No. 22-5482

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH
PETITIONER

v.

HOMEWARD RESIDENTIAL INC.
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

20-11239

PETITION FOR WRIT OF CERTIORARI

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August 22, 2022

I. QUESTION(S) PRESENTED

This case highlights the need for an impartial judiciary along with a need to revisit who should determine if a case can be removed and where it should be removed to.

1. If a petition is filed in state district court and results in a default judgment and is appealed by the defendant to the state court of appeals which rules they do not have jurisdiction because the judgment is an interrogatory judgment and remands the case to the state district court for completion does the thirty-day window for removal begin when the defendant is served with the pleadings and summons or sixteen months later after a mandate is issued by the State Court of Appeals?
2. Should the decision on removal from a state court to a federal court by a defendant only be allowed by the state court judge, a federal district court judge, or any federal judge?
3. If a state district court judge has issued a judgment can a non-Article III federal bankruptcy judge dismisses the case under a **12(b)(6)** motion and vacate the judgment in light of the **Rooker-Feldman Doctrine?**
4. Should a Plaintiff in a case that had been removed to federal bankruptcy court be notified of a pending hearing and, if the case is appealed, tell the district court judge when asked that an appellant has filed a motion to

proceed in forma pauperis when they have received a copy of the motion and entered it on their docket?

5. Should a circuit court dismiss an appeal and sanction an appellant without consideration of the merits of a case and without proper consideration of the in forma pauperis motion because the bankruptcy court issued a questionable vexatious litigant sanction?

II PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Petitioner William Paul Burch, and Respondent Homeward Residential, Inc..

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 (SCOTUS 22-5254) 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 22-5228) 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

This case highlights the need for an impartial judiciary and notifications with an eye on the bankruptcy courts. along with a need to what court should determine if a case can be removed, time limit for removal, and to where it should be removed.

II. PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT..... iii

III. STATEMENT OF RELATED PROCEEDINGS.....iii

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 2

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED. 2

XI. STATEMENT OF THE CASE. 13

XII. REASONS FOR GRANTING THE PETITION. 20

XIII. CONCLUSION 39

V. TABLE OF APPENDIX

APPENDIX A	United States Court of Appeals for the Fifth Circuit Rehearing Denied, Filed May 31, 2022,	App. A
APPENDIX B	United States Court of Appeals for the Fifth Circuit Opinion, Filed April 29, 2022,	App. B
APPENDIX C	United States District Court for the Northern District of Texas Order, Filed December 18, 2020	App. C
APPENDIX D	United States Bankruptcy Court for the Northern District of Texas Order granting Motion to Vacate Judgment and Order to Dismiss Filed October 27,2020	App. D
APPENDIX E	United States Bankruptcy Court for the Northern District of Texas Order Denying Motion to Recuse Filed September 4, 2020	App E
APPENDIX F	11 U.S. Code § 105	App. F
APPENDIX G	11 U.S. Code § 1141	App. G
APPENDIX H	22 Tex. Admin. Code § 157.4	App. H
APPENDIX I	28 U.S. Code § 1446	App. I
APPENDIX J	FRCP Rule 4	App. J
APPENDIX K	TBCC 3.501	App. K
APPENDIX L	TBCC 26	App. L
APPENDIX M	TCPRC CHAPTER 11	App. M
APPENDIX N	TRCP Rule 145	App. N

APPENDIX O 28 U.S. Code § 1442 . . . . . App. O

APPENDIX P Texas Second District Court of Appeals Order Filed January 23, 2020.. . . . . .App. P

APPENDIX Q Texas 348th District Court Order filed May 13, 2020.....App Q

VI. TABLE OF AUTHORITIES

Cases

Ahern Enterprises, Inc,,.....15

Airadigm Communications, Inc. v. FCC 16

Anders v. California.....21

Atlantic Coast Line R. Co. v. Locomotive Engineers.....33

Bankr. D. Del.....16

Bankr. E.D. Pa.....17

Barshop v. Medina County Underground Water Conservation Dist,.....19

Be-Mac Transport Co.....16

Brown v. Demco, Inc.....24

Burch v. Freedom Mortg. Corp.....34

Caldwell v. Barnes.....34

Calendar.....23

Campbell v. Wilder.....20

Caterpillar v. Williams.....29

Coleman v. Thompson.....28

Chicago & N.W. Ry. v. Whitton's Administrator 25

District of Columbia Court of Appeals v. Feldman, 460 U. S. 462, 482 (1983).....33

Elixir Indus., Inc. v. City Bank & Trust Co.....15

Exide Techs. v. Enersys Delaware, Inc.....16

Exxon Mobil Corp. v. Saudi Basic Industries Corp.....32

FDIC v. Union Entities.....16

Georgia v. Rachel.....27

City of Greenwood v. Peacock.....27

Hart & Wechsler (6th ed.), supra at 396–398. 24

International Primate Protection League v. Tulane Educ. Fund.....27

Johnson v. Mississippi.....27

Martin v. Hunter's Lessee.....25

Maryland v. Soper.....27

Mayor v. Cooper.....25

Mesa v. California.....27

The Moses Taylor.....25

Murphy Brothers, Inc. v. Michetti Pipe Stringing, In.....23

Neitzke v. Williams.....21

Omega Optical, Inc.....16

Penrod.....17

Peralta v. Heights Medical Center, Inc.....34

Rogers v. Richmond.....38

Rooker-Feldman..... 32,33

Rooker v. Fidelity Trust Co.....33

Tennessee v. Davis.....25

Villanueva.....19

Willingham v. Morgan.....24,27

CONSTITUTIONAL PROVISIONS:

TEX. CONST. art. I, § 13.....2,19

TEX. CONST. art. I, § 19.....2,19

U.S.CONST ARTICLE ONE **Section 9, Clause 3**, ...2,35

U.S.CONST ARTICLE THREE.....2,24,30,32,35

U.S.CONST ARTICLE FOUR 3,30,35

U.S.CONST ARTICLE SIX.....20, 37

U.S.CONST FIRST AMENDMENT.....4,35,37,38

U.S.CONST FIFTH AMENDMENT.....4,35,38

U.S.CONST TENTH AMENDMENT.....5,35

U.S.CONST FOURTEENTH AMENDMENT.....5,30

STATUTES AND RULES

11 U.S.C. § 105.....ADDENDUM F,34,35

11 U.S. Code § 1141.....ADDENDUM G,15,16

22 Tex. Admin. Code § 157.4.....ADDENDUM H,23

28 U. S. C. § 157.....6,31

28 U. S. C. § 1254(1).....2

28 U. S. C. § 1257.....7,28,33

28 U.S.C. § 1334.....,,.7,27

28 U.S.C. § 1441.....8,24,25

28 U.S.C. § 1442.....ADDENDUM O,24

28 U.S.C. § 1443.....,,9,25

28 U.S.C. § 1446..... ..... ADDENDUM I,23,24

28 U.S.C. § 1452.....,,.9,27

28 U.S.C. § 1651.....10,34,35

FEDERALIST NO.33.....20

FEDERALIST NO.78.....21

FRBP Rule 7012.....10,31

FRBP Rule 7016.....11,31

FBRP 9027(a).....11,23,30

FRCP Rule 12(b)(6).....12,32

FRCP Rule 4..... ADDENDUM K, 22

Judiciary Act of 1789.....13,24,26

Judiciary Act of 1875 18 Stat. 470 (1875).....6, 24,25

TBCC 3.501..... .....ADDENDUM K,17

TBCC 26..... ADDENDUM L,16

TCPRC CHAPTER 11..... ADDENDUM M,36

TRCP Rule 145..... ADDENDUM N,19

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 merits have never been addressed beyond the Texas District Court

The opinion of the United States Court of Appeals for the Fifth Circuit to review the in forma pauperis motion appears at App. A in the appendix to this petition and is unpublished.

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

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

The opinion of the Texas Second District Court of Appeals appears at App. D and is unpublished.

The Order and Judgment of the Texas 348th District Court appears at App. E and is unpublished.

IX. JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on April 27, 2022, and a copy of the order denying rehearing appears at Appendix 1.

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

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Tex. Const. Article 1 Sec 13 provides:

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

Tex. Const. Article 1 Sec 19 provides:

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

U.S. CONST ARTICLE ONE SECTION 9, CLAUSE 3 provides:

> No bill of attainder or ex post facto Law shall be passed.

U.S. CONST ARTICLE THREE provides:

> **Section 1:** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2 : The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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

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

U.S. CONST ARTICLE FOUR provides

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

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

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

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation

therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

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

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

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

U.S. CONST 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 offense 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.

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

(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. § 1257 provides:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U. S. C. § 1334 provides:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with

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.

JUDICIARY ACT OF 1875 18 Stat. 470 (1875) provides:

An Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes",[1] it granted the U.S. circuit courts the jurisdiction to hear all cases arising under the United States Constitution and the laws of the United States, as long as the matter in dispute was worth more than $500. The statute also made it possible for plaintiffs and defendants in cases before state courts to remove a case to a U.S. circuit court whenever the matter involved a question of federal law or if any members of the parties were from different states. By establishing the full federal jurisdiction permitted by the Constitution, the act of 1875 fundamentally changed the role of the federal courts through the most sweeping extension of judicial power since the short-lived Judiciary Act of 1801.

11 U.S.C. § 105 (ADDENDUM F)

11 U.S. Code § 1141 (ADDENDUM G)

22 Tex. Admin. Code § 157.4 (ADDENDUM H)

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.

respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

28 U.S.C. § 1441 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(ADDENDUM O)

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 I)

28 U. S. C. § 1452 provides:

(a)A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b)The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. § 1651 provides:

(a)The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b)An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

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 crossclaim 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 crossclaim, 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 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.

FRCP Rule 4 (ADDENDUM)

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 3.501 (ADDENDUM K)

TBCC 26 (ADDENDUM L)

TCPRC CHAPTER 11 (ADDENDUM M)

TRCP Rule 145 (ADDENDUM N)

XI. STATEMENT OF THE CASE

This case involves two houses, each of which were purchased for cash from HUD and were subsequently renovated for cash. One property is located at 400 Falling Leaves (hereinafter known as "Falling Leaves"), Duncanville, Texas and was purchased on October 6, 2005. The other property is located at 420 Georgetown (hereinafter referred to as "Georgetown"), Everman, Texas 76140 and was purchased on February 24, 2006. On March 24, 2006, Petitioner, William Paul Burch (hereinafter "Burch") obtained a business loan from American Brokers Conduit (ABC), a subsidiary of American Home Mortgage (AHM), using Georgetown as collateral. On March 30, 2006, Burch obtained another loan for his business through ABC using Falling Leaves as collateral.

In August 2008 American Home Mortgage was acquired by AH Mortgage Acquisitions (AHMA) headquartered at 4600 Regent Blvd, Irving, TX 75063. AHMA called Burch in August 2008 to tell him that the mortgages on his properties were underwater and he had to either pay the difference, do a short sell of the property to the mortgage company, or file for bankruptcy. If none of these were done, even though Burch was up to date on his business loan payments, AHMA would foreclose on the property. Burch was told that the same would apply to all 22 properties owned by Burch. Burch did not know about the restrictions keeping lenders from foreclosing on underwater loans in Texas.

During the "Great Recession" in December 2008, Burch filed for a Chapter 11 business bankruptcy due to his twenty-two properties decreasing in value below the loan balance owed.

In April of 2009, AHMA filed for a "Relief of stay" from the Bankruptcy Court. Burch's attorney did not contest the for unknown reasons, so the "relief of stay" was granted by the court. In May 2009 Burch was notified by AHMA of their intent to foreclose the first Tuesday in June 2009. Burch contacted his attorney who contacted the AHMA attorney. The AHMA attorney verbally guaranteed Burch's attorney that he would pull the foreclosure. He did not pull it and the property was foreclosed on. The property was rented by a wounded Iraq war Marine who was reassigned to recruiting in Fort Worth.

Burch's attorney contacted the AHMA attorney. An agreement was reached, as evidenced in the bankruptcy plan, that AHMA would vote for the plan and return the property and Burch would surrender the Falling Leaves property to them. Burch gave AHMA the Falling Leaves property, but AHMA never returned the Georgetown property to Burch.

In December 2009, the Chapter 11 business bankruptcy plan was confirmed pursuant to **11 U.S. Code § 1141.** In Paragraph 5.5 on page 12 of the Bankruptcy Plan called for a new loan with new terms in the amount of $59,500 for Georgetown and the surrender of the Falling Leaves property. Also, in paragraph 5.7 on page 13 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 Georgetown 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, the **Texas Business and Commerce Code 26 "Statute of Frauds" Section 26.01 and Section 26.02.** becomes active, 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.

After AHM collected on the private mortgage insurance (PMI), AHM changed its name to Homeward Residential, Inc. (HRI) and bought back the note from the insurance company for a large discount. This was told to Burch by Ann of Kondaur Capital. Kondaur Capital had bought two of Burch's loans (Ira St and Shady Grove St.) for ten cents on the dollar and offered them to Burch at twenty cents on the

dollar. The "New Mortgage Note" was never written. Burch sent a letter regarding the new terms and the bankruptcy plan number accompanying his payment. By not crediting the payments and instead returning the payments claiming the old note was the one in effect HRI never acknowledged the new note as being valid.

Burch sent HRI a presentment letter as required under Texas Business and Commerce Code 3.501 (**TBCC 3.501**), demanding performance under the court ordered bankruptcy plan or the lien would be voided. As of April 1, 2011, these properties were legally 100% owned by Burch due to the failure of HRI to perform.

In December 2012 Burch again filed for bankruptcy because Nationstar Mortgage, who had just acquired Aurora Bank (formerly a division of Lehman Brothers), said they would not comply with the bankruptcy plan and wanted Burch's homestead turned over to them.

On April 4, 2019, Burch filed a petition in the 348th 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 348-307179-19. The service was completed on April 9, 2019.

On May 10, 2019, a default judgment (**Addendum Q**) was issued after extensive questioning and examination of all paperwork by Texas District Judge Michael Wallach. This judge has never been overturned. In fact, Texas Governor Abbott appointed Judge Wallach to the Texas Second District Court of Appeals to replace Judge Pittman who had been appointed to the Federal District Court.

On November 6, 2019, four months after the Default Judgment was issued, HRI appealed the order to the Texas Second District Court of Appeals as case number 02-19-00413-CV. On January 23, 2020, the Appeals Court dismissed the HRI Appeal. (**Addendum P**)

On August 27, 2020, HRI removed/appealed the ruling to the Federal Bankruptcy Court, Judge Mark X. Mullin presiding as an advisory case number 4:20-04063-mxm. In the removal HRI claimed that Burch should have sued AHMA instead of HRI (they did not realize that AHMA had changed their name to HRI and was, therefore the same company) and that the person who signed for the summons at the front desk of the AHMA home office was not known to AHMA. Burch made a motion to remand based on the sixteen-month timespan between service and the AHMA removal/appeal as being a illegal removal based on FRBP 9027(a)(1)

A summons was given to HRI on August 28, 2020, **without notice to Burch**. Burch filed a Motion for Recusal due to bias actions of Judge Mullin that was denied on September 4, 2020 (**Addendum E**). On October 27, 2020, the bankruptcy court issued an order to vacate the default judgment and dismiss the case under Rule 12(b)(6) (**Addendum D**) stating that AHMA was the company involved, not HRI. Burch repeatedly said that AHMA changed its name to HRI and included a newspaper article about the change.

Burch was notified by the bankruptcy court on October 29, 2020, of the actions taken by the court and the defendant. Burch was never given an opportunity to respond. Burch was never served copies of the HRI motions or filings.

On November 10, 2020, Burch appealed the case to the District Court as case number 4:20-cv-01226-O, Judge Reed O'Conner presiding. Accompanying the appeal was a Motion to proceed in forma pauperis (**docket number 17**) and the Affidavit (**docket number 18**). On December 18, 2020, the district court dismissed the appeal (**Addendum C**) for failure to prosecute saying the bankruptcy court claimed that Burch had never paid the filing fee or filed a Motion to proceed in forma pauperis, **even though Burch had done so.**

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.**

On December 18, 2020 Burch filed an appeal to the Fifth Circuit Court of Appeals. At no time did HRI 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." Case dismissed April 29, 2022.

In ***Neitzke v. Williams*, 490 US 319.325 - Supreme Court 1989 (as stated in *Anders v. California*, 386 U. S. 738.744 (1967).** this court defines frivolous as an appeal on a matter of law where "[none] of the legal points [are] arguable on their merits." The Fifth Circuit denied Burch's appeal on April 29, 2022. **(Addendum B)** and sanctioned $500 because he had been sanctioned as a vexatious litigant in the bankruptcy court although it exempted appeals. Burch filed a motion for rehearing which was denied on May 31, 2022. **(Addendum A)**

XII. REASONS FOR GRANTING THE PETITION

FEDERALIST NO.33

THE GENERAL POWER OF TAXATION (Supremacy Clause)

Alexander Hamilton

But it will not follow from this doctrine that acts of the large society which are not pursuant to its constitutional powers, but which are invasions

of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation and will deserve to be treated as such.

SUPREMACY CLAUSE (**Article VI, Clause 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.

FEDERALIST NO.78

THE JUDICIAL DEPARTMENT

Alexander Hamilton

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor if the commission under which it is exercised, is void No legislative act, therefore, contrary to the constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principle; that the servant is above his master, that the representatives of the people are superior to the people themselves; thus, men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. (In other words, the judge's ruling must be based on the law and not his beliefs)

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as week as the meaning of any

particular act pro ceding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; of, in other words, the Constitution ought to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stand in opposition to that of the people, declared in the constitution, the judges ought to be governed by the latter rather than that of the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

QUESTION ONE:

"If a petition is filed in state district court and results in a default judgment and is appealed by the defendant to the state court of appeals which rules they do not have jurisdiction because the judgment is an interrogatory judgment and remands the case to the state district court for completion does the thirty-day window for removal begin when the defendant is served with the pleadings and summons or sixteen months later after a mandate is issued by the State Court of Appeals?"

HRI claims that they only received notice after a call from Burch to the HRI attorneys. However, the signature on the "certified return receipt requested card" shows otherwise. But the issue is not when HRI signed for the citation, (which contained the petition and summons) but rather when they were served. **FRCP Rule 4(e)(1)** says:

SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by :following state law for serving

> a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;

This case concerns the time within which a defendant named in a state-court action may remove the action to a federal court. The governing provision is **28 U. S. C. § 1446(b),** which specifies, in relevant part, that the removal notice "shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the [complaint]." ***Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 US 344 - Supreme Court 1999.**

Calendar **(5th Cir. Feb. 15, 2011).(**citing **Fed. Bank. R 9027(a)(3) & 28 U.S.C. § 1446(b)**" In the 5th Circuit "a defendant who does not timely assert the right to remove loses that right." ***Brown v. Demco, Inc.*, 792 F. 2d 478, 481 (5th Cir. 1986.)**

The Texas rule for service is:

> **22 Tex. Admin. Code § 157.4(b)(1)** Mailbox rule. Service by mail is complete upon deposit of the notice in a prepaid, properly addressed envelope in a post office or official depository under the care and custody of the United States Postal Service.

HRI was served four hundred and eighty-six days before they removed the case. The bankruptcy court, not having the correct knowledge of the rules for service in Texas, erred in making its ruling against Burch's Motion for Remand due to the untimely removal. But this is not the first time that the bankruptcy court has erred in this manner. Burch had twenty of his twenty-two properties removed from the

state courts to the federal courts. Of these thirteen were removed outside of the allowed time under the Federal statutes of **28 USC §§ 1441 and 1446.** That is more than sixty percent of the cases. Most, if not all, of these cases were removed directly to the bankruptcy court.

QUESTION TWO:

> "Should the decision on removal from a state court to a federal court by a defendant only be allowed by the state court judge, a federal district court judge, or any federal judge?"

Burch is not questioning the constitutionality of removal but rather who should decide if the case qualifies for removal. **Article III, Section 2, Clause 1** is the removal provision of the constitution. But it does not state who should decide if a case should be removed. **28 USC § 1441(a) says:**

> 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.

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 **Judiciary Act of 1875** conferring general federal question

[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

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 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

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[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.
[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)

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 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. 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]

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, 348th Judicial District was conducted under **28 U.S.C. §§ 1452 and 1334** which allows for cases to be removed to a federal district court. It does not allow for the removal to a bankruptcy court. What **28 U.S.C. § 1334(a)** says is:

> "Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11."

Looking at who should make the decision we must consider knowledge, judicial efficiency and economy, comity, and due process. Most bankruptcy lawyers are familiar with basic bankruptcy law as written for Chapter 7 and Chapter 13 bankruptcies. A few know about those plus chapters 11 and 12. It is very rare to find a bankruptcy lawyer with any but the most basic knowledge of real estate law. This is the pool where bankruptcy judges are drawn from. Burch has not seen a bankruptcy judge with the knowledge to properly handle an advisory case. A bankruptcy judge can play a vital roll in these cases in advising the district court on

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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).

findings of fact and conclusions of law but should be restricted from hearing a case and giving orders or judgments on advisory cases that are only related to a bankruptcy case. Further, they should never have a case removed directly to them.

Next is the federal district court judge. Here you have a court that is covered by a generalist. With the help of the staff, a judge coming from a similar judicial background in a state appeals court is capable of deciding if a case should be heard in a federal court or remanded to a state court. Here the problem is case load. Burch has experienced delays of years to get a case heard. The district courts, even when properly staffed, are overloaded with every type of case. They could see several criminal cases, bankruptcy appeals, and various other cases in the course of a week.

Finally, you have the state courts. Realizing that there is a difference between heavily populated and lightly populated areas, these judges may be specialized or generalist, but they are probably more knowledgeable of the areas of the law brought before them that any of the federal judges. In Burch's area there are civil and criminal county courts, there are civil, criminal, probate, family, and juvenal district courts, and there is a multi-county appeals court that is a generalist. These courts far outnumber the two district courts and two bankruptcy courts. They have the time and knowledge to determine by motion from the defendant if the case should be removed to the federal district court.

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 as generalist, deal with a wide range of issues making it difficult to properly address a single category such as state property laws.

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.

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. If the state court make the decision the removal can be appealed to the state appeals court or to the federal district court where the district court would have the opinion of the state court, the magistrate court, and the bankruptcy court to help the district determine jurisdiction. This would give both sides better due process, save judicial resources, and save time in most cases.

QUESTION 3

> .If a state district court judge has issued a judgment can a non-**Article III** federal bankruptcy judge dismisses the case under a **12(b)(6)** motion and vacate the judgment in light of the **Rooker-Feldman Doctrine**?

The policy underlying the **Rooker-Feldman** doctrine is based on the concept that a litigant should not be able to challenge state court orders in federal courts as a means of relitigating matters that already have been considered and decided by a court of competent jurisdiction. The **Rooker-Feldman** doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced." ***Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U. S. 280, 284 (2005**)

This Court is vested, under **28 U.S.C. §1257**, with jurisdiction over appeals from final state-court judgments. We have held that this grant of jurisdiction is exclusive: "Review of such judgments may be had only in this Court." **District of Columbia Court of Appeals v. Feldman, 460 U. S. 462, 482 (1983)** (emphasis added); see also ***Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U. S. 281, 286 (1970)** ; **Rooker v. Fidelity Trust Co., 263 U. S. 413, 416 (1923)** . Accordingly, under what has come to be known as the **Rooker-Feldman doctrine**, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments.

The **Rooker-Feldman doctrine** takes its name from the only two cases in which we have applied this rule to find that a federal district court lacked jurisdiction."

QUESTION 4

Should a Plaintiff in a case that had been removed to federal bankruptcy court be notified of a pending hearing and, if the case is appealed, tell the district court judge when asked that an appellant has filed a motion to proceed in forma pauperis when they have received a copy of the motion and entered it on their docket?

Because Burch was never notified of these proceedings, Burch lost the opportunity to defend his position. Due Process requires "notice at a meaningful time and in a meaningful manner that would have given him an opportunity to be

heard." ***Peralta v. Heights Medical Center, Inc.*, 485 US 80, 86 (1988) (Citations omitted).** "The question of service is properly resolved at trial and not by the trial court in a pretrial proceeding." ***Caldwell v. Barnes*, 154 SW 3d 93, 97 (2004)**

QUESTION 5

> **"Should a circuit court dismiss an appeal and sanction an appellant without consideration of the merits of a case and without proper consideration of the in forma pauperis motion because the bankruptcy court issued a questionable vexatious litigant sanction?"**

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

(From **Article III, Section 1 of the United States Constitution.)** In protecting his individual properties, Burch was not abusive.

A. The Bankruptcy 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. The 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)** should not apply as there were no cases involving Burch at the time of the sanction. As written this ruling is a violation of **Article Four, Section 1** of the Constitution.

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

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

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

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

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

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

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

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

Burch took action to defend his property for his heirs from the advisory cases brought against him, although Burch never filed a case pro-se in the bankruptcy court other than for the bankruptcy judge's recusal which was denied. At the time the order was issued there were no cases open in the

bankruptcy court, and, although the cases filed were on different properties, Burch is mistakenly deemed a frivolous litigant. Although there has never been a trial, though requested, Burch's motions to remand were dismissed even though the removals were made as much as sixteen months after service. The bankruptcy court resists comity and demands that any filings or motions in a state court be approved by the bankruptcy judge with the bankruptcy judge being able to withhold approval until the filing is late thus making a de facto ruling against Burch and against the state court judge's wishes.

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

> **Section (2)** "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
>
> **Section (3)** "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

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

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

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

By requiring the filing of a petition or motion in the state court, to first be approved by the bankruptcy court a burden is placed on Burch that prevents him from timely filing documents. This prevents Burch from exercising his **First Amendment** right to Freedom of Speech. Further, it prevents Burch from freely petitioning the Government for a redress of grievances. It is clear that if the merits were reviewed in court on his cases, Burch would prevail as NO defendant can or has produced a valid copy of a lien despite repeated demands from Burch. Burch has been forbidden by the bankruptcy court from discovery. This Court should understand that there were no cases in the bankruptcy court pertaining to Burch when the sua sponte **vexatious litigant** order was issued. The question is, "why would a judge declare Burch a **vexatious litigant** when there were no cases pertaining to Burch in the court and Burch never filed any adversary proceeding case in the bankruptcy court? All the cases filed were adversary proceedings filed by the defendants."

There are three parts to this that are of concern and definitely abused. Sanctions are levied due to some behavior deemed punishable. Punishments levied sua sponte by the court because Burch would not bear witness against himself is a violation of the **Fifth Amendment**, "nor shall be compelled in any criminal case to be a witness against himself"." ***Rogers v. Richmond*, 365 U. S. 534, 8*8 541.** Governments, state and federal, are thus constitutionally

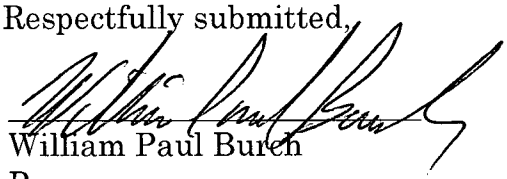
compelled to establish guilt by evidence independently and freely secured and may not by coercion prove a charge against an accused out of his own mouth." By making the order, "Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous." The Court compelled Burch to make a decision that a case is without merit and frivolous to which Burch does not agree. Especially since there is compelling evidence that Burch is correct on the merits.

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 August 2022

Respectfully submitted,



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