

No. 18-7868

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IN THE SUPREME COURT OF THE UNITED STATES

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Charles L. Burgett - Petitioner

vs.

The General Store No. Two Inc., d/b/a Marsh's Sunfresh Market, et al. - Respondents

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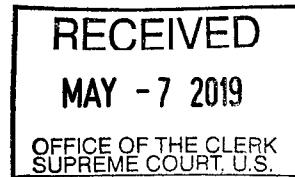
On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit

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**REPLY BRIEF FOR PETITIONER**

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The respondents attempt to change the substance of the questions already presented by Petitioner Burgett. This Court should reject the respondents desire to rephrase the Questions Presented. In *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992), the Court explained, "by and large it is the petitioner himself who controls the scope of the question presented. The petitioner can generally frame the question as broadly or as narrowly as he sees fit."

## **ARGUMENT**

### **I. District Court Proceedings**

#### **A. Petitioner Burgett Established Good Cause in not Appearing at the June 21, 2016 Scheduling Conference**

The district court from the outset of the proceedings engaged in bias and prejudice by issuing an order signaling that it had already made its mind up that Petitioner Burgett's case would eventually be dismissed. The respondents [through out the proceeding] merely interjected its unethical influence upon the district court to assure that Petitioner Burgett's case would unfairly be dismissed rather than be decided on the merits.

District judge Bough stated, "On May 20, 2016, the Court set an in-person Scheduling Conference for July 21, 2017...Plaintiff failed to appear at the July 21, 2016, Scheduling Conference. The Court realized its error, gave Burgett the benefit of the doubt, and set a new hearing for August 30, 2016, at 10:00 a.m. The Court

warned Burgett that “[f]ailure to attend [future] hearings may result in the dismissal of the case.” ([USDC-WD MO] Doc. #27)(Order, P. 2).” [Pet. App. E, 25a]. “The fact of the matter is that Burgett filed a Motion ([USDC-WD MO] Doc. #38) advising the court of the error. The court amended its order and **found that Burgett established good cause for not attending the hearing** ([USDC-WD MO] Doc. ##25, 41, 42). **The court’s warning was thereby nullified.** If Burgett was truly given “the benefit of the doubt”, district judge Bough would not have omitted that Burgett established good cause for his non-appearance. [USDC-WD MO] (Doc. ##25, 41, 42).” [Pet. App. E, 25a].

**B. Petitioner Burgett Established Good Cause in not Appearing at the October 11, 2016 Scheduling Conference**

“The conference setting the hearing date was done without judge Bough or his staff communicating with Burgett; and the foregoing hearing took place without Burgett receiving a notice from the court by mail or otherwise.” [Pet. App. E, 26a-27a].

**C. Petitioner Burgett Made Valid Objections to Discovery Sought**

It must be noted that the district court did not focus its attention on this alleged non-compliance. [Pet. App. B, 15a]. Regardless, “[t]he events surrounding the October 11, 2016 hearing and the order therefrom ([USDC-WD MO]Doc. #59) were manifestly unjust and unfair to Burgett. Id. The warning of, “corrective action, up to and including dismissal of Complaint” was manifestly unjust and

unfair to Burgett and is unwarranted. Id." [Pet. App. E, 26a].

**D. Petitioner Burgett Attended the October 24, 2016 Hearing by Telephone as Instructed**

"Burgett clearly followed the judge Bough's order by participating by telephone, to wit ([USDC-WD MO] Doc. # 65) states: "A memorandum of the discovery dispute, not to exceed two pages in length, should be emailed by each party no later than twenty-four hours prior to the **teleconference** to Tracy\_ Diefenbach@mow.uscourts.gov (emphasis added in original)." Therefore, any failure to comply with a court order by not appearing in person **was thereby void.**" [Pet. App. E, 27a].

**E. Petitioner Burgett had Valid Objections to Discovery Sought**

"Burgett was substantially justified in providing his amended answers, objections and responses because he had pending motions for Protective Order ([USDC-WD MO] Doc. #78) and to Vacate Orders ([USDC-WD MO] Doc. #79)." [Pet. App. E, 30a].

**F. Petitioner Burgett Established Good Cause in not Appearing at the November 1, 2016 Deposition**

It must be noted that the district court did not issue an order for Petitioner Burgett to appear at the November 1, 2016 deposition. [Pet. App. B, 15a]. Nevertheless, "Judge Bough also wrongly put the blame on Burgett for alleged failure to appear at a deposition for November 1, 2016. Burgett incorporate by

reference [USDC-WD MO] Doc. ##76, 80 as if the same is set forth here in its entirety. In sum, “Ryan E. Karaim and Meagan L. Patterson did not operate in good faith and unilaterally extended the deposition parameters and site of the same without Burgett’s agreement.” [Pet. App. E, 28a].

**G. Petitioner Burgett Established Good Cause in not Appearing at the November 10, 2016 Deposition**

“Burgett incorporate by reference [USDC-WD MO] Doc. #94 as if the same is set forth here in its entirety. In sum, Burgett did not receive the court’s ruling [USDC-WD MO] [Doc. #81] until after November 10, 2016. Burgett had good cause not to appear. [Pet. App. E, 29a].

**REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI**

The record clearly shows that the district court’s underlying factual findings on alleged willfulness and prejudice were biased and clearly erroneous; and, the district court’s order of dismissal was an abuse of discretion. [Pet. App. E, 24a-36a]. The decision of the district court is incorrect. The Eighth Circuit adopted the incorrect decision and departed from the prevailing authority of This Court; departed from the prevailing authority in the other Circuits; and, departed from the prevailing authority in its Own Circuit. Certiorari is appropriate as the decision was based on severely misapplied facts; and, the eighth circuit’s decision conflicts with this Court, other courts of appeal, and with its own circuit.

*Pro Se* Petitioner Burgett has the right to represent himself. 28 U.S.C. § 1654; Winkelman v. Parma City School District, 550 U.S. 516, 622 (2007). This Court is the national and predominant interpreter of federal law. This Court should grant certiorari, through its supervisory power to review the lower courts decisions, to assure that access to equal justice for all is extended to *Pro Se* litigants, to wit: Petitioner Charles L. Burgett.

## **CONCLUSION**

The Petition for Writ of Certiorari should be granted.

Dated: May 3, 2019

Respectfully Submitted,



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