprudence demands, in the preservation of defendant's Fourteenth and Thirteenth Amendment right.

Question No. 2
Issue No. 2

[An issue of first impression for this Honorable Court and inherently of both local and National public interest].

**WHETHER IT DENIES PRO-SE DEFENDANTS SIXTH AMENDMENT
RIGHT TO A SPEEDY TRIAL AND TO COUNSEL OF CHOICE, WHEN
INCARCERATED OVER 120 DAYS AND DENIED SELF-REPRESENTATION
WITHOUT A FARRETTA HEARING.**

The Rev. Errol Victor, Sr., et ux, maintain that he and his wife had/have a substantive and exclusive right to counsel of choice. This right, pursuant the 6th Amendment, afford the Victor's right to counsel of choice, conflict free counsel, and counsel providing effective assistance in

accordance with the standards set forth in **Strickland v Washington**.

The Rev. and Mrs. Victor hailed the trial court on May 6, 2016, (see minutes of the court Appendix "C") then was denied rights to access the Court pro se, without a Farretta hearing for over five (5) months thereafter while as all motions filed pro se were either ignored by the Court or muted. This violated implicitly the 6th Amendment guarantee of the right of the accused to personally manage and conduct his own defense in a criminal case. **United States v Plattner**, 330 f.2d 271; **Farretta v California**, No. 73-5772, **Supreme Court**, 422 U.S. 806, 95 S. Ct. 2525.

The trial court was in error, when against the will of the appellant, in forcing upon the accused a public defender as a representative and not assistant. The Sixth Amendment is made applicable to the states by the 14th Amendment guarantee that a defendant in a state criminal trial has an independent constitutional right of self-representation, that he may proceed to defend himself without counsel when he intelligently elects to do so. The minutes of the court will reflect that on **August 26, 2010**, appellant was ignored, told to be quiet, shut up and sit down, and then was violently escorted out of court for wanting to speak in his own defense pro se.

This hearing on August 26, 2010, was scheduled to be an arraignment with plea hearing almost four months after indictment thus in violation of speedy trial rights. **Title XXIV, La. C. Cr. P. art. 701(c)** as well as **(e)**. The Sixth Amendment as well as right counsel also guarantee the right to speedy trial, it provides in pertinent part: "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. **United States v Ewell**, 383 U.S. 116, 120, 86 s. Ct. 773, 776, 15 L. Ed.2d 627 (1966). The Court has held that, the period of delay starts when a person is accused of a crime and ends when the trial begins. **United States v Marion**, 404 U.S.

307, 92 S. Ct. 455, 30 L. Ed.2d 468 (1971). The Rev. Errol Victor, Sr., and his wife, Tonya Victor asserted their substantive right.

The Court refrained the Victors from the court pro se, without a Faretta hearing for almost five (5) months. This was nothing more than purposeful negligence by the State and must be weighed in favor of Rev. and Mrs. Victor. **United States v Locket**, 526 F.2d 1110, 1111-1112 (7th Cir 1975). This Honorable Supreme Court should rule that, holding a pro se (Faretta hearing) on October 18, 2010, when appellant had five (5) months previously hailed the court as a pro se litigant and was ignored, denied the Victors' Due Process and Equal Protection from the time of initial arrest, May 4, 2010. Accordingly, this case should have been dismissed.

During aforementioned period, Rev. Victor was denied visitation by any private attorney that he was interested in retaining to represent he and his wife in this matter for more than nine (9) months by law enforcement, while still incarcerated, with bonds paid. Attorney Morris Reed, Jr., represented specifically one hearing.

Before the trial commenced, there was an attorney present in the courtroom (Mr. Timothy Yazbeck) who attempted to intervene on the Victor's behalf in order to preserve their rights. Mr. Yazbeck petitioned the court verbally, and requested a continuance of a few days to familiarize himself with the Victor's case, the Judge denied the motion. (Rec. pp. 2247-2248). This denial by the Court had three immediate prejudicial effects: (1) the Victors were denied their right to counsel of choice, Stephen Yazbeck; (2) the Victors were denied their Faretta rights for over five months of pretrial incarceration; and most importantly (3) were denied "counsel of choice", and forced to proceed to a jury trial for second degree murder, "Pro Se", by an Order from the Court.

CONCLUSION OF CLAIM TWO

If the right to counsel remains a fundamental and substantive right in America, then such needs to ring true here. Rev, Errol Victor, Sr., and his wife, Tonya Victor, never discarded their right to "counsel of choice." The Victors contends that their right to counsel and Farretta rights were dissolved by the trial court when failing to recognize them as pro se litigants during the first five months of incarceration after arrest, without a Farretta hearing to determine competency.

Subsequently, this violation resulting in appellants Sixth Amendment right, not only to counsel of choice, but also violated their right to a speedy trial. Therefore, Appellants, et ux., are asking that this case be permanently dismissed, and that they be immediately released from prison. See: **Dubose v Kelley, 187 F.3d 999 (C.A. 8(Minn) 1999); and Hey v Irving, 161 F.3d 7, (C.A.).**

The Victors seeks immediate release from prison.

CLAIM 3.

AN ISSUE OF FIRST IMPRESSION FOR THIS HONORABLE U.S. SUPREME COURT AND INHERENTLY OF BOTH LOCAL AND NATIONAL PUBLIC INTEREST.

ISSUE NUMBER 3.

WHETHER IT DENIES THE FOURTEENTH AND FIRST AMENDMENT RIGHT TO FREEDOM OF RELIGION, TO FORCE **PRO SE** INCARCERATED DEFENDANTS BY RESTRAINTS TO PARTICIPATE IN TRIAL ON DEFENDANTS **"HOLY SABBATH-DAY"** SATURDAY, A NON-REGULAR COURT DAY, WITHOUT THE AID OF COUNSEL

"Six days thou shalt do thy work and on the Sabbath day, thou shalt rest, that thine ox and thine ass may rest, and the son of thy handmaid, and the stranger, may be refreshed." **Exodus 23:12.**

Appellant Rev. Errol Victor, Sr., et. ux. Avers that no Louisiana case addresses the issue when a court must honor a pro se criminal defendant request that he/she not be tried on a non-regular court day (Saturday) of which he/she observes his/her religious Holy Sabbath belief

This is a significant issue of law which has not been, but should be resolved by the United States Supreme Court. As this case is prophetically a Louisiana Landmark case.

Rev. and Mrs. Victor avers and maintains that they invoked their right to observe their religious Sabbath Day of Saturday belief, the court was put on "NOTICE" of their request that no trial proceedings take place during their Saturday Sabbath¹ (a non-regular Court Day), as they would not participate in such trial proceedings. Despite a well recorded and documented "contemporaneous objection", Appellant Victor and his wife were forced to trial, pro se on their Sabbath Day Saturday, but the trial jury was given the Sunday (the Sabbath of the Majority) off, so they could be with their families.

This action of the trial court was none other than a direct attack on the Victor's belief, right and spiritual obligation to keep their Saturday Sabbath Day holy. Note: This Honorable Court must take notice of trial transcript rec. page 3998 (Exhibit A-3). Herein, female judge Mary Becnel attempts to prejudice the record in forcing, compelling and ordering the female trial court reporter, after the trial was over, to specifically make personal notations worded by the judge to purposely belittle and make mockery of the Victors praying together, of which she disrespectfully misrepresents as murmuring unintelligently during their Sabbath observance.

Also, the trial court judge's despicable misrepresentation of Mrs. Victor covering her head during prayer. The only thing that Mrs. Victor had in her possession to cover her head and signify that she was in prayer, was a napkin. And the judge made a mockery of this on the face

1 See Exhibit Minutes of the Court attached pg.72; excerpt of trial transcript pgs. 3343-3345 (objection made before jury selection); (2) excerpt of tr. trans.pg 3990-3992 (objection again after jury selection but before the Sabbath; (3) excerpt of tr. Tran.3998-4001 and copy of Objection/Exception on Motion/Notice to Court (Sabbath)) before trial proceeding were conducted on Sabbath again; and (4) Supplement Motion in Limine filed on direct review in the Louisiana Supreme Court and La. 5th Circuit Court of Appeals.

of the trial court's record. This is prima facie evidence of Judge Mary Becnel's prejudice (non-neutrality) in the State's case against the Victors.

This United States Supreme Court, need take notice of the trial court's record that is also both clear and unequivocal of the direct quote from Judge Becnel.

"You raised it yesterday and I think another time before that... (Rec. pg. 4006)² as quoted from Judge Mary Becnel."

In light of this direct quote from Judge Becnel, Appellant Victor and his wife had previously placed the Court on notice before Friday of their intent to observe their Holy Sabbath Day of Saturday. Thus, this was not a dilatory tactic, but rather an observance of their religious tenet and belief in a commandment from God himself. And what was the judge's response? "It was brutally instructive, desecrating of the First Amendment, steeped in bias prejudicial to the Victors and extremely beneficial to the prosecution.

**Alright Ms. Cullen I expect you to have witnesses waiting around. This, this is you know, This has taken an hour and a half off our time today. If you have, to have people from the Sheriff's Office waiting around, I want them waiting around. I don't want to wait. And if its out of chronological order, so be it.
(See Rec., at 3391 attached hereto).**

The judge concluded with this statement regarding the day of the Victor's Saturday Sabbath:

"We are going to four or five tomorrow and I want witnesses for every minute we're here." (See Rec., at 3992 attached hereto).

This abuse of discretion, prejudice and bias display of authority by the court was not addressing any dilatory matter. It was completely about the presiding judge giving the Victors an ultimatum which was: (1) Either you observe your Saturday Sabbath belief and the States entire

² Please see Exhibit "B" excerpt from transcript 4006-4008, filed on Direct Review in the Louisiana Supreme Court and Louisiana 5th Circuit Court of Appeals.

case go unchallenged by that choice; or (2) Desecrate your Saturday Sabbath and disregard your belief and proceed in defense of yourselves (pro se) against the allegations levied against you. Essentially, the Victors were punished for observing their Saturday Sabbath belief, the record is void of any rational basis or legally contemplated state compelling interests as mandated by the **Religious Land Use and Institutionalized Persons Act of 2000, codified at 42 U.S.C. § 2000 cc et. seq.**, nor any reason sufficient enough to triumph The Establishment Clause, under the Free Exercise Clause of the United States Constitution which embraces two concepts. [1] **Freedom to Believe**, and [2] **Freedom to an act on that in which you believe.**

Appellant Victor and his wife soon discovered that the observance of their Saturday Sabbath was used by the court to hand over a decisive tactical advantage to the prosecution. The case was fixed to allow the payload of the State's case to be delivered to the jury while the Victors sat in silence observance of their Saturday Sabbath Day. The prosecution witnesses who went without confrontation were: **Dr. Scott Anthony Brenton, Nurse Clay Hubble, Det. Kenneth Mitchell, Capt. Randall Joseph, Hospital Personel Nico Savoie, State advocate Pat Baudoin**). These were six (6) State witnesses whose testimony was prejudicial to the defense.

The bias trial judge even went as far as having one of the defense key witnesses summoned to testify on the Sabbath, out of turn and without appellant knowing. The oddity of this is that the prosecution had just began and had not yet rest its case. But for the prejudicial effect, the witnesses was brought in out of turn and when the Victors would not participate in the proceedings while observing their Sabbath. (See Rec. pg. 4107-4109). Specifically, the presiding trial court judge, intelligently and knowingly realized that the Victors would not forsake their duty to their belief in God's commandment in the observance of a Holy Day. The Victors did not

participate in said proceedings.

The trial judge purposefully violated the Victor's **First Amendment** constitutional right of Freedom of Religion and Louisiana Constitution Article 1 § 2,3, and 8 of 1974; subsequently, violated substantive protections afforded the Victors pursuant to the Confrontation Clause of both Article 1 § 16 of the Louisiana Constitution and the **Sixth Amendment** of the United States Constitution as well as the **First Amendment** of the United States Constitution.

The Court of Appeals erroneously relied upon the out of state case of **State v Pride, 1 S.W. 3d 494 (Mo. App. W.D. 1999) cert. denied 529 U.S. 1004, 120 S. Ct. 1269, 146 L. Ed.2d 219 (2000)**. Pride is glaringly distinguishable from the facts of appellant's case. In Pride, the accused failed to object pretrial and voiced no objection until after the jury had been fully selected and seated. The evidence and Minutes of the Court, ref, rec. pg. 72 filed as attachment on direct in the Louisiana's courts, provides prima facie proof to this Honorable Court that these historically powerless classified citizens, the Victors made multiple objections before the jury was fully seated during jury selection, after jury was selected and post-verdict, all fully documented.

Another critically distinguishing fact is that Pride was advantaged by the representation of counsel who proceeded on his behalf, whereas the Victors were proceeding "**pro se**", having been deprived of their substantive right to counsel of choice, Anthony Timothy Yazbeck before trial. This Honorable Supreme Court must not ignore the prima facie fact that the state made "NO OBJECTION" to the observance of the Victor's Saturday Sabbath Day (see reference page 4001, lines 13-16) herein the Victors provides unassailable proof of Ms. Cullen (state prosecutor) having stated on the face of the record:

“Your Honor, I have no “objection” believe me, we've all been working very hard for a long time, we could all use some rest.”

There was no objection made by the state to the observance of the Victor's Saturday Sabbath. Rather, it was the judge's abuse of discretion alone waging war against the First and Sixth Amendment rights of the Victors and prejudiced both, the trial and the jury irreparably.

In spite of state prosecutor, recorded non-objection, the State uses two cases to make legal propositions in defense of the trial judge's abuse of discretion in the degradation of the separation of power doctrine. The state (executive branch) erroneously argues in defense of the judge (judicial branch) **Similow v United States, 465 F.2d 802 (2nd Cir 1972)** and **United States v Fisher, 571 F. Supp. 1236 (S.D.N.Y. 1983)**. In Fisher, *supra*, the defendant was trying to prevent to going to trial on his Sabbath, which was a Friday. The Court reasoned that since Friday was a **regular trial day**, and that there were several co-defendants on the same charge that the trial would be too lengthy. The court compelling interest was justified in taking defendant to trial over his First Amendment issue.

Unlike Fisher, *supra*, Appellants's trial was continued on a Saturday Sabbath, which is **not a regular trial day**, an obvious distinction between Fisher and the Victor's case. The Victors were both pro se and were tried together (joint trial), for the same crime, in the interest of judicial economy. Thus, this is also an obvious distinction from Fisher, thereby eliminating any conversation concerning several trials or trial being too lengthy. Moreover, the court expressed an urgent compelling interest to get the jury home to their families and proceed to trial on the Saturday, but skip the very next day, on Sunday (a known holy day for most Christian followers), to proceed on the following Monday.. The trial continued the Monday after the judge gave the Sunday off. This could have been alternated to respect the Holy Sabbath of the Victors, but was

not for the intentional abuse of discretion.

A case on point in *Similow*, *supra*, the state and appeals court failed to include a very “significant legal point” that the *Similow* court noted, “We do not say that bona fide religious views must always give way to the rigid demands of a grand jury investigation. If appellants had refused to appear before the grand jury on the ground that he had been summoned to testify on Jewish Holy Day, the consideration would be different...Recognition of appellants' right to follow his religious beliefs would not then completely nullify society's interest in a thorough investigation. A postponement for a day or two would provide a feasible accommodation of individual and societal interest...” 465 F.2d at 804.

This “latter legal point” above expressed in *Similow*, gives great weight to the Rev. and Mrs. Victor's argument. More specifically, the Victors' legal issue, falls squarely in line with the judges reasons in *Similow* as to this matter. In the Victors' case, the Rev. and Mrs. Victor, did not refuse refuse to participate or testify in the state proceedings. They refused to continue trial on a Saturday Sabbath (the Rev. and Mrs. Victor's holy day and *an irregular trial day*) over their *First Amendment's* right and their religious beliefs to rest and keep their Saturday Sabbath “Holy”. The court *never* considered to accommodate the Victors' religious interest, as stated by the judges in *Similow*. When all the court had to do is skip a day or two as noted by *Similow* court. This would have accommodated the state and appellants' interests simultaneously. The mere fact that the court skipped the Sunday excluding the alleged “extraordinary circumstances” to get jurors home to their families as noted by the trial court, is troubling. (ref., page 4006, lines 27-32, 4007, 4008).

Herein, is what the judge cites on record as the only *prima facie* reason what she (trial court judge) viewed as the “extraordinary circumstances” stating: *she did not want to inconvenience the jury and wanted to get the jury home to their familie..* This Honorable Supreme Court should determine that the jurors had a civic duty to perform; whereas, the Victors’ invoked their *First Amendment Constitutional* right which triumphs.

This revealed that the court *did not* attempt to accommodate the Rev. Errol Victor, Sr. and Mrs. Tonya Victor’s protected religious interest. The district trial court judge, condoned by the Louisiana Supreme Court and 5th Circuit Court of Appeal, have also adjudicated in this case that citizens in the State of Louisiana, although sincere, who are not of a particular popular mainstream denominational belief or citizens of “Non-denominational” beliefs who invoke their rights as state and federal citizens to act upon their personal choice of belief, are not to be granted or afforded equal protection of their **First Amendment Constitutional Rights** or *Louisiana Article 1, § 2, 3 and 8, Constitutional Rights*, nor the rights as are mandated by the *RLUIPA of 2000* in the State Courts of Louisiana.

This is a very sensitive legal matter, issues of this magnitude can solidify the democracy of this great nation or make mockery of the very **1st Amendment** of the 27 Amendments of the Constitution that governs every United States Citizen.

CONCLUSION OF CLAIM THREE

Wherefore, Rev. Errol Victor Sr. and wife, Mrs. Tonya O. Victor, contends that they are entitled to the relief sought for the “clear” and unequivocal violations of their *1st Amendment* Right to comply and conform to God’s Commandment to keep the Sabbath Holy in the absence of a legitimate state compelling interest. The trial court deliberately gave the state prosecution

windfall victory with its direct instruction to the prosecution to essentially "*punish*" the Rev. Errol Victor and Mrs. Tonya Victor for observing their Saturday Sabbath Holy Day of rest, during the period the court knew the Victors' would not be participating in trial. Though appearing in court by submission to the authority of their captors, this did not/does not mean that the Rev. and Mrs. Victor were present voluntarily (ref. pg. 4007, lines 25-32; page 4008, line 1-8) *prima facie* evidence, that in fact, it was completely against their will to be in court on their Sabbath, but due to the Victors' (husband and wife) incarceration, they were forced to appear under physical restraint and orders issued by the court for their presence. The Rev. Errol Victor Sr., et ux. were pro se litigants, consequently the violation of their 1st Amendment right violated their substantive protections afforded them pursuant to the Confrontation Clause of the Sixth Amendment enveloped by the 14th Amendment right to due process. Rev. Errol Victor, Sr., et ux. prays that this court, using the wisdom of this Honorable United States Supreme Court, reversed the conviction of the Rev. Errol Victor, Sr. and Mrs. Tonya Victor, and thus remand this case for a new trial in respect of the Sabbath Right.

SECTION IV

WHETHER IT IS A NULLITY, WHEN JUDGES EN BANC SUBJECT TO UNRESOLVED RECUSAL MOTIONS DELIBERATELY HAVE PROCEEDINGS PRIOR TO RECUSAL HEARINGS HELD

ISSUE FOUR

Louisiana Law, the Federal and State Constitutions, Prevented the Judge of the 40th JDC from Acting in the Case #2010-CR-172 pursuant to La. C.Cr.P. Art. 673

Rev. Errol Victor, Sr., contend that the lower Appellate Court, reached its erroneous decision by way of misinterpretation of the "material facts" of the case. Additionally, the courts was also reached by way of "manifest error of law" because the appellate court ultimately

applied law with a clear misunderstanding of the underlying trial court record. Appellant/appellants further contend that the trial court's error in proceeding in the case after a viable Motion for Recusal of all Judges of the 40th JDC was "manifest legal error." (Ref. Recusal Motion originally filed (March 3/29/2010, at 9:31 A.M.)³

On March 29, 2010, the Motion for Recusal of all 40 JDC Judges was filed into the record. Decisively, this is before the 4/12/10 third indictment of this same case. Because the recusal motion was already pending and had not been resolved, no judge of the 40th JDC was within their power to sit, and/or act as arbitrator or in any other capacity (in this case) due specifically to the pending recusal motion (i.e. arrest warrants, 72 hour hearing, bonds setting, arraignment hearing) This is inclusive of all subsequent judicial acts taken during the pendency of said motion. It is of "grave importance" that the entire record of the previous case (pleading, motions, rulings, etc. were re-date-stamped and re-filed into the record without the authority, consent and/or knowledge of either defendant until long after the fact when the new stamped dated were attempted to fraudulently be passed off as the original filing dates by appellant/appellants opposition.⁴

In light of these undisputed facts, all subsequent proceedings are absolute nullities and do not possess, nor present anything for any court to uphold. All proceedings conducted in violation of the laws and constitutional pursuant *La. C.Cr.P. Art. 673*, pre-requisites are absolute nullities, as the language regarding properly filed motions for recusal speak in mandatory language. No further proceedings could be had, except resolution of the recusal motion. This constitutional

3 See exhibit "C" - copy of page 1 and 7 of original Motion to Recuse all Judges who sit En Banc...(see date-stamp 3/29/10 at 9:30 A.M.) Ref. Page 1703 certified record filed on direct review in the Louisiana Supreme Court and Louisiana 5th Circuit Court of Appeal

4 See exhibit "D" - where Clerk of court re-stamped (changing the filing date of the original recusal motion to May 12, 2010, at 2:53 P.M., page 1 find prima facie evidence of two (2) date stamps.) Ref. Page 177 certified record filed on direct review in the Louisiana Supreme Court and Louisiana 5th Circuit Court of Appeal

mandate is extended to and inclusive of the occasion whereby the initial presiding Judge Madeline Jasmine quashed the indictment in this case. In review of the matter the Fifth Circuit Court of Appeals, erroneously alleged that the case was over. This is contrary to both law and fact, this case was still maintained by statutory *Article La. C.Cr.P. Art. 538* beneath section (4) where the exception is provided:

"In other cases, when a motion to quash is sustained, the court may order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment."

Therefore, any re-indictment of the same case, same material evidence, and same accused (due to the aforementioned recusal of all judges en banc as to all 40th JDC Judges could not be legally re-allotted to any of the said judges.⁵

Had the Appeals Court properly ruled that the court's actions while the recusal motion (originally stamped on March 29, 2010, at 9:31 A.M.) was pending were/are absolute nullities, there would be no need for this Writ of Certiorari. *See La. C.Cr.P. Art. 673 and State v. Price*, 274 So.2d 194 (La. 1973). Failure to do this nullifies and/or renders meaningless substantive rights due the appellant/appellants.

Appellants hereby urge before this Honorable Supreme Court that the appellate decision rendered by this Fifth Circuit of Appeal on May 26, 2016, (rehearing denied June 24, 2016) is not sustainable as a matter of law and fact. The record has documents therein which prove acts of

5 PURSUANT TITLE XXII, Recusation of Judges, Code of Criminal Procedure, Article 671, Grounds for recusation of judges (a)(5) states: "In a criminal case a judge of any court, trial or appellate shall be recused when he/she: (5) has performed a judicial act in the case in another court. The association each of the three (3) District Judges of the 40th JDC has with this case is as follows: **Judge J. Sterling** - Was the judge who adjudicated the "juvenile charges against appellant/appellants" whose foundation and existence was the underlying facts of the instant appellate criminal case. **Judge Mary Becnel** - Presided over an performing judicial acts in the Wrongful Death suit filed against appellant/appellants whose foundation and existence was the underlying facts of the instant appellate criminal case; and **Judge Madeline Jasmine** - was presiding over the criminal case and like the others listed herein, was a part of the en banc panel of judges sought to be recused (by properly filed motion) from performing any judicial acts in this case.

fraud upon the court and obstruction of justice, and the Appeals Court is giving absolutely no consideration to the matters.

This Honorable Court should feel compelled to review exhibit "C" and "D" of the Writ of Certiorari filed into the Louisiana Supreme Court and La. 5th Circuit Court of Appeal on direct review. Why? Because this document was filed and electronically date-stamped by the Clerk of Court, on two separate occasions. The first stamp is for the originally filed "Motion to Recuse all Judges En banc that sit on the panel of the 40th JDC "on **March 29, 2010 at 9:31: A.M.** (see attached copy-Exhibit "C"), which cannot be denied (due to Clerk of Court stamp showing receipt). This same aforementioned Motion to Recuse all Judges En banc was also re-filed on **May 12, 2010 at 2:53 PM** (see attached copy-Exhibit "D"). The Clerk re-filed the same document and gave it a new stamp filed date, which also cannot be denied (due to Clerk of Court double-stamp showing receipt), was re-filed as a part of the ongoing fraud-upon-the-court levied at obstructing justice in the appellants case. The court will notice that these are double dated duplicates intended to deceive because the original is difficult to discern in some respects but the comparison between **Exhibit "C", and Exhibit "D"** tell the tale of it all. This was done to undermine the initial recusal motion filing date of **March 29, 2010**, and the activities of the court. The Clerk re-stamped these filings at the behest of other officers of the court and Law enforcement. (i.e. Judges, Police, District Attorney's, Asst. A.G.).

The documents/motions having three (3) defendant signatures (See **Exhibit "E"**), is proof-evident that the document was filed "before" April 12, 2010 (third indictment). Therein, the defendants sought in the Recusal Motion En banc, the recusal of all judges on the panel of the 40th JDC, in all criminal, civil, and any other cases involving the same material evidence and

the same set of circumstances out of which involved the Victors criminal charges or breathing life thereof. This should have stayed the judges from acting in all/any cases involving the Victors, until recusal hearing were resolved. Those documents are distinguishable because they have three (3) defendant signatures, and were filed prior to the third indictment and could not have been originally filed on May 12, 2010 as the double stamped Motion discloses. Why is this important? Because initially, in the first two flawed indictments (**before April of 2010**), there were three (3) defendants, by the occurrence of the third indictment, the state abandoned the prosecution of the Errol Victor Jr. (the eldest son) but proceeded with the prosecution of the Victor's (husband and wife) resulting in only two (2) defendants. The signatures on the Motions are that of Three (3) defendants prima facie proof evident that this motion was filed prior to May 12, 2010 and before the April 12, 2010, third flawed indictment.

As a result of all of this, the Louisiana Courts made erroneous determinations of fact based upon a fraudulent representation of what the trial record connotes. Appellants invite this Honorable Court to end the practices wild run afoul of justice and constitutionally recognize fair-play. The State's abandonment of their appeal as to Judge Jasmine's decision, as a FINAL judgment. This abandonment of the pursuit of the rightful appellate procedure allowed Judge Jazmine's ruling to become final, which resulted in a pending case #165-CR-2008 pursuant to La. C.Cr.P. Art. 538 beneath section (4) exception and the law of the case. The state cannot re-initiate these same proceedings against the same parties in violation of Rules of the Court as it pertains to Judge Madeline Jasmine jurisdiction of the subject matter and as pursuant to *La. C. Cr. P. Art. 673* the judges on the panel of the 40th JDC was prohibited by statute and could not legitimately act or exceed limits authorized by the legislators.

In her own words, Judge Jasmine said "this case has been going on too long, let these people go on with their lives."⁶

This case originally allotted to Judge M. Jasmine was then against the practice and Rules of the Court (14.1 and 14.3) of the 40th Judicial District and an act of discrimination, re-allotted to Judge Mary Becnel (who was also under an unresolved Motion to Recuse pursuant to La. C.Cr.Proc. Art. 671(5) and Art. 673) and who forced the case to trial in total absence of all authority to act, exceeding the limits allowed by either constitution or legislation. Defendant's never once agreed to the re-allotment of the same criminal case with the same set of circumstances, same set of material evidence. A new corrected indictment does not infer a new case.

Under these precepts, every act committed by this judge is an absolute nullity and has no legal existence in law. Any subsequent proceeding taken by this judge while unresolved recusal motion was pending is likewise an absolute nullity and any and every act taken against these appellants in derogation of the mandate of the Law in both the State and Federal Constitution which were prejudicial to the interests of these appellants is an absolute nullity and appellants asks this Honorable Court to issue a declaration of such nullities. See *Evans v. Michigan*, No. 11-1327, -- U.S. --, 133 S.Ct. 1069, 185 L.Ed.2d 124 (2013), *Sanabria v. United States*, 437 U.S. 54, 98 S.Ct. 2170, 57 L.Ed.2d 43 (1978) and *Fong Foo v. U.S.*, 141, 82 S.Ct. 671, 7 L.Ed.2d 629 (1962). This is a clear case of *res nova*. *State v. Davenport*, 147 So.3d 137, 2013-1859 (La. 2013). Anywhere else in law, the abandonment of an appeal on any issue in controversy finalized the judgment of the lower court. Additionally, all actions taken by Judge Becnel while the motion

⁶ This showed that this judge had already perceived this case was more harassment than it was pursuit of some criminal act. no sitting judge who was convinced that a crime was committed would make a statement to release one or more people the judge thought or half-way believe had taken the life of a child.

to recuse were pending are void *ab initio*, thus, leaving in place the legal dismissal of the case by operation of law by Judge Jasmine. State cannot nolle prosequi a Quashed case.

CONCLUSION OF CLAIM FOUR

Wherefore, appellants contend that all actions taken in this case are null and void. The conviction and sentence should be annulled because the actions taken which resulted in a subsequent violation of *La. Code of Criminal Procedure art. 671(a)(5-6) (grounds for recusal)*, *art. 673 (judge cannot act)* and the *14th Amendment* substantive right to due process and substantive right to equal protection all resulted in what will forever be absolute nullities.

SECTION V

WHETHER IT VIOLATES DEFENDANT'S FOURTEENTH AMENDMENT RIGHT, WHEN CLERK OF COURT VIOLATES ALLOTMENT RULES OF THE COURT TO ALLOW JUDGE-SHOPPING

ISSUE FIVE

Case Was Illegally "Judge Shopped" in Violation of Both State and Federal Constitution

The instant case provides a step-by-step guide of how to judge-shop a case and potentially get away with it. It further provides great insight as to the correct method and arguments to use to allow a clearly judge-shopped case, to be upheld on appeal. As the record reflects that on February 4, 2010, Judge Madeline Jasmine granted appellant/appellants Motion to Quash the amended indictment. ADA Julien Cullen gave notice of their intent to seek an appeal of the judge's ruling quashing the indictment, however, said ADA failed to timely do so, thereby rendering the judgment of the trial court undisturbed.

Frustrated at the loss, Jullien Cullen, sought to subvert the now controlling February 4,

2010, quashed judgment by filing a non-dejure de facto nolle prosequi by the A.A.G, ^{ignoring} ~~then~~ Judge Jasmine (African American female Judge), power, position, Quash and the correct operation of law. This case was moved/reallotted from Section "A" (Judge Madeline) of the 40th JDC to Section "B" (Judge Mary Becnel) a different judge of the prosecutor's choice to preside over the same case. This re-allotment was illegal and Rev. and Mrs. Victor both objected and on May 17, 2010, filed a Motion challenging the unconstitutionality of the process.

Comparatively, and subsequently there were several other cases wherein defendants were re-indicted in the 40th JDC. The "fixing" of the allotment system and the manner in which this case was "singled-out" from the others made clear that this case, was not to be handled in accordance with the letter of the law. The other cases which were quashed for the same reason as appellant and re-submitted to a Grand jury were *State v. McGee*, 2009-CR-515, Div. "B"; *State v. Warren*, 2009 CR-554; and *State v. Stewart*, 2009-CR-387, Div. "C". Each of these quashed and re-submitted cases retained their same case number (#) and Division of Court they were already in. Because the appellant/appellants case was to be "fixed for conviction" (a pre-arranged outcome), the case was discriminatngly re-allotted to another section and given a new allotment/case number and division.

The neon glow of the elephant in the room has to be "noticed" by someone other than just the Rev. and Mrs. Victor. The state conceded, in its brief, that it does not follow the court rules for allotting quashed indictment cases. See the state's declaration of this fact at page 17 of it's opposition brief to the Victors' direct appeal brief. Here appellants opponent is admitting to discrimination consistent with the Victors allegations of law-less-ness in this case, this was a critical fact which went "critically overlooked" in the direct-appeal process before the Fifth

Circuit. Wherein the record reflects that the 40th JDC changed the rules of the Court after this violation in an attempt to justify their acknowledged discrimination against Rev. E. Victor and wife, Mrs. Victor. A fact agreed to by both sides constitutes a "stipulation" and despite the stipulation, the Rev. and Mrs. Victor still could not achieve fairness before the Courts of Louisiana.

CONCLUSION OF CLAIM FIVE

Wherefore, Rev. Errol Victor, Sr., et. ux., prays this Honorable Court will ultimately grant them the direct-appeal relief to which they are entitled. This Honorable Court can and should declare all events occurring after the March 29, 2010, recusal motion (filed against all judges of the 40th JDC) and the discrimination in the re-indictment of appellants as well as the allotment procedures practiced by the 40th JDC to be in violation of appellant's substantive Equal Protection and substantive Due Process rights guaranteed by the *14th Amendment of the United State Constitution and Article 1, § 2, and 3 of the Louisiana Constitution of 1974.*⁷ Rev. Victor avers that in the spirit of and accordance to *State v. Simpson*, 551 So.2d 1303 (La. 1989) and *State v. Rideau*, 802 So.2d 1280 (La. 2001), Rev. and Mrs. Victor, conviction and sentence should be immediately vacated and set aside.

QUESTION NO. 6

DID THE TRIAL COURT MANIFESTLY ABUSE ITS DISCRETION IN DENYING PETITIONERS, FORCED TO REPRESENT THEMSELVES AT THEIR MURDER TRIAL, THE RIGHT TO AN EXPERT WITNESS?

ISSUE NO. 6

⁷ It is requested that Judicial Notice pursuant *La. C.E. Art. 202*, be taken over filing appellant/appellants have lodged into the record of the Louisiana Supreme Court in direct relation to this case. The court of appeals and trial court made mockery of the date and times of various filings in this case, however, those entities were completely unexpecting of appellant/appellants to file duplicates of those same pleadings into the record of the Louisiana Supreme Court. Please begin with Case #14-KH-1636; and proceed to inspect the filings in case #OK-408-2013, #OK-918-2013; #OK-799-2013; and #OK-1098-2013.

The Trial Court Abused It's Discretion Denying Incarcerated Pro-Se Defendant The Right To Present An Expert Witness On The Very Day Of Trial

It is difficult to imagine a child abuse case which alleged physical abuse, where the defense would not be aided by the assistance of an expert. Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 entitlement to expert witness (clearly establish U.S. Supreme Court precedent of the time of Appellant's conviction). An expert could have provided critical assistance in many ways in this case. As stated in United States v. Turner, 28 M.J. 487 (C.M.A. 1898):

To assure that indigent defendants will not be at a disadvantage in trials where expert testimony is central to the outcome, The Supreme Court has ruled that a defendant must be furnished expert assistance in preparing his defense.

Standard of Appellate review for a sufficiency of evidence claim is whether, after viewing the evidence in light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). See *State v. Captville*, 448 So.2d 676, 678 (La. 1984) In this case involving allegations of physical abuse, a defense expert was essential to any defense by the defendants. The trial court in this case deliberately and erroneously circumvented these Federal Constitutional Rights to *Equal Protection and Due Process* from being recognized in this case: *the right to experts in one's behalf; the right to present a defense, the right to equal protection and application of the law as well as the right to substantive due process.*

The expert witness that was restricted from testifying could have aided in determining whether there was sufficient evidence to raise the parental-discipline defense. In cases involving parental discipline, the defense need only show three (3) things: 1.) the appropriate person administered the discipline or force, 2.) for a proper purpose, and 3.) with a reasonable amount of

force.⁸

In this case, *the state never conclusively established an undisputed definitive cause of death*. Specifically, the court subverted the sworn testimony of Dr. Velva Boles, who had previously testified under oath in a pre-trial hearing, in the same case *ab initio*, of which the original allotted judge (Judge Jasmine) presided. **Judge Jasmine** found that Dr. Boles was a properly qualified physician, who had performed and/or participated in more than 2000, autopsies. **Judge Jasmine** (the original allotted judge de jure), after a hearing ruled:

1.) That Dr. Boles, qualified to testify as to her medical knowledge concerning the case, after carefully having reviewed Dr. Boles medical credentials; and 2.) In conjunction with Dr. Boles testimony, having reviewed the detailed autopsy report, and emergency room records, Judge Jasmine ruled that the prosecution (State) failed to prove, their several erroneous criminal allegations.

The Victors contend that the exclusion of the defense medical expert dealt a critical and detrimental blow to the only defense which they had. A Diplomat of the American Forensic Examiner's Institute, American Medical Association Member, National Medical Association Member, etc. The co-defendants Mr. and Mrs. Errol, were deprived of their right to defend themselves. And they were "specifically" denied *Equal Protection* and Application of the substantive law as provided for in the *14th Amendment*.

The defense medical expert had a medically sound alternative (non-criminal) explanation as to why the beloved son of Appellant and Mrs. Tonya Victor passed away. Testimony that will

⁸ See *United States v. Brown*, 26 M.J. 148, 150 (C.M.A. 1988); *United States v. Robinson*, 36 M.J. 190, 191 (C.M.A. 1992). Both cases adopted the test for the parental discipline defense given in the *Model Penal Code*, Section 3.08(1)(1985).

The use of force upon or toward the person of another is justified if: (1) the actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and: (a) the force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his misconduct; and (b) the force used is not designed or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation. . . ."

have created a reasonable doubt to not finding appellant and co-defendant guilty for a crime.

Failure to prove the cause of death.

The state presented expert testimony from the autopsy report conducted on the deceased child in determining the cause of death. On cross examination by the defense, Dr. Richard Tracey admitted that there was no evidence in his report that says that the child died from strangulation—it also was revealed that he did not know for certain what was the actual cause of death. He said that either an object across the neck or bruises caused the death. (Rec. Pp. 3932). He came back on cross and said that the neck bone was intact. **He finally admitted that the cause of death was not from neck compression** and that he never stated any blunt force trauma not even once in his full autopsy. (See trial transcript pg #3923-3940) Which is contrary to what the listed cause in the two **(2) different death certificates** used to indict both defendants. The court of appeal makes no mentioning or reference to any of the records proffered at trial by the appellant, all of which the jury had no opportunity to review.

CONCLUSION OF CLAIM SIX

Wherefore, appellant contends he should have been allowed to present the testimony of Dr. Boles or another medical expert to aid his defense. If the appellant is allowed “fair play” the State would not prove this family tragedy was ^{2nd} ~~not~~ second degree murder. The Rev. and Mrs. Victor's conviction and sentence should be vacated. **This is clearly a violation of the Victors'**

Sixth Amendment and 14th Amendment right, Louisiana Const. Art. I, § 2-3. The Rev. and Mrs. Victor were stripped of their right to defend themselves and their conviction should be reversed.

ISSUE NO. 7.

Whether It's A Denial Of The Fourteenth And Ninth Amendment Rights Reserve To The People When Defendant's Challenge To The State And Court "Status" And "Jurisdiction" Remains Unresolved By Hearing Before Commencement Of Trial

Appellant made, from the very outset of the judicial proceedings to the trial court's jurisdiction declaring a negative averment of the trial court's jurisdiction. Appellant(s) Rev. Errol Victor Sr. and wife both declared the parties and entities (Corporation of the State of Louisiana) exercised fraudulent in personam jurisdiction over them in order to effectuate the appearance of the legality in their custody and the proceedings taken place in the public place know as the court.

The law is settled that, "once the issue of 'status' and 'jurisdiction' are raised, there shall be nothing further to occur until those two (2) questions are resolved. In this case, those questions were never addressed by the court, nor have they been resolve. In these proceedings, both Mr. and Mrs. Victor openly proclaimed [in a timely manner] that they were not corporations for the matter in question. In Louisiana, the requirement of the accused was simple. Pursuant to *La. R.S. 15:429* the stated statute provides:

§429. Corporate existence presumed unless affidavit of denial filed before trial

On trial of any criminal case it shall not be necessary to prove the incorporation of any corporation mentioned in the indictment, unless the defendant, before entering upon such trial, shall have filled his affidavit specifically denying the existence of such corporation.

An accuser cannot be a fiction (artificial creation like a corporation, board, agency,

bureau, office, department, commission, country, state, etc.) it had to be the actual injured party.

Once Jurisdiction is challenged the burden of proof must be proven by the Court/State. Any court who lacks personal jurisdiction is also a court without power to issue in personam judgment. *Pennoyer v Meff*, 95 U.S. 714. For this reason, appellants' custody is illegal. Any Act, lawful or disguised which deprives a living soul with in flesh and blood or people of their birthright, given by their Creator is an act of "Denationalization" and "Genocide". The commission of such an act is in dire violation of the *U.S. Constitution's Art. 1, Section 9 (CL.3) and 10*, which is "Ex Post Facto". This appellant and wife placed squarely before the trial court [pre-trial] and now before this court question of "In Personam" jurisdiction, and (not "quasi in rem"- power over property.)

According to **Federal Rule Title 18, Section 241-242**, "No one has the right, especially under Cadges (a fortiori, Courts, etc.) to De-nationalize, deprive of any rights, privileges or immunities by reason of color or race" any person their birthright and give them a falsified Corporate Existence as their new appellation for the purpose of discrediting of their status as a "flesh and blood" "natural and alive" human being.

CONCLUSION OF CLAIM SEVEN

Wherefore, the Rev. Errol Victor, Sr. contends that he and his wife are entitled to the ending of their illegal custody and that the State had no right of action and suffered no concrete injury and had no cognizable interest in the loss of the Victor's Estate. The Victors owe the State of Louisiana **"nothing"** for what is their own personal loss. The State had no affiliation with nor ownership of our beloved son M.L. This kidnapping of parents must be immediately brought to an end. Appellant hereby invokes his right to the sovereignty of his own estate.

We must be free to reclaim our sovereignty, "nationality" and "standing" before the nations of the world and recognized by the United Nations as human and not the property of the State of Louisiana nor the United States of America. M.L. belonged to his parents and family, not the State of Louisiana. Wherefore, the Rev. and Ms. Victor pray that he/they are granted the relief due them as law so requires of their immediate release.

QUESTION VIII

DID THE STATE OF LOUISIANA PRESENT A BAD FAITH INDICTMENT AGAINST REV. ERROL VICTOR, SR., TO SECURE AN UNLAWFUL CONVICTION THAT WAS BASED ON GENDER DISCRIMINATORY MOTIVES?

ISSUE NO. 8

State Pursued A Bad-Faith Indictment And Prosecution Against Rev. Errol Victor, Sr., Ls And Wife Mrs. Tonya Victor, Ls. The Prosecution As A Whole Was Contrary To Medical Evidence And Gender Driven To The Detriment Of Mr. Errol Victor, Sr. [Gender Discriminatory Motives]

The State of Louisiana rested its prosecution in total absence of any effort to present a prosecutorial case against Mrs. Victor. Here we see that this was a complete and horrid execution of judicial and prosecutorial bias in that, every effort to convict was directed solely at the male factor in the offense (Rev. Mr. Errol Victor, Sr. (LS)) Ironically, Mrs. Tonya Victor (LS) and her husband were indicted on the same charges and held in excess of four (4) years incarcerated before any trial would commence. This case reeks of *1st Amendment* Violation, *5th Amendment* violations, *8th Amendment* violations, and *14th Amendment* violations as to Equal Protection and Due Process of law. All charges had been thrown out by Judge Jasmine on two (2) prior occasions before she (Judge Jasmine) would be wrongfully removed from the case.

The vortex problem created here is that, Mrs. Victor, because there was never any

attempt, real or imagined, by the State of Louisiana to prosecute Mrs. Victor (Mrs. Victor's indictment was pre-textual and tyrannical). In fact, this was a gender-based pro-female prosecution agenda:

- 1.) To ensure the conviction of the male defendant, the female prosecutor and female judge elected to act and function as the defense attorney of the pro se female defendant;

- 2.) The prosecution "flatly rejected" the evidence, the repeated affidavits, written statements, and preliminary hearing testimony as well as confessions and avoidance statements given by the female co-defendant which totally exonerated the male co-defendant.

The tactical objective of the state was to subdue Mrs. Victor in her efforts to exonerate her husband and to subjugate Rev. and Mrs. Victor to a controlled environment wherein they (the State of Louisiana) could control, dictate, restrict and monitor their every movement by deploying the tactics of, but not limited to: false imprisonment, kidnapping of their children-and trafficking those children into the State Adoption System and sending them across State lines and punitive measures designed to inflict mental, spiritual and social tortures all aims at the imposition of "the ultimate chilling effect" upon her declarations of full responsibility for the chastisement and whipping of her own son while her husband was away from home and at work.

Repeatedly and relentlessly, throughout any transcript which this Honorable Court may turn to read, the court will see Mrs. Victor assert her own identity, her capacity to think for herself, and her blatant refusal to let anyone, her husband, the state, the police, her children, the OCS, her family and/or the surrounding community nor world at large, force or demand of her to falsely accuse or in as much as suggest that her husband was, in any way, responsible for the death of her child.

However, the male appellant who has insisted on his complete innocence from the very

inception of this family tragedy turned horror story, has been convicted on the greater offense of 2nd degree murder, when his female co-appellant/defendant insists that he was not even at the home nor did he at anytime strike the child in any way, supported by six (6) other occupants of the home who were present.

CONCLUSION OF CLAIM EIGHT

The District Court failed to protect the Rev. and Mrs. Victor from prosecutorial decisions that were gender bias, vindictive, malicious, unethically based upon unconstitutional motives as in *U.S. v. Blue*, 557 F.3d 682, 686 (6th Cir. 2009). The State's prosecution in this case did not proceed in fair play as the court suggested in *Buck v. Mass*, 878 F.2d 344, 346 (10th Cir. 1989). The record, effectively canonizes the prosecution supplying two (2) different and opposing theories which offends both ethical and traditional jurisprudence. (SHAM PROSECUTION), which is inherently unfair and in bad faith. See *Tibbs v. Florida*, 457 U.S. 31, 47, 102 S.Ct. 2211, 2218, 72 L.Ed.2d (1982).

ISSUE NO. 9

WHETHER IT DENIED DEFENDANT FOURTH AND EIGHTH AMENDMENT RIGHT TO BE ARRESTED ON THE SAME CHARGE IN WHICH HE/SHE IS OUT ON BONDS, WITH NO WARRANT, JUDGMENT OF FORFEITURE OR PREVIOUS BONDS REVOKED.

Defendant, Rev. Errol Victor, Sr. and wife were arrested three separate times, same case, circumstances and material evidence. The third seizure with no warrant, judgment of forfeiture or previous bonds revoked, six bonds in all totaling 4 Million Dollars unreturned and non-reinstated.

CONCLUSION

The Rev. Errol Victor Sr. has done his best to make it clear to this Honorable Court that the below court violated he and his wife constitutional, civil and human rights as an Honorable Man and Woman of God. A family medical tragedy was maliciously turned into a murder case, solely to subdue a political and business rival. The issues are clear and the records support all the contentions placed before this Higher Court of Honor. Let the Constitution of the United States speak loudly for all of it's citizens. This petition for a writ of certiorari should be granted.

Respectfully Submitted By,

Rev. Errol Victor Sr.

Rev. Errol Victor, Sr. #613100
La. State Prison
Camp-D Eagle-1
Angola, La. 70712

IX. OPINIONS BELOW

APPENDIX "A" State of Louisiana v. Errol Victor, (La. Supreme Court #2016-KO-1516-Citation Available)

APPENDIX "B" State of Louisiana v. Errol Victor, (Fifth Circuit, #15-KA-339-Citation available)