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## **INTRODUCTION**

1. This action for declaratory judgment and injunctive relief seeks to prevent the violation of Judge Porteous' rights as guaranteed by the self-incrimination clause of the Fifth Amendment of the United States Constitution. The violation arises from the ongoing, and anticipated continuing, direct and indirect use of Judge Porteous' prior testimony that was provided pursuant to a compulsion order and a grant of statutory immunity pursuant to 18 U.S.C. §6002. Because a statutory grant of immunity is coextensive with Judge Porteous' self-incrimination right under the Fifth Amendment, defendants have violated, and will continue to violate, Judge Porteous' Fifth Amendment rights by using this immunized testimony to pursue his impeachment and removal from office. In particular, defendants have committed these violations by failing to implement measures designed to prevent the immunized testimony from being used against Judge Porteous. The defendants have made, and continue to make, direct and indirect use of this testimony by using it to formulate strategy, inform witness interviews and preparation, and develop additional areas of inquiry for the impeachment investigation. Defendants have published the immunized testimony by exposing potential witnesses to the testimony or its contents, either through the questioning of these witnesses based upon the testimony or by seeking the witnesses' reaction to the testimony. In doing so, defendants have violated, and continue to violate, Judge Porteous' rights under the Fifth Amendment and, thereby, to expose him to immediate and irreparable harm.

## **JURISDICTION AND VENUE**

2. This action arises under the Fifth Amendment of the United States Constitution and, accordingly, jurisdiction is vested in this Court by 28 U.S.C. §1331.

3. The relief requested is authorized by 28 U.S.C. §2201 and by 28 U.S.C. §1651.

4. Venue lies in this District pursuant to 28 U.S.C. §1391(e).

### **PARTIES**

5. Plaintiff, United States District Judge G. Thomas Porteous, Jr., (“Judge Porteous”) is a United States District Judge for the Eastern District of Louisiana and has served in such capacity since October 11, 1994.

6. Defendant, Alan I. Baron, Special Counsel, Impeachment Task Force, Committee on the Judiciary, United States House of Representatives, is sued in his official capacity. In that capacity, he is charged with leading the Impeachment Task Force’s investigation of Judge Porteous.

7. Defendant, Mark Dubester, Majority Counsel, Impeachment Task Force, Committee on the Judiciary, United States House of Representatives, is sued in his official capacity. In that capacity, he is charged with participating in the Impeachment Task Force’s investigation of Judge Porteous.

8. Defendant, Harold Damelin, Minority Counsel, Impeachment Task Force, Committee on the Judiciary, United States House of Representatives, is sued in his official capacity. In that capacity, he is charged with participating in the Impeachment Task Force’s investigation of Judge Porteous.

### **THE FACTS**

9. From approximately, 1999 through 2007, the United States Department of Justice (the “Department”), through the Public Integrity Section of the Criminal Division, conducted a criminal investigation of Judge Porteous. The investigation concluded without the filing of criminal charges.

10. On May 18, 2007, the Department submitted a formal complaint of judicial misconduct to Edith H. Jones, Chief Judge of the United States Court of Appeals for the Fifth Circuit (“Chief Judge Jones”). The complaint letter stated that the Department had determined that it would not seek criminal charges against Judge Porteous, but that it was forwarding the evidence gathered during its investigation for possible disciplinary proceedings and, if warranted, certification for possible impeachment by Congress.

11. Based upon the complaint, Chief Judge Jones appointed a Special Investigatory Committee (the “Special Committee”) to investigate the Department’s allegations.

12. On October 29, 2007, a hearing was convened by the Special Committee to hear testimony and receive evidence in connection with the complaint against Judge Porteous. During that hearing, Judge Porteous was called as a witness by counsel to the Special Committee and Judge Porteous’ testimony was compelled under a grant of statutory immunity pursuant to 18 U.S.C. § 6002.

13. While testifying under the immunity order, Judge Porteous answered numerous questions relating to the allegations of judicial misconduct in the complaint, resulting in a transcript of more than 125 pages.

14. Based upon the hearing, on November 20, 2007, the Special Committee issued a report to the Judicial Council of the Fifth Circuit concluding that Judge Porteous committed misconduct that might constitute one or more grounds for impeachment.

15. On December 20, 2007, a majority of the Judicial Council accepted and approved the Special Committee’s Report and adopted its conclusion that Judge Porteous had engaged in conduct which might constitute one or more grounds for impeachment under Article II of the

Constitution. A minority of the Judicial Council dissented from this action. These reports were forwarded to the Judicial Conference of the United States.

16. On June 17, 2008, the Judicial Conference of the United States transmitted a certificate to the Speaker of the House expressing the Conference's determination that consideration of impeachment of Judge Porteous might be warranted.

17. On September 17, 2008, the House of Representatives of the 110<sup>th</sup> Congress passed House Resolution 1448, which provided that the Judiciary Committee shall inquire whether the House should impeach Judge Porteous.

18. On October 15, 2008 House Judiciary Chair John Conyers announced that Alan I. Baron had been engaged as Special Counsel to lead an inquiry into Judge Porteous' impeachment.

19. On January 13, 2009, the House of Representatives of the 111<sup>th</sup> Congress passed House Resolution 15, which continued the authority of House Resolution 1448 of the 110<sup>th</sup> Congress, in order to permit the work of the Impeachment Task Force to continue.

20. Since that time, defendants, Alan I. Baron, Mark Dubester, and Harold Damelin, have been reviewing the materials provided by the Fifth Circuit including the Special Committee Report, the Special Committee hearing testimony, and other information, and have been interviewing various witnesses.

21. In their official capacity as counsel to the Impeachment Task Force, defendants have received the immunized testimony of Judge Porteous and have failed to implement measures designed to prevent the immunized testimony from being used against Judge Porteous as is typical when a subsequent prosecution is brought against an individual who has provided testimony under a grant of immunity.

22. Defendants have reviewed this testimony and made use of it in determining the course of the impeachment investigation, in interviewing witnesses, and in considering what additional evidence to seek or what investigative leads to pursue.

23. Upon information and belief, defendants have published Judge Porteous' immunized testimony by exposing potential witnesses to the testimony or its contents either through the questioning of these witnesses based upon the testimony or by seeking the witnesses' reaction to the testimony.

24. This use of Judge Porteous' immunized testimony to pursue the quasi-criminal punishment of impeachment, conviction, and removal is a violation of his rights as guaranteed by the Fifth Amendment of the United States Constitution.

25. Defendants' actions have caused and will continue to cause Judge Porteous to suffer irreparable harm.

26. Judge Porteous seeks declaratory and injunctive relief in this proceeding because he has no adequate remedy at law.

**CLAIM FOR RELIEF**  
**VIOLATION OF THE FIFTH AMENDMENT**

27. Plaintiff repeats and realleges paragraphs 1 –26 as if set forth herein in full.

28. The defendants' actions in making direct and indirect use of Judge Porteous' immunized testimony to pursue his impeachment and removal from office violates Judge Porteous' right not to be compelled to be a witness against himself under the Fifth Amendment to the United States Constitution.

29. As a result of these violations of his Fifth Amendment rights, Judge Porteous is suffering injury and will suffer further irreparable harm to his constitutional rights if the Court

does not declare this use of immunized testimony to be a violation of his Fifth Amendment rights and if defendants are not enjoined from using the immunized testimony.

**PRAYER FOR RELIEF**

Plaintiff accordingly prays for the following relief:

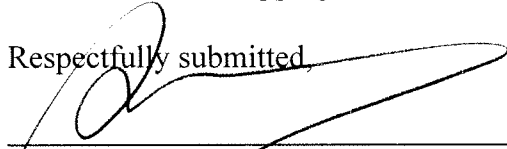
a) a declaration that the actions of defendants, counsel to the Impeachment Task Force, in making use of Judge Porteous' immunized testimony, whether direct or indirect, evidentiary or non-evidentiary, are in violation of Judge Porteous' constitutional rights;

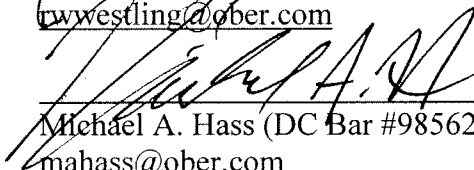
b) that the Court hold a hearing to determine the extent of any prior use of the immunized testimony in order to fashion an appropriate form of injunctive relief to protect Judge Porteous from any and all past violations of his constitutional rights;

c) an injunction enjoining defendants, in their capacity as counsel to the Impeachment Task Force, from making any use of the immunized testimony, whether direct or indirect, evidentiary or non-evidentiary, in connection with its impeachment inquiry and;

d) any additional further relief this Court deems appropriate.

Respectfully submitted

  
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