No. 22-5425

ORIGINAL

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
20-10850

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION(S) PRESENTED

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 case is removed to a Federal court, should it only be removed to an Article III court?
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 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, 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 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

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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 opinion of the United States Court of Appeals, appears at App. B in the appendix to this petition and is unpublished.

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 C and is unpublished.

The opinion of the United States Bankruptcy Court the highest court to review the case for the Northern District of Texas appears at App. D and is unpublished.

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 E and is unpublished.

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 F and is unpublished.

IX. JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on May 20, 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 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 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 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.
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> **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 § 1141 (ADDENDUM F)

28 U. S. C. § 157 provides:

(d)The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

28 U. S. C. § 1332 Addendum J

28 U.S.C. § 1441 (Addendum G) provides:

(a) Generally. —

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal Based on Diversity of Citizenship.—
(1)
In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.
(2)
A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
(c) Joinder of Federal Law Claims and State Law Claims.—
(1) If a civil action includes—
(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and
(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).
(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

28 U. S. C. § 1442 provides:

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.
(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;
(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer—

(1) protected an individual in the presence of the officer from a crime of violence;
(2) provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or
(3) prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

(1) The terms "civil action" and "criminal prosecution" include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.
(2) The term "crime of violence" has the meaning given that term in section 16 of title 18.
(3) The term "law enforcement officer" means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent in the Diplomatic Security Service of the Department of State.
(4) The term "serious bodily injury" has the meaning given that term in section 1365 of title 18.

(5) The term "State" includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).
(6) The term "State court" includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court.

28 U.S.C. § 1443 provides:

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S. Code § 1446 (ADDENDUM FG.

FRBP Rule 7012. provides

(a) When Presented. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more

definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.

(b) Applicability of Rule 12(b)–(i) F. R.Civ.P. Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

FRBP Rule 7016. Provides

(a) PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT.Rule 16 F.R.Civ.P. applies in adversary proceedings.

(b) DETERMINING PROCEDURE. The bankruptcy court shall decide, on its own motion or a party's timely motion, whether:

(1) to hear and determine the proceeding;

(2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or

(3) to take some other action.

FRBP 9011 provides

(a) Signature. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,— [1]

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment

to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability To Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

(e) Verification. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification.

(f) Copies of Signed or Verified Papers. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

Notes

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997.)

Notes of Advisory Committee on Rules—1983

Subdivision (a). Excepted from the papers which an attorney for a debtor must sign are lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto. Rule 1008 requires that these documents be verified by the debtor. Although the petition must also be verified, counsel for the debtor must sign the petition. See Official Form No. 1. An unrepresented party must sign all papers.

The last sentence of this subdivision authorizes a broad range of sanctions.

The word "document" is used in this subdivision to refer to all papers which the attorney or party is required to sign.

Subdivision (b) extends to all papers filed in cases under the Code the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 F.R.Civ.P. The second sentence of subdivision (b) permits the substitution of an unsworn declaration for the verification. See 28 U.S.C. §1746. Rules requiring verification or an affidavit are as follows: Rule 1008, petitions, schedules, statements of financial affairs, Chapter 13 Statements and amendments; Rule 2006(e), list of multiple proxies and statement of facts and circumstances regarding their acquisition; Rule 4001(c), motion for ex parte relief from stay; Rule 7065, incorporating Rule 65(b) F.R.Civ.P. governing issuance of temporary restraining order; Rule 8011(d), affidavit in support of emergency motion on appeal.

FRBP 9027(a) provides:

(a) Notice of Removal.

(1) Where Filed; Form and Content. A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to **Rule 9011** and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

(2) Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code. If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under §362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) Time for filing; civil action initiated after commencement of the case under the Code. If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

Committee Notes on Rules—2016 Amendment

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding

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.

Judiciary Act of 1789 provides:

> The act established that the Supreme Court would be composed of one chief justice and five associate justices and that all decisions of the Supreme Court would be final. The act also vested in the Supreme Court the power to settle disputes between states and provided for mandatory Supreme Court review of the final judgments of the highest court of any state in cases "where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity" or "where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." In ***Cohens* v. *Virginia* (1821)** the Supreme Court reaffirmed its right under the Judiciary Act to review all state court judgments in cases arising under the federal Constitution or a law of the United States.

TBCC 26 (ADDENDUM H)

TRCP Rule 145 (ADDENDUM I)

XI. STATEMENT OF THE CASE

Burch and his wife bought the house located at 1053 Briarwood Ln, DeSoto, Texas 75115 on October 4, 2006, in a cash purchase from HUD. On November 2, 2006, the Burch's obtained a business real estate equity loan in the amount of $99,250 from Freedom Mortgage Corporation for their real estate business in which the Briarwood 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 (CHL). 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 $82,000. Also, in paragraph 5.7 the plan called for a continuation of the current loan on another property (the homestead property on Waterford Dr). This was a clear statement that a new loan was needed for the Briarwood 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.

With 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, CHL never acknowledged the new note as being valid.

As of April 1, 2011, this property was legally 100% owned by Burch due to the failure of CHL to perform. CHL was absorbed by Bank of America, N.A. (BOA)

On March 25, 2020, Burch filed a petition in the 236th 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 236--316109-20. The service was completed on April 2, 2020. On April 27, 2020, BOA removed the case to federal district court pursuant to **28 U.S.C. §§ 1441(a) and 1332.** The district case

number was 20-00387-O. **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."

On May 4, 2020, BOA filed a Motion to Dismiss under **Rule 12(b)(6).** On May 25, 2020, Burch filed a Motion to remand based on not meeting the requirements of **USC § 1441 (b) (1) and 28 USC § 1332 (a).** On May 21, 2020 the Magistrate Judge issued his Findings, Conclusions, and Recommendations. Based on the Magistrates findings, the District issued its order to remove the case to the bankruptcy court on June 3, 2020. On June 15, 2020 Burch filed a Motion for Reconsideration. On July 17, 2020, the bankruptcy court dismissed the case based on **rule 12(b)(6)**

On July 27, 2020, Burch appealed to the District Court for the Northern District of Texas, Fort Wort Worth Division as 4:20-cv-00793-P. On August 16, 2020, the District Court dismissed the appeal saying that, "The right of access to the courts is neither absolute nor unconditional.". On August 16, 2020, Burch filed a motion for reconsideration of the in forma pauperis. On August 17, 2020, the district court denied the motion for reconsideration. Burch appealed to the Fifth Circuit on August 19, 2020. On September 7, 2020, Burch filed his Motion for leave to proceed in forma pauperis in the Fifth Circuit and the district court. On

September 8, 2020, the district court denied Burch's motion to proceed IFP. The district court ***did not certify the IFP as frivolous.***

The circuit court erred in that it 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.**

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 Fifth Circuit denied Burch's Appeal on May 5, 2022, Burch was sanctioned $500 because he had been sanctioned as a vexatious litigant in the bankruptcy court although it did not apply to appeals. Burch filed a motion for rehearing on May 18, 2022, which was denied on May 20, 2022.

XII. REASONS FOR GRANTING THE PETITION

QUESTION ONE:

The question is not, "are the removal statutes unconstitutional?" but rather "should a defendant be able to remove a case to federal court without first filing a motion with the state court where the petition was filed allowing the state court to determine if the case should be removed?".

The rulings and statutes that have allowed removal from a state court to an Article III federal court is **Article III, Section 2, Clause 1:**

> 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.

A limited right to remove certain cases from state courts to federal courts was granted to defendants in the **Judiciary Act of 1789**,[1] and from then to 1872 Congress enacted several specific removal statutes, most of them prompted by instances of state resistance to the enforcement of federal laws through harassment of federal officers.[2]The 1875 Act conferring general federal question jurisdiction on the federal courts provided for removal of such cases by either party, subject only to the jurisdictional amount limitation.[3] The present statute provides for the removal by a defendant of any civil action which could have been brought originally in a federal district court, with no diversity of citizenship required in federal question cases.[4] A special civil rights removal statute permits removal of any civil or criminal action by a defendant who is denied or cannot enforce in the state court a right

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[1] § 12, 1 Stat. 79.

[2] The first was the Act of February 4, 1815, § 8, 3 Stat. 198. The series of statutes is briefly reviewed in Willingham v. Morgan, 395 U.S. 402, 405–406 (1969), and in Hart & Wechsler (6th ed.), supra at 396–398. See 28 U.S.C. §§ 1442, 1442a

[3] Act of March 3, 1875, § 2, 18 Stat. 471. The present pattern of removal jurisdiction was established by the Act of March 3, 1887, 24 Stat. 552, as amended, 25 Stat. 433.

[4] 28 U.S.C. § 1441.

under any law providing for equal civil rights of persons or who is being proceeded against for any act under color of authority derived from any law providing for equal rights.[5]

The constitutionality of removal statutes was challenged and readily sustained. Justice Story analogized removal to a form of exercise of appellate jurisdiction,[6] and a later Court saw it as an indirect mode of exercising original jurisdiction and upheld its constitutionality.[7] In ***Tennessee v. Davis*****,100 US 257 - Supreme Court 1880**[8] which involved a state attempt to prosecute a federal internal revenue agent who had killed a man while seeking to seize an illicit distilling apparatus, the Court invoked the right of the national government to defend itself against state harassment and restraint. The power to provide for removal was discerned in the Necessary and Proper Clause authorization to Congress to pass laws to carry into execution the powers vested in any other department or officer, here the judiciary. The judicial power of the United States, said the Court, embraces alike civil and criminal cases arising under the Constitution and laws and the power asserted in civil cases may be asserted in criminal cases. A case arising under the Constitution and laws is not merely one where a party comes into court to demand something conferred upon him by the

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[5] 28 U.S.C. § 1443.

[6] Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 347–351 (1816). Story was not here concerned with the constitutionality of removal but with the constitutionality of Supreme Court review of state judgments.

[7] Chicago & N.W. Ry. v. Whitton's Administrator, 80 U.S. (13 Wall.) 270 (1872). Removal here was based on diversity of citizenship. See also The Moses Taylor, 71 U.S. (4 Wall.) 411, 429–430 (1867); The Mayor v. Cooper, 73 U.S. (6 Wall.) 247 (1868).

[8] Tennessee v. Davis, 100 U.S. 257 (1879)

Constitution or by a law or treaty. A case consists of the right of one party as well as the other and may truly be said to arise under the Constitution or a law or a treaty of the United States whenever its correct decision depends upon the construction of either. Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted.

The constitutional right of Congress to authorize the removal before trial of civil cases arising under the laws of the United States has long since passed beyond doubt. It was exercised almost contemporaneously with the adoption of the Constitution, and the power has been in constant use ever since. **The Judiciary Act of September 24, 1789** was passed by the first Congress, many members of which had assisted in framing the Constitution; and though some doubts were soon after suggested whether cases could be removed from state courts before trial, those doubts soon disappeared. The Court has broadly construed the modern version of the removal statute at issue in this case so that it covers all cases where federal officers can raise a colorable defense arising out of their duty to enforce federal law.[9] Other removal statutes, notably the civil rights removal statute, have not been so broadly interpreted.[10]

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[9] Willingham v. Morgan, 395 U.S. 402 (1969). See also Maryland v. Soper, 270 U.S. 9 (1926). Removal by a federal officer must be predicated on the allegation of a colorable federal defense. Mesa v. California, 489 U.S. 121 (1989). However, a federal agency is not permitted to remove under the statute's plain meaning. International Primate Protection League v. Tulane Educ. Fund, 500 U.S. 72 (1991).

[10] Georgia v. Rachel, 384 U.S. 780 (1966); City of Greenwood v. Peacock, 384 U.S. 808 (1966); Johnson v. Mississippi, 421 U.S. 213 (1975).

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 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 without 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. This action is constitutional and would reduce the volume of federal litigation.

QUESTION TWO:

If a case is removed to a Federal court, should it only be removed to an **Article III** court? Nowhere is it written in the constitution that a case should be removed directly to a non-Article III court. As shown above, the constitution only talks about Article III courts. Many of the statutes are written to where there must be a district court involved. For example, in **FRBP 9027(a)** it is written:

> (a) NOTICE OF REMOVAL.
>
> (1) *Where Filed, Form and Content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal

court where the civil action is pending. The notice shall be signed pursuant to **Rule 9011** and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

Committee Notes on Rules—2016 Amendment

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, **28 U.S.C. § 157(b)(2),** may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to **Rule 7012(b). Rule 7016** governs the bankruptcy court's decision whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.

If the case is removed directly to the bankruptcy court and consent is not given for the bankruptcy court to issue orders and final judgments, then the court can only issue findings of fact and conclusions of law. Further, as a specialty court the bankruptcy court can only issue those findings and conclusions as they pertain to bankruptcy laws. But to what court so they issue their findings and conclusions if the case was moved directly to the bankruptcy court?

The only logical and fair way to remove a case that may be related to a bankruptcy case would be to remove the case to a district court and then the district court can have the bankruptcy court look at the issues from the bankruptcy perspective and the magistrate judge from the non-bankruptcy perspective thus allowing the district court to determine the proper handling of the case. This still begs for this determination to be made by the state court judge as the means of the greatest judicial economy.

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:

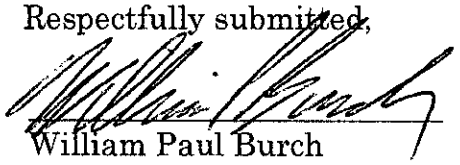
> DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. (Feb. 15, 1876.)

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 18th day of August 2022

Respectfully submitted,



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