No. __-____

IN THE SUPREME COURT OF THE UNITED STATES

DR. PATRICK BYRNE,

Petitioner,

v.

U.S. DOMINION, INC., ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF CERTIORARI

Submitted by:

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QUESTION PRESENTED

Petitioner / Appellant, Dr. Patrick Byrne, seeks review of the Order of the Circuit Court of Appeals of the District of Columbia, dismissing his appeal and refusing to review a District Court order disqualifying his counsel of choice in this defamation case brought by Respondent, U.S. Dominion, Inc., et al., and its multiple affiliated and international companies, seeking hundreds of millions of dollars from Petitioner.

The questions presented for review are:

1. In a civil defamation case where a discovery protective order is filed to shelter evidence of crimes, does a District Court err in affirming the disqualification of Petitioner's counsel of choice for violating the protective order, where she was obligated by state statute (MCL 750.149) to report criminal activity found in the discovery documents to law enforcement?

2. Where a civil litigant's right to retain counsel is rooted in Fifth Amendment notions of due process, was it a violation of Petitioner's constitutional rights for the District Court to disqualify his counsel of choice and for the Court of Appeals to refuse to hear this substantive and directly impactful ruling on jurisdictional grounds? See, e.g., *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir. 1980); *Powell v. Alabama*, 287 U.S. 45, 68, 53 S. Ct. 55, 77 L. Ed. 158 (1932); *Guajardo-Palma v. Martinson*, 622 F.3d 801, 803 (7th Cir. 2010).

PARTIES TO THE PROCEEDING

Respondent, U.S. Dominion, Inc., was the Plaintiff in the District Court proceedings along with its affiliates and subsidiaries. Dominion Voting Systems, Inc., is a wholly owned subsidiary of U.S. Dominion, Inc. Dominion Voting Systems Corporation is also a wholly owned subsidiary of U.S. Dominion located in Toronto, Ontario, Canada.[1]

Petitioner, Dr. Patrick Byrne, was the Defendant in the District Court proceedings.

[1] The discovery revealed that Dominion's U.S. company is just a front, multi-national elements, including Venezuelans (employed by Dominion), Serbians, and Chinese actors conspired to modify firmware in Dominion's equipment and mislabeled the products with false identification numbers to circumvent certification requirements. In other words, foreign actors on behalf of Dominion were gaining remote access to U.S. election equipment and making modifications prior to the certification of elections.

RULE 29.6 DISCLOSURE STATEMENT

On information and belief, Respondent, U.S. Dominion, Inc., is a for-profit Delaware corporation with its principal place of business in Denver, Colorado.

Dominion Voting Systems, Inc., is a wholly owned subsidiary of U.S. Dominion, Inc., and is also a for profit Delaware Corporation with its principal place of business in Denver, Colorado.

Dominion Voting Systems Corporation is also a wholly owned subsidiary of U.S. Dominion and is a for profit Ontario corporation with its principal place of business in Toronto, Ontario, Canada.[2]

Petitioner, Dr. Patrick Byrne, is a U.S. citizen and not a corporate party.

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[2] This was the statement of parties provided by Dominion in the Court of Appeals. But see, footnote 1, *supra*.

RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii) The underlying federal district court case, number 1:21-cv-02131, is a civil defamation case filed against Petitioner by Respondent.

Although containing different party-defendants, the underlying case against Petitioner is included as among other related cases, which Respondent claims or did claim, involve common issues of fact and which Respondent alleges or alleged grow out of the same events or transactions, as designated by Respondent, by their filing of Notices of Related Cases in the underlying case, to wit, *US Dominion, Inc., et al. v. Sydney Powell, et al.*, Case No. 1:21-cv-00040; *US Dominion, Inc., et al. v. Rudolph W. Giuliani*, Case No. 1:21-cv-00213; *US Dominion, Inc., et al. v. MyPillow, Inc. and Michael J. Lindell*, Case No. 1:21-cv-00445; *Michael J. Lindell v. US Dominion, Inc., et al.*, Case No. 1:21-cv-001332; *My Pillow, Inc., v. US Dominion, Inc., et al.*, Case No. 1:21-cv-001015; *US Dominion, Inc., et al. v. Herring Networks, Inc., et al.*, Case No. 1:21-cv-002130; *Michael J. Lindell v. US Dominion, Inc., et al.*, Case No. 1:21-cv-02296; *My Pillow, Inc., v. US Dominion, Inc., et al.*, Case No. 1:21-cv-02294.

See also, *Coomer v. Byrne [petitioner in this case], et al.*, USDC Middle District of Florida, Case No. 8:24-cv-8-TPB-SPF and *Biden v. Byrne,* USDC Central District of California, Western Division, Case No.: CV 23-09430-SVW.

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On December 13, 2024, the District Court issued an opinion and order denying Petitioner's motion for reconsideration and/or for relief from its prior order dated October 22, 2024, in which it affirmed the Magistrate Judge's August 13, 2024 order disqualifying Petitioner's counsel of record.

Petitioner filed a petition in the Circuit Court of Appeals of the District of Columbia arguing that the disqualification of his counsel of choice, who has superior and unique expertise and knowledge in the subject matter concerning Respondent's claims, effectively prevented him from presenting a full and adequate defense depriving him of his constitutional rights, including, *inter alia*, the right to counsel under the Fifth Amendment.[3]

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[3] Indeed, there is no other lawyer or law firm in the District of Columbia area that has specialized and unique knowledge regarding the vulnerabilities of electronic voting machines and the legal and national security implications associated with Respondents' voting machine systems. In another case involving Respondent, the District Court recognized that Petitioner's counsel, Attorney Lambert, "has extensive experience and expertise representing parties in virtually identical types of disputes involving very similar facts and legal issues [and] based on her presentation…the Court remarked that her depth of knowledge and experience might even be sufficient to qualify her as an expert." See, Document 214 in *Coomer v. Byrne [petitioner in this case], et al.*, USDC Middle District of Florida, Case No. 8:24-cv-8-TPB-SPF.

On March 24, 2025, the Court of Appeals issued an order dismissing Petitioner's appeal (App. 1a-2a)

On March 31, 2025, Petitioner filed a petition for review *en banc* and on June 9, 2025, the Circuit Court issued an order denying such review (App. 13a).

The District Court's October 22, 2024, opinion and order disqualifying Petitioner's counsel of choice, and its December 13, 2024, denial of Petitioner's motion for reconsideration are included in Petitioner's Appendix at App. 3a through 12a.

JURISDICTION

Pursuant to 28 U.S.C. § 1254, this Court has jurisdiction over petitions for writs of certiorari from final orders or judgments of federal circuit courts, which dispose of all issues and parties, and in which any title, right, or privilege is claimed under the Constitution or laws of the United States.

The Circuit Court of Appeals' decision constitutes a final disposition of the unique issue of an order disqualifying counsel, because such a decision is effectively moot and unreviewable if the aggrieved party must wait until the end of a trial, especially a civil case involving hundreds of millions of dollars in claimed liability and loss.

In addition, Petitioner has raised what he believes is a significant constitutional question: if the right to counsel of choice is a constitutional one, which has

been confirmed,[4] then would not a decision disqualifying counsel be one of the types of primary constitutional questions over which this Court has always exercised its power of discretionary review?

This is especially pertinent in a case in which Respondent has used the process of disqualification as a strategic tool to keep Petitioner's counsel of choice from defending him due to her significant experience and expertise, especially in matters involving this Respondent and their electronic voting machines and systems that are still being used in local, state, and national elections despite their now well-known vulnerabilities and defects.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Fifth Amendment

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 offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against

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[4] Courts have generally acknowledged a civil litigant's Fifth Amendment due process right to retain and fund the counsel of their choice. See, e.g., *Adir Int'l, Ltd. Liab. Co. v. Starr Indem. & Liab. Co.*, 994 F.3d 1032, 1039-40 (9th Cir. 2021); *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir. 1980); *Powell v. Alabama*, 287 U.S. 45, 68, 53 S. Ct. 55, 77 L. Ed. 158 (1932); *Guajardo-Palma v. Martinson*, 622 F.3d 801, 803 (7th Cir. 2010).

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.

STATEMENT OF THE CASE

1. Introduction

The proceedings in the instant case involve one or more questions of exceptional importance concerning the continued treatment of lower district court orders disqualifying counsel as non-appealable orders, which orders have ostensibly been deemed to have not invoked the subject-matter jurisdiction of the Court of Appeals. Regardless of the substantive treatment of this issue by appellate courts, an order disqualifying counsel in a district court proceeding is for all intents and purposes a final order with respect to *the substantive decision being appealed*, i.e., the decision to disqualify, because the right to counsel of choice is immediately terminated and irredeemably altered by such an order.

The final disposition of the case, subsequent to such an order, is irrelevant when considering the loss of substantive rights and prejudice instantly suffered by the litigant faced with a decision that irrevocably alters the strategy and prognosis of his or defense. Therefore, the constitutional violation occurs at the moment the counsel is disqualified and said violation is a continuing one for however long the case continues to be litigated. It cannot be remedied at the end of the case, because it is an immediate and instant injury that continues to be suffered throughout. Indeed, here, the District Court stayed the

proceedings pending Petitioner's initial appeal of the order disqualifying his counsel of choice.

After disqualification, both substantive and critical procedural decisions continue to be made by the lower court, and the unrepresented litigant is at the mercy of this ongoing process. Even if there is a transition from disqualified counsel to new counsel, in addition to not being the first choice of the litigant, there is always a period in which prejudice to the litigant is bound to occur. Parties that engage in tactics to have counsel disqualified, and it is clear that Respondent did so here because it is well aware of Petitioner's counsel of choice as she has been engaged in multiple jurisdictions litigating civil cases involving Respondent, know very well that there is always an advantage to be had in such circumstances. When counsel is disqualified, the unrepresented litigant is immediately on his or her heels attempting to deal with the ongoing litigation.

Finally, in addition to the constitutional concerns raised herein, and the reality that disqualification of counsel is an order that cannot be *effectively appealed* at the end of a case, Respondent's defamation claim fails or succeeds based on the facts and truth of Petitioner's defense. His choice of counsel is the most prominent expert and experienced attorney with knowledge of the inner workings of Respondent and the factual basis for Petitioner's alleged defamatory statements.

All cases in which the courts have been asked to determine the finality of an order of disqualification have been those in which the underlying challenge, or

the basis of disqualification, was unrelated to a preemptive strike on the part of opposing counsel to get rid of their opposition's attorney because of the latter's competence and expertise. Indeed, the reason that such motions are viewed with great caution is their very use for this strategy. Here, Petitioner's counsel was targeted by Respondent specifically for disqualification so that she could not represent Petitioner because of her aforementioned experience and expertise.

The final order entered by the District Court on Petitioner's motion for reconsideration of the disqualification order is a final, appealable order and was subject to the appellate jurisdiction of the Circuit Court under 28 U.S.C. § 1291.

The decisions of this Court on this issue are outdated and in need of revision in this modern world of guerilla litigation and the weaponization of the justice system against lawyers who seek to discover the truth. These cases are also distinguishable in large part from the instant case and the Court of Appeals erred in its decision to dismiss Petitioner's appeal on jurisdictional grounds.

Furthermore, developments in constitutional law concerning the right of civil litigants to counsel of their choice during the course of civil proceedings has evolved such that rote adherence to the outdated framework of *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 105 S. Ct. 2757 (1985), is constitutionally deficient, and in any event, federal courts have recently demonstrated considerable leeway to civil

litigants in furtherance of protecting their individual constitutional rights.

2. Background

Respondent, a quasi-public state actor (a cartel of national and international organizations that design, manufacture, control, manipulate, and supply election voting machines and equipment for state and local governments for the casting and counting of votes in local, state and national elections) filed suit against Petitioner seeking hundreds of millions of dollars for "defamation" due to Petitioner's comments and observations concerning the quality and integrity of the Respondent's product, among other of Respondent's actions and conduct in this particularly sensitive and constitutionally pertinent subject matter.

On June 8, 2023, the parties jointly moved for an order to govern the handling of information shared through discovery (App. 7a). The District Court thereafter entered a Protective Order expressly mandating (among other things) that:

> *Any Discovery Material produced in the Litigation will be used . . . solely for purposes of this Litigation and no Receiving Party will provide Discovery Material to any person or entity (including for any other litigation) or make any Discovery material public except as permitted by this Order and in this Litigation. Id.*

The Protective Order, which was drafted as broadly as possible by Respondent and before Petitioner's counsel of choice, Attorney Stefanie Lambert, filed an appearance, also required that, if a party received a subpoena to produce certain discovery material, it must inform the other party and object to production of the material. *Id*. at 7a-8a.

On March 12, 2024, Attorney Lambert, who was a prosecutor for nearly a decade, then a criminal defense attorney, and a nationally renowned specialist in fraud and election related cases, entered her appearance on behalf of Petitioner. Three days later, Respondent, well aware of Lambert's experience and knowledge because of her involvement with multiple other cases involving Respondent, moved to disqualify her, accusing her of violating the Protective Order by (1) the filing of a Michigan Sheriff's affidavit in a Michigan criminal case against her which included documents that were produced pursuant to the order; and (2) providing to a Michigan sheriff her username and password so that he could access the discovery database (which included documents produced pursuant to the order). *Id*.

In fact, the affidavit filed in the case against Petitioner's counsel, which was a prime example of the weaponization of the criminal justice system seeking to punish Petitioner's counsel for her involvement in litigation concerning election fraud and related cases, is what contained the information from the discovery. Petitioner was aware that there was an ongoing law enforcement investigation into Dominion being conducted by the Barry County Sheriff in Michigan. Petitioner, who is a Michigan attorney, turned over

the evidence of criminal activity to the sheriff pursuant to MCL 750.149, which required her to report evidence of crimes to law enforcement. The password was provided so that the sheriff could protect the chain of custody of the documents.

At the hearing, Petitioner's counsel argued that as a Michigan attorney, she was required by criminal statute in Michigan (MCL 750.149) to report the commission of crimes found in the Respondent's evidence to law enforcement.

Petitioner's counsel also asserted that the documents were not protected by the protective order and that, even if they were, she was still required to provide them to law enforcement to report past and imminent criminal activity on the part of Respondent and its multiple national and international organizations. *Id.*

In response to Respondent's sudden and tactical motion, Petitioner's counsel pointed out that in the information in Respondent's possession there were email communications (some written in Serbian and foreign languages) with and from top level Dominion employees directing and tasking foreign nationals to remotely access voting machines utilized in the United States during the November 3, 2020 election. The remote access by these foreign nationals occurred while the states were still counting votes, determining a final tally, and prior to certification of the results. The email communications further showed that background checks of Respondent's Serbian employees never took place and the United States had no knowledge or oversight over these individuals,

including whether or not they had prior Serbian military experience.

The discovery also revealed that Dominion's U.S. company is just a front and that multi-national elements, including Venezuelans (employed by Dominion), Serbians (also employed by Dominion), and Chinese actors conspired to modify firmware in Dominion's equipment and mislabeled the products with false identification numbers to circumvent certification requirements. In other words, foreign actors on behalf of Dominion were gaining remote access to U.S. election equipment and making modifications prior to the certification of elections.

It was further discovered that Venezuelans, who worked for Respondent, where the same Venezuelans who programmed the elections for Chavez and Maduro, and that they were on the ground working for Dominion in the 2020 election in Cook County, Illinois.

At the time, it was Petitioner's counsel's belief that if she requested lifting of the protective order to turn the information over to law enforcement, it would put Respondent on notice and also provide the District Court in the District of Columbia from fulfilling her legal obligation to report crimes to law enforcement.

Election machines have been in use in the United States for approximately 20 years, and it seems reasonable that the United States should know who is entering/altering its election system and data, and whether or not these same individuals were involved

in armed conflict in recent years against the United States, such as Kosovo.

Petitioner knowing that there was an open criminal investigation into Respondent in Michigan argued that the email communications to and from Serbian foreign nationals were evidence of violations of federal criminal law, and supported charges of, *inter alia*, perjury, foreign interference in a U.S. election, honest services fraud, and wire fraud.

Additionally, these email communications were corroborative evidence of forensic expert reports that have been previously disclosed in other litigation involving Respondent demonstrating interference with voting machines in the United States via remote access during the 2020 election.

Additional communications by and between Dominion indicated that Dominion misrepresented to the Election Assistance Commission (EAC) and its customers products for certification and products being leased and sold, allowing different products and platforms to be put into use.

Once discovered, Petitioner's counsel argued that she had a legal obligation to report the contents of these email communications to law enforcement. Truth, and transparency are imperative not only to Petitioner's defense in this defamation case, but in order that past actions related to the 2020 election be appropriately exposed and investigated, and for government officials to make informed decisions as to how elections are to be conducted in the future.

Petitioner further argued that the information which Respondent's motion to disqualify addressed was not "Confidential Discovery Material," and that, in any event, evidence of criminal activity, especially touching upon elections, must be turned over to law enforcement, and is not covered by a discovery protective order in a civil action. Indeed, Petitioner's counsel argued that information indicating the commission of criminal actions by foreign nationals and conspiracy with a party were a subject of great public concern, especially when the future of the country is at stake because elections are not secure and can still be compromised and manipulated. There were legitimate national security concerns of an emergent nature. During the hearing, Petitioner pointed out that she had discovered evidence of the most serious crimes in history against the United States. These incidents, among others, are now the subject of numerous law enforcement investigations at the state and federal level.

A "criminal act / public interest" exception must exist, Petitioner continued, notwithstanding the strictures of the protective order, *even if* Respondent's intent and the language of the protective order could be construed to apply to the totality of information in the possession of Respondent.

The magistrate judge overseeing discovery only in the proceedings thereafter entered a so-called "status quo order," which was intended to cure (to the extent possible) the dissemination of materials subject to the protective order and to prevent further violations while Respondent's motion was pending (App. 7a-9a).

Nearly five months later, the magistrate judge finally issued an order disqualifying Petitioner, ruling that she violated the protective order and status quo order. *Id.* At the time, per the Magistrate's instruction, Petitioner's counsel filed motions and argued that she also needed to provide the information because it contained exculpatory evidence for Tina Peters, who she represented and second, because she had received subpoena from several state legislatures. Once the magistrate became aware of this, Petitioner's counsel was immediately removed from the case.

Petitioner filed an objection with the district court judge. On October 22, 2024, the district court affirmed the magistrate's decision (App. 6a-12a). The district court judge found that Lambert violated both the status quo order and the protective order. Applying the "truly egregious" standard, the district court found that the conduct in question was such that it would likely "infect" future proceedings if Attorney Lambert were to continue representing Petitioner.

On December 13, 2024, the district court denied Petitioner's motion for reconsideration (App. 13a). Petitioner filed an appeal with the Circuit Court of Appeals, which dismissed the appeal as interlocutory and without its jurisdiction. Petitioner now seeks review in this Court.

REASONS FOR GRANTING

A party moving to disqualify counsel bears the burden of proving the grounds for disqualification. *In re BellSouth Corp.*, 334 F.3d 941, 961 (11th Cir.

2003)). When a court is presented with motion to disqualify, that court must "be conscious of its responsibility to preserve a reasonable balance between the need to ensure ethical conduct on the part of lawyers appearing before it and other social interests, which include the litigant's right to freely choose counsel." *Woods v. Covington Cnty. Bank*, 537 F.2d 804, 810 (5th Cir. 1976).

Moreover, "[d]isqualification of one's chosen counsel is a drastic remedy that should be resorted to sparingly." *Norton v. Tallahassee Mem'l Hosp.*, 689 F.2d 938, 941 n. 4 (11th Cir. 1982)). "Because a party is presumptively entitled to the counsel of his choice, that right may be overridden only if compelling reasons exist." *In re BellSouth*, *supra* (internal quotation marks and citations omitted). Furthermore, "[s]uch motions are generally viewed with skepticism because…they are often interposed for tactical purposes." *Evans v. Artek Sys. Corp.*, 715 F.2d 788 (2d Cir. 1983); *Manning v. Waring, Cox, James, Sklar & Allen*, 849 F.2d 222 (6th Cir. 1988).

While Respondent claimed in its initial motion to dismiss in the Circuit Court of Appeals that the Circuit Court lacked subject-matter jurisdiction, it began its continued attack on Petitioner's counsel of choice by once again arguing the merits and making several false factual claims.

Indeed, Respondent described the Magistrate's consideration as "incredibly careful" and detailed at great length the substantive reasoning of her decision.

An appellee must address the jurisdictional challenge before addressing especially where it claims the court lacks jurisdiction. This must come before trying to hedge on the merits in a preliminary motion to dismiss. The appeal has been lodged and presumably perfected. The substantive merits of the latter's appeal will have the benefit of full, appropriate briefing during the appeal. See, e.g., *Tulsa Airports Improvements Trust v. United States*, 120 Fed. Cl. 254 (2015); *Flynt v. Weinberger*, 246 U.S. App. D.C. 40, 762 F.2d 134, 135-36 (1985) (where it was stated that it is the duty of the appellate court to clear the path for future re-litigation of the issues raised on appeal not to prematurely dismiss a case at the request of an appellee). See also, *United States v. Munsingwear*, 340 U.S. 36, 40, 71 S. Ct. 104, 95 L. Ed. 36 (1950).

As far as the appellate court's jurisdiction is concerned, case law and federal statute dictate where and when an appellate court may exercise jurisdiction, and the preliminary decision to do so is the only question to consider prior to giving the appellant its opportunity to fully brief and argue the merits.

There is no way around the jurisdictional hurdle and raising it on a preliminary motion certainly does not entitle the appellee to litigate the underlying merits of a timely filed appeal. This layers onto the reason, discussed below, that decisions disqualifying counsel are of the category roughly belonging in that rare group of "interlocutory" orders that have such draconian imposed, behavior changing effects and equally grave constitutional implications, that they *are appealable* despite their interlocutory posture.

Even worse, where an appellee addresses the merits of the case in a preliminary motion to dismiss for lack of jurisdiction in an appellate court, several adverse consequences can occur. Primarily, the appellate court must first determine whether it has jurisdiction before it can address the merits of the case. If the court lacks jurisdiction, it cannot render a valid judgment on the merits and any decision made on the merits would be considered a nullity *Syva Co. v. United States*, 12 Ct. Int'l Trade 199, 681 F. Supp. 885 (1988), *Clark v. Meijer, Inc.*, 376 F. Supp. 2d 1077 (D.N.M. 2004), *Labat-Anderson, Inc. v. United States*, 346 F. Supp. 2d 145 (D.D.C. 2004). Yet, the appellate courts declination can be seen as a decision on the merits where the moving party has included a fair bit of the merits defending the lower court's order. Subsequent appeal, even if it were worthwhile, would inevitably be marred by this presumptive nod towards the lower court's decision on the merits, *and* the initial Circuit Court's decision to decline review.

Addressing the merits prematurely can further result in the appellate court vacating any opinions or judgments on the merits if it later determines that jurisdiction was lacking. This ensures that the path is cleared for future litigation of the issues raised without the preclusive effects of a merits-based decision. *Loughlin v. United State*s, 364 U.S. App. D.C. 132, 393 F.3d 155 (2004).

Moreover, addressing the merits without resolving jurisdictional issues can lead to unnecessary complications and inefficiencies. The court must refrain from making any pronouncement on the merits until it resolves doubts about subject matter

jurisdiction, as a dismissal for lack of jurisdiction carries no claim preclusive effects, unlike a dismissal on the merits. *Johnson v. Burnley*, 887 F.2d 471 (4th Cir. 1989). And certainly, although Petitioner does not concede the point, any decision on the motion to dismiss based on Respondent's improper attack on the merits could potentially threaten further appellate review of the District Court's decision. *Id*.

Therefore, addressing the merits in a preliminary motion to dismiss for lack of jurisdiction can undermine the judicial process and lead to vacated decisions and potential re-litigation. *Syva Co.*, *supra*; *Clark*, *supra*; *Labat-Anderson, Inc.*, *supra*.

In summary, the potential consequences include the nullification of any merits-based decisions if jurisdiction is found lacking, vacating of opinions, and the inefficiency of addressing substantive issues prematurely. The court must first establish jurisdiction before considering the merits to avoid these issues. *Id*. Because of the negative impact ruling on the merits would have on a preliminary motion to dismiss, as discussed above, the principle underlying the prohibition inures to the benefit of an appellant as much so or more than it would the appellee in the litigation below.

Respondent's attempt to obfuscate the Circuit Court's full appellate review and simultaneously skew the playing field by addressing the substance of the District Court's decision and the alleged facts, while ignoring the only substantively applicable legal principle, to wit, a decision disqualifying a litigant's experienced and chosen counsel mid-stream during a

district court proceeding is a final, appealable order as it renders subsequent substantive and *meaningful* review of that decision after the case is over impossible, should therefore be disregarded entirely.

However, it must be said that what Respondent ignores in addressing the substantive underlying decision is that Petitioner's counsel, who is an experienced litigation attorney in the underlying subject matter and who served as a prosecutor for a decade, brought to the attention of law enforcement significant criminal wrongdoing on the part of Respondent, its agents, employees and contractors. This was raised before the Magistrate and the District Court Judge in the hearing on the objection to the Magistrate's disqualification order.

Indeed, in the latter proceeding, Petitioner's counsel raised additional concerns and supporting law for a blanket exception when disclosing the criminal conduct of a litigant to law enforcement. Furthermore, under both Michigan law and federal law, it is required to report criminal conduct to authorities. Attorney Lambert, who lives and works in Michigan, was required by Michigan law to disclose suspected criminal activity to law enforcement. See MCL 750.149. This provision, entitled "Compounding or concealing offense; Penalty" provides:

> Any person having knowledge of the commission of any offense punishable with death, or by imprisonment in the state prison, who shall take any money, or any gratuity or reward, or any engagement therefor, upon an agreement or understanding, express or

> implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, shall, when such offense of which he or she has knowledge was punishable with death, or imprisonment in the state prison for life, is guilty of a felony; and where the offense, of which he or she so had knowledge, was punishable in any other manner, he or she is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00.

Further, one cannot draft or propose a protective order or contract that would ever prohibit the disclosure of a crime to authorities. Such agreements would be considered void and unenforceable as they are contrary to public policy. If it were otherwise, any corporation or entity could conceal crimes or enter into such sweeping protective orders to avoid criminal investigation and prosecution.

Under federal law, particularly 18 U.S.C. § 1512, it is a crime itself to prevent or otherwise penalize one for reporting suspected criminal activity. Corruptly obstructing and impeding the reporting of suspected criminal activity is a crime under this statute. Furthermore, a conspiracy to conceal such. Likewise, intentionally harassing, hindering, delaying, preventing, dissuading another person attending or testifying in an official proceeding and reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial

proceedings is punishable by fine or three years in prison.

In any event, the District Court affirmed the Magistrate's decision on December 13, 2024. Even Respondent concedes that this denial was from a motion for reconsideration, although it challenged that designation below. Perhaps, most pertinent to the latter point, Petitioner's motion for reconsideration was challenged by Respondent on the basis that the motion did not qualify under Rule 60, as a motion for relief.

The fact that it was treated by the District Court Judge, and here, as conceded by Respondent was effectively a motion for reconsideration is critical to an understanding of the developed and evolved nuances in the collateral order doctrine enunciated and developed in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221 (1949) and distinguishing factors with respect to *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 105 S. Ct. 2757 (1985) – applicable here to allow Petitioner's case to proceed as an appeal of right of the disqualification order. These developments render those decisions suspect when addressing interlocutory orders that have the effect of changing behavior and significantly restricting freedoms – especially where such restrictions have been recognized as implicating and indeed denying the fundamental constitutional rights of choice and defense.

An order granting the disqualification of counsel in a civil case was *prima facie* generally considered an appealable order under the collateral order doctrine.

The Fifth Circuit in *Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 646 F.2d 1020 (5th Cir. 1981), correctly noted that such an order is "*effectively unreviewable*" on appeal from a final judgment on the merits, thus falling within the narrow exception to the final judgment rule announced in *Cohen*, *supra.* This reasoning is based on the premise that the harm caused by postponing review of an order granting disqualification is in most instances irreparable. *Id*., see also, *Gough v. Perkowski*, 694 F.2d 1140 (9th Cir. 1982).

While this Court in *Koller*, *supra*, held that an order granting disqualification of counsel in a civil case is not immediately appealable under the final judgment rule, the district court case there was in a stay of proceedings and so all of the *Cohen* controlling factors were not present.

The requirements for collateral order appeal have been distilled down to three conditions: that an order conclusively determined the disputed question, that the order resolved an issue separate from the merits of the action, and that the order is unreviewable on appeal from a final judgment." See *Will v. Hallock*, 546 U.S. 345, 349 (2006) (internal quotation marks and citation omitted), citing *Cohen*, *supra.* Because these three "*Cohen* requirements go to an appellate court's subject-matter jurisdiction," the order must meet all three conditions to qualify as immediately appealable under the collateral order doctrine.

Although *Koller*, which originated from a decision from this Court appears to counsel against the collateral order rule, it is distinguishable, and does

nothing to counter the test applicable under *Cohen* as applied here.

This Court's decision in *Koller* was premised upon and in fact dependent on the fact that a stay had been entered in the lower court proceedings. There was therefore a distinction that took the case out of the full spectrum of analysis needed to apply *Cohen*. The fact that a stay had been entered "assure[d] that there can be [no final] decision pending the outcome of these interlocutory proceedings." *Id*. at 430, citing 28 U.S.C. § 1291. Here, no stay has been entered. The underlying proceedings have continued over Petitioner's objection and to his great prejudice – indeed, while the Magistrate and the District Court have been made aware that he has not been able to retain and keep counsel of his choice in this multi-million dollar defamation action against him.

As noted, *Cohen* allows appeal of an interlocutory order disqualifying counsel as a final order where the order under consideration conclusively determine the disputed question, resolved an important issue completely separate from the merits of the action, and was effectively unreviewable on appeal from a final judgment. *Will*, *supra* at 349.

All three of these elements are still present in this case. The District Court's decision on Petitioner's motion for reconsideration was final – and conclusively determined the disputed question – whether Petitioner's counsel of choice should be disqualified or allowed to continue representing him. See *Will*, *supra*. Secondly, the issue concerning Petitioner's counsel of choice being able to continue

representing him in the litigation is an important issue completely separate from the merits of the litigation. Petitioner's counsel is an expert in election fraud and all matters involving Respondent's involvement and conduct, and she has garnered significant experience and gravitas in the nationwide litigation of these types of matters. Indeed, Petitioner continues to have his counsel of choice represent him in other proceedings and continues to advocate for her to do so here. This, despite the fact that Respondents have used the disqualification in this case as grounds to further violate Petitioner's constitutional rights and prevent his counsel of choice from representing him anywhere in the country, even though Attorney Lambert continues to be in good standing. This is the single most important issue because although it is separate from the merits of Respondent's underlying defamation claims, Petitioner's constitutional rights of choice to a proper defense remain.

Finally, the only reason for Petitioner's appeal now is because the relief and remedy, to wit, restoring to Petitioner his counsel of choice by reversal on appeal of the decision of disqualification is unreviewable on appeal – effectively moot where the substance of the dispute is whether or not Petitioner should be allowed to have his counsel of choice continue representing him in the underlying litigation. All of the elements of *Cohen* remain, and the case is distinguishable from *Koller* because a stay has not been entered pending the outcome of this particular appeal.

Legal challenges and disputes related to a civil litigant's right to choice of counsel often arise from the tension between the litigant's constitutional rights

and the court's authority to regulate legal proceedings. Civil litigants have a constitutional right, rooted in the Fifth Amendment Due Process Clause, to retain counsel of their choice. This right is not absolute and may be overridden in certain circumstances, such as when the choice of counsel interferes with the orderly administration of justice or creates conflicts of interest. *Danny B. v. Raimondo*, 784 F.3d 825 (1st Cir. 2015), *Adir Int'l, Ltd. Liab. Co. v. Starr Indem. & Liab. Co.*, 994 F.3d 1032 (9th Cir. 2021), *Smart Communs. Holding, Inc. v. Glob. Tel-Link Corp.*, 590 F. Supp. 3d 758 (M.D. Pa. 2022). "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense." "[I]f a civil litigant "*hires* a lawyer," then certain protections kick in. See, e.g., *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir. 1980); *Powell v. Alabama*, 287 U.S. 45, 68, 53 S. Ct. 55, 77 L. Ed. 158 (1932); *Guajardo-Palma v. Martinson*, 622 F.3d 801, 803 (7th Cir. 2010).

Courts have recognized that a litigant's choice of counsel is entitled to substantial deference and courts must guard against the use of motions to disqualify counsel as a tactical weapon to get rid of attorneys that pose a substantial obstacle to the opposition. Therefore, courts require a high standard of proof to justify disqualification. Disqualification is generally disfavored unless there is a compelling reason, such as a conflict of interest or a threat to the fair administration of justice.

Here, Petitioner's counsel of choice is the leading expert attorney and primary counsel in election-related cases across the country and other matters involving Respondent, including a breach of contract action. She has garnered significant experience and knowledge in the nationwide litigation of these types of matters because of her status as a former prosecutor, specializing in cases involving election-related issues. She also has the necessary expertise in the sub-specialty of cases involving electronic voting equipment.

Indeed, Petitioner continues to have his counsel of choice represent him in other proceedings and continues to advocate for her to do so here. This is the single most important issue because although it is separate from the merits of the underlying defamation claim, Petitioner's constitutional rights of choice to a proper defense remain and continue to be violated so long as that choice is not honored by this court system.

Respondent's motives are evident, because it continues to engage in reactive actions and conduct demonstrating its fear that Petitioner's counsel will be able to continue to represent Petitioner in litigation with and involving Respondent. Indeed, most egregiously, as a result of the District Court's ruling, Petitioner's counsel has been disqualified in other litigation involving the same questions and issues, including a defamation case brought against Petitioner by a former employee of Respondent. See, *Coomer v. Byrne [petitioner in this case], et al.*, USDC Middle District of Florida, Case No. 8:24-cv-8-TPB-SPF and *Biden v. Byrne,* USDC Central District of California, Western Division, Case No.: CV 23-09430-SVW. Despite being an attorney in

good standing and participating in other litigation which her practice involves, Respondent has used the District Court's ruling to disqualify Petitioner's counsel in any case in which her experience and knowledge regarding Respondent is relevant.

Finally, the only reason for Petitioner's appeal was because the relief and remedy, to wit, restoring to Petitioner his counsel of choice by reversal on appeal of the decision of disqualification is unreviewable on appeal – effectively moot. This is also immutable and will not change. The substance of the dispute is whether or not Petitioner should be allowed to have his counsel of choice continue representing him in the underlying litigation. *David Cutler Indus. v. Direct Grp., Inc. (In re David Cutler Indus.)*, 432 B.R. 529 (Bankr. E.D. Pa. 2010), *Bingham Greenebaum Doll, LLP v. Glenview Health Care Facility, Inc. (In re Glenview Health Care Facility, Inc.),* 620 B.R. 582 (B.A.P. 6th Cir. 2020).

Petitioner grounded the finality of the order below on the unique and explicit constitutional challenge concerning denial of a civil litigant's right to counsel of his choice, especially in a defamation case, where a legal counsel's expertise and experience on the opposing party is often as important as a competent criminal defense attorney. A civil litigant's right to counsel of choice is protected by, inter alia, the Fifth Amendment Due Process Clause. This right is implicit in the concept of due process, ensuring that a litigant can retain and fund the counsel of their choice in civil litigation. *Adir Int'l, Ltd. Liab. Co. v. Starr Indem. & Liab. Co.*, 994 F.3d 1032 (9th Cir. 2021). See also,

Smart Communs. Holding, Inc. v. Glob. Tel-Link Corp., 590 F. Supp. 3d 758 (M.D. Pa. 2022).

Indeed, the continuing nature of the constitutional violations at issue are evident when viewed from the perspective of Petitioner who has had to continue to defend the district court proceedings without the benefit of his counsel of choice. The continued denial of counsel of choice constitutes an ongoing constitutional violation. "Civil litigants have a constitutional right, rooted in the Due Process Clause, to retain the services of counsel." *Danny B. v. Raimondo*, 784 F.3d 825, 831-832 (1st Cir. 2015). See also, *Gray v. New England Tel. & Tel. Co.*, 792 F.2d 251, 257 (1st Cir. 1986), citing *Potashnick v. Port City Construction Co.*, 609 F.2d 1101, 1117-19 (5th Cir.), cert. denied, 449 U.S. 820, 101 S. Ct. 78, 66 L. Ed. 2d 22 (1980). This right has been considered *so important* that it has been extended to certain administrative proceedings as well. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). It safeguards a litigant's interest in communicating freely with counsel both in preparation for and during trial. *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1117-19 (5th Cir. 1980). See also, *Doe v. District of Columbia*, 697 F.2d 1115, 1119; 225 U.S. App. D.C. 225 (D.C. Cir. 1983). After all, the right to retain counsel would be drained of meaning if a litigant could not speak openly with her lawyer about her case and how best to prosecute it. See *Denius v. Dunlap*, 209 F.3d 944, 954 (7th Cir. 2000); *Doe*, 697 F.2d at 1119. A court must give great weight to this valued interest even in areas committed to its discretion. See, e.g., *Doe*, 697 F.2d at 1119-20 (requiring protective order limiting counsel's discussion of discovery materials

with client to be narrowly drawn); *Potashnick*, 609 F.2d at 1119 (reversing judgment where court unreasonably barred attorney from speaking to client during breaks in testimony).

A litigant cannot retain and benefit from the service of counsel of his or her choice throughout proceedings if that counsel is disqualified and prevented from representing his or her client. Thus, the "continuing violation" nature of the disqualification order places these cases squarely in the category of those in which injunctions and restraining orders bar or prohibit, respectively, litigants from pursuing their agenda unless and until the issue is resolved. In other words, the injunction forcibly enjoins one or another party from being able to proceed with their litigation and course of action. Such orders are always immediately appealable and in the nature of final orders over which the Courts of Appeal must be able to exercise jurisdiction.

Actions enjoining conduct or action by way of the entry of temporary and permanent injunctions are immediately appealable because they have the effect of a continuing restraint on the constitutional freedoms and due process rights and liberty interests of the party affected. These types of orders go directly towards the ability of a party to act and therefore implicate important due process rights and liberty interests, the protection of which is fundamental in our adversarial system of justice. *P&G v. Bankers Tr. Co.*, 78 F.3d 219 (6th Cir. 1996), the court emphasized that a permanent injunction remains in effect and is subject to appellate review to ensure judicial oversight and prevent mootness. See also, *McDougald v.*

Jenson, 786 F.2d 1465 (11th Cir. 1986) (once a permanent injunction is entered, any prior preliminary injunction merges into the permanent order, and appeal is proper only from the permanent injunction.

Further, disqualification of counsel, like injunctive orders, have the same constitutional pitfalls – they are extended beyond the period allowed under Rule 65(b) of the Federal Rules of Civil Procedure, they may resolve the merits of the issue, or they may simply retard the legal process and thus have negative ongoing and direct continuing effects on the rights of litigants apart from the scope of the actual litigation. See, e.g., *Hope v. Warden York Cnty. Prison*, 956 F.3d 156 (3d Cir. 2020) (a TRO mandating affirmative relief or causing substantial and irreversible effects is, of course, immediately appealable). Additionally, in *Ne. Ohio Coal. for the Homeless v. Blackwell*, 467 F.3d 999 (6th Cir. 2006), the court allowed interlocutory appeals of TROs that threatened irretrievable harm or acted as mandatory injunctions. This is why preliminary injunctions are *also* immediately appealable under 28 U.S.C. §1292. *Okpalobi v. Foster*, 190 F.3d 337 (5th Cir. 1999).

Disqualification effects continuing constitutional violations of Petitioner's rights, and thus, like injunctive and other behavior enforcing orders, it is immediately prejudicial, affecting Petitioner's choice and causing extraordinary and irreversible constitutional injury. See, e.g., *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (a constitutional violation and loss of constitutional protections "'for even minimal periods of time,

unquestionably constitutes irreparable injury.'") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). What is the difference when a third party, here, Respondent and the District Court, can effectively force a litigant to give up his perceived best shot at a defense by removing his ability to have the best and most knowledgeable legal counsel.

Respondent's attempt to skew the lower courts' impression of Petitioner's counsel, while at the same time arguing that the appeal of the disqualification can only occur after the case is over, is quite telling. Not only is it direct evidence that they have indeed engaged in the dastardly tactic and have ostensibly achieved the very end that courts have cautioned about when reviewing disqualification orders, but they have essentially been able to continue to smear and in fact defame Petitioner's counsel of choice by propagating lies and fostering innuendos against her.

CONCLUSION

It is beyond dispute that an order disqualifying counsel in a district court proceeding is a final order with respect to the substantive decision being appealed. Even the District Court stayed the case while it was on appeal to the Circuit Court. Petitioner asserts that the final order entered by the District Court on his motion for reconsideration of the disqualification order is a final, appealable order and subject to the appellate jurisdiction of this court under 28 U.S.C. § 1291.

The disqualification and effective denial of counsel of a litigant's choice is presumptively an exception to

the finality rule, as such an order's *substance and consequences* can never be effectively appealed, as it is impossible to evaluate how the case would have unfolded had the litigant been able to keep his counsel of choice. In this regard, there is a real threat of considerable loss of institutional knowledge, and Petitioner is unable to replace his counsel with someone of the skill and expertise in this area, without undue prejudice at this juncture – a critical time during the litigation. Petitioner must be allowed to actively participate and defend himself in these proceedings, particularly with respect to discovery and trial.

Further, requiring Petitioner to find other counsel and continue will automatically invoke all three requirements of *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221 (1949). The disqualification order conclusively determined the disputed question (the status of Petitioner's counsel of choice), the order resolved an issue separate from the merits of the action (the only question from which the order arose was whether Petitioner's counsel should be disqualified), and that the order is unreviewable on appeal from a final judgment." See *Will v. Hallock*, 546 U.S. 345, 349 (2006) (internal quotation marks and citation omitted), citing *Cohen*, *supra*.

Indeed, while Respondent claimed below that the third element is not present, the reality is that counsel's active participation in the litigation has been hampered by the disqualification proceedings and to argue that the third element is not met under these circumstances is placing form over substance. Indeed, there will be no reason to appeal the

disqualification order if judgment is rendered against Petitioner because the effect of that order will have already been realized during the litigation.

In the least, the issue is ripe for review given the outdated nature of this Court's last pronouncements, the distinguishing facts of this case, and the evolution of litigation tactics designed to attack competent counsel and weaponize the justice system to handicap the party that holds the key to truth and justice.

Petitioner deserves to have his appeal heard in this Court to sufficiently protect his constitutional rights to freedom of choice and due process. The decision to disqualify Petitioner's counsel directly concerns Petitioner's rights to Due Process in that it deprives him of his counsel of choice. Additionally, it would be bad precedent to condone the sheltering of crimes touching upon national security and allow the disqualification of counsel when those crimes are reported to law enforcement.

REQUESTED RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition.

Respectfully submitted,

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