

22-7107

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

IN RE: ESTATE OF P.D. & VANDELIA W. JOHNSON, et al

Petitioner/ Realtors,

FILED

MAR 09 2023

OFFICE OF THE CLERK
SUPREME COURT U.S.

ON PETITION FOR A WRIT OF MANDAMUS TO THE
SUPREME COURT OF THE STATE OF MISSOURI

ALL WRIT ACT S 1651 - PETITION FOR A WRIT OF MANDAMUS ON
PETITION FOR A WRIT OF MANDAMUS TO THE SUPREME COURT OF THE
STATE OF MISSOURI IN NO. SC99892, COURT OF APPEALS NO. ED111087,
CIRCUIT COURT NO. 2022-cc00594, AND CIRCUIT COURT NO. 1922-cc12348
CAUSE NO. 76-287-A BY CHIEF JUSTICE PAUL C. WILSON or MO EN BANC

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PRO SE

March 9, 2023

QUESTION PRESENTED

When this case was before this Court in No. 21-7556 and this Court denying certiorari review on May 31, 2022. The Movant city of St. Louis' removal to the Federal district court under color of federal law 28 U.S.C. S 1441 and S 1446, removal was not based upon an actual "case and controversy" not involving constitutional or federal question that was allowed to be brought to the district court under United States District Judge Stephen R. Clark's Standing Order (Case Management) entered on March 25, 2020. A case that was allowed to come before the court which must be decided by the Federal judiciary. The Movant's removal was not based upon the plaintiff's pleading in the circuit court because the plaintiff's verified complaint was not filed by the Circuit Clerk's Office of the Twenty Second Judicial Circuit (City of St. Louis) on March 18, 2020. Movant city of St. Louis in the Federal district court filed an S 1983 civil rights claim Civil Demand for \$32,000,000.00 against Jeffrey L.G. Johnson, Jerry A. Johnson, Prisoner No. 081261-8 and Joseph Johnson attested under Movant's CIVIL COVER SHEET proffered as proof to this Court in petitioner's Exhibits. In a removal to federal court state law controls, Movant's S 1983 original action in movant's removal scheme under color of federal law was without legal merit in law and fact, was legally frivolous and constituted unjust harassment of the plaintiffs. The state's Highest Court e.g. Missouri Supreme Court) on January 31, 2023, entered its order denying mandamus relief in a failure to perform the court's superintending authority over the lower state courts, the state's Highest Court in denying mandamus relief failed in its fiduciary duty not ordering the Circuit Clerk's Office to perform its ministerial duty to file plaintiff's verified complaint No. 2022-cc00594, and the circuit clerk's failure to issue process of petitioner's writ of habeas corpus in No. 1922-cc12348 Cause No. 76-287-A, a ministerial duty required by rules promulgated by the Missouri Supreme Court, a ministerial duty the Circuit Clerk's Office has refused to perform. Petitioner is due estoppel relief for fraud, and estoppel tolling relief because the statute of limitation does not start to run until the state's Highest Court has had the chance to speak e.g. res judicata final decision.

The question presented did the state's Highest Court res judicata final decision based upon a letter under the Seal of the Missouri Supreme Court and signature of Clerk Betsy Aubuchon, a unwritten "policy" not promulgated under any rule, or binding statutory authority was facially unconstitutional on its face. THIS COURT, fiduciary duty under the 1866 Civil Rights Act, Sec. 10, is the court of last resort for the vindication of civil rights.

PARTIES

ESTATE of P.D. & Vandelia W. Johnson, et al

Petitioner,

v.

STATE OF MISSOURI / CITY OF ST. LOUIS,
Office of the Governor,
Michael L. Parson, Governor,

Missouri Supreme Court
Paul C. Wilson, Chief Justice
Mary R. Russell, Judge
W. Brent Powell, Judge
Patricia Breckenridge, Judge
Zel M. Fischer, Judge
Robin Ransom, Judge
George W. Draper, III, Judge
Betsy Aubuchon, Clerk

Missouri Court of Appeals Eastern Division
Angela T. Quigless, Appeal Judge, Writ Division V

Attorney General Office
Eric S. Schmitt, Former Attorney General
John D. Sawyer, Former-Solicitor General

Dep't of Vital Records Family Services
Dylan R. Bryant, Director

State Circuit Court, 22nd Judicial Circuit
Michael F. Stelzer, Presiding Judge
Rex M. Burlison, Circuit Judge
Stephenson E. McGraugh, Assoc. Circuit Judge
Michael W. Noble, Circuit Judge
Thomas L. Kloeppinger, Circuit Clerk

CITY OF St. LOUIS
Tishaura O. Jones, Mayor
Kimberly M. Gardner, Circuit Attorney
Erin K. McGowan, Deputy General Counselor

United States House of Representatives
Rep. Cori Bush, 1st Congressional District of Missouri

Respondents,

CORPORATE DISCLOSURE STATEMENT

Realtor's Jeffrey L.G. Johnson, Jerry A. Johnson, Deceased, and Joseph Johnson, acting pro se, proxy by counsel for the Estate of P.D. & Vandelia, et al an estate deemed to be person under S 1983.

Attorney General Andrew Bailey was assigned by the Missouri Supreme Court as Counsel of Record for ("collectively respondents" State of Missouri) Governor Michael L. parson, [Chief Justice Paul C. Wilson, en banc, Appeals Judge Angela T. Quigless, former AG Eric S. Schmitt, Director Dylan R. Bryant, Presiding Judge Michael F. Stelzer, former Presiding Judge Rex M. Burlison, Assoc. Circuit Judge Stephenson E. McGraugh, Circuit Judge Michael W. Noble, Circuit Clerk Thomas L. Kloepfinger, Mayor Tishaura O. Jones, Circuit Attorney Kimberly M. Gardner, Clerk Betsy Aubuchon, and Deputy City Counselor Erin K. McGowan.

State actors In the United States Constitutional law, a state actor is a person who is acting on behalf of a governmental body by statute RSMo, and therefore subject to limitations imposed on government by the United States Constitution, including the First, the Fifth and Fourteenth Amendments which prohibits the federal and state government from violating certain rights and freedoms.

STATEMENT OF RELATED PROCEEDINGS

March 18, 2020, the State Circuit Court (22nd Judicial Circuit of the City of St. Louis) stamped FILED plaintiff's verified complaint in re: Estate of P.D. & Vandelia W. Johnson, et al v. United States, et al with jury trial demand and assigned the complaint No. 2022-cc00594. Circuit Clerk's Office by and through Thomas L. Kloepfinger accepted the circuit court Filing Fee \$148.50 but did not file the estate subject matter on the public record; circuit clerk Kloepfinger substituted upon the public record e.g. Mo Casenet non-verified cause Jeffrey Johnson, et al v. Missouri Attorney General, Off, et al under No. 2022-cc00594 Presiding Judge Rex M. Burlison judge of disposition.

December 30, 2019, the State Circuit Court (22nd Judicial Circuit of the City of St. Louis) FILED petitioner Jerry A. Johnson, Prisoner No. 081261-8's verified petition for Writ of habeas corpus assigned cause No. 1922-cc12348 Cause No. 76-287-A and the circuit court granted petitioner's application to proceed in forma pauperis. January 2, 2020, petitioner filed his motion for the appointment of counsel. In the course of the lifetime of the petitioner and at the time of his death. The circuit court by and through its agent Circuit Clerk's Office failed to perform its ministerial duty withheld service of process of the petition and of the summons required under promulgated Rule 54.01, and the circuit court failed to assign petitioner counsel, or assign next-of-kin by order under his verified Affidavit of Consent in petitioner's writ petition.

October 25, 2022, Appeals Judge Angela T. Quigless, Writ Division V, entered a written and signed an order in Estate of P.D. & Vandelia W. Johnson, et al, Jerry A. Johnson, Jeffrey L.G. Johnson, and Joseph Johnson, Realtors, No. ED111087, Judge Quigless denying mandamus relief on the failure of the Circuit Clerk's Office to perform its ministerial duties to file plaintiff's verified complaint, and failure to issue service of process of writ petition and of the summons under rules promulgated by the Missouri Supreme Court.

January 31, 2023, Chief Justice Paul C. Wilson of the Missouri Supreme Court sitting as the judge of disposition over realtor's mandamus appeal of Judge Quigless's order denying mandamus relief. Justice Wilson in No. SC99892 under the Seal of the Supreme Court authorized his agent Betsy Aubuchon, Clerk, to sign a letter purportedly stating the state's Highest Court denied mandamus relief review of rules promulgated by the Missouri Supreme Court. In an additional letter Clerk Aubuchon stated the case was closed res judicata upon submission of realtor's petition for en banc review.

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PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully petition for a writ of mandamus to the Supreme Court of the State of Missouri, requesting that the Missouri Supreme Court be directed to perform its superintending authority over the state courts, perform the court's fiduciary duty under rules promulgated by the Supreme Court, and order the Circuit Clerk's Office perform its ministerial duty and file plaintiff's estate subject matter, and issue process of plaintiff's writ of habeas corpus and of the summons the Circuit Clerk Office and has refused to perform.

OPINIONS BELOW

Court Appeals for the Eastern Division (City of St. Louis) Writ Division V, in re: Estate of P.D. & Vandelia W. Johnson, Jerry Johnson, Jeffrey L.G. Johnson and Joseph Johnson, Realtors, No. ED111087 denying mandamus relief entered October 25, 2022.

Missouri Supreme Court No. SC99892 denying mandamus relief entered January 31, 2023 in re:

JURISDICTION

This Court's jurisdiction is invoked 28 U.S.C. S 1254, 28 S 1651, Judiciary Act of 1789, sec. 25, Federal Constitution, Article III, sec. 2, cl. 2, and 1866 Civil Rights Act, sec. 10.

FEDERAL CONSTITUTION

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

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

Fifth Amendment in pertinent part: “...No person shall be...denied life, liberty or property without due process of law.”

Sixth Amendment – “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

Seventh Amendment – “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and not fact tried by a jury, shall otherwise be reexamined in any court of the United States, than according to the rules of the common law.”

Fourteenth Amendment – “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article VI, cl. 2 – “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in

every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”

Article III, sec. 3, cl. 1 – “Treason against the United States, shall consist only in levying war against them, or adhearing to their enemies, giving them aid and comfort, no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act...in open court.”

Article I, sec. 9, cl. 2 – “The privilege to the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

STATUTE(S)

The All Writ Act, 28 U.S.C. S 1651(a), provides - “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usage and principles of law.”

MISSOURI CONSTITUTION

Bill of Rights, Article I, sec. 12 – “That the privilege of the writ of habeas corpus shall never be suspended.”

Bill of Rights, Article I, sec. 14 – “That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.”

Bill of Rights, Article I, sec. 22(a) – “That the right of trial by jury as heretofore enjoyed shall remain inviolate; provided that a jury for the trial of criminal and civil cases in courts not of record may consist of less than twelve citizens as may be prescribed by law, and a two-thirds majority of such number concurring may render a verdict in all civil cases; that in all civil cases and courts of record three-fourth of the members of the jury concurring may render a verdict; that in every criminal case any defendant may, with assent of the court, waive a jury trial and submit the trial of such case to the court, whose findings shall have force and effect of a verdict of a jury.”

Bill of Rights, Art, I, sec. 15 in pertinent part – “That the people shall be secure in their persons, papers, homes, effects, and electronic communication and data from

unreasonable searches and seizures..."

STATUTE(S)

RSMo, S 536.090 – in pertinent part: "Every decision and order in a contested case shall be in writing...the finding of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order..."

RSMo, S 514.040.1 – in pertinent part: "If any court shall, before or after the commencement of any suit pending before it, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay all or any portion of the cost and expenses thereof, permit him or her to commence and prosecute his or her action as a poor person, and thereupon such poor person shall have all necessary process and proceedings without fees, tax or charge as the court determines the person cannot pay."

RSMo, S 514.205 Frivolous Suit in pertinent part: "If any civil action or part of a civil action pending before any division of this State...if the court finds after a hearing for such purpose that the cause was initiated, or a defense was asserted, or motion filed, or any proceeding therein was had frivolously and in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion, or caused such proceeding to be had to pay the other party named in such action the amount of cost attributable...reasonable expense occurred by the party..."

STATEMENT OF THE CASE

There is no clearer rule promulgated by the Missouri Supreme Court, Canons alike as law to statutory pronouncements enacted by the Missouri General Assembly, and there is no ambiguity in those promulgated rules mandating a ministerial duty be performed by the Circuit Clerk's Office after receipt of the circuit court's Filing Fee, a ministerial duty to file plaintiff's verified complaint in re: Estate of P.D. & Vandelia W. Johnson, et al v. United States, et al No. 2022-cc00594 e.g. 45.01 – "The court shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders and rules." But, respondent Clerk Thomas L. Kloeppinger filed upon the public record Mo Casenet fraudulent non-verified Jeffrey Johnson, et al v. Missouri Attorney General, Off, et al No. 2022-cc00594 on March 18, 2020.

There is no ambiguity in binding statutory authority RSMo, S 506.150.1 – "The summons and petition shall be served together," the Circuit Clerk's Office should have issue process of the plaintiff's writ of habeas corpus, and promulgated Rule 54.01(a) – 'Upon the filing of a pleading requiring service of process, the clerk shall forthwith issue the required summons or other process" once plaintiff's writ petition was filed in No. 1922-cc12348 Cause No. 76-278-A. But, respondent Clerk Thomas L. Kloeppinger after the petitioner's writ of habeas corpus was filed and the circuit court granted petitioner's application to proceed forma pauperis, respondent clerk Kloeppinger entered on the public record Mo Casenet the following; "The Summons were not issued due to the nature of action."

Realtor filed for mandamus relief with the Court of Appeals, Eastern Division, City of St. Louis, Writ Division V, seeking mandamus relief to compel the Circuit Clerk's Office to perform its ministerial duty under promulgated rules to file and issue service of process of plaintiff's pleadings in those related cases, a ministerial duty the respondent Clerk Kloeppinger refused to perform. The Court of appeals having superintending authority over the state's circuit courts, Appeals Judge Angela T. Quigless in No. ED111087 on October 25, 2022, denied realtor's petition for mandamus relief.

Realtor filed for mandamus relief with the Missouri Supreme Court having superintending authority over the state circuit courts and court of appeal(s), the state's Highest Court in No. SC99892 denied realtor's petition for mandamus relief to vacate and set-aside the order of Appeal Judge Quigless denying mandamus relief, and denying realtor's relief that Clerk Kloeppinger perform his ministerial duties mandated

under rules promulgated by the Missouri Supreme Court, and the court order the filing of plaintiff's verified complaint and to effectuate service of process of realtor's writ petition and of the summons.

RELIEF SOUGHT

Preliminary In Mandamus Order First Amendment Constitutional Challenges As-
Applied, prior too, Facial Challenges To Laws, Statutes and Rules. Citing the Marbury
Court (1803) The Courts Can Determine The Constitutionality of Laws, Statutes,
Regulations, and Rules e.g. Facial and As-Applied Challenges First Amendment

Facial Challenges – Contends that a government law, rule, regulation or policy is unconstitutional as written – that is, on its face.

As-Applied Challenges – Alleges that a statue or regulation is unconstitutional in a specific context. A Plaintiff in an as-applied challenge is not arguing that the entire statute is unconstitutional, but instead that it is being applied in an unconstitutional manner.

SUBSECTION 1: First Amendment Constitutional Challenges Non-Discretionary Ministerial Duty e.g. ministerial duty refers to the official duty of a public officer wherein the officer has no room for exercise of discretion, and the performance being required by direct and positive command of the law.^[1] Petitioner seeks a preliminary in mandamus order for declaratory relief outlining the federal rights of the realtor(s) during the state court proceedings in related cases No. 2022-cc00594, No. 1922-cc12348 Cause No. 76-287-A, appeal No. ED111087 and state's High Court No. SC99892.

1

Canon of construction apply alike to enactment, of General Assembly and rules promulgated by Supreme Court, State ex rel. R-I Schools Dist. v. Ewing (A) 404 S.W.2d 433 (1966).

1. Petitioner seeks a preliminary in mandamus order prospective relief enjoining the state's Highest Court to address any promulgated rule or statute allowing the respondent Circuit Clerk Thomas L. Kloepfinger to refuse to perform his ministerial duty not filing the plaintiff's verified complaint,^[2] after payment of the court's Civil Filing Fee \$148.50 promulgated by the state's High Court.

See, e.g. RSMo S 483.240 complaint to be verified and signed before Notary.

Rule 45.01 – “Court Always Open For Certain Purpose – “The court shall be deemed always open for the purpose of filing any pleading or other proper paper.”

2. Petitioner seeks a preliminary in mandamus order prospective relief enjoining and to compel the state’s Highest Court to perform its ministerial duty having superintending authority over judicial officers and court personnel Mo. Const., Art. V; and rules promulgated governing practices and procedures in the state courts Rule 84.01, or the Court’s discretionary authority not ordering the filing in denying the relator mandamus relief, or alternative order the filing of the plaintiff’s verified complaint No. 2022-cc00594.

3. Petitioner seeks a preliminary in mandamus order prospective relief enjoining and to compel the state’s Highest Court to address the Court’s discretionary powers not to perform its ministerial duty by not entering a written and signed order by judge denying mandamus relief Rule 74.01(a) – “Judgment as used in these rules includes a decree and any order from which an appeal lies. A judgment is rendered when entered. A Judgment is entered when a writing signed by the judge and denominated “judgment” or “decree” is filed.

The Missouri Supreme Court’s unwritten policy addressing decisions, orders. Judgment and decrees in the form of letters, does not conform to promulgated rule 74.01(a) or binding statutory authority S 536.090 requiring a written order, or decision signed by the judge. The state’s Highest Court’s policy is unconstitutional on its face because the policy applies to all cases, and not just as-applied in the realtor’s case No. SC99892. The policy is arbitrary, capricious and vague and should be struck down being unconstitutional under the First Amendment, Fourteenth Amendments and repugnant on federal grounds to due process Fifth Amendment.

SUBSECTION 2: Contested Related Cases Involving Federal Rights Not Addressed In Written Opinion; Court’s Rule Making Authority – Rule of Practice 110, Sec. 5 of Article V

Realtor raised the Federal constitutional issues in state court at an appropriate time and with sufficient precision to allow that state courts to consider it.” New York ex rel.

Bryant v. Zimmerman, 278 U.S. 63, 67 (1928); see, also Canons under Rule Making Authority or by State legislature when repugnant to the Constitution and federal laws, that state law and constitution were “absolutely void”. United States Supreme Court can review all state court judgments in cases arising under federal constitution or a law of the United States. Also, both federal and non-federal ground may have been raised but the state court judgment is ambiguous or is without a written opinion stating the ground relied on; Lynch v. New York, ex rel. Pierson, 293 U.S. 52, 54-65 (1934).

Missouri Supreme Court’s docket listing of WRITS AND OTHER ORIGINAL PROCEEDINGS Chief Justice Paul C. Wilson sitting day by day to review remedial writs filed by the High Court. Chief Justice Wilson the judge in disposition in No. SC99892 denied realtor’s petition for mandamus relief in a letter and not a written opinion signed by the Chief Justice. See, e.g. Writ and Other Proceedings Docket attached hereto APPENDIX 1.

January 31, 2023, respondent Clerk Betsy Aubuchon issued a letter under the Seal of the Supreme Court informing the relator respondent Chief Justice Wilson the judge of disposition over remedial writs had denied realtor’s petition for mandamus relief. Clerk Aubuchon’s Letter attached hereto APPENDIX 2.

February 9, 2023, realtor filed their Memorandum to Clerk Request For Service of Process of Mandate of Chief Judge seeking the clerk issue a written and signed order required by Rule 74.01(a). Respondent Clerk Aubuchon returned realtor’s memorandum without filing on the public record in No. SC99892. Clerk Aubuchon stating in the letter – “Because the matter is now closed. We are returning your documents to you pursuant to

Rule 84.24(1)...” But, a document or letter is not construed as an order, judgment or decree under Rule 74.01(a) which states a written and signed order by the judge or en banc is a final decision res judicata.

Rule 84.16(a) - Written Decision Required. In each case determined by this court or by any district of the court of appeals, the judicial decision shall be reduced to writing and filed in the cause. If a decision is not unanimous, the writing shall show which judge concurred therein or dissented therefrom.

Sec. (d) Opinion Furnished – “The clerk of each appellate court shall furnish promptly free of charge a copy of the decision, written order, or opinion of the court to counsel for each party on appeal; or a party acting pro se.

See, e.g. Written and signed order of respondent Appeals Judge Angela T. Quigless No. ED111087 attached hereto APPENDIX 3.

Promulgated rules by the Supreme Court govern practices and procedure in the state courts relevant to civil fees, filing of pleadings, discovery, subpoena process, service of process of complaint and summons, affirmative defenses time to respond, hearing scheduling and trials supersede the statute; but post proceedings a statute requiring the performance of a ministerial duty adopted by the Missouri General Assembly to issue a written and signed order by the court supersede the rules; RSMo, S 536.090 – Decisions in Writing – notice- Every decision and order in a contested case shall be in writing; see, e.g. Rule 74.01(a) requiring a written and signed order by Chief Justice Wilson.

February 8, 2023, in addition, realtor submitted for filing their petition for en banc review of respondent Chief Justice Wilson's decision denying mandamus relief in lieu of a letter signed by respondent Clerk Aubuchon; and the Court took receipt of realtor's petition by commercial carrier FedEx on February 9, 2023.[3].

3

SC's Docket Writs and Other Original Proceedings noted the state Highest Court would be sitting en banc on March 7, 2023, since the clerk's letter of January 31, 2023, does not indicate the judge of disposition, or the court en banc sitting which authorized the letter.

ADDITIONAL RELIEF SOUGHT

a. Significant State Action Suspending The Privilege to The Writ of Habeas Corpus Which Shall not be Suspended, and Denying Assistance of Counsel By Trial Court Federal Right Sixth Amendment Deprivation

Petitioner seeks a preliminary in mandamus order prospective relief to be executed upon respondent Chief Justice Paul C. Wilson to address any promulgated rule or statute, authorizing the respondent Circuit Clerk Thomas L. Kloepfinger not to perform his ministerial duty under promulgated rule 54.01 to execute service of process of the petition and of the summons at the same time in No. 1922-cc12348 Cause No. 76-287-A.

Petitioner seeks preliminary in mandamus order prospective relief to be executed upon respondent Chief Justice Paul C. Wilson to address any promulgated rule or statute, authorizing respondent Circuit Judge Michael Noble not assigning realtor Jerry A. Johnson, Prisoner No. 081262-8 an attorney under his request by motion for appointment of counsel, or not assigning next-of-kin RSMo, S 194.119 family member surviving sibling of the deceased, prior too, affecting realtor's substantive federal right Sixth Amendment in respondent Judge Michael Nobel's order to dismiss realtor's writ petition entered December 12, 2020 .[4][5].

4

Realtor Jerry A. Johnson was granted leave to proceed in forma pauperis under statute RSMo, S 514.040.1; see, e.g. RSMo, 600.051, sec. 6 – “That, if indigent, an unable to employ an attorney, the defendant has a right to request the judge to appoint counsel to assist the defendant in his defense against the charge.”

5

Respondent Circuit Clerk Kloeppinger to date failed to perform his ministerial duty by not “immediately” serving Judge Nobel's order of dismissal required under promulgated Rule 74.03.

Petitioner seeks a preliminary in mandamus order prospective relief to be executed upon respondent Chief Justice Paul C. Wilson to address any promulgated rule or statute authorizing respondent Circuit Judge Michael E. Noble's judicial discretion to exercise jurisdiction in No. 1922-cc12348 Cause No. 76-287-A absent service of the petition and of the summons; “Service accomplishes the fact of jurisdiction and not the filing of the petition. *Taylor v. Clymer*, 503 S.W.2d 53 (1973).

Petitioner seeks a preliminary in mandamus order prospective relief to be executed upon respondent Paul C. Wilson to address denying mandamus relief from the void judgment want of jurisdiction of respondent Michael Noble on due process grounds citing Realtor's Motion for En Banc Review, pg.5, fn2. “A court cannot confer jurisdiction where no existed.” [204 U.S. 8, 27 S.Ct. 326 (1907).

SUBSECTION 3: Realtor Had the Substantive Right to Be Secure In Their “Property” \$148.50 Filing Fee For Services To Be Rendered By Circuit Clerk's Office Fourteenth Amendment

The State Circuit Court (22nd Judicial Circuit City of St. Louis) by and through its agent respondent Clerk Thomas L. Kloeppinger pursuant to rules promulgated addressing Civil Filing Fees accepts the plaintiff's property \$148.50 and exercised discretion not to file plaintiff's complaint assigned No. 2022-cc00594.

Under like-circumstances the clerk of the Writ Division V, Court of Appeals Eastern Division (City of St. Louis) accepted the realtor's property Civil Filing Fee \$70.00 and filed the realtor's writ of mandamus No. ED111087.

Under like-circumstances respondent Clerk Betsy Aubuchon of the Missouri Supreme Court accepted the realtor's property Civil Filing Fee \$70.00 and filed realtor's writ of mandamus No. SC99892.

QUESTION ONE: If, the appellate court clerks performed their ministerial duties accepted the filing fee(s), and filed the realtor's petitions for mandamus relief after accepting the court's Filing Fee, but the circuit clerk Thomas L. Kloeppinger gets to exercise his discretion to accept the filing fee and not file plaintiff's complaint, and the appellate court(s) deny mandamus relief to ordering the filing on a "purely ministerial duty refused to be performed".

QUESTION TWO: If, The Missouri General Assembly enacts a statute, then the language in the statute means what it says e.g. legislative intent, when enacting RSMo, 536.090 there is no ambiguity in the statute that a judge perform the ministerial duty of executing a written and signed, and even the rules promulgated by the Supreme Court e.g. Rule 84.16(a) and Rule 74.01(a) requiring an ministerial duty that the judge issue a written and signed order, how, can the state's Highest Court not comply with the legislative intent under the statute's binding authority, a ministerial duty to enter a written and signed order, or opinion on federal and nonfederal grounds.

The state's Highest Court operating outside of any promulgated rule governing practices and procedures, or statutory pronouncement binding authority by authorizing the clerk to serve a LETTER under the Seal of the Missouri Supreme Court. The state's Highest Court executing purported orders in the form of Letter(s) signed by the Clerk Aubuchon, is a due process denial Fourteenth Amendment indicating a Letter constitutes en banc final decision of the Court e.g. res judicata.

Letters substituting for written and signed order by the judge under a First Amendment constitutional facial challenge is arbitrary, capricious and vague and should be struck down, effecting the rights of citizens of the State of Missouri subjected to the process.

The Realtors were subjected to honest services fraud involving \$288.50 of their property for Civil Filing Fees by the circuit court; and appellate courts during one-appellate judge reviews in the court of appeals by respondent Judge Angela T. Quigless and the state's Highest Court by respondent Chief Justice Paul C. Wilson.

ISSUES PRESENTED: FIRST AMENDMENT CONSTITUTIONAL AS-APPLIED CHALLENGES TO REALTOR'S EXPRESSIVE ACTIVITIES ACCESS-TO-THE-COURT and THE COURT'S MACHINERY

Inter alia realtors were denied federal rights under the First, Fourth, Sixth, Seventh and Fourteenth, Canon rules promulgated by the Missouri Supreme Court, statutes enacted by the Missouri General Assembly and Missouri Constitution.

First Amendment Facial or As-Applied Constitutional Challenges Promulgated Rules Deemed To Be Law Alike To Legislative Law The Courts Determine The Constitutionality of A Law e.g. statute or rule; *Marbury v. Madison*. 5 U.S. 137 (1803).

First Amendment constitutional right Assoc. Justice Antonin Scalia for a majority court; "abuse must be dealt with if and when a pattern of unlawful favoritism appears, rather than by insisting upon a degree of rigidity that is found in few legal arrangements." *Thomas v. Chicago Park Dist.* (2002).

Rule 74.01(a) – Is arbitrary, capricious and vague and should be struck down as being unconstitutional as-applied because the Supreme Court can exercise discretion not to enter written and signed orders by the Chief Justice / Judges en banc as required in the text of Rule 74.01(a).

Rule 54.01 – Is arbitrary, capricious and vague and should be struck down as being unconstitutional as-applied because the circuit clerk can exercise discretion not to issue service of a petition and summons as required in the text of Rule 54.01.

Rule 74.03 – Is arbitrary, capricious and vague and should be struck down as being unconstitutional as-applied because the circuit court shall "immediately" issue service of

written and signed orders as required in the text of Rule 74.03.

Bill of Rights, Art. I, sec. 12 – Is arbitrary, capricious and vague and should be struck down as being unconstitutional as-applied because the state court can exercise judicial discretion to suspend the writ of habeas corpus.

Bill of Rights, Art. I, sec. 14 – Is arbitrary, capricious and vague and should be struck down as-applied because the state court are not “always open” in politically sensitive cases deny access to the court and the court’s machinery e.g. processes under service of summons, hearings, discovery, and right to counsel.

Bill of Rights, Art. I, sec. 22(a) – Is arbitrary, capricious and vague and should be struck down as-applied because the right to jury trial preserved inviolate under common law effecting property right interest is subject to judicial discretion.[6].

6

Majority Court citing Davidson; subject matter involving “personal and property right interest” a jury determines the law and fact. Davidson v. City of New Orleans, 96 U.S. 97, 102 (1876).

FACTS NECESSARY TO UNDERSTAND PETITION

Promulgated rule 47.01(a) it was the ministerial duty of the state’s Highest Court to enter a written order signed by the judge e.g. respondent Chief Justice Paul C. Wilson or respondent the Court sitting en banc, alleged in the Letter under the Seal of the state court and signature of respondent Clerk Betsy Aubuchon. The purported order dated January 31, 2023, does not state per curiam or en banc final decision res adjudicata.

RSMo, S 536.090 under legislative binding authority the Supreme Court purportedly sitting en banc as alleged in the Letter final decision, it was the Court sitting en banc’s ministerial duty to enter a opinion in writing with judges concurring or dissenting.

Citing Cohen v. Virginia

Jurisdiction not resting on the status of the parties, rest with section 25 of the Judiciary Act of 1789, and state laws repugnant to the constitution and federal law are void. A unanimous court ruled that the Court was bound to hear all cases that involved

constitutional questions.” The power of review was affirmed”; see, e.g. *Martin v. Hunter’s Lessee* (1816), affirmed the constitutionality of the Judiciary Act.

Supremacy Clause, Art. IV of the United States Constitution that federal constitution and federal laws are the supreme law of the land...This doctrine of national supremacy provides basis for the U.S Supreme Court review of state court rulings.”

When repugnant to the Constitution and federal laws, that state law and constitution were “absolutely void.” This Court can review all state court judgments in cases arising under Federal constitution or a law of the United States.

The appellate Court(s) of Missouri e.g. Writ Division V, and Chief Justice entered orders denying mandamus relief in litigation involving federal rights e.g. federal and nonfederal issues in law and fact; mandamus sought relief to compel the performance of purely “ministerial duty” by the respondents, absent a written opinion expressing “adequate, independent ground based on state law” authorizing the denial; *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590 (1875).

Both federal and nonfederal ground had been raised in the lower court but the state court judgment is ambiguous or is without a written opinion stating the ground relied on; *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 54 -65 (1934).

Realtor raised the federal constitutional issue in state court at an “appropriate” time and with “sufficient” precision to allow that state court to consider it.” *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928).

“Private individuals have a constitutional right of access to the courts.” *Bounds v. Smith*, 430 U.S. 817, 821, (1977); “that is the right to sue and defend in the courts.” *Chambers v. Baltimore & Ohio RR*, 207 U.S. 142, 148 (1907).

This Court held in *Goldberg v. Kelly*, 397 U.S. 254 (1970) - “Due Process clause,” Fourteenth Amendment by way of due process Fifth Amendment “in a civil case guarantee the right to an impartial arbiter.”

SUBSECTION 4: State Highest Court Decision When Res Judicata –Final Decision Federal Supreme Court the Court of Last Resort to Vindicate Civil Right 1866 Civil Rights Act, Section 10

"Our only power over the state judgment is to correct them to the extent that they incorrectly adjudged federal rights..." Herb, 324 U.S. 117, 125 -29. Id. When state court proceeding is finally resolved; Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62, 67-69 (1948).

Art. III, sec, 2, cl. 3 – "The Supreme Court's appellate jurisdiction includes the authority to review decisions of both federal courts and state courts. Art. II S1.6.1 Supreme Court review of state court decisions allows the court to review the judgments of "the highest court of a state in which a decision can be had." 28 U.S.C. S 1257. Decision of state highest court final decision and cannot be reviewed by any state appellate court." Grovey v.. Townsend, 295 U.S. 45, 47 (1935).

THE TREE OF TREASON ITS ROOTS RUN DEEP IN MISSOURI'S JURISPRUDENCE

This Court in Cohen v. Virginia set the standard on the fiduciary duty of the Court(s) to decide cases and controversies that are allowed to come before it. Relevant to the federal Constitution e.g. supreme law and those laws made in pursuance thereof, and binding authority jurisdiction relevant to **treason**. Treasonous acts committed in open court under public office and sworn oath of office, as witnessed by two or more realtors e.g. Jeffrey L.G. Johnson, Jerry A. Johnson and Joseph Johnson.

"The Judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. "WE cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before it, we have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given, the one or the other would be **treason** to the Constitution." 19 U.S. (6 Wheat) 264, 404 (1821).

Ministerial duty refers to the official duty of a public officer wherein the officer has no room for exercising discretion, and performance being required by direct positive command of that law. Canon of construction apply alike to enactment, of General Assembly and rules promulgated by Supreme Court; State ex rel. R-I School District v. Ewing (A.) 404 S.W.2d 433 (1966). Issues presented for mandamus relief involving practice and procedures in the State courts promulgated rules supersede the statute, if, the issued presented for mandamus relief, does not involve practice and procedures in the State courts the statute "binding authority" supersede the promulgated rules; State ex rel. Union Electric Co. v. Barnet, 893 S.W.2d 804 (Mo en banc 1995).

"The Supreme Court may establish practice and procedures and pleading for all court," Article 5 Section 5 of the constitution of Missouri 1945, which for the first time gave this Court authority to "establish rules of practices and procedure for all courts", expressly provide that "the rules shall not change substantive rights *** the right to jury trial; Seventh Amendment, or appointment of a lawyer for indigent prisoner in the custody detention of the several States; Sixth Amendment; or deny citizens within its jurisdiction of the right to due process and equal protection of the law Fourteenth Amendment, and Mo. Const., Bill of Rights, art I, sec. 12 – "That the privilege of the Writ of habeas corpus shall never be suspended."

"Void judgment is one that, from its inception, is complete nullity and without legal effect; Holstein v. City of Chicago, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill, 1992).

Judicial Oath

Respondents Presiding Judge Michael F. Stelzer, Then-Presiding Judge Rex Burlison, Circuit Judge Michael Noble, Assoc. Circuit Judge Stephenson McGraugh, Appeal Judge Angela Quigless, and Chief Justice Paul C. Wilson en banc.

"I _____ do solemnly swear (or affirm) that I will administer justice without respect to persons and do equal right to the poor, and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States."

Oath or Affirmation

Respondent Circuit Attorney Kimberly M. Gardner, Deputy City Counselor Erin K. McGowan. Then- Attorney General Eric Schmitt, Attorney Andrew S. Berg, and Law Firm Brinker & Doyen. LLP, and Thompson Coburn, LLP.

"I do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Missouri; That I will maintain the respect due courts of justice, judicial officer and members of my profession and will at all times conduct myself with dignity becoming of an officer of the court in which I appear; That I will never seek to mislead the judge or jury by any artifice or false statement of fact or law; That I will at all times conduct myself in accordance with the Rules of Professional Conduct; and, That I will practice law to the best of my knowledge and ability and with consideration for the defenseless and oppressed, So Help Me God."

Oath of Office

Respondent Mayor Tishaura O. Jones.

"He will support the Constitution of the United States and of the State of Missouri, to the provisions of all laws of this State effecting cities of this class and the ordinances of the city and faithfully demean himself while in office; which official oath or affirmation shall be filed with the city clerk."

SUBSECTION 5: Under Like-Circumstances Attorney General as Realtor, and Private Individual as Realtor – Writ Quo Warranto Double Standard Review

Petitioner concurs with respondent(s) Governor Michael L. Parson and Attorney General Andrew Bailey's public comments, or court pleadings on a Public Official's "oath," and "ministerial duty."

"We are public servants, we are elected officials. All of us are. I am, they are, "And if you say you are going to do your job and take an oath to that, you should be doing that very thing." Governor Michael L. Parson, 23rd day of February, 2023.[7].

7

Governor's ministerial duty Mo. Cont., Art. IV, sec. 2 – "The governor shall take care that the laws are distributed and faithfully executed, and shall be a conservator of the peace throughout the State.

See, e.g. Office of the Governor's Letter dated December 30, 2022, attached hereto APPENDIX 4.

Petition in Quo Warranto; State of Missouri, ex inf. Andrew Bailey, Attorney General, Realtor, Kimberly M. Gardner Respondent Statement of the case, pg. 4, FILED Feb 23, 2023.

"As an elected official of the city of St. Louis, respondent is subject to the provisions of SS 106.220 which states, in pertinent part; "any person elected or appointed to any county, city, town or township office in this state, excepts such officer's as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of duties of such office, or shall be guilty of any willful or fraudulent violations or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with

the respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit [his] office." Attorney General Andrew Bailey, Feb 23, 2023.

There is no ambiguity in Mo. Const., Bill of Rights, Art. I, sec. 14 – "That the courts of justice shall be open to every person, and certain remedy afforded for every injury, to person, property, or character, and that right and justice shall be administered without sale, denial, or delay."

Respondent Governor Michael Parson on November 23, 2022, appointed then-Deputy General Counsel for the Governor's Office Andrew Bailey to serve as acting attorney general, more-probable-than-not because of the Rule 1.7 Lawyer Conflict of Interest imputed upon the Office of the Attorney General and then-Attorney General Eric Schmitt being a respondent before the Supreme Court. The Governor's appointment of Andrew Bailey to serve as acting attorney general occurred, prior too, AG Eric Schmitt taking the oath of office as a United States' senator on January 3, 2023.

Andrew Bailey was already served as acting attorney general at the time relator's writ of mandamus was filed by the Supreme Court on December 6, 2022 case No. SC99829.

The AGO and Acting Attorney General Bailey was given service of process of the realtor's writ of mandamus citing federal and nonfederal violations of federal rights. Respondent Chief Justice Wilson, or the Court en banc knowingly, with knowledge and intent failed to issue a preliminary in mandamus order upon acting attorney general Bailey, and the acting attorney general pursuant to his oath of office and ministerial duty binding authority by statute RSMo, S 27.050 was to defend the state's legal interest by filing a response in opposition within 20-days Rule 84.24(h).

Respondent Chief Justice Wilson, or the Court en banc e,g. arbiter and acting attorney General Bailey, Counsel of Record for respondents knew without the filing of a motion suggestion in opposition to realtor's writ, Chief Justice Wilson or the Court en banc, without the acting attorney general's arguments in a brief in support of state law, there was no basis for the court to enter a written opinion based upon the realtor's writ and a response by the acting attorney general, with the acting attorney general in a response pleading not citing "adequate, independent ground based on state law" why federal rights were adequately addressed under state law [87 US (20 Wall.) 590].

Now-Attorney General Bailey who failed to perform his public duty to answer realtor's writ of mandamus, files a petition writ quo warranto and is automatically granted by respondent Chief Justice Wilson, but the court of appeals on October 24, 2022 filed realtor's writ of mandamus / writ quo warranto case No. ED111087 before the respondent Appeals Judge Angela T. Quigless, Writ Division V, and the writ alleging federal and nonfederal grounds was denied without a written opinion federal rights deprivation. (Realtor's Writ Caption Page attached hereto APPENDIX 5).

See, e.g. Rule 98.04 in pertinent part: "If the realtor is the attorney general or the prosecuting attorney, filing upon personal information, the court shall issue a preliminary order in quo warranto. When the petition is filed at the relation of another as described in Rule 98.02(b) if the court is of the opinion that the preliminary order in quo warranto should be granted, such order shall be issued."

Writ quo warranto is subject to both a ministerial duty automatic granting authority to realtor AGO and its agent attorney general, and discretionary granting to private realtor under like circumstances on the part of the court of appeals and Missouri Supreme Court. Promulgated rule 98.04 is arbitrary, capricious, and vague and should be struck down as unconstitutional as-applied violating the equal protection of law Fourteenth Amendment.

QUESTION: Will Attorney General Andrew Bailey file separate writs quo warranto to deal with the violation of the criminal code by public officers in the realtor's related case, relevant to the fraudulent removal scheme to the Federal district court by then-Attorney General Eric Schmitt, Circuit Attorney Kimberly M. Gardner, Deputy City Counselor Erin K. McGowan, Berg and Brinker & Doyen, LLP and Thompson Coburn, LLP.

SUBSECTION 6: Concealment of Appointed Acting Attorney General

In the purported interest of justice respondent Governor Michael Parson appointed an acting attorney general Andrew Bailey to prosecute and defend the state's legal interest before the Missouri Supreme Court in November of 2022, notwithstanding the Court intentionally listed relieved then-Attorney General Eric Schmitt as Counsel of Records for the respondents in case No. SC99892.

SUBSECTION 7: Succession of Office Holder Acting Attorney General to File Entrance of Appearance; Counsel of Record Files To Prosecute Client Circuit Attorney

Promulgated rule 55.03 in pertinent part; – “An attorney who appears in a case shall be considered as representing the parties from whom the attorney appears for...”

Under like-circumstances the Governor exercised his “emergency powers” and appointed an acting attorney general; Chief Justice Wilson the administrative officer of the state courts in the “interest of justice” RSMo, S 478.240 could have authorized an acting presiding judge to execute the civil filing of the plaintiff’s verified complaint in case No. 2022-cc00594, and order the service of the petition and of the summons in case No. 1922-cc12348 Cause No. 76-287-A, since respondent Presiding Judge Michael Stelzer refused to perform his ministerial duty having superintending authority over respondent Circuit Clerk Thomas L. Kloepfinger,

Then, purportedly in the interest of justice respondent Chief Justice Wilson granted the attorney general’s request for preliminary writ quo warranto in those proceeding to remove from office respondent Circuit Attorney Kimberly M. Gardner; and with the state circuit Court Twenty Second Judicial Circuit’s 31-judges recusing, Chief Justice Wilson as administrator assigned a judge of the court of appeals to preside over the proceedings.

SUBSECTION 8: Default Timeliness of Response in Writ Proceeding(s) Under Like Circumstances Due Process Deprivation Fourteenth Amendment

“You are hereby directed to file your pleadings to the petition in quo warranto within 14-days and serve a copy upon the attorney general. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.”

Judge John P. Torbitzky, Court of Appeals’ Order Feb 27, 2023

Then- Attorney General Eric Schmitt and Acting Attorney General Andrew Bryant issued service of realtor’s writ of mandamus / writ quo warranto filed by the court of appeals, Writ Division V, case No. 111087 and realtor’s writ of mandamus filed by the Supreme Court in case No. SC99892. The AGO by and through then-Attorney General Eric Schmitt and Acting Attorney General Andrew Bailey failed to file response(s), but respondent(s) Appeals Judge Angela T. Quigless, and Chief Justice Paul C. Wilson did not enter a judgment by default against the respondents in realtor’s related cause of actions.

SUBSECTION 9: Federal Right In Court of Law To Be Enforced By Congressional Representative Amicus Filing

Non-Respondent Representative Cori Bush, of the First Congressional District, State of Missouri, under her oath of office had the ministerial duty to protect the constituents of the First Congressional District's federal rights relevant to illegal Title III surveillance and interception domestic spying program violating federal law the National Security Act of 1947, and unlawful searches and seizures violating the Fourth Amendment; see, e.g. Case Help Forms provided the realtor by her congressional office staff in the city of St. Louis, Missouri. Realtor provided the Congresswoman with documentation relevant to the Title III domestic spying program continuing within the Congressional First District, and pleadings filed in the Federal district court and State circuit court.

REASON FOR GRANTING THE WRIT

I. The Court Should Direct The Missouri Supreme Court To Promptly Exercise its Superintending Authority, Its Ministerial Duty The Court Has Refused To Perform Under The Court's Promulgated Rules And Statutory Law Denying Relator Mandamus Relief

A. It is within the scope of the exclusive authority of this Court under the United States Constitution, Art. III, sec. 2, cl. 2, to grant Realtor's relief from the Letter / Order of the state's Highest Court; see, e.g. Judiciary Act of 1789, sec. 25.

There is no ambiguity within the binding authority legislative intent RSMo, S 536.090 that judges perform the ministerial duty to issue written and signed judgments, orders, decrees and opinions; and promulgated Rule 47.01(a) to be lawful a judge shall issue a written and signed order.

In keeping, with this Court's constitutional precedent in state court proceeding involving federal rights, the state's Highest Court's written opinion expressing "adequate, independent ground based on state law" authorizing the denial. [87 U.S. (20 Wall.) 590]. See, e.g. "The power of review affirmed." *Martin v. Hunter's Lessee* (1816) affirmed the constitutionality of the Judiciary Act.

This Court in *Skillings v. United States*, 561 U.S. 358 (2010) the Court holding citing McNally there must be a "fiduciary duty" to be performed, and the Court in *Shushan* further states that no trustee has more sacred duties than a public official, and any scheme to obtain an advantage by corrupting such official must in the federal law be

considered a scheme to defraud under the state circuit court's sham proceedings in realtor's related case.

This Court in a unanimous decision *Tanzin, et al v. Tanzir, et al*, 592 U.S. ____ (2020) the Court addressed liability of officials sued in their individual capacity for violation of constitutional rights, and clearly established law under color of office, or color of law, *Tanzin* pertinent part. The question here is whether appropriate relief includes claims for money damages against government officials in their individual capacity. We hold that it does.

B. A Writ of Mandamus Is Necessary To Prevent Federal Rights Deprivation Under Color of State Law Not Defined In A Written Opinion By the State's Highest Court.

Realtor has exhausted their state remedy purportedly in a final decision based upon a letter under the Seal of the Missouri Supreme Court, and signature of respondent Clerk Betsy Aubuchon.

Respondent Chief Justice Paul C. Wilson servers as the administrative officer over the state court [e.g. circuit and appeal court(s)]. As, the administrative officer having superintending authority over judicial officers and court personnel, and rules promulgated by the state's Highest Court, Justice Wilson knew or should have known of the filing and service of process under summons binding statutory authority RSMo, S 506.150.

Respondent Chief Justice Paul C. Wilson knew or should have known of the binding statutory authority requiring, in cases involving federal rights, the court has to address in a decision in writing S 536.090 the application of state law as grounds for the decision denying mandamus relief.

Respondent Chief Justice Paul C. Wilson knew or should have known the rules promulgated under rule 74.01(a) required a written and signed order by the Chief Justice the judge of disposition in case No. SC99892; or the alternative a written decision signed by the court en banc.

Whereby, a letter signed by the respondent Clerk Betsy Aubuchon cannot be construed res judicata final decision, or inferring the wording in the letter was the context relayed to the clerk by the judge, or that the letter was actually a decision of the

court sitting en banc, in an actual court of law the letter under the signature of the clerk, or testimony in open court by the clerk, as too, what was relayed by the court would not be allowed as inadmissible hearsay.[8].

8

Hearsay evidence – Hearsay rule is the rule prohibiting hearsay (out of court statements offered as proof of that statement) from being admitted as evidence because of the inability of the other party to cross-examine the maker of the statement.

The Missouri Supreme Court en banc in a pattern or habit of practice in a scheme and artifice having used letters under the Seal of the state's Highest Court, and signature of the clerk to defraud the citizens of the State of Missouri of due process Fourteenth Amendment on federal and nonfederal grounds.

In addition, the lawyer-class within the State of Missouri has been silently complicit in the Letter scheme under Seal of the Missouri Supreme Court and signature of the clerk because the attorney is to assert to the client the process was lawful based upon a LETTER. A lawyer's failure to disclose to the client the requirement under Rule 74.01(a) and binding statutory authority S 536.090, that in Missouri an order is lawful when in the caption it states order, judgment or decree, and the document is signed by the judge.

C. Mandamus Is Appropriate Because Rules Promulgated By The Missouri Supreme Court Are Deemed To Be Law Governing Practices and Procedures Involving Fiduciary or Ministerial Duties And Non-Discretionary

SUBSECTION 10: Realtor Has Exhausted Their State Remedy Those Promulgated Rules and State's Highest Court's Policy

Notwithstanding, realtor's estate subject matter in re: Estate of P.D. & Vandelia W. Johnson, et al v. United States, et al assigned case No. 2022-cc00594 not being filed pursuant to Rule 45.01, and realtor Jerry A. Johnson, Prisoner No. 081261-8's writ petition and summons in case No. 1922-cc12348 Cause No. 76-287-A being withheld from service of process Rule 54.01. Realtor under the Missouri Court's policy of a Letter under the Seal and signature of the clerk final decision res judicata, the state's Highest Court denying mandamus relief to compel the performance of the clerk's ministerial duty. Somehow, the state's remedy has been exhausted when the state's Highest Court did not order the filing and service of process in the instant related cases

Those rules promulgated by the Missouri Supreme Court and compliance with those rules by judicial officers, court personnel, lawyers, prosecutors, or attorney general from the basis of decision-making by the tribunal.

Article V, SEC. 18 - "All final decisions, findings, rules and orders on any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affects private rights, shall be subject to direct review by the courts as provided by law, and such review shall include the determination whether the same or authorized by law, and in cases in which a hearing is required by law, whether the same or supported by competent and substantial evidence upon the whole record. Unless otherwise provided by law, administrative decisions, findings, rules, and orders subject to review under this section are which are otherwise subject to direct judicial review, shall be reviewed in such manner as by such court as the Supreme Court by rule shall direct, and the court so designated shall, in addition to its other jurisdiction, have jurisdiction to hear and determine any such review proceeding."

II. Judicial Review DE NOVO Federal Supreme Court Should Review Historical History Relevant to 1900 Civil War Amendment e.g. Thirteenth Amendment, 1866 Civil Rights Act and State of Missouri's Ratification of Federal Constitution

Associate Justice Clarence Thomas reasoned that federal courts in determining Second Amendment case, should take into account the country's historical history relevant to the 1800's era of muskets and balancing State right's governing public safety in the era of weapons of mass destruction e.g. assault weapons 20th century.

Federal constitution, Article VI, cl. 3 - "...and all executive and judicial officers of both the United States and of the several States shall be bound by oath or affirmation, to support this Constitution."

"When I was sworn in as Missouri's 44th Attorney General I committed to protecting the constitution, enforcing the laws as written, defending the state, supporting the counties, and training the next generation of public service minded attorneys."

AG, Andrew Bailey,

SUBSECTION 11: Missouri General Assembly Ratifies Provisions of Federal Constitution Having Superintending Authority Over State Agencies and Personnel Mo. Const. Article III

On January, 31, 1865, Congress amended the Constitution adding the Thirteenth Amendment to the Federal constitution, and the State of Missouri ratified the Thirteenth Amendment of the Federal constitution approximately 1-month later on February 6, 1865.

Thirteenth Amendment. Section 1 - "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

A LAW - Congress exercised its legislative powers enacted the 1866 Civil Rights Acts, sec. 1: "All persons born in the United States where entitled to be citizens, without regard to race, color, or previous condition of slavery or involuntary servitude; sec. 2 As citizens they have the right to enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sale, hold, and convey real and personal property.

In 1821, Missouri entered the Union under the Missouri Compromise (1820) as a slave state. This Court's Dred Scott decision, formerly Dred Scott v. John F. A. Sandford, legal case in which the US Supreme Court on March 6, 1857, ruled (7-2) ruled the Missouri Compromise (1820), which had declared free all territories West of Missouri and North of latitude 36 30' was unconstitutional

January 25, 1867, the Missouri General Assembly ratified the Federal constitution's Fourteenth Amendment; Missouri guaranteed the substantive right to all citizens residing within its territory due process and the equal protection of its laws.

The Missouri Court of Appeals, Eastern Division, city of St. Louis in No. ED111087, and Missouri Supreme Court in No. SC99892 denying realtor mandamus relief under rules promulgated governing practices and procedure in the lower state courts. The judiciary's conduct was impeachable. The citizens of the city of St. Louis and First Congressional District have been denied of their Fourteenth Amendment constitutional right to "honest service". Official misconduct, and willful neglect of duty involving the Office of the Administrator Missouri Supreme Court, City Hall, Office of the Mayor, Governor's Office, Attorney General's Office, Circuit Attorney's Office, and City Counselor's Office; not only against respondent Kimberly M. Gardner. The Missouri General Assembly having ratified provision of the Federal constitution having ministerial and superintending authority over impeachment and removal of public officials for cause "at will"; State ex rel. Gorris v. Mussman (A.) 612 S.W. 2d 357).

SUBSECTION 12: Honest Service Fraud Deprivation of Federal Right Fourteenth Amendment e.g. Federal Rights Addressed In Mandamus Relief, Before Court of Appeals and Missouri Supreme Court Written Opinion Was Fiduciary Duty

Respondent then-Presiding Judge Rex M. Burlison conspired with respondents Clerk Thomas Kloeppinger, Office of the Attorney General, AGO and then-Attorney General Eric Schmitt to usurp the “exclusive jurisdiction”; Pennoyer, 95 U.S. 714 (1878) of the state circuit court over the estate subject matter with jury trial demand; respondents knew or should have known rules promulgated could not be used to violate federal rights. Rule 45.01.1 was not used to file plaintiff’s verified complaint, but respondents substituted non verified cause Jeffrey L.G. Johnson, et al v. Missouri Attorney General, Off, et al, No. 2022-cc00594; and Rule 54.01 was not used to effectuate service of realtor Jerry A. Johnson’s writ of habeas corpus in case No. 1922-cc12348 Cause No. 76-287-A.

SUBSECTION 13: Fiduciary Duty of District Court Judges the Court Must Remand “Parties” Want of Jurisdiction 28 U.S.C. S 1332(a) in Removal Scheme From State Court, Case Not Cognizable Under “Actual Case and Controversy”

“...if a Federal court, on removal, determines that he does not have jurisdiction it is obligated on its own motion, if necessary, to remand.” Strange, 534 F.Supp 138 (1981); see, e.g. “District court should sua sponte remand case to state court if its jurisdiction is not proper.” Petit., 377 F.Supp 198 (1974).

March 25, 2020, non-respondent US District Judge Stephen R. Clark issued a Standing Order (Case Management) the court allowed “to be brought before it” Movant city of St. Louis’ S 1983 original action civil demand \$32,000,000 against Jeffrey L.G. Johnson, Jerry A. Johnson, Prisoner No. 081261-8, and Joseph Johnson; Movant’s petition for removal under color of federal law 28 U.S.C. S 1441 and S 1446.

Movant’s CIVIL COVER SHEET attached hereto APPENDIX 6.

Non-respondent Judge Clark knew or should have known no “actual case and controversy” under federal or constitutional question was sought for removal by respondent city of St. Louis, City Hall by and through Deputy City Counsel Erin K. McGowan. See, e.g. Judicial Oath of Office, Realtor’s Writ, pg. 15 re: Treason.[9].

A void judgment is a nullity from the beginning because of the trial judge's prior misconduct, impropriety and lack of impartiality whose judgment is attended by none of the consequences of a valid judgment. "A void judgment is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.2d (Tex. Crim. App. 2001); and must be set-aside upon appeal. 158 F.R.D. at 278. *Id.*

SUBSECTION 14: City of St. Louis Sought Removal to Federal District Court Case No. 2022-cc00594 Non-Verified Jeffrey L.G. Johnson, et al v. Missouri Attorney General, Off, et al No. 2022-cc00594

May 21, 2020, City of St. Louis by and through respondent Deputy City Counsel Erin K. McGowan electronically filed a "time barred" Notice of Removal with the State circuit court, and electronically filed a Petition for removal with the Federal district court. By succession of public office respondent current-Mayor Tishaura O. Jones was joined in SC99892 under realtor's Motion for Leave to file adding respondents, and realtor's motion adding respondent was sustained on January 11, 2023.

77.260, RSMo, "Duty of Mayor and Council: The Mayor and Council of each city governed by this chapter shall have the care, management and control of the city, and its finances..."

78.560.3, RSMo, The mayor shall be recognized as the official head of the city by the courts for the purpose of serving civil process.

Movant city of St. Louis by and through respondent Deputy City Counselor Erin K. McGowan used taxpayer property \$400 as a civil filing fee in a removal scheme, and filed the city of St. Louis' S 1983 original action \$32,000.000 civil demand alleging civil right deprivation by Jeffrey L.G. Johnson, Jerry A Johnson, Prisoner No. 081261-8 and Joseph Johnson. Movant in their motion to dismiss acknowledged movant failed to state a claim upon which relief could be granted under S 1983 frivolous suit RSMo, S 514.205.

Respondent then-Attorney General Eric Schmitt filed in the district court respondent State of Missouri's motion to dismiss without the payment of the district court's \$400 filing fee, respondent's motion to dismiss failed to comply with S 1446 requiring

respondent Schmitt file to join Movant's removal, or respondent Schmitt was required to file a separate notice of removal with the State circuit court, and a petition for removal with the district court.

Once non-respondent District Judge Clark allowed the unlawful removal to come to the Federal district Court in case No. 4:20-cv-00679SRC. "...if it be brought before it, we have no more right to decline the exercise of jurisdiction which is given...than to usurp that which is not given..." [19 U.S. (6 Wheat) 264, 404 (1821)].

June 15, 2020, non-respondent US District Judge Clark's order to dismiss was nullity void on due process ground Fifth Amendment. Jurisdiction was not given the Federal district court when non-respondent Judge Clark exercised jurisdiction over the city of St. Louis' removal petition. "A court cannot confer jurisdiction where none existed." [204 U.S. 8, 27 S Ct. 326 (1907)].

Fed. R. Civ. P. Rule 60(b)(4) - 28 U.S.C.A - "judgment is void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in manner inconsistent with due process."

Non-respondent United States District Judge Ronnie L. White his ministerial and fiduciary duty in No. 4:21-cv-0039RLW in a case want of jurisdiction, and absent an "actual case and controversy." The standalone issue before Judge White was the plaintiff's counterclaim \$96,000,000, and Judge White ordering the remand of the parties back to the State circuit court, but Judge White failed to order the parties be remanded. See, e.g. Judicial Oath of Office, Realtor's Writ, pg. 15. Treason.

SUBSECTION 15: Federal Appellate Courts e.g. Court of Appeals, Eastern District of Missouri and United States Supreme Court Can Only Review "Actual Case and Controversy" Brought Under Appeal and Certiorari Review

United States Court of Appeals' order in No. 21-3449 affirmed the order of Judge White dismissing in No. 4:21-cv-0039, but at the appellate stage with no "case and controversy" on appeal from the lower courts e.g. the parties plaintiff and defendants were not properly joined in the district court, notwithstanding, Judge Clark's Standing Order allowing the matter "to be brought before it" to the Federal District Court. The court of appeals en banc could not exercise jurisdiction over a case at appeal, not lawfully brought before it by the appellant and appellee, an order remanding a case not removed on the question of jurisdiction would "usurp that which is not given." Supra.

Notwithstanding, the moving party e.g. Movant city of St. Louis and consenting parties Berg and Brinker & Doyen, LLP, Charter Communication Services, LLC, and State of Missouri e.g. appellees filing motions to dismiss seeking affirmative relief, after the 30-day statute of limitation had run under FRAP 31(a) in appeal No. 21-3449.

But, the court of appeals by and through non-respondent Chief Judge Lavenski R. Smith did have the fiduciary, and ministerial duty to adjudicate appellant's judicial misconduct complaint(s) filed against US District Judge(s) Stephen R. Clark and Ronnie L. White.

This Court in appeal No. 21-7556 denied cert without remand because an "actual case and controversy" was not presented on appeal; 28 U.S.C. S 1254 grants the Supreme Court jurisdiction only over "actual cases and controversy" brought before it from the lower court, and without a cause of action based upon the petitioner seeking certiorari review which this Court could "decline". 19 (6 Wheat) 264, 404.

But, this Court promulgated the default rules addressing timeliness in Fed. R. C. P. 55 and FRAP 31(a), but the plaintiff / appellant was not granted the equal protection under the Fifth Amendment to the entry of default orders by the district court and court of appeals.

This Court knew according to the petitioner's appeal that the plaintiff's case was not filed by the State circuit court, and without a filing by the State of Missouri, and the plaintiffs not exhausting their state remedy under an order by the State's Highest Court, this Court could not exercise a review of litigation under Article III, sec. 2, cl. 2, involving a State and its ministers.

"Intangible right" deprivation occurs when government officials do not function "openly and faithfully" in their service to the constituents, Now most fiduciary, privileged, or employment relationships - in which any kind of breach would have been covered by the law...A breach of fiduciary duty, or a failure to disclose a conflict of interest can now be charged as wire fraud and mail fraud. In addition, the Federal appellate court knew the moving parties had used property \$400 of the taxpayers of the city of St. Louis, and plaintiff's property \$148.50 as civil filing fees in furtherance of their removal scheme.

The United States Supreme Court in *McNally v. United States*, 483 U.S. 350 (1987) the Court held "we read the statute as limited to scope to the protection of property right." Id.

This Court en banc denying cert, and the court of appeals en banc summarily affirming dismissal, allowed the Federal appellate court(s) too walk the edges of the legal envelope because this Court denying cert was not material to the issues within the “exclusive jurisdiction” of the state court pending a final decision res judicata by the state’s Highest Court.

Supreme Court’s Order denying certiorari review attached hereto APPENDIX 8.

iii. This Court Should Order the Missouri Supreme Court to Promptly Sua Sponte Review Realtor’s Petition to Compel the Performance of Ministerial Duties Filing Plaintiff’s Verified Complaint, and Issue Service of Realtor’s Writ and Summons Mandated By Promulgated Rules

The Missouri Supreme Court has superintending authority over judicial officers and court personnel e.g. officers of the court [Corporations / Law Firms / Attorneys] practicing before the state courts.

56.540, RSMo and 56.560, RSMo, The Circuit Attorney or Asst. Circuit Attorney has superintending authority to prosecute criminal acts occurring within the jurisdiction of the city of St. Louis; see, e.g. Missouri’s Long-Arm Statute, RSMo, S 506.500 provides for the prosecution of any civil or criminal tort occurring within the jurisdiction of the city of St. Louis, and grants the circuit court cognizable original jurisdiction over the proceedings.

SUBSECTION 16: Accessories RSMo, S 541.110

It’s the appellant’s position, Congress lawfully exercised its constitutional “elastic power” to enact appropriate legislation 28 U.S.C. S 1441 and 28 U.S.C. S 1446 provided for the removal of cases from state court to federal court, and within the provision of the statute enacted a statute of limitation of 30-days to file for removal after a party acknowledges receipt of the “complaint and summons.”

This Supreme Court concurring Congress’ legislative power to enact a statute of limitations provision within a statute the Rotkiske Court held “When Congress chooses to enact a statute of limitations, however, “it speaks directly to the issue of timeliness and provides a rule for determining whether a claim is timely to permit.

"Collectively" non-respondents herein Andrew S. Berg, Attorney at Law and Brinker & Doyen, LLP; and non-respondent Thompson Coburn, LLP, while licensed to practice law within the State of Missouri, non-respondents consented to join Movant city of St. Louis' petition for removal to the Federal district court which was "time barred" under 28 U.S.C. S 1441 and S 1446; Movant's petition for removal electronically filed on May 21, 2020 after the statute of limitation 30-days had run.[10]. Movant's Petition for Removal, pg. 2, attached hereto APPENDIX 7.

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Movant in their petition for removal acknowledge receipt of plaintiff's complaint and summons on April 6, 2020. Movant's petition for removal was filed on May 21, 2020 45-days after the petition could have been filed.

WHEREFORE, since the plaintiff's complaint was never filed by the Circuit Clerk's Office on March 18, 2020, Movant in its petition acknowledged respondent Clerk Kloeppinger issued service of non-verified Jeffrey Johnson, et al v. Missouri Attorney General, Off, et al, fraud case No 2022-cc00594 under summons on April 6, 2020.

Non-respondents herein Movant city of St. Louis, Berg & Brinker & Doyen, LLP, and Thompson Coburn, LLP committed a fraud upon 2-tribunals e.g. State circuit court and Federal district court having used wire to electronically file their Notice and Petition for removal to the district court under color of federal law S 1441 and S1446. But, non-respondent Movant's CIVIL COVER SHEET indicates movant and consenting parties filed an original action Section 1983 civil demand \$32,000,000.00 against Jeffrey L.G. Johnson, Jerry A. Johnson, Prisoner No. 081261-8, and Joseph Johnson.

If, the plaintiff's estate subject matter in re: Estate of P.D. & Vandelia W. Johnson, et al was not filed by the circuit clerk's office, Movant city of St. Louis, Berg and Brinker & Doyen, LLP and Thompson Coburn, LLP committed wire fraud in a scheme to remove non-verified case Jeffrey Johnson, et al v. Missouri Attorney General, Off, et al No. 2022-cc00594 filed March 18, 2020 in the State circuit court.

SUBSECTION 17: RSMo, S 562.014 Conspiracy to Interfere With Federal Rights Continuing Tort or Continuing Violation Doctrine

Respondent Associate Circuit Judge Stephenson McGraugh, first judge, on April 5, 2021 and on April 6, 2021 in case No. 1922-cc12348 Cause No. 76-278-A, prior too,

petitioner's death on July 14, 2022, Judge McGraugh held 2-hearings ex parte with Unknown Johns relevant to realtor Jerry A. Johnson, Prisoner No. 081261-8's writ petition; and under the more-probable-than-not doctrine those Unknown Johns were attorney for respondent city of St. Louis the original prosecuting authority in 1976, and attorney for respondent State of Missouri having current custodial authority over the realtor, at the time.

Respondent(s) Judge McGraugh and Unknown Johns conducted the aforementioned proceedings ex parte without the petitioner seeking unconditional release having the assistance of counsel, or the right to confront persons appearing against him, and the right to review the evidence e.g. Brady material due process denial Fourteenth Amendment and repugnant to petitioner's federal right Fifth and Sixth Amendments[11].

11

"A petition for habeas corpus relief under Missouri law is said to be limited to determine the facial validity of confinement, which is based on the record of the proceeding that resulted in the confinement." Jaynes, 63 S.W.3d at 214.

Unknown Johns appearing ex parte before respondent Judge McGraugh the public record Mo Casenet does not indicate the Unknown Johns filed their required Entry of Appearance(s) under promulgated Rule 55.03(b).

Respondent Circuit Judge Michael Noble, second judge, in case No. 1922-cc12348 Cause No. 76-287-A, respondent city of St. Louis by and through Sheena Hamilton, City Counselor, on November 14, 2022 filed their motion to dismiss, and respondent State of Missouri by and through AGO and then-Attorney General Eric Schmitt filed their motions to dismiss on November 10, 2022, seeking dismissal because the petitioner had died. Respondent State of Missouri by and through AGO and then-Attorney General Schmitt proffered as proof of the death of the petitioner, petitioner's Death Certificate.

RSMo, S 193.045.3, the record e.g. Death Certificate under the sole custody of respondent Dylan R. Bryant, Deputy Director, Dep't of Vital Records, were the property of the state agency, and the statute did not grant respondent discretion to copy or transfer the record e.g. Death Certificate to the respondent AGO and then-Attorney General Eric Schmitt.

Respondents Judge Noble, AGO and then- Attorney General Eric Schmitt, and Dylan Bryant, Deputy Director, in a meeting of minds mens rea orchestrated the illegal copying and transfer of record e.g. Death Certificate for the proceeding in Division 22, in order to facilitate the suspending of the petitioner's writ of habeas corpus in Judge Nobel's order of dismissal entered on December 12, 2022.

SUBSECTION 18: Conflict of Interest By Lawyer Rule 1.7 Imputed Upon the Entire Office or Corporation e.g. Law Firm, Individual Attorney, or Governmental Agency

Respondent city of St. Louis e.g. Circuit Attorney's Office, and City Counselor's Office and Law Department, and State of Missouri AGO and Attorney General's Office in the fraudulent removal under color of federal law in case No. 2022-cc00594; electronically filing notice(s) of removal and petition for removal, or electronically filing motions to dismiss in the district court engaged in honest services wire fraud 18 U.S.C. S 1334; and the AGO and then-Attorney General unlawfully soliciting another e.g. Deputy Director, Dep't of Vital Records to provided privileged material e.g. Death Certificate under color of state law S 193.045.3.

SUBSECTION 19: Solicitor General State of Missouri Failure to Perform Ministerial / Fiduciary Duty to Effectuate Service of Respondent State of Missouri's Response Waiver In Supreme Court No. 21-7556

Hereto date, respondent John D. Sauer, Solicitor General, failed to effectuate service of process upon the petitioner of his response waiver filed with this Court on April 11, 2022. But, according to the Clerk's Office letter dated June 12, 2018, there is no provision in this Court's rules for the filing of a waiver. In a collection of cases before this Court the Dep't of Justice, Office of the Solicitor General filed a total of 5-unsigned waiver and the Dep't of Justice did not file briefs in opposition.

See, e.g. Clerk's Office Letter attached hereto APPENDIX 9

In addition, the state's Highest Court effectuating service upon the Attorney General Andrew Bailey, and the realtor a letter under the Seal of the Missouri Supreme Court and signature of the Clerk constituting a final decision res judicata.

CONCLUSION

This Court should move to grant Petitioner / Realtor any and further relief the court deems just and proper.

- PROXY BY COUNCIL & NEXT-OF-KIN -

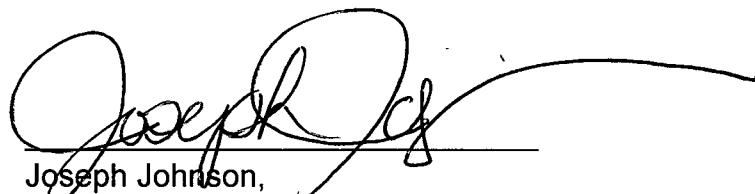
FOR: Estate of P.D & Vanelia W. Johnson, et al

AND:

Jerry A. Johnson, Prisoner No. 081261-8, Realtor, Deceased



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