

20-5401
Docket No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TIM SUNDY, Petitioner

ORIGINAL

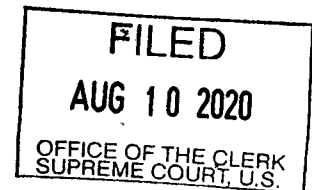
v.

FRIENDSHIP PAVILION ACQUISITION COMPANY, LLC. *ET AL*
Respondents

PETITION FOR A WRIT OF CERTIORARI

to the United States Court of Appeals for the Eleventh Circuit
from a determination in case No. 19-11391-CC

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



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

QUESTION PRESENTED

1.

When the 11th Circuit U.S. Court of Appeals affirmed the U.S. District Court's abstaining from ruling on Sundy's independent claims despite Sundy being clearly enjoined by order of the State trial court from asserting his independent claims in the State proceeding, and with *pro se* Sundy required to meet subjective and arbitrary requirements to qualify in both State and Federal court to file papers with the clerk and to obtain a complete court record, did the 11th Circuit establish that the liberty of Sundy can be restrained by the State of Georgia irrespective of Constitutional protections, while denying Sundy recourse to a federal forum as well as adequate remedy?

2.

Whether the State of Georgia can put United States citizens in custody when 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.

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

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

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

Therese Barnes, Clerk of the Supreme Court of Georgia;

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

Christopher M. Carr, Attorney General of the State of Georgia;

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;

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;

Nova Lee Graber;

David Sundy.

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 07/17/2017
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 10/19/2018
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

Case Number: **A19D0398** (*Docket Date: June 10,2020*)
Style: TIM SUNDY v. FRIENDSHIP PAVILLION
ACQUISITIONS LLC et al.
COA Status: Denied 07/07/2020
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 01/31/2019
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.
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.
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.

Case 19-8492- In re: Tim Sundy, pending.

Case 19-8491- In re: Tim Sundy, pending.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING BELOW.....	ii
CORPORATE DISCLOSURE STATEMENT.....	iv
LIST OF ALL PROCEEDINGS.....	v
TABLE OF CONTENTS.....	xii
TABLE OF AUTHORITIES.....	xiv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	1
RELEVANT CONSTITUTIONAL PROVISIONS.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	5
REASONS FOR GRANTING THE PETITION.....	8
I. In misapplying <i>Younger</i> , the Court of Appeals enhanced deprivation of Sundy’s First Amendment rights	8
A. The state courts do not offer “adequate remedy at law”	9
B. The state courts are proceeding in bad faith	9
C. Sundy is entitled to equitable relief that makes abstention inappropriate	10
D. There is no important state interest in unimpeded tampering with the record.....	12
E. The state cannot provide appellate review sufficient to accord due process	14
F. Abstention has engendered a hostile and retaliatory environment for <i>pro se</i> litigants in Georgia.....	14
II. Sundy is in custody, restrained of his liberty	15
CONCLUSION	24
APPENDIX:	

[1] USCA final order in 19-11391, March 13, 2020 –	A001
[2] USDC Docket 2:18-cv-00112-SCJ, January 12, 2019	A0013
[3] Sundy Notice to Georgia AG Carr, February 21, 2020	A0022
[4] HCSC Order on Sundy’s post-judgment motion, June 3, 2020-	A0024
[5] HCSC Final Judgment in 205CV1366, December 3, 2018	A0036
[6] HCSC Order by disqualified Judge Fuller, July 10, 2018	A0037
[7] Sundy’s Standing Objection, 2015CV1366, November 14, 2018	A0039
[8] HCSC Order to File Standing Objection, 2015CV1366, November 26, 2018	A0040
[9] Sundy’s Standing Objection, 2015CV1366, February 18, 2020	A0041
[10] HCSC Order dismissing Notice of Appeal, March 9, 2020	A0042

TABLE OF AUTHORITIES

Cases

<i>31 Foster Children</i> , 329 F. 3d at 1279	8
<i>Aoude v. Mobil Oil Corp.</i> , 892 F.2d 1115, 1119 (1st Cir. 1989).....	4
<i>Bolin v. Story</i> , 225 F.3d 1242, 1243 (11 th Cir. 2000)	8
<i>Christopher v. Harbury</i> , 536 U.S. 403, 413 (2002).....	24
<i>Collins v. Collins</i> , 597 F. Supp. 33 (N.D. Ga. 1984)	14
<i>Davis v. Phoebe Putney Health Systems</i> , 280 Ga. App. 505, 506-507 (1) (634 SE2d 452) (2006)	20
<i>DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.</i> , 489 U.S. 189, 196, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989)	25
<i>Douglas v. California</i> , 372 U.S. 353, 357 (1963).....	24
<i>Fetterly v. Paskett</i> , 997 F.2d 1295, 1300 (9th Cir. 1993).....	22
<i>Hardy v. United States</i> , 375 U.S. 277, 84 S.Ct. 424, 11 L.Ed.2d 331 (1964).....	11
<i>Hazel-Atlas Glass Co. v. Hartford- Empire Co.</i> , 322 U.S. 238 (1944)	3
<i>Hood v. State</i> , 282 Ga. 462, 464 (Ga. 2007)	17
<i>Johnson v. Atkins</i> , 999 F.2d 99 (5th Cir. 1993).....	24
<i>Kegler v. State</i> , 475 S.E.2d 593 (Ga. 1996)	14, 17
<i>Kugler v. Helfant</i> , 421 U.S. 117, 124-25 (1975)	11
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)	3
<i>Mitchum v Foster</i> , 407 US 225, 240 (1972).....	22
<i>Mitchum v. Foster</i> , 407 U.S. 225, 230, 92 S. Ct. 2151, 2156 (1972)	11

<i>Monroe v. Pape</i> , 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).....	2
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972).....	25
<i>New Orleans Pub. Serv., Inc. v. Council of New Orleans</i> , 491 U.S. 350, 364 (1989)..	10
<i>Pennzoil Co. v. Texaco Inc.</i> , 481 U.S. 1, 19 (1987).....	15
<i>Sprint Commc'ns, Inc. v. Jacobs</i> , 571 U.S. 69, 77 (2013).....	12
<i>State v. Lane</i> , S19A1424 (Ga. Feb. 10, 2020).....	21
<i>State v. Studd</i> , 137 533, 547 (Wn.2d 1999).....	18
<i>Thomas ex rel. Thomas v. Roberts</i> , C.A.11 (Ga.) 2003, 2003 WL 934249.	16
<i>U.S. v Mantilla</i> , 226 Fed. Appx. 945,946 (11th Cir. 2007).....	21
<i>United States v. Rivera</i> , 900 F2d 1462, 1469 (10th Cir. 1990).....	21
<i>United States v. Selva</i> , 559 F.2d 1303, 1304 (5th Cir. 1977).....	11
<i>United States v. United States Gypsum Co.</i> , 438 U.S. 422, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978).....	11
<i>Younger v. Harris</i> , 401 U.S. 37 (1971).....	7, 9
Statutes	
18 U.S.C. § 751(a).....	16
28 U.S.C. 1254(1).....	1
42 U.S.C. §§ 12131-12134.....	5
42 U.S.C. §§ 1983, 1985, 1986	5
Other Authorities	
<i>Constitution of Georgia</i>	14
U. S. Constitution, Fifth Amendment.....	10, 13, 22
U.S. Constitution, First Amendment.....	1, 13, 16, 22

U.S. Constitution, Fourteenth Amendment	1, 10, 13, 22
U.S. Constitution, Fourth Amendment	passim, 22
U.S. Constitution, Ninth Amendment	13, 22

Rules

11 th Cir. R. 31-2	7
11 th Cir. R. 46-5	7
U.S. Supreme Court, Rule 30.1. 2	1
U.S. Supreme Court, Rule 13.1	1

PETITION FOR A WRIT OF CERTIORARI

Petitioner Tim Sundy respectfully petitions for a writ of certiorari to review the final judgment of the Eleventh Circuit of the Court of Appeals (“USCA”) on March 13, 2020 in 19-11391.

OPINION BELOW

The judgment of the Eleventh Circuit of the Court of Appeals (“USCA”) is unpublished and is in the Appendix at **A001-A0012**.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was issued on 13 March 2020 **A001**. On 19 March 2020, this Court issued Miscellaneous Order (Order List: 589 U.S.) in light of the ongoing public health concerns relating to COVID-19, extending filing deadlines to 150 days from the lower court judgment. This Petition to this Court is therefore timely under this Court’s Rule 13.1 and Rule 30.1. 2. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides that no “State [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The First Amendment to the Constitution of the United States 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.

INTRODUCTION

The theoretical possibility of a state court remedy does not necessarily afford realistic protection for civil rights. A multitude of federal cases testify that a federal remedy has often been necessary to awaken state and local governments to their responsibilities toward those under their protection. *See, e.g., Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

Petitioner Sundry has been denied a complete record in every trial court proceeding in the state of Georgia for almost five years. The record is still incomplete in the State Superior Court as well as in the U.S. District Court. Georgia courts have refused to grant Sundry any relief from the incomplete record and, by the Courts' design and creation, Sundry cannot obtain an appeal on a complete record in Georgia, a fatal situation when claims cannot be supported by the record. Additionally, during the course of Sundry's case in USCA, the clerk of the Georgia Supreme Court committed intentional fraudulent conduct specifically directed at the court itself upon Sundry's original action in the Georgia Supreme Court while the trial court continued to subjectively and arbitrarily withhold Sundry's papers from record.

Sundry has pursued extraordinary remedies in State courts including petition for writ of mandamus, application for injunction, and emergency motion in order to obtain a complete record in the trial court. Sundry has been rebuffed, subjected to a secret filing injunction, and dismissed or denied by court officers acting uncivilly and unethically in violation of rules of civil procedure and professional conduct.

When a *pro se* litigant is forced to run a purely subjective and arbitrary gauntlet of qualification to have papers docketed by a clerk or to obtain a complete record, the *pro se* litigant is denied fair procedure as well as equal protection of the law. When judicial misconduct results in favorable judgments to attorney-represented parties, the available remedies for the *pro se* litigant diminish substantially. Sundry has suffered an injury-in-fact' that is 'fairly . . . trace[able] to the challenged actions of the defendant judges and clerks and is 'likely . . . [to] be redressed by a favorable decision' in court." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal quotation marks omitted). The federal court has chosen to abstain

Sundry's liberty has been restrained by the State of Georgia with his constitutional rights to petition for redress of grievances; to equal protection of the laws; and to due process violated by the State courts, the very institutions set up to protect and safeguard the public. The federal court has chosen to abstain.

Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. *Hazel-Atlas Glass Co. v. Hartford- Empire Co.*, 322 U.S. 238 (1944).

In civil action 2:18-CV-112-SCJ, *pro se* Sundry requested that the U.S. District Court of the Northern District of Georgia declare his rights. After all, the federal court is also equipped with equitable power to correct transgressions that occur

before them, recognizing that oftentimes *pro se* victims lack both the skill and knowledge to uncover or adequately contextualize misconduct. The federal court chose to abstain and the abstention was upheld by USCA.

All in all, we find it surpassingly difficult to conceive of a more appropriate use of a court's inherent power than to protect the sanctity of the judicial process—to combat those who would dare to practice unmitigated fraud upon the court itself. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1119 (1st Cir. 1989)

Most *pro se* appearances by civil litigants are not voluntary, but instead result because they simply cannot afford attorneys to represent them. This is the case with Sundy who is victim of a scheme of prevention of performance and RICO perpetrated by Respondents Friendship Pavilion, Arsenal Real Estate, Gary Picone, Thomas Ling, and Michael Weinstein which forced Sundy into debt, robbed him and his siblings of retirement savings, peace of mind, and faith in the justice system.

Respondents have not rebutted Sundy's claims but rather sought to invoke the bias of the courts against *pro se* litigants in general and Sundy in particular. Sundy has no skill in the science of law and this ignorance has been exploited by officers of the court. Despite ample documentary evidence of constitutional violations, the 11th Circuit states "that Sundy's claims are difficult to discern." **A003 footnote** This difficulty appears to be endemic to Circuit Courts with the courts stating in more than 2,000 cases involving *pro se* litigants that the *pro se* claims were "difficult to discern." It appears that the difficulty automatically disappears if litigants are represented by attorneys.

While it is true that federal courts should use abstention to defer to states when doing so will enhance the quality of federal law enforcement, state courts do

not deserve deference simply because they are state courts or because they have jurisdiction over a case in which the State may have an interest. In Sundy's case, the State's interest is in preventing or defusing the exposure of corruption and statutory violations by court officers. If the State court's ability to apply federal law in cases that appear before them is compromised by bias or judicial misconduct, *Younger* abstention is not merited and should, indeed, be avoided at all costs.

STATEMENT OF THE CASE

A. Action initiated in District Court

Case No. 2:18-CV-112-SCJ was initiated on 10 July 2018 in the United States District Court for the Northern District of Georgia – Gainesville Division ("USDC") by *pro se* plaintiffs Tim Sundy, David Sundy and Nova-Lee Graber pursuant to 42 U.S.C. §§ 1983, 1985, 1986 and 42 U.S.C. §§ 12131-12134, and for other violations of rights under the U. S. Constitution of equal protection, due process and full access to the court. The action was precipitated by events in Georgia state courts including Hall County Superior Court, the Georgia Court of Appeals and the Supreme Court of Georgia. In filing this case in USDC, *pro se* plaintiffs were exercising their right to defend against civil liability as well as against state court officers' violations of state, federal and constitutional law, predicated upon a constitutional right to equal protection, to be secure in their papers and to a court record of sufficient completeness to permit effective appellate review of their claims.

B. USDC procedural and due process violations duplicative of state court violations

On 31 July 2018, the first irregularity appeared upon the USDC docket with Document [11] missing **A0016**. Document [12] then appeared, with the docket purporting it as filed by Sundry and other plaintiffs. Sundry and other plaintiffs filed a motion to strike Document [12] with affidavits averring that Plaintiffs had not filed the document. Then Document [57] **A0019** was missing from the docket. Then Sundry's MOTION TO STRIKE DEFENDANT FRIENDSHIP'S [78] AND OPPOSITION TO REPLY BRIEF DOC. [78] AND [81], properly filed on 17 December 2018, was not recorded on the docket. Sundry consistently preserved all objections and due process rights as regards Docs. [11], [12], [57], his missing Motion to Strike, and Friendship's default. USDC also sometimes recorded the wrong date upon the face of the record of when Sundry's document(s) was actually filed.

With the USDC record mirroring the material defects and omissions which occurred in the State courts, Sundry filed petition for writ of mandamus in USCA in an attempt to remedy the incomplete record. Hours before a USDC hearing on 23 January 2018, allegedly as the result of a phone call from USCA to USDC, the record was partially corrected with USCA subsequently denying mandamus action 19-10183. A minute entry of the hearing was entered on the docket on 24 January 2019. No further written orders were issued by USDC. On 25 January 2019, Sundry's Motion to Strike, missing from the record since it was filed on 17 December 2018, was forwarded to USDC for review. The USDC hearing, upon an incomplete record, occurred over the objection of *pro se* Sundry and placed Sundry in an unconstitutional condition while depriving Sundry of the right to properly present his claims and to be fully heard upon a complete record.

C. USDC Case Dismissed

On 12 March 2019, the USDC Clerk docketed thirteen orders signed by the USDC dismissing all matters in instant case USDC 112 citing *Younger v. Harris*, 401 U.S. 37 (1971) abstention , with the Court's final order **Doc. [117]** denying Sundry's IFP without ruling on his indigence, rather stating that the appeal was "frivolous." On 11 April 2019, Sundry timely filed Notice of Appeal ("NOA") **Doc. [120]** in the USDC on the final orders and a contemporaneous IFP in the USCA as specified in **Doc. [117]**. On 1 May 2019 USDC issued another order denying another Sundry IFP. On 17 May 2019, Sundry filed an Amended NOA.

D. Irregularities in the 11th Circuit

The USCA, while threatening *pro se* Sundry with dismissal for procedural infractions:

- 1) allowed attorney-represented parties to improperly file out-of-time documents without leave of the court in violation of 11th Cir. R. 31-2;
- 2) allowed attorneys to speak for respective unrepresented appellees without filing an Appearance of Counsel Form in compliance with 11th Cir. R. 46-5;.
- 3) allowed attorney-represented parties to file deficient briefs;
- 4) . allowed attorney-represented parties to default on Sundry's Motion for Rule Nisi;
- 5) withheld *pro se* Sundry's timely and properly filed documents from the docket;
- 6) denied *pro se* Sundry actual notice of deficiency;
- 7) recorded the wrong date upon the face of the record of when Sundry actually filed document(s).

As Sundry has experienced in the State courts and the District Court, a purportedly impartial judicial system gives every available advantage and special privilege to

attorney-represented parties while denying *pro se* Sundy equal protection. *Pro se* Sundy has an established pattern of being procedurally correct as far as he is able, despite the ongoing bad faith actions of court officers to tamper with the record in ways that confuse or mislead *pro se* parties. But, as Congressman Hank Johnson once stated in private conversation, “*pro se*’s always lose.”

E. 11th Circuit affirms in part and dismisses in part

Citing, among others, *31 Foster Children*, 329 F. 3d at 1279, USCA affirmed *Younger* abstention: “A federal court should assume that state procedures will afford an adequate remedy...” Likewise, the USCA found the dismissal of Respondent Friendship by USDC was justified by a meritorious defense that Friendship never raised.

REASONS FOR GRANTING THE PETITION

I. In misapplying *Younger*, the Court of Appeals enhanced deprivation of Sundy’s First Amendment rights

In *Bolin v. Story*, 225 F.3d 1242, 1243 (11th Cir. 2000), USCA explained that a plaintiff has adequate remedies at law if he is able to file an appeal or extraordinary writ. USCA did not address whether trial court officers conspiring to corrupt the record on appeal, or withholding *pro se*’s documents to render him procedurally incorrect, or denying the right to file an extraordinary writ unless a disabled plaintiff travels 600-plus miles to physically appear before a disqualified judge who can only issue void orders, translates into an “adequate remedy at law.” USCA did not address whether officers of the State’s Supreme Court and the State’s Court of Appeals falsifying documents to ensure that a *pro se* litigant is procedurally deficient translates into an “adequate remedy at law.” Yet these are part of Sundy’s claims and the facts of this case.

A. The state courts do not offer an “adequate remedy at law”

Sundy presented facts and evidence that the actions by State Superior Court officers are in bad faith and that there is no adequate alternative state forum where constitutional issues can be raised. *Younger v. Harris*, 401 U.S. at 45, 53-54, 91 S.Ct. at 751, 755. The Fourth Amendment violations perpetrated by officers of the state court, including judges and clerks of court, have disallowed Sundy from an adequate remedy for his federal claims. For example, the USDC posited in one of its twelve final orders, Doc. [111], that an order issued by Defendant Judge Fuller is “uniquely in furtherance of the state courts’ ability to perform their judicial function.” The USDC ignored the facts and evidence that disqualified Judge Fuller had no jurisdiction to issue any orders, Fuller having previously disqualified himself in the case in which he issued his ruling, as well as in all cases in which Sundy was a party, subjecting Sundy to an unlawful two-judge panel judge which 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.

“There is no greater federal interest in enforcing the supremacy of federal statutes than in enforcing the supremacy of explicit constitutional guarantees, and constitutional challenges to state action, no less than pre-emption-based challenges, call into question the legitimacy of the State's interest in its proceedings reviewing or enforcing that action.” *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 364 (1989)

B. The state courts are proceeding in bad faith

The USDC focused on injunctive relief in its Orders of dismissal while completely ignoring that Sundy asked for declaratory relief, i.e., is *pro se* Sundy immune from criminal activity and can state court officers, in bad faith, remove and/or

destroy *pro se* Sundy's documents from the official court record ensuring that *pro se* Sundy suffers a concrete injury and has no adequate appeal and no protection against constitutional violations.

Both the USDC and USCA ignore that there are no state interests at stake and that Sundy is not seeking review of any state court proceedings. Among other questions, Sundy is seeking clarification of his constitutional right to be secure in his papers under the Fourth Amendment, to be fairly compensated under the Fifth Amendment, and to be immune from criminal activity under the Fourteenth Amendment.

The USDC stated judicial notice as of 11 March 2019 of the online dockets for the Supreme Court of Georgia and the Georgia Court of Appeals, observing "two open appeals for the state court action 2015CV1366". These two discretionary applications, Georgia Supreme Court S19D0838 and Georgia Court of Appeals A19D0345, were subsequently denied, with the State appellate courts having demonstrated a bad faith, pre-determined plan to deny -- with a single sentence -- every remedy sought by Sundy in the State Courts as well as to ensure that Sundy's record remains incomplete on appeal. The State appellate courts have also refused to hold court officers responsible for violations of Georgia statutes or the state and federal constitutions.

C. Sundy is entitled to equitable relief that makes abstention inappropriate

This Court has recognized exceptional circumstances in which Younger abstention might be inappropriate: where the irreparable injury is "great and immediate," where the state law in question is "flagrantly and patently violative of express constitutional prohibitions," or where the plaintiff demonstrates bad faith,

harassment, or other "unusual circumstances" justifying equitable relief. *Mitchum v. Foster*, 407 U.S. 225, 230, 92 S. Ct. 2151, 2156 (1972)

Extraordinary circumstances may justify an exception to *Younger* abstention when the state court cannot fairly and fully adjudicate the constitutional issues and the plaintiff presents "an extraordinarily pressing need for immediate federal equitable relief." *Kugler v. Helfant*, 421 U.S. 117, 124-25 (1975)

Pro se Sundry, with the right to be immune from crimes while a Defendant in Hall County Superior Court ("HCSC") 2015CV1366, and while a Plaintiff in USCA 19-11391-CC. Sundry has an unconditional right to have a complete record in any official proceeding in the State of Georgia whether it's a State Court or Federal court while attending a hearing. Inferred from *United States v. Selva*, 559 F.2d 1303, 1304 (5th Cir. 1977); *Hardy v. United States*, 375 U.S. 277, 84 S.Ct. 424, 11 L.Ed.2d 331 (1964); *United States v. United States Gypsum Co.*, 438 U.S. 422, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978).

In the course of exhausting his remedies, Sundry sought relief in USDC 19-11391-CC, to no avail. Sundry's USDC civil action arose out of constitutional violations occurring in the State Superior Court as well as a dispute involving acts of federal RICO committed by Respondent Friend. In USDC, Sundry did not seek review by the federal court of any judgments in the state court civil action but rather requested a declaration on the constitutionality of the practices employed by court officers, including judges and clerks of court, to deprive Plaintiffs of full access to the court.

The USDC dismissed all parties on 12 March 2019 citing *Younger* abstention. The United States Supreme Court has emphasized that circumstances warranting *Younger* abstention are "exceptional," and the mere pendency of parallel state

proceedings is not itself a bar to federal court litigation. None of the exceptional circumstances warranting *Younger* abstention exist here.

Pro se Sundy has exhausted all remedies to correct the record as a matter of right in the State of Georgia in HCSC 2015CV1366 and Sundy has been unable to overcome the obstacles of corruption, fraud and inconsistent due process created by Georgia's judiciary .

D. There is no important state interest in unimpeded tampering with court records by court officers.

“Jurisdiction existing, this Court has cautioned, a federal court’s “obligation” to hear and decide a case is “virtually unflagging.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976). Parallel state-court proceedings do not detract from that obligation. See *ibid.*” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013)

Georgia Attorney General Christopher M. Carr has allowed respondents to remove, falsify, and otherwise tamper with the record in reaching void orders and judgments, with the record in HSCS incomplete to this day. Meanwhile, Respondent Nova Casualty Corp. continues to finance HCSC Clerk Baker’s defense against Sundy’s attempts to redress Baker’s conduct of removing Sundy’s documents from the record.

This in turn, has subjected Sundy to significant restraints on his liberty to avail himself of his First Amendment rights to have full access to the courts, including the appellate court. Sundy is restrained of liberty to avail himself of the Fourth Amendment to be secured in his papers by unreasonable seizures. Sundy is restrained of liberty to avail himself of the Fifth Amendment’s protection from deprivation of his property without due process of law, with property taken without

just compensation. Sundry is restrained of liberty of the immunity afforded by the Ninth Amendment, where his enumeration of certain rights under the Constitution, are being construed by the co-respondents as denying or disparaging the rights retained by the people. Tim Sundry has been violated of the said Federal constitutional rights in a denial of equal protection within the purview of the Fourteenth Amendment.

The State of Georgia has placed a significant restraint on Tim Sundry's liberty, just shy of physical custody, with said respondents deemed as the State of Georgia. State Attorney General Christopher M. Carr, on multiple notices in HCSC 2015CV1366 A0022, has breached his paramount duty to equally protect Sundry and his property against the transgression of co-respondents within the scope of the Fourteenth Amendment.

Protection to person and property is the paramount duty of government and shall be impartial and complete, No person shall be denied equal protection of the laws. *Constitution of Georgia*, Art. 1 § 1¶ 2: Protection to person and property.

The Georgia General Assembly has failed in its duty to enact effective laws to protect United States citizen Tim Sundry in the full enjoyment of the rights, privileges, and immunities due to Sundry's citizenship.

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

Sundy is without remedy in Georgia against constitutional violations and the issuing of void orders by inconsistent due process, not only in the trial court but in the appellate courts as well.

E. The State cannot provide appellate review sufficient to accord due process.

Georgia's trial court and appellate courts have denied Sundy a complete court record. The state therefore cannot provide appellate review sufficient to accord Sundy the essentials of due process. See *Collins v. Collins*, 597 F. Supp. 33 (N.D. Ga. 1984).

"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) '

Sundy cannot carry his burden to compile a complete record, neither can Sundy substantiate claims because of missing orders and transcripts.

F. Abstention has engendered a hostile and retaliatory environment for pro se litigants in Georgia

The USCA and USDC have sent the unmistakable message to Georgia's citizens that the federal court will tolerate (and even endorse) egregious violations (as well as crimes) purportedly to advance state court proceedings when such violations are committed by state court officers, thereby diminishing the rights of citizens, and fostering a hostile and retaliatory environment for *pro se* litigants who have the audacity to confront court officers on statutory and constitutional violations.

"I also agree with his conclusion that the District Court was not required to abstain under the principles enunciated in *Younger v. Harris*, 401 U.S. 37 (1971). *Post*, at 30, n. 2. I adhere to my view that *Younger* is, in general, inapplicable to civil proceedings, especially when a plaintiff brings a § 1983 action alleging violation of federal constitutional rights. See *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 613 (1975) (BRENNAN, J., dissenting) (*Younger* held "that federal courts should not interfere with pending state *criminal* proceedings, except under extraordinary circumstances" (emphasis in original)); *Juidice v. Vail*, 430 U.S. 327, 342 (1977) (BRENNAN, J., dissenting) ("In congressional contemplation, the pendency of state civil proceedings was to be wholly irrelevant. 'The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights'" (quoting *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)))." *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 19 (1987)

Sundy invoked the Federal court prior to the State court's determining Sundy's post proceedings. The abstention of the Federal court further emboldened the State court to repeat its conduct of making a determination upon an incomplete record to render another void order. **A0024**

II. Sundy is in double custody, restrained of his liberty in State and Federal courts

The USCA in case 19-1391-CC affirmed USDC's abstention from Sundy's independent claims **A0012** while, by order of the State trial court, Sundy was enjoined from filing his independent claims in the State proceeding Sundy's First Amendment and Fourth Amendment constitutional rights have thus been violated by the Federal and State courts' agreement to deprive Sundy of his independent claims.

For the purpose of qualified immunity analysis in Fourth Amendment cases, factually similar case are not always necessary to Establish that a government actor was on notice that certain conduct is unlawful; if the [petitioner] in a § 1983 action can show that the official's conduct lies so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct was readily apparent to the official is not entitled to qualified immunity. *Thomas ex rel. Thomas v. Roberts*, C.A.11 (Ga.) 2003, 2003 WL 934249.

The American Heritage Dictionary defines custody as, "2. the state of being kept or guarded or restrained; and 3. the state of being legally detained or restrained or held under guard, especially by the police." Statute 18 U.S.C. § 751(a) clarifies custody as including "custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge."

Both the State and Federal Courts have established that Sundy, in a denial of equal protection, is restrained from First Amendment protections and must subjectively qualify, based upon arbitrary requirements not applied to other civil litigants, for a complete court record by first coming to a hearing/official proceeding – only then might Sundy qualify to have his papers docketed by the clerk, with the Courts reserving the right to further withhold First and Fourth Amendment protections from Sundy. The Courts have placed no such burden on attorney-represented parties nor given Sundy due process of notice that he must qualify for his Fourth Amendment right to be secure in his papers or that Georgia courts have redefined the duties of the clerk as it pertains to Sundy.

The duties of the clerk relating to the filing of pleadings are ministerial in nature, and "[i]t 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.)' [Cit.] 'A paper is said to be filed, when it is delivered to the proper officer, and by [that officer] received, to be kept on file.' [Cit.]" *Forsyth v. Hale*, 166 Ga. App. 340, 342 (304 SE2d 81) (1983)... It is beyond the purview of the clerk to be concerned with the legal viability of a pleading presented to the clerk for filing. See *Hughes v. Sikes*, 273 Ga. 804 (1) (546 SE2d 518) (2001)" *Hood v. State*, 282 Ga. 462, 464 (Ga. 2007)

Sundy is thus restrained of his liberty by both State and Federal courts in Georgia to have an unconditionally complete court record and to have an adequate

appeal, since it is the burden of the Appellee to perfect the record, see *Kegler v. State*, 475 S.E.2d 593 (Ga. 1996) above.

A. Sundry is in custody by the State of Georgia.

The objective of State courts appears to be to blame Sundry for an incomplete record. This involves inviting Sundry to a hearing while Sundry's timely-submitted documents are not on the docket nor part of the record. Since there is no opposition on the docket by an adverse party, the trial Judge has no jurisdiction over non-formed issues unless and until Sundry walks into the courtroom. The trap set by the court is to get Sundry to volunteer into the court's jurisdiction while acquiescing to the incomplete record. As experienced by Sundry, the trial judge may even have the missing documents in his hands at the hearing, having predetermined the outcome of the non-formed issue.

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).

On December 3, 2018, respondent Judge Martha C. Christian entered a void judgment by inconsistent due process and/or fraud **A0036** against Tim Sundry and his brother David Sundry, over Tim Sundry's objection, while there were missing documents of record in case 2015CV1366 HCSC. On June 3, 2020, Respondent Judge Martha C. Christian entered another void Order over Sundry's objection while there were still missing documents in the same record of case 2015CV1366 HCSC, **A0024**

In November 2018, it appears disqualified Judge Fuller **A0037** failed to determine the fate of 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**") **A0039-first page only** and it was not filed until 26 November 2018 when a hand written ORDER **A0040** from Respondent Judge Christian was stamp-filed in the court at 11:38 am, commanding the Clerk to file Sundy's 2018 Objection.

On 26 November 2018 a calendar call was held 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 **A0040.**, i.e., sometime after the calendar call proceedings. Had Sundy acquiesced to appear at 10:00 am for the calendar call proceedings, he would yet again have been in a court-orchestrated, subjective requirement to participate in a proceeding upon an incomplete record, and again be threatened with jail (or thrown into jail) for adamantly refusing to abandon his constitutional right to be secure in his papers.

HCSC repeated its 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, when Sundy's 21 February 2020 STANDING OBJECTION TO INCONSISTENT DUE PROCESS AND FRAUD UPON THE COURT ("**2020 Objection**") **A0041-first page only**, 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 **A0042** because Sundy did not desire to pay for an incomplete record, as stated in Sundy's withheld **2020 Objection, A0041** while

also determining that the only way Sundry could appeal as a matter of right was to pay for an incomplete record.

Despite *pro se* Sundry's every effort to comply with the substantive and procedural requirements of the law, Sundry is always confronted with the tiresome question of why Sundry's papers (2020 Objection **A0041**) are withheld from the record and not timely docketed by the Clerk.

As evidenced by its 9 March 2020 Order **A0042**, the trial court had Sundry's papers (2020 Objection **A0041**) in hand while sitting on the bench on 2 March 2020 but the papers were not docketed by the clerk until more than a week after the hearing, repeating the pattern of Sundry's **2018 Objection et al.**, reinforcing Sundry's argument that he must subjectively meet arbitrary requirements not applied to other civil litigants in order to qualify to have his papers docketed. The actions of the court suggest that the docketing of Sundry's papers has nothing to do with an objective determination of whether papers should be filed in an existing case, but instead the actual prejudice of the court, in violation of Sundry's civil rights, and the need of the court to "sanitize" the record so that Sundry cannot prevail on appeal. The trial court selectively paraphrased details from Sundry's in hand **2020 Objection** and deliberately misrepresented the facts to achieve a false perception in its Order **A0042**, knowing that the Court might again "file 13" (i.e., trash can) Sundry's papers so that they never appeared upon the record.

Pro se Sundry must stand his ground about "missing document(s)" before participating in an official proceeding. See *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.") This is the same

ground Sundry maintained by not paying the cost to have an incomplete record transmitted and falsely certified as complete to the appellate court as the HCSC clerk has previously done.

In other words, if Sundry participates in a proceeding while knowing that documents are withheld from the record, and with no guarantee that documents will be entered on the record by the clerk since the court has demonstrated that it may elect not to file Sundry's documents, Sundry would have lost any grounds to complain.

Thus, Respondent Judge Christian is correct in her June 3, 2020 by saying *"Every time this Court set a hearing, Defendants refused to attend"*. **A0024** and that is because in weighing the facts, the record demonstrates there has never been a complete record in 2015CV1366 since December 2016 upon which to have a hearing, trial, or an effective, meaningful appeal. The facts show that Sundry's **2016 Joint Objection** was removed and absent from the record at the time of the May 2017 hearing and thereafter. Every time Respondent Judge Christian set a hearing, it was with document(s) missing from the record. The handwritten order **A0040** proves that the Court makes a subjective, arbitrary decision without basis in law as to whether or not to docket Sundry's papers. This is a denial of equal protection and demonstrates that Sundry is in custody, restrained from the ordinary rights and privileges of other Georgia citizens involved in civil litigation.

Pro se Sundry's consistent claim for a complete record in court proceedings is coupled with the right to effective, meaningful appellate review since a complete record functions to ensure procedural due process on appeal. *U.S. v Mantilla*, 226 Fed. Appx. 945,946 (11th Cir. 2007). The pattern of inconsistent due process and denial of First

Amendment protections established by the Respondents, withholding or removing Sundy's papers from court record and then making improper "factual determinations" and findings of law with evidence and argument missing from the record, establishes more than just deprivations under the Fourth and Fourteenth Amendments, it is criminal in nature. The courts may keep writing off this pattern of behavior as harmless error. However;

"The cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error. The purpose of a cumulative-error analysis is to address that possibility. Such an analysis is an extension of the harmless-error rule, which is used to determine whether an individual error requires reversal." *State v. Lane*, S19A1424 (Ga. Feb. 10, 2020) citing *United States v. Rivera*, 900 F2d 1462, 1469 (10th Cir. 1990)

From a disqualified judge issuing an injunctive order against Sundy in a case over which another judge is presiding to Sundy's timely and properly filed papers disappearing from the court record for months, the credulity of impartial justice has been strained. From Sundy's mandamus petitions being mooted by phone calls and under the table orders and then denied as frivolous, with no court officers being publicly disciplined while Sundy obtains only partial relief, to orders being held off the docket in violation of State statutes until Sundy's procedural deadlines are in jeopardy, the pattern of corruption enhances Sundy's claim of being in custody while denied justice. In *Fetterly v. Paskett*, 997 F.2d 1295, 1300 (9th Cir. 1993), the Court stated that "[T]he failure of a state to abide by its own statutory commands may implicate a liberty interest protected by the Fourteenth Amendment against arbitrary deprivation by a state."

B. Sundry's liberty is restrained by the Federal court in the State of Georgia.

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). *Emphasis added*

Sundry sought the protections of the federal court over his constitutional rights under the First, Fourth, Fifth, Ninth and Fourteenth Amendments. However, the corrupt practices utilized in State court case 2015CV1366 HCSC turned out to be endemic to the United States District Court ("USDC"). USDC subjected Sundry to the same violations, following the same pattern as the Respondents in State court by restraining Sundry's liberty to fully access the Federal court. Papers were removed or withheld from the court record while the court circumvented the Constitution and laws by placing no obligation upon the adverse parties to file a written response or opposition to Sundry's missing papers, in a manner that is materially inconsistent with due process.

When a document is not on the docket of a case and there is no opposition to the missing document, there wouldn't be an issue formed before the Judge in the case, thus the Judge has no jurisdiction. This operates materially inconsistent with due process over the issues missing from the record. If the practice of the court is to set a hearing when there are no issues before the court, it seems a reasonable person should inquire about the purpose for participating in a hearing.

The issue of missing documents was a partial impetus for Sundry filing a complaint in USDC. Imagine Sundry's dismay when the same practice was found to

be systemic in Federal court case 2:18-CV-112-SCJ. As in state court, USDC held a hearing upon an incomplete record, rendering inconsistent due process.

On March 12, 2019, the USDC judge issued 12 orders in case 2:18-CV-112-SCJ and 1 judgment. The Orders and judgment should be void by virtue of the fact that they were rendered upon an incomplete record. The USDC docket shows that the document at Doc [116], Sundry's timely response to Doc [10], was put on the docket on March 12, 2019, 2 months after the January 23, 2019 hearing and absent from the record a total of 7 months after it was filed. Once again, Sundry was invited to error, set up to come to court upon an incomplete record. The trial court couldn't have considered all Sundry's documents at the hearing when the clerk had a document secretly tucked away.

"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)

Sundry is in a form of double custody in the United States. On one hand, Sundry is in State custody because he is restrained of liberty by order of HCSC access the court to file his independent Claims in an official State proceeding.

On the other hand, Sundry is restrained of liberty of litigating his independent Claims in a federal proceedings by the federal court abstaining and allowing the State to have absolute custody to reach a conclusion by inconsistent due process and/or fraud upon the court.

"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)

In both the State and Federal proceedings, Sundy is restrained of liberty to have equal protection of due process of a complete record. In both State and Georgia Federal proceedings, Sundy must come to a hearing upon an incomplete record.

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, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself. 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) *emphasis added*

CONCLUSION

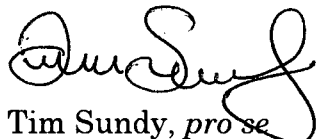
This Court has explained that "the *Due Process* Clause of the Fourteenth Amendment was intended to prevent the government from abusing its power," *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 196, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989) (internal quotation marks and alterations omitted). Sundy has raised constitutional violations by the courts in the State of Georgia, documenting subjective requirements upon *pro se* Sundy which have the effect of unconstitutionally excluding Sundy from a fair and impartial judicial process, while punishing Sundy solely because he believes that judges and other court officers are subject to the law and statutes of Georgia as enacted.

This Court recognized in *Morrissey v. Brewer*, 408 U.S. 471 (1972) that when a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication—and federal courts will review the application of those

constitutionally required procedures. Georgia has arbitrarily deprived Sundry of rights of access to the court and the USDC chose to abstain from reviewing those deprivations.

This Court should grant certiorari and reverse the decision of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted this 10th day of August, 2020.

A handwritten signature in black ink, appearing to read 'Tim Sundry', with a stylized flourish at the end.

Tim Sundry, *pro se*
227 Sandy Springs Place, Ste D-465
Atlanta, GA 30328
dstshall@earthlink.net
404-409-5473