No. 22-5526

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
20-11057

PETITION FOR REHEARING

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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.

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,"

IV. PETITION FOR REHEARING

The original certiorari petition asked this Court to resolve three issues of first impression: (1). "Is it a violation of the United States Constitution for a federal court to accept removal of a case from state court after thirty days or can it be extended sua sponte by a non-**Article III** bankruptcy court judge or a federal district court judge? (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 **Article III** or non-**Article III** federal judge? (3) Should a circuit court dismiss an appeal and sanction an appellant without consideration of the merits of a case and without consideration of the trial court approval due to the bankruptcy court issuing a questionable vexatious litigant sanction?

The Fifth Circuit held that all Burch appeals should be dismissed. Their reason is because a bankruptcy court judge sanctioned Burch by declaring Burch a vexatious litigant. This was done without examining the merits of the cases or the merits of the vexatious litigant sanction. This means the Appellate Courts have become accessories after the fact to the illegal actions of a mortgage company taking property in defiance of multiple court orders. Allowing a biased judge to continue his biased actions of preventing sue process for a citizen (See **SCOTUS 22-5778)** as an insult to the constitution. How can a Plaintiff be declared a vexatious litigant if he never filed a case in the court? The adversary filings were by the defendants who filed removed with over sixty percent (60%) untimely and no a federal questions.

A shop lifter in Los Angeles can get away with stealing up to $900 without punishment. However, a mortgage company can steal a home valued at over $250,000 and get away with it. It is especially interesting when George Soros is involved to some extent in both crimes. In 2008 in this case George Soros, Steve Mnuchin, and Wilbur Ross (Ross) put American Home Mortgage out of business and then split up the company. Ross's portion became known as AH Mortgage Acquisition. Ross threatened to call the note on the loans having private mortgage insurance (PMI) claiming that, due to the recession, the property values were below

the loan balance (it is now against the law to foreclose on a upside down mortgage in Texas that is currently up to date on the payments). Borrowers were advised to either pay the difference, turn over the house, or file for bankruptcy. Most of these loans were either to or working-class citizens. So, even though they were current on their loans, they either lost their homes or went into bankruptcy. Over one million working-class people found themselves on the street, homeless, because of the greed of a few people. For those Ross properties that went into bankruptcy, Ross collected 100% of the loan balance from the Private Mortgage Insurance, (PMI), Ross changed the name of the company to Homeward Residential and bought the mortgage back at ten percent of balance owed. Ross then sold the mortgage to another company without telling them of the bankruptcy plan requirements. The loans were extinguished in the bankruptcy and were to be replaced within six months. The new loan was never issued thus making the loans void. (**TBCC 26**). After completing his scheme and entering the ranks of the billionaires, Ross sold the company to Ocwen Financial Corporation. However, in this case, this was not a home loan but a business loan with the property used as collateral. Unlike all the working-class people and real estate investors who had their assets taken from them Burch has taken up the fight for all of them. Unfortunately, the bankruptcy court is so biased that it forbids Burch from his rightful ownership of the property by enjoining prospective state court actions. This is prohibited in ***Newby v. Enron Corp.*, 302 F. 3d 295.298 - Court of Appeals, 5th Circuit 2002.**

V. WHY DEBTORS ARE DENIED DUE PROCESS ON APPEAL

According to the **United States Courts Statistics & Reports Table F-2**, in the twelve months ending June 30, 2022, there were **380,634** cases filed. Of that number in **Table B-1** there were only **570** original bankruptcy appeals to circuit courts out of **40,403** total appeals of all causes. These appeals include advisory cases. At the same time there were (**Table C-1**) 293,462 civil cases filed, and **18,425** appeals filed. There were (**Table D-1**) 69,466 criminal cases filed with **21,408** appeals. Considering that there are three basis for due process, life, liberty, and property, and almost all bankruptcy appeals are about property, either the **Article I** bankruptcy judges are far superior to the **Article III** district court judges or something else is going on. Apparently, appeals courts, including the Supreme Court of the United States, have little interest in hearing issues that affect **380,634** of the **743,562** cases filed in the year ending June 30, 2022. With **fifty-one percent (51%)** of case filed being bankruptcy cases yet only **one point four percent (01.4%)** of the appeals were from bankruptcy courts.

To figure this out, look at the realities of bankruptcy. Bankruptcy Courts are unique animals that, by their very nature, create an area ripe for abuse, aristocratic attitudes, and malfeasance. In a simple **Chapter 7** bankruptcy it is a matter of a balance sheet. You list your assets on one part and then your liabilities. After you subtract the liabilities from the assets anything left goes to the debtor. If there is nothing left, then you reduce the amount of money the creditors receive.

Most of the cases Burch filed were state law issues illegally removed to the bankruptcy court and accepted by a highly bias judge. This case is a textbook example of what a rouge judge can do to destroy a person for appealing cases in his court. A bankruptcy case itself is not an adversarial process. In most cases, the process consists of the bankruptcy petitioner presenting documentation and information to a bankruptcy trustee through a procedure set by the U.S. Bankruptcy Code.

Adversary proceedings require different knowledge and skills than the bankruptcy case itself. The Federal Rules of Bankruptcy Procedure govern adversary proceedings. **FRBP Rule 7001** includes a list of ten types of proceedings that must be filed as adversary proceedings. **No case** filed by Burch is included on the list, including this one.

There is a bit more to the traditional bankruptcy than that, but this is the premise. The pool that judges for the bankruptcy courts come from are bankruptcy lawyers. Most bankruptcy lawyers only handle **Chapter 7** and **Chapter 13** bankruptcy plans. It is very rare that a layer will handle a **Chapter 11** bankruptcy. Extremely few lawyers who handle bankruptcies know much about state real estate law. Sadly, even fewer know anything about appeals. There is an average of just one appeal per bankruptcy judge in the United States per year.

Because of Judge Mullins bias toward Burch, Burch had five percent of all bankruptcy court appeals in the United States in the year the appeals were filed. Of

these sixty percent were late removals from state court and all but the cases on closing Chapter 7 (**SCOTUS 22-5901**) were cases where the bankruptcy court lacked jurisdiction.

According to the almost one-hundred bankruptcy attorney's Burch talked to (Burch was appointed by the Texas Supreme Court as a Public Director of the State Bar of Texas in 2006), the reason attorneys do not want to appeal a bankruptcy case is that they have to appear in front of the judge again and they are afraid of retaliation. It is very rare that any bankruptcy case is moved to the Supreme Court of the United States, so, it is rare that a major issue is brought to the attention of this court.

The issue of bias is important when it concerns a bankruptcy judge because it usually pertains to the third leg of the **Fifth and Fourteenth Amendments** which is property. By a bankruptcy judge being or appearing to be bias regarding property, citizens are made to believe that you cannot get justice on property because it usually involves financial institutes. The debtor is normally broke at this point, having had all their money taken from them. This petition is important to the Citizens of the United States and the judiciary in that it can help in restoring confidence in the judiciary by making judges follow the constitutions of the United States and the various states as well as the rules put into law by the legislature and the Supreme Court of the United States. It will also help in reducing the opportunity of lenders and lawyers to take advantage of our citizens.

VI. ARGUMENT

The basis for rehearing of the petition for Writ of Certiorari is one additional issue. The dismissal by the Circuit Court is based on an unconstitutional ruling from a lower court.

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.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. In protecting his individual properties, Burch was not abusive.

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

B. **11 U. S. C. § 105(a)** As used by the bankruptcy court and as written, this rule is a violation of the **United States Constitution First Amendment** in that

it prevents the free exercise of free speech. It stops Burch from speaking on behalf of his cases without prior approval. This is also in violation of the **Fifth Amendment** in that it has deprived Burch of his property in this case. Additionally, Burch was prevented from using his Due Process rights in cases in the state courts and federal courts. As written this ruling is a violation of the **Tenth Amendment** in that it allows a bankruptcy judge to write laws and rule on them as he sees fit.

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

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

It allows a bankruptcy judge to 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 attorney's. 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. Although there has never been a trial, though requested, Burch's motions to remand were judged to be without merit even though the removals were made as much as sixteen months after service. 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 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 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 bankruptcy court from discovery. Burch never filed any

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 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 has ruled that it was not the amount of income that determined if a case should proceed in forma pauperis but rather the cash flow of the litigant. Therefor this panel has ruled against the Fifth Circuit ruling that clearly covers this issue. At $4.00 per month extra it is obvious that Burch cannot pay the approximately $10,000 in filing fee in the circuit, $6,000 in district appeals court filing fees.

H. Sixth Amendment:

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

This case was one in which Freedom Mortgage filed the Motion for Vexatious Litigant as part of the Burch v. Chase Bank case. Burch won that case, but the bankruptcy judge then turned around and sua sponte sanctioned Burch. Burch won the Vexatious Litigant case he was prepared for but the surprise sua sponte ruling was unfair because he was confronted with witnesses against him (the defense lawyers) and he was not allowed the compulsory process of obtaining favorable witnesses.

I. **Ninth Amendment**:

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

The Federalists contended that a bill of rights was unnecessary. They responded to those opposing ratification of the Constitution because of the lack of a declaration of fundamental rights by arguing that, inasmuch as it would be impossible to list all rights, it would be dangerous to list some and thereby lend support to the argument that government was unrestrained as to those rights not listed. Madison adverted to this argument in presenting his proposed amendments to the House of Representatives. "It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government and were consequently insecure. This is one of the most plausible

arguments I have ever heard against the admission of a bill of rights into this system; but I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution." It is clear from its text and from Madison's statement that the Amendment states but a rule of construction, making clear that a **Bill of Rights** might not by implication be taken to increase the powers of the national government in areas not enumerated, and that it does not contain within itself any guarantee of a right or a proscription of an infringement

By requiring that any motion or filing be approved by the bankruptcy judge, even in a state court, 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. Citizens who have been diligent in making their payments, even in the difficult times of a recession, are being preyed upon by the men in the black hats. Can the court really sit back while these black hat thieves rob from the poor to make themselves billionaires. Burch has nothing against billionaires, but he does have something against someone defying the law with the

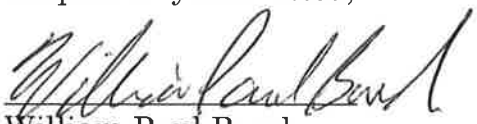
help of lawyers and judges so that he can become wealthy. At what point is the court going to sit up and take notice of what is going on in these bankruptcy courts. Are you going to continue to add to the homeless population by taking homes from people who are making their payments? Are you going to put a stop to investors who are actually providing a service to the real estate industry and are making their payments? Are you really going to allow someone a free pass to take property where they have no loan? This is not the America I grew up in. 570 bankruptcy appeals in the year ending June 2021 yet not even a nod by SCOTUS. 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 348th 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 21st day of November 2022

Respectfully submitted,



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HOMEWARD RESIDENTIAL, INC
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.

Executed on November 21, 2022

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PROOF OF SERVICE

I, William Paul Burch, do swear or declare that on this date, November 21, 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.

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

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