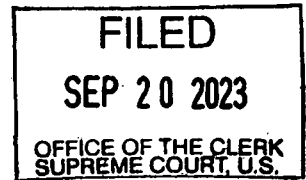


No. **23 - 5651**



IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

**HARRY J. WILLIBY, PETITIONER**

**VS.**

**SERGEY BRIN, ET AL., RESPONDENT(S)**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF  
APPEAL PETITION FOR WRIT OF CERTIORARI**

**HARRY J. WILLIBY**

**P.O. BOX 990755**

**REDDING, CALIFORNIA 96099-0755**

**(916) 519-4649**

**QUESTION(S) PRESENTED**

**ORIGINAL**

1. Does a District Court Judge violate a litigant's right to Due Process, Under the 14th Amendment of the United States Constitution, Section I, when the District Court Judge subject to a recusal motion, under 28 U.S.C. § 455(a), subjectively (or personally) rules on the motion?
  
2. Based upon the Respondents' financial support, campaigning on behalf of President Barack Obama, employment in the Obama/Biden administrations, and the software, computer/Internet technical support provided to President Joe Biden/Barack Obama's campaign(s); and subsequent election(s): Are district court judges required to recuse themselves Sua Sponte, under 28 U.S.C. § 455(a), when the Respondents herein, are plaintiffs, or defendants in the civil action?

## LIST OF PARTIES

ORIGINAL

☐ All parties appear in the caption of the case on the cover page.

☒ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Larry Page;

Pichai Sundararajan, a.k.a., Sundar Pichai, his predecessor;

Eric Schmidt, dba, Alphabet, Inc., Google, LLC., and YouTube, LLC., dba, Blogger, dba, Google AdSense (Pay-Per-Click);

Mark Zuckerberg, dba, Facebook, Inc.; and

Jeff Bezos, dba, Amazon.com, Inc.

## RELATED CASES

Williby v. Brin et al, Case No.: 3:22-cv-01271-VC;

Williby v. Brin et al, Case No.: 3:21-cv-02210-VC;

Williby v. Alphabet Corporation et al, Case No.: 4:18-cv-05986-JST; and

Petition for writ of mandamus (Ninth Circuit) USCA Case Number 21-71353.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

☐ reported at; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix "B" to the petition and is

☐ reported at; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

☐ reported at; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the court appears at Appendix to the petition and is

☐ reported at; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was **July 27, 2023**.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: , and a copy of the order denying rehearing appears at Appendix .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was . A copy of that decision appears at Appendix .

☐ A timely petition for rehearing was thereafter denied on the following date: , and a copy of the order denying rehearing appears at Appendix .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment, § 1, to the United States Constitution Provides as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 455(a) provides as follows: "Section 455(a) of 28 U.S.C. (1994 ed.) provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.""

28 U.S.C. § 1331 provides as follows: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1367(a) provides as follows: Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.



## STATEMENT OF THE CASE

### **(1) Petitioner's 10-year (decade) of Advertisement & Marketing**

Between the time period October 15, 2008 and November 13, 2013, Plaintiff created two (2) YouTube channels: the "Harry Williby" channel (<http://www.youtube.com/c/HarryWilliby021269> created November 13, 2013) and "The Attorney Depot™" channel (<http://www.youtube.com/c/TheAttorneyDepotTM>. created October 15, 2008). On October 8, 2008, Plaintiff also created "The Williby Blogs" (<https://willibys-corruptjustice.blogspot.com> on Defendant Alphabet's Blogger Platform. Beginning in 2011, Defendant Alphabet, dba, Google, dba, Google+, dba, Google AdSense (PPC), dba, Blogger, dba, YouTube, LLC., mandated that YouTube channel owners create Google+ accounts to access YouTube. As a direct and proximate result of this mandate by Defendant Alphabet, Plaintiff created two (2) Google+ accounts: "The Harry Williby" Google+ account (<https://plus.google.com/+HarryWilliby021269>) and The Attorney Depot™ Google+ account. (<https://plus.google.com/b/114610022579488515977/+TheAttorneyDepotT> [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 23-24.]

Between October 15, 2008 and August 1, 2018, The Attorney Depot™ channel published and hosted Daily, Weekly, Monthly and yearly News, legal news, political, election, trial coverage, documentaries and entertainment videos. Videos hosted on The Attorney Depot™ YouTube channel were automatically and simultaneously published on The Attorney Depot™ Google+ account. The Plaintiff simultaneously hosted all The Attorney Depot™ videos on Williby Blogs, Twitter and Facebook. Between October 15, 2008 and August 1, 2018, The Attorney Depot YouTube channel

garnered over twenty-one million (21,000,000) global, public, video views; and twenty-one thousand (21,000) return subscribers. Between October 15, 2008 and August 1, 2018, Plaintiff posted and published Daily, Weekly, Monthly and yearly News, legal news, political, election, trial coverage text and images posts on The Attorney Depot™ Google+. These text, image and video posts numbered approximately 10,000 posts. The Google+ account garnered well over two-million viewers and/or visitors as a direct and proximate result of these videos, text and image posts. Between October 15, 2008 and August 1, 2018, The Attorney Depot™ Channel and Google+ account produced, globally marketed and branded "trial court coverage" videos on YouTube. The Attorney Depot™ channel averaged 500,000 -to- 1,000,000 million viewers per month. Between October 8, 2008 and August 1, 2018, Plaintiffs Blogger pages (Williby Blogs) netted 15k - 40,000 viewers per week, with over one-million global readers/viewers. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 25-26.]

As a direct and proximate result of ten (10) years (or a decade) of marketing YouTube and The Attorney Depot™ Channel by Plaintiff, virtually every major U.S. media network, including the Defendants, and each of them, jointly and severally, has joined YouTube and now host "trial court coverage" videos. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 26-27.] Defendant Alphabet, dba, Google, LLC., dba, YouTube, LLC., effective August 1, 2018, terminated Plaintiffs YouTube channels. The "Williby Channel" and "The Attorney Depot™ Channel." Plaintiff was thus denied access to his Google+, "The Attorney Depot™ page," effective August 1, 2018.

Plaintiff was granted access back to his Google+, "The Attorney Depot™ page," effective October 12, 2018, after Defendant Alphabet removed approximately 7,000-to-10,000 posts, placed there by Plaintiff. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 29.] Despite over a decade (ten years) of publishing on Defendants' platform, under the Google "Adsense (PPC)" program. Plaintiff did not earn \$0.25 per-ad-click. Plaintiff earned less than \$2,500.00 (over 10 years) with the vast majority of this revenue being confiscated by Defendant Alphabet, dba, Google. LLC., dba. YouTube. LLC., dba Google "AdSense (PPC)" In fact. Defendant Alphabet, dba, Google, LLC., dba, YouTube, LLC., dba, Google "AdSense (PPC)," repeatedly, over a ten (10) year time period, accused and adjudicated Plaintiff guilty of copyright infringement, as the basis for confiscating the nominal ad revenue plaintiff earned under the Google "AdSense (PPC)" program. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 29-30.] Between October 15. 2008 and August 1. 2018. The Attorney Depot™ generated \$0.00 in Google AdSense (PPC) revenue: and Plaintiff's independent advertising programs netted \$0.00 in advertisement revenue. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 31.] In fact, Petitioner netted \$1.00, for a decade of marketing Petitioner's advertisement programs. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #5, pp. 01.] On the other hand, respondents, jointly and severally netted over \$1.2 Trillion in advertising revenue, during this same 10-year time frame. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 17-22; and pp. 49-55.]

## **(2) The "Appearance of Impropriety"**

Former Pres. Obama (while campaigning for President in the 2008 election) told Google employees during a 2007 visit to Google's headquarters in Mountain View, California: "What we shared is a belief in changing the world from the bottom up, not from the top down." Between October 15, 2008 August 1, 2018, Defendant Alphabet, dba, Google, dba, YouTube, invited, allowed and supported (now) Former President Barack Obama to campaign, raise funds and secure votes and voters, via Obama's Channel. Defendant Google employees emerged as the No. 2 donors to the Democratic YouTube channel(s) Obama Dotcom (pre-election channel); The Obama White House (President's Channel); and The Obama Foundation (Presidency & Post Presidential National Committee in the 2008 election. Defendant Google employees and the company's political action committee gave \$1.6 million to Democrats in the 2008 presidential election. Google hosted multiple fundraising events for former President Barack Obama. Google's fund-raising executives for Obama's Presidential campaign included Susan Wojcicki and Marissa Mayer. Defendant Schmidt and other Google executives forked over \$25,000 apiece to help pay for the inaugural celebration. Then-Google Chief executive. Page, also wrote a check to help pay for Obama's inauguration. Defendant Schmidt also served as an informal economic adviser during the Obama campaign. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 60-61.] In 2008, multiple "ex-Google employees" joined the Obama administration in various roles. Defendant Schmidt became a member of Obama's Council of Science and Technology Advisers. Google's former head of global public policy, Andrew McLaughlin, was named deputy chief technology officer in Obama's administration.

President Obama's appointment of McLaughlin to a position in his administration resulted in McLaughlin being in a position that shaped policy, ... that affected Google's rivals. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 61.] Alphabet contributed \$21 million dollars to the 2020 Presidential election. The top recipients were Joe Biden and Democrat super PACs. Defendant Alphabet's employees and PACs contributed a whopping \$3.66 million dollars to the Biden campaign since 2019. Defendant Pichai contributed a total of \$10,000 through six donations to Google's PAC. Defendant Larry Page made a \$5,000 one-time donation in late 2019. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 74.]

In 2007, Facebook Co-Founder Chris Hughes met with Jim Brayton (then) Senator Obama's Internet director, via phone. A couple of weeks before Obama's official announcement that he was running for President, Brayton and Hughes met in person over coffee at Union Station in D.C. Brayton decided to hire Hughes on the spot. Hughes created the on-line campaign apparatus that got Barack Obama elected as President of the United States. Hughes helped develop the most robust set of Web-based social-networking tools ever used in a political campaign. Obama's campaign manager David Plouffe said (on April 1, 2009): "Technology has always been used as a net to capture people in a campaign or cause, but not to organize." Chris saw what was possible before anyone else." Hughes' key tool was My.BarackObama.com, or MyBO for short. The website "Obama for America" (<https://www.ofa.us/>) was originally created as My.BarackObama.com by Hughes. The networking Web site, interfaced with Facebook and allowed Obama supporters to create groups, plan

events, raise funds, download tools and connect with one another. By the time the campaign was over, volunteers had created more than 2 million profiles on Facebook. planned 200,000 offline events, formed 35,000 Facebook groups, posted 400,000 blogs. and raised \$30 million on 70,000 personal Facebook fund-raising pages. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 64.] In 2012, Defendants Facebook, Inc., Defendant Zuckerberg and COO Sandberg integrated political campaign data with Defendant Facebook's data. This integrated data change was critical to President Barack Obama's 2012 re-election. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 66.] Employees and PACs affiliated with Defendant Facebook donated a total of \$6 million dollars during the 2020 election cycle. The Joe Biden campaign alone received \$1.3 million dollars from the Defendant Facebook PAC. Defendant Zuckerberg made direct political donations to the Facebook PAC. However, Defendant Zuckerberg and his wife, Priscilla Chan, gave \$400 million dollars to local governments in order to foot the bill for 2020 election-related costs. Thus, the Defendants, jointly and severally, and in furtherance of the conspiracy to engage in unlawful, anti competitive conduct, have donated approximately \$432 million dollars to the Democrat Party and the Biden campaign in the 2020 election cycle. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 74.]

On October 8, 2009, Defendant Amazon.com CEO Jeff Bezos sat down for a lunch meeting with President Obama. Defendant Amazon was ramping up its efforts to sell cloud-computing services to federal government agencies. "Cloud Computing" represented a potentially huge new market for the company. With its Kindle tablet.

Defendant Amazon had a product it wanted to sell. Defendant Amazon launched Kindle Singles Corner in June of 2013. A Kindle single is a type of e-book which is published through Amazon's Kindle Store. Kindle Singles Corner was made available to both Kindle device and Android OS App users, and priced between \$0.99 and \$4.99. In July of 2013, the Defendant Amazon conducted a sit-down interview with President Obama. The interview was featured on Defendant's new Kindle Singles Corner. In July of 2013 President Obama praised Defendant Amazon for the firm's job creation, which notably put independent bookstores out of business. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 69.] In 2019-2020, Defendant Amazon contributed \$8.9 million dollars through individual and PAC donors to federal candidates. Defendant Amazon's top recipient was Joe Biden, who received \$1.7 million dollars. Defendant Amazon's PAC contributed just over \$1 million to the total spending, including a \$5,000 donation from Defendant Bezos. As with the Obama campaign(s) and administration(s) in 2008 and 2012, certain confirmed names on (President-elect) Joe Biden's transition team are intrinsically associated with the Defendants' unlawful, anti-competitive conduct. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #1, pp. 73.] On November 21, 2021, Appellees Bezos, dba, Amazon announced a \$100 Million dollar donation to Barack Obama's Private Foundation. The \$100 million donation was arranged by Jay Carney, Bezos' political liaison and the former Obama press secretary. Carney was the point man for Bezos, and Obama eventually spoke directly with the Amazon C.E.O. earlier this year. The donation is the largest individual contribution the Obama foundation has received to date. In

addition, virtually every book written by Obama is sold through Amazon. [USCA, 9th Cir., Case Number 22-16106: Writ Petition 21-71353; and See also Case 3:22-cv-01271-VC Document 28 Filed 09/26/22 Page 23 of 28.]

### **(3) President Obama's Nomination of Judge Vince Chhabria**

On July 25, 2013, President Barack Obama nominated Vince Chhabria to serve as a United States district judge of the United States District Court for the Northern District of California, to the seat vacated by Judge Susan Illston. Illston assumed senior status on July 1, 2013. On January 16, 2014, Chhabria's nomination was reported out of committee by a 13–5 vote. On March 5, 2014, the United States Senate invoked cloture on his nomination by a 57–43 vote. Chhabria's nomination was confirmed later that day by a 58–41 vote. Judge Chhabria received his judicial commission on March 7, 2014.

### **(4) Proceedings Below**

#### **(A) The Initial Complaint**

Beginning in 2018, Petitioner initiated a civil action against respondents, alleging Anti-Trust activity. [U.S. Dist Ct. Williby v. Alphabet Corporation et al, Case No.: 4:18-cv-05986-JST]. The district court issued an order stating the Petitioner could recover damages, if the complaint was properly amended. The petitioner, untrained in Anti-Trust litigation, refiled the complaint, and the complaint was again dismissed for failure to state a cause of action. [U.S. Dist Ct. Dkt. #10: ORDER DISMISSING COMPLAINT WITH PREJUDICE. Signed by Judge Jon S. Tigar on November 19, 2018].



**(B) Request for Service by the U.S. Marshal**

Petitioner refiled the complaint in 2021. The Respondents made every attempt to evade service of the complaint. Thus, Petitioner filed a motion for service of the complaint by the United States Marshal service. Petitioner, at all times mentioned herein, submitted the statutory amount required for U.S. Marshal service fees. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #16: MOTION Service of Summons and Complaint by the U.S. Marshal Service filed by Harry J. Williby. Responses due by 8/11/2021. Replies due by 8/18/2021. (Attachments: # 1 Envelope) (wsnS, COURT STAFF) (Filed on 7/28/2021)] Judge Vince Chhabria, presiding, denied the motion for U.S. Marshal Service. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #18: Order by Judge Vince Chhabria denying 16 Motion for Service. (vclclS, COURT STAFF) (Filed on 8/16/2021)] Petitioner filed a Motion for reconsideration of the denial of the Motion for U.S. Marshal service. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #19: MOTION for Reconsideration filed by Harry J. Williby. (Attachments: # 1 Envelope)(slhS, COURT STAFF) (Filed on 9/10/2021) (Entered: 09/10/2021)] Judge Vince Chhabria, presiding, denied the motion for reconsideration. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #21: Order by Judge Vince Chhabria denying 19 Motion for Reconsideration. (vclcl2, COURT STAFF) (Filed on 9/20/2021)]

**(C) The Motion to Recuse Judge Vince Chhabria**

Petitioner also filed a motion to recuse district court judge, Vince Chhabria. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #22, #23: MOTION for Recusal filed by Harry J. Williby.] District court Judge Vince Chhabria ruled upon the motion and denied the motion. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #24; Order by Judge Vince

Chhabria denying #22 Motion for Recusal.] Petitioner filed a Petition for writ of mandamus, seeking to compel the district court judge, Vince Chhabria to recuse himself. The USCA, 9th Circuit denied the petition based upon petitioner's right to appeal. [Petition for writ of mandamus (Ninth Circuit) USCA Case Number 21-71353.]

**(D) The Dismissal by Judge Vince Chhabria**

District court Judge Vince Chhabria then dismissed the original complaint for Petitioner's failure to include two (2) Notices & Acknowledgement of Receipts form. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #29: ORDER of Dismissal. Signed by Judge Vince Chhabria on 11/24/2021]

**(E) The First Amended Complaint**

Petitioner refiled the complaint on February 28, 2022. [U.S. Dist Ct. Case No.: 22-cv-01271-VC, Dkt. #1: First Amended Complaint, filed on 02/28/2022.] From the outset, Respondents evaded and/or ignored the lawful service of the complaint. Petitioner filed a Request for Entry of Default on April 4, 2022. [U.S. Dist Ct. Case No.: 22-cv-01271-VC, Dkt. #6: MOTION for Entry of Default filed by Harry J. Williby; filed on 04/04/2022.] The clerk of the district court declined entry of default. [U.S. Dist Ct. Case No.: 22-cv-01271-VC, Dkt. #7-thru-21: Clerk's DECLINATION OF DEFAULT as to Sergey Brin, Larry Page, Pichai Sundararajan also known as Sundar Pichai, Eric Schmidt doing business as Alphabet, Inc., Google LLC, YouTube LLC doing business as Blogger doing business as Google AdSense (Pay-Per-Click), Mark

Zuckerberg doing business as Facebook, Inc. and Jeff Bezos doing business as Amazon.com, Inc., on April 6, 2022.]

**(F) The Dismissal of the First Amended Complaint**

On June 23, 2022, the district court, Judge Vince Chhabria presiding, dismissed the complaint for Lack of Subject Matter Jurisdiction, stating: "The plaintiff, Harry Williby, has filed multiple pro se lawsuits in this district, often against major Silicon Valley figures or entities. See, e.g., Williby v. Alphabet Corporation, No. 4:18-cv-04903-JST; Williby v. Alphabet Corporation, No. 4:18-cv-5986-JST; Williby v. Zuckerberg, No. 3:18-cv-06295-JD; Williby v. Brin, No. 3:21-cv-02210-VC; Williby v. Hearst Corporation, No. 5:15-cv-02538-EJD. This time, he has filed a lawsuit against Sergey Brin, Larry Page, Pichai Sundararajan, Eric Schmidt, Google LLC, YouTube LLC, Mark Zuckerberg, Jeff Bezos, Alphabet Holding Corporation, Facebook, Inc., and Amazon.com, Inc. alleging a wide-ranging antitrust conspiracy. That lawsuit is dismissed for lack of jurisdiction as frivolous. See Fed. R. Civ. P. 12(b)(1); Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998). Leave to amend is not granted, and no further filings will be accepted in the case. The remaining motions are denied as moot." [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #22.] The court issued judgement on June 23, 2022. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #23.]

**(F) The Appeal to the Ninth Circuit**

On July 21, 2022, Petitioner filed Notice of Appeal in the matter. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #24; See also Dkt. #25-thru-28.] On July 27, 2023, the

USCA, 9th Circuit affirmed the order and judgment of the District court. [Ninth Circuit Case Number 22-16106: USCA Memorandum - AFFIRMED as to 24 Notice of Appeal to the Ninth Circuit filed by Harry J. Williby, III, 25 Amended Notice of Appeal filed by Harry J. Williby, III (jml, COURT STAFF) (Filed on 7/5/2023) (Entered: 07/05/2023) - Dkt. #29-thru-#30.] The 9th Circuit held: "The district court properly dismissed Williby's action because Williby failed to establish federal subject matter jurisdiction. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89 (1998) (explaining that an action may be dismissed for lack of subject matter jurisdiction where the alleged federal claim is "wholly insubstantial and frivolous" (citations omitted)); Franklin v. State of Or., State Welfare Div., 662 F.2d 1337, 1342 (9th Cir. 1981) (recognizing that a district court may dismiss an action sua sponte for lack of jurisdiction)." [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #29.]

## REASONS FOR GRANTING THE PETITION

### (A) Overview

All across the Ninth Circuit and the District Courts of the Northern District of California, Judges subject to recusal motions under 28 U.S.C. § 455(a) are applying a subjective standard in ruling upon said motions, despite this court's holding in Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009), which requires an objective standard of review when ruling upon recusal motions under 28 U.S.C. § 455(a). Thus, the Decision Below conflicts with relevant decisions of this Court.

The lower courts had no intention of acting impartial in the matter herein. The petitioner sought to recuse the district court judge, Vince Chhabria. Judge Chhabria denied the motion to recuse, for which petitioner sought a writ to compel recusal. Upon denial of the writ, Judge Chhabria dismissed the original complaint. [U.S. Dist Ct. Case No.: 3:21-cv-02210: Dkt., #29: ORDER of Dismissal. Signed by Judge Vince Chhabria on 11/24/2021] At no time during the dismissal of the original complaint did Judge Chhabria allude to the “complaint failing to establish subject matter jurisdiction. Instead, the judge awaits until the petitioner filed the First Amended Complaint (verbatim to original complaint) and request for entry of default, before dismissing the same complaint for lack of subject matter jurisdiction. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #22.]

### 1. SUMMARY OF THE U.S. CONSTITUTIONAL QUESTION(S) PRESENTED

To understand the constitutional questions that are presented here, it is necessary to review the settled issues of law regarding the Fourteenth Amendment § 1, under the United States Constitution; "Bias or prejudice either inherent in the structure of a trial system or imposed by external events can infringe a person's right to a fair trial." (See Amdt14.S1.5.4.5 Impartial Decision Maker.) There is a presumption of honesty and integrity in those serving as adjudicators, so the burden is on an objecting party to show a conflict of interest or some other reason for disqualification of a specific officer or for disapproval of an adjudicatory system as a whole.

## **2. The Fourteenth Amendment § 1.**

The Due Process Clause requires that the decision to deprive a person of a protected interest be entrusted to an impartial decision maker. This rule applies to both criminal and civil cases. The Supreme Court has explained that the neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law and preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. (Tumey v. Ohio, 273 U.S. 510 (1927); In re Murchison, 349 U.S. 133 (1955); Goldberg v. Kelly, 397 U.S. 254, 271 (1970). See also Amdt14.S1.5.5.2 Impartial Judge and Jury.) Thus, a showing of bias or of strong implications of bias was deemed made where a state optometry board, made up of only private practitioners, was proceeding against other licensed optometrists for unprofessional conduct because they were employed by

corporations. Since success in the board's effort would rebound to the personal benefit of private practitioners, the Court thought the interest of the board members to be sufficient to disqualify them.) Sometimes, to ensure an impartial tribunal, the Due Process Clause requires a judge to recuse himself from a case.

### **3. Judicial Recusal Cases Under the Fourteenth Amendment § 1**

In the 2009 case Caperton v. A. T. Massey Coal Co., the Court noted that most matters relating to judicial disqualification [do] not rise to a constitutional level, and that matters of kinship, personal bias, state policy, [and] remoteness of interest, would seem generally to be matters merely of legislative discretion. (556 U.S. 868, 876 (2009) (citations omitted).) In judicial recusal cases, the Court has explained, [t]he inquiry is an objective one. The Court asks not whether the judge is actually subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.' (Id. at 881.)

#### **(B) Argument**

##### **(1) The 9th Circuit Court Order Demonstrates a Predisposed Bias Towards the Petitioner**

In 2018, the Petitioner was the first litigant in the United States to allege anti-trust activity against the respondents. It is true that each judge appointed by President Barack Obama, dismissed each action. In the instant case, the 9th circuit cited Franklin v. State of Or., State Welfare Div., 662 F.2d 1337, 1342 (9th Cir. 1981) (recognizing that a district court may dismiss an action Sua sponte for lack of jurisdiction) in upholding the district court order dismissing Petitioner's action. [U.S. Dist Ct., Case No.: 22-cv-01271-VC, Dkt. #29.] Franklin was a state prison inmate

involved in the filing of numerous vexatious suits against the department of corrections. The 9th Circuit, without specifically saying so, infers that Petitioner has been engaged in filing vexatious suits against the respondents. Bias or prejudice of an appellate judge can also deprive a litigant of due process. Aetna Life Ins. Co. v. LaVoie, 475 U.S. 813 (1986) (failure of state supreme court judge with pecuniary interest—a pending suit on an indistinguishable claim—to recuse). [S]ection 455 not only may be invoked by motion[, ] but also requires judges to recuse Sua sponte where appropriate. The Supreme Court has repeatedly explained that the neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law and preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. (Marshall v. Jerrico, 446 U.S. 238, 242 (1980); Schweiker v. McClure, 456 U.S. 188, 195 (1982).

As set forth above, Petitioner was the first litigant in the United States to allege anti-trust activities against the respondents. The U.S. Department of Justice and eleven Republican state attorneys general filed their first antitrust lawsuit against Google in October 2020. The suit alleges that the company has unlawfully maintained monopolies in search and search advertising by cutting off rivals from key distribution channels. This is the first of many expected actions by the Justice Dept. over massive tech companies like Alphabet, the parent of Google, Apple, Amazon and Facebook. The USDOJ's lawsuit follows a similar investigation by the European



Union. The EU fined Google over €8 billion for antitrust breaches in three cases relating to Google Shopping, the Android operating system and Google AdSense. The lawsuit is the most significant antitrust case by the DOJ since the Microsoft litigation began over twenty years ago.

On Tuesday, January 24, 2023, The Justice Department and eight states filed a lawsuit against Google over its digital advertising business, claiming the tech giant illegally monopolizes the market for online ads. It is the second antitrust suit federal authorities have brought against the company's advertising empire. Google has for years been under scrutiny over allegations of self-dealing and choking off competitors. Attorney General Merrick Garland spoke at a press conference announcing the lawsuit, saying: "For 15 years, Google has pursued a course of anticompetitive conduct that has allowed it to halt the rise of rival technologies, manipulate auction mechanics, to insulate itself from competition, and force advertisers and publishers to use its tools."

According to the January 24, 2023, suit: "Google forced 2 million advertisers, including parts of the U.S. government, such as the military, to allegedly pay higher rates for ads. [F]ederal agencies and departments have purchased more than \$100 million in web advertising since 2019 that allegedly included "supra-competitive fees" and "manipulated advertising prices."" The suit has allegations similar to those in a lawsuit brought by a coalition of states in 2020 targeting Google's advertising business. A federal judge in September (2022) allowed the case to move forward, while narrowing the scope of the allegations.

On, August 4, 2023, US District Judge, Amit Mehta, (D.C.) ruled that a central part of the 2020 complaint filed by the US Department of Justice (DOJ) and US states accusing Google of suppressing competition in the advertising market will be heard at trial. The trial is scheduled to begin on 12 September 2023. Judge Mehta rejected Google's request to dismiss the case entirely. Judge Mehta stated that the DOJ's claims over Google's alleged monopolization in the market should go ahead. Lastly, Judge Mehta emphasized that for antitrust law to be violated, the government would have to prove that each specific action, like Google's approach to search advertising, is independently unlawful and cannot rely on demonstrating a series of activities that collectively breach antitrust regulations. The European Commission found in its preliminary view, on 14 July 2023, that Google has breached the EU antitrust laws and abused its dominant positions since at least 2014. The European Commission also expressed concerns over Google's alleged intentional favoring of its AdX service, which may have foreclosed rival ad exchanges. Despite the facts as set forth above, the 9th circuit upheld the order of the district court.

**(2) The objective standard set forth in *Caperton* required Sua sponte recusal of the district court judge under 28 U.S.C. § 455(a)**

In Caperton, the Court set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge is too high to be constitutionally tolerable[.]

Respondents and her corporate officers, financed, managed and campaigned for, and were directly employed by Senator Barack Obama (in the 2008 and 2012 Presidential campaigns). Petitioner further alleged that said Respondents, were in fact employed by President Obama's 2008 and 2012 transition teams, and in fact were employed in

the Obama administration, ... while simultaneously serving as corporate leaders in their respective corporate structures. The respondents, jointly and severally, have donated well over \$1 Billion dollars to Obama, Biden and the Democrat party. This revenue was derived from Respondents' anti-trust activities. Judge Vince Chhabria was nominated to the court, immediately after the 2012 election. In Caperton, a company appealed a jury verdict of \$50 million, and its chairman spent \$3 million to elect a justice to the Supreme Court of Appeals of West Virginia at a time when [i]t was reasonably foreseeable . . . that the pending case would be before the newly elected justice. (Id. at 886.) The justice was elected, declined to recuse himself, and joined a 3-2 decision overturning the jury verdict. The Supreme Court, in a 5-4 opinion written by Justice Anthony Kennedy, concluded that there was a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. (Id. at 884.)

The Petitioner has repeatedly asserted the appearance of impropriety exists with respect to judges appointed by President Obama, presiding over civil cases in which Respondents, or any of her subsidiaries, are Plaintiffs, or Defendants. When Judge Chhabria ruled upon the Motion to Recuse, the court applied a subjective standard to the motion to recuse, ... and not the objective standard as set forth in Caperton. Similarly, in Rippo v. Baker, the Supreme Court vacated the Nevada Supreme Court's denial of a convicted petitioner's application for post-conviction relief based

on the trial judge's failure to recuse himself. The Supreme Court noted that [u]nder our precedents, the Due Process Clause may sometimes demand recusal even when a judge 'ha[s] no actual bias.' Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable. *Id.* at 907 (quoting Aetna Life Ins. Co. v. LaVoie, 475 U.S. 813, 825 (1986); Withrow v. Larkin, 421 U.S. 35 (1975)).

In the 2016 case of Williams v. Pennsylvania 136 S. Ct. 1899, 1903 (2016), the Court relied on *Caperton*, which the Court viewed as having set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge is too high to be constitutionally tolerable. *Id.* (internal quotations omitted). The *Williams* Court held that there is an impermissible risk of actual bias when a judge had previously had a significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case. (*Id.* at 1905.) The Court based its holding, in part, on earlier cases that had found impermissible bias occurs when the same person serves as both accuser and adjudicator in a case. As a remedy, the Court remanded the case for reevaluation by the reconstituted Pennsylvania Supreme Court. Notwithstanding the fact that the judge in question did not cast the deciding vote, the *Williams* Court viewed the judge's participation in the multi-member panel's deliberations as sufficient to taint the public legitimacy of the underlying proceedings and constitute reversible error. Likewise, the Court rejected the argument that remanding the case would not cure the underlying due process violation because the disqualified judge's views might still influence his former colleagues, as an inability to guarantee

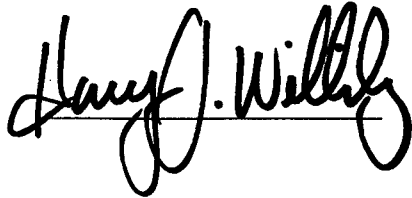
complete relief for a constitutional violation . . . does not justify withholding a remedy altogether. Id. at 1909–10.

Thus, the 9th Circuit court ruling remains in conflict with Supreme Court Authority. The lower court has completely ignored the principle of stare decisis. In doing so, the 9th Circuit concluded the Fourteenth Amendment was not implicated. The Ninth Circuit (and the District Court) ignored this Court's analysis in Caperton v. A. T. Massey Coal Co., (id. at 881). At this point, only this Court can rescue litigants in the Ninth Circuit from the persistent refusal of the court below to come to terms with Fourteenth Amendment case law. We urge the Court to grant certiorari to bring that court back into line with the law of federal jurisdiction.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harry J. Wilkins", written over a horizontal line.

Date: August 30, 2023