CASE NO. 19-13015-D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CONSUMER FINANCIAL PROTECTION BUREAU,
Plaintiff - Appellee

v.

OCWEN FINANCIAL CORPORATION,
a Florida Corporation,

OCWEN MORTGAGE SERVICING,
INC., a U. S. Virgin Islands corporation,

and

OCWEN LOAN SERVICING, LLC, a
Delaware limited liability company.

Defendants - Appellees

v.

JOANNA BURKE, JOHN BURKE,
Intervenor Plaintiffs – Appellants.

On Appeal from the United States District Court
For the Southern District of Florida, Houston Division;

District Court Docket No. 9:17-cv-80495-KAM

APPELLANTS BURKES' MOTION TO DISQUALIFY JUDGE JILL A. PRYOR

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APPELLANTS BURKES' MOTION TO DISQUALIFY JUDGE JILL A. PRYOR

Appellants, Joanna Burke and John Burke ("Burkes"), now file a motion to disqualify Circuit Judge *Jill A. Pryor*.

DISCLOSURE

In the Burkes' first electronically filed initial brief (stricken due to a 90-day extension of time[1]), they alerted the court of the request for the judges' financial disclosure reports which were requested but pending. Those reports, in the majority have now been received in a letter dated January 13, 2020. In the letter[2], it was advised that 3 reports for the fiscal year 2018 were not included and would be sent when 'released'. Judge *Jill A. Pryor* is named in that list.

ARGUMENT

When you've been in private practice as a successful lawyer with your husband and law partners and then you receive a call to serve as an appellate judge[3] on the federal bench, with a lifetime tenure, there is a time for serious consideration of the

[1] Refiled on 26 January 2020 (without disclosure).

[2] Cover Letter from the Judicial Conference of the United States Committee on Financial Disclosure is included as "Exhibit A".

[3] Prior to her nomination, *Jill A. Pryor* was in private practice, never having served as a magistrate or federal judge at any time in her career.

role you're about to embark on. Certainly, due to political shenanigans, *Jill Pryor*, the lawyer, had 803 days to consider that proposition due to the delay in her appointment.[4] The position, a federal judge, embraces public service and with that role comes prestige, authority and the understanding this 'black robe' position requires unquestionable impartiality.[5] This judicial appointment comes with a higher level of public scrutiny as citizens expect judges to rule from the bench whilst adhering to the model code of judicial conduct and ethics.[6]

Without doubt, citizens are not expecting *servitude*[7], but they are entitled to expect *divestiture of assets* which may taint a judges' impartiality[8] on the bench or confer that unwanted impression. (See Exhibit P).

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[4] On February 16, 2012, President Obama nominated *Pryor* to be a United States Circuit Judge of the United States Court of Appeals for the Eleventh Circuit She received her judicial commission on September 9, 2014.

(Credit: Wikipedia)

[5] One of the most fundamental and self-evident principles of any fair system of justice is that judges must be neutral and impartial. In the United States, the Constitution requires that a "neutral and detached judge" preside over judicial proceedings. *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972); In re Murchison, 349 U.S. 133, 136 (1955).

[6] See USCourts.gov and ABA.

[7] "Judicial service—public service—is just that: service. Judges know that going in. It involves personal sacrifice. But public service should not be public servitude." Texas Supreme Court Chief Justice Nathan L. Hecht, The State of the Texas Judiciary, an Address to the 86th Legislature, Feb., 6th, 2019.

[8] See ABA Canon 1.

Citizens are also entitled to have a judge on the case who is not *pro-business*[9] and one who mimics[10] her past private attorney undertakings, by constantly seeking out and maintaining an active role in promoting corporations and high-net worth businesses over seeking allowed positions on consumer-focused groups and committees.

Furthermore, the Burkes are entitled to request a judge be disqualified who appears to be *a shareholder of entities which are currently in prickly litigation* before the US Tax Court for attempting to claim a charitable donation tax exemption to avoid material financial payments to the government, *e.g.* IRS tax liabilities. The Burkes having reviewed the docket and the tax judges' Orders in December 2019, can confirm - it's not going well (See Exhibit T).

The Burkes have invoked their rights to review the financial disclosure record(s) of Judge *Jill A. Pryor*. As highlighted, the Burkes can only currently review 2017[11] as 2018 was not supplied. That itself is *alarming* as is indicative that the filing is tardy, there can be no other logical reason for the missing annual report.[12]

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[9] From Judge *Pryor's* Congressional Questionnaire, p. 18 (2012); November 22. 1994 - Presentation on **Ethical Considerations in the Representation of Organizations** at the Institute for Continuing Legal Education in Georgia's **Complex Litigation Seminar**.

[10] See ABA Business Law Section. *Pryor's* 2019 appointment to the ABA 'Business Law' Section requires the applicant(s) to request the position *e.g.* it is not assigned.

[11] Exhibit A2.

[12] See ABA reporting requirements.

Even so, relying upon this single and redacted financial disclosure report combined with a rather 'low-level' audit of the same, what they have seen is discouraging and of grave concern as to why *recusal*[13] was not automatic for this judge. In support thereof, would show as follows:

THE LAW ON RECUSAL OF AN APPELLATE 3-PANEL JUDGE

The Appellate Judge and legal 'Omnipotence' Will Decide this Disqualification Motion

In the federal court system, a federal statute governs judicial *recusal*.[14] The statute describes two categories for disqualification. The first being that a judge "*shall disqualify ~~himself~~ herself in any proceeding in which ~~his~~ her impartiality might reasonably be questioned*."

The second situation in which recusal is necessary arises if a judge (1) has actual bias or prejudice concerning a party; (2) has a direct financial interest, however small, in a party; (3) has served as lawyer in the matter in controversy while in private or governmental practice; or (4) has a spouse or child who is a

[13] From Judge *Pryor's* Congressional Questionnaire, p. 13 (2012); "December 10, 2009 - Panel discussion on "**Recusal in Georgia Post-Caperton"** for the Atlanta Bar Association CLE Committee's CLE by the Hour" series.

[14] 28 U.S.C. § 455 (Current through P.L. 116-78 (12/05/2019))

party, lawyer or witness in the proceeding.[15]

The Burkes have studied these 'ground rules' and have considered them prior to filing this motion. In 2020, the judicial system in the United States still allows the judge whose recusal is sought to decide whether she is biased and whether her *impartiality*[16] might reasonably be questioned.

In the underlying case, there has been great public interest garnished and which revolves around the government watchdog, the Consumer Financial Protection Bureau. The question which is creating this publicity relates to the "*separation of powers*", insofar as Director Kraninger of the CFPB can only be removed 'for cause'. As documented, she agrees in her own words that her position is 'unconstitutional'.[17]

In a similar case, the Court of Appeals for the Fifth Circuit determined that the FHFA is also 'unconstitutional' for the very same reason[18];

"Congress created FHFA amid a dire financial calamity, but expedience does not license ***omnipotence****"*

(A majority of judges on a 16-member panel opined). Thus, it is inconceivable to these citizens of the United States, how judges can reach this decision when they

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[15] See 28 U.S.C. § 455(b)

[16] See ABA Canon 2 with emphasis on 2.2.

[17] See Covington article

[18] *Collins v. Mnuchin*, No. 17-20364 (5th Cir. Sep. 6, 2019).

also rely upon '***omnipotence***'[19] and, in effect, are '*unconstitutional*'[20] themselves.[21]

That stated, the benchmark for this filing relies upon the *recusal* standards applicable to intermediate appellate judges, which are the same as those applicable to trial court judges. The Burkes have found many cases wherein appellate courts hold trial *judges have abused their discretion in failing to recuse* because, in the appellate courts' view, *the trial judges' impartiality reasonably might be questioned*.

In summation, the Burkes are left to rely upon the judges' own ethical compass, combined with the Judicial Oath and Canons[22] when asking the judge to recognize the legitimate arguments and concerns presented by the Burkes' in this motion and in conjunction with the legal definition of 28 U.S.C. § 455(a)[23], which the Burkes rely upon[24] along with a reminder that 'the duty to sit' rule was repealed in 1974.

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[19] "Omnipotence is the quality of having unlimited power." - Wikipedia

[20] See Dmitry Bam, Our Unconstitutional Recusal Procedure, 84 1135 (2015).

[21] The example being that Judge *Pryor* will read and rule on this disqualification motion and that decision is final *e.g.* without any further independent review, except for separate appeal to the U.S. Supreme Court.

[22] For example, Canon 3.

[23] See *Potashnick v. Port City Constr. Co*., 609 F.2d 1101, 1115 (5th Cir. 1980); 13A WRIGHT & MILLER, supra note 15, § 3551, at 630.

[24] Section 455 - Disqualification of justice, judge, or magistrate judge; (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.

THE JUDGES' QUESTIONNAIRE FOR CONGRESS (2012)

The Disclosed Entities and Assets

In her nomination Questionnaire, the following entities were listed; *Jill A. Pryor* P.C. (former law firm); Top Mall USA LLC (internet sales business); 6616 Midnight Pass Road, LLC (was formed to own rental property but currently owns none); 1088 Country Lane, LLC, (was formed to own rental property but currently owns none); 1933 Kilburn Drive, LLC, (was formed to own rental property but currently owns none); Silver City Land Co., LLC, (owns undeveloped residential lots); Sussex Properties, L.L.C., (owns rental property); and Zephyr Land Corporation, an offshore company, c/o Butterfield Bank, Nassau, Bahamas where she is President and Director (Corporation owns residential beachfront lot).

THE JUDGES' FINANCIAL DISCLOSURE REPORT (2017)

The Disclosed Entities and Real Estate Assets

When Judge *Pryor* submitted her Questionnaire to Congress, it was not redacted. That cannot be said about the 2017 Financial Disclosure Report[25]. As such, the audit relies, in part, upon the Fifth Circuits favorite, the "erie guess" doctrine;

'Erie guesses are just that—guesses.

[25] Exhibit A2.

Hopefully we get them right, but sometimes we get them wrong.'

As admitted - but without correction to the homeowners - by Gregg Costa, Judge in *Priester v JPMorgan*.[26]

This audit attempts to marry the entities as disclosed in 2012 with the real estate assets and disclosures from the 2017 report below.

Please note; All property sales were in joint names of *Jill A. Pryor* and Edward B. Krugman per the relevant States' property records.

The properties in question and respective audit report is attached as ***Exhibit P***.

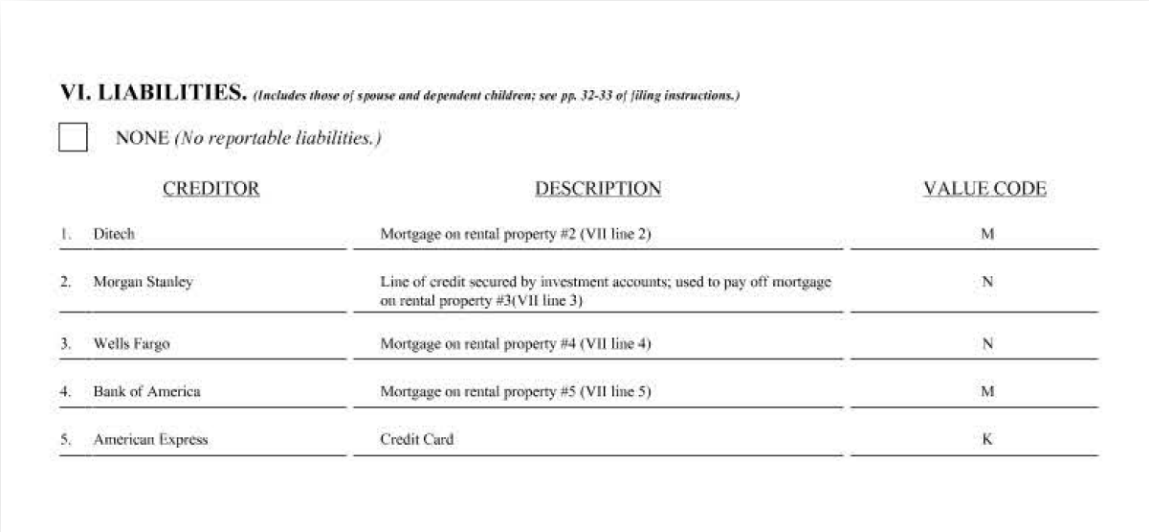
THE 2017 FINANCIAL DISCLOSURE REPORT FOR JUDGE PRYOR SHOWS CONFLICTS OF INTEREST

As the Burke's advised this court in late 2019, a request was made for financial disclosure reports for Judges on the Eleventh Circuit. On or around the 18th of January, 2020, the Burkes' received most but not all of the requested reports. The Burkes, now aware of the 3-Panel judges in this case, namely *Pryor, J.*, Martin, B., and Wilson, C., reviewed the reports received. At this time, there is only one redacted report for Judge *Jill A. Pryor* for the fiscal year 2017, 2018 was not included as discussed above. One questions why that is, as all reports should have been available, as was the case with the Burkes' request for Fifth Circuit judges' reports.

[26] *Priester v. JPMorgan Chase Bank*, 927 F.3d 912 (5th Cir. 2019)

Several Investment and Rental Properties with Mortgages and Loans

Below is a screenshot of Judge *Pryor's* listed liabilities, all of which relate to her portfolio of rental and vacation properties, with *perhaps* the exception of the American Express credit card.



VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Ditech	Mortgage on rental property #2 (VII line 2)	M
2.	Morgan Stanley	Line of credit secured by investment accounts; used to pay off mortgage on rental property #3(VII line 3)	N
3.	Wells Fargo	Mortgage on rental property #4 (VII line 4)	N
4.	Bank of America	Mortgage on rental property #5 (VII line 5)	M
5.	American Express	Credit Card	K

In the report, the first red flag was the *Ditech* mortgage for a rental property. *Ditech* is a non-bank which has recently been involved in a lengthy bankruptcy where they attempted to convince the court it could sell the company, however, in order to complete any sale, they would remove the legal and contractual protections the current mortgage borrowers are entitled to. Due to the overwhelming legal objections and public outcry, this was rejected by the judge and an alternative agreement was

reached. You can read more about it in short form on Bloomberg,[27] which also highlights the Burkes' second issue with the *Ditech* mortgage Judge *Pryor* disclosed. Namely, *Ditech* purchased 9.6 Billion dollars of MSRs from OCWEN is 2015. It is not clear whether the judges' *Ditech* mortgage is serviced with OCWEN. Note; The other listed mortgages with Wells Fargo Bank and Bank of America do not specify who is servicing the loan, so it could possibly be OCWEN for any of these mortgages as servicing rights are transferred, sold and bought like shares on the stock-market today – frequently.

A Real Estate Investor is Biased and Should not be a Judge in this case

OCWEN is a non-bank. As clearly outlined in the Burkes now refiled initial brief, it is involved in all aspects of real estate from Zillow like portals to MSRs to offshoring staff and its executives to St Croix and similar. It has affiliations and contracts with nearly every major US bank and investment bank.

Property Investors rely upon banks to fund mortgages and as you can see, this is certainly the case with the judges' investments. The fact that *Pryor* and Krugman are serial and long-term property speculators and investors - even with the liquidation of several of the property assets in 2018/2019 and which is discussed further in this

[27] Alternatively, the case; *In re Ditech Holding Corp.,* No. 19-10412 (JLG) (Bankr. S.D.N.Y. July 19, 2019)

motion - the Judge should have recused herself from this case which, at its' core, is about consumer and homeowner rights against entities who invest in real estate, REITS, RMBS and more on the back of the misery of homeowners due to the illegal takings of their homesteads. As a property investor and judge, how can you *appear* impartial and independent when you've mortgages and loans with the key perpetrators, the bankers? (This is distinct from a mortgaged main residence.) In short, you can't.

The Redacted 'Positions' in Disclosed Entities (LLC's and Corporation)

The Burkes knew nothing about Judge *Jill Pryor*, prior to this appeal. That has changed. The Burkes have performed a 'low level' audit of the financial report, yet even with this initial audit review, they have some very serious and material concerns.

Without sounding like a mix between Wikipedia, Ballotpedia and a State Bar Journal article, a synopsis of the judge and her personal life (to some extent) is necessary for this audit report and request for disqualification to have substance. Disclaimer; This audit only relies upon data and disclosures obtained from public records.

To the best of the Burkes findings, Judge *Pryor* is currently married[28] to attorney Edward B. Klugman. He is a partner in the law firm Bondurant, Mixson & Elmore LLP ("Bondurant") where Judge *Pryor* is/was a Partner as well.

The *positions* section of the financial report is redacted, but from the available information, it is obvious she is a MEMBER (shareholder) of several LLCs as well as President/Director of one, which is a company in Nassau, Bahamas (Zephyr Land Corporation) and uses a c/o Butterfield Bank address. In relation to the Butterfield association, this is a conflict of interest due to;

(a) this Banks' relationship with Deutsche Bank, and where it plans to further that "partnership" with Deutsche Bank to provide trust products to Deutsche Bank's clients on an ongoing basis. Deutsche Bank is well-documented as an adverse party of the Burkes, and;

(b) Judge *Pryor* was in a recent March 2019 case where *Deutsche Bank National Trust Company*[29] was a party - and where *Deutsche Bank* prevailed, and;

[28] That was questioned during the audit, due to the dissolution of much of *Pryor* and Krugmans' portfolio in such a short timeframe, e.g. after being jointly held (in the majority) in their married names for 10-20 plus years these assets were successively sold in 2018 and 2019.

[29] *Zamore v. Deutsche Bank Nat'l Trust Co.*, No. 18-13635 (11th Cir. Mar. 25, 2019)

(c) In the Burkes' initial brief, they outlined the fact that OCWEN founder William C. Erbey is living in St Croix and sets up tax-havens and offshore companies to reduce or avoid taxation in the United States.

With Judge *Pryor* replicating OCWENs' tax planning and offshore investments, it can only be viewed as prejudicial, as she patently executes the same real estate and tax strategies as those of OCWEN, admonished to the tune of $3 billion[30] since the financial recession.

Furthermore, the judge lists in line 64 of her report, Excelerate Discovery, LLC, which recently rebranded and changed name to TrustPoint International, LLC (line 65). The core business services for these entities relies upon providing legal outsourcing *e.g.* paralegal type services from offshore staff in India and similar countries who provide low-cost labor. Generally, this high margin cash incentive for the company comes with a caveat, poor quality work due to lack of professional study and training in the legal field and understanding of American law.

[30] See VIOLATION TRACKER (It's in excess of $3 billion when you add Altisource and related entities).

Pryor is a shareholder in this dubious company which offers paralegal legal services using cheap offshore and unregulated staff, which provides a mammoth billing opportunity and profit to legal firms in the USA.

The analogy would be that *Pryors'* chosen company is similar to the 'Wilbur Ross system', wherein he (as a former director) and OCWEN hired offshore staff to reduce costs and maximize profit at the expense of consumers and customers who registered tens of thousands of complaints about the poor services provided by OCWEN's offshore customer service teams.

THE DISCLOSED ENTITIES AND THE TWO $8M+ DOLLAR US TAX CASES

This audit leads the Burkes onto the current tax court case involving 2 entities which are disclosed in the judges' financial report which is detailed in Exhibit T.

After reading Exhibit T, you will note on the 10th of December, 2019, the tax judge in the case(s) ordered the case proceed to trial. The IRS assessed an $8.3 million dollar adjustment to income based on 2010 filings by the *Rivers* entity and $8.6 million for the *Dashers* entity, wherein the IRS determined they did not qualify for a claimed charitable contribution deduction.

After the scheduled trial in 2020, any subsequent appeal[31] would be heard by the **Eleventh Circuit Court of Appeals**, according to the Order. That proposition must be a very uncomfortable one for her and her fellow Circuit Judges. Certainly, depending on the amount of shareholding and potential to financial liability, it may well be why there has been a mass liquidation of real estate assets in both 2018 and 2019 by *Pryor* and Krugman. "*It wouldn't look good*", if appealed.

The Burkes erie guess is; this flurry of activity, namely selling the portfolio of approximately $5.38 million dollars of real estate owned by *Pryor* and Krugman was triggered in order to repay any IRS tax liability these entities may be due, depending on the result of the cases and to avoid any embarrassment of the IRS filing for tax liens against any and all real estate, should there be a personal liability incurred from the resulting tax case(s).

The Burkes believe that a judge involved in questionable tax court cases would prejudice the Burkes. Whilst the IRS is making an adjustment for a 2010 filing (before *Pryor* was a judge), the fact she is and was a lawyer, leads the Burkes to believe that as a self-proclaimed 'high net worth client' lawyer[32] who is involved – in her own

[31] FRAP 13 Appeals from the Tax Court and FRAP 14 , per 11th Cir. IOP, Aug., 2019

[32] From the judges' former law firm's bio (Exhibit B):

Jill *Pryor* is known for trying large, complex business cases to juries. Her wins include a plaintiffs'

words - in very complex legal cases, she would have known the tax deduction was an attempt to *'game the system',* in this case the game being the turkeys, to obtain a substantial tax break for which the entities of which she has a financial interest. The tax judge cites 5th Circuit and 11th Circuit case law and *Jill Pryor*, even in 2010, would have known the deduction was unlawful. But to avoid even entering a financial numerical value in a required IRS tax form is beyond comprehension. Ultimately, the judge would financially benefit if the donations had not been audited. It's fair to say, $8.3m and $8.6m are not small charitable tax deduction claims.

In the Burkes opinion, it has *more than* just the appearance of impropriety. Significantly, it's a material sum, a calculated tax avoidance and a big burden to US

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jury verdict totaling nearly $300 million and a defendants' jury verdict in a case seeking almost $400 million in damages.

Jill represents her clients in high stakes trial and appellate business litigation in the areas of business torts, contracts, corporate governance and shareholder disputes, class actions, trade secrets, intellectual property (including patent infringement), fraud, and the Georgia and federal Racketeering and Corrupt Organizations acts (RICO).

A respected leader of the Georgia legal community, Jill currently serves on the State Bar of Georgia Board of Governors and on the Board of Directors of the Georgia Legal Services Program. She is a former Chair of the Appellate Practice Section of the State Bar, served for many years as a member of the Lawyers Advisory Committee of the United States Court of Appeals for the Eleventh Circuit, and is a past President of the Georgia Association for Women Lawyers (GAWL).

Jill is a frequent seminar speaker and has addressed business litigation topics such as trial techniques, litigation cost saving strategies for in-house lawyers, use of technology in litigation, appellate practice, RICO, and trade secrets.

taxpayers if the accounts had not been audited by the IRS. As such, the Burkes request the disqualification of Judge *Jill A. Pryor*.

The Burkes acknowledge that their opinions herein partially rely upon the erie doctrine, for example, relative to *intent*. However, as former Texas Supreme Court Justice Tom Phillips recently stated at a partisan Federalist Society chapter meeting in Texas in 2019, when discussing his opponent taking substantial political contributions ($120k) and then reversing a case decision in favor of that donor, the opponent denied any wrongdoing and Phillips stated; *'I took him at his word, but it didn't look good'*.[33]

Returning to the tax court judges' Orders, the Burkes recite this part of one of the two orders (both the same, just the parties and values are different as disclosed above);

2. Dasher's Bay Argues the Regulation is Invalid.

> As an alternative argument to their assertion that they complied with section 1.70A-14(g)(6)(ii), Dasher's Bay argues the regulation is invalid.
>
> When testing the validity of a regulation, we generally look to the two-part test established under Chevron, U.S.A., Inc. The first prong of

[33] Referencing the 'Justice for Sale' documentary about how the democrats lost their seats on the Texas Supreme Court as a result of the 60 minutes documentary and where the current Chief Justice Nathan Hecht, along with Tom Phillips, benefitted (31 years ago).

> that test is "whether Congress has directly spoken to the precise question at issue." If Congress has not spoken to the precise question at issue, the second prong requires the Court to determine whether the regulation "is based on a permissible construction of the statute " The Supreme Court later clarified that courts must treat Treasury regulations with the same deference as other agencies' regulations and that regulations promulgated under specific grants and regulations promulgated under general grants are not treated differently.

The Burkes requested lower court intervention, which is now on appeal in this court, involves a case between a government watchdog, the CFPB, and a non-bank, OCWEN. The case is among several nationwide which have garnished enormous public and media attention due to the related case of *Selia Law*. That case is currently before the US Supreme Court and which this court is aware, in part, due to the several motions filed and denied by the Burkes, requesting a stay pending the *Selia Law* case decision.

This is mentioned as the tax court judge had to address a defense by both *Dashers* and *Rivers* which questioned the legislative branch and the judicial branch (the tax judge in this case) had to interpret Congress's meaning of the statute and relied upon 5th Circuit and 11th Circuit precedent to do so.

The tax judge rejected the arguments of the respondents. It is fair to say, that alone is sufficient to call into question any and all decisions which Judge *Pryor* has and will take in the Burkes appeal.

LEGAL STANDARD FOR DISQUALIFICATION

The governing standard under Section 455(a) is well settled: "It is of no consequence that the judge is not *actually* biased because § 455(a) concerns not only fairness to individual litigants, but, equally important, it concerns "the public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who *appears* to be tainted."" *In re Kensington,* 353 F.3d at 220 (quoting *Alexander* v. *Primerica Holdings, Inc.,* 10 F.3d 155, 162 (3d Cir. 1993), in tum quoting *In re School Asbestos Litigation,* 977 F.2d at 776) (emphasis added by this Court). "[A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." (quoting *Haines* v. *Liggett Group Inc.,* 975 F.2d 81, 98 (3d Cir. 1992), in tum quoting *Lewis* v. *Curtis,* 671 F.2d 779, 789 (3d Cir. 1982)). Recusal is required if "a reasonable person *knowing all the circumstances* would harbor doubts concerning the judge's impartiality." (quoting *Jones* v. *Pittsburgh Nat'l Corp.,* 899 F.2d 1350, 1356 (3d Cir. 1990)).

CANON 3C ALONE WOULD WARRANT DISQUALIFICATION

The drafters of Canon 3C of the Code of Judicial Conduct clearly intended an appearance-of-bias standard.

The Reporter's Notes to the Code state that *"[a]ny conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's 'impartiality might reasonably be questioned*' is a basis for the judge's disqualification."[34]

Further, the Notes indicate that disqualification would be required if "*participation by the judge in the proceeding . . . creates the appearance of a lack of impartiality*."

The legislative history of the 1974 amendments also supports the use of an appearance-of-bias standard.[35]

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[34] See E. THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 60 (1973) (quoting 28 U.S.C. § 455(a)).

[35] See H.R. REP. No. 1453, supra note 52, at 6354-55.

CONCLUSION

Public confidence is essential to effective functioning of the judiciary because, "*possessed of neither the purse nor the sword*," the judiciary depends primarily on the willingness of members of society to follow its mandates.[36]

Individually, the Burkes' list of judicial breaches present insurmountable hurdles for this judge and when reviewing the *appearance* of bias.

Cumulatively[37], Judge *Jill A. Pryor* cannot ethically withstand the legal and judicial standards to prevent disqualification. It is an impossibility - if you adhere strictly to the law when reviewing one's own impartiality.

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[36] Kaufman, *Lions or Jackals: The Function of a Code of Judicial Ethics,* 35 LAW & CONTEMP. PROBS. 3, 5 (1970) (quoting Baker v. Carr, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting)).

[37] The Fourth Circuit Court of Appeals has stated that "the question is not whether the judge is impartial in fact" but whether a reasonable person might doubt the judge's impartiality on the basis of all the circumstances.

See *Rice v. McKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978); accord *United States v. Ritter,* 540 F.2d 459, 461-62 (10th Cir.), cert. denied, 429 U.S. 951 (1976); *United States v. Cowden*, 545 F.2d 257, 265 (1st Cir.), cert. denied, 430 U.S. 909 (1976).

This standard makes disqualification more likely than the bias-in-fact test, and therefore is consistent with one of the main purposes of the 1974 amendments - to broaden the grounds for judicial disqualification. See H.R. REP. No. 1453, supra note 52, at 6351.

Human nature is protective by default. It is difficult to see fault in oneself. Ultimately, this judge will be allowed to select one of two options; (i) the legally right choice, or (ii) the biased and legally flawed choice.

The Burkes now ask for due process[38] of law and for this 'court' to decide which option it will be.

Respectfully submitted as *pro se* and is also submitted as an affidavit of the entire contents of this motion.

I declare under penalty of perjury that the foregoing is true and correct and the certificates that follow are also correct.
(28 U.S.C. § 1746 - U.S. Code.)

/s/ John Burke

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[38] Due process may require recusal, even if a judge has no actual bias, in situations in which the objective probability of actual bias is too high to be constitutionally acceptable. See *Rippo v. Baker*, 137 S. Ct. 905 (2017).

I declare under penalty of perjury that the foregoing is true and correct and the certificates that follow are also correct.
(28 U.S.C. § 1746 - U.S. Code.)

/s/ Joanna Burke

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CERTIFICATE OF INTERESTED PERSONS ("CIP") AND CORPORATE DISCLOSURE STATEMENT

US District Judge;

Marra, Kenneth A.

US Magistrate Judge;

Matthewman, William

Consumer Financial Protection Bureau ("CFPB");

Brenowitz, Stephanie C.

Baez, Tianna Elise

Chin, Shirley T.

Cohen, Adam Harris

Demille-Wagman, Lawrence

Desai, Atur Ravi

Healey, Jean Marie

Kelly, Erin Mary

Nodler, Gregory Ryan

Posner, Michael

Roberson, Amanda Christine

Savage, James Joseph

Singelmann, Jan Edwards

Wilson, Jack Douglas

Office of the Attorney General &
Office of Financial Regulation;
Fransen, Scott Ray
Granai, Sasha Funk
Pinder, Jennifer Hayes
Winship, Blaine H.

Intervenor Plaintiff;
Burke, Joanna
Burke, John
Fauley, Robynne *(TERMINATED)*
Subramaniam, Denise *(TERMINATED)*

Ocwen Financial Corporation &
Ocwen Loan Servicing, LLC &
Ocwen Mortgage Servicing, Inc.;
Azuero, Catalina E.
Berry, Bridget Ann
Craven, Laura S.
Hefferon, Thomas M.
Previn, Matthew P.
Protess, Amanda B.
Riffee, Matthew L.
Rose-Smith, Sabrina M.
Sheldon, Matthew S.
Smith, Tierney E.
Stoll, Laura

Tayman, W. Kyle
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Dated; January 27, 2020;

/s/ John Burke

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CERTIFICATE OF CONFERENCE

The Burkes' have not conferenced with any of the parties. Any opposition to the MOTION is hereby classified as UNKOWN.

CERTIFICATE OF SERVICE

We hereby certify that, on January 27, 2020, a true and correct copy of the foregoing Motion to Stay Proceedings was served via the Court's EM/ECF system to the attorneys of record per the CIP listing enclosed herein.

/s/ John Burke

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 4,678 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

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