

IN THE SUPREME COURT OF THE UNITED STATES

IN RE:)	
)	
TENNESSEE SUPREME COURT)	No. _____
RULE 10B)	
)	Tennessee Supreme Court No.
<i>Res</i>)	W2024-00932-SC-UNK-CV
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**CORRECTED APPLICATION FOR EXTENSION TO FILE PETITION OF
CERTIORARI**

COMES NOW, applicant, Larry E. Parrish (“Applicant”), a member of the Bar of this Court since April 14, 1980, pursuant to *Rules Of The Supreme Court Of The United States*, Rule 30.3, and applies for an extension of time within which to file a petition for a writ of certiorari.

This is a corrected Application pursuant to the November 7, 2024 letter from The Honorable Scott S. Harris, by Redmond K. Barnes, received by Applicant on November 20, 2024. The need for the correction is the failure to append copies of the orders of the Tennessee Supreme Court to the uncorrected Application. The Tennessee Supreme Court orders are hereto appended.

The currently fixed time by which Applicant is required to file a petition for writ of certiorari in this Court is November 11, 2024. There have been no prior applications for an extension to file a petition for a writ of certiorari.

Applicants respectfully request an additional fifty-three (53) days, up to and through December 28, 2024, within which Applicants must have filed Applicants’ for writ of certiorari, if the necessity remains.

The **question to be presented** is: Because it is a structural constitutional right, can any

litigant for any reason agree, by waiver or can a State for any reason forfeit any litigant's undeniable Fourteenth Amendment structural due process right to be adjudicated by no person other than a constitutionally qualified judge?

Otherwise stated, is the right that no person other than a constitutionally qualified judge can adjudicate, in a court, any litigant's claims a structural right of the public, rather than a personal right of the litigant; therefore, is the litigant constitutionally forbidden to waive and the state constitutionally forbidden to statutorily forfeit the right, no different from a litigant being forbidden to waive or a state to forfeit the public's structural right that only courts with subject matter jurisdiction can render orders and judgments?

In In re Tennessee Supreme Court Rule 10B, No. W2024-00932-SC-UNK-CV (Tenn. Aug. 13, 2024). A copy of the August 13, 2024 final order of the Tennessee Supreme Court denying Applicant's petition to the Tennessee Supreme Court is **appended to this Application.**

The Tennessee Supreme Court held as follows:

Parrish argues that this requirement is facially unconstitutional because a party's right to a fair and impartial judge is a "structural right" that the party cannot forfeit or waive by failing to file a timely motion.

To assert a facial challenge, however, the petitioner "must establish that no set of circumstances exist under which the [statute or rule] would be valid." *Lynch v. City of Jellico*, 205 S. W.3d 384, 390 (Tenn. 2006). The fact that the statute or rule might operate unconstitutionally under some plausible set of circumstances is insufficient to render it facially unconstitutional. *See id.*

Parrish cannot carry his "heavy legal burden," *id.*, of showing that Rule 10B is unconstitutional in all its applications. This Court has repeatedly underscored the "well-settled" rule in this State that a party can waive the right to seek a judge's disqualification or recusal

by not timely seeking relief. (citations omitted). Rule 10B requires a fact-intensive, case-specific inquiry to determine whether a party timely sought recusal or disqualification. Parrish cannot show that Rule 10B is unconstitutional in all its applications, as is required to prevail on a facial challenge. In fact, this Court has held in at least one case that a trial judge's recusal was required even though the parties did not file a recusal motion. *See, e.g., Cook*, 606 S.W.3d at 254. Even if Parrish could point to hypothetical circumstances in which Rule 10B might unconstitutionally prevent a party from obtaining a trial judge's recusal – a showing he has not made – it would not establish that Rule 10B is facially unconstitutional.

Parrish's primary legal authority, *Williams v. Pennsylvania*, 579 U.S. 1 (2016), is not to the contrary. In *Williams*, the United States Supreme Court held that a post-conviction petitioner who *did* timely seek recusal of an appellate judge was not required to show that the judge's unconstitutional involvement affected the outcome of his appeal to obtain relief. *Id.* At 15-16. *Williams* does not excuse a party from timely raising a recusal objection.

Accordingly, Parrish's petition challenging the constitutionality of Tennessee Supreme Court Rule 10B is hereby denied. The costs are taxed to Larry E. Parrish, for which execution may issue if necessary.

A petition to rehear was filed, which the Tennessee Supreme Court denied on September 9, 2024. **The order of the Tennessee Supreme Court denying Applicant's Petition To Rehear is attached.**

The reason Applicant requests a fifty-three (53) day extension is because, in Larry E. Parrish, P.C. v. Nancy Strong, No. M2024-01141-SC-T10B-CV (Sept. 30, 2024), the Tennessee Supreme Court held as follows:

Applicant's arguments that Rule 10B's appeal deadline is facially unconstitutional fail for the reasons stated in *In re Tennessee Supreme Court Rule 10B*, No. W2024-00932-SC-UNK-CV (Tenn. Aug. 13, 2024).

Applicant intends file a petition for certiorari seeking a review of the Tennessee Supreme Court's decision in Larry E. Parrish, P.C. v. Nancy Strong, No. M2024-01141-SC-T10B-CV (Sept.

30, 2024). The date by which this petition is due is December 28, 2024. Applicant wishes file both petitions at the same time for the convenience of the Court. December 28, 2024 is 53 days from today.

If the Court is not inclined to grant a fifty-three (53) day extension, Applicants request the Court to grant an extension up to a date as near fifty-three (53) days as the Court deems reasonable.

Synopsis Of Authority

Literature on point includes Lauren Keane, Williams v. Pennsylvania: The Intolerable Image of Judicial Bias, 49 Loy. U. Chi. L.J. 181 (2017); Zachary L. Henderson, A Comprehensive Consideration of the Structural-Error Doctrine, 85 Mo. L. Rev. 965 (2020).

Applicant is compelled by Williams v. Pennsylvania, 579 U.S. 1 (2016) (“Williams Case”) stating as follows (136 S. Ct. at 1902):

An unconstitutional failure to recuse constitutes structural error that is “not amenable” to harmless-error review, regardless of whether the judge's vote was dispositive, *Puckett v. United States*, 556 U.S. 129, 141 (2009); *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907–08, 198 L. Ed. 2d 420 (2017); *Neder v. United States*, 527 U.S. 1, 8 (1999); *Ruelas v. Wolfenbarger*, 580 F.3d 403, 410 (6th Cir. 2009); *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008); *Cottingham v. Cottingham*, 193 S.W.3d 531, 537 (Tenn. 2006); *Tumey v. Ohio*, 273 U.S. 510, 535 (1927). (emphasis added)

[at 579 U.S. 1, 14-16, 136 S. Ct. 1899, 1909-10]

In past cases, the Court has not had to decide the question whether a due process violation arising from a jurist’s failure to recuse amounts to harmless error if the jurist is on a multimember court and the jurist’s vote was not decisive.

The Court has little trouble concluding that a due process violation arising from the participation of an interested judge is a defect “not amenable” to harmless-error review, regardless of whether the

judge's vote was dispositive. *Puckett v. United States*, 556 U. S. 129, 141, 129 S. Ct. 1423, 173 L. Ed. 2d 266 (2009) (emphasis deleted in original).

Chief Justice Castille's participation in Williams's case was an error that affected the State Supreme Court's **whole adjudicatory framework below**. (Emphasis added)

Applicant will contend that Rule 10B, on its face and irretrievably, creates impediments that prevent litigants from access to litigants' right that no person other than a constitutionally qualified judge can adjudicate a litigant's case.

On the face of Rule 10B, a litigant, by a ministerial miscue in timing (which is ambiguously defined) can be deemed to have waived the non-waivable Fourteenth Amendment due process right to be adjudicated by no person other than a constitutionally qualified judge.

Concomitantly, Rule 10B makes way for constitutionally unqualified judges to adjudicate a litigant's case, and the litigant have no recourse, once the litigant brings the disqualification to the attention of a court, i.e., the litigant will be turned away because the litigant will have "waived" the litigant's right to the litigant's non-waivable Fourteenth Amendment due process right to be adjudicated by no person other than a constitutionally qualified judge.

This Court in Trump v. United States, 603 U.S. 593, 144 S. Ct. 2312 (2024) commented as follows:

Held: Under our **constitutional structure**

at *599

Transforming the political process of ... support in the text of the Constitution **or the structure** of the Nation's Government.

Transforming that political process ... finds little support in the text

of the Constitution or the structure of our Government.

But unlike anyone else, the President is a branch of government, and the Constitution vests ... as the Framers anticipated ...; it preserves the basic structure of the Constitution from which that law derives.

THOMAS, concurring.

I write separately to highlight ... may violate our constitutional structure.

The dissenting Justices focused on pragmatic considerations likely to be the outflow of strictly preserving the structure. The pragmatics were not to be sufficient reason to sacrifice or compromise the structure.

Respectfully Submitted,
PARRISH LAWYERS, P.C.
Counsel for Applicants



By: _____

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CERTIFICATE OF SERVICE

I, Larry E. Parrish, do hereby certify that, on November 20, 2024, I have forwarded a true and exact copy of the foregoing Corrected Application For Extension To File Petition Of Certiorari, by email to:

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