

Docket No. 22-6224

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

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ALI SHAHROKHI

*Petitioner*

vs.

KIZZY BURROW

*Respondent*

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**On APPLICATION *for a* WRIT of CERTIORARI  
to the SUPREME COURT of NEVADA**

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**PETITIONER'S REPLY**

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**REPLY to OPPOSITION to PETITION for a  
WRIT of CERTIORARI**

Petitioner was in litigation with his family court judge—at the time of Petitioner’s child custody trial. But despite the fact that Petitioner was in litigation with his judge—at the time of trial—the judge refused to recuse himself.

This judge had a personal interest in the outcome of the trial, as he was sued for millions of dollars, but this judge used the bench to retaliate against the Petitioner for suing him for money damages in federal courts on a claim under 42 U.S.C. 1983.

This Court *In re Murchison*, 349 U. S. 133, held that ***“no man is permitted to try cases where he has an interest in the outcome,”*** *id.*, at 136, the Court noted that the circumstances of the case and the prior relationship required recusal.

The objective inquiry is not whether the judge is actually biased, but ***whether the average judge in his position is likely to be neutral or there is an unconstitutional potential for bias.***

Not only did the judge refuse to recuse himself in Petitioner’s child custody case, but the judge had a personal interest in the outcome of the trial over which he presided. Petitioner had sued the trial judge for violating his constitutional rights. In fact in his final custody order, issued on October 12, 2020, the trial judge mentioned Petitioner’s lawsuits against him (the judge) on almost 2 pages of his order. (See Rep. App. A)

A detached person reading Petitioner’s custody order—and the judge’s two-page plus rant about Petitioner’s lawsuit, would believe the judge may lack impartiality. Indeed, the risk of bias is constitutionally intolerable, and yet, Nevada Supreme Court turned a blind eye to all of these facts.

28 U.S.C. § 455 was designed "to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." A judge who is an adversary to a litigation by a party, refusing to recuse from the case does not promote any confidence in the judiciary; in fact, it does exactly the opposite.

**THE TRIAL JUDGE MADE COMMENTS *in* HIS ORDER  
*about* PETITIONER'S LAWSUIT AGAINST HIM**

In the final custody order issued by the trial judge. on October 12, 2020, the trial judge dedicates the final part of his custody order, over two pages, discussing Petitioner's lawsuits against him. In his final order, the trial judge makes the following statements with regard to Defendant's supposed obsession with filing lawsuits: (See Rep. App. A)

***"Defendant then decided to re-file a new federal lawsuit suing this Court, in personal capacity along with plaintiffs' attorney" (Page 21, Line 15-16)***

***"Defendant touts he will be seeking in \$10 million in damages", (Page 21, Line 18-19) "motions to dismiss in that case are forthcoming"(Page 21, Line 19)***

The lawsuit against the judge was never dismissed, and it is still in fact pending, stayed in Nevada Federal District Courts, Case No. 2:2020-cv-01623, Shahrokhi vs. Harter, et.al. It would be obvious to an average person, from outside looking-in, that the judge had a huge personal interest in the outcome of the state's case, as the trial judge was a named defendant and adverse party in those lawsuits. The judge refused to recuse, so he could use the bench to retaliate against the petitioner and the statements on the record speak clearly about the judge's state of the mind and being biased.

## **THE JUDGE MADE FURTHER COMMENTS *about* FEDERAL LAWSUITS *at the* JULY 30, 2020 HEARING**

In a different hearing, on July 30, 2020, roughly two months prior to the 3-day bench trial, the judge goes on the record and starts ranting about Petitioner on the record filing lawsuits against him again. It is obvious this judge was not happy about the lawsuits being filed against him and he was biased against Petitioner. The transcripts speak for itself. (See Rep. App. B)

***\*The Court: again its ironic because he keep filing lawsuits....(line 9-  
Page 6)\****

***\*The Court: he has also -- and I don't know if you are aware ,Mr. Spradling, not that it matters, he has since filed a federal lawsuit naming...(line 15-17 Page 6)\****

***\*The Court...Naming not only me, judge bell, Justice Gibbons, and the State of Nevada. It is adamantly clear that he is more focused on litigation than getting this matter set for an evidentiary hearing moving forward to get the matter adjudicated. (Line 19-23 Page 6)\****

If a detached observer knew the facts and circumstances in this case, can they conclude that a fair and impartial hearing or trial would be possible? Obviously, the obvious answer is “no.” The judge continues to bring-up the lawsuits against him in every opportunity possible.

## **THE JUDGE USED *the* BENCH *to* RETALIATE**

The trial judge had a personal stake in the outcome of Petitioner's custody trial. He was being sued for money damages and legal fees and expenses and Petitioner was seeking significant monetary damages. As a result, the judge was highly invested in the outcome of the custody trial and he was determined to do whatever it took to win against Petitioner. The

judge spent a lot of time and energy using the bench to intimidate the petitioner, it got so bad that Petitioner's attorney, at a July 30, 2020 hearing, had to make record the judge was using the bench to intimidate the petitioner. (See Rep. App. B)

**Mr. Page. (Petitioner's attorney of the record): Okay, I am just holding the phone close to my mouth. Mr. Shahrokhi did - - did wanna communicate that he feels like he's - - there's an attempt to intimidate him that he object to today. (Page 4, line 2-5)\***

**THE COURT: I am sorry. I - - still can not hear you. You're breaking up.**

**Mr. Page: Mr. Shahrokhi wanted to communicate that he feels as though there's an attempt to threaten and intimidate him and that he objects to that.**

**THE COURT: Ok, I'll note that for the record. But, again, you're his attorney of the record. If he was standing here in court, you know that would be unacceptable behavior in Court. And if continued on, he'd be asked to leave the Court. And again, as long as you're here representing him, that's all the law requires.**

The judge and Petitioner had a huge conflict, especially over the constitutional violations and lawsuits at hand. Petitioner wanted to make record of the judge's behavior and intimidation tactics, yet the judge says if Petitioner was in court, he would be asked to leave.

The majority of the judge's final custody order, issued on October 12, 2020, are misrepresentation of facts. Recusal was required under the principle that "[e]very 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." [273 U.S., at 532].

In *Ward v. Monroeville*, 409 U.S. 57 (1972), a conviction in another court was invalidated even though the fines assessed went only to the town's

general fund, because the mayor faced a “ ‘possible temptation’ ” created by his “executive responsibilities for village finances.” [*Id.*, at 60.] Recusal was also required where an Alabama Supreme Court justice cast the deciding vote upholding a punitive damages award while he was the lead plaintiff in a nearly identical suit pending in Alabama’s lower courts. [*Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813 (1986)].

The proper constitutional inquiry was not “whether in fact [the justice] was influenced,” [*id.*, at 825], but “whether sitting on [that] case ... ‘ “would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true,” ’ ” *ibid.* While the “degree or kind of interest ... sufficient to disqualify a judge ... ‘[could not] be defined with precision,’ ” [*id.*, at 822], the test did have an objective component. [Pp. 7–9].

### **NEVADA SUPREME COURT DID NOT ASK *the* RIGHT QUESTION REGARDING DISQUALIFICATION**

Nevada Supreme Court did not ask the right question to apply the proper legal standard for disqualification. The question is whether, “under a realistic appraisal of psychological tendencies and human weakness,” the interest “poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.” [*Withrow v. Larkin* 421 U.S. 35, 47 (1975)]. An "adverse action" is defined as any action that is adverse to the interests of the party. If a judge is an adverse party, how could he ever be neutral and impartial? The fact is, no judge can remain neutral or impartial in that scenario.

## **RESPONDENT FAILS *to* ADDRESS *the* ISSUES PRESENTED**

Respondent starts her opposition discussing a custody issue. However, the issue of custody is not presented before this Court. There are two questions presented before this court, one is whether refusal of the trial judge to recuse violated the petitioner's due process clause and second question is whether NRS 125C.0035(5) is unconstitutional.

On November 6, 2019, Case No. COA-79336, Court of Appeals declared the following: (See Rep. App. C)

**"We conclude that Ali's fundamental rights were violated here."**

The record speaks for itself. Court of appeals said Shahrokhi's fundamental liberty rights were violated. Judges take an oath to uphold the laws and constitution, here the judge violated them. The judge created this situation. Did Petitioner force the judge to violate his liberty rights? Of course not. The judge violated Petitioners' rights, for which he should face legal consequences.

18 U.S.C. 242 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

Judges can be sued under two situations in their personal capacity, (1) in the clear absence of all jurisdictions, and (2) when the judge acts in a manner not performed as a normal judicial function. [*Stump v. Sparkman*, 435 U.S. 349 (1978)].

## **HARRASMENT *is* NOT DEFINED *by* NRS 33.018**

Respondent argues that the family court found Shahrokhi had committed domestic violence. Then she goes on to reference NRS 33.018,

(acts constituting domestic violence). However, there is nothing under NRS 33.018, that lists or defines NRS 200.571 (“harassment”) as an act of domestic violence. The trial judge acted in the clear absence of all jurisdiction to make any findings pursuant to NRS 200.571, (“harassment”). Respondent acknowledges and confirms that the trial judge lacked subject-matter jurisdiction to do any fact-finding that is not considered acts of domestic violence pursuant to Nevada’s own statutes, defined by NRS 33.018. Any fact finding without subject-matter jurisdiction is null and void.

**THE JUDGE *was* NOT EXONERATED by  
NEVADA COMMISSION *on* JUDICIAL DISCIPLINE**

Respondent is twisting facts and misleading the Court. The final letter of Nevada’s Commission on Judicial Discipline was presented to this Court as an appendix. Nowhere in that letter it states the judge was exonerated on anything. In fact, the commission letter goes to state the following:

Dear Mr. Shahrokhi:

As you are aware, your complaints filed with the Nevada Judicial Discipline Commission (the “Commission”) were considered by the Commission at its meetings on **October 18, 2019, March 6, 2020, and June 19, 2020**, where it authorized extensive investigations regarding the merits of your complaints. Commission investigators conducted interviews and gathered numerous documents. The Commission met again on October 23, 2020, and based on the results of the investigations and **the issuance of the Nevada Supreme Court’s Opinion in Hughes v. Nev. Comm’n on Judicial Discipline, 136 Nev. Adv. Op. No. 46, filed on July 16, 2020**, the Commission has dismissed your complaints.

Please note that **the Nevada Supreme Court rebuked the Commission for filing public charges against Judge Hughes and reversed its imposition of discipline**, directing that the Commission should not initiate disciplinary proceedings over legal decisions or factual

**findings where relief may ordinarily lie in the appeals process.** The Nevada Supreme Court further proposed that in such cases, the Commission should “dismiss the complaint without holding a hearing and issue a non-disciplinary letter of caution.” Although the Commission has dismissed your complaints, **it has taken what it considers to be appropriate action under the circumstances.** Thank you for bringing the facts set forth in your complaints to the Commission’s attention.

**THERE *is* NO PRIVATE RIGHT *of* ACTION *to bring* CRIMINAL ALLEGATIONS in CIVIL SETTINGS**

Whether NRS 125C.0035(5), authorizing a judge to act as the prosecutor, is constitutional, is Petitioner’s second question presented to this Court. The judge must be a dis-interested party in any legal proceeding. The judge cannot bring charges and be the trier of facts as to those charges. Remarkably, NRS 125C.0035(5) allows judges to be the judge and the prosecutor at the same time.

Respondent, herself acknowledges there was no indictment, no notice of alleged crimes. So who came up with charging the petitioner with NRS 200.571, (“harassment”), or NRS 200.575, (“stalking”). The judge did. The judge brought those charges on his own without any criminal complaints or indictment before the court, convicting the petitioner violating NRS 200.571, (“harassment”), and NRS 200.575, (“stalking”).

Nowhere in the record has Respondent ever accused Petitioner of violating NRS 200.571, (“harassment”), or NRS 200.575, (“stalking”). The judge chose those statutes on his own, provided no adequate notice to Petitioner and the judge convicted the petitioner on his own accord to his liking.

Notably, the Supreme Court of Nevada has decided an important question of federal law in a way that conflicts with relevant decisions of this

Court and other federal courts, which this Court needs to settle, and that question is, whether private individuals can bring private “criminal” causes-of action for harassment, NRS 200.571, in civil proceedings for relief. In contrast, federal courts take the position that there is no private right of action to allege crimes in a civil setting. Nevada claims because Petitioner was not sentenced to jail or prison time, he can be convicted on a criminal statute in a civil proceeding (which has now affected Petitioner’s Second Amendment right to bear arms).

NRS 125C.0035(5), authorizes a single judge to be a special prosecutor at the same time of being a judge, fact finding criminal statutes in a civil setting, and then having a list of menus of criminal acts to choose from on a sole discretion of the single judge after the trial convicting litigants.

Supreme Court of Nevada holds that, because the petitioner was not punished to jail or prison time, a single judge can do criminal fact findings and convict litigants in a civil proceeding and private parties have a right to private actions on criminal statutes in civil proceedings with clear convincing standard of proof. However, the federal courts have a different standing on this issue which is in compliance with this Court’s case precedents where NRS 200.571, (“harassment”), a Nevada state criminal statute does not give rise to a private right of action. [See, *Lewis v. Nevada*, [U.S.D.C., District of Nevada, Case No. 3:13-cv-00312-MMD-WGC (D. Nev. Jan. 6, 2014)].

The split decision between the State’s highest court and the federal courts is troubling where they affect all the citizens of Nevada’s constitutional rights, including Petitioner. The split of authority—between state and federal—needs to be settled by this Court.

## THE TRIAL JUDGE COMMITTED SUICIDE

The trial judge was a deeply troubled individual who struggled with serious mental illness, the evidence clearly proves that the trial judge was psychotic and severely mentally ill.

On November 9, 2022, the trial judge took his own life with a self-inflicted gunshot wound. Nevada has not been transparent disclosing how long he was mentally ill, why he committed suicide and how long before his death he was put on administrative leave. But clearly, he was not judge material, and his actions and behaviors throughout the years confirm such disability.

Apparently, his ongoing battle with mental illness took a significant toll on his well-being, and he ultimately fell victim to the devastating effects of this debilitating condition and he killed himself and cheated his own death. In conclusion, the evidence clearly shows that the trial judge was suffering from a serious mental illness, and his struggle to cope with this condition had a profound impact on his life on the bench. Despite his best efforts, he was ultimately unable to overcome the challenges posed by his mental health issues, and his untimely suicide serves as a tragic reminder of the importance of addressing and treating mental illness of judges. (See Rep. App. D & E)

## SUMMARY

For the foregoing reasons, Shahrokhi respectfully requests that this Court grant his *Petition for a Writ of Certiorari* and vacate the decision of the Nevada Supreme Court. In the alternative, he requests that this Court grant the petition, vacate the state court's decision, and remand for further consideration in light this court's precedent cases regarding judicial recusal, such as Rippo v. Baker, [137 S. Ct. 905 (2017)] whether a judge being an

adversarial to the litigant at the time of the 3-day bench trial, there was a high risk of bias that the constitution would not tolerate.

This Court has always held that **“no man can be a judge in his own case”** and **“no man is permitted to try cases where he has an interest in the outcome”**. The trial judge at the time of the bench trial had a personal interest in the outcome of the case. The trial judge was being sued for millions of dollars.

Recusal was required under the principle that every procedure which would offer a possible temptation to the average man as a judge, which might lead him not to hold the balance nice, clear and true between the parties, denies the latter due process of law.

### CONCLUSION

This Court should grant the petition for writ of cert.

RESPECTFULLY SUBMITTED,



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