

No. 25–898

In the Supreme Court of the United States

WILLIAM MUHR,

Petitioner,

v.

KRISTIN LEE, AKA KRISTIN ELIAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE STATE OF COLORADO

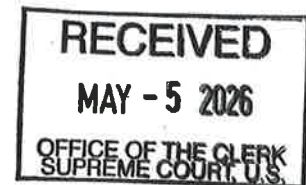
PETITION FOR REHEARING

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QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment's Due Process Clause permits judges who have recused, are disqualified, or have a disqualifying conflict of interest to control which judge will decide a case—by using recusal, transfer, or other assignment mechanisms to select their successors—instead of allowing neutral statewide procedures to determine reassignment.

2. Whether the Fourteenth Amendment's Due Process Clause permits state appellate courts to presume a lawful successor-judge assignment and place on the litigant the burden to disprove it before the very judge whose authority is challenged—even after a disqualified judge has engineered the assignment, the State's records custodian has confirmed there is no statewide assignment order, and the same tribunal continues to decide this child's case without any demonstrably neutral assignment on the record.

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INTRODUCTION

This petition arises from a Colorado child-support and parenting case in which recused judges repeatedly engineered their own successors outside Colorado's neutral statewide assignment procedures, and no transparent, neutral assignment record has ever been produced. The result is that a parent's rights to meaningful parenting time and to lawful adjudication of child-support obligations have been decided for years by judges whose authority Petitioner has consistently challenged and whose assignments the State has never demonstrated were made through the neutral statewide procedures that Colorado law requires.

The petition for certiorari asked whether the Fourteenth Amendment allows such successor-judge selection by recused or disqualified judges, and whether appellate courts may then presume the resulting assignments lawful and place on the affected litigant the burden to disprove them before the very tribunal whose authority is in question.

On April 6, 2026, the Court denied certiorari. Since the filing of the petition on January 2, 2026, however, intervening developments have heightened both the legal significance and the national importance of those questions.

First, this Court has recently reaffirmed the constitutional protection afforded to parental rights and has stressed that the State may not "cut out" parents from critical decisions affecting their children. *Mirabelli v. Bonta*, 607 U. S. ____, slip op. at 5-6, (per curiam) (Mar. 2, 2026) (holding that California's school-secrecy policies violate parents' substantive due-process right to direct their children's upbringing by "cutting out the

primary protectors of children’s best interests: their parents.”). That intervening authority matters here because the challenged assignment system determines which judge will exercise coercive power over Petitioner’s relationship with his child, his parenting time, and his support obligations.

A system that lets conflicted, recused judges choose their successors in such a case, and then shields those choices from meaningful scrutiny, implicates not merely judicial administration but the constitutional protection of the parent-child relationship. “Parents have rights, even though unenumerated, concerning their children...” *Mirabelli*, 607 U.S. at ___ (Kagan, J., dissenting) (slip op. at 6).

Second, current developments concerning structural bias in adjudicative systems have reinforced a substantive due-process principle: constitutional error arises not only when bias is proven in an individual official, but also when the State designs a system that creates an objectively intolerable risk of bias and then makes that design practically unreviewable. This Court’s cases such as *Tumey v. Ohio*, *Ward v. Monroeville*, and *Caperton v. A.T. Massey Coal Co.* all reflect that structural approach.

Rehearing is warranted so that the Court may consider the Questions Presented in light of these intervening developments and the continuing operation of a tribunal whose neutral statewide assignment cannot be shown on the record.

REASONS FOR GRANTING REHEARING

I. **Intervening Supreme Court parental-rights authority materially strengthens the constitutional basis for review**

Since Petitioner filed the certiorari petition on January 2, 2026, this Court has issued a significant parental-rights decision, affirming that parents, not the State, are the primary protectors of children’s best interests and that the State may not structure decision making so as to ‘cut out’ parents from critical determinations about their children—including by channeling those determinations through tribunals appointed outside the state’s neutral, statewide assignment protocols and in violation of those rules. That development is an intervening circumstance of substantial and controlling effect within the meaning of Rule 44.2 because it directly strengthens the constitutional framework within which this case must be understood.

On March 2, 2026, after Petitioner filed his certiorari petition, this Court issued a per curiam decision in *Mirabelli* vacating a stay and reinstating an injunction against a California policy that required schools to withhold from parents information about a child’s gender transition at school unless the child consented. In doing so, the Court held that parents were likely to succeed on their claims that the policy violated their substantive due-process right “to participate in decisions regarding their children’s mental health” and reaffirmed that state actors may not structure systems that shut parents out of critical decisions about their children’s lives.

Mirabelli thus significantly strengthens the foundation of the Questions Presented here: if the State may not exclude parents from school-based decisions about their children's welfare, it likewise may not design judicial-assignment procedures that allow conflicted, recused judges to determine which successor judge will control a parent's custody and support case and then shield that choice from meaningful appellate review, leaving a parent's relationship with his child to be governed by a tribunal whose neutral statewide assignment cannot be shown on the record.

Mirabelli makes clear that the Constitution is not indifferent to how States structure decision making around children: it forbids systems that "cut out the primary protectors of children's best interests: their parents" by excluding them from critical choices about their children's lives. Colorado's assignment scheme, as applied here, does exactly that in a judicial setting. By allowing a recused or disqualified trial judge to control successor selection in a family-law case and then permitting appellate courts to presume that assignment lawful despite the absence of any neutral statewide assignment order and a records-custodian letter confirming "no records responsive," the State has concentrated discretionary power over Petitioner's parenting-time and decision-making rights.

In light of *Mirabelli*'s reaffirmation that parents have a substantive due process right not to be cut out as the primary protectors of their children's best interests, this Court should be especially concerned when a State structures a non-neutral judicial-assignment system that determines who will control a parent's relationship with his child, while simultaneously insulating that system from meaningful review

through opaque procedures and presumptions of regularity.

II. Intervening structural-bias developments show this case presents a systemic due-process problem, not a procedural dispute

Developments since the filing of the certiorari petition confirm that this case fits within a familiar category of constitutional violations: state-designed systems that create an intolerable risk of bias in this case and then avoid meaningful appellate scrutiny by invoking presumptions of regularity or ‘administrative’ labels for assignments that violate their own rules requiring neutral judicial appointments.

Contemporary discussions of structural bias underscore that due process must address system design, not isolated wrongdoing by individual officials. Even where no single judge is shown to harbor subjective ill will, an architecture that places critical decisions in the hands of conflicted judges and then shields parenting- and support-related rulings from review predictably undermines the fairness and reliability of outcomes. That is why this Court’s due-process precedents ask not only whether actual bias has been proven, but whether the State has created a structure that presents an intolerable risk of bias.

The constitutional logic of *Tumey v. Ohio*, *Ward v. Monroeville*, and *Caperton v. A.T. Massey Coal Co.* is directly relevant. In those cases, the Court looked past labels such as “administrative,” “routine,” or “authorized by state law” and instead examined whether the institutional design created a “possible temptation” or a probability of bias too high to be constitutionally

tolerated. Petitioner’s case presents that same problem.

The State permitted Chief Judge Bain, after recusing for bias and unfitness, to use his February 24, 2020 recusal order to install Judge Miller as successor rather than allowing neutral statewide reassignment procedures to determine the replacement.

Then, after Judge Miller acknowledged a prohibited conflict and recused on September 1, 2023, he again used the recusal order to select his successor, Judge Evig, rather than comply with the required rules on neutral statewide assignment. Those are not local procedural irregularities; they are structural defects in the tribunal’s constitution. Judge Evig has repeatedly refused to recuse, and the appellate courts have protected those refusals by ignoring the mandatory neutral-assignment rules—an approach now squarely inconsistent with *Mirabelli*.

Colorado’s insistence, through its appellate courts, that these successor assignments by conflicted, disqualified, and recused judges are merely “administrative” cannot insulate them from constitutional scrutiny. *Tumey*, *Ward*, and *Caperton* all involved systems nominally authorized by state law and justified as routine arrangements for funding or assigning judicial officers, yet in each instance the Court focused on the real-world configuration of power and incentives and concluded that the structure itself created an intolerable risk of bias. A regime that permits disqualified judges to control successor selection in a parenting and support case, and then allows appellate courts to protect that assignment by presuming—without any factual basis—that the resulting tribunal is lawful despite the State’s inability to produce a neutral

statewide assignment order, presents the same structural risk: it embeds a prohibited conflict of interest into the very process that determines who will exercise judicial power over the parent-child relationship.

III. Ongoing structural defects in this parental-rights case raise questions of national importance warranting review

This case is a strong vehicle because the structural defect continues to shape a family-law proceeding. The certiorari petition documented that after Chief Judge Bain's February 24, 2020 recusal for bias and unfitness, he nonetheless personally installed Judge Miller as successor, outside the required neutral assignment procedures, in both the B.B. and M.M. matters.

Later, after Judge Miller acknowledged a prohibited conflict and recused on September 1, 2023, he likewise transferred the case in his recusal order to his chosen successor judge without any neutral statewide assignment order shown on the record. The tribunal that currently exercises authority over Petitioner's parent-child relationship is therefore the product of a chain of judge-controlled assignments by conflicted and disqualified judges, rather than of the neutral statewide procedures Colorado's own rules require.

In 23CA1367, the appeals court noted Judge Miller's representation that, after his recusal, the case would be randomly reassigned by the clerk. In fact, Judge Miller used his recusal order to select Judge Evig as his successor, and the Colorado Supreme Court Clerk's October 20, 2025 letter confirms that there were "no records responsive" to any neutral

statewide assignment order for Judge Evig. Together, that representation, the recused judge-controlled transfer, and the absence of any neutral statewide assignment order show that the assignment system here operates in practice to keep this family-law case under conflicted judges rather than the neutral procedures Colorado's rules require.

This kind of judge-controlled succession concentrates power in precisely the way the Constitution is designed to prevent: it allows a disqualified judge to determine who will control a father's relationship with his child, despite rules requiring neutral assignment and the absence of a statewide assignment order. A judicial-assignment regime that permits recused judges to hand-pick their successors in this way is the very concentration of power the Constitution is meant to forbid, and it threatens the liberty and natural rights of parents and children that the Declaration of Independence and Constitution are intended to secure.

Over nearly a decade of litigation in the B.B. and M.M. matters, unlawfully constituted tribunals have repeatedly entered parenting and child-support orders later reversed as unlawful in 18CA176, 20CA2066, 21CA326, and 23CA1367, while denying Petitioner meaningful parenting time despite the absence of any factual findings over the last decade that he has not been a fit parent, all while forcing a retrial of child support based on decade-old income information, in violation of appellate mandates, that forces yet more appeals.

At each turn, the Colorado Court of Appeals has reversed the trial courts' rulings four different times, but refused to disqualify the unlawfully assigned tribunals, and the same successor judges have then

disregarded or evaded the appellate mandates and issued new unlawful orders, thereby trapping Petitioner in a self-perpetuating loop of appeals of the trial-courts' unlawful rulings and protracted appellate corrections that his family has been unable to escape for ten years. This structural assignment defect has real, ongoing effects on both the parent-child relationship and father's financial obligations, not merely on procedural formalities.

Petitioner has consistently sought to test the legality of these successor-judge assignments in the trial court, on appeal, in certiorari proceedings before the Colorado Supreme Court, and in an original C.A.R. 21 proceeding, yet the Colorado Supreme Court Clerk's October 20, 2025 letter confirmed 'no records responsive' to any statewide judicial-assignment order, and the same structurally defective tribunal has continued to adjudicate parenting-time and child-support issues affecting Petitioner and his child.

That letter crystallizes the closed loop of review: the State cannot identify any neutral statewide appointment order, yet the trial court, court of appeals, and Colorado Supreme Court have refused to disturb the unlawfully assigned tribunal. In this posture, this Court is the only remaining forum in which the federal due-process questions presented can be meaningfully vindicated. When, as here, a State's judiciary is weaponized by a non-neutral judicial-assignment system, the State's own appellate courts cannot meaningfully police the resulting politicization of the bench; only this Court can do so.

State courts nationwide rely on recusal, transfer, and reassignment to constitute tribunals in high-stakes family-law matters; if States may let

recused or disqualified judges influence successor selection and then presume those assignments lawful even when no neutral assignment record exists, the guarantee of an impartial tribunal becomes fragile in proceedings that govern the parent-child relationship.

Mirabelli heightens the concern by reaffirming that parents, not the State, are the primary protectors of children's best interests, and by holding that the government may not structure decision making in ways that sideline parents from participating in core decisions about their children.

A judicial-assignment system that allows a disqualified judge to choose the successor who will decide parenting time and support, and then shields that successor's authority from scrutiny by demanding that the parent disprove legality without access to any neutral assignment record, is structurally analogous to cutting the parent out of a fair process concerning his own child.

This case also presents the issues cleanly. The challenged assignment practices are documented in simultaneous recusal-and-transfer orders and related record materials collected in the cert petition; the absence of any neutral statewide assignment order was confirmed by the Colorado Supreme Court Clerk's "no records responsive" letter; the federal due-process claim was properly preserved and fully presented in the courts below; and the consequences are ongoing because the tribunal whose authority is challenged has continued to enter and enforce orders affecting parenting and child support. This Court, therefore, has before it a developed record, a preserved federal theory, an ongoing irreparable harm, and intervening authority with *Mirabelli* that strengthens the

constitutional significance of the questions presented. Rehearing is warranted so that the Court may reconsider the denial of certiorari and address whether due process sets a constitutional floor for state successor-judge assignment practices in cases affecting the parent-child relationship.

CONCLUSION

This case presents the kind of intervening developments and structural defects that warrant rehearing under Rule 44.2. Since this Court denied certiorari, it has underscored that parents, not the State, are the primary protectors of children's best interests, and developments in the law have confirmed that due process is violated not only by demonstrably biased judges, but also by state-created systems that create an intolerable risk of bias and then shield that design from review.

The challenged assignment system determines which successor judge will wield coercive power over a parent's relationship with his child, his parenting time, and his support obligations through a chain of judge-controlled assignments by recused judges that the State cannot justify with any neutral statewide assignment order in the record. Allowing recused judges to engineer their own successors—and then permitting appellate courts to presume those assignments lawful despite a “no records responsive” confirmation from the Colorado Supreme Court Clerk—replaces the promise of an impartial tribunal with a presumption of regularity that no litigant can meaningfully test.

The federal questions presented ask whether the Fourteenth Amendment allows any State to let

recused, disqualified, or conflicted judges control which successor judge will decide a case rather than relying on neutral statewide procedures, and to place on the affected parent the burden to disprove the lawfulness of that assignment before the very tribunal whose authority is in question, even after the State's records custodian has confirmed that no neutral statewide assignment order exists for the presiding judge. Those questions go to the core of this Court's structural-bias jurisprudence in *Tumey*, *Ward*, and *Caperton*, and its parental-rights decisions, including *Mirabelli*—whether constitutional guarantees can appear to be satisfied by rules requiring neutral judicial assignments, yet be nullified by how the assignment system actually operates.

This case is a suitable vehicle for resolving those questions, as the certiorari record documents the relevant recusal-and-transfer orders, reversals of unlawful rulings in 18CA176, 20CA2066, 21CA326, and 23CA1367, and the Colorado Supreme Court Clerk's October 20, 2025 letter confirming that there were "no records responsive" to any neutral statewide assignment order for Judge Evig, who remains on the case. The federal theory has been preserved, and the irreparable harms are ongoing: Father's parenting time and financial obligations continue to be adjudicated by a successor tribunal whose neutral constitution the State cannot show and whose lawfulness no state court is willing to test.

Rehearing is warranted to clarify federal limits on successor-judge assignment systems that create an intolerable risk of bias; to ensure that the Constitution's structural protections for judicial assignments remain enforceable guarantees by requiring compliance with

neutral assignment rules and preventing disqualified judges from selecting the successor judge who will decide the case after they recuse; and to allow the Court to consider the Questions Presented in light of intervening parental-rights authority.

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**CERTIFICATION OF
UNREPRESENTED PARTY**

I, William Muhr, pro se petitioner, hereby certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and that it is presented in good faith and not for delay.

April 28, 2026

/s/ William Muhr