

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of

AMERICA FIRST LEGAL FOUNDATION,

Petitioner,

For a judgment pursuant to Article 78 of the
Civil Practice Law and Rules,

v.

ETHICS COMMISSION FOR THE NEW
YORK STATE UNIFIED COURT SYSTEM
and JUAN M. MERCHAN, in his official
capacity as Acting Justice of the Supreme
Court of the State of New York, County of
New York,

Respondents.

Index Number: _____

VERIFIED PETITION

PRELIMINARY STATEMENT

1. Petitioner AMERICA FIRST LEGAL FOUNDATION (“AFL” or “Petitioner”) brings this action against Respondents ETHICS COMMISSION FOR THE NEW YORK STATE UNIFIED COURT SYSTEM (the “Commission”) and JUAN M. MERCHAN, in his official capacity as Acting Justice of the Supreme Court of the State of New York, County of New York (“Justice Merchan”) (each a “Respondent” and together, “Respondents”), and alleges as follows to compel compliance with 22 NYCRR § 40.1(p)(1)(i) and 22 NYCRR § 7400.5(d)—both of which require the Commission to produce for inspection mandatory annual financial statements of judges upon request (*see* form Financial Disclosure Statement Pursuant to 22 NYCRR 40,

Exhibit A annexed hereto) (the “Disclosure Form”), and for Justice Merchan to file any required disclosures to the extent that he has not done so.¹

2. This petition arises from the Commission’s failure to respond to and fulfill AFL’s request to the Commission pursuant to 22 NYCRR § 7400.5(d) dated June 6, 2024 (**Exhibit B** annexed hereto) (the “Request”), seeking inspection and production of Justice Merchan’s mandatory financial disclosures to be provided on the Disclosure Form (the “Requested Disclosures”)—which he is required to file under Judiciary Law § 211(4) and 22 NYCRR § 40.2(a).

3. Justice Merchan recently presided over the trial in the criminal matter captioned *People of the State of New York v. Donald J. Trump*, 2024 WL 2783752 (Sup. Ct. N.Y. Co. May 30, 2024) (the “Criminal Matter”), a case of immense national and political significance. The details of this unprecedented proceeding garnered significant national and international attention.²

4. Justice Merchan made numerous bizarre and legally inexplicable rulings in favor of the Manhattan District Attorney’s Office and against President Trump prior to and throughout the trial in the Criminal Matter,³ which led to a widely condemned⁴ guilty verdict on 34 counts of falsifying business records in the first degree.

¹ See Financial Disclosure Statement for Calendar Year 2023, <https://perma.cc/YR92-8NCH>.

² See, e.g., Brooke Singman, *Trump Guilty on All Counts in New York Criminal Trial*, FOX NEWS (May 30, 2024), <https://perma.cc/AR5U-ZNXN>; Madeline Halpert & Kayla Epstein, *Sentencing Set for 11 July as Trump Says Verdict ‘A Disgrace.’* BBC (May 30, 2024), <https://perma.cc/P5YQ-XGTG>; Jesse McKinley, *‘Guilty,’ and History Is Made*, N.Y. TIMES (May 30, 2024), <https://perma.cc/V5TS-EU8F>.

³ See Press Release from House of Representatives Judiciary Committee Chairman Jim Jordan, Chairman, H. Comm. on the Judiciary, “Chairman Jordan Demands Documents About Potential Bias in Trump Trial Judge” (Aug. 1, 2024), (available at <https://perma.cc/NCP2-QBSS>); Letter from Jim Jordan, Chairman, H. Comm. on the Judiciary, to Loren Merchan, President, Authentic Campaigns Inc. (Aug. 1, 2024), (available at <https://perma.cc/KL2F-NXLP>) (the “Jordan Letter”); STAFF OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., LAWFARE: HOW THE MANHATTAN DISTRICT ATTORNEY’S OFFICE AND A NEW YORK STATE JUDGE VIOLATED THE CONSTITUTIONAL AND LEGAL RIGHTS OF PRESIDENT DONALD J. TRUMP (July 9, 2024), (available at <https://perma.cc/B7F7-ZL2A>) (the “Lawfare Report”).

⁴ See, e.g., Jordan Letter; Lawfare Report; see also Ian Schwartz, *Jonathan Turley, The Inability to get a Conviction Outside of Manhattan Undermines the Legitimacy of the Trump Verdict*, REALCLEARPOLITICS (May 31, 2024), <https://perma.cc/3E9R-F8FN>; Jonathan Turley, *Donald Trump’s Conviction is Nothing More Than a “Thrill Kill”*, N.Y. POST (May 31, 2024), <https://perma.cc/3HAY-VSYW>; Hugh Hewitt, *The outcome of NY v. Trump is a ‘Travesty’: Hugh Hewitt*, FOX NEWS (May 30, 2024), <https://perma.cc/72CZ-KJ9L>.

5. Notwithstanding the justifiable concerns about the devastating and irreversible effect of this verdict (and the appearances of bias, conflict, and partiality by Justice Merchan leading up to the verdict)⁵ on public confidence in our criminal justice system, Justice Merchan continues to preside over the matter even as the Requested Disclosures remain hidden from public view; President Trump’s sentencing is scheduled for September 18, 2024. Such a situation severely undermines public confidence in the fair and impartial administration of justice.

6. This is not a close case, nor a complicated one—the Commission is legally required to produce the Requested Disclosures for inspection—*full stop*. As demonstrated herein and in the annexed memorandum of law, the Commission’s refusal to produce the Requested Disclosures for inspection is arbitrary, capricious, and unlawful.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”). *See* CPLR §§ 306-b, 7801, 7804.

8. The Petitioner has no available administrative remedies and, accordingly, must seek judicial review of the Commission’s refusal to fulfill the Request. This Court now has jurisdiction over the matter because the Respondents’ refusal to fulfill Petitioner’s Request cannot be further “reviewed by appeal to a court or to some other body or officer.” *See* CPLR § 7801(1).

9. Venue is proper in this Court pursuant to CPLR § 506(b).

PARTIES

10. The Petitioner, AFL, is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights

⁵ *See, e.g.*, Jordan Press Release; Jordan Letter; Lawfare Report; *see also* Derooy Murdock, *Judge’s Conflicted Political Ties Raise Eyebrows in Trump Trial*, DAILY SIGNAL (April 26, 2024), <https://perma.cc/QUV6-MC96>.

guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

11. Respondent Commission, established pursuant to Judiciary Law § 211(4)⁶ and 22 NYCRR § 40.1(a),⁷ is located at 25 Beaver Street, 8th Floor, New York, NY 10004, and is “responsible for administering the distribution, collection, review and maintenance of annual financial disclosure statements.”⁸ The Commission, therefore, is in possession of, or otherwise the proper custodian of, the Requested Disclosures.

12. Respondent Merchan is an Acting Justice of the Supreme Court of the State of New York, County of New York. He is sued in his official capacity only.

13. The Commission has possession, custody, and control of the Requested Disclosures, and Justice Merchan is legally required to file said Disclosures with the Commission.

FACTUAL BACKGROUND

14. The Criminal Matter has been plagued from the start by disturbing questions about the appearance of bias, conflict, and partiality by Justice Merchan, particularly as he issued numerous egregious rulings in favor of the Manhattan District Attorney's Office and against President Trump. Thus, AFL's Request to obtain Justice Merchan's financial statements is particularly urgent.

15. Some of the most egregious of these rulings were documented by the U.S. House of Representatives Committee on the Judiciary (the “Committee”) and the Select Subcommittee

⁶ See Rules of the Chief Judge, 22 NYCRR Part 40 - Financial Disclosure (available at <https://perma.cc/25S4-WM49>).

⁷ *Id.*

⁸ See 22 NYCRR Part 40 Filers (available at <https://perma.cc/G43Q-9KSL>).

on the Weaponization of the Federal Government in its July 9, 2024 Interim Staff Report entitled “Lawfare: How the Manhattan District Attorney’s Office and a New York State Judge Violated the Constitutional and Legal Rights of President Donald J. Trump.”⁹

16. Justice Merchan’s egregious rulings included: (i) the “failure to recuse himself for manifest political bias against President Trump”; (ii) “[t]he unconstitutional gag order he imposed on President Trump during the trial”; (iii) permitting the “admission of plainly inadmissible, irrelevant, and unfairly prejudicial testimony against President Trump”; and (iv) the “refusal to permit former Federal Elections Commission Chairman Bradley Smith to testify as to the meaning and complexities of the Federal Election Campaign Act.”¹⁰

17. Most relevant to the issue at hand—AFL’s Request—is Justice Merchan’s obvious political bias, a matter which bears directly on the importance of AFL’s Request for his financial statements. As the Committee noted, “Justice Merchan and his family have close ties to the Democrat Party.”¹¹

18. Most alarmingly, Justice Merchan’s daughter, Loren Merchan, is the president of Authentic Campaigns, a “‘Chicago-based progressive consulting firm’ that works with Democrat Party candidates, including President Biden and Vice President Harris.”¹² And “two of Authentic Campaigns’ top clients—Representative Adam Schiff and the Democrat-aligned Senate Majority PAC—raised ‘at least \$93 million in campaign donations’ while using President Trump’s New York indictments in their solicitation emails.”¹³

⁹ Lawfare Report, cover page.

¹⁰ Lawfare Report at 3, 25–30.

¹¹ Lawfare Report at 25.

¹² *Id.* (internal citations omitted); Jordan Letter at 2.

¹³ Lawfare Report at 25 (internal citations omitted).

19. Clearly, Justice Merchan’s daughter and her clients stand to profit handsomely from lawfare against President Trump. Representative Jim Jordan, Chairman of the Committee, summed up the problem best when he wrote in an August 1, 2024 letter to Loren Merchan: “At a minimum, there is a perception that you and Authentic Campaigns could profit considerably from President Trump’s prosecution in a forum overseen by your father.”¹⁴

20. As Chairman Jordan also pointed out in his August 1 letter to Ms. Merchan, “Justice Merchan refused to recuse himself, despite his close ties to Democrat-aligned interests and the likelihood that your political advocacy firm could benefit financially from his rulings.”¹⁵

21. Moreover, Justice Merchan himself has donated to Democrat causes, including to President Biden’s campaign and to a group called “Stop Republicans.”¹⁶

22. As the Committee observed, “Justice Merchan’s bias was so obvious that one former federal prosecutor [Elie Honig], a progressive legal analyst who is not a fan of President Trump, disagreed forcefully with Judge Merchan’s decision not to recuse, stating that he ‘absolutely should have recused himself’ because ‘judges are not supposed to give any amount’ to partisan political organizations.¹⁷ Honig further questioned, “what if the judge had donated a tiny amount, \$35, to Trump 2020 Would people be fine with that? I think people would be going nuts about that [T]here’s 40-something other judges in that courthouse who never donated, and it would have been safer [to have one of them oversee the trial.]”¹⁸

23. Notwithstanding these alarming revelations about Justice Merchan and his daughter, he has stubbornly refused to recuse himself to date, first denying President Trump’s

¹⁴ Jordan Letter at 2.

¹⁵ *Id.* at 3.

¹⁶ Lawfare Report at 26. (internal citations omitted).

¹⁷ *Id.* (citing Kaitlin Lewis, *Judge Merchan Should Have Recused Himself Over Biden Donation: Analyst*, NEWSWEEK (June 10, 2024), <https://perma.cc/B9UP-B4CM> (quoting senior CNN legal analyst Elie Honig).

¹⁸ *Id.*

recusal request in August 2023,¹⁹ denying a second recusal motion on April 15, 2024, and finally denying a third recusal motion on August 13, 2024.²⁰

24. In July 2023, the Commission on Judicial Conduct cautioned Justice Merchan for his improper political donations to the Biden campaign and “Stop Republicans.”²¹

25. Given the magnitude of the Criminal Matter and Justice Merchan’s readily apparent political bias, conflict, and partiality, public-interest organizations such as AFL have a keen interest in obtaining the Requested Disclosures and shining light on his finances.

26. Accordingly, on June 6, 2024, AFL submitted the Request on a properly completed “Request for Public Inspection of Annual Financial Disclosure Statement” form, via email to EthicsCommission@nycourts.gov, the email address used by the Commission for communication with the public. (**Exhibit B**).

27. The Request sought Justice Merchan’s Disclosures for reporting years 2018, 2019, 2020, 2021, 2022, 2023, and 2024—the Requested Disclosures—and notices of delinquency, if any, for these years.

28. The Commission did not produce the Requested Disclosures and never responded to the Request at all.

29. On August 30, 2024, having received no response from the Commission, AFL followed up via a second email to EthicsCommission@nycourts.gov. (**Exhibit C** annexed hereto).

30. Also on August 30, AFL followed up with a formal demand letter from undersigned counsel on letterhead, sent via email to EthicsCommission@nycourts.gov and by courier service,

¹⁹ *Id.* (internal citations omitted).

²⁰ Hon. Juan M. Merchan, A.J.S.C., Decision on Defendant’s Motion for Recusal (August 13, 2024), available at <https://perma.cc/PWA7-QETJ>.

²¹ William Rashbaum, Jonah Bromwich, and Ben Protess, *Ethics Panel Cautions Judge in Trump Trial Over Political Donations*, N.Y. TIMES (May 17, 2024), <https://perma.cc/JH3R-ULLQ>.

indicating that AFL would commence litigation if the Request was not fulfilled. (**Exhibit D** annexed hereto).

31. The Commission did not acknowledge or otherwise respond to any of the August 30 correspondence.

**LEGAL FRAMEWORK: NEW YORK’S FINANCIAL DISCLOSURE
MANDATE FOR JUDGES**

32. Judiciary Law § 211(4) requires, in pertinent part, that the “chief judge . . . shall approve a form of annual statement of financial disclosure which form shall apply to all judges, justices, officers, and employees of the courts of record of the unified court system Within one year after approval of such form, the chief judge shall cause the chief administrator of the courts to promulgate rules or regulations which require every judge, justice, officer, and employee of the courts of record of the unified court system . . . to report the information required by the approved form”

33. 22 NYCRR § 40.2(a)(1) requires, in pertinent part, that “[e]ach state-paid judge or justice, regardless of his or her annual rate of compensation . . . shall file annually with the Ethics Commission of the Unified Court System a financial disclosure statement containing the information and in the form set forth in the annual statement of financial disclosure adopted by the Chief Judge of the State of New York.” Additionally, “[s]uch statement shall be filed on or before the 15th day of May with respect to the preceding calendar year.”

34. 22 NYCRR § 40.1(p)(1)(i) provides, in pertinent part: “[T]he only records of the commission which shall be available for public inspection are: (i) the information set forth in an annual statement of financial disclosure filed pursuant to law and maintained by the commission.”

35. 22 NYCRR § 7400.5(d), entitled “Public Inspection of Statements”, provides, in pertinent part: “(1) An inspector may obtain copies of financial disclosure statements prepared for

public inspection by regular mail or email, or inspect the copies in the Ethics Commission office . . . (2) An inspector must file a written request for public inspection. Public inspection copies of statements will be provided to the inspector in a *timely* manner determined by the needs of the inspector, the number of statements requested, and the workload of the Ethics Commission staff at the time of the request.”

AS AND FOR A FIRST CAUSE OF ACTION
(Judgment Pursuant to CPLR § 7801 et seq.)

36. AFL repeats every allegation of the preceding paragraphs.
37. AFL explicitly adopts and asserts all the arguments in the annexed Memorandum of Law in Support of Verified Petition.
38. Justice Merchan was legally required to file the Requested Disclosures.
39. AFL properly sought the Requested Disclosures, which are within the possession, custody, and control of the Commission.
40. The Commission failed to respond to and fulfill AFL’s Request.
41. The Commission is in custody or possession of the Requested Disclosures, since 22 NYCRR § 40.2(a)(1) mandates that the Requested Disclosures were to have been filed “on or before the 15th day of May with respect to the preceding calendar year.” Therefore, if Justice Merchan has complied with his reporting obligations, the Requested Disclosures exist for, at minimum, 2018 through 2023.
42. Moreover, there can be no question that the Commission failed to provide the Requested Disclosures in a timely manner (3 months with no response), that the number of statements requested was minimal, and that no “workload” concerns could be implicated. 22 NYCRR § 7400.5(d)(2). As well, the needs of the inspector—AFL—are compelling. Consistent

with AFL's mission, AFL requires these Disclosures to further its mission of transparency in government and fairness in the administration of justice.

43. There is no valid factual or legal excuse for the Commission's failure to respond to and fulfill the Request.

44. The Commission's failure to respond to and fulfill the Request is contrary to law and undermines public confidence in New York's Unified Court System.

45. The Commission has violated 22 NYCRR § 40.1(p)(1)(i) and 22 NYCRR § 7400.5(d).

46. The Commission's failure to respond to and fulfill AFL's Request is improper and demonstrably arbitrary, capricious, and unlawful.

47. CPLR § 7803(1) provides that relief is available where the question presented by a petitioner involves "whether the body or officer failed to perform a duty enjoined upon it by law." Here, that is exactly what has happened—the Commission has failed to perform its duty to produce the Requested Disclosures, a duty enjoined upon the Commission by law.

48. Accordingly, pursuant to CPLR § 7806, the Court should "grant the petitioner the relief to which [it] is entitled"—to wit: the Commission's production of the Requested Disclosures for inspection by AFL.

PRAYER FOR RELIEF

WHEREFORE, Petitioner America First Legal Foundation respectfully requests that this Court:

- i. Declare that the Requested Disclosures must be produced to AFL pursuant to 22 NYCRR § 40.1(p)(1)(i) and 22 NYCRR § 7400.5(d);
- ii. Order the Commission to immediately search for the Requested Disclosures;

- iii. Order the Commission to immediately produce to AFL all the Requested Disclosures that are subject to release under 22 NYCRR § 40.1(p)(1)(i) and 22 NYCRR § 7400.5(d);
- iv. Order Justice Merchan to file the Requested Disclosures with the Commission to the extent he has not done so.
- v. Award AFL attorneys' fees and costs incurred in this action; and
- vi. Grant AFL such other and further relief as this Court deems proper.

Dated: September 5, 2024
New York, New York

Respectfully submitted,

By: /s/ Edward Andrew Paltzik
Edward Andrew Paltzik, Esq.
BOCHNER PLLC
1040 Avenue of the Americas, 15th Floor
New York, NY 10018
edward@bochner.law
(516) 526-0341

Michael Ding (admission pro hac vice
forthcoming)
Jacob Meckler (admission pro hac vice
forthcoming)
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Avenue SE #231
Washington, D.C. 20003
Michael.Ding@aflegal.org
Jacob.Meckler@aflegal.org

*Counsel for the Petitioner
America First Legal Foundation*

VERIFICATION

EDWARD ANDREW PALTZIK, Esq., duly affirms and deposes as follows:

I am Of Counsel to the Law Firm of Bochner PLLC, attorneys for Petitioner AMERICA FIRST LEGAL FOUNDATION (hereinafter "Petitioner") in this special proceeding. I have read the annexed Verified Petition and know the contents thereof to be true to the best of my knowledge and based upon my own personal knowledge, except as to matter therein stated on information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to all matters not stated upon my personal knowledge are correspondence and other documentation furnished to me by Petitioner and by other members of this Law Firm. The reason why the verification is not made by the Petitioner is, pursuant to CPLR § 3023(d)(3), the Petitioner is in a county other than that in which my practice is located.

Dated: September 5, 2024
New York, New York

/s Edward Andrew Paltzik
EDWARD ANDREW PALTZIK