

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO**

FILED

VANESSA L ARMSTRONG, CLERK

Apr 03 2020

U.S. DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

COMMONWEALTH OF KENTUCKY)

Ex Parte)

NEELY PETRIE-BLANCHARD)

Petitioner)

vs.)

MIKE LOUIS, Hopkins County, KY Jail)
Superintendent; COMMONWEALTH OF)
KENTUCKY; SUSAN BLANCHARD;)
OTHER STATE OFFICIALS UNNAMED)
OTHER COUNTY OFFICIALS UNNAMED)

Respondents)

CASE NO. 4:20-CV-00049

**AMENDED CORRECTED
PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. 2241**

Senior Judge J.H. McKinley, Jr.

**MOTION TO RECUSE OR DISQUALIFY & INCORPORATED
MEMORANDUM OF LAW**

Comes now John A Gentry, "next friend" on behalf of Petitioner NEELY PETRIE-BLANCHARD, pursuant to 28 U.S. Code Section 455(a): Disqualification of justice, judge, or magistrate, Plaintiff respectfully requests The Honorable Joseph H. McKinley, Jr., Senior Judge to recuse or disqualify himself from these proceedings, due to facts strongly suggesting: (1) actual bias, (2) loss of impartiality, (3) conduct that is plausibly in violation of The Code of Conduct For Federal Judges, and (4) conduct that is in violation of oath of office, and U.S. Constitution; Amendment XIV, §1, Art. VI, § 1 and 2, and Art. I, § 9 cl. 2 rendering him constitutionally incompetent.

Pursuant to 28 U.S.C. § 455(a): Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. Pursuant to Local Rule, this motion is filed with an incorporated memorandum of law.

In Rule 59(e) Motion To Alter or Amend, Petitioner has presented facts in his Memorandum Opinion and Order that evidence plausibly suggesting the Senior Judge has engaged in conduct that falls squarely under one or more of the following doctrine of ineptness in the application of judicial function. Plaintiff also respectfully asserts the Senior Judge's conduct is in violation of The Code Of Conduct For Federal Judges and federal constitution provisions. As stated in the Petitioner's Motion to Alter, filed concurrently with this motion on April 3, 2020;

It was an **omissive error of the District Court Judge** to quote Next Friend as stating; "... *no longer republican in form.*" **Next Friend actually stated** on behalf of Petitioner; "*due to the incontrovertible fact that the Commonwealth of Kentucky is no longer republican in character or form.*" For the Court to use quotation mark punctuation in an ORDER, designating words as an exact quote, and then to omit the words "character or", not only changes the meaning of a compliant substantiating that there is no "*state corrective process*", **but such error, placed "in footnote", strongly evidences bias of the District Court Judge against Next Friend and Petitioner.**

It is the duty of United States officials including federal judges to uphold the guarantee of a republican form of government pursuant to the United States Constitution, Article IV, § 4. Petitioner has made such guarantee demand in her pleading. See Docket Entry 7, PageID 57, ¶5 and Page ID 61, ¶ 16. Without any apparent consideration, or request for further briefing, The Honorable Senior Judge Joseph H. McKinley, has stated such argument is "*without merit as well as frivolous*". As clearly evidenced by facts, this issue raised by Petitioner is clearly **not** "*without merit as well as frivolous*". See the section *THE COMMONWEALTH OF KENTUCY IS NO LONGER REPUBLICAN IN CHARACTER OR FORM* of Motion to Alter or Amend, filed concurrently with this motion and attached exhibits. As further stated in that section of the Motion to Alter or Amend;

Due to the incontrovertible fact that Next Friend's Remonstrance was received and recorded in the journals of the Tennessee General Assembly, is prima facie evidence that the complaint of a government no longer republican in character or form **is not frivolous or without merit**. The same issues of a government that oppresses a right of petition by address or remonstrance and that has unlawfully altered its form of government removing the check of one branch over the other of the judiciary are the same issues raised in Tennessee Petition of Remonstrance and the same issues raised in Petition for Writ of Habeas Corpus

Although Next Friend's Tenn. Petition of Remonstrance was announced on the floors of both houses, the Petition of Remonstrance was not read on the floor as required by House and Senate Rules of Order. Since the Petition of Remonstrance was not read on the floor, Next Friend filed a Petition for Writ of Mandamus in the Davidson County Tennessee Chancery Court. That matter is now before the Tennessee Court of Appeals at Nashville. In the Tennessee Court of Appeals, Next Friend filed Notice of Non Consent pursuant to Tennessee Constitution, Article VI, § 11 as well as a Tennessee Supreme Court, Rule 10B motion to disqualify all Tenn. Ct. of App. judges. In answer to his Rule 10B motion, the Court of Appeals agreed they had a **conflict of interest due to the gravamen of the case**, and the issues raised in Next Friend's Petition of Remonstrance. Attached as **EXHIBIT B** is a copy of the ORDER admitting conflict of interest. Due to this undeniable fact of written order by the Tennessee Court of Appeals at Nashville, the issue raised by Next Friend on behalf of Petitioner, evidence that Next Friend's complaint of a government no longer republican in character or form **is not frivolous or without merit**.

Next Friend has also brought the matter of a government not being republican in character for the reasons stated in remonstrance to the U.S. Dist. Ct MD Tenn. Case No 3:17-CV-0020, U.S. Sixth Circuit Case No 17-6171, and Supreme Court of the United States Case No 18-170. Not in any court, state or federal, and not in any legislative house, has any state of federal official referred to Next Friend's pleadings or motions as "frivolous and without merit", regarding the character of a state government.

This Court and every official of the United States, should be gravely concerned when the character of a state government is questioned pursuant to U.S. Const. Art. IV, §4 since that is the very purpose of our federal government. Neither this Court, nor the Commonwealth of Kentucky can show that the right of Kentucky citizens to petition for redress of grievances, or other proper purposes by petition, address or remonstrance has been exercised and upheld in more than one hundred years. With such right unknown to the people of Kentucky, that right is oppressed and forsaken by the Commonwealth of Kentucky. In Cruikshank, the Supreme Court stated: "*the very*

idea of a government, republican in form, implies a right of its citizens to petition for redress of grievances.” United States v. Cruikshank, 92 US 542, 23 – Sup. Ct, 1876 (at 553).

So too, neither can this Court, nor the Commonwealth of Kentucky show that there is any objective oversight of the Kentucky judiciary. The Kentucky Judicial Commission has an overall ninety-seven percent (97%) dismissal rate of all complaints filed against Kentucky judges, and a one-hundred percent (100%) percent dismissal rate of complaints filed by non-legal professionals (the people) against judges, subjecting the good people of Kentucky to tyrannical judges like those giving rise to this case.

The Honorable Senior Judge Joseph H. McKinley, must know that citizens have no means to exercise their Kentucky Constitution, Bill of Rights, Clause Six right of petition, and the fact that the right of petition has not been exercised or upheld in recent history. This should raise great concern for a constitutionally competent federal judge. The Honorable Senior Judge Joseph H. McKinley, must know that there is no check of one branch over the other of the judiciary and no objective oversight of the judiciary. Knowing these things, and with his own omissive error, and with stating such argument is “*without merit as well as frivolous*” not only renders him constitutionally incompetent, but strongly evidences bias.

Petitioner herein and above does not question the rulings of the Senior Judge, Petitioner questions whether or not the Senior Judge has attempted to subvert her and deny her due process, and deny her a government that is republican in character and form. Petitioner contends, whether or not Petitioner’s concerns are in fact true or not is irrelevant: there is an appearance her concerns might be true, and her concerns are more than just plausible. In the case, *Liljeberg v. Health Services Acquisition Corp.*, 486 US 847 - Supreme Court 1988, the Supreme Court referred to a fifth circuit case that established a “violation of § 455 is established **when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of**

circumstances creating an appearance of partiality..." Plaintiff asserts a reasonable person, and especially a legal professional, would draw the same conclusions and have the same concerns as Petitioner. Specifically, the US Supreme Court Stated:

In the present case, the Court of Appeals for the Fifth Circuit concluded that **a violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. Moreover, although the judgment in question had become final, the Court of Appeals determined that under the facts of this case, the appropriate remedy was to vacate the court's judgment. We granted certiorari to consider its construction of § 455(a) as well as its remedial decision. 480 U. S. 915 (1987). We now affirm. (at 850)**

Again, whether or not Plaintiff's concerns are in fact true or not is irrelevant. The US Supreme Court concurs with this assessment in *Liteky v. United States*, 510 US 540 - Supreme Court 1994 as follows:

Subsection (a), the provision at issue here, was an entirely new **"catchall" recusal provision, covering both "interest or relationship" and "bias or prejudice" grounds**, see *Liljeberg v. Health Services Acquisition Corp.*, 486 U. S. 847 (1988)— but requiring them all to be evaluated on an objective basis, **so that what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal was required whenever "impartiality might reasonably be questioned."**

What effect these changes had upon the "extrajudicial source" doctrine— whether they in effect render it obsolete, of continuing relevance only to § 144, which seems to be properly invocable only when § 455(a) can be invoked anyway— depends upon what the basis for that doctrine was. Petitioners suggest that it consisted of the limitation of § 144 to "personal bias or prejudice," bias or prejudice officially acquired being different from "personal" bias or prejudice. **And, petitioners point out, while § 455(b)(1) retains the phrase "personal bias or prejudice," § 455(a) proscribes all partiality, not merely the "personal" sort. (at 548)**

Petitioner asserts the Senior denied Plaintiff equal access to the court by denying Next Friend status to John A Gentry, and plausibly made an attempt to subvert Petitioner's case by determining that Petitioner's challenge to the republican character of the Commonwealth of Kentucky was "without merit as well as frivolous". Plaintiff invokes the canon of constitutional doubt.

In the concurrently filed Motion to Alter or Amend section, *NEXT FRIEND JOHN ANTHONY GENTRY HAS OR SHOULD HAVE NEXT FRIEND STANDING*, Next Friend demonstrated the unnecessary burden placed upon the Petitioner caused by the Court's denial of next friend status to John A Gentry.

Plaintiff's has also asserted there is a strong indication that the Senior Judge intentionally denied an Emergency Habeas Hearing, without consideration of the pleading. See Docket Entry 6 Second Emergency Motion For Habeas Hearing evidencing that The Honorable Senior Judge Joseph H. McKinley had determined to dismiss the case at the outset, and before consideration of pleadings.


WHEREFORE, PREMISES CONSIDERED, PETITIONER ENTREATS:

1. That The Honorable Senior Judge Joseph H. McKinley recuse and/or disqualify himself from these proceedings due to an appearance of bias and loss of impartiality and for conduct that is plausibly in violation of The Code Of Conduct For Federal Judges, as well as constitutional incompetency.
2. That no orders issue on Motion To Alter pending The Honorable Senior Judge Joseph H. McKinley's pending granting or denial of Petitioner's 28 U.S.C. § 455 Motion herein.

3. That this case be reassigned to another judge presiding in the IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY AT OWENSBORO;
4. That if this motion for recusal/disqualification be denied, that The Honorable Senior Judge Joseph H. McKinley state in writing, his legal basis for denying recusal, and state in writing how his conduct was not impeachable in nature, or in violation of The Code of Conduct For Federal Judges, or not constitutionally incompetent, and provide justification for stating Petitioner's challenge of the Commonwealth not being republican in character or form is "without merit as well as frivolous", and for misquoting Next Friend in footnote.
5. That all of The Honorable Senior Judge Joseph H. McKinley previous orders be reconsidered under a standard of *de novo* review rather than under a standard of "clearly erroneous."

Respectfully submitted,

JOHN ANTHONY GENTRY, CPA, *sui juris*



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Next Friend for Petitioner,
NEELY PETRY-BLANCHARD

Verification Next Friend John Anthony Gentry acting on Petitioner's behalf

pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's Next Friend. I have discussed with the Petitioner the events described in this Petition. I have also personally reviewed court filings, and court orders upon which this motion is based. On the basis of those discussions, court filings, and court orders, I hereby verify that the statements made in the attached Motion To recuse or Disqualify are true and correct to the best of my knowledge.

Dated: April 3, 2020



John A. Gentry
Next Friend for Petitioner