

No. 22-5778

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.

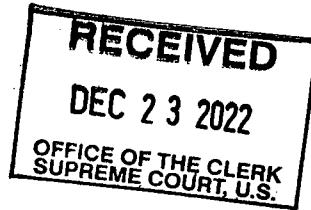
RESPONDENT

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

20-11132

PETITION FOR REHEARING

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December 19, 2022



I. TABLE OF CONTENTS

	ITEM	PAGE
'I. Table of Contents	ii
'II. Table of Attributes	ii
'III. Preamble	1
'IV. Background	2
'V. Argument	5
Argument against Fifth Circuit Ruling	6
Financial Eligibility of IFP	7
Frivolous Issues	9
Monetary sanctions and warning to withdraw any pending appeals	12
Summary	12
VI. Conclusion	13

II. TABLE OF ATTRIBUTES

	CONSTITUTION	PAGE
ARTICLE I, SECTION 9, CLAUSE 3	11
ARTICLE III	11
ARTICLE IV	11
FIFTH AMENDMENT	11, 12
TENTH AMENDMENT	12
FOURTEENTH AMENDMENT	12
TEX. CONST. art. I, § 13	12
TEX. CONST. art. I, § 19-	12

CASES	PAGE
4:20-cv-1040-P Fifth Circuit 20-11239).	..... 11
Auffant v. Paine, Webber, Jackson & Curtis, Inc., 538 F.Supp. 120, 1202 (D.P.R. 1982)	..... 8
Baugh v. Taylor, 117 F.3d 197, 202 n.24 (5th Cir. 1997);	..... 4
Burch v. America's Servicing Company (Matter of Burch), No. 20-11074, 2021 WL 5286563, (5th Cir. Nov. 12, 2021)	..... 5
Burch v. Freedom Mortg. Corp., 850 F. App'x 292, 293 (5th Cir. 2021).	..... 4
Búrch v. Select Portfolio Servicing, Inc. (Matter of Burch), No. 20-11171,	..... 5
Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).	..... 4,7,9
Cofield v. Ala. Pub. Serv. Comm'n, 936 F.2d 512, 516 (11th Cir. 1991	..... 3
Denton v. Hernandez, 504 US 25.31 - Supreme Court 1992,	..... 8
Fifth Circuit case 20-10498	..... 10
Fifth Circuit 20-11239).	..... 11
Green v. Estelle, 649 F.2d 298, 302 (5th Cir. 1981)	..... 7
Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998).	..... 10
In re Martin-Trigona, 737 F.2d 1254, 1261–62 (2d Cir. 1984), cert. denied, 474 U.S. 1061, 106 S.Ct. 807, 88 L.Ed.2d 782 (1986)	..... 3
Miller v. Donald, 541 F.3d 1091, 1096 (11th Cir. 2008)	..... 3
Neitze v. Williams, 490 U.S. 319, 325 (1989).	..... 10
Newby v. Enron Corp., 302 F. 3d 295.298 (5th Circuit 2002).	..... 11
In re Owens, 458 F. App'x 836, 838 (11th Cir. 2012) (citing id.).	..... 3
Procup v. Strickland, 792 F.2d 1069, 1073 (11th Cir. 1986)	..... 3
Prows v. Kastner, 842 F.2d 138, 140 (5th Cir. 1988).	..... 9

Williams v. Estelle, 681 F.2d 946, 947, slip op. at 3853 (5th Cir. 7
1982)

	STATUTES AND RULES	PAGE
28 U.S. Code § 455	2
28 U.S.C. § 1915	7
5th Cir. R. 42.2.	4
5th Circuit Rule 47.5	4
FRAP 12.1	4
FRAP 24	8
FRCP 62.1	4
SCOTUS Rule 44.1	1

	OTHER AUTHORITIES	PAGE
Defense of the Constitution of the United States (1787)	5

III. PREAMBLE

Pursuant to SCOTUS Rule 44.1, Petitioner William Paul Burch (Burch), respectfully requests rehearing and reconsideration of the Courts December 5, 2022, order denying the Petition for a Writ of Certiorari on the grounds of substantial intervening circumstances and substantial grounds not previously presented.

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

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 biased 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?

This petition will show how the Fifth Circuit panel failed in their duty and became complicit allowing for the trial court and the appeals court to falter in the defense of the Constitution of the United States and the State of Texas as well as numerous statutes and precedence established by the United States and Texas legislatures and courts.

IV. BACKGROUND

This case was filed in the bankruptcy court as a Motion to Recuse (Styled:

William Paul Burch

Plaintiff

Vs

Mark X. Mullin

Defendant

under the authority of 28 U.S. Code § 455 (a):

“any judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned”,

and 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.”

The bankruptcy court claimed that Burch’s challenges to the court’s jurisdiction, treatment of motions, treatment of actions by both the court, creditors representatives, and the court were in error and provable based on transcripts of hearings in the court. The transcripts make the Motion For Recusal indefensible on the merits. The case was appealed to the District Court with a Motion to Proceed in forma pauperis. (IFP).

The bankruptcy court or the district court changed the styling to:

William Paul Burch

Appellant

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.

District court denied the IFP stating:

“The right of access to the courts ‘is neither absolute nor unconditional.’” *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008) (quoting *Cofield v. Ala. Pub. Serv. Comm’n*, 936 F.2d 512, 516 (11th Cir. 1991)). “Conditions on access are necessary to preserve judicial resources for all persons.” *In re Owens*, 458 F. App’x 836, 838 (11th Cir. 2012) (citing id.). “As the Supreme Court has noted, filing fees in theory discourage frivolous lawsuits and thus help allocate judicial resources to more meritorious cases.” *Miller*, 541 F.3d at 1096. Accordingly, district courts are empowered and obligated “to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions.” *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986) (citing *In re Martin-Trigona*, 737 F.2d 1254, 1261–62 (2d Cir. 1984), cert. denied, 474 U.S. 1061, 106 S.Ct. 807, 88 L.Ed.2d 782 (1986)).”

The IFP ruling was appealed to the Fifth Circuit Court of Appeals on November 24, 2020. On May 3, 2021, Burch began receiving disability pay in the amount of \$144.10 for injuries received during the Vietnam War. Burch had not applied before because he didn’t need the money and it would have been unpatriotic to take the money when he didn’t need it. The filing fee for the appeal to the district court was \$298. As a result of receiving the additional income Burch, on June 20,

2021, filed an unopposed motion to remand the case to the district court and pay the filing fee under FRAP 12.1. On October 8, 2021, Burch filed a FRCP 62.1 Motion asking the district court to accept the remand of the case and for Burch to pay the filing fee.

On May 4, 2022, The Fifth Circuit dismissed the case and sanctioned Burch \$500 bringing the total to over \$6,000. All the identical sanctions were not mentioned in their order. The basis of the dismissal was:

William Paul Burch appeals from the district court's dismissal of his appeal arising from a proceeding in the bankruptcy court for the Northern District of Texas. The bankruptcy appeal was dismissed without prejudice after Burch failed to pay the required filing fee. Burch has moved to remand the case to the district court. He asserts that he now can pay the filing fee because his financial situation has improved. Burch further seeks a remand to substitute defendants and to consolidate the district court case with another action in which he has paid the filing fee. Also, Burch moves to proceed in forma pauperis (IFP) on appeal. To proceed IFP, a litigant must be economically eligible, and his appeal must not be frivolous. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). If the appeal is frivolous, this court will dismiss it. See Baugh v. Taylor, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5th Cir. R. 42.2. Even before Burch's concessions regarding his improved financial situation, we concluded that he was not financially eligible to proceed IFP on appeal. See Burch v. Freedom Mortg. Corp., 850 F. App'x 292, 293 (5th Cir. 2021). Also, his conclusional assertions effectively fail to identify any error in the dismissal of his bankruptcy appeal for failing to pay the filing fee, and he otherwise has not shown a nonfrivolous issue on appeal. See Carson, 689 F.2d at 586. Thus, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous. See Baugh, 117 F.3d at 202 n.24; 5th Cir. R. 42.2. His motion to remand is denied. * Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4

Because Burch failed to heed our prior sanctions warnings and our direction to withdraw any pending appeals that were frivolous, we previously imposed monetary sanctions. *Burch v. Select Portfolio Servicing, Inc. (Matter of Burch)*, No. 20-11171, 2022 WL 212836, (5th Cir. Jan. 24, 2022) (unpublished) (\$250 sanction); *Burch v. America's Servicing Company (Matter of Burch)*, No. 20-11074, 2021 WL 5286563, (5th Cir. Nov. 12, 2021) (unpublished) (\$100 sanction). Burch, who has paid the monetary sanctions, has repeatedly ignored our admonitions, and we conclude that an additional monetary sanction is warranted. Burch is hereby ordered to pay \$500.00 to the clerk of this court. The clerk of this court and the clerks of all courts subject to the jurisdiction of this court are directed to return to Burch unfiled any submissions he should make until the sanction imposed in this matter is paid in full.

We again warn Burch that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of further sanctions. Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous.”

V. ARGUMENT

The governments of both the United States and Texas consist of three branches. The first two, the Executive and the Judicial are not viewed favorably and have not been since for decades. The only branch looked up to is the judicial. It is important for the judicial branch to be trusted as we may face a complete collapse of our system of judicial justice. As a judge enters a courtroom the Bailiff calls out, “All rise.”. The public then rises as acknowledgement and respect for the judge. However, when that respect begins to wane, as it is now happening in the United States, all hope is lost. 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,"

This hope for a fair and impartial tribunal is lost when there is the appearance of bias in the courtroom. If a judge is biased, then the citizenry loses all hope and anarchy overtakes and prevails. At a minimum, can we not at least require our judges to follow the Constitution of the United States? By allowing a judge to twist the meaning of statutes and rulings away from the plain meaning and totally disregarding the Constitutions of both the State of Texas and the United States by looking the other way the appeals courts are allowing a new precedence where a judge can make it up as he goes along. Burch believes these actions to be perfect examples of legislating from the bench.

If we are to survive as a nation, we must be a nation where our judges hold to the rule of law. We must protect against a biased judge from being allowed to hide his actions by putting forth a procedural cover that masks the merit of the cases.

ARGUMENT AGAINST FIFTH CIRCUIT RULING

In looking at the ruling Burch will examine each specific statement in their ruling. This examination will show that the ruling was tainted by the biased actions of the bankruptcy court judge. The categories are:

1. Financial eligibility of IFP.
2. Frivolous issue
3. Monetary sanction and warning to withdraw any pending appeals

FINANCIAL ELIGIBILITY OF IFP

The Fifth Circuit relied on Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982) where the court wrote, "To proceed IFP, a litigant must be economically eligible". This wording does not appear anywhere in the case @586. The actual wording is:

V. Carson's Request to Appeal In Forma Pauperis

Carson moved the district court for permission to bring this appeal in forma pauperis and to require the United States Government to bear the costs of printing the record on appeal. 28 U.S.C. § 1915(a) authorizes a court to allow an appeal of any suit, civil or criminal, "without prepayment of fees and costs for security therefor, by a person who makes affidavit that he is unable to pay such costs or security therefor." 28 U.S.C. § 1915(b) authorizes a court to "direct payment of the expenses of (1) printing the record on appeal in any civil or criminal case when such printing is required by the appellate court...." Carson made a proper affidavit of his inability to bear the costs of the appeal or the printing of the record. The district court denied Carson's motions because "the Court is of the opinion that none of the ... alleged errors are meritorious and that an appeal of this action, therefore, is not in good faith."

The district court exercises discretion in denying leave to proceed in forma pauperis. Williams v. Estelle, 681 F.2d 946, 947, slip op. at 3853 (5th Cir. 1982); Green v. Estelle, 649 F.2d 298, 302 (5th Cir. 1981). We must conclude, however, that the district court abused its discretion in this case. Our difficult deliberations in resolving the issues presented on appeal provides strong indication that the appeal was not frivolous. Having made the proper economic showing and having raised issues on appeal that were not frivolous, Carson was entitled to proceed in forma pauperis.

Looking only at the financial aspect of the ruling, Burch showed on the IFP affidavit that at the time of the filing of the appeal he had a combined family income of \$2177 and expenses of \$2175 leaving only \$2 per month to pay other expenses. Burch had 22 properties plus 7 direct bankruptcy issues on appeal. The filing fee for the district court appeals at \$298 and the \$500 filing fee for the Fifth Circuit brought

the total to almost \$24,000. Without looking at the frivolous issue which will be addressed below, it is abundantly clear that there is no way Burch could afford the appeals.

1. In the Fifth Circuit- Auffant v. Paine, Webber, Jackson & Curtis, Inc., 538 F.Supp. 120, 1202 (D.P.R. 1982) (court should consider overall financial situation of applicant as well as assets and liabilities of spouse).
2. In Denton v. Hernandez, 504 US 25.31 - Supreme Court 1992, "In enacting the federal *in forma pauperis* statute, Congress "intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because . . . poverty makes it impossible . . . to pay or secure the costs" of litigation.
3. Under FRAP rule 24 Proceeding in Forma Pauperis, (a)(3)(A) Prior Approval, a party who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court certifies that the appeal is

not taken in good faith. Neither the Bankruptcy Judge nor the District Court judge in this case certified that the appeal was not taken in good faith and the state district accepted the Burch filing as an indigent (equivalent of in forma pauperis).

4. 28 U.S.C. § 1915(a); Prows v. Kastner, 842 F.2d 138, 140 (5th Cir. 1988). Courts should make the determination of financial ability after considering whether payment of the filing fee will result in the petitioner “suffering undue financial hardship.”

5. Prows, 842 F.2d at 140. “This entails a review of other demands on individual plaintiffs’ financial resources, including whether the expenses are discretionary or mandatory.” Id.

FRIVOLOUS ISSUES

The Fifth Circuit never identified any of the issues presented as being frivolous. But, what was left out in the court’s ruling was, again citing Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982);

“Having made the proper economic showing and having raised issues on appeal that were not frivolous, Carson was entitled to proceed in forma pauperis.”

A claim is frivolous when the claim lacks any arguable basis either in law or in fact Neitze v. Williams, 490 U.S. 319, 325 (1989). That means, in a frivolous claim, either: "(1) "the 'factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy;" or (2) "the claim is 'based on an indisputably meritless legal theory.'" Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998).

Here are just some of the issues that are in the transcripts, motions, and orders of the bankruptcy court that were not addressed by the Fifth Circuit, any one of which would have entitled Burch to a recusal.:

The bankruptcy court judge (Mark X. Mullin) (hereinafter "Mullin") declared Appellant, William Paul Burch (hereinafter "Burch") a frivolous litigant for filing a Motion for Recusal of the same judge (Mullin).

Mullins action in this appeal is evidence on the appearance of bias in and of itself. He prevented the bankruptcy records from appearing in the record excerpts even though a timely Designation of Records was filed. He had the Appellants name changed from himself (Mark X. Mullin) to the defendants in the advisory cases.

The docket for the Fifth Circuit Appeals Court is littered with cases where Mullin accepted Burch's cases without jurisdictional authority and almost immediately dismissed them. In this acceptance he has taken on the role of an Appeals Court Justice rather than a Bankruptcy Court Judge.

These include case 20-11239 where the Texas District Court awarded a judgement of over \$1 million that was appealed all the way to the Texas Supreme Court. Defendant, Homeward Residential removed (appealed?) the case to the bankruptcy court after sixteen months and the judgment was vacated, and the case dismissed.

Then there was Fifth Circuit case 20-10498 where he combined six cases so that Burch would not have the money to appeal at the District Court level

(the Fifth Circuit correctly only charged for one appeal). Included amongst those five was a case where the County Court had already had a hearing on dismissal (again Homeward). When removed after four months the judge again became an appeals court judge and dismissed the case. In the same suit was a case where just a few weeks before completion of the Chapter 11 case an attorney lied to the court and the court converted the case to a chapter 7 bankruptcy (which is discharged but still not closed). The judge admitted to having read the fraudulent motion but granted the attorneys immunity.

Mullin declared Burch a vexatious litigant even though Mullin admitted that he didn't have the authority to do so. Burch has never, as a pro-se, filed a case in a federal bankruptcy court or any other federal court. Further, the bankruptcy court cannot assume authority over a state court, which he did. (case 20-11106). A federal court cannot enjoin prospective state court actions, Newby v. Enron Corp., 302 F. 3d 295.298 (5th Circuit 2002).

Mullin went against a Writ of Prohibition (District Court 4:20-cv-1040-P and separately Fifth Circuit 20-11239). He allowed a strawman sale by the Chapter 7 Trustee on two properties.

He allowed opening arguments by the Trustees lawyer but not by Burch. He allowed two defendants on appeal in the Fifth Circuit to foreclose on two of Burch's properties.

On the bankruptcy court judges vexatious litigant ruling the following were violated:

- . 1. **U.S. CONST ARTICLE I, SECTION 9, CLAUSE 3**-No Bill of Attainer or ex post facto Law shall be passed.
2. **U.S. CONST ARTICLE III**-The bankruptcy court is not an **Article III** court. It is a court that actually falls under **Article I** as a creation of the legislature and therefore only has powers given to it by the legislature. This does not include anything not covered by the legislature. Vexatious Litigant has not been defined by the legislature
3. **U.S. CONST ARTICLE IV**-Other than the Supreme Court of the United States, no **Article I** or **Article III** court has jurisdiction over state courts. To demand that cases and motions be submitted to the bankruptcy judge for permission to file is outrageous. Comity is part of the constitution.
5. **U.S. CONST FIFTH AMENDMENT**-Due Process (property)

6. **U.S. CONST TENTH AMENDMENT**-The bankruptcy courts branding Burch a vexatious litigant when he never removed or filed a new case in the bankruptcy court is just wrong.
7. **U.S. CONST FOURTEENTH AMENDMENT**- Due Process (property)
8. **TEX. CONST.** art. I, § 13-Due Process-Due Process
9. **TEX. CONST. art. I, § 19**-Due Process-Due Process

MONETARY SANCTIONS AND WARNING TO WITHDRAW ANY PENDING APPEALS

Burch has been sanctioned \$500 each on twelve cases totaling over \$6000 because Burch refused to remove his appeals on his separate properties and declare them to be frivolous. Burch cannot do that because the cases are not frivolous. The Fifth Circuit is denying Burch's right to free speech under the First Amendment of the Constitution and Due Process under the Fifth Amendment of the Constitution. Further, the court cited no authority to grant sanctions on any of the cases.

To demand that all pending appeals be withdrawn is a direct attack against Burch's **First Amendment** right of free speech and an assault against the **Fifth Amendment** and Burch's right to due process under the **Fifth Amendment, Fourteenth Amendment, TEX. CONST. art. I, § 13, and TEX. CONST. art. I, § 19**

SUMMARY

It cannot be denied that Judge Mark X. Mullin had, at least, the appearance of bias and the ability to persuade the outcome on appeal. This case should be

remanded to the Northern District of Texas and due to the prejudice inflicted by the bankruptcy court judge in the Fort Worth Division, be assigned to a Senior Judge in the Dallas Division.

VI. CONCLUSION

For the foregoing reasons and those written in the original petition, 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 19th day of December 2022

Respectfully submitted,



William Paul Burch-Pro se
5947 Waterford Dr.
Grand Prairie, Texas 75052
(817) 919-4853

22-5778

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RESPONDENT

CERTIFICATE OF COMPLIANCE WITH RULE 44

I, William Paul Burch, Pro Se, hereby certify that this petition is presented in good faith and not for delay.

Dated December 19, 2022.



William Paul Burch

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