

No. 26A 521

IN THE SUPREME COURT OF THE UNITED STATES

JOHN R. McKOWEN,
Applicant,

v.

GREG HARRINGTON, et al.,
Respondents.

On Application for an Injunction Pending Appeal to the
United States Court of Appeals for the Tenth Circuit, No. 26-1190

**EMERGENCY APPLICATION FOR AN INJUNCTION PENDING APPEAL, OR
IN THE ALTERNATIVE A STAY, OF A STATE CONTEMPT PROCEEDING
SET FOR NOVEMBER 5, 2026**

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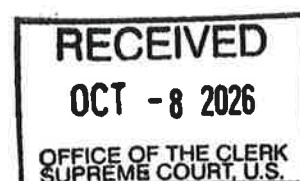


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To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Applicant John R. McKowen, appearing for himself, asks for an order under 28 U.S.C. § 1651(a) and Rules 22 and 23 of this Court directing the Colorado Securities Commissioner, Tung Chan, and the State of Colorado, their officers, agents and attorneys, not to impose or execute any finding of contempt or any sentence against him in *Tung Chan v. Two Rivers Water & Farming Company*, Denver District Court No. 2021CV33922, until the United States Court of Appeals for the Tenth Circuit decides his pending appeal, *McKowen v. Harrington*, No. 26-1190. The contempt hearing is set for November 5, 2026 at 10:00 a.m. (Appendix AA). The State asks that he be imprisoned for not less than 90 and as much as 179 days. He is seventy-six years old and a veteran of the United States Army.

The appeal this application asks the Court to protect is about a federal judgment. In March 2023 the United States District Court for the District of Colorado approved a class settlement among the investors in GrowCo, Inc., a company Applicant founded, and entered a complete bar order that ended further claims against Applicant arising out of the sale of GrowCo securities and expressly preserved the investors' claims "for collection of any amounts due under the GrowCo securities." In April 2025 that court sent the question whether its judgment was being violated to Applicant's own federal action, *McKowen v. Harrington*. In that action Applicant has sued the State of Colorado and its lawyers, among them the First Assistant Attorney General, Robert W. Finke, and he has referred

their conduct to the United States Attorney and five other federal offices for criminal investigation. On April 14, 2026 a contempt motion signed for Mr. Finke asked a state court to jail him. The conduct charged is helping those same investors assert their preserved collection rights in his federal bankruptcy case. Three years earlier the same office had settled with Gregory Harrington, who controls the companies holding the investors' collateral and whose own companies told the state court of a "felony charge" against him in the Drexel Burnham Lambert case, adopted his account of the fraud Applicant reported, and agreed to clear the investors' title in exchange for \$2,000,000 to the State. The District Court then abstained, and the Tenth Circuit declined to act. The State has turned its contempt power on a man for petitioning the federal courts, for reporting state officials to federal prosecutors, and for acting on rights a federal judgment preserved.

The relief was first sought where the rules require. The District Court denied it on April 27, 2026 on abstention grounds. The Tenth Circuit denied it on July 1, 2026 in a two-page order that recited the four factors and gave no reason. The appeal has been fully briefed since August 17, 2026 and is undecided. If nothing is done, Applicant may be jailed before any federal court decides whether a State may do this.

THE RELIEF SOUGHT

Applicant asks the Circuit Justice, or the Court, to enjoin the Commissioner and the State of Colorado, pending the Tenth Circuit's decision in No. 26-1190, from imposing or executing any contempt finding or sanction in Denver District Court No.

2021CV33922 arising from (a) the Supplement to Disclosure Statement he filed in his Chapter 11 case on January 13, 2026, (b) the resolution of the board of directors of VetaNova Inc. adopted March 27, 2026, and (c) his email of March 28, 2026 to the beneficiaries of Huerfano County Deed of Trust No. 404224. In the alternative, he asks for a stay of the November 5, 2026 hearing for the same period. If the Circuit Justice refers the application to the full Court, he asks for an administrative stay of the hearing while the Court considers it.

DECISIONS BELOW

On August 22, 2025, the District Court (Brimmer, C.J.) construed Applicant's motion to stay enforcement of the Colorado judgment as a motion for a preliminary injunction and denied it under *Younger v. Harris*, 401 U.S. 37 (1971), holding among other things that Applicant had offered only allegations, not evidence, of bad faith. *McKowen v. Harrington*, No. 1:25-cv-00708 (D. Colo.), Docket No. 193 at 10–11 (Appendix C). On April 27, 2026, after the Commissioner had filed the contempt motion, the District Court denied Applicant's emergency motion to enjoin the contempt proceeding in a three-page minute order, stating that he had not provided "any new arguments that demonstrate abstention under *Younger* is inappropriate," and, in a footnote, that he did "not provide a basis" for his argument that the contempt proceeding was brought in bad faith and in retaliation. Docket No. 308 at 2, 3 n.3 (Appendix B). The order did not address 28 U.S.C. § 2283 or the Supremacy Clause, both of which the motion and its supplement raised. On June 23, 2026 the District Court dismissed without prejudice Applicant's claims against the State, its officers, Gregory Harrington, who

controls Two Rivers Water & Farming Company, and three other defendants, and denied his motion to enforce the Paulson judgment. Docket No. 326. On July 14, 2026 Applicant filed his Second Amended Complaint, as Exhibit A to a motion for leave to file it; the State and the other defendants opposed, and the motion has been fully briefed since August 19, 2026. Docket Nos. 330, 349–352.

Applicant appealed under 28 U.S.C. § 1292(a)(1) and moved in the Tenth Circuit under Federal Rule of Appellate Procedure 8(a)(2) for an injunction pending appeal. On July 1, 2026 a two-judge panel (Bacharach and McHugh, JJ.) denied the motion. The order lists the four factors of *Nken v. Holder*, 556 U.S. 418, 434 (2009), and then says in one sentence that Applicant “has not carried his ‘burden of showing that the circumstances justify an exercise of [our] discretion.’” No. 26-1190, Document 42 at 2 (Appendix A). It does not say which factor was not met and does not mention the contempt proceeding, the jail sentence sought, or the federal judgment the motion asked the court to protect. The merits appeal was fully briefed on August 17, 2026 and has not been decided or set for argument. The State’s motion to dismiss the appeal, filed June 2, 2026, was referred to the merits panel without ruling.

JURISDICTION

The Circuit Justice may grant an injunction or a stay pending appeal under the All Writs Act, 28 U.S.C. § 1651(a), and Rules 22 and 23 of this Court. The order is in aid of the Court’s jurisdiction: the Tenth Circuit’s judgment in No. 26-1190 will be reviewable here on a petition for a writ of certiorari, 28 U.S.C. § 1254(1), and a sentence served

before that review could not be undone by it. Rule 23.3 is satisfied: the relief requested was first sought in the District Court and in the Court of Appeals, and both denied it.

STATEMENT

The report. Applicant founded GrowCo, Inc. and resigned as its chief executive in May 2016. On July 13, 2018, his counsel wrote to the Colorado Division of Securities, which had subpoenaed records about GrowCo, reporting that his successor had recorded a \$6.2 million journal entry offsetting money another company owed GrowCo, with no documentation, and asking the Division to subpoena that company and that officer because GrowCo could not obtain the records without subpoena power. Letter of Volant Law LLC to Investigator Christina Calabrese (July 13, 2018) (Appendix N). In December 2021 the Commissioner sued Applicant.

Harrington. The company that held the investors' collateral passed, after Applicant reported the fraud, to Gregory Harrington. In February 2019 Two Rivers Water & Farming Company, whose subsidiaries hold the land and water securing the GrowCo investors, agreed to issue 30,000,000 of its shares for Vaxa Global LLC, a company with negative equity of \$582,071, bought from a Colorado company formed four days earlier whose managing member was Mr. Harrington. The exchange closed in July 2019 with no cash paid, and in September Mr. Harrington became Two Rivers' chief executive. Two Rivers filed no report with the Securities and Exchange Commission after that quarter, and in August 2022 the Commission revoked the registration of its securities. Share Exchange Agreement §§ 1.02(a), 3.06 (Feb. 22, 2019); Two Rivers Form 10-Q for the

quarter ended Sept. 30, 2019, Note 8; Exchange Act Release No. 95549 (Aug. 18, 2022) (Appendix T). In 1993 the United States had brought a criminal case against Mr. Harrington in the District of Colorado, No. 1:93-cr-00131; his own companies told the state court in 2024 that it was a felony charge arising from the Drexel Burnham Lambert case and that he had since regained “his civil liberties.” Two Rivers’ Response to Amended Motion for Contempt ¶ 20 (Apr. 11, 2024) (Appendix S).

The federal judgment. On March 15, 2023 the District Court entered its final order in *Paulson v. Two Rivers Water & Farming Co.*, No. 1:19-cv-02639 (D. Colo.), approving a class settlement of the GrowCo investors’ claims and a complete bar order, with final judgment the next day. Mr. Harrington signed the settlement for Two Rivers. The settlement provides that the released claims do “not include any claims for collection of any amounts due under the GrowCo securities pursuant to the terms of the securities, including claims in the event of a GrowCo liquidation.” It bars further claims against Applicant and the other defendants arising out of the sale of GrowCo securities, and it reserves to the investors their securities, their collection claims, and their right to assign the securities to VitaNova Partners, LLC. *Paulson*, Docket No. 180, Settlement Agreement §§ 1.g, 1.i, 1.cc, 28 (Appendix L); see Part I, below. The court retained “jurisdiction to consider all further matters arising out of or connected with the Settlement Agreement, including its implementation.” *Paulson*, Docket No. 178 at 20, quoted in No. 1:25-cv-00708, Docket No. 193 at 3.

The State's settlement with Harrington. On January 19, 2023, Applicant told the Commissioner's counsel in writing that the GrowCo investors could still foreclose on the Orlando assets under their deeds of trust and recover their capital. Counsel answered that Applicant was "free to pursue any action you want against other defendants, but that is not the Commissioner's concern." Email of Jennifer Hunt (Jan. 19, 2023) (Appendix W). On May 5, 2023, seven weeks after the Paulson judgment, the Commissioner settled her claims against Two Rivers and TR Capital Partners by a stipulation signed by Mr. Harrington and, as to form, by Mr. Finke. It recites that prior management, naming Applicant, defrauded "Mr. Harrington and various Harrington family-related entities"; that the deeds of trust securing the GrowCo investors "falsely portrayed providing secured interests to GrowCo related investors"; and that two subsidiaries holding that collateral would be placed in bankruptcy so that the court "may equitably distribute any sale proceeds to individual investors" and "to clear title on the assets that were improperly and fraudulently encumbered." Mr. Harrington agreed to "assist the Commissioner" with proof of fraud, and the State is to be paid \$2,000,000 "from the proceeds of any sale of company property." Stipulation ¶¶ 1(d), 1(f), 1(h), 2(b), 3(a), 3(b) (Appendix Q). The court entered the stipulation as its order four days later, without a hearing. On May 12, 2023, Applicant told the court in writing about Mr. Harrington; the Commissioner answered that his claims were "irrelevant and unsubstantiated" (Appendix V). After trial Applicant told the court that the Commissioner had stated her office would not abide by the Paulson bar order. Amended Closing Argument ¶ 13 (Aug. 21, 2023) (Appendix P).

The bankruptcies the stipulation required did not protect the investors; they made them defendants. In May 2024 Two Rivers Farms F-2 sued the GrowCo investors and GrowCo Partners 1, the beneficiary of record on the investors' deed of trust, in three adversary proceedings inside the bankruptcy that was to distribute sale proceeds to them. In November 2024 and March 2025 the companies' own bankruptcy counsel withdrew, reporting that the Orlando Reservoir debtor had left about \$70,000 in fees unpaid and had filed no monthly operating report for any month after April 2024, and citing its "alleged breach of its fiduciary duties during this case despite the Law Firm's advisement and admonishment." On April 15, 2025 both cases were dismissed on the United States Trustee's motion, the trustee reported no distribution, and the actions against the investors ended with them. In re The Orlando Reservoir No. 2 Co., No. 23-13178-KHT, Docket Nos. 214, 230, 233; In re Two Rivers Farms F-2, Inc., No. 23-15627-KHT, Docket Nos. 95, 97, 99, 151, 192, 203 (Bankr. D. Colo.) (Appendix X). Meanwhile, on February 2, 2024, Mr. Harrington wrote to the Commissioner, copying the Assistant Attorney General who had signed the stipulation, that Applicant's emails to the GrowCo investors affected "our settlement, including the substantial fine that was agreed upon," that his companies "lack the standing to seek relief," and asking her to "take appropriate action." (Appendix R).

The trial. Applicant was never allowed to cross-examine anyone on the facts alleged against him. Before his deposition of the Commissioner's designated witness, her counsel told him she would designate no one to answer for the legal basis of the charges;

at the deposition she withheld the Division's referral memorandum to the Commissioner as privileged and directed the witness not to say whether it recommended charges. 30(b) (6) Deposition of Joseph Burtness (Mar. 13, 2023) at 14–15, 57, 61 (Appendix U). The witness was Mr. Burtness, the investigator who would verify the contempt motion three years later. At trial Applicant moved to compel the State to produce whoever had developed the facts against him. The Assistant Attorney General answered: "there is no one at the division to provide those answers because I drafted the complaint." The court denied the motion as "vague and overbroad." Trial Tr. Vol. V (July 14, 2023) at 56–58, 65–66 (Appendix U). The facts on which Applicant was tried were written by the State's lawyers, and the facts recited in the stipulation were signed by Mr. Harrington's companies. No one who wrote either was ever made to answer for them under oath.

The Judgment. On July 9, 2025 the Denver District Court entered judgment for the Commissioner on claims under the Colorado Securities Act and ordered that Applicant and one other defendant "are enjoined from any participation in private securities transactions in or from the state of Colorado for twenty (20) years from the date of this Order." Judgment at 112 (Appendix E). The Judgment runs 113 pages. It mentions the stipulation once, in its procedural history, and never names Mr. Harrington or the Paulson judgment. *Id.* at 6. It does not define "participation" or "private securities transactions." The only content it gives those words is its finding that, for a period after Applicant resigned, he received transaction-based compensation for procuring investors and so was a "sales representative" who had to be licensed. *Id.* at 103–04. It states that

while he was an officer of the issuer he “could offer and sell GrowCo securities without running afoul of” the licensing statute. *Id.* at 103. The Judgment is on appeal to the Colorado Court of Appeals, No. 2025CA1513.

The federal case. On March 3, 2025 Applicant sued the State of Colorado, the Attorney General and the Commissioner in federal court, *McKowen v. Harrington*, No. 1:25-cv-00708 (D. Colo.); on May 13, 2025 his amended complaint added Mr. Finke and other lawyers of his office as defendants. On April 18, 2025 the court that entered the Paulson judgment declined to reopen Paulson because “it serves the interests of judicial economy to resolve the issue of whether the ‘Contemnors’ have violated the Paulson Settlement Agreement in *McKowen v. Harrington*.” Paulson, Docket No. 199 at 5 (Appendix L). On July 29, 2025 Applicant sent a written criminal referral to the United States Attorney for the District of Colorado alleging that the Attorney General’s office had acted with private parties to suppress investor claims and obstruct discovery, and filed notice of it in the federal case. No. 1:25-cv-00708, Docket Nos. 167, 167-1 (Appendix O). On June 11, 2026 he sent referrals to the United States Attorney, the Federal Bureau of Investigation and three sections of the Criminal Division of the Department of Justice, and filed notice of them in this appeal “in his capacity as a federal whistleblower.” No. 26-1190, Document 38.

The charged conduct. On October 14, 2025 Applicant filed a Chapter 11 petition, *In re McKowen*, No. 25-16665-KHT (Bankr. D. Colo.). His plan proposed that VetaNova Inc., a Nevada corporation of which he is the sole director and chief executive, issue

bonds under 11 U.S.C. § 1145 to the GrowCo investors, if and only if a plan were confirmed; he described them in a Supplement to Disclosure Statement filed January 13, 2026. The Commissioner objected in the Bankruptcy Court on January 21, 2026, saying the plan “clearly contemplates operations in direct contravention of the injunction,” and asked that court to deny approval. Bankr. Docket No. 74 ¶¶ 9, 10, 12 (Appendix F). She sought no contempt. The Bankruptcy Court’s February 12, 2026 order directed Applicant to file an amended disclosure statement and to serve it and a notice of the hearing on all creditors and parties in interest. Bankr. Docket No. 84 (Appendix J). On March 25 he emailed the amended statement and the notice to the beneficiaries of Deed of Trust No. 404224 — the GrowCo investors whose collateral that deed secures. On March 27 the board of VetaNova adopted a resolution giving each beneficiary the right to file an individual proof of claim asserting, in its words, “their Paulson-preserved collection rights under the GrowCo securities,” and on March 28 Applicant emailed the beneficiaries instructions for the official proof-of-claim form, with the resolution attached. Resolution ¶ 2 (Appendix D). Seventeen beneficiaries filed claims totaling \$18,525,974. Bankr. Docket No. 122 at 10 n.12 (Appendix I). On April 6 the Commissioner objected again on the same ground; on April 7 she filed the State’s own claim for \$16,578,690.33. Bankr. Docket No. 101 ¶¶ 17–24 (Appendix G). The Division’s investigator, Joseph Burtness, telephoned the investors listed in Applicant’s bankruptcy filings. Verification ¶ 7 (Appendix D).

The contempt motion. On April 14, 2026, at 8:55 in the morning of the Bankruptcy Court’s hearing on the amended disclosure statement, the Commissioner filed in the Denver District Court an ex parte motion for a contempt citation, signed for Mr. Finke as counsel of record. It charges a single violation of the injunction and identifies three acts: the January 13 Supplement, the March 27 resolution, and the March 28 email. It asks for imprisonment “of no less than 90 days, and as much as 179 days,” a \$25,000 fine, attorney fees, and orders that Applicant “rescind the offering,” tell every offeree he “may not participate in the offering or sale of securities for twenty (20) years,” and return any funds. Ex Parte Motion at 12–14 (Appendix D). The only sworn support is Mr. Burtness’s verification, which alleges no sale, no purchaser, no closing and no payment to Applicant. The citation issued the next day. On April 22 the Bankruptcy Court denied Applicant’s emergency motions to stop the investigation and the contempt proceeding, stating that he had not given it a copy of the contempt motion. Bankr. Docket No. 116 at 4 (Appendix H). On May 11 it dismissed the case and wrote: “Ultimately, whether Mr. McKowen’s conduct or proposed conduct violates the injunction contained in the State Court Judgment is a matter for the State Court to decide.” Bankr. Docket No. 122 at 19 (Appendix I). The dismissal is on appeal. McKowen v. Garvin, No. 1:26-cv-02108 (D. Colo.).

Counsel. Applicant is represented in the state court by counsel the court appointed. That lawyer’s practice is criminal defense and personal injury; it does not include securities law or bankruptcy law. The defense to the citation turns on both: on

what “participation in private securities transactions” means in the state Judgment, and on whether papers filed in, and instructions given to creditors in, a federal Chapter 11 case can be punished in a state court. No paper raising the federal questions described in this application has been filed in the state court, and the state court has said it is not inclined to act on one from Applicant himself while he has counsel. On July 31, 2026 it said it was “not inclined to take action on a motion to dismiss, which would essentially be a pro se filing from an individual who has indicated they do not want to proceed pro se.”

Transcript, July 31, 2026, at 32 (Appendix K).

REASONS FOR GRANTING THE APPLICATION

A single Justice grants an injunction pending appeal only where the legal rights at issue are “indisputably clear,” *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers), and a stay where there is a reasonable probability that the Court would take the question, a fair prospect of reversal, and a likelihood of irreparable harm. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). What this application rests on is indisputably clear because it is written in a federal judgment. The Paulson judgment barred further claims against Applicant arising out of the sale of GrowCo securities, and it reserved to the GrowCo investors their securities and their right to collect on them, including in a liquidation or a bankruptcy. Article VI makes that judgment binding on every state judge. Each of the three acts the State charges as contempt is a paper filed in a federal bankruptcy case, or a step toward one, through which those investors asserted the rights the judgment reserved. What is

open is why, with those things clear, no federal court has protected the rights the judgment established, and that is the question Part III asks the Court to take.

I. Article VI and the Paulson judgment. The Supremacy Clause, Article VI, clause 2 of the Constitution, provides that the laws of the United States “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” A judgment of a federal court entered under federal law carries that command with it. The Paulson judgment made two rulings that decide this application.

The first is the bar. The settlement the court approved is “intended to resolve and satisfy any and all claims that the Releasors have made or could have made against any of the Releasees arising out of the issuance or sale of GrowCo securities,” and calls for “a complete bar to any lawsuits or claims against the Defendants arising out of the issuance or sale of GrowCo securities.” Paulson, Docket No. 180, Settlement Agreement § 28 (Appendix L). Applicant was a defendant in Paulson and is named among the Releasees. *Id.*, Docket No. 180 at 43–44. The court ordered that the class members “are permanently enjoined and barred from asserting, initiating, prosecuting, or continuing any of the claims released by the Settlement Agreement.” Paulson, Docket No. 178 at 19. The Commissioner’s case against Applicant arises out of the sale of GrowCo securities, and by her own pleading every dollar of relief in it is sought “on behalf of the persons injured” — the investors who bought them. Complaint, *Chan v. Two Rivers Water & Farming Co.*, No. 2021CV33922, ¶ 214 and Prayer ¶ 2 (Appendix Z).

The second is the reservation. The same judgment reserved to the investors what it did not release. They “shall retain their GrowCo securities and are not releasing the limited claim for payment of their securities, including claims in the event of a GrowCo liquidation, including in the GrowCo Bankruptcy Action”; the released claims do “not include any claims for collection of any amounts due under the GrowCo securities pursuant to the terms of the securities”; and investors “who have assigned the securities to VitaNova Partners, LLC are not excluded as Class Members by virtue of such assignment.” Settlement Agreement §§ 1.g, 1.i, 1.cc (Appendix L). The final judgment repeats it: “The term Released Claims does not include any claims for payment of the Class Members’ securities, including claims in the event of a GrowCo liquidation.” Paulson, Docket No. 180 at 63, ¶ 12. And the court kept jurisdiction over “all further matters arising out of or connected with the Settlement Agreement, including its implementation.” Paulson, Docket No. 178 at 20.

The contempt the Commissioner seeks collides with both rulings. It enforces against Applicant a state judgment on claims arising out of the sale of GrowCo securities, and it punishes him for helping the investors exercise the right the federal judgment reserved: the resolution’s only operative event is each investor’s filing of a proof of claim asserting “their Paulson-preserved collection rights under the GrowCo securities,” and the email told them how to file it. The argument is not that the Commissioner was a party to Paulson. It is that a state judge, bound by Article VI, may not imprison a man for acting on rights a federal judgment preserved, or enforce against him claims that

judgment barred. The Bankruptcy Code points the same way: Congress's power over bankruptcy "is plenary," and when Congress has committed a matter to the bankruptcy courts "its Act is the supreme law of the land which all courts — State and Federal — must observe." *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940). The charged acts are a supplement to the disclosure statement filed in the Bankruptcy Court under 11 U.S.C. § 1125, a resolution whose only operative event is the filing of a proof of claim under 11 U.S.C. § 501, and an email telling creditors how to fill out the official proof-of-claim form. A state judge bound by federal law cannot imprison a debtor for what he filed in a federal court under federal law, or for helping creditors assert in that court what a federal judgment preserved. The Bankruptcy Court, with the Commissioner's two objections before it, declined to decide whether the plan violated the injunction and left the question to the state court. No federal court is scheduled to answer it before November 5.

II. The injunction's own words. The contempt also fails on the injunction's own words. These grounds show the contempt is unlikely to survive on its merits, which is why no sentence should be served while the federal question of who decides them is pending. The injunction reads in full: Applicant is "enjoined from any participation in private securities transactions in or from the state of Colorado for twenty (20) years." Judgment at 112 (Appendix E). It defines neither "participation" nor "private securities transactions," and the Colorado Court of Appeals has vacated part of an injunction the Commissioner's own office obtained for that defect: "The injunction must define such important terms or omit them." *Rome v. Mandel*, 2016 COA 192M, ¶ 71. The phrase

“private securities transaction” is not defined in the Colorado Securities Act. It is the securities industry’s own term for a trade by a broker’s associated person outside his firm: “No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule,” and a “private securities transaction” is “any securities transaction outside the regular course or scope of an associated person’s employment with a member.” FINRA Rule 3280(a), (e) (1). The rule defines the phrase for persons associated with a FINRA member; the injunction adopts no definition at all. The Judgment found that “[n]either McKowen or Harding held a license to sell securities at the time of the offerings.” Judgment at 21, ¶ 11. Four pages before the decree, the trial court wrote that it could not “say which offerings were strictly private and which offerings were more public.” Judgment at 108. An injunction that does not say what it forbids gives no fair warning, and a man cannot be imprisoned for crossing a line the court never drew. *Bouie v. City of Columbia*, 378 U.S. 347, 350–51 (1964).

The only content the Judgment gives those words is the test it applied to Applicant: an individual acting for an issuer, “effecting” a sale, for “transaction-based compensation.” Judgment at 103. The Judgment did not find the compensation element from any payment it identified as a commission. It inferred it: “The Court infers from these varying amounts that McKowen was receiving additional compensation based upon the number and amount of the investments he procured for GrowCo.” *Id.* at 104. The charged acts meet none of the test. No sale was effected: the plan bonds were to issue

under 11 U.S.C. § 1145 only after a plan was confirmed, and the Bankruptcy Court dismissed the case without confirming anything. Bankr. Docket No. 122 (Appendix I). No compensation is alleged. And the Judgment says an officer of the issuer is outside the licensing statute the injunction enforces: “Prior to McKowen’s resignation from his executive positions with Two Rivers in May 2016, McKowen could offer and sell GrowCo securities without running afoul of § 11-51-401.” Judgment at 103. VetaNova is the issuer of the plan bonds, Applicant is its sole director and chief executive, and the only sworn paper behind the contempt — the investigator’s verification — alleges no sale, no buyer, no closing and no payment to anyone. Verification ¶¶ 1–12 (Appendix D).

Nor do the facts alleged show willful disobedience, which a punitive contempt requires. Each charged act was part of a federal Chapter 11 case in which the Commissioner was appearing. The Supplement was a paper filed on that court’s docket. The resolution’s operative event is the filing of a proof of claim in that court, and the email told the deed-of-trust beneficiaries how to fill out that court’s official proof-of-claim form. On January 23, 2026, ten days after the Supplement and two months before the resolution and the email, Applicant told that court in writing that “the Plan Bonds and any related securities will not be offered or sold in Colorado, and no private placement transaction will occur in or from Colorado.” Bankr. Docket No. 79, quoted in Bankr. Docket No. 122 at 6 (Appendix I). A debtor who tells a federal court, before the resolution and the email, that nothing will be offered or sold in or from Colorado, and

who then acts only through that court's own claims process, has not set out to defy a state injunction.

III. The closed loop. The appeal presents a question this Court should decide: whether a federal court may abstain while a State jails a man for acting on rights the federal court's own judgment preserved, in the forum the federal court itself chose. The Anti-Injunction Act permits a federal court to enjoin state proceedings "to protect or effectuate its judgments." 28 U.S.C. § 2283. The Paulson judgment preserved the investors' claims for collection under their securities. The March 28 email and the resolution it carried told those investors how to assert exactly those claims, in exactly those words. The District Court designated *McKowen v. Harrington* as the place to decide whether its judgment was being violated, and then, when the State moved to jail the plaintiff in that case for acting on the judgment, abstained. *Mitchum v. Foster*, 407 U.S. 225, 243 (1972), holds that an express statutory exception gives the federal court power to act while "the principles of equity, comity, and federalism" continue to restrain it. Whether those principles permit a federal court to designate itself the forum, then abstain while the State punishes the plaintiff for invoking the judgment — a closed loop with no federal forum at either end — is a question neither court below addressed, and one on which the courts of appeals need this Court's guidance. The contempt proceeding closes the loop from the other end. The forum the District Court designated is a case Applicant prosecutes alone. A plaintiff serving 179 days in jail cannot prosecute it, and

the question the District Court sent there would go undecided because the State jailed the only party asking it.

IV. Retaliation for reporting state officials. The contempt proceeding is retaliation against a man who reported state officials to federal prosecutors, which is the exception Younger itself recognizes. Younger does not bar a federal court from acting where there is “bad faith, harassment, or any other unusual circumstance that would call for equitable relief.” 401 U.S. at 54. The Tenth Circuit asks whether the state proceeding “was frivolous or undertaken with no reasonably objective hope of success”; whether it was brought “in retaliation for the defendant’s exercise of constitutional rights”; and whether it “was conducted in such a way as to constitute harassment and an abuse of prosecutorial discretion, typically through the unjustified and oppressive use of multiple prosecutions.” *Phelps v. Hamilton*, 59 F.3d 1058, 1065 (10th Cir. 1995). The District Court rejected the exception because Applicant had offered allegations rather than evidence. The evidence is now in the State’s own papers.

First, the proceeding has no reasonably objective hope of success. The only sworn paper behind it alleges no sale, no purchaser, no closing and no payment to Applicant. The Judgment it enforces held that an officer of the issuer could offer the issuer’s securities without a license, and reached Applicant only by inferring transaction-based pay for the months after he resigned. Judgment at 103–04. VetaNova is the issuer of the plan bonds, Applicant is its sole director and chief executive, and no payment to him is alleged.

Second, the timing and the signer show retaliation for protected activity. Suing state officials in federal court and reporting suspected federal crimes to a United States Attorney are petitions to the government. Applicant named Mr. Finke as a defendant on May 13, 2025 and referred his office to the United States Attorney on July 29, 2025. The contempt motion is signed for Mr. Finke. The State did not seek contempt when it first told the Bankruptcy Court, on January 21, 2026, that the plan violated the injunction. It sought contempt on April 14 — after the investors had filed claims of \$18,525,974, more than the State’s own \$16,578,690.33, filed a week earlier; and while its own objection was still before the federal court.

Third, the State has proceeded on every front at once. Within twelve weeks it objected twice in the Bankruptcy Court, filed its own claim, sent its investigator to telephone the investors who were filing claims before any disclosure statement had been approved — conduct the Commissioner herself told the Bankruptcy Court was improper solicitation under 11 U.S.C. § 1125(b) when Applicant’s email did it, Bankr. Docket No. 101 ¶¶ 17–18 — and then went ex parte to a second court for imprisonment, asking for “as much as 179 days,” just under the six months beyond which the right to a jury attaches. *Codispoti v. Pennsylvania*, 418 U.S. 506, 512 (1974). This is the second time the Attorney General’s office has sought to hold Applicant in contempt. In April 2018 it obtained a contempt citation against him in a water case over a dam Two Rivers had agreed to remove; in August 2019 it dismissed its own citation with prejudice, telling the court its discovery “has not produced any evidence to show that Mr. McKowen retained

sufficient ability, either directly or indirectly, to control the funds or assets” of Two Rivers after he left. *People ex rel. Rein v. Two Rivers Water & Farming Co.*, No. 15CW3051 (Colo. Dist. Ct., Water Div. 2, Aug. 15, 2019) (Appendix Y). That is the “oppressive use of multiple” proceedings Phelps describes.

V. Due process. The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” A person may not be punished for violating a command unless the command told him beforehand that the conduct was forbidden: “a deprivation of the right of fair warning can result not only from vague statutory language, but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language,” and such an expansion “must not be given retroactive effect.” *Bouie v. City of Columbia*, 378 U.S. 347, 352, 354 (1964). The injunction defines none of its terms; the only content the Judgment gave them was its own test of an individual effecting a sale for transaction-based pay. The Commissioner asks the state court to apply it to a bankruptcy filing that sold nothing, and to order Applicant to tell every creditor he “may not participate in the offering or sale of securities for twenty (20) years” — words that appear nowhere in the decree. *Ex Parte Motion* at 14; *Judgment* at 112.

The Fourteenth Amendment was denied a second way, in the trial that produced the Judgment the State now enforces. “In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). The facts

alleged against Applicant were developed by the State's lawyers. The State designated no one who would answer for them, withheld the Division's referral memorandum, and told the court that the only person who could answer was the Assistant Attorney General who drafted the complaint; the court refused to compel anyone. Applicant was found liable without ever confronting the source of the case against him. A State may not imprison a man for violating an injunction entered on facts he was never permitted to test.

VI. Irreparable harm. The harm is irreparable and the date is fixed. The sanction sought is imprisonment of 90 to 179 days. Under Colorado practice a punitive contempt sentence may be executed from the bench. A term of imprisonment served cannot be returned by a later judgment of any court. The State told the Tenth Circuit on June 1 that Applicant "is not yet imprisoned." Response, No. 26-1190, Document 22 at 6. He is not. If the state court finds contempt on November 5, it may impose sentence that day. The Tenth Circuit denied interim relief on July 1 and, as of October 4, 2026, had not assigned the appeal to a panel.

Applicant has no lawyer in any of the cases this proceeding would interrupt. He represents himself in *McKowen v. Harrington*, where his motion for leave to file a second amended complaint against the State and its officers has been fully briefed since August 19, 2026; in this appeal; in his appeal from the dismissal of his bankruptcy case, *McKowen v. Garvin*, No. 1:26-cv-02108 (D. Colo.); and in his appeal from the state Judgment in the Colorado Court of Appeals, No. 2025CA1513, where the Commissioner has asked to extend the time for her answer brief to December 1, 2026. A sentence of 179

days beginning November 5 would run into May 2027. No one else can prosecute those cases for him. The contempt proceeding would accomplish from a jail cell what the State has not accomplished in any of them.

VII. The balance of harms. The balance of harms and the public interest favor a short injunction. The State loses nothing by waiting for the Tenth Circuit. The conduct charged is in documents already filed; no witness will be lost; the Commissioner waited twelve weeks after she first called the plan a violation before seeking contempt, and the hearing has already been moved once, from August 25 to November 5, without any suggestion of prejudice. On the other side is the liberty of a seventy-six-year-old Army veteran, and the public's interest in a rule that a person who reports state officials to federal prosecutors and sues them in federal court will not be jailed by those officials before a federal court can look at what they are doing.

VIII. What has changed since July 1. The application is not a renewal of what the Tenth Circuit decided on July 1. On July 31, 2026 the state court vacated the August 25 hearing and said it was not inclined to act on a motion from Applicant himself while he has counsel; the hearing is now set for November 5. No paper raising the federal questions has been filed for him since. In the District Court, his motion for leave to file the Second Amended Complaint has been fully briefed since August 19, 2026 and is undecided. What has not changed is that no federal court has decided whether the injunction reaches these acts. The Bankruptcy Court's May 11 order left that question to the state court, and no federal court is scheduled to decide it before November 5.

CONCLUSION

The application should be granted and the Commissioner and the State of Colorado enjoined, pending the decision of the Tenth Circuit in No. 26-1190, from imposing or executing any contempt sanction in Denver District Court No. 2021CV33922 arising from the January 13, 2026 Supplement, the March 27, 2026 resolution, or the March 28, 2026 email. In the alternative, the November 5, 2026 hearing should be stayed for the same period. If the application is referred to the Court, Applicant asks for an administrative stay of the hearing until the Court rules.

Respectfully submitted,



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Dated: October 5, 2026

APPENDIX

- A. Order, McKowen v. Harrington, No. 26-1190 (10th Cir. July 1, 2026), Document 42 (2 pp.)
- B. Minute Order, McKowen v. Harrington, No. 1:25-cv-00708 (D. Colo. Apr. 27, 2026), Docket No. 308 (3 pp.)
- C. Order, McKowen v. Harrington, No. 1:25-cv-00708 (D. Colo. Aug. 22, 2025), Docket No. 193 (14 pp.)
- D. Contempt Citation (Apr. 15, 2026), Ex Parte Motion for Issuance of Contempt Citation (Apr. 14, 2026), Verification of Joseph Burtness with Exhibits B–D (Exhibit B, the January 13, 2026 Supplement, first page only), and Amended Resolution of the Board of Directors of VetaNova Inc. (Mar. 27, 2026), Chan v. Two Rivers Water & Farming Co., No. 2021CV33922 (Denver Dist. Ct.)
- E. Findings of Fact, Conclusions of Law and Judgment, Chan v. Two Rivers Water & Farming Co., No. 2021CV33922 (July 9, 2025), pages 6, 21, 98, 103–04, 108 and 112
- F. Securities Commissioner’s Objection to Disclosure Statement, In re McKowen, No. 25-16665-KHT (Bankr. D. Colo. Jan. 21, 2026), Docket No. 74 (4 pp.)
- G. Securities Commissioner’s Objection to Amended Combined Disclosure Statement and Plan, In re McKowen, Docket No. 101 (Apr. 6, 2026) (11 pp.)
- H. Order Denying Emergency Motions, In re McKowen, Docket No. 116 (Apr. 22, 2026) (5 pp.)
- I. Order Denying Approval of Disclosure Statement and Dismissing Bankruptcy Case, In re McKowen, Docket No. 122 (May 11, 2026), pages 1, 3, 6, 10, 19–20 and 23
- J. Minutes of Proceeding, In re McKowen, Docket No. 84 (Feb. 12, 2026)
- K. Transcript of Status Conference, Chan v. Two Rivers Water & Farming Co., No. 2021CV33922 (July 31, 2026), pages 32 and 34
- L. Paulson v. Two Rivers Water & Farming Co., No. 1:19-cv-02639 (D. Colo.): Settlement Agreement §§ 1.g, 1.i, 1.cc, 1.ee and 28, the list of Releasees at pages 43–44, and the Final Order at page 63, ¶ 12 (Docket No. 180); Final Approval Order, pages 19–20 (Docket No. 178); Order of April 18, 2025, pages 4–6 (Docket No. 199)
- M. Appellant’s Emergency Motion Under Fed. R. App. P. 8(a)(2), No. 26-1190, Document 6 (May 21, 2026), first page; State Defendants’ Response, Document 22 (June 1, 2026), pages 1 and 6
- N. Letter of Volant Law LLC to Investigator Christina Calabrese, Colorado Division of Securities (July 13, 2018)

O. Notice of Criminal Referral Filing and Exhibit 95 (criminal referral to the United States Attorney, July 29, 2025), No. 1:25-cv-00708, Docket Nos. 167, 167-1 (Aug. 7, 2025); Appellant's Notice of Criminal Referral, No. 26-1190, Document 38 (June 12, 2026)

P. Amended Closing Argument of John McKowen, Chan v. Two Rivers Water & Farming Co., No. 2021CV33922 (Aug. 21, 2023), page 4 (¶ 13)

Q. Stipulation for Injunction and Other Relief (May 5, 2023) and Order of Injunction and Other Relief (May 9, 2023), Chan v. Two Rivers Water & Farming Co., No. 2021CV33922

R. Letter of Greg Harrington, CEO, Two Rivers Water & Farming Company, to Commissioner Tung Chan, copied to India Kidd-Aaron (Feb. 2, 2024)

S. Two Rivers and TR Capital's Response to Defendant McKowen's Amended Motion for Contempt of Court, No. 2021CV33922 (Apr. 11, 2024), paragraph 20

T. Share Exchange Agreement between Easby Land & Cattle Company, LLC and Two Rivers Water & Farming Company (Feb. 22, 2019); Two Rivers Form 10-Q for the quarter ended Sept. 30, 2019, Note 8; In re Two Rivers Water & Farming Co., Exchange Act Release No. 95549 (Aug. 18, 2022), pages 1–2

U. Rule 30(b)(6) Deposition of the Securities Commissioner, Representative Joseph Burtness (Mar. 13, 2023), pages 14–15, 57, 61; Reporter's Transcript, Volume V, Chan v. Two Rivers Water & Farming Co. (July 14, 2023), pages 56–58 and 65–66

V. Applicant's Motion to Reconsider and Vacate (May 12, 2023) and the Commissioner's Response (May 19, 2023), No. 2021CV33922

W. Email of Jennifer Hunt, Senior Assistant Attorney General, to John McKowen and India Kidd-Aaron, "RE: Settlement Discussions" (Jan. 19, 2023), with Applicant's email of the same date

X. Motions to Withdraw of Buechler Law Office, LLC, In re The Orlando Reservoir No. 2 Co., No. 23-13178-KHT, Docket No. 214 (Nov. 26, 2024), and In re Two Rivers Farms F-2, Inc., No. 23-15627-KHT, Docket No. 192 (Mar. 12, 2025); docket pages of both cases showing the entries cited

Y. State's Unopposed Motion to Dismiss Contempt Citations Issued to John R. McKowen and William M. Gregorak, and Order Granting It, People ex rel. Rein v. Two Rivers Water & Farming Co., No. 15CW3051 (Colo. Dist. Ct., Water Div. 2, Aug. 15, 2019)

Z. Complaint for Injunctive and Other Relief, Chan v. Two Rivers Water & Farming Co., No. 2021CV33922 (Denver Dist. Ct. Dec. 10, 2021), pages 1, 28 and 31 (caption, ¶ 214 and Prayer ¶ 2)

AA. Colorado Judicial Branch public docket search, Chan v. Two Rivers Water & Farming Co., No. 2021CV33922: Hearing on Citation, November 5, 2026, 10:00 a.m., Courtroom 259, Denver District Court (captured Oct. 4, 2026) (1 p.)

APPENDIX A

Order, McKowen v. Harrington, No. 26-1190 (10th Cir. July 1, 2026), Document 42
(2 pp.)

**Additional material
from this filing is
available in the
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