

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**Docket 24-6787
Case 1:24-CV-1300-MC
David White, Pro Se**

**MOTION FOR DECISION
(FRCP 55) AND REQUEST
FOR AFFRIMATIVE RELIEF**

18965 NW Illahe St,
Portland OR.

dave@salmonprotectiondevice.com

vs.

**Scott Ashford, in his personal capacity and his official capacity of
Dean of Engineering,
Jeff Nason in his personal capacity and his official capacity of
Environmental Engineering Leader,
Philip Mote in his personal capacity and his official capacity of
vice provost and dean of the Graduate School;
Edward Feser in his personal capacity and his official capacity of
Provost of Oregon State University
Defendants.**

Legal Counsel for Defendants
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Miller Nash LLP
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Portland, OR 97205
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TABLE OF AUTHORITIES

- 1) 18 U.S.C. § 1001 False Statements, Concealment.
- 2) 28 U.S.C. §191 Proceedings in forma pauperis.

1 3) 8 U.S. Code § 1324c - Penalties for document fraud.

2
3 4) Rule 5. Serving and Filing Pleadings and Other Papers.

4
5
6 5) Rule 11. Signing Pleadings,

7
8 6) 18 U.S.C. 1621 Perjury.

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10 7) Rule 21 Writ of mandamus.

11
12
13 Federal Case Law

14 8) Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002): Pagtalunan
15 was Pro Se and made numerous mistakes in filing his complaint
16 resulting in the case being dismissed. However, upon appeal, the
17 higher Court ruled that the lower Court was in error because they did
18 not give allowance for Pagtalunan's lack of legal training.

19 9) 20-1199 Loper Bright Enterprises v. Raimondo and Relentless, Inc. v.
20 Department of Commerce US Supreme Court Ruled on 6/28/2024
21 that courts can no longer function as Administrative Law courts. They
22 must convene as article III of the US Constitution Courts, in
23 compliance with the judge's sworn oath of office.

24 Today, the phrase "common law judge" may call to mind
25 a judicial titan of the past who brilliantly devised new legal
26 rules on his own. The phrase "stare decisis" might conjure
27 up a sense that judges who come later in time are strictly
28 bound to follow the work of their predecessors. But neither
29 of those intuitions fairly describes the traditional common
30 law understanding of the judge's role or the doctrine of stare
31 decisis.

32 At common law, a judge's charge to decide cases was not
33 usually understood as a license to make new law. For much
34 of England's early history, different rulers and different le
35 gal systems prevailed in different regions. As England
36 consolidated into a single kingdom governed by a single legal
37 system, the judge's task was to examine those pre-existing
38 legal traditions and apply in the disputes that came to him

1 those legal rules that were “common to the whole land and
2 to all Englishmen.” F. Maitland, *Equity, Also the Forms of*
3 *Action at Common Law* 2 (1929). That was “common law”
4 judging.

5
6 10) STUDENTS FOR FAIR ADMISSIONS, INC. v. PRESIDENT
7 AND FELLOWS OF HARVARD COLLEGE

8 CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
9 FIRST CIRCUIT

10 https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf

11
12
13 11) WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION
14 AGENCY ET AL. [https://www.hsph.harvard.edu/news/features/the-](https://www.hsph.harvard.edu/news/features/the-supreme-court-curbed-epas-power-to-regulate-carbon-emissions-from-power-plants-what-comes-next/)
15 [supreme-court-curbed-epas-power-to-regulate-carbon-emissions-](https://www.hsph.harvard.edu/news/features/the-supreme-court-curbed-epas-power-to-regulate-carbon-emissions-from-power-plants-what-comes-next/)
16 [from-power-plants-what-comes-next/](https://www.hsph.harvard.edu/news/features/the-supreme-court-curbed-epas-power-to-regulate-carbon-emissions-from-power-plants-what-comes-next/)

17
18 12) The Clean Air Act of 1967 directed the EPA to tackle issues like
19 Acid Rain and other environmental dangers. The Act instructs the
20 EPA to make a “toxic chemicals” list. Anything the EPA wants to
21 regulate must be on that list, Section 111, subsection D. In 2015, the
22 EPA illegally began to regulate “greenhouse gases” without including
23 them on the toxic chemicals list as prescribed by The Clean Air Act.
24 That’s because Carbon Dioxide and Methane, to name a few, are not
25 toxic chemicals. In fact, every living animal and human being on
26 earth breathes out carbon dioxide. It’s not a toxic chemical.

27
28 13) 28 U.S. Code § 455 (b), (1)- Disqualification of justice, judge, or
29 magistrate judge.

30
31 14) Judges Code of Conduct, Canons 2 and 3;
32 [https://www.uscourts.gov/judges-judgeships/code-conduct-united-](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges)
33 [states-judges,](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges)

34
35 15) 18 U.S. Code § 1621 – Perjury

1

2 16) 28 U.S. Code § 455 (b), (1) which says Where he (The Judge)
3 has a personal bias or prejudice concerning a party, or personal
4 knowledge of disputed evidentiary facts concerning the proceeding;

5

6 17) 18 U.S.C. 4 says, "Whoever, having knowledge of the actual
7 commission of a felony cognizable by a court of the United States,
8 conceals and does not as soon as possible make known the same to
9 some judge or other person in civil or military authority under the
10 United States, shall be fined under this title or imprisoned not more
11 than three years, or both."

12 18) FRAP 15. REVIEW OR ENFORCEMENT OF AN AGENCY
13 ORDER—HOW OBTAINED; INTERVENTION

14

15

16

17

BACKGROUND

18

19 Facts of the Case

20

21

22 The foundational cause of action in this case is the lower court use of

23

24 illegal Administrative Law to deny Plaintiff Due Process of Law under the

25

26 U.S. Constitution. The Court is referred to the Amended Appeal Brief for

27

28 a review of the causes of action and specific elements. Plaintiff appeals

29

30 to the Appeals Court to correct these Federal Trial Court egregious

31

32 violations of Due Process.

33

34 To provide needed context, I'll take the liberty to explain that Illegal

35

36 Administrative Law begins in the Judiciary with improper use of

37

38 precedent to create case law. The 22–451 June 28, 2024 US Supreme

39

1 Court Loper Bright ruling now forbids this abuse and reverts back to the
2
3 US Constitution.

4
5 Because this is an inferior court to the US Supreme Court it must limit
6
7 itself to stare decisis of case law precedent extending vertically back up to
8
9 the U.S. Constitution.

10
11 Stare decisis is, of course, a doctrine or policy of following rules or
12
13 principles laid down in previous judicial decisions unless
14
15 they contravene the ordinary principles of justice. Horizontal stare decisis
16
17 is unreliable because it can never be guaranteed to be the exact same
18
19 case with the same history without studying the transcripts and exhibits
20
21 of
22
23 the previous case. This is like comparing Apples to Oranges; they are
24
25 both fruits, but different. This court is therefore, obligated to convene as a
26
27 Court under Article III of the US Constitution.

28
29
30
31 Plaintiff is advised by a team of 3 professionals, also
32
33 volunteering, pro se.

34
35 One is a 40-year retired, Federal Attorney, expert in the application of
36
37 Federal statutory and Case law, environmental law in particular. Another is
38
39 an investigative journalist, providing legal research and serving as Legal
40

1 Editor for all Court Documents.

2

3 On appeal, Plaintiff served the Complaint and Injunction against

4

5 Defendants. Defendants filed a document (DktEntry: 5.1) informing that
6 they were not going to file an Answering Brief. At the same time, they
7 alleged that they were not served correctly. Appellant filed a Response
8 proving that Defendants were served correctly and explained to TCL 3 or 4
9 times personally that the service on Defendants was completely legal and
10 proper. However, Defendant continued to claim perjuriously in pleadings
11 that the service was illegal.

12

13 Appellant now asks the Appeals Court to declare that this case in the
14 docket is in default, in accordance with Federal law.

15

16 Plaintiff now files FRCP 55 filed MOTION FOR DECISION AND

17

18 EXECUTION OF SUMMARY

19

20 JUDGMENT (FRCP 56).

21

22 The following communication confirms readiness of the Environmental
23 Science textbook for classroom use.

24

25 Dave:

26

27

28 As you know the production phase of your book, Climate Crisis Changed (2nd Edition) has been
29 completed!

30

31

32 I hope you will receive much gratification from seeing your book in print. It has been a distinct
33 pleasure for us to be involved in this phase of your publishing journey.

34

35 The next phase is distribution. Our book sales team is already working on making your book
36 available at distribution points so that consumers can purchase your book.

37

38

39 Right now, it can now be purchased directly at our on-line bookstore

40 [https://rosedogbookstore.com/climate-crisis-changed-the-intergovernmental-panel-on-climate-
41 change-reports-are-deliberate-science-fiction-ipcc-cctruth-org/](https://rosedogbookstore.com/climate-crisis-changed-the-intergovernmental-panel-on-climate-change-reports-are-deliberate-science-fiction-ipcc-cctruth-org/) and will be available within 14

42 days at other retailers like Amazon. Consumers can also call our Book Order Department

1 directly at 800-788-7654. You may also feel free to call that number if you should have any
2 questions about book distribution.

3

4

5 As your move through this phases of your publishing journey your staff contact will
6 now be Michael Knapp whom you can reach at 877-592-0237 or by email
7 at mknapp@dorrancepublishing.com

8

9 Your contract does not include promotion services. If you would like to add
10 promotion services to your project, please reach out at any time.

11

12 We look forward to continuing our relationship.

13

14

15

FACTS IN LAW

16

Rule 55. Default; Default Judgment

17

Governed by the following federal law which may
18 not be nullified by Administrative law.

19

20 (a) ENTERING A DEFAULT. When a party against whom a judgment for
21 affirmative relief is sought has failed to plead or otherwise defend, and that
22 failure is shown by affidavit or otherwise, the clerk must enter the party's
23 default.

24

(b) ENTERING A DEFAULT JUDGMENT.

25

26 (1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that
27 can be made certain by computation, the clerk—on the plaintiff's request,
28 with an affidavit showing the amount due—must enter judgment for that
29 amount and costs against a defendant who has been defaulted for not
30 appearing and who is neither a minor nor an incompetent person.

31

32 (2) *By the Court.* In all other cases, the party must apply to the court for
33 a default judgment. A default judgment may be entered against a minor
34 or incompetent person only if represented by a general guardian,
35 conservator, or other like fiduciary who has appeared. If the party against
36 whom a default judgment is sought has appeared personally or by a
representative, that party or its representative must be served with written
notice of the application at least 7 days before the hearing. The court
may conduct hearings or make referrals—preserving any federal

1 statutory right to a jury trial—when, to enter or effectuate judgment, it
2 needs to:

3 (A) conduct an accounting;

4 (B) determine the amount of damages;

5 (C) establish the truth of any allegation by evidence; or

6 (D) investigate any other matter.

7 (c) SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT. The court may set
8 aside an entry of default for good cause, and it may set aside a final default
9 judgment under Rule 60(b).

10
11 **DISCUSSION**

12
13
14 **CONCLUSION**

15
16 Defendants through their legal counsel filed a pleading in which they
17 declared there will be no answering brief filed in the Ninth Circuit Court of
18 Appeals. Federal Rule 55 a says: “ENTERING A DEFAULT. When a party
19 against whom a judgment for affirmative relief is sought has failed to plead
20 or otherwise defend, and that failure is shown by affidavit or otherwise, the
21 clerk *must* enter the party's default”. Defendants by “otherwise” said in
22 (DktEntry: 5.1) Defendants won't file an answering brief. Appellant
23 therefore submits the complete, Relief Sought in the Prayer for Relief
24 Section below be awarded to Appellant.

25
26 Therefore, **by failing to appear**, defendants implicitly agree with everything
27 in the Opening Appeal Brief Appellant filed in the instant case. This motion
28 by FRAP 27 is Application for Relief. By Roper Bright no Court has
29 authority to nullify this federal statute by Administrative law.

30
31 Grounds and Relief Sought. A motion must state with particularity the
32 grounds for the motion, the relief sought, and the legal argument necessary
33 to support it. The Relief sought is in the Prayer for Relief section.

34
35 (B) Request for Affirmative Relief. A response may include a motion for
36 affirmative relief. The time to respond to the new motion, and to reply to
37 that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the
38 response must alert the court to the request for relief.

39

1 FRAP 31-2.3. Failure to File Briefs
2 If appellee does not elect to file a brief, appellee shall notify the Court by
3 letter on or before the due date for the answering brief. Appellees have
4 fulfilled FRAP 31-2.3.

5
6 Appellant respectfully requests by FRAP 27 for a final disposition of this
7 case by an Order of the Appeals court for the relief sought below.

8
9

10 **PRAYER FOR RELIEF**

11

12 Relief Sought

13 FIRST CLAIM FOR RELIEF

14

15 Pay \$1 million to Appellant at Climate Change Truth Inc. Cctruth.org to
16 reorganize the Department of Environmental Engineering at Oregon State
17 University.

18

19 SECOND CLAIM FOR RELIEF

20 Order purchase and installation of a Nucor Reactor to power the University
21 as a component of reorganization of Department of Environmental
22 Engineering. <https://nucor.com/madeforgood/nuscale-case-study>

23

24 Appellant s re-alleges and incorporates by reference the foregoing
25 allegations as if fully set forth herein.

26

27 THIRD CLAIM FOR RELIEF

28

29 Replace Dr. Nason head of Environmental Engineering with Appellant.

30 Appellant re-alleges and incorporates by reference the foregoing
31 allegations as if fully set forth herein.

1 FOURTH CLAIM FOR RELIEF

2 Due to Misrepresentation of the program to prospective students and
3 Breach of Contract established by this Complaint, order adoption of
4 Appellant's textbook for 200 series classes in Environmental
5 Engineering, as reflecting the professionally recognized content of
6 the subject of environmental science.

7
8 Appellant s re-allege and incorporate by reference the foregoing
9 allegations as if

10
11 fully set forth herein.

12

13

14 FIFTH CLAIM FOR RELIEF

15 Discipline and/or remove Judge McShane for violation of 10) 20-1199
16 Loper Bright Enterprises, 15) Judges Code of Conduct, Canons 2 and 3;
17 [https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges)
18 [judges](https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges), 18 U.S.C. § 1001 False Statements, Concealment., 15) 18 U.S.
19 Code § 1621 – Perjury, 16) 28 U.S. Code § 455 (b), (1) which says Where
20 he (The Judge) has a personal bias or prejudice concerning a party, or
21 personal knowledge of disputed evidentiary facts concerning the
22 proceeding; and 18 U.S.C. 4 says, “Whoever, having knowledge of the
23 actual commission of a felony cognizable by a court of the United States,
24 conceals and does not as soon as possible make known the same to
25 some judge or other person in civil or military authority under the United
26 States, shall be fined under this title or imprisoned not more than three
27 years, or both.”

28 The crimes described in the Complaint include violation of federal
29 copyright law and confession to illegal use of Affirmative Action and DEI
30 criteria for selection of candidates in the doctoral program. The judge
31 knowingly ignored these crimes in his illegal Administrative Law ruling
32 which is Misprision of felony.

1 The Court is reminded that a confession of guilt is a rock-solid proof of
2 guilt in a federal court and may not be nullified by any local Administrative
3 rule or law, per docket #6.

4 Appellant re-alleges and incorporates by reference the foregoing
5 allegations as if fully set forth herein.

6
7

8
9

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on December 4th, 2024, a true and correct copy of the
12 above document was electronically filed with the Clerk of the Court using
13 CM/ECF. A copy of the document will be served upon interested parties via
14 the Notices of Electronic Filing that are generated by CM/ECF. Additionally,
15 a courtesy copy is being provided as follows:

16

17 Attorneys for Defendants (DLC) mike.porter@millernash.com

18 Miller Nash LLP

19 1140 SW Washington St, Ste 700 |

20 Portland, OR 97205

21 Direct: 503.205.2330

22 Via hand delivery

23 Via U.S. Mail, 1st Class,

24 Postage Prepaid

25 Via Overnight Delivery

26 Via Facsimile

27 Via Email

28 Via CM/ECF notification

29 to the extent registered DATED: December 4th, 2024,

30 By: David White

1

A handwritten signature in black ink, appearing to read "David C. White". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

2

3

David C. White Pro Se. December 4th, 2024,