

Comes now the Petitioners Burt Newsome and Newsome Law, LLC and for Response to Respondents Balch & Bingham LLP's and Clark Cooper's Motion to Dismiss and Preliminary Opposition to Petition for Writ of Mandamus and Opposition To Motion to Strike states as follows:

I. The Transcript From The Hearing On Plaintiff's Motion To Recuse Judge Smitherman Confirms Roger Smitherman Sat In Sealed Court Hearings After Receiving Campaign Contributions From Various PAC's and Other Entities Associated With Balch & Bingham, LLP.

Judge Smitherman, on page 7 of the hearing transcript from Plaintiffs' Motion To Recuse (see Exhibit 1), attempts to explain her husband's presence at sealed court hearings by stating that he had come by to take her to the doctor. This explanation appears hollow to explain his appearance inside multiple sealed court hearings, some that lasted well over an hour. Under Balch and Bingham's (or "Balch") and Judge Smitherman's legal theory, Judge Smitherman can unseal the Alacourt records and have open court hearings when Balch thinks it is winning the case and then seal the Alacourt records and close the hearings when Balch thinks it is losing case. Furthermore, Judge Smitherman can clear the courtroom

before each hearing of anyone who is not a party and/or an attorney for one of the parties unless it is someone who has received contributions from Balch and is favorable to Balch. A reasonable and objective person could conclude that conducting the hearings in this case in the manner detailed above evidences bias and a lack of impartiality that calls for the disqualification of Judge Smitherman.

Furthermore, the transcript of the hearing on Plaintiffs' Motion To Recuse was taken at the request of Balch & Bingham, LLP. After the hearing, Plaintiffs requested the name of the Court Reporter from the attorney for Balch & Bingham, LLP and Judge Smitherman's office. Neither Balch nor Judge Smitherman would give Plaintiffs' the name of the Court Reporting Agency that transcribed the hearing - leaving Plaintiffs to call each Court Reporting Agency in Birmingham until it found the one that transcribed the hearing. See Exhibit 2. A simple reading of the transcript, and the bias it evidences against Plaintiffs and the vituperative conduct of Judge Smitherman towards Plaintiffs, shows why Balch and Judge Smitherman did not want the transcript to come into evidence.

II. Judge Smitherman's Assertions That, Even Though Her and Her Husband Face No Opposition To Re-Election And The Deadline For Anyone To Even Qualify To Run Against Them Has Expired, That They Still Need Money To Campaign And Are Endanger of Losing Their Re-Election, Are Simply Absurd.

Judge Smitherman, on page 10 of the hearing transcript from the Motion To Recuse, states that the fact that neither she nor her husband have an opponent running against them in either of their re-election campaigns "has nothing to do with a campaign." One would think that a campaign against an actual opponent would be more expensive and require more effort by the candidate than someone who is running unopposed. Judge Smitherman implies that her and husband are endanger of losing re-election even though they have no opposition by stating that, "A campaign is not over until the votes are certified by the Secretary of State in November."

The contributions by Balch and its allies to the Smithermans were not used to campaign against imaginary opposition. Some of the money was used for a trip by the Smithermans to the Hard Rock Hotel and Casino in Biloxi, Mississippi. See Exhibit 2A. Judge Smitherman dismissed Plaintiffs' complaint upon returning from this Biloxi trip 29

days **before** the hearing set on this motion and before the Plaintiff had even filed his response. See Exhibits 3 and 4. Some of the money was also paid to the Smitherman's daughters. See Exhibit 2A. This is parallel to the Oliver Robinson case as Balch was paying Oliver Robinson's daughter as well. See Exhibits 3 and 5. A reasonable and objective person could conclude that these monetary contributions to the Smithermans improperly influenced Judge Smithermans rulings in this case and calls for the disqualification of Judge Smitherman.

III. Judge Smitherman Falsely Accuses Plaintiffs Of Distorting The Facts Regarding the Suppression Of Evidence And Obstruction Of Justice By Robert Ronnlund, Attorney for Co-Defendant Claiborne Seier.

Judge Smitherman, on page 5 of the transcript from the hearing on the Plaintiffs Motion for Recusal, states that Plaintiffs "are distorting the facts" as it relates to the suppression of evidence by the attorney for Claiborne Seier in this case. Plaintiffs subpoenaed AT&T for all phone numbers associated with John Bullock (see Exhibit 6) during certain specified key dates in the case. When AT&T did not respond to said subpoena, Plaintiff subpoenaed AT&T for certified copies

of any and all communications between AT&T and any parties to this case or their attorneys that requested AT&T not to comply with said subpoena. See Exhibit 7.

AT&T responded to this second subpoena with a letter from the attorney for Co-Conspirator Claiborne Seier, Robert Ronnlund, to AT&T in which **Ronnlund falsely stated** that an objection to Newsome's subpoena was pending in the Circuit Court and directing AT&T not to send any records associated with five different phone numbers of John Bullock's to the Plaintiffs. (See Exhibit "8") Attached is an Order entered by Judge Smitherman on October 31, 2016 where she clearly states that no objection to the AT&T subpoena had ever been filed with the Court. See Exhibit 9. The five numbers of Bullock's that Seier's attorney did not want Plaintiffs to have the phone records on were not listed on Plaintiffs subpoena nor did Plaintiffs have any knowledge of those numbers. Since Plaintiffs had no knowledge of these numbers, they had to come from John Bullock's attorney, Jim Hill, and/or John Bullock himself.

Ronnlund recently filed a pleading blaming all of this on his paralegal and stating that the letter sent to AT&T was not signed by him. See Exhibit 10. He fails to address where

and how his paralegal came up with the five specific numbers that he wanted AT&T to suppress from Plaintiffs. Judge Smitherman, by ignoring this suppression of evidence and falsely stating that Plaintiffs are distorting what happened, is complicit in it. This is judicial misconduct and calls for her disqualification.

IV. Judge Smitherman's Orders Dated June 15, 2018 Were Entered In Anger And Are Due To Be Stricken.

Approximately two and one-half hours after being served with Plaintiffs Writ of Mandamus Seeking Her Recusal, Judge Smitherman systematically fired out 44 Orders, all rulings for the Defendants. In addition to granting all of the Defendants summary judgment motions, Judge Smitherman gave each individual Defendant **14 days** to file their own motions for attorney fees to be assessed against Plaintiffs. See Exhibits 11, 12, 13, and 14. Judge Smitherman gave the Plaintiffs a mere **7 days** to respond to all 4 separate motions that were filed by the Defendants. See Exhibits 15, 16, 17, and 18. This clearly evidences that these Orders were entered in anger and were biased against Plaintiffs and calls for the recusal of Judge Smitherman. The above is in addition to Judge

Smitherman entering Orders striking evidence as untimely that was filed by Plaintiffs before the deadline for filing, entering Orders ruling in favor of the Defendants before the date of the hearings set for said motions and before Plaintiffs have even had the chance to file a responsive pleading, and entering an Order requiring Plaintiffs response to Defendants Summary Judgment Motions be filed on a date that **precedes** the Order setting such date. See Exhibits 3, 19, 20, 21 and 22.

V. Defendants Attribution To Plaintiffs Of Balch's Negative Media Coverage By The CDLU And Others Is Ludicrous.

Newsome did not know about the CDLU (Consejo de Latinos Unidos) nor have any acquaintance with, professional or personal, the CDLU leadership until the late fall of 2016, when Newsome met K.B. Forbes, the Executive Director of the CDLU, for the first time ever at a charity event. Newsome has never donated to or financially backed the CDLU nor does he have exert any control or influence over the content of its web pages or the causes it undertakes. One need look no further than www.al.com for a significant amount of negative coverage of Balch & Bingham. See Exhibit 23. The conduct being

written about is strikingly similar to what has occurred in this case.

VI. Conclusion

A writ of mandamus is the proper method to review the trial court's denial of a motion to recuse. See *Ex Parte City of Dothan Personnel Board*, 831 So.2d 1 (Ala.2002) and *In re BellSouth Corporation*, 334 F.3d 941 (11th Cir.2003).

As a result of all of the above mentioned, and when viewing the circumstances and the manner in which Judge Smitherman has conducted these proceedings in their totality, Petitioners request that the Orders entered by Judge Carole C. Smitherman on June 15, 2018 and all other Orders entered by Judge Smitherman in this case be declared null and void and she be recused from this case.

Respectfully submitted this the 2nd day of July,
2018.

/S/ Burt w. Newsome
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and Burt W. Newsome