

No. 22-1204

RKB

In The
Supreme Court of the United States

ORIGINAL

WILLIAM MUHR,

Petitioner,

v.

DAWNA BRASWELL
AND KRISTIN LEE (A.K.A. ELLIAS),

Respondents.

Supreme Court, U.S.
FILED

OCT 26 2023

OFFICE OF THE CLERK

On Petition for a Writ of Certiorari to the
Colorado Court of Appeals

PETITION FOR REHEARING

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719-648-6230

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PETITION FOR REHEARING

Petitioner William Muhr, petitions for rehearing of this Court's October 2, 2023 Order denying the Petition for a Writ of Certiorari ("Petition").

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial . . . effect...or to other substantial grounds not previously presented."

Significant new developments postdate the judgments of the Colorado Court of Appeals(COA) on January 17, 2023 and January 23, 2023, respectively; the filing of the Petition on June 9, 2023; and the October 2, 2023 Denial of the Petition.

I. Background

The Petition combined two judgments, *Braswell*, and *Lee (Aka Ellias)* from the COA. Both cases were originally assigned to the same trial court, *Chief Judge Bain (J.Bain)* who disqualified himself because he was prejudiced and conflicted. A day later he picked his chosen successor. The COA held that the *Chief Judge* did not err "**to assign the case to Judge Miller once he (J.Bain) had recused.**" (*Braswell-COA, Appendix-A9-A10, ¶s24-27; Original Petition*).

As its basis, the COA ruled that the *Chief Judges*, in Colorado's 22 judicial districts, may assign cases even when the *Chief Judge* making the non-transparent assignment is highly prejudiced and

is acting with a conflict of interest when the judicial assignment is made. The COA relied on Colorado's Chief Justice Directive(CJD) 95-01, which the COA decided delegates to the "*Chief Judges*" the authority to assign cases to their chosen judges, even when the *Chief Judge* making the assignment is prejudiced and has a conflict of interest. ("CJD 95-01 delegates to the *Chief Judge*...to assign judges and issue orders of an administrative nature to assure that the district court is able to reasonably perform its judicial functions."). (Appendix.A-9, ¶26, Original Petition). The COA in Lee/Ellias adopted the ruling in *Braswell*. ("We agree with that division's analysis and disposition of the issue (*in Braswell*) and thus adopt it here." Petition, Appendix.F5, ¶12).

II. New Developments, Recent Unconstitutional Rulings Resulting in Years of New Appeals and Grave Harm to the Child

Years after disqualified Chief J.Bain appointed J.Miller as his successor, J.Miller (who is *not* a Chief Judge) finally, on 8/31/2023, voluntarily disqualified himself and asserted in his **8/31/2023 Minute Order** that, "**Court notes conflict he has w/ Resp (Father) and will recuse off this case.**" (Appendix A).

With that considerable conflict of interest, J.Miller (who is *not* a *Chief Judge*) issued an Order the following day, **September 1, 2023**, directly transferring the case to his successor, J.Evig, thereby creating an appearance of impropriety and *staring the lengthy appellate process all over again*

necessary to be a father involved in M.M.'s life. **(Appendix B)**. No one knows what was discussed, why J.Evig was selected when he has no background in family law, or what partisan instructions he was given. All circumstances regarding the direct transfer from a disqualified judge with a significant conflict of interest to the successor are not open to public scrutiny. The Statement of Case in the Petition objectively and factually demonstrates the abuse of power throughout the case.

On 9/29/2023, the successor, "DENIED" the 9/21/2023 "Motion to Disqualify Successor Trial Court- Lack of Subject Matter Jurisdiction" to proceed when, J.Miller, issued a *non-transparent* order transferring this case to Div.17, J.Evig, the day after J.Miller had disqualified himself.**(Appendix C)**.

The heart of the constitutional violations in the Petition is the *nontransparent* case assignments by disqualified *Chief Judges*. The most recent rulings on 9/1/2023 and 9/29/2023, propelling Petitioner-Father and M.M., into years of additional litigation, facilitated abuse of power to *all* judges throughout Colorado, acting with a prohibited conflict of interest in violation of the Fourteenth Amendment.

There is now insufficient protection from abuse of power when *any Colorado Judge* (i.e., not just limited to *Chief Judges* in Colorado's 22 Judicial Districts and the Chief Judge in the COA) who disqualified himself and then later issues a *nontransparent* order transferring the case to the chosen successor. The judiciary now have the appearance and ability to make highly partisan

judicial assignments to influence the outcome of cases.

No evidence disputes the fact that M.M. has not had a parenting hearing before a qualified judge or an overnight visit with her judicially determined fit father for nearly eight years during the pendency of this litigation over allegations of the willful violation of fundamental parental rights by disqualified judges.

The trial court, with his new order on 9/1/2023, and his successor's order on 9/29/2023, substantially deepens the harm to M.M. by thwarting her ability to have overnights with her judicially determined fit father. The recent ruling on 9/29/2023, by successor J.Evig, that he has subject matter jurisdiction to preside over this parenting case will prevent M.M. to have any overnights with her judicially determined fit father for foreseeably another five years during the appeals, which will result in permanent and severe psychological harm to M.M.. No doubt, if successor J.Evig remains after appeals, J.Evig appointed under these unfair circumstances, will issue an unfair parenting order years from now against M.M.'s fit father and harmful to M.M..

The abuse of power that springs from judicial and governmental appointments by persons with a conflict of interest cannot be tolerated in America any longer, yet in recent months it has become prevalent in our law enforcement and judicial systems.

The U.S. Supreme Court, by the Constitution, cannot allow the judicial system in America to be controlled by government officials or judges acting with a conflict of interest.

This honorable court also should not constitutionally allow M.M. to be deprived of her father for many more years by unwarranted judicial interference with family relationships when, as here, Petitioner-Father is a fit parent as judicially determined by all three judges. Such power and unlawful interference with fundamental parental rights destroys the integrity of government, facilitates corruption, and harms persons and families throughout America.

Allowing disqualified, highly prejudiced judges with a conflict of interest to pick successors, assign cases, or issue nontransparent orders transferring cases to the chosen successor only widens the appearance of partiality in our judicial system and weaponizes the government against, “We the People...” Every citizen has inalienable rights under the Constitution.

III. Targeted Mistreatment of Citizens by Judicial System

As well-demonstrated factually and objectively in the Statement of Case within the Petition, this court has never before addressed the issue of whether the systematic and targeted mistreatment of citizens by the judicial system, as here, constitutes a constitutional violation of the Fourteenth Amendment.

IV. Other New Developments: Why this Court Should *Not* expand Concentrated Power of Government Officials to Act with Constitutionally Impermissible Conflicts of Interests

With the recent expanding war against terrorism and continuing uncontrollable chaos on our southern border, significant issues of national security and national importance have arisen in October 2023, from alleged harmful actions by government officials taken with the *same* unconstitutionally prohibited conflict of interest.

A. Compromised Interests Create Appearance that Decisions are Made to Further Interests other than Interests of U.S. Citizens

On September 27, 2023, House Speaker McCarthy announced that Congress has “uncovered serious and credible allegations...of abuse of power, obstruction and corruption.” “A highly credible FBI source” alleges Joe and Hunter Biden were paid \$5Million each in exchange to firing the Ukrainian prosecutor investigating Burisma. Further, Representative Stefanik reported that “detailed banking records show that the Biden family and their business associates received \$20Million from foreign actors in places like...China. On 10/24/2023, the House Oversight Committee released a report of direct payments to Joe Biden, including the copy of a \$200,000.00 check that allegedly further compromised the appearance of his objectivity to

make decisions on behalf of U.S. citizens rather than in furtherance of his compromised interests. Congress also alleged Joe Biden to not only have taken payments from China but also that he “would obtain a large investment from the middle east based on political connections, in exchange for \$600,000.00 of cash payments from Americore.”

**B. October 2023 Dangerous
“Southern Border Migrant
Encounters” Controlled by
Decisions by Secretary of
Department Homeland Security
(DHS) Acting with Apparent
Conflict of Interest**

On October 10, 2023 the President of Mexico said he rejected a request to set up migrant-transit centers in Mexico where migrants can apply for U.S. work and visas to facilitate the transition of migrants into the U.S.. On may reasonably infer from the circumstances that DHS Secretary Alejandro Mayorkas has allowed *millions* of migrants into the U.S. so that 1) immigrants are first granted work permits, paroled for articulated humanitarian or public benefit reasons, and granted asylum; 2) naturalization to citizenship would then follow and 3) then the right to vote shall be constitutionally afforded by the 15th Amendment.

Thus, with overt Republican resistance, intentionally allowing open borders by *one person* in power acting with a constitutionally impermissible conflict of interest, will turn southern red states, such as Texas and the sanctuary states, into blue states, and strengthen other blue states, thereby

toppling our bi-partisan government not only for this generation but for generations to come. "To lodge all power in one party and keep it there is to ensure bad government and the gradual deterioration of public morals." Mark Twain.

Record Breaking Southern Border

Encounters, published on 10/22/2023 show 269,735 encounters for September 2023 (the highest number of monthly encounters ever) and 2,475,669 just for Fiscal Year 2023. This month alone, terrorists have recently been caught coming into our country from China, Iran, Syria and Lebanon and thousands of terrorists are believed to have recently come into the U.S. undetected. Between October 1 and October 14, 2023 there were 30 Iranians; 60 Syrians; 100 Russians; 285 Afghans and 2,000 Chinese "Southern Border Migrant Encounters."

On October 5, 2023, New York City made its largest seizure yet of Fentanyl, comprising 200,000 pills and 24 Kilograms of suspected Fentanyl. Recent southern-border seizures in October of 2023 of Fentanyl, imported from China who is believed to be the largest exporter of Fentanyl according to Tennessee.com, was enough to kill every U.S. Citizen.

On 10/22/2023 Representative McCarthy announced the existence of terror 'sleeper cells' in the U.S. amid the Israel-Hamas War. On the same day, Iran warned Israel that the war will "go out of control."

Enemies will continue to exploit our known weakness at the border, which is controlled by the insurmountable DHS Secretary, with a clear appearance that he is acting with an unconstitutionally prohibited conflict of interest by

using his official authority to interfere with the Presidential election and promoting a partisan candidate of the Democratic political party.

**C. Approved School Policies
Usurping Parental Rights to Turn
Control of Children over to the
Government**

On October 12, 2023 Fredirck Short, Jr. filed suit in U.S. District Court, appealing the recent trial court ruling in New Jersey, over school policies that exclude parental involvement and violate his constitutional rights to raise his child the way he wants to --- not the way that the N.J. public school's system secretly mandates to the exclusion of parental involvement by usurping parental rights and turning control of children over to the government. Schools have recently taken the position that parents have no roles or rights in the education of their children.

On August 14, 2023, the Federal 4th Circuit ruled, with a dissent, that parents could not challenge a school district's policy against telling parents if their children identify as transgender or gender nonconforming. There has been recent public out-cry for a constitutional ruling regarding fundamental rights of parents to be involved in the decisions to raise their children as they choose and to be free from schools secretly promoting governmental policies, indoctrinating students to accept certain beliefs funded by terrorists, forcing gender ideology on students, and advancing woke agendas without parental involvement, such as encouraging and facilitating sex changes in minors.

Debate over ‘parental rights’ and what is taught to children, contrary to knowledge of parents, is the latest fight in the education cultural wars that was presented to U.S. District Court in New Jersey on October 12, 2023. A ruling in this case, as requested in the 6/9/2023 Petition, on parental rights would also cast a net broad enough to lay to rest these constitutional issues as it affects parents and their children throughout America, as well as our educational institutions in America, and would promptly afford parents a voice in the education of their children.

D. Election Interference

“It’s a disgrace. It’s election interference. ***There has to be some type of recourse for what’s going on.***” (P.Trump on 10/24/2023 at his civil fraud trial that was commenced before an allegedly partisan judge in New York consistent with the promises that the State AG campaigned on.) We have also seen the appearance of abuse of power by government officials, acting with the *same* prohibited conflict of interest, to take out a viable political opponent of Attorney General Garland’s boss, or to otherwise interfere with a presidential election by the weaponization of the American judicial and political systems.

There is only one “recourse” available and that one recourse is through this honorable court to struggle with, reasonably interpret and enforce the Constitution and its intent as set forth in its Preamble:

**“We the People, to... establish
Justice, insure domestic
Tranquility, provide for the
common defense, promote the
general Welfare, and secure the
Blessings of Liberty to ourselves
and our Posterity, do ordain and
establish this Constitution for the
United States of America.”**

All words of the Preamble fail when decision making is left to powerful governmental officials who harbor prejudice and are conflicted, notwithstanding Article VI of the Constitution that, “...all executive officers... shall be bound by Oath...to support this constitution:”

**“I do solemnly swear...that I will
support and defend the
Constitution of the United States...
and that I will well and faithfully
discharge the duties of the office on
which I am about to enter. So help
me God.”**

The fact that so much injustice in America has been witnessed suggests that something is amiss with Constitutional case law to remedy hardships to U.S. Citizens who suffer from conflicted, powerful government officials. “...(P)ersons have a right to due process when the protection and enforcement of their private rights are at issue.” *Gulfside Interval Vacs. v. Schultz*, 479 So. 2d 776, 778 (Fla. Dist. Ct. App. 1985).

On July 26, 2023, Congress sent a letter to AG Merrick Garland asserting that Mr. Jack Smith (chosen and appointed by AG Garland) has a history of questionable political persecutions. Congress advised AG Garland that Mr. Smith's wife also donated to President Biden's 2020 campaign, "raising concern about potential conflicts of interest for Mr. Smith."

The alleged disparate treatments between President Biden and the leading Republican Presidential candidate Mr. Trump, suggest that AG Garland is conflicted and harbors prejudice in the performance of his duties to assign and continue with his assignment of Jack Smith whose sacred role is to act with objectivity and "seek justice"- not to convict his political enemy or to interfere with the presidential election.

In October 2023 we have witnessed what the House alleged is a logically clear weaponization of both our law enforcement and judiciary to take out a key political opponent who would investigate alleged crimes that compromised persons in high government positions and who could prevent, not encourage, or stimulate, war on U.S. soil in the near future.

On October 6, 2023 Congress sent another letter to AG Garland to investigate election fraud and interference in the Virginia elections where thousands of eligible voters were unilaterally removed from the state's rolls.

Presidential and all elections must be fair and trusted by the voters, reflecting the free will of the people. The Presidential elections should proceed without GAG orders against political opponents and the appearance of other governmental election

interference seemingly targeted at its strongest political opponent by conflicted persons and powerful, conflicted government employees.

All of these harms, and more, are caused primarily by one unconstitutional action, which is the *same* unconstitutional action for which the instant case seeks protection: Allowing government officials, in positions of significant power, such as the Secretary DHS, the Attorney General, and now judges, who are seemingly *compromised, highly prejudiced, and/or* acting with an appearance of a constitutionally prohibited conflict of interest, to make decisions in furtherance of *their interests* and *contrary to interests of U.S. Citizens*. The forgoing illustrates why governments should *not* be allowed to further expand abuse of power into our judiciary by allowing disqualified, highly prejudiced judges with a conflict of interest to assign cases to the chosen successor judges, as is now the wide-spread and abusive practice throughout Colorado.

Resolution of the issues raised in the Petition and subsequent rulings that are harming an innocent child, M.M., cannot wait.

The Abuse of Power is enabled and facilitated by vesting all judges, who are severely prejudiced and have a constitutionally impermissible conflict of interest, with the authority and ability to assign partisan judges to decide your case. The instant case, requesting a remedy for impermissible conflicts of interest in government, gives this court an opportunity to cast a net broad enough to address dire circumstances that have an immediate substantial effect on U.S. citizens as well.

This court has the power to expand the abuse of power in America or contain it or reduce it with the force of the Constitution.

The petition is fully briefed and allows this Court to resolve these critical issues at the earliest opportunity.

V. CONCLUSION

For the foregoing reasons, and those stated in the Petition, the Court should grant rehearing, grant the Petition, and review the judgments below. This is an appropriate case for rehearing. Petitioner-Father has been embroiled in litigation for almost eight years to be an involved father in M.M.'s life as a child who should not suffer during five more years of appeals.

Respectfully Submitted,



William Muhr, Petitioner-Father
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Colorado Springs, Colorado 80921
Muhr@pcisys.net 719-648-6230

(*Pro Se*, yet will have counsel if granted)

**CERTIFICATE OF GROUNDS OF
INTERVENING CIRCUMSTANCES OR OTHER
SUBSTANTIAL GROUNDS PRESENTED IN
GOOD FAITH AND NOT FOR DELAY**


I, William Muhr, Petitioner-Father, hereby certify, pursuant to F.R.C.P 44.2 that the forgoing Petition for Rehearing is restricted in grounds to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and the Petition for Rehearing is presented in Good Faith and not for Delay.



William Muhr
Petitioner-Father
(Certificate filed with each Petition)

I, William Muhr, hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th Day of October, 2023.



William Muhr
Petitioner-Father
28 U.S.C. §1746

In The
Supreme Court of the United States

WILLIAM MUHR,

Petitioner,

v.

DAWNA BRASWELL
AND KRISTIN LEE (A.K.A. ELLIAS),

Respondents.

On Petition for a Writ of Certiorari to the
Colorado Court of Appeals

APPENDIX

William Muhr, Pro se Petitioner
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Appendix A1

FILED: 8/31/23

**Minute Order of the Colorado Court
Case No. 2016DR030155**

Miller/KKR/FTR W470 Stat 8/31/23 PPWC
CYBORON; REWSP FTA; ATP STATES THE
RECENT APPEAL FILED HAS BEEN DENIED
DUE TO BEING PREMATURELY FILED; COURT
NOTES THAT PARTIES HAD REACHED AN
AGREEMENT THAT RESP WAS GOING TO PAY
FUNDS EQUAL TO THE AMOUNT THAT WAS
SEIZED FROM THE TRUST; COURT RELEASES
THE MONEY FROM THE TRUST TO ATP'S
OFFICE; ATP TO SUBMIT AN ORDER BEFORE
NOON TODAY; COURT STILL HAS
JURISDICTION; COURT NOTES CONFLICT THE
COURT HAS W/ RESP AND WILL RECUSE OFF
THIS CASE; /KKR

Appendix B1

FILED: 9/1/23

El Paso County, State of Colorado, District Court

Court Address: 270 S. Tejon

Colorado Springs, CO 80903

Mail Address: PO Box 2980

Colorado Springs, CO 80901

Phone Number: (719) 452-5544

Case Number: 16DR30155

Div.: 6 Ctrm: W470

In Re: Marriage of:

Petitioner (s): Kristin Ellias

vs.

Respondent(s): William Muhr

Order of Recusal

The parties are advised that the Court will be recusing off of this matter.

This case is now transferred to Division 17. All future filings should be directed to Division 17.

DATED THIS 1st DAY OF September 2023.

BY THE COURT:

/s/ Chad C. Miller

District Court Judge

Appendix C1

FILED: 9/29/23

DISTRICT COURT, EL PASO COUNTY,
COLORADO
Court Address:
270 S. TEJON, COLORADO SPRINGS, CO, 80903

Case Number: 2016DR30155
Division: 17

KRISTIN ELLIAS
and
WILLIAM MUHR

**Order: VERIFIED - SWORN MOTION TO
DISQUALIFY SUCCESSOR TRIAL COURT-
LACK OF SUBJECT MATTER JURISDICTION**

The motion/proposed order attached hereto:
DENIED.

The Court received a "Verified Motion to Disqualify the Trial Court" Lack of Subject Matter Jurisdiction" on September 11, 2023 from the Respondent in this matter (the "Verified Motion").

The Court has not received a response.

The Verified Motion argues several points, makes several unsupported factual assertions, and request the undersigned judge disqualify himself from hearing the case.

As the court understands the Verified Motion, Respondent argues that the undersigned judge lacks

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subject matter jurisdiction to preside over this case. Respondent centers that argument on the fact that he is currently appealing an issue of whether a trial judge may, after disqualifying themselves, assign the case to another judge.

The court notes this is not the first time Respondent made this claim “about whether a district judge has jurisdiction in a particular case based upon a prior judge recusing. The court notes that from the extensive litigation in this matter, including the most recent appellate opinion in this case. In 2020CA2066, 2021CA504, and 21CA0793 the Colorado Court of Appeals consolidated three different cases and resolved them in an unpublished decision issued June 2, 2022. As relevant here, the Court of Appeals ruled against Respondent's claim that the district court lacked jurisdiction. The opinion found no issue with Judge Bain issuing an order that sent the case to Judge Miller. The same opinion ruled against Father's claim that Judge Miller demonstrated bias.

Respondent has now appealed the Court of Appeals decision to the United States Supreme Court and to the Colorado Supreme Court.

Ordinarily, filing notice of appeal removes the trial court's discretion to decide issues involved in the appeal. Appellate opinions phrase it as “once an appeal is perfected[,] jurisdiction over the case is transferred from the trial court to the appellate court for all essential purposes with regard to the substantive issues that are the subject of the

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appeal.” See *In re W.C.*, 2020 CO 2, par. 6 citing *Molitor v. Anderson*, 795 P.2d 266, 268 (Colo. 1990).

After considering the legal and factual backdrop, the court makes the following findings.

The particular factual scenario appealed concerns Judge Bain's actions in appointing a replacement judge “that being Judge Miller. There is no evidence Judge Bain took any action here. While the issues are similar, in that in both cases an “outgoing” judge issued an order sending the case to another division, there are some important factual distinctions. One of those includes the fact that Judge Miller is not tasked with any responsibilities other than to serve as a district court judge.

That situation “the transfer of the case from Judge Bain to Judge Miller” is not the factual situation here.

Respondent likens the recusal and appointment of this court to a type of infection “indicating any time another judge recuses and issues an order transferring the case to another division the new judge to the case has the same infection as the prior.

But that is not the case. Neither Judge Miller nor Judge Bain have any authority to remove the undersigned judge from office. They have no control over what orders the undersigned issues or what decisions the undersigned makes. The undersigned has no conflict in this case.

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In addition, Respondent presents conclusory statements rather than facts. Simply put, Respondent alleges that Judge Miller chose a successor judge. But he provides no support for that. Judge Miller issuing an order transferring the case does not demonstrate he picked the division to send the case to.

At this point, the motion (which lack a specific affidavit in any case) fails to show the undersigned is biased or prejudiced or appears to be.

The court thus respectfully denies the motion.

Issue Date: 9/29/2023

/S/ SAMUEL ALBERT EVIG
District Court Judge

Appendix C5

ATTACHMENT TO ORDER

DISTRICT COURT, EL PASO COUNTY,
COLORADO

El Paso County Courthouse
270 South Tejon Street
Colorado Springs, CO 80903
719-452-5000

Case Number: 2016DR30155
Div. 6, Hon. Miller transferred to
Div. 17, Hon. Evig

In re: Parental Responsibilities Concerning:
MADISON MUHR, DOB 1-7-2016

Kristen Lee (a.k.a. Ellias), Petitioner

v.

William Muhr, Respondent

**VERIFIED/ SWORN MOTION TO DISQUALIFY
TRIAL COURT-- LACK OF SUBJECT MATTER
JURISDICTION**

Comes now Respondent-Father and hereby respectfully requests that the successor trial court judge in the above-captioned action be forthwith disqualified, and as grounds swears and states:

1. In the instant case, an appeal in the U.S. Supreme Court was perfected on June 9, 2023 and filed with the trial court in 2016DR30155, on June

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12, 2023. In *Musick v. Woznicki*, the Colorado Supreme court held:

“Once an appeal has been perfected, the trial court has no jurisdiction to issue further orders in the case relative to the order or judgment appealed from..... (J)urisdiction over the case is transferred from the trial court to the appellate court for all essential purposes with regard to the substantive issues that are the subject of the appeal.”).

Musick v. Woznicki, 136 P.3d 244, 248 (Colo. 2006).

2. On August 31, 2023, Hon. Miller, the trial court judge, in 2016DR30155, disqualified himself from acting further in 2016DR30155 in that he asserted in his 8/31/20223 written minute order that he had a prohibited conflict of interest and is, therefore, prejudiced, and biased and legally unfit to proceed further with the case with his prohibited conflict of interest. (**Exhibit A**, Minute Order, August 31, 2023).

3. Accordingly, **the trial court Hon. Miller has no jurisdiction to issue further orders in the case relative to the order or judgment appealed.** *Musick* at 248.

4. However, a day later, on September 1, 2023, with his prohibited conflict of interest, and prejudice, he nonetheless issued an order transferring the above

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case to this specific court. (**Exhibit B**, September 1, 2023 Order by the disqualified trial court).

5. The issue of whether a trial court judge, with a conflict of interest, who is deemed prejudiced, has the authority or subject matter jurisdiction to sign an order transferring the case or otherwise assign the case to his successor judge, is an issue now pending before the U.S. Supreme Court in this action.

6. Hence, Hon. Miller did not have the authority or subject matter jurisdiction to issue his order on September 1, 2023, with his conflict of interest and prejudice, transferring the above case to Div.17, Hon. Evig. J. Miller's order of September 1, 2023 reassigning the case to his successor must be vacated.

7. The Petition for Certiorari, now pending before the U.S. Supreme Court states, in part, with its citation references, as follows: (**Exhibit C**, U.S. Petition for Certiorari with Appendices):

....*See Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-243 (1980) ("**Due Process Clause entitles a person to an impartial and disinterested tribunal... (J)ustice must satisfy the appearance of justice**"); *Weiss v. United States*, 510 U.S.163,178 (1994)["(A) fair trial in a fair tribunal is a basic requirement of due process."]; *United States v. Will*, 449 U.S. 200, 212 (1980) ("**The disqualified *judge* must step aside and allow the normal**

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administrative processes...to assign the case to another judge....”; Fourteenth Amendment§1].

(See **Exhibit C**, Petition for Certiorari, page 24)(Bold faced emphasis in original).

....See **Will** at 212 [Disqualified “*judge*” must recuse and allow normal administrative process to assign the case to a neutral judge; and compare *Lawler Mfg. Co. v. Lawler*, 306 So. 3d 23, 24-25(Ala.2020), “When ‘*Presiding*’ Judge... disqualified himself...*he (also) no longer had authority to appoint his successor*” or...enter orders (reassigning his cases to his chosen successor).” See also **Weiss** at 178 and **Marshall** at 242-243(Due Process right to impartial tribunal).

“Issues of subject-matter jurisdiction can never be (lost) *while the case is pending.*” *U.S. v. Hartwell*, 448 F.3d 707,722(4th Cir.2006).

Once J. Bain disqualified himself from hearing *Braswell* and *Lee*, he could take no further action in either case, not even reassigning the cases under C.R.C.P.97 or C.J.D.95-01. J. Bain could not enter an order recusing himself from both cases and then later enter separate orders assigning J. Miller as his chosen successor, because the impartiality of his reassignments might reasonably be questioned. **Will** at 212; **Marshall** at 242-243; Fourteenth

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Amendment§1. Because J. Bain did not have the authority to appoint his successor, J. Bain's appointment of his successor was not valid. J. Bain's orders reassigning the cases to his successor must be vacated.

The successor judge's orders in *Braswell* and *Lee* must also be vacated. Because J. Miller never had jurisdiction over these cases, any orders entered by J. Miller are void. *Hartwell* at 722; *Will* at 212; *Marshall* at 242-243.

"Being without jurisdiction, its subsequent proceedings and judgment[are] not...simply erroneous, but absolutely void. Every order thereafter made in that court[is] *coram non judice*," meaning "not before a judge." *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 140 S.Ct.696,700(2020). See also *Beren v. Goodyear (In re Estate of Beren)*, 412 P.3d 487, 491 (Colo.App.2012). ("Upon recusing, a judge *loses jurisdiction...*"); **28 U.S.C. §636(b)(1)(C)**(A Judge "may be assigned...duties as *are not inconsistent with the Constitution...*"). *Marshall* at 242-243; *Weiss* at 178 (Due process mandates an impartial tribunal); *Will* at 212 (Disqualified judge must allow administrative process to assign his cases); *Lawler Mfg. Co.* at 24- 25 ("When *Presiding* Judge...disqualified himself...he had no jurisdiction to appoint his successor." Fourteenth Amendment§1.

In a case of first impression, the COA held that by C.J.D.95-01(6)(b), a judge, upon

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recusing, *has jurisdiction* to pick his favored judge to decide your case, contrary to *Aaberg v. District Court*, 136 Colo. 525, 527-28 (Colo. 1957). Special interest groups and the judiciary now have the appearance and ability to make highly partisan judicial assignments to influence the outcome of every case.... See C.R.S. §13-1-122. (A judge is disqualified to act at all if he or she is interested or prejudiced)...

C.R.C.P. 97 provides:

“Upon *disqualifying himself*, a judge shall notify forthwith the chief judge... who shall assign another judge....” **If no other judge...**(J. Bain is a judge) **is qualified** (to pick a successor -- J. Bain is not qualified), the chief judge (J. Bain) *shall* notify forthwith **the court administrator** (Mr. Vasconcellos, 1300 N. Broadway, Denver) **who shall obtain from the Chief Justice** (of Colorado’s Supreme Court) the assignment of a replacement judge.....”

As in *Lawler* at 24-25, the Supreme Court in *Aaberg* held:

“(When Chief J. Bain) granted the motion (to disqualify), **such action (is) an admission of bias and prejudice....**(T)he charge of bias and prejudice...**remains as an accusation of unfitness to proceed with the case**, and logically this charge of unfitness would extend to unfitness to pick his successor or assign the case to another

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judge. When *a judge* is charged with bias and prejudice and sustains a motion so charging... *proper procedure requires that he not select his successor* or assign the case to another judge, but that he proceed(under) Rule 97.”

Aaberg at 527-528...

C.J.D.95-01 does not overrule the requirements of the Fourteenth Amendment§1, that a disqualified, prejudiced judge *cannot* pick the judge he favors to decide your case. **Aaberg** at 527-28. **Braswell**, Op.Br.Pgs.17-19; **Appendices-B2-B9; G6- G10, ¶6; I12-14**); **Marshall** at 242-243; **Beckord v. District Court**, 698 P.2d 1323,1329 n.7(Colo.1985)[“...A disqualified judge was without authority... to reassign the claims..., (which) does not comport with the disqualification procedures... in C.R.C.P.9]; **Will** at 212.

“It would be incongruous to permit a (*any*) disqualified judge to pick his...successor to decide the case.” **Beren** at 491; **Will** at 212.(**Braswell- Op. Br. Pgs. 18-20; Appendices- A9-10 ¶s24-28; F4-5, ¶s10, ¶18; I21**). Colorado’ s Constitution, Article VI, § 5, ¶ 4, provides, “Each chief judge shall... exercise administrative powers over judges... *as may be delegated*.” However, J. Bain did not exercise administrative control granted by the constitution within the limitations of Supreme Court Rules, such

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as C.R.C.P. 97 or the Fourteenth Amendment§1. Chief J. Bain had the responsibility to ensure that the constitution, statutes, and rules are followed **A9-10**,¶s24-27; **F5**,¶s12-13; G6-10¶6; *State v. Schaeperkoetter*, 22 S.W.3d 740, 742,743-744 (Mo.Ct.App.2000). [“The administrative control granted by the constitution ‘must be exercised within the limitations of applicable Supreme Court Rules... The disqualified)...court is prohibited from taking any action other than to request the... Supreme Court to transfer a judge.”]

See also *Joshi v. Ries*, 330 S.W.3d 512,517(Mo.Ct.App.2011). [“Judge was *not* serving a ministerial (or administrative) function... when *his only option* was to sustain the application for the change of judge....”]. See also *Ries* at 517,n.13,”The application of [C.R.C.P.97; C.R.S.§13-1-122;C.R.S.§16-6-201(1)(d); 28 U.S.C.§455 and 28 U.S.C.§636(b)(1)(C)] is based *not* upon the judge's title (e.g., Trial or Chief Judge), but rather upon the nature of the authority he exercises (as a disqualified, judge) over a litigant's case.”

(See **Exhibit C**, Petition for Certiorari, page 24)(Bold faced emphasis in original).

8. Since Chief Judge Bain is also disqualified, the court administrator must obtain from the Chief Justice the assignment of a replacement judge,

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which is also quoted in the pending Petition for Certiorari, U.S. Supreme Court, as follows:

.... To avoid causing a party to question the impartiality of the successor selection, a disqualified Chief Judge “shall notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge.” C.R.C.P.97; *Weiss* at 178. (**Appendices-B2-B9; G9-G11, ¶6; I13,I15,I18,I19,21; Lee-Op.Br.Pgs.32-33,49-51).**

9. Thus, as quoted above from the pending Petition for Certiorari, the issue of whether a trial court, with a prohibited conflict of interest, may issue an order transferring the case to his successor, is pending before the U.S. Supreme Court. Thus, Hon. Miller did not have authority or subject matter jurisdiction to issue his September 1, 2023 order transferring this case to Div. 17, Hon. Evig. (See **Exhibit C**, Petition pending ruling, U.S. Supreme Court).

10. “(J)urisdiction over the case is transferred from the trial court to the appellate...*with regard to the substantive issues that are the subject of the appeal.*” *Woo v. El Paso Cnty. Sheriff's Office*, 2022 CO 56, *5 (Colo. 2022). [**Petition for Certiorari, U.S. Supreme Court (“Petition”), Pgs. i, Questions; Pages 25-33, Question 1, jurisdiction, Pages 23, 52, actual bias**, which was filed with this court on 6/12/2023]. The district court lacks jurisdiction to decide matters involved in the appeal. Two courts cannot consider the same judgment. *State Bd. of*

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Exam. v. Lopez-Samayoa, 887 P.2d 8, 14-15 (Colo. 1994).

11. Further, on June 2, 2022, Chief J. Roman of the COA rendered a decision and remanded this case to the trial court to perform the ministerial act of implementing the COA's judgment. (COA decision, 20CA2066, ¶s 39-40). "Once an appellate court resolves an issue and remands the cause to enter judgment, the trial court can only follow the 'ministerial dictates of the mandate.'" *Colorado Interstate Gas Co. v. Natural Gas Pipeline Co. of America*, 962 F.2d 1528,1534(10th Cir. 1992). Until the trial court does so, the case, for all practical purposes, is deemed to be remaining in the appellant court divesting the trial court from acting on matters that affect the COA judgment. "(T)he decree from which the appeal was taken stands until further...orders are entered by the District Court pursuant to mandate." *Hartford-Empire Co. v. U.S.*, 324 U.S. 570, 573 (1945).

12. Petitioner-Father on June 9, 2023 timely appealed the matter to the U.S. Supreme Court challenging, *inter alia*, the trial court's subject matter jurisdiction. (**Exhibit-C**, U.S. Petition, Pgs.25-33;Pgs.16-18; 34-35; 43; 52). Once an appeal has been perfected, the trial court is divested of jurisdiction to issue any further orders in the case. *People v. Jones*, 631 P.2d 1132,1133(Colo. 1981). See also *Eberhart v. U.S.*, 546 U.S. 12,17(2005)["... Once a final judgment is issued ... (and appealed) the... district court has no power to act on it further]."

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13. The final judgments rendered by Colorado's highest court, in which a decision could be had, are currently being reviewed by the U.S. Supreme Court by Writ of Certiorari where the validity of Colorado statutes are drawn into question on the grounds of being repugnant to the Constitution and laws of the United States and where various rights are specially claimed under the Constitution. 28 U.S.C. §1257(a). (**Exhibit-C**, U.S.Petition).

14. Further, the federal issues in the Petition for Certiorari, pending before the U.S. Supreme Court, at **Exhibit-C**, are conclusive and the "determination of the federal issues would immediately resolve the case." *Kiaaina v. Jackson*, 851 F.2d 287,289(9th Cir. 1988)(citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469,479-83(1975). *Haeuser v. Department of Law*, 368 F.3d 1091,1096 n.6(9th Cir. 2004). Thus, J. Miller, or his successor, has not yet been legally permitted to perform the "ministerial act" of implementing the COA's judgment, pending the outcome of the U.S. Supreme Court's decision.

15. "The issue of subject matter jurisdiction may be raised at any time, and the right to do so cannot be waived." *In re Marriage of Haddad*, 93 P.3d 617, 619 (Colo. App. 2004). "Because a lack of subject matter jurisdiction means that a court has no power to hear a case or enter a judgment, it is an issue that may be raised at any time." *Youngs v. Indus. Claim Appeals Office of Colo.*, 2013 COA 54 (Colo. App. 2013). "Subject matter jurisdiction may be raised at any stage of an action." *Kirbens v. Martinez*, 742 P.2d 330, 334 n.8 (Colo. 1987). "A court must have jurisdiction over the parties and the subject matter

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of the case if its judgment is to be valid.” *Water Rights v. Columbine Associates*, 993 P.2d 483, 488 (Colo. 2000). *See also Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 571 (2004) (“Challenges to subject-matter jurisdiction can of course be raised at any time prior to final judgment.”). *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017) (“The jurisdictional defect is not subject to waiver”).

WHEREFORE, for the reasons above, the undersigned respectfully requests that this Honorable Court forthwith issue an order disqualifying himself from serving as a judge in the above matter.

Respectfully Submitted this 21st Day of September 2023,

/s/ William Muhr, Father, *Respondent-Father*

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I, William Muhr, hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATE FILED: September 21, 2023 2:40 PM

CASE NUMBER: 2016DR30155

and correct to the best of my knowledge, information, and belief.

W. Muhr
/s/ William Muhr
Respondent-Father

STATE OF COLORADO)
COUNTY OF EL PASO)

Signed and sworn to before me Kameron Weston, a Notary Public, by affiant,

William W. Muhr this 21st day of September 2023.

Seal

[Signature]
NOTARY PUBLIC
STATE OF COLORADO NOTARY ID: 20164048359
My Commission Expires: 12/23/2024



CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2023, a true and correct copy of the foregoing document was served on all counsel or parties on record by ☒ E-filing; AND ☐ Email; AND ☐ Hand Delivery; AND ☐ Facsimile; AND ☐ by placing it in the United States mail, postage pre-paid, and addressed to the following:

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W. Muhr
/s/ William Muhr, Respondent-Father