

No. ~~19~~-6821  
IN THE

SUPREME COURT OF THE UNITED STATES

TIM SUNDY, Petitioner

v.

ORIGINAL

CHARLES BAKER; BRENDA BRADY, LISA W. COOK; CHRISTOPHER CARR;  
MARTHA C. CHRISTIAN; C. ANDREW FULLER,; G. GRANT BRANTLEY;  
BONNIE OLIVER; JACQUES ("JACK") PARTAIN; RICHARD T. WINEGARDEN;  
AND FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC, ARSENAL REAL  
ESTATE FUND II-IDF; GARY PICONE; THOMAS LING; MICHAEL WEINSTEIN;  
GEORGIA DEPARTMENT OF TRANSPORTATION  
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

FILED  
SEP 30 2019  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

10  
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*Pro se Petitioner*

## **QUESTION PRESENTED**

Whether Petitioner Tim Sundy, without a meaningful remedy, has immunity, as provided by the due process clause of the Fifth and Fourteenth Amendments of the U.S. Constitution, from transgressions by state and federal officers which are purposed to deprive Petitioner of a complete record in a civil action, a meaningful appeal, and ultimately of private property without just compensation, in violation of the First Amendment's right of access to the court as well as the Fourth Amendment's right to be secure in his papers?

## **PARTIES TO THE PROCEEDING BELOW**

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

## **LIST OF ALL PROCEEDINGS IN STATE AND FEDERAL AND APPELLATE COURTS**

### **In the State Magistrate Court of Hall County Georgia:**

- Friendship Pavilion Acquisition Company, LLC. v. Mediterranean Dining Group, No. MV2015150183. Transferred to Superior Court of Hall County July 2015

### **In the Superior Court of Hall County Georgia:**

- Friendship Pavilion Acquisition Company, LLC. v. Mediterranean Dining Group, Tim Sundy, and David Sundy, No. 2015CV1366. Judgment entered Dec. 3, 2018
- Charles Baker v. Tim Sundy and David Sundy, No. 2017CV1125. Judgment entered July 10, 2018.
- In re: David Sundy, No. 2018CV00502. Pending.
- Tim Sundy v. C. Andrew Fuller, *et al.*, No. 2016CV0982. Judgment entered Aug. 22, 2018.

### **In the Court of Appeals of Georgia:**

- A19D0108, Tim Sundy v. Friendship Pavillion Acquisition Company, LLC et al., , Discretionary Application docketed 09/21/2018. Denied 10/19/2018., Petition for Writ of Certiorari in Georgia Supreme Court, S18C0395, docketed 11/08/2018. Denied 06/03/2019. Motion for Reconsideration denied on 07/01/2019.
- A19D0345, Tim Sundy v. Friendship Pavilion Acquisition Company, LLC et al., , Discretionary Application docketed on 02/15/2019., Dismissed 03/15/2019. Motion for Reconsideration denied 04/19/2019.. Petition for Writ of Certiorari in Georgia Supreme Court docketed as a Supplemental Brief in S19C0943
- A19E0011, David Sundy and Tim Sundy v. Friendship Pavilion Acquisition Company, LLC et al., filed an Emergency Motion docketed 09/19/2018, Denied within minutes on 09/19/2019., 2018. .

### **Supreme Court of Georgia:**

- S19C0943 Sundy v. Friendship Pavilion Acquisition Company, LLC et al., , Discretionary Application docketed 03/20/2019 as Petition for Writ of Certiorari

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Tim Sundy respectfully petitions for a writ of certiorari to review the denial by the Georgia Supreme Court of his Petition for Writ of Certiorari to the Georgia Court of Appeals.

### **OPINIONS BELOW**

The opinion of the Supreme Court of Georgia is unpublished and is in the Appendix at **A0001**.

### **STATEMENT OF JURISDICTION**

The Supreme Court of Georgia denied Sundy's Petition for Writ of Certiorari on June 3, 2019 and denied his Motion for Reconsideration on July 1, 2019. This Petition for writ for certiorari to this court is therefore timely under this Court's Rule 13.1 and Rule 30.1.

Sundy is attempting to invoke the equity jurisdiction of this Court. Fraud upon the court confers equitable jurisdiction on a court to set aside a judgment where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court. *Luttrell v. U.S.*, 644 F. 2d 1274, 1276 (9<sup>th</sup> Cir. 1980).

### **RELEVANT CONSTITUTIONAL PROVISIONS**

The purview of the well-known 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 is also implicated, as well as the Fourth Amendment right to be secure in one's papers. Rights and remedies are inextricably intertwined.

### **STATEMENT OF THE CASE**

Tim Sundy, without a sufficient means of an appeal in any state court, and without an effective means of a 42 U.S. C. § 1983 action in federal court, is subject to constitutional violations, fraud upon the court, inconsistent due process, conspiracy, and criminal activity while unable to receive the equal protection of law of a full and complete record of the proceedings in any state or federal court. For the purpose of this petition, Sundy has summed these violations up as "transgressional acts," because the frequency and magnitude of the acts is overwhelming and Sundy has a limited amount of pages in this petition. Sundy cannot express all the criminal activity, coupled with constitutional and statutory violations. For example, in the state of Georgia it is a crime and may warrant removal from office when a judge violates OCGA § 15-6-21(a)(b)(c) for timely determination on matters in a case. And when the determination is a constitutional matter and the court fails to make a determination whatsoever, this has the direct effect of denying litigant an appeal.

Sundy has suffered actual prejudice and injury as the result of transgressional acts by court officers' repeated actions of removing and/or withholding Sundy's pleadings from the court records. Court officers have also

made misstatements and misleading statements in lower court documents to commit fraud upon the court. The Georgia Court of Appeals acted preemptively in A19E0011, upon Sundy's emergency motion requesting court-officer-removed documents be restored to the record of Hall County Superior Court ("HCSC") case 2017CV1125, by issuing a denial and also filing it, contrary to its own stated rules and case law, in independent, non-consolidated cases HCSC 2016CV982, 2015CV1366, and 2018CV0502, effectively depriving Sundy any meaningful remedy to Sundy's denial of access, due process and equal protection claims.

For over two years Sundy was participating as an Intervenor **A0066-A0068** in a "Dispossessory Proceeding" involving a subsidiary of a \$5-billion-corporation which possibly holds investments from Georgia's judicial retirement fund. There were multiple irregularities in those two years of proceedings, including the issuing of oral orders which could not be appealed as well as clerks of court removing Sundy's properly and timely filed papers. On 30 October 2017, HCSC stripped Sundy of his rights under a "Dispossessory Proceeding" and threatened him with contempt if he continued to pursue the law governing a "Dispossessory Proceeding."

**A0069-A0077.** On 28 December 2017, the Georgia Court of Appeals in case A18D0215 **A005-A007**, appeared also to disagree with Sundy's ability to invoke the law of a Dispossessory Proceeding by declaring that case HCSC 2015CV1366 was a Civil Action. With an unprejudiced mind, and from the minimal appendix exhibited to this court, it takes very little to see that Sundy, in fear that he would be

put in jail for pursuing his rights under a Dispossessory Proceeding, had no choice but to rely on the appellate process to vindicate his rights.

Sundy failed to see the trap set for him by the trial court and the Court of Appeals. Sundy believed that what had now been deemed a civil proceeding by the Court of Appeals and the trial court meant that he could appeal within 30 days following a final judgment. However, all along the trial court and Court of Appeals were going to hold Sundy to the rules of a Dispossessory Proceeding **A008- A009**.

*Pro se* Sundy made an error and underestimated the evil that court officers were willing to perpetrate. But when Sundy attempted to get himself back on track, and properly filed an appeal -- within seven days as is required for a dispossessory proceeding. -- from orders still being rendered by the trial court, the Georgia Supreme Court Clerk intercepted Sundy's timely Discretionary Application **A0010- A0040** and converted it into a fake Petition for Writ of Certiorari, docketing S19C0943. Sundy next filed a timely and proper petition for writ of certiorari **A00041- A0065** on 9 May 2019 from a denial by the Georgia Court of Appeals in A19D0345. The Georgia Supreme Court Clerk intercepted this, as well, and docketed it as a supplemental brief within the fake S19C0943. These actions clearly demonstrate that the Georgia Supreme Court, imputed as State of Georgia, is not going to allow Sundy to pursue his claims from a Dispossessory Proceeding or prevail against Friendship Pavilion/Arsenal by any means. The Georgia Supreme Court participates in the corrupt practices and patterns of the lower courts, to implement inconsistent due process for the purposes of assure that a judgment

obtained by fraud upon the court will stand **A0079** and that Georgia citizen are deprived of property without just compensation

## REASONS FOR GRANTING THE PETITION

Petitioners Tim Sundy is subject to the Clerk of Court removing papers from the record of civil actions in Hall County Superior Court (“HCSC”) in conflict with the 1<sup>st</sup> , 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments of the U.S. Constitution. Since December 2015, Sundy has been deprived of his civil rights by court officer respondents wrongfully interfering with Sundy's access to the state court to pursue his claims against Friendship Pavilion Acquisition Company Inc. in an *in rem* proceeding. Because the Clerk of Court is tampering with the records in Sundy's cases, the records are not complete and do not reflect the proof of all notices, objections, etc. filed in the Court, causing Sundy to appear procedurally deficient.

Once received by the Clerk, Sundy's documents are held hostage off the record and may disappear completely. Meanwhile, the Clerk of Court and other officers of the court are collaborating in fraud upon the court.

The Georgia Court of Appeals, in its denial of Sundy's Emergency Motion to Show Cause in 1125J, *sua sponte* placed that denial on the record of all the cases in HCSC involving Sundy, giving “notice in advance” that no matter what document is removed (or planned to be removed) from the record, the Court of Appeals **A0078** will not aid Sundy in restoring that document, whether pleading, defense, objection, etc. Mandamus having already proven ineffective, Sundy-- in point of fact -- has no remedy in the State of Georgia and no valid appeal in the State of Georgia.

Sundy has been effectively stripped of his right of petition and denied full and complete access to the courts. The constitutional deprivations experienced by Sundy appear common to *pro se* litigants as a class within Hall County in particular, and the State of Georgia in general, the courts erecting procedural barriers to impede *pro se* litigants' right of access. A review of civil cases in HCSC involving *pro se* litigants reveals a statistically impractical number of "scrivener errors" on the docket. 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 comply with regulations and statutes, as well as constitutional protections.

## **ARGUMENTS IN SUPPORT**

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).

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)

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 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).

"It is the official duty of the clerk of a court to file all papers in a cause presented by the parties, and to mark them filed, with the date of filing. [Cits.]" *Brinson v. Ga. R. Bank & Trust Co.*, 45 Ga. App. 459,460 (165 SE 321) (1932)

"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).

Sundy has sought to hold court officers in Georgia to the same letter of the law to which Sundy is held, yet is overwhelmed under oppressive circumstances of being deprived of liberty to defend himself against civil liability as well as deprived of access to the court. Sundy's efforts to hold court officers to the statutory rules of the state of

Georgia have garnered a tyrannically-partial and biased conspiracy of Georgia court officers determined to exonerate fellow court officers and silence Sundy.

Sundy's mandamus petitions to enforce the statutory duties of the clerk have been denied and have proven ineffective, with court officers determined to absolve the clerk and, apparently, retaliate against Sundy.

"Clerks of the superior and city courts are amenable to the writ of mandamus to require them to perform their duties when they refuse, or for any cause, fail to act." *Jones v. Smith.* 83 Ga. App. 798, 65 SE2d 188 (1951)

In denying Sundy's emergency motion, **A0078** the Georgia Court of Appeals failed to acknowledge that the Clerk of Court, in concert with judges of the superior court, is using extreme force and threats to overthrow Sundy's access to the court and deprive Sundy of meaningful appeal. Because the Court of Appeals had previously affirmed the dismissal with prejudice of Sundy's mandamus petition against the clerk, its rubber-stamped denial of Sundy's motion **within moments of it being filed**, reveals both the refusal of the Court of Appeals to provide any opportunity for Sundy to enforce the duties of the clerk of court and an abdication of the Court's duty to remedy actual substantial prejudice to specific litigation.

The Clerk's denial of access, combined with the trial court's history of violating Georgia's statutory laws, refusal to acknowledge orders of the U.S. District Court, and threat of sanctions and use of force has effectively deprived Sundy of any meaningful access to the court, is a blatant violation of the due process clause.

"The right of access to the courts, upon which *Avery* [*Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969)] was premised, is founded in the Due Process Clause and assures that no person will be

denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.” *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)

“The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.” *Chambers v. Baltimore Ohio Railroad*, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907)

HCSC civil action 2015CV1366, the original action that precipitated 2016CV0982, 2017CV1125J and 2018CV502, should have ended long ago. But for the Court and its officers who have set themselves above the law. If, in December 2015 upon remand from federal court, then presiding Judge C. Andrew Fuller had performed his affirmative duty to disclose jurisdictional questions to the parties immediately instead of sitting on the case in silence for five months, HCSC 1366 could have assumed a normal course. If, in March 2016, then presiding Judge Fuller had not violated O.C.G.A. § 15-6-21(b) by going over ninety days to rule on motions, HCSC 1366 could have assumed a normal course.

If, after violating O.C.G.A. § 15-6-21(b), Judge Fuller had not also violated O.C.G.A. § 15-6-13 and, instead, responded to Tim Sundy’s timely and proper MOTION FOR DISQUALIFICATION OF JUDGE C. ANDREW FULLER filed after the violation, HCSC 1366 could have assumed a normal course.

If, at the 18 April 2016 status hearing, Judge Fuller had not incorrectly stated that Sundy had NOT been granted intervenor status by the U.S. District

Court (“USDC”) **A0066-A0068** and that the USDC had no jurisdiction to grant that status, HCSC 1366 could have assumed a normal course.

If, on 20 April 2016, after proof of the USDC Order granting intervenor status was again placed on the record, Judge Fuller had admitted his mistake, acknowledging that Sundy **HAD BEEN GRANTED** intervenor status by the USDC in the federal court’s exercise of its jurisdiction, HCSC 1366 could have assumed a normal course.

If, in compliance with O.C.G.A. § 15-6-21(c) Judge Fuller had issued a written order after the 18 April 2016 hearing from which Sundy could have appealed, HCSC 1366 could have assumed a normal course.

Instead, Judge Fuller violated multiple Georgia statutes and Petitioner Tim Sundy, defending himself against the violations, filed a *Brown v. Johnson*, 251 Ga. 436, 306 S.E.2d 655 (1983) mandamus action, Georgia’s remedy for the violations.

“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).”

If Judge Fuller had immediately recused himself from 2015CV1366, as procedure demands, after Petitioner Tim Sundy filed the *Brown v. Johnson* mandamus action, HCSC 1366 could have assumed a normal course.

If Judge Fuller had not engaged in conduct prejudicial to the administration of justice, see *Leitch v. Fleming*, 732 S.E.2d 401 (Ga. 2012), HCSC 1366 could have assumed a normal course.

If, in October 2016, then presiding Judge Martha C. Christian had recognized the validity of the USDC Order granting Sundy intervenor status as supported by the Georgia Court of Appeals, HCSC 1366 could have resumed a normal course.

The fact that the district court, and not the superior court, granted leave to add parties, does not nullify this permission....Rodgers does not suggest that a state court may simply ignore the rulings of district courts made in the same case before remand to superior court...**The district court's order was valid until set aside.** See generally *Howell Mill/Collier Assoc. v. Gonzales*, 186 Ga. App. 909, 910 (1) ( 368 S.E.2d 831 ) (1988). **It was never set aside, and the superior court was therefore bound by it...** Accordingly, we conclude that the superior court erred..." (emphasis added) *El Chico Restaurants, Inc. v. Trans. Ins. Co.*, 235 Ga. App. 427 (509 S.E.2d 681)(1998)

If, when Tim Sundy notified the Court in December 2016 that his documents were missing from 2015CV1366, the Clerk of Court had admitted his mistake and correctly filed all of the removed documents, HCSC 1366 could have resumed a normal course and HCSC 1125J would never have existed.

If, in January 2017, had then presiding Judge Martha C. Christian not violated O.C.G.A. § 15-6-21(b) by going over ninety days to rule on motions, HCSC 1366 could have assumed a normal course.

If, after David Sundy filed a *Brown v. Johnson*, 251 Ga. 436, 306 S.E.2d 655 (1983) mandamus action in January 2017 to compel the Clerk of Court to perform his purely ministerial duties, the Clerk had not argued that he "owed David Sundy

no duty" based upon Judge Fuller's 2016 oral declaration, HCSC 1366 could have resumed a normal course and HCSC 11225J would never have existed.

If, the *Brown v. Johnson*-assigned-judge Winegarden had not stated in his order dismissing the Clerk of Court with prejudice that Judge Winegarden could not locate the missing documents, and therefore David Sundy had no claim against the Clerk, HCSC 1366 could have resumed a normal course and HCSC 11225J would never have existed.

If the Clerk of Court had not then turned around and initiated civil case 2017CV1125J to restore Sundy's missing document to 2015CV1366, admitting that Sundy claims were valid, HCSC 1366 might have resumed a normal course.

If the Clerk of Court had not then turned around and removed Petitioner David Sundy's affirmative defenses from civil case 2017CV1125J and initiated civil case 2018CV502, HCSC 1366 might have resumed a normal course.

If the Clerk and judges of the Northeastern Circuit had not collaborated to implement a secret, oral injunction against Sundy to stop him from filing any document anywhere in the Hall County Court system, HCSC 1366 might have resumed a normal course and Sundy would not even have to seek relief and remedy from the Supreme Court of the United States.

If the judges and clerks of HCSC, and the Sheriff, had not collaborated and conspired together to intimidate Sundy by establishing a systematic pattern of evil practices and threats to defeat good laws, rules and procedures, and to render laws and constitutional protections enacted by the Georgia Legislature and the United States as

null and/or ineffective, HCSC 1366 might have ended long ago and Sundy would not even have to seek relief and remedy from the Supreme Court of the United States. If the Attorney General of Georgia was protecting the citizens and Sundy as is his paramount duty, this case might have ended long ago, and Sundy would not have been deprived of his right to procedural due process under the fourteenth amendment.

Instead, officers of the court have aided HCSC 1366 Plaintiff Friendship Pavilion Acquisition Company LLC (“FPAC”) to prevail in its scheme of prevention of performance , despite law to the contrary, whereby FPAC concealed the material facts of road construction from Sundy and filed a false affidavit in a Georgia government entity using the US mail (implicating RICO).

"Where a [plaintiff] prevents the performance of a stipulation of a contract undertaken by the [defendant], he is estopped from setting up in his own behalf any injury which may have resulted from the non-performance of such condition." *Stimpson Computing Scales Co. v. Taylor*, 4 Ga. App. 567 (4) (61 S. E. 1131); *Byek v. Weiler Co.*, 3 Ga. App. 387 (59 S. E. 1126)

"The doctrine of prevention of performance bars the preventing party from availing itself of the other party's nonperformance." *Perry v. The Schumacher Group of Louisiana*, Case No. 2:13-cv-36-FtM-29DNF (M.D. Fla. Mar 13, 2014)

Sundy, deprived of private property without compensation and defrauded of more than \$300,000 in actual out-of-pocket costs and still paying creditors as direct injury from FPAC *et al.*'s scheme of prevention of performance, has intelligently, rationally, professionally and respectfully exercised his right to defend himself against civil liability and against court officers' violations of Georgia law. In retaliation, court officers have tampered with the record in Sundy's cases and effectively deprived him of any meaningful appeal. While giving lip service to the formal right of access to the court, i.e,

Sundy can file an appeal, that access is neither effective nor meaningful when the record of proceedings is incomplete. See *Bounds v. Smith*, 430 U.S. 817, **832** (1977).

“Of what avail is it to the individual to arm him with a panoply 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)

“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 interferred with an individual's right of access to the courts, may state a cause of action under 42 U.S.C. § 1983. See, *McCray v. Maryland, supra*.” *Crews v. Petrosky*, 509 F. Supp. 1199, **1204** (W.D. Pa. 1981)

Court officers have conspired to block Sundy from filing documents in existing case(s), depriving Sundy of equal protection, full access to the courts and due process, while ensuring Sundy record in each case is defective.

“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.” *Dinwiddie v. Brown*, 230 F.2d 465, 469 (5th Cir.), *cert. denied*, 351 U.S. 971, 76 S.Ct. 1041, 100 L.Ed. 1490 (1956).

Court officers' retaliation against Sundy is because Sundy has opposed the acts and/or practices of judges and clerks made unlawful by the Official Code of Georgia, with court officers threatening Sundy with sanctions for engaging in First Amendment rights to petition for redress, to defend himself from civil liability, and to defend himself from statutory violations by court officers. Court officers have exhibited a bias against *pro se* litigants as a class and demonstrated that attorney-represented parties have an access to

the court that is denied Sundy. Court officers' animus against Sundy for his hubris, *i.e.*, that a *pro se* party would hold court officers to the letter of the law, has been verbalized and that animus culminated in the secret, oral injunction(s) to stop Sundy from pursuing legal remedies against the clerk of court in court officers' conspiracy to obstruct justice.

"What above all else is eroding public confidence in the Nation's judicial system is the perception that litigation is just a game, that the party with the most resourceful lawyer *[or judge]* can play it to win, that our seemingly interminable legal proceedings are wonderfully self-perpetuating but incapable of delivering real-world justice." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 885 (2009) [notation added]

Court officers, in addition to using their official capacity to exonerate each other from violations of State of Georgia statutes, have collaborated with the Clerk of Court and deputy clerks to aid in corrupting and/or destroying the complete record necessary for appeal. Court officers have issued oral orders which other court officers have unlawfully adopted to justify the unlawful deprivation of Sundy's constitutional rights and immunities under the First, Fourth, Fifth, and Fourteenth Amendments and as court officers" defense for not performing their administrative and non-discretionary duties, despite full knowledge that "what the judge orally declares is no judgment until the same has been reduced to writing and entered as such.

The public has an interest in deterring or punishing violators of constitutional rights. The public also has an interest in a self-represented party being accorded the same rights and immunities accorded to an attorney-represented party. When a clerk of court can change the complexion and perception of a case by removing a litigant's documents, creating a false appearance of laches or acquiescence or non-compliance on the part of the litigant, while also manipulating the State appellate

courts to render an adverse ruling as a result of Sundy's defective record on appeal, fraud upon the court is complete.

The Eleventh Circuit, citing *Robinson v. Audi*, has said that "[W]hatever else it embodies, [fraud on the court] is ...an intent to deceive or defraud the court." See *Sec. & Exch. Comm'n v. Lauer*, No. 13-13110 (11th Cir. Apr. 21, 2015)

Sundy has taken the steps provided or required by the state judicial system. He first raised the issue of the Clerk's misfeasance by notice to the court and protest. That being ignored, a mandamus petition was filed. That being denied with prejudice, it was appealed to the Court of Appeals. The Court of Appeals affirmed the denial with prejudice and the Clerk is now emboldened, assisted and even directed by superior court judges, to not only remove additional documents from original case HCSC 1366 but also documents from all cases involving Sundy.

#### **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 Sundy's meaningful access to the courts, court officers have used oral orders, the removal of Sundy's documents from the record, and the voiding of valid federal orders to frustrate and impede and hinder Sundy's efforts to pursue valid legal claims. In the process, the Clerk of Court has 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 Clerk and the judges to deny Sundy full access to the court have caused the loss of a meritorious case, the loss of an opportunity to sue, and the loss of an opportunity to seek appeal on a complete and accurate record. Sundy 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 state court, to Sundy's detriment. The state courts have aligned to insure that Sundy will have no remedy whatsoever.

"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)

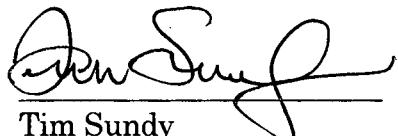
HCSC judges and other court officers have refused to follow Georgia statutes and Georgia case law, including case law recognizing the validity of federal court orders. The Georgia Court of Appeals has aligned itself with superior court officers to allow misfeasance against *pro se* litigants. The public has an interest in ensuring that court officers comply with regulations and statutes, as well as constitutional protections. The 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 tyrannically partial clerks of court.

## CONCLUSION

Tim Sundy is limited in this Petition for a writ of certiorari to point out all the overt criminal acts by court officers, undertaken to exonerate fellow court officers and assist Friendship to prevail, which Sundy has encountered since 2015. Nonetheless, he has documented and demonstrated that the officers of the Superior Court, the Court of Appeals, and the Supreme Court in the state of Georgia have effectively blocked Sundy's demanded relief of a complete record on appeal. Sundy has also demonstrated that such relief is not otherwise available in a future suit in the Georgia court system for him or for any other U.S. citizen if a court officer is implicated in wrongdoing. If the Supreme Court or Congress fails to put an end to corruption and transgressional acts committed by court officers in Georgia under color of law, the First Amendment right of redress of grievance has been effectively and thoroughly shredded for *pro se* litigants in the state of Georgia.

With Sundy having no viable alternative remedy to make the record whole, while Sundy has suffered injury that can only be remedied by a complete record, Tim Sundy respectfully requests that this Court grant this petition for writ of certiorari .

Respectfully and timely submitted 30 September 2019.



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