

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

BRIANNA BOE, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, et al.,

Defendants.

}
}
}
}
}
}
}
}
}
}
}
}
}
}
}
}
}

Case No. 2:22-CV-184-LCB

NOTICE OF FILING

Respondent, Scott D. McCoy, hereby gives notice of the filing of the following:

1. Declaration of Scott D. McCoy in Response to this Court’s February 21, 2024 Order to Show Cause, Doc. 406, attached as Exhibit A. This Declaration was previously filed on March 8, 2024 as an Exhibit to Motion for Leave to Submit Additional Evidence; and
2. Supplemental Declaration of Scott D. McCoy in Response to this Court’s May 1, 2024 Order to Show Cause, Doc. 487, attached as Exhibit B. This Declaration was previously filed on May 8, 2024 as an Exhibit to Submission of Respondent Scott D. McCoy in Response to May 1, 2024, Show Cause Order, Doc. 487.

Respectfully submitted this 14th day of May, 2024.

s/ Robert D. Segall
 Robert D. Segall (ASB-7354-E68R)
 Shannon L. Holliday (ASB-5440-Y77S)
 Copeland Franco Screws & Gill, P.A.
 P. O. Box 347
 Montgomery, AL 36101-0347
 Phone: (334) 834-1180
 Fax: (334) 834-3172
 Email: segall@copelandfranco.com
 Email: holliday@copelandfranco.com
Attorney for Respondent Scott D. McCoy

CERTIFICATE OF SERVICE

I certify that on May 14, 2024, I filed the foregoing electronically with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Robert D. Segall
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

BRIANNA BOE, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, et al.,

Defendants.

}
}
}
}
}
}
}
}
}
}
}
}
}
}

Case No. 2:22-CV-184-LCB

FILED UNDER SEAL

**DECLARATION OF SCOTT D. MCCOY IN RESPONSE TO THIS
COURT’S FEBRUARY 21, 2024 ORDER TO SHOW CAUSE, DOC. 406**

Pursuant to the Court’s February 21, 2024 Order to Show Cause, Doc. 406, I
declare under penalty of perjury that the following is true and correct:

1. I am the Deputy Legal Director (“DLD”) for Inclusion & Anti-
Extremism at the Southern Poverty Law Center (“SPLC”) based in SPLC’s Miami,

EXHIBIT A

Florida office.¹

2. I graduated *summa cum laude* from the Benjamin N. Cardozo School of Law at Yeshiva University in New York City in January 2001. In 2017, I received the Tenth Annual E. Nathaniel Gates Award for outstanding contributions to the LGBTQ community.

3. While in law school, I externed for a full semester with the United States Attorney's Office for the Southern District of New York where I assisted on a criminal trial against a United Nations official and on a prosecution of individuals for involuntary servitude under the 13th Amendment.

4. In addition, while in law school, I was a summer law clerk for the Honorable Judith Barzilay of the U.S. Court of International Trade in New York City.²

5. Upon graduating from law school, I began my legal career as an Associate at the international law firm Cleary, Gottlieb, Steen & Hamilton ("Cleary Gottlieb") in New York City.

6. I became a member of the New York Bar in 2001, where I remain in good standing, and am also admitted and in good standing to practice in both the

¹ As of August 26, 2023, I was promoted from interim DLD to full-time DLD for the LGBTQ Rights and Special Litigation practice group. Since that time, a reorganization changed my title to DLD for the Inclusion & Anti-Extremism team.

² The U.S. Court of International Trade is an Article III court.

Federal District Courts for the Southern and Eastern Districts of New York. I practiced law at Cleary for a year before clerking for the Honorable Justice Leonard N. Russon of the Utah Supreme Court in Salt Lake City, Utah.

7. After clerking for Justice Russon for a year and a half, I became an Associate at the Salt Lake City law firm Bendinger, Crockett, Peterson, Greenwood & Casey PC where I practiced federal securities and antitrust law for several years before returning to New York City to resume practice at Cleary Gottlieb. I became a member of the Utah State Bar in 2003³ and am also admitted and in good standing to practice in the Federal District Court for the District of Utah.

8. During my time practicing law in Utah, I also was appointed by then-Governor Jon Huntsman, Jr. (2005) and then elected (2006) to the Utah State Senate representing the Salt Lake City-based Senate District 2. I held this office from 2005-2009. When I entered the Utah State Senate in 2005, at the age of 35, I was the youngest person in the Utah Senate and the first openly-gay Utah State Senator. As a Utah State Senator, I was appointed by Governor Huntsman to the Governor's Commission on Strengthening (Utah's) Democracy, and I served as a member of the Utah Sentencing Commission. In addition, in 2006 I was named

³ I elected to place my Utah law license on inactive status since I am no longer practicing in that state.

Legislator of the Year and in 2008 Best State Legislator by Salt Lake City Weekly. During this time, I also was an adjunct professor of law at the S.J. Quinney School of Law at the University of Utah where I taught an advanced seminar on legislative process and statutory interpretation. Finally, from 2003-2005, after having been appointed by then-Salt Lake City Mayor Rocky Anderson and confirmed by the Salt Lake City Council, I served as a member and then chairman of the Salt Lake City Police Civilian Review Board.

9. After Utah, I practiced law again at Cleary Gottlieb in New York City before becoming a Senior Staff Attorney at SPLC, where I have practiced law for the past nine years. After two years in Montgomery, Alabama, I moved to Tallahassee, Florida to open SPLC's office there. After five years in Tallahassee, I relocated to Wilton Manors in south Florida and affiliated with SPLC's office in Miami. I have remained active in my local community wherever I have lived. Last year, for example, I was chosen by the Wilton Manors City Commission to serve as a member of the Wilton Manors Planning and Zoning Board.

10. I became a member of the Florida State Bar in 2017 and remain in good standing. I am also admitted and in good standing to practice in the Federal District Courts for the Middle and Southern Districts of Florida.

11. In addition to these bars and courts, I am also admitted and in good standing to practice before the U.S. Circuit Courts of Appeals for the Tenth and

Eleventh Circuits. I am and have been admitted pro hac vice in a number of federal district courts including the Middle and Southern Districts of Alabama, the Middle District of Georgia, the Southern District of Mississippi, the Eastern District of Pennsylvania, and the District of Vermont. I have also been admitted pro hac vice in New Jersey state court.

12. In my 23 years of continual practice, I have never been the subject of a bar complaint or disciplinary investigation or action by any of the courts or jurisdictions in which I am or have been admitted to practice.

13. I deeply regret that my conduct in the *Ladinsky v. Ivey* case and the *Eknes-Tucker v. Marshall* (a/k/a *Boe v. Marshall*) case has raised the appearance or inference of impropriety. It was not my intention to impugn the ethics or character of Judge Burke or any other member of the Alabama federal judiciary. I am sorry that in the hectic events of April 15, 2022, I contributed to speculation about the transfer of the *Ladinsky* case possibly being “grabbed” outside of the ordinary case assignment process. At the time, I just had no notion of why the case was transferred in a way that did not comport with my understanding of how the first-filed rule was expected to work. Instead of giving the process and Judge Burke the benefit of the doubt, I said to some of my co-counsel that the situation “felt” like something untoward may have occurred. Although at the time I mentioned this possibility, in a conversation that I thought was private and privileged, and in

which I made clear to the team members to whom I addressed my speculation that I was being cynical and would never even speculate in this way outside the team, I now know that even that was wrong, and I apologize to the Court and to Judge Burke for doing it. Having now actually practiced before Judge Burke, I know that he would not have taken the kind of action I cynically and inappropriately speculated might have occurred.

14. I do want to be clear that it was never my (or I believe any of the other attorneys') intention to deliberately and in bad faith manipulate the judicial assignment process. It was not my understanding at the time that dismissing the *Ladinsky* case and later filing another case was violative of the Federal Rules of Civil Procedure, namely Rule 41, or any applicable local rule. Rather, at that time, I thought those actions were permissible. I now understand that this Court and the three-judge panel disagree. I accept that, and based on this new understanding, would most assuredly not engage in the same conduct again.

15. In my position as DLD, I am required to practice in many jurisdictions across the country which necessitates the filing of pro hac vice applications and my ability to do so will be placed in jeopardy should I receive a sanction. The mere pendency of this inquiry has already negatively impacted my law practice. I have already refrained from filing for pro hac admission in one federal court and refrained from seeking regular admission in the Northern District of Florida

because of the pendency of this matter. A sanction would almost assuredly prevent me from being admitted pro hac vice in other jurisdictions and would prevent lawyers, including myself, from becoming members of the Bars of one or more federal courts.

Executed on March 8, 2024.


Scott D. McCoy

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

BRIANNA BOE, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, et al.,

Defendants.

}
}
}
}
}
}
}
}
}
}
}
}
}
}
}
}

Case No. 2:22-CV-184-LCB

**SUPPLEMENTAL DECLARATION OF SCOTT D. MCCOY IN RESPONSE
TO THIS COURT’S MAY 1, 2024 ORDER TO SHOW CAUSE, DOC. 487**

Pursuant to the Court’s May 1, 2024, Supplemental Order to Show Cause, Doc. 487, I declare under penalty of perjury that the following is true and correct:

1. The purpose of this Supplemental Declaration is to address matters not covered in my Declaration of March 8, 2024, Doc. 438-1, including such matters as this Court directed to be addressed in its Show Cause Order of May 1, 2024, Doc. 487.

2. Each of such matters is addressed in my brief to be filed on or before May 11, 2024. Rather than duplicate the factual responses to the Show Cause Orders that are in my brief, I adopt and incorporate those factual responses by reference in

EXHIBIT B

this Declaration and affirm their accuracy.

3. I do want to, however, and do, emphasize here a few points. First, I have not knowingly provided the Panel or this Court information that is untrue. In connection with my Declaration to the Panel filed on July 27, 2022, my testimony before the Panel on November 3, 2022, and my Declaration to this Court filed March 8, 2024, I have done my best to relate what I recalled from the very hectic day on which the *Ladinsky* lawsuit was voluntarily dismissed.

4. Secondly, in my testimony on November 3, 2022, at pages 178-79, I made clear that had I known prior to the dismissal decision that *Ladinsky* had been transferred from Judge Axon, who had been assigned the first-filed case, because her involvement in a complex, ongoing criminal case precluded her conducting a timely preliminary injunction hearing, that information would have “in a big way” answered my questions about the transfer. Although not asked by the Panel, implicit in my testimony, which I re-affirm here, is that had I known the actual reason for the transfer, I would not have cynically speculated about the unexpected and seemingly unusual transfer of the case. That only happened because I did not understand the reason for the transfer and thus was left to speculate – wrongly – about what had happened. As is also implicit in my testimony, with a clear explanation in hand, I would not have gone along with any decision to dismiss the case under Rule 41. Although a combination of significant factors led to the dismissal decision, my

concerns about how the case came to be transferred contrary to the first-filed rule (or practice) in the Northern District tipped the scales toward dismissal.

5. Third, I believe my Declaration to the Panel is evidence of my commitment to being candid with the Panel and with this Court. Although the most potentially damaging evidence against me relative to the decision to dismiss *Ladinsky* appeared to be my having commented to *Ladinsky* counsel that it looked like this Court had reached out for the case outside the normal course, I volunteered that information in my Declaration to the Panel of July 27, 2022, because of my commitment to candor. As I say in my brief and elsewhere, I am deeply remorseful for having engaged in what I now know to have been entirely erroneous speculation.

6. Fourth, I made no reference in my Declaration of July 27, 2022 to any *Ladinsky* lawyer's having purportedly said we had "zero" chance to win on preliminary injunction before Judge Burke because I did not, and do not, remember such a comment. Assuming I was on the call in which the comment was purportedly made, and had I remembered the comment, I would not have hesitated to tell the Panel about the comment. In my opinion the comment, if made, would not have been different in kind, but only in degree, from the general feeling among *Ladinsky* counsel that this Court was not a good draw for the case. In my experience, when co-counsel says a judge is "not a good draw", or is a "bad draw", for the case, the clear connotation is that the judge is highly unlikely to rule in favor of my client. If

I had heard co-counsel go a step further and say there was “zero” chance of prevailing before a certain judge, I would have taken that statement as hyperbolic and as adding little to my understanding that the judge was highly unlikely to rule in favor of my client. My point is that given the atmosphere of confusion and time sensitivity surrounding the discussion that evening, whether the “zero” comment was made or not seems almost immaterial to the decision made. Perhaps that is why, if it was made, I do not remember it. Whether said or not, I would have gone along with the consensus view that the case should be voluntarily dismissed.

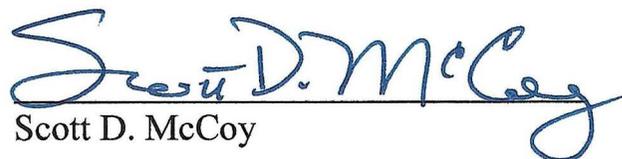
7. Finally, one of the events of alleged misconduct the Court directed me to address was that I, along with co-counsel, suddenly dismissed the *Ladinsky* case “after a series of phone conferences in which counsel discussed a number of matters, including their prospects in front of the Court and how the Court was a bad draw.”

8. Although *Ladinsky* counsel did have discussions about what should be done in light of what appeared to be a transfer contrary to the first-filed rule (or practice), and counsel did discuss our clients’ prospects before this Court, I did not believe or understand at the time that anything was improper about those discussions. The Court is well aware by now of all the circumstances surrounding these discussions and the necessity that a decision be made promptly. As I suspect every litigator and every judge knows, such discussions occur all the time in many different contexts. I certainly never thought that what I regarded as a private and

privileged communication among co-counsel about prospects could be considered improper.

9. Again, to avoid repetition, I request that the Court review the facts set out in my brief, all of which I adopt and incorporate herein by reference.

Executed on May 8, 2024.


Scott D. McCoy