

No. 21-7805

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH,

PETITIONER

v.

SELECT PORTFOLIO SERVICING, INCORPORATED
RESPONDENT

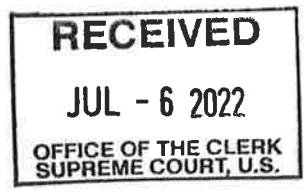
ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

20-11171

PETITION FOR REHEARING OF THE PETITION FOR WRIT OF CERTIORARI

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June 30, 2022

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ARGUMENT

The basis for rehearing of the petition for Writ of Certiorari are two additional issues. They are the unconstitutional removal from state court and the dismissal by the Circuit Court is based on an unconstitutional ruling from a lower court.

UNCONSTITUTIONAL REMOVAL:

Removal from a state court to a federal court should only be allowed after the state court judge conducts a hearing to determine if the case is a state issue, federal issue, or both. He can then keep the case, remove the case, or remove the federal portion and keep the state portion. The removal from Texas Court, 48th Judicial District was conducted under 28 U.S.C. § 1446(d) which reads:

“NOTICE TO ADVERSE PARTIES AND STATE COURT. —

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 affect the removal and the State court shall proceed no further unless and until the case is remanded.

A removal under this provision of 28 U.S.C. § 1446 is unconstitutional.

The Tenth Amendment of the United States Constitution reads:

The Tenth Amendment says that the Federal Government only has those powers delegated in the Constitution. If it isn't listed, it belongs to the states or to the people.

No where in the Constitution is it written that a defendant may remove a case from the state court without the consent of the state court. In

Coleman v. Thompson, 501 US 722.732- Supreme Court 1991,

"It is not always easy for a federal court to apply the independent and adequate state ground doctrine. State court opinions will, at times, discuss federal questions at length and mention a state law basis for decision only briefly. In such cases, it is often difficult to determine if the state law discussion is truly an independent basis for decision or merely a passing reference. In other cases, state opinions purporting to apply state constitutional law will derive principles by reference to federal constitutional decisions from this Court. Again, it is unclear from such opinions whether the state law decision is independent of federal law."

Adequate and independent state grounds refer to the standard used by the Supreme Court to determine if it will hear a case from a state court. The Supreme Court will hear a case from a state court only if the state court judgment is overturned on federal grounds. It will refuse jurisdiction if it finds adequate and independent nonfederal grounds to support the state decision.

However, lower Federal Courts are taking on established state court cases, that have been removed to federal courts and ruling proper consideration of the state laws. Most Federal District Courts are generalist and deal with a wide range of issues making it difficult to properly address a single category such as state property laws whereas the state district courts are frequently divided into categories (juvenile, divorce, civil, criminal, probate, and more) and therefore have the knowledge to determine if the issue is state or federal.

The “well-pleaded complaint rule,” which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. *Caterpillar v. Williams, 482 U.S. 386, 392 (1987)*. The “well-pleaded complaint rule” “makes the plaintiff the master of the claim” and generally permits the plaintiff to “avoid federal jurisdiction by exclusive reliance on state law.” However, by allowing the defendant to take possession of the case in order to remove it to federal court, the removal is in direct violation of the well pleaded complaint rule.

Jurisdiction is the first act in a case. The Plaintiff can only have due process under the **Fourteenth Amendment** if the state court

determines if it should keep all or part of a case. In the law of the United States, the Comity Clause is another term for the Privileges and Immunities Clause of the Article Four of the United States Constitution, which provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Article Four is described as the "interstate comity" article of the Constitution and includes the Privileges and Immunities Clause, the Extradition Clause, and the Full Faith and Credit Clause.

UNCONSTITUTIONAL DISMISSAL BASIS

The justification for dismissal was based on Burch v. Freedom Mortg. Corp., 850 F. App'x 292, 294 (5th Cir. 2021); Matter of Burch, 835 F. App'x at 749. The Burch v. Freedom Mortg. Corp. ruling was based on the bankruptcy courts *sua sponte* order declaring Burch a Vexatious Litigant. The bankruptcy court made their ruling pursuant to 28 U.S.C. § 1651(a) (The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law). § 105(a) The court may issue any order, process, or judgment

that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.) of the bankruptcy code, and the Court's inherent power (From Article III, Section 1 of the United States Constitution.) In protecting his individual properties, Burch was not abusive.

- A. The Court's inherent power does not apply because a bankruptcy court is not an Article III Court.
- B. 11 U. S. C. § 105(a) As used by the bankruptcy court and as written this rule is a violation of the United States Constitution First Amendment in that it prevents the free exercise of free speech. It stops Burch from speaking on behalf of his cases without prior approval. It should be noted that this sanction was made at a time when there were no cases involving Burch in the bankruptcy court. This is also in violation of the Fifth Amendment in that it has deprived Burch of his property in this case. Additionally, Burch was prevented from using his Due Process rights in cases in the state

courts and federal courts. As written this ruling is a violation of the **Tenth Amendment** in that it allows a bankruptcy judge to write laws and rule on them as he sees fit.

C. **28 U.S.C. § 1651(a)** does not apply as there were no cases involving Burch at the time of the sanction. As written this ruling is a violation of **Article Four, Section 1** of the Constitution.

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof”

It allows a bankruptcy judge to write new laws and rule on them.

D. **U.S. Constitution Article I, Section 9, Clause 3,**

“No Bill of Attainder or ex post facto Law shall be passed.”

The bankruptcy court created legislation from the bench by the attributes that specifically targeted a specific person without the benefit of a trial. The basis for the vexatious sanction order was not a new case filed in the court but was based on an apparent ex parte communication between two lawyers and the Judge. Hence the bankruptcy judge wrote in his vexatious order:

“I understand why Mr. Stout is upset. I understand why Mr. Weems is upset”.

This statement could only occur through communication with Mr. Weems and Mr. Stout. The basis was because Burch filed suit in State Court against HWA (Weems law firm) for lying to convert a successful Chapter 11 plan that was going to close in July 2018 to an unsuccessful Chapter 7 plan that has yet to close four years later. The bankruptcy granted the defendants immunity for lying. (12-bk-46959-mxm, advisory case 18-04176-mxm).

Vexatious Litigant is not defined in Federal law but has been legislated into effect in **Texas Civil Practice & Remedies Code CHAPTER 11**. In this case the Bankruptcy Judge legislated his own vexatious law that did not even follow the Texas Law specifically targeting Burch without the benefit of a trial. The bankruptcy judge’s legislation read, based on the order, that Burch, because of his actions to defend his property for his heirs, and although Burch never filed a case pro-se in the bankruptcy court and at the time the order was issued there were no cases open in the bankruptcy court, and, although the cases filed were on different properties, Burch is a frivolous litigant. Although there

has never been a trial, though requested, Burch's motions to remand were without merit even though the removals were made as much as sixteen months after service. Therefore, the bankruptcy courts can now resist comity and demand that any filings or motions in a state court be approved by the bankruptcy judge with the bankruptcy judge being able to withhold approval until the filing is late thus making a defacto ruling against Burch and against the state court judge's wishes.

E. Article 6 sections 2 & 3.

Section (2) "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."

Section (3) "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

All judges have bound themselves to the Constitution of the United States. Therefore, the Constitution must be the binding

article that determines the validity of a Motion to rescind the onerous sanctions and unconstitutional vexatious ruling.

F. **First Amendment:** (Freedom of expression and religion)

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

By requiring the filing of a petition or motion in the state court, to first be approved by the bankruptcy court a burden is placed on Burch that prevents him from timely filing documents. This prevents Burch from exercising his right to Freedom of Speech. Further, it prevents Burch from freely petitioning the Government for a redress of grievances. It is clear that if the merits were reviewed in court on his cases, Burch would prevail as NO defendant can or has produced a valid copy of a lien despite repeated demands from Burch. Burch has been forbidden by the bankruptcy court from discovery. This Court should understand that there were no cases in the bankruptcy court pertaining to Burch when the *sua sponte* vexatious litigant order was issued. The question is, “why would a judge declare Burch a vexatious litigant

when there were no cases pertaining to Burch in the court and Burch never filed any case in the bankruptcy court? All the cases filed were adversary proceedings filed by the defendants.”

There are three parts to this that are of concern and definitely abused. Sanctions are levied due to some behavior deemed punishable. Punishments levied *sua sponte* by the court because Burch would not bear witness against himself is a violation of the Fifth Amendment, “nor shall be compelled in any criminal case to be a witness against himself.” *Rogers v. Richmond, 365 U. S. 534, 8*8 541.* Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured and may not by coercion prove a charge against an accused out of his own mouth.” By making the order, “Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous.” The Court compelled Burch to make a decision that a case is without merit and frivolous to which Burch does not agree. Especially since there is compelling evidence that Burch is correct on the merits. The “due process definition comes in two parts, procedural and substantive.

"nor be deprived of life, liberty, or property, without due process of law". Judge Henry Friendly, in this article titled "Some Kind of Hearing," created a list of required procedures that due process requires. While this list is not mandatory, it remains highly influential, both in its content and relative priority of each item.

An unbiased tribunal.

Notice of the proposed action and the grounds asserted for it. Opportunity to present reasons why the proposed action should not be taken.

The right to present evidence, including the right to call witnesses.

The right to know opposing evidence.

The right to cross-examine adverse witnesses.

A decision based exclusively on the evidence presented.

Opportunity to be represented by counsel.

Requirement that the tribunal prepare a record of the evidence presented.

Requirement that the tribunal prepare written findings of fact and reasons for its decision

Regarding substantive due process rights, the Supreme Court recognizes a constitutionally based liberty and considers laws that seek to limit that liberty to be unenforceable or limited in scope

G. By requiring Burch to testify against himself the court is defying the **Fifth Amendment**. By refusing to even allow Burch the right to have his issues heard when the Fifth Circuit has ruled that it was not the amount of income that determined if a case

should proceed in forma pauperis but rather the cash flow of the litigant. Therefor this panel has ruled against the Fifth Circuit ruling that clearly covers this issue. At \$19.00 per month extra it is obvious that Burch cannot pay the approximately \$10,000 in filing fee in the circuit, \$6,000 in district appeals court filing fees.

H. Sixth Amendment:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. (Constitution spelling)”

This case was one in which Freedom Mortgage filed the Motion for Vexatious Litigant as part of the Burch v. Chase Bank case. Burch won that case, but the bankruptcy judge then turned around and sua sponte sanctioned Burch, even though there were no pending cases at the time in his court regarding Burch. Burch won the Vexatious Litigant case he was prepared for but the surprise sua sponte ruling was unfair because he was confronted

with witnesses against him (the defense lawyers) and he was not allowed the compulsory process of obtaining favorable witnesses.

I. Ninth Amendment:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

The Federalists contended that a bill of rights was unnecessary. They responded to those opposing ratification of the Constitution because of the lack of a declaration of fundamental rights by arguing that, inasmuch as it would be impossible to list all rights, it would be dangerous to list some and thereby lend support to the argument that government was unrestrained as to those rights not listed. Madison adverted to this argument in presenting his proposed amendments to the House of Representatives. “It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the

hands of the General Government and were consequently insecure. This is one of the most plausible arguments I have ever heard against the admission of a bill of rights into this system; but I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution." It is clear from its text and from Madison's statement that the Amendment states but a rule of construction, making clear that a **Bill of Rights** might not by implication be taken to increase the powers of the national government in areas not enumerated, and that it does not contain within itself any guarantee of a right or a proscription of an infringement

By requiring that any motion or filing be approved by the bankruptcy judge, even in a state court and considering comity and the fact that there were no cases in the court at the time of the ruling, it is obvious that this action by the bankruptcy judge and further with the sanctions of the panel is in strict violation of this amendment as there is no vexatious law in the federal constitution. It is covered in the **Texas Civil Practice and Remedies Code**
Title 2, Subtitle A, Chapter 11. Vexatious Litigants.

REASONS FOR GRANTING THE PETITION

Although this case was unpublished, it has been used fifteen times to date. The issues presented in this petition has a negative effect on hundreds of thousands of citizens every year resulting in billions of dollars in unnecessary property seizures. Further, this is unnecessarily tying up the federal courts with state issues when there are many times as the number of state courts versus federal courts.

CONCLUSION

For the foregoing reasons, Burch respectfully requests that this Court issue a writ of certiorari to review the Order of the Court of Appeals for the Fifth Circuit.

DATED this 30th day of June 2022

Respectfully submitted,


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PETITIONER

v.

SELECT PORTFOLIO SERVICING, INCORPORATED
RESPONDENT

PROOF OF SERVICE

I, William Paul Burch, do swear or declare that on this date, May 2, 2022 as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR REHEARING OF THE PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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tyoxall@lockelord.com

Matthew K. Hansen

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Dallas, Texas 75201-6776

(214) 740-8000 (telephone)

(214) 740-8800 (facsimile)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2022



William Paul Burch

No. 21-7805

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH,

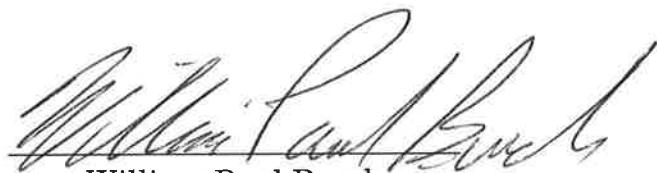
PETITIONER

v.

SELECT PORTFOLIO SERVICING, INCORPORATED
RESPONDENT

CERTIFICATE OF COMPLIANCE WITH RULE 44

I, William Paul Burch, Pro Se, hereby certify that this petition is presented in good faith and not for delay. The grounds for rehearing are based on other substantial grounds not previously presented that have a major impact on hundreds of thousand citizens per year.



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