No. 21-939

In the Supreme Court of the United States

PETER BEASLEY,

Petitioner,

v.

SOCIETY FOR INFORMATION MANAGEMENT
DALLAS AREA CHAPTER, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals for the Fifth District of Texas at Dallas

PETITION FOR A WRIT OF CERTIORARI

PETER BEASLEY
PETITIONER PRO SE
P.O. BOX 831359
RICHARDSON, TX 75083
(972) 365-1170

DECEMBER 20, 2021
SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Beasley, the first Black director of the prestigious, historically, predominately White male Dallas, Texas nonprofit, "The Society for Information Management" ("SIM"), sued including federal Due Process claims to be reinstated from his public expulsion from its board of directors.

SIM indicated it did not want to be in a lawsuit with a director, but a White SIM member who happened to be an attorney along with insurance-backed lawyers counter-sued Beasley in SIM's name, without the board authorizing them to do so, to orchestrate a dismissal of Beasley's lawsuit.

THE QUESTION PRESENTED IS:

Whether Texas courts may discriminate against Black people in violation of Due Process and Equal Protection guarantees of the Fourteenth Amendment through an unconstitutional, specious use of the Vexatious Litigant Statute, where *prima facie* evidence shows Black people are declared vexatious and their lawsuits were dismissed at a 73% rate more frequent than White people who are found to be vexatious and their lawsuits dismissed over the same 53 month review period.

PARTIES TO THE PROCEEDINGS

Petitioner, Plaintiff / Appellant

- Peter Beasley

Respondents, Defendants / Appellees

- Society for Information Management Dallas Area Chapter (SIM)
- Janis O'Bryan

Respondent, Defendant / Counter-Plaintiff / Appellee

- Nellson Burns

LIST OF PROCEEDINGS

Texas Supreme Court
No. 20-0960
Beasley v. Society for Information Management
Petition for Discretionary Review
Date of Final Order: March 26, 2021
Date of Rehearing Denial: May 21, 2021

Texas Supreme Court
No. 21-0067
Beasley v. Society for Information Management
Petition for Writ of Mandamus
Date of Final Order: March 26, 2021

Texas Fifth District Court of Appeals at Dallas
No. 05-19-00607-cv
Direct Appeal
Beasley v. Society for Information Management
Judgment entered: August 28, 2020

District Court Dallas County,
Texas 191st Judicial District
No. DC-18-05278
Final Order of Dismissal
Beasley v. Society for Information Management
Date of Final Order: June 11, 2019

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OPINIONS BELOW

The August 28, 2020, Opinion of the Texas Fifth District Court of Appeals at Dallas, County is not yet reported and is attached hereto in the Appendix ("App.") at App.2a.

The June 11, 2019, Final Order of Dismissal and Take Nothing Judgment from the 191st District Court of Dallas, County, Texas is unpublished and attached hereto at App.44a.

The December 11, 2018, Order Granting Defendants' Motion to Declare Peter Beasley a Vexatious Litigant from the 191st District Court of Dallas, County, Texas is unpublished and attached hereto at App.46a.

JURISDICTION

The Texas Supreme Court denied Petitioner's petition for discretionary review March 26, 2021. (App.1a), and denied Petitioner's motion for rehearing on May 21, 2021. (App.48a).

By this Court's order of July 19, 2021, the deadline to file a petition for a writ of certiorari extended to 150 days from the date of the denied motion for rehearing, or in this case, to October 18, 2021.

This petition was first tendered electronically with the Clerk on October 18, 2021.

October 22, 2021, the Clerk of this Court granted Petitioner another 60 days to file the petition for writ

of certiorari in booklet form, and this petition is filed before the December 21, 2021 deadline.

This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1—Due Process and Equal Protection Clause

> [N]or 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.

Tex. Civ. Prac. & Rem. Code § 11
Texas Vexatious Litigant Act

> Texas Vexatious Litigant Act ("VLA") is included at App.53a.

INTRODUCTION

This case presents the first challenge to the American Vexatious Litigant Statues ("VLS") nationwide to show that such legislation discriminates against Black people, in violation of the 1866 Civil Rights Act.

The appealed Opinion does not reveal that Petitioner is Black. Likewise, none of the numerous federal or state constitutionality challenges to VLS laws

nationwide have uncovered the statistical linkage portraying that illegal racial discrimination is used in determining who is granted due process and equal protection of the laws in America.

This appeal concerns whether statistical evidence from American courts provide a *prima facie* case that certain attorneys and judges have devised an unauthorized way, through frauds on the courts, to dismiss lawsuits based of the color of the litigant's skin.

This appeal raises the issue of whether Black people may enjoy fair, meaningful trials and appeals in state courts to protect their rights, as guaranteed by the U.S. Constitution.

STATEMENT OF THE CASE

Both the trial court and the court of appeals used a statutory "automatic stay" to prevent Beasley from having hearings to pursue his lawsuit, while allowing his adversaries every hearing they requested during the stay to obtain the dismissal of Beasley's lawsuit.

The "automatic stay" is provided under the Texas Vexatious Litigant Act ("VLA") (App.52a) and its use to impede the claims of one party of a lawsuit over another is outlined in the precedential Texas court opinion, *Drum v. Calhoun*, 299 S.W.3d 360, 364 (Tex. App.-Dallas 2009, pet. denied). (App.71a).

Beasley, in 2013 became the first Black on the prestigious, historically White male board of directors of the Society for Information Management ("SIM"). Beasley, *pro se*, sued SIM in Collin County, Texas, in

2016 for damages and included a federal Due Process claim to overturn his public expulsion from the society. Beasley desired to defend his board seat, as allowed by SIM's bylaws.

SIM is a Texas nonprofit corporation, a chapter of a nationwide professional organization for senior IT executives, managed by a board of directors, which included Beasley. The board never authorized anyone to retain counsel for the corporation to defend the lawsuit, or for the corporation to file counter-claims in their name against Beasley. SIM's president swore in an affidavit that SIM did not want to be in a lawsuit with one of its directors.

When lawyers appeared to defend the lawsuit, Beasley immediately filed the required Texas Rule 12[1] Motion to Show Authority. The challenged lawyers responded with a Motion to Declare Beasley a vexatious

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[1] Tex. R. Civ. P. 12. A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least ten days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party. Upon his failure to show such authority, the court shall refuse to permit the attorney to appear in the cause, and shall strike the pleadings if no person who is authorized to prosecute or defend appears. The motion may be heard and determined at any time before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing.

litigant, which imposes an automatic stay on the proceedings, by statute, upon the filing of the motion. Tex. Civ. Rem. & Proc. § 11.052. (App.53a).

During the stay, the three challenged lawyers against *pro se* Beasley moved for and successfully transferred the lawsuit from Collin County, to Dallas, County, and then within Dallas County, transferred the lawsuit from one district court, to a specific judge's court.

During the stay, the Presiding Judge for the 1st Administrative Judicial District of Texas (comprised of 7 Texas counties), in a contested hearing, recused Defendant's chosen trial judge, and then transferred the lawsuit to the judge of 191st District Court, the courtroom next door to the then recused desired judge.

Both the Rule 12 and VLA motions were set for hearing September 20, 2018.

The trial court acknowledged:

> . . . , well, we have motions to disqualify and show authority, and usually those come first but, obviously, I think, you're right, the vexatious litigant has come first.

Over Beasley's objection, now appearing by counsel, the Court decided the vexatious litigant motion first. With Beasley, being a Black man in Texas, the court changed the admitted, standard practice.

Beasley, argued that the VLA statute was unconstitutional. In Texas, constitutional challenges must first be raised in the trial court, *See e.g., In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003)(constitutional complaints must be raised below or they are not preserved

for appellate review), but irrespective of court precedent, the trial judge refused to hear Beasley constitutional claims, saying,

> This issue about the constitutionality of somebody being ruled a vexatious litigant, I don't think that's my job. I mean, I hate to say, I think that usually has to be raised in the Appellate Court or in the Supreme Court, I don't think that I go there.

The judge declared Beasley to be a vexatious litigant and ordered him to pay a $422,064 bond, the highest amount in state history, which is 40 times more than the usual $10,000 amount. The judge took and required no evidence to justify that enormous amount for Beasley to pay to maintain his lawsuit, and to be reinstated as a volunteer on a nonprofit board.

Beasley did not pay the court-imposed security fee.

The trial court dismissed Beasley's claims with prejudice, and ordered that he be placed on the Texas Vexatious Litigant's list for the rest of his life.

With the court determining the VLA issue first, Beasley, then *pro se*, filed another Rule 12 challenge while the trial court still had jurisdiction to hear the attorney challenge second. Rather than give Black Beasley a hearing, the court struck the hearing from its docket. (App.42a).

Beasley sought to prove-up a "fraud on the court" claim in his August 30, 2020, 2nd Amended Motion for New Trial[2], alleging that his U.S. Constitution rights

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[2] In Texas, an appeal on grounds of extrinsic fraud must be raised in a motion for new trial. Tex. R. Civ. P. 324(b)(1).

of Due Process were violated, but the trial judge refused to set Beasley's motion for a new trial for a hearing.

Beasley set a hearing before another judge to get his Motion for New Trial set, and for that judge to hear Beasley's Rule 12 challenge.

The new trial judge explained:

> THE COURT: Okay. Question for you, Mr. Beasley: Have you filed or paid the applicable fee with respect to being found to be a vexatious litigant?
>
> MR. BEASLEY: No. That was in—yeah, no.
>
> THE COURT: Okay. And do you understand that you can't file anything until that is paid, that bond is paid, that that particular order is saying that in order to proceed in Court, if you're going to file any additional motions after that particular order, that you would have to pay that bond in which to do so?
>
> MR. BEASLEY: No, I did not understand that and
>
> THE COURT: That is the case.
>
> MR. BEASLEY: Documents like the motion for new trial or findings of fact and conclusions of law, Ms. Ramsey, my attorney, has filed documents, so I understand that order prevents me from filing another lawsuit, without permission, and I understand that Judge Slaughter–
>
> THE COURT: Well, it essentially prevents you from filing anything further, without permission, until that particular bond is paid.

* * * * *

THE COURT: Okay. You may want to have a lawyer go over it, review it with you. I don't know if you've have an opportunity to do that but, historically, when someone has been declared a vexatious litigant, until that bond is paid, they are not able to file anything else in this particular courthouse.

MR. BEASLEY: Not even a notice of appeal?

THE COURT: Well, I can't give you legal advice. So that's one of the downsides of representing yourself.

What I'm telling you is, you might want to take a look at that order again, you might want to have a lawyer to review it, to explain to it you, but I'm not in a position to give you legal advice. Okay?

So the three motions that you have set today, they will not be going forward.

MR. BEASLEY: Okay.

THE COURT: Okay?

MR. BEASLEY: All right.

THE COURT: All right. That concludes our hearing.

Thank you.

Beasley re-read the order (App.46a) and it does not say what the judge told him, that he cannot file any more documents in court or that he cannot appeal the court's ruling that he pay a $422,064 fee.

Beasley ignored the trial court's verbal restraint, and he appealed the dismissal of his lawsuit and appealed his life-long sentence on the state-wide vexatious litigants list to the state court of appeals.

When the same attorneys appeared to defend the appeal, Beasley filed a motion in the Texas court of appeals for temporary orders to direct the trial court to hold a Rule 12 hearing for the attorneys to show their authority to defend the appeal. The court of appeals denied Beasley's motion for temporary orders, citing its own opinion, that all of Beasley's motions were stayed based on its prior 2009 Opinion under *Drum*. *Id.* (App.39a).

In his appeal, Beasley raised the federal question in Issue 15, on whether the trial court's application of *Drum v. Calhoun* created an unconstitutional due process violation. Beasley devoted an entire section in his appellate brief citing theories of the statute being unconstitutionally vague, that it was overbroad, and that it violated the Texas Family Code's right to *pro se ex parte* protection from family violence.

The Opinion correctly states:

> Beasley specifically criticizes this Court's opinion in *Drum*, arguing that it was applied to him in violation of his due process rights.

(App.29a).

Like the trial court did a year earlier, the court of appeals also refused to address Beasley's constitutional claims to the vexatious litigant statute. The court of appeals, by memorandum opinion, affirmed the trial court's dismissal order on August 28, 2020. (App.2a).

Instead of hearing Beasley's claims, the Opinion cites *Leonard v. Abbott*, 171 S.W.3d 451, 459-60 (Tex .App.—Austin 2005, pet. denied) to hold that the VLA has been held constitutional. But *Leonard* makes no reference to race in how the VLA is administered to discriminate against and dismiss lawsuits of Black people, nor does the *Leonard* Court question whether the VLA is unconstitutionally vague or overbroad.

Having been denied every attempt to have his Rule 12 challenge heard, Beasley sought leave of court post appellate court judgment to provide evidence that was unavailable to the trial court, that people with black skin were added to the vexatious litigant's list, in quantities 3 times greater than White people.

The statistics from 2016 to 2020[3] show that 73% of the litigants in Dallas County, Texas with lawsuits dismissed under the Vexations Litigant Act ("VLA") statute were Black, which included the fate for Beasley. (App.62a). The appeals court denied allowing Beasley to provide evidence of racial discrimination in the Texas court system. (App.50a).

Beasley's motion for rehearing to 1) correct its Opinion and identify him as a Black man, 2) that the court of appeals rule on 8 unaddressed issues on appeal[4], 3) and that the court correct 5 material statements of fact, not supported by the record, was denied on September 28, 2020. (App.50a).

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[3] The years when Beasley attempted to have his case heard.

[4] Tex. R. App. P. 47. The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.

The Texas Fifth District Court of Appeals, en banc, denied reconsideration on October 29, 2020. (App.49a).

The Texas Supreme Court used its discretion to not consider Beasley's appeal.

REASONS FOR GRANTING THE PETITION

I. THE TEXAS VEXATIOUS LITIGANT ACT, AS FURTHER DEFINED BY *DRUM V. CALHOUN* IS UNCONSTITUTIONALLY VAGUE, ALLOWING UNEQUAL TREATMENT TO DISCRIMINATE AGAINST BLACK PEOPLE.

Ratified as it was after the Civil War in 1868, there is little doubt that the Equal Protection Clause was intended to stop states from discriminating against Blacks.

The Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." This Court further defines that the Clause announces a fundamental principle: the State must govern impartially. General rules that apply evenhandedly to all persons within the jurisdiction unquestionably comply with this principle. Only when a governmental unit adopts a rule that has a special impact on less than all the persons subject to its jurisdiction does the question whether this principle is violated arise. *New York City Transit Auth. v. Beazer*, 440 U.S. 568, 584, 99 S.Ct. 1355, 59 L.Ed.2d 587 (1979).

A. The Texas Court Violated the Supreme Court Holding That Statistical Evidence Can Be Used to Present a *Prima Facie* Case of Unconstitutional Racial Discrimination.

In providing discriminatory employment practices, "[A] *prima facie* violation of [Title VII of the Civil Rights Act of 1964] may be established by statistical evidence showing that an employment practice has the effect of denying members of one race equal access to employment opportunities." *Id.*

In his appeal, Beasley presented statistical evidence that 73% of the people declared to be vexatious litigants in Dallas, Texas over a 53 month period during 2016 to 2020, were Black. (App.62a). Contrary to the Supreme Court precedent on how to make a *prima facie* claim of unequal protection of the law, the state court of appeals denied the consideration of irrefutable records from the Texas Office of Court Administration. (App.66a).

It is without question that the right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. *Drope v. Missouri*, 420 U.S. 162, 172 (1975). Unequal applications of the law can be defined by making a *prima facie* violation by statistical evidence which show the effect of a law or practice that denies members of one race equal access to rights protected under the Fourteenth Amendment. *See, Mayor of Philadelphia v. Educational Equality League*, 415 U.S. 605, 620 (statistical analyses have served and will continue to serve an important role as one indirect indicator of racial discrimination in access to service on governmental bodies.)

Comparing a similar parallel with death-penalty cases, the federal courts used statistics to demonstrate that Texas executed Black people in unequal numbers. *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)(A study of capital cases in Texas from 1924 to 1968 reached the following conclusions: "Application of the death penalty is unequal: most of those executed were poor, young, and ignorant.")

Capital punishment in the United States is constitutional, but some prosecutions have delivered death-penalty convictions in unconstitutional ways.

Similarly, Beasley does not challenge that the VLS laws across America are innately unconstitutional, but instead he complains that Texas applies the laws in an unequal fashion to illegally discriminate against certain classes of people.

Upon this Court granting a writ of certiorari, an examination of the statistical data from the state of Texas' own court records will demonstrate the likelihood that the Texas courts are allowing race-based discriminations to determine who will and who will not receive the equal protections guaranteed by law.

The pattern likely exists nationwide.

B. The "Automatic Stay" in the Texas VLA Is Unconstitutionally Vague, It Permits Frauds on the Court, It Is Applied in an Unequal Fashion to Dismiss Lawsuits of Black People, and to Rid That Class of People Onto the Vexatious Litigant List Forever.

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. *Grayned v. City of Rockford*, 408

U.S. 104, 108-09, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972).

The Texas statute defines, "on the filing of a motion under Section 11.051 [of the vexatious litigant statute], the litigation is stayed and the moving defendant is not required to plead." Tex. Prac. & Rem. Code § 11.052(a).

In the case below, after filing their VLA motion under section 11.051, the challenged attorneys were allowed to transfer the lawsuit from Collin County to Dallas County, and then within Dallas County, the challenged attorneys were allowed to transfer the lawsuit again to a desired judge's court. The automatic stay was not applied against them.

During the statutory stay, the Presiding Judge for the Texas seven county region recused the requested trial judge in a contested hearing, again blurring what issues are automatically stayed, and what matters are allowed.

As for Beasley, the state trial court used the "automatic stay" as a) a reason Beasley's constitutional challenges to the VLA could not be heard, b) a reason Beasley could not obtain a hearing to challenge opposing counsel before the vexatious litigant issue was determined, c) used as a reason Beasley could not obtain a hearing to challenge opposing counsel after the vexatious litigant issue was determined, and d) used the automatic stay as a reason Beasley could not get a hearing on his motion for new trial.

In the state appeals court, the "automatic stay" was e) used to deny Beasley temporary orders upon appeal, and f) to prevent him again, or to ever challenge in Texas the opposing counsel's authority to advance

their claims against Beasley, ostensibly because of Beasley's race.

The *Drum* opinion, *Drum, Id.* at 374, (App.74a), itself reveals how arbitrary and vague the statute is wherein Mr. Drum, presumably a White man, was allowed a hearing on his Motion for New Trial, which was denied. But Beasley, being a Black man, he was not even allowed a hearing.

Furthermore, Ben Richard Drum's motions which were stayed from hearing were filed after the VLA motion was filed against him. The automatic stay was used against Beasley, a Black man, to stay hearings he had set before the VLA motion was filed—and was used to avoid answering a fundamental matter—whether the challenged attorneys had authority to bring the vexatious litigant claim against Beasley in the first place.

Although the trial and appellate court stayed every attempt to allow Beasley to challenge their Texas colleagues in the bar, the court freely granted a motion to strike, (App.42a), an extension of time and consolidation of appeals, (App.36a), and allowed a reconsideration on a motion. (App.39a). The record demonstrates how the VLA stay is imprecise, unclear and arbitrary in its application.

Clearly, no fair trial could be obtained if one side of the litigation is held with one hand behind its back, stayed from advancing all of its interests, when the other side may obtain relief from the court, double-fisted, irrespective of any stay.

C. The Court's Unconscionable $422,064 "Security" Fee Under the Texas VLA Creates a Dangerous Precedent on How to Impose Unconstitutional Financial Bars to Justice, and How to Deny Equal Protection Under the Law to Those Who Are Not Indigent.

The imposition of a $422,064 security fee on Beasley, the highest in Texas history and 40 times the customary amount further highlights how vague the statute is, wherein its terms do not determine how a legitimate security amount is determined. (App.55a). The fact that the trial court asked for and required no evidence to support the gargantuan amount underscores how fickle, capricious and uncertain, and frankly dangerous, the statute allows its application to be wielded.

The court of appeals merely presumed, based on argument alone, that a prior debt, (App.26a-28a), and past judgments between the parties[5] could be a proper security fee for Beasley to maintain his current lawsuit. The Opinion promotes a proposition contrary to Fourteenth Amendment guarantees that judgments are made based on evidence presented at trial.

The standard due process protections in determining the reasonableness of attorney fees were ignored, and equal protection of the laws were not afford to Beasley. Certainly, a frivolous lawsuit could reasonably be terminated under a number of strategies for summary judgment for far less than $400,000, and the

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[5] Obtained by these same lawyers in the name of SIM against Beasley

fee amount was an obvious financial barrier to prevent Beasley from maintaining his lawsuit.

This court has held that even a $60.00 filing fee required to obtain a divorce could be an impermissible financial bar to substantive due process. *Boddie v. Connecticut*, 401 U.S. 371 (1971).

The Texas VLA vague security amount clause provides a novel twist to discriminate against people, at will, where the bond amount can be so arbitrary and high that it creates a financial bar, regardless of whether a person is indigent.

This Court held in *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963), that an indigent criminal defendant must be provided counsel in his defense on appeal. The *Douglas* Court explained that

> [T]here is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself.

Id. at 357-58.

The imposition of an unrestrained, unconscionably high security fee to obtain court hearings, to maintain a lawsuit, and to mount a meaningful appeal create the same evil (discrimination against the indigent) that the *Douglas* Court warned about, but on people who are not indigent. These types of financial bars all

discriminate against people in ways which violate the equal access clause of the U.S. Constitution.

II. THE OPINION AND *DRUM V. CALHOUN* IMPERMISSIBLY OUTLINE HOW AN AUTOMATIC STAY CAN PERMANENTLY DENY BLACK LITIGANT'S RIGHTS, IN VIOLATION OF DUE PROCESS PROTECTIONS OF THE U.S. CONSTITUTION

No legitimate purpose exists why the Rule 12 attorney challenge was never allowed to Beasley, him being a Black man. The law and plain language of Rule 12 necessitates a hearing, and a trial court has no discretion to refuse to hear and rule on a properly filed, pending motion because a refusal to timely rule on a motion frustrates the judicial system and constitutes a denial of due course of law. *In re Ramirez*, 994 S.W.2d 682, 683-84 (Tex. App.-San Antonio 1998, orig. proceeding). The U.S. Constitution guarantees due process of law, and this includes allowing Black litigants hearings.

Certainly the attorney challenge could have gone first, and then if overruled, the vexatious litigant challenge could have gone second. The court's arbitrary approach, coupled with the imposition of an enormous financial bar combine into a permanent denial of a substantive right, infirm under the Fourteenth Amendment to the U.S. Constitution. U.S. Const. amend. XIV, § 1.

The trial court also striking the attorney challenge from going second, (App.42a), the trial court refusing to set his third attempt for hearing, (*supra.* pg. 8) and the court of appeals staying his fourth attempt, (App.39a), all violate civil rights protections under the Fourteenth Amendment.

In providing reasons to grant the writ, the argument here is not that the lower court judgment was wrong with respect to Beasley, which it was, but that the laws and practices of the Texas judiciary violate the U.S. Constitution. The procedural posture of the appealed judgment and *Drum v. Calhoun* merit review by this court through certiorari.

III. COLOR-BLIND RACIAL ATTITUDES BY THE COURTS IN HOW THEY ADMINISTER JUSTICE, NOW COMMONLY CALLED MICRO INVALIDATIONS, ARE UNCONSTITUTIONAL, AND ARE OFFENSIVE IN TODAY'S SOCIETY.

The context in which racism, prejudice, and discrimination exist in the United States is complex. Our history is a one of promise and triumph, but also failed opportunities. *See*, Edwards, J. (2017). *Color-Blind Racial Attitudes: Microaggressions in the Context of Racism and White Privilege*, ADMINISTRATIVE JOURNAL, Vol. 7, No. 1: 5-18, Retrieved from https://files.eric.ed.gov/fulltext/EJ1151584.pdf (App.100a).

Some parts of U.S. history of racial discrimination are sufficiently well known to be considered common knowledge without denying the importance of their impact on our collective history or on the people who experienced them. *Id.* The history of slavery and segregation based on race (especially for African Americans) falls into this category. *Id.* at 101a.

Other examples of discrimination and oppression may be less well-known, including treatment of native tribal groups, attempts to control who immigrates to the United States, attempts to force assimilation of non-European populations, and discrimination against

residents and citizens of Chinese and Japanese descent. *Id.*

The Fourteenth Amendment to the U.S. Constitution guarantees due process under the law, which includes a meaningful right to hearings and equal protection of the laws. It is undisputed that this amendment in 1868, was enacted to protect people with black skin.

It is now 2021, and American society has criminalized and prosecuted hate crimes. Black lynching are not commonplace. And White people who murder innocent Black people jogging and police officers who murder innocent Black people are convicted in today's American conscious. Together, we are healing from decades of racial injustices.

Yet, more work remains for the states to uphold the federal laws that guarantee equal protection for all. The evil the *Douglas* Court spoke of remains in employment, racial discrimination remains in our school systems, and mistreatment of the races occurs in prestigious nonprofit societies all across America.

Beasley nor anyone else can, in a meaningful way, appeal a race-discrimination lawsuit when the court of appeals ignores and refuses to consider race-based claims, and refuses to identify the races of the relevant parties in its opinion.

Hiding the race issues central to this lawsuit equate to what in 2021 are commonly called Micro-Invalidations, a term associated with White Privilege and long-held, offensive views that Black people do not even deserve the dignity that their federally protected civil rights against racial discrimination claims be acknowledged. *Id.* at App.110a-112a.

The Opinion is infirm under the Fourteenth Amendment where it stands completely silent in resolving a raised dispute so centered on the unequal treatment of Black people in America.

IV. THE OPINION AND APPEALED JUDGMENT EMBODY A FUNDAMENTAL ERROR AND YIELD A MISCARRIAGE OF JUSTICE, REQUIRING REVERSAL TO PROTECT THE VERY FUNDAMENT OF THE JUDICIAL SYSTEM.

In spite of the automatic stay, the Regional Presiding[6] judge knew better and held a hearing and recused the trial judge, where it is axiomatic to due process that trials must be before an unbiased tribunal.

Likewise, the question of whether the attorneys who sought to dismiss Beasley's lawsuit were authorized to do so using a vexatious litigant statute, once properly raised as Beasley did, created a fundamental question that required an answer.

The trial judge admitted, attorney challenges normally come first. (*supra*, pg. 5).

While the 31 page Opinion, with any unaddressed issues on appeal and with any misstated facts may appear to not provide any conflicts at law warranting this Court to grant its discretion to correct, the fundamental procedural defects across the entire Texas judiciary in how Beasley's lawsuit was dismissed mandate reversal, on its own accord.

"There is an irrefragable linkage between the courts' inherent powers and the rarely-encountered

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6 The Honorable Ray Wheless of McKinney Texas, Presiding Judge for the 1st Administrative Judicial District of Texas

problem of fraud on the court. Courts cannot lack the power to defend their integrity against unscrupulous marauders; if that were so, it would place at risk the very fundament of the judicial system." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250 (1944).

Justice Black wrote:

> [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. . . . The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

Id.

This record portrays a clear miscarriage of justice – using a one-of-kind, "40x", highest in state history, financial bar based on no evidence presented at trial, and an unequal use of an "automatic-stay" in a vague statute to dismiss the lawsuit of a *pro se* Black man – who broke a color barrier to serve as a volunteer on a prestigious nonprofit board.

While the life-long injury to Beasley being now declared a vexatious litigant is harsh and unfortunate, the injury to the justice system is what is intolerable. Judgments procured through fraud create an offense in its own right, and the writ of certiorari should grant to review the Opinion on whether it must be set-aside.

The Fourteenth Amendment and its due process and equal protection clauses as advanced here in the United States Supreme Court is the precise avenue to correct a state's failure in their last court of appeal to uphold the 1866 Civil Rights Act to protect the civil rights of Black people.

CONCLUSION

For the reasons stated herein, this Petition for Certiorari should be granted.

Respectfully submitted,

PETER BEASLEY
PETITIONER PRO SE
P.O. BOX 831359
RICHARDSON, TX 75083
(972) 365-1170

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