No. 22-5425

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 REHEARING

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November 23, 2022

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III. PREAMBLE

Pursuant to **SCOTUS Rule 44.1,** Petitioner William Paul Burch (Burch), respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit's opinion creates a basis for denial of due process under the **Fifth and the Fourteenth Amendments** of the United States Constitution based on an unconstitutional ruling of a bankruptcy court judge with an undeniable bias against Burch.

The Fifth and Fourteenth Amendments to the Constitution both contain the words, "nor be deprived of life, liberty, or property without due process of law." As President John Adams **said in the Defense of the Constitution of the United States (1787)),** "The moment the idea is admitted into society, that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence,"

In addition to this, the **Fifth Amendment** says, "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor be compelled in any criminal case to be a witness against himself".

Reviewing the **Fourteenth Amendment** closely reveals, "No state shall make of enforce any law which shall abridge the privileges or immunities of citizens of the United States". It also says, "nor deny to any person within its jurisdiction the protection of the law.

This rehearing will be based on the above and the unconstitutional vexations litigant ruling of an Article I court that was the catalyst for the mistakes made by the appeals courts thus depriving Burch of his property in an illegal seizure.

IV. PETITION FOR REHEARING

The original certiorari petition asked this Court to resolve four issues of first impression:

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 other courts unconstitutional vexatious litigant order, can the courts pile on sanction fees to a total of over $5000 (**Now $6000**) when the Appellant only had a surplus of $2.00 per month at the time?

The appeals on Burch's cases were due to a denial of in forma pauperis. Burch only had excess income of about $5.00 at that time, far below the amount to pay the $299 filing fee on this appeal and the other appeals. This was also true of the Fifth Circuit filing fee. This even though Burch qualified in the state courts.

The dismissals began after Burch was awarded disability benefits for injuries suffered while serving in the United States Army. Upon receiving the extra income, Burch contacted the courts and made a motion for the case to be remanded to the District so Burch could pay the filing fee and the case could be heard on the merits.

The Fifth Circuit held that all Burch appeals should be dismissed based on an unlawful vexatious litigant order (**SCOTUS Case No. 22-5254**) by a biased bankruptcy judge (**SCOTUS Case No. 22-5778**) and the filing of the **FRAP rule 12.1** that was mistakenly filed by Pro-Se Burch before the **FRCP rule 60** was file (just a few days difference between the two filings). The biased bankruptcy judge ruled against Burch in converting a nearly completed **Chapter 11** Plan to a **Chapter 7** plan based entirely on the creditors lawyers blatantly lying to the court This action caused Burch millions of dollars and left Burch in poverty. Burch sued the lawyers for lying in court, but the biased bankruptcy judge granted them immunity. Burch was of the mistaken and naive impression that honesty and truthfulness was the right way to proceed in court. Burch has been punished by the Fifth Circuit for this honesty by having his cases dismissed without a hearing and

being sanctioned over $6000 dollars as of last week based on the bias bankruptcy judge's unconstitutional vexatious litigant order.

By making the requirement the Fifth Circuit combined the issues on twenty cases as the same with the judgment rendered without a hearing on any of them. This is an extreme abuse of power. The **Fifth Amendment** says, "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb. Due process is life, liberty, or property in the **Fifth Amendment**. The Fifth Circuit rulings in these cases are clearly unconstitutional.

The Fifth Amendment also says," nor be compelled in any criminal case to be a witness against himself". The Fifth Circuit ruled, "Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous." Obviously, Burch could not remove the cases because they were not frivolous.

V. STATEMENT OF ANTI-THERAPEUTIC JURISPRUDENCE

Therapeutic jurisprudence (**TJ**) studies law as a social force (or agent) which inevitably gives rise to unintended consequences, which may be either beneficial (therapeutic) or harmful (anti-therapeutic). It envisions lawyers practicing with an ethic of care and heightened interpersonal skills, who value the psychological wellbeing of their clients as well as their legal rights and interests, and to actively seek to prevent legal problems through creative drafting and problem-solving approaches. In this case anti-therapeutic jurisprudence due to the actions of the

bias bankruptcy judge and BOA and the other associated companies cost Burch millions of dollars in assets and all his income. The associated companies refused to follow the first bankruptcy plan and tried to foreclose on Burch's property even though the lien was void. The actions of the bias bankruptcy judge, BOA, and their associated companies and representatives, are the definition of anti-therapeutic jurisdiction.

VI. ARGUMENT

To understand this simply read these two paragraphs from the first bankruptcy:

In the first bankruptcy plan on page 13, paragraph 5.9 it is written:

> 5.9 "Based upon the Debtors' current value of the Briarwood property, the Debtors will enter into a **New Briarwood Note** in the original principal amount of $82,000 ("**New Briarwood Note**"). The **New Briarwood Note** shall bear interest at the rate of 5% per annum. The Debtors shall pay the **New Briarwood Note** in 360 equal monthly payments of $413.35 commencing on the Effective Date."

What this clearly means is that Burch was to enter into a **new Briarwood Promissory Note.** If confused, the court should go to the preceding paragraph (5.7) where the plan reads regarding the Burch homestead with the terms of the existing loan documents:

> 5.7 "Aurora is also the lienholder on the Debtors present home at 5947 Waterford, Grand Prairie, Texas (the "Waterford Property"). The Debtors **shall retain the Waterford Property as their homestead and continue to make monthly payments in accordance with the terms of the**

> **existing loan documents**. The Debtor's shall pay any pre-petition arrearage on the property prior to the Effective Date. The payments to Aurora shall be principal and interest only on the Waterford property. The Debtors shall be responsible for maintaining and directly paying for adequate continuous insurance coverage on the Waterford property and directly paying all property taxes."

This clearly meant a new loan was needed for the Briarwood property and the Waterford property would continue as is.

The Fifth Circuit gave the perfect criteria for extinguishing a loan in bankruptcy 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 (done); (ii) the collateral must be dealt with by the plan (done); (iii) the lien holder must participate in the reorganization (done); and (iv) the lien must not be preserved under the plan (done);. Other courts have similarly required secured creditor participation in the case as a condition to lien extinguishment under **section 1141(c).** This case met all the criteria for the lien to be extinguished.

With the lien extinguished the Texas Business and Commerce Code 26 "Statute of Frauds" (**TBCC 26.02**) comes into play, requiring:

> **"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.

Burch agreed to give the lenders six months to give him a new note. Burch sent a presentment letter to BOA as required in **TBCC 3.501** as notice that if the new note was not given to Burch, then the lien was void and the lien must be removed.

The reason Burch filed for the second bankruptcy (12-46959) was because Nationstar refused to follow the first bankruptcy plan (paragraph 5.7 in the first bankruptcy plan). After Nationstar merged with Aurora Bank (the homestead lender) Nationstar demanded Burch pay $25,000 in escrow or they would foreclose. This was prohibited in the first bankruptcy (paragraph 5.7 in the first bankruptcy plan).

At the time of the second bankruptcy there was no mortgage on the Hemlock property because the lien was void. The reason the property was included in the second bankruptcy was that the lien had not been removed even though the lien was void and the presentment letter (**TBCC 3.051**) had been sent. In the second bankruptcy there is nowhere that a continuation of the note was to take place. Actually, in Texas law what is void is forever void and cannot be resurrected even with the agreement of both parties. No statute of limitations applies to an action to quiet title on an invalid home-equity lien. ***Wood v. HSBC BANK USA, NA*, 505 SW 3d 542 - Tex: Supreme Court 2016**

Under common law, a "void" act "is one which is entirely null, not binding on either party, and not susceptible of ratification." ***Cummings v. Powell*, 8 Tex. 80, 85 (1852).**

This should make it very clear that these cases are not frivolous.

The justification for dismissal was based on ***Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 294 (5th Cir. 2021); *Matter of Burch*, 835 F. App'x at 749.** The ruling was based on the bias bankruptcy courts (**SCOTU 22-5778**) sua sponte order declaring Burch a Vexatious Litigant (**SCOTUS 22-5254**). 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. Code.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. In protecting his individual properties, Burch was not abusive.

A. The Court's inherent power does not apply because an **Article I** 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. This is also in violation of the **Fifth Amendment** in that it has deprived Burch of his property. 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 (legislating from the bench).

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

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

It allows a bankruptcy judge to legislate from the bench.

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 these attorneys. The basis was because Burch filed suit in State Court against HWA (Weems law firm) for lying to convert a successful **Chapter 11** plan that was going to close in July 2018 to an unsuccessful **Chapter 7** plan that has yet to

close four years later. The bankruptcy granted the defendants immunity for lying. **(12-bk-46959-mxm, advisory case 18-04176-mxm)**.

Vexatious Litigant is not defined in Federal law but has been legislated into effect in **Texas Civil Practice & Remedies Code Chapter 11**. In this case the Bankruptcy Judge legislated his own vexatious law, that did not even follow the Texas Law, specifically targeting Burch without the benefit of a trial. Based on the order, because of Burch's actions to defend his property for his heirs, and although Burch never filed a case pro-se in the bankruptcy court and although the cases filed were on different properties, Burch is a frivolous litigant? There has never been a trial, though requested. Therefore, the bankruptcy courts can now resist comity and demand that any filings or motions in a state court be approved by the bankruptcy judge in defiance of ***Newby v. Enron Corp.*, 302 F. 3d 295.298 - Court of Appeals, 5th Circuit 2002.**

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

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

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

By requiring the filing of a petition or motion in the state court, to first be approved by the bankruptcy court a burden is placed on Burch that prevents him from timely filing documents. This prevents Burch from exercising his 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 because NO defendant can produce a valid copy of a lien despite repeated demands from Burch. Burch has been forbidden by the bias bankruptcy court from discovery. Burch never filed any case in the bankruptcy court. All the cases 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 say that a case is without merit and frivolous to which Burch does not agree. There is compelling evidence that Burch is correct on the merits. The "due process definition comes in two parts, procedural and substantive. "nor be deprived of life, liberty, or property, without due process of law". **Judge Henry Friendly, in this article titled "Some Kind of Hearing,"** created a list of required procedures that due process requires. While this list is not mandatory, it remains highly influential, both in its content and relative priority of each item.

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

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

G. By requiring Burch to testify against himself the court is defying the **Fifth Amendment.** By refusing to even allow Burch the right to have his issues heard when the Fifth Circuit ruled that it was not the amount of income that determined if a case should proceed in forma pauperis but rather the cash flow of the litigant. Therefor this panel has ruled against the Fifth Circuit ruling that clearly covers this issue. At $5.00 per month extra it is obvious that Burch cannot pay the approximately $10,000 in filing fee in the circuit, $6,000 in district appeals court filing fees.

H. Sixth Amendment:

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

This case was one in which Freedom Mortgage filed the Motion for Vexatious Litigant as part of the Burch v. Chase Bank case. Burch won that case, but the bankruptcy judge then sua sponte sanctioned Burch.

I. **Ninth Amendment**:

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

The Federalists contended that a bill of rights was unnecessary. They responded to those opposing ratification of the Constitution because of the lack of a declaration of fundamental rights by arguing that,

> "inasmuch as it would be impossible to list all rights, it would be dangerous to list some and thereby lend support to the argument that government was unrestrained as to those rights not listed."

Madison adverted to this argument in presenting his proposed amendments to the House of Representatives.

> "It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government and were consequently insecure. This is one of the most plausible arguments I have ever heard against the admission of a bill of rights into this system; but I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution."

It is clear from its text and from Madison's statement that the Amendment states but a rule of construction, making clear that a **Bill of Rights** might not by implication be taken to increase the powers of the national government in areas not enumerated, and that it does not contain within itself any guarantee of a right or a proscription of an infringement

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

VII. REASONS FOR GRANTING THE PETITION

Property is one of the three absolutes in both the **Fifth and the Fourteenth Amendments** to the Constitution. The court seems to care about the first two, life and liberty, but ignores the third, property. Why not listen to a bankruptcy case? It might open your eyes just as we enter another recession. That could help millions of Americans. This case, and all the Burch cases should have the monetary sanctions removed and this case remanded to the Texas District Court.

IIX.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 26th day of November 2022

Respectfully submitted,

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22-5425

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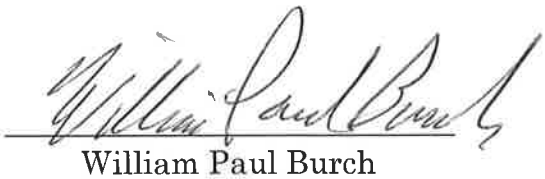
RESPONDENT

CERTIFICATE OF COMPLIANCE WITH RULE 44

I, William Paul Burch, Pro Se, hereby certify that this petition is restricted to the grounds specified in Supreme Court Rule 44 and is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.



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RESPONDENT

PROOF OF SERVICE

I, William Paul Burch, do swear or declare that on this date, November 25, 2022 as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, e-mail, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 25, 2022

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