

22-5254

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH
PETITIONER

v.

MARK X. MULLEN.
RESPONDENT

Supreme Court, U.S.
FILED

JUL 29 2022

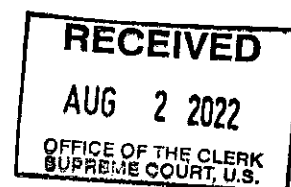
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ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

20-11106

PETITION FOR WRIT OF CERTIORARI

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July 28, 2022



I. QUESTION(S) PRESENTED

1. There are no vexatious litigant rules or statutes currently in effect in Federal law, only in state statutes. Therefore, can a non-Article III bankruptcy judge write his own law on vexatious litigant that violates the constitution and enforce it?
2. What should the federal rules on vexatious litigant be?
3. If a plaintiff has been declared or sanctioned as a vexatious litigant and the ruling, he was sanctioned under is either unconstitutional and/or the new rules on vexatious litigant in the second question would not make the plaintiff a vexatious litigant, should the vexatious litigant sanction be vacated as well as any related orders on other cases?
4. If a Court denies a legal in forma pauperis motion and declares the motion as frivolous based on another panel's ruling involving another courts unconstitutional vexatious litigant order, can the courts pile on sanction fees to a total of over \$5000 when the Appellant only had a surplus of \$2.00 per month at the time?

II PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Petitioner William Paul Burch, and Respondent Mark X. Mullin, Presiding Judge for the Northern District of Texas Bankruptcy Court, Fort Worth Division

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, Dismissed July 14, 2022

20-10709/20-10828 Burch v Areya Holder Aurzada, Dismissed July 14, 2022, \$500 Sanction

20-10850 Burch v Bank of America, Dismissed May 20, 2022, \$500 Sanction

20-11035 Burch v Areya Holder Aurzada, pending

20-11040 Burch v Areya Holder Aurzada, dismissed May 17, 2022, \$500 Sanction

20-11057 Burch v Homeward Residential, Dismissed June 12, 2022, \$500 Sanction

20-11058 Burch v Ocwen Loan Servicing Company, dismissed April 29, 2022 \$500 Sanction

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

20-11117 Burch v America's Servicing Company, dismissed for lack of jurisdiction

20-11132 Burch v Mark X. Mullin, Dismissed July 14, 2022, \$500 Sanction

20-11239 Burch v dismissed Homeward Residential, dismissed May 31, 2022, \$500 Sanction

20-11240 (SCOTUS Petition filed but not yet docketed) Burch v America's Servicing Company, Motion to reopen denied on April 27, 2021, \$500 Sanction

21-10054 Burch v Chase Bank of Texas, N.A., pending

20-10872 (SCOTUS 22-5157) Burch v Bank of America, N.A., Dismissed April 19, 2022, \$500 Sanction

20-11171 (SCOTUS 21-7805) Burch v Select Portfolio Servicing, Dismissed April 17, 2022, \$500 Sanction

IV. TABLE OF CONTENTS

I.	QUESTIONS PRESENTED	ii
II.	PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT.....	iii
III.	STATEMENT OF RELATED PROCEEDINGS.....	iv
IV.	TABLE OF CONTENTS.....	v
V.	TABLE OF APPENDIX.....	vi
VI.	TABLE OF AUTHORTIES.....	vii
VII.	PETITION FOR WRIT OF CERTIORARI	1
VIII.	OPINIONS	1
IX.	STATEMENT OF JURISDICTION	1
X.	CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.	2
	TEX. CONST. art. I, § 13.....	2,20
	TEX. CONST. art. I, § 19.....	2
	U.S. CONST ARTICLE ONE, SECTION 9, CLAUSE 3	

U.S. CONST ARTICLE THREE.....	3,21
U.S. CONST ARTICLE FOUR.....	4,26
U.S. CONST TENTH AMENDMENT.....	4,25
U.S. CONST FOURTEENTH AMENDMENT.....	4,26
XI. STATEMENT OF THE CASE.	14
XII. REASONS FOR GRANTING THE PETITION.	25
XIII. CONCLUSION	27

V. TABLE OF APPENDIX

APPENDIX A	United States Court of Appeals for the Fifth Circuit Rehearing Denied, Filed May 27, 2022, App. A
APPENDIX B	United States Court of Appeals for the Fifth Circuit Opinion, Filed May 2, 2022, App. B
APPENDIX C	United States District Court for the Northern District of Texas Order, Filed October 27, 2020 App. C
APPENDIX D	United States Bankruptcy Court for the Northern District of Texas Order on Motion for Reconsideration Filed September 9, 2020. App. D
APPENDIX E	United States Bankruptcy Court for the Northern District of Texas Order designating Burch a vexatious litigant Filed July 10, 2020. App. E

APPENDIX F	United States Bankruptcy Court for the Northern District of Texas Order denying Freedom Motion to designate Burch a vexatious litigant Filed July 9, 2020.....App F
APPENDIX G	United States Court of Appeals for the Fifth Circuit Opinion in Burch v Freedom Mortgage, Filed June 16, 2021.....App G
APPENDIX H	Texas Business and Commerce Code Title 3 Insolvency, Fraudulent Transfers, and Fraud, Chapter 26.....App H
APPENDIX I	Texas Civil Practice & Remedies Code Chapter 11.....App I
APPENDIX J	Erie Doctrine.App J
APPENDIX K	28 U. S. C. § 1915.....App K
APPENDIX L	U.S. CONST FOURTEENTH AMENDMENT.....App L

VI. TABLE OF AUTHORITIES

Cases

Adkins v. E. I. DuPont de Nemours & Co., 335 U. S. 331, 342-343 (1948).....	21
Anders v. California, 386 U. S. 738 (1967)	21
Burch v. Freedom Mortg. Corp., 850 F. App'x 292, 294 (5th Cir. 2021).....	8
Coppedge v. United States, 369 US 438.446 - Supreme Court 1962.....	21
Rogers v. Richmond, 365 U. S. 534, 8*8 541.....	13

CONSTITUTIONAL PROVISIONS:

TEX. CONST. art. I, § 13.....	2,23
TEX. CONST. art. I, § 19.....	2,23

U.S. CONST ARTICLE ONE, Section 9, Clause 3.....	2,10
U.S.CONST ARTICLE THREE.....	2,9
U.S.CONST ARTICLE FOUR.....	3,10,14
U.S. CONST Article 6 sections 2 & 3	4,12
U.S.CONST FIRST AMENDMENT.....	4,9,12,13,22
U.S.CONST FIFTH AMENDMENT.....	4,9,13,22
U.S.CONST TENTH AMENDMENT.....	5,9
U.S.CONST FOURTEENTH AMENDMENT.....	4,14

STATUTES AND RULES

11 U. S. C. § 105(a)....	9
28 U. S. C. § 1254(1).....	2
28 U.S.C. § 1651(a).....	9,10
28 U.S.C. § 1915.....	5,21
Erie Doctrine	5,11
TBCC 26.....	5,11
TCPR Ch11.....	5,11,15

VII. PETITION FOR WRIT OF CERTIORARI

William 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 ruling of the United States Court of Appeals, not based on the merits appears at App. B in the appendix to this petition and is unpublished.

The ruling of the United States District Court for the Northern District of Texas, not based on the merits appears at App. C and publication is unknown

The opinion of the United States Bankruptcy Court for the Northern District of Texas appears at App. E and is unknown if published but can be googled.

The opinion of the United States Court of Appeals for the Fifth Circuit Opinion in Burch v Freedom Mortgage appears at App. G and is believed to be published.

IX. JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on May 2, 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. Constitution Article One, Section 9, Clause 3 provides:

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

U.S. CONST. Article Three, Section 1 provides

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.

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 6 sections 2 & 3 provides:

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."

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 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 Appendix L**ERIE DOCTRINE Appendix J****28 U.S.C. § 1915 Appendix K****Texas Business and Commerce Code Title 3 Insolvency, Fraudulent, and Fraud, Chapter 26 Appendix H****Texas Civil Practice & Remedies Code CHAPTER 11. Appendix I****XI. STATEMENT OF THE CASE**

On May 27, 2020, Freedom Mortgage Corp (FMC) erroneously filed a Motion to designate Plaintiff (Burch), a vexatious litigant. The filing was styled William Paul Burch and Juanita Burch v. Chase Bank of Texas, N. A. adversary case number 19-4106-mxm. There was no case in existence styled in that manner. There was a case similarly styled but without Juanita Burch. Chase Bank did not give FMC permission to join their case. Furthermore, that case (Adversary Number 19-4106-mxm) was no longer in the bankruptcy court as it had been appealed (4:20-cv-00524-O).

On July 6, 2020, Burch filed a Motion to Recuse Judge Mark C. Mullin.

On July 10, 2020, Judge Mullin denied (**Appendix F**) the FMC motion to designate Burch a Vexatious Litigant but sua sponte designated Burch a Vexatious Litigant. (**Appendix E**) The Order seems to be based on Burch filing suit against attorneys Michael Weems and Mark Stout for lying in court and in motions converting an almost complete Chapter 11 plan into a Chapter 7 plan taking millions of dollars away from Burch and leaving him without anything. Judge Mullin granted them immunity. Judge Mullin was also upset because of the many motions Burch filed for remand on cases removed late.

On September 3, 2020, the bankruptcy denied Burch's Motion for Reconsideration (**Appendix D**) on the Vexatious Litigant Order.

On September 9, 2020, Burch appealed the bankruptcy order to the district court as case number 4:20-cv-1006-O which misstyped the Appellees as American Servicing Company when it should have been Mark X. Mullin. American Servicing Company has nothing to do with this case. This was an error by the bankruptcy court.

On October 27, 2020, the district court dismissed Burch's appeal (**Appendix C**) having denied Burch's motion to proceed in forma pauperis.

On October 31, 2020, Burch appealed the district court order to the Fifth Circuit as case number 20-11106.

On June 18, 2021, The Fifth Circuit dismissed case number 19-11197 (**Appendix G**) loosely based on the vexatious litigant ruling of the bankruptcy

court. This began a stampede of cases being dismissed based on this order and the unconstitutional vexatious litigant designation. The following cases have been dismissed using this order and the amount of their sanction:

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, Dismissed July 14, 2022

20-10709/20-10828 Burch v Areya Holder Aurzada, Dismissed July 14, 2022, \$500 Sanction

20-10850 Burch v Bank of America, Dismissed May 20, 2022, \$500 Sanction

20-11035 Burch v Areya Holder Aurzada, pending

20-11040 Burch v Areya Holder Aurzada, dismissed May 17, 2022, \$500 Sanction

20-11057 Burch v Homeward Residential, Dismissed June 12, 2022, \$500 Sanction

20-11058 Burch v Ocwen Loan Servicing Company, dismissed April 29, 2022 \$500 Sanction

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
(Appendix A and B)

20-11117 Burch v America's Servicing Company, dismissed for lack of jurisdiction

20-11132 Burch v Mark X. Mullin, Dismissed July 14, 2022, \$500 Sanction

20-11239 Burch v dismissed Homeward Residential, dismissed May 31, 2022, \$500 Sanction

20-11240 (SCOTUS Petition filed but not yet docketed) Burch v America's Servicing Company, Motion to reopen denied on April 27, 2021, \$500 Sanction

21-10054 Burch v Chase Bank of Texas, N.A., pending

20-10872 (SCOTUS 22-5157) Burch v Bank of America, N.A., Dismissed April 19, 2022, \$500 Sanction

20-11171 (SCOTUS 21-7805) Burch v Select Portfolio Servicing, Dismissed
April 17, 2022, \$500 Sanction

On May 2, 2020, this cases on vexatious litigant was dismissed and Burch was sanctioned \$500 because he had been sanctioned as a vexatious litigant in the bankruptcy court which is what this case is about.

XII. REASONS FOR GRANTING THE PETITION

There is currently no federal rule defining vexatious litigant and applying punishment for the sanction. Therefore, the courts have generally gone by the vexatious law for the state in which the case is originally docketed. This is not bad. It is when a judge writes their own rule by legislating from the bench, typically due to a bias against a plaintiff, that the constitution comes under attack. It is imperative that legislating from the bench be stopped as it impeaches the integrity of all courts. This is particularly important in today's climate of social distrust.

The following is a breakdown of the vexatious litigant order as written by the bankruptcy judge, Mark X. Mullin:

The justification for dismissal of the cases listed above 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 does not allow 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 even though there are no creditors. 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 (TCPR Ch11). 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 based as mentioned above plus motions to remand on most of the cases. These cases are related to the bankruptcy but are only about Texas issues dealing with Texas Business and Commerce Code 26. The most that could have been done would be to remove the cases to the district court and then have the bankruptcy court issue findings of fact and conclusions of law as they relate to the bankruptcy law and case. A case so removed for diversity would fall under the Erie Doctrine. Those removed late should be remanded without a second thought. Even better would be to have the removal as a motion to the state court judge to decide if the case should be removed. This would save all parties and the judicial system time and money and would allow for equal protection under the law.

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.

It is clear that the bankruptcy judge's overwhelming bias resulted in this unconstitutional and onerous ruling which must be corrected before it becomes the de facto law of the land. This would allow a bias judge to punish an unwitting pro-se plaintiff who is innocent but seeking justice.

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.

- G. By demanding that any filing of petitions or motions in a state court receive the approval of the bankruptcy court judge before it can be submitted to the state court the bankruptcy court was in clear violation of the Comity Clause, also known as 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.

This restriction also restricted Burch's due process under the Fourteenth Amendment by stopping the free flow of action and speech.

QUESTION TWO

What should the federal rules on vexatious litigant be?

Burch would suggest wording similar to that of the Texas rule on Vexatious Litigant (Texas Civil Practice and Remedies Code Chapter 11) with the additional verbiage that the ruling does not apply to state cases. The proposed wording is:

MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. If a defendant removes a case from a state court then the defendant takes the definition position of the plaintiff in this ruling. This ruling applies to all plaintiffs, whether they are represented by an attorney, the attorney or law firm representing a client, or pro-se. In a litigation, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

- (1) determining that the plaintiff is a vexatious litigant; and
- (2) requiring the plaintiff to furnish security.

STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section, the litigation is stayed, and the moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or
- (2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion on or after the date the trial starts, the litigation is stayed for a period the court determines.

HEARING. (a) On receipt of a motion the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

- (1) written or oral evidence; and
- (2) evidence presented by witnesses or by affidavit.

CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT.

A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion has commenced, prosecuted, or maintained at least five litigations as a pro se litigant against the same defendant on the same issue other than in a small claims court that have been:

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

PROHIBITING FILING OF NEW LITIGATION

PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a

hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under to file a litigation only if it appears to the judge that the litigation:

- (1) has merit; and
- (2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

DUTIES OF CLERK. (a) Except as provided by Subsection (c), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order unless the litigant obtains an order from the appropriate local administrative judge permitting the filing.

(b) If the appropriate local administrative judge issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(c) A clerk of a court of appeals may file an appeal from a prefiling order designating a person a vexatious litigant or a timely filed writ of mandamus.

MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, by a vexatious litigant subject to a prefiling order without an order from the appropriate local administrative judge a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge (a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge

(a) permitting the filing of the litigation.

(b) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

**NOTICE TO OFFICE OF COURT ADMINISTRATION;
DISSEMINATION OF LIST.** (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Circuit Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Circuit Judicial System may not remove the name of a vexatious litigant subject to a prefiling order from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered by the same court. A court of appeals decision reversing a prefiling order affects only the validity of an order entered by the reversed court.

QUESTION THREE

If a plaintiff has been declared or sanctioned as a vexatious litigant and the ruling, he was sanctioned under is either unconstitutional and/or the new rules on vexatious litigant in the second question would not make the plaintiff a vexatious litigant, should the vexatious litigant sanction be vacated as well as any related orders on other cases?

If question one is found to be that the bankruptcy court erred in its declaration of Burch as a vexatious litigant then all the listed cases should have the orders dismissing the cases vacated and the cases should be remanded to the district court where the district court judge is to remand to state court any case found to be remove out of time or that was removed straight to the bankruptcy court, reverse any bankruptcy court ruling where a state court has issued a judgement, reverse all dismissals, and hear on the merits in a trial with a jury any case that is not remanded to the state courts.

QUESTION FOUR:

If a Court denies a legal in forma pauperis motion and declares the motion as frivolous based on another panel's ruling involving another courts unconstitutional vexatious litigant order, can the courts pile on sanction fees to a total of over \$5000 when the Appellant only had a surplus of \$2.00 per month at the time?

1. If from the face of the complaint, it is apparent that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal in forma pauperis". Coppedge v. United States, 369 US 438, 446 - Supreme Court 1962, "
2. 28 U. S. C. § 1915, is designed to ensure that indigent litigants have meaningful access to the federal courts. Adkins v. E. I. DuPont de Nemours & Co., 335 U. S. 331, 342-343 (1948).
3. An appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." Anders v. California, 386 U. S. 738 U. S. 744 (1967)

There remain undecided aspects of the question of frivolous and IFP. They are:

1. In a case that is removed from state court under diversity the Erie Doctrine requires state substantive rules apply. Does this mean that if a state court does not deny a pauper status, then the IFP is automatically approved?
2. Is it frivolous for an appellant to motion for a remand and pay filing fee if the financial position of the appellant should change? This question will also apply the other way around if the appellant loses income and can no longer pay the filing fee.

The definition of frivolous must be expanded to take into account these issues. Until then due process rights cannot be served, and freedom of speech will be denied.

Because of the definition remaining unanswered it has led to Burch, currently a pauper, losing millions of dollars in property to the defendants who cannot show a valid lien and have refused to show any ownership are interest in a loan or deed of trust on these twenty-two properties. The courts have been used by the defendants to summarily and unjustifiably take assets away from Burch and have used procedure and disregard for the law in the taking of these properties.

The order given by the panel had the following on each case, "Burch is again warned that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of further sanctions. Burch is once again admonished to review any pending appeals—particularly those in which he requests leave to proceed IFP from an order dismissing his bankruptcy appeal in the district court for failure to pay the filing fee and moves in this court to remand based on new financial resources—and to withdraw any appeals that are frivolous."

By Burch wanting to save the court, the defendant, and himself time and money the case Burch had his Due Process rights taken away from him and he was thus forced to shut up based on the courts statement that could not be heard on the merits. This denied Burch his constitutional right to free speech under the First Amendment and his right to due process as guaranteed under the Fifth Amendment.

Even with the extra money from Burch's Vietnam era disability payments, Burch cannot afford to pay the \$5,000.00 in sanctions created from the sanctions imposed by the Fifth Circuit on Burch with roots in the unconstitutional vexatious litigant order. These sanctions should be reversed or vacated.

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.)

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 28th day of July 2022

Respectfully submitted,

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