

No. \_\_\_\_\_

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

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Henry Hamilton,

*Petitioner,*  
v.

City of Hayti, Missouri, Glenda Overbey,  
Calvin Ragland, Amy Leann Inman,

*Respondents.*

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**On Petition For Writ of Certiorari  
To The United States Court of Appeals  
For The Eighth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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Jim R. Bruce, II  
*Counsel for Petitioner*  
P. O. Box 37  
403 St. Francis St.  
Kennett, Missouri 63857  
(573) 888-9696  
[jrbruce@nwccable.net](mailto:jrbruce@nwccable.net)

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## QUESTIONS PRESENTED

In *Gerstein v. Pugh*, 420 U.S. 130 (1974), this Court found a prosecutor was disqualified from making a determination of probable cause for the issuance of an arrest warrant. It reiterated that the “. . . Fourth Amendment requires a judicial determination to extend restraint of liberty following an arrest.” (p. 114)“ and that . . . the existence of a probable cause must be decided by a neutral and detached magistrate. . . .” (p. 112). More recently in *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429 (1993), the Court adopted a functional approach for extending judicial immunity to non-judicial officials who exercise discretionary judgment comparable to those of judges. The combination of these two decisions has a profound effect on the present case. Here a municipal judge delegated his core judicial functions for determining probable cause and issuing arrest warrants to his court clerk without any review on his part. The Eighth Circuit Court of Appeals held that although the clerk was likely disqualified from making probable cause decisions under *Pugh, supra*, she was nevertheless entitled to quasi-judicial immunity for her discretion in exercising the delegated authority. It also held the municipal judge was immune because he would have had jurisdiction to make probable cause determinations and issue arrest warrants on his own. This case therefore presents three questions:

1. Did the court clerk unconstitutionally exercise a judicial function under the Fourth Amendment and *Gerstein v. Pugh, supra* by issuing arrest warrants and setting bonds and conditions for pretrial release?
2. If so, is the clerk entitled to quasi-judicial immunity for the unconstitutional

exercise of discretion in issuing arrest warrants?

3. Is the municipal judge entitled to judicial immunity for delegating to his clerk the full authority to make probable cause determinations and issue arrest warrants?

**LIST OF PARTIES**

The parties to this action are listed in the caption. They are Henry Hamilton, the Petitioner herein, and Glenda Overbey, former Hayti Municipal Court Clerk, and Calvin Ragland, former Hayti Municipal Court Judge, Respondents.

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Henry Hamilton respectfully petitions the Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit in this case.

### **OPINION BELOW**

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 948 F.3d 921 (2020). The opinions of the United States District Court for the Eastern District of Missouri are unreported but are reproduced at 2017 WL 836558 and 2018 WL 4466014. (See Appx. B-D, pp 5-23).

### **STATEMENT OF JURISDICTION**

On January 28, 2020, the Eighth Circuit Court of Appeals entered its opinion affirming the decision of the United States District Court for the Eastern District of Missouri. The opinion is reported at 948 F.3d 921. It denied Petitioner's timely Petition for Rehearing and Rehearing *En Banc* (See Appx. A) on April 1, 2020. This Court on March 19, 2020 extended the deadline for filing a Petition for Certiorari for 150 days from the date of the judgment or order denying a petition for rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) which provides jurisdiction to review decisions of the United States Courts of Appeal by writ of certiorari.

## **CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED**

### **Fourth Amendment to the Constitution of the United States**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **Eighth Amendment to the Constitution of the United States**

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

### **Fourteenth Amendment, Section I, to the Constitution of the United States**

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 privilege 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 any person within its jurisdiction the equal protection of the laws.

### **42 U.S.C. §1983**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a

declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**§479.090 Mo. Rev. Stat.**

All prosecutions for the violation of municipal ordinances shall be instituted by information and may be based upon a complaint. Proceedings shall be in accordance with the supreme court rules governing practice and procedure in proceedings before municipal judges.

**Missouri Supreme Court Rule 37.34**

All ordinance violations shall be prosecuted by information. An information charging the commission of an ordinance violation may be based on the prosecutor's information and belief that the ordinance violation was committed. The information shall be supported by a violation notice as prescribed by Rule 37.33.

**Missouri Supreme Court Rule 37.43**

When an information charging the commission of an ordinance violation is filed pursuant to Rule 37.34, a summons shall be issued unless the court finds that there are: (a) Sufficient facts stated to show probable cause that an ordinance violation has been committed, and (b) Reasonable grounds for the court to believe that the defendant will not appear upon the summons, or a showing has been made to the court that the accused poses a danger to a crime victim, the community, or any other person.

## STATEMENT OF THE CASE

On July 29, 2011, Henry Hamilton was arrested on a warrant issued by the Glenda Overbey, municipal court clerk for the City of Hayti, Missouri and held in the Pemicoat County Jail. (Appx. p. 27). The City's municipal judge, Calvin Ragland, by a standing agreement with Overbey, allowed her to issue arrest warrants and stamp his name to them without his supervision or involvement. Overbey issued the arrest warrant based on a sworn statement she took from her daughter Amy Leeann Inman. (Appx. p. 25). The city prosecutor was unaware of the circumstances, including Inman's complaint, or that Hamilton had been arrested or was being detained; consequently, he had not filed an information to commence a prosecution for any municipal violation.<sup>1</sup> The warrant charged Hamilton with third-degree assault and peace disturbance, set his bail at \$1,022.50, and required him to post a cash-only bond in that amount for his release.<sup>2</sup> Hamilton was disabled and his sole means of support was a small Social Security check. Because of his poverty and inability to pay the bond, he was denied release. He spent the next seven (7) days in the county jail until

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<sup>1</sup> Missouri's Supreme Court Rules adopted pursuant the Missouri Constitution have the effect of law and supercede all statutes and ordinances to the contrary. They determine when municipal prosecution is commenced and by whom, when a court acquires jurisdiction, and when a warrant may be issued. See: Rule 37.34, "All ordinance violations shall be prosecuted by information."; Rule 37.35, "The information shall be in writing signed by the prosecutor. . ."; Rule 35.43, "When an information charging the commission of an ordinance violation is filed pursuant to Rule 37.34, summons shall issue. . ." If the court finds probable cause exists and a showing has been made that the defendant poses a danger to the community or any person or that reasonable grounds exist for the court to believe the defendant will not appear in response to a summons ". . a warrant for the arrest of the defendant may be issued."

<sup>2</sup> Missouri Supreme Court Rule 37.47 provides: "A person arrested under a warrant for an ordinance violation who does not satisfy conditions for release shall be brought as soon a practicable before a judge of the court from which the warrant issued."

the next court session.

On August 4, 2011, Hamilton was transported from the Pemiscot County jail to the Hayti municipal court. When the city prosecutor arrived for court that afternoon Overbey presented him with informations she had prepared for cases on the docket. Among those cases was an information she prepared for Hamilton. (Appx. 29). The information alleged that Hamilton had “Entered Leann Lannie’s office [now Leann Inman] at Maco Management, cursed her and tossed an ink pen at her, striking her in the left elbow.” No curse words were stated. [Appx. p. 29 ]. It charged ordinance violations for assault and peace disturbance and showed the text of the ordinances for each alleged offense. The prosecutor signed the information and dated it the same day. Hamilton appeared without counsel. He was informed that if he pled guilty to one of the offenses he would be released and sentenced to time served. He waived his rights to counsel and pled guilty to peace disturbance but entered a not guilty plea to assault and was released by the judge who sentenced him to time served. The court rescheduled his trial of the assault charge for the following week. Hamilton obtained the assistance of counsel and the case was transferred to the Circuit Court of Pemiscot County, Missouri. On January 12, 2012 by agreement of counsel, the City voluntarily dismissed the assault charge and the court granted Hamilton a suspended imposition of sentence on the peace disturbance charge.

On March 18, 2016, Hamilton filed the present action against the City of Hayti, Missouri, Glenda Overbey, its municipal clerk, Calvin Ragland, its city judge, and Amy Leann Inman. The action was brought under 42 U.S.C. §1983 and asserted defendants

were responsible for his unlawful arrest and detention without determination of probable cause in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution. He also alleged his bail was set at an excessive amount under the Eighth Amendment, and his release from jail was conditioned on payment of an enhanced cash-only bond without regard to his poverty and his lack of financial ability to pay. This he asserted constituted an impermissible discrimination on the basis of wealth under the due process and equal protection clauses of the Fourteenth Amendment. He also contended that the clerk's long standing practice of issuing warrants, setting excessive bonds, and exclusively conditioning pretrial release on payment of cash bonds was so well established, persuasive, and permanent as to constitute an official policy, custom, and usage with the force of law properly attributable to the City. He also alleged Inman was liable under §1983 as a willful participant in a joint action with the state or its agents (*i.e.* city officials) for the purpose of causing Hamilton's arrest and confinement in the county jail. The district court dismissed Hamilton's claim against Ragland and Overbey based on judicial immunity and quasi-judicial immunity and his state law claims against the City on sovereign immunity grounds. It subsequently granted judgment in favor of the City and Inman after finding the practices at issue were not final policy decisions or a custom or usage attributable to the City and that Inman was not a state actor under 42 U.S.C. §1983.

Hamilton appealed and the Eighth Circuit affirmed. The panel noted that "Hamilton's complaint alleged that Judge Ragland is liable in damages for his unconstitutional actions in allowing Overbey to issue arrest warrants and set bonds

using his signature stamp . . . without regard to the arrested person's ability to pay." (p. 925). It rejected Hamilton's claim that the municipal court lacked jurisdiction in the absence of an information filed by the prosecutor. It also held that Missouri Supreme Court Rule 37.43 authorized Ragland to issue warrants and quoted from the rule which provides for commencement of a prosecution "[w]hen an information charging the commission of an ordinance violation and a statement of probable cause are filed. . ." (p. 926), But found that no information had been filed by the prosecutor. It nevertheless concluded that Inman's complaint prepared and witnessed by her mother was sufficient in and of itself to commence a prosecution in municipal court and support the issuance of a warrant for Hamilton's detention. In doing so it relied on 479.090 R.S.Mo. that "All prosecutions for the violation of municipal ordinances shall be instituted by information and may be based on complaint". However, the court held that the warrant was not issued by Ragland, but by his clerk Overbey exercising authority he had delegated for issuing warrants. It stated:

This delegation likely made the warrant invalid because Overbey was not a neutral and detached magistrate who could make a constitutionally proper probable cause finding under *Gerstein v. Pugh* and *In re Harris*. But Overbey exercised authority delegated by Judge Ragland to perform the judicial act of issuing an arrest warrant.

The panel held that Ragland was entitled to absolute judicial immunity based the delegation and the warrant issued by Overbey. It likewise found that since Ragland was authorized to set bonds and provide conditions for pretrial release, those functions were also judicial acts and he was immune despite their delegation to his clerk..

Hamilton filed a timely Petition for Rehearing and Rehearing *En Banc*. The Eighth Circuit denied rehearing and rehearing *en banc* on April 1, 2020. (Appx. p. 3). Hamilton has timely filed this Petition for Certiorari.

### **REASONS FOR GRANTING THE PETITION**

This Court's decisions in *Gerstein v. Pugh*, 420 U.S. 103 (1974) and *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429 (1993) govern the disposition of this case and the issues of liability and quasi-judicial immunity of the municipal court clerk. *Gerstein* together with *Mireless v. Waco*, 112 U.S. 286 (199) and *Stump v. Sparkman*, 435 U.S. 349 (1978) are determinative of the municipal judges claim to judicial immunity for delegation of his plenary of authority for issuing warrants.

This case is of great importance to our nation and the public at large, for it involves a fundamental right protected by the Fourth Amendment to the Constitution. The Court has vigorously upheld the right to a probable cause determination against encroachments by government and public officials. This case involves a constitutional challenge by Henry Hamilton, but on a broader level it protects the rights of every person from the infringements of government. The circumstances represented by this case are not unique in themselves as is reflected in the cases involving clerks exercising judicial power to order arrests. A single clerk or other non-judicial personnel may be responsible for issuing hundreds if not thousands of unconstitutional warrants. This case offers an important opportunity for change should the Court accept it. A decision rejecting claims of judicial immunity for the clerk and judge would

provide a strong incentive for cities and judges across the country to modify the way they conduct the public business.

#### **A. The Nature of Judge Ragland's Actions Preclude a Finding of Judicial Immunity**

The panel stated the question before it was Ragland's liability for his action in delegating unconstitutional authority to Overbey to issue warrants and set bonds. Hamilton's complaint also alleged that Ragland and Overbey acted jointly and in concert in causing the deprivations. The court in its opinion determined that as a municipal judge, Ragland had jurisdiction over prosecutions for violations of city ordinances and had statutory authority to issue arrest warrants upon the filing of an information charging an offense and a showing of probable cause. See: Missouri Supreme Court Rule 37.43 (2003). Yet, the panel disregarded Missouri Supreme Court Rules 37.34 ("All ordinance violation shall be prosecuted by information") and 37.43 (Filing of an information prerequisite to issuance of summons and arrest warrant). The court ruled that Inman's sworn complaint filed with her mother at the police department authorized Hamilton's prosecution.<sup>3</sup> The basis for its conclusion was a misreading of §479.090 Mo. Rev. Stat. which simply reiterates the requirement of an information. The statute simply states: "All prosecutions for ordinance violations shall be instituted by information and may be based on a complaint". Any doubt as to

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<sup>3</sup> Overbey was employed by the City in a dual capacity. In addition to her duties as municipal court clerk she worked as secretary for the police department where she took complaints from members of the public, dispatched officers, acted as radio operator, and prepared informations for all municipal prosecutions and provided them to the city prosecutor for his signature when the defendants appeared in court.

difference between Rule 37.34 and the statute is resolved by the last sentence that: "proceedings shall be in accordance with supreme court rules governing practice and procedure in proceedings [i.e. prosecutions] before municipal judges." Both the Rule and the statute make it emphatically clear that the filing of an information is predicate to the commencement of a case or prosecution for an ordinance violation. The panel acknowledged that no information had been filed at the time the warrant was issued. (Opinion, p. 926, Appx. p. 7.).

While it cannot be disputed that a municipal judge has the authority to issue an arrest warrant if the requirements of Rule 37.43 are met, he is without jurisdiction to do so under Missouri law in the absence of prosecutor's filing an information. *State v. Morton*, 804 S.W.2d 25, 27 (Mo. 1991) (A myriad of cases hold that a valid information or indictment is a prerequisite to jurisdiction of the circuit court). *University City v. Miller*, 469 S.W.2d 941 (STL App. 1971) (Private complaint insufficient to confer municipal court jurisdiction). *City of Joplin v. Graham*, 679 S.W.2d 897 (Mo. App. 1984) (Without a formal charge by the prosecutor the court lacks jurisdiction to try or punish the defendant). Cf. *U.S. v. Bryson*, 434 F.Supp. 986 (W.D. Okla. 1977) (Federal courts have no jurisdiction of prosecutions unless prosecuted by United States attorneys; private citizens have no right to institute criminal prosecution in federal court).

In *Stump v. Sparkman*, 435 U.S. 349 (1978) the court went to great length to show that the Judge Sparkman was exercising jurisdiction over a case or matter properly before him. In the absence of the commencement of a prosecution, however,

a court under Missouri law does not have jurisdiction to take any action.

To determine whether a municipal judge is protected by judicial immunity, the first question is whether the nature of the act for which immunity is sought is one entitled to protection, *i.e.* whether it allows a judge the freedom to act on his own convictions without apprehension of personal consequences to himself. (*Mireles v. Waco*, 502 U.S. 9 (1991). It is the function a judge performs that justifies protection not the individual himself. In *Antoine*, the court in discussing the doctrine of judicial immunity, described the protected nature and function of an act as that of resolving disputes between parties or authoritatively adjudicating private rights. Judicial immunity however is not without its limitations. In *Stump* and *Mireles* this Court has identified two situations in which immunity does not apply. First, a judge is not immune from liability for “non-judicial actions, *i.e.* actions not taken in the judge’s judicial capacity.” Second, a judge is not immune for actions, though judicial in nature, are taken in the complete absence of all jurisdiction. *Mireles* (p. 11-12).

Since Ragland did not participate in the decision to file the arrest warrant, his only action related to the arrest was to provide Overbey with his name stamp and give her full authority to issue warrants. The delegation and her actions in issuing arrest warrants were plainly unconstitutional under *Pugh*.

As a municipal judge, Ragland had authority under the Missouri Constitution to “hear and determine violation of municipal ordinances.” (Article V §23, Missouri Constitution). The Missouri Constitution authorized Missouri Supreme Court to adopt rules to regulate the practice and procedures in municipal courts. Under Missouri Rule

37.43 a municipal judge has jurisdiction for issuing warrants. The jurisdiction conferred by Missouri Rule 37 is restricted to municipal courts and may be exercised only by the municipal judge. A finding of probable cause is a core judicial function exclusively reserved by law to judges. Delegation to any other person would violate the requirements mandated by *Pugh*. Nothing in Missouri or federal law sanctions the delegation of that power to non-judicial personnel or officials. The delegation by a judge of his power to determine probable cause is unauthorized and not a judicial function which municipal judges have jurisdiction to make. Any grant of jurisdiction is strictly controlled by the Missouri legislature and Missouri Supreme Court. Consequently Ragland had no jurisdiction to authorize Overbey to issue warrants or determine probable cause. His delegation removes any claim of judicial immunity he may had under *Mireles*.

**B. The Unconstitutional Delegation of Purely Judicial Functions to Non-Judicial Personnel Does Not Confer Judicial Status or Discretion Required for Quasi-Judicial Immunity.**

The Eighth Circuit in its opinion asserted that ". . . [w]ithout question, the issuance of an arrest warrant authorizing his [Hamilton's] detention pending trial was a judicial act within Judge Ragland's jurisdiction as a municipal court judge." (p. 926), Hamilton submitted that the private complaint by Inman was ineffective to invoke the court's jurisdiction and authorize the commencement of a prosecution. In the absence of an information there was no case, and without a case, there was no jurisdiction. The judge therefore had no authority to act or issue an arrest warrant. However, the claim against Ragland is not that he issued the warrant himself. The panel was explicit in

that regard—

“In this case, the warrant was not issued by Ragland, but by court clerk Overbey exercising authority delegated by Judge Ragland, including the use of his signature stamp.” (p. 927).

The court candidly observed that Ragland’s delegation of power to issue warrants and set bonds likely make the warrant invalid because Overbey was not a neutral and detached magistrate required by *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) and *In Re Harris*, 593 S.W.2d 517 (Mo. banc 1979).

Ragland’s delegation of authority to his clerk was unconstitutional and conveyed no authority or permitted her to make discretionary judgments. Her normal functions were ministerial as a non-judicial adjunct to the municipal court. Her duties included such ministerial tasks as filing informations submitted by the prosecutor, scheduling cases for court, preparing dockets, keeping minutes of court sessions, giving receipts for bond money and fines, providing an accounting to the city council, and performing such other functions of a ministerial character as were required. Her job gave her no discretion or authority to perform any judicial functions that could only be performed by a judge, such as determining probable cause, issuing warrants for detention, and setting bonds and the conditions for release as she did in Hamilton’s case.

The panel opinion also held that “. . . it is undisputed that Judge Ragland authorized Overbey to use her discretion to issue and set warrants with bond conditions” and that she was entitled to quasi-judicial immunity. In doing so it relied on Circuit precedent that held a clerk was entitled to quasi-judicial immunity for signing and issuing an invalid warrant “. . . because the acts were integral parts of the

criminal justice process.” (Opinion, p. 928, Appx. p.8). Overbey’s action conferred no lawful authority or discretion.

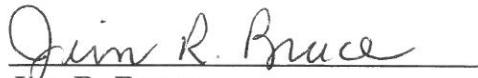
In *Antoine* the Court reaffirmed its functional approaches to judicial immunity. It stated that when judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges because they “exercise a discretionary judgment”. The central focus for recognizing immunity and quasi-judicial immunity for non-judicial officials has been “the performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.” (*Antoine*, p. 435-436). *Antoine* held that merely because the tasks performed were “extremely important” or “indispensable to the appellate process” was insufficient for extending judicial immunity. The Eighth Circuit’s reasoning has erroneously reverted to a standard for analysis expressly rejected in *Antoine*. The fact that determination of probable cause and the issuance of an arrest warrant are “integral parts of the criminal justice process” is no longer a basis for extending judicial or quasi-judicial immunity to non-judicial staff. (*Antoine*, pp. 436-437). Since Overbey’s responsibilities as a clerk were ministerial, and not discretionary in nature, she was not a judge and did not exercise the kinds of judgment recognized in *Antoine*. She is therefore not entitled to quasi-judicial immunity.

## CONCLUSION

The Eighth Circuit's opinion is not only erroneous as a matter of law, but is constitutionally unsound and directly conflicts with this Court's decisions in *Pugh* and *Antoine* on the issues probable of cause and judicial and quasi-judicial immunity. The decision also directly conflicts with Missouri law for initiating municipal prosecutions and undermines important state policies for the operation of its court system. Since no prosecution had been commenced by the prosecutor, no case was before the court, and the municipal court lacked all jurisdiction to act. Neither Ragland or Overbey had jurisdiction or authority to proceed or issue a warrant for Hamilton's arrest either under state law or *Pugh*, *Antoine*, or *Mireles*. For these reasons Overbey and Ragland are not entitled to absolute or qualified immunity.

Petitioner therefore submits that the court should grant the petition, summarily reverse, and remand the case for further proceeding; or in the alternative, place it on the court's docket for briefing and argument.

Respectfully submitted,

  
\_\_\_\_\_  
Jim R. Bruce  
Counsel of Record for Petitioner  
P.O. Box 37  
Kennett, MO 63857  
(573) 888-9696

CERTIFICATE OF SERVICE

I, Jim R. Bruce, Attorney for the Petitioner, hereby certify that I have this day served by mailing *via* U.S. Postal Service, first-class, postage prepaid three true and correct copies of the foregoing Petition for Writ of Certiorari to A. M. Spradling, Attorney for Respondents, 1838 Broadway, P.O. Drawer 1119, Cape Girardeau, Missouri 63702-1119.

Dated: November 2, 2020.

Jim R. Bruce  
Jim R. Bruce