NO. 21-6799

SUPREME COURT OF THE UNITED STATES

ERICH WILLIAM NORRIS,
Petitioner (pro se),

v.

BROOK FOREST COMMUNITY ASSOCIATION, INC.,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Erich W. Norris
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Petitioner

QUESTIONS PRESENTED

1) Does patently unequal, disparate state administration of the Rule of Law and failure to provide state remedy in strict accordance with the Texas Constitution, specifically Article V, Section 10 and Article I, Sections 15 and 29, violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution?

2) Can state court judges refuse to comply with U.S. CONST. ART. VI, § 2 and 28 U.S.C. § 1446(d) by conducting further proceedings and render judgments after a case has been officially removed to federal court?

3) Is the application and enforcement of 28 U.S.C. § 1443 in any way contingent upon race, ethnicity, or color of one's skin and is it contingent, as the U.S. District court ruled, upon whether an issue of racial inequality is present, notwithstanding the salient fact there are no qualifying words of phrases whatsoever in § 1443 indicating this?

4) Can the lower federal courts refuse to comply with the jurisdictional instructions of the U.S. Supreme Court, specifically those promulgated in *Chicot County v. Sherwood*,

148 U.S. 529, 13 S. Ct. 695 (1893) and *Hyde et al. v. Stone*, 61 U.S. (20 How.) 170 (1857)?

5) Can federal courts shirk their duty and authority to correct (nullify) a *coram non judice* (absolutely void) state court judgement, specifically delineated in *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 589 U. S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020), while the litigation is in federal court under federal statutory jurisdiction pursuant to 28 U.S.C. § 1443 or 28 U.S.C. § 1447(d)?

6) Did the Fifth Circuit err when it egregiously fined (sanctioned) an indigent pro se litigant for exercising his federal statutory right to appeal, specifically 28 U.S.C. § 1447(d), to protect and preserve his constitutionally guaranteed right to a trial by jury after it was illegally foreclosed by the State of Texas and subsequently ignored by the U.S. District Court?

7) Did the Fifth Circuit err when it granted Respondent's dubious, eleventh hour new counsel's motion to dismiss?

8) Did the Fifth Circuit err when it egregiously ignored the U.S. Supreme Court declaration promulgated in *Railroad*

Company v. Koontz, 104 U.S. 5 (1881) that a litigant should not have to carry the heavy burden of simultaneous litigation in both state and federal forums, especially in light of the salient fact the litigant is pro se (without counsel).

LIST OF PARTIES AND INTERESTED PERSONS

The following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

(1) Erich W. Norris
Defendant-Appellant-Petitioner

(2) Brook Forest Community Association, Inc. (BFCA)
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RELATED CASES

Brook Forest v. Norris, No. 21-20117, U.S. Court of Appeals for the Fifth Circuit. Final judgment entered September 24, 2021.

Brook Forest v. Norris, No. 4:20-cv-02814, U.S. District Court for the Southern District of Texas. Judgment entered January 29, 2021.

Brook Forest v. Norris, No. 4:19-cv-00703, U.S. District Court for the Southern District of Texas. Judgment entered February 20, 2020.

Brook Forest v. Norris, Case No. 1113192, Texas Harris County Civil Court at Law No. 3. Final judgment (*coram non judice* - null and void) entered August 7, 2020.

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Court Rules:

Fed. R. Civ. P. 38

Tex. R. Civ. P. 216

Other References:

Black's Law Dictionary (9th ed. 2009)

Merriam-Webster's Collegiate Dictionary (11th ed. 2003)

Padawer, Ruth. "Sigrid Johnson Was Black. A DNA Test Said She Wasn't." *N. Y. Times*, Nov. 19, 2018

VI. PETITION FOR A WRIT OF CERTIORARI

Erich W. Norris respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

VII. OPINIONS BELOW

To the best of Petitioner's knowledge, the opinions of the lower courts in this case have not been published yet.

VIII. JURISDICTION

The date on which the Unites States Court of Appeals for the Fifth Circuit decided my case was August 16, 2021 and a copy of the order appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals on September 24, 2021 and a copy of the judgment denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

IX. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST., AMENDMENT XIV, § 1 states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST., ARTICLE VI, § 2 states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

TEX. CONST., ARTICLE V, § 10 states:

> TRIAL BY JURY IN CIVIL CASES. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

TEX. CONST., ARTICLE I, § 15 states:

> RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain **inviolate**. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

TEX. CONST., ARTICLE I, § 29 states:

> BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOLATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain **inviolate**, and all laws contrary thereto, or to the following provisions, shall be void.

28 U.S.C. § 1443 states:

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

28 U.S.C. § 1446(d) states:

> Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

28 U.S.C. § 1447(d) states:

> An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

X. STATEMENT OF THE CASE

This case involves both state and federal judicial abuses of discretion and failure to follow the Rule of Law. State and federal constitutional, statutory, and common laws have been flagrantly flouted and ignored. The Petitioner is a pro se litigant and the reason this case has reached the egregious level of "shocking the conscience." There is clear and evident implicit bias in the judiciary against pro se litigants. None of their cogent arguments, regardless of how well researched and precedent based they are, will ever be given equal credence. This case stinks to High Heaven and needs to be corrected by this Court.

There are deep and far reaching ramifications in this removal case concerning the constitutionally guaranteed civil right to a trial by jury that has been transgressed and trammeled upon. This is a rare pro se case that needs this Court's scrutiny and will not in any way affect the comity and balance between state and federal forums.

The legal issues for review herein stem from a pernicious home foreclosure case initiated by Respondent Brook Forest Community Association, Inc., henceforth "BFCA," against Petitioner Erich W. Norris, henceforth "Norris," for various purported deed restriction violations that are deemed by him to be arbitrary, capricious, and legally untenable.

Norris, a U.S. Marine Corps veteran, is a low income home owner due to his unfortunate chronic lung disease (Bronchiectasis) and BFCA is attempting to force him out of his community neighborhood, which he has been a resident of for more than forty (40) years, via harassment and legal pressure tactics.

It needs to be strongly emphasized, in contrast to his first removal ("Norris I"), this removal ("Norris II") is for the sole purpose of addressing **nascent legal questions of law that manifested subsequent** to Norris I and because there were no state remedies available in strict compliance with the Texas Constitution.

On June 19, 2020, the Texas Harris County Civil Court at Law No. 3 denied Norris's official jury request (filed over eighteen 18 months earlier on January 14, 2019) and subsequently attempted to illegally force him into a bench (Zoom) trial. *See* Harris County Civil Court at Law No. 3, Case No. 1113192, *Defendant's Response To Plaintiff's Original Petition; Order For Trial Setting Via Video Conference.*

On August 3, 2020, Norris filed a Notice of Removal (Norris II) in federal court to address this nascent jury demand violation of TEX. CONST. art. V, § 10 and art. I, § 15 and § 29 to seek remedy pursuant to 28 U.S.C. § 1443 (Civil Rights Removal Statute) and U.S. CONST. AMEND. XIV, § 1 (Equal Protection Clause). *See* Appendix G.

On August 5, 2020, Norris did not participate in said illegal bench trial because the case had already been officially removed to federal court the day prior on August 4, 2020 via electronic filing. *See* Electronic Time Stamp, Appendix G. He was under no legal obligation to attend because the proceeding was conducted without jurisdiction.

On August 7, 2020 a state final judgment (null and void) was signed and entered in the Harris County Civil Court at Law No. 3. *See* Appendix E.

On January 29, 2021 Norris's *Motion to Vacate Harris County Court At Law No.3 Coram Non Judice Final Judgment* was denied (ignored) by the U.S. District court.

On July 1, 2021 Norris's *Motion to Vacate Harris County Court At Law No.3 Coram Non Judice Final Judgment* and *Motion to Stay Remand Pending Appeal* was denied by the Fifth Circuit.

On August 16, 2021 BFCA's new counsel's dubious, eleventh hour Motion to Dismiss was granted by the Fifth Circuit subsequent to its briefing notice to Norris to file a very time consuming, arduous, comprehensive brief, subsequent to Norris's filing of said brief, and subsequent to BFCA's failure to file their requested brief in opposition.

XI. REASONS FOR GRANTING THE PETITION

A. The State of Texas violated Norris's civil right to a trial by jury, guaranteed in TEX. CONST., Article V, Section 10 and Article I, Sections 15 and 29. No state remedies in strict accordance with the TEX. CONST. were available. The U.S. District court and Fifth Circuit ignored this fact.

The Texas Constitution does not guarantee "maybe" an individual has the right to a trial by jury upon request, it guarantees it inviolately. *See* TEX. CONST., Article V, Section 10 and Article I, Sections 15 and 29. In Texas, trial court judges are not allowed to arbitrarily or capriciously decide ("cherry pick") who does or does not get to have their case heard by a jury when one has been officially requested. The constitutional provisions do not delineate **any** exceptions, such as judge tribunals (emphasis added). Importantly, the lower federal courts failed to acknowledge this.

Norris officially requested a trial by jury on January 14, 2019. It was denied by the Harris County Civil Court at Law No. 3. There were no state remedies available to him in strict compliance with the Texas Constitution. Thus, Norris removed his case to federal court to seek remedy pursuant to 28 U.S.C. § 1443 (Civil Rights Removal Statute) and U.S. CONST. AMEND. XIV, § 1 (Equal Protection Clause).

Supreme Court Rule 10(a) (Considerations Governing Review on Writ of Certiorari) states in reference to a court of appeals: ... "or sanctioned such

a departure by a lower court, as to call for an exercise of this Court's supervisory power." The lower federal courts have effectively sanctioned the Texas trial court's egregious abuse of discretion and egregious violation of the Texas Constitution by failing to correct this malfeasance while they had federal statutory jurisdiction to do so, pursuant to 28 U.S.C. § 1443 and 28 U.S.C. § 1447(d), and U.S. Supreme Court directive to do so (not to shirk their duty and authority in favor of another jurisdiction) promulgated in *Chicot County v. Sherwood*, 148 U.S. 529, 13 S. Ct. 695 (1893) and *Hyde et al. v. Stone*, 61 U.S. (20 How.) 170 (1857). *See* Section C, *infra*.

National interest in protecting and preserving one's constitutional civil right to a trial by jury is self-evident for without it the right becomes discretionary, as egregiously occurred in the present case, and such illegal *discretion* has tragically taken us back to a time predating the Magna Carta. The ramifications are monumental. Hence, the need for this Court's supervisory power and the reason for this petition for a writ of certiorari.

(1) Right To Trial By Jury

TEX. CONST. art. V, § 10 states:

> TRIAL BY JURY IN CIVIL CASES. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and

with such exceptions as may be prescribed by the Legislature.

The Texas Supreme Court addressed the importance of the right to a jury trial and stated: "The right to jury trial is one of our most precious rights, holding a sacred place in English and American history." *General Motors Corp. v. Gayle*, 951 S.W.2d 469, 476 (Tex. 1997) (quoting *White v. White*, 108 Tex. 570, 196 S.W. 508, 512 (1917) (quotation marks omitted)). The U.S. Supreme Court conveyed the same reverence (in the federal context) and is included here for emphasis:

> "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded by the courts." *Jacob v. New York City*, 315 U.S. 752, 752-53 (1942).

The Texas Harris County court's denial of Norris's official trial by jury request clearly violates TEX. CONST. art. V, § 10, art. I, § 15, and art. I, § 29 and does not comport with judicial precedent.

(2) There Was No Equivalent State Remedy

TEX. CONST. art. I, § 15 states:

> RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain **inviolate**. The Legislature shall pass such laws as may be needed to regulate the same, and to

> maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

TEX. CONST. art. I, § 29 states:

> BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOLATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

The exhaustive remedies Norris had available to him after the county court denied his request for a jury trial were as follows:

1) Motion for New Trial – Not a jury trial
2) Motion to Stay Judgment Pending Appeal – Not a jury trial
3) Motion to Vacate Final Judgment - Not a jury trial
4) Appeal - Not a jury trial
5) Motion for Rehearing - Not a jury trial
6) Motion for Rehearing (En Banc) - Not a jury trial
7) Petition for Review – Not a jury trial
8) Petition for Writ of Mandamus - Not a jury trial
9) Petition for Writ of Certiorari - Not a jury trial

As can be clearly seen, *before* removal to federal court, Norris did not have any equivalent state remedies as guaranteed by TEX. CONST. art. V, § 10

and art. I, § 15, and § 29. Moreover, other than the right to appeal, they are all discretionary (emphasis added).

Thus, Norris removed this case to seek remedy (via federal jury) of said denial pursuant to Fed. R. Civ. P. 38, U.S. CONST. AMEND. VII, and U.S. CONST. AMEND. XIV, § 1. *See Notice Of Removal To Federal Court To Address Nascent Issues*, Appendix G.

The Texas Supreme Court reverence for the right to a jury trial is evinced in their *General Motors Corp. v. Gayle* opinion which stated: "The right to a jury trial is one of our most precious rights, holding 'a sacred place in English and American history.'" *General Motors Corp. v. Gayle*, 951 S.W.2d 469, 476 (Tex. 1997) (citing *White v. White*, 108 Tex. 570, 581, 196 S.W. 508, 512 (1917)).

It further stated:

> "Even where a party does not timely pay the jury fee, courts have held that a trial court should accord the right to jury trial if it can be done without interfering with the court's docket, delaying the trial, or injuring the opposing party. *See Dawson v. Jarvis*, 627 S.W.2d 444, 446-47 (Tex.App.-Houston [1st Dist.] 1981, writ ref'd n.r.e.); *Childs v. Reunion Bank*, 587 S.W.2d 466, 471 (Tex.Civ.App.-Dallas 1979, writ ref'd n.r.e.); *Aronoff v. Texas Turnpike Auth.*, 299 S.W.2d 342, 344 (Tex.Civ.App.-Dallas 1957, no writ); *Erback v. Donald*, 170 S.W.2d 289, 294 (Tex.Civ.App. — Fort Worth 1943, writ ref'd w.o.m.). *See also Allen v. Plummer*, 71 Tex. 546, 9 S.W. 672, 673 (1888) ("The failure to make a timely jury fee payment does not forfeit the right

> to have a trial by jury when such failure does not operate to the prejudice of the opposite party."). *Id.* (brackets omitted).

Norris does not know why the county court *neglected* to inform him there was a five (5) dollar jury fee, pursuant to Tex. R. Civ. P. 216, associated with his official written jury demand. In light of the ruling in *General Motors Corp. v. Gayle, supra*, this issue is moot.

For clarity, though, it is a well-established legal principle that when a constitutionally protected right is withheld or withdrawn notice must be given. The Harris County court failed to provide *any* notice that his jury demand was denied or that there was any issue concerning a jury fee. A bench (Zoom) trial was illegally forced instead.

(3) Grable Test

In *Grable*, the U.S. Supreme Court addressed when a federal-question will lie over state-law claims and stated:

> "There is, however, another longstanding, if less frequently encountered, variety of federal "arising under" jurisdiction, this Court having recognized for nearly 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues. E.g., *Hopkins v. Walker*, 244 U.S. 486, 490-491 (1917). The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal

> forum offers on federal issues, see ALI, Study of the Division of Jurisdiction Between State and Federal Courts 164-166 (1968)." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312, 125 S. Ct. 2363, 162 L. Ed. 2d 257 (2005).

A state court's illegal denial of a constitutionally protected right to a trial by jury raises and implicates a significant federal issue of national importance satisfying the *Grable* criteria, *supra*, particularly when there were no state remedies in strict accordance with the Texas Constitution. Norris's jury request was treated unequally (disparately) in comparison to someone similarly situated and raises a federal issue of 'equal protection of the laws' guaranteed by the Fourteenth Amendment.

The Court further clarified and stated:

> "[T]he question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Id.* at 314.

Consequently, federal jurisdiction over removal actions like Norris's would not materially affect, nor threaten to affect, nor disturb the normal balanced currents of state and federal litigation. This is a rare case. Rare cases do not upset said balance (emphasis added).

Norris has raised a substantial federal issue requiring this Court's scrutiny. BFCA's state-law claims cannot be currently adjudicated in full **compliance** with TEX. CONST. art. V, § 10, art. I, § 15, and art. I, § 29.

B. The U.S. District court ruled the application and enforcement of 28 U.S.C. § 1443, is contingent upon whether an issue of "racial inequality" is present. The Rules of Law do not allow race to be a contingent factor. This violates the Equal Protection Clause, U.S. CONST. AMEND. XIV, § 1.

Chief Justice Robert's judicial precept stated in *Parents Involved* is simple and sublime: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 748 (2007).

The rulings in *Rachel and Peacock* perceived "racial equality" and "racial discrimination" as an essential element of 28 U.S.C. § 1443 and narrowed its ambit. *See Georgia v. Rachel*, 384 U.S. 780 (1966) and *City of Greenwood v. Peacock*, 384 U.S. 808 (1966). The meaning (connotation) of said phrases is crucial to this case.

Norris's removal, pursuant to 28 U.S.C. § 1443, was denied and remanded by the U.S. District Court because he is Caucasian based upon the rulings in *Varney v. State of Georgia*, 446 F.2d 1368 (5th Cir. 1971), *State of Georgia v. Spencer*, 441 F.2d 397 (5th Cir. 1971), and *Georgia v. Rachel*, 384

U.S. 780 (1966). Perplexingly, if a person is Caucasian they are not treated equally, i.e. a reverse discrimination of the majority class.

(1) 28 U.S.C. § 1443

28 U.S.C. § 1443 states:

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

Though 28 U.S.C. § 1443 appears to be neutral in its scope, its application is limited to racial minorities as a result of the rulings in *Rachel* and *Peacock*, *supra*. Importantly, in *Yick Wo v. Hopkins* the U.S. Supreme Court stated:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in *Henderson v. Mayor of New York*, 92 U. S. 259; *Chy Lung v. Freeman*, 92 U. S. 275; *Ex parte Virginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U. S. 370, and *Soon Hing v. Crowley*,

113 U. S. 703." *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886).

There is definitely a conflict here requiring review by this Court. An examination of some definitions is helpful. "Racial Equality" is defined: "Existing or occurring between races." *Merriam-Webster's Collegiate Dictionary* 1024, def. 2 (11th ed. 2003). "Equality" is defined: "The quality or state of being equal." *Black's Law Dictionary* 616 (9th ed. 2009); *Merriam-Webster's Collegiate Dictionary* 422 (11th ed. 2003). Common sense and sound judgment indicates "in terms of racial equality" connotes equality for all races.

Congress recognized our union consisted of many races and ethnicities and that some courts (judges) abuse their discretion. They were careful **not** to incorporate the words "race," "racial equality," or "of color" into § 1443 and had they wanted to make this a limiting criteria they would have (emphasis added).

It's been over a half-century since the *Rachel & Peacock* (criminal) cases were decided. This case clearly demonstrates the necessity to revisit and re-evaluate the *antiquated* precepts of their rulings which indicate 28 U.S.C. § 1443 is contingent upon race in terms of "racial equality" and "racial discrimination." *See Georgia v. Rachel*, 384 U.S. 780 (1966) and *City of Greenwood v. Peacock*, 384 U.S. 808 (1966).

The Rule of Law and the application of law **cannot** be contingent upon "race" or whether "racial inequality" is present. This violates the Equal Protection Clause of U.S. CONST. AMEND. XIV, § 1 and this antiquated precept has no place in our present society.

(2) U.S. CONST. AMEND. XIV, § 1 - Equal Protection Clause

U.S. CONST. AMEND. XIV, § 1 states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"Equal protection" is defined as: "The 14th amendment guarantee that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances." *Black's Law Dictionary* 616 (9th ed. 2009).

The U.S. Supreme Court addressed civil rights discrimination in the context of *race* and stated:

> "As long ago as 1896, this Court declared the principle that the constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the general government, or by the states, against any citizen because of his race." *Bolling*

v. Sharpe, 347 U.S. 497, 499 (1954) (quoting *Gibson v. Mississippi*, 162 U.S. 565, 591 (1896) (quotation marks omitted)).

It also stated:

> "The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 289-90 (1978). "Distinctions between citizens solely because of their ancestry are, by their very nature, odious to a free people whose institutions are founded upon the doctrine of equality." *Id.* at 290-91 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)).

A particularly poignant U.S. Supreme Court ruling on this issue, in the context of **equal** legal privileges, is *Takahashi v. Fish & Game Comm'n* which stated:

> "The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide in any state on an equality of legal privileges with all citizens under nondiscriminatory laws." *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948) (quotation marks omitted).

Another U.S. Supreme Court opinion squarely on point with this case and this issue is *Richmond v. Croson*. It stated:

> "We thus reaffirm the view expressed by the plurality in *Wygant* that the standard of review under the Equal Protection Clause is not dependent on the race of those

burdened or benefited by a particular classification. *Wygant*, 476 U.S., at 279-280, 106 S.Ct., at 1849-1850; id., at 285-286, 106 S.Ct., at 1852-1853 (O'CONNOR, J., concurring in part and concurring in judgment)." *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 494, 109 S. Ct. 706 (1989).

It further stated:

"The history of racial classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis. See *Korematsu v. United States*, 323 U.S. 214, 235-240 (1944) (Murphy, J., dissenting)." *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 501, 109 S. Ct. 706 (1989).

(3) The "Plain Meaning" Rule

"Any person" means *any* person. Or does it?

"Any person" stated in 28 U.S.C. § 1443(1) means any person *except* if you're white. Baffling is it not? In that case, it is magically transformed to mean any race *other* than white.

Applying the well-established "plain meaning" rule to the statutory construction of 28 U.S.C. § 1443, "any person" does mean any person. This is axiomatic when there are absolutely no modifying or qualifying words or phrases added to the contrary. The U.S. Supreme Court has addressed statutory construction and stated:

"It is a fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as

> taking their ordinary, contemporary, common meaning." *Sandifer v. United States Steel Corp.*, 571 U.S. 220, 227 (2014) (quoting *Perrin v. United States*, 444 U. S. 37, 42 (1979) (quotation marks omitted)).

It can be soundly reasoned that when Congress drafted 28 U.S.C. § 1443 and used the unambiguous phrase "any person" they literally meant any person. This is a discussion in semantics, no doubt, but a necessary one. *Rachel & Peacock's* archaic, narrow interpretations in the context of 28 U.S.C. § 1443 contravene its plain text and the "plain meaning" rule as it applies to the phrase "any person."

(4) Rational Basis or Strict Scrutiny?

The issue of race in terms of "racial equality" and "racial discrimination," as it applies to 28 U.S.C. § 1443, must be reviewed under strict scrutiny. The *Adarand* Court removed any doubt by making it very clear that any racial classification must be subject to strict scrutiny and stated: "Accordingly, we hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995).

There is no sound rational basis for exclusion and discrimination of the Caucasian race, or any race, from the application and enforcement of federal

law, specifically 28 U.S.C. § 1443. Strict scrutiny of such exclusion would be fatal to any such governmental or judicial reasoning.

(5) Are You Black, White, Brown, Or Mixed?

Does the phrase "racial equality" really apply to all races? Why would it not? Why does it, in the context of 28 U.S.C. § 1443, exclude white people? What about racial hybrids? Mulattoes? Aborigines? "Uncertain" Race?

Do you see the repugnant difficulties involved and the repugnant classifications? What color? What race? What ethnicity? What portion/fraction qualifies the person to claim a particular race? What if you're 49% black and 51% white?

A New York Times article discussed (chronicled) a real life story concerning this very messy, very convoluted question. Padawer, Ruth. "Sigrid Johnson Was Black. A DNA Test Said She Wasn't." *N. Y. Times*, Nov. 19, 2018. Available at:

> https://www.nytimes.com/2018/11/19/magazine/dna-test-black-family.html?smid=url-share (Accessed December 20, 2021).

This murky, sensitive issue alone is sufficient to raise some very serious red flags concerning race in terms of the phrase "racial equality," as it applies to 28 U.S.C. § 1443 and elicit review of *Rachel & Peacock's* racially discriminatory rulings.

C. The U.S. District court and Fifth Circuit shirked their duty to correct a state court judgment decreed by the U.S. Supreme Court as *coram non judice* (absolutely void) while this litigation was under federal statutory jurisdiction pursuant to 28 U.S.C. § 1443 and 28 U.S.C. § 1447(d) and failed to follow U.S. Supreme Court jurisdictional instruction promulgated in *Chicot County v. Sherwood*, 148 U.S. 529, 13 S. Ct. 695 (1893) and *Hyde et al. v. Stone*, 61 U.S. (20 How.) 170 (1857) to correct it.

The electronic record (time stamp) *clearly* indicates Norris officially removed his case to federal court *before* the Harris County bench (Zoom) trial was conducted. *See* Appendix G. Therefore it can be clearly determined the Harris County court judge violated 28 U.S.C. § 1446(d) because it mandates that upon the filing of a notice of removal with the clerk of the State court it "shall proceed no further" until the case is remanded. *See* 28 U.S.C. § 1446(d).

A federal statute has been violated and federal courts cannot abdicate their authority (duty) in favor of another jurisdiction. The U.S. District court had jurisdiction pursuant to 28 U.S.C. § 1443 and the Fifth Circuit had jurisdiction pursuant to 28 U.S.C. § 1447(d).

The U.S. Supreme Court stated:

"They [courts of the United States] cannot abdicate their authority or duty in any case in favor of another jurisdiction. This principle has been steadily adhered to by this Court." *Chicot County v. Sherwood*, 148 U.S. 529, 534, 13 S. Ct. 695 (1893) (citing *Hyde v. Stone*, 61 U.S. (20 How.) 170, 175

(1857); *Suydam v. Broadnax*, 39 U.S. (14 Pet.) 67 (1840); *Union Bank v. Jolly's Administrators*, 59 U.S. (18 How.) 503 (1855)). *See also Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 415 (1821) (holding the exercise of [Federal] appellate power over judgments of State tribunals which contravene laws of the United States is paramount). Rightly so, as this precept adheres to U.S. CONST. ART. VI, § 2.

D. The Fifth Circuit erred when it egregiously fined (sanctioned) Norris, an indigent pro se litigant, for exercising his federal statutory right to appeal, specifically 28 U.S.C. § 1447(d), and egregiously granted BFCA's dubious, eleventh hour new counsel's motion to dismiss.

Norris raised **non-frivolous,** precedent based legal arguments concerning federal jurisdiction in his *Motion to Appeal In Forma Pauperis* which was granted despite the fact the U.S. District judge certified his appeal was "not taken in good faith" and indicated it "sees no appellate issues of even arguable merit." A very important issue for review is the fact the Fifth Circuit **overruled** the U.S. District court's certification (emphasis added).

The legal basis for BFCA's motion to dismiss was 5TH CIR. Rule 42.2 which states:

> Rule 42.2: Frivolous and Unmeritorious Appeals. If upon the hearing of any interlocutory motion or as a result of a review under 5TH CIR. R. 34, it appears to the court that the appeal is frivolous and **entirely** without merit, the appeal will be dismissed.

The Fifth Circuit's adjudication that Norris's appeal is *now* frivolous and warrants dismissal is devoid of sound reason. The court addressed the issue of frivolity in *Howard v. King* and stated: "[A good faith] inquiry is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215 (5th Cir. 1983) (quotation marks omitted) (citing *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *Woodall v. Foti*, 648 F.2d 268, 271 (5th Cir. 1982)). Squarely on point U.S. Supreme Court precedent based legal arguments, as Norris has copiously presented, are without question meritorious and have a sound basis in law.

Frivolous is defined: "Lacking a legal basis or legal merit; not serious; not reasonably purposeful." *Black's Law Dictionary* 739 (9th ed. 2009); "Of little weight or importance." *Merriam-Webster's Collegiate Dictionary* 502, def. a. (11th ed. 2003); "Having no sound basis (as in fact or law)," *Id.*, def. b. A frivolous appeal is defined: "An appeal having no legal basis, usu. filed for delay..." *Black's Law Dictionary* 113 (9th ed. 2009).

On April 26, 2021 the Fifth Circuit issued Norris a briefing notice. Importantly and logically, if the legal arguments presented in Norris's *Motion to Appeal in Forma Pauperis* were frivolous, lacked merit, or lacked a legal basis, this Court would have *denied* his ability to proceed *in forma pauperis* and certainly would not have requested he file a very time

consuming, arduous brief only to dismiss it (without explanation or opinion) by saying it was frivolous in direct contradiction with its earlier assessment of the very same legal arguments (emphasis added).

On July 29, 2021, over three (3) months after said briefing notice, after Norris had already submitted his brief, and after BFCA failed to file a brief in opposition, they filed a motion to dismiss. Adding injury to insult, the Fifth Circuit sanctioned Norris one thousand dollars ($1000) for his meritorious endeavor to protect his constitutional right to a jury trial after it had been illegally violated by the State of Texas.

The right to a trial by jury in Texas dates back more than one hundred and forty-five (145) years to the Texas Constitution of 1876. The right is sacrosanct. To claim it is *frivolous* is a grave miscarriage of justice that defies sound reasoning and an insult to American citizens who venerate the right to a trial by jury. Norris's appeal is meritorious not frivolous.

The *dubious* nature of BFCA's new counsel's motion to dismiss, their failure to file a brief in opposition, and the *dubious* "vacation schedule" they purported and falsely filed in another court is more suited for a brief in the event this petition is granted.

E. The Fifth Circuit erred when it egregiously ignored the U.S. Supreme Court declaration promulgated in *Railroad Company v. Koontz*, 104 U.S. 5 (1881) that a litigant should not have to carry the heavy burden of

simultaneous litigation in both state and federal forums, especially in light of the salient fact the litigant is pro se (without counsel).

The Fifth Circuit erred when it denied Norris's motion to stay the U.S. District court's remand back to the Harris County Civil Court at Law No. 3 while this litigation was pending federal appeal and under federal statutory jurisdiction, specifically 28 U.S.C. § 1447(d).

The U.S. Supreme Court declared you should not subject someone to litigation in both state and federal forums against their will. In *Railroad Company v. Koontz*, a removal case with similar elements to the present one, the Court aptly discussed this very issue in regards to concurrent (simultaneous) litigation in both state and federal court after notice of removal to federal court has been filed.

It stated: "Certainly the petitioning party ought not to be required to carry on his litigation in two courts at the same time." *Railroad Company v. Koontz*, 104 U.S. 5, 18 (1881).

To subject a pro se litigant (without counsel) to both forums simultaneously who is trying his level best to make sound, precedent based legal arguments and to comply with the rules and procedures of the courts, all the while under heavy strain and barely able to do so, is not only shameful but truly wicked.

CONCLUSION AND PRAYER

State and federal Rules of Law have been flagrantly flouted and ignored. This case has sadly reached the egregious level of "shocking the conscience." Petitioner has extensively researched the legal issues herein and presented them in good faith. This case is meritorious and in desperate need of this Court's scrutiny.

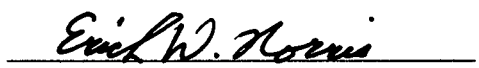
There are deep and far reaching ramifications in this removal case such as the constitutionally guaranteed civil right to a **trial by jury** that has been transgressed and trammeled upon by the State of Texas and shamefully ignored by the lower federal courts. This malfeasance has anachronistically taken us back to a time predating the Magna Carta.

The archaic "racial inequality" criteria leftover from the 1960's and purported by the U.S. District court to be contingent for application and enforcement of **28 U.S.C. § 1443** needs to be revisited.

Norris prays this Court will GRANT this petition to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

December 23, 2021



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