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No. 25-355

JAMES DONDERO, *et al.*,

Petitioners,

v.

STACEY JERNIGAN, *et al.*,

Respondents.

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on October 24, 2025, three (3) copies of the BRIEF OF *AMICI CURIAE* UNIFY.US, AMERICA FIRST POLICY INSTITUTE, CONSERVATIVE POLITICAL ACTION COALITION (CPAC), FAITH & FREEDOM COALITION, DUE PROCESS INSTITUTE, 60 PLUS ASSOCIATION, CHRISTIAN EMPLOYERS ALLIANCE, CONCERNED WOMEN FOR AMERICA, OKLAHOMA COUNCIL OF PUBLIC AFFAIRS, NATIONAL LEGAL AND POLICY CENTER, TAP FOUNDATION, TENNESSEE CONSERVATIVE COALITION, AND FREEDOM AND FAMILY ACTION IN SUPPORT OF PETITIONER in the above-captioned case were served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

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No. 25-355

IN THE
Supreme Court of the United States

JAMES DONDERO, *et al.*,

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICI CURIAE* UNIFY.US, AMERICA FIRST POLICY INSTITUTE, CONSERVATIVE POLITICAL ACTION COALITION (CPAC), FAITH & FREEDOM COALITION, DUE PROCESS INSTITUTE, 60 PLUS ASSOCIATION, CHRISTIAN EMPLOYERS ALLIANCE, CONCERNED WOMEN FOR AMERICA, OKLAHOMA COUNCIL OF PUBLIC AFFAIRS, NATIONAL LEGAL AND POLICY CENTER, TAP FOUNDATION, TENNESSEE CONSERVATIVE COALITION, AND FREEDOM AND FAMILY ACTION IN SUPPORT OF PETITIONER

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 5,376 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Sworn to and subscribed before me this 24th day of October 2025.

AZA SALINDER DONNER
NOTARY PUBLIC
District of Columbia

My commission expires April 30, 2029.

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INTEREST OF *AMICI CURIAE*[1]

Unify.US is a 501c4 organization that unites faith-based and economic grassroots conservatives to pursue policy solutions centered on the principles of individual freedom, limited government, free enterprise, and traditional American values. Unify.US promotes shared belief that free people, free markets, prosperity, and peace are first principles for American greatness. Unify.US restores trust in America's institutions through proper balance of power in the three branches of our national government and better understanding and respect for our federal structure.

America First Policy Institute is a 501c3 nonprofit, nonpartisan research institute. AFPI advances policies that put the American people first. Its guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do. We also believe deeply in the importance of an independent judiciary — one that upholds the Constitution, applies the law as written, and delivers equal justice under law. A strong, impartial judicial system is essential to preserving the rule of law and ensuring that every American can have confidence in the fairness of our courts and the integrity of our democracy.

Conservative Political Action Coalition ("CPAC") is a 501c4 nonprofit social welfare organization. CPAC

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[1] Rule 37 Statement: This brief was not authored in whole or in part by counsel for any party, and no person or entity other than Amici, their members or counsel, has made monetary contributions to its preparation and submission. Counsel for both parties have received notice of Amici's intent to file this brief in support of the Petition.

works to defend the unborn, increase public safety, free entrepreneurs of unnecessary and burdensome regulations, protect free speech, and reduce the size and scope of government.

Faith & Freedom Coalition is a 501c4 nonpartisan, non-profit, social welfare organization. Its mission is to educate, equip, and mobilize people of faith and like-minded individuals to be effective citizens and to enact public policy that strengthens families, protects individuals, and promotes time-honored values and limited government.

Due Process Institute is a non-profit bipartisan public interest organization that seeks to ensure procedural fairness in the criminal legal system. Without judicial accountability, due process is hollow — there can be no meaningful guarantee of fairness when judges are inappropriately insulated from scrutiny or consequence.

60 Plus Association, the American Association of Senior Citizens is a 501c4 nonpartisan, nonprofit organization that advocates for market-based solutions and protecting rights to freedom of speech and limited but effective government. 60 Plus commits to educating and advancing issues that matter most to seniors and their families such as protecting Social Security and Medicare, ensuring access to quality medical care, expanded educational options, lower taxes, retirement security, energy independence and permanently repealing the death tax.

Christian Employers Alliance (CEA) is a national association of Christian-owned businesses and nonprofit organizations committed to protecting religious freedom in the workplace and advancing Biblical principles in public policy. CEA believes that public confidence in the judiciary is essential to the rule of law and to

the stability upon which faith-based employers and institutions depend.

Concerned Women for America (CWA) encourages policies that strengthen women and families and advocates for the traditional virtues that are central to America's cultural health and welfare. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. CWA is profoundly committed to the impartial application of justice for every man, woman, and child in America, which gives rise to its interest in this case.

Oklahoma Council of Public Affairs promotes the flourishing of the people of Oklahoma via free enterprise, limited government, individual initiative, personal responsibility, and strong families.

National Legal and Policy Center is a national nonprofit organization that promotes ethics in public life through research, investigation, education, and legal action.

TAP Foundation is a 501c3 nonprofit charity advocating individual rights, due process, rehabilitation, and public safety. The Foundation works to strengthen democratic governance and institutions to safeguard liberty.

Tennessee Conservative Coalition is a conservative, public interest, nonprofit organization engaging in a variety of issues for the public benefit. The Coalition supports polices and reforms that promote transparent, limited government.

Freedom and Family Action is a 501c4 organization of grassroots conservatives pursuing policy solutions that defend constitutional freedoms, strengthen families, and preserve the integrity of American institutions.

Freedom and Family Action equips Americans to act, organize, and retain influence well beyond the election cycle, ensuring that constitutional principles and public trust are preserved for generations.

SUMMARY OF ARGUMENT

The Court should grant certiorari to resolve an entrenched 12-1 circuit split acknowledged by every court of appeals. The Seventh Circuit reviews recusal decisions de novo, while all other circuits apply abuse-of-discretion review. *United States v. Walsh*, 47 F.4th 491, 498 (7th Cir. 2022) ("we stand alone as the only circuit to employ a de novo standard of review to § 455 recusal decisions; every other circuit reviews them for abuse of discretion."). The Fifth Circuit itself recognized the conflict, yet perpetuated it by denying relief despite acknowledging "a strong argument could be made that [the judge] had a duty to recuse." Pet. App. 17a.

The question presented implicates core constitutional principles. The Due Process Clause requires an impartial tribunal — a "basic requirement of due process." *In re Murchison,* 349 U.S. 133, 136 (1955). In every case addressing judicial disqualification, this Court has independently applied objective constitutional standards without deferring to the challenged judge's determination. *See Caperton v. A.T. Massey Coal Co., Inc.,* 556 U.S. 868, 883-84 (2009) (asking "whether, under a realistic appraisal of psychological tendencies and human weakness," circumstances create unconstitutional risk); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988) (independently assessing under § 455(a) whether one might reasonably conclude "an objective observer would have questioned [the judge's] impartiality").

Yet the Fifth Circuit's approach allows a challenged judge to assess his own impartiality, with appellate courts deferring absent "abuse of discretion"—a standard that inverts the Founding-era principle that "no man is allowed to be a judge in his own cause." The Federalist No. 10, at 59 (J. Madison) (J. Cooke ed. 1961). The lower courts' abuse-of-discretion standard for § 455 claims creates an inexplicable bifurcation from this Court's consistent practice of independent review, even though § 455 effectuates the same constitutional minimum using nearly identical language.

The Framers constitutionalized the common law prohibition on self-judging. Blackstone taught that the law "will not suppose a possibility of bias or favour," yet "should the fact at any time prove flagrantly such, as the delicacy of the law will not presume beforehand, there is no doubt but that such misbehaviour would draw down a heavy censure from those, to whom the judge is accountable for his conduct." 3 William Blackstone, Commentaries on the Laws of England *361. At common law, writs of error reviewed legal determinations — including judicial qualification — without deference. The Seventh Circuit's de novo approach reflects this Founding-era understanding; the majority approach represents a modern departure.

Moreover, § 455's text forecloses discretion. The statute commands that a judge "shall disqualify" when impartiality "might reasonably be questioned" — mandatory language that "creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss*, 523 U.S. 26, 35 (1998) (interpreting "shall"). Whether statutory requirements are satisfied is a legal question reviewed de novo, not a discretionary judgment reviewed deferentially.

As Chief Justice Roberts observed in announcing the Supreme Court's first Code of Conduct, structural protections — not discretionary self-assessment — preserve judicial legitimacy. Chief Justice John G. Roberts, Jr., *2011 Year-End Report on the Federal Judiciary* 7 (Dec. 31, 2011). The Court should grant certiorari to restore uniformity and establish that independent review protects the judiciary's institutional integrity.

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE THE ENTRENCHED AND ACKNOWLEDGED CIRCUIT SPLIT.

A. Every Circuit Has Weighed In, For a 12-1 Split.

The courts of appeals are divided on the question presented. The Seventh Circuit has applied de novo review to recusal decisions for four decades. Every other circuit applies abuse-of-discretion review. This 12-1 split is mature, acknowledged, and ripe for this Court's resolution.

The Seventh Circuit diverged from all sister circuits forty years ago: "[W]e will review decisions against disqualification under § 455(b)(1) de novo. We will evaluate the evidence for ourselves, applying the same standard as the district court." *United States v. Balistrieri*, 779 F.2d 1191, 1202-03 (7th Cir. 1985).

The rationale for this decision rests on the fact that a judge deciding her own integrity claim may be reluctant to admit or appear to admit bias. Section 455 in its terms mandates disqualification, and is not discretionary. "Appellate review … should not be deferential." 779 F.2d at 1203.

On repeated occasions, the Seventh Circuit has reaffirmed this stance. *Walsh*, 47 F.4th at 498; *United States v. Barr*, 960 F.3d 906, 919 (7th Cir. 2020); *United States v. Simon*, 937 F.3d 820, 826 (7th Cir. 2019).

Every circuit other than the Seventh ruled differently, to apply an abuse-of-discretion standard. Pet. at 19-23 (listing all 12 circuits). The Seventh Circuit has explicitly acknowledged this split. 47 F.4th at 498 ("We stand alone as the only circuit to employ a de novo standard."). Forty years of de novo review in the Seventh Circuit has not produced the flood of appeals or other problems that might counsel against this approach.

B. The Split Is Mature, Acknowledged, and Produces Different Outcomes.

In the four decades since the Seventh Circuit adopted the de novo standard, every other circuit has adopted the abuse-of-discretion standard and settled into that regime. Every circuit has now confronted the issue and no circuit is likely to reconsider and change its position. The Seventh Circuit, in *Walsh*, reaffirmed its willingness to continue a "stand alone" position. *Id.* at 498.

The resulting split produces differing outcomes arbitrarily dependent on venue. In this case, the Fifth Circuit acknowledged that a "[s]trong argument could be made that [judge] had a duty to recuse." Pet. App. 17a. Yet the deferential standard, absent "clear and indisputable" misconduct, compelled that court to deny recusal. In the Seventh Circuit, the same facts would receive de novo review; and recusal likely would be granted.

The split produces outcome-determinative differences. *Liteky v. United States*, 510 U.S. 540 (1994), distinguishes recusal based on judicial rulings (requiring

"such a high degree of favoritism or antagonism as to make fair judgment impossible") from extrajudicial sources like public statements about parties or subject matter. *Id*. at 551-55. The Seventh Circuit applies this framework de novo; other circuits apply it deferentially. A judge's novels about an industry, public statements on pending issues, or prior professional activities receive independent scrutiny in the Seventh Circuit but deferential review elsewhere — producing different outcomes from identical facts.

The inevitable result is forum shopping. Sophisticated litigants consider the circuit when filing; the government can often choose in which district to charge a criminal defendant. In federal diversity jurisdiction cases, the plaintiff chooses the forum. Recusal standard of review affects whether the case goes forward with a challenged judge, and drives the choice. This is unfair, as litigant rights shouldn't depend on geography.

C. This Court's Intervention Is Necessary and Appropriate.

This question affects thousands of recusal motions filed annually in federal courts. The issue is timely and ripe for decision by the Court. All of the circuit courts of appeals have weighed in and there is no need for the question to percolate further among the lower courts. Forty years has been enough time for the courts to see the results from both approaches to the standard of review.

Only this Court can settle the question, as there is no other mechanism for achieving uniformity. The Seventh Circuit shows no sign of abandoning the de novo standard (nor should it), and the other circuits show no signs of adopting it.

Thousands of recusal motions are filed annually in federal courts, each potentially affected by the standard of review. Federal rules should mean the same thing nationwide, ensuring the "just ... determination of every action" regardless of venue. Fed. R. Civ. P. 1.

There is no downside to granting the writ of certiorari in this case. The question is cleanly presented with no jurisdictional obstacles. Because the Court has not addressed this issue, there is no precedent to be overturned. Similarly, the Court can craft a narrow ruling to avoid concerns of over-breadth.

The 12-1 circuit split on the question presented is precisely the type of mature, acknowledged, consequential division among the courts of appeals that this Court decides. Forty years of experience with two different approaches has not led to convergence; only this Court's intervention can restore uniformity. The Court should grant certiorari.

II. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE TO THE CONSTITUTIONAL STRUCTURE, PUBLIC CONFIDENCE IN THE JUDICIARY, AND THE RULE OF LAW.

A. The Due Process Clause Independently Requires Impartial Adjudication, and This Court Has Consistently Applied De Novo Review.

Long before Congress enacted § 455, the Due Process Clause established an independent constitutional requirement: "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). This constitutional command operates regardless of statutory formulations and requires independent appellate scrutiny.

Due Process independently requires recusal in certain circumstances — and critically, the Court reviews these questions de novo. *Tumey v. Ohio*, 273 U.S. 510 (1927), first set out a prophylactic rule: "Every procedure which would offer a possible temptation to the average man as a judge... denies the [accused] due process of law." *Id*. at 532.

Caperton establishes that due process recusal determinations rest on "objective standards that do not require proof of actual bias," not judges' subjective self-assessments. 556 U.S. at 883. The Court recognized the "difficulties of inquiring into actual bias" and announced the "need for objective rules" — both incompatible with deferring to a challenged judge's discretionary self-assessment. *Id*. The Court conducted its own independent review, as must appellate courts in all recusal cases.

In every recusal case, this Court has independently determined whether disqualification was required — never once applying abuse-of-discretion review or deferring to the challenged judge's self-assessment.

The Court now faces a disconnect between constitutional and statutory standards. The Court reviews Due Process recusal claims de novo; lower courts review § 455 recusal claims for abuse of discretion. But § 455 uses language nearly identical to the due process standard: "impartiality might reasonably be questioned." 28 U.S.C. §455. Both are objective standards; both serve the same constitutional purpose. It is inexplicable to give less protection to a statutory claim that effectuates the constitutional minimum.

When lower courts apply deferential review to statutory recusal claims while this Court applies independent review to constitutional claims raising

identical issues, the resulting inconsistency warrants intervention. Section 455 enacts constitutional requirements using nearly identical language. The Court should grant certiorari to clarify that § 455 receives the same independent review.

B. The Founders Constitutionalized the Common Law Principle That No Man May Judge His Own Cause.

"No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." The Federalist No. 10, at 59 (J. Madison). This maxim — *nemo judex in causa sua* — traces to Roman law, was embedded in English common law, and was constitutionalized by the Framers as a structural protection against tyranny.

Blackstone explained that the law is extremely strict regarding judicial partiality, permitting no room for even the appearance of bias. *See* 3 William Blackstone at *360-61 (discussing judicial disqualification).

Lord Coke's famous declaration that no man may be judge in his own cause was not a suggestion of best practices — it was a prohibition grounded in "common right and reason" that even Parliament could not override. The Framers, steeped in Coke's Institutes, understood this as a structural imperative, not a discretionary preference. *Dr. Bonham's Case*, 8 Co. Rep. 107a, 114a, 118a, 77 Eng. Rep. 638, 646, 652 (C.P. 1610) (College of Physicians both prosecuting and benefiting from fines — making them judges in their own cause).

At the Founding, common law appellate review was through "writs of error." Courts reviewed legal determinations without deference: Issues of Law were

reviewed independently; facts were left to the finder of fact without review. Recusal would have been a legal question (does a statute require disqualification?) and therefore reviewed de novo.

The Federalist Papers emphasized, "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents." Federalist No. 78 (A. Hamilton). Abuse-of-discretion review was the "arbitrary discretion" Hamilton warned against; Independent review meant the "strict rules" Hamilton championed.

Diversity jurisdiction was created as an anti-bias structural solution:

> No man ought certainly to be a judge in his own cause or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens.

Federalist No. 80 (A. Hamilton). The Framers did not trust State judges even if they were actually impartial — appearance mattered. By the same principle, independent appellate review is a structural solution to a challenged judge's conflict.

Madison did not write that judges should try to be impartial in their own causes, subject to deferential review. He wrote that "no man is allowed" — a categorical prohibition based on the certainty of bias, "not improbably" corrupting even integrity itself. The Framers built structural solutions for human weaknesses they knew would persist.

The question presented is not a technical dispute about appellate standards, but touches bedrock constitutional principles the Framers inherited from the common law and embedded in our constitutional structure. Allowing a challenged judge's self-assessment to stand unreviewable inverts the *nemo judex* principle and departs from the Founding-era understanding. The Court should grant certiorari to restore the original constitutional design.

C. The Statutory Text Forecloses Discretion and Requires Uniform Application.

"Any justice, judge, or magistrate judge of the United States **shall disqualify** himself in any proceeding in which his impartiality **might reasonably be questioned**." 28 U.S.C. § 455(a) (emphasis added).

Rules of textual interpretation and canons of statutory interpretation support the de novo standard. "Shall" is a mandatory word, as opposed to alternatives "may" (discretionary) or "should" (aspirational). *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 114 (2012) ("when the word *shall* can be reasonably read as mandatory, it ought to be so read."). "Shall" creates "obligation impervious to judicial discretion." *Lexecon,* 523 U.S. at 35. When Congress mandates action, compliance is a legal question.

"Reasonably questioned" is an objective measure. Congress did not write, if a "judge believes his impartiality cannot be questioned", which would be a subjective assessment. "Reasonably" invokes instead the objective "reasonable person" standard known to common law. The Court reviews objective standards de novo. *See Ornelas v. United States*, 517 U.S. 690, 697 (1996) (evaluating "reasonable suspicion," a "policy of

sweeping deference would permit … varied results [that] would be inconsistent with the idea of a unitary system of law.").

A prior version of this statute had the judge recuse if it was "improper, i**n his opinion,** for him to sit." Judiciary and Judicial Procedure Act of 1948, c. 646, 62 Stat. 98 (1948) (emphasis added). In 1974, Congress deleted this language to remove a "subjective standard." S. Rep. No. 93-419 (1974) (BASES FOR DISQUALIFICATION: "This sets up an objective standard, rather than the subjective standard set forth in the existing statute through use of the phrase 'in his opinion'."). The amendment made recusal an objective determination, not a discretionary judgment.

Subsection (b) of the section confirms this reading of subsection (a). Section 455(b) reads: "He **shall also** disqualify himself in the following circumstances…" 28 U.S.C. §455(b). (Emphasis added) There has been no argument that section (b) is "discretionary." *See Liljeberg,* 486 U.S. at 862 ("recusal is required" upon "concluding that an objective observer would have questioned" impartiality). As "shall" occurs in both subsections, it would be odd for it to mean "discretionary" in (a), yet "mandatory" in (b).

Section 455's mandatory language and objective standard place recusal determinations squarely in the category of legal questions that receive de novo review under this Court's precedents. The circuit split perpetuates confusion about whether a federal statute's mandatory requirements are legal determinations or discretionary judgments — a question of general importance warranting this Court's review.

D. Current Events Underscore the Urgent Need for Clear, Uniform Standards.

Recent high-profile recusal controversies underscore the need for clear, uniform standards. When judges decline recusal despite apparent conflicts and appellate courts defer to those self-assessments, public confidence erodes. The question presented affects federal courts' ability to self-regulate and ensure impartiality in cases of national importance.

Both political parties have increased challenges to judicial impartiality: Cases challenging executive actions where a judge has made extrajudicial statements on the policy at issue; cases involving parties where a judge has family members with financial interests; cases where a judge's prior professional activities create appearance of predetermined views; and criminal cases where a judge expressed strong views about defendant's alleged conduct.

Under abuse-of-discretion review, these cases often proceed with a challenged judge. The Public sees: "Judge X investigated himself and found no problem." The appearance of impartiality is undermined, even if actual impartiality exists. "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges." *Code of Conduct for United States Judges*, Canon 2, cmt.

The question presented is not academic. It affects public confidence in federal courts' ability to self-regulate and ensure impartiality in cases of national importance. The Court should grant certiorari to establish that meaningful appellate review — not judicial self-certification — protects the judiciary's legitimacy.

III. CHIEF JUSTICE ROBERTS' INSTITUTIONAL PERSPECTIVE CONFIRMS THAT STRUCTURAL PROTECTIONS, NOT DISCRETIONARY SELF-ASSESSMENT, PRESERVE JUDICIAL LEGITIMACY.

A. The 2023 Adoption of the Supreme Court's Code of Conduct Demonstrates the Necessity of Binding Standards and Formalized Procedures.

In December 2023, responding to sustained public concern about judicial ethics, Chief Justice Roberts announced adoption of the Supreme Court's first binding Code of Conduct. His Year-End Report accompanying that historic step provides crucial insight into the relationship between judicial independence, public confidence, and structural accountability. *2023 Year-End Report on the Federal Judiciary* (Dec. 31, 2023).

Chief Justice Roberts' announcement of structural protections — binding rules and formalized complaint procedures — reflects institutional recognition that judicial legitimacy requires transparent accountability mechanisms, not mere trust in individual judges' discretion. When he announced that "the absence of binding ethics rules ... has fostered a lack of public confidence," he identified precisely the problem created by deferential review of recusal decisions: the appearance that judges self-certify their impartiality without independent scrutiny. *Id*. at 2.

The Court chose to create "avenues for addressing ... concerns" through formalized procedures. *Id*. at 3. De novo appellate review provides exactly such an avenue when a judge's impartiality is challenged. Just as the Code of Conduct establishes binding standards applied uniformly rather than leaving ethics to each

Justice's discretion, de novo review ensures that the objective legal standard in § 455 — "impartiality might reasonably be questioned" — is applied uniformly rather than left to each challenged judge's discretionary self-assessment.

B. The Chief Justice Has Repeatedly Emphasized That Recusal Turns on Objective Legal Requirements, Not Subjective Discretion.

The 2011 Year-End Report highlights the central concern:

> I have complete confidence in the capability of my colleagues to determine when recusal is warranted... They are jurists of exceptional integrity... **But the issue for judges is not whether they can be impartial**... Rather, **the considerations are whether the circumstances create an appearance of partiality** and, importantly, **whether disqualification is required under the Code of Conduct or federal statute**.

2011 Year-End Report at 7 (emphases added).

Chief Justice Roberts' own formulation forecloses treating recusal as discretionary. When he asks "whether disqualification is required under ... federal statute," he frames it as a question of legal compliance, not judicial discretion. Section 455 uses mandatory language — "shall disqualify" — and an objective standard — "impartiality might reasonably be questioned." Whether these statutory requirements are satisfied is precisely the type of legal determination that receives de novo appellate review under this Court's precedents. *See Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991) (district court decisions of questions of state law

reviewed de novo to maintain "doctrinal coherence" and economy of judicial administration).

C. The Chief Justice Recognizes That Judicial Independence and Accountability Are Complementary, Not Conflicting.

From the start of his tenure, the Chief Justice recognized that independence and accountability are not conflicting values but complementary ones. "The Framers designed a system in which the Judiciary would be independent, but they did not design a system in which judges would be unaccountable." *2006 Year-End Report* at 7.

Chief Justice Roberts has explained that the Framers created "a framework that ... respects both the need for independence and the obligation of accountability." *2011 Year-End Report* at 6. De novo appellate review of recusal decisions embodies that framework. It preserves trial judges' independence in adjudicating cases — no appellate court second-guesses substantive rulings, witness credibility determinations, or case management decisions. But it ensures accountability when the one thing a trial judge cannot independently assess — his own potential bias — is challenged. This limited, targeted review enhances rather than threatens judicial independence by maintaining the public confidence upon which independence ultimately stands.

D. The 2023 Code of Conduct Itself Reflects the Principles Supporting De Novo Review.

The 2023 Supreme Court Code's Introduction states: "The Code of Conduct for United States Judges ... has long served as a model for other judicial codes of conduct."

The Code of Conduct for United States Judges, Canon 2, Commentary states: "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges ... A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct."

The Code of Conduct's emphasis on avoiding "appearance of impropriety" applies not only to judges' substantive conduct but also to the process by which bias allegations are resolved. When a challenged judge assesses his own impartiality with only deferential appellate review, the process itself creates an appearance of impropriety — regardless of the judge's actual impartiality or good faith. The Code's principles support independent review as the mechanism that satisfies both the reality and appearance requirements.

The Court's recent institutional reforms — particularly the 2023 adoption of binding ethics rules and formalized complaint procedures — demonstrate that judicial legitimacy depends on structural accountability mechanisms, not discretionary self-assessment. The Chief Justice's conclusion that "the absence of binding ethics rules ... has fostered a lack of public confidence" applies with equal force to recusal: The absence of independent appellate review fosters similar concerns. His characterization of recusal as determining "whether disqualification is required under ... federal statute" confirms that it presents a legal question, not a discretionary judgment. The Court should grant certiorari to align appellate practice with the Chief Justice's institutional understanding and the structural protections he has championed.

IV. THIS CASE IS AN IDEAL VEHICLE, AND THE ISSUE IS FULLY RIPE FOR THE COURT'S REVIEW.

A. The Question Presented Is Squarely Raised and Cleanly Decided Below.

No jurisdictional issues block the Court's review of the question presented. Petitioner presents a final decision of a court of appeals in a timely petition. No mootness, standing or other threshold issues arise in the case.

The question is squarely presented: Petitioners argued for de novo review in the appeals court. The Fifth Circuit explicitly addressed the standard of review, acknowledging the 12-1 circuit split. Yet that court applied an abuse-of-discretion standard and denied relief, despite acknowledging that "a strong argument" existed for recusal.

A clean legal question appears: It is not fact-bound, and there are no State law complications. Due Process and Section 455 are pure federal questions, which do not require prior solution of other complex issues.

B. The Facts Present a Compelling Case for Establishing the De Novo Standard.

The facts present a compelling vehicle. The bankruptcy judge's conflict arose from an extrajudicial source — novels written during the case that negatively depicted the hedge fund industry and resembled the parties' business structure. The judge published while the case was pending and used the controversy for book promotion. This presents the *Liteky* extrajudicial source issue cleanly, without complications from judicial rulings within the case.

The Fifth Circuit acknowledged "a strong argument could be made" for recusal, but denied relief due to its deferential standard. Pet. App. 17a. In the Seventh Circuit, the same facts would receive de novo review, likely producing a different outcome. The case thus illustrates precisely how the standard of review affects outcomes—the core problem requiring this Court's resolution.

Public interest in this case shows the real world impact of judicial self-assessment on public confidence. Judge Jernigan made public statements about the case in the media, and she promoted her book using the case controversy. "A judge should not make public comment on the merits of a matter pending." *Code of Conduct* Canon 3(A)(6).

Nor is this case any mere outlier. The facts are unusual but not so extreme that the decided rule would lack general applicability. The Court can establish principle here without opening floodgates to controversy. It can clarify that, when extrajudicial statements are made about parties/industry, de novo review applies.

C. Resolution Would Provide Clear Guidance for Future Cases.

With this case, the Court can announce a clear rule: recusal decisions are reviewed de novo. Should that prove too broad a remedy, the Court may offer narrower versions, like Recusal based on extrajudicial sources is reviewed de novo, or at its narrowest, declare that as Constitutional recusal claims are already reviewed de novo, so too, § 455 claims should merit de novo review.

None of these results requires overruling prior precedent — the Court has not addressed this specific

question. De novo review is familiar, widely used and a manageable standard. Appellate courts apply it to many mixed questions. The Court would not be creating a new, complex framework, rather simply clarifying which existing framework applies.

Trial judges who know recusal will get independent review may be more willing to recuse. Litigants will know the standard and can better assess whether to file a recusal motion. Appellate courts will apply a uniform standard with predictable outcomes regardless of venue. The Public will see independent review and its confidence enhanced in the federal courts.

CONCLUSION

The courts of appeals are entrenched in a 12-1 split that has persisted for four decades. The Seventh Circuit reviews recusal decisions de novo, recognizing that "a judge may be especially reluctant to recuse himself when to do so requires him to admit that his actual bias or prejudice has been proved." *Balistrieri*, 779 F.2d at 1203. Every other circuit applies abuse-of-discretion review, deferring to the very judge whose impartiality is challenged. An additional split exists on the mandamus standard, with circuits requiring varying levels of deference before granting relief. These divisions are mature, acknowledged, and consequential. Only this Court can restore uniformity.

The question presented implicates bedrock constitutional principles. The Founders inherited from the common law — and constitutionalized in the Due Process Clause — the principle that "no man is allowed to be a judge in his own cause." This Court has consistently applied that principle by reviewing constitutional recusal claims de novo. Yet lower courts apply deferential review to statutory claims under

§ 455, even though the statute uses nearly identical language and effectuates the same constitutional minimum. This disconnect cannot be reconciled with the Constitution's original meaning, this Court's precedents, or the statutory text's mandatory language ("shall disqualify").

As Chief Justice Roberts recognized in announcing the Supreme Court's Code of Conduct, judicial legitimacy depends on structural protections that "enhance public confidence," not discretionary self-assessment. His framing of recusal as determining "whether disqualification is required under ... federal statute" confirms it presents a legal question requiring independent review.

This case presents an ideal vehicle for resolving these questions. The Fifth Circuit acknowledged "a strong argument could be made" for recusal yet denied relief due to its deferential standard. Pet. App. 17a. The same facts reviewed de novo would likely yield a different outcome — illustrating precisely how the circuit split produces inconsistent justice.

For these reasons, amici respectfully urge the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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