No. *23-338*

Supreme Court of the United States

Dr. BYRON V. BUSH
Mrs. KELLY DIANE BUSH
Petitioners Pro Se

v.

FDIC RELIANT BANK
DEVAN D. ARD, JR., Pres. of FDIC Reliant Bank
RICK BELOTE, Sr. V.P. of FDIC Reliant Bank
JAMES G. MARTIN, III
FRANK G. CLEMENT, JR.
STEVEN J. STAFFORD
RELIANT BANCORP, INC.
WILLIAM RONALD DEBERRY
Respondents

PETITION FOR REHEARING
(Pursuant to RULE 44)

Dr. Byron V. Bush
Mrs. Kelly Diane Bush
5601 Cloverland Drive, #142
Brentwood, TN 37027
615-293-3645 / 615-999-8741
bvbush@aol.com / keltybu@aol.com

Herewith, we PETITION this U.S. SUPREME COURT to reconsider their DENIAL of our WRIT OF CERTIORARI. Per Rule 44 (2) of the SCOTUS rules, *"... grounds shall be limited to intervening circumstances of a substantial or controlling effect..."*

Nothing could be more "*substantial or controlling*" than fraud, that is *extrinsic*, beyond the control of any litigant. But even more devious, is fraud that is a "*corruption of the judicial machinery itself*" in which *officers-of-the-court* commit a *fraud-upon-the-court*.

This has worked its way through the courts of Tennessee since 2012, the Nashville District Court, the Sixth Circuit Court of Appeals, and is now in danger of infiltrating SCOTUS.

The APPENDIX submitted with our PETITION FOR WRIT OF CERTIORARI contains the Opinions of State and Lower Federal Courts, a.k.a. the Court **RECORD**. However, repeatedly missing from this Court RECORD of Opinions, Orders, and Rulings, are the "*FACTS surrounding Reliant's alleged-mistake*".

Until these FACTS are openly *acknowledged* and *addressed*, and "*legally considered*", the multiple "*types of fraud*" continue unabated within Federal Courts. The Sixth Circuit's **NOT RECOMMENDED FOR PUBLICATION** only exacerbates and reinforces the hush-secrecy that has plagued this case for the past 12-years. Due Process has been Breached, and JUSTICE has been perverted, now at the Federal level.

Initially, this PETITION FOR REHEARING contained TWO motions: JUDICIAL NOTICE and Rule 60(d)(3) for *FRAUD-UPON-THE-COURT*. However, the SCOTUS Office of the Clerk required correction by stating, "... ***the rules of this Court make no provision for the filing of...***" these two motions. But in the presence of missing "*conflicting evidence*", if not SCOTUS, then *WHO*...?

PETITION FOR REHEARING
WRIT OF CERTIORARI
USCA6 No. 22-5656

The Due Process Clause of the FIFTH and FOURTEENTH AMENDMENTS of the U.S. CONSTITUTION state that no person shall be *"deprived of life, liberty, or property without due process of law..."*

Yet, that is exactly what has occurred in the State of Tennessee and now in the U.S. Federal District and Circuit Courts. Due Process is not [*or should not be*] conditioned on whether or not you are currently or formerly a U.S. President, nor about your red or blue political Party status, nor on your financial condition, or any other connections to the "*in-crowd*".

Due Process has been best defined by one word... "*fairness*" ... in applying the Rule of Law.

- Is it "*fair*" for courts to intentionally and repeatedly *leave-out* or withhold, i.e. "*pretermit*" relevant and material facts that support and prove Petitioners allegations of a fraudulent Breach of Contract by an FDIC Bank and the resultant injuries to Bushes?
- Is it "*fair*" for State and now Federal Judges to omit SWORN TRIAL TESTIMONY given by FDIC Bank officers, from *every* Court RECORD of Opinions, Orders, and Rulings, that exposes their fraudulent Breach of Contract, and causes intentional financial and emotional injury to Bushes for *twelve-years*?
- Is it "*fair*" for Federal District and Sixth Circuit Courts to ignore Bushes' MOTIONS FOR SUMMARY JUDGMENT and JUDICIAL NOTICE with no

mention of the missing Undisputed Facts, on ***three*** separate occasions, not even once openly considering the SWORN TESTIMONIAL FACTS given by FDIC Bank officers, that prove their fraud?

- Is it "***fair***" for a Federal District Court, in determining whether or not they have *"factual jurisdiction*" and which requires "***conflicting evidence...***" to *leave-out* Bushes' "*conflicting-evidence*" contained within Bushes' MOTION FOR SUMMARY JUDGMENT and JUDICIAL NOTICE, in the same manner as occurred in TN State courts; thereby *conspiring* again to omit this SWORN TRIAL TESTIMONY by FDIC Bank officers, thus completing the fraudulent breach?
- Is it "***fair***" for the Sixth Circuit Court to leave-out "*quotations*" of SWORN TRIAL TESTIMONY, contained in Petitioners JUDICIAL NOTICE with Undisputed "FACTS" and then with a broad brushstroke conclude, that they are no more than "*baseless allegations...*"?
- Is it "***fair***" for judges to undermine the very fabric of justice, in a "***malicious and corrupt manner***" with no relief for Bushes... or consequence for their actions?
- Is the CONSTITUTION's "***fairness***" or **Due Process** no longer required or guaranteed to protect Citizens, when judges with this "*sovereign immunity*" act in a "***malicious and corrupt manner...***"?
- IF the "***fairness***" of Due Process is *knowingly* and *intentionally* violated against citizens... does not that constitute a willful Breach of Due Process... or a "*corruption of the judicial machinery itself*" ... hence a ***fraud-upon-the-court***?
- Lastly, WHY would this be occurring? WHY would judges leave-out relevant and material facts? WHY

JUDICIAL NOTICE of the "FACTS"

In the APPENDIX submitted with our PETITION FOR WRIT OF CERTIORARI, beginning on page 94, is **PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE** of the "***FACTS surrounding Reliant's alleged-mistake***". This will be the 4th attempt by Petitioners, simply to have SWORN TRIAL TESTIMONY by FDIC Reliant Bank officers *acknowledged*, *addressed*, and *legally-considered*, and thereby entered into the Federal Court RECORD.

The Undisputed Facts, page 117, are *"201 (a) **adjudicative fact(s)**... (b) not subject to reasonable dispute" [and] (c) The court: (2) **must take judicial notice if a party requests it** and the court is supplied with the necessary information... (d) **at any stage** of the proceeding."*

This should include the U.S. SUPREME COURT which is charged with oversight of all state and lower federal courts, to ensure that Due Process is "***fairly***" applied for the protection of all U.S. Citizens.

FDIC Reliant Bank's officers gave SWORN testimony during the 2014 Trial, that the Loan NOTE and Third Party Security Agreement which they prepared in 2007 for the Bushes as a ***non-recourse*** Loan, and had presented as "***true and correct***" to the Chancery Court in a SWORN AFFIDAVIT *twice* in 2013 to begin the Deficiency Judgment proceedings... was now a

* "***mistake***..." hence, the NOTE was no longer "***non-recourse***" or "***true and correct...***"
* The "***Bank's mistake...***"
* "***NOT*** *the Bushes' mistake...*"

* Which bank Sr. V.P. Rick Belote had "*discovered in 2010... or 3-4 years earlier...*"
* But "***never told the Bushes... and wouldn't have told the Bushes if they had asked...***" while knowing the injury it would cause if they ever defaulted... and
* The Sr. V.P. then testified that upon discovery, he "***made it a point to ensure the Bushes did not renew the third party agreement...***" by his "***silence***" and intentional concealment of the "***mistake***", and... by ***alteration*** of Renewal documents... thus...
* FDIC Reliant Bank and their officers committed *fraud*... YET,

---

This SWORN TESTIMONY HAS NEVER BEEN ENTERED INTO THE COURT RECORD...

Therefore, Petitioners herein, now AGAIN, formally request JUDICIAL NOTICE, of these FACTS... contained in the APPENDIX [*beginning on page 117*] of our WRIT OF CERTIORARI.

RULE 60 (d)(3)
"FRAUD UPON THE COURT"

When *fraud-upon-the-court* occurs, it is not the "*court*" that committed the fraud, but rather an *officer-of-the-court...* who in some way, *intentionally* deceived or "*corrupted the judicial machinery itself*". [1]

This is vastly different from a "Harmless Error. [2]

---

[1] Petitioners gave multiple and adequate reference to statutes and case law in our PETITION FOR WRIT OF CERTIORARI. We will not repeat those herein.

[2] "**Rule 61. Harmless Error**: *Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is*

Instead, **Federal RULE 60 (d)(3)** states,

> *"OTHER POWERS TO GRANT **RELIEF**. This rule does not limit a court's power to: (3) **set aside a judgment for fraud on the court."***

This may arise from a motion, or spontaneously from a court which recognizes that an injustice has occurred, knowing that the Statute of Limitations never expires in the presence of *FRAUD-UPON-THE-COURT.*

The official duty of any *officer-of-the-court*, is or should be, to assure that Due Process, or "***fairness***"... in applying the Rule of Law... is upheld. Judges are human, that is, they can make a "*mistake*" or inadvertently distort or *leave-out* facts. But when the relevant and material FACTS of one-party ONLY are consistently and repeatedly omitted, or "*pretermitted", a p*attern becomes crystal clear of intentional dereliction of official duty. This is especially true when these FACTS are presented time and time again in Motions, Briefs, Petitions and Oral Arguments, over *12-years.*

Petitioners have never argued that Defendant State Judges, or now the Federal Judges of the District or Circuit Courts are evil, but rather that they have contributed to a "*deceit*" of the Court they were entrusted to serve. Perhaps they were on a defensive power-trip, or attempted to *protect their peers*, or worse yet, have been *paid-off.* Regardless of the reason, they have intentionally, either consciously or sub-consciously

---

*ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects **that do not affect any party's substantial rights**."* Bushes rights have been violated!

perverted Due Process and JUSTICE, and in so doing, caused *12-years* of injury to Bushes.

Whether or not the actions of these court officers' subjects them personally to damages, or whether they are "*sovereignly immune*" does not take away from the FACT that Petitioner/Bushes' Due Process has been violated, and injuries were sustained... and... a remedy for those injuries is available per State and Federal Rule 60's.

When a final OPINION from State Appellate Court states, "***Bushes were not entitled to relief regardless of the type of fraud alleged...***"it becomes apparent that that officer, acting on behalf of the court, is either morally ignorant of the law, or simply doesn't care.

The Undisputed FACTS of this case [*within the APPENDIX of the WRIT*], makes it abundantly clear that relevant and material FACTS were omitted, i.e. "*pretermitted*". This was even admitted too by Defendant Stafford in his final OPINION, stating ***"All other issues not specifically addressed have been pretermitted"***. He then doubled-down stating, "***Pretermitting issues is a long-standing practice in Tennessee courts"***. How can that be "***fair...***"?

These are revealing and damaging admissions by a court officer, which have affected many injured litigants, and are contrary to every precept of Due Process, or "***fairness***"nor do they in any way uphold the Rule of Law.

This pattern, began in Tennessee State Courts, was the very reason this matter was brought to the Nashville Federal District Court in Fall of 2021. Bushes filed our MOTION FOR SUMMARY JUDGMENT with

MEMORANDUM OF LAW and UNDISPUTED FACTS. FDIC Reliant Bank officers then responded through counsel. It was then *deliberately* ignored by the Magistrate Judge [3] who recommended DISMISSAL WITH PREJUDICE. The District Judge then determined that jurisdiction must first be established, and "*the court must weigh the conflicting evidence...*" [APPENDIX, page 38] Yet, he then proceeded to omit, any and all mention or reference to Petitioners' "*conflicting evidence*" contained within the MOTION FOR SUMMARY JUDGMENT. Only the facts contained within the court RECORD were referenced in his DISMISSAL W/O PREJUDICE. Therefore, the District Court NEVER "*HEARD... or RECORDED*' Petitioners' FACTS. The "Honorable Court" ONLY "***knows***' what its officers "*tell*" *it.* "*Judges are not the court.*"

The pattern then proceeded to the 6th Circuit Court of Appeals in Cincinnati, whereupon a MOTION FOR JUDICIAL NOTICE was filed with Undisputed FACTS... but, were AGAIN "*pretermitted*", *left-out*, brushed-aside, NEVER mentioned or acknowledged, NEVER "*legally considered*". To this day, the Sixth Circuit "Court" does not "***know***" or have ANY KNOWLEDGE concerning Petitioners' FACTS. The officers "***know***" ... but NOT the Court. To the Court, they are no more than "***baseless allegations...***" and, to top it off, the Order is NOT RECOMMENDED FOR PUBLICATION.

The **APPENDIX** filed with this SUPREME COURT in Petitioners" WRIT OF CERTIORARI contains the Undisputed FACTS with SWORN TRIAL TESTIMONY...

---

[3] APPENDIX, page 11 footnote, MAGISTRATES REPORT & RECOMMENDATION.

yet, these FACTS are NOWHERE to be found in either the State or Federal Court RECORD. Petitioners have been robbed of their Due Process. The Rule of Law has been violated. The Honorable Federal District and Circuit Courts have now been deceived... "*corrupted*".

WHY...? HOW can SWORN TRIAL TESTIMONY, given by FDIC Bank officers during the 2014 Trial, be no more than "*baseless allegations*"?

WHY would "*conflicting evidence*" be required, then omitted or "*pretermitted*" from the District Court's analysis, to determine a "*factual*" basis for jurisdiction?

And WHY would this SWORN TRIAL TESTIMONY be *left-out* again in lower Federal Courts, when that was the sole basis for removal from State Court?

Therefore, Petitioners do hereby request RELIEF from a final judgment, per Federal Rule 60 (d)(3) for "***FRAUD-UPON-THE-COURT***" that has infiltrated and now deceived Federal Courts. Since there is no Statute of Limitations or other time limit for filing, and since this U.S. SUPREME COURT is empowered and obligated to oversee and ensure CONSTITUTIONAL DUE PROCESS and "***fairness***" to all U.S. Citizens, and since these are new grounds upon which a PETITION FOR REHEARING is justified, and since failure to REHEAR would result in rewarding those officers who acted in a "*malicious and corrupt manner...*" and deserve no reward regardless of ANY immunity available, and since FDIC Banks should "*prepare their documents accurately... and immediately notify and fulfill their Duty to Disclose to those who would be injured by any mistake discovered... and should NOT conceal or alter their FDIC Renewal*

documents for 3-4 years, which unlawfully changes the "terms of the contract" [T.C.A. 47-50-112], *and... when substantial injury would result..."*

Petitioners want to be very clear. The 2007 Loan NOTE was **NO** "*mistake...*" but was discussed, and negotiated with Mr. DeVan Ard, president of FDIC Reliant Bank, using a $2.4M commercial property known as StarPointe for collateral, that upon any "*default... may satisfy the Borrower's debt...*" Sr. V.P. Rick Belote "*discovered*" what he alone considered to be a "*mistake*" in 2010, but instead of immediately disclosing to Bushes, "***made it a point to ensure that the Bushes did not renew the third party agreement...***" thereby, secretly changing the terms of the Loan NOTE, from *non-recourse* to fully *recourse*. Instead of forthrightly "*legally considering*" this SWORN TESTIMONY, court "*officers*" have *conspired* to "*pretermit*" or *intentionally leave-out* from all state and federal court records, making a mockery of "***fairness***" or of Petitioners' Due Process rights.

CONCLUSION

In a recent article by Jon Dougherty, entitled, "**Trump Lawyer Habba: '100 *Percent* Sure SCOTUS Will Overturn Colorado Ballot Rulings**', Alina Habba stated,

> ***"And there is no question in my mind. Due Process exists for a reason. There has to be some America left. There just has to be. And this was a very, very, I mean such a ridiculous decision that I'm not even concerned that the Supreme Court will make the right decision here."***

Some would argue, "*But that is for the President of the United Staes... Of course, SCOTUS will hear...*"

But to them, I would reply, ***"No... that is NOT the deciding issue. The issue is Due Process, or "fairness" in applying the Rule of Law. For without Due Process, this country is just a banana republic."***

Therefore, Petitioner Bushes prayerfully request a REHEARING to restore Due Process by this High Court, or a Court of its choosing, that JUDICIAL NOTICE of the UNDISPUTED FACTS be granted, and that RELIEF from *12-years* of injury be given, per RULE 60 (d)(3) for "***FRAUD-UPON-THE-COURT***".

Respectfully and prayerfully submitted,

Dr. Byron V. Bush, *Petitioner*
Kelly Diane Bush, *Petitioner*
5601 Cloverland Drive #142
Brentwood, TN 37027
(615) 293-3645 / bvbush@aol.com
(615) 999-8741 / keltybu@aol.com

"Truth will ultimately prevail where there [are] pains taken to bring it to light."
George Washington

CERTIFICATE OF SERVICE and COMPLIANCE, as a SWORN AFFIDAVVIT

We hereby certify that three copies of Petitioners' PETITION FOR REHEARING were served on or before January 23rd, 2024 to Respondents, by first-class mail, postage prepaid.

Counsel for Reliant Bancorp, Inc., William Ronald DeBerry, Reliant Bank, DeVan D. Ard (deceased), Jr. and Rick Belote

Stephen M. Montgomery
Dickinson Wright
424 Church Street, Suite 800
Nashville, Tennessee 37219-6009

Counsel for Frank G. Clement, Steven J. Stafford, and James G. Martin, III

Ms. Mary McCullohs
Office of the Attorney General
John Sevier State Office Building
500 Charlotte Avenue
Nashville, Tennessee 37219

Petitioners' file this PETITION FOR REHEARING with less than 2,600 words, as a SWORN AFFIDAVIT, under penalty of perjury, that the matters contained herein are "true and correct". We further certify it is presented in good faith and not for delay.

Dr. Byron V. Bush Mrs. Kelly Diane Bush

5601 Cloverland Drive, #142
Brentwood, TN 37027
615-293-3645 / 615-999-8741
bvbush@aol.com / keltybu@aol.com