

No. 26-5214

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE JAMES R. CAPUTO, M.D.

PETITIONER

v.

RICHARD S. TUBIOLO, ESQ.

BRYAN S. KORNFIELD, ESQ.

HIRSCH AND TUBIOLO, PC

RESPONDENTS

*ON PETITION FOR A WRIT OF MANDAMUS
TO THE NEW YORK STATE SUPREME COURT,
APPELLATE DIVISION: FOURTH DEPARTMENT*

PETITION FOR WRIT OF MANDAMUS

BRIEF IN REPLY

James R. Caputo, M.D.
Petitioner, pro se
4278 Lafayette Road
Jamesville, N.Y. 13078
(315) 382-8778
jrcaputo@yahoo.com

QUESTIONS PRESENTED

Question 1: Is Petitioner's case legitimate to be heard and responded to by the United States Supreme Court?

Question 2: Is remaining silent and evading the chief issue in a legal matter the standard for (both) proving innocence by a defendant and for rendering justice by the Court system?

Question 3: Have any of the Courts encountered by Petitioner in this legal malpractice lawsuit fulfilled their respective duties to both the law and the United States Constitution?

LIST OF PARTIES

Petitioner, James R. Caputo, M.D. (“Petitioner”), is a New York resident, not a corporation, proceeding *pro se* and *in forma pauperis* and is the Plaintiff, Plaintiff-Appellant, and Appellant in the cases listed below.

Respondents Richard S. Tubiolo, Esq., (“Tubiolo”), Bryan S. Kornfield, Esq., (“Kornfield”) and Hirsch and Tubiolo, PC (“HT, PC”) are New York residents and a New York Corporation, respectively, and are the Defendants, Defendant-Respondents, and the Respondents in the cases listed below.

RELATED CASES

1. ***Court :*** Supreme Court of the State of New York: Monroe County

Docket # : I2017005512

Caption : James R. Caputo, M.D. v Richard S. Tubiolo, Esq.,
Bryan S. Kornfield, Esq., Hirsch and Tubiolo P.C.

Judgment Date of Entry : July 21, 2023

RELATED CASES - continued

2. **Court :** Supreme Court of the State of New York,
 Appellate Division: Fourth Department

 Docket # : CA 23-01338

 Caption : James R. Caputo, M.D. v Richard S. Tubiolo, Esq.,
 Bryan S. Kornfield, Esq., Hirsch and Tubiolo P.C.

 Judgment Date of Entry : March 14, 2025

3. **Court :** State of New York Court of Appeals

 Motion # : 2025-302

 Caption : James R. Caputo, &c., v. Richard S. Tubiolo, &c., et al.

 Judgment Date of Entry : October 21, 2025

4. **Court :** United States Supreme Court - Petition for
 Writ of Certiorari

 Case # : 25-6673

 Caption : James R. Caputo, &c., v. Richard S. Tubiolo, &c., et al.

 Judgment Date of Entry : March 23, 2026

5. **Court :** United States Supreme Court - Petition for Rehearing

 Case # : 25-6673

 Caption : James R. Caputo, &c., v. Richard S. Tubiolo, &c., et al.

 Judgment Date of Entry : May 18, 2026

**IN THE
SUPREME COURT OF THE UNITED STATES**

**PETITION FOR WRIT OF MANDAMUS
BRIEF IN REPLY**

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a) as there are no other adequate remedies or legal avenues available to compel the mandatory duty owed to Petitioner by the Courts.

**RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

- 1. Preamble to the Constitution**
- 2. U.S. Constitution: Article III, Section 2**
- 3. 5 USC §3331. Oath of office**
- 4. 18 U.S.C. § 242**
- 5. 34 U.S.C. § 12601**
- 6. 42 U.S.C. § 1983**
- 7. Marbury vs. Madison 1803**
- 8. United States v. Throckmorton, 98 U.S. 61 (1878)**

INTRODUCTION

This Brief in Reply, as part of Petitioner's *Petition for Writ of Mandamus*, is being submitted subsequent to the Respondents' submission of their waiver of right to respond. The absence of a response to the simple evidentiary challenges in the *Petition for Writ of Mandamus* is precisely what would be expected from defendants who have repeatedly failed to provide any cogent and/or convincing argument or evidence whatsoever in support of their case, having relied entirely on a corrupted court system to bail them out and run cover for them all the way through the United States Supreme Court. The contemptuousness of these defendants to act as though they are above having to provide the "goods" for a legitimate defense is precisely what is on trial here, as is their confidence in the Courts continuing to shirk the facts and law in order for them to get away with what they did.

STATEMENT OF THE CASE

A. Addressing Question 1: Is Petitioner's case legitimate to be heard and responded to by the United States Supreme Court?

The preamble to the United States Constitution is clear.

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

It is the "People" of the United States who established the Constitution (and thus the Supreme Court of the land) for application upon themselves. Petitioner is one of those "People" who the Constitution serves and is wholly applicable to, as is this Court.

Article III, Section 2 of that Constitution states the following:

“The judicial Power (vested in one supreme Court) shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”

This matter is a civil legal malpractice lawsuit of Law and Equity, (regardless of whether it falls under admiralty or maritime Jurisdiction), between Citizens of a State in the union over which the Constitution and the U.S. Supreme preside and have jurisdiction. Therefore, Petitioner’s case is not only legitimate to be heard, but has been (illicitly) made dependent upon this highest of Courts for justice to be served after every lower court flagrantly violated its respective duty thereto, thereby making a mockery of these very Constitutionally established provisions which SCOTUS must now decide how to treat themselves, after having been given two previous opportunities to address.

As “insignificant” as this case might appear to this Court, it is presently serving as a test case to see just how legit the Courts really are or how compromised to secret orders and societies they have truly become. Because, if there was no dishonest or improper adjudication occurring here, then this matter would have been readily settled at the State Supreme Court level, since the facts, evidence and

law are all blatantly clear and favoring Petitioner's case. Instead, there has been manifest cheating by actual courts and judges, who have used their experience and expertise in the law to exploit (both) the discipline itself as well as an inexperienced pro se litigant, in order to purposely deny justice twice, in two distinct cases made known to this Court.

B. Addressing Question 2: Is remaining silent and evading the chief issue in a legal matter the standard for (both) proving innocence by a defendant and for rendering justice by the Court system?

It has been extensively argued in all previous papers to every court that there are strict federal criteria for how a court is to rule on the facts and the law, and for when an appellate court can wordlessly affirm a lower court's ruling. In New York State, however, the statutes directing lower court decisions, summary judgments and appellate affirmations are so divergent from their federal counterparts that they not only enable the courts to cheat justice but the courts actually misuse them to do this exact thing. How they get away with such unlawful behavior is that they simply choose to remain silent on core legal issues rather than address them, knowing full well that no judge or authority above them will do anything about it, even if pointed out. These courts have treated the detailed legal queries upon them from the case at bar as if these urgent questions didn't even exist. That way the court cannot be backed into a corner by not being able to actually answer the question unfavorably to the party whom they are denying justice.

By acting in this manner [of remaining deafeningly silent], the courts involved with this matter have unequivocally denied Petitioner his Constitutionally protected right to an impartial tribunal, the right to be heard and the right to equal protection of the laws.

In *Marbury vs. Madison* 1803, the Court ruled the following: *"It is emphatically the providence and duty of the judicial department to say what the law is."* All four courts in this case have been explicitly asked to answer specific questions of law as they apply to the material facts of the case. All four courts have abrogated that duty to the detriment of justice by remaining silent and refusing to answer. They are not allowed to do this. *Marbury v. Madison* (emphatically) establishes their duty to say what the law is and not remain silent.

C. Addressing Question 3: Have any of the Courts encountered by Petitioner in this legal malpractice lawsuit fulfilled their respective duties to both the law and the United States Constitution?

Lest ye forget, all judges take the following oath of office under **5 USC §3331**:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

34 U.S.C. § 12601 is a federal law that makes it illegal for governmental authorities or law enforcement officers to engage in a "pattern or practice" of conduct that deprives people of their constitutional rights.

18, U.S.C., SECTION 242 states the following:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both;....

42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

United States v. Throckmorton, 98 U.S. 61 (1878), is a landmark U.S. Supreme Court decision that established the rule that only *extrinsic fraud*—and not intrinsic fraud—can be used as a basis to set aside a final judgment or decree. Extrinsic Fraud is defined as: “*Deceptive actions or tricks outside of the actual trial that stopped a real, fair contest of the subject matter.*” *Throckmorton* made it clear that fraud vitiates the most solemn contracts, documents and even judgments.

Three separate but connected courts in New York State, with the same Administrative Judge, (who had a personal motive to deny Petitioner justice), all working together to ignore the manifest material evidence and applicable law despite it all being presented to them in undisputable fashion, constitutes a “pattern of practice” of conduct that deprived this Petitioner of his Constitutional

rights. What was done against Petitioner by these courts was conducted in fraud and therefore has no lawful authority or authenticity. SCOTUS cannot deny this fact. Yet the response thus far has been clear. Flagrant and repeated Constitutional rights violations by unmistakably compromised courts are just not important enough to garner the attention of The United States Supreme Court. What is The Court here for then?

CONCLUSION

Therefore, for the reasons, arguments and relevant law cited, this Petition for Writ of Mandamus should be granted as that one exceptional case deserving such extraordinary action. Yet as stated previously, no action by this Court will be equally deemed a failure of duty and therefore null and void under the Laws of Equity. Either way, the facts and the law which clearly establish legal malpractice with special circumstances against the Respondents, along with Petitioner's clean hands and lawful claim have already prevailed under the trust relationship of faith, trust, truth and honor.

Date: September 2, 2026

Respectfully submitted,



James R. Caputo, M.D.
Petitioner, pro se
4278 Lafayette Road
Jamesville, N.Y. 13078
(315) 382-8778
jrcaputo@yahoo.com