

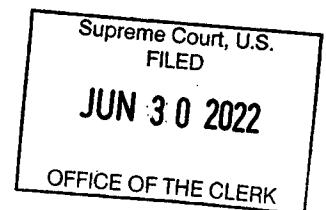
22-5041 ORIGINAL

In the Supreme Court of the United States

BRADLEY B. MILLER, PETITIONER

v.

VIRGINIA TALLEY DUNN, RESPONDENT



***ON PETITION FOR REVIEW
TO THE SUPREME COURT OF TEXAS***

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- 1) Whether the trial court judgments were the result of fraud, and are thus void; and whether such a judgment violates Due Process.
- 2) Whether the trial court judgments were the result of bias, and are thus void; and whether such a judgment violates Due Process.
- 3) Whether dismissal for want of prosecution (if that was the trial court's ruling) was improper under TRCP 165a.1 because Miller never missed a hearing in the trial court.
- 4) Whether Dunn's Motion to Dismiss violated TRCP 91a.3 because it was not filed within 60 days of service of the first document on the movant.
- 5) Whether Dunn's Motion to Dismiss violated TRCP 91a.2 because it failed to state that it was filed under TRCP Rule 91a.
- 6) Whether hearing on Dunn's Motion to Dismiss violated TRCP 91a.3(b) because it was heard before 21 days had elapsed after filing.
- 7) Whether the trial court erred in granting Dunn's Motion to Dismiss because TRCP Rule 91a.1 explicitly precludes the filing of such motions in cases brought under the Texas Family Code.
- 8) Whether the trial court erred in granting Dunn's Motion to Dismiss, given Dunn's numerous violations of TRCP Rule 91a.
- 9) Whether the trial court's levy of attorney's fees against Miller represents a violation of Miller's constitutional rights to Due Process and freedom from excessive fines, and thus whether the trial court erred in imposing this levy.
- 10) Whether the Texas requirement that a bill of review be filed in the same court that issued a prior constitutionally-violative ruling represents a clear violation of Due Process.

LIST OF PARTIES

Petitioner (Texas Supreme Court Petitioner, Texas Fifth District Court of Appeals Appellant, trial-court Plaintiff):

Bradley B. Miller

Respondent (Texas Supreme Court Respondent, Texas Fifth District Court of Appeals Appellee, trial-court Defendant):

Virginia Talley Dunn

RELATED CASES

United States Supreme Court <i>Miller v. Dunn</i>	20-6965	Cert Petition Denied
Denied:	04/05/2021	
Petition for Rehearing Denied:	06/01/2021	
 United States Supreme Court <i>Miller v. Texas</i>	 18-7450	 Cert Petition Denied
Denied:	3/18/2019	
Petition for Rehearing Denied:	4/29/2019	
 United States Supreme Court <i>Miller v. Dunn</i>	 17-6836	 Cert Petition Denied
Denied:	1/22/2018	
Petition for Rehearing Denied:	3/05/2018	
 United States Supreme Court <i>Miller v. Plumlee, et al.</i>	 16-9012	 Cert Petition Denied
Denied:	10/02/2017	
Petition for Rehearing Denied:	11/27/2017	
 U.S. Fifth Circuit Court of Appeals <i>Dunn v. Miller</i>	 16-11817	 Appeal Dismissed
Judges:	Jolly, Owen, Haynes	
Denied:	8/17/2017	

U.S. Fifth Circuit Court of Appeals 18-10897 Appeal Dismissed

Miller v. Texas, and Dunn

Judges: Smith, Higginson, Duncan

Denied: 11/21/2018

U.S. Fifth Circuit Court of Appeals 20-11054 Appeal Successful

Miller v. Dunn, Andrea Plumlee, et. al.

Judges: Wiener, Graves, Duncan

Opinion issued: 06/02/2022

[Dismissal of Miller's Section 1983 civil suit REVERSED and case remanded to NDTX district court. **Opinion invalidated Hale v. Harney.** Held: Federal suits cannot be dismissed under *Rooker-Feldman* in situations where a related state case is pending on appeal when the federal suit is filed.]

U.S. District Court (NDTX)

3:16-CV-3213 Case Remanded

Dunn v. Miller

Judge: Sam Lindsey

Dismissed: 11/18/2016

Reconsideration Denied: 12/22/2016

[Federal removal under 28 U.S.C. § 1443.]

U.S. District Court (NDTX)

3:18-CV-967 Case Remanded

Dunn v. Miller

Judge: Jane J. Boyle

Dismissed: 5/16/2018

[Federal removal under 28 U.S.C. § 1443.]

U.S. District Court (NDTX)

3:18-CV-1457 Case Remanded

Miller v. Dunn, and Texas

Judge: Jane J. Boyle

Dismissed: 6/29/2018

[Federal removal under 28 U.S.C. § 1443.]

U.S. District Court (NDTX) 3:20-cv-759 Dismissed, appealed.*

Miller v. Dunn, et al.

Judges: Ada Brown, David Horan

Dismissed: 9/17/2020

Reconsideration denied: 11/05/2020

[Civil suit under 42 U.S.C. § 1983. *Dismissal reversed on appeal to the U.S. Fifth Circuit Court of Appeals. Fifth Circuit published Opinion issued on June 2, 2022 in case no. 20-11054.]

Texas Supreme Court 16-0487 Review denied

IN RE BRADLEY B. MILLER

Denied: 10/07/2016

Rehearing Denied: 12/02/2016

[Petition for writ of mandamus.]

Texas Supreme Court 20-0503 Review denied

IN THE INTEREST OF V.I.P.M., A CHILD

Denied: 8/28/2020

Rehearing Denied: 10/16/2020

[Petition for review of Texas 5th District COA ruling. Appealed.]

Texas 5th District Court of Appeals 05-22-00090-CV Pending

Miller v. Andrea Plumlee, et al.

Judges: ?

[Appeal of trial court's dismissal of civil suit for declaratory judgment.]

Texas 5th District Court of Appeals 05-19-00197-CV Ruling aff'd.

IN THE INTEREST OF V.I.P.M., A CHILD

Judges: Burns, Bridges, Carlyle

Disposed: 03/26/2020

Reconsideration Denied: 05/14/2020

Texas 5th District Court of Appeals 05-15-00444-CV Modified/aff'd.

Miller v. Talley Dunn Gallery, LLC, and Talley Dunn

Judges: Fillmore, Stoddart, O'Neill

Disposed: 03/03/2016

[Gag order issued by Texas 191st Civil District Court struck.]

Texas 9th District Court of Appeals 09-19-00345-CV Ruling aff'd.
Miller v. Dunn

Judges: Golemon, Horton, and Johnson

Disposed: 10/07/2021

Reconsideration Denied: 10/27/2021

[Appeal of trial court's dismissal of Bill of review. Transferred to Texas 9th District COA on 10/09/2019. Appealed to Texas Supreme Court.]

Texas 5th District Court of Appeals 05-21-00431-CV Ruling aff'd.

Miller v. Andrea Plumlee

Judges: Burns, Myers, Molberg

Disposed: 04/08/2022

Reconsideration Denied: 05/09/2022

[Interlocutory appeal of trial court's dismissal of civil suit. Appealed to Texas Supreme Court.]

Texas 5th District Court of Appeals 05-21-00658-CV Ruling aff'd.

Miller v. Daniel Diaz and Dallas County

Judges: Myers, Molberg, Garcia

Disposed: 01/12/2022

Reconsideration Denied: 02/17/2022

[Interlocutory appeal of trial court's dismissal of civil suit.]

Texas 191st Civil District Court (Dallas) DC-15-01598 Closed

Talley Dunn Gallery, LLC, and Talley Dunn v. Miller

Judge: Gena Slaughter, Ted Akin

Closed (admin.): 09/10/2015

[Civil suit by Dunn against Miller, requesting a gag order.]

Texas 330th Family District Court (Dallas) DF-13-02616 Pending
IN THE INTEREST OF V.I.P.M, A CHILD

(Open modification suit filed 3/8/2018.)

(Dunn's suit to change surname of child filed May 24, 2022.)

Judge: Andrea Plumlee

(Originally filed in February 2013 as a divorce case.)

[This is the root case from which all of the others stem.]

Texas 330th Family District Court (Dallas) DF-18-06546 Pending
Miller v. Dunn

Judge: Andrea Plumlee

Pending (Opened 2018, dismissed 8/1/2019, reinstatement motion denied 11/19/2019.)

[Bill of Review case.Appealed to the Texas 9th COA, then to SCOTX.
Appealed herein.]

Texas 116th Civil District Court (Dallas) DC-20-15614 Pending
Miller v. Dunn, et al.

Judge: Tonya Parker

(Opened 10/15/2020.)

[Civil suit under 42 U.S.C. § 1983 and related torts.]

Texas 134th Civil District Court (Dallas) DC-20-15614 Pending
Miller v. Dunn, et al.

Judge: Dale Tillery

Pending (Opened 09/28/2021.)

[Civil suit for declaratory judgment under 42 U.S.C. § 1983. Case dismissed for lack of jurisdiction. Appeal filed 01/30/2022.]

Note: ALL of the above cases stem from case number DF-13-02616 in the 330th Family District Court, Dallas County, Texas.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
LIST OF PARTIES.....	ii
RELATED CASES	iv
TABLE OF AUTHORITIES.....	xi
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
GLOSSARY OF CITATIONS TO RECORD	4
STATEMENT.....	5
REASONS FOR GRANTING THE PETITION	19
I. Fraud renders the trial-court judgments void.....	20
II. Bias renders the trial-court judgments void.....	26
III. Dismissal for want of prosecution is improper because Miller never failed to appear for any hearing in the trial court ...	28
IV. Dunn's Motion to Dismiss violated four sections of Texas Rules of Civil Procedure Rule 91	29
A. Dunn's Motion to Dismiss was not timely filed under TRCP 91a.3	30
B. Dunn's Motion to Dismiss failed to state that it was filed under TRCP 91a.....	30

C. Dunn's Motion to Dismiss was heard before 21 days had elapsed, in violation of TRCP 91a.3(b).....	31
D. Under TRCP 91a.1, a party may not move to dismiss a cause of action brought under the Texas Family Code on the grounds that it has no basis in law or fact.....	32
V. The attorney's fees levy violates Miller's constitutional rights to Due Process and freedom from excessive fines.....	33
VI. The Texas requirement that a bill of review be filed in the same court that issued a prior constitutionally-violative ruling represents a clear violation of Due Process	37
CONCLUSION	40
APPENDIX.....	(SEPARATE VOLUME)

(Note: For consistency and clarity of reference, the appendix tab order from the state-court appeals has been preserved herein. The rulings to be reviewed are located at Appendix tabs A, B, P, Q, R, S, and T.)

Trial Court's Order Dismissing Bill of Review (2019/08/01).....	A
Trial Court's Order Dismissing Motion to Set Aside Judgment and Motion to Reinstate Case (2019/11/19)	B
Trial Court's Ruling on Motion to Enter Confidentiality Order (Case # DF-13-02616) (2013/11/06)	C
Trial Court's Order on De Novo Hearing on Confidentiality Order (Case # DF-13-02616) (2014/02/14)	D
Miller's Trial Court Memorandum Opposing Prior Restraint of Speech (Case # DF-13-02616) (2014/03/31)	E

Dunn's Second Amended Petition to Modify the Parent-Child Relationship (Case # DF-13-02616) (2015/07/15)	F
Trial Court's Order in Suit to Modify the Parent-Child Relationship (Signed without jurisdiction) (Case # DF-13-02616) (2016/11/17)	G
Miller's Objection to Entry of Proposed Order (in 2015 Modification Suit) (Case # DF-13-02616) (2016/11/15)	H
Miller's Motion to Dismiss or Change Venue (with Affidavit on Local Bias and Prejudice) (Case # DF-13-02616) (2018/02/19)	I
Miller's Motion to Recuse Trial Court District Judge Andrea Plumlee (Case # DF-13-02616) (2018/02/19)	J
Dunn's First Amended Petition to Modify the Parent-Child Relationship (in 2018 Custody Modification Suit) (Case # DF-13-02616) (2018/03/18)	K
Trial Court's Temporary Orders (Signed without jurisdiction) (in 2018 Custody Modification Suit) (Case # DF-13-02616) (2018/06/07)	L
Email Exchange between Miller and Trial-Court Court Reporter Francheska Duffey Regarding November 17, 2016 Hearing Transcript (regarding case # DF-13-02616, appeal # 05-19-00197) (2017/11/03, 2017/11/06, 2019/11/15)	M
Letter from Trial-Court Court Reporter Francheska Duffey to Texas Fifth District Court of Appeals Claiming No Transcript from November 17, 2016 Hearing (Case # DF-13-02616, appeal # 05-19-00197) (2019-06-27)	N
Trial Court's Findings of Fact and Conclusions of Law (2019-08-19)	O

Texas Ninth District Court of Appeals' Judgment affirming trial-court judgment and dismissing appeal (Case # 09-19-00345-CV) (2021-10-07).....	P
Texas Ninth District Court of Appeals' Opinion (Case # 09-19-00345-CV) (2021-10-07).....	Q
Texas Ninth District Court of Appeals' Ruling denying reconsideration (Case # 09-19-00345-CV) (2021-10-27).....	R
Texas Supreme Court Ruling Denying Review (Case # 21-1064) (2022-02-11).....	S
Texas Supreme Court Ruling Denying Rehearing (Case # 21-1064) (2022-04-01).....	T

TABLE OF AUTHORITIES

UNITED STATES CASES

<i>Bullock v. United States</i> , 763 F.2d 1115 (10th Cir. 1985)	25
<i>Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.</i> , 561 F.3d 1298 (11th Cir. 2009)	25
<i>Hale v. Harney</i> , 786 F.2d 688 (5th Cir. 1986)].	iii, 19
<i>Miller v. Dunn</i> , No. 20-11054 (5th Cir. 2022).....	iii
<i>Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank</i> , 515 F.2d 1200 (5th Cir. 1975)	25
<i>Offutt v. United States</i> , 348 U.S. 11 (1954)	27-28
<i>Timbs v. Indiana</i> , 586 U.S. ____ (2019).....	36
<i>United States v. Throckmorton</i> , 98 U.S. 61 (1878)	24

TEXAS CASES

<i>Campbell v. Wilder</i> , 487 S.W.3d 146 (Tex. 2016).....	34-35
<i>Equitable Gen. Ins. Co. v. Yates</i> , 684 S.W.2d 669 (Tex. 1984).....	34, 35, 36

<i>Freeman v. Freeman</i> , 327 S.W.2d 428 (Tex. 1959).....	33
<i>Grigsby v. Coker</i> , 904 S.W.2d 619 (Tex. 1995).....	39
<i>In re Sisk</i> , 14-13-00785-CV, 2014 WL 5492804 (Tex. App.— Houston [14th Dist.] Oct. 30, 2014, pet. denied) (mem. op.)	33
<i>Rodriguez v. EMC Mortgage Corp.</i> , 94 S.W.3d 795 (Tex. App.—San Antonio 2002, no pet.)	38

STATUTES AND RULES: STATE AND FEDERAL

18 U.S.C. § 241	2, 23, 24
18 U.S.C. § 242	3, 23, 24
18 U.S.C. § 1513	3, <i>passim</i>
28 U.S.C. § 1651(a).....	3
FED. R. CIV. P. 8(b)(6).....	25
TEX. FAM. CODE	32-33
TEX. PEN. CODE § 15.02.....	23, 24
TEX. PEN. CODE § 32.46(b)(5)	23, 24
TEX. R. CIV. P. 13.....	12
TEX. R. CIV. P. 21(b)	16
TEX. R. CIV. P. 91a.....	i, 15, 16, 29-33

TEX. R. CIV. P. 145.....	34
TEX. R. CIV. P. 165a.1.....	i, 28, 29
TEX. R. CIV. P. 165a.3.....	16
TEX. R. CIV. P. 329b.....	16, 29
TEX. R. CIV. P. 329d.....	16, 29

CONSTITUTION

TEX. CONST. Art. I, § 13.....	33
TEX. CONST. Art. I, § 19.....	26, 34, 35
U.S. CONST. Amd. I	2, 6-7, 8, 13, 19, 37
U.S. CONST. Amd. VIII	2, 33, 35, 36
U.S. CONST. Amd. 14.....	i, 2, 8, 13, 14, 15, 19, 20, 26, 28, 30, 31, 32, 33, 34, 36, 37, 38, 39, <i>passim</i>

OTHER AUTHORITIES

Yates, D. (2020). Appellate record shows Dallas County family law judge has long history of reversals. [online] Southeast Texas Record. Available at: https://setexasrecord.com/stories/525161586-appellate- record-shows-dallas-county-family-law-judge-has- long-history-of-reversals (Accessed 20 Jun. 2020).....	17, 38
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OPINIONS BELOW

The Supreme Court of Texas denied Miller's petition for review without opinion. (App. S). Miller's subsequent motion for rehearing was denied by The Supreme Court of Texas, also without opinion. (App. T). The decision of the Court of Appeals for the Ninth District of Texas denying Miller's requested relief in case no. 09-19-00345-CV (*Miller v. Dunn.*, No. 09-19-00345-CV (Tex. App. Oct. 7, 2021)) is attached as App. P, Q. The decision of the Court of Appeals for the Ninth District of Texas denying reconsideration, unpublished, is attached as App. R.

JURISDICTION

The decision of The Supreme Court of Texas was entered on February 11, 2022, and its denial of rehearing was entered on April 1, 2022. (App. S, T). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) for a petition for a writ of certiorari in a civil case after rendition of a judgment or decree by the highest court of a state “...where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution” or where any “right, privilege, or immunity is specially set up or claimed under the Constitution”.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

“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.”

The Eighth Amendment to the United States Constitution provides:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Fourteenth Amendment to the United States Constitution, § 1, provides, in relevant part:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Title 18 U.S.C. § 241 provides, in relevant part:

“If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.... They shall be fined under this title or imprisoned not more than ten years, or both...”

Title 18 U.S.C. § 242 provides, in relevant part:

“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section... shall be fined under this title or imprisoned not more than ten years, or both...”

Title 18 U.S.C. § 1513 provides, in relevant part:

“(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.”

Title 28 U.S. Code § 1651(a) provides:

“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.”

GLOSSARY OF CITATIONS TO RECORD

The following abbreviations refer to the Record on Appeal in Court of Appeals for the Ninth District of Texas case number 09-19-00345-CV:

C.R. = Clerk's Record

C.R.Supp. = Supplemental Clerk's Record, volume 1

R.R. = Reporter's Record

R.R.Supp. = Supplemental Reporter's Record, volume 1

"App." refers to Appendix tabs in this petition, unless otherwise noted.

STATEMENT

In February 2013, Respondent Virginia Talley Dunn filed for divorce against Petitioner Bradley B. Miller (Dallas County, Texas cause # DF-13-02616). (C.R.: 11). On November 6, 2013, the trial-court Associate Judge entered a confidentiality order effectively gagging Miller, who had tried to communicate to friends regarding Dunn's conduct. (C.R.: 13-14; App. C). That order was vacated by the trial-court District Judge on February 14, 2014, but the trial court simply replaced it with yet another blanket gag order. (C.R.: 15; App. D). Miller was thus gagged from November 2013 until the divorce was final. (*Id.*) Dunn and Miller were divorced in April 2014. (C.R.: 15). Prior to the final divorce hearing, Miller had to hire an appellate attorney to file a memorandum opposing a permanent gag order requested by Dunn. (C.R.: 107, 182, 314-331; App. E). The divorce cost approximately Miller \$270,000 in legal fees and left him without a home or assets, and with limited time with his daughter. (C.R.: 106, 182, 275). Miller accused Dunn of committing perjury during the divorce. (C.R.: 14, 84, 88, 91, 92, 97, 109, 110, 116, 120, 182, 274).

In April 2015, Dunn sued Miller in the trial court in for custody modification; no grounds were ever cited for filing this action. (C.R.: 81, 123, 126, 127, 282, 333-344; App. F). Dunn requested and was granted injunctions against Miller, including prior restraint upon Miller's speech and movement. (C.R.: 182, 254, 560; App. G at 6). Because he could no longer afford an attorney, Miller began representing himself in the trial court in mid-2015. (C.R.: 33, 48, 54, 59, 130, 182, 560). Soon afterward, Miller began drafting and eventually filed a pro se mandamus petition in The Supreme Court of Texas in an effort to regain his right to free speech—an endeavor which took him almost a year. (C.R.: 13, 33, 71, 182, 560). (*See* SCOTX case # 16-0487). In that petition, Miller stated that he had signed a Mediated Settlement Agreement in his divorce case “under duress.” (C.R.: 15, 32, 33, 106, 107, 275, 484). Miller subsequently appealed, pro se, to The United States Supreme Court in case # 16-9012. (C.R.: 71, 182, 212, 213, 357, 433, 438). The custody modification suit lasted until October 18, 2016, when trial was held. (C.R.: 16, 183, 248; App. G at 1). In her ruling from the bench, trial court judge Andrea Plumlee imposed several prior restrictions on Miller's speech and movement, most of which had been

previously imposed in the Temporary Orders in that suit. (C.R.: 183, 254, 439, 561; App. G at 6). Miller objected to these injunctions on numerous constitutional grounds. (C.R.: 282-291; App. H). The trial court judge also levied \$25,000 in attorney's fees against Miller—despite the fact that Dunn had filed the suit, and without grounds—and also imposed a \$15,000 appeal bond against Miller. (C.R.: 224, 257; App. G at 9).

A final order-entry hearing in that 2015 modification suit was scheduled for 9:00 a.m. on November 17, 2016. (C.R.: 16, 183, 276, 439, 561). Immediately prior to the final order-entry hearing in the trial court, Miller removed his case to federal court at 8:27 a.m. on November 17, 2016, citing numerous constitutional violations in the state trial court. (*Id.*). Miller filed a Notice of Removal in the state court at 8:57 a.m. on that same day. (C.R.: 183, 187; *see also* pending Fifth Court of Appeals case # 05-19-00197). After Miller filed his removal petition, and prior to remand, state trial court judge Andrea Plumlee signed—entirely without jurisdiction—a (void *ab initio*) trial order recording her custody modification ruling. (C.R.: 46, 52, 70, 185, 249-257; App. G). Dunn's attorney, Patricia Rochelle, though served by Miller with the

removal documents just before the state-court hearing, presented the order to Judge Plumlee anyway. (C.R.: 183-184). Before walking into the 330th courtroom, Rochelle told Miller, “I’ll tell Judge Plumlee you think you have removed the case.” *Id.* Rochelle’s office emailed Miller the signed order later that day. (C.R.: 184).

Miller’s federal appeal (United States District Court for the Northern District of Texas case # 3:16-CV-3213) eventually proceeded to the United States Court of Appeals for the Fifth Circuit (case # 16-11817), where it was remanded on August 17, 2017. (C.R.: 184). Miller then appealed to The United States Supreme Court (case # 17-6836). (*Id.*). None of these courts saw fit to restore Miller’s right to free speech, or to address the other constitutional violations in his complaints. (*Id.*). In fact, this Court later refused to hear Miller’s motion for declaratory judgment on these First and Fourteenth Amendment issues in case number 20-6965.

As a result of the extensive time commitments required of the trial court case and related appeals, Miller’s income suffered, he ran out of money, and he began to fall behind on child support payments in November 2016. (C.R.: 184). He also lost his rental house in May 2017

due to lack of funds; he was forced to move back in with his elderly parents, in whose care he assisted. (*Id.*). Miller's father, who passed away in 2019 at age 96, had Alzheimer's disease and was wheelchair-bound. (*Id.*).

On November 3, 2017, Miller emailed the court reporter of the 380th Family District Court, Francheska Duffey, asking her for a price quote for the transcript of the November 17, 2016 order-entry hearing in the trial court (case # DF-13-02616). (App. M at 1-2). On November 6, 2017, Duffey responded that the price would be \$175—indicating that she possessed the reporter's record for this hearing. (*Id.* at 1). Miller later requested that Duffey produce this transcript in his pending Texas 5th COA appeal (*see* case # 05-19-00197-CV); but this time, Duffey claimed that she did not have a record of this hearing—effectively concealing incriminating evidence against the trial-court judge, Dunn, and her attorneys. (App. N). Miller then sent Duffey an email asking her to explain this discrepancy, but Duffey did not respond. (App. M at 1).

On February 19, 2018, after discovering that the trial court had been holding child-support enforcement hearings without notifying him,

Miller filed a Motion to Change Venue and a Motion to Recuse trial-court District Judge Andrea Plumlee. (C.R: 185, 426-443; App. I; App. J). In these two pleadings, Miller catalogued numerous instances of abuse, rights violations, and criminal acts committed by both Appellee Dunn and the trial court against him. (*Id.*). District Judge Plumlee refused to recuse herself, just as she had previously refused to during Dunn's 2015 modification suit against Miller. (C.R.: 73).

Dunn filed yet another custody modification suit against Miller on March 8, 2018, seeking to limit his custody of their daughter. (C.R.: 187, 361, 565, 739; App. K). Miller then filed his Petition for Bill of Review on March 29, 2018 in the trial court (Dallas County, Texas case # DF-18-06546), alleging fraud and numerous rights violations—both on the part of Appellee Dunn and trial-court District Judge Andrea Plumlee. (C.R.: 11-20). In conjunction with this petition, he filed an Affidavit of Indigency. (C.R.: 9-10). The affidavit of indigency was uncontested. Miller is also proceeding under an affidavit of indigency in this appeal, and in the prior SCOTX and Texas 5th COA appeals. (C.R.: 446-447).

Because Miller expected the trial court to again violate his

constitutional rights in the modification suit, he decided to remove his case to federal court once again. (C.R.: 187, 565). A temporary orders hearing was scheduled in the trial court for 9:00 a.m. on June 7, 2018. (*Id.*). Prior to the state-court hearing, Miller removed the case to federal court. (*Id.*). Miller filed his removal petition in the United States District Court for the Northern District of Texas at 8:14 a.m. on June 7, 2018 (case # 3:18-CV-1457). (*Id.*). Miller then filed a Notice of Case Removal in the state trial court at 8:46 a.m. on that day, i.e. prior to the state-court hearing. (*Id.*). At 8:57 a.m. on that same day, Miller personally served Respondent Dunn's attorney, David H. Findley (Texas Bar card # 24040901), with the state-court Notice of Case Removal and the federal removal petition, and he informed Findley that the case had been removed to federal court. (C.R.: 187-188, 565-566).

Despite the fact that Appellant Miller had properly removed the case, the state court proceeded with the temporary orders hearing, issued a default judgment against Miller, and signed the temporary orders without jurisdiction at 9:37 a.m. on June 7, 2018. (*Id.*; App. L). These (fraudulent) temporary orders bar Miller from custody of or access to his daughter, prohibit Miller from going within 1000 feet of his

daughter's school (i.e. the Hockaday School), and enjoin Miller from attending his daughter's extracurricular activities. (App. L at 2). The temporary orders also require Miller to undergo a psychological evaluation. (*Id.*) **As a result of these injunctions, Miller has not seen or spoken to his daughter since May 2018.** (C.R.: 188, 566).

On July 16, 2019, Respondent Dunn filed a motion to dismiss Miller's Bill of Review. (C.R.: 28-30). On July 19, 2019, Appellant Miller filed a Motion to Strike Dunn's dismissal motion. (C.R. 31-38). As grounds, Miller argued that Dunn's motion had violated local Rule 3.01 because Dunn's counsel failed to attempt conference, and because her motion did not contain a certificate of conference; that Dunn's motion was without merit, and that granting it would violate Miller's right to Due Process; that Dunn's motion violated Texas Rules of Civil Procedure Rule 13 because it was brought in bad faith; and that Dunn's counsel had previously raised no objections to dismissal at a prior hearing on July 5, 2019. (C.R.: 31-36; R.R.: 11, 13-15; *see also* R.R.Supp.: 13).

The trial court held a dismissal hearing in Miller's Bill of Review case on August 1, 2019. (R.R.: 1-111). That hearing also dealt with

Miller's motion to strike and Miller's motion to stay the Bill of Review case. (*Id.* at 5). Miller argued that a trial-court gag order that had been imposed on him in 2015 was hindering his ability to prosecute his Bill of Review case; therefore, he wished to stay the Bill of Review case until his pending Texas 5th COA appeal (case no. 05-19-00197-CV) of this gag order had been disposed. (*Id.* at 5-6, 8). The trial court refused to admit a copy of Miller's appellate docket summary and appellant's brief, and Miller objected on Due Process grounds. (*Id.* at 6, 30-104). Miller testified that he had not been able to conduct discovery due to the extensive time requirements of having to represent himself in both the ongoing Texas 5th COA appeal and the Bill of Review case. (*Id.* at 8-9). Miller asserted that Dunn had defrauded the community estate during their divorce, and that allowing Dunn to escape justice by keeping him busy with other cases would violate his Due Process rights. (*Id.*). The trial court denied Miller's Motion to Stay. (*Id.* at 12). The trial court also denied Miller's motion to strike Dunn's motion to dismiss. (*Id.* at 16).

During the dismissal portion of the August 1, 2019 hearing, Miller stated that he learned "a month and a half after the divorce was final"

about sales from a show at Dunn's art gallery of the artist David Bates, and that this financial issue formed the basis for his Bill of Review. (R.R: 20-21, 24). Miller reiterated that his signature on the Mediated Settlement Agreement was coerced, not only by the misconduct of his own attorney, but also because he was exhausted after a 16-hour mediation, and because Dunn and her attorneys had drained his finances with their illicit conduct. (*Id.* at 21-24). He argued that Due Process demanded that the case proceed. (*Id.* at 25). Miller emphasized that he was claiming extrinsic fraud: the David Bates art sales were in progress during the end of the divorce, but since they were booked just after the divorce was final, Miller had no way to determine the value of these sales by discovery during the divorce. (*Id.* at 27). The trial court then dismissed Miller's Bill of Review. (*Id.* at 28, App. A).

On August 7, 2019, Miller filed a request for findings of fact and conclusions of law. (C.R.: 63-64.) Miller subsequently filed a supplemental request on December 11, 2019, and **the trial court did not respond.** (C.R.Supp.: 25-27).

On August 30, 2019, Miller filed a Motion to Set Aside Judgment. (C.R.: 70-143). On September 3, 2019, Miller filed an identical

document as his Motion to Reinstate the Case. (C.R.: 448-821). In these two pleadings, Miller argued that fraud by Dunn and the trial court rendered the judgment in his divorce case void, and fraud also rendered the dismissal of his bill of review void. (C.R.: 71-72). He argued that bias rendered these trial court judgments void. (C.R.: 72-74.) And Miller argued that the attorney's fees levy violated his constitutional rights to Due Process and freedom from excessive fines, i.e. as an indigent party. (C.R.: 74-76).

On November 13, 2019—six full days before the hearing on Miller's motions to reinstate and to set aside judgment—Miller filed his Objections to Dismissal. (C.R.Supp.:4-18). In this document, Miller noticed the trial court that Dunn's motion to dismiss was not timely filed under TRCP 91a.3; that it failed to state that it was filed under TRCP 91a; and that it was heard before 21 days had passed, in violation of TRCP 91a.3(b), thus granting Dunn's motion to dismiss would violate both the law and the Constitution. (*Id.* at 4-5). Miller also again stated that Dunn had defrauded him of a share of a family business in which he had invested more than a decade of his life. (*Id.* at 6-9). Miller's

Objections were timely filed under Tex. R. Civ. P. Rule 21 (b). (*Id.* at 25-26).

On November 14, 2019, Miller filed his Notice of Pro Se Litigant Rights. (C.R.Supp.: 19-23).

On November 19, 2019, the trial court held a hearing on Miller's Rule 165a.3 Motion to Reinstate Case and his Rule 329b/329d Motion to Set Aside Judgment. (R.R.Supp.: 1, 4). Miller testified that fraud had pervaded his divorce case; that Dunn, her attorneys, and the trial court judges had committed fraudulent acts against him; and that these acts were at issue in his pending appellate case (05-19-00197-CV). (*Id.* at 5). Miller stated that dismissal of his Bill of Review under TRCP 165a.1 was improper because he, the plaintiff, had never failed to appear at any hearing in the trial court case. (*Id.* at 6.) Miller then reiterated the items in his previously-filed Objections, i.e. that Dunn's motion to dismiss was not timely filed under Texas Rules of Civil Procedure 91a.3a, and the motion to dismiss did not state that it was filed pursuant to Rule 91a, as required by TRCP 91a.2. (*Id.* at 7-10). Miller also argued that TRCP Rule 91a, in its text, explicitly forbids the filing of a Motion to Dismiss in Family Court cases. (*Id.* at 8, 11). Miller

further argued that, for these reasons, Dunn was not entitled to the relief requested in her Motion to Dismiss. (*Id.* at 11). The trial court then dismissed Miller's motions to reinstate and to set aside judgment. (C.R.Supp.:24).

Miller had previously filed a Notice of Appeal on August 30, 2019; his appeal ensued in the Texas 9th District COA. (C.R.: 68-69).

On February 11, 2020, the *Southeast Texas Record* published an article about trial-court District Judge Andrea Plumlee, noting that Plumlee's many appellate reversals demonstrated her frequent abuse of discretion, and citing a 2019 5th COA opinion finding that "Judge Plumlee's appellate history shows a pattern of her exceeding her authority." (Yates, 2020).

On April 19, 2021, Miller filed a notice in the Texas 9th COA, attaching a copy of the petition in his pending civil suit against Dunn (Dallas County case no. DC-20-15614), including evidence revealed post-divorce that Dunn had burgled his home during the divorce, photographed documents on his desk pertaining to the divorce, and emailed them to her lawyer. Dunn never specifically denied

perpetrating this act; and her lawyers never reported this crime to police.

The Texas 9th COA dismissed Miller's appeal on October 7, 2021 and denied reconsideration on October 27, 2021. (P, Q, R). The Opinion issued by the Texas 9th Court of Appeals made absolutely no mention of the constitutional violations and crimes committed against Miller by the trial court judges and Dunn during his divorce. (*Id.*).

Miller appealed his case to the Supreme Court of Texas on December 10, 2021. SCOTX denied review on February 11, 2022, and denied rehearing on April 1, 2022.

Miller had previously sued Dunn, trial court judge Andrea Plumlee, her Associate judge Danielle Diaz, and several other defendants in federal court, complaining of the various violations of his constitutional rights cited above. (NDTX case no. 3:20-CV-759). The NDTX federal district court dismissed Miller's suit under the *Rooker-Feldman* doctrine. Miller then appealed to the United States Court of Appeals for the Fifth Circuit. **On June 2, 2022, the 5th Circuit ruled in Miller's favor, reversing the NDTX dismissal of his federal Section 1983 suit, and invalidating the prior 5th Circuit ruling in**

Hale v. Harney [786 F.2d 688 (5th Cir. 1986)]. (See Miller v. Dunn, No. 20-11054 (5th Cir. 2022)).

REASONS FOR GRANTING THE PETITION

Simply put, a judgment obtained by fraud—and especially by means of court-imposed infringements of fundamental constitutional rights—represents an egregious violation of the Fourteenth Amendment right to Due Process.

In this case, the trial court subjected the Petitioner to a patently illegal gag order for most of the duration of his divorce case. This First Amendment violation severely hampered his ability to gather information and recruit witnesses, which in turn prevented him from fully litigating his rights and interests during his divorce. As a direct result, Petitioner suffered severe financial harm.

Further, after the divorce was final, Petitioner was provided with clear evidence that his ex-wife, Respondent Dunn, had burgled his residence while the divorce case was pending, photographed documents on his desk pertaining to the suit, and transmitted them to her lawyer. Because the trial court summarily dismissed Petitioner's bill of review, he was never able to present this evidence in court, or obtain evidence

in discovery that could have proven his claims of financial concealment on the part of Dunn.

Of equal importance, the Texas requirement that a plaintiff file a bill of review in the same court that so clearly violated his constitutional rights in the original divorce case also represents a clear violation of the Fourteenth Amendment. A trial court judge who so thoroughly trampled a litigant's rights in the original case is highly unlikely to behave any differently in a subsequent bill of review. And a state court of appeals that issues an opinion that entirely omits any mention of these lower-court constitutional violations is clearly complicit in this abuse. (As is a state supreme court that subsequently refuses review.) Such a requirement—and the lack of any meaningful avenue of appellate redress—makes a mockery of Due Process. This Court cannot allow such a corrupt decision—or system—to stand.

I. Fraud renders the trial-court judgments void.

Miller has repeatedly alleged, in several courts, that the judgment in his divorce case was obtained by fraud—both intrinsic and extrinsic—and by coercion. Miller submitted an affidavit to the trial court regarding the events in the 330th Family District Court during

his divorce case. (C.R.: 80-162). This affidavit was attached to Miller's mandamus petition in Texas Supreme Court case # 16-0487, as well as to his subsequent mandamus petition in United States Supreme Court case # 16-9012. (C.R.: 13, 32). Miller's affidavit describes multiple allegations of perjury and fraud against Dunn; these same allegations were raised in Miller's Original Petition for Bill of Review. (C.R.: 458-540, 11-20). In his trial-court petition, Miller stated that Dunn began the divorce case with false allegations, which caused Miller to incur legal expenses of \$270,000 to defend himself; that Dunn requested and was granted a series of illegal gag orders, which prevented Miller from being able to recruit witnesses and thus to fully litigate at trial all the rights or defenses that could have been asserted; that Miller only signed a Mediated Settlement Agreement under duress; and that a conspiracy to defraud him became apparent only long after the divorce was final. (C.R.: 14-19, 107; R.R.: 20-22; *see also* R.R.Supp.: 5, 12, 13). In court, Miller argued that dismissing his Bill of Review case would violate his Due Process rights under the Fourteenth Amendment. (R.R.Supp.: 13). Miller again repeated these allegations of fraud and fraud on the court—both by Defendant Virginia Talley Dunn and her attorneys, and

by the judges of the trial court—in an appeal in the Court of Appeals for the Fifth District of Texas, case # 05-19-00197-CV. (C.R.: 163-425).

(The pleadings and supporting documents in case # 05-19-00197-CV should be reviewed and considered in the instant appeal. The case docket page may be accessed at <http://www.search.txcourts.gov/Case.aspx?cn=05-19-00197-CV>.)

In that appeal, Dunn did not deny Miller's allegations in her Response. (C.R.: 418-425). Miller noticed the trial court that **Dunn and her attorneys have never denied any of the criminal allegations Miller has made against them, regarding their conduct in the trial court case, in any of the state and federal appeals Miller has filed since 2016.** (C.R.: 71).

Nor have the judges of the trial court denied these allegations, despite being served with the pleadings in Miller's Texas 5th District COA appeal in case # 05-19-00197-CV. (*Id.*; R.R.: 21).

The evidence Miller presented in that case, and in SCOTUS case no. 20-6965, clearly shows that Dunn, her attorneys, and the trial court judges have—at the very least—issued two orders without jurisdiction in related trial-court case # DF-13-02616, and that these orders have resulted in illegal financial levies against Miller. (C.R.: 403-405; App.

G). The (void for lack of jurisdiction) trial-court order of November 17, 2016 resulted in a financial levy against Miller of \$40,000. (C.R.: 403-404; App. G at 9). Because Dunn's attorney, Patricia Rochelle, presented the order to a judge while knowing that the court had no jurisdiction, **Rochelle's act constitutes a third-degree felony**. TPC § 32.46(b)(5). (C.R.: 404). Attorney David Findley, who also represented Dunn at the time, and Dunn herself, in whose interest this act was committed, are also culpable. Trial-court Judge Andrea Plumlee, who signed this abusive order without jurisdiction, clearly violated 18 U.S.C. §§ 241 and 242, as did Rochelle. (*Id.*). Rochelle, Findley, Dunn and Plumlee also meet the criteria for prosecution for criminal conspiracy under Texas Penal Code (TPC) § 15.02. (*Id.*). Dunn and her attorneys did not deny these allegations in her Response, and Plumlee, though served, did not file a response in that Texas 5th District COA appeal. (*Id.*).

Further, on June 7, 2018, Dunn's attorney David Findley presented an order to trial court Associate Judge Danielle Diaz, while again fully aware that the trial court case had been removed to federal court. (C.R.: 405; App. L). The trial court Associate Judge then signed the order

without jurisdiction. (*Id.*). This order contained a stipulation that Miller be subjected to supervised visitation—for which a fee must be paid for each visit. (App. L). And Miller has since been forced to spend more than four years fighting this fraudulent “order” in both state and federal court, costing him time and income. (C.R.: 405). So just as Rochelle’s act did, Findley’s identical act violated TPC § 32.46(b)(5). (*Id.*). The trial court Associate Judge, Dunn, Findley, and Rochelle all similarly violated 18 U.S.C. §§ 241 and 242 and TPC § 15.02 (“Criminal Conspiracy”). (*Id.*). Dunn and her attorneys did not deny these allegations in her Response in case # 05-19-00197-CV. (C.R.: 405, 418-425). In fact, Dunn and her attorneys have never denied any of the criminal allegations Miller has made against them, regarding their conduct in the trial court case, in any of the state and federal appeals Miller has filed since 2016. (*Id.*).

Almost a century and a half ago, The Supreme Court of the United States proclaimed, “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.” *United States v. Throckmorton*, 98 U.S. 61, 64 (1878).

Accordingly, a century later, the federal Court of Appeals for the Tenth District ruled:

“Fraud on the court...is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. [...] It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function — thus where the impartial functions of the court have been directly corrupted.” *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

The trial court case has been characterized, since its inception, both by fraud and fraud upon the court. (See Miller’s 2016 Texas Supreme Court redrafted petition for writ of mandamus, case number 16-0487, especially at Tab A. This petition may be viewed at <http://www.search.txcourts.gov/Case.aspx?cn=16-0487>).

Our federal courts have repeatedly ruled that allegations not denied are admitted, and this tenet is enshrined in the Federal Rules of Appellate Procedure. *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009); *Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); FED. R. CIV. P. 8(b)(6). Thus it should be considered admitted that Dunn and her attorneys have engaged in repeated criminal acts in an effort to defraud

Miller of his assets, his constitutional rights, and even the custody of his own child—both in the initial divorce case in the trial court (case # DF-13-02616) and since. The trial court judges have done the same. (Miller has been subject to a patently illegal gag order since 2015. C.R.: 16, 213, 276). Thus this Court must reverse the trial-court’s dismissal of Miller’s Bill of Review to correct the now-admitted fraud that produced the divorce judgment in case # DF-13-02616—on the grounds that both of these judgments were obtained by fraud and fraud on the court, thereby violating Miller’s Due Process rights under the Fourteenth Amendment and Article I, § 19 of the Texas Constitution.

II. Bias renders the trial-court judgments void.

Miller has repeatedly alleged that the judges of the trial court are biased against him. (App. I; C.R. 426-443). He first catalogued the evidence of trial-court bias in his Texas Supreme Court mandamus petition in 2016. (*See* Miller’s redrafted petition for writ of mandamus, Texas Supreme Court case no. 16-0487, at Tab A, and *passim*). He repeated these claims in his federal appeals. (C.R.: 73). Four of these appeals went before the United States Supreme Court. (*See* SCOTUS

case numbers 16-9012, 17-6836, 18-7450, and 20-6965, and below; C.R.: 33, 47, 73). Miller has twice filed motions to recuse the District Judge of the trial Court, Andrea Plumlee, in case # DF-13-02616. (C.R.: 13, 73, 353). Plumlee refused to recuse herself both times. (C.R.: 73). Miller testified before the Dallas Citizens Police Review Board on April 11, 2017 regarding Plumlee's abusive and criminal conduct. (*Id.*). He has also filed complaints against Plumlee with the State Commission on Judicial Conduct, the FBI, and the U.S. Department of Justice. (*Id.*). The record in both this case, and in the underlying case no. DF-13-02616, shows a long, consistent history of Judge Plumlee ruling against Miller—and, as Miller showed in 5th Court of Appeals case # 05-19-00197-CV—many of these rulings are clearly unconstitutional on their face. (*Id.*).

The United States Supreme Court vacated a contempt ruling when a judge clearly displayed personal animosity toward a lawyer. *Offutt v. United States*, 348 U.S. 11 (1954). The ruling in *Offut* could be describing this case:

“The record is persuasive that, instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroiled with the petitioner. There was an intermittently continuous

wrangle on an unedifying level between the two.” *Offut* at 17.

It should be noted that, since 2015, with brief exceptions, Miller has proceeded pro se in the trial court. (C.R.: 73). But even before that, it was apparent to Miller that the trial court was biased against him. (App. I; C.R. 426-443). The trial court record, both in this case and in underlying case no. DF-13-02616, certainly shows a “continuous wrangle” between Plumlee and Miller—and an animosity that is clearly interfering with the “fair administration of justice.” *Offut* at 17. In *Offut*, the Supreme Court vacated the trial-court judgment—and recused the trial-court judge. (*Id.* at 18). Given the obvious rancor between the trial court District Judge and Petitioner Miller, this Court should reverse the trial-court’s dismissal ruling and reinstate the case. The dismissal judgment as it stands—a product of bias—clearly violates Miller’s Due Process protections under the Fourteenth Amendment.

III. Dismissal for want of prosecution is improper because Miller never failed to appear for any hearing in the trial court.

Texas Rules of Civil Procedure Rule 165a.1 allows dismissal of a case for “failure to appear,” that is, “on failure of any party seeking

affirmative relief to appear for any hearing or trial of which the party had notice.” TRCP Rule 165a.1. However, as Miller emphasized in the trial court, he never missed a hearing in the trial-court case. (R.R.Supp.: 6.) Miller’s assertion on this issue was not contested. (R.R.Supp.: *passim*). Thus dismissal of Miller’s Bill of Review under TRCP Rule 165a.1 would be improper and would violate Miller’s Due Process rights.

Because the trial court did not state the grounds for its ruling, it is difficult to know whether the trial court District Judge actually dismissed Miller’s case for want of prosecution. (R.R.: 28; C.R.: 62). The trial court cited no law or rule under which its decision to dismiss Miller’s case was issued, and the order of dismissal itself cites no legal grounds for its issuance. (*Id.*). That uncertainty is why Miller filed both a Motion to Reinstate the Case (i.e. under TRCP 165a.3) and a Motion to Set Aside the Judgment (i.e. under TRCP Rule 329b and 329d). (R.R.: 4; C.R.: 70-443, 448-821). But if the Court determines that dismissal was made for want of prosecution, such a ruling would not be allowable under TRCP Rule 165a.1 and must be reversed.

IV. Dunn’s Motion to Dismiss violated four sections of Texas Rules of Civil Procedure Rule 91.

A. Dunn’s Motion to Dismiss was not timely filed under TRCP 91a.3.

TEX. R. CIV. P. 91a.3(a) requires that “a motion to dismiss must be...filed within 60 days after the first pleading containing the challenged cause of action is served on the movant.” According to the docket in this case, Appellee/Defendant Virginia Talley Dunn was served with Miller’s Petition for Bill of Review on October 4, 2018. (C.R.: 5). Dunn filed her Motion to Dismiss on July 16, 2019. (C.R.: 6). Dunn thus filed her Motion to Dismiss **284 days** after she was served with the “first pleading”—far beyond the limit specified by TRCP 91a.3. (See R.R.Supp.: 7-9; C.R.Supp.: 4-5; R.R.Supp.: 11). Therefore, Dunn’s Motion to Dismiss was improperly filed under the stipulations of 91a.3 and should have been denied. Granting Dunn’s Motion to Dismiss represents a clear violation of Miller’s Fourteenth Amendment Due Process rights. Any arguments or grounds presented by Dunn in her Motion to Dismiss, or in the subsequent dismissal hearing on August 1, 2019 are therefore moot.

B. Dunn’s Motion to Dismiss failed to state that it was filed under TRCP 91a.

TEX. R. CIV. P. 91a.2 requires that “A motion to dismiss must state that it is made pursuant to this rule” (i.e. TRCP 91a). Nowhere in Dunn’s Motion to Dismiss does Dunn state that her motion was filed under TRCP 91a. (C.R.: 28-30; *see* C.R.Supp.: 4-5). In fact, Dunn’s motion does not mention TRCP 91a, or cite *any* law or rule that might govern or allow its filing. (*Id.*). Thus Dunn’s Motion to Dismiss is deficient under TRCP 91a.2 and should have been denied. Granting Dunn’s Motion to Dismiss represents a clear violation of Miller’s Fourteenth Amendment Due Process rights. Any arguments or grounds presented by Dunn in her Motion to Dismiss, or in the subsequent dismissal hearing on August 1, 2019 are therefore moot.

C. Dunn’s Motion to Dismiss was heard before 21 days had elapsed, in violation of TRCP 91a.3(b).

TEX. R. CIV. P. 91a.3(b) requires that “[a] motion to dismiss must be...filed at least 21 days before the motion is heard.” Dunn filed her Motion to Dismiss on July 16, 2019. (C.R.: 6, 28-30). The hearing on Dunn’s Motion to Dismiss was held on August 1, 2019—**only 16 days later.** (C.R.: 6). Therefore, Dunn’s Motion to Dismiss was improperly filed and heard under the stipulations of 91a.3(b) and should have been denied. (*See* C.R.Supp.: 5). Granting Dunn’s Motion to Dismiss thus

represents a clear violation of Miller's Fourteenth Amendment Due Process rights. Any arguments or grounds presented by Dunn in her Motion to Dismiss, or in the subsequent dismissal hearing on August 1, 2019 are therefore moot.

- D. Under TRCP 91a.1, a party may not move to dismiss a cause of action brought under the Texas Family Code on the grounds that it has no basis in law or fact.**

TEX. R. CIV. P. 91a.1 stipulates:

“Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact.”
(TRCP 91a.1) (*emphasis added*).

While, as noted *supra*, Dunn's Motion to Dismiss failed to state that it was being filed under TRCP 91a, its contents demonstrate that its grounds are, indeed, that Miller's petition has no basis in law or fact. (C.R.: 28-29). Dunn's motion posits a legal argument for why Miller's petition has no merit—i.e. no basis in law or fact. (*Id.*). Dunn's attorney, David Findley, made the same argument at hearing. (R.R.: 16-19). Mr. Findley stated on the record, “There is no law that Mr. Miller can cite that says that once I found out this process exists then I

can go do it.” (R.R.: 19). His own words indicate that his grounds are that Miller’s case “has no basis in law or fact.” TRCP 91a.1.

However, the language of TRCP 91a.1 **explicitly precludes** the filing of such a motion to dismiss in a case brought under the Texas Family Code—as Miller’s case was. See *In re Sisk*, 14-13-00785-CV, 2014 WL 5492804, at *4-5 (Tex. App.—Houston [14th Dist.] Oct. 30, 2014, pet. denied) (mem. op.) (holding that parents’ motion to dismiss child’s suit for child support was not recognized under Rule 91a, which excludes cases brought under Family Code). Dunn’s Motion to Dismiss was not allowable under TRCP 91a.1, and she was therefore not entitled to the relief granted by the trial court—i.e. the dismissal of Miller’s Bill of Review case.

In 1959, the Texas Supreme Court ruled: “Our Rules of Procedure have the same force and effect as statutes.” *Freeman v. Freeman*, 327 S.W.2d 428, 433 (1959). Dunn and her attorneys may not ignore the Texas Rules of Civil Procedure, nor may the trial court District Judge do so—because such brazen acts would violate the law, and thus the Constitution. (U.S. CONST., AMD. 14).

V. The attorney’s fees levy violates Miller’s constitutional rights to Due Process and freedom from excessive fines.

On March 29, 2018, Appellant Miller filed an affidavit of indigency in the trial court. (C.R.: 9-10). That affidavit was uncontested. (C.R.: 5-8). The Texas Supreme Court has reaffirmed that “An uncontested affidavit of inability to pay is conclusive as a matter of law.” *Campbell v. Wilder*, 487 S.W.3d 146 at 151 (Tex. 2016) (quoting *Equitable Gen. Ins. Co. v. Yates*, 684 S.W.2d 669 at 671 (Tex. 1984)). *See also* Tex. R. Civ. P. Rule 145. Thus Miller’s inability to pay is conclusive as a matter of law. Miller’s status has not changed in the interim; he also proceeding under an affidavit of inability to pay in his state appeal (and also herein). (C.R.: 446-447).

Assessing court costs and/or fines to an indigent party clearly violates constitutional Due Process and Due Course of Law protections. There is no exception in Family Court cases. In its recent *Campbell* ruling, the Texas Supreme Court stated:

“The District Clerk argues that because the Family Code provides courts with increased latitude to award costs, it is conceivable that a family court could order costs despite an affidavit of inability to pay. This argument flies in the face of our Constitution and case law. Rule 145 is but one manifestation of the open courts guarantee that “every person...shall have remedy by due course of law.” It is an abuse of discretion for any judge, including a family law judge,

to order costs in spite of an uncontested affidavit of indigence.” *Campbell* at 151-52.

So assessing court costs to an indigent party violates the guarantee of “due course of law” under Article I, § 19 of the Texas Constitution.

If there is any quibble about what constitutes a “cost,” the *Yates* ruling should put that issue to rest. In *Yates*, there was a question regarding whether attorneys fees would qualify as a “cost.” The Texas Supreme Court stated:

“Although we recognize the general rule that attorney’s fees are not costs, the assessed fees in the present case will be considered in light of Rule 145 and the rule’s intended purpose to guarantee a forum to those unable to pay court costs.” *Equitable Gen. Ins. Co. v. Yates* at 671.

Under *Yates*—as far as an indigent party is concerned—court filing costs are a “cost,” as are attorney’s fees. Imposing an attorney’s fees levy against an indigent party—especially one trying to appeal a judgment obtained by fraud—would represent an unconstitutional barrier to equal access to the courts. (*Id.*).

Recently, the United States Supreme Court also ruled that the imposition of excessive fines at the state level violates both Eighth and

Fourteenth Amendment protections. *Timbs v. Indiana*, 586 U.S. ____

(2019). In its *Timbs* ruling, this Supreme Court stated:

“Like the Eighth Amendment’s pro-scriptions of ‘cruel and unusual punishment’ and ‘[e]xcessive bail,’ the protection against excessive fines guards against abuses of government’s punitive or criminal-law-enforcement authority. This safeguard, we hold, is fundamental to our scheme of ordered liberty,’ with ‘dee[p] root[s] in [our] history and tradition.’ *McDonald v. Chicago*, 561 U.S. 742, 767 (2010) (internal quotation marks omitted; emphasis deleted). The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment.” *Timbs* at 2.

Surely a levy imposed by a state court against an indigent party qualifies as an “excessive fine,” and the imposition of such levies thus also qualifies as an “abuse of government’s punitive authority” under *Timbs*. The *Timbs* ruling agrees with *Yates* in this regard.

Further, *Timbs* specifically stipulates that the Eighth Amendment protections against excessive fines are actually incorporated into the Fourteenth Amendment’s Due Process clause. *Timbs* at 2. As this Court noted, “Thus, if a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires.” (*Id.* at 3). The states and state courts lack any discretion to

violate these federal constitutional protections. Therefore this Court must vacate the trial-court's \$1,500 attorney's fees levy against Miller.

VI. The Texas requirement that a bill of review be filed in the same court that issued a prior constitutionally-violative ruling represents a clear violation of Due Process.

The record in the trial-court case, and in underlying trial-court case no. DF-13-02616 and its numerous state and federal appeals, clearly shows an outrageous pattern of trial-court abuse against Petitioner Miller. Even his fundamental First and Fourteenth Amendment rights to free speech and to parent his own child have been violated—and continue to be violated. It is evident that the trial court—by imposing illegal gag orders and otherwise habitually violating Miller's constitutional rights—forced Miller to incur obscene expense during his divorce, which eventually coerced Miller into signing a so-called “mediated settlement agreement” under duress. **Incredibly, the Opinion of the Texas 9th District Court of Appeals makes no mention whatsoever of the trial court's fraudulent and criminal conduct.** The COA simply ignored the mountain of evidence Miller presented regarding this judicial malfeasance. A crooked judge is

abhorrent—but a court of appeals that abets these crimes is a monumental cause for alarm.

It is one of the (many) perverse ironies of the Texas court system that a Petition for Bill of Review must be filed in the same court that initially ruled in the case—and must thus be reviewed by the same judge whose ruling is in question. *See Rodriguez v. EMC Mortgage Corp.*, 94 S.W.3d 795, 797 (Tex. App.—San Antonio 2002, no pet.). Miller has asserted—and herein again asserts—that trial-court District Judge Andrea Plumlee is not only incompetent, but is also a criminal. The evidence submitted by Miller in Fifth Court of Appeals case no. 05-19-00197-CV clearly demonstrates criminal acts against Miller by Plumlee, and by Dunn and her attorneys, all working in concert. A recent review of multiple appellate reversals from District Judge Plumlee’s court clearly demonstrates a distinct and persistent professional incompetence, at the very least. (Yates, 2020). Requiring a litigant to return to the same court to file a bill of review—where he will be subject to the same corruption and incompetence already demonstrated by the *same judge*—will certainly also subject him to a continued violation of his right to Due Process. A fair hearing will be

impossible to obtain in such a venue. Under these circumstances, allowing the trial-court dismissal of Miller's Petition for Bill of Review to stand would also egregiously violate Miller's right to Due Process. The trial court judgment should be vacated, and the trial court judge should also be precluded from further involvement in the case.

In a landmark Texas case—also involving an appeal from Family Court—the Supreme Court of Texas ruled that, while trial courts have “broad powers in family cases, it does not authorize them to invade constitutional guarantees.” *Grigsby v. Coker*, 904 S.W.2d 619 at 621 (Tex. 1995). The crux of the matter in the instant case is that the trial court has habitually and intentionally violated provisions of both the Texas and United States constitutions—and has been doing so *for years*. It goes without saying—or it should—that no court has the legal discretion to behave in this manner. It is this Court’s responsibility to ensure that the trial court follows the law, and that the Petitioner’s rights are protected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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