

No.

18-7758

IN THE SUPREME COURT OF THE UNITED STATES

MARY CUMMINS

Petitioner,

v.

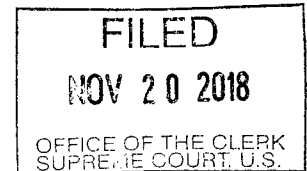
AMANDA LOLLAR, BAT WORLD SANCTUARY

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Texas Courts allow “visiting Judges” when the sitting Judge is ill or wants to take time off. The sitting Judge chooses which specific Judge they want as their replacement. The Judicial Judge for that District then assigns the requested Judge as the visiting Judge for the specific case and time. In almost every other court in the nation the Judges are chosen in an unbiased random manner by an administrative district Justice to assure a fair trial by an unbiased Judge. Defendant was deprived of an impartial tribunal.

- 1) Is a trial by a visiting Judge according to Texas regulations a fair trial?
- 2) Has Mary Cummins been deprived of due process by use of a retired Texas visiting Judge who was the longtime friend of the sitting Judge Bonnie Sudderth, Plaintiffs’ attorney, Randall Turner and Plaintiffs’ attorney’s wife, Patti Gearhart-Turner?
- 3) Has Mary Cummins been deprived of a fair trial based on a judgment in a case made by a visiting Judge?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Mary Cummins, Defendant Pro se

Amanda Lollar, Plaintiff
Bat World Sanctuary, Plaintiff
Represented by attorney
Randall E. Turner

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	i
TABLE OF CONTENTS.....	ii
INDEX OF APPENDICES.....	1
TABLE OF AUTHORITIES.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL, STATUTORY PROVISIONS INVOLVED..	2
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	6
CONCLUSION.....	6
PROOF OF SERVICE.....	7

INDEX OF APPENDICES

- Appendix A Decision of 352nd District Court of Tarrant County, Texas
- Appendix B Decision of County Court 3 of Tarrant County, Texas
- Appendix C Decision of the Seventh Court of Appeals of Texas denying rehearing
- Appendix D Decision of the Supreme Court of Texas denying review

TABLE OF AUTHORITIES

CASES

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986)2

Tumey v. Ohio, 273 U.S. 510 (1927).....2

Ward v. Village of Monroeville 409 U.S. 57 (1972); in re Murchison, 349 U.S. 133 (1955).....2

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment XIV, § 1.....2

Texas Constitution Article 5 § 1 (a).....2

STATUTES

28 U.S.C. § 1257.....2

OPINIONS BELOW

The decision by the 7th Court of Appeals of Texas denying Ms. Cummins’ motion to rehear was denied May 29, 2018 case # 07-16-00337-CV West Publishing. The Texas Supreme Court denied Ms. Cummins’ petition for review case # 18-0635 on August 24, 2018 West Publishing.

JURISDICTION

Ms. Cummins' petition for hearing to the Texas Supreme Court was denied on August 24, 2018. Ms. Cummins invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Texas Supreme Court's judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." U.S. Const. amend. XIV, § 1. The United States Supreme Court has recognized that the lack of an impartial judge is violative of the due process clause of the 14th amendment. See, e.g., *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986) *Ward v. Village of Monroe* 409 U.S. 57 (1972); *in re Murchison*, 349 U.S. 133 (1955); *Tumey v. Ohio*, 273 U.S. 510 (1927).

The Texas Constitution Article 5 § 1 (a): "RETIREMENT, COMPENSATION, DISCIPLINE, AND REMOVAL OF JUSTICES AND JUDGES; STATE COMMISSION ON JUDICIAL CONDUCT. (1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant on the expiration of the term during which the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe, except that if a Justice or Judge elected to serve or fill the remainder of a six-year term reaches the age of seventy-five (75) years during the first four years of the term, the office of that Justice or Judge shall become vacant on December 31 of the fourth year of the term to which the Justice or Judge was elected."

INTRODUCTION

The right to due process and a fair trial conducted by an impartial judge is a fundamental component of the American system of Justice¹. To ensure achievement of this fundamental goal, most states, as well as the federal government, developed fair and random mechanisms by which judges are assigned to individual cases as sitting Judges and visiting Judges. In Texas sitting Judges are allowed to choose

¹ The United States Supreme Court has recognized that the lack of an impartial judge is violative of the due process clause of the 14th amendment. See, e.g., *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986) *Ward v. Village of Monroe* 409 U.S. 57 (1972); *in re Murchison*, 349 U.S. 133 (1955); *Tumey v. Ohio*, 273 U.S. 510 (1927).

which specific visiting Judge will be their replacement when they take a day or even just an hour off from certain cases for certain hearings and even the trial. This is unconstitutional.

In Texas lawyers can manage the subject matter of a case to make sure their case will be overseen by a specific favored Judge. That sitting Judge can then manage their schedule so that they will take a vacation for one specific hearing or trial without even having to give notice to Defendant. In Texas the Constitution requires Judges to be elected as well as in twenty-nine other states. "Not elected, not accountable." Visiting Judges are not elected. "From the visiting Judge's viewpoint his customers are the law firms and the lawyers with whom he has a relationship – not the public who he is ostensibly serving. When one considers this one is not surprised by their behavior – only surprised that their employment which is unconstitutional in Texas is allowed in the first place"².

Sitting Judges in Texas are allowed to request and have appointed a specific visiting Judge to take their place when they are ill or go on vacation³. Sometimes they will request a visiting Judge when they don't want to rule on a specific case because a just ruling would hurt their friend and an unjust ruling would hurt their reputation and ability to be re-elected (footnote 3).

The visiting Judge is generally a retired Judge. The sitting Judge appoints a specific visiting Judge who will give favorable results to one party over another (footnote 3). Visiting Judges make at least \$400 per day not including per diem expenses which are paid by the state. The more favorable rulings a visiting Judge makes to certain parties, the more likely they will be requested again via the sitting Judge. Sometimes the sitting Judge will have their clerk fill out the request for a visiting Judge. The request still comes from the sitting Judge.

In Texas no Judge may serve over the age of 75 per the Texas Constitution. The only exception is if they are elected before the age of 75, they may serve out their term. While the Texas Constitution states that is the law for "all" Judges some visiting Judges are appointed, assigned cases over the age of 75 as in this case.

This case presents the question of whether a hearing or trial by a visiting Judge specifically appointed by the sitting Judge who is a longtime friend of the visiting Judge, Plaintiffs' attorney and Plaintiffs' attorney's wife who is also an attorney, is

² Legal Reform Now. Eliminate Visiting Judges.

http://web.archive.org/web/20110110030653/http://www.legalreform-now.org/menu2_4.htm

³ Request for specific visiting Judge <http://www.txcourts.gov/media/1437460/request-for-attorney-assignment-8th-ajr.pdf>

a fair trial. This case asks if a judgment made by such a visiting Judge is constitutional and valid. It further asks if a ruling made by another court on the basis of said judgment is constitutional.

STATEMENT OF THE CASE

June 2010 Defendant Cummins went to Texas to learn more about bats. Instead Defendant witnessed animal cruelty and other violations. Defendant left early and filed fair and privileged reports to authorities. Plaintiffs were investigated. Violations were found. Plaintiff lost their USDA permit.

September 2010 Defendant Cummins was sued for defamation and breach of contract by Amanda Lollar and Bat World Sanctuary in Texas case #352-148169-10. Plaintiffs claimed the reports to authorities were defamation. Defendant never defamed Plaintiffs or breached a contract. Defendant lives in California. The then sitting Judge of 352nd District in Tarrant County, Texas was Judge Bonnie Sudderth.

May 2011 there was a motion for temporary injunction. In the court room Plaintiffs' attorney Randall Turner stated to Defendant "I've known this judge for many years. He'll sign anything I put in front of him." Defendant was never given a copy of the motion or exhibits before Defendant showed up in Texas for the hearing. There was a visiting Judge that day then 83 year old Judge William Brigham now deceased. Judge Sudderth had specifically requested Judge Brigham for this short hearing.

Defendant had no chance to review the motion or exhibits and objected. Judge Brigham over ruled every objection made by Defendant. Defendant didn't write most of the items. Some were in Chinese which Defendant doesn't speak. Judge Brigham ruled for Plaintiffs. Defendant was ordered to remove other people's posts from other people's websites whom Defendant didn't even know and hadn't even seen. Plaintiffs' attorney Randall Turner handed the Judge a six page single spaced court order. Judge flipped to the last page and signed it unread in front of Defendant.

June 2012 Defendant showed up for the trial in Texas. Again, no notice of different Judge was given. Defendant even called the day before. Now 84 year old Judge Brigham heard the trial. Plaintiffs did not show even one element of defamation. They never even stated what they felt was defamatory. They showed no evidence of who wrote anything. They admitted they had no evidence of even one penny of damages.

Judge Brigham gave Plaintiffs what they requested, \$3,000,000 compensatory damages, \$3,000,000 exemplary damages, \$176,000 in legal fees and \$10,000 liquidated damages. The judgment doesn't include the word "defamation" or "malice." It's a takedown order only with monetary damages. Most of the items ordered to be taken down were made by Plaintiff, government agencies and others. The current judgment has swelled to well over \$10,000,000 even after Plaintiff took every asset and penny from Defendant.

Defendant appealed to the Second Court of Appeals of Texas case # 02-12-00285-CV⁴. All claims for breach of contract, legal fees and liquidated damages were reversed April 9, 2015. The defamation claim was affirmed. The judgement was found to be unconstitutional as it included prior restraint. Defendant was allowed to repost the items taken down but didn't.

Days after the opinion was released Plaintiff Amanda Lollar sued Defendant again for the exact same things in a copy/paste filing case #2015-002259-3/# 2015-002259-2. One Judge another personal friend of Plaintiff's attorney recused herself after hearing the motion to dismiss without ruling. Plaintiff falsely stated the items were reposted.

Since the first case was filed the Texas Defamation Mitigation Act and the Texas Citizen Participation Act were passed into law to try to cut down on the huge number of frivolous defamation lawsuits in Texas. Defendant filed a Motion to Dismiss per the two Texas acts, statute of limitations and the fact that Plaintiff forged almost every single exhibit. Because Defendant never defamed Plaintiff, Plaintiff had to fabricate defamation against Plaintiff. Plaintiff then submitted a perjured declaration stating all exhibits are exact copies of the originals which are still publicly available online. They are very poor quality forgeries as if made by a child. Plaintiff committed the crimes of multiple forgeries and perjury. Plaintiff in exhibits defamed Plaintiff using Defendant's name in their exhibits. Those comments are just barely within the statute of limitation for defamation in Texas. The comments don't exist online in the actual articles which are still public. Defendant did not write those original articles or comments. No actual comments are within the statute of limitations for defamation of one year in Texas.

Defendant lost the motion to dismiss in County Court 3. Defendant appealed to the Appeals Court case # 07-16-00337-CV⁵. The 7th Court of Appeals affirmed the lower court's decision May 3, 2018. Their decision is based on the original 2012 judgment by Judge Brigham. The Court ruled that the 2012 judgment stated the items were

⁴ Mary Cummins v Bat World et al <http://www.search.txcourts.gov/Case.aspx?cn=02-12-00285-CV&coa=coa02>

⁵ Mary Cummins v Amanda Lollar <http://www.search.txcourts.gov/Case.aspx?cn=07-16-00337-CV&coa=coa07>

defamatory even though the word “defamation” and “defamatory” are not in the judgment and Defendant didn’t write most of the items. Defendant appealed to the Supreme Court of Texas case #18-0635⁶ who refused to hear the case. Defendant now files this Writ for Centiorari.

REASONS WHY CENTIORARI SHOULD BE GRANTED

The court should grant this petition for the following reasons:

To avoid the erroneous deprivations of the right to a fair trial by an unbiased Judge and proper due process. The use of visiting Judges is unconstitutional because in some states the sitting Judge gets to select a specific Judge. Judge William Brigham didn’t just rule in civil cases. He was used to game many court rulings in criminal cases. Judge Brigham sent people to prison who are still in prison. Texas has the death penalty. It’s also the state with the most convictions over turned by the Innocence Project. Many people have been and will continue to be adversely affected by the manipulative use of visiting Judges to game the Judicial system in many states. Many non-profit justice organizations have tried to reform the use of visiting Judges for many years. None have been successful as states will not eliminate the use of specifically chosen visiting Judges as it benefits certain people in Texas and other states. It is especially harmful to pro se parties and parties with public defenders. The only way to eliminate the use of specifically requested visiting Judges is by a ruling by the Supreme Court of the United States stating it is unconstitutional.

CONCLUSION

For the foregoing reasons, Ms. Cummins respectfully requests that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,



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⁶ Mary Cummins v Amanda Lollar <http://www.search.txcourts.gov/Case.aspx?cn=18-0635&coa=cossup>