Docket No. _____

19-7600

IN THE

SUPREME COURT OF THE UNITED STATES

TIM SUNDY, Petitioner

v.

FRIENDSHIP PAVILION ACQUISITIONCOMPANY, LLC,

Respondent

ORIGINAL

PETITION FOR A WRIT OF CERTIORARI

to the Supreme Court of Georgia from a determination in case S19C0493

TIM SUNDY
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Pro se Petitioner

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

QUESTION PRESENTED

State of Georgia court officers have demonstrated a collective and relentless practice of knowingly removing or concealing documents and information from the records of official court proceedings of select *pro se* litigants, in violation of the Ninth Amendment of the U.S. Constitution, as well as falsely adding information to the record, mischaracterizing pleadings, failing to docket a transferred case, and otherwise causing the record of proceedings of select litigant's to be inaccurate or incomplete, tampering with official records with the specific intent to defraud or injure the litigant and/or to alter the outcome of an official proceeding. Does this oppressive conduct and reckless defiance of elementary standards of justice and fair play, with the specific and purposeful intent to defraud or injure a *pro se* litigant, effectively depriving *pro se* litigants of the substantial rights of due process, equal protection, full access to the court, and the right to be secured in one's papers as well as, in Sundy's specific case, private property without just compensation, raise the issue of judicial and/or equitable estoppel?

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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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tim Sundy respectfully petitions for a writ of certiorari to review the final judgment of the Supreme Court of Georgia on 4 November 2019 in case S19C0943.

OPINIONS BELOW

The judgment of the Supreme Court of Georgia is unpublished and is in the Appendix at **Appx001**.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Georgia was issued on 4 November 2019 **Appx001** and this Petition to this Court is therefore timely under this Court's Rule 13.1 and Rule 30.1.

The Petitioner 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 (9th 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 U.S. Constitution's Fourteenth Amendment guarantees Sundy to be immune from criminal activity.

The purview of the U.S. Constitution's First Amendment right to petition for redress of grievances and access to the court are 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

This case presents a recurring question that confronts *pro se* litigants in Georgia: how to overcome the actions of court officers who knowingly falsify, destroy, remove, or conceal "a writing or record" with specific intent to deceive or injure or defraud *pro se* litigants, as well as to conceal any wrongdoing by fellow court officers?

Pro se litigants in Georgia have no access to electronic filing in any court and must present their pleadings and other documents to a court in person, or by some means that provides a chain of evidence than can refute a court officer's falsification of the date of filing, number of pages filed, the recipient, etc., as well as a court's removal of a document and denial of its receipt. Courts in Georgia serve *pro se* litigants by U.S. postal service and may also, as Sundy has discovered, wait several days after the issuance of an order or after affixing an electronic postmark to an envelope before actually consigning it to the U.S. postal system.

This tampering with the records in official proceedings, by court clerks and judges who, without the privilege to do so, falsify, destroy, remove, conceal, or alter any writing, data, or record, is repugnant to the U.S. Constitution as well as the Constitution of Georgia, and an overt denial of due process.

On 20 March 2019, *pro se* Petitioner Sundy filed a procedurally correct "Application for Discretionary Appeal pursuant to O.C.G.A. § 5-6-35" **Appx002 (1st**

page only) in the Clerk's Office of the Supreme Court of Georgia ("GASUP") to seek appeal of Hall County Superior Court's ("HCSC") 13 March 2019 Order in HCSC 2015CV1366 denying Sundy's post-judgment "Motion for Leave to Proceed In Forma Pauperis". The GASUP Clerk docketed *pro se* Sundy's Application for Discretionary Appeal as case S19C0943, falsely denoting it as a petition for writ of certiorari, concealing the fact of Sundy's discretionary application and depriving Sundy of the benefit of O.C.G.A. § 5-6-35(f). The GASUP Clerk mailed Sundy notice on 21 March 2019 of the unlawful conversion **Appx003**, falsely stating that *pro se* Sundy's discretionary application was a petition for writ of certiorari from Georgia Court of Appeals ("GCOA") A19D0345 Order of 15 March 2019. [1] **Appx003**

Sundy's discretionary application **Appx002** did not comply with procedural rules governing a petition for writ of certiorari nor did it seek to meet the standard for granting certiorari. It is only providential that Sundy's discretionary application turned out to be timely in light of GCOA's A19D0345 astounding ruling **Appx004** that Petitioner Sundy was subject to O.C.G.A. §44-7-56 [2].

On 4 April 2019, having received GASUP's notice that it had docketed Sundy's discretionary application on 20 March 2019 as a petition for writ of certiorari **Appx006**, *pro se* Sundy filed a "Motion to Clarify and Correct the Docket." **Appx008**

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[1] The Georgia Court of Appeals ("GCOA") ruled on March 15, 2019 in A19D0345 that HCSC 2015CV1366 was a dispossessory case, despite possession having been resolved almost four years prior and Plaintiff Friendship Pavilion Acquisition Company LLC ("FPAC") having amended its complaint on 6 February 2017, FPAC raising new causes of action that arose subsequent to the original action and purposefully stating that its amended complaint sounded solely in contract.

[2] The GCOA ruling **Appx004** made Petitioner Sundy subject to O.C.G.A. §44-7-56, which states than any appeal in a dispossessory action must be filed within seven days of the date a judgment is entered, contradicting GCOA's prior ruling in A18D0215 that HCSC 2015CV1366 was a civil action **Appx0028**.

On 22 March 2019, Sundy filed a timely Motion for Reconsideration **Appx0031** in A19D0345 of the GCOA's 15 March 2019 ruling **Appx004** that HCSC 2015CV1366 was still a dispossessory case. The GCOA denied Sundy's Motion for Reconsideration in A19D0345 on 19 April 2019. **Appx0046**

On 9 May 2019, Sundy timely and properly filed in the Georgia Supreme Court a procedurally-correct petition for writ of certiorari to the GCOA in A19D0345.[3] **Appx0047** The Georgia Supreme Court Clerk, with intent to defraud, docketed Sundy's 9 May 2019 procedurally correct petition as a "supplemental Brief" into the "fake" S19C0943 created by the Clerk on 20 March 2019. **Appx006**

To reiterate, the 9 May 2019 "Supplemental Brief" listed on the docket of S19C0943 **Appx006** is Sundy's actual petition for a writ of certiorari which is listed at 9 May 2019 on the docket of case A19D0345. **Appx0049** As is apparent on the A19D0345 docket, there is no other petition for a writ of certiorari in the case. As is also apparent on the docket of case A19D0345 **Appx0049,** subsequent to the denial of Sundy's Motion for Reconsideration on 19 April 2019, Sundy properly and timely filed his Notice of Intent **Appx0063** to apply for certiorari in the Georgia Supreme Court on 29 April 2019 as is required by Georgia Supreme Court Rule 38 (1).

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[3] GCOA A19D0345 was docketed on 15 February 2019 as the result of the GASUP's transfer of case S19D0602 **Appx0050**, Sundy's Application for Discretionary Appeal from the HCSC 2015CV1366 final Order of December 3, 2018, filed in GASUP on 2 January 2019. GASUP transferred the case to GCOA on 31 January 2019. **Appx0050.** GCOA's ruling in A19D0345 on 15 March 2019 that Sundy was subject to O.C.G.A. §44-7-56 and therefore had only seven(7) days to appeal from any order in a case that began as a dispossessory action was inconsistent with its prior ruling **Appx0028** that 2015CV1366 was a civil action case.

REASONS FOR GRANTING THE PETITION

The popular locution in the U.S. Congress today is that "No one is above the Law, not even the President." However, State of Georgia court officers proximate to Atlanta, have collectively -- by design -- created the perfect crime to render themselves above the laws of Georgia. These court officers, including judges, clerks, and the State Attorney General, use their power and their discretion to conspire to escape their oath of office and duties while Atlanta-based U.S. District Court officers and Atlanta-based U.S. 11th Circuit officers join as parties to support the crimes. *Pro se* litigants, as now appears, have no remedy.

When the Clerk interferes with or illegally converts a valid Application for Discretionary Appeal into a petition for writ of certiorari in a premeditated design to deprive a *pro se* litigant of reliance upon the benefits of O.C.G.A. § 5-6-35, subjecting the litigant to denial for failure to follow the Rules of the Supreme Court of Georgia and creating a legal shortcoming in a *pro se* litigant's case that is directly attributable to the Clerk's misconduct, the Justices of the US Supreme Court should be very disturbed. When the Clerk converts an actual petition for writ of certiorari into a supplemental brief **Appx006,** knowingly creating defects because "a supplemental brief is not the vehicle for raising a new issue of law" (see *Fargason v. State*, 266 Ga. 463,464(6) (467 SE2d 551)), the Clerk's action amounts to constructive fraud with the result of depriving the *pro se* litigant of full access to the court.

By judicial notice, the Clerk of GASUP has used the Office on other occasions to falsify records in other of Sundy's cases. See this Court's Case 19-6694, page 27-28 of Sundy's Petition for Writ of Certiorari.

As a court officer, the Clerk of Court has every power to create a remedy which would not otherwise be available – such as a fake petition for writ of certiorari -- and then defeat that remedy or any other remedy available to a *pro se* litigant.

> "It is a principle of the widest application that equity will not permit one to rely on his own wrongful act, as against those affected by it but who have not participated in it, to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available." *Deitrick v. Greaney*, 309 U.S. 190 (1940)

Judges in Georgia have used that same power to defy statutory law, exonerate fellow court officers, and ignore *pro se* litigants' properly filed requests for a certificate of immediate review, purposefully depriving *pro se* litigants of interlocutory review while moving the GCOA to threaten *pro se* litigants with sanctions **Appx0030** for what judges withhold. Disqualified judges have used that power to demonstrate that they can unlawfully assume a collaborative jurisdiction with the presiding judge, exercising power to withhold and/or remove Petitioner's documents from the official court record to create an appellate defect that cannot be overcome.

In this case, the Clerk of the Supreme Court of Georgia, with the endorsement of the Attorney General, has designed a corrupt scheme against the citizens of Georgia to effectively allow public officials and special private individuals to commit perfect crimes. Court officers can defy statutory requirements and constitutional mandates to the detriment of *pro se* litigants and appellate courts can then create legal

shortcomings in the *pro se*'s case that are directly attributable to the appellate court's misconduct but which allow the appellate court to then dismiss or deny the *pro se* litigant's case, thereby "exonerating" the malfeasance of court officers.

Georgia courts seek to affirm that the reality of "above the law" is alive and well in Georgia and that court officers can commit crimes because the government has failed the public trust, with the officials who allow the malpractice, misfeasance and malfeasance failing to perform their duties and operating above the law as well.

Equitable estoppel is supposed to operate against the wrongdoer. Judicial estoppel protects the integrity of the judicial system. *New Hampshire v Maine,* 532 U.S. 742, 749 (2001). When a Clerk of Court has previously correctly docketed Sundy's applications for discretionary appeal but then acts in a manner inconsistent in order to deprive Sundy of procedural correctness, i.e., that Sundy's application was timely filed within seven days of contested order, Sundy is denied equal protection and deprived of access to the court.

In assuming by some miracle that Sundy is granted this petition for writ of certiorari in the U.S. Supreme Court, or in case 19-6821, or reconsideration in case 19-6694, and the U.S. Supreme court orders a lower State court to deliver the complete record of case 2015CV1366 Superior Court of Hall County, ("HCSC") so that this court may review the record, Sundy will be denied justice. This is because the lower court record is incomplete and, after four years of Sundy's efforts to enforce the lower courts to complete the record, to restore removed documents and/or information to the record, to correct falsified and/or added information, and to stop any other means of tampering with records, Sundy is still denied a complete

record and the malfeasance and misfeasance of court officers has been winked at and otherwise whitewashed. The fraud upon the court, perpetrated by court officers, is in violation of Sundy's rights, including the Ninth Amendment of the U.S- Constitution, and is a systemic practice that appears on the lower court records to predominately affect only *pro se* litigants. The number of "scrivener errors" in cases involving *pro se* litigants is statistically improbable.

> "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)

As stated above, the record of case HCSC 2015CV1366 is still incomplete as a result of tampering. This means Sundy cannot get a meaningful review from this court or in any official proceeding upon an incomplete record -- even if this Court granted a Petition for writ of certiorari -- , unless this Court first uses its equitable powers to compel the lower courts to complete and correct the record via some extraordinary and effective means.

Georgia's court officers are unquestionably bent on violation of the US Constitution, with even the Atlanta-based 11th Circuit Court of Appeals abstaining despite this Court's mandate to protect the citizen's federal constitutional rights.

> Congress enacted § 1983 and its predecessor, § 2 of the Civil Right Act of 1866, 14 Stat. 27, to provide an **independent avenue for protection of federal constitutional rights**. The remedy was considered necessary because "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federal protected rights. *Mitchum v Foster,* 407 US 225, 240 (1972).

There is no remedy for *pro se* Sundy. Sundy cannot attain the relief of having a complete record nor "Notice" via show cause why Sundy is singled out to not have equal protection of having a complete record. Rather Sundy is allowed to be damaged and prejudiced repeatedly in a way that is not correctable on ordinary appeal. Petitioner Tim Sundy is without remedy in the State of Georgia, while he is subject to Clerks of Court, judges, other court officers and even private individuals interfering with papers and information in the official record in conflict with the 1st , 4th, 5th, and 14th Amendments of the U.S. Constitution.

Sundy urges this Court to consider the ultimate fraud upon the court by the GASUP Clerk in case S19C0943. **Appx006** Consider that the highest Court in the State has made it, ***inter alia***, impossible for Sundy or any citizen to have unbiased 1st Amendment rights of access to the court, as demonstrated in this Petition, when its clear the Clerk of the highest Court of the State will knowingly, willfully and intentionally violate her oath of office to commit fraud upon the court on the face of the record to deprive Citizens of Georgia of any meaningful review while collaborating with other court officers in a systematic pattern of evil practices.

ARGUMENTS IN SUPPORT OF GRANTING THE PETITION

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)

A. The true reason why Sundy believes Georgia Supreme Court Clerk Thérése S. Barnes committed fraud upon the court by converting a Discretionary application into a fake Petition for a writ of certiorari.

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* Petitioners from the exercise of their First Amendment right to petition for redress of grievances, the Clerk is in violation of the Constitution and his administrative duties.

> "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)

> "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).

The action of the GASUP Clerk to convert Sundy's timely application for appeal of the IFP order **Appx002** into a fake petition for writ of certiorari **Appx006**, and then convert Sundy's actual petition for a writ of certiorari **Appx0047** into a supplemental brief **Appx006**, appears to be in furtherance of a collaborative plan to ensure that Sundy would be denied certiorari, thereby depriving Sundy of due process, equal protection and his property without just compensation.

The back story of the conversion is one of the most amazing occurrences of tampering with the record Sundy has seen thus far. The tampering took place between March 15, 2019 and March 20, 2019 when Sundy discovered that Hall County Superior Court ("HCSC") will go so far as to issue a certified copy of a document in their records and certify the document as true with a "Blank" page in the certified copy to conceal information **Appx0052** and **Appx0057** to deprive litigants of their rights. HCSC will also charge the litigant a fee for the Blank page **Appx0054-Appx0056**, if the customer is not careful.

Sundy, who is subject to legal abuse syndrome and without the protection of government, is constantly on edge and disturbed as to whether the Clerk of HCSC or other court clerks in Georgia are going to tamper with documents in the record in violation of Georgia's constitutional guarantee to insure justice and preserve the peace and happiness of its citizens. Over the past four years, Sundy has experienced clerks removing filed documents from the record, falsely creating documents that don't exist and adding them to the record, misdating documents on the face of the record, withholding documents from the record, etc.

The removal and/or withholding of Sundy's' pleadings and tampering with the record are not isolated incidents of negligence. The removal of pleadings began in HCSC 2015CV1366 with Sundy's 20 November 2016 Joint Objection and other filings and has continued in HCSC 2017CV1125J, HCSC 2017CV0502A, and HCSC 2016CV0982 as well as in U.S. District Court, the 11th Circuit Court of Appeals, and Georgia's appellate courts – all proximate to Atlanta and staffed by individuals who are familiar with each other and been both subordinates as well as colleagues. At present, HCSC court records in all of Sundy's cases are incomplete and, in HCSC 2015CV1366, the Clerk has rearranged the docket on a sometimes daily basis inferring additional fraud upon the court. Since Sundy has not been protected by government, Sundy is compelled to take extra precautions and seek other means to safeguard himself from the criminal malpractice of officials,. This is the result of the State Attorney General breaching his duty to prevent criminal activity:

Sundy is aware that the Georgia courts have a vested interest in dismissing or denying every case in which Sundy is a participant, especially those which expose the statutory and constitutional violations perpetrated by court officers. As Sundy has delineated in his definition of tampering, **(Judicial Notice: found in case 19-6694, pgs 8-10):** "***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.***" Sundy must therefore constantly watch the on-line electronic court docket in each case.

When Sundy discovered that GCOA had ruled in case A19D0345 on Friday March 15, 2019 **Appx004**, denying his application based upon GCOA's determination that Sundy was now subject to O.C.G.A. §44-7-56 and Sundy had not filed his appeal within seven days, **Appx003**, Sundy was immediately on high alert as to what HCSC would do to defraud him of his outstanding Motion Pursuant to OCGA § 9-11-60(d)(2)(3).

Sundy was conscious that his Motion for OCGA § 9-11-60 (d)(2)(3) **Appx013** was filed in HCSC 2015CV1366 on 13 December 2018 and 90 days from that time was 13 March 2019. As of 14 March 2019, HCSC was again in violation of O.C.G.A. **§** 15-6-21(b) which makes it the duty of the judge to rule within 90 days on all motions of any nature. Sundy has also documented that HCSC purposefully delays placing some items on its online docket for its own nefarious purposes, while delaying the mailing of notice to *pro se* litigants in order to deprive them of compliance with statutory deadlines. In observing the HCSC on-line electronic court docket on 15 March 2019, Sundy noted that HCSC trial court issued an "Order on In Forma Pauperis" ("IFP") on 13 March 2019, exactly 90 days after the filing of Sundy's O.C.G.A. § 9-11-60 Motion. HCSC's on-line electronic court docket did not, however, reveal any determination on Sundy's OCGA § 9-11-60(d)(2)(3) Motion nor any other determination. Sundy suspected that HCSC would do something underhanded based upon the actions of its court officers over the previous four years.

Sundy is a school teacher during normal business hours and therefore requested friend and business associate Mr. Tony Phipps to make the trip to Hall County Superior Court on Friday, 15 March 2019 to physically obtain a copy of the IFP Order.

Appx0052 Upon the return of said copy, Sundy noted that page two of the three page document was blank and Mr. Phipps had paid $0.50 cent per page, a total of $1.50 for the copy **Appx0054** . Sundy was now concerned that the blank page was concealing information or error that Sundy should know about, at the same time Sundy was learning that the GCOA would hold him to 7 days to appeal **Appx004** and Sundy not yet knowing if the IFP was an appealable order.

Therefore, on Monday March 18, 2019, Sundy requested that Mr. Phipps and Diana Endsley return to the HCSC Clerk's office to obtain a certified copy of the March 13, 2019 IFP Order. Ms. Endsley made a request for a certified copy of the IFP Order from the same deputy Clerk (Brenda Brady) with whom Mr. Phipps had dealt on Friday, March 15. Ms Endsley, aware of the possible Blank page, informed Ms . Brady of the defect as she was beginning to certify the copy and stated that it was not fair to pay for a blank page. Ms Brady, upon consulting her superiors, agreed with Ms. Endsley and removed the blank page. **Appx0057** Thus Ms Ensley paid $2.00 to certify the copy and $0.50 cents per page, a total of $3.00 for the certified copy. **Appx0059**

Mr. Phipps, having ascertained that he had overpaid for his copy on Friday, requested that the clerk's office refund his $0.50 cent for the blank page overcharge and Lisa Cook agreed by refund of $0.50, **Appx0055-0056.** Ms Brady and Ms Cook were in verbal agreement that there were no oversight of a missing document by the blank page and stated a possible error by the copy machine.

Sundy, upon receiving this new information on Monday 18 March 2019, was relieved that he had obtained certified evidence of the 13 March 2019 IFP so if the blank page had been part of a scheme to conceal information or a document that could

have possibly had appealable issues, such as a ruling on his O.C.G.A. § 9-11-60(d)(2)(3) motion. After all, the historic behaviour of HCSC court officers has proven that HCSC will willingly and intentionally abuse its power and authority in order to deprive *pro se* Sundy of any remedy, including an adequate appeal.

Sundy subsequently scrutinized the blank page closer and saw evidence to cause him to believe that the original IFP order deposited with the clerk was stapled in the top left corner of the document because the copy machine had clearly made an image of the two holes where the staple was removed. The image of the two holes on the blank page was clearly marked on the top right corner, in contrast with holes on the top left corner on the other two pages. This led Sundy to believe that when the Clerk ran the document thru the copier, s/he purposefully copied the back side of **the** IFP Order so that it would produce a blank page to conceal content. (If the copier had been set to automatically copy two sides, the document obtained by Phipps and Sundy would have initially contained four pages.) After all, the HCSC clerk only had to conceal the contents of the Blank page until March 20, 2019, the expiration of 7 days, and then correct the clerical error by giving Sundy full disclosure (i.e., the O.C.G.A. § 9-11-60 (d)(2)(3) had been ruled on). Then it would have been all Sundy's fault that he failed to appeal timely because the GCOA would have held Sundy to the 7 days it mandated for appeal. **Appx004**

Case S19C0943- was filed as a Discretionary Appeal 20 March 2019 **Appx002** within 7 Days of the 13 March 2019 IFP order issued in 2015CV1366.. S19C0943 as a discretionary application was timely in compliance with the GCOA order **Appx003** When the GASUP Clerk realized that Sundy's discretionary application was compliant

with the 7-day requirement of GCOA, instead of transferring the case to GCOA, the GASUP Clerk determined to interfere with Sundy's right of access to the courts and converted the application into a fake Petition for Writ of Certiorari **S19C0943 Appx003** , thereby delaying the appellate process so Sundy would not be in compliance with the 7 days and causing a different outcome of Sundy's case.

> "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)

Sundy believes that the blank page in HCSC was the determination on Sundy's O.C.G.A. § 9-11-60(d)(2)(3) but Sundy what not supposed to discover that information until after the expiration of the 7 days.. Because Sundy providentially obtained a certified copy of the IFP Order without the blank page, HCSC was forestalled from executing its plan to deprive Sundy of appeal.

The action of the GASUP Clerk to convert Sundy's timely application for appeal of the IFP order into a fake petition for writ of certiorari, was the next best thing because it made sure that Sundy would be denied certiorari, thereby depriving Sundy of due process, equal protection and his property without just compensation. When Sundy then filed his actual petition for a writ of certiorari **Appx0047,** the GASUP Clerk converted the writ into a supplemental brief, establishing the Clerk had full intention to violate her oath of office and deprive Sundy of equal access to the courts.

B. The GCOA ruled that HCSC 2015CV1366 was a civil action in A18D0215 and then reversed itself in A19D0345

In 2011, under what later were discovered to be conditions of fraud, RICO and a scheme of prevention of performance, Tim Sundy and his brother, in good faith, executed and guaranteed a lease authored by Plaintiff Friendship Pavilion Acquisition Company LLC ("FPAC") to open a restaurant in a shopping center owned by FPAC and former third-party Defendant Arsenal Real Estate Fund II-IDF, LP ("Arsenal"). Major road construction, FEDERAL AID PROJECT STP-2688(4), Project PI No. 170735, began in front of the shopping center approximately ninety days after Applicant's restaurant opened. For three years, Sundy and his brother and their families labored under circumstances of inverse condemnation, loss of ingress and egress, imminent domain and other conditions rendering the property unsuitable for a restaurant, fighting for the restaurant's survival and sacrificing savings including retirement funds, while incurring debt to overcome the suspected but then unproven fraudulent scheme of FPAC, Arsenal and their agents. FPAC received reduced rent payments from Sundy during the three years of road construction with instructions to "Do the best you can."

However, when Sundy obtained partial disclosure in May 2015, after three years of open record requests, of FPAC's secret negotiations with Georgia Department of Transportation ("GDOT") prior to authoring and executing the restaurant lease and guaranty, FPAC's misrepresentation of the material fact of the Premises "AS IS," FPAC's subsequent affidavit to GDOT averring it had no tenants,

and such bad faith actions as FPAC's attempt to fraudulently convey Sundy's fully equipped restaurant to another lessee at reduced rent (confirming the diminution of the value of the Premises), FPAC retaliated by initiating an *in rem* proceeding as plaintiff in Hall County.

The *in rem* proceeding, ***inter alia***, was removed to federal court, with Sundy and his brother applying for intervention as defendants, joining the *in rem* case by Order of the federal court, and then timely adding parties pursuant to Rule 14, Federal Rules of ("F.R.C.P."), as a matter of law, to litigate Sundy's compulsory counterclaims of inverse condemnation, prevention of performance, fraud by FPAC, criminal conduct (RICO), etc. as well as the Sundy's claims of breach of contract by FPAC with increase of risk to Sundy under O.C.G.A. § 10-7-22. Subsequent evidence of FPAC's undisclosed and undiscoverable negotiations with GDOT to convey a portion of the Premises under eminent domain prior to executing the contract with Sundy, FPAC's concealment of the material fact of road construction from the lease and from the Sundy, and FPAC's averment to GDOT that it had no tenants, the averment being made subsequent to Sundy's lease, is conclusive of bad faith on the part of FPAC. This concealment caused a failure by GDOT to send NOTICES to Sundy as required by Georgia state approved rules for condemnation and land acquisition.

The federal court issued an order on 5 October 2015, without a trial of the issues, to dispossess Sundy's restaurant and subsequently remanded the case to Hall County Superior Court ("HCSC") on 4 December 2015.

On 6 February 2017, almost two years after its initial magistrate court filing and with the dispute over possession of the Premises long ago settled, FPAC filed a

document into HCSC 2015CV1366 titled "1st Amended Complaint," purposefully stating that the amended complaint sounded solely in contract, converting FPAC's complaint to a conventional contract action under a lease with FPAC citing new causes of action that arose subsequent to the original action. (The Applicant took exception to the untimely, illegal and improper "1st Amended Complaint" because Applicant's Third-party issues were unresolved, and FPAC was in default.)

Months later, the presiding Superior Court judge allowed the document to stand "for the sake of judicial economy" and, affirmed that FPAC's amended complaint sounded purely in contract, with the court also ruling that Sundy's claims, after more than two years of Sundy litigating as Intervenor and Third-party Plaintiff, were not compulsory counterclaims but rather independent claims and, on 30 October 2017 enjoined Sundy from any reliance on the provisions of the dispossessory statutes, including his right to his compulsory counterclaims, depriving Sundy of First, Fifth and Fourteenth Amendment constitutional protections.

The trial court also determined that Sundy was not a third party plaintiff, despite the fact that Sundy as third-party plaintiff, in the midst of the removal action, timely complied with both the laws, rules, and procedures of O.C.G.A. § 9-11-14 and F.R.C.P. Rule 14 in bringing in Third-party Defendants without leave of the court, and that all parties, including Third-party Defendants, were proper before the Federal Court without leave of the court and acknowledged as proper. The dispossessory in Federal Court had proceeded ***In Rem***, as provided by Rule 9(h) F.R.C.P., therefore Third-party Plaintiffs were entitled to implead against Third-

party Defendants for remedy over or contribution or otherwise as provided by Rule 14(c)(1) F.R.C.P.

In 2017, when Sundy was appealing the above-mentioned 30 October 2017 injunctive order and diligently urging the GCOA in case A18D0215 to provide sufficient opportunity to review his issues originating from an *in rem* proceeding while being granted intervention status from the Federal Court, the GCOA stated that this was a civil action and advised Sundy that he must follow proper interlocutory procedures, including the ten day pursuit of a certificate of immediate review. **Appx0028.** The GCOA recognized the validity of FPAC's amended complaint changing the nature of the case.

In 2019, however, the GCOA reversed itself and stated HSCS 2015CV1366 was a dispossessory action and therefore Sundy was subject to O.C.G.A. §44-7-56, which requires than any appeal in a dispossessory action must be filed within seven days of the date a judgment is entered. **Appx004**

This intentional reversal and contradiction by GCOA, had the effect of allowing GCOA to dismiss Sundy in 2017 under one set of rules and then rely on another set of rules in 2019 to dismiss Sundy. Sundy was entitled to rely upon GCOA's plausible interpretation of the law in 2017 and/or due process of notice that GCOA would now apply a different standard to Sundy's case(s). See *Sorrell v. IMS Health Inc.,* 564 U.S. 552,562 (2011), *Burnes v. Pemco Aeroplex, Inc.*, 291 F3d 1282 , 1286(11th Cir. 2002).

C. Delaying the extraordinary remedy case 2016CV0982 Hall County Superior Court Georgia, now case 19-6821 in this Court, follows the same pattern of bad *behaviours* as previously established

On the face of the Order of case 2016CV0982 HCSC **(By Judicial Notice, See 19-6821, A004-C1 of 1),** Judge Christian created a false implication by stating: "***If a Defendant has filed a counterclaim or asked for other affirmative relief, then such counterclaim or relief shall not be dismissed if that Defendant objects to the dismissal.*** There was absolutely neither a counter claim nor objection filed by Friendship Pavilion Acquisition Company, LLC, ("Friendship" or "FPAC")) or any other party which this court can discover by sending for record of 2016CV0982 HCSC upon U.S. Supreme certiorari 19-6821. It was a blazing lie by the Judge Christian to falsely suggest that she had jurisdiction over case 2016CV0982 HCSC after the case was stagnant for 27 mouths because of the false representation of existing counter claim or objection and upon an order issued by a previously disqualified judge.

HCSC case 2016CV0982, was a ***Brown v. Johnson*** *case* **(Judicial Notice: cited case 19-6694)** filed on 18 May 2016 with a final Order not issued until 22 August 2018, **(By Judicial Notice, See 19-6821, A004-C1 of 1)** The failure to rule in the case was in defiance of OCGA § 15-6-21 which the Legislature of Georgia enacted to stop judges delaying cases and avoiding process to cause irreparable injury to litigants.

In comparing two separately filed Brown v. Johnson cases in HCSC, case 2016CV0982 and case 2017CV0031, case 2016CV0982 began 6 ½ months prior to 2017CV0031 with the latter case reaching a final conclusion in a little over 2 months with a dismissal with prejudice affirmed, unsurprisingly, by the COA However, case 2016CV0982 HCSC was still pending as of August 22, 2018 **(By Judicial Notice, See 19-6821, A004-C1 of 1)** and the only reason why the case was dismissed by Judge

Christian more than 27 months after the of the commencement date, **(By Judicial Notice, See 19-6821, A004-C1 of 1)** was because Sundy recognized that Judge Christian was prolonging case 2016CV0982 HCSC in order to completely violate Sundy in case 2015CV1366 HCSC to give Friendship Pavilion the advantage, mandating in her orders that 2016CV0982 be heard before 2015CV1366. The court demonstrated and intention to rule against Sundy and in favor of Friendship in 2016CV0982 and then cite *res judicata* in 2015CV1366, allowing the RICO acts of Friendship to completely disappear.

These commonality of these two cases was such that 2016CV0982 HCSC was filed against Judge C. Andrew Fuller for violations under OCGA § 15-6-21(b)(c) and 2017CV0031 was filed against Judges Christian and Fuller for violations under OCGA § 15-6-21(b)(c). Both cases invoked ***Brown v. Johnson*** **(Judicial Notice: citation in case 19-6694, page 10-15)** and Sundy has established that ***Brown v. Johnson*** has inconsistent meaning in the State of Georgia thus rendering it ineffective, **(Judicial Notice: arguments in case 19-6694, page 10-15).** Exceeding the time limitations under OCGA § 15-6-21(b) is again an issue in HCSC 2015CV1366 with Sundy's O.C.G.A. § 9-11-60(d)(2)(3) motion in limbo for more than a year.

In case 2016CV0982 HCSC, Judge Christian was exceeding 90 days in violation of OCGA 15-6-21(b)(d) so that she could dispose of 2016CV0982 HCSC and 2015CV1366 HCSC simultaneously, with Judge Christian not wanting 2016CV0982 HCSC to be appealed before she achieved her objectives in case 2015CV1366 HCSC. Judge Christian, by ruling on both cases the same day, with case 2016CV0982 HCSC ruled on first, knew that she could render Sundy complaints of an incomplete record

moot. The condition here is that Sundy would get a trial/hearing for 2016CV0982 HCSC only after being subjected to the crime of O.C.G.A. § 15-6-21(d), but Sundy would lose all his rights under his Intervenor status in 2015CV01366 HCSC by misfeasances in 2016CV0982 HCSC.

Once Sundy realized the design of Judge Christian, and knowing that he was subject to inconsistent due process as well as denials of equal protection and that GCOA would affirm any decisions in 2016CV0982 HCSC – no matter how bogus -- Sundy was forced to dismiss 2016CV0982 HCSC after 2 ½ years with no final decision or risk losing his intervenor status in case 2015CV1366.

Disqualified Judge Fuller **(Judicial Notice; *see case 19-6821, Appendix A004-A1-A2*)** placed Sundy in an unconstitutional condition, when Judge Fuller intercepted Sundy's voluntary dismissal of case 2016CV982 **(Judicial Notice; *see case 19-6821, Appendix A004-B3- B5*)** and would not allow the filing of the voluntary dismissal unless Sundy first served all former parties including Federal Judge Richard W. Story. **(Judicial Notice; *see case 19-6821, Appendix A004-B1-B2*)** Disqualified Judge Fuller was well aware that Sundy was under threat and duress to be damaged by Judge Fuller or completely destroyed by Judge Christian by subjecting Sundy to Rooker-Feldman in federal court, even though neither State court judge had jurisdiction. Sundy had no idea that serving federal Judge Richard W. Story the voluntary motion to dismiss was a plan created by Judges Story, Fuller, Jones and Clerk James H. Hatten in order to place false entries on the docket of 2:18-CV-0112-SCJ-USDC, **(Judicial Notice: see false entry Document [11] in 2:18-CV-0112-SCJ-USDC)**. Sundy is aware that federal Judge Story was formerly a Hall

County Court judge, including serving as Judge Fuller's predecessor on the Northeastern Judicial Circuit.

Even when Sundy, under threat and duress, complied with disqualified Judge Fuller's **(Judicial Notice; *see case 19-6821, Appendix A004-A1-A2*)** void order **(Judicial Notice; *see case 19-6821, Appendix A004-B1- B2*)**, Judge Christian continued to commit transgressions against Sundy, creating Judge Christian's final 2016CV0982 HCSC Order **(By Judicial Notice, See 19-6821, A004-C1)** to falsely imply that she had jurisdiction to hold a hearing, falsely imply that some parties had a counterclaim or objection in 2016CV0982 HCSC and falsely blame Sundy for not showing up at the fake hearing for a case Sundy voluntarily dismissed., with the Court frustrated that Sundy refused to acquiesce to its lack of jurisdiction.

D. Judges and Justices practice using oppressive methods to establish traps and cause irreparable injury to U.S. Citizens

The elements of the fake Petition for Writ of certiorari case S19C0943 have been applied collectively by GASUP Clerk Thérése S. Barnes, GCOA Clerk Stephen E. Castlen, Judge Martha C. Christian, HCSC Clerk Charles Baker, and Attorney General Christopher M. Carr in other cases, causing records to be incomplete or contaminated in some form is for the purpose of creating traps for *pro se* litigants, with the impeachable crime of O.C.G.A. § 15-6-21(d) being a resourceful element of a perfect crime.

> "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)'

The pattern is to blame a litigant for an incomplete record for failure to follow a specific rule or Law *i.e.*, when the GCOA Order in case A18D0215 **APPX0028** called HCSC 2015CV1366 a civil action and Sundy did not follow the interlocutory rules. Also in the Order **APPX0028** the COA mentioned cases; A18A0290, A17D0525 and A17D0476 where Sundy also had interlocutory defects and did not comply with the interlocutory procedures. However, the GCOA failed to mention that in each of the said cases, Sundy filed his Notice of Appeal or Application beyond 7 days but within 30 days. Therefore, GCOA's Order in case A19D0345 **APPX004** is inconsistent with GCOA's previous orders.. Sundy claims that if the Order in case A19D0345 **APPX004** is valid then GCOA lacked jurisdiction to even discuss interlocutory matters for previous appeals on the dominating grounds that none of the appeals were filed within 7 days,. In a denial of equal protection or inconsistent due process, as well as a scheme of invited error, the COA ruled inconsistent with the law because COA lacked jurisdiction to even determine whether Sundy should have complied with interlocutory procedures because all PREVIOUS ORDERS' appeal were filed beyond the 7- day requirement of O.C.G.A. §44-7-56.

> Invited error refers to a trial court's error against which a party cannot complain to an appellate court because the party encouraged or prompted the error by its own conduct during the trial. The original goal of the invited error doctrine was to prohibit a party from setting up an error at trial and then complaining of it on appeal. In *State v. Pam*, the State of Washington intentionally set up an error in order to create a test case for appeal. Since then, the doctrine has been applied even in cases where the error resulted from neither negligence nor bad faith. See, e.g., *State v. Studd*, 137 533, 547 (Wn.2d 1999).

The GCOA did not call HSCS 2015CV1366 a dispossessory case in its orders in A18A0290, A17D0525, and A17D0476 because the GCOA was saving the surprise in its scheme of invited error to cause Sundy to follow rules of the Civil Practice Act. GCOA created the perfect trap to moot everyone of Sundy's claims of an incomplete record, statutory violations malfeasance by court officers, etc.

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 Petitioner(s)' documents from the record, the voiding of valid federal orders, the mischaracterization of pleadings, and the reversal of legal standards 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 Clerks and 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 on 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 state court, to Petitioner's detriment. Officers of courts in metro Atlanta, Georgia have aligned to insure that pro se Petitioner 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)

CONCLUSION

Hall County Superior Court 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 Georgia Supreme Court denies relief without explanation. 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.

Pro se Sundy requested the Georgia Supreme Court to review the decision of the Georgia Court of Appeals. The Court declined without explanation. Sundy's Petition for Writ of Certiorari identified multiple instances of misfeasance in multiple courts as well as presenting a valid, legal basis for review. Sundy documented where the Superior Court and the Court of Appeals have effectively blocked the Sundy's demanded relief of a complete record on appeal and that such relief is not otherwise available in a future suit in the Georgia court system.

Pro se Petitioner has no viable alternative remedy to make the record whole and Petitioner has suffered injury that can only be remedied by a complete record.

Petitioner Tim Sundy respectfully requests that this Court grant this petition for writ of certiorari .

Respectfully submitted this 2 February 2020.

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