

No. 21-1115

Supreme Court, U.S.

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

IN RE WANDA BOWLING,

Petitioner,

On Petition for a Writ of Mandamus to the
United States Court of Appeals for the Fifth
Circuit

PETITION FOR A WRIT OF MANDAMUS

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QUESTIONS PRESENTED

Petitioner appealed to the Fifth Circuit Appellate Court of Appeals over abuse of discretion of three(3) distinct issues tightly relating to each other. The Fifth Circuit issued an opinion which omitted addressing the first and third issues. Petitioner motioned for the court to address those issues because if there were findings of abuse of discretion, the second issue automatically would be an abuse of discretion, contradictory to their opinion. The Fifth Circuit Court of Appeals denied the second request to adjudicate the issues on October 12th, 2021. This Petition originally arrived at the Supreme Court on January 11th, 2021. The clerk sent it back to petitioner twice.

This petition is asking the Supreme Court to mandate the Fifth Circuit Court of Appeals to execute their duties and adjudicate the appealed issues.

1. Is the Fifth Circuit Court of Appeal's deliberate refusal to adjudicate appealed issues, willfully denying a second request, a failure to execute its duties or abuse of discretion?

PARTIES TO THE PROCEEDINGS

1. US Magistrate Judge Christine Nowak: US Eastern District Court Magistrate Judge for above case.
2. US Judge Amos Mazzant: US Easter District Court Judge for above case
3. Greg Willis, Defendant(one of the defendants in case 4:18CV-00610 who filed a motion deeming Relator Vexatious Litigant)
4. Robert Davis, Attorney for Greg Willis

TABLE OF CONTENTS

PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS.....	2
RELIEF SOUGHT.....	6
LEGAL AUTHORITY:WRIT OF MANDAMUS.....	6
Three Part Test	
First Prong.....	7
Second Prong.....	8
Third Prong and	
Reasons to Grant Writ.....	9
CONCLUSION AND PRAYER.....	16
APPENDICES	
Appendix A - Order Vexatious Litigant	1a-6a
Eastern Dist. Court of Texas 4:18-cv-00610	
Appendix B – Interlocutory Appeal(Brief).....	7a-50a
Fifth Circuit COA 19-40914	
Appendix C - 5 th Circuit Opinion.....	51a-53a
Fifth Circuit COA 19-40914	
Appendix D - Motion for Clarification.....	54a-57a
Fifth Circuit COA 19-40914	
Appendix E – Order DENIED, no opinion	58a
Fifth Circuit COA 19-40914	

TABLE OF AUTHORITIES

Cases

<i>BE & K Const. Co. v. NLRB</i> , 536 U.S. 516, 524–25 (2002)	14
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 556 (2007)	13
<i>Cheney v. U.S. Dist. Ct.</i> , 542 U.S. 367, 380 (2004).....	6
<i>Christopher v. Harbury</i> , 536 U.S. 403, 415 n. 12 (2002).....	14
<i>De Long</i> , 912 F.2d at 1148 (quoting <i>In re Powell</i> , 851 F.2d 427, 431 (D.C. Cir. 1988) (per curiam)).....	12
<i>Delew v. Wagner</i> , 143 F.3d 1219, 1222 (9th Cir.1998).....	14
<i>Fink v. Gomez</i> , 239 F.3d 989, 991, 993-94 (9 th Cir. 1995).....	12
<i>In re Air Crash Disaster Near New Orleans, La.</i> , 821 F.2d 1147, 1166 (5th Cir.1987) (en banc).....	9
<i>In re Al-Nashiri</i> , 791 F.3d 71,78 (D.C. Cir. 2015)	7
<i>In re Volkswagen of Am., Incl, (Volkswagen II)</i> , 545 F. 3d 304-311.....	10

<i>Irving Trust Co. v. Marine Midland Trust Co. of NY (D. C. N. Y.)</i> 47 F.(2d) 907, 908.....	11
<i>La Buy v. Howes Leather Co.</i> , 352 U.S. 249, 256-258, (1957).....	10
<i>Peke Res., Inc. v. Fifth Judicial Dist. Court In & For Cty. of Esmeralda</i> , 944 P.2d 843, 848 (Nev. 1997).....	6
<i>Ringgold-Lockhart v. County of Los Angeles</i> , No. 11-57231 (9 th Cir. 2014).....	13
<i>Rose v. Hartford Underwriters Ins. Co.</i> , 203 F.3d 417, 420 (6th Cir.2000).....	9
<i>Schlagenhauf v. Holder</i> , 379 U.S. 104, 110 (1964).....	10

Statutes

28 US Code § 1651 – Writs.....	1
28 U.S.C. § 1254(1).....	1
Texas CPRC 11.054.....	11
Texas CPRC 11.101(c).....	16

JURISDICTION

The U.S. Supreme Court's jurisdiction is invoked under 28 US Code § 1651 – Writs. The Fifth Circuit's Order denying a Motion for Clarification was dated 10/12/2021. Alternatively, the U.S. Supreme Court has jurisdiction under 28 U.S.C. § 1254(1) to review a decision by a U.S. Court of Appeals.

STATEMENT OF THE CASE

This request is to ask the US Supreme Court to mandate the Fifth Circuit Court to execute its duties. Bowling filed an interlocutory appeal and called out 3 distinct issues. After waiting 17 months for disposition, the Fifth Circuit issued an opinion avoiding 2 of 3 issues. As a result, Bowling is being denied access to the courts. The skirting of the main issue diffuses the defenses of the other two issues(a clear abuse of discretion).

The district court issued an order that insinuated, inferred, and implied Bowling was a Vexatious Litigant, but there was no direct language to that effect. The order stood deficient of the alignment of law, facts, and justification.

Bowling filed an interlocutory appeal to the Fifth Circuit clearly calling out the three issues, #1 deemed a Vexatious Litigant, #2 Prefiling Injunction, #3 unlawful use of the order retroactively. However, the Fifth Circuit skirted the main issue as well and only addressed the second issue #2 Prefiling injunction completely omitting disposition of the other two abuse of discretions. If Bowling doesn't remotely fall into vexatiousness, the prefiling

injunction is a violation of Bowling's constitutional right of access to the court.

Alternatively, this court has the power to spare more court resources and simply issue an opinion since both the lower courts want to evade writing up any real language or justification toward the declaration of vexatious litigant.

STATEMENT OF FACTS

This case arises from a state court appeal in Texas implicating the unlawful corruption involving former spouse and several state actors. As time went forward in the state appeal, state actors involved themselves in assisting the wealthy republicans from criminal charges and proceeded to collusively violate Bowling's rights to liberty and property. The more Bowling escalated the court abominations to higher courts, the more corrupt behavior ensued. To conceal the abuses in the Texas Appellate court, eighty-seven megabytes (87mgbts) of trial clerk records disappeared from the Appellate court records. The transfer of records cost Bowling \$1,100.00. The tampering of records was discovered after a baseless fictitious opinion was issued. The disappearing clerk records incriminated the state actors in their corruption and was the basis for Bowling's appeal. After requesting the correction of records(not discretionary) in the Appellate court for a Rehearing, an Appellate state actor denied correcting the records and thus thwarted Bowling's entire appeal at the state level, further violating Bowling's right of appeal. Bowling made it known she possessed the original master indexed records purchased from the district trial court clerk. In response, Bowling then

was the recipient of active threats, violence, vandalism, and attempted wrongful incarceration to prevent Bowling from escalating further. Bowling was pummeled with false accusations in hordes of motions which resulted in exhausting Bowling's resources for protection. On multiple occasions, and without a court order, a warrant, or a cause, the same two Plano Texas policeman (under defendant Willis's authority) walked into Bowling's home, and threatened her with jail if she didn't leave. Bowling told them to "get out of her house", and they refused threatening her further. This is all on live available video.

Many more events occurred that precipitated Bowling to file a federal lawsuit over the ongoing violations of her constitutional rights to liberty and property. Defendants included two judges, the appellate clerk of the court, two court appointed receivers, District Attorney Greg Willis, former spouse/estate for embezzlement/forgery, and an attorney who pummeled Bowling with costly vicious libel frivolously litigating to threaten Bowling. After filing a federal lawsuit, the state actors continued to threaten Bowling which precipitated Bowling's attempt to remove the state court case (now with Judge John Roach) for the ongoing federal violations with the same Defendants. Bowling requested the federal court consolidate it to the current federal case.

The US Eastern District Magistrate Judge Christine Nowak wrongly denied the removal without factual and legal justification. Additionally, Christine Nowak should have recused herself as she was appointed to her federal judge seat by defendant Greg Willis's wife, Jill Willis, who was sat on the

small commission to appoint federal judges. Further, Judge Christine Nowak's spouse, Judge Tom Nowak, is an associate to several defendants(McCraw, Willis, and Roach) serving in the same court and serves on other commissions together. Judge Christine Nowak's close ties to the Defendants should have warranted her to recuse herself. Bowling softly requested this in several written objections to the court.

After Nowak dismissed the removal from the state court Bowling filed a Complaint against the current state court judge, John Roach, for the same ongoing violations requesting he be added to the main federal case. Nowak, again, simply declined to consolidate.

Over the federal case, Nowak proceeded to write over 265 pages of reports and recommendations gravely mischaracterizing the record so significantly that it appears willful and in collusion with the state actors for which she has close ties. It was Nowak's report and recommendation that the Senior Judge Mazzant carelessly "adopted" which inferred Bowling vexatious. Mazzant simply re-iterated the written mischaracterizations from Nowak's report inferring Bowling Vexatious without justification and imposed a prefiling injunction(9/27/2019). The district's Report and Order are both deficient of direct language and legal authority for the vexatious litigant order.

Bowling responded by filing an interlocutory appeal(10/28/2019) to the U.S. Fifth Circuit Court of Appeals for abuse of discretion in issuing the Vexatious Litigant Order. There were three(3) issues identified in Appellant's Brief(See Appendix B p. 9a).

- 1) Abuse of discretion to deem Bowling a Vexatious Litigant designation of Bowling.
- 2) Abuse of discretion in issuing a prefilling injunction against Bowling.
- 3) Abuse of discretion of the Eastern District court using this Vexatious Litigant order retroactively.

While waiting for the Fifth Circuit to issue its findings on the above issues, the Eastern District senior court judge(Judge Mazzant) simply adopted all of Nowak's misleading reports and recommendations, and just rewrote her mischaracterizations in his orders, and dismissed Bowling's case altogether. Bowling appealed her case to the Fifth Circuit and the Briefs were completed March 2021. The appeal is still pending(20-40642).

In the meantime, the Fifth Circuit Court issued an opinion on the interlocutory appeal (Mandate 8/2021). However, the court completely omitted adjudicating the main issue #1 deeming Bowling Vexatious and the #3 abuse of using the order retroactively. Only #2, the prefilling injunction, was disposed. If #1 is not justified, then #2, prefilling injunction, is questionable, and #3 is simply an abuse regardless.

Bowling filed a Motion for Clarification, 9/23/2021, compelling the Fifth Circuit court to answer the appeal's issues, the abuse of discretion to issue #1 Vexatious Litigant and #3 the retroactive use of such order.

On 10/12/2021, the Fifth Circuit DENIED Bowling's request without an opinion.

RELIEF SOUGHT

Bowling is requesting a Writ of Mandamus to instruct the Fifth Circuit Court of Appeals to adjudicate Bowlings appeal specifically the main issue, abuse of discretion of being designated as a Vexatious Litigant, Issue #1. Alternatively, this court has the power to adjudicate the issues and declare in writing the findings of which both lower courts are failing to directly address.

LEGAL AUTHORITY FOR WRIT OF MANDAMUS

The Supreme Court has explained that mandamus is reserved for "exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion. *See Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004).

Mandamus grants a higher court supervisory authority to command an inferior court, tribunal, public official, board, corporation, or person to perform a particular duty required by law. *See Peke Res., Inc. v. Fifth Judicial Dist. Court In & For Cty. of Esmeralda*, 944 P.2d 843, 848 (Nev. 1997) ("A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station.").

This is such the case where Bowling is requesting the US Supreme Court to mandate the Fifth Circuit court to perform its duties by adjudicating all 3 issues in Bowling's interlocutory appeal.

Consistent with the extraordinary nature of the writ, the Supreme Court imposed a demanding three-part test for mandamus in the federal system: **(1)** "the party seeking issuance of the writ [must]

have no other adequate means to attain the relief he desires-a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process"; (2) "the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable"; and (3) "even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." In setting out this exacting standard, the Supreme Court noted that "[t]hese hurdles, however demanding, are not insuperable."
In re Al-Nashiri, 791 F.3d 71,78 (D.C. Cir. 2015) (quoting *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 380-81 (2004)

APPLYING THE THREE PART TEST

PART 1):

"the party seeking issuance of the writ must have no other adequate means to attain the relief he desires"

Bowling has no adequate remedy by appeal. The interlocutory appeal was the remedy, but the court errored omitting the adjudication of two issues. The US Fifth Circuit Court simply did not execute their duties.

A Motion for a Rehearing isn't a remedy. If there is no substance declared in writing in an order for Issues #1 and #3, there is no information or foundation to Rehear.

There is no course of action existing for a Writ of Certiorari for the same reasons as a rehearing. There is no language to contest. To directly request

a review by Certiorari appears overly burdensome especially since the Fifth Circuit hasn't even completed their duties giving way to a Certiorari.

Bowling did exhaust all remedies by prompting the Fifth Circuit with a Motion for Clarification (See Appendix D p. 57a) compelling the court to answer issue #1, only to be DENIED with no opinion.(See App E) It appears the Fifth Circuit Court is actively refusing to address the main issue on appeal(Vexatious Litigant).

The only remedy available to obtain answers to an appeal is a writ of mandamus instructing the Fifth Circuit Court to perform its duties(answer the appeal), or alternatively, the US Supreme Court is empowered to issue judgment directly ending the circus of expensive lower court omittances.

PART 2):

"the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable";

The Fifth Circuit made an interesting statement in their opinion where it "agreed" the District Court deemed Bowling was a Vexatious Litigant even though there is no direct language in the district court's order. (Appendix C p. 52a):

"Willis moved for sanctions against Bowling and a declaration she was a vexatious litigant under 28 U.S.C. § 1651(a). The court agreed,"

and

Proceeding pro se, Bowling contests the injunction through an interlocutory appeal,"

and

“A pre-filing injunction is reviewed for abuse of discretion”

Indisputable clear error: The Fifth Circuit wrongly called out that Bowling was only appealing the prefilng injunction. This is not factual. Bowling identified 3 distinct issues for abuse of discretion on appeal(See Appendix B p. 9a)

The 5th Circuit’s Order only addressed the imposition of a prefilng order out of context and omits any language tying Bowling’s facts to the justification of a vexatious litigant or a prefilng injunction. (Appendix C p. 52a)

In previous cases, the Fifth Circuit agreed that “It is an abuse of discretion for a district court to grant or deny a motion to dismiss without written or oral explanation, See *In re Air Crash Disaster Near New Orleans, La.*, 821 F.2d 1147, 1166 (5th Cir.1987) (en banc) or where,” The district court provided no written or oral explanation for its decision. *Id. at 1166–67; cf. Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir.2000) (“Because the district court [decided a] motion without explanation, it has clearly abused its discretion in this case.”).

By the Fifth Circuit’s own historical opinions, it’s an abuse of discretion NOT to address an issue directly with explanation(direct language) in writing.

PART 3):

“even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.”

and

REASONS TO GRANT A WRIT OF MANDAMUS

a) Both lower courts skirted the Vexatious Litigant issue by omissions.

(See Appendix A and C). However, there is a prefiling injunction against Bowling.

In *La Buy v. Howes Leather Co* the lower courts' *refusal to perform its true adjudicator role & duty*, and instead, corrupt the judicial process, constitutes an exceptional circumstance. Here, the action(s) of lower courts nullified its purpose and reasons for its existence. See *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256-258, (1957), The deficiencies justify the requirement for supervisory mandamus to correct the established bad habits of the lower courts, See *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964) (wherein the Supreme Court first explicitly recognized advisory mandamus).

b) Magistrate Judge Christine Nowak from the Eastern District Court should have recused herself due to the conflict of interest to Defendant Greg Willis's wife who appointed Christine Nowak to her federal seat and the conflict of interest of her spouse's relationship(Tom Nowak) who sits with the other defendants(McCraw) in the same court. (Most all appointed by Governor Greg Abbott as Republican Judges including Tom Nowak).

To meet the threshold of a mandamus a district court cannot give "undue weight" to one litigant while misapprehending law and facts. *In re Volkswagen of Am., Incl, (Volkswagen II)*, 545 F. 3d 304-311.

Bowling filed a Judicial Conduct or Disability complaint over Judge Christine Nowak, but the Fifth Circuit Court abated addressing the complaint.

c) No justification deeming Bowling a Vexatious Litigant was identified in either lower court's order. Federal courts look to state law to determine if a litigant meets the threshold of vexatious litigants. In this case Texas CPRC Title Ch. 11.054 states(summarized): there must exist at least five(5) lawsuits filed pro se by litigant, some sort of res judicata exists, or litigant was deemed vexatious elsewhere with similar facts. None of the above exists. Both lower court(s) never mentioned, nor tied Texas law, to any facts that deem Bowling vexatious. Multiplicity of lawsuits filed pro se does not exist in Texas or federal jurisdiction. There is one state court case litigated mainly by Bowling's attorneys and appealed, one federal case by Bowling pro se, and two failed attempts to add a state court Judge John Roach to the one Federal case for the ongoing violations. In Nowak's Report and Recommendation she mischaracterized the cases as 3 independent federal lawsuits. That is willfully untrue. Nowak wrongly dismissed both attempts to add Judge Roach and created the false appearance of "multiplicity" by dividing it into "*3 separate cases in the federal court*"(See Appendix A p 4a). This was costly for everyone. *Irving Trust Co. v. Marine Midland Trust Co. of New York (D. C. N. Y.)* 47 F.(2d) 907, 908, states that "multiplicity of suits involving issues which can be conveniently tried together" is something that equity holds in abhorrence.

d) No court identified a frivolous or harassing practice by the Bowling. “[B]efore a district court issues a pre-filing injunction it is incumbent on the court to make ‘ substantive findings as to the frivolous or harassing nature of the litigant’s actions.’” *De Long*, 912 F.2d at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir., 1988) (per curiam)).

While Nowak mentioned the law, she couldn’t tie it to facts of the Bowling. As a matter of fact, any filings by Bowling were in response or reply to other defendant’s motions (except Bowling’s filing of a preliminary injunction to stop the threats of ongoing violations in the state court of John Roach, but denied by Nowak). There is no such frivolous motions practice on the Bowling’s part.

e) The district court did not identify bad faith in Bowling’s complaint and neither did defendants as most of them did not deny the facts in Bowling’s complaint, but simply invoked various immunities. In order to sanction a litigant under the court’s inherent powers, the court must make a specific finding of “bad faith or conduct tantamount to bad faith” *Fink v. Gomez*, 239 F.3d 989, 991, 993-94 (9th Cir. 1995)

f) Nowak determined there was no merit in Bowling’s case and used her premature assessment to recommend a vexatious litigant order be granted.

Courts cannot properly say whether a suit is “meritorious” from pleadings alone. A lawsuit need not be meritorious to proceed past the motion-to-dismiss stage; to the contrary, “a well-pleaded complaint may proceed even if it strikes a savvy

judge that actual proof of those facts is improbable, and that recovery is very remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556(2007) (internal quotation marks omitted). And even as to the propriety of a Rule 12(b)(6) dismissal, whether a case merits dismissal for failure to state a claim is often determinable only after briefing and argument; it is often not a decision accurately to be made at the pre-filing stage. *Ringgold-Lockhart v. County of Los Angeles*, No. 11-57231 (9th Cir. 2014)

Nowak’s reports and recommendations precipitated the dismissal of Bowling’s case by misarticulating facts and omitting addressing Bowling’s arguments to meet the meritless element. Nowak went so far as to wrongly deny Bowling’s well plead 1st Amended Complaint. The current original case is still pending on appeal in the Fifth Circuit.

Merit cannot be a factor in a prefilings injunction or being deemed vexatious unless the multiple Defendants dispute the violations. Nowak cannot determine facts without moving into discovery.

g) Neither court identified any res judicata or duplication on Bowling’s part for litigation. Nowak attempted to misarticulate such a concept by mentioning “Divorce” twenty(20) times in her Report and Recommendation as well as the Sr. Judge Mazzant did in his Order (mentioned 9 times). The ongoing violations in the state court which precipitated the federal court Complaint had nothing to do with a “Divorce” nor any issues previously litigated in the state case. Bowling’s divorce ended July 2016. The written facts are clear that Bowling was prevented from litigating the embezzled funds,

forgery, the fraud on the court, the DA's threats of wrongful incarceration demonstrating retaliation, the police trespass/threats, and the tampering (disappearance) of governmental records in the state court to prevent evidentiary prove of court corruption. The federal constitutional violations in Bowling's complaint are very different from any of the state violations attempted(but prevented).

h) Restricting access to the courts is a serious matter. “[T]he right of access to the courts is a fundamental right protected by the Constitution.” *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir.1998). The First Amendment “right of the people to petition the Government for a redress of grievances,” which secures the right to access the courts, has been termed “one of the most precious of the liberties safeguarded by the Bill of Rights.” *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 524–25 (2002) (internal quotation marks omitted, alteration in original); see also *Christopher v. Harbury*, 536 U.S. 403, 415 n. 12 (2002) (noting that the Supreme Court has located the court access right in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause).

i) DAMAGES from the inferred vexatious litigant order and the omissions in opinion keeping the Vexatious Litigant status alive:

i. The state actors, inclusive of Judge John Roach who refused to recuse himself, used the federal court's Vexatious Litigant order as a leg up to wrongly deem Bowling a Vexatious Litigant just in time to prevent her from

appealing Judge John Roach's distribution of the \$187,000.00(10K missing) of assets for which Bowling had significant separate property interest. Roach had taken the funds and held them for two years. (NOTE: Holding her assets conveniently prevented Bowling from retaining attorney protection.) Roach executed this distribution over the phone and not in an evidentiary hearing. These state actors continue to violate Bowling's constitutional rights to property and liberty, yet Bowling is permanently halted in a state and federal court from defending their continuing aggressions. Bowling was the defendant from 2016 to current. "Vexatious" applies to the Plaintiff.

ii. The misuse of these orders by the state actors have fostered ongoing violations and an open door for repetitive violations toward Bowling and other innocent litigants. This court's corrupt practice is negatively affecting children and usurping funds from working class people.

iii. Currently, because of the US Eastern District's Order, Bowling is on the State Registrar list as a Vexatious Litigant STATE-WIDE. This is pure libel. Bowling has been a defendant from these vexatious litigants since day one. These litigants pummeled Bowling with false allegations to prevent her from exposing unlawful violations. The libel is causing problems in Bowling's business and ability to earn a living.

iv. The overhead of the wrongful attachment of Vexatious Litigant has cost Federal courts resources and is now costing the Texas state appellate courts to review the wrongful denial of appeal to even review this wrongfully

issued order of deeming her vexatious. It is Texas law that provides for the appeal of a Vexatious Litigant Order without permission. *Texas CPRC 11.101(c) A litigant may appeal from a prefilng order entered under Subsection (a) designating the person a vexatious litigant.* The state actors continue to obstruct justice to conceal their abuses of discretion.

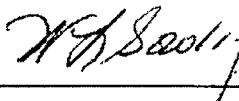
(NOTE: The state district judge, Emily Miskel who serves with Tom Nowak and Christine Nowak in several capacities, denied Bowling's notice of appeal of the vexatious litigant order.)

CONCLUSION AND PRAYER:

The Fifth Circuit Court clearly avoided answering a clearly defined issue on appeal.

Bowling prays this court will foster a trusted opinion from a court of integrity and mandate the Fifth Circuit court to execute their duties by answering Bowling's appeal. Alternatively, the US Supreme Court has the inherit power to make their own determinations on the issues, and if this court decided to do so, would REVERSE the damaging Order issued by the US Eastern District Court of Texas.

Respectfully submitted,



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