
No. 20-5143

JUNE 5, 2020

**In the
United States Court of Appeals
for the District of Columbia Circuit**

**IN RE: MICHAEL T. FLYNN,
*Petitioner***

**On Petition for a Writ of Mandamus to the
United States District Court for
the District of Columbia**

**Motion for Leave to File Brief *Amicus Curiae* of
Professor Eric Rasmusen
in Support of Petitioner**

ERIC B. RASMUSEN
Kelley Sch. of Bus, Indiana University
1309 E. Tenth Street
Bloomington, Indiana 47401
(812)345-8573, Erasmuse61@gmail.com
Pro se

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIA*

The movant, Professor Eric Rasmusen, hereby requests leave of this Court to file a Brief Amicus Curiae in Support of Petitioner in the above-captioned action.

The Flynn mandamus petition presents questions to which ideas drawn ultimately from law-and-economics can be usefully applied. These questions revolve around the first part of the standard test for mandamus: whether alternative relief is available. This question has been somewhat neglected by the parties and the other amici, who have focused on whether the district court's actions have been unlawful. Even if its actions are unlawful, that is insufficient for mandamus, which also requires that appeal be an inadequate remedy for the injured party. Thus, a brief devoted to that question alone may be useful.

Eric Rasmusen is Professor of Business Economics and Public Policy at Indiana University's Kelley School of Business and has held visiting positions at the University of Tokyo, Oxford, the University of Chicago,

the Harvard University Department of Economics, and Harvard and Yale Law Schools. He has been a director of the American Law and Economics Association and was several times chosen by George Mason's Law and Economics Center to teach economics to judges. He has published over 70 papers in scholarly journals, including over 10 in law reviews and legal journals. His co-authors include Judges John Wiley and Richard Posner and law professors J. Mark Ramseyer (Harvard), Ian Ayres (Yale), Richard McAdams (Chicago), Minoru Nakazato (Tokyo), Frank Buckley (George Mason), and Jeffrey Stake, Ken Dau-Schmidt, and Robert Heidt (Indiana). With J. Mark Ramseyer, he is author of *Measuring Judicial Independence: The Political Economy of Judging in Japan* and many articles on prosecutors, attorneys, organized crime, and the Japanese judiciary. In economics, he is best known for his book on strategic behavior, *Games and Information*, which has been translated into Japanese, Italian, Spanish, French, and Chinese (two editions, simplified characters and complex).

Professor Rasmusen also has at least a little familiarity with real-world law. He has previously submitted several amicus briefs to federal

circuit courts and one to the Indiana Supreme Court, and has been a party in two high-stakes, complex-litigation cases: a federal railroad tort claim and a New York State *qui tam* case that travelled from state to federal court and back again.

His proposed Amicus Curiae brief is timely. This Court's June 2 order requested motion and brief submission by June 5, with a length limit of 3,900 words. His brief will comply with this and the Federal Rules of Appellate Procedure, including the local rules of the D.C. Circuit.

No person or party or their counsel, other than amicus authored this motion in whole or in part; and no person or party or their counsel, other than amicus contributed money that was intended to fund preparing or submitting the brief or motion.

Respectfully submitted,

/s/ Eric B. Rasmusen

ERIC B. RASMUSEN
Kelley Sch. of Bus, Indiana University
1309 E. Tenth Street
Bloomington, Indiana 47401
(812)345-8573, Erasmuse61@gmail.com
Pro se

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED:

1. That the foregoing Motion for Leave to File Brief Amicus Curiae of Eric Rasmusen in Support of Petitioner complies with the type-volume limitation of Rule 27(d)(2)(A), Federal Rules of Appellate Procedure, because this motion contains 498 words, less than the 5,200-word limit.
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using MS-Word with 14-point Century Schoolbook.

/s/ Eric B. Rasmusen

Eric B. Rasmusen
Dated: June 5, 2020

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Motion for Leave to File Brief Amicus Curiae of Professor Eric Rasmusen in Support of Petitioner was made this 5th day of June, 2020. Service used the Court's special covid-19 procedures in *Notice: Update to Court Operations in Light of the COVID-19 Pandemic*, using the *pro se* email address, ProSeFilings@cad.uscourts.gov, in the belief that the Clerk will post it electronically and thus provide service upon the attorneys for the three parties (Flynn, Sullivan, and the USA).

**CERTIFICATE AS TO
PARTIES, RULINGS, AND RELATED CASES**

Parties and Amici

All parties and *amici* appearing before the district court and this Court are listed in the petition for a writ of mandamus except the following *amici*: Majority Leader Mitch McConnell and Senators Tom Cotton, Mike Braun, Kevin Cramer, Ted Cruz, Charles E. Grassley, and Rick Scott; the states of Ohio, Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, Texas, Utah, and West Virginia; John M. Reeves; 16 individuals who served on the Watergate Special Prosecution Force; Lawyers Defending American Democracy, Inc.; former federal District Court jurists; John Reeves; The New York City Bar Association; Edwin A. Meese, III and Conservative Legal Defense and Education Fund; Eleven Members of The United States House of Representatives; Federal practitioners - a group of attorneys with experience in federal criminal and civil litigation; and James M. Murray.

Ruling under Review

Petitioner seeks review of the district court's appointment of an *amicus curiae* and the district court's May 18, 2020 minute order allowing *amicus* to appear *pro hac vice* in the case and setting a briefing schedule. Petitioner also requests review of the district court's failure to grant the government's motion to dismiss the case with prejudice pursuant to Rule 48(a). References to the ruling at issue appear in the Petition for a Writ of Mandamus.

Related Case

Amicus is not aware of any related cases other than the pending case before the district court.

/s/ *Eric B. Rasmusen*

Eric B. Rasmusen
Amicus Curiae, pro se

Dated: June 5, 2020