9/24/25

No. 25-370

In the Supreme Court of the United States

FRANZ A. WAKEFIELD D/B/A
COOLTVNETWORK.COM,

Petitioner,

v.

BLACKBOARD, INC. ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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September 24, 2025

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QUESTIONS PRESENTED

A three-judge panel that includes a judge later suspended for disability cannot satisfy 28 U.S.C. § 46(b) "in the first instance." Just as a two-member NLRB lacked authority in *New Process Steel* and an improperly composed appellate panel was void in *Nguyen*, due process and statutory law require three capable judges from the start. *Therefore, the questions presented are:*

1. Whether Rule 60(b)(6) requires relief where new official facts arose only after judgment and mandate and reveal a post-judgment structural due process defect in the integrity of the tribunal, and whether the equitable purpose of Rule 60(b) requires a uniform national standard, rather than divergent circuit approaches, when the defect alleged is structural—such as violation of 28 U.S.C. § 46(b)'s requirement that appellate cases be heard by a panel of three competent judges.

2. Whether, to obtain Rule 60(b) relief, a movant must be required to make a "non-empty exercise" (meritorious-claim or defense) threshold showing, and if so, how that showing interacts with a structural-defect claim where the core injury is denial of a fair tribunal and whether an appellate panel that includes a judge later suspended for disability, satisfies 28 U.S.C. § 46(b)'s three-judge quorum requirement and the Due Process Clause, or whether such participation creates a structural defect requiring relief under Rule 60(b)(6).

3. Whether the "reasonable time" under Rule 60(b)(6) begins at *public initiation of an investigation* into a judge's capacity, or at the issuance of *a definitive disciplinary order* (*e.g.*, suspension) that removes speculation and ripens the due process claim, and

whether the courts below erred in refusing Rule 60(b)(6) relief as "untimely" without applying the case-specific analysis required by this Court's precedents.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant

- Franz A. Wakefield, Pro Se d | b | a CoolTvNetwork.com, Inc.

Respondents and Defendants-Appellees

- BlackBoard, Inc.
- Meta Platforms, Inc., f | k | a Facebook, Inc.
- International Business Machines, Corp.
- Kaltura, Inc.
- Microsoft Corporation
- Ooyala, Inc.
- Snap, Inc.
- Trapelo, Corp.

CORPORATE DISCLOSURE STATEMENT

Pursuant to This Court's Rule 29.6, Petitioner, FRANZ WAKEFIELD is an individual person who does business as COOLTVNETWORK.COM, INC. Thus, there is no corporation, and no shareholders.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Federal Circuit

Nos. 2024-2030, 2024-2031, 2024-2032, 2024-2033, 2024-2035, 2024-2036, 2024-2037, 2024-2038

Franz A. Wakefield, dba Cooltvnetwork.com, Inc., *Plaintiff-Appellant,* v. Blackboard Inc., Meta Platforms, Inc., fka Facebook, Inc., International Business Machines Corporation, Kaltura, Inc., Microsoft Corporation, Ooyala, Inc., Snap Inc., Trapelo Corp., *Defendants-Appellees.*

Date of Final Judgment: April 23, 2025

Date of Rehearing Denial: June 26, 2025

U.S. District Court, D. Delaware

Nos. 19-291-LPS-JLH, 19-292-LPS-JLH, 19-293-LPS-JLH, 19-294-LPS-JLH, 19-296-LPS-JLH, 19-297-LPS-JLH, 19-534-LPS-JLH, 19-535-LPS-JLH

Cooltvnetwork.Com, Inc., v. Blackboard, Inc., Et Al.

Date of Final Judgment: July 16, 2021

Order denying Rule 60 relief: January 25, 2024

Order denying Clarification/Reargument: May 20, 2024

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The opinion of the United Sates Court of Appeals for the Federal Circuit is included at App.1a-10a. The judgment of the United States District Court for the District of Delaware is included at App.13a-14a, and the order denying clarification/reargument is included at App.17a.

JURISDICTION

The Federal Circuit entered judgment on April 23, 2025, App.1a-12a, and denied a combined petition for rehearing and rehearing en banc on June 26, 2025, App.15a-16a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the U.S. Constitution Amendments V & XIV (Due Process Clause), the Assignment of Judges; Panels; Hearings, 28 U.S.C. § 46, and the relevant provisions of Federal Rules of Civil Procedure, Rule 60, Relief from a Judgment or Order, are set forth in the Appendix: App.18a-20a.

INTRODUCTION

This petition presents an issue of exceptional importance: what should courts do when a litigant's case is decided by an appellate panel that later proves to have included a judge suspended for disability?

The Federal Circuit affirmed denial of Petitioner's Rule 60(b)(6) Motion without requiring the district court to apply the multifactor, case-specific analysis mandated by the governing law of the Third Circuit and this Court's precedents. Instead, the panel treated the motion as untimely because it was filed more than a year after mandate, even though it was filed within two months of the Judicial Council's September 20, 2023, order formally suspending Judge Pauline Newman for disability. The Federal Circuit further dismissed Petitioner's due process challenge as an impermissible attempt to relitigate the merits, rather than recognizing it as a structural defect in the tribunal itself.

That ruling conflicts with this Court's decisions and with decisions of multiple circuits. In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), this Court held that Rule 60(b)(6) relief was warranted where a judge's undisclosed conflict undermined public confidence in the judiciary, even absent actual bias. In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the Court reaffirmed that due process is offended where the probability of bias—or incapacity—is constitutionally intolerable. In *Nguyen v. United States*, 539 U.S. 69 (2003), the Court stressed that the statutory requirement of a properly constituted appellate panel is fundamental to the integrity of the judicial process.

These precedents make clear that the appearance and reality of a competent and impartial tribunal are structural constitutional requirements, not optional considerations.

The Federal Circuit's approach also conflicts with the Third Circuit's rule that a district court must consider "the full measure of any properly presented facts and circumstances attendant to the movant's request" when assessing Rule 60(b)(6). *Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014). Other circuits likewise require either **a threshold showing of a meritorious claim** (*Teamsters v. Superfine Transp. Co.*, 953 F.2d 17 (1st Cir. 1992); *Nat'l Credit Union Admin. Bd. v. Gray*, 1 F.3d 262 (4th Cir. 1993); *Blue Diamond Coal Co. v. Trustees*, 249 F.3d 519 (6th Cir. 2001)) or an intensive balancing of equities. By affirming a skeletal one-paragraph order, the Federal Circuit deepened an acknowledged disuniformity in the circuits' treatment of Rule 60(b)(6).

Rule 60(b) is the federal judiciary's safety valve, designed to prevent injustice where extraordinary circumstances undermine the legitimacy of a judgment. The Supreme Court has long held that the rule empowers courts to vacate judgments "whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 615 (1949). Yet a division has emerged among the circuits on how this standard is applied. Most circuits require a threshold showing that the movant has a meritorious claim or defense, ensuring that reopening is not a futile exercise. Once that showing is made, courts weigh whether extraordinary circumstances warrant relief. The Third Circuit, however, employs a multifactor balancing test that allows courts to deny relief even where both a merit-

orious claim and extraordinary circumstances exist—by misclassifying the motion as an impermissible attempt to "relitigate the merits." *Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3d Cir. 2008).

This misapplication takes on constitutional dimensions in cases where a panel is unlawfully constituted under 28 U.S.C. § 46(b). Congress requires that appeals be heard by three competent judges; due process requires adjudication before a lawful and impartial tribunal. Where a judge on the panel is later suspended for disability, both the statutory quorum and the constitutional guarantee are compromised. Other circuits would treat this structural defect as a quintessential ground for Rule 60(b) relief. The Third Circuit's approach, by contrast, bars relief under the guise of "relitigation." This conflict deprives litigants of a uniform national safeguard, threatens the integrity of appellate judgments, and calls for this Court's intervention. App.18a-27a, App.32a-37a, App.39a-42a, and App.54a-79a.

The timing question, *i.e.*, when does the 60(b)(6) clock start, is also a question of national importance. The Federal Circuit erred by: (1) Failing to require a full 60(b)(6) analysis under Third Circuit law, (2) Misstarting the timeliness clock months before the suspension order ripened the due-process claim, and (3) Mischaracterizing a structural due-process challenge as a merits reargument.

> The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 empowers circuit judicial councils to investigate allegations of misconduct or disability lodged against fellow judges. The Act also authorizes judicial councils to take 'action' to address such allegations, including by 'ordering that, on a

> temporary basis for a time certain, no further cases be assigned' to the judge in question. 28 U.S.C. § 354(a)(1)-(2). In 2023, a Special Committee of the Federal Circuit opened an investigation into Judge Pauline Newman under the Act. The Committee asked Judge Newman to undergo medical examinations and produce medical records. Judge Newman refused, contending that those requests and the Committee's investigation were unlawful. In response, the Federal Circuit's Judicial Council suspended Judge Newman from receiving new case assignments for one year, subject to potential renewal. The Judicial Council in fact renewed that suspension in September 2024.

Newman v. Moore, No. 24-5173 (D.C. Cir. 2025), and App.39a-41a.

The Chief Judge, Kimberly A. Moore, and the Judicial Council, in an order dated ***September 20, 2023***, states:

> "***Affidavits prepared after more than 20 interviews*** with Court staff reflect ***consistent reports of deeply troubling interactions with Judge Newman that suggest significant mental deterioration including memory loss, confusion, lack of comprehension, paranoia, anger, hostility, and severe agitation***. Critically, **these reports** are not isolated incidents of occasional forgetfulness based on a few interactions with only one or two staffers. To the contrary, they come from **interactions with staff members across a broad range of departments**

> [. . .] the **reports indicate** that the behaviors suggesting that Judge Newman may have a disability ***emerged over two years and increased in frequency and severity***." emphasis added.

Wakefield v. Facebook, Inc., 19-CV-00292-JLH; [DE 106 pg. 27[1]], and App.72a-79a.

The Federal Circuit effectively held that the "reasonable time" clock under Rule 60(b)(6) began when the Judicial Council announced, in an order dated March 2023, the complaint against Judge Newman, rather than when she was formally suspended, in September 2023. That approach punishes diligence: filing earlier would have been speculative, because Judge Newman might have complied with the investigation and mooted any concern. By filing two months after the suspension order—the first definitive adjudication—Petitioner acted reasonably. This Court's precedents recognize that Rule 60(b)(6) timeliness must be measured contextually. *See Kemp v. United States*, 596 U.S. 528, 538 (2022); and *Ackermann v. United States*, 340 U.S. 193, 202 (1950). *See Moolenaar v. Gov't of the Virgin Islands*, 822 F.2d 1342, 1348 (3d Cir. 1987) (Rule 60(b) motion untimely where "the reason for the attack . . . was available for attack upon the original judgment," implying timeliness runs only once grounds are concrete); *Liljeberg v. Health Servs.*

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[1] All reference to the record in the Federal Circuit, [ROA], is based on: *Franz Wakefield, D|B|A, Cooltvnetwork.Com, v. Blackboard, Inc.*, Appeal Docket No.: 2024-2030.

[1] All reference to the record in the District Court, [DE], is based on: *CoolTvNetwork.com, Inc., v. Meta Platforms F|K|A Facebook, Inc.*, C.A. No. 19-292-LPS-JLH.

Acquisition Corp., 486 U.S. 847, 864-65 (1988) (Rule 60(b)(6) relief warranted where facts undermining judicial integrity came to light only after judgment, stressing the importance of post-judgment developments rather than speculation). App.72a-79a.

Finally, this case presents a first-of-its-kind problem for the federal judiciary. The Federal Circuit has existed for more than 40 years; only once has a judge been suspended for disability. The Judicial Council itself stressed that litigants "deserve to have confidence" that judges deciding their cases are not impaired. *Wakefield v. Blackboard Inc.*, 24-2030; [ROA 36 pg. 19]. When such confidence is shaken, the legitimacy of the judiciary is at stake. This case squarely raises how Rule 60(b)(6) should function when new, official facts reveal that a litigant's prior appeal was decided by a judge who should not have been hearing cases at all.

Rule 60(b) exists to balance finality with justice. Yet the circuits diverge sharply on how relief may be obtained. The First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits all require a movant to make a threshold showing of a meritorious claim or defense. Once that gateway is satisfied, the court then examines extraordinary circumstances, prejudice, and timeliness. *See, e.g.*, *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005); *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). By contrast, the Third Circuit does not treat a meritorious defense as a threshold. Instead, it applies a multifactor balancing test, where prejudice, culpability, and "meritorious claim" are weighed together. *Feliciano v. Reliant Tooling Co., Ltd.*, 691 F.2d 653, 656 (3d Cir. 1982). This approach

allows district courts to deny relief even when the movant has made both showings required in other circuits. This divergence produces starkly different outcomes. In most circuits, once a movant shows both a meritorious claim and extraordinary circumstances, relief is at least available. In the Third Circuit, the same showing may be barred as "relitigation." That conflict undermines national uniformity and invites this Court's review.

FIGURE A

RULE 60(B) – MERITORIOUS CLAIM/ DEFENSE REQUIREMENT BY CIRCUIT			
1st	Threshold required	Must show "potentially meritorious defense" to avoid futile reopening.	*Teamsters v. Superline Transp.*, 953 F.2d 17, 20 (1st Cir. 1992)
2nd	Threshold required	Movant must present "highly convincing evidence" and show a meritorious defense.	*State St. Bank v. Inversiones Errazuriz*, 374 F.3d 158, 177 (2d Cir. 2004)
3rd	Multi-factor test	Courts weigh (1) prejudice, (2) defense, (3) culpability. Defense is important but not a rigid prerequisite.	*Feliciano v. Reliant Tooling*, 691 F.2d 653, 656 (3d Cir. 1982); *Budget Blinds v. White*, 536 F.3d 244, 255 (3d Cir. 2008)

4th	Threshold required	Rule 60(b) movant must show timeliness, meritorious defense, lack of prejudice, and exceptional circumstances.	*Augusta Fiberglass v. Fodor*, 843 F.2d 808, 812 (4th Cir. 1988)
5th	Threshold required	Movant must demonstrate a meritorious defense "so reopening is not an empty exercise."	*Hesling v. CSX Transp.*, 396 F.3d 632, 641 (5th Cir. 2005)
6th	Threshold required	First requirement is showing "meritorious defense"	*United Coin Meter v. Seaboard Coastline R.R.*, 705 F.2d 839, 845 (6th Cir. 1983)
7th	Threshold required	Movant must demonstrate a meritorious defense and lack of prejudice	*Jones v. Phipps*, 39 F.3d 158, 165 (7th Cir. 1994)
8th	Threshold required	Meritorious claim/defense is required to prevent reopening from being empty	*Stephenson v. El-Batrawi*, 524 F.3d 907, 914 (8th Cir. 2008)

9th	Threshold required	Threshold requirement = meritorious defense + no prejudice + excusable conduct	*TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001)
10th	Threshold required	Must show timeliness, meritorious defense, and lack of prejudice.	*Cessna Fin. Corp. v. Bielenberg Masonry*, 715 F.2d 1442, 1445 (10th Cir. 1983)
11th	Threshold required	Relief requires showing meritorious defense so reopening serves a purpose.	*Solaroll Shade v. Bio-Energy Sys.*, 803 F.2d 1130, 1132 (11th Cir. 1986)
D.C.	Threshold required	Rule 60(b) movant must show "meritorious defense."	*Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980)

This Court's review is necessary to resolve conflicting approaches to Rule 60(b)(6), to clarify the proper measure of "reasonable time" in the face of post-judgment judicial disability findings, and to address a structural due-process defect of national significance.

I. Overview of the Proceedings Below

On ***September 20, 2023, an order*** of the Judicial Council issued suspending Judge Pauline Newman, who sat on Petitioner's initial appellate panel which affirmed the invalidation of United States Patent №: 7,162,696, because the patent *allegedly* did not disclose

an algorithm in the specification that corresponds to the claimed "means" functions of Claim 1's means-plus-function limitations. Petitioner contends that the ***defective panel*** overlooked, because of the inclusion of Judge Newman, crucial evidence during the appeal which proves that Independent Claim 1 was supported by an algorithm documented in the specification of the subject patent, the fact that Independent Claims 15, 17, and 18, does not use "means" or "step" for language, and that Petitioner did not concede that Claims 15, 17, and 18 were means-plus-function claims.

Thus, the district court should have conducted a meaningful means-plus-function analysis (*i.e.* complete the 2-Step process) for Independent Claims 15, 17, and 18, as it pertains to the "presumption" for the application of § 112, ¶ 6 when means-plus-language is **not** used in a claim limitation.

The **September 20, 2023, order**, the "**Rule 60(b) Event**," of the Judicial Council of the Federal Circuit, *found* that: "(1) the evidence establishes reasonable concerns that ***Judge Newman suffers from a disability preventing*** her from ***effectively discharging the duties of her office***." *emphasis added.* Petitioner believes that, in his prior appeal, the appointment and inclusion of Judge Newman, who had a witnessed—20 court staff, and documented state of deteriorating mental capacity over a 2-year period and while serving on Petitioner's prior appellate panel; displaced the equilibrium and dynamics of the prior appellate panel, causing a defect in the integrity of the proceeding which caused the Federal Circuit to affirm the district court's ruling, which is in conflict with its own precedents in: *Williamson v. Citrix Online, LLC.*, 792 F. 3d 1339, 1349 (Fed. Cir. 2015), *Zeroclick, LLC v. Apple*

Inc., 891 F. 3d 1003 (Fed. Cir. 2018), and *Dyfan*; ultimately violating and nullifying Petitioner's Due Process, and Constitutional Rights predicated by the 14th Amendment, and Article I, Section 8, which authorizes Congress to secure for limited times to inventors, the exclusive right to their discoveries.

On **November 21, 2023**, Petitioner filed a Rule 60 Motion, based on an ***intervening clarification*** of the law brought to light by the precedential ruling in *Dyfan, LLC v. Target, Corp.*, 28 F 4th 1360 (Fed. Cir. 2022) on **March 24, 2022**, which ***clarified*** when to give effect to the presumption against the application of § 112, ¶ 6, as it pertains to the Independent Claims 15, 17, and 18 of Petitioner's invalidated patent No. 7,162,696; which was unearthed by Petitioner during the ***investigation*** into Judge Pauline Newman's mental status, when the Special Committee of the Federal Circuit issued and published recommendations to the Judicial Council, on the Federal Circuit website. App.18a-27a, App.32a-37a, App.39a-42a, and App.54a-79a.

On **January 25, 2024**, the district court issued a skeletal order denying Petitioner's Rule 60 Motion as "untimely." That order states:

> "When this case was filed in 2019, Plaintiff CoolTVNetwork.com, Inc. was a Limited Liability Company represented by licensed counsel. (D.I. 1, para 2.) LLCs cannot appear pro se in federal court. See *Dougherty v. Snyder*, 469 F. App'x 71, 72 (3d Cir. 2012). That said, it appears that Mr. Wakefield told the Federal Circuit on appeal in 2022 that Plaintiff was then operating as a 'sole proprietorship,' and the Federal Circuit accepted

> that representation and permitted Mr. Wakefield to appear pro se 'on behalf of CoolTV-Network.com.' (No. 2021-2191, D.I. 104 (Fed. Cir. Sept.1, 2022).) As Defendants do not oppose the Court ruling on the pending motion (*see, e.g.*, No. 19-291, D.I. 90 at 1 n.3), the Court has considered it. The motion is denied at least for the reason that it is untimely. The Clerk of Court shall e-mail a copy of this Order to Mr. Wakefield at the address set forth in his Motion. Ordered by Judge Jennifer L. Hall on 1/25/2024."

Wakefield v. Blackboard, 24-2030; [ROA 36]—pgs. 10-13, and App.13a-14a.

Petitioner timely filed a Notice of Appeal on June 17, 2024. The Federal Circuit affirmed the denial of Rule 60(b) relief in a ten-page order dated April 23, 2025. Petitioner filed a combined petition for rehearing and rehearing en banc on May 23, 2025, which was denied on June 26, 2025, in a one-page order. App.1a-12a, and App.15a-16a.

II. The Third Circuit's Misclassification of Rule 60(B) Motions as "Relitigation" Bars Relief Even When a Movant Demonstrates Both a Meritorious Claim and Extenuating Circumstances

Rule 60(b) was designed as a flexible, equitable mechanism to ensure that justice prevails over rigid adherence to finality in extraordinary cases. The Supreme Court has recognized that "[t]he rule attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done." *Klapprott v. United*

States, 335 U.S. 601, 615 (1949). Where a movant demonstrates both (1) a meritorious claim that could alter the outcome if reopened and (2) extenuating circumstances—such as judicial error, misconduct, or newly discovered evidence—courts are to weigh those factors heavily in favor of relief.

Yet under the Third Circuit's nuanced, multi-factor framework, courts sometimes deny relief by characterizing such showings as mere attempts to "reargue the merits." *See, e.g., Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3d Cir. 2008) (cautioning that Rule 60(b) cannot substitute for appeal). While this admonition serves a legitimate function in deterring misuse of Rule 60(b), its overbroad application undermines the rule's equitable purpose. Where a movant can establish both a viable claim and circumstances that truly warrant reopening, to dismiss the motion as "relitigation" elevates finality above fairness and collapses the multifactor test into a single, outcome-determinative bar.

This misclassification is especially problematic because it creates a paradox: the stronger the movant's showing of a meritorious claim, the more likely the court is to view the motion as an impermissible attack on the underlying merits rather than as a legitimate plea for equitable relief. That inversion runs contrary to the principle that Rule 60(b) should prevent injustice where extraordinary circumstances are present. *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005) (relief may be warranted in "extraordinary" cases).

Thus, while the Third Circuit's nuanced approach properly avoids rigid thresholds, its misapplication creates a bar where none should exist—denying relief to parties who have both a meritorious claim and

compelling equitable grounds. Such an outcome frustrates Rule 60(b)'s central aim: to ensure that finality does not become injustice.

III. The Third Circuit's Overbroad "Relitigation" Bar Conflicts with Other Circuits' Equitable Application of Rule 60(B)

Rule 60(b) is intended to balance the need for finality with the imperative that justice be done. The Supreme Court has recognized that "Rule 60(b) vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 615 (1949). Where a movant demonstrates both (1) a meritorious claim that could alter the outcome if the case is reopened and (2) extraordinary circumstances justifying relief, the balance should tip in favor of vacating the judgment.

The Third Circuit's multifactor framework, however, has too often denied relief by misclassifying such motions as impermissible attempts to "reargue the merits." *See Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3d Cir. 2008). In practice, this transforms the "meritorious claim" factor into a liability rather than a ground for equitable relief: the stronger the movant's showing, the more likely the motion will be dismissed as "relitigation." This paradox undermines Rule 60(b)'s core purpose. App.7a-9a.

By contrast, other circuits recognize that a showing of both a meritorious claim and extenuating circumstances weighs heavily in favor of relief, even where the merits overlap with issues previously litigated:

- **First Circuit:** Relief may be granted if reopening would not be a "futile exercise." *Teamsters v. Superline Transp.*, 953 F.2d 17, 20 (1st Cir. 1992). The inquiry is functional, not formalistic: if justice requires reopening, the claim's overlap with prior arguments does not foreclose relief.
- **Fifth Circuit:** Requires showing a meritorious defense to ensure the motion is not an "empty exercise," but once that showing is made, relief is available where extraordinary circumstances exist. *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005). The defense is a gateway, not a bar.
- **Ninth Circuit:** Applies a three-factor test (culpability, meritorious defense, prejudice). *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). A movant with both a meritorious claim and extraordinary circumstances satisfies the standard for relief—even if the claim touches on the merits—because equity requires that possibility of injustice be weighed over rigid finality. *See, Wakefield v. Blackboard*, 24-2030; [ROA 69]—pgs. 7-11.

These circuits treat the existence of a meritorious claim as affirmative evidence that relief would serve a purpose, not as proof that the movant is improperly seeking a "second bite." The Third Circuit's contrary approach risks collapsing the Rule 60(b) analysis into a near-absolute bar, stripping the rule of its equitable force and placing it at odds with the broader consensus among the courts of appeals.

The question presented strikes at the heart of Rule 60(b)'s equitable purpose: whether a movant who demonstrates both a meritorious claim and extraordinary circumstances may nevertheless be denied relief because a court misclassifies the motion as an impermissible attempt to relitigate the merits.

The Third Circuit's approach creates an outlier. Unlike most circuits, which treat the existence of a meritorious claim as affirmative evidence that reopening would not be a futile or "empty exercise," the Third Circuit frequently transforms that showing into a liability. Under its multifactor framework, courts may deny relief by labeling the motion "relitigation," even where the movant has shown both the viability of the claim and extraordinary circumstances justifying reopening. *See Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3d Cir. 2008). This paradox elevates finality above fairness, allowing the strength of the movant's case to become the very reason for denial. *See, Wakefield v. Blackboard,* 24-2030; [ROA 69 pg.12-19].

By contrast, the First, Fifth, and Ninth Circuits apply Rule 60(b) more consistently with its equitable design. The First Circuit requires only that reopening not be a "futile exercise." *Teamsters v. Superline Transp.*, 953 F.2d 17, 20 (1st Cir. 1992). The Fifth Circuit holds that once a meritorious defense is shown, relief is available where extraordinary circumstances exist. *Hesling v. CSX Transp.*, 396 F.3d 632, 641 (5th Cir. 2005). The Ninth Circuit applies a three-factor test where a meritorious claim plus extraordinary circumstances weighs heavily in favor of relief. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001).

This divergence creates a direct conflict among the circuits on the availability of equitable relief under Rule 60(b). At stake is whether finality of judgments may override justice even where the statutory standard is satisfied. The Third Circuit's misclassification doctrine strips Rule 60(b) of its remedial force, undermines national uniformity, and deprives litigants of the safety valve Congress intended. The Supreme Court's intervention is warranted to resolve this conflict and reaffirm that Rule 60(b) remains a tool of equity rather than a rigid bar to relief.

STATEMENT OF THE CASE

A. Proceedings Below

In 2019, Petitioner Franz A. Wakefield, doing business as CoolTVNetwork.com, Inc., filed suit in the United States District Court for the District of Delaware alleging infringement of U.S. Patent №: 7,162,696. After claim construction, the court held all asserted claims invalid as indefinite and entered final judgment on July 16, 2021.

Petitioner appealed. In July 2022, a panel of the United States Court of Appeals for the Federal Circuit consisting of Judges Newman, Linn, and Chen affirmed the judgment under Federal Circuit Rule 36. *CoolTV-Network.com, Inc. v. Blackboard, Inc.*, No. 2021-2191, 2022 WL 2525330 (Fed. Cir. July 7, 2022). The mandate issued October 7, 2022. App.11a.

In February 2023, Petitioner filed a petition for a writ of certiorari, which this Court denied. Shortly thereafter, the Chief Judge of the Federal Circuit initiated

proceedings under the Judicial Conduct and Disability Act concerning Judge Pauline Newman[2]. On September 20, 2023, the Judicial Council of the Federal Circuit issued an order suspending Judge Newman from hearing cases.

On November 21, 2023, Petitioner moved under Federal Rule of Civil Procedure 60(b)(5) and (6) to set aside the judgment based on (1) the district court's treatment of claims 15, 17, and 18, and (2) the participation of a judge later suspended for disability. The district court denied the motion in an oral order as untimely and later denied a motion for clarification or reargument.

Petitioner appealed again. On April 23, 2025, the Federal Circuit affirmed, holding the Rule 60(b) motion was not filed within a reasonable time and that Petitioner's arguments sought to relitigate matters that could have been raised on direct appeal. *Wakefield v.*

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[2] Judge Newman's suspension occurred more than a year after the mandate in Petitioner's first appeal and after this Court denied certiorari in February 2023. That suspension is therefore a new, post-judgment development not available at the time of the prior petition. The Judicial Council's order recognized that "litigants deserve to have confidence that none of the judges ruling on their cases suffers from a cognitive impairment that may affect the resolution of their cases." *Wakefield v. Blackboard Inc.*, 24-2030; [ROA 36 pg.19]. The question presented here is of national importance because it implicates both the statutory guarantee of a properly constituted three-judge panel under 28 U.S.C. § 46(b) and the structural due process right to a competent tribunal. This is the first time in the history of the Federal Circuit that a judge has been suspended for disability, and the handling of such cases affects not only Petitioner but potentially many other litigants whose appeals were decided by panels that included Judge Newman.

Blackboard, Inc., No. 2024-2030 (Fed. Cir. Apr. 23, 2025) (nonprecedential).

Petitioner timely sought rehearing and rehearing en banc. On **June 26, 2025**, the Federal Circuit denied both.

B. Post-Judgment Developments

Following the Federal Circuit's July 2022 affirmance and the denial of certiorari in February 2023, circumstances fundamentally changed. On March 24, 2023, the Chief Judge of the Federal Circuit announced that a complaint had been filed under the Judicial Conduct and Disability Act against Judge Pauline Newman, a member of the three-judge panel that decided Petitioner's appeal. At that time, however, the proceedings were preliminary and gave Judge Newman the opportunity to comply with requests for medical records and examinations that might have resolved the concerns. Filing a Rule 60(b)(6) motion based on speculation would have been premature and likely subject to dismissal as moot.

The situation ripened only on **September 20, 2023**, when the Judicial Council issued a formal order suspending Judge Newman from hearing cases. That order was the first definitive adjudication that Judge Newman was unable to discharge her judicial duties, thereby raising a structural due process concern about the integrity of the appellate panel in Petitioner's case, since "the **reports indicate** that the behaviors suggesting that Judge Newman may have a disability ***emerged over two years and increased in frequency and severity***." emphasis added. *See Wakefield v. Facebook, Inc.,* 19-CV-00292-JLH; [DE 106 pg. 27]. Petitioner filed his Rule 60(b)(6) motion on **November**

21, 2023, just two months later. App.3a, ¶4-5a, and App.6a-10a.

Measured against the governing standards, this filing was timely. The Third Circuit has made clear that the timeliness of a Rule 60(b)(6) motion must be assessed in light of the specific facts and circumstances. *Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014). In *Cox*, the court vacated a denial of Rule 60(b)(6) relief because the district court failed to evaluate diligence, prejudice, and the gravity of new circumstances, holding that "[a] district court must consider the full measure of any properly presented facts and circumstances attendant to the movant's request." *Id.* Here, Petitioner acted with diligence by filing within two months of the suspension order—the first moment at which the claim ceased to be speculative and became concrete.

This Court's precedents reinforce that conclusion. In *Kemp v. United States*, 596 U.S. 528, 538 (2022), the Court noted that timeliness under Rule 60(b) is a "case-specific" inquiry, and that Courts of Appeals have properly denied untimely motions where the asserted grounds were available earlier but not raised. Likewise, in *Ackermann v. United States*, 340 U.S. 193, 202 (1950), the Court distinguished between parties who fail to act when they could have raised arguments and those who confront extraordinary circumstances arising later. And in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863-65 (1988), the Court granted Rule 60(b)(6) relief where evidence undermining judicial integrity became known only after judgment, emphasizing that relief was justified because the grounds were not previously available.

Applying those principles, Petitioner's motion was filed within a "reasonable time" under Rule 60(c)(1). Unlike cases where litigants attempted to relitigate issues long settled, the grounds here emerged only when the Judicial Council's suspension order issued. A delay of two months is not only reasonable, but minimal as a matter of law. *See Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 235 F.3d 176, 183–84 (3d Cir. 2000) **(holding a two-month delay in filing Rule 60(b) motion "insignificant as a matter of law")**.

Thus, the record shows both diligence and extraordinary circumstances. Petitioner acted promptly once the basis for relief ripened, and the motion was timely under both this Court's and the Third Circuit's standards. App.18a-27a, App.32a-37a, App.39a-42a, App. 54a-79a, and *Wakefield v. Facebook, Inc.*, 19-CV-00292-JLH; [DE 106]--pgs. 25-27.

REASONS FOR GRANTING THE PETITION

The integrity of an appellate panel cannot turn on the number of pages a pro se litigant devotes to the issue; once a Rule 60(b)(6) motion identifies a structural due process defect, the court must address it fully[3].

The Federal Circuit erred when it treated Petitioner's due process argument concerning Judge

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[3] *See Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014) ("[A] district court must consider the full measure of any properly presented facts and circumstances attendant to the movant's request."); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864–

Newman's later suspension as untimely merely because it was allegedly raised briefly in the Rule 60(b)(6) motion. See. *Wakefield v. Blackboard Inc.,* 24-2030; [ROA 67]--pgs. 8-9. The Third Circuit has been clear that **brevity of presentation does not waive a properly preserved argument, nor does it relieve the court of its obligation to conduct a full Rule 60(b)(6) analysis.** In *Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014), the court emphasized that a district court must consider "the full measure of any properly presented facts and circumstances attendant to the movant's request." Here, the fact that Judge Newman was suspended for disability after sitting on Petitioner's appellate panel was not speculative—it was a post-judgment development central to the integrity of the tribunal. By dismissing this argument as insufficiently developed, the Federal Circuit sidestepped the very inquiry that *Cox* requires: whether extraordinary circumstances justified relief. See. *Wakefield v. Blackboard,* 24-2030; [ROA 69 pg.17,¶2-19].

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65 (1988) (granting Rule 60(b)(6) relief where judicial integrity was compromised, stressing that "justice must satisfy the appearance of justice"); *Nguyen v. United States*, 539 U.S. 69, 82 (2003) (vacating appellate judgments where panel composition was defective, underscoring that structural errors must be corrected regardless of how the issue was raised); *Ackermann v. United States*, 340 U.S. 193, 202 (1950) (Rule 60(b)(6) relief appropriate in "extraordinary circumstances" beyond the party's control); *Martinez-McBean v. Gov't of the V.I.*, 562 F.2d 908, 912-13 (3d Cir. 1977) (Rule 60(b)(6) serves as a "grand reservoir of equitable power" that courts must apply flexibly to achieve justice); *Buck v. Davis*, 580 U.S. 100, 123-25 (2017) (reversing denial of Rule 60(b)(6) motion, holding that extraordinary circumstances require relief where the integrity of the judicial process is at stake).

Supreme Court precedent reinforces this error. In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864-65 (1988), the Court granted Rule 60(b)(6) relief where judicial integrity was compromised, even though the issue was not extensively developed in earlier stages. The Court explained that "justice must satisfy the appearance of justice," *id.* at 864, and required relief because the circumstances went to the heart of due process. Similarly, in *Nguyen v. United States*, 539 U.S. 69, 82 (2003), the Court vacated appellate judgments where the panel was improperly constituted, underscoring that structural defects in tribunal composition demand correction regardless of how extensively the issue was argued.

Moreover, the Federal Circuit's reliance on the alleged brevity of the argument improperly elevates form over substance. This Court has consistently recognized that **extraordinary circumstances, particularly those implicating the fairness and integrity of judicial proceedings, warrant relief even when raised imperfectly.** *See Ackermann v. United States*, 340 U.S. 193, 202 (1950). The critical fact was not how many pages Petitioner devoted to the issue, but that he presented it at all, and that it was supported by an official Judicial Council suspension order unavailable during the prior appeal. To deny relief because the argument was concise is to disregard both the constitutional magnitude of the defect and the equitable principles that animate Rule 60(b)(6).

In sum, the Federal Circuit erred by treating the due process claim as untimely based on its alleged brevity rather than its substance. Under both Third Circuit and Supreme Court precedent, once a Rule 60(b)(6) motion identifies an extraordinary circum-

stance undermining the integrity of a judgment, the court must address it fully, regardless of how extensively the movant develops the argument.

The Federal Circuit's refusal to grapple with Petitioner's due process claim because it was allegedly presented "briefly" not only elevates form over substance, but it also blinds the court to the structural defect at issue. Once a Rule 60(b)(6) motion identifies that an appellate judgment was rendered by a panel including a judge later suspended for disability, the question ceases to be about page length or argument style and becomes about the lawful constitution of the tribunal itself. This Court has made clear that statutory quorum requirements and constitutional guarantees of due process are not optional formalities. *Nguyen v. United States*, 539 U.S. 69, 82 (2003); *New Process Steel, L.P. v. NLRB*, 560 U.S. 674, 682–83 (2010). The defect here is not a routine legal error but a structural one: whether Petitioner's appeal was ever "heard and determined" by the three duly constituted and competent judges that 28 U.S.C. § 46(b) demands and the Constitution requires. It is against this backdrop that the application of § 46(b) and the due process violation must be analyzed.

Rule 60(b) was designed as a "grand reservoir of equitable power" to ensure that final judgments do not stand when extraordinary circumstances make their enforcement unjust. *Martinez-McBean v. Gov't of the V.I.*, 562 F.2d 908, 911 (3d Cir. 1977). This Court has emphasized that Rule 60(b)(6) exists to balance the competing values of finality and fairness, requiring case-specific consideration of whether justice demands reopening a judgment. *Ackermann v. United States*, 340 U.S. 193, 202 (1950); *Liljeberg v. Health Servs.*

Acquisition Corp., 486 U.S. 847, 863-65 (1988). Yet the circuits are divided on how that equitable discretion must be exercised. The First, Fourth, and Sixth Circuits impose a threshold requirement that the movant demonstrate a "meritorious claim" so that reopening is not an "empty exercise." *Teamsters v. Superfine Transp. Co.*, 953 F.2d 17, 20 (1st Cir. 1992); *Nat'l Credit Union Admin. Bd. v. Gray*, 1 F.3d 262, 264 (4th Cir. 1993); *Blue Diamond Coal Co. v. Trustees*, 249 F.3d 519, 529 (6th Cir. 2001). By contrast, the Third Circuit employs a flexible, multifactor analysis that considers all attendant circumstances. *Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014). The Federal Circuit's decision below, which endorsed a skeletal denial without applying either approach, deepens this entrenched conflict and leaves litigants without clear guidance as to when extraordinary circumstances truly justify relief.

This case squarely presents whether Rule 60(b)(6)'s "grand reservoir of equitable power" requires courts to conduct a full, case-specific analysis of extraordinary circumstances, or whether relief may be denied under divergent circuit rules that either impose a rigid threshold test or, as here, no meaningful analysis at all.

The entrenched circuit split on Rule 60(b)(6) relief takes on exceptional importance here, where the extraordinary circumstance is not routine error correction, but a structural due process defect created by the participation of a judge later suspended for disability.

I. THE FEDERAL CIRCUIT ELEVATED FORM OVER SUBSTANCE BY DISMISSING A STRUCTURAL DUE PROCESS CLAIM AS "BRIEF"

The Federal Circuit compounded its error by treating Petitioner's due process argument as untimely because it was allegedly raised "briefly" in the Rule 60(b)(6) motion. That approach improperly elevates form over substance and conflicts with both Supreme Court and Third Circuit precedent. The Third Circuit has held that a district court considering Rule 60(b)(6) relief must evaluate "the full measure of any properly presented facts and circumstances attendant to the movant's request." *Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014). The presence of a suspended judge on Petitioner's appellate panel was not a collateral point, but the central extraordinary circumstance supporting relief. Once that fact was presented, the district court and Federal Circuit were obligated to consider it fully, regardless of how many pages Petitioner devoted to it.

This Court has likewise made clear that the equitable power of Rule 60(b)(6) is meant to reach extraordinary circumstances, even when raised imperfectly. In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864-65 (1988), the Court granted relief where judicial integrity was compromised, explaining that "justice must satisfy the appearance of justice." In *Nguyen v. United States,* 539 U.S. 69, 82 (2003), the Court vacated appellate judgments because of a structural panel defect, underscoring that such issues cannot be excused or minimized. And in *Buck v. Davis,* 580 U.S. 100, 123–25 (2017), the Court reversed denial of a Rule 60(b)(6) motion where extraordinary circumstances threatened the fairness of the judicial

process, stressing that courts must not allow procedural labels to obscure substantive injustice.

By dismissing Petitioner's due process argument as too "brief" to warrant consideration, the Federal Circuit ignored this body of precedent. The defect at issue—the participation of a judge later suspended for disability—strikes at the structural integrity of the appellate tribunal and the public's confidence in the judiciary. Under Rule 60(b)(6), the alleged brevity of an argument cannot be a basis for denial when the facts presented establish extraordinary circumstances of constitutional dimension. App.18a-27a.

II. THE FEDERAL CIRCUIT ERRED IN AFFIRMING WITHOUT THE REQUIRED RULE 60(B)(6) ANALYSIS

The Federal Circuit's affirmance rests on an error both fundamental and avoidable: it treated Rule 60(b)(6) as a procedural escape hatch to be summarily closed, rather than as the "grand reservoir of equitable power" this Court has recognized it to be. *Martinez-McBean v. Gov't of the V.I.*, 562 F.2d 908, 911 (3d Cir. 1977). The district court denied Petitioner's Rule 60(b)(6) motion in a single-paragraph oral order, stating only that the motion was "untimely." That skeletal disposition was itself deficient under controlling Third Circuit precedent, which requires courts to engage in a case-specific, multifactor inquiry before denying relief. The Federal Circuit compounded the error by affirming without requiring that such an inquiry be conducted.

This Court's decisions make clear that Rule 60(b)(6) relief cannot be denied without weighing the full scope of facts and equities. In *Ackermann v. United States,* 340 U.S. 193, 202 (1950), the Court emphasized that

relief is appropriate where extraordinary circumstances arise beyond the litigant's control. In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863–65 (1988), the Court granted Rule 60(b)(6) relief to protect the integrity of the judicial process, underscoring that equitable considerations must be given full weight. The Third Circuit has consistently echoed these principles. In *Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014), it held that a district court must "consider the full measure of any properly presented facts and circumstances attendant to the movant's request" before denying Rule 60(b)(6) relief.

By contrast, the Federal Circuit treated Petitioner's Rule 60(b)(6) motion as little more than an attempt to relitigate prior issues and dismissed it as "untimely" without ever examining whether extraordinary circumstances justified relief. Worse still, it treated the alleged brevity of Petitioner's due process argument as though it were a waiver, disregarding the principle that substance controls over form when judicial integrity is at stake. *See Buck v. Davis*, 580 U.S. 100, 123-25 (2017) (reversing denial of Rule 60(b)(6) motion where the courts below elevated procedural formality over substantive injustice). Once Petitioner identified that his appeal was decided by a panel later found defective due to the suspension of a judge for disability, the district court and Federal Circuit were obligated to consider that fact in full, regardless of page count or stylistic presentation. Their refusal to do so conflicts with the governing law of this Court and of the regional circuit they were bound to apply.

III. THE SUSPENSION OF JUDGE NEWMAN PRESENTS A STRUCTURAL DUE-PROCESS DEFECT

Even more troubling than the Federal Circuit's procedural error is its failure to recognize that the suspension of Judge Pauline Newman presented a structural due process defect in Petitioner's appeal. This Court has consistently held that litigants are entitled to an adjudication by a competent and impartial tribunal. *See Tumey v. Ohio,* 273 U.S. 510, 532 (1927) (invalidating judgment where judge had financial interest); *Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, 876–77 (2009) (due process requires recusal where probability of bias is too high); *Turner v. Rogers,* 564 U.S. 431, 447 (2011) (litigants must have adjudicators with "requisite procedural and substantive knowledge"). Due process is violated not only when actual bias is shown, but also when structural conditions raise legitimate concerns about the competence or impartiality of the tribunal.

The statutory requirements are no less clear. Section 46(b) of Title 28 provides that "[c]ases shall be heard and determined by a court or panel of not more than three judges, unless a hearing or rehearing before the court in banc is ordered." This Court has interpreted quorum statutes strictly, holding that panels must be "duly constituted" at the time of decision. In *Nguyen v. United States,* 539 U.S. 69, 82 (2003), the Court vacated appellate judgments decided by a Ninth Circuit panel that included a non–Article III judge, underscoring that the statutory requirement of three Article III judges was mandatory and not subject to harmless-error review. Similarly, in *New Process Steel, L.P. v. NLRB,* 560 U.S. 674, 682-83 (2010), the Court invalidated NLRB decisions made by a two-member

panel because the statute required three, rejecting pragmatic arguments for efficiency. App.19a.

By dismissing Petitioner's Rule 60(b)(6) motion as an attempt to relitigate the merits, the Federal Circuit overlooked the real issue: whether Petitioner's appeal was ever heard by a lawfully constituted three-judge panel as required by § 46(b). Once Judge Newman was suspended for disability, serious doubt arose as to whether that requirement was satisfied. Such a defect is structural, not procedural. Structural defects demand correction regardless of whether the litigant raises them extensively or briefly. *See Nguyen,* 539 U.S. at 82; *Liljeberg*, 486 U.S. at 864–65.

IV. THE CASE RAISES A QUESTION OF EXCEPTIONAL NATIONAL IMPORTANCE

This case presents a question of first impression with implications far beyond Petitioner. It is the first time in the 42-year history of the Federal Circuit that a sitting judge has been suspended for disability while continuing to hold office. The Judicial Council, in issuing the suspension, recognized the fundamental concern: "Litigants deserve to have confidence that none of the judges ruling on their cases suffers from a cognitive impairment that may affect the resolution of their cases." *Wakefield v. Blackboard Inc.,* 24-2030; [ROA 36 pg. 19]. That recognition goes to the heart of public trust in the judiciary.

The national importance of this case cannot be overstated. If litigants learn that their appeals were decided by a panel later revealed to be defective, confidence in the judicial system itself erodes. The risk is not hypothetical. During the period of Judge Newman's investigation and eventual suspension,

dozens of appeals were decided by panels on which she sat. The legitimacy of those decisions, and others that may arise in future cases where judicial disability is at issue, hangs in the balance.

This Court's intervention is therefore necessary to ensure that due process and statutory guarantees are not hollow promises. If courts may excuse defective panels simply because the argument was allegedly raised "briefly" or because the suspension order was issued post-judgment, then litigants nationwide are left without meaningful safeguards. The appearance and reality of justice demand that appellate panels be competent, impartial, and lawfully constituted "in the first instance." Anything less imperils not only individual litigants but the legitimacy of the federal judiciary as a whole.

V. THE CIRCUITS ARE SPLIT ON RULE 60(B) THRESHOLD SHOWINGS

Finally, this case provides the Court with an opportunity to resolve an entrenched and acknowledged circuit split over how Rule 60(b)(6) motions must be evaluated. The First, Fourth, and Sixth Circuits impose a rigid threshold requirement: a movant must show that reopening the judgment would not be an "empty exercise" by establishing a meritorious underlying claim. *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superfine Transp. Co.*, 953 F.2d 17, 20 (1st Cir. 1992); *Nat'l Credit Union Admin. Bd. v. Gray*, 1 F.3d 262, 264 (4th Cir. 1993); *Blue Diamond Coal Co. v. Trustees of UMWA Combined Benefit Fund*, 249 F.3d 519, 529 (6th Cir. 2001). By contrast, the Third Circuit has rejected rigid preconditions and instead requires a flexible, multifactor

analysis that considers all attendant facts and equities. *Cox v. Horn,* 757 F.3d 113, 124 (3d Cir. 2014).

The Federal Circuit's decision below intensifies this disuniformity. Rather than apply either standard, it affirmed a perfunctory denial that engaged in no meaningful analysis at all. This leaves litigants in patent cases—and in all cases within the Federal Circuit's jurisdiction—with no clear guidance on whether extraordinary circumstances will ever justify relief. That uncertainty undermines the very purpose of Rule 60(b)(6), which is to ensure that justice prevails when finality must yield to fairness. Only this Court can resolve the split and provide uniform standards for when relief is warranted under Rule 60(b)(6).

This case presents an extraordinary convergence of constitutional, statutory, and equitable concerns. The Federal Circuit affirmed denial of Petitioner's Rule 60(b)(6) motion without requiring the district court to conduct the multifactor analysis mandated by this Court and the Third Circuit. Instead, the court treated the motion as untimely, even though it was filed within two months of the Judicial Council's suspension of Judge Pauline Newman, the first definitive finding that she was unable to discharge her duties. That narrow view of timeliness conflicts with decisions such as *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847 (1988), *Ackermann v. United States,* 340 U.S. 193 (1950), and *Cox v. Horn,* 757 F.3d 113 (3d Cir. 2014), all of which require case-specific balancing of equities when extraordinary circumstances arise post-judgment.

More importantly, the suspension of Judge Newman created a structural due process defect that goes to the heart of appellate legitimacy. This Court has

held that tribunal composition is not a formality but a constitutional and statutory guarantee. *Nguyen v. United States*, 539 U.S. 69 (2003); *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010). Litigants are entitled to a three-judge panel "in the first instance" that is both lawfully constituted and competent. When a judge is later suspended for disability, confidence in that tribunal is irreparably undermined.

Finally, the circuits are divided on how Rule 60(b)(6) should be applied, with some imposing threshold requirements and others adopting multifactor balancing. By affirming a skeletal denial that applied neither approach, the Federal Circuit deepened this conflict. This Court's intervention is necessary not only to resolve the split but also to address a nationally important question: whether litigants can trust that their appeals are decided by a lawful and capable three-judge panel, as Congress required in 28 U.S.C. § 46(b) and as the Constitution guarantees.

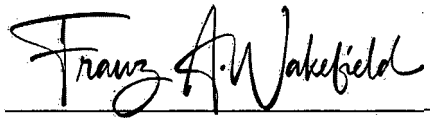
CONCLUSION

The errors below, taken together, reveal not a routine dispute over procedural rules but a crisis of judicial integrity that demands this Court's review. The Federal Circuit affirmed the denial of Rule 60(b)(6) relief without requiring the case-specific, multifactor analysis mandated by this Court and the Third Circuit; it dismissed as "brief" a claim that went to the core of due process; it overlooked the structural defect created when Petitioner's appeal was decided by a panel later revealed to be unlawfully constituted under 28 U.S.C. § 46(b); and it left unresolved a deep circuit split over how extraordinary circumstances must be evaluated under Rule 60(b). Most importantly, this case presents a question of exceptional national importance: whether litigants can trust that their appeals are decided by a competent, impartial, and duly constituted three-judge panel, as Congress requires and the Constitution guarantees. The integrity of the federal judiciary, and public confidence in the fairness of appellate adjudication, depends on a clear and uniform answer. App.18a-20a.

The decision below exemplifies a circuit conflict over the meaning of Rule 60(b), conflicts with this Court's precedents, and raises questions of national importance concerning the integrity of appellate adjudication. The Third Circuit's approach transforms Rule 60(b) into a device for entrenching judgments even when they are infected by statutory and constitutional defects. That outlier rule undermines uniformity, fairness, and confidence in the judicial system.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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September 24, 2025

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