Docket No. 19-8492

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE:

ORIGINAL

TIM SUNDY, Petitioner



10

# ORIGINAL PETITION FOR A WRIT OF PROHIBITION OR THE ALTERNATIVE WRIT OF MANDAMUS

**An Original Action for an Extraordinary Remedy Pursuant to Rule 20.**

**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

## Questions presented for review

Whether Congress and/or the U.S. Constitution has afforded all United States citizens the unconditional right to equal protection to be secured in their papers, including the right to have a complete record in a court proceeding regardless of whether a citizen has any case pending before an appellate court or any right to appeal.

## A list of all parties to the proceeding

In compliance with Rule 12.6 Rules of the Supreme Court of the United States, all parties listed below have an interest in the outcome of the judgment sought to be reviewed and promoted the judgment via inconsistent due process and/or Fraud upon the court.

Martha C. Christian; Judge of the Superior Court of Hall County by appointment

Charles Baker; Clerk of the Superior Court of Hall County

C. Andrew Fuller; Judge of the Superior Court of Hall County

Kathlene F. Gosslein, Judge of the Superior Court of Hall County

Jacques ("Jack") Partain; Senior Judge by appointment

Bonnie Oliver; Judge of the Superior Court of Hall County

Richard T. Winegarden; Senior Judge by appointment

G. Grant Brantley; Judge of the Superior Court of Hall County

Brenda Weaver; Judge of the Superior Court of Hall County

Clint G. Bearden; Judge of the Superior Court of Hall County

Christopher Carr; The Attorney General of the State of Georgia

Lisa Cook; Deputy Clerk of the Superior Court of Hall County

Brenda Brady; Deputy Clerk of the Superior Court of Hall County

Friendship Pavilion Acquisition Company, LLC; a Delaware corporation

ARSENAL REAL ESTATE FUND II-IDF, L.P.; a Delaware corporation

Gary Picone; Senior Partner, Arsenal Real Estate Partners

Thomas Ling; former Vice President, Arsenal Real Estate Partners

Michael Weinstein;

Georgia Department of Transportation;

Nova Casualty Company; liability insurer for Hall County Clerk of Court

Daniel J. Ross; Deputy U.S. District Clerk for the Northern District of Georgia

James H. Hatten; U.S. District Clerk for the Northern District of Georgia

Therese Barnes; Clerk of the Supreme Court of Georgia

Steve E. Castlen; Clerk of the Court of Appeals of Georgia

David J. Smith; Clerk of the 11th Circuit U.S. Court of Appeals

## Corporate Disclosure Statement

The Petitioner is not a corporation.

## List of All Proceedings

Pursuant to Rule 14(b)(iii)- Rules of the Supreme Court of the United States, the list in State and Federal trial and appellate courts, including proceedings in this Court, that are directly related to the case and the Judgment sought to be reviewed in this Court as follows:

**Cases in the State Magistrate Court of Hall County Georgia:**

Case **MV2015150183**- Friendship Pavilion Acquisition Company, LLC. v. Mediterranean Dining Group, affidavit for summons of dispossessory, filed 9 June 2015 and transferred to Superior Court of Hall County ("HCSC") on 2 July 2015 as HCSC case **2015CV1366.**

**Cases in the Superior Court of Hall County Georgia:**

Case **2015CV1366**- Friendship Pavilion Acquisition Company, LLC. v. Mediterranean Dining Group, Defendant, and Tim Sundy and David Sundy, Intervenor Defendants and Third-party Plaintiffs vs Michael Weinstein, ARSENAL REAL ESTATE FUND II-IDF, L.P.; Thomas Ling, Gary Picone, Third-Party Defendants. Judgment entered December 3, 2016 and December 6, 2016

Case **2016CV0982** -Tim Sundy v. C. Andrew Fuller, et al., a *Brown v. Johnson*, 251 Ga. 436 (Ga.1983) mandamus action. Judgment entered August 22, 2018.

Case **2017CV0031** -David Sundy v. Charles Baker, et al., a *Brown v. Johnson*, 251 Ga. 436 (Ga.1983) mandamus action. Judgment entered April 3, 2017.

Case **2017CV1125J** Charles Baker v. David Sundy and Tim Sundy. Judgment entered July 10, 2018

**Case 2018CV00502** -In re: David Sundy, Still Pending.

**Cases in the Georgia Court of Appeals:**

| | |
|---|---|
| Case Number: | **A17D0476** *(Docket Date: May 31,2017)* |
| Style: | DAVID SUNDY v. MARTHA C. CHRISTIAN, JUDGE ET AL. |
| COA Status: | Denied 06/21/2017 |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A17D0476** *(Docket Date: May 31,2017)* |
| Style: | DAVID SUNDY v. MARTHA C. CHRISTIAN, JUDGE ET AL. |
| COA Status: | Granted 06/21/2017 |
| Trial Court Case #: | 2017CV31A |

| | |
|---|---|
| Case Number: | **A17D0525** *(Docket Date: June 19,2017)* |
| Style: | DAVID SUNDY ET AL. v. FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC ET AL. |
| COA Status: | Dismissed 07/17/2017l |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A18A0170** *(Docket Date: August 14,2017)* |
| Style: | DAVID SUNDY v. MARTHA CHRISTIAN ET AL. |
| COA Status: | Lower Court Affirmed 03/28/2018 |
| Trial Court Case #: | 2017CV000031 |

| | |
|---|---|
| Case Number: | **A18A0290** *(Docket Date: September 13,2017)* |
| Style: | TIM SUNDY ET AL. v. FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC ET AL. |
| COA Status: | Dismissed 10/03/2017 |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A18D0215** *(Docket Date: November 29,2017)* |
| Style: | TIM SUNDY ET AL. v. FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC ET AL. |
| COA Status: | Dismissed 12/28/2017 |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A19D0108** *(Docket Date: September 21,2018)* |
| Style: | TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION CO., ET AL. |
| COA Status: | Denied 10/19/2018l |
| Trial Court Case #: | 2016CV982 |

| | |
|---|---|
| Case Number: | **A19D0345** *(Docket Date: February 15,2019)* |
| Style: | TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC |
| COA Status: | Dismissed 03/15/2019 |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A19E0011** *(Docket Date: September 19,2018)* |
| Style: | DAVID SUNDY ET AL. v. CHARLES BAKER ET AL. |
| COA Status: | Denied 09/19/2018 |
| Trial Court Case #: | 2017CV1125 |

| | |
|---|---|
| Case Number: | **A19E0011** *(Docket Date: September 19,2018)* |
| Style: | DAVID SUNDY ET AL. v. CHARLES BAKER ET AL. |
| COA Status: | Denied 09/19/2018 |
| Trial Court Case #: | 2016CV982 |

| | |
|---|---|
| Case Number: | **A19E0011** *(Docket Date: September 19,2018)* |
| Style: | DAVID SUNDY ET AL. v. CHARLES BAKER ET AL. |
| COA Status: | Denied 09/19/2018 |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A19E0011** *(Docket Date: September 19,2018)* |
| Style: | DAVID SUNDY ET AL. v. CHARLES BAKER ET AL. |
| COA Status: | Denied 09/19/2018 |
| Trial Court Case # | 2018CV502 |

| | |
|---|---|
| Case Number: | **A20D0016** *(Docket Date: July 29,2019)* |
| Style: | TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITIONS CO., LLC et al. |
| COA Status: | Dismissed 08/27/2019 |
| Trial Court Case #: | 2015CV1366 |

| | |
|---|---|
| Case Number: | **A20E0037** *(Docket Date: March 13,2020)* |
| Style: | TIM SUNDY v. FRIENDSHIP PAVILLION ACQUISITIONS LLC et al. |
| COA Status: | Denied 03/13/2020 |
| Trial Court Case # | 2015CV1366 |

**Cases in the Supreme Court of Georgia:**

| | |
|---|---|
| Case Number: | S17O1606 *(Docket Date: May 10, 2017)* |
| Style: | SUNDY v. BAKER et al. |
| GSUP Status: | Dismissed 05/30/2017 Reconsid. Denied: 06/30/2017 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S18C0377 *(Docket Date: May 10, 2017)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 05/30/2017 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S18C0475 *(Docket Date: November 13, 2017)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 05/07/2018 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S18C0710 *(Docket Date: January 19, 2018)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 05/07/2018 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S18C0395 *(Docket Date: November 8, 2018)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 06/03/2019; Recons. Denied 07/01/2019 |
| Trial Court Case # | 2016CV982 |

| | |
|---|---|
| Case Number: | S19D0602 *(Docket Date: January 2, 2019)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Transferred to COA 01/31/3019 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S19D0838 *(Docket Date: February 25, 2019)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Transferred to COA 03/20/2019 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S18C0395 *(Docket Date: November 8, 2018)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 06/03/2019; Recons. Denied 07/01/2019 |
| Trial Court Case # | 2016CV982 |

| | |
|---|---|
| Case Number: | S18C0943 *(Docket Date: March 20, 2019)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 11/04/2019 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | S19O1351 *(Docket Date: June 13, 2019)* |
| Style: | SUNDY v. CHRISTIAN et al. |
| GSUP Status: | Dismissed 08/05/2019; Recons. Denied 08/20/2019 |
| Trial Court Case # | |

| | |
|---|---|
| Case Number: | S20M1044 *(Docket Date: March 25, 2020)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | Denied 03/31/2020 |
| Trial Court Case # | |

| | |
|---|---|
| Case Number: | S20C1075 *(Docket Date: April 2, 2020)* |
| Style: | SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| GSUP Status: | pending |
| Trial Court Case # | 2015CV1366 |

**Cases in the U.S. District Court – Northern District of Georgia:**

| | |
|---|---|
| Case Number: | 2:15-cv-00149-RWS *(Docket Date: July 10,2015)* |
| Style: | FRIENDSHIP PAVILLION ACQUISITION LLC v. MEDITERRANEAN DINING et al. |
| USDC Status: | Remanded to Hall County Superior Court 12/04/2015 |
| Trial Court Case # | 2015CV1366 |

| | |
|---|---|
| Case Number: | 2:16-cv-00123-WCO *(Docket Date: June 14, 2016)* |
| Style: | SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| USDC Status: | Remanded to Hall County Superior Court 08/31/2016 |
| Trial Court Case # | 2016CV982 |

| | |
|---|---|
| Case Number: | 2:18-cv-0112-SCJ *(Docket Date: July 10, 2018)* |
| Style: | SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| USDC Status: | Complaint Dismissed 03/12/2019 |
| Trial Court Case # | |

**Cases in the 11th Circuit USCA**

| | |
|---|---|
| Case Number: | 19-10183 *(Docket Date: January 16, 2019)* |
| Style: | SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al.<br>Sundy's mandamus petition to restore missing documents to 2:18-cv-0112-SCJ |
| USDC Status: | Denied (most documents restored by SCJ prior to USCA ruling) |
| Trial Court Case # | 2:18-cv-0112-SCJ |

| | |
|---|---|
| Case Number: | 19-10445 *(Docket Date: April 11, 2019)* |
| Style: | SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al.<br>Sundy's petition requesting injunction until missing documents are restored to 2:18-cv-0112-SCJ |
| USDC Status: | Denied |
| Trial Court Case # | 2:18-cv-0112-SCJ |

| | |
|---|---|
| Case Number: | 19-11391 *(Docket Date: February 4, 2019)* |
| Style: | SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al. |
| USDC Status: | Dismissed. 03/13/2020 |
| Trial Court Case # | 2:18-cv-0112-SCJ |

**Cases in the Supreme Court of the United States:**

Case 19-7600-Title: Tim Sundy, Petitioner v. Friendship Pavilion Acquisition Company, LLC, et al.,for writ of certiorari Petition DENIED on April 6, 2020.

Case 19-6694-Tim Sundy, Petitioner v. Martha C. Christian, Judge, et al....for writ of certiorari Petition DENIED on January 27 2020, Rehearing DENIED on March 23 2020.

Case 19-6821-Tim Sundy, Petitioner v. Friendship Pavilion Acquisition Co., et al....for writ of certiorari Petition DENIED on Feb 24 2020, Rehearing DENIED on March 23 2020.

Case 19-5506-Tim Sundy, Petitioner v. Friendship Pavilion Acquisition Company, LLC, et al.....for writ of certiorari Petition DENIED on Feb 24, 2020, Rehearing DENIED on March 23 2020.

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## PETITION FOR A WRIT OF PROHIBITION OR THE ALTERNATIVE WRIT OF MANDAMUS

Comes now self-represented *("pro se")* Petitioner Tim Sundy ("Sundy"), unwilling to acquiesce to an incomplete court record which denies him a full and meaningful appeal, and deprived of adequate relief in any other form and from any other court, to respectfully petition for petition for Writ of Prohibition or, in the alternative a Writ of Mandamus pursuant to Rule 20 of the Rules of the United States Supreme Court ("US.SUP") for an Extraordinary remedy authorized by 28 U. S. C. § 1651(a) for this *Original Action* in aid of the US.SUP's appellate jurisdiction. Rule 20.2 of the US.SUP suggests "The petition shall be captioned "In re [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14."

### I. Opinions Below

The opinion of focus for Tim Sundy, a certified copy of which is attached as Appendix **A001**, was issued in case 2015CV1366 Hall County Superior Court Georgia on 9 March 2020, the day after this Court denied petition for writ of certiorari of case 19-6694. Related ORDERS by the State of Georgia denied Sundy an Emergency Motion from the Supreme Court of Georgia ("Ga.Sup") S20M1044 **A004** and Emergency Motion by the Georgia Court of Appeals ("GCOA") A20E0037 **A005** to compel State court and other officials in civil action 2015CV1366 in Hall County Superior Court ("**HCSC**") to enforce Sundy's clear legal rights under the First, Fourth, Ninth, and Fourteenth Amendments of the U.S. Constitution as well as his

clear legal rights under the Constitution of the State of Georgia to have a complete record in any court proceeding.

## II. Statement of the basis for jurisdiction

This petition is pursuant to Rule 20 of the Rules of the United States Supreme Court ("US.SUP") for an extraordinary remedy authorized by 28 U. S. C. § 1651(a). Jurisdiction of the US.SUP over the matters of Tim Sundy is also conferred by United States Constitution Article III, Section I and II in aid of the US.SUP's appellate jurisdiction.

Sundy has a potential Petition for a writ of certiorari in the US.SUP from the Georgia Supreme Court's denial of Sundy's Emergency Motion in Ga.Sup S20M1044 **A004**. The Emergency Motion **A004** was denied on 27 January 2020 and, with the covid-19 national health emergency and US.SUP's 19 March 2020 order regarding filing deadlines, Sundy's Petition for a writ of certiorari is due by 25 June 2020. This Court has jurisdiction over Sundy's matters in aid of this Court's appellate jurisdiction throughout pendency of the Petition for a writ of certiorari.

In support of this Court's appellate jurisdiction is 28 U.S.C. § 1254(1), which Congress enacted to allow this court to have jurisdiction over pending matters before or after rendition of judgment or decree in 11th Circuit Court of Appeals ("11th Cir. USCA") case 19-11391. On 13 March 2020, Sundy exhausted his remedies pursuant to 28 USC § 1651 in the 11th Cir. USCA and, with the Covid-19 national emergency and US.SUP's 19 March 2020 order regarding filing deadlines, Sundy's petition for a writ of certiorari in case 19-11391 is due by 16 August 2020.

This Court has jurisdiction over Sundy's matters in aid of this Court's appellate jurisdiction throughout pendency of Petition for a writ of certiorari.

### III. Preservation of Claims

On 10 March 2020 the clerk of US.SUP sent Sundy a notice of deficiency **A008** to allow Sundy to make corrections to a prior Original Action which included a mandamus request for entry of default and Sundy is without waver of his 60 days **A008** to correct and re-submit by Monday, May 11, 2020. Sundy's letter to Clerk Harris **A008** is actually a thank you letter for aiding and encouraging Sundy to submit a more efficient petition.

This second, unique **Original Action** is without waiver of Sundy's claims for defaulting respondents; without waiver of claims from disqualified judge(s) rendering any void orders; without waiver of claims of the impeachable offense of violating OCGA § 15-6-21(b), and without waiver of claims of RICO activity.

Sundy is not waiving the set aside of the void Judgment by disqualified Judge Martha C. Christian, established by inconsistent due process and fraud upon the court, in granting judgment of $394,617.47 in violation of established case law that "The doctrine of prevention of performance bars the preventing party from availing itself of the other party's nonperformance." See 17B C.J.S. Contracts § 531; Williston on Contracts § 677 at 224 (W. Jaeger, ed., 3d ed.1961); *Buckley Towers Condo., Inc. v QBE Ins. Corp.*, 395 F.App'x 659,663 (11th Cir.2010), *et al.*. Sundy is without waiver of claims of constitutional and statutory violations by disqualified Judge C. Andrew Fuller and the set aside of void Orders issued by inconsistent due process and fraud upon the court by disqualified Judge Christian in HCSC 2016CV0982.

Sundy is without waiver of transfer of Sundy's 20 March 2019 Discretionary Appeal, filed within 7 days of orders rendered in HCSC, to the Georgia Court of Appeals by Ga.Sup Court Clerk Thérése S. Barnes, and relinquishes no claims attendant to the fake Petition for writ of certiorari S19C0943 falsely created and materially misrepresented by Clerk Barnes.

The respondent federal court officers are subject to a ***Bivens*** cause of action for interfering with the due course or proceeding of law, with this Court or the federal courts having original jurisdiction over claims arising under 42 U.S.C. § 1983 and *Bivens*. Sundy is also without waiver of all claims under 18 U.S.C. § 242 and 18 U.S.C. § 1001.

## IV. Specific Extraordinary Writ Petitioner is seeking

Petitioner Tim Sundy is seeking this Court to issue an order in the nature of a prohibition, prohibiting Respondent disqualified Judge Martha C. Christian ("Respondent Christian") Superior Court of Hall County Georgia ("HCSC) from ruling, while the record in HCSC 2015CV1366 is incomplete, on Sundy's O.C.G.A. § 9-11-60(d)(2)(3) Motion ("Post Proceedings") filed on 13 December 2018 and so that the trial court will appoint a qualified judge over the case. By HCSC Order dated 9 March 2020 **A001** Respondent disqualified Christian intends to knowingly and willfully determine the Post Proceedings upon an incomplete record, knowingly engendering inconsistent due process and committing Fraud upon the court.

In the alternative, Petitioner is conditionally seeking an order in the nature of a writ of Mandamus to declare Respondent Christian's ruling as void if Respondent Christian has determined Sundy's Post Proceedings upon an incomplete record, by

inconsistent due process and fraud upon the court and in a manner repugnant to the Constitution of the United States. The Petitioner is also seeking this Court to issue an order in the nature of a Mandamus commanding the Respondent Clerk of Court Charles Baker HCSC ("Respondent Baker") to perform his ministerial duties in case 2015CV1366 HCSC by docketing all missing documents to restore a complete record as requested in the Relief Sought of this petition.

**V. Reason why the relief sought unavailable in any other court**

Since 20 December 2016 when Respondent Clerk of Court Baker removed Sundy's JOINT OBJECTION ("**2016 OBJECTION**") from the record of HCSC 2015CV1366, Sundy has been trying to obtain a complete record in **HCSC,** virtually an impossible task for Sundy in the State of Georgia. Sundy's contention of impossibility is supported by the fact of the LIST OF ALL PROCEEDINGS directly related to this case, all of which derived from case MV2015150183 State Magistrate Court of Hall County Georgia, transferred to the Superior Court of Hall County Georgia as case 2015CV1366. Every proceeding listed has missing documents as a component, as well as bad faith on the part of the State court officers and the Federal court officers in connection with the missing documents. Lower court officers appear determined to prejudice Sundy's issues on appeal knowing that Sundy cannot adequately present error or support his claims by the record when orders, transcripts and timely and proper pleadings or other documents are missing from the record. Both Georgia trial and appellate courts proximate to Atlanta have demonstrated their intent to make it impossible for Sundy to fulfill his responsibility to complete the record on appeal. The federal court proximate to Atlanta has participated in

creating material falsity in its record for a set period of time, with federal court officers having communal relationships with state court officers. Sundy has documented in the various proceedings court officers willful actions to falsify, destroy, remove, conceal and alter Sundy's pleadings as well as other parts of the court records.

Hall County Superior Court ("HCSC") has also established a pattern of knowingly and willfully removing/concealing Sundy's pleadings and other documents from the record for specific periods of time in order to mislead and/or materially falsify the record for that period. From March 2018 through July 2018, HCSC subjected Sundy to a secret, oral injunctive order whereby Respondent HCSC Clerk Baker refused to accept, or accepted but refused to file Sundy's pleadings and documents in violation of Baker's purely administrative duties. The same day the Sundys initiated civil action **2:18-CV-0112** in U.S.D.C. Northern District of Georgia – Gainesville Division ("USDCNDGA"), disqualified HCSC Judge C. Andrew Fuller issued a written injunctive order **A0010** whereby, as unlawfully enforced by the Clerk of Court and Hall County Sheriff's Office, Sundy was refused any access to the office of the clerk of court. The Real Estate Division of the HCSC Clerk's Office even refused to file papers germane to **USDCNDGA 2:18-CV-0112**.

In November 2018, defying the terms of his own injunctive order **A0010,** Respondent Judge Fuller neither reviewed Sundy's 14 November 2018 INTERVENORS' STANDING OBJECTIONS TO ALL VOID ORDERS AND PROCEEDINGS, AND NOTICE TO THE COURT OF PENDING MATTERS IN

FEDERAL COURT ("**2018 Objection**") nor did Respondent Baker file Sundy's **2018 Objection**. Two weeks later, on 26 November 2018 by hand written ORDER stamp-filed in the court at 11:38 am **A00102**, Respondent Christian commanded the Clerk to file Sundy's **2018 Objection**. On 8 November 2018 Respondent Christian had issued a notice of calendar call to be held on 26 November 2018 at 10:00 am **A00104**, the same date upon which Respondent Christian's hand written ORDER was issued. As noted, the calendar call was at 10:00 am while Sundy's **2018 Objection** was filed sometime after the hand written ORDER was stamp-filed in the court at 11:38 am, i.e., sometime after the calendar call proceedings. Had Sundy appeared at 10:00 am, he would have been in the oft repeated position of having to participate in a calendar call or other proceeding upon an incomplete record or protest because his papers were not docketed and again be threatened with jail (or thrown into jail) for seeking to enforce his constitutional right to be secure in his papers.

> "[N]o matter how erroneous a ruling of a trial court might be, a litigant cannot submit to a ruling or acquiesce in the holding, and then complain of the same on appeal. He must stand his ground. Acquiescence deprives him of the right to complain further." (Footnote omitted.) *Roberts v. First Ga. Community Bank*, 335 Ga. App. 228, 230 (1) (779 SE2d 113) (2015). See also *Davis v. Phoebe Putney Health Systems*, 280 Ga. App. 505, 506-507 (1) (634 SE2d 452) (2006) ("A party cannot participate and acquiesce in a trial court's procedure and then complain of it.")

Repeating HCSC's ongoing pattern of material falsity, i.e., concealing the material fact of Sundy's documents/pleadings and depriving Sundy of rights under color of law, Sundy's February 21, 2020 STANDING OBJECTION TO INCONSISTENT DUE PROCESS AND FRAUD UPON THE COURT ("**2020 Objection**") **A0065**, was not docketed until more than a week after a 2 March 2020

hearing. The trial court subsequently accused Sundy of delay under OCGA § 5-6-48(c) in its 9 March 2020 Order **A001** because he did not desire to pay for an incomplete record, as stated in Sundy's **2020 Objection A0065**, while also determining that the only way Sundy could appeal as a matter of right was to pay for an incomplete record. Yet the trial court is well aware that Georgia appellate courts will not hear claims unsupported by the record and it is Sundy's burden to complete the record.

> "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) '

Again, the tiresome question of why Sundy's papers **(2020 Objection A0065)** were not docketed by the Clerk before the 2 March 2020 hearing would have been Sundy's argument if he had physically attended. As evidenced by A001, Respondent Christian had Sundy's papers **A0065** in hand on 2 March 2020 while sitting on the bench, but the papers were not docketed by Respondent Baker until more than a week after the hearing, repeating the pattern of Sundy's **2018 Objection**.

This suggests that the docketing of Sundy's papers has nothing to do with an objective determination of whether they should be filed in an existing case **A0010** but rather the actual prejudice of the court, in violation of Sundy's civil rights, based upon whether Sundy physically appears at a hearing or not, and the need of the court to "sanitize" the record so that Sundy cannot prevail on appeal. Respondent Christian paraphrased details from Sundy's **2020 Objection** in her 2 March 2020-authored order and deliberately misrepresented the facts, to achieve a false

perception in the Order **A001,** knowing that Sundy's objection might never appear upon the record,. HCSC is secure in the established fact that its deprivation of Sundy's rights under color of law will not be disturbed by Georgia appellate courts.

The irony of this corrupt malfeasance is that Sundy is, still, in a situation in the court of standing his ground about "missing document(s)", the same ground he maintained by not paying the cost to have the incomplete record transmitted and falsely certified as complete as the HCSC clerk has previously done.

Today the record is still incomplete in 2015CV1366 HCSC and Sundy has a pending petition for certiorari case S20C1075 in the Ga.Sup regarding the Court of Appeal's denial of Sundy's emergency motion to complete the record in 2015CV1366. But a petition for certiorari is not a matter of right in Georgia in the same manner as a petition for certiorari is not a matter of right under Rule 10 of the Rules of the United States Supreme Court. Since Georgia appellate courts have consistently demonstrated over the past four years that *pro se* Sundy will not be afforded enforcement of his constitutional rights under the First, Fourth, and Fourteenth Amendments and that the pattern and practice of Atlanta-area courts maintaining court records with substantial and significant omissions and material falsities is not a matter of public concern in Georgia, it is unlikely that S20C1075 will meet with righteous ruling. This has been Sundy's experience since the day he obtained partial disclosure of Respondent Friendship Pavilion Acquisition Company's scheme of prevention of performance, RICO activity, and false affidavit filed in a government entity stating that Friendship had no tenants despite having signed a lease with Sundy's family-owned company almost two months prior.

Not discounting the political scrutiny of this Court, Ga.Sup may go through the empty exercise of granting certiorari in case S20C1075. The certiorari will be meaningless for Sundy's issues and claims because the lower court records are incomplete – thus, certiorari would already be defeated because Sundy cannot support his claims from the record below. Ga.Sup. denied Sundy's emergency motion to correct the lower court record in Ga.Sup S20M1044 **A004.** Likewise, the GCOA denied Sundy's emergency motion A20E0037 **A005** to compel HCSC and other officials in civil action HCSC 2015CV1366 to enforce Sundy's clear legal rights of the Equal Protection of a complete record under the U.S. Constitution. Sundy is without remedy in the State of Georgia.

*Pro se* Sundy has made a consistent claim for a complete record in court proceedings, a claim which is coupled with the right to effective, meaningful appellate review. A complete record functions to ensure procedural due process on appeal. *U.S. v Mancilla*, 226 Fed. Appx. 945,946 (11th Cir. 2007) With the record below incomplete, GaSUP S20C1075 is no remedy at all; at most, S20C1075 is only another element that amounts to exhaustion of all remedies.

> "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)

The pattern of inconsistent due process established by HCSC, withholding or removing Sundy's papers from court record and then making improper factual determinations and conclusory findings with evidence and argument missing from the record, establishes more than just deprivations under the Fourth and Fourteenth

Amendments. Sundy is required by HCSC Respondents to participate in a hearing before his papers are docketed yet the adverse parties are never required to file a written response or opposition to Sundy's missing papers. Disqualified Judge Fuller's Order **A0010** appears to justify adverse parties not responding -- if Sundy's papers are not timely put on the docket, the court places no obligation upon the adverse parties to respond. Let this Court take judicial notice of the fact that Judge Fuller uniquely and particularly disqualified himself in each of HSCS cases 2015CV1366, 2016CV0982, 2017CV1125, and 2017CV0031 before issuing Order **A0010**, apparently creating an illegal two-judge panel without dispute from Georgia's appellate courts.

The adversarial nature of civil proceedings has been artificially interrupted and skewed by HCSC court officer in favor of billion-dollar-corporate-subsidiary Respondent Friendship and Georgia's appellate courts are active participants. Georgia courts have demonstrated that they are more interested in protecting court officers from Sundy's viable claims of misfeasance, malfeasance and dereliction of duty than in protecting and upholding Sundy's constitutional rights.

Litigants proceeding *pro se* are already at a disadvantage in the unfamiliar world of law because they lack the specialized training of attorneys. *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991). When Sundy's papers and documents supporting material facts are removed and/or hidden from the record, so that Sundy is procedurally and/or substantively disadvantaged in the defense or prosecution of a cause of action, the disadvantage is elevated to a deprivation of rights under color of law. 18 U.S.C. § 242.

As regards Sundy's **2016 OBJECTION,** i.e., the December 2016 Joint Objection removed from the record by Respondent Baker, Respondent Baker commenced NEW, completely separate action 2017CV1125J HCSC to restore the missing **2016 OBJECTION** to 2015CV1366 after the trial court had dismissed Baker with prejudice from Sundy' mandamus action to compel Baker to restore the missing objection. Baker requested for a process from the court in 2017CV1125J to compel Sundy to appear. A process was never issued and, over 18 mounts later, the **2016 OBJECTION** was restored to 2015CV1366 by order dated 10 July 2018 without Sundy physically participating in an oral hearing. Let this Court note that the Order restoring the document is missing from 2015CV1366, with the face of the record making it appear the 2016 OBJECTION was never missing.

Respondent Christian apparently believed Sundy's **2020 OBJECTION** by special appearance was valid, constituting a physical appearance at the 2 March 2020 hearing. But there was no issue formed with Sundy's non-docketed document by the adverse parties, *i.e.*. adverse parties neither made arguments against nor agreed with the contents, and Sundy did not give Respondent Christian permission to act as his attorney to go into the subject-matter of the non-docketed document. Sundy's **OBJECTION** should have been sustained by the court as unopposed. Instead, Respondent Christian stated on the record the falsehood that "[T]*he only document he (Sundy) identifies as not being on the docket is a document titled "December 20, 2016 JOINT OBJECTION.*" **A002,** establishing that Respondent Christian was ineffective counsel for. Sundy and apparently inviting attorney-represented parties to join her in her falsehood.

Respondent Christian having Sundy's papers **A0065** in hand at oral proceedings, the first thing Respondent Christian should address is why Sundy's **2020 OBJECTION** or any other papers are not docketed before she proffers false findings of fact. Or she should have been consistent by issuing an order to the clerk to file Sundy's **2020 OBJECTION** as she did Sundy's **2018 OBJECTION.** The terms and conditions of the Show cause hearing **A001** should have been enough to dismiss Sundy's appeal under OCGA § 5-6-48(c). But in like manner as Sundy's 2018 **OBJECTION**, and throughout the history of this case, the court creates material falsities on the face of the record to injure Sundy in the appellate process.

> "There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record... The indigent, where the record is unclear or the errors are hidden, has only the right to a meaningless ritual, while the rich man has a meaningful appeal." *Douglas v. California*, 372 U.S. 353, 357 (1963)

Furthermore, as Sundy has argued steadily in the List of All Proceedings, he is subject to inconsistent due process. On one hand, the ORDER showing how the **2015 OBJECTION** was restored to the record of case 2015CV1366 is missing from the record. On the other hand, Respondent Christian issued a hand written ORDER **A00102** showing how Sundy's **2018 OBJECTION** was restored to the record. On one hand, the injunctive Order by Respondent Fuller **A0010** is absent from the record of 2015CV1366 yet the Georgia Court of Appeals, *sua sponte* and without jurisdiction, filed its controlling order in every active HCSC case. The incomplete record in 2015CV1366 cannot support all of Sundy's claims on appeal, and the court and its

officers continue to create gaping holes in the record to harm Sundy's appeal while subjecting Sundy to inconsistent due process.

> "Under Federal Rule of Civil Procedure 60 (b)(4), "a judgment is not *void* merely because it is erroneous, but only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law." In re Four Seasons Securities Laws Litigation, 502 F.2d 834, 842 (Tenth Cir. 1974). The term "void," as used in CPA § 60 (Code Ann. § 81A-160), has been more broadly construed (see Canal Ins. Co. v. Cambron, 240 Ga. 708 (242 S.E.2d 32) (1978); Wasden v. Rusco Industries, 233 Ga. 439 (211 S.E.2d 733) (1975)). Consistent with federal authority, we now hold that a judgment is void if the court which rendered it acted in a manner materially inconsistent with due process." *Johnson v. Mayor c. of Carrollton,* 249 Ga. 173 (Ga. 1982)

Because Georgia Attorney General Christopher Carr allows the Clerks of Georgia courts to practice tampering with the record, despite actual notice from Sundy with evidence of the tampering by clerks in Georgia's trial and appellate courts, the State has not afforded Sundy equal protection.

> "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)

To have a complete remedy it is conclusive there must a complete record. Sundy believes Congress and/or the U.S. Constitution has given him unconditional rights to a complete record in a court proceeding even if there is no other case pending or appeal. Sundy has been discriminated against because he is *pro se* and a member of the unprivileged, but Sundy believes that whether he has no right to a certiorari in either

State nor Federal court, the equal protection clause guarantees Sundy to have an unconditionally complete record.

> "Not only is a biased decision maker constitutionally unacceptable, but our system of law has always endeavored to prevent even the probability of unfairness." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955))

In sum, the relief sought by Sundy from this Court is not available in any other court in the state of Georgia. Trial court officers collude to willfully falsify, destroy, remove, conceal and alter Sundy's pleadings as well as other parts of the court records. Respondent Clerk Baker has previously certified as true and complete a record on appeal while knowing the record was incomplete and therefore false. The Georgia Supreme Court and the Georgia Court of Appeals have tampered with Sundy's appeals by re-docketing documents a second time with a new filing date to create fake motions, creating a fake petition for certiorari from a discretionary application for appeal, delaying transfer of an appeal for months to allow more chicanery in the trial court, etc. There is no way a reasonable person can conclude Sundy has a remedy anywhere but in this Court, or a congressional appeal.

> "...it is still the ultimate responsibility of the court to consider all potential remedies if it finds that the ones the plaintiffs offer do not suffice. It has always been Congress's intent that "[t]he court should exercise its traditional equitable powers to fashion the relief so that it completely remedies..." *Southern Christian Leadership Conference v. Sessions*, 56 F.3d 1281 (11th Cir. 1995).

## VI. The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case

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.

## VII. Summary of the Case

Over the course of the last five years, since *pro se* Sundy was first introduced to the notion of a two-tiered system of justice in HCSC 2015CV1366, Sundy has discovered that Georgia court officers can commit forgery, suborn perjury, violate statutory duties, create their own "Star Chamber" of secret agreement and conspiracy, tamper with the records of official proceedings and all the while remain confident that no fellow court officer will hold them accountable for their actions, however repugnant to the Constitution.

On 18 February 2020, Sundy not in agreement with Respondent Christian's order **A006**, by Special appearance submitted his **2020 OBJECTION A0065,** stating that the record of 2015CV1366 was incomplete. Sundy's objection was not filed on the record. In her 9 March 2020 Order, Respondent Christian incorrectly stated "***Defendant has not shown that the record in this case is incomplete or not accurate.***" **A001.'** Sundy's non-docketed **2020 Objection** made it self-evident that Respondent Christian's finding of facts was based on falsehood.

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

On page 32 of his objection **A0096**, Sundy stated: "If Intervenor [Sundy] says "Right Now, I need the ORDER in 2015CV1366 showing how the December 20, 2016 JOINT OBJECTION was restored 18 months after it was filed so I can challenge the inconsistent due process on appeal," it will never happen. Unless Intervenor can come up with thousands of more dollars and another eighteen months of time." This is because the 10 July 2018 ORDER restoring the Joint Objection is missing from the record of 2015CV1366.

The July 2018 written injunctive order issued by disqualified Judge Fuller "on behalf of the Northeastern Judicial Circuit" **A0010** prohibiting Sundy from filing documents directly with the HCSC Clerk of Court and enforced in 2015CV1366 is also missing from the record of 2015CV1366. By judicial notice, the secret, oral injunctive order against Sundy implemented in March 2018 is likewise missing from the record. The handwritten **A00102** 26 November 2018 "ORDER TO FILE PLEADING TITLED INTERVENORS STANDING OBJECTIONS" (**2018 OBJECTION**) was an apparent "OVERRULE" by Respondent Christian and inconsistent with the judges of the Northeastern Judicial Circuit. Disqualified Judge Fuller did not review the **2018 OBJECTION** and did not make it part of the record on appeal. But Respondent Christian had the privilege of overruling the

Northeastern Judicial Circuit's order at her convenience while subjecting Sundy to an illegal two-judge panel.

> "a two-judge panel ... is positively inconsistent with both local rules of the court [and] the American legal system's long-standing practice of assigning a case or motion, at the trial level to a 'single' judge." *Grutter v. Bollinger*, 16 F. Supp. 2d 797, 802 (E.D. Mich. 1998)

If Sundy attempts to argue issues on appeal in 2015V1366 attendant to the Northeastern Judicial Circuit order **A0010**, such as the fact that Sundy is subject to inconsistent due proces and/or Fraud upon the Court and/or denied constitutional access to the court by the 2-judge panel, there is nothing for the appellate court to review since Sundy cannot support an argument from the record if Judge Fuller's order **A0010** is missing.

Sundy documented in both Emergency Motions **A004** and **A005** that in comparing the 2015CV1366 Docket with Sundy's Notice of Appeal ("NOA"), Sundy's designation of the record reveals that (1) NOA #150 is not on the Docket and (2) NOA Transcript: October 15, 2018 is not on the Docket. The Docket also reflects no Notice to the Sundys of the conference hearing of November 25, 2018 despite a November 25, 2018 transcript being on the record.

The Clerk's Itemized Appeal Costs **A0064** -- which is also not on the record --, reflects $35.00 for one transcript rather than $210.00 for the six (6) transcripts listed in Sundy's NOA, indicating that the Clerk will not adhere to Sundy's NOA.

> "I have included an Index with the items you requested in your Amended Appeal along with a bill of cost. The cost for an appeal would be $1.00 per page on the record and $2.50 to certify that record, a $35.00 charge to certify each transcript..." *Gruner v. Thacker*, 739 S.E.2d 440, 441 (Ga. Ct. App. 2013)

Sundy's NOA in case 2015CV1366 was unjustly dismissed under OCGA § 5-6-48(c) for failure to pay costs for an incomplete record **A001** despite Sundy having documented for the court that the record was, in fact, incomplete.

Despite these facts, both GCOA and GASUP denied Sundy's Emergency Motions to complete the record **A005** and **A004** respectively. This establishes that Sundy has no remedy in Georgia to obtain a complete record from which to appeal and also demonstrates that Georgia's appellate courts are complicit with Hall County Superior Court in depriving Sundy of a full and fair appeal. When the appellate courts ignore procedural misconduct by court officers, as well as the accompanying substantive misconduct of false statements of the facts of the case by judges and attorneys, fraud upon the court is confirmed to any objective observer.

Although the missing **2015 OBJECTION** was finally restored to the record of 2015CV1366 on 10 July 2018, this did not stop other officials or the same officials from further removing or tampering with the record. On 3 December 2018, Respondent Christian issued a final Judgment against Sundy of $394, 617.47 in case 2015CV1366 HCSC with the record in an incomplete state and did not cure the fact that Sundy was denied remedy for being deprived of constitutional property rights without just compensation.

In her 9 March 2020 Order **A001,** Respondent Christian vowed to make a determination on Sundy's O.C.G.A. § 9-11-60(d)(2)(3) motion, or Post Proceedings, while also inserting the false narrative that the record is complete. The record was not complete when final judgment was rendered and the record is not complete today. Respondent Christian, in keeping with the court's pattern of inserting material

falsities into and upon the record, issued the falsehood of an order **A001,** in the nature of an interlocutory determination, with the real issue of Post Proceedings ignored.

Over the years, *pro se* Sundy has discovered that the trial court employs the pattern of holding a fake hearing and rendering mandatory interlocutory injunctive orders with unconstitutional conditions framed to cause Sundy to waive other substantive rights, while inviting Sundy to commit an error on appeal. If Sundy escapes the error and files a proper Appeal, the appellate courts in Georgia have documented they will blame Sundy for not following a fictitious or non-applicable rule or law that does not even apply to the circumstances of Sundy.

If Georgia's courts' initial scheme fails to achieve their object or target of ousting Sundy by error, the appellate courts outright DENY Sundy any relief. The perfect example is that Georgia's appellate courts have denied Sundy to restore and complete the record of 2015CV1366 **A004** and **A005** without an explanation or reason but just because they can. *Pro se* Sundy is not a member of the club.

At this point, Sundy is having difficulty in deciphering the difference between the appellate courts in Georgia issuing orders DENYING relief to correct the record **A004, A005** as opposed to their simply issuing orders commanding Respondent Christian to make determination on Sundy's Post Proceedings **A001** upon an incomplete record, or to commit fraud upon the court, or otherwise act in a manner inconsistent with due process, committing the crime of violating oath of office.

> O.C.G.A. § 16-2-20. When a person is a party to a crime: (a) Every person concerned in the commission of a crime is a party thereto and may be charged with and convicted of commission of the

> crime. (b) A person is concerned in the commission of a crime only if he: (4) Intentionally advises, encourages, hires, counsels, or procures another to commit the crime.

Subsequently, when Sundy attempts to appeal to Georgia's appellate courts from Respondent Christian's inequitable and fraud-based order in this case on his Post Proceedings motion **A001**, the appellate courts have already predetermined that their rule of law embraces malfeasance by clerks and constitutional violations by trial judges. Since Fuller's Order **A0010** is valid until set aside or declared void, and Georgia's appellate courts have refused to address the legality of a disqualified judge reinserting himself into a case he has previously relinquished, it is also predetermined that Respondent Baker's repeated malpractice of withholding or removing documents from the record will continue unchecked. There is nothing stopping Respondent Clerk from concealing any final order beyond Sundy's time to timely appeal since the appellate courts in Georgia have documented that they will aid and abet the trial courts crimes and constitutional violations.

The ultimate objective within Respondent Christian 's pattern of rendering an interlocutory matter before issuing a final determination on the subject matter of Post Proceedings **A001** is to get rid of Sundy's claims and issues. If Sundy refuses to acquiesce to an incomplete record, when Respondent Christian renders the Order on the Post Proceedings **A001** Sundy will still be "COMPLAINING ON APPEAL" about the incomplete record while also forced to file his appellate process from the Post Proceedings **A001**. Respondents Baker, Christian, *et al.* will again send Sundy a cost

bill to pay for the incomplete record. Or Baker will falsely certifying the record as complete while knowing the record is incomplete.

"It is well established that the burden is on the party alleging error to show it affirmatively by the record..." *Burns v. Barnes*, 154 Ga. App. 802 (270 S.E.2d 57)(1980). But a plaintiff or defendant who chooses to proceed *pro se* is not entitled to special treatment on appeal. *United States v. Chaney*, 662 F.2d 1148 (5th Cir. 1981). The determination and practice of Georgia's appellate courts to cover up court officers' malfeasance means it will inform Sundy that his right to a complete record was somehow waived by Sundy, or the issue of a complete record at that point is moot.

Georgia courts have determined that *pro se* Sundy does not qualify to have a complete record even though no one has told Sundy what qualifications are necessary. In Georgia's judiciary, Sundy is always subject to an unconstitutional condition or a catch-22 : If Sundy pays for an incomplete record then, by the natural consequence of missing material documents, Sundy will be deprived of a meaningful appeal to review all his issues and claims on appeal. If Sundy challenges Respondent Clerk Baker and refuses to pay costs until the record is complete, then Respondent Christian will falsely state that the record is complete and dismiss Sundy's appeal, saying that Sundy's dispute with Baker has caused unreasonable delays.

## VIII. Argument and citations

Under the All Writs Act, "[t]he 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." 28 U.S.C. § 1651 (a. Mandamus "is an extraordinary remedy for extraordinary causes."

*United States v. Denson*, 603 F.2d 1143, 1146 (5th Cir. 1979) (en banc). "A writ of mandamus may issue only if (1) the petitioner has 'no other adequate means' to attain the desired relief; (2) the petitioner has demonstrated a right to the issuance of a writ that is 'clear and indisputable;' and (3) the issuing court, in the exercise of its discretion, is satisfied that the writ is 'appropriate under the circumstances.'" See *Cheney v. U.S. Dist. Court for D.C*, 542 U.S. 367, 380 (2004)

This Court has observed that the writ of mandamus is an extraordinary remedy, to be reserved for extraordinary situations. See, *e. g., Kerr* v. *United States District Court*, 426 U.S. 394, 402 (1976).

In *Local 391, Intl. Bro. of Teamsters v Ward*, 501 F.2d 456 (4th Cir. 1974), the court used its conditional discretion to issue mandamus:

> "In accordance with our holding in *Schwab v. Coleman*, 145 F.2d 672 (4 Cir. 1944), we think that mandamus should issue to protect our appellate jurisdiction and to enable us to exercise it expeditiously."

In *Schwab v. Coleman*, 145 F.2d 672, 676 (4th Cir. 1944), the controlling case, the court used its conditional discretion to enter an Order but not to issue the writ.

> "It is clear, however, that the learned judge has refused to act upon the petitions merely because of an erroneous view of the law applicable; and we assume that it will not be necessary that the writ of mandamus actually issue requiring him to act, now that this court has passed upon the questions of law involved. Order will accordingly be entered that petitioners are entitled to the writ but the writ will not issue until further order."

In *Mapco, Inc. v. Forrest,* 795 S.W.2d 700, 703 (Tex.1990), the state court also used it conditional discretion.

> "Because the orders and actions of the court of appeals and its clerk conflict with this court's decisions in *Johnson v. Sovereign Camp, W.O.W.* and *Cockburn v. Hightower,* and further with rule 132(a), Tex.R.App.P.,

> we grant leave to file and without oral argument a majority of the court conditionally issues the writ of mandamus. Tex.R.App.P. 122. We direct the Ninth Court of Appeals and its clerk to forward the record and applications for writ of error to this court."

Petitioner Sundy is seeking an extraordinary remedy for an extraordinary situation. Petitioner Sundy has spent more than five years in the state superior court fighting to obtain a complete record while the superior court clerk, in concert with judges and court officers, conspires to remove properly-filed papers from the record(s) of the superior court cases in which Sundy is a party. Sundy initiated USDCNDGA No. 2:18-cv-0112-SCJ, in part, in order to obtain declaratory relief regarding the constitutional violations and deprivations committed by court officers in the state court. However, the same due process irregularities and violations occurred in the record of the U.S. District Court with docket items missing, including a motion properly-filed by the Petitioner on 17 December 2018. Moreover, the constitutional protections which Sundy sought to vindicate were violated by the very court from which Sundy sought protection, prejudicing Sundy's efforts to enforce his legal rights. (With the Gainesville Division district court physically located directly across the street from Hall County Superior Court and employees/court officers of both courts fraternizing with regularity, and with irregularities appearing on the federal record which directly mirrored the violations in Hall County Superior Court, Sundy still doesn't know if they collaborated or if they train each other.)

Under circumstances where the district court concealed, removed or would not consider his properly-filed papers, implicating the integrity of the adjudicative processes of the court, Sundy was thus effectively excluded from federal court and no

appeal at a later date could have corrected that prejudice. Mirroring HCSC's pattern, USDCNDGA knowingly and willfully determined to move forward with a hearing over Sundy's objections while (1) the record was incomplete; (2) Sundy was not secure in his papers; and, (3) justice was obstructed.

Sundy sought mandamus and prohibition in the 11th Circuit Court of Appeals. But, as Sundy has discovered over the five years, when Sundy files a legally-sound action implicating court officers, such as a Mandamus, there will be a secret phone call or under-the-table, unwritten Order issued by the Court granting the relief sought while the court officers escape any public guilt. Someone from the 11th Circuit called USDCNDGA Judge Jones, as Judge Jones implied in open court, and most missing papers were restored before the scheduled hearing -- with no paper trail to implicate court officers. The hearing proceeded upon an incomplete record but the Eleventh Circuit was able to deny Sundy's petition, with the phone call preventing the Eleventh Circuit from having to acknowledge a clear usurpation of power or abuse of discretion by USDCNDGA.

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 petitions and one motion for injunction by achieving the relief sought though the courts in Georgia have refused to issue a written order which implicates any court officer, instead dismissing or denying Sundy's cases upon his prevailing. The fact that *pro se* Sundy has been injured and impoverished not just by HCSC Plaintiff Friendship but by having to file mandamus cases and motions for injunction just to obtain a partially complete record, is a commentary on the denial of equal protection, procedural due

process and constitutional protections experienced by underprivileged, *pro se* litigants. The fact that court officers continue to tamper with the record in 2015CV1366 to support Friendship in its tortious scheme of prevention of performance and RICO activity is a resounding indictment against Georgia's appellate courts as well as the trial court.

> "Not only is a biased decisionmaker constitutionally unacceptable, but our system of law has always endeavored to prevent even the probability of unfairness." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)

This Court has explained that "postjudgment appeals generally suffice to protect the rights of litigants..." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009). Such is not the case for Sundy because the incomplete record cannot support Sundy's issues on appeal.

*Pro se* Sundy's attempt to maintain the status quo, *i.e.,* delay litigation from proceeding until the record is complete, is an uphill battle against the preplanned and biased conditions created by the corrupt court officers/individuals who are manipulating the outcome of HCSC 20151366. The legally unsophisticated Sundy is placed in the unconstitutional condition of having to acquiesce to the corrupt and incomplete court record or abandon any meaningful appeal. However Sundy might attempt to debate with the courts about missing documents, a challenged factual issue based upon the record, Sundy is unable to combat the abuse of power by biased court officials and other adverse parties. See *Graybill v. Attaway Construction & Assocs* ., 341 Ga. App. 805, 808-809 (1), 802 S.E.2d 91 (2017) (a party cannot participate and acquiesce in a trial court's procedure and then complain of it); *Oglethorpe Power Corp.*

*v. Estate of Forrister* , 332 Ga. App. 693, 699 (2) (b), 774 S.E.2d 755 (2015) (a party cannot be heard to complain on appeal of error induced by his own conduct, nor to complain of errors expressly invited by him at trial).

Petitioner Sundy has been denied equal protection and deprived of access to the court, contrary to the First and Fourteenth Amendments of the Constitution, by Respondent Clerk of Superior Court Charles Baker refusing to file properly submitted documents into a civil action and/or the same Respondent Baker removing and/or withholding properly submitted documents from a civil action both prior to and after any written order by Respondent Fuller. **A0010.** Sundy has been denied the right of a complete record on appeal and injured by Respondent Baker's failure to perform the Clerk's duties despite OCGA § 9-6-22:

> If any sheriff, clerk, or other officer fails to discharge any duty required of him by any provision of Title 5.... No party shall lose any right by reason of the failure of the officer to discharge his duties when the party has been guilty of no fault himself and has exercised ordinary diligence to secure the discharge of such duties. **OCGA § 9-6-22**

The Clerk of Court has a duty to file Sundy's pleadings without question.

> "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 propriety of the filing should be considered, if at all, by the court upon motion by the parties or on its own motion, and not by the Clerk." *Alexander v. Gibson*, S16A1352,5 (Ga. Nov. 30, 2016)

The clerk of court is an elected official who bears the responsibility for ensuring that he, or a deputy clerk on his behalf, performs the statutory duties he is required to perform. OCGA §§ 15-6-50; 15-6-59 (b) (powers and duties of appointed deputy clerks are same as clerk's). State court clerks have the legal duty "to file pleadings, not to ascertain their legal effect." (Citation omitted.) *Ford v. Hanna*, 292 Ga. 500, 501 n.2 (739 SE2d 309) (2013). These "duties of the clerk relating to the filing of pleadings are ministerial in nature" and do not involve the exercise of discretion. *Hood v. State*, 282 Ga. 462, 464 (651 SE2d 88) (2007). As stated in the Uniform Rules of the Superior Courts of Georgia Rule 36.2, actions shall be entered by the clerk in the proper docket immediately or within a reasonable period after being received in the clerk's office.

> "...the City overlooks the fact that the loss of a procedural right "is itself an injury" sufficient to provide standing "without any requirement of a showing of further injury." *Bertulli v. Independent Ass'n of Continental Pilots,* 242 F.3d 290, 295 (5th Cir. 2001). Additionally, "the right to procedural due process is `absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions and [therefore] the denial of procedural due process [is] actionable for nominal damages without proof of actual injury." *Carey v. Piphus,* 435 U.S. 247, 266, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978). Wessel v. City of Albuquerque, 299 F.3d 1186, **1193** (10th Cir. 2002)

Sundy has been injured, and continues to be injured, deprived of status, and constitutional protections of property, equal protection and due process in civil action 2015CV1366 because of the actions of the clerk as well as oral orders issued by Respondent Judge Fuller, Respondent Fuller knowing that "What the judge orally declares is no judgment until it has been put in writing and entered as such.'" [Cit.]" *State v. Sullivan*, 237 Ga. App. 677, 678 (516 S.E.2d 539) (1999). At the same time,

Respondent Christian applies the incorrect legal standard that an incomplete record assists her in reaching erroneous conclusions of law based upon material facts in dispute, denying Sundy a full and fair hearing and depriving Sundy of due process and equal protection. As is true in federal courts, *see Alexander v. Fulton County,* 207 F.3d1303, 1326 (11th Cir. 2000), a clear error in judgment or the application of an incorrect legal standard is an abuse of discretion, *see Wilson v. State Farm Mut. Auto. Ins. Co.,* 239 Ga. App. 168, 520 S.E.2d 917, 920 (1999).

If facts are missing from the record or in question, how can full and fair consideration be given? Does the standard of *Mincey v. Head,* 206 F.3d 1106, 1125 (11th Cir. 2000) apply in the state court? ("For a claim to be fully and fairly considered by the state courts, where there are facts in dispute, full and fair consideration requires consideration by the fact-finding court...")

The idea of *pro se* immunity from criminal activity, including removing or withholding documents from an official government record, is apparently disregarded by Georgia court officers in a discriminatory act of judicial hubris.

> "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)

*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 the docket is to be consecutively numbered (FRCP 79) then that is what is supposed to happen. Self-represented Sundy is a discrete minority but either the law is applied to every one or the law is applied to no one.

> "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)

The origin of this controversy is an *in rem* proceeding filed in Hall County, Georgia Magistrate court in June 2015 as case MV2015150183P, governed by O.C.G.A. Title 44, Chapter 7, Article 3, related to dispossessory proceedings. Since that time, Petitioner Sundy is a person subject to deprivation of, and has been deprived of, equal protection of the laws of property by inverse condemnation, defrauded by Friendship Pavilion Acquisition Company, LLC ("Friendship") in the dispossessory proceedings, injured by criminal predicate acts of RICO activity, denied access to the court contrary to the 1st Amendment, and injured by fraud upon the court committed by court officers, contrary to the 5th and 14th amendments of the Constitution of the United States which provide, in part, that "No person shall be ...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Sundy has also been denied procedural and administrative due process as well as subjected to inconsistent due process.

Petitioner Sundy, to no avail, has made multiple efforts under Georgia law to secure relief from the statutory and constitutional violations, with state appellate

courts prejudicially refusing to grant relief against fellow court officers to a *pro se* litigant. *See List of Related Cases*

An incomplete record is an obstacle to appeal. "A function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal." *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943).

On 9 March 2020, subsequent to a 2 March 2020 hearing in HCSC 2015CV1366, an ORDER was file-stamped by the Clerk of Court which states that "...The Court will proceed to consider "MOTION PURSUANT TO O.C.G.A. 9-1160(d)(2)(3) TO SET ASIDE THE DECEMBER 3, 2018 VOID FINAL JUDGMENT FOR FRAUD UPON THE COURT AND/OR NON-AMENDABLE EFFECTS" [sic]. This means that finally, after seventeen months, there may be a ruling on Sundy's Post Proceedings MOTION from which decision Sundy may have another opportunity to appeal. In the same Order **A001**, *Pro se* Sundy had his final judgment appeal dismissed for "unreasonable delay" for failing to pay for an incomplete record while the court failed to filed Sundy's objection **A0065** and inserted material falsehoods into the record.

> "It takes an exquisite talent for irony for courts to punish a rule breaker with one hand while they break their own rules with the other." *In re Bird*, 353 F.3d 641 (8th Cir. 2003)

Absent a mandamus from this court, Sundy has no other adequate means to attain the relief he desires – a complete record from which to obtain a fair appeal. The record in HCSC 2015CV1366 is incomplete. In an ongoing denial of equal protection and due process, Sundy never knows what qualifies him to timely have his papers docketed or whether the court will disappear Sundy's papers completely.

It is a manifest injustice that Sundy has not yet obtained a remedy to prohibit Respondent Baker and other court officers from tampering with the record of any of Sundy's cases, including removing Sundy's papers and withholding items from the docket, to deprive Sundy of Notice and equal protection as well as the full and fair litigation of issues and claims.

It is a manifest injustice that Sundy has no remedy to prohibit Respondent court officers from delaying filing and/or backdating or changing the stamp-filed date on documents.

It is a manifest injustice that Sundy has no remedy to prevent court officers from concealing any HCSC ruling on Sundy's Post Proceedings Motion until his seven days to appeal has expired. HCSC court officers employ the same pattern established by GASUP Clerk of Court Therese Barnes in S19O1351, falsifying court records and acting intentionally and with premeditation to prejudice Sundy's claims and appeal(s). By Judicial Notice, Clerk Barnes created a false motion for sanctions in S19O1351 to injure Sundy while denying Sundy Notice once she had filed the fake motion in the record.

Sundy is requesting this Court to observe that Sundy has to qualify **A0010** to have his papers docketed by the judges of the Northeastern Judicial Circuit but has no notice of what that qualification is, in an overt denial of due process. Sundy is also requesting this Court to observe HCSC's completely subjective enforcement of the Order **A0010** as well as the documents still missing from the record of 2015CV1366.

In HCSC 2017CV1125J, Respondent Baker actually sued Sundy to restore Sundy's 20 December 2015 Joint Objection missing from 2015CV1366 – the same document that Sundys' mandamus petition HCSC 2016CV0031 failed to restore with Baker dismissed with prejudice -- claiming Sundy was a necessary party. But, in light of the hand written order **A00102** by Respondent Christian restoring Sundy"s missing **2018 Objection**, and Respondent Baker *sua sponte* placing Sundy's missing **2020 Objection** on the docket sometime after the 2 March 2020 hearing **A0056,** Sundy is clearly not a necessary party to restore a document to the record.

Since Sundy is prohibited from physically entering the HCSC Clerk's Office under threat of arrest, and illegally enjoined from the normal filing of papers by disqualified judge Respondent Fuller **A0010**, who recused himself from 2015CV1366 in 2016, and must submit papers by certified mail if he wants a record of their delivery by HCSC, all of Sundy's papers and pleadings are subject to tampering.

As Sundy have shown by evidence, his **2020 Objection** was nowhere to seen on the docket on 2 March 2020 **A0056** despite having been received by the Clerk's Office on 21 February 2020 **A0054.** Sundy's 20 December 2015 Joint Objection, his 14 November 2018 Standing Objection (**"2018 Objection")** and his 21 February 2020 Standing Objection (**"2020 Objection**") were all tampered with by the judges of the Northeastern Judicial Circuit to create material falsehood on the face of the record.

The pattern by HCSC court officers is consistent: In an ongoing denial of equal protection and due process, Sundy never knows whether the court will disappear Sundy's papers completely or what will qualify him to have his papers docketed.

> "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)

Friendship Pavilion Acquisition Company LLC ("Friendship") and its officers and agents took a calculated risk in 2011 that it could successfully perpetrate, using affirmative RICO acts, a scheme of prevention of performance and fraud upon Petitioner Tim Sundy, his brother, and their family-owned restaurant company. Friendship *et al.* knew that what it was doing was deceitful, fraudulent and illegal, and could cost the Sundys their livelihood, but calculated that imposing obstacles upon the Sundys' restaurant of condemnation, road construction and the secret conveyance of its property frontage -- obstacles not contemplated within its contract with the Sundys--was a risk Friendship was willing to take. When Friendship's calculation proved wrong and the Sundys finally obtained partial evidence, after three years of open record requests, of Friendship's scheme and Friendship's breaches of contract, Friendship hired multiple attorneys and sought to avail itself of the Sundys' nonperformance, resulting in HCSC case 2015CV1366.

For still unknown reasons, court officers in the Northeastern Judicial Circuit of Georgia have demonstrated an actual interest in the outcome of the original *in rem* proceeding and even, at one point, adopted HCSC Plaintiff Friendship's MOTION TO LIFT LIS PENDENS in court officers' mandamus response. For five years, court officers have created collateral issues in HCSC 2015CV1366 by violating statutory laws and ministerial duties to deprive Sundy of Constitutional due process, equal protection,

redress of grievance, immunity from criminal activity, private property without compensation, and liberty interests, as the Sundys defend themselves from Friendship's affirmative RICO activity and scheme of prevention of performance and seek counter means for damages. HCSC Plaintiff Friendship and HCSC court officers, including judges and clerks, have given every appearance of conspiring to shield Friendship from the consequences of its own scheme of making it impossible for the Sundys to perform in the face of obstacles of Friendship's own creation.

When a clerk of court or judge can change the complexion and perception of a case by removing and/or withholding a *pro se* litigant's documents, as in every case in HCSC, creating a false appearance of laches or acquiescence or procedural non-compliance on the part of the *pro se* litigant, while manipulating the State appellate courts to render an adverse ruling as a result of litigants' defective record on appeal, fraud upon the court is complete.

Is the ongoing tampering with the court record in 2015CV1366 a gross usurpation of power? When is judicial or official misconduct sufficiently egregious to distinguish it from "abuse of discretion"? Does an apparent scheme calculated to interfere with the judicial system's ability to impartially adjudicate Sundy's claims and issues by unfairly hampering the presentation of the Sundy's claims and defenses suffice as fraud upon the court?

How much bad conduct is enough? Does one indisputable judicial lie about a fact central to the case suffice or does it take two lies? When do the material factors of missing objections, missing notices, missing orders, and missing transcripts -- which yield an incomplete court record totally insufficient for a fair and adequate

appeal – become abuse of the judicial process in the eyes of Georgia's appellate courts or this Court?

The relief requested by this Original Action is time-sensitive because it appears that the trial court and the clerk have already determined to collude to deprive this Court of jurisdiction of any appeal by Sundy from a ruling on his Post Proceedings **A001** MOTION by causing *pro se* Sundy to be denied notice and opportunity for some or all of the 7-days he has in which to appeal. *Pro se* Sundy, served by U.S. mail, cannot rely on the HCSC to timely docket or the trial court for timely notice.

> "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)

Review by this Court of the GCOA's prejudicial and erroneous 13 March 2020 ORDER in A20E0037 **A005** regarding 2015CV1366 as well as GCOA's 19 September 2018 ORDER in A19E0011 **A0062-63** is also necessary to protect *pro se* Sundy from further injury by court officers' continued tampering with the record and to give Sundy access to a remedy at law.

Over the last five years, Sundy has documented that it appears the only way in the State of Georgia for Sundy to appeal a civil case, whether the court is State or Federal, is to acquiesce to an incomplete record with missing documents while paying thousands of dollars for a fundamentally unfair review, with Sundy having no enforcement to restore a complete record in HCSC 2015CV1366.

> "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)

The executive branch of Georgia, while the federal courts are abstaining in this case, has watched the Superior Court of Hall County place Sundy in an unconstitutional condition via misfeasance, malfeasance, subtle forms, malpractice, lies, RICO activity, and falsehood such that even if Sundy could come up with the money to pay for the incomplete record from which to appeal, it is clear that Sundy still would be denied a fair and impartial appeal.

As has happened often during the past five years, a situation was created by disqualified Respondent Christian on 28 January 2020, with calculation and malice, to weaponize Sundy's Notice of Appeal docketed 2 January 2019 in HCSC 2015CV1366, despite the fact that she delayed action for over a year and Sundy's Notice of Appeal had been mooted under OCGA § 5-6-48(b)(1) by GCOA on 15 March 2019 by its "7-days to appeal" ruling in A19D0345 **A0048.**

As the docket shows **A0059**, Sundy's Notice of Appeal in 2015CV1366 was filed on 2 January 2019, more than 7 days after the filing of the Civil Disposition Form and Final Order on 6 December 2018. (The trial court's tactics of delay in the cases in which Sundy is a party, including a 27-month delay in HCSC 2016CV0982, remain purposeful and predictable.)

To make it clear: If Sundy fails to pay costs for a record that is tampered with and incomplete, the trial court dismisses his Notice of Appeal under OCGA § 5-6-48(c) for unreasonable delays to transmit record, despite the fact that Respondent Baker never sent a cost bill inclusive of all items detailed in Sundy's Notice of Appeal. If

Sundy acquiesces and borrows thousands of dollars to pay for the incomplete record, Georgia's appellate court will dismiss Sundy's Notice of Appeal as untimely under OCGA § 5-6-48(b)(1), GCOA having previously ruled on 15 March 2019 in A19D0345 **A0048** that HCSC 2015CV1366 never ceased to be a dispossessory proceeding and Sundy is therefore subject to the 7-day appeal requirements of OCGA § 44-7-56 – despite Plaintiff Friendship's amended complaint filed on 6 February 2017, almost two years after the dispute over possession of the premises had been settled, with Friendship stating that its amended complaint sounded solely in contract while citing new causes of action that arose subsequent to the original action. In its ruling, GCOA chose to ignore its own case law as well as Friendship's amended complaint, further establishing inconsistent due process while continuing its protection of superior court officers. GaSup, having participated in the inconsistencies, denied certiorari.

> "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).

The State of Georgia refuses to protect Sundy or provide him with the complete trial court record to which he is entitled by the Constitution.

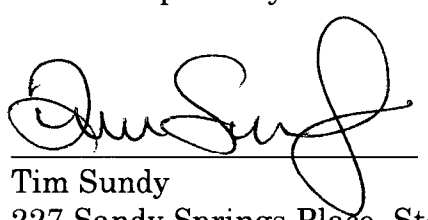
## RELIEF SOUGHT

The Petitioner Tim Sundy, without remedy in any other court, respectfully requests the Court to issue an order in the nature of a prohibition, prohibiting disqualified HCSC Judge by assignment Martha Christian from ruling on Sundy's OCGA § 9-11-60(d)(2)(3) Motion filed on 13 December 2018 in 2015CV1366 Hall County Superior Court. As stated in her Order of 9 March 2020 **A001,** Judge

Christian intends to determine the post proceedings upon an incomplete record, engendering inconsistent due process and fraud upon the Court by.

In the alternative, Sundy conditionally requests the Court to declare as void any post-proceeding Order issued by Hall County Superior Court in 2015CV1366 rendered upon an incomplete record, via inconsistent due process and fraud upon the court in a manner repugnant to the Constitution to the United States. The Petitioner also requests the Court to issue an order in the nature of a Mandamus to command Respondent Hall County Superior Court Clerk Charles Baker to perform his ministerial duties by restoring to the record of HCSC 2015CV1366: the July 10, 2018 ORDER which restored Sundy's 20 December 2016 JOINT OBJECTION to the record of HCSC 2015CV1366; the Notice given to the Sundys of the conference hearing of November 25, 2018 (25 November 2018 transcript); the May and July 2018 injunctive orders issued by disqualified Judge Fuller "on behalf of the Northeastern Judicial Circuit" prohibiting Sundy from filing documents directly with the HCSC Clerk of Court in 2015CV1366; the transcript of the 15 October 2018 Conference hearing.

Respectfully submitted, Saturday, May 09, 2020.



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