No. 24-

IN THE

Supreme Court of the United States

LARRY E. PARRISH, P.C., A TENNESSEE PROFESSIONAL CORPORATION,

Petitioner,

v.

JONATHAN SKRMETTI, ATTORNEY GENERAL OF STATE OF TENNESSEE, AND NANCY J. STRONG,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

PETITION FOR A WRIT OF CERTIORARI

LARRY E. PARRISH
Counsel of Record
PARRISH LAWYERS, P.C.
1661 International Drive, Suite 400
Memphis, TN 38120
(901) 818-3072
parrish@parrishandshaw.com

Counsel for Petitioner

335232

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. According to *Williams v. Pennsylvania,* 579 U.S. 1 (2016) ("***Williams***"), is Rule 10B of the Rules of Tennessee Supreme Court ("Rule 10B") a structural constitutional violation,[1] guaranteed by the United States Constitution, Fourteenth Amendment, Due Process, Clause ("Fourteenth Amendment"), because Rule 10B, imposes conditions that shift, from the State of Tennessee to litigants, the burden of providing petitioner access to a judge with a state of mind equal to the minimum ***Williams*** requires for any judge to be constitutionally qualified to adjudicate petitioner's case?

2. Is an inalienable characteristic of a structural constitutional right that it is impossible for a litigant (as is petitioner) to waive and for the State of Tennessee to forfeit?

3. Per petitioner (a litigant), for a judge to be constitutionally qualified to adjudicate a litigant's case, must the judge not appear to have a state of mind ("psychologically wedded") described in ***Williams***?

4. Per ***Williams***, is the right of a litigant to a constitutionally qualified judge a structural

1. Structural constitutional rights. *Greer v. United States*, 593 U.S. 503 (2021); *Weaver v. Massachusetts,* 582 U.S. 286 (2017); *McCoy v. Louisiana*, 584 U.S. 414 (2018); *Glebe v. Frost*, 574 U.S. 21 (2014); *United States v. Davila*, 569 U.S. 597 (2013); *United States v. Marcus*, 560 U.S. 258 (2010); *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006); *Washington v. Recuenco*, 548 U.S. 212 (2006).

constitutional right guaranteed by the Fourteenth Amendment?

5. For petitioner (a litigant) to be assured access to the structural constitutional right to a constitutionally qualified judge, does Rule 10B mandate that petitioner (a litigant) qualify by complying with prerequisite conditions prescribed by Rule 10B but not allowed by ***Williams***?

6. Other than being a litigant, is the structural constitutional right to have the litigant's case be adjudicated only by a constitutionally qualified judge an unconditional right?

7. Is the State of Tennessee structurally obligated, by the Fourteenth Amendment, to provide all litigants in Tennessee with a constitutionally qualified judge without any litigant obligation to file a motion to recuse?

8. Is the State of Tennessee structurally obligated, by the Fourteenth Amendment, to provide all litigants in Tennessee with a court with subject matter jurisdiction constitutionally the same as the State of Tennessee's structural obligation to provide all litigants in Tennessee a judge constitutionally qualified according to ***Williams***?

LIST OF PARTIES TO THE PROCEEDING

Petitioner

Larry E. Parrish, P.C., a professional corporation incorporated by the State of Tennessee for the practice of law since April 1977 ("Professional Corporation").

Larry E. Parrish, Esq. is not a party to this petition of certiorari but, below, was the petitioner in the Tennessee Supreme Court who prosecuted In re Tennessee Supreme Court Rule 10B, No. W2024-00**932-SC**-UNK-CV (Tenn.) described in the related proceedings below.

Respondents

The Honorable Jonathan Skrmetti, Attorney General & for the State of Tennessee ("Tennessee Attorney General"). On March 18, 2024, the trial court entered an order permitting the Tennessee Attorney General to intervene in the trial court proceedings in the September 30 Judgment case, to protect the interests of the public in the outcome of Professional Corporation's claim that Rule 10B was unconstitutional according to the Fourteenth Amendment. Thereafter, the Attorney General participated, in the trial court proceedings September 30 Judgment case.

Nancy J. Strong ("Respondent Strong") filed the motion to dismiss the Professional Corporation's In Rem Case which precipitated an October 5, 2023 trial court order dismissing the In Rem Case and has been an adversary of Professional Corporation in all trial court proceeding in the In Rem Case.

CORPORATE DISCLOSURE

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Petitioners, Professional Corporation makes the following disclosure:

1. **Corporate Party Status**: There are no corporate entities that are parties to this petition other than Professional Corporation, which is a professional corporation organized under the laws of the State of Tennessee.

2. **Parent Corporations**: Professional Corporation has no parent corporation.

RELATED PROCEEDINGS

- "Rule 60.02(3) Independent Action To Set Aside November 14, 2017 Judgment For Lack Of Court's Post-Nonsuit Subject Matter Jurisdiction"(Seventeenth Judicial District of Tennessee, Fayetteville, Tennessee, filed June 13, 2023) ("*In Rem Case No. **15757***"), Remains pending. Not published in any reporter or online.

- *In re Tennessee Supreme Court Rule 10B,* No. W2024-00**932**-SC-UNK-CV (Tenn. Supreme Court, filed July 2, 2024). Tennessee Supreme Court final judgment (App. A pp. 1a-2a) August 13, 2024). Order denying motion to rehear on September 9, 2024 (App. B p. 3a). Not yet published in reporter or online.

- *Larry E. Parrish, P.C. v. Strong,* Case No. W2024-001**141**-COA-UNK-CV (Tenn. Ct App. filed July 29, 2024), final judgment on August 21, 2024. Not yet published in reporter or online. **This is decision is not the decision to which is the *sub judice* petition for certiorari seeks a writ.**

- *Larry E. Parrish, P.C. v. Strong,* Case No. W2024-00932-SC-UNK-CV (Tennessee Supreme Court, September 5, 2024). Final judgment on September 30, 2024) (App. A pp. 1a-2a). Not yet published in reporter or online. **This is the decision which is the *sub judice* petition for certiorari of this which is due to be filed December 30, 2024.**

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In re Tennessee Supreme Court Rule 10B, No. W2024-00932-SC-UNK-CV (Tenn. **August 13, 2024**) Final judgment (App. D pp. 11a-13a). Not Yet Published In Official Reporter Or Online.

In re Tennessee Supreme Court Rule 10B, No. W2024-00932-SC-UNK-CV (Tenn. **September 9 , 2024**) (App. B p. 3a).Order denying petition to rehear. Not Published.

Larry E. Parrish, P.C. v. Strong, No. M2024-01141-COA-T10B-CV (Tenn. Ct, App. **August 21, 2024**) (App. C pp. 4a-10a). Final judgment dismissing appeal for failure to comply with Rule 10B deadlines. Not Yet Published In Official Reporter Or Online.

Larry E. Parrish, P.C. v. Strong, No. M2024-01141-SC-T10B-CV (Tenn. **September 30, 2024**) (App. A pp. 1a-2a). Final Judgment on merits finding Rule 10B constitutional and that *Williams* is not contrary. Not Yet Published In Official Reporter Or Online.

The **federal question was raised** in the trial court (Chancery Court) in the *In Rem Case No. **15757***, filed June 13, 2023.

It is the Tennessee Supreme Court's September 30, 2024 final judgment disposing of the Nov. 21, 2023 Federal Question Motion that is the subject of the instant petition. The orders (and proceedings necessary to understand

the orders) will be chronologically set forth separated from ancillary and related proceedings, which will be separately listed.

On November 21, 2023 a motion was filed in the *In Rem Case No. 15757* entitled "Sworn Motion To Recuse Chancellor And To Declare Tennessee Rules Supreme Court, Rule 10B, Section 1.01 In Violation Of The Fourteenth Amendment, Due Process Clause, United States Constitution" ("Federal Question Motion").

On March 18, 2024, Chancery Court entered an **ORDER** permitting The Honorable Jonathan Skrmetti, Attorney General & Reporter for the State of Tennessee ("Attorney General") to intervene in the In Rem Case No. 15757 for the sole purpose of protecting the interests of the public in the disposition of the Federal Question Motion.

On May 6, 2024, the Attorney General filed a response moving Chancery Court, because Chancery Court had no subject matter jurisdiction to adjudicate the constitutionality of Rule 10B, to dismiss the Federal Question Motion pending in the In Rem Case No. 15757 because the constitutionality of Rule 10B was beyond the subject matter jurisdiction of Chancery Court and that, in Tennessee, only the Tennessee Supreme Court had such subject matter jurisdiction.

On July 3, 2024, with Professional Corporation, the Attorney General, Respondent Strong and Chancery Court in agreement that Chancery Court had no subject matter jurisdiction to decide to the constitutionality of Rule 10B, Chancery Court, entered an **ORDER** ("Federal Question Dismissal Order") (App. E pp. 14a-15a) dismissing the Federal Question Motion without deciding the merits.

On July 29, 2024, Professional Corporation appealed the July 3, 2024 Federal Question Dismissal Order to the Tennessee Court of Appeals ("COA") where the COA docketed the appeal as Case No. W2024-01**141-COA**-UNK-CV.

The trial court order No. 15747 is the subject of the instant Petition which, in the Tennessee Supreme Court was given the docket number including 141-SC. The September 30 final judgment in 141-SC incorporated by reference the August 13, 2024 final judgment with the docket number including 932-SC. At this juncture, on September 30, 2024, docket numbers 932-SC and 141-SC merge.

On August 21, 2024, the COA entered an **ORDER** (App. C pp. 4a-10a) dismissing Professional Corporation's July 29, 2024 appeal, in Case No. W2024-01141--COA-UNK-CV, for lack of COA's jurisdiction on a finding that Professional Corporation failed to comply with Rule 10B's time constraints in filing the appeal.

On September 5, 2024, Professional Corporation filed, in the Tennessee Supreme Court, an application for permission to appeal the August 21, 2024 judgment of the COA (App. C pp. 4a-10a) in Case No. W2024-01141-COA-UNK-CV dismissing the July 29, 2024 appeal of Professional Corporation.

On September 30, 2024, the Tennessee Supreme Court, in Case No.W2024-01141-SC-UNK-CV entered **FINAL JUDGMENT/ORDER** (App. A pp. 1a-2a) holding that Rule 10B was constitutional and explicitly that ***Williams*** did not require that the Tennessee Supreme Court hold otherwise because ***Williams*** involved a timely

filed recusal motion and Case No. 15757 November 21, 2023 Federal Question Motion was not a timely filed recusal motion.

JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) from a federal question concerning Fourteenth Amendment constitutionality of a substantive court-made Tennessee Supreme Court Rule arising in State of Tennessee courts.

The order below which is the subject of the petition was entered by the Tennessee Supreme Court on September 30, 2024 and the filing date has not been extended by the Court; therefore, the due date for filing in this Court is December 30, 2024.

STATUTORY/RULE/CONSTITUTION PROVISIONS

The Fourteenth Amendment, United States Constitution, Due Process Clause is implicated and reads, in pertinent part, as follows:

> 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.

The only other constitutional provision implicated is the United States Constitution, Article VI, Clause 2 Supremacy Clause which reads, in pertinent part, as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The only statutory provision is 28 U.S.C. § 1257(a) which reads, in pertinent part, as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Tennessee Supreme Court Rule 10B, in pertinent part (App. F pp. 16a-18a).

Tennessee Rules of Civil Procedure, Rule 60.02(3), in pertinent part (App. F pp. 16a-18a);

Tennessee Rules of Civil Procedure, Rule 59.04, in pertinent part (App. F p. 19a).

STATEMENT OF THE CASE

Facts

This Petition involves no trial proceedings. This Petition involves no factual disputes and no proceedings concerning facts. All facts are conceded, matters of record and indisputable and consist of the various motions and pleadings which are documented herein.

This petition is all about the structure and structure's priority over everything else.

The premise here is that no court, no legislature and no governor/president (or any part of the executive branch) is constitutionally empowered to change, modify, mitigate, or diminish the structure because all courts, all judges, all legislatures, all legislators and all a governors/presidents (or any part of the executive branch) exist only inside the structure and do not exist or have authority/jurisdiction to function outside the structure.

The structure prescribes exactly how it can be changed, and there is no means other than the prescribed method can change the structure. Any attempt to change the structure, per se, is a structural constitutional violation which nullifies the change attempted. So far there have been 27 changes to the structure, that is, 27 Constitutional amendments. There is reported to have been more than 10,000 unsuccessful attempts to change the structure. The structure is designed to be hard to change and attempts to make changes bypassing, for pragmatics sake, the structure's prescribed methods for changes destroy the structure.

Only We The People can change the structure, and preserving the structure and the only means to change it is the one and only means for We The People to rule the government instead of the government rule We The People.

As well-known but worth remembering, no court or group of courts and no judge or group of judges has/have an iota of authority to change the structure.

Likewise, worth remembering is that, if any court, any judge, any legislature, any legislator any governor/president attempts to perform any "official act" outside the structure, the "official act" has zero force and effect or, as the law puts it, is *corum non judice* (legally worthless as counterfeit currency is legally worthless).

Likewise, worth remembering is that any court, any judge, any legislature, any legislator any governor/president who attempts to perform any "official act" outside the structure, is usurping the authority of the office he/she holds, and the officeholder functioning outside the bounds of the structure loses the privileges of the office when the officeholder functions within the bounds of the structure.

The immediately preceding six paragraphs are basic tenets of United States civics, able to be understood without the necessity to be educated in the law, and which Professional Corporation respectfully suggests are too often overlooked and result in understandable but regrettable situations which call on this Court to correct.

ARGUMENT

Williams arrived at this Court via a petition for certiorari that, to court-watchers, had no chance of being granted. Obviously, the Justices saw something court-watchers were missing. One of those things seen by the Justices might have been the opportunity for this Court to make certain that the constitutional law of the land is that the right of every litigant in the United States to access the **public's constitutional structural right** to be judged only by a constitutionally qualified judge, i.e., a judge with a state of mind different from the appearance of Chief Justice Castille's state of mind, as described by ***Williams***.

By leaving without doubt that the right of access of all litigants was not a mere personal, but a structural right, by ***Williams***, the Court placed the right of access into an exalted rare breed of rights co-equal with the right of every litigant to be subjected to judgments by no courts, except courts with subject matter jurisdiction.

The word "structure," analogizing a building or house, is aptly used by the law to describe the collection of **non**-waivable/**non**-forfeitable rights that belong to We The People (the public) and not to any individual (be he/she a judge, a legislator, a governor/president or anybody else).

Keeping this collection of **non**-waivable/**non**-forfeitable rights separate and exalted above all rights is the critical linchpin that assures that We The People are self-governing and are not a governed people. The structure belongs exclusively to We The People, and the structure is not co-owned by We The People and any government or government official. Indeed, government

officials, including judges, have an interest in the structure to no greater extent than any other member of We The People.

Within the structure, the untouchable rights are those rights which, if touched, threaten the structure itself and not just individuals, one at a time, who make up the corpus of We The People.

The rights within the structure that are untouchable by any court, any judge, any legislature, any legislator any governor/president are coined by the law as "structural rights" or, because the Fourteenth Amendment protects the "structural rights," the "structural rights" are referred to as "structural constitutional rights." There are no "structural rights" which are not guaranteed by the Fourteenth Amendment, thus, are not "structural constitutional rights."

As ***Williams*** unequivocally holds, the right of every litigant and every potential litigant (i.e., every person who is a constituent part of the corpus of We The People) to be judged only by judges who meet the prerequisite standards ***Williams*** identifies a judge must have to be constitutionally (Fourteenth Amendment) qualified to adjudicate a particular litigant's case, is a "structural right."

Every litigant and every potential litigant is guaranteed that, when and if they appear before a judge in any court in the United States, the judge is a person who is constitutionally qualified by ***Williams'*** standards. No litigant need bear any obligation or responsibility of any kind to assure that the litigant will be judged by

none other than a constitutionally qualified judge. This is a structural right, which by being a structural right, is absolute and is unconditional and is **non**-waivable/**non**-forfeitable, meaning that the litigant could not sacrifice even if the litigant so desired and no state or federal government could take from the litigant, no matter what good reason the government had for taking the right away. This is very simple to understand.

There is a mirror-image structural right. Every litigant and every potential litigant is guaranteed that, when and if they appear in a court, the court has subject matter jurisdiction to render a *corum judice* (viable/enforceable) judgment. This is equally a **non**-waivable/**non**-forfeitable structural right and a threshold structural right.

No litigant must do anything to have full advantage of this absolute structural right for the remainder of the litigant's life, no matter if the litigant knew the first day of the litigation that the court had no subject matter jurisdiction but said nothing waiting in hopes that the litigant would prevail without stating what the litigant knew about the lack of the court's subject matter jurisdiction. The litigant could wait until years after a judgment to file a Rule 60.02(3) (App. F p. 18a-19a) motion to set-aside the *corum non judice* judgment emanating from the court with no subject matter jurisdiction.

The reason is that the obligation to assure that the litigant, from the moment the litigant sets foot in the court and throughout the litigation, is exclusively the court's (or the states') obligation to assure that the litigant's absolute, unconditional, **non**-waivable/**non**-forfeitable structural

right to a court with subject matter jurisdiction is afforded the litigant. None of this falls on the litigant.

The law knows of no structural right that is waivable/forfeitable.

What does this say about this petition?

This Court in both 2016 (***Williams***) and again in 2017 (Rippo) held that the right to a constitutionally qualified judge, as ***Williams*** and Rippo described a constitutionally qualified judge, is a structural right.

Then and thereafter, Rule 10B was and currently is in place in Tennessee and the remaining 49 states have laws with similar conditions. Unabashedly, the State of Tennessee and the other 49 states ignore ***Williams*** and Rippo the same as if this Court had never said anything about the right to a constitutionally qualified judge being a structural right. Rarely is such brazen defiance by lower courts of this Court's crystal clear holdings seen.

Another structural right is the Supremacy Clause. Rule 10B could not be a more brightly shining example of flouting this Court in a fashion that denigrates this Court and chips away at the foundation of the structure.

Without the necessity to cite statistics, it is common knowledge that the respect of We The People for courts, in general, but much of the disrespect for this Court has created a constitutional crisis in the United States. This threatens the structure without which we can have no vestige of rule of law, much less being a nation of laws, not men.

There are rights within the structure designed to protect the individuals who make up the corpus of We The People. These are personal rights which each person who is part of We The People can chose, one by one, to waive and may be conditional on the individual meeting certain legislatively prescribed standards to keep from forfeiting. These are waivable/forfeitable.

Rule 10B is enforced by the State of Tennessee as if it were a personal waivable/forfeitable right. A catch-it-if-you-can right where waiver is likely the most frequent reason given by Tennessee courts for denying recusal motions.

By Rule 10B, the Tennessee Supreme Court has unconstitutionally invaded the exclusive domain of the structure and unconstitutionally flipped a vital part of the structure on its head.

The following is a June 28, 2024 statement from a Justice of the Court on the extreme importance of structural constitutional rights. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2275 (2024):

> *Chevron* deference was "not a harmless transfer of power." *Baldwin*, 589 U. S., at ___, 140 S. Ct. 690, 206 L. Ed. 2d 231, 232 (opinion of Thomas, J.). 'The Constitution carefully imposes structural constraints on all three branches, and the exercise of power free of those accompanying restraints subverts the design of the Constitution's ratifiers.' Ibid. (Emphasis added)

To fix ***Williams*** in its context provides perspective otherwise not obvious.

The Court's opinion was rendered at a time when there were only eight Justices because Justice Scalia had not been replaced.

The ***Williams*** opinion was authored for the Court by Justice Kennedy joined by Justice Sotomayor, Justice Ginsberg, Justice Breyer and Justice Kagan.

Chief Justice Roberts, Justice Alito and Justice Thomas wrote dissenting opinions.

Ten months after ***Williams***, the Court rendered its decision in *Rippo v. Baker,* 580 U. S. 285 (2017) (*per curiam*) ("*Rippo*") reiterating ***Williams***.

Since Rippo, Justice Sotomayor, Justice Gorsuch and Justice Kavanaugh have cited ***Williams*** in other contexts.[1]

Because two facts are the crux of what this Petition puts before the Court, those facts need to be presented. Having these facts in mind elucidates the argument.

Fact one is that ***Williams*** is unconcerned with the date of the events that evidence a disqualifying state of mind relative to the date of the recusal motion or even if there is a recusal motion. ***Williams*** is focused exclusively on the probative significance of the event.

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1. Justice Sotomayor concurred in the denial of a petition for certiorari in *Isom v. Arkansas*, 140 S. Ct. 342, 343-44 (2019). Justice Gorsuch, with Justice Kavanaugh, dissented from denial of a petition for certiorari in *Donziger v. United States*, 143 S. Ct. 868, 869-70 (2023). Justice Gorsuch dissented from denial of a petition for certiorari in *Buffington v. McDonough*, 143 S. Ct. 14, 19 (2022).

Fact two is that Rule 10B (and similar rules in the other 49 states)[2] are only concerned with the date of the event/s said to disqualify the judge relative to when the required recusal motion is filed.

The probative significance of the event is of no concern to Rule 10B. If too much time has elapsed between the event and the required recusal motion, Rule 10B forbids

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2. Rule 32, Alabama Rules of Judicial Administration; Alaska Rule of Civil Procedure 42; Alaska Statutes § 22.20.020; Arizona Rule of Civil Procedure 42; Arkansas Code of Judicial Conduct Canon 3E; California Code of Civil Procedure § 170.1; Colorado Rule of Judicial Conduct Rule 2.11; Connecticut Practice Book § 1-22; Delaware Code Title 10, Chapter 45, § 144; Florida Rule of Judicial Administration 2.330; O.C.G.A. § 15-1-8; Hawaii Rules of Civil Procedure Rule 42; Idaho Code § 1-2001; Illinois Supreme Court Rule 63; Indiana Rule of Trial Procedure 12; Iowa Rule of Civil Procedure 1.260; Kansas Statutes § 20-311d; Kentucky Rules of Civil Procedure 76.42; Louisiana Code of Civil Procedure Article 151; Maine Rules of Civil Procedure Rule 63; Maryland Rule 18-102; Massachusetts Rules of Professional Conduct 3.5; Michigan Court Rule 2.003; Minnesota Statutes § 542.12; Mississippi Rules of Civil Procedure 63; Missouri Rule 51.05; Montana Code Annotated § 3-1-803; Nebraska Revised Statutes § 24-736; Nevada Rule of Judicial Administration 2.20; New Hampshire Rule of Court 4.1; New Jersey Court Rule 1:12-1; New Mexico Rule of Civil Procedure 1-089; New York Judiciary Law § 14; North Carolina General Statutes § 15A-1223; North Dakota Rules of Court 3.1; Ohio Revised Code § 2701.03; Oklahoma Statutes § 20-1.1; Oregon Rule of Civil Procedure 63; 42 Pa. C.S. § 1701; Rhode Island Rule of Judicial Conduct 2.11; South Carolina Code of Judicial Conduct Canon 3E; South Dakota Rule of Judicial Conduct Rule 2.11; Texas Rule of Civil Procedure 18a; Utah Code of Judicial Conduct Rule 2.11; Vermont Rule of Judicial Conduct 2.11; Virginia Code § 17.1-100; Washington Rule of Court 2.11; West Virginia Code § 51-2-2; Wisconsin Statutes § 757.19; Wyoming Rule of Judicial Conduct Rule 2.11

the litigant from challenging the qualifications of the judge, no matter how egregiously the judge might be disqualified.

The difference in the significance of time in ***Williams*** and the significance of time in court-made Rule 10B is of critical constitutional significance. This difference evidences diametrically opposite views of the structural constitutional right of every litigant and litigant to come to access a constitutionally qualified judge.

Of importance is the fact that the Tennessee Supreme Court reaffirmed (App. D p. 12a) that, in Tennessee, waiver by a litigant is a longstanding legitimate reason for denying a litigant the opportunity to challenge whether a judge is constitutionally qualified to adjudicate the litigant's case.[3]

The words "bias" and "partial" are not used herein because the constitutionally prohibited appearance may or may not evidence bias or partiality but still create the unconstitutional appearance of unconstitutional risk.

For instance, the trial judge in the instant case said on the record that he was entering a judgment for the court even though he did not know whether the court did or did not have jurisdiction to-render the "judgment" the judge entered for the court.

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3. *Cook v. State*, 606 S. W.3d 247, 254 (Tenn. 2020); *Bean v. Bailey,* 280 S. W. 3d 798, 803 (Tenn. 2009); *Winters v. Allen*, 62 S. W.2d 51, 52 (Tenn. 1933); *Obion Cnty. v. Coulter,* 284 S. W. 372, 374-75 (Tenn. 1924); *Radford Trust Co. v. E. Tenn. Lumber Co.*, 21 S.W. 329, 331 (Tenn. 1893).

A court with no jurisdiction is no court at all and is incapable of adjudicating. The judge stated that he was "not smart enough" to decide whether the court had jurisdiction. Whether this judge evidenced an appearance of bias or non-neutrality is debatable. It is not debatable that this judge evidenced the appearance of a state of mind incapable or unwilling to perform his oath of office to apply the law that, unless a court has jurisdiction, the court could do nothing, that is, the "court" is not a court.

The orders in the trial court (App. E pp. 14a-15a) and the COA (App. C pp. 4a-10a) are inconsequential to this petition because the all-controlling issue below was and here is the constitutionality of court-made Rule 10B, and it is conceded by the trial court and all interested persons that neither the trial court nor the COA had an iota of subject matter jurisdiction to adjudicate anything about the constitutionality of Rule 10B.

The Tennessee Supreme Court, in both the August 13 Judgment proceeding (App. D pp. 11a-13a) and in the In Rem Case (App. E pp.14a-15a), explicitly held that the Rule 10B's time deadlines are facially constitutional and that ***Williams*** did not require a contrary holding because the recusal motion in ***Williams*** was timely filed in contrast to the In Rem Case's November 21, 2023 recusal motion being untimely filed.

The fact of the matter is that there was no recusal motion in the August 13 Judgment proceeding (App. D pp. 11a-13a), and the challenge in the August 13 Judgment proceeding was a facial challenge, tied only to a hypothetical recusal motion.

The other fact of the matter is that the Case 15747, June 13, 2023 In Rem Case (App. E pp. 14a-15a) involved Professional Corporation's Rule 60 independent action which was a new case, not a recusal motion. The issue was whether the trial judge should have *sua sponte* recused himself when he admitted on the record that he could not (was "not smart enough") or for whatever reason, though conceding jurisdiction was a serious issue, refused to adjudicate the jurisdiction issue.

The issue developed that because Professional Corporation, per Rule 10B, did not file a timely recusal motion when the disqualifying event ("not smart enough") occurred, seven (7) years before the Rule 60 (App. F pp. 18a-19a) independent action In Rem-Case was filed, Professional Corporation, per Rule 10B's time deadline, waived Professional Corporation's right to challenge whether the trial judge was constitutionally qualified. In essence, this is a claim that, if the trial judge was constitutionally disqualified, that was just too bad for Professional Corporation because a litigant is only-entitled to a constitutionally qualified judge if the litigant successfully runs the gauntlet of Rule 10B's prerequisite conditions to qualify for the right to insist on a constitutionally qualified judge.

Therefore, Professional Corporation's Rule 60 case was unmeritorious because, even if the trial judge was constitutionally disqualified, the *corum non judice* (legally worthless) "judgment," bound Professional Corporation to pay the $2,000,000 the same as if the legally worthless (*corum non judice*) $2,000,000 "judgment" was legally enforceable.

In this context, Professional Corporation raised the issue that Rule 10B is unconstitutional.

Professional Corporation's appeal was found by the COA to have been untimely, and the Tennessee Supreme Court affirmed that finding by COA. Professional Corporation argued to the contrary.

If the Tennessee Supreme Court is factually incorrect (as it is) about the ***Williams*** recusal motion being timely filed, there is at least an implication that, if the ***Williams*** recusal motion was not timely filed (as is the case here), the Tennessee Supreme Court would have held that the court-made Rule 10B time deadline is unconstitutional, even though constitutionality has 0% to do with time and 100% to do with whether the judge is constitutionally disqualified.

Showing that there is no evidence that the ***Williams*** recusal motion was timely filed but evidence that the ***Williams*** recusal motion was untimely filed clarifies-that the timeliness or untimeliness of a recusal motion is of no concern to whether a litigant has unconstitutionally been denied the structural constitutional right to access a constitutionally qualified judge.

There are two essentials without which it is impossible for any litigant to receive justice. One is a court with subject matter jurisdiction. Two is a constitutionally qualified judge.

Both of these are structural constitutional rights of the public which can neither be waived nor forfeited. These are absolutely unconditional parts of our being as a

government. Neither of these structural rights is given by courts, by any executive branch official or the legislative branch and neither can be taken away by courts, by the executive branch or legislative branch.

This Court and Tennessee's courts make it impossible for courts with no subject matter jurisdiction to render a *corum judice* (legally viable) judgment.

A "judgment" by a court with no subject matter jurisdiction is a nullity (*corum non judice*) from its inception and, more importantly, never ever can be converted to *corum judice* by the passage of time or by any action or inaction of any person, court or other body. A *corum non judice* "judgment" functions as an instrument of fraud in the same way as counterfeit currency is an instrument of fraud. Both not only deceive individuals but pollute the structure as a whole.

A "court" without subject matter jurisdiction is not a court.

The second essentiality for a litigant to receive justice is a constitutionally qualified judge.

A "judge" who is not constitutionally qualified is not a judge.

To render or enter a judgment, there are two separate ingredients which must interact. One ingredient is a court with subject matter jurisdiction. The other ingredient is a constitutionally qualified judge. The absence of either ingredient makes a judgment impossible.

A court with subject matter jurisdiction presided over by a person who is not a constitutionally qualified "judge," cannot make a judgment because a constitutionally disqualified judge is a court with no judge.

A constitutionally qualified judge presiding over a "court" with no subject matter jurisdiction cannot render a judgment because a "court" with no subject matter jurisdiction is not a court.

There is nothing known to Anglo-American jurisprudence that can make a "court" with no subject matter jurisdiction into a court or a constitutionally disqualified "judge" into a judge.

There are no statutes which purport to make a way for a "judgment" which is *corum non judice*, because the "court" lacked subject matter jurisdiction into a *corum judice* (legally viable) judgment.

In fact, Tennessee law[4] and the law of the

4. *Acuff v. Daniel*, 387 S.W.2d 796, 798 (Tenn. 1965) ("A void judgment is a dead limb upon a judicial tree"); *Lawrence County v. White,* 288 S.W.2d 735, 739 (Tenn. 1956) ("it is in the same plight as though it never existed," citing *Tennessee Marble & Brick Co. v. Young*, 179 Tenn. 116, 163 S.W.2d 71); *Mortg. Elec. Registration Sys., Inc. v. Ditto,* 488 S.W.3d 265, 278 (Tenn. 2015) ("then anything based on this void judgment would *corum non judice* (null, void, legally worthless) "judgments "likewise be of no effect ... [and] such a decree may be assailed at any time and it is in the same plight as though it never existed," citing *Watson v. Waters*, 694 S.W.2d 524, 526–27 (Tenn. Ct. App. 1984); *Hood v. Jenkins*, 432 S.W.3d 814, 825 (Tenn. 2013); *Cumberland Bank v. Smith*, 43 S.W.3d 908, 910 (Tenn. 2000); *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999); *Gentry v. Gentry,* 924 S.W.2d 678, 680 (Tenn. 1996); *Dykes v. Compton*, 978 S.W.2d

United States[5] and common law generally pull all the stops to flush out of the system *corum non judice* "judgments" which emanate from a "court" with no subject matter jurisdiction because such "judgments" are able to destroy the structure if allowed to infect the structure.

Adamson v. Grove, No. M2020-01651-COA-R3-CV, 2022 Tenn. App. LEXIS 459, at *36 (Ct. App. Nov. 30, 2022) recently reiterates Tennessee's precedent as follows:

528, 529 (Tenn. 1998); *New York Casualty Co. v. Lawson,* 24 S.W.2d 881, 883 (Tenn. 1930).

5. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-102 (1998)("Much more than legal niceties are at stake here. The statutory and ... constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects. *See United States v. Richardson*, 418 U.S. 166, 179, 41 L. Ed. 2d 678, 94 S. Ct. 2940 (1974); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227 (1974). For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires"). *See also Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007); *Gale v. Gen. Motors*, 556 F. Supp. 2d 689, 697 (E.D. Mich. 2008); *Sheldon v. Vilsack*, 538 F. App'x 644, 647–48 (6th Cir. 2013); *United States v. Blewett*, 746 F.3d 647, 661–62 (6th Cir. 2013) ("As a result, the lower courts, including this one, have recognized that a federal court must satisfy itself of its jurisdiction, no matter how difficult, before reaching the merits of a case. See, e.g., *Am. Civil Liberties Union v. Nat'l Sec. Agency*, 493 F.3d 644, 651–52 (6th Cir.2007); *In re LimitNone*, LLC, 551 F.3d 572, 576 (7th Cir. 2008); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004); *Friends of Tims Ford v. Tennessee Valley Authority*, 585 F.3d 955, 965-66 (6th Cir. 2009).

> This Court must address the parties' arguments regarding subject matter jurisdiction, even if late-raised, because "[a] challenge to subject matter jurisdiction cannot be waived and may be raised at any time." *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 157 (Tenn. 2017) (citing *Johnson v. Hopkins*, 432 S.W.3d 840, 843-44 (Tenn. 2013); *In re Estate of Brown*, 402 S.W.3d 193, 199 (Tenn. 2013)). "[S]ubject matter jurisdiction is a threshold inquiry, and it may be raised at any time in any court." *Recipient of Final Expunction Order in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 167 (Tenn. 2022). In fact, "an appellate court *must* consider subject-matter jurisdiction, regardless of whether that issue was presented by the parties or addressed below." *State v. Bristol*, No. M2019- No. M2019-00531-SC-R11-CD, 2022 Tenn. LEXIS 350, 2022 WL 5295777, at *5 (Tenn. Oct. 7, 2022). (Footnote omitted)

The problem is that *corum non judice* (null, void, legally worthless) "judgments" infect the structure. Whether such "judgments" are worthless pollutants which are the product of a constitutionally disqualified judge or a court with no subject matter jurisdiction is a distinction without a difference.

Respectfully, Professional Corporation argues that the same level of insulation of the structure from these structure-destroying "judgments" requires that the consequence of *corum non judice* (null, void, legally worthless) "judgments" from constitutionally disqualified judges should be afforded as the law affords when the *corum*

non judice (null, void, legally worthless) "judgments" from a court with no subject matter jurisdiction.

In conclusion, Professional Corporation highlights, among others, the following five reasons for this Court granting this Petition for Writ of Certiorari.

I. Rule 10B, As Conceived By The Tennessee Supreme Court's September 30 Judgment Below, Defies *Williams* and Destroys Structure

If Tennessee's decision is left to stand, the other 49 states will maintain their status quo and continue to do as Tennessee's Rule 10B. This effectively overrules the holding in ***Williams*** that the Fourteenth Amendment right to access a constitutionally qualified judge is a structural constitutional right and, as such, not subject to waiver or forfeiture and converts what ***Williams*** held was not waivable or forfeitable to a "personal" right subject to waiver/forfeiture at the will of the litigant or the State of Tennessee. This is in direct defiance of ***Williams*** and destroys the structure which ***Williams*** took care to maintain intact.

II. The September 30 Judgment Misconceives *Williams* As Applying Only In Cases Where A Litigant Has Filed A Recusal Motion That Complies With State Imposed Timeliness Prerequisites

The Tennessee Supreme Court dispensed with considering the merits of ***Williams,*** relative to the structural constitutional right of access being violated by Rule 10B's timeliness waiver requirements, by the following words:

> In Williams, the United States Supreme Court held that a post-conviction petitioner who ***did timely*** seek recusal. (Italics in original, bold and underline added) (App. A p. 2a and App. D pp. 12a-13a)

Respectfully, had the Tennessee Supreme Court considered the fact that there is nothing about ***Williams*** to support a conclusion that the recusal motion in ***Williams*** was timely filed, the Tennessee Supreme Court would perhaps have seen that timeliness is a constitutional non-factor.

The fact of the matter, as ***Williams***' reveals, is that the recusal motion in ***Williams*** highly likely was untimely filed.

It never has it been decided whether the ***Williams*** litigant's motion to recuse was timely or untimely. There is nothing in ***Williams*** that gives a clue whether the recusal motion in ***Williams*** was there raised.

Williams makes clear, on careful reading, that whether the recusal motion was filed in compliance with Pennsylvania's time deadlines was constitutionally immaterial.

Just as when it is discovered that a court, without subject matter jurisdiction, rendered a *corum non judice* "judgment," whether, much less when, a litigant filed a motion to set aside the *corum non judice* "judgment" is constitutionally immaterial.

III. This Case Presents an Important Constitutional Question About The Occurrence And Consequence Of Structural Rights In Comparison With Non-Structural Rights

This case directly impacts every litigant and litigant to come in the United States because every state has time deadlines more or less like Rule 10B's. Who knows the exact number of litigants who appear in courts every day? But, not knowing exactly, does not keep a reasonable estimate that could number in the millions which call thousands of judges into service every day.

These litigants span the gamut from the elite among the elite to the poorest homeless among us. The vast, vast majority of these litigants are ordinary working people who are not sophisticated or educated in the law, much less the exceedingly important nuances of the law, and few indeed have access to lawyers astute in these matters.

The quality of justice these litigants receive in courts around the United States, in large part, is dependent on the oversight of this Court as it speaks through it holdings.

IV. The State Court's Reliance on "Adequate and Independent State Grounds" Is Misplaced

This Court has repeatedly recognized that when the state procedural rule itself is the subject of the constitutional challenge, the "adequate and independent" state ground doctrine does not bar review. See *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). Since the central issue in this case is whether Rule 10B's time deadlines unconstitutionally deprive litigants of their right to a constitutionally qualified judge, the procedural rule cannot

simultaneously serve as a jurisdictional bar to Supreme Court review.

This Court must grant review to clarify that all 50 states are bound by the constitutional classification of this right as "structural" and non-waivable.

This Court must grant review to clarify that all 50 states are bound by the constitutional classification of this right as "structural" and non-waivable.

CONCLUSION

This case provides a clean vehicle to address this constitutional question. The procedural posture is simple, with two clear rulings from the Tennessee Supreme Court relying on the same flawed reasoning. No factual disputes exist, and the issue is sharply framed.

The Court has previously addressed structural rights in cases like *Williams* and *Rippo*. This case offers an opportunity to reassert and reaffirm the structural nature of the right to a constitutionally qualified judge with emphasis on the fact that the Due Process Clause of the Fourteenth Amendment insulates this right from procedural impediments that, de facto, deny the right as a structural right.

Respectfully submitted,

Larry E. Parrish
Counsel of Record
Parrish Lawyers, P.C.
1661 International Drive, Suite 400
Memphis, TN 38120
(901) 818-3072
parrish@parrishandshaw.com

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE SUPREME COURT OF TENNESSEE AT NASHVILLE, FILED SEPTEMBER 30, 2024

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

No. M2024-01141-SC-T10B-CV
Chancery Court for Lincoln County
No. 15747

LARRY E. PARRISH, P.C.

v.

NANCY STRONG ET AL.

Filed September 30, 2024

ORDER

This matter is before the Court on an accelerated application for permission to appeal filed by Larry E. Parrish, P.C. pursuant to Tenn. Sup. Ct. R. 10B, § 2.07. Applicant seeks to appeal from the Court of Appeals' order dismissing Applicant's recusal appeal as untimely.

Upon due consideration of the application, the Court concludes that this matter should be decided summarily, without ordering the filing of an answer, pursuant to Tenn. Sup. Ct. R. 10B, § 2.07. Based on our review of the application and appendix, we conclude that the Court of Appeals correctly dismissed the appeal as untimely. *See* Tenn. Sup. Ct. R. 10B, §§ 2.02, 2.08. Applicant's arguments

that Rule 10B's appeal deadline is facially unconstitutional fail for the reasons stated in *In re Tennessee Supreme Court Rule 10B,* No. W2024-00932-SC-UNK-CV (Tenn. Aug. 13, 2024).

Accordingly, the accelerated application for permission to appeal pursuant to Tenn. Sup. Ct. R. 10B, § 2.07 is hereby DISMISSED. The costs are taxed to the applicant, Larry E. Parrish, P.C., for which execution may issue if necessary.

PER CURIAM

APPENDIX B — ORDER OF THE SUPREME COURT OF TENNESSEE AT JACKSON, FILED SEPTEMBER 9, 2024

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

No. W2024-00932-SC-UNK-CV

Filed September 9, 2024

ORDER

On August 13, 2024, this Court denied the petition to declare Tennessee Supreme Court Rule 10B unconstitutional filed by Larry E. Parrish. Mr. Parrish has now filed a petition to rehear. After due consideration, the petition is respectfully denied.

PER CURIAM

APPENDIX C — OPINION OF THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE, FILED AUGUST 21, 2024

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 6, 2024

No. M2024-01141-COA-T10B-CV

LARRY E. PARRISH, P.C.

v.

NANCY STRONG, *et al.*

Appeal from the Chancery Court for Lincoln County
No. 15747 J. B. Cox, Chancellor

Filed August 21, 2024

The Petitioner sought recusal of the trial court judge. The trial court denied the motion. The Petitioner appeals to this court. Because the petition on appeal was not filed within twenty-one days of the entry of the order, we dismiss the appeal as untimely.

Tenn. Sup. Ct. R. 10B Interlocutory Appeal as of Right; Appeal Dismissed

OPINION

I.

A Tennessee professional corporation, Larry E. Parrish, P.C. ("LEP"), asserts that the Chancellor erred

by denying a motion to recuse. While some challenges exist in fully deciphering LEP's filing on appeal, it appears that LEP sought to disqualify the Chancellor approximately seven years after "the incident which precipitated the grounds for disqualification," that it alleged the Chancellor exhibited "result-oriented" rulings and improperly sanctioned LEP, and that it believed the Chancellor should be disqualified for allegedly failing to rule on a question of subject matter jurisdiction related to whether a counterclaim against LEP was validly raised in an *in rem* proceeding. Additionally, LEP's motion challenged the constitutionality of the prompt filing requirement of Rule 10B.

LEP supplemented its motion,[1] asserting that the Chancellor exhibited prejudice at a zoom hearing that was canceled due to the pending recusal motion. In a separate "memorandum," LEP appeared to seek recusal based on the contention that the judge ignored a jurisdictional issue in an order of dismissal. Additionally, LEP added a reference based upon a literal understanding of a self-deprecating remark the Chancellor allegedly made that he was not "smart enough" to decide the jurisdictional issue. LEP subsequently filed a supplemental motion again asserting the court lacked subject matter jurisdiction. The State of Tennessee intervened to argue that the chancery court lacked subject matter jurisdiction to decide the constitutional challenge that was being advanced by LEP to Rule 10B. *See Long v. Bd. of Prof'l Responsibility of*

1. The supplement to the motion references an affidavit not included in the appellate record.

Sup. Ct., 435 S.W.3d 174, 184 (Tenn. 2014). On appeal, LEP indicates that only the Tennessee Supreme Court may adjudicate the constitutionality of Tennessee Supreme Court Rule 10B. LEP states that the chancery court erred by declining to recuse. LEP, which asserts that neither the trial court nor this court have subject matter jurisdiction over its challenge to Tennessee Supreme Court Rule 10B itself, asks this court to reverse the trial court's dismissal of his motion to recuse.

II.

According to the petition filed in this court, the chancery court filed the order dismissing the motion to recuse in this case on July 3, 2024. LEP's petition references an "order dismissing Recusal Motion" as Exhibit 7. Exhibit 7, however, does not appear in the record transmitted to this Court. Rule 10B requires that the petition for recusal appeal be accompanied by a copy of the trial court's order or opinion ruling on the motion. Tenn. Sup. Ct. R. 10B § 2.03. Without a copy of the trial court's order, we cannot review the trial court's decision, analyze its reasoning, or determine the timeliness of the appeal, *see Judzewitsch v. Judzewitsch*, No. E2022-00475-COA-T10B-CV, 2022 WL 1279790, at *2 (Tenn. Ct. App. Apr. 29, 2022), and the appeal is subject to dismissal, *see Robert R. Batson, Sr. Revocable Living Tr. by Batson v. Batson-Smith*, No. M2024-00739-COA-T10B-CV, 2024 WL 2933352, at *2 (Tenn. Ct. App. June 11, 2024).

On July 29, 2024, LEP filed the "Petition for Recusal Appeal," "pursuant to Rules of the Supreme Court State of

Tennessee, Rule 10B," asserting that the trial court lacked jurisdiction to adjudicate the constitutionality of Rule 10B and urging this court to "reverse Chancery Court's intrusion over the boundary by attempting to exercise subject matter jurisdiction that Chancery Court has never had by dismissing the Recusal Motion." LEP asserts that its petition is timely under the Rules of Civil Procedure because the "standard means by which the Clerk & Master notifies litigants in Chancery Court that Chancery Court has entered an order is by United States Mail," entitling LEP to a three-day extension.

We conclude the petition is not timely, and the appeal is accordingly dismissed. Under Rule 10B, when a trial court enters an order denying a motion for disqualification, a party may seek an accelerated interlocutory appeal as of right. Tenn. Sup. Ct. R. 10B § 2.01. If the appellate court determines that no answer is required, it may act summarily, without further briefing or argument. Tenn. Sup. Ct. R. 10B §§ 2.05, 2.06.

"To effect an accelerated interlocutory appeal as of right from the denial of a motion for disqualification or recusal of the trial court judge, a petition for recusal appeal shall be filed in the appropriate appellate court within twenty-one days of the trial court's entry of the order." Tenn. Sup. Ct. R. 10B § 2.02. This court may not provide relief from an untimely filing: "The time periods for filing a petition for recusal appeal pursuant to section 2.02 and for filing an accelerated application for permission to appeal to the Supreme Court pursuant to section 2.07 are jurisdictional and cannot be extended by the court."

Tenn. Sup. Ct. R. 10B § 2.08. Furthermore, and contrary to LEP's contention that the Rules of Appellate Procedure do not apply, Rule 10B expressly provides that "[t]he computation of time for filing the foregoing matters under section 2 shall be governed by Tenn. R. App. P. 21(a)." Tenn. Sup. Ct. R. 10B § 2.08.[2]

Rule 21(a) accordingly governs the computation of time in a recusal appeal. Rule 21 states:

> (a) Computation of Time. In computing any period of time prescribed or allowed by these rules, the date of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday as defined in Tenn. Code Ann. § 15-1-101, or, when the act to be done is the filing of a paper in court, a day on which the office of the court clerk is closed or on which weather or other conditions have made the office of the court clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

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2. We note, however, that Rule 10B "supercede[s] any inconsistent provisions of the Tennessee Rules of Appellate Procedure for purposes of the accelerated interlocutory appeal." Tenn. Sup. Ct. R. 10B, Explanatory Comment § 2.

Tenn. R. App. P. 21(a). Rule 21 makes no exceptions for litigants notified of court filings through U.S. mail.

LEP argues that Rule 6.05[33] of the Tennessee Rules of Civil Procedure "adds a 3- day extension onto the filing deadline." Rule 6.05 provides:

> Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period.

Tenn. R. Civ. P. 6.05. LEP asserts that the notice of filing was mailed, that LEP did not receive notice until July 9, 2024, and that LEP is entitled to the three extra days, making July 29, 2024, the expiration of the deadline and bringing its filing into compliance with the time limitation set by Rule 10B.

LEP's argument on timeliness, however, is without merit. As an initial matter, the Tennessee Rules of Civil Procedure "do not apply to the Court of Appeals," meaning LEP cannot benefit from the additional three days under the Rules of Civil Procedure. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 654 (Tenn. Ct. App. 1988); *see* Tenn. R. Civ. P. 1 ("[T]he Rules of Civil Procedure shall govern procedure in the circuit or chancery courts in all

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3. LEP cites Rule 6.02, which gives a trial court the authority to enlarge time for certain acts, for this proposition, but it also cites Rule 6.05 in the same footnote.

civil actions, whether at law or in equity, and in all other courts while exercising the civil jurisdiction of the circuit or chancery courts.").

Moreover, "Rule 6.05 applies only when a party is required to do some act after service of a notice or other paper and does not apply when the doing of the act is triggered by some other event, like the entry of a final judgment." *Binkley v. Medling*, 117 S.W.3d 252, 257 (Tenn. 2003) (the Rule did not apply to the filing of a Rule 59 motion) (citing *Begley Lumber Co., Inc. v. Trammell*, 15 S.W.3d 455, 457 (Tenn. Ct. App. 1999) ("[I]f notice of the judgment is given by mail, the time period is not extended by three days.")). Here, the act triggering the deadline is not a service of notice or other paper but the entry of a judgment. Accordingly, the extension provided by Rule 6.05 would not in any event enlarge the time period for an accelerated interlocutory appeal. LEP did not file the petition for accelerated interlocutory appeal within 21 days of the judgment, and this requirement is jurisdictional. Tenn. Sup. Ct. R. 10B § 2.08. Accordingly, we dismiss the appeal.

CONCLUSION

Because the petition for recusal appeal is untimely, the appeal is dismissed.

/s/ Jeffrey Usman
JEFFREY USMAN, JUDGE

APPENDIX D — ORDER OF THE SUPREME COURT OF TENNESSEE AT JACKSON, FILED AUGUST 13, 2024

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

No. W2024-00932-SC-UNK-CV

IN RE TENNESSEE SUPREME COURT RULE 10B

Filed August 13, 2024

ORDER

The petitioner, Larry E. Parrish, has filed an original petition in this Court styled as a "Petition to Declare Tennessee Supreme [Court] Rule 10B Unconstitutional." The Petition challenges Rule 10B's requirement that a party seeking a trial judge's disqualification or recusal must file a written motion promptly after the party learns or reasonably should have learned of the facts establishing the basis for recusal. Tenn. Supr. Ct. R. 10B 1.01. Parrish argues that this requirement is facially unconstitutional because a party's right to a fair and impartial judge is a "structural right" that the party cannot forfeit or waive by failing to file a timely motion.

This Court has the authority to consider original actions asserting "facial challenges" to the validity of Supreme Court rules. *Long v. Bd. of Professional Responsibility of Supreme Court*, 435 S.W.3d 174, 184–85 (Tenn. 2014). To assert a facial challenge, however, the petitioner "must establish that no set of circumstances exist

under which the [statute or rule] would be valid." *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006). The fact that the statute or rule might operate unconstitutionally under some plausible set of circumstances is insufficient to render it facially unconstitutional. *See id.*

Parrish cannot carry his "heavy legal burden," *id.*, of showing that Rule 10B is unconstitutional in all its applications. This Court has repeatedly underscored the "well-settled" rule in this State that a party can waive the right to seek a judge's disqualification or recusal by not timely seeking relief. *See, e.g., Cook v. State*, 606 S.W.3d 247, 254 (Tenn. 2020); *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009); *Winters v. Allen*, 62 S.W.2d 51, 52 (Tenn. 1933); *Obion Cnty. v. Coulter*, 284 S.W. 372, 374–75 (Tenn. 1924); *Radford Trust Co. v. E. Tenn. Lumber Co.*, 21 S.W. 329, 331 (Tenn. 1893). Rule 10B requires a fact-intensive, case-specific inquiry to determine whether a party timely sought recusal or disqualification. Parrish cannot show that Rule 10B is unconstitutional in all its applications, as is required to prevail on a facial challenge. In fact, this Court has held 08/13/2024 in at least one case that a trial judge's recusal was required even though the parties did not file a recusal motion. *See, e.g., Cook*, 606 S.W.3d at 254. Even if Parrish could point to hypothetical circumstances in which Rule 10B might unconstitutionally prevent a party from obtaining a trial judge's recusal—a showing he has not made—it still would not establish that Rule 10B is facially unconstitutional.

Parrish's primary legal authority, *Williams v. Pennsylvania*, 579 U.S. 1 (2016), is not to the contrary.

Appendix D

In *Williams*, the United States Supreme Court held that a post-conviction petitioner who *did* timely seek recusal of an appellate judge was not required to show that the judge's unconstitutional involvement affected the outcome of his appeal to obtain relief. *Id.* at 15–16. *Williams* does not excuse a party from timely raising a recusal objection.

Accordingly, Parrish's petition challenging the constitutionality of Tennessee Supreme Court Rule 10B is hereby denied. The costs are taxed to Larry E. Parrish, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

APPENDIX E — ORDER ON MOTION TO RECUSE OF THE CHANCERY COURT FOR THE SEVENTEENTH JUDICIAL DISTRICT, LINCOLN COUNTY, TENNESSEE, AT FAYETTEVILLE, FILED JULY 3, 2024

IN THE CHANCERY COURT FOR THE
SEVENTEENTH JUDICIAL DISTRICT
LINCOLN COUNTY, TENNESSEE,
AT FAYETTEVILLE

No. 15747

LARRY E. PARRISH, P.C.,
A TENNESSEE PROFESSIONAL CORPORATION,

Claimant,

v.

NOVEMBER 14, 2017 JUDGMENT,

Res.

Filed July 3, 2024

ORDER ON MOTION TO RECUSE

This cause came to be heard on the 24th day of June 2024. Present for the hearing were the Honorable Larry Parrish, the moving party, the Honorable Timothy Ishii, for Ms. Strong, and the Honorable Amy Hollars, for the office of the Attorney General of Tennessee. The subject of the hearing

was Mr. Parrish's motion to recuse which raised the constitutionality of Tennessee Supreme Court Rule 10B.

On the record, the parties stated that it was the considered judgment of all of them that the Court was without jurisdiction to adjudicate the constitutionality of Supreme Court Rule 10B. The Court asked each party to acknowledge as much on the record, which they did. They also conceded that this was the only basis remaining for the Court's recusal. Further discussion occurred as to how best deal with the Motion in light of the concessions.

From the concession of the parties that the Court is without jurisdiction to adjudicate the constitutionality of Tennessee Supreme Court Rule 10B, and from the Court's agreement that it does not have jurisdiction to adjudicate the constitutionality of Tennessee Supreme Court Rule 10B, the Court hereby dismisses the motion due to said lack of jurisdiction.

IT IS SO ORDERED this the 2nd day of July, 2024.

/s/ J. B. Cox
J. B. COX
CHANCELLOR

APPENDIX F — QUOTATIONS FROM RULES

Quotations from Rules

Tennessee Supreme Court Rule 10B (in pertinent part):

- *Section 1*: Requires recusal motions to be filed "promptly" and no later than 10 days before trial, absent "good cause" supported by affidavit.

> 1.01: Any party *seeking disqualification*, recusal, or a determination of *constitutional* or statutory *incompetence* of a *judge* of a court of record, or a judge acting as a court of record, *shall do so by* a *timely* filed written *motion* filed promptly after a party learns or reasonably should have learned of the *facts* establishing the basis for recusal. The motion shall be filed *no later than* ten days before trial, absent a showing of good cause which must be supported by an affidavit. The motion shall be *supported by* an affidavit under oath or a declaration under penalty of perjury on personal knowledge *and* by other appropriate materials. The motion shall state, with *specificity*, *all* factual and legal grounds supporting disqualification

> of the judge and shall *affirmatively state* that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> ***

- *Section 2*: Imposes a 21-day jurisdictional deadline for interlocutory appeals of recusal denials, rendering the right to appeal forfeited if the 21-day deadline is missed.

> 2.01: If the trial court judge enters an order denying a motion for the judge's disqualification ... or for determination of constitutional ... incompetence, the trial court's ruling ... *can be appealed* in an accelerated interlocutory appeal as of right, ... These two alternative methods of appeal ... shall be the *exclusive* ... *appellate review*
>
> ***
>
> 2.02: To effect an accelerated interlocutory appeal as of right ... *shall be filed ... within twenty-one days* ....
>
> ***

Appendix F

> 2.07: In an accelerated interlocutory appeal decided by ... the Court of Appeals ..., ... *may seek the Supreme Court's review* of the intermediate court's decision by filing an accelerated application for permission to appeal. The application *shall be filed* in the Supreme Court within *twenty-one days* ...
>
> ***
>
> The accelerated application for permission to appeal authorized by this section 2.07 is the *exclusive method* for seeking the *Supreme Court's review* .... (Emphasis added)

Tennessee Rules of Civil Procedure, Rule 60.02(3), in pertinent part:

> [C]ourt may relieve a party ... from a final judgment ... for the following reasons: ... (3) the judgment is void ....
>
> The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken.
>
> ***

Appendix F

> This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, ... or to set aside a judgment for fraud upon the court.

Tennessee Rules of Civil Procedure, Rule 59.04, in pertinent part:

> Motions to which this rule is applicable are: ... (4) under Rule 59.04 to alter or amend the judgment. These motions are the only motions contemplated in these rules for extending the time for taking steps in the regular appellate process.
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> A motion to alter or amend a judgment shall be filed and served within thirty (30) days after the entry of the judgment.