21-1137

No.

ORIGINAL

IN THE
Supreme Court of the United States

Supreme Court, U.S.
FILED
FEB 11 2022
OFFICE OF THE CLERK

Byron Wendell Phillips

Petitioner

v.

The Life Property Management Services, LLC, et al

Respondent(s)

On Petition for Writ of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Whether the courts below erred by excluding and/or failing to constitutionally dispute all essential elements of an argument(s).
2. Whether the petitioner abandoned a claim(s), and whether the courts below erred when dismissing claims against all defendants.
3. Whether there is abuse of personal jurisdiction.
4. Whether any category of fraud and/or corruption exists in this case and whether the court(s) below furthered a conspiracy.

Parties

1. 3321 Peppertree Circle Decatur LLC – Appellee/Respondent
2. Carter, Tonya – Appellee/Respondent
3. Conroy, James W. – Appellee/Respondent
4. DeKalb, County of – Appellee/Respondent
5. Harris, Derrick L. – Appellee/Respondent
6. Havre, Bill – Appellee/Respondent
7. Mann, Jeffrey L. – Appellee/Respondent
8. McMurray, Curtis – Appellee/Respondent
9. Morgan, DeKalb Sergeant – Appellee/Respondent
10. NORTHWEST REGISTERED AGENT, LLC. – Appellee/Respondent
11. Phillips, Byron Wendell – Appellant/Petitioner
12. QUICK DROP IMPOUNDING,TOWING & RECOVERY, INC. – Appellee/Respondent
13. REGISTERED AGENTS INC. – Appellee/Respondent
14. REGISTERED AGENTS INC – Appellee/Respondent
15. Registered Agents Inc – Appellee/Respondent
16. The Life Property Management Services, LLC – Appellee/Respondent
17. Thomas, Tenesha – Appellee/Respondent

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3. NDGA, [Doc 2], Case No.1:20-cv-00812-SDG, 3/24/2021
4. NDGA, [Doc 5], Case No.1:20-cv-00812-SDG, 3/24/2021

5. NDGA, [Doc 8], Case No.1:20-cv-00812-SDG, 3/24/2021
6. NDGA, [Doc 9], Case No.1:20-cv-00812-SDG, 3/24/2021
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8. NDGA, [Doc 12], Case No.1:20-cv-00812-SDG, 3/24/2021
9. NDGA, [Doc 13], Case No. 1:20-cv-00812-SDG, 3/24/2021
10. NDGA, [Doc 18], Case No. 1:20-cv-00812-SDG, 3/24/2021
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22. NDGA, [Doc 39], Case No. 1:20-cv-00812-SDG, 3/24/2021
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Other Authorities

Dictionary

Noah Webster's American Dictionary of the English Language, 47, 2. (Vol. II, 1828), PDF 14

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Holy Bible, King James Study Bible. Thomas Nelson, 1988; available at https://www.biblestudytools.com

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PETITION FOR WRIT OF CERTIORARI

Phillips petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

CITATION OF REPORTS

The Eleventh Circuit's opinion is unpublished. App. 1A-7A. The district court's opinion and order is unreported. App. 8A-33A.

BASIS FOR JURISDICTION

The Eleventh Circuit entered judgment on November 22, 2021. It had jurisdiction under 28 U.S.C. §1291. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. §1254(1). 28 U. S. C. §2403(b) may apply and notice has been served on Georgia Attorney General Christopher Carr. The Eleventh Circuit did not certify to the State Attorney General the fact that the constitutionality of a statute(s) was drawn into question.

CONSTITUTION PROVISIONS INVOLVED

Provisions of the Constitution involved are Articles IV, §1; VI, cl. 2, 3; Amendments I, IV, V, IX, XI, and XIV. §§1, 3. App. 34A-36A.

STATUTORY PROVISIONS & REGULATIONS INVOLVED

Statutory provisions and regulations involved are as follows: **(1)** 18 U. S. C. §31(a)(6), (10), **(2)** 28 U. S. C. §§453; 455(a), (b)(1); 1331; 1343(a)(1), (2), (4); 1652; 2072(b); 3002(10), **(3)** 42 U. S. C. §§1981, 1982, 1983,

1985(3); **(4)** 49 CFR §§390.5T; 523.2; 523.3(a); 523.4; 523.5, **(5)** 49 U.S.C. §§20133; 30101, SEC. 2502(a)(3); 32901(a)(3); §32908(a)(1). App. 37A-47A.

STATEMENT OF THE CASE

Background

Petitioner, Phillips, filed suit in the District Court under 42 U.S.C. §1983 on 2/21/2020 against respondents after his personal automobile was outright seized/stolen via conspiracy (§1985(3)) perpetrated by The Life and Quick Drop, thereby violating and restricting his personal rights included in life and liberty and his rights attached to said property. The sheriff and the county police refused to protect Phillips's rights and property—furthering the conspiracy. NDGA had jurisdiction under 28 U.S.C. §§1331, 1343(a)(1), (2), (4). App. 38A-39A.

Phillips amended the text of his complaint between 3/10 and 4/10/2020—before service. He filed his amended complaint and reissued all summonses on 5/18/2020.

The District Court issued an order pursuant to Fed. R. Civ. P Rule 4(m) on 6/22/2020. The court later dismissed petitioner's complaint for failure (1) to properly serve all but three Defendants and (2) to allege a protected constitutional right of which he was deprived, *inter alia*, on 3/23/2021.

Petitioner's research efforts confirmed that the State is misclassifying the people of Georgia and their personal property. Private individuals using personal automobiles for personal/private purposes are being

classified as drivers and their vehicles are being classified as motor vehicles. The State is operating beyond its authority in its application, execution, and enforcement of Title 40 MOTOR VEHICLES AND TRAFFIC, and related laws used to penalize the traveling public for exercising the rights directly related to the ownership and use of personal automobiles or automobiles not for hire. It's licensing scheme and that code section lawfully do not apply to the traveling public and their private automobiles being used on the highways for personal/private purposes—also confirmed.

In the instant case, the State's licensing scheme ultimately resulted in violation and restriction of Phillips's personal liberties included in life, liberty, and property interests under Amendments V and XIV, §1.

Argument

I. Failure to constitutionally dispute all essential elements of an argument(s).

A. Fed. R. Civ. P. Rule 4.

(1) Failure to properly serve all but 3 defendants. As to Group I (NDGA,[Doc 18] 7), the District Court (NDGA) dismissed all defendants because, in part, petitioner served the summons along with the notice (AO398) in the mail, following Fed. R. Civ. P. Rules 4(c)(1), 4(c)(2), 4(d)(1)(G), and the AO398—as written.

Phillips exercised the freedom of choice under Amendments I, V, IX, and XIV, §1, as to which person would serve his papers. See USCA11, [OB] 31-40. Phillips argued that the USPS, a parent corporation, is a person. Fed. R. Civ. P. Rule 4(c)(2) makes no distinction between an artificial person and a natural person. It says "Any person . . .". "Corporations are "persons" as that word is used in the first clause of the XIVth Amendment". *Covington & L. Turnp. Co.* v. *Sandford*, 17 S.Ct. 198, 164 U.S., 578, 41 L. Ed. 560; *Smyth* v. *Ames*, 18 S.Ct. 418, 169 U.S. 466,42 L.Ed. 819; *U. S.* v. *Supply Co.*, 30 S.Ct. 15, 215 U.S. 50, 54 L. Ed. 87; *People* v. *Fire Ass'n*, 92 N.Y. 311, 44 Am. Rep. 380; See 28 U.S.C. §3002(10); App. 40A-41A.

The term "person" is defined neither in Fed. R. Civ. P. Rule 4, or elsewhere within the rules, nor in O.C.G.A. §9-11-4, but the Constitution is defined. See *Screws* v. *United States*, 325 U.S. 91, 104 ¶ 1; 105 ¶ 1 (1945). If the supreme Law of the Land is defined, then rules are not above being defined.
To bar or exclude a corporation as a "person" is a violation of Art. IV, §1; Art. VI, cl. 2; Amendment XIV, §1; 28 U.S.C. §§1652, 3002(10)—depriving Phillips's freedom of choice relative to Rule 4, a violation of 28 U.S.C. §2072(b). Seemingly, these violations are meaningless to the Eleventh Circuit (USCA11), which sanctioned them with its decision, and failed to constitutionally dispute them.

(A) The Life, 3321 Peppertree Circle Decatur, and Tonya Carter, argued NDGA, [Doc 22] and Fed. R. Civ. P. Rules 4(c)(2), (d), (h), (m), (e). The other Group I defendants did not return a waiver or

answer by motion, and none of the packages were returned except for Bill Havre, who refused service twice (NDGA, [Doc 38] 1), including refusing service by the Sheriff's Deputy—Johnson County in Buffalo, Wyoming. Motions for Clerk's entry of default were filed by Phillips. NDGA, [Doc 88] 8-9.

(i) The Life answered by motion. NDGA,[Doc 30-1] 4-9. Phillips responded with NDGA, [Doc 38] 9-19. The NDGA, [Doc 22] argument is irrelevant. Phillips exercised the right to be free to amend his complaint within the 90 days and reissue the summonses under the replacement of the original. The order was pursuant to Rule 4(m).

On 8/5/2020 Phillips responded to the Order being submitted to Judge Grimberg. That document pointed out that the District Court was not allowing the defendants 30 days to return a waiver or answer by motion, and that an affidavit was not due. NDGA, [Doc 28] 1-2. Therefore the Order (NDGA, [Doc 22]) was void but no new Order was issued. Phillips was allowed additional time resulting from his response to the court's probable intention.

(ii) Also, Phillips pointed out the fact that The Life fraudulently used a false address in its lease document. That's fraud, and invalidates that document. The Life was also listed as the registered agent. That's also fraud. NDGA, [Doc 38] 13, 15, 36. Group I was served notices and invoices consistently during the 2-year period of statute of limitations. They all knew

the lawsuit was imminent. After the original complaint was filed, The Life's contact information was changed as well as the registered agent on 4/24/2020 (NDGA, [Doc 75-1], 2), a third instance of fraud. NDGA, [Doc 38] 13, 15, 36.

(iii) Peppertree answered by motion after Phillips filed motion for Clerk's entry of default (NDGA, [Doc 56]). NDGA, [Doc 68-1] 6-12. Phillips responded with NDGA, [Doc 73] 14-24. Its package was not returned.

(iv) Carter Answered by motion after motion for Clerk's entry of default (NDGA, [Doc 57]). NDGA, [Doc 69-1]) 2-3. Phillips responded with NDGA, [Doc. 74] 5-16. Her package was not returned.

(v) The remainder of Group I did not return a waiver or answer by motion, and neither of those packages were returned.

(B) The District Court omitted part (1) of rule 4(c) when quoting in its Opinion. NDGA, [Doc 82] 17. It says "A summons must be served with a copy of the complaint." It makes no exception for the AO398 (NDGA, [Doc 38] 34), which states "A copy of the complaint is attached." (NDGA, [Doc 38] 9); USCA11, [OB] 35.

(C) Out of Group II (NDGA, [Doc 18] 8), only Curtis McMurray returned a waiver, inserting his name as the party waiving instead of Quick Drop, the party named as defendant. Curtis McMurray

failed to return a waiver from the package sent to him named as a defendant, and his package was not returned. Tenesha Thomas failed to return a waiver, and her package was not returned. This group knew the lawsuit was imminent, being served notices and invoices consistently during the 2-year period of statute of limitations.

(D) Out of Group III (NDGA, [Doc 18] 10) Morgan did not answer or return a waiver. Jeffrey L. Mann, who was listed separate from any group, took early retirement as did Conroy. Neither of their packages were returned. They both answered by motion after Phillips filed motion for Clerk's entry of default ((NDGA, [Docs 63, 64]). They responded with NDGA, [Doc 72] and Phillips replied with NDGA, [Doc 76]. DeKalb County and Harris returned waivers. All knew the lawsuit was imminent, being served notices and invoices consistently during the 2-year period of statute of limitations.

(E) Fed. R. Civ. P. Rule 4(e).
Under Rule 4(e)(2)(C) service may be made by delivering a copy of each to an agent authorized by appointment or by law to receive service of process. "An" could mean anyone present at the time of delivery and that individual could very well be either "authorized by appointment" or "authorized by law". See NDGA,[Doc 73] 17-18; [Doc 74] 8-9; [Doc 76] 8-9.

(F) Fed. R. Civ. P. Rule 4(h).
Under Rule 4(h)(1)(A),(B) a defendant corporation must be served as in Rule 4(e)(1) for serving an

individual or by delivering a copy of the summons and of the complaint to "an" officer, "a" managing or general agent, or "any other agent" authorized by appointment or by law to receive service of process. Either "an" or "a" or "any other agent" could mean anyone present at the time of delivery and that individual could very well be either "authorized by appointment" or "authorized by law". The same situation as Rule 4(e).

(G) Fed. R. Civ. P. Rule 4(*l*).
Under Fed. R. Civ. P. Rule 4(*l*)(3) failure to prove service does not affect the validity of service and the court may permit proof of service to be amended, however, it does not state to what extent. That could mean anything including certified mail receipts. NDGA, [Doc 73] 20-21; [Doc 74] 12.

B. Fed. R. Civ. P. Rules 8(a)(2) & 10(b).

Respondents DeKalb County and Derrick Harris argued Rules 8(a)(2) and 10(b). Rule 8(a)(2) states that a pleading that states a claim for relief must contain a "short and plain" statement of the claim showing that the pleader is entitled to relief. Short and plain is not defined by a word count, line count, paragraph count, page count or any other definite guideline. It's left open to interpretation. Rule10(b) states that a party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. "A single set of circumstances" is not defined in that rule, however, Phillips expound how the claims were expressed as a single set of circumstances. It's also

left open to interpretation. Dismissal based upon undefined rules deprived Phillips freedom of speech and expression under Amendment I. NDGA, [Doc 48-1] 7-9; USCA11, [OB] 41-42.

(2) Failure to state a constitutionally protected right.

NDGA failed to recognize constitutionally protected rights and USCA11 sanctioned it. Both failed to consider that Phillips pointed out the material fact that he used the Pro Se 15 to write his complaint and followed it as closely as possible. USCA11, [OB] 32-33, 41-42. Phillips consistently argued: "Life and liberty include all personal rights." *Rosenblum* v. *Rosenblum*, 42 N.Y.S. 2d 626, 630, 181 Misc. 78 (1943). Phillips asked USCA11 "Are the rights of life, liberty, and property no longer protected by the Constitution?" USCA11, [OB] 32. Perhaps affirming NDGA was the answer.

C. Groups I & II Liability.

USCA11 failed to recognize that private parties (Groups I & II) were acting under color of law or using State authority when Phillips's vehicle was seized/stolen pursuant to a term in the lease agreement, which didn't apply to the vehicle in the first place. Groups I and II executed the conversion based upon "license" and "appropriate statute" clearly stated in the excerpt from the lease document. See NDGA, [Doc 18] 100-101. Neither the private respondents, nor NDGA, nor USCA11 lawfully proved that determining which vehicles must be licensed and who has right of possession are not public functions exclusively reserved to the State.

See NDGA, [Doc 18] 7-8; [Doc 38] 3-4. USCA11 falsely stated that "Nothing in Phillips's amended complaint suggests any action that was "fairly attributable" to the state." Apparently, it ignored or did not read neither [Doc 18] 7-8 nor [Doc 38] 3-4.

"We have, of course, found state action present in the exercise by a private entity of powers traditionally exclusively reserved to the State." *Jackson* v. *Metro. Edison Co.*, 419 U.S. 345, at 352 (1974).

> "A private person acts under color of a state statute or other law when he, like the official, in some way acts consciously pursuant to some law that gives him aid, comfort, or incentive". . ., *cf. Griffin* v. *Maryland*, 378 U.S. 130, 135-137 (1964); *Flemming* v. *South Carolina Elec. Gas Co.*, 224 F.2d 752, 753 (C.A. 4th Cir. 1955), appeal dismissed, 351 U.S. 901 (1956); or when he acts in conjunction with a state.

Adickes v. *S. H. Kress & Co.*, 398 U.S. 144, at 212 (1970).
NDGA followed *Stevens* v. *Plumbers & Pipefitters Loc. 219*, 812 F. App'x 815, 819 with *Lugar*, 457 U.S. 922, 923 stating that a private party's actions must be "fairly attributable" to the state, but omitted the definition provided by this Court, as did USCA11. See NDGA, [Doc 82] 22; App. 29A; USCA11, [OB] 46-48; App. 6A.

> "Fair attribution is a two-part approach. First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. . . Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State."

Lugar v. *Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 ¶1 (1982). Seizing an unlicensed vehicle is a right or privilege created by the State and it is a rule of conduct imposed by the State (O.C.G.A. §40-2-8 (b)(1)), therefore the private parties' conduct is chargeable to the State, making them state actors. Also mentioned, *Id.*, at 932 n. 14, a factual showing that private parties acted with knowledge of, or pursuant to a statute must be present. This was demonstrated in the excerpt of the lease document where the language included the terms "license" and "appropriate statute", meeting that standard and the "something more" standard (*Id.*, 939; USCA11, [OB] 6). Additionally, the "something more" standard is met with *Adickes*, 398 U.S. 144, at 212 (citing *Griffin*, 378 U.S. 130, 135-137; *Flemming*, 224 F.2d

752, 752-753) and *Jackson*, 419 U.S. 345, *supra,* at 352.

It's obviously undisputable that Groups I & II were acting pursuant to State statutes. "Towing a vehicle can be either a public or private matter, but licensing is a state legislative matter, not a property management company matter." NDGA, [Doc 38] 3. Groups I & II had no ownership interest, no right of possession, no warrant (probable cause), and there was no hearing (NDGA, [Doc 18] 7-9), and is lawfully defined as conversion. For respondents exercised dominion over Phillips's property. See *Suzuki* v. *Small*, 214 App. Div. 541, 556-58, 212 N.Y.S. 589 (1925); *Boyce et al.* v. *Brockway et al.*, 31 N.Y. 490, 493 (1865); *Debobes* v. *Butterly*, 210 App. Div. 50, 54-55 (N.Y. App. Div. 1924). NDGA, [Doc 38] 2-5.

Groups I & II violated Amendments I (freedom of choice), IV (unreasonable seizure), V (due process, life, liberty, property, equal protection), IX (right to reject state license), XIV, §1 (due process, life, liberty, property, equal protection), §1981(a) (right to the full and equal benefit of all laws and proceedings for the security of persons and property), and §1982 (right to hold personal property).

A private entity using State authority is bound by mandates that bind officials everywhere. *Cf. Nixon* v. *Condon*, 286 U.S. 73, 88 (1932).
A private party can be liable under §1983 for violating the Fourteenth Amendment. *Lugar* v. *Edmondson Oil Co., Inc.*, 457 U.S. 922, *932 (1982).

NDGA cited *Beyer* v. *Vill. of Ashwaubenon*, 444 F. App'x 99, 101 (7th Cir. 2011) concerning rights of property owners.

> The rights of life, liberty, and property occupy the preferred position when balancing them against the rights of a corporate property owner, and corporations can neither be permitted to govern the people so as to restrict their fundamental liberties nor to enforce such restraint by the application of a state statute.

See *Marsh* v. *Alabama*, 326 U.S. 501, 509 (1946). USCA11, [OB] 53-54.

D. Signing a lease.

NDGA failed to recognize that even though Phillips signed a lease, he waived no rights, and USCA11 affirmed. Signing a document does not constitute a waiver of rights. A waiver of rights must be done knowingly and intelligently by the waiving party. See *Miranda* v. *Arizona*, 384 U.S. 436, 492 (1966); *cf. Hodges* v. *Easton*, 106 U.S. 408, 412 (1882); *Patton* v. *United States*, 281 U.S. 276, 309 (1930). "For a waiver of constitutional rights in any context must, at the very least, be clear." *Fuentes* v. *Shevin*, 407 U.S. 67, 95 (1972).

E. The Incident Report and Group III liability.

Firstly, Harris interfered with due process. The legal process of reporting stolen property begins with obtaining an incident report which must include the information that identifies the said property. Harris proscribed the report after being given information that would identify Phillips' property, i.e. the plate number, and the VIN # was redacted. No one can lawfully and rightfully claim property without being able to properly identify it as his own. This is a deprivation of Phillips' right to due process under Amendment XIV, §1; to hold personal property under §1982; and to identify his own property pursuant to Amendment IX and his life, liberty, and property interests under Amendments V and XIV, §1.

Secondly, proscribing the report put Phillips out of the protection of the law (*Noah Webster's American Dictionary of the English Language*, 47, 2. (Vol. II, 1828), 375 PDF), depriving him of equal protection of the law under Amendment XIV, §1 and the full and equal benefit of all the law and proceedings for the security of person and property under §1981(a).

Thirdly, the aforementioned deprivations were/are the proximate cause of Harris being accessory to the conversion and furthering the conspiracy to deprive Phillips of his rights (§1985(3)) as stated in the counts or claims against him. Interfering with due process set the stage for Harris being equally liable for all the counts or claims against the chief defendant actors in this case (Groups I & II). NDGA, [Doc 18] 76-79. His actions furthered the conspiracy already in existence whether he knew it or not,

making him a party to it. Phillips may recover damages against Harris for furthering the conspiracy (§1985(3)).

Fourthly, Harris refused to come forward when Phillips attempted to contact him in an effort to correct the incident report. Phillips had/has the right to be free to confront Harris and demand correction of the proscribed report. Harris disparaged that right in violation of Amendment IX and Amendment XIV, §1 pursuant to Phillips's life and liberty interests, which includes all personal rights. *Rosenblum* v. *Rosenblum*, 42 N.Y.S.2d 626, *supra*, at 630.

DeKalb is charged with the exact counts or claims as is Harris. Firstly, there were two (2) key officers who were aware of Harris' actions. Officer Morgan, a Sergeant who stated that Harris "followed protocol", thereby approving of Harris's deprivations and furthering the conspiracy. He is personally liable. See *A.M ex rel JMK.* v. *Luzerne County Juvenile Detention Center*, 372 F.3d 572, 586 (3d Cir. 2004); *C.N.* v. *Ridgewood Bd. of Educ.*, 430 F.3d 159, 173 (3d Cir. 2005)).

James W. Conroy, DeKalb County Police Chief, at the relevant time, acquiesced to both Harris's and Morgan's course of action, after the fact, thereby continuing the deprivations and furthering the conspiracy. DeKalb County is liable through Conroy, who was a policy-maker for the Department at the relevant time, who acquiesced to the constitutional violations in furtherance of a conspiracy by two (2) subordinate officers who were following what Morgan stated as "protocol". Conroy was given

written notice that his subordinates were violating Phillips's right to identify himself and his property, inter alia. See *Andrews* v. *City of Philadelphia*, 895 F.2d 1469, 1481-1482 (3d Cir. 1990); *Brennan* v. *Norton*, 350 F.3d 399, 427-28 (3d Cir. 2003). See also NDGA, [Doc 48-1] 6-7.

Both DeKalb and Harris claimed immunity. DeKalb's claim of immunity is based upon Phillips's alleged assertion of state law claims and O.C.G.A. §36-1- 4 ("A county is not liable to suit for any cause of action unless made so by statute.") There are no state law claims asserted. DeKalb is liable through its Chief of Police, Conroy, at the relevant time. Four reasons DeKalb is not immune from suit:
(1) The Eleventh Amendment grants immunity to States and not to municipalities or counties. "Political subdivisions of the state have no Eleventh Amendment protection from suit in federal court." *Moor* v. *County of Alameda*, 411 U.S. 693, 717-721 (1973); (2) 42 U.S.C. §1983 is the supreme Law of the Land and trumps O.C.G.A. §36-1-4; (3) DeKalb is a "person" for §1983 purposes; and (4) municipalities have no immunity from damages liability flowing from their constitutional violations. . ."Congress "abolished" municipal immunity when it included municipalities "within the class of 'persons' subject to liability" under §1983. *Owen* v. *City of Independence, Mo.*, 445 U.S. 622, 657, 667 (1980)

Claim of immunity for Harris is meritless. Firstly, Harris is being sued in his individual capacity. Secondly, Harris deprived Phillips of his constitutional rights to due process, and to equal protection of the law under Amendment XIV, §1. He

also disparaged the unenumerated right Phillips has to identify his own property under Amendment IX and under Amendment XIV, §1 pursuant to his life, liberty, and property interest(s). When it is shown that an officer has violated the constitution he has no qualified immunity. The Constitution is well established law and Harris should have known he was violating those provisions, for he took an oath to support the Constitution of the United States. Harris had no standing concerning qualified immunity.

> "But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment"; "In all its flux, time makes some things axiomatic. One has been that state officials who violate their oaths of office and flout the fundamental law are answerable to it when their misconduct brings upon them the penalty it authorizes and Congress has provided."

Screws v. *United States*, 325 U.S. 91, *105; 116-*117 (1945). State officials oath and first duty are to uphold the constitution. *Id.*, pp. 129 ¶4-*130. Secondly, in the process of committing those violations and depriving Phillips of his rights, Harris violated well established statutory provisions of 42 U.S.C.—§§1981(a), 1982, and 1985(3).

Thirdly, qualified immunity is entitlement not to stand trial and not a defense from liability. *Saucier* v. *Katz*, 533 U.S. 194, 200-201 (2001), quoting *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985). See NDGA, [Doc 48-1] 10-12.

Dismissal based upon undefined rules (II(B), *supra*, pp. 8-9) not only abridged the right to freedom of speech and expression; to redress grievances; and the personal choice to sue, but abrogated or nullified all. This is a violation of the Amendment I and XIV, §1 ; 28 U. S. C. §2072(b); 42 U.S.C. §1981(a), and in defiance of this Court (*Miranda* v. *Arizona*, 384 U.S. 436, *491 ¶ 1); USCA11, [OB] 43.

USCA11 affirmed NDGA's decision stating that Phillips had no right to an investigation and lacked the lesser right of proper recordation (citing *Vinyard* v. *Wilson*, 311 F.3d 1340, 1356 (11th Cir. 2002)). USCA11, [OB] 56; App. 7A, 30A. Phillips expressed that the claims against Group III and DeKalb was not about the investigation but Harris's refusal to come forth and correct the report. USCA11, [OB] 56-59. Nowhere in the counts or claims is there a claim about an investigation. Harris furthered the conspiracy and is charged with the same counts or claims as Groups I & II.

If Phillips were to argue the investigation, he has the right to an investigation according to Georgia law.

> "Public officers are the trustees and servants of the people and are at all times amenable to

> them. The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it."

Ga. Const. art. I, §2, ¶¶I-II. Amenable means subject to answer to the law; accountable; responsible; liable to punishment. *Pickelsimer* v. *Glazener*, 173 N.C. 630, 92 S.E. 700, 704 (1917).

Under §1981(a) (App. 41A), he would have that right, and under Amendment IX implemented pursuant to life and liberty under Amendments V and XIV, §1. USCA11 showed no proof of Harris's behavior either protecting, securing, or benefitting Phillips. Instead, it sanctioned and affirmed NDGA.

F. An automobile (not for hire) is neither a motor vehicle nor a car.

NDGA failed to consider the material facts that Phillips's vehicle is/was of the class of vehicles intentionally misclassified by the State as a motor vehicle (18 U. S. C. §31(a)(6), (10)) when the lawful classification is an automobile (49 CFR §523.3(a); 49 U.S.C. §§32901(a)(3), 32908(a)(1); See *also* 49 CFR §§523.2, 523.4, 523.5); App. 37A, 43A-47A) or automobile not for hire, (*Cf. City of Dayton* v. *DeBrosse*, 62 Ohio Ct. App. 232, *238-241 (1939),

citing *Memphis Street Ry.* v. *Crenshaw,* 165 Tenn. 536, 55 S.W.2d 758; *Shultz* v. *Cambridge,* 38 Ohio St. 659; *State, ex rel. Schorr,* v. *Viner,* 119 Ohio St. 303, 164 N.E. 119); See *also American Mutual Liability Ins. Co.* v. *Chaput,* 95 NH 200 (1948), 60 A.2d 118, 120; and that license fees or taxes do not apply to automobiles used on the highways for personal or private purposes.

(A) NDGA failed to consider the material fact that the State defines motor vehicle (O.C.G.A. § 40-1-1(33); App. 68A)—contrary to 18 U.S.C. §31 (a)(6),(10), and sub-classifies automobiles as passenger cars (O.C.G.A. §40-1-1(41); App. 68A)—contrary to (49 U.S.C. §§20133(a), 30101, SEC. 2502(a)(3); App. 46A-47A). It also failed to consider the material fact that the State is classifying travelers as drivers and defines driver (O.C.G.A. §40-1-1(14); App. 68A)—contrary to 49 CFR § 390.5T; App. 43A.

A traveler is one who passes from place to place, whether for pleasure, instruction, business or health. *Lockett* v. *State,* 47 Ala. 45 (1872), 10 C.B.N.S. 429. Phillips is lawfully a member of this class of vehicle users, not a driver. A driver is any person who operates any commercial motor vehicle. 49 CFR §390.5T; App. 43A. These undisputed facts draw into question the requirement of a driver's license (O.C.G.A. §40-5-20; App. 77A-78A) being applied to travelers using personal automobiles for personal/private purposes and not using the highways as a place of business. This draws into question the related laws used to penalize or punish travelers who

> choose to reject the licensing requirements and exercise their rights ((B), *infra*, p. 22). (*i.e.*, O.C.G.A. §§40-2-8(a), (b)(1), (c); 40-2-20(c); 40-2-26(d)(2); 40-2-29(d); 40- 5-29(c); 40-5-58(c)(1), (2); 40-5-121(a), (d); 40-6-10(4), (b); 40-6-15(a)-(c). App. 68A-71, 78A-83A.

USCA11 sanctioned NDGA's failure to lawfully consider vehicles under 10,000 pounds are not motor vehicles (NDGA, [Doc 38] 7) and that license fees or taxes, which are State required ((O.C.G.A. §§40-2-20(a)(1)(A); 40-2-26(a); 40-2-29(a), 40-2-151, 40-5-20(a)(d)). App. 69A-78A), don't apply to automobiles being used for personal or private purposes. Notably, automobile is not defined in O.C.G.A. §40-1-1 (statutory definitions), p. 1. App. 66A-68A.

> "A license fee is the sum extracted for the privilege of carrying on a particular occupation or business, and it may be imposed either for regulation under the police power or for revenue, or for both regulation and revenue. Under such title the state exacts a license or registration fee which is a privilege tax in the nature of a license or toll for the use of the highways."

J. W. Payne v. *Otis Massey Et Al.*, 145 Tex. 237, 241 (Tex. 1946). "[S]elf-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure, or business, nor for the transportation of

freight, are exempted." *Marin* v. *Chenu*, 188 Cal. 734, 736 (Cal. 1922). *Cf. Arthur* v. *Morgan*, 112 U.S. 495, 497 ¶3, 5 S. Ct. 241, 28 L. Ed. 825 (1884); *Frost & Frost Trucking Co.* v. *Railroad Comm'n*, 271 U.S. 593-594 (1926); *Mallicoat* v. *Volunteer Finance & Loan Corp.*, 415 S.W.2d 347, 350 (1966).
A person cannot be compelled to purchase, through a license fee or a license tax, the privileges [rights] freely guaranteed by the Constitution. *Murdock* v. *Pennsylvania,* 319 U.S. 105, 114 (1943), quoting *Blue Island* v. *Kozul,* 379 Ill. 511, 41 N. E. 2d 515. A license tax certainly does not acquire constitutional validity because it classifies the privileges [rights] guaranteed the people by the Constitution, which exist apart from State authority. *Id.*, 115.

(B) USCA11 sanctioned the failure of NDGA to lawfully consider Phillips's rights, as a traveler, directly attached to his personal automobile.

> It is Phillips's right to be free to remove himself and his property from a situation of actionable fraud (U.S. Const. amend. I; V; IX; XIV, §1 (App. 34A-35A)); maintain rightful and lawful possession of his personal property (42 U.S.C. §1982 (App. 41A)); and exercise his right to be free to use his own property as he sees fit (*City Of Dallas* v. *Mitchell,* 245 S.W. 944, 945 (Tex. Civ. App. 1922)); use the highways in his ordinary travels (*Solberg* v. *Davenport,* 211 Iowa

> 612, 621- 622; 232 N.W. 477 (Iowa 1930), *Schultz* v. *City of Duluth*, 163 Minn. 65, 68 (Minn. 1925)); pursue a livelihood without unreasonable interference (*Berberian* v. *Lussier* 87 R.I. 226, 231-232 (R.L 1958), 139 A.2d 869, 872)); and to travel freely and uninterrupted (*Saenz* v. *Roe*, 526 U.S. 489,515 (1999), with impunity.

NDGA, [Doc 38] 6-7; [Doc 48-1] 13.
See also *United States* v. *Guest*, 383 U.S. 745, at 757 ¶1, 758 ¶1, 761 n.17 (1966)).

These are inherent and constitutional rights the State is charging license fees or taxes to exercise. Notably, the licensing scheme is administered without full disclosure, and is lawfully defined as actionable fraud and corruption, having nothing to do with public health, safety, and welfare—revenue is the objective. Actionable fraud is deception practiced in order to induce another to part with property or surrender some legal right. *Sawyer* v. *Prickett*, 86 U.S. (19 Wall.) 146, 22 L. Ed. 105 (1874). Corruption is an act done with an intent to give some advantage inconsistent with official duty and the rights of others. *Johnson* v. *U. S.*, C.C.A. Alaska, 260 F. 783, 786 (1919).

Ultimately, via its scheme of misclassification, the State is regulating the right to travel. States don't have that authority. "The right to travel

> is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the Fifth Amendment."; "If that "liberty" is to be regulated, it must be pursuant to the law-making functions of Congress." *Kent* v. *Dulles*, 357 U.S. 116, 125, 129 (1958). NDGA, [Doc 48-1] 16-17. The Georgia General Assembly is aware of the unconstitutionality of O.C.G.A. §40-5-20 and related laws—as applied to the traveling public—but lacks the integrity to protect the rights of the people. *Id.*, 41-43.

A person faced with an unconstitutional licensing law may ignore it and engage with impunity in the exercise of a right secured by the Constitution for which the law purports to require a license. *Shuttlesworth* v. *Birmingham*, 394 U.S. 147, 151(1969).

The State cannot impose conditions that require relinquishment of constitutional rights. *Frost & Frost Trucking Co.* v. *Railroad Comm.* 271 U.S. 593-*594 (1926).

A statute offering a choice between the exercise of a constitutional right or the penalty created by it, is a violation of that right. The injured party must be restored. *Sherar* v. *Cullen* 481 F.2d 945, at 947 ¶3, 948 (9th Cir. 1973); See *also Boyd* v. *United States*, 116 U.S. 616, 6 S.Ct. 524,29 L.Ed. 746 (1886); *Malloy* v. *Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Bd.2d 653 (1964); *Sanitation Men* v. *Sanitation Comm'r.*, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968); *Gardner* v. *Broderick*, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968).

Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them. *Miranda* v. *Arizona*, 384 U.S. 436, *491 ¶1 (1966).

The assertion of Federal rights when plainly and reasonably made, is not to be defeated under the name of local practice. *Davis* v. *Wechsler*, 263 U.S. 22, 24 (1923).

The due exercise of the police power is limited to the preservation of the public health, safety, and morals, and legislation which transcends these objects, whatever other justification it may claim for its existence, cannot be upheld as a legitimate police regulation. *Ex parte Dickey*, 144 Cal. 234, 236 (1904), 77 P. 924. See also *Ex Parte Dickey*, 76 W. Va. 576, 579, 85 S.E. 781, L.R.A. 1915F, 840 (1904), quoting Judge Cooley on Constitutional Limitations, 7th edition, p. 837 ("The limit to the exercise of the police power in these cases must be this: The regulation must have reference to the comfort, safety, or welfare of society.").

> "That power has never yet been fully described nor its extent plainly limited further, at least, than this; it is not above the Constitution, but it is bounded by its provisions; and if any liberty or franchise is expressly protected by any constitutional provision it cannot be destroyed by any valid exercise by the legislature or the executive of the

> police power. Under an exercise of the police power the enactment must have reference to the comfort, the safety or the welfare of society, and it must not be in conflict with the Constitution."

People v. *Gillson* 109 N.Y. 389, 400-*401 (N.Y. 1888). *See also State* v. *Dalton,* 22 R.I. 77, 80, 46 A. 234 (R.I. 1900).

NDGA failed to constitutionally dispute all elements essential to Phillips's arguments (II(A)-(F), *supra*), meaningfully (*Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965)) and appropriately (*Mullane* v. *Central Hanover Tr. Co.*, 339 U.S. 306, at 313 (1950), 70 S. Ct. 652), obviating the standard of due process. See *Bell* v. *Burson*, 402 U.S. 535, at 542 (1971). This was sanctioned by USCA11's decision. Ultimately, Phillips was deprived of the right to be free to choose which person serves his papers; the right of freedom of speech and expression; the personal choice to sue; personal rights included in life and liberty; and his property rights—sanctioned by USCA11 with it's affirmation of NDGA's decision. This is in violation of Amendments I, V, IX, & XIV, §1 (App. 34A-35A); 28 U.S.C. §2072(b) (App. 40A); 42 U.S.C. §§1981(a), 1982 (App. 41A). USCA11, [OB] 31-40.

II. Phillips did not abandon his claim that NDGA erred in dismissing claims against all defendants, and USCA11 erred in affirming it.

A. Defective Service

USCA11 stated that Phillips abandoned his claim(s) that NDGA erred in its dismissal for defective service stating that he did not argue that his service complied with Fed. R. Civ. P. Rule 4, on appeal. (App. 4A). That's false.

Phillips's argument on service was/is simple. He stated that he followed (complied) the rules as written (USCA11, [OB] 33-37); how the rules connect to the AO398; that the USPS is a person by lawful definition (undefined in the rules). Rightfully, Phillips argued inclusively a review of Rule 4 parts; his right(s) in the situation; this court's decisions concerning rules and rights; the Constitution; and federal law. USCA11, [OB] 31-40. Notably, neither NDGA nor USCA11 constitutionally disputed the facts pointed out in either element.

(1) USCA11 affirmed dismissal of all defendants but stated:

> "Even if this claim is not abandoned, the district court did not err in dismissing Phillips's complaint for defective service *as to those defendants* who were not personally served or did not return a waiver of service. Only DeKalb County, Officer Harris, and Curtis McMurray waived service, so Phillips was required to effect personal service for all other defendants."

App. 5A.

(2) NDGA didn't constitutionally dispute the facts Phillips presented in his arguments concerning the rules or otherwise. Taking into account that USCA11 didn't constitutionally dispute the facts pointed out by Phillips in his argument(s), it failed to lawfully dispute all essential elements thereof. And, according to the foregoing statement, NDGA did not follow Rule 4(m). USCA11 should not have affirmed dismissal of any defendants because of undisputed facts neither court was willing to reach. The standard of due process was not met. See *Armstrong* v. *Manzo*, 380 U.S. 545, 552; *Mullane* v. *Central Hanover Tr. Co.*, 339 U.S. 306, at 313; *Bell* v. *Burson*, 402 U.S. 535, at 542, *supra.*

III. Abuse of personal jurisdiction exists.

There is nothing in NDGA's decision that shows it met the requirement of personal jurisdiction—protect liberty interests. USCA11 sanctioned it by its affirmation, and it also failed to meet the requirement. See *Ins. Co. of Ireland* v. *Compagnie Des Bauxites*, 456 U.S. 694, at 702 ¶2 (1982).

The protection of constitutional rights may not be watered down because some members of the public [judiciary] actively oppose the exercise of constitutional rights by others (citing *Cooper* v. *Aaron*, 358 U.S. 1, at 6 (1958)). *Adickes* v. *Kress Co.*, 398 U.S. 144, 234 ¶1 (1970). USCA11, [OB] 54, 61. "Neither the President, nor Congress, nor the Judiciary can disturb any one of the safeguards of

civil liberty incorporated into the Constitution, except so far as the right is given to suspend in certain cases the privilege of the writ of habeas corpus." *Ex Parte Milligan*, 71 U.S. 2, *4 n. 11 (1866). See also *Roe* v. *Wade*, 410 U.S.113, 169-170 ¶2 (1973).

IV. Constructive fraud and corruption is present.

(A) There's eight (8) instances of what may be construed as constructive fraud and corruption committed by NDGA altering and manipulating the narrative and the facts. USCA11 sanctioned it and employed six (6) instances of the same tactics in its decision.

NDGA

(1) Making the case out to be about Petitioner's vehicle and not his rights attached to it, its use, and right of possession pursuant to the Constitution and laws. USCA11, [OB] 33-34; NDGA, [Doc 82] 1, 4, 5, 8, 22. See App. 10A.

(2) Using the term "car" instead of automobile or automobile not for hire when referring to Phillips's vehicle, and not defining that term. USCA11, [OB] 34-35, 53-54; App. 10A-12A, 15A, 29A."Car" has no application in this case, neither does "motor vehicle" (App. 9A). USCA11, [OB] 34.

(3) Stating that Phillips sought "compensatory and punitive damages, the return of his 'car', litigation fees and expenses". USCA11, [OB] 44-46; App. 15A. "Compensatory" does not exist in the Amended Complaint, or elsewhere. "Compensatory" damages has no application in this case, but damages apply. Reason (3)(a), *infra*, p. 37. "Historically, damages

have been regarded as the ordinary remedy for an invasion of personal interests in liberty." *Davis* v. *Passman*, 442 U.S. 228, at 245 ¶2 (1979), quoting *Bivens*, 403 U.S. 388, at 395. USCA11, [OB] 45-46; See 28 U. S. C. §1343(a)(1), (2), (4). App. 39A.

(4) Failed to state subpart (1) when quoting Rule 4(c). App. 23A. This is the main point that Phillips argued concerning Rule 4. USCA11, [OB] 35.

(5) Intentionally and incorrectly stating the excerpt of the lease document using the term [un]registered, rather than [un]licensed—different meanings. USCA11, [OB] 48-50; App. 9A, 26A, 29A.

(6) Making out the claims against Harris and DeKalb to be about the investigation and not the refusal of Harris to come forward and correct the report, thus furthering the conspiracy by Groups I & II. USCA11, [OB] 56-59; App. 30A. There is no count or claim for an investigation. Harris furthered a conspiracy and is charged with the same counts or claims as Groups I & II.

(7) Using class and/or race to aid in its justification for dismissal by omitting part of §1983 that applies to Phillips when quoting. USCA11, [OB] 59-60; App. 27A. Intentional omission of "or other person".

(8) Labeling Phillips as a sovereign citizen to aid in its justification for dismissal, because Phillips identifies himself as a sovereign principal, which he defined. USCA11, [OB] 61-64. NDGA failed to define "sovereign citizen", and USCA11 sanctioned it with its acquiescence and affirmation. Notably, courts in the Eleventh Circuit routinely and summarily dismiss cases based upon that label (App. 30A-31A). USCA11, [OB] 33. This may be construed as biased and discriminatory.

A right is implicated when a law [rule] uses any classification which serves to penalize the exercise of that right. *Cf. State* v. *Cuypers*, 559 N.W. 2d 435, 437 (Minn. Ct. App. 1997). Using a classification to penalize the exercise of the right to self-identify violates the Equal Protection Clause. *Cf. Saenz* v. *Roe*, 526 U.S. 489, 515 (1999). USCA11, [OB] 62.

USCA11

(1) Stating that Phillips asserted allegations of violation of his Fourteenth Amendment due process rights when his unregistered "car" was towed . . . App. 2A. "Car" has no application in this case. Phillips defined "car" (USCA11, [OB] 34-35). Apparently it was ignored. App. 6A-7A.

(2) Failed to state subpart (1) when quoting Rule 4(c). See App. 3A-4A. This is the main point that Phillips argued concerning Rule 4. USCA11, [OB] 35.

(3) Omitted subpart (1)(G) when quoting Rule 4(d) (App. 4A), knowing this was part of Phillips's argument. USCA11, [OB] 40.

(4) Making the case out to be about Petitioner's vehicle and not his rights attached to it, its use, and right of possession pursuant to the Constitution and laws. USCA11, [OB] 33-34; App. 6A.

(5) Making out the claims against Harris and DeKalb to be about the investigation and not the refusal of Harris to come forward and correct the report, thus furthering the conspiracy by Groups I & II. USCA11, [OB] 56-59; App. 6A-7A. Nowhere in the counts or claims is there a claim for an investigation. Harris furthered a conspiracy and is charged with the same counts or claims as Groups I & II.

(6) Fabricating that Phillips argued "that the relevant lease provision was meant to ensure compliance with Georgia law regarding vehicle registration". App. 6A. Phillips stated that private actors were:

> "using State authority and performing public functions customarily done by the State, to wit, determining which vehicles must be licensed, which involves payment of a license fee or tax, and deciding who has right of possession . . . having no ownership interest and no right of possession, without a warrant (no probable cause) and no hearing prior to depriving the owner/possessor of his/her property, for not having a state license". . . .

NDGA, [Doc 18] 7-9. These intentional acts of constructive fraud and corruption (*Johnson* v. *U. S.*, C.C.A. Alaska, 260 F. 783, 786, *supra,* p. 24) yielded bias, proscription, and furtherance of the conspiracy to deprive Phillips of his rights.

> Constructive fraud consists of any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. . . . an act,

> statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare.

People v. *Kelly*, 35 Barb., N.Y., 444, 457 (1862); *Jackson* v. *Jackson*, 47 Ga. 99 (1872). Fraud vitiates everything. *United States* v. *Throckmorton*, 98 U.S. 61, 66 (1878), quoting Wells, *Res Adjudicata*, sect. 499.

REASONS FOR GRANTING THE WRIT

(1) USCA11's decision conflicts with *Armstrong* v. *Manzo*, 380 U.S. 545, 552; *Mullane* v. *Central Hanover Tr. Co.*, 339 U.S. 306, at 313; *Bell* v. *Burson*, 402 U.S. 535, at 542 (A hearing must be meaningful and appropriate to the nature of the case. Excluding essential elements of an argument(s) don't meet that standard). USCA11 sanctioned NDGA's departure from meeting the standard of due process, and did likewise.

(a) Those conflicts proximately caused collateral conflicts.

(i) Collateral conflicts with state decisions: *People* v. *Fire Ass'n*, 92 N.Y. 311, 44 Am. Rep. 380 (corporations are "persons"). *Rosenblum* v. *Rosenblum*, 42 N.Y.S. 2d 626, 630, 181 Misc. 78 (1943) (life and liberty include all personal rights).

(ii) Collateral conflicts with this court's decisions: *Covington & L. Turnp. Co.* v. *Sandford*, 17 S.Ct. 198, 164 U.S., 578, 41 L. Ed. 560; *Smyth* v. *Ames*,

18 S.Ct. 418, 169 U.S. 466,42 L.Ed. 819; *U. S.* v. *Supply Co.*, 30 S.Ct. 15, 215 U.S. 50, 54 L. Ed. 87, (corporations are "persons"); *Screws* v. *United States*, 325 U.S. 91, 104 ¶ 1; 105 ¶ 1 (the Constitution is defined.); *United States* v. *Throckmorton,* 98 U.S. 61, 66 (fraud vitiates everything). USCA11 sanctioned instances of fraud ignored by NDGA, and employed its own fraud.

For word limit purposes, see App. 88A-90A for other collateral conflicts applicable to this reason.

(2) USCA11 sanctioned NDGA's abuse of personal jurisdiction and furthered the abuse with its decision. Neither NDGA nor USCA11 protected Phillips's liberty interest(s). USCA11's decision conflicts with *Ins. Co. of Ireland* v. *Compagnie Des Bauxites*, 456 U.S. 694, at 702 ¶2 (1982) (protecting a liberty interest is the requirement of personal jurisdiction); *Adickes* v. *Kress Co.*, 398 U.S. 144, at 234, ¶1 (1970) citing *Cooper* v. *Aaron,* 358 U.S. 1, at 6 (1958)) (protection of constitutional rights may not be watered down by active opposition to their exercise); *Ex Parte Milligan*, 71 U.S. 2, *4 n. 11 (1866) (safeguards of civil liberty incorporated into the Constitution are not to be disturbed by neither the President, Congress, nor the Judiciary, excepting the writ of habeas corpus in certain cases).

(a) Those conflicts proximately caused collateral conflicts.

(i) Collateral conflicts with state decisions: *City Of Dallas* v. *Mitchell*, 245 S.W. 944, 945 ¶7 (Tex. Civ. App. 1922) (right to use one's own property as he sees fit); *Solberg* v. *Davenport,* 211

Iowa 612, 621-622; 232 N.W. 477 (Iowa 1930); *Schultz* v. *City of Duluth*, 163 Minn. 65, 68 (Minn. 1925) (right to use the highways in ordinary travels); *Berberian* v. *Lussier* 87 R.I. 226, 231-232 (R.I. 1958), 139 A.2d 869, 872) (right to pursue a livelihood without unreasonable interference). See also *City of Dallas* v. *Mitchell*, 245 S.W. 944, *supra*, 945 ¶9-*946 (rights are endowed by the Creator; it is the duty of the courts to declare encroachment of rights and afford relief). See App. 90A-91A.

(ii) Collateral conflicts with another appeals court's decision:
Sherar v. *Cullen* 481 F.2d 945, at 947, ¶3, 948 (9th Cir. 1973) (A statute offering a choice between the exercise of a constitutional right or the penalty created by it, is a violation of that right. The injured party must be restored).

(iii) Collateral conflicts with this court's decisions:
Sawyer v. *Prickett*, 86 U.S. (19 Wall.) 146, 22 L. Ed. 105 (1874) (deception practiced in order to induce another to part with property or surrender some legal right is actionable fraud); *Saenz* v. *Roe*, 526 U.S. 489, 515 (1999); *United States* v. *Guest*, 383 U.S. 745, at 757 ¶1, 758 ¶1, 761 n.17 (1966) (right to travel freely); *Kent* v. *Dulles*, 357 U.S. 116, 125, 129 (1958) (right to travel can only be regulated by Congress under Amendment V); *Shuttlesworth* v. *Birmingham*, 394 U.S. 147, 151(1969) (ignore a law requiring a license to exercise a right secured by the Constitution and engage in the exercise of that right with impunity); *Frost & Frost Trucking Co.*

v. *Railroad Comm.* 271 U.S. 593-*594 (1926) (State cannot impose conditions that require relinquishment of constitutional rights); *Boyd* v. *United States*, 116 U.S. 616, 6 S.Ct. 524,29 L.Ed. 746 (1886) (a form of compulsion is violation of Amendments IV and V); *Malloy* v. *Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Bd.2d 653 (1964) (right to remain silent and suffer no penalty); *Sanitation Men* v. *Sanitation Comm'r.*, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968) (public employees protected against self-incrimination, no forced choice between rights or job); *Gardner* v. *Broderick*, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968) (attempted coercion to waive immunity from self-incrimination intolerable as conferred on penalty of employment loss); *Miranda* v. *Arizona*, 384 U.S. 436, *491 ¶1 (1966) (no rule-making or legislation abrogating rights secured by the Constitution); *Davis* v. *Wechsler*, 263 U.S. 22, 24 (1923) (plain and reasonable assertion of Federal rights not to be defeated in name of local practice); *Roe* v. *Wade*, 410 U.S.113, 169-170 ¶2 (1973) (protected personal liberty to choose to terminate a pregnancy. Lesser degrees of significance cited within quotation of *Abele* v. *Markle,* 351 F. Supp. 224, 227 (Conn. 1972)—right to send a child to private school protected in *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), right to teach a foreign language protected in *Meyer* v. *Nebraska*, 262 U. S. 390 (1923)). Perhaps these are to be overturned.

An even lesser degree of significance was not protected in this case—choosing the USPS to

serve a summons with a copy of the complaint, following Rule 4(c)(1) and the AO398. Adding insult to injury, Phillips's personal liberties were unprotected. *E.g.*, NDGA, [Doc 18] 29-32.

(3) USCA11 sanctioned NDGA's constructive fraud and corruption, and used the same tactics in its decision, producing four levels of conflict.

(a) USCA11's conflicts with State decisions:

People v. *Kelly*, 35 Barb., N.Y., 444, 457 (1862); *Jackson* v. *Jackson*, 47 Ga. 99 (1872) (constructive fraud consists of any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. . . . an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare); *Johnson* v. *U. S.*, C.C.A. Alaska, 260 F. 783, 786 (1919) (an act done with an intent to give some advantage inconsistent with official duty and the rights of others is corruption); *State* v. *Cuypers*, 559 N.W. 2d 435, 437 (Minn. Ct. App. 1997) (a right is implicated when any classification is used to penalize the exercise thereof); *McKnight* v. *Denny*, 198 Pa. 323, 47 A.970; *Wade* v. *Power Co.*, 51 S.C. 296,29 S.E. 233, 64 Am. St. Rep. 676; *Gatzow* v. *Buening*, 106 Wis. 1, 81 N.W, 1003, 49 L.R.A. 475 (Compensatory damages is the proper relief where there is physical injury suffered); *Wainscott* v. *Loan Ass'n*, 98 Cal. 253, 33 P. 88; *Strong* v. *Neidermeier*, 230 Mich. 117, 202 N.W. 938, 940; *Greer* v. *Board of Com'rs of Knox County*, 33 Ohio App. 539, 169 N. E. 709,710

(Damages is the proper relief where a party is injured in his rights);

(b) USCA11's conflicts with this court's decisions: *Roe* v. *Wade*, 410 U.S. 113, at 142 ¶2 (1973), (an honest judge calls things by their proper names, without compromise)—in other words [s]he would define things; *Scott* v. *Donald*, 165 U.S. 58, 17 S.Ct. 265,41 L.Ed. 632 (Damages is the proper relief where a party is injured in his rights); *Saenz* v. *Roe*, 526 U.S. 489, 515 (1999) (using any classification to penalize the exercise of a right violates equal protection); *Davis* v. *Passman*, 442 U.S. 228, at 245 ¶2 (1979), quoting *Bivens*, 403 U.S. 388, at 395 (damages regarded as ordinary remedy for an invasion of personal interests in liberty); *.Adickes* v. *Kress Co.*, 398 U.S. 144, 205 (1970); *Nixon* v. *Condon*, 286 U.S. 73, 89 (1932) (Amendment XIV was originally meant to protect a Negro or Colored—now labeled Black or African American)); *United States* v. *Throckmorton,* 98 U.S. 61, 66 (1878) (fraud vitiates everything).

(i) Collateral conflicts with another appeals court's decisions negated DeKalb County liability. *Andrews* v. *City of Philadelphia*, 895 F.2d 1469, 1481-1482 (3d Cir. 1990); *Brennan* v. *Norton*, 350 F.3d 399, 427-28 (3d Cir. 2003) (policy-maker acquiesced to constitutional violations by subordinate officers, after the fact—he's liable).

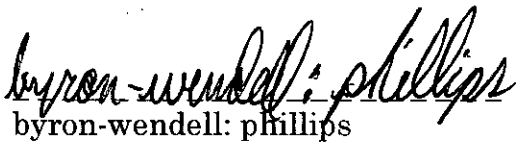
(ii) Collateral conflicts with this court's decisions gave immunity to DeKalb County and Harris. *Moor* v. *County of Alameda*, 411 U.S. 693, 717-721(no Eleventh Amendment protection from suit in federal court for political subdivisions); *Owen*

v. *City of Independence, Mo.*, 445 U.S. 622, 657, 667 (municipalities are persons subject to liability under §1983 for violating the constitution); *Screws* v. *United States*, 325 U.S. 91, 116-*117 (state officials violating their oaths are answerable to it); *Saucier* v. *Katz*, 533 U.S. 194, 200-201, quoting *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (qualified immunity is no defense against liability).

CONCLUSION

Judges in this case rebelled against the Constitution, violating Article VI, cl. 3 and Amendment XIV, §3, and violated 28 U.S.C. §§453, 455(a),(b)(1) (oath, disqualification for impartiality and personal bias). This behavior yielded multiple violations of Articles IV, §1, and VI, cl. 2, and 28 U.S.C. §1652—absolving constitutional enemies. App. 35A-40A.
Fraud vitiates everything. *United States* v. *Throckmorton*, 98 U.S. 61, 66. The writ is warranted.

Respectfully submitted. Date: 2/11/2022



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APPENDIX