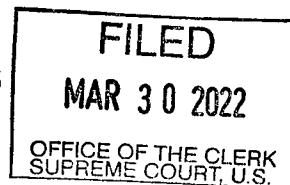


ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2021



Case No. 21-7556

JOHNSON, et al

Plaintiffs / Petitioners,

v.

STEPHEN R. CLARK, SR., et al

Defendants / Respondents,

WRIT OF CERTIORARI / WRIT OF MANDAMUS TO
UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

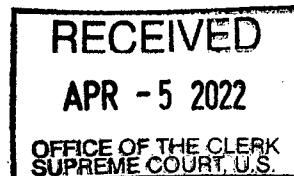
JUDGMENT OF PANEL / CIRCUIT COURT EN BANC NO: 21-3449
SUP. CT. RULE 22.1
"BRIEF OF PETITIONER"

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JURY TRIAL DEMAND



QUESTION PRESENTED

- (1) Does violation of an individual's Fourth Amendment protection against unreasonable search and seizure give rise to a federal claim for damages.
- (2) Does governmental privilege extend to federal agents who clearly violate constitutional rights and act outside their authority.
- (3) Does Congress have legislative elastic powers to enact statute of limitations within a statute or adopted rule.
- (4) Does the DUE PROCESS Clause Fourteenth Amendment by way of due process Fifth Amendment in a civil case guarantee the right to an impartial arbiter.
- (5) Does the removal of cases from state court to federal court require "unanimity among all defendants."
- (6) Does the several States have "exclusive jurisdiction" over personal and property right interest within its jurisdiction.
- (7) Does the common law in all cases involving personal or property right interest is the right to jury trial reserved inviolate.
- (8) Does a minor have the right to an attorney in APA [e.g. SSA's] administrative proceedings and SSA's appeals in the district court, and the minor has the right to a hearing.
- (9) Does the Missouri Constitution, Bill of Rights, Article I, Sec. 12, reserving the right to petition for writ of habeas corpus must not be suspended state an implied cause of action waiving state sovereign immunity, judicial immunity, and public officer immunity Eleventh Amendment.
- (10) Are retirement benefits deemed "property" social contract or social compact Federal Insurance Contribution Act, FICA.

PARTIES

JOHNSON, et al
Pro se Petitioners / Plaintiffs

v.

UNITED STATES, et al
Ronnie L. White, District Judge
Stephen R. Clark, Dist. Judge
Saylor Fleming, US Attorney
Jeffrey B. Jensen, former US Attorney
Michael Gans, Clerk of Court
Gregory J. Linhares, Clerk of Court

STATE of MISSOURI, et al
Eric Schmitt, State Attorney General
Rex R. Burlison, Circuit Judge
Stephenson McGraugh, Assoc. Circuit Judge
Sam C. Bertolet, former Asst. Circuit Attorney
Mary Fox, Dist. Public Defender
Frank Fabbri, III, former Public Defender
Denise L. Thomas, Deputy General Counsel, Mo. Dep't Mental Health
Laurent Javois, REO, Mo. Dep't of Rehab.
Mark Stringer, Director, Dep't of Mental Health
Jasmyn Frager, Supt., Lebra Center
Thomas L. Kloeppinger, Circuit Clerk

CITY of ST. LOUIS, et al
Kimberly M. Gardner, Circuit Attorney
Sheila Hayes, Asst. Circuit Attorney
Erin K. McGowan, Asst. City Counselor

SOCIAL SECURITY ADM, SSA
Kilolo Kijakazi, Acting Commissioner
Nancy A. Berryhill, former Commissioner

Berg and Brinker & Doyen, LLP

Charter Communications Services, LLC

% Thomas Rutledge, CEO
Thompson Coburn, LLP
Defendants / Respondents

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STATEMENT OF THE CASE

a. INSTANT CASE NO. 4:21-cv-0039RLW

The trial court, United States District Judge Ronnie L. White inter alia denied the plaintiff of the substantive right to due process Fifth Amendment, and engaged in judicial misconduct having used emails to communicate in secret by engaging in improper ex parte communications with "all attorneys" for the defendants in previous case No. 4:19-cv-002328. Judge White purportedly was randomly assigned instant case No. 4:21-cv-0039 in 2021, involving the same plaintiffs and "all attorneys" for the defendants in the previous case in 2019 when Judge White had used emails to communicate in secret ex parte with "all attorneys" improper contact and communications not authorized under the Federal Rules of Civil Procedures, ("F. R. C. P.")

This Court 5-3 decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970) holding the "Due Process clause in a civil case guarantees the right to an impartial arbiter," in instant case No. 4:19-cv-0039.

In previous case No. 4:19-cv-002328AGF/RLW/SRC the Clerk of Court, Gregory J. Linhares disclosed under CM/ECF notice DOCKET SHEET the following "Email all Attorneys, and Additional Recipients, (will not send to terminated parties)."

Clerk of Court's CM/ECF Notification attached hereto APPENDIX D.

Judge White in previous case No. 4:19-cv-02328 used emails and the clerk's office to notify defendants listed in the plaintiffs' complaint, which defendants were *sua sponte* being dropped from the proceedings without the knowledge and participation of the plaintiffs, Judge White displayed an abuse of authority and judicial discretion by *sua sponte* dropping defendants, and without notification made to the plaintiff, and without a scheduled motion hearing being set by the court.

b. MOTION FOR RECUSAL 28 U.S.C. S 455(a)

January 21, 2021, in instant case No. 4:21-cv-0039 the plaintiff filed its motion for Administrative Order filed with Chief Judge Rodney W. Sipple for removal or recusal of trial judge White for bias, impropriety, and lack of impartiality on due process grounds. [397 U.S. 254].

February 4, 2021, Judge White entered an Order denying the plaintiffs' motion seeking his recusal under 28 U.S.C. S 455(a)(b)(1).

S 455(a) - "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," sec. (b) -"He shall also disqualify himself in the following circumstances; (1) - "Where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

c. INTERVENING MATTER ONE - JUDICIAL COMPLAINT No. JCP-08-21-00935

April 8, 2021, the plaintiff filed with the court of appeals, Eighth Circuit, its judicial complaint against district judge Ronnie L. White before Chief Judge Lavenski R. Smith.

Cover page of Judicial Complaint No. JCP-08-21-00935 attached hereto APPENDIX E.

d. INTERVENING MATTER TWO - DEFENDANT UNITED STATES FILES FOR PROTECTIVE ORDER TO STAY DISCOVERY NON PRIVILEGED DOCUMENTS

February 8, 2021, Plaintiff filed its Rule 26 motion for discovery against the United States Attorney's Office, and against the Clerk of Court for those emails non-privileged communications within the internal docket of the district court, or sole custody of the US Attorney's Office materially relevant to the plaintiffs' substantive right to due process an impartial arbiter. [397 U.S. 254].

February 17, 2021, US Attorney Saylor Fleming files its motion for protective order or to stay discovery, US Attorney Fleming seeking to avoid the production and disclosure of those emails requested under the plaintiffs' Rule 26 motion.

March 3, 2021, Judge White enters a protective order staying discovery on February 17, 2021 of non privileged documents [e.g. emails] sought under the plaintiffs' motion for discovery under Rule 26.

September 21, 2021, Judge White entered its Order dismissing the plaintiffs Jeffrey L.G. Johnson, Jerry A. Johnson, Prisoner No. 081261-8 and Joseph Johnson's joined claims F. R. C. P. 18 Joinder of Claims and Remedy. The trial court e.g. Judge White citing the plaintiffs, failed to state a claim upon which relief court be granted, official immunity, sovereign immunity, judicial immunity, or absolute immunity, or Rooker-Feldman doctrine.

In the *United States v. Bagley*, 473 U.S. 667 (1985) this Court held the discovery right is limited to evidence in the Government's possession; and the withholding or failing to disclose invalidates the proceeding as unfair to the plaintiffs' right to prosecute its own case.

Judge White dismissed instant case No. 4:21-cv-0039 arbitrarily without entering a scheduling order, or holding a motion hearing, and dismissed, prior too, lifting the order staying discovery.

Opp Cotton Mills v. Administrators, 312 U.S. 126 (1941) the Court held that "due process does not require a hearing at the initial stage of the administrative process so long as a hearing is held before the agency final orders become effective."

California Comm'n v. United States, 355 U.S. 534 (1938) the Court held that "access to the courts is essential to deciding questions about the constitutional or statutory authority of agencies."

Citing *Twombly* the district court, Eastern District held the decision of the decision-maker is to be based upon the "pleading and exhibits." But, the defendants under Rule 8 requirement never contested or disputed the allegations in the complaint or exhibits, and the trial court in its order of dismissal omitted any references to the exhibits in support of the allegations raised in the complaint. See, *Kwock Janfat v. White*, 253 U.S. 454 (1920) the Court held that "decisions made based on a record that omitted relevant evidence was not a fair hearing."

e. JUDICIAL COMPLAINT NO. JCP-08-21-00935 - DUTY TO SIT DOCTRINE - DUE PROCESS DEPRIVATION FAILURE TO PERFORM "LIMITED INQUIRY"

Chief Judge Lavenski R. Smith had the judicial complaint against Judge White filed since April of 2021, and could have addressed the due process right to an impartial arbiter, prior too, trial judge White entering its order of dismissal in September of 2021.

Chief Judge Smith, supervisor, had the fiduciary duty to perform a "limited inquiry," and if warranted order "corrective measures" to assure the parties of a fair hearings, based upon the disclosure by the Clerk of Court that the trial judge Judge White in instant case No. 4:21-cv-0039 could act impartially, and establish the truthfulness of the misconduct of Judge White on whether Judge White used emails to communicate in secret ex parte in the previous case No. 4:19-cv-02328.

Chief Judge Smith could have ordered the disclosing party e.g. Clerk of Court to provide any and all emails the clerk's office dissimulated between the court and "all attorneys," additional recipients," and terminated parties" for in camera review by the Chief Judge or independent district judge, or merely lifted the trial court's "stay" of those emails and communicated with the trial judge about the plaintiffs' right to discovery of non privileged materials [e.g. emails].

"...there is an unconstitutional "potential for bias" warranting recusing, see e.g. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). The prior familiarity the trial judge had with "all attorneys" having used emails to communicate in secret the impartiality of Judge White "might reasonably be questioned by a reasonable person." *Liteky v. United States*, 510 U.S. 540 (1994).

OVERVIEW

f. ORAL ARGUMENT WARRANTED APPEAL NO. 21-3449 - APPELLEES' DEFAULTING WAIVER OF PRIOR FAVORABLE JUDGMENT BY TRIAL COURT

Once an appeal is filed precedent stands. The court of appeals, Eighth Circuit, review was de novo addressing judicial error or err of law under the Federal constitution, or federal questions. Notwithstanding, the panel's de novo review power this Court in *Londoner v. Denver*, 210 U.S. 373 (1908) the Court held that "sometimes the right to a fair hearing implies a right to oral argument."

Rotiske Court; "When Congress chooses to enact a statute of limitations, however, "it speaks directly to the issue of timeliness and provides a rule for determining whether a claim is timely to permit, " when Congress adopted FRAP 31(a).

FRAP 31(a) - statute of limitation in the text the appellees must file a response to the appellant's appeal filed October 15, 2021 within 30-days of electronic service by the Clerk's Office; appellees' responses must be filed on or before November 15, 2021, or responses are "time barred" at appeal; appellees knowingly, or voluntarily, or did forego, or waive a prior right to relief under the trial court's favorable decision. Appellees' Certificate of Service(s) affirm default FRAP 31(a); the appellees knowingly failed to claim, or enforce a legal right at the proper time, see e.g. *People v. Heirens*, 648 N.E.2d 260 (Ill. 1st Dist. Ct. App)

Federal Appellees - US Attorney Saylor Fleming's Motion to Dismiss or for Summary Disposition electronic service date December 17, 2021.

State Appelles - AGO / AG Eric Schmitt's Motion for Partial Dismissal and or for Summary Affirmance electronic service date January 3, 2022.

Appellee - Charter Communications Services, LLC - Thomas Rutledge Motion to Dismiss or for Summary Disposition electronic service date December 27, 2021.

Appellees - Berg and Brinker & Doyen, LLP's Motion to Dismiss or For Summary Disposition and Motion for Stay of Briefing Schedule electronic service date December 22, 2021.

Appellee - Mary Fox's Motion for Partial Dismissal and for Summary Affirmance electronic service date January 3, 2022.

Appellee - Jasmyn Frager's Motion to Dismiss or for Summary Disposition electronic service date December 21, 2021.

Appellees - City of St, Louis Circuit Attorney Kimberly M. Gardner, former city circuit attorney Sam Bertolet, City Counselor Erin K. McGowan's Motion to Dismiss or for Summary Disposition electronic service date December 22, 2021.

g. PANEL PER CURIAM'S "IMPROPER INSTRUCTION" ABUSE OF AUTHORITY AND LACK OF JUDICIAL DISCRETION

Once FRAP Rule 31(a) was adopted by Congress, any change to "modifying" the statute of limitation for responsive pleading "timeliness," the requested change to the text must be submitted and approved by Congress. See, e.g. 28 U.S.C. S 2074(b).

November 2, 2021, the court of appeals by and through the Clerk of Court Michael Gans in a letter exercised unlawful discretion violating FRAP 31(a) statute of limitation's response time of 30-days for the appellees to file a responsive pleading to the appellant's appeal the Clerk of Court's letter states in part: "...Until a briefing schedule is established, no appellee responsive brief is due at this time."

Clerk Gans' Letter dated November 2, 2021 is attached hereto Appendix F.

The appellees did not file motions for extension to file out of time. The appellee or appellees' motions to dismiss, or for summary disposition, or summary affirmation were mooted because of appellees' defaulting, and for another reason, the question left before the panel was one *inter alia* of due process the substantive right to an impartial arbiter at the time of supposedly randomly assigning of the trial judge. [397 U.S. 245].

h. PETITIONER IS ENTITLED TO RELIEF FROM JUDGMENT, ORDER AND MANDATE RULE 60(b)(4) DUE PROCESS DEPRIVATION FIFTH AMENDMENT

Federalist No. 78 in part: "A constitution is, in fact, and must be regarded by the judges as, a fundamental law." "A judgment entered in violation of due process of law, must be set-aside." Jaffe, Asher, 158 F.R.D. at 278. The Federal constitution and laws made in pursuance thereof is the supreme law of the land. U.S. Const. Article VI, cl. 2.

A void judgment is a nullity from the beginning because of the trial judge's prior misconduct, impropriety and lack of impartiality whose judgment is attended by none of the consequences of a valid judgment. "A void judgment is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.2d (Tex. Crim. App. 2001); and must be set-aside upon appeal. 158 F.R.D. at 278. *Id.*

After the appellees had defaulted FRAP 31(a) the panel entered its judgment on January 24, 2022 affirming the judgment of the trial court; and the panel entered its Mandate affirming its judgment Rule 41(a) on March 8, 2022. The panel's judgment and mandate are void judgments not due any respect whatsoever on due process grounds; *ex parte Seidel*. *Id.* In addition, the panel's judgment and mandate, and the court en banc its order entered March 1, 2022 denying review "overlength," can be attacked either directly or collaterally Rule 60(b)(4) on due process grounds, provided the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.d 548 (C.A.7 Ill. 1999). FRAP 31(a) the plaintiff timely filed its appeal on October 15, 2021 within 30-day of the trial court's order dismissing.

The appellant filed its rule 60(b)(4) motion for relief on due process grounds against the Court en banc's order denying review based on "overlength," and on March 18, 2022 Clerk of Court returned the appellant's motion stating in the letter in pertinent part::

"I am returning your motion rule 60(b)(4) considered as a successive petition for rehearing, unfiled. An order denying your previously filed petition for rehearing was entered on March 1, 2022."

Clerk of Court's Letter dated March 18, 2022 attached hereto Appendix G.

SUBSECTION A: The Court en banc denying review citing "overlength" of the motion for rehearing; FRAP rules 27, 28 and 30 addressed the number of words and pages under the "initial filing" of the appellant's appeal limited to 13,000 words and 30 pages; and there is no ambiguity in the FRAP rules relevant only to the "initial pleading," the

words motion for rehearing or rehearing en banc relevant to words and number of pages was omitted from the FRAP rules. Supra.

SUBSECTION B: Any issue relevant to “overlength” under FRAP rules 27, 28, 30 were to be addressed, prior too, the Clerk of Court filing the appellants’ appeal, and the Clerk’s Office effectuating electronic service upon the appellees of the appeal on October 15, 2021.

i. PANEL'S JUDGMENT AND MANDATE, AND COURT EN BANC'S ORDER
FIRST AMENDMENT DEPRIVATION REPUGNANT AGAINST DUE PROCESS FIFTH
AMENDMENT INTENT TO DEFRAUD PERSON(S) 18 U.S.C. S 371 HONEST
SERVICE FRAUD

The panel arbitrarily entered its order to affirm the appeal FRAP rule 41(a) after the appellees had defaulted FRAP rule 31(a); and after the appellant filed its reply motion citing the appellees’ default. The panel denied the appellants’ First Amendment right to free speech e.g. oral argument outlining the appellees’ rule 31(a) default.

The pro se appellants’ appeal was filed on October 15, 2021 and the Clerk of Court effectuated electronic service upon the appellees and the appellee United States acknowledged the filing and electronic service date in its motion to dismiss in pertinent part: “Johnson filed their notice of appeal on October 15, 2021.” Appellee’s Motion to Dismiss, paragraph 1, pg. 4.

Appellee United States’ Motion to Dismiss, pg. 4, attached hereto Appendix H.

SUBSECTION A: The appellee United States’ motion to dismiss or for summary disposition electronically filed December 17, 2021 the appellee’s motion to dismiss not filed on or before November 15, 2021 was “time barred” filed outside the 30-day statute of limitation FRAP rule 31(a).

December 17, 2021, on the date the appellee United States filed its “time barred” motion to dismiss, the Clerk of Court Gans in a letter also dated December 17, 2021 acknowledged therein the appellee’s “time barred” motion to dismiss “will be referred to the court” for the panel to render a decision.

Clerk Gans’ Letter dated December 17, 2021 attached hereto APPENDIX I.

SUBSECTION B: Panel's Misconduct Improper Ex Parte Communication Of Briefing Schedule With Only One Party e.g. Appellees In Appeal No. 21-3449 Due Process Deprivation

The December 17, 2021 letter acknowledged the panel was 'suspending' something that already existed e.g. briefing schedule the date known only by the panel and appellees. The panel ex parte in secret had advised the appellees of the briefing schedule, but withheld notice of the briefing schedule from the appellant; the December 17, 2021 letter further stated in pertinent part: "...the briefing schedule will be suspended. You will be advised when a revised briefing schedule is established."

j. **JUDICIAL ERROR AND ERR OF LAW**

After the appellees defaulted FRAP 31(a) the panel ruled to affirm the appeal FRAP 41(a), and the panel and the Court en banc on rehearing not addressed the appellant's 'stand alone' constitutional and federal questions presented on appeal "deliberate indifference is a civil rights violation." Baker v. McCollan, 443 U.S. 137 (1979). Due Process a substantive right guaranteed by the Federal constitution "every right must have a remedy" Marbury v. Madison, 5 U.S. 137 (1803).

**RELATED CASES PROCEDURAL HISTORY
INSTANT CASE NO. 4:21-cv-0039 JOINDER OF CLAIMS RULE 18**

CLAIM NO. 1 - COUNTERCLAIM

March 18, 2020, State circuit court, Twenty First Judicial Circuit, City of St. Louis, State of Missouri filed in re: Estate of P.D. & Vandelia W. Johnson, et al v, United States, et al case No. 2022-cc00594.

Caption page stamped FILED MAR 18, 2020 attached hereto APPENDIX J.

28 U.S.C. S 1441 and 28 U.S.C. S 1446 - statutes enacted by Congress governing the removal of cases to Federal court from state court, there is no ambiguity in the text of the statute on the question of "timeliness" under the statute of limitations enacted herein.

S 1446, Sec. (b)(1) - "The notice of removal of a civil action or proceeding shall be filed within 30-days after the receipt by the defendant through server or otherwise of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or 30-days after service of summons upon the defendant if such initial pleading has then been filed in court....".

May 21, 2020, defendants, Movant city of St. Louis, consenting parties Berg and Brinker & Doyen, LLP, and Charter Communications Services, LLC electronically filed its petition for removal with the district court, and its Notice of Removal with the State circuit court. Under color of federal law S 1446.

The Movant city of St. Louis in its petition for removal acknowledged receipt of the initial pleading e.g. complaint and of the summons on April 6, 2020, and the Movant's petition was "time barred" S 1446 when not filed on or before May 6, 2020.

Movant's Petition for Removal, signature pg. 2, acknowledging receipt April 6, 2020 attached hereto APPENDIX K.

June 1, 2020, defendant, United States by and through former US Attorney Jeffrey B. Jensen filed its motion to dismiss in the Movant's removal case in the district court in No. 4:20-cv-00679 before an improper venue.

June 1 2020, defendant, State of Missouri by and through AGO and AG Eric Schmitt filed its motion to dismiss in the Movant's removal case in the district court in No. 4:20-cv00679 before an improper venue.

STANDING PRECEDENT IN DISTRICT COURT at APPEAL:

Pennoyer v. Neff, 95 U.S. 714 (1878) the Court holding the several States have "exclusive jurisdiction over persons and property within their jurisdictions." The estate under 25 S 1446 was non removable subject matter; and -

The Clerk's Office in state court proceeding No. 2022-cc00594 sealed and signed 18-summons naming defendants. 5-defendants, United States, State of Missouri, city of St. Louis, Berg and Brinker & Doyen, LLP and Charter Communications Services LLC e,g. Moving parties to federal court out of 18-defendants served the complaint and summons voided removal under 28 S 1446; and -

-- STANDING PRECEDENT IN DISTRICT COURT at APPEAL:

Removal of cases requires "unanimity among all defendants." See, beginning with the United States Supreme Court's decision in Chicago R. I. & Pac. Ry. Co., 178 U.S. at 248, federal courts have universally required unanimity of consent in removal cases involving multiple defendants." and -

"A court cannot confer jurisdiction where none existed." [204 U.S. 8, 27 S Ct. 236 (1907); and -

"...if a Federal court, on removal, determines that he does not have jurisdiction it is obligated on its own motion, if necessary, to remand." Strange, 534 F. Supp 138 (1981); see, e.g. "District court should sua sponte remand case to state court if its jurisdiction is not proper." Petit., 377 F.Supp 198 (1974).

k. Estate Subject Matter Removed to Federal Court State Law Controls

SUBSECTION A: Judicial Misconduct "Facilitation" Of Obstructing State Court Proceeding By District Judge and AGO Mens Rea "Meeting of Minds"

RSMo, S 576.030.1 - "A person commits the offense of obstructing government operations if he or she purposely obstructs, impairs, hinders, or perverts the performance of a governmental function ...interference or obstacle."

March 25, 2020, lead defendant in instant case No. 4:21-cv-0039 Stephen R. Clark, Sr., entered a predetermined STANDING ORDER ("Case Management") want of jurisdiction over the eventual filing of the Movant's petition for removal electronically filed in the district court on May 21, 2020 case No. 4:20-v-00679.

District Judge Clark had the Standing Order served by the US Mail upon non moving plaintiffs in state court, estate members Jeffrey L.G. Johnson, Jerry A. Johnson, Prisoner No. 081261-8, and Joseph Johnson for a case not pending in the district court e.g. misconduct mail fraud 18 U.S.C S 1341.

June 1, 2020, defendant State of Missouri by and through AGO and AG Eric Schmitt files its motion to dismiss in district court removal case No. 4:20-cv-00679; AGO and AG Schmitt usurping the State circuit court "exclusive jurisdiction" over probate matters involving personal and estate property right interest RSMo, S 473 Probate Code. [Pennoyer, 95 U.S. 714].

Copy Judge Clark's predetermined Standing Order ("Case Management") attached hereto APPENDIX L.

June 16, 2020, notwithstanding and contrary to the State court having "exclusive jurisdiction" over the estate subject matter and personal jurisdiction over estate members, Judge Clark want of jurisdiction entered an order purportedly dismissing an

estate subject matter pending in state court as frivolous, and not remanding sua sponte obstructing a State court governmental function under its Probate Code S 473.

I. Removal Scheme Fraud Upon 2-Tribunals

May 21, 2020, Movant city of St. Louis and consenting parties Berg and Brinker & Doyen, LLP and Charter Communications Services, LLC electronically filed its Notice of Removal with the State circuit court and its motion for removal with the Federal district court.

But, the Movant's CIVIL COVER SHEET displayed the moving party filing a Section 1983 e.g. Original Action non justiciable civil demand in the amount of \$32,000,000 against estate members Jeffrey L.G. Johnson, Jerry A. Johnson, and Joseph Johnson; and the CIVIL COVER SHEET does not reference Removal of Case 28 U.S.C. S 1446.

By scheme the Movant under its original action Section 1983 civil demand did not file as plaintiff, but listed the estate members Jeffrey L.G. Johnson, Jerry A Johnson, and Joseph Johnson as the plaintiff non-moving party required to defend as defendants against the Movant's original action Section 1983 civil demand \$32,000,000. The Movant 's Civil Cover Sheet disclosed that Movant paid the court's \$400 Civil Filing Fee.

Movant's Civil Cover Sheet electronically filed attached hereto APPENDIX M.

Movant city of St. Louis by and through Asst. City Counselor Erin K, McGowan relevant to listing the non-moving party ("Johnson") as the plaintiff in the Movant's original action Section 1983 civil claim; attorney McGowan was required to correct the record in No. 4:20-cv-00679. See, RPC Rule 3.3 Candor Towards the Tribunal - (a). "A Lawyer shall not knowingly; sec. (1) - "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer," relevant to correcting the record Jeffrey L.G. Johnson, Jerry A. Johnson and Joseph Johnson were the plaintiffs on the Movant's CIVIL COVER SHEET, and not the defendants who were to defend against the Movant's civil demand \$ 32,000,000; materially relevant to the defendant's right to counstersue in the district court in the amount of \$96,000,000.

STANDING PRECEDENT IN DISTRICT COURT at APPEAL:

"As a general rule, removability is determined by plaintiff's pleading." Union Planters Nat. Bank of Memphis v. CBS, Inc., C.A. 6 (Tenn), 1977 667 F.2d 84.

**SUBSECTION A: Non-Moving Estate Members Counter Sue In Related Case
No. 4:20-cv-00679 "Justiciable Issue"**

June 1, 2020, non moving party e.g. estate members Jeffrey L.G. Johnson, Jerry A. Johnson and Joseph Johnson, notwithstanding being listed as the plaintiff in the Movant's original action Section 1983 claim; because of fraud the estate members as defendant could file its counterclaim civil demand \$96,000,000 against Movant city of St. Louis, Berg and Brinker & Doyen, LLP and Charter Communications Services, LLC.

In the estate subject matter, the subject of the petition for removal to district court state law controls, and the estate members removed to Federal district court its counterclaim was authorized under state law RSMO, S 482.320.1.

The panel and the circuit court en banc never intended to adjudicate the appellant's appeal based upon the constitutional and federal questions articulated in the appellants appeal filed on October 15, 2020 because after the appellees all defaulted under FRAP 31(a) statute of limitations "...the judicial power of the United States is limited by the doctrine of precedence" Anastasoff, 223 F.3d 898 (8th Cir, 2000) under court of appeals own precedent.

Caption Page, of appellant's appeal Stamped Filed Oct 15, 2020 attached hereto
APPENDIX N.

March 8, 2022, the panel's mandate affirming appeal FRAP 41(a) generally applied to affirming the judgment of the trial court, the mandate affirming Judge Whit's order could not make a void judgment res judicata void judgment; and the panel's mandate was mooted for other reason the appellees defaulted, and were no longer entitled to the favorable ruling of the district court, therefore Rule 41(a) affirming appeal was materially relevant to the appellant's appeal by default

CLAIM NO. 2 - UNCONSTITUTIONAL TAKING

j. Social Security Retirement Benefits Deemed The "Property" of Insured Worker FICA Contributions

STANDING PRECEDENT IN DISTRICT COURT at APPEAL

Hovey v. Elliot, 167 U.S. 409 (1897) the Court held that "deprivation of property violated due process if done without a trial."

Kent v. United States, 383 U.S. 541 (1966) the Court held that "juveniles have due process rights."

Wong Yang Sung v. McGrath, 339 U.S. 33 (1956) the Court held that "when the US Constitution requires a hearing it must be fair and held before a tribunal that meets current standards of impartiality, also held that "a hearing in front of a tribunal that doesn't meet the impartiality of APA might violate due process."

May of 2018, plaintiff Joseph Johnson, an insured former worker under FICA filed for retirement benefits administered by the Social Security Administration, SSA, and the Commissioner of SSA seized the plaintiff's property e.g. retirement benefits purportedly based upon an overpayment of discretionary funds e.g. disability payments in the amount of \$79,000.00.

SUBSECTION A: SSA "Seizing Property" To "Repay Discretionary" Funds Opened The Door" To Review Prior District Court Decision in 2010

Prior to, SSA's seizure of the plaintiff's property e.g. retirement benefits in May of 2018 while SSA was pending in district court proceeding No. 4:21-cv-0039 was an "unconstitutional taking" violating due process done without an administrative proceeding before an administrative law judge, ALJ, under Social Security separate administrative proceeding under the Social Security Act under APA, a seizure by SSA in May 2018 made without a trial or hearing. [167 U.S. 409]. Supra. Or, SSA would have to withhold seizing of the property e.g. retirement benefit while the question of the purported discretionary disability payments was being adjudicated in the district court.

In appeal No. 21-3449 SSA by and through US Attorney Saylor Fleming having default FRAP 31(a), SSA's favorable judgment entered by Judge White, SSA's argument of the purported overpayment of disability payments was mooted one, SSA's default during the appeal process, two Judge White's judgment is not just void is nullity void judgment on due process grounds, and thirdly APA required the proceedings in the district court be fair, and held before a "tribunal that meets current standards of impartiality." [339 U.S. 33]. Supra.

Whereas, the proceeding in 2010 did not meet any of the requirements in Wong Yang Sung and Hovey because the trial judge(s) Magistrate Judge Frederick R. Buckles and Charles A Shaw weren't "impartial arbiters" because the jurist also ignored controlling precedent in Richardson v. Perales, 402 U.S. 389 (1971) the Court held that "appeals council can vacate a decision of the ALJ based upon "conflicting medical evidence" and "order a reexamination" of the claimant, but the ALJ's FULLY FAVORABLE decision

stated the SSA record did not contain any "conflicting medical evidence" filed by the State's agency. In addition, a minor under the age of 18-years old had an insurance benefit seized by the Commissioner in 2008, prior to, appointment of a lawyer by the Appeals Council and district court before affecting the minor's right to those discretionary benefits due process deprivation Fifth Amendment because "juveniles have due process rights." [Kent, 383 U.S. 541].

CLAIM NO. 3- WRIT DEPRIVATIOn S 1983 CLAIM

k. State of Missouri Consents To Suit "Eleventh Amendment" Sovereign Immunity Waived Constitutional Deprivation(s)

Because of the importance of the constitutional right violated, an "implied cause of action" is cognizable in State and Federal court(s) irrespective of a statute not authorizing such relief. Bivens, 403 U.S. 388 (1971).

Supremacy Clause: Federal judges can interpret state constitutions and state laws when there is a conflict involving rights secured by the Federal constitution and those laws made in pursuance thereof e.g. supreme law.

Federal constitution, Article I, sec. 9 - "The privilege to the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require it."

U.S.CONST., FOURTEENTH AMENDMENT

"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 the 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."

STANDING PRECEDENT IN DISTRICT COURT at APPEAL:

Moore v. Dempsey, 261 U.S. 86 (1923) the Court held that "depriving someone of liberty without a proper trial violated due process."

Hewitt v. Helms, 459 U.S. 460 (1983) the Court held that "liberty interest protected under the Fourteenth Amendment can come from the due process clause of state law

Mo. Const., Bill of Rights, Article I, sec, 4 - "That Missouri is a free and independent State, subject only to the Constitution of the United States..."

Mo. Const., Bill of Rights, Article I, sec. 12 - "That the privilege of the writ of habeas corpus shall never be suspended."

RSMo, S 532.110 - "Such writs shall not be disobeyed for any defect of form." And anyone who shall be served there with shall be deemed to be the person to whom it is directed."

RSMo, S 491.230. 1 - "Courts or record, and any judge or justice thereof shall have power, upon the application of any party to a criminal suit or proceeding, pending in any court of record, to issue a writ of habeas corpus."

December 30, 2019, petitioner, Jerry A. Johnson, Prisoner No. 081261-8 in the State circuit court filed his petition for writ of habeas corpus seeking unconditional release from the detention and custody of the State of Missouri since September of 1967.

Caption Page to Writ Petition Filed Dec 30 2019 attached hereto APPENDIX O.

The circuit court filed petitioner's writ case No. 1922-cc12348 and the petition was assigned circuit court, Division 19, Associate Circuit, Judge Stephenson McGraugh presiding. Judge McGraugh under state law once the petition was filed and assigned, the presiding judge "to issue a writ of habeas corpus" S 491.230. Id.

Circuit Clerk, Thomas L. Kloeppinger disclosed on the DOCKET SHEET in case No. 1922-cc12348 the following: January 2, 2020, "The Summons were not issued due to the nature of action."

January 2, 2020, the DOCKET SHEET disclosed petitioner filed his motion for the appointment of an attorney with the trial court.

Division 19's Docket Sheet attached hereto APPENDIX P.

Under State law once the circuit court accepted jurisdiction over the petitioner's writ petition, Judge McGraugh was to issue the writ to the party responsible for the "prosecuting" and "managing" of the writ proceeding in Division 19, the Circuit Attorney's Office by and through Circuit Attorney Kimberly M. Gardner RSMO, S 56.450; "And anyone...served...shall be the person to whom it is directed." S 532.110. Supra.

In addition, based upon the petitioner's motion for the appointment of an attorney the trial court was supposed to either assign a lawyer, or writ served upon the Office of the Public Defender by and through District Public Defender Mary Fox; and both the Office of the Circuit Attorney and Office of the Public Defender could not "disobey" the writ once served RSMo, S 532.110.

COUNT ONE: Trial Judge McGraugh under color of state law S 491.230.1 - Due Process and Equal Protection of Law Deprivation Fourteenth Amendment repugnant to due process Fifth Amendment.

March 5, 2020, without a hearing in the trial court Division 19, and without entry of appearances filed by the circuit attorney, or district public defender, or notice given to the petitioner by court order. Case No. 1922-cc12348 pending in the circuit court was transferred to Probate, a division of the State circuit court; and Deputy General Counsel, Dep't of Mental Health, Denise L. Thomas filed an Application to Amend and Extend Conditional Release, before Presiding Judge Rex R. Burlision.

The record is clear, the trial court Judge McGraugh withheld summons and service of the petitioner's writ petition seeking unconditional release so, if the writ was withheld "do the nature of the action" as required under S 491.230.1. The question is, how did the General Counsel's Office for the Dep't of Mental Health the state's custody agent know one, that the petitioner had filed in case No. 1922-cc12348 and, two under state law RSMo, S 56.450 the circuit attorney Kimberly M. Gardner was charged by statute to file any applications in the circuit court, and not the General Counsel's Office.

More-probable-than-not-doctrine since service of the writ under summons was withheld by the trial court Judge McGraugh, the trial court Judge McGraugh and the General Counsel's Office for the Dep't of Mental Health had engaged in secret ex parte communications concerning the petitioner's application for unconditional release; judicial misconduct on the part of the trial judge Stephenson McGraugh.

April 21, 2020, Presiding Judge Burlison, Probate Division 1, an improper venue entered its order granting the Dep't of Mental Health's Application to Amend and Extend Conditional Release case No. 1622-ccMH0621.

Judge Rex Burlison's Order Signature page, pg.5, attached hereto APPENDIX Q.

Trial judge McGraugh, Division 19, withhold service of the petition and summons of the writ in case No. 1922-cc12348, and Judge Burlison, Division 1, without service of the writ required under RSMo, S 491.230.1 entering the order extending conditional release in case No. 1622-ccMH0621; Judge(s) McGraugh and Burlison suspended that which could not be suspended the petitioner's privilege to petition for the writ of habeas corpus seeking unconditional release.

I. Prisoner's S 1983 Claim Justiciable, Cognizable "Implied Cause of Action"

Bill of Rights, Article I, sec. 12 - "That the privilege of the writ of habeas corpus shall never be suspended."

There is no ambiguity in sec. 12, supra, the privilege to the writ of habeas corpus "shall never be suspended" the Missouri constitution clearly states an implied cause of action voiding sovereign immunity, or individual immunity Eleventh Amendment for constitutional torts. Petitioner could sue tortfeasors e.g state actors in their individual capacity under S 1983 for the denial of his substantive right to the privilege of writ of habeas corpus.

Judge Rex Burlison's order No. 1622-ccMH0621 void judgment on due process grounds Fourteenth Amendment, and void judgment not due any respect or force of law consideration under Rooker-Feldman doctrine in district court proceedings. Deputy General Counsel, Thomas' Application to Amend and Extend Conditional Release filed before an improper venue Probate Division 1, the Application's Certificate of Service disclosed all of the participants who secretly had appeared, or had knowledge of Judge Burlison's ex parte proceedings conducted without the execution of a writ withheld by the trial court, Division 19, and the Certificate of Service discloses the prisoner did not attend, but a copy of the Application was sent % Labre Center.

PARTICIPANTS: Laurent Javois, REO, and Mark Stringer, Director, and Kimberly M. Gardner, Circuit Attorney, and Joshua Canavan, Asst. County Prosecuting Attorney.

Application's Certificate of Service attached hereto APPENDIX R.

REASON FOR GRANTING THE WRIT

This Court should reaffirm its constitutional precedent in *Bivens* v. Six Unknown Narcotics Agents, 403 US 388 (1971) relief in "implied cause of action" in constitutional deprivations.

In *Bivens* a 6-3 majority: The Court held *Bivens* had a constitutional right to the Fourth Amendment protection and *Bivens* does have a cause of action arising from the federal agents actions. *Bivens* must provide proof of his injuries in order to recover...that federal courts have the power to award damages for constitutional violations.

The defendants, United States, State of Missouri, city of St. Louis, Berg and Brinker & Doyen, LLP and Charter Communications Services, LLP and the district court Judge Stephen R. Clark, Sr., having commissioned and facilitated a removal scheme of estate case No. 2022-cc00594 to the Federal district court under color of federal law 28 U.S.C. S S 1441 and 28 U.S.C. S 1446, whether intentionally or unintentionally the district court allowed it to come before it in case No. 4:20-cv-00679SRC an estate civil rights case joining Title III Fourth Amendment *Bivens* criminal injury "in fact."

WHEREFORE, the initial proceeding in instant case No. 4:21-cv-0039RLW the evidence supports the trial court Judge White engaged in judicial misconduct, by engaging in improper ex parte communication having used emails to communicate in secret with "all attorneys" filing motions to dismiss in the instant case, who also used emails to communicate ex parte with Judge White in the previous case No. 4:19-cv-02328. The plaintiffs were denied their substantive right to an impartial arbiter, and denied the right to a fair hearing, and plaintiffs; substantive right to jury trial demand, in a controversy involving personal and property right interest.

The Federal district court and circuit court are prosecuting cases involving default under Fed. R. Civ. P 12 and FRAP 31(a) based upon class animus discrimination when governmental agencies default, default does mean default. In addition, defendants seeking dismissal under Fed. R. Civ. P 12 insufficient service, and service of process; an attorney should know once in forma pauperis is granted by the court under 28 S 1915 Rule 4(c)(3) the court must issue service of process. And, the court in the Order grants a dismissal in part on the defendant's rule 12 argument, constitutes honest service fraud by the tribunal, and the defendant's motion seeking dismissal under rule 12 is prayed for delay rule 11 sanction should apply against both the client and attorney.

In addition, the panel and the circuit court en banc in affirming appeal FRAP 41(a) did not adjudicate appellants appeal based upon the "stand alone" constitutional and

federal questions after the appellees defaulted FRAP 31(a). The petitioner / appellant is due mandamus relief because this court has exclusive appellate review over its constitutional precedents.

AFFIDAVIT OF CONSENT: Case No. 1922-cc12348

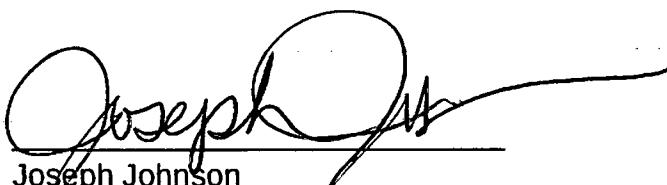
Appellant / Petitioner, Jerry A. Johnson, incompacitated under hospital care under HIS Certified Affidavit of Consent, estate members may execute CONSENT of estate's Executor, Jeffrey L.G. Johnson, Fed. R. Civ. P. each submission to the court must be signed by one party to the proceeding.

CONCLUSION

The Court should move to grant the Petitioners any and further relief the court deems just and proper.


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