No. 22-5778 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH
PETITIONER

v.

America's Servicing Company; Homeward Residential, Incorporated; Ocwen Loan Servicing; Select Portfolio Servicing; Wells Fargo; Areya Holder; Bank of America; Chase Bank of Texas; Federal National Management Association; Seterus, Incorporated; Freedom Mortgage Corporation; Hughes, Watters & Askanase, L.L.P.; Loan Care Servicing Center; Rushmore Loan Management Services, L.L.C.; WL Ross and Company, L.L.C.

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE FIFTH CIRCUIT
22-11132

PETITION FOR WRIT OF CERTIORARI

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October 1, 2022

I. QUESTION(S) PRESENTED

1. If a judge continuously refuses to recuse himself following an extreme amount of verifiable bias should another judge in a close, but separate division, be appointed to determine the correct path for the litigation
2. Should a Circuit Court reverse orders, including horrendous sanctions on multiple cases, that are based on an unconstitutional ruling by a bias judge?
3. Should a judge be recused if he shows bias and refuses to follow the law and give a litigant due process resulting in the loss of property?

II PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Petitioner William Paul Burch, and Respondents America's Servicing Company; Homeward Residential, Incorporated; Ocwen Loan Servicing; Select Portfolio Servicing; Wells Fargo; Areya Holder; Bank of America; Chase Bank of Texas; Federal National Management Association; Seterus, Incorporated; Freedom Mortgage Corporation; Hughes, Watters & Askanase, L.L.P.; Loan Care Servicing Center; Rushmore Loan Management Services, L.L.C.; WL Ross and Company, L.L.C.. These were added and the true respondent, Judge Mark X. Mullin removed for unknown reasons in Fifth Circuit

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 and the Supreme Court of the United.

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***, (SCOTUS 22-5425) $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***, (SCOTUS 22-5526) $500 Sanction

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

20-11074 ***Burch v America's Servicing Company***, dismissed November 12, 2021, $100 Sanction

20-11106 ***Burch v Mark X. Mullin***, (SCOTUS 22-5254) $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, (SCOTUS 22-5428) $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

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VII. PETITION FOR WRIT OF CERTIORARI

William Burch, a resident of Grand Prairie, Texas as a pro-se litigant respectfully petitions this court for a writ of certiorari to review the judgment of the Fifth Circuit Court of Appeals.

VIII. OPINIONS

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

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

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

The immunity opinion of the U S Bankruptcy Court for the Northern District of Texas appears at App. I and is unknown if published but can be googled.

The Rule 144 opinion of the U. S. Bankruptcy Court for the Northern District of Texas appears at App. J and is unknown if published but can be googled.

The Vexatious Litigant opinion of the U. S. Bankruptcy Court for the Northern District of Texas appears at App. M and is unknown if published but can be googled

IX. STATEMENT OF JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on May 2, 2022, and a copy of the order denying rehearing appears at **APPENDIX A.** The jurisdiction of this Court is invoked under **28 U. S. C. § 1254(1).**

Code of Conduct for United States Judges.

CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TBCC 3.501 Appendix Q

TBCC 26, Texas Business and Commerce Code Title 3 Insolvency, Fraudulent, and Fraud, Chapter 26 Appendix O

Texas Civil Practice & Remedies Code CHAPTER 11. Appendix P

TEXAS CONSTITUTION ARTICLE 16, SECTION 50 (C) provides

> No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

U.S. Constitution Article One, Section 9, Clause 3 provides:

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

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

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

U.S. CONST Article Four Appendix X

U.S. CONST Article 6 sections 2 & 3 provides:

> **Section (2)** "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made,

under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Section (3) "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

U.S. Const. FIRST AMENDMENT provides:

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

U.S. Const. FIFTH AMENDMENT provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST TENTH AMENDMENT provides

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. CONST FOURTEENTH AMENDMENT Appendix R

11 U. S. C. § 105(a) **Appendix** S

11 U. S. C. § 9027 **Appendix** T

18 U. S. C. § 241 provides

> If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--
>
> They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U. S. C. § 242 provides

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to

kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

28 U.S. Code § 144 provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S. Code § 455 **Appendix** U

28 U. S. C. § 1254(1) provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1)By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. § 1651(a) 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.

28 U.S.C. § 1915 **Appendix** V

42 U. S. C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within

> the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

FRBP Rule 7001 **Appendix** W

ERIE DOCTRINE **Appendix X**

XI. STATEMENT OF THE CASE

The specific issue, recusal, is the end result of a long saga that began with the first bankruptcy filing in 2008 during the "Great Recession". This was a Chapter 11 filing (**Case number 08-45762-rfn-11**) by Petitioner, William Paul Burch (Burch), and his wife, Juanita Burch. At the time the Burch's owned twenty-one investment properties in their real estate flipping business plus their homestead. The reason for the bankruptcy was that one of the lenders notified Burch that due to the recession, the values on his real estate had dropped in value and Burch needed to either pay the difference between the property value and the loan balance or they would foreclose on the property unless the Burch's filed for bankruptcy. Investment loans could not be modified at that time.

The Burch's filed for bankruptcy with the provision that the short-term notes would be replaced by thirty-year notes. The new notes were to be given to Burch

within six months so that they could sell the houses. Their homestead note was to continue in place. The plan was confirmed on December 9, 2009. (**APPENDIX F**)

Because the plan extinguished the loans (***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), a new loan was required with Burch paying the new note amount in the interim. Burch made his payment, noting the terms and the bankruptcy case number. However, the mortgage companies for the investment properties returned the payments writing that the payment did not match the loan terms. The mortgage companies did not recognize the bankruptcy plan and new loan needs even though they had agreed to it and Burch included the information with his payment. Many months went by before Burch was advised to send the mortgage companies a presentment letter as required in Texas Business and Commerce Code 3.501 (**TBCC 3.501)**

Soon afterwards nine of the properties entered foreclosure. Burch began legal action. In the bankruptcy plan portion on the Burch homestead (**paragraph 5.7 of APPEDIX F**) Burch was not required to pay an escrow because he had a blanket insurance policy on his real estate. The lender, Aurora Bank (Aurora) insisted on the escrow payment, so Burch paid the escrow and sent them a presentment letter to follow the plan. Aurora refunded the overpayment ($12,449.35) but immediately was merged with Nationstar Mortgage Holdings, Inc. Nationstar wanted Burch to return the refund, plus pay the current year and one additional year or they would foreclose on the house.

To save his homestead Burch entered a second bankruptcy on December 9, 2012. Burch wanted to reopen the first bankruptcy, but his lawyer insisted on a Chapter 13 saying that it would be faster and cost less. After four years of waiting, the Chapter 13 Trustee said that the estate was too large for a Chapter 13 and the plan was converted to a Chapter 11.

The new plan (12-46959-mxm-11) (**APPENDIX G**) was approved on February 1, 2016. The plan had some special requirements due to the problems with the mortgage companies in the first plan. It should be noted that because Burch had never signed the Mortgage Note or the Deed of Trust, his homestead lien was void (**Texas Constitution Article 16, Section 50(c)**). Because the lenders never replaced the loan on the investment properties and were sent a presentment letter, the liens on the investment properties were void per **TBCC 26.2**. The Constitution and the Texas statute are not debatable and in ***Wood v. HSBC BANK USA, NA,* 505 SW 3d 542 - Tex: Supreme Court 2016** it is written, "**Article XVI, section 50** of the Texas Constitution has long protected the homestead, strictly limiting the types of loans that may be secured by a homestead lien. Historically, constitutionally noncompliant homestead liens were absolutely void." See, e.g., ***Tex. Land & Loan Co. v. Blalock*, 76 Tex. 85, 13 S.W. 12, 13 (1890)** (holding that borrowers' misrepresentation of homestead status of land securing debt did not "enable parties to evade the law, and incumber [sic] homesteads with liens forbidden by the constitution"); ***Inge v. Cain*, 65 Tex. 75, 79 (1885);** see also

***LaSalle Bank Nat'l Ass'n v. White*, 246 S.W.3d 616, 620 (Tex.2007)** (acknowledging invalidation of noncompliant lien, but recognizing right to equitable subrogation). What the Constitution forbids cannot be evaded even by agreement of the parties, ***Tex. Land & Loan Co.*, 13 S.W. at 13**, and what is "never valid is always void," ***Inge*, 65 Tex. at 80;** see also ***Laster v. First Huntsville Props. Co.*, 826 S.W.2d 125, 130 (Tex. 1991)** ("A mortgage or lien that is void because it was illegally levied against homestead property can never have any effect, even after the property is no longer impressed with the homestead character.").

The plan called for there to be a six-month period for Burch to sell the properties without any payments being due. Again, based on the universally used Fifth Circuit ruling 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. All the cases met this criterion. So, the previously voided liens were again voided. Essentially the money was, at best, unsecured.

Because all the litigation had to be halted with the filing of this bankruptcy, Burch understood that he could pick up on the lawsuits once the bankruptcy was completed. Burch was losing between $40,000 and $60,000 per year per property ($800,000 and $1,200,000) by not being able to flip them so he was anxious to get things started.

Burch sold almost all the properties to his tenants but could not close on them. The lenders would not timely send the payoffs or what they sent was wrong to the extent that the lenders added fees of fifty percent or more in defiance of the court ordered bankruptcy plan. Burch filed a Motion to Comply as it became clear that the lenders were trying to delay until after the six month sells period had passed (**APPENDIX G**).

ACTIONS THAT REQUIRE RECUSAL

> **28 U.S. Code § 455 (a)** Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

The problems began when Burch was within a few weeks of completing the Chapter 11 plan, two and one-half years early. All properties were without liens and Burch was weeks away from filing to Quiet Title on the properties as well as sue on those properties that had been sold or foreclosed illegally.

As a means of preventing this, Michael Weems (Weems), representing five properties, filed for a motion to convert the case from a chapter 11 plan to a chapter 7 plan. This would have all of Burch's property taken away from Burch and entered into the Bankruptcy Estate. Although Weems only had one property left unsold and one sold but not closed, Weems refused to back away even though with the closing and money from another sale, Burch had agreed to pay off the final Weems represented property. Weems had no way of winning by telling the truth, so he and his partner in this venture, Mark Stout (Stout), pushed forward with their Motion to convert the plan from a chapter 11 to a chapter 7 plan. This was accomplished by

intentionally false wording of statutes and prior rulings. **(APPENDIX H).** There were questions regarding when the payments were to start based on the plan and the motion to compel. The plan went into effect in February 2016. With the extension and the one year no payment foreclosure period, there were no payments actually due until February of 2018.

Because of the lies and misrepresentations told by Weems and Stout, costing Burch millions of dollars and leaving him in poverty, Burch filed suit on September 25, 2018, against Weems, Stout, the law firm for Weems (HWA) and the mortgage company. The defendants removed the case to the bankruptcy court. Burch filed a Motion to Recuse Judge Mullin due to his position in the case. Judge Mullin denied the Motion to Recuse. The **judge then granted the defendants immunity**. **(APPENDIX I)**

Burch filed lawsuits in state court for Quiet title on his properties to have the liens removed or to have the value of the property paid to Burch.

Fourteen cases were removed out of time and accepted by the bankruptcy court in violation of **11 U.S. Code § 9027.**

Twenty cases were removed to him in violation of 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.

Additional issues are refusal to allow discovery, allowing the other side to have an opening statement but not Burch, and giving orders on adversary cases removed to the bankruptcy court from state court where the two sides did not agree to have the bankruptcy judge do more than findings of fact and conclusions of law.

Burch put forth a second motion for recusal (**this case**) that was answered with a sua sponte vexatious order. The judge proclaimed that the vexatious litigant order was because "Michael Weems and Mark Stout were upset". This was years after the immunity order and how would Judge Mullin know how Michael Weems of Houston felt without an ex parte conversation. Juanita Burch filed a lawsuit on one of the properties to stop a foreclosure where there was no valid lien. The case was removes to the bankruptcy court where she was not a debtor. The judge added Burch to the case and without authority to give orders per **11 U.S. Code § 9027,** made Juanita Burch a vexatious litigant and dismissed the case per rule 12(b)(6).

Burch filed a **Rule 144** recusal motion on December 10, 2020, because the judge refused to recuse himself. Burch believed that if another judge looked at the case it would be reversed in his favor. According to the Court Coordination for Chief Judge Harlin D. Hale, the Chief Judge did not know what to do with this motion to recuse and asked Judge Mullin what to do with it. Judge Mullin said, "give it to me and I will take care of it". Judge Mullin then took the case back to his chambers where he dismissed it on February 2, 2021. The Judge had no jurisdiction in a **28**

U.S. Code § 144 motion to do anything other than certify the affidavit. (**APPENDIX J**) It requires another judge to look at the evidence and make the decision. Burch filed for reconsideration which was denied on September 4, 2020.

Burch appealed to the district court with Judge Mark Pittman presiding who denied the appeal on December 3, 2021. (**APPENDIX J**) Judge Pittman failed to understand that another judge was to be assigned to hear the case because Judge Mullin had no jurisdiction.

Burch appealed the case to the Fifth Circuit Court of Appeals on December 31, 2021. The Fifth Circuit denied the appeal on May 6, 2022, and the motion for rehearing on because Burch had been designated a vexatious litigant. The vexatious sanction was one of the examples of bias. The Motion for Recusal which is the basis for this appeal was the catalyst for the vexatious litigant sanction which was the basis for the dismissal and sanction on this case. A clear round robin.

On June 18, 2021, The Fifth Circuit dismissed case number 19-11197 loosely based on the vexatious litigant ruling of the bankruptcy court. This began a stampede of cases being dismissed based on this order and the unconstitutional vexatious litigant designation. The following cases have been dismissed using this order and the amount of their sanction:

19-11197 Burch v Freedom Mortgage Corp., Dismissed June 16, 2021

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

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

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

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

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

20-11074 Burch v America's Servicing Company, dismissed November 12, 2021, $100 Sanction

20-11106 Burch v Mark X. Mullin, dismissed May 2, 2022 $500 Sanction **(Appendix A and B)**

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

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

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

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

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

On July 14, 2022, this cases on vexatious litigant was dismissed and Burch was sanctioned $500 because he had been sanctioned as a vexatious litigant in the bankruptcy court which is what this case is about.

XII. REASONS FOR GRANTING THE PETITION

STATEMENT OF JURISPRUDENTIAL IMPORTANCE

Therapeutic jurisprudence (**TJ**) studies law as a social force (or agent) which inevitably gives rise to unintended consequences, which may be either beneficial (therapeutic) or harmful (anti-therapeutic). It envisions lawyers practicing with an ethic of care and heightened interpersonal skills, who value the psychological

wellbeing of their clients as well as their legal rights and interests, and to actively seek to prevent legal problems through creative drafting and problem-solving approaches. In this case anti-therapeutic jurisprudence due to the actions of the Judge Mullin cost Burch millions of dollars in assets and all his income. Judge Mullin refused to follow the first bankruptcy plan and worked to prevent Burch from keeping his properties even though the liens were void. Judge Mullin then allowed the creditors representatives to lie in court so they could change to a chapter 7 plan, thus stripping Burch of his assets and income. He granted them immunity for their actions and were the basis for Burch and separately Juanita Burch to be sua sponte declared vexatious litigants without either having filed a case pro-se in the court. He refused to allow any consideration of the merits on any of the cases and set things up so that no appeals court would hear a case on the merits. The actions of Judge Mark X. Mullin are the definition of anti-therapeutic jurisdiction and the basis of all subsequent legal actions by Burch. In North Texas the actions of Judge Mullin have a established a degree of fear of the bankruptcy process that should never have occurred.

REASONS FOR FEAR OF THE JUDICIARY IN BANKRUPTCY

Bankruptcy Courts are unique animals that, by their very nature, create an area ripe for abuse, aristocratic attitudes, and malfeasance. In a simple bankruptcy it is a simple 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 advisory cases. 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.

However, in some bankruptcy cases, an issue or dispute arises that requires resolution by the bankruptcy court. A creditor, the trustee, or the debtor may raise the issue by filing an adversary proceeding with the bankruptcy court. The court resolves the dispute as a separate action within the bankruptcy case. The underlying bankruptcy case does not close until the adversary proceeding ends with settlement or a court decision.

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 Burch's proceeding is included on the list.

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.

In the twelve months ending June 30, 2022, there were 380,634 bankruptcies. Of that number only 4,429 were Chapter 11 filings. Extremely few lawyers who handle bankruptcies know much about state real estate law. Sadly, even fewer know anything about appeals. In fact, during this same period there were only 570 bankruptcy cases appealed to the court of appeals out of 40,403 appeals. There are 94 federal judicial districts in the United States. That means that there are an average of just 6 appeals per district per year or about 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. Of these sixty percent were out of time removals and eighty percent were cases where the bankruptcy court lacked jurisdiction.

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 one of the three legs of the United States Constitution (life, liberty, and property) which is property. By being or appearing to be bias regarding property by a bankruptcy judge leads citizens to believe that you cannot get a fair shake on property because it usually involves large mortgage companies or banks. The debtor is normally broke at this point, having had all his money removed from him. 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 rules as established by the constitutions of the United States and the various states, and it will help in reducing the opportunity of lenders and lawyers to take advantage of our citizens.

QUESTION 1: "If a judge continuously refuses to recuse himself following an extreme amount of verifiable bias should another judge in a close, but separate division, be appointed to determine the correct path for the litigation"?

Burch asked Judge Mullin to recuse himself from the hearing on Michael Weems and Mark Stout (Adversary No: 18-04176-mxm) because Judge Mullin had ruled to convert the case from a chapter 11 to a chapter 7 against Burch's wishes. The ruling was based on the lies of the defendants. Burch reasoned that it would be difficult to rule against the defendants by Judge Mullin since he was the one who was dupped by the untruths written and stated by the defendants. Judge Mullin refused to recuse himself and instead granted the defendants immunity.

(APPENDIX I)

On July 6, 2019, Burch filed the Motion for Recusal **(APPENDIX L)** citing

(1). Improperly certifying over twenty cases as frivolous when Burch appealed his decision in an attempt to prevent Burch from pursuing justice.

(2). Taking jurisdiction when it was not allowed

(3). Altering laws by leaving out the ending that takes jurisdiction away from Mullin. (Legislating from the bench)

(4). Proceeds in cases where he does not have subject matter jurisdiction.

(5). Accepting cases that did not meet the simplest of requirements for removal from state court.

(6). Refusing to remand cases just so that he can rule against Debtor

(7). Bias in favor of the Creditors and the Trustee.

(8). Accepting untruths and rewrites from a creditors lawyer and then ruling against the Debtor.

(9). Not compelling discovery when asked to do so.

(10). Allowing Trustees lawyer to give an Opening statement while not allowing Debtor

(11). Possible ex parte communication with Freedom Mortgage's representative and either the Trustee or her lawyer.

(12). Allowing a company without standing to file into a case that had been removed from the court on appeal.

(13). As a Bankruptcy Judge, Mullin totally disregarded to Bankruptcy laws by not following the Department of Justice Handbook for Trustees on taxes.

(14). Accepting a filing on Vexatious Litigant against a person who has no cases before the Court. Juanita is in no cases currently before the court.

(15). Refusing to give Burch requested additional time to bring together his witnesses for a hearing during a pandemic.

(16). In a show of bias, Mullin granted standing to Freedom Mortgage in their Motion to declare Burch a Vexatious Litigant when Freedom had no cases pending in the court and the case they filed into was already removed through appeal to a District Court.

(17). Failure to allow Burch due process under the **United States Constitution's Fifth Amendment** over twenty times.

(18.) Failure to allow Burch time for witnesses to be set up due to the special requirements due to the covid pandemic.

In **28 U.S. Code § 455 (a)** it is written, "Any judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned and in **28 U.S. Code § 455 (b)(1)** "he shall also disqualify himself where

he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

On July 17, 2020, Judge Mullin denied the Burch Motion for Recusal (**APPENDIX E**) This was ten days after Judge Mullin had sua sponte designated Burch a vexatious litigant because Michael Weems and Mark Stout were upset. **(APPENDIX M).** This was an unconstitutional action as explained in question 2.

On February 2, 2021, (**APPENDIX N**) again asked Judge Mullin to recuse himself under **28 USC §144**. This rule requires, "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." Judge Mullin, however, met with the Chief Bankruptcy Judge, Harlin D. Hale, who, according to the court coordinator, did not know what to do with the motion. Judge Mullin, in an ex parte conversation (he was the defendant) took the motion back to his chambers and dismissed it without authority. The case was appealed to the district court. The district court judge did not know what to do (he was new) so he dismissed it based on looking at the docket sheet and deciding that there was nothing wrong. The issue on appeal was to have the case assigned to a new judge and for them to review the case, not for Judge Pittman to review the case. Even if he was to be the one to

review the case, he should have had a hearing to determine what the issues were before deciding. (**APPENDIX J**)

With this type of actions, it makes a person feel very uneasy about the judicial system in the United States. It allows bias and lack of knowledge to prevail and become the norm. The only solution would be to educate the judges on the laws where they have jurisdiction and punish those who fail to follow the laws. It should be stressed that judges should not create jurisdiction where none exists.

QUESTION 2: Should a Circuit Court reverse orders, including horrendous sanctions on multiple cases, that are based on an unconstitutional ruling by a bias judge?

In this case the Court of Appeals for the Fifth Circuit sanctioned Burch eleven times for the same action. The action they sanctioned Burch on was loosely based on the vexatious litigant order by Judge Mullin. (**APPENDIX M**) That includes this case where they sanctioned Burch $500 on an appeal of a Motion for Recusal that had resulted in a vexatious litigant designation which was used to justify this sanction. Burch was unaware as a pro-se that courts used such a round robin action to punish an appellant on cases where the merit was never heard. As shown on the Affidavit for IFP, Burch earns $4 more than his expenses. If a Court denies a legal in forma pauperis motion and declares the motion as frivolous based on another panel's ruling of another courts unconstitutional vexatious litigant order, can the courts pile on sanction fees to a total of over $5000 when the Appellant only had a surplus of $4.00 per month? Burch is almost 71 years old with

multiple illnesses so he cannot work. Of course, had Judge Mullin not taken millions of dollars from Burch in his income, retirement and assets, Burch would not have this problem. In the removed cases the defendants never challenged Burch's pauper status. In ***Campbell v. Wilder*, 487 SW 3d 146.152 - Texas 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."

1. If from the face of the complaint, it is apparent that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal in forma pauperis". ***Coppedge v. United States*, 369 US 438.446 - Supreme Court 1962,** "

2. **28 U. S. C. § 1915,** is designed to ensure that indigent litigants have meaningful access to the federal courts. ***Adkins v. E. I. DuPont de Nemours & Co.*, 335 U. S. 331, 342-343 (1948).**

3. An appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." ***Anders v. California*, 386 U. S. 738 U. S.744 (1967)**

There is currently no federal rule defining vexatious litigant and applying punishment for the sanction. Therefore, the courts have generally gone by the vexatious law for the state in which the case is originally docketed. This is not bad. It is when a judge writes their own rule by legislating from the bench, typically due to a bias against a plaintiff, that the constitution comes under attack. It is

imperative that legislating from the bench be stopped as it impeaches the integrity of all courts. This is particularly important in today's climate of social distrust.

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

The justification for dismissal of the cases listed above was based on ***Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 294 (5th Cir. 2021); *Matter of Burch*, 835 F. App'x at 749.** The ***Burch v. Freedom Mortg. Corp.*** ruling was based on the bankruptcy courts sua sponte order declaring Burch a Vexatious Litigant. The bankruptcy court made their ruling pursuant to **28 U.S.C. § 1651(a)** (The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law). **11 U. S. C. § 105(a)** The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.) of the bankruptcy code, and **the Court's inherent power** (From **Article III, Section 1 of the United States Constitution.)** In protecting his individual properties, Burch was not abusive.

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

B. **11 U. S. C. § 105(a)** As used by the bankruptcy court and as written this rule is a violation of the **United States Constitution First Amendment** in that it prevents the free exercise of free speech. It stops Burch from speaking on behalf of his cases without prior approval. It should be noted that this sanction was made at a time when there were no cases involving Burch in the bankruptcy court. This is also in violation of the **Fifth Amendment** because it has deprived Burch of his property. Additionally, Burch was prevented from using his Due Process rights in cases in the state courts and federal courts. As written this ruling is a violation of the **Tenth Amendment** in that it allows a bankruptcy judge to write laws and rule on them as he sees fit.

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

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

It does not allow a bankruptcy judge to write new laws and rule on them.

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

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

The bankruptcy court created legislation from the bench by the attributes that specifically targeted a specific person without the benefit of a trial. The basis for the vexatious sanction order was not a new case filed in the court but was based on an

apparent ex parte communication between two lawyers and the Judge. Hence the bankruptcy judge wrote in his vexatious order:

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

This statement could only occur through communication with Mr. Weems and Mr. Stout. The basis was because Burch filed suit in State Court against HWA (Weems law firm) for lying to convert a successful Chapter 11 plan that was going to close in July 2018 to an unsuccessful Chapter 7 plan that has yet to close four years later even though there are no creditors. The bankruptcy granted the defendants immunity for lying. (12-bk-46959-mxm, advisory case 18-04176-mxm).

Vexatious Litigant is not defined in Federal law but has been legislated into effect in **Texas Civil Practice & Remedies Code Chapter 11 (TCPR Ch11)**. In this case the Bankruptcy Judge legislated his own vexatious law that did not even follow the Texas Law specifically targeting Burch without the benefit of a trial.

The bankruptcy judge's legislation is based as mentioned above plus motions to remand on most of the cases. These cases are related to the bankruptcy but are only about Texas issues dealing with **Texas Business and Commerce Code 26.** The most that could have been done would be to remove the cases to the district court and then have the bankruptcy court issue findings of fact and conclusions of law as they relate to the bankruptcy law and case. A case so removed for diversity would fall under the **Erie Doctrine**. Those removed late should be remanded without a second thought. Even better would be to have the removal as a motion to the state court

judge to decide if the case should be removed. This would save all parties and the judicial system time and money and would allow for equal protection under the law.

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

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

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

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

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

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech,

> or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

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

There are three parts to this that are of concern and definitely abused. Sanctions are levied due to some behavior deemed punishable. Punishments levied sua sponte by the court because Burch would not bear witness against himself is a violation of the **Fifth Amendment**, "nor shall be compelled in any criminal case to be a witness against himself'." ***Rogers v. Richmond*, 365 U. S. 534, 8*8 541.** Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured and may not by coercion prove a charge against an accused out of his own mouth." By making the order, "Burch is once again

admonished to review any pending appeals and to withdraw any that are frivolous." The Court compelled Burch to make a decision that a case is without merit and frivolous to which Burch does not agree. Especially since there is compelling evidence that Burch is correct on the merits.

G. By demanding that any filing of petitions or motions in a state court

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

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

QUESTION THREE: Should a judge be recused if he shows bias and refuses to follow the law and give a litigant due process resulting in the loss of property?

A bias judge in his official capacity can cause much harm to an innocent citizen. As a result of his wrongful decision in converting the Chapter 11 plan to a Chapter 7 plan it is evident that the judge felt the need to cover up his actions. He never had the authority to hear most of the cases before him by Burch as they were

state court issues, and the outcome would not affect the claim allowance of the bankruptcy. **FRBP 7001** is clear in what the court can hear. Additionally, the court can only give findings of fact and conclusions **11 U. S. C. § 9027** unless the parties give permission for the court to issue orders and final judgments. Permission was never granted by Burch.

Burch has never shown any disrespect to the judge so the need for the judge to cover up his fatal decision that destroyed Burch and his family when the Chapter 11 Plan was only a few weeks from conclusion (2 ½ years ahead of time) is the only explanation that makes sense.

In the **Bankruptcy Reform Act of 1978** Congress enacted the current U.S. Bankruptcy Code, abolished the office of bankruptcy referee and established bankruptcy judgeships to serve separate bankruptcy courts in each judicial district. While these judges assumed the referees' judicial duties, the remaining administrative functions in most districts were transferred to trustees whose offices were placed under the supervision of the Department of Justice.

The unfortunate result of this act is that it has created a situation where a bankruptcy judge can do what ever he wants to do and there is little anyone will do about it. Justice to the debtor is generally denied and the debtor is thrown back into society in a state of nakedness. In this case millions of dollars were taken from Burch with hundreds of thousands of dollars paid to the trustee, her lawyers, and her support. There were no debts that were without collateral. Property was sold in strawman sales with all the equity going to the trustee. The judge sua sponte

designated Burch a vexatious litigant even though the Adversary cases were filed by the defendants, not Burch. The defendants then used the vexatious litigant designation to persuade the appeals courts to dismiss their cases against Burch even though he was 100% correct on the merits.

CIVIL RIGHTS VIOLATIONS

18 U.S.C. § 241 Conspiracy Against Rights

> This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

18. U.S.C. § 242 Deprivation of Rights Under Color of Law

> This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.
>
> This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, then those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.
>
> Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

42 U.S.C § 1983. - Civil action for deprivation of rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

"This Constitution, and the Laws of the United States [and Treaties] which shall be made in Pursuance thereof; . . . . shall be the supreme Law of the Land. +++

Supremacy Clause, Article VI, Clause 2 of the United States Constitution

When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a " minister" of his own prejudices. (**Pierson v. Ray, 386 U.S. 547,568 (1967))**

A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e. g., ***Ex parte Virginia*, 100 U.S. 339 ; 2 *Harper & James, The Law of Torts* 1642-1643 (1956).** The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function.

When the state is one of the perpetrators and violators, there can be no expectation of just, indeed any, relief from it. The State cannot cause a federal violation, and then try to prohibit litigants from seeking redress in the federal courts for those same violations (i.e. the state cannot violate our fundamental rights, and then try to have us dismissed out of federal court for seeking vindication of those rights) ' "We have long recognized that a state cannot create a transitory cause of action and at the same time destroy the fight to sue on that transitory cause of action in any court having jurisdiction", ***Tennessee Coal, Iron & R. Co. v. George*, 233 U.S. 354, 360 (1914)**' cited in ***Marshall v. Marshall* (2006).** Judges' oath of office includes the undertaking to uphold the laws and Constitution of the United States. Any Judge violating such undertakings loses jurisdiction, resulting in his orders being VOID, and he himself commits a treasonable offense against the United States.

FRAUD UPON THE COURT (By The Court)

Fraud Upon the Court is where the Judge (who is NOT the "Court") does NOT support or uphold the Judicial Machinery of the Court. The Court is an unbiased, but methodical "creature" which is governed by the Rule of Law... that is, the Rules of Civil Procedure, the Rules of Criminal Procedure and the Rules of Evidence, all which is overseen by Constitutional law. The Court can ONLY be effective, fair and "just" if it is allowed to function as the laws proscribe. The sad fact is that in MOST Courts across the country, from Federal Courts down to local Bankruptcy Courts, have judges who are violating their oath of office and are NOT

properly following these rules, (as most attorney's do NOT as well, and are usually grossly ignorant of the rules and both judges and attorneys are playing a revised legal game with their own created rules) and THIS is a Fraud upon the Court, immediately removing jurisdiction from that Court and vitiates (makes ineffective - invalidates) every decision from that point on. Any judge who does such a thing is under mandatory, non-discretionary duty to recuse himself or herself from the case, and this rarely happens unless someone can force them to do so with the evidence of violations of procedure and threat of losing half their pensions for life which is what can take place. In any case, it is illegal, and EVERY case which has had fraud involved can be re-opened AT ANY TIME, because there are no statutes of limitations on fraud.

"Fraud On The Court By An Officer Of The Court" And "Disqualification Of Judges, State and Federal Law"

1. Who is an "officer of the court?"

A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court. ***People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).**

2. What is "fraud on the court"?

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In ***Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985),*** the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." ***Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23**. The 7th Circuit further stated, "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

3. What effect does an act of "fraud upon the court" have upon the court proceeding?

"Fraud upon the court" makes void the orders and judgments of that court. "

It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. ***The People of the State of Illinois v.***

***Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934)** ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); ***Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929)** ("The maxim that fraud vitiates every transaction into which it enters ..."); In re ***Village of Willowbrook*, 37 Ill.App.2d 393 (1962)** ("It is axiomatic that fraud vitiates everything."); ***Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896)**; ***Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949)**; ***Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935).** Under Illinois and Federal law when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

4. What causes the "Disqualification of Judges?"

Federal law requires the automatic disqualification of a Federal judge under certain circumstances.

In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. ***Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).**

Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. **Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988)** (what matters is not the reality of bias or prejudice but its appearance); ***United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985)** (**Section 455(a)** "is directed against the appearance of partiality, whether or not the judge is actually biased.") (**"Section 455(a) of the Judicial Code, 28 U.S.C. §455(a)**, is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." ***Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989).** **In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972)**, the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", ***Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960)**, citing ***Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).** A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

"Recusal under **Section 455** is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." ***Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989).**

Further, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification. The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." ***Balistrieri*, at 1202**.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge.

Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law and are of no legal force or effect.

Should a judge not disqualify himself, then the judge is violation of the **FIFTH AMENDMENT** Due Process Clause of the U.S. Constitution. ***United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996)** ("The right to a tribunal free from bias or prejudice is based, not on **section 144**, but on the **Due Process Clause**)

Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce".

The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However, some judges may not follow the law.

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason and may be engaged in extortion and the interference with interstate commerce.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.

The Supreme Court of the United States has a choice on how non-**Article III** bankruptcy courts operate. They can follow the United States Constitution, the statutes as written by the United States Congress and signed into law by the United States President, and they can follow the precedence established by the Article III courts, or they can go by what they feel is right. If the latter is chosen, then our country is headed for anarchy rather than the rule of law.

Judge Mullin has brought undeserved financial and physical harm to the Burch's. There is no way for Burch to regain the years lost due to Judge Mullins

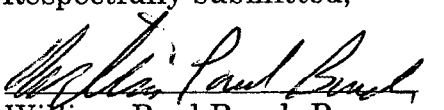
actions. Burch is leaving any punishment up to the court. What Burch wants is for Judge Mullin to be recused from this case, the case to be reassigned to a Senior District Judge in the Dallas District who would have the time to revisit the rulings by Judge Mullin in an in person hearing so that justice may, at last, be served. As seen in **Appendix C and D** only Judge Mark X Mullin was the Appellee/Defendant. The case was appealed the Fifth Circuit without a change. At some point while the case was in the Fifth Circuit Mark X. Mullin was replaced with the current respondents. Burch has no proof of what happened but considering everything else that was done it looks suspicious. The respondents are not guilty, but Judge Mark X. Mullin is guilty and should be removed.

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 1st day of October 2022

Respectfully submitted,



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