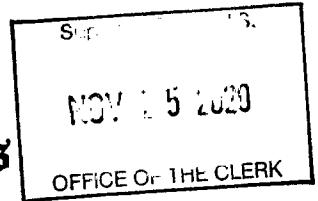


No. 20-750

In The  
**Supreme Court of the United States**



◆  
TIMOTHY P. MURPHY,

*Petitioner,*

v.

SUSAN STACY,

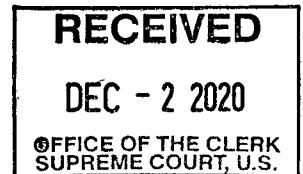
*Respondent.*

◆  
**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

◆  
**PETITION FOR WRIT OF CERTIORARI**

◆  
TIMOTHY P. MURPHY  
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*Petitioner, appearing pro se*



**QUESTIONS PRESENTED**

1. Whether under any circumstances in their application of common law, federal courts are allowed the authority or discretion to disregard this Court's opinion in *Erie Railroad Co. v. Tompkins*, as in this case by their failure to consider the requisite requirements to invoke a Florida trial court's subject matter jurisdiction established unanimously by opinions of the state's highest court, and instead apply the doctrine of *Swift v. Tyson*.
2. Whether as the subject courts state and federal did determine by their decisions, a court retains the authority and jurisdiction to enter and enforce a summary judgment after denying the affected party their constitutional right to be heard.

## PARTIES TO THE PROCEEDING

Petitioner Timothy P. Murphy was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent Susan Stacy was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

## RELATED CASES

- *Christiana Trust v. Timothy P. Murphy*, No. 2010CA005287, Circuit Court for the 18th Judicial Circuit in and for Seminole County, FL. Judgment entered July 16, 2014
- *Timothy P. Murphy v. Christiana Trust*, No. 5D16-2854, District Court of Appeal of the State of Florida 5th District. Judgment entered April 25, 2017
- *Timothy P. Murphy v. Susan Stacy*, No. 6:19-cv-00404-Orl-37LRH-RBD, United States District Court for the Middle District of Florida Orlando Division. Judgment entered August 13, 2019
- *Timothy P. Murphy v. Susan Stacy*, No. 19-13553-GG, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered April 20, 2020

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**PETITION FOR A WRIT OF CERTIORARI**

Timothy P. Murphy petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

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**OPINIONS BELOW**

The Eleventh Circuit's opinion is reproduced at App. 1. The Eleventh Circuit's denial of petitioner's motion for reconsideration and rehearing is reproduced at App. 24. The opinion of the District Court for the Middle District of Florida Orlando Division is reproduced at App. 14.

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**JURISDICTION**

The Court of Appeals entered judgment on April 20, 2020. App. 1. The court denied a timely petition for rehearing on July 1, 2020. App. 24.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

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**STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED**

18 U.S.C. § 241 Conspiracy Against Rights. App. 25.

42 U.S.C. § 1983 Civil Action for Deprivation of Rights. App. 25.

The 14th Amendment's Provision for Due Process  
Before Being Deprived of Property. App. 26.

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### **INTRODUCTION AND STATEMENT OF THE CASE**

This petition involves Federal District and Circuit Court decisions that challenge certain determinations of this Court, including its finding in *Erie Railroad Co. v. Tompkins* (also “*Erie*”) that in matters of common law including those of tort, the law to be applied in any case is the law of the State<sup>1</sup>, and its decisions in cases including *Armstrong v. Manzo* holding the “opportunity to be heard” to be “a fundamental requirement of due process”<sup>2</sup>. The subject federal courts in reaching their decisions, exercised authority that was determined by this Court in its *Erie* decision to be exclusive to the states by failing to consider or to apply to their findings and judgments, the legal requirements determined by decision of the state’s highest court<sup>3</sup> to be

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<sup>1</sup> See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) “[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State.”

<sup>2</sup> See, e.g., *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) “A fundamental requirement of due process is the opportunity to be heard . . .”; see also *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) “The fundamental requisite of due process of law is the opportunity to be heard.”

<sup>3</sup> See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) “Whether the law of the State shall be declared by its Legislature

essential to invoke a Florida trial court's subject matter jurisdiction (also "jurisdiction"), and then assuming and applying common law conjured for the occasion, resulting in decisions the petitioner (also "Murphy") alleges to have denied the state its constitutional right to establish legal protections for its citizens, and deprived its citizen, in this case Murphy, the benefits of those constitutional protections.

Also of concern to the people, the subject Circuit Court decision could be cited as grounds for state and federal courts to deny them without loss of the courts' authority or jurisdiction, the most basic and fundamental requirement of "Due Process", that being their right to an "opportunity to be heard" before being deprived of Life, Liberty, or Property, and as in this present case, could allow federal courts to find for a judge's entitlement to absolute immunity against a federal suit for redress for actions they take under "color of law", and in the known absence of all authority or jurisdiction as defined by relevant decisions of both this Court and the state's highest court, in direct contradiction of this Court's decision in *Bradley v. Fisher* that ". . . when the want of jurisdiction is known, no excuse is permissible."<sup>4</sup>

On 8-5-2010, Florida's 18th Circuit Court allowed JPMC Specialty Mortgage, LLC (also "JPMC") to institute a residential foreclosure action against Murphy

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in a statute or by its highest court in a decision is not a matter of federal concern."

<sup>4</sup> See *Bradley v. Fisher*, 3 Wall. 335, 20 L.Ed. 646 (1871).

with a Complaint that by its false claims to standing, failed to comply with Florida's minimum requirements to institute a suit in equity, establish standing to foreclose, and most importantly, invoke a Florida trial court's subject matter jurisdiction. Murphy filed a timely response to the complaint *pro se* and awaited his day in court. On 3-27-2013 without the notice and hearing required by Fla. R. Civ. P. 1.500(b)<sup>5</sup>, a jurist other than the presiding judge executed an Order of Default against Murphy pursuant to a motion that was not filed with the court until the following day, while service on both the order and the belated motion were withheld from him.

On 11-8-2013, Murphy filed an objection to the state court's Referral to Magistrate issued on 10-31-2013, instead requesting mediation in accordance with State Statute 44.102<sup>6</sup> and opting to have the case heard by a judge, which the court's order specifically conferred. Still unaware of the underlying default and awaiting either an order for mediation or his day in court, on 7-15-2014, the presiding judge executed a Default Final Judgment of foreclosure against Murphy

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<sup>5</sup> See, e.g., *Okeechobee Ins. Agency, Inc. v. Barnett Bank of Palm Beach Cnty.*, 434 So. 2d 334 (Fla. 4th DCA 1983) “[R]ule 1.500(b) requires notice and a hearing before entry of default against a party who has filed a paper in the action.”

<sup>6</sup> See, Fla. Statutes, 44.102(2) A court, under rules adopted by the Supreme Court: (a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, . . .

pursuant to the Plaintiff's motion for final default filed five (5) days earlier, denying Murphy the "notice" and "hearing" required by the Fla. R. Civ. P., and the "opportunity to be heard" guaranteed by the state constitution and the 14th Amendment.

After the second presiding jurist was reassigned, the case was allegedly assigned to the respondent (also "Stacy"), who proceeded to enforce the summary judgment against Murphy and issue a Writ of Possession for the plaintiff on 7-10-2017 after being judicially noticed by Murphy on 5-31-2017, that the Court lacked subject matter jurisdiction pursuant to the denials of Murphy's 14th Amendment "right to be heard" that stood obvious on the record, and that the summary judgment she was enforcing against him was issued without authority or jurisdiction and was therefore "Void".

Stacy then continued to deny Murphy due process and prevent him from challenging the "Void" summary judgment by among other actions, allowing an attorney to appear for the Plaintiff without "notice" to the court or Murphy, and therefore without compliance with Florida's mandatory requirements to appear, be considered an "attorney of record", or to take any action in the case<sup>7</sup>. Stacy then allowed that attorney through his illegal appearance, to file dozens of documents to intimidate Murphy and confound his defense

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<sup>7</sup> See, Fla. R. Jud. Admin. 2.505

efforts<sup>8</sup>, including allowing him to file and maintain on the docket as pending, multiple motions for Sanctions, Attorney's Fees, and Costs that were clearly frivolous, with their appearance on the docket serving to deny Murphy his right to legal representation to defend against allegations of the complaint, as evidenced by the mere threat of the first motion that caused the withdrawal of Murphy's recently retained counsel<sup>9</sup>.

Pursuant to Stacy's continued actions that violated established procedure and denied Murphy due process, including her denial of his 10-25-2018 objection to the illegal appearance of Plaintiff's counsel in which Murphy raised the severe injustices he was suffering from that illegal appearance, including the deprivation of his right to legal representation, and after those facts were raised before her in multiple filings and hearings, Murphy concluded that Stacy had no intention of acknowledging the court's denials of his right to due process to allow for a just conclusion to the suit, compelling him to file on 2-22-2019, a Motion to Disqualify Stacy, which in spite of Fla. R. Jud. Admin.

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<sup>8</sup> The now four year ongoing appearance and actions of plaintiff's counsel without the notice required by law are fully documented in the state court record of Case No: 2010CA005287.

<sup>9</sup> Murphy did attempt to replace withdrawn counsel. The attorneys contacted admitted he had been denied due process and that the summary judgment against him appeared void, yet they declined the case citing the court's apparent disdain for Murphy by its constant actions to deny him due process, and the liability they would assume pursuant to the pending though legally frivolous motions for sanctions.

2.330 requiring her to disqualify herself, she denied on 2-26-2019, at which time Murphy could see no other options then to file suit against her in federal court.

Murphy filed his 42 U.S.C. § 1983 (also “§ 1983”) suit against Stacy on 3-1-2019 after which on 3-6-2019, she recused herself from the state court case. After having her violations of Murphy’s 5th and 14th Amendment rights and Stacy’s unethical and allegedly illegal actions against Murphy evidenced to have been taken under “color of law” and in the known absence of all jurisdiction properly raised and evidenced before it, and having been fully noticed of the state’s established mandatory requirements to invoke a Florida trial court’s subject matter jurisdiction including the filing of a “proper pleading” and of the Plaintiff’s failure to comply with those requirements in any manner, the U.S. District Court in direct violation of This Honorable Court’s determination in *Erie Railroad Co. v. Tompkins*, failed to apply those requirements established by the Florida Supreme Court, instead presuming requirements far less demanding and protective of the people’s rights, and then subsequently assuming for its ruling, that the state court’s designation of the alleged case as a “foreclosure”, provided sufficient jurisdiction to entitle Stacy to absolute judicial immunity (App. 20, ¶ 2).

Murphy also raised to the District Court by Judicial Notice filed on 7-29-2019, allegation supported by *prima facie* evidence, of a conspiracy against his rights as defined by 18 U.S.C. § 241, in which the state court record evidenced Stacy to be complicit. On 8-13-2019,

the District Court dismissed Murphy's § 1983 suit with prejudice pursuant to what are evidenced to be findings contrary to the opinions of both this Court and the Florida Supreme Court, while failing to address the raised conspiracy against rights still pending on its docket.

On 9-11-2019, Murphy's appeal was docketed in the 11th U.S. Circuit Court in which he properly raised and evidenced the state court's and Stacy's violations of his 5th and 14th Amendment rights, the state court's lack of jurisdiction during Stacy's entire tenure as presiding judge, her actions taken under "color of law" and in the known absence of that jurisdiction that continue to this day to cause Murphy harm, and the U.S. District Court's disregard of the State of Florida's governing laws, procedures, and legal precedents when reaching its decision. Murphy also raised to the Circuit Court, the District Court's failure to address Murphy's properly raised claim of the "Conspiracy Against Rights".

In a twelve (12) page decision in which the Circuit Court failed to address or acknowledge in any manner, Murphy's properly raised claims of the state court's denials of his "right to be heard", or to include the term "due process", and in which it withheld its consideration of his properly raised claim of a Conspiracy Against Rights by falsely claiming Murphy had not raised it in the District Court case, the Circuit Court on 4-20-2020, entered judgment against Murphy, following the District Court by again disregarding the precedents of Florida law establishing the mandatory

requirements to invoke the court's jurisdiction, presuming and applying lesser requirements that failed to protect the people's rights, failing to acknowledge the state court's denials of Murphy's right to due process evidenced in its record, and ignoring the state court's obvious absence of all jurisdiction during Stacy's tenure, allowing for its ruling affirming Stacy's entitlement to absolute judicial immunity.

On 5-11-2020, Murphy filed a seventeen (17) page Petition for Panel Rehearing in which he dedicated five (5) pages to again properly raising and evidencing the claimed denials of his 5th and 14th Amendment right to due process that the Circuit Court had failed to acknowledge after reviewing his brief, including the multiple denials of his right to be heard and defend in the state court action. He also again raised the state court Plaintiff's failure to comply with the state's mandatory requirements to establish standing, to institute a civil suit, and to invoke the state trial court's subject matter jurisdiction, and the Conspiracy Against Rights that contrary to the Circuit Court's claim, he had properly raised in his District Court case.

Murphy also raised in his petition for rehearing, the alleged conflict of interest the Office of the Florida Attorney General's representation of Stacy presented in both the District Court case, and in the appeal, alleging that the bias demonstrated by her appearance, and its false inference that Florida law supported Stacy's claim to have acted with jurisdiction, was intentionally prejudicial by its influence on the U.S. District and Circuit Courts and their decisions. On 7-1-2020 in a one

(1) page decision that provided no reason or justification, the 11th U.S. Circuit Court denied the petition for rehearing.

On 8-26-2020, Murphy filed a Motion to Recall Mandate in which he again raised to the Court, the facts previously raised and evidenced before it that the state court's jurisdiction had never been invoked, and that had it been invoked, it would have been lost upon the violations of Murphy's 14th Amendment right to due process that stand blatant on the state court record. On 10-26-2020, the Circuit Court denied Murphy's Motion to Recall Mandate with no stated reason or justification.

Knowing it would be naive to believe that he was the only *pro se* litigant to be denied constitutional protections by these courts, and after suffering over ten (10) years of injustices at the hands of a state court and seven (7) of its jurists, and now suffering as well from the actions of four (4) federal court judges who had been made fully aware by *prima facie* evidence of, the violations of Murphy's 14th Amendment rights, the state court's absence of all jurisdiction throughout the now over ten (10) year tenure of that action, the evidenced conspiracy against his rights, and the federal courts' failure to consider the denials of his right to due process or apply relevant state law when making their determinations, Murphy concluded that no person should be burdened with such deplorable treatment of their rights and attacks on their livelihood as he has now suffered at the hands of the subject courts and their jurists, compelling him to seek through this

petition, action by This Honorable Court to protect both himself and the people from what is evidenced to be a growing intolerance within the subject courts of our 5th and 14th Amendment rights, and their increasing disdain for *pro se* litigants, even when as in this case, the courts themselves force parties against their will, to proceed so.

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#### **REASONS FOR GRANTING THE PETITION**

Without the intervention of This Honorable Court, the 11th U.S. Circuit Court's decision and findings may be construed by the lower courts to diminish and/or deny precious constitutional protections that this Court, in decisions that include *Erie Railroad Co. v. Tompkins*, *Armstrong v. Manzo*, and *Johnson v. Zerbst*, determined the people and the sovereign states to be entitled.

Granting this *pro se* party's petition, in which are raised civil rights issues comparable to those historically considered by This Honorable Court to be of significant importance to the people, stands to reaffirm to them at a time of civil strife when that reassurance will most benefit our nation, this Court's commitment to uphold and protect the constitutional rights of not just the wealthy and powerful, but those of the common man as well.

**I. In its Affirmation of the District Court’s Decision, the 11th Circuit Court Failed to Notice or Consider the District Court’s Failure to Apply State Law When Determining its Findings and Judgment.**

In their subject decisions, the U.S. District and Circuit Courts failed to apply the state’s laws relevant to the common law issues being decided, and thereby challenged by those decisions, This Honorable Court’s determination in *Erie Railroad Co. v. Tompkins* (also “*Erie*”), that a state’s laws and the prevailing decisions of its highest court govern on all issues of common law within a federal court action<sup>10</sup>.

**A. Both Federal Courts Failed to Apply to Their Decisions After Having Been Properly Raised Before Them<sup>11</sup>, the State’s Specific Mandatory Requirements to Invoke a Florida Trial Court’s Subject Matter Jurisdiction** that stand clearly defined by decisions of the Florida Supreme Court<sup>12</sup>. The District Court presumed the authority to

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<sup>10</sup> See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) “[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. Whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.”

<sup>11</sup> The records of the U.S. District and 11th U.S. Circuit Court confirm that the state’s established requirements to invoke a trial court’s jurisdiction were properly raised before them, only to remain unacknowledged by either court, and never applied to their decisions.

<sup>12</sup> By decisions of its highest court, under Florida law, a trial court’s jurisdiction remains at rest until “proper pleadings” are

determine that common law issue by the unfounded determination (App. 20, ¶ 2) it applied to its decision that the state court's designation of the subject foreclosure case as a type normally heard by the court, served to invoke its jurisdiction. The Circuit Court then affirmed in its order (App. 1) denying Murphy's appeal and by its subsequent denial (App. 24) of his petition for panel rehearing, the District Court's findings and its decision dismissing Murphy's § 1983 suit with prejudice pursuant to the application of their false assumptions on Florida's common law, made possible by their disregard of this Court's decision in *Erie Railroad Co. v. Tompkins*.

**B. In its Decision, the Circuit Court Relied on the Appellee/Respondent's Findings in the State Trial Court Case She Presided Over to Determine the Existence of the Court's Jurisdiction Over the Case, After Petitioner Had Properly Raised Before the Circuit Court, Florida Supreme Court Decisions That Unanimously**

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filed and service of "process" is achieved. *See, e.g., Lovett v. Lovett*, 93 Fla. 611, 112 So. 768, 775-76 (Fla: Supreme Court 1927) "If a court enters an order prior to the filing of proper pleadings, the court is said to lack jurisdiction . . . The jurisdiction and power of a court remain at rest until called into action by some suitor; it cannot, by its own action, institute a proceeding *sua sponte*. The action of a court must be called into exercise by pleading and process, prescribed or recognized by law[.]" *See also Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 – (Fla: Supreme Court 2007) We take this opportunity to remind civil litigants that "[a] complaint is . . . essential to initiate an action. . . . [I]ts purpose is to invoke the subject matter jurisdiction of the court and to give notice of the claim."

**Defined Them as False.** The Circuit Court failed to apply the opinions of the state's highest court to determine the existence of the trial court's subject matter jurisdiction, instead applying trial court rulings made by Stacy during her tenure as presiding judge. It is evidenced in the state court record that the Plaintiff, JPMC, failed by law to institute the foreclosure suit by filing what the Florida Supreme Court defines as a "sham and frivolous" pleading<sup>13</sup> that falsely claimed Fannie Mae owned the "note" and had authorized them to foreclose, thus failing to comply with the state's mandatory requirements that "notice" be given and "proper pleadings" be filed to institute a civil suit and to invoke the court's jurisdiction. Adding that the court's record also evidences violations of Murphy's 14th Amendment right to due process that would have rendered it without jurisdiction had it been invoked, no legal justification was ever presented to the District or Circuit Court that would allow Stacy's findings for the state court's jurisdiction, or for the Circuit Court's reliance on them.

Murphy raised to both federal courts that any reliance on Stacy's finding affirming the existence of the court's subject matter jurisdiction in the foreclosure case, that stands contrary to every relevant decision of the Florida Supreme Court pursuant to the Plaintiff's recorded failure to invoke the court's subject matter

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<sup>13</sup> See, e.g., *Meadows v. Edwards*, 82 So. 2d 733 (1955 Supreme Court of Florida. Special Division A.), "Sham and Frivolous Pleadings. A sham pleading is defined as one that while in good form is false in fact, . . .".

jurisdiction at inception and the court's subsequent denial of due process, would be unfounded and contrary to the proper administration of justice, yet after being provided those applicable and governing decisions, the federal courts proceeded to rely on Stacy's false claim for their determinations.

**C. Left Unchallenged, the Legal Precedent Inferred by the 11th Circuit's Findings and Decision Threaten to Diminish the Effects of This Court's Opinion in *Erie Railroad v. Tompkins*,** by providing possible grounds<sup>14</sup> for federal courts to again assume the authority and discretion to disregard state law when determining issues of common law in cases before them and thus "invade" on the right this Court found in *Erie* to be "reserved by the constitution for the several states"<sup>15</sup>, to determine the common law and legal procedures to be applied within their borders, and by allowing those courts in their decisions, to deny the people, the benefits and protections their state's laws and its established legal procedures and decisions are intended to provide.

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<sup>14</sup> Left unchallenged, the 11th Circuit's decision when assumed to be founded on the facts in evidence in the appeal, can then be cited as grounds for federal courts to disregard state law relevant to the action before them.

<sup>15</sup> See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) "In disapproving the doctrine of *Swift v. Tyson*, the Court does not hold unconstitutional § 34 of the Federal Judiciary Act of 1789 or any other Act of Congress. It merely declares that, by applying the doctrine of that case, rights which are reserved by the Constitution to the several States have been invaded." P. 304 U.S. 79.

**II. Unchallenged, the 11th Circuit’s Decision Serves to Contradict Other Significant Precedents of This Court, and to Encourage Unjust Decisions Similar to the Judgment Presently in Question.**

The Circuit Court’s affirmation of the District Court’s finding for absolute immunity by its failure to acknowledge or consider after being properly raised, the state court’s recorded denials of Murphy’s right to due process including its denial of any opportunity for Murphy to be heard in the state court action before issuance of the summary judgment against him, directly contradicts precedent of This Honorable Court and the Florida Supreme Court by its determinations that the state trial court’s denial of a party’s 14th Amendment right to an “opportunity to be heard”, even when as in this case the denial is evidenced to be intentional, no longer rises to a level where courts state or federal consider it a violation of due process, and that the denial of that right carries no detrimental effect for the court or its judge’s authority or jurisdiction in said case, or to the validity of a resulting judgment, providing grounds for similar unjust actions and decisions by other courts.

**A. The U.S. District and Circuit Courts Failed to Consider the Recorded Denials of Murphy’s Right to be Heard in the State Court Action Before it Issued the Summary Judgment Against Him.** Fla. R. Civ. P. 1.510(c) provides for “notice” and a

“hearing” before issuance of a summary judgment<sup>16</sup>, and the previous rulings of both This Honorable Court and the State of Florida’s higher courts have well established the “opportunity to be heard” to be “a fundamental requirement of due process”<sup>17</sup>. Those courts have also determined the denial of a party’s due process right to be heard as was denied Murphy by the state court, to be fatal to a court’s subject matter jurisdiction<sup>18</sup> and the validity of its subsequent judgments<sup>19</sup>.

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<sup>16</sup> See, e.g., *Kozich v. Hartford Ins. Co.*, 609 So. 2d 147 – Fla: Dist. Court of Appeals (4th Dist. 1992) “Rule 1.510(c) provides for a hearing. . . . The rule does not provide the trial court with discretion to decide whether a hearing is required. . . . An order granting summary judgment on liability determines a party’s right to the relief requested and to deny either party a hearing must be construed as a denial of due process.”

<sup>17</sup> See, e.g., *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) “A fundamental requirement of due process is the opportunity to be heard.” See also, *Grannis v. Ordean*, 234 U.S. 385, 394. “It is an opportunity which must be granted at a meaningful time and in a meaningful manner.”; see also *Schuman v. Int’l Consumer Corp.*, 50 So. 3d 75, 76-77 (Fla. 4th DCA 2010) “. . . due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure before judgment is rendered.”

<sup>18</sup> See, e.g., *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938) “Subject Matter Jurisdiction is lost after any “Violation of due process””.

<sup>19</sup> In *State ex rel. Fulton Bag & Cotton Mills v. Burnside*, 153 Fla. 599, 602 (Fla. 1943), the [Supreme] court followed Malone, holding where it appears that a court is legally organized and has jurisdiction of the subject matter and the adverse parties are given an opportunity to be heard as required by law, errors or irregularities, or even wrong doing in the proceedings, short of an illegal deprivation of an opportunity to be heard, will not render the judgment void.

**B. In Both the 11th U.S. Circuit Court's Twelve (12) Page Decision and in its Order Denying Murphy's Petition for Panel Rehearing, it Failed to Acknowledge or Consider Murphy's Primary Claim**, that being the evidenced denials of due process including the documented denial of Murphy's "right to be heard" before issuance of the summary judgment against him, or to acknowledge the fatal effect those denials of due process had on the state court's jurisdiction and Stacy's entitlement to absolute immunity<sup>20</sup>, and to the District Court's justification for its decision, after those claims were properly raised and accompanied by *prima facie* evidence in his appellate brief, and reconfirmed in his petition for rehearing in which he presented those claimed denials of due process as the predominant grounds for his appeal.

**III. The Pattern of Civil Rights Violations, and the Apparent Disregard of U.S. Supreme Court Precedent by Lower Courts Evidenced in This Case, May Warrant Scrutiny**

The subject state and federal courts' apparent defiance of This Honorable Court's decisions and the number of civil rights violations on record against them, would seem to warrant extraordinary corrective measures. The U.S. District Court and the 11th U.S.

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<sup>20</sup> See, e.g., *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1871) "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known, no excuse is permitted."

Circuit Court, after failing to apply in reaching their decisions, the governing laws of the state, and failing to consider the state court's obvious violations of Murphy's right to due process raised before them, then declined to consider Murphy's properly raised claim of a "Conspiracy Against Rights", and Stacy's complicity in it that stands fully documented by *prima facie* evidence in the state court record that Murphy referenced in its entirety in both his U.S. District Court complaint, and in his appeal brief.

**A. The 11th Circuit Court Declined to Consider Murphy's Claim of a Conspiracy Against his Rights by Falsely Claiming "Murphy Failed to Raise This Argument Before the District Court"** (App. 12, ¶ 2), despite him having specifically raised it by Judicial Notice upon its recognition, which was docketed as Entry #24 in the District Court record, a copy of which was furnished to the Circuit Court as Exhibit #3 to his appeal brief, with that failure to consider such an important issue after it being properly raised before them, demonstrating an apparent lack of effort by the Circuit Court's panelists to perform a proper review of Murphy's appeal.

**B. The Recorded Actions of the State and Federal Courts Raise Concerns as to Their Abilities to Properly Administer Justice.** The people must ask in the interest of justice, how a U.S. Circuit Court could affirm (App. 1) a District Court's decision (App. 14) to dismiss a § 1983 suit with prejudice, and then subsequently deny (App. 24) a petition for panel rehearing, all based on the District Court's decision

clearly tainted by the disregard of its duty under this Court's *Erie* decision to apply state law, and that evidences the District Court not just overlooked but completely ignored claims of such importance to the proper administration of justice as the denial of the petitioner's 14th Amendment right to be heard, after those facts were properly raised and fully evidenced before the Circuit Court in both Murphy's appeal brief and in his petition for rehearing, thus bringing in question, that court's ability to provide fair and equal justice to the over forty (40) million Americans that must with rare exception, rely on the 11th U.S. Circuit Court as their last real bastion of hope for justice?

**C. Jurists in the State and Federal Courts Chose to Unjustly Withhold Constitutional Protections.** Florida's Circuit Court for the 18th Judicial Circuit, the U.S. District Court for the Middle District of Florida, Orlando Division, and the 11th U.S. Circuit Court of Appeals, by the collective actions of almost a dozen jurists, have chosen to withhold constitutional protections from Murphy that those courts and their judges are sworn and duty bound to provide. The courts' records confirm the failure of any judge that acted in the subject state and federal cases to address or acknowledge in any manner, what is now a decade of civil rights violations and illegal and unethical actions taken against Murphy by the jurists of the state court including Stacy, that resulted in the unlawful seizure and sale of his homesteaded property, after those facts were properly raised before each subsequent

judge including the U.S. District Court judge, and the panelists of the 11th U.S. Circuit Court.

The jurists' unanimous failure to notice or address the illegal and/or unethical actions of their colleagues evidences an aversion by the judges of those courts to perform their sworn duty to address unethical and/or illegal actions of fellow legal professionals, judges and attorneys included<sup>21</sup>, to the point as in this case, they willfully violate the constitution and the civil rights of the people, commit and/or allow to be committed, criminal acts against both the state and the U.S. Constitution, and conspire with one another against the civil rights of an innocent party to protect themselves from accountability to the law, and to parties injured by their illegal and/or unethical actions.

**D. The District and Circuit Courts' Finding for Absolute Judicial Immunity Were Unfounded and Prejudicial.** It was properly raised and evidenced to both federal courts that Stacy acted without jurisdiction to enforce the state court's summary

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<sup>21</sup> Starting over a decade ago with the first state court judge's denials of Murphy's 14th Amendment rights including his right to be heard, and continuing through the U.S. District and 11th U.S. Circuit Courts' open disregard of the doctrine of *Erie Railroad Co. v. Tompkins* allowing for their findings for absolute immunity and their decisions to deny Murphy his right to redress through his 42 U.S.C. § 1983 suit, the courts and their jurists have been bound by ethics to notice and properly address the illegal and/or unethical actions of their fellow legal professionals, with the records of those courts evidencing each consecutive presiding jurist's failure to acknowledge or address the questioned actions of their predecessors after being properly raised before them.

judgment against Murphy that she had been judicially noticed was issued without him being afforded any “opportunity to be heard” and was therefore “void”<sup>22</sup>, with her issuance of the writ of possession on 7-10-2017 completing the court’s actions depriving Murphy of his property while denying him due process, and leaving her vulnerable to a § 1983 suit<sup>23</sup>. Stacy was fully noticed of her court’s lack of jurisdiction that was obvious by review of the case docket alone which to this day, confirms by the absence of any “notice” or “hearing” prior to the summary judgment’s issuance, the denial of Murphy’s right to be heard. Stacy then, after again being noticed of her lack of jurisdiction in additional defense filings, continued to preside over the case, enforce the void judgment against Murphy, and to deny him relief against the court’s unethical, illegal, and unconstitutional actions, evidencing her actions were taken under “color of law” and in the known “absence of all jurisdiction”, eliminating by this Court’s previous

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<sup>22</sup> See, e.g., *Elliott v. Lessee of Peirsol*, 26 U.S. 328 – Supreme Court (1828), Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is “without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.”

<sup>23</sup> See, e.g., *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331-Supreme Court (1978), “The necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him.”

determinations, any entitlement to absolute immunity<sup>24</sup>, or to qualified immunity as well.

**E. The Florida Attorney General’s Appearance in Representation of Stacy was Prejudicial and Presented a “Conflict of Interest”.** The Florida Attorney General’s (also “Moody”) representation of Stacy denied Murphy valuable protections she was duty bound to provide him<sup>25</sup>, was openly prejudicial to his § 1983 suit and his appeal by its false inference that Florida law and legal precedent supported Stacy’s claim that subject matter jurisdiction existed in the state court case during her tenure as presiding judge, and presented a “Conflict of Interest”<sup>26</sup> in both his

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<sup>24</sup> See *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed.2d 326 (1981), “When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost.”

<sup>25</sup> The Florida Attorney General is duty bound to represent the interests of every state citizen including Murphy, against violations of their civil rights such as those evidenced to have been committed by Stacy. The Florida Attorney General’s official website defines the “Role and Function of the Attorney General” stating in pertinent part, “Also housed within the Attorney General’s Office is the Office of Civil Rights, which investigates and takes legal action against violations of Floridians’ civil rights.”

<sup>26</sup> See: American Bar Association Rule 1.7 Conflict of Interest: Current Clients (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; See also: Rule 1.7(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (3) the representation does not involve the assertion of a claim by one client against another

§ 1983 suit and the subject appeal pursuant to her representation of one client's interests against those of a concurrent client in the same action.

**F. The Florida Attorney General's Representation of Stacy Denied Murphy Civil Rights Protections Her Office is Duty Bound to Provide.**

Having been made fully aware by Murphy's District Court complaint and his appeal brief that according to legal precedent confirmed by multiple Florida Supreme Court decisions, the state court's subject matter jurisdiction had never been invoked in Murphy's foreclosure case, that the Florida and U.S. Supreme Courts' determinations that the denial of a party's "opportunity to be heard" renders a court without subject matter jurisdiction and its judgments "Void", and that Murphy was denied that right in the state court case by Stacy among others, Moody, in violation of her prior commitment as State Attorney General to represent Murphy's interests, chose to defend Stacy who she was duty bound to take legal action against, evidencing Moody's apparent complicity in the conspiracy to deny Murphy his protected rights that the state court record confirms its jurists began a decade earlier<sup>27</sup>.

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client represented by the lawyer in the same litigation or other proceeding before a tribunal;

<sup>27</sup> See 18 U.S.C. § 241 Conspiracy Against Rights, If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or . . .

The people deserve courts that insure their rights, not deny them. Protecting the original presiding state court judge from accountability for actions he had taken that violated the U.S. Constitution and Murphy's 14th Amendment rights provided no justification for the subsequent courts', their jurists', and the Florida Attorney General to further deny his constitutional rights, more so when it was raised to all, that the original state court judge they are protecting is shown beyond doubt, to have intentionally withheld any opportunity to be heard from Murphy while he issued the summary judgment against him.

Court records evidence that the subject state and federal court judges, and now the Office of the Florida Attorney General, have acted in concession to take every advantage required, legal or otherwise, to insure the illegal and unethical actions of those judges are not brought to bear in their courts and that Murphy is denied his right to seek redress for damages he continues to suffer from their violations of his 5th and 14th Amendment rights, leaving action by This Honorable Court as Murphy's last and best hope for justice.

The Supreme Court should therefore grant this petition for writ of certiorari in order to reconfirm to the lower courts, the doctrine to be applied when deciding issues of common law, to again establish with them, the requisite and foundational requirements of due process, and to protect the people from future

unjust decisions and court actions the 11th Circuit Court's findings could encourage.

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### **CONCLUSION**

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

TIMOTHY P. MURPHY  
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November 25, 2020