No. 22-5901 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH
PETITIONER

v.

AREYA HOLDER AURZADA
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE FIFTH CIRCUIT
20-11035

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION(S) PRESENTED

1. Should a final report of a chapter 7 bankruptcy case be divided into five parts thus depriving the debtor of transparency so as to prevent errors, fraud, and corruption?
2. To avoid fraud and corruption should the trustees, accountants, and lawyers representing the bankruptcy estate be salaried employees of either the courts or the Department of Justice?
3. The Constitution states only one command twice. The **Fifth Amendment** says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The **Fourteenth Amendment**, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. Does this mean that a bankruptcy judge is obligated to grant "due process" to a debtor?

II. PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Petitioner William Paul Burch; and Respondent Areya Holder Aurzada , Chapter 7 Bankruptcy Trustee for the Northern District of Texas

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.

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

20-11035 Burch v Areya Holder Aurzada, Dismissed August 3, 2022

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

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1-Cases

Constitutional Provisions:

Statutes and Rules:

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 judgments of the Fifth Circuit Court of Appeals.

VIII. OPINIONS

APPENDIX A	The opinion of the United States Court of Appeals for the Fifth Circuit in the Fifth Circuit case number 20-11035 at App. A in the appendix to this petition and is unpublished. Filed August 11,2022
APPENDIX B	The dismissal by the United States District Court for the Northern District of Texas, case number 4:20-cv-1051-P at App. B in the appendix to this petition and is unpublished. Filed December 3, 2020
APPENDIX C	The opinion of the United States Bankruptcy Court for the Northern District of Texas final and is unpublished. at App. A in the appendix to this petition and is unpublished. Filed August 27, 2020

IX. STATEMENT OF JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on May 17, 2022. August 3, 2022, for case number 20-11035 and a copy of the orders denying rehearing appears at Appendix 1, 2, and 3. The jurisdiction of this Court is invoked under **28 U. S. C. § 1254(1).**

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Chapter 7 bankruptcy Appendix

Chapter 11 bankruptcy Appendix

Chapter 13 bankruptcy Appendix

Erie Doctrine.

The Erie doctrine is a binding principle where federal courts exercising diversity jurisdiction apply federal procedural law of the Federal Rules of Civil Procedure but must also apply state substantive law.

Article I, Section 9, Clause 3,

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

Article III, Section 1 of the United States Constitution.

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 Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article IV Appendix D

Article VI sections 2 & 3.

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.

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. Amendment I 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 Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amendment V

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. Amendment X

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. Amendment XIV Appendix E

Chapter 7 bankruptcy Appendix F

Chapter 11 bankruptcy Appendix G

Chapter 13 bankruptcy Appendix H

11 U.S. Code § 105 Appendix I

28 U.S. Code § 144

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 § 157 Appendix J

28 U.S. Code § 455 Appendix K

28 U.S. Code § 1367 Appendix L

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.

TBCC 3.501 Appendix M

TBCC 26 Appendix N

TCPR Ch11 Appendix O

2016 Bankruptcy Plan 12-46959-mxm Appendix P

XI. STATEMENT OF THE CASE

Between 2006 and 2007 Petitioner, William Paul Burch (Burch) and his wife, Juanita Solis Burch purchased twenty-one houses from HUD. This gave them a total of twenty-two including their homestead. The Burch's paid cash for all but their original homestead and repaired the properties prior to getting a business loan on them. The exception was their homestead which was a VA loan. The Burch's were required to hold the houses for one year before selling them at a profit if a buyer was going to get a Fannie Mae or Freddie Mac loan.

Beginning in 2007 and continuing into 2010 the United States experienced the "Great recession". This brought the value of real estate down. For Burch most of his newly acquired properties were soon valued at less than the loan balance. In 2007 Burch moved from his homestead to a new property on a purchase money loan which was then his new homestead.

An employee for AH Mortgage Acquisitions, Inc. contacted Burch and gave him four options. Foreclosure, pay the difference between current value and the loan balance, short sale of his properties, or bankruptcy. Burch was **not** behind on his payments. Burch filed for bankruptcy (08-45761-RFN) on December 1, 2008. After negotiation, it was agreed that all lenders but the homestead lender on Waterford Dr, Grand Prairie, Texas, would issue new loans with new, 30-year loans that would replace the current five-year loans. The exception would be the homestead where the loan would continue but without an escrow (insurance and taxes to be paid direct).

All loans met the criteria for loan extinguishment as defined in the widely accepted rulings in ***Elixir Indus., Inc. v. City Bank & Trust Co.* (In re Ahern Enterprises, Inc.), 507 F.3d 817 (5th Cir. 2007)**, the Fifth Circuit held that four conditions must be met for a lien to be voided under section Because the loans were business loans collateralized by real estate, the governing law was **Texas Business And Commerce Code 26.2 (TBCC 26.2).** Payments were timely made by Burch. Each payment included a letter with the bankruptcy information and agreed to terms. The payment were returned by the lenders, not acknowledging the loans.

Burch sent a Presentment letter to the lenders giving them time to comply as required in **TBCC 3.501.** The loans were legally void as of March 1, 2011, except for the homestead.

Some lenders proceeded to foreclose on properties based on the payments not being made when in fact the payments were made but returned to Burch. Four properties were illegally taken from Burch in what was supposed to be a swap, one property was freely given to the lender, and one property was taken during the bankruptcy and was supposed to be given back but was kept by them in agreement to leave the homestead alone. The five foreclosed properties have values of over one and one-half million dollars. This left sixteen properties currently valued at over $5,000,000 dollars.

In 2012, just after the homestead lender (Aurora Bank, a former subsidiary of Lehman Brothers Bank) refunded over payment to Burch, Aurora was absorbed by Nationstar Mortgage. Nationstar refused to follow the bankruptcy plan saying that because they had acquired Aurora and were not a part of the bankruptcy plan that they were not required to follow it. They wanted all the money back plus one year of escrow in advance or they were going to foreclose on the house. The attorney for Nationstar was Michael Weems. Nationstar soon changed its name to Nationstar Mortgage Acquisition d/b/a Mr. Cooper in an effort to change their image due to the 14,000 complaints with the Better Business Bureau and the reduced stock price.

Because the lenders had not followed the previous bankruptcy plan, the new bankruptcy plan called for the first six months to be without payments to allow the

sale of the properties. Burch's attorney would not listen to Burch and would not reopen the old **Chapter 11** plan. He filed a **Chapter 13** plan saying it would be faster and cheaper. (12-46959-mxm). It was not.

Burch fired his attorney after the plan was confirmed and hired another attorney. Almost all of the properties were sold by the deadline to the tenants but the lenders either sent no payoff, sent it late, or sent them with incorrect information. In addition to the Homestead, Michael Weems (Weems) represented the lenders on four more properties.

Burch's new attorney filed a motion to comply and asked for a six-month extension of the no payment period. During this period Burch sold and closed on three of the properties. One property was sold under court order by Burch, but Weems was successful in getting the sale stopped and foreclosed on the property. He did the same with another property.

Burch sold two more properties, one of which was represented by Weems. Weems demanded that the remaining property be paid off in cash to which Burch agreed to do upon the closing of two sold properties. Weems then filed a Motion to convert the **Chapter 11** plan to a **Chapter 7** plan and held up the closing documents for the sold property. Meanwhile the other sold property's attorney held up the closing documents on their property (something they had done thirteen times before along with the insurance check for reimbursement of the repairs on the house.).

The **Chapter 11** plan was on track to close within a few weeks (Two and one-half years early). Burch's attorney withdrew due to a large case she was handling and put the case with a friend of hers who had no background in bankruptcy. Burch had also spent $65,000 on renovating the final house held by Weems client. The homestead was now in state court because Nationstar is a Texas company.

In the hearing on converting the plan from a **chapter 11** to a **chapter 7**, Weems lied in his motion to convert, and the lies were not caught by Burch's inexperienced lawyer. Weems is in Houston and had a Fort Worth attorney handle the hearing (Mark Stout). Stout continued to not only misrepresent the facts of the case but the two of them misquoted case law and statutes. Despite all of this, the Burch lawyer was winning the argument. The judge stepped in and took over the questioning. His questions were to the payments not being made. The bankruptcy plan and the continuance stated that no payments were due. The judge only allowed yes or no answers while asking if the payments were made. Obviously, they were no payments made because they were not due. A "no only" answer does not allow an explanation. The judge ruled based on Weems motion and the questions by Stout.

The Burch attorney then vanished, something unbeknown to Burch was that she had been sanctioned five time before by the Texas Supreme Court for the same thing. Burch is not a lawyer and had no idea what to do. The appeal of the conversion was dismissed for lack of prosecution. Burch, as pro-se, later filed a lawsuit against the defense attorney's for lying in court. The bankruptcy judge granted the lawyers immunity and dismissed the case.

The properties Burch had sold were not closed. The **Chapter 7** Trustee took over. The sale of the Weems client's loan was allowed to close but the trustee canceled the other sale. The final Weems represented property was sold without notifying the Trustee. Burch complained and the Trustee's attorney collected an additional $8,000 and charged the bankruptcy estate $9,000 for doing it.

Three properties were abandoned by the trustee. The values of the remaining properties are now almost two million dollars. Although at least one was foreclosed on, The remaining only brought the estate about $230,000. The properties, according to the property records, were sold and then resold within minutes for a much higher price.

Burch questioned how there could be $230,000 in fees when there was no unsecured debt but was shut down by the judge. Burch questioned how there could be $166,000 in legal fees which were more than twice the commissions paid to the real estate agent but was shut down by the judge. Burch questioned why the real estate agent did not put out for dale signs but did put out no trespassing signs and sold the properties for one half of their value in a strong sellers' market but was shut down by the judge. Burch questioned why the legal fees and the trustee fees, and the administrative fees, and the accounting fees, and the final report were all separated on separate motions and Burch was not allowed to cross reference them.

Burch proceeded to file lawsuits in state court on state actions that were related to the bankruptcy but not part of the bankruptcy and therefore not subject to the bankruptcy jurisdiction. Because these cases were removed to the bankruptcy

court, after they were appealed from the bankruptcy court, the bankruptcy judge sanctioned Burch as a vexatious litigant. The Fifth Circuit used this vexatious litigant designation as justification to dismiss all the cases, including these and all the property cases as frivolous, resulting in over $5,000 in sanctions. Burch never removed a single case to the bankruptcy court and the court had no jurisdiction under the claims allowance statutes because there were no unsecured claims.

"Based on the Fifth Circuit Courts own statute cited, ***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". Burch also wrote, "Because Burch receives **five dollars a week** more than allowed for IFP, the District Court Judge dismissed Burch's appeal thus robbing Burch of due process under the **Fifth Amendment of the United States Constitution**." And Burch wrote, "In the SCOTUS ruling "***Coppedge V. United tStates*, 369 U.S. 438 .444-445 (1962)",** the requirement that an appeal *in forma pauperis* be taken "in good faith" is satisfied when the defendant seeks appellate review of **any** issue that is not frivolous. ***Id.*446** If it appears from the face of the papers filed in the Court of Appeals that the applicant will present issues for review which are not clearly frivolous, the Court of Appeals should grant leave to proceed *in forma pauperis.*

In ***Neitzke v. Williams*, 490 US 319.325 - Supreme Court 1989 (as stated in *Anders v. California*, 386 U. S. 738 (1967).** this court defines frivolous as an

appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." ***Id.*, at 744.**

The only issue in the Burch motion to remand and pay the filing fee was Burch's request to have the case remanded to the district court with instructions for the court to accept his filing fee and move forward with the case to either rule on the merits of the case. There is no precedence for a ruling on changing an appeal from accepting the case as in forma pauperis to paying the filing fee due to a change in income. However, the Fifth Circuit did rule 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. ***Adkins* v. *E. I. DuPont de Nemours & Co.*, 335 U. S. 331, 342 (1948)** (internal quotation marks omitted). At the same time that it sought to lower judicial access barriers to the indigent, however, Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." ***Neitzke, supra*, at 324**. In response to this concern, Congress included subsection (d) as part of the statute, which allows the courts to dismiss an *in forma pauperis* complaint "if satisfied that the action is frivolous or malicious." It must be understood that Burch, on his own and with obvious honesty, requested that he be allowed to pay the filing fee, but the court turned him down.

Burch was obviously being punished for serving his country and being injured in the process while assigned TDY to the Central Intelligence Agency. This action reeks of disdain. This act of honesty was the catalyst for the denial of due process.

The Fifth Circuit denied the IFP seemingly due to an increase in income that happened after the fact. The Fifth Circuit again denied Burch the opportunity to pay the fee either on remand or upon dismissing the IFP. This is an obvious denial of Burch's Due Process rights under The **Fifth Amendment** and the **Fourteenth Amendment** to the U. S. Constitution, and Burch's right to Free Speech as guaranteed under the **First Amendment** of the U. S. Constitution.

Unfortunately, Burch, who was raised poor, had properties with current values of over $6,500,000 and an income of over $23,000 gross per month, had it all taken away from him without cause. Burch was not behind on payments and was forced into bankruptcy by lenders pointing to a law about underwater loans. Unknown to Burch at the time, that law doesn't exist in Texas. The properties were taken when there were no lawful liens on them. The bankruptcy judge punished Burch because the creditors attorney lied in motions and in hearings (all of which is on the record). It seems that it should be the other way around. Burch filed cases in the state court and the defendants moved them to federal court, so Burch was made a vexatious litigant. There is no definition in any state or the federal government that defines a vexatious litigant as someone who files unrelate lawsuits

in state court as being a federal vexatious litigant. Burch asked that the judge recuse himself (**SCOTUS 22-5778**). He refused. Burch asked that another judge hear the recusal argument with over one hundred acts of bias, the judge jumped jurisdiction and dismissed the case (**Fifth Circuit 22-10027**). Burch was put into poverty by the bankruptcy judge and the Fifth Circuit sanctioned him over $5,000 for filing cases in forma pauperis (even though the removed cases were approved for pauper status in the trial courts) (At $5 extra a month it would take Burch 89 years or until he is 151 years old to repay this amount (Burch is currently 71 years old).

XII. REASONS FOR GRANTING THE PETITION

1. 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 Trustee (Areya Holder (AH)) and Bankruptcy Judge cost Burch millions of dollars in assets and all his income. When the mortgage companies refused to follow the plan, they helped to design and agreed to the judge pretended his order to comply did not exist and followed the lies laid out

by opposing council. Even though the **Chapter 11** plan was on track to be completed by June 2017 the court changed to a **chapter 7** plan, thus stripping Burch of his assets and income. They convinced the bankruptcy court to grant 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. The judge cited Burch's suit against attorney's Weems and Stout as making them mad and the basis for his vexatious litigant sanction (**SCOTUS 22-5254**). The trustee, a friend of the court and the opposing council, proceeded to set up strawman sells where Burch's millions of dollars' worth of property was liquidated at below market value prices in a sellers' market and were immediately resold the same day for thousands of dollars more. The actions of the AH, the judge, and attorney's Weems and Stout is the perfect example of anti-therapeutic jurisdiction and the basis of all subsequent legal actions by Burch.

2 REASONS BANKRUPTCY CASES ARE NOT APPEALED

Most bankruptcy lawyers handle **Chapter 7** or **Chapter 13** only, a much smaller number handle **Chapter 11** cases. These lawyers tend to specialize in bankruptcy only and have little knowledge of real estate or property laws or most any other area of law. Non-bankruptcy lawyers, such as real estate lawyers, generally call in a bankruptcy lawyer to handle the bankruptcy issues in a case. It is from this pool that bankruptcy judges and trustees are drawn from.

Because the cases are generally balance sheet cases, assets on one side, liabilities on the other, anything beyond that is beyond the understanding of both the lawyers and the judges. The statutes (**28 U.S. Code § 157**) are written to where, unless the parties agree otherwise, the bankruptcy court only has the

authority to advise the district court on findings of fact and conclusions of law on any case not directly related to the bankruptcy.

However, because of the amount of money in most bankruptcy cases, if the judge errs lawyers and debtors overwhelmingly refuse to appeal because:

1. the lawyer is afraid the judge may be vindictive and will rule against them in other cases
2. the client doesn't have the money to fight the case
3. the lawyer does not know how to appeal.

Unfortunately, many bankruptcy judges use this power to rule based upon what they feel should be done rather than what the constitution, statutes or precedence require. Bankruptcy judges are known for retaliation. This is seen in the numbers. In the twelve months ending June 30, 2022, there were 380,634 bankruptcies. Of that number only 4,429 were Chapter 11 filings. 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. The Supreme Court has a habit of ignoring bankruptcy cases just as attorneys are afraid to appeal due to retaliation from the bankruptcy judges. A simple docket search of the SCOTUS Docket Report under the name William Paul Burch shows the results of retaliation brought about by a bankruptcy in an effort to show attorneys what

happens if you dare to appeal the bankruptcy judge. This is the only court that can put a stop to this flagrant abuse of power.

3.HOW THIS CASE AFFECTS JUSTICE IN THE UNITED STATES

In this case, by dividing the final closing into five parts, legal fees, trustee fees, accounting fees, administrative costs, and the resulting calculations you have created a situation ripe for fraud, corruption, bias, and error. A bankrupt debtor is likely to not have the money coming out of a **Chapter 7** bankruptcy to be able to pay $1495 is filing fees for the five appeals as is the case with this bankruptcy. If the district court dismisses the case without looking at it, the appeal to the circuit court for the debtor is $2525. That is a total of $4020 for a debtor to get justice. So, justice comes at a high price. Those who have had all their money taken from them by a rouge, unscrupulous judge conspiring with two lawyers and a trustee to illegally impoverish a citizen have no chance to prevail on the merits. Unless you have all the costs together you cannot possibly see where the fraud comes into play. The wall presented by this type of action is obviously a violation of due process as defined in the **Fifth Amendment**.

A **Chapter 7** plan is focused on unsecured creditors. Here the assets with value above the debt are sold to pay the unsecured creditors. A **Chapter 7** plan is to only be used if there are underwater loans and unsecured creditors who can be paid by sell good assets to pay the unsecured creditors and the underwater loans.

there not being a lien on the properties and the properties were resold the same day for a higher amount. The real estate agent put out on no trespassing signs and no for sale signs. The trustee's lawyer charges more fees on the sales of the houses than the real estate agent charged on the sales of the houses. Yet by separating the closing into five parts none of this is apparent. It is only because Burch put the five pieces together that he was able to see what took place or that there was an indication of wrongdoing that needed to be investigated. This is in direct violation of the **Fifth Amendments** due process clause and the **Fourth Amendments** "unreasonable seizure" provision.

The next part has to do with two $500 sanctions on two of the cases in this case for a total of $1000 and over $4000 additional on the single issue of the bankruptcy courts sanction of Burch as a vexatious litigant. When you look at the above and consider that Burch has filed a **28 U.S. Code § 455** recusal (denied and to be appealed (**Fifth Circuit 20-11132**)) and **28 U.S. Code § 144** recusal (denied by the bankruptcy court judge and never heard by another judge as required (**Fifth Circuit 22-10027**)) you get a better understanding of the bias in the judge's issuance of the vexatious litigant order.

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** in that it has deprived Burch of his property in this case. Additionally, Burch was prevented from using his Due Process rights in cases in the state courts and federal courts. As written this ruling is a violation of the **Tenth Amendment** in that it allows a bankruptcy judge to write laws and rule on them as he sees fit.

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

G 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.

By demanding that any filing of petitions or motions in a state court receive the approval of the bankruptcy court judge before it can be submitted to the state court the bankruptcy court was in clear violation of the Comity Clause, also known as the Privileges and Immunities Clause of the **Article Four of the United States Constitution**, which provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." **Article Four** is described as the "interstate comity" article of the Constitution and includes the Privileges and Immunities Clause, the Extradition Clause, and the Full Faith and Credit Clause.

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

If a plaintiff has been declared or sanctioned as a vexatious litigant and the ruling, he was sanctioned under is either unconstitutional and/or the new rules on vexatious litigant in the second question would not make the plaintiff a vexatious litigant, should the vexatious litigant sanction be vacated as well as any related orders on other cases?

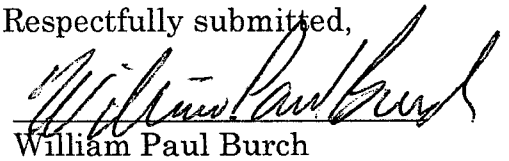
In light of the hundreds of thousands of citizens affected by the actions of bankruptcy judges, this case can go a long way in helping the citizens of the United States. This case must be heard.

XI. 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 18th day of October 2022

Respectfully submitted,



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