No. 23-338

Supreme Court of the United States

Dr. BYRON V. BUSH
Mrs. KELLY DIANE BUSH
Petitioners Pro Se

v.

FDIC RELIANT BANK
DEVAN D. ARD, JR., Pres. of FDIC Reliant Bank
RICK BELOTE, Sr. V.P. of FDIC Reliant Bank
JAMES G. MARTIN, III
FRANK G. CLEMENT, JR.
STEVEN J. STAFFORD
RELIANT BANCORP, INC.
WILLIAM RONALD DEBERRY
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether or not the Sixth Circuit erred in determining that relevant and material facts given by ONE Party only [Respondents], are sufficient for a State or Federal court 1.) to determine if it has subject matter jurisdiction; and... 2.) to determine the outcome of a particular case; or

Whether in so doing, the Sixth Circuit repeated the pattern begun in state court, by again "*pretermitting*" the relevant and material facts, which contradicts the "*true intention*" of a contract, an FDIC Bank's Duty to Inform and NOT *conceal* their "*alleged-mistakes*", the Duty of Impartial Due Process, RULE 60 Motions, the *Rooker-Feldman* Doctrine, and "*sovereign immunity*" for Judicial Defendants; all of which have contributed to Petitioners' injuries; or

Does Due Process require the "*conflicting evidence*" of ALL Parties be acknowledged openly, fairly without bias, and "*legally considered*" without "*pretermitting*" Petitioners' FACTS [1]... which will prove their allegations of *fraudulent Breach of Contract* by an FDIC Bank and *fraud-upon-the-court* by Judicial Defendants acting as individuals, under "*color of law*"?

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[1] Petitioners' use of "**FACTS**" as opposed to "facts", hereinafter refer to the "***FACTS surrounding Reliant's alleged-mistake***"

PARTIES TO THE PROCEEDING

per 14.1(b)(i)

In addition to the parties listed in the CAPTION of this case, three other parties should be considered for substitution to this action.

Petitioners, notified the Sixth Circuit Court [DOCs. 9 & 10, 08/30/22] of the:

1. Death of DeVan D. Ard, Jr.
2. Sale of FDIC Reliant Bank to United Community Bank

Attorney Stephen M. Montgomery who represents FDIC Reliant Bank and their officers, responded with a MOTION TO SUBSTITUTE,

1. DeVan D. Ard's widow estate [DOC. 14, 08/31/22], and
2. United Community Bank & United Community Banks, Inc. [DOCs. 15 & 16, 08/31/22]

The Sixth Circuit's ORDER [DOC. 23, 04/10/23] to "*DENY as moot the motions to substitute parties...*" *[10] [14] [15] [16]* should be granted. Petitioners support and do not object to these motions to substitute parties.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Dr. & Mrs. Byron Bush respectfully petition for a writ of certiorari to review the judgment of the Sixth Circuit Appellate Court, and to correct and reverse this trend of fraudulent judgments which have never legally considered the relevant incriminating "*FACTS surrounding Reliant's alleged-mistake*".

OPINION

The Sixth Circuit opinion follows in the APPENDIX.

JURISDICTION

Judgment of the Sixth Circuit was entered on 04/10/23. Petitioners filed a petition for en banc rehearing [25] on 04/24/23, and the Court's ORDER denying [27] was filed on 05/16/23. Deadline for filing petition for writ of certiorari is 90-Days or 08/14/23. This U.S. Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT

Petitioners allege a *fraudulent* Breach of Contract by a Federal Deposit Insurance Corporation (FDIC) Bank, and... *fraud-upon-the-court* by individuals acting under "*color of law*" as Judicial Defendants, who conspired with that FDIC Bank by intentionally "*pretermitting*" the "*FACTS surrounding Reliant's alleged-mistake*" from the RECORD, that if included... would expose this *fraud*.

In 2007, FDIC Reliant Bank originated a $1.5M Loan with Petitioner/Bushes, *fully secured* by their $2.4M/5-acre commercial property known as StarPointe. Bushes defaulted in 2012. FDIC Reliant Bank began legal proceedings for a Deficiency Judgement, twice filing a SWORN AFFIDAVIT with the Chancery Court that the NOTE, Renewals, and documents are "*true and correct*".

However, during 2013-14 Depositions and Trial as recorded in the TRANSCRIPT but *not* legally considered in court RECORDS, it was learned that a material "*mistake*" had *allegedly* been discovered by Reliant's Sr. V.P. Rick Belote in 2010, three-years BEFORE his SWORN AFFIDAVIT of "*true and correct...*" and three-years AFTER Loan Origination.

He had *unilaterally* changed the "*true intention*" of the Loan in future Renewals from NON-RECOURSE to RECOURSE, admitted at Trial that he did not disclose to the Bushes, then intentionally *concealed* his finding for

another 3-4 years till Depositions and Trial with *altered documents* while obtaining secret sub-par appraisals to justify and ensure a Deficiency Judgment. In so doing, he perjured his testimony to the court, all while knowing the injury this "*mistake*" would cause "*If the Borrower defaults...*"

But again, this testimony is nowhere to be found in the "*summary*" of the Court's RECORD. Therefore...

The Sixth Circuit's ORDER of April 10, 2023 is in error. It covers-up, and duplicates the same pattern of deception that prevailed in State Court. Beginning on page one, the Court summarized *ten-years* of litigation, begun by FDIC Reliant Bank against Bushes for a Deficiency Judgment. That summary was again VOID of ANY of the "FACTS" of why we are here.

It began by stating, "*The relevant facts, as summarized by the magistrate judge below, are as follows.*"[1] Magistrate Frensley had made it clear from the beginning of his Report and Recommendation that he "*will not discuss Plaintiffs' Motion for Summary Judgment*",[2] or the facts, and he didn't, including Petitioners' Statement of Undisputed Facts and Memorandum of Law. He did not cite or reference a single supporting FACT or authority presented by Petitioners in his Report; thereby again "*pretermitting* [the] ... *appropriate [and] proposed findings of fact*" directly in conflict with RULE 72.

Furthermore, the plain language of Rule 56(c) mandated the entry of a summary judgment, after adequate time for discovery and upon motion, against a party [Respondents] who failed to make a showing sufficient to

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[1] Sixth Circuit ORDER, 04/10/23, page one.

[2] Magistrate Frensley's Report & Recommendation, DOC. 55, page 1 footnote.

establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In such a situation, there can be "*no genuine issue as to any material fact*," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party [Petitioners] were "*entitled to a judgment as a matter of law*" because the nonmoving parties failed to make a sufficient showing on an essential element of their case with respect to which they have the burden of proof. "The standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a)..." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Rule 56(e) requires the nonmoving party to go beyond the pleadings and by its own affidavits, or by "*depositions, answers to interrogatories, and admissions on file,*" designate *"specific facts showing that there is a genuine issue for trial.*" Rule 56(e) permits a summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves. While FDIC Reliant "*Disputed*" or "*Partially Disputed*" all but 4 of the 119 FACTS in Plaintiffs' Statement of Undisputed Facts, they did not give a single "fact" as required by RULE 56(c) to justify their dispute; because they can't.

Defendants Martin, Clement, and Stafford, gave NO reply, conceding Petitioners' FACTS as true. For them, "*sovereign immunity*" should apply even while "*acting* [as individuals] *outside of their official capacities*", and in direct contravention to their oath of office. The Sixth Circuit noted that this immunity "***applies even when a judge acts maliciously or in a corrupt manner***"??? [p. 5]

Then, missing again from the Circuit's summary, were the "***FACTS surrounding Reliant's alleged-mistake***" that were heard for ten-years in state court and two-years in federal, but were never acknowledged, addressed, or legally considered. The Law was never applied. Instead, Petitioners' FACTS, were again "*pretermitted*" [3], hushed, intentionally left-out. Why?

Certainly, courts must "*pretermit*" volumes of information learned during a trial that are not relevant or material to the outcome of a particular case; however, NOT when their inclusion would prove allegations of *fraud* by an FDIC Bank, and *fraud-upon-the-court* by individuals acting under "*color of law*". Otherwise, if no parking ticket will ensue by parking in a forbidden zone... why not park there?

Petitioners' FACTS were again brushed aside as though they do not exist. This repeated pattern, begun in state court, has now infected the federal courts.

Thus, QUESTION I, restated from above simply asks,

Whether or not the Sixth Circuit erred in determining that relevant and material facts given by ONE Party only [Respondents], are sufficient for a State or Federal court
1.) to determine if it has subject matter jurisdiction; and...
2.) to determine the outcome of a particular case;

If the answer is that only the facts of ONE party are sufficient to determine both "*subject matter jurisdiction [and] the outcome of a particular case*", then Petitioners have no reason to petition... the case is closed... it's over.

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[3] Last OPINION by Defendant Stafford, admitted that ***"All other issues, not specifically addressed have been pretermitted. Pretermitting issues is a long-standing practice in Tennessee courts. Appellants were not entitled to relief regardless of the type of fraud alleged."***

If that is so, Petitioners can now begin our proceedings in federal bankruptcy court, repeating the reason we were forced into bankruptcy was because an FDIC Bank *alleged* that 3-years after Loan origination, they found a "***mistake***" in their Loan Multi-Purpose NOTE and security agreement, that changed the intent, from fully NON-RECOURSE to RECOURSE; meaning that Bushes, who defaulted in 2012 on a $1.5M Loan taken out in 2007, and fully secured by a $2.4M/5-acre commercial property known as StarPointe to "*satisfy the Borrower's debt*"... will not have their debt "*satisfied*", but will instead now owe a Deficiency Judgment of $1+ Million. That "***mistake***" was the focus of the 2014 Trial, and yet the testimony of FDIC bank officers has disappeared.

Either the State and Federal Courts 1.) Did not consider this "***mistake***" testimony relevant and material, or 2.) Did not want to disclose this testimony by FDIC Reliant Bank officers to the courts they serve for other reasons (???) ..., or 3.) Are protecting their judicial peers of wrongdoing... of, "*corrupting the judicial machinery itself*".

Which is it? But... is that Due Process?

Can Petitioners' "FACTS... which will prove their allegations of ***fraud*** and ***fraud-upon-the-court***", be brushed aside so easily, and still be called... ***justice***?

The Sixth Circuit seems to think so.

Referring to Petitioners' "*motion to take judicial notice*" [4] the Court reasoned that "*courts do not take judicial notice of documents, they take judicial notice of facts... Judicial notice is only appropriate if 'the matter is beyond reasonable controversy*". Petitioners agree... in part.

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[4] Sixth Circuit ORDER, page five, middle, JUDICIAL NOTICE.

Documents contain "***facts***", the specifics of an agreement, and the "*true intention of the parties*". [5] Also, sworn testimony by FDIC bank officers concerning the document they prepared as being "*true and correct*", then a "***mistake***" is both relevant and material... and factual. And, these FACTS are "*beyond reasonable controversy*".

Yet, without citing a single "FACT" in Petitioners' Judicial Notice, without referencing Reliant's sworn testimonial admission of ***"mistake... Reliant's mistake... not the Bushes mistake...."***, or of the concealment which followed after discovery, the Sixth Circuit in like manner, again "*pretermitted*" Petitioners' "*judicial notice of facts*" by broadly stating, "*The Bushes' motion consists of baseless allegations... We therefore deny the motion to take judicial notice.*"

And just like that... Petitioners' FACTS vanished again... did not exist... and were again, not "*legally considered*"!

Admittedly, these summary and judicial motions or this writ are not perfectly written by Petitioners as *pro se* [6], and may require a less stringent reading, however they do contain direct quotations by FDIC Reliant Bank officers, and were *verified as accurate* by Reliant's counsel in their response.

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[5] T.C.A. § 47-50-112 *"All contracts, including notes and security agreements... are prima facia evidence that the contract contains the true intention of the parties, and shall be enforced as written."*

[6] Due Process provides that the *"rights of pro se (Sui Juris) litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; **if a court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so** despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants' unfamiliarity with pleading requirements*" Spencer v Doe; 1998; Green v Bransou 1997; Boag v McDougall; Haines v Kerner, 1972

FACTUAL BACKGROUND

JUDICIAL NOTICE / *"baseless allegations..."*

The Sixth Circuit casually dismissed Petitioners' FACTS as "*baseless allegations*". These were contained in Petitioners' MOTION FOR SUMMARY JUDGMENT, UNDISPUTED FACTS, and MEMORANDUM OF LAW, filed in Dis.Ct., and REQUEST FOR JUDICIAL NOTICE [8] filed 08/19/22 [7]. By dismissing in this flippant manner, the Sixth Circuit did again "*pretermit*" or omit, either intentionally or not, Petitioners' "*conflicting evidence*" in the same manner that had been done by Tennessee Courts for the past ten-plus years. Either way, it results in a deception to the Federal Courts, in the same way as occurred at the state level for ten-years.

Therefore, below is an abbreviated version of Petitioners' "***FACTS surrounding Reliant's alleged-mistake***". These omitted FACTS are thoroughly detailed and sequenced in Petitioners' REQUEST FOR JUDICIAL NOTICE, with UNDISPUTED FACTS [8][8], and are attached to this Petition. They are cited to the TRANSCRIPT and are much more than "*baseless allegations*".

> **Please note again that FDIC Reliant Bank's RESPONSE gave no "facts" in dispute conceding them as true, but merely "disputed" with no factual proof, in direct contravention of Rule 56. Judicial Defendants gave no response.**

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[7] Petitioners' JUDICIAL NOTICE containing the Undisputed Facts submitted in the Motion for Summary Judgment, are also in the APPENDIX to follow.

[8] Petitioners filed for JUDICIAL NOTICE with the UNDISPUTED FACTS in Doc. 8 on 08/19/2022.

- FDIC Reliant Bank prepared a non-recourse Loan Multi-Purpose NOTE and Security Agreement for Petitioners in 2007, having the "*business duty to prepare it accurately*", clearly defining the only "*remedy for default... to satisfy the Borrower's debt*" for a LOAN SECURED BY REAL ESTATE.
[Undisputed Facts, #1, 2, 14 *thru* 37]

- FDIC Reliant Sr. V.P. Rick Belote testified in 2013-14 that he found what he alone determined to be a "***material change mistake***" in the NOTE in 2010 and drew a "*legal conclusion*" affecting both parties. This changed the "*written intent*" upon default from NON-RECOURSE to FULLY RECOURSE...; FROM "*satisfy the Borrower's debt...*" TO ... Reliant will NOT SATISFY the Borrower's debt but will instead seek a Deficiency Judgment. Thus, a false statement. However, ***"Where a party desires to rescind upon the grounds of mistake or fraud he must upon the discovery of the facts, at once announce his purpose, and adhere to it."*** Grymes v Saunders, 93 US 55, 62. FDIC Reliant Defendants did NOT "*announce [their] purpose... did NOT disclose to Bushes...*" but instead, intentionally *concealed*. [#53, 61, 86, 90, **91**, 93]

- Additionally, "*The law in Tennessee, long and well-settled, is that a renewal note does not discharge the original note unless all of the parties thereto agree that the renewal is to have this effect.*"[9] In this case, the "*parties*" DID NOT AGREE... because Bushes DID NOT KNOW that Sr. V.P. Rick Belote considered the original NOTE to be a "*mistake*".
[FACT #90 *thru* 101]

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[9] Commerce Union Bank v. Burger-In-A-Pouch, Inc., 6457 S.W.2d 88, 90 (Tenn. 1983)

- FDIC Reliant Sr. V.P. Rick Belote testified that he *"did not disclose [this] material change mistake"* intentionally to Bushes, but instead, "*made it a point to ensure that the Third Party Agreement was not renewed on the 2011 Renewal*". This was intentional, and done by *concealing* this false statement with *alteration* of renewal documents, in combination with acquisition of sub-par appraisals at *half-the-value* of preceding appraisals, and Reliant's sale price listing within 30-days of foreclosure; all done in secret to ensure a deficiency judgment, while *knowing* the injury it would cause to Bushes upon default, who have relied since 2007 upon this "*remedy for default*". Thus, FDIC Reliant Defendants' ***"Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation."*** Leigh v. Loyd, 244 P.2d 356, 74 Ariz. 84- (1952). ***"Concealing a material fact when there is duty to disclose may be actionable fraud."*** Universal Inv. Co. v. Sahara Motor Inn, Inc., 619 P-2d 485,127 Ariz. 213- (Ariz. App. 1980) [#56, 57, 58, 59, 60, 61 thru 71]

- Defendants Martin, Clement and Stafford, as individuals, then *conspired* under "*color of law*" with Reliant to fraudulently Breach their Contract with Bushes, intentionally "*pretermitting*" this testimony. However, ***"No essential element of the crime can be omitted without destroying the whole pleading."*** [United States v. Hess., 124 U.S. 483, 8 S. Ct. 571] BMW OF NORTH AMERICA, INC. v. GORE, 517 U.S. 559, 588-589 (1996).
  Thus, FDIC Reliant did not fulfill their obligation to "*satisfy the Borrower's debt...*", and were assisted by individuals, acting under "*color of law*" as judges, who deceived the courts they serve. [#72, 89, 92]

- FDIC Reliant's fraudulent Breach of Contract had far-reaching implications. Instead of "*satisfying the Borrower's debt*", the fraudulent Deficiency Judgment has now inflated to over $1,000.000 with interest, Petitioners' bank account has been tapped, their income garnished, their ability to own a home squashed, their children's inheritance stolen, and their peace-of-mind entering retirement gone.
"An intentional misrepresentation, made through a statement or silence, can easily amount to "fraud" sufficient to warrant punitive damages." See § 6-11-20(b)(1) (***"Fraud" includes "intentional . . . concealment of a material fact the concealing party had a duty to disclose, which was gross, oppressive, or malicious and committed with the intention . . . of thereby depriving a person or entity of property"***) (emphasis added); § 6-11-20(b)(2) ("Malice" includes any "wrongful act without just cause or excuse . . . [w]ith an intent to injure the . . . property of another"); § 6-11-20(b)(5) ("Oppression" includes "[s]ubjecting a person to . . . unjust hardship in conscious disregard of that person's rights")." This would apply to Reliant Defendants who, upon discovery in 2010, were silent and misrepresented until 2013-14, AND equally to Defendant Judges as individuals, who have deceptively misrepresented under "*color of law*" to the courts they serve for the past ten-years. ***"When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth."*** State v Coddington, 662 P.2d 155,135 Ariz. 480. (Ariz. App. 1983)

[*XX*

- The final FORBEARANCE AGREEMENT, Item 10, also states in part, page 3, "*Effect of Agreement. Except as provided in this Agreement, all of the terms and conditions of the Loan Document shall remain in full force and effect.*" This was signed Feb. 28th, 2012, in the presence of Sr. V.P. Rick Belote, two-years after his discovery of the "*alleged mistake*". According to testimony, his attorneys were also aware, collectively, and individually prior to signing. Thus, the original agreement for a LOAN SECURED BY REAL ESTATE, upon "*default... to satisfy the Borrower's debt... shall remain in full force and effect.*"

  [FACT #65, 94, 95, 96, 97, 98]

- Additionally, FDIC Reliant Defendants filed their initial COMPLAINT with two SWORN AFFIDAVITS in 2013 attaching copies of the NOTE and separate security Third Party Agreement and Renewals, attesting the "*matters... are true and correct*", while *knowing* that they had already determined in 2010 that these "*matters...* [were NOT] *true and correct*", thus, a "*false statement*".

  Following Bushes contesting of the deficiency judgment because the Reliant prepared NOTE was "*true and correct...*" upon which they relied, Reliant then testified in 2014 Trial that their documents are ***"contradictory... ambiguous... [and a] mistake..."*** Thus, Reliant fraudulently initiated their action in state court with perjured testimony, with intent to injure Bushes. ***"Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth."*** [Morrison v Acton, 198 P.2d 590, 68 Ariz. 27 (Ariz. 1948)]

  [FACT #102 *thru* 107]

- Defendant Martin then conspired with FDIC Reliant to find the NOTE to be "*ambiguous*" by *pretermitting* the only "*remedy for default*" (Paragraph #19) for a LOAN SECURED BY REAL ESTATE [10]... and ALL incriminating testimony by Reliant officers. Thus... ***"Fraud vitiates the most solemn contracts, documents, and even judgments."*** U.S. vs. Throckmorton, 98 U.S. 61.

  [FACT #73 *thru* 79, 89]

- This pattern of pretermitting relevant and material FACTS was repeated in 4-appeals even though presented to the court. Defendants Clement and Stafford each heard these *"FACTS surrounding Reliant's alleged-mistake"* on two separate occasions, thus Petitioners were denied their Constitutional right to Due Process by Defendants Martin, Clement, and Stafford, who *pretermitted* these FACTS.

  The reason given was...

  "All other issues not specifically addressed have been pretermitted." *[intentionally left-out]*

  "Pretermitting issues is a long-standing practice in Tennessee courts."

  "Appellants [Bushes] were not entitled to relief regardless of the type of fraud alleged". [11]

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[10] Contrary to T.C.A. 47-50-112 ***"All contracts, including notes, security agreements... shall be prima facie evidence that the contract contains the true intention of the parties, and shall be enforced as written;"*** Nothing in this statute authorizes a judge to remove a key-provision, *thereby making the contract ambiguous where no ambiguity exists*, or to "*pretermit*" multiple testimonial admissions by FDIC bank officers which prove their fraudulent Breach of Contract, but that is exactly what Judges Martin, Clement, and Stafford did. Although this has repeatedly been brought to the attention of the state and federal courts, it was never openly acknowledged, addressed, or legally considered.

[11] Reference to Mr. Stafford's three-defining statements given in the last two OPINIONS from state court.

- Tennessee's case law FAIR MARKET VALUE standard, concerning a Borrower's appraisal was abandoned in order to justify a Deficiency Judgment, even though listed by Reliant's realtor within 30-days for full value of $1,900,000.

[FACT 67 *thru* 71]

- In shorter summary, Petitioners' FACTS are:

An FDIC bank, seeking a deficiency judgment against Bushes, testified during Trial that the Loan contract, the NOTE and separate security Third Party Agreement they prepared 7-years earlier is a "***mistake... the bank's mistake... not Bushes' mistake...*** *discovered in 2010 or 3-years after Loan origination... did not tell anybody at the time but later told their superiors... did not tell Bushes... would not have told Bushes if they had asked... even testified they 'made it a point to ensure that they did not renew the security agreement'... altered documents... after finding this 'alleged-mistake' they obtained four-in-a-row property appraisals from inside-bank connections that were less-than-half of previously acquired appraisals... to guarantee a Deficiency Judgment. Immediately after purchasing the property at foreclosure auction, the bank listed the property with their realtor for the full amount of Bushes' appraisal showing what they considered to be the true FAIR MARKET VALUE...*";[12] which would not result in a Deficiency Judgment.

This testimony by FDIC bank officers as recorded in the court TRANSCRIPT is both "*material [and] relevant*"[13]

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[12] T.C.A. 35-5-118, FAIR MARKET VALUE.

[13] This is a brief summary of the ***"FACTS surrounding Reliant's alleged-mistake"***. This testimony was filed with the District Court in Plaintiffs' Motion for Summary Judgment, Memorandum of Law

Yet... WHY was Petitioners' relevant and material testimony of FDIC bank officers "*pretermitted*" from all court Opinions, Orders, and Rulings... and recently by the District and Sixth Circuit Courts with regard to jurisdiction, and to the ultimate outcome...? They gave no consideration to these FACTS in their dismissal even though they correctly stated, "***the court must weigh the conflicting evidence to arrive at the factual predicate*** *that subject-matter jurisdiction does or does not exist.*" [14]

Why did the State Court of Appeals ignore Petitioners' earlier request to honor T.C.A. 27-1-113, which states, "***"The court of appeals shall not be limited to the consideration of such facts as were found or requested in the lower court, but it shall independently consider and find all material facts in the record; and either party, whether appellant or not, may assign error on the failure of the chancellor to find any material fact, without regard to whether such fact was found or requested in the lower court."***

These QUESTIONS still have not been answered, and will only be answered when Honorable Judges uphold their sworn *oath-of-office*, and fairly, equitably, without bias, openly and forthrightly, "*legally consider*" the HOW and WHY these relevant facts have been "*pretermitted*".

Anything less, is a miscarriage of justice.

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and Statement of Undisputed Facts, as a SWORN AFFIDAVIT in Doc. 44 thru 47. Reliant Defendants gave their RESPONSE to the Statement of Undisputed Facts in Doc. 52, followed by Plaintiffs' REPLY in Doc. 54, attached hereto.

[14] Doe v. Lee, No. 3:21-CV-00809, 2022 WL 1164228, at *4 (M.D. Tenn. Apr. 19, 2022).

REASONS FOR HEARING

This PETITION FOR WRIT OF CERTIORARI is crucially important. Its outcome will have dire consequences on what a Federal Deposit Insurance Corporation (FDIC) BANK can... or cannot do to injure their customers, the importance of fiduciaries' duties, and the confidence in our financial institutions. It will clarify the *Rooker-Feldman* Doctrine concerning how and when lower Federal courts can hear matters previously heard in State courts when their Rulings have been tarnished with various "*types of fraud*".

It may determine whether our CONSTITUTIONAL RIGHT TO DUE PROCESS is only 1-2%, or GUARANTEED as intended by the framers. It affects the way RULE 60 is enforced, concerning "*mistake, fraud, and fraud-upon-the-court*". It will have an influence on whether or not "*pro se litigants*" are given equal opportunity, respect and justice under the law, or are treated with a "*Ho-hum... Oh well...*" attitude while quietly sweeping them under the rug.

It drastically affects the integrity and confidence in our judicial system, and the way relevant and material facts which support a litigant's allegations are acknowledged and addressed by fair and equal legal consideration, which not only "*looks right*", but "*is right*", and finally... it affects the conduct by *officers-of-the-court* who would "*corrupt the judicial machinery itself*" without consequence... while having *"sovereign immunity...[?]"*.

In short, it is a necessary and much needed oversight by this SUPREME COURT. While a "*petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings...*" [Part III, Rule 10, Sup.Ct.] this Petition far exceeds any baseline of an "*asserted error*". Instead, it involves *fraudulent* actions,

on the part of an FDIC Bank, and individuals acting as judges, who should... and do... know better. Thus, an exercise of "*the Court's supervisory power...*" [RULE 10] is drastically needed.

> *(a) "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;... or* ***has so far departed from the accepted and usual course of judicial proceedings****, or sanctioned such a departure by a lower court,* ***as to call for an exercise of the Court's supervisory power****; (c) a state court or a United States court of appeals... has decided an important federal question in a way that conflicts with relevant decisions of this Court."*
>
> [Underline added]

Petitioners made every attempt herein to limit the QUESTIONS PRESENTED, but 10-plus years of litigation have a way of complicating the issues before this Court. Certainly, a seasoned attorney could have done much better, but then, a seasoned well-connected attorney would not have been taken advantage of in the same manner as *pro se* Petitioners. The questions are self-evident as to the answer, yet have been violated, with far reaching implications to our courts, and to citizens for their protection.

WHY? Why would an FDIC Bank think that they have no Duty to Disclose their "*alleged-mistake*" that will result in a Deficiency Judgment, now in excess of $1M? After all, Mr. Belote disclosed this "*mistake*" information AFTER he signed a SWORN AFFIDAVIT that the NOTE and documents were "*true and correct.* It cannot be "*true and correct*" if the prepared documents contain a material, costly "*mistake*". That is perjury.

And, WHY would he think it is OK to alter Bank renewal documents, to "*make it a point to ensure that [Bushes] did not renew the third-party agreement...*", of a "*hypothecation*" security agreement that fully secures a Loan with real estate "*to satisfy the Borrower's debt...*" in the event of default? That's *intent* to do harm.

WHY after hearing this testimony from bank officers, would "Honorable Judges" think they have no Duty to Disclose to the Courts they serve, this incriminating TRANSCRIPT testimony of FDIC Bank officers?

WHY? Because fraud is silent, sneaky, and frequently successful, especially if you are in a position of power, conspiring to defraud, protecting your peers, and yet still have "*sovereign immunity*".

> *"I cannot accept your canon that we are to judge Pope and King unlike other men, with a favorable presumption that they do no wrong. If there is any presumption, it is the other way against holders of power... power tends to corrupt... and absolute power corrupts absolutely."* [Lord Acton's famous quote, April 5, 1887]

The obvious and simple solution to end this litigation marathon, is to have Respondents to show WHERE in the RECORD they presented to the Court... WHERE are the "*FACTS surrounding Reliant's alleged-mistake...*" to show that they were ever litigated? Respondents can't... because the FACTS were never litigated. The evidence was either suppressed willfully by the state... or by individuals acting under "*color of law*"... who withheld the material facts from the State and now Federal courts. This would implicate a *Brady* [15] violation. And yes... the "*type of fraud*" does matter.

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[15] *Brady v Maryland*, 373 U.S. 83, 87 (1963).

THREE "types of fraud"

Petitioners allege a conspiracy, of three "*types of fraud*" still at play in this decade-plus litigation nightmare.

1. *Fraudulent Breach of Contract* by FDIC Reliant Bank;
2. *Fraud-upon-the-court* by Judicial Defendants, as individuals, who conspired to "*pretermit*" these FACTS from the court RECORD of OPINIONS, ORDERS, and RULINGS, and have denied Petitioners' Due Process Rights under the U.S. CONSTITUTION; deceiving the courts they serve;
3. *Fraud* to cover-up the first two frauds, extrinsic, beyond Petitioners' control, ongoing by all Respondents to prevent the FACTS from being heard even now... in Federal Court... thus, another attempt at "*fraud-upon-the-court*".

While Petitioners have the burden of proof in a civil matter, it is the FACTS... &/or absence of those FACTS, which show by a preponderance of the evidence that their allegations of *fraud and fraud-upon-the-court* have occurred. These missing FACTS must be exposed to the light of TRUTH, for as long as they are missing and "*pretermitted*", deception prevails.

Any "*type*" of fraudulent conduct which prevents a party from fairly and fully presenting his claims or defenses, or subverts, conceals, and omits those claims and defenses after presentation is extrinsic fraud. "***Fraud is extrinsic where a party is prevented by trick, artifice or other fraudulent conduct from fairly presenting his claim or defenses or introducing relevant material evidence.***" [16]

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[16] 7 Moore 60.37[1] & n.17.

FRAUD / FRAUDULENT BREACH OF CONTRACT

"Fraud... is a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegation, or by concealment of what should have been disclosed; that deceives and is intended to deceive another, so that the individual will act upon it to her or his legal injury."

There are 5-ELEMENTS to fraud: [FACT #60]

1. There was a misrepresentation of a material fact, thus a false statement;
2. By FDIC Reliant Bank officers who had knowledge that the material fact was false, a "*mistake*";
3. With intent to injure, or to defraud Bushes by secretly, quietly, changing the "*true intention*" of the NOTE, from NON-Recourse... to Recourse;
4. Who justifiably relied on FDIC Reliant's misrepresentation of material fact; and
5. Who suffered actual, quantifiable injury or damages resulting from their reliance on that intentional false fact.

Reliant's 2007 NOTE cannot be both "*true and correct*" as their two 2013 SWORN AFFIDAVITS attest when they began their quest for a Deficiency Judgment... and simultaneously be a "*mistake*" discovered in 2010, for which they have no responsibility or consequence. One of those realities is a false statement.

If the NOTE is "*true and correct...*", it cannot be a "*mistake...*", and vice versa.

Unlike the state and federal court RECORD SUMMARY, Bushes have cited to the RECORD of the TRANSCRIPT containing the testimony by FDIC Reliant Bank officers, which clearly reveals in their own words the fraud, and have subsequently "*stated with particularity*" Reliant's

"*mistake*", their "*fraud... [and] concealment*" as required by RULE 9.02 on numerous occasions. A careful and thorough reading of Petitioners' JUDICIAL NOTICE clearly reveal these FACTS.

Initially, it was a "*mistake*" or "*error*", easily correctable. RULE 36: RELIEF; EFFECT OF ERROR, states in part, "(a) *Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error [Reliant] or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error... (b) When necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party [Bushes] at any time...*"

And yet, it is FDIC Reliant, the "*party responsible for an [alleged] error*" that received relief, even when they "*intentionally concealed*" what only they allege to be a "*mistake*", knowing the injury that would result upon "*default*". [FACT #93 *thru* 101]

Defendant Martin heard this testimony, and was fully aware during Trial, stating, "***I understand the point. It's clear the bank takes the position that it was a mistake.***" [FACT #89] But in his 30-page OPINION, although the word and concept of "*mistake*" was repeated over and over, he did not once mention it, holding Bushes responsible... for Reliant's "*alleged-mistake*".

Thus, by omission of multiple relevant and material FACTS, and by "*creating ambiguity where no ambiguity exists...*" by omission of paragraph #19 in the NOTE, Defendant Martin conspired with FDIC Reliant Bank to fraudulently Breach their Loan Contract with Bushes. This was repeated by Defendants Clement and Stafford.

FRAUD UPON THE COURT

"Fraud upon the courts consists of conduct: (1) On the part of the officer(s) of the court, (2) That is directed to the judicial machinery itself, (3) That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth, that is positive averment or is concealment when one is under duty to disclose, that deceives the court." [17]

"*Fraud upon the court*" has been defined by the Seventh Circuit to "*embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.*" [18] The 7th Circuit has stated "***a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.***"

In *Bulloch*, it was defined as, *"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function--- thus where the impartial functions of the court have been directly corrupted."* [19]

It is also clear and well-settled law that any attempt to commit *"fraud upon the court" vitiates* the entire

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[17] Demjanjuk v. Petrovsky, 10 F.3d 338.

[18] Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23.

[19] *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985)

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

In *Brady v Maryland*, the court held that "***the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution***". Judges are *officers-of-the-court* in the same manner as prosecutors. Evidence of fraud that was committed by FDIC Reliant Bank and presented by Petitioners for the past ten-years may be intrinsic, but the withholding of that evidence by Reliant's attorneys and Judicial Defendants from the Honorable Court, is "*extrinsic*" and well beyond the control of Petitioners.

Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services*

Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (***what matters is not the reality of bias or prejudice but its appearance***); *United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) ***"is directed against the appearance of partiality, whether or not the judge is actually biased."*** ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), ***is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.")*** The Court also stated that Section 455(a) "***requires a judge to recuse himself in any proceeding which impartiality might reasonably be questioned.***" *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989). In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that ***"it is important that the litigant not only actually receive justice, but that he believes that he has received justice."***

Petitioners KNOW... and do not "*believe that [we] have received justice*". Respondents know it. This ongoing effort to "***pretermit***" issues and relevant material facts, as a "***long-standing practice in Tennessee courts...***"[20] over the past ten-years in more than a dozen efforts in state, and now federal court, simply for these facts to be openly *acknowledged* and *addressed*, has again revealed what has now become a pattern of deceit within the court system, a "*corruption of the judicial machinery itself*".

Therefore, since ***"fraud vitiates contracts, orders and rulings or anything it touches"***, those contracts, orders or rulings are no longer valid, but VOID. Fraud therefore vitiates FDIC Reliant Bank's "*alleged-mistake*" contract, which in reality is no "*mistake*", and should have been "*enforced as written*". It voids the ***Reliant v Bush*** 2014

[20] Defendant Stafford's last OPINION, defending his omission of the FACTS.

Trial Ruling and Opinion, the DISMISSED Motion to Alter or Amend which could easily have corrected this travesty. It vitiates the Appellate Ruling and Opinion in ***Bush I (first appeal),*** the ***Bush II*** Countersuit DISMISSED for "*res judicata*" by Defendant Martin, but upheld on appeal for "*prior suit pending*". It vitiates ***Bush III*** RULE 60 for "*mistake... fraud*" that was not "*untimely*" following appeal. And finally, it vitiates the ***Bush IV*** RULE 60 DISMISSAL in state court, based on *technicalities*, for *fraud-upon-the-court.* These ORDERS and RULINGS are now null and void.

In an article entitled *"TECHNICALITIES SHOULD NOT DEFEAT JUSTICE"* [April 20, 2014], the author M.J. Anthony opened by stating, ***"The Supreme Court has stated that procedural defects and irregularities, which can be cured, should not stand in the way of justice..."*** In Haryana State Coop Supply and Marketing v. Jayam Textiles, the Supreme Court on appeal stated, "***The courts below were wrong for insisting on technicalities***". It remitted the case back to the trial court to expose what it had failed to do so earlier. Commenting on the technicalities relied upon, the Supreme Court stated that ***"procedure, a hand maiden of law, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use."***

It now remains to be seen, how this Court will adjudicate the failure to consider the "*conflicting evidence*" of Petitioners, instead of dismissals based on *technicalities*, by the state and lower federal courts.

Petitioners' claim should be easily defensible for Defendant Judges; i.e., all that is required, is for them to show in their Opinions, Orders, Rulings, and Summaries, Petitioners' FACTS... and *where* they were adjudicated,

where they were "*legally* considered". Were they acting as the "*arm of the court...*"? Does the "*arm of the court*" deceive its own body. If so, then the State of Tennessee should be a party to this action, and the State Attorney General's office representing Judicial Defendants should now be put on notice. Or, were they acting as "*individuals*" under "*color of law*"? Either way, Judges as sworn *officers-of-the-court*, are paid by citizens of this Nation to act impartially, lawfully, and to administer fair and equal Due Process. Judges are not the court. [21]

Again, Appellants take no pleasure in bringing this to the court's attention. This isn't about punishing judges, but rather goes to the very heart and integrity of the court itself. If fraud upon the court is the ultimate perversion of the judicial machinery itself, by those who have sworn and been entrusted to protect us, then one has to wonder why to date, no judge has shown or expressed any concern, remorse or even the slightest curiosity to investigate, to hear and then *acknowledge* and *address* the alleged *fraud* and *fraud upon the court.* Instead, these judges have apparently resolved to defend themselves and their colleagues by whatever technical means to silence the Bushes. This is in and of itself evidence of a concerted effort to obstruct JUSTICE.

ONGOING "*FRAUD UPON THE COURT*"

IF *"fraud vitiates contracts, orders and rulings or anything it touches"*, and IF "*a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final...*" then respectfully... even if this Petition for writ of certiorari is not heard, the decisions

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[21] People v. Zajic, 88 Ill App. 3d 477, 410 NE 2d 626 (1980)

by state and federal courts are still not "*final*", because "*The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.*"[22]

Thus, Petitioners will begin all over again the process of exposing these three "*types of fraud*".

Respectfully, until this Court, or a court they designate, openly determines and "*legally considers*" these missing "*FACTS surrounding Reliant's alleged-mistake*", this matter will continue.

Judicial Defendants, Martin, Clement, and Stafford, had a "*duty*" to inform the court they were entrusted to serve, of what they had heard during Trial, but they did not. As individuals, they brought *"Fraud upon the court... is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function--- thus where the impartial functions of the court have been directly corrupted."*[23]

IF the "*judge has not performed his judicial function...*" can it be said that he is still acting in his judicial capacity... and has "*sovereign immunity...*" even if he violates a citizens' Constitutional Right to Due Process?

Thus, the final OPINION from state court that, "*Appellants* [Bushes] *were not entitled to relief regardless of the 'type of fraud' alleged...*" is FALSE... and exposes ongoing *fraud...* and corruption.

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[22] The *People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934)

[23] *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985)

RULE 60

RULE 60 at both the state and federal levels is the means by which errors, mistakes, fraud and fraud upon the courts may be corrected; but not in Tennessee. Specifically, it states in part, RULE 60.02:

> *"This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court".*

THREE RULE 60 MOTIONS were filed in State court to correct. The FIRST was dismissed for lack of a "*final order*" while waiting on appeal for the same reason. So, Petitioners waited to file the SECOND until that appeal was "*final*", however it was then considered "*untimely*" and dismissed, based on the Chancery Court's "*final*" ruling date (which wasn't "*final*"), and not the Appellate Court's "*final*" ruling date, and would have required Petitioners to file a RULE 60 for "*mistake, fraud*" while awaiting the appellate decision for the same reasons. Therefore, a THIRD RULE 60 MOTION [*Bush IV*] was then filed for "*fraud-upon-the-court*", but was likewise DISMISSED, because of the prior "*untimely*" filing, and false claim that it should be referred to the Board of Judicial Conduct[24], as the "*exclusive forum for an assertion of misconduct*". Yet, the "Board" cannot hear RULE 60's... only a "*court*". RULE 60 was ignored even though "*timely*" and properly presented, as no time bar exists for asserting fraud on the court.

Yes, the "*type of fraud*" is relevant and material... but it does require Petitioners' "*conflicting evidence*" of the

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[24] T.C.A. 17-5-201 through T.C.A. 17-5-311, ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a)

"*FACTS surrounding Reliant's alleged-mistake*" to be heard by an Honorable Court, not one that is corrupted.

Rooker-Feldman Doctrine

FDIC Reliant Bank Defendants were dismissed for lack of *subject matter jurisdiction,* via *Rooker-Feldman.* Admittedly, there is diversity among Circuit Courts concerning the *Rooker-Feldman Doctrine.*

Respondents will stress that Petitioners are simply relitigating the same old issues, thus *Rooker-Feldman.* Petitioners argue they have never been litigated, thus the District Court should and could have heard this matter, and exposed the three "*types of fraud*" involved.

The Sixth Circuit [to their past credit] has recognized an exception to the *Rooker-Feldman* doctrine when a state court judgment was procured through fraud, deception, accident or mistake [*See In re Sun Valley Foods Co., 801 F2d 186, 189 (6th Cir. 1986) (citing Resolute Ins. Co. v. State of No. Carolina, 397 F.2d 586, 589 (4th cir. 1968)*]. Therefore, *Rooker-Feldman* should not apply. Yet in this current matter, *Rooker-Feldman* apparently did apply, as the Sixth Circuit upheld the dismissal, even though the "*state court judgment was procured through fraud, deception, accident or mistake.*" Why?

The Seventh Circuit has stated that *"[t]he Rooker-Feldman doctrine is concerned not with why a state court's judgment might be mistaken (fraud is one such reason; there are many others) but with which federal court is authorized to intervene.*" Iqbal v. Patel, 780 F3d 728, 729 (7th Cir. 2015). Thus, the Seventh Circuit would only allow the U.S. SUPREME COURT to intervene &/or reverse a fraudulent state court judgment.

So, which is it? If there "*is not in essence a decision at all...*", and if the FACTS have never been "*legally considered*", HOW can *Rooker-Feldman* apply? And if only the U.S. SUPREME COURT can hear, does that only apply to 1-2% of the cases lucky enough to be heard? If so, the U.S. CONSTITUTION should be amended to indicate that the Right to Due Process is conditional, depending on which Circuit Court you are in, how busy the SUPREME COURT is, and depending whether you are within the 1-2% lucky enough to be heard.

But then, does the crime continue unabated or go unanswered without remedy, because the perpetrators claim *Rooker-Feldman,* or *immunity*...? No...!

Petitioners are not "*state court losers*", rather as pro se, have been the target of fraud by an FDIC bank who gave incriminating sworn testimony of that fraud, yet was omitted by Defendants Martin, Clement and Stafford, who conspired *with* and on behalf of Reliant to "*pretermit*" that factual testimony... and... the lower federal courts, did the same by their casual dismissal, even though they admitted that "***the court must weigh the conflicting evidence to arrive at the factual predicate that subject-matter jurisdiction does or does not exist.*** [25]

As life-long citizens of this great Nation, it seems repugnant, unbelievable, that after swearing an Oath to uphold the Constitution and laws, the Sixth Circuit would validate that judicial immunity "***applies even when a judge acts maliciously or in a corrupt manner***"???

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[25] *Doe v. Lee, No. 3:21-CV-00809, 2022 WL 1164228, at *4 (M.D. Tenn. Apr. 19, 2022).*

Therefore, "*malicious and corrupt*" behavior has now been legalized... and will be repeated.

SOVEREIGN IMMUNITY

"*Fraud-upon-the-court*" is not an "*official act, duty, nor is it within the official capacity*" of any honorable judge.

However, the Sixth Circuit who reviewed de novo[?], and without ANY consideration of Petitioners' FACTS, concluded that, judicial defendants "*are clearly entitled to judicial immunity* [and]...*although there exist narrow exceptions to that rule, those exceptions are not relevant here because the Bushes did not show that the judicial defendants were acting outside of their official capacities*..."

But then the question must be asked. "How can the Bushes show that "*judicial defendants were acting outside of their official capacities...*" if the Bushes "*conflicting evidence*" of the "FACTS" are never mentioned, never "*legally considered*" by state or federal courts? Case law is clear, therefore...

"***Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law.***" [Owen v. Independence, 100 S.C.T. 1398, 445 UA 622]

As individuals who heard and have seen the TRANSCRIPT testimony given by FDIC bank officers of, "*Reliant's mistake... not the Bushes mistake... didn't tell the Bushes for 3-4 years... wouldn't have told the Bushes even if they had asked... even made it a point to ensure that Bushes did not renew the third party agreement...*", etc., Judicial Defendants never informed the Court of this testimony. Thus, the courts they serve were deceived.

Judicial Defendants would have us believe that because they are "*judges...*", they are "*sovereignly immune... regardless of the type of fraud*" they have committed. For them, they are above the Law. This prideful argument could serve as the perfect definition of insanity, destined to be repeated. No one... I repeat, NO ONE is sovereign, or should have sovereign immunity, without first "*considering*" the FACTS of ALL parties.

To begin with, ONLY GOD IS SOVEREIGN.

> "*Silence in the face of evil... is evil itself.*
> *Not to speak... is to speak. Not to act... is to act.*
> *God will not hold us guiltless.*"

These are not only general moral and judicial predicates that form the basis of fraud, but are direct quotes from "Letter to the American Church", a book authored by Eric Metaxas who is calling the Church of Jesus Christ to stand against the evils of modern day, and who then levels criticism against the silence of the church both now and during the dark days leading up to Germany's horrific holocaust. It should equally apply as a warning to be heard now, to our American courts.

Judges who *intentionally* pervert the "*... Truth, the Whole TRUTH, so help me GOD...*" through silence and the "*pretermitting*" of material facts they have seen and heard, violate the LAW themselves, deceive the courts, injure the innocent, and are corrupt. Nor can FDIC banks be allowed to fraudulently breach their trust with the American public.

Our Pastor, Kevin Ulmet, shared his thoughts with our congregation recently. It applies well in this context.

"Power is alluring, no matter the arena you find yourself in: the church, your job, the neighborhood, the community, organizations or politics. We have all observed people compromising to get ahead, crushing others on their journey yet receiving the temporary benefits of increased power. The higher road often seems longer and harder, with no guarantee of success. Yet in our spirit we know *we should do it the right way. And the longer we live, the more we observe the "what goes around" in the short-cuts "comes around" in eventual collapse, and we watch others crash and burn. We can live every day with the quiet satisfaction that we have done things the "right way" - and God has led and blessed us or will compensate us in eventual."*

Pastor Kevin Ulmet

The Sixth Circuit's Dismissal *Without* the "FACTS", Has Far-Reaching Consequences

First, it will be the "facts" of the party accused of *fraud*, and/or *fraud-upon-the-court*, which will be the ONLY "facts" in the RECORD used, while the FACTS of the party alleging various "*types of fraud*" can be passively dismissed as "*baseless allegations*".

Secondly, FDIC banks, will be emboldened, since they will now have a precedent in which they do not need to prepare their Loan documents accurately, but can... upon discovery of a relevant material "*alleged-mistake...*" years later, unilaterally change and intentionally conceal that mistake, with no Duty to Disclose, to the detriment and injury of their customer.

Thirdly, RULE 60's can by dismissed on *technicalities*, even with the most egregious efforts to deceive the court.

Fourthly, those injured customers will only have a 1-2% chance of being heard, since *Rooker-Feldman* applies, and only the U.S. SUPREME COURT can hear.

And lastly, *officers-of-the-court* can sigh a breath of relief, knowing that they got away with it again, because they are "*sovereignly immune*" even if they act "*maliciously or in a corrupt manner...*"

CONCLUSION

For the foregoing reasons, this Court should grant this petition for a writ of certiorari to correct this injustice and carefully consider Petitioners' Judicial Notice with the Statement of Undisputed Facts [APPENDIX]. In the alternative, the Court should prepare for more of the same from Tennessee courts, since...

- ***"All other issues not specifically addressed have been pretermitted."*** *[intentionally left-out]*
- ***"Pretermitting issues is a long-standing practice in Tennessee courts."***
- ***"Appellants [Bushes] were not entitled to relief regardless of the type of fraud alleged".*** [26]

Respectfully and prayerfully submitted,

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[26] Reference again to Mr. Stafford's three-defining statements given in the last two OPINIONS from state court.