No. _____

BEFORE THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2015

Marie Assa'ad-Faltas, MD, MPH, Petitioner,

vs.

Tandy Carter *et al.*, Respondents

ON PETITION FOR A WRIT OF *CERTIORARI*

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF *CERTIORARI*

Respectfully submitted by:
Marie Assa'ad-Faltas, MD, MPH, *Petitioner pro se*
P.O. Box 9115, Columbia, SC 29290
Phone: (803) 783 – 4536
e-mail: MarieAssaadFaltas@GMail.com

Question Presented

Given that the Genetic Information and Non-discrimination Act of 2008 ("GINA") defines "third degree" of relationship to include first cousins, given that most states bar potential juror who is first cousin to lawyer(s), part(y)(ies) or witness(es) to a case from sitting on that case, given that a majority of states bar marriage of first cousins (equating them with siblings), and given that at least the Eighth and Third Circuits have published opinions against a jurist sitting on a case where a first cousin is a party or lawyer, should this Court hold **as a bright line rule**, that "the third degree of relationship" in 28 U.S.C. §455(b) must be read in light of modern genetic knowledge, not under a medieval "parentellic" inheritance system, to promote public confidence in the judiciary?

Alphabetical List of Respondents

V. Claire Allen, as Deputy Clerk of SC's Court of Appeals; CPD Officer Ashmore; CPD Sergeant Auld; James R. Barber, III; Brett Bayne; CPD Corporal Bell; DeAndrea Gist Benjamin; Steven Benjamin, as Mayor of the City of Columbia ("*the* City"); CPD Investigator Blanton; Amanda H. Long Branham; CPD Corporal Branham; CPD Investigator Brian; CPD Officer Brown; CPD former Acting Chief Carl Burke; Barbara Jean Burns [FKA Popowski]; CPD Lieutenant Butzer; CPD Corporal Caldwell; Tandy Carter; Wendy/Windy Ceo/Cio; City of Columbia, SC, Police Department (CPD); Robert D. Coble; Leslie Coggiola, as SC's Disciplinary Counsel; Gafford Thomas Cooper, Jr.; Robert G. Cooper; John Courson as President *pro tempore* of SC's Senate; Charlene Crouch; Corey Lamont Curry; Sterling Davies; CPD Officer DeJesus; John Andrew Delaney; John Doe; CPD Sergeant Drafts; CPD Lieutenant Evans; David A. Fernandez; Roslynn Frierson as Director of SC's Office of Court Administration; Ken Gaines; CPD Lieutenant Gibson; Barney Giese; The Gigingliat, Bettis and Savitz law firm; CPD Officer Girard; CPD Corporal Gomez-Rievera; CPD Sergeant Gunther, Marion Oneida Hanna; Nimrata R. Haley, as SC's Governor; CPD Captain Hendrix; RCSD Deputy Calvin Hill; Robert Eldon Hood, as Current SC's Fifth Judicial Circuit's Administrative Judge for General Sessions; Teresa Ingram; Daniel Johnson, as SC's Fifth Judicial Circuit's Solicitor; John Mitchell ("Mitch") Jones; Debbie Jordan; SC's Judicial Merit Selection Commission (JMSC); Mark Keel, as Chief of SC's State Law Enforcement Division (SLED); CPD Officer Kelson; Micheal King; Jenny Kitchens, as Clerk of SC's Court of Appeals; Angela Ladsen; Leon Lott; Tiffany Lurke; Christopher James Mason; Larry Wayne Mason; Richard Wayne Mason; The McAngus, Goudelock & Courie law firm; Jeanette McBride; Yancey McGill, as SC's Lieutenant Governor; CPD Officer McSwain; John Meadors; CPD Officer Medlock; all members of *the* City Council; CPD Investigator Narewski; William Nettles as U.S. Attorney for the District of South Carolina (D.S.C.); John K. Passmore; RCSD Lieutenant Darryl Price, Richland County, SC, Sheriff's Department (RCSD); Jane Roe; David Ross; CPD Sergeant Sanders; CPD former Acting Chief Ruben Santiago; Stephen Savitz and Jennifer Carr Savitz; SC's General Assembly; CPD Lieutenant Sharp; Daniel Shearouse, as Clerk of SC's Supreme Court; LeRoy Smith, as Head of SC's Department of Public Safety; CPD Lieutenant Smith; State of South Carolina (SC); Dinah Gail Steele; RCSD Captain Harry Stubblefield; William Tetterton; CPD Captain Thornton; Dana M. Thye; Jean Toal as administrative head of all SC's state courts; Dana Turner; the Warden of the Alvin S. Glenn Detention Center (ASGDC); Gary Watts, as Coroner for Richland County, SC; Sara Heather Savitz Weiss; Alden Hollis Wheeler; Richard Glenn Wheeler; CPD Officer White; Alan Wilson, as SC's Attorney General; Teresa Wilson, manager for *the* City; CPD Lieutenant Yates; and all their subordinates and agents who intend to injure Plaintiff; all *solely* officially and *solely* for injunctive and declaratory relief and for *qui tam* recovery.

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TABLE OF AUTHORITIES

Petitioner prays this Court to issue a writ of *certiorari* to review the 23 July 2015 judgment of the U.S. Court of Appeals for the Fourth Circuit, in case 14-2258, affirming the U.S. District Court for the Middle District of North Carolina's (Judge Catherine C. Eagles) summary overruling of Petitioner's timely objections to U.S. Magistrate Judge Auld's Report and Recommendation (R&R), in 14-cv-678-CCE-LPA and overruling Petitioner's *challenge to Magistrate Auld's neutrality as a first cousin to then key-Defendant and now key-Respondent Auld.*

OPINIONS BELOW

The U.S. Court of Appeals for the Fourth Circuit's 23 July 2015 opinion and 29 September 2015 order denying Petitioner's timely petition for rehearing by the panel and rehearing *en banc* are unreported but appended hereto. All lower court orders and R&R are also unreported but are available to this Court on PACER. But the part of the R&R relevant to the sole question presented herein is quoted hereunder verbatim:

> Sergeant Auld's late father and the undersigned Magistrate Judge's late father were brothers. Accordingly, Sergeant Auld's late father was the undersigned Magistrate Judge's uncle, Black's Law Dictionary 1524 (6th ed. 1990) ("Uncle. The brother of one's father or mother."), and Sergeant Auld is the undersigned Magistrate Judge's first cousin, *id.* at 362 (defining "[f]irst cousins" as "the children of one's uncle or aunt"). That fact, however, does not require recusal. See 28 U.S.C. § 455(b)(5) (mandating disqualification of a federal judicial official when "a person within the third degree of relationship to [the federal judicial official] . . . [i]s a party to the proceeding"); see also 28 U.S.C. § 455(d)(2) (providing that "the degree of relationship is calculated according to the civil law system"); *United States v. Fazio*, 487 F.3d 646, 653 (8th Cir. 2007) ("A first cousin is considered the fourth degree of relationship."); *Njie v. Lubbock Cnty., Tex.*, 999 F. Supp. 858, 862 (N.D. Tex. 1998) ("According to the civil law system . . . ['][t]he fourth degree of relationship includes first cousins . . . .[']" (quoting 23 Am. Jur. 2d Descent & Distribution § 55 (1983))). Moreover, because no close personal relationship exists between Sergeant Auld and the undersigned Magistrate Judge (*e.g.*, the undersigned Magistrate Judge has not spoken to Sergeant Auld since his father's funeral in January 2006), no basis for recusal exists under the general provision that demands disqualification where a federal judicial official's "impartiality might reasonably be questioned," 28 U.S.C. § 455(a). See *Liteky v. United States*, 510 U.S. 540, 553 (1994) ("It would obviously be wrong, for example, to hold that 'impartiality could reasonably be questioned' simply because one of the parties is in the fourth degree of relationship to the judge. Section 455(b)(5), which addresses the matter of relationship specifically,

ends the disability at the third degree of relationship, and that should obviously govern for purposes of § 455(a) as well."); *In re International Bus. Machs. Corp.*, 618 F.2d 923, 929 (2d Cir. 1980) ("[I]f a judge's first cousin is a party to a case and no disqualification arises under section 455(b)(5) since he is not within the third degree of kinship, reasonable men might well question his impartiality where a close personal relationship exists between the two." (emphasis added)).

JURIDICTION

On 16 December 2015, the Honorable Chief Justice of the United States kindly extended Petitioner's time to file this petition to 26 February 2016 (No. 15-A-630). Jurisdiction of this Court over this timely petition is therefore invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

Title 28 U.S.C. §455(b) is not here recited deference to this Court's profound knowledge thereof.

Statement of the Case

The particular facts of the case are not necessary for the bright-line rule sought by this petition. One of the late Justice Scalia's immortal rulings is: the right to jury trial is inviolate even if a defendant were obviously guilty. Petitioner urges that the right to neutral jurist cannot be waived depending on a party's entitlement to prevail.

REASONS TO GRANT THE PETITION

The Petition should be granted to resolve conflicts among the Circuits, to exercise of this Court's supervisory power over the lower courts, and to promote public confidence in the Judiciary, specially in light of the oath prescribed by 28 U.S.C. § 453 [with emphasis]:

> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, XXX XXX, do solemnly swear (or affirm) that I **will administer justice without respect to persons, *and do equal right to the poor and to the rich***, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as XXX under the Constitution and laws of the United States. So help me God."

I. Generally Applicable Principles *Proving Public Offense* by a Jurist's Insistence on Ruling on His First Cousin's case.

A. This Court Holds that What Controls Juries *a fortiori* Controls Judges.

Herring v. *New York*, 422 U.S. 853 (1975), noted and quoted [with emphasis added] at footnote 15:

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> *Judicial training and expertise*, however it may enhance judgment, *does not render memory or reasoning infallible.* Moreover, in one important respect, closing argument may be even more important in a bench trial than in a trial by jury. As Mr. Justice Powell has observed, the "collective judgment" of the jury "tends to compensate for individual shortcomings and furnishes some assurance of a reliable decision." Powell, *Jury Trial of Crimes*, 23 Wash. & Lee L. Rev. 1, 4 (1966). In contrast, the judge who tries a case presumably will reach his verdict with deliberation and contemplation, but must reach it without the stimulation of opposing viewpoints inherent in the collegial decision-making process of a jury.

Neder v. *U.S.*, 527 U.S. 1 (1999), recognizes the evolution of common law, public perception thereof, and its importance in interpreting statutes [with emphasis added]:

> We have recognized that "most constitutional errors can be harmless." *Fulminante* at 306. "[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis." *Rose* v. *Clark*, 478 U.S. 570, 579 (1986). Indeed, we have found an error to be "structural," and thus subject to automatic reversal, only in a "very limited class of cases." *Johnson v. United States*, 520 U.S. 461, 468 (1997) (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963) (complete denial of counsel); *Tumey v. Ohio*, 273 U.S. 510 (1927) (biased trial judge); *Vasquez v. Hillery*, 474 U.S. 254 (1986) (racial discrimination in selection of grand jury); *McKaskle v. Wiggins*, 465 U.S. 168 (1984) (denial of self-representation at trial); *Waller v. Georgia*, 467 U.S. 39 (1984) (denial of public trial); *Sullivan v. Louisiana*, 508 U.S. 275 (1993) (defective reasonable-doubt instruction)). * * * * * But, as indicated in the foregoing discussion, the matter is not *res nova* under our case law. **And if the life of the law has not been logic but experience, see O. Holmes, *The Common Law 1 (1881)*, *we are entitled to stand back and see what would be accomplished by such an extension in this case.*** * * * *
>
> "[W]here Congress uses terms that have accumulated settled meaning under the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.'" *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992) (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989)); see *Standard Oil Co. of N. J. v. United States*, 221 U. S. 1, 59 (1911) ("[W]here words are employed in a statute which had at the time a well-known meaning at common law or in the law of this country, they are presumed to have been used in that sense").

The public knows that jurors do not sit in their first cousin's case.

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B. This Court Holds that Common Law Evolves with Modern Knowledge.

Leegin Creative Leather Products v. *PSKS, Inc.*, 127 S.Ct. 2705 (2007), holds that statutes should be read with, and common law adopts, modern understandings [with emphasis added]:

> [C]oncerns about maintaining settled law are strong when the question is one of statutory interpretation. See, *e.g.*, Hohn v. United States, 524 U.S. 236, 251 (1998). *Stare decisis* is not as significant [where] the issue before us is the scope of the [] Act. *Khan* at 20, 118 S.Ct. 275 ("[T]he general presumption that legislative changes should be left to Congress has less force with respect to the [] Act"). From the beginning the Court has treated the [] Act as a common-law statute. [citation and quotation] **Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act's prohibition on "restraint[s] of trade" evolve to meet the dynamics of present economic conditions.** The case-by-case adjudication contemplated by the rule of reason has implemented this common-law approach. See National Soc. of Professional Engineers at 688, 98 S.Ct. 1355. Likewise, the boundaries of the doctrine of *per se* illegality should not be immovable. For "[i]t would make no sense to create out of the single term 'restraint of trade' a chronologically schizoid statute, in which a 'rule of reason' evolves with new circumstance and new wisdom, but a line of *per se* illegality remains forever fixed where it was. Business Electronics, 485 U.S. at 732.

"Modern knowledge" is: a biological first cousin is ***genetically*** **in the third degree** of "blood" kinship as (s)he share **an eighth of the index person's genes, *the same fraction shared by biological great grandparents and great grandchildren*, who are in the *statutory* third degree.**

C. This Court Holds that the Purpose of a Statute Supersedes its Language.

Since *U.S.* v. *Kirby*, 74 U.S. 482 (1868), the settled law remains:

> **All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence.** It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. **The reason of the law in such cases should prevail over its letter.**

Petitioner painstakingly located, studied *and extracted in searchable form, the entire hearings in the Senate Subcommittee on Judi-*

cial Machinery and the House Subcommittee on Civil Liberties on S.1064, which became the current 28 U.S.C. §§ 144 and 455.

The dominant intent of Congress is to promote public confidence in the federal judiciary AND to free litigants and their lawyers, if applicable, to seek recusals without incurring judges' wrath. The public cannot trust or respect authors of this *absurd* result:

> *"We, the judges, hold that a juror cannot be impartial to hear his first-cousin-once-removed testify; but we, same judges who so hold, also hold that we the judges are impartial to our direct first cousins: AND* WE THE JUDGES WILL PUNISH YOU THE PUBLIC and brand you 'delusional, frivolous, and malicious,' IF YOU DARE question *our* impartiality in ruling for *our* first cousins."

D. N.C. Supreme Court *and* the Fourth Circuit Held even *Second Cousins* Disqualified from Juries.

State v. Allred, 169 S.E.2d 833 (N.C. 1969), quoted Lord Coke's assertion that the law mistrusts protestations of impartiality by blood relatives of parties:

> **In this jurisdiction, a juror, who is related to the defendant by blood or marriage within the ninth degree of kinship, is properly rejected when challenged by the State for cause on that ground. *State v. Perry*, 44 N.C. 330; *State v. Potts*, 461, 6 S.E. 657, 658; *State v. Levy*, 187 122 S.E. 386, 389; McIntosh, North Carolina Practice and Procedure, § 555(6).**
>
> An earlier rule is referred to by Nash, C. J., in *Perry*, as follows: "Lord Coke says that relationship is a good cause of principal challenge, 'no matter how remote soever, **for the law presumeth that one kinsman doth favor another before a stranger.**' Thomas's Coke, 3 Vol. 518." In *State v. Tart*, 155 S.E. 609, the opinion of Brogden, J., **implies the defendant had the right to challenge for cause a juror who was related within the seventh degree to the prosecuting witness.** [....] The juror had made no reply when counsel for defendant stated: **"If there is any member of the jury related to the prosecutrix by blood or marriage, please let that fact be known and excuse himself."** After the jury had returned a verdict of guilty, this juror disclosed that, although he had not recognized his relationship to the prosecuting witness when the jury was being selected, he became aware of their relationship before any evidence was introduced. Notwithstanding the court found the juror was not prejudiced, the cause was **"remanded [....] for a finding as to whether the defendant['s] counsel was misled[.]"**

In *Conaway v. Polk*, 453 F.3d 567 (2006), the Fourth Circuit again cited Justice O'Connor and Lord Coke:

> **Lord Coke aptly observed,** "no matter how remote soever, the law presumeth that one kinsman doth favor another before a stranger." State v. Allred, 169 S.E.2d 833, 837 (1969) **(quoting *Thomas's Coke*, 3 Vol. 518)** (internal quotation marks omitted). Section 2254(d)(1) of AEDPA therefore does not preclude Conaway from obtaining federal habeas corpus relief on the Juror Bias claim, because the MAR Court's decision involved an unreasonable application of clearly established federal law as determined by the Supreme Court.

And *U.S. v. Mitchell,* 690 F.3d 137 (3rd. Cir. 2012), remanded with directions to reverse conviction if "Juror 28" turned out to be the first cousin of the prosecutor:

> It is well settled that the Sixth Amendment, like the common law, under some circumstances presumes bias when the relative of a party in a case serves on his or her jury in a criminal trial. *E.g.*, Wood, 299 U.S. at 138, 146-47; *Brazelton*, 557 F.3d at 753; *Duer*, 151 F.3d at 982; *Torres*, 128 F.3d at 45. **Indeed, consanguinity is the classic example of implied bias.** *Conaway*, 453 F.3d at 586. **Presiding over Aaron Burr's trial for treason while riding circuit, Chief Justice Marshall explained that "the most distant relative of a party cannot serve upon his jury [because] ... the law suspects the relative of partiality; suspects his mind to be under a bias, which will prevent his fairly hearing and fairly deciding on the testimony which may be offered to him."** *United States v. Burr*, 25 F.Cas. 49, 50 (C.C.D.Va.1807) **(No. 14,692g). To secure an impartial jury, he continued, "the law cautiously incapacitates [the juror] from serving on the jury ... because in general persons in a similar situation would feel prejudice."** *Id.* **This is true even if "[t]he relationship [is] remote; the person ... ha[s] [never] seen the party; [and] he ... declare[s] that he feels no prejudice in the case[.]"** *Id.*
>
> **Chief Justice Marshall's "kinship category" of implied bias endures.** Nearly two centuries later, Justice **O'Connor's concurrence included "close relative[s]" as one of the "extreme" situations where courts impute bias to a juror irrespective of actual partiality.** *Smith*, 455 U.S. at 222 (O'Connor, J., concurring). And the Court of Appeals for the Ninth Circuit, sitting en banc, reiterated the rule:
>
> > **Of course, a juror could be a witness or even a victim of the crime, perhaps a relative of one of the lawyers or the judge, and still be perfectly fair and objective. Yet we would be quite troubled if one of the jurors turned out to be the prosecutor's**

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> **brother because it is highly unlikely that an individual will remain impartial and objective when a blood relative has a stake in the outcome. Even if the putative juror swears up and down that it will not affect his judgment, we presume conclusively that he will not leave his kinship at the jury room door.**

Dyer, 151 F.3d at 982; *see also United States v. Quinones*, 511 F.3d 289, 302 (2d Cir. 2007) ("Irrevocable bias would be so evident" from a juror's admission "that he was the defendant's brother or the prosecutor's uncle" that any further inquiry into the "the juror's ability to follow legal instructions and to serve impartially" would be "superfluous").

Likely because it is so uncommon for a relative of a party to be seated as a juror, little case law explores the outer boundary of the kinship category. Chief Justice Marshall's formulation suggests that even distant relatives are categorically presumed biased. *Burr*, 25 F. Cas. at 50. The Seventh Circuit Court of Appeals likewise finds implied bias whenever a juror shares "any degree of kinship with a principal in a case." *Brazelton*, 557 F.3d at 754. The Second Circuit Court of Appeals uses an intermediate standard, explaining that "automatically presumed bias deals mainly with jurors who are *related to* the parties." *Torres*, 128 F.3d at 45 (emphasis added). Justice O'Connor's formulation in *Smith* is narrower still; it presumes bias only in the case of a "close relative." *Smith*, 455 U.S. at 222 (O'Connor, J., concurring). Our Court has not considered the parameters of the kinship category. The touchstone of the inquiry, as previously discussed, is whether the average person in the position of the juror would be prejudiced and feel substantial emotional involvement in the case. In view of that inquiry, we reject the most expansive formulations that categorically presume bias whenever a juror shares any degree of kinship with a party in a case. A distant relative, on average, is unlikely to harbor the sort of prejudice that interferes with the impartial discharge of juror service. On the other hand, the bond between close relatives is intimate enough, on average, to generate a stronger likelihood of prejudice, whether unconscious or intentionally concealed. *Compare Conaway*, 453 F.3d at 586-88 (presuming bias when it was discovered that a juror was the double first cousin of a key prosecution witness), *and Brazelton*, 557 F.3d at 754 (suggesting, without explicitly holding, that it "might seem prudent" to disqualify a victim's second cousin from juror service), *with Allen v. Brown Clinic, P.L.L.P.*, 531 F.3d 568, 572-73 (8th Cir. 2008) (rejecting an implied bias challenge to a juror whose first cousin was married to the brother-in-law of the defendant). These considerations lead us to agree with

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> Justice O'Connor that the kinship category of implied bias excludes jurors who are "close relative[s]" of a principal in a case. *Smith*, 455 U.S. at 222 (O'Connor, J., concurring). This formulation, we believe, is most faithful to the notion that implied bias is a limited doctrine, one reserved for exceptional circumstances. *See id.*; *United States v. Tucker*, 243 F.3d 499, 509 (8th Cir. 2001); *Gonzales v. Thomas*, 99 F.3d 978, 987 (10th Cir. 1996). In adopting the "close relative" standard, we are concerned both with the right of the defendant to an impartial jury and with preservation of the appearance of justice in the courts. *See Dyer*, 151 F.3d at 983. If the seating of a party's relative as a juror would lodge serious doubts in the public's mind about the neutrality of the proceedings, that consideration favors legal attribution of bias. **Public confidence in the fairness of the proceedings would suffer if a trial court permitted a juror to deliberate and pass judgment in a case in which her close relative labored as prosecutor to procure a conviction or faced years in prison and the moral and societal condemnation that accompanies a criminal conviction.** We cannot say the same for distant relatives, whose relationship is sufficiently attenuated so as not to undermine the appearance of fairness in judicial proceedings.

E. SC's Supreme Court Disciplined a Prosecutor for Concealing that his Cousin Sat on Jury.

And that was in a case where the disciplined lawyer did not prosecute the case but lied about texting his cousin while he sat on the jury. *In re Nelson*, 750 S.E.2d 85 (S.C. 2013).

F. The 1974 Congress that Passed S.1064 Did NOT Know What the 2008 Congress that Passed the Genetic Information Non-Discrimination Act (GINA) Knew.

Salient in the legislative history is the following:

1. On 15 April 1971, to amend 28 U.S.C §455, then-U.S.-Senator Hollings (D, SC) introduced S. 1553, which would have set the mandatory recusal at *fourth degree*, which (even under a parentellic system) would have included first cousins;
2. On 17 May 1973, Professor E. Wayne Thode informed Senator Burdick's subcommittee (then consisting only of Senator Burdick himself and his Chief Counsel, William P. Westphal) of this:

> The Committee considered that "near relative" is too indefinite and that a relative as a party is only a *part* of the problem. [¶] The degree of relationship that will result in disqualification is statutory in many states, possibly because of the lack of specificity in Canon 13. Twenty [page 26]

states set the disqualification at the third degree; ***eight states specify the fourth degree***; and one state, Michigan, uses the ninth degree. The third degree of relationship selected by the Committee *automatically* disqualifies a judge if, for example, his nephew or uncle is involved in the proceeding. **There is no *automatic* disqualification if his first cousin is involved, *but the general Canon 3C(1) standard of "impartiality" might require the disqualification of the judge if he in fact had a close personal relationship with the cousin.*** A "Relationship and Degrees of Kindred" chart is attached as Appendix A. ¶ The disqualification standard was expanded to include not only a relative within the third degree as a party, but also any relative within the third degree who is a director or officer of a party, or who is known by a judge to have a substantial interest in the subject matter or in a party, or who is a known material witness in the proceeding, or who is a lawyer in the proceeding. As the Commentary to Canon 3C(1)(d)(ii) makes clear, however, *the fact that a relative of a judge is affiliated with a law firm that is involved in the proceeding does not **automatically** disqualify the judge.* The Committee felt that such a broad disqualification is not justified. Of course, **either a breach of the general impartiality test or a judge's knowledge that his lawyer-relative's interest in the law firm could be substantially affected is a basis for disqualification.** ¶ The relationship disqualification standard applies in the same manner to a judge's relatives, to a judge's spouse's relatives, and to the spouses of all the foregoing relatives. The Committee concluded that to maintain the appearance of impartiality the disqualification standard should encompass all persons within the third degree of relationship *to a judge or his spouse even though the relationship arises only through marriage.*

3. Appendix A, which professor Thode left with the subcommittee is a chart devised *solely by probate researchers and solely* for probate purposes.
4. No one on the ABA committee, the Judicial Conference of the U.S., or the U.S. Senate, shared any knowledge that a first cousin is ***genetically*** at the same relationship as great grandparents and great grandchildren (an eighth of the genes on average). No physicians served in Congress then. There are single-digit physician-senators and physician-house-members now.
5. Then-Administrative-Office-of-the-Courts' Kirks informed the subcommittee of anti-nepotism statutes, including that a federal judge may not appoint his first cousin. He also informed them that the Judicial Conference resolved to require income disclosure by federal judges, whereas the ABA committee had declared against income disclosure by judges.

6. The one hearing in the House Subcommittee was attended by then-Congressman Kastenmeier and then-Congressman Cohen (later elected Senator and even later appointed Secretary of Defense) *only* and did not address the relationship issue beyond reiterating that if the social relationship to even "a 42nd cousin" raises the appearance of partiality, the judge is disqualified.
7. The full House briefly debated Representative Dennis' objection: "you cannot legislate ethics."
8. No Senate floor debate beyond Senator Burdick's reading (or placing into the record) the final bill.
9. The overwhelming assurance from the hearings is: federal jurist is *required* to recuse whenever a reasonable person, not the jurist himself, would reasonably question his impartiality, whether for financial interest, announced political views, or family relationship beyond the third degree.

IN SUM: The only difference in the 1974 Congress' treatment of first cousins versus the genetically-equivalent great grandchildren and great grandparents is that recusal for relationship with a party, witness or lawyer of the latter type is *automatic and non-waivable,* whereas recusal for first-cousin relationship *is required if it raises the appearance of impartiality and waivable* ***only if both all parties and their lawyers, if any, consent in writing without pressure from the jurist.***

The genetic knowledge permeating the public by 2014, and the public's knowledge that first cousins are *automatically* disqualified, by statute and/or case law, from sitting on juries, **establish the appearance of partiality in the public's mind when a jurist, over timely objection, rules for his first cousin.**

II. CONLCUSION

Certiorari should be granted, and the judgment of the U.S. Court of Appeals for the Fourth Circuit should be reversed.

Respectfully submitted by:

Marie Assa'ad-Faltas, MD, MPH, *Petitioner pro se*
P.O. Box 9115, Columbia, SC 29290
Phone: (803) 783 – 4536
e-mail: MarieAssaadFaltas@GMail.com

Date: 26 February 2016, (resubmitted as corrected) 29 April 2016.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNPUBLISHED **No. 14-2258**

MARIE THERESE ASSA'AD-FALTAS,
Plaintiff - Appellant,

v.

TANDY CARTER, individually for damages for qui tam recovery; BARBARA JEAN BURNS, individually for damages and for qui tam recovery; SARA HEATHER SAVITZ WEISS, individually for damages and for qui tam recovery; THE GINGLIAT, BETTIS AND SAVITZ LAW FIRM, in its corporate capacity, for damages and for qui tam recovery; STEPHEN SAVITZ; JENNIFER CARR SAVITZ; THE MCANGUS, GOUDELOCK & COURIE LAW FIRM, in its corporate capacity for damages and for qui tam recovery; JOHN ANDREW DELANEY; STERLING DAVIES; GAFFFORD THOMAS COOOPER, JR.; MARION ONEIDA HANNA; MICHAEL KING, present or former Assistant City of Columbia Manager; ANGELA LADSEN, City of Columbia Ministerial Recorder; RICHLAND COUNTY, SC, SHERIFF'S DEPARTMENT; LEON LOTT, officially as Sheriff of Richland County, South Carolina; JEANETTE MCBRIDE, RC's Clerk of Court; BRETT BAYNE; JAMES R. BARBER, II; HARRY STUBBLEFIELD, RCSD Captain; DARRYL PRICE, RCSD Lieutenant; CALVIN HILL, RCSD Deputy; DEANDREA BENJAMIN GIST; KEN GAINES; ROBERT G. COOPER; DANA M. THYE; DAVID A. FERNANDEZ; CITY OF COLUMBIA, SC, POLICE DEPARTMENT; JOHN K. PASSMORE; AMANDA H. LONG BRANHAM; DEBBIE JORDAN; BURKE, CPD FORMER ACTING CHIEF; RUBEN SANTIAGO, CPD former acting chief; CAPTAIN HENDRIX; CAPTAIN THORNTON; LT. BUTZER; LT. EVANS; LT. GIBSON; LT. SHARP; LT. SMITH; LT. YATES; SGT. AULD; SGT. DRAFTS; SGT. GUNTHER; SGT. SANDERS; CORP. BRANHAM BELL; CORP. CALDWELL; CORP. GOMEZ-RIEVERA; BRIAN, CPD INVESTIGATOR; BLANTON, CPD INVESTIGATOR; NAREWSKI, CPD INVESTIGATOR; OFFICER ASHMORE; OFFICER BROWN; OFFICER DEJESUS; OFFICER GIRARD; KELSON; OFFICER MCSWAIN; OFFICER MEDLOCK; OFFICER WHITE; BARNEY GIESE; JOHN MEADORS; DAVID ROSS; DINAH GAIL STEELE; LARRY WAYNE MASON; WENDY CEO, also known as Windy Cio; ROBERT D. COBLE; CHARLENE CROUCH; COREY LAMONT CURRY; TERESA INGRAM; JOHN MITCHELL JONES; TIFFANY LURKE; CHRISTOPHER JAMES MASON; RICHARD C. MASON; WILLIAM TETTERTON; ALDEN HOLLIS WHEELER; RICHARD GLENN WHEELER; JOHN DOE; JANE ROE; DANA TURNER, falsely bearing a title of Chief Administrative Judge of the City's Municipal Court; STATE OF SOUTH CAROLINA; NIMRATA R. HALEY; ALAN WILSON, as SC's Attorney General; YANCEY MCGILL, as SC's Lieutenant Governor; JOHN COURSON; SC'S JUDICIAL MERIT SELECTION COMMISSION; JEAN TOAL; DANIEL SHEAROUSE; JENNY KITCHENS; V. CLAIRE ALLEN; MARK KEEL; LEROY SMITH; DANIEL JOHNSON, as SC's Fifth Judicial

Circuit's Solicitor; GARY H. WATTS, as Coroner for Richland County, SC; ROBERT ELDON HOOD, as Current SC's Fifth Judicial Circuit's Administrative Judge for General Sessions; LESLIE COGGIOLA, as SC's Disciplinary Counsel; ROSLYNN FRIERSON, as Director of SC's Office of Court Administration; WILLIAM NETTLES, as US Attorney for the District of South Carolina; STEVEN BENJAMIN, as Mayor; ALL MEMBERS OF THE CITY OF COLUMBIA COUNSIL; TERESA WILSON, manager for the City;

Defendants – Appellees

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:14-cv-00678-CCE-LPA)

Submitted: July 21, 2015 Decided: July 23, 2015

Affirmed by unpublished per curiam opinion.

Marie Therese Assa'ad-Faltas, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Before WILKINSON and MOTZ, Circuit Judges, and DAVIS, Senior Circuit Judge.

PER CURIAM:

Marie Therese Assa'ad-Faltas appeals the district court's order accepting the magistrate judge's recommendation to dismiss her civil complaint against Defendants, pursuant to 28 U.S.C. § 1915(e)(2)(B) (2012). Assa'ad-Faltas has also filed motions for injunctive relief pending appeal and to exceed the length limitations for her informal brief. We have reviewed the record and find no reversible error. Accordingly, although we grant Assa'ad-Faltas's motion to exceed the length limitations for her informal brief, we deny her motions for injunctive relief pending appeal and affirm for the reasons stated by the district court. Assa'ad-Faltas v. Carter, No. 1:14-cv-00678-CCE-LPA (M.D.N.C. Oct. 21, 2014). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process. AFFIRMED

Appendix B

FILED: September 29, 2015

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 14-2258 (1:14-cv-00678-CCE-LPA)

MARIE THERESE ASSA'AD-FALTAS,

Plaintiff - Appellant,

v.

TANDY CARTER, individually for damages for qui tam recovery; BARBARA JEAN BURNS, individually for damages and for qui tam recovery; SARA HEATHER SAVITZ WEISS, individually for damages and for qui tam recovery; THE GINGLIAT, BETTIS AND SAVITZ LAW FIRM, in its corporate capacity, for damages and for qui tam recovery; STEPHEN SAVITZ; JENNIFER CARR SAVITZ; THE MCANGUS, GOUDELOCK & COURIE LAW FIRM, in its corporate capacity for damages and for qui tam recovery; JOHN ANDREW DELANEY; STERLING DAVIES; GAFFFORD THOMAS

COOOPER, JR.; MARION ONEIDA HANNA; MICHAEL KING, present or former Assistant City of Columbia Manager; ANGELA LADSEN, City of Columbia Ministerial Recorder; RICHLAND COUNTY, SC, SHERIFF'S DEPARTMENT; LEON LOTT, officially as Sheriff of Richland County, South Carolina; JEANETTE MCBRIDE, RC's Clerk of Court; BRETT BAYNE; JAMES R. BARBER, II; HARRY STUBBLEFIELD, RCSD Captain; DARRYL PRICE, RCSD Lieutenant; CALVIN HILL, RCSD Deputy; DEANDREA BENJAMIN GIST; KEN GAINES; ROBERT G. COOPER; DANA M. THYE; DAVID A. FERNANDEZ; CITY OF COLUMBIA, SC, POLICE DEPARTMENT; JOHN K. PASSMORE; AMANDA H. LONG BRANHAM; DEBBIE JORDAN; BURKE, CPD FORMER ACTING CHIEF; RUBEN SANTIAGO, CPD former acting chief; CAPTAIN HENDRIX; CAPTAIN THORNTON; LT. BUTZER; LT. EVANS; LT. GIBSON; LT. SHARP; LT. SMITH; LT. YATES; SGT. AULD; SGT. DRAFTS; SGT. GUNTHER; SGT. SANDERS; CORP. BRANHAM BELL; CORP. CALDWELL; CORP. GOMEZ-RIEVERA; BRIAN, CPD INVESTIGATOR; BLANTON, CPD INVESTIGATOR; NAREWSKI, CPD INVESTIGATOR; OFFICER ASHMORE; OFFICER BROWN; OFFICER DEJESUS; OFFICER GIRARD; KELSON; OFFICER MCSWAIN; OFFICER MEDLOCK; OFFICER WHITE; BARNEY GIESE; JOHN MEADORS; DAVID ROSS; DINAH GAIL STEELE; LARRY WAYNE MASON; WENDY CEO, also known as Windy Cio; ROBERT D. COBLE; CHARLENE CROUCH; COREY LAMONT CURRY; TERESA INGRAM; JOHN MITCHELL JONES; TIFFANY LURKE; CHRISTOPHER JAMES MASON; RICHARD C. MASON; WILLIAM TETTERTON; ALDEN HOLLIS WHEELER; RICHARD GLENN WHEELER; JOHN DOE; JANE ROE; DANA TURNER, falsely bearing a title of Chief Administrative Judge of the City's Municipal Court; STATE OF SOUTH CAROLINA; NIMRATA R. HALEY; ALAN WILSON, as SC's Attorney General; YANCEY MCGILL, as SC's Lieutenant Governor; JOHN COURSON; SC'S JUDICIAL MERIT SELECTION COMMISSION; JEAN TOAL; DANIEL SHEAROUSE; JENNY KITCHENS; V. CLAIRE ALLEN; MARK KEEL; LEROY SMITH; DANIEL JOHNSON, as SC's Fifth Judicial Circuit's Solicitor; GARY H. WATTS, as Coroner for Richland County, SC; ROBERT ELDON HOQD, as Current SC's Fifth Judicial Circuit's Administrative Judge for General Sessions; LESLIE COGGIOLA, as SC's Disciplinary Counsel; ROSLYNN FRIERSON, as Director of SC's Office of Court Administration; WILLIAM NETTLES, as US Attorney for the District of South Carolina; STEVEN BENJAMIN, as Mayor; ALL MEMBERS OF THE CITY OF COLUMBIA COUNSIL; TERESA WILSON, manager for the City

Defendants – Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz and Senior Judge Davis.

For the Court

/s/ Patricia S. Connor, Clerk

SC ATTORNEY GENERAL'S OFFICE
REMBERT C. DENNIS BUILDING
1000 ASSEMBLY STREET, RM 519
COLUMBIA, SOUTH CAROLINA

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