No. 22-6544

# In the Supreme Court of the United States

BRADLEY B. MILLER, PETITIONER

*v.*

ANDREA PLUMLEE, RESPONDENT



*ON PETITION FOR REVIEW*
*TO THE SUPREME COURT OF TEXAS*

**PETITION FOR WRIT OF CERTIORARI**

# APPENDIX

BRADLEY B. MILLER
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# A

Trial Court's Order
Granting Defendant Andrea Plumlee's Plea To The Jurisdiction

[Texas 116th Civil District Court]

(2021/05/14)

APPENDIX
**A**

CAUSE NO. DC-20-15614

| | | |
|---|---|---|
| **BRADLEY B. MILLER,** *Plaintiff,* | § | **IN THE DISTRICT COURT** |
| **v.** | § | **116TH JUDICIAL DISTRICT** |
| **VIRGINIA TALLEY DUNN, et al.,** *Defendants.* | § | **DALLAS COUNTY, TEXAS** |

**ORDER GRANTING**
**JUDGE ANDREA PLUMLEE'S PLEA TO THE JURISDICTION**

On this day, the Court considered the Plea to the Jurisdiction filed by Defendant Judge Andrea Plumlee ("Judge Plumlee"). After due consideration, the Court finds this motion meritorious, and is of the opinion that the following Order should issue:

**IT IS THEREFORE ORDERED** that the Plea to the Jurisdiction filed by Judge Plumlee is **GRANTED.**

**IT IS FURTHER ORDERED** that all of Plaintiff's claims against Defendant Judge Andrea Plumlee are **DISMISSED WITH PREJUDICE** in their entirety.

SIGNED this 14th day of May, 2021.

HONORABLE JUDGE PRESIDING

# B

Memorandum Opinion And Judgment
Affirming The Trial Court Judgment

[Texas 5th District Court of Appeals]

(2022/04/08)

APPENDIX
**B**

**Affirm and Opinion Filed April 8, 2022**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-21-00431-CV**

**BRADLEY B. MILLER, Appellant**
**V.**
**JUDGE ANDREA PLUMLEE, Appellee**

**On Appeal from the 116th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-20-15614**

# MEMORANDUM OPINION

Before Chief Justice Burns, Justice Myers, and Justice Molberg
Opinion by Justice Molberg

Bradley Miller appeals the trial court's order granting Judge Andrea Plumlee's plea to the jurisdiction. Miller raises eleven issues in this appeal, primarily arguing that Judge Plumlee did not have jurisdiction to enter an order after Miller attempted to remove his case to federal court. Because we conclude Miller's claims against Judge Plumlee are barred by judicial immunity, we affirm the trial court's order dismissing Miller's suit.

## I. Background

This case arises out of Miller's dissatisfaction with his divorce proceeding and a related child support enforcement action in the 330th District Court, over which

Judge Plumlee presides. On October 15, 2020, Miller filed the petition in this case, in which he made allegations against Judge Plumlee, his ex-wife and her lawyers, an associate judge of the 330th court, and several other defendants.

As pertinent here, Miller alleges Judge Plumlee violated varying statutes and constitutional provisions and committed several torts in the course of presiding over his divorce and child support proceedings. Miller asserts Judge Plumlee quashed all but one of his subpoenas for witnesses; entered a gag order and made "other restrictions on Miller's parental rights permanent"; entered a final order on November 17, 2016, after Miller "removed his case to federal court"[1] earlier that morning; issued a show cause order, a citation, held an enforcement hearing, and issued a capias warrant after "[n]o remand letter had been filed in the state court case subsequent to the remand of Miller's federal appeal" and without notice to Miller; denied Miller's "special appearance," which he filed in "an attempt to force the state court to recognize federal jurisdiction"; denied his request for a hearing on temporary orders entered by an associate judge; "held a rights hearing," after "jurisdiction had not been established," where Miller was found indigent and appointed an attorney; denied Miller's request for a "de novo hearing on" temporary orders issued by the associate judge; and "found Miller guilty of 'willful contempt'

[1] Miller attempted to remove his divorce proceeding to federal court on several occasions without success.

for nonpayment of child support," and imposed several conditions on Miller, including payment of $2,500 in child support, court costs, and attorney's fees.

Judge Plumlee filed a plea to the jurisdiction, arguing that Miller could not demonstrate the court's subject matter jurisdiction over his claims because Judge Plumlee "has judicial immunity and sovereign immunity from [Miller's] claims, and because [Miller] lacks standing to bring his claims." Regarding judicial immunity, Judge Plumlee argued she had immunity "for judicial acts like entering orders in a case that was filed in the 330th District Court." This is true, she argued, whether any specific order was entered in excess of her authority or even if it "were void." Thus, because Miller's claims were based on judicial acts of Judge Plumlee, and those acts were not taken in the complete absence of jurisdiction, judicial immunity bars Miller's claims. The trial court granted Judge Plumlee's plea to the jurisdiction and dismissed Miller's claims against her.

## II. Standard of review and applicable law

A plea to the jurisdiction is a dilatory plea seeking dismissal of a case for lack of subject matter jurisdiction. *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). Whether a court has subject matter jurisdiction is a question of law, *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004), and we review de novo a trial court's ruling on a plea to the jurisdiction. *Suarez v. City of Tex. City*, 465 S.W.3d 623, 632 (Tex. 2015).

"When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Miranda*, 133 S.W.3d at 226. In considering the pleadings, we construe them liberally in favor of the plaintiff, look to the pleader's intent, and determine if the pleader has alleged facts affirmatively demonstrating the court's jurisdiction. *City of Elsa v. Gonzalez*, 325 S.W.3d 622, 625 (Tex. 2010). "When a plaintiff fails to plead facts that establish jurisdiction, but the petition does not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiff should be afforded the opportunity to amend." *Cty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002). But "if the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to amend." *Id.*

Judicial immunity deprives a court of subject matter jurisdiction. *Dallas Cty. v. Halsey*, 87 S.W.3d 552, 554 (Tex. 2002). It grants a judge acting in his or her official judicial capacity absolute immunity from liability for judicial acts performed within the scope of jurisdiction. *Id.* Judicial immunity applies unless the plaintiff can show: (1) the claim is based on some act not taken in the judge's judicial capacity or (2) the judge's actions were taken in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 10–12 (1991). It is an immunity from suit, not just from the assessment of damages. *Mireles*, 502 U.S. at 11; *Miranda*, 133 S.W.3d at 224. Further, "[t]his immunity extends to actions that are done in error, maliciously,

and even in excess of the judge's authority." *Twilligear v. Carrell*, 148 S.W.3d 502, 504 (Tex. App.—Houston [14th Dist.] 2004, pet. denied).

In deciding whether an action is one taken in the judge's judicial capacity, we consider whether (1) the act complained of is one normally performed by a judge, (2) the act occurred in the courtroom or an adjunct such as the judge's chambers, (3) the controversy centered around a case pending before the judge, and (4) the act arose out of a visit to the judge in his judicial capacity. *Bradt v. West*, 892 S.W.2d 56, 67 (Tex. App.—Houston [1st Dist.] 1994, no pet.).

When a court has "some subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes." *Adams v. McIlhany*, 764 F.2d 294, 298 (5th Cir. 1985). The inquiry is not "whether the judge's specific act was proper or improper, but on whether the judge had the jurisdiction necessary to perform an act of that kind in the case." *James v. Underwood*, 438 S.W.3d 704, 712 (Tex. App.—Houston [1st Dist.] 2014, no pet.). Put differently, "the proper inquiry is not whether the judge actually had jurisdiction, or even whether the court exceeded its jurisdictional authority, but whether the challenged actions were obviously taken outside the scope of the judge's power." *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995).

## III. Analysis

Miller raises eleven issues in this appeal, but only five of them are properly raised in this appeal of the trial court's order granting Judge Plumlee's plea to the

jurisdiction.[2] In these issues, Miller focuses on Judge Plumlee's November 17, 2016 order, which, Miller argues, was entered after he removed the case to federal court. In his remaining issues, Miller raises matters not properly before us, and we therefore reject them.[3]

We conclude Judge Plumlee's order, as well as the other actions described in Miller's petition, were actions taken in Judge Plumlee's judicial capacity. The November 17, 2016 order granted Miller's ex-wife's requested modification to Miller's relationship with their daughter. Judge Plumlee ordered that Miller be removed as managing conservator, and that his ex-wife be appointed sole managing conservator; Miller was appointed possessory conservator. The order spelled out Miller and his ex-wife's rights and duties relating to their daughter. The order further modified the possession order that was part of Miller and his ex-wife's final divorce decree. Miller was permanently enjoined from taking certain actions regarding his

[2] The five issues pertinent to this appeal of the order granting Judge Plumlee's plea to the jurisdiction are the first ("whether state court jurisdiction halts during the pendency of a federal removal"); second ("whether any state court proceedings conducted during the pendency of a federal removal are void"); third ("whether Judge Plumlee acted without jurisdiction and thus has no judicial immunity from suit and damages"); fifth ("whether the 330th Family District Court has no 'continuing jurisdiction' over Plumlee's purported 'order' because it was fraudulent and not issued as part of any legitimate case"); and eleventh ("whether the trial court erred in its ruling granting appellee's plea to the jurisdiction").

[3] The remaining issues not properly before us include issues four ("whether res judicata and collateral estoppel do not apply because the issue of jurisdiction regarding Plumlee's purported 'order' of November 17, 2016 has never been adjudicated in any court"); six ("whether appellant has standing to bring suit in the trial court"); seven ("whether the trial court defendants' tortious acts fall within the statute of limitations"); eight ("whether Miller is suing under a criminal statute"); nine ("whether appellant's constitutional claims are valid"); and ten ("whether appellee's arguments regarding jurisdiction are intentionally misleading and therefore represent a fraud upon the court and a violation of the Fourteenth Amendment guarantee of due process").

daughter and ex-wife. Finally, Miller's ex-wife was awarded attorney's fees and costs against Miller.

Judge Plumlee's November 17, 2016 order was undoubtedly an action normally performed by a judge; it was entered in a case pending before the judge; and it was entered after a hearing conducted by the judge in her judicial capacity. Thus, we conclude Judge Plumlee's November 17, 2016 order was an action taken in the judge's judicial capacity. *See Bradt*, 892 S.W.2d at 67.

We further conclude the order was not entered in the complete absence of all jurisdiction. Miller argues that, because he removed the case to federal court, the trial court did not have jurisdiction to enter the order, which he argues was void. This argument misunderstands the meaning of jurisdiction in the judicial immunity context. The question here is not whether Judge Plumlee actually had jurisdiction to enter the order, but whether she had jurisdiction to perform an action of the kind she performed. *James*, 438 S.W.3d at 712; *Davis*, 70 F.3d at 373. As this Court put it in a related case, Miller's argument "conflates the meaning of jurisdiction for purposes of determining a court's authority to issue a valid judgment or order with the meaning of jurisdiction in the context of judicial immunity." *Miller v. Diaz*, No. 05-21-00658-CV, 2022 WL 109363, at *4 (Tex. App.—Dallas Jan. 12, 2022, no pet. h.) (mem. op.). Judge Plumlee, as Presiding Judge of the 330th District Court, had jurisdiction to enter an order modifying a parent-child relationship in a suit to do just that.

Additionally, we conclude the other actions described in Miller's petition were similarly taken in Judge Plumlee's judicial capacity and were not taken in the complete absence of jurisdiction. As described above, those actions include quashing subpoenas, entering various orders in the case, holding hearings, and denying requests for hearings. In other words, they were ordinary actions taken by a judge in a case in her court, which are also the sort of actions a district court judge has the power to take.

Miller has thus failed to show that (1) his claims are not based on acts taken in Judge Plumlee's judicial capacity and (2) the judge's actions were taken in the complete absence of all jurisdiction. *See Mireles*, 502 U.S. at 10–12. Accordingly, we overrule Miller's first, second, third, fifth, and eleventh issues; we need not reach his remaining issues. *See* TEX. R. APP. P. 47.1. Because we conclude that dismissal based on judicial immunity was proper, we need not reach the issue of sovereign immunity, which was also raised by Judge Plumlee. *E.g.*, *James v. Underwood*, 438 S.W.3d 704, 709 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

## IV. Conclusion

Having overruled the appellate issues properly before us, we affirm the trial court's order.

/Ken Molberg/
KEN MOLBERG
JUSTICE

210431f.p05

# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

| | |
|---|---|
| BRADLEY B. MILLER, Appellant | On Appeal from the 116th Judicial District Court, Dallas County, Texas |
| No. 05-21-00431-CV V. | Trial Court Cause No. DC-20-15614. |
| JUDGE ANDREA PLUMLEE, Appellee | Opinion delivered by Justice Molberg. Chief Justice Burns and Justice Myers participating. |

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 8th day of April, 2022.

# C

Order Denying Miller's Motion for En Banc Reconsideration

[Texas 5th District Court of Appeals]

(2022/05/09)

APPENDIX
C

**Order entered May 9, 2022**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-21-00431-CV**

**BRADLEY B. MILLER, Appellant**

**V.**

**JUDGE ANDREA PLUMLEE, Appellee**

**On Appeal from the 116th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-20-15614**

**ORDER**
**Before the Court En Banc**

Before the Court is appellant's April 22, 2022 motion for reconsideration en banc. Appellant's motion is **DENIED**.

/s/ ROBERT D. BURNS, III
CHIEF JUSTICE

# D

Order Denying Miller's Motion to Recuse Justice Ken Molberg

[Texas 5th District Court of Appeals]

(2022/05/03)

APPENDIX
**D**

**Order entered May 3, 2022**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-21-00431-CV**

**BRADLEY B. MILLER, Appellant**

**V.**

**JUDGE ANDREA PLUMLEE, Appellee**

**On Appeal from the 116th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-20-15614**

**ORDER**
**Before the Court En Banc**[1]

Before the Court is appellant's April 22, 2022 motion to recuse Justice Ken Molberg. Because appellant's motion is not timely, we **DENY** the motion. *See Ex Parte Ellis*, 275 S.W.3d 109, 124 (Tex. App—Austin 2008, no pet.) (motion to recuse must be filed before opinion is issued).

/s/ ROBERT D. BURNS, III
CHIEF JUSTICE

[1] After Justice Molberg declined to recuse himself in this appeal, the motion to recuse was certified to and decided by the remaining justices en banc. *See* TEX. R. APP. P. 16.3(b).

# E

Miller's Motion to Recuse Justice Ken Molberg

[Texas 5th District Court of Appeals]

(2022/04/22)

APPENDIX
**E**

ACCEPTED
05-21-00431-CV
FIFTH COURT OF APPEALS
DALLAS, TEXAS
4/22/2022 4:07 PM
LISA MATZ
CLERK

No. 05-21-00431-CV

IN THE COURT OF APPEALS,
FIFTH DISTRICT OF TEXAS
DALLAS

BRADLEY B. MILLER,

*Appellant*

v.

ANDREA PLUMLEE,

*Appellee*

APPELLANT'S MOTION TO RECUSE JUSTICE KEN MOLBERG

TO THE HONORABLE JUSTICES OF THE FIFTH COURT OF APPEALS:

Appellant BRADLEY B. MILLER, appearing before the Court on his own behalf, files this *Motion to Recuse* in accordance with Tex. R. App. P. 16.2 and 16.3, as well as Tex. R. Civ. P. 18a and 18b, and in support offers the following:

On April 8, 2022, the Court issued an Opinion signed Justice Ken Molberg, a Justice of this Court. Prior to that time, he apparently had no direct involvement in this case. A prior order in this case (regarding the provision of a supplemental

clerk's record) was issued by Chief Justice Robert Burns. (See the Order issued by this Court on October 4, 2021.) Miller had no reason to expect that Justice Molberg would become involved in this case before April 8, 2022.

Appellant Miller is a *pro se* litigant in this case.

Appellant Miller is a citizen of the State of Texas and of the United States of America. Miller resides in Dallas, Texas.

Appellant Miller has a Facebook account and has been active on that social media platform since 2013.

Justice Molberg likewise has a Facebook account which has been active since at least 2015. In 2015, his Facebook account was listed as "Judge Ken Molberg Campaign"; his Facebook account is now listed as "Justice Ken Molberg." In 2015, Justice Molberg was the judge of the 95th Judicial District Court—i.e. he was an elected government official of the State of Texas. Justice Molberg was elected to this Court in 2018. (*See* https://www.txcourts.gov/5thcoa/about-the-court/justices/justice-ken-molberg.)

On October 27, 2015, Judge Ken Molberg created a Facebook post titled "JUDGE KEN MOLBERG: reinvesting in the Legal Profession." **[EXHIBIT "A".]** In his post, then-Judge Molberg ruminated:

> "I wonder how many imperfections in our legal system have been addressed by groups dedicated to making the process more

> fair and accessible for those who may feel voiceless and powerless." *Id.*

The next day, on the morning of October 28, 2015, Miller read Judge Molberg's Facebook post and posted a reply in the comments section, as follows:

> "Here's a good example of what's wrong with the legal profession: city bar associations--including the Dallas Bar Association--lack any sort of meaningful ethics committee. The DBA compiles a survey on judicial conduct and yet fails to censure even egregious violations. Judicial incompetence is rampant (and we all know who they are), and yet lawyers lack the guts to stand up and speak out against these people. Family Court is awash in abuse of discretion--and abuse in general--and yet Family Law attorneys are happy to profit from the court-assisted destruction of families. The Dallas Bar is essentially a self-congratulation club that perpetuates this abuse. The law is a frequently dishonorable profession whose practitioners--at best--exist in a state of cowardly denial. At worst, they are manipulative predators.
>
> If you really believe what you are saying, Judge Molberg, you can begin by speaking out publicly against the abuse that goes on daily in the George Allen Courts building, and by advocating for the destruction and reform of our so-called Family Court system. We're waiting." **[EXHIBIT "B".]**

When Appelant Miller checked the post later that day, he saw that **his comment had been deleted from Judge Molberg's post**. *Id.* Not only that, but Miller also saw that **he had been blocked from making any comments on Judge Molberg's Facebook page. [EXHIBIT "C".]** A 2020 screenshot of the same post on Justice

Molberg's Facebook page clearly shows that Miller was *still* blocked from making comments on Justice Molberg's Facebook page, more than *four years* later. *Id.*

In a prior appeal in the 5th District COA (case no. 05-19-00197-CV), Miller filed a motion to recuse Molberg, citing the above conduct as evidence of bias. This Court granted Miller's motion to recuse, and Molberg recused himself from that appellate case. **[The Court's 2020 Order recusing Molberg is attached as EXHIBIT "D".]**

Even more egregiously, **Justice Molberg has now blocked Miller from even *viewing* Molberg's Facebook page. [EXHIBIT "E".]** When Miller attempts to access this page while logged into Facebook under his own account, he sees a page indicating that "This content isn't available." *Id.* When Miller accesses Molberg's official Facebook page while Miller is *not* logged in under his own account, Molberg's page displays normally. **[EXHIBIT "F".]**

It is apparent from Justice Molberg's acts of censorship and blocking that he does not agree with Miller's criticism of the Family Court system as abusive and corrupt—an allegation that is central to the instant appeal—and he will actively prevent Miller from expressing this criticism in a public forum. Thus Justice Molberg's bias against Miller is right before us in black and white—or rather in the empty space that Miller's words once occupied.

TEX R. CIV. P. Rule 18b(b)(1) requires recusal when "the judge's impartiality might reasonably be questioned." TEX R. CIV. P. Rule 18b(b)(2) requires recusal when "the judge has a personal bias or prejudice concerning the subject matter or a party." When a Justice—an elected government official—has previously deleted a litigant's comments on a that elected official's public social media page—and has gone so far as to block a litigant from even viewing the official's social media page—the impartiality of that Justice in a case involving this litigant is certainly in question. Thus Justice Molberg should recuse himself on grounds of bias and a lack of impartiality under TEX R. CIV. P. Rule 18b(b)(1) and 18b(b)(2).

Under part 18b(b)1, a party need not prove actual bias or what was in the mind of the judge. (See *Gaal v. State*, 332 S.W.3d 448 (Tex. Crim. App. 2011); *Litkey v. United States*, 510 U.S. 540, 555 (1994)).

Even more troubling, in his act of censorship, Justice Molberg has violated Appellant Miller's First Amendment rights. In 2019, the United States Court of Appeals for the Fourth Circuit ruled that a Facebook page of an elected official is a public forum, and that the official may not block users with dissenting views:

> "In sum, the interactive component of Chair's Facebook Page constituted a public forum, and Randall [i.e. the official] engaged in unconstitutional viewpoint discrimination when she

> banned Davison's Virginia SGP Page from that forum." *Brian Davison v. Phyllis Randall*, 17-2002 (4th Cir. 2019), at 34.

And in another notorious recent case involving President Donald Trump and his Twitter account, the United States Court of Appeals for the Second Circuit also ruled that deleting comments and blocking users from an elected official's social media page is a violation of the First Amendment:

> "The United States District Court for the Southern District of New York (Buchwald,J.) found that the 'interactive space' in the account is a public forum and that the exclusion from that space was unconstitutional viewpoint discrimination. We agree, and, accordingly, we affirm the judgment of the District Court." *Knight First Amendment Institute v. Trump*, 18-1691 (2nd Cir. 2019), at 2.

The Second Circuit's ruling also elaborated:

> "President Donald J. Trump appeals from a judgment of the United States District Court for the Southern District of New York (Buchwald,J.) concluding that he engaged in unconstitutional viewpoint discrimination by utilizing Twitter's 'blocking' function to limit certain users' access to his social media account, which is otherwise open to the public at large, because he disagrees with their speech. We hold that he engaged in such discrimination and, consequently, affirm the judgment below." *Id.* at 3-4.

And the Second Circuit concluded:

> "Accordingly, we hold that the President violated the First Amendment when he used the blocking function to exclude the Individual Plaintiffs because of their disfavored speech." *Id.* At 27.

Justice Molberg's act of censorship is identical to that of Donald Trump in the Second Circuit case, and of the public official in *Davison*: he blocked Appellant Miller from his public social media forum, and in doing so, he violated Miller's First Amendment rights. This behavior is abhorrent in any elected official, and it is absolutely unconscionable when it is manifested by a judge. Justice Molberg took a professional oath to uphold the Constitution. *See* TEX. CONST. ART. XVI, SECTION 1. He chose to violate that oath when he deleted Miller's comment and blocked Miller from his Facebook page, and he has continued to violate that oath—and Miller's constitutional rights—from 2015 to the present by continuing to block Relator Miller from this official public forum.

Justice Molberg's viewpoint discrimination against Miller on his Facebook page demonstrates clear bias against Miller, who is a litigant in this appeal, and it further demonstrates professional incompetence. A Justice who has such a manifest, blatant, brazen disregard for the First Amendment should not be hearing an appeal complaining of numerous First Amendment violations. Nor should a Justice who has previously

discriminated against an individual (i.e. Miller) be empaneled to hear an appeal involving that same person (not to mention actually writing an opinion in such an appeal). To do so would represent a clear violation of Miller's Fourteenth Amendment Due Process rights, as well as Miller's right to Due Course of Law under Article I, § 13 of the Texas Constitution. Justice Molberg should therefore recuse himself from this appeal—as he did in Miller's 2019 case. The people of Texas would be best served by his resignation from office, so that it might be filled by a jurist who at least understands and adheres to the most fundamental tenets of American law—i.e. the Bill of Rights.

PRAYER:

Appellant prays that the Court grant his *Motion to Recuse*, and recuse Justice Ken Molberg from these proceedings, vacate the Court's Opinion issued by Molberg on April 8, 2022, and assign another impartial Justice in Molberg's place.

Appellant prays for all other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Bradley B. Miller

Bradley B. Miller
Party Pro Se
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Dallas, Texas 75230
(214) 923-9165 Telephone
tech@bbmcs.com

CERTIFICATE OF CONFERENCE

I certify that on April 21, 2022, Appellant contacted counsel for Appellee Andrea Plumlee via email in accordance with Texas Rules of Appellate Procedure § 10.1 (a) (5). Appellee's counsel, Scot M. Graydon, responded that he is opposed.

/s/ Bradley B. Miller
Bradley B. Miller
Party Pro Se

CERTIFICATE OF SERVICE

I certify that on April 22, 2022, the foregoing document was served via the Court's electronic filing manager upon Appellee and upon state counsel in compliance with the Texas Rules of Appellate Procedure Section 9.5 (b) (1).

***Via E-file***

(Counsel for Andrea Plumlee and State of Texas)
Scot M. Graydon (Bar Card # 24002175) scot.graydon@oag.texas.gov

Courtesy Copies:

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(Counsel for The Estate of Maryann Mihalopoulos)
Jennifer Littman (Bar Card # 00786142) elayna@bnmdallas.com

Dated this 22nd day of April, 2022.

/s/ Bradley B. Miller
Bradley B. Miller
Party Pro Se

## VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared Bradley B. Miller, a person whose identity is known to me. After I administered an oath to him, upon his oath he said the following:

"My name is Bradley B. Miller. I am over twenty-one (21) years of age, of sound mind, and am capable of making this document. The facts stated in this document are within my personal knowledge and are true and correct. All of the documents in the attached Exhibits are true and correct copies of the documents identified, as those documents exist in my files. I am a Party Pro Se, and I prepared this document."

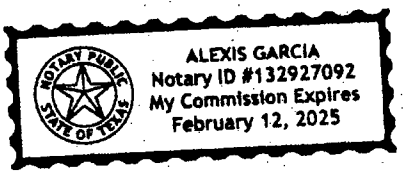
Signed this 22nd day of April, 2022.

Bradley B. Miller, Affiant

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 22nd day of April, 2022.

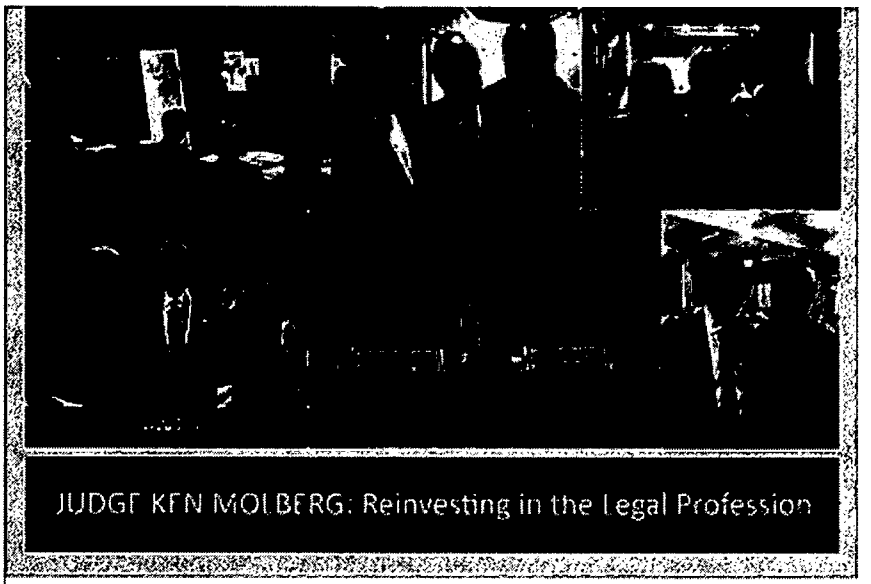
Notary Public in and for the State of Texas

My commission expires: Feb 12, 2025



Post on Facebook page of Judge Ken Molberg Campaign, October 28, 2015.

[Snapshot of March 7, 2019. The post is unchanged as of January 27, 2020.]




**Justice Ken Molberg**
October 27, 2015 ·

My Thoughts on Reinvesting in the Legal Profession

To my way of thinking, being a responsible member of the profession doesn't stop with earning your law degree and starting your practice. Our justice system is a living thing. It relies on ongoing reinvestment from its members into the community and the profession itself, from continuing education, to volunteerism, to encouraging young people who want to become lawyers.

I wonder how many young people first truly believed they could be a lawyer because they participated in a mock trial coached by real attorneys, and presided over by real judges. I wonder how many people in legal trouble who felt hopeless were assisted by a volunteer attorney. I wonder how many imperfections in our legal system have been addressed by groups dedicated to making the process more fair and accessible for those who may feel voiceless and powerless.

All of my career, I have been involved in and supported legal organizations such as the Dallas Bar Association, Dallas Hispanic Bar Association, American Board of Trial Advocates, Dallas Trial Lawyers Association, the J. L. Turner Legal Association and many more. These organizations make a real difference. Most have vibrant programs that improve the profession, help attorneys better assist their clients, address discrimination and access to the profession, provide scholarships to young people entering the law, and pursue efforts to improve the community and our justice system.

The continuous improvement of the legal profession directly impacts anyone going through the justice system. That is why I have been such an active member and strong supporter of legal organizations at the regional, state and national levels.

- Judge Ken Molberg

EXHIBIT "A"
Page 1 of 1

Post on Facebook page of Relator Bradley Miller, October 28, 2015.

[Snapshot of March 7, 2019. The post is unchanged as of January 27, 2020.]

**Bradley Miller** shared a photo. •••

October 28, 2015 ·

This morning, I posted the comment below on the FB page of Judge Ken Molberg Campaign (link below). Later today, my comment was removed, and I have been blocked from the page. Would Judge Ken Molberg care to comment on the actions of his campaign page moderator? Why should we allow a candidate to hold office who does not allow the airing of legitimate concerns?

========[Comment text follows]========

Bradley Miller Here's a good example of what's wrong with the legal profession: city bar associations–including the Dallas Bar Association–lack any sort of meaningful ethics committee. The DBA compiles a survey on judicial conduct and yet fails to censure even egregious violations. Judical incompetence is rampant (and we all know who they are), and yet lawyers lack the guts to stand up and speak out against these people. Family Court is awash in abuse of discretion–and abuse in general–and yet Family Law attorneys are happy to profit from the court-assisted destruction of familes. The Dallas Bar is essentially a self-congratulation club that perpetuates this abuse. The law is a frequently dishonorable profession whose practitioners–at best–exist in a state of cowardly denial. At worst, they are manipulative predators.

If you really believe what you're saying, Judge Molberg, you can begin by speaking out publicly against the abuse that goes on daily in the George Allen Courts building, and by advocating for the destruction and reform of our so-called Family Court system. We're waiting.

https://m.facebook.com/.../a.60473996631180.../826549390797523/...

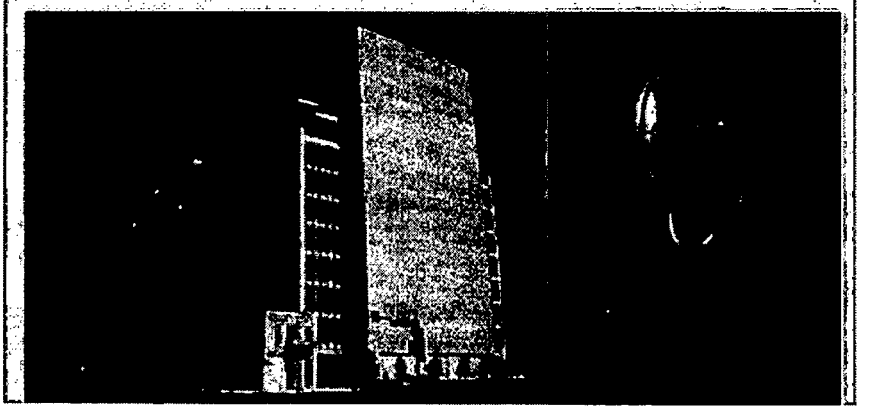


EXHIBIT "B"
Page 1 of 1

Facebook page of Justice Ken Molberg; Comment section of October 28, 2015 post. [Snapshot of January 27, 2020. All comments shown.]

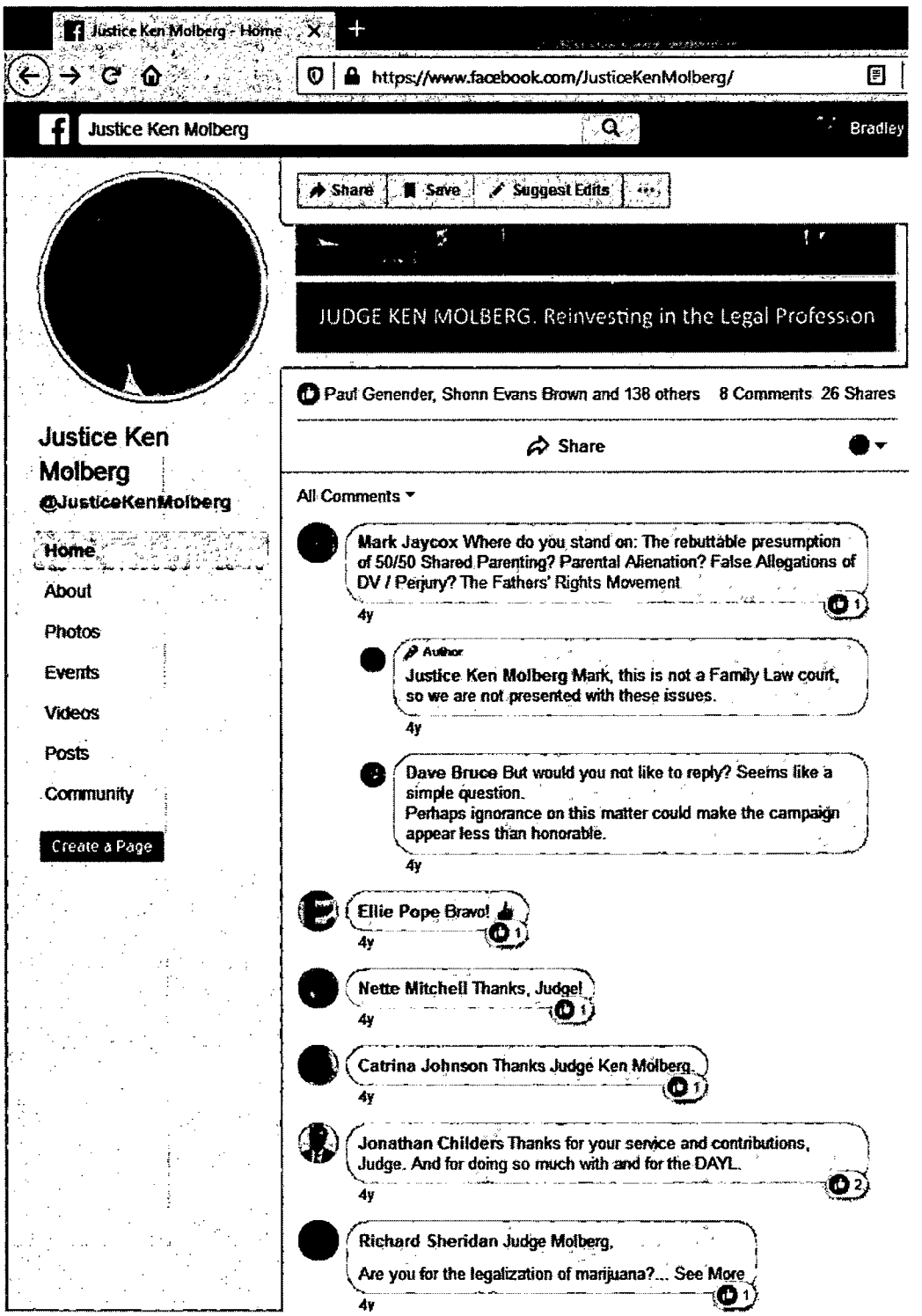



EXHIBIT "C"
Page 1 of 1

**Order entered February 3, 2020**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-19-00197-CV**

**IN THE INTEREST OF V.I.P.M., A CHILD**

**On Appeal from the 330th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DF-13-02616**

# ORDER

Before the Court is appellant's January 27, 2020 motion to recuse Justice Ken Molberg. The motion is **GRANTED** to the extent that Justice Molberg voluntarily recuses himself from this proceeding.

/s/ DAVID L. BRIDGES
Presiding Justice

EXHIBIT "D"
Page 1 of 1

Facebook page of Justice Ken Molberg; page is NOT visible when accessed from Miller's Facebook account. [Snapshot of April 21, 2022.]

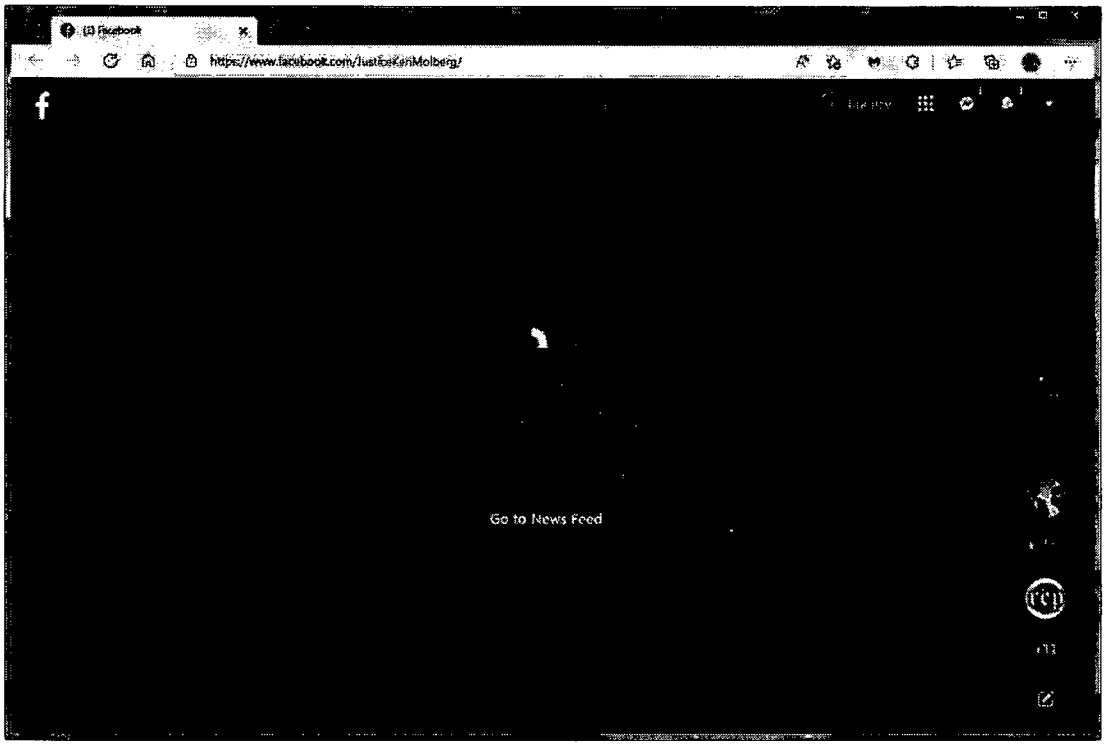



EXHIBIT "E"
Page 1 of 1

Facebook page of Justice Ken Molberg; page IS visible when accessed

While Miller is NOT logged into Facebook. [Snapshot of April 21, 2022.]

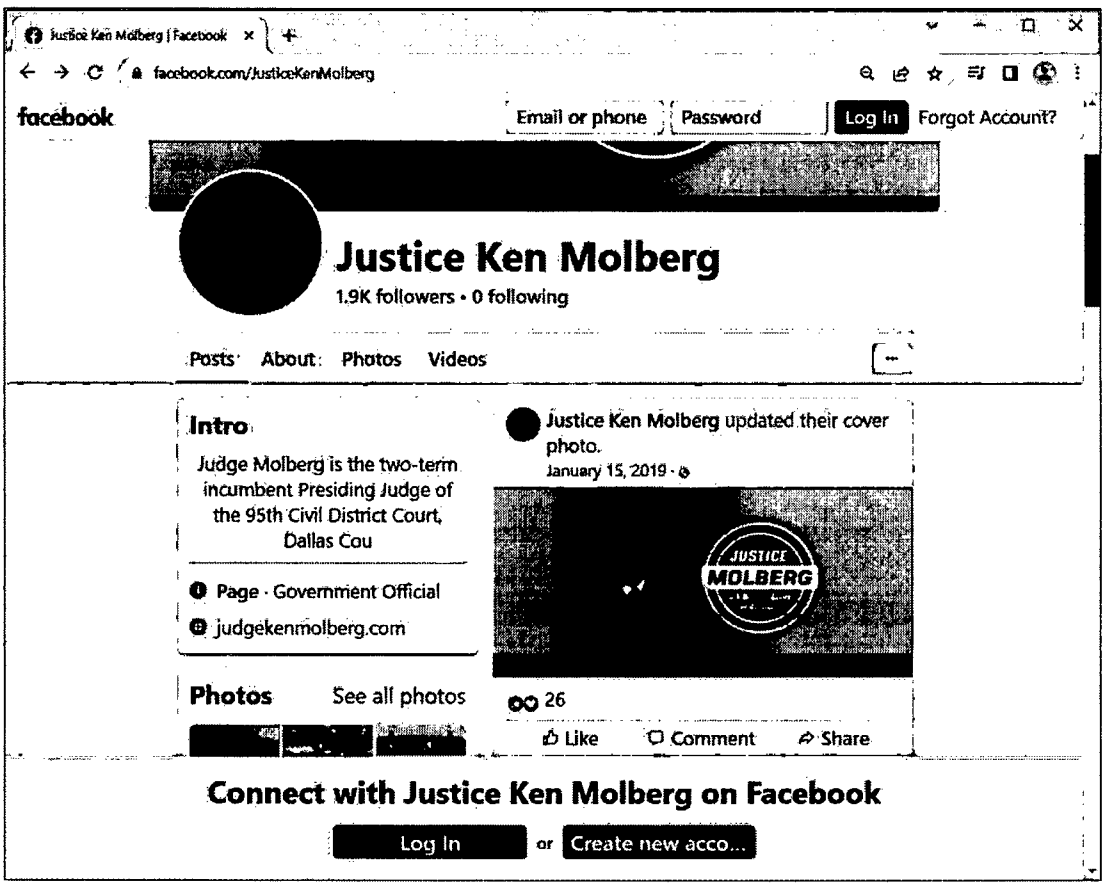



EXHIBIT "F"
Page 1 of 1

# F

Miller's Response In Opposition To Plumlee's Plea To The Jurisdiction

[Texas 116th Civil District Court]

(2021/05/11)

APPENDIX
**F**

NO. DC-20-15614

| | | |
|---|---|---|
| BRADLEY B. MILLER,<br>*Plaintiff* | § | IN THE DISTRICT COURT |
| v. | § | 116th JUDICIAL DISTRICT |
| VIRGINIA TALLEY DUNN, et al.<br>*Defendants* | § | DALLAS COUNTY, TEXAS |

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT ANDREA PLUMLEE'S PLEA TO THE JURISDICTION**

Bradley B. Miller, Plaintiff, appearing before the Court on his own behalf, files this *Response In Opposition to Defendant Plumlee's Plea to the Jurisdiction.* In support, Plaintiff shows the following:

## I. Introduction and Summary

1. Plaintiff is alleging that Defendant Andrea Plumlee signed—**without jurisdiction**—a purported "Order" on November 17, 2016, which contained injunctions violative of Plaintiff's First Amendment rights to free speech and assembly, and also of his Fourteenth Amendment right to parent his child. This purported "Order" also imposed financial levies against Miller, an act that constitutes fraud. Defendant Plumlee performed this illicit act in conjunction with Defendants Rochelle (in person) and Defendants Dunn and Findley (by participation)—which constitutes conspiracy. (*See Plaintiff's Original Petition* at pp. 48-49, 83-84).

2. Defendant Plumlee has no immunity for this act because it was done "in the complete absence of all jurisdiction" and was therefore not taken in her official judicial capacity. *Mireles v. Waco*, 502 U.S. 9 at 11-12 (1991).

3. Plaintiff Miller filed a Motion for Declaratory Judgment and accompanying Exhibits in this Court on April 21, 2021. That Motion and its Exhibits clearly demonstrate—by way of date and time stamps on federal and state court filings—that **(1)** Miller had removed his case to (NDTX) federal court prior to Defendant Plumlee's signing of her purported "Order," **(2)** that Plumlee signed the order **after Miller's removal**, and **(3)** that Miller's case was not remanded from federal to state court until the day **after** Plumlee signed this purported "Order". Thus Plumlee's signing of this purported "Order" was done without jurisdiction, and she has no immunity (sovereign or judicial) for this illegal and tortious act. The "Order" is also void.

4. Defendant Plumlee's conduct was consistent with her constitutionally-violative behavior toward Miller throughout the course of Miller's divorce and subsequent custody proceedings in the 330th Family District Court in case number DF-13-02616. Defendant Plumlee has been able to hide behind the shield of her office during most of her egregious misconduct against Miller. But in the case of the fraudulent "Order" she signed on November 17, 2016, she has no such immunity. Defendant Plumlee is therefore liable to civil suit and damages for her conduct.

5. Defendant Plumlee's frantic hand-waving in her *Plea to the Jurisdiction* is merely a desperate effort to distract attention from the fact that she regularly engages in unconstitutional and illegal conduct in her courtroom, and that—in this instance—she committed a crime and tortious acts for which she has no immunity. Plumlee must therefore be held accountable in this civil suit.

6. The issue of jurisdiction regarding Plumlee's purported "Order" of November 17, 2016 has never been adjudicated in any court. The United States Supreme Court denied hearing of Miller's petitions four times, and the Texas Supreme Court denied hearing twice. The federal

Fifth Court of Appeals twice decline to rule on the matter during Miller's removals. The Texas Fifth District Court of Appeals explicitly (and ludicrously) ruled that this purported "Order"—appealed via mandamus—was "not included within the scope of his appeal" because "his appeal was due thirty days from the date of that November 17, 2016 order." *Int. of V.I.P.M.*, No. 05-19-00197-CV, 2020 WL 1472210, at *2 (Tex. App. Mar. 26, 2020), review denied (Aug. 28, 2020), cert. denied sub nom. *Miller v. Dunn*, No. 20-6965, 2021 WL 1240959 (U.S. Apr. 5, 2021); this ruling is attached to Plumlee's *Plea to the Jurisdiction* as Exhibit B. The 5th District Court of Appeals (shamefully) limited its ruling to the appealed Title IV-D judgment **only**. *Id.* **Thus this Court does have jurisdiction over Defendant Plumlee and her purported "Order".**

7. Plaintiff does have standing to bring suit because he has been harmed by the actions of Defendant Plumlee; Plumlee's conduct falls within the statue of limitations; and Plaintiff is not bringing suit under a criminal statute.

## II. Factual Background

8. A final order-entry hearing in Defendant Dunn's custody modification suit (in 330th Family District Court case number DF-13-02616) was scheduled to be held before Defendant Andrea Plumlee at 9:00 a.m. on November 17, 2016. (See Plaintiff's *Emergency Motion for Declaratory Judgment*, Exhibit A at 16).

9. Immediately prior to the final order-entry hearing in the 330th Family District Court, Miller removed his case to federal court. He filed his removal petition in the United States District Court for the Northern District of Texas ("NDTX") at 8:27 a.m. on November 17, 2016, citing numerous constitutional violations in the 330th Family District Court. (*Id.* at Exhibit B).

10. Miller then filed a Notice of Case Removal in the 330th Family District Court at 8:55

a.m. on that same day. [*Id.* at EXHIBIT C]. Miller's case was then legally removed to Federal Court, and the state court had no jurisdiction over the case.

11. Miller then proceeded immediately to the door of the 330th Family Court and waited outside the courtroom door for Defendant Dunn's attorneys to arrive.

12. At 9:00 a.m. on that same day, Defendant Patricia Rochelle (counsel for Defendant Dunn) appeared, walking from the elevator alcove to the 330th courtroom door. When Defendant Rochelle approached, Miller handed Rochelle file-stamped copies of his federal removal petition and the state court Notice of Removal. [*Id.* at EXHIBITS B, C]. Miller then informed Rochelle, "This case has been removed to federal court." Rochelle retorted, "I'll tell Judge Plumlee you think you have removed the case. Defendant Rochelle then walked into Defendant Plumlee's courtroom. Miller left the premises.

13. Later that day, Rochelle's office emailed Miller a purported final *Order In Suit To Modify Parent-Child Relationship* signed by Defendant Plumlee. [*Id.* at EXHIBIT D at 9]. The purported "Order" is dated November 17, 2016. *Id.*

14. This purported "order" of November 17, 2016 contains several injunctions that are violative of Miller's constitutional rights, including prior restraint on his First Amendment rights to free speech and assembly, and infringements of his Fourteenth Amendment right to parent. [*Id.* at EXHIBIT D at 6]. The purported "order" also imposes a $25,000 legal fees levy against Miller and a $15,000 levy of attorney's fees on appeal, with interest accruing at 5% per year, compounded annually; it also imposes a requirement that Miller post an additional appellate bond of $15,000 prior to any appeal, and it levies $517.33 in court costs against Miller. *Id.* at 9. As a direct consequence of this purported "order," Miller has been subject to an illegal gag order and other serious violations of his constitutional rights for more than four years.

15. The evidence indicates that Defendant Rochelle—knowing that Plaintiff Miller had removed his case to federal court, and that the state court had no jurisdiction—submitted a purported "order" to Defendant Plumlee, then a false "judge" of a purported court which had no jurisdiction; and Defendant Plumlee signed this purported "order" without jurisdiction. Defendant Rochelle then electronically transmitted this purported "order" to Plaintiff Miller, falsely claiming it to be a legitimate court document.

16. Miller's federal removal case was remanded by the NDTX Federal Court on November 18, 2016, i.e. the following day. [*Id.* at EXHIBIT E].

17. Thus the 330th Family Court and Defendant (Judge) Plumlee were entirely deprived of jurisdiction in Miller's Family Court case from 8:55 a.m. on November 17, 2016—prior to the 9:00 a.m. final order-entry hearing at which the purported "order" was signed—until November 18, 2016. Further, Dunn's counsel did not file a certified copy of the remand letter in the state court as required by Tex. R. Civ. Proc. 237a. [*See Id.* at EXHIBIT A at 17]. Thus any subsequent default judgment (if any) against Miller would be barred by law. TRCP 237a. (There is no record of any further order in Dunn's 2015 modification suit. *Id.*)

18. The case docket for Miller's Family Court case (DF-13-02616) indicates that the November 17, 2016 order-entry hearing was "canceled". [*Id.* at EXHIBIT A at 17].

**Argument**

19. Plaintiff previously filed an Emergency Motion for Declaratory Judgment and accompanying Exhibits in this case on April 21, 2021; Plaintiff incorporates herein by reference all portions of and arguments contained in those filings.

**III. State Court Jurisdiction Halts During Federal Removals**

20. Federal removals are governed by 28 U.S.C. § 1446. 28 U.S.C. § 1446(d) dictates that, once a case is removed, the state court case can "proceed no further unless and until the case is remanded," and the state court loses jurisdiction over the case. 28 U.S.C. § 1446(d); *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 122 (1882). As described above, Plaintiff Miller filed his removal petition in the NDTX Federal District Court on November 17, 2016 and subsequently filed his notice of removal in the state court. These filings occurred prior to the hearing in Miller's state court case, and prior to Defendant Plumlee's signing of her purported "order" later that day. Plumlee's acts were done after removal and prior to remand.

21. Extensive federal and state precedent has determined and affirmed that these two federal and state filings establish federal jurisdiction, and remove state-court jurisdiction: "Since the adoption of § 1446, it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971), citing *Hopson v. North American Insurance Co.*, 71 Idaho 461, 233 P.2d 799; *State ex rel. Gremillion v. NAACP*, La.App., 90 So.2d 884; *Bean v. Clark*, 226 Miss. 892, 85 So.2d 588; *State v. Francis*, 261 N.C. 358, 134 S.E.2d 681; *Schuchman v. State*, Ind., 236 N.E.2d 830; *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 5 Cir., 325 F.2d 206.

22. Miller also served Dunn's counsel, Defendant Patricia Rochelle, with the removal documents prior to the state-court hearing on November 17, 2016; but according to the ruling in *Moore*, that service was not required to perfect removal. Only the filing of the removal petition in the federal district court and the filing of the notice of removal in the state court are required to remove the case. Miller did both, which "immediately" removed the case. *Moore* at 1073. At that point, the state court lost all jurisdiction; yet the state court then proceeded as if federal law

and federal jurisdiction did not apply. The actions of the state court—and Defendant Plumlee—in conducting hearings after Plaintiff Miller's removal were entirely improper and in violation of federal law and Miller's Fourteenth Amendment due process rights. And because Defendant Plumlee signed her spurious "Order" "in the complete absence of all jurisdiction," this act was **not** a judicial act taken in her official capacity. *Mireles v. Waco*, 502 U.S. 9, 13 (1991).

**IV. Any State Court Proceedings Between Removal and Remand Are Void.**

23. The United States Court of Appeals for the Fourth Circuit has previously held that, even if a case is eventually ruled to be not removable, **"the proceedings in the state court in the interval between the filing and service of the removal petition and the remand order [are] void."** *South Carolina v. Moore* at 1069. In the same ruling, The Fourth Circuit elaborated that **"any proceedings in the state court after the filing of the petition and prior to a federal remand order are absolutely void, despite subsequent determination that the removal petition was ineffective."** *Id.* at 1073; *see also McCauley v. Consolidated Underwriters*, 301 S.W.2d 181, 185 (Tex. Civ. App. 1957). The scenario described in *Moore* exactly mirrors the situation in the instant case. Even if a federal district court eventually rules that a removal is ineffective—as occurred in Miller's federal removals—**any** interim proceedings in the state court are void, period.

24. The Fourth Circuit has reaffirmed its prior decision on this issue in a more recent case. In *Ackerman v. ExxonMobil*, the Fourth Circuit ruled:

> "Because § 1446(d) explicitly states that 'the State court shall proceed no further' once removal is effected, 28 U.S.C. §1446(d), we agree with the Defendants that the statute deprives the state court of further jurisdiction over the removed case and that **any post-removal actions taken by the state court in the removed case action are void ab initio. See *South Carolina v. Moore*, 447 F.2d 1067, 1072-73 (4th Cir. 1971)**; accord *Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d

875, 880 (1st Cir. 1983)." *Kenneth Ackerman v. ExxonMobil Corporation*, 12-1103 at 16 (4th Cir. 2013). (Emphasis added.)

The Fourth Circuit went even further regarding the lack of legal authority of continuing state-court proceedings, stating that "Section 1446(d) may be self-acting, in that improper post-removal actions are void whether or not a court has so declared, see *Polyplastics*, 713 F.2d at 880...". *Ackerman* at 17. But of course the 330th Family District Court and Defendant Plumlee believe—however improperly—that these purported "orders" are legitimate; and unfortunately Defendant Plumlee has the power to direct armed sheriff's deputies and police officers to enforce them. Plaintiff Miller has been thus subject to these illegal strictures since November 17, 2016.

25. The United States Court of Appeals for the Fifth Circuit also reaffirmed the Fourth Circuit's ruling in *Moore*:

> "In *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 1 S. Ct. 58, 27 L. Ed. 87 (1882), the Supreme Court held that the removal of a case from state court to federal court ends the power of the state court to act.
>
> Upon the filing, therefore, of the petition (for removal) and bond ... the jurisdiction of the state court absolutely ceased, and that of the circuit court immediately attached. The duty of the state court was to proceed no further in the case. **Every order thereafter made in that court was coram non judice, unless its jurisdiction was actually restored.**
>
> 106 U.S. at 122, 1 S.Ct. at 60. See *Johnson v. Estelle*, 625 F.2d 75, 77 (5th Cir. 1980) (per curiam); ***South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971)**; *Allman v. Hanley*, 302 F.2d 559, 562 (5th Cir. 1962). The jurisdiction of the state court is not restored unless and until the federal court remands the case. *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957). A state court judgment in a case that has been removed may not foreclose further federal proceedings in the removed case and the federal court may enjoin a party from enforcing the state court judgment. *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 325 F.2d 206 (5th Cir. 1963); *Roach v. First National Bank of Memphis*, 84 F.2d 969 (5th Cir. 1936)." *E. D. Systems Corporation v. Southwestern Bell Telephone Company*, 674 F.2d 453 at §§ 19-21 **(5th Cir. 1982)**. (Emphasis added.)

The jurisdiction of the 330th Family District Court had certainly not been restored at the time of the November 17, 2016 hearing, so this proceeding was void. The resulting purported "Order" of November 17, 2016 is likewise void, and this Court must declare it so.

**V. Because Defendant Plumlee acted without jurisdiction, she has no Judicial or Sovereign immunity from suit or damages.**

26. Further, because Defendant Plumlee's signing of the November 17, 2016 post-trial order was done without jurisdiction, Plumlee has no immunity whatsoever from civil suit because her act were not done in her official capacity. Judges are deemed to be "liable to civil actions" for "acts done by them in the clear absence of all jurisdiction over the subject matter." *Bradley v. Fisher*, 80 U.S. 335 at 351 (1871). See also *Stump v. Sparkman*, 435 U.S. 349 at 356-357, 360 (1978). **Further, a judge "is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity," and "a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction."** *Mireles v. Waco* at 11-12. At the time of the November 17, 2016 hearing, the trial court and Defendant Plumlee proceeded while having "clearly no jurisdiction over the subject matter" and with "usurped authority"; thus "no excuse is permissible." *Bradley v. Fisher* at 351-352.

27. Therefore, because she was not acting in her official capacity, and because she was acting without jurisdiction, Defendant Plumlee has no immunity regarding her signing of the purported "Order" of November 17, 2016, and she is answerable to civil damages under 42 U.S.C. §§ 1983 and 1985.

28. In addition, Defendant Plumlee has no immunity under the Texas Tort Claims Act. (See TEX. CIV. PRAC. & REM. CODE § 101.002, and § 101 generally). The TTCA limits

liability for governmental units, but not for individuals who are employees of government units. TTCA § 101.026 states, "To the extent an employee has individual immunity from a tort claim for damages, it is not affected by this chapter." But—as argued *supra*—because Defendant Plumlee was acting without jurisdiction, she has no individual immunity from suit or damages, and the TTCA provides her no additional protection.

29. Plumlee likewise has no sovereign immunity for her actions. The Texas Supreme Court has ruled that "suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity, even if a declaration to that effect compels the payment of money." *City of El Paso v. Heinrich*, 284 S.W.3d 366 at 372 (Tex. 2009). Miller is of course suing Defendant Plumlee to comply with the First and Fourteenth Amendments to the United States Constitution, thus the *El Paso* ruling applies. The Texas Supreme Court explained this exception to sovereign immunity: "A state official's illegal or unauthorized actions are not acts of the State. Accordingly, an action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars." *Id.* at 370, quoting *Federal Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 404 (Tex. 1997). Defendant Plumlee is not the state; she has issued an illicit "Order" without any legal authority; thus she is also deprived of sovereign immunity.

## VI. The issue of jurisdiction regarding Plumlee's purported "Order" of November 17, 2016 has never been adjudicated in any court; thus Res Judicata does not apply.

30. Defendant Plumlee (falsely) claims that the Texas Fifth District Court of Appeals has already ruled that Plumlee had jurisdiction when she signed her "Order" of November 17, 2016.

(See Defendant Plumlee's *Plea to the Jurisdiction* at 5-6). This claim by Defendant Plumlee and her counsel, Scot Graydon, is a deliberate misstatement of material fact.

31. In truth, the issue of jurisdiction regarding Plumlee's purported "Order" of November 17, 2016 has never been adjudicated in any court. The United States Supreme Court denied hearing of Miller's petitions four times, and the Texas Supreme Court denied hearing twice. The federal Fifth Court of Appeals twice declined to rule on the matter during Miller's removals. The Texas Fifth District Court of Appeals explicitly (and ludicrously) ruled that this purported "Order"—appealed via mandamus—was "not included within the scope of his appeal" because "his appeal was due thirty days from the date of that November 17, 2016 order." *Int. of V.I.P.M.*, No. 05-19-00197-CV, 2020 WL 1472210, at *2 (Tex. App. Mar. 26, 2020), review denied (Aug. 28, 2020), *cert. denied sub nom. Miller v. Dunn*, No. 20-6965, 2021 WL 1240959 (U.S. Apr. 5, 2021); this ruling is attached to Plumlee's *Plea to the Jurisdiction* as Exhibit B. The 5th District Court of Appeals (shamefully) limited its ruling to the Title IV-D proceedings only. *Id.* The ruling issued by the 5th District COA pertained **solely and exclusively** to the ruling issued in the Title IV-D enforcement action on January 4, 2019. **Thus this Court does have jurisdiction over Defendant Plumlee and her purported "Order" of November 17, 2016.**

## VIII. The 330th Family Court has no "continuing jurisdiction" over Defendant Plumlee's purported "Order" because it was not part of any legitimate court case.

32. Plaintiff re-alleges all paragraphs *supra*.

33. Because Defendant Plumlee was acting without jurisdiction, her signing of the fraudulent "Order" of November 17, 2016 was entirely nonjudicial. *See Bradley v. Fisher* at 351; *Stump v. Sparkman* at 356-357, 360; *Mireles v. Waco* at 11-12. Plumlee had no more

authority to issue this fraudulent "order" than a Walmart greeter, a gas station attendant, or a local drug dealer. Thus her "Order" is not an instrument of any legitimate court, and the document does not represent any part of the proceedings in Miller's pending 330th Family Court case. Therefore TEX. FAM. CODE § 155.002 does not apply.

34. Plumlee's purported "Order" was thus void *ab intio*. *See National Steam-Ship Co. v. Tugman*; *South Carolina v. Moore* at 1069; *McCauley* at 185. Because her order was issued in the absence of jurisdiction and was not merely the result of judicial error, Her "Order" is not merely "voidable". (*See*, e.g.. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex.2010); *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 271–73 (Tex. 2012)). It is **void**. And a void judgment can be collaterally attacked "at any time". *In re E.R.*, 385 S.W.3d 552, 566 (Tex.2012); *Peralta v. Heights Med. Ctr. Inc.*, 485 U.S. 80, 86 (1988).

**IX. Plaintiff has Standing to bring suit.**

35. Plaintiff re-alleges all paragraphs *supra*.

36. Defendant Plumlee alleges that Miller lacks "standing" to bring suit. (See Defendant Plumlee's *Plea to the Jurisdiction* at 10-11). Standing has been covered *ad nauseam* in Texas jurisprudence. "[S]tanding focuses on the question of who may bring an action." *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The general test for standing is whether there is a real controversy between the parties that will actually be determined by the judgment sought. *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440 at 446 (Tex.1993). "To establish standing, a person must show a personal stake in the controversy." In re B.I.V., 923 S.W.2d 573, 574 (Tex. 1996). There is no question that there is a controversy in this case: Plaintiff Miller alleges—with extensive evidence—that Defendant Plumlee issued a purported

"Order" without jurisdiction that subjected him to financial harm and also injured his First and Fourteenth Amendment rights (at the very least). Miller thus has a personal stake in seeking remedy for these injuries.

37. As Defendant Plumlee herself points out, 'Under Texas law, standing requires (among other things) "that the plaintiff's alleged injury be 'fairly traceable' to the defendant's conduct..." (citing *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 484 (Tex. 2018). (See Defendant Plumlee's *Plea to the Jurisdiction* at 10). There is no question in this case that the harm done to Plaintiff Miller is directly traceable to Defendant Plumlee. In fact, the signature on the purported "Order" of November 17, 2016 is in fact traced in Plumlee's own hand. Plumlee's suggestion that "this Court cannot redress any alleged injury" is a legal absurdity. As Miller has clearly demonstrated above, the United States Supreme Court has ruled that a judge is liable to suit and damages for acts performed in the absence of all jurisdiction. Thus the Court can indeed offer redress, and Miller has standing to file suit.

**X. Defendant Plumlee's tortious act falls within the statue of limitations.**

38. The statute of limitations for fraud is four years. *See* Texas Civ. Prac. & Rem. §16.004(a)(4). Defendant Plumlee signed her injurious purported "Order" on November 17, 2016. Miller initially filed suit in the NDTX federal district court on March 30, 2021. When that suit was dismissed on September 17, 2020, he filed the instant suit in this state Court on October 15, 2020—within 30 days of dismissal, thus preserving the tolling of his fraud claim from four years prior to March 30, 2020. (*See Artis v. District of Columbia*, No. 16-460, Slip op. at 11). Thus Miller filed his suit within four years of Plumlee's tortious act of November 17, 2016, and **within the statute of limitations for fraud.**

39. For other acts complained of in Miller's Petition for which the strict statute of

limitations may have run (e.g. conspiracy for the act of November 17, 2016), the continuing torts doctrine should apply. The conspiratorial acts by several Defendants—including Plumlee, Diaz, Dunn, Rochelle, Findley, and Hockaday, at least—against the Plaintiff are ongoing, thus the statute of limitations should toll from the present day. (*See Treanor v. MCI Telecommunication Corp.*, 200 F.3d 570 at 573 (8th Cir. 2000)). The Defendants have kept Miller tied up in constant appellate litigation since 2015 in the effort to regain his constitutional rights. (*See Plaintiff's Verified Original Petition* at 13-14, *passim*). Any reasonable application of the Due Process Clause of the Fourteenth Amendment would preclude allowing the statue of limitations for tortious acts (including personal injury and conspiracy) to run while one or more conspirators keeps an indigent party involved in litigation resulting from their abusive conduct—thus allowing the other conspirators to escape liability for their tortious acts. Plaintiff thus challenges as unconstitutional the Texas state 2-year statute of limitations for personal injury and conspiracy in these circumstances. See Tex. Civ. Prac. & Rem. Code 16.003, etc. Thus Plumlee should be held liable for personal injury and conspiracy as well as fraud.

**XI. Plaintiff Miller is not suing under a criminal statute.**

40. Defendant Plumlee protests that Miller does not have standing to bring a complaint under a criminal statute. (*See* Plumlee's *Plea to the Jurisdiction* at 2, 14-15). Miller acknowledges that point. However, he is bringing this suit under the civil statutes 42 U.S.C. §§ 1983 and 1985, Section 24.007(b) of the Texas Government Code, Sections 65.001-65.045 and specifically Section 65.021(a) of the Texas Civil Practices and Remedies Code, Tex. R. Civ. P. 680–693, and under other statutes and the common law of the State of Texas. Miller has catalogued the numerous criminal statutes violated by the Defendants herein to highlight the seriousness of their actions and the severity of the tortious acts they have committed against

Miller. He also does so in the expectation that the Dallas County District Attorney—who appears as counsel in this case—will prosecute these crimes, as his office requires.

*Prayer*

WHEREFORE, Plaintiff MILLER prays that the Court DENY Defendant Andrea Plumlee's Plea to the Jurisdiction, and allow his suit against her to proceed. Plaintiff further prays for all such other and further relief as the Court deems just and proper.

Respectfully submitted,

Bradley B. Miller, pro se
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Dallas, Texas 75230
Tel: (214) 923-9165

By: /s/ Bradley B. Miller
Bradley B. Miller
*Pro se*

May 11, 2021

CERTIFICATE OF SERVICE

I certify that true and correct copy of the above was served on each attorney of record or party via E-file in accordance with the Texas Rules of Civil Procedure on May 11, 2021.

/s/ Bradley B. Miller
Bradley B. Miller
*Pro Se*

# G

Miller's Memorandum Objecting To Fraud On The Court

[Texas 116th Civil District Court]

(2021/05/17)

APPENDIX
**G**

NO. DC-20-15614

| | | |
|---|---|---|
| BRADLEY B. MILLER,<br>*Plaintiff* | § | IN THE DISTRICT COURT |
| v. | § | 116th JUDICIAL DISTRICT |
| VIRGINIA TALLEY DUNN, et al.<br>*Defendants* | § | DALLAS COUNTY, TEXAS |

**PLAINTIFF'S MEMORANDUM OBJECTING TO FRAUD ON THE COURT REGARDING THE ATTEMPTED APPLICATION OF PARRISH v. STATE AND BRADT v. WEST TO THIS CASE BY DEFENDANTS VIRGINIA TALLEY DUNN, DAVID H. FINDLEY, PATRICIA ROCHELLE, AND ANDREA PLUMLEE**

Bradley B. Miller, Plaintiff, appearing before the Court on his own behalf, files this *Memorandum*. In support, Plaintiff shows the following:

## I. Introduction – Hearings and Untimely Briefs

1. Two consecutive hearings were held in this Court on Friday, May 14, 2021 at 10:00 a.m. and 11:00 a.m. The first dealt with Defendant Andrea Plumlee's Plea to the Jurisdiction, and the second dealt with the Rule 91a Motion to Dismiss filed by Defendants Virginia Talley Dunn, David H. Findley, and Patricia Rochelle.

2. On Wednesday, May 12, 2021 at 10:31 a.m., attorney (and Texas Assistant Attorney General) Scot M. Graydon filed a *Reply Brief For Judge Andrea Plumlee's Plea To The Jurisdiction*. It was in this "Reply Brief" that Defendant Plumlee first cited the case *Bradt v. West* in her defense. *Bradt v. West*, 892 S.W.2d 56, 67 (Tex. App.—Houston [1st Dist.] 1994, writ denied); *see* Plumlee's Reply Brief at 3-5. As Plaintiff Miller was busy preparing for two Rule 91a hearings the next day, Miller did not see this Reply Brief until the evening of May 12,

and he did not have time to thoroughly review it before Defendant Plumlee's hearing on May 14—less than two full days after Plumlee's Reply Brief was filed.

3. On Thursday, May 13, 2021 at 3:49 p.m., Mr. Graydon filed a *Letter Brief From Judge Andrea Plumlee*. It was in this "Letter Brief" that Defendant Plumlee first cited the case *Parrish v. State* in her defense. *Parrish v. State*, 485 S.W.3d 86 (Tex. App. 2015); *see* Plumlee's Letter Brief at 2. Mr. Graydon's filing also speciously claims that the content of the Letter Brief was "inadvertently omitted" from Plumlee's prior Reply Brief—when it is obvious that the Reply Brief was complete as submitted, and the Letter Brief was submitted with the sole purpose of adding additional case law and legal arguments. *See* Plumlee's Letter Brief at 1-2. As Plaintiff Miller was busy preparing for two other Rule 91a hearings the next day, Miller did not see this Reply Brief until the night of May 13, and he did not have time to review it at all before Defendant Plumlee's hearing on May 14—less than nineteen hours after Plumlee's Reply Brief was filed. Miller was thus totally unaware of its contents at the time of the hearing.

4. Dallas County Civil Courts Local Rule 2.09 stipulates that briefs "must be served and filed with the Clerk of the Court no later than three working days before the scheduled hearing." L.R. 2.09. The same Rule also stipulates, "Briefs not filed and served in accordance with this paragraph likely will not be considered. L.R. 2.09. Both the Reply Brief and Letter Brief were thus untimely filed and violated Local Rule 2.09.

5. At the hearing in this Court on Plumlee's Plea to the jurisdiction on May 14, 2021, Plaintiff Miller verbally moved to strike both Defendant Plumlee's Letter Brief and Reply Brief on the grounds that their untimely filing violated Local Rule 2.09. The Court denied Miller's motion; the judge commented that she had already read these Briefs and could not simply forget them.

6. In the interest of the Fourteenth Amendment guarantee of Plaintiff Miller's rights to Equal Treatment and Due Process, this Court must now read and consider this Memorandum before issuing judgment on the motions of Defendants Plumlee, Dunn, Findley, and Rochelle.

7. In the two hearings on May 14, 2021 on the jurisdiction and Rule 91a dismissal motions filed by Defendants Plumlee, Dunn, Findley, and Rochelle, Mr. Graydon and Defendant Findley relied heavily on *Bradt* and *Parrish* in their arguments. Plaintiff Miller, in the limited time he had between receiving Plumlee's briefs and the hearing itself, had ascertained that *Bradt* involved a motion to recuse and not a federal removal, but had not researched the case beyond that point. Miller was totally unfamiliar with *Parrish* at the time of the hearing and was thus unable to address its content or (in)applicability. He will do so now.

## II. Summary of the Argument

8. Plaintiff's case was removed under civil statute 28 U.S.C. § 1443 and 28 U.S.C. § 1446, and his case was removed timely according to those statutes.

9. *Parrish v. State* does not apply because Plaintiff's case was removed under civil statute 28 U.S.C. § 1443 and not criminal removal statute 28 U.S.C. § 1455.

10. A Federal Court Order recognized the procedural validity of Miller's removal by ordering the remand of his case on grounds of subject matter jurisdiction, and not on grounds of procedural defect. Therefore Plaintiff's federal removal was not procedurally defective.

11. A State Court is prohibited from overruling or otherwise interfering with a Federal Court Order. Therefore this Court cannot rule that Miller's federal removals were invalid when the NDTX federal district court has already ruled to the contrary.

12. *Bradt v. West* does not apply to judicial jurisdiction issues because Plaintiff's case involves a federal removal and not a motion to recuse. Recusals do not halt stae court jurisdiction, while a federal removal unequivocally does.

13. *Bradley v. Fisher*, *Stump v. Sparkman*, and *Mireles v. Waco* define the meaning of "without jurisdiction" in regard to judicial immunity; and that definition accords with *National Steam-Ship Co. v. Tugman* and its descendants. Judges have immunity UNLESS they act without jurisdiction. A federal removal deprives a state court and state judge of jurisdiction, and a state judge who acts without jurisdiction has no immunity from suit.

14. The specious arguments of Defendants Plumlee, Dunn, Findley, and Rochelle were designed to mislead and therefore represent a fraud upon the court. These Defendants have intentionally mischaracterized both facts and laws in an attempt to interfere with the judicial mechanism, and Due Process requires that court must not rely on these misrepresentations in making its judgment.

## Argument

### III. Plaintiff's case was removed under civil statute 28 U.S.C. § 1443 and 28 U.S.C. § 1446, and his case was removed timely according to those statutes.

15. On both November 17, 2021 and June 7, 2018, Miller moved his case to federal court under the authority of 28 U.S.C. § 1443—the federal civil rights removal law. (*See Plaintiff's Verified Emergency Motion for Declaratory Judgment*, filed in this case on April 21, 2021 at Exhibit B, page 1 and Exhibit F, page 1. Plaintiff incorporates all paragraphs and exhibits of that Motion herein by reference). Section 1443 provides for the removal of civil cases to federal court. *See* 28 U.S.C. § 1443.

16. Removals under Section 1443 are governed by the procedures set forth in 28 U.S.C. § 1446. Specifically, pertaining to this case, Section 1446(b)(3) stipulates:

> "[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3)

Further,

> "The second paragraph of the amendment to subsection (b) [i.e. § 1446(b)(3)] is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removable case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions." 16 Moore's Federal Practice ¶ 107 App.02[2] (3d ed. 2001) (quoting H.R. Rep. No. 352, 81st Cong., 1st Sess. (1949)). *See also Benson v. SI Handling Sys., Inc.*, 188 F.3d 780, 783 (7th Cir. 1999).

The "initial pleading" in both instances of Miller's removals was a petition in a custody modification suit filed by Dunn—and neither pleading was "removable" on its face. In Miller's November 17, 2016 federal removal, the triggering event under 28 U.S.C. § 1446(b)(3) was Miller's receipt of Defendant Dunn's *Findings of Fact and Conclusions of Law* from Defendants Findley and Rochelle on October 28, 2016, as well as Miller's receipt of an Order denying Miller's motion to recuse Defendant Plumlee on October 18, 2016. (*See Plaintiff's Verified Emergency Motion for Declaratory Judgment* at Exhibit B at 3, Sub-Exhibit B and Sub-Exhibit C.) Miller filed his federal removal on November 17, 2016, within 30 days of the receipt of both documents. **Thus Miller's November 17, 2016 federal removal was timely filed under 28 U.S.C. § 1446(b)(3).**

17. In Miller's June 7, 2018 federal removal, the triggering event under 28 U.S.C. § 1446(b)(3) was Miller's receipt of a Temporary Restraining Order signed by Defendant Plumlee

on May 17, 2018, as well as Miller's receipt of an extended Temporary Restraining Order signed by Defendant Diaz on May 31, 2018. (*See Plaintiff's Verified Emergency Motion for Declaratory Judgment* at Exhibit F at 8.) Miller filed his federal removal on June 7, 2018, within 30 days of the receipt of both documents. **Thus Miller's June 7, 2018 federal removal was timely filed under 28 U.S.C. § 1446(b)(3).**

18. In addition, the same state court case may be removed to federal court multiple times, as long as the grounds for removal are different each time: "The prohibition against removal 'on the same ground' does not concern the theory on which federal question jurisdiction exists (i.e., federal question or diversity jurisdiction), but rather the pleading or event that made the case removable." *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996); *see also O'Bryan v. Chandler*, 496 F.2d 403, 410 (10th Cir. 1974) ("[D]ifferent grounds more precisely mean a different set of facts that state a new ground for removal."). Miller's 2016 and 2018 removals cited different documents and facts as grounds for removal, so his later removal was not prohibited.

## III. *Parrish v. State* does not apply because Plaintiff's case was removed under civil statute 28 U.S.C. § 1443 and not criminal removal statute 28 U.S.C. § 1455.

19. As described *supra*, Mr. Graydon (on behalf of Defendant Plumlee) cited *Parrish v. State* in his attempt to claim that Plumlee actually did have jurisdiction when she signed the purported "Order" on November 17, 2016. Mr. Graydon made the same arguments in Plumlee's Plea to the Jurisdiction on May 14, 2021—though his stammering and cringing posture belied his lack of confidence in his assertions. And Defendant Findley (on behalf of himself, Dunn, and Rochelle) cited *Parrish v. State* even more forcefully in the May 14, 2021 hearing on the Motion to Dismiss—repeatedly claiming that Miller's federal removal was untimely because he had not

removed his case "within 30 days of service of citation." Defendant Findley appeared more confident in his argument—but as Plaintiff Miller has personally observed over the past eight year, that apparent confidence is only manifest because Mr. Findley is an accomplished liar.

20. But back to the case law: In *Parrish v. State*, a party removed his case to federal court under 28 U.S.C. § 1455—the criminal prosecutions removal statute. *Parrish* at 88. 28 U.S.C. § 1455 has different filing deadlines than Section 1443. Under Section 1455, "A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier..." 28 U.S.C. § 1455(b)(1). And—UNLIKE Section 1443 and 1446—under Section 1455, "The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further..." 28 U.S.C. § 1455(b)(3). This provision stands in stark contrast to removal under Section 1443. Section 1443 removals are governed by 28 U.S.C. § 1446, which explicitly stipulates that, after removal, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C. § 1446(d).

21. In *Parrish*, the SDTX federal district court had ruled that, because the appellant (a criminal defendant) had removed his case later than statutorily allowed, his removal was therefore untimely and was thus defective. *Parrish* at 89. The Texas 14th District Court of Appeals then ruled that the state court did not lose jurisdiction during a defective criminal removal under Section 1455. *Id.* at 89-90. **Crucially, however, nothing of the sort happened in Miller's federal removals—neither removal was untimely, and neither was ruled defective by the NDTX federal district court. Quite the contrary.** Moreover, *neither* of Miller's removals was taken under 28 U.S.C. § 1445.

22. Thus *Parrish v. State* does not apply to the issue of state court jurisdiction in Plaintiff Miller's suit for three reasons: 1) Miller's federal removals were both timely filed according to federal statute (28 U.S.C. § 1446(b)(3)), 2) Miller's removals were *not* ruled defective by the federal district court, and 3) Miller's removal was not taken from a criminal case, or under the federal criminal prosecution removal statute.

23. The same legal logic argued *supra* applies to *Windsor v. Round*, which was also cited by Mr. Graydon in Plumlee's Letter Brief (at 2). In that case as well, a federal district court ruled the appellant's removal procedurally defective—which, again, was not true of Miller's removals. *Windsor v. Round* 591 S.W.3d 654, 666 (Tex. App.—Waco 2019, no pet.). Thus *Windsor v. Round* does not apply to Miller's suit, nor does it apply to his claims regarding Defendant Plumlee's (and Diaz's) lack of jurisdiction.

## IV. A Federal Court Order recognized the procedural validity of Miller's removal by ordering the remand of his case on grounds of subject matter jurisdiction, and not on grounds of procedural defect.

24. The NDTX federal district court remanded Miller's November 17, 2016 removal on November 18, 2016 on the grounds that "subject matter jurisdiction is lacking". (*See Plaintiff's Verified Emergency Motion for Declaratory Judgment* at Exhibit E, page 3.) NDTX federal district court judge Sam Lindsay further ordered, "The clerk of the court is directed to effect the remand in accordance with the usual procedure..."—thus indicating that Miller's removal was procedurally sound. *Id.* There was no mention of any defect regarding the procedure of Miller's removal. *Id.* **Thus Miller's November 17, 2016 federal removal was legally valid.**

25. The NDTX federal district court remanded Miller's June 7, 2018 removal on June 29, 2018. (*See Plaintiff's Verified Emergency Motion for Declaratory Judgment* at Exhibit K,

page 3.) This remand order was also issued "for lack of subject matter jurisdiction". (*See Findings, Conclusions, and Recommendations* in NDTX case no. 3:18-cv-01457, *Miller v. Dunn*, Doc. 23 at 11). The federal district court made no mention of any procedural defect in Miller's removal. **Thus Miller's June 7, 2018 federal removal was also legally valid.**

## V. A State Court is prohibited from overruling or otherwise interfering with a Federal Court Order.

26. A century and a half ago, the United States Supreme Court ruled:

> "Authority of the Circuit [i.e. federal] Courts to issue process of any kind which is necessary to the exercise of jurisdiction and agreeable to the principles and usages of law, is beyond question, and the power so conferred cannot be controlled either by the process of the State courts or by any act of a State legislature." *Riggs v. Johnson County*, 73 U.S. 166 at ¶ 110 (1867).

The *Riggs* ruling elaborated:

> "...it cannot be contended that a State court can enjoin any such process of a Federal court." (*Id.* at ¶ 118).

More recently, the Supreme Court has also held:

> "The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett v. Rose* 496 U.S. 356 (1990); *see also* 18 U.S. Code § 401.

What Defendants Plumlee, Dunn, Findley and Rochelle are doing is effectively asking this state Court to invalidate a judgment issued by a federal district court, i.e. by perverting the interpretation of its letter and intent. Specifically, the Defendants are asking this Court to declare a federal removal procedurally invalid—despite the fact that the NDTX federal district court made no such ruling, and that the NDTX federal court indicated that Plaintiff Miller's removals were, in fact, according to "procedure". The Supremacy Clause of the United States Constitutional forbids this state Court from interfering with the order of a federal court in this

manner. U.S. CONST, ART. VI, CLAUSE 2. Further, to do so under the circumstances argued above would represent a fraud on the court, and this Court must not condone or engage in such conduct. Miller's federal removals were both procedurally sound, were both valid, and thus entirely deprived the state court of "all jurisdiction" during the pendency of those removals. *See* 28 U.S.C. § 1446(d); *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971): "Since the adoption of § 1446, it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court.", citing *Hopson v. North American Insurance Co.*, 71 Idaho 461, 233 P.2d 799; *State ex rel. Gremillion v. NAACP*, La.App., 90 So.2d 884; *Bean v. Clark*, 226 Miss. 892, 85 So.2d 588; *State v. Francis*, 261 N.C. 358, 134 S.E.2d 681; *Schuchman v. State*, Ind., 236 N.E.2d 830; *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 5 Cir., 325 F.2d 206; *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 1 S. Ct. 58, 27 L. Ed. 87 (1882); *E. D. Systems Corporation v. Southwestern Bell Telephone Company*, 674 F.2d 453 at §§ 19-21 (5th Cir. 1982). *See also Plaintiff's Response in Opposition to Defendant Plumlee's Plea to the Jurisdiction*, filed in this Court on May 11, 2021.

## VI. *Bradt v. West* does not apply to judicial jurisdiction issues because Plaintiff's case involves a federal removal and not a motion to recuse.

27. Mr. Grayson, in his Reply Brief filed on behalf of Defendant Plumlee—and in a monumental piece of legal chicanery—repeatedly cites *Bradt v. West* in a frantic attempt to falsely redefine the meaning of a court's "jurisdiction" in the context of a federal removal. (*See* Plumlee's Reply Brief at 3-5).

28. In *Bradt*, Mr. Bradt filed a motion to recuse a judge; after which the judge signed an order of contempt against Bradt. *Bradt* at 66. Recusal procedure is governed by Texas Rules of

Civil Procedure Rule 18a. Once a motion to recuse is filed, "the respondent judge must take no further action in the case until the motion has been decided, except for good cause stated in writing or on the record." TRCP 18a(f)(2)(A). **TRCP 18a contains no stipulations whatsoever regarding jurisdiction, either on the part of the judge, or the court itself.** This fact stands in stark contrast to the stipulation—regarding removals—that "the State court shall proceed no further unless and until the case is remanded" [28 U.S.C. § 1446(d)], and the explicit federal declaration that state court "loses all jurisdiction" during a federal removal. *South Carolina v. Moore*, at 1073. Federal Removals and state-court recusal are two completely different judicial scenarios, with completely different governing laws. **A motion to recuse does not deprive a court or judge of jurisdiction, but a Federal Removal absolutely divests a state court and a state judge of all jurisdiction over a case.** *National Steam-Ship Co. v. Tugman*, 106 U.S. 118; *South Carolina v. Moore*, at 1073; *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, No. 18-921, 2020 WL 871715 (U.S. Feb. 24, 2020), citing *Kern v. Huidekoper*, 103 U. S. 485, 493 (1881): during removal, the state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not …simply erroneous, but absolutely void." The case law on removals and jurisdiction is well settled and in complete accord.

29. Miller's case does not complain of an act taken by a judge after a recusal. Rather, Plaintiff Miller complains of an act taken during a federal removal. Thus *Bradt* does not apply. Defendant Plumlee and her state court were both deprived of jurisdiction during Miller's removal, she had no authority to act, and she is thus liable to suit and damages.

**VII. *Bradley v. Fisher*, *Stump v. Sparkman*, and *Mireles v. Waco* define the meaning of "without jurisdiction" in regard to judicial immunity; and that definition accords with *National Steam-Ship Co. v. Tugman* and its descendants.**

30. In a fruitless, circular argument, Mr. Graydon and Defendant Plumlee attempt to argue that *Bradt* defines "jurisdiction" differently in the context of judicial immunity. (*See* Plumlee's Reply Brief at 4-8). Though fruitless, it is, however, word salad. While Plumlee relies on *Bradt* for justification of this specious argument, the *Bradt* ruling itself repeatedly cites *Stump v. Sparkman* and *Mireles v. Waco*. (*Bradt* at 68-69).

31. First, to sum up Plaintiffs prior arguments, judges are deemed to be "liable to civil actions" for "acts done by them in the clear absence of all jurisdiction over the subject matter." *Bradley v. Fisher*, 80 U.S. 335 at 351 (1871). See also *Stump v. Sparkman*, 435 U.S. 349 at 356-357, 360 (1978). **Further, a judge "is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity," and "a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction."** *Mireles v. Waco* 502 U.S. 9 at 11-12 (1991). At the time of the November 17, 2016 hearing, the trial court and Defendant Plumlee proceeded while having "clearly no jurisdiction over the subject matter" and with "usurped authority"; thus "no excuse is permissible." *Bradley v. Fisher* at 351-352. (See Plaintiff's Response In Opposition to Defendant Plumlee's Plea to the Jurisdiction at 9).

32. *Bradt*, citing *Mireles*, states: "In determining whether an act was clearly outside a judge's jurisdiction for judicial immunity purposes, the focus is...on whether the judge had the jurisdiction necessary to perform an act of that kind in the case. *See Mireles v. Waco*, 502 U.S. 9, 13, 112 S.Ct. 286, 289, 116 L.Ed.2d 9 (1991)". (*Bradt* at 68). The *Bradt* ruling also cites *Harris v. Deveaux* [780 F.2d 911 (11th Cir. 1986)], "(holding that a judge acts in the 'clear

absence of all jurisdiction' only if the judge 'completely lacks subject matter jurisdiction')". *Bradt* at 68. *Bradt* also cites other cases along the same lines, including *Spencer v. City of Seagoville* [700 S.W.2d 953, 957-58 (Tex.App. — Dallas 1985, no writ)]: "The judges of Texas courts have absolute immunity for their judicial acts 'unless such acts fall clearly outside the judge's subject-matter jurisdiction.'" *Id.* at 66, 67-69.

33. So *Bradt, Stump v. Sparkman, Mireles v. Waco*, and the other cases cited in *Bradt* are all in agreement: **a judge has immunity UNLESS that judge (and his or her court) lacks subject matter jurisdiction.**

34. And when is a judge absolutely deprived of subject matter jurisdiction? **Federal law and precedent make it very clear that such *a deprivation of jurisdiction occurs during a federal removal.*** Again, in *South Carolina v. Moore* (at 1073): "...it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the [removal] petition in the federal court and a copy in the state court." *South Carolina v. Moore* at 1073. And again, in *Kern v. Huidekoper* (at 493): during removal, the state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not ...simply erroneous, but absolutely void." (*Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano* at 493). (See also *Plaintiff's Verified Emergency Motion for Declaratory Judgment* at 9-13; 28 U.S. Code § 1446(d)).

35. A lack of jurisdiction is a lack of jurisdiction is a lack of jurisdiction. Where it concerns state court and judges, to "lose all jurisdiction" is the same condition as "to lack subject matter jurisdiction". There is no disagreement on this issue between *Bradt, Stump v. Sparkman, Bradley v. Fisher, Mireles v. Waco, South Carolina v. Moore, National Steam-Ship Co. v. Tugman*, and the rest of the numerous according cases that Plaintiff has cited in his pleadings.

As the Supreme Court ruled in *Hurtado v. California*, "Due Process" in the Fifth Amendment has the same meaning as "Due Process" in the Fourteenth Amendment:

> "The conclusion is equally irresistible that, when the same phrase was employed in the Fourteenth Amendment to restrain the action of the States, it was used in the same sense and with no greater extent..." *Hurtado v. California*, 110 U.S. 516 (1884).

In the same way, the word jurisdiction in the phrases "without jurisdiction," "lose jurisdiction," "absence of all jurisdiction," has the same meaning—both within and beyond the context of judicial immunity. *Bradt* and the cases it cites hold that a judge has immunity unless acting without jurisdiction; *National Steam-Ship Co. v. Tugman* and its descendants declare that state courts and judges are absolutely deprived of all jurisdiction during the pendency of a federal removal, and *Bradley v. Fisher* and *Mireles v. Waco* proclaim that judges have no immunity from suit and damages when acting in the absence of jurisdiction. These cases all exist in perfect harmony.

36. So it is clear that, in this case, we have encountered the one rare exception to judicial immunity: a state judge who was totally deprived of jurisdiction during a federal removal, a judge who then acted in a state court case without jurisdiction and under color of law, a judge who caused injury to the Plaintiff by these actions, and a judge who is thus absolutely deprived of immunity from suit for these acts. No amount of intentionally misleading and specious arguments will change that fact, and this suit against Defendant Plumlee should proceed.

## VIII. The specious arguments of Defendants Plumlee, Dunn, Findley, and Rochelle were designed to mislead, and therefore represent a fraud upon the court.

37. As argued *supra*, Defendant Findely (for himself, Dunn, and Rochelle) and Mr. Graydon (for Defendant Plumlee) have knowingly and intentionally cited spurious facts,

precedent, and federal laws that they were fully aware did not apply to the case at hand, or which otherwise had no basis in law or reality. All of these Defendants were served with copies of Plaintiff Miller's removal documents on both November 17, 2016 and June 7, 2018, so they were fully aware that Miller's removals were taken under 28 U.S. Code §§ 1443 and 1446, that these removals were timely, and that these removals had not been procedurally defective—period. By attempting to mischaracterize Miller's federal removals in this way, Mr. Findley and Mr. Graydon have crossed the boundary between assertive client representation into the realm of calculated deception.

38. The same can be said of their attempt to claim that state judges somehow have the authority to act in a state court case during a federal removal—and immunity from suit for doing so—when federal law clearly dictates that they do not. Findley and Mr. Graydon (and by extension Plumlee) have intentionally twisted the plain meaning of the laws and precedent they cite in a way that is deigned to interfere with this Court's deliberations, and with the mechanism of justice itself. **They have thus engaged in a fraud upon the court.** "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." *United States v. Throckmorton*, 98 U.S. 61, 64 (1878). As the United States Court of Appeals for the Fifth Circuit has also ruled, "Moreover, fraud destroys the validity of everything into which it enters. It affects fatally even the most solemn judgments and decrees...." *Diehl v. United States*, 438 F.2d 705 (1971). If this Court relies on the patently specious arguments of Defendants Dunn, Findley, Rochelle, and Plumlee described above, it will also have taken part in this fraud, and Due Process demands that it does not do so.

*Prayer*

WHEREFORE, Plaintiff MILLER prays that the Court, mindful of Miller's rights to Due Process and Equal Treatment, review and consider this Memorandum prior to ruling on Defendant Plumlee's Plea to the Jurisdiction, and prior to ruling on the Rule 91 Motion to Dismiss and Motion for Sanctions filed by Defendants Dunn, Findley, and Rochelle.

Plaintiff further prays for all such other and further relief as the Court deems just and proper.

Respectfully submitted,

Bradley B. Miller, pro se
5701 Trail Meadow Dr.
Dallas, Texas 75230
Tel: (214) 923-9165

By: /s/ Bradley B. Miller
Bradley B. Miller
*Pro se*

May 17, 2021

CERTIFICATE OF SERVICE

I certify that true and correct copy of the above was served on each attorney of record or party via E-file in accordance with the Texas Rules of Civil Procedure on May 17, 2021.

/s/ Bradley B. Miller
Bradley B. Miller
*Pro Se*

# H

Texas Supreme Court Ruling Denying Review

(Case # 22-0500)

(2022/08/26)

APPENDIX
**H**

FILE COPY

RE: Case No. 22-0500 DATE: 8/26/2022
COA #: 05-21-00431-CV TC#: DC-20-15614
STYLE: MILLER v. PLUMLEE

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

BRADLEY B. MILLER
* DELIVERED VIA E-MAIL *

# I

Texas Supreme Court Ruling Denying Rehearing

(Case # 22-0500)

(2022/10/14)

APPENDIX

I

FILE COPY

RE: Case No. 22-0500 DATE: 10/14/2022
COA #: 05-21-00431-CV TC#: DC-20-15614
STYLE: MILLER v. PLUMLEE

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

BRADLEY B. MILLER
5701 TRAIL MEADOW DRIVE
DALLAS, TX 75230
* DELIVERED VIA E-MAIL *