

24-5025  
No.

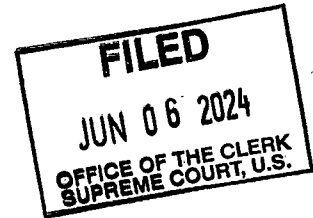
ORIGINAL

In the Supreme Court of the United States

Delbert W. Hargis Jr. - Petitioner

v.

State of New York-Respondent



ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT

Motion for Leave to Proceed In Forma Pauperis

New York State

Respondent

New York State Attorney General

Office of the Attorney General

The Capitol Albany, NY 12224-0341

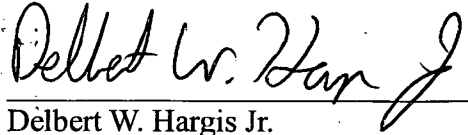
Delbert W. Hargis Jr.  
Petitioner-Pro Se  
1502 S. Salisbury Ave  
Spencer, North Carolina 28159  
(Cell) 315-489-8512  
DelHargis101@yahoo.com

**Dependents:**

LEH, age 11 (Biological Daughter) via child support, MBCDL, age 6 (Biological Daughter) via lives in same household, and Flosier C. Lucas, age 42 (Girlfriend) via lives in same household.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 24, 2024



Delbert W. Hargis Jr.

Petitioner-Pro Se

1502 S. Salisbury Ave

Spencer, North Carolina 28159

(Cell) 315-489-8512

DelHargis101@yahoo.com

0  
No, \_\_\_\_\_

In the Supreme Court of the United States

Delbert W. Hargis Jr.- Petitioner

v.

State of New York-Respondent

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT

**Declaration**

**New York State  
Respondent  
New York State Attorney General  
Office of the Attorney General  
The Capitol Albany, NY 12224-0341**

Delbert W. Hargis Jr.  
Petitioner-Pro Se  
1502 S. Salisbury Ave  
Spencer, North Carolina 28159  
(Cell) 315-489-8512  
DelHargis101@yahoo.com

June 6, 2024

To: Clerk of the Supreme Court of the United States  
Supreme Court Building  
1 First Street, NE  
Washington, DC 20543

Re: **Motion for Leave to Proceed In Forma Pauperis**

### **Declaration**

I, Delbert W. Hargis Jr., declare that I am the Petitioner in the above-entitled case. In support of my motion to proceed in forma pauperis, I state that because of my poverty, I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress. I also state that because of my poverty, I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

The Jefferson County Family Court and Oswego County Family Court both failed to properly apply established constitutional principles that are outlined clearly in past decisions by this court in past cases before this court, resulting in an erroneous decision that undermines the sanctity of parental rights and threatens the stability of all family units.

The issues presented in this case have far-reaching implications for parental rights and the proper application of constitutional principles. Granting Motion for Leave to Proceed In Forma Pauperis and granting the courts permission to review this court record decisions is essential to ensure uniformity in the interpretation of constitutional law in custody disputes, to ensure that lower courts follow the doctrine of Judice Prudice as ruled by this court in past decision, and preventing inconsistent decisions that may impact parents nationwide.

The lower courts have consistantly granted the Petitioner poor person status and have been granted assighment of counsel therefore the Petitioner respectfully requests the court does the same by granting this **Motion for Leave to Proceed In Forma Pauperis**.

On March 18, 2021, the New York State Appellate Division Fourth Department granted the Petitioner's Motion to proceed as a poor person and assignment of counsel.

On July 28, 2021, the New York State Appellate Division Fourth Department granted the Petitioner's Motion to proceed as a poor person and assignment of counsel.

On December 9, 2022, the New York State Appellate Division Fourth Department granted the Petitioner's Motion to proceed as a poor person and asignment of counsel.

From the on start of the Jefferson County Family Court matter the Petitioner was allowed to proceed as a poor person and have court ordered assignment of counsel through out the whole court proceeding.

Petitioner subsequently relocated to North Carolina for employment purposes, with the intention of providing a better life for his child.

Following Petitioner's relocation, the Family Court of New York, citing the Petitioner's move, granted full custody of the Child to the aunt, effectively severing the child's primary relationship with the Petitioner.

Petitioner contends that these orders were made without giving adequate weight to his fundamental right to make decisions concerning the care, custody, and control of his child, as established in *Troxel v. Granville*, 530 U.S. 57 (2000).

The court's decision was based primarily on the bond formed between the child and the Respondent and the Petitioner's relocation to North Carolina severing the visitation schedule with the aunt, invoking the standard set forth in *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976), which allows for non-parental custody under "extraordinary circumstances."

Petitioner contends that this decision violates his fundamental right to custody of his child, as protected by the Due Process Clause of the Fourteenth Amendment, and seeks review of this decision

The issues presented in this case have far-reaching implications for parental rights and the proper application of constitutional principles.

The Family Court's decision to grant custody to an aunt over a biological father, based on a disputed finding of neglect and the father's relocation to North Carolina, violates the Petitioner's constitutional rights. The Fourteenth Amendment protects the fundamental rights of parents to make decisions regarding the care, custody, and control of their children. In *Troxel v. Granville*, 530 U.S. 57 (2000), this Court held that there is a presumption that fit parents act in the best interests of their children. This presumption was not adequately rebutted in John Smith's case, and the court's decision infringes on his fundamental rights in this regard warrants review by this Court..

The Petitioner's attorney admitted to legal malpractice for failing to file an appeal against the original order granting visitation to the aunt. This failure deprived the Petitioner of the opportunity to challenge the decision and further violated his due process rights. Effective assistance of counsel is a critical component of due process, and the attorney's failure in this regard warrants review by this Court.

The Petitioner's financial status should not prevent the important review of the case by this court.

The aunt did not file a visitation petition in Jefferson County Family Court, yet she was granted visitation against the Petitioner's wishes. This action violates the procedural due process rights of the Petitioner, as it bypassed the proper legal channels and deprived him of the opportunity to contest the visitation order. This violation further undermines the fundamental right of a fit parent to make decisions regarding the care, custody, and control of their child in this regard warrants review by this Court.

The lower court's decision effectively diminishes these rights by allowing custody to be transferred to a non-parent without a finding of parental unfitness, solely based on a bond formed between the child and the non-parent in this regard warrants review by this Court.

## **Importance of the U.S. Supreme Court's Review of this Case**

### **1. Protection of Parental Rights**

- **Fundamental Right:** Parental rights are a fundamental liberty interest protected by the Fourteenth Amendment. The Supreme Court's review ensures these rights are not infringed upon unjustly.
- **Precedent:** The decision could set a precedent for similar cases, ensuring that parents' rights are consistently protected across the country.

### **2. Judicial Oversight on Lower Court Decisions**

- **Ensuring Legal Consistency:** The Supreme Court can address and rectify inconsistencies or errors in lower court rulings.
- **Review of State Court Decisions:** The case highlights the need for Supreme Court oversight when state court decisions potentially violate constitutional rights.

### **3. Clarification of Custody and Visitation Laws**

- **Legal Standards:** The Court's review can clarify the legal standards and criteria for granting visitation and custody to non-parents.
- **Best Interests of the Child:** It can provide guidance on how courts should balance the best interests of the child with the constitutional rights of parents.

### **4. Implications for Family Law Nationwide**

- **Uniformity in Application:** A ruling from the Supreme Court can ensure uniform application of family law principles across different states.
- **Impact on Future Cases:** The decision will impact how future cases involving third-party custody and visitation are handled, promoting fairness and consistency.

### **5. Addressing Potential Overreach by Courts**

- **Limits on Judicial Authority:** The case presents an opportunity for the Supreme Court to delineate the limits of judicial authority in overruling parental decisions.
- **Protection Against Unwarranted Interference:** It ensures that courts do not overstep and unlawfully interfere in family matters without compelling justification.

## 6. Public and Legal Community Awareness

- **Raising Awareness:** The Supreme Court's involvement can raise awareness about the importance of safeguarding parental rights and the potential for judicial overreach.
- **Educational Impact:** The case serves as an educational tool for judges, lawyers, and the public on the constitutional protections afforded to parents.

## 7. Reinforcement of Constitutional Principles

- **Fourteenth Amendment Rights:** The review reinforces the constitutional principles enshrined in the Fourteenth Amendment regarding family and parental rights.
- **Due Process:** It underscores the importance of due process in custody and visitation disputes, ensuring fair treatment of all parties involved.

## 8. Correcting Attorney Malpractice

- **Impact of Malpractice:** The case highlights the significance of attorney malpractice which prevented an appeal against an unlawful and unconstitutional visitation schedule.
- **Ensuring Fair Legal Representation:** It emphasizes the importance of competent legal representation and the impact of attorney errors on judicial outcomes.
- **Remedy for Injustice:** The Supreme Court's review can provide a remedy for the injustice caused by the attorney's malpractice, ensuring that the father's rights are properly considered.

## 9. Ensuring Just Outcomes

- **Correcting Misjudgments:** The Supreme Court can correct any misjudgments or unlawful decisions made by lower courts, ensuring justice is served.
- **Protecting Family Integrity:** It helps protect the integrity of the family unit, which is a core value in American society and law.

## Conclusion

The U.S. Supreme Court's review of this case is crucial in protecting fundamental parental rights, ensuring consistency and fairness in the application of family law, addressing potential judicial overreach, and correcting injustices caused by attorney malpractice. The outcome of this review has the potential to set significant legal precedents that will impact not only this case but also future cases involving similar issues.

## Statement of Financial Status

List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
New York Air Brake	115 Summit Park Dr Salisbury, NC 28146	12/03/13-Present	\$2,800.00

List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
None/NA	None/NA	NA	\$0

How much cash do you and your spouse have? \$35.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
F&M Bank	Savings	\$537.00	\$0

List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Asset	Value
2012 Ford Escape	\$500.00



State every person, business, or organization owing you or your spouse money, and the amount owed.

Person Owing You or Your Spouse Money	Amount Owed to You	Amount Owed to Your Spouse
None	\$0	\$0

State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
LEH	Biological Daughter	11

Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

Expense	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$850.00	\$0 _____
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$200-\$400	\$0 _____
Home maintenance (repairs and upkeep)	\$50	\$0 _____
Food	\$300-\$400	\$0 _____
Clothing	\$50	\$0 _____
Laundry and dry-cleaning	\$50	\$0 _____
Medical and dental expenses	\$100-\$200	\$0 _____
Transportation (not including motor vehicle payments)	\$100	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$50	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$100	\$ _____
Life	\$25	\$ _____
Health	\$150	\$ _____
Motor vehicle	\$60	\$ _____
Other	\$0	\$ _____
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$0	\$ _____
Installment payments		
Motor Vehicle	\$0 _____	\$ _____
Credit card (name):	\$0 _____	\$ _____
Department store (name):	\$0 _____	\$ _____
Other:	\$0	\$ _____
Alimony, maintenance, and support paid to others	\$400.00	\$ _____

Expense	You	Your Spouse
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$0 _____	\$ _____
Other (specify):	\$0 _____	\$ _____
<b>Total Monthly Expenses</b>	<b>\$2,485.00-\$2,785.00</b>	<b>\$ _____</b>

Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes ☐ No ☒

If yes, describe on an attached sheet.

Have you paid—or will you be paying—an attorney any money for services in connection with this case, including the completion of this form?

Yes ☐ No ☒

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes ☐ No ☒

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

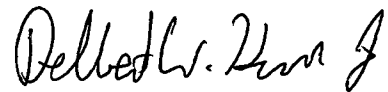
Provide any other information that will help explain why you cannot pay the costs of this case:

In support of my motion to proceed in forma pauperis, I state that because of my poverty, I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress. I also state that because of my poverty, I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I declare under penalty of perjury that the foregoing is true and correct.

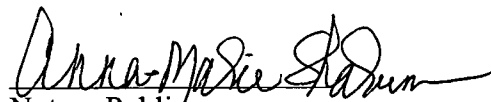
Dated: June 6, 2024

Yours, etc.



Delbert W. Hargis Jr.  
Petitioner-Pro Se  
1502 S. Salisbury Ave  
Spencer, N. C. 28159  
(Cell) 315-489-8512  
DelHargis101@yahoo.com

As sworn before me on  
June 6, 2024.

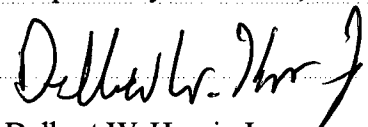


Notary Public  
Exp 3-3-28

### Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Motion for Leave to Proceed In Forma Pauperis in the interest of justice.

Respectfully submitted,



Delbert W. Hargis Jr.  
Petitioner-Pro Se

### Exhibits:

- Exhibit A: Copy of the New York State Appellate Division Fourth Department granted the Petitioner's Motion to proceed as a poor person and assignment of counsel dated March 18, 2021.
- Exhibit B: Copy of the New York State Appellate Division Fourth Department granted the Petitioner's Motion to proceed as a poor person and assignment of counsel dated July 28, 2021.
- Exhibit C: Copy of the New York State Appellate Division Fourth Department granted the Petitioner's Motion to proceed as a poor person and assignment of counsel dated December 9, 2022.

No, \_\_\_\_\_

---

In the Supreme Court of the United States

---

Delbert W. Hargis Jr.- Petitioner

v.

State of New York-Respondent

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT

---

---

**Exhibit A**

---

---

**New York State  
Respondent  
New York State Attorney General  
Office of the Attorney General  
The Capitol Albany, NY 12224-0341**

Delbert W. Hargis Jr.  
Petitioner-Pro Se  
1502 S. Salisbury Ave  
Spencer, North Carolina 28159  
(Cell) 315-489-8512  
DelHargis101@yahoo.com

---

---

SUPREME COURT OF THE STATE OF NEW YORK  
Appellate Division, Fourth Judicial Department

**CAF 21-00214**

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.

---

IN THE MATTER OF DELBERT W. HARGIS, JR., PETITIONER-APPELLANT,

V

VICTORIA ANN PRITTY-PITCHER, RESPONDENT-RESPONDENT.

Docket No: V-2452-12/20M

---

IN THE MATTER OF VICTORIA PRITTY-PITCHER, PETITIONER-RESPONDENT,

V

DELBERT W. HARGIS, JR., RESPONDENT-APPELLANT, AND  
NICOLE E. HARGIS, RESPONDENT-RESPONDENT.

Docket No. V-2452-12/200

---

IN THE MATTER OF VICTORIA PRITTY-PITCHER, PETITIONER-RESPONDENT,

V

DELBERT W. HARGIS, JR., RESPONDENT-APPELLANT.

Docket No. V-2452-12/20N

---

**CAF 21-00215**

---

IN THE MATTER OF VICTORIA A. PRITTY-PITCHER,  
PETITIONER-RESPONDENT,

V

DELBERT W. HARGIS, JR., RESPONDENT-APPELLANT.

Docket No: V-02452-12/20N

---

**CAF 21-00216**

---

IN THE MATTER OF VICTORIA PRITTY-PITCHER, PETITIONER-RESPONDENT,

V

DELBERT HARGIS, RESPONDENT-APPELLANT,  
AND NICOLE HARGIS, RESPONDENT-RESPONDENT.

Docket No: V-2452-12/19I

---

Appellant having moved for permission to proceed as a poor person and for assignment of counsel on the appeals taken herein from orders of the Family Court, Jefferson County, entered December 11, 2020, December 16, 2020, and January 12, 2021,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is granted, and

It is further ORDERED that Amber M. Poulos, Esq., 41 Autumnview Road, Williamsville, New York 14221, is hereby assigned as counsel to conduct the appeals, and

It is further ORDERED that the Jefferson County Family Court Clerk provide Amber R. Poulos, Esq., with copies of all papers and transcripts of stenographic, digitally recorded, or audiotaped minutes, if any, of the proceedings upon which the appeals are based, and

It is further ORDERED that the record and briefs are to be filed and served within 60 days of the filing of the transcripts with the Jefferson County Family Court Clerk.

Entered: March 18, 2021

Mark W. Bennett  
Clerk of the Court

No, \_\_\_\_\_

---

In the Supreme Court of the United States

---

Delbert W. Hargis Jr.- Petitioner

v.

State of New York-Respondent

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT

---

---

**Exhibit B**

---

---

**New York State  
Respondent  
New York State Attorney General  
Office of the Attorney General  
The Capitol Albany, NY 12224-0341**

Delbert W. Hargis Jr.  
Petitioner-Pro Se  
1502 S. Salisbury Ave  
Spencer, North Carolina 28159  
(Cell) 315-489-8512  
DelHargis101@yahoo.com

---

---



SUPREME COURT OF THE STATE OF NEW YORK  
**Appellate Division, Fourth Judicial Department**

**CAF 21-00931**

PRESENT: SMITH, J.P., CENTRA, CARNI, LINDLEY, AND BANNISTER, JJ.

---

IN THE MATTER OF VICTORIA PRITTY-PITCHER, PETITIONER-RESPONDENT,

V

DELBERT HARGIS, RESPONDENT-APPELLANT,  
AND NICOLE HARGIS, RESPONDENT.

Docket No: V-2452-12/20P

---

Respondent-appellant having moved for permission to proceed as a poor person and for assignment of counsel on the appeal taken herein from an order of the Family Court, Jefferson County, entered June 14, 2021,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is granted, and

It is further ORDERED that Ryan J. Muldoon, Esq., 126 Genesee Street, Suite 105, Auburn, New York 13021, is hereby assigned as counsel to conduct the appeal, and

It is further ORDERED that the Jefferson County Family Court Clerk provide Ryan J. Muldoon, Esq., with copies of all papers and transcripts of stenographic, digitally recorded, or audiotaped minutes, if any, of the proceedings upon which the appeal is based, and

It is further ORDERED that the record and briefs are to be filed and served within 60 days of the filing of the transcripts with the Jefferson County Family Court Clerk.

Entered: July 28, 2021

Mark W. Bennett  
Clerk of the Court

**Supreme Court**  
**APPELLATE DIVISION**  
**Fourth Judicial Department**  
**Clerk's Office, Rochester, N.Y.**



*I, MARK W. BENNETT, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original document, now on file in this office.*



*IN WITNESS HEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this*

**JUL 28 2021**

  
\_\_\_\_\_  
**Clerk**

No, \_\_\_\_\_

---

In the Supreme Court of the United States

---

Delbert W. Hargis Jr.- Petitioner

v.

State of New York-Respondent

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES SUPREME COURT

---

---

**Exhibit C**

---

---

**New York State  
Respondent  
New York State Attorney General  
Office of the Attorney General  
The Capitol Albany, NY 12224-0341**

Delbert W. Hargis Jr.  
Petitioner-Pro Se  
1502 S. Salisbury Ave  
Spencer, North Carolina 28159  
(Cell) 315-489-8512  
DelHargis101@yahoo.com

---

---

SUPREME COURT OF THE STATE OF NEW YORK  
**Appellate Division, Fourth Judicial Department**

**CAF 22-01495**

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, LINDLEY, AND NEMOYER, JJ.

---

IN THE MATTER OF VICTORIA PRITTY-PITCHER, PETITIONER-RESPONDENT,

V

DELBERT HARGIS, RESPONDENT-APPELLANT.

Docket No: V-2452-12/20P-S, O-548-21

---

**CAF 22-01496**

---

IN THE MATTER OF VICTORIA A. PRITTY-PITCHER,  
PETITIONER-RESPONDENT,

V

DELBERT W. HARGIS, JR., RESPONDENT-APPELLANT,  
AND NICOLE E. HARGIS, RESPONDENT-RESPONDENT.

Docket No: V-02452-12/20P

---

**CAF 22-01497**

---

IN THE MATTER OF VICTORIA PRITTY-PITCHER, PETITIONER-RESPONDENT,

V

DELBERT HARGIS, RESPONDENT-APPELLANT,  
AND NICOLE HARGIS, RESPONDENT-RESPONDENT.

Docket No: V-2452-12/20Q

---

Respondent-appellant having moved for permission to proceed as a poor person and for assignment of counsel on the appeals taken herein from a decision of the Family Court, Jefferson County, dated August 16, 2022, and from orders of the Family Court entered August 31, 2022,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the appeal from the decision dated August 16, 2022 (CAF 22-01495), is dismissed on the ground that no appeal lies from a decision (see *Matter of Hankinson v Steele*, 195 AD3d 1380, 1380-1381 [4<sup>th</sup> Dept 2021]; *Kuhn v Kuhn*, 129 AD2d 967,

967 [4<sup>th</sup> Dept 1987]), and the motion with respect to that appeal is dismissed, and

It is further ORDERED that the motion is otherwise granted, and

It is further ORDERED that John A. Cirando, Esq., 250 South Clinton Street, Suite 350, Syracuse, New York 13202, is hereby assigned as counsel to conduct the appeals, and

It is further ORDERED that the Jefferson County Family Court Clerk provide John A. Cirando, Esq., with copies of all papers and transcripts of stenographic, digitally recorded, or audiotaped minutes, if any, of the proceedings upon which the appeal is based, and

It is further ORDERED that the records and briefs are to be filed and served within 60 days of the filing of the transcripts with the Jefferson County Family Court Clerk.

**Supreme Court**  
**APPELLATE DIVISION**  
**Fourth Judicial Department**  
**Clerk's Office, Rochester, N.Y.**



*I, ANN DILLON FLYNN, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original document, now on file in this office.*



*IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this*

**DEC 09 2022**

*Ann Dillon Flynn*  
*Clerk*