

ORIGINAL

20-5047
No.

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2020

FILED
JUN 04 2020

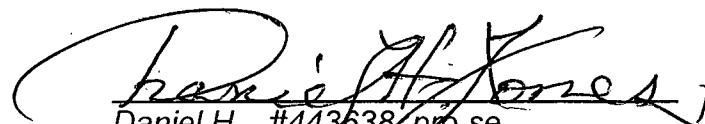
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RE: DANIEL H. JONES,
Petitioner

PETITION FOR AN EXTRAORDINARY WRIT TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
AT CINCINNATI, OHIO

No. 19-5209

Petitioner, Daniel H. Jones, pro se, respectfully prays that an Extraordinary Writ issue, "specifically", a Petition for Writ of Prohibition, or, one of Mandamus, or both in the alternative issue where no other remedy remains to achieve the relief sought from an Order entered in the U.S. Sixth, Circuit, State of Ohio (August 23, 2019) to review the judgment and order tendered in the United States District Court for the Middle division at Nashville, Tennessee on March 6, 2019.



Daniel H. #443638, pro se
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1499 R.W. Moore Memorial Hwy.
Only, Tennessee. 37140-4050

QUESTIONS PRESENTED FOR REVIEW

I.

**WOULD THE ISSUANCE OF A WRIT OF PROHIBITION
AND/OR MANDAMUS BE JUSTIFIED WHERE THE
PETITIONER'S CIRCUMSTANCES COULD AID THIS
COURT IN SUPERVISING AN APPELLATE COURT'S
JURISDICTION?**

II.

**WOULD THIS COURT BE JUSTIFIED GRANTING
EITHER WRIT OF PROHIBITION OR MANDAMUS
WHERE ADEQUATE RELIEF CANNOT BE OBTAINED
IN ANY OTHER FORM OR FROM ANY OTHER COURT?**

RESPONDENT PARTIES
BY JOINER

Statement of Parties; S.Ct. R. 14.1(b);

For purpose of this action, the below listed parties shall be joined in cause by nature of their actions, as well as inactions while performing their duties in their official capacities, and, under color of [state] law, being recognized as the real parties in interest, serving as the instruments to the Appellant's injuries.

Therefore, shall be liable as entities of the State of Tennessee pursuant to TCA § 29-20-313(a), who are –

CAROL L. MCCOY, Part-II, Chancellor, ELLEN HOBBS LYLE, Part-III, Chancellor, RUSSELL T. PERKINS, Part-IV, Chancellor; DAVIDSON COUNTY CHANCERY COURT; TWENTIETH JUDICIAL DISTRICT; JIM PURVIANCE, Executive Director; RICHARD MONTGOMERY; Chair, TENNESSEE BOARD OF PAROLE, 404 James Robertson Parkway, Suite 1300 Nashville, Tennessee 37243-0850.

Defendant-Respondents

Each respondent's cloak of sovereignty or otherwise lesser immunities shall be waived by Acts of U.S. Congress, 42 USC §1983 as well as State Legislation; Tennessee Constitution, Art. I, § 17.

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OPINIONS BELOW

Cases from federal courts;

[i.] *The [initial] Opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix "A" [doc.5], and is not published.*

[ii.] *The Opinion of the United States District Court for the Middle Division at Columbia, Tennessee appears at Appendix "A" [doc. 1&4.], (Civil) and is unpublished.*

[iii.] *The [“final”] Opinion of the U.S. Court of Appeals appears at Appendix "A" [doc.6] and is unpublished.*

iv.] *There was no Order for Mandate in the United States Sixth Circuit related to the action now taken.*

v.] *To date, no cross-appeals have been filed with respects to this appeal.*

vi.] *Petition for Writ of Certiorari was filed on September 9,, 2019 as docket no. 19-5984, thereafter, denied on November 12, 2019 and is unpublished.*

vii.] *No Petition for Rehearing was filed in this appeal, rather, the Petitioner sought to have the matter reviewed by single Justice, filed on November 21, 2019, thereafter, denied and is also unpublished.*

Cases from state courts;

[i.] *There were no ["State"] Appellate Opinions entered in this action being aborted in the trial [Chancery] court whose orders will appear at Appendix "B" [doc.9a & 9b] with Appendix "D" [doc.1.], and is unpublished.*

[ii.] *The ["Advisory"] order denying the petitioner's motion to proceed in forma pauperis on November 27, 2018 will appear at Appendix "C" [doc.7].*

[iii.] *The order being required by law (TCA § 41-21-807(4), overruling motion to alter and/or amend judgment will not appear in these proceedings and indicated at Appendix "C" [doc. 5, 6 & 8a].*

JURISDICTION

Cases from federal courts;

Jurisdiction is conferred upon this court via 28 USC §1651(a) to review by an Extraordinary Writ a final judgment rendered by the highest court of a state in which this case is of such imperative importance as to justify deviation from normal appellate practice and to require immediate determination in this court; See 28 USC § 1254(1)), & §1651(a) from which a decision may be had; petitioner will further submit that,

i.] The date on which the U.S. Court of Appeals, for the Sixth Circuit decided his case was on August 23, 2019, and will appear at Appendix "A" [doc.5],

ii.] No Motion(s) for Rehearing were filed] to this petition.

iii.] Immediately thereafter, a petition for Writ of Certiorari was filed on September 9, 2019 with this U.S. Supreme Court, and docketed as No.19-5984; thereafter, returned from the Clerk's office without consideration by this court.

iv.] To date, no cross-appeals have been filed with respects to this appeal.

v.] Jurisdiction shall be conferred upon this court via **28 USC §1254(1) & 1651(a)**), to review on an Extraordinary Writ the judgment and orders in question.

Cases from state courts;

[i.] There were no State Appellate Opinions enter in this action being aborted in the trial [Chancery] court whose orders will appear at Appendix "B" [doc.9a & 9b] with Appendix "D" [doc.1.], and is unpublished.

[ii.] The ["Advisory"] order denying the petitioner's motion to proceed in forma pauperis on November 27, 2018 will appear at Appendix "C" [doc.7].

[iii.] The order being required by law (TCA § 41-21-807(4), overruling motion to alter and/or amend judgment will not appear in these proceedings and indicated at Appendix "C" [doc. 5, 6 & 8a].

iv..] Petitioner's records will show that all issues have been exhausted in the U.S. District Court for the Middle Division at Columbia, Tennessee. Consistent with 42 USC §1983, and may be found in Appendix "A" [doc.1, 4 & 5].

xi.] In accordance with the provisions of 28 US §2403 (b) and this Court's Rule 29.4 (c), Petitioner has timely served the State Attorney General a copy of this petition with an appendix where gives rise to State and U.S. Constitutional issues of law.

CONSTITUTIONAL PROVISIONS

The following provisions of the United States Constitution are involved; Const, Amends, V, VIII & XIV. The test of said provisions are attached in the initial writ of certiorari's appendix "E" (1-8). as follows --

AMENDMENTS

V.

No person shall be held to answer for a capital, or otherwise Infamous crime, unless on a presentment or indictment by a grand jury. . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. Nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process;
[Emphasis, mine]

VIII

Excessive bail shall not be required, nor excessive fines be imposed Nor cruel and unusual punishment inflicted.

XIV

All persons born or naturalized in the United States, and Subject to the jurisdiction thereof, are citizens of the United

States and of the state wherein they reside. No state shall Make or enforce any law which shall abridge the privileges Or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without Due process of law; nor deny to any person within its jurisdiction The equal protection of the laws.

FEDERAL STATUTES & RULES INVOLVED

*The following provisions of federal statutes are involved; 42 USC § 1983
28 USC §1343(a) (3), 18 USC § 242, and F.R.Civ.P. 62(g) (1) The test of said provisions are attached hereto as appendix "E"(doc. 4-8).as well as other state statutes and treaties relevant to this petition and made a part hereof.*

STATE CONSTITUTION INVOLVED

The following provisions of Tennessee Constitution are involved; Art. I, § 17, Art. I, § 9 Art. II §1 and Art.II, §2 which holds,

Art. I § 9

That in all criminal prosecutions, the Accused hath the right to be heard by Himself and his counsel, to demand the Nature and cause of the accusation against Him, and to have a copy thereof, to meet the Witnesses in his favor, and in prosecution By indictment or presentment, a speedy public Trial, by an impartial of the County in which The crime shall have been committed, and shall Not be compelled to give evidence against himself.

Art. I, § 17

That all courts shall be open, and every man, For an injury done him in his . . . person or

*reputation , shall have remedy by due course
Of law, and right and justice administered with-
out. . . denial or delay. Suits brought against the
State in such manner and in such courts as the
Legislature may by law direct.*

[Emphasis, added]

Art.il, §1

*The powers of the Government shall be divided
Into three distinct departments; the Legislative,
Executive, and Judicial.*

Art.il, §2

*No person or persons belonging to one of these
departments shall exercise any of the powers
properly belonging to either of the others, except in
the cases herein directed or permitted.*

ARGUMENT

I.

**THIS COURT WOULD BE JUSTIFIED GRANTING
EITHER WRIT OF PROHIBITION OR MANDAMUS
WHERE ADEQUATE RELIEF CANNOT BE OBTAINED
IN ANY OTHER FORM OR FROM ANY OTHER COURT.**

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ARGUMENT

ii.

**THIS COURT WOULD BE JUSTIFIED GRANTING
EITHER WRIT OF PROHIBITION OR MANDAMUS
WHERE ADEQUATE RELIEF CANNOT BE OBTAINED
IN ANY OTHER FORM OR FROM ANY OTHER COURT.**

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STATEMENT OF THE FACTS

As will be supported by the Appellant's Appendices "A-E," from the outset the records will show the petitioner being an inmate housed in a Tennessee Correctional Facility, [which is to say, Turney Center Industrial Complex ("T.C.I.X.")], located at Only, Tennessee, at the point of filing his Governmental Tort Liability Action ("GTLA"), with the Davidson County Chancery Court, and thereafter summarily dismissed because of being statutorily exempt from civil prosecution; See Appendix, hereafter, Appendix "C" [doc.1-6], as well as his pauper status, Appendix "D" [doc.1-4].

Having received no Hearings, Conferences and/or terms for Mediations between the parties, petitioner was denied his right to access the Court of Appeals, Appendix "B" [doc.-9a-b"], & Appendix "C" [doc.1-8b].

It is at this point the petitioner realized he was being deliberately denied his right to appeal a civil matter, consistent with Tennessee's provisions of laws, Appendix,"C" [doc.5 & 6"] ultimately and currently attempting to overcome this deprivation by filing his Title 42 USC § 1983 Complaint with the U.S. District Court for the Middle District of Tennessee, Nashville, [Columbia division], See Appendix, "E" [doc.5 & 6"] where again his efforts were thwarted by the District Court Judge's Opinion-Memorandum and Order, without any further process, Appendix"A" [doc.1 & 4"]. Hence, this appeal now ensues.

AMPLIFIED REASONS FOR GRANTING THE WRIT

*The **first** of reasons as to why an Extraordinary Writ should issue, is because of the U.S. Sixth Circuit's summary conclusion dismissing the Appellant's appeal due to, (presumably), having failed to state a cognizable claim for which relief may be granted that departs so far from the excepted and usual course of judicial proceedings, as well as to sanction such a departure, by a lower court ["A1"], as to call for an exercise of this court's discretionary powers.*

***Secondly**, whereby a Congressional Act allows this Appellant to pursue "state-entities" for injunctive-relief and the lower U.S. Court of Appeal's decision conflicting with other U.S. Court of Appeals, as well as this U.S. Supreme Court on the same issues of law. **Third**, where all U.S. Appellate Courts are vested with "unlimited" power in restoring the criminally accused to their right to be heard in [state] courts of proper jurisdiction and venue which have need to be settled by "this supreme-court" requiring immediate determination.["E1-9].*

STATEMENT OF PETITION

History:

Petitioner challenged the conclusion of the Tennessee Board of Parole (hereafter T/BOP) which recommended a five (5) year deferral rendered February 27, 2018 ("B-1"), which was his "second" review by T/BOP-- the first being 2/2013.

Thereafter and in the outcome of a full-board decision, based upon the recommendations of its Hearing Officer [Amber Lineberry], this petitioner then sought the review of their decision through the Agency's "Director", defendant PURVIANCE, who thereafter upheld the Board's action ("B-2"). From that point, the petitioner sought an appeal to the Tennessee Chancery Court, which further denied an "appellate review" in the state-courts;["D-1"], now giving rise to this appeal by reason of this procedural flaw, and, passed over in the lower U.S. District Court; Appendix- "A" ["doc.-2 & 4"].

Nature & Cause:

Clearly, as initiated in the petitioner's [State] GTLA, he seeks to be reinstated, as well as to have his "**eligibility-status restored**" based upon material evidence which was omitted at his "[P]arole-[H]earing", that inevitably served no purpose in "absence" of this crucial-material, Appendix, ["B1-7"] that was never activated during the course of his hearing, in order to demonstrate his attempt to improve his character-rehabilitation for purpose of parole; Appendix, ["B-3"] whom also was "accepted by a civil sponsor." See also Appendix- "B" ["doc.7"].

Neither was any "other" such criteria displaying petitioner as being a risk-factor, e.g. Appendix ["B-4"], introduced at this hearing, i.e. other than relying upon the **nature and gravity** of his offense, Appendix, "B" [doc. 1-2] which remains to be a judicial-matter, excluded from query as required by both BOP-Policy as well as "statutory-law", See Appendix, ["E-1, 11 & 12"]

Because of this irreparable and tortuous injury,-- physical as well - each of the defendant-respondents inaction have, since 2013, subjected the petitioner to the very hazards and dangers of a "penal-environment" which forces and extends petitioner's ineligibility for parole-release due to their "encroachment" upon duties belonging to another branch of government, See Appendix- "E," [11 & 12], in deferring his release without legal-cause, rather than rely upon its "own criteria," See appendix, ["B-3 & 4"] with ["E-6"].

Supreme Court Rule 26.8

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ARGUMENT

L

**THE ISSUANCE OF A WRIT OF PROHIBITION
AND/OR MANDAMUS WOULD BE JUSTIFIED
WHERE THE PETITIONER'S CIRCUMSTANCES
COULD AID THIS COURT IN SUPERVISING AN
APPELLATE COURT'S JURISDICTION.**

From the outset and upon each level, a barrier has existed prohibiting the petitioner access to hear and appeal his action ignoring the fact that, through a passage of time, Congressional Legislation has always provided ways and means for a Court to relax its standards in resolving the Appellant's objective, cf. Felkner v. Turpin, 116 S.Ct. 2353 (1996).

In Felkner, the court concluded that, the critical language of Art. III, §2, of the Constitution provides that, apart from several classes of cases specifically enumerated in this court's original jurisdiction, "[i]n all the other cases, the Supreme Court shall have Appellate Jurisdiction, both as to law and fact, with such Exceptions, and under such Regulations as the Congress shall make" ... particularly where regarding "any" of these Appellant's (Jones) former [criminal] appeals no second and/or successive appeal(s) have been sought driving this Court of Appellate Jurisdiction in violation of Art. III, §2, having thoroughly, as well as timely exhausting all state court remedies and clarified in this court; See Rose v. Lundy, 102 S.Ct. 11989, 455 U.S. 509; 71 L.Ed.2d. 379 (1982).

Considering other aspects to this court's discretionary powers and viewed consistent with Title 28 USC §1651(a), . . . the U.S. Supreme Court shall have the power to issue ["all"] writs, and in aid of "any" Appellate Jurisdiction See also In Re: Jessie McDonald, 109 S.Ct. 993(1989), where here the Appellant over a period of ten years has been allowed to file "numerous" petitions into this court and being recognized by this court, that paupers (e.g. Jones) are an important---and valued --- part of the court's docket which to date, remains so, whose avenue flows through this court's Rule 46.3 in keeping to the spirit and letter of Rule 26.1----"if not (as here) being abused". The McDonald Court has emphasized that extraordinary writs are - not surprising - "drastic and extraordinary remedies" to be reserved for "really" extraordinary causes in which appeal is clearly an inadequate remedy.

However, quite unlike McDonald's attempt(s), this petitioner's (Jones,) attempt(s) were not only dismissed in this court on more than one occasion, but all such previous courts prior to a "**before-the-fact disposition**" compatible with the individualized determination that §1915 contemplates, as well as prior to an agreement from "all parties" to the action in dismissing the case. Rule 46.1.

Next, where pertains to the petitioner's claims for relief, beginning with this initial defendant [Chairman, Montgomery], a solid claim was forged when demonstrating a "discrepancy" at his Parole Board proceedings, i.e., the methodical criteria Appendix "B" [doc.3-4"] consistent with governing statutes which invokes a federal question of law - 28 USC §1343(a)(3) - giving the lower Appellate Courts their jurisdiction and intervention, Appendix "A" [doc.5-6"], and,

as supported by record whose sole excuse denying Appellant's request is that he failed to fulfill financial obligations prior to proceeding in the lower courts "A" [doc.&2"], who is not entitled to be allowed to proceed *in forma pauperis* and of course, being contrary to allowing access and jurisdiction overcoming his injustices in the lower courts. Appendices [C1-8b] and ["D1-4"]

Accordingly, a decision may be disturbed by the [Appellate] Court via F.R.Civ.P. 62 (g)(1), when district courts rely on clearly erroneous findings of fact, improperly applied the governing laws---or, used an erroneous legal standard, Welch v. Brown, 551 Fed.App. 804[6CA 2014]. Therefore, to invoke a preliminary injunction, which is an extraordinary remedy that should be granted if the Appellant establishes that the circumstances clearly demand it, and in view of having satisfied the "gate-keeping standards" allows this Appellant passage overcoming this court's rarity in granting writs of extraordinary nature; In Re: McDonald, *supra*.

Added to this, to determine whether an injunction is appropriate, a [trial] court must consider 1.) Whether the (Appellant) has a strong likelihood of success on the merits, 2.) Whether the (Appellant) will suffer irreparable injury "without" the injunction, 3.) Whether the issuance of the injunction would cause substantial harm to others, and 4.) Whether the public interest would be served by issuance of the injunction . . . these considerations are "factors to be balanced, not prerequisites that must be met", Washington v. Reno, 35 F.3d. 1093, 1099 [6th Cir. 1994].

Therefore, it is this Appellant's plea to be allowed passage and review in keeping to the spirit and letter of this court's Rule 20.1 and .3 where, in this instance, "no other form or court" remains for him to obtain adequate relief.

ARGUMENT

II.

THIS COURT WOULD BE JUSTIFIED GRANTING EITHER WRIT OF PROHIBITION OR MANDAMUS WHERE ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT.

Since initiating his GTLA with the Davidson County Chancery Court, the petitioner proffered for review specifically two issues of law giving rise to a constitutional violation---1.) An encroachment upon the jurisdiction of another (judiciary) court in violation of the State of Tennessee's Constitution, Art.II, §2 safeguarding the Separation of Powers and 2.) Cruel and excessive deferrals, both of which denied him a fair Hearing and justifiable outcome, now requiring this court's consideration for injunctive relief, Appendix "E"[doc.1-4"], where at this point of his proceedings he is unable to obtain relief in "any other" form and/or court. SEE. Grey v. Wilburn, 270 F.3^d. 607 (8thCir..2001) with Hafer v. Melo, 502 U.S. 21, 25, 112 S.Ct.358, 116 L.Ed. 2d.301 (1997)

Here and basically, its the Appellant's contention that the lower court committed an act of encroachment upon the jurisdiction of another court ["B-1"] where in context, a "form" of jeopardy violation arises creating the effect of being "retried" without due process.

Keeping in mind that the 'encroachment' clause is binding on the states, See Fransaw v. Lynaugh, 810 F.2d. 510 [CA 5, 1987]; through the fourteenth amendment to the U.S. Constitution, whose clauses, *id.* covers both imprisonment and monetary-penalties even though its text mentions only harm to "life or limb".

Secondly, as stated in this Supreme Court in Preiser v. Rodriguez, 411 U.S. 475, 36 L.Ed.2d.433; 93 S.Ct. 1872 (1973), the question before it, is whether 'state' prisoners seeking such injunctive redress may obtain equitable relief under the Civil Rights Act. ["E4 & 8"]. Even though this act clearly provides a specific remedy of considerable and practicable importance.

For if a remedy under the civil rights act is available, a plaintiff need not first seek redress in a state forum. In Jones v. Caruso, 569 F.3d.258 [6CA 2009], it was established that an Appellate Court may hear Appellant's arguments on appeal, and, as made feasible via F.R.Civ.P. 62 (g) (1) having their powers to be **unlimited**, particularly when the issue is one of law, and, further development of record is not necessary in considering the merits as long established and reaffirmed in other U.S. Circuits e.g. Grey, *supra*, where the Eleventh Amendment does not bar such relief; at pp. 5-6.

Referencing an issue of "sovereign immunity", this forum, as well as other U.S. Circuits, Lewis v. Clarke, 137 S.Ct.1295; 2017[WL-14471611], establishes that, in the context of lawsuits against either state, or their Agencies/agents, courts should look to whether the "sovereignty" is the real party in interest; here,

the Appellant argues otherwise, to determine whether sovereign immunity bars the suit, citing Hafer *supra*,

*In aid of the Clark panel's reasoning, the Supreme Court in Hafer points out, that in making this assessment, courts may not simply rely on the characterizing of the parties to the complaint, but rather, must determine in the first instance whether the remedy sought is "truly" against the sovereignty, however, in the case sub judice; it is not, and neither has either of the former courts moved themselves to make this determination, i.e., if the state **is the real party in interest**, then, it would be entitled to invoke the Eleventh Amendment's protection. Here, however, and by virtue of Tennessee's tort-laws [TCA §29-20-313], it is not!*

*Similarly, lawsuits brought against employees – as such the Appellant's defendants are ["E18 & 25"] – being **elected officials** in their "official capacities", such as "agents" may also be barred by sovereign and/or lesser immunities.*

*Consider also the court's analysis in Kentucky v. Graham, 473 U.S. 159, 165-166, and 105 S.Ct. 3099, 87 L.Ed.114 (1985), While it may be intended that state entities such as these defendants enjoy the cloak of the Eleventh Amendment, as long ago provided in such courts as Imbler v. Pachtman, 96 S.Ct. 984, to reiterate, liability filed under §1983 does not leave this Appellant powerless to deter misconduct, or to punish that which occurs, because **even agents** cloaked with absolute immunity (civil) **could be punished "criminally"** for the willful deprivation of constitutional rights on the strength of Title 18 USC §242 --- the criminal analogue of Title 42 USC §1983. See appendix, ["E4 & 8 "].*

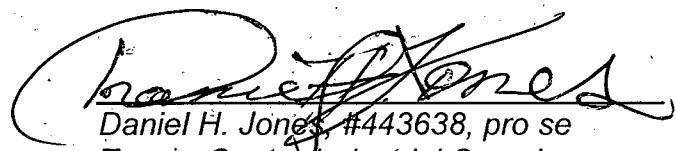
Therefore, taken in this light, and, to apply U.S.District Court Judge Caldwell's conclusion, See Martin v. Patterson, 2013 [WL-5574485; USDC, S.D.London, Ky.]; who held, although the petitioner's §1983 claim must be dismissed in a civil complaint in the federal Courts, targeting state-officials, however, the State Tort Action (as here) may proceed, particularly where under [state] legislation; See ["C9,13 &18"] the state, if viewed to be the real party in interest has waived its immunity; Tenn.Const., Art.I,§17. §29-20-307-8.

Further, and to this extent, our "U.S. Sixth Circuit" has previously held, that where involves a [State] Tort, it's more appropriate to have it resolved in a State Circuit Court of proper Jurisdiction and venue. Coleman v. Governor of Michigan, 413 App'x 866, 8712 (6th Cir. 2011). For these reasons, the petitioner is requesting that this court now intervene where there has been a breach in judicial ethics –state and federal–infringing upon the Appellant's constitutional demands to declaratory, injunctive and monetary relief.

Conclusion

Wherefore, having now established the lower court's departure from the norms of Federalism, as well as this petitioner's entitlement to the relief herein requested, justice suggest that this Court consider the issuance of an Extraordinary Writ in light of the fact that this Appellant no longer retains a means to recover from the damage done by these defendants, Grey, Hafer, both *supra*..

Respectfully submitted,

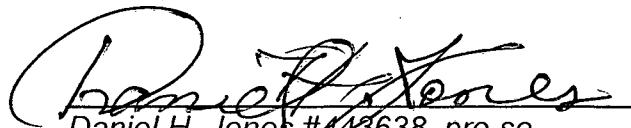


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CERTIFICATION

I certify, that a true and correct copy of the Petitioner's Extraordinary Writ was mailed this 4th day of June, 2020, to the Clerk of the United States Supreme Court, located at 1 First Street, N.E. Washington, D.C. 20543, by depositing it in the U.S. Mail, postage prepaid..

Respectfully submitted,



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C: file/dhj