

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

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Brandon L. Fake,

*Petitioner*

*v.*

Philadelphia Court of Common Pleas,  
Judge Kevin M. Dougherty, Judge Margaret T. Murphy,  
Judge Holly J. Ford, Judge Joel S. Johnson,  
Patrick J. Murphy, Judge Daniel R. Sulman,  
Anita N. Botchway, William Ketterlinus,  
Judicial Conduct Board of PA, Robert A. Graci,  
Philadelphia District Attorney's Office,

*Respondents*

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**On Petition For Writ Of Certiorari  
To The United States Court of Appeals  
For The Third Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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Brandon L. Fake  
5341 Bowersox Parkway  
Firestone, CO 80504  
(303) 506-9910  
*Pro se Petitioner*

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## **i. QUESTIONS PRESENTED**

I. Does a Federal Judge have authority to preside over a case when a clear and willful violation of 28 U.S. Code § 455 has occurred due to conflicts of interest with Defendants?

II. Does absolute immunity apply when a judge has acted criminally under color of law and without jurisdiction, as well as actions taken in an administrative capacity to influence cases?

III. Does Eleventh Amendment immunity apply when officers of the court have violated 31 U.S. Code § 3729 and the state has refused to provide any type of declaratory relief?

IV. Does Title IV-D, Section 458 of the Social Security Act violate the United States Constitution due to the incentives it creates for the court to willfully violate civil rights of parties in child custody and support cases?

V. Has the United States Court of Appeals for the Third Circuit erred in basing its decision on the rulings of a Federal judge who has clearly and willfully violated 28 U.S. Code § 455.

## **ii. LIST OF PARTIES**

Petitioner, Brandon L. Fake is the Plaintiff in case 16 cv 3893 in United States District Court, Eastern District of Pennsylvania which was appealed to United States Court of Appeals for the Third Circuit, 17-1173.

Respondents, Philadelphia Court of Common Pleas, Judge Kevin M. Dougherty, Judge Margaret T. Murphy, Judge Holly J. Ford, Judge Joel S. Johnson, Patrick J. Murphy, Judge Daniel R. Sulman, Anita N. Botchway, William Ketterlinus, Judicial Conduct Board of PA, Robert A. Graci, Philadelphia District Attorney's Office were all listed as Defendants in Plaintiff's initially filed complaint in United States District Court, Eastern District of Pennsylvania on July 18, 2016.

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

Brandon L. Fake, on behalf of himself, hereby petitions for a writ of certiorari to review the judgment of the United Court of Appeals for the Third Circuit, filed on September 18, 2017. There was no fair hearing or good faith determination in either the District Court or the Third Circuit Court of Appeals.

**OPINIONS BELOW**

The Third Circuit Court of Appeals decision denying Petition For Rehearing En Banc, entered on September 18, 2017, is reproduced at Appendix, App. 1. The Third Circuit Court of Appeals Opinion, entered on August 22, 2017, affirming the District Court's final judgment is reproduced at App. 2. The District Court's Memorandum and Order of December 21, 2016 is reproduced at App. 3. The District Court's Memorandum and Order of October 17, 2016 is reproduced at App. 4. The District Court's Memorandum and Order of July 27, 2016 is reproduced at App. 5. The District Court's Order of November 28, 2017 is reproduced at App. 6. The District Court's Order of November 13, 2017 is reproduced at App. 7. : District Court's Order of December 8, 2017 is reproduced at App. 7. .

**JURISDICTIONAL STATEMENT**

The Third Circuit Court of Appeals final judgment was entered on September 18, 2017. The jurisdiction of this Court is invoked under 28 U.S. Code § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth, Eleventh and Fourteenth Amendments to the United States Constitution

### Amendment V

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids “double jeopardy,” and protects against self-incrimination. It also requires that “due process of law” be part of any proceeding that denies a citizen “life, liberty or property” and requires the government to compensate citizens when it takes private property for public use.

### Amendment XI

*The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.*

The Eleventh Amendment was the first Constitutional amendment adopted after the Bill of Rights. The amendment was adopted following the Supreme Court's ruling in *Chisholm v. Georgia*, 2 U.S. 419 (1793). In *Chisholm*, the Court ruled that federal courts had the authority to hear cases in law and equity brought by private citizens against states and that states did not enjoy sovereign immunity from suits made by citizens of other states in federal court. Thus, the amendment clarified Article III, Section 2 of the Constitution, which gives diversity jurisdiction to the judiciary to hear cases "between a state and citizens of another state."

#### Amendment XIV

##### *Section 1.*

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

##### *Section 2.*

*Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any*

*of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.*

*Section 3.*

*No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.*

*Section 4.*

*The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.*

*Section 5.*

*The Congress shall have power to enforce, by*

*appropriate legislation, the provisions of this article.*

The Fourteenth Amendment addresses many aspects of citizenship, the rights of citizens and the equal protections of the laws. Civil Rights, Due Process Clause and Equal Protection Clause are important integral rights that apply to this case.

#### Civil Rights

A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. Discrimination occurs when the civil rights of an individual are denied or interfered with because of the individual's membership in a particular group or class. Various jurisdictions have enacted statutes to prevent discrimination based on a person's race, sex, religion, age, previous condition of servitude, physical limitation, national origin, political affiliation and in some instances sexual orientation.

#### Due Process

The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.

#### Substantive Due Process

Substantive due process has been interpreted to include the right to work in an ordinary kind of job, marry, and to raise one's children as a parent.

### Equal Protection

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits states from denying any person within its territory the equal protection of the laws. This means that a state must treat an individual in the same manner as others in similar conditions and circumstances. The Federal Government must do the same, but this is required by the Fifth Amendment Due Process.

### STATUTORY PROVISIONS INVOLVED

#### 18 U.S. Code § 241 - Conspiracy against rights

*If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.*

#### 18 U.S. Code § 242 - Deprivation of rights under color of law

*Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if*

*such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both.*

18 U.S. Code § 286, Conspiracy to defraud the U.S.  
Government

*Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.*

18 U.S. Code § 287, False, fictitious or fraudulent  
claims

*Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.*

18 U.S. Code § 371, Conspiracy to defraud the United  
States

*If two or more persons conspire either to commit*

*any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.*

18 U.S. Code § 1031, Major fraud against the United States

*(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—*

*(1) to defraud the United States; or*

*(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program, an economic stimulus, recovery or rescue plan provided by the Government, or the Government's purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008, or in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of such grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, or any constituent part thereof, is \$1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than \$1,000,000, or imprisoned not more than 10 years, or both.*

*(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed \$5,000,000 and—*

(1) the gross loss to the Government or the gross gain to a defendant is \$500,000 or greater; or  
(2) the offense involves a conscious or reckless risk of serious personal injury.

(c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed \$10,000,000.

(d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).

(e) In determining the amount of the fine, the court shall consider the factors set forth in 18 U.S.C. sections 3553 and 3572, and the factors set forth in the guidelines and policy statements of the United States Sentencing Commission, including—

(1) the need to reflect the seriousness of the offense, including the harm or loss to the victim and the gain to the defendant;

(2) whether the defendant previously has been fined for a similar offense; and

(3) any other pertinent equitable considerations.

(f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time otherwise allowed by law.

(g)(1) In special circumstances and in his or her sole discretion, the Attorney General is authorized to make payments from funds appropriated to the Department of Justice to persons who furnish information relating to a possible prosecution under this section. The amount of such payment shall not exceed \$250,000. Upon application by the

*Attorney General, the court may order that the Department shall be reimbursed for a payment from a criminal fine imposed under this section.*

*(2) An individual is not eligible for such payment if—*

*(A) that individual is an officer or employee of a Government agency who furnishes information or renders service in the performance of official duties;*

*(B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court determines the individual has justifiable reasons for that failure;*

*(C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government; or*

*(D) that individual participated in the violation of this section with respect to which such payment would be made.*

*(3) The failure of the Attorney General to authorize a payment shall not be subject to judicial review.*

*(h) Any individual who—*

*(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the*

*employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and*

*(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fee's.*

18 U.S. Code § 1951(a)(b)(2), Interference with comm.  
by threats or violence

*(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.*

*(b) As used in this section—*

*(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession,*

*or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.*

*(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.*

*(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.*

18 U.S. Code § 1961(1)(A)(B)(2)(3)(4)(5), Racketeering activity

*(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit*

*transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons)., [1] sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering*

*paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials),*

*(2) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the*

*United States, any political subdivision, or any department, agency, or instrumentality thereof;*

*(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;*

*(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;*

*(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;*

18 U.S. Code § 2382, Misprision of Treason

*Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.*

28 U.S. Code § 455, Disqualification of justice, judge or magistrate judge

*(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.*

*(b) He shall also disqualify himself in the following circumstances:*

*(1) Where he has a personal bias or prejudice*

*concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;*

*(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;*

*(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;*

*(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;*

*(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:*

*(i) Is a party to the proceeding, or an officer, director, or trustee of a party;*

*(ii) Is acting as a lawyer in the proceeding;*

*(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;*

*(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.*

*(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and*

*minor children residing in his household.*

*(d) For the purposes of this section the following words or phrases shall have the meaning indicated:*

*(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;*

*(2) the degree of relationship is calculated according to the civil law system;*

*(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;*

*(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:*

*(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;*

*(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;*

*(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;*

*(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.*

*(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for*

*disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.*

*(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.*

31 U.S. Code § 3729(a)(1)(A)(B)(E), False claims

*(a) Liability for Certain Acts.—*

*(1) In general.—Subject to paragraph (2), any person who—*

*(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;*

*(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;*

*(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);*

*(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;*

*(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;*

42 U.S.C. 658, Title IV-D, Section 458, Social Security Act, INCENTIVE PAYMENTS TO STATES

The text of Title IV-D is found at App. 9. This law is being challenged as unconstitutional due to the financial incentives it creates which have allowed for corrupt actors to proliferate and abuse the law to willfully deprive citizens of their constitutional right under color of law for financial gain.

### STATEMENT OF THE CASE

Brandon L. Fake, Petitioner, has been victimized for fourteen years by a corrupt system of judicial misconduct in the Commonwealth of Pennsylvania. The clear conflict of interest that involves the current and former administrative judges of the Philadelphia Court of Common Pleas, Domestic Relations Division has been detailed in District Court filings. In summary, Petitioner's ex-wife, Defendant Dianne J. Fake, maintains a close family-like relationship of 30+ years with Defendant Patrick J. Murphy, who has used his personal and political influence to commit fraud upon the court by and through his influence of Defendants Margaret T. Murphy and Kevin M. Dougherty, who are his family and close personal friends who have presided administratively in the Philadelphia Court of Common Pleas, Domestic Relations. The influence used has been acknowledged during a recorded

ex-parte conversation between Defendants on March 8, 2005 wherein Murphy was named and fraud was committed. Defendant Dianne Fake has further made incriminating statements on record and during several conversations admitting to the relationships of Defendants and the influence that has been used in her favor.

Officers of the Philadelphia Court of Common Pleas under the administration and supervision of Kevin M. Dougherty and Margaret T. Murphy have perpetrated an unconscionable scheme to criminally defraud the United States Government and willfully deprive citizens of their Constitutional rights for the sole intent of unlawful financial gain. The Defendants named in this case have conspired to commit fraud by and through the establishment and enforcement of fraudulent child support orders that were created with complete disregard of evidence and fact. The bad actors within the court have devised this scheme to inflate the incomes of obligors which in turn would increase the revenues available to the court through Title IV-D funding. Establishment and enforcement tactics used have discriminated against Petitioner on the basis of his gender and disabilities, the court has systematically deprived Petitioner of his civil rights during contempt and child custody proceedings.

Petitioner realized this criminal scheme in 2014 when it became clear that Patrick J. Murphy had used his influence with Kevin M. Dougherty and Margaret T. Murphy to fraudulently dispose of felony kidnapping charges filed against Dianne J. Fake, the court administration subsequently falsified court records to conceal the felony case of Ms. Fake. Petitioner witnessed this entire chain of events and was witness to incriminating statements made by Ms. Fake regarding this obstruction of justice.

Petitioner filed to modify the child custody order in June 2016 due to extreme circumstances of child endangerment from abuse and neglect being suffered at the hand of Defendant Ms. Fake. Administrative judge, Defendant Margaret T. Murphy has obstructed due process in violation of Petitioner's Constitutional rights. The actions of Margaret Murphy in violation of 18 U.S. Code § 241 and 18 U.S. Code § 242 were done to protect Ms. Fake from losing custody in fear of the knowledge and testimony that Ms. Fake could provide to authorities about the criminal enterprise assembled by Defendants Dougherty and Murphy.

July 2017 this case was presented to United States District Court. Petitioner's Constitutional rights have been violated by the District Court judge who presided over the case in direct violation of 28 U.S. Code § 455. Petitioner has been denied his Constitutional right to a fair hearing. All orders entered in this matter by Judge Gerald J. Pappert are void.

## **REASONS FOR GRANTING THE PETITION**

**I. Does a Federal Judge have authority to preside over a case when a clear and willful violation of 28 U.S. Code § 455 has occurred due to conflicts of interest with Defendants?**

Federal Judge Gerald J. Pappert has proceeded in this case when not only was the appearance of partiality abundantly clear with his personal relationships with Defendants there is evidence of financial interests and perjury by Judge Pappert.

The Supreme Court has ruled and reaffirmed the principle that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct 1038 (1960)

"Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).

"Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." The court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." *Taylor v. O'Grady*, 888 F.2d 1189 (7<sup>th</sup> Cir. 1989).

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. "The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause" *United States v. Sciuto*, F.2d 842, 845 (7<sup>th</sup> Cir. 1996).

"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgement; he acts no longer as a judge, but as a "minister" of his own prejudice." *Pierson v. Ray*. 386 U.S. 547 at 567 (1967)

"Conduct of trial judge must be measured by standard of fairness and impartiality." *Greener v. Green*, 460 F.2d 1279 (U.S.Ct. App. - Pa. - 1972)

"quite simply and quite universally, recusal...[is] required whenever impartiality might reasonably be questioned." Thus, in a case where the question of partiality is a close one, a judge should err on the side of recusal. *United States v. Dandy*, 998 F.2d 1344, 1349 (6<sup>th</sup> Cir. 1993)

The Eighth Circuit required recusal in a case in which both the district judge and the defendant, who did not have a connection with each other, had an association with President and Mrs. Clinton. *United States v. Tucker*, 78 F.3d 1313 (8th Cir. 1996). In this case, Judge Pappert and Defendant Murphy have an indisputable connection to former President Obama.

Due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case. *Bracy v. Gramley, Warden*, 520 U.S. 899 (1997).

## **II. Does absolute immunity apply when a judge has acted criminally under color of law and without jurisdiction, as well as actions taken in an administrative capacity to influence cases?**

The Defendants in this case have engaged in a criminal conspiracy to defraud the United States Government through the fraud and abuse of Title IV-D, Section 458 of the Social Security Act. This fact has been made abundantly clear in the illegal activity and fraud that has been documented in Petitioner's case. The administration of the court has acted in violation of 18 U.S. Code § 1961 and has used threats and coercion to obtain funds from Petitioner in violation of 18 U.S. Code § 1951.

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985). "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its

impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore's Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

The Issue in Petitioners case is the fact that the Judicial Conduct Board of Pennsylvania which is run by Defendant Robert Graci, has refused to properly investigate the criminal activity within the court due to political and personal interests. The reports made by Petitioner have explained in detail of the illegal and unethical actions of Defendants. Graci has acknowledged that he is a close acquaintance of many years to Judge Pappert.

"Judges have no immunity from prosecution for their judicial acts." *Bradley v. Fisher*, U.S. 13 Wall. 335 (1871).

"Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law." *Owen v. Independence*, 445 U.S. 622 (1980)

"When a judge knows that he lacks jurisdiction or acts in face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost." *Rankin v. Howard*, 633 F.2d 844. (1978)

"A judge is not immune from criminal sanctions under the civil rights act."; "State officials acting in their official capacities, even if in abuse of their lawful authority, generally are held to act "under color" of law. This is because such officials are "clothed with the authority" of state law, which gives them power to perpetrate the very wrongs that Congress intended Section 1983 to prevent. " *Ex parte Virginia*, 100 U.S. 339, 346-347 (1879)

"Actions by state officers and employees, even if unauthorized or in excess of authority can be actions under 'color of law'. " *Stringer v. Dilger*, 313 F.2d 536 (U.S. Ct. App 10th Circ. - 1963)

"The language and purpose of the civil rights acts, are inconsistent with the application of common law notions of official immunity. . . " *Jacobsen v. Henne*, 335 F.2d 129, 133 (U.S. Ct. App. 2nd Circ. - 1966)

"Judges are not immune for their nonjudicial activities, i.e., activities which are ministerial or administrative in nature." *Santiago v. City of Philadelphia*, 435 F.Supp. 136 (1977).

"Referring both to the objective and subjective elements, we have held that qualified immunity (Ed. Note: or "good faith") would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury. . ." *Harlow v. Fitzgerald*, 102 S.Ct. 2727 at 2737, 457 U.S. 800 (1982)

"There is no judicial immunity from criminal liability." *Shore v. Howard*, 414 F.Supp. 379 (1976).

"The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees." *Butz v. Economou*, 438 U.S. 506, 98 S.Ct. 2910 (1978)

"We should, of course, not protect a member of the judiciary "who is in fact guilty of using his power to vent his spleen upon others, or for any other personal motive not connected with the public good." *Gregoire v. Biddle*, 177 F.2d 579, 581.

If a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggests that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts. "Judges may be punished criminally for willful deprivation of rights on the strength of Title 18 U.S.A. 241 and 242." *Imbler v. Pachtman*, 424 U.S. 409; 96 S.Ct. 984 (1976)

### **III. Does Eleventh Amendment immunity apply when officers of the court have violated 31 U.S. Code § 3729 and the state has refused to provide any type of declaratory relief?**

The Eleventh Amendment was not intended to afford officers of the court freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law, *See Old Colony Trust Company v. City of Seattle, ET AL.*, 271 U.S. 426, 46 S.Ct. 552, 70 L. Ed. 431. (1926).

In *Edelman v. Jordan*, 415 U.S. 651 (1974), the Court held that a state could properly raise its Eleventh Amendment defense on appeal after having defended and lost on the merits in the trial court.

Although the Eleventh Amendment grants immunity to states from suit for money damages or equitable relief without their consent, in *Ex parte Young*, 209 U.S. 123 (1908), the Supreme Court ruled that federal courts may enjoin state officials from violating federal law. In *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976), the Supreme Court ruled that Congress may abrogate state immunity from suit under Section 5 of the Fourteenth Amendment.

No officer of the law may set that law at defiance with impunity. *United States v. Lee*, 106 U.S. 196, 220

"Government immunity violates the common law maxim that everyone shall have remedy for an injury done to his person or property." *Fireman's Ins. Co. of Newark, N.J. v. Washburn County*, 2 Wis.2d 214, 85 N.W.2d 840 (1957) Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people." *Rabon v. Rowen Memorial Hosp., Inc.* 269 NSI. 13, 152 S.E.2d 485, 493 (1967)

"The Eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person of a federal right under color of state law, and the District Court acted prematurely, and hence erroneously, in dismissing the complaints as it did without affording petitioners any opportunity by subsequent proof to establish their claims. Pp. 416 U. S. 235-238. The immunity of officers of the executive branch of a state government for their acts is not absolute, but qualified, and of varying degree, depending upon the scope of discretion and responsibilities of the particular office and the circumstances existing at the time the challenged action was taken." *Scheuer v. Rhodes*, 416 U.S. 232, (1974)

The unlawful actions of Defendants in this case with the intent to defraud the United States government through the fraud and abuse of Title IV-D funds raises many questions as to why the Commonwealth of Pennsylvania would be insulated from liability for the willful criminal acts of officers of the court who have violated Federal criminal statutes.

**IV. Does Title IV-D, Section 458 of the Social Security Act violate the United States Constitution due to the incentives it creates for the court to willfully violate civil rights of parties in child custody and support cases?**

Title IV-D is a law that has given officers of the court the incentive to abuse their power under color of law to cause irreversible harm to countless individuals and families.

Quite apart from the guarantee of equal protection, if a law impinges on a fundamental right explicitly or implicitly secured by the Constitution it is presumptively unconstitutional. If a law has no other purpose than to chill assertion of constitutional rights by penalizing those who choose to exercise them, it is patently unconstitutional. *Harris v. McRae*, 100 S.Ct. 2671, 448 U.S. 297, 65 L.Ed.2d 784, rehearing denied 101 S.Ct. 39, 448 U.S. 917, 65 L.Ed2d. 1180 (1980)

"It is the duty of the courts to be watchful for CONSTITUTIONAL RIGHTS of the citizen, against any stealthy encroachments thereon." *Boyd v. U.S.*, 116 US 616, 635, (1885)

*"Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the*

*Constitution is void".... "So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."* *Marbury v. Madison*, 5 U.S. 137 (1803)

In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity. *Dunn v. Blumstein*, 92 S.Ct. 995, 405 U.S. 330 (1972)

"Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." *United States v. Brown*. 381 U.S. 303, 66 S.Ct. 1073 (1946)

"The judicial branch has only one duty --- to lay the article of the Constitution which is involved beside the statute which is challenged and to decide whether the latter squares with the former. . .the only power it (the Court) has. . .is the power of judgement." *U.S. v. Butler*, 297 US (1936)

"Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966)

**V. Has the United States Court of Appeals for the Third Circuit erred in basing its decision on the rulings of a Federal judge who has clearly and willfully violated 28 U.S. Code § 455.**

The fact that the decisions of the Third Circuit Court were based on Memorandum and Orders from a District Judge who was acting in violation of 28 U.S. Code § 455 raises questions of Petitioners right to due process which has been violated by the fraud committed by Judge Pappert.

“the District Court acted prematurely, and hence erroneously, in dismissing the complaints as it did without affording petitioners any opportunity by subsequent proof to establish their claims.” *Scheuer v. Rhodes*, 416 U.S. 232, (1974)

“A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.” *Kenner v. C.I.R.*, 387 F.3d 689 (1968).

### CONCLUSION

Petitioner respectfully requests this Petition for Writ of Certiorari be granted for the reasons set forth within.

Dated: December 16, 2017

Respectfully submitted,



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