22-7601
No.

In the Supreme Court of the United States

DANIEL E. HALL, PETITIONER

v.

TWITTER, INC., RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DANIEL E. HALL
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ORIGINAL

April 25, 2023

(10)

I. Questions Presented

1. Was recusal mandatory under § 455(b)(1) where the trial judge's administrative activities had involved her in "disputed evidentiary facts?

2. Was recusal mandatory under § 144 and § 455(a) where a reasonable person might question [the judge's] ability to remain impartial in hearing the case after learning material facts from an extrajudicial source?

3. If recusal is mandatory, would any subsequent orders be void?

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US SUPREME COURT

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IV. Petition for Writ Of Certiorari

Petitioner, "Petitioner", Daniel E. Hall, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit against Defendant, Twitter, Inc.. See Verogna v. Twitter, Inc., 2020 DNH 152 (D.N.H. 2020), currently as Daniel E. Hall v. Twitter, Inc. Case No. 1:20-cv-536-SE in the U.S. District Court District of New Hampshire. This case is intertwined with case USAP1 No. 22-1364, Verogna v. Johnstone, et. al., "Sister Case" in which a Writ to this court was submitted on April 17, 2023.

V. Opinions Below

On January 25, 2023, the Court of Appeals for the First Circuit denied Petitioner's Petition for Rehearing and Rehearing En Banc; Case-22-1987, [App. 1]

> "The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied."

By: Barron, Chief Judge, Lynch, Kayatta, Gelpí and Montecalvo, Circuit Judges.

On December 30, 2022, the Court of Appeals for the First Circuit denied Petitioner's Writ of Mandamus. Case: 22-1987. [App. 2]

> "Petitioner has filed a petition for writ of mandamus asking this court to direct the district court judge to recuse and to transfer the case to another venue. We conclude that the extraordinary remedy of mandamus relief is not in order. See *In re Justices of Superior Court Dep't of Massachusetts Trial Court,* 218 F.3d 11, 15 (1st Cir. 2000) (general mandamus principles). The petition for a writ of mandamus is denied."

By: Lynch, Kayatta and Montecalvo, Circuit Judges.

On November 23, 2022, the District Court "Judge Elliot" denied Petitioner's Doc. 104 Motion for Recusal of herself, Samantha E. Elliot. [App. 3]

11/23/2022		**ENDORSED ORDER denying 104 Motion for Recusal of Samantha E. Elliot ; denying 105 Motion to Move District. *Text of Order: Denied. The plaintiff's motions fail to raise any cognizable legal or factual basis that would require either recusal or transfer to another district.* So Ordered by Judge Samantha D. Elliott.(vln)** (Entered: 11/23/2022)

VI. Jurisdiction

Petitioner's motion for rehearing or hearing en banc was denied on January 25, 2023. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the First Circuit Court's judgment.

VII. Constitutional Provisions Involved

The Order [App. 3] violates Petitioner's constitutional rights of the Due Process Clause of U.S. CONST. AMEND XIV, which requires recusal as Judge Elliot is a fact witness's to Magistrate Johnstone's illegal policy, and has gained personal knowledge of material facts outside of the case and also violates Petitioner's rights Due Process under the U.S. CONST. AMEND V as actual bias exists as Judge Elliot, in her administrative duties, voted twice in favor despite Magistrate Johnstone's utilization of illegal policies to favor one party. (Due process guarantees of "an absence of actual bias" on the part of a judge.) *In re Murchison,* 349 U. S. 133, 136 (1955). *** (due process requires, at a minimum, an impartial tribunal.) *Mullane v. Central Hanover Bank* (1950).

VIII. Statement of the Case

In this case regarding the recusal of Judge Elliot and in the Sister Case regarding the recusal of Chief Justice McCafferty, both judges, and subsequently many judges from the First Circuit, all failed to grasp the rather simple concept proscribed by 28 U.S.C. § 455 in that a judge shall disqualify herself where [s]he has . . . personal knowledge of disputed evidentiary facts concerning the proceeding. Their opinions and panel opinions disregard current laws, rewriting statutes such as § 455(b) and longstanding cases such as *Liteky v. United States*, 510 U.S. 540, 548 (1994), where "[r]ecusal [is] required whenever `impartiality might reasonably be questioned.'" Id. See § 455. While recusal issues may be diminutive or perhaps trivial, these decisions have powerful ramifications as to where and when a particular federal judge receives personal knowledge of disputed evidentiary facts through their administrative duties and whether those facts learned are to be considered personal knowledge and therefore requiring recusal under § 455.

Here, Petitioner can prove that Judge Elliot has gained personal knowledge of disputed evidentiary facts outside the case. He can prove a reappointment commission was formed to reappoint Magistrate Johnstone, and that Judge Elliot was a member of that Commission. He can prove that he sent letters to the Merit Panel commenting on and documenting Magistrate Johnstone's past acts of giving Twitter 66 favors through her illegal pro hac vice policies, and that these comments were compelled by statute to be discussed between the Merit Panel and the Commission Members, including Judge Elliot. Because these administrative

"meetings" of the Members are secretive, we will never hear the whole truth of what was said and by whom. But we do know that by statute and duty of all involved, Magistrate Johnstone's illegal policies were and had to have been discussed. A reasonable person would also believe that statutorily Magistrate Johnstone was given a chance to explain herself and her prior actions in her job regarding the alleged constitutional violations regarding the Petitioner's claims, and without any cross examination from the Petitioner. In essence, Petitioner's "incontrovertible proof" of claims in both cases regarding Magistrate Johnstone's illegal policies, which unconstitutionally biased the court in favor of Twitter, were decided behind closed administrative doors and without the Petitioner present, in which all Members voted two times to reappoint Magistrate Johnstone to another term despite the well documented unconstitutional acts of promulgating her own rules to benefit one party. This Article III judge Commission included Judge Laplante, Judge Paul Barbadoro, Judge Joseph A. DiClerico Jr and Judge McAuliffe, (who was the judge of this Twitter case at the same time), including Magistrate Johnstone, allowed Twitter Attorneys to practice before the court without the proper bar credentials. The commission also included Chief Justice McCafferty who was chief justice when these illegal policies were being implemented or otherwise utilized in Twitter court cases within the district. So 4 out of the 5 judges had an interest in the outcome and, right, wrong or indifferent, came to the conclusion to reappoint Magistrate Johnstone to another term despite Petitioner's claims the Magistrate Johnstone violated his constitutional rights via her illegal policies which favored Twitter.

In this case, Judge Elliot, guided by her Article III Administrative Duties, vetted, inquired, investigated and voted in favor of Judge Johnstone's illegal policies and in favor of Twitter. Now she wants to preside over this case in which she has already learned the identical material facts outside the case and has already made her mind up concerning Magistrate Johnstone's acts, through the reappointment commission and her votes on that commission. Moreover, Judge Elliot made this commission decision with a "Pro government" position of rehiring an employee and not that of a pure jurist. So when Judge Elliot makes any such decisions in this case as to whether Twitter's Doc. 3 Motion to Dismiss should be struck or voided because it is illegal on its face and illegal as part of the fraud upon the court to utilized Judge Johnstone's illegal policies would and have violated Petitioner's due process rights which guarantees "an absence of actual bias" on the part of a judge. In *re Murchison,* 349 U. S. 133, 136 (1955). (due process requires, at a minimum, an impartial tribunal.) See also, *Mullane v. Central Hanover Bank* (1950).

1. REAPPOINTMENT COMMISSION

Late in 2021, Magistrate Johnstone filed administrative paperwork seeking to be re-hired for another 8 year term as a Magistrate Judge, which triggered a reappointment "Commission" of all current Article III judges, including Judge Elliot, within the court to determine her reappointment by first authorizing a Merit Selection Panel inquiry and with a Notice to the public on or about January 2, 2022. On January 13, 2022, Petitioner, aka Petitioner Verogna, filed a comment to this Merit Selection Panel. Within these comments, Petitioner cites his [Rule 60 Motion,

at 74] which alleges fraud upon the court and constitutional violations via Magistrate Johnstone's illegal policies. On February 28, 2022, Petitioner, aka Petitioner Verogna, filed an amended comments to the Merit Selection Panel, attaching his motion to vacate, which again, alleges fraud upon the court and constitutional violations via Magistrate Johnstone's illegal policies. On June 16, 2022, Magistrate Johnstone was reappointed to a second eight-year term.

When the court has determined that it desires to consider the reappointment of the incumbent and the public notice has been published, the panel does not take applications for the position. It merely reviews the incumbent's performance in office as a magistrate judge, and considers comments received from members of the bar and the public, and any other pertinent evidence as to the incumbent's good character, judgment, legal ability, temperament, and commitment to equal justice under the law. The panel and the court itself should determine how the panel should appraise the incumbent's performance. All written comments should be considered carefully. An interview with the incumbent would generally be useful. Also the panel might want to interview selected individuals who have actual and reliable knowledge of the incumbent's performance. To encourage candor, the panel should assure individuals who comment on the incumbent's performance that their names will not be disclosed. As a matter of fairness, however, the magistrate judge should be given an opportunity to appear personally before the panel to respond to any negative comments that have been received and to answer any questions regarding his or her performance.

Magistrate book, Pges. 39-40. Reappointment Of An Incumbent Magistrate Judge To A New Term.

2. EVIDENCE IN FRONT OF COMMISSION

The Court was noticed of Judge Johnstone's illegal policy on March 18, 2021, Petitioner filed Doc. 74, Exhibits at 74.1 and on April 16, 2021, McAuliffe Recusal Motion, Doc. at 77, and with the [COMPLAINT, at 1], filed in Case No. 1:21-cv-01047-LM on December 9, 2021, Petitioner has made well known to the Court Judge Johnstone's actions such as promulgating and utilizing illegal policies; disregarding laws; using the judge's office to obtain special treatment for the defendant Twitter; and among other acts committed in; Case No. 1:19-cv-009 78-JL, involving Justice Joseph Normand Laplante and Judge Johnstone, which was live from September 17, 2019, through January 28, 2021; Case No. 1:17-cv-00733-PB, involving Justice Paul Barbadoro and Judge Johnstone, which was live from December 21, 2017, through April 25, 2019; Case No. 1:18-cv-00203-PB, involving Justice Paul Barbadoro and Judge Johnstone, which was live from March 5, 2018, through April 4, 2019; Case No. 1:17-cv-00749-JD, involving Justice Joseph A. DiClerico Jr. and Judge Johnstone, which was live from December 21, 2017, through June 12, 2018. Also, the Article III judges received notice of Judge Johnstone's illegal policy through comments submitted on January 13, 2022, and as amended on February 28, 2022. Magistrate book, Pges. 39-40.

3. PETITIONER'S MOTION TO STRIKE

Early in this case Petitioner motioned to strike Twitter's Doc. 3 motion to dismiss because it was submitted by a non-bar member and was therefore illegal under state law and void ab initio, which went unanswered by the Court. While on interlocutory appeal to the First Circuit regarding Petitioner's true identity, Petitioner identified that the District Court, through Magistrate Johnstone's illegal policies, allowed Twitter Attorneys to practice at bar in prior cases 66 times "Favors" despite not meeting the requirements of the bar, and therefore creating an unconstitutional and biased court. On March 18, 2021, Petitioner filed an emergency Rule 60 motion noticing the court and alleging fraud upon the court, which was denied as the case was still on appeal. Upon return to the District Court, Twitter revived its Doc. 3 motion, which again was attacked by Petitioner on the same and additional grounds of fraud upon the court. See [Doc.100, Petitioner's Motion to Strike] Petitioner's motions were denied again, (without addressing the State issues first). Currently, this case is stayed in the District Court pending Petitioner's appeal for a Writ of Mandamus pertaining to Judge Elliot's Recusal.

IX. REASONS FOR GRANTING THE WRIT

A. TO STOP THE CONTINUOUS VIOLATION OF THE LAW

Here, Judge Elliot, through her administrative duties as an Article III judge serving on the reappointment commission to reappoint Magistrate Johnstone (from December 2021 until about June 2022) involved her in disputed material evidentiary facts as disputed in Petitioner's Doc. 100 Motion to Strike and other motions before the court. Both the Commission and the Petitioner's case directly involve disputed

evidentiary facts regarding Magistrate Johnstone's illegal policy of allowing Twitter attorneys to practice before the bar of the court 66 times, although they lacked the credentials or authorization to do so. "The language of § 455(b) is unequivocal: [A judge] shall also disqualify himself in the following circumstances: (1) Where he has . . . personal knowledge of disputed evidentiary facts concerning the proceeding.

Because Judge Elliot was an Article III judge serving on the Reappointment Commission, she had a duty to investigate, because she has participated in an administrative process which gave her personal knowledge of material facts outside the case. Adjudicating a case where he was also an investigator for the government.) *Johnson v. Carroll,* 369 F.3d 253, 260 (3d Cir. 2004). (where the appearance of partiality exists, recusal is required). See 28 U.S.C. § 455; *Liteky v United States*, at 510 U.S. at 548, 114 S.Ct. at 1153-54; *Blizard v. Frechette,* 601 F.2d 1217, 1220 (1st Cir.1979). 28 U.S.C. § 455(b)(1) states that a judge shall disqualify herself... "where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding." 455(b)(1)--does not require that bias or prejudice in fact be established. *United States v. Chantal,* 902 F.2d 1018, 1023 (1st Cir.1990). It does mean that where the appearance of partiality exists, recusal is required regardless of the judge's own inner conviction that he or she can decide the case fairly despite the circumstances. *Blizard v. Frechette,* 601 F.2d 1217, 1220 (1st Cir.1979). Section 455 is primarily concerned with knowledge gained "outside a courthouse". In Judge Elliot's case, knowledge acquired in an administrative capacity as an Article III judge, has not entered the record to which it

may be controverted or tested by the tools of the adversary process. . . . Off-the-record briefings in chambers leave no trace in the record—and in this case Judge Elliot would be forbidding any attempt at legitimate reconstruction. . . . This is 'personal' knowledge . . . ." *Edgar v. K.L.*, 93 F.3d 256, 259 (7th Cir. 1996).

"The test under Section 455(a) is whether an objective, disinterested, lay observer fully informed of the facts on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Chandler*, 996 F.2d 1073, 1104 (11th Cir. 1993). Objective test, based on all relevant circumstances. *Liteky v. United States*, 510 U.S. 540, 548 (1994). "Recusal [is] required whenever 'impartiality might reasonably be questioned.'" Id.

Here, Judge Elliot was either compliant with her Article III administrative duties and has investigated Petitioner's claims, and Magistrate Johnstone's illegal policy and thus has personal knowledge or "extrajudicial information" and not what she has learned through the case. Regardless of whether Judge Elliot voted for or against Magistrate Johnstone's re-appointment, a reasonable person would surmise that she along with the other Article III judges have already come to a conclusion on the matter of the Petitioner's case, given her administrative duties to the Court and her personal knowledge of the case.

Because there is a "presumption of honesty and integrity in those serving as adjudicators," *United States v. Morgan,* 313 U.S. 409, 421 (1941); *Schweiker v. McClure,* 456 U.S. 188, 195 (1982); *Withrow v. Larkin,* 421 U.S. 35, 47 (1975), the man on the street under the reasonable person standard would presume that Judge

Elliot diligently discharged her Article III administrative duties and responsibilities and therefore;

a. has personal knowledge of disputed evidentiary facts concerning the proceeding and stemming from an extrajudicial source other than what Judge Elliot has learned from her participation in the case;

b. has personal knowledge of off-the-record briefings in chambers, administrative or other meetings with other justices, clerks or personnel which leave no trace in the record;

c. remains a serious risk that Judge Elliot would be influenced by an improper, if inadvertent, motive to validate and preserve the result obtained through any administrative process of re-appointment.

With evidence of Magistrate Johnstone's illegal policies in hand, Judge Elliot just recently voted in favor to reappoint Magistrate Johnstone for good behavior to another term, partly based on her past performance and merit. (Cannon 3(B)(3)).

With this vote for re-appointment, Judge Elliot, has already decided Petitioners claims such as his , which in turn makes her objectively bias, a material witness under her Cannon 3(B) administrative responsibilities and would make any order from her unconstitutional.

Within the Commission's consideration, all six judges, including Judge Elliot, agreed and decided that Magistrate Johnstone, despite her illegal policy; (1) would be their selection for Magistrate Judge in the next term; (2) was selected pursuant to standards and procedures promulgated by the Judicial Conference of the United

States; (3) Was of good moral character and committed to equal justice under the law; (4) should not be impeached or removed from her current appointment for incompetency, misconduct, neglect of duty; (5) and exercised fairly re-appointment only on the basis of merit. (Cannon 3(B)(3)); which is opposite of what Petitioner alleges in his "Remaining Motions".

Based upon the facts presented, a "reasonable person" would be convinced that bias existed and, certainly, "would harbor doubts" about Judge Elliot's impartiality. This recusal is compelled since Judge Elliot's "impartiality might reasonably be questioned," 28 U.S.C. § 144 and 28 U.S.C. § 455. The Writ should demand that Judge Elliot be recused and that any of her subsequent orders are void.

B. TO STOP THE DEPRIVATION OF DUE PROCESS AS ACTUAL BIAS IS TOO HIGH TO BE CONSTITUTIONALLY TOLERABLE

Appellant has due process rights which guarantees "an absence of actual bias" on the part of a judge. In *re Murchison,* 349 U. S. 133, 136 (1955). (due process requires, at a minimum, an impartial tribunal.) See also, *Mullane v. Central Hanover Bank* (1950).

Due process guarantees "an absence of actual bias" on the part of a judge. When Judge Elliot performed due diligence under her duties prior to the vote on reappointment, she had to have investigated the allegations in the Sister Case to come to an informed decision regarding Magistrate Johnstone's merits and behaviors. Did she interview other employees?, Did she interview the two judges? Or all judges? Did she interview herself. Were damages to potential parties even discussed? When

Judge McCafferty voted with the other five Article III justices to re-appoint Magistrate Johnstone, they did so regardless of her illegal policy, and in the process she/they created actual bias towards Petitioner's case, therefore creating favoritism towards Magistrate Johnstone, which created an unconstitutional tribunal which violates Petitioners rights to Due Process as Judge Elliot failed to recuse herself and produced the Order at Doc. 124. The Order is a clear error of judgment and Judge Elliot has applied the wrong legal standards and neglected the facts in record.

Given Judge Elliott's position as an Article III judge, a conflict arising from her position or participation as the re-appointment of Judge Johnstone in an earlier proceeding, presents a case of actual bias or a high probability of actual bias too high to be constitutionally tolerable because the average judge in Judge Elliott's position would be unlikely to be neutral. Furthermore, if not recused from the case, Judge Elliot would be commingling her duties as administrator, advocate and Judge, would not be an impartial decisionmaker, would be underhanded, and would violate Petitioner's Fifth Amendment rights to an impartial tribunal. Many cases have held that judges must not "become an advocate or otherwise use . . . judicial powers to advantage or disadvantage a party unfairly," *Logue v. Dore*, 103 F.3d 1040, 1045 (1st Cir.).

An example of this actual bias is contained within the subsequent "Order" [Doc. 124]; [App. 3], which was made after Judge Elliot refused to recuse herself. In addressing Petitioner's, [Dkt. 100, Motion to Strike Doc. 3], Judge Elliot's Order blatantly ignores the Rules of Decision Act of 1789 (RDA) when she failed to apply

New Hampshire State law RSA 311:7 prior to ruling upon federal rules of procedure, as there are no federal statutes addressing unauthorized practice of law or fraud upon the Court. The Order also ignores the principles of the Erie doctrine as unauthorized practice of law and intentional fraudulent conduct are substantive law issues in which state law controls the rights and duties of the parties. *Erie Ry. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

Petitioner had motioned the Court to Strike any resurrection of Twitters illegal Doc. 3 Motion to Dismiss because Attorney Schwartz engaged in the unauthorized and prohibited practice of law in New Hampshire as prohibited by N.H. RSA 311:7, and for this Court to accept defendant's Motion and Memorandum submitted by Attorney Schwartz would be tantamount to affixing an ex post facto imprimatur of approval of the unauthorized and prohibited practice of law in violation of N.H. RSA 311:7. The overwhelming facts in this case demonstrate that Attorney Schwartz engaged in unauthorized practice of law in New Hampshire and in violation of N.H. RSA 311:7, ABA Rule 5.5(c)(2) and LR 83.1, prior to and when submitting the Motion and MOL, and would give the appearance of sanctioning the unauthorized practice of law. See *Bilodeau v. Antal,* 123 N.H. 39, 45, 455 A.2d 1037 (1983).

The fraud upon the Court utilized here is not intricate. Start at the Docket of District Court Case No. 1:17-cv-00749-JD. No Motion for Pro Hac Vice was filed by Attorney Mrazik in this case, yet he submitted 7 pleadings to the Court on behalf of and counsel of Twitter. Next go to District Court Case No. 1:18-cv-00203-PB. Again, no Motion for Pro Hac Vice was filed by Attorney Mrazik in this case, yet he submitted

30 pleadings to the Court on behalf of and counsel of Twitter. Next go to District Court Case No. 1:17-cv-00733-PB. Again, no Motion for Pro Hac Vice was filed by Attorney Mrazik in this case, yet he submitted 29 pleadings to the Court on behalf of and counsel of Twitter. In each of Attorney Mrazik's submittals to the Court, he stated to the effect, "(motion for pro hac vice admission to be filed)" Then comes Petitioner's case here, Attorney Schwartz submits the Doc. 3 Motion and MOL at 3.1, and states in effect the same statements made by Mrazik that "(motion for pro hac vice admission to be filed)" [4], while she was not authorized under the rules and New Hampshire Law, to do so.

Because Attorney Schwartz's motion was part of the fraud upon the Court in which Magistrate Johnstone's illegal policy was benefitting Twitter and therefore it should be struck or voided under federal rules or at least, it should not reward Twitter for its fraud.

Judge Elliot's Order cites *Wolford v. Budd Co.,* 149 F.R.D. 127, 130 (W.D. Va. 1993) noting that its "decision is in accordance with decisions of numerous other federal courts which have refused to dismiss pleadings or motions filed by attorneys not admitted to practice before the court" and cites *Powe v. Boykins,* No. 19-20206, 2 (5th Cir. Jun. 23, 2020), and that Schwartz had been granted pro hac vice before any ruling on the motion to dismiss and that the court has broad discretion to control its own docket and permit the filing of pleadings. (None of these cases cited have alleged that the document or motion was illegal under state law.)

What the Order fails to acknowledge (because it is bias in favor of Twitter) is that it's not just Attorney Schwartz' name on a piece of paper. [It] is a representation that Attorney Schwartz represented Twitter and has submitted the motion along with Attorney Eck, the New Hampshire attorney to the Court, which is illegal under New Hampshire law. If *Wolford* is to be commanding, State law should control the rights and duties of the parties in a federal action founded on diversity, *Wolford v. Budd Co.*, 149 F.R.D. 127, 130 (W.D. Va. 1993), *Erie Ry. Co. V. Tompkins*, 304 U.S. 64 (1938), and not just the federal rules exclusively.

Certainly Judge Elliot has broad discretion under federal rules, but if she does what she must, decide state law first, the complexity of the question is altered from a question strictly involving federal rules or discretion to a question of whether the court should, under the rules and in its discretion, accept a scandalous document which is illegal under New Hampshire law. More importantly, Judge Elliot has made this decision knowing what she knows through her participation in the Commission, and is otherwise tied to that decision. Petitioner strongly argues that Judge Elliot made these decisions not upon the facts of the case, but because she is biased in favor of Twitter and Judge Johnstone.

C. TO STOP THIS INCREDIBLE WASTE OF RESOURCES

Petitioner has alleged in his "Complaint" a claim under 42 U.S.C. § 1981 that he is white and of a protected class. And that; the defendant Twitter intentionally discriminated against him because he was white, while simultaneously, similarly situated non-whites were treated differently even though they have committed

similar or worse acts, which gives the appearance of racial disparity in the issuing of discipline for virtually the same or less infraction and invokes the notion of treating two persons differently on the basis of a certain characteristic that only one possesses. And as a result, Petitioner suffered equitable losses, compensatory damages, suffered damages, and continues to suffer, including, but not limited to, insult, pain, embarrassment, humiliation, emotional distress, mental suffering, and injury to his personal and professional reputations, including general or special damages, costs, and other out of-pocket expenses. 42 U.S.C. §1981, regulates private conduct as well as governmental action and prohibits race discrimination in the enforcing of contracts against or in favor of, any race. By a preponderance of the facts recorded herein, a reasonable factfinder could rationally conclude that significant circumstances contribute to the inference of discrimination of at least thousands of whites, including Petitioner, silenced or otherwise oppressed by Twitter locking or banning their contracts, and that these facts demonstrate Twitter's and that of its Workforce, state of mind(s) and that race made a difference in Twitter's decisions and raises an inference that Twitters legitimate reasons such as Health Policies were not it's true reasons for locking and banning the contracts of a white Petitioner and other white users, but were a devised pretext for mass discrimination as a result of the anti-white racial animus held by Twitters', CEO, officers, directors and/or managers, employees and/or agents and that these facts demonstrate the prima facie elements of discrimination which include acts to deprive Petitioner and other similarly situated white users of equal protection of, and equal privileges and immunities under the

laws, in which Petitioner, and the others were treated less favorably than others who are non-white and that this treatment was because Petitioner and other whites, are or were perceived to be white or behaving white, and was not accidental. Additionally, Twitters' CEO, officers, directors and/or managers knowingly and maliciously devised, participated in and condoned the discriminatory conduct as they used their new Health Policy initiative as a pretext to discriminately remove or ban for life the contracts, of perceived or actual white owned accounts like Petitioner's. These accounts did not need to be oppressively ban as Twitter already had a processes in place that would remove any violative tweets not within their policies. Thus, Twitter needlessly and maliciously locked then banned Petitioner's tweets and contract when it should have known, that [it] had already demonstrated that it could, among other things, simply delete the violative tweet and not ban his contract.

Petitioner has alleged claims under 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17 that he is white and of a protected class: and that; Twitter is a place of public accommodation; that he attempted to exercise his right to full benefits and enjoyment of a place of public accommodation; but was denied those benefits and enjoyment because of his race; and was treated less favorably than similarly situated persons who are not members of the protected class; and was required to behave like a non-white person as a condition for admission; and that Twitter owed a duty and breached that duty not to discriminate against the Petitioner in a place of accommodation as described within 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17.

Petitioner has further sought declaratory relief that "Twitter" Inc. is a place of public accommodation within the meaning of 42 U.S.C. §2000a(b) 32 and (c), (2), (3) and (4) and NH Rev Stat § 155:39-a, as its operation of cafeteria's, lunchrooms, lunch counters, soda fountains, motion picture houses, theaters, concert halls or other places of exhibition or entertainment within its many facilities or establishments affect commerce as a substantial portion of the food which it serves or other products which it sells, has moved in commerce within the meaning of 42 U.S.C. § 2000a(b) 2 and (c)2 and NH Rev Stat § 155:39-a, II; hosts many public events within the meaning of 42 U.S.C. §2000a(b) and NH Rev Stat § 155:39-a; Twitter facility in San Francisco contains and houses a covered establishment within its facility, Bon Appetit Management Co., which holds itself out as serving the public and patrons of that covered establishment would, in fact, bring it within the reach and definition of 42 U.S.C. § 2000a(b) 4 and (c)(4).

Petitioner alleged in the Complaint a claim for violations of his constitutional rights. It is because Congress delegated to Twitter Executive policing powers through §230 by which Petitioner was injured. Twitter, endowed by §230 acted as an instrument of Congress. Twitter also has a symbiotic relationship with Congress through §230 to which it assumed the traditional Constitutional and Executive duties of policing speech and other criminal acts which are enforced by State and Local Law Enforcement Agencies, and was in fact acting for Congress and relied on governmental assistance to police its public forum and received many benefits for its work.

"The injury caused" by Twitter to Petitioner and others —the deprivation of free speech rights for posting political views and freedom to assemble thereafter through banning, is most certainly aggravated in a unique way as Twitters' boardroom is led by executives who seek guidance and directives from Congress, content–policy teams led by employees, content moderators, independent contractors, others, in and a part of "Twitter's Workforce" who draft respective public forum' content rules, review complaints about content, and speech and behavior infractions all under the guidance and authority of §230. Even if [its] rules were produced by private consulting firms, it's not unusual for the government to hire private consulting firms and regardless, they have or would have been guided by the municipal or federal powers within the principles of §230 in the formation and the application of those rules used towards U.S. Citizens. Twitters Workforce was in fact working under the direction of Congress to aid in the policing and enforcement of §230.

Petitioner sought declaratory relief pursuant to 28 U .S.C. §§ 2201 and Rule 57 of the Federal Rules of Civil Procedure, that Twitter is a "State Actor" under the law, or minimally, as it applies to Petitioner and within the timeframe of Petitioner's Complaint Twitter, under Federal Authority, while enforcing Section §230, owed a duty to Petitioner under Part I, Articles 22 and 32 of the New Hampshire Constitution and the U.S. Constitution Article [I] Freedom of expression not to discriminate against Petitioner based on race or a viewpoint or behavior-based restriction in a public forum.

Petitioner sought declaratory relief that Twitter computer network, Twitter.com, a Public Forum under the law as §230 regulates through participating volunteers or whistleblowers the private property of Twitters platform or "computer network" for the publics welfare. See *Perry 85 Education Assn. v. Perry Local Educators' Assn.*, 460 U.S., at 45. Similarly, when the Government has intentionally designated a place or means of communication as a public forum, a speaker cannot be excluded without a compelling governmental interest.

The Petitioner challenges the Constitutionality of Title 47 U.S. Code § 230 and submits that he has proper standing, and that such relief will further clarify any uncertainty as to the United States' culpability or liability through respondeat superior, through its policing partner Twitter, or other, or is Twitter alone liable for violations of the Petitioner's Rights. The relief sought will also alert, narrow down or clarify issues effecting both current parties. See Komorowski v. Boston Store, 263 Ill. App. 88, 93-96 (1931). Petitioner further alleged that Section §230 is unconstitutional because it abridges free speech; because it contains content-based restrictions; regulates speech without providing for due process of law; violates the nondelegation doctrine and the separation of powers by placing exercise powers traditionally reserved to the State to a private entity; violates a citizens' First Amendment rights under the U.S. Constitution and the New Hampshire Constitution; encroached on States' policing powers to regulate free speech; fails to provide explicit standards to prevent arbitrary or discriminatory enforcement for those who apply it; and because it is too vague or too broad as (1) it fails to provide people of ordinary intelligence a

reasonable opportunity to understand what conduct it prohibits; (2) it authorizes or even encourages arbitrary and discriminatory enforcement, as Congress lacks authority under the Commerce Act because §230 is criminal in nature and that it is purely non-economic.

Petitioner alleges that Twitter's Contract Venue Forum Clause, "VFC" is invalid, in this case, as it acts as an impermissible prospective waiver of federal and state statutory and Constitutional rights which left Petitioner with no ability to negotiate and would be against public policy in this case because Twitter has the ability to change the terms of the VFC and Petitioner's contract at any time, and at its sole discretion, and with such unilateral power to change the VFC, makes the VFC "illusory"--and thus unenforceable. This VFC seeks to interfere, obstruct or pervert 28 U.S. Code § 1391 in the administration of justice of discriminatory injury claims to residents of New Hampshire by stating in the contract that "all disputes" be settled in a particular, out of state, forum and was designed to discourage parties like Petitioner, who have zero bargaining, zero lack of choice, power or the mental capacity to understand the Federal and State Constitutional rights he may have been giving up at the time, or within the time, he sign the contract, from filing any lawsuit against Twitter. To allow the VFC in this case would be procedural unconscionability and promote this type of breach of the discrimination laws and of the policies behind these laws and would also allow Twitter to insulate themselves from their own negligence and/or wrongful discriminatory behavior and also reward Twitter by having lawsuits where it's power is most influential and would also tend to harm or

severely damage the Citizens of New Hampshire and Petitioner and would be unreasonable, fundamentally unjust, immoral and unfair to expect any Petitioner to bring discrimination claims 3,000 miles away from where the discriminatory acts and Constitutional violations took place.

It has been almost 3 years since Petitioner filed his Complaint and the District Court has yet to apply substantive state law regarding Attorney Schwartz's Doc. 3 submittal and the unauthorized practice of law and as requested by the Petitioner since the beginning of the case. Petitioner is eager to push forward his claims against Twitter, but not by a judge who has learned material facts outside the case and has been proven to be bias in favor of Twitter, or in the least, in favor of Magistrate Johnstone's illegal policies which benefitted Twitter 68 times prior. That would be a waste of everyone's time.

X. CONCLUSION

Judge Elliot's disqualification is thus mandated because of her involvement in the disputed factual issues surrounding Magistrate Johnstone's illegal policies which allowed Twitter Attorneys to practice before the bar, unauthorized. Such personal knowledge vitiates the carefully constructed rules of procedure and evidence that ensure deliberate, unbiased fact finding. Petitioner is entitled to have his case decided by a judge who can approach the facts in a detached, objective fashion. Judge Elliot's partisan efforts to reappoint Magistrate Johnstone and orders [App. 3] regarding Petitioner's Motion to Strike raise legitimate questions about her impartiality in deciding these factual matters. To permit Judge Elliot to decide a case in which she

had extrajudicial, personal knowledge of disputed facts would be contrary to the express language and underlying spirit of the statute, as well as the case law. See *United States v. Alabama*, 828 F.2d 1532, 1545 (11th Cir. 1987)

Additionally, no reasonable person could believe that when Judge Elliot was notified of Magistrate Johnstone's alleged illegal policies, that she didn't do her duty as an Article III Commission Member and inquire into the material facts of Magistrate Johnstone's alleged illegal policies which favored Twitter, regarding the same material facts and in which gained personal knowledge through her administrative position.

The issues presented within this case are too important to be decided under a cloud or by a Court who's judges have given the defendant Twitter, 68 favors in the past, or by a judge such as Judge Elliot, who has personal knowledge that she gained outside the case, within her administrative duties. In decisions such as these, decisions which will affect millions of Americans, public confidence in the judicial system demands a judge free from personal knowledge or biases about the issues before the court.

For this reasons, this petition for a writ of certiorari should be granted and disqualify Judge Elliot and remand for a new trial. See United States v. Alabama, 828 F.2d 1532, 1546 (11th Cir. 1987).

Dated April 25, 2023

Respectfully,

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XI. CERTIFICATE OF SERVICE

As required by Rules 29 and 39, service of a single copy of the foregoing Writ of Certiorari, and Motion in forma pauperis was made upon the Defendant in record, and on this day, through their attorney of record via US First Class Mail to David A. Perez, 1201 Third Avenue, Suite 4900 Seattle, WA 98101- 3099. As a courtesy, I have sent a copy to Demetrio F. Aspiras, via e-mail to daspiras@dwmlaw.com.

As Required by Rules 29 and 39, service of 10 copies and the original of the foregoing Writ of Certiorari, and Motion in forma pauperis was mailed on this day to the Clerk United States Postal Service by first-class mail.

XII. CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains no more than 40 pages, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury and 28 U. S. C. § 1746, that the foregoing CERTIFICATE OF SERVICE and COMPLIANCE are true and correct.

Executed on April 25, 2023

DANIEL E. HALL
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XIII. APPENDIX