21-5330

In The

Supreme Court of the United States

LAURA MARIE SCOTT,

Petitioner,

v.

NANDAN PATEL, *et al,*

Respondents

On Petition For Writ of Certiorari

To The United States Court of Appeals

For the Sixth Circuit

PETITION FOR RECONSIDERATION

LAURA MARIE SCOTT, *pro counsel* for the Petitioner

CORPORATE DISCLOSURE STATEMENT

There is no corporate disclosure necessary. Petitioner is not a corporation. She remains a private citizen of Michigan since birth. However, Respondent, Enterprising Real Estate, L.L.C. (hereafter "ERE"), at issue in the pending Michigan Supreme Court parallel action discussed herein, is a limited liability corporation.

Furthermore, its appropriation of Petitioner's federal 42 U.S.C. §1983 civil rights claims — from the federal Complaint in this matter, filed September 11, 2019 — in the subsequent parallel action in state district court, cannot be construed as legitimate reciprocal civil rights claims; whereby petitioner becomes the defendant in the latter matter. This is because ERE was in a federal contract since mid-2019 (or earlier) with the Respondent, City of Hamtramck. It is therefore a "state actor" agent on behalf of a city, rather than a private citizen.

Petitioner, being a private citizen in a prior federal contract with the same city since 2007 on the same subject property, as ERE is with the same city, has remained a private citizen. Therefore, Petitioner cannot be made a defendant to any Respondent's civil rights claims made against her, in any court, let alone in state court where at minimum there is a legitimate state statute claim in the correct state court with the federal claims made supplementary to that prerequisite; particularly ERE. *Monroe v. Pape* (1961).

See further explanation herein as to this context for the Corporate Disclosure Statement clarifying this distinction regarding the parties' corporate role in 42 U.S.C. §1983 actions — those connected by contracts over the years between the parties in this matter, which make them all "state actors" for the purposes of Petitioner's subject-matter jurisdiction on reconsideration herein — to this instant matter.

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PETITION FOR RECONSIDERATION

In accordance with this Court's Rule 44.2, Petitioner respectfully seeks reconsideration ("rehearing") of the Court's order of October 12, 2021, summarily denying certiorari without explanation, while silent as to the *In Forma Pauperis* ("IFP") motion accompanying it. Notably, mention of the Michigan Supreme Court parallel case number 162892, herein, is not a violation of the rule in repeating the same covered grounds in both cases simultaneously, on reconsideration in each respective court. Rather, this is why reconsideration is warranted, among other reasons. The five groups sets of reasons are each stand-alone reasons, but in the order chosen for a purpose: that the parallel action's path to this Court replicates a recent case in this Court in *Lange v. California,* 141 S. Ct. 617 or 644, Case No-20-18, decided June 23, 2021. It gives this Petition for Reconsideration context as well, as to the Fourth Amendment violation, August 29, 2019.

Substantive/Constitutional Reasons for Reconsideration

Until recently, this Court's recent decision in *Lange v. California* did not need to be addressed, prior to October 12, because the parallel case to this matter on the "same", pursuant to state court directions as to filling out the Michigan Supreme Court-court-approved forms, appropriated Petitioner's 42 U.S.C. §1983 claims as its own (the victim). It had not yet been passed upon by the Michigan Supreme Court. In other words, the one Respondent among nine, Enterprising Real Estate, L.L.C. (hereafter "ERE"), not only filed a motion to dismiss (R. 14) in federal district court; but, because it had no consensus among the other eight to remove the federal action to state court, it alone filed a state district court complaint 19-3717-LT (hereafter "parallel" action), subsequently, while the former motion was pending.

Similar to Lange's entering his garage, which denied the *Terry v. Ohio* stop to the police officer articulated in *Michigan v. Long* (see Question Presented on this case) in this Court, the Michigan Supreme Court in the parallel matter to this instant case, passed upon the Application for Leave to file an appeal of ERE erroneous affirmation of its "bad-faith" complaint 19-3717-LT. Lange closed the loophole in the exceptions to a warrant, etc. Pursuant to that court's holding in *Hodge v. State Farm Mutual Automobile Insurance Company,* Case No.149043, decided June 6, 2016, which is virtually the same as the scolding given in federal *River Park, Inc v. City of Highland Park, 23 F.3d (7th Cir. 1994), 93-3017,* citing *Williamson County* in its scolding (since reversed by this Court in *Knick,* cited elsewhere herein) , Case No. 93-3017, with its Illinois Supreme Court parallel action, for having filed it with the wrong court.

This is what happened in parallel in this matter with the Michigan courts, on appropriated federal claims, under the pretext of state law claims quickly abandoned. The parallel action should have been dismissed at the first hearing January 2, 2020 pre-pandemic. It was not dismissed, necessitating a timely appeal to the state circuit court, which should have been the trial court pursuant to *Hodge* and other guidance from the Michigan Supreme Court in 1970 as the state statute in the parallel case was cumbersomely amended to death since 1846. The commissioners advised the state legislature to send complicated cases to circuit court for discovery reasons that benefit the defendant where summary eviction was not based on agreed facts or a contract for instance. It was ignored by the courts due to the court forms, customs and instructions, especially for *pro se* and indigent defendants who are unaware of internal operating procedures on short notice in the state district court. Moreover, despite the court instructions in the parallel matter, the court ignored its own instructions once pressed at the first hearing on those procedural safeguards denied such that appeal was inevitable as the hearing went on.

For instance, the parallel state court affirmed that the invasion was unlawful but then ignored that preclusion to the action before it *res judicata*. Additionally, when contradiction was given, minutes apart as to the subject-matter jurisdiction of the summons, as compared to the complaint, that contradiction was also ignored. Opposing counsel and the judge both contradicted themselves in that exchange. The fix was in, as the saying goes. The witness, in lieu of ordered state court transcripts, later cited in the opinion in this matter (R. 100, footnote 1) were ultimately obtained too late to help in the two parallel matters. They had been ordered months earlier; misfiled under the wrong judge's name; and never produced, etc., until after the hearing. These were just part of the record on appeal, as to the procedural hurdles that were worsened once the pandemic closed the courts on appeal. Jury demand was thwarted. Even the court rules provision for the oral answer to the complaint was ignored despite there being no discretion, where the libraries were closed the entire week prior to the hearing due to the New Year holiday closures and the courts were as well. Every good-faith effort by Petitioner was met with bad-faith actions by ERE prompted by the local court of the Respondent city. Basically, as in *Lange*, the refusal to address this burdens this Court by state courts refusing to do their duty. In part, the odds of granting the petition in this Court make it less likely that the state supreme courts need to concern themselves with these matters. *Lange* shows why reconsideration here is needed to lessen that confidence.

Then, on appeal, ERE stipulated Petitioner's claims be granted, thrice in three appellate courts. A timely motion for reconsideration based on *Lange v. California* and other grounds is pending in the Michigan Supreme Court. If that reconsideration (162892, Doc. No. 60) is not granted, Petitioner will be filing a petition for certiorari (or an appeal, whichever is appropriate) from that Michigan Supreme Court decision on the same 42 U.S. §1983 appropriation of claims, in this Court, soon afterwards.

As stated in the Corporate Disclosure Statement, ERE is a corporation. Due to its federal contract with the Respondent city, it is a not a private citizen in this matter nor in the parallel subsequent state-court action. It cannot use any court to file 42 U.S.C. §1983 claims – especially ones it caused, August 29, 2019, regarding the Fourth Amendment, at the subject property to invade privacy where the *pro se* opposing party has privilege over her legal papers on pending matters in federal court concurrent with the invasion. The Fourth Amendment protected Petitioner's legal papers as *pro se* and not just the property itself, during an invasion pending federal litigation against the Respondent city who contracted ERE. In other words, only the Fourth Amendment claims it appropriated were because its predecessors paved the path to the invasion with Fifth Amendment (and Fourteenth Amendment violations), thus putting the city in the precarious dual Amendment role of the Respondents, a "conduit" under Michigan law.

One article from Cornell addresses this concept to pair with *Knick* (Petition for Certiorari's[1] *Appendix E*) of that opinion entailing all of the Bill of Rights and updating *Monroe v. Pape* (1961) cited therein. Notably the reliance by Petitioner on intervening *Knick v. Township of Scott*, Pennsylvania during the state court matter of its predecessors was beyond repose, in 2019; was related to the municipal Respondents; regarding the Fifth Amendment (due to the federal contracts on the subject property). It predated ERE's Fourth Amendment violation by the Respondent Nandan Patel for ERE, prompted by the city Respondent. Since, the Fifth Amendment violation preceded — rather than followed — the Fourth Amendment violation, the entire matter would have been easier to make clear to the courts had the conflicting federal contracts on the subject property not been in conflict as to Petitioner's occupancy as a stand-alone matter, based on the first contract under federal law, superseding state law.

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[1] In a theory of "convergence":*Enforcing the Fourth Amendment: The Exclusionary Rule*, from https:///law.cornell.edu/constitution-conan/amendment-4/enforcing -the-fourth-amendment the exclusionary rule, also cites Monroe v. Pape (1961) and on page 11 of 21 pages it has footnote 442, "We have already noticed the intimate relationship between the two amendments. They throw great light on each other." Knick in this Court expanded that linkage this matter's Certiorari's Appendix E.

The Fifth Amendment violation is an *in rem* action, albeit out of time, as described in the Petition for Certiorari, whereas the Fourth Amendment is an *in personam* action as to possession in the first instance. Normally, *in rem* jurisdiction would be exclusively a state-court matter; but, exceptions described in the Petition for Certiorari are premised on the bifurcation of a 2013 debt ordinance amendment in December 2013, challenged directly in the Michigan Supreme Court, amended by the Respondent city, which never attained any statutory lien status, even as a baseline. There too, the Michigan Supreme Court passed on that case in Livonia, Michigan whose liens were valid and which the legislature extended the time to certify liens afterwards in response to it.

Under Michigan statute and case law, consumption is what self-executes the lien. The city must provide the service to be consumed in order to execute the liens. Lacking both, no liens existed to be certified to the county Respondnent, let alone become personal debt either. Yet, its bifurcation into *in rem* and *in personam* debt led to parallel actions in the state foreclosure court as well as the bankruptcy court to resolve both debts. In sum, it all ends in 2021 as it began in 2016: parallel actions bourne out of nothing real (fraud) that will soon approach another foreclosure in 2022 and yet another bankruptcy in 2023 for no good reason.

Furthermore, this burdens both the courts and the Petitioner alike. Reconsideration to hedge against this future as well as current abuse of process is justified as perhaps the Sixth Circuit is likely to be hit harder than most circuits. Michigan this week leads the nation in COVID-19 cases and Petitioner see both vaccinated and unvaccinated dying in equal numbers among family and others known to her; one this very past week. The courts have been closed here more or less in total to in-person business since early 2020 and this is especially burdensome in Michigan courts as it leads the nation in cases. COVID-19 had a direct impact on this case and the IFP status as worsening rather than stabilizing.

Notably, this is relevant on reconsideration because the parallel action in the state court pending its motion to dismiss in the federal court (R. 14) was an *in personam* action to "recover possession" in the *second* instance – a "second bite of the apple" as it were. The state district court affirmed the illegality of that first invasion, but ruled in favor of it anyway, in error. However, in doing so, that revealed once again the "split" :misunderstanding the *in rem* and *in personam* actions are under Michigan's Constitution of 1963, Article IV, §24, distinct objects for which all Michigan statutes must choose one object or another. Not both.

Not only that, but ERE quickly abandoned its state law claims as well, leaving only the moot civil rights claims it appropriated in error. The problem for the Michigan courts is that once the first court has no jurisdiction, the subsequent courts have none either – to affirm that decision, nor act upon it while appeal is pending. Michigan Supreme Court's *Fraser* in ERE's *Exhibit 1* in both parallel matters was incorporated into *Hodge* by that court. It was revisited recently as it still important law. However, *Fraser* is misapplied to good-faith defendants who appeal a bad-faith complaint under *Hodge*. This leaves Petitioner in limbo as to why that is so. In other words, the only way to prevail is when the bad-faith plaintiff loses and itself appeals the good-faith defendant's victory. Hence, the pending motion for reconsideration attempted to prevent the need to file another petition for certiorari with this Court on the parallel matter but fear it is inevitable under the holding that rewards a victorious bad-faith litigator but punishes only those who lose. What kind of system is that? And to what end are cases like this and *Lange being* forced to get this Court to address the dereliction of the superior courts to correct such a problem for their own sake?

Under Michigan Supreme Court holdings, a peculiar situation is attractive to bad-faith plaintiffs in that if they prevail rather than fail, the lack of jurisdiction is ignored by the upper courts. This leaves a the good-faith defendant (same as good-faith Plaintiff in this matter) in such actions out in the cold in each of the thre courts between the trial court and this one– despite the abandonment of its state claims and despite on appeal stipulating thrice in three appellate courts that each appellate court "should grant Scott's claims herein" – meaning Petitioner's counterclaims which were appropriated by the Respondent. It is no wonder why that matter is now pending reconsideration, perhaps soon to be the next petition in this Court on the "same" reciprocal claims.

The reason for mentioning this now is because ERE's claim abandonment and stipulations, in addition to the first court's errors are not in dispute. But, they are in the parallel record rather than this Record on Appeal to the disadvantage to justice and complete transparency. These serve to show that if they were incorporated into the Record on Appeal in this instant matter, it would contradict not only the motions to dismiss; also the orders appealed in the federal district and Sixth Circuit courts quite clearly in ways not possible prior to October 12's denial. Again, the text thus far is not in violation of rule 44 but rather replication of the parallel action to justify reconsideration. It is not restating verbatim what was in the Petition for Certiorari. It is new information as the Michigan Supreme Court review began around this Court's decision in *Lange*.

Sixth Circuit Reasons for Reconsideration

As it stood when the Certiorari was filed, it was not as clear as now; that there is a "split" between the Sixth Circuit and the Michigan courts as to that key difference. In the Sixth Circuit order, preceding the one appealed, it stated erroneously that the Petitioner was "evicted" since "April" 2019; before *Knick* was decided. Whereas, the first exhibit used by ERE was same the case intervened by *Knick.* In that case, Respondents Yun, on behalf of Sabree, said the opposite of the Sixth Circuit. Respondents Yun, on behalf of Sabree stated that the *in rem* action was not an *in personam* demand for money. But it was requiring both money as a prerequisite to appeal; in violation of even non-bankruptcy matters, when it was forbidden by federal law and state law alike, as follows:

Specifically, Michigan Supreme Court held in *In re Wayne County,* 480 Mich. 985 (2007), "In conjunction with *Perfecting Church*" – both in 2007 - cited in both the instant matter's Order (R. 100) and the Sixth Circuit order appealed in the Certiorari. It cited the exceptions to the state statute at 983. Specifically, in contrast to what Respondent Yun stated in ERE's *Exhibit 1* case, being "and" to both redemption and to appeal. It also shows that the alternative to subsection 7 in subsection 6 is §211.78k(9), of which its subsection (9)(f) is the 11 U.S.C. Bankruptcy Code exception to it. That the word **"or"** in addition to the precise language of the statute in ERE's *Exhibit 1* case, was to either redeem (an admission that the debt is owed) **"or"** an appeal (an objection where the same statute prohibits payment in advance of the appeal). It is a Catch-22; but one with federal exceptions as well, which were ignored. Notably, from k(9)(f) is the permanent injunction which is not subject to the Tax Injunction Act (see Chief Judge Sutton's concerns below on this) as the Sixth Circuit would otherwise assume barred jurisdiction beyond the sale of the parcel but now has updated it to not do so. But, that is also ignored in the parallel matter as some collateral attack on the erroneous ERE *Exhibit 1* decision preempted by *Knick* in 2019.

Therefore, Reconsideration here depends upon sequence of each 42 U.S.C. §1983 violation, when one is *in rem* and the other is *in personam,* they are un-tethered in Michigan yet connected in causation to one another to some extent here because of the federal contracts. When the state statute at issue in direct opposite understanding by both the Sixth Circuit and the Michigan courts hinges upon 11 U.S.C. incorporated directly into the said state statute against any *in personam* actions in addition to the prohibition in the said state statute as to any *in personam* actions regarding possession in the *first* instance, ERE's parallel action was under a state statute for possession in the *second* instance.

In other words, the invasion August 29, 2019, was *res judicata* under the Sixth Circuit understanding of state tax foreclosure law as to "eviction"– when ejection was the proper state court action if not for the Fourth Amendment violation – *res judicata* of that invasion, as to the parallel action. Notably, as stated elsewhere herein, and in the parallel motion for reconsideration, *ejectment* is a different statute in Michigan than eviction, for several reasons. The latter is done in the circuit court rather than the district court. Once in a state circuit court, the parallel action concurs with federal law. In that example it cited the 2007 Michigan Court of Appeals case, *Adams v. Adams,* decided the same year as "*Perfecting Church.*" *Knick* also uses the word "ejectment" in the context of ejecting the government from the premises as understood in federal law which is not necessarily the same as the usage in state law. Florida distinguished these words clearly as used as the basis for this in the parallel action until *Adams v. Adams* addressed ERE's assertion on appeal for the first time, that Michigan did not have any ejectment statute, which was untrue.

In Michigan, careful determination of title issues before possession issues, regardless of who occupies the property in the matter. The parallel "eviction" is only for *re*possession; thus, requiring prior possession. Its tax foreclosure statute and eviction statute are incompatible, because to be in foreclosure one must own the property; not landlord-tenant parties. The repose moots both actions in 2019 regardless..

In other words, the basis for ERE's *Exhibit 1,* in both matters, was inconsistent with the Michigan Supreme Court holdings since 2007. It has been updated since, but ERE's *Exhibit 1* ignored it all. Specifically, it says, again the word "or" as to 7 or 9, not both. Double use of the word "or" in subsection 6 and again in conjunction with this context shows that where 211.78k(9) applies as it did here, the *in personam* demand for cash to appeal in 2019, back in 2007, would have yielded a reversal pre-*Knick*. Post-*Knick*, the remedy is not enough to resolve the error.

Justice Kavanaugh's reassignment to what was formerly Justice Sotomayor's circuit aligns with another reassignment of the Sixth Circuit's Judge Sutton, who wrote a book fitting the "two free throw" analogy of a case in both the federal and state supreme courts at once. This case and its reciprocal case pending in the Michigan Supreme Court on the same 42 U.S.C. §1983 claims as Petitioner made in her Complaint were appropriated. The decision in the federal district court at the end of June 2020, coincided with appeal in the state court, such that the counterclaims were in effect to fruition of that analogy. See EXHIBIT A attached.

The nexus between the Sixth Circuit's misapplication of Michigan's *in rem* statute*, as articulated its COVID-19 order (prior to the one Certiorari appealed) in this instant matter, is a mirror image of Michigan's misapplication of federal *in personam* statute (11 U.S.C. in *M.C.L. §211.78k(9)(f). Not only is it incorporated directly into *§k(9)(f); but, it is also true for the action for possession *in personam* in the parallel action, filed subsequent to the Complaint in this matter.

This is worsened by the same exhibits in both matters; thus, "doubling down" on that error by using these misapplications boldly. Rather than taking notice of the Michigan Constitution of 1963, Article IV, §24 prohibiting any dual action *in rem* and in *personam* in a single statute, it did the opposite. 211.78k(9)(f) incorporates the exception into the rule in that it, in effect, the subsection uses federal 11 U.S.C. to separate the *in personam* demands from those of in rem state demands; yet requiring that if liquidated the equity is reserved. This is an excellent example of how federalism is used correctly; albeit ignored in the parallel actions and that leading up to it. See *Federal Regulation of State Court Procedures*, by Anthony J. * Bellia, Jr. Yale Law School Journal, Vol. 110:947, from Notre Dame Law School, Anthony.j.bellia.3@nd.edu (2010), page 975, on the difference between one-object per statute in Michigan's Constitution as opposed to importation of all objects into civil matters in federal court in a certain jurisdiction. In other words, federalism must respect the sole object of Michigan's statute as the federal court "finds it" rather than join two objects as one in its opinions in error as the Sixth Circuit did regarding the "April" 2019 "eviction" when no such thing happened; and if it did happen, it makes the entire parallel action ERE afterwards void on its face. Either way, the error provides a nexus between this matter and the parallel action which justifies reconsideration on this sole-object point, as applied erroneously in both matters.

In Michigan, the right to either possession in the first instance or repossession in the second instance – if any — is determined in a subsequent separate action, in either the state district court or the state circuit court. It depends on whether the matter is complex or based on a contract (no dispute as to material facts). Avoidance altogether of either court is not allowed in Michigan. When that happens, the civil rights claims are not required to be resolved in state courts under *Monroe v. Pape* (1961); primarily because the federal claims being supplemental, may lack the required state law claims to begin the complaint.

* see also EXHIBIT C, p. 978 and its footnote 168.

That did not stop ERE from doing just that — effectively a removal action — *after* it filed its motion to dismiss in this matter. One article updates the timing of *Monroe v. Pape* (1961) as to immediate access to either state of federal court without delay caused by state court or state law, regarding 42 U.S.C. §1983 actions. *Felder v. Casey*, 487 U.S. 131 (1988) cited on page 961 of *Federal Regulation of State Court Procedures*, says, "In effect, the Court found that §1983 implies as a matter of procedure that a plaintiff may immediately pursue relief in court...[citing also *Brown v. Western Railway*, 338 U.S. 294 (1949)..., '[f]ederal law takes state courts as it finds them..." Notably, when the Sixth Circuit misstated what it *found* in state law in its opinion about "eviction" in "April" during the 2019 ERE *Exhibit 1* case, it failed *Felder*'s holding in that regard. Bellia, page 961.

The "split" warranting reconsideration is therefore the misapplication by the Sixth Circuit of Michigan law and Michigan's misapplication of federal laws in the context of *in rem* and *in personam* actions; separated by law here, such that other States in the same circuit are, in one State in the a circuit, treated as if all have the same laws and state constitutions, when they do not. See Judge Sutton's point on this in EXHIBIT A attached. In addition to the Michigan Supreme Court passing on the constitutional challenge before it in the parallel action to this instant matter, it would affect only one State.

The Sixth Circuit, however, involves multiple States and its overarching application of *in rem* as *in personam* hurts Michigan's constitutional application of its own law as well as undermines Michigan's deference for federal law in §k(9)(f). Judge Sutton also describes "restraint" by this Court as in the said transcripts as well as EXHIBIT B but that misses the point: Michigan Supreme Court, much like the California Supreme Court in *Lange* passed upon that opportunity and "restraint" is not relevant here, unless Michigan Supreme Court grants Petitioner reconsideration in the parallel matter. Still, reconsideration here is not "restraint" so much as it is a matter of putting in abeyance this instant matter until that decision is made in the parallel action on the same claims before it is too late to see them both at once.

When the contracts are federal, there is yet another reason why conflicting contracts regarding superseding federal law should be addressed in federal court. State law does not control in this matter, for that reason; made evident in the parallel action, and as described herein.

Notably, Judge Sutton's concerns in *CIC* Services, *LLC v. Internal Revenue Services* a year ago in this Court, Case No. 19-930, Transcripts, December 1, 2020, page 22, Lines 3 (Justice Gorsuch citing Judge Sutton), in a tax-preemptive context as to the Tax Injunction Act (rooted in the Anti Injunction Act). It is distinguished from this matter beyond tax collection by August 19, 2019. The Sixth Circuit since has recognized that distinction in its post-tax collection *Freed* opinion, citing *Knick* — decided the same day, September 30, 2020, as the affirmation of the parallel action was made. Timing.

These are reiterated on its page 997, Bellia, as to "stealth preemption," how *Knick* preempted in this matter. Since *Monroe* predated *Knick* on the Fourth Amendment violation decades earlier, regardless of Certiorari's *Exhibit E* on the entire Bill of Rights. The Fourth Amendment violation that prompted – especially after *Lange* – the instant matter was not dependent upon either concerns Judge Sutton articulated, nor concerns of federalism in general; in either parallel action. Due to the Sixth Circuit's version of federalism, which is tantamount to false modesty and Michigan the same as to 11 U.S.C. in practice. Neither one actually respected either constitution as written nor the statutes as written.

Additionally, *State Constitutionalism In The Age of Party Polarization* joins this Court and the Sixth Circuit together, in reiterating these points saying, "Judge Sutton and Justice Kavanaugh extoll our system of federalism[15] when calling for state courts to fill the void that they and the other federal court judges will never leave open.[16]" Page 1,132. Its footnote 15 discusses Judge Sutton's focus on process. In that regard, once ERE's motion to dismiss (R. 14) was filed in federal court, ERE was not allowed to file a parallel action on the "same" claims in state court that ERE with Patel. This is point of order to clarify the basis for reconsideration.

The article's page 1,139 also articulates what is true in Michigan court rules that, "Several state supreme courts are further limited because they are obligated to hear all state constitutional challenges to state law." As such, unlike a certified question from the Sixth Circuit, which is discretionary, Petitioner did put on the face of the caption sheet in the parallel case submissions, the constitutional challenge to each appellate court according the rules. It was ignored. This justifies reconsideration there, being non-discretionary.In the alternative, Michigan's passing on it opens the door to this Court's review of it as if it was a certified question asked my Petitioner directly in advance, if that reconsideration is not granted. Rutger's University Law Review, Volume 7, Issue 5, Summer 2019. That was *Knick* was decided reiterating Justice Brennan in the article as when this matter took root.

Michigan Reasons for Reconsideration

Under no circumstances do federal rules of civil procedure allow Respondent to have it both ways – a motion to dismiss and a parallel action. ERE's *Exhibit 1* case was just such a case for Petitioner as Justice Sotomayor describes.[2] Since ERE could not get the other eight Respondents to removal. Respondent's motions to dismiss (R. 11, 12, 14 & 38) were enjoined; ERE incorporated by reference their exhibits and their submissions' text. In sum, the Sixth Circuit cannot read into the Michigan statute a full remedy which is prohibited by the Michigan Constitution, regarding one-object per statute. Both *in rem* and *in personam* actions offer partial separate remedies: title and possession in the first instance. Doing so negates entirely the parallel action ERE filed on its face. Denial of reconsideration in *that* matter is proof of *this* matter's meritorious claims. ERE lacks "exception" in the parallel action for two reasons:

1. It avoided the second "proper" court before invading the subject property, to seek the *in personam* action for possession in the first instance in the Michigan circuit court circa July 2019, after the *in rem* action of its predecessors; partial relief.

2. ERE's parallel action was appropriation of Petitioner's civil rights claims.

In contrast, Petitioner's partial remedy was created by the unconstitutional statute challenged in the parallel case. While the cited case adds nuance to school any *pro se* on basic terms such as "cause of action" and "claims," it serves to show how bifurcation in 2013 in this matter created the very "partial" relief that needed two courts to resolve the matter in full. In Michigan, that bifurcation is unconstitutional. That ordinance's amendment from 2013 was properly challenged by Petitioner in the Michigan Supreme Court in the parallel action still pending reconsideration there for similar reasons.

If the other 49 States — or even those in the Sixth Circuit other than Michigan — do enjoin *in rem* and *in personam* actions in a single state statute, then that that is a different kind of "split" than at issue herein, between state and federal on one another's laws, including those incorporated into the state law as herein.

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[2] See this Court's opinion and dissent in *United States v. Tohono O'Odham Nation*'s exception to the rule in in Justice Sotomayor's dissenting opinion, page 11, ¶3, "There is, however, an exception to this rule when a plaintiff was unable to obtain a certain remedy in the earlier action. See Restatement (Second) of Judgments §26(1)(c) (1980) ...([W]here a plaintiff brings an action in a State in which the courts have jurisdiction only with one portion of his cause of action, he is not barred from maintaining an action a proper court for the other portion")..." Key word: "proper," as to the parallel case in this matter, as well as the avoidance of that "proper" court to seek *ejectment* in the Wayne County circuit court, prior to the Fourth Amendment violation, after ERE's *Exhibit 1* decision and before August 29, 2019 which prompted the instant Complaint. *Tohono*: Case No. 09-846, Decided April 26, 2011 which precedes the entire bifurcated mater herein which began in 2013.

Mutual reconsiderations in both this Court and the Michigan Supreme Court mimic this Court's *Princess Lida of Thurn and Taxis et al v. Thompson et al,* 305 U.S. 456, which attempts to bridge *in rem* and *in personam* with "quasi in rem"yet due to the logic therein, "each of the courts claiming jurisdiction has restrained the parties before it from proceeding in the other." Certiorari in that matter was granted to solve the "conflict" between this C9ourt and the Supreme Court of Pennsylvania. So is the situation pending in the parallel case in this matter. https:www.law.cornell.edu/supremecourt/text/305/456 page 4 of 11. This example dated 1939 – the same year the *Fraser* case was cited in ERE's *Exhibit 1* - was reiterated in 1984 in the D.C. Circuit citing it and said it footnote 48 "...proceedings *in rem* are usually restricted to one forum..." *Laker Airways v. Sabena, Belgian Wd. Airlines*, case No. 83-1280. If so, then partial remedy *in rem* adds to Justice Sotomayor's "exception" because an *in personam* action is not an *in rem* action within a sigle statute in Michigan. A transfer was not possible during the in rem action in ERE's *Exhibit 1* because it was not a party to that case. This lag adds emphasis to the basis for the reconsideration that Petitioner did not need to remove the action and that ERE could not transfer the action prior to this Complaint.[3]

One example of a nexus between the *in rem* and *in personam* is *lis penden.* While not precisely the same, a *lis penden* has the effect as a reciprocal action such as the parallel action to this one. Effectively, the "rights to sue" in the bankruptcy was the same as a *lis penden* to the municipal Respondents, who were in the 11 U.S.C. case 16-56880. One distinction is that ERE's parallel action was simultaneously dependent on the other Respondents' knowledge of that intangible asset against them and any future purchasers and the quit-claim deed ERE purchased was compromised by that knowledge. When a defendant (ERE) becomes a plaintiff in a parallel action after *that* fact, it loses additional steam that it would otherwise have in state court by such notice of litigation that predated its *Exhibit 1.*[4] In addition to *Ruby Shores*, another case in the Michigan Appeals Court adds to the dissent by Justice Sotomayor cited elsewhere: *Richards v. Tibaldi*, 272 Mich. App. 522 (Mich Ct. App. 2006) says, in its footnote 10, "complete" relief in terms of all parties..." In this matter, it shows why this is another exception to the Michigan

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[3] Parallel Litigation, by James P. George, 51 Baylor L. Rev. 769 (1999), https://scholarship.law.tamu.edu/facscholar/427, diminishes comity concerns when *in rem* cases are about control of the property, which Fourth Amendment violations are not about, on its page 780. The article also addresses on its page 895 Anti-Injunction Act in the CIC case cited elsewhere and declaratory – unlike injunctions – are also exceptions. See Justice Sotamayor's "exception elsewhere herein. Hunting down the exceptions, and noting that the instant matter was post-tax collection and not therefore an injunction of the in rem action. Rather it was consistent with not only the repose the state statute and the Michigan Constitution.

[4] *Ruby v. Shore Financial,* 741 N.W.2d 72 (Mich. Ct. App. 2007), citing 14 Powell on Real Property, §82A.02[2], p. 82A-9.

Court Rules as well. The other Respondents relinquished their bad title to ERE yet they had no interest in possession. Since ERE never recorded it as was the case in *Richards*, it left none in title on August 29, 2019. Instead, the federal contracts accomplished what would not have been possible in a court of law: invasion pending federal litigation in ERE's *Exhibit 1 in* Sixth Circuit. None had standing.

Likewise, state courts such as Michigan cannot initially utilize the gateway state statute for "eviction" in the Michigan Supreme Court-approved form summons, abandon that in contradiction, then pivot to the civil rights statute for a decision; especially when that is pending in federal court. To do so violate the holding of this Court in *Michigan v. Long* (expansion of federal law) by pre-*Knick* misusing 11 U.S.C. to escape objections Petitioner filed on the *in rem* action. Only to later, ignore 11 U.S.C. on the *in personam* actions pre-*Knick* and post-*Knick* without deciding federal law in state courts in ways that it was not expressly and commonly understood to be used, in a situational fashion as circumstances changed over several years. The subject property fell victim to the same cardinal sin that Respondents used as their justification to violate both federal and state law: Respondent ERE has since 2019 failed to pay the property taxes exceeding the amount it paid for the property from the conduit city of about $4,000. On reconsideration, it is headed back to the property tax foreclosure in 2022.

This is recent that it exceeds the amount paid. This means that by the time this case coincides with the next petition if the Michigan Supreme Court denies reconsideration the county treasurer will start the whole process all over again. Then the city will exercise its right of first refusal again. And likely the same Enterprising Real Estate, LLC through its same federally matching contract, the Neighborhood Stabilization Program will give the city another $25,000 and so forth. The circular system evident at this juncture is keep the process going to get federal funds. It negates all four motions to dismiss in two ways:

1. *In rem* State statutes cannot foreclose on 42 U.S.C. §1983 Fourth Amendment *in personam* suits as Respondents argued it would at minimum shield Respondents Enterprising Real Estate, LLC and its member Respondent, Nandan Patel, because that would be overbroad in terms of subject-matter jurisdiction;
2. *In personam* State statutes in a summons in parallel to a pending federal motion to dismiss cannot hide the 42 U.S.C. §1983 nor appropriate that federal claim in a state complaint after no removal action in federal court was filed by any Respondent – nor would have been granted based on the federal statute at issue.

Other Reasons for Reconsideration

1. Strangely, there is a disturbing reason for reconsideration to grant reconsideration that was never imagined prior to the Petition for Certiorari so as to include it there. Petitioner, and probably others would question the constitutionality of such a scheme as being a double standard in the Sixth Circuit.

In the article, *An Indigent Plaintiff in the Federal Courts*, by Christian J. Grostic, in Ohio. It mentions this Court and the Sixth Circuit's response to a case, which was remanded back to the lower court in *Burnside* in light of *LaFountain*. However, within that article was the revelation that "First, instead of random judicial assignment, Burnide's case was transferred to one particular judge, pursuant to a local administrative order regarding all pro se §1983 cases." Really? That would certainly explain why Petitioner got the judge assigned as a default to that assigned judge in the U.S. District Court in Detroit, Judge Parker. It turns out that the very day after the invasion, August 30, 2019, but before the Complaint two weeks later, the pending appeal to get back into the bankruptcy case 16-56880 top enforce the discharge was denied. It was pending the day of the invasion on that matter. An emergency motion was filed to see if that clarified more reason to grant that appeal. It was the second appeal from the bankruptcy case to Parker; the first was the adversary proceeding and the other was the main case itself. I could not afford the fee. Same reasoning as the order appealed in this matter (IFP). When I was assigned to Judge Parker a second time, it was questioned by me to the court. Judge Parker did not reveal the order that she was that assigned judge, but rather the clerk told me it was a coincidence that I got her twice on appeal from the bankruptcy. Parker wrote in her order that familiarity with the matter was not a reason to recuse herself. This is very disturbing to learn this. Doubly so as Burnside and Petitioner are both *pro se* and IFP §1983 litigants. Worse, the article revealed "staff attorneys" rather than clerks prepare the "recommended disposition." Really? It cites in its endnote 10 statutory and administrative rules.

2. See EXHIBIT B attached for communication with this Court on the flawed scanning of the original Petition for Certiorari – since corrected – but it may not have been seen by the clerks for each justice in forming the "cert pool" memo. It compounds the other reasons for a redo. This adds layers of procedural obstacles that should concern this Court. Imagine if a prisoner pro se who did not read the PDF to find such a flaw, assumed that their petition was the complete hardcopy.

3. EXHIBIT C adds to Sixth Circuit's Thomas v. TN in Certiorari and this article is cited elsewhere herein.

CONCLUSION

the Court should consider the two-free-throw analogy presented there by its new chief judge, Sutton as a sign of hope; as a reason to grant the reconsideration and hold it in abeyance until the parallel matter pending in the Michigan Supreme Court, similar in its path to this Court as was *Lange v. California*, such that following Certificate of Good Faith is given the backdrop of the holding in Michigan Supreme Court in *Hodge* as to Respondent's "bad-faith" complaint is side by side in this Court for full contrast and comparison as to the Constitutionality of the matter.

In the alternative, the disturbing systemic Sixth Circuit reasons just mentioned, the other reasons for reconsideration herein should suffice to make worthy of this Court the reconsideration of the Petition for Certiorari denial in favor of Petitioner whether or not the Michigan Supreme Court reconsiders its pass on the matter, unlike Lange whom never filed a reconsideration to slow down the path to this Court. COVID-19 had a great deal to do with the timing of both matters reaching this Court at once.

Abeyance in a parallel reconsideration in both courts makes this reconsideration prudent toward ultimate justice.

Respectfully submitted,

Date: November 6, 2021

Signature: Laurie M. Scott

Laurie M. Scott, Petitioner, *pro se*

EXHIBIT A

Supreme Court Submission

1 message

<PIONoReply@supremecourt.gov> Fri, Aug 20, 2021 at 6:52 AM
To: 19cv12676@gmail.com

Thank you for your submission, it has been received and should it require any other information we will contact you at this e-mail address. - Public Information Officer, U.S. Supreme Court

SUPREME COURT
OF THE UNITED STATES

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Contact Us - Public Information Office

Your Name:

Laura Marie Scott

Your Email Address:

19cv12676@gmail.com

Subject:

Case No. 21-5330 - pages missing in PDF online

Message:

I looked at the scanned PDF of my Petition for Certiorari and there seems to have been some scanning problem. Pages near 14 through 17 were wider than 8.5" x 11" originals were and pages 18-20 were missing entirely from the PDF. Page 20 is the signature page. In addition to the original ten copies were sent with it. I personally checked to ensure that the original and the ten copies had all the pages. Please re-scan such that all the pages appear on the PDF of the case record.

I do not have a phone to call the Court. I wanted to let you know this as soon as possible.

Thank you for your kind attention to this important matter.

Note: All fields are required.

Retype the characters from the picture:

JHDWW3

Clear All Send

EXHIBIT B

7. *See id.* at 7–8.

When challenging state laws, citizens may vindicate their rights under both the Federal Constitution and their state's constitution. [8]

8. *See id.* at 8. Most state constitutions contain provisions protecting individual rights that are very similar or identical to provisions in the Federal Constitution. *Compare* CAL. CONST. art. I, § 15 (granting defendants a right "to be confronted with the witnesses against" them), *and* MICH. CONST. art. I, § 20 (same), *with* U.S. CONST. amend. VI (same).

Thus, just as basketball players would always take both shots, American lawyers should always argue for their clients' state and federal constitutional rights. [9]

9. *See* SUTTON, *supra* note 1, at 8. Lawyers may fail to raise or fully argue both constitutional claims for two reasons: First, this strategy is relatively new because it was not until most of the Bill of Rights was incorporated through the Fourteenth Amendment that such a strategy became possible. *Id.* at 14. Second, states have historically been viewed as underprotective of individual rights. *Id.* at 14–15.

Judge Sutton further explains that state constitutions provide a greater chance to vindicate rights because state supreme courts, the decisions of which affect only one state, often feel less constrained than does the U.S. Supreme Court and have greater flexibility to tailor their interpretations to "local conditions and traditions." [10]

10. *Id.* at 17. A smaller population makes it easier for a state supreme court to manage future litigation arising from a newly identified constitutional right. *Id.* at 16–17. Also, it is easier to amend a single state constitution than the Federal Constitution. *Compare* MO. CONST. art. XII, § 2 (allowing amendments by a simple majority of the state legislature and a simple majority of a public referendum), *with* U.S. CONST. art. V (requiring, inter alia, approval of three-fourths of state legislatures or conventions).

This flexibility is important because "many American constitutional issues do not lend themselves to winner-take-all solutions." [11]

11. SUTTON, *supra* note 1, at 18.

Therefore, he says, individual rights may flourish most when the U.S. Supreme Court shows restraint and the state supreme courts take a more active role. [12]

EXHIBIT C

and "Procedure" in the Conflict of Laws, Professor Walter Cook identified at least eight areas of law that in 1933 drew different distinctions between substance and procedure, including one to determine what law a federal court hearing a state claim would apply.[168] Under what is now known as the *Erie* doctrine, federal courts adjudicating state claims apply state "substance" and federal "procedure." The *Erie* doctrine, as it has evolved, is concerned with uniformity of outcome between cases tried in federal court and cases tried in state court. The "twin" aims of *Erie* are to discourage forum shopping and to avoid inequitable administration of the laws.[169] These aims are inapposite to the question whether Congress has the power to regulate state court procedures in state law cases. As far as Congress's authority over the states goes, the concern is with sovereignty. If, as Hamilton and the Court have suggested, state courts enforce federal rights of action in the same manner that they would enforce foreign rights of action, the proper distinction is the one traditionally drawn in conflict of laws, which, appropriately, is concerned with defining exclusive spheres of legislative competence.[170]

The substance-procedure dichotomy in conflict of laws was traditionally understood to protect the sovereignty of a forum state over "procedure." Under conflict-of-laws principles that predate the Founding of the Union,[171] it is axiomatic that a forum state may apply its own procedural law to all rights of action that it enforces. Chief Justice John Marshall explained in 1806 that "[n]o man can sue in the courts of any

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168. Walter W. Cook, *"Substance" and "Procedure" in the Conflict of Laws*, 42 YALE L.J. 333, 341-43 (1933). Dichotomies between "substance" and "procedure," he observed, were involved in determining whether a law was unconstitutional as applied retrospectively; whether a law violated the Ex Post Facto Clause; whether a law violated the Contract Clause; whether a law by its terms operated retrospectively; what law a state court adjudicating a federal claim would apply; what law a federal court adjudicating a state claim would apply; what law a federal court adjudicating a state equitable right would apply; and what law a forum state applying the law of a foreign state would apply. *See also* Edgar H. Ailes, *Substance and Procedure in the Conflict of Laws*, 39 MICH. L. REV. 392, 401-08 (1941) (describing what is meant by "substance" and "procedure" in conflict of laws).

169. *See* Sun Oil Co. v. Wortman, 486 U.S. 717, 726-27 (1988) ("In the context of our *Erie* jurisprudence, that purpose is to establish (within the limits of applicable federal law, including the prescribed Rules of Federal Procedure) substantial uniformity of predictable outcome between cases tried in a federal court and cases tried in the courts of the State in which the federal court sits." (citations omitted)); *see also* Gasperini v. Ctr. for Humanities, Inc., 518 U.S. 415, 428 (1996) (explaining that application of the outcome-determinative test must be guided by the "twin aims" of "discouragement of forum-shopping and avoidance of inequitable administration of the laws"). What may be "substance" for *Erie* purposes may be "procedure" for conflicts purposes. *See* Joseph P. Bauer, *The* Erie *Doctrine Revisited: How a Conflicts Perspective Can Aid the Analysis*, 74 NOTRE DAME L. REV. 1235, 1266-70 (1999) (providing examples).

170. *See Sun Oil*, 486 U.S. at 727 (explaining that the purpose of the dichotomy between "substance" and "procedure" in choice of law "is quite simply to give both the forum State and other interested States the legislative jurisdiction to which they are entitled").

171. Professor Douglas Laycock presents evidence of the Founders' understanding of choice of law in *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 COLUM. L. REV. 249, 306-10 (1992).

COVER LETTER

Dear Clear of the U.S. Supreme Court,

As Petitioner understands the federal rules, when the date due falls on a weekend when the courts are closed the submission must be post-marked and mailed U. S. Mail by the next court date open. That would be November 8, 2021. Today is the day I receive 100% of my month's income to pay for said postage. It was not for any other delay. Ten copies of the original are included with the original as was done in the Certiorari.

As discussed in the attached Petition for Reconsideration, the status of the Motion for In Forma Pauperus (IFP) remains undetermined. Since it was not expressly denied when the Petition for Certiorari was denied, October 12, 2021, for the purposes of the fee to file this submission, Petitioner believes that the fee is waived, therefore.

More specifically, the Sixth Circuit IFP was also the issue in the Petition for Certiorari as well. Therefore, since the IFP was initially granted in the U.S. District Court in September 2019, and due to the COVID-19 pandemic the financial circumstances worsened rather than improved, it seems safe to conclude that there would be no basis for this Court to require the fee at this juncture, after reading the post-pandemic $298 per month income that is a fraction of what was earned pre-pandemic.

If there are any concerns that this Court needs to address, please use my email 19cv12676@gmail.com used throughout the federal matter to get that to me quicker so that I may respond promptly. I believe that I am in compliance.

Respectfully submitted,

Date: November 8, 2021

Signature: Laurie M Scott

Laurie M. Scott, Petitioner *pro se,* Case No. 21-5330