Docket No. _____

19-6694

IN THE
SUPREME COURT OF THE UNITED STATES

TIM SUNDY, Petitioner

v.

ORIGINAL

MARTHA C. CHRISTIAN; CHRISTOPHER CARR; C. ANDREW FULLER; KATHLENE F. GOSSLEIN, JACQUES ("JACK") PARTAIN;BONNIE OLIVER; RICHARD T. WINEGARDEN; G. GRANT BRANTLEY;BRENDA WEAVER; CLINT G. BEARDEN; CHARLES BAKER; LISA COOK; BRENDA BRADY; FRIENDSHIP PAVILION ACQUISITIONCOMPANY, LLC; ARSENAL REAL ESTATE FUND II-IDF, L.P.; GARY PICONE; THOMAS LING; MICHAEL WEINSTEIN;GEORGIA DEPARTMENT OF TRANSPORTATION; NOVA CASUALTY COMPANY,
Respondents

PETITION FOR A WRIT OF CERTIORARI

to the Supreme Court of Georgia from a determination in case S19O1351
of matters in case 2015CV1366 of the Superior Court of Hall County

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TIM SUNDY
227 Sandy Springs Place, Ste. D-465
Sandy Springs, GA 30328
404-409-5473
email: dstshall@earthlink.net
Pro se Petitioner

with motion and affidavit accompanying
for permission to proceed in forma pauperis

QUESTION PRESENTED

Whether *pro se* litigants are immune from criminal activity, undue interference and/or transgressional acts by State of Georgia court officers, with that immunity requiring the State of Georgia court officers to provide full Notice or show cause that court officers can criminally tamper with official court records to deprive *pro se* litigants of a complete record as well as violate *pro se* litgant's rights of access to the court, due process, equal protection, and security in their papers, as guaranteed by the Constitutions of the State of Georgia and the United States, with Respondents ultimately, in this case, depriving Petitioner of private property without just compensation?

PARTIES TO THE PROCEEDING BELOW

All parties are as listed in the caption of the case on the cover page. The Petitioner is not a corporation.

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PETITON FOR A WRIT OF CERTIORARI

Pro se Petitioner Tim Sundy, unwilling to acquiesce to an incomplete record in the courts below, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Georgia in S19O1351, Sundy's **ORIGINAL ACTION FOR A MANDAMUS NISI TO SHOW CAUSE.**

OPINIONS BELOW

The Supreme Court of Georgia's opinion in case S19O1351 for Tim Sundy's request for an Original Jurisdiction Petition for Mandamus Nisi to Show Cause, as well as injunctive relief, is unpublished. Sundy's request for Mandamus nisi relief was dismissed without prejudice on 5 August 2019, and injunctive relief was denied.[1] see Appendix at **>A001-A002** Sundy's Motion for Reconsideration was denied on 20 August 2019. **>A003**

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over the Supreme Court of Georgia's dismissal of Mandamus nisi relief on 5 August 2019, with Sundy's Motion for Reconsideration denied 20 August 2019 **>A0003.** This Petition in the United States Supreme Court, being put in U.S. priority mail on 18 November 2019, is timely under Rule 13.1 and Rule 30.1: Rules of the Supreme Court of the United States.

The mandamus nisi relief sought in case S19O1351 was an extension of Sundy seeking relief from an incomplete record in State court case 2015CV1366 in Hall

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[1] According to legal theory in the state of Georgia as established in *Robinson v. Glass*, 302 Ga.App. 742, 746 (2010), Sundy partially prevailed in S19O1351 because he obtained the injunctive relief sought even though it was provided without the granting of the injunctive writ requested.

County Superior Court ("HCSC"). Sundy has pending federal court case 19-11391 in the Atlanta-based 11th Circuit Court of Appeals ("USCA") which is also an extension of Petitioner seeking relief from violations in State court case HCSC 2015CV1366. But, the face of the USCA docket demonstrates 11th Cir. USCA officers have adopted the pattern of Bad *Behaviour (*as spelled and used by the framers of the Constitution) used in the State Courts or vice-versa, i.e., State court officers are merely mirroring bad behaviour learned from federal court officers in Georgia. The *Bad Behaviour* by federal officers has risen to a level to compel Petitioner to file a *Bivens* cause of action in Petitioner's attempt to obtain the fundamental due process of a complete record in case HCSC 2015CV1366 with Petitioner now in need of additional remedy in this Court for relief from the lower Federal courts.

This Court has jurisdiction under 28 U.S.C. § 1254(1) before or after rendition of judgment or decree in the 11th Cir. USCA.

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution guarantees that Petitioner Sundy is immune from criminal activity. The purview of the Fourteenth Amendment to the United States Constitution is in agreement with the Constitution of the State of Georgia Art. 1 § 1¶ 2: Protection to person and property; equal protection. Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

The purview of the First Amendment right to petition for redress of grievances and access to the court is also implicated, as well as the Fourth Amendment right to be secure in one's papers. Rights and remedies are inextricably intertwined.

STATUTE INVOLVED

The All Writs Act, 28 U.S. Code § 1651, states: (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Section 1512(c)(1)(2) of Title 18, which was added to the United States Code as part of the Sarbanes-Oxley Act of 2002 states "**(c)** Whoever corruptly- **(1)** alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding..." Section 1512(f)(1) of Title 18 states that an official proceeding need not be pending or about to be instituted at the time of the offense.

PRELIMINARY STATEMENT

Petitioner Sundy has a statutory and constitutional right to a complete record of proceedings in the courts below, as well as consistent due process without undue interference. Sundy respectfully requests that this Court issue a writ of certiorari to the Supreme Court of Georgia to review the case below so that Petitioner's rights may be honored. Such relief is warranted by the extraordinary

nature of this case. Sundy filed this lawsuit against various court officers seeking to show cause why Sundy is not immune from criminal activity committed by court officers, as guaranteed by the Constitutions of the State of Georgia and the United States, and why Sundy is subject to inconsistent due process and unable to receive equal protection of law of a full and complete record on appeal. Sundy has suffered actual prejudice and irreparable injury as the result of court officers' repeated actions of removing and/or withholding Sundy's pleadings from the court records, as well as Respondents' statutory violations, misstatements and misleading statements in lower court documents to commit fraud upon the court.

Sundy expected that Georgia's Supreme Court, based in Atlanta, would exercise superintending control over its subordinate officers so that Sundy might obtain what he is entitled to by law, with Sundy seeking to amend the action to add additional court officers committing the same crimes. Instead, despite the default of respondents who admitted by their default that every statement of Petitioner was true, the Georgia Supreme Court dismissed the lawsuit and denied injunctive relief, [1] in what is the continuing pattern in Georgia of exonerating court officers. [2]

Petitioner Tim Sundy is not a lawyer but only a citizen with the constitutional right to be secured in his person and papers. *Pro se* Petitioner Sundy is subject to judges and clerks of court in the federal courts, Georgia appellate courts and Hall

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[2] According to legal theory in the state of Georgia as established in *Robinson v. Glass*, 302 Ga.App. 742, 746 (2010), Sundy has partially prevailed on two mandamus claims and one motion for injunction by achieving the relief sought though the courts have refused to issue a written order which implicates any court officer, instead the courts dismissing or denying Sundy's claims.

County Superior Court – all in or proximate to Atlanta -- removing and/or tampering with papers in the records of civil actions in conflict with the 1st , 4th, 5th, and 14th Amendments of the U.S. Constitution. Since December 2015, Petitioner has been deprived of his civil rights by court officers criminally interfering with Petitioner's access to the court to defend himself against civil liability, and pursue claims against billion-dollar entity Friendship Pavilion Acquisition Company Inc. LLC ("Friendship") in an *in rem* proceeding. Because court officers are tampering with the records in Sundy's cases, the records are not complete and do not reflect the proof of all notices, objections, etc. to the court, causing Petitioner to appear procedurally deficient or falsely exposing Petitioner to sanctions.

This is an unpopular case raised to answer an unpopular question – are court officers who are derelict, violative or abusive of their duties, and conspiring in a pattern to deprive *pro se* parties of constitutional protections while violating state statutes, subject to a declaration of their constitutional responsibilities by a state or federal court? There is a second unpopular question - Can a "Property Owner's Affidavit," filed into a state government entity by an affiliate of a $5-billion-dollar corporation with possible retirement investment holdings of state court officers, and denied review in the state court by those same state court officers, be examined and reviewed by any court to address Sundy's injury of being deprived of private property without just compensation?

When the Georgia Court of Appeals ("COA"), imputed as the State of Georgia, issued an order in A18E0011 denying Sundy's Emergency Motion for Process to be

Issued in HCSC 2017CV1125, **>A004-A000,** and then,. *sua sponte,* also issued the ORDER in independent, non-consolidated cases HCSC 2015CV1366, 2016CV0982, 2018CV502A **>A004-A005** contrary to COA's own stated rules and case law, the COA was affirmative of its direct intention to not correct any act involving criminal activity, undue interference or tampering by a court officer with the objective to cause the official record to be incomplete (see case 18-5506 in this court as Judicial Notice **>A007**). The COA affirmatively acted to effectively deprive Sundy in Georgia's lower courts of any meaningful remedy to Sundy's claims of denial of access, due process and equal protection.

Petitioner Sundy brings Order A19E0011 **>A004-A005** to this Court's attention via this Court's case 18-5506, by judicial notice, **>A007,** because the bad behaviour of the courts has only increased since that time, with the courts becoming more fortified against the Constitution, aggressively protecting corrupt court officers while denying Sundy due process and equal protection. The COA's Order in A19E0011 **>A004-A005** standing alone, even without supportive evidence, is enough to convince any reasonable person that no citizen in Georgia can receive equal protection and due process if it is court officers who instigate the violations, and should qualify for intervention by writ of certiorari without any argument.

The *pro se* Petitioner has sought relief below in multiple forms in State and Federal courts from the malfeasance, malpractice and/or bad behaviour which is the subject of this petition, behaviour which recurs in every case and violates a duty of government while precipitating prejudice to Petitioner's 4th Amendment right to be

secure in his papers as well as his 1st Amendment right of access to the court. Sundy has been purposefully denied a written order in the nature of an extraordinary remedy in Sundy's favor by every court, with court officers colluding to ensure that the malfeasance of court officers can evade judicial review, while utilizing secret phone calls, *ex parte* and under-the-table orders to correct and restore portions of the record so as to render Sundy's valid legal claims as moot. [2] Sundy is still denied an adequate appeal since the record in every case is incomplete and has been tampered with by Respondents. Without this Court's intervention, Sundy and other *pro se* litigants in Georgia, will be subjected to the same actions again and again, and the two-tiered system of justice which allows court officers to commit crimes and avoid punishment will remain in place.

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Boyd* v. *United States*, 116 U.S. 616, 635 (1886)

> "We have long appreciated that more "searching" judicial review may be justified when the rights of "discrete and insular minorities"—groups that may face systematic barriers in the political system—are at stake. *United States v. Carolene Products Co.,* 304 U.S. 144, 153, n.4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938)

Sundy, who is entitled to equal protection, cannot, adhering to space limitations of 40 pages, express details of every violation in every court below, documenting how

the respective court officers and private citizens or companies or attorneys ("***private individual***") are in collusion to induce the constitutionally-violative acts from which Sundy has sought relief in the State of Georgia. But Sundy believes this PETITON FOR A WRIT OF CERTIORARI will allow Sundy to express the pattern of subtle forms and transgressional acts purposed by Respondents to obtain their mutual objective of an ***"Incomplete Record",*** in order to cause Sundy to appear procedurally deficient in every court located in Georgia, in violation of the Constitution. A denial of this **PETITION FOR A WRIT OF CERTIORARI** will further enhance the lower courts' corruption.

STATEMENT OF THE CASE

i. Sundy is subject to repeated tampering with his record in the courts:

The term "Tamper(ed)(ing) with the record," when used by *pro se* Petitioner Sundy implicates 18 U.S.C. § 1512(c) and is comprised of the actual violations and injuries suffered by Sundy in every court in which he has litigated in the State of Georgia, up to and including the 11th Circuit Court of Appeals withholding from the record Sundy's timely and properly filed 18 October 2019 Corrected Certificate of Service and other documents. As experienced by Sundy, "Tamper(ed)(ing) with the record" means, but is not limited to, the following: To be unsecured in Sundy's papers by court officers' removal, altering, destroying or concealing of some documents or thing, such as a transcript or notice or objection, from the official record; to falsely add a document or thing to the official record; to withhold a document or thing from the record for a period of time in order to achieve misrepresentation to the parties who rely

thereon; to falsify on the face of the record the actual date of filing a document or thing; to alter a document or thing from its original status when initially filed with the custodian of the record; to falsely certify a court record as true and complete when the custodian has knowledge of documents or things missing from the record; to delay the mailing of notice or to mail incomplete or partial notice; a judge who lacks jurisdiction ordering documents to be removed or withheld or concealed from the record, with the intent to cause an error in the case or to impair the use or availability of the document or thing removed, whether acting in a non-judicial function or with the appearance of legality to specifically foster an erroneous assessment of the facts and the evidence.

Sundy considers Tamper(ed)(ing), when used in this Petition, to also include the manipulation of the official court record in any manner, or by any means, for deceptive purposes in order to defeat a *pro se* party and to cause a desired outcome in aid of attorney-represented adverse parties, *i.e.*, to cause a case to have a different outcome then would issue from the record's true and honest state. Tampering with a *pro se* party's documents allows the court to gut valid legal claims, portray a *pro se* party as procedurally deficient, and alter the factual basis of any suit. Tampering with the record also places the already disadvantaged *pro se* party in a place of even greater weakness, requiring of the unsophisticated *pro se* party a standard of legal acumen and expertise that he can never obtain.

In the State and Federal courts and their respective appellate courts in the State of Georgia, Tampering also occurs when the appellate court takes special measures after a *pro se* litigant files a notice of or application for appeal to calculate the

specific times for ruling and/or docketing a case, and schemes to allow time for collusion in the lower court for the purpose of contaminating the record. This may have the appearance of being "legal" on the part of the appellate courts but it is an evil practice of Tampering with the record, indicative of lawlessness because it is an intentional, biased calculation designed to injure citizens.

> "Subtle forms for destructive means" is a descriptor in general of, and interchangeable with, "malpractice" and derives from M. L. Kathrein's statement: "You must appreciate however, that corruption takes many subtle but equally destructive forms. A dishonest judge can ignore evidence, twist procedure, obstruct the record, retaliate, manufacture facts and ignore others, dismiss valid claims, suborn perjury, mischaracterize pleadings, engage in *ex parte* communication and misapply the law. When he does these things intentionally, he commits a crime. Petty or grand, the acts are still crimes. It takes surprisingly little to "throw" a case."

For the sake of clear expression in this Petition for Writ of Certiorari, Tampering is inclusive of one, or a combination of any. unseen subtle forms for destructive means, with the crime of tampering including the elements of willfulness and an affirmative act constituting manipulation of the record.

ii. An extraordinary remedy is ineffective in the State of Georgia:

Pro se Sundy is not a lawyer but only a citizen with the constitutional right to be secured in his person. It might appear that the remedy which Sundy could rely on in the State of Georgia is to file a ***Brown v. Johnson,*** 251 Ga. 436,306 S.E. 2d 655 (1983) mandamus action to enforce statutory duties of court officers:

> "Although there may occasionally appear to be a need to file an original petition in the Supreme Court to issue process in the nature of mandamus, and perhaps quo warranto or prohibition, where a superior court judge is named as the respondent, such as where the petitioner seeks to require the judge to enter an order in a matter, alleged pending

> more than [90] days in violation of subsection (b) of this section, such a petition may in fact be filed in the appropriate superior court. Being the respondent, the superior court judge will disqualify, another superior court judge will be appointed to hear and determine the matter, and the final decision may be appealed to the Supreme Court for review. *Brown v. Johnson, 251 Ga. 436,306 S.E. 2d 655 (1983).*"

However, as this petition documents, any type of extraordinary proceeding action in Georgia, including a mandamus action, is subject to tampering by court officers -- including members of the judiciary -- to prevail against a *pro se* litigant and exonerate fellow court officers, with the Georgia General Assembly having failed to provide a remedy for the violative actions of interfering officers.

> "Art. 1§1¶ 7: Protection of Citizen. All citizens of the United States, resident in the state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." *Constitution of the State of Georgia*

Respondent Judge Fuller refused to issue a written order in Hall County Superior Court ("HCSC") case 2015CV1366, in violation of OCGA § 15-6-21(c), with the intention to deprive litigant Sundy of appellate process. Upon Sundy filing a mandamus petition, the mandamus-appointed collegial judge ruled that there was no evidence that Fuller did not issue an order. The irony was not lost on Sundy. Respondent Clerk Baker removed Sundy's document(s) from the record. Upon filing a mandamus petition, the mandamus-appointed collegial judge ruled that he could not locate the missing document and therefore dismissed Clerk Baker with prejudice, which the Georgia Court of Appeals affirmed. **>A0091** The irony was not lost on Sundy – especially when the "exonerated" Clerk Baker then initiated his own case (naming Sundy as a respondent) in order to restore the missing document. When Respondents

Judges Fuller and Christian make it a practice, contrary to OCGA § 15-6-21(b), to exceed 90 days in making a determination on the "various motions, injunctions, demurrers, and all other motions of any nature," with the intention to tamper with the record and coordinate their rulings with those of the appellate courts, their failure to perform their duty is a crime against the public under OCGA § 45-11-4(b). When this crime too, upon filing a mandamus petition, is dismissed by the mandamus-appointed collegial judge, the irony is not lost on Sundy. When Sundy's petitions for extraordinary remedy yield contradictory rulings as to the jurisdiction -- or lack of jurisdiction -- of a mandamus judge to act in the causative case, the irony is also not lost on Sundy.

There is a distinction between mistake and malfeasance. Court officers ruling in a manner purposed to exonerate fellow court officers nullifies *Brown v. Johnson* while defeating justice and obstructing the exercise of Sundy's constitutional right of access to the courts. Sundy reiterates that Order A18E0011, **>A004-A005** affirms the privilege of State of Georgia court officers to violate statutes while removing papers form an official record, including papers in an extraordinary proceeding, as well as affirming the subtle form of allowing time for a lower court to contaminate the record after an extraordinary remedy is filed, with interfering officers scheming to defeat the due course of justice.

> "if state officers conspire . . . in such a way as to defeat or prejudice a litigant's rights in state court, that would amount to a denial of equal protection of the laws by persons acting under color of state law." D*inwiddie v. Brown,* 230 F.2d 465, 469 (5th Cir.), *cert. denied,* 351 U.S. 971, 76 S.Ct. 1041, 100 L.Ed. 1490 (1956).

iii. Sundy is injured by an incomplete record as the result of the pattern of Tampering and other criminal acts:

This Petition is the result of criminal acts of tampering on the face of the record, as well as tampering that is not apparent on the face of the record, perpetrated upon Petitioner Sundy in the courts below. The goal of said acts is to create an incomplete record so that Sundy has no adequate appeal while publicly exonerating every court officer. As M. L. Kathrein stated, "corruption takes many subtle but equally destructive forms."

On 26 July 2019 in Georgia Supreme Court case S19O1351, Clerk of Court Therese Barnes colluded with S19O1351 Respondent Nova Casualty Company to purposefully and knowingly process Respondent's document for the second time **>A0010**, having previously processed it on 28 June 2019 **>A009**, overstriking the previous date and creating a "new" Motion for Sanctions on the docket against Sundy while depriving Sundy of any Notice of the "new" Motion. The face of the record in S19O1351 **>A0011** does not reflect the truth of the proceedings and the record is incomplete.

On 20 March 2019 in Georgia Supreme Court case S19C0943 **>A0016**, Clerk of Court Therese Barnes transformed Sundy's timely, proper and clearly-labeled Application for Discretionary Appeal from HCSC case 2015CV1366 **>A0015** into a fake petition for writ of certiorari. On 9 May 2019, the same clerk of court transformed Sundy's timely, proper and clearly-labeled petition for writ of certiorari to the Georgia Court of Appeals in A19D0345 **>A0018** into a "supplemental brief" and filed it into the

fake S19C0943. **>A0016** The face of the record in S19C0943 does not reflect the truth of the proceedings and the record is incomplete.

In Hall County Superior Court cases 2015CV1366, 2016CV0982, 2017CV1125, and 2017CV0502, clerks of court and judges have removed, withheld, destroyed and mislabeled Sundy's timely and properly-filed documents. The face of the records do not reflect the truth of the proceedings and all the records in every case are incomplete.

In 11th Cir. USCA 19-11391, on 18 October 2019, *pro se* Sundy filed CORRECTED CERTIFICATE OF SERVICE FOR REPLY BRIEF OF PLAINTIFF-APPELLANT FILED 15 OCTOBER 2019. As of 4 November 2019, the document was still not docketed. On 23 August 2019, Sundy filed a second copy of his 3-volume appendix into 11th Cir. USCA 19-11391. The second copy has never been docketed, nor has his third copy filed on 11 September 2019. Other documents filed by Sundy have been delayed entry on the docket or misdated or otherwise misrepresented. The face of the record in 11th Cir. USCA 19-11391 does not reflect the truth of the proceedings and the record is incomplete. **>A0085-A0091**

In lower United States District Court ("USDC") case 2:18-cv-0112, Documents 11, 57 and what became Document 92 were missing from the record and Document 12 was incomplete. Upon Sundy filing a separate mandamus action in the 11th Cir. USCA, Documents 11, 57 and 92 were restored to the USDC record though mandamus was not granted[2] and Document 12 is still incomplete. (As always, the irony is not lost on Sundy.) USDC closed 2:18-cv-0112 yet never ruled on Sundy's claims of RICO. The

face of the record in USDC 2:18-cv-0112 does not reflect the truth of the proceedings and the record is incomplete.

Sundy brings this to the Court's attention as further evidence of the fact that court clerks, for whatever reason, are not impartial employees performing their purely administrative duties but rather are biased members of a conspiracy of court actors. These court actors are determined to fatally injure Sundy's redress of grievance and deprive Sundy of equal protection; due process; a complete record on appeal; and, full access to State courts. This interference by clerks, with other court officers; deprives Sundy of sufficient, adequate, effective, and meaningful appeal in any court of the State of Georgia.

iv. Sundy is subject to violations of substantive and procedural due process:

As it stands today, if *pro se* Sundy invokes any court geographically located in the State of Georgia -- State or Federal -- to enforce the statutory and/or constitutional duties of court officers while defending himself against civil liability and predicate acts of RICO by Respondent Friendship, that court adopts a pattern of Subtle Forms that amounts to violations of substantive and procedural due process. How does a state Supreme Court clerk reprocess a document filed a month previously, overstriking the previous electronic filing date, to create a new filing date and a motion for sanctions against Sundy? How do both federal appellate clerks and district court clerks lose only *pro se* Sundy's documents for weeks at a time? How does a mandamus claim of a missing document against a state superior court clerk get dismissed with prejudice, only to have that same superior court clerk then initiate a separate case to restore the

missing document? How does a plethora of "scrivener error" occur only as regards *pro se* litigants and never attorney-represented parties? How do attorney-represented private citizens or companies (***"private individual"***) such as Nova Casualty Company act collaboratively with court officers such as Supreme Court Clerk Therese Barnes to induce a transgressional act?

Can the pattern of transgressional acts used by court officers and private individuals in Georgia to obtain their mutual objective of an ***"Incomplete Record,"*** ensuring that Sundy will appear procedurally deficient in every court located in Georgia, be disrupted? *Pro se* Sundy has received no answers and no relief in any court in the State of Georgia, and has no adequate means to puncture the close-knit judicial community of Atlanta to attain the relief he desires. But Sundy believes this written *Limited Petition* will allow Sundy to obtain relief from the constitutional violations and deprivations.

A "STATEMENT OF THE CASE" in this Original Action containing a few paragraphs cannot do Sundy justice. Documenting the Subtle Forms that *pro se* Sundy has been subjected to since 2015, whether perpetrated by State or Federal court officers, whether constitutional or statutory violations, whether a tortious act or a State or Federal crime, whether a misdemeanor or felony, whether committed by a conspiracy of court officers or the action of a single court officer, whether fraud upon the court by an attorney or a judge, would require more pages than Sundy is allowed in this *Limited Petition.* Thus, while Sundy attempts to present the particularity required, Sundy will generally use the term "Subtle Forms" or the term

"Transgressional act" as a quantitative descriptor of the retaliatory corruption Petitioner has experienced in Georgia.

REASONS FOR GRANTING THE PETITION

An extraordinary remedy is to be reserved for extraordinary situations. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988). The issuance of a writ of mandamus is warranted when a party establishes that "(1) 'no other adequate means [exist] to attain the relief he desires,' (2) the party's 'right to issuance of the writ is "clear and indisputable," ' and (3) 'the writ is appropriate under the circumstances. *Cheney* v. *United States Dist. Court*, 542 U.S. 367, 380-381 (2004)) All three criteria were plainly met in Sundy's 14 JUNE 2019 ORIGINAL JURISDICTION PETITION FOR A MANDAMUS NISI TO SHOW CAUSE, docketed as S19O1351, as in light of the actions of officers of the Georgia Supreme Court, the Georgia Court of Appeals, the U.S. District Court, the 11th Circuit Court of Appeals, Hall County Superior Court and their disregard for the statutes and laws of Georgia, their internal rules of court, as well as the constitutional protections due Sundy.

Sundy has documented evidence that the Georgia Supreme Court falsified the record in S19O1351, changing the filing date as well as manufacturing a "new" motion for sanctions.. **>A0011** The Georgia Supreme Court also created a false petition for writ of certiorari in its December term from Sundy's 20 March 2019 Application for Discretionary Appeal **>A0015**, **A0016** timely and properly filed within seven days of a ruling in the Superior Court. The Supreme Court's purpose

was to nullify Sundy's procedurally-proper compliance with a Georgia Court of Appeals ruling that Hall County Superior Court case 2015CV1366 remained a dispossessory action more than three years after possession of the premises was determined by the U.S. District Court and more than two years after the plaintiff, Respondent Friendship, amended its complaint to drop all dispossessory claims. Almost two months after creating the fake certiorari, the Georgia Supreme Court then took a valid, actual petition for writ of certiorari filed by Sundy on 9 May 2019 from the Georgia Court of Appeals ruling in A19D0345 **>A0018** and filed it into the fake certiorari as a "supplemental" brief," **>A0016** violating the court's own rules. The Court then violated Article 6, Section 9, Paragraph 2 of the Georgia Constitution by delaying its ruling on the fake certiorari in order to facilitate court officers' defense in the federal court of appeals..

Sundy. again draws this Court's attention to the fact that Georgia court clerks, for whatever reason, are not impartial employees performing their purely administrative duties but rather are biased members of a conspiracy of court actors. Court clerks, one of whom even adopted Friendship's Motion to Lift Lis Pendens in HSCS 2015CV1366 as part of his mandamus defense, have joined with other court actors specifically to fatally injure Sundy's redress of grievance. The result is to deprive Sundy of equal protection, due process, a complete record on appeal, and, full access to State courts. As previously stated, the interference by clerks, in concert with other court officers; deprives Sundy of sufficient, adequate, effective, and meaningful appeal in any court of the State of Georgia

> "A mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be "adequate, effective, and

> meaningful." Bounds v. Smith, 97 S.Ct. at 1495; see also Rudolph v. Locke, 594 F.2d at 1078. Interference with the right of access to the courts gives rise to a claim for relief under section 1983. Sigafus v. Brown, 416 F.2d 105 (7th Cir. 1969)" *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983)

On 14 June 2019, Petitioner Tim Sundy filed ORIGINAL JURISDICTION PETITION FOR A MANDAMUS NISI TO SHOW CAUSE in the Supreme Court of Georgia. **>A0019** Clerk of Supreme Court Therese S. Barnes assigned Case Number S19O1351 and, immediately tampering with the record, docketed the ORIGINAL JURISDICTION PETITION as being filed on 13 June 2019. **>A0011**

Service that gave Notice of law suit was perfected via United States mail on the Respondents. On 28 June 2019, Respondent Nova Casualty Company ("Nova") responded to that service by filing a motion to dismiss **>A009**, introducing matters outside the original pleadings, but did not file an answer as required by Georgia's Civil Practice Act, subjecting Nova to default. By 16 July 2019, every respondent had completely defaulted except Nova, each failing to submit an answer, response or otherwise defend, and went into automatic default as stipulated in OCGA § 9-11-55(a). **>A0011**

Pro se Sundy was entitled to due process and equal protection under OCGA § 9-11-55(a) for default judgment against each DEFAULTING RESPONDENT, **>A0011, A0074-A0079** for the relief sought in the Original Jurisdiction Petition, which respondents had admitted by operation of law "as if every item and paragraph of the Original Jurisdiction Petition or other pleading were supported by proper evidence." Sundy timely and properly requested entry of default **>A0074-A0079** but the relief was denied **A0002.**

> "Moreover, the Civil Practice Act provides that when the defendant has not filed a timely answer, "the case shall automatically become in default" and if the case is still in default after the expiration of the statutory period of 15 days for opening default as a matter of right, "the plaintiff at any time thereafter *shall be entitled to verdict and judgment by default,* in open court or in chambers ... unless the action is one ex delicto or involves unliquidated damages." OCGA § 9–11–55(a) (emphasis supplied). See, e.g., *H.N. Real Estate Group v. Dixon,* 298 Ga.App. 124, 126, 679 S.E.2d 130 (2009); *Lewis v. Waller,* 282 Ga.App. 8, 11(1)(a), 637 S.E.2d 505 (2006)" *Williams v. Contemporary Serv. Corp.,* 750 S.E.2d 460, **462** (Ga. Ct. App. 2013)

Sundy cannot attain the relief of a complete record or Notice but, rather, is allowed to be damaged and prejudiced in a way that is not correctable on appeal. Petitioner Tim Sundy is without remedy in the State of Georgia, including in case S19O1351 which is subject to the Clerk of Court or some other court officer tampering with papers in the record in conflict with the 1st , 4th, 5th, and 14th Amendments of the U.S. Constitution.

The transgressional acts committed by Georgia court officers under color of law has now extended to officers of the USDC and 11th Cir. USCA, raising a ***Bivens*** cause of action. But, if Sundy files a ***Bivens*** cause of action in the local District Court, there is nothing that Sundy could file to prohibit the existing conspiracy of court officers from interfering by tampering with the record via Transgressional acts. In the close-knit collegial community of court officers in metropolitan Atlanta, which includes officers of the Georgia Supreme Court, the Georgia Court of Appeals, the U.S. District Court, and the 11th Cir. USCA, as well as officers of Hall County Superior Court, with judges often having been promoted through the ranks, the courts' ongoing and easily achieved goal is to exonerate court officers of even the most blatant of violations.

Pro se Sundy has been accused by Respondents of being ignorant of the nuances of the law, which is certainly true. *Pro se* Sundy, however inarticulate, is a literalist who believes that if the law states that judge must rule on a motion in 90 days (OCGA 15-6-21(b)), or must issue a written order (OCGA 15-6-21(c)) **>A0034-A0035**, or the docket is to be consecutively numbered (FRCP 79), then that is what is supposed to happen. Either the law is applied to every one or the law is applied to no one.

> "But if the statutes show no discrimination, yet in its judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another, or if secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws." Cong. Globe, 42nd Cong., 1st Sess., App. 315." *Monroe v. Pape,* 365 U.S. 167, 180 (1961)

When the Georgia Supreme Court can somehow use its E-filing ("SCED") system to create a fraudulent Motion for Sanctions against Sundy, this Court should grant Sundy's petition to reveal whether *pro se* litigants in Georgia no longer have the right to a higher review process upon a complete and accurate record. This Court is the only court which can give Sundy clear NOTICE of the reasons that certain rights are no longer available to state citizens in general, or U.S. citizens in general, or just not to *pro se* litigants. The class of underprivileged *pro se* litigants, and the American People, are entitled to due process of NOTICE from the federal government allowing them to know if they still have basic rights, or if certain rights are now only accorded to privileged, attorney-represented parties who come to court assured

that all attorney-presented issues, motions, objections, and papers are filed upon the record intact.

This Court should issue a writ directly to the Georgia Supreme Court reviewing its decision in S19O1351 and correcting overt errors. The review by this Court of Sundy's' cause would enforce *pro se* litigants' meaningful access to the courts without undue interference and would vindicate the public interest in ensuring that court officers are not exempt from compliance with regulations and statutes, as well as constitutional protections.

At minimum, Sundy is entitled to obtain Notice or show cause from the highest court that court officers geographically located in Georgia are allowed to blatantly commit the crime of violating their oath of office so that *pro se* Sundy and other underprivileged citizens can recognize that they will not receive equal protection or due process of a complete record in Georgia under any circumstances. Sundy and other similarly-situated Georgia citizens will then know to refrain from attempting to obtain full access to the court within the state's boundaries. This is basically what the Georgia COA did in A19E0011 **>A004-A006** by giving advance Notice to Sundy that COA would not assist to correct any record tampered with in the lower court. In other words, the COA made it absolutely clear that Sundy did <u>not</u> have the right to be immune from criminal activity in Georgia, even if it results in an incomplete record.

> "The simplest corruption is systematic abuse of procedural rules to allow or dismiss cases...The next stage of judicial corruption is false statement of the facts. The judge simply states a false set of "facts" which would lead any other court to the desired conclusion, and the resulting judgment not only looks plausible but cannot be appealed... If tried, the outcome is determined by the false picture of fact." <u>Why</u>

> Judicial Corruption is Invisible, John Barth, Jr., CounterPunch Magazine. December 10, 2010

The right of access to the courts is basic to our system of justice, and one of the fundamental rights protected by the Constitution. Likewise, a fair tribunal, in possession of all the facts of the case, is essential to due process.

> A fair tribunal is essential to due process. See In re Murchison, 349 U.S. 133, 136 (1955). This principle "helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law," and "preserves both the appearance and reality of fairness." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (internal citation and quotations omitted).

When the Clerk of Court, who is the custodian of the court record and, in many ways, the gatekeeper to the court, corrupts the court record to deter *pro se* Sundy from the exercise of his First Amendment right to petition for redress of grievances, the Clerk is in violation of the Constitution and his administrative duties.

> "There is only one way in which to file a paper in the superior court, and that is, by depositing it with the clerk, who is the legal custodian of the paper. [Cit.]" *Hilt v. Young*, 116 Ga. 708, 709 (43 SE 76) (1902).
>
> "Causing a paper to be actually placed in the hands of the clerk of a trial court within the time prescribed by law for filing the same in [the clerk's] office is all that is, in this respect, required of a party." (Punctuation omitted.) *Gibbs v. Spencer Indus.*, 244 Ga. 450,451 (260 SE2d 342) (1979).
>
> "We take this occasion to remind that the duty of the clerk is to file pleadings, not to ascertain their legal effect. See generally *Hood v. State,* 282 Ga. 462,464, 651 S.E.2d 88 (2007) (clerk has ministerial duty to file pleadings, and it is beyond the purview of the clerk to be concerned with their legal viability)." *Ford v. Hanna,* 292 Ga. 500,502, 739 S.E.2d 309 (2013).

A complete record on appeal is one of the cornerstones of the appellate process. In Georgia, the burden for that record rests squarely on the shoulders of the appellant.

> "The burden is on the complaining party, "including pro se appellants, [cit.], to compile a *complete record* of what happened at the trial level, and `when this is not done, there is nothing for the appellate court to review.' [Cit.]" Wright v. State, 215 Ga. App. 569, 570 (2) (452 S.E.2d 118) (1994). See also Johnson v. State, 261 Ga. 678, 679 (2) (409 S.E.2d 500) (1991); Brown v. State, 223 Ga. 540, 541 (2) (156 S.E.2d 454) (1967)." *Kegler v. State*, 475 S.E.2d 593 (Ga. 1996)

Since mandamus and injunctive petitions to enforce the statutory duties of the clerk and other court officers have been denied and have proven ineffective, with court officers determined to absolve their peers and, apparently, retaliate against *pro se* Sundy, this Court must enforce equal protection of the laws by reviewing the action of the Georgia Supreme Court.

ARGUMENT IN SUPPORT OF A WRIT OF CERTIORARI

A. The Georgia Supreme Court denied *pro se* Sundy Equal Protection:

In *Muscogee Realty Dev. Corp. v. Jefferson Co.*, 252 Ga. 400 (314 S.E.2d 199) (Ga. 1984), where two of three defendants were in default for filing an answer on the 31st day following service, and the plaintiff apparently did not notice the default, the case proceeded to trial and after both sides had made opening statements and the trial had commenced, the trial judge noticed that answers of two defendants had been filed late. The trial judge *sua sponte*, with integrity and lawful righteousness, declared the two defendants in default. In contrast, the Georgia Supreme Court has demonstrated that it will close its eyes and even ignore Georgia statutes in order to benefit attorney-represented parties regardless of depriving *pro se* parties of justice.

The Respondents named in this petition defaulted, thus admitting to all allegations in the complaint as true including all assertions of Transgressional acts. **>A0011** The Supreme Court of Georgia ignored the default and rejected Sundy's timely request for default judgment contrary to established law. **>>A0074-A0079**

> "Moreover, the Civil Practice Act provides that when the defendant has not filed a timely answer, "the case shall automatically become in default" and if the case is still in default after the expiration of the statutory period of 15 days for opening default as a matter of right, "the plaintiff at any time thereafter *shall be entitled to verdict and judgment by default,* in open court or in chambers ... unless the action is one ex delicto or involves unliquidated damages." OCGA § 9–11–55(a) (emphasis supplied). See, e.g., *H.N. Real Estate Group v. Dixon,* 298 Ga.App. 124, 126, 679 S.E.2d 130 (2009); *Lewis v. Waller,* 282 Ga.App. 8, 11(1)(a), 637 S.E.2d 505 (2006)" *Williams v. Contemporary Serv. Corp.,* 750 S.E.2d 460, **462** (Ga. Ct. App. 2013)

The law is presumed to be a legal, binding contract with the people. When any court breaches the contract with the people by showing partiality towards respondent judges, clerks, attorneys and other court officers and against *pro se* parties, the Court is reprobate and equal protection is a myth. The law is supposed to be constant and universal. If the law is not enforced against a court officer, it ceases to be a law and is merely a phenomena, resulting in inconsistent due process for *pro se* litigants and a denial of equal protection.

B. <u>The Evil practice of Tampering in Georgia courts has resulted in inconsistent Due Process and a denial of Equal Protection:</u>

> "Equity abhors fraud, of which conspiracy is the handmaid, and will extend its aid to prevent accomplishment of fraudulent design." *Perkins v. First National Bank of Atlanta,* 143 S.E.2d 474 (Ga. 1965)

Sundy's Original Jurisdiction Petition in case S19O1351 **>A0019-A0051** raises issues such as Due Process and Equal Protection, just compensation,

immunity from ongoing criminal acts, malpractice and/or bad ***behaviour*** committed by court officers, violations of OCGA § 15-6-21(d) and OCGA § 45-11-4(b)(1)(3)(4), conspiracy, and fraud upon the court.. However, the core of the mandamus nisi **>A0019-A0051** is Sundy's claim seeking relief from an "Incomplete Record" caused by the tampering as previously defined by Sundy.

Whether or not the officers of the Georgia Supreme Court preliminarily read *pro se* Sundy's Nisi document when it was initially docketed and made a conscious decision to tamper with Sundy's original jurisdiction petition, it appears that court officers are operating under a systemic pattern to immediately corrupt the record of a *pro se* litigant. The first thing Respondent Clerk of the Supreme Court of Georgia Therese S. Barnes did was to alter the filing date from July 14 to July 13. **>A0011** Next, on the face of docket, **>A0011-A0014,** Clerk Barnes failed to list all parties and/or attorney's names below. Georgia Department of Transportation is missing but its attorney Mary Jo Volkert is listed as an Appellee. Nova Casualty Company's attorneys Karen Woodard and Marisa Beller, are identified as Appellees while Nova itself is missing. Conversely, Friendship's long-standing attorney Robert C. Khayat Jr. is intentionally omitted as is Charles Blalock, long-standing attorney for Respondents Charles Baker, Brenda Brady and Lisa Cook. To add further confusion, Christopher Carr and his attorney Russell Willard are both listed. The incomplete record immediately suggests that the court had already determined that missing Respondents had no intention of answering the petition but would purposely go into automatic default.

Continuing to examine the face of the record **>A0011** reveals an entry on 28 June 2019 of a motion to dismiss **>A009** as well as a 26 July 2019 Motion for Sanctions, **>A0010**. When *pro se* Sundy discovered the 26 July 2019 motion for sanctions on the online docket, but was never served a copy, Sundy frantically obtained a copy directly from the Supreme Court of Georgia in order to discover which respondent sought to seriously injure Sundy. **>A0011** Upon Sundy obtaining a certified copy of the Motion for Sanctions **>A0010,** Sundy discovered that the motion to dismiss **>A009** and the Motion for Sanctions **>A0010** were the very same document with an overlapping filestamp at the top of the "new" Motion for Sanctions. **>A0010** .

28 June 2019 Motion
Digital filestamp

Case S19O1351 Filed 06/28/2019 Page 1 of 10

26 July 2019 Motion
Digital filestamp

Case S19O1351 Filed 06/26/2019 Page 1 of 10

Apparently Respondents Karen Eleice Woodard and/or Marisa McNatt Beller, Attorneys for Nova, had special privileges on 26 July 2019 to conspire with Respondent Clerk Barnes to re-run a copy of their motion to dismiss **>A009** and file it again as a "new" Motion for Sanctions **>A0010, A0011** to prejudice the court against Sundy, to Sundy's injury.

All that Sundy wants is a complete record in the trial court and in the appellate court so that he may have an adequate, impartial appeal to address the constitutional and statutory violations committed against him by Respondents. But Sundy cannot escape the overt tampering, this time by Supreme Court Clerk Barnes.

Clerk Barnes, under color of law, had already colluded with Georgia COA Clerk Stephen Castlen to interfere with the timeliness of filing transferred case S19D0838 , **>A0080,** as A20D0016 **>A0081**. Clerk Barnes had also falsified the Supreme Court record by docketing Sundy's legitimate discretionary application for appeal **>A0015** as an illegitimate petition for writ for certiorari in order to establish a fake certiorari S19C0943, denying Sundy the equal protection of law. **>A0016.** When Sundy submitted a real and legitimate petition for writ of certiorari to COA **>A0018**, Clerk Barnes entered the legitimate petition as a supplemental brief in the fake, illegitimate certiorari **>A0016** to compound Sundy's injury.

> "if state officers conspire . . . in such a way as to defeat or prejudice a litigant's rights in state court, that would amount to a denial of equal protection of the laws by persons acting under color of state law." D*inwiddie v. Brown,* 230 F.2d 465, 469 (5th Cir.), *cert. denied,* 351 U.S. 971, 76 S.Ct. 1041, 100 L.Ed. 1490 (1956).

Respondent Clerk Barnes joining with respondents Woodard and Beller to reprocess a document **>A0010** (note the overstrike date at the top) in an attempt to injure *pro se* Sundy with sanctions, denying Sundy due process of notice and the equal protection of the law, was merely a continuance of her steady pursuit of violating *pro se* Sundy's constitutional rights. Whether Clerk Barnes discriminates against all *pro se* litigants is yet to be determined, but there is no doubt that Respondent Clerk Barnes' purposefully sought to obtain the objective of an incomplete record in Sundy's case so as to deprive Sundy of due process and to cause Sundy to appear, or to actually be, procedurally deficient.

Respondent Clerk Barnes recognized and affirmed the objective of the lower courts to ensure that Sundy's court record is incomplete and immediately joined the conspiracy of other court officers, in violation of the Constitution. The S19C0943 case **>A0015, >A0016** commenced by fraud upon the court can only render a void order or judgment under conditions of fraud upon the court.

A conspiracy is actionable under 42 USC §1983 when there has been a denial of due process and under 42 USC §1985 when there has been a denial of equal protection. see *Jennings v. Nester*, 217 F.2d 153, **155** (7th Cir. 1955)

> It is not necessary to prove an express compact or agreement among parties. It need not appear that parties have ever met together, either formally or informally, and entered into any explicit formal agreement; it is not necessary that it appear either by word writing that defendants formulated their unlawful objects. It is sufficient that two or more persons in any manner, either positively or tacitly, come to a mutual understanding that they will accomplish the unlawful design. ***Hewitt v. State,*** 127 Ga. App. 180, 193 S.E. 2d 47 (1972).

However, by 16 July 2019 all respondents were already defaulted in the Original Jurisdiction Petition S19O1391. **>A0074-A0079** There is no other court Sundy can review the Original Jurisdiction Petition, but the US Supreme Court.

C. The pattern in State or Federal courts geographically located in the State of Georgia to define a Frivolous Action while denying due process

The face of the docket of case S19O1351, **A0011** in the Supreme Court of Georgia indisputably establishes the records are being tampered with by court officers. Sundy applied for injunctive relief on 1 July 2019 within case S19O1351 **>A0019-A0051,** seeking relief that case **S19D0838** be transferred to the Georgia Court of Appeals as ordered by the Supreme Court of Georgia on 20 March

2019. **>A0080,** On 29 July 2019, twenty-eight days after Sundy filed his motion for injunctive relief, S19D0838 was docketed in the Court of Appeals as A20D0016. **>A0081** The Georgia Supreme Court then denied Sundy's request for injunctive relief in S19O1351 on 5 August 2019. **>A0011**

In the never-ending process of tampering in the State of Georgia, Sundy is compelled to file petitions for extraordinary remedies, such as mandamus or injunction, to have the court record corrected. But, the court then gives orders under the table or by secret phone call to the malefactors to make all necessary corrections to the record as requested in the extraordinary petition so that the issues become moot, no court officer is publicly implicated on the record, and Sundy can be castigated for filing a "frivolous" action. This is the pattern in Georgia in the Superior Courts, in the Appellate Courts and even in the federal courts. The missing documents in USDC 2:18-cv-0112 were partially restored after Sundy filed a request for extraordinary writ in the 11th Circuit COA with Sundy's request then deemed frivolous and dismissed. As previously noted, though Sundy has partially prevailed on two mandamus claims and one motion for injunction by achieving the relief sought, the courts refuse to issue a written order which implicates any court officer. Instead the courts make secret phone calls to the malefactors and then dismiss or deny Sundy's claims, labeling them as frivolous, and ignoring violations of duties and oaths of office. In the real world, if Georgia Supreme Court Clerk Barnes or USDC Clerk Hatten robbed a bank and then returned the money, s/he would or should still be charged.

As proven by Sundy's experiences, while all necessary corrections are being made upon Sundy's initial extraordinary request, there will be another court officer that will drop in, or a *private individual* who invokes an officer, to remove or tamper with other parts of the record, thereby causing Sundy to repeat the costly and time-consuming exercise of submitting an extraordinary request for the enforcement of having a complete record.

It is unimaginable in a land that proclaims "equal justice" for all, that Petitioner Sundy, from 20 December 2016 when Respondent Clerk Baker removed the first documents from the record in HCSC 2015CV1366 until now (moving into four years!) Sundy is still begging the State and federal courts for a complete record in any of his cases. Sundy made claims of § 1983 in case USDC 2:15-cv-0112 and is now compelled to raise *Bivens* claims just to obtain a complete record. This apparent conspiracy to deprive Sundy of due process and equal protection also serves to run down the statute of limitations clock on Respondents' initial violations, as the courts count the days and time their rulings.

> "We note that the right of access to the courts is protected by the due process clause of the 14th Amendment. *Bounds v. Smith,* 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977); *Procunier v. Martinez,* 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1976); *Wolff v. McDonnell,* 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). An allegation that a clerk of state court has negligently delayed the filing of a petition for appeal, and that the delay has interfered with an individual's right of access to the courts, may state a cause of action under 42 USC § 1983 . See, *McCray v. Maryland, supra.*" *Crews v. Petrosky,* 509 F. Supp. 1199, **1204** (W.D. Pa. 1981)

It appears that Sundy's 42 U.S.C. § 1983 rights are implicated and his right of access to the court is violated when transferred case S19D0838 is not docketed in the

Court of Appeals until 5 months have passed from the Supreme Court issuing its order **>A0080, A0081**, with Clerks Barnes and Castlen claiming plausible deniability.

> "In order to maintain an action under 42 U.S.C. § 1983, it is not necessary to allege or prove that the defendants intended to deprive plaintiffs of their constitutional rights or that they acted wilfully, purposefully or in pursuance of a conspiracy. It is sufficient to establish that the deprivation of constitutional rights or privileges was the natural consequence of the actions of defendants acting under color of law, irrespective of whether such consequence was intended." *Ury v. Santee*, 303 F. Supp. 119, 126 (N.D. Ill. 1969) citing *Monroe v. Pape*, 365 U.S. 167 (1961)

Sundy contends that the continual and repeated interference by court officers to delay Sundy's cases, coupled with court officers causing the record to be incomplete via intentional tampering with the record, cements the fact that there is no possible way Sundy can obtain meaningful access to the courts in the State of Georgia.

> "Meaningful access to the courts is a fundamental constitutional right, grounded in the First Amendment right to petition and the Fifth and Fourteenth Amendment due process clauses." *Johnson v. Atkins*, 999 F.2d 99 (5th Cir. 1993)

> A conspiracy may be continuing one; actors may drop out, and other drop in; the details of operation may change from time to time; the members need not know each other or the played by others; a member need not know all the details of the plan or the operation; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. *Craig v. U.S.* C.C.A. Cal., 81. 2d 816, 822.

Ultimately, when Sundy is compelled to what appears to be excessive filing of extraordinary remedies or pursuing relief in the appellate courts, respondents and their Attorneys, such as Nova Casualty and Friendship, seek to impose sanctions on Sundy. **>A0011, A0016, A0037, A0082, A0090** But respondents will

refuse to acknowledge that a phone call was made, or a secret order was given under the table, and court went into delay mode to allow the malefactors to moot the claims raised by Sundy, and that Sundy prevailed in accordance with *Robinson v. Glass*, 302 Ga.App. 742, 746 (2010).

The perception of the respondents' of this Original Action for an extraordinary remedy in the US Supreme Court will also be that it is a "Frivolous action". But, in light of respondent Judge Christian having exceeded 90 days for a determination of Sundy's motion OCGA § 9-11-60(d)(2)(3) in HCSC 2015CV1366 **>A0034, A0043-A0044**, and a complete failure of duty by respondent Judge Fuller to make determination in HCSC 2018CV502, **>A0029, A0040** it appears the only remedy Sundy is to file a "frivolous" action so that an *ex parte* court-initiated phone call, or a secret order given under the table, and the Mandamus court goes into delay mode to allow the malefactors to correct the issue. Thus, Sundy again prevails.

D. The Supreme Court of Georgia looks to the 11th Circuit Court of Appeals to set the standard for all other Courts in the State of Georgia, including establishing that a 42 USC §1983 is ineffective in the Federal Court.

As demonstrated by the 11th Circuit Court of Appeals ("11th Cir. USCA") (by judicial notice, **>A0085-A0091)** and confirmed by the actions of the Georgia Supreme Court, the only remedy Sundy had in Georgia to have his record close to being complete in case 2:18-cv-0112-SCJ, was to file an extraordinary petition in the 11th Cir. USCA and allow an *ex parte* phone call, or a secret order under the table,

be directed to USDC respondent Judge Jones to correct the record, with the 11th Cir. USCA going into delay mode.

On 16 January 2019 Sundy filed for Mandamus nisi relief in 11th Cir. USCA, case 19-10183 **>A00085** , to restore papers in the trial court USDC 2:18-cv-0112-SCJ that trial Judge Jones allowed to be missing from the case, some for over 7 months, despite all Sundy's previous Motions and protest s to correct the record.

As a general rule under FRAP Rule 21(b)(6); "The [*mandamus*] proceeding must be given preference over ordinary civil cases". However case 19-10183 was not given preference and was delayed by the 11th Cir. USCA until the equivalent of a phone call or order under the table order to Respondent USDC Judge Jones was made. Then, after USDC made the mandamus-requested corrections, case 19-10183 was rendered frivolous, as was any appeal.

However, with Sundy's document restored on the day before or day of the 23 January 2019 hearing and document [105] not restored until March 12, 2019, almost two months later, Sundy was not given adequate time to respond, reply, object or otherwise, in a denial of equal protection. The perception of the 11th Cir. USCA was that USDC had given full consideration while documents were missing and there was no need of due process, even though the adverse parties took advantage while document was missing by not filing a timely respond on the record even though adverse parties were served with missing document. Therefore Sundy's case 2:18CV0112-SCJ Appeal is frivolous and thus Sundy is unable to proceed *in forma pauperis*.

> "Of what avail is it to the individual to arm him with a vesture of constitutional rights if, when he seeks to vindicate them, the courtroom door can be hermetically sealed against him by a functionary who, by refusal or neglect, impedes the filing of his papers?" *McCray v. State of Maryland*, 456 F.2d 1, **6** (4th Cir. 1972)

Whether State court case 2018CV1125J HCSC **>A0028-A0030, A0040** ,or Federal court case USDC 2:18-cv-0112, **>A0085** the pattern is the same. Respondent Martha Christian's Attorney Tolley admits to Sundy's missing document in a hearing and says "***That's what the Baker case in the Supreme Court is about,***" meaning the Supreme Court of Georgia is fully conscious of the Malpractice, but its doors are locked. Respondent Judge Jones in a hearing admits to missing papers and the 11th Cir. USCA is fully conscious of the malpractice but it, too, has locked its doors. And, when the case in which the documents were missing is ripe for appeal, the appellate court which colluded with the lower court to restore missing documents now is supposed to impartially contemplate whether Sundy had full consideration in the lower court of the missing documents upon the document being restored and whether Sundy's injury -- and the appellate court's *ex parte* interference -- was harmless when:

> "Loss of First Amendment Freedoms, [*and*], for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns, 427 U.S. 347; 6 S. ct 2673; 49 L. ed. 2d (1976)*;

The real question is, to what avail is it to have a "Court above" when the above courtroom door is hermetically sealed by functionaries who tamper with the record while affirming the lower courts to continue, by subtle refusal or neglect, to also tamper with the record.

> "A mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be "adequate, effective, and meaningful." *Bounds v. Smith*, 97 S.Ct. at 1495; see also *Rudolph v. Locke*, 594 F.2d at 1078. Interference with the right of access to the courts gives rise to a claim for relief under section 1983. *Sigafus v. Brown*, 416 F.2d 105 (7th Cir. 1969)" *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983)

There cannot be true consideration and meaningful access to the courts in any case, if any element of the Moving Party's pleading, the Non-Moving parties' opposition of whatever kind, and the reply of the Moving Party is missing from the record. A litigant cannot be heard upon missing documents.

> Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question." *Earle v McVeigh*, 91 US 503, 23 L Ed 398.

The systemic process of delaying mandamus proceedings, and a phone call or under-the-table order and State and Federal trial courts making corrections asserted in request for extraordinary writ invites attorney-represented parties to perceive the systemic process as Sundy wasting the court's resources. And, because corrections are made to the record without a written order and only *pro se* Sundy is injured, nothing stops subsequent officers or *private individuals* from further tampering with the record at a future time in the current case or a related case .

SUMMARY OF ARGUMENT

> "Meaningful access to the courts is a fundamental constitutional right, grounded in the First Amendment right to petition and the Fifth and Fourteenth Amendment due process clauses." *Johnson v. Atkins*, 999 F.2d 99 (5th Cir. 1993)

In a scheme of constitutionally impermissible interference with Petitioner's meaningful access to the courts, court officers have used oral orders, the removal of

Petitioner's documents from the record, and the voiding of valid federal orders to frustrate and impede and hinder Petitioner(s)' efforts to pursue valid legal claims. In the process, Clerks of Court have also perpetrated fraud upon the court, with fraud upon the court defined as:

> "fraud directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents .... It is thus fraud where ....the impartial functions of the court have been directly corrupted." See *Robinson v. Audi Aktiengesellschaft*, 56 F.3d 1259, 1266 (10th Cir. 1995)

The official acts by the clerks and the judges to deny Petitioner full access to the court has caused the loss of a meritorious case, the loss of an opportunity to sue, and the loss of an opportunity to seek appeal based upon a complete and accurate record. *Pro se* Petitioner is placed in the unconstitutional condition of proceeding on an incomplete record in the appellate court, to his detriment, or pursing claims against court officers to achieve a complete record, invoking the bias and tyrannical partiality of the courts, to Petitioner's detriment. Courts in the state of Georgia have aligned to insure that no adequate remedy is available to the *pro se* Petitioner.

> "Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong." *Christopher v. Harbury*, 536 U.S. 403, **413** (2002)

Hall County Superior Court judges and other court officers have refused to follow Georgia statutes and Georgia case law. The Georgia Court of Appeals has aligned itself with superior court officers to allow misfeasance against *pro se* litigants. The public has an interest in ensuring that court officers comply with regulations and statutes, as well as constitutional protections. The Atlanta-based USDC and the 11th Cir. COA have also

aligned themselves with Respondents to sabotage Petitioner's valid claims via an incomplete record. The public has an interest in ensuring that a conspiracy of elected judges and clerks cannot override the constitutional rights, protections and immunities of the citizens. The public has an interest in ensuring that attorney-represented parties are not given procedural advantages over *pro se* litigants by biased judges and clerks of court.

CONCLUSION

In *Bolin v. Story*, 225 F.3d 1242, 1243 (11th Cir. 2000), the court explained that a plaintiff has adequate remedies at law if he is able to file an appeal or extraordinary writ. The Court did not address whether court officers conspiring to corrupt the record on appeal or the requirement to physically appear before a disqualified judge who can only issue void orders translates into an "adequate remedy at law." Neither did the court address whether errors on the face of the record created by court officers specifically to prejudice the court, or an incomplete record created by court officers to deprive a litigant of a meaningful appeal, translates into an "adequate remedy at law."

This case presents the question of whether *pro se* Sundy has equal protection of due process of "NOTICE" and is entitled to process to show cause why he is singled out to have his documents concealed, removed and/or withheld from the court record and cannot obtain a correct, full, and complete record in either state court or in federal court. The USDC eliminated due process by virtually saying USDC is so busy it makes mistakes **USDC 2:18-cv-0112/Doc [102 (T-11:17-20)].** The Georgia Supreme Court eliminated equal protection by denying entry of default.

A clerk of court or judge withholding documents or facts from the official record of an active case has the natural and probable effect of interfering with the due administration of justice. How can that satisfy "adequate remedy at law"? The mere fact that *pro se* Sundy, in the course of time, has had to object and beg Georgia courts to complete the record in every case, and then file petitions for extraordinary writ demonstrates an impediment of the official proceeding. Sundy has been placed in a condition of irreparable harm with his independent claims unlitigated. The subject matter of incomplete record and court officers tampering with the record by transgressional acts is the gist of every case in which Sundy has found himself.

Pro se Petitioner Sundy is seeking extraordinary remedy in the U.S Supreme Court with the never ending prayer for relief of a complete record in the State of Georgia. Petitioner Sundy, therefore, respectfully requests that this Court grant this petition for writ of certiorari.

Respectfully submitted 18 November 2019.

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