No. 2024- 324

8/25/2024

In The
Supreme Court of the United States

CHRISTINA PAYLAN, M.D.

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

CHRISTINA PAYLAN, MD.
110 Pinellas Way North
St. Petersburg, Florida 33710
Tel: 813-919-6299
drpaylan@bodytuck.com

RECEIVED
AUG 29 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

This petition exposes the vacuum in Florida's appellate judicial disqualification mechanism that creates a constitutional infirmity for all Floridians.

Every state in the nation, but Florida has rules, statutes or adopted code of judicial conduct that is equal to force of law, governing disqualification of appellate court judges.

Is Florida's arbitrary, rudderless standard for disqualification of appellate judges a violation of due process where Florida State Supreme Court declined to disqualify an appellate judge relying on procedural grounds in spite of the fact that the appellate judge parachuted back into the same criminal case after revoking his own previous disqualification and doing so without any written explanation?

In the absence of any rule or statute, is it also violation of due process for Florida Supreme Court to decline disqualification of another appellate judge on the same panel relying on procedural grounds, in light of the substantive grounds stemming from remarks by this judge at oral argument, that include but are not limited to the remark that that the party is a "perjurer" where the appellate record is void of any evidence of conviction or even an allegation of perjury?

Under federal law, are Floridians deprived of their right to fair trial in criminal cases because Florida is the only state in the nation to has *no rules* or statutes governing the disqualification of appellate judges?

PARTIES TO THE PROCEEDING

Petitioner is Christina Paylan, M.D.

Respondent is State of Florida

Table of Contents

PARTIES TO THE PROCEEDING

Petitioner is Christina Paylan, M.D.

Respondent is State of Florida

Table of Authorities

Statutes

PETITION FOR WRIT OF CERTIORARI

OPINIONS AND RULINGS BELOW

First opinion of Florida Supreme Court which reviewed the merits of the petition for writ of disqualification as to appellate court Judge Anthony Black, is at Appendix A, and is unpublished and designated as Paylan v. State No. SC2024-0216, 2024 WL 2733680, at *1 (Fla. May 28, 2024).

Second opinion of Florida Supreme Court which reviewed the merits of the petition for writ of disqualification as to appellate court Judge Daniel Sleet is at Appendix B, and is unpublished, and designated as Paylan v. State, No. SC2024-0222, 2024 WL 2733659, at *1 (Fla. May 28, 2024)

JURISDICTION

On May 28, 2024, Florida Supreme Court denied two petitions for writ of prohibition to disqualify two appellate court judges. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution guarantees the right to an impartial judge in all criminal proceedings. *See Tumey v. State of Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927).

Fair trial in fair tribunal is basic requirement of due process. *Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868 (2009).

Right to fair and impartial trial is fundamental to litigant. *United States v. Jordan,* 49 F.3d 152 (5th Cir. 1995). Under the Fifth Amendment: "No person shall ....be deprived of life, liberty, or property, without due process of law..." Under the Fourteenth Amendment, Section 1, "...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."

Under Florida Constitution, Section 9, "No person shall be deprived of life, liberty or property, without due process of law."

STATEMENT

Ther is a vacuum in Florida's appellate mechanism that creates a constitutional infirmity. There are no rules or statutes in Florida that govern the disqualification procedures for appellate judges. The constitutional infirmity that gets created as a result of this vacuum is especially significant in criminal proceedings in Florida.

Absence of ground rules has created a petri dish for arbitrary decisions regarding recusals of appellate judges in Florida

Without these ground rules, an appellate judge has parachuted back into the same criminal case after revoking his own priors disqualification from the same case without any written explanation. And another appellate judge has continued to preside in the case after calling Petitioner a "perjurer" without any

evidence to support such a label.

Petitioner filed two disqualification motions directed at both of these appellate judges on her panel following oral argument. Both motions were denied in a generic order without any elaboration as to whether the motions presented legally sufficient facts. *See App C and App D.*

Subsequently, Petitioner filed two petitions for writ of prohibition in the Florida Supreme Court requesting disqualification of both appellate judges. After briefing was ordered from the parties, Florida Supreme Court denied both petitions, relying on rules for disqualification written for trial court judges in spite of their precedent that disqualification rules applicable to trial judges are not applicable to appellate judges in Florida. *See App A and App B.*

The denials by the Florida Supreme Court were based on procedural grounds that the motions were untimely, even though no rule or statute were cited because neither a rule nor a statute for disqualification of appellate judges exists in Florida. Both of the recusal motions were filed within thirty (30) days of the date when record on appeal was completed, and within six (6) days of Petitioner having received the transcript of oral argument which was attached as an exhibit to the recusal motions.

In the time frame from the date of oral argument to the date of filing of the two recusal motions, there were also two major holidays, Christmas and New Year's.

The right to a fair hearing with unbiased and impartial judges, including appellate judges, is a fundamental constitutional right at the core of American values and the American constitutional system.

This is a fundamental issue involving Petitioner's federally protected constitutional rights to due process of law, and every citizen's right in Florida to be judged by fair appellate judges where an appeal from a criminal conviction is a matter of right.

A. Factual Background

1. Pre-*Ruan*[1], when the standard relied upon by prosecutors was purely an objective standard, in 2011, Petitioner, a cosmetic surgeon, was charged in state court in Hillsborough County, Florida with one (1) count of obtaining controlled substance by fraud and one (1) count of criminal use of personal information. These two charges stemmed from a single prescription written on July 1, 2011, for a patient, in anticipation of a cosmetic surgical procedure, whose son, unbeknownst to Petitioner, during Petitioner's trial, was serving a fifteen (15) year prison sentence for armed trafficking in Florida State Prison.

2. At trial, plagued by ineffective assistance of counsel, the patient and her husband, with their son

---

[1] *Ruan v. United States,* 142 S.Ct. 2370 (2022).

in prison who was awaiting a sentence reduction at the mercy of the same state attorney's office as the one prosecuting Petitioner, testified as State's witnesses that they were never planning on having a surgical procedure with Petitioner. The state used this testimony and only this testimony to criminalize the one and single prescription of July 1, 2011, written by Petitioner in anticipation of the surgical procedure scheduled for July 8, 2011.

3. Soon after the case was filed, the case evolved into a type of local *'celebre'* case in Hillsborough County, triggered by the rare move by the local State Attorney's office to disqualify the assigned trial judge. The State's recusal motion was granted and the case was ultimately re-assigned to another trial judge, but only after two additional rounds of recusals entered by two subsequent judges.

4. In July 2014, the case went to trial.

5. At trial, shockingly, trial counsel admitted on the record that he *did not know* about the applicable law of the then prevailing standard of objective standard of "good faith" practitioner's privilege. After his admission, trial counsel ultimately acquiesced to the jury instruction and failed to introduce any evidence in spite of acquiescing to an affirmative defense like the 'good faith' practitioner's privilege in line with federal prosecutors' standard pursuant to 21 U.S.C. §841 prescription fraud cases.

6. At trial, there was no perjured testimony of Petitioner or her office manager that was introduced. No one, including Petitioner or her office manager, testified because trial counsel was so unprepared for trial that he did not interview any of the

critical witnesses and did not call them at trial. [2]

7. On July 31, 2014, the jury returned a guilty verdict after the state rested following a one and a half days of trial testimony.

8. In May 2015, while the criminal appeal was pending, appellate judge, Judge Anthony Black of the Second District Court of Appeal was disqualified on the premise that he had a conflict arising out of his relationship with Petitioner's fiancé. Following this disqualification, Petitioner never heard of or came across Judge Black again in any proceeding in the appellate court from 2015 through 2023.

9. In 2017, the intermediate appellate court affirmed the verdict with a *per curiam* affirmance but without prejudice for Petitioner to file a motion for postconviction relief.

10. In 2017, Petitioner filed her postconviction motion in the trial court.

11. The first postconviction trial court judge assigned to the case was disqualified when video

---

[2] Evidence during postconviction period surfaced showing trial counsel's significant preoccupation with hosting of a fund raising party for the then gubernatorial candidate, Charlie Crist who ultimately lost the race to Governor Rick Scott in 2014. The fund raising party was scheduled in Miami the Friday of Petitioner's trial week when the trial was taking place in Tampa. Introducing any of the evidence from the mountain of materials in the case would have inevitably resulted in trial extending into the following week and requiring trial counsel to ask the judge for that Friday off for his fund raising party.

surveillance surfaced showing prosecutors visiting the presiding judge's chambers in the morning before the hearings without Petitioner being invited to the gathering in chambers.

12. The case was then assigned to another postconviction trial judge who held an evidentiary hearing and entered an order denying postconviction relief. The order written by the successive postconviction judge was a *verbatim* copy and paste of the findings of the first disqualified postconviction judge, and some of these findings were about witnesses who did not testify live before the successive judge.

13. On appeal, Petitioner representing herself, appeared before a three-judge panel of the Second District Court of Appeal on December 12, 2023.

14. However, prior to oral argument, there had been a change in the panel composition of judges when Petitioner requested that the originally scheduled Zoom oral argument be changed to an in-person oral argument.

15. With the change from zoom to in-person oral argument, two judges from the original panel were replaced with Judge Anthony Black and Judge Daniel Sleet being the two replacements.

16. Prior to their elevation, Judge Black and Judge Sleet had also served together as trial court judges in Hillsborough County where Petitioner's case had been filed.

17. On December 12, 2023, oral argument

was held in person with Judge Sleet, Judge Black and Judge Rothstein-Youakim serving on the three judge appellate panel.

18. Exhibiting hostility from the outset of oral argument proceedings, Judge Sleet made the remark that Petitioner and her office manager had "perjured" themselves. *See App F, pg 18a.*

19. Judge Sleet also demonstrated a surprising level of lack of familiarity with the facts of the case, including describing a video surveillance that was the state's trial exhibit, with detailed facts even though he had never before seen this video surveillance. Judge Sleet's description of this video surveillance was so off that it was obvious that he had never seen this video surveillance. *See App F, pg 19a.*.

20. Realizing this, and confirming it with the clerk of appellate court following oral argument, Petitioner filed a motion to supplement the record. The motion was granted and the video surveillance was in fact later transmitted to the appellate court on December 30, 2023, making the record on appeal complete as of December 30, 2023.

21. Once Petitioner secured a complete record on appeal post oral argument, Petitioner then began to research her options for the unusual hostility that had been displayed by Judge Sleet. In that process, Petitioner also realized that the Judge Black who was on the panel was the same Judge Black who had disqualified himself eight (8) years earlier in 2015 from the same criminal case. Following his

disqualification in 2015, Petitioner never again had Judge Black on any of her cases, whether it was related to the criminal or the other civil cases that spawned off of the criminal case and this was in spite of having no shortage of petitions and other civil proceedings being filed before the appellate court.

22. On January 4, 2024, Petitioner contacted several court reporters in an attempt to get the transcription of the December 12, 2023 oral argument in order so that Petitioner may be able to include the transcript as an exhibit to her motions to disqualify. Petitioner provided proof of her call log from her cell phone to show that call on January 4, 2024 was in fact made to a court reporter.

23. On January 17, 2024, just eighteen (18) days after the record on appeal was completed, the panel issued a non-final decision denying Petitioner's postconviction appeal.

24. On January 24, 2024, Petitioner acquired the transcription of the oral argument proceedings from the court reporter. *See App F.*

25. On January 26, 2024, intending to file the two recusal motions directed at the two appellate judges, Judge Black and Judge Sleet, Petitioner filed a motion for extension of time to file her post-decision motions for rehearing. The motion was granted setting the filing of the rehearing motions to a later date.

26. On January 30, 2024, within six (6) days of acquiring the oral argument transcript, Petitioner

filed the two motions to disqualify Judge Black and Judge Sleet respectively.

27. The very next day, on January 31, 2024, both recusal motions were denied in a generic order without any elaboration or language of whether the facts were legally sufficient. *See App C and App D.*

28. On February 12, 2024, Petitioner filed two petitions for writ of prohibition in the Florida Supreme Court seeking the disqualification of both Judge Black and Judge Sleet.

29. On March 7, 2024, the Florida Supreme Court set a briefing schedule for the parties.

30. On May 28, 2024, the Florida Supreme Court denied both of these petitions, citing to a case that relied on rules pertaining to disqualification for trial court judges. *See App A and App B.*

31. In its denials, the state supreme court did not allow any motions for rehearing.

REASONS FOR GRANTING THE PETITION

In recent years, and especially after public exposure to the New York so-called "hush money" trial of President Trump, public confidence in fair and impartial judiciary has eroded significantly. Today, more than ever, Americans overwhelmingly view the court system as being broken and politicized.

Existence of a biased tribunal is repugnant to the concept of due process. *In re Antar,* 71 F.3d 97, 102 (3d Cir. 1995). Rules for disqualification of judges at all levels of the judicial system is necessary to avoid this repugnance.

A vacuum exists in the mechanism of Florida's disqualification process for appellate judges where there are no rules or laws to abide by regarding the timeliness of filing of a motion to recuse an appellate judge but yet Florida Supreme Court arbitrarily deems a 30-day time frame within which a recusal motion was brought as untimely.

This is especially significant when an appellate judge, as was in the instant case, parachuted back into the case after revoking his prior disqualification in the same criminal case without a written explanation. It is hard to imagine how this could be consistent with appearance yet alone the reality of fairness in a tribunal. Under no circumstances can such judicial behavior instill public confidence that appellate proceedings are run by impartial judges. The fact that this one judge was able to return to the case without being required to explain the revocation of his recusal brings disrepute to the entire appellate judiciary.

This Petition should be granted because Florida's appellate mechanism for the disqualification process of appellate judges is rudderless and faulty inevitably lending to outcomes that is constitutionally intolerable.

I. WITHOUT RULES OR STATUTES GOVERNING DISQUALIFICATION OF APPELLATE JUDGES, FLORIDIANS ARE DEPRIVED OF NOTICE AND THEREFORE DUE PROCESS WHEN A RECUSAL MOTION IS DENIED ON PROCEDURAL GROUNDS FOR UNTIMELINESS

In *Rippo v. Baker*, 580 U.S. 285, (2017), this 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. Here, there has been a failure to recuse two appellate judges in a postconviction criminal appeal where one of the judges presided in the case after revoking his own prior disqualification in the same case without a written explanation.

In Florida, there is no statutory right or mandatory procedure to disqualify an appellate judge. This leaves Floridians without the notice requirement when a party intends to file a motion to disqualify an appellate judge. There is, however, a rule in Florida Rules of Judicial Administration setting forth a time frame to bring a recusal motion directed at trial judges. That rule gives proper notice to litigants who intend to file disqualification motions for trial judges.

It is sloppy to have no rules setting forth a time

frame to bring a disqualification motion directed to an appellate judge. But this sloppiness translates into a constitutional infirmity when a litigant, like Petitioner, is then denied recusal of an appellate judge based on timeliness grounds.

Even the precedent for disqualifying an appellate judge in the very same appellate court where Petitioner filed her two recusal motions has been set as "whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial hearing." *Adams v. Smith,* 884 So. 2d 287 (Fla. 2nd DCA 2004). No other criteria is identified in *Adams* to disqualify an appellate judge. There is especially no language in *Adams* stating that the recusal motion must be brought in a certain time frame or that it must be filed before the initial non-final ruling.

If no rules exist governing the timing of filing of disqualification motions directed at appellate judges, then a 10-day, a 30-day or a 49-day time frame cannot be arbitrarily deemed as being untimely. Similarly, when there are no such ground rules, a recusal motion filed after a non-final decision is issued, but before a final judgment, cannot be arbitrarily deemed as being untimely.

The only rule in the context of disqualification of a judge that provides a timeline is in Rule 2.330 of the Florida Rules of Judicial Administration which expressly applies *only* to disqualification of trial court judges.

Rule 2.330, in pertinent part, states the following:

> This rule applies only to county and circuit judges in all matters.....It does not apply to justices, appellate-level judges, or county and circuit judges sitting on a multi-judge appellate panel.

Under Florida's Rule 2.330, a motion to disqualify *a trial judge* must be brought within twenty (20) days of the date of discovery of facts constituting grounds for disqualification. Thus, a motion brought within that time period, even where there is an adverse decision, would be considered timely. In appellate court, there is no way for any person to know when a non-final decision will be issued by a three judge appellate panel once the party walks out of an oral argument because there is no rule providing fair notice. A non-final decision, following oral argument, at the appellate level, could come in 3-days, 30 days or 300 days.

The only barometer that a non-final decision will not be forthcoming is when the record on appeal is not yet complete. In the instant case, the record was not complete until December 30, 2023 due to a missing trial exhibit which was inadvertently not transmitted by the clerk from the lower court. Once the record on appeal was complete, it then took the appellate court 17 days to issue a non-final decision. During this time, Petitioner had already begun the arduous work of putting together her recusal

motions.[3] Imposing the requirement that somehow Petitioner should have known to bring the recusal motions earlier than 17 days is emblematic of what happens when there are no ground rules for disqualification of appellate judges.

Moreover, Florida Supreme Court's ruling denying the recusal motions, while citing to case law addressing disqualification of a trial judge, to wit, the citation to *Fischer v. Knuck,* 497 So. 2d 240, 243 (Fla. 1986) is also arbitrary and capricious because *Fischer* discusses recusal motion directed at a trial judge only. Florida Supreme Court has repeatedly asserted its precedent that rules governing disqualification of trial judges *are not* applicable to appellate level judges. *See App A and App B. In Re Estate of Carlton,*378 So. 2d 1212, 1216 (Fla. 1979).

In all cases, but especially in criminal cases, the appellate process plays a very significant role and all appeals arising from postconviction matters is as a matter of right in Florida.

A procedural time bar interjected in the absence of any rule or statute is especially problematic when the circumstances are as compelling as Judge Black, in the instant case, revoking his own previous disqualification to re-enter the same case without explaining and without being required to explain.

---

[3] In her filing with the Florida Supreme Court, Petitioner provided her own cell phone record log showing that on January 4, 2024 she contacted a court reporter for the purpose of transcribing the oral argument so that she could attach it as an exhibit to her recusal motions.

This Petition should be granted because Florida's appellate mechanism for disqualification of appellate judges invariably leaves a vacuum that creates a constitutional infirmity.

II. REVOCATION OF A PREVIOUS DISQUALIFICATION BY THE SAME JUDGE IN THE SAME CASE REQUIRES WRITTEN EXPLANATION

At the heart of criminal justice lies the right to fair trials, fair hearings and fair appeals. Both the United States Constitution and Florida Constitution guarantee that litigants will receive "due process" of law which entitles a person to an impartial tribunal in both civil and criminal cases. *See Marshall v. Jerrico,* Inc., 446 U.S. 238, 242 (1980), Marshall, J., holding that "the neutrality requirement...preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done' by ensuring that no person will be deprived of his interests [absent] a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him".

Under the Federal and Florida constitutions, fundamental fairness and due process rights demonstrate that, a criminal defendant has a Federal and a State right to an unbiased judge. *Mayberry v. Pennsylvania,* 400 U.S. 455, 464 (1971) (it is generally wise where the marks of unseemly conduct have left personal stings [for a judge] to ask a fellow judge to take his place); *Taylor v. Hayes,* 418 U.S. 488, 503 (1974) (where marked personal feelings were present

on both sides, a different judge should preside over a contempt hearing). In the context of alleged contempt before a judge acting as a one-man grand jury, this Court reversed criminal contempt convictions, saying: A fair trial in a fair tribunal is a basic requirement of due process. ***Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.*** *In re Murchison,* 349 U.S. 133, 136 (1955).

It is hard to imagine that there could be appearance yet alone the reality of fairness of a tribunal when a previously disqualified judge parachutes back into the same case without any explanation and the Florida Supreme Court brushes this off because the recusal motion was not timely based on no rule and no statute.

Judge Black did just that- parachute himself back into the same criminal case without any written explanation. There was only one word in the order in response to recusal motion directed at Judge Black, "denied". *See App C.* Nothing had changed insofar as the basis of the previous disqualification in 2015. And most notably, the 2015 disqualification of Judge Black squarely related to his relationship with Petitioner's fiancé. Petitioner's fiancé remained as an integral part of the case from 2015 through 2023, and in fact was referenced in Petitioner's appellate brief citing to an affidavit written by the fiancé. Yet, Judge Black did not find that an explanation was necessary for parachuting into the same case after he had been disqualified on the account of the fiancé.

Even in a state like California, where there are no court rules per se governing the disqualification of appellate judges, there are rules requiring appellate judges to explain in writing when they revoke a previous disqualification in the same case. *See App E.*

Bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial. In vacating the Nevada Supreme Court's decision in *Rippo, v. Baker*, 580 U.S. 285, (2017), this Honorable 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 decisionmaker 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, 47 (1975)). ***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 to recuse).

Similarly in *Tumey v. Ohio* 273 U.S. 510, 520 (1927), it was held to violate due process for a judge to receive compensation out of the fines imposed on convicted defendants, and no compensation beyond his salary "if he does not convict those who are brought before him." *See also Ward v. Village of Monroeville*, 409 U.S. 57 (1972).

Even when judge does not have any direct, personal, substantial, pecuniary interest in case, of kind requiring his or her disqualification at common law, there are circumstances in which probability of actual bias on part of judge is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

Parachuting back into the same case after a prior disqualification without any written explanation for revoking this prior disqualification is constitutionally intolerable.

This Petition should be granted to cure this vacuum in Florida's appellate mechanism that creates a constitutional infirmity.

III. SECOND APPELLATE JUDGE'S REMARKS EQUALLY CREATE THE APPEARANCE OF AN UNFAIR TRIBUNAL

As if the parachuting of a previously disqualified judge was not enough, Petitioner's appellate proceedings were also plagued by the remark of another appellate judge in the same panel during oral argument.

Without any evidence in the appellate record, Judge Sleet made the conclusion that Petitioner and her office manager were "perjurers". There is not a scintilla of evidence of perjury in the appellate record. Yet, Judge Sleet's statement was as follows:

> But you perjured yourselves by padding the medical records, adding notes, postdating notes. That could be one reason why you decided not to testify.

See App F, pg.18a.

It is hard to wrap one's brains around as to what Judge Sleet is talking about making a decision not to testify because "we" had perjured ourselves. There was no prior testimony of either Petitioner or her office manager in discovery. Moreover, because of gross ineffective assistance of counsel, neither Petitioner nor her office manager testified at the trial. As such, there could not have been any perjury on either Petitioner's or office manager's part. There was also not a scintilla of evidence of padding, adding or postdating notes. All the documentation in the medical chart was forensically confirmed through metadata analysis of computers and patient and her husband's cell phone records during the postconviction hearing.

Under *Adams v. Smith,* 884 So. 2d 287 (Fla. 2nd DCA 2004), a reasonably prudent person would have fear that he or she would not receive a fair hearing if an appellate judge makes a remark, out of the blue, that the person is a perjurer while there is no evidence in the appellate record to corroborate this remark.

The totality of Judge Sleet's remarks are also important in consideration of his disqualification. The entirety of the oral argument transcript has been attached as *App F.* The hostility of Judge Sleet jumps off the page almost at every remark by Judge Sleet.

And what else jumps off the page is the prefixed conclusions of Judge Sleet that are unquestionably based upon wrong set of facts. Facts that are as undisputed as whether Petitioner raised a certain claim regarding lack of independence of the successive judge after her verbatim copying and pasting of an order from the previously disqualified postconviction judge. *See App F, pg. 20a.* Lack of knowledge on these facts squarely points to lack of review in a judge who was so predisposed that he relied on extrajudicial rumor and innuendo that had been created as the narrative in the local legal community regarding Petitioner's case.

Petitioner argued at great length about the extrajudicial influence on Judge Sleet in both the recusal motion and the petition for writ of prohibition that was filed in Florida Supreme Court requesting Judge Sleet's disqualification.

This Petition should be granted because it cannot be maintained that a judge is impartial upon a record that is reflected in the oral argument transcript of this case.

IV. FLORIDA IS THE ONLY STATE WITH A VACUUM IN ITS APPELLATE MECHANISM CREATING A CONSTITUTIONAL INFIRMITY

Every state in the nation has a framework, involving either court rules, statutory provisions or adoption of Code of Judicial Conduct set forth by American Bar Association that has same force and

effect of law, governing disqualification of appellate judges. *See App E.* But Florida does not.

In Florida, disqualification of appellate judges are left to the unfettered discretion of the individual judge. *See* opinions of Justice England in *Dept of Revenue v. Dolder* 322 So.2d 1 (Fla, 1975), ultimately disqualifying himself, and opinion of Justice Overton *In Re Estate of Carlton*, 378 So.2d 1212 (Fla. 1979).

The provisions of the Bill of Rights to the United States Constitution, which are applicable to the states, contain basic guarantees of a fair trial. "Due process of law requires that the trial and appellate proceedings shall be fair." *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). *See also Buchalter v. New York*, 319 U.S. 427, 429 (1943). Conversely, "as applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice.

Florida, standing alone, among a nation of states, cannot refuse to employ rules or statutes that are safeguards for affording a fair trial especially in the context of criminal cases. *See Haywood v. Drown*, 556 U.S. 729, (2009), holding that "State cannot employ a jurisdictional rule to dissociate itself from federal law, because of state's disagreement with law's content or its refusal to recognize superior authority of its source; while states retain substantial leeway to establish contours of their judicial systems, they lack authority to nullify federal right or cause of action that they believe is inconsistent with their local

policies."

This Petition should be granted so that Florida can be congruent with the rest of the states in the nation in implementing concrete appellate procedures for disqualification of appellate judges.

CONCLUSION

For all the foregoing reasons, this Honorable Court should grant this Petition for Writ of Certiorari, directing the Florida Supreme Court to vacate its orders entered on May 28, 2024, and directing the state supreme court to grant both of the recusal motions directed at Judge Anthony Black and Judge Daniel Sleet of the Second District Court of Appeal of Florida.

In spite of Petitioner's status of self-representation, Petitioner respectfully asks the Court to grant oral argument.

Dated: August 24, 2024.

Respectfully submitted,

/s/ Christina Paylan, MD
Christina Paylan, MD
110 Pinellas Way North
St. Petersburg, Florida 33710
Tel: 813-919-6299
Email: drpaylan@bodytuck.com