No. _____

In The Supreme Court of the United States

DOUGLAS WALTER GREENE,

Petitioner,

v.

IPA/UPS SYSTEM BOARD OF ADJUSTMENT;
UNITED PARCEL SERVICE CO.;
INDEPENDENT PILOTS ASSOCIATION,

INDEPENDENT PILOTS ASSOCIATION;
ROBERT TRAVIS, in his capacity as President of the Independent Pilots Association; ERICK GERDES, in his capacity as Vice President of the Independent Pilots Association; THOMAS KALFAS, in his capacity as Secretary of the Independent Pilots Association; BILL CASON, in his capacity as Treasurer of the Independent Pilots Association; HARRY TREFES, in his capacity as At Large Representative of the Independent Pilots Association,

FROST BROWN TODD, LLC;
MARK FRANCIS SOMMER; TONY C. COLEMAN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. A National precedent setting question is asked, may the Federal District & Appellate Courts knowingly & purposely render a Decision based on overwhelming fraud in the record as its foundation. While at the same time denying an American citizen their 5th, 7th, & 14th Amendment rights to due process and a jury trial?

2. Is it within the jurisdiction of the lower courts to abandon the rule of law by unlawfully setting aside findings of fact and denying Petitioner's rights to challenge/question the credibility of known perjured witnesses, while never being afforded the opportunity to be heard in a trial court with manufactured false facts and tampering with evidence by the Court itself compromising the sanctity of the Judicial mechanism? *Bulloch v. United States*, 763 F.2d 1115 (1985) *citing Wilkin v. Sunbeam Corp.*, 466 F.2d 714 (10th Cir.).

We hold that this question affects Constitutional Rights (1, 4, 5, 7, 8, & 14 Amendments) of all Americans under the Rule of Law having a direct impact on Public Policy in this and similar cases posing and enormous threat to Public Safety threatening the Safety & Security of the flying public while punishing American citizens tasked to defend it.

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OPINIONS BELOW

The Decision of U.S. District Court Western District of Kentucky was entered on November 21, 2016 (App. 16-138). Disposition court of appeals for the Sixth Circuit was entered on December 04, 2017 and wasn't recommended for full-text publication as set forth in Appendix (App. 1-15). A petition for Rehearing and Rehearing *En Banc* was received on January 17, 2018 and denied on April 13, 2018 (App. 139-140). A Motion to Stay the Mandate was filed on April 23, 2018 and was denied on May 02, 2007 (App. 141). Mandate order of the U.S. District Court Western District of Kentucky was entered on May 10, 2018 (App. 142).

BASIS FOR JURISDICTION IN THIS COURT

Judgment of the Sixth Court of Appeals was entered on December 04, 2017. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), 28 USC § 1651(a), and 28 USC § 2403(a) raising a constitutional question.

CONSTITUTIONAL & STATUTORY PROVISIONS

Constitutional rights of the 5th, 7th, and 14th Amendments are embodied in this case that:

- *"No Person shall. . . . be deprived of life, liberty, or property without due process of law."*
- *"In suits at common law. . . . the right of a trial by jury shall be preserved."*
- *"All persons born or naturalized in the United States . . . 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; or deny to any person within its jurisdiction the equal protection of the law."*

Federal Rules of Civil Procedure (FRCP) and Federal Rules of Appellate Procedure (FRAP) compromise Rules of Law that aren't open for interpretation and weren't complied with by the lower courts to include Standards of Review.

FRCP Rule 38. Jury Trial Demand;

(a) Right Preserved. The right of trial by jury declared by the Seventh Amendment to the Constitution – or provided by a federal statute – is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial. . . .

The lower courts unlawfully ignored the Rule of Law and Petitioner's Motions asserting jury trial demand rights.

FRCP Rule 52(a)(5)(6). Findings and Conclusions by the Court; Judgment on Partial Findings. . . .

The lower courts denied Petitioner's rights to a trial court so as to question defendant evidentiary support comprised with findings of fact that were *"clearly erroneous."* The lower courts ignored the Rule of Law in unlawfully setting aside Petitioner's hundreds of exhibits containing evidence with findings of fact in both oral & documentary evidence without giving due regard to providing a trial court opportunity to judge the witnesses' credibility.

FRCP Rule 56. Summary Judgement; "The court shall grant summary judgment if the movant shows there is no genuine dispute as to any material fact." The lower courts unlawfully ignored Petitioner's hundreds of material facts in dispute.

FRCP Rule 60(b)(3). Relief from a Judgment or Order;

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

Lower courts unlawfully ignored the Rule of Law and Petitioner's Motions asserting these rights.

Appellate court failed to comply with 5th & 14th Amendments to due process and equal protection of the law by failing to conduct *de novo* review by unlawfully giving complete deference to the district court. The appellate court must consider the matter anew, as if no decision previously had been rendered. (*Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006)).

No deference is given to the district court. (*Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011)); *Ditto v. McCurdy*, 510 F.3d 1070, 1075 (9th Cir. 2007); *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 971 (9th Cir. 2003) ("When *de novo* review is compelled, no form of appellate deference is acceptable.").

U.S. Supreme Court holds *de novo* review occurs when a "reviewing court makes an original appraisal of *all* the evidence to decide whether or not it believes [the conclusions of the trial court]" (*Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 514 n.31 (1984)).

De novo standard is applied when appellate court is in as good a position as the trial court to judge the evidence. Because of this, if *all* the relevant evidence is in documentary or deposition form, the appellate court

should be able to substitute its judgment for that of the trial court about facts as well as application (*Southwest Wash. Prod. Credit Ass'n. v. Seattle-First Nat'l Bank*, 19 Wash. App. 397, 406, 577 P.2d 589, 594 (1978), *rev'd on other grounds*, 92 Wash. 2d 30, 593 P.2d 167 (1979)). Giving substantial weight to the lower court's decision is not in accord with strict *de novo* review.

STATEMENT OF CONSOLIDATED CASES

I. 16-6761, FROST BROWN TODD RICO ACT FRAUD & MALPRACTICE

Three cases inextricably connected in one Writ of Certiorari with known fraud in which a decision abandoning the "Rule of Law" was made showing a paper trail of RICO Act fraud directly connected to the law firm Frost Brown Todd and their "Dark Money" subsidiary CivicPoint, LLC on behalf of their "Dark Money" benefactor clients (UPS and others) having a political alliance with Mitch McConnell. McConnell's career appeared to be sponsored by the Heyburn family (to include longtime friend former Judge John Heyburn) just before the merger with Brown Todd & Heyburn that later became Frost Brown Todd concealing McConnell's Heyburn family connection. Frost & Jacobs LLP, Cincinnati's largest law firm, partnered with Louisville's Brown, Todd & Heyburn PLLC November 01, 2000 becoming the Nation's Midwestern legal powerhouse ranking among the 75 largest firms in the Country similar to the firm Quarles & Brady.

A. Stranglehold of Corruption by a Few Denying Americans Access to Justice

Addison "Mitch" McConnell has notoriously placed individuals, from his beloved law firm former Brown Todd Heyburn known today as Frost Brown Todd (FBT), into Gatekeeper positions to unduly influence the judicial mechanism as we know it while appeasing McConnell's "Dark Money" benefactors. Congress attempted to put in place a system of checks and balances to limit these undue influences. Like our founding fathers, Judge Elena Kagan appears to share concerns of very powerful "Dark Money" influences infiltrating Washington D.C. manipulating the sanctity of our sacred system of Justice. Judge Kagan stated:

> *"In fact, corporate and union moneys go overwhelmingly to incumbents, so limiting that money, as Congress did in the campaign finance law, may be the single most self-denying thing that Congress has ever done."*

Judge Kagan's quote exemplified protections Congress intended which were overturned by Mitch McConnell undermining Congress' efforts to inhibit "Dark Money" influences (*McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003)) now played out in this and many other cases including countless Government agencies being directly & unduly influenced. McConnell's arrogance confirmed his "Dark Money" influences stating:

> *"One of my proudest moments was when I looked Barack Obama in the eye and I said, Mr. President, you will not fill the Supreme Court vacancy."*

FBT uses ties to State/National Government officials, & members of the judiciary abusing their potential power within the judicial and enforcement systems protecting FBT & their clients throughout the Country. U.S. Attorney Office (USAO) officials, specifically within jurisdiction of both Western and Eastern Districts of Kentucky link a line of former McConnell Chiefs of Staff, Legal Aids, & Advisors directly to either former Brown Todd Heyburn firm or Frost Brown Todd. The following paper trail connects the dots of a Federal Judiciary in Kentucky that's synonymous with FBT's undue influence compromising our sacred system of justice:

FBT Attorney, Tony Coleman's history proceeds himself in countless cases as this one with Coleman knowingly & contemporaneously representing UPS as the mischievous mastermind undermining Petitioner's career failing to do a conflict check. *Folsom v. Menard, Inc. et al*, No. 3:2009cv00094, neither Petitioner nor UPS ever gave FBT informed consent of contemporaneous representation in writing. *Van Kirk v. Miller*, 869 N.E.2d 534, 541 (Ind. Ct. App. 2007), ***"The only manner in which a concurrent conflict of interest under Rule 1.7 can be waived is in writing after informed consent."*** This *stare decisis* precedent establishes Supreme Court Rules (SCR) of Professional Conduct forbidden to be ignored.

FBT Attorney, Mark Sommer, Petitioner's former attorney was recruited by FBT from Bingham Greenebaum Doll linked directly to his former colleague and **McConnell Sixth Circuit judicial**

confirmed Judge, John K. Bush. The record shows Sommer aided & abetted FBT in undermining Petitioner's career and representation.

Former FBT Attorney, Russell Coleman, McConnell's confirmed lawman for U.S. Attorney Office Western District of Kentucky. Russell Coleman former FBI agent, McConnell Chief of Staff and legal advisor is believed to have stymied Petitioner FBI RICO Act criminal complaints.

Reviewing similar cases within the region shows a clear pattern of protection as noted in "My View Matters" News Release highlighting additional FBT RICO Act involvement with contemporaneous representation of multiple clients against each other to protect the greater client's best interest (Stock Yards Bank, UPS, and others).

https://springston.blogspot.com/2017/05/stock-yards-bank-fbt-and-steve-pence.html.

In a conversation with former FBT client Steve Weyland, he conveyed his frustration with the Western KY USAO and the KY Bar unduly influenced by FBT. Weyland who was led to meet with Ex-FBI agent Carl Christiansen to review the material, suggested using former U.S. Attorney and disgraced GOP Lt. Governor Stephen Pence to serve as Weyland's personal attorney. McConnell handpicked Pence for both prior positions after Pence eliminated many democratic politicians in a case called BOPTROT. Pence uses Christiansen on other high-profile cases as a supposed unbiased lie detector administrator on behalf of Pence's clients.

During representation Pence ignored and intimidated Weyland from pursuing any legal action against FBT.

Weyland's story establishes countless pieces of evidence proving unethical RICO Act misconduct by firms FBT, Middleton Reutlinger, and others ignored by USAO Russell Coleman, John Kuhn, Jr. and Assistant U.S. Attorney Jay Gilbert due to their FBT ties. USAO refused to go forward with any investigation despite strong evidence shown (i.e. audio recordings & E-Mails) to the FBI's local field office. The compromised USAO has "dirty hands" protecting FBT and their benefactors. Coleman and his Assistant U.S. Attorney Jay Gilbert refused to recuse themselves despite being shown journal entries proving FBT was protecting favored hidden clients from Weyland to avert civil/criminal court complaint filings. An additional court case in Oldham County, KY *Steven G. Weyland v. Stock Yards Bank & Trust Co.*, No. 16-Cl-00243 establishes similar FBT conflicts of interest and manipulation claims.

Former Brown Todd Heyburn Attorney and U.S. Attorney Western District of Kentucky, District Court Judge, David J. Hale originally assigned to Petitioner's 16-6772 case before commandeered by District Court Judge Thomas B. Russell. In *Mattingly v. United Parcel Services, KY Western District*, No. 3:17-cv-00267 (2018), it was revealed on May 19, 2017 Judge Hale was conflicted given his ownership of UPS common stock with the case being temporarily deferred to Magistrate Judge and **former FBT Attorney, Colin H. Lindsay.**

Chief Justice, Judge Joseph H. McKinley, Jr., reassigned the case to **former FBT Attorney, and McConnell confirmed Eastern/Western District of Kentucky Court Judge Claria H. Boom,** who dismissed the case with prejudice on behalf of FBT's "Dark Money" benefactor United Parcel Service.

Western District Court Judge, Thomas B. Russell, longtime McConnell friend, former McConnell law clerk, and University of Kentucky College of Law Alumni is directly linked to FBT through KY Bar Association and longtime friend former **FBT Chairman, Attorney John R. Crockett.** In this case and countless others, to include *Laferty v. United Parcel Service, Inc., KY Western District*, 3:14-cv-00853, (2016) Judge Thomas B. Russell continues to show bias to McConnell's "Dark Money" donors by continuously granting Motions for Summary in favor of UPS over and over again.

Former FBT Chairman, Attorney John R. Crockett indirectly recused FBT from further UPS representation against Petitioner due to admitted conflict of contemporaneous representation of one client against another.

B. FBT Continued Involvement Ensuring UPS' Best Interest

In a January 13, 2014 FBT recusal letter the firm stated:

> *"We acknowledge that applicable rules of professional conduct prohibit the contemporaneous representation on behalf of a client in one case and adverse to the same client in another."*

Shortly after FBT recusal, FBT mischievously continued involvement ensuring UPS' best interest against the Petitioner. In May of 2014 a team of seven former **FBT Attorneys & Litigators** were tasked to join Quarles & Brady, another regional law firm that replaced FBT's representation of UPS against Petitioner (some may say coincidence, others would disagree):

1. Vanessa A. Davis;
2. Lucy R. Dollens;
3. Joshua B. Fleming;
4. **J. Michael Hearon;**
5. Daniel M. Long;
6. Michael A. Rogers;
7. Joel E. Tragesser

All the above attorneys previously worked for FBT, with **J. Michael Hearon** joining Quarles & Brady Attorneys, John Klages and Edward King Poor as counsel against Petitioner on behalf of UPS' continued assault against American workers. Quarles & Brady was directly linked to 60-Minutes story highlighting Quarles & Brady involvement on behalf of Mitch McConnell and the Pharmaceutical Industry to disarm Drug Enforcement Agency (DEA) efforts to stop our Nation's opioid epidemic war against the American people.

Western District Court Judge, Rebecca Grady-Jennings, McConnell's confirmed Judge directly connected to McConnell & FBT through her

husband lobbyist Patrick Jennings who was a long-term McConnell legal aid. Another McConnell payback rewarding former Middleton Reutlinger Attorney, Rebecca Grady-Jennings who represented McConnell's "Dark Money" donor FBT in Petitioner's 16-6761 case in which she blatantly violated multiple counts of ABA Professional Conduct manufacturing false statements of defamation against Petitioner in the record impeaching Grady-Jennings' true character.

Eastern & Western Kentucky District Court Judge, Claria Horn-Boom another McConnell confirmed judge and former Assistant U.S. Attorney Eastern and Western Districts of Kentucky, and former member of **FBT Attorney alumni**.

Regina S. Edwards Magistrate Judge Western District of Kentucky. Another McConnell confirmed judge and former Assistant U.S. Attorney Western Districts of Kentucky, a former member of **FBT Attorney alumni.**

Western District Court Judge, Charles R. Simpson, longtime McConnell friend originally assigned Petitioner's 16-6763 case before reassigned to Judge Hale which case was also commandeered by Judge Thomas B. Russell.

FBT Attorney, Sheryl Snyder, directly linked to McConnell and believed to have colluded with FBT Attorney, Tony Coleman in using the undue influence of Snyder's son former KY Department of Revenue Special Investigations Director, Jason Snyder via

malicious prosecution in an attempt to fraudulently criminalize & end unwanted UPS pilot's careers.

Assistant U.S. Attorney Western District of KY, Jason Snyder currently works directly for McConnell's confirmed **U.S. Attorney Western District of KY, Russell Coleman.**

Former Western District Court Judge, John G. Heyburn, was Special Counsel for then-Jefferson County Judge/Executive Mitch McConnell. Heyburn was a longtime McConnell friend implicated in numerous cases on behalf of McConnell's "Dark Money" benefactors to include UPS in *Dorsey v. United Parcel Service* remanded by Sixth Circuit Court Judge Gilbert S. Merritt back to the District Court for UPS *coup de gras* damages against Dorsey which mirrors Petitioner's triad cases.

Heyburn was also originally assigned to *Laferty v. United Parcel Service, Inc.*, in which the same FBT players (Tony Coleman) were involved but despite Heyburn's alliance with Brown Todd & Heyburn now FBT, Heyburn failed to recuse himself. Heyburn eventually referred *Laferty v. UPS* to **Magistrate Judge, Colin H. Lindsay also a former member of FBT Attorney alumni.**

Former Brown Todd Heyburn Attorney and Sixth Circuit McConnell confirmed Judge, John M. Rogers, was assigned to Petitioner's Sixth Circuit merits panel despite Petitioner filing a Motion requesting impartial judicial appointment outside the sphere of McConnell and the State of Kentucky's undue

influence betrothed to those connected to McConnell and his "Dark Money" benefactors.

Former FBT Attorney, Gordon Hunter Bates, lobbyist colleague of Patrick Jennings and former top aide to Mitch McConnell who surreptitiously ran for Lieutenant Governor for Kentucky while knowing he wasn't a legal resident of the State.

FBT Emeritus and Vehement McConnell supporter, C. Edward Glasscock, "Dark Money" McConnell donor and co-conspirator with Gordon Hunter Bates sustaining McConnell campaigns on behalf of the corporate infiltration of our American Democracy.

On December 01, 2014 a Harvard study ranked Kentucky number two in the Nation, behind Louisiana, being the most corrupt State legislatively, and judicially. The overwhelming impact of this study resulted in a Department of Justice (DOJ) and FBI effort to purportedly end public corruption in Kentucky. This was led by **Former FBT Attorney, John Kuhn Jr.,** unfortunately Kuhn's bias in favor of his FBT alumni protected FBT and their "Dark Money" subsidiary CivicPoint, LLC. FBT and their clients are constantly being shielded by undue monetary/political influences posing an enormous threat to the long-term durability of the justice system via their unlawful manipulation disallowing the court system to operate effectively.

Illegal concealment by the Mitch McConnell Mafia using the lower courts and the U.S. Attorney's Office,

attempt to cloud the view of the U.S. Supreme Court violating the purity of the institution itself.

This case witnesses the full extent of the polluted environment since the advent of *"Citizens United"* by regional firms like FBT, to include Quarles & Brady:

> *"If there was one decision I would overrule, it would be Citizens United. I think the notion that we have all the democracy that money can buy strays so far from what our democracy is supposed to be.". . . . Supreme Court Justice, Ruth Bader Ginsburg, The New Republic September 28, 2014*

Political nepotism of FBT & CivicPoint shows an easily identifiable pattern of "Dark Money" influence. Given the countless judiciary connections to FBT and their undue influence throughout the District Courts of Kentucky and the Sixth Circuit Court of Appeals, honest adjudication is impossible as a result of FBT's infiltration of our American Democracy:

> *"We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can't have both". . . . Louis D. Brandeis*

The venue for the Petitioner's legal action was compromised from the beginning when it was underhandedly filed within the jurisdiction and sphere of influence of FBT's playground. The actual jurisdiction should have been where the Petitioner's employment with UPS was located in the U.S. District Court of Alaska affiliated with the Ninth Circuit Court of Appeals.

Western District Court Judge, Thomas Russell & the other judges assigned to the Petitioner cases were compromised with their close ties and loyalty to FBT and their "Dark Money" benefactors (UPS).

In accordance with the stare decisis precedent of this Court in *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009), the Court held:

> *The Due Process clause of the **Fourteenth Amendment** requires a judge to recuse himself not only when actual bias has been demonstrated or when the judge has an economic interest in the outcome of the case, but also when "extreme facts" create a "probability of bias."*

Judge Thomas B. Russell knew the impartiality of himself and other members of Western District Court of Kentucky judiciary could reasonably be questioned given their close ties to FBT and had a duty in accordance with **28 U.S. Code § 455** – Disqualification of justice, judge, or magistrate judge and **28 CFR § 45.2** – Disqualification arising from personal or political relationship, to recuse themselves by changing the venue for the Petitioner's legal action to an impartial venue being the U.S. District Court for the District of Alaska for the Ninth Circuit Court of Appeals. Mitch McConnell's legacy of terror against the American people, as witnessed above, can only be ended by Congress finally passing a bill demanding term limits of U.S. Representatives and Senators.

C. FBT Attorney, Tony Coleman

Coleman's underhanded involvement and devious acts are no different in these cases than his Sixth Circuit history of a *coup de gras* against UPS pilot Frank Robbins Dorsey where the Sixth Circuit establishes a circuit split in their own court stating:

> *"Accordingly, the summary judgment in favor of the defendant on the issue of liability under the Railway Labor Act is reversed and the case is remanded to the district court with instructions to grant the plaintiff's motion for summary judgment on the issue of liability and to submit the question of damages suffered by the plaintiff to trial by jury in accordance with plaintiff's prayer for relief in his complaint" [United States Court of Appeals, Sixth Circuit. Frank Robbins DORSEY, Plaintiff-Appellant, v. UNITED PARCEL SERVICE, Defendant-Appellee. No. 98-6464 Sixth Cir. 1999]*

Countless acts of workplace violence committed by Coleman too many to count, despite the Petitioner being a former client of FBT. Coleman on behalf of UPS orchestrated the coercion of UPS perjured witnesses knowing they have no credibility.

In violation of FRCP Rule 11, Coleman refuses to come forward with his positive knowledge of the coerced witnesses' acts of perjury under oath in violation of **18 U.S. Code § 4 – Misprision of felony** and **18 U.S. Code § 1622 – Subornation of perjury.**

Citing **FRCP Rule 52(a)(5)**, the Petitioner questioned sufficiency of evidence *purportedly* supporting District/Appellate Court findings. Petitioner demanded my rights under **FRCP 38 Right to a Jury Trial Demand** because there was no evidence proffered supporting the countless false claims & fabrications of evidence submitted by Defendants biasedly repeated by the District/Appellate Courts violating Federal Rules of Evidence and **18 U.S. Code § 4 – Misprision of felony.**

District/Appellate Courts violated **FRCP 52(a)(6)** setting aside ***findings of fact*** never providing Petitioner the opportunity to be heard in a trial court to judge the credibility of UPS' perjured witnesses:

> ***"Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."***

"A grant of judgment as a matter of law is reviewed de novo. Kusens v. Pascal Co., Inc., 448 F.3d 349, 360 (Sixth Cir. 2006). *"In entertaining a motion for judgment as a matter of law,* ***the court is to review all evidence*** *and draw all reasonable inferences in the light most favorable to the non-moving party, without making credibility determinations or weighing the evidence." Jackson v. FedEx Corporate Servs., Inc.*, 518 F.3d 388, 392 (Sixth Cir. 2008).

Judgment as a matter of law is appropriate when "a party has been *fully heard* on an issue during a jury trial and the court finds that a reasonable jury wouldn't have a legally sufficient evidentiary basis to find for the party on that issue[.]" Fed. R. Civ. P. 50(a)(1). B.

The Petitioner was denied access to a trial court and ***never heard*** despite invoking jury trial demand rights in accordance with **FRCP Rule 38 Jury Trial Demand**.

> *"The failure to apply the law correctly in reaching a decision is always an abuse of discretion. Koon v. United States, 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law.")."*
>
> *"An appellate court will affirm the trial court's fact determinations unless, based on a review of the entire record, it is "left with the definite and firm conviction that a mistake has been committed." Pullman-Standard v. Swint, 456 U.S. 273, 284-85 n.14 (1982)*

The Appellate Court Decision **AFFIRMING** District Court judgments reveals a failure to conduct a *de novo* review. Had the Circuit Court done so the voluminous evidence in the record of countless *Material Facts in Dispute* establish egregious error with *clearly erroneous* factual determinations that must be overturned.

The record shows the lower court rulings are based on false & fabricated evidence by Defendants, the Arbitrator, & the lower courts proving beyond

reasonable doubt an egregious error showing flagrant disregard for Supreme Court teachings & the Canons of Ethics to include harsh & unreasonable results on the record of an appalling decision.

II. 16-6763, IPA's BREACHED DFR

A. Lower Court decisions Conflict With a U.S. Supreme Court Decisions

In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) the U.S. Supreme Court held:

> *"The Court of Appeals didn't apply the correct standard in reviewing the District Court's grant of summary judgment. Pp. 477 U. S. 247-257.*
>
> *(a) Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. At the summary judgment stage, the trial judge's function is not himself to weigh the evidence and Page 477 U. S. 243 determine the truth of the matter, but to determine whether there is a genuine issue for trial. There is no such issue unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. In essence, the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law. Pp. 477 U. S. 247-252.*

> *(b) A trial court ruling on a motion for summary judgment in a case such as this must be guided by the New York Times "clear and convincing" evidentiary standard in determining whether a genuine issue of actual malice exists, that is, whether the evidence is such that a reasonable jury might find that actual malice had been shown with convincing clarity. Pp. 477 U. S. 252-256."*

The lower courts unlawfully ruled on upholding a secret side agreement outside the scope of the CBA in violation of Federal law. Contrary to the lower Court's Decision, Federal law of the Plain Language of the CBA doesn't provide putting grievances at *"abeyance"* as a Duty of Fair Representation option:

> *"Thus, a jury could reasonably conclude that using such a side arrangement when processing the employee's grievance was "so far outside a wide range of reasonableness, as to be irrational." PATRICIA RUPCICH, Plaintiff Appellant, v. UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 881, and JEWEL FOOD STORES, INC., No. 14-3377 (7th Cir. 2016)*

In *Hines v. Anchor Motor Freight*, the Supreme Court held the Finality Rule, according presumptive validity to an arbitration award, isn't applicable if an employee can establish his union breached its duty of fair representation. The Supreme Court further held the following:

> ***"If a fair representation breach could be shown, thereby nullifying the arbitration award, summary judgment for the company would have the effect of denying the plaintiffs a hearing on their grievance."***

IPA & UPS putting grievances at "*abeyance*" was nothing less than a secret side deal in violation of the CBA unlawfully denying the Petitioner from having his grievances heard which would have stymied the UPS/IPA effort to end his career:

B. *Conley v. Gibson*, 355 U.S. 41, 41 LRRM 2089 (1957)

> *"**The Supreme Court**, in a case involving a claim under the RLA against a Union for alleged racial discrimination in the application of a nondiscriminatory contract, held that the duty set out in Steele to represent **all** fairly did not come to an abrupt end with the making of the contract between the Union and the Employer. The Court held that **the Union could no more unfairly discriminate in carrying out its grievance functions than it could in negotiating a contract**. See also, Humphrey v. Moore, 375 U.S. 335, 55 LRRM 2031 (1964)."*

C. Hostility by Way of *ZERO* IPA Investigation

The record shows IPA knowingly assisted three compromised pilots to craft fraudulent & perjured

statements. Factual findings of both oral and documentary evidence *In the Record* establish the false statements of UPS crewmembers suggesting they have serious behavioral concerns to hold an Airline Transport Pilot License (ATPL). IPA had this information & purposely made no effort to ascertain the truth violating their Duty of Fair Representation:

> *"The falsity of the charges could have been discovered with a minimum of investigation, and that the union had made no effort to ascertain the truth and thereby had violated its duty of fair representation by arbitrarily and in bad faith depriving petitioners of their employment and permitting their discharge without sufficient proof." Hines v. Anchor Motor Freight, 424 U.S. 554 (1976)*
>
> *"Inadequately investigating a grievance by overlooking critical facts or witnesses. Hines v. Anchor Motor Freight, 424 U.S. 554 (1976); Graphic Communications, Local 4, 104 LRRM 1050 (NLRB 1980); see also Garcia v. Zenith Electronics Corp., 58 F.3d 1171 (7th Cir. 1995) (a union "must provide 'some minimal investigation of employee grievances'").*

This Court stated – Union owes "duty to exercise fairly the power conferred upon it on . . . without hostile discrimination" against bargaining unit members (*Steele v. Louisville & Nashville R.R.*, 323 U.S. 192 (1994)).

and

Subject to the Duty Fair Representation (DFR) obligation "applies to all union activity" involving all duties

as exclusive collective bargaining representative (*ALPA v. O'Neill*, 499 U.S. 65 (1991)).

As stated by this court in ALPA v. O'Neill, the IPA violated the Arbitrary Conduct Standard with Action "so far outside a wide range of reasonableness as to be wholly irrational" (*ALPA v. O'Neill*, 499 U.S. 65 (1991)). In collusion with UPS, IPA violated the Discrimination Standard with Actions based on "irrelevant, invidious or unfair" distinctions (*Vaca v. Sipes*, 386 U.S. 171 (1967))

These actions by IPA were also "intentional, severe and unrelated to legitimate union objectives" (*Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971))

IPA BREACHED their DFR in Grievance Handling in violation of the Federal Law of the Plain Language of the CBA putting relevant grievances at "*abeyance*" with no contractual provision to do so. A Union's Duty of Fair Representation in handling grievances:

1. Must not discriminate against non-members or political opponents;
2. Should consistently apply policies and adhere to past practices;

"Clarke Rule of the Shop"

3. Should make good-faith, reasonable investigation of the merits of grievances:

IPA made ***ZERO*** investigation into the merits of the Petitioner's grievances versus committing fraud in assisting coerced pilots with their perjured statements.

When the UPS/IPA CBA was ratified it was signed by both the Company and the Union. UPS agreed they would provide mandatory discovery within 30 days of request. UPS/IPA CBA Article 7.D.10.a. isn't open for interpretation, the IPA allowed UPS to violate the CBA unlawfully dumping over 6,000-pages of discovery on the Petitioner two days prior to his arbitration. UPS did this to strategically place the Petitioner at a disadvantage. When the IPA allowed the 6,000-page document dump IPA set a precedent which gave UPS the right to dump documents from here to eternity placing every union member at a disadvantage from being able to defend themselves in all future purported discipline cases.

D. Arbitrary, Discriminatory, & Bad Faith Representation

IPA sustained the more than 6,000-page Document Dump and ***ZERO*** IPA investigation of discovery and witnesses to uncover mountains of evidence, now in the record, was invidious with malice and intent. Even if IPA had completed a minimal investigation of the discovery, the evidence in the document dump would have proven UPS's motives and retaliation against the Petitioner.

District/Appellate Courts bypassed the governing laws of the RLA, UPS/IPA CBA, FRCP, FRAP while

also denying the Petitioner his due process rights under the CBA and the 5th, 7th, & 14th Amendments of the Constitution.

E. *Hines v. Anchor Motor Freight*

Hostility, collusion, arbitrary, discriminatory, & bad faith actions by IPA were a result of hostility between the Petitioner and the local union leadership over IPA failing to enforce the CBA on behalf of the membership and the petitioner exercising his LMRDA & First Amendment Rights to Freedom of Speech in suggesting alternative Union representation of Air Line Pilots Association (ALPA):

> *"Evidence of hostility between the plaintiffs and the local union leadership included a dispute over the appointment of a steward which resulted in one of the plaintiffs being denounced as a "hillbilly" by the president of the local, and lingering hostility from a wildcat strike in which the plaintiffs had participated. (Hines v. Anchor Motor Freight, Inc., 424 U.S. 554,91 LRRM 2481 (1976)Id. at 559-60 n.4).*

F. Extortion Of Union Members' Rights To Free Speech and To Participate In Internal Union Democracy Guaranteed By The LMRDA

In many of its civil RICO lawsuits involving labor unions, the Government has alleged that. . . . corrupt union officials have extorted union members' rights to

democratic participation in internal union affairs, guaranteed by the LMRDA, in violation of the Hobbs Act, 18 U.S.C. § 1951. The rationale underlying these decisions is firmly supported by the scope of New York extortion law that served as the model for the Hobbs Act, discussed above, as well as by the LMRDA's legislative history, the Supreme Court's decision noting union members' LMRDA rights are economic rights designed to secure union members' economic interests, and the common law understanding that extortion broadly encompassed the taking of any "thing of value."

The Second, Third and Sixth Circuits and district courts in the Second and Third Circuits have held such LMRDA rights constitute intangible "property" within the meaning of the Hobbs Act on the ground that such rights constitute "a source or element of wealth" since the exercise of these rights enable union members to secure financial benefits through collective bargaining, and corrupt deprivation of these rights may cause union members economic deprivation through loss of livelihood and/or reduced benefits (*United States v. Gotti*, 459 F.3d 296, 320-21 (2d Cir. 2006)).

The district court held that Section 411 rights to union democracy constituted "property" within the scope of 18 U.S.C. § 1951, which encompasses both tangible and intangible property rights. The district court also held that the extortion charges weren't preempted by 29 U.S.C. §§ 530 and 610 on the ground that those labor law prohibitions weren't the exclusive remedies for the alleged extortionate conduct.

The court noted that RICO and the LMRDA were intended to supplement the remedies to reach such unlawful racketeering (*United States v. Local 560, I.B.T.*, 581 F. Supp. 279 (D.N.J. 1984), *aff'd*, 780 F.2d 267 (3d Cir. 1985), *cert. denied*, 476 U.S. 1141 (1986)).

In accordance with Hines v. Anchor Motor Freight, and the Supreme Court's Finality Rule, the Petitioner has established IPA breached their duty of fair representation. The arbitration award must be nullified as summary judgment on behalf of UPS/IPA has denied Petitioner's rights under Federal law. As a matter of law the Petitioner prays for his asserted Constitutional Right having filed motion for a **Rule 38 Jury Trial Demand.**

This basic Constitutional Right has been determined in just one of many U.S. Supreme Court Decisions as in *Teamsters v. Terry* (1990) No. 88-1719, *United States Supreme Court*, in which JUSTICE MARSHALL delivered the opinion of the Court stating:

> *"This case presents the question whether an employee who seeks relief in the form of back-pay for a union's alleged breach of its duty of fair representation has a right to trial by jury. We hold that the Seventh Amendment entitles such a plaintiff to a jury trial."*

This Court also held in *Wooddell v. International Brotherhood of Electrical Workers, Local 71, et al.*, U.S. No. 90-967 (1991).

"Also, this Court has recently held that actions under the LMRDA are closely analogous to personal injury actions, Reed v. United Transportation Union, 488 U. S. 319, 326-327 (1989). A personal injury action is of course a prototypical example of an action at law, to which the Seventh Amendment applies. We agree with petitioner and hold that petitioner was entitled to a jury trial on the LMRDA cause of action, and we note that respondents now concede that Terry controls this case. Accordingly, we reverse the judgment below on this issue."

G. Finality Rule of a DFR

*"The Supreme Court has held that an Employer **may not** rely on the finality of an arbitrator's decision if the Union has breached its duty of fair representation, inasmuch as the breach relieves the employees of the express or implied requirement that disputes be settled through contractual grievance procedures. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554,91 LRRM 2481 (1976)"*

III. 16-6772, ARBITRATOR AWARD BASED ON FRAUD & CORRUPTION

When UPS/IPA are determined to get rid of an unwanted employee threatening the solidarity of UPS' Company controlled Union they will expend every measure necessary as in this case and UPS pilot Gerald Brown's case.

UPS will unconscionably lie, cheat, and steal a person's career with total disdain for the law. The arbitration was a part of that process being a rigged fight from start to finish with UPS/IPA Attorneys using channels and ex-parte communications with Arbitrator Winograd to assure their end result.

A. Railway Labor Act, 45 U.S.C. 159 Award & Judgment Thereon

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration.

B. Arbitrator Winograd Commits Willful Fraud

Honest judicial review must be available to correct an *arbitrator's intentional flouting of the law* as no man in this Country is so high that he's above the law, including Winograd. Winograd committed countless violations of the Railway Labor Act (RLA) by ignoring the Plain Language of the CBA.

The Arbitrator was a party to fraud, exceeding scope and authority of his jurisdiction, inserting out of thin air his own false statements into the record, draft, and final decision falsely alleging Petitioner used powerful-painkilling drugs & injections to perform duty despite zero evidence in the record to sustain this

outrageous arbitrator fabrication. Winograd unlawfully refused to acknowledge his own false & fraudulently fabricated allegations while ignoring "*Substantive-Issues*" raised by IPA System Board of Adjustment (SBA) Members that were never resolved with signatures of all SBA members acknowledging a fraudulent Decision.

If SBA members know there are still "*Substantive-Issues*" after an arbitrator was challenged on those issues all SBA members have a duty and obligation to not place their signatures on a flawed decision. The Board exceeded its jurisdiction based on false allegations and "*Substantive-Issues*" introduced by the Arbitrator raised for the first time during the Arbitration proceedings.

C. 6,000-Page UPS Document Dump Two Days Prior to Petitioner's Arbitration

On September 14, 2014, one day before Petitioner's arbitration, Petitioner's attorney contacted Arbitrator Winograd, while including UPS/IPA attorneys conveying his concerns:

> *"On Friday Mr. Klages produced approximately 6000-pages of documents which included e-mail communications between Union Executive Board Members and the company which further support the Grievant's contention that the collusion between the union and the company reaches the highest levels of the union and puts no malfeasance beyond reasonable concern."*

Arbitrator Winograd simply said he was mindful of that and sustained the suppression of discovery/evidence while acknowledging he was ignoring the Plain Language of CBA Article 7.D.10.a mandating UPS was required to produce discovery within 30 days versus 9-months after the request & only two days before the arbitration. No honest judge in America would ever allow 6000-pages of discovery two days prior to trial. So why did Winograd?

D. Sixth Circuit Decision Conflicts With Sixth Circuit Decision of 2005

A SBA Award has no preclusive effect when it is based on fraud, **RLA 45 U.S.C. § 159(c):**

> *"The arbitrator's award is a product of fraud or corruption if he exhibited complete unwillingness to respond to any evidence or argument in support of one of the parties' positions." Green v. Grand Trunk W. R.R., Inc., 155 F. App'x 173, 176 (Sixth Cir. 2005).*

This is exactly what happened when the Arbitrator refused to correct his own fabrications of Petitioner using "powerful-painkilling drugs" with no evidence in the record to substantiate such premeditated and outrageous claims.

E. Established Disputes in Material Facts

The arbitrator blatantly ignored testimony of the Petitioner's witnesses, proving UPS and their perjured

witnesses were a party to fraud and corruption which affected the result of the arbitration. Another clear violation of the RLA. The decision was based on false premises and known perjury by UPS witnesses who were coerced and threatened to testify falsely.

The Petitioner had the right to judge the UPS witness's credibility. Do the lower courts have jurisdiction to take federal rights away from the Petitioner, dismissing UPS witnesses' false accusations while ignoring exculpatory evidence? What about inculpatory evidence showing a person's involvement in an act, or evidence establishing their guilt?

In criminal law, the prosecution has a duty to provide all evidence to the defense, whether it favors the prosecution's case or the defendant's case.

The U.S. Supreme Court held in *Brady v. Maryland*, 373 U.S. 83 (1963) that *Constitutional Due Process* requires disclosure of false misrepresentations & evidence in opposing counsel's possession with Justice William O. Douglas writing:

> *"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment . . . Society wins not only when the guilty are convicted, but when criminal trials are fair" (Brady v. Maryland, 373 U.S. 83 (1963))*

Instead the lower courts sustained known free-wheeling perjury and misrepresentations by UPS/IPA

attorneys, while at the same time taking a hard stance in defending known perjurers.

F. UPS' Unscrupulous Retaliation Imposing Groundless Fitness for Duty Exams to Manufacture Insubordination

In accordance with *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987), an arbitration award can be vacated on public policy grounds even if enforcing the award wouldn't require unlawful conduct. The federal courts have an affirmative obligation to refuse to enforce any private agreement violating public policy. While there is certainly a public policy favoring collective bargaining and arbitration, that policy has never been held to trump all other public policies especially those dealing with public safety. UPS is putting the public safety at risk by allowing coerced airmen to fly when those airmen haven't reported DUIs and refusals to submit to chemical tests. UPS is abusing the HIMS program by coercing pilots with substance abuse issues to write false statements so UPS can discharge pilots who address safety concerns. Even when evidence proves absolutely, beyond reasonable doubt, coerced pilots are lying.

UPS/IPA CBA Article 5.A.2 Physicals: Crewmember physical standards are established by the FAA. Petitioner was already holding a valid and recent FAA First Class Medical:

G. Eighth Circuit Court Split

"We find no reversible error in the trial court's refusal to order Lee to report to Pensacola, Florida, for an examination by Dr. Phillips. Lee had a current first-class FAA physical certificate. We need not resolve the ***doubtful issue of whether good cause has been shown for the requested examination."*** *(Air Line Pilots Ass'n, Int'l v. Northwest Airlines, Inc., 415 F.2d 493, 498 (8th Cir.1969))*

H. Sixth Circuit Court Test

The Sixth Circuit violates its own Circuit Court test created as a less deferential test, holding when an award doesn't "draw its essence" from a CBA. In violation of Federal Law/RLA the following proves the award didn't "draw its essence from the CBA." These examples, formerly presented in Appellant Briefs, aren't all inclusive of numerous award CBA violations:

(1) *The award conflicts with express terms of the agreement:*

- CBA 5.D.1.a, essence is intent to maintain health & prolong careers (*"Clarke Rule of the Shop"* established, ignored by Arbitrator).
- Abuse of CBA 5.D.1.a, in conflict with article 5.M. & FAA AME Guide.
- Charges never cited before ordering unlawful medical exam.

- CBA Article 7.D.3 & 7.D.10.a., unlawful UPS Document Dump.

(2) *It imposes additional requirements not expressly provided for in the agreement:*

- Arbitrator "Routine Medical" language argument in violation of CBA Article 5.M. restricting UPS from intrusive self-ordained exploratory unwarranted medical exams/procedures in violation of Public Policy and forbidden by the FAA.
- Arbitrator precedent changed "Meaning & Intent" ignoring "Rule of the Shop."
- Arbitrator fabricated/inserted statements of FRAUD into proceedings for the first time that didn't exist before Arbitration as cited grounds used for discharge.

(3) *It isn't rationally supported by or derived from the agreement:*

- Arbitrator fabricated and inserted statements of FRAUD into proceedings for the first time that didn't exist before Arbitration as UPS cited grounds used for discharge.

(4) *It is based on general considerations of fairness and equity instead of the exact terms of the agreement* [3:15cv234 DN-129 *id.* at 24]

Plain Language of CBA Limits the Board's Authority. The UPS/IPA CBA provides that, before a pilot is subject to discipline, suspension, or discharge as follows in CBA 7.B.2.b., c., & d they will:

CBA 7.B.2.b.

> ***"Continue on full pay and credit with benefits, and except for a period following a serious accident or incident,*** *won't be removed from flight status during an investigative process unless there is probable cause as to the crewmember's inability to safely or legally conduct his duties."*
>
> ***"Probable cause shall include, but not be limited to, violations of FAA/NTSB directives or regulation, positive drug/alcohol test results, or verified medical reasons"***

The lower courts overlooked the circuit court split & *stare decisis* precedent of employer ordered medical exams including Sixth Circuit precedent. *[see Appendix, Air Line Pilots Ass'n, International v. Northwest Airlines, Inc.*, 415 F.2d 493 (1969) No. 19541. *United States Court of Appeals Eighth Circuit. September 9, 1969].*

I. Pretextual & Unwarranted Employer Ordered Medical Exams

Had the Sixth Circuit Court done an actual *de novo* review required by Federal law, the Panel would have reviewed the entire record finding clear *"Abuse of Discretion"* by district court's refusal to apply the law correctly, unlawfully *setting aside findings of facts.*

The District/Appellate Courts embraced false and fabricated evidence not based upon reliable information provided by a credible third party as required

by 42 USC 12112(d)(4)(A). This is a violation of Federal law **42 U.S. Code § 12112 - Discrimination** [*Paul Williams v. Township of Lakewood*, N.J. Super (App. Div. 2016) (A-0341-15T2)].

> *"The failure to apply the law correctly in reaching a decision is always an abuse of discretion. Koon v. United States, 518 U.S. 81, 100 (1996) "A district court by definition abuses its discretion when it makes an error of law."*
>
> *"An appellate court will affirm the trials court's fact determinations unless, based on a review of the ENTIRE record, it is "left with the definite and firm conviction that a mistake has been committed." Pullman-Standard v. Swint*, 456 U.S. 273, 284-85 n.14 (1982)

The lower court's Decision is without rational support not derived from the terms of the CBA. This is Manifest Disregard of the law wholly unsupported by principles of contract construction and *Stare Decisis* precedent of the "*Clarke Rule of the Shop.*"

PROCEDURAL BACKGROUND

These Petitioner triad actions (16-6761, 6763, 6772) exposing Respondent's RICO Act fraud were filed on September 9, 2014; September 12, 2014; and March 30, 2015 respectively in the Western District Court of Kentucky, against the Petitioner's wishes.

On November 21, 2016, under dubious procedural circumstances, the District Court Granted summary

judgment to all Respondents under false grounds that there were no disputes in material facts.

On appeal to the Sixth Circuit, the Court of Appeals Affirmed the District Court Decisions on all accounts without conducting a legitimate *de novo* standard of review. Both the District and Appellate Courts abandoned the Rule of Law in accordance with Federal Rules of Civil & Appellate Procedure (**FRCP Rule 52(a)(5)(6)**) by unlawfully setting aside all of the Petitioner's findings of fact in both oral and documentary evidence that wasn't "*clearly erroneous*" without the reviewing courts giving due regard to providing a trial court opportunity to judge the witnesses' credibility.

Petitioner now petitions this Court to review the Court of Appeal's judgments of affirmance in favor of the cited respondents.

REASONS FOR GRANTING CERTIORARI & WHY IT'S WARRANTED

This case presents a Good Vehicle for this Court to consider and decide the issues presented herein settling a question of National importance that adhering to the Rule of Law isn't open for interpretation but mandatory. This case demonstrates a crying need by ALL American Citizens for immediate Supreme Court intervention to guarantee the principles of Equal Justice Under Law.

I. The Decision of the Sixth Circuit

The Decision of the Sixth Circuit cannot be reconciled with the Supreme Court and other Circuit court stare decisis precedents set in past decisions (*Anderson v. Liberty, Hines v. Anchor, Terry v. Teamsters, Vaca v. Sipes, etc.*). This includes blatant lower court disharmony with the plain language of the Federal Constitutional & Statutory provisions/history while failing to give application or due regard to teachings of the Supreme Court precedent.

II. Facts of This Case & Public Policy

Facts of this case present competing policy interests involved in their clearest and most compelling light and therefore provide this Court with an optimal opportunity to consider and decide the substantial and unresolved legal issues involved. There is overwhelming evidence petitioner was innocent of insubordination for which he was unlawfully discharged. Evidence establishes Union conduct in handling petitioner's grievance was at best arbitrary, irrational, and was clearly in "bad faith" out of hostile motives toward petitioner and "friendly" motives toward the Company.

Exculpatory evidence in the record demonstrates the highest degree of proving fraud necessary to overturn a grievance decision even apart from the Union's neglect in sustaining their duty of fair representation principles. Breach of fair representation suffered by the Petitioner clearly prejudiced the outcome of the arbitration grievance proceedings and reliability of its

fact-finding by depriving both the Petitioner and the tribunal of the benefit of the unequivocal exculpatory evidence by the Union purposely failing to enforce the terms of the Collective Bargaining Agreement mandating timely discovery. These facts present labor law issues of nationwide concern in their clearest light for consideration by this Court.

Extraordinary public policy importance and impact of lower court decisions compromises safety and security of the flying public versus their perceived benefit of sustaining undue influence of "Dark Money" benefactors, which cannot be overstated. Supreme Court's intervention is essential for professional pilots, who are the safety keepers of our skies, to feel uninhibited of fulfilling the awesome responsibility of being able to enforce the safety and security of the airline industry without the current reality of having to succumb to fear and retaliation for doing so.

III. Lower Courts Violated FRCP Rule 52(a)(5)(6)

When confronted with the evidence via Petitioner's judicial notice of criminal complaints the Sixth Circuit's Order stated complaints weren't properly before the Court when in fact they were sequestered by the Sixth Circuit. Petitioner Complaints cited previously raised issues with the district court establishing numerous **Title 18 U.S.C. crimes** sequestered & suppressed by Defendant Motions attempting to strike them from the record.

A *de novo* review would've revealed these issues weren't raised for the first time on appeal. The Defendants didn't deny any of the cited **Title 18 U.S.C. Crimes.** Despite positive knowledge of Defendant's crimes, in violation of Federal Law, the Sixth Circuit sustained sequestration of evidence formerly raised with the district court[16-6772, DN-50]. Had the Appellate Court done an actual *de novo* Review required by Federal law, the Panel would have reviewed the entire record finding clear *"abuse of discretion"* by District Court's refusal to apply the law correctly, unlawfully *setting aside findings of facts* and Granting motions for summary judgment despite countless material facts in dispute in the record.

IV. FRCP Rule 56. Summary Judgment

The Federal District/Appellate Courts erred when Granting/Affirming summary judgment without looking at evidence *in the record* and Defendants never showing there was no genuine dispute to countless material facts presented by the Petitioner.

The Petitioner supported factual positions genuinely disputed with evidence *"Beyond Reasonable Doubt"* including depositions, documents, electronically stored information, affidavits, transcript admissions, audios and other materials in the record. The Petitioner's supported factual positions were thoroughly covered in countless pleadings & evidence unlawfully ignored by District and Appellate Courts. District Court Judge Russell entered the Petitioner's

supplemental materials and audio-tapes in the record via court order then ignored the evidence as if it didn't exist.

These proceedings have presented more than a mere "*scintilla*" of sufficient evidence favoring the non-moving party for a jury verdict for that party.

> *"The right to a jury trial is fundamental in our judicial system, and that the right is one obviously immovable limitation on the legal discretion of the court to set aside a verdict, since the constitutional right of trial by jury includes the right to have issues of fact as to which there is room for a reasonable difference of opinion among fair-minded men passed upon by the jury and not by the court." (Michael Tomick v. United Parcel Service et al., Superior Court of Connecticut. CV064008944, Decided: October 28, 2010).*

V. 5 U.S. Code § 706 – Scope of Review

Federal statute of **5 U.S. Code § 706** make it emphatically clear of the urgency and reasons for Granting the Petitioner's Writ of Certiorari & why it is warranted given the aforementioned and that the Petitioner has been denied his basic right to have ever even been heard in a trial court to judge the credibility of known perjured witnesses.

> ***5 U.S. Code § 706 – Scope of review:*** To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret

constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be –

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

All Courts have a duty and obligation to follow the *Rule of Law* in ascertaining the truth and securing a just determination. A judge must render a Decision grounded in principle and reasoned argument, not in power, manipulating and ignoring the rules in order to advance political agendas. It is time to right this wrong by taking affirmative action in granting Petitioner's Writ of Certiorari.

CONCLUSION

The peripheral issue of these triad cases is whether the petitioner, whose livelihood has been jeopardized and whose good name has been ruined by demonstrably false & manufactured charges of insubordination, is to be permanently deprived of his job and honor because he was the subject of lower court Decisions based on known RICO Act fraud without the substance of a Duty of Fair Representation. If the answer (which shouldn't depend on whether petitioner was subject to honest adjudication in the Sixth Circuit rather than the Second or Ninth) is to be "yes", it should be so only after a reasoned consideration and explanation by this Court based on the Rule of Law which gives a foundation to compel such a result.

The central issue of these triad cases is that this filing brings sunlight to systemic corruption attacking our rights and freedoms as U.S. Citizens versus greed. This case encompasses both sides of the aisle of our representatives who are forced to "go along to get

along." Recent actions by government bodies are helping take away the very transparency necessary to identify corrupt manipulators of our elected officials & judiciary.

We hold that this case represents deteriorating ethics permeating throughout various government departments and agencies. Allowing this case to move forward can open up dialogue to overturn undue corporate influences of our political & judicial process, reigniting a virtuous cycle of campaign reform similar to Bipartisan Campaign Reform Act putting a damper on what has clearly benefited "Dark Money" with *McConnell vs FEC*. This corruption also brings into question need for transparent voting of both the House and Senate on term limits.

McConnell's flippant response to term limits exposes his true agenda to maintain unlimited & indefinite totalitarian control of our Government and its sacred institutions on behalf of "Dark Money" influences against the American people:

> *"I would say we have term limits now," Mr. McConnell told reporters. "They're called elections. And it will not be on the agenda in the Senate."*

Given Presidential term limits, this mentality exhibits hypocrisy that needs to be publicly exposed and impeached.

Accordingly, the petitioner prays that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

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