

06/14/21

_____ No.
21-308
In the Supreme Court of the United States

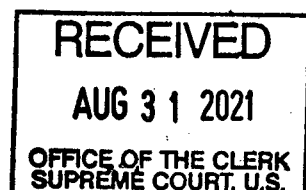
Tim Sundry, Petitioner v.

FRIENDSHIP PAVILION ACQUISITION CO. LLC, ARSENAL REAL ESTATE
FUND II-IDF, LP, Gary Picone, Thomas Ling, Michael Weinstein,
GEORGIA DEPARTMENT OF TRANSPORTATION, Respondents

On Petition for Writ of Certiorari
To The Supreme Court of Georgia
from a determination in case S21C0007

PETITION FOR A WRIT OF CERTIORARI

Tim Sundry, *pro se*
227 Sandy Springs Place, Ste D-465
Sandy Springs, GA 30328
404-409-5473



Question Presented for Review

Whether the willful refusal and/or failure of a court of record to maintain a complete record is a form of custody, depriving a litigant of due process while denying the litigant protections and immunities and rights guaranteed by the First, Fourth, and Fourteenth Amendments of the United States Constitution?

List of Parties to Proceeding

1. Tim Sundy
2. Friendship Pavilion Acquisition Company, LLC; a Delaware corporation
3. Arsenal Real Estate Fund II-IDF, LP, a Delaware corporation
4. Georgia Department of Transportation
5. Gary Picone
6. Thomas Ling
7. Michael Weinstein

Related Cases

Superior Court of Hall County, Georgia:

Case **2015CV1366**-FRIENDSHIP PAVILION ACQUISITION CO., LLC V. MEDITERRANEAN DINING GROUP, ET AL. Judgment entered December 3, 2018.

Case **2016CV0982** -TIM SUNDY V. C. ANDREW FULLER, ET AL., a *Brown v. Johnson*, 251 Ga. 436 (Ga.1983) mandamus action. Judgment entered Aug. 22, 2018.

Case **2017CV0031** -DAVID SUNDY V. CHARLES BAKER, ET AL., a *Brown v. Johnson*, 251 Ga. 436 (Ga.1983) mandamus action. Judgment entered April 3, 2017.

Case **2017CV1125J** -CHARLES BAKER V. DAVID SUNDY AND TIM SUNDY. Judgment entered July 10, 2018

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

Cases in the Georgia Court of Appeals:

Case **A17D0476**, DAVID SUNDY v. MARTHA C. CHRISTIAN, JUDGE ET AL.,
Granted in part, denied in part 06/21/2017

Case **A17D0525**, ~~DAVID SUNDY ET AL. v. FRIENDSHIP PAVILION~~

ACQUISITION COMPANY, LLC ET AL., Dismissed 07/17/2017

Case **A18A0170**, DAVID SUNDY v. MARTHA CHRISTIAN ET AL., Lower Court

Affirmed 03/28/2018

Case **A18A0290**, TIM SUNDY ET AL. v. FRIENDSHIP PAVILION ACQUISITION

COMPANY, LLC ET AL., Dismissed 10/03/2017

Case **A18D0215**, TIM SUNDY ET AL. v. FRIENDSHIP PAVILION ACQUISITION

COMPANY, LLC ET AL. Dismissed 12/28/2017

Case **A19D0108**, TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITION CO.,

ET AL., Denied 10/19/2018

Case **A19E0011**, DAVID SUNDY ET AL. v. CHARLES BAKER ET AL, Denied

09/19/2018

Case **A20D0016**, TIM SUNDY v. FRIENDSHIP PAVILION ACQUISITIONS CO.,

LLC et al., Dismissed 08/27/2019

Case **A20E0037**, TIM SUNDY v. FRIENDSHIP PAVILLION ACQUISITIONS LLC

et al., Denied 03/13/2020

Case **A19D0398**, TIM SUNDY v. FRIENDSHIP PAVILLION ACQUISITIONS LLC

et al., Denied 07/07/2020

Cases in the Georgia Supreme Court:

Case **S17O1606**, SUNDY v. BAKER et al., Dismissed 05/30/2017 Reconsid.

Denied: 06/30/2017

Case S18C0377, SUNDY-et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. ACQUISITION LLC et al. Denied 05/30/2017

Case S18C0475, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 05/07/2018.

Case S18C0710, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 05/07/2018

Case S18C0395, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 06/03/2019; Recons. Denied 07/01/2019

Case S19D0602, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Transferred to COA 01/31/2019

Case S19D0838, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Transferred to COA 03/20/2019

Case S18C0395, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 06/03/2019; Recons. Denied 07/01/2019

Case S18C0943, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 11/04/2019

Case S19O1351, SUNDY v. CHRISTIAN et al. Dismissed 08/05/2019; Recons.

Denied 08/20/2019

Case S20M1044, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 03/31/2020

Case S20C1075, SUNDY et al v. FRIENDSHIP PAVILLION ACQUISITION LLC

et al. Denied 10/05/2020

Case ~~S21C0007~~, SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al.

Denied 03/15/2021

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

Case **2:15-cv-00149-RWS**, FRIENDSHIP PAVILLION ACQUISITION LLC v.

MEDITERRANEAN DINING et al. Remanded to Hall County Superior Court
12/04/2015

Case **2:16-cv-00123-WCO**, SUNDY v. FRIENDSHIP PAVILLION ACQUISITION

LLC et al. Remanded to Hall County Superior Court 08/31/2016

Case **2:18-cv-0112-SCJ**, SUNDY v. FRIENDSHIP PAVILLION ACQUISITION

LLC et al. Dismissed 03/12/2019

Cases in the 11th Circuit USCA

Case **19-10183**, SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al.

Sundy's mandamus petition to restore missing documents to 2:18-cv-0112-SCJ.
Denied after most documents- but not all-were restored by SCJ prior to USCA
ruling.

Case **19-10445**, SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al.

Sundy's petition requesting injunction until missing documents are restored to
2:18-cv-0112-SCJ. Denied

Case **19-11391**, SUNDY v. FRIENDSHIP PAVILLION ACQUISITION LLC et al.

Appeal from 2:18-cv-0112-SCJ. Dismissed. 03/13/2020

Cases in the Supreme Court of the United States:

Case 19-7600-Title: Tim Sundry, Petitioner v. Friendship Pavilion Acquisition

Company, LLC, et al. for writ of certiorari Petition DENIED on 04/06/2020.

Case 19-6694-Tim Sundry, Petitioner v. Martha C. Christian, Judge, et al..for writ of certiorari. Petition DENIED on 01/27/2020, Rehearing DENIED on 03/23/2020.

Case 19-6821-Tim Sundry, Petitioner v. Friendship Pavilion Acquisition Co., et al. for writ of certiorari. Petition DENIED on 02/24/2020, Rehearing DENIED on 03/23/2020.

Case 19-5506-Tim Sundry, Petitioner v. Friendship Pavilion Acquisition Company, LLC, et al..for writ of certiorari Petition DENIED on 02/24/2020, Rehearing DENIED on 03/23/2020.

Case 19-8492- In re: Tim Sundry, DISMISSED on 10/05/2020.

Case 19-8491- In re: Tim Sundry, DISMISSED on 10/05/2020.

Case 20-5401- Tim Sundry, Petitioner v. Friendship Pavilion Acquisition Company, LLC, *et al.*.....for writ of certiorari to the 11th Circuit Court of Appeals. Petition DISMISSED on 10/13/2020.

Case 20-5559 Tim Sundry, Petitioner v. Friendship Pavilion Acquisition Company, LLC, *et al.*.....for writ of certiorari Petition DISMISSED on 11/02/2020.

Corporate Disclosure Statement

The Petitioner is not a corporation.

Table of Authorities

Question Presented.....	Page i
Parties to Proceeding.....	Page ii
Related Cases	Page ii
Corporate Disclosure.....	Page vi
Table of Contents.....	Page vii
Table of Authorities.....	Page viii
Opinions Below.....	Page 1
Basis of Jurisdiction.....	Page 1
Constitutional Provisions.....	Page 1
Statement of the Case.....	Page 2
Argument.....	Page 5
Reasons for Granting the Writ.....	Page 13
Conclusion.....	Page 14
Appendix A (Supreme Court of Georgia ORDER 03/15/2021)	Page 1A
Appendix B (Georgia Court of Appeals ORDER 07/07/2020)	Page 2A
Appendix C (Superior Court of Hall County ORDER 12/3/2020)	Page 3A
Appendix D (Scott Harris letter 03/22/2021 denying pauperis status)	Page 4A
Appendix E (Superior Court of Hall County ORDER 6/3/2020)	Page 5A
Appendix F (Scott Harris deficiency letter 06/25/2021)	Page 17A
Appendix G (image of cover of returned 6/14/2021 Petition)	Page 19A

Table of Authorities

Cases	Page
<i>Alvarez v. Warden, San Quentin State Prison,</i> No. 2:97-cv-1895 KJM KJN P (E.D. Cal. Apr. 2, 2019)	.13
<i>Chambers v. Baltimore Ohio Railroad,</i> 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907)	..7
<i>Christopher v. Harbury</i> , <u>536 U.S. 403, 415</u> (2002)	..7
<i>Davis v. Phoebe Putney Health Systems</i> , 280 Ga. 505, 506-507 (1) (634 SE2d 452) (2006)	..9
<i>Douglas v. California</i> , 372 U.S. 353, 357 (1963)	..3
<i>Elrod v. Burns</i> , 427 U.S. 347; 6 S. Ct 2673; 49 L. ed. 2d (1976)	..6
<i>Kegler v. State</i> , 475 S.E.2d 593 (Ga. 1996)	..3
<i>Mayer v. City of Chicago</i> , 404 U.S. 189 (1971)	.13
<i>McCray v. Maryland</i> , 456 F.2d at 6	..7
<i>Neitzke v. Williams</i> , 490 U.S. 319, 327, 109 S.Ct. 1827, 1831-32, 104 L.Ed.2d 338 (1989)	..9
<i>Noble v. Shearer</i> , 6 Ohio 426, 427 (1834)	..5
<i>Roberts v. First Ga. Community Bank,</i> 335 Ga. App. 228, 230 (1) (779 SE2d 113) (2015)	..9
<i>Ryland v. Shapiro</i> , 708 F.2d 967 (5th Cir. 1983)	..7
<i>Undisclosed LLC v. State</i> , 302 Ga. 418, 425 (Ga. 2017)	..6
<i>U.S. v. Mancilla</i> , 226 Fed. Appx 945, 946 (11 th Cir. 2007)	..6

Table of Authorities

Western United Realty, Inc. v. Isaacs, 679 P.2d 1063, 1069 (Colo. 1984) ..9

Wright v. State, 215 Ga. App. 569, 570 (2) (452 S.E.2d 118) (1994) ..6

Statutes

O.C.G.A. § 9-11-1 7, 9

28 U.S.C. 1257(a) 1

Rules

Rule 20, U.S. Supreme Court 11

Other Authorities

U. S. Constitution, First Amendment 7

U. S. Constitution, Fifth Amendment 7

U. S. Constitution, Fourteenth Amendment 7

PETITION FOR A WRIT OF CERTIORARI

Tim Sundy, *pro se*, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Georgia in case S21C0007.

OPINIONS BELOW

The order of the Supreme Court of Georgia is unpublished and is attached as Appendix A. The order of the Court of Appeals of Georgia is unpublished and is attached as Appendix B. The order of the Superior Court of Hall County, Georgia, is unpublished and is attached as Appendix C. The order of this Court in No. 20-6868 is unpublished and is attached as Appendix D.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on 15 March 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). Pursuant to this Court's Rule 13.1 and Rule 30.1, this Petition was timely submitted on Monday, June 14, 2021, by U.S. Priority Mail #9505511997471165645145 with money order number 19-263200973 in the amount of \$300.00 enclosed; the Petition was prepared in booklet form and proper pursuant to Rule 33.1.

This Petition momentarily appeared on this Court's online docket on June 25, 2021 as Case 20-1798 but was removed. Sundy's signed booklet and the 8.5x11 copy were returned to Sundy by Clerk Scott S. Harris with a deficiency letter dated June 25, 2021. Attached as Appendix F. An image of the docketed petition is at Appendix G.

This Petition is timely resubmitted by U.S. Priority Mail on Monday, August 23, 2021, certified mail # 70200640000027649607, and is now formatted under Rule 33.2.

STATEMENT OF THE CASE

Petitioner Tim Sundry (Sundry) in the state court below, since December 20, 2015 in case 2015CV1366 Hall County Superior Court ("HCSC") when the Clerk began removing Sundry's properly filed documents from the record of the court, has been subject to a record that is incomplete or otherwise defective in violation of Sundry's substantive and procedural due process rights. From 2015 to the present, removed documents have included properly filed objections, timely responses, as well as statutorily-required notice(s). Omissions and falsifications in the record have deprived Sundry of a record adequate to review specific claims of error already raised, undercutting Sundry's ability to meaningfully prosecute his appeal. The trial court Judge threatened to sanction Sundry for refusing to acquiesce to the incomplete record but did not follow through, instead rendering a judgment with inconsistent due process as punishment enough.

Sundry has repeatedly presented clear evidence of the defective record and the omissions which prejudice Sundry's case, with Sundry exercising due diligence to correct the record, while appellate courts either avoid the issue or dismiss proceedings on other grounds. *Judicial Notice—see RELATED CASES*. For the past six years, no adverse party in any of the proceedings listed, including those in the 11th Circuit, has ever argued or demonstrated that the record was complete for the opposing party to obtain a judgment **APPENDIX C** by inconsistent due process in the State court.

Sundry, to no avail, has asserted that in a court of record he is entitled to have

a complete record, even if no upcoming appeal or any other case is pending in another court. A complete record on appeal is one of the cornerstones of the appellate process and, in Georgia, the burden for that record rests squarely on the shoulders of the appellant. See *Kegler v. State*, 475 S.E.2d 593 (Ga. 1996). All that *pro se* Tim Sundy wants is a correct and complete record in the State trial court and in the appellate court so that he may have a sufficient, adequate, effective, meaningful, and impartial appeal to address his constitutional violations and issues.

No Court has identified to *pro se* Sundy at what point it should have become clear to Sundy that he has no right to be immune from criminal activity. No Court has found that Sundy does not have the right to a complete record. No Court has ever even ruled on the original issue of Friendship Pavilion's unclean hands and scheme of prevention of performance, or the false affidavit it filed into a government entity.

On the other hand, *pro se* Sundy, in custody, has been forced to spend thousands of dollars to defend against collateral acts committed by court officers acting to deprive Sundy of Constitutional due process, equal protection and liberty interests, at the same time as Sundy defends himself from Friendship Pavilion's affirmative RICO activity.

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

APPENDIX D states, without evidence, that *pro se* Sundy is abusing the Court process and therefore Sundy is restrained of his liberty of the privilege of

proceeding *in forma pauperis* to apply for a writ of certiorari. Opposing parties have likewise, throughout the course of *pro se* Sundy's respectful pursuit of remedy to the deprivation of his rights, accused Sundy of sanctionable behavior in retaliation for *pro se* Sundy's tenacious and zealous self-advocacy. This, despite the fact that Sundy's legal arguments, claims and entitlement to equal protection and due process are neither unreasonable nor without merit. The judges in State and Federal appellate courts have failed to sustain such retaliatory requests, recognizing Sundy's right to intelligently, rationally, and respectfully defend himself against civil liability and against court officers' violations of Georgia and federal law.

APPENDIX D saying the "THE COURT" is in stark contrast with the cases listed in RELATED CASES in which no Judge has ever sustained the notion that Sundy's complaints in multiple proceedings were abusive.

Only persons who are not a party, such as a Clerk, or the opposing parties, would suggest Sundy as being abusive for adamantly invoking the Court on rights, privileges and immunities which Sundy should have ordinarily as any other free man. *Pro se* Sundy, despite his inexperience and lack of legal training, has always attempted to present a cogent legal argument supported by factual evidence and with citation to relevant legal authorities. Sundy's demand for a complete record from a court of record is supported by law, statute, and court rules. As outlined in Sundy's pleadings, this matter could have been terminated long ago if Georgia's court officers had simply obeyed the law. Instead, Sundy has suffered injury without remedy.

No Court has ruled that Sundy's contentions and argument are utterly devoid

of all plausibility. It is clear, however, that *pro se* Sundry's zealous self-advocacy and availing himself of statutory access to the courts to vindicate his rights is an affront to Clerks and attorney-represented parties. However, zealous self-advocacy is not abusive. Sundry's good faith efforts to determine whether a *pro se* litigant has any remedy of equal protection of due process when the *pro se* party is singled out to have his properly filed documents concealed, removed and/or withheld from the court record, denying the *pro se* a correct, full, and complete record in both state court and federal court, are the only method available to establish due diligence in the eyes of the Court.

The determination of **APPENDIX D** was made upon an incomplete record. Only if the U. S. Supreme Court did have a complete record could the U. S. Supreme Court objectively say under Rule 39.8 that Sundry's case is frivolous or malicious. The U. S. Supreme Court, by inconsistent due process, does not have a complete record before it to reach a determination of Sundry's complaint as frivolous. At the same time, the Court can present no evidence that *pro se* Sundry is malicious in any way, shape or form.

ARGUMENT

This petition for a writ of certiorari presents the question whether the willful refusal and/or failure of a court of record to maintain a complete record is a form of custody in depriving a litigant of due process while denying the litigant rights, protections and immunities guaranteed by the First, Fourth, and Fourteenth Amendments of the United States Constitution.

In *Noble v. Shearer*, 6 Ohio 426, 427 (1834) the Court stated that "A record is

the history of the cause from its commencement, the issuing of the writ, until final judgment is rendered." In *Undisclosed LLC v. State*, 302 Ga. 418, 425 (Ga. 2017), the Court states "Case law and leading common law authorities have defined a court record as a history of the proceedings and actions of the court from the commencement of the suit to its termination."

When Sundry petitions the U. S. Supreme Court, or any court, for review or a writ of certiorari and only an incomplete record is available to be sent up, Sundry is deprived of his liberty and is prejudiced as the result of his inability to present an accurate and true record from which to prosecute his review.

"A complete record functions to ensure procedural due process on appeal." *U.S. v. Mancilla*, 226 Fed. Appx. 945, 946 (11th Cir. 2007)

"The burden is on the complaining party, including pro se appellants, [cit.], to compile a *complete record* of what happened at the trial level, and 'when this is not done, there is nothing for the appellate court to review.' [Cit.]" *Wright v. State*, 215 Ga. App. 569, 570 (2) (452 S.E.2d 118) (1994).

Sundry's First Amendment right of petition is lost when Sundry's properly filed objections, responses or other documents are removed from the court record. "Loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347; 6 S. Ct 2673; 49 L. ed. 2d (1976). Yet, no Court will not uphold Sundry's right to a complete court record. Six years is a long time to be injured by an incomplete record.

The numerous remedies sought by *pro se* Sundry to correct the record as noted in the list of RELATED CASES would lead any reasonable man or women to

question why, in the interest of justice, a court in Georgia would not have supported Sundry's right to a complete record and to the "just, speedy and inexpensive determination of every action" secured to Sundry by O.C.G.A. § 9-11-1.

Pro se Sundry has consistently presented factual evidence that court clerks in the trial court, state appellate courts, and even the U.S. District Court of the Northern District of Georgia court have removed Sundry's properly filed documents from the court record and/or altered the record resulting in Sundry being deprived of full access to the court.

This Court has placed 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.

"Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong[M]eaningful access to the courts is a right of constitutional significance." *Christopher v. Harbury*, 536 U.S. 403, 415 (2002)

In *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983), the Court stated, citing *Chambers v. Baltimore Ohio Railroad*, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907):

"that it is clear that this Court viewed the right of access to the courts as one of the privileges and immunities accorded citizens under article 4 of the Constitution and the .fourteenth amendment."

The 5th Circuit went on to say that "A mere formal right of access to the courts does not pass constitutional muster." and further cited *McCray v. Maryland*, 456 F.2d (4th Cir. 1972) at 6 ("Of what avail is it to the individual to arm him with a panoply of constitutional rights if, when he seeks to vindicate them, the court-room

can be hermetically sealed against him by a functionary who, by refusal or neglect, impedes the filing of his papers?").

A meritorious action that proves unsuccessful is not frivolous. Defending against the violations by court clerks and other functionaries as have been perpetrated upon Sundry to deprive him of due process and full access to the court is meritorious. It is especially meritorious to the other *pro se* litigants in Georgia who are documented by Sundry to have been subjected to the same violations.

Under the U.S. Constitution, the right of access to the courts is guaranteed and protected from unlawful interference and deprivations by the state. Georgia's lower courts and appellate courts, by failing to comply with the local rules of the courts thereby denying Sundry due process, while also falsifying Sundry's court record(s) in a manner to abrogate Sundry's legally protected private substantive and procedural interests guaranteed by the statutes and constitution of the United States and the State of Georgia, have placed Sundry in constructive custody.

Sundry has presented evidence in the lower courts of actual prejudice and irreparable injury suffered by Sundry as the result of court officers' repeated actions of removing and/or withholding Sundry's pleadings from the court records as well as court officers' actual falsification of the record.

The mere fact in Sundry's case that Sundry has proven and established that neither a state court nor a federal court in Georgia will compel the lower trial court Clerk to complete the record, conclusively establishes that once the initial removal of document is perpetrated by a clerk, on the very first day this happens, Sundry and

other citizens are denied the "just, speedy and inexpensive determination of every action" secured to the citizens by O.C.G.A. § 9-11-1 and have absolutely no remedy to the injury.

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

Sundy has refused to acquiesce to court officers tampering with the record to deprive Sundy (and other *pro se* litigants in Georgia) of equal protection and full access to the court. For his due diligence and defense of his constitutional rights, this Court's Clerk labels Sundy's pursuit of justice as abusive and Sundy's claims as "frivolous."

A claim or defense has been defined as frivolous "if the proponent can present no rational argument based on the evidence or law in support of that claim or defense." *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984). "To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling." 5, 818 N.W.2d 804, 807 (S.D. 2012). A claim is frivolous if and only if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827,

In the American Psychological Association's 27 February 2020 article "Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases," the researchers documented that: "consistent with hypotheses, **judges evaluated pro se litigants as having less meritorious cases (despite identical case content)** and expected these litigants to experience the civil justice system as less fair and satisfying than counseled litigants, especially when trial (vs. mediation) was pursued....Legal officials relied on preconceptions of pro se litigants rather than evidence presented to them. Even under practically perfect conditions where case information was held constant, **legal officials were affected by their preconceived notions about pro se litigants over available data.** We find this troubling. In real-world settings, this phenomenon may disadvantage pro se litigants with meritorious cases." (*emphasis added*)

The record below reveals the pattern that when Sundry files an extraordinary action in a state court to correct the record, the lower court may *sua sponte* correct the defect complained about in the extraordinary action but without issuing an order, rendering the issue in the complaint as moot. At the same time, the Clerk or some other person will cause a new defect -- such as removing papers—thereby forcing *pro se* Sundry onto a hamster wheel of defending himself against collateral acts by court officers. Any reasonable person would consider such acts as evil yet Georgia's courts deny Sundry any remedy to his injuries so that the record is still incomplete and / or somehow defective.

On May 10, 2020 case 19-8492 for example, Sundry filed an Extraordinary Action in this Court which this Court denied, establishing that this Court would not compel correction of the record. But at the same time, this Court will declare Sundry's pursuit of consistent due process and equal protection as a frivolous or malicious act by Sundry with this Court, in fact, punishing Sundry.

When claims are caused to become moot by correcting an existing defect then maliciously creating a new defect and this conduct is allowed by the appellate courts, the very nature of the design will generate numerous of cases in pursuit of a remedy. If it is perceived as frivolous or malicious when a *pro se* litigant exhausts all remedies in the numerous cases, it would thus seem the only remedy available on the very first day a clerk removes papers from the record, would be for the citizen to immediately file a Petition for a Writ of Habeas Corpus for the restraint of liberty. In this non-prevailing situation, the Court will likely say the litigant has not exhausted all remedies (not filed enough suits yet) to Petition for an Extraordinary Writ.

With all respect to the Court, in filing this petition for writ Certiorari, it may appear that Sundry is abusing the process because this Petition is also related to Sundry's seeking a certiorari upon an incomplete record. In considering Rule 20 however, *pro se* Sundry believes that in order to avail himself of an extraordinary action in aid of this court's jurisdiction, Sundry must first qualify for a petition for writ of certiorari for this court to have jurisdiction. As *pro se* Sundry respectfully avails himself of the rules, the Court may, here again, complain that Sundry is

~~abusing the process. However, in an attempt to overcome this catch-22-in-aid-of this~~
court's jurisdiction, Sundy is filing an independent Application for a Writ Habeas Corpus to the Honorable Justice Clarence Thomas contemporaneously with the respectful filing of this Petition, it appearing to the *pro se* Sundy that this Petition is necessary to benefit under the rules by first qualifying for writ of certiorari.

Sundy has exhausted all remedies in the State of Georgia and the record is still incomplete. Perhaps Sundy, as a free man, absolutely has neither an ordinary remedy nor an extraordinary remedy to enforce Georgia to make the record whole.

It is strange times we live in in America, where judges, not the rule of law, deem a clerk removing papers from the record as normal behavior and that there is no issue of public interest to justify for certiorari to review an incomplete record. But if a citizen is adamant about seeking judicial aid to compel a clerk to return the papers, it is deemed abusive, frivolous or even malicious.

Because Sundy's claims have an arguable basis in both law and fact, perhaps the bias of judges evaluating *pro se* litigants as having less meritorious cases despite identical case content to attorney-represented parties is the only reasonable explanation. Despite the obvious futility of appealing upon an incomplete record, *pro se* Sundy stands his ground and avails himself of the appellate process in order to correct error, pursue valid legal claims and clearly justiciable issues of law or fact, still believing in the right of equal protection for all citizens.

REASONS FOR GRANTING THE WRIT

Sundy has not asked for a perfect record, only the complete record to which he is entitled.

“...while Petitioner is entitled to a complete record, a perfect one is not mandated by either the state or federal courts. See, e.g., Mayer v. City of Chicago, 404 U.S. at 194 (“A ‘record of sufficient completeness’ does not translate automatically into a complete verbatim transcript”); People v. Harris, 43 Cal.4th 1269, 1283 (2008) (a perfect record cannot always be achieved)” *Alvarez v. Warden, San Quentin State Prison*, No. 2:97-cv-1895 KJM KJN P (E.D. Cal. Apr. 2, 2019)

Georgia appellate courts have consistently demonstrated over the past six years that *pro se* Sundy, in custody, will not be afforded enforcement of his constitutional rights under the First, Fourth, and Fourteenth Amendments, and that the pattern and practice of Atlanta-area courts, or record maintaining court records with substantial and significant omissions and material falsities is not a matter of public concern in Georgia.

To have a “plain, speedy and efficient” remedy it is conclusive that a litigant must have a complete record. The relief sought by Sundy from this Court is not available in any other court in the state of Georgia.

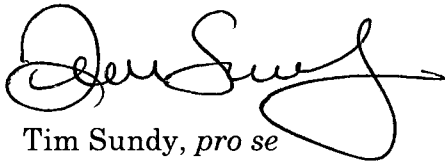
CONCLUSION

After all remedies have been exhausted, the truth must still be upheld. The adverse parties must come into the court under oath and swear that a judgment APPENDIX C was obtained with consistent due process and upon a complete record, a record without defects and with all essential papers. If the opposing parties present falsehood, then the court must allow Sundy to confirm the evidence

that Sundy has presented many times in previous cases.

The Court should grant Sundy's petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tim Sundy", with a stylized flourish extending from the end.

Tim Sundy, *pro se*
227 Sandy Springs Place, Ste D-465
Sandy Springs, GA 30328