ORIGINAL

No. 22-5157

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH,

PETITIONER

v.

BANK OF AMERICA, N.A.,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE FIFTH CIRCUIT
20-10872

PETITION FOR WRIT OF CERTIORARI

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July 15, 2022,

I. QUESTION(S) PRESENTED

The questions presented are:

1. Should removal from a state court to a federal court by a defendant only be allowed after the state court judge conducts a hearing to determine if the case is a state issue, federal issue, or both and remove the case if warranted?
2. If a state trial court accepts an affidavit of pauper status, should the federal courts continue to honor in forma pauperis after removal to federal court and if not can the circuit court pile on sanctions on this issue to amount for thousands of dollars more than the Appellant could pay before death?
3. Is it a violation of due process rights under the constitution to rely on unconstitutional rulings to dismiss a case?

II. PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Plaintiff William Paul Burch, and Defendant Bank of America, N. A. Pursuant to this Court's Rule 29.6, undersigned pro-se states that Bank of America, N. A. is a publicly held corporation and not a subsidiary of any entity. Based solely on SEC filings regarding beneficial ownership of the stock of Berkshire Hathaway owns 1.0 billion shares of Bank of America, representing 11.7% of total shares outstanding, according to the company's 13F filing.

It is unclear what percentage of Bank of America, N. A. shares are owned and/or controlled by Blackrock, Inc. BlackRock owns 509.9 million shares of Bank of America, representing 5.9% of total shares outstanding, according to the company's 13F filing. The company is primarily a mutual fund and ETF management company with approximately $7.8 trillion in AUM. The iShares Core S&P 500 ETF (IVV) is one of BlackRock's largest ETFs with approximately $239 billion in AUM. Bank of America comprises about 0.7% of IVV's holdings.

III STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the Court of Appeals for the Fifth Circuit.

19-11197 Burch v Freedom Mortgage Corp., Dismissed June 16, 2021

20-10498 Burch v Freedom Mortgage Corp et al, Dismissed February 2, 2021

20-10651 Burch v Freedom Mortgage Corp, et al pending

20-10709/20-10828 Burch v Areya Holder Aurzada, pending-(to be appealed to SCOTUS)

20-10850 Burch v Bank of America, pending-(to be appealed to SCOTUS)

20-11035 Burch v Areya Holder Aurzada, pending

20-11040 Burch v Areya Holder Aurzada, dismissed April 21, 2022 $500 Sanction-(to be appealed to SCOTUS)

20-11057 Burch v Homeward Residential, pending-(to be appealed to SCOTUS)

20-11058 Burch v Ocwen Loan Servicing Company, dismissed April 30, 2022 $500 Sanction-(to be appealed to SCOTUS)

20-11074 Burch v America's Servicing Company, dismissed November 12, 2021, $100 Sanction

20-11106 Burch v Mark X. Mullin, dismissed May 2, 2022 $500 Sanction-(to be appealed to SCOTUS)

20-11117 Burch v America's Servicing Company, dismissed for lack of jurisdiction-(to be appealed to SCOTUS)

20-11132 Burch v Mark X. Mullin, pending, $500 sanction (to be appealed to SCOTUS)

20-11171 Burch v. Select Portfolio Servicing, Inc. (SCOTUS 21-7805-Pending)

20-11239 Burch v dismissed Homeward Residential, $500 Sanction-(to be appealed to SCOTUS) -(to be appealed to SCOTUS)

20-11240 Burch v America's Servicing Company,-$500 Sanction-(to be appealed to SCOTUS) -(to be appealed to SCOTUS)

21-10054 Burch v Chase Bank of Texas, N.A., pending-(to be appealed to SCOTUS)

The sanctions are because Burch refuses to withdrawal his cases as frivolous due to the in forma pauperis motion that was accepted in the trial court.

IV. TABLE OF CONTENTS

V. TABLE OF APPENDIX

VI. TABLE OF AUTHORITIES

Cases

Constitutional Provisions:

Statutes and Rules:

VII. PETITION FOR WRIT OF CERTIORARI

William Paul Burch, a resident of Grand Prairie, Texas as a pro-se litigant respectfully petitions this court for a writ of certiorari to review the judgment of the Fifth Circuit Court of Appeals.

VIII. OPINIONS

The denial of rehearing of the United States Court of Appeals for the Fifth Cicuit at App. 1 in the appendix to this petition and is unpublished.

The opinion of the United States Court of Appeals for the Fifth Cicuit at App. 2 in the appendix to this petition and is unpublished.

The opinion of the United States District Court for the Northern District of Texas appears at App. 3 and is unpublished.

The opinion of the United States Bankruptcy Court for the Northern District of Texas appears at App. 4 and is unpublished.

IX. JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on April 19,2022, and a copy of the order denying rehearing appears at Appendix 1.

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

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Tex. Const. Article 1 Sec 13 provides:

> EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law. (Feb. 15, 1876.)

Tex. Const. Article 1 Sec 19 provides:

> DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. (Feb. 15, 1876.)

U.S. CONST ARTICLE ONE, Section 9, Clause 3 provides

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

U.S. CONST ARTICLE THREE provides

> **Section 1:** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> **Section 2** : The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting

Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

U.S. CONST ARTICLE FOUR provides

Section 1:Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4: The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

U.S. CONST ARTICLE SIX provides:

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

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

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

U.S. CONST FIRST AMENDMENT 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.

U.S. CONST FIFTH AMENDMENT provides

> no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

U.S. CONST SIXTH AMENDMENT provides

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

U.S. CONST NINTH AMENDMENT provides

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

U.S. CONST TENTH AMENDMENT provides

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. CONST FOURTEENTH AMENDMENT provides

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being *twenty-one* years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

11 U.S. Code § 105 (ADDENDUM F)

11 U.S. Code § 1141 (ADDENDUM G)

28 U. S. C. § 1254(1) provides:

> By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree

28 U.S. Code § 1446 (ADDENDUM H)

28 U.S. Code § 1651 provides

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
>
> (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S. Code § 1915 (e)(2)(B)(i). provides:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious.

28 U.S. Code § 2072 provides:

> (a)The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
>
> (b)Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
>
> (c)Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

TBCC 26 (ADDENDUM I)

TCPRC Title 2, Subtitle A, Chapter 11. Vexatious Litigants (ADDENDUM J)

TRCP Rule 145 (ADDENDUM K)

Erie Doctrine (ADDENDUM L)

FRCP Rule 12(b)(6). provides:

> Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted; A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

FRAP 12.1 provides:

> Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal
>
> (a) Notice to the Court of Appeals. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.
>
> (b) Remand After an Indicative Ruling. If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but

retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

FRCP 62.1 provides:

Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) Notice to the Court of Appeals. The movant must promptly notify the circuit clerk under **Federal Rule of Appellate Procedure 12.1** if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) Remand. The district court may decide the motion if the court of appeals remands for that purpose.

XI. STATEMENT OF THE CASE

Burch and her husband bought the house located at 713 Timberline Dr, Kennedale Texas 76060 on August 11, 2006, in a cash purchase from HUD. On September 6, 2006 the Burch's obtained an equity loan in the amount of $45,000 from American Brokers Conduit for their real estate business in which the Timberline property was used as collateral.

In December 2008, Burch filed for a Chapter 11 business bankruptcy due to his twenty-two properties decreasing in value during the "Great Recession" below the loan balance owed. The lien holder at that time was Countrywide Home Loans. Countrywide was acquired by Bank of America, N.A. (BOA) in January 2008. In December 2009, the Chapter 11 business bankruptcy plan was confirmed pursuant to **11 U.S. Code § 1141.** In Paragraph 5.9 the Bankruptcy Plan called for a new loan with new terms in the amount of $89,602. Also, in paragraph 5.7 the plan called for a continuation the current loan on another property. This was a clear statement that a new loan was needed for the Timberline property. As defined by the Fifth Circuit in ***Elixir Indus., Inc. v. City Bank & Trust Co.* (In re *Ahern Enterprises, Inc.*), 507 F.3d 817 (5th Cir. 2007)**, the Fifth Circuit held that four conditions must be met for a lien to be voided under **11 U.S. Code § 1141(c): (i)** the plan must be confirmed; (ii) the collateral must be dealt with by the plan; (iii) the lien holder must participate in the reorganization; and (iv) the lien must not be preserved under the plan. Other courts have similarly required secured creditor participation in the case as a condition to lien extinguishment under section 1141(c). See, e.g., ***Airadigm Communications, Inc. v. FCC (In re Airadigm Communications, Inc.)*, 519 F.3d 640 (7th Cir. 2008); *FDIC v. Union Entities (In re Be-Mac Transport Co.)*, 83 F.3d 1020 (8th Cir. 1996); *Penrod*, 50 F.3d at 463; *Exide Techs. v. Enersys Delaware, Inc. (In re Exide Techs.)*, 2013 BL 5423 (Bankr. D. Del. Jan. 8, 2013); *In re Omega Optical, Inc.*, 476 B.R. 157**

(Bankr. E.D. Pa. 2012). This case met all the criteria for the lien to be extinguished.

Now that we have the lien extinguished, we turn to the **Texas Business and Commerce Code 26 "Statute of Frauds" Section 26.01 and Section 26.02.**

This requires:

"PROMISE OR AGREEMENT MUST BE IN WRITING."

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

The New Mortgage Note was never written. In fact, Burch even wrote a letter regarding the new terms and the bankruptcy plan number accompanying his payment. By not properly crediting the payments and instead crediting the payments under the old note, Countrywide/now BOA never acknowledged the new note as being valid.

As of April 1, 2011, these properties were legally 100% owned by Burch due to the failure of Countrywide/BOA to perform.

On November 9,2019, Burch filed a petition in the 96th District Court of Tarrant County, Texas, accompanied by a **Statement of Inability to Afford Payment of Court Costs or an Appeals Bond**. This was case number 096-313204-19. On December 13, 2019, BOA removed the case to federal district court based on

diversity. The case was assigned to Judge Mark Pittman as case number 4:19-cv-01030-P-BP. **At no time did BOA challenge Burch's pauper status.** In ***Campbell v. Wilder*, 487 SW 3d 146.152 - Tex: Supreme Court 2016,** the Texas Supreme Court ruled, "It is an abuse of discretion for any judge to order costs in spite of an uncontested affidavit of indigence."

The **Erie Doctrine** requires that for state filed cases removed to federal court, federal procedural rules will apply, and state substantive rules will apply. **28 U.S. Code § 2072 (b)'s** requirement that federal procedural rules "not abridge, enlarge or modify any substantive right" means that a Rule must "really regulat[e] procedure, — the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them," ***Sibbach v. Wilson & Co.*, 312 U.S. 1, 14, 61 S.Ct. 422, 85 L.Ed. 479.** Though a Rule may incidentally affect a party's rights, it is valid so long as it regulates only the process for enforcing those rights, and not the rights themselves, the available remedies, or the rules of decision for adjudicating either. **(*Shady Grove Orthopedic Associates v. Allstate Ins.*, 559 US 393, 1434-1435 - Supreme Court 2010)**

On May 13, 2020, the case was transferred to the Bankruptcy Court as 12-46959-mxm-7, Adversary No. 4:20-04037-mxm. A few days later, on June 2, 2020, the

Bankruptcy Court dismissed the case pursuant to **FRCP Rule 12(b)(6).** This ruling was made even though this property causes were on state law issues, and Burch presented the cause of action along with supporting evidence, statutes, and rulings.

On June 16, 2020, Burch appealed to the District Court for the Northern District of Texas, Fort Wort Worth Division as 4:20-cv-00620-Y. On June 17, 2020, the Bankruptcy Court denied Burch's Motion to proceed In Forma Pauperis (IFP) even though the state district court had accepted Burch's unchallenged motion. The bankruptcy judge ***did not certify the IFP as frivolous.*** On August 20, 2020, the District Court dismissed the case for non-payment of filing fee.

The bankruptcy court and the district court erred in that he did not grant the IFP as required in **TRCP Rule 145**. **Rule 145** is but one manifestation of the open courts guarantees that "every person ... shall have remedy by due course of law." **(TEX. CONST. art. 1, § 13)** Due process is also guaranteed under **Tex. Const. art 1, § 19.** 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. See ***In re Villanueva,*** **292 S.W.3d 236, 246 (Tex.App.-Texarkana 2009)**, orig. proceeding) (concluding that family court abused its discretion when it ordered indigent divorce litigant to pay costs despite uncontested affidavit of indigency). **In *Barshop v. Medina County Underground Water Conservation Dist*, 925 S.W.2d 618, 636-37 (Tex. 1996)** the Texas Supreme Court Ruled that, "The Texas Constitution provides the

following 'open courts' guarantee. This provision includes three separate constitutional rights: (1) courts must actually be available and operational; (2) the Legislature cannot impede access to the courts through unreasonable financial barriers; and (3) meaningful remedies must be afforded, 'so that the legislature may not abrogate the right to assert a well-established common law cause of action unless the reason for its action outweighs the litigants' constitutional right of redress.'" If this case stayed in state court the indigency status would have remained through appeal and legally should do so in federal court. **The district judge did not certify the appeal to the circuit court as frivolous.**

On August 27, 2020, Burch appealed the IFP decision by the district court to the United States Court of Appeals for the Fifth Circuit and filed a Motion to Proceed In Forma Pauperis on September 23, 2020. At some point in 2021 Burch was determined to be a disabled veteran by the Veterans Administration due to an injury during his military service. The amount awarded was small, but Burch made a motion on September 27, 2021, to remand the case and pay the filing fee under **FRAP 12.1**. Twenty days later, on October 17, 2021, Burch filed a motion under **FRCP 62.1** requesting that the case be remanded and the filing fee to be paid by Burch. On April 19, 2022, the Court dismissed the case as frivolous and sanctioned Burch $500.00 bringing the total sanctions for the dame issue to $4950. The Fifth Circuit panel stated that Burch should have been able to pay the filing fee based upon his Motion to pay the Filing Fee due to his increase in income even though the

increase in income came ***after*** filing the motion. Also, Burch filed the **FRAP 12.1** days before he filed the **FRCP 62.1** even though it was four months later that the Fifth Circuit issued its ruling. The District Court ruled in the **Rule 62.1** Motion that the case was closed. It appears that the district court did not understand the wording of the **62.1** motion anymore that Pro-se Burch.

The court relied on **§ 1915(e)(2)(B)(i).** This rule say, "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious." But the basis for the courts frivolous determination is "because Burch effectively has not identified any error in the dismissal without prejudice of his bankruptcy appeal for failing to pay the filing fee in the district court, he has not shown a nonfrivolous issue on appeal. Accordingly, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous". Yet Burch clearly wrote, "Based on the Courts own statute cited, ***Auffant v. Paine, Webber, Jackson & Curtis, Inc.*, 538 F.Supp. 120, 1202 (D.P.R. 1982),** "court should consider overall financial situation of applicant as well as assets and liabilities of spouse.

Burch also wrote, "Because Burch receives **five dollars a week** more than allowed for IFP, the District Court Judge dismissed Burch's appeal thus robbing Burch of due process under the **Fifth and Fourteenth Amendment of the United States**

Constitution and Sections thirteen and nineteen of the Texas Constitution." And Burch wrote, "In the SCOTUS ruling in ***Coppedge V. United States*, 369 U.S. 438 .444-445 (1962)** The requirement that an appeal *in forma pauperis* be taken "in good faith" is satisfied when the defendant seeks appellate review of **any** issue that is not frivolous. ***Id.*446** If it appears from the face of the papers filed in the Court of Appeals that the applicant will present issues for review which are not clearly frivolous, the Court of Appeals should grant leave to proceed *in forma pauperis.*

In ***Neitzke v. Williams*, 490 US 319.325 - Supreme Court 1989 (as stated in *Anders v. California*, 386 U. S. 738 (1967).** this court defines frivolous as an appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." ***Id.*, at 744.**

The only issue in the Burch motion to remand and pay the filing fee was Burch's request to have the case remanded to the district court with instructions for the court to accept his filing fee and move forward with the case to either rule on the merits of the case or remand the case to the State District Court. There is no precedence for a ruling on changing an appeal from accepting the case as in forma pauperis to paying the filing fee due to a change in income. However, This court did rule in ***Denton v. Hernandez*, 504 US 25.31 - Supreme Court 1992, "**In enacting

the federal *in* ***forma pauperis*** statute, Congress "intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because . . . poverty makes it impossible . . . to pay or secure the costs" of litigation. ***Adkins* v. *E. I. DuPont de Nemours & Co.*, 335 U. S. 331, 342 (1948)** (internal quotation marks omitted). At the same time that it sought to lower judicial access barriers to the indigent, however, Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." ***Neitzke, supra*, at 324**. In response to this concern, Congress included subsection (d) as part of the statute, which allows the courts to dismiss an ***in forma pauperis*** complaint "if satisfied that the action is frivolous or malicious." It must be understood that Burch, on his own and with obvious honesty, requested that he be allowed to pay the filing fee, but the court turned him down. This act of honesty appears to have been the catalyst for the denial of due process.

The Fifth Circuit denied the IFP seemingly due to ***Burch v. Freedom Mortg. Corp. (Matter of Burch)*, 835 F. App'x 741, 749 (5th Cir.).** The basis for this ruling was the vexatious litigant order by the bankruptcy court.

XII. REASONS FOR GRANTING THE PETITION

One of the principal functions of the Supreme Court of the United States is to ensure that legislation and lower court rulings are constitutional. What will be addressed here is the constitutionality of the law, rules, and rulings of the lower courts as they relate to this case.

QUESTION 1

Should removal from a state court to a federal court by a defendant only be allowed after the state court judge conducts a hearing to determine if the case is a state issue, federal issue, or both and remove the case if warranted?

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

> "NOTICE TO ADVERSE PARTIES AND STATE COURT. —
>
> Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall affect the removal and the State court shall proceed no further unless and until the case is remanded.

A removal under this provision of **28 U.S.C. § 1446 is** unconstitutional. **The Tenth Amendment of the United States Constitution** reads:

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

Nowhere in the Constitution is it written that a defendant may remove a case from the state court without the consent of the state court. In ***Coleman v. Thompson*, 501 US 722.732- Supreme Court 1991**,

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

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

However, lower Federal Courts are taking on established state court cases, that have been removed to federal courts and ruling proper consideration of the state laws. Most Federal District Courts are generalist and deal with a wide range of

issues making it difficult to properly address a single category such as state property laws whereas the state district courts are frequently divided into categories (juvenile, divorce, civil, criminal, probate, and more) and therefore have the knowledge to determine if the issue is state or federal.

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

Jurisdiction is the first act in a case. The Plaintiff can only have due process under the **Fourteenth Amendment** if the state court determines if it should keep all or part of a case. In the law of the United States, the Comity Clause is another term for the Privileges and Immunities Clause of the **Article Four of the United States Constitution,** which provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." **Article Four** is described as the "interstate comity" article of the Constitution and includes

the **Privileges and Immunities Clause, the Extradition Clause, and the Full Faith and Credit Clause**.

In summation, removals currently are unconstitutionally being decided by the defendant and confirmed or denied by a federal judge. The constitutional way to remove a case would be for a defendant to file a motion for removal in the state court and have the state court rule on whether the case should be removed.

QUESTION 2

The justification for dismissal was based on ***Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 294 (5th Cir. 2021); *Matter of Burch*, 835 F. App'x at 749.** The ***Burch v. Freedom Mortg. Corp.*** ruling was based on the bankruptcy courts sua sponte order declaring Burch a Vexatious Litigant. The bankruptcy court made their ruling pursuant to **28 U.S.C. § 1651(a)** (The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law). **11 U. S. C. § 105(a)** The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent

an abuse of process.) of the bankruptcy code, and **the Court's inherent power** (From **Article III, Section 1 of the United States Constitution.)** In protecting his individual properties, Burch was not abusive.

A. The Court's inherent power does not apply because a bankruptcy court is not an **Article III** Court.

B. **11 U. S. C. § 105(a)** As used by the bankruptcy court and as written this rule is a violation of the **United States Constitution First Amendment** in that it prevents the free exercise of free speech. It stops Burch from speaking on behalf of his cases without prior approval. It should be noted that this sanction was made at a time when there were no cases involving Burch in the bankruptcy court. This is also in violation of the **Fifth Amendment** in that it has deprived Burch of his property in this case. Additionally, Burch was prevented from using his Due Process rights in cases in the state courts and federal courts. As written this ruling is a violation of the **Tenth Amendment** in that it allows a bankruptcy judge to write laws and rule on them as he sees fit.

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

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

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

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

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

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

> "I understand why Mr. Stout is upset. I understand why Mr. Weems is upset".

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

Vexatious Litigant is not defined in Federal law but has been legislated into effect in **Texas Civil Practice & Remedies Code CHAPTER 11**. In this case the Bankruptcy Judge legislated his own vexatious law that did not even follow the Texas Law specifically targeting Burch without the benefit of a trial.

The bankruptcy judge's legislation is interpreted as:

Burch took action to defend his property for his heirs from the advisory cases brought against him, although Burch never filed a case pro-se in the bankruptcy court other than for the bankruptcy judge's recusal which was denied. At the time the order was issued there were no cases open in the bankruptcy court, and, although the cases filed were on different properties, Burch is a frivolous litigant. Although there has never been a trial, though requested, Burch's motions to remand were without merit even though the removals were made as much as sixteen months after service. The laws preventing these removals do not count per bankruptcy court decree when it comes to Burch. Therefore, the bankruptcy courts can now resist comity and demand that any filings or motions in a state court be approved by the bankruptcy judge with the bankruptcy judge being able to withhold approval until the filing is late thus making a de facto ruling against Burch and against the state court judge's wishes.

E. **Article 6 sections 2 & 3.**

> **Section (2)** "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
>
> **Section (3)** "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but

> no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

All judges have bound themselves to the Constitution of the United States. Therefore, the Constitution must be the binding article that determines the validity of a Motion to rescind the onerous sanctions and unconstitutional vexatious ruling.

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

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

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

and Burch never filed any adversary proceeding case in the bankruptcy court? All the cases filed were adversary proceedings filed by the defendants."

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

QUESTION 3

The "due process definition comes in two parts, procedural and substantive. "nor be deprived of life, liberty, or **property**, without due process of law". Judge Henry Friendly, in this article titled "Some Kind of Hearing," created a list of required procedures that due process requires. While this list is not

mandatory, it remains highly influential, both in its content and relative priority of each item.

> An unbiased tribunal.
> Notice of the proposed action and the grounds asserted for it.
> Opportunity to present reasons why the proposed action should not be taken.
> The right to present evidence, including the right to call witnesses.
> The right to know opposing evidence.
> The right to cross-examine adverse witnesses.
> A decision based exclusively on the evidence presented.
> Opportunity to be represented by counsel.
> Requirement that the tribunal prepare a record of the evidence presented.
> Requirement that the tribunal prepare written findings of fact and reasons for its decision

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

G. By requiring Burch to testify against himself the court is defying the **Fifth Amendment.** By refusing to even allow Burch the right to have his issues heard when the Fifth Circuit has ruled that it was not the amount of income that determined if a case should proceed in forma pauperis but rather the cash flow of the litigant. Therefor this panel has ruled against the Fifth Circuit ruling that clearly covers this issue. At $19.00 per month extra it is obvious that Burch cannot pay the approximately $10,000 in filing fee in the circuit, $6,000 in district appeals court filing fees.

H. Sixth Amendment:

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

This case was one in which Freedom Mortgage filed the Motion for Vexatious Litigant as part of the Burch v. Chase Bank case. Burch won that case, but the bankruptcy judge then turned around and sua sponte sanctioned Burch, even though there were no pending cases at the time in his court regarding Burch. Burch won the Vexatious Litigant case he was prepared for but the surprise sua sponte ruling was unfair because he was confronted with witnesses against him (the defense lawyers) and he was not allowed the compulsory process of obtaining favorable witnesses.

I. **Ninth Amendment**:

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

The Federalists contended that a bill of rights was unnecessary. They responded to those opposing ratification of the Constitution because of the lack of a declaration of fundamental rights by arguing that, inasmuch as it would be impossible to list all rights, it would be dangerous to list some and thereby lend support to the argument that government was unrestrained as to those rights not listed. Madison adverted to this argument in presenting his proposed amendments to the House of

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

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

XIII. CONCLUSION

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

DATED this 15th day of July 2022

Respectfully submitted,

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