No. 21-7980

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 2021 TERM

PERRY SINGO – PETITIONER

Vs.

JASON CLENDENION – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

TENNESSEE COURT OF CRIMINAL APPEALS

FOR THE MIDDLE DIVISION

PETITION FOR WRIT OF CERTIORARI

PRO-SE PETITIONER:

Perry Singo
318005
T.C.I.X.
1499 R.W. Moore Memorial Highway
P. O. Box 4050
Only, Tennessee 37140-4050

No Phone

QUESTIONS PRESENTED FOR REVIEW

I.

ARE THE ATTACKS ON THE JUDICIARY AND THE EFFORTS OF POLITICIANS TO CHANGE THE JUDICIARY SO IT WILL DO THINGS THE POLITICIANS WANT IT TO DO DENYING DUE PROCESS IN CRIMINAL CASES?

II.

IS A STATE APPELLATE COURT BOUND BY THE PLAIN LANGUAGE OF IT'S STATE CONSTITUTION AND, IF SO, DOES A RULING BY THE STATE APPELLATE COURT IN DIRECT CONTRAVENTION TO ITS CONSTITUTION DENY DUE PROCESS OF LAW IN A CRIMINAL CASE?

PARTIES

PERRY SINGO is a *Pro-Se* litigant currently incarcerated in the Tennessee Department of Corrections as inmate number 00318005 in Turney Center Industrial Complex located at 1499 R.W. Moore Memorial Highway, Only, Tennessee 37140-4050, and is the Petitioner in this action.

JASON CLENDENION is the Warden and an employee of the State of Tennessee having custody of the of the Petitioner at the Turney Center Industrial Complex prison located at 1499 R.W. Moore Memorial Highway, Only, Tennessee 37140-4050, and is the Respondent in this action by virtue of his office.

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CITATION OF OFFICIAL & UNOFFICIAL REPORTS

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The opinion of the State Habeas Corpus Court to review the merits appears at Appendix "A", (page 34-35) to the petition and is unpublished.

The opinion of the highest state court to review the merits appears at Appendix "B" to the petition and is unpublished at *Singo v. State of* Tennessee, No. M2021-00299-CCA-R3-HC, 2021-WL-5505033 (Nov. 24, 2021) *permission to appeal denied by the Tennessee Supreme Court on Mar. 24, 2022.*

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The date on which the highest state court decided my case was November 24, 2021. A copy of that decision appears at Appendix "B".

A timely application for permission to appeal was thereafter denied on the 24th day of March, 2022, and a copy of the order denying permission to appeal appears at Appendix "B".

Rule 29.4(c) Statement of Notification

As this proceeding may call into question the constitutionality of state statutes and a state constitution amendment regarding state judicial elections, notice is given that the Respondent, Jason Clendenion as Warden of a State of Tennessee prison, as an officer and employee of the State of Tennessee, and service has been made upon the Attorney General's Office for the State of Tennessee. See Proof of Service filed contemporaneously herewith.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Tennessee Constitution Article I, § 15:

> **Bail; habeas corpus** - That all prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great. And the privilege of the writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion, the General Assembly shall declare the public safety requires it.

Tennessee Constitution Article VI, § 3:

> **Supreme Court Judges** – Judges of the Supreme Court or any intermediate appellate court shall be appointed for a full term or to fill a vacancy by and at the direct discretion of the governor; shall be confirmed by the Legislature; and, thereafter, shall be elected in a retention election by the qualified voters of the state. Confirmation by default occurs if the legislature fails to reject an appointee within sixty calendar days of either the date of appointment, if made during the annual legislative session, or the convening date of the next annual legislative session, if mad out of session. The Legislature is authorized to prescribe such provisions as may be necessary to carry out Sections two and three of this article. Every judge of the Supreme Court shall be thirty-five years of age, and shall before his election have been a resident of the State for five years. His term of service shall be eight years.

Tennessee Constitution Article VI, § 4:

> **Inferior court judges** – The Judges of the Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years and of the circuit or district one year. His term of office shall be eight years.

Tennessee Constitution Article VI, § 12

> **Requisites of writs and process** .-All writs and other process shall run in the name of the State of Tennessee and bear test and be signed by the respective clerks. Indictments shall conclude,

'against the peace and dignity of the State.' "

Tennessee Code Annotated § 17-1-103:

> The judges of the supreme court, court of appeals and court of criminal appeals are elected by the qualified voters of the state at large; the chancellors, circuit court judges and judges of special courts, by the qualified voters of the respective judicial districts and special judicial districts.

Tennessee Code Annotated § 29-21-109:

> If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the writ may be refused, the reasons for such refusal being briefly endorsed upon the petition, or appended thereto.

Tennessee Rules of Criminal Procedure, Rule 12(b):

> Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:
>
> — — —
>
> (2) Defenses and objections based on defects in the indictment, presentment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); ...

STATEMENT OF THE CASE

As is relevant to the instant case, the Petitioner submitted the following facts to the State habeas court: On the 30th day of June, 1999, Perry Singo was indicted on 13 counts in a 25 count indictment on a variety of sexual charges involving his six year old stepdaughter. (T.R., pp. 5-10) The True Bill was not signed by the Prosecutor, Foreman of the Grand Jury, District Attorney General or the Clerk of the Court. (T.R., p. 11); see also, (T.R., p. 5).

Petitioner submitted that the Trial Court and Tennessee Court of Criminal Appeals opinions were in direct contravention to art. VI, § 12 of the Constitution of the State of Tennessee and was contrary to and could not be reconciled with the Tennessee Supreme Court's holdings in *Graham v. Caples*, 325 S.W.3d 578 (Tenn. 2010); *State, Dep't of Revenue v. Moore*, 722 S.W.2d 367, 370 (Tenn.1986); *Webb v. Carter*, 129 Tenn. 182, 165 S.W. 426 (1913); *Harper v. Turner*, 101 Tenn. 686, 50 S.W. 755 (1899); *McClendon v. State*, 92 Tenn. 520, 22 S.W. 200 (1893); *Wiley v. Bennett*, 68 Tenn. 581 (1877); *Lyle v. Longley*, 65 Tenn. 286 (1873); *White v. State*, 1871, 50 Tenn. 338, 339-40, 3 Heisk. 338; *State v. Scott*, 32 Tenn. 332 (1852); and, *Mayor and Alderman of the City of Nashville v. Pearl*, 30 Tenn. 249 (1850) and Tennessee Rules of Criminal Procedure, Rule 12(b)(2).

On the 20th day of November, 2020, Perry Singo, a *Pro-Se* prisoner litigant, filed his Petition for Writ of Habeas Corpus in the Circuit Court for Hickman County at Centerville, Tennessee. (T.R., p. 1)[1] Attached to his Petition were copies of his Indictments, (T.R., pp. 5-11); Judgments, (T.R., pp. 12-16); and, a copy of his previously filed "Amended Petition for Writ of Habeas Corpus and Affidavit of Criminal Complaint", (T.R., pp. 17-22). On the 25th day of January, 2021, Sixty-Six (66) days after the Petition was filed, the Respondent filed a "Motion to Dismiss Petition for Writ of Habeas Corpus". (T.R., p. 26) On the 8th day of February, 2021, the Appellant filed a reply in opposition to the motion to dismiss. (T.R., p. 30) On the 22nd day of February, 2021, the habeas court entered an order dismissing the petition for habeas corpus. (T.R., p. 34) A timely notice of appeal was filed on the 19th day of March, 2021. (T.R., p. 36)

The Court of Appeals for the Middle District of Tennessee entered judgment on the 24th day of November of 2021. No Petition for Rehearing was filed. The Supreme Court for the State of Tennessee denied permission to appeal on March 24, 2022.

[1] References to the Technical Record are designated as "T.R." followed by the page number in the record and can be found in Appendix "A".

REASONS FOR GRANTING THE PETITION

I.

Are The Attacks On The Judiciary And The Efforts Of Politicians To Change The Judiciary So It Will Do Things The Politicians Want It To Do Affecting Due Process In Criminal Cases?

"A fair trial in a fair tribunal is a basic requirement of due process." *Caperton v. A.J. Massey Coal Co., Inc.*, 556 U.S. 868, 876, 129 S.Ct. 2252, 2259, 173 L.Ed.2d 1208, (2009); quoting *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955). This Court, in *Tumey v. Ohio*, 273 U.S. 510, 535, 47 S.Ct. 437, 71 L.Ed. 749 (1927), articulated the controlling principle as:

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law."

Caperton, 566 U.S. at 878, 129 S.Ct. at 2260.

"The inquiry is an objective one." *Caperton*, 566 U.S. at 881, 129 S.Ct. at 2262. "The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.' " *Id.*

This Court has recognized that the "essential elements" of a Judicial Bias claim as follows:

> [M]ost questions concerning a judge's qualifications to hear a case are not constitutional ones, because the Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard. Instead, these questions are, in most cases, answered by common law, statute, or the professional standards of the bench and bar. But the floor established by the Due Process Clause clearly requires a "fair trial in a fair tribunal," before a judge with no actual bias against the defendant or interest in the outcome of his particular case.

Bracy v. Gramley, 520 U.S. 899, 905-06, 117 S.Ct. 1793, 1797, 138 L.Ed.2d 97 (1997).

In *Caperton v. Massey*, this Court acknowledged the following:

> It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.' *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955). As the Court has recognized, however, 'most matters relating to judicial disqualification [do] not rise to a constitutional level.' *FTC v. Cement Institute*, 333 U.S. 683, 702, 68 S. Ct. 793, 92 L. Ed. 1010 (1948). The early and leading case on the subject is *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927). There, the Court stated that 'matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion.' *Tumey*, at 523, 47 S. Ct. 437, 71 L. Ed. 749.
>
> The *Tumey* Court concluded that [3] the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has "a direct, personal, substantial, pecuniary interest" in a case. *Ibid.* This rule reflects the maxim that '[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.' The Federalist No. 10, p 59 (J. Cooke ed. 1961) (J. Madison); see Frank, Disqualification of Judges, 56 Yale L. J. 605, 611-612 (1947). Under this rule, 'disqualification for bias or prejudice was not permitted'; those matters were left to statutes and judicial codes. *Lavoie*, supra, at 820, 106 S. Ct. 1580, 89 L. Ed. 2d 823; see also Part IV, infra (discussing judicial codes). Personal

> bias or prejudice 'alone would not be sufficient basis for imposing a constitutional requirement under the Due Process Clause.' *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 820, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986)
>
> As new problems have emerged that were not discussed at common law, however, the Court has identified additional instances which, as an objective matter, require recusal. These are circumstances 'in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712(1975).

Caperton v. Massey, 556 U.S. at 876-77, 129 S Ct 2252.

Analysis

After her retirement from the United States Supreme Court, former Justice Sandra Day O'Connor warned that elected judges could be seen as 'politicians in robes' and adopted judicial election reform as her professional cause.[2] Justice O'Connor feared that 'motivated interest groups [were] pouring money into judicial elections in record amounts'[3] and worried that judicial elections had "turned into 'political prize-fights, were partisan and special interests seek to install judges who will answer to them.'"[4] The following arguably confirms Justice O'Connor's fears about judicial elections and campaign finance.

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[2] Annemarie Mannion, *Retired Justice Warns Against 'Politicians in Robes,'* CHI. TRIB. (May 30, 2013), https.//www.chicagotribune.com/suburbs/Elmhurst/ct-xpm-2013-05-30-chi-retired-justice-warns-against-politicians-in-robes-20130530-05-30-story.html [https://perma.cc/CYBY-RMM6].

[3] Sandra Day O'Conner, Opinion, *Justice for Sale*, WALL ST. J. (Nov. 15, 2007, 12:01 AM), https:/www/wsj.com/articles/SB119509262956693711 [https://perma.cc/8JR3-YJZJ].

[4] *Judges Behaving Badly*, ECONOMIST (June 28, 2007), https:www.economist.com/inited-states/2007/06/28/judges-behaving-badly {https://perma.cc/V98A-WKBN]

"Get tough on crime" has been a political mantra since before Ronald Reagan ran for president over forty years ago. The "get tough on crime" campaign has caused our legislators to pass tougher laws with harsher sentences that have resulted in our prisons overflowing to the point that we currently incarcerate more of our citizens than any other country in the world.[5] By percentage, the United States incarcerates more of its citizens than any country in history.[6] Politicians fully realize that a label of "soft on crime" is a death knell for a political career. As the following enumerated Justices of the Tennessee Supreme Court found out, being tagged as "soft on crime" is the end of a judicial career for an elected judge as well.

Article VI, §§ 3 & 4 of the Constitution of the State of Tennessee provides for judges and justices in Tennessee to be elected for an eight (8) year term of service. "The judges of the supreme court, court of appeals and court of criminal appeals are elected by the qualified voters of the state at large; the chancellors, circuit court judges and judges of special courts, by the qualified voters of the respective judicial districts and special judicial districts." Tenn. Code Ann. § 17-1-103.

Following are the results of being labeled "soft on crime."

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[5] See ALLEN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, PRISONERS AT MID-YEAR 2001, at 1 (2002), at http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim01.pdf.

[6] See *Rehabilitation a Worthy Focus*, OMAHA WORLD-HERALD, ar. 16, 1999, at 20.

A. Justice Penny White

In August 1990, Justice Charles O'Brien was elected to a full eight year term [on the Tennessee Supreme Court] as an "at large" judge residing in the Eastern Grand Division. *Hooker v. Thompson*, 249 S.W.3d 331, 343 (Tenn. 1996). He resigned in October, 1994. *Id.* Pursuant to the selection procedure of the Tennessee Plan, Justice Penny White, also a resident of the Eastern Grand Division, was appointed December 17, 1994, to fill a portion of Justice O'Brien's unexpired term, to wit, until August 31, 1996. *Id.* The next biennial election after Justice O'Brien's resignation creating the vacancy in his unexpired eight-year term was the election held on August 1, 1996. *Id.* Justice Penny White ran unopposed on the ballot in a "retention election" whereby hers was the only name on the ballot and the public would be given the opportunity to vote "yes" or "no" as to whether she should be retained as a Supreme Court Justice. *Hooker*, 249 S.W.3d at 333-34. During her tenure on the Supreme Court, Justice White authored opinions and wrote concurring opinions that reversed and remanded several criminal cases on constitutional grounds:

1. *State v. Bobo*, 909 S.W.2d 788 (Tenn.1995)(In a DUI case the Supreme Court, White, J., held that results should be suppressed since defendant's breath sample was 1.3 liters and testing instrument required minimum sample of 1.5 liters);

2. *Tennessee v. Trusty*, 914 S.W.2d 481 (Tenn.1996)(Attempted first degree murder defendant convicted of aggravated assault, the Supreme Court, White, J., held that aggravated assault was not

lesser included offense and reversed appellant's conviction);

3. *Tennessee v. Trusty*, 919 S.w.2d 305 (Tenn.1996), *superseding opinion*, (The Supreme Court, White, J., held that defendant could not be convicted for uncharged offense that was neither a lesser grade or class of, nor necessarily included in, charged offense);

4. *State v. Harris*, 919 S.W.2d 323 (Tenn.1996)(White, J., dissented and filed opinion against reinstatement of death penalty after Court of Criminal Appeals modified death sentence to life imprisonment);

5. *State v. Wilson*, 924 S.W.2d 648 (Tenn.1996)(The Supreme Court, White, J., held that evidence that defendant fired shots into house two days after having angry, verbal confrontation with its owner was insufficient to establish that defendant intentionally or knowingly caused victims to fear imminent bodily injury, as required to support aggravated assault conviction, absent evidence that defendant knew house was occupied at the time);

6. *State v Lynn*, 924 S.W.2d 892 (Tenn.1996)(In a negligent homicide case, the Supreme Court, White, J., held that improper and unnecessary deviations from statutory [jury] selection procedures, prejudiced administration of justice and required reversal of defendant's conviction).

While on the Court, White also was part of an unanimous decision holding that a death sentenced defendant was entitled to a new sentencing hearing. *See State v. Odom,* 928 S.W.2d 18 (Tenn. 1996). This case became the mechanism for targeting White. For example, just six weeks prior to her election, the headline of a Nashville newspaper read: "Court Finds Rape, Murder of Elderly Virgin Not Cruel. Tennessee Conservation Union Says 'Just Say No to Justice White.'" Anthony Champagne, *Interest Groups and Judicial Elections,* 34 Loy.L.A.L.Rev.

1391, 1400 (2001) (Champagne). A mailing sent by Republicans opened with a brutally graphic description of the crime Odom was convicted of, and ended with the statement: "But her murderer won't be getting the punishment that he deserves. Thanks to Penny White." *Id.* at 1401.

The circulated brochure also criticized White for two cases she participated in as a member of the Tennessee Court of Criminal Appeals. The brochure told voters that White voted to reverse the aggravated sexual battery conviction of Edward Jones "[d]espite the child's graphic heart-breaking testimony of what Jones did to her." Bright, at 315 n.33. In fact, a panel of the court unanimously reversed the conviction because the state's expert made an improper comment on the credibility of the complaining witness. *See State v. Jones,* No. 3C01-9301-CR-0024, 1994 WL 529397 (Tenn.Crim.App., September 15, 1994). The same brochure also told voters that White "voted that John Henry Wallen shouldn't be tried for first degree murder when he shot to death Tennessee Highway Patrolman Doug Tripp." Bright, at 315 n.33 In fact, the Court of Criminal Appeals reversed Wallen's conviction when all three members of the panel concluded that statements obtained from Wallen should have been suppressed. *See State v. Wallen,* No. 3C01-9304-CR-00136, 1995 WL 702611 (Tenn.Crim.App., November 30, 1995).

As a result, White became the first judge in Tennessee history

defeated in a retention election. Stephen B. Bright and Patrick J. Kennan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases,* 75 B.U. L.Rev. 760, 764-765 (1999).

B. Threat by Republican Governor Don Sundquist

Republicans utilized White's defeat as a warning to all Tennessee judges when considering criminal cases. For example, immediately after White lost her bid for retention, then Republican Governor Don Sundquist warned:

> Should a judge look over his shoulder to the next election in determining how to rule on a criminal case? I hope so.

Paula Wade, *White's Defeat Poses Legal Dilemma: How is a Replacement Justice Picked*? The Commercial Appeal (August 3, 1996).

Thereafter, to show the Court's "tough on crime" stand, and to ward-off further opposition in future elections, the Court began to issue press releases anytime it affirmed a death sentence. Deborah Goldberg, *Public Funding of Judicial Elections: The Role of Judges and the Rules of Campaign Finance,* 64 Ohio State Law Journal, 95, 100 n.25 (2003).

C. Justice Lyle Reid

In 1997, Republicans targeted Tennessee Supreme Court Justice Lyle Reid, also appointed by a Democratic governor.

Reid was subject to retention in August 1997, just a year after White's defeat, and expected to become a target by Republicans using the same *Odom* case. Champagne, at 1401. Rather than become a target, Reid announced that he would retire. *Id.*

D. Justice William C. Koch

In 2013, Republicans targeted Republican Tennessee Supreme Court Justice William C. Koch --- for not being "conservative enough."

An open records request obtained by the Associated Press revealed that Chris Clam, a conservative member of the Judicial Performance Evaluation Commission, sent an email to Republicans in the Tennessee Senate stating that Koch was not being as conservative as many Republicans liked to believe. Senate Republicans pressured the commission for a "for replacement" recommendation, and Koch retired from the Court. Johnson City Press, *Grand Jury Recommends Criminal Charges Against Tennessee Lt. Gov. Ramsey, House Speaker Harwell* (September 26, 2014).

E. Justices Gary Wade, Cornelia Clark, and Sharon Lee

In 2014, Republicans --- led by Tennessee's Republican Lieutenant Governor and Speaker of the Tennessee Senate Ron Ramsey (Ramsey) --- targeted Tennessee Supreme Court Justices Gary Wade, Cornelia Clark, and Sharon Lee, each were appointed by Democratic governors.

Wade, Clark, and Lee held a 3-2 majority on the Court and faced retention:

> [I]n a state where the governor's office, both U.S. Senate seats, and a supermajority of the state legislature are controlled by Republicans, any loss would have given the sitting Republican governor the opportunity to make new appointments and change the ideological composition of the Court.

Greytak, at 26.

These campaigns "were the state's most expensive and politically hostile judicial races" in Tennessee history. *Id.* According to published reports, these campaigns cost a record-shattering $2.4 million. Chattanooga Times Free Press, *Price Tag on Tennessee Supreme Court Justices Retention Election Fight: $2.4 Million* (October 13, 2014).

Leading the anti-retention campaigns, Ramsey stated:

> My cause is the conservative cause. And the place for conservatives to be is fully behind the effort to replace a Supreme Court that is out-of-touch and out-of-line with Tennessee values.

Chas Sisk, *Ramsey Backs Efforts to Oust 3 Supreme Court Justices*, The Tennessean (May 5, 2014).

A presentation put together by Ramsey's legislative staff suggested that the Court was the "most liberal place in Tennessee," the justices were anti-business, they had "advanced Obamacare," and they were "soft on crime." Greytak, at 26. According to Ramsey:

> We came up with this PowerPoint presentation to be able to show business leaders where we are ... kind of laid out facts for them --- some of the cases that they've overturned, some of the decisions they've made --- and encouraged them to not to sit on the sidelines.

Paul Williams, *Plan Outlines Attack On Supreme Court Justices,* NewsChannel 5 (May 5, 2014) (Williams, May 5). This presentation became the lynchpin for the campaign. Los Angeles Times, *Conservatives Nationwide Target Tennessee Supreme Court* (August 6, 2014) (Times, August 6).

When asked: Does this lend credence that big business was trying to buy the Supreme Court? Ramsey replied:

> No, I don't want them to buy it, but I want them to be involved. This is an opportunity for a group like that that wants to have a Republican, pro-business, anti-crime court and attorney general, and to elect them in a relatively cheap way.

Williams, May 5.

Ramsey's presentation criticized the Supreme Court for halting the death penalty for Leonard Edward Smith --- who was sentenced to die for killing two people in 1984, and ordering a hearing over whether Smith was "intellectually disabled." The second case involved Authur Copeland, sentenced to die for a 1998 murder. The presentation accused the Court of letting Copeland off death row "and back into society" when they ordered a new trial for him in 2007. Times, August 6.

A website with close ties to the Republicans suggested that the Copeland case "may send Tennessee voters rushing to the polls." Paul Willaims, *Ramsey's Supreme Court Claims Called "Misleading,"* NewsChannel 5 (May 6, 2014) (Williams, May 6).

On attacking the justices, Ramsey stated:

> I am concerned about some of the heinous crimes that have been overturned, I think, for frivolous reasons.... Now that's my opinion. I'm sure the Supreme Court would not say that.

Williams, May 6.

The Smith and Copeland cases were unanimous decisions of all five justices --- not just the three Ramsey wanted replaced. *See Smith v. State,* 357 S.W.3d 332 (Tenn. 2011); *State v. Copeland,* 226 S.W.3d 287 (Tenn. 2007). And both opinions were legally correct decisions. Williams, May 6.

Ramsey's presentation placed the "anti-business" label on the three justices over the Affordable Care Act. The Tennessean, *TN Supreme Court Battle Brings National Money, Scrutiny* (August 5, 2014) (Tennessean, August 5). According to Ramsey, the court is responsible for its 2006 decision to appoint Robert E. Cooper Jr., a Democrat, as state attorney general and, therefore, bears responsibility for his decisions, like the one not to join other states in a lawsuit challenging Obamacare. The New York Times, *Judges and Justice for Sale* (May 19, 2014). According

to Susan Kaestner, founder of the anti-retention group Tennessee Forum:

> Since Tennesseans don't elect the attorney general, the only way to hold him accountable is by taking on the Supreme Court. I do believe that holding the Supreme Court accountable for political partisan actions of the [Attorney General], that were a pattern of behavior before he was ever brought into office, is fair.

Tennessean, August 5.

Although Ramsey's campaigns spoke in partisan terms, many Republicans opposed Ramsey's actions as politicizing the Court. For example, Justice Koch spoke out against Ramsey's campaigns, saying he was "sorry [Ramsey] want[ed] to inject partisan politics into the court system." Greytak, at 26. And when asked if he was afraid Ramsey was putting the Supreme Court up for sale, former appeals court judge and Republican Lew Conner replied: "You bet I am. [Ramsey's campaign is] an unwarranted, unjustified attack on the independence of the judiciary." Williams, May 5.

Even Tennessee's Republican Governor Bill Haslam saw "danger" in Ramsey's campaign, stating:

> As judges, you are restricted in how you can respond to some things. So I think it's one of the dangers in having an election about specific issues when judges can't comment on those issues.

Paul Williams, *Governor Sees "Danger" In Ramsey's Campaign Against Justices,* NewsChannel 5 (May 7, 2014). But when asked if he would join the anti-retention efforts, Haslam replied:

> That's not my role. [I want] to let the candidates themselves speak for why they should be retained.

Id.

Ramsey made no apologies for his campaigns:

> This is the same thing exactly as called for in our constitution, people. Can you not understand that? I'm telling my side of the story and they'll get to tell their side of the story. Every campaign tells half of the story, come on. Campaigns are about telling your side of the story, which is what I'm telling. If I am running for election, do I tell both sides? No, I tell what I think will enhance my election. They will have a committee to defend themselves. I hope they'll be able to tell their side of the story. We'll tell our side and may the best man win.

Paul Williams, *Ramsey: "Let People Decide Who's Telling The Truth,"* NewsChannel 5 (May 8, 2014).

Anti-retention supporters formed "Tennessee Forum," which was the highest non-candidate spender, pumping nearly $790,000 into efforts opposing the justices. These included a mailer that urged voters to "drop the hammer on our liberal Supreme Court," as well as TV ads asking voters to "replace the liberal Supreme Court." Greytak, at 26-27. Ramsey's political action committee, RAMMPAC --- funded by corporate and healthcare interests --- gave $605,000 to Tennessee Forum. *Id.*

Ramsey also sought support from outside groups, including the Washington D.C.-based Republican State Leadership Committee which spent nearly $190,000 on mailers and also gave to Tennessee Forum.

Greytak, at 27. The State Government Leadership Foundation ran over $40,000 worth of TV ads. *Id.* The Judicial Crisis Network gave to Tennessee Forum. *Id.* And Americans for Prosperity injected an undisclosed amount on radio ads and mailers to "educate the public on the liberal records" of the three justices. *Id.*

According to Republican State Leadership Committee president Matt Walter:

> Republicans have had a significant amount of success [electing legislators] at the state level, not only being elected to offices but implementing bold conservative solutions.... Unfortunately, that's running into a hard stop with judges who aren't in touch with the public.

Center for American Progress, *Koch Brothers and D.C. Conservatives Spending Big on Nonpartisn State Supreme Court Races* (August 11, 2014).

There was also an aggressive pro-retention campaign --- by lawyers appearing before the Court --- that formed "Tennesseans for Fair Courts," which spent nearly $350,000 on TV ads defending the justices against the "outrageous extremists" the group claimed were attacking the Court. Greytak, at 27.

The justices themselves formed "Keep Tennessee Courts Fair," raising a combined $1.2 million, a significant portion from attorneys. Greytak, at 27. This bankrolled television ads that highlighted the

justices' history of "upholding nearly 90 percent of death sentences." *Id.* The justices also ran an ad featuring retired Republican Supreme Court Justice Mickey Barker, who said "out-of-state special interests" were "trying to take over [the] Supreme Court." *Id.*

A record shattering $1.75 million was spent on television ads in the weeks leading up to the elections. Greytak, at 58. Over the four-weeks prior to the elections, Tennessee experienced the largest absolute number of negative ads, with nearly 2,000 negative spots appearing on television -- some 42 percent of all television ads airing across Tennessee airwaves. *Id.*

Wade, Clark, and Lee also aggressively campaigned. This resulted in a complaint being filed by George Scoville, a political and media strategist with close ties to the Republican Party. Paul Williams, *Political Strategist Files Ethics Complaints Against Three Justices,* NewsChannel 5 (June 17, 2014). According to the complaint, the justices "use[ed] court staff, facilities, or other court resources in a campaign for judicial office"; engaged in unauthorized political activity; and violated the rule that justices should be free from political influence. *Id.* Scoville, however, would not identify his clients: "I'm sorry, but I have strict confidentiality agreements with my clients." *Id.*

In the August 7, 2014 election, all three justices were retained, but Ramsey had left his mark. Wade, Lee, and Clark received 57%, 57%, and 56% support respectively, compared to the 20 other appellate court judges retained the same day, each receiving over 60% support. When Lee last faced retention, she received 68% approval; when Wade last faced retention, he received 77% approval; and when Clark last faced retention, she receive 74% approval. Greytak, at 27.

According to Justice at Stake:

> Tennessee's being put on notice that their courts, like those of many other states, are now officially in the crosshairs of groups who view courts as one more investment.

—The Washington Post, *Three Tennessee Supreme Court Justices Survive High-Stakes Campaign to Keep Seats* (August 8, 2014).

F. Chief Justice Gary Wade

On June 2, 2014, Republican Mike Bell, Chairman of the Senate Judicial Committee --- who shares a Nashville apartment with Ramsey, and a principle supporter of Ramsey's effort to outs the justices --- announced he would hold hearings into the ethical conduct of Chief Justice Wade. Paul Williams, *Senator Calls Hearing Over His Own Ethics Complaint Against Chief Justice,* NewsChannel 5 (June 3, 2014) (Williams, June 3).

Two weeks prior, NewsChannel 5 reported that Ramsey was wrong

when he told reporters that a complaint Bell filed against Wade resulted in Wade being reprimanded by the Board of Judicial Conduct. Paul Williams, *Ramsey Wrong About Claim of Reprimand Against Chief Justice,* NewsChannel 5 (May 23, 2014) (Williams, May 23).

After the NewsChannel 5 report, Bell called a news conference in the State Capitol to announce that he would convene hearings into why his complaint did not result in reprimand:

> This is a very, very important issue when the integrity of a third branch of government, which is the judicial branch, is called into question.

Williams, June 3.

Bell brought his complaint alleging that Wade violated the Code of Judicial Conduct when he appeared to publicly endorse three state appellate court judges. Paul Williams, *WEB EXTRA: What's Behind Ethics Claim Against Chief Justice,* NewsChannel 5 (May 29, 2014) (Williams, May 29). The Board of Judicial Conduct, however, concluded that the judges were not "candidates for public office" while before the Judicial Performance Evaluation Commission. Williams, June 3.

In response to his complaint being dismissed, Bell sent a letter to Wade suggesting that he had committed a serious ethical breach involving the Judicial Performance Evaluation Commission (JPEC). Williams, May 29. Bell's letter also says he had been told that Wade "actively and

aggressively sought to influence JPEC's judicial evaluation," although no evidence has been presented. *Id.*

In response to Bell's letter, Wade, Clark and Lee released statements, two of them from Republicans, suggesting that politics was behind Bell's effort:

> Efforts to politicize Tennessee's Supreme Court are counter to what the people of our state want and deserve: a fair and impartial court.

Edward M. Yarbrough, former U.S. Attorney for the Middle District of Tennessee, appointed by President George W. Bush. Williams, May 29.

> It is okay to debate these issues as long as they are not motivated by partisan intentions or retaliation because of some special interest group or legislator who dislikes the result of legal decisions.

Retired United States District Judge Robert Echols, appointed by President George H.W. Bush. Williams, May 29.

On July 24, 2015, just days before Bell's Senate hearings were scheduled to begin, Wade announced he would retire from the Court effective September 8, 2015, just eight days into his new eight year term. TNReport, *Wade Departure Sets in Motion New Procedures for Picking Supreme Court Judges* (July 27, 2015).

On Wade's retirement, Ramsey gloated:

> The Democrats had over 150 years of de facto control over Tennessee's judiciary. Now it is our turn to choose fair, impartial and independent judges capable of rendering conservative decisions. I look forward to this historic opportunity to give Tennessee its first ever Republican Supreme Court majority.

Id.

G. Attorney General Robert E. Cooper, Jr.

Shortly after the election, Attorney General Robert E. Cooper, Jr., a Democratic, was up for reappointment. The Supreme Court, however, replaced Cooper with Herbert Slatery III, a Republican --- Republican Governor Bill Haslam's chief legal counsel. Greytak, at 27. According to Andrew Ogles, Americans for Prosperity-Tennessee:

> Due to the efforts of Americans for Prosperity and Lt. Governor Ron Ramsey, the justices were besieged partially based upon decisions made by our previous Attorney General. We held their feet to the fire and they heard us.

GavelGrab, (September 17, 2014). On Slatery's appointment, Ramsey said:

> As the first Republican attorney general in Tennessee history, Herbert Slatery will be a strong advocate for the people of Tennessee and a vigilant defender of Tennessee's conservative reforms.

Id.

This Court has identified four circumstances, the first and last of which arguably apply in the case *sub judice*, where the Due Process

Clause requires a judge to recuse himself in the absence of actual bias. The first is when a judge has a direct, personal, and substantial pecuniary interest in the case. Thus, in *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), the Court held that the mayor of the city could not sit as a judge in traffic court where the mayor was responsible for the town finances and revenue production and the city derived a major part of its income from fines and other costs imposed in that court. And, in *Tumey v. Ohio*, the Court held the Due Process Clause was violated where the judge in criminal cases was paid only if the defendant was convicted. 273 U.S. at 520, 47 S.Ct. 437.

Lastly, the Court in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), held that the federal due process rights of parties were violated when a state appellate judge failed to recuse himself from participating in the case where the judge in his election campaign for that judicial office received substantial financial support from the corporation that would later prevail in an appeal in which the judge participated.

Your Petitioner submits that this matter is of utmost importance to restore judicial integrity in our courts, is ripe for review, and he therefore respectfully asks this Court for an accordant review.

II.

Is A State Appellate Court Bound By The Plain Language Of It's State Constitution And, If So, Does A Ruling By The State Appellate Court In Direct Contravention To Its Constitution Deny Due Process Of Law In A Criminal Case?

The United States Supreme Court has consistently held that the Fourteenth Amendment forbids the government to infringe on fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Washington v. Glucksberg*, 571 U.S. 702, 721, 117 S.Ct. 2258, 2268, 138 L.Ed.2d 772 (1997).

Due process under the state and federal constitutions encompasses both procedural and substantive protections. The most basic principle underpinning procedural due process is that individuals be given an opportunity to have their legal claims heard at a meaningful time and in a meaningful manner. In contrast, substantive due process limits oppressive government action, such as deprivations of fundamental rights like the right to marry, have children, determine child custody, and maintain bodily integrity. *Washington v. Glucksberg,* 521 U.S. at 720, 117 S.Ct. 2258.. Substantive due process claims may be divided into two categories: (1) deprivations of a particular constitutional guarantee and (2) actions by the government which are "arbitrary, or conscience shocking in a constitutional sense." *Collins v. City of Harker Heights*, 503 U.S. 115, 128, 112 S.Ct. 1061,

117 L.Ed.2d 261 (1992); *Valot v. Southeast Local Sch. Dist. Bd. Of Educ.,* 107 F.3d 1220, 1228 (6th Cir. 1997). In short, substantive due process bars certain government action regardless of the fairness of the procedures used to implement them. *County of Sacramento v. Lewis*, 523 U.S. 833, 840, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

A clear understanding of what transpired in the case *sub judice* requires interpretation of the Tennessee's state constitution.

The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. art. I, § 15 of the Constitution of the State of Tennessee. However, the grounds upon which the trial court may grant such relief are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). The writ may only issue where the prisoner's judgment is shown to be void, rather than merely voidable. *Id.* A trial court may grant a writ of habeas corpus "only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." *State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000) (quoting *Archer v. State*, 851 S.W.2d 157, 158 (Tenn. 1993)). The petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to the writ. See *State v.*

Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). The Court may summarily dismiss the petition if it fails to state a cognizable claim. Tenn. Code Ann. § 29-21-109.

The True Bill in the Petitioner's criminal case was not signed by the Prosecutor, District Attorney General or the Clerk of the Court. (T.R., p. 11) Petitioner argued that his conviction was void because the True Bill was not signed by the clerk. Tennessee Constitution article VI, Section 12 requires judgments to run in the name of the State of Tennessee and to be signed by the clerk of the court. Tennessee Constitution Article VI, Section 12 reads as follows:

> Requisites of writs and process . All writs and other process shall run in the name of the State of Tennessee and bear test and be signed by the respective clerks. Indictments shall conclude, 'against the peace and dignity of the State.' "

Tenn. Const. art. VI, § 12 (emphasis in original).

As the title of this section indicates, this section is only applicable to writs and other process. The judicial process referenced in Article VI, Section 12 is "original process." As the Tennessee Supreme Court has explained, judicial process is the process by which a court obtains jurisdiction. *State, Dep't of Revenue v. Moore*, 722 S.W.2d 367, 370 (Tenn.1986).

Art. 6, § 12 of the Tennessee constitution provides that: All writs

and other process shall run in the name of the State of Tennessee and bear teste and be signed by the respective clerks." The Tennessee Supreme Court has long held that this section is mandatory and that process is void which does not run in the name of the state of Tennessee, *Harper v. Turner*, 101 Tenn. 686, 50 S. W. 755, *McLendon v. State*, 92 Tenn. 520, 22 S. W. 200, 21 L. R. A. 738, *Nashville v. Pearl*, 30 Tenn. (11 Huniph.) 249, and does not bear teste and is not signed by the clerk, *Wiley v. Bennett*, 68 Tenn. (9 Baxt.) 581; *State v. Scott*, 32 Tenn. (2 Swan) 333. These cases deal with the sufficiency of process issued by courts to obtain jurisdiction and involve the issues of the name in which a writ must run and whether the process was duly attested by the clerk of the issuing court. Particularly instructive for this case is *State v. Scott, supra.* There a statute authorized a district attorney general to issue a writ of *scire facias* in certain cases; the Tennessee Supreme Court found that the Legislature did not intend to permit the district attorney to initiate judicial process on his own authority, but rather it intended

> "that he should collect the facts, and file his official information before the court, as a foundation for the writ, and then that the same, like any other process, should run in the name of the state, with the signature of the clerk. It surely could not have been intended that a proceeding of such serious import as this ... should be instituted without any foundation of record, at the discretion of the prosecuting officer."

32 Tenn. at 334. The Scott Court found that a *scire facias* was clearly a

writ by which a court obtained jurisdiction and thus was controlled by the requirements of art. VI, § 12. The Tennessee Supreme Court held that the writ was properly quashed due to constitutional defects.

Tennessee courts have long held that "[a] valid indictment is an essential jurisdictional element without which there can be no prosecution." *Wyatt v. State*, 24 S.W.3d 319, 323 (Tenn. 2000); *State v. Perkinson*, 867 S.W.2d 1, 5 (Tenn.Crim.App. 1992). Thus, an indictment that is so defective as to fail to vest jurisdiction in the trial court may be challenged at any stage of the proceedings, including in a habeas corpus petition. *Wyatt v. State*, 24 S.W.3d 319, 323 (Tenn. 2000).

However, the Justices and Judges in the Tennessee courts are in an election year which your Petitioner believes had a debilitating effect on the outcome of his proceedings in the courts.

CONCLUSION

Accordingly, your Petitioner has shown that the Tennessee Supreme Court has consistently held that an indictment in criminal cases is "original process" and that "failure of the clerk to sign the writ renders it void". Your Petitioner has also shown that Tenn. R. Crim. P. 12(b)(2) does not apply because the failure of the clerk to sign the indictment deprived the trial court of jurisdiction. Your Petitioner has also shown that Habeas Corpus is the appropriate remedy because "an indictment that is so

defective as to fail to vest jurisdiction in the trial court may be challenged at any stage of the proceedings, including in a habeas corpus petition. *Wyatt v. State*, 24 S.W.3d 319, 323 (Tenn. 2000).

Moreover, your Petitioner submits that the forthcoming judicial election has swayed the Justices and Judges in Tennessee to turn away from judicial prudence in favor of pragmatic choices favoring re-election to their primary source of income.

For this reason, the petition for a writ of certiorari should be granted for an accordant review.

Respectfully submitted,

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